

ORIGINAL

UNITED STATES

NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF:

DOCKET NO: 50-440-OL
50-441-OL

THE CLEVELAND ELECTRIC ILLUMINATING
COMPANY, et al.

(Perry Nuclear Power Plants,
Units 1 and 2)

TELEPHONE CONFERENCE

LOCATION: WASHINGTON, D. C.

PAGES: 2094 - 2140

DATE: FRIDAY, MARCH 22, 1985

TR-01
0/1

ACE-FEDERAL REPORTERS, INC.

Official Reporters
444 North Capitol Street
Washington, D.C. 20001
(202) 347-3700

8503260344 850322
PDR ADOCK 05000440
T PDR

NATIONWIDE COVERAGE

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

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

-----x
:
In the Matter of: :
: Docket No. 50-440-OL
THE CLEVELAND ELECTRIC ILLUMINATING : 50-441-OL
COMPANY, et al. :
: TELEPHONE CONFERENCE
(Perry Nuclear Power Plants, :
Units 1 and 2) :
-----x

Ace-Federal Reporters, Inc.
Suite 402
444 North Capitol Street, N.W.
Washington, D. C.

Friday, March 22, 1980

The telephone conference call in the above-entitled
matter commenced at 11:00 a.m.

BEFORE:

JUDGE JAMES P. GLEASON, Chairman
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D. C.

JUDGE GLENN O. BRIGHT, Member
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D. C.

JUDGE JERRY R. KLINE, Member
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D. C.

1 APPEARANCES:

2 On behalf of the Applicant:

3 JAY E. SILBERG, ESQ.
4 HARRY GLASFPIEGEL, ESQ.
5 Shaw, Pittman, Potts & Trowbridge
6 1800 M Street, N.W.
7 Suite 900 South
8 Washington, D. C. 200369 On behalf of the Nuclear Regulatory
10 Commission Staff:11 COLLEEN WOODHEAD, ESQ.
12 U.S. Nuclear Regulatory Commission
13 Washington, D. C.14 On behalf of the Intervenor Ohio
15 Citizens for Responsible Energy:16 SUSAN HYATT, ESQ.
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

JUDGE GLEASON: Let's proceed. Can everybody hear me all right? All right. Let's start, reporter.

This is a telephone conference held on the Perry Nuclear Power Plant operating license proceeding. At this time I would like officially for the record the parties to identify themselves. The Board will go first, and then the Applicant, then the Staff and then the Intervenor.

This is Judge James P. Gleason, the Chairman of the Atomic Safety and Licensing Board.

JUDGE KLINE: This is Judge Jerry R. Kline.

JUDGE BRIGHT: Judge Glenn Bright.

MR. SILBERG: For the Applicants, this is Jay Silberg of Shaw, Pittman, Potts & Trowbridge. Also with me on the call today are Mr. Glasfpiegel and Mr. Swiger.

MS. WOODHEAD: This is Colleen Woodhead, counsel for NRC Staff.

MS. HYATT: This is Susan Hyatt for Intervenor, Ohio Citizens for Responsible Energy.

JUDGE GLEASON: All right, fine. In the light of the previously-announced Board order on the commencement of a hearing on the remaining three issues in this case, an order that was communicated to the Board on -- to the parties on February 1st, this conference has been called to consider two motions submitted by the Ohio

1 Citizens for Responsible Energy, OCRE, one requesting the
2 postponement of the hearing on issue 8 until June 3rd, and
3 the other requesting the Board tell the appearance of a
4 particular individual, Dr. Marshall Berman, to present
5 testimony at the forthcoming hearing on issue 8.

6 Dr. Burnham is alleged to be a supervisor of the
7 reactor safety studies division at the Sandia National
8 Laboratory in Albuquerque, New Mexico.

9 I want to say at this point that before concluding we
10 want to discuss a problem that has come up in connection
11 with the place for having this hearing. If I forget,
12 please simply remind me.

13 What I would like to do first is to discuss the
14 postponement of the hearing issue and I request everybody
15 to kind of proceed slowly, since the Board is not sitting
16 together in one place and we need to comprehend carefully
17 what is being said.

18 On this issue, we will ask the Applicant and then the
19 Staff to comment; and then if Mrs. Hyatt wants to make
20 some further comments beyond her motion, why, the
21 opportunity will be there for her to do so.

22 I might say that her motion for postponement was dated
23 March 15th.

24 The essence of that motion is a need that she feels for
25 a break to adequately prepare a case on two complex issues.

1 The motion alleges that additional discovery information,
2 which was not furnished because of a pending motion which
3 has now been resolved, is forthcoming now and needs to be
4 analyzed. It also alleges and has alleged there are
5 certain pending freedom of information requests which
6 involve information that she requires on issue 8. She
7 references the fact that the SER is not yet available and
8 also that there are potential witnesses -- a witness not
9 available in April, but may be available later and that
10 there are other witnesses recently identified to her which
11 she needs to have time to negotiate with; and finally
12 that -- she alleges that there would be no substantial
13 harm to anyone, or any harm granting the requested delay
14 in time.

15 I do have a few preliminary questions which I would
16 like to get responses to at this point, before proceeding
17 with the order that I announced a few minutes ago.

18 Mrs. Hyatt, I presume, from reading your motion, that
19 OCRE is intending to put on an affirmative case. I would
20 like to get your your comment stating that at this time on
21 the record, please? Or whatever comment you want to make
22 with respect to it.

23 The reason I ask that is because it's my understanding
24 that in the prior issues that have gone to hearing there
25 has not been an affirmative case put on.

1 MS. HYATT: Mr. Chairman, this is Ms. Hyatt and
2 that is correct, we have not put on an affirmative case
3 before. We would like to on this issue. Whether or not
4 we will can best be expressed as tentative. Negotiations
5 are proceeding. It is possible but perhaps not very
6 probable -- it is possible but not very probable that we
7 will put on an affirmative case and have witnesses. It is
8 still very sensitive.

9 JUDGE GLEASON: All right. I would like to ask
10 the Staff -- I would like to ask the Applicant what the
11 status of complying with the discovery request is on the
12 OCRE's 13th set of interrogatories.

13 MR. SILBERG: Your Honor, she has provided
14 several sets of responses to the last request. The last,
15 I believe, was in January or perhaps early February. I
16 don't have that in front of me. Perhaps Mr. Glasfpiegel
17 can confirm the date of that last update.

18 MR. GLASFPIEGEL: If you give me a moment I'm
19 reaching for my file and I'll give you the precise date.

20 JUDGE GLEASON: All right.

21 MR. SILBERG: While we are doing that, I'll
22 continue. After the last conference call Ms. Hyatt called
23 me and asked if we would make available additional
24 information. That conference call, I think, was on Friday
25 following our last conference -- Thursday or Friday

1 following our last conference call. It was March --

2 JUDGE GLEASON: Information beyond the 13th set
3 of interrogatories?

4 MR. SILBERG: I think some of it was beyond.
5 Some of it were things that were in the 13th set of
6 interrogatories. All of it was things we had objected to
7 before as being irrelevant or untimely.

8 For instance, one of Ms. Hyatt's requests was to have
9 access to all the nonconformances reports -- all the
10 nonconformance reports relating to containment and
11 containment penetration.

12 We had objected to that when it was asked in the 13th
13 set of interrogatories on the grounds that those questions
14 could have been asked three years ago and were not.

15 In the interests of cooperation, even though I still
16 believe that as a discovery request it is objectionable
17 because it was grossly untimely, we did agree to make
18 those available to Ms. Hyatt, as well as other information
19 that she asked for which I also think was either untimely
20 or irrelevant. But, in an attempt to cooperate I told
21 Ms. Hyatt on the -- I think it was March 18 -- that that
22 information was available and I understand Ms. Hyatt is
23 coming in today to look at that.

24 MR. GLASFPIEGEL: This is Harry Glasfpiegel, I
25 do have my file. The dates of the two voluntary sets of

1 answers to the 13th set were November 6, 1984, and then
2 December 28, 1984, respectively.

3 We answered approximately 48 additional interrogatories
4 on a voluntary basis in those two filings.

5 JUDGE GLEASON: Could I ask the Staff if they
6 are aware of the status of the freedom of information
7 request submitted by OCRE?

8 MS. WOODHEAD: I must apologize. I wrote myself
9 a note yesterday to check on that.

10 JUDGE GLEASON: You don't have that now?

11 MS. WOODHEAD: The secretary is calling there
12 right now so I will advise you of their answer before we
13 finish the conference call.

14 JUDGE GLEASON: Okay. Fine. While they are
15 talking, do you have any further information on the
16 availability of the SER on issue 8?

17 MS. WOODHEAD: We intend to produce it at the
18 hearing. Well, we intend to have it ready on the 15th as
19 promised, and we'll bring it to hearing on the 16th. We
20 will bring it with us on the 15th, going back to Ohio.

21 JUDGE GLEASON: So it will be available on the
22 15th?

23 MS. WOODHEAD: Yes.

24 JUDGE GLEASON: All right. Fine.

25 Well, what I would like to do, then, is to have the

1 Applicant make what responses it cares to at this time,
2 and then the Staff, and then if there's anything further
3 Mrs. Hyatt wants to comment on, why, we'll hear from her
4 at that time.

5 MR. SILBERG: Thank you, Mr. Chairman, this is
6 Mr. Silberg.

7 First, I think the appropriate place to start is the
8 Commission's policy statement, CLI-81-8, dated May 20,
9 1981 reported at 13 NRC 452.

10 In that policy statement the Commission states that:
11 "The fact that a party may have personal or other
12 obligations or possess fewer resources than others to
13 devote to the proceeding does not relieve that party of
14 its obligations.

15 I would also point out the Appeal Board's decision in
16 Pennsylvania Power and Light, Susquehanna Steam, ALAB 612,
17 12 NRC 317. The Appeal Board pointed out that limited
18 intervenor resources don't excuse disregard of the
19 Commission's requirements and that the Appeal Board
20 specifically recognized that, indeed, these proceedings
21 may be burdensome on Intervenors but that is the nature of
22 these proceedings and that is not a grounds for avoiding
23 one's obligations.

24 I would also like to discuss briefly the one authority
25 cited by Ms. Hyatt, on page 3 of her motion: Southern

1 California Edison San Onofre decision, ALAB 312.

2 Ms. Hyatt cites that case for the proposition that the
3 agency should be solicitous of an intervenor's desire for
4 additional time to prepare its case given the disparity of
5 resources between Applicants and Staff on the one hand,
6 and Intervenors on the other.

7 I think it's useful to read that case and to look at
8 exactly what was involved in San Onofre.

9 In that case the Board said we must look at "the
10 totality of circumstances." And, in the totality of
11 circumstances the Appeal Board, in that case, decided that
12 the Intervenors were entitled to some accommodation. But
13 let's look for a minute at what the circumstances of that
14 case were.

15 In San Onofre, the Intervenors were admitted to the
16 proceeding on November 28, 1972, by an order that was not
17 issued until December 15, 1972.

18 Applicant's answers to discovery were filed seven days
19 later on December 22, 1972; NRC Staff answers to discovery
20 were filed on January 12, 1973; and the hearing started
21 four days later on January 16, 1973.

22 In other words, in that case the Appeal Board was
23 willing to give some additional time to the Intervenors
24 where the total period from the date they were admitted to
25 the hearing until the start of the date they were

1 admitted to the proceeding until the start of the hearing
2 was less than two months.

3 In this case we are talking about a situation where the
4 Intervenors were admitted to the hearing 3-1/2 years ago;
5 where discovery has been going on for that entire period
6 of time. And we simply don't have the case that was
7 presented in the San Onofre decision.

8 Now, as to the specific bases for Ms. Hyatt's request,
9 the first is that they have two complex technical issues.

10 As the Appeal Board pointed out in the context of
11 discovery requests in ALAB 613, that is a choice that the
12 Intervenors made. It is the intervenor's decision as to
13 how many issues and whether they are complex and technical
14 or not complex and not technical. It's their choice as to
15 how many issues they want to raise. Having raised those
16 issues the Intervenors should not now be in a position to
17 complain that they can't go to hearing and they can't be
18 prepared on the schedule that the Board has set.

19 The next comment that they make is that they have
20 limited resources. That's an issue the Commission
21 specifically addressed in its statement of policy in which
22 the Appeal Board specifically talked about in ALAB 612.

23 Ms. Hyatt next notes that there's a lot of discovery
24 out there and she presumably is going to look at a lot of
25 things today. Well, most of that material is, we think,

1 not relevant. Much of it could have been requested
2 earlier. The volumes she's talking about -- certainly
3 there are many -- QA documents. We don't think those are
4 relevant and even if they were Ms. Hyatt could have asked
5 for those three years ago.

6 The fact that she decided in an untimely manner to ask
7 for those and that we have voluntarily decided to give
8 them to her cannot be used to bootstrap her into delaying
9 the hearing. As far as Freedom of Information Act
10 requests, having looked at the request she attached to her
11 motion, most of those deal with ongoing discussions
12 between the NRC and the owners' group.

13 The hydrogen control program, as the Commission
14 recognized when it issued its regulation, is an ongoing
15 program and, indeed, there will be many developments as
16 the final owners' group program comes to a conclusion over
17 the next month.

18 If we are to use that as an excuse to delay the hearing
19 we'll never get to hearing. The Commission did not intend
20 as this rule makes clear, that we have all the answers in
21 on hydrogen control. That's why it distinguished between
22 a preliminary analysis and a final analysis. And,
23 therefore, even if the Freedom of Information Act were
24 relevant in the context of a delay in the hearing, the
25 fact that there are meetings that are ongoing ought not to

1 provide any basis for the Intervenors to seek a delay
2 because that, in essence, would be challenging the rule --
3 waiting for all the answers on hydrogen to be developed
4 before we can go to hearing.

5 If Ms. Hyatt wants to stipulate that we not have all
6 those issues before we receive our full power license, and
7 that we litigate hydrogen at the conclusion of the final
8 report, I think the Applicants would be willing to do that.
9 But to do that and to say that we must delay the hearing
10 in the context -- the hearing is on an issue -- something
11 that is needed on the full power conference -- when the
12 program need not be completed until after the full power
13 license, we think would be inconsistent with the
14 Commission's regulations.

15 In addition, using Freedom of Information Act requests
16 to support a delay of a hearing gives an intervenor
17 absolute right to bootstrap its way into seeking delays.

18 Ms. Hyatt can file Freedom of Information Act requests
19 any time she wants. Those are issues -- that is a
20 procedure which is totally separate from the hearing
21 process. It is unrelated to her participation in the
22 hearing. It is unrelated to her status as an intervenor.
23 To use that as the grounds for delaying this hearing, I
24 think, is not justified.

25 JUDGE GLEASON: Are you saying, Mr. Silberg,

1 that the information that she's requested -- the matter on
2 the Freedom of Information Act request, has no
3 relationship to the contention of issue 8?

4 MR. SILBERG: She's asked for documents that
5 relate to certain meetings in February, I think, between
6 the NRC and the Hydrogen Control Owners Group. My
7 understanding of that meeting -- I was not there -- my
8 understanding of those meetings was that they were
9 primarily aimed the at final owners' group program and as
10 such would be irrelevant to the scope of this issue since
11 the only thing Ms. Hyatt is entitled to litigate is the
12 preliminary analysis under the Commission's rule.

13 But in any event, there will always be things that are
14 going on. If we are to delay a hearing until all
15 available data is available, we would never go to hearing
16 and the Supreme Court has recognized that one cannot hold
17 records open indefinitely. There will always be new
18 developments. In the Interstate Commerce Commission
19 versus Jersey City and Interstate Commerce Commission
20 cases versus United States several decades ago, which are
21 the leading cases on when the record closes, the Supreme
22 Court recognized specifically that one does not wait for
23 every final piece of information to arrive, otherwise we
24 cannot get to the end of any process.

25 With respect to Ms. Hyatt's argument that the SER will

1 not be available until April, my own view of this is that
2 once the SER comes out, that an appropriate period of time,
3 perhaps a week, ought to pass and then we would go to
4 hearing on this issue.

5 If the SER comes out on April 15, is available on April
6 16, my own position would be that Ms. Hyatt ought to be
7 entitled to a week or so and then we'll go to hearing on
8 that issue. But that doesn't mean we wait and hold the
9 whole process open until June. That seems to be an
10 unreasonable delay, particularly when the current schedule
11 for 5 percent power, which is the point in time at which
12 we need approval of our preliminary hydrogen analysis, is
13 July 28 and we are currently running 30 days behind that.
14 So, under our current schedule with the current progress
15 in preoperational testing and systems turnovers, we are
16 planning on being ready to go above 5 percent power by
17 August 27th. So we can't simply sit by and wait several
18 months until Ms. Hyatt deems herself ready to go to
19 hearing.

20 With respect to her potential witnesses, I guess I'm
21 somewhat skeptical that that's an appropriate
22 justification for delaying the hearing.

23 First of all, Ms. Hyatt herself said that it's not
24 probable that she will even have such a witness. She has
25 not been willing to identify who that person is to me in

1 our previous discussions nor did she do so today. She has
2 had, literally, years to talk with potential witnesses,
3 and I don't think that waiting until the last minute,
4 notwithstanding the fact that there are obviously many
5 motions on this issue pending, is an appropriate reason
6 for delaying going to hearing on this issue. And, while
7 the Board should properly be solicitous of all parties'
8 schedules, the Board is also charged by the Commission in
9 its statement of policy with the responsibility for
10 expeditiously conducting these proceedings, giving due
11 considerations to the rights of all the parties.

12 To delay this hearing until June, we think, would
13 ignore the rights of the Applicants to a fair and
14 expeditious hearing. I don't think OCRE has made a case
15 for that delay and I would urge the Board to deny that
16 motion.

17 JUDGE GLEASON: What about her allegation of no
18 harm being occasioned by the delay?

19 MR. SILBERG: I tried to address that by
20 indicating that our current schedule calls for being ready
21 to go above 5 percent power by August 27th. If we wait to
22 start the hearing until June 3, whatever her date is, it's
23 unlikely that we would even have all the proposed findings
24 done, let alone a decision by the Board in time for August
25 27th.

1 JUDGE GLEASON: All right. Ms. Hyatt? Anything
2 to add?

3 MS. WOODHEAD: I would only like to add two
4 points to Mr. Silberg's discussion. The first one being
5 that OCRE is in no worse position on the hydrogen control
6 situation than the NRC Staff has been. We have had
7 exactly one week for five witnesses from different
8 branches to review, evaluate, and write testimony on CEI's
9 hydrogen control system information.

10 Ms. Hyatt has the same information we have, yet without
11 having to prepare witnesses or testimony, she has had a
12 much easier job than we have in that she simply needs to
13 read it, understand it, and develop her position, her
14 viewpoint on this matter.

15 Ours has been a much more difficult job, and although
16 certainly we do have resources available here, they are
17 not available in abundance to evaluate and prepare
18 testimony at a moment's notice.

19 Our staff has been working 12, 15-hour days and over
20 the weekend in order to accommodate the schedule here.

21 I do not see that Ms. Hyatt is in any more untenable a
22 position than we are, given our responsibilities.

23 Number 2, as to the issuance of the SER, and a delay
24 based on the admittedly rather late date for this, I do
25 not believe that this is cause for delay either, because

1 the staff who is writing the testimony to be filed on
2 Monday with the Board, and served to the parties, is the
3 same group of people who are writing the SER.

4 The summary of their evaluation of the utility's
5 hydrogen control system is contained in the testimony
6 which Ms. Hyatt will receive on Monday.

7 The SER will be no different from the testimony, except
8 that there will be more detail. It will be a fuller
9 explanation of the Staff's more summary statements in the
10 testimony. So there is not the element of surprise, here,
11 that Ms. Hyatt seems to anticipate.

12 She will know the Staff's evaluation and viewpoint on
13 this subject on Monday. She will, when she receives the SER,
14 have a fuller explanation of the Staff's evaluation. But
15 it seems to me the crucial document is that of the
16 Applicant's description of his hydrogen control system.
17 And in that case, she and the Staff stand in the same
18 position, in terms of receiving information and having
19 time to evaluate it, assess it, and develop a position on
20 it.

21 So I see -- I see no real good reason to delay the
22 hearing, simply because the SER will be issued in mid-April.

23 Additionally, I have just gotten a note from the
24 secretary who contacted our FOIA office, and it seems that
25 the document enumerated 102 has already been sent to

1 Ms. Hyatt. Documents 113 and 127 are in typing and will
2 go out today or tomorrow. And the one document that is
3 unnumbered pertains to the Perry plant emergency
4 instructions and procedures. I don't know if we have
5 those documents, but even if we do, it seems reasonable to
6 expect that they are at the Perry plant itself, and that
7 she could view those, if it's permissible or agreeable to
8 the Applicant, at the plant.

9 MR. SILBERG: Ms. Woodhead, that was one of the
10 items which Ms. Hyatt asked us for on the telephone. That
11 was a previous discovery request and as I confirmed to her
12 and confirmed in writing, copies of which should have gone
13 to all the parties, there aren't any.

14 MS. WOODHEAD: All right. I would like to
15 affirm Mr. Silberberg's statement about what the information
16 Ms. Hyatt wants about the hydrogen control group and
17 owners' meetings, as being, as far as I can ascertain,
18 irrelevant to the specific hydrogen control systems at the
19 per re plant. My understanding of the HCOG group is that
20 they are addressing the long term analysis of hydrogen
21 control systems, et cetera; and that is beyond the
22 parameters of issue 8 that's before the Board.

23 JUDGE GLEASON: All done, Ms. Hyatt? I mean
24 Ms. Woodhead?

25 MS. WOODHEAD: Pardon me?

1 JUDGE GLEASON: Does that finish your comments?

2 MS. WOODHEAD: Yes, I'm finished.

3 JUDGE GLEASON: Do you have any further comments
4 to make with respect to your comments or anything you have
5 heard?

6 MS. HYATT: Yes, sir.

7 JUDGE GLEASON: Speak loudly.

8 MS. HYATT: First, Applicants have referenced
9 the statement of policy on the conduct of licensing
10 proceedings, I81-8, and I would like to quote a sentence
11 herein, which I think is controlling: "Commission wishes
12 to emphasize that in expediting the hearing the Board
13 should ensure that the hearings are fair and produce a
14 record which leads to high quality decisions that are
15 adequately -- effect the public health and safety -- and
16 requirements." So it is the Commission's goal that
17 although we shouldn't unnecessarily delay things,
18 although hearings are not to be unnecessarily delayed,
19 expediting is not to compromise the quality or fairness of
20 the hearings either.

21 I think that needs to be controlling here: Is there
22 enough time for a fair hearing and quality proceeding and
23 we don't believe --

24 JUDGE GLEASON: Ms. Hyatt, he's having a great
25 deal of difficulty in picking up what you are saying and I

1 think I am, too.

2 MS. HYATT: All right. I'll try to correct that.

3 Applicants claim that the discovery I requested in the
4 13th set of interrogatories is not relevant. First of all
5 I greatly pared down what I sought in the 13th set of
6 interrogatories to basically 66 items which are enumerated
7 in Silberg's March 18 letter to me; and all of these items,
8 if I recall correctly, were sought in the 13th set of
9 interrogatories. It's not new information. It is a
10 tremendous amount of information. Item 3, concerning
11 nonconformance reports on the containment, I am told by
12 Mr. Silberg, consists of 7- to 8000 nonconformance reports
13 for the reactor building. Some of these may not be
14 relevant but that is indicative of the large volume of
15 materials to be reviewed.

16 Applicants also claim that the FOIA requests are
17 somehow not relevant in that they somehow do not pertain
18 to the preliminary analysis. I don't think it has been
19 established by this Board as to what constitutes an
20 adequate preliminary analysis of Staff's and Applicant's
21 agreement -- but I don't think that is controlling.

22 JUDGE GLEASON: Does that do it, Ms. Hyatt?

23 MS. HYATT: No, I'm still -- okay. Applicants
24 quote the Supreme Court saying that you cannot hold the
25 record open indefinitely because there ought to be

1 information -- I'm not asking the record be held open
2 indefinitely. I'm asking for June. I don't think that
3 will adversely impact anyone's schedule. They themselves
4 admit that 5 percent power on their current schedule would
5 not be achieved until August 27th. I have heard some new
6 information that, due to an incident which occurred last
7 week, there may be a five-week delay in this schedule and
8 this incident is an inadvertent actuation of the
9 containment frame -- equipment -- and that needs to be
10 corrected.

11 As far as potential witnesses that could have been
12 identified or sought earlier, we have been trying for two
13 years to find people competent to testify on the issue.
14 We have been talking to the Union of Concerned Scientists
15 and we have been told repeatedly no such person exists. I
16 finally found one person who does not wish to be
17 identified and who would not be available until -- I don't
18 know when the person is available but it certainly won't
19 be April. That is tentative, whether or not we can have
20 witnesses. But we have been working diligently on this
21 issue and it's a very complex issue and we do need some
22 more time.

23 The Staff's argument today underscores that. Maybe the
24 Staff would like some more time, too.

25 That about does it. Thank you.

1 JUDGE GLEASON: Okay. That finished it,
2 Ms. Hyatt?

3 MS. HYATT: Yes.

4 JUDGE GLEASON: All right. What I would like to
5 do now is to go to the second issue, which is the motion
6 to compel the appearance and testimony of Dr. Burnham.

7 The essence of the motion is that Sandia laboratory has
8 acted as a consultant to the NRC and -- to conduct
9 analysis and research, and they have, in fact, conducted
10 this research and analysis on hydrogen control, which is
11 the subject matter of issue 8. Dr. Burnham has directed,
12 as a supervisor, extensive research in hydrogen combustion
13 and control. In fact, Sandia, with Dr. Burnham's
14 involvement, has conducted analytical studies on
15 containments which demonstrated or resulted in a finding
16 that its distributed igniter system had a marginal value.

17 This system is supposed to be identical with --
18 according to the allegations -- with the Perry system, the
19 system as planned for Perry; but the Staff has claimed the
20 Sandia analysis, in fact, supported the interim approval
21 of the Perry system.

22 MS. HYATT: I believe that to be the Grand Gulf
23 system, judge.

24 JUDGE GLEASON: I appreciate your pointing that
25 out. The Grand Gulf system. But the Staff in fact

1 rejected Sandia's findings on the igniter system.

2 I would like the Staff to respond first in this
3 connection. Then the rest and then finally OCRE; if they
4 have any additional comments. I would like to get some
5 additional comments. You don't have to answer in this
6 order, but in your response I would like answers to them:

7 Was Dr. Burnham responsible for the conduct of NRC --
8 of research and analysis for the NRC as alleged in the
9 motion?

10 Did he conduct the alleged research on the Grand Gulf
11 containment, which, presumably, found -- did, in fact,
12 find that the igniter system was marginal? I might say
13 that the copy of the exhibit that we received in
14 connection with this motion was hardly readable so we have
15 to get a little bit more explanation of the Burnham
16 denying these allegations from the parties today.

17 If you would like to start with that, Ms. Woodhead, I'd
18 appreciate it.

19 MS. WOODHEAD: Yes. Judge Gleason, I discussed
20 this with the Staff yesterday and they felt it would be
21 best if I talked to Dr. Burnham directly, and I did at 10:00
22 this morning.

23 To answer your first question, Dr. Burnham and some of
24 his colleagues at Sandia were, indeed, responsible for
25 research in an analysis and the Sandia report on the Grand

1 Gulf Hydrogen Control System. He and his colleagues did
2 make the statement, or perhaps only he made the statement,
3 that the system was marginal in his opinion.

4 Dr. Burnham explained to me today that subsequent to
5 the production of his report, Mississippi Power and Light
6 did some further calculations with more complete data or
7 perhaps a different code -- and I'm not sure about that.
8 But they did other calculations which showed that there
9 was not the narrow margin but a much wider margin of
10 containment capability at Grand Gulf and that his opinion
11 was no longer that their margin was minimal but that it is
12 now sufficient.

13 But in any event, he wanted to emphasize to me that his
14 statement about the marginal containment capability with
15 their system was not meant and did not mean at the time
16 that he found it to be inadequate. He was simply pointing
17 out that there was a narrow margin.

18 But, however, his opinion on that has changed.

19 I asked him if he appeared at the hearing on the Perry
20 hydrogen control system with the assumption that it is
21 identical to Grand Gulf, if he would have in any way a
22 differing professional opinion from that of the NRC Staff.
23 We had a conference call in which the NRC staff explained
24 to him their evaluation and their opinion of the hydrogen
25 control system at Perry. And he stated he would -- his

1 opinion would be the same as the Staff's and he had no
2 different opinion from theirs.

3 He also agreed to affirm my representations of his
4 conversation, either directly to the Board if one of the
5 Board members would wish to call him, or in writing in a
6 letter to the Board and copies to the parties.

7 I hope I have answered all your questions, Judge
8 Gleason.

9 JUDGE GLEASON: The last question is: I presume
10 from your answers that you do not intend to call
11 Dr. Burnham as a witness?

12 MS. WOODHEAD: No, we do not.

13 JUDGE GLEASON: Mr. Silberg?

14 MR. SILBERG: Yes. First, I think the
15 appropriate place to start the analysis is with the
16 regulation we are dealing with, which is 2.720. That's
17 the normal conditions, the NRC Staff gets to determine who
18 its witnesses ought to be and that attendance of named NRC
19 personnel may not be required by subpoena or otherwise,
20 with an exception. And that exception states as follows:
21 "The presiding officer may, upon the showing of
22 exceptional circumstances such as the case in which a
23 particular named NRC employee has direct personal
24 knowledge of a material fact not known to the witnesses
25 made available by the executive director of operations,

1 require the attendance and testimony of named NRC
2 personnel."

3 I think we first have to start and see whether
4 Ms. Hyatt has made anything approaching a case for these
5 exceptional circumstances. We think she hasn't.

6 First of all, based on what we've heard from
7 Ms. Woodhead today, it's clear that Dr. Burnham does not
8 have different facts available to him on Perry than does
9 the witnesses that the Staff is proposing to present.

10 Second, based on the documents and information which
11 Ms. Hyatt provided, it is not clear that Dr. Burnham has
12 direct personal knowledge of a material fact. The Sandia
13 report on Grand Gulf igniter systems lists seven authors,
14 none of which is Dr. Burnham.

15 While Dr. Burnham has supervisory responsibility over --
16 perhaps over the entire program at Sandia, regulations --
17 the regulation talks about direct personal knowledge; not
18 just supervisory knowledge.

19 Second, I think based on where we are --

20 JUDGE GLEASON: These seven different persons
21 you referred to, are they all employees of Sandia?

22 MR. SILBERG: I presume so. I can't answer that.
23 The names are J.C. Cummings, A.L. Camp, M.P. Sherman, J.M.
24 Wester, D. Tomasko, R.K. Byers and W.B. Burnham, and this
25 is a document entitled "Review of the Grand Gulf Hydrogen

1 Igniter System, NUREG/CR-2530," currently known as
2 SAND 82-0218.

3 I assume that since that's a Sandia report all those
4 people are Sandia employees.

5 Wholly apart from that, there's a situation where
6 there's a material fact which is not known by the Staff --
7 the witnesses which the Staff intends to present. Since
8 the Staff hasn't even put their testimony on the record,
9 nor have they had the opportunity to be questioned by the
10 parties or the Board, even if there were a difference of
11 opinion, which there no longer is, it would clearly be
12 premature for the Board to order Dr. Burnham to appear.
13 We simply don't know whether there are material facts that
14 he has that are not known to the witnesses that the Staff
15 intends to call.

16 It is also clear that there is no basis in the record
17 at this time for assuming that there is a genuine
18 scientific disagreement, which is one of the tests that
19 Ms. Hyatt has relied upon.

20 Even if we were to still go with the language in the
21 SER, which doesn't say that the system is minimal -- it
22 says that it is minimally adequate, but it's adequate --
23 even if we were to go with that characterization, that
24 analysis was not done in the context of the current rule.
25 The current rule calls for a preliminary analysis. The

1 Sandia report was not a preliminary -- was not reviewing
2 things from the context of a preliminary analysis and so
3 there's no basis for assuming that even if we were still
4 dealing with marginal inadequacy, that that would apply to
5 the issue which we are dealing with on issue 8, which is
6 the adequacy of our preliminary analysis.

7 JUDGE GLEASON: I don't follow that point too
8 well, Mr. Silberg. Performing the work on Grand Gulf
9 prior to the issuance of the rule -- analyzing systems --
10 and analysis would have to show whether the system is
11 workable or is not workable.

12 MR. SILBERG: That's true. But in the context
13 of a preliminary analysis for a short time period one is
14 dealing with a very different type of analysis than if one
15 is looking at the adequacy for the entire term of a full
16 power operating license. And the Commission has made it
17 very clear in the rules that a preliminary analysis is
18 adequate for a shorter time period, and there is no
19 indication that when Sandia was evaluating Grand Gulf,
20 that they were looking at it from anything other than the
21 full 40-year operating license term. We just don't know.
22 But since the obligation is on Ms. Hyatt's shoulders to
23 show that there is a genuine scientific disagreement, she
24 just hasn't made that showing.

25 I think that's really irrelevant at the present time,

1 based on what Ms. Hyatt has reported of her conversations
2 with Dr. Burnham. I simply think there is no disagreement
3 and she just hasn't -- there's no basis for any conclusion
4 that we have anything unusual here or anything other than
5 the normal case where there are lots of people within the
6 Staff and its consultants who have information on the
7 subject matter.

8 We went through this issue at great length during the
9 quality assurance hearing. The issue there was whether a
10 region 3 inspector ought to be called to the stand because
11 he had made some statements which might arguably be
12 characterized as inconsistent with views of the Staff.

13 We had some amount of cross-examination and a lot of
14 discussion as to whether the panel presented by the Staff
15 was adequate to characterize that inspector's views. And
16 this Board determined that, in fact, the record was quite
17 clear that there was no information which that inspector
18 could bring to bear on the situation that was not already
19 being presented by the panel that the Staff had chosen.

20 Based on that precedent as well as the rule and what
21 we've heard today, it's clear to me that there's
22 absolutely no basis for requiring the presentation of
23 Dr. Burnham.

24 JUDGE GLEASON: Do you have any comment on the
25 metropolitan district case she cited?

1 MR. SILBERG: Yes. I think it just doesn't
2 apply. We have, in that case, "a genuine scientific
3 disagreement on a central decisional issue." That's the
4 language from ALAB 714, the case, the Three Mile Island
5 case. We simply don't have a genuine scientific
6 disagreement on a central decisional issue for two reasons.

7 First of all, there's no disagreement at all. Second
8 of all, we don't have Staff's position on the record to
9 know whether there's a disagreement. Clearly, we just
10 don't meet those tests.

11 I would note that in ALAB 714, there was another
12 individual that the intervenors had sought to produce who
13 had authored a report, not on Babcock & Wilcox plants such
14 as the Three Mile Island's units are, but on Combustion
15 Engineering plants. And the Board said that the fact that
16 he had written a report on the same type of problem but
17 for a different type of plant disqualified him, or put him
18 outside the realm of the 2.720 provision because he did
19 not have any direct personal knowledge regarding the
20 matters of concern to us in the reopened hearing, since
21 his report had been on other types of plants.

22 Similarly, since Dr. Burnham's name doesn't appear on
23 the Grand Gulf report, which is the only tie-in we have to
24 the Perry design, particularly at the preliminary analysis
25 stage, we are in a very similar situation to that of the

1 proposed witness that was not ordered presented in the
2 Three Mile Island case.

3 JUDGE GLEASON: I think the Staff has already,
4 if I listened to Ms. Woodhead correctly, have already
5 moved Dr. Burnham into the work done on Grand Gulf --

6 MR. SILBERG: As I said, I was working from the
7 Grand Gulf report itself which doesn't indicate that
8 Dr. Burnham had any direct role in the preparation of that
9 report.

10 JUDGE GLEASON: All right. Ms. Hyatt?

11 MS. WOODHEAD: Judge Gleason, one moment?

12 JUDGE GLEASON: Yes, Ms. Woodhead?

13 MS. WOODHEAD: I'm afraid I overlooked one point
14 that Mr. Silberg's discussion reminded me of and I need to
15 provide you with this information.

16 He recited earlier 10 CFR 2.720 as the standard for
17 asking for particular witnesses. I failed to advise you
18 that one of those Staff witnesses, Mr. Notafrancesco, is
19 thoroughly familiar with the contents and background of
20 the Sandia report and could speak to any of the matters
21 discussed in that report.

22 JUDGE GLEASON: How do you spell his name?

23 MS. WOODHEAD: I believe it's this way:

24 N-o-t-a-f-r-a-n-c-e -- wait a minute --

25 MR. SILBERG: I was just going to ask the same

1 question.

2 MS. WOODHEAD: My tongue gets twisted every time
3 I say his name and I never tried to spell it out letter by
4 letter before.

5 JUDGE GLEASON: All right. We'll refer to him
6 as "that person."

7 MR. SILBERG: His name is
8 N-o-t-a-f-r-a-n-c-e-s-c-o.

9 JUDGE GLEASON: Mrs. Hyatt?

10 MS. HYATT: Yes, sir.

11 JUDGE GLEASON: Speak up, please.

12 MS. HYATT: All right. First of all, concerning
13 the Grand Gulf report, the view of the Grand Gulf hydrogen
14 igniter system, I would quote from page 6,
15 acknowledgements, "Marshall Burnham provided leadership to
16 the project and painstakingly reviewed several drafts of
17 this report. His high standards of excellence and
18 commitment of time are deeply appreciated by the office."
19 So, Mr. Burnham is, indeed, connected with the Sandia
20 report.

21 As for the recent Staff conversation with Dr. Burnham,
22 I think I would like to have a written confirmation of
23 that by Dr. Burnham, including specific references to some
24 subsequent analysis done by Mississippi Power and Light.
25 I am not aware of any, I have never seen it in my numerous

1 Freedom of Information Act request studies of this. I am
2 not aware of any subsequent analysis any different than
3 what the first analysis does.

4 Also, it must be noted that as far as Mr. Silberg's
5 comments that somehow this isn't relevant, I would point
6 to Applicant's preliminary analysis submitted to the Board
7 by letter of March 5th, which devotes an entire section, 9
8 pages of text, 27 tables and 57 figures, to demonstrating
9 that Perry and Grand Gulf are similar in all material
10 respects related to hydrogen control. So I think any
11 analysis of Grand Gulf is obviously going to be relevant
12 to Perry.

13 MR. SILBERG: Mr. Chairman --

14 JUDGE GLEASON: Let her finish, please.

15 MR. SILBERG: I'm sorry. I thought she was.

16 JUDGE GLEASON: Had you finished, Mrs. Hyatt?

17 MS. HYATT: No, sir.

18 JUDGE GLEASON: Go ahead.

19 MS. HYATT: The discussion of Applicants
20 concerning the preliminary analysis. Mr. Silberg seemed
21 to apply that the Grand Gulf review by Sandia was somehow
22 for 40 years whereas in the exhibit SER-3 -- I'm sorry
23 that was a poor copy, that's the best I had, it came off
24 microfiche -- it is stated that the Staff's analysis
25 therein is an interim approval which would, obviously, be

1 similar to a preliminary analysis. I would quote from 22-2:
2 "The Staff has reviewed the SNL analysis of the Grand Gulf
3 igniter system and finds it to be supportive of the Staff's
4 interim approval. While the Staff does not at this time
5 concur with all of the conclusions, suggestions, or
6 recommendations made by SNL, it believes that the overall
7 independent SNL analyses buttress the Staff's findings.
8 As stated previously, SNL has found the hydrogen ignition
9 system as it is currently designed to be marginally
10 adequate."

11 MR. GLASFPIEGEL: Excuse me, Ms. Hyatt, this is
12 Mr. Glasfpiegel and I have the language in front of me and
13 I would appreciate it if you would read the next sentence
14 to put this issue into its proper context.

15 MS. HYATT: All right. "The SNL review did not
16 evaluate the HIS with respect to interim versus final
17 evaluation. Therefore, this evaluation can be construed
18 as a final evaluation based on present, albeit incomplete,
19 knowledge." The Staff does not agree the igniter system
20 is marginal with respect to adequacy.

21 I think that really mischaracterizes what the Sandia
22 National Laboratory found. They did not find that the
23 system, as currently designed, was marginally adequate.
24 What they found, and I'll quote from page 195 of the
25 report: "In our opinion the design of the HIS is

1 basically sound (the deliberate ignition concept, however,
2 is marginally adequate to meet the threat posed by
3 hydrogen combustion.) We have a few suggestions that
4 we -- we do have a few suggestions that we feel would
5 improve the Grand Gulf system's reliability." That's the
6 end of the quote from the report.

7 There are other aspects of hydrogen control. There has
8 been ongoing research which may not have been addressed in
9 this report; ongoing research primarily by Sandia National
10 Laboratory concerning the probabilities, likelihood --
11 ongoing -- I'm not sure the NRC staff is willing or able
12 to present.

13 I think Mr. Burnham should, number 1, provide a written
14 explanation complete with references for his changed
15 opinion concerning the adequacy of the system. I think
16 this motion should be held open pending the receipt of
17 that. There are other areas in which Dr. Burnham's
18 testimony would be useful.

19 JUDGE GLEASON: I don't understand that last --
20 that last part of your suggestion, Mrs. Hyatt.

21 If I recall your motion, your motion asked to not only
22 really -- the testimony really not only would comment on
23 the disagreement that he had but also provide additional
24 information on these other areas. Isn't that correct?

25 MS. HYATT: Yes, it is.

1 JUDGE GLEASON: All right. That's what you
2 intended to imply there?

3 MS. HYATT: Right.

4 JUDGE GLEASON: All right. Ms. Silberg, I cut
5 you off, did you want to make a comment?

6 MR. SILBERG: I'm sorry I interrupted. I
7 thought Ms. Hyatt was finished.

8 Ms. Hyatt said that we had -- that our preliminary
9 analysis had -- preliminary evaluation had significant
10 amount devoted to the similarity with Grand Gulf and
11 seemed to imply that I was arguing that Grand Gulf was
12 somehow irrelevant.

13 If that was the impression that I left I will
14 certainly -- it was certainly an unintentional impression.
15 We think the Grand Gulf design is the basis for the Perry
16 design and the preliminary approvals of the Grand Gulf
17 design are certainly relevant. But what we are talking
18 about here is something entirely different. We are
19 talking about the Staff's analysis, which is an interim
20 analysis, versus Sandia's, which was not.

21 I think Ms. Hyatt's statement that she now wants to
22 broaden this as to other things that Sandia is looking
23 into, again puts her well beyond the scope of the
24 regulations in that she has, again, failed to show that
25 there is any significant scientific disagreement or that

1 there is any information which Mr. Notafrancesco would not
2 be able to discuss or which, indeed, our witnesses would
3 not be able to discuss. And I think she just simply has
4 not made the case.

5 JUDGE GLEASON: All right. What we are going to
6 ask the parties to do is to hang onto their phones for a
7 while because the Board has got to discuss this thing with
8 themselves for about five minutes, which means we'll have
9 to go to another set of phones. I don't want to break up
10 this connection because it's just too hard, at times, to
11 put it back together and the circuits might get overloaded
12 and so forth.

13 MR. SILBERG: Before we break, just clarify one
14 item Ms. Hyatt mentioned to get it on the record. I was
15 unaware of this inadvertent actuation problem. I don't
16 know where the five-week delay comes from, but there was
17 no equipment damage. All the equipment in there is
18 qualified for submergence. There's no clean up and no
19 delay in the schedule so that's a nonissue as far as we
20 are concerned.

21 MS. WOODHEAD: Judge Gleason, I would like to
22 make one point about the research performed by Sandia.
23 I'm sure the Board is aware that Sandia does this research
24 under contract for the NRC. And their reports must not
25 only be reviewed, but the research is established by

1 agreement between NRC and Sandia, so therefore, the people
2 who run this contract are intimately familiar with their
3 research.

4 JUDGE GLEASON: I might say, Mr. Silberg, in
5 connection with that incident that Mrs. Hyatt referred
6 to -- I'm glad you brought that up because I was going to
7 get back to it. Are you making the positive statement
8 that whatever that was is not going to cause any delay in
9 the schedule?

10 MR. SILBERG: That's the information that we
11 were given. I was unaware of it.

12 JUDGE GLEASON: Are you aware of the incident
13 occurring?

14 MR. SILBERG: I was not until Ms. Hyatt
15 mentioned it.

16 JUDGE GLEASON: I see. I think in light of that
17 it would be appropriate for us to request you to look into
18 that and to give some kind of statement, something on the
19 schedule, to the Board and the parties.

20 MR. SILBERG: We were informed, though it will
21 not affect the schedule. I'll be happy to confirm that in
22 writing.

23 JUDGE GLEASON: All right. Please do. We are
24 going to break at this time. When I say "break," the only
25 one that's going to hang up the phone is me. The rest of

1 you please hang onto your phones, including the other
2 members of the Board and they'll go to another phone. I
3 don't think it will take us too long and we'll be back
4 with you very shortly. Thank you.

5 (Discussion off the record.)

6 JUDGE GLEASON: Back on the record now. The
7 Board has considered these motions and, in connection with
8 the motion for a continuance, we, of course, the Board has
9 responsibility to manage the course of its proceedings,
10 and have to give consideration to the convenience of the
11 parties or their representatives and have to consider the
12 nature of the proceeding and the public interest, but at
13 this stage the reasons for any delay have to be
14 substantial and they have to be valid. So in the light of
15 that, we are going to postpone requirements for the
16 receipt of testimony on issue 8. We are going to postpone
17 the testimony on issue 8 until April 1st. We'll require
18 by next Wednesday, OCRE to submit an identity of the
19 witnesses they intend to produce if the hearing is delayed;
20 plus a proffer of the testimony that those witnesses would
21 make.

22 THE OPERATOR: This is the operator, did you get
23 Judge Gleason?

24 JUDGE GLEASON: Yes. We are already on here.
25 That ought to come in by next Wednesday, November 27.

1 JUDGE KLINE: March 27th.

2 JUDGE GLEASON: We would like to have the Staff
3 and Applicant make written responses to the motion by next
4 Wednesday, carrying out pretty much what you've said, I
5 would gather -- I would imagine, and we will then issue
6 our decision with respect to this motion in a telephone
7 conference next Friday.

8 In connection with the motion to compel an appearance
9 and testimony of Dr. Burnham, we've decided not to make a
10 decision on that motion at the present time. We would
11 like to get responses from the Applicant and Staff to the
12 motion, also by next Wednesday. And, in addition to that
13 we'd like to get an affidavit from Dr. Burnham, in
14 effect -- the information that was provided to you by
15 telephone and also some reference to comments on the
16 further analysis done at Grand Gulf.

17 Then, we'll make a decision -- make our decision with
18 respect to that motion and announce that in the telephone
19 conference next Friday as well. This really wraps up what
20 our decision is. And I don't see the necessity for other
21 comments with respect to them.

22 MS. WOODHEAD: Could I ask another question?
23 You delayed filing issue 8 testimony until April 1st. Do
24 you mean also to delay the hearing on that issue to a
25 certain date?

1 JUDGE GLEASON: No. We are not making any
2 decision on that at the present time.

3 MS. WOODHEAD: Oh. All right.

4 JUDGE GLEASON: I will say this, I have
5 indicated before that the SER on that issue has to be
6 available, and I think in all likelihood we would want to
7 at least, at a minimum, take a couple of days' delay until
8 the Intervenors would have a chance to review the SER.

9 Although I'm sure it's true, as you say, that the
10 testimony of your witnesses will be bearing out what's in
11 the SER, the SER, as you know, does stand as a separate
12 document and the witness ought to have time to review it.

13 MS. WOODHEAD: Yes.

14 JUDGE GLEASON: All right. Any other comments
15 with respect to our judgement?

16 Mr. Silberg, any comments as far as the decision of
17 Board?

18 MR. SILBERG: No, sir.

19 JUDGE GLEASON: Ms. Hyatt?

20 MS. HYATT: I am concerned if there is a delay
21 in the filing of testimony on issue 8 until April 1st,
22 there be sufficient time for us, at least 15 days, for a
23 hearing -- before a hearing on that issue is scheduled.

24 JUDGE GLEASON: Ms. Hyatt? I'm not hearing you.
25 Did anybody hear what she said?

1 MR. SILBERG: We did.

2 MS. HYATT: I'll repeat it if you like. I'm
3 somewhat concerned that if the date on filing all
4 testimony on issue 8 is delayed until April 1st, that
5 there be sufficient time for us to prepare
6 cross-examination before the hearing and that would be at
7 least the 15-day minimum period required by the
8 regulations.

9 JUDGE GLEASON: They have indicated that the SER
10 will not be in until the 15th, so that gives you your 15
11 days.

12 MS. HYATT: What you are saying is there will be
13 no hearing until at least after the SER?

14 JUDGE GLEASON: I'm not saying anything other
15 than what I've said.

16 MS. HYATT: All right, then. Sufficient.

17 JUDGE GLEASON: All right. The last item I
18 wanted to discuss was in connection with the difficulties
19 that have apparently arisen in connection with the hearing
20 site.

21 Jerry, do you want to handle this a little bit?

22 JUDGE KLINE: The details are we had made
23 preliminary arrangements with the Lake County
24 Administration Center for the hearing site. We thought
25 those arrangements were firm. They later turned out not

1 to be. That site will not be available.

2 We have conducted a search for other sites in that
3 immediate area and the only thing we can come up with is
4 the Perry town hall which we understand is only a couple
5 of miles or thereabouts away from the original site. That
6 town hall is located at Center and King Streets in Perry,
7 Ohio. We know very little about its suitability and I
8 guess we would just ask for any comments anybody has on
9 whether or not that's an acceptable location?

10 JUDGE GLEASON: Ms. Hyatt?

11 MS. HYATT: I really am not prepared to comment
12 on it. I am not familiar with the place that much. My
13 personal preference is the center at Painesville. If it
14 was not available --

15 JUDGE GLEASON: Apparently it was available, but
16 the administrator, executive there indicated that the
17 person that had given us the okay on the thing did not
18 have permission to do so. So we are forced -- faced with
19 getting another place to have it.

20 MR. SILBERG: Mr. Chairman? This is
21 Mr. Silberg. I have been informed by our people out there
22 that the upstairs room, or the ground floor room at the
23 Perry township hall is large enough for a hearing. I
24 understand if chairs were brought in, it could seat
25 perhaps 100 people.

1 There are also rooms downstairs which no one claims to
2 have ever seen. I assume you are talking about the
3 upstairs facilities? The large room; is that right?

4 JUDGE KLINE: Yes. That's correct. We were
5 told that there was a room available that would
6 accommodate about 100 people.

7 MR. SILBERG: Okay. Our people think that that
8 is suitable.

9 As I told Mr. Kline yesterday -- Dr. Kline yesterday,
10 there are also, in Painesville, empty stores in the New
11 Market Mall which, as I understand it, is diagonally
12 across the street from the administration building where
13 the hearing was to be and that those might be rentable.

14 From our standpoint that would also be suitable and
15 adequate.

16 JUDGE GLEASON: Is there any information that
17 these stores could provide chairs and tables and
18 accommodate us -- all of our needs for a hearing?

19 MR. SILBERG: I assume chairs and tables would
20 have to be procured separately. I don't know that for a
21 fact but I assume that's true. I don't know, for instance,
22 whether the town hall has chairs or tables.

23 JUDGE KLINE: Our understanding was that they
24 did but we'll check on it.

25 JUDGE GLEASON: Ms. Hyatt, could I ask you

1 this -- could you take the time to look that facility over?

2 MS. HYATT: Okay.

3 JUDGE GLEASON: And if you have any negative
4 comments on it, if you would call Judge Kline at the NRC
5 tomorrow, I'd appreciate it because we do have to get
6 notice out. Otherwise, we'll go ahead with the town hall,
7 if it's available. And if it appears to meet
8 everybody's -- it appears to be at least adequate for our
9 purposes.

10 JUDGE KLINE: I won't be here tomorrow but we'll
11 do it Monday.

12 JUDGE GLEASON: If we could hear from you by
13 Monday that will be helpful, Ms. Hyatt.

14 MR. SILBERG: Mr. Chairman, before we conclude I
15 have one other item and while it relates to the issue 1
16 part of the hearing. I guess Terry isn't here -- I don't
17 think it's a question which necessarily involves
18 discussion. It is a question of what the Board's
19 preference, if any, is on the order of presentation and
20 that is whether the Board anticipates going subcontention
21 by subcontention, or whether we are going to present all
22 of one party's testimony on all of issue 1, followed by
23 all the testimony by the next party on all of issue 1? Or
24 doesn't it matter to the Board?

25 JUDGE GLEASON: Well, I'm not sure. Wait just a

1 minute.

2 MR. SILBERG: Is this something we could deal
3 with at next Friday's conference call? It could be useful
4 in terms of our working out schedule.

5 JUDGE GLEASON: Okay. Fine. That concludes the
6 conference and we'll be back in touch with you. Thank you.

7 (Whereupon, at 12:45 p.m., the telephone
8 conference was concluded.)
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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: THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, et al.

(Perry Nuclear Power Plants.
Units 1 and 2)

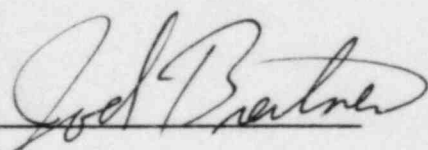
TELEPHONE CONFERENCE

DOCKET NO.: 50-440-OL, 50-441-OL

PLACE: Washington, D. C.

DATE: FRIDAY, MARCH 22, 1985

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission.

(sig) 

(TYPED)

JOEL BREITNER

Official Reporter

Ace Federal Reporters, Inc.
Reporter's Affiliation