

1 ORIGINAL
2 UNITED STATES OF AMERICA
3 NUCLEAR REGULATORY COMMISSION
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6 In the Matter of:
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8 TEXAS UTILITIES GENERATING COMPANY

Docket No. 50-445 OL
50-446 OL

9 (Comanche Peak Steam Electric
10 Station, Units 1 & 2)
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1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION

3 BEFORE THE ATOMIC SAFETY & LICENSING BOARD
4

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

11 Conference Call
12 4350 East West Highway
13 Bethesda, Maryland

14 Thursday, June 28, 1984

15 Hearing in the above-entitled matter reconvened
16 at 3:00 p.m., pursuant to adjournment.

17 BEFORE:

18 JUDGE PETER BLOCH, ESQ.
19 Chairman, Atomic Safety & Licensing Board
20 U.S. Regulatory Commission
21 Washington, D.C.

22 JUDGE HERBERT GROSSMAN, ESQ.
23 Member, Atomic Safety & Licensing Board
24 U.S. Regulatory Commission
25 Washington, D.C.

ALSO PRESENT:
ELLEN GINSBERG, LAW CLERK

APPEARANCES:

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On behalf of the Applicants:

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MILLERS FALLS
ERASE
COTTON CONTENT

P R O C E E D I N G S

1
2 JUDGE BLOCH: Good afternoon. This is
3 Peter Bloch, Chairman of the Licensing Board for the
4 Comanche Peak Licensing Board-2, the intimidation
5 portion of the docket.

6 The purpose of today's prehearing conference
7 being held by telephone is to discuss matters that
8 have arisen in the course of discovery and to reset
9 the docket in light of new discussions between the,
10 among the parties concerning, concerning expedition
11 of the discovery process.

12 May I ask who would be best to start?

13 MR. DOWNEY: Judge Block, I, I think --
14 this is Bruce Downey speaking. Just prior to this
15 conference call Miss Garde, Mr. Treby and myself were
16 discussing a very concrete proposal which I think was
17 fairly close to agreement.

18 And if I may, I think the most principal
19 thing for me to restate that proposal (inaudible) in
20 mind.

21 JUDGE BLOCH: One second. Off the record.

22 (OFF THE RECORD).

23 MR. DOWNEY: The proposal, Judge Bloch, is
24 as follows: That during the week of July 9th, we will
25 put forward for deposition all of our employees that

1 CASE, who CASE wants to depose. There are some 30 odd
2 employees, 32 or 3.

3 I'm informed by Miss Garde that four of those
4 depositions or perhaps five will take about one day
5 and the remainder less. So, that to finish those
6 depositions in the first week, we will produce, we
7 will conduct six simultaneous sessions with the
8 anticipation that we will finish by Thursday or by
9 mid-day on Friday.

10 JUDGE BLOCH: I take it you'll continue until
11 done? Is that the idea?

12 MR. DOWNEY: We can -- until done, yes, of
13 that first week, and we have a reasonable expectation,
14 in fact, a very strong indication that we'll finish
15 by close of business Thursday or sometime Friday
16 morning.

17 JUDGE BLOCH: Okay. And the second week?

18 MR. DOWNEY: And the second week, we will
19 then -- let me -- during the weekend and the remainder
20 of Friday and Saturday, Sunday, and Monday, we would
21 endeavor to put in final form agreements of the
22 parties that would eliminate the need for CASE producing
23 some of their affirmative witnesses. That is,
24 stipulate that prior testimony would serve the purpose
25 for this hearing or other kinds of stipulations that

1 would cut down the number of witnesses.

2 JUDGE BLOCH: Okay.

3 MR. DOWNEY: Commencing Tuesday morning of
4 that second week which is July 17th, we would resume
5 six sessions per day with the anticipation that we
6 could finish the CASE affirmative witnesses by close
7 of business Friday or no later than sometime mid-day
8 on Saturday, after which, and this is where I think
9 our points of disagreement come in, after that second
10 week session, we are prepared to resume with our
11 affirmative case and our rebuttal evidence beginning
12 on Monday, July 23rd.

13 Mr. Roisman, I think, has indicated to you,
14 Judge Bloch, that he has a conflict during that week
15 and, so, we're prepared to resume with our case
16 either the 23rd or as soon as Mr. Roisman is
17 available. Or, for that matter, it may be that
18 Mr. Roisman need not be available since we're
19 conducting so many simultaneous sessions.

20 And that's the state of, of the proposal.
21 I think I omitted one thing. The NRC would produce
22 witnesses who CASE wants to depose at the end of that
23 second week. But we contemplate that all of that
24 would be completed by the 20th or 20, at the latest,
25 Saturday, the 21st.

1 JUDGE BLOCH: That week is actually the
2 third week; right?

3 MR. DOWNEY: No, that's the second.

4 MR. TREBY: This is Mr. Treby. The second
5 week is devoted to taking the deposition of CASE
6 person and there are three people which the staff is
7 prepared to make available.

8 JUDGE BLOCH: Oh, so, the NRC's witnesses
9 would come the week of that?

10 MR. TREBY: Yes, Your Honor.

11 JUDGE BLOCH: Okay. And into the second --

12 MR. TREBY: But I did want to clarify
13 that it is not all of the NRC people which CASE has
14 indicated on their list but that there are three that
15 we would be prepared to make available at that time.

16 JUDGE BLOCH: And the others are going to
17 be contested or they'll be available later?

18 MR. TREBY: They're going to be contested.

19 JUDGE BLOCH: Okay. This 7/23 session or
20 whenever it starts, Mr. Downey, when would it, how
21 long would it take? Do you have any idea?

22 MR. DOWNEY: I, I would anticipate, Your
23 Honor, that with six sessions that week, we could
24 complete that in five days. It's very hard for me
25 to anticipate exactly how much time will be required

1 because we contemplate putting on our rebuttal evidence
2 at the same time, and we can't define that with
3 specificity until we know how much rebuttal evidence
4 we feel we need to put on.

5 JUDGE BLOCH: Okay. I understand that there
6 is -- apparently, there is no discussion as to how
7 many weeks to hearing after the conclusion of that?

8 MR. DOWNEY: They're, I think we're all
9 operating on the assumption, Your Honor, that, that,
10 well, there's one more wrinkle that I should mention.

11 Mr. Treby indicates that the NRC will not
12 be prepared to put on an affirmative case until late
13 in August, and I think that at least from our side,
14 we would urge that that be moved up.

15 JUDGE BLOCH: NRC affirmative case late
16 in August.

17 MS. GARDE: Or that isn't it, Mr. Treby --
18 this is Billie Garde. Didn't you say at the comple-
19 tion of Mr. Ipiolletto's (Phonetic) report?

20 MR. TREBY: That is correct. Maybe I
21 should make a statement. The, the, I've been advised
22 by the, the Director of the Office of Investigations
23 that that office will not be making any witnesses
24 available for this proceeding, that they, that there
25 are their report that has been provided to the

1 Board and the parties that are in the public domain
2 now. There are those three reports. That the three
3 reports contain the statement that the investigators
4 took and that the members of the Office of Investiga-
5 tions would have nothing to add to that.

6 And that if there is any question as to
7 what those statements state or what the various
8 witnesses wanted to say, the best people to address
9 those questions to are the people who, in fact, made
10 the statement.

11 Now, that means that the staff is not going
12 to be presenting any direct testimony with regard
13 to the issue of what one person, what any of the CASE
14 persons may have said to various investigators as to
15 their feelings with regard to discouragement or
16 intimidation; however, Mr. Ipiolletto has a technical
17 review team which is going to be conducting a review
18 down at the site of a collection of allegations that
19 he has, is given from various sources, including a
20 careful review of the record of this tape and that he
21 will then be working on those matters during the
22 month of July and early August.

23 In fact, there was a, in his proposed
24 plan, which I guess has now been approved by the
25 Executive Director of Operations, he indicated that

1 he would have this technical review team and that the
2 target date for completion was approximately the
3 middle of August.

4 JUDGE BLOCH: And what does the technical
5 review team have to do with the allegations of
6 intimidation?

7 MR. TREBY: Well, what, I'm not sure that
8 they will have, to what extent/^{that}they will have anything
9 to do with it, but what they will be able to do is
10 to the extent that there are allegations that, that
11 as a result of discouragement, I did not inspect that
12 particular pipe or I did not note a defect in a pipe
13 and that pipe is identified, he will have had an
14 opportunity to review that particular pipe and he will
15 be able to provide corroborative evidence, one way
16 or the other, as to whether or not there is a problem
17 with a pipe or that's just an example or whatever
18 specific items of hardware may have been identified.

19 JUDGE BLOCH: So, whatever the problems are,
20 they could be inferred from the implications testi-
21 money, they're going to be looking for physical
22 correlates (Phonetic) in the plant?

23 MR. TREBY: That is correct.

24 JUDGE BLOCH: Okay. Let's discuss the OI
25 position later as a separate matter. I think it

1 probably is better to do that, but the affirmative
2 case that Mr. Downey is talking about, apparently
3 consists of the filing of OI reports, not supported
4 by any direct testimony?

5 MR. DOWNEY: Are you talking to our
6 affirmative case, Your Honor? This is --

7 JUDGE BLOCH: No, the OI, the NRC affirmative
8 case. If I understand it, you said there would be that,
9 that would be late August, but if I understand Mr.
10 Treby correctly, what we get in late August is some
11 papers.

12 MR. DOWNEY: It was my understanding from
13 my conversation, Your Honor, with, with Mr. Treby
14 that they would produce witnesses to expound upon the
15 reports ^{of} /the technical review group, to the extent
16 that those reports address specific items that arose
17 in the context of the intimidation hearing.

18 JUDGE BLOCH: Oh, okay. Well, that's when
19 we get that. Is that your understanding, Mr. Treby?

20 MR. TREBY: Yes. It's only the technical
21 review report. The OI report are already in the hands
22 of the party. Again, I have been advised by the
23 Director of the Office of Investigations that he's
24 not going to be providing any live witnesses. He
25 would provide an affidavit that says that this report

1 was prepared by his investigator.

2 JUDGE BLOCH: Yeah, but he still has other
3 reports he's going to file through August, doesn't
4 he?

5 MR. TREBY: That is correct. I understand
6 that they are working on other reports, although I
7 have no schedule for their release.

8 JUDGE BLOCH: Okay.

9 MR. ROISMAN: Mr. Chairman, this is Mr.
10 Roisman.

11 JUDGE BLOCH: Yes, sir, I think it's your
12 turn.

13 MR. ROISMAN: Thank you. First, let me
14 talk about the, the affirmative case question, starting
15 with the staff part of it.

16 If I understand correctly, Mr. Treby's
17 position is that the staff will not be available for
18 deposition and thus, I assume, will not testify.

19 JUDGE BLOCH: No. I think I don't under-
20 stand it that way. It's --

21 MR. ROISMAN: Oh, wait, I'm not, I didn't
22 finish the sentence.

23 JUDGE BLOCH: Oh, okay.

24 MR. ROISMAN: Be available for deposition
25 and will not testify with respect to information re-

1 received from third party but that everybody should
2 go to the third party and ask them. So, that if the
3 staff conducted 27 interviews, we want to know what
4 the 27 interviewed people said. You don't ask the
5 staff person to tell us. We ask the 27 people.

6 And am I correct in that, Mr. Treby? Is
7 that a correct understanding of what the staff position
8 is?

9 MR. TREBY: No.

10 MR. ROISMAN: All right. Would you state it
11 again, then?

12 MR. TEBY: The, the, what you have stated
13 is the position that the Director of OI, in which he
14 said that he will not put on OI investigated because
15 the best person to talk to, the statements which are
16 attached to OI reports, are the people who gave those
17 statements.

18 MR. ROISMAN: What about Mr. Ipiolletto? Will
19 he or his people, to the extent that they interview
20 people, be testifying about what they were told or
21 will they only testify from their own personal
22 knowledge of what they see and investigate themselves?

23 MR. TREBY: I believe that it will be
24 principally the latter, what they see and investigate
25 themselves. To the extent that they have spoken to

1 other people and have gotten information, that, I guess
2 they may indicate that they received some information
3 from other people, but I, it is, you know, in the sense
4 of hearsay in that it's just information that was
5 passed on to them from other people and it would
6 certainly be labeled as --

7 MR. ROISMAN: So, it's not being offered
8 for its truth but merely for its existence?

9 MR. TREBY: Yes.

10 MR. ROISMAN: Smith told me that something
11 was wrong, and I went to look.

12 MR. TREBY: That's right.

13 MR. ROISMAN: Yes. Okay. I just wanted to
14 be clear. All right.

15 MR. TREBY: And that would be about the
16 extent to what it would be, that they would say that
17 the reason I went to look at this pipe is because
18 that
19 Smith told me/there was a problem there, and that's
20 why I had gone to look at it.

21 MR. ROISMAN: All right. How, how will
22 Mr. Ipiolletto's investigation deal with the allegations
23 related to the existence of harassment and intima-
24 tion which is not a hardware item, that the existence
25 of an attitude or need on the site? Is he going to
look at those allegations and will he then express

1 opinions on those, as well?

2 MR. TREBY: No. He is looking at technical
3 issues.

4 MR. ROISMAN: Only?

5 MR. TREBY: Only.

6 MR. ROISMAN: So, the only staff investiga-
7 tions related to that are whatever may be ongoing
8 at OI?

9 MR. TREBY: That is correct.

10 MR. ROISMAN: And the only ones that are
11 planned are the ones that are ongoing at OI?

12 MR. TREBY: That's correct. OI is the
13 one who, who looks into those types of matters.

14 MR. ROISMAN: Okay. All right. Mr.
15 Chairman, excuse me, but I thought that was a good way
16 to get clarified so that I understood what it was
17 that that was coming from the staff.

18 JUDGE BLOCH: Okay. Could you now address
19 Mr. Downey's statement?

20 MR. ROISMAN: Yes. Yes. Let me say this.
21 We started a proposal a few days, more than a week
22 ago now, with the understanding that we were trying
23 to be responsive to the we thought legitimate concern
24 that the hearing should not unnecessarily go on and
25 that the sooner that we could reach a resolution of

1 the matters that we're responsible for, the better it
2 was for all parties.

3 And, so, we started with a proposal that
4 we would take all the depositions, both of our people,
5 the applicant's people, the staff people, affirmative
6 evidence, rebuttal evidence in one week. And we
7 identified ourselves, we didn't give the names to
8 the parties, but we identified some fifteen lawyers
9 who we were able to get who would come to Fort Worth
10 and spend one week taking fifteen or more depositions
11 a day.

12 In conversations with the applicant and the
13 staff, they indicated substantial problems with meeting
14 that level of intensity of the source and we tried to
15 work out some kind of a compromise position. We
16 had the problem if our people would volunteer, that
17 they were able to give their time in a short period
18 and at a certain time in the course of the summer
19 that they weren't available to us when we needed them
20 at anytime.

21 We went back. We talked to them. We were
22 able to get a commitment from them for a two week
23 period, starting on the 9th of July, ending on the 20th
24 of July.

25 Some of them are people who will be at the

1 same conference that I must attend that takes me
2 away starting on the evening of the 20th through the
3 27th.

4 Some of them are people who just had
5 other scheduling problems but we caught them at a
6 good time. I think stretching this out the way the,
7 Downey has proposed beyond that two week period,
8 unnecessary, creates some impossibilities for us. We
9 cannot produce six lawyers at some other week in the
10 future. We don't have them to produce. And imposes
11 tremendous additional expenses on us that we're not
12 able to meet.

13 Now, we understood that everytime we saved
14 the (inaudible) to the day, we saved \$1 million. Our
15 original proposal was one week. We compromised to
16 two weeks at the applicant and staff's urging, that
17 \$7 million.

18 They now want to add at least a third week.
19 That's another \$7 million. We don't feel that that's
20 appropriate. The time that Mr. Downey outlines,
21 between the end of depositions in week one, at the,
22 maybe the end of Thursday, until the beginning of
23 depositions of week two which is Tuesday, is at least
24 two deposition days that we're ready and willing to
25 go with. That's \$2 million.

1 Then that week doesn't end it, but we go
2 on to some future time when the applicant wants to
3 put on its "direct case and rebuttal case." That can
4 go on incessively.

5 On this issue, it is arguable that we then
6 have a rebuttal case. And, now, the staff, apparently,
7 not only wants to wait for Mr. Ipioletto's report
8 but I can't tell, but it sounds like they also want
9 to wait for their "affirmative case" on the issues
10 which we intend to raise in the course of our deposi-
11 tions of the staff which relate not to what the staff
12 heard but to what the staff did about what it heard;
13 namely, nothing. Which added to the sense of isola-
14 tion that the QA/QC people felt on the site.

15 So, I have a feeling that this proposal
16 which started off to try to neatly compact things into
17 a week is now stretching off into August. And I
18 certainly join with Mr. Downey. I don't want to see
19 the staff drag us all out into the end of August.

20 As I understand it, Mr. Ipioletto has a
21 report. The OI have reports. The Board has acknowledged
22 that the hearing record is going to have to remain
23 open until we hear the major things that have to be
24 said on the issues that are in the case, but I think
25 those have to be isolated and separated and that we

1 have to complete the phase of the hearing that we now
2 have.

3 We have a cut-off date. And I believe that
4 the cut-off date is one which means that all the
5 parties in the kind of schedule we're talking about
6 should get everything done and conceded in the, in the
7 time period.

8 Now, under our proposal, you would not use
9 six lawyers. You would use seven or eight. You
10 wouldn't do five days of depositions each week. We
11 could then afford to keep our people in Fort Worth
12 over the weekend if necessary. We can hold on to
13 housing space for two consecutive weeks and get some
14 kind of a price break on that that we can't get
15 by scattering it out over a third week sometime in
16 the future.

17 And at the end of the second week, a five
18 day deposition, seven or eight a day, we would have
19 everybody finished. And we don't think that it is
20 reasonable that the parties, the other party should
21 not have their people ready to go and put their case
22 on and make their witnesses available in the same
23 time frame as we're being required to do.

24 JUDGE BLOCH: Okay. What, what do you
25 want in terms of number of simultaneous sessions?

1 MR. ROISMAN: We, we want a minimum of
2 seven. We want them five days a week. And if we
3 finish with the applicant's witnesses who we want to
4 call, not their affirmative witnesses now, although
5 it's argued they could be the same people. In week
6 one, we want to move immediately, then, to the
7 witnesses that we have and take as many of those as
8 we can take before the end of week one. Start week
9 two, still seven sessions a day. Finish up with our
10 people. Move, then, either to the restaff people
11 or to the applicant's affirmative, whichever the staff
12 and the applicant want to work out between them and
13 finish the week with everything.

14 JUDGE BLOCH: Okay. Mr. Roisman, you don't
15 see any reason why we must make the Ipioletto
16 affirmative case part of this portion of the proceed-
17 ing, do you?

18 MR. ROISMAN: No. That's right, I do not.

19 JUDGE BLOCH: We would need a time for
20 findings related to technical issues that could affect
21 the outcome of this portion of the proceeding, but
22 it wouldn't be part of the hearing on this part of
23 the proceeding.

24 MR. ROISMAN: That's right. My understanding
25 of our, well, really of things that predate my

1 involvement of the, of the Board and the party's
2 determinations before this, was that this harassment/
3 intimidation issue has a certain rolling quality to
4 it and that there was a value to stopping the ball
5 at some point for purposes of getting a definitive
6 record put together, recognizing that there might
7 be other things that would be happening after that
8 that would inevitably be relevant but that there was
9 at least enough now available to have a definitive
10 hearing that would get to much of this issue.

11 And, so, that's, that's what I'm saying.
12 Let's get on with that piece of it and do it and do
13 it in this, in this two week time frame that we're
14 talking about.

15 JUDGE BLOCH: Okay. Mr. Treby?

16 MR. TREBY: Yes. May I have a moment,
17 please?

18 JUDGE BLOCH: A five minute recess in
19 place.

20 (BRIEF RECESS).

21 JUDGE BLOCH: Back on the record. Mr.
22 Treby?

23 MR. TREBY: This is Mr. Treby. As I
24 understand the question, it was --

25 JUDGE BLOCH: Off the record.

1 (OFF THE RECORD).

2 MR. TREBY: As I understand the, the question,
3 it was what was the fast reaction to the Intervenor's
4 proposal that we have this two week of depositions
5 with, which would include an affirmative case by the
6 applicant but which would not include any affirmative
7 case by the staff and that at some later date Mr.
8 Ipioletto would be submitting to the parties and
9 the Board and, and presumably would subsequently get
10 into the record, his report on his technical review
11 of matters.

12 JUDGE BLOCH: Yes, but you weren't barred
13 from commenting on the applicant's position, as
14 well.

15 MR. TREBY: All right.

16 MR. ROISMAN: I'm sorry. I didn't under --
17 I didn't hear that, Mr. Chairman.

18 JUDGE BLOCH: He also is permitted to
19 comment on the applicant's position.

20 MR. ROISMAN: On the -- my understanding was,
21 that's why I asked him the question, if Mr. Ipioletto
22 is going to talk exclusively about hardware and that
23 anything the staff has to say regarding the issue
24 of either opinion of whether the applicant did or
25 did not properly deal with the problem of harassment/

1 intimidation or whether it believed there was harassment
2 and intimidation at the site or to the extent that it
3 wants to put on anything to defend against the
4 allegations being made by a number of the CASE
5 witnesses to the effect that the staff undercut
6 people who wanted to use the existing process to
7 complain and thus increase their harassment and
8 intimidation impact, that all of that would take place
9 in the first two weeks, that all that Mr. Ipiolletto
10 was going to do was he was going to complete an
11 evaluation that might include some of the charges
12 made by CASE people regarding particular pieces of
13 hardware that they claim are defective that needed to
14 be looked at and that Mr. Ipiolletto's group is
15 going to look at that and determine whether they were
16 defective and, if so, what had been done about them.

17 JUDGE BLOCH: Okay. I, I interpret the
18 same as Mr. Treby and Mr. Roisman to be consistent,
19 but please continue, Mr. Treby.

20 MR. TREBY: Oh, well, first of all, with
21 regard to what Mr. Roisman just said, we would oppose
22 that an appropriate part of this question with regard
23 to intimidation is whether or not the staff has been
24 aiding or is some way abetting intimidation of the
25 applicant's people.

1 We have indicated at the prehearing conference
2 that intimidation, as we understood the issue, was
3 whether or not they were living at or a statement by
4 the applicant which caused the applicant's employees
5 not to be in compliance with the written procedures
6 of the QA/QC program and as I understood the Board
7 further discussed the matter on (inaudible) 13939,
8 whether the applicant responded reasonably to the
9 information available to it in light of the requirements
10 of Appendix B.

11 JUDGE BLOCH: That is the general thrust,
12 but as I recall, Mr. Roisman had a statement that day
13 about a possibility that he would show that the
14 pattern of intimidation was one that resulted both
15 from actions of the applicants and the staff.

16 I don't know that Mr. Roisman will have
17 evidence to that effect, but if he had it, I think
18 we'd have to rule on the relevancy of that evidence
19 at that time. I don't see how we can anticipate it.

20 MR. ROISMAN: But, Mr. Chairman, I --

21 MR. TREBY: But I do want to make the
22 record clear that we don't claim that any of that is
23 appropriate, that we think that the, the question is
24 whether or not the applicants have complied with its
25 written procedures and the definition that we

1 indicated with regard to intimidation and that this
2 proceeding is to see how the applicant's QA/QC program
3 worked and it is not one in which the activities of
4 the NRC to be --

5 JUDGE BLOCH: Okay. For the most part, I
6 would agree with you, Mr. Treby, but what Mr. Roisman
7 (inaudible) was that in order to understand the nature
8 of what it was the applicants were reacting to, that
9 if there were a pattern that involved the staff as
10 well as the applicants, that it would have to be in
11 light of that total pattern that we would judge the
12 reaction of the applicants.

13 Now, I don't know that that is going to
14 prove to be relevant because I've got no idea of
15 what the facts in the world were at this time. I don't
16 see how I could possibly rule at this time, though,
17 until they were an offer of proof about that.

18 MR. ROISMAN: Mr. Chairman, this is Mr.
19 Roisman.

20 JUDGE BLOCH: Yes, sir. Am I stating
21 correctly what you had offered at that last meeting?

22 MR. ROISMAN: Yes, and it's also apparent
23 in the filing that we made yesterday, some of our
24 witnesses claim that when they contacted the staff
25 about the incidents they are now discussing, that the

1 staff's reaction left them with the feeling that they
2 were even more isolated than they thought and enhanced
3 the impact of the activities that the applicant engaged
4 in which these people viewed as being either harassment
5 or intimidation.

6 JUDGE BLOCH: Okay. Now, I'm not prepared
7 to rule on that now, either, but I want to see it
8 before I rule on it.

9 MR. ROISMAN: I understand that. And we
10 intend to develop it in the course of the deposition
11 but all we're saying is that the staff wants to
12 respond to that. That the time for them to do it
13 is in this two weeks.

14 This is, this is not a, we do not feel that
15 this is an appropriate situation for someone to be
16 able to hold back and not put everything forward.
17 We're putting everything forward.

18 JUDGE BLOCH: Mr. Treby, is that part of
19 your problem, not knowing whether to anticipate a
20 need of rebutting that kind of pattern?

21 MR. TREBY: No, I don't think that that is
22 a problem. I think that the, the Intervenors, at
23 least in the filing that they made last night, has
24 put us on notice that that is one of the things that
25 they're going to attempt to prove.

1 We, of course, argue that that's not at all
2 relevant, and we will persist in objecting to any of
3 that stuff during the course of the deposition. To
4 the extent that I don't believe that any of the
5 information which Mr. Ipioletto is going to be
6 presenting when his team is completed with its work
7 sometime in August, it's going to go to that subject,
8 but Mr. Ipioletto's information may go to is the,
9 the significance, if any, of the fact that someone
10 may or may not have written the nonconformance or
11 (inaudible) what it's primary purpose is is to look at
12 the hardware and see what the state of the hardware is,
13 whether that state confirms one or the other party's
14 position.

15 JUDGE BLOCH: Okay. Does the separation out
16 of the hardware issue is something to be tried
17 separately concern you?

18 MR. TREBY: No. The fact that that will be
19 separate does not concern me, but I didn't want you
20 to believe that it was totally divorced from the
21 concept of intimidation as the staff is defining that
22 term which is compliance with Appendix B and the
23 various written procedures and other key provisions
24 of that appendix.

25 JUDGE BLOCH: Okay. When you said you were

1 going to object at the depositions, I take it you're
2 not going to try to interfere with the answers being
3 received. You're going to preserve an objection for
4 relevance?

5 MR. TREBY: Well, only, well, I guess
6 (inaudible) face the question that Jeff posed in
7 (inaudible). To the extent that the Intervenors
8 get into this area with the three witnesses that
9 CASE is going to be making available, I guess well
10 we will object. To the extent that these witnesses
11 have anything to say, I guess they'll say it on the
12 record.

13 However, we are objecting to certain of the
14 witnesses which came to (inaudible) such as John
15 Collins, who is the Administrator of the region
16 because the purposes for which they have set out for
17 him to testify to, we think are solely irrelevant to,
18 to the question of intimidation and again, as fast,
19 as defined at a past, our prehearing conference, but
20 we also don't think that it is appropriate and
21 traditional for a regional administrator to be called
22 to a deposition and before the staff would agree to
23 any such actions, we would require that all of the
24 requirements of 10 CFR 2.7208 were fully complied
25 with.

1 JUDGE BLOCH: Okay. Now, would you continue
2 with your reaction to the case and applicant's
3 proposals?

4 MR. TREBY: Well, with regard to the
5 applicant's proposal that there be one week devoted
6 to taking the applicant's witnesses using six people.
7 When that was originally proposed in the sort of mini-
8 conference that was held between Mr. Downy, Miss Garde
9 and myself, the staff didn't see any problems with
10 that nor do, do I recall any other being voiced.
11 Of course, Mr. Roisman was not there, and he did not
12 make his counter-proposal of going forward with eight
13 continuously five days a week until we finished the
14 whole thing.

15 JUDGE BLOCH: I heard seven from him. Seven
16 for five days for two weeks. He hopes to conclude in
17 two weeks.

18 MR. TREBY: All right. Well, seven --
19 well, the staff has prepared, developed (inaudible)
20 with, with 17, two a week to conclusion if --

21 JUDGE BLOCH: I'm sorry. Seventeen, did
22 you say?

23 MR. TREBY: Seven teams.

24 JUDGE BLOCH: Okay. Thank you.

25 MR. TREBY: (inaudible), not seventeen but

1 seven teams to conduct these depositions.

2 We thought that there might be some merit
3 in seeing whether the number of depositions of CASE
4 people could be reduced by, through the method of
5 stipulation. We still think that there may be some
6 merit to that, but if the concensus is that we go
7 forward with the seven teams five days a week, the
8 staff is prepared to do that.

9 JUDGE BLOCH: Can you see any reason to
10 wait for the second week to go to the CASE witnesses?

11 MR. TREBY: No, I don't think that there's
12 any necessity to wait.

13 JUDGE BLOCH: And would your witnesses be
14 available in the second week, regardless? I suppose
15 they would be.

16 MR. TREBY: Yes, the three that we have
17 indicated for CASE would be available.

18 JUDGE BLOCH: Mr. Downey, for rebuttal?

19 MR. DOWNEY: Yes, Your Honor, I have several
20 points in my notes that I'd like to raise. I'll
21 address scheduling, first.

22 Mr. Roisman's proposal really only addresses
23 half of the time involved in the presentation of this
24 issue to the, to the Board. The second half of the
25 time frame is the time allotted to briefing these

1 issues. And it's our proposal that we go to three
2 weeks that we have described and use during that time
3 our best efforts to reduce to the smallest amount
4 necessary, the testimony on this issue by stipulating
5 to some witnesses and that sort of thing.

6 And then to brief the case in the three
7 week period that was originally contemplated by the
8 Board. Mr. Roisman's proposal contemplates extensions
9 of briefing time, in essence, to absorb all of the
10 information that, that comes forward in these eight
11 simultaneous sessions. So, the overall time frame
12 would remain the same and perhaps even be shortened
13 under our proposal.

14 I think as to the need for separating,
15 doing one group of witnesses one week, one the second,
16 one the third, there is a very practical need and
17 that is to absorb the information that comes forward
18 in the first week. We're talking about several
19 thousands of pages of transcript being generated in
20 week one and week two. For us to present both an
21 affirmative case and rebuttal evidence on the facts
22 elicited by CASE, we will necessarily need to
23 interview people who may have personal knowledge or
24 who may have witnessed some of the events described
25 by the CASE witness. And without a minimum of a one

1 or two day break which the weekend seems to be reason-
2 able for that break, we will not be able to guarantee
3 to the Board that we can assemble our rebuttal evidence
4 to present in that second period, second week period.

5 I think it is (inaudible) to, to use that
6 second weekend to assemble the rebuttal evidence and
7 present our witnesses commencing the 23rd. As to
8 the briefing point, Your Honor, we would, we would
9 recommend and urge the Court order that proposed
10 findings be submitted on August 20, which is in
11 advance, I believe, of the date proposed by Mr.
12 Roisman and, in fact, it may coincide with it, in his
13 original proposal.

14 And I think that is duable because the
15 information will be coming at a more even --

16 JUDGE BLOCH: Off the record. Just a
17 second.

18 (OFF THE RECORD).

19 (END OF TAPE 1)

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P R O C E E D I N G S

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2 JUDGE BLOCH: Can you pick up where you were,
3 Mr. Roisman, I'm very sorry.

4 MR. DOWNEY: Bruce Downey.

5 JUDGE BLOCH: I'm sorry Mr. Downey.

6 MR. DOWNEY: But, if it was Mr. Roisman, I cer-
7 tainly agree with everything he said. We were contemplat-
8 ing submitting proposed findings on the 20th of August,
9 upon the issues tried in this trade. Now, as to a second
10 point, I think Mr. Treby correctly states that the hard-
11 ware evidence that may come from the technical reviews
12 group will be relevant to the overall issues of intima-
13 tion in the licencing contract. I do think, however, that
14 that is an issue that may be separated from this first
15 wave. I would urge that we go forward under the plan that
16 we originally put forth to get the issue, potentially,
17 did intimidation occur? Were people intimidated, tried
18 and submitted as soon as possible. I think the submission
19 date of August 20, under the plan we had put forward is
20 realistic.

21 JUDGE BLOCH: That's a submission date for the
22 last written filings, or what?

23 MR. DOWNEY: The proposed findings of fact.

24 JUDGE BLOCH: And then the hearing would start
25 when?

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1 MR. DOWNEY: The hearing could start, I think as
2 soon as a week to two weeks after that. The parties
3 would then request I would take it at the time they submit
4 proposed findings, the opportunity to put on live those
5 witnesses whose credibility is based at issue.

6 JUDGE BLOCH: Do you know at the last conference
7 how much time we had proposed findings to the hearing?

8 MR. DOWNEY: One week.

9 JUDGE BLOCH: One week.

10 MR. ROISMAN: If it was one week from then, that
11 time, that would be acceptable to us. Total, determined
12 with Mr. Roisman, I believe we had a total of three weeks
13 under the old arrangements. Two weeks to do the proposed
14 findings, and then while it was decided that there would
15 only be the need for one week to get to the hearing.

16 JUDGE BLOCH: Our hearing would start August
17 27th now? I don't understand, Mr. Roisman why we couldn't
18 accommodate the applicants and just skip your one week,
19 and still get the schedule done. In that event, you'd
20 have August 1st for the rebuttal date, because you can't
21 make it on the 23rd. I think there is some substantial
22 merit to the difficult of preparing a rebuttal case with-
23 out having heard the testimony.

24 MR. ROISMAN: First of all, I'd like to respond
25 to the actual dates involved if I might.

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JUDGE BLOCH: Please.

MR. ROISMAN: If you do it in two weeks, you start on the 9th. You're done on the 20th. You take three weeks of filing of proposed findings which adds one week to our original thought of two weeks, but I think is what Mr. Downey was just saying anyway. That takes you to the 10th of August. We start the hearing on the 20th of August. That's the actual date. There is a 10-day difference between the dates.

MR. DOWNEY: Mr. Roisman, this is Bruce Downey I can't hear you. There was a siren going by. Could you repeat your last two or three sentences.

MR. ROISMAN: I'm trying to go through the dates that would apply if our proposal were used, which is that you would start the depositions on the 9th, go five days a week and end them on the 20th. You have three weeks for proposed findings, which would make them filed on the 10th, start the hearing on the 20th.

JUDGE BLOCH: Ok. That's a seven-day difference.

MR. ROISMAN: Yes.

JUDGE BLOCH: That's precisely the seven days that the applicants are proposing for that rebuttal week.

MR. DOWNEY: Your honor if I may, Mr. Roisman, has determined, I'm not trying to stand that the

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1 applicants proposing to take two weeks, one of which I'm
2 out of pocket, and then the week for the rebuttal.

3 JUDGE BLOCH: It's that extra week for rebut-
4 tal that you are arguing about. That week gets reflected
5 in the hearing schedule.

6 MR. ROISMAN: Well, what I am concerned with is
7 that that week is going to be a week in which we can
8 keep the applicants schedule going. We end up doing the
9 deposition, I think it starts on the 30th, that's three
10 weeks for the filing of the proposed filing takes us to
11 the 24th. If we would finish all the depositions under
12 the applicant's proposal on Friday August 3rd, it would
13 then do.

14 JUDGE BLOCH: That's there proposal modified
15 by your availability?

16 MR. ROISMAN: By my long previously-announced
17 availability.

18 JUDGE BLOCH: Ok.

19 MR. ROISMAN: On the 24th is when we would have
20 proposed findings in and we would start the hearing on
21 the 4th, because the 3rd is Labor day, on the 4th of
22 September.

23 MR. DOWNEY: Your honor, this is Bruce Downey.

24 JUDGE BLOCH: Yes sir.

25 MR. DOWNEY: We do have a difference here in

1 time. Mr. Roisman is making an assumption about complet-
2 ing all of these depositions in a two-week period. His
3 assumption is that we can, at the very tail end of his
4 case, respond immediately with rebuttal evidence on point
5 as to which we have not yet heard. That is not a realis-
6 tic assumption. Many of the people who may have witnes-
7 sed events that are subject to this hearing, have scat-
8 tered all over the country. Some are working in Washing-
9 ton, some are working in Michigan, some are working in
10 Mississippi. To present rebuttal evidence to address
11 specific facts raised in their direct case, we will need
12 to identify, locate, and bring to Texas, those witnesses.
13 That simply is not a feasible project to start on a
14 Tuesday, Wednesday, or a Thursday of that second week
15 and be prepared to have six or eight witnesses ready to
16 go the next morning.

17 JUDGE BLOCH: Ok. What do you think about the
18 problem that Mr. Roisman is insisting that we therefore
19 would take if we took that view we would have to take
20 that rebuttal week starting on July 30th and we would go
21 to hearing September 4th.

22 MR. DOWNEY: I acknowledge Mr. Roisman's long
23 announced unavailability for the week of the 23rd. That
24 does not, however, mean that that is an idle week. Both
25 the applicants and CASE and the staff could work on their

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1 proposed findings during that time period. I see no rea-
2 son.

3 JUDGE BLOCH: So, you could shorten up the
4 period to less than two weeks from the end of that?

5 MR. DOWNEY: I would be proposing exactly two
6 weeks, we would, to accommodate Mr. Roisman we would
7 put our affirmative and rebuttal evidence on beginning
8 the 30th. In like, the weeks we have described with
9 CASE witnesses and the applicant witnesses, I don't think
10 it will take all five days. In any event, we will be
11 prepared to file proposed findings on the 20th. I have
12 been using Monday, and Mr. Roisman has been using Friday
13 for the submission. So, in essence we would be talking
14 about a week extension over what I would call Mr. Rois-
15 man's hypothetical plan, because there is no way, and I
16 feel confident in saying this, there is no way that we
17 could prepare rebuttal evidence contemporaneously with
18 hearing for the first time the evidence that we must
19 rebut.

20 JUDGE BLOCH: Mr. Roisman, that's right isn't
21 it.

22 MR. ROISMAN: My concern is that Mr. Downey is
23 not only talking about rebuttal evidence. Number one.
24 He knows now what we filed yesterday, the essence of the
25 details that the CASE peoples objection. That is,

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1 people's objections. That is, people that we want to put
2 on and what we want to talk to his people about. Inci-
3 dents were identified and we talked about the general
4 things. He has a very good sense of it. So, he is not
5 waiting until some time after the 9th of July to be put
6 on notice. Secondly, I'm very troubled by the proposal
7 that the applicants not only want to postpone their re-
8 buttal witnesses, they also want to postpone their whole
9 affirmative case until after they have sat down and spent
10 a lot of time suggesting all this information. Now, my
11 concern with all of that is I too would like to digest.
12 I would like to finish the applicants' witnesses and take
13 a week to digest before we went to the witnesses to them
14 taking on our people. Then, I'd like to have another
15 week to do some digesting. And, I'd like to digest to
16 the rebuttal. And, if it came from my side of the table
17 the cries would be heard without the use of the phone.
18 And, legitimately so. Everybody puts their feet to the
19 fire for these things. Now, maybe we could work some-
20 thing out with regard to genuine, pure rebuttal wites-
21 ses. And, we might want to have some of our own. We
22 have a practical difficulty. We can't do more than two
23 or three at one time after the end of the 20th of July
24 because of logistics problems.

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1 MR. DOWNEY: Your honor, this is Bruce Downey
2 again. The only reason for the week break that Mr.
3 Roisman has siezed upon is his personal schedule. We
4 have prepared to go forward the 23rd with our rebuttal
5 and affirmative case, and I would add that since many
6 of the witnesses who would be part of an affirmative
7 case may also testify at the rebuttal facts, we're talk-
8 ing about a plan in our proposal that would keep to a
9 minimum the number of times the same human being must
10 come forward.

11 JUDGE BLOCH: I'm not so sure I'm convinced
12 about that. They are mostly residents in that area.
13 Some may not be. What is wrong with getting as much done
14 in those first two weeks as possible and preserving just
15 rebuttal witnesses for that subsequent session, so that
16 we make sure that it is as short as possible.

17 MR. DOWNEY: Your honor, we don't have objec-
18 tions to doing as much as possible during those two
19 weeks.

20 JUDGE BLOCH: Well, why not have that include
21 all portions of your direct case which may be reasonably
22 anticipated as a result of the materials furnished to
23 you by CASE.

24 MR. DOWNEY: Your honor, I don't think Mr.
25 Roisman and I have a difference of opinion, and maybe we

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1 should address this one. What we can reasonably anti-
2 cipate from the submission. He has, himself character-
3 ized it as general. It certainly is that. We can't
4 anticipate the details or the contours of what the in-
5 dividual would testify about.

6 JUDGE BLOCH: Ok. At the present time, there
7 may be some difficulty. We must get to that in this
8 conference call or another one we set real soon, because
9 you were supposed to be on notice of specific dates and
10 names and incidents. If you have a problem with that,
11 we must issue appropriate orders.

12 MR. ROISMAN: I believe, Mr. Chairman that we
13 have provided that by referencing the material that we
14 produced where in the record that already exists in this
15 case, the further details that was expected of us is
16 available.

17 JUDGE BLOCH: Mr. Downey, is that or is that
18 not true.

19 MR. DOWNEY: Your honor, with respect to some
20 of the witnesses, and Ms. Garde and I have had several
21 conversations about this point. With regard to some of
22 the witnesses that have a limited point to make, I agreed
23 that she could reference NRC affidavits, and they would
24 be self-contained and that would define the terms of the
25 testament. As to other witnesses, who may have many

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1 things to testify about, like Mr. Atchison, Mr. Dunham,
2 Ms. Hatley, whose testimony may cover many, many points,
3 I specifically told Ms. Garde that it was unacceptable
4 that we would be able to perieve several hundred pages
5 of testimony and guess as to what testimony they are
6 going to offer at this proceeding.

7 JUDGE BLOCH: Mr. Roisman, how do you feel
8 about that?

9 MR. ROISMAN: Let me say, Mr. Chairman, that
10 is an unreasonable discovery request. No party is expect-
11 ed. These people, Mr. Donovan, Mr. Atchison, particu-
12 larly have both been subjected to rather close examina-
13 tion. We have indicated, and I think everybody knows
14 that they have been cross examined and examined on pre-
15 cisely the issue of this case. We noted in our filing
16 yesterday, what a positional matter beyond chat was
17 pertinent, parties have done proposed findings of fact
18 in those cases, they have argued. One of them is up in
19 the U.S. Court of Appeals. Another one is pending before
20 a hearing board. If that is not enough detail for Mr.
21 Downey, then there isn't enough detail to satisfy him.

22 MS. GARDE: Let me also respond. I think that
23 you mischaracterized a little bit, our conversations.
24 Because, as for the people that you named, Donovan,
25 Atchison, and Hatley, I think that it is very clear that

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1 you and I have agreed to sit down and go over the people.
2 I think I highlighted with an asterisk, each one of those
3 people that we have agreed that there is limited amounts
4 of material on the record, and to reach some type of
5 joint narrative on those issues. I feel your statement
6 is a little unfair, given the fact that I have made a
7 really good-faith effort to keep in contact with you in
8 detail to make sure that what I was doing was going to
9 be responsive to your concerns. As for the people you
10 have named, which includes others, Steiner, Dunham,
11 Hatley, the T-shirt incident individuals, we have agreed
12 to sit down and work those things out. But, I feel like
13 that's unfair.

14 MR. DOWNEY: I agree, Ms. Garde that we sat
15 down and try eliminate witnesses as to speculation. But,
16 as you will recall, I also specifically stated in our
17 conversation that we needed the specifics of what they
18 were contending in this proceeding.

19 JUDGE BLOCH: I think you are not communica-
20 ting. If I understand Ms. Garde right, she intends to
21 give you that, to tell you which incidents they are going
22 to focus on in this proceeding. Is that right Ms. Garde?

23 MS. GARDE: Yes it is. That's what I thought
24 we were going to sit down and work on when we work on
25 joint narratives and narrow down to those items left to

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1 be disputed on this issue. It is physically impossible
2 for me to go through all of this material in this time
3 period, and say, Mr. Atchison is going to talk about the
4 universe, and we are going to pick out one or two stars.
5 I can't do that, that is impossible. There is too much
6 material on too many people. That is why, Bruce, I
7 thought we were going to sit down and work it out.

8 JUDGE BLOCH: Ok. What is it that you are
9 going to work out? I still don't understand that very
10 clearly.

11 MS. GARDE: We are going to work out, as I
12 understand it, as Bruce, will you correct me if I don't
13 understand it. We are going to work out a joint narra-
14 tive as to the facts which we can agree upon on a number
15 of witnesses and/or a number of incidents. And, further
16 beyond that, we were going to agree on those matters on
17 which we disagree. We are going to go forward in the
18 context of this hearing. I'm not having any interest in
19 surprise in putting Mr. Atchison on the stand. In fact,
20 I think that witness says that we don't even feel a need
21 to call Mr. Atchison.

22 MR. DOWNEY: That's not distant with my under-
23 standing, Ms. Garde. It was that we would attempt to
24 produce a narrative with respect to the T-Shirt eight.
25 The eight persons involved in the T-shirt matter, that

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1 we would attempt to stipulate that for purposes of this
2 proceeding, we could use all or some portion of Dunham
3 record in the well proceeding, and with respect to Ms.
4 Hatley, we could use all or some of the record could be
5 developed at the trial now set for July 25. It was not
6 that we would sit down and try to agree on the incidents
7 of intimidation that are relevant here. The simple fact
8 is, as of time we speak now, we the applicants must
9 prepare our case to address evidence, the contours of
10 which we don't know.

11 That is precisely the problem in us trying to
12 do in two weeks what we propose to do in three. I don't
13 believe we are talking about, all we are doing is being
14 able to digest that information that is coming forward.

15 JUDGE BLOCH: You say because of the tight
16 time period before you go to trial, that this offer of
17 assistance from Billy Garde isn't going to help you very
18 much. I'm not understanding quite.

19 MR. DOWNEY: I think it might be quite useful
20 your honor, Ms. Garde and I, I think have done everything
21 we can, given our other commitments in this case to
22 work on it today.

23 JUDGE BLOCH: Now, assuming that that is going
24 to be a good-faith effort by CASE to assist you,

25 MR. DOWNEY: And us to assist them.

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1 JUDGE BLOCH: And vice versa. In that case,
2 can you be expected to go forth to the end of the second
3 week with your affirmative case other than rebuttal or
4 surprise matters?

5 MR. DOWNEY: Your honor, let me just add a tale
6 or two. We talked this afternoon about completing the
7 three-week schedule that we had proposed. Completing in
8 the first week applicant witness, and trying to do that
9 by close of business Thursday, and devoting the next
10 four days to this very subject to eliminating witnesses
11 to preparing a read-to statement of fact that would stand
12 in stead of live witnesses, thereby reducing the number
13 of witnesses and the amount of transcript.

14 JUDGE BLOCH: If I fully understand what CASE
15 is offering, they actually want to try and start that
16 before you start your witnesses.

17 MR. DOWNEY: That's correct your honor.

18 MS. GARDE: We're ready to go forward on that
19 very soon.

20 MR. DOWNEY: In fact, Garde, we will be in
21 Texas next week working on our affirmative case to the
22 extent we can, and these other issues. If you.

23 MS. GARDE: If you can't sit down and go over
24 with me the stipulations,

25 MR. DOWNEY: I can in Glen Rose.

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1 JUDGE BLOCH: Or by telephone, right.

2 MR. DOWNEY: Or by telephone, although I think
3 that would be very difficult considering the voluminous,
4 considering the scope of the task that we are about to
5 undertake.

6 JUDGE BLOCH: Does CASE have anyone in Glen
7 Rose that can do that?

8 MR. ROISMAN: No we don't Mr. Chairman. Except
9 for Ms. Garde and myself there would be no one.

10 JUDGE BLOCH: And, Mr. Downey, do you have
11 anyone in Washington who can do that?

12 MR. DOWNEY: Your honor, our entire team will
13 be in Glen Rose next week, preparing witnesses to be
14 deposed the week following and to take the depositions
15 of the CASE witnesses. This would be in response to
16 the file that we got just last night. Now that we have
17 identified subject matter of those depositions, both
18 of our witnesses and theirs, we now must go out and with
19 the materials that we have, and as best we can identify
20 what facts will arise from the course of the testimony,
21 and be prepared to put on our case and respond to theirs.

22 JUDGE BLOCH: What about the possibility that
23 during the rest of this week you could at least lay forth
24 the areas you need more detail on, and Ms. Garde can
25 prepare it and communicate it to you. I don't know that

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1 it needs a lot of face-to-face contact.

2 MR. DOWNEY: I have no problem with that, your
3 honor, working with her over the next day and perhaps
4 some on the weekend to provide that information. But,
5 that doesn't address the more fundamental question of
6 can we accomplish in ten days, eight sessions, all that
7 needs to be accomplished. I think the answer from our
8 perspective is that we cannot.

9 JUDGE BLOCH: Now, it's not all that can be
10 accomplished. The proposal that Mr. Roisman has refined
11 at this point, is that everything be accomplished that is
12 foreseeable at this point, but that anything that sur-
13 prises you, or that you need rebuttal on you could do
14 during that tail-week that is being reserved, the one
15 after Mr. Roisman's time away.

16 MR. DOWNEY: Your honor, that is not, I think
17 makes an artificial distinction between affirmative evi-
18 dence and rebuttal evidence.

19 JUDGE BLOCH: What is artificial about it?

20 MR. DOWNEY: Pardon me?

21 JUDGE BLOCH: What is artificial about it?

22 MR. DOWNEY: The affirmative case will, right
23 now is skeletal, because we don't know to what we are
24 responding. It may be that there are intentions of sim-
25 plicity between the NRC staff and someone from the

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1 applicant to discourage reporting a violation. Which
2 case, we would contemplate putting on witnesses.

3 JUDGE BLOCH: Ms. Garde is supposed to tell
4 you the names of individuals involved, and dates. That
5 is somehow supposed to be specified. Is that CASE's
6 understanding too?

7 MR. ROISMAN: We've done that Mr. Chairman.

8 JUDGE BLOCH: Ok. Have they not done that?

9 MR. TREBY: This is Mr. Treby.

10 JUDGE BLOCH: Yes.

11 MR. TREBY: It was my recollection during the
12 pre-hearing conference that we had on the 14th, I believe
13 that we were going to get the abstract here of names,
14 places and dates, and that we were also be getting some
15 affidavits that CASE, that GAP investigators are pre-
16 pared.

17 JUDGE BLOCH: The record does refelct that.
18 When will those affidavits be covered?

19 MS. GARDE: Let me respond to that. On that
20 matrix that I gave you, there is indications with both
21 the asterisks and the x's. The X information, for in-
22 stance, Susie Neumeyer has an affidavit in the hands
23 of OI. Billy Oer has an affidavit in the hands of OI.
24 It is a matter that I think we need to talk about in the
25 dissussion on OI. In other words, I think there are

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1 materials which as of the 14th, we stated that we would
2 just be able to hand over. Now, OI has requested, or
3 expressed a preference that they not be turned over. I
4 would prefer to talk about that in the OI section of
5 this.

6 MR. ROISMAN: In short, Mr. Chairman, we have
7 them to give, we raised in our letter that went with the
8 mailing yesterday, the question that we would be today
9 putting to you our request that you decide this issue.
10 We want to use the information. The applicant wants to
11 see it, and should, but why that they have a preference
12 that it not be shown, we felt constrained that we should
13 not sua sponte if we turn it over in the base of OI's
14 request, but that if you ask OI to set up a call tomor-
15 row morning and get on and tell you why they shouldn't
16 be turned over, and then you decide. Turn it over or
17 not turn it over. If you say don't turn it over, then
18 those affidavits fall into the category of this waiting-
19 to-be-decided when we have the decided problem. What
20 do you do with the "secret information".

21 JUDGE BLOCH: Mr. Treby, is there any hope of
22 getting an explanation from OI?

23 MR. TREBY: I would think that the best hope
24 is that the board request an explanation from OI. I
25 say that because I am not the counsel for OI, all I can

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1 do is relay to this board what the director of OI tells
2 me and I can relay back to the director what you tell me.
3 But, I have no authority to clarify OI's position, or to
4 state any position for them. It was my understanding,
5 and the staff had been anticipating getting these state-
6 ments so that we would have the information of the inci-
7 dents and whatever details are contained in these affi-
8 davits.

9 JUDGE BLOCH: Ok. OI must provide me by noon
10 on Friday of a written filing in my hands explaining why
11 these CASE affidavits should not be turned over in the
12 course of discovery.

13 MR. TREBY: I will relay that information to
14 the director of OI.

15 JUDGE BLOCH: Thank you.

16 MR. ROISMAN: Mr. Chairman, will that infor-
17 mation also be given to us?

18 JUDGE BLOCH: It will be filed. It should be
19 in the hands of all the parties either noon Friday, or
20 as soon thereafter as feasible.

21 MS. GARDE: There is one other matter, and that
22 is that at least one, and there may be two of these
23 people's information we can give to the parties, includ-
24 ing their names as soon as a protective order is agreed
25 to. Those I am prepared to turn over.

1 MR. DOWNEY: Your honor, this is Bruce Downey.
2 We will work with Ms. Garde on the protective order. I
3 don't perceive that as being a stumbling block.

4 JUDGE BLOCH: If there is no problem between
5 the parties, we will have no trouble signing it.

6 MR. TREBY: We have no problem with the concept
7 of the protective order and I don't think we have much
8 difficulty with the language in the protective order, but
9 the staff does have a number of serious concerns with
10 the affidavit of nondisclosure which was also included
11 in the package.

12 JUDGE BLOCH: Ok. Will you be part of the
13 negotiations on that?

14 MR. TREBY: Well, I intend to make myself a
15 part of it. I will keep after the parties, and make sure
16 that I'm included.

17 JUDGE BLOCH: Ok.

18 MR. ROISMAN: Mr. Chairman, could we go back
19 to this affirmative evidence thing?

20 JUDGE BLOCH: That's a good idea, Mr. Chairman.

21 MR. ROISMAN: My concern was that the appli-
22 cants view of affirmative evidence sounds like my view
23 of what is rebuttal evidence. If one of our witnesses
24 says something Joe did something to me, and the appli-
25 cant wants to say he didn't do it, or he did it but I've

1 got an explanation for it, that's rebuttal. What I
2 thought their affirmative case was, and what was discus-
3 sed at that pre-hearing conference in Bethesda a few
4 weeks ago, was that they were going to set forth the
5 procedure and the policy and the programs that were in
6 place at this plant that deal with harrassment and in-
7 timidation in order to carry out their responsibilities
8 under Appendix E.

9 JUDGE BLOCH: I'm a little confused. I thought
10 that you would be trying to bring that out during the
11 first week.

12 MR. ROISMAN: I'm going to try and bring them
13 out, but we still have no idea, what are the programs
14 that the applicant claims exists. Maybe it levels
15 higher than all the people that we have identified.

16 JUDGE BLOCH: In other words, you see the af-
17 firmative case merely as being anything they need to do
18 to supplement the picuture of their programs that CASE
19 brings out in depositions of the applicants' witnesses.

20 MR. ROISMAN: At those depositions, under the
21 schedule we propose, seven depositions a day, should be
22 done at the end of the Wednesday of the first week. We
23 are very happy for the applicants to take the last two
24 days of the second week, put on whatever they want a
25 response to with respect to that.

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1 JUDGE BLOCH: Ok. Now, Mr. Downey, if we un-
2 derstand that as the affirmative case that is tying up
3 the loose ends concerning the affirmative programs the
4 applicant has, and then saving rebuttal for later, do
5 you have any problem with going ahead with that on that
6 second week.

7 MR. DOWNEY: Yes I do, your honor. It stems
8 from two points. One, I don't know, I personally don't
9 know what Mr. ROisman is going to illicit. Therefore,
10 I don't know what supplementation we will have to make
11 until we are in the midst of depositions being conducted
12 at the rate of seven sessions a day, perhaps as many as
13 fifteen or twenty depositions in one day. If I am going
14 to be participating in that, and my colleagues assigned
15 to this matter are participating in that, we can't
16 simultaneously be preparing supplemental information to
17 complete the picture that Mr. Roisman will start to draw
18 in his view step vision. What we are asking for here,
19 defined as the way Mr. Roisman defined it, we are talking
20 about whether we will do these depositions on Thursday
21 and Friday of July 19th and 20th, or Monday and Tuesday,
22 July 23rd and 24th. Now, we are prepared to do them on
23 the 23rd and 24th. Mr. Roisman tells us he can't be
24 there till the 30th. Not only, can't I but I don't have
25 seven lawyers, I don't know that we need seven lawyers

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1 for this second session.

2 MR. ROISMAN: Mr. Chairman, I'm the ringmaster
3 at this show. We don't have the show unless I am there.
4 I have brought in a lot of other people, but they are
5 not knowledgeable about this particular case.

6 MR. DOWNEY: Then, lets go on. We will accom-
7 modate your schedule, Mr. Roisman.

8 MR. ROISMAN: The applicant wants to buy time
9 to try to repair its witnesses.

10 JUDGE BLOCH: Ok. I think that we have heard
11 that argument before. Are there new arguments?

12 MR. DOWNEY: It's simply a matter in our view
13 of we are prepared to go the 23rd, Mr. Roisman says he
14 can't, so we'll go the 30th and we need that time to
15 complete the picture that he draws, and we simply don't
16 have one or even two briefing days to review those trans-
17 cripts, and I, too, am the ringmaster, and I can't at-
18 tend all seven depositions at one time, I can't review
19 those transcripts without at least a weekend to see
20 what we need to put in by way of supplementation. That
21 is the weekend between week one and two.

22 MR. ROISMAN: That's the week between two and
23 three.

24 MR. DOWNEY: The weekend between two and
25 three, the weekend between one and two, as I understand

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1 it, we are going to be working on eliminating CASE wit-
2 nesses.

3 MR. ROISMAN: No.

4 MR. DOWNEY: situation effort. We then used
5 to working on those.

6 JUDGE BLOCH: Wait a second. We are having
7 trouble with people overlapping each other. Mr. Downey
8 please finish what you were saying and then Mr. Roisman
9 will have a chance again.

10 MR. DOWNEY: The weekend between week one and
11 two, I have two major agenda items for both me and my
12 staff. First agenda item is to prepare to digest the
13 information from the first week in anticipation of what
14 their witnesses are going to say in anticipating of
15 preparing cross examination. Also, as we have discussed,
16 I think, no matter how far we get next week, and I think
17 given this information it is going to be limited, in
18 reducing witnesses we are prepared to devote a substan-
19 tial portion of that weekend to developing stipulation.

20 It is only by the end of the second week, only
21 at the time the last CASE witness comes forward, will we
22 know what it is we have to supplement, what it is that
23 we have to rebut, and can address ourselves to preparing
24 a full case in an efficient way. We think we can do it
25 in three days.

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1 JUDGE BLOCH: Mr. Roisman, very briefly.

2 MR. ROISMAN: First of all, Mr. Downey is mak-
3 ing the choice to spend next week in Glen Rose. It is
4 not my business to tell him not to make the choice, but
5 we had expected, our whole understanding was that before
6 we ever got to the first witness on the 9th, we would
7 have sat down to attempt to reach stipulation. We won't
8 have the benefit of these stipulations in narrowing our
9 cross-examination of the applicants' people who we call
10 on the week of the ninth, if we don't get into the stip-
11 ulations. Stipulations is different if Billy Garde is
12 spending time showing the applicant where in the trans-
13 cript Atchison said I got fired because I was harrassed
14 and intimidated, an act which I think she should not do,
15 and I will instruct her not to do. I do not believe she
16 needs to show the company who has already tried this
17 issue where in the record damage has been done to them,
18 since they've already lost the issue to try to decision
19 making. That just seems to be foolish, and I think that
20 it is grossly unfair.

21 Number two, we are prepared to take the weekend
22 to the applicants between the first week and the second
23 week to do its affirmative case. We will have finished
24 with their people, in fact we will have finished with
25 them two days before that. Why can we get our witnesses

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1 ready over that two-day weekend without going to Glen
 2 Rose before then. The applicants can't. Why can we get
 3 ready to cross-examine their people with not a single
 4 shred of advanced information from them on what their
 5 people have to say, only on the basis of what we've got
 6 from the dribbling discovery, and they can't. I do not
 7 understand it. I feel like I am standing in the road of
 8 an applicants' lawyer, and that applicants' lawyer are
 9 sounding like the unsophisticated intervener lawyer, who
 10 can't seem to figure out how to get his case together
 11 without many more weeks of time than necessary. This
 12 is not reasonable Mr. Chairman.

13 JUDGE BLOCH: Ok. That was more than the brief
 14 rebuttal that I wanted. Mr. Downey, have you a very
 15 brief rebuttal?

16 MR. DOWNEY: I believe we have said our piece
 17 on this issue.

18 JUDGE BLOCH: Ok. Thank you. I just wanted
 19 to give you a chance.

20 (Off the record discussion.)

21 JUDGE BLOCH: I'd like the staff to take its
 22 customary last shot.

23 MR. TREBY: The staff has nothing to add to
 24 this discussion.

25 JUDGE BLOCH: Thank a lot. The question is

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1 JUDGE BLOCH: Thanks a lot.

2 (Brief recess.)

3 JUDGE BLOCH: We favor the procedure which
4 will permit the most to be accomplished during those
5 initial two-weeks of discovery starting on July 9th.
6 Although some difficulty will be experienced by the
7 applicants as a result of the compact schedule, and that
8 difficulty may be shared by the staff, we think that if
9 CASE is able to go forward with expedition during those
10 two weeks, the applicants and staff should be able to do
11 so also. Therefore, during those two weeks, we order
12 that there be seven simultaneous teams of lawyers working
13 for five days in each of those two weeks. The second
14 week will begin on the 16th. There will be a continuous
15 deposition sessions as soon as the depositions of the
16 applicants witnesses are completed. There will be im-
17 mediate start on the CASE witnesses. The applicants will
18 be expected at the end of that time to present portions
19 of their direct case that they had not elicited by CASE
20 when CASE was questioning their witnesses. Although
21 there is some difficulty in this, we think the applicants
22 are capable of having an outline of direct case preapred,
23 and comparing that outline as to what is produced on the
24 record, we believe they have the legal resources to be
25 able to do that, and while it will be some difficulty for

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1 them, it is not unfair to require them to do that. We
2 accept Mr. Roisman's difficulties of continuing from the
3 23rd, the week of July 23rd. The offer that he has made
4 of conducting seven simultaneous sessions, actually, at
5 one time he offered fifteen, is extraordinary for an
6 intervener, and under the circumstances, it is hard for
7 us to find that his personal commitments of July 23rd
8 are inconsequential. We are hopeful that the rebuttal
9 session, which will be pure rebuttal, which will begin
10 on July 30 will be brief and will take far less than the
11 full week.

12 Applicants can contribute to that to the extent
13 possible by bring forward rebuttal witnesses that they
14 can call at the end of the two weeks that are scheduled.
15 As a consequence to this schedule proposed findings will
16 be due August 20, 1984 and the hearing will commence
17 August 27, 1984.

18 Are there any necessary comments on this sched-
19 uling order?

20 MR. DOWNEY: Yes your honor, this is Bruce
21 Downey. I'd like to note our objection to the imposing
22 on the applicants the obligation of presenting its af-
23 firmative case at the immediate conclusion of the CASE
24 deposition.

25 JUDGE BLOCH: Your objection is noted. Of

1 course, in NRC proceedings, any prejudice caused to the
2 parties can always be preserved for appeal without an
3 objection.

4 MR. ROISMAN: Mr. Chairman.

5 JUDGE BLOCH: Yes sir.

6 MR. ROISMAN: In response to Mr. Downy's ob-
7 jection.

8 JUDGE BLOCH: There's no need to.

9 MR. ROISMAN: I just want to say that we do not
10 object to taking the staff witnesses immediately after
11 the CASE witnesses, and then taking the applicants.

12 JUDGE BLOCH: We will modify our order to this
13 effect if there is no objection from staff. Is that
14 acceptable to staff?

15 MR. TREBY: It is acceptable to staff, under-
16 standing that we are only talking about three staff
17 witnesses at this point.

18 JUDGE BLOCH: That's correct. The others will
19 have to be decided on motion.

20 MR. TREBY: That's correct.

21 JUDGE BLOCH: Ok. The next matter for discus-
22 sion is the question of OI's requirements concerning the
23 lack of depositions and lack of testimony by OI inves-
24 tigators. Mr. Downey would you comment first on that?

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1 MR. DOWNEY: After the OI witnesses noticed by
2 CASE, in some respects we share the views expressed by
3 Mr. Treby earlier, and those are as follows. First, as
4 to any of the substantive issues, the testimony of these
5 witnesses necessarily will be hearsay, which I believe
6 the board has indicated is strongly disfavored in all but
7 exceptional cases excluded from this proceeding. Second-
8 ly, we would argue that.

9 JUDGE BLOCH: How about for discovery though?
10 Isn't it unusual to have knowledgeable people to be ex-
11 cluded from the discovery process?

12 MR. DOWNEY: Your honor, the discovery, as we
13 understand it, the depositions are for purposes of evi-
14 dence, not discovery. The discovery was to be conducted
15 on the written record. That is certainly the way that
16 we have operated, and as I understand it the way CASE
17 has operated with respect to us.

18 JUDGE BLOCH: Let me ask if that's CASE's un-
19 derstanding?

20 MR. ROISMAN: Chairman it is. We have requests
21 in for the OI materials in effect, the difficulty is, is
22 that OI doesn't speak. The subpoena.

23 JUDGE BLOCH: Ok. That wasn't the question.
24 I just wanted to know if the depositions to be started
25 on the 9th are purely evidentiary and are not discovery.

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1 MR. ROISMAN: No. I'm sorry. My understanding
2 is that they were both.

3 JUDGE BLOCH: That was my understanding at the
4 time of our conference in Bethesda. Mr. Downey, I don't
5 know where you got that. We discussed the possibility
6 that they could be divided into two sections for the
7 purpose of clarity and objections. That is, a separate
8 section dealing with evidentiary matters, and a separate
9 section dealing with discovery matters. Am I incorrect
10 in thinking that that was the way things were discussed
11 Mr. Downey.

12 MR. DOWNEY: I was not there.

13 JUDGE BLOCH: You weren't there.

14 MR. DOWNEY: I did review the transcript, and
15 it was my understanding that the parties to the maximum
16 extent possible which seems, in all other instances to
17 rely on written discovery and limit to the deposition
18 evidentiary matters. That, however, is not our primary
19 reason for supporting in essence of staff on this issue.
20 It is the heresay question that first and foremost I
21 think eliminates the need to call these people for pur-
22 poses of evidence. The second point I would like to make
23 I understand CASE to be attempting to put OI on trial.
24 That seems to be included in whether OI did its job, is
25 included in their motion now pending before the board.

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1 JUDGE BLOCH: I'm not sure. I think they
2 wanted to put the NRC on trial, but I don't think the
3 NRC was on site. I don't think I read them that way.
4 Am I right about that, Mr. Roisman.

5 MR. ROISMAN: No. Mr. Chairman, our position
6 is, certainly as to Mr. Driscol and Mr. Griffith that it
7 is not to be heresy that we wanted in the system. It is
8 rather, how they dealt with intimidated people when they
9 came forward and further support for the proposition
10 that people who were intimidated at this site had no
11 choice. They got no relief from the regulatory staff
12 in any of its various regards.

13 MR. DOWNEY: We would simply say that Mr.
14 Griffin and Mr. Driscol's reaction and NRC's reaction to
15 the complaint is simply not relevant to the issue put
16 forth.

17 MS. GARDE: Let me draw attention to this dis-
18 cussion to the attachment about the NRC witnesses which
19 was provided to the chairman and the parties yesterday.
20 I don't know if you all have it, I can read it, it's a
21 brief paragraph. But for Mr. Driscol, Mr. Griffin, Mr.
22 Herr, they also put in a tall check, requested to testify
23 about actions taken in response to conditions of harass-
24 sment and intimidation, judgement of the seriousness of
25 harassment and intimidation of Comanche Peak site,

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1 understanding of the NRC policies, NRC's policies regard-
2 ing harrassment and intimidation, his investigation of
3 the complaints of all these witnesses, The last item
4 was specifically to Mr. Griffin, the release of names
5 provided by Betty Brink.

6 JUDGE BLOCH: Seems clear to me that we are
7 not going to get any voluntary disclosure of witnesses
8 or make availability of witnesses. Are you prepared to
9 file a motion to require them to be deposed?

10 MR. ROISMAN: Yes we are, Mr. Chairman.

11 JUDGE BLOCH: Is it, Mr. Roisman is it best
12 that we wait to rule on the motion till its filed?

13 MR. ROISMAN: Only if you could rule my way,
14 would I let you rule now Mr. Chairman.

15 JUDGE BLOCH: That's a very good response. I
16 certainly approve of that one. It seems to me it would
17 be better to have the grounds for the motion stated.

18 MR. ROISMAN: Since there are no OI people,
19 they have no spokesperson on this phone call, and I think
20 Mr. Treby has explained his akward position. I would
21 rather do it, make a filing. We'll include in that our
22 .720H filing as well, put them all together in a package,
23 let the parties respond and the board act, if I can have
24 an on the record, but actually private conversation with
25 Billie Garde. Billie are we looking at the end of the

1 day tomorrow, or the end of the day Monday.

2 MS. GARD: Alright.

3 MR. ROISMAN: By the end of the day Monday, we
4 will have in everyone's hand the motions. But, the
5 substance of it will be directed to this piece of testi-
6 mony. Our understanding, I just want to be clear one
7 more time, the staff does not intend to produce any
8 witness on the issue of whether or not what took place
9 at the site was harrassment or intimidation, and does
10 not tend to produce any witnesses regarding how the staff
11 responded. The claims of harrassment and intimidation
12 absent the people that we get is a result of this dis-
13 covery motion.

14 JUDGE BLOCH: Ok. I will order that responses
15 to that motion be in the board's hands and the hands
16 of the other parties by 3:00 pm. Thursday of next week,
17 providing that it is, in fact, served on the parties by
18 close of business on Monday. If it is served later,
19 there will be a one-day deferral, there will be a day-
20 by-day deferral deadline for response. No filings on
21 weekends.

22 MR. ROISMAN: Mr. Chairman, did I understand
23 that the response is the close of business on Thursday?

24 JUDGE BLOCH: No. Three o'clock on Thursday.

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1 MR. ROISMAN: Ok. Thank you.

2 JUDGE BLOCH: It is the understanding of the
3 board that the parties will attempt to negotiate an
4 agreement on the order and agreement of nondisclosure?

5 MR. DOWNEY: Yes we will, your honor.

6 JUDGE BLOCH: Ok. It is the understanding of
7 the board that based on prior informal discussions, that
8 CASE will be able to use information provided in the
9 public utility hearing, providing that it gives advanced
10 notice to applicants. They will be able to use it un-
11 less applicants promptly object and provide reasons for
12 the uses of portions of the material. CASE will explain
13 which materials they intend to use. The applicants will
14 have to make specific objections. Is that a correct
15 understanding on the part of the board? Mr. Downey, do
16 you know?

17 MR. REYNOLDS: Mr. Reynolds.

18 JUDGE BLOCH: Mr. Reynolds.

19 MR. REYNOLDS: Assuming that the CASE filing
20 would be feasible, that applicants had an opportunity to
21 fairly evaluate and respond in writing, we agree with it.

22 JUDGE BLOCH: Ok. I would hope when CASE makes
23 its filing, depending on how extensive it is, it would
24 attempt to discuss it, so that applicants will know
25 orally as quickly as possible the scope and nature of

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1 the request.

2 MR. ROISMAN: Do we understand, Mr. Reynolds,
3 that Ms. Ellis can allow the guard and myself see that
4 material without violating the condition upon which you
5 received it?

6 MR. REYNOLDS: Yes.

7 JUDGE BLOCH: The answer was yes.

8 MR. DOWNEY: This is Bruce Downey. I want to
9 raise the housekeeping point. I think, correctly stated
10 that we don't object to that, but it may be that Ms.
11 Ellis is under order of another authority not to make
12 that disclosure, and some appropriate modification of
13 that other order may be appropriate just to protect her
14 interests.

15 JUDGE BLOCH: I would consider that a strange
16 reading of that other order. I haven't seen it myself.
17 All they said was that they did not see any reason why
18 you couldn't make that statement yourself in your filing.
19 It was not in order of the public utility commission that
20 it could not be disclosed.

21 MR. REYNOLDS: Judge Bloch, I believe that
22 your outline of the procedure is appropriate, again, as
23 long as we are offered ample opportunities.

24 JUDGE BLOCH; Are you sure that's Reynolds?

25 MR. REYNOLDS: Yes. I'm not carrying the ball.

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1 Lets have more of that Reynolds.

2 JUDGE BLOCH: Ok. Is there any other neces-
3 sary business.

4 MS. ELLIS: Ok. I want to be sure that I un-
5 derstand what just went on.

6 JUDGE BLOCH: Ms. Ellis, I'm sure that it is
7 clear on the record. I don't think that you have to
8 clarify it further. You can talk to Mr. Roisman. Is
9 there anything else necessary right now.

10 MS. GARDE: I want to make sure the record is
11 clear on two other points. First of all, on discovery
12 that was addressed in our letter to Mr. Belter. I just
13 want to make sure, Judge Bloch, that you are aware that
14 there is a large amount of material, some of which we
15 have not yet received, but we are aware of its existence.

16 JUDGE BLOCH: Yes, I've read the filing. I
17 see, you still haven't received some. I also am aware
18 that you have some problems related to digesting what
19 you have just received.

20 MS. GARDE: Right. I'm going to try very hard
21 to digest it so it all fits into both the witnesses and
22 the schedule that we have outlined. There may be other
23 witnesses and there may be a problem after I sit down
24 to read them, and I just want to make sure that that may
25 happen.

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1 JUDGE BLOCH: I'm aware that in the world that
2 things don't usually go faster than we expect them to.

3 MS. GARDE: The second thing is that there in
4 the witnesses identified by letter in our filing today,
5 there are two that we may have to get back with both of
6 them first.

7 JUDGE BLOCH: Could you repeat that. We got
8 a blif. There are two what?

9 MS. GARDE: There are two witnesses identified
10 by letter, which we may have to get back to you for
11 resolution of a problem. We are still attempting to work
12 that out, first with the witness, and then with the
13 applicant and the staff. I noted those, and I can't re-
14 member the letters of particular individuals.

15 JUDGE BLOCH: Ok. Anything else necessary.

16 MR. TREBY: Yes. This is Mr. Treby. Just to
17 clarify with regard to these motions for witnesses, the
18 only ones that were discussed were Mr.'s Driscol and
19 Herr, who are ally people. The staff also, is not vol-
20 untarily making available Don Collins, Paul Check,
21 Robert Stewart, and Dan Tomlinson. My question is the
22 motion with regard to those people, also going to be
23 filed by Monday?

24 MR. ROISMAN: Yes.

25 MS. GARDE: Yes.

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JUDGE BLOCH: Ok. Then, let us supply the deadline on response to the other section, the same as to the former.

MR. TREBY: Alright. My understanding is that this motion is going to be the close of business on Monday, which is 5:00.

JUDGE BLOCH: That's right. Based on that, the deadline is Thursday at 3:00 with a deferral of day-by-day.

MR. DOWNEY: Your honor, this is Bruce Downey. I just wanted to be clear, your honor, that we will receive that document by close of business Monday, not that it will be.

JUDGE BLOCH: No. That was the promise, that you will receive it.

MR. TREBY: Yes. In indicating the list of people we were not voluntarily making available for depositions, I did not include Tom Polito. I want to correct that oversight. He also will not be made available voluntarily.

JUDGE BLOCH; Therefore, that name will also be added with explanation in the Monday motion if his appearance is sought.

MR. TREBY: With regard to Mr. Polito, let me also advise all the parties that he has advised me today

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1 that a special review team that did a review the first
2 two weeks in April, he anticipates that the report of
3 that team will be coming out in the next week or two.
4 And, that attached to that are some statements of approx-
5 imately 30 personnel which were interviewed. I wanted
6 to alert the parties, because Mr. Polito thought it would
7 be appropriate for them to be alerted to that fact.

8 MR. ROISMAN: Mr. Chairman, can I ask Mr. Treby
9 a question about that?

10 JUDGE BLOCH: Please do.

11 MR. ROISMAN: Mr. Treby, are the statements
12 that are being attached, statements prepared by the
13 people interviewed, or prepared by people who interview-
14 ed them?

15 MR. TREBY: The latter.

16 MR. ROISMAN: So they are all heresay, is that
17 correct?

18 MR. TREBY: Yes. In the sense that they were
19 not the statements of the actual people.

20 MR. ROISMAN: And, they are not signed by those
21 people, the people who actually made the statement?

22 MR. TREBY: That is my understanding, although
23 I have not seen the documents, but that is what Mr.
24 Polito has indicated to me.

25 MR. ROISMAN: Is there any chance that the

1 documents could be made available separately from the
2 reports, if they may contain information that people will
3 want to ask questions about the depositions that start
4 on the 9th?

5 JUDGE BLOCH: Either with or without protective
6 order, Mr. Treby?

7 MR. TREBY: Mr. Polito indicates that he thinks
8 it would be more appropriate for the statements to be
9 attached to the report.

10 'S. GARDE: Let me say something here. It is
11 my understanding that Mr. Polito's investigation for his
12 two week team in April, looked at a lot of the material
13 which is now in the hands of OI, and comes from identi-
14 fied CASE witness. If that is true, I think it is ex-
15 tremely important that that information be made avail-
16 able as soon as possible.

17 MR. ROISMAN: Mr. Chairman, could we make an
18 oral motion now, to produce now reduction, end of busi-
19 ness tomorrow for every one of those statements that is
20 now complete, and for all of the others as soon as they
21 become complete. And, that waiting for the report, while
22 even through Polito's preference, in terms of the neg-
23 ligencies of CASE is unwarranted, and that they should
24 come forward now.

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1 JUDGE BLOCH: Mr. Treby, are you prepared to
2 respond on this matter at this point?

3 MR. TREBY: No. I'm not. I need to talk
4 further with Mr. Polito. I was only made aware of these
5 matters at the beginning of the conference call.

6 JUDGE BLOCH: The board is not fully informed,
7 except by Ms. Garde's representation of what is actually
8 in those documents. If they are roughly what Ms. Garde
9 says, they seem necessary to a decision in the case, it
10 would be very helpful to the parties in their deposi-
11 tions. I am prepared to allow time to lapse. Why don't
12 you report to the board tomorrow on whether you can
13 voluntarily release those documents. If not, we will
14 arrange a procedure to resolve this dispute.

15 MR. TREBY: I would like to have some time to
16 do that. I guess I would like to have some time to talk
17 with Mr. Polito. Can I set 4:00 as a time to respond to
18 the board?

19 JUDGE BLOCH: No difficulty.

20 MR. ROISMAN: Judge Bloch, this is Mr. Roisman.

21 JUDGE BLOCH: Yes sir.

22 MR. ROISMAN: While Mr. Polito is there, could
23 he be asked to get on the phone to describe what is cor-
24 rect, if we all know what it is that's there. This is
25 an opportunity when we could all hear what it is.

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1 JUDGE BLOCH: Mr. Treby, have you any objec-
2 tion to that procedure?

3 MR. TREBY: Pre-hearing conferences are in-
4 formal. Mr. Polito is here and can give a general de-
5 scription of what those statements will contain.

6 JUDGE BLOCH: We appreciate the staff's co-
7 operation.

8 MR. IPOLITO: Thank you all. As part of the
9 review team effort, what we did do is to interview the
10 T-shirt people, and a number of other people, including
11 some management types to determine a number of things.
12 One was, did they feel that the plant was being built in
13 a safe manner. Some of the questions that were asked
14 by the interviewer were questions relating to, have you
15 been intimidated. One of the reasons that I wanted to
16 make sure you knew that this report was coming out, and
17 hopefully shortly, but I didn't want to hit you with a
18 surprise, although I think you all knew that my team was
19 out there, and the only thing that you didn't know was
20 about when that report would be issued. We asked if they
21 had any safety questions, whether they were intimidated,
22 whether they felt that they could bring issues before
23 their management, whether, the felt that management was
24 reacting to their concerns correctly, that type of thing.

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1 JUDGE BLOCH: Mr. Treby, you will reply by
2 two tomorrow?

3 MR. TREBY: That's correct.

4 MR. DOWNEY: Your honor, this is Bruce Downey.
5 I wanted to clarify one point that occurred to me as the
6 consequence of one of Mr. Roisman's remarks. That is,
7 the location of these seven simultaneous sessions to be
8 held. I have been operating and my client and employees
9 have been operating under the assumption that since the
10 substantial majority of at least the applicant witnesses,
11 to be deposed by CASE are in Glen Rose, that those de-
12 positions will be taken there.

13 MR. ROISMAN: That is not correct. We at this
14 point do not have reason to believe that we can locate
15 a sufficient number of rooms at a price that we can af-
16 ford in Glen Rose. Our intention is to take them all in
17 Fort Worth. If you have rooms available off-site in
18 Glen Rose, I don't have any problem with bringing my
19 lawyers down there, but at this time I know of no access
20 to the rooms that we need in Glen Rose to be able to do
21 this.

22 JUDGE BLOCH: No access to the what?

23 MR. ROISMAN: To the rooms that the depositions
24 are to be taken in.

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1 MR. DOWNEY: I believe that the arrangements
2 both at the NOSF, which is the administrative facility
3 on site, and at a local motel to arrange for places that
4 the depositions could be taken. I would add that that
5 would be a substantial benefit to my client, because of
6 the large number of people whose normal work activities
7 are to be disrupted by these depositions.

8 JUDGE BLOCH: I am hopeful that the parties
9 will resolve this amicably. If there is some difficulty
10 the board will intervene. A possibility is to do many
11 of the depositions in Glen Rose if the applicants make
12 the rooms available, and some of them in Fort Worth. I
13 hope the parties will explore fully the possibility of
14 reaching agreement.

15 MR. DOWNEY: We certainly are more than wel-
16 come to discuss that with Mr. Roisman.

17 MR. TREBY: Chairman, we get the message.

18 JUDGE BLOCH: Ok. Is there any other necessary
19 material?

20 MS. GARDE: I have one more question for the
21 applicants. I am going to provide the applicants with
22 a brief summary of the information that we think is im-
23 portant from the documents that we got from the rate
24 hearing.

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1 JUDGE BLOCH: Ok. To identify what it is and
2 state briefly, what it is that you want to use.

3 MS. GARDE: Right.

4 MR. ROISMAN: This was a prerequisite to giving
5 Ms. Garde and myself.

6 JUDGE BLOCH: No. There is no prerequisite to
7 giving to Ms. Garde and yourself.

8 MR. REYNOLDS: We agreed to that procedure,
9 Mr. Chairman in the hopes that Mr. Roisman will assist
10 Mrs. Ellis in calling out the material which is not fully
11 relevant and is material to the issue before the board.

12 MR. ROISMAN: That is true with regard to
13 harassment and intimidation issues, Mr. Chairman. We
14 will not be performing any services, because that is not
15 the nature of our relationship with CASE with regard to
16 calling it on other issues that Ms. Ellis may chose to
17 try to introduce it.

18 JUDGE BLOCH: Do I understand, therefore, that
19 the responsibility for defining harassment and intima-
20 tion issues from that other record is Mr. Roisman's. The
21 remainder is Ms. Ellis. There being no comment I accept
22 that as being a statement as what will occur.

23 MS. ELLIS: Yes. The staff has indicated an
24 interest in this information as well, both with regard
25 to intimidation and other matters. The applicants have

1 an objection to me filing that with the staff at the
2 same time?

3 MR. DOWNEY: I'm sorry, I'm not sure I under-
4 stood Mrs. Ellis.

5 JUDGE BLOCH: Mrs. Ellis wants to know whether
6 she can provide material from the public utility record
7 to the staff of the commission before any prior release
8 from applicants.

9 MR. REYNOLDS: No. I would think that the
10 proper procedure.

11 MS. ELLIS: Excuse me just one moment. I'm
12 talking now about a summary of the points that we think
13 are important, but not the documents themselves.

14 MR. REYNOLDS: Mr. Chairman, this is Mr.
15 Reynolds. I would think that the proper approach would
16 be to have that document filed with applicants since it
17 is the relationship between applicants and CASE in the
18 rate proceeding that gave rise to the need in the first
19 place.

20 JUDGE BLOCH: Mrs. Ellis, let us follow that
21 procedure. If there is a deadlock, and you have matters
22 that you want to bring to the attention of the staff, you
23 will bring that to the board's attention.

24 MS. ELLIS: I think all of these matters that
25 we will be providing will be of interest to the staff as

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1 sort of a time from the applicants as to when we can ex-
2 spect a response. We have already provided a listing of
3 the docuemnts.

4 MR. REYNOLDS: To me.

5 MS. ELLIS: Yes.

6 JUDGE BLOCH: Do you know how long it will take
7 you to respond after Ms. Ellis and perhaps Mr. Roisman
8 identify portions they wish to use?

9 MR. REYNOLDS: I will endeavor to respond very
10 promptly. Response time depends on the length of the
11 document that Ms. Ellis provides is the depth of the
12 research that I have to go into it. Let me just say that
13 I have no intention on being unreasonable on responding
14 here. It is just a matter of taking the time necessary to
15 respond. Let me ask, what did you send to me?

16 MS. ELLIS: The list was contained in our
17 answer to the applicants' ninth, the objections regarding
18 the applicants' ninth step. The answer to the motion to
19 compel, I believe.

20 MR. REYNOLDS: I'll have to check that. I
21 haven't seen that document.

22 MS. ELLIS: This is just strictly a listing of
23 the members of the docuemnts of the specific reports. No
24 information yet from the report, but you do have a list-
25 ing of the documents themselves.

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1 MR. REYNOLDS: I haven't seen that, but it
2 doesn't sound as though it is going to be specific enough
3 for me to respond properly.

4 JUDGE BLOCH: This sounds like a good matter
5 for discussion between the parties.

6 MR. REYNOLDS: I agree.

7 JUDGE BLOCH: Is there anything else necessary
8 for this conference.

9 MR. TREBY: This is Mr. Treby. I'm sorry to
10 prolong this. Mr. Ipolito has just indicated something
11 that needs to be added to the record to make it clear.
12 That is, one of these difficulties is the statements that
13 are going to be attached to the report, he does not
14 physically have them in his hand. They are coming from
15 the various people who work on his team. He did not
16 want the record to reflect the fact that he has them
17 in his hands and was being reluctant to provide them with
18 people.

19 JUDGE BLOCH: Ok. Do you know if he has
20 enough information about them to be able to respond by
21 two o'clock tomorrow as to whether he will make them
22 available when they first come into his hands.

23 MR. TREBY: He doesn't have it now, but we are
24 hopeful to make various calls and gather some of that
25 information tomorrow morning.

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JUDGE BLOCH: Ok. And if you are not successful, I will understand at two o'clock.

MR. TREBY: Ok. Thank you.

JUDGE BLOCH: There being no further matters, hearing is adjourned. I thank everybody for their participation.

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CERTIFICATE OF PROCEEDINGS

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4 This is to certify that the attached proceedings
5 before the NRC.

6 In the matter of:

7 TEXAS UTILITIES GENERATING COMPANY
8 (Comanche Peak Steam Electric Station, Units 1 & 2)
9 Docket No. 50-445 OL
10 50-446 OL

11 Date of Proceeding: June 28, 1984

12 Place of Proceeding: Bethesda, Maryland

13 were held as herein appears, and that this is the
14 original transcript for the file of the Commission.
15

16 Barbara Becker
17 Official Reporter - Typed

18 Barbara Becker / USB
19 Official Reporter - Signature
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