

# ORIGINAL

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the matter of:

TEXAS UTILITIES ELECTRIC COMPANY, et al

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

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

-X

JUDGE WALTER JORDAN,  
Member, Atomic Safety and Licensing Board

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P R O C E E D I N G S

1

2

THE OPERATOR: Ms. Williams?

3

MS. WILLIAMS: Yes.

4

THE OPERATOR: Mr. Hicks?

5

MR. HICKS: Yes.

6

THE OPERATOR: Mr. Reynolds?

7

MR. REYNOLDS: Yes.

8

THE OPERATOR: Dr. Jordan's line is still busy.

9

Mr. Treby?

10

MR. TREBY: Yes. And I have Geary Mizuno with me.

11

THE OPERATOR: Ms. Ellis?

12

MS. ELLIS: Yes.

13

THE OPERATOR: Ann Riley?

14

MS. RILEY: Yes.

15

THE OPERATOR: All right. Thank you. We will  
16 try the others. Dr. Jordan, I'll try his line now.

17

JUDGE BLOCH: Ann, could you make a notation of  
18 the roll, based on what we have just done?

19

MS. RILEY: Yes, I can.

20

JUDGE BLOCH: Thank you.

21

MR. REYNOLDS: Also, Homer Schmidt and Bill Horin.

22

And also Dr. McCollom.

23

JUDGE BLOCH: We are waiting for Walter Jordan  
24 for later.

25



1 (Pause.)

2 JUDGE BLOCH: Good afternoon. This is Peter Bloch,  
3 Chairman of the Licensing Board for Commanche Peak Steam  
4 Electric Station, Units 1 and 2.

5 The purpose of this afternoon's conference is  
6 to discuss scheduling matters related to the upcoming March  
7 12 through March 16 hearing.

8 Mr. Reynolds, would you like to speak for the  
9 Applicant first?

10 MR. REYNOLDS: Yes, sir.

11 Applicant believes that the hearings in March  
12 should be devoted to litigation on the subjects we had last  
13 week. That is, welding and the Cygna Report. We propose that  
14 the welding issue be addressed first and at the close of  
15 the welding issue that Cygna be taken up.

16 JUDGE BLOCH: Are there any disagreements about  
17 this, among the other parties, Mr. Reynolds?

18 MR. REYNOLDS: No, I don't believe so. I didn't  
19 realize Ms. Williams was going to be on the call,  
20 so she may have some perspective on it.

21 JUDGE BLOCH: Do any parties have any words of  
22 clarification or disagreements?

23 MS. ELLIS: Yes, Mr. Chairman. This is Ms. Ellis.  
24 We would like to move for a postponement of two weeks, until  
25 March the 26th, for the hearings to continue. We are currently

1 in the process -- and I just spoke with Billie Garde again  
2 right before the conference call again, to see what the status  
3 was on this. I think we have everybody, with all of the  
4 different organizations in Washington, trying to find an  
5 attorney for us to represent our witnesses.

6 At this point in time, looking back over the  
7 events of last week, I don't feel that I am adequate to  
8 represent our witnesses when they are under attack on the  
9 stand. And I think, in all fairness to them, and to me, I  
10 think we need to have an attorney with them.

11 I believe that we will be able to obtain an  
12 attorney through some of the people in Washington. However,  
13 it appears that most of them that might be able and willing  
14 to do this, at this point, are involved in hearings or are  
15 otherwise tied up for the next couple of weeks or so. I  
16 think that we will have a better outlook if we have a couple  
17 of weeks.

18 JUDGE BLOCH: That's on both issues, or just on  
19 the welding?

20 MS. ELLIS: On the welding issue. On the Cygna  
21 issue there is no problem, as far as that goes, with going  
22 forward, if Cygna will be ready. However, another point is  
23 that I personally need to try to rehabilitate myself. After  
24 thinking about this, last week was very debilitating and I'm  
25 not in very good health at the moment.

1 JUDGE BLOCH: So based on your health needs, you  
2 think you need two weeks on that hearing?

3 MS. ELLIS: Yes.

4 JUDGE BLOCH: Mr. Reynolds, would you like to  
5 comment?

6 MR. REYNOLDS: Yes, sir. We would oppose that  
7 request for an extension. We sympathize with Ms. Ellis. We  
8 don't want to see here in a distraught state, but nevertheless  
9 it's important that we proceed as soon as possible with the  
10 litigation and the completion of these two issues, with regard  
11 to the selection of a lawyer for Mr. and Mrs. Stiner. We  
12 have no comment on whether or not that's a good idea.

13 But it seems to us there are thousands of  
14 lawyers in the country who could qualify to represent that  
15 case including, I might add, Mr. Gilmore, who has worked with  
16 CASE in the past, and lives in Hurst, Texas, right outside  
17 of Forth Worth. Certainly --

18 MS. ELLIS: Mr. Chairman --

19 JUDGE BLOCH: Let's let Mr. Reynolds finish. You'll  
20 have plenty of opportunity.

21 MR. REYNOLDS: But certainly, it's not in our view,  
22 a valid basis for extending the hearing for a couple of  
23 weeks or months. I think -- we think it is inappropriate to  
24 extend a schedule that has been set by the Board months ago,  
25 a couple of months ago, simply to allow CASE to select from

1 a host of lawyers that may be available to them.

2 JUDGE BLOCH: Ms. Ellis?

3 MS. ELLIS: Yes. I would say that it's not to  
4 select -- for CASE to select an attorney. I think that the  
5 facts are that there are not a host of attorneys available  
6 to begin with. Another thing, that Mr. Reynolds mentioned,  
7 as a possibility that we get Marshall Gilmore to represent  
8 us, is no longer a possibility. When Mr. Gilmore and his  
9 wife heard there might be a possibility that Commanche Peak  
10 was going online right away, they moved to Oregon and that's  
11 where they currently are. And they have no interest in  
12 coming back to represent us in hearings.

13 Further, there is a need, as we see it, for  
14 discovery regarding some matters. Ms. Stiner still does  
15 not recollect, at this point in time at least, having signed  
16 the document which the Applicant's presented and we think  
17 it is imperative that we see the original of that, that we have  
18 it for a lawyers as early as we can line one up, to have an  
19 expert look at this to be sure it is an authentic document  
20 and that she actually did sign it.

21 JUDGE BLOCH: I don't want to get away from our  
22 scheduling purpose, but hasn't Staff had an opportunity to  
23 think about whether the regulations require that the original  
24 be in, rather than a certified copy of the original?

25 MR. TREBY: Staff is still looking into it. There



1 is nothing, in our findings, that require that the original  
2 study onsite. Apparently the applicable entity regulation is  
3 N-45.2.9, which just talks generally in terms of record  
4 taping. It does provide that records can be kept in the form  
5 of microfiche. One can analyze from that, or analogize from  
6 that, that if microfiche is sufficient records, than a  
7 certified copy of the original is an appropriate record.

8 However, the Staff has not concluded that. It's  
9 looking into it. This is just its preliminary view now.  
10 We expect --

11 JUDGE BLOCH: Assuming that it can be released,  
12 then it seems to me that the Applicant shouldn't take whatever  
13 steps are necessary to preserve the copies and then make the  
14 original available. Why don't we let that rest until the  
15 Staff finishes its work. If the Applicant comes up with  
16 a legitimate legal barrier to that, we could reconsider.  
17 But we hope it can be done informally, if there is no valid  
18 legal objection.

19 MS. ELLIS: Mr. Chairman, further Ms. Stiner has  
20 requested that we ask for her to be able to look at the  
21 original and all of the hanger rejection reports regarding this  
22 matter and the whole package, which was -- it was only one  
23 sheet of that entire package.

24 MR. REYNOLDS: Mr. Chairman, we object to this  
25 request for discovery. We've had discovery, in this case,



1 for three years. We thought we were finally to the case  
2 where we could litigate and resolve some issues. And I  
3 don't see any point in discussing why we should be involved  
4 in further discovery. Applicants stipulated to the termina-  
5 tion of the hearing last Friday morning because Ms. Ellis  
6 was in a distraught state, but I don't think we should be  
7 penalized by further extension of these hearing for that  
8 same reason.

9 JUDGE BLOCH: Ms. Ellis, I think the problem, at  
10 this point, is we would like to get the full discovery  
11 request as soon as you can get it together. I think it  
12 would be better, given the fact that it may be somewhat  
13 complex at this stage, that it be fully described in writing  
14 so that the Board can consider it, along with responses.

15 And I would urge that if it is important information  
16 related to the surprise matters that were brought out at the  
17 hearing, by all means file for that information.

18 MR. REYNOLDS: Mr. Chairman, does that cut both  
19 ways? Because we were described by documents that Ms.  
20 Ellis produced.

21 JUDGE BLOCH: The object of these hearings is  
22 to get at the truth, Mr. Reynolds. Anytime a party needs to  
23 get discover, in order to help bring out the truth, they  
24 should file their request along with the reason why they  
25 need it at this time.

1 MR. REYNOLDS: We seem to go through hearings and  
2 we never seem to resolve anything. There always seem to  
3 be open issues and more discovery and more hearings.

4 JUDGE BLOCH: There is no free ride. If there  
5 is a reason for further discovery, we will consider the  
6 filing and we will decide what is appropriate under the  
7 circumstances. The only test of how things are going to  
8 end is what is there and balancing fairness against the  
9 needs of the litigation to be efficient.

10 I know of no other way to make that kind of  
11 determination. Now, Ms. Ellis -- let me not ask Ms. Ellis.  
12 I'd like to talk to Ms. Williams about what she thinks about  
13 the proposal that we might be able to go forth on Cygna  
14 matters on March the 12th.

15 MS. WILLIAMS: We believe at this time we will  
16 be ready.

17 JUDGE BLOCH: Will you be ready in enough time so  
18 that Mr. Walsh and Mr. Doyle get an opportunity to review the  
19 documents or your answer? We said we wanted to go forward  
20 in a state where everyone is informed.

21 MS. WILLIAMS: I can't say, in all cases, the  
22 calculations will be done or that we're even going to have  
23 calculations in each case because in some cases clarification  
24 is what is required. And we will provide that clarification.

25 JUDGE BLOCH: Okay. We're looking for two stages

1 of information. One is tell us the basis of where you  
2 reached the conclusion and the second -- which you may or  
3 may not have -- is further engineering justification now  
4 that you've got the opposing proof.

5 MS. WILLIAMS: That's correct. And I'm not  
6 sure that we're working to a schedule to be completed by  
7 next Friday. That would not give them much time. We're  
8 going to be working right up until the end, to get ready.

9 MS. ELLIS: We're in the same position we  
10 were before, when Mr. Doyle had days perhaps to look at the  
11 documents before the hearing.

12 JUDGE BLOCH: No, I think we won't be doing that.  
13 It seems to me there is some question as to whether we can  
14 profitably go ahead on the Cygna issue. There is no point  
15 in scheduling it and winding up having to schedule further  
16 discussion during the week of the hearing.

17 Mr. Treby, what is your advice?

18 MR. TREBY: I believe we should try to go forward  
19 with hearings on March 12th. I believe that we should be  
20 able to go forward with the Cygna stuff because my understand-  
21 ing is that the problem was that they had just been  
22 presented with documents and opportunity to familiarize  
23 themselves with documents.

24

25

1           Once having that opportunity to answer questions  
2 on them -- I was not aware that there was going to be further  
3 exchange of documents, although I was aware that there might  
4 be some further discussion between Ms. Williams and Mr. Doyle  
5 for further clarification purposes.

6           JUDGE BLOCH: Do you think it's realistic to  
7 expect Mr. Doyle to be able to go forward meaningfully, to  
8 ask questions about the Cygna response without some opportunity  
9 to study the Cygna response?

10          MR. TREBY: Is the Board Chairman suggesting that  
11 Cygna is going to submit, to Mr. Doyle, a written answer to  
12 some of his questions?

13          JUDGE BLOCH: Well, we have always had a procedure  
14 for prefiling direct testimony. And that gives some opportu-  
15 nity for study. But in this case it seems to me that the  
16 documents and the answers may be sufficiently complex that  
17 the ordinary period of prefiling wouldn't even be enough.

18          MR. REYNOLDS: Mr. Chairman, might I just comment  
19 that if we were to take the welding issues first, during the  
20 week of the 12th, that that would allow Mr. Doyle a few  
21 extra days, perhaps until Wednesday or Thursday, to address  
22 the Cygna matters and to indeed meet with Cygna.

23          JUDGE BLOCH: Ms. Ellis, how would you feel if  
24 we went forward with all of Applicant's witnesses, but not the  
25 Stiners?



1 MS. ELLIS: Just these hearings?

2 JUDGE BLOCH: Yes. And we would reserve the  
3 Stiners for a later session.

4 MS. ELLIS: That would certainly be preferable.

5 MR. REYNOLDS: Mr. Chairman, obviously we would  
6 object to that because it would preclude the closing of the  
7 record on welding and I think the object is for each phase  
8 of the hearings to address and close issues so that we make  
9 some kind of progress towards completion of the proceeding.  
10 If we leave it open for Mr. Stiner, who knows when we'll  
11 get to it. We can't prepare our findings for the Board.  
12 The Board can't render a decision. It just leaves it open  
13 and I think unnecessarily.

14 In all fairness to us, the fact that Mr. Stiner  
15 may care to have counsel now, two weeks from now, should not  
16 preclude us from going forward and litigating the entire  
17 matter to a close.

18 MR. MIZUNO: I would also like to comment on the  
19 proposed potential for laying out, for the Board's proposed  
20 alternative. Staff finds some problem with the Board's  
21 proposed alternative. We would have to have the inspectors  
22 come to the March hearing to listen to the direct testimony of  
23 the Applicant. But their direct -- in addition, also, they  
24 would have to be at the next hearing session and the Staff  
25 would want to have the option to present any rebuttal testimony



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1 which it is entitled to. That would involve additional time.

2 And as you know, Region IV inspectors are very  
3 hard worked. And we would like to minimize the time at the  
4 hearings. So we'd like to do it all at one hearing session.  
5 And that's the March hearing session. That would definitely  
6 be the preferred course, for the Staff.

7 MS. ELLIS: Mr. Chairman, it appears to me that  
8 the only difference in the amount of actual time out would  
9 be time to and from the place of the hearing and from  
10 Arlington that wouldn't be far.

11 Further, I'd like to point out that part of the  
12 problem that arises here is because of surprise documents  
13 presented by the Applicants, of which we had no knowledge in  
14 advance. We were unable to prepare any advance case.

15 JUDGE BLOCH: You know, that is certainly a  
16 legitimate trial strategy. I don't know what to say about  
17 that, Ms. Ellis. The document appears to bear the witness'  
18 name. It was a fair thing to ask her about it. You're going  
19 to ask discovery because your witness believes that that  
20 document was not real, or something of that kind. But there's  
21 no way I can think there is anything improper about using the  
22 document.

23 MS. ELLIS: I'm not saying it's improper. I'm  
24 saying that's one of the reasons we're concerned at this point.

25 JUDGE BLOCH: I'd like to know, from counsel on

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1 the phone, whether there is any precedent in other cases --  
2 possibly criminal cases -- as to the extent to which  
3 continuances are allowed to obtain counsel.

4 Mr. Hicks, do you have any experience with that?

5 MR. HICKS: Well, I know that it happens periodi-  
6 cally in the state of Texas, especially when you combine that  
7 with the factor of illness similar to what Ms. Ellis is  
8 experiencing. It has been done before, but I also had a  
9 question regarding --

10 JUDGE BLOCH: Is there a period of time that it's  
11 generally done for? Do you know that?

12 MR. HICKS: It's usually just whatever is considered  
13 reasonable. It seems to me that this would be really a one  
14 week delay -- two week delay, I'm sorry.

15 JUDGE BLOCH: Two week delay, but there is also  
16 already -- there will have been over two weeks to obtain  
17 counsel. Plus the fact that there was opportunity previous  
18 to the last hearing, to consider obtaining counsel.

19 MR. HICKS: Yes. I just can't speak to that. I  
20 really don't know. I do know that in criminal cases delays  
21 are given for counsel changes, even if -- if the party  
22 changes counsel just before the hearing.

23 MR. REYNOLDS: Mr. Chairman, I doubt there is an  
24 analogy to our case, where you have a criminal trial initiating  
25 when the defendant doesn't have counsel and then there arises

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1 a request, from the defendant, to obtain counsel. It seems  
2 to me the more likely situation would be that counsel is  
3 present from the beginning, but the defendant seeks to change.

4 MR. HICKS: There are instances in which a party,  
5 in a criminal case, has said they would like to represent  
6 themselves and somewhere, during the proceeding, said  
7 basically I've changed my mind. I need an attorney.

8 And the courts have been pretty understanding.

9 JUDGE BLOCH: Mr. Reynolds, how do you feel about  
10 the problem -- well, first of all, do you know of any precedent  
11 on this matter? And second, how do you feel about the problem  
12 of Mr. Doyle being able to be informed about Cygna responses?

13 MR. REYNOLDS: In answer to your first question,  
14 I know of no precedent that would address your question. On  
15 the issue of Mr. Doyle, I think it is in everyone's interest  
16 that Cygna and Mr. Doyle communicate with each other prior to  
17 hearing, so that Cygna is clear as to what Mr. Doyle's  
18 concerns are and Mr. Walsh's concerns. And that Mr. Doyle and  
19 Mr. Walsh are clear on what Cygna's responses are.

20 It seems to me that if we don't address Cygna until  
21 say Wednesday -- until that week of trial -- that would be the  
22 14th of March, and that would allow Ms. Williams and her people  
23 and Mr. Doyle and his people starting from some time late in  
24 the previous week, and perhaps have four or five days during  
25 which they could communicate and exchange information.

1 MS. ELLIS: Mr. Chairman, there is a problem with  
2 that because Mr. Doyle is very much interested in the welding  
3 issue, as well. And may well be one of our rebuttal witnesses  
4 on some aspects of the welding.

5 JUDGE BLOCH: Mr. Reynolds, if we wanted to go  
6 forward with something, can we use the week of March the 12th?

7 MR. REYNOLDS: No, sir. I looked at my list on  
8 that, and I really don't see anything that is right --

9 JUDGE BLOCH: You're still not ready on 8500 steel?

10 MR. REYNOLDS: We have an affidavit that we intend  
11 to submit this week. We didn't do that as necessarily in  
12 relation to the hearing issue. Let me just run down my list,  
13 if I may, silently here.

14 JUDGE BLOCH: Thank you.

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1 MS. ELLIS: While he's doing that --

2 MR. REYNOLDS: No, sir. I don't see any other  
3 issues that are ripe for March 12th.

4 JUDGE BLOCH: I take it you're not ready on the  
5 computer runs to tracking system or the inspection report  
6 used?

7 MR. REYNOLDS: Your memorandum of January 31st?  
8 No, sir. We're working on that response now.

9 JUDGE BLOCH: Ms. Ellis?

10 MS. ELLIS: Yes. There's one other aspect of  
11 this that I need to bring to the parties' attention. I've  
12 mentioned it earlier to the Applicant and the Staff. I  
13 now have more information regarding if there is one further  
14 thing that we need to call to Cygna's attention and we will  
15 get something off. I'll try to get it off in the mail  
16 tonight, if not tomorrow.

17 It is not a new issue. It is some new information  
18 regarding an issue that was addressed by Mr. Walsh in his  
19 prefiled testimony, on page eight, lines 12 through 21.  
20 And it consists of a letter which Mr. Walsh had received in  
21 his mail right before the hearing. But he hadn't looked at  
22 it till Sunday morning, and it's dated January 27th, 1984,  
23 on the subject of evaluation of the effect of overthickness  
24 in pipe fittings.

25 This is from Mr. George W. Knighton, Chief of



1 Licensing Branch Number 3, Division of Licensing with the NRC  
2 in Washington to the Vice President of the Duquesne Light  
3 Company, Pittsburgh, Pennsylvania. And apparently this has  
4 implications for our hearings as well. And we will be  
5 getting something off on that right away to all the parties  
6 and the Board for their consideration.

7 MR. REYNOLDS: Mr. Chairman, of course we reserve  
8 the right to see what it is Ms. Ellis is talking about. And  
9 if it raises new information or new allegations, then we  
10 will respond accordingly.

11 MR. HICKS: Mr. Chairman, I had a question. In  
12 discussing whether both welding issues and matters relating  
13 to the Cygna Report could be completed, assuming that the  
14 hearings were to go forward on the 12th, is it contemplated  
15 that all matters about Cygna would be completed and terminated  
16 the last week in the investigations --

17 JUDGE BLOCH: That's what the proposal was, Mr.  
18 Hicks. I don't know that we can realistically expect to  
19 finish all of them.

20 MR. HICKS: It seems me if Mr. Reynolds' concern  
21 was that the idea was to go ahead and close out those two  
22 issues, it seems highly likely -- given the current situation  
23 regarding the Cygna Report -- by the calculations and work that  
24 Williams was doing, it seems highly unlikely that the Cygna  
25 Report could be finished the week of the 12th anyway.

1           Whereas the two week delay might allow time for  
2 all the issues about that to be additionally and would allow  
3 the completion.

4           JUDGE BLOCH: There is some truth to that. We  
5 would have a problem, however, because we also still have  
6 to deal with the welding issues. There's no way both are  
7 going to be fully closed out in one week.

8           MR. REYNOLDS: Mr. Chairman, I'm having trouble  
9 hearing Mr. Hicks, but did I hear him ask whether the matter  
10 that was terminated last week would be addressed? Is that  
11 what he asked?

12           MR. HICKS: Yes, that's what I asked.

13           MR. REYNOLDS: By that, I assume he means the  
14 Hutchison business?

15           JUDGE BLOCH: No, I don't think he mean that. No,  
16 he was talking about the Cygna matters which were terminated.

17           MR. REYNOLDS: Oh, I see. I think they would  
18 be addressed and completed during this next week. I think  
19 one question that will shed some light on the ability to  
20 conclude those issues on the March 12th session is, does the  
21 Board intend to sequester anyone, or will they be able to  
22 proceed in panels?

23           JUDGE BLOCH: I think the Board does intend to  
24 sequester the witnesses.

25           MR. REYNOLDS: It does?

1 JUDGE BLOCH: Yes.

2 MR. REYNOLDS: That will slow things considerably.

3 JUDGE BLOCH: Ms. Williams, would it be possible  
4 for Cygna to do their report in segments, so that a substantial  
5 portion of your responses could be available well in advance  
6 of the hearing? For example, is there a chunk of your  
7 stuff that you'll be able to finish by the end of this week?

8 MS. WILLIAMS: I'd have to go look at the  
9 schedule, but right now I've got all the activities proceeding  
10 in parallel. And the end date is also next week on them.  
11 Now, I'd have to take them individually and see if there's  
12 any possibility. I would say there is a possibility. I just  
13 can't answer it right now.

14 JUDGE BLOCH: I would think that the ability of  
15 Mr. Doyle to have a fair opportunity to look at the material  
16 is very important. It could well be that the thing you  
17 finish fastest will be the simpler matters that Mr. Doyle  
18 will be able to review faster also. So we should look for  
19 some way of trying to accomodate his need for information  
20 early.

21 Ms. Ellis, I need some further help from you. I  
22 can understand why, after last week which was physically  
23 tiring and also taxing, because of what happened to your  
24 witness, that you would be reluctant to go ahead. It's my  
25 impression that while you are still upset about what

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1 has happened, but you have been intellectually on top of  
2 what we have been discussing right now, and that it really  
3 is no question so much as inability to go ahead. Could you  
4 clarify this for me?

5 MS. ELLIS: I think part of it is physical as well.  
6 Right at the moment, I feel as if I'm coming down with a cold  
7 and I feel as though I need to lay in bed for about three  
8 days. I think it is going to be very difficult for me to  
9 meet the deadlines that we have to do already, much less even  
10 consider doing anything in addition.

11 JUDGE BLOCH: Which deadlines are you talking  
12 about, Ms. Ellis?

13 MS. ELLIS: I'm talking about specifically we  
14 have to complete our answer regarding the Cygna report.  
15 The plan, which has been proposed by the Applicants, which  
16 has to be in the mail I believe by next Monday. I believe  
17 that's the date, the 5th. So we do have that to complete.  
18 And the way I feel at this point, I think I'm going to do  
19 well just to make that deadline, without taking on anything  
20 else at this time.

21 Aside from that, I am very much concerned about  
22 the adequacy of representing anyone in the hearing, that it's  
23 playing with people's lives. I think that they certainly  
24 deserve to have an attorney, and I think they should have,  
25 under the circumstances. I just do not feel adequate to the



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1 job of adequately protecting them. And even if they were  
2 willing to go forward, which they might be if pressured -- I  
3 don't know, I haven't pushed them -- they would prefer to have  
4 an attorney. And it's my understanding that at this point  
5 in time that they are, if necessary, willing to have their  
6 testimony withdrawn, if necessary. Because I think that  
7 the way that things have developed, I think that they feel,  
8 frankly, that it was very unfair to both of them. And the  
9 Board is aware, but I don't know if it's anywhere in the  
10 record, we had to ask special provisions to speak to Henry  
11 Stiner on the night of the 23rd, because he felt that he  
12 had been abused and he was ready to literally walk out the  
13 door if I hadn't had an opportunity to talk to him, at  
14 least and --

15 MR. REYNOLDS: Mr. Chairman, could we learn how  
16 he felt he was abused? He was merely sequestered, as were  
17 10 other people.

18 MS. ELLIS: Yes, I think he was sequestered  
19 in more of a fashion than other people in that he had not  
20 been adequately prepared for any of this. He did not  
21 understand being sequestered. I had no time to sit down with  
22 either of them beforehand, to go over simple things with them,  
23 which an attorney would normally have been able to do with a  
24 client.

25 We had apparently -- we had not had an opportunity



1 to go over things such as, for instance, when I object,  
2 don't keep talking. Allow me to finish the question and  
3 let the Board rule on it. Just very simple things such  
4 as that we had not had an opportunity to go through.

5 JUDGE BLOCH: Ms. Ellis, as I understand it, you  
6 still feel there was substantial prejudice. The Board does  
7 not know that yet. We know that there were problems. We  
8 will not know if there is any prejudice at all until someone  
9 states what that prejudice consisted of. We don't see it right  
10 now. It doesn't mean it doesn't exist and you'll have an  
11 opportunity to show it. It's obvious the Board is going to  
12 have to take this matter under advisement and decide, as early  
13 as possible, what the schedule is going to be.

14 Dr. Jordan or Dr. McCollom, do you have any  
15 questions that would help you in our deliberations?

16 JUDGE MC COLLOM: I'm not aware that I would need  
17 any more information.

18 JUDGE BLOCH: Okay. Is Dr. Jordan on the phone?

19 JUDGE JORDAN: Yes, I'm here, but I missed so  
20 much of the conversation. Something was wrong with my line,  
21 apparently. And I'm not in a position to answer.

22 JUDGE BLOCH: So we'll have to fill you in later.  
23 The quorum was present. Are there any necessary last comments?

24 MR. REYNOLDS: Just a few, Mr. Chairman, if I may.  
25 With regard to the Board's instruction that Mr. Hutchison  
not be talked to by Applicant until the NRC has talked to him.

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We understand that he had a session yesterday with the OI people, but that they intend to come back and do further discussions with him. Under the Board's order, I assume that means that we are still not permitted to talk to him unless our discussions are tape recorded.

JUDGE BLOCH: That is true, although I would hear it at a later date if this becomes unending.

MR. REYNOLDS: We'll apprise you of that, if it's a problem. May I seek clarification on the scope of the gag order? My interpretation was that it applied to Applicant's counsel. But if I'm reading the transcript, the transcript says Applicants.

JUDGE BLOCH: Yes, we intended this to be in the nature of a continuing interrogation. And therefore, we intended no further contact with this witness, that would not have been able to occur in the middle of the trial, with the exception of independent counsel. We tried to make clear why we were ordering it. It immediately followed our concession of error, sua sponte. And that was the whole purpose of it. It was intended for all people that are related to Applicant and the construction of this plant. That was the intent.

Now that was why we asked for an explanation from Brown & Root counsel of what contact they had with the witness prior to this deposition.

MR. REYNOLDS: The reason I asked for clarification is that has been the interpretation literally by everyone

1 involved. And the interpretation of your order, in that  
2 respect, has taken Mr. Hutchison completely out of his job  
3 function. No one can talk to the man about routine matters,  
4 because they feel that it would violate your order.

5 JUDGE BLOCH: The order was only directed to  
6 hearing matters.

7 MR. REYNOLDS: Cygna-type issues, the issues that  
8 were discussed in the hearing?

9 JUDGE BLOCH: That's correct. Having to do with  
10 the list, his view of what the problems were at the time that  
11 Cygna came to the record center, those issues, things having  
12 to do with the running of the record center today, or  
13 permissible matters.

14 MR. REYNOLDS: All right. I appreciate that  
15 clarification.

16 JUDGE BLOCH: Any other necessary matters?

17 MS. ELLIS: Mr. Chairman, would that order also  
18 include conversations with counsel for Brown & Root?

19 JUDGE BLOCH: Well, that is why I asked counsel  
20 for Brown & Root, who apparently are now representing Mr.  
21 Hutchison, for a clarification of whether they were in  
22 compliance with our guidelines.

23 MR. REYNOLDS: I overheard Ms. Ellis mention  
24 something to the Chairman last week about modifying testimony.  
25 Is there a procedure for modification of testimony that has

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1 already been sworn to?

2 JUDGE BLOCH: You don't modify testimony that's  
3 sworn to, but I think what you may be referring to,  
4 Mr. Reynolds, is that I was approached by Henry Stiner at  
5 the close of the hearing. He said there may be some things,  
6 that he has in his prior testimony, that are not entirely  
7 correct. And he wanted to know if he should clarify it  
8 under oath.

9 I said yes, he obviously should start out his  
10 testimony by clarifying anything of that nature. And then I  
11 suggested that that should be done as soon as possible by  
12 affidavit and I had suggested to Ms. Ellis that, if in  
13 reviewing her testimony, Ms. Stiner finds there are matters  
14 that are incorrect, that she also should file affidavits as  
15 soon as possible on the principle that any individual who  
16 finds that he has misled an adjudicatory body should straighten  
17 that out as soon as possible.

18 MR. REYNOLDS: So you contemplate that that would  
19 be filed before the hearings?

20 JUDGE BLOCH: I would hope it would be done as  
21 soon as possible, if there are such matters. It could be that,  
22 if on further consideration, that the Stiners will find that  
23 there are no such matters. I think Ms. Ellis was talking,  
24 weren't you, Ms. Ellis?

25 MS. ELLIS: Yes. There is one further item, which



1 I think should be addressed. And that is, I think that it  
2 was very disruptive to Mr. Doyle to be trying to cross-examine  
3 -- especially since it was his first really extensive cross-  
4 examine which he had done in the hearing. He's not an  
5 expert cross-examiner by any means. And he had his attention  
6 focused fully on trying to attend to the cross-examination.

7 I think it was very disrupting and distracting to  
8 him to have to answer questions during that and be cross-  
9 examined on the spot.

10 JUDGE BLOCH: We will try not to have that happen  
11 again. The procedure we set up, in the general rules, should  
12 be adequate for that. But again, my impression of the  
13 transcript is that in no way hurt Mr. Doyle or CASE. I see  
14 nothing that happened that would hurt their interest in that  
15 procedure.

16 And the examination of Cygna is continuing and there  
17 was no loss of any rights there.

18 MS. ELLIS: Yes, sir. I understand that. But I  
19 think the point is that he was focusing primarily on the  
20 cross-examination. And I assume also, should he feel it  
21 necessary, that he could also file an affidavit if he felt  
22 there were any areas to be clarified.

23 JUDGE BLOCH: Anytime anyone has said something in  
24 testimony, that they want to clarify, they may. I don't  
25 think he said anything there that you're going to find needs

1 clarification. Otherwise, you can wait for your findings to  
2 explain things in context.

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1 MS. ELLIS: I believe Mr. Reynolds wanted to  
2 address something. I believe that Mr. Horin had spoken  
3 earlier about the supplemental interrogatories.

4 MR. HORIN: Earlier today, when Mr. Treby, myself,  
5 and Ms. Ellis were discussing -- prior to the conference  
6 call -- what our thoughts were on scheduling, I also raised,  
7 with Ms. Ellis, the possibility that I would be pursuing  
8 during the conference call some questions I had regarding  
9 the Board's memorandum and order requesting the parties to  
10 update their interrogatories.

11 As a consequence of that conversation, and a  
12 subsequent conversation with Ms. Ellis, you have decided that  
13 neither one of us feel that all interrogatories will need  
14 to be updated. And we intend to get together tomorrow to  
15 specify which ones they have a continuing interest in, and  
16 any questions we have regarding the need to update those  
17 ones specified.

18 At that point, we would go to the Board. But right  
19 now we think we will be able to work out, amongst the parties  
20 and ourselves.

21 JUDGE BLOCH: That sound very constructive.

22 MR. REYNOLDS: The point is, we have a deadline  
23 tomorrow to certify to you that all interrogatories have  
24 been updated. We would ask leave of the Board, does this mean  
25 until we've had these discussions?

1 JUDGE BLOCH: That is suspended.

2 Any other further matters that must be handled?

3 MS. WILLIAMS: I would like clarification on how  
4 we are to transmit this information to Mr. Doyle. We are  
5 prepared to answer those that we can answer at the close of  
6 this week by a letter. Is that correct?

7 JUDGE BLOCH: I think it would be best to do it in  
8 writing at the close of this week and possibly in the middle  
9 of next week, if you phase it that way. You should transmit  
10 simultaneously to Mr. Doyle and the other parties.

11 MS. WILLIAMS: The only problem will be at the  
12 close of this week and midpoint next week, that that will  
13 be the entire set of responses?

14 JUDGE BLOCH: No, we understand that fully. We  
15 hope you'll be able to finish your responses by your deadline.  
16 And then whatever is open, we will just date it still open.

17 MS. WILLIAMS: Okay.

18 MR. REYNOLDS: Does the Board have a time by  
19 which it will make its decision on this schedule?

20 JUDGE BLOCH: We will try to decide by sometime  
21 tomorrow afternoon. There's a necessary personal matter that  
22 keeps the Chairman from working tomorrow morning.

23 Is there any other necessary matter?

24 MR. MIZUNO: Yes, Mr. Chairman.

25 JUDGE BLOCH: Go ahead.



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1 MR. MIZUNO: It is the Staff's understanding that  
2 the Board had a rule in place whereby all documents that a  
3 party expected to use during either direct or cross would be  
4 submitted to the other parties 48 hours in advance of the  
5 beginning of these hearings, except where the surprise  
6 element in presenting the documents --

7 JUDGE BLOCH: Yes, and we do intend that to be  
8 in effect for all hearing sessions.

9 MR. MIZUNO: Okay. Thank you.

10 MS. ELLIS: Mr. Chairman, I think you need to be  
11 aware that may be difficult if we don't get documents any  
12 faster than we have on some of them in the past.

13 JUDGE BLOCH: In that case, you'll just file for  
14 good cause and file late. You will need good cause to wreck  
15 the deadline. That means if you are ready as we start the  
16 hearing, as opposed to at the established deadline, you will  
17 try to make things available then. We will also try to  
18 accomodate you by not giving you documents that late that  
19 will be served at the hearing.

20 MS. ELLIS: That would be helpful.

21 MS. WILLIAMS: Mr. Chairman, there were a couple  
22 of examples or diagrams that I was intending to use on an  
23 overhead projector to clarify some points. They are not  
24 new information or documentation or a basis for any of our  
25 responses, but rather to make the picture more clear. Would

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1 that fall under this category of 48 hours?

2 JUDGE BLOCH: It would if you're able to comply.  
3 The reason is that often you get to that point in the hearing  
4 and the parties have to study what you're showing to understand  
5 it before we go ahead. And that breaks up the hearing. And  
6 this advance filing enables us to charge right ahead.

7 MS. WILLIAMS: Okay.

8 JUDGE BLOCH: Any other necessary matters?

9 MS. ELLIS: One further thing. I take it it  
10 would be in order for us to go ahead and send the information  
11 we have discussed to Cygna and the parties?

12 JUDGE BLOCH: I'm not certain which information  
13 you're referring to, Ms. Ellis.

14 MS. ELLIS: The new information that Mr. Walsh  
15 received.

16 JUDGE BLOCH: If there's no problem sending it. The  
17 Applicant has suggested that it might object to it as new  
18 information. If it's directly related to other information,  
19 go ahead and file it and we'll see what the objections amount  
20 to.

21 MS. ELLIS: All right.

22 JUDGE BLOCH: Are there any other problems?

23 All right. The hearing is adjourned. People may  
24 stay on the line to order transcripts.

25 I'm going to attempt to call my Board members

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1 immediately.

2 (Whereupon, at 5:10 p.m., the telephone conference  
3 was adjourned.)

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CERTIFICATE OF PROCEEDINGS

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

In the matter of: COMANCHE PEAK


Date of Proceeding: Tuesday, February 28, 1984

Place of Proceeding: Bethesda, Maryland

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