

ORIGINAL

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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In the matter of:

CLEVELAND ELECTRIC ILLUMINATING  
COMPANY

(Perry Nuclear Power Plant,  
Units 1 & 2)

Docket No.

50-440 OL

50-441 OL

*Please return original to Jack Whitaker,  
E/W-439  
Attribution: TR 01*

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Location: Bethesda, Maryland

Pages: 805 - 883

Date: Monday, 9 May 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: :  
:  
CLEVELAND ELECTRIC ILLUMINATING :  
COMPANY : Docket Nos. 50-440 OL  
: 50-441 OL  
(Perry Nuclear Power Plant, :  
Units 1 & 2) :  
:  
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4350 East-West Highway  
4th Floor  
Bethesda, Maryland

Monday, May 9, 1983

A telephone conference call in the above-entitled matter was reconvened at 10:16 a.m., pursuant to notice.

BEFORE:

PETER BLOCH, Administrative Judge.

JERRY KLINE, Administrative Judge

GLENN BRIGHT, Administrative Judge

1     APPEARANCES:

2  
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9  
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14                    Counsel for the NRC Staff.

15  
16            SUE HIATT  
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20  
21            DANIEL D. WILT, ESQ.  
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24                    Counsel for Intervenor Sunflower Alliance.  
25

## P R O C E E D I N G S

1  
2 JUDGE BLOCH: This is Peter Bloch, chairman of  
3 the Licensing Board for the Perry Nuclear Power Plant. With  
4 me this morning is Judge Kline and Judge Bright. Ann Riley  
5 is our reporter.

6 Would the parties please identify themselves for  
7 the record? For the applicant.

8 MR. SILBERG: This is Jay Silberg of Shaw,  
9 Pittman, Potts and Trowbridge in Washington for the  
10 applicant.

11 JUDGE BLOCH: For intervenor Sunflower Alliance.

12 MR. WILF: This is Dan Wilt. I represent  
13 Sunflower Alliance.

14 JUDGE BLOCH: Dan, we would appreciate it if you  
15 would speak up. It's very hard to hear you.

16 MR. WILF: All right. Can you hear me now?

17 JUDGE BLOCH: Yes.

18 MR. WILF: Thank you.

19 JUDGE BLOCH: Thank you for your apology.

20 Ms. Hiatt for OCRE.

21 MS. HIATT: Sue Hiatt, representing Ohio Citizens  
22 for Responsible Energy.

23 JUDGE BLOCH: And for the staff.

24 MR. CUTCHIN: This is Cutchin, Office of the  
25 Executive Legal Director, and I represent the staff.

1 JUDGE BLOCH: Mr. Wilt, we appreciate your  
2 apology. On the other hand, our hearing obligation is  
3 important. It's the same as appearing before a hearing that  
4 was convened on the site. We have several lawyers, three  
5 Judges, and a reporter waiting. We trust that you will be  
6 able to make your hearing obligations in the future.

7 MR. WILF: I will, sir.

8 JUDGE BLOCH: The agenda for today is a variety  
9 of matters that have been raised by motion by the parties  
10 plus two questions that the Board wishes to ask to obtain  
11 some information. The order of the agenda is the Board  
12 inquiries, the motion for reconsideration filed by the  
13 applicant, the motion to hold the record open filed by  
14 OCRE, the motion for stay and for summary disposition filed  
15 by OCRE, the Sunflower request for stipulations, and the  
16 Sunflower request for issuance of subpoenas.

17 Are there any necessary additions to that  
18 agenda?

19 MR. WILF: I would like to add one item. This is  
20 Dan wilt. I would like to add to the agenda the question of  
21 the availability of going out to the plant site one more  
22 Saturday to review documents.

23 JUDGE BLOCH: Are you asking for a continuance,  
24 sir?

25 MR. WILF: No, sir. We want to go out to the

1 Perry plant one more Saturday in order to review documents  
2 on Issue 3.8 that are at the Perry site.

3 JUDGE BLOCH: Mr. Silberg, is that a problem?

4 MR. SILBERG: Yes, sir. We are prepared to  
5 discuss that. We can do that at the end of the call.

6 JUDGE BLOCH: Let's add it at the end.

7 The two Board inquiries are an attempt to obtain  
8 information which would help us to decide whether or not to  
9 declare a sua sponte issue.

10 The first inquiry is: To what extent does the  
11 simulator training for operators of the Perry reactors  
12 include training in differentiating different kind sof  
13 instrument failures from transient or accident conditions?

14 And the second question is: To the extent that  
15 some kinds of instrument failures are not simulated during  
16 training, please explain whether the omission is  
17 detrimental to the safe operation of the reactors.

18 These questions, of course, are primarily for  
19 the applicant and for the staff. And we would just ask that  
20 they be answered expeditiously without setting a date.

21 Are there any questions concering those Board  
22 inquiries?

23 MR. SILBERG: We assume that the text will show  
24 up in the transcript. I am obviously not prepared right now  
25 to even repeat what it was you asked. But we will certainly

1 provide answers to them.

2 JUDGE BLOCH: I think we can trust that it will  
3 be in the transcript.

4 MR. CUTCHIN: The staff will be prepared to  
5 answer them as expeditiously as possible once we see them  
6 in writing.

7 JUDGE BLOCH: Thank you, Mr. Cutchin.

8 The second question is the motion for  
9 reconsideration filed by the applicant. On this question  
10 the Board is going to request brief oral discussion on only  
11 one aspect of this motion. The aspect of the motion is the  
12 applicability of 10 CFR Part 50 Appendix B, Section II.  
13 This is the section cited by applicant on page 7 of  
14 applicant's brief. And we believe that it was not responded  
15 to by the intervenors.

16 Since this argument was made by the applicant, I  
17 would like Mr. Silberg to address it briefly at the outset.

18 MR. SILBERG: Okay. I don't have a copy of the  
19 brief in front of me.

20 JUDGE BLOCH: May I ask, Mr. Silberg, would it be  
21 helpful to you -- it may be to the other parties -- if we  
22 had a 5-minute recess to have you review this before  
23 argument?

24 MR. SILBERG: That would be fine. Or we can put  
25 this to the end of the call and I will get a copy of the

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1 brief in front of me. What page is that on the brief?

2 JUDGE BLOCH: It's page 7 of your brief.

3 May I ask if the other parties would prefer a  
4 5-minute recess so they can familiarize themselves with the  
5 material?

6 MR. WILT: I would. This is Dan Wilt. Could you  
7 please identify the motion in question here?

8 JUDGE BLOCH: Applicant's motion for  
9 reconsideration, filed April 14, 1983, concerning the  
10 polymer questions.

11 MR. WILT: Okay. Yes, it would be helpful to me  
12 if I could find the motion.

13 JUDGE BLOCH: Okay. It's 10:20. We will take a  
14 5-minute recess and reconvene at 10:25 on my watch.

15 MR. SILBERG: Shall we hold on the call?

16 JUDGE BLOCH: Please hold. Don't leave the line.  
17 (Brief recess.)

18 JUDGE BLOCH: This hearing is reconvened.

19 Mr. Silberg.

20 MR. SILBERG: The point that we were trying to  
21 make on page of our April 14 motion was that there are no  
22 requirements in the NRC regulations that these types of  
23 programs be developed prior to their need. And in fact, the  
24 language that we recorded from Appendix B says the program  
25 should be established at the earliest practicable time

1 consistent with the schedule for accomplishing the  
2 activities.

3 And if you look at the footnote at the very  
4 beginning of Appendix B, it is clear that the Appendix B  
5 requirements, footnote 1 says -- well, the term "applicant"  
6 is used in the criteria, the requirements are, of course,  
7 applicable after such a person has received a license to  
8 construct and operate a nuclear power plant. That tells me  
9 that Appendix B is, in fact, designed to set forth the  
10 criteria for people who are already operating their plants  
11 and not just people who are filing applications.

12 So that when Appendix B Section II talks about  
13 establishing a program at the earliest practicable time  
14 consistent with the schedule for accomplishing the  
15 activities, that tells me that when you have a surveillance  
16 and maintenance program which is designed to examine things  
17 after operation starts, that you do not have to create that  
18 program prior to operation.

19 JUDGE BLOCH: Mr. Silberg, how do you square that  
20 with --

21 MR. SILBERG: The Board's order, it seemed to us,  
22 was that the program would have to be completed long before  
23 fuel loading. If that were not the case, there would not be  
24 adequate time to have either summary disposition or further  
25 evidentiary hearings without risking the issuance of an

1 initial decision would be delayed beyond the fuel loading  
2 time.

3 JUDGE BLOCH: Mr. Silberg.

4 MR. SILBERG: Yes.

5 JUDGE BLOCH: How do you square your  
6 interpretation with the very first sentence of the  
7 introduction, which says these things are to be included in  
8 the preliminary safety analysis report?

9 MR. SILBERG: The second sentence says these  
10 things are to be included in the final safety analysis  
11 report. The level of detail obviously varies with the stage  
12 in the proceeding, but I think if you look at Appendix --  
13 at footnote 1 to Appendix B, that tells you that some of  
14 these criteria will be applicable after the time you file  
15 your FSAR and indeed after the time that you receive your  
16 operating license.

17 JUDGE BLOCH: Okay. And then you have already  
18 filed your FSAR, is that right?

19 MR. SILBERG: That's correct.

20 JUDGE BLOCH: Now, isn't it possible to interpret  
21 the sentence you are referring to to say that if it's not  
22 practicable -- that is, if you have some serious reason --  
23 now, you have mentioned the \$100,000 expense that's  
24 possibly a ground for impracticability or possibly that you  
25 cannot have a plan for an element of the plant that you

1 haven't decided on yet, then you don't have to do it until  
2 it becomes practicable.

3 MR. SILBERG: Consistent with the schedule for  
4 carrying out those activities.

5 JUDGE BLOCH: The earliest practicable time  
6 consistent with the schedule for accomplishing these  
7 activities. In other words, if it's impracticable, you  
8 don't have to do it either because, let's say, it's too  
9 expensive to do it early because you don't know enough  
10 about it or perhaps it's impossible because it has to do  
11 with an element of the plant that you haven't even decided  
12 on yet.

13 MR. SILBERG: I think that is one possible  
14 reading. I think under the terms of that reading, we would  
15 prevail. The alternate reading, which I think may be  
16 somewhat preferable, although I don't know that I can  
17 support that formally, is that consistent with the schedule  
18 language to set the minimum time and that the earliest  
19 possible language is added on over and above the schedule  
20 time. In other words, you first look to see what the  
21 schedule is and then you determine how early it is  
22 practicable, taking into account when those activities will  
23 be carried out.

24 But on either interpretation, I think our view  
25 would prevail.

1 JUDGE BLOCH: Okay. Could you address the reason  
2 that it's going to cost, I believe you said, \$100,000 extra  
3 to do the portion of the QA/QC program on polymers now  
4 rather than after fuel load?

5 MR. SILBERG: Yes, sir. There are, as you well  
6 appreciate, many, many, many procedures which must be  
7 developed prior to fuel load. The normal way that the plant  
8 proceeds in developing these procedures, using their  
9 resources, is to develop those which are needed earlier  
10 followed by those which are needed later.

11 The plant has laid out a schedule in which they  
12 are preparing the various procedures, and that schedule is  
13 tied to the time when those procedures are needed. The  
14 maintenance and surveillance program, which is an  
15 in-service procedure and one which would not in any event  
16 be carried out until some time after the plant became  
17 operational went into operation, is obviously not needed  
18 until well after procedures which are needed for testing,  
19 for fuel loading, for power ascension testing, et  
20 cetera.

21 Therefore, the resources of the plant staff are  
22 being devoted to developing those procedures which are  
23 needed now and in the near future. Those procedures which  
24 are needed later will be developed upon a time frame  
25 consistent with their need.

1 JUDGE BLOCH: So to be clear, your problem is one  
2 of capacity.

3 MR. SILBERG: That's right. If we were to develop  
4 these procedures now, we will have to go outside the  
5 company and bring in additional consultant help over and  
6 above that which we would otherwise be using, at obviously  
7 additional cost. And we don't think that those costs are  
8 warranted, particularly where we have a system which calls  
9 for procedures to be developed when they are needed and  
10 also where we have, we think, laid out the criteria which  
11 will be used in developing those procedures.

12 Moreover, I would think the more experience  
13 people have in other plants which are already operating,  
14 the better our procedures will be. And since we will not  
15 need this particular procedure for some time, perhaps 2 or  
16 more years, it would certainly make sense to avail  
17 ourselves of the experience which is being generated in  
18 operating plants, and factor that experience into the  
19 procedures as they are developed rather than to write the  
20 procedures now and then have to go back at a time which is  
21 closer to the time the procedures will be needed and redo  
22 them based on data which is available at that time.

23 JUDGE BLOCH: Have you completed your oral  
24 argument on this point, Mr. Silberg?

25 MR. SILBERG: Yes, sir.

1 JUDGE BLOCH: Mr. Wilt, do you wish to address  
2 this point?

3 MR. WILT: No, sir, I do not.

4 JUDGE BLOCH: Ms. Hiatt.

5 MS. HIATT: Yes. First, I would like to state  
6 that we are unaware that a cost-benefit analysis needs to  
7 be performed, whether applicants will decide whether or not  
8 or when to comply with the Commission's regulations and the  
9 Board's orders.

10 JUDGE BLOCH: The real question is what the  
11 section in Appendix B means.

12 MS. HIATT: Yes, I am going to address that. The  
13 question states that the applicant shall establish as early  
14 as practicable time consistent with the schedule to  
15 accomplish the schedules in the quality assurance program.

16 I think what we need to define is the word  
17 "activities." Since this is a contested issue before the  
18 Board, the activities, in my mind, would include not only  
19 the actual inspection and maintenance of the plant itself  
20 but also the necessary litigation which must be conducted  
21 in order to determine the adequacy of such a program. And  
22 anything less than a complete public hearing on this matter  
23 would be a violation of the Appeal Board's ruling of  
24 ALAB-298, which states that a board may not delegate an  
25 issue to the staff for resolution.

1 JUDGE BLOCH: Ms. Hiatt, in your filing I think  
2 you raised the question about the practicability of  
3 inspecting polymers within electrical conduits. Is that  
4 correct?

5 MS. HIATT: Correct.

6 JUDGE BLOCH: Could you tell us what basis there  
7 is for believing that that is a problem?

8 MS. HIATT: Well, it is my understanding that  
9 conduits are not transparent and that if you were to  
10 conduct a visual inspection on the condition of the cable,  
11 it would be quite difficult.

12 JUDGE BLOCH: Am I correct, though, that there  
13 are a number of access points; and if there are access  
14 points, is there a real physical difficulty? You think  
15 inspecting the access points would be a sufficient sample?

16 MS. HIATT: That depends on whether the access  
17 points are located at the places in which the radiation  
18 levels are such that the degradation would be caused and if  
19 other types of monitoring are performed, such as measuring  
20 of electrical insulation resistance.

21 Some of the material submitted by applicants to  
22 the Sandia study indicate that this property has not  
23 degraded quite as much as the mechanical properties. So it  
24 would not really detect the actual degradation of the  
25 insulation, whereas if a certain event, such as a

1 mechanical or seismic loading type of event were to occur,  
2 the properties of the insulation would be affected, perhaps  
3 resulting in short circuits between the wires but the  
4 electrical resistance test would not have detected them. So  
5 I think that is really a problem.

6 JUDGE BLOCH: You are saying even with access,  
7 the tests for the jacket are not adequate?

8 MS. HIATT: They are not adequate to detect  
9 degradation of the polymers.

10 JUDGE BLOCH: Okay. Thank you. Have you completed  
11 your argument?

12 MS. HIATT: Yes.

13 JUDGE BLOCH: Mr. Cutchin.

14 MR. CUTCHIN: Well, Mr. Chairman, I will just  
15 supplement slightly what has been said by applicant, and I  
16 would have to repute what is said by Mrs. Hiatt as far as  
17 the applicability of the QA program, because I think in the  
18 introductory portion the words state those things to which  
19 the quality assurance program applies, and I don't think  
20 that can be used to argue that the activities include  
21 litigation.

22 I think the fact of the matter is that in  
23 practice these programs have not been required to be  
24 submitted for review.

25 JUDGE BLOCH: Mr. Cutchin, before you go to that

1 argument, I don't understand the first one.

2 MR. CUTCHIN: If you look at the first one,  
3 quality assurance does not include requiring the activity  
4 of litigation. It says what things the activities do and do  
5 not include -- and they have to do with activities like  
6 design, purchase, fabricating, maintaining, refueling,  
7 modifying; not in litigating.

8 JUDGE BLOCH: Where does it say that those are  
9 activities? We are trying to define it.

10 MR. CUTCHIN: In the introduction. And I don't  
11 know which version you are reading from, but it is included  
12 in the first paragraph. It says, the pertinent requirements  
13 of this appendix apply to all activities affecting the  
14 safety-related functions of those structures, systems, and  
15 components. And then it goes on to identify what those  
16 activities include.

17 And all I am saying is those activities do not,  
18 contrary to the argument of intervernor, include  
19 litigation.

20 JUDGE BLOCH: Were you just reading from the  
21 first paragraph?

22 MR. CUTCHIN: I am reading from the first  
23 paragraph of Appendix B, entitled "Introduction."

24 MR. SILBERG: It's actually the second paragraph  
25 of that introduction.

1 MR. CUTCHIN: I am reading from the soft-bound  
2 pamphlet rather than from the looseleaf version. But it  
3 does in mine include the first paragraph. I don't believe  
4 there has been any change in it recently.

5 JUDGE BLOCH: In case it's in the second  
6 paragraph, which I am looking at in the looseleaf, could  
7 you read it slowly again?

8 MR. CUTCHIN: Yes. "The pertinent requirements of  
9 this appendix apply to all activities affecting the  
10 safety-related functions of those structures, systems, and  
11 components. These activities include design, purchasing,  
12 fabricating, handling, shipping, storing, cleaning,  
13 erecting, installing, inspecting" --

14 JUDGE BLOCH: Okay. I have it. I see your point.

15 MR. CUTCHIN: All I am saying is when you look at  
16 the term "activities" -- and I am saying in practice, the  
17 staff has not indeed required either the submission for  
18 review to the licensing staff of some of these procedures  
19 until well toward the end of the licensing process.

20 And we are in agreement with the licensee that  
21 there is no requirement to have these programs available as  
22 long as they are committing that these programs will be  
23 developed in accordance with certain criteria. And that  
24 they have committed to do. Especially procedures and  
25 programs of this type normally are not submitted to the

1 staff, but indeed are reviewed by the inspection staff in  
2 the field.

3 And so unless there is some safety justification  
4 for requiring that these things be submitted in detail and  
5 litigated in advance, it appears to be a monumental waste  
6 of time and resources. And there has been apparently no  
7 sufficient challenge to the criteria that would indicate  
8 that development of such a program in accordance with these  
9 criteria would create safety problems.

10 JUDGE BLOCH: Mr. Cutchin, could you briefly  
11 comment on the problem of accessibility and inspectability  
12 of polymers?

13 MR. CUTCHIN: I think again there is speculation  
14 there, because if we go back to the beginning of this  
15 contention, there has been no showing that the degradation  
16 is likely to occur to these particular cables and so forth.

17 You know, we started out by saying where the  
18 highest radiation fields were and what level of radiation  
19 material would tolerate before being subjected to  
20 degradation at all. And the Board has said that even  
21 degradation does not show up the presence of a safety  
22 problem. And the Board's calculations as well show that  
23 there are a number of years after the plant starts up, even  
24 including the uncertainties in the Board's calculations,  
25 before such a program is even likely to be needed.

1 JUDGE BLOCH: Mr. Cutchin, I understand.

2 MR. CUTCHIN: But you would have to be talking  
3 about specific areas on inspection, and I personally am not  
4 aware of the manner in which the inspections are done. But  
5 to say that some of the cable goes through conduits does  
6 not necessarily mean that it is going to degrade in the  
7 conduit and then suffer mechanical damage because the  
8 conduit itself would be providing mechanical support, if  
9 you will.

10 But that again is pure speculation. I think  
11 unless you are talking about a specific piece of cable  
12 subjected to a specific radiation level and then are able  
13 to point to how it would degrade and whether over the life  
14 of the plant in the locations at which the cable will be in  
15 the plant it is likely to degrade to the point that one  
16 needs to worry about inspecting that particular piece of  
17 cable, because it is a fact not every piece of cable and  
18 every polymer in the plant is likely to be inspected,  
19 period. It's going to be determined on the basis of what  
20 the radiation levels are and what the qualification  
21 information is.

22 JUDGE BLOCH: Thank you.

23 Mr. Silberg, would you like a very brief  
24 rebuttal only to new matters raised?

25 MR. SILBERG: Two things. I was looking for the

1 reference in our motion to the \$100,000. And what we  
2 actually said was estimated in the hundreds of thousands of  
3 dollars. So that raises the ante a little bit.

4 JUDGE BLOCH: I guess I discounted it because it  
5 wasn't accompanied by an affidavit.

6 (Laughter)

7 MR. SILBERG: The other point I would like to  
8 make was that we did say by affidavit that the program that  
9 we described would be sufficient to detect any significant  
10 degradation. That affidavit showing is essentially  
11 unchallenged by anything approaching a similar evidentiary  
12 presentation. And it seems to me that to deny  
13 reconsideration based on speculation in the face of  
14 evidentiary showings by affidavit -- I do not think it is  
15 warranted.

16 JUDGE BLOCH: May I ask, do they specify in the  
17 affidavit the method by which it was possible to inspect  
18 those polymers?

19 MR. SILBERG: The affidavit outlined the program  
20 element of an inspection program and stated those are  
21 consistent with industry guidelines. It then went on to  
22 state that those surveillance and maintenance program  
23 incorporating those elements should detect any significant  
24 degradation of polymer materials.

25 JUDGE BLOCH: Do you know the method that would

1 be used?

2 MR. SILBERG: It would be a variety of methods  
3 used, depending on which particular aspect one is looking  
4 at. It would certainly use Megar checks to detect  
5 electrical insulation properties and visual inspection to  
6 detect impairment of mechanical properties. They will have  
7 test portions of cables in various areas which will be  
8 periodically removed and sampled in the laboratories.

9 These are all details that will be included in  
10 the program when it is developed, and those are common  
11 aspects of these kinds of surveillance programs. And my  
12 understanding is the program will include all those and a  
13 lot more.

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1 JUDGE BLOCH: Ms. Hiatt, brief rebuttal?

2 MS. HIATT: Yes. Mr. Silberg talked about the  
3 appropriateness of material presented by affidavit, but he  
4 has just presented his speculation of what a surveillance  
5 and inspection program will actually constitute, but none of  
6 this material was included in the affidavit.

7 MR. SILBERG: I was asked that question by the  
8 Board, and I didn't have much choice but to respond.

9 MS. HIATT: Yes, sir, but the whole point is  
10 the quality assurance program, inspection, maintenance and  
11 surveillance program described in the affidavit does not  
12 address polymer degradation or anything specific whatsoever.  
13 It merely addressed the commitment by applicants to meet  
14 the criteria of Reg Guide 1.33.

15 I really don't think that's adequate because of  
16 some of the problems that exist in detecting polymer degrada-  
17 tion. I really don't think that can be accepted as an  
18 adequate surveillance and inspection program.

19 JUDGE BLOCH: Mr. Cutchin, brief rebuttal?

20 MR. CUTCHIN: Mr. Chairman, I think I've stated  
21 about everything I have to say, and I think I'm willing to  
22 stand on the papers that we filed. I think if the Board is,  
23 indeed, going to change the practice over any that I'm aware  
24 of to require this early development and detail for litigation  
25 without any safety showing on the part of the intervenor, and

1 even where the Board by its own calculations appears to be  
2 rather convinced that this cannot become a safety problem  
3 for a number of years after the plant has started, it is  
4 going, I think, a little bit far, and on that I will stand.

5 JUDGE BLOCH: Off the record.

6 (Discussion off the record.)

7 (A short recess was taken.)

8 JUDGE BLOCH: The Board is prepared to rule.

9 There are two branches to the motion for reconsideration or  
10 clarification. The first deals with the schedule for comply-  
11 ing with the final environmental qualification requirements.  
12 With respect to that branch of the motion, we were reluctant  
13 to promulgate our own interpretation of that time schedule  
14 without briefs by the parties, and we therefore, in our  
15 order, required a stipulation from the applicant concerning  
16 the schedule that it would comply with.

17 We're fully satisfied with the applicant's state-  
18 ment that it basically agrees with our interpretation of  
19 the filing deadlines, and we don't intend to preclude the  
20 applicant from seeking an extension from the Commission itself.

21 We, therefore, accept the applicant's brief as  
22 a fulfillment of the requirement concerning scheduling, and  
23 rescind any need for further stipulation.

24 With respect to the other branch of the motion,  
25 we are persuaded by applicant's citation to Appendix B,

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1 Roman II, and believe that under the circumstances of low  
2 risk from embrittlement during the early years of operation  
3 of the plant, that it should not now be necessary for the  
4 applicant to complete his quality assurance plan on polymer  
5 degradation.

6           However, in making this ruling, we will require  
7 that the applicant instead submit to us brief affidavits  
8 stating the tests that they now intend to include in the  
9 quality assurance program, and an expert opinion that those  
10 tests are adequate to detect electrical embrittlement.

11           In addition, the affidavit should contain a  
12 statement concerning the ability to gain access to key loca-  
13 tions in which degraded polymers might be present, what  
14 the condition of that affidavit affects, do we grant the  
15 applicant's motion for reconsideration concerning the polymer  
16 question, and except for the requirement of the affidavit,  
17 rescind any further requirements under our order on summary  
18 disposition concerning polymers.

19           Are there any questions that must be asked about  
20 the order that has just been issued?

21           MS. HIATT: Will this be issued as a written order?

22           JUDGE BLOCH: No. The Commission's rules now  
23 permit that a ruling made on the record is an adequate answer  
24 to a written order. Is there an aspect of the order that  
25 you would like to have clarified in order to assist you in

1 knowing whether to appeal?

2 MS. HIATT: No, not really. I was just wondering  
3 if it would be issued as a separate written order.

4 JUDGE BLOCH: If there were some reason to do so  
5 we would consider doing it, but I don't at this point under-  
6 stand the reason to do it. Are there any other necessary  
7 clarifications?

8 (No response.)

9 There being none, the next item on the agenda  
10 is the motion to hold the record open because there might  
11 be witnesses on quality assurance. We deny this motion  
12 because there are no names now available, and the motion to  
13 reopen the record can be made if there's grounds for it in  
14 the future.

15 On the other hand, we appreciate this filing  
16 from OCRE because it gives as early notice as possible that  
17 a possible problem might arise later. We trust that all of  
18 the parties will do their best to make sure that this problem,  
19 if it becomes tangible, will be resolved as early as possible.

20 For example, we would hope that OCRE would  
21 consult with the staff if these witnesses are known to the  
22 staff so that an effort will be made to make them available  
23 as early as possible to this proceeding.

24 Are there any questions concerning this ruling?

25 MR. SILBERG: Mr. Chairman, could you just maybe

1 explain in a little bit more detail what you mean by  
2 possible problems? That went over my head.

3 JUDGE BLOCH: OCRE is saying that it has witnesses  
4 who, for some reason not completely specified, cannot come  
5 forward at this time. The problems could be problems in  
6 terms of the efficient completion of this proceeding. We  
7 would like to hear witnesses concerning quality assurance  
8 as early as practicable.

9 MR. SILBERG: Okay, I understand, thank you.

10 (Discussion off the record.)

11 JUDGE BLOCH: Back on the record. The next  
12 item on the agenda is the motion for a stay and for summary  
13 disposition of the application. The motion for a stay must  
14 be denied without inquiring into the merits of whether or  
15 not a mis-statement has, in fact, been made. This is a  
16 very complex proceeding, taking the facts that OCRE has given  
17 on its face.

18 There was a statement about the use of herbicides  
19 in materials filed by the applicant, and subsequently, we  
20 have an inconsistent statement about that. And if we accept  
21 OCRE's statement, there has been no rapid attempt to correct  
22 the record.

23 Given the complexity of the record, that might  
24 provide some reason to take an action in this proceeding,  
25 although we will not rule on that now. However, it would

1 not be grounds to deny the license. Since the license would  
2 not be denied for that reason, there's no reason to hold up  
3 our proceedings, either. That's the sole ground for denying  
4 the stay.

5 Are there any questions for clarification of  
6 that?

7 MS. HIATT: Yes. Could you please explain your  
8 reasoning in why the initial statement would not require a  
9 denial of this license? Under Section 186 of the Atomic  
10 Energy Act, Section 2 --

11 JUDGE BLOCH: Could you say the citation more  
12 clearly?

13 MS. HIATT: Section 186 of the Atomic Energy  
14 Act. These are the items which I cited in 42 USC 22.36, I  
15 believe, at 10 CFR 50.100.

16 JUDGE BLOCH: I believe the section of the text  
17 which you omitted by using an elipsis provides a variety  
18 of remedies, and it is the Board's view that a single problem  
19 of inconsistency of the nature that you have pointed out is  
20 just not sufficient to deny the license entirely.

21 Am I correct that you omitted sections that  
22 stated that there were other remedies also, for these  
23 mis-statements?

24 MS. HIATT: Yes, there are other remedies, but  
25 it also includes the revocation of a license or permit.

1 JUDGE BLOCH: It's our judgment, in denying the  
2 stay, that the matter you have pointed out to us, while it  
3 would be serious if you were to demonstrate it, would not  
4 be sufficient for us to deny the license, and, therefore,  
5 we deny the stay of the proceeding.

6 We would point out that the only harm to OCRE  
7 is the harm of participating in a proceeding, which generally  
8 is not in itself grounds for a stay anyway. It's not the  
9 kind of irreparable injury that's required for the granting  
10 of a stay.

11 Are there any other requests for clarifications  
12 of this ruling?

13 (No response.)

14 There being none, I would like to hear a brief  
15 oral argument on the status that ought to be accorded for  
16 the motion for summary disposition. It's a bit unusual  
17 because it's a motion for summary disposition of an issue  
18 not yet admitted to the hearing via contention, and yet,  
19 it seems to be based on new facts.

20 I would like to know the most efficient way for  
21 us to treat this motion for purposes of disposition in the  
22 proceeding.

23 Ms. Hiatt, since it's your motion, I think it  
24 would be appropriate that you go first on that question.

25 MS. HIATT: The motion is, as it says it is, a

1 motion for disposition under 10 CFR 2.749, and all the  
2 provisions in that section should apply to it, and it should  
3 be treated as a motion for summary disposition.

4 The staff and applicant and other parties have  
5 an opportunity to reply to this within 20 days, the rule  
6 says, and after that time the Board should issue its order  
7 upon whatever sanction is appropriate.

8 JUDGE BLOCH: Thank you. Mr. Wilt, do you  
9 want to comment on this?

10 MR. WILT: Yes, Your Honor. I would. I would  
11 like to suggest to the Board -- I hope you can hear me. Let  
12 me speak up.

13 I would like to suggest to the Board that a  
14 possible alternative treatment to the issues raised by OCRE  
15 in their motion is to exercise your authority under 10 CFR  
16 2.718(m) and refer the matter to the Office of Inspection  
17 and Enforcement in a show cause proceeding.

18 I think it has been demonstrated that there are  
19 certain inconsistencies on the record as reported to the  
20 Commission, and I think in light of the seriousness of  
21 the allegations made by OCRE, that a possible alternative  
22 procedure that is available to the Board is to refer the  
23 matter to the Office of Inspection and Enforcement and let  
24 them determine whether or not a show cause order proceeding  
25 should be initiated.

1 JUDGE BLOCH: You would suggest we do that and under  
2 2.718(a) you would just regulate the course of the  
3 proceeding?

4 MR. WILT: I would suggest that as a possible  
5 alternative.

6 JUDGE BLOCH: Which would you prefer we do

7 MR. WILT: I would prefer you do it under (m).

8 JUDGE BLOCH: Okay, but you would prefer a  
9 referral, or would you prefer us to take it up ourselves?

10 MR. WILT: I think I would urge a referral.

11 JUDGE BLOCH: Have you completed your remarks?

12 MR. WILT: Yes, Your Honor.

13 JUDGE BLOCH: I think for efficiency, I'd like  
14 to hear Ms. Hiatt's comments on that question.

15 MR. HIATT: Well, I think the referral under  
16 10 CFR 2.200 et seq. is an appropriate alternative. I  
17 would prefer that the Board address this issue itself as  
18 a licensing board when its jurisdiction is in question. And  
19 I believe this is within the licensing board's jurisdiction  
20 and it should be decided by the Board as a motion for  
21 summary disposition.

22 JUDGE BLOCH: Thank you. Mr. Silberg?

23 MR. SILBERG: Just a minute, I want to make a  
24 note of this. Okay.

25 The first thing I would note is that the summary

1 disposition motion is invalid on its face for a number of  
2 reasons. First of all, it's asking for relief which I don't  
3 believe the Board has.

4 Second of all, it's covering a matter which is  
5 improper format for summary disposition. Let me talk about  
6 the second matter first.

7 Section 2.759, which governs summary disposition  
8 motions, describes what the scope of those motions may cover,  
9 and it says that any party to a proceeding may move, with  
10 or without supporting affidavits, for a decision by the  
11 presiding officer in that party's favor, as to all or any  
12 part of the matters involved in the proceeding.

13 Now, the question here is whether the matters  
14 which Ms. Hiatt has raised are "matters involved in the  
15 proceeding," and I think clearly, they are. The licensing  
16 board's jurisdiction to resolve issues is governed by  
17 2.760(a), which says that in an operating license hearing,  
18 that hearing is limited to those matters which are put into  
19 controversy by the parties, and matters determined to be  
20 issued by the licensing board.

21 That which Ms. Hiatt wants to resolve, which  
22 is the status of the application, has not been put into  
23 controversy by the parties, and it certainly has not been  
24 admitted by the licensing board. So the motion on its face  
25 is really dealing with something that is beyond the scope

1 of an appropriate motion for summary disposition. Motions  
2 for summary disposition are supposed to take place after an  
3 issue has been admitted, after there has been discovery on  
4 that issue and basically, the case is ready for a decision.

5 Here we have an issue which has never before been  
6 presented to the licensing board, and again, it's not clear  
7 whether the issue is the question of the alleged inconsistent  
8 statements or whether the application itself should be  
9 dismissed. But in either event, it's not an issue which has  
10 either been admitted by the Board or been subject to discovery.  
11 So we should not be proceeding forward with summary disposi-  
12 tion in any event.

13 It's just as if, when one of the parties sought  
14 to raise a new contention, -- you can pick out any one of  
15 the contentions that we've looked at -- shift rotation, for  
16 example, and before the Board had admitted the contention  
17 they filed a summary disposition motion. That would obviously  
18 be an improper pleading at that point in time because there  
19 is no issue pending before the Board on that matter.

20 The second point that I would like to make is  
21 that questions of material, false statements or enforcement  
22 matters, matters to be handled not by the licensing board but  
23 by other branches of the Nuclear Regulatory Commission. This  
24 is particularly the case where we're dealing with something  
25 which is not otherwise before the licensing board -- alleged

1 inconsistencies between statements made in one proceeding  
2 and statements made in some other proceeding.

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1 Ms. Hiatt has heard this. And she can --

2 JUDGE BLOCH: Of cours, Mr. Silberg, if there are  
3 responsible company officials who did what Ms. Hiatt stated  
4 they may have done, I take it it would at least be admissible  
5 with respect to their credibility on other issues.

6 MR. SILBERG: If those witnesses were to get on  
7 the stand and testify?

8 JUDGE BLOCH: Well, I suppose a pattern of misstate-  
9 ment certainly would be relevant even if you did not call the  
10 witnesses, wouldn't they? I guess they would be relevant --  
11 I guess you're correct. It would have to be an issue relat-  
12 ing to management competence.

13 MR. SILBERG: And there is no such issue here.

14 JUDGE BLOCH: That's correct.

15 MR. SILBERG: So, the appropriate procedure is for  
16 Ms. Hiatt to file a request for order to show cause and the  
17 Staff will undertake, in its normal course, to evaluate that.  
18 Indeed, the cases that she cites in her pleading, specifically  
19 the North Anna case, involved exactly the type of procedure  
20 -- the matter was referred or developed initially -- I can't  
21 recall which in that cast -- to the NRC Staff. The Director  
22 issued a decision. The Applicant asked for and received a  
23 hearing before a separate licensing board, the licensing  
24 board looking at a licensing application that a separate  
25 atomic safety and licensing board. That licensing board

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1 decision was appealed to the Appeal Board and ultimately to  
2 the U.S. Court of Appeals for the D.C. Circuit. That is the  
3 appropriate procedural route.

4 JUDGE BLOCH: Mr. Silberg, have you any problem  
5 with our suggesting that this be considered by the Office  
6 of Inspection and Inforcement?

7 MR. SILBERG: I would think the most appropriate  
8 procedure would be for Ms. Hiatt to file with the Office of  
9 Inspection and Enforcement. I think if the Board sends it  
10 there, it may give some credence to the allegations that are  
11 contained in that document.

12 JUDGE BLOCH: Well, since we haven't heard anything  
13 on the merits, our sending it there would merely be a routing  
14 action. It would have nothing to do with our decision that it  
15 was meritorious.

16 MR. SILBERG: In that case, I wouldn't have any  
17 strong objections to their procedure.

18 By the way, if the Board is interested, I'll be  
19 happy to shed some light on the alleged misstatements.

20 JUDGE BLOCH: At this point, it would probably  
21 cause more heat than light at this point.

22 MR. SILBERG: It's a fairly simple explanation, but  
23 it's really not relevant.

24 JUDGE BLOCH: I'm sure we'll see it sooner or later.

25 Mr. Cutchin.

1 MR. CUTCHIN: I would only add a couple of things,  
2 Mr. Chairman. I agree that the appropriate course for  
3 Ms. Hiatt is to, herself, seek action by the Office of  
4 Inspection and Enforcement under 2.206, and I think the  
5 appropriate course for the Board --

6 (Discussion off the record.)

7 MR. CUTCHIN: I said, and I will repeat, that I  
8 think the appropriate action is for Ms. Hiatt to request an  
9 action under 2.206, citing the facts as she believes them to  
10 be and to seek an investigation of the matter from the Office  
11 of Inspection and Enforcement. I think the appropriate action  
12 for the Board -- and it's under paragraph 2.749, at the bottom  
13 of that first paragraph, (a), since we are close upon the  
14 start of the hearing and I think, clearly, to deal with this  
15 matter the Board would have to divert substantial attention  
16 as with the parties -- I think the Board should summarily  
17 dismiss this Motion for Summary Disposition, and I tend to  
18 agree with Mr. Silberg, that I think because Ms. Hiatt does  
19 have another forum, the Board, referring the matter may indeed  
20 place it in a different light than is warranted.

21 And since Ms. Hiatt is not without other remedies,  
22 the motion should just be dismissed and she should be advised  
23 to stick to remedies in the appropriate matter.

24 JUDGE BLOCH: Ms. Hiatt, just in case we should  
25 decide to dismiss the Motion for Summary Disposition, could

1 you tell me if there is any portion of this that you think is  
2 really necessary as a part of this proceeding that's not  
3 related to enforcement questions?

4 MS. HIATT: Well, I really think the question bears  
5 on what is the Licensing Board jurisdiction in this matter,  
6 and I think the Licensing Board has jurisdiction to decide  
7 this operating license case and issue or deny a license. And  
8 with that jurisdiction, I think it is entirely appropriate  
9 that the Board consider this Motion for summary Disposition.

10 JUDGE BLOCH: Okay. But, for example, are you  
11 seriously interested in the question of the particular  
12 species of turtle that might be imperiled by this herbicide?

13 MS. HIATT: It's concerned with the material false  
14 statements that occurred, and that is essentially the basis  
15 for the motion, the fact that the Applicant submitted a  
16 material false statement.

17 JUDGE BLOCH: Really, the information I was seeking  
18 is that you would like us to consider the motion that --  
19 that there is nothing within it that you particularly want to  
20 advance as a contention because of the information you have  
21 obtained?

22 MS. HIATT: Not really, but I would note that this  
23 basically refers to environmental impact statements required  
24 under the National Environmental Policy Act. And I believe  
25 it is the Licensing Board's obligation to review that

1 material, as it did the Safety Analysis Report filed by the  
2 Staff. And this inconsistency is of interest to the Board,  
3 so I think it is within the Board's jurisdiction and interest  
4 to look at this issue.

5 JUDGE BLOCH: The Board will now take a five-minute  
6 break for the purpose on considering this issue. I have  
7 11:15. We'll be back at 11:20.

8 (Recess.)

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1 JUDGE BLOCH: The Board is prepared to rule.  
2 Considering the entire scope of the Commission's procedural  
3 rules, we're convinced that motions for summary disposition  
4 are intended to be directed at pending issues in cases.  
5 In this case, a summary disposition motion has been filed  
6 about an issue that has not been formally admitted. In a  
7 sense, whether or not to issue a license is implicit in  
8 each contention in an NRC proceeding. Nevertheless, it is  
9 the grant of one of the grounds that are advanced by a party  
10 which could result in a decision not to issue a license.

11 That is not an independent issue for the Board  
12 to decide. Consequently, this motion for summary disposition  
13 must be denied because it is not addressed to a pending  
14 issue, and it is denied.

15 On the other hand, we are not believers in the  
16 bureaucratic paper-shuffling, and we, therefore, would like  
17 Enforcement to consider Ms. Hiatt's motion. We, of course,  
18 have not considered the merits of that motion and have  
19 absolutely no opinion as to whether the suggestion that OCRE  
20 has made should be granted by the staff.

21 Nevertheless, we would like the staff to take  
22 that up and, Mr. Cutchin, we request that you just transmit  
23 this for us and ask that it be considered as a petition for  
24 an enforcement action.

25 MR. CUTCHIN: I will do so. I will take the

1 appropriate pages from the transcript of this conference,  
2 together with the incoming papers from Ms. Hiatt, and we'll  
3 provide them to the appropriate person on the staff.

4 JUDGE BLOCH: We appreciate that, Mr. Cutchin.  
5 Additionally, because there have been matters  
6 raised which cast some aspersion's on applicant's reputation,  
7 we would encourage applicant to make an appropriate filing  
8 that would help to address the issues that Ms. Hiatt has  
9 raised. Otherwise, there would be no opportunity, in the  
10 context of this proceeding, to attempt to set the record  
11 straight.

12 Are there any requests for clarification of  
13 this ruling that the Board has now made?

14 MR. SILBERG: Yes. I'm not sure I understand  
15 the directions to the applicant, "The appropriate filing is  
16 to be made."

17 JUDGE BLOCH: That's not a direction at all.  
18 It's just an opportunity. There's no motion for summary  
19 disposition pending anymore. But if you wanted to clarify  
20 the record for us, you could file something. You are not  
21 required to.

22 MR. SILBERG: I think rather than do that, with  
23 the Board's forbearance I could take two minutes and just  
24 indicate the nature of the problems.

25 JUDGE BLOCH: If you would.

1 MR. SILBERG: The alleged mis-statements involved  
2 two separate proceedings. Cleveland Electric is the lead  
3 applicant in the NRC licensing proceeding. It has also filed  
4 jointly with Ohio Edison Company an application before the Ohio  
5 Power Siting Board for permission to build a transmission line,  
6 the Perry-Hanna line, which will serve Unit 2 and Unit 2 only.

7 In the construction permit stage, the applicant's  
8 environmental report stated that herbicides might be used  
9 for maintenance of transmission line right-of-way.

10 That statement appeared in a draft, in the  
11 Final Environmental Statement, in connection with the con-  
12 struction permit at page 4-2 and 5-23. In the operating  
13 license Environmental Report, a statement was made in  
14 Section 5.5 that the method of maintaining transmission lines  
15 were unchanged from those described in the construction permit  
16 stage.

17 In connection with a specific question addressed  
18 to spotted turtle, the applicants were asked whether  
19 herbicides would be used in connection with various portions  
20 of maintenance of the right-of-way. If I can just find that  
21 page in a minute, I can more accurately describe that. This  
22 was December 1981, as I recall, a question and answer dealing  
23 with the effects of transmission line maintenance on the  
24 spotted turtle. And then our answer, "It is not the policy  
25 of CEI to use herbicides for vegetation control along the

1 Perry transmission lines," and that statement was picked  
2 up in the Final Environmental Statement by the NRC Staff --  
3 in the draft and final statements -- but was not written in  
4 a way that the question has been answered. It was written  
5 more generally that the maintenance procedures for the  
6 Perry transmission lines would use mechanical cutting rather  
7 than herbicides.

8 As I mentioned, the answer to the staff's question  
9 was specifically in terms of what CEI would use. The problem  
10 arises because the Perry-Hanna line is not only a CEI trans-  
11 mission line. The application that is filed before the Ohio  
12 Power Siting Board is a joint application between CEI and  
13 Ohio Edison. In fact, that application, when it is cited in  
14 the Hiatt document, is an amended application. The original  
15 application goes back, I believe, to 1978. I'm in the process  
16 of trying to get a copy.

17 And in that original 1978 application, basically  
18 the same description of the use of herbicides appears, and  
19 there are certain caveats in that application, but it is a  
20 joint application.

21 At a hearing before the Ohio Power Siting Board  
22 in February of 1980, the specific question was asked whether  
23 CEI uses herbicides for line maintenance, and the specific  
24 answer was that CEI does not use herbicides for line mainten-  
25 ance, but Ohio Edison does. And that's where the confusion

1 has arisen.

2 I believe the order that was issued in that  
3 proceeding by the hearing examiner -- I don't have a copy of  
4 that yet either but I'm getting it -- reflected the fact  
5 that herbicides were used by Ohio Edison but not CEI, and  
6 there was a dispute over how those herbicides were to be used,  
7 and that dispute was resolved by the hearing examiner.

8 I think the problem arose because in reviewing  
9 the draft environmental statement -- and I don't know  
10 precisely what happened, but it is perhaps the fact that  
11 the transmission line people at CEI did not look at this  
12 or did not look at it carefully, and didn't notice that the  
13 answer had been written in terms of all the transmission  
14 lines rather than CEI's portion alone.

15 But the whole thing appears to be kind of a  
16 tempest in a teapot, particularly where the construction  
17 permit stage was looked at and it approved the use of  
18 herbicides for maintenance of rights-of-way. I think that's  
19 a basic picture of the facts as I know them today.

20 JUDGE BLOCH: Thank you, Mr. Silberg. The  
21 record now stands with the charge that was made by OCRE;  
22 the response that was made by the applicant. The Board has  
23 no jurisdiction over this controversy. It has taken steps  
24 to see that the appropriate people will consider it. No  
25 further statements on this controversy are appropriate at

1 this time.

2 Are there any other further requests for clarifi-  
3 cation concerning our decision on summary disposition?

4 MS. HIATT: Yes. Mr. Cutchin mentioned that he  
5 would refer to the Director of Nuclear Regulaion, I believe.

6 MR. CUTCHIN: I said to the appropriate persons  
7 on the staff.

8 MS. HIATT: Okay. And you said, along with my  
9 incoming papers?

10 MR. CUTCHIN: Yes. Your motion for summary  
11 disposition with its attachments.

12 MS. HIATT: All right. You're not expecting me  
13 to file further motions or requests pertaining to this.

14 MR. CUTCHIN: I had understood the Chairman to  
15 say that they would not stand on bureaucratic formality,  
16 and that your original filing should be referred to the  
17 appropriate persons on the staff for treatment as a 2.206  
18 request.

19 MS. HIATT: I would like to receive copies of  
20 what you send the appropriate persons.

21 MR. CUTCHIN: Well, all I plan to send to the  
22 appropriate persons is your incoming motion with its attach-  
23 ments and the pages of the transcript that address any  
24 discussion of this matter.

25 JUDGE BLOCH: Perhaps you could communicate to

1 Ms. Hiatt the page numbers so she will know precisely what  
2 you have said.

3 MR. CUTCHIN: Certainly, I'll be happy to.

4 MS. HIATT: Yes, I presume you would have a  
5 cover letter with that. I would like to receive a copy of  
6 the cover letter, at least, and the transcript pages.

7 MR. CUTCHIN: Mr. Chairman, I think if we're going  
8 to get very formal about this thing, I have made a representa-  
9 tion of counsel that I will carry out a request of the  
10 Board. Now, if we want to get much more formal than that,  
11 I will step back a moment. I had not planned to make any  
12 formal transmittal of anything.

13 I will, as counsel for one portion of the staff,  
14 carry the appropriate pages to another portion of the staff  
15 and ask that that individual put Ms. Hiatt on distribution  
16 for any documents that are generated in this matter.

17 JUDGE BLOCH: She just wants to know what the  
18 record is going to be in this enforcement request. One way  
19 or another, I'm sure you'll see that she --

20 MR. CUTCHIN: I certainly will.

21 JUDGE BLOCH: Ms. Hiatt, any further clarification?

22 MS. HIATT: No.

23 JUDGE BLOCH: There being none, the next  
24 question is Sunflower's request for a stipulation. Mr.  
25 Wilt, I just say that this motion surpasses even my

1 expectations. What have you in mind?

2 MR. WILT: All I wanted to do was to put people  
3 on notice -- I mean we're supposed to supply -- I have an  
4 agreement with Mr. Silberg the documents that we intend to  
5 use at the hearings by the 18th of this month. All I was  
6 trying to do was to put people on notice in advance that I  
7 was going to ask for stipulations when I got these documents  
8 together. That's all.

9 JUDGE BLOCH: Okay. I think probably what was  
10 confusing to everyone was that you styled it as a request  
11 for stipulations when, in fact, it couldn't be that. Right?

12 MR. WILT: Well, no, it was just my attempt to  
13 put people on notice of what I was going to do.

14 JUDGE BLOCH: The next time, label it notice.

15 MR. WILT: Okay.

16 JUDGE BLOCH: Now, Sunflower has requested the  
17 issuance of subpoenas.

18 MR. WILT: Yes.

19 JUDGE BLOCH: Would you like to address that,  
20 please, sir.

21 MR. WILT: I have also filed an amended applica-  
22 tion for a subpoena. I don't know if it got anywhere yet.

23 JUDGE BLOCH: I haven't seen it yet. I called  
24 up to request that because we do ask parties to provide  
25 the requested form of subpoena for us to sign.

1 MR. SILBERG: I received a copy today. It does  
2 not have a requested form of subpoena attached to it.

3 MR. WILT: No, I was planning to send that out  
4 if, in fact, my application would be granted. I will put  
5 that in the express mail today.

6 I have limited resources myself, and I can only  
7 do one thing at a time, I guess. But basically, I have been  
8 advised by Mr. Cutchin that one of my proposed witnesses is  
9 going to be there anyway. That's Mr. Conklin, so there's no  
10 need for a subpoena on him. So my amended application --  
11 but only two requests for subpoenas that I have pending at  
12 this point in time. One is to a Mr. Schuster of the appli-  
13 cant, and to have him bring with him the contract performance  
14 reports to the hearing.

15 JUDGE BLOCH: Is the only purpose there to get  
16 the contract performance reports in a form that you can  
17 validate them?

18 MR. WILT: That's the primary purpose, and if  
19 anything, -- we find that anything useful in our cross examin-  
20 ation to advise all of the parties of that intent and to use  
21 the documents for that purpose.

22 JUDGE BLOCH: Your cross examination of whom?

23 MR. WILT: Well, I would imagine --

24 (Discussion off the record.)

25 JUDGE BLOCH: Mr. Wilt, I think we were back

1 to the question of whether or not you thought it was necessary  
2 to question Mr. Schuster.

3 MR. WILT: Only to the extent that he can  
4 validate the documents. The purpose is to get the information  
5 and then to cross examine others.

6 JUDGE BLOCH: Mr. Silberg, is there any problem  
7 in having these documents at the hearing in a form where you  
8 can stipulate to their accuracy that they are the correct  
9 documents?

10 MR. SILBERG: No, we certainly would not need  
11 Mr. Schuster to do that. But there is a more basic question  
12 as to whether it's appropriate to issue a subpoena to have  
13 those documents made available at the hearing, and I can  
14 discuss that if you'd like.

15 JUDGE BLOCH: I was asking a simpler question.  
16 Is there any problem having the documents available at the  
17 hearing?

18 MR. SILBERG: There's no such physical problem, no.

19 JUDGE BLOCH: What is the problem?

20 MR. SILBERG: I think there is a significant  
21 legal issue, however.

22 JUDGE BLOCH: What is it?

23 MR. SILBERG: It seems to me that what Mr. Wilt  
24 is doing is, in essence, late discovery. He does not want  
25 the documents for the purpose of stipulating as to their

1 authenticity; he wants to use them and to read them for the  
2 first time so he can determine whether there ought to be  
3 some cross examination based on those documents. But those  
4 documents were never requested on discovery. We had many  
5 rounds of discovery on QA issues. Mr. Wilt asked for a host  
6 of QA documents by name, most recently in his last discovery  
7 request last December where he identified perhaps 20  
8 categories of documents very specifically. These documents  
9 were not listed in that category.

10 JUDGE BLOCH: Mr. Silberg, could you refresh  
11 my memory as to what's in the documents and the period in  
12 which they were filed?

13 MR. SILBERG: Let me ask Harry Glasspiegel who  
14 is in my office to address that. I don't think I can off  
15 the top of my head.

16 MR. GLASSPIEGEL: The contractor performance  
17 reports have been used intermittently on the project for the  
18 purpose of really construction management of the project.

19 From time to time, there have been sections,  
20 very brief sections, that have contained information produced  
21 by the quality engineers. However, the use of that informa-  
22 tion has not been for the purpose of QA overview, as the  
23 Board discussed it in its most recent order. And you will  
24 find, in reviewing applicant's written testimony, that indeed,  
25 we do not make reference to the CPRs because, in fact, we

1 don't rely on CPRs as part of the QA overview program.

2 MR. SILBERG: These are really construction  
3 management documents.

4 JUDGE BLOCH: Mr. Wilt, you have two hurdles to  
5 jump. One is that this is, in essence, a request for  
6 discovery of documents you haven't seen yet. And the second  
7 is that these documents apparently are not directly relevant  
8 to what we're going to be litigating. What do you say about  
9 that?

10 MR. WILT: Well, as to the first question, I  
11 don't think that's an accurate characterization of the  
12 request. The request for subpoena is to produce evidence  
13 at the time of the hearing, and I think one is permitted to  
14 use evidence that is produced at the time of the hearing for  
15 purposes of cross examination.

16 JUDGE BLOCH: That's true. How do you know it's  
17 evidence if you haven't seen it yet?

18 MR. WILT: Because the Board in its January 28th  
19 order indicated that it was interested in reviewing these  
20 reports in connection with the four issues that the Board  
21 said were issues of fact.

22 In other words, the Board raised the issue as  
23 to -- if I could quote it -- what the Board's order of  
24 January 28th, 1983. One issue of the non-conformance trend  
25 analysis is to go over the program, including the use of

1 in-depth review and efficient follow-up to cure problems  
2 identified in AROQP's and the CPRs.

3 In the first instance,we're interested in the  
4 application of these systems. In addition, we're interested  
5 in the use of these systems to control the quality of work  
6 of other contractors. It's upon this basis of the Board's  
7 order that I have requested the documents, and, of course,  
8 this Board's order was issued after discovery closed.

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1 JUDGE BLOCH: Have you anything further to say  
2 about the importance of the CPRs other than we specifically  
3 stated we were interested in them?

4 MR. WILT: No, sir.

5 JUDGE BLOCH: Ms. Hiatt, would you like to make a  
6 brief remark just on the CPRs?

7 MS. HIATT: Yes. I would basically affirm what  
8 Mr. Wilt has said. The fact that the Board has indicated  
9 its interest in these documents is certainly sufficient to  
10 grant any subpoena or a request that they be brought to the  
11 hearing. I am sure the Board would not want to decide this  
12 on the basis of an inadequate and incomplete record. I  
13 think it is appropriate that these documents be produced.

14 JUDGE BLOCH: Mr. Silberg, how do you address the  
15 fact that we actually mention these documents in our  
16 summary disposition?

17 MR. SILBERG: I think the basis for that was  
18 probably a reference. But I think you were quoting a  
19 paragraph from the inspection report 81-19, which mentioned  
20 the CPRs in connection with that inspector's look at the  
21 overview program.

22 But the fact remains that they are not QA  
23 documents. They are not used for that. The staff testimony  
24 does not mention them or rely on them, and we don't mention  
25 them or rely on them. They are construction management

1 documents, and the fact that an inspector happened to  
2 mention them in his report I don't think would change the  
3 relevance.

4 The question of whether the Board will have an  
5 incomplete and inadequate record is really I think a  
6 problem that the applicants have to face. The burden is on  
7 our shoulders to carry the day on this issue, and I think  
8 we are entitled to choose which witnesses we put on. We are  
9 certainly entitled to form our case any way we want to form  
10 it.

11 To the extent that Mr. Wilt wanted to see these  
12 records, perhaps he could have argued the relevance, saying  
13 if we had made that an objection earlier, which we probably  
14 wouldn't have, we didn't object to relevancy on any of the  
15 QA documents that they have asked to see. They were  
16 identified in orders which were available prior to the  
17 close of discovery, and there was no reason why he could  
18 not have asked for them earlier.

19 It seems me what we are getting into now is  
20 really a question of late discovery. I think, as we will  
21 mention in respect to the item that was not on the Board's  
22 agenda that Dan asked to put there, that we were talking  
23 about a very significant problem in preparing for this  
24 hearing, given the quantities of documents which the  
25 intervenors have already obtained from their review of our

1 file. And we have opened our file totally to them.

2 JUDGE BLOCH: How thick a stack of documents are  
3 we talking about?

4 MR. GLASSPIEGEL: The CPRs themselves as  
5 construction management documents, are quite voluminous.  
6 However, the portions that have been included  
7 intermittently, they have been essentially written by the  
8 quality engineers, are not lengthy. And as Mr. Silberg  
9 mentioned before, applicants really do not have a problem  
10 in terms of burdensomeness in bringing those documents to  
11 the hearing.

12 JUDGE BLOCH: Now, the rest of the CPRs which  
13 were not done by the quality engineers must at times deal  
14 with quality-of-construction issues even though they are  
15 not done by the quality engineers. Isn't that a fair guess?

16 MR. GLASSPIEGEL: No. These are basically  
17 documents that are used to monitor the cost impacts of the  
18 construction on engineering programs, and they're not part  
19 of the QA overview program.

20 JUDGE BLOCH: Is there any discussion on those  
21 documents of how to consider the cost impacts of QA  
22 suggestions?

23 MR. SILBERG: The portions that are written  
24 essentially by the quality engineers, my recollection is  
25 they do not discuss cost and schedule per se. But the use

1 of the discussions by the quality engineers was essentially  
2 to provide construction management with the sense of the  
3 direction of the QA program from a costing perspective.

4 JUDGE BLOCH: Mr. Cutchin, how do you feel about  
5 this issue?

6 MR. CUTCHIN: The staff normally stays out of  
7 these fights between other parties and what I view as well  
8 to be a very late-filed discovery request. I presently have  
9 no knowledge of the content of any of these documents. I do  
10 agree with Mr. Silberg that they were not referred to by  
11 the staff in its testimony that I can tell.

12 JUDGE BLOCH: Mr. Glasspiegel, given the nature  
13 of these materials and the Board's obligation to have a  
14 complete record, I think I would prefer to defer ruling on  
15 whether the applicant should produce these documents until  
16 we have a chance to see them, possibly at the very  
17 beginning of our hearing.

18 It sounds to me like it will be feasible for me  
19 to look at them. If they are needed for a complete record,  
20 I would know that very quickly.

21 Mr. Silberg, Mr. Glasspiegel, does that pose any  
22 serious problems?

23 MR. SILBERG: I think it's really important that  
24 you would look at the entire document. And Harry, when I  
25 asked him what the total stack looked like, he raised his

1 hands about 2 feet apart. We can certainly copy those which  
2 we have. It may be a large stack. I don't want to mislead  
3 the Board by thinking that it's one or two pages.

4 JUDGE BLOCH: I think what I would like to review  
5 at the beginning are the structured samples consisting of  
6 the first three for 1982 plus the excerpts of all of the  
7 QA/QC portions. Does that abbreviate the stack?

8 MR. SILBERG: Yes, we can. That would be  
9 manageable.

10 JUDGE BLOCH: That's a structured nonrandom  
11 sample.

12 MR. SILBERG: So be it.

13 JUDGE BLOCH: Mr. Wilt, what is the next aspect  
14 of your subpoena request?

15 MR. WILT: The next aspect is a subpoena directed  
16 to Mr. Keppler, who is the regional administrator of Region  
17 III of the NRC, to attend the hearing. The basis for that  
18 is again on my amended subpoena request I attached a copy  
19 of a letter dated September 27, 1982, from Mr. Keppler --  
20 signed by Mr. Keppler -- but it wasn't --

21 (Discussion off the record.)

22 JUDGE BLOCH: Please continue.

23 MR. WILT: I would like to quote some language  
24 from that letter. In that letter he states, "We are  
25 concerned that even though your continuing assessment of

1 the electrical contractor's performance shows degradation  
2 of the quality assurance program, you fail to investigate  
3 in a prompt manner the elements contributing to the poor  
4 performance and require adequate corrective action to  
5 upgrade the program. Because of the several examples of  
6 noncompliance which we identified, we seriously considered  
7 whether these items collectively represented your  
8 contractor's quality assurance program."

9 The reason I would like a subpoena issued to Mr.  
10 Keppler is to inquire as to what he meant by these  
11 statements, which I think are right on issue as to the four  
12 issues that have been identified by the Board as issues in  
13 this proceeding.

14 JUDGE BLOCH: Mr. Cutchin, I take it you will  
15 have some people there with direct knowledge of this entire  
16 controversy. Is that correct or incorrect?

17 MR. CUTCHIN: That is correct, Mr. Chairman. And  
18 as I made known to Mr. Wilt, I think first of all he has  
19 fallen far short of making the showing that is necessary to  
20 subpoena a particular named NRC employee, because he has  
21 made neither a claim nor an attempt at showing that Mr.  
22 Keppler has direct personal knowledge of a material fact  
23 not known to the witnesses that we are making available.

24 And as I indicated, at present -- and this can  
25 be seen from our testimony -- we are planning to make

1 available Mr. Conklin and Mr. Williams, both of whom have  
2 first-hand knowledge of matters of which Mr. Keppler only  
3 has second-hand knowledge.

4 And as well, we are making available two other  
5 individuals: Mr. Maxwell -- and the other name slips me at  
6 the moment. But the fourth individual -- and all four of  
7 those gentlemen have first-hand knowledge of these matters  
8 -- so I think he has fallen far short of being able to make  
9 a showing of the special circumstances that are required to  
10 subpoena particular named staff witnesses.

11 I would only add, as the Board well knows, Mr.  
12 Keppler, as the regional administrator, is a very busy  
13 individual.

14 JUDGE BLOCH: Is there any reason to believe that  
15 the staff witnesses have views that are different from Mr.  
16 Keppler's on this issue?

17 MR. CUTCHIN: Not these individual members, no,  
18 sir. And I think -- there has been a practice in the recent  
19 past at least that there are staff persons that have  
20 differing views that they wish to make known to a board,  
21 those members are given an opportunity to do so. I am  
22 unaware that that is the case in this particular instance.

23 JUDGE BLOCH: Thank you, Mr. Cutchin.

24 Mr. Wilt, Mr. Cutchin briefly has said that Mr.  
25 Keppler doesn't know anything about these issues that the

1 other witnesses don't know and in fact they are his eyes  
2 and ears, so why should we bother to ask Mr. Keppler to  
3 come?

4 MR. WILT: Well, based on Mr. Cutchin's  
5 representation on the record, I would withdraw the request.

6 JUDGE BLOCH: Is there any other further request  
7 for us to consider now?

8 MR. WILT: No, sir.

9 JUDGE BLOCH: The next item for the agenda is the  
10 one that was added by Mr. Wilt, having to do with a  
11 Saturday to review documents.

12 Mr. Wilt, would you like to address that first?

13 MR. WILT: Yes, Your Honor.

14 Briefly, I would like to go into the background  
15 of what has transpired on this matter. Issue 3 was not  
16 finally presented in a final --

17 (Discussion off the record.)

18 JUDGE BLOCH: Please continue.

19 MR. WILT: Okay. Thank you.

20 Basically, what I wanted to do was -- well, what  
21 I guess I started saying was that the issue finally cleared  
22 up on January 28 of this year. We then --

23 JUDGE BLOCH: What issue was that?

24 MR. WILT: Pardon me?

25 JUDGE BLOCH: What issue was cleared up?

1 MR. WILT: The quality assurance issue. And that  
2 was the January 28 -- that was the Order from the Board  
3 on reconsideration that finally indicated that the four  
4 issues identified by the Board would be litigated on  
5 quality assurance.

6 At that point in time, I attempted to secure  
7 volunteers to go out to the Perry plant to review documents  
8 as to quality assurance on these four issues. Through Ms.  
9 Hiatt, we negotiated with Mr. Silberg as to times when we  
10 could go out to the Perry plant to review documents in such  
11 a manner to be less burdensome on the facility as possible.

12 But we went back and forth, I think, for a  
13 while. At first we were supposed to go out on Sunday and  
14 then -- or, no, I am sorry, I think first we were going to  
15 go out on Saturday, and then the plant told Ms. Hiatt, no,  
16 make it Sunday.

17 I had to reschedule my people. And then we went  
18 back to a Saturday. The Easter holidays came up, and no one  
19 was going to be there during that period of time. And then  
20 Mr. Silberg only wanted two people to go through the plant,  
21 and this was eventually enlarged to three, again through  
22 negotiations.

23 And then I had a discussion with Mr. Silberg  
24 last week in which I indicated that Ms. Hiatt told me she  
25 wanted to go out there one more Saturday, which would be

1 this Saturday. She told me again it would be about a half a  
2 day with her volunteers to review the final documents that  
3 she wanted to review with her volunteers.

4 JUDGE BLOCH: Can you tell me what these final  
5 documents are that are going to be looked at that have not  
6 been looked at yet?

7 MR. WILF: I would have to defer to Ms. Hiatt, as  
8 she is the person who is spearheading the volunteer  
9 campaign.

10 MS. HIATT: These are audit reports, primarily.  
11 And the applicant's testimony does refer to audit reports  
12 and stresses the importance of them and the quality  
13 assurance program, specifically the quality assurance  
14 aspect of applicant's control of contractors. So I do  
15 believe they are relevant.

16 JUDGE BLOCH: Are all the other aspects of this  
17 work done in terms of how many people are going to be there  
18 except for this one additional Saturday morning?

19 MS. HIATT: Yes. We were prepared to go Saturday,  
20 May 7, because we had only a few more documents to look at  
21 really and request copies of, and we thought we could  
22 probably finish it in one morning. And we did have people  
23 who were ready to go.

24 JUDGE BLOCH: Mr. Silberg.

25 MR. SILBERG: Let me go back and give you some

1 history.

2 JUDGE BLOCH: If it's relevant but --

3 MR. SILBERG: It is. December 1981 was the first  
4 request for interrogatories by Sunflower, the first  
5 interrogatories by Sunflower to us. They did not request to  
6 see any documents. We answered those in February of 1982.

7 On September 30, 1982, Sunflower filed their  
8 second set of interrogatories to applicants, and we  
9 answered that on October 29, 1982, and said that -- they  
10 had asked to see many, many categories of documents I  
11 referred to before. We said that those documents are all  
12 available for inspection and all you have to do is call us  
13 up and we'll make arrangements for you to come in and look  
14 at them.

15 At that point in time, it is also worth bearing  
16 in mind that the Board had already set a February 15 date  
17 for hearing. One would have thought that based on that,  
18 some discovery would have taken place. And indeed Ms. Hiatt  
19 reviewed some QA documents on the 17th or the 18th of  
20 November and requested copies of those documents. And we  
21 made them available to them.

22 We heard nothing more from the intervenors on  
23 discovery for QA documents until the end of March, March  
24 22, at which time we received a letter from Ms. Hiatt  
25 requesting or confirming an appointment to visit and

1 inspect the QA documents on April 9, 1983.

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1                   A series of visits has taken place since that time.  
2                   The original request, by the way, called for 12 people to  
3                   come in and look at the documents. And as we explained to  
4                   Ms. Hiatt, and as was later settled by negotiation, these  
5                   documents are basically documents that are in a vault and  
6                   there physically is not enough room for 12 people to look  
7                   at them. And it is impractical to attempt to maintain con-  
8                   trol over these documents with that many people looking at  
9                   them for a considerable length of time, and we agreed on a  
10                  figure of three people to review the documents on about the  
11                  29th April, which was, I think, the Friday preceding  
12                  Ms. Hiatt's visit to see the documents I indicated to her,  
13                  that the inspection for that Saturday could certainly go  
14                  forward, but that in looking at the testimony to date of  
15                  May 2nd, which was -- let me see if it was -- that I had  
16                  considerable difficulty if this dicsovery was continued, and  
17                  we're talking about discovery which has been underway for  
18                  almost two years.

19                   I was very concerned that if any further discovery  
20                  visits were made that we would not be able adequately to  
21                  prepare for the hearing.

22                   I also asked Ms. Hiatt to let me know, after her  
23                  April 30 visit, if she believed it necessary to visit the  
24                  site again, that she was to call me and we would discuss it.  
25                  But my feelings prior to that April 30 visit was a very

1 one that we just were being adversely affected in preparing  
2 for the hearing by this continued document copying and  
3 inspection.

4 JUDGE BLOCH: Mr. Silberg, you're telling me at  
5 this time that if Ms. Hiatt were to have four hours, only  
6 four hours , with two additional volunteers, that this would  
7 seriously interfere with your preparation for the hearing?

8 MR. SILBERG: Yes, I'll get to that in a minute.

9 JUDGE BLOCH: Please. I think that's the only  
10 thing I'm interested in at this point.

11 MR. SILBERG: Ms. Hiatt did not call me until last  
12 Friday, when she called to set up a visit, and I explained  
13 to her, again, that it was adversely affecti-g her prepara-  
14 tion.

15 So far, on their various cassettes, they have  
16 copied and we have made available to them some 3500 pages of  
17 QA documents representing over 1000 separate documents.  
18 This, as you can appreciate, is an enormous quantity of paper  
19 for us, not only to review but even to collate. We have to  
20 be prepared at the hearing to deal with any piece of paper  
21 which the Intervenors may happen to pick out of that stack,  
22 to organize those documents to find what went before and what  
23 went after, the closeouts, the inspection reports that go  
24 along with the audit reports. To cross reference them is  
25 an enormous task. We're devoting considerable resources to

1 that right now, and it's problematic whether we will, given  
2 the amount of paper that's already on the table, be able to  
3 prepare as I would like to see prepared in order to go forward  
4 with the hearing.

5 Of course, we feel very strongly that we must stick  
6 with the schedule, and we think we must go forward. So, we  
7 are on the horns of a very difficult dilemma. We already  
8 have an enormous quantity of documents of the Intervenors'  
9 choosing that we have to review and we have our own case that  
10 we have to be preparing for.

11 JUDGE BLOCH: You still haven't told me why these  
12 four hours with this set of documents is going to bother you,  
13 except perhaps what, that it might generate additional  
14 need, for you should be able to respond to what they now say.

15 MR. SILBERG: No, because of what will happen, as  
16 has happened on previous occasions, is that they will ask to  
17 copy documents; and then, having copied the documents, they  
18 will have to be prepared to deal with every document that  
19 they have copied. And it's quite easy to run up a list of  
20 500 or 1000 pages of copying, as they have done on other  
21 visits to the plant.

22 And if we have to prepare to review those additional  
23 documents in addition to the 3500 pages which we have already  
24 provided them, that adversely affects our ability to prepare  
25 to respond to those documents on cross-examination, having

1 had so much time to come in and look at the documents and  
2 having had free rein virtually of all of our quality assurance  
3 documents up to this point in time.

4 As soon as appropriate, there will be some cutoff  
5 on discovery it seems to me, that after testimony has been  
6 filed, that certainly is more than a reasonable cutoff time.  
7 Testimony was filed on May 2nd. That ought to be the time  
8 when people's cases are more or less organized. For us to  
9 prepared with continuing discovery after that fact I think  
10 puts us with a very unfair burden.

11 JUDGE BLOCH: Mr. Silberg, in a less voluminous  
12 case, a case where the documents were shorter, we would not  
13 be having this problem, would we, because Ms. Hiatt would  
14 have all the relevant documents.

15 MR. SILBERG: And she probably would have had them  
16 many months ago, and she has had many months to come in and  
17 look at them. And to wait until the last minute, having  
18 given up the opportunity, at least from November to March, to  
19 spend any time looking at QA documents -- I really don't think  
20 it's appropriate for them to insist to come in and continue  
21 to look at our documents after the direct case has already  
22 been put to bed.

23 JUDGE BLOCH: Ms. Hiatt, have you previously  
24 reviewed audit reports?

25 MS. HIATT: We have reviewed some of them on our

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1 previous visits to the site, beginning with April 9th. I  
2 might provide some amplification on the history of this  
3 problem.

4 It is true that we did not look at documents very  
5 much after the November 17th date, and there's a very good  
6 reason for that. First, you must realize that the interroga-  
7 tories and request for production which was filed on  
8 September 30th -- Applicant did not answer them until  
9 October 29th, on the same day which the NRC Staff filed its  
10 Motion for Summary Disposition of the issue.

11 Since Intervenors have limited resources, time, and  
12 personnel, we really cannot afford to be expanding a great  
13 deal of effort on an issue that may or may not arise at the  
14 hearing, especially when there are other issues and other  
15 motions for summary disposition which need to be attended to.

16 After the Board came out with its Order and Summary  
17 Disposition, Applicants quickly filed a motion for reconsiera-  
18 tion, still leaving that issue up in the air as to its status  
19 until the end of January, at which time Mr. Wilt said he  
20 attempted to get together a group of poeple to look at these  
21 documents.

22 The documents we have looked at are a tiny fraction  
23 of the enormous quantities of QA documents at the site. We  
24 certainly have not seen all of them.

25 JUDGE BLOCH: Might it be adequate for your

1 purposes to take a sample of these audit reports?

2 MS. HIATT: These other documents?

3 JUDGE BLOCH: You want to look at more audit  
4 reports, and part of th problem Mr. Silberg is pointing out  
5 to us is that for every one you get a copy of, he may have  
6 to respond. And it may me that for whatever purpose you need  
7 these audit reports that you can characterize them with a  
8 sample, rather than looking at all of them.

9 Have you thought about looking at a sample which  
10 would reduce Mr. Silberg's need to resond?

11 MR. SILBERG: Before that, Mr. Chairman, let me  
12 just point out that virtually all the documents that  
13 Ms. Hiatt had looked at are audit reports. On April 9th,  
14 she got 765 pages of construction audit reports; on April 16th,  
15 she got 617 pages of audit reports; on April 13th, she got  
16 just under 1000 pages of audit reports; and on April 30, she  
17 got over 1000 pages of audit reports.

18 JUDGE BLOCH: How are these audit reports different  
19 from the other audit reports? First, Mr. Silberg.

20 MR. SILBERG: I don't know.

21 JUDGE BLOCH: Ms. Hiatt.

22 MS. HIATT: Well, they are dealing with different  
23 contractors, different periods of time. And the microfilm  
24 that that I left off on on April 30ths, I believe they're  
25 getting into the period of 1981, which was the time period

1 that the Comstock problem was in question. So, I think they  
2 would certainly be relevant to the hearing coming up now.

3 JUDGE BLOCH: Would you be willing to limit your-  
4 self just to audit reports of Comstock?

5 MS. HIATT: We could. But at the same time, I  
6 believe the Board has raised the question of whether the  
7 problems with Comstock have actually been extended to other  
8 contractor as well?

9 JUDGE BLOCH: But you say that you've looked at  
10 an awful lot of other audit reports that would give you  
11 some opportunity to argue that that is the case?

12 MS. HIATT: Well, yes, actually we have really  
13 looked at a sampling -- well, we've looked at all the audit  
14 reports, but the copies we've requested are, in essence, the  
15 sampling, that random sampling, because they are the audits  
16 which we feel are important. But we feel that all of these  
17 are necessary to provide an accurate picture of the quality  
18 assurance picture.

19 MR. SILBERG: I'm just hearing that Ms. Hiatt has  
20 already looked at all the audit reports, and she has certain-  
21 ly looked at a lot of Comstock ones.

22 MS. HIATT: I did not say we have looked at all of  
23 them. I said we are looking at all the audit reports, and  
24 the copies we have requested are not all the audit reports  
25 but only a fraction of them.

1 JUDGE BLOCH: If we talk only about the Comstock  
2 audit reports, it seems to me that that must be an area,  
3 Mr. Silberg, in which you are already prepared to respond or  
4 will be prepared to respond in quite some detail anyway;  
5 isn't that true?

6 MR. SILBERG: But you've directed that we not look  
7 at specific hardware problems, and lots of these audit reports  
8 cover specific hardware problems. I would be very surprised  
9 if we are looking at preparing answers to each inspection  
10 finding. I really don't think that is the Board's view of  
11 the scope of this hearing. I think, in a sense, that's what  
12 we're going to be dealing with with many of these reports.

13 JUDGE BLOCH: At the outset, we would be looking  
14 at a narrower issue.

15 MR. SILBERG: That's right, and I don't think these  
16 audit reports are at all necessary to support that narrow  
17 issue.

18 MR. CUTCHIN: Mr. Chairman, could I get a word in  
19 edgewise?

20 JUDGE BLOCH: Please. I was trying to clarify  
21 things before that. But get in a word edgewise.

22 MR. CUTCHIN: At your pleasure, sir.

23 JUDGE BLOCH: If you prefer to talk now, maybe  
24 you can help.

25 MR. CUTCHIN: The Staff has come to have a similar

1 problem, in that the Staff has to be prepared to address  
2 anything that Intervenor raises on cross-examination as well.  
3 And my understanding, based on my reading of  
4 the Board's orders that the first step in the process was to  
5 see if there is evidence of a loss of control of the electri-  
6 cal contractors' activities by the Applicants, and then only  
7 if there were evidence of that, with a look see broadened,  
8 to see whether there were loss of control of other con-  
9 tractors. In spite of the fact that the Board has, indeed  
10 said in some of its later orders that we should be prepared  
11 to go where the evidence leads, I think it is obvious that  
12 if we get into a situation in this first session of the  
13 hearing where the Board believes there is evidence that  
14 makes necessary its inquiry deeper into the details, there  
15 is no way we are going to do that at this first session.

16 So, I think for the Intervenor to have passed up  
17 an opportunity to get everything it wants with the numerous  
18 opportunities that it has had to allow them to come in, to  
19 continue to look as we're going into to the last two weeks  
20 of the hearing, is burdensome not only for the Applicant,  
21 but for the Staff as well. And I think discovery was sup-  
22 posed to have been cut off, if I recollect, on all of these  
23 issues back in December or January sometime, and it has been  
24 extended well beyond that in these QA matters. And so I  
25 think it is grossly unfair to continue to allow it to go on

1 forever.

2 JUDGE BLOCH: If it were limited only to the  
3 Comstock audit reports, how would that burden the Staff?

4 MR. CUTCHIN: Well, again, it's getting likely into  
5 details, Mr. Chairman. I think the Board has said -- or I  
6 understand it to have said that it did not broaden by one  
7 iota the issues that were admitted to hearing. And if that  
8 be the case, then the Intervenor was put on notice long ago  
9 as to what areas it had to cover. And to allow it to go on  
10 forever in discovery, right up until the day of the hearing,  
11 is unfair any way you slice it, and I don't think it's up to  
12 us to defend why it would not be burdensome. I think the  
13 duty is on the Intervenors to support why it is they have  
14 been unable to prepare their case up until now, with the  
15 many opportunities they have had, well beyond the original  
16 deadlines, to complete their discovery.

17 JUDGE BLOCH: Mr. Silberg, do you have a very brief  
18 concluding remark?

19 MR. SILBERG: Yes.

20 I just found a number -- in fact, it's in our  
21 testimony -- the number of the audits in the Comstock area  
22 approaches 300, so we're not talking about a small number.  
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1 JUDGE BLOCH: Ms. Hiatt, first you said you  
2 have looked at audits in the past. What period of Comstock  
3 audits would we be talking about? What period of time that  
4 you have not looked at yet?

5 MS. HIATT: I believe that involves early ones  
6 from, I'd say, around 1976 to 1977 through about 1980, maybe  
7 1979. I'm not quite sure.

8 JUDGE BLOCH: You have looked at the ones since  
9 then?

10 MS. HIATT: Again, I would say starting in  
11 about 1982, sometime to the present, we have seen those.

12 JUDGE BLOCH: You have seen those?

13 MS. HIATT: From 1980 to 1981 we have not seen.  
14 And that was the time period, if you look at the NRC's  
15 inspection reports and the testimony that was filed, that  
16 the alleged breakdown in the Comstock program was beginning  
17 to occur.

18 JUDGE BLOCH: Okay, the Board will take a --  
19 Mr. Wilt, do you have a brief concluding remark?

20 MR. WILT: No, Your Honor.

21 JUDGE BLOCH: The Board will take a brief  
22 decisional recess. We have to be back online in five minutes.

23 (A short recess was taken.)

24 JUDGE BLOCH: The Board is prepared to rule.  
25 We have considered the history of discovery and the problem

1 that both sides have had and now have. We also considered  
2 the possible relevance of additional documents to Sunflower's  
3 case on the quality assurance issue.

4 Having done that, we have concluded that OCRE  
5 should have access to Comstock documents consisting of audit  
6 reports in the 1980 through 1981 time period. These are  
7 relatively recent audit reports, and they have relevance to  
8 the admitted contention.

9 We need not rule at this time whether any of  
10 those documents is admissible. It may well be that a  
11 predicate would have to be laid before we went to that level  
12 of detail.

13 Mr. Silberg, I take it you will be prepared to  
14 grant access to those particular documents this coming  
15 Saturday?

16 MR. SILBERG: Yes, sir.

17 JUDGE BLOCH: Are there any other matters  
18 that must be considered at this time?

19 MR. SILBERG: One clarifying matter. Going way  
20 back to the polymer question, my recollection -- and I  
21 don't have the order in front of me -- was there was another  
22 affidavit requested by the Board having to do, I believe, with  
23 the dose rate and the high dose rate area.

24 My assumption from your discussion is that you  
25 have not changed the requirement for that affidavit. Is  
that correct?

1 JUDGE BLOCH: We didn't mention that. I don't  
2 think you mentioned it in your motion for clarification either.

3 MR. SILBERG: That's correct, and I just want  
4 to make sure that --

5 JUDGE BLOCH: The affidavit we addressed was  
6 only the procedural affidavit on times of filing.

7 MR. SILBERG: We're in the process of generating  
8 additional information, and we will provide answers on both  
9 of those affidavits.

10 JUDGE BLOCH: We appreciate that. We did, I  
11 think, request a very short additional affidavit during this  
12 call as well.

13 MR. SILBERG: That's the one I was thinking of,  
14 yes.

15 JUDGE BLOCH: Are there any other matters that  
16 must be considered today?

17 MR. SILBERG: There's just one other matter.  
18 Parties are under an obligation by the Board's earlier order  
19 to provide by May 18 an identification of those documents  
20 that they would use as a significant portion of their cross  
21 examination.

22 I have already discussed with Mr. Wilt the  
23 mechanics of getting that, rather than putting it in the  
24 mail. If we wait for mail delivery, we probably won't get  
25 it before the beginning of the hearing. And Mr. Wilt and I

1 have agreed that we will make some kind of hand delivery  
2 either the afternoon of the 18th or, if that's not possible,  
3 the first thing the morning of the next day. I would, of  
4 course, make that filing available to the staff when we get  
5 it back here. But as long as we have everyone on the phone,  
6 I just wanted to ask if Ms. Hiatt was going to have any  
7 others in addition to Mr. Wilt's lead cross examination,  
8 that she also make those available for hand delivery on the  
9 18th, or no later than the first thing on the 19th.

10 MS. HIATT: Yes, I have identified a few documents  
11 I'll be using. Most of these are NRC documents and are  
12 readily available.

13 JUDGE BLOCH: But you will be able to do it  
14 within the time schedule that Mr. Wilt and applicant have  
15 agreed to?

16 MS. HIATT: I believe we're talking about merely  
17 identification of the documents, if they are readily  
18 available. Is that correct?

19 MR. SILBERG: No, no. It's identification of them  
20 in any case.

21 MS. HIATT: Right, and you want the identification  
22 to be available to you on May 18th or early May 19th.

23 MR. SILBERG: That's right, rather than wait  
24 for the mail.

25 MS. HIATT: That's right. They will be available.

1 MR. SILBERG: If you could just call me, we'll  
2 work it out with someone either here or at the Perry plant,  
3 and we'll arrange for hand pickup.

4 MS. HIATT: Okay.

5 JUDGE BLOCH: Are there any other matters that  
6 must be handled today?

7 MR. HIATT: There are a couple of minor matters  
8 which might be better addressed now than at the hearing.  
9 First, some persons have expressed an interest in video-  
10 taping the hearing scheduled to begin May 23rd, and I  
11 wondered if that might be a problem with the Board or any  
12 of the parties.

13 JUDGE BLOCH: These hearings are public, and  
14 the only problem with videotapes would be if the lighting  
15 interfered with the procedures for the Board. If the press  
16 or any other person who is taking tapes or videotapes would  
17 interfere with the proceeding, we would object and we would  
18 stop the matter. But if it can be done without interrupting  
19 us, there's no problem.

20 MS. HIATT: Okay. And another matter concerns  
21 the limited appearance requests which have been filed by  
22 quite a few persons. I notice that some of these are filed  
23 by persons representing the unions which work at the Perry  
24 plant, and since many of these people may have direct, personal  
25 knowledge of the issue at hand to be litigated at that hearing,

1 I wonder if it might be appropriate for the Board to question  
2 such persons. I realize that limited appearances are not  
3 witnesses and not subject to cross examination, but it would  
4 seem appropriate that if these persons do have direct  
5 personal knowledge and they intend to make some sort of  
6 testimony to that effect, I presume that the Board perhaps  
7 considers questioning them, whether they would like to  
8 present their statement as sworn testimony to be subject to  
9 cross examination by the parties.

10 JUDGE BLOCH: We will attempt to use limited  
11 appearance statements in the matter that's appropriate,  
12 depending on what's being said. I have personally in the  
13 past, during the Big Rock proceeding, attempted to turn a  
14 limited appearer into a witness and that did not work out  
15 well because the limited appearer ultimately decided that he  
16 didn't want to continue with voir dire.

17 We would consider the importance of any informa-  
18 tion that comes to us during limited appearance statements,  
19 and will attempt to make appropriate use of that information.

20 Ms. Hiatt, is there further question that you have?

21 MS. HIATT: No, there is not.

22 JUDGE BLOCH: Are there any other matters that  
23 we must consider? There being none, I would like to thank  
24 the parties for their participation. I think we have  
25 proceeded efficiently and that we had the cooperation of all

1 the parties. This hearing is adjourned.

2 (Whereupon, at 12:20 p.m., the prehearing  
3 conference in the above-entitled matter was concluded.)

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CERTIFICATE OF PROCEEDINGS

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

In the matter of: Cleveland Electric Illuminating

Date of Proceeding: 9 May 1983

Place of Proceeding: Bethesda, Md.

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

Ann Riley

Official Reporter - Typed



Official Reporter - Signature