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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND  
LICENSING BOARD

In the matter of:

TEXAS UTILITIES GENERATING COMPANY

Docket No. 50-445  
50-446

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

Location: Bethesda, Maryland

Pages: 13,795 - 13,867

Date: Thursday, May 24, 1984

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1 UNITED STATES OF AMERICA  
2 NUCLEAR REGULATORY COMMISSION

3 BEFORE THE ATOMIC SAFETY & LICENSING BOARD

4 ----- X  
5 In the matter of: :  
6 TEXAS UTILITIES GENERATING : Docket Nos. 50-445  
COMPANY, et al. : 50-446  
7 :  
8 (Comanche Peak Steam Electric :  
Station, Units 1 and 2) :  
9 ----- X

10 4th Floor  
11 4350 East West Highway  
Bethesda, Maryland

12 Thursday, May 24, 1984

13 Hearing in the above-entitled matter convened at  
14 3:10 p.m.

15 BEFORE:

16 JUDGE PETER BLOCH, ESQ.  
17 Chairman, Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
18 Washington, D. C.

19 JUDGE WALTER JORDAN  
20 Member, Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
21 Washington, D. C.

## 1 APPEARANCES:

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23 On behalf of Intervenor Citizens Association  
24 for Sound Energy:

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26 On behalf of Texas Attorney General's Office

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On behalf of Public Justice

ANTHONY Z. ROISMAN  
Trial Lawyers for Public Justice  
Washington, D. C.



1 Robert Woolridge.

2 JUDGE BLOCH: Okay, first in Washington?

3 MR. ROISMAN: Anthony Roisman with regard to  
4 the issue of harrassment and intimidation only, and with  
5 me on the line, Billie Garde, my law clerk.

6 MS. ELLIS: And Juanita Ellis in Dallas,  
7 President of CASE, Citizens Association for Sound  
8 Energy, the Intervenor.

9 JUDGE BLOCH: With us down in Texas?

10 MR. HICK: Renea Hicks.

11 JUDGE BLOCH: And for -- yes, Mr. Hicks?

12 MR. HICKS: I just said with the State.

13 JUDGE BLOCH: And for the staff of the Nuclear  
14 Regulatory Commission?

15 MR. TREBY: My name is Stuart A. Treby. With  
16 me on the line are Geary Mizuno, Richard Bachmann, Joseph  
17 Scinto. We also have present with us Thomas Epalito  
18 and Anite Vanetta.

19 JUDGE BLOCH: The last name I didn't catch.

20 MR. TREBY: The last name is Anite Vanetta.  
21 She is an assistant to Mr. Epalito.

22 JUDGE BLOCH: There are a variety of matters  
23 that are scheduled, plus, of course, we have the custom  
24 of asking parties for additional matters at the end.  
25 The principal matter with which we are concerned today

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1 are the written motions to summary disposition filed by  
2 the applicants and whether or not the parties agree that  
3 these are addressing matters that should be able to be  
4 filed in writing.

5 We can discuss in detail as we go on what that  
6 would mean. Also of importance is applicants' motion  
7 for these option of special procedures filed on May 8th,  
8 1984, which have been responded to in part by cases  
9 motion for enlargement of time filed on May 21, 1984.

10 There are a variety of scheduling matters that  
11 the Board would like to clarify, including the staff  
12 schedule to the extent that's possible, and the appli-  
13 cants' schedule for filing the remaining items related  
14 to its plan.

15 I think with that brief introduction, the  
16 order of those things doesn't seem to me to be that  
17 important, but I think it probably would be helpful  
18 if the staff could clarify, if it would, when it feels  
19 it is going to be able to respond to the various pending  
20 matters.

21 MP. TREBY: By pending matters, are you  
22 talking about the motions for summary disposition or  
23 something beyond that?

24 JUDGE BLOCH: That's a good start.

25 MR. TREBY: With regard to the motions for

1 summary disposition, it is our belief that in the first  
2 instance at least a response in pleading -- would be  
3 appropriate. We believe that --

4 JUDGE BLOCH: I'm asking about a schedule.  
5 Can you do it within the time schedule provided in the  
6 rules?

7 MR. TREBY: No, I don't believe so. We have  
8 reviewed those motions. We've had our technical people  
9 review them and we believe that we have a number of  
10 matters for clarification that we'd like to ask the  
11 applicants about.

12 I would like to point out that when the appli-  
13 cants filed their plan initially on February 3rd, they  
14 indicated as part of that plan that they proposed to  
15 meet with Messrs. Walsh and Dole during the latter  
16 stages of implementation of the plan to discuss the  
17 results of those efforts.

18 And then in later pleading their discussions  
19 amongst the parties and with the Board, that would in-  
20 clude the staff. We have not had any of those meetings.  
21 In reviewing the various documents, we find that we have  
22 a number of questions with regard to some of the data  
23 and some of the methodology.

24 We think that if we could have a meeting in  
25 the very near future -- we would prefer either the end



1 of next week or the beginning of the following week --  
2 that we would probably be able to answer these motions  
3 for summary disposition shortly thereafter, perhaps  
4 within the time allotted by the regulations which would  
5 be June 11th on most of the ones we've received.

6 But I suspect that we might need a short period  
7 of time to go after it. It all really depends on the  
8 information that we would gather at these meetings.

9 JUDGE BLOCH: Since the meetings would be  
10 designed to try to narrow issues and focus the motion  
11 to some extent --

12 MR. TREBY: These would be technical meetings  
13 and exchange of technical information between the people  
14 which would be designed to do that, you know, to the  
15 extent that the technical people could agree on what  
16 has been proposed and said -- things and we all agree,  
17 that wouldn of course, narrow that matter and we'd be  
18 able to dispose of it.

19 JUDGE BLOCH: I appreciate that and the Board  
20 will be pleased either to have you do that alone or  
21 with our participation, as you know. What I was going  
22 to ask you is whether in light of that process, you  
23 think that it would be fruitful to look forward to a  
24 situation where the Board would attempt to resolve these  
25 matters based on the written filing, supplemented, if

1 necessary, by further written filings requested by the  
2 Board or by oral argument or, if the Board considers it  
3 necessary to resolve the issues fairly, by cross-examina-  
4 tion of specified witnesses.

5           Would you prefer adopting a procedure at this  
6 point which favored the determination on written papers  
7 in the discretion of the Board?

8           MR. TREBY: Yes, we would favor that -- that  
9 approach after we have this meeting and filed our  
10 written paper.

11           JUDGE BLOCH: I understand. You're not waiving  
12 any rights to take the time necessary to make a clear and  
13 careful technically correct response. I hope that's what  
14 we'll get because that's the only way the Board's going  
15 to be able to make a clear decision on summary disposition  
16 anyway.

17           Mr. Reynolds, would you like to comment on  
18 the schedule of staff as suggested and on the Board's  
19 comments on a principal commitment to determinations on  
20 written filings?

21           MR. REYNOLDS: Once you have Mr. Treby to  
22 clarify whether the staff indeed was suggesting that  
23 these matters could go off on the pleadings and you re-  
24 ceived an answer in the affirmative, that satisfied my  
25 concerns that the staff hadn't made up its mind one way

1 or the other on that question. I think that a meeting  
2 in the next week is appropriate.

3 I would suggest that it be next week and not  
4 the following week because that would impair any hearing  
5 schedule that the Board might rule on today. So yes, we  
6 would agree that a meeting with the staff next week some-  
7 time is appropriate to respond to staff questions.

8 JUDGE BLOCH: Now, when you said with the staff,  
9 the staff suggestion was with staff and CASE. Is that  
10 okay?

11 MR. REYNOLDS: I didn't mind -- I didn't mean  
12 to exclude CASE.

13 JUDGE BLOCH: Mrs. Ellis, would you like to  
14 comment?

15 MRS. ELLIS: I think that that's a -- pretty  
16 much our feeling. I think it would be worth the effort  
17 to try to resolve the things on paper, if possible, and  
18 at the very least I think it would be worth our while  
19 because we could narrow the issues considerably, and at  
20 best, we might be able to resolve all of them on paper  
21 to the Board's satisfaction.

22 I think that's certainly a good way to approach  
23 it. I don't know at this point, without checking with  
24 Mr. Walsh or Doyle, what their schedules would be like  
25 as far as a meeting. That seems like a reasonable way

1 to proceed if we could, you know, work out some -- with  
2 them to be available.

3 JUDGE BLOCH: It would be best if they could  
4 be available in person, but if not, I would hope things  
5 could be done so that they can have a meaningful con-  
6 ference by telephone.

7 MRS. ELLIS: Right, uh-huh.

8 JUDGE BLOCH: I think it is important that we  
9 try to proceed expeditiously and try to get it going  
10 next week. You understand that what we were requesting  
11 is that the parties agree in advance that the Board would  
12 attempt to reach decisions based on the written filings  
13 and that we would only have additional -- we would only  
14 have a hearing or cross examination if the Board deter-  
15 mined that that was necessary to make a reasoned decision.  
16 Is that an acceptable standard to you, Mrs. Ellis?

17 MRS. ELLIS: Yes, I think so.

18 JUDGE BLOCH: It's my understanding that all  
19 of the parties are agreeable to that basic method of  
20 going forward. We, therefore, don't know at this time  
21 that any of the issues that are now pending before us  
22 will need to go to hearing, and therefore have nothing  
23 at this point to schedule for hearing.

24 We're hopeful that the parties will meet,  
25 narrow things and will give us the record to decide

1 things on paper, unless, of course, the settlement is  
2 reached prior to that time, which is an even stronger  
3 wish on our part, as the parties all know. The --

4 MRS. ELLIS: One further comment I probably  
5 should make here is that we'll do our best to work within  
6 the time frame available, but, as everybody is aware,  
7 we've had like -- I think it's eight now, I've sort of  
8 lost count -- within the last week of motions for summary  
9 disposition, which is quite a lot to try to answer at  
10 the same time.

11 JUDGE BLOCH: We would only ask that you make  
12 reasonably expeditious request for extensions that you  
13 might need with an explanation of why you need the  
14 extension.

15 MR. REYNOLDS: Mr. Bloch.

16 JUDGE BLOCH: Yes?

17 MR. REYNOLDS: Could we have some sort of  
18 Board understanding that Thursday or Friday of next week  
19 will be the time when the staff meets with CASE and  
20 applicants to discuss these motions?

21 JUDGE BLOCH: Well, it's my understanding that  
22 every effort will make -- will be made to have it done  
23 by no later than Thursday or Friday. It could be that  
24 when you look at the schedules, it'll be convenient to  
25 do it earlier in the week.

1 I did ask -- say that I was going to ask  
2 applicants for their remaining schedule on filings. I  
3 notice, for example, that you have a filing on two-way  
4 restraints from U-bolts, but apparently nothing on  
5 cinched up U-bolts. Is that a matter that you're going  
6 to file on later and are there other matters that you  
7 intend to file on later?

8 MR. HORIN: Several matters that we are in  
9 the process of preparing in response to the plan. The  
10 U-bolt item is one that is in the final process of  
11 preparation. We are hopeful of filing it --

12 JUDGE BLOCH: Okay, one second. Who's  
13 speaking, please?

14 MR. HORIN: Oh, this is Mr. Horin.

15 JUDGE BLOCH: Thank you, Mr. Horin.

16 MR. HORIN: -- hopeful of filing that. If not,  
17 first thing next week.

18 JUDGE BLOCH: That's the cinched up U-bolt  
19 question?

20 MR. HORIN: Right. The result of the tests  
21 that applicants have conducted and the analysis that  
22 we have performed on the three plan items that are re-  
23 lated to U-bolt cinching.

24 In addition, we have filing on the stability  
25 question which should be completed within, hopefully,

1 today. We have the Design QA process which will be  
2 completed first thing next week. And also was the plan  
3 item regarding the Richmond Insert allegation.

4 That also is in the final stages of preparation.  
5 It should be out very shortly.

6 MR. REYNOLDS: Judge Bloch, this is Mr. Reynolds.  
7 Looking at -- in response to Mr. Treby's comments that  
8 the applicants have not provided the parties with an  
9 opportunity to review this material before it was filed,  
10 when we proposed our plan, we recognized that it was an  
11 ambitious plan.

12 The schedule was ambitious as well. What we  
13 have here is a program that normally would have taken  
14 perhaps a year to perform and we've tried to do it as  
15 expeditiously as we could, and have been successful in  
16 doing it in about three months.

17 It has not been as a result of bad faith that  
18 we have not provided CASE and the staff with copies of  
19 this material before we filed it. It simply wasn't  
20 available and, as we speak, we are working on completing  
21 the matters that Mr. Horin just described.

22 JUDGE BLOCH: Okay. I did want to comment  
23 that in the Board notification on protective coatings  
24 there was an allegation that related to the QA issue  
25 that I thought ought to be somehow mentioned or dealt

1 with. It's the allegation on page 6 of the Brookhaven  
2 National Laboratory's report, Item Number 7 dealing  
3 with documentation and design control.

4 I just thought that you ought to be aware that  
5 we see some relationship between the QA for design issue  
6 and the finding in that paragraph 7. Could we have some  
7 idea from the applicants about the time frame in which  
8 applicants are going to be responding to the coatings  
9 allegation?

10 MR. REYNOLDS: Can we back up a minute? Now  
11 I'm looking at --

12 JUDGE BLOCH: All right, I'm looking at  
13 Board Notification Number 84-106.

14 MR. REYNOLDS: What's the date of that?

15 JUDGE BLOCH: Dated May 22 and it's attached  
16 to an April 25, 1984, draft from Brookhaven.

17 MR. REYNOLDS: Sir, I have not received that  
18 document yet.

19 JUDGE BLOCH: Well, I'm sorry. That and --  
20 let's see, that -- well, I received it yesterday so I  
21 assumed the parties had it. I'm very sorry about that.

22 MRS. ELLIS: We don't have it either.

23 JUDGE BLOCH: It is a seven-page draft. I  
24 understand from conversations with the staff that in  
25 addition to this draft, that there was a Region 4 letter



1 to the applicants asking for responses to 60 allegations  
2 about violations in the coatings area.

3 MR. HORIN: We have that letter.

4 MRS. ELLIS: Yes, and we have that one also.

5 JUDGE BLOCH: The Brookhaven report is an  
6 interim report that was intended to be followed by a  
7 final report in the end of April, but which had to be  
8 extended, the staff tells me, because they ran out of  
9 money and they're completing a more finished report now.  
10 That should be done sometime soon. Is that correct,  
11 Mr. Treby?

12 MR. TREBY: I think what I indicated to you  
13 was that this report was prepared because they -- when  
14 we came into their contract period, they no longer could  
15 give a status report as to where they were at that time  
16 and that it was my understanding that their contract had  
17 been extended.

18 JUDGE BLOCH: Until when? Do you know that?

19 MR. TREBY: Excuse me?

20 JUDGE BLOCH: Until when? Do you know?

21 MR. TREBY: I believe their contract has been  
22 extended three months.

23 JUDGE BLOCH: So that their final report isn't  
24 due until about the time the plant is schedule to start?

25 JUDGE JORDAN: Judge Bloch, this is Walter

1 Jordan. It seems to me that this has to be taken up as  
2 a separate matter, the items that we're discussing.

3 JUDGE BLOCH: Well, it is. The reason I  
4 raised it is only because we're concerned with scheduling  
5 in relationship to plant start-up and we want to keep our  
6 eye on whatever those limiting factors are going to be.

7 If the applicants are going to answer that these  
8 allegations are all baseless, there may be no effect on  
9 plant start-up except that we'll have to adjudicate the  
10 allegation.

11 If, on the other hand, there are important  
12 allegations that are going to be admitted, it could affect  
13 start-up directly.

14 MRS. ELLIS: Judge Bloch.

15 JUDGE BLOCH: Yes?

16 MRS. ELLIS: This is Ellis. One of the things  
17 that I think would be helpful, and I mentioned this just  
18 briefly to Mr. Treby before the conference call, is for  
19 the staff to clarify what, in effect, the caseload fore-  
20 cast panel really means.

21 It's my understanding that everything will  
22 basically have to work just about perfectly to -- for  
23 the applicants to reach that -- date. And I think it  
24 would be helpful for the staff to clarify maybe one  
25 specific -- what is being projected right now, as to

1 what it really means and whether they believe that this  
2 is in fact practical to rely on a date like that.

3 JUDGE BLOCH: Well, of course, the Board has  
4 seen the complete transcript. If the staff wishes to  
5 further clarify, it may, but I think we understand the  
6 contingency. Would the staff like to comment?

7 MR. TREBY: Only to the extent that, number  
8 one, there are contingencies and, number two, that it is  
9 a tool which the staff uses in displaying its resources.  
10 It is not a commitment upon the staff that the staff  
11 guarantees the plant will be ready at that time.

12 It is the staff's determination, based on the  
13 presentation made by the applicants, that the staff  
14 doesn't see any basis for arguing that it would not be  
15 done by that time, but we're not guaranteeing that it  
16 will be done.

17 There's a distinction between us making a  
18 finding that the applicants forecast appears to be  
19 measurable and we have no basis for finding that it will  
20 not be made versus a commitment on the staff's part that  
21 says yes, the plant's going to be done at that time.

22 And you never said -- you mentioned earlier  
23 that there was something in the transcript about the  
24 fact that the schedule was tight and that it did not  
25 include much, if any, leeway for contingencies that

1 might arise. That's the end of my consultation.

2 JUDGE BLOCH: Mr. Reynolds, I called Mr. Horin  
3 and I later spoke to you about hoping that there could  
4 be some settlement reached about CASE's motion for  
5 enlargement. Do you have anything to report about settle-  
6 ment discussions?

7 MR. REYNOLDS: I spoke with Mrs. Ellis five  
8 minutes before the conference call started and we weren't  
9 able to really spend any time talking about these matters.  
10 It seems to me that with regard to Item 3 in her motion,  
11 that is their response to our motion for revised hearing  
12 schedule, adoption of special procedures and clarification  
13 of issues, that those are the matters that we are to  
14 discuss here today in the conference call so that I ad-  
15 mit that that motion for extension of time is really new.

16 With regard to the first two motions for  
17 extensions, it is relating to CASE's responses to  
18 applicants' proposed standards for litigating intimi-  
19 dation and applicants' motion to obtain access to OI  
20 information, it seems to me -- seems to me reasonable  
21 that since CASE has recently obtained counsel to address  
22 the issue of intimidation, that counsel should be afforded  
23 some reasonable time to review the pleadings that we have  
24 filed and to prepare responsive pleadings.

25 I think that an extension to June 12th is

1     acceptable. Given the fact that these documents were  
2     filed in early May and they aren't really that compli-  
3     cated, I would agree to some reasonable extension of  
4     time and I would submit perhaps to June 5th. I would  
5     oppose an extension to June 12th.

6             JUDGE BLOCH: Mr. Roisman, could you comment  
7     on that point?

8             MR. ROISMAN: Yes, Mr. Chairman. We would be  
9     willing to work with the June 5th on Items 1 and 2, as  
10    proposed by the applicants, if the state is able to do  
11    the same.

12            If the Board should ultimately rule that the  
13    state will be responding by the 12th, then we would want  
14    to have the same amount of time simply in order to make  
15    our filings more competent than they might otherwise be.

16            JUDGE BLOCH: I guess I already ruled with  
17    respect to the state that the 12th was acceptable because  
18    I saw no impact on the schedule of the case. Mr. Hicks,  
19    I did rule that way, didn't I?

20            MR. HICKS: Yes.

21            JUDGE BLOCH: Mr. Reynolds, what is the effect  
22    of the schedule on the case of allowing extension 'til  
23    the 12th?

24            MR. REYNOLDS: I wasn't aware that you had so  
25    ruled for the state. Was that in a written pleading?

1 JUDGE BLOCH: No, it wasn't. It was one of  
2 those things that was going to be memorialized when they  
3 filed it.

4 MR. REYNOLDS: I see. My concern with regard  
5 to schedule and impact on the case is that we are hopeful  
6 to bring intimidation on to trial in early July and before  
7 we can fully prepare for that trial, the Board has to tell  
8 us what the standard for intimidation will be.

9 JUDGE BLOCH: Well, we understood the need for  
10 that and already made some preliminary rulings that tipped  
11 some of our feelings about that. Do you really need the  
12 formal filings on the legal matters that much in advance  
13 of the time of trial?

14 MR. REYNOLDS: Well, I don't see how we can  
15 fully prepare for trial, including taking whatever dis-  
16 covery may be necessary, until we know formally what the  
17 Board's view is on the standard for intimidation.

18 JUDGE BLOCH: Okay, wait. Maybe I should  
19 separate out number -- oh, I see. Okay, I understand  
20 the argument.

21 MR. REYNOLDS: I think with regard to both  
22 pleadings, time is of the essence in that not only the  
23 applicants, but all of the parties must understand what  
24 the Board views the issues to be and how the Board is  
25 going to handle the OI information.

1 MR. ROISMAN: Mr. Chairman, this is  
2 Mr. Roisman. One of the concerns I have with what I'm  
3 hearing from the applicants is -- and I guess it relates  
4 somewhat to the -- to the Board's earlier ruling in  
5 March regarding the potential for cut-off dates and the  
6 applicants' now pending motion on that is that there are  
7 some ongoing investigations that are taking place with  
8 regard to the harrassment-intimidation issue, which if we  
9 learned anything else, I guess, from the Byron decision  
10 it is that the Board should not prematurely end an in-  
11 vestigation by closing off the hearings and making a  
12 decision.

13 And this Board, in its own ruling last  
14 December, seemed to indicate that it wouldn't want to  
15 do that either. Indeed, if the applicant wishes, I  
16 don't see anything from what I've heard that would  
17 suggest that the issue of harrassment intimidation can  
18 be resolved in the month of July.

19 Now, that's not to say there isn't a good  
20 reason to go ahead with some phases of the hearing on  
21 it, but I don't think that it is in the same category  
22 as I understand some of these issues on which motions  
23 for summary judgement are now pending and in which the  
24 final iterations of the positions of the parties are  
25 about to be developed and the Board may be able to,

1 having in a sense already had some hearings on it, come  
2 to some conclusions even on paper.

3 So I'm having trouble putting the harrassment  
4 intimidation issue within the same track as the other  
5 issues are. Maybe that's just my early involvement in  
6 the case, but I'm not understanding how the applicant  
7 can be pressing for an early July hearing at possible  
8 prejudice to CASE when it knows that it can't get the  
9 issue resolved at least until the staff completes its  
10 own independent investigation of those matters.

11 And there are other independent investigations  
12 going on, including one by the Government Accountability  
13 Project and perhaps, although I don't know this for sure,  
14 maybe one by the applicant itself.

15 MR. REYNOLDS: Mr. Chairman, this is  
16 Mr. Reynolds. May I attempt to clarify?

17 JUDGE BLOCH: Before you do, I'd like to ask  
18 Mr. Roisman my own question. I don't understand the  
19 conflict between starting hearings on matters that we  
20 can start on, for example, intimidation within the coatings  
21 area which has been the subject of a full report -- it  
22 may or may not be able to be fully released or relied on --  
23 and concluding hearings on important investigations that  
24 may be subsequently concluded.

25 The suggestion that the Board made about a



1 cut-off date would not preclude any hearings with  
2 respect to matters that occurred before that cut-off  
3 date, and it also would not preclude any reopening of  
4 that deadline with respect to important matters that  
5 were discovered after it.

6 It seems to me, though, that the applicants  
7 have something for the point that we ought to get started  
8 on intimidation because it's going to be a long process.

9 MR. ROISMAN: Oh, that's right. And I didn't  
10 want to -- I didn't want to say anything that was con-  
11 trary to that. I think all I was trying to say is that  
12 given -- that given the harrassment-intimidation issue  
13 can't end until the OI work is done or the other inde-  
14 pendent work is done, it didn't seem to me that we needed  
15 to start it so soon if that -- and I don't know what that  
16 date is, by the way, but let's just hypothetically say  
17 the date currently projected for the completion of the  
18 OI report and any other of these independent reports is  
19 August the 15th and that the parties need to have an  
20 opportunity of a week or two minimum to examine that and  
21 to, if necessary, get discovery or whatever they're going  
22 to do so that they'd be ready for hearing.

23 If there are other hearings that the Board has  
24 got to have in any event, we don't gain anything by  
25 starting a hearing on the 6th of July of the issue of

1 harrassment-intimidation and therefore we don't gain  
2 anything by jamming up the time in late May or early  
3 June for getting the -- for that.

4 That's my only concern. We seem to be rushing  
5 but maybe unnecessarily.

6 JUDGE BLOCH: Mr. Reynolds?

7 MR. REYNOLDS: Mr. Chairman, I'm not sure that  
8 counsel's premise is correct. Mr. Roisman seems to be  
9 suggesting that if there is a pending OI investigation,  
10 then this Licensing Board's hands are tied in concluding  
11 the hearing.

12 I don't think that's necessarily right. The  
13 fact that there is a pending issue in this case on intimi-  
14 dation and the fact that there may be an ongoing OI  
15 investigation into the same issue, do not necessary  
16 marry up.

17 OI has made it clear to the Board in the past,  
18 as has Mr. Treby and Mr. Scinto, that OI is not bound by  
19 any schedule that this Board may impose. Indeed, OI is  
20 not bound by nor controlled by staff lawyers.

21 They are independent and they do things on  
22 their independent schedule. To suggest that this Board  
23 must stay its hand in conducting hearings on intimidation  
24 or indeed in closing the record on intimidation because  
25 of the pendency of an OI investigation into such matters,

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1 is in my opinion incorrect. If OI completes an investi-  
2 gation in such a manner and in such time that it raises  
3 issues while the Board has the record open on intimi-  
4 dation, I agree with the Chairman that your order pro-  
5 posing an arbitrary cut-off date contemplates the re-  
6 opening of the record if significant matters are raised.

7 I don't think it's correct to suggest that in  
8 all instances the Board must await the outcome of OI  
9 investigations on intimidation. Rather, it is my view  
10 that the parties should proceed with the issues of  
11 intimidation, present their cases and the Board should  
12 close the record.

13 If we can schedule that process such that we  
14 can receive the results of OI investigations, then that's  
15 fine. But if we can't, I don't think there's any law  
16 or policy at this agency that requires this Board to  
17 stay its hand to await OI results.

18 JUDGE BLOCH: Would staff like to briefly  
19 comment just on the schedule for the two items numbered  
20 one and two on page 6 of the CASE motion?

21 MR. TREBY: I'm looking for Items 1 and 2 on  
22 page 6.

23 JUDGE BLOCH: Item 1 is the deadline for the  
24 proposed standard for litigating allegations of intimi-  
25 dation, and Item 2 is the motion concerning Office of

1 Investigations obtaining access to information,  
2 etcetera.

3 MR. TREBY: I -- I guess I would support CASE's  
4 motion that they have until June 12th to respond to the --  
5 with regard to the first one, the proposed standards for  
6 litigation.

7 I think that it is my understanding that there  
8 are ongoing OI investigations and that we need to await  
9 the results of at least some of them before the staff  
10 will even be ready to go to hearing on the subject.

11 And I do not believe that it will be greatly --  
12 the schedule will be greatly impacted by waiting until  
13 June 12th to respond to the applicants' proposed standards.  
14 With regard to the second item, it seems to me that the  
15 Board's letter of May 17th regarding secret communi-  
16 cations from the Office of Investigations had a large  
17 part -- responded to the applicants' second motion.

18 I would also mention one other thing. It  
19 seems to me -- to mention one other thing. It seems to  
20 me that with regard to this question of intimidation,  
21 one of the complicating factors is the question of con-  
22 fidentiality, and it seems to me that there is certainly  
23 some difficulty in going to hearing on questions of  
24 intimidation where there are confidentiality questions  
25 involved in, in fact, the Board's order in which you

1 can indicate that the information to this Licensing  
2 Board should be provided either publicly or subject to  
3 a protective order, recognizes that there are confiden-  
4 tiality problems.

5 MR. ROISMAN: Mr. Chairman, this is Mr. Roisman  
6 again.

7 JUDGE BLOCH: Yes, Mr. Roisman. If you have  
8 a very brief argument on points made since your last  
9 argument only.

10 MR. ROISMAN: Yes. Mine is just a point of  
11 clarification. I have not seen the May 17th order.  
12 Secondly, your --

13 JUDGE BLOCH: That is ~~prospective~~ only.  
14 Mr. Roisman. What we ruled was that OI should not give  
15 us anything confidentially in the future.

16 MR. ROISMAN: All right, I'm sorry to hear  
17 that, Mr. Chairman. I hope I'll have a chance to file  
18 reconsideration. With respect to the things that the  
19 other parties said, I believe that your March 15th, 1984,  
20 order made clear what's on page 3.

21 At this point in our proceeding each issue  
22 heard must be heard to its conclusion. Again, on page 7,  
23 under paragraph D, where you make the point with regard  
24 to intimidation of the protective coatings area, that  
25 the subject's deferred because of the ongoing OI

1 investigation, and finally, on page 14 of that order  
2 where you say, and I quote at the top of the page, "When  
3 significant new events arise here within the -- of this  
4 issue, when the Office of Investigation completes its  
5 reports, findings relevant to this issue will be auto-  
6 matically -- will automatically be subject to litigation."

7 I think Mr. Reynolds' argument, unless he's  
8 moving to reopen on that issue, the matter remains open.  
9 I'm not asking to postpone or even urging that the Board  
10 postpone the commencement of the hearings until it's  
11 over.

12 My only point was I didn't see the reason for  
13 the rush on starting it. It couldn't end until then,  
14 anyway, and it seemed to make some sense to get it  
15 started on the right foot and do it right once so that  
16 we don't have to do it again.

17 JUDGE BLOCH: Okay, let's resolve the narrow  
18 issues first. It's a Board order that the deadline for  
19 responding to the proposed standards for litigating  
20 allegations of intimidation be June 12th, 1984, and that  
21 the deadline on the Office of Investigations motion should  
22 be June 5th, 1984.

23 Now, we have not decided anything about  
24 applicants' suggestion for a greatly expedited hearing  
25 schedule. I want to point out some background information

1 on that. The first is that by action we already took  
2 during this conference, in which we're going to be re-  
3 solving many things on paper, we have shifted some of  
4 the burden from the hearing process, from the time that  
5 we would have to spend in hearing, the time that must  
6 necessarily be spent by the parties in preparing analyses  
7 and considering their responses on the summary disposition  
8 matters.

9 The Board considers that that's a more fruitful  
10 way to spend time in resolving technical issues than  
11 spending as much time as can be done trying to unmask  
12 expert witnesses through cross examination.

13 And we are pleased that this efficient method  
14 of hearing management has been adopted, with the  
15 approval of the parties. On the question of expedition  
16 of the schedule, we are not prepared at this time to  
17 rule, and the reason we are not is that the applicants'  
18 findings -- suggestions -- were filed without a detailed  
19 schedule of what the obligations of the parties are and  
20 we feel that at this point we still do not have enough  
21 information in terms of a detailed schedule to make the  
22 balanced consideration of fairness and efficiency re-  
23 quired of us by the rules and by the guidance given to  
24 us by the Commission.

25 There are a whole list of filings that parties

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1 are now being required to make. There are filings the  
2 applicants are scheduled to make that parties are going  
3 to have to respond to.

4 There are subissues that we know we can go to  
5 hearing on, and others that have to be deferred. It seems  
6 to me that we ought to attempt to lay this out in a  
7 thorough manner and have it all before us before we  
8 attempt to decide what the fastest and most expeditious  
9 way to the conclusion of the case is and full consideration  
10 of the fairness needs for all the parties.

11 It seems to me we're not equipped now, despite  
12 the applicants' proposed schedule filed on May 18, 1984,  
13 to make that determination. It just does not flush out  
14 enough what those parties' obligations are for us to set  
15 it in a fair context.

16 Now, I'd add that a successful completion of  
17 settlement negotiations, which are underway and are  
18 still hopeful, also would contribute to efficient  
19 resolution of the case, even though only some of the  
20 issues are now seriously under consideration for  
21 settlement. Mr. Reynolds, have you a comment on the  
22 statement that the Board has just made?

23 MR. REYNOLDS: I think certainly given the  
24 Board's ruling with regard to the motions that are  
25 pending for summary disposition and the fact that inherent



1 in that ruling is the conclusion that we don't need  
2 evidentiary hearings on those issues, obviously the  
3 release that we sought in our motion was in part  
4 obviated.

5           However, I don't see any reason why the Board  
6 cannot schedule additional hearings to address the re-  
7 maining issues in the case and establish that schedule  
8 now so that the parties may know the time frame in which  
9 they're working in order to prepare their cases.

10           JUDGE BLOCH: Well, I'd like to go to hearing  
11 rather rapidly on the coatings issue, which I was told  
12 months ago the applicants would be ready to go to  
13 hearing on, but you can't go to hearing on that one,  
14 can you?

15           MR. REYNOLDS: Mr. Chairman, I could not pre-  
16 dict months ago that we would be faced with a letter  
17 dated May 18th with 60 allegations in it. Obviously,  
18 we just got that and you tell me there was a Board  
19 notification which I haven't even seen. We'll have to  
20 address that, too.

21           JUDGE BLOCH: Okay, what about the adequacy  
22 of the record keeping system?

23           MR. REYNOLDS: The adequacy of the record  
24 keeping system, the Board said -- records receivable  
25 memorandum? Is that what you're referring to?

1 JUDGE BLOCH: Yeah.

2 MR. REYNOLDS: We're preparing affidavits on  
3 that.

4 JUDGE BLOCH: When will those be filed?

5 MR. REYNOLDS: I would guess within a week,  
6 two weeks.

7 JUDGE BLOCH: Okay, you think that that also  
8 could be something that you'll seek summary disposition  
9 on or is that something we'll need a hearing on?

10 MR. REYNOLDS: No. Quite clearly, I believe  
11 that's something that would be appropriate for at most  
12 summary disposition and perhaps not even that. I took  
13 it as responding to a Board request for information.

14 JUDGE BLOCH: Okay, I guess I saw that as  
15 still related to the Office of Investigations questions  
16 about the adequacy of relying on inspection report  
17 checklists as opposed to nonconformance reports. I  
18 thought that was still an open issue in the proceeding.  
19 Am I wrong about that?

20 MR. REYNOLDS: Can you tell me to what document  
21 you're referring?

22 JUDGE BLOCH: Yeah, the CAT team found that  
23 you had issued a memorandum. I believe it was either --  
24 I think it was Mr. Tolson that issued a memorandum which  
25 changed the procedure from nonconformance reporting to

1 the use of the checklist for nonconformances, and we  
2 were assured during the hearing that the nonconformances  
3 on the checklist could be checked just as carefully and  
4 accurately as your nonconformance reporting system.

5 I thought that that matter was -- what we said  
6 in our order was still open.

7 MR. REYNOLDS: My recollection of the record  
8 in that regard is that the only open issue was with  
9 regard to the trending of deficiencies which are reported  
10 on IR's. Is that the matter to which you are referring?

11 My recollection is that staff testimony on  
12 the use of IR's was that there is nothing wrong or in-  
13 consistent with Appendix B in reporting nonconforming  
14 conditions on inspection reports.

15 JUDGE BLOCH: Yeah, our memorandum said that  
16 they had reached that conclusion rather rapidly in the  
17 course of the hearing and that, in the absence of  
18 further information on how those were tracked and how  
19 they were followed in the computer, that we were not  
20 confident in that conclusion.

21 MR. SCINTO: Mr. Chairman, this is Joe Scinto.

22 JUDGE BLOCH: Yes, sir?

23 MR. SCINTO: It's my recollection and it's  
24 our recollection basically that we think there is an  
25 issue in the matter. I think that the differences between

1 the staff filing and the applicants' filing concerning  
2 what we expected, it was part of the question matter the  
3 applicants had.

4 They indicated -- we expected that the  
5 applicants response to Question 1 of the 15 questions  
6 was to be a copy after discussion and including these  
7 kind of things.

8 The applicant has indicated they were going  
9 to file -- week, one week from summary disposition right  
10 now. If it's as comprehensive as the staff suggested  
11 it should be and our comments are --, then that --  
12 going to be put to bed.

13 If it is not as comprehensive, then I think  
14 it is a matter of issue in this proceeding.

15 MR. REYNOLDS: Mr. Chairman, the question that  
16 you alluded to was one of construction, inspection and  
17 sufficiency reporting, where as the matter that is con-  
18 templated in Item 1 of our plan is a design QA matter.

19 MR. SCINTO: But I -- and contemplated in our  
20 response is that it's -- on how the design gets actually  
21 implemented in the -- in construction --. That's been  
22 the design QA question.

23 MR. REYNOLDS: That to me, Mr. Chairman, is  
24 implementation through construction and construction QA.

25 JUDGE BLOCH: I guess I see them as separate

1 issues, but I see them as having been raised on this  
2 record. Whether they're part of Part 1 of the plan is  
3 not clear to me, and it is clear to me that questions  
4 have been raised about how DCA's get tracked, about what  
5 whether CYGNAS findings on the adequacy of the record  
6 keeping system were adequate given the prenotification  
7 problem.

8 We have problems generally on how the records  
9 are being used in the construction process that are open  
10 on our hearing record. One of the issues we raised was  
11 how you keep track of nonconformances.

12 As you recall, the IR's have checklists, but  
13 there's no serialized numbers on the checklist items  
14 as there were on the nonconformance reports and we were  
15 also not sure whether you were keeping track of those in  
16 a systematic fashion that would enable you to recover  
17 all of them.

18 MR. REYNOLDS: Mr. Chairman, we are in the  
19 process of preparing a response to your January 30  
20 records receivable memorandum. That will be a rigorous  
21 response and that should be forthcoming within a week  
22 or two. We do not see that as a matter that will require  
23 hearing.

24 JUDGE BLOCH: Okay, what do you see as the  
25 next matter that requires hearing?

1 MR. REYNOLDS: Intimidation.

2 JUDGE BLOCH: And that we have to ask  
3 Mr. Roisman concerning when he might be able to go to  
4 hearing on and how soon and set a reasonable schedule  
5 after hearing from him. Is that the right way to proceed  
6 on that?

7 MR. REYNOLDS: No, I don't think it is. I  
8 think it is a factor to ask Mr. Roisman how long it  
9 will take to prepare his case, but we have to remember  
10 that Mrs. Ellis has known intimidation was going to be  
11 litigated for a year, and now to come in this day and  
12 announce that she has new counsel to litigate that issue  
13 should not prejudice applicants by delaying unreasonably.

14 I am, of course, sympathetic with Mr. Roisman's  
15 situation and I would agree that he should be permitted  
16 ample time, but he's representing a client who has a  
17 great deal of knowledge on this issue.

18 JUDGE BLOCH: May I ask Mr. Roisman whether  
19 he has ideas on the earliest date he might be able to  
20 go to trial on some portion of the intimidation issue?

21 MR. ROISMAN: Mr. Chairman, I would make the  
22 mistake on erring on the side of too much time, a subject  
23 which is ever popular in these conference calls, if I  
24 gave you an estimate now.

25 I would rather take a few more days to get

1 myself what I hope is at least moderately up to speed  
2 on this record and to have some much more extensive con-  
3 versations with Mrs. Ellis, and I have my law clerk in  
4 Fort Worth now so that she and Mrs. Ellis can go over  
5 this.

6 I could answer that question better in a week  
7 than I can answer it today. If I answered it today, I  
8 would say that a hearing date that would be -- the  
9 feasible one is the one that you had at least initially  
10 blocked out at the end of July, not the one at the first  
11 of July.

12 JUDGE BLOCH: Okay, I would appreciate a  
13 response in the hands of the parties by May 31, if you  
14 would, setting forth what you think a feasible schedule  
15 on intimidation is.

16 MR. ROISMAN: You're asking for a date to  
17 begin or a date for everything?

18 JUDGE BLOCH: Well, why don't you tell me as  
19 much as you think you can at that point.

20 MR. ROISMAN: All right.

21 JUDGE BLOCH: Tell me what your uncertainties  
22 are, what you can do and what you're not sure about.  
23 We will then, at the request of the other parties,  
24 either convene a telephone conference to decide those  
25 matters or have an expedited system for response so we

1 can decide those matters. May I have the staff  
2 comments on what we've just done?

3 MR. TREBY: At this point the staff can only  
4 say that it's our understanding that there are ongoing  
5 investigations. We will immediately contact OI and see  
6 if we can get a better feel for what the schedule is  
7 and perhaps in response to Mr. Roisman's filing, we  
8 can, you know, advise the Board further as to our up-  
9 dated estimate.

10 JUDGE BLOCH: Mr. Treby, I notice that the  
11 applicants volunteered on page 3 of their filing on  
12 proposed schedule that you might be ready to go forward  
13 on the CYGNA report. Is that true?

14 MR. TREBY: No, it is not true.

15 JUDGE BLOCH: Do you know when you'll be  
16 able to have the staff schedule?

17 MR. TREBY: I'm advised that we will have a  
18 staff schedule within 10 days.

19 JUDGE BLOCH: Are there any items that you  
20 see as feasible for hearing on the dates we've already  
21 established for the beginning of June?

22 MR. TREBY: Nothing at the beginning of June.

23 JUDGE BLOCH: Mrs. Ellis, do you see anything  
24 at the beginning of June, other than a lot of headaches  
25 doing with summary disposition?



1 MRS. ELLIS: No, I really don't.

2 JUDGE BLOCH: And, Mr. Reynolds, I don't know  
3 if you do either. Do you?

4 MR. REYNOLDS: Well, let me check.

5 JUDGE BLOCH: Mr. Hicks, would you like to  
6 comment while Mr. Reynolds is checking?

7 MR. HICKS: I really don't think I have any-  
8 thing that would be -- add anything to what's been said.

9 JUDGE BLOCH: Thank you. I thought I'd check  
10 with you.

11 MR. HICKS: Thank you.

12 MR. REYNOLDS: Mr. Chairman, if the Board in-  
13 tends to rule on our motion seeking clarification of  
14 issues, in particular with regard to the need to litigate  
15 staff walk downs, we may flush out an issue.

16 It seems to me that if the Board is inclined  
17 to grant our motion that there would be no issue ripe  
18 for litigation in June. If the Board is inclined not  
19 to grant our motion or to grant partial relief to our  
20 motion, we may be prepared in June to litigate the staff  
21 walk down of the cable spreading room.

22 MR. TREBY: This is Mr. Treby. The staff does  
23 not yet have an inspection report on that inspection.  
24 And further, we have serious question as to whether it  
25 constitutes a walk down in the sense that we've been

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1 using it in this hearing as opposed to have been an  
2 inspection performed by the -- the staff of one room.

3 JUDGE BLOCH: I would comment that if I  
4 recall the basis for our order on wanting to look at the  
5 staff walk down, it was at the time in consideration of  
6 the need for hearing efficiency.

7 Our concern was that there were substantial  
8 issues pending concerning improper quality control  
9 practices and we therefore said that it would be fruitful  
10 to pursue two tracks -- one, the finished quality of  
11 the plant and, two, the question of intimidation issues.

12 The efficiency of doing it as a two-track  
13 process seems to have disappeared into thin air. Since  
14 it now seems that it's impossible to litigate the two  
15 of them at the same time, it therefore seems to the Board  
16 to make sense to go back to the other order, which is  
17 the -- intimidation issues first and get the quality of  
18 plant issues second.

19 And I think Mr. Reynolds probably has no  
20 serious qualms with that. Mrs. Ellis, would you like  
21 to comment on that?

22 MRS. ELLIS: I'm not sure that -- I think I  
23 need to look back at the order, if somebody else would  
24 like to talk.

25 JUDGE BLOCH: Would the staff like to comment

1 on that view?

2 MR. TREBY: We believe that the Board has  
3 accurately stated what previously happened and we agree.

4 JUDGE BLOCH: Applicants, I take it, agree?

5 MR. REYNOLDS: Yes, if I heard you correctly.  
6 Would you repeat the summary of your statement?

7 JUDGE BLOCH: I think you heard it correctly,  
8 Mr. Reynolds. It sometimes happens that what we say is  
9 in your favor.

10 MR. REYNOLDS: Geez, I better sit down.

11 JUDGE BLOCH: Mr. Roisman, are you familiar  
12 enough with the record to have a comment?

13 MR. ROISMAN: I'm sorry, were you asking me,  
14 Mr. Chairman?

15 JUDGE BLOCH: Yes. Do you have a comment on  
16 the ruling that we had considered plant quality to be  
17 important as a simultaneous issue because of doubts that  
18 were raised about intimidation.

19 What I've just said is that I think now since  
20 we can't get to those plant quality issues first, we  
21 should reserve them to see what we learn about intimi-  
22 dation before we get to those issues.

23 MR. ROISMAN: Theoretically, I don't see a  
24 problem with that. Obviously, the question is when do  
25 you start intimidation, not whether you do it before or

1 after the other issue, from my perspective.

2 JUDGE BLOCH: Okay. Of course, obviously, if  
3 the intimidation issue is a substantial one, as it  
4 appears at trial, then construction quality becomes  
5 far more important.

6 If intimidation is not so substantial, con-  
7 struction quality may drop out of the hearing. Mrs. Ellis,  
8 have you a comment at this point?

9 MRS. ELLIS: I think that Mr. Roisman covered  
10 our position pretty well on that.

11 JUDGE BLOCH: Okay, are there any other  
12 necessary matters for this conference?

13 MR. ROISMAN: Mr. Chairman, this is  
14 Mr. Roisman. In order to prepare my piece of paper by  
15 next week, could you just clarify for me a procedure  
16 that you discussed with regard to earlier issues, and  
17 that's the summary judgment issue, so that I'll better  
18 understand, particularly in light of the Board's order  
19 in December, what the Board's procedure is going to be?

20 If I understand correctly on the issues on  
21 summary judgment, the Board on some of these issues has  
22 previously taken evidence and at a point in the taking  
23 of that evidence the Board stopped to put the applicant  
24 on notice that at that point and at that stage of the  
25 record the applicant was not carrying its burden and

1 that the Board wanted to let them know that, and then  
2 the applicant began to prepare other materials.

3 Some of that is the materials that are going  
4 to be the subject of the summary judgment motions and  
5 the settlement discussions and the Walsh-Doyle meetings  
6 and the like.

7 JUDGE BLOCH: That's right, but to be fair,  
8 the way we've modified the summary judgement motions,  
9 with the Board's discretion to request additional  
10 affidavits or pleadings or even oral argument, what I  
11 really have set forth is a procedure for deciding tech-  
12 nical issues on paper.

13 MR. ROISMAN: Okay. I guess my question is  
14 this: At this time is the Board, after the applicant  
15 submits its papers and then CASE and the staff and the  
16 state present their-, will the Board, if it finds that  
17 the applicant again has failed, provide the applicant  
18 another opportunity or is that all the bites and will  
19 that same principle be applied to the harrassment-  
20 intimidation question?

21 JUDGE BLOCH: Well, we already had something  
22 to say about that issue, which is that there may be an  
23 opportunity to get a second bite but there is a point  
24 at which you reach due process considerations.

25 Obviously, we were very concerned that if we

1 were to give one more bite after this one, we would be  
2 getting close to that due process line. However, in  
3 keeping with the sound practice of all courts, I won't  
4 decide that issue until we see what it amounts to.

5 MR. ROISMAN: All right, then in other words,  
6 it is possible that -- excuse me -- that on harrassment-  
7 intimidation we might have a round of hearings, at the  
8 end of which time the Board might indicate that if that's  
9 all that's going to be said on it, the issue's going to  
10 be resolved against the applicant with whatever conse-  
11 quences there are and invite no more information.

12 Or the Board might say if that's all that's  
13 going to be said on it by the plaint -- excuse me, my  
14 court practice is coming through -- by the intervenor,  
15 that it's going to resolve in the favor of the applicant  
16 and thus the intervenor needs to decide whether they're  
17 going to bring in something more. Am I correct in under-  
18 standing that that -- that is an optional action that  
19 the Board might take at the end of any piece of  
20 harrassment-intimidation hearings?

21 JUDGE BLOCH: Well, more often when there's  
22 a problem of incomplete presentation by the intervenor,  
23 which I don't expect to happen now that you're in the  
24 case, what we've done is to ask for additional evidence  
25 or ask our own questions at that point to obtain an

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1 adequate record. We have, as you know, an obligation  
2 to obtain an adequate record and we take that quite  
3 seriously.

4 I don't think the way we would deal with that  
5 problem is to go back -- although I can imagine the  
6 situation arising where we would become aware during  
7 deliberation that the record was not adequate.

8 It's possible. I again wouldn't rule on that  
9 now.

10 MR. ROISMAN: Okay, thank you.

11 JUDGE BLOCH: Mr. Reynolds, have you anything  
12 necessary at this point?

13 MR. REYNOLDS: Mr. Chairman, as you were  
14 speaking with Mr. Roisman, I was perusing the filings  
15 and I see three matters that are before you. The first  
16 is our motion for the Board to establish a schedule for  
17 the filing of proposed findings by the parties on the  
18 matters of welding and the CAT report.

19 It seems to me that while there may have been  
20 an argument that given we were going to go forward with  
21 hearings next month, that there were some equities  
22 suggesting we not file for postponment until sometime  
23 later.

24 That reason has now gone away and it seems  
25 to me perfectly appropriate for the Board to establish

1 a schedule for the filing of findings on CAT and  
2 welding, and I would suggest that we start today, the  
3 clock running, and that you prescribe the time limits  
4 in the rules for the filing of findings and required  
5 findings.

6 JUDGE BLOCH: Well, I find that the record on  
7 welding is certainly not adequate at the present time.  
8 We, first of all, have a staff finding to which the  
9 applicants haven't responded.

10 That finding has to do with three repair welds  
11 for which no paper was found. We also have a staff ob-  
12 ligation to this Board to comment on the Coleman finding  
13 that you made in which it was clear that repair welds  
14 are treated as fabrication and that there are no repair  
15 papers issued prior to those welds being made.

16 MR. REYNOLDS: Mr. Chairman, I would remind you  
17 that the matter of the three holes is not within the  
18 scope of the issues in this case. This was a matter  
19 that was raised and the Board ruled was not within the  
20 case, but the Board did ask the staff to investigate it.

21 JUDGE BLOCH: The problem is that as we reflect  
22 on that, it bears very heavily on the credibility issues  
23 affecting whether we believe the Stiners and we believe  
24 the applicants' witnesses.

25 That was the reason we asked for the Coleman



1 paper before the hearing closed, and it now appears that  
2 there is some question as to exactly what the procedure  
3 was that was being followed with those repair holes and  
4 I certainly would not want to close the record until after  
5 we saw the results of that answer.

6 In addition, it's possible that the answer the  
7 applicants are going to give on the -- in response to the  
8 staff affidavit on Crayons and preheat could also affect  
9 the credibility issues that were litigated about the  
10 Stiners.

11 MR. REYNOLDS: The next motion you have pending  
12 is our motion with regard to the adoption of special  
13 procedures.

14 JUDGE BLOCH: No, wait. You originally  
15 mentioned the CAT report. I'm not sure, though -- my  
16 problem on the CAT report is that it was very complex  
17 and I'm not certain which issues in the CAT report are  
18 now ripe for determination.

19 I think if you wanted to make that motion,  
20 you better flesh out a little bit more in writing which  
21 CAT issues you think are now closed so they could be sub-  
22 ject to findings.

23 In fact, one way for you to do that would be  
24 for you to file a summary disposition motion on it.

25 MR. REYNOLDS: The next motion you have pending

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1 is our motion seeking special procedures.

2 JUDGE BLOCH: Correct. Would CASE like to  
3 take this opportunity to respond? We're talking about  
4 the applicants' motion from pages 6 through 10 on  
5 Roman Number -- the first Roman Numeral IV preceding  
6 the second Roman Numeral IV.

7 MR. ROISMAN: Mr. Chairman, this is Mr. Roisman.  
8 Mrs. Ellis and I will both talk about this because the  
9 special procedures will relate to some issues that we'll  
10 be handling here and some that she'll be handling.

11 But I had thought that you had indicated  
12 earlier in the conversation, and maybe I understood it --  
13 misunderstood it -- that the special procedures that  
14 applicants talking about here is the so-called expediting  
15 procedures and that you did not feel that the applicant  
16 had provided adequate information from which you could  
17 make the fairness and expeditious findings that you had  
18 to make before you implemented those.

19 JUDGE BLOCH: Okay, but the ones I was talking  
20 about before were the ones in Roman Numeral III of the  
21 applicants' motion, which has to do with what you --  
22 what you schedule, what we're ready to hear and when.

23 Roman Numeral IV is different. These are  
24 things that, to some extent, are drawn from the  
25 Commission's suggestion for practice before hearing boards

1 having to do with the expedition of the individual  
2 hearing sessions when they occur.

3 For example, cross examination plans, use of  
4 documents in cross examination, cross examination limits,  
5 the board cross examination of witnesses and close of  
6 discovery.

7 MR. ROISMAN: All right, well, I'm happy to  
8 comment on all of those. I would favor the use of cross  
9 examination plans provided the parties exchange them  
10 with each other.

11 I'm not a Perry Mason type lawyer and I don't  
12 think the NRC hearings are good for those.

13 JUDGE BLOCH: May I ask --

14 MR. ROISMAN: It can happen two weeks in ad-  
15 vance of when the witnesses go on the witness stand to  
16 avoid the witness saying, "Gee, I didn't know that was  
17 going to come up and I don't have the document with me"  
18 kind of problems that we seem to run into at these  
19 hearings.

20 JUDGE BLOCH: Sounds constructive. Mr. Reynolds,  
21 is that acceptable?

22 MR. REYNOLDS: Yes, that's fine.

23 JUDGE BLOCH: And staff?

24 MR. TREBY: The staff has a problem with the  
25 two weeks period in the sense that I'm not sure if that's

1 on your files in ad -- enough time in advance of that  
2 so that cross examination plans can be provided two weeks  
3 before the hearing.

4 MR. ROISMAN: Well, in commenting with that,  
5 Mr. Chairman, I would want to have them filed sufficiently  
6 in advance to make that possible, so that when we get to  
7 the hearing we've all narrowed it down, we know what  
8 everybody wants to hear from our witnesses and no one  
9 has an excuse for not being prepared.

10 JUDGE BLOCH: So you want to have the testimony  
11 filed how much -- two weeks in advance?

12 MR. ROISMAN: No, I would file it -- I think  
13 it's a question depending upon the volume of testimony  
14 you're talking about whether you'd want a week to do your  
15 cross examination plan based upon the testimony, or two.

16 I would say if you're looking at a week's  
17 worth of hearings, you shouldn't need more than a week  
18 at most to prepare a cross examination plan from the  
19 proposed testimony.

20 If you're looking at two weeks of hearings,  
21 you might need two weeks to do your cross examination  
22 plan from the filed testimony. That again may depend  
23 on the volume of the testimony.

24 It's very, very hard to determine, and it  
25 might be, and I would not object to this, to the Board

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1 making a ruling the moment the testimony is filed as  
2 to how long it would give the parties to cross examination  
3 plans.

4 JUDGE BLOCH: Well, let me ask -- I think it  
5 would be helpful if you explained the detail that you  
6 expect to file in the cross examination plan so that the  
7 parties would have similar levels of detail.

8 MR. ROISMAN: All right, the best example I  
9 can use -- we only got to do these once. I did them in  
10 the Operating License Hearings on the Indian Point  
11 Number 2. That's ancient history, but at that time what  
12 we did was we indicated the areas that we wanted to do  
13 cross examination from the witness and the nature of the  
14 types of questions that were going to be asked.

15 For instance, if we were talking about whether  
16 a particular set of welds had been properly done, we  
17 would indicate the cross examination plan that we wanted  
18 to have the witness to explain and we'd indicate which  
19 statements in the testimony were the ones that we found  
20 questionable.

21 We would also indicate if we intended to  
22 confront the witness, and I think that's covered some-  
23 what in Mr. Reynolds' proposal, in Number B -- in Letter B  
24 what documents we were going to confront them with.

25 You know, how did you take into account this

1 particular thing. And we tried to have them in a level  
2 of detail in which the witness could honestly prepare  
3 and the "trickery" factor would be relatively diminished.

4 JUDGE BLOCH: Sounds like a good set of guide-  
5 lines. I take it you agree, Mr. Reynolds?

6 MR. REYNOLDS: Yes, I agree with that, and I  
7 assume that this applies to all issues that will be  
8 litigated henceforth, not just intimidation.

9 MR. ROISMAN: I'm speaking only on behalf of  
10 CASE on intimidation and, Mr. Chairman, I'm not convinced  
11 that this is a procedure which can necessarily be carried  
12 out with the same level of detail by a lay person as it  
13 can by an attorney and I will speak to that.

14 JUDGE BLOCH: I would prefer to decide about  
15 whether to apply it to other issues when we know what the  
16 other issues are. Right now we don't have any to set  
17 for hearing.

18 So let's consider that it would be adopted for  
19 this purpose, unless staff has an objection at this point.

20 MR. TREBY: I guess the staff would like to  
21 have the timing aspect of this all clarified again. We  
22 have no objection to the principle of exchanging cross  
23 examination plans and identifying the documents that  
24 were to be used in -- as an effective means of making  
25 the hearing more efficient.

1 I guess my question, though, is I am unclear  
2 as to just what the timing is.

3 JUDGE BLOCH: Okay, I understand first that if  
4 there's to be a one-week hearing, there's a one-week  
5 delay from the time testimony is filed until the cross  
6 examination plan is due.

7 If there's a two-week hearing, there's two  
8 weeks to prepare the cross examination plan. It's going  
9 to be in enough detail so that a lot of time, I hope,  
10 will be saved at hearing.

11 Now, we've got to work backwards from that.  
12 Mr. Roisman, how much time does there have to be from  
13 the time that you receive the cross examination plan to  
14 the time you go to hearing?

15 MR. ROISMAN: I would think if they're in the  
16 level of detail that we're talking about, maximum two  
17 weeks, maybe less. Maybe one, but --

18 JUDGE BLOCH: It sounds to me like we're going  
19 a little over on days. This is now three weeks from the  
20 time that the testimony is filed before you're going to  
21 hearing?

22 So I guess we can settle it's a three total  
23 on a two-week hearing. Mr. Reynolds, do you have anymore?

24 MR. REYNOLDS: I think, Mr. Chairman, three total  
25 on a two-week hearing would not be unacceptable, and

1 maybe if the parties took -- really, if you think about  
2 it, you do your cross examination plan witness by witness.  
3 We might also have agreed to file the seriatum (phonetic)  
4 as we do our cross examination plan and not try to hold  
5 the whole packet to the end.

6 JUDGE BLOCH: I actually see a problem on  
7 intimidation cross examination plan because I see that  
8 in the first instance most of the plan -- most of the  
9 witnesses' testimony is going to be filed by intervenors.

10 The applicants, I take it, are going to have --  
11 are going to try to file simultaneously their rebuttal  
12 testimony. Is that right, Mr. Reynolds?

13 MR. REYNOLDS: Mr. Chairman, that depends on  
14 whether through discovery we can learn the substance of  
15 intervenor's case. We haven't been successful so far  
16 in doing that.

17 We would hope to file simultaneous pleadings  
18 if we were able to depose the prospective witnesses.

19 JUDGE BLOCH: Sounds to me like the best way  
20 to resolve the issues you raised, Mr. Reynolds, on the  
21 special procedures is to allow Mr. Roisman to prepare  
22 his paper and for you and he to talk during this next  
23 week.

24 And I have a feeling we're going to be able  
25 to make reasonable resolutions on an efficient schedule,

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1 but that it'd be very helpful for the two of you to talk  
2 on what that schedule ought to be.

3 MR. TREBY: We assume that they will also be  
4 talking with the staff.

5 JUDGE BLOCH: The staff is welcome to  
6 participate, yes.

7 MRS. ELLIS: And I'd like to mention, too,  
8 that some of the things that we're talking about, there  
9 may be some variations that if we do not reach a settle-  
10 ment, we may need to get into with the Walsh-Doyle man.

11 JUDGE BLOCH: Okay, but right now we have no  
12 Walsh-Doyle issues scheduled for hearing so we don't  
13 have to worry about that right now.

14 MRS. ELLIS: I just want to retain that  
15 opportunity.

16 JUDGE BLOCH: Yeah, but the discussion that  
17 we're having will be for the intimidation matter.

18 MR. REYNOLDS: Mr. Chairman, let me -- this is  
19 Mr. Reynolds. Let me just say that this motion was pre-  
20 pared and filed without the knowledge that Mr. Roisman  
21 would be involved.

22 The fact that he is now involved for this  
23 issue suggests to me that motion may not even be  
24 necessary to the extent that it goes to efficiencies  
25 during the hearing process.

1 We've worked with Mr. Roisman before and we  
2 know him to be an efficient litigator. So it really may  
3 be moved as it applies to the intimidation question.

4 JUDGE BLOCH: Okay, but what I'd like to have  
5 happen during this next week is for the parties to have  
6 discussions about what they consider to be fair and  
7 efficient and to try to reach agreements, including agree-  
8 ments on dates.

9 MR. ROISMAN: You're talking about dates for  
10 the commencement of a phase of hearings on this issue?

11 JUDGE BLOCH: Yeah, dates on the commencement  
12 of a phase of hearings if you can reach that. Otherwise  
13 the Board of course will be involved in that discussion  
14 at some near period of time.

15 I also expect, Mr. Reynolds, that your discovery  
16 problems may be eased with Mr. Roisman on the case. So  
17 I hope the discovery will proceed openly and above-board  
18 on both sides and that we'll get the hearing efficiently  
19 and fairly on the intimidation issues on the understanding  
20 that if OI reports come in subsequently, we're going to  
21 have to seriously consider reopening and getting back  
22 into matters that we may have thought we finished.

23 MR. ROISMAN: Mr. Chairman, I feel that I must  
24 say that -- have not seen it, I don't want to prejudice  
25 you -- but that if the Board has already ruled on the

1 procedure to be used with regard to the witnesses or  
2 the information that comes from witnesses who the parties  
3 don't know the names of, that if there is not an --  
4 they are reporting only directly to OI or they're going  
5 through some other independent group like the Government  
6 Accountability Project but their names are not known to  
7 other parties.

8 If the ruling on that is that their infor-  
9 mation is inherently excluded from the hearing, that's  
10 going to greatly complicate this discovery portion of  
11 the process and I just want to --

12 JUDGE BLOCH: There's no ruling.

13 MR. ROISMAN: -- iterate -- oh, I'm sorry.  
14 I thought that you had said you had made some ruling on  
15 the 17th of this month.

16 JUDGE BLOCH: No, that was only that we did  
17 not want OI sending us reports in the future which  
18 deleted information that was not being made available to  
19 the other parties.

20 We don't want to be in the position of even  
21 being able to be accused of having X-party information  
22 that could affect our decision.

23 MR. ROISMAN: I got -- well, Mr. Chairman,  
24 I was going to write this. I will talk at this point.  
25 It's so obviously coming up here. We wanted to propose

1 a procedure. We are concerned that the bulk of the  
2 reliable information on this subject may be people who  
3 are unwilling to have their names disclosed and to --  
4 even under protective orders.

5 JUDGE BLOCH: May I interrupt? It sounds to  
6 me like a very important subject, but one that would be  
7 much better resolved if you'd present it in a thorough  
8 and careful way in writing.

9 MR. ROISMAN: I intended to do that and the  
10 date that you had given me for the filing of the piece  
11 of paper in which I hope to do that was either the 5th  
12 or the 12th of June. I now have a May 31 date.

13 JUDGE BLOCH: That's the 5th. That's the 5th  
14 because that's the one that relates to the motion on OI.

15 MR. ROISMAN: That's right, but I see an  
16 interrelationship between those, the May 31 -- and I  
17 haven't figured out the solution to the problem.

18 JUDGE BLOCH: You can always move it forward.  
19 You never advance from filing something earlier.

20 MR. ROISMAN: I understand. I am not going  
21 to be able to make May 31 if I do both of those, and  
22 part of that reason is admittedly personal, but nonethe-  
23 less unavoidable.

24 My son is being Bar Mitzvahed on Saturday  
25 and when this phone call is over, I'm leaving my office

1 until, at the earliest, next Monday morning so I need  
2 to -- if I'm going to do this and do it -- and talk to  
3 Mr. Reynolds and talk to the staff and try to work it out,  
4 I'd at least like the opportunity to move the date on  
5 which I do the response to what we have said on May 31  
6 until, at a minimum, the end of that week, which is only  
7 another day or so but it's important for me.

8 JUDGE BLOCH: Let me ask -- it sounds to me  
9 like you'd rather make your May 31 filing on the pro-  
10 cedure for witnesses whose names are not known and delay  
11 somewhat your filing on what you can go to trial first on.  
12 Is that right?

13 MR. ROISMAN: Yes. Or to try to work the whole  
14 thing out with the applicants because our proposal here  
15 is one that is of mutual benefit, I think, to all the  
16 parties if we can sit down and discuss it.

17 We're all -- I think we all have the same  
18 interest and that is to try to get to the truth.

19 JUDGE BLOCH: Mr. Reynolds, are you --

20 MR. ROISMAN: I did want to do it in a way  
21 that will not compromise people who are currently working  
22 at the plant who are scared of losing their jobs.

23 JUDGE BLOCH: Mr. Reynolds, are you for getting  
24 at the truth?

25 MR. REYNOLDS: By all means.

1 JUDGE BLOCH: And sitting down together  
2 with Mr. Roisman for that purpose?

3 MR. REYNOLDS: I'm also for due process for  
4 all parties, too.

5 JUDGE BLOCH: That sounds like something the  
6 Board is for also. I bet the staff is for it.

7 MR. TREBY: The staff is for it.

8 JUDGE BLOCH: All right, why don't we leave it  
9 that the parties will talk, the Board will be available  
10 shortly, if necessary. Anything we can do to facilitate  
11 these conversations we will do.

12 And as the parties know, that would include  
13 evening hours, when necessary. We want to thank the  
14 parties for their participation. Is there anything  
15 absolutely necessary at this time?

16 MR. TREBY: The staff has a problem. At the  
17 beginning of this conference call we were discussing  
18 the various motions for summary disposition which the  
19 applicant was filing on, the 16 items of the plan, and  
20 they were in the process of telling everybody when and  
21 why they were going to be covering when we went on to  
22 another subject.

23 I guess I'm unclear as to when all of these  
24 filings are going to be completed because it seems to  
25 me that that is a necessary piece of information so we

1 can efficiently hold meetings on the plan.

2 JUDGE BLOCH: Okay, let's get back to that.  
3 I thought we finished it. They gave us three items, the  
4 last of which was the Design QA process. Mr. Horin, do  
5 you want to finish what the schedule is on these in-  
6 process items?

7 MR. HORIN: There's only one other item that  
8 we have not mentioned that's in the plan that has yet to  
9 be filed and that is the actual restraint question. That  
10 also is nearing completion and we intend to have that  
11 early to mid next week also.

12 JUDGE BLOCH: Is actual restraint the torquing  
13 problem? Not the torquing problem, the -- I guess it's  
14 a problem with the torque on the particular configuration  
15 that we were worried about last time? That one we're  
16 talking about with the bolt -- torque on a bolt?

17 MR. HORIN: This is the double trunion.

18 JUDGE BLOCH: It's the double trunion. Where's  
19 the torque on the bolt?

20 MR. HORIN: That's the Richman Insert with  
21 which I mentioned was under preparation now and it would  
22 be end of the next day or two.

23 JUDGE BLOCH: Oh, okay. I didn't hear that one.  
24 That's the one -- is that the one you called stability?

25 MR. HORIN: No. Stability is the pipe support

1 stability question that Mr. Doyle raised, the piping  
2 system stability -- support stability.

3 JUDGE BLOCH: Okay, the ones I heard are  
4 U-bolt cinching, stability, Design QA process, axial  
5 restraint, which is the double trunion problem, and the  
6 Richman Insert. Is that it?

7 MR. HORIN: There are -- there are a few other  
8 items that I'm sitting here -- if I had my group of  
9 people that are working on these, there are a few others  
10 that we presently are working on but I can't say  
11 definitely. We are hopeful to have those out next --  
12 shortly.

13 Those are the wall-to-wall and re-analysis  
14 of all Mr. Doyle's supports but it's -- and by the time  
15 we're completed with all the filings, that one will be  
16 flushed out within individual responses to the other  
17 issues.

18 JUDGE BLOCH: Oh, we never did get back to  
19 that question of relevance either, which we were going  
20 to talk about.

21 MR. HORIN: We had that on our list to bring  
22 up before we came -- we signed off.

23 JUDGE BLOCH: Okay, all right. Did that answer  
24 the staff question on scheduling or not? Do you need  
25 more detail?



1 MR. TREBY: This list that he just gave, does  
2 that include all 16 items in the applicants' plan?  
3 All of the items that are intended to be handled by  
4 testimony?

5 MR. HORIN: The list I just gave you includes  
6 all of applicants' plan items, and all will be summary  
7 dispositions.

8 MR. SCINTO: You will admit it's a summary  
9 disposition. Is that correct.

10 JUDGE BLOCH: That's correct, Judge Scinto.

11 MR. SCINTO: I want to make it clear that we  
12 have indicated that we had already reached a conclusion  
13 that summary disposition was appropriate for things we  
14 haven't seen yet.

15 MR. REYNOLDS: But neither has the Board.

16 JUDGE BLOCH: That's correct, Judge Reynolds.  
17 All right, now on the question of the relevance of the  
18 safety margins filing, the safety factors filing, the  
19 reason the Board asked the question is as we understood,  
20 this issue of safety factors came up initially because  
21 applicants were saying that the safety margins were so  
22 large that certain minor things could be ignored and  
23 then CASE, in its findings, addressed the question of  
24 what the safety factors really are.

25 And applicants have gone back now in a motion

1 for summary disposition and have tried to argue that  
2 the safety factors are really quite high. But as I  
3 understand the thrust of this, it is that there are  
4 certain items which may or may not be required to be  
5 considered by the code which are marginal in the sense  
6 that their impact is generally small, although sometimes  
7 perhaps substantial, and that either because of practice  
8 at Comanche Peak or because of industry practice somehow  
9 defined, these small factors are not considered.

10 Is applicant arguing that under the correct  
11 interpretation of the code those small factors should  
12 be ignored by the Board?

13 MR. PHILLIPS: Judge Bloch, this is Mr. Phillips.  
14 Applicant is not arguing that anything that the code  
15 requires to be done that this document would say that  
16 we don't need to do.

17 Indeed, applicant believes that they will  
18 meet all code allowables and perform all necessary  
19 calculations pursuant to the code.

20 JUDGE BLOCH: Okay, now but for example, on  
21 self-weighted excitation, as I read the code, that is  
22 one of the things that has to be considered. Now you  
23 may have reasons for believing that you are within  
24 code allowables because the effect is so small that it  
25 just doesn't throw you over.

1 Are you going to be arguing that you can ignore  
2 things like self-weighted excitation?

3 MR. PHILLIPS: No, Judge Bloch, that's not  
4 what we're arguing. It would go to the rigorous nature  
5 of the calculations. There are several ways to perform  
6 that calculation and we will perform the calculation in  
7 accordance with the code and we do not anticipate -- well,  
8 we know we do not exceed code allowables.

9 JUDGE BLOCH: Okay, now if we were merely to  
10 rule that you must meet the code allowables, would there  
11 at that point be any relevance to this summary disposition  
12 motion?

13 MR. PHILLIPS: Judge Bloch, we would think  
14 that if the issue of cumulative effect is not an issue  
15 in this proceeding, which we don't honestly think it  
16 should be, then we would withdraw the motion.

17 JUDGE BLOCH: The cumulative effect.

18 MR. PHILLIPS: This has been an issue that  
19 CASE raised under Section Y of their proposed findings  
20 which we attempted to address.

21 JUDGE BLOCH: All right, now that sounds like  
22 something that the Board talked about with CYGNA during  
23 the hearing. That is that factors which individually may  
24 be negligible could in certain supports which are right  
25 close to code allowables placed the support outside of

1 the code allowable. Is that what you mean? I didn't  
2 hear. Was that a no or a yes?

3 MR. PHILLIPS: No, Judge Bloch, I do not  
4 believe that's what we mean. I think what it is is that  
5 we are indicating that in all instances we will meet  
6 code allowable.

7 There are certain calculations that the code  
8 does not require and the reason that the code does not  
9 require them necessarily is because there is a chance  
10 for inherent margins of safety.

11 JUDGE BLOCH: All right, we know the code does  
12 not require that certain things --

13 MR. PHILLIPS: Margins of safety in response  
14 to CASE's Section 1.

15 JUDGE BLOCH: I see. You think that CASE is  
16 arguing there are certain things that the code does not  
17 require to be calculated should be calculated?

18 MR. PHILLIPS: That's an estimate. In many  
19 instances, yes, that's why.

20 JUDGE BLOCH: All right, Mrs. Ellis, do you  
21 know if that is an argument CASE is making?

22 MRS. ELLIS: I think I really need to talk to  
23 Messrs. Walsh and Doyle about this one.

24 JUDGE BLOCH: All right, if you would clarify  
25 that. It seems to me that I haven't heard that argument

1 from CASE. I've only heard an argument that they must  
2 meet the code allowables according to the terms of the  
3 code that's fully and fairly interpreted.

4 If they're arguing more than that, then there  
5 could be some relevance to the safety factor allegations.  
6 Otherwise, I'm inclined to think there would be none.  
7 Does the staff have a comment?

8 MR. --: This is Mr. --. I generally agree  
9 with the Board's look at this issue. I don't think  
10 that there is a separate issue on the safety factors.  
11 If the applicants are now saying that -- meeting the  
12 code allowables, even when you consider the factors or  
13 phenomena which -- should be considered.

14 Just leave it at that and I believe that  
15 potential resolution of all the individual issues which  
16 relate to -- will -- safety factor question either coming  
17 up there or being negated at -- so we know that's a  
18 third and separate issue.

19 JUDGE BLOCH: Okay, is there anything else  
20 that must be considered?

21 MRS. ELLIS: There's one point of clarification  
22 I'd like to ask Mr. Treby. In regard to the Brookhaven  
23 report, did I understand you to indicate that the report  
24 won't be out until October?

25 MR. TREBY: No, that was not correct. All I've

1 indicated is that there was a Board notification made  
2 of an interim report and that Brookhaven's contract has  
3 been extended three months.

4 I'm not projecting what date their report is  
5 going to come out. It may come out within a month or  
6 it may take three months.

7 JUDGE BLOCH: Let me ask on the question of  
8 schedule for completing the plant, when applicants file  
9 that schedule, Mr. Reynolds, if there are analytical  
10 issues that have to be addressed before the staff concerns  
11 can be met, does that work itself into the schedule at all?

12 MR. REYNOLDS: Mr. Bloch, if you will recall  
13 in the merit affidavits --

14 JUDGE BLOCH: Yeah, you had three factors at  
15 the end which you said were beyond your control, I  
16 remember.

17 MR. REYNOLDS: Correct.

18 JUDGE BLOCH: But I wonder, for example, if  
19 an issue were raised and you found that there was merit  
20 to it, you know, that there really was a need either to  
21 analyze further or to even correct some hardware, I take  
22 it at that point you'd have to put it into your schedule.  
23 Is that right?

24 MR. REYNOLDS: Well, I think so.

25 JUDGE BLOCH: Okay. Any other points?

1 MR. REYNOLDS: Yes, sir, just a couple more  
2 points, Judge Bloch. In your colloquy with Mr. Roisman  
3 I don't know where you ended up on the filing dates. My  
4 understanding earlier in the conversation was that on  
5 June 5 CASE would file its response on the OI question  
6 and that on June 12th CASE would file its response on the  
7 standard for litigating intimidation.

8 JUDGE BLOCH: Yeah, my understanding is that  
9 you and he are going to sit down and discuss that, that  
10 June 5 would be somewhat flexible because of the inter-  
11 relationship between the June 5 and the May 31 date.

12 He saw some problems in addressing those  
13 separately. That is the question of what's going to be  
14 tried first and what is the issue -- what is the way you  
15 should deal with confidential witnesses.

16 MR. REYNOLDS: Okay, so the June 12th date  
17 stands. The June 5th date is somewhat flexible and it  
18 may move forward toward May 31st? Is that right?

19 JUDGE BLOCH: The June 12th date is firm. The  
20 June 5th and May 31 dates I see as being somewhat flexible,  
21 yes.

22 MR. REYNOLDS: Last question. When you talked  
23 about welding, I was left uncertain as to whether the  
24 Board considers there to be outstanding issues that  
25 require further hearing or whether there are simply

1 outstanding matters between applicants and staff as to  
2 which the Board wishes to be advised.

3 JUDGE BLOCH: Yeah, we want to see those  
4 written papers before we will decide whether or not it's  
5 appropriate to close the record.

6 MR. REYNOLDS: Okay, so it's -- so as far as  
7 the Board is concerned at this stage, it's written  
8 pleadings that it's looking for?

9 JUDGE BLOCH: That's right. Incidentally,  
10 it's my understanding from the conversation among the  
11 parties that there's to be no hearing June 1 through 4  
12 or June 2 through 5. Is that correct? There being no  
13 objection with CASE, that will be cancelled. Mrs. Ellis?

14 MRS. ELLIS: Yes, there are some portions in  
15 our motion on page 7, at the top, Item 3, there are some  
16 aspects of that which I think that CASE does need to  
17 address.

18 JUDGE BLOCH: Which motion?

19 MRS. ELLIS: Address them briefly in writing,  
20 but if we're going to be precluded from doing that --

21 JUDGE BLOCH: Mrs. Ellis, which motion?

22 MRS. ELLIS: This is our motion for an  
23 extension of time, for enlargement of time.

24 JUDGE BLOCH: Wait a second while I find that.  
25 Okay, what page is that?



1 MRS. ELLIS: That's on page 7 at the top.

2 JUDGE BLOCH: Okay, what about it?

3 MRS. ELLIS: There are some specific portions  
4 there which I would like to address at some point in time.  
5 I would prefer to save transcript time and do that  
6 briefly in writing. However, if we're going to be pre-  
7 cluded from these specific things, for instance --

8 JUDGE BLOCH: You won't be precluded because  
9 our ruling was that the applicants are going to have to  
10 file a more detailed schedule setting forth the party's  
11 obligations before we will decide what can be set where.

12 That is except with respect to intimidation  
13 where there'll be other negotiations going on. But if  
14 the applicants want hearings on specific matters, we  
15 have to know how that relates to the party's total  
16 hearing obligation, and at that point you'll have an  
17 opportunity to respond with a comment on the fuel  
18 loading submission.

19 MRS. ELLIS: All right, including the things  
20 like the time limits, the documents to be used and so  
21 forth?

22 JUDGE BLOCH: The time limits, documents to  
23 be used and so forth are to be part of Mr. Roisman's  
24 discussions now, and we have not decided anything with  
25 respect to those on other issues. I'll discuss those

1 separately when we know what the issues are.

2 MRS. ELLIS: Okay. My only concern is that  
3 what applicants have said does not stand unchallenged.

4 JUDGE BLOCH: Well, we understand that that's  
5 a general principle in this case.

6 MRS. ELLIS: Okay. I'm still not clear if I'm  
7 going to be given an opportunity to respond to those --  
8 those specific points.

9 JUDGE BLOCH: Well, we already ruled on the  
10 revised hearing schedule. We're not adopting the --  
11 promotion at this point. The adoption of special  
12 procedures is going to be discussed only with respect to  
13 the intimidation matters between Mr. Roisman and  
14 Mr. Reynolds. Clarification of issues, remind me what  
15 that means.

16 MR. REYNOLDS: One is OI involvement and  
17 the second is walk downs.

18 JUDGE BLOCH: Well, we already ruled on  
19 walk downs and on OI involvement, that's going to be a  
20 subject of written filing.

21 MR. REYNOLDS: That's true.

22 MRS. ELLIS: I'm not at all sure that I agree  
23 with -- I'm not sure if applicants are attempting to  
24 limit it to just those issues. I think there are many  
25 other issues that are open also.

1 MR. REYNOLDS: Well, let me revise the scope  
2 of my motion, Mrs. Ellis.

3 JUDGE BLOCH: You were just commenting on her  
4 motion -- on his motion, rather. Mr. Reynolds' motion  
5 when you said clarification of issues. There's a section  
6 in his thing that says "clarification of issues". It's  
7 pages 10 through 12.

8 MRS. ELLIS: As far as the issue of limiting  
9 the time for cross examination and this sort of thing,  
10 the documents to be used in cross examination, I'm  
11 trying to find out when we will have an opportunity to  
12 respond to that?

13 JUDGE BLOCH: When we know what issues there  
14 are going to be for hearing.

15 MRS. ELLIS: Okay.

16 JUDGE BLOCH: Mr. Scinto, did you have a  
17 comment? No. Is there anyone else who has necessary  
18 business?

19 MR. TREBY: This is Mr. Treby. I guess the  
20 staff requests that we also respond on June the 5th and  
21 June 12th to the respective applicant motions.

22 JUDGE BLOCH: Okay, that sounds very good.  
23 You usually have extra time, but that will be helpful  
24 if you don't take extra time.

25 MR. REYNOLDS: Mr. Bloch, is your cancellation

1 of the first week of hearings also apply to cancellation  
2 of the second?

3 JUDGE BLOCH: The date doesn't mention where  
4 the second week of hearing -- the first week was cancelled  
5 before we got on the phone today.

6 MR. REYNOLDS: That's right.

7 MR. TREBY: I didn't -- this is Mr. Treby.

8 JUDGE BLOCH: What's that, Mr. Treby?

9 MR. TREBY: I didn't know that the first week  
10 had been cancelled.

11 JUDGE BLOCH: Well, you may show up but it'll  
12 be a -- it'll be lonely. This scheduling conference is  
13 hereby adjourned. Thank you very much.

14 END OF CONFERENCE

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CERTIFICATE OF PROCEEDING

This is to certify that the attached proceedings before the  
ATOMIC SAFETY AND LICENSING BOARD

In the matter of: Texas Utilities Generating Company,  
et al. (Comanche Peak Steam  
Electric Station, Units 1 and 2)

Date of Proceeding: Thursday, May 24, 1984

Place of Proceeding: Bethesda, Maryland

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

Melba Reeder  
Official Reporter - Typed

  
Official Reporter / Signature