

17313

# Official Transcript of Proceedings

## NUCLEAR REGULATORY COMMISSION

DOCKETED

'95 NOV 22 A11:13

Title:

GEORGIA INSTITUTE OF TECHNOLOGY  
RESEARCH REACTOR  
Atlanta, Georgia

OFFICE OF SECRETARY  
PUBLIC SERVICE  
BRANCH

Docket Number:

50-160-REN  
ASLBP No. 95-704-01-REN

Location:

Atlanta, Georgia

Date:

November 15, 1995

Work Order No.:

NRC-396

Pages 477-580

NEAL R. GROSS AND CO., INC.  
Court Reporters and Transcribers  
1323 Rhode Island Avenue, N.W.  
Washington, D.C. 20005  
(202) 234-4433

9511270249 951115  
PDR ADOCK 05000160  
T PDR

TR.01

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

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

+ + + + +

ATOMIC SAFETY AND LICENSING BOARD

PREHEARING CONFERENCE

- - - - - X

In the Matter of: :  
GEORGIA INSTITUTE OF TECHNOLOGY :Docket No. 50-160-REN  
RESEARCH REACTOR :ASLBP No. 95-704-01-REN  
:  
Atlanta, Georgia :  
Facility License No. R-97 :

- - - - - X

Wednesday, November 15, 1995  
Conference Room 224  
Richard B. Russell Federal Building  
75 Spring Street  
Atlanta, Georgia

The above-entitled matter came on for  
prehearing conference, pursuant to adjournment, at 9:30  
a.m.

BEFORE:

CHARLES BECHHOEFER, Esq. Chairman  
DR. JERRY R. KLINE Administrative Judge  
DR. PETER S. LAM Administrative Judge

NEAL R. GROSS  
COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVENUE, N.W.  
WASHINGTON, D.C. 20005

## 1 APPEARANCES:

2 On behalf of Georgians Against Nuclear Energy:

3 GLENN CARROLL

4 139 Kings Highway

5 Decatur, Georgia 30030

6 (404) 378-9542

7 (404) 378-4263 (GANE)

8  
9 On behalf of the Nuclear Regulatory Commission10 Staff:

11 SHERWIN E. TURK,

12 Office of General Counsel

13 U. S. Nuclear Regulatory Commission

14 Washington, D. C.

15  
16 MARVIN MENDONCA, Project Manager

17 For Georgia Tech Facility

18 Office of Nuclear Reactor Regulation

19 U. S. Nuclear Regulatory Commission

20 Washington, D. C. 20555

21  
22  
23  
24  
25  
NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D. C. 20005

1 APPEARANCES: (Continued)

2 On behalf of the Georgia Institute of Technology:

3 PATRICIA GUILDAY, Attorney

4 State of Georgia Attorney General's Office

5

6 RANDY A. NORDIN, Chief Legal Advisor

7

8 DR. RATIB A. KARAM, Director

9 Neely Nuclear Research Center

10

11 RODNEY ICE, Manager

12 Office of Radiation Safety

13

14

15 ALSO PRESENT:

16 MS. PAMELA BLOCKEY-O'BRIEN

17

18

19

20

21

22

23

24

25

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20006



P R O C E E D I N G S

(9:40 a.m.)

1  
2  
3 CHAIRMAN BECHHOEFER: This, I guess, is the  
4 third prehearing conference. We are going to start with  
5 the prehearing conference that is the renewal proceeding.  
6 Later on, we will have a fairly short one, I think, the  
7 fuel proceeding.

8 Let me introduce the members of the Licensing  
9 Board, whom you all probably know anyway but, for the  
10 record, Dr. Peter Lam on my left and Dr. Jerry Kline on my  
11 right. Peter is the Nuclear Engineer and Jerry is an  
12 Environmental Scientist. I am Charles Bechhoefer and I am  
13 an attorney.

14 For the purpose of the record, the people who  
15 are going to make appearances, will you identify  
16 yourselves? Ms. Carroll.

17 MS. CARROLL: I am Glenn Carroll from GANE,  
18 Georgians Against Nuclear Energy.

19 MR. TURK: My name is Sherwin Turk, I am here  
20 with the NRC staff and to my right is Marvin Mendonca, who  
21 is Project Manager for the Georgia Tech facility.

22 MS. GUILDAY: I am Patricia Guilday with the  
23 State of Georgia Attorney General's Office. I am here  
24 representing Georgia Tech.

25 MR. NORDIN: I am Randy Nordin, I am the Chief

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 Legal Advisor at Georgia Tech.

2 DR. KARAM: I am Ratib Karam, I am with  
3 Georgia Tech.

4 MR. RICE: Ron Rice with Georgia Tech.

5 MS. CARROLL: To the panel, Ms. Blockey-  
6 O'Brien is the only person sitting here that hasn't been  
7 addressed. I mean should we make a note of her presence?

8 CHAIRMAN BECHHOEFER: Well, she is not  
9 representing any party.

10 MS. CARROLL: Okay.

11 CHAIRMAN BECHHOEFER: She can sit next to you  
12 or confer with you but she can't participate as a party.  
13 I understand that she is not a member of GANE. I might  
14 say I rendered that advice over the telephone. Ms.  
15 Blockey-O'Brien telephoned me and asked me and I said  
16 while she was a member of GANE, she couldn't represent  
17 GANE. We don't care who, it is up to you, Ms. Carroll,  
18 whether you want her to sit with you.

19 MS. CARROLL: I just didn't want to slight  
20 her.

21 CHAIRMAN BECHHOEFER: No.

22 MS. CARROLL: Okay. (Laughter.)

23 CHAIRMAN BECHHOEFER: Now, let's see.

24 We thought we ought to have this conference  
25 mostly to see where we are going and set the schedules for

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 the remainder, first, in the renewal proceeding where the  
2 Commission affirmed our Order. The Commission Decision  
3 was denominated COR 95-12 and came out October 12 and it  
4 assumes I could set up a prehearing conference where  
5 everybody could attend and I did so to see where we go  
6 from here. I do think we should start with the discovery  
7 matter and see where we are on discovery and have really a  
8 status report on discovery.

9 Well, it doesn't matter to us which party  
10 wants to address that. All can be heard but we would like  
11 sort of a status report of where things are and what you  
12 are going to inquire into and what further discovery the  
13 parties wish or the parties find necessary before we set  
14 any further schedule, so you can -- since the part that  
15 has done most of the discovery is either the staff or  
16 GANE, the staff perhaps would like to start out giving a  
17 status report on where they think discovery stands.

18 MR. TURK: All right. Your Honor, as I  
19 understand the current status of discovery, the staff has  
20 filed a set of discovery requests against GANE and GANE  
21 has filed discovery against the staff and against Georgia  
22 Tech.

23 The staff's discovery consisted of document  
24 requests and interrogatories to which GANE did respond.  
25 Many of the answers that GANE provided, however, were

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 inconclusive and they stated that GANE would have more  
2 knowledge of the answers after the conducted their own  
3 discovery and I would simply note that we do not have a  
4 Motion to Compel outstanding against GANE. We do expect,  
5 however, that when GANE is able to, and perhaps in  
6 accordance with the schedule that we set today, that we  
7 would get a supplementation of their discovery responses  
8 which is required in accordance with 10 C.F.R. 2.740(e)  
9 and we certainly would like to see their discovery  
10 responses supplemented before we proceed to developing  
11 testimony because only then would we really know what the  
12 issues are in the case.

13 GANE's discovery against the staff has been  
14 responded to. GANE's discovery consisted of a single  
15 interrogatory to which we responded with an affidavit,  
16 providing a substantive response.

17 In addition, they had a number of document  
18 requests to which we responded. We objected in principal  
19 to having to provide documents which are publicly  
20 available. We also raised several limited objections  
21 based upon relevance and other standard discovery  
22 objections.

23 There is no Motion to Compel outstanding  
24 against the staff in response to our discovery, or  
25 following our discovery responses.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20006

1           The last set of discovery was GANE's discovery  
2 against the licensee to which the licensee, as I  
3 understand it, objected to responding back when the  
4 appeals were being taken, from the Licensing Board's  
5 Decision admitting the contentions and I noticed that a  
6 few days ago GANE filed a Motion to Compel against the  
7 applicants and I think those two parties would best be  
8 able to address the status of that discovery.

9           CHAIRMAN BECHHOEFER: Right, well, let's hear  
10 from GANE. Do you have anything you wish to add?

11           MS. CARROLL: Well, I availed myself of  
12 Georgia Tech's offer to let us use their files which are  
13 complete as far as what I looked at. Most of the  
14 documents I was interested in seeing from them were the  
15 ones that the NRC counsel said are publicly available and  
16 declined to offer to us.

17           The Legal Affairs Department in the course of  
18 facilitating my looking at Georgia Tech's records  
19 mentioned that they were already apparently, without  
20 having received our Motion to Compel, had already begun to  
21 gather the materials to fulfill our discovery request and  
22 I came to the shocking realization last night that we  
23 would be assessed a quarter a page for any documents that  
24 were filled so I began conferring with Mr. Nordin about  
25 the possibility of them being made available to us to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 review without actually serving us copies. I am not sure  
2 GANE can afford all of our document request.

3 CHAIRMAN BECHHOEFER: Let me inquire if the  
4 staff's reproduction charge still about nine cents? That  
5 is a figure that comes to mind. I think it is less than  
6 25.

7 MR. TURK: That is my recollection as well,  
8 Your Honor. I think it is about nine cents. I think it  
9 may be slightly higher than that.

10 CHAIRMAN BECHHOEFER: Yes, I am not sure  
11 either.

12 MS. GUILDAY: I believe it is still nine, Your  
13 Honor.

14 CHAIRMAN BECHHOEFER: So theoretically if GANE  
15 saw some documents and they could identify them and then  
16 come to the staff to get copies at nine cents a page, am I  
17 not correct?

18 MR. TURK: Would you repeat, Your Honor?

19 CHAIRMAN BECHHOEFER: Assuming the documents -  
20 - the staff has the documents and I assume that a lot of  
21 them they will, if not all of them.

22 MR. TURK: Your Honor, the copying charge may  
23 be nine cents a page but there is a staff personnel  
24 resource involved also. I don't think we should be forced  
25 to devote our staff resources and our Federal budget

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005



1 allocation to reproducing documents for GANE. If they  
2 want to go to the PDR and get documents copied, they can  
3 do that but I would not impose that burden on staff  
4 counsel or upon NRC staff personnel.

5 CHAIRMAN BECHHOEFER: Well, I didn't impose  
6 any burden. I said if GANE identified documents, they  
7 could go to the Public Document Room and ask for copies  
8 for nine cents.

9 MR. TURK: Yes, they could.

10 MS. CARROLL: That is available to us. Now, I  
11 will point out that a lot -- most all that we've asked  
12 from Tech, I don't think the NRC may keep copies of the  
13 logs and the personnel records and audits and that sort of  
14 that.

15 CHAIRMAN BECHHOEFER: That I am not sure.

16 MS. CARROLL: So basically I thought this  
17 would be free and it would just be my burden to go through  
18 all of the paper and now I realize that that is not  
19 necessarily all of the factors so I am either going to  
20 pare down my request -- but I believe that Georgia Tech  
21 will probably work with me to set up some kind of a review  
22 process where I can look at the documents without copying  
23 them except those I need. Randy Nordin is nodding, so --

24 CHAIRMAN BECHHOEFER: Now, I know that Mr.  
25 Turk has also filed a request that he can't enforce and we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005



1 can't enforce the LPDR, the Local Public Document Room, be  
2 set up around here in this area but the Board doesn't have  
3 authority to do that, neither does the staff counsel but  
4 he has filed the request, I can assure you of that.

5 MR. TURK: That is correct.

6 CHAIRMAN BECHHOEFER: That is in the file.  
7 You may have a copy of it.

8 MR. TURK: I did send an E-Mail message to  
9 Joanna Sauder at the LPDR Branch asking -- informing her  
10 that you and GANE would appreciate having an LPDR set up  
11 but it also is their decision.

12 CHAIRMAN BECHHOEFER: It is their decision.

13 MR. TURK: As to whether or not they will do  
14 it or not.

15 MS. CARROLL: And this would have everything  
16 on microfiche or --

17 CHAIRMAN BECHHOEFER: Normally, yes.

18 MS. CARROLL: -- In paper form?

19 MR. TURK: It normally consists of microfiche  
20 records.

21 MS. CARROLL: Uh-huh.

22 MR. TURK: How up to date it would be for  
23 Georgia Tech, I can't tell you but if they do set up the  
24 LPDR, I am sure there will be things in there that are  
25 useful to you.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 CHAIRMAN BECHHOEFER: Well, their target is  
2 two weeks. Everything is filed in two weeks. Don't ask  
3 me whether they meet their target.

4 ADMINISTRATIVE JUDGE LAM: Mr. Turk, have you  
5 heard any responses from the staff regarding that request?

6 MR. TURK: No, I have not, Judge. I am sorry.

7 CHAIRMAN BECHHOEFER: Okay, I think one of the  
8 outstanding discovery questions is Georgia Tech's response  
9 which was not in line with our Orders nor was it in line  
10 with the Commission's Order which granted a stay on  
11 discovery on only one of the contentions, the security  
12 contention, so theoretically management, Georgia Tech, the  
13 discovery on that, Georgia Tech is in default and now GANE  
14 has not filed a motion or had not until a couple of days  
15 ago filed a Motion to Compel so I am not sure whether you  
16 are technically in default in light of if the Motion to  
17 Compel had been filed or not but I won't resolve that at  
18 the moment and hope today we can work something out on  
19 discovery.

20 Also, Georgia Tech has not sought discovery  
21 from either GANE or the staff and whether or not Georgia  
22 Tech has waived it's right by not doing so is another  
23 outstanding question. I don't know whether Georgia Tech  
24 wishes discovery but if it does, identity of witnesses and  
25 that kind of thing, there is some question whether

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 technically at least you would entitled to further  
2 discovery or not, so could Georgia Tech perhaps make a  
3 statement on what it's plans are or desires are?

4 MS. GUILDAY: I think with respect to our  
5 decision to postpone responding to GANE's discovery until  
6 the decision by the Commission, the way I read GANE's  
7 discovery, there was actually no way to distinguish what  
8 was security related and what was management related. We  
9 are having the same exact problem now in trying to respond  
10 to their discovery now that the security issue is at least  
11 at this point moot. There is no way to decide that this  
12 question goes to security and this question goes to  
13 management. We have had a number of internal arguments or  
14 discussions trying to make that distinction so with  
15 respect to it's being in default, I would respectfully  
16 stand on our decision originally and I would argue that we  
17 are not in default.

18 With respect to GANE's Motion to Compel, the  
19 moment -- literally the moment the decision from the  
20 Commission was issued or received by our office, we began  
21 in earnest responding to this discovery. She states a  
22 date of December 1 in the Motion and I believe we can  
23 comply with that with absolutely no problem at all. In  
24 fact, with respect to the document production, obviously  
25 we have already -- that is already in the works.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20006

1 I foresee, I may or may not, I am not sure  
2 whether it will happen but I do foresee some objections  
3 coming from GANE to our responses, given the scope of the  
4 discovery which they seek, and to give you some examples:  
5 They want information and documents dating back all the  
6 way to 1964. They want, I think another time frame is in  
7 the seventies somewhere. I am just giving GANE prior  
8 notice now that we intend with respect to interrogatories  
9 and with respect to documents that are not within the  
10 files that she is listing, we intend to object on  
11 overbreadth and relevancy grounds to discovery going that  
12 far back to 1964.

13 The management contentions focuses on the 1988  
14 forward time frame. We have no problem giving her  
15 information from '88 forward and we really have no problem  
16 with going back to '85 forward.

17 CHAIRMAN BECHHOEFER: I would say some of the  
18 stuff started in '87, I think.

19 MS. GUILDAY: Okay. That's fine. I mean I  
20 can see the relevance of a year or so before that to get a  
21 feel for what was going on but to go all the way back to  
22 '64 to me seems absurd and so I am just giving the Judges  
23 and GANE advance notice of that aspect of our responses to  
24 discovery but we will have the responses to GANE probably  
25 before December 1.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1           We have -- I have a draft of discovery  
2 responses here and it is just a matter of putting them in  
3 formal form and getting them to her.

4           MS. CARROLL: I think I would --

5           ADMINISTRATIVE JUDGE KLINE: Isn't it evident  
6 that GANE's Motion to Compel is moot now?

7           MS. CARROLL: Well, we want the stuff  
8 available but we don't want pieces of paper at 25 cents a  
9 hit.

10           ADMINISTRATIVE JUDGE KLINE: That is a  
11 different problem. I just want, you know, we are not  
12 going to be able to regulate the price. The issue is  
13 just whether they are available or not and I understand  
14 now that they are going to be made available. All I want  
15 to know is does this Motion need to be resolved now or  
16 not?

17           Does the Motion to Compel filed by GANE need  
18 to be resolved? Are we going to go through a response and  
19 a resolution by the Board or not, or do we have an  
20 amicable solution to it?

21           MS. GUILDAY: I think that we are addressing  
22 her requests in their entirety so I don't see any reason  
23 for a resolution but if you need something further, I will  
24 be glad to respond to that and see if we can't work it  
25 out.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 MS. CARROLL: I feel like it is amicable but  
2 there probably needs to be some amount of process, for  
3 instance, if we want to argue we do need the documents  
4 backfilled back to 1964, then we do need a process by  
5 which we can haggle over anything you might withhold and  
6 we may not, we may find we have a gracious plenty to work  
7 with and don't want that.

8 I put forth the December 1 date with the mind  
9 that perhaps the first anybody was thinking about getting  
10 back into discovery was our bringing it up in which case I  
11 looked at a date what I guessed might be a reasonable  
12 amount of time. I don't want to delay the proceeding so,  
13 you know, it was just a suggestion. We could set an  
14 earlier date if people wanted to.

15 CHAIRMAN BECHHOEFER: Well, if they complied  
16 by some date earlier, then perhaps you could accept it as  
17 of that date and then further Motions to Compel depending  
18 on what answers you get, I am sure. The rules do set out  
19 a time frame for doing that. I think it is fairly rapidly  
20 after the response has been filed.

21 MS. GUILDAY: The only other point I guess I  
22 would address and that is any right that Georgia Tech  
23 would have to serve discovery on GANE. Respectfully, my  
24 position would be or Georgia Tech's position would be that  
25 if we serve discovery, it would be up to GANE to file some

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005



1 type of motion to strike or something based on Georgia  
2 Tech's failure to have responded earlier to their  
3 discovery and, further, it seems to me they would have to  
4 show some sign of prejudice by Georgia Tech's failure. It  
5 seems to me we are putting the cart before the horse for  
6 the Judges to be looking at that question now.

7 (Discussion held off the record.)

8 CHAIRMAN BECHHOEFER: The Board thinks that  
9 both Georgia Tech and GANE may have made a few mistakes,  
10 may not have technically complied with all of the rules  
11 but we think that full discovery is in the public interest  
12 for both sides and it would be better to start here and --  
13 not start over again but at least allow all parties to  
14 have some discovery. I think that is fair. The purpose  
15 of discovery is to help have a full adequate record on  
16 the various points of view so I think it would be in the  
17 public interest to have both parties allow further  
18 discovery.

19 Now, we will assume that Georgia Tech will  
20 respond to the prior request by December 1; therefore, we  
21 won't have to rule on the Motion to Compel and the  
22 responses aren't necessary and if you can do it earlier,  
23 that's fine but December 1 seems a fair date because  
24 particularly you get past Thanksgiving, in view of that.

25 Now, as the staff mentioned, GANE responded to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005



1 their discovery request but many of the items weren't  
2 indicated, the names of witnesses and that type of thing -  
3 - I don't have all of them in front of me -- but we think  
4 that the rules do require that answers be supplemented  
5 when you find out identity of witnesses and that type of  
6 thing, they should be revealed to the staff as a  
7 supplement to their prior discovery, so when you find out  
8 your witnesses or if you know them now anyway you could  
9 supplement your discovery and I don't know to what extent  
10 you would want to bother putting them on the record here  
11 but even that wouldn't serve as an adequate supplement;  
12 however, it is our belief it is a start. Otherwise, you  
13 would file a response. Are affidavits required? I can't  
14 remember. I can't remember if an affidavit is required or  
15 not.

16 MR. TURK: I believe so in response to  
17 interrogatories.

18 CHAIRMAN BECHHOEFER: Yes, but I think to the  
19 extent you have information here now, you can put it on  
20 the record and that would serve --

21 MS. CARROLL: Oh, to supplement now? I mean  
22 because it was going to come out later I thought when we  
23 got into the contentions.

24 I have a housekeeping announcement. My  
25 hearing aids are broken and I read lips a little bit. I

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 hear some sounds and not others and I am working at it and  
2 if I don't hear everything, I might not know, you know.

3 CHAIRMAN BECHHOEFER: So you are telling me to  
4 shout. I don't talk very loud.

5 MS. CARROLL: Well, I am just wanting y'all to  
6 know if I am acting weird, it is because I can't hear.

7 CHAIRMAN BECHHOEFER: Okay.

8 MS. CARROLL: So, for some reason or another I  
9 don't have -- I have my notes. I don't have the document  
10 I sent on the interrogatories.

11 Do you want me to just plunge on into  
12 contention 5 or do you want it to come out when we discuss  
13 contention 5.

14 MR. TURK: I think in terms of responses to  
15 our discovery requests.

16 CHAIRMAN BECHHOEFER: Yes.

17 MR. TURK: I would just as soon get them in  
18 writing.

19 MS. CARROLL: Okay.

20 MR. TURK: It will allow GANE to make a more  
21 complete response.

22 CHAIRMAN BECHHOEFER: Right.

23 MR. TURK: And we will be assured that that is  
24 something we can rely upon. Incidentally, the requirement  
25 for affidavit is in 2740(b).

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D. C. 20005

1 CHAIRMAN BECHHOEFER: Yes, I was just speaking  
2 off the top of my head. I didn't have the rule before me.

3 MR. TURK: We don't see any need to supplement  
4 the responses today except to the extent that it would be  
5 useful to know whether or not GANE will be calling  
6 witnesses.

7 CHAIRMAN BECHHOEFER: Well, that would be  
8 useful to us to know whether we should schedule Motions  
9 For Summary Disposition. If certain -- if witnesses are  
10 going to be called, it might be useful to waive any rights  
11 to file summary disposition. Summary disposition takes  
12 about two months, so it could be useful, it would from our  
13 point of view to be used.

14 MS. CARROLL: We have a witness. Do you want  
15 me to make my big announcement now?

16 CHAIRMAN BECHHOEFER: Well, I am on the  
17 management point right now.

18 MS. CARROLL: That's right.

19 CHAIRMAN BECHHOEFER: Yes. Well, that would  
20 assist the discussion.

21 MS. CARROLL: We will be subpoenaing Bob Boyd  
22 who was the Radiation Safety Officer at Georgia Tech until  
23 I think '88 or '89. Do you get affidavits even from  
24 people you are subpoenaing?

25 CHAIRMAN BECHHOEFER: Pardon me?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20006

1 MS. CARROLL: Do you subpoena them to sign an  
2 affidavit? I suppose that is a legal question I should  
3 ask my lawyers because we are forcing them to do this.

4 CHAIRMAN BECHHOEFER: Yes, we have the  
5 subpoenas but you would need a date. You might, Georgia  
6 Tech may use a subpoena for taking depositions to the  
7 extent that they need to or wish it, I don't know.

8 MS. GUILDAY: I think it may be they need to  
9 take depositions rather than us.

10 MS. CARROLL: I am sorry I can't hear.

11 MS. GUILDAY: I said it may end up that you  
12 all need to take a deposition as opposed to us but --

13 CHAIRMAN BECHHOEFER: Well, we have the  
14 subpoenas. They are blank. We can fill them in.

15 MS. CARROLL: Now, when we look at personnel  
16 records, we might identify other people more recent than  
17 Mr. Boyd that we would subpoena but Mr. Boyd is all that  
18 we know of.

19 CHAIRMAN BECHHOEFER: Is it Dr. Boyd?

20 MS. CARROLL: It is mister.

21 CHAIRMAN BECHHOEFER: Mister?

22 MS. CARROLL: Uh-huh.

23 MS. GUILDAY: Do you know at this time whether  
24 you will offer Mr. Boyd as an expert witness or as a fact  
25 witness?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20006

1 MS. CARROLL: I can't make that distinction.  
2 I am sorry.

3 MS. GUILDAY: It is my understanding that you  
4 will have to make that distinction.

5 MS. CARROLL: I will have to consult with a  
6 lawyer or something. I don't even know what that means.

7 (Discussion held off the record.)

8 I have a process question. When Pamela's  
9 2.206 petition was -- a partial decision was issued and it  
10 was remanded to this Board for those portions of her  
11 petition that we along the same lines as GANE's petition  
12 and off the top of my head, I don't know if there was  
13 emphasis on management as well as security in Ms.  
14 O'Brien's petition but I have been wondering how Ms.  
15 O'Brien formally fits into the process considering that  
16 decision.

17 CHAIRMAN BECHHOEFER: Well, that would have no  
18 effect on our proceedings at all. Ms. O'Brien is not a  
19 party. You have raised the issue, so it is your issue.

20 MS. CARROLL: It strikes me as separate but  
21 different. I mean it occurred to me when we got to the  
22 hearing stage that GANE as a separate entity would  
23 testify, subpoena and do that sort of thing but that  
24 Pamela O'Brien at that point -- this is our prehearing  
25 conference on the 2.714 and the relicensing process but

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20006

1 the Judges did, the Commission did only issue a partial  
2 decision on that. I am sure you received the document.

3 CHAIRMAN BECHHOEFER: Right. Yes, we did.

4 MS. CARROLL: Uh-huh. I just don't fully  
5 understand that.

6 CHAIRMAN BECHHOEFER: The Commission, I don't  
7 believe, and I am not even sure it would have the  
8 authority to -- well, I guess we would have the authority  
9 to do it but that was a document I think issued by a  
10 member of the staff which is appropriate. I don't think  
11 they could even direct this Board to -- the Commission  
12 itself could, but I don't think that that other, the  
13 representative of the staff -- maybe I will have it in a  
14 moment -- but could direct this Board to consider Ms.  
15 O'Brien's issue. We are considering your issues and if  
16 they are identical, then the issue would be considered but  
17 I don't think that Ms. O'Brien -- she would have to  
18 petition to come in late and I am not sure she would even  
19 qualify given the fact that one of the criteria is will  
20 the issue be argued anyway -- will it be heard anyway as  
21 one of the things we would have to consider so --

22 MS. CARROLL: Now, at a public hearing, Ms.  
23 O'Brien may testify at length on her information and  
24 knowledge that she has about issues.

25 CHAIRMAN BECHHOEFER: Well, she could be one

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20006



1 of your witnesses. I won't say she would qualify but she  
2 potentially could be a witness.

3 MS. CARROLL: But she has -- there is a  
4 process available for her to enter her information into  
5 this record.

6 CHAIRMAN BECHHOEFER: Well, you could call her  
7 as a witness, you might find objections, but you could  
8 present her as like a fact witness. I don't know whether  
9 she would be an expert or not. I don't have the  
10 information. I guess as a fact witness, you could call  
11 her.

12 MS. CARROLL: I am going to make a stab at it.  
13 I think Mr. Boyd is an expert witness. I am kind of  
14 gleaning a little bit here.

15 Now, I wouldn't announce this today that was  
16 how we hoped Ms. O'Brien could put her knowledge into the  
17 record but I mean we have got to get a hearing. That is  
18 what we have got to accomplish today. What GANE has to do  
19 is get us to a hearing and then we can bring in Ms.  
20 O'Brien and John Doe and they will have --

21 CHAIRMAN BECHHOEFER: You will have to or  
22 should identify your witnesses in advance. In fact, the  
23 Commission practice has their testimony will be submitted  
24 beforehand, two or three weeks before the hearing in  
25 writing so all of the parties will have it in writing.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005



1 Then those witnesses will be subject to cross-examination  
2 at the hearing but the testimony will get bound into the  
3 transcript. That is the usual practice. There are some  
4 limited exceptions but that is the usual way that it is  
5 handled for a licensing case particularly. It almost  
6 always is done that way so you would prepare your  
7 testimony with some schedule or whatever. What is it, 15  
8 days or 14 days?

9 MR. TURK: Fourteen.

10 CHAIRMAN BECHHOEFER: Pardon?

11 MR. TURK: I believe it is 14 days before the  
12 hearing.

13 CHAIRMAN BECHHOEFER: Before the start of the  
14 hearing or it can be made more and often we like to have  
15 it made more so we have a little chance, because of  
16 mailing time and that kind of thing, we like to look at it  
17 before the hearing too, so normally that is the kind of --

18 (Discussion held off the record.)

19 ADMINISTRATIVE JUDGE KLINE: Let me ask GANE  
20 with their proposed witness, Mr. Boyd, is he likely to  
21 voluntarily submit testimony on your behalf and prefile  
22 written testimony?

23 MS. CARROLL: He has been cooperative and he  
24 has established with us that he won't hate us for  
25 subpoenaing him.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20006

1 ADMINISTRATIVE JUDGE KLINE: He will what?

2 MS. CARROLL: He won't hate us for subpoenaing  
3 him. We don't want to offend his person.

4 ADMINISTRATIVE JUDGE KLINE: We normally  
5 require prefiled written testimony but if the witness  
6 refuses to do it or isn't really cooperating with you,  
7 then we have a problem that has to be solved.

8 CHAIRMAN BECHHOEFER: Yes, the section is 10  
9 C.F.R. 2.743(b), I guess it is, (b)(1), I think it is, if  
10 I am up to date. It is marked 1992 but I don't think it  
11 has changed.

12 MS. CARROLL: Have you got your 1995 over  
13 there?

14 MR. TURK: No, Judge Bechhoefer is --

15 CHAIRMAN BECHHOEFER: No, I am reading at the  
16 bottom of a loose leaf which is supposed to be up to date.

17 MR. TURK: I don't think that provision has  
18 changed. It is 15 days as Ms. Guilday pointed out to me.

19 Your Honor, the question posed by Judge Kline  
20 is a very poignant one. I think maybe this is a good day  
21 for us to begin focusing on what it is that GANE will have  
22 to do in order to present testimony that will be  
23 admissible in the proceeding.

24 Number one is a distinction between fact  
25 witnesses who speak about things within their personal

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 knowledge, almost as an eye witness, and expert witnesses  
2 who are qualified by reason of experience or education to  
3 provide an expert opinion and I don't know that Ms.  
4 Blockey-O'Brien is an expert in any of the fields that may  
5 be considered here before the Board.

6 CHAIRMAN BECHHOEFER: I had mentioned fact  
7 witness for her.

8 MR. TURK: Right.

9 MR. TURK: And the same also may be true of  
10 Mr. Boyd. He may be able to be called as a fact witness  
11 about things that he knows happened at Georgia Tech while  
12 he was there but it would be a different question as to  
13 whether he would be qualified in some field to speak about  
14 matters as an expert and that really will depend on what  
15 the issues are that he will be addressing. For those  
16 issues as to which he can be qualified as an expert, we  
17 wouldn't object to the Board's receiving his testimony as  
18 an expert but, for instance, if he is trained as a nuclear  
19 engineer and he wanted to speak about some unrelated  
20 field, we may well object to his being qualified as an  
21 expert.

22 CHAIRMAN BECHHOEFER: Management is the field  
23 more or less at issue.

24 MR. TURK: That is right, so without seeing  
25 his testimony, we really can't say whether or not we would

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20006

1 object to his being qualified as an expert which comes to  
2 the question posed by Judge Kline, if he is not going to  
3 file -- if he is not going to provide prefiled written  
4 testimony, then we will have to find some other means to  
5 know what it is he is going to testify about and whether  
6 he can be qualified in those fields. I guess we will have  
7 to address that with GANE to decide what is the  
8 appropriate procedure.

9           On the other hand, if he is cooperating with  
10 GANE and if he is willing to provide written testimony in  
11 advance, that will give us the insight to know what it is  
12 he will be speaking about and whether he is qualified in  
13 those fields.

14           MS. CARROLL: I can't speak for him. I wasn't  
15 prepared to answer this question today. It seems like you  
16 could depose him in order to find out what you think might  
17 be pertinent. I don't really -- I don't know.

18           MR. TURK: In our interrogatories to GANE, we  
19 did ask for identification of witnesses. We asked for a  
20 summary of the testimony that they will be expecting to  
21 provide and the basis for their views. If GANE looks at  
22 our interrogatory, they will see that GANE has the  
23 obligation to respond to us and tell us those things.  
24 After we see those responses, then we can decide if we  
25 need more.

1 MS. GUILDAY: And with respect to Ms.  
2 Carroll's statement that we can take a deposition. We  
3 cannot take a deposition or it would be a worthless  
4 endeavor to take a deposition until he has given us some  
5 indication as to the areas of testimony that they intend  
6 to present -- the issues that he is going to address.  
7 That decision must be made first and then we can, if  
8 depositions are appropriate, go that step.

9 MR. TURK: And incidentally, Your Honor, I  
10 would point out to GANE that in our Interrogatory 23, we  
11 asked GANE to identify any person that GANE intends to  
12 call as a witness. If they expect to call any such person  
13 as an expert witness, they are requested to state the  
14 subject matter to which the person is expected to testify,  
15 the substance of the facts and opinions that the witness  
16 is expected to provide and a basis, a summary of the  
17 grounds for that opinion.

18 And, also, in number 24, we say provide the  
19 details of the person's education, employment history and  
20 asserted area of expertise and it goes on from there, so  
21 we did ask the questions that GANE should consider in a  
22 supplementation.

23 CHAIRMAN BECHHOEFER: Yes, when you supplement  
24 your response, that should come out. Of course to the  
25 extent you wish Ms. Blockey-O'Brien to be a factual



1 witness, that should be mentioned in the response as well.  
2 Any witness you have. Now, if you get somebody at the  
3 last minute, there are means you can supplement that.

4 MS. CARROLL: Now, the public will have  
5 limited appearances. They won't be subject to cross-  
6 examination or anything.

7 CHAIRMAN BECHHOEFER: Probably similar to what  
8 we did before. We would hold a session during the hearing  
9 session, assuming we get that far, because you have to get  
10 over the summary -- we have to decide about whether the  
11 summary disposition is appropriate. I might say if we  
12 could avoid that, it does speed things up a lot and -- but  
13 it also depends on what your witnesses are going to  
14 testify to.

15 To defeat summary disposition, we would have  
16 to find that there is unresolved issues, factual issues  
17 still remaining but if there were real expert testimony,  
18 that would almost by definition qualifies but a person  
19 would have to be an expert and offered differently from  
20 other party's experts.

21 MS. CARROLL: Are we going to try and settle  
22 this now, whether Mr. Boyd is an expert witness or not?

23 CHAIRMAN BECHHOEFER: Well, I think it will  
24 have to -- you should put down his qualifications in your  
25 supplement to the staff's, I guess it was an interrogatory

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 you are asked that right now. I have it but not right  
2 before me.

3 MS. CARROLL: I was willing to plunge in but  
4 that is something that I will write.

5 MR. TURK: I think it would be appropriate for  
6 GANE to take the time to prepare the proper response.

7 CHAIRMAN BECHHOEFER: Yes, you can probably do  
8 it better by taking a little time. You have got several  
9 weeks to do it and you could probably get it done better.

10 MS. CARROLL: I didn't hear that.

11 CHAIRMAN BECHHOEFER: I said you will have  
12 several weeks to do it and I think you could probably do  
13 it better if you sat down and thought about what you  
14 write, that kind of thing.

15 MS. CARROLL: Uh-huh.

16 MS. GUILDAY: Judge Bechhoefer, if I could  
17 just make one other comment. I am not sure that GANE  
18 understands the point I was trying to make earlier.

19 My understanding is Mr. Boyd left Georgia Tech  
20 in 1988 so we need to know from you in your interrogatory  
21 responses whether he will be offering factual testimony  
22 from '88 forward when he wasn't at Georgia Tech or whether  
23 he is offering expert opinions in support of your  
24 contentions that there is something wrong with the current  
25 management at Georgia Tech and I think that is your

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005



1 obligation under the rules and I just wanted to make sure  
2 that you understood what my point was.

3 MS. CARROLL: I understand.

4 CHAIRMAN BECHHOEFER: And, of course,  
5 identification of any documents on which you are going to  
6 rely should also be -- documents on which you are going to  
7 rely should be also identified in response to the  
8 outstanding staff interrogatory, or was that a part of  
9 your Motion to Produce?

10 MR. TURK: Our Interrogatory 26 asked GANE to  
11 identify all documents that they intend to rely upon in  
12 support of their contention. And then 27 asks them to  
13 provide copies of those documents but if it is an NRC  
14 document, of course we won't ask them to make a copy of  
15 that for us.

16 MS. CARROLL: Did you just set a deadline for  
17 this?

18 CHAIRMAN BECHHOEFER: No, we set the deadlines  
19 but we haven't yet.

20 MS. CARROLL: Okay. I am with you so far.

21 ADMINISTRATIVE JUDGE LAM: Mr. Turk, how much  
22 supplementary response are you waiting for?

23 MR. TURK: For most of them.

24 ADMINISTRATIVE JUDGE LAM: Most of them?

25 MR. TURK: Yes. In GANE's response to our

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20006

1 discovery request, they provided a list of documents they  
2 would like to see. Most of them, at least in response to  
3 our request, are in the public record but they did not  
4 identify which documents they are going to actually rely  
5 upon. They said they would do that after they read the  
6 documents and the same thing with respect to witnesses,  
7 they said they don't know at that time, that is to be  
8 determined.

9 ADMINISTRATIVE JUDGE LAM: So you are still  
10 waiting for most of the responses?

11 MR. TURK: We are waiting for most of the  
12 responses. We really have no seen anything substantive  
13 yet in the way of responses to our interrogatories but we  
14 felt that the responses they provided at the time they  
15 provided them were probably as complete as they could make  
16 them at that time but we do need supplementation.

17 CHAIRMAN BECHHOEFER: All right. Now, were  
18 all of the documents which you sought available in the  
19 Atlanta area because this Board at least doesn't consider  
20 a pro se intervenor availability of the Washington public  
21 document room. We think that certainly a local public  
22 document room that will be established, that is clearly  
23 documents that are available. If the documents were  
24 available from Georgia Tech and you saw all of the  
25 documents that you sought from the staff, then in effect

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 you have had local access to documents but we would not as  
2 you have given response rely on Washington public  
3 documents. We don't consider that as being available to a  
4 local pro se party.

5 ADMINISTRATIVE JUDGE KLINE: Let me ask Mr.  
6 Turk, is it possible for GANE to identify the documents  
7 they need from Georgia Tech and then order by telephone  
8 from the Washington PDR and pay the fee? I want to know  
9 about the PDR.

10 MR. TURK: For the PDR for sure.

11 ADMINISTRATIVE JUDGE KLINE: They could order  
12 by phone identified documents.

13 MR. TURK: Yes.

14 ADMINISTRATIVE JUDGE KLINE: And then pay the  
15 copying fee of nine cents rather than --

16 MR. TURK: Yes, GANE could do that, assuming  
17 that we have the documents which goes back to one of the  
18 issues raised earlier on which is that some -- many of the  
19 documents that GANE is seeking are internal Georgia Tech  
20 documents.

21 ADMINISTRATIVE JUDGE KLINE: Yes. Okay, I  
22 understand that.

23 MR. TURK: Which NRC does not have.

24 ADMINISTRATIVE JUDGE KLINE: But as to  
25 documents that are publicly available, it appears that you

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 could order from the Washington PDR by phone after you  
2 identify what you want. In other words, you can browse in  
3 relevant documents here, then order what you want from the  
4 Washington PDR but you do have to pay something.

5 MS. CARROLL: There is one problem and that is  
6 that I don't know how far back. I only spent a couple or  
7 a few hours over there the other day and didn't get very  
8 far back but earlier than some date, they are in a  
9 warehouse so I mean, you know, how available are the  
10 documents we might be interested in because frankly we  
11 think it would help our case to establish a 30-year  
12 pattern. We do think we need to go far back to show it is  
13 still going on.

14 ADMINISTRATIVE JUDGE KLINE: Okay.

15 MS. CARROLL: And it is not just going on  
16 since '88, it is going on since '68 so that could be a  
17 problem.

18 ADMINISTRATIVE JUDGE KLINE: It appears that  
19 part of our discovery problem has been that people have  
20 sort of left discovery matters sit dead in the water and  
21 didn't go through them and at the risk of getting legal  
22 advice, you shouldn't do it. It would be best not to let  
23 these things sit dead in the water.

24 In other words, it is appropriate to object.  
25 That is a good answer so if you want to make a discovery

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 request going back 30 years, do it if you haven't already  
2 done it and if they don't like it, then they will object  
3 and then we will resolve it for you but you just can't let  
4 it sit and so that is why you need to follow these rules  
5 so we can get these things solved.

6 It appears that that is a going controversy  
7 and it is going to need resolution, so why don't we just  
8 get with it?

9 (Discussion held off the record.)

10 CHAIRMAN BECHHOEFER: Well, we would like to  
11 make sure now, would the parties like to propose any dates  
12 -- I know we have December 1 for one of the responses to  
13 GANE's prior discovery but should we have some dates set  
14 for other matters such as supplementation, for instances,  
15 of responses to the staff?

16 Prior to your receiving answers from Georgia  
17 Tech, presumably you could respond to the -- supplement  
18 your answers to the staff. Would December 1 be a good  
19 date? I don't know what day December 1 is, when December  
20 1 is.

21 MS. CARROLL: I think it is a Friday.

22 It is a Friday. That would be fine and, of  
23 course, we will supplement again once we begin to review  
24 the Georgia Tech documents we are asking for.

25 MS. GUILDAY: I am sorry, I didn't hear the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005



1 date.

2 CHAIRMAN BECHHOEFER: December 1 both for your  
3 following up and responding and for GANE's response --  
4 supplement to the staff's interrogatories.

5 MS. CARROLL: Did Georgia Tech indicate  
6 whether they have any desire to discover from us?

7 CHAIRMAN BECHHOEFER: I understood they did  
8 indicate they do. Now when will Georgia Tech know -- when  
9 would Georgia Tech like to file it's discovery. Do you  
10 want December 1 the same date for the filing date?

11 MS. GUILDAY: The only reason I would say no  
12 to that is we would only need discovery to the extent that  
13 GANE does not completely supplement the staff responses.

14 I mean by asking all of the documents and all  
15 of the witnesses, they have asked the same questions that  
16 we did and so if there is anything left remaining after  
17 they have supplemented to the staff, we would like  
18 discovery on that, so, December 10?

19 MR. TURK: Actually, Your Honor, I think that  
20 we may have to play with the date a little bit because as  
21 I understand GANE's initial responses to us, they are  
22 waiting to see documents before they give us complete  
23 responses so if GANE is not going to complete it's  
24 discovery against the applicant until December 1, they  
25 really would probably need a couple of weeks after that

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005



1 before they could supplement their answers to us.

2 CHAIRMAN BECHHOEFER: Maybe that is right,  
3 yeah.

4 MS. CARROLL: I was thinking we would file  
5 more than once but, you know, we can just wait.

6 MR. TURK: I would suggest if GANE finds this  
7 acceptable, maybe wait until the 15th of December to  
8 provide the supplementation to us and by then I think they  
9 would know which documents they are going to rely upon and  
10 which witnesses they may want to call.

11 CHAIRMAN BECHHOEFER: What is the 15th?

12 MR. TURK: Also a Friday.

13 CHAIRMAN BECHHOEFER: Also Friday. Okay.

14 MS. CARROLL: Let me ask you this. Is Georgia  
15 Tech going to have limited hours or anything as the  
16 quarter ends or the holiday approaches or any such?

17 DR. KARAM: Georgia Tech closes the day before  
18 Christmas through the end of the year.

19 MS. CARROLL: That shouldn't affect this  
20 though.

21 MR. NORDIN: We will be closed Thursday for  
22 Thanksgiving and the following Friday.

23 MS. CARROLL: Right. I guess I will just have  
24 to work out my holiday shopping. It is hard every year  
25 anyway.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20006

1 MR. TURK: Your Honor, if --

2 CHAIRMAN BECHHOEFER: We have December 1 and  
3 December 15 now. Now, the Georgia Tech discovery, do you  
4 want to wait until you see the supplement to the staff?

5 MS. GUILDAY: If we could, I would prefer to  
6 do that.

7 CHAIRMAN BECHHOEFER: Yes.

8 MS. GUILDAY: Because we may not have any.  
9 There may not be anything left.

10 CHAIRMAN BECHHOEFER: By the way, if you  
11 decide -- if we set a date now and you decide that you  
12 don't need more discovery, I would like a note in the  
13 record to reflect that so we know what is happening. By  
14 then, the mail service may even be out of business, you  
15 know, but, assuming it won't be.

16 So if they file the 15th, it will probably  
17 take until the 20th to get to you, the holiday season  
18 comes about and you are going to be closed, probably we  
19 should set some date in January.

20 MS. CARROLL: Before we go forth with this,  
21 if I am hearing right, I sort of have an objection. Now,  
22 if Georgia Tech wants to say we think that the NRC  
23 counsel's questions cover all of our questions and we will  
24 participate with them in objecting to GANE's response if  
25 we think, you know, if they think GANE is withholding or

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON D.C. 20005

1 whatever, that's fine; but if they are waiting to see what  
2 happens and then they are going to go, oh, that makes me  
3 think of another question, I don't feel like we have got  
4 that right and, you know, we had our deadline back in July  
5 and I think if you have any questions you should get them  
6 in by December 1, if you have any questions additionally  
7 to the NRC counsel. I have no problem with you  
8 participating with them if you guys want to gang up on us,  
9 that's okay, but I just don't think you should be able to  
10 add to that unless I am misunderstanding that I can begin  
11 adding to my requests which I thought I had to kind of  
12 close down in July.

13 CHAIRMAN BECHHOEFER: Yes. Would your request  
14 only then be limited to the general subject matter of what  
15 the staff inquired about?

16 MS. GUILDAY: What do you mean?

17 CHAIRMAN BECHHOEFER: If the staff initially  
18 didn't ask about something, did or didn't, but if they  
19 didn't ask a question that you were going to ask, I think  
20 that under the methodology, you probably shouldn't be  
21 allowed to come back at a later date and ask that question  
22 but if the question was asked by the staff, responded to,  
23 and there is some objections to that --

24 MS. GUILDAY: Well, I mean I think this will  
25 resolve that. We will file a set of discovery and who

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20006

1 are your witnesses, what your documents are and all of  
2 that type of thing if their supplementation to either -- I  
3 mean  
4 if their responses to us or their supplementation to the  
5 staff's discovery leaves questions unanswered, then we  
6 would reserve the right to follow up on that but beyond  
7 that, I don't see --

8 CHAIRMAN BECHHOEFER: Yeah, on those topics  
9 only though.

10 MS. GUILDAY: Right, whatever they didn't  
11 answer in that set of discovery, uh-huh.

12 CHAIRMAN BECHHOEFER: But if the staff forgot  
13 to ask a question and, you know, something came to mind, I  
14 guess you would have to at least ask our permission to ask  
15 her some questions then.

16 MS. GUILDAY: I can't imagine any questions  
17 besides documents and witnesses and so I don't foresee  
18 there is any problem.

19 CHAIRMAN BECHHOEFER: Well, I can't either but  
20 I am just hypothesizing.

21 MS. GUILDAY: The problem I do foresee in  
22 timing is anticipating GANE's moving to compel on  
23 objections that would fall into either, again, the time  
24 frame, going back to '64, or where the line is drawn  
25 between security and management because 75 to 80 percent

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20006

1 of the interrogatories and requests for production relate  
2 to security matters and I don't know if there is a line to  
3 security, if that contention has now been mooted, to  
4 require us to respond to some 20 questions dealing with  
5 security. I mean we don't feel it is relevant now but  
6 obviously they think it is and I can see that there is  
7 going to be --

8 CHAIRMAN BECHHOEFER: Well, if you could  
9 clearly -- if they don't relate at all to the management  
10 contention, then they are not relevant, you don't have to  
11 answer. To the extent they combine management and  
12 security, I guess to the extent they deal with management,  
13 you probably should answer and I haven't got them in front  
14 of me right now while I do have them.

15 MS. GUILDAY: I am just saying if that is  
16 going to be a problem then at some point we will have to -  
17 -

18 CHAIRMAN BECHHOEFER: As far as we are  
19 concerned, right now security is no longer an issue.  
20 Whether it will be by the end of the day or by two weeks  
21 from now, who knows, but we are going to talk about that  
22 later.

23 MS. CARROLL: Now, I did think about this and  
24 it occurred to me, I don't think this would probably be  
25 the legal way of doing things, that we could sit down and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 confer on the list and I could make my case when I think  
2 the security issue is also a management issue but I  
3 imagine you are going to go down the list and you are to  
4 say we object, this goes for a moot contention, here is  
5 your docs on this and I will write back and I will go  
6 objection overruled because that is a management issue, I  
7 mean and that we will work it out that way or we could try  
8 to meet on it and then resort to battling it out on paper  
9 later.

10 CHAIRMAN BECHHOEFER: Would it be useful for  
11 you people around lunch time to just set aside a little  
12 extra time and get together and see if you can decide  
13 which are management and which aren't?

14 MS. GUILDAY: I think it might be. I have a  
15 thought. We have a draft response prepared and I think we  
16 can get that to GANE much before the December 1 deadline  
17 and she could see which ones we went one way and she is  
18 going the other and tell us the ones we disagree on and  
19 then discuss those.

20 CHAIRMAN BECHHOEFER: Yeah, I think if the  
21 interrogatories could go to both contentions, they should  
22 be answered insofar as they apply to management, not to  
23 security, but I don't know whether it would be difficult  
24 to separate that or not.

25 MS. CARROLL: I mean I think the security plan

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005



1 is not management but a TV crew walking in is a management  
2 issue, you know, for example.

3 CHAIRMAN BECHHOEFER: Well, that has been  
4 submitted as a security issue.

5 MS. CARROLL: True.

6 CHAIRMAN BECHHOEFER: Not as a management  
7 issue.

8 MS. CARROLL: True, but I mean it has it's  
9 management component and I will bring it up as a  
10 management problem in case the security contention doesn't  
11 fly. That is just my logic on it.

12 CHAIRMAN BECHHOEFER: But you will have to  
13 identify eventually what is going to go into your  
14 management response. What we have before us, I couldn't  
15 find the word management anywhere in that proposed  
16 contention.

17 I assume that everybody else, all the various  
18 parties, Georgia Tech and the staff, got copies of that.  
19 We got a FAX that came in on a holiday but we picked it up  
20 Monday at least.

21 MS. GUILDAY: We received it. I received the  
22 hard copy in the mail in the office.

23 CHAIRMAN BECHHOEFER: I have never seen the  
24 hard copy.

25 MS. CARROLL: Well, I left the newspaper

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 article out of the FAX regretfully so you haven't seen the  
2 whole thing.

3 CHAIRMAN BECHHOEFER: Oh, well, we hadn't, at  
4 the time we left. I wasn't around Friday. I had a day  
5 off on Friday and on Monday though, we had not received  
6 anything except the FAX, so --

7 MS. CARROLL: Some people, the local people, I  
8 think Pamela got hers yesterday and maybe yours, the hard  
9 copies will come in today. I dispatched them Friday.

10 CHAIRMAN BECHHOEFER: Well, anyway, I haven't  
11 seen it. I don't know whether Mr. Turk received his or  
12 not.

13 MR. TURK: We did get it. I have not seen the  
14 hard copy yet but we did get the FAX.

15 CHAIRMAN BECHHOEFER: Yes, we got the FAX.

16 MR. TURK: Actually three documents: The  
17 Motion to Compel Georgia Tech, the new contention and the  
18 request for Commission action on Cobalt 60.

19 CHAIRMAN BECHHOEFER: Right. Well, we are out  
20 of that. We will leave that with the Commission unless  
21 the Commission orders us to do something about it. They  
22 will have to -- the Commission will have to take action  
23 officially on that one.

24 Okay, so the only dates we have now are the  
25 1st and the 15th and the 1st, Georgia Tech will file.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 MS. GUILDAY: We will answer and we will serve  
2 any discovery we want.

3 CHAIRMAN BECHHOEFER: Right, and I suppose to  
4 the extent the questions are covered by -- are similar to  
5 the staff's, the December 15 response, probably you could  
6 file one piece of paper. That would save a little. Of  
7 course, everybody has to be served anyway and so --

8 MS. CARROLL: Now, if we --

9 CHAIRMAN BECHHOEFER: But to the extent they  
10 differ, you will have to separately file.

11 MS. CARROLL: And if we wanted to compel one  
12 of the parties on a request we had made that they denied,  
13 I think that would be a separate document than our  
14 supplemental answers?

15 CHAIRMAN BECHHOEFER: Oh, yes. That would  
16 have to be separate.

17 MS. GUILDAY: I think I am on track. Isn't  
18 that like five days you will have to file you --

19 CHAIRMAN BECHHOEFER: I probably said 10. I  
20 am not sure.

21 MS. CARROLL: That sounds right.

22 CHAIRMAN BECHHOEFER: Let me turn back a page  
23 here.

24 MS. CARROLL: However, if Georgia Tech  
25 fulfills the discovery request early, the clock, the 10-

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 day clock wouldn't actually start until the 1st.

2 CHAIRMAN BECHHOEFER: And by the way, for what  
3 it is worth, I don't think the rule should read this way  
4 but it says 10 days after the date of the response, or  
5 failure to respond. It doesn't say 10 days after serving  
6 the response. For whatever that is worth, it should say  
7 service but it doesn't because 5 of those 10 days could be  
8 mailing time, but it is a rapid response in any event.

9 MS. CARROLL: Uh-huh.

10 CHAIRMAN BECHHOEFER: We would hope that you,  
11 the parties that are local at least, could perhaps --  
12 almost hand delivery would be useful.

13 MS. GUILDAY: That is not in the State's  
14 budget.

15 CHAIRMAN BECHHOEFER: Pardon?

16 MS. GUILDAY: That is not in the State's  
17 budget.

18 CHAIRMAN BECHHOEFER: Oh.

19 MS. GUILDAY: We do no hand delivery.

20 CHAIRMAN BECHHOEFER: Oh, I see.

21 MS. GUILDAY: I am sorry.

22 MS. CARROLL: Well now, I am going to put it  
23 in writing, do not deliver any paper to me. It just blows  
24 my mind that if they mail me paper they can charge me for  
25 it.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBER,

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 Is it written anywhere in the NRC law that  
2 they have to, it is at their own expense, but they--

3 CHAIRMAN BECHHOEFER: Who is doing that?

4 MS. GUILDAY: We usually --

5 MS. CARROLL: If you fill my interrogatory  
6 requests, you are going to bill me.

7 MS. GUILDAY: Yes.

8 MS. CARROLL: Twenty-five cents a page.

9 CHAIRMAN BECHHOEFER: Oh, that's different.  
10 That is not what I was talking about.

11 MS. CARROLL: Oh, so you can fill my discovery  
12 request and it won't be a quarter a page?

13 Randy is looking like he is saying yes and Pat  
14 is looking like she is saying no.

15 MS. GUILDAY: Well, I mean interrogatories,  
16 yes, that is information and yeah, there is no charge for  
17 that but any documents you are requesting, yes.

18 CHAIRMAN BECHHOEFER: The production of  
19 documents.

20 MS. CARROLL: Okay.

21 MR. NORDIN: Well, I will write you a letter.

22 MS. CARROLL: And give me a list of whatever  
23 you will make available to me.

24 CHAIRMAN BECHHOEFER: Whatever the State, does  
25 the State plan to waive or reduce charges?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D. C. 20005

1 MS. GUILDAY: It is Georgia Tech's budget that  
2 is the matter.

3 MR. NORDIN: The fee is set to cover both the  
4 retrieving and copying of documents. I am not sure how  
5 much we could tolerate in the way of documents.

6 CHAIRMAN BECHHOEFER: Right, but maybe you  
7 people, you know, if the NRC can do something for 9 cents,  
8 I am not sure that Georgia should require 25.

9 MR. NORDIN: I understood the NRC 9 cents does  
10 not include retrieving charges. The number of copies --

11 CHAIRMAN BECHHOEFER: But she has identified  
12 the documents already at this point for copying. Is there  
13 something --

14 ADMINISTRATIVE JUDGE KLINE: We have  
15 established that she could do it by phone.

16 CHAIRMAN BECHHOEFER: Well, from the NRC,  
17 yeah.

18 ADMINISTRATIVE JUDGE KLINE: Is the retrieval  
19 cost or charge just for her to come in and look at the  
20 files?

21 MR. NORDIN: No.

22 MR. TURK: No.

23 ADMINISTRATIVE JUDGE KLINE: It is only when a  
24 copy is requested?

25 MR. NORDIN: That is right.

**NEAL R. GROSS**  
COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVENUE, N.W.  
WASHINGTON, D.C. 20005



1 MR. TURK: Right.

2 CHAIRMAN BECHHOEFER: Right.

3 ADMINISTRATIVE JUDGE KLINE: Okay, so that the  
4 process we outlined earlier, identification from them,  
5 request from NRC is open to you.

6 CHAIRMAN BECHHOEFER: Right, but it doesn't  
7 apply to documents that the NRC doesn't have.

8 ADMINISTRATIVE JUDGE KLINE: I understand  
9 that.

10 MR. TURK: Your Honor, one thing that I think  
11 -- I am sorry.

12 CHAIRMAN BECHHOEFER: What I was going to  
13 inquire was if the State had just a copy charge for an  
14 identified document that would be less than the full  
15 retrieval

16 MR. NORDIN: The only State charge I am aware  
17 of is set out in the Open Records Act and that is 25 cents  
18 a page.

19 CHAIRMAN BECHHOEFER: I see. Okay. Well,  
20 that is all I wanted to know. Okay, now, Mr. Turk, you  
21 had a statement?

22 MR. TURK: I wasn't sure if GANE is under the  
23 impression that they are entitled to receive copies of  
24 documents in response to their discovery requests or not.

25 MS. CARROLL: Oh, I thought I was when I

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 placed the request and you educated me as to publicly  
2 available documents and I am educated now that I can have  
3 anything I want almost from Tech if I am willing to pay.  
4 Okay?

5 MR. TURK: The point I wanted to make is that  
6 discovery rules entitle you to inspect and to copy at your  
7 expense.

8 CHAIRMAN BECHHOEFER: You mean I can take your  
9 personnel records off Tech and go to Kinko's at 5 cents a  
10 shot?

11 MR. NORDIN: No, but you can bring a copying  
12 machine to our office if you would like.

13 CHAIRMAN BECHHOEFER: Well, there are some  
14 portable machines.

15 MR. NORDIN: We have had people do that quite  
16 frequently.

17 CHAIRMAN BECHHOEFER: Sure.

18 (Discussion held off the record.)

19 CHAIRMAN BECHHOEFER: Could the parties  
20 perhaps suggest a date we could say further discovery is  
21 closed? In other words, at least for filing further  
22 discovery requests or depositions requests, do you think  
23 it would be possible to set some sort of a date which  
24 could be changed I believe by the Board but -- or are  
25 things too indefinite at this stage to do that, say

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20006

1 January 15, February 1, or something like that? Do the  
2 parties have any thoughts on that?

3 We would like to keep the proceeding moving.  
4 It is better to get it resolved as quickly as possible.

5 ADMINISTRATIVE JUDGE LAM: I think setting a  
6 date to end discovery is important for all parties.

7 CHAIRMAN BECHHOEFER: Yes.

8 ADMINISTRATIVE JUDGE LAM: Otherwise, this  
9 process is endless.

10 CHAIRMAN BECHHOEFER: Yes, that is what I was  
11 trying to get to.

12 MS. GUILDAY: February 1 looks good to us.

13 CHAIRMAN BECHHOEFER: Would that February 1 be  
14 okay or could it be any time earlier? Does the staff have  
15 any suggestions or does February 1 look good to you.

16 MS. CARROLL: Georgia Tech, you like February  
17 1 better?

18 MS. GUILDAY: That's fine.

19 MS. CARROLL: January 15 sounds fine to me.  
20 They sound similar.

21 MR. TURK: The only question I have is whether  
22 we are going to need any further discovery once we see the  
23 supplementation. If we do need to go to --

24 CHAIRMAN BECHHOEFER: Well, that is prior to  
25 that date.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 MR. TURK: Right. If we do need to, for  
2 instance, take depositions, we would have to be able to  
3 schedule those at a time to accomplish them before the  
4 close of discovery unless we would simply close discovery  
5 on all things other than depositions by a date like  
6 January 15 and possibly leave open to February 1 as a date  
7 for completing any depositions. That is assuming any are  
8 felt to be necessary.

9 CHAIRMAN BECHHOEFER: Well, would Georgia Tech  
10 prefer February 1 as just an overall date or the 15th date  
11 for everything except the depositions as the staff just  
12 suggested?

13 MS. GUILDAY: Either way is fine with us.

14 CHAIRMAN BECHHOEFER: Which would GANE prefer?

15 MS. CARROLL: I don't think it matters much  
16 one way or the other. We will be hard pressed no matter  
17 what.

18 (Discussion held off the record.)

19 CHAIRMAN BECHHOEFER: Okay, well, we will set  
20 the February 1 date but that includes depositions if that  
21 can be done. Of course, we could modify dates but I think  
22 putting up a target date would be useful.

23 MS. CARROLL: I take it this process isn't  
24 like Perry Mason where we bring surprise witnesses in?

25 CHAIRMAN BECHHOEFER: No, it would have to be

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 something newly developed, new information, that kind of  
2 thing but normally you can't do that, at least in  
3 licensing cases. We are going to expect this prepared  
4 testimony as mentioned. We can grant exceptions to that,  
5 2.743 sets out the rules on that and normally exceptions  
6 are not granted. The Commission does like prepared  
7 testimony and it makes it much easier for us to check any  
8 sources first and look at some of the background documents  
9 and we will have read and be familiar with that testimony  
10 and prepared for cross-examination on that at the hearing.

11           As an aside on this, we would swear in the  
12 witness, then counsel would normally ask regarding the  
13 prefiled testimony whether there are any changes they wish  
14 to make or any modifications, corrections, typos, anything  
15 like that and then as corrected, it will go into the  
16 record as the witness's testimony. That would take a very  
17 short period of time and then cross-examination would  
18 start.

19           MS. CARROLL: Well, now, let's say, you know,  
20 we have all been looking at this testimony on paper but  
21 the public comes to this hearing, I mean that is a  
22 significant reason I would want to do it, not just to  
23 create a record but so the public will be privileged to  
24 some of this, so that testimony would be given again  
25 orally?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D. C. 20005

1 CHAIRMAN BECHHOEFER: No, it won't be. It  
2 will be subject to cross-examination.

3 MS. CARROLL: It is available for an  
4 interested party to see a written transcript or --

5 CHAIRMAN BECHHOEFER: Well, the testimony will  
6 be in the public record earlier. Proposed testimony I  
7 believe this gets in the public document room.

8 MS. CARROLL: It will be in the public  
9 document room in Washington?

10 CHAIRMAN BECHHOEFER: That is my impression.

11 MS. CARROLL: So interested Atlantans --

12 MS. BLOCKEY-O'BRIEN: Cannot see it.

13 CHAIRMAN BECHHOEFER: But the public documents  
14 doesn't get things immediately.

15 MR. TURK: It will be in the public document  
16 room.

17 CHAIRMAN BECHHOEFER: And if there is a local  
18 room around here it will be there too.

19 MR. TURK: Also, at the time of the hearing,  
20 we will be bringing the hard copies of testimony to be  
21 filed with the court reporter and she will then bind them  
22 into the transcript. GANE as well, if they have prefiled  
23 testimony that they are interested in the public seeing, I  
24 would assume they would bring extra copies and would urge  
25 the public to pick up a copy.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005



1 CHAIRMAN BECHHOEFER: And normally the staff  
2 does bring extra copies.

3 MR. TURK: We normally do.

4 CHAIRMAN BECHHOEFER: At most hearings I have  
5 been at, the staff has extra copies to hand out to other  
6 interested persons other than the parties.

7 MR. TURK: GANE has raised an interesting  
8 point about possibly bringing in surprise witnesses. In  
9 fact, the same discovery rule that I mentioned before, the  
10 agreement to supplement under 2.740(e), requires that any  
11 witnesses be identified as soon as their identities are  
12 known.

13 CHAIRMAN BECHHOEFER: Right.

14 MR. TURK: So that even if the night before  
15 the hearing, GANE suddenly receives word that there will  
16 be some new witness, they would have the duty to  
17 supplement immediately.

18 CHAIRMAN BECHHOEFER: That is correct.

19 MR. TURK: And I think at that point also  
20 there may be objections as to why that person was not  
21 identified earlier and I think Perry Mason is no longer a  
22 good example, I think the O.J. Simpson trial provided more  
23 recent examples even in a criminal setting where materials  
24 produced late on the eve of trial can be excluded as  
25 having been improperly left to sandbag.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D. C. 20005

1 MS. CARROLL: Now, we can have -- it is my  
2 sense that your parade of interested citizens very rarely  
3 sets the process on it's ear or says anything startling or  
4 that changes anything but it is possible for that to  
5 happen so anybody we are unable to get a commitment from  
6 or anything in a timely fashion could take their five  
7 minutes and hope it makes a difference.

8 CHAIRMAN BECHHOEFER: Well, we will have a  
9 limited appearance session.

10 MS. GUILDAY: I am not sure I understand if  
11 what GANE is saying is members of the public are -- the  
12 hearing is open to members of the public and they can take  
13 the stand and say their five minutes; if GANE knew ahead  
14 of time that they were a witness, they intended to be a  
15 witness to present testimony, then I think those people  
16 should be identified in discovery and not --

17 MS. CARROLL: Well, I think you call that  
18 limited appearances, I think that is a formal term for  
19 your citizen who thinks about it in the bathtub the night  
20 before and goes I am going to go down there and I am going  
21 to, you know, express my concern and stand up and be  
22 counted, an individual who cares.

23 CHAIRMAN BECHHOEFER: At that, they could come  
24 and they could say anything they want to. It doesn't even  
25 theoretically have to have anything to do with the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 reactor or the case but it is not evidence and we used one  
2 statement to raise a question ourselves but the parties  
3 have to raise the question and they have to go through the  
4 new contention for it. There is, I think, in 2.714 there  
5 is a five-factor test that has to be responded to at least  
6 and the parties will have a chance to talk about that.

7           That five-factor test may have to be used for  
8 the new contention they've already got if indeed it is a  
9 new contention, I am not sure. We will talk about that  
10 later but you would have to demonstrate very good cause  
11 why that individual was not identified earlier and you  
12 would have to supplement your discovery as soon as you  
13 found out about that person for being a witness.

14           The theory of the NRC hearing practice is to  
15 not have anything -- it is to have no surprises. Everyone  
16 knows what the witnesses will say, what the scope of the  
17 testimony is, and there will be, of course, the validity  
18 of it will depend in part on cross-examination, the weight  
19 to be given it, so the Commission doesn't want surprises,  
20 wants the public to be fully informed and the parties to  
21 be fully informed ahead of time unless it is a very  
22 extraordinary circumstance.

23           MS. CARROLL: Am I to assume that there would  
24 be a two-week period that the Commission would accept  
25 written comments following a public hearing in which case

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 the public may very well be learning things they don't  
2 know and desire to comment?

3 CHAIRMAN BECHHOEFER: I don't think there is  
4 any such provision. You would have your testimony. After  
5 the hearing would be proposed findings. All parties will  
6 have a chance to file a post finding. We would set the  
7 schedule for that. There is a standard schedule which we  
8 could modify if necessary but that doesn't get set until  
9 after the hearing -- at the hearing and there is no, the  
10 parties can always -- not parties, people, persons can  
11 always file limited appearances to state statements. They  
12 can send them to the secretary too but it probably won't  
13 have much effect. We would have to re-open the record  
14 then and there is a very stringent criteria on re-opening  
15 the record particularly if it involves a new contention.  
16 I won't say it is impossible, but it is very difficult.

17 (Discussion held off the record.)

18 Why don't we take a short break, fifteen  
19 minutes maybe and then we will come back on the record. I  
20 think we have finished both the discovery matters. We  
21 will have to talk about whether we will set a schedule for  
22 summary disposition motions, whether we should hold off or  
23 whether the parties are willing to waive that just for  
24 quickly being able to get into the hearing, so when we get  
25 back, we will talk about that.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 (Whereupon, a short recess was taken.)

2 CHAIRMAN BECHHOEFER: We are back on the  
3 record. The Board would like to correct one matter that  
4 we made statements about. In terms of prefiled written  
5 testimony, we could waive that requirement with respect to  
6 hostile witnesses, for instance, so if a party is calling  
7 a witness who is a hostile witness, upon request to us, we  
8 can waive that requirement.

9 MS. CARROLL: For instance, somebody that we  
10 subpoena that doesn't know us, that doesn't care to  
11 support our concerns but we think has information that we  
12 could use would be that type of hostile witness?

13 CHAIRMAN BECHHOEFER: Yes, I think that's --  
14 that's correct, yes, but normally witnesses who are  
15 supporting your case present testimony with respect to  
16 your case, we would expect prepared prefiled testimony.  
17 2.743(b) is the basic rule on that.

18 We have had one request and I think we can  
19 honor that right now. It concerns the fuel case and  
20 apparently GANE has brought Mr. Johnson here to at least  
21 make a statement as to standing and since he is here now,  
22 normally we would wait until we had gotten through with  
23 everything concerning the renewal case, then we were going  
24 to bring up the fuel case but we thought we would allow  
25 Ms. Carroll to present Mr. Johnson.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 Now, that, for the benefit of the reporter,  
2 that would be the other transcript where we start at zero  
3 or one, so let's shift. We will not talk about  
4 contentions or anything at this time. That is likely to  
5 be the more crucial issue but we will permit GANE to --  
6 you can introduce Mr. Johnson and mention why you brought  
7 him here.

8 [Whereupon, at 11:25 a.m., a recess was taken  
9 in the renewal case to be resumed at 11:30 a.m.]

10 \* \* \*

11 CHAIRMAN BECHHOEFER: Now, we are shifting the  
12 transcript back to wherever we were in the renewal case.

13 The next matter is summary disposition, for  
14 instance, whether to speed up the proceeding, the parties  
15 would be willing to waive that. I think there was a  
16 little on that question before we left. Do the parties  
17 have any thought on that at this point, either Georgia  
18 Tech or the staff -- well, both really, we want to hear  
19 from the both of you from what you know now -- I do  
20 understand in that connection Ms. Carroll has a number of  
21 documents that they would be willing to identify now to  
22 supplement their case even though technically they  
23 wouldn't have to do that until they respond December 15  
24 but for purposes of summary disposition -- I haven't been  
25 able to get rid of this cough, I am sorry --

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20006



1 MS. CARROLL: Do you want some water? Would  
2 you like a glass of water?

3 CHAIRMAN BECHHOEFER: No, it is okay.

4 MS. CARROLL: I don't know where we would get  
5 one but we could work on it.

6 CHAIRMAN BECHHOEFER: No. I might mention all  
7 I drink is coffee. I don't want to -- in fact, I  
8 shouldn't preside drinking a cup of coffee I don't think.  
9 I am not sure Judges are supposed to do that.

10 But, be that as it may, what are the parties  
11 thoughts now on summary disposition? If possible, it  
12 would save a lot of time if we could avoid the process at  
13 all.

14 The parties have a right to file so they would  
15 formally have to waive it in order for us not to consider  
16 it. In one of our previous cases, the parties did that  
17 based on mostly numbers of documents that would be put  
18 into evidence or witnesses.

19 MR. TURK: Your Honor, at this point, I would  
20 not want to waive the right to file a Motion For Summary  
21 Disposition but I have to note also that if after seeing  
22 GANE's discovery responses it is clear to us that they  
23 will have witnesses to present testimony that does present  
24 a genuine issue in fact, I doubt that we would file a  
25 Motion For Summary Disposition. Once we see those

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20006

1 discovery responses, we will know whether in fact there is  
2 a basis to try to dispose of the case without going to  
3 hearing or whether in fact that going to hearing is the  
4 only real way to resolve the issues and after seeing the  
5 discovery response, we will know if in fact perhaps  
6 portions of the contention are being abandoned or not  
7 supported and maybe we would file a Motion For Summary  
8 Disposition on those portions.

9 CHAIRMAN BECHHOEFER: What we were trying to  
10 avoid is the two months or so that it takes.

11 MR. TURK: I probably would be supportive of  
12 that goal, Your Honor, but it really would depend on our  
13 interpretation of GANE's supplemental response to  
14 discovery.

15 MS. GUILDAY: Given the brevity of the  
16 contention and the broadening nature of the allegations we  
17 would tend to take the same position as Mr. Turk. Until  
18 we know with a little more specificity what it is that  
19 GANE is contending, we can't say with respect to that  
20 issue but we would have no problem in setting a deadline  
21 by which a decision must be made as to whether or not we  
22 would file a Motion For Summary Disposition, if the same  
23 deadline was set by February 1.

24 CHAIRMAN BECHHOEFER: Well, would it -- I am  
25 told at the time of the break that GANE has certain

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 documents here today. Now whether those would be enough,  
2 that they propose to present. They would identify those  
3 in any event in their December 15 supplemental response  
4 but if they identified enough documents today, perhaps it  
5 would be enough -- that together with Mr. Bird. Of  
6 course, we don't know precisely what his testimony will  
7 be, whether it is expert testimony or not, depending on  
8 what he says and what his background is but if they  
9 identify documents today, perhaps it would be enough as in  
10 the other case that I was referring to to form a waiver.

11 Now I don't know what the documents are but  
12 perhaps Ms. Carroll could briefly describe what those  
13 documents are. Of course, they would necessarily be a  
14 part of the supplement but maybe identifying them now  
15 would be sufficient.

16 Of course, you would have to identify them and  
17 let the other parties look at them.

18 MR. TURK: Frankly, Your Honor, I would be  
19 willing to receive whatever documents it is that she wants  
20 to give us but I don't see how we could respond in the  
21 time that we are sitting here today and have time to  
22 review the documents and analyze how they affect the  
23 Commission.

24 I think the best thing to do would be to leave  
25 that until we can see the supplemental responses but,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 again, we would not frivolously file a Motion For Summary  
2 Disposition, only if we felt there was a real basis for  
3 seeking that avenue would we pursue it.

4 (Discussion held off the record.)

5 ADMINISTRATIVE JUDGE KLINE: Do we have to  
6 wait all the way until February 1 to find out?

7 CHAIRMAN BECHHOEFER: We would like to know  
8 before hand whether we have to even be thinking about  
9 potential Motions For Summary Disposition.

10 ADMINISTRATIVE JUDGE LAM: Well, the Board is  
11 really neutral as to whether the parties would waive the  
12 right to file summary disposition. What we are trying to  
13 get at is really a scheduling matter. If we know that you  
14 will be filing, then we would set the schedule  
15 differently.

16 MS. GUILDAY: Can we set a deadline by which  
17 we must decide whether we are filing one so if the answer  
18 is no, then we can go forward.

19 ADMINISTRATIVE JUDGE LAM: That would be a  
20 good approach.

21 ADMINISTRATIVE JUDGE KLINE: You would sort of  
22 know in December after you got your responses, wouldn't  
23 you?

24 CHAIRMAN BECHHOEFER: That won't be the end of  
25 discovery.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 (Discussion held off the record.)

2 CHAIRMAN BECHHOEFER: By some date early in  
3 January you could presumably answer. If the parties  
4 decided by early January if there is sufficient  
5 information to warrant going to hearing, I don't think  
6 that would be all of it, but if there has been enough, we  
7 could set a date early in January.

8 (Discussion held off the record.)

9 MR. TURK: We have a proposal, Your Honor.

10 Ms. Guilday and I would suggest a date of  
11 January 12 for us to notify the Board whether we would be  
12 filing Motions For Summary Disposition. That would apply  
13 to all parties, if that is acceptable to GANE?

14 MS. CARROLL: Did you say --

15 MS. O'BRIEN: We don't understand what you  
16 said.

17 CHAIRMAN BECHHOEFER: They said January 12.

18 MR. TURK: Right, what we propose is by  
19 January 12, the parties would indicate whether or not we  
20 intend to file Motions For Summary Disposition and then --

21 CHAIRMAN BECHHOEFER: Then we could set dates  
22 after that. Of course -- okay, and then we could set a  
23 date if we have to -- of course we could set a date and  
24 say file any motion you want to, we are not going to read  
25 it but you can file it.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 (Laughter.)

2 We could move the hearing, but be that as it  
3 may, January 12, what day is that, what day of the week?

4 MR. TURK: It is a Friday.

5 (Discussion held off the record.)

6 CHAIRMAN BECHHOEFER: I think in the renewal  
7 case what we should shift to we would like some definition  
8 of what this new contention or revised contention -- we  
9 are not sure what it is, whether this is just -- whether  
10 this should be a basis, another basis for the management  
11 contention in which case responses to discovery might well  
12 be all we need or whether it is a security contention,  
13 which it appears to be. It is written in terms of being a  
14 security contention. If that is the case, there are  
15 certain late-filed factors. I think they apply, my  
16 recollection is and I have case support here I think that  
17 says that if it is a new basis for an existing contention  
18 you still have to go through the five-factor test. That  
19 is my impression at least. I can dig out here, I think  
20 there are cases that say that, so I would like to hear  
21 what the parties have to say about that.

22 First, whether this is really a new contention  
23 which I think it is, a new basis at least and whether by  
24 this contention you are trying to revive portions of the  
25 contention we have already rejected, where you had made

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D. C. 20006



1 statements where we had found the basis inadequate earlier  
2 or if this is an attempt to add a new basis. In fact, the  
3 contention no longer exists as far as the proceeding is  
4 concerned.

5 MS. CARROLL: I am concerned that not  
6 everybody has a complete document because I did fail to  
7 FAX this newspaper article that I referred to. So, it  
8 seems like the local parties did receive their hard copies  
9 and it is actually the Board of Judges that has not  
10 received your hard copies yet.

11 CHAIRMAN BECHHOEFER: Right.

12 MS. CARROLL: So I wonder if I should get this  
13 copies and it would be available to everybody for the  
14 discussions?

15 CHAIRMAN BECHHOEFER: Well --

16 MS. CARROLL: It is basically the basis for us  
17 bringing a new contention.

18 CHAIRMAN BECHHOEFER: Is it a new contention  
19 or is it an attempt to -- from your wording we couldn't  
20 tell if it is a new contention or a revision, an attempt  
21 to bring in all of the other bases that we have already  
22 rejected for the general security?

23 When we read it, we could see there was some  
24 sort of a new incident but is that supposed to be the  
25 basis for a new security contention or is it some attempt

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 to revive some of the matters that we thought didn't  
2 warrant -- wouldn't satisfy the contention, didn't have  
3 adequate basis or justification. We have already held  
4 that.

5 ADMINISTRATIVE JUDGE KLINE: The new  
6 contention is worded almost verbatim like the one that no  
7 longer exists.

8 CHAIRMAN BECHHOEFER: Yeah.

9 MS. CARROLL: Well, what --

10 ADMINISTRATIVE JUDGE KLINE: It includes, for  
11 example, references to cobalt 60 and it includes  
12 references to the olympic games and all of that is out now  
13 and so what is this contention? Is it a new security  
14 contention based on the new basis only or what?

15 The new basis I take it that a television  
16 station came and sat on the roof of the reactor or  
17 something. Now, does that make it a new contention?

18 MS. CARROLL: That is new information. It is  
19 brand-new information.

20 ADMINISTRATIVE JUDGE KLINE: That is new  
21 information about a contention that is not included.

22 MS. CARROLL: Well, you see, I find this very  
23 hard to set up, this little legal design at the top of the  
24 page (indicating) so I always pull up an old document,  
25 save it as my new thing, delete all of the copy and give

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 it a new title and start going for it and I pulled this  
2 one up for it's symbolic value. I mean, you know, it was  
3 a contention. It was in my petition to be -- I am  
4 brandishing the wrong one, but here it is. It doesn't  
5 even say Nuclear Regulatory Commission on it. I noticed  
6 that later.

7 CHAIRMAN BECHHOEFER: Well, we don't care what  
8 --

9 MS. CARROLL: So you know what, now I didn't  
10 meet the threshold. It wasn't that that stuff wasn't  
11 valid security concerns. I didn't have enough to make the  
12 threshold and I started to delete it and I read it and it  
13 is all still real. It is just a chain-link fence. They,  
14 by the way, are locking the door now I have noticed and  
15 have got a hand-lettered sign that says "Ring The Bell,"  
16 so basically I couldn't delete any of that. It is all  
17 security problems that still exists but there is a new  
18 thing.

19 It has been proven, a TV crew, they went over  
20 there to check it out. They didn't go over to break in.  
21 They were opportunists. They didn't run into anybody so  
22 they started wandering around.

23 That is new information and we definitely want  
24 your attention on it. We still feel like a chain-link  
25 fence is lame, that there is not enough TV cameras and,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 you know, basically, all of this same stuff is still a  
2 problem and the cobalt is still a problem to us and since  
3 we are going for broke and hope that we will get  
4 Commission attention on the cobalt 60, I left that in.

5 I want to keep bringing that up to you  
6 because, in fact, new information to me, you guys do your  
7 security checks on the Neely people using the cobalt pool.  
8 You drop the level of water in the cobalt pool and see how  
9 they respond so, you know, on the one hand you exclude it,  
10 and on the other hand, it is your basis for saying that  
11 they have got a good security plan, so -- I did not know  
12 that when I submitted this, but I know it now.

13 CHAIRMAN BECHHOEFER: The cobalt 60, we can't  
14 do anything about as we have held.

15 MS. CARROLL: So I say it is new but the old  
16 stuff is still a problem.

17 CHAIRMAN BECHHOEFER: We still can't do  
18 anything about cobalt 60.

19 MS. CARROLL: Well, you know, you can strike  
20 that. I will keep bringing it up.

21 ADMINISTRATIVE JUDGE LAM: Ms. Carroll, are  
22 you filing a new contention? I thought that was Judge  
23 Kline's question?

24 MS. CARROLL: Yes.

25 ADMINISTRATIVE JUDGE LAM: The answer is yes,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D. C. 20005

1 right?

2 MS. CARROLL: Yes.

3 ADMINISTRATIVE JUDGE LAM: Okay.

4 MS. CARROLL: Like I said, I found the same  
5 concerns we had previously are still the conditions that  
6 they are operating under. It was my understanding that we  
7 hadn't met the threshold and I thought this new security  
8 breach was possibly enough to put us over the top and  
9 allow us to bring up the concern about the chain-link  
10 fence.

11 CHAIRMAN BECHHOEFER: I think our ruling on  
12 that was that you didn't have any expertise to show why a  
13 chain-link fence was bad.

14 MS. CARROLL: Well, we do now.

15 CHAIRMAN BECHHOEFER: Well, it is not in the  
16 contention. There is nothing in here. No, you don't  
17 have, I will say, an expert who will say that chain-link  
18 fences per se are not enough.

19 MS. CARROLL: I didn't understand I had to  
20 include it with the contention which may be enough to  
21 strike me out but --

22 CHAIRMAN BECHHOEFER: well, that -- the basis  
23 for the contention, that was why you didn't get the other  
24 one.

25 MS. CARROLL: I was concerned about getting it

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D. C. 20005

1 in in a timely fashion, just getting a foot in the door to  
2 tell you guys that, you know, something happened over  
3 there recently and it sheds new light on it and maybe I  
4 will be batted out because I didn't include the expert  
5 witness, but we do have an expert witness on the security  
6 issue now.

7 CHAIRMAN BECHHOEFER: That would have to be  
8 stated too. I mean is that Mr. Bird, or somebody else?

9 MR. TURK: Boyd.

10 MR. MENDONCA: Mr. Boyd.

11 MS. CARROLL: No. No, it is not Mr. Boyd.

12 CHAIRMAN BECHHOEFER: Oh, okay.

13 MS. CARROLL: And it actually is not fully  
14 arranged. I mean I have just been struggling to make my  
15 deadlines. I haven't fully arranged that but I am very --  
16 I feel very positive about it.

17 ADMINISTRATIVE JUDGE LAM: Well, Ms. Carroll,  
18 what deadline are you talking about?

19 MS. CARROLL: There wasn't a deadline in my  
20 mind except that the incident happened earlier in October.  
21 It came out I think week before last and I felt like I had  
22 to get a reference to that new information in rapidly. I  
23 didn't -- I just did not set out, I mean my goal was to  
24 let you know about the TV crew and maybe my goal was too  
25 low.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005



1 CHAIRMAN BECHHOEFER: Well, I might say that  
2 there are five factors that the rules require for a late-  
3 filed contention and which you have to deal with and they  
4 are set forth right in 2.714.

5 ADMINISTRATIVE JUDGE LAM: Right, but this  
6 paper as it stands does not meet the five factors.

7 CHAIRMAN BECHHOEFER: And this paper has  
8 nothing about those. You will see five factors with Roman  
9 numbers to them and these are the factors you have to  
10 mention.

11 Like the first one, good cause for failure to  
12 file on time. If there was good cause, presumably you  
13 could figure out why and on time, they mean on the  
14 earlier, whatever date we set earlier, the December 30  
15 date or whatever it was last year which you met for your  
16 other contentions and the good cause, well, you can figure  
17 out why you couldn't have filed them by last December 30  
18 but you have got to tell people and then you have to go  
19 through the other factors too. There are five them. They  
20 are right in the rules, 2.714.,

21 MS. CARROLL: I didn't bring my book with me.

22 CHAIRMAN BECHHOEFER: 2.714(a)(1), it is right  
23 in the introductory paragraph.

24 ADMINISTRATIVE JUDGE LAM: And the intent of  
25 the rule is to set a high threshold so that the parties

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 just don't come back and bring new stuff, you know.

2 CHAIRMAN BECHHOEFER: You have to go into  
3 that. The parties so far, their time for response hasn't  
4 come yet at all and now I am not so certain that you  
5 shouldn't avoid a lot of paper work by putting in the  
6 factors that you need to for a late-filed contention and  
7 then have the parties respond to that. I am not sure what  
8 the positions are going to be on this. In fact, I have  
9 not seen the news article. I am not even sure what is  
10 involved. We have a very sketchy -- maybe if -- did this  
11 give rise to any sort of an incident or did the staff  
12 through it's inspection process pick up anything involved  
13 in that which we wouldn't have seen yet? I guess we  
14 probably don't have an Inspection Report out yet.

15 MR. TURK: The staff did conduct an inspection  
16 of security following news of this intrusion by the  
17 Current Affair camera crew and there will be an Inspection  
18 Report published probably within the next two weeks and I  
19 understand that the conclusions of that report will be  
20 that there was no breach on security, there was no  
21 violation, based upon the information available to the  
22 staff.

23 ADMINISTRATIVE JUDGE LAM: And also, Mr. Turk,  
24 do you intend to respond to this?

25 MR. TURK: To the contention, yes.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D. C. 20005

1 CHAIRMAN BECHHOEFER: Well, would it be easier  
2 if we told them to refile the 2.714(a) factors? You  
3 almost by definition would have to say -- I know what you  
4 would have to say.

5 ADMINISTRATIVE JUDGE KLINE: Yes.

6 MR. TURK: I know, we have said it at least  
7 three times already.

8 CHAIRMAN BECHHOEFER: You could almost get it  
9 out of the computer.

10 ADMINISTRATIVE JUDGE KLINE: I am sure we  
11 could save several weeks.

12 CHAIRMAN BECHHOEFER: Yes.

13 ADMINISTRATIVE JUDGE KLINE: From what we know  
14 you have to say.

15 CHAIRMAN BECHHOEFER: Yes.

16 MS. CARROLL: Here is the newspaper article  
17 (handing).

18 CHAIRMAN BECHHOEFER: That will come back to  
19 us, but I know given the rules, you have to deal with  
20 those factors and they are right in the rules so they are  
21 not very hard to figure out what they are.

22 MS. CARROLL: Would anybody care to loan me a  
23 rule book?

24 It is kind of thick. I did look at it. I  
25 figured out I had to respond to the initial order, the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 partial initial decision within 10 days to hope to get the  
2 Commission to look at the cobalt and I believe I read  
3 this, I just need to look at it and see what I was  
4 thinking about it.

5 CHAIRMAN BECHHOEFER: It is right in this  
6 first paragraph, set forth in 714(a)(1). You will see the  
7 five factors.

8 MS. CARROLL: So, I am not -- I am weak on  
9 condition 4 but you know what, now in this document, I  
10 said the TV show hasn't aired and the Inspection Report is  
11 not out, so what I did was by golly I defeated myself by  
12 trying to hurrying up by this because, you know, I fully  
13 intend to add to this contention and I suppose it is in  
14 here somewhere that I am not allowed to. I don't get an  
15 amended petition process for a new contention. That may  
16 be in here and I don't know it but --

17 CHAIRMAN BECHHOEFER: No, it is just the  
18 factors that have to be dealt with.

19 For instance, the date that the information  
20 was available as distinguished from when the incident  
21 happened. All of these factors, we are not sure unless it  
22 is filed. I don't think we could resolve these factors  
23 based on what is filed and I am not sure the other parties  
24 could either.

25 ADMINISTRATIVE JUDGE LAM: What I would like

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D. C. 20006

1 to do is to hear from both Georgia Tech and the staff.

2 CHAIRMAN BECHHOEFER: Yes.

3 ADMINISTRATIVE JUDGE LAM: Regarding should  
4 the Board allow GANE to amend their filing.

5 CHAIRMAN BECHHOEFER: Well, for a late  
6 contention, you don't need to allow. It is late and it is  
7 filed when it is filed.

8 MR. TURK: I think the Board is right that  
9 there is an obligation on GANE's part to address the five  
10 factors in 2.714 whenever they file a contention after the  
11 deadline that has been set for filing contentions.

12 Now, in many cases, it may be that the  
13 contention could only have been filed late because it was  
14 new information that was not available previously but that  
15 is one of the things that GANE would have to address in  
16 their showing of good cause under 2.714.

17 And speaking for the staff, I don't have a  
18 problem if the Board was to tell GANE at this point that  
19 it appeared that the contention as currently filed could  
20 not be granted but they are free to refile at such time as  
21 they have, or can do more statements but at that time  
22 would have to make the showing of good cause and the other  
23 factors set out in 714.

24 MS. GUILDAY: We concur with that.

25 CHAIRMAN BECHHOEFER: Yes, I think that is

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 reasonable and I think the Board will do that.

2 (Discussion held off the record.)

3 CHAIRMAN BECHHOEFER: I might say we will do  
4 this and we should advise GANE that the time still is  
5 running. You would want to do it as soon as possible.  
6 You can't just sit on it. We have been preliminarily  
7 advised but you can't just sit on it, you have to file  
8 something, read the rules and file what you think you have  
9 to file. Don't wait six months, there are cases to throw  
10 things out.

11 MS. CARROLL: Well, let me take this moment to  
12 tell everybody to watch FOX network today.

13 CHAIRMAN BECHHOEFER: Well, the airplane  
14 doesn't --

15 MS. CARROLL: And see what happened on hidden  
16 camera.

17 CHAIRMAN BECHHOEFER: Shall be characterize  
18 that as a foxy response?

19 (Laughter.)

20 I guess we shouldn't.

21 MR. TURK: In that event, Your Honor, I take  
22 it that the staff and Georgia Tech need not respond to the  
23 contention as presently filed?

24 CHAIRMAN BECHHOEFER: That is correct. As  
25 filed, that contention would have to be denied.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005



1 ADMINISTRATIVE JUDGE KLINE: Does GANE  
2 understand that now?

3 CHAIRMAN BECHHOEFER: Yes. Well, no, it may  
4 still have spunk but as filed.

5 ADMINISTRATIVE JUDGE KLINE: Does GANE  
6 understand that, that the ball is in your court now?

7 MS. CARROLL: That is right and I feel lucky.

8 ADMINISTRATIVE JUDGE KLINE: And you are not  
9 going to get a response from them.

10 CHAIRMAN BECHHOEFER: The transcript here will  
11 reflect we could not grant that contention as filed and  
12 responses are not necessary because it lacks the essential  
13 five factor discussion so it is not really worthwhile to  
14 have the parties file a lot of papers on it as filed.

15 MR. TURK: Right.

16 MS. GUILDAY: Judge Bechhoefer, before we go  
17 on, I would like to introduce co-counsel Al Evans who is  
18 also with the Attorney General's office and Mr. Evans may  
19 either be assuming lead responsibility for this file and I  
20 will not have any responsibility or he may not. We don't  
21 know at this point but I did want him to be here today for  
22 you all to meet him.

23 CHAIRMAN BECHHOEFER: If you want him to be  
24 seated at the table, he is welcome.

25 MS. GUILDAY: If you would like to sit with

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20006

1 us, do you want to move up with us so you will know what  
2 is going on?

3 MR. LEWIS: Well --

4 CHAIRMAN BECHHOEFER: He is welcome to.

5 MR. LEWIS: -- If there is room. Otherwise, I  
6 am comfortable here.

7 CHAIRMAN BECHHOEFER: Okay.

8 MS. CARROLL: I am sorry, I didn't hear your  
9 name.

10 MR. LEWIS: Alfred Lewis Evans, Jr. Most  
11 people call me Al.

12 MS. CARROLL: And you are with the State  
13 Attorney General's Office?

14 MR. LEWIS: Yes, ma'am.

15 MS. CARROLL: Thank you.

16 A point of clarification. I may not have  
17 understood this. I understood that the new contention I  
18 filed did not meet the criteria, that it is dismissed and  
19 I am free to file a new contention any time and make a  
20 concerted effort to meet the threshold and get it  
21 accepted.

22 CHAIRMAN BECHHOEFER: Right, but don't forget  
23 the factors that the rules deal with.

24 MS. CARROLL: Exactly, uh-huh.

25 CHAIRMAN BECHHOEFER: Yes.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 MS. CARROLL: We did not discuss which of the  
2 factors I satisfied or not. That was not discussed today.

3 CHAIRMAN BECHHOEFER: Well, now, if you do it  
4 in the terms of the rule, it will make it a lot easier if  
5 people knew exactly what statements are connected to -- I  
6 can't tell you how to write your brief but --

7 MS. CARROLL: But I could number it I, II,  
8 III, IV, V and that would help everybody know what I was  
9 thinking about.

10 CHAIRMAN BECHHOEFER: You could do the  
11 substance separately perhaps but that just makes it  
12 easier. I guess we don't prescribe how people write their  
13 briefs. I am just saying what might be helpful.

14 (Discussion held off the record.)

15 MS. CARROLL: Okay. Thank you.

16 (Discussion held off the record.)

17 CHAIRMAN BECHHOEFER: Let me ask the parties,  
18 is there anything else that you think should be discussed  
19 on renewal that we haven't taken up thus far?

20 MS. CARROLL: I have a process question and  
21 that is after the January 12 deadline -- well, I guess we  
22 take our chances, if we go into a summary disposition  
23 mode, it can take a couple of months to argue back and  
24 forth about whether we should have summary disposition and  
25 we won't know until January 12.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20006

1 CHAIRMAN BECHHOEFER: There is a requirement  
2 that certain affidavits be filed and that kind of thing  
3 before summary disposition between the response time and I  
4 think we have -- and sometime for us to write it up. We  
5 are guessing but two months is not unusual for that.

6 Beyond that, we would set a date for filing  
7 prefiled testimony for everybody.

8 I think for prefiled testimony we would have  
9 simultaneous filings from all parties, whatever date is  
10 eventually set.

11 I know that the rules don't make a distinction  
12 but sometimes the staff gets five extra days when we set a  
13 date. We are not going to set the date today anyway. It  
14 will be after we hear about summary disposition sometime  
15 in January.

16 MR. TURK: I would rather not have to take a  
17 position on that today, Your Honor. We certainly don't  
18 need the five extra days other than to see if it is  
19 necessary to address additional issues that would not be  
20 in the original testimony but I would rather wait until we  
21 close off discovery before we get a feel for whether that  
22 is necessary or not.

23 CHAIRMAN BECHHOEFER: Well, sometimes I know  
24 the staff says that the Regional Office is involved and  
25 all and they would like a few extra days just to be able

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20006

1 to talk to the people in the region. We are not unwilling  
2 to give that if you need it, or maybe we will just set a  
3 date that is far enough in advance of the hearing.

4 MR. TURK: I think the real benefit from our  
5 standpoint is being able to address all of the issues that  
6 are raised in the testimony which challenge the licensing  
7 action, which sometimes you don't know until you see that  
8 testimony because the discovery answers don't give you a  
9 very good picture of it, so at this point I would rather  
10 just wait until discovery closes before I say whether we  
11 want the additional time for filing prefiled testimony.

12 CHAIRMAN BECHHOEFER: Okay, so preliminarily,  
13 we are probably going to have simultaneous dates for  
14 filing and then if the staff needs a few extra days, we  
15 will have a conference call and we will see what happens.

16 I think unless somebody has anything further  
17 on the renewal case, we will --

18 MS. CARROLL: One more question.

19 CHAIRMAN BECHHOEFER: Okay. I was moving  
20 toward adjourning for lunch.

21 MS. CARROLL: I have got to admit, I am  
22 dazzled. I come into this fresh, I follow you and I think  
23 I've got it all but it is still churning around in here.

24 Now, I thought when we closed discovery on  
25 February 1 which I guess will go forward unless there is a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 Motion For Summary Disposition --

2 CHAIRMAN BECHHOEFER: Well, that is February  
3 1.

4 MS. CARROLL: -- Which would fall back to that  
5 date.

6 CHAIRMAN BECHHOEFER: Yeah.

7 MS. CARROLL: Then after all of the testimony  
8 is submitted, so you are asking the NRC if they want five  
9 days beyond that?

10 CHAIRMAN BECHHOEFER: No, no.

11 ADMINISTRATIVE JUDGE KLINE: No.

12 MS. CARROLL: No? Then we --

13 CHAIRMAN BECHHOEFER: February 1 is discovery.

14 MS. CARROLL: So you will name everybody and  
15 all of the docs but then you start giving time --

16 CHAIRMAN BECHHOEFER: The testimony will be  
17 filed some days after that. Theoretically, 15 days before  
18 the hearing.

19 MS. CARROLL: All right. Okay. Yeah, I  
20 remember that now.

21 CHAIRMAN BECHHOEFER: So that will be  
22 different and if it is a hostile witness you are calling,  
23 and perhaps you could ask our permission on this, not to  
24 file prefiled testimony but we won't know until after  
25 February 1 whether that is the case.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005



1 MS. CARROLL: So by February 1, you will set a  
2 hearing date.

3 CHAIRMAN BECHHOEFER: Well, we may set it as  
4 early as January 12 or subsequent to our finding out on  
5 January 12 what is going to happen.

6 MS. CARROLL: Now, do all parties cross-  
7 examine all witnesses?

8 CHAIRMAN BECHHOEFER: Yes.

9 MS. CARROLL: So even like if we get Pamela up  
10 there and she has got some prefiled testimony, we could  
11 still cross-examine her and bring stuff out.

12 CHAIRMAN BECHHOEFER: No, you are not cross-  
13 examining her. Her testimony, if she is your witness, she  
14 will put her testimony in.

15 MS. CARROLL: Uh-huh.

16 CHAIRMAN BECHHOEFER: The other parties cross-  
17 examine.

18 MS. CARROLL: Uh-huh.

19 CHAIRMAN BECHHOEFER: You can have rebuttal if  
20 new subjects are raised or something like that.

21 MS. CARROLL: I mean I have got to make the  
22 observation that that means that the little guy and all of  
23 the people in Atlanta we are going to notify about this  
24 thing that are going to come out, they are going to meet  
25 on that day a mountain of paper, if we offer it to them,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 and they are going to be hearing stuff so, you know,  
2 getting to read whatever the testimony is and then hear  
3 cross-examination and my guess would be that the parties  
4 would try to put as negative a spin as they could on what  
5 Ms. O'Brien would say which really makes it questionable  
6 that we want a public hearing.

7 CHAIRMAN BECHHOEFER: Well, but that is how  
8 the hearing system of NRC works.

9 MR. TURK: Judge Bechhoefer.

10 CHAIRMAN BECHHOEFER: Yes.

11 MR. TURK: Isn't that the point, Your Honor,  
12 it is not a forum where people get up and state their  
13 political views or their views on whether a nuclear  
14 reactor should operate in the center of Atlanta, it is an  
15 evidentiary hearing and it is not a place for people to  
16 get up on a platform and make their ideological  
17 statements.

18 If that is the purpose of Ms. Pamela Blockey-  
19 O'Brien's testimony, then she is better off giving a  
20 limited appearance statement or making a press statement.

21 MS. CARROLL: I mean my notion.

22 MS. O'BRIEN: No, I think -- I am sorry but I  
23 think I would like to say something here. I have got  
24 your copies of the NRC file with me that shows all of the  
25 problem on this thing since 30 years which I don't think

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 any of you have read. I don't like to be insulted like  
2 that either. I am not making a political statement. The  
3 Nuclear Regulatory Commission has spent the last year  
4 lying to me and I have the proof that you have all lied to  
5 me. I don't like this one bit.

6 MS. CARROLL: If I could state it another way  
7 --

8 MR. TURK: Let me say I apologize --

9 MS. CARROLL: -- As I read this stuff, it  
10 occurs to me I want somebody else in the world to know.  
11 What have I, how strenuous has it been for me to take all  
12 of this volunteer time to go read what the Nuclear  
13 Regulatory Commission has found out is going on over  
14 there.

15 Okay, now, the NRC said go forth and make  
16 errors no more on every error that has been made and I  
17 think that that's probably going to hold up. I don't  
18 think this process can make the NRC behave differently but  
19 what became a precious hope in my heart was that somebody  
20 besides Pamela and me is going to know about this and I am  
21 starting to really wonder if it isn't all going to be  
22 behind closed doors and what the public hears is actually  
23 going to be very negative and very esoteric which I really  
24 thought public hearing meant, I mean reading the  
25 Commission's upholding y'all's decision and then reading

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D. C. 20005

1 your decision about this, it was acknowledged that the NRC  
2 had been satisfied pretty much. They check this and that  
3 out and had been satisfied but that deserved the weight of  
4 a public hearing. It deserved to be presented before the  
5 public.

6 CHAIRMAN BECHHOEFER: Well, this will be.  
7 This is the way the Commission hearings are held. It is a  
8 public hearing. We have prefiled testimony but that  
9 testimony is available for anybody in the room, it will be  
10 passed out to anybody and then in answering questions  
11 through cross-examination, witnesses will explain quite a  
12 bit what they need to say so --

13 MS. GUILDAY: Let me be sure I understand.  
14 That cross-examination is on paper though, not --

15 CHAIRMAN BECHHOEFER: No, it is all oral.  
16 Cross-examination is oral.

17 MS. GUILDAY: Okay. I just wanted to make  
18 sure I understood.

19 MS. CARROLL: Okay, now --

20 CHAIRMAN BECHHOEFER: Prefiled testimony is on  
21 paper.

22 MR. TURK: Your Honor, I would like to point  
23 out that I did not by any means intend to insult Ms.  
24 Pamela Blockey-O'Brien.

25 MS. O'BRIEN: Yes, you did, sir. Yes, you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 did.

2 MR. TURK: No, I know my intentions.

3 The point is that all of us will be filing  
4 testimony in writing. The staff will not be putting on a  
5 witness to take the stand supporting the reactor or  
6 opposing the reactor, it will be prefiled written  
7 testimony. Georgia Tech will abide by the same rule.  
8 They will not be putting on witnesses live to boast about  
9 the value of this reactor and how it should be allowed to  
10 license. That will be, if that is their direct testimony,  
11 that will be in writing the same as any opponent of the  
12 reactor would submit their testimony in writing. All of  
13 us will then be subject to live cross-examination. That  
14 is the process.

15 And the point I was making before is that if a  
16 person wants to make a public appearance and a statement  
17 in front of the public, it is not through the filing of  
18 direct testimony, it is through making a limited  
19 appearance statement, which is one alternative, or by  
20 going and making a press, a statement to the press, and  
21 that is the point I was trying to make and I apologize to  
22 Ms. Blockey-O'Brien if she perceived me in some way to be  
23 insulting her.

24 I would note also that the staff has spent a  
25 lot of time in reviewing and responding to Ms. Pamela

NEAL R. GROSS  
COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVENUE, N.W.  
WASHINGTON, D.C. 20005

1 Blockey-O'Brien's positions.

2 MS. O'BRIEN: And it is not right, okay?

3 MR. TURK: And I would note that the staff --

4 MS. O'BRIEN: And you have not responded to my  
5 letters, sir. I have five letters with me that you have  
6 not responded to.

7 ADMINISTRATIVE JUDGE LAM: Ms. O'Brien.

8 CHAIRMAN BECHHOEFER: That is not within --

9 ADMINISTRATIVE JUDGE KLINE: You are not a  
10 party in this case.

11 MS. O'BRIEN: I am sorry, I didn't mean to but  
12 I have had to put up with these people for years.

13 CHAIRMAN BECHHOEFER: The staff responded,  
14 they did respond to each one because I have got a copy.  
15 Whether you are satisfied with the response, I don't know,  
16 but we have got copies of the responses.

17 MS. O'BRIEN: My last letters, my last four  
18 letters they have never responded to, Your Honor. I have  
19 them with me. They have never responded to them. My  
20 telephone is being tapped as well.

21 CHAIRMAN BECHHOEFER: Well, I presume, I have  
22 seen in the files many responses from the staff. I didn't  
23 bring them with me. They are not technically relevant  
24 except as background but we have certain issues that we  
25 are going to resolve.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20006



1 ADMINISTRATIVE JUDGE LAM: And I want to get  
2 clear, the Board is not here to address Ms. O'Brien's  
3 concern on the petition, so --

4 CHAIRMAN BECHHOEFER: We are here to address  
5 GANE's contentions. Now, all he said is that Ms. O'Brien  
6 at least can be proffered as a witness with prepared  
7 testimony and there may or may not be objections to that  
8 testimony and there will be undoubtedly, if the testimony  
9 gets accepted, there will be extensive cross-examination.  
10 That is the right of all parties.

11 MS. CARROLL: Now, I have one more process  
12 question and this is my last one.

13 CHAIRMAN BECHHOEFER: I would say if we ever  
14 get to cross-examination, we would probably require a  
15 certain outline of what the cross-examinations is going to  
16 be and that doesn't go to all the parties, it goes to us,  
17 the cross-examination planned, so we have an obligation to  
18 make sure the subject matter of the cross-examination is  
19 relevant and it isn't excessive on a given area but that  
20 goes only to us, that doesn't go to the other parties.

21 MS. CARROLL: That cuts down on the objection,  
22 Your Honor.

23 CHAIRMAN BECHHOEFER: Well, if we see things  
24 that are very clearly objectionable, we may suggest that  
25 that line not be followed and that kind of thing

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20006

1    beforehand, so we can save some time.

2                   ADMINISTRATIVE JUDGE LAM:   And I also would  
3    like to make a comment on Ms. Carroll's earlier comment  
4    regarding the hearing process.

5                   I think this process, the rules are clear to  
6    all the parties, I think the rules are fair to all of the  
7    parties.  Now this is very serious business, this is  
8    litigation, so the rules are fair and clear, it would  
9    serve everybody's interest to participate.  That is the  
10   response I would like to give you.

11                   CHAIRMAN BECHHOEFER:  And I will reiterate  
12    what I said before.  Her hostile witnesses, the prepared  
13    testimony, that could be waived for hostile witnesses.

14                   MS. CARROLL:  Which means both, all parties  
15    may cross-examine in that case.  Even if we submit  
16    somebody as a witness --

17                   CHAIRMAN BECHHOEFER:  No, all parties cross-  
18    examine in any case.

19                   MS. CARROLL:  Well, now, if we proffer Ms.  
20    O'Brien as a witness, then GANE will not cross-examine.  
21    We will stand on her submitted testimony.

22                   CHAIRMAN BECHHOEFER:  Right.  They will cross-  
23    examine and you will have --

24                   MS. CARROLL:  But if we subpoena Bill Downs  
25    and he is hostile to us and we don't know what he will

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 say, we just leave it up to Tech and the counsel to cross-  
2 examine him or do we also bring out, I mean are we allowed  
3 to cross-examine in hopes of bringing out what we believe  
4 we know?

5 CHAIRMAN BECHHOEFER: No, that is not cross-  
6 examination. That is in fact direct examination.

7 MS. CARROLL: Oh, okay.

8 CHAIRMAN BECHHOEFER: And if you subpoena him  
9 and he is not willing to prepare testimony, you can ask  
10 us, you have to ask us first to waive the requirement for  
11 prefiled. When there is a hostile witness, that often  
12 will be done.

13 MS. CARROLL: And then it would be natural to  
14 request direct examination and it would be possible that  
15 that would be granted.

16 CHAIRMAN BECHHOEFER: Yes, but you would have  
17 to request it first.

18 MS. CARROLL: Right.

19 CHAIRMAN BECHHOEFER: Well, in advance of the  
20 time for prepared testimony.

21 MS. CARROLL: And submit our questions?

22 CHAIRMAN BECHHOEFER: Yes.

23 (Discussion held off the record.)

24 If that were the case, in submitting a  
25 request, you should at least outline to us the subject

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20006

1 matter of that testimony and also why prepared testimony  
2 couldn't be filed. I would mention that if it is a  
3 hostile witness, that is often done but there are usually  
4 not that many hostile witnesses, so we will have to see  
5 where we go on that.

6 MR. TURK: I would also --

7 CHAIRMAN BECHHOEFER: In enforcement cases, I  
8 know it has been held but that is different.

9 MR. TURK: With respect to Mr. Boyd, I will  
10 have to note that GANE has stated already today that Mr.  
11 Boyd has been cooperating with GANE. I don't see him as a  
12 hostile witness. He is not hostile to GANE's position.

13 MS. CARROLL: I am not using him as an  
14 example.

15 MR. TURK: All right.

16 MS. CARROLL: But I am expecting some others,  
17 I don't know, who may.

18 CHAIRMAN BECHHOEFER: You had mentioned Mr.  
19 Downs.

20 MS. CARROLL: I am sorry?

21 CHAIRMAN BECHHOEFER: You had mentioned Mr.  
22 Downs may be.

23 MR. TURK: But in any event, I would point out  
24 again that under 2.740(e), there is a duty to supplement  
25 as to the names of witnesses --

1 CHAIRMAN BECHHOEFER: Oh, of course.

2 MR. TURK: -- That you are going to call, the  
3 substance of their testimony and there is also a duty to  
4 supplement where even if your prior answer is complete, if  
5 they then come upon further information, they must  
6 disclose that too where the non-disclosure of that  
7 information would constitute a knowing concealment, so  
8 even for a hostile witness if a party knows in advance  
9 they are going to be calling that person, although we may  
10 not be able to get prefiled testimony, we should be able  
11 to learn the substance of what it is they are going to say  
12 and why the party wants to call them.

13 MS. CARROLL: What we expect that they know  
14 and expect that they will contribute to the knowledge  
15 base.

16 CHAIRMAN BECHHOEFER: Yes, I thought I had  
17 mentioned that myself.

18 MS. CARROLL: Yes, I understood that.

19 CHAIRMAN BECHHOEFER: That is required and  
20 that should be provided in response to the discovery  
21 request too. Apparently the staff and Georgia Tech will  
22 have similar questions.

23 MS. CARROLL: I would like to respond to Dr.  
24 Lam. I did buy the volumes and it is a lot and I am  
25 digesting a lot of this as it happens and I just want to,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20006

1 you know, share with you that my experience with public  
2 hearings have been hearings that have been put on by the  
3 Department of Energy or put on by the Nuclear Regulatory  
4 Commission and I am standing in the full light of  
5 knowledge now that 2.714 is specifically a different  
6 process, it is brought about differently, it is conducted  
7 differently but please forgive me for, you know, just  
8 thinking that, picturing my previous experiences with  
9 different types of hearings.

10 ADMINISTRATIVE JUDGE LAM: Thank you.

11 (Discussion held off the record.)

12 MS. GUILDAY: Could we have a time estimate or  
13 quotation for this afternoon?

14 CHAIRMAN BECHHOEFER: Well, I think we have  
15 finished everything now on the renewal case. How much the  
16 other case will take, I don't know but I would think if we  
17 get back here in an hour, I would guess that I think the  
18 other case wouldn't take, I would imagine, not more than  
19 an hour.

20 MS. GUILDAY: Thank you.

21 CHAIRMAN BECHHOEFER: At one point, I was  
22 aiming for 2 o'clock.

23 MS. GUILDAY: I had to reschedule a doctor's  
24 appointment for 4 o'clock, so I was just wondering.

25 CHAIRMAN BECHHOEFER: Oh, well, that you will

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005



1 make.

2 MS. CARROLL: But you won't be able to watch  
3 the TV show. I will be submitting a tape.

4 CHAIRMAN BECHHOEFER: Let's try and be back in  
5 an hour.

6 (Whereupon, at 12:24 p.m., a recess was taken,  
7 to resume at 1:30 p.m., the same day.)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

## A F T E R N O O N S E S S I O N

(1:28 p.m.)

1  
2  
3 CHAIRMAN BECHHOEFER: Before we turn to the  
4 fuel case, I understand Mr. Turk wanted to make a  
5 statement on the record on the other case concerning fuel  
6 removal.

7 MR. TURK: Your Honor, the discussion that Ms.  
8 Carroll and I had just before we went back on the record  
9 about a paper that GANE filed recently in which it sought  
10 action on cobalt 60 and that was a follow-up pleading  
11 following the Board's decision ruling that cobalt 60 is  
12 beyond the jurisdiction of the Board.

13 CHAIRMAN BECHHOEFER: No, I had understood you  
14 wanted to make a statement for the record on Georgia  
15 Tech's plans to remove the fuel during the olympic  
16 implementation. You had mentioned to me you wanted to  
17 make a statement.

18 MR. TURK: Well, there was another matter that  
19 was the subject of a brief discussion and that is Georgia  
20 Tech's plans to remove the HEU fuel from the reactor and I  
21 just wanted to note that there is a letter on file from  
22 Georgia Tech to the NRC stating that they intend to shut  
23 the reactor down at the end of the week. I believe the  
24 current plan is to shut the reactor down on the 17th?

25 DR. KARAM: Right.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20006

1 MR. TURK: After Friday?

2 DR. KARAM: This Friday.

3 MR. TURK: This coming Friday, for the  
4 purpose, as I understand, to allow the fuel to cool prior  
5 to it's being removed in the next few months. I believe  
6 the current plan would be to allow the cooling period to  
7 proceed for ninety days and in February, they begin the  
8 removal of the fuel from the reactor.

9 CHAIRMAN BECHHOEFER: Well, that is what I  
10 thought you wanted to state. You had asked me if you  
11 could make a statement for the record on that.

12 MR. TURK: Oh, I thought we would ask Georgia  
13 Tech to announce their first enactment.

14 CHAIRMAN BECHHOEFER: Oh, I am sorry. I  
15 thought you had wanted to make it.

16 MR. TURK: No. There was another matter  
17 though that I would like to have addressed on the record  
18 while we are doing this.

19 CHAIRMAN BECHHOEFER: Okay.

20 MR. TURK: And that is that GANE recently  
21 filed a paper seeking Commission action on undertaking a  
22 review of the State of Georgia's agreement state,  
23 agreement covering the cobalt 60 and I had asked Glenn  
24 Carrll during the break whether that was in fact an  
25 appeal from the Licensing Board's recent decision or if

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 that was a separate matter that they are now asking the  
2 Commission to address directly and Ms. Carroll informed me  
3 that in fact it is not an appeal from your decision, it is  
4 a request for separate Commission action in light of the  
5 fact that they do have jurisdiction over cobalt 60 -- I am  
6 sorry, that the Board does not have jurisdiction over  
7 cobalt 60 and it would be up to the Commission to  
8 determine whether or not they should assert jurisdiction  
9 over that.

10 MS. CARROLL: I liked the former way that you  
11 put it. Even though I am not sure it is your decision  
12 make.

13 MR. TURK: No, I know the Commission does not  
14 have jurisdiction. I apologize for that misstatement.

15 So we will, therefore, respond to that not as  
16 a response to the Appellate pleading, we won't be  
17 responding to the brief but we will, if requested by the  
18 Commission, advise it as to whether we think it is  
19 appropriate for the Commission to assert jurisdiction over  
20 that material but not under the time constraints of an  
21 Appellate brief.

22 MS. CARROLL: On the former matter that you  
23 brought up about the fuel removal, I would like to ask if  
24 we will continue to be notified of progress, I mean when  
25 the 90-day cooling period is ended and the cask arrives

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20006

1 and you begin that process, will you notify the service  
2 list? Will we have progress reports as we go?

3 DR. KARAM: We will make a Progress Report to  
4 the NRC, not the public.

5 MR. TURK: I think it is more appropriate that  
6 the schedule for cask movement is not a matter of public  
7 record. I think that is more appropriately done without  
8 press notices and things of that nature.

9 MS. CARROLL: Well, is there a discrete way to  
10 inform GANE?

11 MR. TURK: I think GANE should assume that the  
12 fuel removal will continue as the licensee has committed  
13 to perform it and that if the licensee changes it's plans  
14 in any material way that they would then provide notice to  
15 GANE and the parties and the Board.

16 MS. GUILDAY: That is our understanding as to  
17 how, actually how we will proceed.

18 MS. CARROLL: I am sorry?

19 MS. GUILDAY: That is how we understand that  
20 we are to proceed.

21 MS. CARROLL: Would there be any after the  
22 fact photographs of the removal process, anything? I mean  
23 because we are here largely because we don't trust Georgia  
24 Tech all that much so assuming that Tech will follow  
25 through on it's commitment, I mean we picture rods being

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D. C. 20005

1 dropped on the floor. I hate to be negative but we do  
2 picture problems and we would like some kind of  
3 verification and maybe this isn't the time or the place  
4 but --

5 ADMINISTRATIVE JUDGE LAM: Well, I would  
6 assume GANE would be notified after all the fuel has been  
7 removed and I just don't see what GANE is requesting now.  
8 Do you want a video and audio record of the removal  
9 process?

10 CHAIRMAN BECHHOEFER: I think they want some  
11 record of it.

12 MS. CARROLL: We want some assurance.

13 CHAIRMAN BECHHOEFER: There is no requirement,  
14 I guess, that they be informed unless we impose it, or  
15 unless the staff --

16 ADMINISTRATIVE JUDGE LAM: I would assume that  
17 the State of Georgia is trustworthy enough.

18 MS. CARROLL: You would?

19 MS. O'BRIEN: You don't know Georgia.

20 MR. TURK: I think if the licensee would  
21 simply agree to notify the parties and the Board when the  
22 fuel removal was complete, that would alleviate GANE's  
23 concerns and the staff, of course, will be continuing to  
24 do inspections at the facility. I don't know if in fact a  
25 special inspection will be made to verify that the fuel

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005



1 has been removed but I am sure there will be some NRC  
2 verification of that along the way.

3 CHAIRMAN BECHHOEFER: Sure.

4 MR. TURK: I think the most timely way to get  
5 that notice that the removal has been completed I think  
6 would be to ask Georgia Tech to notify the parties and the  
7 Board when it is completed.

8 CHAIRMAN BECHHOEFER: Yes, I think that would  
9 be satisfactory.

10 ADMINISTRATIVE JUDGE LAM: Good.

11 MS. CARROLL: Sounds good.

12 (Discussion held off the record.)

13 (Whereupon, at 1:35 p.m., the hearing in the  
14 above-entitled matter was adjourned.)

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

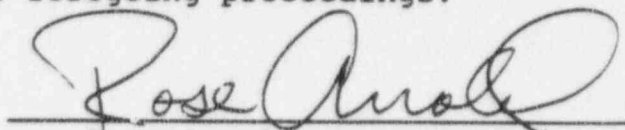
This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission in the matter of:

Name of Proceeding: Georgia Institute of Technology,  
Research Reactor, Atlanta, Georgia

Docket Number: 50-160-REN  
ASLBP No. 95-704-01-REN

Place of Proceeding: Atlanta, Georgia

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission taken by me and, thereafter reduced to typewriting by me or under the direction of the court reporting company, and that the transcript is a true and accurate record of the foregoing proceedings.



Rose Arnold  
Official Reporter  
Neal R. Gross and Co., Inc.