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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY & LICENSING BOARD

DOCKETED
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Docket Nos. 50-454 OI
50-455 OI

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in the matter of:
COMMONWEALTH EDISON COMPANY
(Byron Nuclear Power Station,
Units 1 and 2)
----- -x

Courtroom 270
Federal Building
211 South Court Street
Rockford, Illinois

Wednesday, August 10, 1983

IN CAMERA, EX PARTE HEARING WITH THE
OFFICE OF INVESTIGATIONS

BEFORE:

JUDGE IVAN SMITH,
Chairman, Atomic Safety & Licensing Board.

JUDGE A. DIXON CALLIHAN,
Member, Atomic Safety & Licensing Board.

JUDGE RICHARD COLE,
Member, Atomic Safety & Licensing Board.

1 APPEARANCES: ...

2 STEVEN GOLDBERG, ESQ.
3 MITZI YOUNG, ESQ.
4 Office of the Executive Legal Director
5 U.S. Nuclear Regulatory Commission
6 Washington, D.C. 20555

7 Appearing on behalf of the NRC Staff.

8 NRC PARTICIPANTS:

9 David M. Galanti
10 Roger Fortuna
11 Robert L. Segal
12 D.W. Hayes
13 Kevin Connaughton
14 William Forney

P R O C E E D I N G S

1
2 JUDGE SMITH: Gentlemen, may I administer the
3 oath to you?

4 Whereupon,

5 DAVID M. GALANTI

6 and

7 ROBERT SEGAL

8 were called as witnesses and, having been first duly sworn,
9 were examined and testified as follows:

10 MR. FORTUNA: I am Roger Fortuna, Deputy
11 Director of the NRC Office of Investigations.

12 I am here this afternoon because as we all
13 know, this is a matter before this Board and the Commission
14 has taken a considerable interest in it from a generic
15 perspective, in that a task force has presently been
16 constituted so that the Commission can make a policy
17 determination as to how its employees, including the Office
18 of Investigations and the Regions and the Boards and what-
19 have-you, should conduct themselves in the dissemination,
20 review, and what-have-you of material which is presently
21 under investigation and/or inspection, yet of interest to
22 sitting Board or Boards.

23 As your Honors are certainly aware, this
24 probably won't be resolved for several months; hopefully
25 more quickly. And in the meantime, the Commission, the

1 Boards, and all of us have to go about our business. But
2 what we are endeavoring to do today is to resolve issues
3 in the meantime.

4 I am here for several reasons. The first
5 reason I am here is to try to provide the Board, in the
6 best manner I can, information that we think may be relevant
7 to your efforts.

8 I also wish to let the record reflect that it is
9 up for grabs in the Office of Investigations because we are
10 a Commission office. We are not subject to the judicial
11 oversight of the Boards and Panels, so that we come here
12 voluntarily today.

13 We also feel it is important for us to be here
14 today so that if at a later date this matter -- the issues
15 involved -- are sent up topside to the Commission, sent
16 to the Appellate Court, the Supreme Court of the NRC, that
17 they have before them not only the concerns of the Office
18 of Investigations from a theoretical or hypothetical view,
19 but have it from a real-case situation, and by that I
20 mean quite simply in our view going to the Commission with
21 what we view may be potential harm if information is
22 released, even in a restricted disclosure posture. It is
23 much easier to discuss if we have a real-life situation
24 before us.

25 So the Office of Investigations has struggled

1 with this issue and tried to do the right thing, and we
2 believe the right thing to do is take the risk of
3 providing to the Board on this one particular occasion
4 information regarding an investigation which has been
5 recently initiated by this Office, providing this Board with
6 what we have to date in the form of oral testimony or
7 information by the two investigators, Mr. Segal and Mr.
8 Galanti, who are presently assigned to this task, and then
9 urge the Board to carefully weigh and consider their
10 information and carefully weigh this and make a decision
11 that such information need not be provided to the general
12 public under unrestricted disclosure, or even to the parties
13 of this hearing with limited disclosure.

14 We realize we are running the risk that you may
15 rule adversely on our petition and may make a determination
16 that some sort of unrestricted disclosure is necessary.

17 We would hope that we could "win at the trial
18 level". If we did not, then we'd have a more expansive
19 record which would allow the Commission to read about what
20 we are doing, and allow them to read it on a real-time
21 basis rather than in the abstract.

22 So what I am saying is by appearing here today,
23 we do not wish to imply or suggest to the Board or the
24 Commission at the time they make a final ruling about how
25 this may be handled that we will do this today, but we feel

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1 it is important to do this today, so the Commission has
2 before it a transcript which speaks about real instances
3 rather than hypotheticals.

4 If it is appropriate before the investigators
5 that are assigned to the case make their oral presentation
6 as to where we are and where we might be going on this
7 particular case, I wish to spend a few minutes with your
8 Honors describing to you what our general concerns are
9 regarding the provision of information related to ongoing
10 investigations to the Boards in camera; and additionally
11 to parties in a restricted or unrestricted setting.

12 JUDGE SMITH: Certainly we want to hear that.
13 Again, anything that you can tell us which can be told to
14 the general public should be separated, if you can. For
15 example, your reasons for coming here today are really not
16 secret. You know, they are sound management decisions,
17 and we sort of have a commitment to the parties and really
18 to the regulations of the Commission to use this very
19 unusual procedure only where it is essential, to address
20 the problem.

21 In other words, give us what you wish us to
22 know, but either withhold unnecessary information or be
23 prepared to make public the information which is not secret.
24 We should not be privy to any information from anybody in
25 this session which does not have to be secret.

1 MR. FORTUNA: Could you repeat that, your Honor?

2 JUDGE SMITH: This is a rare and unusual procedure
3 where the parties aren't even present and we have to restrict
4 it to only secret information. You heard our conversation
5 with Mr. Hayes as he speaks about the safety significance.

6 MR. FORTUNA: I think what your Honor is
7 suggesting so far as my general comments regarding the Office
8 of Investigations regarding positions on this generic issue,
9 there are no secrets, therefore let's make sure that when
10 I begin those comments and finish those comments, that I
11 clearly indicate that which we have no concern about release
12 of.

13 JUDGE SMITH: Right. And we would like to go
14 farther than that. We would like to explain to the public
15 and the parties that those comments were made. We have
16 promised everybody, we promised the court, the press and
17 the parties when we go into a secret session it will be only
18 that which is necessary to be secret.

19 MR. FORTUNA: I see.

20 JUDGE SMITH: We are not supposed to be sitting
21 around talking about lawsuits with people in private. We
22 only do it for the purposes of protecting the information
23 and following the Commission's guidance and following 2.744.
24 It's complicated. You want to give us your background, and
25 it should be. On this point you are correct.

1 We also ask when you give us information which
2 does not have to be secret that you also make it public.

3 MR. FORTUNA: In our view?

4 JUDGE SMITH: Right.

5 MR. FORTUNA: But isn't the court going to be
6 making a determination once they accept the information
7 about that which should or should not be?

8 JUDGE SMITH: The point I was getting at, for
9 example, you are going to tell us generally now why you
10 don't want to reveal to the parties secret information.

11 MR. FORTUNA: Restricted or unrestricted
12 disclosure?

13 JUDGE SMITH: I would imagine that information
14 you would not mind having given to the general public
15 this morning.

16 MR. FORTUNA: I understand, and I agree.

17 JUDGE SMITH: However, then you might come into
18 circumstances where there are people you don't trust and
19 you have reason not to trust them. That belongs in this
20 room and only in this room.

21 MR. FORTUNA: I believe, as I understand -- and
22 perhaps as I elaborate on that which I have no concern to
23 share with the world.

24 JUDGE SMITH: What we might do is when we get
25 done with this in camera session, we will get the transcripts.

1 you pick out the parts that you think can be made public
2 and simply make them public. That will take care of it.

3 MR. FORTUNA: Thank you.

4 Back to my general comments.

5 Essentially the Office of Investigations'
6 position, absent guidance by the Commission -- which
7 hopefully be forthcoming pretty soon, and I imagine it is --
8 is that we want one thing only, and I will elaborate on it
9 and approach it from different angles:

10 Investigations historically are conducted in
11 as private an atmosphere as is possible. On the other hand,
12 the results of investigations, be they hearings, trials,
13 and what-have-you, are conducted according to due process,
14 the Constitution, and the Anglo-Saxon heritage of law that
15 we have in an open and public manner.

16 The concern that the Office of Investigations
17 has is that information that is collected during the
18 collection process should remain, as much as is humanly
19 possible, within the confines of the investigative -- I
20 don't dare speak for the Region or the Staff -- perhaps the
21 inspection apparatus or function. At such time as an
22 investigative effort is completed, then clearly action
23 may have to be taken by the decisionmakers of this particular
24 agency, including yourselves.

25 At that point in time the Office of Investigations

1 clearly understands and appreciates that the product does
2 no one any good if it's held secretly and can't be addressed
3 and litigated.

4 So my comments today pertain to information
5 collected, about to be collected, allegations, impressions
6 gained by investigators, directions that individual
7 investigators should be going in during the course of
8 an investigation.

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1 It's quite simply the position of our office that
2 such information is inappropriate for sharing by boards,
3 parties, what have you, during the ongoing process. And
4 there are reasons for this.

5 First off -- and your Honors correct me if I
6 misunderstand the role and the function that we're playing
7 in this setting here -- I believe it was my understanding that
8 the information that is to be acquired will allow the Board
9 to make a determination as to whether or not you should
10 pursue particular issues that are presently contested or you
11 may reopen and allow to be contested.

12 JUDGE SMITH: Yes, that's probably the most
13 important purpose, yes.

14 MR. FORTUNA: So, my argument would be -- or the
15 position that our office is advocating is that perhaps that
16 decision that you make would best be served by the receipt of
17 information in its final incomplete form, and that any
18 information that we can offer you as we progress through a
19 given investigation is, of necessity, preliminary, incomplete,
20 and that there may be other people or other documents to
21 review, and that any impressions, opinions, what have you
22 gained by the particular investigator or investigators who
23 are working on that product may be ephemeral and disappear
24 once all the facts are in.

25 Now, once all the facts are in -- and I can

1 understand how different people feel -- that all the facts are
2 in sooner or faster, depending on the perspective that you
3 have -- we feel it's perfectly legitimate at that point in
4 time to take that product, to look at it and examine it,
5 question it, what have you.

6 I'll continue.

7 JUDGE SMITH: See, the problem, gentlemen -- and not
8 just you, Mr. Fortuna, but everybody -- is what's going to
9 happen if the Byron plant sits there idle while we wait for
10 the results of investigations that come out to be of not much
11 moment anyway -- and what we're trying to find out is isn't
12 it possible that maybe some of these investigations and
13 inspections simply don't matter, and we'd go ahead with our
14 decision anyway.

15 This is one of the things we're trying to look at.

16 If you're investigating child molesting out there
17 at that plant, or something of that nature, it may be outside
18 our jurisdiction and we'll go ahead with the decision.

19 On the other hand, if you're investigating deep-
20 rooted corruption in the quality assurance program, it may
21 very well be that, notwithstanding the fact the plant will
22 have to sit idle, we'll simply wait and get the results. We
23 have to make some kind of judgment. We have to decide whether
24 the issues that are subject to the pending investigations are
25 so serious that we will take the responsibility of delaying a

1 decision and keeping the plant idle, if that's where it turns
2 out to be. We will take that responsibility.

3 Or we can say, "Well, there's a middle ground."
4 Or we can say, "None of it matters. Just go ahead with the
5 decision."

6 But we have to look at it enough to know if those
7 circumstances prevail.

8 MR. FORTUNA: I understand you point.

9 JUDGE SMITH: And no one, the Commission or
10 anyone, is stepping down and offering to relieve us of that
11 responsibility.

12 The Commission makes it quite clear: "You decide
13 the issues put before you, and you do it damned fast." That's
14 what they're telling us. And they have not ever said anything
15 to the contrary.

16 MR. FORTUNA: Moving along in my presentation,
17 your Honors, we have another deep, abiding concern. And that
18 is, quite simply, information which may be relayed, either
19 restricted or unrestricted, that may, for however or whatever
20 reason, make itself known and become aware of, by subjects,
21 the targets, or whatever you want -- people, individuals,
22 corporations, or entities on the wrong end of an allegation.

23 And we are looking at it from the prophylactic
24 approach, which, quite simply, is if nothing is said about it,
25 then, quite simply, nothing possibly could go wrong to cause --

1 nothing could go wrong and therefore jeopardize the
2 investigative process.

3 From the Office of Investigations' perspective,
4 quite simply, if we can give the decisionmakers in this
5 agency a product which we feel was in no way tainted by the
6 potential for witnesses, subjects, what have you, to have been
7 in a position to tailor testimony, destroy documents, what
8 have you -- well, think dark thoughts for a moment -- then,
9 we think we've delivered a better product.

10 We also have a concern that if this type of
11 information, in whatever form, that sits way out of the inner
12 recesses, to barely in the recesses of an investigative
13 process, until it's complete, it will be very difficult for
14 you or for us to know whether or not that investigation that
15 we performed was untainted or unharmed.

16 It's very difficult in many instances to establish
17 that an individual destroyed documents knowing that he or
18 she was the subject of an investigation and perhaps an
19 allegation unless this individual historically destroyed or
20 doctored documents when the investigators arrived on site.

21 JUDGE SMITH: We think you have just persuaded us
22 of that point of view so thoroughly that -- I mean, we
23 understand that you simply cannot warn the people you're
24 investigating. You just can't do it. We recognize that.

25 MR. FORTUNA: The point I'm making -- and I'm really

1 beginning to focus my energies and my comments on -- for
2 even restricted disclosure is not that there may be anything
3 on the record, not that there may be anything that one could
4 establish that parties under affidavits of disclosure may or
5 may not give out.

6 What we're saying, quite simply, is: Is it worth
7 running the risk that that might happen even under a protective
8 order, talking sanctions and all those things which may
9 enhance the ability of --

10 JUDGE SMITH: Mr. Fortuna, do you read our
11 memoranda and order denying the motion for a stay?

12 MR. FORTUNA: No, I have not.

13 JUDGE SMITH: The Nuclear Regulatory Commission,
14 in decisions and statements of consideration, is even willing
15 to risk special nuclear material to safeguards -- I mean to
16 protective orders.

17 We have a body of law and tradition in the
18 Commission, which the Commission is yet to change, which
19 directs boards, directs us. We must comply and assume the
20 protective orders and affidavits of nondisclosure do their
21 job, absent some particular information, even though you're
22 talking about safeguarded information.

23 MR. FORTUNA: Excuse me. I am familiar with that.
24 When you elaborated, yes, I am aware of what you're speaking
25 to.

1 JUDGE SMITH: On a need-to-know basis.

2 MR. FORTUNA: And the only point -- and this is,
3 again, for the record --

4 JUDGE SMITH: It would be very helpful to us,
5 when you make your arguments to us about the necessity to
6 risk disclosure under protective order, if you recognize the
7 responsibility we have to comply with the Commission's
8 previous orders to even risk special nuclear material.

9 MR. FORTUNA: I do. And I hear exactly what
10 you're saying.

11 I believe what you're saying, stating it for
12 myself, very simply, is you work under certain rules and
13 regulations. And until told otherwise, you are obligated,
14 as the Commission implied, to adhere to that.

15 JUDGE SMITH: I'm telling you we simply don't have
16 the authority to allow you to convince us that, as a
17 general principle, protective orders and affidavits of non-
18 disclosure are inadequate. We don't have that authority to
19 even let you convince us of that, because the Commission has
20 said, in its official rulings, that they are adequate.

21 MR. FORTUNA: I understand your point.

22 JUDGE SMITH: And it may very well be that each of
23 us, personally and philosophically, don't believe what the
24 Commission has said. But we are judicial officers, and we
25 have to comply with that anyway.

1 MR. FORTUNA: And perhaps, your Honor, I'm speaking
2 to the Commission, rather than you. So, rather than elongate
3 that horrible process, I will direct my comments to you and,
4 more particularly, to the record.

5 And I'll wrap it up by saying if one does, in the
6 Office of Investigations' view, a cost-benefit analysis,
7 the withholding, if you will -- and that has a negative
8 connotation which I don't agree with -- temporarily of
9 information from a board or parties on either restricted or
10 unrestricted disclosure, it may be, in our view, it's out-
11 weighed by the potential for a disclosure, which would
12 compromise the outcome of an investigation and would not give
13 you as good a data base as you otherwise would have.

14 Quite simply, the tradeoff of a month or two of
15 waiting to get a complete report, in our view, is far
16 outweighed by the potential that -- the occasion that we
17 may compromise.

18 End of story.

19 JUDGE SMITH: Now, you're talking to us in
20 language that would be very helpful.

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MR. FORTUNA: In our view again, subject to the Commission wishes, we would argue that the risk is far outweighed by the potential benefit.

MR. GOLDBERG: Roger, before you proceed with your presentation can I address a few remarks?

First of all, Mr. Fortuna's policy arguments parallel those the Staff advanced in its directed certification motion and still adheres to.

Although we have submitted to this procedure, we do not feel that it's an advisable one for reasons which we indicated in our initial motion papers.

JUDGE SMITH: Which procedure is this?

MR. GOLDBERG: The procedure whereby NRC inspectors provide substantive information concerning pending inspections to Boards exclusively or to parties restrictively or the public unrestrictively. There is --

JUDGE SMITH: You've never addressed the procedure we are following today in any papers that I've read.

MR. GOLDBERG: We took the initial position that we should not provide any information at present to the Board regarding the subject of pending inspections and that Board inquiry should and could await the completion of the Staff investigation and report, and only on receipt of the Appeal Board decision and the policy did the Staff alter its position and move for a reconsideration and alternative

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1 presentation of the information for the Board's exclusive
2 review in camera.

3 JUDGE SMITH: I am really concerned about what's
4 become a general argument on the merits of the case and I
5 think actually, so far we can probably resolve the problem
6 by simply serving a transcript of this discussion -- and
7 we'll give you a chance to read it -- of this general dis-
8 cussion on the parties.

9 MR. GOLDBERG: I want to address one or two of
10 the points you have made about affidavits of nondisclosure.
11 I don't know if there's ever been an instance in which parties
12 to an NRC adjudication have been privy to this type of in-
13 formation regarding pending inspections or investigations.
14 There certainly have been instances in which parties have
15 been provided safeguards and other types of information under
16 protective order.

17 One can argue about the character of that infor-
18 mation is somewhat static. The plans are as stated in the
19 document. We are talking here about a nonstatic investiga-
20 tory process from which preliminary opinions and not facts
21 have been drawn and it is that kind of opinion information
22 that may, as Mr. Fortuna indicated, prove ephemeral at the
23 conclusion of the inspection and at least in the case of
24 the identities of confidential informants.

25 In the South Texas case, the Appeal Board has

1 concluded that even providing that information on a restricted
2 basis under affidavits of nondisclosure is unacceptable be-
3 cause knowledge on behalf of would-be informants that their
4 identities cannot be confined to NRC sources would have a
5 chilling effect on the access of the NRC inspection to infor-
6 mation received in that form.

7 JUDGE SMITH: I think that's a problem that we
8 certainly would be very sensitive to and we can get around
9 that.

10 I was think about Mr. Hayes' problem, We can ap-
11 prove a statement how you can either have a situation where
12 you received allegations and you don't mention the informant
13 and this was the result that it may be as Mr. Hayes pointed
14 out, as in the case with that the allegation
15 would identify so that wouldn't work.

16 So maybe then I would expect that we would approve
17 a presentation that would say -- that would eliminate refer-
18 ences to allegations, because allegations become irrelevant
19 when they have been inspected and the results of the inspec-
20 tion are known.

21 I think we have to take it on a case by case
22 basis, but we are aware of the vital need to protect the
23 identity of informants. And I think we have the authority
24 to go to great lengths to protect informants and I think we
25 can use some imagination on how to go about it.

1 And in this particular case I just don't see that
2 there's any problem.

3 MR. GOLDBERG: I guess we're also suggesting that
4 law enforcement investigative privileges is perhaps of
5 co-equal importance in terms of accomplishing the inspection
6 and enforcement program and function of the Agency that has
7 been entrusted to various other offices within the Agency.

8 And in no prior NRC case have I seen that privilege
9 asserted and approached as directly as it is in this case.
10 I understand that these are arguments that probably we will
11 revisit, but addressing myself to the Board's understandable
12 dilemma about its knowledge of a pending inspection and its
13 need to reach a decision, I would say it's probably the rarity
14 in contemporary NRC licensing that there is not a pending
15 inspection of one type of another regarding a plant nearing
16 completion that also happens to be the subject of a licensing
17 proceeding.

18 And I think as the Board has correctly indicated
19 and Mr. Fortuna, that it does require a balancing of the
20 need for disclosure regarding the substance of those in-
21 spections prior to their completion and the primarily
22 schedular concerns about advancing a decision date if the
23 Board or parties fail, that and an inspection could bear on
24 the outcome of the decision.

25 Typically, inspections have been reported and

1 Boards or parties have -- it has prompted Boards or parties
2 to inquire further. It has not been the case to my knowledge
3 where the pendency alone of an inspection has led to its
4 pre-completion litigation.

5 JUDGE SMITH: Its what?

6 MR. GOLDBERG: Where the pendency of an inspection
7 has led to a pre-inspection completion litigation of the
8 matters under investigation, as maybe one of the courses
9 under consideration by the Board.

10 JUDGE SMITH: I really regret the general argu-
11 ment that you are making. The same arguments that were made
12 with the Appeal Board and to us, and we promised everyone
13 involved that this would be a session that deals with secret
14 information. I think it will be harmless when we serve the
15 parts of the transcript of this session that can be made
16 public, but we are somewhat familiar with Commission law and
17 precedent and we are aware of what you're telling us.

18 MR. GOLDBERG: Your Honor, perhaps at this point
19 in time, it would be appropriate to proceed with the factual
20 presentations or the oral presentation of the NRC Office of
21 Investigation investigators and that we should at this point
22 clearly indicate for the record this would be, as you've
23 dubbed it, the secrecy part of this transcript, okay, with
24 one exception.

25 JUDGE SMITH: I think that it may very well be possible to tak

1 the beginning of Mr. Fortuna's presentation up until this
2 very moment and serve it on the parties except that we have
3 to delete my reference to To honor our commit-
4 ment to the parties not to go into matters that we don't
5 have to go into, but if you are done, if you are completed
6 giving us a textual background, fine. If you think we have
7 to know more about it, go ahead. But we know Commission
8 law, we've read Commission cases.

9 We read your briefs carefully before the Commission
10 and I do think that we are required under the circumstances
11 now, to make a preliminary inquiry into the significance of
12 the pending investigation.

13 So, with that, unless you have anything more to
14 say, let's go into the details or the substance of the infor-
15 mation.

16 MR. FORTUNA: All right, we will now begin our
17 presentation by the investigators but I'll just repeat one
18 more time for the record, so that it's close to the comments
19 that these investigators are about to make, Mr. Segal and
20 Mr. Galanti, that this is a one time thing in our view,
21 and the Office of Investigation's view. Because we're here
22 today does not necessarily mean that in the future we'd be
23 willing to make a similar presentation in the future.

24 Mr. Segal, I wonder if at this time you could
25 discuss with -- or Mr. Galanti, as you see fit -- what we

1 have done to date and where we are.

2 JUDGE SMITH: Give your full names, gentlemen,
3 would you for the transcript.

4 MR. SEGAL: Robert L. Segal.

5 MR. GALANTI: David M. Galanti.

6 MR. SEGAL: As has been indicated already by Mr.
7 Fortuna, we're basically in a very, very preliminary stage
8 of the investigation.

9 Basically our investigative activity actually was
10 predicated initially from the allegation regarding what I
11 refer to as cheating on the examination, the Hughes allegatio
12 regarding the failed test, et cetera. However, in the time
13 from that allegation [REDACTED]

14 [REDACTED] two other outgrowths of that allegation have
15 entered into our area of interest and the Board is very
16 familiar with those.

17 Basically we are talking about Hughes' allegation
18 that his training did not meet the requirements as indicated
19 in the training records and in the ANSI requirements et
20 cetera at Hatfield and that he was acting as a certified
21 inspector prior to the completion of the certification.

22 These were the three points of departure that
23 Mr. Galanti and I departed from when we went into -- began
24 our work on the investigation. The actual investigative work
25 was only begun very recently.

End 31.

1 As part of the investigative process, we have
2 reviewed as much of the material as was available to us --
3 both from the Region and from other sources. That's
4 basically just to get a foundation, so that when we're talkin
5 to people and looking at things, we can have at least as
6 good an understanding as possible about what it is we're
7 looking at, so we can recognize things, et cetera.

8 There were some related events which occurred
9 [REDACTED] And probably of
10 significance was an allegation made by an alleger -- I believ
11 in [REDACTED] -- and it regarded the QA program -- it had
12 failed, and.

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16 As a result of that [REDACTED] allegation regarding t
17 QA program, the Region did do an inspection and, as best as
18 can discern, that inspection was conducted by Mr. Forney
19 somewhere in the March area and resulted in the relief of
20 the QA manager at Hatfield from his position.

21 So, he actually confirmed the substance of that
22 allegation.

23 And at least one other inspector was decertified
24 and required to be recertified again.

25 The next event prior to our entry which we find

1 significant was an allegation received by the NRC by
2 Mr. Gardner on October 29th. That's an interesting date,
3 because that's the date that basically terminates the period
4 of time where [REDACTED] allegations are focused -- that is
5 Mr. Hughes came on board with PTL on October 1st last year,
6 actually was physically present at the site on October 4th.

7 And on October 29th, according to the Hatfield
8 records, he had accumulated all those requirements that were
9 necessary for his certification.

10 On that same date, [REDACTED] contacted Mr. Gardn
11 at the NRC with the allegations regarding not only Byron but
12 another nuclear site that he worked on before coming out
13 there. And why that is perceived as important -- it's
14 important to us, as investigators, in view of those events
15 which followed after it.

16 Hughes [REDACTED]
17 [REDACTED]
18 [REDACTED] removed from
19 Hatfield somewhere in the first few days of January.

20 Two weeks ago, Mr. Galanti and I were at the
21 site, and we interviewed approximately five or six people,
22 all of whom were principals to the Hughes' allegations.

23 Every person that we talked to gave no indicator
24 of having any problems with Mr. Hughes prior to the end of
25 November. And, in fact, he was dismissed for talking too

1 much. That's basically the substance. He was cut loose. He
2 was in gabbing sessions all the time and wasn't paying
3 attention to his job. And it was distracting not only to
4 his performance, but to those people around him.

5 As an investigator, I find that odd. I find that
6 worthy of looking into in probably a little more depth.

7 What I find interesting from an investigative
8 point of view is that we have a person who is dismissing for
9 talking too much, which appears to be a problem that manage-
10 ment might be able to resolve without dismissing the parties
11 That same person now is claiming, in fact, that he was let go
12 because he talked to the NRC and was making allegations to
13 the NRC.

14 And then we have the interviewees at the site,
15 none of them indicating any problem with the individual prior
16 to the end of November. [REDACTED]

17 [REDACTED]
18 Now, I'm not concluding that any of that is
19 factually significant. All I am saying is that raises or
20 questions in my mind -- or "suspicions" is probably the
21 appropriate word -- that there might be something here worth
22 looking at. That is -- "intimidation," I guess, is the best
23 word -- that something like this exists. And it's something
24 like that that we're interested in looking at.

25 But that's just an inference on our part. That'

1 just one of many, many inferences which we are drawing from
2 the facts and circumstances.

3 I'd like to reiterate this is very preliminary.
4 We have taken no statements from anybody, and we've had very,
5 very limited contact with the people we've talked to.

6 The same lack of recognition of a problem with
7 Mr. Hughes prior to the end of November that was held by the
8 people at Byron is also the case by the people in the Region.
9 That is, the -- when I talking to people in the Region, they
10 were basically surprised at the existence of that allegation
11 [REDACTED], as opposed to what they thought was the
12 initial allegation existing on [REDACTED] And it's
13 just --

14 JUDGE COLE: [REDACTED]

17 MR. SEGAL: [REDACTED]

20 JUDGE COLE: [REDACTED]

22 MR. SEGAL: I don't know the answer to that. But
23 I do know the people who are conducting inspections regardir
24 the allegations, to the best of my knowledge, found out from
25 me, just a few weeks ago, that that allegation had been made

1 on [REDACTED] or acted as if they had.

2 Again, I'm just telling you my reactions to talki
3 with them about that.

4 JUDGE COLE: You were surprised that they didn't
5 know about it?

6 MR. FORTUNA: Let me just interject at this point
7 The point is not who told what to whom or how or why. The
8 point is we're trying to indicate to you, in the ongoing
9 investigative process, what goes typically through the minds
10 of investigators -- and when they get on things that may or
11 may not be a disconnect, the suspicions they have. That's
12 just a typical example.

13 I'll let you finish running through those types
14 of examples.

15 And what I suggest we do, then, is turn to the
16 allegations and advise the Board as to what we've got and
17 where we are and who we've talked to so far, and about what
18 it is that they've given us to date. And then we can go on
19 with whatever preliminary feelings that we have and where
20 we think we're heading.

21 We're purposely doing this this time, because we
22 want to make sure that we have a record that shows what you
23 get, to be perfectly blunt, when you step into something at
24 the beginning or the middle, but certainly prior to the end

25 MR. SEGAL: If we can address the three allegatio

1 that I indicated in the beginning -- that is, failure to meet
2 training requirements and the certification -- we have not
3 had a change to talk to Mr. Hughes as yet. In fact, that
4 is scheduled for next week.

5 The Region has conducted at least two inspections
6 regarding the Hughes' allegations that I am aware of. And
7 I've got copies of those inspection reports.

8 And to the best of my knowledge and ability to
9 discern, their conclusions in those inspection reports are based
10 a great deal upon review of records held and maintained by
11 Hatfield.

12 Now, we had reference earlier by Mr. Goldberg to
13 a March 11th document from Mr. Forney. That, to us, is a
14 very significant document, and the contents of that
15 basically report an allegation that Hatfield records were
16 being tampered with -- in fact, were being tampered with by
17 a person who was a witness in front of this Board and a person
18 who was very, very critical to the Hughes' allegations.

19 Now, as an investigator, again, I just wonder how
20 much credence I can place upon an inspection based on records
21 which are alleged to be tainted in some fashion? They may not
22 be tainted; it may just be one example. But these are things
23 that are running through our minds. So, we find it necessary
24 to proceed independently and to try to talk to as many people
25 related to these allegations as we can.

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1 I don't want to mention name, but [REDACTED]
 2 [REDACTED] basically has substantiated the Hughes'
 3 allegations. And it's important to us to talk to these
 4 people. We don't feel that --

5 JUDGE SMITH: All of them are --

6 MR. SEGAL: To as many as we feel critical --

7 JUDGE SMITH: No, [REDACTED] you say, has
 8 substantiated Mr. Hughes' allegations.

9 And I just wondered if --

10 MR. SEGAL: Just the cheating.

11 But I find --

12 MR. FORTUNA: I think the word is "corroborate"
 13 not "substantiate."

14 MR. SEGAL: But basically, the ~~three~~^{OK} of them seem
 15 to fit together, to me, in a -- when you're looking at one,
 16 you're going to be looking at the others.

17 It all seemed to deal with the QA program and the
 18 recordkeeping process and the integrity of the program.

19 When you're looking at one or three, you're look
 20 at them basically together, to try to fit the facts together.
 21 If you try to look at them independently, I feel you're
 22 probably not addressing the issue in its entirety, as you
 23 probably should be.

24 We're not in a position to reach any conclusions.
 25 All we are in a position to know that there is work still

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to be done, and there are necessary statements and interviews to be conducted. And these should be in a great deal of detail.

1 I don't know what more I can add to that.

2 MR. FORTUNA: Let's go into what we have done,
3 who we have talked to, and what we have gotten so far, and
4 as it relates to the particular allegations.

5 MR. GALANTI: Can we confer for just a minute?

6 (Parties conferring.)

7 MR. GALANTI: What I'd like to do at this time
8 -- and again this comes from a little bit of confusion as a
9 result of yesterday when the Office of Investigations
10 learned that this session was going to be held yesterday
11 and we were not prepared to respond at that point in time,
12 so the Office of I&E of Region III was going to basically
13 talk in our behalf due to the fact that we could not
14 respond and come here for this session.

15 We just have learned that some of the allegations
16 specifically referred to the Office of Investigations have
17 not been presented and what I would like to do is go over
18 each one of these things briefly and also cover the point
19 of specifics as far as what has actually been accomplished
20 to date as far as these allegations.

21 One of the allegations that the Office of
22 Investigations is in fact responsible for is that weld
23 travelers are being filled out post facto which simply states
24 that all the weld documentations as far as the welding
25 and QC inspections that have been accomplished, the paper

1 work that is subsequently prepared after the fact which is,
2 of course, one of the violations.

3 JUDGE COLE: Is it suggested that the weld
4 travelers are simply made up then?

5 MR. GALANTI: That is correct. Nothing is, in
6 fact, documented, but these are simply allegations that
7 some of the allegers have presented to us.

8 JUDGE SMITH: That would be one of your concerns?

9 MR. GALANTI: Yes, sir.

10 MR. SEGAL: If I can inject a comment, there is
11 an additional inference and it is just an inference, that's
12 all it is, but when we are talking about the allegation
13 regarding the period of time when Mr. Hughes was actually
14 certified, versus when the records say he was certified,
15 this particular allegation could have implications on that.

16 That is, were documents altered to fit the
17 company's certification data?

18 JUDGE SMITH: Right. That's basically why we
19 reopened the record. We wanted to know if there was
20 manipulation of records, and we were concerned if they
21 would do it for one purpose, they would do it for other
22 purposes.

23 MR. GALANTI: Continuing on with this first
24 allegation, basically allegation number two -- they go hand
25 in hand together and they deal with welds being accepted

1 by an individual who was a quality control supervisor
 2 from his desk. In other words, he's taking verbal responses
 3 from the welders that all the welds have in fact been
 4 completed and in fact just fabricating the paper work.

5 Another quality control individual has been
 6 reported to alter discrepancy reports, basically by adding
 7 information after close-out by the inspectors. After the
 8 inspectors write up discrepancy reports, this individual
 9 will go back, in fact, and make changes, additions or
 10 deletions to this report. Again these are simply allegations
 11 We do not have any confirmatory information about any of
 12 these at this point in time.

13 Again, the testing. Some Level I inspectors
 14 are basically being given the same test several times on
 15 the same day until they can pass the test. Failed tests are
 16 not retained in the training files. Four names were
 17 provided.

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25 It relates to a previous allegation which

1 discussed improper QC certification testing and destruction
2 of required records.

3 The allegor stated he would gladly provide a
4 sworn statement on this issue and, of course, this is going
5 to be documented next week, in essence when we have the
6 opportunity to talk to him.

7 MR. CONNAUGHTON: That sworn statement has been
8 taken and that individual [REDACTED] The reason
9 those allegations as stated are still considered uninvestigat
10 -- in the one case four names have been provided of
11 individuals who presumably went through repetitive testing
12 until they passed and, of course, [REDACTED] subject to
13 that same process, and those allegations would be closed
14 on the basis and reasoning that we employed to address
15 that in the [REDACTED]

16 However, since then, with the Hughes depositions,
17 that facet of test procedure involving cheating and
18 providing answers has caused us to keep those items open.

19 MR. GOLDBERG: Can we confer for a minute?

20 (Parties conferring.)

21 (Recess.)

22 MR. GALANTI: I would like to -- I'd like to
23 clarify one point that I have been referring to, a quality
24 control inspector who basically we are looking at, who has
25 basically been accused of making [REDACTED] violations

1 and just identify him as being the same individual, Mr.
2 Allen Koca, from Hatfield. He is the same individual,
3 [REDACTED] I have mentioned previously, and that's
4 allegation [REDACTED] They are all the same
5 individual, Mr. Allen Koca.

6 JUDGE COLE: You identified him as the
7 inspector. He was the quality control supervisor; he is
8 now the quality assurance supervisor.

9 MR. GALANTI: I'm sorry. That is correct.

10 JUDGE CALLIHAN: He is the one against whom [REDACTED]
11 allegations are being made?

12 MR. GALANTI: That is correct.

13 JUDGE SMITH: [REDACTED]

14 MR. GALANTI: Yes.

15 MR. CONNAUGHTON: He does act in the capacity of
16 a Level III inspector and has done so in other areas with
17 previous titles and capacities.

18 MR. GALANTI: Another area is telephone calls
19 are being in fact monitored by Hatfield personnel to
20 detect communications with Commonwealth Edison and also
21 the Nuclear Regulatory Commission.

22 We also received information that documentation
23 was in fact removed from files during an inspection
24 conducted by Mr. Forney on March 10th, 1983.

25 MR. FORTUNA: That's not the date of the

1 removal, that's the date of the receipt of the information.

2 MR. FORNEY: [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 MR. GALANTI: I will read this one particular
6 allegation verbatim:

7 "On March 10th, 1983, W. L. Forney was at
8 Hatfield Electric Company, Byron site offices, for the
9 purpose of reviewing training qualification and certification
10 records of quality control inspectors. In order to
11 accomplish this task, he would select the names of personnel
12 from the employee roster, provide the names verbally to
13 a person who, in turn, would go to their QC record vault
14 and retrieve the requested records. This process was
15 utilized in the past for the records to be reviewed.

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17 MR. GALANTI: In conjunction with that
18 particular point I'd like to go into exactly what we have
19 done in an attempt to resolve these allegations at this
20 point in time. However, please keep in mind that these are
21 simply allegations. We have only received them for about
22 approximately the last month, and some of them will take a
23 considerable amount of time for resolution.

24 Myself -- well, we went to the Byron site on the
25 27th of July, and basically we went in under the purview of

1 just trying to understand what the procedures are.

2 In other words, we did not let them know that
3 we were coming for, in fact, investigative purposes.
4 They quickly found out due to the nature of some of the
5 questions we were asking.

6 We started out by talking to Mr. Robert Klinger
7 who is a quality control supervisor at CECO. We went to
8 him basically for him to set the stage to locate and identify
9 people that were -- in fact we were going to be making
10 preliminary interviews with.

11 Mr. Klinger also advised that he was overall
12 responsible for monitoring the Hatfield quality control
13 program, or quality assurance program, and we got a brief
14 rundown on their procedures and the procedures that they
15 expected the Hatfield Company to comply with.

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1 We talked to -- we also talked to Mr. Marvin
2 Tallent, who is the site manager for PTL, and who identified
3 himself as the person responsible for hiring Mr. John
4 Hughes, and also having worked with Hughes once before
5 in the Savannah River Project in August, Georgia.

6 Mr. Tallent basically stated that Hatfield was
7 responsible for making the overall determination of the
8 qualifications for the personnel, although PTL was
9 responsible for basically hiring personnel to work for
10 Hatfield.

11 The only time that Pittsburgh Testing
12 Laboratories got involved would be if in fact there was
13 basically a disciplinary problem with an employee that they
14 had sent over to work for Hatfield.

15 Mr. Tallent stated that Mr. Hughes had made a
16 comment to him shortly after working there that basically
17 he did not understand or basically agree with the procedures
18 and the way Hatfield was running a particular program.
19 However, he did not have any complaints as far as the
20 performance of his work, until about the middle of
21 December, early part of December.

22 JUDGE SMITH: Tallent did not have complaints
23 about the performance of Hughes' work?

24 MR. GALANTI: Correct. And this was from
25 talking to people at Hatfield that did not have any

1 complaints about his work.

2 During approximately early to mid-December was
3 the first time that he was in fact notified there was a
4 problem with Mr. Hughes and that he was having a problem.
5 But Tallent said again it was not directed towards his
6 actual work performance, it was on the lines of basically
7 he goofs off on the job, he talks a lot, he disrupts
8 other workers in the surrounding area.

9 Tallent said he did in fact have three
10 meetings between Hatfield and Hughes and himself, and after
11 the third meeting apparently they received a letter from
12 Hatfield saying that their services were no longer required,
13 Mr. Hughes' services were no longer required.

14 Tallent said that after they were laid off,
15 if he had had another job for Mr. Hughes at that point in
16 time that he would have given him the job simply because
17 he was a good worker, although he talked a great deal.
18 He did not have any complaints about the quality of the
19 work that he was doing.

20 MR. SEGAL: If I can interject, that's
21 significant to what I was talking about in the early part
22 of my testimony. That is, here we have a worker who
23 there's no complaints about his work. Mr. Tallent, who
24 was actually his PTL manager, is ready to place him in
25 another job if one was available. That is, it wasn't

1 "get out of our sight," it was "I'd like to use you, but
2 I just don't have a spot," and yet the man is discharged
3 for talking too much which just seems curious and worthy of
4 further attention.

5 MR. GALANTI: We also talked to Mr. James T.
6 Hill who has been with Hatfield for 17 years. Presently
7 he is the QA/QC manager for Hatfield.

8 JUDGE SMITH: At Byron?

9 MR. GALANTI: That is correct. He gave us an
10 overall purview of the Hatfield quality control program
11 and the training program, the testing program. Since his
12 promotion to the job on 28 March 1983. So basically the
13 information that Mr. Hill provided to us was information
14 from that date forward.

15 JUDGE CALLIHAN: Where in this sequence do you
16 believe, if anywhere, your mission, your true mission, was
17 recognized?

18 MR. GALANTI: It was definitely during the
19 second interview we had with Mr. Tallent. We laid our cards
20 out on the table at that point in time because we got
21 directly to the conversation and the concerns of [REDACTED]
22 [REDACTED] At that time both myself and Mr.
23 Segal talked to Tallent and believed him to be very honest
24 and straightforward individual.

25 From that point on, obviously it got around the

1 site very, very quickly what we were looking for.

2 MR. FORTUNA: That's your assumption.

3 MR. GALANTI: That's correct.

4 Mr. Hill basically again went over their new
5 established procedures and all the time we were talking
6 with him, it was not like we were prying for investigative
7 type responses from these individuals, but we were talking
8 to them like, "Please tell us how your program works, we
9 need to know," like this.

10 The only individual we really in fact basically
11 put any questions to, any investigative type questions,
12 was in fact Mr. Buchanan who was the next individual we
13 talked to, and Mr. Koca.

14 Hill was important because basically he did not
15 have a high regard for Mr. Hughes, and he was the only
16 individual who had anything to do -- any adverse comments
17 at all about Mr. Hughes' as far as the quality of his
18 work, and he simply stated some of his work was not of a
19 workmanship-like manner. But overall he said --

20 MR. FORTUNA: That's of the individuals spoken
21 to to date. That's the only individual who had any
22 "negative" comment regarding the quality of the work.

23 MR. GALANTI: That's correct.

24 JUDGE SMITH: Even the separation letter for Mr.
25 Hughes did not refer to quality of work.

1 MR. FORTUNA: If we're providing you with
2 information you are already aware of, we're just not really
3 clear what you've got.

4 MR. GALANTI: We talked to Mr. James Buchanan
5 who was in fact the main supervisor, quality control super-
6 visor for Hatfield Company at the time Mr. Hughes was
7 hired, and at the time of his termination or his lay-off
8 with Hatfield in Byron.

9 Mr. Buchanan came across as a very sincere,
10 honest, straightforward individual who talked plainly
11 and gave us information concerning the problems that they
12 were having within the quality control section, such as
13 the reinspection requirement or recertification requirement
14 in which all inspectors had to be recertified by a certain
15 date of 1 November. And he was also an individual that
16 indicated when we asked specifically about whether or not
17 there was any type of cheating on examinations, he stated
18 he has heard absolutely nothing on that particular allegation.
19 However, he said it certainly is possible.

20 JUDGE COLE: Mr. Buchanan was not in direct
21 charge in administering the examinations?

22 MR. GALANTI: He was Mr. Koca's supervisor at
23 that point in time.

24 JUDGE COLE: So he was the QA/QC supervisor over
25 both QA and QC?

1 MR. GALANTI: Correct.

2 JUDGE CALLIHAN: He is no longer there?

3 MR. GALANTI: He is in a different capacity. He
4 did not meet the qualifications established or set forth
5 and they had to relocate him at that point in time.

6 There were three other individuals that we talked
7 to; Mr. Allen Koca [REDACTED] and Mr. Ramon
8 Quiajones, and I'll let Mr. Segal go into them because
9 they tie directly into basic -- the initial point of
10 the substantiation of some of these allegations. They
11 are basically confirming of these things, that there is
12 something in this area, something in that area which we
13 need to look into.

14 MR. SEGAL: In the interview of Mr. Koca, we
15 talked to him much like the other people and we asked him
16 what were the procedures that existed, and in fact he gave
17 some confusing answers which he then attempted to set
18 straight.

19 He appeared a little nervous to us. He
20 then described the procedure and it's interesting because
21 some events have occurred early in front of this Board, I
22 guess early this month there was some testimony by Mr.
23 Koca which is in many parts in direct opposition to what he
24 told us at the interview. There is some significant
25 contradictions in what he told the Board and what he told us

1 when we were present.

2 MR. FORTUNA: That's based on information that
3 you received orally. You haven't read a transcript, nor
4 were you in attendance at that meeting.

5 MR. SEGAL: No, I wasn't present at that. I
6 have seen a copy of the transcript.

7 MR. FORTUNA: You have? Okay.

8 MR. SEGAL: I've seen that copy of the transcript.
9 I'm not talking about today. I guess it's August 1st.

10 MR. GOLDBERG: Koca has not previously testified.
11 Are you talking about his written testimony before its
12 receipt in evidence today?

13 MR. SEGAL: I guess that's what it is. I thought
14 that was the transcript of his oral testimony.

15 JUDGE COLE: It was written some time ago and
16 just given today.

17 MR. SEGAL: I had a chance to review that this
18 afternoon and have heard descriptions of his testimony that
19 was given today. It's hearsay, basically. I didn't hear
20 it and didn't read it. But from what I understand, one
21 significant point, there was no doubt in his mind when Mr.
22 Galanti and I spoke to him that Mr. Hughes had failed an
23 examination. He couldn't recall which examination, but he
24 had no doubt. It was very, very clear and readily
25 acknowledged that occurred. Yet I understand that may be

1 one of the points of contradiction.

2 However, he described a process -- I asked him
3 what happened with failed examinations, and the process
4 he described basically was this:

5 He said if a person failed an examination, he
6 would immediately critique the examination, indicate the
7 errors, let the person take the examination back to his desk
8 to review it, and the person would return the examination
9 to Mr. Koca, who would then retain the failed examination
10 until the person, at his discretion, whatever that happened
11 to be, decided that he would like to retake the test.

12 When the person retook and passed the test, the
13 final test would then be included in the file, and then he
14 would take the failed test and rip it into shreds and
15 deposit it among a multitude of waste baskets, so that
16 people couldn't seek through the test for purposes of cheating
17 or reviewing it or whatever. He didn't state that, but
18 that was the obvious implication to us.

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1 He said one other thing to us when he was taking
2 us back to his area, because we wanted to take a look at
3 some records. He offered -- and it was purely a voluntary
4 statement -- that he had had a chance to look at, read, and
5 review Mr. Hughes' written allegations to the NRC. And I
6 found that interesting.

7 He didn't indicate where it came from or how he
8 had obtained it, but it was clear that he, in fact, had read,
9 verbatim, the written statements that we had in possession.
10 And I don't know whether they were made available by the
11 Board or how he got his hands on them.

12 JUDGE SMITH: Which ones were they?

13 MR. SEGAL: The July 19th statements that were made
14 -- July 19th of this year.

15 MR. CONNAUGHTON: He prepared a written statement.

16 MR. SEGAL: I'm sure it's public.

17 But what I'm saying is he had access to it and told
18 us that he had read the thing.

19 JUDGE SMITH: That would have been the statement
20 that we took from him right here in the hearing room.

21 MR. GOLDBERG: He originated that statement, if
22 that's the one you're referring to.

23 MR. CONNAUGHTON: Mr. Koca was probably consulted
24 by the Applicant in formulating their response.

25 JUDGE CALLIHAN: That would have been May 26th of

1 this year.

2 MR. SEGAL: He gave a statement to the Intervenor
3 which was given to the Board, but that's not the statement
4 he was referring to. [REDACTED]

5 [REDACTED]
6 [REDACTED]
7 [REDACTED]

8 MR. GALANTI: Excuse me one moment.

9 (Parties conferring.)

10 MR. SEGAL: Anyway, when we got over to the site,
11 we went in. And what we wanted to do was just get a feel for
12 the recordkeeping section and take a look at Mr. Hughes'
13 file.

14 We did have an opportunity to talk to
15 there, and Mr. Koca was not aware, to the best of our
16 knowledge, of Mr. Forney's report regarding the tampering of
17 files.

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24 We just wanted to find someone who was present
25 at that time, just ask a couple of feeler questions.

1 The person we talked to was one of the who
2 worked there.

3 And when we just asked a very, very simple questio
4 regarding possible tampering,

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8 We had to stop There was no
9 doubt in our mind -- and we did not relate that Mr. Koca,
10 that conversation. All we did was just try to ask some
11 general questions.

12 And finally, the last thing I'd like to mention is
13 in regard to one other person.

14 [REDACTED] had indicated in his statement to us
15 that there was one particular employee who he had seen in
16 early January being tested in the same manner that he was
17 tested -- that is, the same cheating-type manner, take the
18 test, fail it, take it again right away.]

19 And we talked to that individual, and it was
20 interesting. We just asked him had he taken the test, and
21 he said, "Yes."

22 And I said, "Have you failed in any test?" And
23 he immediately offered, "Oh, yes. And I retook it two days
24 later." That two-day period fits very, very concisely in th
25 current program -- the current mandated policy at Byron. Tha

1 mandated policy was just mandated in May of year -- that is
2 some three or four months after this individual had taken the
3 test.

4 Now, again, he may very well have taken it two
5 days later, but it just appeared strange to us that it was
6 immediately volunteered that "Yes, I took it two days later."
7 And it's something we would like to look into in some more
8 depth.

9 I said I had one final comment. We've had access
10 to Mr. Hughes' testimony before the Board. We're quite
11 aware of many, shall we say, inconsistencies in his
12 testimony and in his resume -- his use of resumes, falsifica-
13 tion, if you will, on resumes. And we're clear that in
14 certain areas his integrity has taken a beating.

15 However, that does not discourage us from looking
16 into what may still be founded allegations. And basically,
17 we look at it as our job to find corroboration if it exists.
18 And if not, Mr. Hughes may very well be the final, shall we
19 say, target of our work. We have no idea how it's going to
20 wash out.

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1 MR. FORTUNA: We have no desire -- we're in a
2 confused state ourselves. We have conflicting information
3 that we may be able to resolve at a later date. And I think
4 we're about done with -- oh, excuse me.

5 I think, Dave, you missed one allegation.

6 MR. FORNEY: This might be an opportune time for
7 me to interject something.

8 I know a lot of times there is some question as to
9 the rationale or are all allegations processed. And in that
10 regard, I'd like to add this point. We don't make any
11 judgment when we get an allegation of the validity. We do
12 go through that process I illuminated yesterday.

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18 And even having all of this knowledge, we
19 go through exactly the same process. We do not let any of
20 that detract from or give a free opinion as to the validity
21 of any of the allegations.

22 I just thought this would be a good time to
23 interject that.

24 MR. GALANTI: It's been pointed out to me when I
25 was going over or making -- basically covering the initial

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That's one additional allegation that we will be making inquiries into.

JUDGE SMITH: I guess I missed the significance of that.

What's NCR?

MR. GALANTI: It's the nonconformance report.

MR. FORNEY: That dovetails with one on DRs that is being superseded and was the cause of our requiring them to go to the hardbound log and the preserialized NCRs and DRs.

MR. FORTUNA: I think that's the end of the story for me -- OI perspective.

Your Honors, just one final comment and I'm finished, unless there's any other questions -- at least I hope we are.

A couple of things I hope -- I don't know if we've been successful in giving you a general overview where we are realizing that we're in a preliminary stage and we're going

1 to try to work through this thing as rapidly as we can. I
2 will be perfectly candid with the Board, this was an effort
3 to show you -- I don't know, maybe you know -- if these
4 kinds of things aren't of any value to you, then that's a
5 decision that, I guess, you can make.

6 Another concern, just from a manpower perspective,
7 OI presently has in its employ a total of 38 people, 20 of
8 whom are assigned to the different regional offices and
9 co-located with the regions, which means that we have minus
10 supervisors in the field -- 20 supervisors. That's 10 teams.

11 I guess it's not a concern of yours. But for
12 whatever it's worth, I will go to confession to you for a
13 minute. If we're involved in these types of hearings on an
14 interim status basis, it really cuts into our time and is
15 another practical reason why the Office is advocating can
16 you hold up and get it from us in the end and talk to us one
17 time?

18 JUDGE SMITH: When we ruled on the Staff's motion
19 for a stay, we made it that the efficiency of the inspectors
20 was a legitimate concern and interest. And prematurity is
21 legitmate.

22 We don't want valueless evidence. Those issues
23 were never put before us before squarely. And we will listen
24 to that, and we want to know about that.

25 The difficulty that we have this afternoon is -- at

1 least as I perceive it -- your investigators have indicated
2 -- and we heard yesterday from I&E that they like to approach
3 these investigations with openmindedness, and they don't
4 assume in advance that somebody is credible or incredible.
5 And they look at them all.

6 So, I don't think we can have a discourse with
7 you in which we might express to your people our view of the
8 credibility of any of these people. I don't think that's
9 appropriate.

10 MR. FORTUNA: I purposely today directed both
11 of the OI staff members to offer up that kind of opinion
12 information, so that, again, if this record is ever certified
13 topside, the people that are in the perilous situation, in the
14 catbird's seat, can see if they like us talking about these
15 things or should we stick with, in our view, fact, fact, fact,
16 fact, fact, fact, fact, and you folks decide whether it's
17 credible or not. And if you really want the ultimate test,
18 bring them in under a subpoena. But that's another thing
19 we've purposely built in this time so we could see what it
20 look like when it went up topside, if it does.

end 35

1 MR. GOLDBERG: Can we confer before this
2 portion is done?

3 (Parties conferring.)

4 JUDGE SMITH: Anything further?

5 MR. FORTUNA: That's it.

6 JUDGE SMITH: Are you all done?

7 MR. FORTUNA: Yes, your Honor.

8 JUDGE SMITH: I guess I only have one question.
9 I'd like to ask it of the I&E people, too.

10 In your inquiries, have you had the full
11 cooperation of Commonwealth Edison?

12 MR. HAYES: Yes, I certainly have.

13 JUDGE SMITH: Have you seen any signs of any
14 effort on their part to frustrate your inquiry into Hatfield?

15 MR. HAYES: No, I haven't. I have been dealing
16 primarily with two individuals, Dick Tuetken and Mr.
17 Klinger, and I have had full cooperation from both of
18 those individuals.

19 JUDGE SMITH: How about you gentlemen in the
20 Office of Investigations?

21 MR. GALANTI: We have had one contact with Mr.
22 Klinger, and he was just simply outstanding as far as
23 cooperation and the support he was giving us in our inquiry
24 to this date.

25 JUDGE SMITH: Using your intuition or whatever

14

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1 facility you bring to bear as an investigator, do you
2 feel that those officials would like to get to the --
3 you know, get this information, too, or have it developed?

4 MR. FORTUNA: Do you have enough input to make a
5 conclusion?

6 MR. GALANTI: Mr. Klinger impressed me as an
7 individual that wanted to get things done and get them
8 done right. He mentioned the fact that Hatfield had
9 had problems in the past. He's glad now to see that they
10 have a good adequate training program, and he hoped they
11 would follow through with that program.

12 So, therefore, I did have the feeling that they
13 would want to get it resolved.

14 JUDGE SMITH: Of course, they don't know all the
15 things that you know.

16 MR. GALANTI: That's true.

17 MR. FORNEY: May I make some observations?

18 On occasions when I had referred to about
19 taking a member of the Commonwealth Edison organization
20 with me when I would go talk to the QA manager from Hatfield,
21 that was generally Mr. Klinger. And when I would tell them
22 the NRC position and what we expected should be done, Mr.
23 Buchanan typically would look to Mr. Klinger and say, "Should
24 I or shouldn't I?" And Mr. Klinger would tell him to do it
25 immediately, there was no hesitation.

1 I guess the second observation that I would
2 make was when we were -- had advised Commonwealth Edison
3 that there were allegations in the Hatfield area of
4 different ones, and through the process of different
5 inspectors, Mr. Raelove and myself and Kevin looking into
6 them, at one point I think they felt it was Koca who was
7 an allegor. And they hadn't been particularly happy with
8 Mr. Koca's performance, but because there was the possibility
9 he was an allegor and not wanting to be in a position of
10 firing somebody who was talking to the NRC, that was one
11 thing that precipitated Mr. Koca's shift from one area of
12 the QC supervision to another.

13 And I guess subsequently some number of months
14 subsequent to that, Mr. Tuetken had told me that they
15 weren't particularly happy -- they being Commonwealth
16 Edison -- with Mr. Koca's performance, and had they known
17 that he wasn't the allegor -- because after a while it
18 became apparent that he was not -- they would have let him
19 go, rather than shifting him, they would have fired him.

20 So I personally believe that, to answer your
21 question, Mr. Klinger and Mr. Tuetken both want to see
22 the job done and done correctly.

23 JUDGE SMITH: Then there is another area that
24 the Board was discussing. Let's assume that we feel that
25 all of the inspections, or the inspections and investigations,

1 or at least the ones we referred to, are premature -- I
2 mean it's premature for us to receive evidence on them, but
3 we feel that they raise issues that are important. Can
4 the technical staff give us what might be a worst case
5 scenario? That is assuming that the allegations are
6 valid, what is the significance of it, and give us a
7 basis, if there is any, to proceed with the licensing, and
8 leaving the whole -- perhaps with a condition -- and leaving
9 the whole matter to ultimate resolution to the Staff?

10 But we simply don't think we should be in the
11 position of just sitting around waiting for investigations
12 which may not develop into anything and making the utility
13 pay that price when perhaps there is a middle ground.

14 Maybe we can -- I don't know, just what is the
15 worst that can be evolved?

16 MR. HAYES: On a time frame?

17 JUDGE SMITH: No. Let's assume -- the safety.
18 Is it a seismic consideration?

19 MR. HAYES: Yes, it would certainly be a seismic
20 consideration. I think that would be the one event that
21 would test the welds the most, that would put the highest
22 stress on them. If they were going to fail, they would
23 fail under those conditions.

24 JUDGE SMITH: So certainly when we are talking
25 about seismic, we are talking about a long term problem.

1 You are not talking about any immediate safety concern if
2 we should license the plant or permit the plant to be
3 licensed?

4 MR. HAYES: Right now our best guess, just
5 finishing the reinspection program and the resampling that
6 has been necessary based on the results so far to date,
7 they have had to resample -- they expanded the sample size
8 and we are not to the end of that with Hatfield yet. They
9 could very well expand to nearly 100 percent, particularly
10 in the weld area.

11 And then, depending on our evaluation, their
12 evaluation first and our evaluation of the adequacy of
13 their review of it, it could result in a significant number
14 of welds being replaced, which would be a fairly long term
15 job. Months.

16 JUDGE SMITH: And that would impact upon
17 operations?

18 MR. HAYES: Yes, it would delay the fuel load
19 and start-up of that plant.

20 Now, right now, just on the -- what we know
21 today, it appears that they cannot finish all phases of
22 this reinspection program involving Hatfield until
23 approximately December.

24 Now that may change, you know. It's a moving
25 target we're looking at. Sometimes these things fall away

1 and sometimes they get bigger. I don't know if it would be
2 appropriate -- you're assuming a fuel load date of December,
3 and I can give you my -- which is -- is not going to be
4 December. I can say that very positively.

5 JUDGE COLE: Because of the reinspection program
6 or for other reasons?

7 MR. HAYES: Because of the reinspection program
8 alone, but there is a lot of things yet to be done at that
9 plant, and my best estimate is April to June of next year.

10 JUDGE SMITH: Would you be willing to make that
11 observation on the record?

12 MR. HAYES: I certainly would be. I have made
13 that observation to NRR in a meeting with Commonwealth
14 Edison. They have some control over this, but they don't
15 have all the control, you know. You can throw a lot of
16 people or a lot of workers and move things along, but there
17 is a limit because there is a space limitation. You can
18 only get so many workers in a confined space. And I have
19 supervised the planning group, I have been involved in a
20 number of these caseload forecast panels, and so I am not
21 unexperienced in this area of estimating what it's going to
22 take to finish up.

23 JUDGE SMITH: We sure thought we saw a lot of
24 people out there when we toured the place.

25 JUDGE CALLIHAN: Is this reinspection program on a

1 two-shift basis or one-shift basis now? This thing that
2 you say that is not going to get done until December.

3 MR. FORNEY: I believe it's six ten. Six
4 ten-hour days. Six days at 10 hour a day shifts.

5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]

10 So definitely I would say the population would
11 significantly increase. When the caseload forecast panel
12 was at the site, the resident officer, as well as Mr.
13 Hayes' observations were we really believed an April-to-June
14 date. That was back in January, I believe is when the
15 caseload forecast panel was there. And since that time
16 there has been even additional problems that have been
17 surfaced: the weld problems found during the reinspection
18 program, which in my estimation makes it look more like
19 June than April.

20 JUDGE COLE: Maybe that's why Mr. Miller didn't
21 scream too loudly when the possibility of delay was brought
22 up.

23 JUDGE CALLIHAN: [REDACTED]
24 [REDACTED]

25 MR. FORNEY: [REDACTED]

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[REDACTED]

JUDGE SMITH: Is this still private information?

MR. FORNEY: Yes, sir.

end 36

1 JUDGE CALLIHAN: Is this Byron site-specific
2 within Commonwealth, or have you had this sort of thing
3 at other Commonwealth plants?

4 What do they find at Braidwood?

5 MR. HAYES: I missed the first part.

6 JUDGE CALLIHAN: In this business we have been
7 discussing here of Hatfield, to be specific, is this Byron-
8 oriented, or has Commonwealth Edison run into these problems
9 at, say, Braidwood?

10 MR. HAYES: Just recently we received allegations
11 concerning Braidwood on the electrical contractor there.

12 JUDGE CALLIHAN: Different from Hatfield?

13 MR. HAYES: Yes, different from Hatfield. It's
14 Comstock. The gentlemen sitting here have received the
15 allegations.

16 The duty officer, he called our headquarters, Our
17 phones are diverted to answering in the emergency response
18 center at Bethesda, so he called our phone and it was di-
19 verted and in the headquarters emergency response official
20 answers the phone on a 24-hour basis got ahold of the duty
21 officer in Region III, who called me.

22 And then we made arrangements, because he alleged
23 that wrongdoing was in process. So they immediately turned
24 it over OI and they made the initial contact. All we did
25 was give them the name, the telephone number and the address.

1 And that just happened just recently, but that's--
2 we've had a few others but nowhere near the number of alle-
3 gations we've had at Byron.

4 But we find that we seem to have a pattern here
5 as we approach the licensing and going into hearings, that
6 these people seem to flush out of the walls and there is
7 advertisements in the paper and things so they are encouraged.
8 And you have to correlate that with layoffs and reduction of
9 workers and things like that.

10 And so there is always that possibility.

11 MR. FORNEY: Judge Smith, may I make one more
12 comment, that I didn't quite finish on the schedule?

13 My belief is that Commonwealth Edison has been
14 less than candid with this Board on scheduling. I believe
15 internally they understood a number of times that they could
16 not meet the schedules, that --

17 JUDGE SMITH: Are you willing to say this?

18 MR. FORNEY: Yes, sir, I've told it to them. I
19 understand where they are coming from and --

20 MR. GOLDBERG: You're looking at me. If they are
21 asked under oath, then they give sworn testimony.

22 MR. FORNEY: I managed the Nuclear Overhaul
23 Subcommittee for a number of years and we used the same
24 scheduling technique. We never told anybody what we really
25 believed because people being what they are, if you say we

1 are going to be done in January, people not being a hundred
2 per cent productive, they'll meet January, so you meet a
3 later date, and I believe that's what they are playing with
4 you.

5 Staff never was asked directly what our position
6 was relative to their ability to make any of these dates.

7 JUDGE SMITH: Sometimes it helps us to have a --
8 we have resource problems too.

9 All right, defer that information and maybe we'll
10 bring it up. In fact, maybe it will come up when you testify.

11 The Board with respect to Office of Investigations,
12 listening to the nature of the allegations, our own awareness
13 of the allegers and the accused, the state of the investiga-
14 tions; that is, how far along they are -- we don't believe
15 that an evidentiary presentation would be of any benefit
16 to us now. So we won't ask for that unless you want to give
17 it.

18 You know the Commission's order is -- it goes both
19 ways, if you think it's information we ought to have in
20 public, we'll hear you, but we don't think that under pro-
21 tective order or otherwise that the information that you
22 have is helpful. We don't think that the quality of the
23 evidence that you have to present to us is such that we
24 can use it in our decision-making.

25 This is not a question of the seriousness of it

1 or anything else, this is the quality. Because it's pre-
2 mature and because of the nature of it, it's just not con-
3 crete enough and we know something about the backgrounds
4 and the way that people talk.

5 So, as far as we are concerned the Office of
6 Investigation has nothing that they can help us in the Byron
7 case now. Of course, the information that you are developing
8 is important and the conclusions of your investigations
9 should be, if possible, part of our record.

10 Now, this doesn't mean that maybe six months down
11 the road, we still haven't heard anything and we still have
12 a decision to get out, we may not come back and ask you
13 what is happening, but the way you have presented it to
14 us now, we just don't think that you can be of any help to
15 us.

16 MR. FORTUNA: Understood, Your Honor.

17 JUDGE CALLIHAN: This is probably a grossly unfair
18 question, but do you have an estimate of when you might
19 work through this sort of thing?

20 MR. FORTUNA: I would agree that it's perhaps
21 grossly unfair, but I'll be delighted to offer you, as
22 best I can, judgment, and please -- that's all it is, but
23 I think you also have to understand that my presence here
24 has heightened my interest in the relatively speedy resolu-
25 tion of these allegations because I'm aware now far more

1 keenly even then I was this morning of the tremendous burden
2 in responsibilities that you have.

3 I would hope that we could have this wrapped,
4 based on what we have today, the number of allegations,
5 apparent numbers of people to speak with, and assuming that
6 things don't break and lead us into other areas, which they
7 could, in three months on what we've got today.

8 JUDGE SMITH: You should not infer from anything
9 this Board has to say that we have a request as to priorities.

10 We're aware if we ask for a priority here that
11 somebody else suffers and we have no authority nor interest
12 in having you place greater priorities in this case as to
13 another.

14 MR. FORTUNA: Understood, Your Honor.

15 JUDGE CALLIHAN: I hope that wasn't implied in
16 my question.

17 MR. FORTUNA: I don't believe it was, Your Honor.

18 JUDGE SMITH: I don't believe it was either but
19 we've talked about schedules, schedules, schedules and you
20 might infer from our remarks that we are asking you to
21 hurry and we certainly are not.

22 MR. HAYES: We also plan to have our end of it
23 done by December and Kevin and I, even if we have to approach
24 it a little bit differently than we would like to, are
25 doing a lot of it ourselves and we are going to make every

1 effort to get these allegations investigated.

2 That doesn't mean the corrective action will be
3 done, but we will have investigations so we will know where
4 we are by December.

5 JUDGE SMITH: Okay, now, one final thing: when
6 you get the transcripts of the in camera, would you go over
7 them and try to make an effort to identify pages of them that
8 can be served on the public record as much as you can?

9 Anything further?

10 MR. GOLDBERG: I guess before we conclude, when
11 can we expect a decision on the information given by Region
12 III?

13 JUDGE SMITH: I think that we'll have to confer
14 but I don't think that we can -- I don't know.

15 (Laughter.)

16 We don't know what to do.

17 MR. GOLDBERG: You have indicated that you would
18 give an opportunity to be heard on your prospective arrange-
19 ments.

20 JUDGE SMITH: Realizing that would be the case,
21 I can't see any possibility that this week we would be asking
22 you to begin a discussion among the lawyers about how we're
23 going to approach evidence, even if we should think that
24 evidence is appropriate, yet. We are still trying to explore
25 different ways to satisfy- the interest of everybody involved.

1 MR. GOLDBERG: There may be another occasion to
2 explore this, but we believe that the present posture of
3 the Region III inspection is comparable to the posture of
4 the OI investigation and I hope you are able to draw the
5 same conclusions about the concreteness of any evidentiary
6 presentation, that being it would be largely opinion rather
7 than factual and that opinions are subject to change once
8 all the facts are garnered.

9 And I won't recount other problems I would say
10 in a present in camera adjudication of the pending inspection
11 but I would -- I would like to do so if that is a course
12 the Board seriously is considering.

13 JUDGE SMITH: Okay.

14 All right, anything further?

15 All right, thank you very much. We appreciate
16 your courtesy in coming, gentlemen.

17 (Whereupon, at 5:50 p.m., the hearing
18 was adjourned, to reconvene in the morning
19 in open session at 9:00 a.m., Wednesday,
20 August 11, 1982.)
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