

# ORIGINAL

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

---

---

In the matter of:

TEXAS UTILITIES ELECTRIC  
COMPANY, et al

Docket No. 50-445  
50-446

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

TELEPHONE CONFERENCE

---

---

Location: Glen Rose, Texas

Pages: 38,500-38,542

Date: Monday, July 9, 1984

*Original to E. Pleasant, H-1149*  
*TR 01 0/1*

**TAYLOE ASSOCIATES**

Court Reporters  
1625 I Street, N.W. Suite 1004  
Washington, D.C. 20006  
(202) 293-3950

8407170324 840709  
PDR ADOCK 05000445  
T PDR

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY & LICENSING BOARD

-----x	:	
In the matter of:	:	
TEXAS ELECTRIC UTILITIES	:	
COMPANY, INC.	:	Docket Nos. 50-445
	:	50-446
(Comanche Peak Steam Electric	:	
Station, Units 1 and 2)	:	
-----x	:	

Glen Rose Motor Inn  
Glen Rose, Texas

Monday, July 9, 1984

TELEPHONE CONFERENCE CALL

A conference call in the above-entitled matter  
convened at 11:00 a.m.

BEFORE:

JUDGE PETER BLOCH, ESQ.  
Chairman, Atomic Safety & Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

JUDGE HERBERT GROSSMAN  
Member, Atomic Safety & Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

1 APPEARANCES:  
2

3 Mr. Roisman

4 Mr. Sosnick

5 Mr. Jacks

6 Mr. Guild

7 Mr. Belter

8 Mr. Bachmann

9 Mr. Mizuno

10 Mr. Treby

11 Mr. Downey

12 Mr. Philips

13 Mr. N. Reynolds

14 Mr. C. Reynolds

15 Mr. Walker  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

P R O C E E D I N G S

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

JUDGE BLOCH: This is Judge Peter Bloch. I have been called on to make an evidentiary ruling. Who has made the motion to limit the cross examination?

MR. PHILIPS: Yes. This is Malcomb Philips speaking for Applicants. Perhaps just laying out the background, briefly, Judge Bloch, we were in a deposition of Jimmie Green and Jimmie Green was addressing an issue that had previously been testified to, specifically the pipe gauge incident that involved Henry Stiner.

There was a substantial amount of testimony given on this particular issue at the past proceeding and that occurred in transcript pages 11717 to 11728. There was an extensive amount of cross examination, detailed inquiries into this area. That is the background.

JUDGE BLOCH: Previous discussion, as I understand it, was for the purpose of determining deficiencies in welding practices and that was not addressed in intimidation questions, is that correct?

MR. PHILIPS: That is correct, Judge Bloch.

JUDGE BLOCH: What is the basis of precluding further questioning on the intimidation question, because the technical matter was gone into in the other branch of the hearing.

MR. PHILIPS: Let me be very clear what the

1 objection is. It is not an objection going into this further,  
2 it is an objection into having Mr. Green have to restate the  
3 facts that was already presented on the transcript in the  
4 record.

5 JUDGE BLOCH: Redundancy?

6 MR. PHILIPS: That is correct, redundancy and  
7 cumulative. The specific question that was asked, and perhaps  
8 this will clear it up, is tell me about the instance with  
9 Henry Stiner. We objected to that question in that there was  
10 a substantial amount already on the record with this. To the  
11 extent that Intervenors would like to come in and ask specific  
12 questions not on the record or probe further into the area  
13 beyond the questions that are on the record, Applicants have  
14 no objections and indeed that is the purpose of this particular  
15 phase of the hearing.

16 JUDGE BLOCH: Your objection is it is redundant?

17 MR. PHILIPS: That is correct.

18 JUDGE BLOCH: Is that the principal objection?

19 MR. PHILIPS: Redundant and cumulative.

20 JUDGE BLOCH: And cumulative.

21 MR. PHILIPS: If I could address just one other  
22 issue, I think this is an important objection because we are  
23 going to run into this time and time again as we go through  
24 the various witnesses we are facing now and it is going to  
25 be wasteful of resources, significantly, if we have to go

1 through and continue to rehash old ground that has already  
2 been covered extensively in previous proceedings.

3 And so this objection carries a substantial amount  
4 of weight, more than what would typically be the case.

5 JUDGE BLOCH: Mr. Roisman?

6 MR. ROISMAN: Mr. Chairman, I am going to speak  
7 briefly, then I am going to have Mr. Sosnick, who is the  
8 attorney who is in the deposition also speak.

9 But to the generic question, the questions that are  
10 being asked here and that would be asked in other depositions  
11 is simply for the witness to state at this point in the record  
12 very quickly and briefly what the facts are so that we know  
13 and are all talking about the same group of facts on the same  
14 record at the same time.

15 There is no attempt here nor does anybody have any  
16 desire to try to rehash the question of whether the particular  
17 defect was a defect or not a defect. The question is just to  
18 have the witness state that, so that when we are talking about  
19 harassment, intimidation, we all have freshly in front of us  
20 in our minds at that moment what it is and when we are writing  
21 proposed findings, we have got a neat type transcript on that  
22 particular issue.

23 Now I will let Mr. Sosnick explain the specific  
24 instance here for you. Mr. Sosnick?

25 MR. SOSNICK: Judge Bloch, my name is Charles Sosnick.

1 I am the attorney propounding the questions for Intervenor.

2 JUDGE BLOCH: Welcome to the hearing.

3 MR. SOSNICK: Thank you.

4 Let me just state that the objection was posed in  
5 this context. The line of questioning had to do with certain  
6 quality control procedures as they relate to the purpose of  
7 the hearing, intimidation and harassment.

8 The objection was posed and the basis of that  
9 objection is that the matter was previously gone over, but as  
10 I understand it, that testimony related to the defect and it  
11 is directly relevant here to the explicitly reserved subject  
12 of intimidation and harassment and if the objection will  
13 stand that we cannot discuss the Henry Stiner incident, it will  
14 eliminate a bulk of what was reserved to be discussed today,  
15 specifically about intimidation and harassment.

16 JUDGE BLOCH: Staff?

17 MR. TREBY: This is Stuart Treby. I will begin for  
18 for the Staff.

19 The Staff agrees with the Applicant in that we  
20 understand that what is occurring here is just cumulative and  
21 repetitious of what is in the record. Now we have no problems  
22 with a question which goes to any specific instances --

23 MR. BLOCH: Mr. Treby, you are not quite alone. Have  
24 the Applicants stipulated that what Mr. Stiner said about this  
25 incident is true?

1 MR. TREBY: I don't believe that that has been  
2 raised yet. I think that the only matter that has been raised  
3 is whether what Mr. Green said at transcript pages 11727  
4 through 11728 is true or not.

5 JUDGE BLOCH: So Mr. Green has said these things  
6 previously?

7 MR. TREBY: Yes.

8 This is a deposition of Mr. Green.

9 JUDGE BLOCH: He is one of Applicant's personnel?

10 MR. TREBY: That is correct.

11 MR. REYNOLDS: No, that is a little bit incorrect.  
12 He is an employee of Brown and Root who is appearing voluntaril  
13 for this deposition and who appeared voluntarily in Fort Worth  
14 to testify.

15 When he testified in Fort Worth, sir -- this is  
16 Mr. Reynolds again -- he described in detail the incident as  
17 far as the facts relating to the incident. There was an  
18 attempt made at this time to get him to relate the incident  
19 once again, when he had already fully testified about it, and  
20 I don't think my witness should be subjected to that.

21 JUDGE BLOCH: Okay. These are facts that he had  
22 previously testified about?

23 MR. PHILIPS: That is correct.

24 JUDGE BLOCH: Is that right, Mr. Treby?

25 MR. TREBY: Yes, that is my understanding. We would

1 have no objection to one question which identifies things in  
2 the transcript, but we are in fact -- this is the incident  
3 that is being the subject of the deposition, so that everyone  
4 knows what the incident is. But my understanding is that the  
5 questioning was going far beyond that and going to rehashing  
6 those matters that had been previously covered in the  
7 transcript.

8 JUDGE BLOCH: Okay. Does Mr. Mizuno have anything  
9 to add?

10 MR. MIZUNO: No. I agree with everything that has  
11 been said.

12 JUDGE BLOCH: We will take a brief recess.

13 Mr. Grossman is with me.

14 MR. PHILIPS: Judge Bloch, this is Malcolm Philips  
15 again. I think there is perhaps to some extent an agreement  
16 of the parties here. Maybe if I could just state it briefly,  
17 I don't think that there is any objection rendered to going  
18 beyond what is on the transcript right now, and perhaps if  
19 that is what the Intervenors viewed Applicants' objection as  
20 being, that was not intended at all.

21 MR. N. REYNOLDS: Nor is there an objection to clearly  
22 making the witness understand the incident.

23 JUDGE BLOCH: Then there is a basis for an agreement  
24 among the parties, that is when something like this comes up  
25 that you ask that the previous testimony be shown to the

1 witness. He reviews. Then if you ask him if he agrees that  
2 that is the complete story or he'd like to add to that? Is  
3 there any problem with that -- I would like to know -- from  
4 anybody?

5 MR. PHILIPS: Applicants would have no problem with  
6 that whatsoever, Judge Bloch.

7 JUDGE BLOCH: How about the Intervenors?

8 MR. SOSNICK: I think that would be all right,  
9 Judge Bloch.

10 MR. REYNOLDS: That is acceptable to me on that  
11 basis.

12 MR. DOWNEY: This is Bruce Downey, Your Honor. That  
13 is the first of what I believe to be two and perhaps three  
14 matters.

15 JUDGE BLOCH: Let's continue.

16 MR. DOWNEY: The second agenda item in point of time  
17 as I understand it is an objection interposed to a question  
18 put to David Chapman, QA Manager of TUGCO. At that deposition  
19 for the Applicant is Len Belter and he will speak for the  
20 Applicant on that point.

21 I'd ask the other attorneys present at that deposi-  
22 tion to introduce themselves.

23 MR. BACHMANN: Judge Bloch, this Richard Bachmann.  
24 I was present at the deposition. I also have entered an  
25 objection on behalf of the Staff.

1 JUDGE BLOCH: Speak up.

2 MR. BACHMANN: I entered an objection to the same  
3 question on behalf of the Staff.

4 MR. GUILD: Judge Bloch, this is Robert Guild. I  
5 was questioning for Intervenor.

6 JUDGE BLOCH: Welcome to the hearing also.

7 MR. GUILD: Thank you, Your Honor. It has been a  
8 ball so far.

9 JUDGE BLOCH: Mr. Belter? Your objection?

10 MR. BELTER: Judge Bloch, let me give you the  
11 background briefly first.

12 Mr. Chapman was asked concerning the reassignment  
13 of Mr. Tolson. He indicated that Mr. Tolson had asked to be  
14 reassigned some months prior to his actual reassignment and  
15 then during those months, Mr. Chapman had been searching for  
16 a potential replacement.

17 In response to a question about whether or not he  
18 had spoken with anyone at the NRC about this, he initially  
19 indicated no and then interrupted Mr. Guild, remembering a  
20 conversation that he had or an interview that he had with a  
21 member of the NRC Staff.

22 Mr. Guild asked for the name and we objected. The  
23 grounds of our objection are primarily that it is not relevant  
24 to the evidentiary portion of the proceeding. We recognize  
25 that it may be an appropriate question in the discovery phase

1 and we have taken the position that the evidentiary phase and  
2 the discovery phase should be segregated here.

3           There is a further reason for segregating them in  
4 this particular instance. The NRC is concerned and we are  
5 concerned also that the potential relevance of the man's name  
6 is so far afield and of such small potential relevance in  
7 comparison with the possible impact on this individual's  
8 privacy --

9           JUDGE BLOCH: I understand the argument.

10           MR. BELTER: -- that at the very least it ought to  
11 be clearly segregated into the discovery portion of this which  
12 as I understand it would not appear in the public documents  
13 room.

14           I will let Mr. Bachmann expand on that, if he cares  
15 to.

16           JUDGE BLOCH: Mr. Bachmann?

17           MR. BACHMANN: Yes, sir. I was about to say just  
18 what Mr. Belter said on the second part of the basis for his  
19 objection.

20           The Staff also agrees that the question is not  
21 relevant to the evidentiary phase of the hearing and strongly  
22 maintains the fact that this would be the type of privacy  
23 question which clearly outweighs any potential --

24           JUDGE BLOCH: This would be what?

25           MR. BACHMANN: I say the privacy question clearly

1 outweighs any possible relevancy.

2 JUDGE BLOCH: Privacy of a government official  
3 having his name disclosed if someone called him?

4 MR. BACHMANN: No. I think the context of this is  
5 that this particular NRC employee was applying for a job and  
6 it was a during a job interview, possibly for Mr. Tolson's  
7 former job. We have no objection to asking anything about  
8 him as to his qualifications, anything that may have been said.

9 We just do not believe that his particular name  
10 should be put into the evidentiary portion of the transcript  
11 to be put in the PDR.

12 JUDGE BLOCH: You represented that this employee  
13 who was called interviewed for Mr. Tolson's job?

14 MR. BACHMANN: No. He was not called. He approached  
15 TUGCO for a job. It was during the course of a job interview,  
16 possibly for Mr. Tolson's job, that the discussion came in.

17 JUDGE BLOCH: That was after you had been approached  
18 by Mr. Chapman for the information?

19 MR. BACHMANN: No, no, Your Honor. The entire  
20 context, the entire thing was a job interview. He was not  
21 approached by Mr. Chapman. He approached Mr. Chapman for a  
22 job and it was Mr. Tolson's job.

23 JUDGE BLOCH: It was not a call to the NRC to share  
24 information about a problem at the plant?

25 MR. BACHMANN: Not at all. It was a private

1 conversation insofar as these things can be private, in the  
2 context of a personal job interview.

3 JUDGE BLOCH: Mr. Guild?

4 MR. GUILD: The context was this, judge. We were  
5 asking Mr. Chapman the qualifications that he had established  
6 in attempting to replace Mr. Tolson with ultimately Mr. Vega  
7 as the site QA Manager.

8 He related over a several month period of time the  
9 considerations at play among which were the importance of  
10 effective communication and sensitivity to the craft quality  
11 assurance interface, which of course bears directly on the  
12 harassment and intimidation subject of these depositions.

13 In the context of that discussion, the question  
14 arose as Applicants' counsel stated it, Mr. Chapman recalled  
15 that there had been a contact with the NRC Staff and that in  
16 fact that contact had been initiated by this now unnamed  
17 staff member who was seeking the job.

18 Now at that point I asked the name and asserted that  
19 it was relevant on the merits of how, first, the Applicants  
20 seek to fill the position of Quality Assurance Manager at the  
21 facility, second, on the basis that the NRC Staff, a party  
22 to the proceeding's position as to the merits of harassment  
23 and intimidation issue.

24 Of course, the Staff, if they have not yet, will  
25 ultimately present evidence and take a position on the

1 effectiveness of quality assurance at the facility and on the  
2 harassment - intimidation issue. At that point Applicants  
3 instructed their witness not to answer the question. In order  
4 to preserve the record but to not delay, I said, Len,  
5 reserving our position, I asked the question by way of  
6 discovery, to identify the individual, asserting that if not  
7 relevant, and we assert it is, that it is certainly calculated  
8 to lead to the production of relevant information.

9 At that point we reached an impasse, the previously  
10 scheduled conference call with Your Honor was set and we  
11 decided to raise the matter with the Board.

12 It is our view essentially that there is no sound  
13 basis even asserted for the privacy argument. We are talking  
14 about a government official who in this instance rather  
15 startlingly appears to have applied for the job of Quality  
16 Assurance Manager at the facility. I understand he is a current  
17 Region IV Staff person, although we have not gotten beyond  
18 the pending question. So we think it is certainly no basis  
19 for a privacy objection in this, and then argued simply that  
20 he deserves to be protected for no apparent reason.

21 We of course maintain that it is relevant to the  
22 merits and want to raise the point now because we think we are  
23 going to find ourselves arguing the essential dichotomy  
24 between the validity of discovery questions versus merit  
25 questions during the balance of these depositions.

1           But we assert that it is relevant on the merits and  
2 it is not appropriately private or confidential information.

3           JUDGE BLOCH: What is the relevance? How does it  
4 relate to whether Appendix B is being properly implemented?

5           MR. GUILD: It seems clear to us, Judge, the  
6 qualities of the person that you select to place in the  
7 position of site Quality Assurance Manager, particularly when  
8 you have decided to replace the incumbent, Mr. Tolson, and  
9 have chosen ultimately Mr. Vega to take that job -- there on  
10 Applicants' compliance with, among other things, let's say  
11 the Criterion 2 with respect to assuring the independence of  
12 the quality assurance function from cost and schedule pressure.

13           On the merits of the specific subject of these  
14 depositions, harassment and intimidation, where there have  
15 been allegations that Mr. Tolson improperly handled harassment  
16 and intimidation instances, or inappropriately set policy on  
17 the site with respect to harassment and intimidation, the  
18 identity and qualifications of his replacement obviously bear  
19 on Applicants' case.

20           JUDGE BLOCH: You said the identity and qualification.  
21 You are arguing that this is relevant because the individual  
22 at the NRC may have been better qualified than Mr. Vega?

23           MR. GUILD: That is unclear, Judge.

24           But let's turn, then, secondly to the Staff's  
25 position. The Staff is a party of the case and will offer

1 a substantive position on the merits of Applicants'  
2 qualifications generally, under Appendix B and the specifics  
3 of the harassment and intimidation issue.

4 This very individual, for example, might be offered  
5 as a witness. Now it certainly is at least reasonably  
6 calculated to lead to the production of relevant information  
7 to be able to ask who this person is, to anticipate whether  
8 the very witness Staff may offer on the merits, his objectivity  
9 and impartiality, his interest if you will, may be colored  
10 by the fact that he applied for and was rejected for the job.

End 1.

11 JUDGE BLOCH: We will make that decision in a moment.  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

tel conf

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

(Discussion off the record.)

JUDGE BLOCH: It is my understanding that that was supposing this was a matter of discovery also; is that correct?

MR. TREBY: The Staff's position is that the subjection of all as part of the evidentiary deposition, we would not object to it if it was discovery in a segregated transcript that was not put into the public record.

JUDGE BLOCH: Okay, and this is the way we will do it. We do not see the direct relevance of this point, but it is reasonably calculated to lead to admissible evidence. Therefore, it should be in the segregated portion dealing with discovery matters.

I must say that I am a little concerned that so much time and effort was spent on this, since the same judge that will have to decide whether or not to treat this as material is now making the ruling on the materiality after an extended conference on it. I hope the parties won't continue to bring up what really is a rather minor distinction for an extended conference with the Board.

Let's continue to the third matter.

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

1                   Perhaps I can explain why this is happening.

2                   At the outset of the depositions this  
3 morning when the Applicant read into the transcript of  
4 each deposition a prepared statement which represents  
5 their view of what the ground rules are with respect to  
6 these depositions, we have some substantial objections  
7 with regard to their interpretation.

8                   Where the difficulties are arising is the  
9 Applicants are insisting on applying what they perceive  
10 to be the ground rules and to ordering witnesses not to  
11 answer questions and raising problems based upon that  
12 interpretation.

13                   The instance that we have just been discussing  
14 relates to the premise that the Applicant is making  
15 which is that every time they object to a question  
16 that we ask, which they claim is relevant -- which  
17 they claim is not relevant and we claim is relevant,  
18 that it is automatically into a "separate" transcript  
19 which is then called a discovery transcript.

20                   Our position is that unless we can see that  
21 the question we are asking is discovery, it is to be  
22 answered in the context of the normal deposition. If  
23 the Applicant is able at a subsequent time to make its  
24 case, then what we have done is a matter that was only  
25 for discovery and not for evidentiary purposes. Then we

1 would be responsible for paying for the portion of the  
2 transcript that relates to that material.

3 JUDGE BLOCH: That's right.

4 I'd like the Applicants to respond, and maybe  
5 the Staff as well, but I have now reread portions of  
6 the order that I entered, and that was a correct  
7 interpretation that Mr. Roisman just made. The  
8 segregation responsibility is a good-faith responsibility.  
9 If the lawyer asking the question is reminded by an  
10 objection and still feels that is material, then the  
11 answer should be answered over the objection with the  
12 objection remaining in the transcript.

13 We will have a chance to answer later. The  
14 obligation is the lawyer's obligation in good faith to  
15 segregate, but it should not be used as a way of  
16 stalling up the transcript and preparing a separate  
17 transcript, merely because the objection was stated.

18 Would Mr. Downey like to respond, or Mr.  
19 Belter?

20 MR. DOWNEY: Yes, I would, your Honor. This  
21 is Bruce Downey speaking.

22 I read the Board's orders as clearly requiring  
23 a segregation, good faith effort to segregate questions  
24 that are for evidentiary purposes from those that are  
25 discovery purposes.

1 I would remind Mr. Roisman that we have  
2 interposed that objection one time and the Board has  
3 just sustained it. It is, I think, important to being  
4 these depositions on the right foot and to force and  
5 I believe correctly force the interrogators of these  
6 witnesses to undertake the good faith effort the  
7 Board has required.

8 As a practical matter, the discovery portion  
9 of the transcripts are not normally filed with the Board.  
10 In fact, there is no provision for that being done,  
11 only evidentiary transcripts are filed with the Board.

12 I think consistent with that Board procedure  
13 and the rulings of the Board, that from time to time it  
14 may be necessary to go to you, Your Honor, to get a ruling  
15 on what is admissible and what is not, just as we would  
16 in any hearing context.

17 JUDGE BLOCH: I ask that you do that only  
18 where the standard is the good faith of attorney asking  
19 the question, so that in close questions, there will be  
20 an objected-to question, the answer will be there, and  
21 the Board will know the grounds of the objection from  
22 your having stated it, and we will be able to consider  
23 the relevance of it when it is brought to our attention.

24 That is just a much more efficient way of  
25 proceeding, and I will stick with the ruling that we made

1 in this instance, although it doesn't strictly fit  
2 the test, because in this case I am persuaded that the  
3 lawyer asking the question in good faith thought it  
4 was related to the evidentiary matters.

5 Now there was a third matter -- Mr. Treby,  
6 do you need to comment, or Mr. Mizuno?

7 MR. TREBY: I think that one area does need  
8 some clarification. The Staff has been operating  
9 on the premise that the scope of the evidentiary  
10 deposition is defined by the matters set out in the  
11 June 27 letter that CASE sent, I believe it was  
12 addressed to Mr. Belter, to the extent that matters  
13 appeared to be raised outside of that the general  
14 parameters of the items listed in that letter. For  
15 instance, give us the name of the NRC employee who  
16 applied for a job. Those matters appear to the Staff  
17 to be clearly discovery matters and not evidentiary  
18 matters in the sense that they are clearly outside  
19 of the scope of the matters that we understand this  
20 deposition to be covering, which are the items in the  
21 June 27 letter. And I think that is one of the problems  
22 we are having about some of the questioning -- well,  
23 we have one instance so I can't make a generalization,  
24 but it seems to me that there's been at least one  
25 instance when we've gone outside of the scope of the

1 June 27th letter, and that's, I guess, an area that we  
2 think perhaps the Board can give us some clarification  
3 on.

4 MR. GUILD: Judge, This is Bob Guild. I asked  
5 the question and the record should reflect that  
6 Mr. Chapman had before him that same June 27th  
7 letter with the subsequent attachment of, I think,  
8 July 6, that specifically listed the subjects to be  
9 queried at his deposition among which -- I don't have the  
10 document before me, if I paraphrase -- was the subject  
11 of Mr. Tolson's replacement. That's what got us to  
12 this point in the first place. I just wanted you to  
13 understand that matter was before the witness, and  
14 it wasn't a surprise subject.

15 I have to admit, I was somewhat surprised  
16 by the answer, but it's not to suggest that the area  
17 was somehow outside the scope of what Applicants  
18 and the Staff fairly understood the inquiry would  
19 be focused on.

20 JUDGE BLOCH: Mr. Treby, would you like  
21 to conclude?

22 MR. TREBY: I believe I have concluded.

23 MR. DOWNEY: Your Honor, I have just one  
24 short point to make. I think I started in the middle  
25 of my argument in a sense in that I agree with

1 Mr. Treby that the entire basis for this particular  
2 argument is whether the evidentiary portion of the  
3 deposition can be confined -- is properly confined  
4 to the list of issues in the letter of June 27, and  
5 we agree fully with the Staff on that point and we  
6 have prepared for these depositions on that basis.

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

9 MR. ROISMAN: Mr. Chairman, as I understood  
10 the agreement that the Board accepted and ruled on,  
11 it was to the extent that we asked questions which  
12 would clearly be permissible as evidentiary questions  
13 but that represented matters that the Applicant or  
14 the Staff considered to be surprise, the remedy  
15 was not to attempt to freight CASE with the cost of  
16 the deposition which cannot afford and would not be  
17 able to proceed if it had to do that, but rather,  
18 that the Applicant and the Staff would use the  
19 surprise outlet which the Board has already provided.

20 I don't believe, and in fact I think the  
21 example here that Mr. Guild is discussing is a classic  
22 example. We would have chaos if every time in the  
23 course of asking questions we learned something that  
24 we didn't previously know, and were told, well, you  
25 can't ask questions about that unless you want to pay

1 for the transcript. We would then reserve all of  
2 that, call the witness back at the time of the actual  
3 hearing, and go ahead and ask what everybody would  
4 feel were relevant questions. I think that the  
5 proper conduct here, what the Board has ruled is,  
6 if our questions would have been permissible in a  
7 hearing, they are permissible here. If they are  
8 only justifiable because they are discovery and  
9 essentially that means if they fail the test of  
10 relevancy and would only be allowed to ask because  
11 they might lead to relevant information, only  
12 those questions fall in the "discovery" category,  
13 only those that CASE expected to pay for, and all  
14 of the others are evidentiary questions, the remedy  
15 being the surprise outlet for Applicant and Staff  
16 that there is a genuine surprise.

17 MR. DOWNEY: Your Honor --

18 JUDGE BLOCH: Before you speak, have you  
19 yet had a chance to reveal the telephone transcript  
20 that we talked about last Friday starting at  
21 transcript 13780? That's the order that we gave in  
22 the last conference call.

23 MR. DOWNEY: That transcript, if you're  
24 speaking, Your Honor, of the transcript of the  
25 July 2nd hearing, the answer is no. That transcript

1 has not been delivered to my office as of Friday, and  
2 has not been delivered to me here. Perhaps Mr. Treby  
3 has a copy but I do not.

4 JUDGE BLOCH: Mr. Roisman's statement is  
5 consistent with the order that was entered there.  
6 In addition, I would say that in reviewing that  
7 transcript -- excuse me. It's at 13780. I've got  
8 the wrong cite for you.

9 MR. DOWNEY: Your Honor, may I add one  
10 additional point which I think is relevant to this?

11 JUDGE BLOCH: You may while I'm searching.

12 MR. DOWNEY: The point is this. The  
13 Board clearly ordered that the Intervenors made a  
14 good-faith effort to segregate evidentiary from  
15 discovery questions. And in our lawyers' conference  
16 this morning before the commencement of any  
17 depositions, we raised this very point of what would  
18 be segregated and what would not; what would be  
19 evidence and what would be discovery. And we were  
20 informed that indeed the Intervenors have prepared  
21 no discovery questions, and in their view, everything  
22 they plan to ask over the next week was evidentiary.

23 JUDGE BLOCH: Okay. And each time you  
24 raise a question they have to reconsider whether they  
25 really consider it to be evidentiary, and if they

ja-2-10

1 consider at that time it's not, they they're under  
2 a professional obligation to change their mind on  
3 that.

4 If you want to read transcript 13786  
5 following and see that we discussed this problem of  
6 potential surprise, and we found that the CASE  
7 filing to date was disappointingly scanty. And  
8 that there would inevitably be events that would  
9 constitute surprise, but we felt it better to proceed  
10 on that basis. We do not think that the list of  
11 issues that was filed by CASE is determinative of  
12 what is relevant.

13 That was supposed to have been a complete  
14 and full disclosure of what CASE then believed to  
15 e the relevant issues. The remedy for surprise  
16 that was laid out in our order in the transcript  
17 is the calling of rebuttal witnesses and possibly  
18 the calling of witnesses at trial itself. In  
19 addition, if there seems to have been a pattern of  
20 surprise used as a tactic, we would hope that the  
21 Applicants and Staff would raise that to our  
22 attention, also.

23 But, no, we do not consider the list of issues  
24 to be determinative of relevance.

25 Let's continue to the next matter.

mgc 2-11

1 MR. ROISMAN: Mr. Chairman, my understanding  
2 of the next matter and Mr. Jacks', the Intervenor  
3 attorney involved in this, is the first arising of what  
4 I believe may be a generic problem, and we felt it  
5 appropriate to bring it to you at this time.

6 A question was asked of a witness. The  
7 Applicants attorney objected to the question on the  
8 ground that the answer would be hearsay. We do not  
9 believe it would be hearsay.

10 The Applicants' lawyer asked us to stipulate  
11 that we were not -- that the answer we would get would  
12 not be used for the purposes of the truth of the statement  
13 therein. I believe that the question, first of all,  
14 has nothing to do with the discovery matter. It is not  
15 a matter of discovery or non-discovery. It is a question  
16 of admissibility or inadmissibility.

17 It is my understanding of the Board's order  
18 is that questions of admissibility are to be resolved  
19 not now, but the objections are reserved. In fact, they  
20 need not be made now. They are to be made at no later  
21 than, but they can be made sooner, the time at which  
22 we attempt to introduce into evidence the statement,  
23 and none of it is objected to as being hearsay or  
24 objected to as being unreliable or whatever, the normal  
25 basis for objections are, those can be made, and that we

mgc 2-12

1 would flow through the hearing.

2 JUDGE BLOCH: Both you and Mr. Jacks believe  
3 that this question is properly admissible?

4 MR. ROISMAN: Yes. I have spoken to Mr. Jacks.  
5 He is here. I will let him speak for himself, and he  
6 will tell you the precise question, if you wish,  
7 Mr. Chairman.

8 MR. JACKS: Your Honor, I am Tommy Jacks from  
9 Austin, Texas.

10 JUDGE BLOCH: Actually, I would prefer,  
11 Mr. Jacks -- welcome to the hearing -- I think in the  
12 interests of economy, I would prefer to have the  
13 Applicants respond. I'm not sure the details of whether  
14 the question is actually admissible are important to me.

15 Mr. Roisman has argued in principle that that  
16 should not concern us. I would like to have Applicants'  
17 response to that argument.

18 MR. DOWNEY: Your Honor, this is Bruce Downey,  
19 and I will respond in the generic sense to the point.  
20 If it becomes necessary to address the particulars of  
21 the question put to the witness joining me, and the argument  
22 will be Richard Walker, another counsel for TUGCO, --  
23 our point, Your Honor, is quite simple. You have ruled  
24 in a very clear way time and time again in our conference  
25 calls that hearsay is outside -- hearsay was not

mgc 2-13

1 admissible evidence in this proceeding, admissible for  
2 the purpose of proving the truth of the matter asserted.

3 Now we have already had here -- the situation  
4 becomes, if there are no constraints at all on the scope  
5 of discovery versus evidence, hearsay versus nonhearsay,  
6 we in essence have created a situation in which matters  
7 as to which you have already reviewed are beyond the  
8 scope --

9 JUDGE BLOCH: What are we supposed to do when  
10 Mr. Roisman and Mr. Jacks say they don't think it's  
11 hearsay? Are you going to call us every time there is  
12 a hearsay objection in the course of these depositions?

13 MR. DOWNEY: Your Honor, the situation becomes  
14 this. We have approximately 40 witnesses slated over  
15 the next two weeks. In the course of those 40 depositions,  
16 there could be literally thousands of questions put to  
17 witnesses that would elicit hearsay testimony which you  
18 have ruled to be inadmissible in this proceeding.

19 JUDGE BLOCH: As you know, the hearsay rule  
20 is a rather complex rule. Is this particular instance  
21 one in which it is so clear that it's hearsay and not  
22 within an exception that you feel they are not within  
23 good faith?

24 MR. DOWNEY: Your Honor, I can't address that.  
25 I wasn't present at the deposition. Mr. Walker can.

mgc 2-14

1 JUDGE BLOCH: Does Mr. Walker feel that it's  
2 so clear that it's hearsay and not within an exception  
3 to the hearsay rule that it's a matter that could phase  
4 the opposing attorneys?

5 MR. WALKER: Your Honor, this is Richard  
6 Walker.

7 Yes, I would definitely take that position.

8 MR. JACKS: Your Honor, if I may, this is  
9 Tommy Jacks again.

10 JUDGE BLOCH: Mr. Jacks, tell me the details.

11 (Laughter.)

12 MR. JACKS: I will do so, Your Honor. The  
13 questioning involved -- the witness is a man named  
14 Curley Krisher, who became involved in the Bill Dunham  
15 dispute a couple of weeks before Mr. Dunham was  
16 terminated. The particular line of questioning --

17 JUDGE BLOCH: He was fired, right?

18 MR. JACKS: Yes.

19 MR. ROISMAN: We're starting to talk like the  
20 NRC and the Applicant, Mr. Chairman.

21 MR. JACKS: I've only been here a day, Judge.  
22 It's worn off on me.

23 The particular line of questioning, Your  
24 Honor, involved a conversation in which where after a  
25 meeting, Bill Dunham came up to Mr. Krisher and began

mgc 2-15

1 making some comments to him about concerns that Dunham  
2 had about harassment and intimidation of QC inspectors.

3 I asked Mr. Krisher whether or not  
4 Mr. Dunham named any names, whether or not he referred  
5 to any particular individuals who he thought either  
6 had been engaging in harassment or intimidation, or  
7 whom he thought had been harassed or intimidated. I asked  
8 Mr. Krisher whether or not Mr. Dunham indicated in that  
9 conversation that he, Dunham, had been subjected to  
10 harassment and intimidation.

11 With respect to each of those questions a  
12 hearsay objection was raised. I then was asked whether  
13 I would stipulate that --

14 JUDGE BLOCH: Do you think it's hearsay?

15 MR. JACKS: Your Honor, I believe if we get  
16 into arguing the hearsay objection, what Dunham said  
17 on that occasion, without regard to whether or not it  
18 was true, certainly indicates that Mr. Krisher, who was  
19 supervisor, had received notice that there was a QC  
20 inspector --

21 JUDGE BLOCH: If there is direct knowledge  
22 that Mr. Krisher had been informed of something and that  
23 he therefore might be expected to follow up on it, is  
24 that the argument?

25 MR. JACKS: That's certainly one argument,

mgc 2-16

1 Your Honor.

2 I then was asked by --

3 JUDGE BLOCH: That's enough. You only need  
4 one argument to make out on hearsay.

5 MR. JACKS: If I may make one other statement,  
6 Your Honor, to explain my quandry, I then was asked  
7 whether I would stipulate that at trial the statement  
8 would not be offered, any testimony of Mr. Krisher  
9 in response to that question would not be offered for  
10 the truth of the matter stated, but would only be  
11 offered for some more limited purpose, and I was asked  
12 to qualify in my offer of the evidence, if you will,  
13 I feel -- you know, I'm not the lawyer who is going to  
14 be trying this case. I have not been involved in it  
15 before this week. I presumably will not be involved in  
16 it after this week. I am asking questions in good faith  
17 that I believe to be pertinent questions.

18 I came into this proceeding with the  
19 understanding that the rulings on such objections would  
20 be reserved until the time of trial. But once I told  
21 the counsel for the Applicant, who made the objection,  
22 that I didn't feel that I had the authority even to enter  
23 into stipulations that would provide counsel at trial  
24 in that way, he then said he would instruct the witness  
25 not to answer and then proceeded, as I asked each of the

mgc 2-17

1 other questions, proceeded to instruct the witness not  
2 to answer the questions.

3 JUDGE BLOCH: I think I understand the  
4 problem.

End 2

5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MMmgc3-1

1 MR. JACKS: That's my problem. I don't have  
2 any problem with his putting a suggestion on the record,  
3 if he lacks --

4 JUDGE BLOCH: I think you're done.

5 MR. DOWNEY: May Mr. Walker address this issue?

6 JUDGE BLOCH: Please.

7 MR. WALKER: Your Honor, this is Mr. Walker.  
8 I think Mr. Jacks has fairly characterized our dispute  
9 in most respects. I would add only that if you examine  
10 closely Mr. Jacks' argument, it sounds to me that he is  
11 not even asking the question for the purpose of proving  
12 the matter asserted, in which case it clearly would not  
13 be hearsay.

14 My objection would be obviated, and the witness  
15 could answer. That's why I asked for the stipulation.

16 JUDGE BLOCH: Mr. Walker, I don't understand why  
17 you need a stipulation. You state your objection clearly  
18 for the record. The Board knows how to rule on hearsay  
19 matters later. Just have some confidence that the Board  
20 will understand the hearsay rule. You don't need the  
21 stipulation.

22 We have ruled firmly that we will not consider  
23 hearsay evidence. All you have to do is go ahead on the  
24 basis of your understanding that Mr. Jacks is asking about  
25 the knowledge of Mr. Kresher.

mgc 3-2

1 MR. DOWNEY: Your Honor, this is Bruce Downey  
2 again.

3 The problem we have is that at the conclusion  
4 of these depositions, we are confronted as Applicants with  
5 the problem of preparing a rebuttal case. What we will  
6 face, if there are not clear rulings about what is and is  
7 not in evidence, we are faced with the task of preparing  
8 rebuttal evidence to matters that are not in evidence.

9 JUDGE BLOCH: If that's what bothers you, it's  
10 a clear case of hearsay. It's just for the truth of  
11 the underlying facts. And you and I both know that as  
12 lawyers; isn't that correct?

13 MR. DOWNEY: That's correct, Your Honor. And  
14 I don't think every case will be as clear as the one that  
15 was put to you by Mr. Walker and Mr. Jacks.

16 JUDGE BLOCH: Okay. I would suggest if you have  
17 a need for an evidentiary ruling to avoid surprise, that  
18 you compile them, file them with the Board, and we will  
19 rule as promptly as we can after the hearing is over.

20 I suppose it may not be possible to do that by  
21 the third week of deposition, but we have given you two  
22 cracks at surprise problems. One is during the third  
23 week, and the other is at the hearing itself. That's the  
24 best I can do for you.

25 If there really are ambiguities in your mind as

mge 3-3

1 to whether or not we would consider something to be  
2 hearsay, I suggest that in most instances you will know what  
3 the law is on it.

4 MR. DOWNEY: Your Honor, there is one final  
5 matter that hasn't arisen in the same context, and we might  
6 as well do it now.

7 I would like to address in sequence what we have  
8 covered here to pose the context for the third point.

9 First the question of whether or not the  
10 transcripts will be segregated. You have ruled that they  
11 will not?

12 JUDGE BLOCH: I did not rule that. We ruled that  
13 when it comes up in the course of the hearing, that the  
14 lawyer propounding the question will consider again whether  
15 or not in good faith he considers itself to be evidentiary.  
16 The test will be the good faith of the lawyer asking the  
17 question.

18 MR. DOWNEY: The second point, Your Honor, in  
19 my judgment, that has taken us from guidelines that are  
20 clear to those that are ambiguous, that expand the  
21 proceeding, the hearsay rule, it seems to me, expands it  
22 even further.

23 For example, hearsay questions, questions  
24 eliciting hearsay responses are quite clearly appropriate  
25 in discovery -- for purposes of discovery -- but they aren't

mgc 3-4

1 appropriate for evidence.

2 JUDGE BLOCH: I haven't ruled anything to the  
3 contrary to that.

4 Mr. Downey, what did we rule that makes that  
5 relevant?

6 MR. DOWNEY: What you have ruled, Your Honor, is  
7 that in the evidentiary portion of the deposition, there  
8 are no constraints on the Intervenors in asking hearsay  
9 questions.

10 JUDGE BLOCH: You're not listening. The  
11 Intervenors have to, in good faith, believe that what they  
12 are asking is admissible in evidence -- if they are in good  
13 faith, which is the test. If there is something that is  
14 admissible but you want to restrict the use or the purposes,  
15 you make your objection and clearly state it. Since it's  
16 admissible, you don't hold up the deposition.

17 MR. DOWNEY: Your Honor, I come to the third  
18 point, having made the first two. I won't repeat them. But  
19 the third is whether this proceeding will be limited to the  
20 intimidation of QC inspectors or QC personnel, or whether  
21 the scope of this proceeding will expand again now to include  
22 construction -- allegations of intimidation of construction  
23 workers in the course of the depositions.

24 We basically took three points -- positions --  
25 in our opening statement. You should segregate hearsay as

mgc 3-5

1 not admissible, except for limited purposes, and three,  
2 that examination of witnesses about alleged acts of  
3 harassment of construction workers, all three are outside  
4 the scope of the evidentiary portions of these depositions.

5 I anticipate shortly that the third question will  
6 arise, and I would ask the Court to reaffirm its earlier  
7 ruling that such matters are beyond the scope of these  
8 proceedings.

9 JUDGE BLOCH: Our ruling is identical. If it is  
10 in good faith, the attorneys for CASE must believe that the  
11 questions are relevant to the issues before us, which are  
12 intimidation of QC. They must believe there is a relevant,  
13 logical connection between any event and that issue. It  
14 doesn't mean that they may not have some evidentiary material  
15 that would link up an incident which is not directly related  
16 to that, to the ultimate issue. It must be relevant. It  
17 will be their good faith that will determine whether or not  
18 they will be permitted to ask the question. Objections that  
19 are made to it will be in the transcript.

20 The intimidation of craft people is not itself  
21 an issue at this hearing.

22 MR. ROISMAN: Mr. Chairman, this is Mr. Roisman.  
23 With the qualification that I think we have all  
24 agree to, and that is the Stiner matter.

25 MR. DOWNEY: That's correct, Your Honor.

mgc 3-6

1 JUDGE BLOCH: That's correct.

2 Are there any other matters that we must handle  
3 now?

4 MR. ROISMAN: Mr. Chairman, just so that it is  
5 crystal clear, your ruling is that it is not appropriate  
6 for the Applicants to instruct the witness not to answer,  
7 but rather that the Applicants are to preserve the objection.

8 Is that correct?

9 JUDGE BLOCH: That is correct. It is appropriate  
10 for your lawyer to reconsider whether the question is  
11 admissible in evidence and is bound by professional obliga-  
12 tion to the Board to not ask a question unless they believe  
13 it is admissible.

14 MR. ROISMAN: At our lunch break today,  
15 Mr. Chairman, I will reemphasize that point to all of my  
16 attorneys and impress upon them your insistence, appropriately  
17 so, that they ask these questions when they have a  
18 good-faith belief that they are appropriate and that when  
19 challenged by the Applicants' lawyers, they will rethink  
20 that. And you may note, for instance, that Mr. Guild  
21 actually at the time that it was in deposition proposed that  
22 the question be treated as a discovery question himself,  
23 as a fallback position to his principal position.

24 But I will reemphasize that to them.

25 JUDGE BLOCH: Thank you.

mgc 3-7

1 I would like to thank Mr. Walker for joining this  
2 proceeding. I have not spoken with him before, and I  
3 neglected to welcome him. I'm sorry about that.

4 MR. WALKER: Thank you, Your Honor.

5 JUDGE BLOCH: Anything else that must be handled  
6 right now?

7 MR. DOWNEY: Your Honor, what procedure would you  
8 suggest we follow for getting -- obtaining rulings from the  
9 Board on those matters where we feel it essential to do so?

10 JUDGE BLOCH: Providing that it is consistent with  
11 the rulings we just made, the same procedure you just used  
12 is the one you should use.

13 MR. DOWNEY: Just a moment, Your Honor.

14 JUDGE BLOCH: I would urge also that you consider  
15 the delay that is caused and weight it against the  
16 importance of getting an immediate ruling.

17 MR. DOWNEY: Your Honor, just one point of  
18 clarification of our earlier -- of your first ruling where  
19 you sustained the objections to the question propounded to  
20 Mr. Chapman. Is that question -- are those questions,  
21 discovery questions like the one identified in that argument,  
22 are they to be segregated in a separate transcript?

23 JUDGE BLOCH: That one is going to be, although  
24 it was inconsistent with the principles that I consequently  
25 laid down, because of the good faith of the person asking,

mgc 3-8

1 it was an admissible question. However, I have ruled on  
2 the specifics of that one, and that one will have to be  
3 segregated in a separate transcript section.

4 MR. DOWNEY: Is this something like winning the  
5 battle and losing the war?

6 JUDGE BLOCH: If you feel that way.

7 MR. MIZUNO: Chairman Bloch, --

8 JUDGE BLOCH: I don't fight battles and wars.  
9 I rule on objective rulings.

10 MR. MIZUNO: Chairman Bloch, I want to make a  
11 comment. I don't think your ruling effectively precludes  
12 any discovery occurring. I think any good attorney can make  
13 a reasonable argument at some point saying that something  
14 is relevant, and I don't think, judging from what I heard,  
15 my understanding is that the Intervenors have no discovery  
16 questions prepared. I think that is evidence that suggests  
17 that your ruling, as a practical matter, means that every-  
18 thing is going to come in in the evidentiary portion of  
19 the proceeding.

20 JUDGE BLOCH: If the Staff and the Applicants see  
21 a pattern of conduct by one or more of the CASE attorneys  
22 which indicates that they are not following the procedure  
23 of acting in good faith, then you may bring that to our  
24 attention. They don't just have to have a reasonable  
25 argument. They have to actually believe in the validity

mgc 3-9

1 of that argument. It's a good faith test, not that they  
2 just have some reasonable argument.

3 Okay?

4 (No response.)

5 JUDGE BLOCH: This hearing is adjourned.

6 (Whereupon, at 11:55 a.m., the telephone  
7 conference was adjourned.)

8 End 3  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CERTIFICATE OF PROCEEDINGS

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

In the matter of: Texas Electric Utilities Company Comanche Peak

Date of Proceeding: Monday, July 9, 1984

Place of Proceeding: Glen Rose, Texas

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

Mimie Meltzer  
Official Reporter - Typed

*Mimie Meltzer*  
Official Reporter - Signature