

ORIGINAL

UNITED STATES OF AMERICA NUCLEAR REGULATORY COMMISSION

In the matter of:

TEXAS UTILITIES ELECTRIC
COMPANY, et al

Docket No. 50-445-2
50-446-2

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

Telephone Conference

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*Add:
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Eric Johnson*

TAYLOE ASSOCIATES

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

8407310383 840723
PDR ADOCK 05000445
T PDR

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY & LICENSING BOARD

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TEXAS UTILITIES ELECTRIC	:	
COMPANY, et al	:	Docket Nos. 50-445-2
	:	50-446-2
(Comanche Peak Steam Electric	:	
Station, Units 1 and 2)	:	
	:	

Room No. 46
Glen Rose Motor Inn
Highway 67 & FM 201
Glen Rose, Texas

Monday,
July 23, 1984

TELEPHONE CONFERENCE

The telephone conference in the above-entitled
matter commenced at 8:20 a.m.

BEFORE:

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

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APPEARANCES:

For the Applicants, Texas Utilities Electric
Company, et al: _____

RICHARD K. WALKER, ESQUIRE
McNEILL WATKINS, ESQUIRE
Bishop, Liberman, Cook, Purcell & Reynolds
1200 Seventeenth Street, Northwest
Washington, D.C. 20036

For the Nuclear Regulatory Commission Staff:

GEARY S. MIZUNO, ESQUIRE
STUART TREBEY, ESQUIRE
Office of the Executive Legal Director
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

BENJAMIN HAYES, Director, Office of
Investigations
RENEA HICKS, Office of Investigations
U.S. Nuclear Regulatory Commission, Region 4
Suite 804, Bryan Plaza
Arlington, Texas

For the Intervenor, Citizens Association for Sound
Energy: _____

ANTHONY Z. ROISMAN, ESQUIRE, Executive
Director
BILLY GARDE, ESQUIRE
JUANITA ELLIS
Trial Lawyers for Public Justice, P.C.
2000 P Street, Northwest, Suite 611
Washington, D.C. 20036

- - -

P R O C E E D I N G S

8:20 a.m.

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2
3 JUDGE BLOCH: This is Peter Bloch, Chairman
4 of the Licensing Board for the Comanche Peak Licensing Case-
5 2.

6 With me is Judge Grossman, who is also on
7 that Board and Alan Ginsberg, who is a clerk for the Board.

8 Would applicants representatives please
9 identify themselves for the record?

10 MR. WALKER: This is Richard Walker, Your
11 Honor. And with me is McNeill Watkins.

12 JUDGE BLOCH: Would intervenors represen-
13 tatives please identify themselves for the record?

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

16 MS. ELLIS: And I'm Juanita Ellis.

17 MS. GARDE: And this is Billie Garde.

18 JUDGE BLOCH: Who will be doing most of the
19 talking for CASE?

20 MR. ROISMAN: Mr. Roisman will.

21 JUDGE BLOCH: Okay. And--

22 MS. ELLIS: There are only a couple of
23 comments that I would like to add, which I have personal
24 information about.

25 JUDGE BLOCH: Okay. The only reason I am

1 mentioning that is that I would expect when the principal
2 person for a party is talking that it's not necessary
3 that they represent who they are, but anyone else should
4 clearly identify themselves for the record.

5 I will assume that Richard Walker will be
6 doing most of the talking for Applicant?

7 MR. WALKER: That's correct.

8 JUDGE BLOCH: And for the Staff?

9 MR. TREBEY: For the Staff, Stuart Trebey
10 is on the line, as well as Geary Mizuno.

11 JUDGE BLOCH: And who may we expect to
12 carry the laboring oar?

13 MR. TREBEY: I think Mr. Mizuno. He was
14 present during the earlier discussions.

15 JUDGE BLOCH: That was just for identifica-
16 tion.

17 I was called last night at home--

18 MR. HICKS: Excuse me, Judge Bloch.

19 JUDGE BLOCH: Yes.

20 MR. HICKS: Renea Hicks, State of Texas,
21 also is on the line.

22 JUDGE BLOCH: Thank you very much, Mr.
23 Hicks.

24 I was called last night at home at
25 approximately 8:40 p.m. where I had a conference with

1 Richard Walker and Billie Garde. We discussed six essential
2 agenda items for today's conference, of which one, the
3 fifth presented to me, might be a subject for agreement
4 between the parties.

5 I've asked Richard Walker to manage the
6 agenda on these matters.

7 Mr. Walker, the first matter, please?

8 MR. WALKER: The first matter, Mr. Chairman,
9 is the relevancy of testimony regarding the harassment and
10 intimidation-- or, allegations of harassment and intima-
11 tion directed against employees in the document control
12 organization.

13 There are two witnesses for the Intervenors
14 that are scheduled to appear this week. They are Ms.
15 Dobie Hatley and Ms. Billie Orr, both of whose testimony,
16 it has been outlined to us, would relate solely to harass-
17 ment and intimidation allegations against themselves--
18 directed against themselves.

19 And it is the Applicant's position that that
20 testimony is irrelevant for purposes of the present
21 hearings, which, as we understand it, were confined to
22 the issue of harassment and intimidation of Quality Control/
23 Quality Assurance inspectors.

24 These two individuals were not, and never
25 have been, part of the QA/OC organization. In fact, the

1 part of the organization in which they worked, which was
2 document control, is a part of the craft organization.

3 Their jobs are, in no sense as we see it,
4 of a functional equivalent of those of QA/QC inspectors.
5 They perform no inspections of craft work. They are not
6 involved in a role of oversight of the QA/QC function.
7 They do not write NCR's or inspection reports or anything
8 like it.

9 Their sole involvement with regard to the
10 quality of construction work that has been done at the
11 plant is that they share, like all employees, the duty
12 to report any defects of which they have knowledge.

13 In that sense, of course, they are not
14 at all distinguishable from craft personnel, such as,
15 welders and so forth.

16 JUDGE BLOCH: Mr. Walker, do they prepare
17 the quality records for use by QC inspectors?

18 MR. WALKER: What they do, Your Honor, is
19 they prepare document packages which are used by craft
20 people when they go out into the field to perform work,
21 and when the QC inspectors need to inspect that work, they
22 also obtain the documentation packages from which they
23 perform their inspections from the document control
24 organization.

25 JUDGE BLOCH: And I understand that the

1 QC work is subject to both QC inspection and quality
2 assurance; is that correct?

3 MR. WALKER: Well, it is subject to QC
4 inspection and, of course, all of the audits and surveillance
5 of the QC inspection function.

6 JUDGE BLOCH: Okay. Do you know whether
7 there is any other part of Intervenor's argument to which
8 you can respond right now?

9 MR. WALKER: Not that I know of, Your Honor.

10 JUDGE BLOCH: Okay. Mr. Roisman?

11 MR. ROISMAN: Mr. Chairman, now we are not
12 in significant disagreement with what Mr. Walker has just
13 characterized as the nature of the work of Ms. Hatley
14 and Ms. Orr.

15 Nor are we particularly in disagreement with
16 them about whether they are squarely within the ambit of
17 the current proceeding.

18 I think our concern is merely that we
19 don't have any question but that Ms. Orr and Ms. Hatley
20 have very relevant things to say with respect to this
21 proceeding.

22 And as we understand the way the proceeding
23 has evolved before we got into it, there was an assumption
24 that was made, perhaps erroneously, on the part of CASE
25 that this phase of the hearing would be addressing the

1 concerns that Ms. Orr and Ms. Hatley have.

2 As long as we are made aware through this
3 conference call that CASE has no restrictions on its
4 ability to either add to an existing contention or to add
5 a contention which would raise the serious concerns that
6 Ms. Orr and Ms. Hatley have with respect to the existence
7 of massive problems in the document control section, such
8 that it is not possible to know whether a QC inspection
9 which has occurred, in fact occurred using the proper
10 documentation. And thus, the entire credibility of the
11 entire QC process is undermined.

12 As long as that issue is not foreclosed,
13 then we would be prepared to withdraw those two witnesses
14 and the Applicant's concomitant witnesses that match up
15 with them and recognize that it is tangential to this
16 process.

17 Should it be, however, the Board's view that
18 somehow or another the Hatley/Orr contention must either
19 come in here or not at all or the case has no opportunity
20 to really argue any more that they belong elsewhere in
21 the proceeding, then we would press what we think is a
22 legitimate, although, I would admit, a somewhat tenuous
23 argument to the effect that the QC function is directly
24 affected in an adverse way if the documents being used for
25 purposes of doing the QC examination are themselves

1 inadequate and that the source of that inadequacy is
2 harassment and intimidation of Ms. Orr and Ms. Hatley
3 substantially by QC personnel, who may or may not have
4 been doing it as a result of pressures that they were getting
5 from craft or production oriented people to get through
6 with that phase of the process.

7 So, to sum, our position is: We are not
8 pressing for them and are prepared to withdraw them now,
9 as long as we are clear that the withdrawal of them now
10 doesn't waive some right that CASE had before, that we
11 would just take them off and that would resolve the issue.

12 JUDGE BLOCH: To what extent, Mr. Roisman,
13 does the testimony reflect on the adequacy of QC with
14 respect to document control?

15 MR. ROISMAN: It only reflects on the
16 question, as I understand it, and Ms. Garde is closer to
17 these witnesses than I. But it only reflects on it in the
18 sense that the QC work that was being done using the
19 documents that came out of document control was less than
20 adequate because the documents they were getting were not
21 complete.

22 It's not that QC inspections of the document
23 control, if which I don't believe there are any incidentally,
24 but the QC inspections of document control itself were
25 somehow or another distorted.

1 There is, as you know, and you've had some
2 hearings on this, concern about the audit of document
3 control having been affected, but that's a different issue
4 and that's not the one that we're talking about here.

5 JUDGE BLOCH: Mr. Walker, I suggested
6 that there was both QC and audit with respect to document
7 control. Is there a difference between you and Mr. Roisman
8 on whether that fact is true?

9 MR. WALKER: I'm sorry. I didn't understand
10 your question.

11 JUDGE BLOCH: Well, Mr. Roisman just said
12 that there was no QC function with respect to document
13 control. Is he correct?

14 MR. WALKER: That is-- Yes. That is my
15 understanding. They are not subject to audit by the QC
16 organization.

17 They are, however, subject to audits by
18 the Quality Assurance organization.

19 JUDGE BLOCH: In that one respect, they
20 are different from other crafts, aren't they?

21 MR. WALKER: Yes, I believe that's correct.

22 JUDGE BLOCH: Let me ask the Staff to
23 begin by commenting on the status of the inquiry in the
24 other branch of the case, on the adequacy of documentation
25 at the plant.

1 MR. MIZUNO: I believe Mr. Trebey could
2 better answer that.

3 MR. TREBEY: This is Mr. Trebey.

4 My understanding is that certain allegations
5 with regard to document control were made to the Office of
6 Investigations, and the Office of Investigations has been
7 looking into those allegations.

8 The only knowledge that I have that that's
9 the case is that we were told that they had these various
10 affidavits and we were told that some sort of agreement was
11 reached with the affidavits would not be released until the
12 20th.

13 JUDGE BLOCH: It was my understanding that
14 there also was a staff inspection--

15 MR. TREBEY: Right.

16 JUDGE BLOCH: --of document control?

17 MR. TREBEY: I believe that Miss Ippolito
18 is currently in the process of doing a review of a large
19 number of allegations regarding Comanche Peak. Some of
20 those allegations of document control, she is also looking
21 into the document control process down there.

22 Okay. That is one that is going to go for,
23 my understanding, at least six weeks, and those six weeks
24 will be spread over a nine-week period of time.

25 JUDGE BLOCH: Do you see that document

1 control inspection as being related to an open matter in
2 this case?

3 MR. TREBEY: I'm not aware of any specific
4 issue. I am aware of the fact that the Board has made
5 some inquiries of document control, my recollection being
6 that the inquiry was based on a site visit that the Board
7 took in which they inquired about the document control
8 system that had been testified to just prior to their site
9 visit.

10 JUDGE BLOCH: That's true. But it also
11 was based on our feeling that certain testimony by one
12 of Applicant's witnesses was incomplete and that we're not
13 satisfied that IR's can be followed up and tracked with the
14 same precision as NCR's.

15 MR. MIZUNO: I agree with that. But as I
16 said, I think that these are various Board questions that
17 have been raised.

18 JUDGE BLOCH: Okay. But those are adequacy
19 questions related to the open record. So, the Board does
20 consider that to be an open issue, the documentation issue.
21 That was in the record, and we just were not satisfied.

22 In addition, it's an open issue because
23 no one has filed findings on the CAT team matters yet.

24 MR. MIZUNO: That is correct.

25 MR. ROISMAN: Mr. Chairman, if I understand

1 the-- This is Mr. Roisman. If I understand the thrust
2 of what you've just said, it is that CASE has the option--
3 Strike that. Not "option". CASE has the right to produce
4 Ms. Orr and Ms. Hatley outside the harassment and intimi-
5 dation issue with respect to the substance of their concerns
6 as part of the hearing.

7 JUDGE BLOCH: But you jumped too fast. We
8 were asking about it to acquire information.

9 MR. ROISMAN: Okay. I'm sorry. I'm sorry.

10 JUDGE BLOCH: Maybe Mr. Hicks can comment
11 before the Staff finishes?

12 MR. HICKS: I really don't think I have
13 anything to add to what was said.

14 JUDGE BLOCH: Okay. Mr. Trebey, have you
15 any more to add?

16 MR. TREBEY: Well, I believe that the document
17 control is not related to the question of intimidation of
18 QA/QC people, and I believe that's been agreed to by the
19 other parties who spoke earlier than I have.

20 I guess the only question now is whether
21 there is an extra meaning to document control activities
22 as the issue of what we've been calling intimidation,
23 which really relates to harassment, intimidation, or
24 threatening of the QC inspectors.

25 MR. MIZUNO: Chairman Bloch?

1 JUDGE BLOCH: Yes, Mr. Mizuno.

2 MR. MIZUNO: (Inaudible, in part) I seem
3 to be hearing the Intervenors--

4 JUDGE BLOCH: Would you please speak up?

5 MR. MIZUNO: Yes.

6 I seem to understand the Intervenor's
7 argument, basically, requesting that they be allowed to
8 litigate the question of harassment in the document control
9 area, apart from the harassment, intimidation and threatening
10 of inspectors or other OA personnel. They view it as
11 something separate.

12 I would just point out to the Board that the
13 reason why the present proceeding encroaches upon the
14 intimidation of inspection and OA personnel is because
15 each department checks its function, that you can have
16 allegations of intimidation, and I think it's proven
17 allegations of intimidation in the craft area.

18 But the important point is that if you
19 catch it.... (Broken phone connection.)

20 JUDGE BLOCH: You finished, Mr. Mizuno?

21 (No response.)

22 JUDGE BLOCH: Mr. Mizuno there? Is anyone
23 there?

24 MS. ELLIS: I'm here. I think we lost him.

25 MS. GARDE: We're here.

1 MR. ROISMAN: Mr. Roisman's here.

2 JUDGE BLOCH: We just lost Mr. Mizuno and
3 Mr. Trebey: Are they in the same location?

4 MR. WALKER: Yes, they are.

5 (Whereupon, there was an off-the-record
6 discussion concerning getting all parties back on the line.)

7 MR. MIZUNO: Judge Bloch?

8 JUDGE BLOCH: Yes.

9 MR. MIZUNO: Did you hear anything that I
10 said?

11 JUDGE BLOCH: Yes, but I can't tell you what
12 the last word was.

13 Does anyone else remember the last word?

14 (No response.)

15 JUDGE BLOCH: You just sort of faded out.
16 I could hear you much better now than when you spoke before.

17 MR. WALKER: Judge, perhaps we should have
18 the Court Reporter read back the last part of what we heard
19 from Mr. Mizuno.

20 JUDGE BLOCH: Okay. Why don't we see if the
21 Reporter can do that?

22 Let me ask first: How long will it take
23 you to get to that portion of the transcript?

24 THE REPORTER: Just a little bit.

25 MR. WALKER: Just a few minutes, she says.

1 MS. ELLIS: I thought I heard somebody in
2 the background say, "Hello," very weakly. Was somebody
3 else out there?

4 I just heard someone say that they had faded
5 out again.

6 JUDGE BLOCH: Who is that that faded out?

7 MS. ELLIS: The staff, I think.

8 JUDGE BLOCH: The staff there?

9 (No response.)

10 JUDGE BLOCH: The staff's gone again.

11 Mr. Walker?

12 MR. WALKER: Yes.

13 JUDGE BLOCH: We have the case of the fading
14 staff.

15 MR. WALKER: Let's try again to solve it.

16 JUDGE BLOCH: Thank you.

17 (Whereupon, there was a pause in the
18 proceedings for the above-stated reason, during which the
19 record was read.)

20 JUDGE BLOCH: On the record, please.

21 MR. MIZUNO: We're now on the record.

22 JUDGE BLOCH: That's correct.

23 MR. MIZUNO: This is Mr. Mizuno speaking.

24 As I understand the Intervenor's argument,
25 they are requesting that they either be allowed to litigate

1 the intimidation in the document control area, apart from
2 and separately from, the intimidation of QC inspectors and
3 QA personnel.

4 The Staff would generally disagree with that
5 approach for the following reason: The reason why our
6 proceeding is currently focused on intimidation of QC
7 personnel and other QA personnel is because the Board
8 recognized that the important question was whether the
9 final hardware at the plant was in an acceptable condition
10 and that if the QC inspectors and the QA audit personnel
11 were able to do their inspections and audits and catch the
12 problem that one would not have to address the question of
13 craft intimidation.

14 As I understand it, the document control
15 personnel were in the craft area. So, therefore, unless
16 CASE--

17 JUDGE BLOCH: Mr. Mizuno, not subject to
18 QC inspections.

19 MR. MIZUNO: Hello?

20 JUDGE BLOCH: Mr. Mizuno, not subject to
21 QC inspection.

22 MR. MIZUNO: Well, that's not the important--
23 Well, that may be important, too. But I believe that the
24 important thing is that CASE should not be able to litigate
25 the intimidation in the document control area unless they

1 are able to show that the accuracy of the QC inspections
2 or the QA audits are dependent upon the accuracy of the
3 document control process being carried out.

4 Unless they can show that, they shouldn't
5 be allowed to litigate the intimidation in the document
6 control area.

7 I believe that Mr. Roisman recognizes that
8 and says that it's a tenuous connection.

9 But the Staff believes that in whatever
10 way it may be characterized, that connection is the only
11 nexus between-- that can possibly exist between the
12 document control area and the QC/QA area before the
13 Intervenors will be able to litigate that.

14 JUDGE BLOCH: Okay. Mr. Mizuno, what about
15 the open matter with respect to Hutchinson that was already
16 raised on our record?

17 MR. MIZUNO: I believe the Hayward Hutchinson
18 matter dealt with the CYGNA Phase 1 and 2, independent
19 assessment program which was done for the Staff.

20 I believe that the question there is quite
21 different from the question that we're addressing here,
22 in that the Hayward Hutchinson matter went to the fact of
23 whether the CYGNA audit and its results had been compromised
24 by the fact that the Applicants knew ahead of time that
25 CYGNA was supposed to request documents from the document

1 control area.

2 I believe that the purpose of the Board
3 requesting the testimony of Hayward Hutchinson be preserved
4 was to ultimately resolve that question of whether the
5 CYGNA audit is that area where-- would be a valid one.

6 (Pause.)

7 MR. MIZUNO: Fade out again?

8 JUDGE BLOCH: Hold on for a second, please.

9 MS. ELLIS: Are we off the record?

10 JUDGE BLOCH: We're deliberating. Yes.

11 (Whereupon, there was an off-the-record
12 discussion.)

13 JUDGE BLOCH: Back on the record.

14 I'm just interested in knowing whether Mr.
15 Walker is prepared to comment on the appropriateness of
16 considering these witnesses in the context of documentation
17 in the case?

18 MR. WALKER: Your Honor, as you may have
19 realized, I have been but an intermittent player, and I
20 have not been involved in this case prior to a couple of
21 weeks ago, did not participate in this proceeding at the
22 time that issue arose, and I think it would be preferable
23 to have Mr. Reynolds or someone who did address that issue.

24 I would only state that I'm confident that
25 the Applicant would resist any attempt by CASE at this

1 point to add a new contention to the proceeding.

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

4 JUDGE BLOCH: Yes, Mr. Roisman.

5 MR. ROISMAN: We were not seeking a ruling
6 at this moment from the Board to the effect that these
7 two witnesses' testimony would clearly be admissible in
8 some other phase of the hearing.

9 All I had intended to say was that, and it
10 was really based more upon my ignorance of the whole record
11 of the case, because I wanted to be certain that there
12 wasn't some pre-existing bar in the Applicant's position
13 that these witnesses could not be presented unless CASE
14 could raise an amended pleading or something like that
15 and that the passage of time that has incurred when it was
16 assumed that they were coming into this phase of the hearing
17 is not itself, in any way, going to be a prejudice against
18 them. I don't think it's been very much time.

19 All we were trying to do was to make sure
20 there wasn't some pre-existing bar that we didn't know about
21 to their being brought forward in the hearing, not to
22 ask the Board at this time to rule one way or another.

23 I'm not in a position to argue that only
24 Ms. Ellis would be and only in another phase of the hearing
25 as to the merits of the concerns that these witnesses raised.

1 And my concern was that their harassment
2 and intimidation was substantially less significant to the
3 issues in the case, although significant, than was the
4 underlying concerns that they expressed about the condition
5 of document control at the plant.

6 And I was just trying to find out, and am
7 still trying to find out, is there a ruling someplace that
8 says: Oh, no, you can't put any more on.

9 I mean, there are some rulings on the record
10 that I've seen that relate, for instance, to the harassment
11 and intimidation question that the issue is closed, there
12 isn't any more that can be done on it.

13 JUDGE BLOCH: A ruling on craft was that
14 we would consider whether or not craft intimidation could
15 be considered later.

16 MR. ROISMAN: Okay.

17 JUDGE BLOCH: That was what our previous
18 ruling was.

19 MR. ROISMAN: Okay.

20 JUDGE BLOCH: Mr. Roisman, if you do go
21 ahead, are you prepared to question these witnesses on the
22 substantive nature of the documentation deficiencies, as
23 well as on intimidation?

24 In other words, if CASE does go ahead, is it
25 prepared to make this its only shot with these witnesses?

1 MR. ROISMAN: Can I get Ms. Garde to answer
2 that question since she's going to do these witnesses?

3 JUDGE BLOCH: Please.

4 MS. GARDE: I have been preparing the
5 witnesses only for their incidents of harassment and
6 intimidation.

7 It's not impossible that they could be
8 prepared to present direct testimony on their concerns,
9 although I think that would be much lengthier than the
10 time allotted for them during this week now scheduled.

11 JUDGE BLOCH: That's because-- I don't
12 understand. You were going to intimidate-- You were
13 going to question them only on harassment and intimidation
14 without going into detail as to how that was reflected in
15 the inadequacy of the record?

16 MR. ROISMAN: No, no. I think what she's
17 saying, Mr. Chairman, is that these witnesses, as their
18 affidavits disclose, have expressed a broad range of
19 concerns. One piece of those concerns related to harassment
20 and intimidation.

21 Other concerns as to which they are not
22 claiming that they were harassed and intimidated simply
23 related to practices and other activities of the utility
24 that were making documentation control ineffectual.

25 They're not saying that that happened because

1 of harassment and intimidation. I think they're saying
2 that happened because of a mixture of other factors.

3 So, there's a whole piece of what they had
4 to say which had nothing to do with the harassment and
5 intimidation issue, even if their harassment and intima-
6 tion were a part of this proceeding.

7 And in reality, their harassment and
8 intimidation is a very small piece of a much bigger story
9 that they have to tell, so that the portion of the witnesses
10 which, if you will, that our mandate covers, the portion
11 that our mandate covers relates to a small piece of a much
12 bigger thing related to the witnesses.

13 I think, at least if it were I who were
14 there, I would have serious problems with being able to
15 present the witnesses on their substantive concerns that
16 were unrelated to harassment and intimidation but were
17 related to document control.

18 JUDGE BLOCH: I guess my principal concern
19 here is that I am worried that if we accept Mr. Roisman's
20 suggestion, we're going to wind up prolonging the proceedings
21 because this testimony is going to wind up being important,
22 and I'm reluctant to do that.

23 Mr. Roisman, is there any overlap in the
24 people who allegedly did the intimidation? I mean, people
25 intimidating in the rest of the case?

1 MR. ROISMAN: No. I believe that these two
2 persons, Mr. Strand and Mr. Hutchinson, who are the
3 utilities counterpart to Hatley and Orr are separate, and
4 we've not used them nor had any intention of calling them
5 in any other respect in the case, except for this piece.

6 I think it's fair to say that what these
7 witnesses have to say is carved out from the issues that
8 we have been otherwise looking at in the sense of who are
9 the actors and actresses involved in it.

10 JUDGE BLOCH: Mr. Walker, since my concern
11 really is the overall impact on schedules in the decision
12 I'm about to make, could you help me to understand what
13 that might be if it wound up that these were important
14 for a different question? That's really what's concerning
15 me.

16 MR. WALKER: Well, I have some difficulty
17 responding, Your Honor, first of all, because we have not
18 been provided with notice in this proceeding of what the
19 substantive issues might be and exactly what is involved.

20 Obviously, the utility is deeply concerned
21 about delay, which is very costly.

22 The question that caused us to bring this
23 before you is that we see these witnesses as being offered
24 in a context in which their testimony is, to use Mr.
25 Roisman's phrase, at best, only tenuously linked, and I

1 would suggest wholly irrelevant to the issue that is before
2 the Board.

3 I am unable to speak to its relationship to
4 other open issues simply because, like Mr. Roisman, I
5 haven't been involved in this proceeding for a long period
6 of time and I'm not familiar with the various other issues
7 that may be pending.

8 JUDGE BLOCH: The Court has been persuaded
9 by all the parties that the testimony is not directly
10 relevant to other intimidation issues.

11 On the other hand, it does seem likely that
12 it is important testimony, although probably not on this
13 particular issue.

14 The issue really is the adequacy of the
15 records that are being used by the craft and by OC. I
16 would urge that the Applicants and CASE confer and make a
17 proposal to the Board within the next two weeks concerning
18 how this matter can be handled expeditiously for the overall
19 resolution of the case.

20 Let's go on to the second matter, Mr. Walker.

21 (Pause.)

22 JUDGE BLOCH: Are you still there?

23 MR. WALKER: Yes, I am.

24 The second issue was-- I think has been
25 assumed in our discussion of the first issue. It really

1 related to the question of if there was any relevancy of the
2 testimony of these witnesses, the scope of that relevancy.

3 Do I understand the Board's ruling to
4 suggest that the conclusion is that only if the parties
5 agree that it would be the most expeditious way to proceed
6 would we be required to put on and respond to testimony
7 relating to these witnesses this week?

8 JUDGE BLOCH: Yes. We've ruled that it's
9 not relevant to the intimidation of QC inspectors, which
10 is the subject of the hearings this week, but we do want
11 an efficient handling.

12 And if it turns out that the parties can
13 see some way of doing it efficiently because the witnesses
14 are there, then that's up to the parties.

15 MR. WALKER: Okay. Then I think we can
16 proceed to the third issue, which also relates to one of
17 these witnesses, and that is the failure of the Intervenor
18 to produce the OI interview transcripts of Ms. Orr, who is
19 one of the two witnesses we've been talking about, and Ms.
20 Sue Ann Neumeyer, who is-- who was a QA/QC inspector.

21 Judge Bloch, I was not involved at the time,
22 but it is my understanding that there was an agreement
23 reached to which you were made a party or, at least in any
24 event, you were informed of the agreement several weeks
25 ago.

1 The issue of these statements came up in
2 discovery and DOL proceedings, as well as in this proceeding.
3 The Intervenor took the position that those statements
4 could not be produced because OI had requested that they
5 not produce them.

6 This was the subject of extensive discussions
7 among Ms. Garde, Roger Fortuna of OI, and myself in the
8 context of the DOL proceedings and Mr. Downey in the
9 context of the licensing proceedings.

10 Just very briefly, in those discussions,
11 OI was unable to state a legal objection and, in fact,
12 conceded that they would not be in a position to prevent
13 the witnesses from producing the statements. They would
14 have no legal basis for preventing their producing the
15 statements. And that in characterizing their position as
16 one of a request out of concern that early releases of the
17 interview transcript could, in some way, jeopardize the
18 ongoing OI investigation.

19 The culmination of all these discussions
20 was an agreement reached with Mr. Fortuna and the parties,
21 both in the DOL proceeding and in the licensing proceeding
22 that if we could defer production of those statements for
23 a period of time, I think the time was approximately three
24 and a half weeks, that OI's investigation would be far
25 enough along that their release could not harm the

1 investigation.

2 And as a result of that, it was agreed that
3 the statements-- I'm sorry. --the transcripts of the
4 interviews of all three witnesses were to be produced on
5 July 20th.

6 JUDGE BLOCH: That is my recollection of
7 what went on. Do you recall if this was on the transcript
8 or not?

9 MR. WALKER: Ms. Garde indicates that she
10 does not think it was in the licensing proceeding, and I
11 know the discussions in the DOL proceeding were not
12 transcribed.

13 JUDGE BLOCH: It was my understanding that
14 there was a firm date set, or I wouldn't have been able
15 to tell you July the 20th but that the Office of Investi-
16 gations had said they would make those statements available.

17 That is what you're telling me; is that
18 right, Mr. Walker?

19 MR. WALKER: That's correct.

20 JUDGE BLOCH: Does anyone recollect the
21 same? Mr. Trebey, is that your recollection?

22 MR. TREBEY: Yes, it is. But I also agree
23 that I don't believe it was part of any transcribed
24 conference call.

25 JUDGE BLOCH: Motion is, I take it, to

1 postpone these depositions?

2 MR. WALKER: Well, if I could just explain
3 what happened, Your Honor.

4 On Friday, July the 20th, the Intervenors
5 produced the OI interview transcript for Dobie Hatley.
6 The other two witnesses as to whom there were interviews
7 which were transcribed, Ms. Orr and Ms. Neumeyer, those
8 statements were not produced, and we were told that OI had
9 not provided those witnesses with a copy.

10 The schedule for the depositions for this
11 week was set expressly in contemplation of those documents
12 being made available on the 20th, and inasmuch as witnesses
13 who are interviewed by OI have, as far as we understand it,
14 an absolute right to copies of statements that they give
15 and transcripts of interviews and, in our experience, have
16 no difficulty obtaining those from IE, it's our opinion,
17 given the fact that Intervenors had several weeks in which
18 to do so, they did not seek with all due diligence to
19 obtain copies of the transcript.

20 And in light of that failing on their part,
21 we would move that the depositions of Ms. Orr and Ms.
22 Neumeyer be canceled and that any of Applicant's employees
23 who might be called as witnesses to answer their allega-
24 tions, that those depositions be canceled.

25 JUDGE BLOCH: Mr. Walker, I understand the

1 motion, but the grounds seem strange.

2 You just said that OI had undertaken to
3 provide these transcripts, and now you're willing attribute
4 the nonproduction to some lack of diligence on CASE's part?

5 MR. WALKER: Your Honor, this agreement was
6 reached some three and a half, perhaps four, weeks ago,
7 and it is our understanding that in that ensuing period
8 CASE did-- or, these individuals, Ms. Orr and Ms. Neumeyer
9 and CASE did not obtain copies.

10 We are unaware of their having sought to
11 have the copies sent to them in the interim and of OI's
12 having refused to do so.

13 In fact, it's our understanding that what
14 was worked out with OI was that Mr. Fortuna was to arrange
15 to have the transcripts sent here for arrival on the 20th.

16 Mr. Fortuna, in the interim, has left the
17 country and either did not make such arrangements or,
18 if the arrangements were made, someone failed to carry
19 through.

20 In any event, we think that it would have
21 been possible for these two witnesses to obtain copies
22 of their statements before July the 20th and probably
23 before Mr. Fortuna's departure, especially inasmuch as we
24 are informed that Mr. Griffin in Region 4 has indicated
25 that he is willing, or would be willing, to turn them over

1 directly to these individuals.

2 So, we think the delay in production is
3 attributable, in part, to some sort of foul up in Mr.
4 Fortuna's office, but we think that the Intervenor needn't
5 have relied on Mr. Fortuna's following through and could
6 have obtained copies of the statements earlier and had
7 them available for production on the 20th.

8 JUDGE BLOCH: Mr. Roisman, are Ms. Orr and
9 Ms. Neumeyer requesting copies of their own depositions?

10 MR. ROISMAN: Judge, Ms. Garde can answer
11 that question. I believe that they are, but she's the
12 one who has had the direct dealings with the OI people.
13 Maybe she can answer your question, Mr. Chairman.

14 JUDGE BLOCH: I think, maybe, we don't have
15 to assess blame if we can avoid it.

16 I would just like to know, Mr. Trebey, on
17 the representation of CASE that these witnesses want their
18 statements and the representation of the Applicant that
19 Mr. Griffin is prepared to make them available, can you see
20 if they can get them to the site today, and then these
21 witnesses can be listened to later this week?

22 Is that acceptable to Mr. Walker? Is that
23 feasible?

24 MR. WALKER: Your Honor, I think the
25 deposition schedule was set in contemplation of their

1 production on the 20th, and I would suggest that we should
2 be entitled, at the very least, to a postponement that
3 would allow us the same period of preparation that was
4 built into the schedule originally agreed to in contempla-
5 tion of production on the 20th.

6 JUDGE BLOCH: When were they going to testify?

7 MR. WALKER: I beg your pardon?

8 JUDGE BLOCH: When were they going to
9 testify? If you got the documents on the 20th, when were
10 you prepared to have the depositions?

11 MR. WALKER: They were going to testify on
12 this coming Friday, which I guess would be the 26th or 27th.

13 JUDGE BLOCH: I see.

14 MR. WALKER: But we also have two witnesses--
15 Well, we have several witnesses starting tomorrow who have
16 been called that are employees of the Applicant or of
17 Brown and Root who would be called on to answer the
18 allegations that these witnesses will be making in their
19 direct testimony and which, to some extent, we're told,
20 were detailed in these transcripts of their interviews with
21 OI.

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

24 JUDGE BLOCH: Yes.

25 MR. ROISMAN: There is a little piece-- or,

1 rather, a large piece of this puzzle that Mr. Walker has
2 not discussed.

3 Number one, all of the affidavits and all
4 of the material in the possession of Ms. Neumeyer-- And
5 Ms. Orr is not part of his because we've already dealt
6 with that issue before. But of Ms. Neumeyer, has been
7 given to the Applicant. In fact, they were given to them
8 early on Friday the 20th.

9 And secondly, Ms. Garde took a substantial
10 period of time to sit down and essentially go through the
11 entire Q and A that she is preparing for Ms. Neumeyer in
12 order to advise the utility thoroughly of what it is that
13 Ms. Neumeyer has to say. And she's made representation
14 to the utility in those conversations that what Ms.
15 Neumeyer is going to talk about is what she's told them.

16 The only legitimate availability-- The
17 only legitimate basis for wanting the transcript available
18 would be, presumably, for the purpose of showing that Ms.
19 Neumeyer's direct testimony, as already given to the
20 Applicant essentially by Ms. Garde, was somehow or another
21 inconsistent with the prior sworn statement that she made.

22 We have been very clear that there is nothing
23 in there that represents some new allegation related to
24 her harassment and intimidation that's different than what
25 they are already being made aware of.

1 Like Ms. Orr and Ms. Hatley, Ms. Neumeyer
2 has also expressed some concern, substantive concerns, that
3 are not part of this harassment-intimidation proceeding
4 at all. She had some very discrete incidences of harassment
5 and intimidation. Her affidavit is broader than that. They
6 have that affidavit. And her statement to OI is broader
7 than that.

8 So that the proposition that in some way
9 or another the utility is disadvantaged, at least vis a vis
10 its own witnesses, is groundless. There is no basis for
11 that concern. they know everything that Ms. Neumeyer
12 is going to say on this matter.

13 Secondly, with regard to the, assuming that
14 the intervention of the Staff succeeds in breaking the
15 road jam, I think Ms. Garde can explain, if the Board
16 wishes, in more detail our extensive efforts when we
17 suddenly realized that the agreement made by Mr. Fortuna
18 was not going to be kept on Friday to try to get these
19 transcripts, that if they're made available today, it'd
20 be more than ample time for any reasonable attorney,
21 particularly now that Ms. Orr and Ms. Hatley and at least
22 two Applicant witnesses are tak off for the week of the
23 23rd, for them to find whatever they think they need to
24 find in there for doing any cross-examination for Ms.
25 Neumeyer when she goes on next Friday.

1 JUDGE BLOCH: Ms. Garde, can you clarify
2 what the roadblock is with OI, why we can't get things
3 they promised us?

4 MS. GARDE: Yes, Your Honor, I would also
5 like to point out that both Miss Orr and Miss Neumeyer
6 had filed Department of Labor complaints in March and
7 April, so the company has been on notice from at least that
8 time period that there were allegations relating to protected
9 speech, at least, which, in fact, are the same incidents
10 which they would be discussing in this proceeding.

11 So, I don't think there's a lot of surprise.

12 In terms of OI, I think that the situation
13 that Mr. Roisman characterized is accurate.

14 I discovered, I believe, on late Wednesday
15 or, perhaps, early Thursday that Mr. Hayes did not know of
16 any such commitment made by Mr. Fortuna; moreover, was not
17 going to implement any commitment made by Mr. Fortuna because
18 he didn't have any instructions to do so.

19 At that time,--

20 JUDGE BLOCH: Okay. Let's stop.

21 Mr. Trebey, please tell Mr. Hayes that OI
22 made a commitment to this Board that the statements of
23 Miss Orr and Miss Neumeyer would be provided on July 20th
24 and please ask him to make that available as soon as
25 possible on the site. Explain that it's extremely urgent

1 that it get there today or tomorrow, if possible.

2 And based on that and based on the Inter-
3 venor's representations that the material covered in those
4 statements is basically the same in scope as material
5 already available to the Applicants, we order that the
6 depositions go ahead as scheduled, and if there is any
7 unfair surprise as a result of their being matters in those
8 statements that are not in the other material that's
9 disclosed, that we will at that time hear about a proper
10 remedy for that narrow concern.

11 MR. ROISMAN: Mr. Chairman,--

12 JUDGE BLOCH: Mr. Roisman.

13 MR. ROISMAN: I just wanted to clarify what
14 we represented. What we represented was that the scope of
15 the direct testimony of Miss Neumeyer is not different
16 and will not be, in any way, altered by what's contained
17 in the transcript.

18 There may be matters discussed in that
19 transcript that the utility has not yet been made aware of
20 that don't relate to anything that we're doing in our
21 direct.

22 I've not seen the transcript and neither
23 has Ms. Garde.

24 But the other concerns that Ms. Neumeyer
25 raised, which we are not presenting at this phase in the

1 case and have nothing to do with this phase of the case.

2 We are not making a representation that
3 somehow or another there may not be something in there that
4 they didn't see in their affidavit. We're just saying that
5 there's nothing in there that's related to harassment and
6 intimidation that's different than what she's going to say
7 here because we've already told them what she's going to
8 say here.

9 MR. WALKER: Judge Bloch, this is Mr.
10 Walker. I wonder if I might add a couple of things.

11 JUDGE BLOCH: Please.

12 MR. WALKER: We're dealing with the problem
13 that is a bit more complex than I think the discussion
14 we've just had might suggest.

15 Beginning tomorrow, we have scheduled two
16 or three witnesses who are employees of the Applicant or
17 Brown & Root who will be called to answer these allegations.
18 Without the statements,--

19 JUDGE BLOCH: Mr. Walker, before you
20 continue, I want to clarify something from CASE.

21 Mr. Roisman, has Applicant basically been
22 put on notice of what the testimony of these witnesses is
23 or haven't they?

24 MR. ROISMAN: Absolutely, they have, Mr.
25 Chairman. In escruciating detail.

1 JUDGE BLOCH: Not just the topics, but
2 the--

3 MR. ROISMAN: Not just the topics. I don't
4 know. Ms. Garde could tell you precisely how many hours
5 were spent, but they were told everything that we know as
6 to the testimony that will be given by Ms. Neumeyer and
7 Ms. Barnes, who's the other witness not faulted in this
8 discussion on this Friday.

9 JUDGE BLOCH: You are representing that,
10 basically, Applicants are on notice of everything you believe
11 is covered in those statements with respect to intimidation.

12 MR. ROISMAN: That is correct.

13 MR. MIZUNO: Judge Bloch, this is Mr. Mizuno.
14 I really need to get in my words at this point.

15 JUDGE BLOCH: Mr. Walker, would you want to
16 yield, or would you like to continue?

17 MR. WALKER: I could yield for the moment to
18 Mr. Mizuno, though, I do think there are some comments
19 that I need to respond to.

20 JUDGE BLOCH: Please.

21 Mr. Mizuno?

22 MR. MIZUNO: The first thing is that Mr.
23 Trebey is trying to get Mr. Hayes on the line, Ben Hayes
24 on the line. But if we are unable to, I will definitely
25 transmit your order to Mr. Hayes concerning making available

1 statements as soon as possible at Comanche Peak.

2 The other thing is that I would point out
3 to you, I represent to you in Mr. Roisman's statement that
4 we spent hours on Saturday talking about the incidents in
5 the briefing, my recollection, as indicated on my notes, was
6 that Billie Garde basically referred us to sections in the
7 Susie Neumeyer affidavit and said, "This is what she's going
8 to talk about."

9 And with Dobie Hatley, she spent, I would
10 say, about half an hour just basically listing the ten
11 incidents which Dobie Hatley was going to be talking about.

12 And with Billie Orr, she gave us three
13 incidents, and I think she took a total of five minutes
14 describing them in very-- very briefly.

15 So, Mr. Roisman says we spent hours going
16 through these incidences in excruciating detail, I think,
17 is an overstatement.

18 We did spend a lot of time arguing about the
19 subject which we are now covering in our conference call,
20 such as the scope of the proceeding and whether Dobie
21 Hatley's intimidation and the document control intimidation
22 is within the scope of this proceeding. But we certainly
23 didn't go into the kind of detail that Mr. Roisman would
24 have you believe that we went into.

25 JUDGE BLOCH: Your statement is that what

1 you covered was the topics that would be discussed but not
2 what would be said; is that correct, Mr. Mizunto?

3 MR. MIZUNTO: I would say "topics", with the
4 understanding that it's on the order of: "A" said this to
5 "B" on this particular date, and this is intimidation.

6 You know, in two or three sentences and,
7 perhaps, providing some background on that.

8 I have some notes here which substantially
9 reflect that. We didn't spend more than 45 minutes actually
10 going-- being briefed on all the incidents. And when
11 you consider that Dobie Hatley, by herself, had ten
12 incidents and we spent part of the time on the Susie
13 Neumeyer affidavit, just reading the affidavit, the
14 particular pages that Ms. Garde pointed us to, it's clear
15 in my mind that it just wasn't that kind of excruciating
16 detail that Tony Roisman is talking about.

17 I think that there is a legitimate claim
18 that the Applicants and the Staff have, which is that we
19 might have-- we might now know the particular incidents
20 that the Intervenors will be litigating, but certainly the
21 details as to who said what, when and the surrounding
22 circumstances clearly are there, and we are hoping to find
23 that in the OI interviews.

24 MS. GARDE: Judge Block, I wish to respond
25 to that.

1 First of all, I think Mr. Mizuno's comments--

2 JUDGE BLOCH: When a person asks to be
3 recognized, they have to be permitted to go ahead before they
4 start.

5 Miss Garde, what exactly are you seeking
6 to respond to?

7 MS. GARDE: To his representations about the
8 discussions on Miss Neumeyer's allegations.

9 JUDGE BLOCH: Okay. Why don't you give us
10 three minutes on that, and then Mr. Walker's going to
11 wrap it up.

12 MS. GARDE: First of all, on Miss Neumeyer's
13 allegations, as Mr. Mizuno represented, I directed them to
14 I think there's six different pages of an 11-page affidavit
15 that detailed the incidents-- the two incidents which Miss
16 Neumeyer will go over in her direct testimony.

17 I asked the parties to read the affidavit,
18 which had been provided Friday morning to the parties. So,
19 they should have had the opportunity to read that statement
20 beforehand--

21 MR. MIZUNO: Let's correct that. The Staff
22 did not receive its copies until the afternoon, and they
23 did it only because Billie Garde gave us something that we
24 had to copy by ourselves. That's clearly incorrect.

25 JUDGE BLOCH: Wait. Mr. Mizuno, please try

1 not to interrupt.

2 Let me understand your interruption before
3 we go back to Miss Garde.

4 She said you got it on Friday, and you say
5 you got it on Saturday?

6 MR. MIZUNO: Oh, we got it on Friday. But
7 she said we got it on Friday morning. As a matter of fact,
8 they spent half of the day on Friday trying to get Billie
9 Garde when I understood Applicants had a copy but we hadn't
10 received a copy.

11 When I finally got in touch with Billie Garde,
12 all she would arrange to do was to give me her original of
13 the affidavit and have the Staff copy it wherever it could
14 and to make its own arrangements.

15 And I could not understand why Billie Garde
16 could not have had a copy waiting for us on Friday morning
17 whenever they turned it over to the Applicants.

18 JUDGE BLOCH: Miss Garde, please continue.
19 Wait a second. Miss Garde?

20 MS. GARDE: Yes, I'm still here.

21 JUDGE BLOCH: Off the record now.

22 (Brief discussion off the record.)

23 JUDGE BLOCH: On the record.

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

25 Roisman.

1 JUDGE BLOCH: Yes.

2 MR. ROISMAN: Can you hear me?

3 JUDGE BLOCH: Yes.

4 MR. ROISMAN: I think the problem is at my
5 end. I am not on a phone that I have unlimited access to,
6 and if you could hold one second for me to get--

7 There's an alternate phone where I am which
8 will give me that access and, perhaps, you could have the
9 conference call operator call that other number. It's one
10 that I was not aware of when we set up the conference call.

11 (Whereupon, there was a period off the record
12 for the above-stated purpose.)

13 JUDGE BLOCH: Now, on the record, please.

14 Mr. Trebey.

15 MR. TREBEY: Yes. I've just had a conversa-
16 tion with Ben Hayes, the Director of the Office of
17 Investigations.

18 I advised Mr. Hayes that we were in the
19 process of a conference call and that it was the desire
20 of the Board and the parties to see whether it would be
21 possible to get copies of affidavits-- or, not affidavits,
22 but transcripts of conversations between certain individuals
23 to the Glen Rose site.

24 Mr. Hayes advised me that his office had
25 signed agreements of confidentiality with the two individuals

1 involved, that it was his view that the only person who
2 could void those agreements of confidentiality were the
3 people who had signed them, and that he would not direct
4 his investigators to make the transcript available to
5 anyone other than the persons who had given the transcripts
6 and that his people would have to advise those persons as
7 to what their rights were with regard to confidentiality
8 and what the action of making those documents available
9 would be.

10 JUDGE BLOCH: Mr. Roisman, do you know where
11 those people are?

12 MR. ROISMAN: Miss Garde may know where--
13 I think we're only talking here, for practical purposes,
14 about Ms. Neumeyer, although Ms. Orr I've not met. I don't
15 know where she is. But maybe Miss Garde can answer that
16 question.

17 JUDGE BLOCH: Okay. Where are these people
18 so that OI can get them to those people today and explain
19 to them today what their rights are?

20 MS. GARDE: Judge Bloch, what I was going
21 to add about OI is that I heard from Mr. Griffin this
22 position on Friday, and I had Miss Neumeyer call Brooks
23 Griffin on Friday. And he agreed to send Miss Neumeyer
24 a copy of her interview; although he knew she was coming
25 down to Glen Rose for the weekend to work with counsel in

1 preparation for this week's hearing, he refused to send it
2 to her down here and sent it, instead,-- or, alleged that
3 he sent it, instead, on Friday by registered and certified
4 mail to her home in Fort Worth.

5 JUDGE BLOCH: Miss Garde, where are these
6 people now?

7 MS. GARDE: They're at work.

8 JUDGE BLOCH: At work. All right. Does
9 that mean that they will be going to their home this
10 evening?

11 MS. GARDE: Yes.

12 JUDGE BLOCH: Then they'll have it tonight.

13 MS. GARDE: Well, when you send something
14 registered and certified, you have to go to the Post Office
15 to pick it up.

16 JUDGE BLOCH: And the individual himself
17 has to go, not their attorney; is that correct?

18 MS. GARDE: That's right. And he refused
19 to send it to or take any representation by counsel to have
20 it picked up.

21 MS. ELLIS: May we go off the record for a
22 moment?

23 JUDGE BLOCH: I think I'd like to solve this
24 on the record.

25 MS. ELLIS: Well, I need to talk to our

1 attorney, and I can't whisper in his ear.

2 JUDGE BLOCH: Off the record.

3 (Whereupon, there was a brief period off
4 the record for the above-stated reason.)

5 JUDGE BLOCH: On the record.

6 MS. GARDE: I've instructed Miss Neumeyer to
7 make every effort possible to get to the Post Office if, in
8 fact, a delivery was attempted Saturday or a delivery is
9 attempted today. And, of course, she won't be home, because
10 she'll be at work during the day.

11 I've instructed Miss Neumeyer to make every
12 effort possible to get to the Post Office to pick up that
13 statement.

14 JUDGE BLOCH: And are we not able to get
15 Miss Orr's statement?

16 MS. GARDE: Miss Orr attempted to call
17 Mr. Brooks Griffin at home, per his instruction, all day
18 Saturday. He was not available throughout the day whenever
19 we attempted to call him.

20 JUDGE BLOCH: Where is Miss Orr?

21 MS. GARDE: Miss Orr is also at work, and I
22 will have Miss Orr call him today.

23 JUDGE BLOCH: And what is the distance between
24 the residence of Miss Orr and Miss Neumeyer and Region 4's
25 offices?

1 MS. GARDE: Probably about an hour and a
2 half drive for Miss Orr. And for Miss Neumeyer, probably
3 about an hour's drive, 45 minutes to an hour's drive.

4 JUDGE BLOCH: Mr. Trebey, do you happen to
5 know whether there are messenger services available?

6 MR. TREBEY: I have no information about such
7 services in Region 4.

8 MR. MIZUNO: Chairman Bloch?

9 JUDGE BLOCH: Yes, sir.

10 MR. MIZUNO: This is Mr. Mizuno. I suggested
11 at the Saturday briefing that, perhaps, Staff could get its
12 witnesses to drive to Brooks Griffin's house or at the
13 Region 4 headquarters and physically pick up a copy of the
14 statements and then bring it back to the site.

15 I don't know whether they followed through
16 on that.

17 But that seems to be the most expeditious
18 manner for getting the statements to the Staff and the
19 Applicants.

20 JUDGE BLOCH: Mr. Roisman, are you satisfied
21 that these people have given knowledgeable waivers of their
22 agreement to confidentiality?

23 MR. ROISMAN: You'd have to ask that of Miss
24 Garde. I was not there at the time that those-- I thought
25 that they had done that before and that OI had agreed that

1 they were going to produce all of this information last
2 Friday. So, everything that we did with regard to it was
3 only after we learned that OI did not consider that to be
4 an agreement.

5 JUDGE BLOCH: Miss Garde, are you confident
6 that these are informed decisions to waive confidentiality?

7 MS. GARDE: Yes, they were informed decisions
8 to waive confidentiality some weeks ago. It was Fortuna's
9 representation that OI needed them to remain confidential
10 so that OI could finish its investigation.

11 Our witnesses, who both filed Department of
12 Labor complaints, released confidentiality when they agreed
13 to become witnesses in this proceeding, which was sometime
14 in early June.

15 JUDGE BLOCH: When you said they did that,
16 what do you mean? They released it in writing to you?

17 MS. GARDE: Did not release it in writing
18 to me, no.

19 JUDGE BLOCH: When you say it was informed
20 consent, what kind of a discussion did you have with them?

21 MS. GARDE: I had a detailed discussion
22 with each of them. I have a memo to my file recording
23 that, as well as-- in which we discussed what releasing
24 confidentiality meant.

25 (Pause.)

1 MS. GARDE: Judge Bloch?

2 JUDGE BLOCH: The Board decides that
3 confidentiality has been waived on representation of Miss
4 Garde, and we are convinced that it has been waived. And
5 we don't want that to hold anything up.

6 We appreciate the offer that Mr. Trebey has
7 made.

8 When the Staff delivers the documents,
9 according to their kind agreement, they may, if they like,
10 ask some brief questions to determine whether, in fact,
11 that was a knowing waiver.

12 But we expect that Region 4 should cooperate,
13 that Mr. Griffin will cooperate, and that those documents
14 should be in the hands of those witnesses today.

15 And unless there is a strong reason to
16 believe that they don't go through with the revocation of
17 confidentiality, we hope that the parties will all have
18 it today, also.

19 Is that a correct understanding of your
20 capabilities, Mr. Mizuno?

21 MR. MIZUNO: This is Mr. Trebey.

22 I don't guess I understand what offer I
23 have made, other than to call OI.

24 JUDGE BLOCH: I thought Mr. Mizuno said
25 he would drive there.

1 MR. TREBEY: Oh, no. All Mr. Mizuno
2 indicates was that he had suggested, during the Saturday
3 discussion with Billie Garde and the Applicants, that he
4 thought that the most expeditious way that this could occur
5 was for the two witnesses to drive to Region 4.

6 My understanding is that he's not made any
7 representation that he personally was going to drive
8 anywhere or that anyone else from the NRC was.

9 MR. MIZUNO: Not that we don't want to, but
10 it's not going to make any difference. I could drive to
11 Brooks Griffin's house and show up, and he wouldn't give
12 it to me personally, anyway.

13 It's got to be the two witnesses to show
14 up on his front step or at the Region 4 office.

15 JUDGE BLOCH: Brooks Griffin isn't even an
16 OI person, is he, at this point?

17 MR. MIZUNO: Yes, he is.

18 JUDGE BLOCH: He is. Okay.

19 (Pause.)

20 JUDGE BLOCH: Can Mr. Trebey be in touch
21 with these two people by telephone sometime this evening?

22 MR. TREBEY: Which two people are you
23 referring to?

24 JUDGE BLOCH: Miss Neumeyer and Miss Orr.

25 MR. TREBEY: I be in contact with them?

1 JUDGE BLOCH: No, what I'd like to suggest
2 is that the documents be sent to Mr. Trebey and that he
3 telephone -- he speak by telephone with this office in
4 order to satisfy himself that there is a voluntary release.

5 I don't see any reason why OI has to find
6 out there's a voluntary release if there's a staff person,
7 a competent staff person, who's going to do that in good
8 faith.

9 MR. TREBEY: This is Mr. Trebey. I have no
10 difficulty undertaking to do that. However, I --

11 JUDGE BLOCH: Well you're not really certain
12 that that's going to satisfy OI. I merely think that if
13 we want to know what is going to satisfy OI, then I think
14 that we need to get them on the line and ask them. I make
15 this representation only because of my vast experiences
16 with the Office of Investigation, as I think is well
17 documented in this record.

18 Okay. Mr. Walker, I'm afraid we'd better
19 try to do that.

20 Do you happen to have their number in front
21 of you, Mr. Trebey, having just called it? Hello.

22 MR. TREBEY: No, I don't have it right in
23 front of me. I will have it in one minute.

24 MS. GARDE: I know it.

25 JUDGE BLOCH: Okay. Say it.

1 MR. TREBEY: Billy Garde calls it more
2 frequently than I do.

3 MS. GARDE: 202 --

4 JUDGE BLOCH: Ms. Garde, just say it so that
5 Mr. Walker can --

6 MS. GARDE: I'm giving it to him, Judge.

7 JUDGE BLOCH: Excellent.

8 MS. GARDE: 202-492-4388.

9 JUDGE BLOCH: All right. Let's continue --

10 MS. GARDE: 4388. It's 301. And it's
11 301 Area Code.

12 JUDGE BLOCH: -- our argument.

13 MR. WATKINS: Why don't we go off the record.

14 MS. GARDE: Yes?

15 MR. ROISMAN: Pardon me. This is Mr.
16 Roisman. What are we arguing about now?

17 MS. GARDE: I believe, Tony, that we're
18 back to the Newmeyer incident briefing.

19 MR. ROISMAN: Oh, okay, fine.

20 MS. GARDE: Some discussion was made some
21 time ago now about the level of detail provided on Ms.
22 Newmeyer, who is the only witness at least at this point
23 that this problem relates to, seeing that Ms. Orr goes
24 with Ms. Hatley's allegations on document control.

25 And in the case of Ms. Newmeyer, they were

1 provided with a copy of -- both the Staff and the Applicant
2 was provided with a copy of Ms. Newmeyer's affidavit, which
3 had been confidential and in the hands of OI until Friday.

4 In that affidavit are approximately six
5 pages which detail the two incidents which Ms. Newmeyer is
6 going to talk about on her direct testimony.

7 My notes of the Saturday meeting indicate
8 that I drew the attention of the parties to the affidavit,
9 indicated the specific places in the affidavit that those
10 two incidents were discussed, and then there was a 20
11 minute, approximately, recess or break while the parties
12 read through that affidavit, at the end of which I asked
13 them if there was any further questions, gave them some --
14 answered the questions that there were.

15 My notes indicate there was only a few, and
16 said that Ms. Newmeyer's testimony would follow the affi-
17 davit almost precisely through a series of questions and
18 answers.

19 The names of the people, the date of the
20 incident, those involved, in some cases the specific NCR
21 number, are all contained in the affidavit.

22 JUDGE BLOCH: Basically that is the scope
23 of the direct testimony.

24 MS. GARDE: Yes, it is, Your Honor.

25 JUDGE BLOCH: Okay. Mr. Walker, please

1 conclude

2 MR. WALKER: Your Honor, I think there are
3 several points that need to be addressed. First of all, I
4 believe both Mr. Roisman and Ms. Garde have suggested that
5 Ms. Orr is not properly a part of this discussion because
6 of the Board's ruling on the earlier issue regarding Ms.
7 Orr's testimony.

8 But I would remind everybody that we still
9 have to reach an agreement on the expeditious handling of
10 Ms. Orr's and Ms. Hatley's testimony, and the Board's ruling
11 on this issue could impact what agreement we might reach.

12 JUDGE BLOCH: Okay. So you want to get the
13 testimony but that really doesn't relate to whe her or not
14 we go ahead with Ms. Newmeyer's deposition, right?

15 MR. WALKER: No, I think it relates in both
16 instances to whether we go ahead with Ms. Orr and Ms.
17 Newmeyer.

18 First of all, let me say in response to Ms.
19 Garde's representation about there being DOL proceedings
20 pending brought by both of these people, while that is
21 true, Ms. Garde is well aware of the fact that there has
22 been very little discovery in those proceedings by agree-
23 ment of both parties. And the mere fact that a DOL
24 proceeding is pending certainly doesn't provide us with
25 much in the way of notice of what issues might be raised

1 in this.

2 JUDGE BLOCH: Now I understand that the
3 only issues they intend to ask about are the ones that are
4 in the deposition that they went over with you. On that
5 basis, what surprise are we worried about?

6 MR. WALKER: Well the -- I think the --
7 their representation is that the only issues they're going
8 to go over are those in the affidavit and provided by way
9 of summary to us on Saturday. And I do think that the
10 emphasis has to be on the word "summary" because that was
11 the kind of briefing that we got on Saturday.

12 As Mr. Mizuno has said, there was a great
13 deal in the way of specifics. Assuming that any specifics
14 exist that were not provided to us on Saturday, and I think
15 that --

16 JUDGE BLOCH: Ms. Garde, are there specifics
17 that you know about that the witnesses are likely to talk
18 about that were not revealed?

19 MS. GARDE: Judge, I made a good faith
20 effort on Saturday to go through the details of the inci-
21 dent. And the affidavit in Ms. Newmeyer's case contains
22 them. In Ms. Orr's case, there are three incidents. I
23 told them about two of them, giving them the name of the
24 person involved and the approximate timeperiod that it
25 occurred.

1 The third one is contained in Ms. Orr's
2 affidavit.

3 JUDGE BLOCH: That wasn't quite the question.
4 The question is whether when these witnesses testify,
5 there's going to be substantial additional detail that was
6 not provided to the applicant.

7 MS. GARDE: I don't believe there is. I
8 have now written my questions out one by one. I am willing
9 to sit down again with the parties and go over the ques --
10 actually read them my questions, obviously which I know the
11 answers to.

12 But I don't think there is any more level
13 of detail there, other than maybe a more structured presen-
14 tation than the affidavit contains.

15 MR. WALKER: Judge Bloch?

16 JUDGE BLOCH: Yes, sir.

17 MR. WALKER: This is Richard Walker again.
18 The other issue that I think we keep skipping over is the
19 fact that beginning tomorrow morning, we have scheduled
20 depositions of some of our people that CASE has called
21 and whom they apparently intend to cross-examine on the
22 basis regarding the allegations.

23 They are in a position to know what their
24 witnesses have told OI, and to use that to prepare for
25 cross-examination, and we are not. And I think that

1 disparity alone is grossly unfair.

2 JUDGE BLOCH: Ms. Garde, do you know enough
3 to be able to tell us whether the OI statement contains
4 substantial additional detail on the subject you're talking
5 about?

6 MS. GARDE: No, I do not because I was not
7 present at the OI interview.

8 JUDGE BLOCH: Have you asked your witness?

9 MS. GARDE: Yes, I have.

10 JUDGE BLOCH: What did they say?

11 MS. GARDE: They say that OI asked a lot of
12 questions about essentially hardware issues and went
13 through the affidavit, which has been provided to the
14 Applicant.

15 The representation of OI and of the
16 witnesses is that the session with Ms. Billy Orr was fairly
17 brief, and that the session with Ms. Newmeyer was somewhat
18 longer. I'm guessing two hours. And they just went through
19 the affidavit.

20 Ms. Newmeyer said that none of the -- no
21 more than what I asked her about these incidents was given
22 to OI and -- in her interview.

23 Ms. Orr didn't recall, having been through
24 a number of interviews, if there was more detail given to
25 OI than we went over.

1 JUDGE BLOCH: Mr. Walker, what's your
2 proposed remedy? How would it work out and will it impact
3 our schedule?

4 MR. WALKER: Well my suggestion, Mr.
5 Chairman, would be that inasmuch as it's my view that CASE
6 didn't do everything they could to have these statements
7 produced when they were promised, that the depositions be
8 cancelled.

9 At the very least, however, I would suggest
10 that the depositions be postponed for a period of time that
11 would be equivalent to the amount of time for preparation
12 that was made available under the schedule that was origin-
13 ally agreed to in contemplation of production on Friday the
14 20th.

15 JUDGE BLOCH: So basically, what that would
16 amount to is that if you got it today or tomorrow, you'd
17 wind up talking to these witnesses Monday or Tuesday. And
18 what happens to your related witnesses?

19 MR. WALKER: I don't feel that there's any
20 difference in terms of the fairness of examining our
21 witnesses or theirs without the benefit of these statements
22 so counsel can be prepared.

23 JUDGE BLOCH: I guess your related witnesses
24 were scheduled to appear --

25 MR. WALKER: Tomorrow.

1 JUDGE BLOCH: -- four days -- four days
2 after the time you were going to get it?

3 MR. WALKER: That's correct.

4 JUDGE BLOCH: If you get it today, they can
5 testify Friday?

6 MR. WALKER: That's correct. Well now wait
7 a minute. We do have an additional problem. The particular
8 witnesses that are our witnesses have also requested that
9 they be represented by personal counsel and have retained
10 counsel.

11 We have -- we were informed yesterday that
12 their personal counsel would not be available after
13 Wednesday of this week, so if those schedules were shifted
14 it would be necessary for them to be shifted into next
15 week.

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

18 JUDGE BLOCH: One second, please, Mr.
19 Roisman.

20 (Pause.)

21 MS. ELLIS: Are we off the record?

22 MR. ROISMAN: No, and let's not talk,
23 please.

24 MR. HAYES: Judge Bloch, this is Ben Hayes
25 speaking.

1 MR. ROISMAN: He's off the record for a
2 second, Ben.

3 MR. HAYES: Okay.

4 JUDGE BLOCH: All right. I think that under
5 the circumstances, the situation is difficult for everybody.
6 It seems to me the best solution is to take -- to allow --

7 MR. ROISMAN: Hello.

8 JUDGE BLOCH: Yes. -- is to allow an
9 expeditious discovery deposition by the Applicant and Staff.
10 Can Ms. Newmeyer be made available either this evening or
11 tomorrow morning before Applicant's witnesses go on?

12 MR. ROISMAN: Mr. Chairman, this is Mr.
13 Roisman. I wish you to reconsider that order. I do not
14 believe that the Applicant -- we have been as explicit as
15 we could conceivably be on this point.

16 Ms. Newmeyer's direct testimony is contained
17 in the affidavit. We have identified the portions of it.
18 Then Ms. Garde said, "Read that affidavit and ask me the
19 questions that that affidavit raises for you so I can tell
20 you everything you want to know about it."

21 Her notes show they asked some questions.
22 She gave them all the answers that they asked for.

23 To subject Ms. Newmeyer to a discovery
24 affidavit at this point -- excuse me -- a discovery
25 deposition at this point is to totally abrogate the entire

1 nature of the process which the Board approved a month or
2 more ago, in which if we gave the level of detail that the
3 Board had requested us to do, and I don't think there's
4 any question but that we gave that level of detail, that
5 our witnesses would not be subject to this double bite
6 from the Applicant.

7 I would request that the Board look at the
8 discovery affidavit done of Witness F, which lasted for two
9 full days, before it orders us to produce these witnesses
10 with that kind of a ruling and attack into every conceivable
11 thing that the person has ever said in their life that the
12 Applicant has become aware of.

13 We have made our representations. If our
14 representations prove wrong, then we're prepared to suffer
15 those consequences. But our representations are the
16 Applicant and the Staff know what Ms. Newmeyer is going to
17 say. They are on notice more than the Board even ordered
18 us to put them on notice, and we've made extraordinary
19 efforts to do that.

20 We should not now be punished because of a
21 deposition which was taken by somebody else of Ms.
22 Newmeyer, which the contents of which are not what we are
23 relying upon for purposes of our direct case.

24 Our direct case is what Ms. Garde told
25 these people on Saturday would be out direct case. And

1 that should put the end to the matter. If we try to go
2 beyond that direct case in Mr. Walker's relief, then I
3 think it appropriate one is to say "That's stricken. You
4 may not put that into this record. You have represented
5 what your direct case is."

6 JUDGE BLOCH: And you're still representing
7 that you don't think the transcript of the OI Staff is
8 going to add a lot of what you've already disclosed.

9 MR. ROISMAN: That's not even the point.
10 Let's just say that we've not seen it so we don't know what
11 it says. Let's say that in the OI affidavit, Ms. Newmeyer
12 lists five other incidents of harassment and intimidation.
13 Our representation is we are not presenting those in
14 evidence in those proceeding. We're not offering the OI
15 affidavit, the OI --

16 MR. WALKER: Mr. Roisman?

17 MR. ROISMAN: We are saying the two inci-
18 dents that Ms. Garde has described to the Applicant and
19 the Staff are what Ms. Newmeyer is going to testify about.
20 The detail given in there plus the answers to the questions
21 which she invited them to ask her, and she's now invited
22 them to ask her again if they want, is the detail that Ms.
23 Newmeyer will give.

24 Her direct will be very direct. It will be
25 very limited. And that is the extent of what she is going

1 to testify.

2 MR. WALKER: Judge Bloch?

3 JUDGE BLOCH: Let's hear Mr. Walker on the
4 motion for reconsideration.

5 MR. WALKER: Judge Bloch, I understand that
6 Mr. Hayes is on the line. Perhaps we should hear from him.

7 JUDGE BLOCH: Let's talk to Mr. Hayes, first.
8 Mr. Hayes?

9 MR. HAYES: Yes, Judge.

10 JUDGE BLOCH: We have a problem apparently
11 resulting from a lack of communication. The matter of
12 consent of these witnesses was understood in earlier discus-
13 sions with Mr. Fortuna about two weeks ago, and there was
14 no problem about consent.

15 The lawyers in this case have represented
16 that they had a full discussion about consent. And they've
17 also stated that in subsequent discussions that Ms.
18 Newmeyer was on the phone with Mr. Griffin, a telephone
19 call that she initiated, and that there really is no ques-
20 tion about consent here.

21 We need the document so that the Applicant
22 can be informed. What can you do to facilitate this
23 process?

24 MR. HAYES: If we get a request from the
25 witnesses, we will provide their testimony to them. I was

1 unaware that we had previously gotten a request from the
2 people you're questioning.

3 JUDGE BLOCH: Well my understanding is that
4 the most recent time it happened was a call from Ms.
5 Newmeyer to Mr. Griffin, in which Mr. Griffin said he sent
6 it registered to her home but that he wouldn't send it to
7 some other address at her request.

8 MR. HAYES: Yes, that is correct.

9 JUDGE BLOCH: Well explain, if she called
10 up and asked that it be sent so that it could be used at
11 the hearing, would anyone go through that kind of ridiculous
12 routing?

13 MR. HAYES: Well I'm not questioning whether
14 it would go through the ridiculous routing, but we want an
15 opportunity to sit down with her and explain the circum-
16 stances of releasing that particular document.

17 JUDGE BLOCH: But you had her on the
18 telephone. What was the problem?

19 MR. HAYES: Well since we have an ongoing
20 matter, Judge, I'm a little reluctant to discussing the
21 details with the Applicant and with the Intervenors and
22 with you. I would be more than happy to sit down with you
23 and your Board in an ex parte in camera and discuss with
24 you our reasonings as to why we feel it necessary to go
25 directly to the individual and sit down with that

1 individual.

2 JUDGE BLOCH: Are you saying that there's
3 something extraordinary in this case that suggests that
4 this witness would be in special jeopardy if they waived
5 confidentiality?

6 MR. HAYES: No, I'm not suggesting that.
7 What I'm suggesting, if they waive confidentiality I want
8 an opportunity to sit down with that individual and express
9 the fact that what could or would happen pursuant to the
10 contract that we have with that individual. I want that
11 in writing. I want that individual fully cognizant of the
12 fact that she decides to release this particular document,
13 what it does with our agreement with that individual.

14 JUDGE BLOCH: Mr. Hayes, I think you make
15 the agency look very bad because there was already a
16 representation by Mr. Fortuna in this proceeding on last
17 Friday that documents would be made available.

18 I'm convinced that these witnesses have
19 fully consented, both because of their discussion with Ms.
20 Garde from GAP and because of a telephone conversation
21 with Mr. Griffin in which there was apparently a one-on-
22 one discussion and every opportunity to disclose everything.

23 Why does it have to be in writing?

24 MR. HAYES: Well because our contract was
25 in writing, Judge. And again, I would be more than happy

1 to sit down with you and discuss the matter with you and
2 your panel, ex parte in camera, and give you my reasoning.

3 However, since we do have other matters
4 going on at that utility, I would -- I am somewhat reticent
5 in getting into a full-blown discussion with you.

6 JUDGE BLOCH: Do you know that it's already
7 been sent to Ms. Newmeyer at her home?

8 MR. HAYES: Yes. I instructed that to be
9 done last week.

10 JUDGE BLOCH: Now if she didn't consent to
11 having it, why was it all right to send it to her at her
12 home?

13 MR. HAYES: Judge, again, I have to go back
14 to the fact that we have ongoing investigative matters. I
15 would be more than happy to sit down with you, sir, and
16 discuss the matters with you.

17 We are trying to cooperate with that
18 particular individual.

19 JUDGE BLOCH: I don't understand it, Mr.
20 Hayes, and I think it's obstructionate in this proceeding
21 that we can't just send it directly to the Applicant, but
22 I have no power to order you to do anything. I don't
23 understand it, and I do think the agency looks very bad
24 in this respect.

25 I would hope that you could think about it

1 today and decide you can do it otherwise, possibly by
2 getting Ms. Newmeyer on the telephone at her place of
3 employment and having a talk just one-on-one between
4 yourself and her or between Mr. Griffin and her, because
5 I don't understand what this face-to-face magic is.

6 All right. If the -- I would just urge you
7 to be able to try to figure out whether you can ascertain
8 quickly and expeditiously so that the attorneys can get
9 the document rapidly.

10 There's no need for you to respond unless
11 you'd like to, Mr. Hayes.

12 MR. HAYES: I appreciate your suggestion,
13 Judge.

14 JUDGE BLOCH: Thank you.

15 MR. HAYES: Is that it for me, sir?

16 JUDGE BLOCH: Yes.

17 MR. HAYES: Thank you.

18 JUDGE BLOCH: Mr. Walker, you're responding
19 to the motion for reconsideration.

20 MR. WALKER: Well in light of what we've
21 heard from Mr. Hayes, it sounds as though it's less than
22 definite that we're going to get the statements or, at
23 least, anytime in the near future.

24 I think the Board's ruling makes some
25 sense; however, there may be another -- another approach

1 suggested by Mr. Roisman's response on his motion for
2 reconsideration.

3 Mr. Roisman has represented very vigorously
4 that, in his view, any wandering beyond the things that we
5 have been apprised of would be subject to a motion to
6 strike and that that remedy would be entirely appropriate
7 as to the witness's direct testimony.

8 If Mr. Roisman were willing similarly to
9 limit the scope of his cross-examination of our witnesses,
10 then I would suggest that, perhaps, that also would be a
11 satisfactory resolution of the matter.

12 JUDGE BLOCH: Your response, Mr. Roisman?

13 MR. ROISMAN: I see no problem with that,
14 Mr. Chairman. I mean, we have been trying to say that we
15 want to --

16 JUDGE BLOCH: We've got an agreement. Don't
17 go any further.

18 MR. ROISMAN: Okay. All right.

19 JUDGE BLOCH: Mr. Trebey, do you have any
20 problem with this agreement? Or Mr. Mizuno? Uh-oh.

21 MR. ROISMAN: Oh, shit. Oh, excuse me.

22 JUDGE BLOCH: Off the record. We've got to
23 get the Staff back.

24 (Discussion off the record.)

25 JUDGE BLOCH: All right. Let's go back on

1 the record. All right.

2 MR. TREBEY: Let me mention one thing,
3 though. Mr. Mizuno is going to have to leave at this point.
4 I will remain on the line. Mr. Mizuno has a plane to catch.

5 JUDGE BLOCH: Okay. Do you have any problem
6 with the agreement reached between the parties?

7 MR. TREBEY: No.

8 JUDGE BLOCH: All right. I think the agree-
9 ment will reflect itself on the record, but basically it's
10 that the scope of the examination of these witnesses is
11 limited to the matters that have been discussed between
12 the parties. And the scope of cross-examination shall be
13 similarly limited, and to my understanding Ms. Newmeyer's
14 testimony may be received.

15 We still are pressing for the -- for OI to
16 make available the transcript as rapidly as possible.

17 Mr. Walker, the next matter?

18 But we've not yet -- Mr. Trebey, we've not
19 yet gotten to the question of discovery, have we?

20 MR. TREBEY: Mr. Chairman, I'm not in a --

21 MR. WALKER: No, we have not.

22 JUDGE BLOCH: Okay. Mr. Walker.

23 MR. ROISMAN: Mr. Chairman, this is Mr.
24 Roisman. I am not hearing you.

25 JUDGE BLOCH: Can you hear me now?

1 I'll try to stick right up to the speaker.
2 Did you hear my summary?

3 MR. ROISMAN: I guess I heard the summary,
4 and then when you were turning to Mr. Walker, I started
5 hearing voices but I couldn't hear what they were saying.
6 I don't even know whether it was or Mr. Walker that I wasn't
7 hearing.

8 JUDGE BLOCH: I hope it's the telephone
9 equipment, Mr. Roisman.

10 Mr. Walker, please proceed.

11 MR. WALKER: Mr. Chairman, the fourth issue
12 we have on the agenda relates to the scope of permissible
13 cross-examination regarding credibility issues. Since
14 this is Mr. Roisman's and Ms. Garde's, a point I suggested,
15 it might make sense for them to outline their position,
16 first.

17 JUDGE BLOCH: Okay. I heard that in a
18 brief conversation with Ms. Garde last night that the
19 Intervenors addressed how it is that we can possibly rule
20 on this issue at this point, so we need some specificity
21 of the relief sought.

22 MR. ROISMAN: All right. Mr. Chairman,
23 this is Mr. Roisman. Our concern is embodied probably
24 best in the affidavit taken of Mr. Messerly. In that
25 affidavit, the Applicant's attorney initially attempted

1 to get into questions of, one, whether or not Mr. Messerly
2 had received payoffs from contractors at the plant site
3 and, number two, whether Mr. Messerly had or had not done
4 something improper on his tax return.

5 So eventually it was determined, though,
6 that that would not be examined into, although the
7 Applicant's attorney made a summary statement of what he
8 thought he might be able to establish if he had gotten
9 into that.

10 I am concerned that that kind of inquiry
11 is so far afield from anything that's relevant here, that
12 the only reasonable interpretation is that it be used to
13 harass and intimidate the witnesses. And I can assure
14 you that it's working.

15 We have witnesses, and Ms. Newmeyer is one
16 of them, and Ms. Hatley is another, who've indicated that
17 if matters that are as far afield as that are being
18 inquired into under the generic guise that somehow or
19 another that's something to do with their credibility,
20 that they will not appear as witnesses, that they will
21 not subject themselves to that type of an inquisition.

22 I tried to get from the Board some kind of
23 a guidance as to what can legitimately be considered
24 be appropriate for purposes of credibility.

25 I'm not questioning that there is

1 credibility but, for instance, there are matters in every
2 human being's life in which they do things, whether it's
3 juveniles or whatever, that are not high points of their
4 lives.

5 I do not believe that there is a legitimate
6 basis for the Applicant or the Staff to muck around in
7 that and to drag all that up at the price of these people
8 appearing at the hearings.

9 And for our part, we've not attempted to go
10 into any prior criminal history or any prior misconduct of
11 any of the Applicant's witnesses on the assumption that
12 those matters could not be inquired into because they would
13 not produce relevant information in the proceeding. They
14 were too far afield.

15 JUDGE BLOCH: May I ask, what are we
16 supposed to do -- rule that the Applicants shall not
17 unduly muck about?

18 MR. ROISMAN: No. What I'm trying to find
19 out is do you have some standard? And what we are hearing
20 when we try to discuss this with the Applicant lawyers,
21 particularly, is that anything that anybody did that was
22 improper at any time in their life "goes to their
23 credibility."

24 JUDGE BLOCH: I have a --

25 MR. ROISMAN: They are free to get into

1 that. And I believe that what the Board should rule at
2 this time is that absence of evidence that either the
3 person has previously had some problem with perjury or
4 something to demonstrate that the particular statements
5 that they make here are not credible; that is, that they
6 made a prior inconsistent statement or that they engaged
7 in some conduct that was inconsistent with what they said
8 had happened or something of that nature, that all these
9 other matters are not appropriate.

10 And if the Applicant or the Staff wishes to
11 inquire into them, they must go to the Board and make a
12 proffer with regard to that rather than we must sit there
13 and subject the witness to these inquiries as though they
14 are presumptively appropriate in these depositions, which
15 are evidentiary depositions, not discovery depositions.

16 JUDGE BLOCH: Assuming that we listed -- I
17 have a feeling that it's a matter of judgment. For
18 example, even if we were to say that perjury or false
19 swearing is allowed, we get into the tax returns question,
20 don't we?

21 MR. ROISMAN: You mean with regard to the
22 -- to Mr. Messerly?

23 JUDGE BLOCH: I mean -- yes. If we adopt
24 the standard of perjury or false swearing, don't we still
25 to allow the tax returns problem? I don't know how they

1 got the information, but wouldn't we have to allow it?

2 MR. ROISMAN: Well I -- I think that it has
3 to be shown that it had some bearing to the kind of thing
4 that we're dealing with here. I guess what I want, Mr.
5 Chairman, I understand the practical problem of sort of
6 giving an expletive ruling with nothing explicit.

7 I think what I want is sort of a statement
8 of where the Board's head is at so that there's a lot
9 better opportunity, if we're talking with the Applicant's
10 attorneys about this sort of line of inquiry, that we all
11 have some idea of where -- where you're coming from.

12 JUDGE BLOCH: Well I have a feeling that --
13 I'd like Mr. Walker to comment -- but I have a feeling that
14 there's a common concern that you're concerned about the
15 privacy of the individuals and you're also interested in
16 the truth and the individual inferences.

17 The privacy of the individual has to be
18 weighed in some sense against the importance of the
19 credibility evidence being elicited. So that, for example,
20 impropriety of tax returns, I imagine the omission of some
21 minor items, the ruling wouldn't be very relevant.

22 But a lying about half the person's income,
23 I would think that would be more relevant. I see it only
24 as a case-by-case problem. I don't see it any other way.

25 Mr. Walker, are you in agreement with that?

1 MR. WALKER: Yes, essentially. I would
2 just make three points. The first one is -- is to
3 reinforce yours. I think that the issue that's being
4 raised as to relevance of specific questions going to
5 credibility, and it's just impossible to deal with that in
6 the abstract.

7 Secondly, I think Mr. Roisman well knows
8 that whenever any witness takes the stand, he may be subject
9 to cross-examination on credibility. And the only way to
10 fairly adjudge -- fairly judge the appropriateness of the
11 questions is in the context in which they arise. And that
12 context would include both the -- both the testimony of
13 the witness whose credibility was being tested and the
14 means by which it was being tested.

15 Also, I -- I feel that Mr. Roisman suggests
16 that we have a problem here of much greater dimensions,
17 even under the broadest construction of the facts than it
18 really is.

19 The fact of the matter is that we have not
20 been indiscriminately delving into the backgrounds of the
21 Intervenor's witnesses. There is at least one witness, I
22 have been told, as to whom we had credibility materials
23 but did not use them because in the direct testimony it
24 was our judgment that that person's credibility was not
25 fairly placed in issue. And so, we forewent the use of

1 the credibility materials that we had developed.

2 Finally, I think that Mr. Roisman rather
3 unfairly mischaracterizes our position. Now I should
4 confess I have not been personally present at all of the
5 discussions of this issue, but I do not understand our
6 position to be as he states it, that any misconduct in an
7 individual's past is fair game.

8 JUDGE BLOCH: Okay. I think I have enough
9 to rule. I'm going to rule and then ask for comments from
10 the Staff, if they don't mind that order.

11 Mr. Walker, in the past we have relied
12 primarily on the good faith of Intervenor's lawyers on
13 certain matters. We would like to rely on the Applicant's
14 good faith in acting out of humanity as well as the concern
15 for their case and the credibility of individual witnesses.

16 I understand that these particular matters
17 may involve matters of privacy, so that we would consider
18 it somewhat different if the Intervenors would come to us
19 and say, "We can't accept the good faith of the Applicant
20 as our entire guarantee here."

21 But I'm hopeful that if the Applicants act
22 with restraint that we won't have to speak frequently to
23 the parties about matters that the Intervenors feel that
24 they just don't want their witnesses to go forward on.
25 We will be available, if necessary. Would the Staff

comment? ON CONTENT

1
2 MR. TREBEY: The Staff believes that that
3 is reasonable guidance. It is a matter of judgment in each
4 case. The Staff believes that credibility testimony is
5 appropriate testimony. On the other hand, we also
6 recognize the importance of privacy of the individuals,
7 so we believe that this is a -- an appropriate ruling by
8 the Board.

9 Our suggestion has been for some general
10 guidance to generally follow the Rules of Evidence, the
11 Federal Rules of Evidence, and accepted their relevance in
12 this area.

13 JUDGE BLOCH: Good. Mr. Walker, the next
14 matter.

15 MR. WALKER: The fifth matter, Mr. Chairman,
16 relates to the right to take discovery.

17 After we had our conference call with you
18 yesterday evening in which we listed the agenda items, Ms.
19 Garde informed me that although I had accurately represented
20 to you what she had told me about this issue, she had
21 concern that what she had told me did not accurately reflect
22 Mr. Roisman's concern.

23 In light of that, and although we had a
24 very brief discussion before you came on the line this
25 morning, I think it's best to have Mr. Roisman state the

1 precise nature of his concern.

2 JUDGE BLOCH: Thank you, Mr. Walker.

3 Mr. Roisman?

4 MR. ROISMAN: Yes, Mr. Chairman.

5 My concern is very simply this. My under-
6 standing of the nature of the process is that if we had met
7 our burden, and as you know we've now made that representa-
8 tion here with regard to Ms. Newmeyer and Ms. Barnes to
9 inform the Applicant and the Staff in the level of detail
10 that you would anticipated we would have done back at the
11 June 27th hearing. Excuse me, the June 27th filing.

12 The fact, in short, that the surprise claim
13 is not available, that there was not to be discovery in
14 these depositions, that discovery was to be -- there might
15 be an argument that the Intervenor was conducting discovery
16 and we might have to segregate a portion of the transcript.

17 There might be an isolated question here or
18 there that either on further reflection or otherwise would
19 appear to be discovery, but that the scope of the examina-
20 tion of the witnesses would essentially be limited to what
21 they had to say on their direct.

22 Now the Applicant's witnesses when they came
23 on didn't really have direct. And so, the issue was
24 different there but I think we all pretty well abided by
25 that.

EXHIBIT
COTTON CONTENT

1 We instructed our lawyers and I think they
2 followed those instructions, that they should not ask
3 discovery questions. They should ask examination questions.

4 Now that all this has been coming forward,
5 we have been making an effort, and I confess in some cases
6 more successfully than others, to have them define very
7 clearly, precisely what their testimony is.

8 In other words, what are they asserting.
9 For instance, when Mr. Stiner was on, we had Mr. Stiner
10 simply identify a portion of prior testimony already
11 received in evidence and say, "That's my direct testimony."

12 And he actually made no additional direct
13 statements. He said, "That's my direct testimony," and
14 then the Applicant was free to cross-examine him on that
15 statement, that we had previously identified that to them
16 before the actual deposition took place.

17 We've now done a similar thing with Ms.
18 Newmeyer and Ms. Barnes. We believe that that means that
19 the kind of wide ranging discovery which we experienced
20 in the two-day deposition of Witness F is not available,
21 is not appropriate. It should not be allowed to be
22 pursued here.

23 And that the Applicant, absent of minor
24 deviations, and the Staff as well are limited to cross-
25 examining the witness within the scope of the direct as

the Rules of Evidence provide.

We think that there is some substantial disagreement among the parties about that. We're secondly concerned that the split of the discovery and the cross-examination is clearly not permissible, even if the Board should say, "Well, I'm going to let them do discovery. They have to pay for the transcript," which by the way I think is wrong. I don't think that's what we agreed to.

The discovery phase of this proceeding ended some time ago. But if you should rule that, that they are not entitled, to then postpone their cross-examination of the witness for any period of time whatsoever, that they must do it right then just as we had to do it with regard to their witnesses.

That's what I would like to get a clear ruling on.

JUDGE BLOCH: You know, the ruling is the one that I gave on the phone last night when Ms. Garde presented it. And that is also the one we gave last Friday.

And that is that if there is no particular surprise with respect to the witness, then yes, the Applicants must go ahead and cross-examine on the evidentiary portion of the record. And then must ask whatever questions they have of evidentiary significance

1 at that time.

2 After that, however, we never ruled that
3 anyone was waiving the right to discovery.

4 Now, obviously, since the evidentiary
5 deposition is finished, the ensuing deposition has a
6 limited purpose. And that is, it must bring something
7 out that's going to be used by the parties subsequently
8 to argue that there's a reason to either have to go to
9 either go to hearing or present rebuttal witnesses.

10 It's not, itself, evidentiary. The purpose
11 of the discovery is to see whether there's something
12 important being missed that can be responded to on rebuttal
13 or that becomes a credibility issue that's going to have
14 to be heard in hearing.

15 But we never did preclude anyone from
16 having that kind of discovery. Now the other problem is
17 the order in which it happened, and unless there is
18 surprise, the order is evidentiary cross-examination first,
19 deposition next.

20 If there's been surprise, then we rule
21 that the evidentiary deposition can come before the cross-
22 examination. And that is the ruling we made last week and
23 I see no reason to change it.

24 MR. ROISMAN: Mr. Chairman, can I just ask
25 a clarification? I'm sorry I wasn't able to be on the

1 phone call last evening.

2 JUDGE BLOCH: Sure.

3 MR. ROISMAN: What I'm concerned about is
4 the following. And, again, I would ask the Board -- I hate
5 to subject them to the tediousness of that two-day
6 deposition, but if you have not read it, to take a look
7 at the deposition of Witness F.

8 Here is where my concern comes in. Our
9 witness goes on the witness stand. The witness says, "There
10 are 57 things that I have thought were wrong in this plant
11 but I'm going to tell you about two. That's all I'm going
12 to testify about." That's all CASE is offering. The
13 witness tells you about the two.

14 The Applicant and Staff cross-examine the
15 witness and then proceed to conduct "discovery" with regard
16 to the other 55, which the witness is not offering.

17 Now that's precisely what happened in the
18 discovery deposition of Witness F. Now I confess that we
19 should have done a better job with regard to defining the
20 scope of Witness F's direct so that that wouldn't have
21 been a problem at all. And that's why we're trying to
22 correct that.

23 JUDGE BLOCH: Mr. Walker, is that the
24 problem? If you knew that the scope of the testimony was
25 limited to the testimony presented, would this problem

1 arise again?

2 MR. WALKER: Well, I don't -- I'm not really
3 sure because I'm not really sure about the problem with
4 Witness F.

5 I was not a participant at that deposition
6 and I must confess I have not read the transcript. But it
7 seems to me that the Board's ruling is fairly clear and
8 workable.

9 There's only one additional issue, as I
10 understand it from Ms. Garde, that -- that -- as to which
11 perhaps we need some clarification. It is my understanding
12 that it's her position and Mr. Roisman's that the fact
13 that they give us these little briefing sessions that
14 they -- such as the one on Saturday -- necessarily obviates
15 any claim of surprise.

16 That, however, is not what I have been
17 told about the Board's prior ruling, which as I understood
18 it, was that information provided after June 27th could
19 give rise to a legitimate claim of surprise.

20 JUDGE BLOCH: That was our ruling, and we
21 wish to stick by that ruling except, of course, that on
22 the particular matter you just mentioned, there's now a
23 stipulation by the parties.

24 Have you finished, Mr. Walker?

25 MR. WALKER: Yes, I have.

1 JUDGE BLOCH: I think, Mr. Roisman, if you
2 have a problem and something looks like it's going to take
3 a lot more time than you think it ought to because the
4 scope has expanded way beyond what it ought to be, just
5 call the Board and I'll take care of it.

6 MR. ROISMAN: Okay. I think, Mr. Chairman,
7 what you have indicated here on the phone and what you
8 advised the parties of last night is satisfactory.

9 And at this point, with the possible excep-
10 tion of Ms. Brink and Culton, I believe Ms. Garde can
11 correct me if I'm wrong, that our direct witnesses are
12 concluded.

13 Is that right, Billy?

14 MS. GARDE: That's right. But I do have
15 another comment on the discovery issue.

16 MR. ROISMAN: Brink?

17 MS. GARDE: Yes, just Betty Brink and Dennis
18 Culton.

19 MR. ROISMAN: Okay.

20 JUDGE BLOCH: Yes, Ms. Garde, please, a
21 brief comment if necessary.

22 MS. GARDE: Yes. Now Mr. Watkins is in
23 the room with us. And as to the question of the appropriate
24 length or not length of the particular deposition or
25 evidentiary deposition, Mr. Watkins informed me last

1 night that Ms. Newmeyer's deposition would take a full day.
2 I indicated to him at that time, and I'd like to bring up
3 at this time, that that to me seems an inappropriate length
4 for Ms. Newmeyer's deposition since we are only going to
5 have her on for two incidents which I don't anticipate will
6 take longer than an hour, possibly an hour and a half, to
7 at the most walk her through those two incidents.

8 And I am concerned about that.

9 JUDGE BLOCH: Mr. Walker, do you see the
10 stipulation between the parties as affecting the scope of
11 discovery?

12 MR. WALKER: I'm not sure I know what stipu-
13 lation you're talking about, Judge.

14 JUDGE BLOCH: The one we reached during the
15 call about what the limitations of Ms. Newmeyer's testimony
16 and the limitations on the cross-examination concerning Ms.
17 Newmeyer's testimony. You don't remember that?

18 MR. WALKER: Yes, I do. I was just consult-
19 ing with Mr. Watkins, Judge. And I -- it is my understand-
20 ing that it's our position that the stipulation would take
21 care of it.

22 JUDGE BLOCH: Excellent. Let's move on to
23 number six.

24 MR. ROISMAN: I'm not sure what that meant.
25 What did he mean "take care of it"? Did he mean that they

1 now see that the cross will be substantially less because
2 the stipulation that we indicated shows them that they don't
3 have to worry that she's going to get into other areas that
4 they didn't anticipate?

5 JUDGE BLOCH: That's correct, isn't it, Mr.
6 Walker?

7 MR. WATKINS: Mr. Chairman, this is McNeill
8 Watkins. Perhaps I could comment.

9 JUDGE BLOCH: Please. To the point, please.

10 MR. WATKINS: We will stay within the under-
11 standing that we have just reached, however long --

12 JUDGE BLOCH: Limited to the scope of the
13 testimony being given. You aren't to discover things way
14 outside that scope.

15 MR. WATKINS: That's correct. And --

16 JUDGE BLOCH: Okay.

17 MR. WATKINS: And however long the deposition
18 takes will be a function of however many questions I have
19 within the scope of that deposition.

20 JUDGE BLOCH: Let's go to number six.

21 MR. WALKER: I'm not sure that we still
22 have a number six, Mr. Chairman. As I told you last night,
23 I wasn't entirely sure what number six was. But it had
24 to do with the deposition of Witness F and something about
25 trivia and that sort of thing.

1 Perhaps Mr. Roisman can tell us whether we
2 have already heard from him all that he feels he needs to
3 say in that regard.

4 MR. ROISMAN: The answer is yes to that
5 question, Mr. Chairman.

6 JUDGE BLOCH: Good.

7 Is there any other necessary matter relating
8 to the intimidation phase of the case at this point?

9 MS. ELLIS: There's one thing I'd like to
10 clarify. I'm not sure if I heard right.

11 Mr. Watkins, did I understand you to say
12 that the cross-examination would be limited to the scope
13 of the deposition?

14 MR. WATKINS: No, I said the direct.

15 JUDGE BLOCH: No.

16 MS. ELLIS: Oh, I'm sorry. I misunderstood
17 you. Thank you.

18 MR. ROISMAN: Mr. Chairman, I'd just like
19 to report that the sun is rising in Seattle.

20 JUDGE BLOCH: Thank you, Mr. Roisman. And
21 the sun is setting on this conference call.

22 MR. ROISMAN: Good.

23 MR. TREBEY: This is Mr. Trebey. Could Mr.
24 Walker remain on the line after this conference call?

25 MR. ROISMAN: Mr. Chairman, I'm getting --

1 this is Mr. Roisman. I'm getting off the line. I consider
2 that this conference call by your statement is ended and
3 we're off the record.

4 JUDGE BLOCH: This conference call is
5 adjourned.

6 (Whereupon, at 10:33 a.m. the conference
7 call was adjourned.)

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WILLERS HALLS
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CERTIFICATE OF PROCEEDINGS

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

In the matter of: TEXAS UTILITIES ELECTRIC COMPANY, et al

Date of Proceeding: Monday, July 23, 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.

Margaret K. Schneider

Official Reporter - Typed

Margaret K. Schneider
Official Reporter - Signature

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Official Reporter - Typed

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13 *Sandra Harden*
14 Official Reporter - Signature