

ORIGINAL

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the matter of:

COMMONWEALTH EDISON COMPANY

(Byron Nuclear Power Station,  
Units 1 & 2)

Docket No. 50-454 OL  
50-455 OL

Location: Rockford, Illinois

Pages: 7851-8021

Date: Friday, August 12, 1983

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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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 COMMONWEALTH EDISON COMPANY : Docket Nos. 50-454 OL  
 : 50-455 OL  
 (Byron Nuclear Power Station, :  
 Unites 1 and 2) :  
 :  
 -----X

Courtroom 260  
Federal Building  
211 South Court Street  
Rockford, Illinois

Friday, August 12, 1983

Hearing in the above-entitle matter convened  
at 8:30 a.m., in open session, pursuant to notice.

BEFORE:

JUDGE IVAN SMITH,  
Chairman, Atomic Safety & Licensing Board.

JUDGE A. DIXON CALLIHAN,  
Member, Atomic Safety & Licensing Board.

JUDGE RICHARD COLE,  
Member, Atomic Safety & Licensing Board.

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## 1 APPEARANCES:

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STEVEN GOLDBERG, ESQ.  
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U.S. Nuclear Regulatory Commission  
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On behalf of Intervenors DAARE/SAFE and  
Rockford League of Women Voters:

13

JANE WHICHER, ESQ.  
Business and Professional People for  
the Public Interest  
109 N. Dearborn Street, Suite 1300  
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<u>Witness:</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>	<u>Board</u>
Wm. Forney					
Kevin Connaughton		7854			7975
D.W. Hayes		7997	8008		

E X H I B I T S

For Identification:      Received:

P R O C E E D I N G S

1  
2 Whereupon,

3 WILLIAM FORNEY,

4 KEVIN CONNAUGHTON

5 and

6 D. HAYES

7 resumed the stand and, having been previously duly sworn, were  
8 examined and testified further as follows:

9 JUDGE SMITH: Good morning, ladies and gentlemen.

10 Our objective today is to complete this panel and  
11 this reopened session by approximately 4:00 o'clock.

12 We would approach it by allocating approximately  
13 four hours of cross-examination to the Intervenors,  
14 approximately one hour of cross-examination and redirect by  
15 the Staff and the Applicant, and approximately one hour of  
16 Board questions, a half hour of miscellaneous business, and  
17 approximately an hour noon break. We believe this is  
18 adequate.

19 After having reexamined the testimony and then  
20 discussing the breadth of the scope of the reopened issue, we  
21 will make whatever adjustments seem to be appropriate as we  
22 move along.

23 You may proceed.  
24  
25

XXXX

## 1 CROSS-EXAMINATION (continued)

2 BY MS. WHICHER:

3 Q Mr. Hayes, yesterday you made certain additions to  
4 your prepared testimony.

5 Do you recall that?

6 A (Witness Hayes) Yes, I do.

7 Q And those were specifically with respect to  
8 welding problems at Bryron; right?

9 A Yes, they were.

10 Q And you spoke for Region III when you made those  
11 statements; correct?

12 A Yes, I did.

13 Q And you accurately represented the position of  
14 Region III in those statements; correct?

15 A Yes, I did.

16 Q I would like to ask the panel generally whether  
17 they recall Mr. Tuetken's addition to his testimony yesterday  
18 regarding an August 4th meeting with Region III?

19 A Yes, I recall that.

20 Q And were any of the panel members in attendance  
21 at that meeting?

22 A (Witness Forney) I was not.

23 A (Witness Hayes) I was in attendance.

24 A (Witness Connaughton) Yes, I was.

25 Q I would ask Mr. Hayes and Mr. Connaughton whether

1 Mr. Tuetken accurately and complete represented the position  
2 of Region in the statements that he made?

3 A (Witness Connaughton) Yes, I believe he did.

4 A (Witness Hayes) Yes. There were the general  
5 matters discussed. There was one additional item discussed,  
6 but that concerned processing of deficiency reports.

7 We had received some complaints that some of the  
8 inspectors felt that they were being hassled or hampered a  
9 little bit in issuing and processing some of these DRs, and  
10 we passed that on to the Commonwealth Edison Company, that they  
11 may want to take a look and make sure that the inspectors were  
12 completely free to not only write one, but to make sure it  
13 got into the system and was processed.

14 Q And when you say, Mr. Hayes, that you received some  
15 complaints from inspectors, were those complaints in the form  
16 of allegations?

17 A No, they were not. They were just comments in the  
18 course of making inspections. They would just comment, you  
19 know.

20 We do talk to a number of those inspectors.

21 Q And do you intend to process those as you would  
22 allegations?

23 A Not the ones -- not those where they're just  
24 comments. No, we don't.

25 Q Mr. Forney, I'd like to turn your attention, please,

1 to the 82-05-19 reinspection.

2 A Let me add one more thing. That meeting will be

end 1

3 documented and will be in one of our reports.

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1 JUDGE SMITH: While you're on this point, has  
2 it been and will it be the practice of Region III to serve  
3 in this proceeding the relevant inspection reports as they  
4 are completed or have they been made available to you in  
5 the past?

6 MS. WHICHER: Well, starting, I believe, in May  
7 or June, I was placed on the distribution list, which means  
8 that I receive a copy as it's placed in the public document  
9 room.

10 JUDGE SMITH: And you are satisfied with that  
11 arrangement?

12 MS. WHICHER: Well, of course, I would like a copy  
13 earlier and I don't know enough about the logistics and the  
14 timing to know whether it's possible to get copies earlier.

15 JUDGE SMITH: Okay, we'll address that later on.

16 BY MS. WHICHER:

17 Q Now, Mr. Forney, Commonwealth Edison originally  
18 estimated that the reinspection program would be completed in  
19 July of 1983, right?

20 A (Witness Forney) That's correct.

21 Q That estimate was later revised to late September  
22 of this year, right?

23 A Yes, it was.

24 Q And it will take three months for the Staff to  
25 review and evaluate the results of that program, right?

1 A That's our estimate.

2 Q Therefore, the earliest we can expect Region III's  
3 evaluation is late December of this year, right?

4 A That's correct.

5 Q Do you agree, Mr. Forney, that the license should  
6 not issue until that evaluation is complete and the results  
7 of the program are acceptable?

8 A The Region would not recommend to Mr. Keppler, and  
9 therefore he would not recommend to NRR the issuance of the  
10 license until that issue is resolved.

11 Q And resolution of that issue includes the Region's  
12 evaluation of the program and finding the results acceptable,  
13 correct?

14 A That's correct. And it's relationship to item  
15 82-05-19.

16 Q And if the results are not acceptable, the license  
17 will not issue, right?

18 A That's correct. We have notified the applicant of  
19 the areas that we felt additional work would be required.

20 Q Mr. Forney, when Commonwealth Edison first proposed  
21 corrective action for the noncompliances found in 82-05-19,  
22 their proposed program was less substantial than the program  
23 that's now in effect, right?

24 A That's correct.

25 Q In fact, in their original proposal, Commonwealth

1 Edison did not include plans for reinspection of work by  
2 unqualified inspectors, right?

3 MR. BECKER: Objection. I'm not sure there is  
4 any foundation to the reference to unqualified inspectors,  
5 Your Honor.

6 MS. WHICHER: Well, I think in order to move this  
7 along if Mr. Forney doesn't know or has a problem about what  
8 I'm referring to, maybe we could leave it up to the witness.

9 JUDGE SMITH: I thought there was a foundation.  
10 But let Mr. Forney address your objection in his response.

11 WITNESS FORNEY: That's correct.

12 JUDGE SMITH: You accept the premise of the ques-  
13 tion?

14 WITNESS FORNEY: I believe I already said the  
15 Region's position was that there were unqualified inspectors  
16 that had been used.

17 JUDGE SMITH: Yes, that was my memory of his testi-  
18 mony.

19 BY MS. WHICHER:

20 Q The original proposal did not include provisions  
21 to inspect past reinspections of inspectors who were newly  
22 recertified, right?

23 A (Witness Forney) To the best of my recollection,  
24 that's true.

25 Q Mr. Forney, you agree, do you not, that Commonwealth

1 Edison's failure to include these two areas in their plan  
2 is symptomatic of a poor attitude on the part of Commonwealth  
3 Edison toward quality assurance?

4 A That is not a conclusion I drew. The conclusion  
5 I drew is that they were approaching the problem from one  
6 standpoint and we were approaching it from another and that  
7 amounts more, in my opinion, to differing professional opinion  
8 as to attitude.

9 Q Can we agree, Mr. Forney, that Region III took a  
10 broader view with the problem than Commonwealth Edison did?

11 A I would agree.

12 Q Now it's correct, is it not, Mr. Forney, that in  
13 Commonwealth Edison's original proposal, they were only con-  
14 cerned about the precise noncompliances you discovered in  
15 your inspection?

16 A I really don't remember all the details of each  
17 iteration. Generally, I'd say that was yes.

18 Q And, Mr. Forney, you are familiar with the SALP  
19 report, right?

20 A Yes, I am.

21 Q Do you have a copy of that report before you? I  
22 have one copy left.

23

24

25

End 2.

1 A I believe I do. Yes, I do.

2 Q Now, turning your attention specifically,  
3 Mr. Forney, to pages 16 and 17 of that report, the last  
4 paragraph on page 16 and the first paragraph on page 17.

5 A What was that on page 17?

6 Q The last paragraph on page 16 and the first --  
7 I call it "the paragraph" -- the first item on page 17.

8 These two paragraphs refer to the findings of the  
9 special team inspection, 82-05; right?

10 A It refers to items from the team inspection and  
11 from other functional areas, which means areas other than  
12 just the team inspection.

13 Q So, it's an overview; right?

14 A Yes, the SALP is an overview of the reporting  
15 period. In this case, it was the year 1982.

16 Q And that overview includes the results of 82-05?

17 A That's correct.

18 Q You agree, do you not, that those two paragraphs  
19 criticize Commonwealth Edison for taking the narrow view of  
20 correcting noncompliances and not the broader view expressed  
21 by Region III.

22 A That's correct.

23 MS. WHICHER: Judge Smith, at this time, I would  
24 like to move for admission of this report as an exhibit.

25 JUDGE SMITH: Before we move to that, I'm going to

1 make sure that there's a common understanding as to what the  
2 two paragraphs are that you're referring to.

3 The bottom of page 16 is the paragraph that begins  
4 with the words "Additional inspection of open items." And I'm  
5 not sure what constitutes the first paragraph on the following  
6 page.

7 MS. WHICHER: All right. If you look at the last  
8 phrase of the paragraph on page 16, it says: "These  
9 observations are evidenced by the following examples:" And  
10 the examples start on page 17.

11 And I'm also referring specifically to the first  
12 example.

13 JUDGE SMITH: The first example?

14 MS. WHICHER: Yes.

15 JUDGE SMITH: Now, with respect to the motion, are  
16 there objections?

17 MR. BECKER: Objection, Your Honor.

18 MS. YOUNG: Staff objects, also.

19 JUDGE SMITH: Okay. The basis of the objection was  
20 argued yesterday, and I assume that it's the same basis.

21 MR. BECKER: Yes, Your Honor.

22 JUDGE SMITH: And that is it goes -- it is beyond  
23 -- it includes information beyond the scope of the reopened  
24 hearing, and it is unreliable, in that it is outdated and  
25 does not have the complete story.

1 MR. BECKER: Perhaps even more importantly is it's  
2 also cumulative.

3 JUDGE SMITH: Cumulative, yes.

4 MS. YOUNG: Judge Smith, I also think Ms. Whicher's  
5 examination has not been directed towards the entire SALP  
6 report itself. She's only limited her inquiry to certain  
7 portions.

8 JUDGE SMITH: I think that observation is certainly  
9 true.

10 MS. WHICHER: If the motion is not granted at this  
11 time, then I would like to read these two paragraphs into the  
12 record.

13 JUDGE SMITH: All right. I think that that is  
14 reasonable.

15 However, instead of taking the time of reading  
16 it, why don't I just give it to the reporter and mark it. And  
17 she can either read it in now or put it in at the appropriate  
18 time.

19 Would that be satisfactory?

20 Are there any objections to that proceeding?

21 MR. BECKER: No.

22 MS. YOUNG: No, Your Honor.

23 MS. WHICHER: While you're doing that, let me pass  
24 out the next exhibit.

25 JUDGE SMITH: Off the record.

1 (Discussion off the record.)

2 (The paragraphs from pages 16 and 17 of the SALP  
3 Report follow:)

4 "Additional inspection of open items from  
5 the team inspection and findings from other functional  
6 areas; however, continued to identify generic quality  
7 problems and concerns throughout the remainder of the  
8 assessment period. These observations and findings  
9 indicated that the licensee at times did not address  
10 corrective actions beyond the specifics in the  
11 noncompliances, his corrective measures were not  
12 effective in all cases, in at least two instances  
13 failed to promptly address potentially reportable  
14 items, and exhibited a lack of thorough understanding  
15 of quality requirements. These observations are  
16 evidenced by the following examples:

17 " -- Followup on the noncompliance  
18 concerning QA/QC personnel qualifications (Item 2  
19 above) indicated that the qualification/certification  
20 practices for QA/QC personnel were deficient in almost  
21 all contractor organizations performing safety related  
22 work. Subsequent to the end of the assessment period,  
23 an acceptable proposal for corrective action was  
24 obtained, is currently in progress and is scheduled  
25 for NRC review and evaluation in July 1983."

1 BY MS. WHICHER:

2 Q Mr. Forney, turning your attention again to the  
3 SALP report, you agree, do you not that the criticism expressed  
4 in the paragraphs of that report which we were speaking about  
5 just a moment ago -- that criticism is that Commonwealth  
6 Edison did not address corrective action beyond the specifics,  
7 that their corrective actions were not always effective, and  
8 they failed at least twice to promptly address reportable  
9 items and exhibited a thorough lack of understanding -- a  
10 sorry, a lack of thorough understanding of quality require-  
11 ments. You agree with that, right?

12 MR. BECKER: Objection, I assume we are talking  
13 only about 82-05 and I think the question ought to be speci-  
14 fically limited to 82-05.

15 MS. WHICHER: Let me make sure 82-05 is factored  
16 into that.

17 JUDGE SMITH: Is your microphone operating?

18 MS. WHICHER: I don't think so.

19 JUDGE SMITH: I'm having difficulty. It's not  
20 working, is it? I missed part of that exchange. I got yours  
21 but I didn't hear her comment about 82-05.

22 MS. WHICHER: My comment was that in my next  
23 question I would establish that 82-05 was a factor and the  
24 extent, it was a factor in making that determination.

25 JUDGE SMITH: Does that meet your objection?

1 MR. BECKER: No, the question is asking for a  
2 broader conclusion which isn't relevant. The paragraph  
3 states specifically it's at times. There's no reason this  
4 question can't say with regard to 82-05.

5 JUDGE SMITH: I wish there could be an accommoda-  
6 tion because I've lost the thread of the objection and the  
7 point. I'm sorry, I don't know what's happening.

8 MS. WHICHER: All right, I have such limited time,  
9 I don't want to take up a lot of it with this kind of thing.

10 JUDGE SMITH: I realize it. My clarifying it  
11 cuts down the need for the Board to ask questions.

12 MS. WHICHER: I'm referring Mr. Forney's attention  
13 specifically to three -- I think it's three criticisms set  
14 forth in the paragraph on page 16. It's the SALP report,  
15 Your Honor, that they at times did not address corrective  
16 actions beyond the specifics in the noncompliances.

17 Corrective measures were not effective in all  
18 cases. In at least two instances they failed to promptly  
19 redress reportable items and they exhibited a lack of thorough  
20 understanding of quality requirements.

21 JUDGE SMITH: And your request is that the question  
22 be limited to 82-05, which I think is reasonable.

23 MS. WHICHER: How about if I inquire into the  
24 extent that the findings of 82-05 are factored into that?

25 JUDGE SMITH: All right, let's do that.

1 BY MS. WHICHER:

2 Q Mr. Forney, you see the portion of the paragraph  
3 on page 16, to which I just referred?

4 A (Witness Forney) I believe you started on the  
5 second sentence of the bottom paragraph on page 16.

6 Q That's right. And 82-05, the findings of 82-05-19  
7 were factored into this statement by the Region, correct?

8 A They did factor into that sentence. They weren't  
9 the predominant issue; they were one of the issues but they  
10 weren't the predominant issue.

11 Q They were a significant issue factored into this  
12 finding, right?

13 A They were an issue in it. I don't know whether  
14 I'd typify it as significant. There were a number of consi-  
15 derations we gave when we prepared that paragraph and to the  
16 extent we considered all of the the factors that went into  
17 that sentence as being significant.

18 Q Mr. Forney, 82-05 was one of the most extensive  
19 inspections that Region III did at Byron during 1982, right?

20 A That's correct.

21 Q And it's findings were significant, correct?

22 A There were a number of findings. I would say if  
23 you wanted to categorize them, one relative to the other,  
24 the most significant was the QA-QC inspector certification  
25 issue.

1 Q And Mr. Forney, it's correct is it not, that no  
2 other finding at Byron has resulted in a reinspection program  
3 of the magnitude of the reinspection program?

4 A That's correct.

5 Q Okay, thank you.

6 Mr. Forney, you agree, do you not, that the rein-  
7 spection program would not have been necessary if Commonwealth  
8 Edison had at the start of construction established a formal-  
9 ized program for contractor training, qualification and  
10 certification and seen to it that contractors had adhered to  
11 that program?

12 A (Witness Forney) I would say we would not have made that  
13 finding and therefore the issue wouldn't have come up and therefore  
14 the reinspection would not have been developed.

15 Q So, your answer is yes, right?

16 A Yes.

17 Q Now, I'd like to address the panel generally. You  
18 have received a number of allegations by current and former  
19 Hatfield workers since last August, correct?

20 A That's correct.

21 Q And some of these allegations were serious charges,  
22 weren't they?

23 A I guess to answer that, we consider all of them  
24 serious. We look at all of them. They have not all been  
25 evaluated at this time, so --

1           A       (Witness Hayes) We don't know how serious some  
2 of them might be.

3           Q       Just the charges themselves and not the Region's  
4 evaluation, okay? Some of these charges have serious safety  
5 implications, right?

6           A       If substantiated, yes.

7           Q       And you investigate these charges thoroughly and  
8 expeditiously, right?

9           A       Thoroughly.

10          Q       But not expeditiously?

11                   (Laughter.)

12          A       (Witness Hayes) We'd like to. I can say that  
13 we do investigate those allegations that involve ongoing  
14 work where something -- say, deficiencies would continue  
15 to occur if the allegation was substantiated. So those we  
16 do try to get on right away.

17                   Those that look like they are just dealing with  
18 past work and it is not going to go away, those are not as  
19 high a priority.

20          Q       Now, I'd like to ask each of the panel members to  
21 describe his role in the receipt and investigation of the  
22 allegations against Hatfield Electric, and to speed things  
23 along, I think if you will agree with me we can divide these  
24 into the August allegations, the November allegations, the  
25 January allegations and the March allegations. Is that a

1 fair way to divide it?

2 A (Witness Hayes) Those are the dates we received  
3 the allegations, yes.

4 Q I would like each panel member, please, to tell  
5 me his role in both the receipt and the investigation of  
6 those allegations.

7 A Well, in most cases, the resident and senior resi-  
8 dent inspector received the allegations. They would talk  
9 to the individual and get all of the facts, prepare a memo,  
10 which in most case they tried to review that with the allegor  
11 to make sure they have accurately reflected his concerns, and  
12 they would send that memo to Region III files through me.

13 I would, in turn, attach a buck slip, essentially  
14 sending that memo to individuals that would be involved in  
15 resolving those allegations and usually that would trigger  
16 a meeting between usually the engineering staff and, if  
17 Office of Investigation was involved, they would also attend  
18 that meeting.

19 And during that meeting we would try to decide  
20 who would have the lead responsibility for initiating action.

21 There is other memos where we try to move things  
22 along and keep the parties informed that we still have those  
23 allegations out there and we would like to get them resolved  
24 as quickly as possible. There is a few memos, I'm sure you  
25 have copies of them, that deal strictly with talking about  
resolving the issue as quickly as possible.

End 4.

1 Q So, Mr. Hayes, your role in the receipt and investiga-  
2 tion of the allegations is really one of facilitating the  
3 inspection, is that right?

4 A Well, I can get involved in a number of areas,  
5 but I would say my primary role is to make sure that the  
6 allegations do get to the people that would be responsible  
7 for resolving those and to keep the issue in the forefront  
8 to accommodate resolution.

9 Q And you personally did not receive any of the  
10 allegations, right?

11 A No, I did not.

12 Q But you did some of the inspections, right?

13 A Yes, and that would be the other part that I might  
14 be involved in. If I felt qualified and time was running  
15 short and we just could not get other resources, I would  
16 myself investigate the allegation.

17 Q Would the panel please tell me who received the  
18 August allegations.

19 A (Witness Connaughton) Yes, the alleged first  
20 contacted the Regional office by telephone. I believe that  
21 was documented by memoranda dated August 2nd or perhaps  
22 August 6th, that sticks out in my mind.

23 The alleged was only talking to an investigator  
24 from the Office of Investigations. That same alleged was  
25 later contacted by the Office of Investigations. Two

1 investigator were involved, a gentleman from the division  
2 of engineering in the regional office, Mr. Forney, and  
3 myself. That was in November and I believe documented in a  
4 memorandum dated November 30th.

5 JUDGE CALLIHAN: Excuse me, before you get too  
6 far, August of 1982?

7 WITNESS CONNAUGHTON: Yes, sir, in November of  
8 1982.

9 BY MS. WHICHER:

10 Q When was the first time Mr. Forney or Mr. Connaught-  
11 ton had personal contact with the allegor who gave allegations  
12 in August?

13 A (Witness Connaughton) I believe somewhere around  
14 mid-August, around the 16th or so.

15 Q And who received the November allegations?

16 A As I stated, there was -- there were two investi-  
17 gators present, a gentleman from the division of engineering  
18 by the name of Mr. Ray Love, L-o-v-e, Mr. Forney and myself.

19 Q And who received the January allegations?

20 A Mr. Forney and myself.

21 Q And who received the March allegation?

22 A Mr. Forney and myself.

23 Q And you all three have aided in the investigation  
24 of all the allegations, right?

25 A (Witness Hayes) I didn't catch the first part of

5rg3

1 your question.

2 Q All three of you have aided in the inspection of  
3 all these allegations, right?

4 A Yes, if you include passing out as much information  
5 as we know about the allegation, yes.

6 Q When you say "passing out," you are referring to  
7 passing it out to OI, right?

8 A If the allegation was referred to OI, yes, we  
9 would brief them on all the facts as we knew them.

10 Q Under what circumstances ---

11 A (Witness Connaughton) May I make a correction to  
12 my last response? When the November allegations were received  
13 there was no representation from the Office of Investigations.

14 Q Thank you. Under what circumstances are allega-  
15 tions referred to the Office of Investigations?

16 A (Mr. Hayes) If the allegation appears to involve  
17 wrongdoing.

18 Q And what do you mean by wrongdoing?

19 A Where there would be false records, lying to a  
20 Federal official, concealing evidence from the investigator  
21 or the inspector, things of that nature.

22 Q Now when a worker comes to you, you divide up  
23 what he has to say into allegations, right?

24 A (Witness Forney) That's correct.

25 Q And you investigate each allegation separately,

1 right?

2 A We inspect or investigate depending on whether it's  
3 the Office of Investigations that's performing the function  
4 or whether it's the Office of Inspection and Enforcement.

5 We inspect, we don't investigate.

6 A (Witness Hayes) These terms get interchanged  
7 quite easily as you know.

8 Q And exactly what do you need to substantiate an  
9 allegation?

10 A (Witness Forney) Without an example, it's hard  
11 to say. Our process is, we go through records, we review  
12 records. We'll go out in the field if necessary. If it were  
13 an item dealing with welding, we'd try and get a welding  
14 specialist. If it were an item dealing with electrical  
15 separation, we'd try and get an electrical specialist from  
16 the region and they would go out and look for examples of  
17 that particular type of item.

18 If the allegor can give us specifics, then, natur-  
19 ally it becomes much easier if they can pinpoint a Unit 1  
20 or Unit 2 containment, whether it's a specific system or  
21 whatever, then it makes our job much easier.

22 Q Is there some standard or policy which you operate  
23 under in order to determine whether an allegation is considered  
24 substantiated or unsubstantiated?

25 A You couldn't write a book that would tell you how

1 to -- what you would use for each given case. The inspector  
2 or investigator has to evaluate the allegation, see what it  
3 deals with, make a value judgment of the areas to look at  
4 and then they go and they just start looking at everything  
5 they can find.

6 Q Do you need some kind of proof that what the  
7 worker says is true?

8 A (Witness Hayes) Yes.

9 Q What kind of proof do you need, Mr. Hayes?

10 A Well, if he alleges that a certain component is  
11 deficient and he can identify that component, we'll go and  
12 look at it. If it is deficient, we would consider his alle-  
13 gation to be substantiated.

14 If it was not deficient and met all the require-  
15 ments we would conclude that his allegation was not substan-  
16 tiated.

17 Q And you can't find the component, you conclude the  
18 allegation was not substantiated, right?

19 A We'd still make the effort of pursuing to the  
20 degree possible based on the information he's been able to  
21 provide us. It's very difficult if he just says, "Somewhere  
22 in the plant a problem exists." That's very difficult to  
23 run down, but if he can give us any clues at all, even though  
24 he cannot pin down the building it's in, we still make an  
25 effort to look at a reasonable sample of that and go through

1 record and see if we can find any clues, especially if he  
2 can give us the timeframe it occurred in.

3 It's very time-consuming, I'll assure you.

4 Q If you have three workers who give the same alle-  
5 gation, they would help substantiate each other, right?

6 A It would give more credence to it, yes.

7 Q And you'd give more weight to the allegation,  
8 right?

9 A Yes, we would.

10 Q Now, a year has passed since Region III first  
11 received the August allegations, right?

12 A (Witness Forney) That's correct.

13 Q And there were 31 discrete allegations given at  
14 that time, right?

15 A I believe that was the number.

16 Q And four of those remain uninspected, right?

17 A I believe that's correct.

18 Q Why are those four still uninspected after a year?

19 A We haven't looked at them yet.

20 Q Why not?

21 A Well, a lot of things goes into the judgment. Mr.  
22 Hayes already stated when we get them we try to evaluate  
23 those but where's more urgency and those that have the  
24 potential to be hidden behind the installation of additional  
25 equipment or so on. If the allegation is the type that in

1 our judgment will be there when we have the appropriate  
2 technical inspector at the site for routine inspection, it's  
3 not unusual for us to wait for that period of time.

4 In addition, there's manpower considerations,  
5 and priorities within the region relative to the inspection  
6 or investigation of these allegations compared with, say,  
7 Zimmer, which has 550 allegations currently outstanding.

8 Q You are not saying, are you Mr. Forney, that these  
9 four allegations are less important than the others?

10 A No, I did not say that. I said that in our judg-  
11 ment, that our ability to look at them either last year or  
12 this year would not be changed by a period of time.

13 Q You also stated, did you not, it's not unusual to  
14 wait a year to investigate allegations?

15 A I didn't say it was not unusual to wait a year.  
16 I merely stated it was not unusual to let time pass. I  
17 didn't give a time period.

18 Q Is it unusual to wait a year, Mr. Forney?

19 A I guess in view of the fact that the Zimmer site  
20 has a backlog of 550 that have been in existence for over  
21 two years, the answer to your question would be no.

22 XXXX

(The document referred to was  
23 marked Joint Intervenors'  
24 Exhibit No. 30 for identification.)  
25

1 BY MS. WHICHER:

2 Q I have asked the reporter to mark Joint Intervenors'  
3 Exhibit No. 30, and you have it before you. Let me represent  
4 to you that these are documents produced to me by Region III.  
5 I have collated them together and numbered them pages 1  
6 through 34. I apologise that I've put them in chronological  
7 order and they wound up in reverse chronological order.

8 So perhaps we can start at the back. You've had  
9 a chance to look at these, right, just briefly?

10 A (Witness Forney) The top sheet.

11 Q And you've seen these documents before, right?

12 A I see most of them appear to have been generated  
13 by our office.

14 Q Mr. Hayes, these documents came from your files,  
15 right?

16 A (Witness Hayes) Not necessarily my files, but  
17 from the Region III files, yes.

18 Q Now, if you will turn, please, to the pages that  
19 I have marked 33 and 34 of Exhibit 30, Mr. Connaughton, is  
20 this the August 6th memo that you referred to in the previous  
21 answer?

22 A (Witness Connaughton) Yes, it is.

23 Q And this is a memo of the allegations received  
24 on August 2nd, right?

25 A That's correct.

Q If you will turn, please, to pages 26 through 31  
of this Exhibit.

End 5.

1                   This is a memo dated August 19th, 1982, that is a  
2 report of Region III's meeting with the August allegor;  
3 right?

4           A           (Witness Connaughton) Would you repeat the  
5 question, please.

6           Q           Pages 26 through 31 is an August 19th report of an  
7 August 16th meeting with the allegor who gave allegations on  
8 August 2nd; right?

9           A           Yes, it is.

10          Q           And that memo amplifies the concerns expressed by  
11 the allegor; right?

12          A           Yes, it does -- some of those concerns.

13          Q           Pardon me?

14          A           Some of those concerns are amplified. And he also  
15 presents some new concerns not previously heard from.

16          Q           I notice that on both memos, in various places,  
17 entire paragraphs are deleted.

18                   Do you see that?

19          A           Yes, I do.

20                   MR. GOLDBERG: Judge --

21                   JUDGE SMITH: I don't see that.

22                   MR. GOLDBERG: Judge Smith, could we approach the  
23 bench?

24                   JUDGE SMITH: Sure.

25                   (Bench conference off the record.)

bu 2

1 MS. WHICHER: As I understand it, none of the  
2 copies of this exhibit are to leave this room until Staff has  
3 had a chance to review it.

4 JUDGE SMITH: Not only that, but not passed beyond  
5 anybody who is beyond our nondisclosure protection.

6 BY MS. WHICHER:

7 Q Turning your attention again, please, to the memo  
8 that begins on page 26 and also to the memo on pages 33 and 34,  
9 there are entire paragraphs in these two memos that have been  
10 deleted; correct?

11 And specifically, I can point you to page 2 of the  
12 August 19th memo, page D and E -- page 3 of that memo,  
13 paragraph H, the paragraph directly underneath that.

14 A (Witness Hayes) Yes, paragraphs have been deleted.

15 JUDGE COLE: What pages are you on now?

16 MS. WHICHER: Page 26 of the exhibit, the memo  
17 that starts on that page.

18 Page 27 has two entire paragraphs deleted.

19 JUDGE SMITH: Oh, I see. I couldn't find them.

20 I see. D and E are missing.

21 MS. WHICHER: And the same thing occurs on page 3  
22 of that memo, page 28 of the exhibit.

23 JUDGE SMITH: All right. Okay.

24 BY MS. WHICHER:

25 Q Now, these paragraphs that have been deleted, are

1 these paragraphs allegations that have not yet been inspected  
2 or investigated?

3 A (Witness Hayes) I believe that's the case, yes.

4 JUDGE SMITH: Let's have another bench conference.

5 (Bench conference off the record.)

6 BY MS. WHICHER:

7 Q Now, is it your testimony as to the allegations  
8 which have been deleted from the August 19th memo that, in  
9 your opinion, these allegations can wait to be investigated?

10 A (Witness Connaughton) That's correct.

11 A (Witness Hayes) That's correct, yes.

12 A (Witness Forney) That's correct.

13 Q And can Region III recommend issuance of the  
14 license with these allegations uninvestigated?

15 A We never purported that we would issue a license  
16 before these were investigated.

17 I believe I previously stated it has been our  
18 intention to review all of these prior to the issuance of the  
19 license, or at least a recommendation from Region III to NRR  
20 to issue the license.

21 Q So, you agree, do you not, that the license cannot  
22 be issued until investigation of the allegations has been  
23 completed; right?

24 A (Witness Hayes) That's correct.

25 Q Now, the allegations that have been investigated

1 by Region III or inspected are those which appear in the  
2 reports attached to the panel's testimony as Exhibit C;  
3 correct?

4 A That's one of the exhibits. I'm not sure that's  
5 all of them.

6 A (Witness Connaughton) C and D.

7 Q C and D.

8 Now, if you would turn, please, to Attachment C.

9 Now, the first report in Attachment C is 82-17;  
10 right?

11 A (Witness Hayes) That's correct.

12 Q And this relates to inspections of portions of the  
13 August allegations; right?

14 A (Witness Connaughton) That's correct.

15 Q Now, on page 4 of this report, paragraph 3.b.1, at  
16 the bottom of the page, this allegation concerned lack of  
17 personnel qualifications and improper certification; correct?

18 A Yes, it does.

19 A (Witness Hayes) That's correct.

20 Q And you disposed of that allegation because in May  
21 of 1982, in report 82-05, you found, indeed, Hatfield had had  
22 unqualified inspectors; right?

23 A (Witness Connaughton) That allegation was not  
24 disposed of. The inspector chose to reference that item in  
25 the course of addressing the list of allegations that he had

1       been provided.

2                       However, that matter is considered uninvestigated.

3                       You will also note that, as stated, the allegation  
4 is somewhat general in the inspection report. However, he is  
5 referring to more specific allegations in this area. It has  
6 not been disposed of.

7           Q       So, you're not relying, are you, on the 82-05  
8 recertification program to dispose of this allegation then;  
9 right?

10          A       (Witness Forney) Now, that was Mr. Love's  
11 position, in making it clear it was not a Division of  
12 Engineering technical matter, but a resident inspector  
13 matter.

14          Q       So, Mr. Love was referring it back to you; right?

15          A       It was basically a clarification of where the  
16 responsibility lay. It wasn't absolutely necessary, in my  
17 opinion, that he even put this in the report.

18          Q       So, it's up to you to inspect this allegation,  
19 Mr. Forney?

20          A       Correct.

21          Q       Have you done that?

22          A       Partially.

23                       The ones where there were specific people  
24 identified, in many cases I have gone over already and  
25 reviewed the various individuals' work packages or

1 certification packages.

2 And I believe in one instance we have already told  
3 you that we have issued this year two Level IV items.  
4 noncompliance, once against a Level II weld inspector and one  
5 against a quality assurance manager.

6 Q And that's based on this allegation; right?

7 A I don't know that it's the specific one. Over a  
8 period of time, we kind of got repetitive allegations and they  
9 overlapped. And whether this is the specific one he's talking  
10 about, I'm not certain.

11 All of the allegations regarding training belong  
12 to the Resident Inspector Office, however.

13 Q Mr. Forney, did you consider the fact that these  
14 allegations were made after the issuance of 82-05 as indicating  
15 that the violations uncovered by you in 82-05 were continuing?

16 A What I found, during my review of the specifics of  
17 these allegations that I have looked at, is that it appeared  
18 predominantly to be an isolated case after they had taken  
19 their action.

20 The Applicant had issued guidance in June, which  
21 has already been discussed, to the contractors on the  
22 methodology to be used to train, qualify, and certify  
23 inspectors.

24 And I believe the implementation date was  
25 somewhere around the 31st of September. And these allegations

1 -- I don't believe the specifics -- some of the allegations  
2 came subsequent to that time. I believe the day I went over  
3 and reviewed them I reviewed something like 10 certification  
4 packages -- and with Mr. Hines from the Region III office.

5           And I believe, out of the 10, we found the two that  
6 we cited. He cited one Level IV against the weld inspector  
7 in his report, and I cited Level IV against the quality  
8 assurance manager in my report.

9           I believe it was a difference, rather than an  
10 intent -- in my opinion, it was a difference in an application  
11 of creditable time for work experience.

12           Q       With respect to the weld inspector cited in this  
13 violation, how long had that inspector been on site?

14           A       At the time I did the inspection or at that time  
15 that the allegation -- I'm not certain what your question is  
16 asking.

17           Q       Do you know when that inspector first became a  
18 welding inspector for Hatfield?

19           A       To the best of my recollection, I believe he was  
20 hired on October 5th and was certified, I believe, on  
21 October 14th.

22                    The dates are right around in there.

23                    JUDGE COLE: 1982?

24                    WITNESS FORNEY: 1982; yes, sir.

25

1 BY MS. WHICHER:

2 Q Mr. Forney, you received these allegations in  
3 August of 1982; right?

4 A That's correct -- these specific ones. That's  
5 what I'm saying, we need to start talking about allegations  
6 of inspectors being qualified or not being qualified.

7 It's difficult for me to relate to the specifics  
8 of which ones I've looked at at which time, because I've  
9 looked at them in groups, and they kind of overlap, the  
10 different allegations, at different times.

11 So, I'm having difficulty answering your questions  
12 on the time period.

13 Q Mr. Forney, the allegation concerning the quality  
14 assurance manager, was that allegation given to you in August?

15 A I don't recall whether it was the August one or  
16 whether it was the one around November. I don't recall. I  
17 believe it was -- I believe it was in November.

18 Q And when did you inspect and discover that the  
19 quality assurance manager was improperly certified?

20 A Oh, I believe it was in January. The specific  
21 allegation did not say he wasn't qualified. The specific  
22 allegation was -- I believe relative to him was one of  
23 whether he was competent to perform his function. And that's  
24 a difficult thing for me to just merely assess.

25 So, I decided a good starting point was with the

1 certification package. And when I reviewed his certification  
2 package, I determined that he did not have the required  
3 background for a time period to substantiate certification.

4 Q Now, one of the allegations received in August was  
5 that some workers were inspecting their own work; right?

6 A That's correct.

7 A (Witness Connaughton) That's correct.

8 Q And who investigated that allegation?

9 A Mr. Ray Love, from the Division of Engineering in  
10 the Region III office.

11 Q None of you gentlemen on the panel?

12 A (Witness Forney) No.

13 A (Witness Connaughton) No.

14 Q Now, turning your attention, please, to page 6 of  
15 that report, paragraph 4, beginning at the bottom of page 6  
16 and continuing to the top of page 7, the worker was expressing  
17 concern, was he not, that Hatfield's training and retraining  
18 programs were inadequate?

19 A (Witness Forney) He does allege that.

20 Q Okay.

21 And you decided, did you not, that since the  
22 quality of Hatfield's training program was covered by the  
23 reinspection and recertification program of 82-06-19, you  
24 need not inspect this allegation further; right?

25 A (Witness Connaughton) That's not true. That

1 allegation is still open.

2           Again, Mr. Love chose to reference 82-05-19 as one  
3 mechanism by which we might follow up or try to substantiate  
4 that very subjective portion of his allegation, which states  
5 that the training program accomplishes nothing. That he did  
6 not try to establish.

7           However, these statistics that were to support that  
8 notion, because of a dramatic increase in the number of  
9 people that had to be trained in a year's time approximately,  
10 Mr. Love did not substantiate.

11           But that subjective portion of that allegation has  
12 yet to be inspected and is considered uninvestigated and  
13 uninspected at this time.

14           A           (Witness Forney) I think the real determination  
15 here of whether it did nothing to provide qualified inspectors  
16 is going to rely heavily on our evaluation of the reinspection  
17 program, given that the Applicant's reinspection program is  
18 determined to be adequate. And given that the findings of the  
19 reinspection program indicate that the inspectors did a good  
20 job, then that would provide documented evidence contrary to  
21 this allegation.

22           So, that's why it's tied in with 82-05 or 82-05-19.  
23 82-05-19 is tied in with the reinspection program. So,  
24 they're all going to go together. They have to relate  
25 together.

1 Q Your testimony is, is it not, that this allegation  
2 is uninspected at this time; right?

3 A Partially uninspected.

4 A (Witness Hayes) But the contractor and the  
5 Licensee or the Applicant have initiated programs to assure  
6 themselves that the inspectors that are presently there are  
7 properly certified and qualified.

8 We have not evaluated the total results of their  
9 efforts. But as Mr. Forney indicated earlier, we will be  
10 doing this. But we have no reason to believe that unqualified  
11 inspectors are working for Hatfield at this time.

12 Part of these things remain open, because there is  
13 the question of proper administration of the training program,  
14 including possible cheating.

15 Q You are not contending, are you, Mr. Hayes, that  
16 this allegation is a type of allegation that you can find  
17 evidence of no matter when you inspect for it? You're not  
18 contending that, are you?

19 A (Witness Forney) Let me answer that one.

20 If you take this allegation in parts, he makes  
21 statements relative to numbers. That part has already been  
22 inspected or reviewed by Mr. Love.

23 I believe the allegor said at a certain period of  
24 time, December of '81, Hatfield only had four inspectors.

25 Mr. Love reviewed records.

1           In the next paragraph, you said: "An examination  
2 of the records revealed there were, in fact, 50 personnel  
3 working in the area."

4           Now, regarding whether Hatfield has used qualified  
5 inspectors, a random-sampling, oversight inspection of  
6 installed-equipment will give you a feel for whether the  
7 program is providing qualified inspectors.

8           If you take a random sample and you find, in your  
9 rereview of the work, that nothing is right, that tells you  
10 that there is a generic problem. And in all likelihood,  
11 there are qualified inspectors.

12           If you take a random sample and find, as a result,  
13 that the reinspection -- that you have very little problem,  
14 and you sample is, in fact, random and covers a wide period  
15 of time, which this reinspection does, and you don't determine  
16 that there are problems, then it's an indication that  
17 generically the program does provide qualified inspectors.

18  
19  
20  
21  
22  
23  
24  
25  
end 6

7rgl

1 Q This allegation, does it not, raises general  
2 allegations concerning Hatfield's training program?

3 A As did 82-05-19, yes.

4 Q And it's going to be resolved along with 82-05-19,  
5 right?

6 A That's right. The issue would have been resolved  
7 with or without these allegations and because of 82-05-19,  
8 it parallels 82-05-19 and we have put them in one category  
9 to be reviewed. When the applicant submits the reinspection  
10 program to the regional office to review, that's one reason  
11 it's going to take three months to review the program because  
12 there's a lot of aspects of how the reinspection program --  
13 what proves, how it relates to the issues, all that will be  
14 taken into account.

15 Q Did you consider the fact that this allegation was  
16 made in August as indicating that the violations found in  
17 82-05-19 were continuing?

18 MS. YOUNG: I object to that question. It's been  
19 asked and answered.

20 WITNESS FORNEY: Let me answer that. I was aware  
21 at the time --

22 MR. MILLER: There's an objection pending.

23 WITNESS FORNEY: Let me answer that.

24 JUDGE SMITH: Wait a minute, the witness also has  
25 rights independent of counsel and I don't want to get involved

1 in a family feud here.

2 (Laughter.)

3 But he does, and I think you should allow him if  
4 he wants to answer. But it's up to you. You may answer.

5 WITNESS FORNEY: The ones that concerned us more  
6 would be the ones after the September 31st date. The appli-  
7 cant had made a commitment to the regional office to retrain  
8 people by September 31st.

9 So, when this allegation was provided and they  
10 were in the process of reforming their training programs and  
11 so on, it was in the transition period, so it caused us less  
12 concern, I might say in my mind, than the ones I received  
13 subsequent to September 31st.

14 JUDGE CALLIHAN: By what date was this retraining  
15 to be accomplished?

16 MR. MILLER: September 30th.

17 WITNESS FORNEY: September 30th. Is there a 31st  
18 in September?

19 JUDGE CALLIHAN: It could have been a different  
20 month. The day isn't important.

21 WITNESS FORNEY: September's only got 30 days. It's  
22 not a knuckle.

23 (Laughter.)

24 BY MS. WHICHER:

25 Q Turning your attention, please, to paragraph C on

1 that report, there was an allegation tht discrepancy reports  
2 had been destroyed, right, or voided?

3 A (Witness Forney) That's correct.

4 Q And in fact you found that Hatfield was using  
5 a looseleaf log and therefore destruction of discrepancy  
6 reports would be an easy matter, right?

7 A I guess the answer to that is yes.

8 Q Did you substantiate this allegation, then, Mr.  
9 forney?

10 A I'm reading Mr. Love's -- it was Mr. Love's report.

11 Q Okay.

12 JUDGE SMITH: I think there's a misstatement -- I  
13 mean a typo in that report that might cause some confusion.  
14 The second sentence of the second paragraph, it was observed  
15 that the text of the DR is Hatfield's DR logbook. It probably  
16 should be in Hatfield's DR logbook.

17 WITNESS FORNEY: Yes.

18 BY MS. WHICHER

19 Q You substantiated that allegation, right?

20 A (Witness Forney) I'd say Mr. Love did.

21 Q Did you issue a notice of violation?

22 A It doesn't appear he did.

23 Q Well, using a looseleaf DR log is contrary to NRC  
24 regulations, isn't it?

25 A We don't have a regulation that says it has to be

1 looseleaf or hardbound. Good practice would dictate that you  
2 would use a hardbound logbook because that way you are not  
3 apt to be questioned on whether there's improprieties going  
4 on, and where this indicates that we suggested to the licensee  
5 that that be changed to hardbound, I went over to Hatfield  
6 with Mr. Klingler and presented our concern to Hatfield, who  
7 agreed to providing hardbound logbooks and also pre-serialized  
8 DRs.

9 Q So, prior to --

10 A (Witness Connaughton) Could I add to Mr. Forney's  
11 response?

12 This allegation was partially substantiated, but  
13 as it was substantiated to the extent that the text of the DR  
14 provided to the inspector, which had a number on it did not  
15 match that was in the DR log, the allegation is that the  
16 inspector wrote the DR. That number was issued. And once  
17 that number is issued that DR is considered official document  
18 and must be formally dispositioned.

19 The allegation is that the number was issued but  
20 rather than process -- continue to process the DR, it was  
21 decided by supervision or management that well, no, that  
22 wasn't really a DR. And rather than voiding it and indicating  
23 it on the log and documenting the justification for doing so,  
24 it was alleged that they round filed the DR or told the  
25 inspector it was no longer a valid DR and reissued that number

1 for another discrepancy.

2 Mr. Love could not substantiate that aspect of it.  
3 He was able to get to the point where he knew that the text  
4 of the DR on the report provided by the allegor and that and  
5 the DR log did not match. And the point is making here in the  
6 inspection report is because of the fact that it was a loose-  
7 leaf non-tamperproof type log that he could go no further to  
8 substantiate whether or not the allegor's concern was true.

9 JUDGE COLE: Mr. Connaughton, you said a looseleaf,  
10 nontamperable?

11 WITNESS CONNAUGHTON: Yes.

12 BY MS. WHICHER:

13 Q How long had Hatfield been using a looseleaf non-  
14 tamperproof log?

15 A (Witness Forney) As long as they've been keeping  
16 logs, I'm not aware of the time period, they have never,  
17 to my understanding, used a hardbound.

18 MS. YOUNG: Excuse me, Ms. Whicher, did you mean  
19 to say looseleaf, nontemperproof?

20 MS. WHICHER: I meant to say -- yes.

21 WITNESS FORNEY: I think you meant to say loose-  
22 leaf, tamperable. And my answer was, to my knowledge they  
23 have never used a hardbound before.

24 BY MS. WHICHER:

25 Q Now turn, please, to page 14 of that same report.

1 In paragraph number two on that page, now the alleger staed  
2 there that a quota of not more than one and a half hours per  
3 inspection had been set by Hatfield, right?

4 A (Witness Hayes) That's the allegation, yes.

5 Q And the NRC\_was concerned that setting a quota  
6 like this could impact on the quality of inspection, right?

7 A That's correct.

8 Q Because it could force the inspector to rush the  
9 inspection, right?

10 A That would be our concern.

11 Q And the QC supervisor at Hatfield said, no, it's  
12 not a quota, it's just a suggestion, right?

13 A (Witness Forney) That's correct.

14 Q And he told you that the average time per inspec-  
15 tion was three hours, right?

16 A He told Mr. --

17 MR. MILLER: I think that's a mischaracterization  
18 of what the document says. There's no representation by an  
19 individual with respect to the actual length of time.

20 MS. WHICHER: I'm just trying to get through what  
21 this report states, and if the witness doesn't think it's  
22 accurate the witness can tell me.

23 MR. MILLER: Excuse me. In rushing to completion  
24 here, it seems to me that there is more of an obligation on  
25 the part of everybody to be accurate in characterization of

1 documents so when we go back and look at this record in two  
2 months

3 JUDGE SMITH: Let's read the pertinent sentence  
4 into the record. That's the last sentence, the records  
5 compiled by Hatfield for the inspection time per attribute  
6 indicates that the present inspection time for hanger/tray  
7 location verification is approximately three hours.

8 WITNESS FORNEY: May I add a comment regarding  
9 that? I have performed some discussions with various inspec-  
10 tors as well as Hatfield supervision to try and get in my  
11 mind a better feeling for that particular issue and although  
12 there is a goal set I was unable through discussion with  
13 various inspectors or supervision to uncover anybody that  
14 had received any adverse action towards them, or even taking  
15 five or six hours, recognizing that if you run into problems  
16 you are not always going to meet your goal.

17 But I think for planning purposes, that it is  
18 realistic to tell an inspector that I think you should nor-  
19 mally be able to get a hanger inspected in a certain length  
20 of time so you can -- you've got to do something like that  
21 to be able to determine how many inspectors you need to have  
22 to finish a job.

23 And, like I say, I've talked to a number of indi-  
24 viduals and have not been able to discover any improprieties.

25 The discussions with the inspectors were all in

1 private, so they had a perfect opportunity in my mind that  
2 if they were being harassed or intimidated regarding this  
3 goal that they could have provided the information.

4 WITNESS HAYES: You have to be very careful on  
5 this three hours as to exactly what that three hours included.  
6 In my followup of Mr. Hughes' training, I found that exclu-  
7 sive of preparation and the time it took to walk out to the  
8 location, that average time for an inspection was approxi-  
9 mately two hours in the field for this particular inspection.

10 BY MS. WHICHER:

11 Q And the time that Hatfield was recommending was  
12 less than the average two-hour time, right?

13 A (Witness Hayes) It appeared that was the case, yes.

14 Q In fact, it was half the time that inspections were  
15 normally taking, right?

16 A Well, as I said, you have to be very careful what  
17 that time includes. If the one and a half hours they are  
18 talking about here starts at the time the man is up on the  
19 scaffolding and is right at the hanger, the one and a half  
20 hours may not be inappropriate, but if you include the time  
21 it takes to climb up there and get in position, if you include  
22 that time and the time to record all the data and get back  
23 down on the floor again, that average is about two hours from  
24 my findings and that is based on looking at approximately  
25 30 or so inspections, so it's not a large sample.

1 Q So, Mr. Hayes, in the last sentence, the sentence  
2 read by Judge Smith, you don't know what those records  
3 showed that Mr. Love was looking at, right?

4 You don't know what was included in those inspec-  
5 tions, right?

6 A I would interpret it as being the cumulative  
7 time for records.

8 Q You would or would not?

9 A I would conclude that that's what the three hours  
10 included.

11 Q But you do not know?

12 A No, I do not know.

13 Q Now QC at Hatfield was falling behind, right, is  
14 not that stated right there in that paragraph?

15 A (Witness Connaughton) Yes, it does.

16 Q And the NRC took the Hatfield QC supervisor's  
17 word for it that it was not a quota but a suggested goal,  
18 right?

19 A (Witness Forney) I don't think that's correct.  
20 I think I already stated I went out in the field and I talked  
21 to both Hatfield supervision and Hatfield inspectors and I  
22 talked to probably 10 or 12 of the inspectors and asked them  
23 if they particularly -- or had any knowledge of some other  
24 individual as having been harassed or intimidated or having  
25 adverse action taken against them for not meeting the goal

1 for any hanger, and the answers that I got in all instances  
2 were no.

3 A (Witness Hayes) Let me correct one thing I said.  
4 The inspections that I looked at were those on the job  
5 training type of inspections, so those inspections may have  
6 taken a little bit longer, depending on the amount of questions  
7 the inspector may have had in going about his job, especially  
8 those early on the job training. So, maybe we are not so  
9 far away from that one and a half hours as it may indicate.

10 Q Mr. Forney, it's true, is it not, that two Hatfield  
11 QC inspectors were dismissed in January for lack of producti-  
12 vity?

13 A (Witness Forney) I don't believe that's -- to my  
14 understanding a total characterization of it. I think it's  
15 a lack of productivity as I recall reading the letter associ-  
16 ated with goofing off. There is a difference between total  
17 lack of productivity -- that they were disruptive to other  
18 individuals, I'm trying to remember what that memo said, but  
19 I don't recall it specifically as you said.

End7.

20 Q Let me get a copy of that.  
21  
22  
23  
24  
25

bu 3

1 JUDGE SMITH: Inattentiveness to the tasks at  
2 hand was one of the allegations.

3 Poor corporate attitude and other language which  
4 we characterized as lack of productivity in our memorandum  
5 and order.

6 MS. WHICHER: I think the "lack of productivity"  
7 were the words from the memorandum.

8 JUDGE SMITH: It's close to it, but it's not  
9 verbatim.

10 In addition to that, however, we observed that  
11 lack of productivity is a legitimate concern of quality  
12 assurance managers, because if you don't have productivity  
13 in quality assurance, you don't have quality assurance.

14 MS. WHICHER: I may come back to this point.

15 BY MS. WHICHER:

16 Q Would you turn, please, to page 15, the next page  
17 in the report.

18 Paragraph L concerns pan hanger installations;  
19 right? And specifically a missing weld traveler; right?

20 A (Witness Forney) Yes.

21 Q And, in fact, Mr. Love found that two weld travelers  
22 were missing; right?

23 A That's correct.

24 Q So, this allegation was substantiated; right?

25 A I don't know that his allegation here was the fact

1 that the weld traveler was missing. But when it was missing  
2 and a replacement had been put into the files, it indicated  
3 to him that the welder -- he believed that the card indicated  
4 that the welder whose name and number appeared on the card  
5 wasn't working that day.

6 Q And Mr. Love found that that weld traveler was  
7 missing; right?

8 A No, I don't believe that's what he found.

9 Again, I think the allegation related to the fact  
10 that -- the review indicated that, I think, an original weld  
11 traveler was missing. In a complete hanger package, you have  
12 to have a weld traveler. I think what this indicates that  
13 somebody had filled out a weld traveler. The name was printed.  
14 It hadn't been signed by a welder. It had his stamp on it,  
15 and it had a date.

16 And I think what the allegor had indicated here is  
17 that when he had done some review of that, to see if he felt  
18 that card was valid, that it indicated to him that it  
19 couldn't have been valid, because the welder wasn't working  
20 that day.

21 And I think that's what the real allegation was,  
22 not that there was a missing traveler.

23 Q Was a notice of violation issued with respect to  
24 the two missing weld travelers?

25 A (Witness Connaughton) No. It's recognized in the

1 applicable requirements that documents do become illegible,  
2 lost, destroyed, and that the contractors are required to have  
3 procedures to address such eventualities.

4           If you lose that objective evidence, like an  
5 inspection report, the objective evidence of the quality of  
6 an item, you have to take whatever measures are necessary to  
7 reestablish the quality of that item. And that's done in the  
8 case of visual weld inspections by reinspecting the weld and  
9 reestablishing the quality of the item.

10           Q       Were those reinspections done for these two missing  
11 -- for the missing weld travelers?

12           A       Yes, they were -- on the date indicated on the  
13 traveler.

14           Q       Would you turn, please, to page 16, paragraph 3.  
15                   Now, this allegation concerns the fact that  
16 Hatfield Level II inspectors were doing essentially a paper  
17 review of Level I inspectors' work; right?

18                   Is that a fair summary of that allegation?

19           A       (Witness Forney) I don't think the allegor took  
20 issue with doing a paper review of somebody else. I believe  
21 the allegor had a concern that he was having to sign a  
22 statement that the item was inspected by him, when, in fact,  
23 the data was being taken by a Level I, and he was reviewing the  
24 Level I's work.

25           Q       This was also a concern of Mr. Hughes; right?

1 A That's correct.

2 Q Now, according to paragraph 3, a Level II must  
3 evaluate the validity of the inspection; right?

4 A I missed that. I was flipping pages.

5 Q According to this report, in paragraph 3, a  
6 Level II inspector must evaluate the validity of the  
7 inspection; right?

8 MR. MILLER: Excuse me. The word is "can," not  
9 "must."

10 JUDGE SMITH: I would think that this allegation is  
11 almost res judicata in this case, unless you're going to  
12 approach it from the --

13 MS. WHICHER: Well, I will be coming back to it.

14 MR. MILLER: Well, excuse me. I think the line  
15 of examination ought to be cut off. This was one of the  
16 allegations that was completely discussed in Mr. Hughes'  
17 deposition before this Board.

18 JUDGE SMITH: That's what I meant by my remark.

19 I think it has been alleged, litigated, and  
20 decided, unless she has something distinct.

21 MS. WHICHER: All right.

22 When I come back -- I'll withdraw that question.  
23 And when I come back, if the objection is renewed, then we'll  
24 deal with it at that time.

25 JUDGE COLE: That was our own -- well, all right.

1 Continue.

2 BY MS. WHICHER:

3 Q Now, on that same page, item M concerns cable tray  
4 connections; right?

5 A (Witness Forney) Yes.

6 Q And the problem here was alleged that the inspectors  
7 were told not to remove fireproofing to inspect, but rather to  
8 rely on other inspectors' documents; right?

9 A That's correct.

10 Q And this allegation was substantiated; right?

11 A (Witness Connaughton) Yes, it was.

12 A (Witness Forney) That's correct.

13 Q And was a notice of violation issued?

14 A No.

15 A (Witness Connaughton) No.

16 Q Why not?

17 A What was asserted in that memorandum, 295, is that  
18 the weld detail was, in fact, verified during the visual weld  
19 examination associated with that hanger. They're asserting  
20 that those attributes that were to be covered in a separate  
21 inspection of detail verification were, in fact, being  
22 verified during the weld examinations -- that is, that the  
23 inspector would have to go to the plan and see the type and  
24 size of welds that were to be associated with that  
25 connection. And in doing so, he would, in fact, verify

1 connection detail.

2 This allegation is not considered resolved or  
3 caused, because we wish to gather data either through the  
4 reinspection program and through an effort that was  
5 independently conducted by the Applicant to support or  
6 refute that assertion that, in fact, weld examinations do  
7 include detail verification.

8 Those statistics are now being compiled.

9 Q So, this item is still open; right?

10 A Yes, it is.

11 A (Witness Forney) Yes.

12 Q Now, let's turn, please, to Report 83-07, which  
13 is a few pages down in your attachment.

14 And this report -- this inspection was done in  
15 February of this year; right?

16 A That's right.

17 Q And this report was due to allegations received in  
18 November by Mr. Hughes and two others; right?

19 A That's correct.

20 Q And at this time, the remainder of the August  
21 allegations were still uninspected; right?

22 A (Witness Connaughton) There were four, I believe,  
23 as yet considered uninspected from the August allegations at  
24 this time.

25 Q As of February?

j1 8-7

1 A Yes.

2 Q Those are the same four that are still outstanding;  
3 right?

4 A I believe that's true.

5 Q Now, would you turn, please, to page 22 of  
6 Intervenors' Exhibit 30, to a November 30, 1982 memo from  
7 Mr. Forney through Mr. Hayes.

8 A (Witness Hayes) You said "22"?

9 Q Yes.

10 A Okay. We have it.

11 Q Now, Mr. Forney, is this a true and accurate  
12 reflection of your conversation with these three workers?

13 A (Witness Forney) That's correct -- and as agreed  
14 to by them.

15 Q They reviewed this document?

16 A That's correct.

17 Q Now, I notice that, starting at the bottom of page  
18 2 and continuing throughout the remainder of the memo, next  
19 to certain allegations there appears a letter "R" or the  
20 letter "I" in a circle.

21 Can you explain to me, please, what these symbols  
22 mean?

23 A "Region" and "OI." That's my own cryptic notation.

24 Q Does this mean that those allegations with "R"  
25 were investigated by Region III? And those investigations

1 marked "I" were referred to the Office of Investigations?

2 A That was an initial review of it. Without going  
3 into some detail, I couldn't tell you that that's how the  
4 final outcome was. That was a feeling.

5 Q Now, turn your attention, please, to Report 83-07.

6 JUDGE SMITH: What attachment is that?

7 MS. WHICHER: That's the next document down, in  
8 Attachment C. I had just asked the panel to turn to it a  
9 moment ago before I referred Mr. Forney to this memo.

10 WITNESS HAYES: What page was that, again?

11 MS. WHICHER: Page 6, please.

12 JUDGE COLE: My copy starts with page 6.

13 MS. WHICHER: Yes. As I understand the panel, they  
14 just excerpted portions of the reports.

15 JUDGE COLE: Fine.

16 BY MS. WHICHER:

17 Q Now, this regards -- this concerns an August  
18 allegation concerning Sargent & Lundy; right?

19 A (Witness Forney) That is correct.

20 Q And you did not investigate this; right?

21 A I believe that was Mr. Hines.

22 Q Mr. Hines did not inspect this allegation; right?

23 A Did you say he "did not" or he "did"?

24 Q He "did not," did he?

25 A (Witness Connaughton) He merely reviewed the item

1 for content.

2 I think we should say that when we receive  
3 allegations from people and interview the people that we  
4 try to get down as many complete thoughts as we possibly can.  
5 And oftentimes, what gets into our tracking system as an  
6 allegation are oftentimes comments or concerns, things that  
7 on the surface are absurd or lack any substance, they're  
8 uninvestigatable or, as stated, have no bearing on quality or  
9 safety.

10 A (Witness Forney) I might add that one reason  
11 this was turned over to Mr. Hines and not us is that we  
12 process all allegations.

13 In my opinion, it's incredible to even make this  
14 statement that anything the size and complexity of Byron is  
15 100 percent as billed.

16 So, the allegation, just on base fact, is  
17 incredible.

18 So, we turned it over to Mr. Hines, who was  
19 unbiased -- without any preconclusions when he came out to  
20 the site and said, "Please look at this one," which he did.

21 Q Who received this particular allegation?

22 A I don't recall who all was there. I know  
23 Mr. Connaughton and I were there, I believe. There may have  
24 been others.

25 Q Did you ask this allegor for details about this

1 allegation?

2 A If he could have provided more details, he would  
3 have. That is all we were able to allude from the allegor.

4 Q Did you ask him for more details, Mr. Forney?

5 A Yes. In all cases, we all ask them for as much  
6 detail as they can provide.

7 Any time the allegor can tell us whether it's  
8 Unit 1 or Unit 2 or a system or a level or a valve or a  
9 component, that obviously makes it much easier to inspect; we  
10 don't try to go out here and get an allegation that we're  
11 going to wander around for months trying to figure out what  
12 it is.

13 Q Would you turn, please, to page 7 of 83-07.

14 JUDGE SMITH: Excuse me. That allegation, to me,  
15 looks more like a rhetorical comment than an allegation. But  
16 do you take a rhetorical comment like that literally as an  
17 allegation and explore it?

18 WITNESS FORNEY: The receiving individual is  
19 required to receive it and document it as an allegation.  
20 We're not allowed to make that value judgment.

21 JUDGE SMITH: For the record, the allegation, in  
22 its entirety, is Sargent & Lundy was a "poor excuse for an  
23 engineering firm."

24 The plant is in 100 percent as-built condition and  
25 does not relate to the original design.

1 BY MS. WHICHER:

2 Q Would you turn please to page seven of 83-07, the  
3 top paragraph, the top section numbered 2. Would you read  
4 to yourself, please, that first paragraph. Are you ready?

5 Now, this allegation was evaluated as being of a  
6 subjective nature and lacking sufficient detail to be evalu-  
7 ated, right?

8 A (Witness Forney) Part of it.

9 Q Did you consider, Mr. Forney, that the allegor  
10 was trying to tell you that there was something suspect about  
11 the facts he stated?

12 A I would believe that Mr. Hines did. This is Mr.  
13 Hines' report.

14 Q Well, you received this allegation, didn't you  
15 Mr. Forney?

16 A Yes, I did.

17 Q And you just turned it over to Mr. Hines, the way  
18 it was written, right?

19 A That's correct.

20 Q Now, with respect to the second item, the second  
21 portion of the item, that there was a person who was unquali-  
22 fied in a Level I position and could not read drawings and  
23 weld symbols, do you see that?

24 A Yes, I do.

25 Q And Mr. Hines concluded that this was being tracked

1 as an open item under 82-05-19, right?

2 A He did. It more appropriately should have stated  
3 noncompliance item 82-05-19.

4 Q So, again, it's the case, is it not, that you are  
5 relying on the 82-05-19 program to resolve this allegation?

6 A (Witness Connaughton) In fact, we did not rely  
7 on that. That was documented and later investigated to deter-  
8 mine the individual's qualifications as a Level I in -- it's  
9 on page six of Inspection Râport 83-09, 454 83-09, paragraph  
10 B-2.

11 Mr. Hines was trying to -- initially trying to  
12 evaluate the statement regarding HECO Management suggesting  
13 the individual by qualified as a Level II, but his qualifi-  
14 cations were later investigated.

15 Q Okay, and I think we'll get to that in just a  
16 minute. Now, turning your attention on page seven to the  
17 allegation, 11-30, that's in paragraph three, I'm sorry,  
18 and does your copy of this attachment have page seven followed  
19 by page eight?

20 A (Witness Forney) No, it's followe by the cover letter or  
21 cover page for inspection report 83-09.

22 Q In another portion of your attachment, there is  
23 a different excerpt from this report which includes page 8.  
24 I believe it's in attachment D.

25 MS. YOUNG: The second report to attachment D.

1 BY MS. WHICHER:

2 Q Would you turn to that please, so that you have  
3 pages seven and eight in front of you?

4 JUDGE SMITH: What attachment is it, now?

5 MS. YOUNG: Attachment D as in "dog." Page seven  
6 and eight of 83-09.

7 MS. WHICHER: I think it's about the third page  
8 down in the attachment.

9 MR. GOLDBERG: 83-07-03.

10 (Pause.)

11 MS. YOUNG: It's the first report in attachment D.

12 WITNESS FORNEY: Okay.

13 BY MS. WHICHER:

14 Q Now this allegation concerned an unqualified in-  
15 dividual working as an inspector for Hatfield, right?

16 A (Witness Forney) Yes, I believe we already dis-  
17 cussed him about an hour ago. That was Level IV item of non-  
18 compliance that was issued against an inspector that was  
19 hired somewhere around the first of October or fifth of  
20 October.

21 Q Okay, that was my next question. And, in fact,  
22 you found, did you not, Mr. Forney -- or Mr. Forney, did  
23 investigate this particular allegation.

24 A I inspected that item with Mr. Hines because this  
25 was the first in-depth review of the individual -- of an

1 individual -- of an individual certification package that  
2 he had performed and I wanted to ensure consistency in the  
3 strict interpretation of N 45.2.6-1978 as it relates to the  
4 item of noncompliance, 85-02-19.

5 Q So you were personally involved in this?

6 A Yes, I was.

7 Q Now, you found, did you not, Mr. Forney, that this  
8 man in fact did not have the requisite level of experience?

9 A That's correct.

10 Q You found that Hatfield had erroneously certified  
11 him, right?

12 A That's correct.

13 Q And you found that there were mistakes in the  
14 Hatfield documentation of this man's qualifications, right?

15 A Hatfield had given him credit for experience --  
16 nuclear experience, because he had worked for another con-  
17 tractor at Byron, which is a nuclear facility, but he had  
18 worked on cooling towers and in my opinion, he did in fact  
19 work on a nuclear site but cooling towers are not nuclear-  
20 related. Therefore I gave him zero credit for his work  
21 experience.

22 Now they had additionally given him some credit  
23 and I don't know whether all the detail is related here, but  
24 the details of this item included some time that was allowed  
25 him as an inspector for -- I don't recall the company, it was

1 the company that performed pressure grouting early in the  
2 excavation part of the construction project where he had in  
3 fact worked as an inspector.

4 And I believe the time period was somewhere between  
5 six and nine months and although he had worked as an inspector  
6 for that time period, I gave him zero credit for that time  
7 period because the program was not a formalized program.

8 So he ultimately, by the region's position, got  
9 zero credit for work experience.

10 Q Now, it's true, is it not, Mr. Forney, that Mr.  
11 Wells was certified after the changes in Hatfield's inspector  
12 certification program?

13 A That is correct.

14 Q And this indicated to you, did it not, that al-  
15 though that portion of 82-05-19 which pertained to Hatfield  
16 certification of inspectors was supposed to have been resolved.  
17 It was, in fact, continuing, correct?

18 A It did concern me that that was continuing, parti-  
19 cularly in the application of interpretations of acceptable  
20 work experience.

21 Q Thank you

22 Now, let's turn to the next report, 83-09.

23 Now, this inspection took place from January 1 --  
24 in January and February of '83, right?

25 A That's correct.

1 Q And it's issued March 19th of this year, right?

2 A That's correct.

3 Q And if you would turn, please, to page six of this  
4 document, this is concerning the violation which you found  
5 pertaining to the Hatfield Quality Assurance Manager, right,  
6 Mr. Forney?

7 A That's correct. It's also one that I discussed a  
8 while back.

9 JUDGE SMITH: Where are we?

10 MS. WHICHER: We're on page 6 of 83-09.

11 MR. GOLDBERG: In Attachment C.

12 MS. WHICHER: Yes, I'm sorry, I forgot. I had moved.

13 (Pause.)

14 BY MS. WHICHER:

15 Q Now, Mr. Forney, the allegation that Hatfield's  
16 Quality Assurance Manager was not qualified was substantiated,  
17 right?

18 A (Witness Forney) The specific allegation wasn't  
19 that he wasn't qualified. They felt that he was inept or  
20 was incapable of performing as a quality assurance manager.  
21 I took it one step farther. That, in itself, is a difficult  
22 allegation to substantiate, so I decided from my point of  
23 view that the starting point was to go review his certifica-  
24 tion and see if I could find a basis for his certification.

25 Q You received this allegation in November, right?

1 A Yes.

2 Q And that was after Hatfield's recertification  
3 program went into effect, right?

4 A That's correct.

5 Q Mr. Forney, turning your attention to the bottom  
6 paragraph on page six, the sentence that reads (quote),  
7 "However, neither HECO nor the applicant had performed a  
8 formal evaluation of the educational level of the QAM."

9 Do you see that?

10 A Yes, I do.

11 Q So, it is the case, is it not, that neither Hat-  
12 field nor Commonwealth Edison verified this man's educational  
13 achievement, right?

14 A What they relied upon, as I recall, reviewing  
15 the certification package, is there was a letter in his  
16 certification package from some company that normally deals  
17 with providing managers and they had performed a review and  
18 that was, in fact, in his record. And so, I don't believe --  
19 and what you gave me I don't believe there was any specific  
20 intent on anybody to mislead. It was an interpretation of  
21 an application of time. This individual had spent a number  
22 of years as a manager of different companies in Rockford and  
23 I think some other areas, and the letter that reviewed his  
24 background by this firm that provides managers, which was a  
25 letter to, I believe, Mr. Brock, who was the President of

1 Hatfield, suggested that he met the qualifications but would  
2 need specific training in the nuclear area.

3 And I found that he had the specific training.  
4 However, my review of his background, if he had worked, say,  
5 as the manager of an electric company for five years and his  
6 principal activities were, say, in five different areas, only  
7 one of which of those areas was responsible for quality  
8 assurance, I only gave him one-fifth credit because I didn't  
9 consider that he would spend more than 20 per cent of his  
10 time performing a QA-type function.

11 So, I believe it was more of an in-depth review.  
12 It would have taken a very in-depth review to make that  
13 determination.

14 Q So, Mr. Forney, you yourself reviewed this man's  
15 background, right?

16 A That's correct.

17 Q And you found that he didn't have sufficient work  
18 experience to be qualified for that position, right?

19 A That was my position and I issued a noncompliance.

20 Q Neither Commonwealth Edison nor Hatfield had  
21 performed such a review of this educational background?

22 A Not in depth. They obviously had reviewed this  
23 sheet of paper because it was in his certification file and  
24 they relied on this other individual's review of his work  
25 experience.

1 Q They relied on the documents in the file, right?

2 A Yes.

3 Q And this person has subsequently left Hatfield,  
4 right?

5 A I don't believe that's correct.

6 Q Is he still Quality Assurance Manager?

7 A He is not.

8 Q So he has left that position, right?

9 A He has left that position.

10 Q And what corrective action, Mr. Forney, has been  
11 taken with respect to the work supervised and performed  
12 by this man?

13 A I believe that Commonwealth's already reviewed  
14 all of the -- has done a recertification or re-review of  
15 all the inspectors' certification packages. To any extent  
16 beyond that, I don't know of anything.

17 Q Well, this man had more responsibility than just  
18 compiling inspector certification packages, right?

19 A That's correct.

20 Q And he had been Quality Assurance Manager for  
21 how long before he left?

22 A I don't remember exactly. It was a couple of years.

23 Q Okay, thank you.

24 Now, the next report is 83-13.

25 JUDGE SMITH: Did you give him any credit for the

1 time he was actually on the job, albeit without qualifica-  
2 tions?

3 WITNESS FORNEY: Yes, I did.

4 BY MS. WHICHER:

5 Q If you would turn, please, to the next reoort,  
6 which is 83-13. Now, this inspection was performed in March  
7 and the report was issued at the end of March, right?

8 A (Witness Hayes) That's correct.

9 Q This is a followup on the August allegations and  
10 an inspection of some of the January allegations, right?

11 A I can only see a reference to allegations received  
12 in August and in November.

13 Q Okay. Now, turning your attention, please, to  
14 the paragraph that the heading is on page five, which is the  
15 next page down from the cover page, the heading reads, "In-  
16 vestigation of Safety-Related Work Allegations," and turning  
17 your attention to the text on page six and seven, in the  
18 first paragraph, Mr. Forney, I think you will find a reference  
19 to January allegations.

20 Do you see that at the end of the first paragraph?

21 A (Witness Connaughton) Those were not additional  
22 allegations being referred to. Additional information in  
23 support of previously submitted allegations.

24 A (Witness Forney) He's just giving background in  
25 that paragraph.

1 Q Is it your testimony there were no new allegations  
2 received in January?

3 A (Witness Connaughton) I believe there were, but  
4 not addressed in this report.

5 Q Okay, now, let's move down the page and take a  
6 look at the allegation that is denominated number two, that  
7 a Hatfield Level I inspector was unqualified as a Level I  
8 because he could not read drawings or weld symbols.

9 Do you see that?

10 A (Witness Forney) Yes.

11 Q And who investigated this particular allegation?

12 A (Witness Connaughton) That was Mr. Hines, in the  
13 Region III office.

14 Q Now Mr. Hines reviewed the qualification and certi-  
15 fication files for this individual, right?

16 A (Witness Forney) That's what the report indicates.

17 Q And Mr. Hines found the allegation was unsubstanti-  
18 ated, right?

19 A That's correct.

20 Q There's no indication on this report, is there,  
21 that Mr. Hines looked at anything other than that inspector's  
22 file, right?

End 9.

23

24

25

1           That's correct as read. I believe his file would  
2 indicate or would have the examinations that he was given and  
3 quite possibly the examination may have shown that he had to  
4 identify weld symbols.

5           Q       But you don't know that, do you, Mr. Forney?

6           A       No, I'm saying that we don't know that it doesn't.

7           A       (Witness Connaughton) Mr. Hines would have reviewed  
8 those in the course of the review of the individual certifica-  
9 tion package, though he did not document that in the inspection  
10 report.

11          Q       You weren't there, right, Mr. Connaughton?

12          A       That's correct.

13          A       (Witness Forney) I might add, although we weren't  
14 there, one of the purposes for -- when I stated earlier when  
15 I did the inspection with Mr. Hines with the welds, is I went  
16 through step-by-step on every item for reviewing the certifi-  
17 cation package and the methodologies to be used, which  
18 includes reviewing the examinations.

19          Q       And you don't know, do you, whether the test in  
20 that file indicated whether this individual could read weld  
21 drawings or symbols, do you?

22          A       I do not.

23          A       (Witness Hayes) That does not mean the test did  
24 not exist in his file.

25          Q       Right. With reference to allegation one, also on

1 page six, this allegation was that the QA supervisor was  
2 certified as a Level III and -- in summary, this allegation  
3 is that the QA supervisor was unqualified by reason of lack  
4 of training and experience, right?

5 A (Witness Forney) That's the allegation.

6 Q This is not the same gentleman who was the QA  
7 manager who was dismissed, right?

8 A No, it is not.

9 Q This was someone else.

10 JUDGE SMITH: I just wonder if we're -- do you  
11 recall what your question was two questions ago? I thought  
12 that you were referring to the conclusion and I thought the  
13 witness was referring to the allegation.

14 MS. WHICHER: I was referring to the allegation.

15 JUDGE SMITH: All right.

16 BY MS. WHICHER:

17 Q Now, Mr. Hines inspected this allegation also,  
18 right?

19 A (Witness Forney) That's correct.

20 Q Mr. Hines reviewed the documents in the file,  
21 right?

22 A That's correct.

23 Q There is no indication in this report, is there,  
24 that Mr. Hines went beyond the documents that were in that  
25 file?

1 A (Witness Connaughton) That's correct.

2 A (Witness Forney) That's correct.

3 Q There is no indication in this report, is there,  
4 that Mr. Hines sought to verify whether what the allegor  
5 said was, in fact, true, whether or not it was reflected in  
6 the documents?

7 MR. BECKER: I didn't understand that question.  
8 Can I have it reread?

9 (The reporter read from the record as requested.)

10 MR. BECKER: Somehow there doesn't appear to be  
11 any foundation for the question. I guess the question is  
12 that Mr. Hines did, in fact, investigate. It seems to me  
13 he did investigate. The first question was, verify beyond  
14 the documents. That's asked and answered. The panel answered  
15 that one.

16 MS. WHICHER: It hasn't been asked and answered,  
17 Your Honor. I think it's a proper question.

18 JUDGE SMITH: It's a different question. Is that  
19 your objection, asked and answered?

20 MR. BECKER: No. The question as asked has no  
21 foundation. There is no evidence in the record there was  
22 falsification of documents.

23 JUDGE SMITH: I think that's a valid objection.

24 MR. BECKER: The other part of it -- I guess the  
25 question was confusing. Did he investigate the documents or

1 did he go beyond that? The question, did he go beyond the  
2 documents was asked and answered. That was the prior  
3 question. To the degree the question is different and has  
4 no foundation, it's because it's assuming the documents were  
5 false.

6 MS. WHICHER: It's not assuming the documents were  
7 false. We don't know because Mr. Hines only looked at the  
8 documents. That's the point of the question, Your Honor.

9 WITNESS FORNEY: From my experience reviewing these  
10 certification packages, at least now one of the problems in  
11 82-05-19 was that there wasn't a verification of prior employ-  
12 ment.

13 When I reviewed many of the certification packages  
14 this year, and they had not gone out to previous employers  
15 and asked for certification. Typically when I review a  
16 package now there will be a letter in the file that has the  
17 letterhead of the companies. Now, it's almost incredible  
18 to me that somebody would -- you know, for us to suspect that  
19 somebody is going to go to a printer and have a bunch of  
20 name headings made for a bunch of different companies.

21 So we take them as a basis of fact that if the  
22 certification package in fact includes the requirements of  
23 the ANSI standard, that an acceptable basis to clear the  
24 item of noncompliance or the allegation.

25 JUDGE SMITH: If you want to argue that it's not

1 acceptable, Ms. Whicher, you're free to do that in proposed  
2 findings, but I don't think it's productive for you to try  
3 to get the witnesses to agree with you.

4 BY MS. WHICHER:

5 Q Let me ask just one followup question to Mr. Forney.  
6 Mr. Forney, when was this person certified as a Level III  
7 inspector?

8 A (Witness Forney) Since I was not the person that  
9 reviewed this man's package, I can't tell you.

10 Q So, you don't know whether it was before or after  
11 the recertification program went into effect?, right?

12 MR. BECKER: Doesn't the record indicate that  
13 this report was investigated in 1983?

14 MS. WHICHER: I'm asking when the man was origi-  
15 nally certified.

16 MR. BECKER: You're asking him when he was in-  
17 spected? They are two different questions.

18 WITNESS FORNEY: I don't know whether --

19 MR. BECKER: Can we determine, is the question  
20 when was he originally certified or when did the NRC inspec-  
21 tor examine his file?

22 MS. WHICHER: I asked, when was this person  
23 certified?

24 MR. BECKER: That was asked and answered; Mr.  
25 Forney said he didn't know.

1 MS. WHICHER: Is that your answer, you don't know?

2 WITNESS FORNEY: I believe that this individual  
3 has been working for Hatfield for a considerable period of  
4 time, and I believe he was required to be recertified during  
5 the recertification program.

6 So, I would say that there was probably more than  
7 one certification, possibly, there was the periodic certifi-  
8 cation that is required by ANSI also in his record. So the  
9 details I don't know. I think the important thing is Mr.  
10 Hines states here that he reviewed the certification package  
11 that it had all of the required requirements of ANSI in  
12 the certification package and that based on that he found that  
13 the individual was in fact certified.

14 I might also add that there were only three Level  
15 III's working for Hatfield, and besides Mr. Hines looking at  
16 this, I have personally reviewed the records of all the  
17 Level III supervisors that were working at Hatfield at the  
18 time that I reviewed the quality assurance manager and issued  
19 the item of noncompliance. I did not document it specifi-  
20 cally against this allegation because I didn't have that  
21 allegation assigned to me or probably would have cleared  
22 that allegation at the time I issued by Level IV item of  
23 nonconformance.

24 WITNESS HAYES: I know the individual that's being  
25 referred to here personally and the statement by the allegor

1 that he had never worked in a QC program until coming to  
2 work for Hatfield is not correct. I have personal knowledge  
3 that he worked at other nuclear sites in the quality control/  
4 quality assurance area.

5 BY MS. WHICHER:

6 Q Now the next report is 83-18, right? And this  
7 inspection was performed in March and April of this year and  
8 the report was issued at the end of May of this year, right?

9 A (Witness Forney) That's correct.

10 Q Now if you turn, please, to the first attached  
11 page of 83-18, paragraph four, investigation of allegations,  
12 now the allegation inspected in this paragraph is one of  
13 the August allegations, right?

14 A (Witness Connaughton) I believe that was received  
15 in November.

16 Q This was a November allegation?

17 A I believe so, yes. The allegor had also contacted  
18 us on January -- I believe that was January 10th contact,  
19 previously referenced and reviewed the memoranda that we  
20 had generated from our notes in the November interview.

21 At that time we asked him, please review that and  
22 to let us know if we accurately and adequately had character-  
23 ized their concerns, and if he had any additional information  
24 on any of the allegations that we documented, or new concerns  
25 to please provide that.

1 Well, he did so and two items that he looked at,  
2 that we have documented, he indicated to us that while yes,  
3 that adequately -- that accurately reflected what was said  
4 during the interview that he did not consider this matter to  
5 be a safety concern. He felt that people resolving this  
6 particular DR didn't do enough in documenting their corrective  
7 action to acknowledge that there was a legitimate problem  
8 needing correction. I believe the corrective action merely  
9 said that item is satisfactory or what have you.

10 The resolution taken -- the allegor knew what the  
11 resolution was and had not taken issue with the resolution  
12 but more with the documentation. He felt that that was not  
13 a safety concern. But since it was in our tracking system  
14 as an allegation, it has to be formally addressed and docu-  
15 mented on an inspection report.

16 Q Now if you would turn, please --

17 MS. YOUNG: Excuse me, would this be an appropriate  
18 time for a recess?

19 JUDGE SMITH: Yes, several people expressed that  
20 desire, so let's take a 10-minute break.

21 (Recess.)

22 BY MS. WHICHER:

23 Q Would you turn, please, gentlemen, to page nine  
24 of your prepared testimony. In drawing your attention to  
25 the paragraph beginning with the words, four of the 31 unique

1 allegations.

2 WITNESS HAYES: Yes, we have it.

3 JUDGE SMITH: Isn't it -- hasn't that been changed  
4 to four of the 30 unique allegations?

5 MS. WHICHER: I had thought --

6 JUDGE SMITH: Well, in any event, proceed.

7 MS. WHICHER: I thought that change was somewhere  
8 else in --

9 JUDGE SMITH: Did you say page nine of the pre-  
10 pared testimony?

11 MS. WHICHER: Yes, was that figure corrected yes-  
12 terday? I thought it was a different page.

13 WITNESS HAYES: It was page eight.

14 MS. WHICHER: Is the same mistake on this page?

15 WITNESS FORNEY: One is pertaining to remaining  
16 allegations and one is pertaining to how many were received  
17 at a certain time.

18 BY WHICHER:

19 Q Now four of the allegations were substantiated,  
20 right?

21 A (Witness Connaughton) That is correct.

22 Q And one of those was quality control inspector  
23 certification and we talked about that today, right?

24 A (Witness Forney) Correct.

25 Q Now, are there reflected in the attachments to

1 your testimony the allegation concerning separation between  
2 production and quality assurance functions?

3 A (Witness Connaughton) Yes.

4 Q Can you tell me where in your testimony?

5 A Inspection Report 82-17, Attachment C, paragraph  
6 III-B2.

7 JUDGE CALLIHAN: Give us a page number.

8 WITNESS CONNAUGHTON: Page 5.

9 JUDGE CALLIHAN: Thank you.

10 BY MS. WHICHER:

11 Q That was the allegation concerning inspectors  
12 inspecting their own work?

13 A (Witness Connaughton) That's correct.

14 Q And that again was substantiated, right?

15 A Yes, it was. To a very limited extent, I should  
16 add.

17 Q But it was in fact substantiated, right:

18 A That's correct. There were one or two instances  
19 identified.

20 Q Now, referring you to page 11 of your testimony,  
21 as I understand your testimony, three new allegations from  
22 two individuals whom you had already spoken with, were re-  
23 ceived on January 10th, right?

24 A That's correct.

25 Q And none of those allegations had been inspected

1 or investigated, right?

2 A I believe that's correct.

3 Q And that was about seven months ago, right?

4 A About.

5 Q And on January 17th, you were contacted by Mr.  
6 Hughes, right?

7 A That's correct.

8 Q And he made some allegations, right?

9 A That's correct.

10 Q And two of those allegations were duplicative  
11 of the ones you had received a week earlier, right?

12 A That's correct.

13 Q So, of the allegations Mr. Hughes made on Janu-  
14 ary 17th, those two allegations have not been acted on, right?

15 A That's correct.

16 Q One allegation which Mr. Hughes gave you on  
17 January 17th, concerned the circumstances of his failing  
18 test?

19 A Correct.

20 Q And the investigation or inspection of that alle-  
21 gation has not yet been completed, right?

22 A The substance of that allegation as it was presented  
23 on that date I believe has been addressed. It was never  
24 documented in an inspection report and to close the item,  
25 were there no additional information regarding the testing

1 procedure, that item would probably have been closed pending  
2 the of following the special inspection conducted to address  
3 Mr. Hughes' sworn statement in these proceedings.

4           However, due to the fact that the additional  
5 facet of the testing procedure involving potential cheating  
6 was made known, we have decided to leave these items open,  
7 because they identify Mr. Hughes as being subject to repeti-  
8 tive testing and allegations concerning others with similar  
9 testing procedures.

10           By itself, the repetitive testing we don't attach  
11 a great deal of safety significance to that, but because of  
12 the additional facet of Mr. Hughes' allegation that came out  
13 during the deposition and in his sworn statement, those items  
14 are open.

15           Q       So they have not been investigated or inspected  
16 yet, right?

17           A       Partially they have. I cannot speak to that.

18           A       (Witness Hayes) The part that has been referred  
19 to OI, which would involve wrongdoing, that is cheating on  
20 tests, has not been resolved yet. All the rest of the  
21 part of that allegation has been resolved and has been  
22 documented in a report.

23           Q       And it's in one of the reports attached, as an  
24 exhibit to your testimony, right?

25           A       Yes, that's correct.

End 10.

1 Q Now, would you turn, please to pages 11 and 12 of  
2 your testimony.

3 And specifically with respect to that portion of  
4 your testimony which speaks about training and certification  
5 of Mr. Hughes and supplied answers on examinations; do you  
6 see that?

7 It's the bottom of 12 and the top of page 11.

8 MR. BECKER: Bottom of page 12 and top of page 11?

9 MS. WHICHER: I'm sorry. Top of page 13.

10 BY MS. WHICHER:

11 Q Are you with me?

12 A (Witness Forney) Yes.

13 Q Now, the panel's testimony states: "These issues  
14 were never raised in the form of allegations prior to  
15 Mr. Hughes' deposition of May 26th, 1983."

16 Do you see that?

17 A (Witness Connaughton) That's correct.

18 That should, more accurately, be singular, this  
19 issue.

20 The cheating issue was not part of any previous  
21 allegation provided by Mr. Hughes or others.

22 Q So, you want to change that to refer only to the  
23 cheating issue; right?

24 A Let me read this.

25 It may be okay as stated.

1                   No, that reads correctly, "these issues," the  
2 other issue being training less perfunctory and the inference  
3 from that that perhaps documentation of such training might  
4 be suspected.

5           Q       So, so the sentence it correct, and it refers to  
6 both issues; right?

7           A       Yes.

8           Q       Now, prior to May 26th, how many conversations had  
9 Region III and OI officials had with Mr. Hughes?

10          A       Four or five.

11          A       (Witness Forney) That's four or five that we know  
12 of. OI may have had separate contact.

13          Q       So, at least four or five occasions, you have met  
14 and talked with Mr. Hughes; right?

15          A       Right.

16          Q       And did you ask him -- Mr. Forney, I would like  
17 you, please, to turn to page 14 of Intervenor's Exhibit 30,  
18 the last paragraph on that page.

19          A       (Witness Hayes) "14" did you say?

20          Q       Yes. Exhibit 30

21                   Now, that indicates, does it not, Mr. Forney, that  
22 Mr. Hughes told you of the cheating on the test issue at least  
23 as early as November 30; right?

24          A       (Witness Connaughton) No, it does not.

25          Q       Do you see that sentence, "This relates to

1 item IV.A of the November 30 memo from W. L. Forney to file,  
2 which discusses alleged improper OC inspector certification  
3 testing and destruction of required records"?

4 A (Witness Forney) I think the distinct difference  
5 between the two times where it stated that he provided an  
6 additional allegation -- this one related to flunking the  
7 test and retaking it in a short period of time. I think it  
8 was, additionally, later that he said that he had -- had  
9 the answers in front of him, also had a separate sheet with  
10 the answers. It gets kind of confusing on when all this  
11 stuff occurred.

12 Q Mr. Forney, when did you first become aware that  
13 Mr. Hughes was making an allegation that he had the answers  
14 in front of him when he took the test the second time?

15 A It was later than this date. The exact date I  
16 don't remember. I'd have to review all of the documentation.  
17 But it was later.

18 At this given time, he merely stated to us that he  
19 had personally flunked the test, that he then was allowed to  
20 review the test, and then that he was given, a very short  
21 time later, the same test and retook it. The "same test"  
22 doesn't mean that he was given the one at that time -- he  
23 didn't say he'd given the one with the answers, but he had a  
24 new one, of exactly the same questions.

25 Q Now, when you say "this time" in your previous

1 answer, Mr. Forney, are you referring to January 19th, when  
2 you wrote the memo which starts on page 14? Or are you  
3 referring to November 30, which is referred to in the memo?

4 A Let me review it.

5 What page is the "November 30" on?

6 Q I believe 22.

7 A Okay. On page 23, at that time the allegation was  
8 some Level I inspectors are being given the same test several  
9 times in the same day, until they can pass the test. He  
10 stated that failed tests are not retained in training files.  
11 And then, he provided us some names, which are blanked out.

12 Later on in January, on January 17th, Mr. Hughes  
13 stated that he personally had flunked a certification test  
14 and reviewed the test. So, what that would indicate to me is  
15 that initially he held back some information, possibly because  
16 at that time he might have felt that we would have  
17 decertified him. And he chose to continue the work, knowing  
18 that later on, after he was no longer there; then, he came  
19 forward and told it.

20 And so -- I don't know. Maybe that was for his  
21 own personal gain or not wanting to go through recertification.  
22 I don't know why.

23 He could have provided us the information he did  
24 on January 17th, when he talked to us earlier.

25 Q In fact, he could have provided you, on January 17th,

1 with the information he provided in May in his deposition;  
2 right?

3 A That's correct.

4 Q Mr. Forney, do you know of any reason why  
5 Mr. Hughes would not have been as forthcoming when he talked  
6 with you as he was when this Board?

7 MR. BECKER: Objection. The witness can't answer  
8 that question.

9 JUDGE SMITH: If he knows of an objective reason  
10 why that might be the case, he can give it.

11 MR. BECKER: Fine.

12 WITNESS FORNEY: The only thing I would attribute  
13 it to is he wasn't working, so he possibly had a lot of time  
14 all day long, every day, to sit around and reflect on  
15 occurrences. Whereas before, there were meetings when they  
16 had time available to meet with us.

17 You know, I met with him at his house or wherever  
18 he wanted to meet, at whatever time.

19 BY MS. WHICHER:

20 Q He wasn't working on January 17th, was he,  
21 Mr. Forney?

22 A No, he wasn't.

23 Q Mr. Forney, did you ask him if he had retained  
24 the flunked test while he took the test the second time?

25 A (Witness Forney) I believe that was the date that

1 two OI investigators were with us.

2 And when we completed the session where we met at  
3 that point in time, the OI investigators were directed to  
4 where they could receive a copy of it and were provided a  
5 copy of it.

6 So, that evening, it's my understanding, that  
7 the Office of Investigation got the copy.

8 Q Mr. Forney, it's true, isn't it, that at no time  
9 did you ask Mr. Hughes whether he had the copy of the flunked  
10 test before him when he took the test a second time?

11 A You say did we ever ask him that? I don't believe  
12 I asked him. I believe the investigators asked him.

13 Q When did the investigators ask him?

14 A There was myself, Kevin Connaughton, and two  
15 investigators there at that same meeting.

16 Q Was this the January 17th meeting?

17 A Yes.

18 Q And is that fact that he had the tests before him  
19 reflected in the January 19th memo?

20 A No, it isn't, because it's my understanding that  
21 he didn't provide that information. I don't believe he  
22 wasn't asked that information: I just believe he didn't say  
23 he had it.

24 Q Mr. Forney, maybe I'm not understanding you. I  
25 thought he had provided the information, the information that

1 he had the flunked test before him when he took the test the  
2 second time. I thought you just testified he provided that  
3 information during the January 17th meeting.

4 MR. GOLDBERG: That's not the testimony. The  
5 testimony is that in January he indicated that he had, in  
6 fact, flunked the test, which was later retaken. It was not  
7 until his deposition in May that he indicated that he had a  
8 copy of the failed test before him during the retest.

9 JUDGE SMITH: Mr. Goldberg, let Mr. Forney clear  
10 it up, because I got confused there myself.

11 So, let's clear it up.

12 WITNESS FORNEY: It was my understanding or my  
13 recollection of the meeting, the way he --

14 JUDGE COLE: Which meeting?

15 WITNESS FORNEY: The January 17th, 1983 meeting.

16 In the discussions with NRC officials that were  
17 present -- that he had indicated that the failed test was in  
18 the trash can and that this failed -- the way we were able  
19 to obtain the failed test was because someone else had  
20 retrieved it from the trash can and made a Xerox copy of it.  
21 And we were provided -- "we" being the Office of Investiga-  
22 tions -- were provided a Xerox copy of it.

23 And at that time, he did not indicate that he  
24 had it, to my recollection, in front of him and used it as a  
25 crib, or whatever you want to call it, for taking the exam.

1 BY MS. WHICHER:

2 Q Mr. Forney, are you saying that until May of 1973  
3 -- 1983, when Mr. Hughes testified before this Board, you  
4 had no knowledge that he was alleging that he had the failed  
5 test before him when he retook the test?

6 A (Witness Forney) That was my recollection: yes.

7 Q And you didn't ask him, during the January 17th  
8 meeting, whether that occurred; right?

9 MR. BECKER: Your Honor --

10 JUDGE SMITH: We asked Mr. Forney to clear it up  
11 once and for all, and this will do it.

12 WITNESS FORNEY: I believe that we did ask that.  
13 And I believe that he indicated that it was in a trash can.  
14 And if it was in the trash can, I don't know how he would  
15 have had it on his desk at the same time.

16 So, I don't believe that your understanding is the  
17 same as mine.

18 And regarding why he wouldn't tell me, he felt free  
19 to call me at home at 12:30 at night on occasion. So --

20 JUDGE SMITH: That's enough.

21 BY MS. WHICHER:

22 Q Now, I'd like to turn, please, to your two  
23 recent reports concerning Mr. Hughes, which are Attachments  
24 E and F to your testimony.

25 A (Witness Hayes) Okay. We have them.

1 Q Now, Mr. Hayes, as I understand your inspection  
2 and your results, you could not substantiate the fact that  
3 Mr. Hughes did not receive the required training; right?

4 A That's correct.

5 Q That doesn't mean you don't believe Mr. Hughes,  
6 does it?

7 A The documentation that is reviewed in many cases  
8 had Mr. Hughes initials on it. So, I have to conclude that  
9 the documents that are reviewed and from which I drew my  
10 conclusion were, in fact, valid documents.

11 I also talked to inspectors who personally  
12 accompanied Mr. Hughes during much of his training, and  
13 they also verified that fact.

14 Q Mr. Hayes, when you inspected -- went to inquire  
15 how much classroom training Mr. Hughes had received, you  
16 reviewed only the documents; right?

17 A That's correct.

18 Q And when you inspected the number of on-the-job  
19 training hours that Mr. Hughes received, one of the things  
20 that you did was you reviewed the documents; right?

21 A Yes, I reviewed the documents and talked to the  
22 inspector, the Level II inspector that was conducting the  
23 training.

24 Q Now, Mr. Hayes, in your inspection report, you  
25 stated that of the 64 hours reflected in Mr. Hughes' training

1 memorandum, you could only verify 48 of those hours; right?

2 A That's correct.

3 Q So, that means, does it not, that there are a  
4 number of hours that you could not verify that Mr. Hughes  
5 had had that training?

6 A That's correct.

7 Q How did you go about trying to verify whether  
8 Mr. Hughes had had that training?

9 A In regard to the missing documents?

10 Q I'm trying to ascertain how you decided that some  
11 hours were verified and others were not verified.

12 A I was able to go to the records on those parts  
13 that were verified, and there was an inspection report in the  
14 record that Mr. Hughes' name on it. And there were others  
15 that the numbers were in his training package. But those  
16 documents were not in the files. And because they were not  
17 in the files was the reason -- it was due to the fact that  
18 some of those hangers had been reworked since Mr. Hughes may  
19 have inspected them.

20 And so, in the meantime, the original documents  
21 either had been misplaced or destroyed.

22 We did locate one of the documents in one of the  
23 inspectors' open files and were able to confirm that such a  
24 document did exist.

25 We were also able to locate DRs which were, I

1 believe, written by Mr. Hughes. They certainly had  
2 Mr. Hughes' signature on them.

3 And the time frame that those DRs were written  
4 corresponded to the date that he was supposed to have  
5 received that on-the-job training.

6 In fact, the DRs referred back to the inspection  
7 reports and the numbers correspond.

8 So, from talking to the inspectors involved and  
9 with that evidence, I conclude that he, indeed did receive  
10 all of that training as documented in his file.

11 But even if he did not receive those missing -- the  
12 ones I could not verify, he still easily met the minimum  
13 requirements for that procedure, 9.A.

14 JUDGE COLE: And on those inspection reports  
15 you're talking about, he was accompanied by a Level II  
16 inspector and that qualified as on-the-job training?

17 WITNESS HAYES: That's correct. In every case,  
18 the Level II inspector accompaied Mr. Hughes in the field  
19 and signed the report as such. And then that inspector is  
20 still working for Hatfield, and I talked to him, and he  
21 verified, yes, indeed, he really did that.

22 JUDGE COLE: All right, sir.

23 Thank you.

24 BY MS. WHICHER:

25 Q Mr. Hughes, is it your testimony -- Mr. Hayes, I'm

1       sorry, is it your testimony that every inspection report  
2       which you could find to verify the number of hours indicated  
3       the number of hours that the inspection took?

4               A       (Witness Hayes) The inspection reports did not  
5       have the number of hours that it actually took to conduct  
6       that particular inspection.

7                       The two hours recorded was an average number of  
8       hours it took to make those inspections that were on-the-job  
9       type of inspections.

end 11

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1 Q So, it's the case, is it not, that the reports  
2 themselves did not indicate how long the inspection took?

3 A True.

4 Q Where did the two-hour entry in the file come  
5 from?

6 A From the training.

7 The Level II person that was training the  
8 individual told me that that was an average number of hours  
9 it took. In some cases, it took longer than two hours; in  
10 some cases, it might have taken less than two hours. But the  
11 two hours was an average amount of time.

12 Q Okay. Thank you.

13 Now, Mr. --

14 JUDGE SMITH: Did you agree or disagree with  
15 Mr. Koca's explanation of those hours; or do you recall?

16 WITNESS HAYES: I believe he said it was within a  
17 few minutes, and I disagree with that.

18 BY MS. WHICHER:

19 Q Mr. Hayes, you reviewed the examinations which were  
20 in Mr. Hughes' file; right?

21 A (Witness Hayes) That's correct.

22 Q Two of the examinations had 20 questions each on  
23 them; right?

24 A I believe that's correct.

25 Can I check my --

1 Q Oh, please.

2 A Yes, that's correct. Two of them had 20 questions.

3 Q And you are aware, are you not, Mr. Hayes, that  
4 Mr. Stanish testified that each test is to have a minimum of  
5 40 questions?

6 A I believe he was referring to those tests that  
7 demonstrate his knowledge of a particular area which he will  
8 be performing inspections in and which he would be certified  
9 to.

10 The 20-question examinations are very general in  
11 nature.

12 Q Is it your testimony, then, Mr. Hayes, that it is  
13 not a requirement that each test contain a minimum of  
14 40 questions?

15 A I don't set those requirements.

16 Q Now, I'm asking you, are you saying that the  
17 requirement is not that each question -- or each test contain  
18 a minimum of 40 questions?

19 A (Witness Connaughton) That is not a requirement.

20 The policy, as set forth by the Applicant, beginning,  
21 I believe, on June 9th, 1982, states that for an individual  
22 to be certified that they be examined -- take at least a test  
23 which is closed-book and 40-question minimum.

24 And for each area of certification within Hatfield,  
25 at least one of those tests -- and typically, it's the one that

1 is most closely related to the procedures to which you will  
2 be inspecting -- is, indeed, a 40-question minimum.

3 Q Thank you.

4 Now, would you turn, please, to Report 83-21, which  
5 is Attachment F, and page 6 of the body of that report.

6 A (Witness Hayes) The bottom of paragraph 5 you're  
7 talking about?

8 Q No. I'm going to be talking about the paragraph  
9 immediately preceding number 5, on page 6.

10 A Yes, I have it.

11 Q Do you have that?

12 It begins with "During the current inspection."

13 A Yes.

14 Q Okay.

15 Now, this paragraph refers to retention of tests;  
16 right?

17 A Yes, it does.

18 Q And Hatfield did, in fact, change its practice  
19 concerning retention of tests because of the concerns brought  
20 to your attention by Mr. Hughes; right?

21 A I'm not sure that was solely related to Mr. Hughes.  
22 The retention of tests was committed to by Hatfield prior to  
23 this inspection. I don't know the -- I can't remember the  
24 exact circumstances that would have led to -- that would have  
25 identified the fact that they were not retaining these tests.

1 But certainly Mr. Hughes' allegation would have led us to  
2 that for sure.

3 Q Mr. Hayes, this statement states, does it not,  
4 during the current inspection, CECO and Hatfield management  
5 committed to developing a more definitive policy concerning  
6 inspector QC tests?

7 A That's correct.

8 Q One of those policies was to require retention of  
9 the test; right?

10 A Right. If you're referring to requiring the  
11 retention of the test, I included that in there. But that  
12 was already a commitment they had made.

13 Q When did they make that commitment?

14 A I'm not sure of the exact date. It was  
15 before the date of this inspection.

16 They were already retaining those tests as of this  
17 date. I can say that.

18 Q Was it before September 31st, 1982 -- 30th, I'm  
19 sorry.

20 A (Witness Connaughton) No, it was not.

21 Q Mr. Connaughton, do you have any idea when that  
22 policy was changed?

23 A No, I don't. I would be guessing.

24 Q So, is it your testimony, then, Mr. Hayes, that the  
25 policy change referred to in this paragraph relates to the

1 minimum time required between retesting, as well as having  
2 different versions of a test?

3 A (Witness Hayes) That's correct.

4 That was the two items that were committed to  
5 during this inspection.

6 Q So, Hatfield, in fact, changed its practice in  
7 those two respects because of the allegations brought to  
8 your attention by Mr. Hughes; right?

9 A I believe that's the case.

10 Q Now, would you turn, please, to page 7 of that  
11 report, the last paragraph on that page.

12 A Yes, I have it.

13 Q This paragraph concerns, does it not, the  
14 concern raised by Mr. Hughes and at least one other Hatfield  
15 worker concerning the wording of Hatfield Form HP-QA1; right?

16 MR. BECKER: Objection, Your Honor.

17 MS. YOUNG: Objection, Your Honor.

18 This issue has been resolved in the June 21 order.

19 MS. WHICHER: Your Honor, the July order asks for  
20 a full presentation on the allegations, the inspected  
21 allegations of Hatfield. And this is one of those inspected  
22 allegations.

23 JUDGE SMITH: That may very well be. However,  
24 this was litigated and decided by the Board. It's  
25 res judicata.

1 MS. WHICHER: Your Honor, I think it's relevant to  
2 the issues before the Board that that form was, in fact,  
3 changed. And that issue has never been before this Board  
4 before.

5 JUDGE SMITH: It is irrelevant. It has no safety  
6 significance.

7 BY MS. WHICHER:

8 Q Would you turn, please, to the last page of your  
9 testimony.

10 JUDGE SMITH: Moreover, I refer to Rule 407 of the  
11 Federal Rules of Evidence, which says: When, after an event,  
12 measures are taken which, if taken previously, would have made  
13 the event less likely to occur, evidence of the subsequent  
14 measures is not admissible to prove negligence or culpable  
15 conduct in connection with the event, this is evidence of  
16 subsequent corrections.

17 Okay. Just move on.

18 MS. WHICHER: Your Honor, may I make a statement  
19 for the record as to the applicability of Rule 407?

20 I feel this rule does not apply in this case,  
21 because the change was due to an NRC inspection and an NRC  
22 finding and not due to voluntary corrective action on the  
23 part of Hatfield Electric, which is the situation contemplated  
24 by that rule.

25 JUDGE SMITH: Okay.

1 Move on.

2 BY MS. WHICHER:

3 Q All right. Page 22 of your testimony.

4 Now, as I understand your testimony, there are  
5 31 allegations which remain open; right?

6 A (Witness Hayes) That's correct.

7 Q And that's of a total of 65 unique allegations;  
8 right?

9 A I believe there were 65 unique, yes.

10 Q And the last allegation you received was in March;  
11 correct?

12 A That's correct.

13 Q And this was not an allegation received from  
14 Mr. Hughes or his co-workers; right?

15 A (Witness Forney) That's correct.

16 Q Now, is it your testimony that the 31 uninvestigated  
17 and uninspected allegations will either be unsubstantiated or  
18 will be resolved by the 82-05-19 reinspection program?

19 A (Connaughton) That is not correct. There may be  
20 other remedial action required.

21 Q So, the last sentence on page 22 is incorrect in  
22 that context; right?

23 MR. GOLDBERG: Could we have the question read  
24 back, please?

25 (The reporter read the record as requested.)

1 WITNESS CONNAUGHTON: To the extent that the subject  
2 matter of the allegations has affected work already performed  
3 up until the date the results of 82-05-19 are evaluated, they  
4 will be encompassed by that program.

5 However, there may be remedial actions, other  
6 remedial actions necessary to preclude future occurrences  
7 embodied in the allegations. That would be part of the  
8 corrective actions proposed to respond to our evaluation of  
9 the reinspection program.

10 BY MS. WHICHER:

11 Q So, in other words, the mere fact that the 82-05-19  
12 reinspection program at some future date is completed by  
13 Commonwealth Edison and evaluated and accepted by the Region  
14 does not necessarily mean that the remaining -- the open  
15 31 allegations have been resolved; correct?

16 A (Witness Connaughton) The results of the  
17 reinspection program will have to be evaluated, with specific  
18 attention to the subject of individual allegations. In other  
19 words, it is not our intent to disregard the existence of the  
20 allegations and review the results of the reinspection  
21 program solely against the findings of 82-05-19.

22 A (Witness Hayes) If the reinspection program does  
23 not encompass the safety significance of the allegations, then  
24 additional work will have to be done to resolve those issues.  
25 And the intent of that statement was we believe that they will

1 be involved -- encompassed within the reinspection program.  
2 That is a very extensive and comprehensive program that looks  
3 at almost all of the work that has been completed at that  
4 plant that is safety-related.

5 Q Now, it's the case, is it not, that the allegation  
6 concerning supplied answers for the examination will not be  
7 encompassed within the reinspection program; right?

8 A Would you mind repeating that?

9 Q It's true, is it not, that Mr. Hughes' allegation  
10 concerning supplied answers for a test would not be encompassed  
11 within the 82-05-19 reinspection program; right?

12 A That's been referred to the Office of Investigations.  
13 So, it's completely separate. It would not have a technical --

14 Q Let me try it this way.

15 A Okay.

16 Q The fact that the 82-05-19 reinspection program  
17 may be, at a future date -- becomes completed by Commonwealth  
18 Edison and reviewed and accepted by Region III -- that fact  
19 would not mean that Mr. Hughes' allegation concerning being  
20 supplied answers on his test would be considered resolved;  
21 right?

22 A (Witness Forney) That's correct.

23 MS. WHICHER: I have no more questions for the  
24 panel.

25 And I move to --

1 JUDGE SMITH: There's more time available to you  
2 if you want it.

3 MS. WHICHER: No, Your Honor. I revised my cross-  
4 examination plan last night in light of the Board's order and  
5 indication after the hearing last night. And I have completed  
6 that plan which I wrote last night.

7 I would also move that --

8 JUDGE SMITH: Nevertheless, there still is time  
9 available for you if you wish it -- to continue the cross-  
10 examination.

11 MS. WHICHER: No. No.

12 I would move that Exhibit 30 be admitted.

13 And let me say -- before I hear the objections --  
14 that I realize that many of the documents have not been  
15 inquired into. And I will be willing to enter into a  
16 stipulation now, with respect to the proposed findings for  
17 this session, those documents referred to by the witnesses  
18 in their testimony will be referred to in the findings.

19 JUDGE SMITH: Is that satisfactory?

20 MS. YOUNG: Yes.

21 MR. GOLDBERG: Yes.

22 Before receipt, however, we would like a second  
23 opportunity to review the material that has been excised for  
24 confidential reasons before its actual receipt into the  
25 evidence.

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MS. WHICHER: Can we go off the record for a minute?

(Discussion off the record.)

JUDGE SMITH: All right. Let's take our lunch break.

How much time do you need to do that? Will an hour be enough?

WITNESS CONNAUGHTON: Five or ten minutes.

WITNESS FORNEY: We have been working on it between breaks.

JUDGE COLE: You have been working on it between breaks?

(Laughter.)

JUDGE SMITH: Let's return at 1:00 o'clock.

(Whereupon, at 11:45 a.m., the hearing was recessed, to reconvene at 1:00 p.m., this same day.)

- - - - -

end 12

AFTERNOON SESSION

(1:15 p.m.)

1  
2  
3 Whereupon,

4 WILLIAM FORNEY,

5 D. W. HAYES

6 and

7 KEVIN CONNAUGHTON

8 resumed the stand and, having been previously duly sworn, were  
9 examined and testified further as follows:

10 JUDGE SMITH: Okay, Mr. Becker.

11 CROSS EXAMINATION (Continued)

12 BY MR. BECKER:

13 Q Let me start by addressing a couple of questions  
14 to Mr. Hayes. This is with regard to your inspection of  
15 the certification of Mr. Hughes.

16 A (Witness Hayes) Yes.

17 Q When you inspected the file at Hatfield pertaining  
18 to the certification of Mr. Hughes, did he find, in that  
19 file, there was a verification of Mr. Hughes' prior employment?

20 A There was a letter, as I recall, that -- and I  
21 took that to mean that they had checked it.

22 Q In your view, Mr. Hayes, did this letter  
23 constitute adequate verification of Mr. Hughes' prior  
24 employment to -- let me rephrase that. It's only a part of  
25 the certification process.

1                   In your view, Mr. Hayes, was this letter verifying  
2 Mr. Hughes' prior employment adequate to satisfy that portion  
3 of the certification requirements that Hatfield was to  
4 follow with regard to Mr. Hughes?

5           A        Yes. I accept it as such.

6           Q        Mr. Hayes, Believe you testified in these  
7 proceedings with regard to Region III's position on the  
8 licensing or recommending the licensing of Byron in terms of  
9 the status of allegations and inspections. Do you recall  
10 the testimony you have given?

11          A        Yes, I do.

12          Q        Let me ask some foundational questions.

13                    Would you, Mr. Hayes, and the rest of the panel  
14 agree that some allegations are more serious than others?

15          A        That is correct.

16          Q        There are those allegations that impress the  
17 Staff member receiving the allegations as being particularly  
18 serious and warranting prompt and significant attention; is  
19 that right?

20          A        That would be correct.

21          A        (Witness Forney) Yes.

22          Q        Is it also the view of the panel that there are  
23 allegations at the other end of the spectrum that appear  
24 to be absurd on their face?

25          A        (Witness Hayes) Yes.

1 A (Witness Connaughton) That's correct.

2 Q An example of absurd allegation would be the one  
3 that the Staff received stating that Sargent & Lundy was a  
4 poor excuse for an engineering firm?

5 A Yes.

6 A (Witness Hayes) That would be.

7 A (Witness Forney) Yes.

8 Q Would you agree with me that the prioritizing  
9 that the Staff does with regard to inspecting allegations  
10 reflects the perceived seriousness of those allegations?

11 A (Witness Connaughton) That's part of the  
12 consideration.

13 Another consideration -- and I believe we  
14 discussed this earlier -- would be the ability to substantiate  
15 it if, indeed, it is true and the ease with which you could  
16 effect correction actions that were shown to be true, though  
17 it may be of a minor safety significance.

18 Q Is another factor of prioritizing the Staff's  
19 inspection whether the allegation involves ongoing work versus  
20 work that has been completed?

21 A (Witness Hayes) That is correct.

22 A (Witness Forney) Yes.

23 A (Witness Connaughton) Yes.

24 Q Let me get back to the Staff's position with  
25 regard to recommending licensing of the plant.

1           A       Is it the Staff's position -- is it the panel's  
2 position that Region III will not recommend any licensing  
3 for any operation of the Byron facility until all inspections  
4 of all allegations are completed?

5           A       (Witness Hayes) That's true for the allegations  
6 that we have received to date.

7                    It's our position that we will investigate or  
8 inspect all of those allegations before we recommend a  
9 license. That does not mean that the resolution of any of  
10 those allegation which are substantiated would necessarily  
11 hold up a license.

12                   We would look at the nature of the problem and  
13 the extent of it, and then we may recommend that those  
14 things be corrected before fuel load. We may recommend that  
15 they be corrected before initial criticality, or we may  
16 recommend that they be corrected before you exceed some  
17 power level.

18                   (Counsel conferring.)

19                   BY MR. BECKER:

20           Q       In terms of the Hatfield allegations that have  
21 been inspected to date, there were two violations identified;  
22 is that right?

23           A       (Witness Hayes) That's correct.

24           Q       I mean items of noncompliance.

25           A       That's correct.

1 Q One of these involves Mr. Wells' certification as  
2 an inspector?

3 A Yes, that's correct.

4 Q A certification of this -- has the Staff been  
5 satisfied that Mr. Wells now is properly certified?

6 A (Witness Forney) No.

7 Q Is it your understanding, Mr. Forney, that  
8 Hatfield and/or Commonwealth Edison Company has reviewed  
9 Mr. Wells' certification?

10 A It's my understanding that that has been done and  
11 that you provided a response to the item of noncompliance.  
12 And it's my understanding that the Region took exception to  
13 your position and said that we would review the matter at a  
14 later date.

15 Q So, this review is pending?

16 A Yes, it is.

17 Q The other item of noncompliance involved the  
18 Hatfield quality assurance manager: is that correct?

19 A Yes.

20 A (Witness Hayes) Correct.

21 Q Since that item of noncompliance was identified,  
22 has the official in that position been removed from that  
23 position?

24 A (Witness Forney) Yes, he has.

25 A (Witness Hayes) Yes, he has.

1           Q       Mr. Forney, let me ask you a couple of things  
2 concerning the reinspection program that has arisen out of  
3 the report, 82-05.

4                   82-05 did not identify any deficient work actually  
5 performed, did it, by an inspector?

6           A       (Witness Forney) That's correct.

7           Q       And in fact, would you agree with me, Mr. Forney,  
8 that the Staff is now awaiting the results of the reinspection  
9 program in order to determine whether the work performed by  
10 inspectors who were certified prior to September of 1982 was  
11 deficient?

12          A       That's correct.

13          Q       Would you agree with me, Mr. Forney, that with  
14 regard to Hatfield inspectors, at this time it is premature  
15 to say that any particular Hatfield inspector performed his  
16 or her work inadequately prior to September 1982?

17          A       Yes, it is.

18          Q       I think there was some confusion in a question-and-  
19 answer sequence that involved you, Mr. Forney, yesterday.

20                   Let me just ask the question outright. With  
21 regard to inspections performed before March of 1981, those  
22 inspections are included within the reinspection program,  
23 aren't they?

24          A       That's true. The reinspection program took a  
25 chronological listing of all inspectors that had ever

1 performed safety-related inspections for the contractors  
2 within the scope of the program and took a random selection  
3 of every fifth individual.

4 Q And that was the beginning of the project, sir --  
5 I guess September of 1982; right?

6 A Yes, it is.

7 Q Okay, Mr. Forney, in referring to the findings  
8 you made in the special team inspection, you referred to the  
9 programs used by contractors to certify their QC inspectors  
10 before that inspection as being informal; is that correct?

11 A No. What I referred to is that Commonwealth  
12 Edison did not have a formal program by which they identified  
13 to the contractors how the contractors would meet a contract-  
14 ual obligation that would, say, provide trained and certified  
15 inspectors.

16 So, if there wasn't specific guidance, there was  
17 some lesser guidance within the quality assurance manuals  
18 and, to a varying degree, the various contractors, of how they  
19 certified inspectors.

20 Q Well, would you agree with me that although you  
21 might have felt that the programs of each contractor would  
22 be revised or updated in some way, that the contractors did  
23 have programs prior to the special team inspection?

24 A I would agree.

25 Q Would you agree with me that Commonwealth Edison

1 Company had a program, albeit one that perhaps required  
2 revision, for reviewing the programs of its contractors prior  
3 to the special team inspection?

4 A Commonwealth has performed audits. However, it's  
5 difficult, in my opinion, to perform an audit of a contractor  
6 if you don't have a formal program established within your  
7 own corporation as to what has to be done by a contractor to  
8 certify an inspector.

9 And I believe, like I said previously, the lack  
10 of that formal program established by Commonwealth, in my  
11 estimation, is what allowed the variation between contractors.

12 Q Is it your understanding, Mr. Forney, that the  
13 review Commonwealth Edison Company performed with regard to  
14 its contractors' certification programs before the special  
15 team inspection consisted of a review which would ensure  
16 each contractor the intent of the ANSI standard in its own  
17 program?

18 A I don't believe it ensured that they met the  
19 intent, or I would not have found the item in noncompliance.

20 Q I guess our confusion here, Mr. Forney -- let me  
21 ask a couple of questions and maybe we can at least satisfy  
22 ourselves.

23 82-05-19, prepared by you, stated -- well, it was  
24 your recommendation, your suggestion that Commonwealth Edison  
25 Company implemented a certification program that set forth

1 uniform standardized requirements for the certification of  
2 inspectors; correct?

3 A That's correct.

4 Q Is it your testimony, Mr. Forney, that prior to  
5 the special team inspection that the certification program  
6 being followed at the site by the contractors and by  
7 Commonwealth Edison Company did not make efforts to conform  
8 to the perceived intent of the ANSI standard?

9 A Given that Commonwealth Edison had committed to  
10 the Regulatory Guide 1.58 and that the Regulatory Guide 1.58  
11 changes the recommendations from the ANSI, since there is  
12 only one recommendation, from "should" to "will," I have  
13 found in my item of noncompliance, as indicated, that that  
14 was not correct.

15 If you'd like a couple of examples, an electrician  
16 had been certified that had worked as a house electrician,  
17 was given credit because he had worked as a house electrician.  
18 And on that basis, he was certified. And I find that in no  
19 way does that meet the intent of the ANSI, as the ANSI says  
20 "equivalent related experience" -- it says "related experience  
21 in equivalent inspection examination or testing activities."

22 And I found a similar type thing, where if I had  
23 been a plumber for a period of time, I found a situation  
24 where a guy had worked on non-nuclear piping in the turbine  
25 building, and I did not find that any of those met the intent

1 of the ANSI.

2 JUDGE SMITH: I'm having a little bit of difficulty  
3 distinguishing whether the questions and answers relate to  
4 the purpose of the program, as compared to the effect of the  
5 program or the success of the program.

6 Sometimes I find your questions were -- at least,  
7 wasn't there a plan in effect that had that objective in mind?  
8 But the answer comes back that whatever it was, it was  
9 ineffective?

10 WITNESS FORNEY: That was my position.

11 JUDGE SMITH: But the question, as I understand it,  
12 is: What was the purpose of it -- notwithstanding its  
13 success or failure, what was the purpose of it?

14 MR. BECKER: Maybe I can ask a direct question.

15 BY MR. BECKER:

16 Q You performed a special inspection, Mr. Forney.

17 In performing that, was it your view that Commonwealth  
18 Edison or its contractors did not intend to be in compliance  
19 with the ANSI standard?

20 A (Witness Forney) No, I don't believe it was  
21 that they didn't intend. Too, I believe they hadn't put all  
22 of the commitments together.

23 Q Well, can we agree that when it came down to a  
24 bottom line, it was a question of interpretation?

25 A I would not agree it's a question of interpretation.

1 I'd agree it was a question of application of the commitments.

2 Q You thought it should be applied in one way, and  
3 apparently Commonwealth Edison believed it should be applied  
4 in a different way?

5 A That's correct.

6 Q I think this morning Ms. Whicher asked you a  
7 question, Mr. Forney -- I can paraphrase it -- to the extent  
8 that if Commonwealth Edison had been following the procedures  
9 with regard to certification that it has now from the very  
10 start of construction back to the mid-1970s that there would  
11 not be a present reinspection program.

12 Do you recall that question and your answer?

13 A I do.

14 Q I believe yesterday you testified, Mr. Forney, that  
15 the notion of certification pursuant to the ANSI standards  
16 was a "moving target."

17 Do you recall that testimony?

18 A I do.

19 Q In fact, wouldn't you agree, Mr. Forney, that the  
20 question of certifying quality control inspectors has been  
21 an evolving issue over the past decade?

22 A It has.

23 Q And in fact, would you agree that Commonwealth  
24 Edison Company was not even asked by the NRC to explicitly  
25 commit to Regulation 1.58 until January of 1981?

1           A       I believe that was generic letter 81-01.

2                    There was a precursor to that. And the specific  
3 date of the issue I don't recall. And the specific title I  
4 don't recall.

5                    We refer to it as the "green book," and we have it  
6 in our library -- and I believe the date of that was somewhere  
7 around '76 or '77 -- I guess '75 even, maybe as early as  
8 late '75 -- which indicates an NRC understanding of Applicant's  
9 and Licensee's intent to follow the recommendations of the  
10 ANSI.

11                   And at that time, there were recommendations,  
12 because there was no specific commitment such as the Reg Guide  
13 in the FSAR.

14                   JUDGE SMITH: Before you go on, when you originally  
15 answered the question about it being an evolving issue, did  
16 you mean an evolving generic issue industrywide? Was that  
17 the gist of the question and answer?

18                   WITNESS FORNEY: Yes, sir.

19                   BY MR. BECKER:

20                   Q       Can you identify for me, Mr. Forney, a specific  
21 date when Commonwealth Edison Company, with regard to Byron,  
22 was specifically requested by the NRC to adopt the ANSI  
23 standard as the basis for certification of QC inspectors?

24                   A       (Witness Forney) I don't remember the date of the  
25 generic letter. I'd say it was by receipt of the generic

1 letter, 81-01, which would be January '81.

2 Q Would you agree with me, Mr. Forney, in March of  
3 1981, two months later, that Commonwealth Edison responded  
4 by specifically adopting the ANSI standards with regard to  
5 certification of QC personnel?

6 A My recollection is it's true, with the exception  
7 that in that letter I believe you also took exception to  
8 having a high school diploma as a necessary requirement.

bu 7 9 Q The documents that were marked as Intervenors'  
10 Exhibit 30 have since been taken from me to be sanitized --  
11 resanitized, I'm sorry --

12 MR. GOLDBERG: Mr. Becker, we can provide you with  
13 resanitation if you'd like.

14 MR. BECKER: Well, let me ask the question. I  
15 might not need the resanitation.

16 BY MR. BECKER:

17 Q In a memo that I believe is dated January 19th, I  
18 believe, of 1983, pertaining to an interview with Mr. Hughes,  
19 my recollection is that the document states that Mr. Hughes  
20 informed the Staff that the test that he had failed was  
21 thrown away before he was retested.

22 I guess the question is: Is that what the document  
23 states?

24 MS. WHICHER: Well, I object to that. I think  
25 we should wait on that until we get the document back or let

1 witness and counsel borrow the reporter's copy.

2 JUDGE SMITH: I think that's a good idea, because  
3 that's not my memory of the document, too. And I think it's  
4 confusing.

5 (Pause.)

6 BY MR. BECKER:

7 Q Is the panel at page 14 of the exhibit?

8 A (Witness Forney) Yes.

9 Q The bottom paragraph states the flunked test  
10 copy was destroyed after Mr. Hughes had passed the test.

11 Did Mr. Hughes inform you that the test had been  
12 destroyed?

13 A I believe that he indicated that the test had been  
14 thrown in the trash can. Ultimately, stuff that goes in the  
15 trash can gets destroyed.

16 And I believe at that meeting he indicated that  
17 another individual had a copy -- I believe he indicated that  
18 another individual had the test.

19 And after that meeting concluded, the investigators  
20 from the Office of OI went to the other individual's house  
21 and were provided with a Xeroxed copy of the test that was  
22 purported to them to be the original test.

23 We did not -- "we being Mr. Connaughton and myself  
24 -- did not ever see that test.

25 And in fact, our interrelationship with OI is

1 such that when OI retrieves something and we're not present,  
2 we can't even go to OI and have OI show it to us.

3 So, we never saw that until -- I believe it was  
4 around May, when it became disclosed through Mr. Hughes'  
5 discovery -- discovery relative to Mr. Hughes' testimony.

6 Q Did Mr. Hughes indicate to you, in your meeting  
7 of January 19th -- strike that.

8 This January 19th memo pertained to a January 17th  
9 meeting?

10 A Right.

11 Q Did Mr. Hughes indicate to you on January 17th  
12 that he knew that the flunked test was in the position of  
13 someone else?

14 A Well, yes, because the -- after the meeting broke  
15 up where we were meeting there, then the OI people went to  
16 the other place, that same evening and got the test.

17 So, that night he knew of the existence. He did  
18 indicate to us that he initially didn't know of the existence  
19 of that test and was later informed by this other individual  
20 that the other individual had retrieved the test or a copy  
21 of the test from the trash can.

22 In fact, I guess -- Kevin reminded me that he  
23 actually received a call from the other individual while we  
24 were in this meeting that said that this other individual  
25 had this test and if somebody would come down, they would

1 be able to get it.

2 Q Did you ask Mr. Hughes his understanding of why the  
3 other individual had apparently taken the test out of the  
4 wastebasket?

5 A Would you ask that again. I don't --

6 Q Did you ask Mr. Hughes his understanding of why  
7 the other individual apparently took the flunked test out of  
8 the wastebasket of wherever he got it?

9 A I don't think he really knew, because up to that  
10 point, like I say, initially, when it was retrieved he had  
11 not known it had been retrieved.

12 So, the answer to that would be Mr. Hughes stated  
13 himself that he didn't even know the guy had it, so he wouldn't  
14 have known why.

15 Q Did you ever ask the other individual why he had  
16 retrieved the test?

17 A I did not, because I wasn't there when they  
18 retrieved them. OI very well may have.

19 And again, once we separated, we're not privy to  
20 what goes on in the other office, not until their review.  
21 Ultimately, their investigation will be provided to  
22 Mr. Keppler, the Regional Administrator. And at that point,  
23 Mr. Keppler will assign whoever in the office he wants to  
24 perform the review.

25 MR. BECKER: I have nothing further, Judge Smith.

XXXX

## BOARD EXAMINATION

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BY JUDGE COLE:

Q On page 3 of your testimony, you refer to Tables 2 and 3. And I have only Tables 1 and 2.

MS. YOUNG: Excuse me, Judge Cole, I handed out two replacement pages.

JUDGE COLE: Oh, you did? And that was one of them?

MS. YOUNG: One was professional qualifications of Mr. Forney and the other was Table 3.

MS. WHICHER: Mitzi, I didn't get those either.

(Pause.)

BY JUDGE COLE:

Q Thank you.

I know have it.

In response to a question, A.4, the last section of your answer, page 3 of your testimony, you refer to the types of findings that you could make as substantive and nonsubstantive.

Now, with respect to Hatfield, how many of your findings would you characterize as substantive?

A (Witness Forney) Let's see. As I recall, I think there was three people that failed. And I would say that -- and on some of them there was more than one finding. I'd say that at least two of them were substantive.

1 Q They failed what, sir?

2 A Failed to meet the requirements of the ANSI by  
3 not having all the requirements. In other words, I had a  
4 check list that I made out for each individual that had all  
5 the attributes of the ANSI. And if they had it, I marked it  
6 "yes." If they didn't, I marked it "no."

7 Q So, you say there were three, and three were  
8 substantive, in that it was -- their qualifications weren't  
9 demonstrated, or some documents were missing?

10 A I believe, of the nine I looked at for Hatfield,  
11 three of them were not, in my judgment, certifiable. At least  
12 two of those were substantive; and I think I already talked  
13 about one of them generally, and that was the individual that  
14 had been a house electrician for 10 or 12 years with no  
15 prior related experience. I don't recall the details of the  
16 other.

17 Q All right, sir, on page 6 of your testimony, in  
18 the paragraph that begins at the bottom of the page, you talk  
19 about certain of the reasons why no reinspections were  
20 being performed. And one of the reasons you stated there is  
21 that it was inspected by another contractor, such as  
22 Pittsburgh Testing Laboratory, or the authorized nuclear  
23 inspector?

24 A Yes.

25 Q You might not be the best one to answer this, but

1 you're the only available right now. And it has to do with  
2 the role of the Pittsburgh Testing Laboratory.

3 I got the impression that they did the testing  
4 directly for the Applicant, Commonwealth Edison, and protected  
5 their interest at the site.

6 And I got the impression that they were involved  
7 in all of the contractors at the site.

8 What is your understanding of that, sir?

9 A (Witness Hayes) I can't say if they were involved  
10 in all of them, but they were involved in a number of them.  
11 Most of their -- they were doing -- in the case of structural  
12 steel bolting, for example, they were verifying a certain  
13 percent of the bolts were properly torqued and properly  
14 installed. And I believe they were acting for Commonwealth  
15 Edison Company in that role.

16 Q As an independent testing laboratory?

17 A As an independent testing lab, yes.

18 Q So, it's not that they were involved in everything?

19 A Well, they wouldn't -- well, for example, Reliance  
20 Trucking Company that would move safety-related equipment --  
21 to my knowledge, they would oversee that. I'm not aware of  
22 any of it. They did oversee concrete place and testing  
23 activities of concrete. They did do some overseeing on  
24 visual weld inspections. There's a number of others.

25 Q Mr. Becker referred to September 1982 several

1 times in his cross-examination. What is the significance of  
2 the September 1982 date, sir? Anyone.

3 A (Witness Forney) The completion of the recertifi-  
4 cation program was to be accomplished by September 30th, 1982.

5 So, the commitment to the Region from Commonwealth  
6 relative to the reinspection program then stated that the  
7 population of inspectors to be drawn from would include that  
8 population of inspectors that were certified up to  
9 September 30th, 1982, before they had gone into the  
10 recertification program.

11 Q All right, sir, Mr. Becker ask you questions  
12 concerning the adequacy of work performed by Hatfield  
13 quality control inspectors prior to September '82 and  
14 demonstration of the adequacy of that work.

15 Is the reinspection program involving work done  
16 only prior to September '82?

17 A That's correct. That's what I was trying to tell  
18 you in my last answer, that the population of inspectors in  
19 the reinspection program for Hatfield takes into consideration  
20 all inspectors from the first inspector that came on board  
21 for Hatfield up until September 30th, because that's when  
22 they went into the new reinspection program.

23 At that point, anybody that we would find not  
24 properly certified would be dealt with by an item of  
25 noncompliance and handled individually, rather than within

1 the population of the reinspection program.

2 Q But the reinspection program itself involves only  
3 work done prior to September 1982?

4 A That's true.

5 Q Okay. Thank you.

6 You gentlemen have been involved in your own  
7 evaluations of the effectiveness of the reinspection program.  
8 And I won't ask you to give your estimates of the effective-  
9 ness of that program unless you wish, because it might be  
10 premature. I know you're still looking at it.

11 But do you have any estimate, a realistic estimate  
12 or an estimate that you think is realistic, of just when that  
13 reinspection program will be completed, including all of  
14 its phases?

15 A (Witness Hayes) When you say all phases, would  
16 that include our evaluation as well?

17 Q Well, then you can tell me how long your  
18 evaluation will take after that, sir.

19 A If I complete it in September, I could see -- I  
20 believe our best estimate, our evaluation would require three  
21 months, which would take us to December, end of December.

22 So, right now I'm -- there's a number of factors  
23 that we just haven't looked at real thoroughly but could  
24 place Commonwealth Edison into Phase III.

25 Let me just touch on a couple of them.

1           One of the things that we would be looking at in  
2 our evaluation was the worker himself, the fact that a  
3 defect exists would imply that a welder may not have been  
4 properly qualified, and we may want to look at what other  
5 work that welder did.

6           If it is an isolated case, then that may not be  
7 any concern. But if it appears to be a pattern where not  
8 only the inspector failed to identify a defective weld, but  
9 the same welder made those defective welds, that would  
10 expand the program into looking at what other work did that  
11 welder do.

12           Another thing we would be looking at would be a  
13 pattern, if a certain inspector consistently failed to  
14 identify a certain attribute. And even though his overall  
15 inspection may be acceptable quality level, if it consistently  
16 missed the same attribute time after time, I think we would  
17 take a pretty hard look at that.

18           And if we found that, say, there was a number of  
19 inspectors inspecting the same general activity and we found  
20 the pattern among all of those inspectors, that they all were  
21 missing a particular attribute, we would take another look  
22 at that.

23           A       (Witness Forney) One other one that I believe is  
24 already documented to the Applicant in correspondence from  
25 the Region, is there a basic disagreement with the 95-90 or

1 95-95, whatever.

2 We agree that the subjectiveness of some of the  
3 attributes they have identified should only be at a 90 percent  
4 versus some higher percentage. And the Applicant is  
5 proceeding or has proceeded knowing that that's an issue that  
6 we're evaluating and quite likely may result in additional  
7 evaluation of that population of inspectors that falls at  
8 least within the area of 90 to 95.

9 In that regard, if that does happen and we provide  
10 that in correspondence to them at the end of December, as you  
11 can recall from Mr. Tuetken's comments on how long it takes  
12 to research the records to even get the program going,  
13 conceivably you could add another three months to that.

14 Q So, you're raising some question about the  
15 criteria that the Applicant is using to demonstrate the  
16 quality of the work prior to September '82?

17 A We accepted the basic premise of the reinspection  
18 program, but notified them in our acceptance of the  
19 program, saying we would reinspect it at a later date, that  
20 we were at issue currently with the 90 for subjective  
21 attributes.

22 Q Which is there acceptance criteria?

23 A Yes.

24 Q I just really only have one more question, and I  
25 have asked it before. And you might not be able to answer it.

1 But do you have any feeling for the status of the demonstra-  
2 tion of the validity of the inspection work done prior to  
3 September '82 that's being developed by this reinspection  
4 program? Do the results look promising, or do you think  
5 there's going to be a problem?

6 A (Witness Hayes) In a few areas, it appears that  
7 there may be a problem. But again, that's based on prelimin-  
8 ary evaluation. And the welding area I think is the main  
9 problem area that we will probably be taking a very hard  
10 look at.

11 Q And what are the consequences of that?

12 A They would have to demonstrate that those welds  
13 would meet design requirements.

14 Q You mean by redoing them?

15 A They may have to redo them or show otherwise that  
16 they meet the requirements, that they meet the design  
17 requirements.

18 Q All right, sir.

19 A And that would be an engineering evaluation for  
20 for some relief from the code requirements.

21 JUDGE COLE: Thank you.

22 BY JUDGE CALLIHAN:

23 Q I, too, would like to return to Table 3.

24 There is, I think, on some page near Table 3,  
25 reference to what column are questions 10, 11, 12 and 30.

1 We're all concerned. And although I find Table 3, I don't  
2 find questions 10, 11, 12, and 13.

3 Is there still another page missing?

4 A (Witness Forney) I believe Table 3 was a two-page  
5 table, to the best of my recollection.

6 Q Well, I'll look to counsel and ask what you  
7 distributed yesterday?

8 It looks like we've only got half of it.

9 MS. WHICHER: I may have some extra copies of that  
10 report. I know I distributed a number of them.

11 If you'll give me just a minute, I'll look through  
12 my files.

13 JUDGE CALLIHAN: It's not that important. It's a  
14 Staff problem.

15 JUDGE SMITH: The most important thing is that we  
16 check the transcript.

17 MS. YOUNG: The transcript wouldn't have it either.

18 JUDGE SMITH: Then, we will have to put it in  
19 today's transcript.

20 At this point, then, would place the complete  
21 table -- the two pages of Table 3 at this point in the  
22 transcript.

23 (The complete two-page Table 3 follows:)

24

25

TABLE 3

## SUMMARY OF QUESTIONS ASKED

QC/QA INSPECTORS DURING INTERVIEWS

1. How long employed as an inspector onsite?	<u>3 mo.</u>	<u>6 mo.</u>	<u>6 mo.-1 yr.</u>	
	2	4	8	
	<u>1-2 yr.</u>	<u>2-3 yr.</u>	<u>4 yr.</u>	
	7	4	5	
2. Prior inspection experience?		<u>Yes</u>	<u>No</u>	
		14	16	
3. What discipline(s)?		<u>Nuclear</u>	<u>Non-Nuclear</u>	
		8	6	
4. Is there a sense of intimidation based upon the need/requirement to keep up with construction?	<u>Yes</u>	<u>No</u>	<u>Qualified</u>	<u>Implemented Qualified Answer</u>
		29	1	
5. Is there a reluctance to make adverse findings if they will impact on the construction or audit schedule?	<u>Yes</u>	<u>No</u>	<u>Qualified</u>	<u>Implemented Qualified Answer</u>
		29	1	
6. Is it routine for QC inspectors to be working frequent and/or excessive overtime?	<u>Yes</u>	<u>No</u>	<u>Qualified</u>	<u>Implemented Qualified Answer</u>
		19	9	2
7. Do the inspectors feel that their particular section is adequately staffed?	<u>Yes</u>	<u>No</u>	<u>Qualified</u>	<u>Implemented Qualified Answer</u>
		19	2	9
8. Do they feel the required inspections are being conducted promptly?	<u>Yes</u>	<u>No</u>	<u>Qualified</u>	<u>Implemented Qualified Answer</u>
		18	2	10
9. Do the QC inspectors have stop work and/or stop process authority?	<u>Yes</u>	<u>No</u>	<u>Qualified</u>	<u>Implemented Qualified Answer</u>
		13	3	14
Have they ever used this authority?		13	9	8
If so do they feel they were supported or will have the support of management in the event of a stop work?		19	1	3
				7

	<u>Yes</u>	<u>No</u>	<u>Qualified</u>	<u>Implemented Qualified Answer</u>
10. Do the inspectors feel the training they have been provided is adequate?	24	1	5	
11. Do situations arise where the lack of a QC inspector causes construction activities to come to a stop?	1	27	2	
12. Are the QC inspectors provided adequate check lists for all activities they are inspecting or are they sometimes using vague guidelines?	15		15	
13. Do they feel that they have an avenue to management if they come across a problem?	28		2	
Do they feel management will get involved or just pay lip service?	27		3	

ARj1 15-5

1 BY MS. CALLIHAN:

2 Q We've heard a great deal about this reinspection  
3 program. It seems that the Staff is into it pretty deeply.  
4 And we have a tabulation somewhere that says that somebody  
5 has reinspected something on the order of 100,000 items or  
6 attributes and something on the order of 10,000 reports have  
7 been written -- inspection reports.

8 And those actions -- the people who did that  
9 writing and the people who took their flashlight and their  
10 foot rule out in the field and measured something, I presume  
11 have been contractor personnel; is that true?

12 A (Witness Hayes) Yes, I believe that's correct.  
13 Yes.

14 Q What I find absent in the review is a loud and  
15 clear statement of how Commonwealth Edison, the Applicant,  
16 has fitted or is fitting into the problem.

17 Can you tell me what contribution -- and that's  
18 not meant to be derogatory in any sense -- but what action  
19 the Applicant has made directly to this reinspection program  
20 in your opinion and your observation?

21 A I'm sure that they had meetings and provided  
22 documents spelling out what the program encompassed and  
23 gave the contractors instructions on carrying it out.

24 Then, I know at least there were several  
25 surveillances done by QA.

1 Q Excuse me. Whose QA?

2 A Commonwealth Edison's Quality Assurance Department.

3 Q And this is Commonwealth Edison's office that's  
4 on-site that we heard about yesterday?

5 A That's correct. And they have performed one audit  
6 that I am aware of.

7 I believe that was -- I can't remember the date  
8 that was performed. But it was after I wrote this report.

9 Q I just want to also make the observation that  
10 Commonwealth Edison is probably paying for it or part of it.

11 A I'm sure they're paying for a lot of it.

12 Q I haven't found, really, a nitty-gritty, nut-and-  
13 bolt function that Commonwealth Edison is engaged in this  
14 reinspection program.

15 What have I missed?

16 A You say you don't see them involved in the nitty-  
17 gritty?

18 Q Maybe that's true.

19 A (Witness Connaughton) Their presence has been  
20 much more apparent in the area of assuring that the  
21 contractors are properly implementing the latest requirements  
22 for recertifying inspectors and assuring that only properly  
23 certified inspectors are out performing reinspections.

24 To a lesser extent, they've been involved in  
25 monitoring the program's progress.

1                   As Steve mentioned, surveillances have been  
2 performed -- and one audit by Commonwealth Edison Quality  
3 Assurance.

4           Q        You say they're standing in the wings cracking  
5 the whip, in effect?

6           A        That's a reasonable paraphrase.

7           Q        Thank you.

8           A        (Witness Forney) I think one other thing you  
9 could here, they have taken one additional step, such as in  
10 welding, for those items that appear to be potentially  
11 acceptable or may not be. They have involved, I believe,  
12 two or three Level III weld inspectors from Sargent & Lundy  
13 to be the adjudicator of those matters.

14          Q        I'd like to come back to an immediately preceding  
15 question about September -- let's say the end of September  
16 1982.

17                   Is this reinspection program concerned with  
18 welding and whatnot that occurred before then? Or -- well,  
19 you say "yes"?

20          A        (Witness Hayes) Yes.

21          A        (Witness Forney) Yes, that's correct.

22          Q        Now, let's assume, since there's been so much  
23 emphasis on it -- let's assume that this reinspection has  
24 been somehow related to inspector qualification.

25                   I presume, further, that inspectors who were

1 active before September 30, 1982, may still be there.

2 A (Witness Forney) Yes.

3 Q And still inspecting?

4 A Yes.

5 A (Witness Hayes) Yes.

6 A (Witness Connaughton) That's correct.

7 Q Now, what assurance is being generated that those  
8 inspectors are not doing a good job now as, by implication  
9 at any rate, they didn't do before September '82?

10 A (Witness Forney) I believe Mr. Tuetken described  
11 the reinspection program as looking at the initial three  
12 months of an individual's work. And if his work in the first  
13 three months is found to be unacceptable, they add an  
14 additional three months to see how his work looks at six  
15 months.

16 And I presume -- he didn't discuss it beyond that  
17 -- but our view would be if he did not perform well for the  
18 entire six months, we would look to see what additional  
19 actions they did relative to his work.

20 It may end up being that we would require a  
21 reinspection of all his work.

22 That would be the position that would be taken,  
23 and I believe that would be the position Commonwealth Edison  
24 would take.

25 Q Well, first, reinspect work that this individual

1 has inspected since September 1982.

2 A Ultimately, it would include -- if he was working  
3 today, it could conceivably go right up to today.

4 A (Witness Connaughton) 100 percent of the  
5 individual's work would be reinspected if he did not meet  
6 these acceptance criterion within the first six months.

7 Q Regardless of when he did that first faulty  
8 "inspection"?

9 A It could have been two our three years ago.  
10 Conceivably they could end up looking at two, three, or  
11 four years' worth of work.

12 Q And it could include yesterday?

13 A (Witness Forney) Yes. sir.

14 A (Witness Connaughton) That's correct.

15 A (Witness Hayes) Commonwealth Edison, I believe,  
16 has asked all the contractors to recertify their inspectors  
17 that are presently working. And that would go back into  
18 1982. I'm not sure of the exact date they told the  
19 contractors to recertify all of their inspectors. But I  
20 know that Commonwealth Edison has since audited the  
21 contractors to verify that the present inspectors are indeed  
22 certified and qualified.

23 Q In that context, what do you mean by "audit"?

24 A Commonwealth Edison conducted an audit where they  
25 would go in and review the certification packages and agree

1 with the contractor that indeed he did meet all the require-  
2 ments.

3 Q All right. Thank you.

4 Also, to return to an earlier question, on page  
5 of your testimony there is reference to Pittsburgh Testing  
6 Laboratory looking at things. And it says, in item 2, in  
7 the final paragraph on that page: "The authorized nuclear  
8 inspector."

9 Who is that?

10 A That would be the --

11 Q I don't want names. But what organization does  
12 he belong to?

13 A That would be an insurance company. And I'm not --  
14 Hartford -- I believe it's Hartford Insurance Company.

15 Q It's some independent organization?

16 A Right.

17 And they would be ASME. That would be ASME-type  
18 work.

19 Q Not you?

20 A No.

21 Q I think this was said, but let me repeat, with  
22 any due apologies, that all items about which you have  
23 allegations of misdealings or improper dealings will be  
24 reinspected before this program is finished?

25 A They will be investigated, yes, or inspected.

1                    If there's a technical matter that -- I guess I'm  
2 a little bit confused. There are some that OI has and some  
3 that we have.

4                    Both organizations will complete their investiga-  
5 tions into those allegations.

end 15

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1 Q This is also related to an earlier question, what  
2 do you gentlemen and what does the Region III conceive as  
3 truly the goal of this reinspection program?

4 A The goal of it? The objective?

5 Q Yes. Given our finding that deficiencies existed  
6 in certifying and qualifying quality control inspectors, we  
7 have to assure ourselves that the work is properly completed  
8 and does meet requirements.

9 JUDGE COLE: You mean the requirements? I think  
10 you had another word in there.

11 WITNESS HAYES: Does meet requirements.

12 Q I know what you meant.

13 A I believe that's the basic objective to show some  
14 reasonable assurance that the work completed is proper.

15 A (Witness Forney) I would say it has one additional  
16 thing and that's to serve to determine whether or not they  
17 have used qualified inspectors. That's the issue of the  
18 noncompliance. We have to deal with that to clear that item  
19 of noncompliance. It has to be twofold. It has to prove  
20 that they had, in fact, a program that used qualified inspec-  
21 tors and also the program will give us a confidence level of  
22 the quality of the installed equipment or systems.

23 BY JUDGE CALLIHAN:

24 Q With some reluctance--I thumbed through what every-  
25 body else has, and I deserve my turn on the muchly-discussed

1 examination of Mr. Hughes, and I refer particularly to a letter  
2 of July 22, 1983, from the Office of Investigation addressed  
3 to the Chairman of this Board, to which is attached a copy  
4 of the document that I alluded to.

5 MS. YOUNG: Are you referring to Joint Intervenors'  
6 Exhibit No. 27?

7 JUDGE CALLIHAN: Yes, it's Intervenors' Exhibit  
8 No. 27, thank you.

9 BY JUDGE CALLIHAN:

10 Q I also referred to Staff Exhibit No. 5, of which I  
11 have two copies, and parenthetically may I ask counsel or  
12 Staff some time for another copy, and unmarked up copy of  
13 Exhibit No. 5?

14 MS. YOUNG: Certainly.

15 BY MS. CALLIHAN:

16 Q I judge that, then, additionally, of course. There  
17 is Mr. Koca's Exhibit J, which purports to be a copy of that  
18 examination. Are you sufficiently with me to say that the  
19 two exhibits, Intervenors' 27 and Staff 5, are the same docu-  
20 ments?

21 A (Witness Forney) I think the problem we are having  
22 is the panel didn't -- we don't get copies of the exhibits.  
23 Could someone let us look at their copies?

24 Q Maybe counsel can hand them to you.

25 A (Witness Hayes) The answer is yes, we believe they

1 are they same document, yes.

2 Q Now you may have to have some help from your  
3 counsel on my question, which is this: what was the source  
4 to the best of your collective knowledge of Staff Exhibit 5,  
5 when did you get it, where did it come from, and so forth?

6 A (Witness Forney) Where did we, as Region III Staff,  
7 get it, or where did OI get it?

8 Q I don't know. To the best of your knowledge.

9 A That exhibit, both being the same, was provided to  
10 two members of the Office of Investigations field office lo-  
11 cated in Region III on January 17th, 1983, by an additional  
12 allegor other than Mr. Hughes.

13 Q Thank you. And finally, as far as I am concerned at  
14 the moment at any rate, there has been mentioned discussion  
15 about the program, the reinspection program, it's schedule,  
16 how it's moving along and so forth. What, now, with all that  
17 in mind, is the NRC best estimate of fuel load date for Byron?

18 A (Witness Hayes) I cannot speak for the entire NRC;  
19 I can give you my personal opinion.

20 Q That will be fine

21 A In my personal opinion, it's fuel load date would  
22 be some time between April, 1984 and June, 1984 and that has  
23 been my position for several months.

24 Q (Witness Forney) I would agree with that.

25 A (Witness Connaughton) I would agree.

1 Q So it's concurrent?

2 A (Witness Hayes) Yes.

3 A (Witness Forney) Yes.

4 A (Witness Connaughton) Yes.

5 JUDGE CALLIHAN: Thank you very much.

6 BY JUDGE SMITH:

7 Q What would be your estimate of fuel load date,  
8 putting aside the reinspection program?

9 A (Witness Hayes) Putting aside the reinspection  
10 effort?

11 Q Were it not for that.

12 A (Witness Forney) I don't believe they could make  
13 before April, 1984, regardless of the reinspection program  
14 or not.

15 Q Mr. Forney, how did you select the inspectors which  
16 were added to the random sampling for inspectors at Hatfield?  
17 You selected four of them from what I recall in your testimony.

18 A Yes, I did. I reviewed records of a number of  
19 Hatfield inspectors of whom I felt were at least marginally  
20 experienced, so I wanted to see how they would come out.

21 JUDGE SMITH: Is there cross-examination on the  
22 Board's questions?

23 MS. WHICHER: I have two short items. One is a  
24 mere clarification.

25

1 BY MS, WHICHER:

2 Q As I understand it, not all employees who were  
3 paid by Pittsburgh Testing Laboratories worked directly for  
4 Pittsburgh Testing Laboratories, right?

5 A (Witness Forney) That's correct.

6 Q There were some, John Hughes for example, who,  
7 although they were paid by PTL actually worked for Hatfield,  
8 right?

9 A (Witness Forney) That's correct.

10 A (Witness Hayes) That's correct.

11 A (Witness Connaughton) That's correct.

12 A (Witness Hayes) Those two groups, as I understand  
13 it, are separate. There is a group that is doing inspection  
14 work for Commonwealth Edison and there is another group that  
15 is more or less a body shop which PTL hires and provides to  
16 Hatfield. I'm not sure if they provide them to other con-  
17 tractors or not.

18 Q Now, as to the second group that you referred to  
19 as a body shop, those inspectors are covered by the reinspec-  
20 tion program as if they had been employed directly by the  
21 particular contractor, right?

22 A (Witness Forney) That's correct.

23 Q Did I understand your testimony, I believe Mr.  
24 Hayes was the one who have this answer, that when the Office  
25 of Investigation has completed their investigation of the

1 allegations which they have, they will report to Mr. Kepler?

2 A (Witness Forney) I provided that response, and the  
3 normal procedure for the reporting of investigations is that  
4 the report goes to the regional administrator. The Office  
5 of Investigations does not have the authority to issue items  
6 of noncompliance.

7 If there were verification of matters that would  
8 belong to the Department of Justice, they would also submit  
9 a report to the Department of Justice.

10 JUDGE SMITH: I think you're wrong about that. I  
11 think the Office of Investigations has to report to the Office  
12 of the Inspector and Auditor.

13 WITNESS FORNEY: They also send them a copy; Mr.  
14 Kepler also get's a copy. We write the noncompliance, as the  
15 auditor does not.

16 JUDGE SMITH: No, what I mean is with reports to  
17 the Department of Justice, but that is not important to you.

18 MS. WHICHER: I have misunderstood your question now.

19 BY WHICHER:

20 Q So in other words, Mr. Forney, it's Region III  
21 who determines what action to take based on the OI inspection  
22 with respect to the Byron plant, right?

23 A (Witness Forney) For technical issues, that's  
24 correct.

25 For criminal issues, that's not correct.

1 A (Witness Hayes) It would be any issue that would  
2 bear on the safety of that plant.

3 Q Whether or not it's a criminal issue?

4 A That's right.

5 Q Okay.

6 A (Witness Forney) If the criminal issue also had  
7 a technical aspect, that's true. If it was merely a criminal  
8 issue, then we don't get involved with that. And I stand  
9 corrected: it does go OIA, then to DOJ.

10 MS. WHICHER: I think that's all I have.

11 JUDGE SMITH: Miss Young?

12 MR. BECKER: We have some questions.

13 JUDGE SMITH: Oh, excuse me.

14 CROSS-EXAMINATION ON BOARD QUESTIONS

15 BY MR. BECKER:

16 Q Mr. Forney, you responded in answer to a question  
17 from Judge Cole that the Staff has documented to the Applicant  
18 that the Staff has not necessarily accepted the 90 per cent  
19 acceptability level for subjective weld attributes, correct?

20 A (Witness Forney) I believe that we have not, yes.

21 Q Can you identify for me the documentation you are  
22 referring to?

23 A It was in a letter, I don't remember the date,  
24 that after the applicant had submitted the reinspection pro-  
25 gram for the last iteration and we told them, thank you for

1 your answer and we'd reinspect it later.

2 Included in that letter I believe was the fact  
3 that we did not agree with that.

4 Q Was this a letter from Mr. Spessard to Mr. Reed?

5 A I believe it would have been from Mr. Spessard to  
6 Mr. Reed.

7 Q Let me show you a letter that appears to be on NRC  
8 stationary. I have only one copy, dated March 22nd, 1983.  
9 Let me show it to counsel.

10 JUDGE SMITH: Mr. Becker, is that one of the  
11 documents you sent to the Board?

12 MR. BECKER: No, I don't believe so.

13 (Document being distributed.)

14 JUDGE SMITH: Did you want them to have it?

15 MR. BECKER: Yes, please.

16 (Document handed to witnesses.)

17 BY MR. BECKER:

18 Q My question to you, Mr. Forney, after you've re-  
19 viewed it, is that the letter that you are referring to in  
20 your testimony?

21 A (Witness Forney) Yes, it is. I don't recall  
22 seeing this final letter. The original draft was slightly  
23 different than this.

24 Q This final letter you've got before you does not  
25 mention the fact that the NRC has not accepted the 90 per cent

1 level, is that correct?

2 A This version does not.

3 Q This is the version that was sent to Commonwealth  
4 Edison, is that correct?

5 A Yes.

6 Q Can you identify any other documentation in which  
7 the NRC has explicitly to Commonwealth Edison that the NRC has  
8 not accepted the 90 per cent level for subjective attribution?

9 A At this time I don't. I don't recall seeing the  
10 final issue. As I said, the preliminary issue that was sub-  
11 mitted, of which I was a participant in the preparation, ap-  
12 parently when it was sent to the applicant was changed.

13 However, within the region we still are considering  
14 the unacceptability of the 90 per cent. I believe also at  
15 the meeting that we had relative to the reinspection program,  
16 that we discussed the fact that the region in all likelihood  
17 may take objection to the 90 per cent.

18 Q All right, now, let me proceed. The letter you have  
19 before you was written subsequent to the meeting you just re-  
20 ferred to, is that right?

21 A Yes, it was.

22 Q The meeting referred to occurred on February 11th  
23 of this year, is that correct?

24 A I believe that's the date.

25 Q Did you take notes of that meeting?

1           A       Did I take notes of that meeting. No, or if I did  
2 I don't have them anymore, I didn't take notes personally.

3           Q       Was anyone else on the panel at that meeting?

4           A       (Witness Hayes) I may have been at part of that  
5 meeting. There were several meetings and I'm having a little  
6 difficulty separating them.

7           Q       Do you happen to have notes with you from that  
8 meeting or other meetings, Mr. Hayes?

9           A       No, I don't but I believe the second paragraph of  
10 this letter alludes to the problem Mr. Forney is talking about.  
11 It essentially limits those subjective inspections that we  
12 will consider subjective inspections and leaves open how we  
13 will treat the others that you may consider to be subjective  
14 that we may not consider to be subjective, and that would,  
15 in fact, be 90-95

16           MS. WHICHER: Could we either have this letter made  
17 an exhibit and get some copies of it or at least have it read  
18 into the record? I think since the discussion is concerning  
19 the wording of the letter that it ought to be in the letter.

20           MR. BECKER: I'll read it into the record.

21           JUDGE SMITH: It's short enough that I think it can  
22 actually be read into the record.

23           MR. BECKER: This is the letter on United States  
24 Nuclear Regulatory Commission, Region III, stationary. The  
25 upper left hand states docket number 50-454, docket number

1 50-455, addressed to Commonwealth Edison Company to the  
2 attention of Mr. Cordell Reed. The letter states (quote):

3 "Gentlemen: Thank you for your letter dated February 23rd,  
4 1983, providing us your revised response to one of the items  
5 of noncompliance, which we brought to your attention in  
6 Inspection Report No. 50-454/82-05; 50-455/82-04, forwarded  
7 by our letter dated June 24th, 1982. We will examine these  
8 matters during the subsequent inspection.

9 Regarding visual weld examination being classified  
10 as a subjective inspection attribute, we understand this  
11 classification will be used only for surface conditions which  
12 do not affect the integrity of the weld.

13 The names of the additional inspectors whose work  
14 is to be checked have been provided to site personnel by the  
15 NRC resident inspector's office.

16 Your cooperation with us is appreciated.

17 Sincerely, R. L. Spessard, Director, Division of  
18 Engineering (end quote)."

19 And there are various cc's. I might just note that  
20 one of the cc's is to Resident Inspector, Byron.

21 MS. YOUNG: I don't believe you read the date.

22 MR. BECKER: There are two dates on it. One is  
23 stamped March 22nd, 1983; that appears to be the date it was  
24 sent by Mr. Spessard. There's another date stamped on the top,  
25 March 24th, received.

End 16.

1 BY MR. BECKER:

2 Q Let me give this back to you and follow up on Mr.  
3 Hayes' last comment. To your knowledge, Mr. Hayes, in looking  
4 at the subject of attributes has Commonwealth Edison acted ac-  
5 cording to this letter?

6 A (Witness Hayes) I can't really say, as I haven't  
7 been that involved on evaluating the wells themselves.

8 Q I guess what I'm getting at, Mr. Hayes, is you  
9 commented that the 90 per cent figure somehow was related to  
10 that paragraph that discusses what is and what is not a sub-  
11 jective attribute?

12 A Yes.

13 Q Isn't that really a separate issue, Mr. Hayes?  
14 That is, once the particular attributes are viewed and identi-  
15 fied, isn't the 90 per cent figure, then, the 90 per cent of  
16 those attributes?

17 A Of the ones we agree that are subjective.

18 Q So that if Commonwealth Edison is defining sub-  
19 jective attributes in accordance with that letter, then the  
20 issue of 90 per cent is related to those subjective attributes,  
21 correct?

22 A Yes, we may not have a problem, that's correct.  
23 I do recall -- you know, there was quite a little bit of  
24 discussion on this point and I believe a telephone conver-  
25 sation and a conference before this letter was sent out occurred

1 discussing what was meant by this. And I cannot recall  
2 exactly who was involved in that conference call but there  
3 was another area, another thing that was discussed also, was  
4 what I alluded to where an inspector may, from an overall  
5 standpoint -- his inspection quality may meet the acceptance  
6 requirements but where he may have missed continuously one of  
7 several attributes and that was also a part of what we dis-  
8 cussed.

9 A (Witness Forney) Let me add something to this,  
10 and I'd like to relate back to Mr. Tuetken's testimony and his  
11 answer, A15, and it shows that there is some disagreement  
12 between the region and Commonwealth Edison.

13 Mr. Tuetken on line 1-2-3-4-5-6-7 -- starting at  
14 the sentence that starts on the seventh line of his answer  
15 A15, on page 9 states that -- well, I'll back up one sentence.  
16 He says that the attributes involved relate to weld inspection  
17 and are all considered to be subjective attributes.

18 The attributes include weld detail type and profile,  
19 size, length, cracks, fusion, porosity, undercuts, slag, craters  
20 and overlap. I don't see how that relates to the paragraph  
21 that we're currently discussing regarding Mr. Spessard's  
22 memorandum. So there is still some basic disagreement between  
23 acceptable levels percentage-wise and also attributes.

24 Q Mr. Hayes, would you agree with me that each of  
25 the items set forth in this answer 15 of Mr. Tuetken's is a

1 visual attribute of a weld?

2 A (Witness Hayes) Yes.

3 A (Witness Forney) That's correct.

4 Q Please identify for me, Mr. Forney, which if any  
5 of these items are not by the NRC considered to be subjective  
6 attributes for the purposes of the reinspection.

7 A Well, basically, the AWS doesn't allow for a lot  
8 of this interpretation. AWS recognizes that if a weld is  
9 accessible and if there is a defect such as cracks and lack  
10 of fusion porosity, undercut, slag inclusions, craters or  
11 overlap that they should be repaired.

12 Q I'm sorry my question, Mr. Forney, is, can you  
13 please identify -- obviously Mr. Tuetken in overseeing the  
14 reinspection program is of the impression that the items he  
15 has listed here constitute subjective attributes for the pur-  
16 poses of that reinspection while the work is going on.

17 I'd like to ask you to identify for me which of  
18 these, if any, are not considered subjective attributes for  
19 the purposes of the reinspection by Region III?

20 A Okay. We would consider that the length of a weld --  
21 there's a design requirement to have a certain length weld and  
22 if that length isn't long enough and if a guy can measure the  
23 weld, that's not subjective. Welds in many cases, or most  
24 cases, are measurable.

25 If there's cracks, there's acceptable limits for

1 cracks. Fusion or lack of fusion AWS recognizes that if you  
2 have a lack of fusion line going parallel with the weld that  
3 it's indeterminate as to the lack of fusion. Therefore, you  
4 must take the surface discontinuity, you must excavate it to  
5 determine the length and make a repair. Porosity, many times  
6 a very small surface porosity indication, when in fact excavated  
7 determines that there is a considerably amount of porosity  
8 underneath. The same thing with slag inclusion. Slag inclu-  
9 sion can turn out to be tremendous and have an effect on the  
10 weld. Excessive overlap is recognized by AWS as being an  
11 attribute and to say that they're subjective means that a guy  
12 looks at them and he guesses or he estimates they're acceptable  
13 or not and there's methods that you can determine. For example,  
14 the lack of fusion, you excavated and determined the lack of  
15 fusion.

16 Q What is a visual inspection? The notion of visual  
17 in the reinspection program relates to the AWS definition of  
18 visual, is that right, Mr. Forney?

19 A (Witness Forney) Yes, the individual looks at the  
20 weld.

21 Q These are all visual attributes, according to the  
22 AWS, isn't that right, Mr. Forney?

23 A (Witness Forney) Yes.

24 Q With regard to all the items you just talked about,  
25 have you personally informed anyone at Commonwealth Edison

1 that you personally may not consider these items to be sub-  
2 jective attributes for the purpose of their inspection program?

3 A I believe it's been discussed.

4 Q Have you personally told anyone from Edison what  
5 you just testified to?

6 A I believe upon at least two occasions I told Mr.  
7 Tuetken that AWS and our position is very clear about what  
8 needs to be reworked or repaired, whatever terminology you  
9 want to place upon it.

10 Q We're not talking about repairing or reworking,  
11 we're talking about what constitutes a subjective attribute  
12 for the purposes of the reinspection program.

13 My question, Mr. Forney, is, have you told Mr.  
14 Tuetken or anyone else at Commonwealth Edison that any of  
15 these specific items Mr. Tuetken refers to are not subjective  
16 attributes for the purposes of the reinspection program?

17 A We've had at least two discussions on it and I  
18 believe his response is, that Commonwealth Edison currently  
19 has requested an interpretation or relief from AWS, so that's  
20 one reason we're kind of at a lull right now. We're waiting  
21 to see what AWS comes back and tells us.

22 Q Do you consider this to be a significant in the  
23 reinspection program?

24 A Do I consider it real significant?

25 Q Yes.

Bu-10

1           A       Given that that issue will be resolved before this  
2 item is clear and that ultimately it's merely a scheduling  
3 problem -- from a scheduling aspect, I don't consider it  
4 significant. From the aspect that it will have to be resolved  
5 before the item is clear, it is obviously significant.

6           Q       Would you agree with me that if it's a significant  
7 item, you should document to Mr. Tuetken or someone else at  
8 Edison your views on this item, that some of these may not be  
9 subjective attributes for the purposes of the program?

10          A       It's been discussed. It was even discussed in the  
11 meeting that precipitated the final reinspection program.  
12 This is not unlike issues at other sites that are requiring  
13 rework of the welds.

14                JUDGE SMITH: I can appreciate your concern, but  
15 aren't we straying somewhat from the issues of the reopened  
16 hearing? I know that just came up and it's a good opportunity  
17 and you have the man here under oath and everything.

18          A       (Witness Hayes) Let me say one thing -- in my  
19 review of the reinspection program results -- and they are  
20 not complete but they are documenting all of these attributes  
21 that are listed in Mr. Tuetken's testimony. So I guess it's  
22 just a matter of which one of those they think that may affect  
23 the integrity of the weld and I think this is what we're  
24 going to argue about at the end, as they may say that overlap  
25 doesn't affect the integrity of the weld and we may, so we

1 believe, it does and there we are. We'll have to resolve  
2 it somehow.

3 But it's not that they're not -- the reinspection  
4 program is gathering that data, so it isn't something they  
5 are going to go back and get. They are not trying to make  
6 this decision prior to -- they are documenting the data. We'll  
7 make the decision afterwards.

8 MR. BECKER: If I may just pursue it with two  
9 questions.

10 BY MR. BECKER:

11 Q Is it accurate to say, Mr. Hayes, that Commonwealth  
12 Edison is generating data with regard to all these attributes?

13 A (Witness Hayes) That's correct from what I have  
14 seen, yes.

15 Q And regardless from what type of problems may be  
16 identified with the welds, all those problems will be repaired  
17 or reworked or whatever?

18 A That's correct.

19 MR. BECKER: That's all.

20 JUDGE SMITH: Now before we go to redirect, is  
21 there anything else by anybody else?

22 Okay, Ms. Young.

23 REDIRECT EXAMINATION

24 BY MS. YOUNG:

25 Q I just have one question for the panel, that may

1 turn into two.

2 But did the panel consider in preparing their  
3 testimony that they gave in March and April of this year,  
4 the Applicant's performance during the SALP-3 rating period?

5 A (Witness Forney) The answer to that is yes. The  
6 SALP process requires the different responsible individuals  
7 from the different sections within the region to provide input  
8 to the Resident Office for the SALP evaluation. That infor-  
9 mation is reviewed -- was reviewed by myself and put together  
10 as the basic SALP in January of 1983. It was forwarded to  
11 the region in February of 1983. I assigned the five category  
12 three evaluations in January, so I was well aware of those  
13 at the time of my testimony.

14 Q And also at the time of your testimony in March  
15 and April, did you also consider corrective actions that were  
16 taken subsequent to the SALP-3 rating period?

17 A Yes, I did. Again, to reiterate, SALP is merely  
18 a summary of performance for a given time period and by SALP  
19 evaluation procedures, those ratings, because they take in the  
20 entire time period, are required to be evaluated at a category  
21 three. However, again, since the hearing was in March, then  
22 I considered in my testimony everything that had transpired  
23 up to that point in time.

24 Q Does the rest of the panel agree with that?

25 Mr. Connaughton, you didn't testify?

1 A (Witness Connaughton) I didn't testify.

2 A (Witness Hayes) I was aware of the ratings and  
3 also I had taken them into account.

4 MS. YOUNG: No further questions.

5 JUDGE SMITH: Any further questions on redirect?

6 MS. WHICHER: No.

7 JUDGE SMITH: Anything further with this panel?

8 All right, gentlemen, thank you very much.

9 (Witnesses excused.)

10 JUDGE SMITH: The Board would like to have recom-  
11 mendations from the parties on how to handle this session  
12 this week, whether we should defer proposed findings or make  
13 them now, or just what we should do.

14 MS. WHICHER: Judge Smith, I would propose that  
15 findings be deferred, at least until the Board has ruled as  
16 to whether it will hear additional evidence which was the  
17 subject of the ex parte communications from the Staff.

18 JUDGE SMITH: Yes, but even if we ruled that there  
19 are aspects of that that we would hear, there most certainly  
20 will be very large aspects of it that we will not hear. So  
21 the same problem will persist.

22 MS. WHICHER: Your Honor, my point is that if there  
23 is another session, then there will be more evidence and I  
24 think the panel's -- the Board's indication the other day  
25 that there were things that came up in the ex parte discussion

1 which were things that were not necessary to hold ex parte  
2 makes clear the fact that it's difficult if not impossible  
3 to neatly separate the portions of the evidence which may be  
4 heard in the future which have already been heard by the Board  
5 ex parte from the overall testimony which has been heard this  
6 week.

7 JUDGE SMITH: We'll be making that decision very  
8 quickly, next week probably, and I think perhaps it wasn't well  
9 understood what our comment was.

10 We were able immediately following the presentation  
11 by the Office of Investigation to conclude that we would not  
12 be having, because it would be premature, an evidentiary  
13 presentation from them. However the presentation from the  
14 Office of Inspection and Enforcement was much longer and  
15 bigger and it covered more facets, and as we sit here at this  
16 moment we cannot identify any aspect of that which we believe  
17 is ready for evidentiary presentation.

18 However, we don't want to close the door on that  
19 until we have a chance to go back over the transcript. That  
20 was the significance of our ruling.

21 MS. WHICHER: I was referring to that portion of  
22 your ruling in which you announced that you would attempt  
23 to segregate portions of the transcript.

24 JUDGE SMITH: We are not going to require the  
25 Staff or ask them or even ask them to reveal any substantive

1 information before the -- we're going to serve transcript  
2 pages, but we got into a great deal of contextual discussion  
3 and argument and that type of thing which does not involve  
4 the allegations and we have no right to keep those private  
5 and that was our reference.

6 MS. WHICHER: Well, my point was that the diffi-  
7 culty of attempting to hear from the Staff only those things  
8 which should be ex parte illustrates the difficulty here if  
9 we have further evidentiary proceedings of trying to segment  
10 the findings.

11 JUDGE SMITH: Right.

12 MR. MILLER: I disagree. I don't there's anything  
13 that the Board heard ex parte, which is evidence that can't  
14 have any effect on the findings.

15 MS. WHICHER: No, it's not effect on the findings,  
16 it's an illustration of how difficult it is to segment the  
17 findings.

End 17.

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1 JUDGE SMITH: I'm still not clear what you would  
2 ask us to do.

3 MS. WHICHER: I would ask you to defer setting  
4 a date for proposed findings until you determine whether we  
5 will have further evidentiary material.

6 JUDGE SMITH: We will probably determine that we  
7 will not have further evidentiary material in the near future.  
8 We will quite possibly determine that we will not have any  
9 evidentiary material in camera because we won't really have  
10 evidentiary material, if then, of completed investigations  
11 as to which the Staff does not object with the exception of  
12 the identity of informants.

13 So, really, what our question is, what do we do  
14 now? It is unlikely that in the convenient foreseeable future  
15 that we will be having evidentiary presentations, and if we  
16 do it will be for the most part, discrete.

17 However, I don't think it's easy for the parties  
18 nor is it easy for the Board to keep coming in with waves  
19 of proposed findings.

20 MR. MILLER: Judge Smith, it seems to me that this  
21 week's session dealt with two subject matters, the reinspection  
22 program and the allegations regarding Hatfield Electric.  
23 They are separate issues, by and large, from those that we  
24 considered earlier and I believe that a set of findings could  
25 be prepared by the parties on this week's evidentiary session.

18rg2

1           If they need to be supplemented or amended as a result  
2           of future actions by the Board, or as a result of completed  
3           investigations, we'll deal with it then, but do not set dates  
4           on the chance that something might happen, seems to be inap-  
5           propriate.

6           MS. WHICHER: No, my position is that we should not  
7           set dates until we know what will happen. It's not on the  
8           chance. I think we should wait until the Board's determina-  
9           tion is made and then set the dates.

10          JUDGE SMITH: Forget the Board's determination.  
11          We're asking advise under certain predictable assumptions, and  
12          that is, next week we say for the foreseeable future we are  
13          not going to have an additional evidentiary presentation,  
14          but you're not down in our office when we do that so now  
15          we're asking your advice on what to do if that is the case.

16          MS. WHICHER: If that is the case?

17          JUDGE SMITH: Yes. And as we stated which will  
18          probably be the case. I'm not asking you to waste your time  
19          on speculation.

20          MS. WHICHER: Well, the problem is that I don't  
21          know what the Board's ruling is going to be and whatever the  
22          Board's ruling is --

23          JUDGE SMITH: Assume.

24          MS. WHICHER: Well, does that mean that you will  
25          have any further evidentiary presentations if you ruled that?

1 JUDGE SMITH: No.

2 MS. WHICHER: See, that's the problem that I'm  
3 operating under. There are too many variables.

4 JUDGE SMITH: One of the things we want to discuss  
5 is what's going to happen with these inspection reports is  
6 premature and what do we do with them? What mechanism? Do we  
7 treat them as information which would be the subject of a  
8 motion to reopen the record?

9 I don't know. I think probably we should, but I  
10 don't know. That's one of the things that would be part of  
11 our discussion today.

12 So, as I am saying, we're just asking for advice.

13 MS. WHICHER: On all matters?

14 JUDGE SMITH: No, we're asking for advice, bearing  
15 in mind that there is down the road information which is  
16 perhaps important. We don't know. It might have safety sig-  
17 nificance, it may not have, we don't know. There's information  
18 coming down the road that we don't have any schedule for re-  
19 ceiving that. We probably won't have any evidence on interim,  
20 I mean on pending investigations -- on pending inspections,  
21 we know we won't have any on pending investigations -- so the  
22 issue right now is knowing that more information will come  
23 in down the road. Should we regard this as a discrete package  
24 and get proposed findings on it? That's really what's facing  
25 us now, so we have two things to worry about.

1           What do we do with the evidence we received this  
2 week, that's number one. And then your advice on what to do  
3 about this information that's going to be coming toward the  
4 end of this year, as I understand it.

5           One of the things that wasn't clear -- well, I  
6 think we can tell from your testimony this week that as in-  
7 vestigations are completed they will be released. You are  
8 not going to wait until the end of everything and then --

9           WITNESS HAYES: That's correct. Yes, we'll release  
10 them as we clear them.

11          JUDGE SMITH: That would be helpful, yes. I guess  
12 we can't really set any firm guidelines today on how to handle  
13 the results of investigations as they become complete because  
14 it's going to depend upon the significance, the seriousness,  
15 whatever they are.

16          So, really I think the advice I am seeking as we  
17 discuss it it's becoming clear what we should do. I think  
18 we should proceed with proposed findings on this session  
19 and just let the future take care of itself.

20          However, if we should get back and look at the  
21 transcripts of the in camera proceeding and determine that  
22 we erred, which is not likely, and we do want more evidence  
23 on pending inspections, we would quickly inform you of that  
24 so that you wouldn't be -- so there wouldn't be too many  
25 fragmented proposed findings.

1           But I think unless parties can convince us to the  
2 contrary that Mr. Miller's point is the better point and that  
3 we should proceed with proposed findings on this weekly  
4 session.

5           MR. MILLER: So we don't have to repeat the dis-  
6 cussion about reply findings and the time for them, I just  
7 propose that we have these findings due the same day.

8           MS. WHICHER: Judge Smith, I have, as you know,  
9 will not be able to work on the reply findings for some time.  
10 And because the time immediately before the reply findings  
11 are due is going to be taken up with my preparation of those  
12 findings, I don't know when I'm going to do the findings for  
13 this week.

14           JUDGE SMITH: Okay. We have lots of work. I  
15 don't like putting Ms. Whicher under this stress just to have  
16 a paper sit on the desk unnoticed. So I think we should be  
17 generous with her on that.

18           MR. MILLER: I'd like to hear a proposal from  
19 her.

20           MS. WHICHER: The 30th.

21           MR. MILLER: That is satisfactory.

22           JUDGE SMITH: Okay.

23           I get uncomfortable when you're agreeing so  
24 uneasily.

25           (Laughter.)

1 I just wonder if we really have a lawsuit here.

2 MR. MILLER: What leads me to that is the Board's  
3 comments that you have a lot on your plate already.

4 JUDGE SMITH: Oh, yes, we do, yes.

5 MS. YOUNG: September 30th is fine.

6 JUDGE SMITH: Do you have any particular comments  
7 about -- oh, how about, will we have automatic service of  
8 the completed investigations?

9 MR. GOLDBERG: We can make those arrangements and  
10 let me say that at least during the pendency of this proceed-  
11 ing I think the Region has met your unusual arrangement of  
12 serving representatives of the other parties with all inspec-  
13 tion reports. We will certainly effect service on the Board  
14 of reports pertaining to completed inspections and to pending  
15 allegations.

16 JUDGE SMITH: In the cover letter that comes with  
17 it that we receive in the office on Board notifications on  
18 cases that were on five years ago -- it just keeps coming  
19 and coming. Make sure that the cover letter has the  
20 style of Byron on it and it's a reference to this reopened  
21 proceeding.

22 MR. GOLDBERG: Let me say that as is the case with  
23 Board notifications, these reports do not originate with  
24 our office. I can either effect the service on the Board of  
25 material provided by the Region or I could ask that the Region

1 take that into account and identify those reports.

2 JUDGE SMITH: I really think it would be better in  
3 this instance, in this case, if it would not be a routine  
4 part of the Board notification process that be something that  
5 is coordinated with legal counsel and submitted.

6 MR. GOLDBERG: The completed reports will be trans-  
7 ported from our office under cover letter.

8 WITNESS HAYES: You might wind up getting two, but  
9 you might wind up getting two because we draft the letter and  
10 send it to NRR and then it goes to you.

11 We'll send it to Mr. Goldberg and he'll send it  
12 to you.

13 MS. WHICHER: Along that same line there is one  
14 problem. My understanding is that the reports first are  
15 released to Commonwealth Edison and then after a certain  
16 amount of time, if there's no objection as to proprietary  
17 information, at that time I get them. And does this new policy  
18 mean that I will get them at the same time Commonwealth Edison  
19 gets them or I have to wait an additional amount of time after  
20 Commonwealth Edison has seen them?

21 WITNESS HAYES: Yes, they have a legal right to  
22 review those reports for proprietary information.

23 MS. WHICHER: And how much lead time is that?

24 MR. MILLER: It's 10 days.

25 MS. WHICHER: So Commonwealth Edison will get

1 everything 10 days ahead of everyone else?

2 JUDGE SMITH: Yes.

3 MR. MILLER: But I don't know that we've taken the  
4 full 10 days on every occasion.

5 MS. WHICHER: My understanding is that when the  
6 10 days is up, if they haven't heard from you, then I get it.

7 MR. MILLER: That's right.

8 WITNESS HAYES: It goes out automatically if they  
9 haven't notified us otherwise, yes.

10 MR. MILLER: But we will arrange for a telephonic  
11 communication to the Region releasing the documents in advance  
12 of the 10 day period.

13 WITNESS HAYES: We have done that in the past.

14 MS. WHICHER: And Edison's responses I also will be  
15 receiving, right? Is that right?

16 WITNESS HAYES: We'll send them to you when we  
17 receive them. They have 30 days to respond and they will  
18 follow after the reports.

19 JUDGE SMITH: The reporter has a very, very long  
20 day ahead of her yet; I wonder if we can just adjourn this?

21 MS. YOUNG: Excuse me, just one point. I do have  
22 copies of the two-page Table 3 for inclusion in the transcript.

23 JUDGE SMITH: All right and it is already noted  
24 where that will be bound in.

25 MR. MILLER: I've got one more matter on the

1 record and it's apropos of the questions asked by Judge  
2 Callihan and yourself with respect to the expected fuel load  
3 date.

4 I want to preface my remark by saying regardless  
5 of whether those questions were asked or not, I intended to  
6 make this statement: the fuel load date that is currently  
7 estimated by Commonwealth Edison, as the Board and the parties  
8 know, is December, 1983. That date remains the official fuel  
9 load forecast date for Byron Unit 1.

10 However, because of the scheduling problems that  
11 the Board has, I wanted to advise the Board and the parties  
12 that that date has become less certain of achievement than  
13 it was when I wrote my letter to the Board.

14 That does not mean that in Commonwealth Edison's  
15 opinion it cannot be achieved or will not be achieved, but  
16 only that it has become less certain of achievement.

17 JUDGE SMITH: All right.

18 Anything further?

19 All right, this concludes the evidentiary hearing  
20 in the Byron operating license proceeding.

21 (Whereupon, at 3:00 p.m., the hearing  
22 was adjourned.)

CERTIFICATE OF PROCEEDINGS

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

In the matter of: COMMONWEALTH EDISON - BYRON

Date of Proceeding: Friday, August 12, 1983

Place of Proceeding: Rockford, Illinois

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

Official Reporter - Typed

*Ann Riley*

Official Reporter - Signature