

ORIGINAL

UNITED STATES  
NUCLEAR REGULATORY COMMISSION

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IN THE MATTER OF:

DOCKET NO: 50-445-OL2  
50-446-OL2

TEXAS UTILITIES GENERATING COMPANY,  
et al.

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

LOCATION: BETHESDA, MARYLAND

PAGES: 20180 - 20450

DATE: WEDNESDAY, NOVEMBER 21, 1984

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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: In the Matter of: :  
: : :  
: TEXAS UTILITIES GENERATING COMPANY, : Docket Nos. 50-445-OL2  
: et al. : 50-446-OL2  
: : :  
: (Comanche Peak Steam Electric : :  
: Station, Units 1 and 2) : :  
: : :  
----- -X

Nuclear Regulatory Commission  
4350 East/West Highway  
Fifth Floor Hearing Room  
Bethesda, Maryland

Wednesday, November 21, 1984

The hearing in the above-entitled matter was reconvened,  
pursuant to adjournment, at 8:30 a.m.

BEFORE:

JUDGE PETER BLOCH, Chairman  
Atomic Safety and Licensing Board

JUDGE HERBERT GROSSMAN, Member  
Atomic Safety and Licensing Board

JUDGE WALTER JORDAN, Member  
Atomic Safety and Licensing Board



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C O N T E N T S

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
Robert B. Roth (Resumed)					
by Mr. Roisman (Continued)		20185			
by Mr. Watkins		20369			
by Mr. Watkins					20378

RECESS:

NOON - 20350

LAY-IN - RBR EXHIBIT 1, PAGES 20225 through 20230.

LAY-IN - RBR EXHIBIT 2, PAGES 20242 through 20244.

LAY-IN - MEMO, SUBJECT: SECURITY OF DOCUMENTS, ETC, 11-14-83, PAGE 20271.

LAY-IN - DOCUMENTS, REFERENCE: CANNON NUCLEAR COATINGS REPORT, 11-30-83, PAGES 20275 through 20280.

LAY-IN - MEMO, SUBJECT: TUSI-CONTINUING NOTES, 11-21-83, PAGE 20311.

LAY-IN - LETTER, TO MR. REYNOLDS, 11-28-83, PAGES 20315 and 20316.

LAY-IN - HANDWRITING NOTES FROM MR. ROTH, 10-18-83, PAGES 20353 and 20354.

LAY-IN - DOCUMENTS, REFERENCE: NUCLEAR COATINGS SITE ASSIGNMENT, 11-4-83, PAGES 20388 through 20396.

LAY-IN - RBR EXHIBIT 3, PAGES 20401 through 20431.

LAY-IN - MEMO, SUBJECT: MEETING TUSI, 11-4-83, PAGES 20437 and 20438.



1                   MR. WATKINS: Can we have some guidance as to  
2 when we should file this material? I believe it was due  
3 today and because we filed for reconsideration and because  
4 Intervenors indicated they wanted a chance to respond, it  
5 is not ready for filing today.

6                   JUDGE BLOCH: I think it would be preferable if  
7 you were able to file it by Friday. The only reason I  
8 want it done then is because it may arguably be relevant  
9 to the credibility of witnesses in this side of the  
10 document and if it is relevant it may be used by CASE, and  
11 if it is relevant I wouldn't want to see a situation where  
12 there's move to reopen the record because the information  
13 wasn't available to them.

14                   MR. WATKINS: I'll have to check at the site  
15 your Honor at the first break to see who is available to  
16 provide an affidavit or even an explanation.

17                   JUDGE BLOCH: If it can't be done by Friday  
18 we'll hear from applicants as to cause --

19                   MR. WATKINS: At the hearing on Monday?

20                   JUDGE BLOCH: Yes. That's okay.

21                   Now I think we should delay for the Staff.

22                   (Recess.)

23                   JUDGE BLOCH: Come to order, please. The  
24 chairman will note for the record that the Staff is not  
25 here at 8:40, and the hearing will proceed.

1 Welcome back to the stand, Mr. Roth.

2 Whereupon,

3 ROBERT B. ROTH

4 having been previously duly sworn, was examined and  
5 testified further as follows:

6 THE WITNESS: Thank you, judge. Nice to be back.

7 JUDGE BLOCH: Mr. Roisman?

8 MR. ROISMAN: Was he under oath when he said "nice  
9 to be back"?

10 JUDGE BLOCH: I saw he smiled. I believe it was  
11 genuine.

12 MR. ROISMAN: I believe the last item on the  
13 agenda, unless I'm mistaken, is something that the board  
14 had asked.

15 JUDGE BLOCH: Yes.

16 MR. ROISMAN: And Mr. Roth was going to look at  
17 something overnight.

18 MR. THORNTON: I thought that was Mr. Lipinsky.

19 JUDGE BLOCH: Yes. That was Mr. Lipinsky.

20 CROSS-EXAMINATION (resumed)

21 BY MR. ROISMAN:

22 Q I believe whether we adjourned last night we  
23 were discussing the meeting of November the 3rd, that you  
24 had with the management of the utility in Dallas. And at  
25 the time of that meeting, you and they worked out a plan

1 for further work to be done at the site by O.B. Cannon.  
2 And I'm going to show you a copy of a November 4, 1983  
3 letter from John Merritt to you with an attachment.

4 JUDGE BLOCH: I'll note for the record that the  
5 Staff has arrived.

6 MR. TREBY: I apologize, I had a flat tire this  
7 morning.

8 JUDGE BLOCH: I'll note also it's their only  
9 lateness so far in the proceeding.

10 BY MR. RCISMAN:

11 Q Mr. Roth, my first question to you is: Did you  
12 write this letter? Is this a copy of the letter that you  
13 wrote?

14 A Yes, I did write the letter.

15 Q And a memorandum that's attached to the letter,  
16 also dated November 4, from you to Messrs. Trallo, Norris,  
17 Lipinski, and Michels; is that a correct copy of the  
18 memorandum that you wrote on that date?

19 A Yes, it is. Mr. Roisman, if I may back up just  
20 a bit?

21 Q Yes.

22 A There was not a plan, as such, as worked out at  
23 the November 3rd meeting. I suggested that the task force  
24 be appointed in order to revisit the site and to attempt  
25 to review and/or confirm or negate the Lipinsky concerns.

1           The actual plan I worked up on the plane returning back  
2 to Philadelphia on the evening of the 3rd. So the  
3 memorandum is that work product, not a work product that  
4 was developed in conjunction with the client at the  
5 November 3rd meeting.

6           Q           At the November 3rd meeting, what did you  
7 understand was the meeting of the minds? What did you and  
8 they agree was supposed to happen next?

9           A           The meeting of the minds was for the task force  
10 that I had recommended to revisit the job site and to meet  
11 with the site people, site managers in order to review the  
12 matters that were discussed and/or expressed in the August  
13 8 memorandum.

14          Q           Was it your understanding that they wanted an  
15 explanation of what had been concluded by Mr. Lipinsky?  
16 Or that they wanted something else?

17          A           My impression was they wanted to take whatever  
18 action -- which, once again, would address those concerns --  
19 and either go forward to negate or confirm them.

20          Q           Well, what role was it that you would play at  
21 this time, since you had, on the 31st I believe it was, of  
22 November -- excuse me, of October -- communicated to them  
23 both Mr. Norris' and Mr. Lipinsky's answers to the  
24 detailed questions from Mr. Chapman?

25          A           What was my role?

1 Q What was the role for O.B. Cannon to play? I  
2 take it that there had already been sent a detailed  
3 written statement from you to Mr. Merritt of both  
4 Mr. Lipinsky's and Mr. Norris' version --

5 A Responses.

6 Q -- yes, responses to Mr. Chapman's fairly  
7 detailed questions?

8 A Surely.

9 Q What additional role was O.B. Cannon expected to  
10 play after that, as a result of the November 3rd meeting?  
11 What did you all agree that O.B. Cannon's role would be?

12 A I think it could only be as I stated, and that  
13 was our role was to have our people return to the site.  
14 And really, that evolved as a result of the November 3rd  
15 meeting.

16 Q Did it seem to you that -- I'm sorry?

17 A That's okay.

18 Q If you were trying to finish a question -- an  
19 answer, go ahead.

20 A I think that's satisfactory.

21 Q Okay. Did it appear to you that the company was  
22 anxious to have O.B. Cannon's opinion on the final  
23 resolution of the Lipinsky matter, since it was O.B.  
24 Cannon's opinion, at least Mr. Lipinsky's opinion, that  
25 had started the controversy in the first place?



1           A           It was quite evident that they wanted our  
2 participation.

3           Q           But what I'm trying to get at, was it your  
4 understanding that the reason they wanted your  
5 participation was because it was from O.B. Cannon that the  
6 original concerns had arisen?

7           A           Oh, I think that's obvious.

8           Q           In other words, it wasn't that they couldn't, on  
9 their own, have figured out for themselves whether they  
10 were or were not addressing their concerns? That wasn't a  
11 problem, was it?

12          A           Not in my opinion. They were perfectly capable  
13 of confirming, addressing, taking care of -- name whatever  
14 semantics you may care to use -- on their own. But I  
15 think it's rather obvious that since one of our people had  
16 raised these concerns or made these observations, then it  
17 was important to have that type of participation from  
18 Cannon.

19          Q           So that it also was important to them that, when  
20 it was in their opinion resolved, that it also be in O.B.  
21 Cannon's opinion resolved? Sort of close the loop; isn't  
22 that true?

23          A           Well, I'm sure that was important to them.

24          Q           And did they express that to you in so many  
25 words in the course the meeting? That they really needed

1 to have O.B. Cannon sign off on this before they could put  
2 it to bed?

3 A I wasn't under the impression from that meeting  
4 they agreed to any conclusion. They were objective, they  
5 were searching. As I say, there were very few points of  
6 the October 31st transmittal that transpired in that  
7 meeting. They had gone over in some detail the  
8 investigations on other matters and how they had looked  
9 into questions such as those that were raised by Joe  
10 Lipinsky, and after some discussion, again, I suggested  
11 the task force from Cannon go back to the site and do  
12 whatever might have to be done with respect to having our  
13 people and theirs feel comfortable about those very  
14 matters that were contained in the memorandum.

15 Q It didn't really ever occur to you that you  
16 might end up in a situation in which O.B. Cannon would be  
17 saying that what the company thought was the resolution of  
18 the problem was inadequate; did it?

19 A I had no predetermined opinion, nor had I drawn  
20 any conclusions as to what might result from the task  
21 force activities.

22 Q Well, as I understand it the reason that these --  
23 that the post-October 10th meetings were taking place was  
24 in part your perception that the company had been damaged  
25 and that, as a customer of O.B. Cannon, the damage to them,

1 which had been apparently caused by actions or inactions  
2 by Cannon, reflected badly on O.B. Cannon; correct?

3 A I think that was self-evident.

4 Q Right. And in that vein I assume it would not  
5 have been much solace to the utility were you to go back,  
6 work with them to resolve the problem, and at the end  
7 still say to them: I'm sorry, guys, you have not solved  
8 your paint coatings problem. That wouldn't very well  
9 ameliorate the relationship problem, would it?

10 A No. But the actions and activities of the task  
11 force would have been very welcome to that conclusion. It  
12 was not predetermined.

13 Q I understand it wasn't predetermined. But  
14 wasn't it an implicit assumption in your going back there  
15 to calm troubled waters that you couldn't very well  
16 accomplish that if the end result of your work was to  
17 continue to be critical of what the Comanche Peak plant  
18 was accomplishing in the paint coatings area.

19 A It could very well have evolved as a result of  
20 whatever activity were to have taken place that the  
21 criticisms, if they -- or the observations, would not have  
22 been completely removed or catered to. We weren't down  
23 there to hold hands.

24 JUDGE BLOCH: Mr. Roth, just a moment ago you  
25 expressed confidence that TUSI could have resolved these

1 problems itself without further consulting. But I'm not  
2 sure on the record why we should feel that way, since they  
3 turned to you in the first place to look at the paint  
4 problem.

5 What do you think changed between the time they turned  
6 to an outside consultant to look to the paint problem and  
7 the time you went back, that made it likely that they  
8 could resolve the problems all by themselves which they  
9 had come to you for in the first place?

10 MR. GALLO: Objection. The question is  
11 confusing in that the determine "problems" -- are we  
12 talking about the Lipinsky problems or the overall  
13 problems that TU may have had with respect to their  
14 coating problems.

15 JUDGE BLOCH: The coating problems.

16 MR. GALLO: All right. With that understanding  
17 I withdraw the objection.

18 THE WITNESS: If I understand the timeframes,  
19 there were some observations made in July and contained in --  
20 and expressed in a trip report by Lipinsky. There had  
21 been a retrofit program to the coating specifications, an  
22 effort that had been recently implemented or had, about  
23 the same time, gone forward. On August 9 -- the meeting I  
24 spoke about yesterday was an engineering and technical  
25 symposium on once again addressing the upgrading and how

1 the retrofit program could be improved upon.

2 That retrofit program continued from the information we  
3 had, and was continuing at the time that the meeting of  
4 November 3rd, in Dallas, took place -- the one I mentioned  
5 as having attended with Jack Norris along with the TUSI  
6 management.

7 At that meeting, certain matters relative to the  
8 progress of the trip report came up in relationship to the  
9 expressed observations contained in the August 8th report  
10 as put forth by Joe Lipinsky.

11 So, I think, to answer your question it will certainly  
12 appear that the matters were being addressed and perhaps  
13 were even being addressed at the time that Joe walked  
14 through the unit in late July.

15 JUDGE BLOCH: Well, that's the problem. As I  
16 understand it the retrofit program was actually in effect  
17 before you were hired; substantially before you were hired.  
18 So that doesn't explain why the applicants now were able  
19 to handle the problem that they felt they had to turn to  
20 you for in the first place.

21 THE WITNESS: Well, I'm not sure when the  
22 retrofit program was implemented but I think I stated  
23 earlier, it had been implemented -- my understanding was  
24 recently -- at the time that Lipinsky made his visit in  
25 July.

1        Now, the reason that we were hired in the first place  
2 was not specifically to get into certain of the details on  
3 the QA/QC program. We were to provide an overview.

4        My understanding from Jack Norris is that the principle  
5 input from Cannon would be to observe the work input, the  
6 methods of scaffolding, the types of equipment, the  
7 organization of the crews, the things which really Cannon --  
8 since our basic business is in the applications and  
9 contracting business -- are things that we would be most  
10 familiar about.

11                JUDGE BLOCH: First, I'm confident the record  
12 will support the statement that Corry Allen started the  
13 retrofit program at least as early as February of '83.

14                MR. WATKINS: Your Honor, I believe there's  
15 testimony in the record on the retrofit program from  
16 Mr. Tolson, perhaps Mr. Brandt. It was under way at the  
17 time Mr. Lipinsky visited the site, if that's your  
18 question.

19                JUDGE BLOCH: And part of the work you were  
20 asked to do was quality control and you are saying part of  
21 the quality control portion of the work was to do a  
22 general overview? That's what the applicants needed on  
23 quality control was a general overview of their own  
24 program?

25                THE WITNESS: Judge, I don't know what they

1 needed. I know that our surveillance, if you will, or  
2 taking a look at the quality procedures, quality control  
3 program, was part of that which had been requested of us.  
4 It was by no means all of it.

5 JUDGE JORDAN: Didn't I understand you to say  
6 that the overview that you spoke of included more than  
7 quality control? It was the entire matter of paint  
8 application?

9 THE WITNESS: Yes, sir. It was the entire  
10 effort, sir.

11 JUDGE BLOCH: But do you really think it was not  
12 specifically to get into the details on QA/QC? Where did  
13 that come from? You just said it was understood by  
14 Mr. Norris that it was not to get into the details of QA/QC?

15 THE WITNESS: I'm not sure Jack had any specific  
16 direction on that. Quality control, and we looked at the  
17 directions yesterday, was part of the activities that we  
18 were to look at.

19 CHAIRMAN BLOCH: And you sent someone there for  
20 three days, a qualified person?

21 THE WITNESS: Yes.

22 JUDGE BLOCH: Presumably he did some preparatory  
23 work before he went? I mean you don't as a paint  
24 contractor just go to the site and go in cold. You get  
25 some preparation, I assume?



1           THE WITNESS: I believe the testimony of Joe  
2 Lipinsky which has been submitted to the court, describes  
3 the fact that prior to his visit he had spoken to several  
4 individuals who had worked for him and whom he knew were  
5 at the site. So he had a prior "tune in" before he landed  
6 at the site by talking to individuals.

7           What other preparation he made is entirely up to him.

8           JUDGE BLOCH: You know that QC people generally  
9 work to procedures when they do their job; is that correct?  
10 As a practice in the industry?

11          THE WITNESS: Are you saying they work to  
12 procedures?

13          JUDGE BLOCH: Yes.

14          THE WITNESS: I don't know that's true.

15          JUDGE BLOCH: Generally, I mean --

16          THE WITNESS: The procedures had already been  
17 worked and the procedures, Judge Bloch, were already in  
18 place. We had nothing to do with procedures.

19          JUDGE BLOCH: I don't mean that.

20          THE WITNESS: As part of Joe's visit he may have  
21 said, may I see your procedures, or your program, or FSAR,  
22 or whatever --

23          JUDGE BLOCH: I'm sorry, that's not what I meant.

24          THE WITNESS: Wasn't I responsive?

25          JUDGE BLOCH: You were responsive because I



1 didn't express myself clearly. Often the programs are  
2 heavily proceduralized so someone in QC is accustomed to  
3 having a framework to doing his work; he has a framework  
4 to work with. That's a practice in the industry, isn't it?  
5 Maybe not as a consultant, but as a QC person that's what  
6 Mr. Lipinsky is used to doing?

7 THE WITNESS: As a QC person, Joe had put  
8 together procedures and manuals and was familiar with the  
9 procedure with respect to Cannon's program. Every  
10 organization, including every utility, may have a  
11 different program as long as they meet the uniform YFR-50  
12 as you are aware.

13 JUDGE BLOCH: And of course, he knew there would  
14 be differences between his program and the program he was  
15 going to look at?

16 THE WITNESS: Most assuredly.

17 JUDGE BLOCH: I notice when he went back with  
18 the task force there was a fairly extensive checklist they  
19 made up for QC items? Is that correct?

20 THE WITNESS: Yes, we discussed that yesterday.  
21 He and Keith Michels had a checklist they made with them.

22 JUDGE BLOCH: If I were going to a strange plant  
23 to look at a QC program I would have a checklist when I  
24 went the first time. Did you ever inquire whether  
25 Mr. Lipinsky had a checklist like that when he went to the

1 site the first time?

2 THE WITNESS: I did not inquire.

3 JUDGE BLOCH: Would you be surprised if someone  
4 from your firm went to a strange site for look at quality  
5 control without an outline of what they were going to do  
6 and how they were going to get information?

7 THE WITNESS: Not particularly because if the  
8 first visit was a walk around, an orientation, if you will,  
9 then very often a day or two's orientation and then return  
10 to make the checklist to see what interfaces could be  
11 addressed upon a revisit, would be appropriate.

12 JUDGE BLOCH: Okay. So then there's either one  
13 of two scenarios you have in mind. Either he would have  
14 thought this was only a preliminary visit and he was going  
15 to go back? Or he would have thought this was the final  
16 visit, in which case he would have been more thoroughly  
17 prepared?

18 MR. WATKINS: Your Honor, we object. We suggest  
19 these questions are better directed to Mr. Lipinsky.

20 JUDGE BLOCH: Except Mr. Roth is responsible for  
21 the company and it seems to me in thinking about this  
22 matter he has a certain responsibility of understanding  
23 what his company was going about --

24 MR. WATKINS: Your questions, though, were what  
25 did Mr. Lipinsky think or what should Mr. Lipinsky have

1 thought? If the question was what did Mr. Roth think,  
2 that's fine.

3 JUDGE BLOCH: Well, after we go through this  
4 we'll find out what Mr. Roth did to find out what his  
5 company actually did. But aren't I right? That you have  
6 in mind one of these two scenarios. Either he thought  
7 this was his first visit and he'd be going back? Or he  
8 was pretty thoroughly prepared? I mean you would have  
9 expected one of those two things to be true?

10 THE WITNESS: In all honesty, any one of several  
11 scenarios could have been true.

12 It was my responsibility, certainly, to manage Cannon  
13 and I had, and my testimony so states. My part in the  
14 effort was to make the managers available to Jack Norris  
15 as project manager. And when Jack requested that Joe  
16 visit the site, then certainly I put through channels the  
17 permission for him to go. I gave neither Jack nor Joe any  
18 direction.

19 JUDGE BLOCH: Once you found out that the report  
20 had leaked, didn't you have enough curiosity to find out  
21 what actually happened on that visit and how thorough the  
22 information was that Mr. Lipinsky had about the plant?

23 THE WITNESS: Well, certainly when, even prior  
24 to the report leaking, when the report crossed my desk  
25 after it had been promulgated and reviewed by Ralph Trallo,

1 I reviewed and talked to Joe about some of the obligations,  
2 but I did not go into any great detail or ask him for any  
3 detailed explanations. It was an in-house memorandum and  
4 it was one of those things that was still in work.

5 JUDGE BLOCH: Did you ask him on that in-house  
6 memorandum whether he had notes that supported his  
7 conclusion, since they seemed fairly extreme?

8 THE WITNESS: No, I did not.

9 JUDGE BLOCH: Did you ever see notes of  
10 Mr. Lipinsky that he took on the site?

11 THE WITNESS: I don't recall ever seeing any  
12 notes; no, sir.

13 JUDGE BLOCH: Did you ever ask him that this  
14 stuff is so important we ought to follow up on it right  
15 now because the safety of the plant could be at stake?

16 THE WITNESS: No. As I believe we explored  
17 yesterday, the timing problem was such that the day the  
18 memorandum went into final typing was the same day that we  
19 had left for the job site to attend the meeting of August  
20 9th, and the activities after the meeting of August 9th  
21 were catered to following through and obtaining the  
22 information and doing the activities that had been  
23 requested of us on the August 9th meeting. So the time  
24 factor didn't permit the --

25 CHAIRMAN BLOCH: Did you ever ask him --

1                   THE WITNESS: -- my doing in any great detail,  
2 frankly.

3                   JUDGE BLOCH: Did you ever ask him or Mr. Norris  
4 why they thought Mr. Merritt had put a stop to the work of  
5 O.B. Cannon in the course of that meeting?

6                   THE WITNESS: I don't recall that Mr. Merritt  
7 put a stop to Cannon's activities at the course of the  
8 August 9th meeting. I was aware that Jack was requested  
9 to do nothing further until further requests or notice  
10 from John Merritt.

11                  JUDGE BLOCH: I notice that no further requests  
12 ever came. You know that?

13                  THE WITNESS: Certainly.

14                  JUDGE BLOCH: And you do know that there were  
15 direct expenses that were part of the contract that were  
16 never billed?

17                  THE WITNESS: Direct expenses relating to what  
18 timeframe?

19                  JUDGE BLOCH: Phase 1.

20                  THE WITNESS: Okay. But the timeframe being the  
21 July-August?

22                  JUDGE BLOCH: I don't think that phase 1  
23 specifies in the contract specifically the ending date for  
24 the phase one-time frame.

25                  THE WITNESS: Okay.

1                   JUDGE BLOCH: But the phase 1 was just never  
2 completed, in terms of the direct billing that was  
3 anticipated.

4                   MR. GALLO: Objection. I don't know of any  
5 foundation for that conclusion made by the judge in this  
6 record.

7                   MR. WATKINS: For the record, it is applicant's  
8 position that the contract does specify the time period.

9                   JUDGE BLOCH: The time period ends when,  
10 Mr. Watkins?

11                   MR. WATKINS: Let me refer to the document.

12                   MR. GALLO: I think it indicates a period time  
13 in terms of weeks for completion of phase 1.

14                   THE WITNESS: September 21st?

15                   MR. WATKINS: It's a matter of weeks.

16                   JUDGE BLOCH: September 21st or so?

17                   THE WITNESS: Isn't that in the purchase order?

18                   JUDGE BLOCH: I'll accept that because that  
19 really wasn't the problem for the question. The question  
20 is whether you are aware that direct billing was never  
21 completed and only about a third of the direct billing was  
22 ever made? That's in the record.

23                   THE WITNESS: Okay. The direct billing you are  
24 referring to would be the out-of-pocket costs and the per  
25 diem costs?

1 JUDGE BLOCH: Yes.

2 THE WITNESS: Whatever was billed was billed.

3 They stood on their own two feet.

4 JUDGE BLOCH: Who is "they"?

5 THE WITNESS: The billings. The billings would  
6 reflect the expenses of the people who were involved in  
7 pursuing the purchase order.

8 JUDGE BLOCH: But I --

9 THE WITNESS: Now, all of the monies that may  
10 have been appropriated were not spent; if that's your  
11 question.

12 JUDGE BLOCH: My problem is, having worked as a  
13 consultant, when I have a contract that has partly direct  
14 billing and partly fixed fee, the reason you specify the  
15 direct billing is that in part it specifies the magnitude  
16 of the effort expected from the company, the amount of  
17 man-hours that are going to be put in. And I would think  
18 spending only a third of the direct billing would be  
19 something of a change of what was expected in terms of  
20 overall effort. How do you feel about that?

21 THE WITNESS: I don't think I feel one way or  
22 the other. Bad, good, indifferent.

23 JUDGE BLOCH: Do you think it was a change from  
24 the overall?

25 THE WITNESS: Sir?

1 JUDGE BLOCH: Do you think it was a change from  
2 the overall effort that was anticipated when the contract  
3 started?

4 THE WITNESS: I don't know that.

5 JUDGE BLOCH: Even though only a third of the  
6 direct billing was made?

7 THE WITNESS: I had no insight as to how the  
8 budget, if you will, had been guessed at or allocated by  
9 the utility or whoever put the purchase order together.

10 MR. GALLO: Judge Bloch, may I inquire of the  
11 record basis for the flat declaratory statements you make  
12 about only a third of the billing having been in fact  
13 billed?

14 JUDGE BLOCH: Testimony of Mr. Norris based on  
15 the accounting sheets.

16 MR. GALLO: This is the testimony, subject to  
17 the motion to strike, that you are referring to?

18 JUDGE BLOCH: That's correct. And not corrected  
19 by Mr. Norris in his direct testimony.

20 MR. GALLO: That, I think -- the inference  
21 therefore being it's true; is that it? Is that what the  
22 judge is suggesting?

23 JUDGE BLOCH: The order in which we stated we  
24 were deferring the ruling stated that we would suspend  
25 ruling on that motion until there was evidence and there



1 was clarification of what might be wrong about that record.  
2 "Explanation" is one of the words we used. There is no  
3 explanation of what was wrong with that portion of the  
4 record.

5 MR. GALLO: But the basis for the motion was  
6 that it was impractical and inappropriate to attempt to  
7 sort out that record and that, as a result the overall  
8 motion to strike would be appropriate.

9 Now, the board has not ruled other than to defer the  
10 motion. The basis for the motion, therefore, still stands  
11 as far as the O.B. Cannon, Lipinsky, and Norris position  
12 is. And therefore we do not view that part of the record  
13 as setting forth any kind of factual basis for the  
14 presumptions made by yourself in your questioning of this  
15 witness.

16 JUDGE BLOCH: Until it's struck it is in the  
17 record and it is a proper basis for questioning.

18 In addition to that there will have to be an  
19 explanation of what's wrong about various portions of that  
20 record before we would strike it as not being true.  
21 That's why we said that the defer was made, waiting an  
22 explanation of that portion of the record.

23 We are not going to wholesale strike things that maybe  
24 have been said that are true just because the witness was  
25 generally distressed.

1                   JUDGE GROSSMAN: Mr. Gallo, no one required you  
2 to go back and point out each instance in the record in  
3 which the testimony may not have been correct. But, if  
4 there were areas that were covered and the testimony was  
5 not correct, I would think that you ought to find an  
6 obligation there to have testimony cover that area without  
7 going back and specifying that the record was incorrect in  
8 that respect.

9                   MR. GALLO: Well, I find this board's view of  
10 that matter curious, with all due respect.

11                   We filed a motion, and state particular grounds for  
12 having that testimony stricken. As a predicate and  
13 fulcrum for that motion is the proposition that, for the  
14 reasons given, none of it has any probative value and  
15 should be stricken.

16                   The board issues a one-line order that says that they  
17 are deferring the motion pending explanation, something  
18 like that. That hardly explicates the rejection of the  
19 theses in the motion filed.

20                   The testimony that we filed on behalf of Mr. Norris in  
21 this case was on the predicate that that motion was still  
22 pending before this board and that there was no  
23 consideration of correcting anything in the record until  
24 the motion was either denied or granted.

25                   JUDGE BLOCH: How did you interpret "pending

1 explanation"? What was the reasonable interpretation that  
2 you gave to those words of this board?

3 MR. GALLO: I'm used to, in these proceedings,  
4 not to have to interpret orders. I'm used to having board  
5 orders telling what they mean. And not having to subject  
6 them to interpretation.

7 JUDGE BLOCH: You may either place any  
8 reasonable interpretation on a board order or may ask for  
9 clarification. What you cannot do is ignore it.

10 MR. GALLO: I, in looking at that order, rested  
11 very heavily on the word "deferred." And I believed that  
12 the board intended to listen to Mr. Norris, ask him  
13 questions with respect to his testimony, ask him questions  
14 with respect to other aspects it may have in mind that  
15 were not expressly covered in his testimony, and make a  
16 judgment after that testimony was received, to determine  
17 whether or not to grant the motion based on his demeanor,  
18 based on his appearance before this board. Not that the  
19 board was going to accept the prior testimony and then  
20 wait for explanations one way or another with respect to  
21 some of that testimony, strike some, leave some.

22 The motion was to strike in its entirety, and I would  
23 fully expect the subsequent Norris testimony would  
24 supersede that if the board was satisfied. That's how I  
25 interpreted the order, the one-liner.

1           JUDGE BLOCH: Counsel, you actually thought we  
2 would be going forward on the basis the motion was granted,  
3 not deferred. You actually thought that it was proper to  
4 go forward on the basis that that testimony did not exist  
5 on the record. That was not the ruling of the board.

6           At any rate the predicate for the question is  
7 legitimate because it is in the record.

8           I have no further questions right now, Mr. Roisman.

9           (Discussion off the record.)

10          JUDGE BLOCH: Please read the question.

11          (The reporter read the record as requested.)

12          JUDGE BLOCH: Mr. Roisman?

13          MR. ROISMAN: I would like to get, just to  
14 clarify the record in light of some of the questions the  
15 board asked.

16          During the testimony of Mr. Norris, there was received  
17 in evidence and marked as sheet number 1, a sheet like a  
18 spread sheet that showed expenses and the like. And that  
19 sheet showed reimbursable costs -- and no reimbursable  
20 costs above \$12,935 were shown as incurred prior to the  
21 end of December of 1983. And then there was an additional  
22 amount which we now have an invoice for, that was produced  
23 in discovery, dated 1/31/84, for reimbursable, \$14,302.  
24 That then shows up on the spread sheet a few days before  
25 the date of the actual invoice, which I think Mr. Norris

1 testified was the common procedure. The spread sheet  
2 represented anticipated money that would come in, rather  
3 than a bookkeeping entry for the sending of an invoice.

4 MR. WATKINS: Can you identify the transcript  
5 page number for that?

6 MR. ROISMAN: No, because I don't have the  
7 transcripts. It was bound into the transcript and had a  
8 number 1 marked on it to help separate it from the other  
9 spread sheets, but I think that was the spread sheet that  
10 reflected the question as to whether or not the  
11 reimbursable costs had been billed under the contract  
12 during phase 1.

13 JUDGE BLOCH: My understanding of that billing  
14 on January '84 is it's on the supplementary contract.  
15 Does the document itself indicate that or not?

16 MR. ROISMAN: No, it does not. In fact the only  
17 thing on this spread sheet, in the far left column where  
18 the word "contract appears" the number under reimbursable  
19 cost is still the \$37,000 that was originally projected in  
20 the first contract. Then as we go across, opposite that  
21 number there are these two entries, \$12,935.15, which  
22 represents an anticipated billing as of December 11th of  
23 '83; and then \$27,237.61, under a date which is blurred  
24 but I think looks like 1/15/84, which represents, I  
25 believe, if I remember the testimony correctly, is the

1 accumulated billing against that \$37,000 amount. And I  
2 think the difference between is the \$14,342.46 which shows  
3 up on the invoice 1/31/84 from O.B. Cannon to Texas  
4 Utilities, and that's one of the invoices that has the  
5 notation, "pay only percent" written on it.

6 MR. WATKINS: For the record, that document  
7 appears at transcript page 18825.

8 For clarification, your Honor, I may have misunderstood.  
9 I thought your statement was that O.B. Cannon billed --  
10 incurred costs which they did not bill the company.

11 JUDGE BLOCH: No. Not at all. That they had  
12 the right to bill more costs than they did bill.

13 MR. WATKINS: Right. They had a bank against  
14 which they had not completely drawn down.

15 JUDGE BLOCH: That's right.

16 BY MR. ROISMAN:

17 Q If I understand correctly, the thrust of the  
18 whole line of questioning was, was O.B. Cannon's work  
19 stopped in mid-stream? And one question related to that  
20 is did you get billed all the things you thought you were  
21 going to bill and do all the work you thought you were  
22 going to do.

23 Now, my second --

24 JUDGE BLOCH: Mr. Roth, in listening to this is  
25 there anything you want to say to clarify what counsel are

1 talking about?

2 THE WITNESS: Yes. I think you are on the wrong  
3 track.

4 JUDGE BLOCH: Tell us. Tell us.

5 THE WITNESS: When you have a consultancy  
6 contract and you address the fact that you were involved  
7 as a consultant, the fixed fee that Jack had quoted is the  
8 fixed fee. That's cast in concrete.

9 Then Jack went on, as his letter of proposal addressed,  
10 and set forth the per diem costs for the individuals  
11 and/or the dates that they might be on-site. And then he  
12 submitted that to the utility.

13 The utility accepted his proposal. The only part of  
14 that proposal that Jack had quantified was the amount of  
15 the fee.

16 And to the best of my knowledge -- and I could be wrong  
17 and Jack could address it -- he did not -- "he," meaning  
18 Jack Norris, -- did not participate in setting aside the  
19 allowable limit, if you will, on the direct billing for  
20 the costs.

21 Now, they may have said: Jack, what do you think is in  
22 line?

23 And Jack may have said well it could be five days for  
24 two people or it could be 20 days as we get into various  
25 items and so forth. I just don't know. And he could have

1 said, maybe you better use X dollars, so that we are safe.

2 Now, once those dollars, which are like target dollars,  
3 are set forth in the direct billings for the out-of-pocket  
4 costs, then obviously, as those costs are accrued you will  
5 bill in accordance with the terms of the contract.

6 Now, if in fact there was -- pick a figure, what \$40,000  
7 that may have been guesstimated for that amount -- and the  
8 final cost comes out to 12, 14, \$15,000 and the work is  
9 complete or the owner says to ourselves or any consultant:  
10 Okay, I'm satisfied, let's hold it right here. Then we  
11 have no chagrin or feelings about the fact that there's  
12 another \$15,000 laying there. We are not going to try and  
13 find work for it.

14 JUDGE BLOCH: No. I understand that.

15 THE WITNESS: No. I don't think you'd do the  
16 same thing. As a matter of fact, if you can do it for  
17 less you are a hero.

18 JUDGE BLOCH: My concern was this: When you  
19 make the estimate you are going to ask for a certain fixed  
20 fee. We'll put a rough estimate on it, it's 2/3 of the  
21 total cost. A client that agrees to a fixed fee of 2/3  
22 thinks you are worth a lot and that's all right. But he  
23 might not have agreed to a fixed fee of 80 percent of the  
24 total instead of 2/3, but when you are done with the work  
25 you have done so little direct cost that, in fact, your



1 fixed fee is 80 percent of what you actually did? Now  
2 it's possible that that's okay. That he didn't expect you  
3 to do any more work than that. But you might look at that  
4 as a chief executive and say: It looks like they expected  
5 a lot more effort from us. What happened? Why didn't we  
6 give them the effort we thought we were going to give them?

7 THE WITNESS: I rather think the effort and its  
8 worth are in the eyes of the purchaser. I'd rather  
9 reverse my role and say: Okay, I'm completely satisfied.  
10 We have the reports. We have the presentations from Jack  
11 Norris. He saved us a bundle by recommending a piece of  
12 equipment that let the whole crew start in the morning  
13 instead of hanging around for two hours, so pay the client  
14 back and said to Jack, and then perhaps calling my  
15 auspicious office, and saying: I don't think that you  
16 earned your fee and we are not going to pay it, that's a  
17 different matter. But that's not the case here.

18 JUDGE BLOCH: What about when the client comes  
19 back and says: Don't do any more work unless we tell you.  
20 Does that suggest you would want to inquire into, as to  
21 why that happened?

22 THE WITNESS: Not really. That's his entire  
23 prerogative.

24 If he were to have said -- I think I know what you may  
25 have in mind, if I may?

1           That is, I'm not satisfied. Stop right here and that's  
2 the end of it.

3           Most assuredly if that were to be the attitude or even  
4 if I were to have perceived that that was the attitude,  
5 then I would have been walking on eggshells, expecting the  
6 fee part to not be paid or to be renegotiated. And that  
7 was not the case. So we had to take, at least in my  
8 purview, the logical position that if they were satisfied  
9 they would pay the fee, and we stopped in place, and maybe  
10 they would call back at some later time to have us do more  
11 work. I had no problem with that.

12           JUDGE GROSSMAN: Well, actually they weren't  
13 satisfied, were they? And even though they didn't contest  
14 the fixed fee they contested the other costs later on,  
15 didn't they?

16           THE WITNESS: The only costs that they contested  
17 later on were those that were associated with the Lipinsky  
18 report having surfaced. But I believe the timeframe  
19 that's contained in the purchase order for the first phase,  
20 Judge Grossman, was September 21st, or in that timeframe.  
21 I believe that Jack was asked to go to further at this  
22 time; sometime in August. And it was never fed back to me  
23 by either any of our people or by any of the client's  
24 people, that there was dissatisfaction on the part of what  
25 Cannon had done.

1           JUDGE BLOCH: Well, actually -- you did know  
2 that they didn't think that the quality control findings  
3 that Mr. Lipinsky had communicated on-site were worth  
4 following up on? They didn't believe they should follow  
5 up on anything there; did they?

6           THE WITNESS: As I recall at the exit interview,  
7 Joe had communicated his observations and findings and I --  
8 I don't know, Judge Bloch, whether the utility took any  
9 action on what Joe said or whether they may have. They  
10 may not have expressed it or gotten excited in Joe's  
11 presentation about it. But I don't know that they didn't  
12 follow up on them.

13          Do you?

14          JUDGE BLOCH: I have no evidence that they have  
15 followed up on them.

16          THE WITNESS: Okay.

17          MR. WATKINS: You have an affidavit from  
18 Mr. Brandt.

19          JUDGE BLOCH: You'll have to call my attention  
20 to the portion of that in the finding. There was specific  
21 follow-up on Lipinsky's finding?

22          MR. WATKINS: The affidavit itself is follow-up.

23          JUDGE BLOCH: Oh, I meant between the time of  
24 the report and the time of the leak.

25          MR. WATKINS: Your question assumed follow-up

1 was necessary. I'm saying the affidavit itself is  
2 follow-up.

3 JUDGE BLOCH: Mr. Roth, did the internal  
4 memorandum from Mr. Lipinsky throw a flag in your mind as  
5 to a possible communication problem between Mr. Lipinsky  
6 and Mr. Tolson?

7 THE WITNESS: Had no reason to believe that.

8 JUDGE BLOCH: Even though it was Mr. Lipinsky's  
9 conclusion that Mr. Tolson wasn't interested in following  
10 up on the report and that he wasn't really interested in  
11 findings, he was interested in buying results?

12 THE WITNESS: Well, those were Joe's impressions.

13 JUDGE BLOCH: Doesn't it at least indicate a  
14 communications problem between your company and a client  
15 that could be pretty serious?

16 THE WITNESS: I don't know that it should. If  
17 any one of our representatives is interviewing a client  
18 representative and, in the opinion or the perception of my  
19 guy, maybe he's not getting across to the client's  
20 representative, then I guess that's more a matter of the  
21 human interface than it is a corporate responsibility.

22 JUDGE BLOCH: Yes, but wouldn't you worry about  
23 one of your guys not coming across properly to the  
24 corporate representative? Maybe it was his fault and not  
25 Mr. Tolson's fault? You couldn't tell.

1 THE WITNESS: I couldn't tell. How could I tell?

2 JUDGE BLOCH: But you didn't think it was worth  
3 following up on?

4 THE WITNESS: I wasn't excited about it at the  
5 time. Joe -- and again it was an internal report --  
6 expressed his opinions. That's certainly what he's  
7 entitled to do. I encourage him and the other managers to  
8 be independent. At times, adversarial, if that serves the  
9 purposes of the corporate good.

10 JUDGE BLOCH: Thank you.

11 BY MR. ROISMAN:

12 Q Mr. Roth, in the nature of the contracting work  
13 such as the work that was done here by O.B. Cannon, I take  
14 it that the normal procedure is that your contracting  
15 officer, in this case Mr. Norris, would have a sufficient  
16 communication with the client to be able to make a  
17 reasonable bid, if you will, for the work, which included  
18 the amount of work that O.B. Cannon would be doing and  
19 make sure that there was at least enough of a meeting of  
20 the minds, that the client didn't expect two months of  
21 work and you were submitting a bid for the work that  
22 looked like you were going to do 10 days. I mean there's  
23 that much of a process that must go on before you get to  
24 the contracting phase; isn't that true?

25 A I believe that's likely.

1 Q And I assume Mr. Norris is fairly competent in  
2 doing this and you would have expected that he would have  
3 done at least a respectable job trying to match up the  
4 time required to do the work and the contract that O.B.  
5 Cannon was going to enter into; isn't that true?

6 A That's Jack's profit center.

7 Q Yes. Okay. In other words you mean if he kept  
8 missing on that and underestimating and started showing  
9 really low profits or no profits, it could affect Jack  
10 Norris rather significantly in terms of his future with  
11 the corporation; correct?

12 A It changes to a loss center.

13 Q Yes. Right.

14 JUDGE BLOCH: I think in this case, Mr. Roisman,  
15 you may have misled the witness a little. In this case,  
16 if he has fewer direct costs than he estimated and a  
17 lesser percentage are fixed fees, his profit center grows;  
18 isn't that right, Mr. Roth?

19 THE WITNESS: The return on cashflow or  
20 investments is obviously higher.

21 BY MR. ROISMAN:

22 Q In either event, I take it his job is to neither  
23 be in the business of overreaching nor underestimating.  
24 His job is to be as close as possible, right on the money.  
25 That's what he's supposed to do when he's doing it right?

1           A           That's highly desirable.

2           Q           Did he at any time communicate with you before  
3 the end of the precontracting period? In other words,  
4 before the contract was signed, sealed, and delivered, and  
5 Cannon was ready to go to the site, did he communicate  
6 with you what it was that he was estimating would be  
7 required to do this job, in terms of person-years of  
8 effort, out of pocket costs, and the like?

9           A           I don't recall that he did, sir.

10          Q           And did he, at any time before they actually  
11 went to the site, brief you on what the scope of work was  
12 that was going to be carried out by the company?

13          A           He briefed me from a standpoint of copying me on  
14 his confirming proposal or offer of services.

15          Q           All right. And when you say "copying you," do  
16 you mean that you got a cc of the letter dated July 15,  
17 1983, from Mr. Norris to Texas Utilities, a copy of which  
18 I will show you. And I want to caution you that there are  
19 handwritten notes on there and I'm going to ask you  
20 whether they were on your copy when you got it.

21          A           Okay.

22          Q           They were on my copy when I got it.

23                    JUDGE BLOCH: Why don't we take a five-minute  
24 recess.

25                    (Recess.)

1 JUDGE BLOCH: The hearing will come to order.

2 BY MR. ROISMAN:

3 Q Mr. Roth, just before we took our break I showed  
4 you a copy of a letter dated July 15, 1983, and asked you  
5 if that what you had been talking about when you said you  
6 had been copied on a letter defining the scope of the  
7 contract.

8 A Yes, sir. This is the letter. And I am copied.

9 Q And you are copied. Now, I just want us to be  
10 clear because I'm going to have to have this marked. I  
11 don't think this witness is an appropriate one to put this  
12 in evidence because it is not his document but I would  
13 like to get it marked so we can refer to it, because the  
14 copy that we have here is different than the copy which  
15 was served on the parties in later discovery.

16 This is a copy which Mr. Norris provided to us when we  
17 were in Texas in discovery. And so --

18 JUDGE BLOCH: In what way is it different?

19 MR. ROISMAN: It's different, I believe, in that  
20 on the Exhibit A, which was attached to the letter,  
21 there's a substantial amount of handwritten notes. And on  
22 the front page of the document there is a cross through  
23 item 7, and some check marks, and there is the name J.C. --  
24 it looks like.

25 THE WITNESS: Youngman?



1                   MR. ROISMAN: -- Youngman, and there's also a  
2 notation in the upper right-hand corner that looks like  
3 10/11/A. All of those are handwritten notes and don't  
4 appear to be part of the original letter.

5                   THE WITNESS: Mr. Roisman?

6                   MR. ROISMAN: Yes, sir?

7                   THE WITNESS: These appear to me like a work  
8 copy. In other words, the quotation I have is all of the  
9 typewritten matter on pages 1 and 2, and the Exhibit A  
10 typewritten matter.

11                  This looks like a work copy where someone would have  
12 made the notations, or -- it could have been Jack Norris  
13 or his secretary. This is the first time I've seen the  
14 document with the manual notations.

15                  BY MR. ROISMAN:

16                  Q           There are some handwritten sheets which are also  
17 attached which make up the last three pages of the packet  
18 I gave you.

19                  Is it your recollection that those handwritten sheets  
20 were attached to the letter?

21                  A           Not in my opinion.

22                  Q           Okay.

23                  A           Because this would have been generated by Texas  
24 Utilities, as a result of having -- this is a requisition.  
25 And the normal course of action would be to receive a

1 quotation. And this was dated the 15th, and then, as a  
2 result of that offer of services, to have written a  
3 requisition to purchasing, and purchasing would then  
4 formalize the purchase order.

5 So, this is a copy, as I view it, of the requisition.

6 And, incidentally it's clarified here, sir. It looks  
7 like "Youngblood." I think that's his name --

8 Q The same name from the front cover?

9 A J.C. -- J.C.

10 Q Well, we have a handwriting expert, but I don't  
11 think it's crucial.

12 JUDGE BLOCH: Chief executive officers are  
13 decipherers of vague --

14 THE WITNESS: I'm usually the worst. I can't  
15 decipher mine.

16 MR. ROISMAN: Can I have this marked as RBR  
17 Exhibit 1?

18 MR. WATKINS: Your Honor, I have no objection to  
19 having it marked.

20 THE WITNESS: It's not mine.

21 MR. ROISMAN: That doesn't mean it's yours.

22 MR. WATKINS: The two-page letter and attachment  
23 are already in the record, they were identified and bound  
24 in the transcript. They seem to be document product --  
25 not from O.B. Cannon. And subject to confirmation, I

1 believe those notes are Mr. Youngblood's notes, and  
2 Mr. Youngblood is with the applicant.

3 So Mr. Roth, as he said, really can't speak to the  
4 notes.

5 MR. ROISMAN: Splendid.

6 So the notes, Mr. Watkins, you think are probably  
7 Mr. Youngblood's?

8 MR. WATKINS: As I recall; yes.

9 MR. ROISMAN: Do you know who he is, by the way?

10 MR. WATKINS: I don't know his title. My  
11 understanding is he's on the site in purchasing. I  
12 believe he's Mr. Gentry's assistant.

13 THE WITNESS: I would concur with that in  
14 retrospect. Because it is unusual for we, the vendor, to  
15 receive a copy of the handwritten requisition. And the  
16 handwritten requisition is attached to that.

17 MR. WATKINS: Have you ever seen that document  
18 before?

19 THE WITNESS: No.

20 MR. ROISMAN: So the record is clear and not --  
21 without in any way suggesting that it's Mr. Roth's  
22 document, I'm going to ask the reporter to mark it as RBR  
23 Exhibit 1, so we'll know which was the document we did all  
24 the talking about.

25 MR. WATKINS: Certainly.

1                   JUDGE BLOCH: It may be bound in but it is not  
2 in evidence.

3                   (The document follows:)

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**ERKOTE**

# OLIVER B. CANNON & SON, INC.

*Industrial Painting Specialists* 20225

8001 AIRPORT BLVD. • SUITE 801 • HOUSTON, TEXAS 77061  
PHONE 713 947-9670

*Corrosion  
Control Services*

July 15, 1983

*J. Youngblood*

REPLY TO:  
P.O. BOX 166 • SOUTH HOUSTON, TX 77587

C8301:001

Texas Utilities Services, Inc.  
P.O. Box 1002  
Glen Rose, Texas 76043

Attention: Mr. J. T. Merritt, Jr., P.E.  
Engineering & Construction Manager

Reference: Texas Utilities Generating Company  
Comanche Peak Steam Electric Station  
1981-83 - 2300 MW Installation  
Gibbs & Hill Project No. 2323  
05277 Protective Coatings  
Specification No. 2323-AS-31

*RBR-1 JD  
21 NOV 84*

Gentlemen:

Thank you for the time and courtesies extended to me during my visit to the jobsite on July 13, 1983. We are organizing our analysis of the Service Level One coating effort into the following categories:

- ✓1-Production
- ✓2-Work Procedures
- ✓3-Scheduling
- ✓4-Training and Painter Qualification
- ✓5-Quality Control
- ✓6-Management of Coating Effort
- ✓7-Future Maint. Considerations
- ✓8-Specifications

Per the above breakdown, we will send you our recommendations and observations, individually as we perceive the need, rather than wait until we complete our analysis. Please promptly indicate your acceptance, rejection or "needs further study" so that we don't waste time on recommendations that can't be implemented for reasons we might not be aware.

I have reviewed the commercial terms with John Youngblood and confirm them on Exhibit A (attached). TUSI General Terms and Conditions are acceptable except for the Hold Harmless Clause. A limited Hold Harmless Clause is acceptable.

We will, of course, send you a weekly report, indicating manpower, work in process, etc.

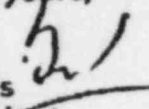
July 15, 1983

Texas Utilities Generating Company  
Comanche Peak Steam Electric Station

Page 2

Our Certificate of Insurance was mailed to Mr. Gentry's attention on July 14, 1983.

Very truly yours,

  
J. J. Norris  
Vice President

/d

cc: R. B. Roth  
A. P. McDonald  
T. F. Rogers

Attachment: Exhibit A

EXHIBIT A  
FEE SCHEDULE

A.	Management Personnel <i>CORPORATE LEVEL</i>	\$500/day + reasonable expenses
B.	Line Personnel ( <i>WORKING LEVEL - CRAFT</i> )	\$400/day + reasonable expenses
C.	Technical Personnel	
	1. Site	\$350/day + reasonable expenses
	2. Office	\$250/day
D.	Clerical Personnel	Cost
E.	To A, B, C & D above add 16% for overhead	
F.	FIXED FEE thru 9/15/83 (Negotiable after 9/15/83)	\$63,000 - <i>PAID AT END - 9-15-83</i>
G.	Test Equipment (if necessary)	Per OBC List III (attached)
H.	Terms:	Net 30

*ACTED* - DEFINE SCOPE  
 - GET ESTIMATE OF MANHOURS REQUIRED FOR SCOPE  
 - WRITE P.O. COVERING SCOPE WITH CAP ON DOLLARS

Phase I -  
 cap order for this effort @ 330.00 hours

2. SCOPE ~~ORDER~~ → B. TO GET PEOPLE FOR TWO/THREE WEEKS TO DO GENERAL SURVEY FOR JOB (FEE SCHEDULE A *MANAGEMENT PERSONNEL*)

3. GET PEOPLE ON SITE FOR TWO/THREE WEEK PERIOD

4. SECURITY AGREEMENT - JACK MORRIS - TUESDAY

5. RAY TOSGAY - WEDNESDAY

6. CREDENTIALS FOR BACK UP

7. ERACE & ABOVE

8. BILL WARD  
 PRODUCTION / ACTIVITY REPORT



J4

TEXAS UTILITIES GENERATING COMPANY  
CPSES FIELD REQUISITION - CONSTRUCTION

No R 1928

Jul 19

THIS IS NOT A PURCHASE ORDER

PURCHASING

(Leave blank for Purchasing Dept.)  
 VENDOR NAME: *Oliver B Cannon & Son Inc*  
 STREET: *9001 Airport Blvd*  
 CITY: *Suite 801*  
 STATE, ZIP: *Houston Texas 77061*  
 SHIP VIA: *N/A*  
 SHIPPING DATE: *N/A*  
 F.O.B. *SP-PPA* TERMS: *Net 30*

DEPARTMENT: *PMG*  
 INTENDED USE: *Technical Services*

REQUISITION NO. *CPF 16245*  
 DATE: *July 19* 19*83*  
 DATE REQUIRED \_\_\_\_\_  
 ESTIMATED COST - *\$100,000.00*  
 BUYER: *JC Youngblood*

ITEM NO.	QUANTITY WANTED	U/I	DESCRIPTION Give complete descriptions, ratings, catalog nos., etc. Attach specifications, if required.	SAFETY CLASS CODE	LEAVE BLANK FOR PURCHASING DEPT.		COST CODES
					UNIT PRICE	TOTAL	
			<p><i>This requisition is written to procure the services of Oliver B. Cannon &amp; Son, Inc for the purpose of coming to Comandre Peak Jobsite and analyzing the protective coatings program.</i></p> <p><i>Phase I - Scope</i></p> <p><i>Oliver B. Cannon &amp; Son Inc. will organize their analysis of the protective coatings program into the following categories:</i></p> <ul style="list-style-type: none"> <li><i>Production</i></li> <li><i>Work Procedures</i></li> <li><i>Scheduling</i></li> <li><i>TRAINING AND PAINTER Qualification</i></li> </ul>				<p><i>129230</i></p> <p><i>940010-102</i></p>

**R**  
 RECEIVED  
 JUL 20 1983  
**D**

JOB NO. 35-1195

REQUISITIONER: *JC Youngblood*  
 CONTRACTOR APPROVAL: *[Signature]*  
 APPROVED: *[Signature]*

No. Q.A. Required  
 Safety Related Q.A. required  
 TUSI APPROVALS: *[Signature]*  
 DATE: *7-19-83*

DATE: *7/19/83*  
 APPROVED: *[Signature]*



**TEXAS UTILITIES GENERATING COMPANY**  
**CPSES FIELD REQUISITION CONTINUATION SHEET — CONSTRUCTION** No R

THIS IS NOT A PURCHASE ORDER

REQUISITION 21928

ITEM NO.	QUANTITY WANTED	U/I	DESCRIPTION Give complete descriptions, ratings, catalog nos., etc. Attach specifications, if required.	SAFETY CLASS CODE	LEAVE BLANK FOR PURCHASING DEPT		COST CODES
					UNIT PRICE	TOTAL	
			<p align="center">Quality Control                      Management of Coating Effect                      Specifications</p> <p>Oliver B. Cannon &amp; Son Inc will send a team of two to three individuals (Corporate level management personnel) to the jobsite beginning July 19, 1983 for a duration of approximately three (3) weeks to do a general survey and get a general feel for the above mentioned categories.</p> <p>Fee Schedule</p> <p>A. Management Personnel (Corporate Level) * 500/day</p> <p>B. Line Personnel (Working Level - Craft) * 400/day</p> <p>C. Technical Personnel</p> <p>    1. Site * 350/day</p> <p>    2. Office * 250/day</p>				

20229

REQUISITIONER  
*JC Gargulood* X-347

No Q.A. Required     Safety Related Q.A. Required  
 TUS APPROVALS

Q.A. ACCEPTED

DATE:

CONTRACTOR APPROVAL  
 APPROVED

*Robert W. Gentry* 7-19-83  
 APPROVED

*[Handwritten Signature]*

**TEXAS UTILITIES GENERATING COMPANY**  
**CPSES FIELD REQUISITION CONTINUATION SHEET — CONSTRUCTION** No R

**THIS IS NOT A PURCHASE ORDER**

REQUISITION 21928

ITEM NO.	QUANTITY WANTED	U/I	DESCRIPTION <small>Give complete descriptions, ratings, catalog nos., etc. Attach specifications, if required.</small>	SAFETY CLASS CODE	LEAVE BLANK FOR PURCHASING DEPT		COST CODES
					UNIT PRICE	TOTAL	
			D. Clerical Personnel * Cost				
			E. To A, B, C + D Above ADD 16% tax overhead				
			F. Fixed Fee thru 9-15-83 * 63,000.00 (Negotiable after 9-15-83)				
			G. Test Equipment (if necessary) Per OBC List III				
			H. Terms Net 30				
			* plus reasonable expenses				
			Oliver B. Cannon & Son Inc. will furnish QUALIFICATIONS DATA & resumes for the personnel assigned to this effort.				
			Total cost of Phase I is not to exceed * 40,000.00 / 100,000.00. 84				
			Phase II will be defined as a comprehensive study with associated recommendations and observations. If this is required a supplement will be issued to add the additional scope.				

REQUISITIONER JC Gorgood X-347  
 CONTRACTOR APPROVAL  
 APPROVED

No Q.A. Required     Safety Related Q.A. Required     Q.A. ACCEPTED  
 JUST APPROVALS  
 APPROVED John H. Gentry 7-19-83    APPROVED JFG

DATE:

20230

1 MR. GALLO: We do not have a copy of it, Judge  
2 Bloch.

3 JUDGE BLOCH: I guess we'll get a copy when we  
4 get the transcript.

5 When I say it's not in evidence I mean I'm not  
6 admitting it now. If it has been already admitted, I'm  
7 not reversing that decision.

8 JUDGE GROSSMAN: Gentlemen, could we make an  
9 effort not having people talk at the same time. I think  
10 the reporter is probably going to have a little trouble if  
11 we keep this up.

12 MR. ROISMAN: Okay. Would you take a look at  
13 what was document number 3 in the production by O.B.  
14 Cannon. That's not it. It's the July 15th letter.

15 BY MR. ROISMAN:

16 Q Okay. That document, which does not have the  
17 additional markings on it that we just saw, that's the one  
18 that you received?

19 A That's correct. This is my designation.

20 Q Okay. And did you review it when it came in,  
21 and look at the substance of it? Or did you do something  
22 else with it?

23 A I read it, put it in the job file.

24 Q Did you, on the basis of looking at it, have any  
25 sense of what the scope of this contract was going to look

1 like?

2 A No. The only thing that was spelled out was the  
3 lump sum fee. I had no idea, and attempted to make no  
4 guesstimate, as to the direct billing portion.

5 Q Okay.

6 A By the time this came in we had not received the  
7 purchase order which gave the figure for directs.

8 JUDGE BLOCH: So you knew the lump sum fee but  
9 not the total contract amount?

10 THE WITNESS: That's correct.

11 JUDGE BLOCH: That's interesting because the  
12 total contract amount was a round number, \$100,000. And  
13 the fee was just a fraction, a portion of that. All you  
14 had to do was subtract from the 100 -- it looks to me like  
15 the controlling figure was \$100,000.

16 THE WITNESS: Well, I answered the question of  
17 what I may have perceived from this document and there's  
18 nothing in this document that says \$100,000. And I rather  
19 suspect that the direct billing costs, again, was a  
20 guesstimate or in some way promulgated by, and/or budgeted  
21 by client, Judge Bloch. Wouldn't you?

22 JUDGE BLOCH: I would think probably it was  
23 talked about.

24 BY ME. ROISMAN:

25 Q Now, when a contract is developed by someone

1 like Mr. Norris, and there is a job scope developed by him,  
2 is there any standard explanation for why the full scope  
3 of the work as originally identified would not be carried  
4 out, once you had undertaken to do the contract?

5 A I don't know that it wasn't carried out.

6 Q I didn't say it was -- I said if it isn't, is  
7 there some standard explanation for that or standard  
8 process for redefining the scope of contract in the way in  
9 which O.B. Cannon does it contracting work?

10 A Well, our disciplines are such that if there's a  
11 change in the scope plus or minus, there's a letter  
12 confirming whatever that might be in order for the record  
13 to properly reflect the discourse of the job as the job  
14 progresses.

15 Q Now -- so that if you went in expecting and  
16 contracting to do 30 days worth of work and five days into  
17 the work the company with whom you were contracting said:  
18 We'd like you just to stop here; that there should be some  
19 sort of confirmation that you are stopping short of the 30  
20 days you had predicted. Is that right?

21 A Only if the 30 days had a material effect on the  
22 fixed fee portion of the billing, which was the only  
23 portion that you can book as revenues upon receipt of the  
24 purchase order.

25 Q So from your perspective, from a corporate

1 perspective, the focus is on the fixed fee side rather  
2 than on the daily rate and out-of-pocket cost side of the  
3 contracts?

4 A Well, obviously they are both important to us.  
5 But as far as recognizing revenues from a sales standpoint  
6 or from a corporate commitment standpoint, the fixed fee  
7 is the only portion that you can address. Obviously any  
8 manager is interested in the structures for cost  
9 reimbursement. But they always stay -- stood on their own  
10 two feet. What you spend, you spend.

11 Q Let me see if I understand just the nature of  
12 the O.B. Cannon -- the way you set up your contracts.

13 The portion of the contract which is called "reimbursable  
14 costs," that is an effort to really do just that? To have  
15 the corporation get back exactly as much money as it  
16 spends, including the salary and overhead for personnel,  
17 travel expenses, food costs, and the like? It's not  
18 intended to be a place where you are making a profit on  
19 that; is that correct?

20 A Well, I don't know that the per diem fees for  
21 individuals do not have profit. I'm sure there's profit  
22 built into the per diem costs. But the only interests  
23 that Cannon, corporate, would have, would, number one, to  
24 be sure that a reimbursable cost schedule did exist; and,  
25 number two, that the commitment of time and the



1 confirmation of that time, along with the billings, would  
2 coincide with the allocable reimbursement schedule.

3 That's our corporate concern.

4 Q So you don't want to be in a situation where you  
5 are going to have reimbursable costs of \$50,000 but a  
6 contract which only allows you to bill \$25,000 for them?

7 A I see nothing wrong with that arrangement. If  
8 the billings come out to be less than that which may have  
9 been totally allowable.

10 Q No, I was positing the reverse.

11 A I'm sorry.

12 Q The real costs were 50, but the contract would  
13 only allow you to recover 25, you wouldn't want to be  
14 caught in that kind of situation; right?

15 JUDGE BLOCH: We'll take official notice of that.

16 THE WITNESS: Naturally not. But such was not  
17 the case here.

18 BY MR. ROISMAN:

19 Q No, no, I understand. And if I understand what  
20 you are saying, the focus, of, if you will, the corporate  
21 interest in a contract, is the fixed fee portion of the  
22 contract?

23 A That's true.

24 Q That as long as the company with whom you are  
25 contracting agrees to pay you the fixed fee, in a sense

1 you don't mind if, after 30 minutes of talking to you,  
2 they say: Well, that's it, guys. We don't want to see  
3 you any more but we are paying your full fixed fee. You  
4 don't go unhappy; right?

5 A No, I would be very pleased. Go back again the  
6 next day, maybe.

7 Q So that if, in the case of this contract with O.B.  
8 Cannon -- I'm sorry, with TUGCO, if TUGCO had reduced the  
9 amount of work that was going to be done by O.B. Cannon,  
10 but had not reduced the amount of fixed fee that it was  
11 going to pay, that was not a matter of great corporate  
12 interest that would necessarily have even come to your  
13 attention; is it?

14 A I don't recall that it did.

15 Q But even if -- if it happened it wouldn't  
16 necessarily have done so anyway, because it's not a matter  
17 of major importance; is it?

18 A I don't feel comfortable with the assumption  
19 that we didn't complete the work. I'm not sure that we  
20 didn't do everything that had been requested of us.

21 Q Requested of you before you ever started working  
22 on-site? Or requested of you after you got there?

23 A Well, naturally after you start work.

24 Q Well, but you start with some presumptions of  
25 what they are requesting of you. That's how you get



1 started.

2 A You have a point of departure, sure. And the  
3 point departure is to say: Here are the areas, and an  
4 overview of the coatings effort should be looked at. Then  
5 when you go on-site, you look at the item or follow the  
6 direction of your client as to what he would best have you  
7 do.

8 Q Let me show you a document, now, that's -- that  
9 was produced in the discovery on November 8th. It is a  
10 three-page document dated July 18, 1983, to J.J. Norris,  
11 from J.J. Lipinsky. And the subject: "Questions, items  
12 for OBC job number H8301."

13 A Yes?

14 Q First I would like you to look at it and tell me  
15 if you have ever seen the document before. The upper  
16 right-hand corner notations were not on the document.  
17 They are our notation.

18 A Okay.

19 Q Have you seen that document before?

20 A I probably have seen it. I am not copied.

21 Q Does that represent --

22 A I have seen it, most assuredly -- most assuredly  
23 I have seen it more recently during the review of the  
24 pretrial testimony.

25 Q But you don't have a specific recollection of

1 having seen it back around the time it was generated?

2 A No, I have no such recollection.

3 Q Now, is that kind of a document a standard  
4 document that O.B. Cannon personnel developed? That is,  
5 it's got some preprinted material on it -- qwip log sheet --  
6 in other words, are we seeing here an example of  
7 Mr. Lipinsky following a fairly well-established O.B.  
8 Cannon process when you are involved in a contract?

9 A As far as the generic process.

10 Q Yes.

11 A Because the footlog -- the qwip is the  
12 communication machine. You are aware of that? This is a  
13 machine that transmits information over the airwaves.

14 Q Right.

15 A So that's a qwip log. That's what this first  
16 sheet is.

17 Q Okay.

18 A And this is the checklist.

19 Q And that is --

20 A Or suggestion list.

21 Q And that's the kind of thing that you would  
22 expect your people to do, in preparation for undertaking a  
23 job; isn't it?

24 A Well, I leave it up to the individual. He may  
25 or may not be this complete.

1 But, certainly any manager, before he goes to a job  
2 site for a client, would have some preparatory material.  
3 And certainly this would be it.

4 Q All right. Would you look at that list and tell  
5 me whether, in your judgment, from what you know of the  
6 work that was done at the site, did Mr. Lipinsky complete  
7 the work described there in his three-day visit to the  
8 site on July 26th, 7th, and 8, 1983?

9 A Mr. Roisman, I can't make that judgment.

10 Q Okay. You have no way of knowing.

11 A Correct.

12 JUDGE BLOCH: Mr. Roisman, for the adequacy of  
13 the record, we would like you to ask that question of  
14 Mr. Lipinsky when he's recalled.

15 MR. WATKINS: For the adequacy of the record,  
16 applicants will ask him that question.

17 JUDGE BLOCH: Okay. Then you need not. I was  
18 just allowing you the possibility if they don't ask.

19 MR. ROISMAN: Okay.

20 MR. TREBY: But perhaps for the adequacy of the  
21 record we ought to have the document that's just been  
22 discussed bound in here so we know what document --

23 MR. WATKINS: Mr. Roth doesn't know very much  
24 about the document.

25 MR. ROISMAN: If I thought he knew anything

1 about it I would have asked to bind it in, but there's no  
2 confusion. This is in a version he didn't see, but he saw  
3 an earlier one. It's just a version that he saw, if at  
4 all, at a very late date.

5 MR. GALLO: I don't see any reason, Judge Bloch,  
6 why it can't be bound in as an exhibit just like the  
7 previous document was. I think Mr. Treby's suggestion is  
8 the good one.

9 MR. TREBY: Not as evidence. Just so the record  
10 is meaningful whether we go back to review it.

11 JUDGE BLOCH: Is this the only document copy  
12 that you have, Mr. Roisman?

13 MR. ROISMAN: That's true of the other document  
14 also, but the reporter has been very good with us about  
15 that so --

16 JUDGE BLOCH: It shall be bound in as an exhibit.  
17 Not at this time in evidence.

18 MR. ROISMAN: Will we mark it RBR Exhibit 2?

19 JUDGE BLOCH: For reference.

20 JUDGE GROSSMAN: Since the witness testified it  
21 was kept in the ordinary course of business, I don't even  
22 see why it couldn't be offered into the record, if someone  
23 desires it now.

24 MR. WATKINS: Judge Grossman, I believe he  
25 testified that it's up to the individual. He didn't know

1 whether these are prepared -- he hasn't testified that  
2 these are prepared in the ordinary course of business.

3 JUDGE GROSSMAN: I thought he had testified that  
4 this was expected of someone, preparatory to visiting a  
5 job site.

6 MR. WATKINS: Mr. Roth, in every case if one of  
7 your people goes to a job site do they prepare one of  
8 these sheets?

9 THE WITNESS: No, they do not. If I may clarify,  
10 Judge Grossman -- excuse me. What I said is there's some  
11 preparation by any manager prior to visiting a job site.  
12 We do not have a standard format that would address, for  
13 instance if it's a QC man, it may or may not be all the  
14 items on what is purported to be Joe Lipinsky's checklist.

15 JUDGE GROSSMAN: I don't want to argue the point,  
16 if someone wants to offer it anyway. But my understanding  
17 was that you expected that either this document or a  
18 document similar to it or some other document would be  
19 generated before a visit to the job site.

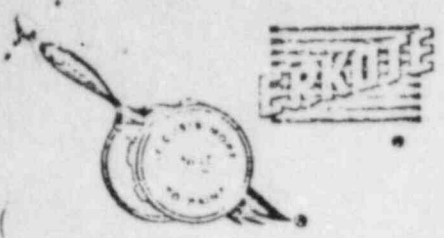
20 But let the record just indicate what it does right now.

21 JUDGE BLOCH: So you are giving a copy to the  
22 reporter, Mr. Roisman?

23 MR. ROISMAN: I have already done that,  
24 Mr. Chairman.

25 (The document follows:)

11/8/83 (1)



Corrosion  
Control Services

# OLIVER B. CANNON & SON, INC.

Industrial Painting Specialists

20242

5600 WOODLAND AVENUE · PHILADELPHIA, PA 19143  
AREA CODE (215) 729-4600 · TWX 710-670-0482

QWIP LOG SHEET

RDR-2 FIN 50  
21 NOV 83

TO: J. J. Norris  
of OBC - Breno  
Company

Number of Pages Following  
Cover Sheet: 2

FROM: J. J. Lipinsky  
of OBC - Phila  
Company

DATE: 7-18-83

QWIP NUMBER: \_\_\_\_\_

SUBJECT: Questions/Items for OBC  
Job No. 'H8301

MESSAGE:

OPERATOR: \_\_\_\_\_ Company

(215) 729-4600

FOUNDED 1916

A member of the corporate family of

1814A

QUESTIONS/ITEMS FOR OBC JOB NO. H8301

1) MATERIAL

A) Receipt

- Certification
- Tagging (Accept, Hold, Reject) are hold and rejected materials isolated?
- Receiving and Warehousing reports initiated

B) Storage

- Proper facilities (air conditioned/heated locking trailers or building with fire extinguishers)
- Access to trailers limited to QC
- Recording Thermograph

C) Material Issuance

- Only 'accept' material issued
- Materials issued by QC
- Shelf life (older material issued first or first-in first-out basis)
- Are unused materials returned

D) Mixing

- Power mixers
- Induction time and estimated pot life (do not use material with expired pot life)
- Proper thinner and amount of thinner utilized
- mixed material strained
- Only complete kits utilized
- QC monitors material temperature, pot life, mixing and documents as required

QUESTIONS/ITEMS FOR OBC JOB NO. H8301

- E) Application
  - Applicators qualified
  - Proper technique utilized
  - WFT monitored by applicator and QC (recorded by QC as needed)
  - Application equipment clean and good operating condition
  - Proper ambient conditions (confirmed and recorded by QC)
  - Defects (such as runs, sags, voids) corrected during application
  
- 2) QC PERSONNEL
  - A) Qualified per ANSI N45.2.6 (Preferably 1973)
  - B) Free from production pressures
  - C) Access to responsible management
  - D) Free to identify problems and recommend corrective action
  - E) Properly identify and document production/construction activities
  
- 3) TEST INSTRUMENTS
  - A) Proper type for activity with certificate of conformance
  - B) Regularly calibrated with documentation of results
  
- 4) DOCUMENTATION
  - A) Adequately ties work activity documented to area or item where the activity took place (traceability)
  - B) Adequately records all required tests
  
- 5) PROCEDURES/SPECIFICATIONS
  - A) Available for review and information
  - B) Adequately describe and provide instruction for all activities



1 JUDGE BLOCH: Let's continue.

2 BY MR. ROISMAN:

3 Q Now, Mr. Roth, on page 10 of your testimony, you  
4 indicated that after your November 3rd meeting, or during  
5 that meeting, you recommended the creation of a task force  
6 to be chaired by Ralph Trallo. And you say this committee  
7 would consist of Norris, Lipinsky, and our lead corporate  
8 auditor, Keith Michels. They would revisit the project  
9 site and look into each issue of concern as expressed by  
10 Joe Lipinsky, along with other matters, and report back as  
11 to their accomplishments.

12 What was it that you expected they would actually do,  
13 in order to look into each issue of concern?

14 A Well, my approach was to have Ralph Trallo chair  
15 the committee and to give him a memo of the parameters of  
16 the task force assignment, and let them take whatever  
17 action they deem necessary in concert with the client, to  
18 address the concerns expressed by Joe's memo and other  
19 matters that might come up at the time. That was my  
20 action.

21 JUDGE BLOCH: You said "Joe's memo." Do you  
22 mean the original memo or October 29 memo?

23 THE WITNESS: August 8. No, sir; the August 8  
24 memo. Is there a memo of the 29th?

25 BY MR. ROISMAN:

1 Q There's one that has a date of October 28 that  
2 he signed on October 31st, which is his answers to the  
3 Chapman questions?

4 A Okay, I did not take that --

5 Q What the chairman was asking is, did you expect  
6 the concerns, as more explicitly laid out there, were the  
7 ones that were going to be addressed?

8 A Well, I was referring to the concerns addressed  
9 in the August 8, but I believe they are coincident.

10 Q They are. There's just more detail; isn't that  
11 true?

12 A Yes.

13 Q So you expected that it would include going at  
14 least to that level of responding to those details, as he  
15 expressed them; correct?

16 A Whatever was necessary.

17 Q All right. Now, at this point in time did you  
18 have an opinion as to whether or not the way to address  
19 Mr. Lipinsky's concerns was to do an in-depth audit?

20 A I had no opinion.

21 Q None at all?

22 A No opinion at all.

23 Q Had Mr. Lipinsky expressed to you his opinion  
24 that it could only be resolved by carrying out an in-depth  
25 audit?

1           A           Yes, he said that an in-depth audit would  
2 confirm or deny the concerns he had expressed and I had no  
3 opinion, other than to respect his opinion.

4           Q           And I assume there would have been no use to the  
5 trip, if the trip merely left the same ambiguity that the  
6 original trip had left? That is with your people saying:  
7 Well, we don't know yes and we don't know no and we need  
8 more information before we can say one way or the other.  
9 That would have made no sense; would it?

10          A           What's your question? The question did not  
11 address --

12          Q           That this second trip --

13          A           Yes.

14          Q           -- the only sense to having the second trip was  
15 that it result in O.B. Cannon being able to give some  
16 definitive answer to the question: Are the Lipinsky  
17 concerns resolved? Or are they real?

18                If they couldn't give a definitive answer to that  
19 question there would be no point in going down to have  
20 another trip; would there?

21          A           That's obvious.

22          Q           And, given what you just said, then, the only  
23 person whose opinion had been really sought on this  
24 subject, Mr. Lipinsky's, by you, his opinion was that the  
25 only way that we can give that definitive answer and lay

1 the matter to rest, one way or the other, is to do an  
2 audit; isn't that right?

3 A His is not the only opinion, Mr. Roisman, on  
4 which I relied.

5 Q I'm sorry. I thought you just said -- I thought  
6 you just told me that you had no basis to question his  
7 opinion.

8 A I didn't.

9 Q Well, did you have any contrary opinion?

10 A I had opinions from Ralph Trallo and Jack Norris,  
11 relative to the actions of the task force.

12 Q And what -- were their opinions consistent or  
13 inconsistent with Mr. Lipinsky's?

14 A There were some variances, but they were  
15 basically in agreement.

16 Q That you needed to do an audit, in order to lay  
17 to rest the issues of the Lipinsky memo, one way or the  
18 other?

19 A The only way to totally allay the concerns would  
20 be to do an in-depth audit.

21 JUDGE BLOCH: Mr. Roth, are you sure that was  
22 Mr. Norris' view?

23 THE WITNESS: I'm not sure that Jack Norris was  
24 opposed to an audit. Certain things expressed could only  
25 be completely allayed by an in-depth audit and review of

1 the documentation.

2 JUDGE BLOCH: Do you recall that was his view at  
3 the time?

4 THE WITNESS: I don't recall his specific views.

5 MR. GALLO: Judge Bloch, what time are we  
6 talking about? I'm sorry to interrupt.

7 CHAIRMAN BLOCH: This is November 3rd?

8 THE WITNESS: November 3rd, November 4th,  
9 thereabouts.

10 JUDGE BLOCH: Was that his view at that  
11 timeframe? Do you know?

12 THE WITNESS: I don't know. I do know, if there  
13 is a serious objection, rest assured I hear about it. And  
14 I recall no objection. These three principle managers of  
15 the task force were in concert that they should go to the  
16 job site and follow my parameters.

17 JUDGE BLOCH: Yes, but had he previously  
18 expressed the opinion to you that the Lipinsky report was  
19 just badly in error and there was no reason for a detailed  
20 follow-up?

21 THE WITNESS: No. I don't think Jack said that.  
22 There were, certainly, opinions expressed by Joe  
23 Lipinsky with which Jack did not agree. But I took no  
24 great umbrage at that.

25 BY MR. ROISMAN:

1           Q           Isn't the reason for this confusion that the  
2 real issue that was on the table was not whether or not O.B.  
3 Cannon as a corporation thought there were or were not  
4 problems; the issue was to get Joe Lipinsky, who had said  
5 there were originally, to come to some conclusion on that  
6 issue? Isn't he the pivotal factor here, and that's why  
7 Mr. Norris had to agree there had to be an audit, because  
8 Joe Lipinsky didn't change his mind about needing an audit  
9 as a prerequisite about resolve his concerns?

10          A           Well, you said "the reason for the confusion,"  
11 and quite honestly I don't think there is any confusion.

12          Q           I think the confusion I was referring to was  
13 that: Why would it be that Mr. Norris would be in  
14 agreement with Mr. Lipinsky that there had to be an audit,  
15 given the fact that he had said, both on his October 28th  
16 memorandum to you for transmittal to Mr. Chapman, and on  
17 earlier occasions, that he didn't agree with Joe Lipinsky  
18 that there were any problems there. And that -- that's a  
19 confusion, in trying to figure out why was he so  
20 supportive of an audit? And I'm saying, isn't the reason  
21 for that apparent confusion that the issue that you  
22 discussed on November 4th, or 3rd, with your staff, was  
23 not: How many of you think that Joe is right and how many  
24 of you think that Joe is wrong? But rather the issue was:  
25 What do we have to do to get Joe to confirm or deny his

1 concerns? And that's a somewhat different question than  
2 the question that was being asked by Mr. Chapman in the  
3 memo to which Mr. Lipinsky and Mr. Norris provided answers;  
4 isn't that right?

5 A Well, it's correct that as a result of talking  
6 to the respective managers who were part of the task force,  
7 Joe's position, and as OA director properly so, that  
8 really to allay the concerns and/or his observations, an  
9 audit would be necessary.

10 Jack's opinion was that that may or may not be true, I  
11 don't think so; or words to that effect.

12 But I can assure you that when the task force received  
13 the directive, there was acquiescence by all to proceed  
14 within the parameters of my direction.

15 Q All right. But the point is, just as before you  
16 indicated that there would be no sense in going back to  
17 the site the second time if you weren't going to put the  
18 issues to rest one way or the other, similarly there would  
19 have been no sense to going back to the site if everybody  
20 but Lipinsky put the issues to rest, and he still felt  
21 that the issues were not resolved; isn't that true?

22 A Well, the task force was to do their job. And,  
23 if, in so doing their job, the matter of the Lipinsky  
24 concerns were resolved, fine. If they weren't, then they  
25 would have to be investigated further.



1 Q That's right.

2 A So the purpose of going there was to, as I think  
3 we've stated on at least several occasions, was to confirm  
4 or negate the concerns expressed by the Joe Lipinsky memo.

5 Q But confirm or negate them for Joe Lipinsky?  
6 You would not have succeeded in your task if Trallo,  
7 Norris, and Michels had all said: We are satisfied. And  
8 Lipinsky had come way and said: I'm not. I'm not  
9 satisfied that I've got enough information to answer the  
10 question whether my first memo was right or wrong.

11 That wouldn't have been a satisfactory resolution, was  
12 it?

13 A No, I delegated the satisfactory resolution to  
14 Ralph Trallo. And he was the task force leader. And he  
15 would be aboard when they were there; he would receive the  
16 opinions, he would make his own investigation. He's a  
17 capable investigator.

18 And then, whatever the results were to be they were to  
19 be.

20 Q That's not my question. My question, and I'm  
21 going to ask you again, I want you to listen real  
22 carefully to it.

23 There would have been no sense for O.B. Cannon, no  
24 matter how many people it sent to the site, to end up with  
25 a resolution that did not include Joe Lipinsky saying: I



1 now have the definitive answer to all the issues that I  
2 raised in August; and here is my definitive answer? He  
3 was the one that had to have the definitive answer to put  
4 the issues to rest; isn't that true?

5 A That is correct. But I wanted the report to  
6 come from a third party and not have Joe alone. And  
7 that's why I had Ralph do it.

8 Now, if they are unanimous in their opinions and Ralph  
9 was to receive the input of the other members of the  
10 committee, then I think what has resulted from that is a  
11 matter of record.

12 Q I understand the value of having a lot of other  
13 people there. But I just wanted to understand the focus  
14 of the trip.

15 JUDGE BLOCH: Mr. Roth, I'm not sure that you  
16 really mean what you just said. What would have happened  
17 if the report came out, it was well documented, and  
18 Mr. Trallo found that each of the things was not justified,  
19 and documented that, and Mr. Lipinsky said: I still don't  
20 believe it.

21 Would that or would that not have resolved the problem?

22 THE WITNESS: Well, you know, you can explore  
23 any "what ifs"; any group of scenarios, if you will.

24 I have found Ralph Trallo to be very objective, very  
25 supportive of his people. If he feels they are wrong,

1 he'll be the first to tell them. If he thinks I'm wrong,  
2 he'll be the first to tell me.

3 So, when the composite report came out, I accepted it  
4 at face value. I made no changes.

5 JUDGE BLOCH: That's not what I meant. I  
6 thought you testified that the purpose of this report was  
7 served only if Joe Lipinsky personally changed his mind.  
8 I am asking you to consider if it might also not be served  
9 if you found the report what well documented, Joe Lipinsky  
10 was wrong, but he didn't change his mind? Would that also  
11 resolve the problem?

12 MR. ROISMAN: Excuse me, I didn't think I asked  
13 the question you phrased.

14 JUDGE BLOCH: Oh, I thought you did. If the  
15 witness agreed to something wrong --

16 MR. ROISMAN: All I intend to ask -- if I can  
17 interrupt your question -- all I intended to ask the  
18 witness was: Wasn't it essential that Joe Lipinsky come  
19 out of this visit with a definitive answer to the question?

20 JUDGE BLOCH: Okay. Then I was right. And I  
21 think --

22 MR. ROISMAN: Not that he come out and say  
23 everything is okay. Just that he not come out and say "I  
24 don't know and I need more information."

25 JUDGE BLOCH: That's my problem. Suppose

1 Mr. Lipinsky said he still doesn't know but Mr. Trallo was  
2 sure he knew and he said that and it seemed to be well  
3 documented. Wouldn't that have served Cannon's purpose  
4 well also?

5 THE WITNESS: If that's what's in the report  
6 from Trallo, the task commander, to me; yes. And I think  
7 we said yesterday if the results of their actions were to  
8 have confirmed Joe's concerns, we would have looked upon  
9 that as a plus factor.

10 JUDGE BLOCH: I understood until you made the  
11 last comment. Because the hypothetical we are considering  
12 is --

13 THE WITNESS: Plus being helpful to the client.

14 JUDGE BLOCH: We are considering the situation  
15 where they don't confirm Joe's concerns. They deny them.  
16 But Joe says: You still don't have enough information.

17 Would that have served the purpose of resolving the  
18 issues, or not?

19 THE WITNESS: I never had to make that judgment.

20 JUDGE BLOCH: Okay.

21 BY MR. ROISMAN:

22 Q When you spoke to the TUGCO people on the 3rd of  
23 November, what did they tell you that they wanted to come  
24 out of this visit by your people? Did they say we want  
25 you to come out with a corporate position, one way or the

1 other? Was that what they told you?

2 A No. They didn't give me any instructions on the  
3 meeting of the 3rd. This was the meeting in Dallas?

4 Q Yes. That's the one I'm talking about.

5 A Okay. And they raised the question, to the  
6 degree that they had, in their own objective approach,  
7 taken steps in the way of a retrofit, they had listened to  
8 experts other than Cannon's, such as EBASCO, people from  
9 Gibbs & Hill, et cetera, et cetera, and they felt they  
10 were pursuing in the best practices of the industry, their  
11 coatings program.

12 Obviously a curve had come their way in the release of  
13 the stolen document authored by Lipinsky. And, therefore,  
14 what could they do to maybe allay some of their own  
15 concerns and, as I mentioned before, I then suggested the  
16 task force. With a new manager, who had never been to the  
17 site, to do the chairing. But they didn't give me any  
18 instructions.

19 Q You say "allay their concerns." What did they  
20 mean by that? Or what did you understand they meant by  
21 that?

22 A As I stated earlier to confirm or deny.

23 Q The Lipinsky concerns?

24 A Surely.

25 Q But I take it they expressed to you in very

1 clear terms that they believed it would have to deny  
2 because all the other experts they had consulted, both  
3 in-house and out, were saying that it would deny; right?

4 A They didn't believe that the concerns expressed  
5 by Lipinsky were as serious as his terms of language had  
6 couched.

7 Q They didn't believe the concerns existed at all;  
8 did they?

9 A I can't say what was in their minds. Obviously --

10 Q Well, what did you understand from the  
11 conversation?

12 MR. GALLO: Let him finish the answer, please.

13 JUDGE BLOCH: Mr. Roisman, do let the witness  
14 answer.

15 THE WITNESS: They believed that they had  
16 addressed the concerns in their own efforts. But again,  
17 in the interests of objectivity, if a guy with, like a Joe  
18 Lipinsky, still had some reservations, then let's go back  
19 at the job site and see what can be done about reserving  
20 those -- removing those reservations.

21 BY MR. ROISMAN:

22 Q Now, when you learned on the 9th that the  
23 company was interested in a different scope of work than  
24 what, at least Joe Lipinsky and Mr. Michels contemplated --  
25 it was on the 9th, was it, that you learned that?

1       A       9th or 10th, I believe.

2       Q       What was your reaction to learning that?

3       A       Oh, I had no reaction of any great sorts.  Ralph  
4 Trallo had reached me on vacation and I said to Ralph:  If  
5 the utility has modified the format, they are the client.  
6 Follow their line of march and use your best judgment.

7       Q       But wasn't it really a startling change?  
8 Inasmuch as your people were taking the position that they  
9 needed to do this in-depth audit, that had been designed  
10 by Mr. Lipinsky and Michels, in order to definitively  
11 answer the question?  I mean you had made that very clear  
12 in your testimony a few moments ago.  And now the company  
13 that definitely wanted a definitive answer to the question  
14 was removing the only vehicle for getting it.  Wasn't that  
15 really a very startling result?

16      A       I was not startled because the way the report  
17 came to me was that there would be taped interviews.

18      At that time I did not know that the taped interviews  
19 would be -- would be the only activity on-site.  I had no  
20 idea about that.  I told our people to go forward.

21      Q       You mean you did not know that the audit was not  
22 going to take place, as Mr. Lipinsky and Michels had  
23 outlined it on the 9th?

24      A       I knew it was not to take place at the time that  
25 they were there, because they were to spend the several

1 days that had been priorly allocated, in the taped reviews.

2 Q So you thought they were going to come back to  
3 the site subsequently and do the complete audit following  
4 taped interviews?

5 A At the time I received the information I thought  
6 that would be a possibility.

7 JUDGE BLOCH: Mr. Roth, didn't Mr. Trallo find  
8 this a startling development?

9 MR. WATKINS: Your Honor, ask Mr. Trallo that  
10 question.

11 JUDGE BLOCH: No, he spoke to Mr. Trallo.  
12 Did Mr. Trallo find this a startling development?

13 THE WITNESS: Well, his report, bear in mind,  
14 was an overseas long distance report was to the effect:  
15 Hey, boss, we are here. These guys want to have taped  
16 interviews and review the matters. That doesn't follow  
17 your directive to me. Ralph is good at following  
18 directions. I wish everyone else did. I just said:  
19 Ralph, go forward and use your best judgment.

20 JUDGE BLOCH: He must have thought that was  
21 quite a departure because you don't call your boss long  
22 distance on vacation unless there's something you don't  
23 expect to happen.

24 THE WITNESS: Well, if there's a directive and  
25 the directive is sufficiently modified, he'll track me

1 down.

2 JUDGE BLOCH: So whether it was startling or not  
3 it was a significant modification of what was to be done?

4 THE WITNESS: It was obviously enough of a  
5 change for Ralph to call me. He doesn't call me on  
6 everything.

7 JUDGE BLOCH: Certainly not when you are on  
8 vacation.

9 THE WITNESS: You better believe it.

10 JUDGE BLOCH: Mr. Roisman?

11 BY MR. ROISMAN:

12 Q Now, there's a memorandum dated November 8, 1983,  
13 entitled "Comanche Peak, confidential, no copies." That  
14 appears to be notes of conversations with Mr. Trallo. You  
15 are one of the people which he purports to talk to.

16 I want you to take a look at these and first tell me if  
17 you have seen these notes before.

18 I can't tell you what document production it is.

19 JUDGE BLOCH: Our clerk believes it's the  
20 November 8 document.

21 MR. ROISMAN: That's what Ms. Garde also said.

22 MR. TREBY: Judge Bloch, can we be off the  
23 record for one second?

24 JUDGE BLOCH: Off the record.

25 (Discussion off the record.)



1 JUDGE BLOCH: On the record.

2 BY MR. ROISMAN:

3 Q Mr. Roth, the question that I asked was: Had  
4 you seen those before?

5 A Yes. I saw these about a month ago.

6 Q All right. And the portions of them that  
7 recount conversations with you, to the best of your  
8 recollection are they accurate?

9 MR. GALLO: Objection, the witness hasn't had a  
10 chance to refresh his memory with respect to the six or  
11 seven pages.

12 JUDGE BLOCH: Please take your time.

13 MR. WATKINS: I have an objection of that.  
14 It's not clear the witnesses memory needs refreshing. If  
15 Mr. Roisman wants to ask questions and he can't remember,  
16 that's one thing.

17 JUDGE BLOCH: Please review the document and  
18 then answer whether or not the sections are true. Maybe  
19 you could help the witness by pointing out the sections.

20 THE WITNESS: Well, judge, if I may, certainly  
21 these are Ralph Trallo's notes that he dictated as a  
22 result of the dates November 8, 9, et cetera, et cetera,  
23 that are shown here. And as it evolved, they were in the  
24 word processor with a separate key, marked "confidential,"  
25 and that's why when our counselor, Mr. Gallo, had asked to

1 bring Ralph Trallo aboard as another witness, Ralph then  
2 extracted his notes from the Wang machine. And these are  
3 they.

4 JUDGE BLOCH: The question was whether sections  
5 that refer to things you know about, that you have  
6 personal knowledge of, are true. What sections are those,  
7 though, Mr. Roisman?

8 MR. ROISMAN: All right. Let's start --

9 THE WITNESS: If you me specific --

10 MR. ROISMAN: If you want we can just go through  
11 it page by page, Mr. Chairman. I'm very happy to do it  
12 that way and we can start on page 1.

13 Why don't you just hold it. You have my copy so just  
14 hold it right there and if your counsel doesn't object  
15 I'll look over your shoulder and point out to you what I'm  
16 interested in.

17 BY MR. ROISMAN:

18 Q This part here, Merritt, on page 1, under the "4:45  
19 p.m." note, "Merritt asked if John J. Norris would also be  
20 there."

21 Does that represent your understanding of the  
22 conditions that Mr. Merritt and the TUSI vice-presidents  
23 had laid down for purposes of this second look that O.B.  
24 Cannon was going to do?

25 MR. WATKINS: Objection. These are telephone --

1 these are notes of telephone conferences that Mr. Trallo  
2 had. These were not prepared by Mr. Roth.

3 Mr. Roisman wants to ask the question: What was his  
4 understanding -- that's fine. But the use of the notes  
5 for that purpose is inappropriate.

6 JUDGE BLOCH: He can accomplish the purpose  
7 using the notes only as an exhibit. I still don't  
8 understand the question very clearly.

9 MR. ROISMAN: The question is: Does that second  
10 paragraph under the "4:45 p.m." accurately reflect his  
11 understanding of the conditions that had been laid down by  
12 Mr. Merritt and the TUSI vice-presidents, for the second  
13 visit by O.B. Cannon? To wit, that Jack Norris be present  
14 for the reason that they wanted a second opinion from  
15 someone who was competent.

16 JUDGE BLOCH: You are talking about as he  
17 understood them after the November 2 meeting?

18 MR. ROISMAN: Yes.

19 THE WITNESS: Sir, I can answer that. There  
20 were no prior commitments.

21 JUDGE BLOCH: So as of the time you left the  
22 November 3 meeting you didn't know that these were part of  
23 the ground rules of what the task force would do?

24 THE WITNESS: That is correct. There were no  
25 pretense. There were no commitments. We did not have a

1 roster from the client as to those people who were or who  
2 might not be aboard during the occasion of the revisit.

3 BY MR. ROISMAN:

4 Q Did anything happen between the 3rd and the 9th --  
5 excuse me -- and the 8th, that you are aware of, in which  
6 those conditions were laid down?

7 A No such occasion that I'm aware of.

8 Q Were you advised that the client was insisting  
9 on those conditions at the time that you spoke to  
10 Mr. Trallo on the 9th of November?

11 A Well, I believe Ralph called me for the purpose  
12 of so advising me.

13 Q Were you surprised that those conditions were  
14 laid down?

15 A Not particularly.

16 Q Did you -- did he tell you that the reason that  
17 they were laying down the particular condition that  
18 Mr. Norris must be there during the entire process was  
19 that they wanted somebody who was competent?

20 A No.

21 Q He didn't tell you that?

22 A Ralph said they want to wait until Jack gets  
23 here. And I said, once again: Hey, you are the boss.  
24 You are down there in Texas. I'm over here in Bermuda.  
25 You run the show.

1 Q But he didn't tell you why they said they wanted  
2 to have Norris there?

3 A Not that I recall.

4 Q And you didn't ask him?

5 A I didn't ask him.

6 Q As between Mr. Norris and Mr. Lipinsky, who, in  
7 your judgment, is the more competent to form an opinion on  
8 the issues which Mr. Lipinsky had identified in his August  
9 8, 1983 memorandum, other than the issue on whether or not  
10 a contract would be sought?

11 A On matters of quality assurance, Joe Lipinsky is  
12 our quality assurance manager and I think he has a greater  
13 competency to address matters of quality.

14 Q Such as the --

15 A Such as documentation, painter qualification,  
16 storage materials.

17 Q The very matters that he purported to express an  
18 opinion on back in his August 8, 1983 memorandum?

19 A Yes.

20 Q I'm going to take this back --

21 A Yes. Surely.

22 Q Now, Mr. Roth, you indicated yesterday that you  
23 learned that TUGCO felt, and was, damaged by the release  
24 of this report, the public release of it.

25 Did you form an opinion as to what you thought the

1 consequences could be to O.B. Cannon, as a result of that  
2 damage to TUGCO?

3 A Yes. I was severely concerned about the breach  
4 of security. I was very, very much concerned. It had  
5 never occurred to us.

6 Q And that was a matter of not insignificance, but  
7 it was very significant?

8 A Oh, I think it was very significant because,  
9 although it had never happened to us, my reactions were  
10 understandably varied. Do we have a mole in the  
11 organization? Is there someone sending documents out?  
12 And as it evolved down the road a piece, fortunately that  
13 was not the truth of the matter.

14 But, as a matter of record the document was stolen.  
15 But certainly the necessity to keep documents, and all  
16 business papers locked in your briefcase or valise at all  
17 times, became a mandatory part -- a mandatory requirement  
18 as a result of this occurrence.

19 Q You don't actually know that it was stolen;  
20 isn't that true?

21 A I don't know that. I have been told that.

22 Q You have been told that by --

23 A Joe Lipinsky.

24 Q So your source of information as to whether it  
25 was stolen is exclusively from him?

1           A           Yes.  And he quoted me as having talked to one  
2   of the NRC people, and I believe the expression used was "it  
3   was surreptitiously removed from your belongings and/or  
4   your briefcase."

5           Q           Given your level of concern about this, why did  
6   you wait a month before you advised your employees of  
7   steps that they should take to avoid a recurrence of such  
8   an event?

9           A           The passage of time.  The matter of getting with  
10  my own executive committee to formulate policy.  There can,  
11  sometimes, be a several-week lag.

12          Q           With all due respect, I'm going to show you this  
13  November 14, 1983 memo.  It does not look to me like it  
14  required a meeting of a lot of minds to come up with the  
15  suggestion that you watch your briefcases.

16                 Can you explain to me a little bit?

17          A           I don't think I said it needed a meeting of the  
18  minds.  I said I ran it by a meeting of our executive  
19  committee.  It's a matter of policy.  An order to all  
20  hands.

21          Q           I show you this.

22          A           I wrote the memorandum.

23          Q           That is your memorandum?

24          A           That is correct.

25          Q           And all it says is, in essence:  We have had an

1 experience of someone's briefcase being rifled. Be very  
2 careful about your briefcase and belongings. Isn't that  
3 all it says?

4 A Yes, but it also establishes the policy of,  
5 again, maintaining the security.

6 Do you want it back?

7 Q Wait. That was a policy that was in existence  
8 all along; wasn't it?

9 A No. We had no such policy.

10 Q You had no policy to maintain security?

11 A We had no policy that said thou shalt keep your  
12 briefcase locked at all times when you have business  
13 papers. I think it makes good sense. I do it myself.  
14 But there is no directive from management saying such.

15 Q But I want to be clear, it was a month before  
16 you felt comfortable with enough information to make that  
17 corporate policy?

18 MR. GALLO: Objection. The question has been  
19 asked and answered and that's not the witness' testimony.

20 MR. ROISMAN: Withdrawn.

21 MR. GALLO: He says he wants to be clear --

22 MR. ROISMAN: It's not his testimony either.

23 I'll stand on the record.

24 I would like to introduce this in the record at this  
25 point, a document dated November 14, 1983, subject, "security



1 of documents, proposals, et cetera," to those concerned  
2 from R.B. Roth. One-page document.

3 MR. WATKINS: We object. The document is not  
4 relevant to the question the board is considering.

5 JUDGE BLOCH: Relevance, Mr. Roisman.

6 MR. ROISMAN: The document goes to the witness'  
7 credibility as to to what it was that really concerned him  
8 about the events surrounding the release of the Lipinsky  
9 document? Was it security that concerned him? Or was it  
10 something else? And I submit that the document produced a  
11 month after the date of his knowledge of it reflects, plus  
12 his testimony just now, reflects on that.

13 JUDGE BLOCH: Without reaching any conclusion as  
14 to how persuasive that is, we will receive it in the  
15 record and it may be bound in.

16 THE WITNESS: May I question the question or  
17 aspersion of credibility of what the witness has stated?

18 JUDGE BLOCH: If you can clarify what's going on  
19 now, sure. Please tell us now how you want to clarify the  
20 situation?

21 THE WITNESS: You mean the situation of a  
22 several-week lag before the time a document is issued?

23 JUDGE BLOCH: You have something you want to  
24 clarify?

25 THE WITNESS: Rather than shoot from the hip.

1           JUDGE BLOCH: You have something you want to  
2 clarify, just clarify it.

3           THE WITNESS: I'm clarifying the statement  
4 Mr. Roisman made as to the admission of the document that  
5 would reflect on the credibility of the witness.

6           JUDGE BLOCH: It would reflect on how important  
7 you thought security arrangements were in this instance.

8           JUDGE BLOCH: Okay.

9           THE WITNESS: Maybe I became unnecessarily  
10 exercised. I'm sorry.

11           (The document follows:)

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*J. J. Ferguson*

CONFIDENTIAL CORRESPONDENCE

DATE November 14, 1983

BY Security of Documents, Proposals, etc.

TO Those Concerned

FROM R. B. Roth

A recent incident, involving the rifling of one of our manager's briefcase, while at a project site, and pilfering sensitive Cannon papers therefrom, raises the essential need and practice of SECURITY, by all of us.

It is imperative we keep our briefcase, luggage (if files are therein), etc. locked at all times while traveling, or on jobsites, visiting, interviewing or auditing vendors, etc.

Business espionage is becoming more active and sophisticated, and with a high profile in our industry, we must be ever alert.

You will recall the recent event, on a big scale, involving the Japanese and IBM!!!

I am confident I can count on your vigilance and cooperation.

*R. B. Roth*

R. B. Roth

1 BY MR. ROISMAN:

2 Q Mr. Roth, we started the questioning by asking  
3 what was the impact of TUGCO being damaged, and you  
4 answered that there was a security problem.

5 But, beyond the security problem, was there a business  
6 implication to O.B. Cannon of the existence of damage to  
7 TUGCO which, it was believed by TUGCO, and I take it also  
8 by you, had its origin from actions by O.B. Cannon?

9 A I don't believe I assessed that at the time.

10 Q You mean as of October the 10th?

11 A That's correct.

12 Q Did you assess it at any time?

13 A Surely.

14 Q When?

15 A Well, you are always reflecting on these matters  
16 as to -- I don't think there's a date that you do, one way  
17 or the other. But you are reflecting on the matters that,  
18 again, could affect the corporate track record and  
19 integrity.

20 Q Well, do you think you reflected on it before  
21 you went to the November 3rd meeting with the TUGCO  
22 officers in Dallas?

23 A I don't recall that being a prime concern; no.

24 Q I didn't ask if it was a prime concern. I asked  
25 did you reflect on it before you went to that meeting in

1 did you think about it?

2 A I could have.

3 Q Did the potential impact on your business ever  
4 become an important concern to you?

5 A Not really. I didn't envision any substantial  
6 impact on our business. What sort of impact could have  
7 occurred?

8 Q I'll give you some hypotheticals. One; you  
9 could never get another contract from TUGCO.

10 A Well, it was the first contract we ever had from  
11 TUGCO and we did survive priorly; and if that were to be  
12 the truth of the matter I would suspect we would have  
13 continued to survive.

14 Q You might not get another contract in the  
15 nuclear industry.

16 A I don't see how that could be possibly effected.

17 Q I'm sorry, you wouldn't be affected if you never  
18 got another contract in the nuclear industry.

19 A I'm sorry, my choice of words -- I don't see how  
20 that could have happened to us.

21 Q You mean how that would have been the  
22 consequence of this occurrence?

23 A How that would have been the consequence. Thank  
24 you.

25 Q On the 28th of November, you said to Mr. Merritt:

1 The final report -- I'm sorry. On the 30th of November,  
2 you sent to Mr. Merritt, the final report of your task  
3 group with respect to the site visit that had occurred on  
4 the 9th, 10th, and 11th.

5 MR. GALLO: I don't think the --

6 THE WITNESS: This one? I recall the letter  
7 which transmitted the task force report. Does that answer  
8 your question? Do you have a specific --

9 MR. ROISMAN: Well, I'm just going to get it  
10 into evidence at this point. I'm going to look at what  
11 I'm going to show you, which is the November 30, 1983  
12 letter to John Merritt from R.B. Roth.

13 Tell me, is that a copy of the letter that you sent  
14 with the attachments?

15 THE WITNESS: Yes, it is.

16 MR. ROISMAN: Mr. Chairman, I would like that  
17 bound in the record at this point as evidence in the  
18 proceedings, the letter with the attachment to it. I'm  
19 providing a copy to the reporter.

20 MR. WATKINS: No objection.

21 JUDGE BLOCH: It is admitted in evidence and may  
22 be bound into the record.

23 (The document follows:)

24

25



*Corrosion  
Control Services*

# OLIVER B. CANNON & SON, INC.

*Industrial Painting Specialists*

20275

5600 WOODLAND AVENUE · PHILADELPHIA, PA 19143  
AREA CODE (215) 729-4600 · TWX 710-670-0482

November 30, 1983

Mr. John T. Merritt, Jr.  
Assistant Project General Manager  
Texas Utilities Services, Inc.  
Post Office Box 1002  
Glen Rose, Texas 76043

Reference: Cannon Nuclear Coatings Overview Task Group  
Summary Report of November 28, 1983

Dear John,

Please refer to my letter to you of November 4, 1983, regarding the assignment of our above subject Task Group, to visit your Comanche Peak construction site. This assignment was implemented on November 9, 10 and 11, 1983. Our comment copy of the transcribed meetings that took place thereon, has been forwarded to your office, under separate cover, on November 28, 1983

Our Task Group leader, Ralph Trallo, in accordance with my November 4th directive, has submitted to me his composite report which embodies the comments, remarks, etc. of all our Task Group members.

In turn, I have studied Ralph's composite report, and concur with the conclusions set forth. Hence, I am transmitting a copy to you as being properly representative of our corporate position on the assigned matter.

Yours very truly,

Robert B. Roth  
President

/1  
encl.

cc: J. J. Norris  
R. A. Trallo  
N. S. Reynolds

FOUNDED 1916

DEPARTMENTAL CORRESPONDENCE

20276

DATE November 28, 1983

SUBJECT H-8301 - Coatings Overview Task Group Report

TO Robert B. Roth

FROM Ralph A. Trallo

I. Background:

Cannon Personnel Concerned:

Robert B. Roth - President and Chief Executive Officer

Ralph A. Trallo - Vice President Nuclear Services

John J. Norris - Vice President and Project Account Manager

John J. Lipinsky - Corporate Quality Assurance Director

M. Keith Michels - Corporate Quality Assurance Lead Auditor

On November 4, 1983 a Cannon Task Group consisting of the writer, J. J. Norris, J. J. Lipinsky, and M. Keith Michels was established to perform follow-up evaluation of items previously addressed within the scope provided under our Consulting Services Contract<sup>1</sup> with this client.

This follow-up was to be in accordance with guidelines set forth in departmental correspondence from Robert B. Roth to the writer<sup>2</sup> and the principle purpose detailed was to evaluate the nuclear coatings retrofit program at Comanche Peak. Key areas included:

Material Storage and Control

Painter mechanic qualification/documentation

Working relationship between Production/Inspection

Status and adequacy of documentation/traceability

Implementation of coatings retrofit effort, see "Painting Minutes of Meeting", pages 1 to 4, dated 8/15/83, as prepared by R. M. Kissinger, Project Civil Engineer

Compliance of Nuclear coatings to Project Specifications requirements

Overview as to adequacy of current safety-related coatings in place, as per proper Industry practice, etc.

1. - TUGO Purchase Order No. CPF-15245

2. - Departmental correspondence R. B. Roth to R. A. Trallo, 11-4-83



H-8301 - Coatings Overview Task Group Report

TO: Robert B. Roth

November 28, 1983

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## II. Preliminary Preparation:

The writer discussed the operation and purpose of the Cannon Task Group with the other participants. A point of departure schedule was established in accordance with Robert B. Roth's memo guidelines, and preliminary checklists were prepared to facilitate orderly progression and review.<sup>3</sup> The intent was to have OBC QA Services (Lipinsky and Michels) and J. J. Norris (Account Manager) onsite for whatever time was required to complete the necessary reviews. R. A. Trallo was to visit the site to perform an overall evaluation as to the effectiveness of the Cannon Task Group activities. Commencement dates for site activities were: November 9, 1983, J. J. Norris, J. J. Lipinsky and M. Keith Michels onsite to begin preliminary reviews; November 10, 1983, the writer onsite to insure effective implementation of the Cannon Task Group activities.

## III. Task Group Activities:

On November 8, 1983 I called John Merritt to advise him that Oliver B. Cannon personnel would be onsite November 9, 1983, and requested that he have available the following information for review:

Organizational chart with names and titles of individuals and positions filled

Copy of current revision of the QA Program

Complete cooperation with various onsite departments, organizations and individuals

List of names of all inspection personnel and level of certification

List of names and positions of production personnel (foremen and above)

List of certified painters and systems for which the painters are qualified

3. "JLJ and MKM Comanche Peak Trip Plan" (4 Pages)

III. Task Group Activities: (continued)

Liason or interface person for quality assurance, quality control, production, and other departments in order to expedite and aid in the performance of this review

Mr. Merritt requested that any reviews conducted by OBC were to be performed on a joint basis (ie. QA and Accout Management).

Cannon personnel were onsite the morning of November 9, 1983. At that time J. J. Lipinsky gave a copy of the preliminary review checklist<sup>3</sup> to John Merritt. J. J. Norris and John Merritt discussed the checklist and Mr. Merritt requested a "kick off" meeting prior to any formal reviews or implementation of Cannon Task Group activities.

It became evident that the scope of the Cannon Task Group activities which had been previously outlined<sup>2</sup>; were not coincident with that perceived by TUGO. Mr. Merritt requested a review meeting to discuss the concerns of the "Lipinsky.Memo"<sup>4</sup> and based on the outcome of that meeting TUGO would re-define the scope of the Cannon Task Group activities. The review meeting was held commencing Thursday, AM, November 10, 1983, with John Merritt chairing.

Mr. Ron Tolson, Construction QA Supervisor, started the discussion. In essence the "Lipinsky Memo"<sup>4</sup> was used as an agenda, and each memo paragraph, or statement, was discussed and clarified. The meeting was recorded and the transcript has been distributed for comment.<sup>5</sup> It became evident that certain statements in the trip memo<sup>4</sup> were incorrectly stated or misinterpreted. This was principally due to the organizational structure at Comanche Peak. (ie. A management team consisting of individual's employed by different organizations.)

2. - Departmental correspondence R. B. Roth to R. A. Trallo, 11-4-83
3. - "JLJ and MKM Comanche Peak Trip Plan" (4 Pages)
4. - Trip Report (JLJ to RBR) 8-8-83
5. - "Lipinsky Memo Meeting on November 10 and November 11, 1983"

Mr. Tolson explained the operational roles of the individuals involved on the Comanche Peak Team, along with their proper titles, responsibilities, and lines of reporting.

Concerns raised in the "Lipinsky Memo"<sup>4</sup> were for the most part, based on observations and discussions between Joe Lipinsky and site personnel. At face value this "information," would be the cause for raising concerns regarding the site coating activity. Throughout the course of the November 10 meeting, it was evident that Site QA Management at Comanche Peak was not interested in further audits, or program reviews, since they have been subject to numerous outside and internal reviews and audits in the past several years. These constant and sometimes redundant reviews, compounded by the apparent personnel matters, resulted in short or clipped responses, which could readily be misinterpreted.

Regarding areas of coatings material handling, personnel qualifications, non-conformances, and quality responsibility, Mr. Tolson discussed the current procedures and controls in effect at Comanche Peak. This detailed information not readily available to Joe Lipinsky during his site visit of July 26, 27, 28th, 1983, and on which visit he based his August 8, 1983 trip report to Robert B. Roth.

Comanche Peak Management stated that they do not feel they have a problem in the areas of concern, as raised in the "Lipinsky Memo."<sup>4</sup> A detailed indepth audit was not agreed to. However, a review of specific items could be scheduled, or program "paper" be made available for review, at Cannon's request. After consideration the Cannon Task Group decided that a limited review was unwarranted, since it would not provide sufficient support to a statistical extrapolation as to the entire coatings programs' effectiveness.

Detailed discussion and information is provided in the notes of the November 10 and November 11 meetings. (Reference footnote 5.)

H-8301 - Coatings Overview Task Group Report  
TO: Robert B. Roth  
November 28, 1983  
Page Five

IV. Conclusion:

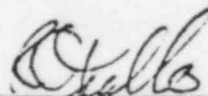
The Cannon Task Group did not perform the total overview function as originally scoped by Robert B. Roth. This was due to the request of our client to explore and review the "Lipinsky Memo"<sup>4</sup> in further detail, paragraph by paragraph.

The site meetings of November 10 and 11, 1983 resulted in the following:

The concerns raised in the "Lipinsky Memo"<sup>4</sup> were based on limited information and observations which were neither investigated nor discussed in sufficient detail, during his site visit, to either allay or to confirm.

Comanche Peak Site Management adequately detailed the programs and controls in place, which would relieve or allay the concerns raised in the "Lipinsky Memo."<sup>4</sup> Cannon has no basis to confirm that these programs and controls are in place and are being effectively implemented. Confirmation could only be provided by a detailed audit. Such an audit could be redundant and certainly time consuming. Further, TUGO has neither requested same, nor is it required by the referenced Purchase of Services Agreement.

Based on the information provided by the Comanche Peak Site Organization we can assume that our concerns are unfounded, however, affirmation could only be finalized by further effort.



Ralph A. Trallo

RAT:jr

1 BY MR. ROISMAN:

2 Q I believe in the letter you state: "In turn, I  
3 have studied Ralph's composite report, and concur with the  
4 conclusions set forth."

5 A Right.

6 Q I assume, therefore, that you were aware, then,  
7 at least by November the 30th, that the O.B. Cannon goal  
8 that was set out, at least in your mind and as you  
9 understood it from TUGCO, in their mind, of laying to rest  
10 the Lipinsky concerns definitively, had not been achieved  
11 as a result of the visit. Isn't that true?

12 A I don't know that that's true. The task  
13 committee went to the site. They met with the client.  
14 They followed the client's line of march with respect to  
15 what they wanted us to do. They had the various meetings  
16 recorded so that they could be thoroughly accurate. And  
17 then Ralph reported to me with a -- with his conclusions  
18 as a result of the task force activity, and after  
19 reviewing that submittal I concurred with the actions and  
20 conclusions therein drawn and I transmitted that to the  
21 client. That was our goal.

22 Q Well, let me direct your attention to the  
23 conclusions of the report which appear under the heading  
24 "conclusion," on page 5 of the report that's attached to  
25 your November 30th letter. And, in particular, to the

1 indented paragraphs and the second indented paragraph.  
2 And isn't it true that in the second indented paragraph  
3 the conclusion is that Cannon doesn't have a basis to  
4 confirm that these programs and controls are in place and  
5 are being effectively implemented and confirmation can  
6 only be provided by a detailed audit? And thus, in short,  
7 that Cannon is not able to give the definitive answer that  
8 you set out to give?

9 A I don't know that we -- I think it's unfair to  
10 assume that we set out to give some predetermined answers.

11 Q I don't mean predetermined in terms of good  
12 program/bad program, but predetermined in terms of  
13 definitive. That is, we can conclusively say that it is  
14 good or that it is bad. That I believe you've already  
15 testified to.

16 A I agree, and you are absolutely correct and the  
17 memorandum does make the statement that based upon -- and  
18 I'll quote for the benefit of the reporter, "based on the  
19 information provided by the Comanche Peak site  
20 organization we can assume that our concerns are unfounded.  
21 However, affirmation could only be finalized by further  
22 effort." And I agreed with Ralph's conclusion.

23 Q Okay. So --

24 JUDGE BLOCH: In fact, Mr. Roth, that's a matter  
25 of some pride; isn't it? That letter shows some integrity



1 and is a matter of some pride for your organization; isn't  
2 it? Because the client really didn't want that kind of a  
3 qualification. You knew that?

4 THE WITNESS: They never dictated any  
5 qualifications or conclusions, Judge Bloch, in all honesty.  
6 If it came out this way, it came out that way.

7 JUDGE BLOCH: No, but the fact -- but if you had  
8 been able to leave off that sentence your client probably  
9 would have been a little happier?

10 THE WITNESS: I can't speak for him. I don't  
11 think that's a horrendous statement in there. I don't  
12 think that's particularly bothersome. If I were  
13 projecting myself into a manager's job at TUGCO or EBASCO  
14 or Cannon -- or if I were a judge.

15 BY MR. ROISMAN:

16 Q But Mr. Roth your earlier testimony here today  
17 was that you went into the site visit of November 8 -- 9,  
18 10, and 11, with the expectation that you would ultimately  
19 be able to give a definitive answer to the question of  
20 whether the Lipinsky concerns had been either confirmed or  
21 denied.

22 A Right.

23 Q And this says: I can't give you that. And yet  
24 that's what you thought would come out of that visit;  
25 that's what TUGCO expected to come out of that visit; and

1 it isn't what came out of it.

2 Now, somebody should have been surprised about that, or  
3 disappointed; shouldn't they?

4 MR. GALLO: Object. Argumentative and  
5 nonprobative.

6 JUDGE BLOCH: I'm not sure of the relevance of "someone  
7 should have been surprised about that." Maybe you can  
8 focus it a little better.

9 MR. ROISMAN: Well, Mr. Lipinsky has indicated  
10 it was just --

11 Okay. Nothing to worry about. I'm trying to  
12 understand how can O.B. Cannon have entered into a  
13 contract to do a particular job, both sides met and agreed  
14 what the result of the job should be, and come out with a  
15 result --

16 MR. WATKINS: That was not --

17 MR. ROISMAN: -- and come out with a result that  
18 was not accomplishing the job. And still have Mr. Roth  
19 testify, as he seems to be testifying, that there was no  
20 big problem about that.

21 JUDGE BLOCH: Mr. Roth, if you choose to comment  
22 on that you may. And if you are just satisfied with the  
23 state of the record, you need not.

24 MR. TREBY: I heard --

25 THE WITNESS: Advice of counsel?



1                   JUDGE BLOCH: Sure. Do you think he ought to  
2 answer that one, Mr. Gallo?

3                   MR. GALLO: No.

4                   JUDGE BLOCH: Okay --

5                   MR. TREBY: The only comment I was going to make  
6 was I thought that Mr. Roisman misspoke and said "Lipinsky"  
7 when he meant to say "Roth." That might have affected the  
8 answer. But since he's not going to answer the question I  
9 guess it's not relevant. But I thought we should have the  
10 record accurate.

11                   JUDGE BLOCH: I guess the question that may not  
12 have been asked fully is whether you have an explanation  
13 for how it came about that what you thought was going to  
14 happen, as a result of the task force report, apparently  
15 didn't happen.

16                   Do you have an explanation for how that came about?

17                   THE WITNESS: No, not really. My position was  
18 that, again, neither the results had been dictated or the  
19 personnel had been dictated by the client. And if, when  
20 our people arrived at the job site, if the format of their  
21 activities had been modified -- and that was entirely up  
22 to the utility -- they were the client. They were calling  
23 the shots at the job site.

24                   JUDGE BLOCH: So your explanation is, well, we  
25 did our best and the client just changed the ground rules

1 when we got there?

2 THE WITNESS: That's in essence, the fact of the  
3 matter.

4 BY MR. ROISMAN:

5 Q Now, at this time, when you sent this letter to  
6 Mr. Merritt on November 30th, was it your understanding  
7 that O.B. Cannon's work with regard to the paint coatings  
8 program at Comanche Peak was concluded?

9 A I don't believe I drew that conclusion.

10 Q Well, did you think that, if you did any more  
11 work you'd have to have a new contract to do it?

12 A I really didn't think about it.

13 Q Well, you mean you didn't know whether or not  
14 your work was done?

15 A No. We -- you know, the phone could ring any  
16 time and they could make a request, Mr. Roisman. There's  
17 no great finality to that or any other client whom we  
18 serve, really.

19 Q But did you think you had finished all your work  
20 on your contract? There was a contract here. Was it done  
21 now?

22 A Well, the contract with respect to the phase 1  
23 activity for which we received the fee was completed by  
24 the date set forth in the purchase order of September 21st.  
25 But I believe I testified yesterday that, as a commitment,

1 certainly a moral commitment to the utility and again  
2 preserving our own integrity, we would go forward and meet  
3 with them and do what they felt would be important from  
4 Cannon's standpoint. Or our input.

5 Q Now, subsequent to the 28th, was Cannon involved  
6 with regard to the paint coatings program at Comanche Peak?

7 A Subsequent to the 28th?

8 Q Of November, 1983.

9 A We involved with the program, either before or  
10 after.

11 Q Well, were you in any way involved in evaluating  
12 the program?

13 A Oh, yes. We had the consultancy contract in the  
14 summer and fall.

15 Q Yes. I'm talking about after November 28, 1983.

16 A Okay.

17 Q Were you involved in evaluating the paint  
18 coatings program at Comanche Peak?

19 A No. We were not.

20 Q What was going on with Mr. Lipinsky's  
21 development of testimony and the preparation of an  
22 affidavit? Was that being done by him as a freelance  
23 consultant?

24 A No. We had, upon request of the utility for Joe's  
25 cooperation with respect to an affidavit -- when at such

1 time as TUGO and/or their attorneys had asked Joe to come  
2 to Washington or to review his testimony, I made Joe  
3 available.

4 Q Well, but was the submittal of the testimony not  
5 an O.B. Cannon project?

6 A No. I didn't consider it a project. It was Joe's  
7 testimony. It had been formalized by the TUGO attorneys.  
8 And as I mentioned, this was the continuing cooperative  
9 effort.

10 Your other question, earlier, was: Did we do any  
11 further evaluation of the paint coatings at the job site.  
12 And we did not.

13 Q I don't think I added the words "at the job site,"  
14 I said of the paint coatings program.

15 A Okay.

16 Q But isn't it true that Mr. Lipinsky did do a  
17 further evaluation of the paint coatings program of TUGCO  
18 subject subsequent to November 28?

19 A I can't answer that.

20 JUDGE BLOCH: I think you may have to read the  
21 question back, Mr. Reporter.

22 MR. GALLO: There's no question on the floor,  
23 your Honor.

24 JUDGE BLOCH: My understanding is the question  
25 was asked by Mr. Roth may not have finished his answer

1 and I want a chance to have it reread and allow him to  
2 complete his answer if he wasn't finished.

3 (The reporter read the record as requested.)

4 THE WITNESS: Who has the ball, me?

5 JUDGE BLOCH: You may hear the question. He's  
6 going to read it to you and then if you have something  
7 more to say you may add to it. If you don't, you don't  
8 have to.

9 (The reporter read the record as requested.).

10 THE WITNESS: I can't. It's possible in his  
11 various visits to Washington and/or his conversations with  
12 Ralph or whomever, he could have thought about it more,  
13 maybe he was evaluating it. I am not aware of any formal  
14 program that he was to continue evaluation.

15 That doesn't say he didn't do anything.

16 BY MR. ROISMAN:

17 Q Mr. Roth, isn't it true that on the 26th or 27th  
18 of September, 1984, you received a package of material  
19 that was addressed to Mr. Lipinsky that consisted of a  
20 draft affidavit by him and an affidavit by Mr. Brandt,  
21 with attachments? Isn't that true?

22 A That could be. Is there a document that's  
23 addressed to me that says that?

24 Q There's testimony that that's so. You have no  
25 recollection on your own of ever --

1                   JUDGE BLOCH: I think it would be helpful if you  
2 showed him the document you think you received. Unless  
3 Mr. Gallo objects.

4                   BY MR. ROISMAN:

5           Q           Here is a letter dated September 26, 1984, to  
6 Mr. Lipinsky from Mr. Watkins, in which he indicates,  
7 there's a copy of the executed affidavit of C. Thomas  
8 Brandt, along with attachments A through N. I believe  
9 that is what is right here.

10          A           Okay.

11          Q           All right. There's also the original of the  
12 affidavit of Joseph J. Lipinsky. I'm just trying to get  
13 this down to a copy that will be what you received in the  
14 mail.

15          A           What's your point, sir?

16          Q           Okay. And third, copies of the draft motion for  
17 summary disposition and accompanying statement of material  
18 facts. Those are not contained in what you are looking at  
19 here. But they are not relevant to my question.

20               My question to you is: Did you receive this letter  
21 before Mr. Lipinsky received it, and review its contents?

22          A           I could have.

23          Q           You don't have a recollection?

24          A           I don't have a recollection. I recognize this  
25 document, or this group of documents as having come to my

1 office -- come to Cannon's office.

2 Whether I saw them first or whether I saw them after  
3 Joe Lipinsky, I don't recall.

4 I do recognize them.

5 Q When you got it, were you aware that it was  
6 draft testimony from Mr. Lipinsky to file in this  
7 proceeding, related to his opinions on the O.B. Cannon  
8 paint coatings -- excuse me, on the TUGCO paint coatings  
9 program?

10 MR. WATKINS: Objection. Objection. He's  
11 testified he didn't remember getting it.

12 JUDGE BLOCH: I'm sorry, I think he says he  
13 remembers getting it. He's just not sure --

14 THE WITNESS: Whether I got it before or after  
15 Lipinsky may have seen it.

16 JUDGE BLOCH: Right.

17 MR. WATKINS: Withdraw the objection.

18 JUDGE BLOCH: So I guess the question was: were  
19 you aware that it was testimony intended to be filed in  
20 our companion proceeding, in this case in its larger sense?

21 THE WITNESS: Well, most assuredly I'm aware  
22 that it was an affidavit signed by Joe. And it's ultimate  
23 use, I don't think I reflected on specifically.

24 BY MR. ROISMAN:

25 Q Is it standard operating procedure for material

1 that's sent to the employees in the Philadelphia office to  
2 cross your desk first?

3 A Negative. That is not necessary.

4 Q Are there any kinds of documents addressed to  
5 employees that would, by procedure, always have to cross  
6 your desk first?

7 A Well, let me outline my modus operandi, as a CEO.

8 If there are any packages that are received by special  
9 mail, they would go to my secretary, and she would make  
10 the distribution. And if they are matters that address  
11 litigation or are from any legal source, she'll normally  
12 call those to my attention: Here's a packet that came in  
13 from so-and-so. And I'll say, well then, give it to him  
14 or let me see it or words to that effect.

15 But I think to answer your question, I do not see all  
16 the mail that comes to the Cannon organization, I shall  
17 assure you.

18 Q But you are saying that your standard procedure  
19 would be that something coming by special mail, as this  
20 did, from a law firm --

21 A Those items addressed to me, obviously would  
22 come to me.

23 Q No, I'm talking about items addressed to other  
24 people.

25 A Okay. Sometimes they do.



1 Q But not always?

2 A Not always.

3 Q Now, when can you say with confidence, that you  
4 were aware that Mr. Lipinsky had submitted or was going to  
5 submit an affidavit in which he would express his opinions  
6 about the adequacy the paint coatings program at Comanche  
7 Peak?

8 A Well, I was aware that Joe would be working with  
9 the TUSI attorneys in promulgating an affidavit that would  
10 say what it says. That started, golly, way back in early  
11 '84, if not sometime in '83. Probably early '84.

12 Q Did you know at that time that the affidavit was  
13 going to contain an assessment of the adequacy of certain  
14 aspects of the paint coatings program at Comanche Peak?

15 A Mr. Roisman --

16 MR. GALLO: Objection. Mischaracterization of  
17 the purpose of the Lipinsky affidavit. It's not to assess  
18 the adequacy of the paint program. That's the third time  
19 that was stated. It was to deal with the Lipinsky  
20 concerns and assess their adequacy as either founded or  
21 unfounded concerns. But there's a real difference between  
22 the two.

23 JUDGE BLOCH: I think there's some point to  
24 counsel's objection. Would you rephrase the question,  
25 please?

1 BY MR. ROISMAN:

2 Q Were you aware that Mr. Lipinsky's affidavit was  
3 going to contain an assessment on his part of the adequacy  
4 of the aspects of the paint coatings program upon which he  
5 had previously commented in his August 8, 1983 trip report?

6 A I had no idea what it would contain.

7 Q For all you know he was going to testify about  
8 the rivalry between the Philadelphia Eagles and Washington  
9 Redskins?

10 A Well, I think that's --

11 MR. GALLO: Objection.

12 JUDGE BLOCH: That's overruled.

13 BY MR. ROISMAN:

14 Q What do you mean when you tell me, Mr. Roth, you  
15 don't have any idea what it was going to contain? Do you  
16 really mean that?

17 A Well, obviously I had not seen the final draft.  
18 Certainly the affidavit would address certain of the  
19 matters which Joe was involved. And I suspected  
20 principally as it related to the meetings in November.

21 But once again I was not aware of nor did I set any  
22 prior conditions for an affidavit, so I didn't know what  
23 would be in it.

24 Q I didn't ask you whether you set any prior  
25 conditions. I'm trying to understand whether you knew

1 what the purpose or scope of the affidavit was going to be,  
2 and if so, when did you know it?

3 JUDGE BLOCH: Why don't we break it down. What  
4 was the first date, if any, on which you became aware that  
5 Mr. Lipinsky was working on an affidavit with attorneys  
6 for applicants?

7 THE WITNESS: I think the fairest response would  
8 be that I knew Joe and approved his time to meet with the  
9 TUGCO attorneys. And again, as I mentioned, it goes back  
10 to early -- early 1984. It could have been late 1983. To  
11 review the entire matter of his memo, the task force -- I  
12 don't recall that it was fed back to me that early in the  
13 game, that he would be preparing an affidavit to that  
14 effect. Certainly there would be some legal addressing of  
15 his cooperative effort.

16 So, if the question was: When did I become aware that  
17 there would be an affidavit that would address these  
18 concerns? I can't say that was paramount in my mind.

19 JUDGE BLOCH: Thank you. I think that's a very  
20 full answer.

21 Mr. Roisman?

22 BY MR. ROISMAN:

23 Q Mr. Roth, when you learned that the TUGCO  
24 lawyers wanted to meet with your people, what did you  
25 understand was the purpose of them wanting to meet with

1 your people?

2 MR. GALLO: Objection. Asked and answered in  
3 the last answer.

4 This is just another version of the same question that  
5 Mr. Roth answered with respect to the judge's question.

6 JUDGE BLOCH: I'm not sure what you are trying  
7 to get at in addition to what Mr. Roth just said.

8 MR. ROISMAN: Well, we've got some notes that  
9 indicate what his basis was. With all due respect to the  
10 chairman's question, his question focused on precisely  
11 what I needed to ask him questions on to lay some  
12 predicate for asking him questions about the notes.

13 JUDGE BLOCH: About --

14 MR. ROISMAN: About notes of Mr. Roth's to the  
15 file, regarding his communications -- his understanding of  
16 what was happening with the lawyers and why he felt  
17 certain ways about it.

18 JUDGE BLOCH: So you are moving to the notes now?

19 MR. ROISMAN: As soon as I get an answer to the  
20 question I just asked.

21 JUDGE BLOCH: As to what he thought the purpose  
22 of the lawyers was, in trying to get Mr. Lipinsky to  
23 cooperate?

24 MR. ROISMAN: Yes.

25 JUDGE BLOCH: This is a different question than

1 the one you asked before.

2 MR. GALLO: The prior question went to what he  
3 thought the purpose of the meeting was.

4 JUDGE BLOCH: No. It was to what he thought  
5 Mr. Lipinsky was doing.

6 MR. GALLO: Oh. All right.

7 JUDGE BLOCH: Do you have a separate notion as  
8 to what the purpose of the lawyers was at these meetings?

9 THE WITNESS: Purpose of the lawyers? Well, the  
10 purpose of the lawyers would be to certainly rehearse with  
11 Lipinsky, his reactions, I guess, if you will, to the task  
12 force opportunity -- I mean activities; the preparation of  
13 an affidavit, if you will, along the lines of: Did he  
14 feel more comfortable about the problems that he had  
15 observed last July? A combination of those things. I  
16 didn't attend any of those sessions.

17 BY MR. ROISMAN:

18 Q When did you -- at the November 3rd meeting, did  
19 you understand that one of the outgrowths of the visit to  
20 the site that would take place on the 9th, 10th, and 11th  
21 would be that somebody from O.B. Cannon would prepare an  
22 affidavit or do testimony in this proceeding?

23 A That matter was never discussed at the November  
24 3rd meeting to the best of my knowledge.

25 Q Okay. I don't think you've answered this, but

1 if you have I'm sure your counsel will jump in, so just  
2 pause a second before you answer it.

3 When did you first learn that it was the intent of the  
4 company that one of your people be a witness or prepare an  
5 affidavit with regard to the Lipinsky memorandum and  
6 subsequent follow-up on it by O.B. Cannon?

7 MR. GALLO: Asked and answered.

8 JUDGE GROSSMAN: Mr. Gallo, are you satisfied  
9 that what he answered is the first time he learned about  
10 an affidavit and testifying was in late 1983 or early 1984?  
11 Is that what you think was the answer?

12 MR. GALLO: That's what I believe is what the  
13 witness answered, yes.

14 JUDGE GROSSMAN: Okay. I'm not sure that he  
15 responded with those dates as to the affidavit and  
16 testifying. But he hears the exchange now, and if those  
17 answers apply to the question Mr. Roisman asked now, we'll  
18 let the record stand the way it is.

19 MR. GALLO: I'm not going to permit the witness  
20 to answer that -- you are addressing that to me or to the  
21 witness, Judge Grossman?

22 JUDGE BLOCH: Judge Grossman, if you want an  
23 answer to the question I would not rule it as redundant  
24 because I think the extra information is always the  
25 prerogative of a board member.

1                   JUDGE GROSSMAN: I do want the answer because  
2 I'm not sure we got it with regard to the specific matters  
3 that Mr. Roisman asked now.

4                   JUDGE BLOCH: We need the question reread.  
5                   (The reporter read the record as requested.)

6                   MR. GALLO: Judge Grossman, I would like the  
7 witness be instructed that there's two parts to the  
8 question. When did he first learn that O.B. Cannon would  
9 be a witness and when did he first learn about the  
10 affidavit.

11                   JUDGE BLOCH: Okay.

12                   JUDGE GROSSMAN: The witness can respond to each  
13 of those separately if he desires.

14                   THE WITNESS: I'll do my best. I can't recall  
15 the specific dates when the words "witness" and "affidavit"  
16 were used. I'm aware, certainly, as I mentioned before,  
17 that in late '83 or early '84, we had been requested again,  
18 in the cooperative effort, to have Joe available to meet  
19 with the TUGO attorneys. And there were a -- several  
20 meetings that perhaps started as early as maybe late  
21 December, early January. I'm looking at a memorandum  
22 dated January 10, which -- a trip report as a result of  
23 one of those meetings. And the meetings continued on  
24 through 1984.

25                   Now, the date that Joe Lipinsky started to prepare an

1 affidavit, I can't attest to. He has a description. The  
2 memorandum is a matter of record, as to what he did and  
3 the major topics that were discussed at his meetings with  
4 the attorneys. And on one or two occasions, Ralph Trallo  
5 went with him.

6 JUDGE GROSSMAN: I believe the question was when  
7 you became aware of the fact. Not when it actually took  
8 place -- the fact that he was working on an affidavit.

9 THE WITNESS: On an affidavit? Probably sometime  
10 early or mid-'84. Because I stated I knew he was in touch  
11 by phone and also by physical visit in Washington with the  
12 TUGO attorneys. Whether that was the date that they were  
13 initiating an affidavit as such or not, I don't know.  
14 There's some legal terms I'm hazy on, if you will. The  
15 statement and affidavit, are they coincident?

16 MR. WATKINS: I wanted to raise that point of  
17 clarification, whether the witness is aware of the  
18 distinction between testimony and an affidavit, for  
19 example.

20 JUDGE GROSSMAN: I was just going to say -- now,  
21 as to testimony, you were aware earlier, were you not,  
22 than mid-1984, that Mr. Lipinsky was preparing possible  
23 testimony. Is that correct? Or am I wrong in that?

24 THE WITNESS: My most honest response is I tend  
25 to equate "testimony" and "affidavit" and "statements of



1 fact" as all being efforts in the legal field. And when  
2 one commences and the other starts and the other stops, I  
3 really can't address that.

4 JUDGE GROSSMAN: As to that overall activity,  
5 then, you believe it was late 1983 and early 1984 that the  
6 activities began?

7 THE WITNESS: When the activities began with  
8 respect to Joe's meetings and/or cooperative effort to  
9 review the matters.

10 JUDGE GROSSMAN: That's when you became aware of  
11 it?

12 THE WITNESS: Surely.

13 JUDGE GROSSMAN: Thank you.

14 JUDGE BLOCH: Thank you, Mr. Roth.

15 Mr. Roisman?

16 BY MR. ROISMAN:

17 Q Mr. Roth, on the 18th of November of 1983, did  
18 you have occasion to discuss with Mr. Norris a planned  
19 meeting that John Merritt wanted to have between his  
20 lawyers and your people in Washington on the 22nd of  
21 November?

22 JUDGE BLOCH: I'm sorry? The answer was "yes"?

23 THE WITNESS: I could have been. If there's a  
24 document that confirms that, but I could have been.

25 JUDGE BLOCH: You made a verbal response that

1 wasn't a word so I was trying to clarify what you meant.

2 THE WITNESS: Okay -- yes, sir.

3 BY MR. ROISMAN:

4 Q Do you remember at the time you spoke with  
5 Mr. Norris, telling him that you thought that such a  
6 session was premature?

7 A I could have said that.

8 Q Did you?

9 A I don't recall the specifics. I could have.

10 Q Did you, on the 19th, speak to Mr. Merritt about  
11 the question of a meeting between his lawyers and your  
12 people, and indicate to him that you thought it was  
13 untimely to have it on the 22nd?

14 A Once again, I could have. I'd have to refer to  
15 specific notes or documents. I don't have those. It's  
16 quite possible.

17 Q All right. If you'll look in your file of  
18 documents there, there's one dated November 21, 1983,  
19 subject, "TUSI continuing notes, to file, from R.B. Roth."  
20 Would you look at entries 10/18 and 11/19, and see if  
21 that refreshes your memory?

22 A Yes, sir.

23 MR. GALLO: Just a moment. Can we see your copy  
24 and compare it and make sure we have the right document?

25 We have. The document number is number 40.

1 BY MR. ROISMAN:

2 Q Have you refreshed your memory, Mr. Roth?

3 A Yes. I'm reading it. These are my notes to the  
4 file. Okay.

5 Q Why did you want to have a corporate position on  
6 resolving concerns per the Lipinsky memo before you met  
7 with the Washington lawyers?

8 A Well, the corporate position was as set forth in  
9 our November 28 submittal, which was the report to me from  
10 the task force. I think that's already been in evidence.

11 Q My question to you was why did you want to have  
12 a corporate position on resolving concerns per the memo  
13 before you met with the Washington lawyers?

14 A Well, the corporate position would have been set  
15 forth in the letter of transmittal from me to John Merritt.  
16 And I merely reflected the corporate position as being one  
17 of concurring with the task force report. And the task  
18 force report and the letter of transmittal had not gone  
19 forth to the client until my transmittal letter of  
20 November 28th. So this date that you refresh my memory on,  
21 of November 22nd, would have been premature, because the  
22 memo vis-a-vis the corporate position had not even been  
23 transmitted to the client.

24 MR. ROISMAN: Mr. Chairman, at the risk that I  
25 would appear to be berating the witness, I would ask the

1 chair to ask the witness to please answer my question,  
2 which I have twice asked him: Why he needed to have the  
3 corporate position before he met with the Washington  
4 lawyers. I still don't have an answer to that question.

5 JUDGE BLOCH: I think counsel is correct,  
6 Mr. Roth. My impression is you try to answer questions  
7 fully but that you just haven't answered this one yet.

8 THE WITNESS: I'm sorry. There was no attempt  
9 to evade or not be responsive.

10 JUDGE BLOCH: I understand that.

11 THE WITNESS: I was trying to, and did say, that  
12 the corporate position would be -- had not been finalized  
13 as of the 11/22nd date because I didn't have Ralph's  
14 report.

15 JUDGE BLOCH: The question was, why did you  
16 think that Mr. Lipinsky shouldn't talk to the lawyers  
17 until after the corporate position was finalized? Why  
18 couldn't he talk to them before it?

19 THE WITNESS: I thought it would be  
20 inappropriate.

21 JUDGE BLOCH: And why?

22 THE WITNESS: That was my best judgment at the  
23 time.

24 BY MR. ROISMAN:

25 Q What factors entered into that judgment?

1           A           You are talking a year ago, what factors entered  
2 into -- it's hard to remember what I had for breakfast  
3 sometimes. The factors must have been cogent at the time,  
4 and that's what I rendered the decision and decided that  
5 the corporate position should be firm and clear.

6                   JUDGE BLOCH: Mr. Roth, if you can't remember --  
7 and you've tried --

8                   THE WITNESS: Tried.

9                   JUDGE BLOCH: -- you can say you can't remember.  
10 That's okay. I take it from your statement about  
11 breakfast, that you couldn't remember.

12                   THE WITNESS: It was eggs and bacon -- it would  
13 have been perhaps improper and unfair to Ralph, who was  
14 still pulling the task force memorandum together. That  
15 would have been a legitimate factor.

16                   BY MR. ROISMAN:

17           Q           As those notes indicate, on the 21st you were  
18 advised that, although you thought the meeting was off,  
19 that in fact, it was now on and your people would have to  
20 go nonetheless; correct?

21           A           Well, let me read it. Okay.

22           Q           So you were advised by Mr. Merritt you were  
23 going to have the meeting anyway; right?

24           A           I was advised. Right?

25           Q           No. JJN called --

1 A Okay.

2 Q -- tell you that Mr. Merritt's secretary had  
3 advised him that the meeting was on?

4 A Okay.

5 Q Did you make any effort to reach Mr. Merritt  
6 again and say: No. I don't want to have the meeting now?  
7 It's premature.

8 A No, I don't know that I did.

9 Q On the 21st, in a later note at the bottom of  
10 the page, you say: "I told him" -- meaning Norris -- "  
11 I had met with RAT and JJL at 4:30 am in office and 'bottom  
12 line' is to be up front with TUSI attorney. Give him  
13 factual history to date."

14 A Okay. I think that's pretty clear.

15 Q Was there any question that you wouldn't be up  
16 front with the TUSI attorney?

17 A Certainly not.

18 Q Do you remember telling --

19 JUDGE BLOCH: I'm sorry. I can't hear you. You  
20 said "certainly not"?

21 THE WITNESS: Certainly not.

22 BY MR. ROISMAN:

23 Q Do you remember telling Mr. Lipinsky on November  
24 21st -- instructing him that if the question of whether he  
25 had provided a copy of the Lipinsky memorandum to E.

1 Mouser were to come up, that he was to say "no," and not  
2 to elaborate or explain about E. Mouser?

3 A Yes.

4 Q How do you square that with being up front with  
5 the TUSI attorney? Is that being up front with the TUSI  
6 attorney, in your judgment?

7 A Well, if Joe could not recall one way or the  
8 other, then it's better to say, okay, if you can't recall,  
9 then you didn't do it. And he agreed. And I said, all  
10 right, then say "no."

11 Q If you can't recall, isn't the up front thing to  
12 say "I can't recall."

13 A That could be. It can't be more confusing to  
14 the issue than saying, if you can't recall and you are not  
15 sure, then it didn't happen.

16 Q Well, did you see --

17 A So I said "say no" at that time.

18 Q Did you see some potential detriment to your  
19 company if the attorneys got a little confused over  
20 whether the event -- whether Mouser was or was not given a  
21 copy?

22 A No, not really. I just was more concerned with  
23 Joe, that he doesn't seem wishy-washy.

24 Q Well, I take it that on the merits of whether or  
25 not his concerns had been resolved, he was going to be

1 extremely wishy-washy; wasn't he?

2 MR. GALLO: Objection, argumentative.

3 MR. ROISMAN: It's not argumentative.

4 JUDGE BLOCH: No. It's leading. Overruled.

5 THE WITNESS: Would you rephrase the question?

6 MR. ROISMAN: No, I won't rephrase it but I'll  
7 reask it.

8 THE WITNESS: Reask it then. Restate it.

9 THE WITNESS: On the merits, wasn't it the case  
10 that you expected Mr. Lipinsky to be extremely wishy-washy?

11 THE WITNESS: No. I don't -- I didn't expect  
12 him to be.

13 BY MR. ROISMAN:

14 Q You weren't aware that at that point he did not  
15 feel that he had received the information necessary to  
16 definitively answer the question: Are my concerns real?  
17 Or are they not real?

18 A Oh, I don't think that's being wishy-washy. If  
19 Joe feels that he has information that allays his concerns;  
20 fine. If he feels the concerns have been verbally  
21 addressed and he might need a full, in-depth audit, he'll  
22 say so. Joe's not wishy-washy from that standpoint.

23 Q It's not wishy-washy to say, I don't know the  
24 answer then, is it?

25 A Well, perhaps it's my preference to have



1 something more definitive. If it's not available, it's  
2 not available.

3 JUDGE BLOCH: You have a communication problem  
4 about those two words. I'd suggest you use two different  
5 words.

6 THE WITNESS: Okay.

7 BY MR. ROISMAN:

8 Q Well, it's no more confusing to say to the  
9 attorneys: I don't know without more information whether  
10 this particular concern is resolved or not --

11 A I think you are right.

12 Q -- than it is to say I don't know whether I gave  
13 this to Mouser or not?

14 A That was a mistake on my part.

15 Q You mean a mistake to tell him not to tell -- not  
16 to tell the Mouser situation?

17 A Well, I may done it at that time, but when you  
18 reflect on it, I may have done it differently.

19 Q So your reason was you didn't want him to appear  
20 wishy-washy but on reflex maybe it was a mistake for you  
21 to feel that way?

22 A Yes.

23 Q And you can't think of any other reason that you  
24 had for not wanting him to say I don't know whether I gave  
25 one of these to Mouser or not?

1           A           I can think of no other reasons for asking him.

2                       MR. ROISMAN: I would like to put in evidence  
3 now, the one-page memo to the file from Mr. Lipinsky --  
4 excuse me -- Mr. Roth, dated November 21, 1983. And have  
5 it received as evidence.

6                       JUDGE BLOCH: There being no objection it may be  
7 received as evidence and bound into the transcript. We'll  
8 take a five-minute recess.

9                       (The document follows:)

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## DEPARTMENTAL CORRESPONDENCE

DATE November 21, 1983SUBJECT TUSI - Continuing notesTO FileFROM R. B. Roth

- 11/18 -- Informed by J. J. Norris, that per John Merritt, Norris and Lipinsky are requested to meet with TUSI, Washington, D.C. based lawyers on Tuesday, November 22nd. I put call in immediately to Merritt to suggest such session appears premature. Answer came back that Merritt is off-site. I reminded JJN we needed his report on November 10th & 11th meeting.
- 11/19 -- Reached Merritt at his office and told him we were digesting 'transcript' from site meetings of 11/10 & 11, and that Trallo would be giving me summary memo, at which time I would be in touch with him. Hence, until we gave him our 'Corporate Position' on resolving concerns per the Lipinsky memo, a 'go-round' with Washington lawyers on 11/22 is untimely. Merritt agreed and said to have Norris stand by and Merritt would talk to his legal people in Dallas and call JJN, Monday morning, 11/21.
- 11/19 -- I relayed Merritt's telephone conversation to Norris at his home, 11 a.m. EST.
- 11/21 -- JJN called to say, per Merritt's secretary, meeting in Washington with TUSI lawyer, Nick Reynolds, was still on. I directed JJN to get his memo report in on 11/10 & 11 meetings.. R. B. Roth reviewed with RAT & JJJ to effect that JJJ had put tapes side-by-side to transcript and was formalizing his comments and revisions. We decided RAT & JJJ should revise the transcript together and have draft response ready to send John Merritt by Tuesday, p.m. 11/22. Recognizing now that Washington meeting is definitely on and will put JJJ out of office on 11/22, the best we can do is to EXPRESS comments memo to Merritt, on Wednesday, 11/23.
- 11/21 -- JJN called RBR at home, 7:30 p.m., upon his arrival in D.C. I told him I had met with RAT and JJJ at 4:30 p.m. in office and 'bottom line' is to be up front with TUSI attorney, give him factual history to date.



1 (Recess.)

2 JUDGE BLOCH: The hearing will come to order.

3 MR. ROISMAN: Mr. Chairman, were you going to do  
4 something on the record with regard to the exhibits? Just  
5 to clarify for the record the marking of those first two  
6 items?

7 JUDGE BLOCH: Would you do that? Mr. Roisman  
8 wanted two of his exhibits marked with numbers for  
9 reference purposes. The parties may want to know which  
10 ones have which numbers.

11 MR. ROISMAN: The document dated July 15, 1983,  
12 that has notes on it which were apparently done by  
13 Mr. Youngblood, be marked as RBR-1 for identification only;  
14 not in evidence but be bound into the transcript.

15 And that the document, qwip log sheet from J.J. Norris  
16 to Y.J. Lipinsky, with a two-page attachment, be marked as  
17 RBR-2, and bound into the transcript at the appropriate  
18 place previously identified, but also not received in  
19 evidence at this time.

20 JUDGE BLOCH: They may be so identified and  
21 bound in and previously ordered with no change.

22 (Exhibits RBR-1 and RBR-2 identified.)

23 BY MR. ROISMAN:

24 Q Okay. Now, at the time of the meeting between  
25 your people and the attorneys for TUGCO, did you have any

1 concern that things that your people might say there could  
2 get O.B. Cannon into trouble with the utility, because it  
3 would not give the utility the answers that it wanted to  
4 hear?

5 A I harbored no such concerns.

6 Q Did you write to Mr. Reynolds on the 28th of  
7 November, 1983, and tell him, and I quote: "I assure you  
8 Joe does not have a prejudicial attitude nor 'an axe to  
9 grind' in this whole matter." ?

10 A Are you asking me whether I wrote the letter?

11 Q Yes.

12 A Yes, I did write the letter.

13 Q And why did you feel it necessary to include  
14 that line in your letter of November 28, to Mr. Reynolds?

15 A I think just prior to Joe going down there I had  
16 a talk to Nick and word came back that the client feels  
17 perhaps Joe has an axe to grind, or words to that effect.  
18 So I was addressing the phraseology that came to me from  
19 Nick Reynolds. I didn't make it up.

20 Q Did you inquire into what it was that your  
21 people believed was meant by the phrase, "an axe to grind"?

22 A No, I think it's a rather common phrase in  
23 colloquial English.

24 Q Well, but I mean --

25 A Did he harbor any prejudice; did he have any

1 particular issue, to continue to sand paper --

2 JUDGE BLOCH: Mr. Roth, I'm not clear if you  
3 answered. I know you tried to but the question was: Did  
4 you inquire into how they felt about that?

5 THE WITNESS: No. I took the statement does Joe --  
6 or it appears, words to that effect, does Joe have an axe  
7 to grind? And I just took it at face value and just  
8 immediately came to Joe's defense.

9 BY MR. ROISMAN:

10 Q Mr. Roth, I'm showing you a letter dated  
11 November 28, 1983, addressed to Mr. Reynolds. Would you  
12 look at both pages of it and confirm that that is a copy  
13 of the letter that you sent to Mr. Reynolds?

14 A Sure. Yes.

15 Q It is?

16 A Yes, it is.

17 MR. ROISMAN: Mr. Chairman, I would like to have  
18 this received into evidence at this point and bound into  
19 the record at this point.

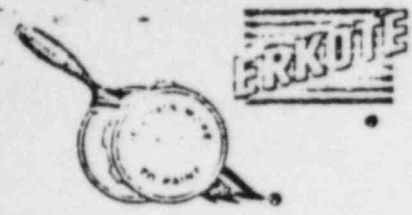
20 CHAIRMAN BLOCH: There being no objection it may  
21 be received into evidence and bound in.

22 (The document follows:)

23

24

25



# OLIVER B. CANNON & SON, INC.

*Industrial Painting Specialists*

5600 WOODLAND AVENUE - PHILADELPHIA, PA 19143  
 AREA CODE 215/ 291-4600 - TWX 711 620-0402

*Conversion  
 Central Services*

November 28, 1983

Nicholas S. Reynolds, Esquire  
 Debevoise & Liberman  
 1200 Seventeenth St., N.W.  
 Washington, D. C. 20036

Dear Nick,

This will confirm our telephone conversation on Wednesday, November 23rd, relative to the position of Cannon to the matters reviewed in your office on Tuesday, November 22nd, with our Messrs. Norris and Lipinsky, in connection with the Lipinsky trip report dated August 8, 1983, concerning his visit to the Comanche Peak Nuclear construction site.

The referenced trip report is a Cannon in-house document, transmitting information to me, as President and Chief Executive Officer of Cannon, expressing Lipinsky's observations, concerns, etc. It is not an official document in connection with TUGO's Purchase Order CPF-15245, to Cannon, nor does it represent the Cannon corporate position relative to our contractual commitment with TUGO/TUSI.

I assure you Joe does not have a prejudicial attitude, nor 'an axe to grind', in this whole matter. I would, both corporately and personally, be disappointed, should you or your client harbor such a concern. Suffice to say, it has been most embarrassing to this office, that Lipinsky's memorandum was surreptitiously removed from his personal papers to effect a breach of our corporate security.

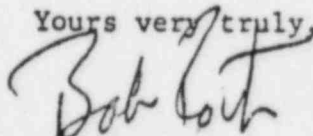
Cannon's posture is to support TUGO/TUSI with whatever objective and honest effort we can render.

Further, as a matter of re-emphasis, Cannon, at the time we accepted the consulting assignment from TUGO/TUSI, had no interest in site work or contracting, and we continue in this position. The conflict is obvious. We are fully committed in Nuclear coatings contract work thru spring of 1984. Staff availability thereafter is questionable.

Cooperative efforts, as the term implies, requires mutuality, particularly in communicating, and you assured me of your concurrence therein.

I have forwarded by mail on Wednesday, November 23, 1983, the memorandum and all copies thereto, as we had discussed.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Bob Roth".

Robert B. Roth  
President

/1



1           JUDGE BLOCH: The question before was whether  
2 you wanted to clarify the meaning of the word "axe to  
3 grind" and you said you didn't speak to Mr. Lipinsky about  
4 this before. Did you speak to him at all after speaking  
5 to Mr. Reynolds, assuring him that he had no axe to grind?

6           THE WITNESS: I don't recall speaking to Joe  
7 with that phraseology. I had reviewed with Joe his  
8 reports. I had employed Mr. Lipinsky for some six-odd  
9 years, and I felt I was a pretty good judge of his  
10 character.

11          JUDGE BLOCH: So you do not recall, then, any  
12 meeting that was immediately in the timeframe that you  
13 wrote this letter? That you used to assure yourself that  
14 he had no axe to grind or something to that effect; that  
15 he did not have a prejudicial attitude?

16          THE WITNESS: I don't recall that specifically;  
17 no, sir.

18          BY MR. ROISMAN:

19          Q        Mr. Roth, do do you remember having a meeting  
20 with Mr. Lipinsky, Trallo, Norris, on the 23rd of November,  
21 after they returned from the meeting with the lawyers?

22          A        I could very well have had one. I don't recall  
23 the specifics.

24          Q        Well, do you remember a meeting at which  
25 Mr. Lipinski indicated that he was upset at the fact that

1 he had now attended two meetings with representatives of  
2 TUGCO, and that the meetings didn't turn out to be what he  
3 had been led to believe they were going to be?

4 A That could have been his expression.

5 Q And do you remember him saying something about,  
6 he felt -- he wanted to know what was going on? Asked you  
7 to explain, or the other people who were there, to explain  
8 what's going on? Why do I keep ending up in meetings and  
9 I don't know what the agenda is going to be?

10 A Sure. He could very well have raised that  
11 question.

12 Q I'm sorry, Mr. Roth. I know that he very well  
13 could have. The question is, do you remember that he did?

14 A Well, I could refresh my memory. I think I  
15 answered the fact --

16 JUDGE BLOCH: Whatever you would like to see to  
17 refresh your memory would be acceptable.

18 THE WITNESS: What are you reading from?

19 MR. ROISMAN: It's nothing that you wrote.

20 THE WITNESS: Okay.

21 BY MR. ROISMAN:

22 Q I'm asking if you have something that you wrote  
23 that you want to take a look at that will refresh your  
24 memory, please do so.

25 A I thought you were referring to a memorandum

1 such as we just looked at, notes to the file or something  
2 of that nature.

3 Q I'm not referring to one that you wrote.

4 A Okay. Then it's a page from Joe's diary. Okay.

5 MR. GALLO: Just tell him whether or not you can  
6 remember.

7 JUDGE BLOCH: Thank you, Mr. Gallo.

8 THE WITNESS: I can't recall the specifics.

9 BY MR. ROISMAN:

10 Q Do you remember telling Mr. Reynolds --

11 JUDGE BLOCH: I'm sorry. I didn't hear an  
12 answer.

13 THE WITNESS: I can't remember the specific  
14 statement.

15 BY MR. ROISMAN:

16 Q Do you remember telling Mr. Reynolds that you  
17 had -- that you felt that O.B. Cannon had been sandbagged  
18 at least twice as a result of attending meetings which  
19 were -- the agenda was changed, once the people got to the  
20 meeting, from what it was purported to be when they went  
21 into the meeting?

22 A Yes. I used that phraseology.

23 Q And what were you referring to specifically?

24 A Well, on the latter -- the latter case was the  
25 fact that there was a meeting that was apparently

1 scheduled and requested by the TUGO lawyers on a date  
2 which was actually prior to my having received the task  
3 report. But, in the spirit of cooperation, we went  
4 forward with it.

5 And the other was referring to the fact that we had  
6 drafted a letter, a line of march, or letter of direction,  
7 if you will, of mine, by November 4 memorandum. And when  
8 the people arrived at the job site the client had  
9 unilaterally changed the line of march.

10 Q And what did you mean to connote with the  
11 phraseology "sandbagged"?

12 A Well, my feeling is, you know, where you have an  
13 agreement to go forward and you are doing your thing and  
14 following your best understanding as to what had been  
15 agreed upon, and with specific reference to the November  
16 4th memorandum to my task force people, and I had sent a  
17 courtesy copy of that to Mr. Merritt, and prior to putting  
18 it in the mail I had read it to him over the phone, so  
19 then you go away on vacation with your people already  
20 scheduled to go and they land at the job site and it has  
21 been, again, unilaterally changed -- so you feel: Oh, boy,  
22 they changed it on us without telling me.

23 Q Was that a matter of concern to you, that that  
24 had happened? Did it cause some inconvenience to you or  
25 your people?

1 A Yes. I think it did.

2 Q In what respect?

3 Let's talk about the 9th, 10th, and 11th meeting first.  
4 How were your people inconvenienced in the change in the  
5 agenda for that site visit?

6 A Well, I think it's pretty obvious that, based on  
7 my letter of direction and the preparation that the  
8 various managers made, in logical support of that letter  
9 of direction, and they arrive at the job site and the  
10 format has been modified, then you or they or any human  
11 would have a feeling that a lot of their preparation and  
12 their effort had been for naught. But: Here we are.  
13 Let's go at it.

14 Q And with regard to the scheduled meeting on the  
15 22nd with the lawyers, what was it there that was  
16 inconveniencing to your people?

17 A Well, I think I was more inconvenienced than anyone  
18 else simply because it was a desire to have the task force  
19 report finalized and transmitted before really we met with  
20 attorneys. But we acquiesced at the request of the client  
21 and I didn't feel that was the greatest of things, but it  
22 happened.

23 Q Why didn't you just refuse to go ahead, if you  
24 felt in both instances that it was going to be an  
25 inconvenience to your people?

1           A           Well, there's two events so I suspect you need  
2 two answers.

3           And the answer to the fact that the format had been  
4 unilaterally changed, how much it had changed, really, I  
5 did not know upon receiving a phone call on vacation from  
6 Ralph Trallo saying: Hey, boss, there's a somewhat  
7 different format. It doesn't follow your memorandum.

8           And that's when I said, as I had testified earlier  
9 today: Ralph, they are the client. Use your best  
10 judgment. Go forward.

11          So, at the time I didn't really have a feeling that our  
12 people were inconvenienced and it wasn't until after they  
13 got back and said, well, this is what we did. And I said  
14 well, boy, you guys did a lot of preparation and maybe you  
15 didn't need the preparation, but what's done is done.

16          Coming forward to November 22nd, and they said, well,  
17 we really had this meeting set up and we want your people  
18 to be aboard. And, again, I agreed with them.

19          Q           At the time of the November 23rd, 1983 meeting  
20 between yourself and Mr. Lipinsky and Norris and Trallo,  
21 did you intend that meeting to result in the resolution of  
22 any matters that you considered to be outstanding,  
23 vis-a-vis O.B. Cannon and TUGCO?

24          A           No. As I best recall, we did have a meeting.  
25 We had a meeting and they were all members of the task

1 force, and I was principally interested in, let's say,  
2 orchestrating the composite results of those four  
3 individuals having been to the site visit in earlier  
4 November.

5 Q Wasn't it at that meeting that you, for the  
6 first time became aware of the interest of TUGCO's  
7 attorneys in having O.B. Cannon appear as a TUGCO witness  
8 in the licensing proceedings for the Comanche Peak plant?

9 A It could be. I don't recall, once again, the  
10 word "witness." I don't recall that. I just don't.

11 Q Do you recall earlier discussions with  
12 Mr. Lipinsky in which he indicated to you that Ms. Ellis  
13 had raised with him the possibility of he being either a  
14 CASE witness or a board witness, with regard to the  
15 Lipinsky trip report?

16 A Yes, I believe he mentioned that to me sometime  
17 in early or mid-October, as to having received a call from  
18 Ms. Ellis. I don't think Joe has ever met her. I don't --  
19 but I think she identified herself.

20 Q Didn't you get a package --

21 A Or would you be a witness? Or words to that  
22 effect.

23 Q Did you get a package of materials that were  
24 addressed to Mr. Lipinsky, that you opened, that came from  
25 Ms. Ellis, that contained some materials regarding the

1 CASE. The issue was not pressed, and, judge, I don't  
2 recall getting it in -- getting into it any deeper after  
3 that.

4 JUDGE BLOCH: You don't recall indicating in any  
5 way, by the way you looked at him or what you said,  
6 whether you liked that idea or not?

7 THE WITNESS: No. I always look at him the same.

8 JUDGE BLOCH: Poker face?

9 THE WITNESS: That's right.

10 BY MR. ROISMAN:

11 Q At the meeting on the 23rd, did you develop a  
12 position regarding what the relationship should be between  
13 O.B. Cannon and TUGCO/TUSI, as a condition of further  
14 cooperation by O.B. Cannon with TUGCO/TUSI on this whole  
15 trip report issue?

16 A Did I develop an opinion?

17 Q Position, I think I said.

18 A Yes. We were to maintain a supportive position  
19 to their effort.

20 Q What does that mean?

21 A That means, if they -- they may have, as they  
22 did request us to have discourse with their lawyers. It  
23 could mean another trip to the job site. We were to  
24 support their effort to resolve the hassle they had  
25 experienced as a result of the Lipinsky report.



1 Q In your understanding of their concept of  
2 resolution, it was that their belief that they had no  
3 problems would ultimately be confirmed; that there were no  
4 problems? Isn't that true?

5 A Oh, I'm sure they had that belief.

6 Q Did you at the 23rd meeting, remember discussing  
7 anything about developing some kind of a hold harmless  
8 relationship between you and TUGCO? "You" I mean O.B.  
9 Cannon and TUGCO?

10 A That could very well have been discussed. I  
11 don't recall the specifics.

12 Q What is a "hold harmless"?

13 A Well, there are several definitions. There's a  
14 layman's sense and an insurance term sense.

15 In a layman's sense a hold harmless is, you know, I'll  
16 agree not to hit you and you'll agree not to hit me back.

17 In the insurance sense of the word, a hold harmless is  
18 a third party protection in the event that such is in our  
19 sphere of activity, our workmen should become injured,  
20 then they would be compensated by workman's compensation  
21 claim and workman's compensation board.

22 If then they turn around and sue our client for  
23 maintaining -- let's say it's a brewery -- a slippery  
24 floor, and the guy sues the owner of the brewery for  
25 maintaining an unsafe work condition, then, under the hold

1 harmless, we, as the contractor of record and of the man's  
2 employer, would be forced to defend that owner against the  
3 man's suit. That's hold harmless in the insurance term.

4 Q Which of those was the subject of the discussion  
5 on the 23rd of November?

6 A The layman's term.

7 MR. GALLO: Objected to.

8 THE WITNESS: Excuse me.

9 MR. GALLO: Withdraw the objection. It's been  
10 answered.

11 THE WITNESS: I'm sorry.

12 BY MR. GALLO:

13 Q And what was it, as best you can remember, that  
14 constituted the two sides of the hold harmless? What kind  
15 of a hit would you not give? What kind of a hit would  
16 they not give?

17 A Bear in mind --

18 MR. WATKINS: The word "hit" -

19 JUDGE BLOCH: He used the word "hit," he's  
20 asking for the meaning of it.

21 THE WITNESS: This was a discussion in house.  
22 Not something we discussed with the client. And we were  
23 discussing with ourselves should we have a hold harmless  
24 with the client and it was discussed and put to bed.

25 BY MR. ROISMAN:

1 Q I understand that. But the question was, what  
2 kind of a hit were you discussing that you would not give  
3 in exchange for them not giving a hit?

4 A It would have been along the lines that, if in  
5 fact there was a delay in opening the plant because  
6 Lipinsky's matters had to be addressed, then we could have  
7 an exposure. It was later decided then if we did have,  
8 how would we address that? And then it was never resolved.  
9 We put it aside because it didn't appear to be the spectre  
10 that maybe the guy who brought it up thought it was.

11 Q So that's sort of, if you will -- that would  
12 sort of be "their hit." If there should be a delay in  
13 opening the plant, they would agree that they would not  
14 hit, that is try to hold O.B. Cannon responsible for that  
15 delay, as a result of the Lipinsky memorandum.

16 A (Witness nods head.)

17 Q Now, what was it that you would not do?

18 A Well, that wasn't really fully addressed once  
19 the concern was expressed and the phraseology used, as I  
20 said we put it aside as not being that great a spectre.

21 JUDGE BLOCH: Did you put that aside with or  
22 without the advice of counsel?

23 THE WITNESS: Without. We didn't have counsel  
24 at that time.

25 BY MR. ROISMAN:

1 Q As best as you can remember it, what were the  
2 concerns, as specifically expressed, and who was  
3 expressing them at the meeting on the 23rd of November?

4 MR. GALLO: Objection. The first part of the  
5 compound question has been answered, what are the concerns.  
6 The "who" is expressing them has not been answered.

7 MR. ROISMAN: The first part of the question has  
8 not been answered specifically, which is, I put that in  
9 there --

10 JUDGE BLOCH: Why don't you break it up into two  
11 parts.

12 BY MR. ROISMAN:

13 Q Specifically, what were the concerns as best you  
14 can remember them?

15 MR. GALLO: I object as previously indicated. I  
16 was answered by the witness as --

17 MR. ROISMAN: He's about to testify for the  
18 witness. I would really like him not to do that,  
19 Mr. Chairman.

20 MR. GALLO: I'm going to repeat a prior answer  
21 by the witness to demonstrate the question has been asked  
22 and answered.

23 JUDGE BLOCH: Mr. Roth, can you remember in any  
24 greater specifics than you have already stated?

25 THE WITNESS: No, sir. I thought I answered.

1 The concern came up do we need a hold harmless in the  
2 event this hassle delays the opening of the plant and do  
3 we have an exposure and we decided we didn't and that was  
4 the sum and substance of it.

5 JUDGE BLOCH: Okay. You realize sometimes I'm  
6 just restating a question that was asked to expedite  
7 things. It may not be particularly my concern at all. I  
8 was just trying to restate that, as to what I thought was  
9 allowable.

10 THE WITNESS: That's your prerogative.

11 BY MR. ROISMAN:

12 Q Does it refresh your memory, if I mention to you  
13 that the Nuclear Regulatory Commission's case load  
14 forecast group had attended the Comanche Peak site during  
15 the month of September, and had identified as one of the  
16 potential areas for delay, the paint coatings concern?  
17 Does that refresh your memory as to some more of the  
18 details that you may have discussed in your meeting on the  
19 23rd about the possible linkage between the Lipinsky  
20 memorandum and some delay in the plant?

21 A Mr. Roisman, I'm not knowledgeable of any report  
22 that says a investigatory committee was on-site and one of  
23 the things on the list was coatings. That's news to me.

24 Q There was no such discussion as you can remember  
25 it on the 23rd?

1 A No.

2 Q No discussion --

3 A If our people knew there was an investigation,  
4 they sure as hell didn't tell me, so I don't know what you  
5 are reading from.

6 JUDGE BLOCH: Mr. Roisman wasn't referring to an  
7 investigation. This was just an effort for the forecast  
8 panel? Is that right? And they were just trying to  
9 estimate when the plant would be completed for planning  
10 purposes. Just a routine staff visit to figure out when  
11 the plant would be completed.

12 I take it your answer was that you weren't aware of  
13 that at all?

14 THE WITNESS: I'm not aware of that. No, sir.

15 BY MR. ROISMAN:

16 Q Now, who was the person who raised the delay  
17 concern?

18 A The exposure if there were a delay?

19 Q Yes.

20 A I don't honestly recall. It could have been  
21 Ralph. It could have been Jack. I don't recall.

22 Q Do you remember, at the meeting on the 23rd,  
23 deciding that O.B. Cannon should once again offer to  
24 conduct the in-depth audit that Mr. Lipinsky had been  
25 saying he wanted to have conducted in order to

1 definitively answer whether his concerns were real or not?

2 A The matter really principally, amongst the  
3 group -- and this was a task force -- was the  
4 qualification at the end of the task force report. I  
5 think we've looked at that.

6 Q I understand it was a qualification. But did  
7 you make any judgment to actually formally address the  
8 company and say: Look, we are still ready to do that  
9 audit if you want it done, to definitively put to rest our  
10 concerns?

11 A I don't recall that we did that. I don't recall  
12 that we didn't do it.

13 Q Does the September 28, 1984 affidavit submitted  
14 by Mr. Lipinsky in this proceeding represent a company  
15 position of O.B. Cannon?

16 A I'd have to read it. I'm under the impression  
17 it's his affidavit and he signed it. I don't recall that  
18 Cannon signed it.

19 Q Well, as an inanimate object that would have  
20 been difficult.

21 A Or any other representative of Cannon signing it.  
22 I don't recall my signing it.

23 Q No. No. I understand all of that.

24 A Okay.

25 Q But my question to you is: Is that a company

1 position? You just tell me "yes" or "no." You don't tell  
2 me why it isn't or why it is for the moment. Is it a  
3 company position? What that affidavit -- does that  
4 represent a company position?

5 A Mr. Roisman, I'd have to read it to make a  
6 statement "yes" or "no." It certainly represents Joe's  
7 position. I take no issue with that. I don't know that  
8 Cannon would have any objection to it.

9 Q I'm not asking you whether or not you could now  
10 look at it and tell me as a company we agree with it or we  
11 don't agree with it. I'm asking you have you, up until  
12 this point, made a company decision that this is the  
13 company's position, as you did on the Trallo, November 28,  
14 1983 memorandum?

15 A We have only made one statement of the company  
16 position and that was in my letter that accompanied the  
17 November 28th transmittal to John Merritt. There's been  
18 no need to make a new company position or to restate that,  
19 to my knowledge.

20 Q And why is that? Why was there a need then to  
21 state a company position but there isn't any need now to  
22 state a company position?

23 A Because the company position hasn't changed.

24 Q Have you read the Lipinsky affidavit to know  
25 whether or not you think Mr. Lipinsky's position has



1 changed?

2 A I have glanced through it but I do not recall  
3 the specifics and I don't believe his position has changed,  
4 but I wouldn't interfere with it one way or the other.

5 Q So, as far as you are concerned, all of the  
6 subsequent meetings that he had in the development of his  
7 affidavit, which I guess originally started that it might  
8 be testimony and then became affidavit, is really just  
9 between him and the attorneys for TUGCO? And it's not a  
10 corporate matter at all?

11 A I think that's a correct statement.

12 Q Would it trouble you if he were spending half of  
13 his time working on it?

14 MR. WATKINS: Objection. This line of  
15 questioning is not relevant, your Honor.

16 JUDGE BLOCH: Overruled.

17 THE WITNESS: Half has time could be a problem.

18 BY MR. ROISMAN:

19 Q But he is being paid for the time that he spends  
20 working on it by O.B. Cannon?

21 A He is.

22 Q But O.B. Cannon is not being paid for the time  
23 he is working on it; is that not correct?

24 A I don't recall we made any invoicing on this.

25 JUDGE BLOCH: Is there an internal company

1 procedure for reporting unbillable time?

2 THE WITNESS: Judge, there is no such formal --  
3 there is no formal modus operandi for that, simply because --  
4 and I recognize in the law profession, for instance, there  
5 is a very strict record on time. I recognize that with  
6 professional consultants there is a very strict time.  
7 Structural engineers, et cetera, et cetera.

8 Consulting is not our business. The individuals, such  
9 as a Trallo and Lipinsky and a Keith Michels, are under  
10 G,S and A. They are salaried individuals. So my best  
11 answer is there is no formal tracking of time or  
12 accounting for of time as such.

13 JUDGE BLOCH: Is there any requirement before  
14 they undertake activities for which they are not to be  
15 compensated that they have advance approval from you?

16 THE WITNESS: They don't need my approval but  
17 they need the cognizance of their division or their  
18 immediate superior.

19 JUDGE BLOCH: Do you know the extent to which  
20 there was advance approval of the percentage of  
21 Mr. Lipinsky's time which could be spent on these matters?

22 THE WITNESS: I am not aware that there was any  
23 time limit or any direction to spend only X hours or not  
24 more than Y hours; no, sir.

25 MR. TREBY: May we also approach the bench,

1 please?

2 JUDGE BLOCH: Please.

3 (Discussion at the bench as follows:)

4 MR. TREBY: I don't want to interfere with  
5 counsel's cross-examination so I haven't brought this up  
6 before. But since we are now going into, for at least the  
7 fourth time, the question about whether O.B. Cannon is  
8 getting reimbursed or not for their services, one of the  
9 documents that we got on discovery is a supplement to the  
10 contract which specifically provides that "additional  
11 related expenses which may be incurred by O.B. Cannon  
12 personnel attending hearings and giving testimony as  
13 directed by TUGCO management will be reimbursed within the  
14 scope of this purchase order." And it's dated June 25,  
15 1984.

16 I guess what I'm concerned about is whether we are  
17 going to get a very confusing record on this subject.

18 I was originally going to ask about it when I  
19 cross-examined but since it has now been done for the  
20 fourth or fifth time --

21 MR. ROISMAN: It was my next document. I am  
22 aware of the document. But I'm also perfectly willing to  
23 give the witness all the rope he wants.

24 JUDGE GROSSMAN: That's fine.

25 MR. TREBY: I was only concerned about the

1 record.

2 JUDGE BLOCH: I would like to state that I was  
3 not having that in my mind when I asked the questions. I  
4 was seeking information.

5 MR. WATKINS: The document, incidentally, is  
6 18689 of the transcript. It's already in the record.

7 MR. REYNOLDS: I don't understand the point of  
8 the bench conference.

9 JUDGE BLOCH: Whether we should take it up now.  
10 The point was to advise the attorney about that.

11 (Discussion at the bench concludes.)

12 JUDGE BLOCH: Thank you, Mr. Roth. I would like  
13 to assure you this was not a clandestine matter.

14 BY MR. ROISMAN:

15 Q Mr. Roth, were you ever aware of any supplement  
16 to the original O.B. Cannon consulting contract between O.B.  
17 Cannon and TUGCO?

18 A Yes.

19 Q I'm going to show you what is a document that  
20 counsel advises me is in our record already on transcript  
21 page 18869, and is a Texas Utilities Generating Company  
22 document addressed to O.B. Cannon and the subject seems to  
23 be "a supplement," and ask you if you have seen this  
24 document? I see you seem to have one in front of you.

25 A Yes. I remember, it's supplement 1, Mr. Roisman,

1 to our original purchase order.

2 MR. WATKINS: Mr. Roisman, excuse me, it's 18681.

3 MR. ROISMAN: 18681. Thank you.

4 BY MR. ROISMAN:

5 Q Now, what did you understand that contract was  
6 to reimburse O.B. Cannon for?

7 A Well, I took it at face value in that it  
8 authorizes payment for additional travel expenses for  
9 Cannon's invoices, numbers so-and-so under date of 4/1 and  
10 4/30, and 1/31/84.

11 So, this was a supplement to the original purchase  
12 order, authorizing the expense costs for the -- as covered  
13 by those three invoices.

14 Q All right. And the note?

15 A Well, I took the note to relate to the  
16 authorization in the first paragraph. One merely explains  
17 the other.

18 Q You don't treat the note as indicating that,  
19 when it says "additional related expenses which may be  
20 incurred" relates to subsequent expenses as opposed to  
21 previously-incurred expenses?

22 A Oh, I think you could interpret it that way.  
23 But on the first reading here it would appear as though  
24 the note is put in to elucidate the prior paragraph.  
25 Because then they go on to say, sir, if I may "obtained

1 and authorized by this supplement 1 as follows." And then  
2 they spell out the dollars. One line. That's not  
3 open-ended. That's a specific sum.

4 Q Is it your understanding that the expenses that  
5 were being reimbursed were expenses incurred subsequent --  
6 at least some of them -- subsequent to November 28, 1984?

7 A Yes.

8 Q And that they included --

9 JUDGE BLOCH: I'm sorry, what was the year right  
10 there?

11 MR. ROISMAN: '83. Excuse me.

12 THE WITNESS: '83. Good pick up.

13 BY MR. ROISMAN:

14 Q I just want to make sure you and I --

15 A After November of '83. I'll take the latter.

16 Q Yes. I understand. And that some of the  
17 expenses that were being reimbursed were expenses incurred  
18 by Mr. Lipinsky for traveling to meet with lawyers for  
19 TUGCO to develop his affidavit or testimony, as the case  
20 may be?

21 A They could very well have been. As I mentioned  
22 yesterday, it's an easy enough thing to get the detail for  
23 the invoice. All we have here are the numbers. I don't  
24 prepare the invoices. So I suspect what you say is true.

25 Q And so you also won't know whether or not there

1 were, subsequent to this June 25, 1984, expenses incurred  
2 by Mr. Lipinsky which were also billed under this  
3 supplement, if the note means that it relates to future  
4 expenses?

5 A Well, that would be a very desirable  
6 interpretation. But there have been, to the best of my  
7 knowledge, no invoices issued other than those which are  
8 referred to in this memorandum. I'm sorry, in this  
9 purchase order, not memorandum.

10 Q So your testimony is that the time being spent  
11 by Mr. Lipinsky, and at least his expenses subsequent to  
12 the 30th of April, 1984, have been absorbed by O.B. Cannon  
13 and not reimbursed pursuant to contract with TUGCO?

14 A Well, if the invoices that are given here by  
15 number list any expenses that could have -- that could be  
16 effective through April of '84, then they would be so  
17 contained. And they would be detailed.

18 Q I'm sorry, I don't think I understood that.

19 A Did I answer the question properly?

20 Q The last dated invoice on the document, if you  
21 look at the document again --

22 A Right. Right.

23 Q -- is 4/30/84?

24 A I understood.

25 Q I assume it couldn't have billed for any travel

1 expenses other than those already incurred; is that  
2 correct?

3 A Correct. That's right.

4 Q So my question to you then is: then do I  
5 understand your testimony is to the best of your knowledge,  
6 O.B. Cannon is absorbing what, if any, additional travel  
7 expenses and other costs related to Mr. Lipinsky's meeting  
8 with attorneys or appearance at hearings, itself? And not  
9 passing those costs on to TUGCO?

10 MR. GALLO: After April 30, 1984?

11 JUDGE BLOCH: Right.

12 THE WITNESS: Well, we've made no additional  
13 billings, to my knowledge.

14 The costs have been absorbed for any activities up  
15 through -- up through now. After that date.

16 BY MR. ROISMAN:

17 Q And why have you done that?

18 A Well, we were continuing the cooperative effort,  
19 and the agreement to go forward. And, where it was  
20 feasible, support the utility, our client. And we had  
21 continued to do that.

22 I had never backed off of that cooperative effort.

23 Q I didn't understand that agreement to be  
24 cooperative was also an agreement to be available for free.

25 A Well, perhaps it just evolved that way. Or



1 maybe the administrative people haven't gotten around to  
2 billing it. I can't address that.

3 JUDGE BLOCH: I was going to ask for a  
4 clarification. On one prior occasion you said sometimes  
5 you do something because it's right and you worry about  
6 whether you are going to get paid for it later? Is that  
7 this kind of situation? Or is it one where you know you  
8 won't get paid?

9 THE WITNESS: It could be. It could be. We  
10 have no assurances.

11 BY MR. ROISMAN:

12 Q Well, speaking as the chief executive officer of  
13 this corporation, is it your intention that the costs  
14 being incurred by O.B. Cannon to work on the affidavit,  
15 the costs that were incurred, and any future costs that  
16 may be incurred in conjunction with testifying with  
17 respect to it, will or will not be billed to TUGCO? I'm  
18 not talking about whether they will be paid, but will they  
19 be billed?

20 A I don't think we've decided that, Mr. Roisman.

21 Q Is that your normal procedure if you were doing  
22 this work in a different proceeding altogether without the  
23 Lipinsky memorandum having been damaging to a client of  
24 yours? Would you be doing work and not knowing whether  
25 you were going to bill it or not?

1           A           The obvious answer is "no." And this is not a  
2 normal situation.

3           Q           Do you feel some inhibition, that maybe you  
4 don't have the right to ask for reimbursement from TUGCO  
5 because of the role that you played in this damage that  
6 they've suffered?

7           A           No, I feel no inhibition, speaking for Cannon.  
8 Again we are supporting our own integrity. We are  
9 supporting our own agreements with the client to go  
10 forward in the spirit of cooperation. We are not going to  
11 back away from that. If it costs a few dollars, it costs  
12 a few dollars.

13          Q           Well, I take it the essence of cooperation is to  
14 avoid disagreement; isn't it?

15          A           Isn't that the usual approach of cooperation?

16          Q           So that when the company comes to O.B. Cannon or --  
17 strike that.

18                When the company comes to Mr. Lipinsky and says: We  
19 would like to get an affidavit from you that to the  
20 fullest extent possible indicates a resolution of the  
21 concerns that you have, cooperation would mean to try  
22 every way possible to be able to give such an affidavit;  
23 isn't that true?

24          A           Well, I will think that's speculative. I think  
25 that's a desired end. It may not evolve.

1 Q But there's a question --

2 A I don't think you cooperate for the effort or  
3 the conclusion of having a complete disagreement on  
4 something. I think you cooperate for establishing a  
5 record and hopefully there will be some concurrence.

6 If there isn't, there isn't. That doesn't mean you  
7 haven't cooperated.

8 Q I take it these are matters on which reasonable  
9 minds could differ, aren't they? These matters that were  
10 raised in Mr. Lipinsky's memorandum as evidenced by  
11 Mr. Norris and Mr. Lipinsky's differing conclusions on it?

12 A I think that's self-evident; yes, sir.

13 Q So without having to be dishonest in any way, it  
14 is certainly possible to try as much as possible within  
15 the range of reasonable disagreement to come out on the  
16 side that everything is okay; rather than on the side that  
17 everything is not okay; isn't that right?

18 A Yes. And by reasonable agreement as well as  
19 reasonable disagreement.

20 Q And that to the extent that you are attempting  
21 to develop a strategy that will enable you to come to  
22 agreement; that is, to reach the conclusion that there are  
23 no problems; without having to do an audit -- you would  
24 feel that you should try to do that to the fullest extent  
25 possible; wouldn't you?

1           A           We had no preconceived course or purpose.  If,  
2           in fact those matters did evolve in our meeting with and  
3           developing the affidavit, so be it.

4           Q           Well, you say that Mr. Lipinsky is not acting  
5           for O.B. Cannon at this point.  And yet you also say that  
6           O.B. Cannon has this sort of ongoing commitment to be  
7           cooperative in every way it can.  I assume if Mr. Lipinsky  
8           were being uncooperative -- if he were being uncooperative,  
9           that would be a matter of concern for O.B. Cannon;  
10          wouldn't it?

11          A           Well, I don't think any manager would like to  
12          have his people characterized as being uncooperative.  And  
13          I don't believe that the -- I don't believe that happened.  
14          And, if it did, then I'm sure our people wouldn't be  
15          invited back.  They'd say "don't come to Washington any  
16          more."

17          Q           Well, your people did come out of the meeting of  
18          the 22nd with some apprehension and tension; didn't they?

19          A           22 of what?

20          Q           22 of November.  Excuse me.

21          A           Meeting with whom?

22          Q           With the lawyers for TUGCO.

23          A           Oh, yes.  But that's their first time around.  I  
24          think apprehension is very normal under those  
25          circumstances, if in fact they had apprehension.

1 Q Well, you are the one who used the phrase that  
2 that was the second time that your people had been  
3 sandbagged. So, it wasn't -- it was more than just: Gee,  
4 this is the first chance I have to meet these people.  
5 There were some substantive --

6 A No, I was --

7 MR. GALLO: Objection. This whole colloquy has  
8 reduced itself to an argument between counsel and the  
9 witness. The witness has explained very carefully what he  
10 meant by "cooperation." We have now gone over this  
11 question of cooperation and the degree of cooperation,  
12 what that term means. The witness is being argued with.  
13 We have elicited all we can from this witness. We should  
14 move on to a new subject.

15 MR. WATKINS: We join in the objection.

16 JUDGE BLOCH: I think the approach counsel is  
17 using is a little different and he's relating it to the  
18 use of the term " sandbagged" and providing it's not too  
19 redundant from this point on, we'll allow the line of  
20 questioning.

21 BY MR. ROISMAN:

22 Q The question was, Mr. Roth, that at the time of  
23 the meeting of the 22nd between the attorneys for TUGCO  
24 and your people, there was more tension than just the  
25 natural tension between strangers meeting for the first

1 time. There was also some substantive concerns that your  
2 people, and you, had about what was happening? Thus, the  
3 use of the term "sandbagged" by you; isn't that true?

4 A We had some concerns.

5 Q Now --

6 MR. ROISMAN: Mr. Chairman, unless the board  
7 objects I would like to take a break at this time. I may  
8 have no more questions for this witness or I may have one  
9 or two more --

10 JUDGE BLOCH: Let's take the break in a couple  
11 of minutes.

12 Mr. Roth, did any of the people who were at the  
13 November 22nd meeting talk to you about the approach the  
14 lawyers seem to have had at that meeting?

15 MR. WATKINS: Your Honor, could you ask the  
16 witness who was at that meeting? I don't think that's  
17 established.

18 JUDGE BLOCH: I think we have it in the record  
19 already though. Do you know who was at that meeting?

20 THE WITNESS: November 22 or November 23, now?

21 JUDGE BLOCH: The date of the meeting with the  
22 lawyers was which?

23 MR. ROISMAN: 22nd.

24 JUDGE BLOCH: Okay.

25 THE WITNESS: Okay. I recall no specifics on

1 that, judge. Whether there was apprehension, not  
2 apprehension, or they liked someone's demeanor --

3 JUDGE BLOCH: That wasn't the question. Did anyone  
4 who was at the meeting -- first of all the question is:  
5 do you know who was at the meeting?

6 THE WITNESS: I don't recall specifically.

7 JUDGE BLOCH: Do you know whether Mr. Trallo was  
8 at the meeting?

9 THE WITNESS: I don't believe Ralph went to that  
10 first meeting.

11 JUDGE BLOCH: Do you know whether Mr. Lipinsky  
12 was at the meeting?

13 THE WITNESS: I think Joe and probably Jack went  
14 to the meeting. Ralph may or may not have been aboard.

15 JUDGE BLOCH: Okay. And did either Jack or Joe  
16 subsequently come to you to discuss with you the approach  
17 the lawyers had taken at that meeting?

18 THE WITNESS: Oh, I'm sure they discussed it  
19 with me. I didn't detect anything unusual in their  
20 reporting.

21 JUDGE BLOCH: What do you recall to be the  
22 substance of their feeling about the approach of the  
23 lawyers at that meeting?

24 MR. GALLO: I don't believe the witness  
25 understands what you mean by "approach."

1           JUDGE BLOCH: What was your understanding of  
2 their reaction to what the lawyers had done at the meeting?

3           THE WITNESS: Judge, I don't recall any reaction  
4 that, you know, is imprinted on my memory. There was no  
5 explanation one way or the other. They had a meeting. It  
6 accomplished what it accomplished. It was my impression  
7 it was somewhat perfunctory. I don't recall any -- any  
8 other impressions or approach, if you will, that was  
9 relayed back to me.

10           JUDGE BLOCH: My concern is that in the first  
11 meeting you used the term "sandbag" and this meant people  
12 went to the meeting and what happened was contrary to what  
13 they expected and so they were really surprised about what  
14 happened and upset about it.

15           THE WITNESS: That's right.

16           JUDGE BLOCH: Is that the way you are using the  
17 term "sandbag" with respect to the second meeting?

18           THE WITNESS: No, sir. It's a slightly  
19 different context. I think I addressed that earlier on  
20 the basis that here we were, trying to get from the task  
21 force their final report and get it in writing and get it  
22 down to the client and here they were having the lawyers  
23 wanting to have a meeting even before we had released the  
24 report. So I felt it was premature and kind of a sandbag  
25 effect. That may not have been the proper choice of



1 verbiage but --

2 JUDGE BLOCH: Whatever words you use are  
3 acceptable as far as I'm concerned. But the words you use --  
4 what you meant by it, if I understand it correctly -- was  
5 just that were you pressured to be there before you you  
6 thought you were fully ready to be there? Not you, the  
7 company.

8 THE WITNESS: That's it. Cannon, and/or  
9 Cannon's people.

10 CHAIRMAN BLOCH: And there's nothing that  
11 happened at that meeting that you learned subsequently  
12 that contributed subsequently to your feeling that the  
13 company might have been sandbagged at that meeting?

14 THE WITNESS: No. I can't recall anything of  
15 that nature.

16 JUDGE BLOCH: We'll take a break for lunch.

17 (Whereupon, at 12:30 p.m., the hearing was  
18 recessed, to reconvene at 1:30 p.m., this same day.)

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1 one that you have prepared.

2 A Right.

3 JUDGE BLOCH: I'm sorry, I don't think the  
4 record reflects what you have showed him.

5 MR. ROISMAN: I'm sorry. The document is his  
6 handwritten note to Mr. Merritt and then an attachment to  
7 it which sent to Mr. Merritt the JJL notes regarding  
8 contact with the NRC.

9 I would like to have this introduced in evidence. It  
10 was not introduced yesterday although it was discussed  
11 yesterday.

12 JUDGE BLOCH: There's no objection. It shall be  
13 admitted into evidence and bound into the transcript.

14 (The document follows:)

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FROM THE DESK OF

ROBERT B. ROTH 10-18-63

John

As per a/cen tel. on this date,  
I've Xerated the information from  
last Friday 10/14, on Jas. Lipinski's  
weekly activity report.

Each of my Dept. chiefs is req'd.  
to give me this type report, high-lighting  
the managers' principal activities,  
contacts, etc.

J. L. (Lipinski) verified that Don Driscoll  
was w/NCC, before returning his call. The  
phone number w/area code 301, is a  
Maryland area code.

I thought you should have a  
confidential copy of an in-house activity  
report.

Regards -  
Bob Roth

FRIDAY: ARR. 0905HRS. LV. 1715HRS.

T. CONN W/ TCD RE: REC'D 1/2 GAL OF CE#11 TO REPLACE PREVIOUSLY REJECTED MATERIAL - LIDS ON REPLACEMENT MAT  
BETTER BUT STILL LOOSE - TCD ACCEPTED BUT POINTED OUT THAT LOOSE LIDS COULD BE A PROBLEM !!  
ARC RECEIVED 1000+ GAL ON SITE / GO INTO STORAGE FOR LONG TERM - T. CONN W/ WFM RE: JL PROVISION WATER  
BLMT / WMTB/TRE LETHO. ; ADVISE ON PROBLEM W/ CE#11 FINISH UP ON CR. LEVEL II TEST

T. CONN W/ DON DRISKILL (NAC - 917 860 8109 or 8110) WANTED TO DISCUSS 8/8/83 TRIP REPORT - JL ASK  
FOR A PHONE NUMBER TO VERIFY THAT DRISKILL WORKS FOR NRC -> 301 492 7246 BILL &  
TED GILBERT -> JL CALLED (PHONE ANSWERED HELLO NRC) COULD NOT GET A HOLD OF MR. WOOD OR  
MR. GILBERT BUT MS. D. LEWIS CONFIRMED THAT DRISKILL IS AN NRC INVESTIGATOR -> T. CONN W/  
S. DRISKILL RE: 8/8/83 TRIP REPORT - JL EXPLAINED THAT THE TRIP REPORT HAD NO OFFICIAL STA.  
AND IS BASED IN JL IMPRESSIONS / OPINIONS / OBSERVATIONS, MR. DRISKILL INDICATED THAT THE REPORT  
IS PART OF HIS INVESTIGATIONS (NOT A FORMAL INVESTIGATION BASED ON JL TRIP REPORT BUT IN  
REPORT DEALS W/ ISSUES BEING INVESTIGATED) AND WILL INDICATE THAT REPORT IS SUBJECTIVE  
OTHER DETAILS IN C/ FOLDER OTHER ITEMS / ACTIVITIES NOT RECORDED

1                   MR. ROISMAN: Can we go off the record one  
2 second?

3                   JUDGE BLOCH: Off the record.

4                   (Discussion off the record.)

5                   JUDGE BLOCH: Back on the record.

6                   MR. ROISMAN: Mr. Chairman, I would like to  
7 offer into evidence and have bound into the record, if not  
8 already bound into the record, the letter dated November 4,  
9 1983, by Mr. Roth to Mr. Merritt, with the attachments  
10 thereto; and the letter dated November 28, 1983, from  
11 Mr. Reynolds to Mr. Roth.

12                   CHAIRMAN BLOCH: There being no objection, you  
13 may reserve for examination of the transcript. We'll bind  
14 them in next week if necessary.

15                   I would comment on the matter that arose the very first  
16 thing this morning, where there was a motion to reconsider  
17 which the board acted on. When the board reflected on  
18 what happened we became somewhat surprised that applicants  
19 were not preparing to file on the date originally ordered,  
20 just because they had filed a motion for reconsideration.  
21 They should be aware that motions for reconsideration do  
22 not stay anything by virtue of being filed. We did grant  
23 until Friday as an extension of time.

24                   MR. WATKINS: Thank you, Mr. Chairman.

25                   MR. ROISMAN: Mr. Chairman, we have no further



1 questions for Mr. Roth at this time.

2 JUDGE BLOCH: Mr. Roth, I have only a couple.

3 In your letter after the November 3rd meeting, which I  
4 don't have to show you, but maybe you'll remember this  
5 portion of it, there are, as I recall, two paragraphs  
6 dealing with security.

7 Could you show him, counsel?

8 MR. GALLO: Are you referring to the policy  
9 statement?

10 JUDGE BLOCH: The outline that came out of the  
11 November 3 meeting of what the task force was going to do.

12 MR. GALLO: The November 4 memorandum, Roth to  
13 Trallo, that sets out the scope?

14 JUDGE BLOCH: I believe it's the last two  
15 numbered paragraphs, if my recollection serves me right.  
16 Now, there are two on security in there?

17 MR. GALLO: Yes.

18 THE WITNESS: Yes. I have it. It's -- this is  
19 a memorandum that I had written to the task force  
20 committee.

21 JUDGE BLOCH: The intent of that, I take it, was  
22 so O.B. Cannon conclusions would be entirely internal  
23 except for what you would communicate to the site; is that  
24 correct?

25 THE WITNESS: Judge, I didn't have that

1 specifically in mind, in light of the fact that we had  
2 already had documents that had been removed. I had -- it  
3 was a fairly focal point that there were to be no releases  
4 outside of Cannon, of any of the deliberations, if you  
5 will, of the task force, until such time as Ralph gave me  
6 his summary.

7 JUDGE BLOCH: To effectuate that, the process  
8 that you set up was that the information was to come only  
9 to you and you would be the source of communication to the  
10 site; is that correct?

11 THE WITNESS: Yes. May I just elucidate briefly?  
12 And that is, Ralph would be the clearinghouse with respect  
13 to the members of the task force. And thereafter he would  
14 address me, since I had sent the memorandum setting him up  
15 as chairman and I, in turn, would communicate that result  
16 to the utility.

17 JUDGE BLOCH: Was there any discussion about  
18 circumstances under which you might be able to make  
19 further use of those conclusions other than just  
20 communicating them to the applicants?

21 THE WITNESS: No, sir. There were not.

22 JUDGE BLOCH: I was thinking that there could be  
23 legal requirements that might have to supersede that  
24 security arrangement depending on what your findings were.

25 THE WITNESS: No. There were no such actions or



1 thoughts on my part at the time.

2 Basically the security element had been one that was  
3 highly focalized, and secondly, good business would be  
4 such that, rather than having four to five Cannon-ites  
5 talking to the members of the utility's folks, it would be  
6 better to channel it through and over my signature.

7 JUDGE BLOCH: Thank you.

8 JUDGE GROSSMAN: Mr. Roth, were you aware of any  
9 scheme, on or around November 30, 1983, to make it appear  
10 that you were retaining TUGO's attorneys when TUGCO  
11 actually was going to be retaining you?

12 MR. GALLO: Do you understand that question?

13 THE WITNESS: I am not aware of any scheme,  
14 Judge Grossman.

15 JUDGE GROSSMAN: Well, wasn't there some  
16 suggestion made that you would have it appear as though  
17 you were retaining applicant's attorneys, and actually  
18 paying them when, in fact, those costs would be reimbursed  
19 by TUGCO?

20 THE WITNESS: With respect to the corporate  
21 effort, which is the term I used earlier, there was no  
22 real scheming -- not scheming -- discussion of attorney's  
23 fees. I did get involved with respect to the question on  
24 attorney's fees when the meeting in Chicago with the NRC  
25 had been gelled, and felt that Joe should be represented

1 by counsel at the meeting which evolved to be on January  
2 4th, although it had been priorly scheduled a time or two.

3 And I recall speaking to either Mr. Reynolds or  
4 Mr. Watkins on the basis that, if in fact it could be  
5 construed as a conflict on their part, then Cannon would  
6 stand for the fees of that date and sent them to me.

7 JUDGE GROSSMAN: Well, wasn't there a proposal  
8 that --

9 JUDGE BLOCH: I'm sorry; what date was that?

10 THE WITNESS: That would have been certainly  
11 prior to the actual January 4th meeting.

12 As it turned out, they did not send a bill, but that  
13 was my conversation with them.

14 JUDGE GROSSMAN: Wasn't there also a suggestion  
15 that if you were sent a bill, that TUGCO would actually  
16 pay that bill for you?

17 THE WITNESS: That suggestion was not made to me,  
18 sir.

19 JUDGE GROSSMAN: And you were not aware of it at  
20 the time?

21 THE WITNESS: No. My volunteering to either  
22 Mr. Watkins or Mr. Reynolds was the fact that to represent  
23 Joe, if the conflict in their view was such that that was  
24 a problem, then: Send me the bill.

25 JUDGE GROSSMAN: Well, Mr. Roth, you act

1 surprised at my question, now. You weren't perhaps aware  
2 of it at the time, but you were certainly aware of  
3 something in the record now that indicates that that  
4 scheme was proposed; aren't you?

5 THE WITNESS: Yes.

6 MR. GALLO: Objection. Objection.

7 Characterization of "scheme," that's Judge Grossman's own  
8 characterization and no one else's.

9 MR. WATKINS: We agree and we would add to the  
10 objection, Judge Grossman, the board has ruled that no  
11 attorney/client relationship exists. I think the the  
12 applicable relationship is you can't get it both ways?

13 JUDGE GROSSMAN: Mr. Reporter, did you get the  
14 "yes" answer?

15 THE WITNESS: I was interrupted.

16 MR. GALLO: It's all right.

17 JUDGE BLOCH: I want to overrule Mr. Watkins'  
18 objection because it's not true. Because someone else  
19 thought they had a relationship or they were trying to  
20 make it look like a relationship could be important even  
21 though we have ruled there is no relationship.

22 JUDGE GROSSMAN: If the word "scheme" offends  
23 you, or your attorney, you were certainly aware that there  
24 was such a relationship posed weren't you? You are aware  
25 now?

1           THE WITNESS: This is your word and I have no  
2 objection to it. It has connotations sometimes. In Joe  
3 Lipinsky's diary notes, such a terminology is referenced.

4           JUDGE GROSSMAN: Could you tell me the first  
5 time you were aware of the proposal for this particular  
6 arrangement?

7           THE WITNESS: I would guess that the  
8 conversation I had with Mr. Watkins or Mr. Reynolds about  
9 representing Joe would have been sometime in -- between  
10 late November and maybe the 20th, 21st of December; in  
11 that timeframe. That's when I had the conversation  
12 whereby I authorized them to bill me.

13          JUDGE GROSSMAN: Well, did your knowledge at  
14 that time extend to the suggestion that those payments to  
15 the applicant's attorneys might be reimbursed by TUGCO?

16          THE WITNESS: No, sir.

17          JUDGE GROSSMAN: When is the first time that you  
18 understood that to be part of the suggestion at that time?

19          THE WITNESS: I never really understood the --  
20 that suggestion until such time as I read the diary notes  
21 from Mr. Lipinsky. But the mere fact that they never did  
22 send the invoice through -- I haven't received it as yet --  
23 is a matter of record.

24          JUDGE GROSSMAN: Perhaps I'm mistaken about your  
25 responses to Mr. Roisman with regard to ongoing

1 arrangements; but is it correct that your position is that  
2 subsequent to June of 1984, that none of the work that O.B.  
3 Cannon does with regard to the Comanche Peak matter is  
4 covered by any billing arrangement?

5 THE WITNESS: Let me respond in this way. As I  
6 recollect this morning, in response to a similar question  
7 I answered that we have submitted -- prepared and  
8 submitted no invoices. And, secondly the change order to  
9 the purchase order, which we discussed again sometime just  
10 before lunch, spells out a specific amount and relates to  
11 four to five invoices to which that specific amount would  
12 apply.

13 JUDGE GROSSMAN: Well, that seems to leave one  
14 gap. Now, you've talked about actual invoices for times  
15 subsequent to that. And I'm asking you about an  
16 arrangement, in case there are invoices, with regard to  
17 work after that.

18 Do you have any kind of agreement or understanding with  
19 regard to billings that you will be reimbursed for in the  
20 future?

21 THE WITNESS: Sir, there are no assurances nor  
22 no firm commitments.

23 JUDGE BLOCH: That means oral or written, I  
24 assume?

25 THE WITNESS: That is correct, yes, sir. To the

1 best of my knowledge.

2 JUDGE GROSSMAN: Well, now in reviewing the  
3 Lipinsky diary notes, you are aware of the fact, are you  
4 not, that on May 25, 1984, it was suggested that there  
5 were some administrative restraints on Mr. Lipinsky for  
6 doing any further work because of the billings problem;  
7 that subsequently --

8 THE WITNESS: I know --

9 JUDGE GROSSMAN: Let me give them all to you now.  
10 Subsequently on August 6 of 1984 that billing problem  
11 was brought up again with Mr. Watkins' firm; and that sometime  
12 later in August Mr. Watkins had inquired as to whether OBC  
13 had, that is the Cannon firm had received payments.

14 Now, you are aware of all these diary notes. And if  
15 you need some time to review them, you may certainly have  
16 that.

17 THE WITNESS: No, sir; I know to which you refer.

18 JUDGE GROSSMAN: Well, now, doesn't that appear  
19 to suggest that there was some sort of arrangement with  
20 regard to work that would be performed, at least after  
21 August 6, 1984?

22 THE WITNESS: No, sir. And I think the most  
23 clarifying item in the diary would be August 7th, and a  
24 handwritten note from myself to Joe Lipinsky, since he had  
25 been jockeying back and forth to visit with the attorneys,

1 to remind them that the invoicing for the \$8700 which was  
2 covered by the change order had not been paid. And it was  
3 some 60, 90 days after Jack had negotiated that lump sum  
4 and the bills had not been paid to Cannon.

5 It was a rapidly aging receivable.

6 JUDGE GROSSMAN: Well let me ask you then,  
7 specifically with regard to the May 25, 1984 diary note,  
8 what was meant, if you know, by the indication that there  
9 was an administrative restraint on Mr. Lipinsky from  
10 proceeding with the work because of billings?

11 THE WITNESS: I have the page that you mentioned,  
12 May 25th. May I have a moment to glance at it?

13 JUDGE GROSSMAN: Certainly. I don't have it so  
14 I can use a moment, too.

15 THE WITNESS: Excuse me, sir. I want to see one  
16 more document. Okay.

17 That comment referenced the fact that up and through  
18 the date of May 25th the invoices had not been paid to  
19 Cannon, which invoices had been priorly submitted. And,  
20 not having had those monies, we were continuing to send  
21 our people back and forth. There was not an  
22 administrative restraint as such. But I expressed a  
23 reluctance to Joe to hurry up and catch the train,  
24 inasmuch as the aging receivable was a concern.

25 We followed through on that, and, as a result, the



1 change order, one, was generated whereby the lump sum  
2 amount was agreed upon.

3 Is that sequence clear, Judge Grossman?

4 JUDGE GROSSMAN: Well, in other words -- if I  
5 understand what you are telling me now, that it was not  
6 that there was an administrative restraint on Mr. Lipinsky  
7 to do further work that would not be paid; but there was a  
8 restraint by your company on his performing any further  
9 work because the prior work that you could actually bill,  
10 and had billed, had not been paid; is that what you are  
11 saying?

12 THE WITNESS: That's correct. Yes, sir. That's  
13 the exact chronology.

14 JUDGE GROSSMAN: Well, now let's go to the  
15 August 6th diary note, in which there is a notation that:  
16 J.J.L. brought up billing, and O.B.C. could bill Watkins' firm,  
17 but first Watkins will talk with J. Merritt.

18 THE WITNESS: Right.

19 JUDGE GROSSMAN: Now, I assume you weren't, or  
20 Mr. Lipinsky was not referring to O.B. Cannon billing  
21 Mr. Watkins' firm for work that had been done for TUGCO at  
22 that point.

23 THE WITNESS: No. As I understand the gist of  
24 that conversation, and bearing in mind that, as late as  
25 May we had not again received payment for the invoices and



1 then Jack Norris negotiated a lump sum change order, and  
2 then we invoiced the lump sum change order and the  
3 payments had not been forthcoming -- and I had reminded  
4 Joe each time he went to Washington: Hey, check on such  
5 and such an invoice.

6 And then, when each time he reminded the folks in  
7 Washington to this effect, they said well, we'll check on  
8 it. And my impression on this remark was, from Watkins,  
9 well, if they haven't paid you, give me the bill, speaking  
10 of the same \$8700, and I'll follow through on it.

11 MR. WATKINS: Judge Grossman? I'll try to  
12 remember, but if I don't let's please ask Mr. Lipinsky  
13 that same question. These are his notes and he had the  
14 conversation, not Mr. Roth.

15 JUDGE GROSSMAN: So you are suggesting now,  
16 Mr. Roth, that where the note said "bill Mr. Watkins'  
17 firm," what it really meant was to ask Mr. Watkins' firm  
18 to try and receive payment for you from TUGCO?

19 THE WITNESS: That's my distinct impression;  
20 yes, sir. We were seeking some help from them to hasten  
21 the payment to Cannon that had been so long outstanding.  
22 But the payment throughout this discourse was one and the  
23 same; and that being the amount on change order 1 in  
24 accordance with the Norris negotiation.

25 JUDGE GROSSMAN: Earlier, when Mr. Roisman asked

1 you about whether you reflected on the possibility of not  
2 getting another contract with the nuclear industry because  
3 of the Lipinsky memo, you indicated that you had no such  
4 concern and never reflected on that.

5 Do you recall that?

6 THE WITNESS: Yes. That was the second part to  
7 his question.

8 JUDGE GROSSMAN: Well, now, did you ever reflect  
9 on the possibility of not getting another contract with a  
10 nuclear firm if you were not to fully cooperate with TUGCO  
11 after the Lipinsky memorandum had surfaced?

12 THE WITNESS: That was never a concern to me.

13 JUDGE BLOCH: Mr. Gallo, I have a very minor  
14 matter. The top of the August 7 entry. It appears to be  
15 whited out with a label. That's a strange place for an  
16 irrelevant matter but would you assure me that it's  
17 irrelevant when you check it? Where the calendar part is.

18 MR. GALLO: This is from the desk -- let me make  
19 sure I know we are -- oh, August 7th. You think that's  
20 whited out over there?

21 JUDGE BLOCH: It appears to be covered over.

22 MR. GALLO: You want me to check it?

23 JUDGE BLOCH: Not immediately but before the  
24 next time.

25 MR. WATKINS: As long as we are making

1 corrections, I forgot to mention the copy of the November  
2 28 task force group report that Mr. Roisman had introduced  
3 into the record has two footnotes cut off of his copy.  
4 They are not substantive but my copy shows that on pages 4  
5 and 5, each of those pages has a footnote referring to the  
6 Lipinsky trip report.

7 MR. GALLO: It's not really important, I don't  
8 believe, because the same document is attached to the  
9 Trallo testimony as an exhibit and all the footnotes  
10 appear there.

11 JUDGE BLOCH: Okay. So it will be in the record  
12 in proper form.

13 JUDGE BLOCH: I suppose the best order is for  
14 applicants to come next.

15 May I ask you before you start whether we can release  
16 Mr. Lipinsky?

17 MR. WATKINS: As far as I'm concerned; yes.

18 JUDGE BLOCH: If you would like Mr. Lipinsky to  
19 feel free to leave, he may.

20 MR. GALLO: May I have just a moment to do that?

21 JUDGE GROSSMAN: That means, Mr. Gallo, he can  
22 reserve that answer to that question until the next time.

23 MR. GALLO: It's indelibly imprinted in his mind.

24 JUDGE BLOCH: Mr. Watkins?

25 CROSS-EXAMINATION

1 BY MR. WATKINS:

2 Q Mr. Roth, what's an audit?

3 A Well, an audit would be a very detailed,  
4 in-depth confirmation of a procedure, a set of rules, a  
5 set of books. That would be my definition.

6 Q Are audits performed by QA/QC personnel?

7 A They are normally performed by auditing  
8 personnel. The auditing personnel in turn are normally  
9 members of the QA/QC departments within organizations.

10 Q Mr. Michels of your company is an auditor?

11 A He's the lead corporate auditor, yes, sir.

12 Q Mr. Lipinsky?

13 A Is the QA director.

14 Q Is not an auditor within the meaning of O.B.

15 Cannon?

16 A He's been qualified as an auditor on certain  
17 projects where he's not the QA manager.

18 Q Has O.B. Cannon ever comprehensively audited a  
19 coatings program in a nuclear power plant with which it  
20 was not already involved?

21 A I'd have to go through my files, Mr. Watkins, on  
22 that. None springs immediately to mind. We have audited  
23 QA programs as put together by other -- others in our  
24 business. And that was done principally during an offer  
25 of services period that Cannon had been involved in. I

1 would have to go back to the record on that.

2 I know we have, to a very substantial degree, audited  
3 coatings vendors and suppliers of instruments which are  
4 manufactured to measure and verify coating's integrity.

5 Q You can audit for individual items or subjects;  
6 can you not?

7 A Yes.

8 Q How long would a comprehensive audit of a  
9 nuclear coating program taken?

10 A My best judgment, that would certainly vary,  
11 again, on the -- depending on the parameters, to somewhere  
12 between three, five, perhaps six weeks.

13 Q Do you have a copy of the document that you  
14 talked about this morning, it has a qwip cover sheet and  
15 an attachment?

16 MR. GALLO: He doesn't have that.

17 THE WITNESS: I don't have it in front of me.

18 Okay?

19 BY MR. WATKINS:

20 Q Let me see if I can find another copy.

21 A I recall this; yes, sir.

22 Q Is that an audit outline?

23 A I believe it could be used in order to confirm  
24 an audit, either to a specific area of the QA program or  
25 for a complete audit.

1 I believe there are maybe some other areas if you were  
2 to do -- and "comprehensive" is an elusive word -- a  
3 thorough, comprehensive, in-depth audit you might add an  
4 item or two here.

5 Q Part of your definition of "audit" was that you  
6 would review procedures? Books? Would you also observe  
7 activities in the field in connection with an audit?

8 A That could very well be part of it; yes.  
9 Particularly where you are auditing the actual painter  
10 qualification requirements which are part, normally, of a  
11 QC program for protected coatings.

12 Q Now, this two-page outline includes as topics:  
13 "Material," with subheadings of "receipt," "storage,"  
14 "material issuance," "mixing," and "application." It  
15 includes "QC personnel," "test instruments,"  
16 "documentation," and "procedures and specifications."

17 A Yes.

18 Q How much time would an audit of all of those  
19 things take?

20 A Well, I would -- if all of these things were  
21 done, I don't believe the memo was prepared for that --  
22 but if all of these things were to be done I think that  
23 timeframe would still be addressed. Three, five weeks,  
24 six weeks, depending on on the complexity of the situation.

25 Q Of one person?

1           A           No, the audit team.

2                    JUDGE BLOCH:  When you say complexity of the  
3 effort what are you referring to?

4                    THE WITNESS:  Just which of these topics -- okay,  
5 were to be audited.

6                    BY MR. WATKINS:

7           Q           How many people would that audit team include?

8           A           I would suspect you'd have a minimum of two and  
9 you'd probably crank into the audit team, specialists when  
10 you got to instrument calibration, specialists whether you  
11 got to vendor qualification, things of that nature.

12          Q           Did you know in advance how much time  
13 Mr. Lipinsky was going to spend at Comanche Peak?

14          A           You are talking about the July visit?

15          Q           Yes.

16          A           No, sir.

17          Q           You now know it was three days?

18          A           That's correct.

19          Q           Given the --

20                    JUDGE BLOCH:  No, wait a second.  You know the  
21 time he was going to spend on the site was three days or  
22 that he only spent three days?

23                    THE WITNESS:  No.  I did not know how much time  
24 he was going to spend on-site.  I believe three days had  
25 been marked on his itinerary, but that could be less or

1 more once he gets to the site.

2 BY MR. WATKINS:

3 Q Given the definition in the outline you have in  
4 front of you and armed with the knowledge that he spent  
5 three days on the site, is it clear to you that he was not  
6 performing an audit?

7 A Oh, I think that's quite clear.

8 Q What was he doing?

9 A He was again making observations as to certain  
10 of the work in place. He was interviewing, and I think  
11 his own record address -- his own testimony may address  
12 this -- he was interviewing other inspectors, particularly  
13 those who were acquaintances of his.

14 I believe he had asked for and received certain work  
15 procedures which he then went through in some detail.

16 He went to the warehouse to inspect the receiving  
17 mechanism for Q related paint materials. And several  
18 other activities that involved his visit: His touring the  
19 site, his talking with people, his meeting with Mr. Tolson.

20 Q When you first reviewed his trip report I  
21 believe you testified you did not discuss it with him at  
22 that time; is that correct?

23 A That's correct.

24 Q Do you know or do you recall asking him at any  
25 time what exactly -- what parts of the trip report he



1       communicated to Texas Utilities?

2           A           I don't recall going through the specific  
3       numbered paragraphs. I took at face value -- when you say  
4       "review," he, of course, reviewed the report with me  
5       because I had seen it just prior to its final typing with  
6       a couple of grammatical adds and subtracts and so forth.

7           But, at any rate I don't think he made the statement  
8       that he had reviewed all of those items. Although he  
9       could very well have done so.

10          Q           Could you refer to page 3 of the trip report.  
11       Beginning on the last paragraph --

12          A           Page 3? Yes, sir.

13          Q           The bottom of the page appears: "The following  
14       are the writer's observation/opinions as a result of this  
15       site visit."

16               Is it your impression that that which comes before that  
17       sentence actually records what Mr. Lipinsky communicated  
18       to site personnel? And what comes after is simply  
19       observations that he made in writing the trip report?

20               JUDGE BLOCH: Mr. Watkins, could you clarify  
21       that? You think the things -- the question is whether the  
22       things before that sentence were the things that were  
23       communicated and the things after were not?

24               MR. WATKINS: Yes.

25               JUDGE BLOCH: Thank you. Is that your

1 understanding, Mr. Roth?

2 THE WITNESS: My understanding -- let me back up  
3 -- is that up to that paragraph, Joe was setting down a  
4 chronology of the things that he did. Okay? Thereafter  
5 he's setting forth the opinions and observations as a  
6 result of having done the prior items.

7 Does that answer the question?

8 JUDGE BLOCH: Those things were not communicated;  
9 is that right? The things after?

10 THE WITNESS: I don't know that.

11 JUDGE BLOCH: You don't know that they were?

12 THE WITNESS: I don't know that.

13 BY MR. WATKINS:

14 Q Just to take an example, do you know, for  
15 example, whether Mr. Lipinsky communicated to Texas  
16 Utilities that he thought parallels could be drawn between  
17 Comanche Peak and Zimmer?

18 A I don't know that. You mean at the time he had  
19 the exit interview?

20 Q Yes.

21 A I do not know that.

22 Q On August 9 you attended a meeting at the site.  
23 Could you refer to item 1 in your binder there?

24 A Thank you. Okay.

25 Q Item 16, a Texas Utilities Services, Inc.

1 memorandum dated August 15, 1983, titled "meeting" --  
2 "minutes of meeting"?

3 A Okay.

4 Q Was a copy of this memo sent to you?

5 A Yes.

6 Q And you reviewed it, among other things, to  
7 determine what your assignments were; is that correct?

8 A Among other things. We already knew what our  
9 assignments were.

10 Q Could you describe in a little more detail than  
11 you did in your testimony what the subject matter of that  
12 meeting was? What topics were discussed?

13 A Well, I suspect the easiest thing would be to  
14 address the minutes of the meeting that were made up by  
15 the chairman of the meeting.

16 Q Do the minutes accurately reflect your  
17 recollection of what took place at the meeting?

18 A They seem pretty complete.

19 JUDGE BLOCH: I take it "and accurate" is  
20 implied in that; is that right?

21 THE WITNESS: I have no problem with that.  
22 There's a lot more discussion than has been reduced to the  
23 minutes, but that's not unusual.

24 BY MR. WATKINS:

25 Q On the very first page of the minutes appear

1 references to reg guide 1.54 and three ANSI standards.

2 A Right.

3 Q Was that the context of the meeting? In other  
4 words, the discussion that took place was against the  
5 backdrop of these standards; is that correct?

6 A Well, that was certainly part of it. But the  
7 meeting was not completely on items 1 through 4.

8 Q No, I understand.

9 A Oh. Okay.

10 Q But, for example, you discussed revisions to  
11 procedures?

12 A Yes.

13 Q You discussed revisions to acceptance criteria;  
14 for example, dry film thickness readings?

15 A Sure.

16 Q Those discussions took place against the  
17 backdrop of these ANSI standards?

18 A Yes.

19 Q And if you were discussing -- if there was a  
20 discussion at the meeting of changing a procedure or an  
21 acceptance standard, reference was made to these ANSI  
22 standards?

23 MR. ROISMAN: Objection. Mr. Chairman, I would  
24 like a ruling out of the board as to whether or not this  
25 witness is adversary to the applicant, and thus the extent

1 to which the witness can be properly led. It seems to me  
2 the record is replete with information that would suggest  
3 that the witness not adversary and that, therefore,  
4 leading would be inappropriate.

5 JUDGE BLOCH: I would think that there's no  
6 reason to believe that he's either adversary or  
7 particularly friendly at the time, so it would be better  
8 not to lead.

9 MR. WATKINS: He's a board witness.

10 JUDGE BLOCH: That has nothing to do with  
11 whether you could lead him or not.

12 MR. REYNOLDS: Can we be heard on the argument  
13 before you rule?

14 JUDGE BLOCH: If you have something to say  
15 beyond what I have ruled; sure.

16 MR. WATKINS: I would like to do a little voir  
17 dire of the witness.

18 VOIR DIRE EXAMINATION

19 BY MR. WATKINS:

20 Q Mr. Roth, when did we first meet?

21 A Monday.

22 Q Yesterday or Monday?

23 A This last Monday. I had spoken to you on the  
24 phone.

25 Q How many times?

1           A           I would guess, Mack, maybe two, three, times. I  
2 had discussions with you and Nick and how many discussions,  
3 frankly, I haven't reduced to diary.

4           Q           Have we discussed your testimony in this  
5 proceeding?

6           A           No, we have not.

7           MR. WATKINS: Your Honor, we approach this  
8 witness from the same perspective as Mr. Roisman. Whether  
9 he is adverse or hostile, makes no difference.

10           JUDGE BLOCH: The standard on the federal rules  
11 on leading was you had to establish that the witness was  
12 adverse.

13           MR. WATKINS: Let me refer to the federal rules.

14           THE WITNESS: Off the record, I don't think I'm  
15 adverse to anyone in the room.

16           MR. GALLO: Therefore nobody can lead him,  
17 including Mr. Roisman. I move to strike.

18           (Laughter.)

19           (Discussion off the record.)

20           JUDGE BLOCH: The hearing will come to order.  
21 The ordinary rule under federal rules is leading questions  
22 may be asked on cross-examination and cross-examination  
23 may be addressed to board-called witnesses. And we will  
24 allow that as the ordinary rule here but we will be  
25 cautious because we know that there has been some

1 relationship between O.B. Cannon and the company, so we  
2 will exercise discretion if we think the leading should  
3 become excessive.

4 MR. ROISMAN: Mr. Chairman, we have not been  
5 heard on this issue. I would like to be heard before you  
6 make a final ruling. Guess in the nature thing it is a  
7 motion for reconsideration?

8 JUDGE BLOCH: No, we'll consider it preliminary  
9 since I thought everyone had been heard.

10 MR. ROISMAN: We saw a copy of a document  
11 prepared by Texas Utilities indicating that it's their  
12 perception that they continue to have a contractual  
13 relationship with O.B. Cannon, namely supplement number 1  
14 dated June 25, 1984. And, although Mr. Roth did not read  
15 the note that's contained in that document as indicating  
16 that the continual relationship exists, I submit that on  
17 its face it does so indicate.

18 Thus, we are dealing here with a consultant to the  
19 utility. And it is not possible for that to be  
20 established to be an adversarial relationship on the  
21 current state of the record.

22 JUDGE BLOCH: I have examined that document in  
23 the past, but I would like to see it again.

24 MR. ROISMAN: I think we gave ours -- that was  
25 part 1 of a two-part argument. I'll make the second after

1 you have a chance to look at that, if that's all right.

2 JUDGE BLOCH: I would point out that in light of  
3 the last entry on this page, where it says, "the above  
4 price is firm and not subject to escalation," it is clear  
5 that the note implies a continuing relationship. Counsel  
6 is right. The witness is therefore --

7 MR. REYNOLDS: You haven't heard our argument.

8 JUDGE BLOCH: You are going to address it.  
9 Sorry about that. I can change my mind again.

10 MR. ROISMAN: I haven't finished and if there's  
11 rebuttal --

12 JUDGE BLOCH: The last note on the page says  
13 prices shall not be subject to escalation which suggests a  
14 continuing relationship.

15 MR. ROISMAN: Now, in the Federal Rules of  
16 Evidence, the subdivision that I think is the critical one  
17 is rule 611 (c) on leading questions. And in the note  
18 that goes with that, it indicates that the rule also  
19 conforms to tradition in making the use of leading  
20 questions on cross-examination a matter of right.

21 "The rule also conforms to tradition in making the use  
22 of leading questions on cross-examination a matter of  
23 right. The purpose of the qualification 'ordinarily' is to  
24 furnish a basis for denying the use of leading questions  
25 when the cross-examination is cross-examination in form



1 only and not in fact, as for example, the 'cross-examination'  
2 of a party by his own counsel after being called by the  
3 opponent who proves to be friendly to the Plaintiff."

4 I'm sure that's not the same situation, by analogy,  
5 what we have here is a company who has a principle officer  
6 who has submitted an affidavit in support of the position  
7 of the company. If he's not being paid, it certainly is  
8 even more of a close relationship. It's being done  
9 presumably, then, out of friendship if not out of fear,  
10 and it substantiates the proposition that the officer of  
11 the company for whom the witness works, and whose time is  
12 being allowed to do this, is not in any way adverse and  
13 that they should not be allowed to lead the witness.

14 JUDGE BLOCH: I will not rule hastily at this  
15 point. I want counsel for each of the parties to have a  
16 chance to address that.

17 Mr. Watkins?

18 MR. WATKINS: Under rule 614, the Court may, of  
19 course, call its own witness and all parties are entitled  
20 to cross-examine witnesses thus called.

21 Under rule 611 (c) as Mr. Roisman points out,  
22 ordinarily, leading questions should be permitted on  
23 cross-examination.

24 The question is what is extraordinary about Mr. Roth's  
25 appearance?

1           The witness has testified that he has had no contact  
2 with counsel for Texas Utilities in connection with the  
3 preparation of his testimony.

4           Mr. Lipinsky may well be a different matter. For  
5 example, questions regarding the affidavit that he has  
6 submitted -- and we do plan to address the three changes  
7 that he would make -- would be redirect. Mr. Roth  
8 certainly doesn't stand in those shoes, and we would be  
9 substantially disadvantaged by limiting the scope of our  
10 cross-examination.

11           JUDGE BLOCH: Mr. Watkins, are you going to  
12 address the question whether there's a continuing  
13 agreement, a binding contract under which O.B. Cannon  
14 could attempt to obtain reimbursement for expenses,  
15 including Mr. Norris' expenses for appearing here --  
16 excuse me, Mr. Roth's expenses for appearing here? The  
17 supplementary contract?

18           BY MR. WATKINS:

19           Q       Mr. Roth, do you plan to bill Texas Utilities  
20 for your appearance here at this hearing?

21           A       No.

22           JUDGE BLOCH: He's already testified on that.

23           MR. WATKINS: I didn't understand -- perhaps the  
24 board can ask the witness.

25           JUDGE BLOCH: He said earlier he wasn't sure, he

1 could consider it. He might consider billing it but he  
2 didn't think he had an agreement on it right now.

3 MR. REYNOLDS: Why don't we ask Mr. Roth his  
4 interpretation of the sentence in that supplementary  
5 invoice that you seized upon.

6 JUDGE BLOCH: That would be fine. How do you  
7 interpret the very last sentence in the invoice, Mr. Roth?

8 THE WITNESS: I think I discussed it earlier  
9 when we looked at the change order. It says "the above  
10 price is firm and not subject to escalation." That sum  
11 being the \$8700.33. And that sum was firm because that's  
12 the sum that Jack Norris negotiated.

13 JUDGE BLOCH: It says not subject to escalation  
14 due to inflation.

15 How could inflation affect the sum that was already  
16 agreed to?

17 THE WITNESS: Due to escalation.

18 JUDGE BLOCH: It doesn't say "inflation"?

19 THE WITNESS: It's redundant. But it appears on  
20 so many change orders as a matter of firm statement.

21 JUDGE BLOCH: I'll look at it again.

22 THE WITNESS: It says "the above price is firm  
23 and not subject to escalation."

24 MR. REYNOLDS: It says nothing about inflation.

25 THE WITNESS: If we agreed to this lump sum

1 price, which Jack Norris did, then that price is firm. I  
2 feel more comfortable with your interpretation.

3 JUDGE BLOCH: Thank you.

4 MR. WATKINS: We would add to the foregoing,  
5 your Honor, that rule 611 doesn't deal with companies. It  
6 deals with witnesses.

7 As I pointed out, Mr. Lipinsky may be one thing.  
8 Mr. Roth is certainly another.

9 JUDGE BLOCH: Mr. Treby -- I'm sorry, Mr. Gallo,  
10 first.

11 MR. GALLO: I think I will not participate in  
12 the argument.

13 JUDGE BLOCH: Mr. Treby?

14 JUDGE GROSSMAN: I assume, Mr. Gallo, you do not  
15 want your client led here?

16 MR. GALLO: In answer to your inquiry I feel  
17 able to protect him whether they are leading or not  
18 leading questions.

19 MR. TREBY: The Staff agrees that the sections  
20 that have been cited here are the appropriate sections.  
21 We think, though, that what the record has indicated here  
22 and the testimony this morning has been replete with  
23 references to the fact that the O.B. Cannon Company  
24 intends to cooperate with the applicant; that they feel  
25 that there is some sort of moral obligation. That causes

1 the Staff to believe that there is some sort of a  
2 relationship, if not a contractual relationship at least  
3 some sort of a relationship between the parties, and we  
4 believe that cross-examination -- any cross-examination is  
5 cross-examination in form and not in actuality  
6 cross-examination between adversary parties. And we would  
7 believe that the board has discretion but we don't believe  
8 that excessive leading questions would be appropriate.

9 JUDGE BLOCH: Well, let me say I'm not convinced  
10 that there is substantial importance to this argument  
11 because I don't think Mr. Roth is likely to testify to  
12 what he doesn't believe, whether he's led or not.

13 The rule is, under 611 (c), leading questions should  
14 not be used on the direct examination of a witness except  
15 as may be necessary to develop his testimony. Ordinarily  
16 leading questions should be permitted on cross.

17 In this case the relationship between O.B. Cannon and  
18 applicants is somewhat more than arms length. Therefore,  
19 we'd ask you to avoid leading questions. And if you make  
20 occasional use of a leading question we'll try to  
21 understand that.

22 MR. WATKINS: I'll try to keep it to a minimum.

23 One thing I would do to save time, just to summarize  
24 evidence he's already given or to summarize places in his  
25 written testimony --

1                   JUDGE BLOCH: Providing that's objective, that  
2 will expedite the hearing and we'll permit that. Counsel,  
3 of course, will correct you if they disagree with your  
4 summary.

5                   MR. ROISMAN: I would like to indicate of the  
6 two documents which we previously indicated if they hadn't  
7 been included they should be, we would like to give the  
8 reporter so he can put it in at this point the one that is  
9 addressed to Mr. Merritt dated November 4, 1983, which  
10 does not appear to be included. The one addressed to  
11 Mr. Reynolds was included.

12                   JUDGE BLOCH: That shall be done.

13                   MR. GALLO: Judge Bloch, before we start, will  
14 we finish this witness today?

15                   JUDGE BLOCH: Well, let's try. The applicants  
16 do not think so.

17                   (The document follows:)

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*Corrosion  
Control Services*

# OLIVER B. CANNON & SON, INC.

*Industrial Painting Specialists*

5600 WOODLAND AVENUE · PHILADELPHIA, PA 19143  
AREA CODE (215) 729-4600 · TWX 710-670-0482

November 4, 1983

Mr. John T. Merritt, Jr.  
Assistant Project General Manager  
Texas Utilities Services, Inc.  
Post Office Box 1002  
Glen Rose, Texas 76043

Reference: Oliver B. Cannon & Son, Inc.  
Nuclear Coatings Overview Task Group  
Site Assignment - Starting November 9, 1983

Dear John,

Confirming our telephone conversation this date, I have set up a Cannon Task Group, to visit the site starting Wednesday, November 9th, and to continue for as long as needed to complete an evaluation of the matters we discussed with you and your Management people at your Dallas Office on November 3, 1983. I would guess that three to five days, perhaps a week, would be our site stay.

A courtesy copy of my departmental memorandum, dated November 4, 1983, which formalizes this Task Group and their instructions, is attached. Please review, and you may want to add or delete to the specifics of my assignment. Let Ralph Trallo or Jack Norris know what else you may want.

Our Task Group shall include:

Task Leader - Ralph A. Trallo	- Vice President, Nuclear Services
John J. Norris	- Vice President, Houston Operations
Joseph J. Lipinsky	- Corporate QA/QC Director
Keith M. Michels	- Corporate Auditor - Nuclear

I am enclosing copies of the Resumes on our people. I believe you already have one for Jack Norris, on file.

I will be on vacation thru November 13th, returning to my office on Monday, November 14th, and can monitor our progress at that time.

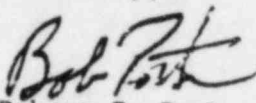
To: Texas Utilities Services, Inc.  
Re: Cannon Task Group

November 4, 1983  
Page 2

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May I express my appreciation, at this time, for the hospitality and courtesies extended to Jack Norris and me, by you, your Management people and associates in our recent meeting. I feel our getting together was well worth the effort.

Sincerely,



Robert B. Roth  
President

/1  
encl.

cc: J. J. Norris  
R. A. Trallo  
Account File



# OLIVER B. CANNON & SON, INC.

20390

## DEPARTMENTAL CORRESPONDENCE

DATE November 4, 1983

SUBJECT Job #8201-Coatings Overview Task Group, Cannon to TUSI, Comanche Peak  
TO R. A. Trallo, J. J. Norris, J. J. Lipinsky, K. Michels cc: APMc, Acct File  
FROM R. B. Roth

1. As a follow-up to our Consulting Services Contract over the past summer, for this client, I am assigning this Cannon Task Force to perform a Nuclear Coatings overview at the Comanche Peak Nuclear Plant, being constructed by Texas Utilities Services, Inc. at Glen Rose, Texas
2. Task Force to be:
  - R. A. Trallo - Vice President - Nuclear Services
  - J. J. Norris - Vice President Houston Operations
  - J. J. Lipinsky - Corporate QA/QC
  - K. Michels - Lead Corporate Auditor
3. Site effort to commence, Wednesday morning, November 9, 1983. Jack, Joe and Keith to report on Wednesday. Ralph may not be able to schedule till later in the week. There is no established time limit. I suspect from three to five days may be necessary, but the best judgment of our senior managers involved will so ascertain. Ralph is designated as Task Force Leader.
4. Principal purpose is to evaluate the Nuclear Coatings Retrofit Program that has been in effect over the last 3 to 4 months. Key areas would include:
  - Material Storage and Control
  - Painter mechanic qualification/documentation
  - Working relationship between Production/Inspection
  - Status and adequacy of documentation/traceability
  - Implementation of coatings retrofit effort, see "Painting Minutes of Meeting", pages 1 to 4, dated 8/15/83, as prepared by R. M. Kissinger, Project Civil Engineer
  - Compliance of Nuclear coatings to Project Specifications requirements.
  - Overview as to adequacy of current safety-related coatings in place, as per proper Industry practice, etc.

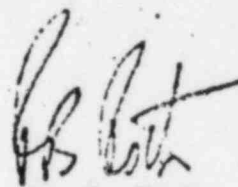
To: R. A. Trallo, J. J. Norris, J. J. Lipinsky, K. Michels  
Re: Job H8301 - Task Group

November 4, 1983  
Page 2

- 
5. Separate individual and objective reports are due to Task Leader and his composite report shall be submitted to my office within five working days after site assignment.

Ralph is further charged with the security of the reports/observations given to him and his composite report shall be directed to me, and no other copies issued or distributed.

6. I shall then communicate the results of our effort to TUSI.
7. All costs and expenses involved shall be submitted in separate expense envelopes, with appropriate receipts and clearly marked with Job #H8301.
8. Any questions or clarifications to the above shall be addressed to my attention.

  
R. B. Roth

## RESUME

for

RALPH A. TRALLO

- EDUCATION** - Newark College of Engineering  
Bachelor of Engineering - Civil 1967
- Drexel University, Philadelphia, Pa.  
Corrosion Engineering Credits
- Continuing education courses in Labor Relations  
and Claims Management -  
Pepperdine University  
Rutgers University
- EMPLOYMENT** - Oliver B. Cannon & Son, Inc., Philadelphia, Pa.  
1974 to Present
- 1980 to Present - Oliver B. Cannon & Son, Inc.  
Vice President Nuclear Services
- Primary responsibility for all corporate Nuclear projects.  
See Attachment I for current projects
- 1978 to 1980 - Oliver B. Cannon & Son, Inc.  
Appointed Vice President, Production Services
- Primary responsibility for corporate field and production  
services, equipment assignment, OSHA compliance and Safety  
Program.
- 1974 to 1978 - Oliver B. Cannon & Son, Inc.  
Project Management
- Responsible manager on all phases of projects assigned.
- Key projects included:
- Unit 2 - Three Mile Island  
Units 1, 2, 4 - WWPSS  
Units 1, 2 - GGNS  
Five (5) Fossil Generating Units
- 1971 to 1974 - Babcock & Wilcox, Inc.
- Field Construction Manager for boiler construction and erection  
Champion Paper Co., Canton, NC  
City of Lakeland Power Authority, Lakeland, FL

Re: Resume for Ralph A. Trallo

1970 to  
1971

- United Engineers & Constructors, Inc.

Lead Engineer - Civil Group - Three Mile Island

Nuclear Construction - General Public Utilities Corp.

1969 to  
1970

- Active Duty - U. S. Navy - Fleet Submarine Service

1967 to  
1969

- United Engineers & Constructors, Inc.

Field Engineer - Fossil and Nuclear construction projects

Professional Affiliations:

- American Nuclear Society

- National Association of Corrosion Engineers

- ASTM - Committee D-33

- UNCWC

- Liberty Bell Corrosion Conference - NACE - Lecturer

ATTACHMENT I

- Units #1 & 2 - GGNS, Port Gibson, MS - New Construction
- Unit #1 - Jersey Central Power & Light, Oyster Creek, NJ - Retrofit
- Unit #1 - General Public Utilities, Three Mile Island - Maintenance
- Unit #1 - Cincinnati Gas & Electric Co., Zimmer Station - Coatings Retrofit
- Unit #2 - WPPSS, Richland, WA - New Construction
- Unit #1 - Public Service Electric & Gas, Hope Creek, NJ - New Construction
- Units #1 & 2 - Public Service Electric & Gas, Salem Station, NJ - Maintenance

RESUME  
for  
MARTIN K. MICHELS

EDUCATION

Pennsylvania State University  
Bachelor of Science - Biology, 1978

EMPLOYMENT

Oliver B. Cannon & Son, Inc. - 1980-Present  
Philadelphia, PA. 19143

1982-Present      CORPORATE QUALITY ASSURANCE AUDITOR -  
Responsible for the performance and  
coordination of internal and vendor quality  
assurance audits for all nuclear contracts.  
Also included is the coordination of activities  
required to assure the resolution of  
deficiencies noted by outside auditing  
organizations. Currently certified as a Lead  
Quality Assurance Auditor in accordance with  
ANSI N45.2.12 and ANSI N45.2.23.

1981-1982      QUALITY ASSURANCE AUDITOR - Responsible for  
field audits and evaluation of quality  
assurance programs for all nuclear contracts.  
Experience included regular audit functions  
combined with filing and maintenance of quality  
assurance records, review of records and  
interface with management personnel as  
necessary to achieve quality goals.  
Aforementioned duties require familiarity with  
ANSI N45.2 and applicable daughter standards,  
Appendix B of 10CFR50 and Regulatory Guides  
pertaining to the construction and maintenance  
of nuclear power plants.

1980-1981      QUALITY ASSURANCE TECHNICIAN - Responsible for  
quality assurance testing of paints and  
coatings along with calibration, repair and  
certification of measuring and test equipment  
used for the field inspection of coatings.

Valley Forge Laboratories, Inc.  
Devon, PA. 19333

9/79-12/79      FIELD QUALITY CONTROL INSPECTOR - Responsible  
for the inspection of various concrete  
products. Duties involved specific testing  
procedures in both the field and laboratory to  
determine the suitability of different types of  
concrete in construction projects. Familiarity  
with ASTM testing procedures was necessary to  
accomplish all work assignments.

PROFESSIONAL AFFILIATIONS

American Nuclear Society - Member since 7/83



RESUME  
for  
JOSEPH J. LIPINSKY

20396

EDUCATION

Pennsylvania State University  
Associate Degree - Liberal Arts, 1974  
Bachelor of Science - Biology, 1977

EMPLOYMENT

Oliver B. Cannon & Son, Inc. - 1978-Present  
Philadelphia, PA. 19143

- 1981-Present    CORPORATE QUALITY ASSURANCE DIRECTOR -  
Responsible for developing, implementing and  
coordinating all aspects of the Quality  
Assurance Program and Quality Work Procedures  
as related to ANSI N101.4, Class I and II  
Service Levels. Also responsible for  
non-nuclear work with regard to Quality Work  
Procedure development and implementation. In  
addition, responsibilities include inspector  
training and qualification, providing technical  
direction as needed for nuclear and  
conventional work, providing continuity and a  
point of interface between manufacturers,  
clients and technical representatives.  
Currently certified as a Level III Coatings  
Inspector in accordance with ANSI N45.2.6.
- 1980-1981    CORPORATE QUALITY ASSURANCE AUDITOR -  
Responsible for satisfying the internal and  
external audit requirements relating to all  
nuclear contracts. Certified as a Lead Auditor  
in accordance with ANSI N45.2.12 and ANSI  
N45.2.23.
- 1979-1980    QA/OC MANAGER - Responsible for all quality  
activities and the supervision and direction of  
field personnel on the WNP-1/4 and WNP-2  
nuclear projects, Richland, Washington. In  
addition, functioned as the OBC quality  
assurance representative on these sites.
- 1978-1979    LEAD FIELD QUALITY CONTROL INSPECTOR (Level II)  
- Responsible for the implementation of the OBC  
Quality Assurance Program and Quality Work  
Procedures on the Three Mile Island and Perry  
Nuclear Power Plant projects. Responsible for  
the quality assurance testing of surface  
preparation and coating application of Class I  
nuclear coatings applied on these sites.

PROFESSIONAL AFFILIATIONS

American Nuclear Society - Member since 6/82  
National Association of Corrosion Engineers -  
Member since 4/81  
American Society for Quality Control - Member  
since 4/81

1           MR. REYNOLDS: We are willing to go later than 3:00,  
2 but we have only been cross-examining for 25 minutes.

3           MR. WATKINS: Of which actual cross-examination  
4 is fewer than five.

5           JUDGE BLOCH: The witness wants to stay --  
6 Mr. Watkins, how do you feel about this possibility  
7 since you told us you had a problem?

8           MR. WATKINS: My indication was I don't think we  
9 can finish until 3:00 but I can stay late if I can make a  
10 phone call.

11           JUDGE BLOCH: We have a problem with one board  
12 member leaving at 3:00 and another who would have to leave  
13 at 3:30. We could sit without a quorum on the agreement  
14 of the parties.

15           MR. ROISMAN: We would not agree to that,  
16 Mr. Chairman.

17           JUDGE BLOCH: So we can only go until 3:30.  
18 Let's proceed.

19           MR. ROISMAN: May I suggest that, since I don't  
20 think there's any doubt that -- there's no question you  
21 will not finish by 3:30, that we stick to 3:00. I add  
22 that the board should take judicial notice of the fact  
23 that anybody who is going anywhere will double every  
24 minute that they take after 3:00 to get there, on this  
25 particular day. And that we gain nothing, the extra 30



1 minutes isn't going to relieve Mr. Roth of the admitted  
2 burden of having to come back here again. I don't see  
3 what we gain by sticking 30 more minutes in.

4 MR. TREBY: Staff would agree with that. The  
5 Staff has some questions also and I'm not sure that you  
6 are going to get both applicant's and Staff's examination --

7 JUDGE BLOCH: Let's break at 3:00 as planned.

8 BY MR. WATKINS:

9 Q Did Mr. Lipinsky attend the August meeting,  
10 on-site?

11 A Yes, sir.

12 Q Did he raise any of the concerns that he had by  
13 then committed to paper, those in his trip report, at that  
14 meeting?

15 A I don't recall specifically that he did.

16 Q Did you do so?

17 A I did not.

18 JUDGE BLOCH: Counsel, if there are points in  
19 the record where the position is clearly adverse to yours,  
20 that would be the time whether we would be most lenient  
21 towards leading questions.

22 BY MR. WATKINS:

23 Q Start with the trip report -- what were the  
24 additional assignments that were given to O.B. Cannon at  
25 this meeting?

1           A           The additional assignment was for yours truly to  
2           contact the Carboline Paint Manufacturing Company on some  
3           technical matters and the assignment to Joe Lipinsky was  
4           to prepare a suggested work procedure for top coat  
5           application over existing top coat.

6           Q           Mr. Roth, let me show you this document. I have  
7           copies for the parties and the board.

8           I would ask if you can identify this?

9           A           This is the work proceedure that Joe Lipinsky  
10          prepared as a result of the assignment received on August  
11          9th.

12          Q           Why did Mr. Norris send this to Mr. Merritt?

13          A           Simply because by normal corporate procedure the  
14          communications to the client had gone out over Mr. Norris'  
15          signature.

16          Q           Did you review the procedures prior to the time  
17          they were sent to Mr. Norris?

18          A           No.

19                   MR. WATKINS: Your Honor, we move the admission  
20          of this document consisting of a cover page, 26 pages of  
21          text and four pages of attachments.

22                   MR. ROISMAN: Objection. I believe there's some  
23          question about the authenticity of the document.

24                   In the upper right-hand corner below the address is a QAD  
25          number which Mr. Lipinsky has testified is uniquely his,

1 and his method of keeping track of documents.

2 The copy we have has a J.J. Norris signature line but  
3 no signature on it.

4 There appears to be some question as to where this  
5 document was sent from and who is the true author of the  
6 letter.

7 MR. WATKINS: We'll ask that it be bound into  
8 the record subject to further examination of Mr. Norris  
9 and Mr. Lipinsky.

10 JUDGE BLOCH: At this point it will be an  
11 exhibit and later it may become evidence. That shall be  
12 done.

13 MR. ROISMAN: Will this be RBR Exhibit 3?

14 JUDGE BLOCH: For reference purposes, RBR-3. It  
15 may be so marked.

16 (RBR-3 identified.)

17 (The document follows:)

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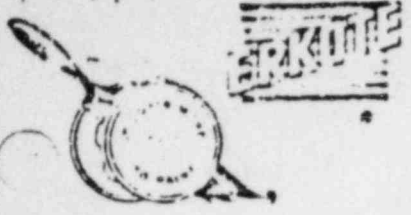
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# OLIVER B. CANNON & SON, INC.

*Industrial Painting Specialists*

9001 AIRPORT BLVD. SUITE 801 HOUSTON, TEXAS 77061  
PHONE 713 947-9470

QAD-83-0105

August 22, 1983

REPLY TO  
P. O. BOX 166 SOUTH HOUSTON, TX 77587

*Corrosion  
Control Services*

Texas Utilities Services, Inc.  
P. O. Box 1002  
Glen Rose, Texas 76043

*RBR-3 For ID  
21 NOV 84 JS*

Attention: Mr. J. T. Merritt, Jr., P.E.  
Engineering and Construction Manager

Reference: Texas Utilities Generating Company  
Comanche Peak Steam Electric Station  
Specification No. 2323-AS-31  
Procedure for Application of Carboline 191 Prime Coat  
and Phenoline 305 Finish Coat over Steel Surfaces  
Prepared to the Requirements of SSPC-SP10-63T,  
'Near White Metal'

Gentlemen:

Attached please find an uncontrolled copy of the referenced procedure for your review and comments.

Per direction from Mr. Richard Kissinger, O. B. Cannon will not develop other coating application procedures unless otherwise directed.

Please do not hesitate to contact the writer or Mr. J. J. Lipinsky at (215) 729-4600, extension 63, if there are any questions or need for additional information.

Very truly yours,

J. J. Norris  
Vice President

JJL:JJN:cf  
Attachment  
cc: R. B. Roth  
J. J. Lipinsky

COMANCHE PEAK STEAM ELEC. STATION  
Units 1 and 2  
Glen Rose, Texas

OLIVER B. CANNON & SON, INC.  
5600 Woodland Avenue  
Philadelphia, PA. 19143

20402

Quality Construction Procedure No.	Date Orig. Issue	Rev. No.	Date of Rev.
QCP-1	08/22/83	0	

APPLICATION OF CARBOLINE'S 191 PRIME COAT AND  
PHENOLINE 305 FINISH COAT OVER  
STEEL SUBSTRATES PREPARED TO THE REQUIREMENTS OF  
SSPC-SP10-63T, 'NEAR WHITE METAL'

UNCONTROLLED COPY

Quality Construction	Date Orig.	Rev.	Date of
Procedure No.	Issue	No.	Rev.
QCP-1	08/22/83	7	.

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<u>PAGE</u>	<u>DESCRIPTION</u>
1	Cover Page
2	Table of Contents
3	Surface Preparation
12	Prime Coat (Carboline 191) Application
16	Repair of Prime Coat Defects
20	Finish Coat (Phenoline 305) Application
23	Repair of Finish Coat Defects
26	Acceptance Criteria for the Completed Carboline System

UNCONTROLLED COPY

Quality Construction Procedure No.	Date	Orig. Issue	Rev. No.	Date of Rev.
QCP-1		08/22/83	J	

APPLICATION OF CARBOLINE'S 191 PRIME COAT AND  
PHENOLINE 305 FINISH COAT OVER  
STEEL SUBSTRATES PREPARED TO THE REQUIREMENTS OF  
SSPC-SP10-63T, 'NEAR WHITE METAL'

INSTRUCTIONS TO CONSTRUCTION PERSONNEL  
(QUALITY CONSTRUCTION PROCEDURES)

1.0. Surface Preparation

1.1. Equipment and Materials Required:

1.1.1. Abrasive for Abrasive Blasting -

The abrasive for blast cleaning is silica sand, or steel slag grit, or other abrasive that has sharp cutting surfaces, properly graded, dry and produces a surface profile of 1.0 to 3.0 mils when the profile is tested with a Keane-Tator Profile Comparator.

A) Abrasive used in a recycle system is checked by quality control once each day of operation for possible oil contamination.

1.1.2. Air Pressure and Air Quality

The air pressure at the nozzle must be adequate to obtain a near-white metal blast with a surface profile of 1.0 to 3.0 mils. The air supply must be oil and water free as confirmed by Quality Control prior to the start of the abrasive blasting operations and approximately each 4 hours of operation (blasting) thereafter. In addition, the quality of the air supply is checked in a similar manner when the air supply contacts the work surface as in surface blow down; or when the air is used to operate power tools.



Quality Construction Procedure No.	Date Orig. Issue	Rev. No.	Date of Rev.
QCP-1	08/22/83	0	

1.1.3. Abrasive Blasting Equipment -

Equipment utilized must produce a surface as required by SSPC-SP10-63, Near-White Metal, with the previously specified surface profile.

1.1.4. Miscellaneous Power Tools -

Miscellaneous power and hand tools are utilized as needed: to supplement abrasive blasting; to clean areas where abrasive blasting is not effective; and to prepare surfaces of one square foot or less.

1.1.5. Solvent and Cleaning Materials for Solvent-Cleaning -

The solvent used for solvent cleaning is Carboline Thinner #76 or other suitable organic solvents. The rags used (brushes not recommended) are to be clean and starch-free. Old clothing and miscellaneous previously laundered cloth parts are acceptable as purchased. New cloth must be laundered to remove starch prior to use.

1.1.6. Alkaline Cleaners (SSPC-SP1-63, Paragraphs A-2 and A-5) -

Use Trisodium Phosphate (TSP) at the rate of 6 to 8 ounces per gallon of warm water for scrubbing or TSP added through a metering system for steam cleaning.

1.2. Standards:

1.2.1. Visual Standard for Degree of Surface Cleanliness -

The visual standard for the degree of surface cleanliness is SSPC-Vis-1-67T, Pictorial Surface Preparation Standard.

1.2.2. Surface Preparation Standard -

The standard for surface preparation is the SSPC Surface Preparation Specification, in SSPC-SP10-63T.



Quality Construction Procedure No.	Date of Issue	Orig. No.	Rev. No.	Date of Rev.
QCP-1	08/22/83		1)	

1.3. Ambient Conditions for Work:

Ambient conditions (to be confirmed by Quality Control) for work are:

A) Dew Point at least 5<sup>0</sup>F below the surface temperature

1.4. Inaccessible Areas:

Areas and items (such as bolt holes, threaded surfaces, rat holes, crevices, hidden surfaces, and hard to reach areas, etc.) previously determined by Construction and Quality Control to be inaccessible are prepared, coated, and inspected on a best effort basis.

1.5. Construction Step No. 1 - Correction of Adverse Conditions (not a Quality Control Controlled Step):

1.5.1. The construction foreman, or other qualified persons assigned by the foreman, carefully inspect the surface to be prepared for conditions adverse to quality. Such conditions are corrected prior to quality control inspection as follows:

1.5.1.1. Removal of Oil, Grease and Crayon Marks -

A) Oil, grease, and crayon marks are removed per the requirements of SSPC-SPI-63. In the event the oil and grease contamination is heavy, the rags used to remove the heavy deposits are discarded without return of the rags to the solvent container and clean rags used for the next steps. The final step must be to apply clean solvent to thoroughly wet the surface, but not to the extent that run down occurs. After wetting, and before the solvent evaporates from the surface, wipe the solvent away with a dry, clean cloth or rag.

Quality Construction Procedure No.	Date Issue	Orig. Rev. No.	Date of Rev.
QCP-1	08/22/83	1	

NOTE: The wax in crayons prevents rusting of steel, therefore, a mark (or outline of the crayon mark) will remain after removal of the crayon mark. The outline of the mark is acceptable.

B) In the event the oil and grease are not removed by the procedure outlined in 'A' above, the procedures outlined in SSPC-SP1-63, Paragraphs A-3 and A-5 may be used with TSP added to the water or steam. After the use of TSP for cleaning, if the surface is not to be abrasive blasted, the surface must be flushed free of TSP by water or steam. In order to assure the TSP has been removed, the pH of the wet surface must be no greater than the pH of the water used in the flushing operation.

1.5.1.2. Correction of Metal Defects -

All surface defects which are to be corrected as necessary, but without further damage to the metal surface. Defects such as rough and noncontinuous welds, holes in welds, porous areas, rolling flaws, sharp recesses, undercuts, weld splatter, slag, and sharp edges are marked and then reported to the engineering in writing by Quality Control for corrective action.

FOR INFORMATION  
ONLY

Quality Construction Procedure No.	Date Orig. Issue	Rev. No.	Date of Rev.
QCP-1	08/22/83	0	

1.6. Protection of Surfaces not to be Prepared -

All surfaces not to be prepared or coated (such as expansion or construction joints to be caulked or sealed with sealant; machined surfaces and spargers; galvanized steel, stainless steel, and nonferrous metal; areas within 1 inch of surfaces to be field welded; name and instruction plates, rubber, plastic, and glass; shop coated items and equipment; exposed mastic portions of penetration seals and inside walls of penetrations or sleeves scheduled to be sealed) are protected from abrasive and from the coating material.

1.7. Acceptance Criteria for Steel Surfaces Prior to Surface Preparation:

- A) Surface free of oil, grease, and crayon marks
- B) Surfaces not to be prepared or coated are protected from abrasive, harmful dust, and paint materials.
- C) Defects reported to engineering by Quality Control are corrected or resolved.

1.8. Establishment of QC Hold Point No. 1:

QC Hold Point No. 1 is established at the time the construction foreman is satisfied that the presurface preparation acceptance criteria have been met. QC Hold Point No. 1 remains in effect until temporarily lifted for corrective action, or until the Quality Control Inspector has confirmed, by inspection, that the presurface preparation acceptance criteria have been met.

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1.9. Correction of Condition Reported by the Quality Control Inspector as Not Meeting The Acceptance Criteria (QC Hold Point No. 1 Temporarily Lifted):

All conditions reported by the Quality Control Inspector as not meeting acceptance criteria are corrected by procedures previously outlined in this procedure.

1.9.1. Release of QC Hold Point No. 1 -  
QC Hold Point No. 1 is released by the Quality Control Inspector.

1.10. Performance of Preliminary Surface Preparation Functions:  
After release of QC Hold Point No. 1, but before Quality Control has established control over ambient and surface conditions, construction may proceed at this point with preliminary surface preparation.

NOTE: Abrasive used for preliminary surface preparation may be silica sand or steel slag grit or other suitable abrasive. However, all surfaces receiving a preliminary abrasive blast during this period are reblasted after ambient conditions have been confirmed by Quality Control.

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1.11. Quality Control Establishment of Acceptable Ambient Conditions (QC Hold Point No. 2):

QC Hold Point No. 2 is established at the time the construction foreman indicates that construction is prepared for controlled surface preparation to begin. The hold point is released by the Quality Control Inspector thereby confirming controlled conditions have been established. Prior to start of quality controlled surface preparation, the Quality Control Inspector confirms the acceptance criteria for surface preparation have been met. The criteria are: no visible moisture or oil on the surface; the air supply free of oil and water; and the dew point at least 5<sup>o</sup>F below the surface temperature.

1.11.1. Release of QC Hold Point No. 2 -

QC Hold Point No. 2 is released by the Quality Control Inspector.

1.12. Construction Step No. 2 - Surface Preparation of Steel Surfaces (this is a Quality Control monitored step):

1.12.1. Prior to start of the surface preparation operation, the construction foreman assures all construction personnel involved understand the scope of their work to be performed and that all workmen are aware of the location of this procedure for reference purposes.

1.12.2. Monitoring by Construction During Surface Preparation -

1.12.2.1. As the work proceeds, the foreman or other qualified persons appointed by the foreman:

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- A) randomly checks the surface profile, using a Keene-Tator Profile Comparator. The profile produced by the surface preparation operation must be 1.0 to 3.0 mils. Should the profile obtained not be within the 1.0 to 3.0 mil range, the surface preparation operation in the affected area is held until the cause has been corrected, or until approval has been received from the Engineer for the profile obtained.
- NOTE: A profile is not required for weld areas.
- B) randomly checks equipment to insure oil and water traps and separators are properly functioning.
- C) checks protective coverings to insure equipment and surfaces not to be prepared or painted are not damaged by the blasting operation.
- D) assures that all surface showing physical damage to the existing coating and/or rust, to a degree of cleanliness equal to near white metal, SSPC-SP10, utilizing hand or power tools or abrasive blasting as the needs dictate. The sound coating around the periphery of the repaired area is sanded to remove rough coating and to allow for a uniform repair to the coating film.
- E) assures that all detrimental dirt and other surface contaminants which would interfere with adhesion of the coating material applied over adjacent sound coating. The contaminants are removed by hand or power tools or by washing with water and detergent or organic solvents as required for removal.

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1.12.3. Impurities that may remain in weld crevices or similar areas that may be bridged or cannot be reached by the working surface of the hand or power cleaning tool need not be removed.

1.12.4. Acceptance Criteria for Completed Surface Preparation -

A) Surface conforms to the requirements of the word description as given in the Steel Structures Painting Council Surface Preparation Specification SSPC-SP10-63, Near-White Metal, plus reference to the Swedish Pictorial Standards in accordance with the SSPC-Vis-1-67T Pictorial Standard.

NOTE: Minor rust residue or shadow is permissible for pitted steel surfaces, providing the surfaces meet the requirements of SSPC-Vis-1-67T, Standard Sa 2 1/2.

B) Surface profile 1.0 to 3.0 mils.

NOTE: A profile is not required for weld areas.

1.12.5. Surface Blow Down -

At such time the construction foreman has determined that all segments of the surface have been prepared per the requirements of this procedure, the surface is cleaned of abrasive and loose material by brushes, brooms or as preferred by construction, yet retaining a clean and grease-free surface. Surfaces, pockets, and corners are blown off with oil and moisture-free compressed air.

1.13. Establishment of QC Hold Point No. 3 - Confirmation of Surface Preparation

1.13.1. QC Hold Point No. 3 is established at the time the construction foreman is satisfied that the surface preparation criteria have been met. The hold point remains in effect until released by Quality Control Inspector. In the event the Quality Control Inspector does not confirm the prepared surface as meeting the acceptance criteria, the necessary corrective action is taken by construction with the hold point being lifted only temporarily to allow the corrective action to be performed.

1.13.2. Release of QC Hold Point No. 3 -  
QC Hold Point No. 3 is released by the Quality Control Inspector, thereby accepting the prepared surface as meeting the acceptance criteria.

2.0. Construction Step No. 3 - Application of Carboline 191 Prime Coat

2.1. Action by Construction Foreman Prior to Start of Application Step:

The construction foreman, or other qualified persons appointed by the construction foreman, perform the following prior to start of mixing and preparation of materials:

A) Estimates the volume of coating material required to coat the prepared surface and obtains the coating material from storage.

NOTE: Only coating material previously accepted by Quality Control and maintained in controlled storage is utilized.

B) Assures all application personnel have been previously qualified to apply the Carboline 191 coating material.

C) Assures all construction personnel understand their operation to be performed.



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- D) Reviews this Procedure, the manufacturer's application instructions, applicable portions of the project specifications, as necessary, and has a working knowledge of each.
- E) Assures this procedure is available for reference by the workmen during the performance of the work.
- F) Assures application equipment recommended by the manufacturer, or suitable substitutes, is available at the point of application, clean and in proper working condition.
- G) Assures abrasive and other potential contaminants to the fresh coating material have been removed or controlled to prevent contamination of the freshly applied coating film.
- H) Assures that adjacent sound coating has been "feathered" as necessary.

2.2. Final Dust Removal:

- 2.2.1. After acceptance of the surface by the Quality Control Inspector and prior to application of the Carboline 191 Primer, the surface to be coated is vacuumed.
- 2.2.2. Removal of dust is assured by slapping the surface with a hand covered with a clean cotton glove and observing the dust movement as the hand strikes the surface being tested. If dust is present to a harmful degree, the dust will be visible in a light held at approximately 45° to the surface. Removal of dust is continued until no significant dust appears when the surface is slapped by the hand.

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2.3. Pre-Mixing and Application Confirmation

2.3.1. Prior to mixing the Carboline 191 for application, the Quality Control Inspector confirms the following:

- A) The surface conditions remain as the original approval (SSPC-SP10-63) and the surface is free of detrimental dust.
- B) The ambient and surface conditions are within the range of:
  - 1) surface and air temperature between 50°F and 110°F.
  - 2) dew point at least 5°F below the surface temperature.

2.4. Construction Step No. 4 - Mixing and Thinning (this is a Quality Control monitored step):

The Carboline 191 Primer materials are handled per the Carboline Application Instructions.

2.4.1. Monitoring by Foreman During Mixing -

The construction foreman, or other designated persons, observes the mixing operation to assure:

- A) Only complete kits, as provided by the manufacturer, are utilized. The base and catalyst portion are combined and thoroughly mixed.
- B) The mixed coating material may be thinned up to 20% by volume with Carboline Thinner No. 76.

NOTE: Thinning is not recommended for brush application.

2.5. Construction Step No. 5 - Applying the Mixed Materials

The mixed and strained prime coat material is applied as directed by the Carboline Application Instructions.

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2.5.1. Acceptance Criteria for Work to be performed -

- A) Film uniform and continuous without skips and voids
- B) Dry film thickness of 2.0 to 4.0 mils (WFT for monitoring during application should range between 3.0 and 5.5 mils).

2.5.2. Monitoring by Foreman During Application -

The construction foreman, or other designated persons, observes the application operation to assure:

- A) Edges and weld seams receive a preliminary brush application (or initial spray pass) of coating material.
- B) High film thickness, runs, sags and imbedded particles are corrected during the application step. Runs, sags, high film thickness and imbedded particles are corrected by removing the affected wet coating material by a painter's scraper, or other suitable tool, and reapplying the material in a manner which will not produce excessive film in the lap areas, and produce a smooth, uniform and continuous film.

NOTE: In the event the necessary repairs cannot be made without damaging the adjacent coating film, or without obtaining high film thickness in the lap area, the defect is allowed to remain, or the bulk of the affected coating removed and the repair not completed until the coating has dried for recoat, and the affected coating removed by mechanical means.

- C) Mixed coating material is discarded or no longer utilized for coating application after expiration of the manufacturers recommended pot life.

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2.6. QC Hold Point No. 4 - Curing of the Coating

2.6.1. Establishing QC Hold Point No. 4 -

QC Hold Point No. 4 is established at such time the construction foreman has determined that the coating material has been applied per the Carboline Application Instructions, and per the requirements of this procedure, and all necessary in-process repairs completed. At this point, QC Hold Point No. 4 becomes effective and remains in effect until lifted temporarily for repairs to the cured film, or until released by the Quality Control Inspector.

3.0. Construction Step No. 6 - Repair of Defects in the Cured Film (QC Hold Point No. 4 Temporarily Lifted)

3.1. Film defects detected by the Quality Control Inspector are repaired by construction personnel as follows:

3.1.1. Repair of Low Film Build

- A) Remove surface contamination per requirements of SSPC-SPI, followed by sanding to lightly roughen the surface.
- B) Remove detrimental dust and loose material by vacuuming or other suitable means.
- C) Apply additional coating material as required to obtain uniform coverage and required film thickness.

3.1.2. Repair of High Film Build

- A) Grind or sand to remove excess film.
- B) After sanding or grinding, clean by vacuuming or other suitable means.
- C) Apply additional coating material as required to obtain uniform coverage and required film thickness.

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3.1.3. Repair of Imbedded Particles

- A) Remove particles by scraping lightly with a putty knife or broad knife, and sand the area lightly using medium grit sandpaper.
- B) Remove detrimental dust and loose material by vacuuming, or other suitable means.
- C) Coating film will be sealed with finish coat application.

3.1.4. Repair of Skips and Voids

- A) Lightly sand the area around the skip or void.
- B) Remove detrimental dust and loose material by vacuuming, or other suitable means.
- C) Apply additional coating material to obtain a uniform film without overbuild in the lap areas.

3.1.5. Repair of Runs and Sags

Runs and sags are repaired as directed by the Quality Control Inspector after an evaluation of the effects of the runs and sags.

- A) Runs and sags which produce high or low DFT are repaired as high or low DFT as appropriate.
- B) Runs and sags which produce undesirable appearance are repaired by grinding or sanding and leaving the prepared surface to be resealed by the application of the finish coat material.

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3.1.6. Peeling or Loss of Adhesion

Peeling or loss of adhesion are indications of surface contamination or defective coating resulting from improper mixing or other possible causes. The affected surface area and the loose coating material must be carefully inspected to determine the cause and extent of loss of adhesion. After the cause has been identified and the problem determined to be a local condition, the affected coating is removed, and the surface cleaned as dictated by the cause of the problem. Fresh prime coat material is applied.

3.1.7. Blisters

Blisters indicate problems within the coating film. In the event blisters are observed, the situation must be investigated to determine the cause of the problem. In the event the problem is wide spread, coating work should immediately cease until the problem has been defined and resolved. After the cause has been corrected, all affected coating material is removed, the surface prepared and recoated as specified.

3.1.8. Dry Overspray on Surface

Prior to recoating, remove non-adhering overspray by rubbing with Scotch Brite Pad or Plastic Screen. Overspray not removed by adequate "screening" is acceptable.

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3.1.9. Fish Eyes

Fish eyes in an applied coating film are indications of oil, silicone or other "incompatible" contamination. Upon detection of fish eyes, the coating operation should stop until the cause has been corrected. Fish eyes which are considered harmful to the coating film are removed by sanding or grinding and the affected area resealed by application of the finish coat material.

3.1.10. Pinholes

- A) Lightly sand the area around the pinhole to break the surface tension.
- B) Remove detrimental dust by vacuuming or other suitable means.
- C) Apply a small amount of the coating material by finger or other suitable tool.

3.2. Coating Material Utilized for Repair:

All Carboline 191 prime coat material utilized for repair is handled in the same manner as the material used for the original application.

3.3. Release of QC Hold Point No. 4 -

QC Hold Point No. 4 is released by the Quality Control Inspector thereby confirming compliance with the acceptance criteria for the prime coat.

3.4. Acceptance Criteria for the Prime Coat

- 3.4.1. Surface uniformly coated without skips and voids - only a negligible number of minor discontinuities (pinpoint size) are allowed.
- 3.4.2. Dry film thickness between 2.0 and 4.0 mils (WFT for monitoring during application should range between 3.0 and 5.5 mils).
- 3.4.3. Surface free of contamination.

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4.0. Construction Step No. 7 - Application of Phenoline 305 Finish Coat

4.1. Action by Construction Foreman Prior to Start of Application Step:

The construction foreman, or other qualified persons appointed by the construction foreman, perform the following prior to start of mixing and preparation of materials:

A) Estimates the volume of coating material required to coat the prepared surface and obtains the coating material from storage.

NOTE: Only coating material previously accepted by Quality Control and maintained in controlled storage is utilized.

- B) Assures all application personnel have been previously qualified to apply Phenoline 305 Finish coating material.
- C) Assures all construction personnel understand their operation to be performed.
- D) Reviews this Procedure, the manufacturer's application instructions, applicable portions of the Project Specifications, as necessary, and has a working knowledge of each.
- E) Assures this procedure is available for reference by the workmen during the performance of the work.
- F) Assures application equipment recommended by the manufacturer, or suitable substitutes, is available at the point of application, clean and in proper working condition.
- G) Assures abrasive and other potential contaminants to the fresh coating material have been removed or controlled to prevent contamination to the freshly applied coating film.



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- H) Assures the prime coat is free of contaminants (dust, abrasive, oil, grease, etc.).
- I) Assures that adjacent sound coating has been "feathered", as necessary.

#### 4.2. Pre-Mixing and Application Confirmation

4.2.1. Prior to mixing the Phenoline 305 Finish Coat material for application, the Quality Control Inspector confirms the following:

- A) The surface is free of oil, grease, detrimental dust, and abrasive.
- B) The ambient and surface conditions are within the range of:
  - 1) surface and air temperature between 50°F and 110°F.
  - 2) dew point at least 5°F below the surface temperature.

4.3. Construction Step No. 8 - Mixing and Thinning (this is a Quality Control monitored step):

The Phenoline 305 Finish Coat materials are handled per the Carboline Application Instructions.

4.3.1. Monitoring by Foreman During Mixing -

The construction foreman, or other designated persons, observes the mixing operation to assure:

- A) Only complete kits, as provided by the manufacturer, are utilized. The base and catalyst portion are combined and thoroughly mixed.
- B) The mixed Finish coating material may be thinned up to 25% by volume with Phenoline Thinner.

NOTE: Thinning is not recommended for brush application.

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4.4. Construction Step No. 9 - Applying the Mixed Materials

The mixed and strained finish coat material is applied as directed by the Carboline Application Instructions.

4.4.1. Acceptance Criteria for Work to be performed -

- A) Film uniform and continuous without skips and voids
- B) Dry film thickness of 4.0 to 6.0 mils (WFT for monitoring during application should range between 6.5 and 9.5 mils).

4.4.2. Monitoring by Foreman During Application -

The construction foreman, or other designated persons, observes the application operation to assure:

- A) Edges and weld seams receive a preliminary brush application (or initial spray pass) of coating material.
- B) High film thickness, runs, sags and imbedded particles are corrected during the application step. Runs, sags, high film thickness and imbedded particles are corrected by removing the affected wet coating material by a painter's scraper, or other suitable tool, and reapplying the material in a manner which will not produce excessive film in the lap areas, and produce a smooth, uniform and continuous film.

NOTE: In the event the necessary repairs cannot be made without damaging the adjacent coating film, or without obtaining high film thickness in the lap area, the defect is allowed to remain, or the bulk of the affected coating removed and the repair not completed until the coating has dried for recoat and the affected coating removed by mechanical means.

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C) Mixed coating material is discarded or no longer utilized for coating application after expiration of the manufacturers recommended pot life.

4.5. QC Hold Point No. 5 - Curing of the Coating

4.5.1. Establishing QC Hold Point No. 5

QC Hold Point No. 5 is established at such time the construction foreman has determined that the coating material has been applied per the Carboline Application Instructions, and per the requirements of this procedure, and all necessary in-process repairs completed. At this point, QC Hold Point No. 5 becomes effective and remains in effect until lifted temporarily for repairs to the cured film, or until released by the Quality Control Inspector.

5.0. Construction Step No. 10 - Repair of Defects in the Cured Film (QC Hold Point No. 5 Temporarily Lifted)

5.1. Film defects detected by the Quality Control Inspector are repaired by construction personnel as follows:

5.1.1. Repair of Low Film Build

- A) Remove surface contamination per requirements of SSPC-SP1, followed by sanding to lightly roughen the surface.
- B) Remove detrimental dust and loose material by vacuuming or other suitable means.
- C) Apply additional coating material as required to obtain uniform coverage and required film thickness.

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5.1.2. Repair of High Film Build

- A) Grind or sand to remove excess film.
- B) After sanding or grinding, clean by vacuuming or other suitable means.
- C) Reseal the surface by applying additional coating material as required to obtain uniform coverage and required film thickness.

5.1.3. Repair of Imbedded Particles

- A) Remove particles by scraping lightly with a putty knife or broad knife, and sand the area lightly using medium grit sandpaper.
- B) Remove detrimental dust and loose material by vacuuming, or other suitable means.
- C) Reseal the surface by applying additional coating material as required to obtain uniform coverage and required film thickness.

5.1.4. Repair of Skips and Voids

- A) Lightly sand the area around the skip or void.
- B) Remove detrimental dust and loose material by vacuuming, or other suitable means.
- C) Reseal the surface by applying additional coating material to obtain a uniform film without overbuild in the lap areas.

5.1.5. Repair of Runs and Sags

Runs and sags are repaired as directed by the Quality Control Inspector after an evaluation of the effects of the runs and sags.

- A) Runs and sags which produce high or low DFT are repaired as high or low DFT as appropriate.

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B) Runs and sags which produce undesirable appearance are repaired by grinding or sanding and leaving the prepared surface to be resealed by the application of additional finish coating material.

5.1.6. Peeling or Loss of Adhesion

Peeling or loss of adhesion are indications of surface contamination or defective coating resulting from improper mixing or other possible causes. The affected surface area and the loose coating material must be carefully inspected to determine the cause and extent of loss of adhesion. After the cause has been identified and the problem determined to be a local condition, the affected coating is removed, and the surface cleaned as dictated by the cause of the problem. Fresh finish coat material is reapplied.

5.1.7. Blisters

Blisters indicate problems within the coating film. In the event blisters are observed, the situation must be investigated to determine the cause of the problem. In the event the problem is wide spread, coating work should immediately cease until the problem has been defined and resolved. After the cause has been corrected, all affected coating material is removed, the surface prepared and recoated as specified.

5.1.8. Dry Overspray on Surface

Prior to recoating, remove non-adhering overspray by rubbing with Scotch Brite Pad or Plastic Screen. Overspray not removed by adequate "screening" is acceptable.



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### 5.1.9. Fish Eyes

Fish eyes in an applied coating film are indications of oil, silicone or other "incompatible" contamination. Upon detection of fish eyes, the coating operation should stop until the cause has been corrected. Fish eyes which are considered harmful to the coating film are removed by sanding or grinding and the affected area resealed by application of additional finish coating material, while maintaining the specified film thickness.

### 5.1.10. Pinholes

- A) Lightly sand the area around the pinhole to break the surface tension.
- B) Remove detrimental dust by vacuuming or other suitable means.
- C) Apply a small amount of the coating material by finger or other suitable tool.

### 5.2. Coating Material Utilized for Repair:

All Phenoline 305 finish coat material utilized for repair is handled in the same manner as the material used for the original application.

### 5.3. Release of QC Hold Point No. 5 -

QC Hold Point No. 5 is released by the Quality Control Inspector thereby confirming compliance with the acceptance criteria for the finish coat.

### 5.4. Acceptance Criteria for the Finish Coat

- 5.4.1. Surface uniformly coated without skips and voids.
- 5.4.2. Dry film thickness between 4.0 and 6.0 mils (WFT for monitoring during application should range between 6.5 and 9.5 mils).

### 6.0. Acceptance Criteria for Completed Carboline System

- 6.1. Dry Film Thickness between 6.0 and 10.0 mils.
- 6.2. Finished system is free of detrimental defects.

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## SELECTION DATA

**GENERIC TYPE:** Epoxy-polyamide. Part A and Part B mixed prior to application.

**GENERAL PROPERTIES:** A tank lining system for fresh water, including potable water service, and for contact with food products. \*Carboline 191 Primer and Finish are not photochemically reactive as defined by Regulation 8, Rule 4 of the Bay Area Air Quality Management District.

**RECOMMENDED USES:** Carboline 191 Primer and Finish is recommended for use as a tank lining and heavy duty service system for protection of steel and concrete in water and food products service. Carboline 191 Finish, colors White S800, and Gray C703 and C705, may be used in contact with food products in accordance with Food and Drug Administration Regulation 175.300. Extraction tests on the material were far below the limits set by the agency.

**NOT RECOMMENDED FOR:** Immersion in water over 130°F (54°C), strong mineral and organic acids, or solvents.

### CHEMICAL RESISTANCE GUIDE:

Exposure	Immersion	Splash and Spillage
Acids	NR	NR
Alkalies	Excellent to 150°F (66°C)	Excellent
Solvents	NR	Poor-Fair
Salt	Excellent to 150°F (66°C)	Excellent
Water	Excellent to 130°F (54°C)	Excellent
Sugar Solutions	Excellent to 150°F (66°C)	Excellent

**TEMPERATURE RESISTANCE:** Not affected by steam cleaning. See specific exposure for temperature resistance.

**FLEXIBILITY:** Good

**WEATHERING:** Very Good (chalks)

**ABRASION RESISTANCE:** Very Good

**SUBSTRATES:** Carboline 191 Primer may be applied over properly prepared steel or concrete.

**TOPCOAT REQUIRED:** The recommended system is Carboline 191 Primer with two coats of Carboline 191 Finish or two coats of Carboline 191 HB. Carboline 191 Primer may be topcoated with catalyzed epoxies, vinyls, modified phenolics, or others as recommended.

**COMPATIBILITY WITH OTHER COATINGS:** May be applied over Carbo Zinc® 11, or others as recommended. When applied over inorganic zincs such as Carbo Zinc 11, a mist coat may be required to minimize bubbling.

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## SPECIFICATION DATA

### THEORETICAL SOLIDS CONTENT OF MIXED MATERIAL:

	By Volume
Carboline 191 Primer	71% ± 2%
Carboline 191 Finish	69% ± 2%

### RECOMMENDED SYSTEM:

One coat Carboline 191 Primer at 5 mils (125 microns) dry film thickness.

Two coats Carboline 191 Finish at 5 mils (125 microns) dry film thickness each.

An alternate system is two coats Carboline 191 Finish over Carbo Zinc 11.

### THEORETICAL COVERAGE PER MIXED KIT\*: (1½ Gal. Kit)

Carboline 191 Primer	1708 mil sq. ft. (28.4 sq. m/1 at 25 microns)
	342 sq. ft. at 5 mils (5.7 sq. m/1 at 125 microns)
Carboline 191 Finish	1660 mil sq. ft. (27.6 sq. m/1 at 25 microns)
	332 sq. ft. at 5 mils (5.5 sq. m/1 at 125 microns)

\*NOTE: Material losses during mixing and application will vary and must be taken into consideration when estimating job requirements.

**SHELF LIFE:** 12 months minimum.

**COLORS:** Carboline 191 Primer — Brick Red only. Carboline 191 Finish — White S800 and Gray C703 and C705 are standard colors for food contact. Other colors are available on special order.

**GLOSS:** Finish — Semi-Gloss.

## ORDERING INFORMATION

Prices may be obtained from Carboline Sales Representative or Main Office.

### APPROXIMATE SHIPPING WEIGHT:

	1½ Gal. Kit	7½ Gal. Kit
Carboline 191 Primer	20 lbs. (9.1 kg)	94 lbs. (42.7 kg)
Carboline 191 Finish	20 lbs. (9.1 kg)	94 lbs. (42.7 kg)
Carboline Thinner #76	8 lbs. (3.6 kg) in 1's	37 lbs. (16.8 kg) in 5's

### FLASH POINT: (Pensky-Martens Closed Cup)

Carboline 191 Primer Part A	68°F (20°C)
Carboline 191 Finish Part A	67°F (19°C)
Carboline 191 Part B	70°F (21°C)
Carboline Thinner #76	21°F (-6°C)

To the best of our knowledge the technical data contained herein are true and accurate at the date of issuance and are subject to change without prior notice. User must contact Carboline to verify correctness before specifying or ordering. No guarantee of accuracy is given or implied. We guarantee our products to conform to Carboline quality control. We assume no responsibility for coverage, performance or injuries resulting from use. Liability, if any, is limited to replacement of products. Prices and cost data if shown, are subject to change without prior notice. NO OTHER WARRANTY OR GUARANTEE OF ANY KIND IS MADE BY THE SELLER, EXPRESS OR IMPLIED, STATUTORY, BY OPERATION OR LAW, OR OTHERWISE, INCLUDING MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.



# APPLICATION INSTRUCTIONS

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These instructions are not intended to show product recommendations for specific service. They are issued as an aid in determining correct surface preparation, mixing instructions, and application procedure. It is assumed that the proper product recommendations have been made. These instructions should be followed closely to obtain the maximum service from the materials.

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**SURFACE PREPARATION:** Remove any oil or grease from surface to be coated with clean rags soaked in Carboline Thinner #76 or Methyl Ethyl Ketone in accordance with SSPC-SP1.

**Steel:** Dry abrasive blast to a White Metal Finish in accordance with SSPC-SP 5 to a degree of cleanliness in accordance with NACE #1 to obtain a one to two mil (25-50 micron) blast profile.

**Concrete:** Do not coat concrete treated with hardening solutions unless test patch indicates satisfactory adhesion. Do not apply coating unless concrete has cured at least 28 days at 70°F (21°C) and 50% R.H. or equivalent time. Apply to properly prepared concrete that was acid etched or sweep sandblasted.

**MIXING:** Mix separately, then combine and mix in the following proportions:

	<u>1½ Gal. Kit</u>	<u>7½ Gal. Kit</u>
Carboline 191 Primer Part A or Carboline 191 Finish Part A	1 Gal.	5 Gal.
Carboline 191 Part B	¼ Gal.	2½ Gal.

Thin up to 20% by volume with Carboline Thinner #76.

**POT LIFE:** Two hours at 75°F (24°C) and less at higher temperatures. Pot life ends when coating loses body and begins to sag.

## APPLICATION TEMPERATURES:

	<u>Material</u>	<u>Surfaces</u>
Normal	65-85°F (18-29°C)	65-85°F (18-29°C)
Minimum	55°F (23°C)	50°F (10°C)
Maximum	90°F (32°C)	110°F (43°C)
	<u>Ambient</u>	<u>Humidity</u> *
Normal	65-85°F (18-29°C)	50%
Minimum	50°F (10°C)	0%
Maximum	110°F (43°C)	90%

Do not apply when the surface temperature is less than 5°F (2°C) above the dew point.

Special thinning and application techniques may be required above or below normal conditions.

**SPRAY:** Use sufficient air volume for correct operation.

Use a 50% overlap with each pass of the gun. On irregular surfaces, coat the edges first, making an extra pass later.

**NOTE:** The following equipment has been found suitable, however, equivalent equipment may be substituted.

**Conventional:** Use a 3/8" minimum I.D. material hose. Hold gun approximately 12-14 inches from the surface and at a right angle to the surface.

<u>Mfr. &amp; Gun</u>	<u>Fluid Tip</u>	<u>Air Cap</u>
Binks #18 or #62	66	63PB
DeVilbiss P-MBC or JGA	E	704
Approx. .070" I.D.		

**Airless:** Use a 3/8" minimum I.D. material hose. Hold gun approximately 18-20 inches from the surface and at a right angle to the surface.

<u>Mfr. &amp; Gun</u>	<u>Pump*</u>
DeVilbiss JGA-507	QFA-514 or QFA-519
Graco 205-591	President or Bulldog 30:1
Binks Model 500	Mercury 5C

\*Teflon packings are recommended and available from manufacturer.

Use a .017-.021" tip with 2400 psi.

**BRUSH OR ROLLER:** For touch-up or small areas only. Use a natural bristle brush applying with full strokes. Avoid rebrushing. If rolled, use a short nap mohair roller with phenolic core. Avoid rerolling.

## DRYING TIMES:

	<u>Carboline 191 Primer</u>	<u>Carboline 191 Finish</u>
Between coats:		
50°F (10°C)	5 days	5 days
60°F (16°C)	2 days	2 days
75°F (24°C)	18 hours	18 hours
90°F (32°C)	12 hours	12 hours
Final cure:		
60°F (16°C)	3 weeks	3 weeks
75°F (24°C)	10 days	10 days
90°F (32°C)	7 days	7 days

Force curing at 150°F (66°C) is recommended for all tank lining service.

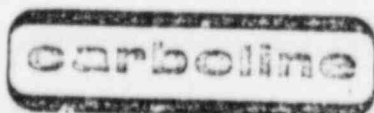
**CLEAN UP:** Use Carboline Thinner #76 or Methyl Ethyl Ketone.

## STORAGE CONDITIONS:

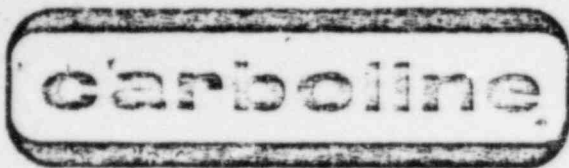
Temperature: 45-110°F (7-43°C) Humidity: 0-100%

**CAUTION: CONTAINS FLAMMABLE SOLVENTS. KEEP AWAY FROM SPARKS AND OPEN FLAMES. IN CONFINED AREAS WORKMEN MUST WEAR FRESH AIRLINE RESPIRATORS. HYPERSENSITIVE PERSONS SHOULD WEAR GLOVES OR USE PROTECTIVE CREAM. ALL ELECTRIC EQUIPMENT AND INSTALLATIONS SHOULD BE MADE AND GROUNDED IN ACCORDANCE WITH THE NATIONAL ELECTRICAL CODE. IN AREAS WHERE EXPLOSION HAZARDS EXIST, WORKMEN SHOULD BE REQUIRED TO USE NONFERROUS TOOLS AND TO WEAR CONDUCTIVE AND NONSPARKING SHOES.**

350 HANLEY INDUSTRIAL COURT



ST. LOUIS, MO. 63144 • 314-644-1000



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SELECTION DATA

GENERIC TYPE: Modified phenolic. Part A and Part B mixed prior to application.

GENERAL PROPERTIES: A heavy duty topcoat, Phenoline 305 Finish sets to a hard, tough, smooth finish having very good abrasion resistance. The surface is glossy and easily cleaned. Has excellent resistance to a wide range of solvents, caustics, cleaning solutions and acid entrained vapors of high concentration. Phenoline 305 Finish has outstanding chemical, physical and application properties. Phenoline 305 Finish is easily repaired, has excellent resistance to hydraulic fluids and meets the applicable performance criteria of the American National Standards Institute ANSI 101.2-1972 and ANSI N5. 12-1974. It has performed satisfactorily in radiation resistance and decontamination testing at Oak Ridge National Laboratory.

RECOMMENDED USES: Phenoline 305 Finish is an excellent coating for the protection of steel and concrete surfaces in nuclear power plants. Because of its glossy appearance and excellent physical properties, Phenoline 305 Finish is an excellent topcoat for use by manufacturers of industrial equipment and components. Also used in chemical processing plants, pulp and paper mills for the protection of structural steel and concrete against severe splash, spillage and fumes. Makes an excellent floor coating, addition of Special Silica #2 provides a non-skid surface.

NOT RECOMMENDED FOR: Immersion service or continuous spillage of hot or concentrated acids.

CHEMICAL RESISTANCE GUIDE:

Exposure	Splash and Spillage	Fumes
Acids	Very good	Excellent
Alkalies	Excellent	Excellent
Solvents	Excellent	Excellent
Salt	Excellent	Excellent
Water	Excellent	Excellent

TEMPERATURE RESISTANCE:

Continuous:	200°F (93.3°C)
Non-continuous:	250°F (121°C)

FLEXIBILITY: Fair

WEATHERING: Very good

ABRASION RESISTANCE: Very good

SUBSTRATES: Apply over suitably primed metal or cementitious surfaces. Surfacers normally required for poured vertical surfaces.

TOPCOAT REQUIRED: Normally none

COMPATIBILITY WITH OTHER COATINGS: May be applied over inorganic zincs, catalyzed epoxies, modified phenolics or others as recommended. Acceptable primers are Carbo Zinc<sup>®</sup> 11, Carbo Zinc 12, Carboline 195 Surfacers, Carboline 295 WB Surfacers, Phenoline 305 Primer, Phenoline 305 Concrete Primer, Phenoline 307 or others as recommended. A mist coat may be required when applied over inorganic zinc.

SPECIFICATION DATA

THEORETICAL SOLIDS CONTENT OF MIXED MATERIAL:

	By Volume
Phenoline 305 Finish	64 ± 2%

RECOMMENDED DRY FILM THICKNESS PER COAT: 4-6 mils (100-150 microns)

THEORETICAL COVERAGE PER MIXED KIT\*:

1 gal. kit (yields 1.25 gal.)	1283 mil sq. ft. (25.6 sq. m/l @ 25 microns)	320 sq. ft. at 4 mils (6.4 sq. m/l @ 100 microns)
5 gal. kit (yields 6.25 gal.)	6416 mil sq. ft. (25.6 sq. m/l @ 25 microns)	1603 sq. ft. at 4 mils (6.4 sq. m/l @ 100 microns)

\*NOTE: Material losses during mixing and application will vary and must be taken into consideration when estimating job requirements.

SHELF LIFE: 2 years minimum

COLORS: Phenoline 305 Finish: Standard colors are White C800, Gray C705, Gray C703. Consult Carboline Color Chart.

GLOSS: Glossy

ORDERING INFORMATION

Prices may be obtained from Carboline Sales Representative or Main Office. Terms - Net 30 days.

SHIPPING WEIGHT:

	1 Gal. Kit (1.25 gal.)	5 Gal. Kit (6.25 gal.)
Phenoline 305 Finish	17 lbs. (7.7 kg)	80 lbs. (36.3 kg)
Phenoline Thinner	9 lbs. (4.1 kg)	45 lbs. (20.5 kg)
Carboline Thinner #2	9 lbs. (4.1 kg)	45 lbs. (20.5 kg)

FLASH POINT: (Pensky-Martens Closed Cup)

Phenoline 305 Finish Part A	68°F (20.0°C)
Phenoline 305 Finish Part B	60°F (15.6°C)
Phenoline Thinner	77°F (25°C)
Carboline Thinner #2	30°F (-1°C)

May 80 Replaces Jan. 80

To the best of our knowledge the technical data contained herein are true and accurate at the date of issuance and are subject to change without prior notice. User must contact Carboline to verify correctness before specifying or ordering. No guarantee of accuracy is given or implied. We guarantee our products to conform to Carboline quality control. We assume no responsibility for coverage, performance or injuries resulting from use. Liability, if any, is limited to replacement of products. Prices and cost data if shown, are subject to change without prior notice. NO OTHER WARRANTY OR GUARANTEE OF ANY KIND IS MADE BY THE SELLER, EXPRESS OR IMPLIED, STATUTORILY, BY OPERATION OR LAW, OR OTHERWISE, INCLUDING MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

# APPLICATION INSTRUCTIONS

20431

These instructions are not intended to show product recommendations for specific service. They are issued as an aid in determining correct surface preparation, mixing instructions and application procedure. It is assumed that the proper product recommendations have been made. These instructions should be followed closely to obtain the maximum service from the materials.

**SURFACE PREPARATION:** Remove any oil or grease from surface to be coated with clean rags soaked in Carboline Thinner #2 or Toluol.

**Steel/Concrete:** Apply over clean, dry recommended primer or surfacer. Application over inorganic zincs may require a mist coat.

**MIXING:** Mix separately, then combine and mix in the following proportions:

	<u>1 Gal. Kit</u>	<u>5 Gal. Kit</u>
Phenoline 305 Finish Part A	1 Gal.	5 Gal.
Phenoline 305 Finish Part B	1 Qt.	1.25 Gal.
	1.25 gal.	6.25 gal.

Thin up to 25% with Phenoline Thinner.

**POT LIFE:** 1½ hours at 75°F (24°C) and less at higher temperatures. Pot life ends when coating loses body and begins to sag.

## APPLICATION TEMPERATURES:

	<u>Material</u>	<u>Surfaces</u>
Normal	65-85°F (18-29°C)	65-85°F (18-29°C)
Minimum	55°F (13°C)	50°F (10°C)
Maximum	90°F (32°C)	120°F (49°C)

	<u>Ambient</u>	<u>Humidity</u>
Normal	65-85°F (18-29°C)	NA
Minimum	50°F (10°C)	0%
Maximum	110°F (43°C)	90%

Do not apply when the surface is less than 5°F (2°C) above the dew point.

Special thinning and application techniques may be required above or below normal condition and when applying over inorganic zinc primers.

**SPRAY:** Use adequate air volume for correct operation. Hold gun 8-10 inches from the surface and at a right angle to the surface.

Use a 50% overlap with each pass of the gun. On irregular surfaces, coat the edges first, making an extra pass later.

**NOTE:** The following equipment has been found suitable, however, equivalent equipment may be substituted.

**Conventional:** Use a 3/8" I.D. material hose.

<u>Mfr. &amp; Gun</u>	<u>Fluid Tip</u>	<u>Air Cap</u>
Binks #18 or #62	66	63PB
DeVilbiss P-MBC or JGA	E	704
approx. .070" I. D.		

**Airless:** Use a 3/8" I.D. material hose.

<u>Mfr. &amp; Gun</u>	<u>Pump*</u>
DeVilbiss JGB-507	QFA-519
Graco 205-591	President 30:1 or Bulldog 30:1
Binks Model 500	Mercury 5C

\*Teflon packings are recommended and available from pump manufacturer.

Use a .015-.017" tip with 2200 psi.

**BRUSH OR ROLLER:** Use natural bristle brush — for touch-up only. Lambs wool roller with phenolic core. Two coats may be required.

## DRYING TIMES:

<u>Between coats:</u>	<u>Temperature</u>	<u>Final Cure</u>
72 hrs.	50°F (10°C)	12 days
36 hrs.	60°F (15.6°C)	8 days
18 hrs.	75°F (24°C)	4 days
12 hrs.	90°F (32°C)	2 days

**CLEAN UP:** Use Carboline Thinner #2 or Xylol.

## STORAGE CONDITIONS:

Temperature: 45-110°F (7-43°C)      Humidity: 0-100%

For more detailed information please consult specific Carboline Application Guides. For specific recommendations, consult Carboline Technical Service.

**CAUTION: CONTAINS FLAMMABLE SOLVENTS. KEEP AWAY FROM SPARKS AND OPEN FLAMES. IN CONFINED AREAS WORKMEN MUST WEAR FRESH AIRLINE RESPIRATORS. HYPERSENSITIVE PERSONS SHOULD WEAR GLOVES OR USE PROTECTIVE CREAM. ALL ELECTRIC EQUIPMENT AND INSTALLATIONS SHOULD BE MADE AND GROUNDED IN ACCORDANCE WITH THE NATIONAL ELECTRICAL CODE. IN AREAS WHERE EXPLOSION HAZARDS EXIST, WORKMEN SHOULD BE REQUIRED TO USE NONFERROUS TOOLS AND TO WEAR CONDUCTIVE AND NONSPARKING SHOES.**

1 BY MR. WATKINS:

2 Q Yesterday, Mr. Roth, you testified that the  
3 decision, your decision to change the last paragraph of  
4 the trip report was exclusively your decision. Is that  
5 correct?

6 A That is correct.

7 Q Was the decision to request Mr. Lipinsky to sign  
8 the report subsequently also exclusively yours?

9 A That is correct.

10 Q Would you describe the atmosphere of your  
11 meeting in Dallas on November 3, 1983?

12 A Yes. I thought the meeting was quite  
13 professional. The individuals spoke their minds, their  
14 concerns, very objectively.

15 I don't recall any disagreements. The discourse was  
16 more of an inquiring nature than anything else, the upshot  
17 of which, I recommended the Cannon task force return to  
18 the site for the purposes already known.

19 Q I show you this document consisting of two pages  
20 and ask if you can identify that?

21 A Yes. This is a memorandum to the file written  
22 by myself, the subject being the meeting with TUSI  
23 management, Wednesday, the 3rd of November, 1983.

24 MR. ROISMAN: Could you identify which number of  
25 the discovery documents this one is, Mr. Watkins?

1 MR. WATKINS: I don't know. I don't have the  
2 index.

3 MR. ROISMAN: We don't believe we ever received  
4 it in discovery. That's why I asked.

5 MR. WATKINS: Perhaps you can ask the party who  
6 produced the document.

7 MR. GALLO: I'm sure we produced this document.

8 JUDGE BLOCH: There were many documents but I  
9 don't know of how many we can be sure, unless they have an  
10 attachment with the filing.

11 MS. GINSBERG: It was number 31.

12 MR. ROISMAN: Number 31 of which filing?

13 MS. GINSBERG: Of the O.B. Cannon filing of  
14 October 10, 1984.

15 BY MR. WATKINS:

16 Q Paragraph 2 of this memorandum indicates that  
17 you apologized for the lack of security. To what were you  
18 referring?

19 A Well, the lack of security whereby an in-house  
20 document got out of the organization.

21 Q Did you apologize for the substance of the trip  
22 report?

23 A Negativ

24 Q Did anyone at that meeting for Texas Utilities  
25 suggest that you should take care of the trip report by

1 yourself?

2 A I should take care of the trip report?

3 Q Yes.

4 A In what way?

5 Q Well, without consulting Mr. Lipinsky?

6 A Oh, no way.

7 Q Did anybody suggest that Mr. Norris do that?

8 A No, they did not.

9 Q Did anyone suggest that adverse consequences  
10 might be visited upon O.B. Cannon and Son, unless you saw  
11 to it that the concerns expressed in the trip report were  
12 resolved in the utilities' favor?

13 A No such implication. Very objective.

14 Q Do you recall Mr. Chapman at the meeting saying  
15 anything about audits?

16 A I'm not sure whether it was Mr. Chapman or one  
17 of the other individuals who had addressed the subject of  
18 audits, in that several audits were in progress or had  
19 been performed relative to the coatings program. It came  
20 up in that sort of context. By whom, I do not recall.

21 Q Did they state that due to the fact that audits  
22 had been performed they were not interested in further  
23 audits?

24 A I don't recall that specifically. They  
25 addressed the fact that a number of audits had, or were



1 taking place. That's the extent of my recollection.

2 MR. WATKINS: Your Honor, we move the admission  
3 of the two-page document that Mr. Roth identified.

4 JUDGE BLOCH: Mr. Roth, in paragraph 1 at the  
5 end of the sentence, would you examine that and explain  
6 how that alteration apparently was made?

7 THE WITNESS: Alteration?

8 JUDGE BLOCH: It appears on my copy that there  
9 was a period after "evaluation," and then subsequently and  
10 on a slightly lower line that was substituted for a comma,  
11 and it says, "according to the client's people."

12 THE WITNESS: Oh? I never paid that much  
13 attention. It looks like the typewriter slipped.

14 JUDGE BLOCH: Since there was a period there to  
15 start with, it looks like it was done at a separate time.

16 THE WITNESS: The only thing I could do is, look  
17 on the second page to see who typed it. And "S" would  
18 have been Winnie Sherwin. I could ask her.

19 JUDGE BLOCH: If you don't remember, that's okay.

20 THE WITNESS: I don't remember.

21 JUDGE BLOCH: But it's in its correct final form  
22 right now?

23 THE WITNESS: In my opinion that's just  
24 inadvertence.

25 JUDGE BLOCH: Okay. There being no objection



1 the memorandum may be admitted in evidence and bound into  
2 the transcript.

3 (The document follows:)

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## DEPARTMENTAL CORRESPONDENCE

DATE November 4, 1983

SUBJECT Meeting TUSI - Dallas Headquarters - Wednesday 11/3/83 - RE: COMANCHE PEAK COATINGS  
TO File cc: JJNorris, RATrallo  
FROM RBRoth

Joe George, Vice President - TUSI  
Dave Chapman, Corporate QA Manager - TUGO  
John Merritt, Jr., Assistant Project  
General Manager - TUSI  
Billy R. Clements, Vice President-Operations -  
TUGO  
Tony Vega, QA Manager to Chapman - TUGO  
R. B. Roth & J. J. Norris - O. B. Cannon & Son, Inc.

1. Session started at 3:00 p.m. and was principally on clients reaction to August 8, 1983 Joe Lipinsky trip report. In general, with only a three day site visit in July, 1983, certain of the positions taken by Joe, and stated as 'factual', would have taken weeks of close examination and evaluation, according to the clients people.
2. RBR apologized again for the lack of security at OBC, in that an in house memo 'leaked out' and had caused our client such consternation and now additional exposure to intervenors.
3. In answer to RBR specific questions, Billy Clements said that site Q. C. reports directly to him, also, contrary to Lipinsky memo, site QA Manager, Tolsun, reports to him and not to Production. Dave Chapman readily confirmed this. Further, Toulson is a TUGO man and not Brown & Root.
4. Joe George is Vice President and has complete charge of C. Peak. He emphasized that Brown & Root, currently are essentially Labor Brokers and he is calling the shots. Hence, as suggested by Lipinsky memo, whether Brown & Root would be receptive to, or responsive to a Cannon audit and/or the findings thereof is a mute point with TUSI.
5. JJNorris raised point of writing NCR's, or the lack thereof, and Clements and Dave Chapman responded that nothing in 10CFR50 requires "NCR". TUGO elected to have 'unsatisfactory reports' as their mechanism for identifying construction or equipment deficiencies.

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Meeting TUSI - Dallas Headquarters  
Page 2

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6. RBRoth asked further who has responsibilities for generating QCP's, QAP's and QIP's and Chapman answered, TUGO, through Toulson's group. Jack added that he was present, when JJJLipinsky met with Toulson and Toulson's remark about 'not his concern' related to the Plant Licensing Procedure and not to JJJLipinkys's voicing his view of the quality of work and inspection at the site.
7. RBRoth suggested that to further address Cannon and TUSI concerns on the Class I coatings, and recognizing its been three months or better since Cannon made any actual site inspections, that Cannon set up a Taskforce Group, to visit the site ASAP and take whatever time is required to come up with a realistic overview of the coatings effort, especially since the retro-fit program was effected around the first of September.
8. All agreed - we were thanked for coming to Dallas on short notice and the meeting adjourned.
9. RBRoth to set up the Taskforce Group, to commence site visit November 9, 1983.

  
R. B. Roth

/s

1 BY MR. WATKINS:

2 Q In your testimony at page 10, your prefiled  
3 testimony -- in the last sentence of the answer before  
4 question 19 indicates that the task force would visit the  
5 site and examine the issues identified by Mr. Lipinsky in  
6 his trip report.

7 A Yes.

8 Q Was the task force to look at items beyond that?  
9 Were they to look at the overall coatings program?

10 A If other items were to be requested of the task  
11 force, they were cleared to do so.

12 Q But the essential purpose was to address the  
13 specific issues that he raised in the trip report?

14 A That's correct.

15 Q Do you have the document about which you were  
16 questioned this morning? I believe it's Lipinsky Exhibit  
17 3. It's a four-page outline entitled "JJL and MKM  
18 Comanche Peak trip."

19 A What's the date? Oh, yes.

20 Q I don't believe it has one.

21 A That's the checklist that was prepared by  
22 Lipinsky and Keith Michels.

23 Q When did you first see that document?

24 A As I recall it was sometime after I got back  
25 from vacation. Sometime after the meetings actually took

1 place on-site.

2 Q That was your trip to Bermuda?

3 A Yes.

4 Q When did you leave for that trip?

5 A I would have to check the calendar; somewhere  
6 around the 5th or 6th. Somewhere in there. I believe it  
7 was the 5th. It had to be the 5th.

8 Q If the first time you saw this was after the  
9 meetings on-site on November 10 and 11, then you did not  
10 send a copy of this to Mr. Merritt; did you?

11 A No.

12 Q Do you know whether a copy was sent to  
13 Mr. Merritt by anyone in your company?

14 A No.

15 Q Do you know whether a copy was sent to  
16 Mr. Norris in Houston?

17 A I don't know that.

18 Q Do you know whether any copy was sent to the  
19 copy prior to the time Mr. Lipinsky and Mr. Michels went  
20 to the site?

21 A A copy of that document?

22 Q Yes.

23 A Not to my knowledge. I doubt it very much.

24 Q If you would look at page 1 of the document,  
25 under day number 1 --

1           MR. GALLO: We have to find it for you. Can you  
2 show him your copy? We don't have that one with us.

3           MR. WATKINS: Sure.

4           BY MR. WATKINS:

5           Q       For day 1, it says "review QA program in general"?

6           A       Okay.

7           Q       And "review QC procedures."

8           Were any of the items listed under day 1, items that  
9 Mr. Lipinsky had identified as problems in his trip report?

10          A       I guess you could construe the item "tour site  
11 containment paint shop --" no, that was -- I don't know  
12 that you could.

13          Q       Day 2, the second item is "procedure and  
14 specification revision control."

15          Did Mr. Lipinsky identify the problem with respect to  
16 that topic in his trip report?

17          A       Not that I recall; no, he did not.

18          MR. ROISMAN: Excuse me, Mr. Chairman. I'm a  
19 little unclear about what we are doing here. We have a  
20 document which the witness did not see before the critical  
21 visit, that was not authored by him, and he's being asked  
22 to comment on whether what appears in this document, that  
23 he didn't author, in his judgment as a layperson amounts  
24 to the equivalent of what was in another document, that he  
25 also didn't author.

1       We do have Mr. Lipinsky who authored both the documents  
2       about which the comparison is being offered.

3       I don't know what the value is of finding out what  
4       Mr. Roth thinks.

5                JUDGE BLOCH: He testified on direct that he  
6       thought there was a surprise sprung on him on the site.  
7       It seems to me the line of cross-examination is designed  
8       to elicit the possibility that the surprise was not on him  
9       but on the applicant.

10       So I think I'll allow it.

11               MR. ROISMAN: But I take it his testimony  
12       couldn't have been indicating that he was surprised  
13       because of this document. The comparison should be made  
14       with the letter that he authored and the proposed outline  
15       of work that went along on November 4th to Mr. Merritt.  
16       This document, the testimony is now Mr. Merritt hadn't  
17       seen it and Mr. Roth hadn't seen it.

18               JUDGE BLOCH: No. I don't agree. I believe the  
19       testimony is that Mr. Merritt had seen it. Is that  
20       incorrect?

21               MR. WATKINS: The testimony is Mr. Lipinsky  
22       presented Mr. Merritt with this document when he arrived  
23       on-site.

24               MR. ROISMAN: He hadn't seen it before the  
25       moment of the site visit.



1           JUDGE BLOCH: Right, but I think he had seen it  
2 before he objected to Mr. Lipinsky going ahead any further,  
3 as I understood the testimony.

4           MR. REYNOLDS: Judge Bloch, may I be heard for  
5 one minute?

6           JUDGE BLOCH: Surely. You usually don't ask to  
7 comment when I rule for you.

8           MR. REYNOLDS: It's the argumentative approach  
9 Mr. Roisman takes. He makes his position known, the board  
10 rules, and he continues to debate it. We have been  
11 chastised in the past, particularly by Judge Bloch, for  
12 the same thing. You stated, "I think I'll allow it," and  
13 Mr. Roisman continued for a minute and a half to debate it  
14 with you. I don't think that's fair. I think we should  
15 apply the rules equally to both parties.

16           JUDGE BLOCH: I'll keep that in mind, but if  
17 there was a fault it was probably mine as well as  
18 Mr. Roisman's, because I permitted the continuing argument.

19           BY MR. WATKINS:

20           Q        The last item on day 2 is, "examine site  
21 situation to determine sequence of work activities."

22           Had Mr. Lipinsky identified that as an issue in his  
23 trip report?

24           A        No.

25           Q        Day 5, the second subheading appears to be

1 "inspector qualifications." Had Mr. Lipinsky identified  
2 that as an issue in his trip report?

3 A I don't recall that he had.

4 Q Had he identified auditor qualifications as a  
5 problem?

6 A No, he had not.

7 Q Had he, under day 6, identified "equipment  
8 calibration" as presenting a problem?

9 A No.

10 Q Do you remember what the total number of days  
11 that this four-page document was to involved?

12 A The one we just looked at?

13 Q Yes.

14 A Well, the way it shows in that outline, anyone  
15 can glance -- can read it. It is set up for what, 9, 10  
16 days? Yes, up through day 9 and 10.

17 Q How many days did you estimate it would take for  
18 your task force to go to the site and address this matter?

19 A I think we've discussed that as being three days.

20 Q Is the outline that you've just talked about  
21 broader than the understanding that you left the November  
22 3rd meeting with?

23 A It's much broader in the area relating to QC  
24 than I had addressed in my memorandum of assignment to  
25 Ralph Trallo.

1 Q And you sent a copy of that memorandum to  
2 Mr. Merritt; is that correct?

3 A That's correct.

4 Q Just to be clear, neither Mr. Lipinsky nor  
5 Mr. Michels were at the November 3rd meeting in Dallas?

6 A That's correct.

7 JUDGE BLOCH: In your opinion, could the work on  
8 that outline be done in 10 days?

9 THE WITNESS: I don't think all of the items  
10 could be, perhaps, completed in 10 days. When I finally  
11 did see the memorandum I took it to be a checklist  
12 prepared by Joe Lipinsky and Keith Michels to indicate  
13 what eventually might come up in their sector as a result  
14 of the task force effort. I didn't take it as being a  
15 line of march that was cast in concrete that was going to  
16 be done. I took it as a checklist to indicator to the  
17 eventualities.

18 JUDGE BLOCH: You interpreted it when you said  
19 it, as that what it might come to, but they weren't going  
20 to start doing that much? Is that how you interpreted it  
21 when you saw it?

22 THE WITNESS: Yes.

23 BY MR. WATKINS:

24 Q Did you know that Mr. Lipinsky, the morning he  
25 arrived at the site on November 8, presented this outline

1 to John Merritt?

2 A I did not. I just found it out when you  
3 mentioned it.

4 JUDGE BLOCH: I'm sorry. I know Mr. Merritt saw  
5 it. I'm not certain we know whether Mr. Lipinsky  
6 presented it or Mr. Trallo, do we?

7 MR. WATKINS: Mr. Trallo was not on-site at that  
8 time. He was in Philadelphia, I believe the record will  
9 show.

10 JUDGE BLOCH: He did not.

11 THE WITNESS: That's right.

12 JUDGE BLOCH: We have 34 minutes.

13 MR. WATKINS: We have more than four. Why don't  
14 I do one last item? I'm going to show the witness a copy  
15 of the purchase order with attachments, along with  
16 supplement 1, which appears in the record at pages 18689  
17 through 18707.

18 THE WITNESS: Yes, sir?

19 BY MR. WATKINS:

20 Q Earlier today you testified that you discussed  
21 the hold harmless clause. I believe that was on November  
22 23rd; is that correct?

23 A Yes.

24 Q Did you check the contract, the actual purchase  
25 order, to see whether it has a hold harmless clause?

1           A           No, because almost as quickly the subject came  
2 up it was put to bed. We went on to other things.

3           Q           Would you look at, stamped in the upper right-hand  
4 corner, page 18706?

5           A           Okay.

6           Q           At the paragraph under "limitation of liability."  
7 Could you review that paragraph.

8           A           Quite clear.

9                       MR. WATKINS: Your Honor, I won't ask the  
10 witness for a legal conclusion, but Mr. Roth, in your  
11 experience as a contractor, is that a hold harmless clause?

12                      THE WITNESS: It's different from a lot of the  
13 phraseology, but my interpretation of this is that it's a  
14 hold harmless clause -- okay? The only exposure being  
15 limited to the value of the replacement of service or  
16 equipment supplied by the vendor.

17          Q           Who is the vendor in this case?

18          A           Oliver B. Cannon.

19                      MR. GALLO: Is counsel prepared to stipulate to  
20 that interpretation?

21                      JUDGE BLOCH: I'm not sure that the chairman is.  
22 Do you know that it says "tort, including negligence and  
23 strict liability."?

24                      THE WITNESS: Yes.

25                      JUDGE BLOCH: Do you think it might be possible

1 that there might be something more than mere negligence  
2 involved, that the document might be said to say there's  
3 something like gross negligence --

4 THE WITNESS: In my opinion as a layman, gross  
5 negligence has a lot of coverages.

6 MR. WATKINS: Is this a good time to break?

7 JUDGE BLOCH: Okay. I would like to thank you,  
8 Mr. Roth, for your testimony, and I would like to express  
9 my appreciation for the fact that you have been  
10 inconvenienced and the other members of your firm have,  
11 and I would like you to be able to break the rule on  
12 witnesses to be able to thank them for the board for their  
13 participation. I know that this is not the reason that  
14 you are in business or the reason that they are in  
15 business, but we depend on your testimony. I appreciate  
16 your being here.

17 THE WITNESS: I'll convey to them your very warm  
18 feelings. Thank you.

19 JUDGE BLOCH: And that's the only reason why one  
20 should break the rule on witnesses.

21 MR. GALLO: Can we go off the record, Judge  
22 Bloch?

23 MR. ROISMAN: While we are still on, I would  
24 like to mention one thing that I think we should simply be  
25 aware of.

1           The document which we showed Mr. Lipinsky this morning,  
2   that I believe has been marked as --

3           THE WITNESS: Mr. Roth.

4           JUDGE BLOCH: Mr. Roth, you are not into the  
5   microphone, sir.

6           MR. ROISMAN: That we showed Mr. Roth this  
7   morning and that has been marked as RBR Exhibit 1, is a  
8   document which apparently has notations on it that were  
9   made by the -- by an employee of the utility, a  
10   Mr. Youngblood. At least that's the preliminary  
11   assumption.

12          The notations, I think, are extremely probative with  
13   regard to the question of what the scope of the original  
14   audit or review or site was going to be.

15          And I'm open to any way -- and I think the document  
16   speaks for itself -- I'm open to any way to put it in. It  
17   obviously can't go in through this witness, but I just  
18   want to put all the parties on notice that we feel that it  
19   should go into evidence, and we are willing, the parties  
20   are willing, to stipulate it in, if the parties are?  
21   Although I think there's a question as to who actually  
22   wrote those notes, I don't think anybody here actually  
23   knows the answer to that.

24          MR. WATKINS: I would have to review the  
25   document. I don't have a copy with me, before I would



1 stipulate.

2 JUDGE BLOCH: We'll seek clarification from  
3 counsel if they can figure out for the record who wrote  
4 that note.

5 MR. GALLO: One last thing before we go off the  
6 record -- I just briefly discussed with Mr. Roth and he  
7 believes he can adjust his schedule to be here December 3.

8 On that assumption, could he be the first witness that  
9 would be heard?

10 JUDGE BLOCH: That seems logical. That's  
11 granted.

12 THE WITNESS: And be finished at what time?

13 (Laughter.)

14 JUDGE BLOCH: Yes. I always look to answer your  
15 questions.

16 Off the record now, Mr. Gallo? What was your problem  
17 for off the record?

18 MR. GALLO: We took care of it.

19 JUDGE BLOCH: The hearing is adjourned.

20 (Whereupon, at 3:05 p.m., the hearing was  
21 concluded.)

22

23

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CERTIFICATE OF OFFICIAL REPORTER

This is to certify that the attached proceedings before the UNITED STATES NUCLEAR REGULATORY COMMISSION in the matter of:

NAME OF PROCEEDING: TEXAS UTILITIES GENERATING COMPANY, et al.

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

DOCKET NO.: 50-445-OL2  
50-446-OL2

PLACE: BETHESDA, MARYLAND

DATE: WEDNESDAY, NOVEMBER 21, 1984

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission.

(sig) *Joel Breitner /sg*

(TYPED)

JOEL BREITNER

Official Reporter

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