

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

IN THE MATTER OF:

NRC-202

METROPOLITAN EDISON COMPANY, ET AL

LOCATION: BETHESDA, MARYLAND

PAGES: 27563-27825

DATE: OCTOBER 26, 1984

RECEIVED BY: _____ DATE: _____ TIME: _____

TR-01
0/1

8411020114 841026
PDR ADOCK 05000289
T PDR

1 UNITED STATES NUCLEAR REGULATORY COMMISSION

2 - - - - -
3 PRE-HEARING
4 - - - - -

5 -----X
6 In the Matter of: :
7 METROPOLITAN EDISON COMPANY, et al. : Docket No.
8 (Three Mile Island Nuclear Station, : 50-289 SP
9 Unit No. 1) : (Restart-
: Management
: Remand)
-----X

11 5th Floor Hearing Room
12 4350 East West Highway
13 Bethesda, Maryland

14 The above-entitled matter came on for
15 hearing, pursuant to notice, at 9:30 a.m.

16 BEFORE: HONORABLE IVAN W. SMITH, Chairman
17 HONORABLE SHELDON WOLFE
18 HONORABLE GUSTAVE LINENBERGER
Administrative Law Judges

19 APPEARANCES:

20 On behalf of Edward Zebroski and
21 Present and Former TMI employees:

22 HARRY H. VOIGT, Esquire
23 MICHAEL F. MC BRIDE, Esquire
24 Leboeuf, Lamb, Lieby, and MacRae
1333 New Hampshire Avenue, Northwest
Washington, D.C. 20036
(202) 457-7500

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

APPEARANCES: (Continued)

On behalf of the Licensee:

ERNEST L. BLAKE, JR., Esquire
DAVID R. LEWIS, Esquire
Shaw, Pittman, Potts, and Trowbridge
1800 M Street, Northwest
Washington, D.C. 20036
(202) 822-1000

On behalf of the Intervenors:

JOANNE DOROSHOW
The Christic Institute
1324 North Capitol
Washington, D.C. 20002
(202) 797-8106

LYNNE BERNABEI
Government Accountability Project
1555 Connecticut Avenue, Northwest
Washington, D.C. 20036
(202) 232-8550

On behalf of the NRC:

JACK R. GOLDBERG, Esquire
Staff Counsel
Nuclear Regulatory Commission

N. PRASAD KADAMBI
NRR/DL/ORB4

1 P-R-O-C-E-E-D-I-N-G-S

2 JUDGE SMITH: Good morning -- dated October
3 24 with respect to the identification of proposed
4 exhibits, which was issued with respect to the
5 training issue under the assumption that you have not
6 received service of that memorandum. I ask that you
7 look at it now for the purpose of discussing later
8 this morning whether an order similar to this should
9 be issued with respect to the Dieckamp Mailgram issue.

10 As we stated, the purpose of this pre-
11 hearing conference will be limited to matters
12 pertaining to discovery disputes between TMIA and GPU,
13 also with the Zebroski matter scheduled with two
14 exceptions. And that is we want to discuss with the
15 parties the particular time and place for the
16 beginning of the hearing. And Ms. Weiss of UCS knows
17 that that will be discussed. And it's all right with
18 her so long as it doesn't go that opposite direction,
19 and that is move her up in any presentation.

20 And Judge Wolfe wishes to place on the
21 record his oral ruling with respect to UCS discovery
22 dispute.

23 JUDGE WOLFE: As has been our practice where
24 we extend the time for discovery, we make it known to
25 all parties. Unfortunately, on Friday last, October

1 19th, when I heard oral arguments by Ms. Weiss and Mr.
2 Jordan on the one hand and Ms. Bowser on the other
3 with respect to Union of Concerned Scientists's motion
4 to compel GPU response to UCS's sixth set of
5 interrogatories and document requests.

6 At that time -- I don't have to go into the
7 nuts and bolts of the order -- or the ruling itself
8 during this telephone conference. But therein I did
9 in partially granting Concerned Scientists' motion to
10 compel, I did extend the response date or the
11 production date as the case may be from October 29 to
12 October 31. So all parties are advised and certainly
13 Mr. Jordan is well aware of that extension date.

14 Back to you, Judge Smith.

15 JUDGE SMITH: I propose that we proceed with
16 the matters on which Mr. Voigt has indicated an
17 interest so that if you choose you can leave. The
18 others will be rather lengthy. You have expressed an
19 interest in the motion to attend the Stier interviews,
20 and you represent --

21 MR. VOIGT: Dr. Zebroski.

22 JUDGE SMITH: -- Dr. Zebroski.

23 MR. VOIGT: That's correct.

24 JUDGE SMITH: So if you prefer we'll take
25 those up and then the others promise to be a bit more

1 lengthy, too. And you may not want to spend the time
2 for those.

3 MR. VOIGT: We appreciate that, Mr.
4 Chairman.

5 MS. BERNABEI: Judge, we have not received
6 any response, I don't know if there is a written
7 response, concerning attendance at the Stier
8 interviews from Mr. Voigt or his firm. We have not
9 been served with any papers concerning that.

10 JUDGE SMITH: You have been served.
11 However, the --

12 MS. BERNABEI: Yes, their response to the --
13 or their motion to quash.

14 JUDGE SMITH: Yes, and you've been served --
15 Mr. Blake I think served late yesterday afternoon
16 their position on the Stier interviews.

17 MS. BERNABEI: Yes, we have them.

18 JUDGE SMITH: Well, if you're -- if it
19 should be that the argument is so complex that you're
20 prejudiced by that we will afford whatever relief is
21 required.

22 MS. BERNABEI: I would just -- I don't
23 understand -- I don't know what Mr. Voigt's position
24 is and if there's a statement of his position, I would
25 like to see it.

1 JUDGE SMITH: Well, there isn't any as far
2 as I can see. I can infer what his position is, but
3 there has been nothing in writing yet.

4 MS. BERNABEI: Oh, I understand.

5 MR. VOIGT: At the appropriate time, Mr.
6 Chairman, I will be happy to tell the Board what my
7 position is. We have not served the written response,
8 and it is not our intention to do so.

9 JUDGE SMITH: Okay.

10 Well, let's move first then to Dr.
11 Zebroski's subpoena and the plans to depose him. It's
12 a rather lengthy discussion as to the history of it.
13 I hope that we can cut it short by proposing to the
14 parties that Dr. Zebroski be deposed by telephone.

15 Would you have any objections to that?

16 MS. BERNABEI: Well, it would pose a problem
17 depending on the documents.

18 JUDGE SMITH: The documents -- we'll discuss
19 that. I would expect that the production of documents
20 would be narrowed so that they could be mailed.

21 MS. BERNABEI: At some time prior to the
22 deposition.

23 JUDGE SMITH: Well, there's probably time,
24 yes. I hadn't really thought about that. But
25 certainly the technology is easily available to depose

1 Dr. Zebroski by telephone and to get the documents to
2 you quite quickly. I think that -- I see no problems.

3 Would anybody have any objections to that?

4 MR. MC BRIDE: Mr. Chairman?

5 JUDGE SMITH: Yes.

6 MR. MC BRIDE: My name is Michael F.
7 McBride. I appear today on behalf of Dr. Zebroski. I
8 do not have an objection to that provided that the
9 number of documents that we're talking about is
10 drastically reduced. And I understand from your
11 statement that you intend to get to that.

12 But we're talking about such a large number
13 of documents that even if we reduced them by 90
14 percent I think we'd still have a problem. But
15 provided that we're talking about the documents that I
16 have proposed that his testimony entail, I don't think
17 that would be a problem.

18 Now, as Mr. Blake's witness and as to the
19 substance of his testimony, I think it would be up to
20 Mr. Blake to decide whether he could adequately defend
21 that deposition. I don't have a particular interest
22 in defending the substance of his deposition --

23 JUDGE SMITH: Yes.

24 MR. MC BRIDE: -- only these logistical
25 problems.

1 JUDGE SMITH: Yes.

2 MS. BERNABEI: Could I just state our
3 position. As a first order we would oppose taking
4 deposition by telephone. I personally have never done
5 it before. I know it is done in certain extenuating
6 circumstances. I don't think those circumstances
7 exist in this case. I wanted to address some of the
8 points that were brought up in Mr. McBride's response.

9 First of all, there has been absolutely no
10 showing in this record that Mr. Zebroski will not be
11 available or that this is an inconvenient time for Mr.
12 Zebroski. We scheduled the deposition --

13 JUDGE SMITH: That being the 13th, the
14 evening of the 13th.

15 MS. BERNABEI: That's correct. In fact, he
16 -- I contacted him personally at such time as he did
17 not have an attorney in order to ensure that this
18 would not interfere with his other business affairs.

19 I'll state that I don't believe that is
20 required. I think an intervenor has a right to
21 discovery of a witness presented by the company
22 regardless of whether it would interfere with other
23 business obligations given that he has been proposed
24 as a witness. However, we attempted because he is an
25 out-of-town witness to accommodate Mr. Zebroski's

1 schedule.

2 In the subsequent conversations with Mr.
3 McBride I learned that he, as Mr. -- as EPRI or as Mr.
4 Zebroski's attorney has no objection to an evening
5 deposition given that it is limited. And I
6 represented to him on the telephone I had no problem
7 limiting it to two hours. I think given the fact that
8 we will know on November 13th very clearly the scope
9 of his --

10 JUDGE SMITH: Does that appear in our
11 papers?

12 MS. BERNABEI: No, it doesn't. It's --

13 JUDGE SMITH: Oh, so it's been worked out.

14 MS. BERNABEI: Well, no, let me just -- we
15 received his response after the telephone
16 conversation. But what I'm saying to you is that
17 there is no problem as I understand with Mr.
18 Zebroski's availability on November 13th. And, as I
19 understand in conversations with Mr. McBride, he was
20 amenable to some kind of limit, something along the
21 line of two hours, in that that would not unduly tax
22 or be too tiring for Mr. Zebroski.

23 I want to state, though, on the record that
24 I think we have a right to take his deposition even
25 during this other business hours, which would be

1 during the day on the 12th or the 13th prior to the
2 hearing. We attempted to accommodate his schedule by
3 scheduling it in the evening. Now, I don't understand
4 why since he is going to complain about the schedule
5 in any case.

6 But what I'd like to say, first of all, is
7 Mr. Zebroski is available. We tried to accommodate
8 his schedule given that he is out of town. He's going
9 to be here on other business, not TMI business, during
10 this period of time. I see no reason why it can't
11 take place as originally scheduled. That's number
12 one.

13 Number two, he was announced as a witness
14 in this proceeding at a very late time. We did not
15 learn about it as we have attempted to do with
16 Licensee at the earliest possible time that they had
17 an intention of announcing him as a witness.

18 I was here in a pre-hearing conference on
19 September 17th when Judge Wolfe, and I think it's out
20 of a legitimate concern, questioned me seriously about
21 our intention to call Dr. Myers as a witness. And I
22 could appreciate his concern that each party announce
23 their witnesses at the earliest possible time.

24 We stated even though we had not arranged
25 for his testimony that we would like to call him as a

1 witness in the status of our negotiations. The
2 Licensee has never done that with Dr. Zebroski. We
3 learned for the first time on October 11th that he
4 would be a witness.

5 JUDGE SMITH: All right.

6 Do you know -- I'm sorry to interrupt you.
7 But this point is going to have to be repeated and
8 repeated and repeated. You learned it on October 11.
9 Mr. Blake comes back with an answer. Well, it was
10 mailed when --

11 MR. BLAKE: The 5th.

12 JUDGE SMITH: -- the 5th. Well, when you
13 make a statement like that make the entire statement.
14 When you make a statement tell us everything which is
15 material to your statement.

16 MS. BERNABEI: Okay.

17 I can state it. It's been stated on the
18 record thus far. The notice that he was to be a
19 witness was mailed on October 5th. I had promised --

20 JUDGE SMITH: We didn't learn that until Mr.
21 Blake told us about it. In the future tell us the
22 whole story, the whole story which is material to your
23 point.

24 MS. BERNABEI: Okay.

25 Let me state the whole story. On October

1 5th we were in depositions in Harrisburg. Apparently,
2 and his comes through conversations with Mr. Zebroski,
3 his testimony was arranged at a bad time. Mr. Blake
4 didn't tell me on October 5th when we were in
5 Harrisburg on depositions, Mr. Zebroski and Mr. Van
6 Whitbeck were going to testify. I didn't learn about
7 it on the 8th when I was over at Shaw Pittman
8 reviewing documents. I also didn't learn about it on
9 October 9th which was the Tuesday prior to the time we
10 were to leave for Harrisburg for a deposition on
11 Wednesday.

12 On October 9th I had a conversation in which
13 I discussed with Mr. Blake our intention to call Dr.
14 Gilinsky as a witness. I stated that to him over the
15 telephone as a courtesy prior to mailing out our
16 notice of intention to call him as a witness. Mr.
17 Blake thanked me for that courtesy.

18 In the same conversation he could well have
19 informed me that Dr. Zebroski and Mr. Van Whitbeck
20 were intended as witnesses. And he did not. I
21 learned of that when I received a pleading that was
22 supposedly mailed on October 5th, did not reach our
23 offices until the time I was in Harrisburg on October
24 10th, which I read on October 11th when I learned he
25 was a witness for the first time. On that day I

1 applied for a subpoena to depose him in an expeditious
2 manner. That was -- as I read it, October 11th was
3 two days prior, two business days prior to the close
4 of discovery.

5 JUDGE SMITH: My point is simply this, your
6 statement to us perhaps could have had a footnote on
7 it, you know, that says although the matter was mailed
8 on October 5th it did not reach our office until the
9 10th or 11th. That would have been a total
10 disclosure. That is a type of presentation we expect
11 in this proceeding.

12 MS. BERNABEI: My point was -- the point I
13 think, which is of concern to the Board, is when we
14 learned and the fact --

15 JUDGE SMITH: No, I'm making another point.
16 I'm making another point which has broader application
17 for the balance of this hearing and for all pleadings
18 in this hearing. And that is when you make a
19 representation make all of the representation. And in
20 this instance I would have expected something as I
21 recommended, perhaps a footnote or something, not
22 simply the statement with nothing else that you did
23 not learn until October 11, which implies that they
24 didn't tell you until October 11. See?

25 MS. BERNABEI: No, it implies that I was not

1 given notice.

2 JUDGE WOLFE: Well, that's the way we
3 understood it, and I think Judge Smith's observation
4 is well taken.

5 JUDGE SMITH: Yes, now let's establish it.
6 You understand what I said and you understand what the
7 admonition is.

8 MS. BERNABEI: I understand.

9 JUDGE SMITH: Then why quarrel?

10 MS. BERNABEI: I'm not quarreling. I wanted
11 to take your admonition seriously and state on the
12 record the full --

13 JUDGE SMITH: And I caution you to do that.

14 MS. BERNABEI: Yeah, I guess what we would
15 say in summary is that we did not believe there is any
16 reason to quash or otherwise modify the subpoena of
17 Dr. Zebroski. He is available. We have agreed as Mr.
18 McBride stated, given our increased knowledge about
19 the scope of his testimony to limit the subpoena to
20 documents that are relevant. We had no idea at the
21 time we applied for the subpoena on the scope of his
22 testimony or as to what documents may or may not have
23 been relevant.

24 We have talked to Mr. McBride and said
25 certainly we would consider narrowing it once we have

1 a clear understanding, which we are gaining largely
2 through the motions to quash of the scope of his
3 testimony.

4 JUDGE SMITH: Well, does anyone then object
5 to him being deposed on the evening of October 13th?

6 MR. MC BRIDE: Yes, Mr. Chairman.

7 I want to make clear what our discussion was
8 when we talked on the telephone the other night. What
9 I told Mr. Bernabei was that I personally had no
10 problem with the night of the 13th because I'm not
11 going to be in the hearings with you if they're to be
12 held on the 14th. That is not my problem.

13 But I did say that Mr. Blake might have a
14 problem, and that is exactly what I said in my motion.
15 We're not objecting because of my schedule; we're
16 objecting because of this being on the eve of the
17 hearing. That's number one.

18 JUDGE SMITH: How about Dr. Zebroski? How
19 does he feel about it?

20 MR. MC BRIDE: That's number two. At the
21 time I filed the motion and at the time I had the
22 discussion with Ms. Bernabei his schedule appeared to
23 me to be clear.

24 But as events were unfolding here, and we
25 were moving very quickly, I am now advised that he has

1 been requested to meet with an official of Electricite
2 de France, which is the official energy agency of
3 France as I understand it, on the evening of the 13th.
4 He would like to do that. It would suit his
5 employer's convenience if he could do that. But he
6 will forego that if the alternative is to delay these
7 hearings.

8 So he has developed a conflict -- just for
9 the Board's complete information. The reason he's
10 coming to Washington, D.C. is for the Atomic
11 Industrial Forum and annual conference. And as the
12 Board is probably aware there are people from all over
13 the world in the nuclear industry who are there. And
14 these sorts of things develop as you get closer to the
15 conference, and he has been requested to meet with
16 that official. His employer would like him to do so.

17 Now, we did discuss limiting the deposition.
18 I think Ms. Bernabei stated that fairly, that she
19 didn't expect it to take more than an hour, certainly
20 more than two as I understood our conversation. And I
21 would certainly ask the Board to order that the
22 deposition be limited to that. I don't -- I can't
23 imagine that it would take more than two hours to
24 depose this witness because my understanding is that
25 his testimony is very limited.

1 Now, she says "Don't quash the subpoena."
2 Let's go forward on the basis that she has proposed.
3 And I must then at this point take the position that
4 she has no right to compel him to come to Washington
5 for the purposes of the subpoena duces tecum and in
6 the circumstances of this situation in which she
7 contacted him directly and did not go through Mr.
8 Blake when she didn't advise Mr. Blake she was going
9 to do that. And Dr. Zebroski asked her to do that
10 repeatedly in the telephone conversation that she had
11 with him. I do not believe that she should be allowed
12 to profit by doing an end run around Licensee's
13 counsel.

14 Now, I want to make clear we did not
15 represent Dr. Zebroski at the time of that telephone
16 call. Mr. Blake didn't know that we represented him
17 until I advised him on Monday. Ms. Bernabei didn't
18 know that we represented him until I advised her on
19 Monday. So I'm not accusing her of doing anything
20 improper because we were already representing him.
21 What I'm saying is that given that he's Mr. Blake's
22 witness she should have gone through Mr. Blake. And I
23 think she should not be allowed to profit by having
24 done that end run.

25 JUDGE SMITH: Well, I don't really -- did

1 not understand that to be the rule that Mr. Voigt told
2 us about. If the District of Columbia rules parallel,
3 the motto -- code of professional responsibility.
4 However, I really think it's going to be wasteful of
5 time to go down that road. Let's talk more about how
6 he can be deposed fairly and efficiently.

7 I might say that I have a -- I start the
8 thing with the sense that a deposition on the eve of a
9 hearing is not -- it's just not a good time. I mean
10 it sounds hasty. It's not going to give the parties
11 -- the parties are going to be tired.

12 I know that I would not want to be deposed
13 at that time if I had other responsibilities or if I'm
14 -- I wouldn't want to be counsel on it. I don't
15 really favor that for that reason, particularly when I
16 believe that a telephone deposition could be done and
17 could be done deliberately, timely, and at everyone's
18 convenience without disruption.

19 Mr. Blake or Mr. McBride, do you want to be
20 heard further?

21 MR. MC BRIDE: I just wanted to say, I've
22 never done a telephone deposition either. Unlike Ms.
23 Bernabei I have no objection to it; I think it's a
24 perfectly agreeable procedure, and we would make Dr.
25 Zebroski available at a time that is mutually

1 convenient to all the parties that intend to be on the
2 call. I think it will work.

3 And my understanding is that there is
4 counsel for the Electric Power Research Institute in
5 Palo Alto who can be made available for this. We
6 haven't heard from Mr. Blake, but as far as I'm
7 concerned that would solve our problem. And I think
8 it's a reasonable thing to do.

9 JUDGE SMITH: It would have the additional
10 advantage, I believe, of having all the parties know
11 the results of the deposition far enough in advance to
12 make whatever adjustments are necessary to have an
13 accurate record.

14 Mr. Blake, may we hear from you on this?

15 MR. BLAKE: I can make it unanimous that I
16 never have been involved in a telephone deposition as
17 well, although I'm willing to give it a try here. My
18 suggestion is that we do it during the period of time
19 that -- Dr. Zebroski's counsel has indicated he would
20 be available during the work day. That would be
21 somewhere between today or -- I guess we can't do it
22 on Monday because we have a Creitz deposition
23 scheduled. But I would be hopeful that we would do it
24 as promptly as possible so that we have a record
25 available to us prior to the hearing. And I'd be

1 willing to give it a try.

2 My suggestion for the document business is
3 that we rely on those documents that we use in the
4 course of the deposition, those documents which Dr.
5 Zebroski has indicated he intends to rely on for his
6 testimony which we have placed in our discovery room
7 and are available to the parties.

8 We've only -- Dr. Zebroski has only
9 identified two to us that he intends to rely on. One
10 is some notes that he took I believe on March 30th,
11 and the second is the NSAC report. And those are
12 available and, therefore, we have a common group of
13 documents to use. Frankly, I don't know how you go
14 beyond that in a telephone deposition to use documents
15 which each of the parties don't know in advance are
16 going to be used so that you have access to them.

17 JUDGE SMITH: Well, I guess I missed a
18 point. I would assume that at sometime prior to the
19 telephone deposition that the documents that were
20 identified as having been produced under the subpoena
21 or that you've identified would be known to each of
22 you and would be available. And they would be in the
23 possession of Dr. Zebroski, his counsel out there, and
24 everybody participating.

25 MR. BLAKE: I've gone just one step further

1 and identified my suggestion at least for what those
2 documents are currently and what they ought to be for
3 the deposition.

4 MR. GOLDBERG: Judge Smith, while this is
5 primarily a dispute among TMIA and Licensee and Dr.
6 Zebroski, it does concern the staff to the extent that
7 there is a suggestion that there may be a deposition
8 on the eve of hearing. We would find that extremely
9 inconvenient as far as our being prepared for the
10 hearing and knowing in advance what the nature is of
11 Dr. Zebroski's testimony during this deposition. I
12 would on behalf of the staff support and endorse the
13 Board's suggestion that there be a telephone
14 deposition of Dr. Zebroski.

15 I think it's a perfect situation where that
16 very mechanism can be utilized to the advantage of all
17 the parties; it can be done in advance and not
18 interfere with the parties' preparation and attendance
19 at the hearing as would a deposition on the eve of
20 hearing.

21 JUDGE SMITH: Now, we haven't heard from you
22 on the scope of the document production.

23 MS. BERNABEI: I perhaps misheard Mr.
24 McBride. But we do object to doing a telephone
25 deposition. I haven't done --

1 JUDGE SMITH: Yeah, I understood you to say
2 that.

3 MS. BERNABEI: Okay, fine.

4 And I might reiterate or I might repeat some
5 of the concerns I have, which I think are keyed into
6 some of Mr. Blake's confusions as well. There seems
7 -- there is a problem in terms of identifying all the
8 documents which may or may not be used in a
9 deposition. Again, we're very unclear as to the scope
10 of his testimony. So we're somewhat unclear as to
11 what the scope of his deposition would be.

12 However, assuming that's cleared up there
13 may be questions that come up during a deposition
14 which rely on documents that we could not foresee at
15 the time. That's first, number one.

16 Number two, it appears to me that one of the
17 purposes of discovery is in order to get a fresh view
18 of the witness. And it does not seem to me that it is
19 fair to expect an intervenor or any party to basically
20 hand the witness all the documents on which he will be
21 questioned prior to a deposition. It does not
22 provide a fresh look or a spontaneous response.

23 And the third problem is, Mr. Blake has
24 suggested that we use the documents that are in the
25 document room. There's very few documents. I

1 reviewed those that were copies of them, and that will
2 certainly be insufficient to question Mr. Zebroski
3 about what I now understand to be the scope of his
4 proposed testimony.

5 So in any case we'd have to -- we'd need
6 more documents.

7 JUDGE SMITH: I think one of the things that
8 we'd have to do before you would depose him by
9 telephone or otherwise would be have a better idea of
10 the scope of his testimony. Perhaps that could be --
11 I understand he's simply going to testify as to Mr.
12 Dieckamp's involvement in the relevant days or the
13 relevant period.

14 MR. BLAKE: I should think, to the extent
15 there's any doubt or questionning about his testimony
16 -- well, I find it a little unusual. But why not just
17 do the deposition after I file his testimony? That
18 will remove any doubt. That would have to be done by
19 November 1st in any event.

20 JUDGE SMITH: That's true, yes.

21 MR. BLAKE: I can try with -- in Dr.
22 Zebroski's case to finalize that testimony in advance
23 of November 1st. To the extent I'm able to do that
24 I'm willing to do it and just set up now or try to do
25 it as close thereafter as possible so to have as much

1 lead time on the hearing as possible. But do it
2 afterwards. Then this quarrel of what it is and what
3 it isn't evaporates.

4 JUDGE SMITH: All right.

5 That certainly makes sense. That won't be
6 just in a few days in any event.

7 Your objection to use of a telephone for
8 deposition seems to be centered on your inability to
9 have personal contact with the witness. I can see
10 that there might be a case where that wouldn't be a
11 problem. But here we're dealing with a scientist who
12 although is going to be a fact witness it not going to
13 be a fact witness of the nature that involves total
14 demeanor and credibility. In any event, you always
15 have had your option of going out there and deposing
16 him if that is that important to you.

17 MS. BERNABEI: Well, I should state our
18 position because it may not be clear on the record
19 because we don't have the resources to do that. And
20 obviously --

21 JUDGE SMITH: I -- you're asking for
22 everything and then -- I just don't think that you've
23 made a case here.

24 MS. BERNABEI: Well, just so it's clear on
25 the record. It is Licensee's witness; he was

1 announced at a late date.

2 JUDGE SMITH: Yes, but to depose him the
3 night before the hearing is just a burden on
4 everybody. And not only that but it does not produce
5 the results, the reliable results that a timely
6 deposition would.

7 MS. BERNABEI: Well, my understanding is Dr.
8 Zebroski is available; it is not a burden on him. My
9 understanding is that Licensee objects. And from my
10 experience in the depositions up to this point it's
11 basically the GPU attorneys and ourselves who
12 participate in these depositions. The staff has asked
13 very few questions.

14 It is also my understanding that the hearing
15 is currently scheduled to begin on the 15th unless --

16 JUDGE SMITH: No, no, we indicated that
17 we're shooting for the 14th.

18 MS. BERNABEI: Okay.

19 Well, it was -- I wasn't clear. It did have
20 the indication you were considering that.

21 In any case, what I would suggest is that it
22 be kept at the 15th as originally scheduled.

23 JUDGE SMITH: It was never scheduled for the
24 15th.

25 MS. BERNABEI: Well, that's what I read in

1 the pre-hearing --

2 JUDGE SMITH: No, you read about the 15th.

3 MS. BERNABEI: About the 15th.

4 JUDGE SMITH: And the 14th is about the
5 15th.

6 MS. BERNABEI: In any case, I think the
7 burden falls on Counsel for the Licensee and on 1MIA
8 Counsel. And I would suggest that given Dr.
9 Zebroski's availability at least at the time the
10 subpoena was issued that we could sustain that burden.
11 And I'm sure we could get a timely copy of the
12 deposition. It is daily copy. I think that is
13 available.

14 JUDGE SMITH: Would you remind me, Mr.
15 Blake. Have you specifically objected to the
16 deposition on the eve of the -- on the 13th, evening
17 of the 13th?

18 MR. BLAKE: Yes, sir.

19 JUDGE SMITH: Because of the timing of it?

20 MR. BLAKE: Yes.

21 JUDGE SMITH: I think those are reasonable
22 complaints. We will give you the opportunity to
23 depose Dr. Zebroski by telephone. I invite the
24 parties to set it up. If they need Board assistance
25 in setting it up, it is a matter that the Board would

1 be interested in. We will help if necessary. We
2 would rather not however.

3 Now, as to the documents to be produced.
4 Inasmuch as your only grounds for deposing Dr.
5 Zebroski after the close of discovery is the fact that
6 he was identified as a witness, it seems to me that
7 there's a great deal of merit to limiting the
8 production of documents to those documents upon which
9 he has relied, be it either expressly or not expressly
10 in his testimony, but those that actually -- I don't
11 mean those that he's just referred to in his testimony
12 but those which support his testimony.

13 MS. BERNABEI: Well, discovery is broader
14 than that under the --

15 JUDGE SMITH: I understand discovery is
16 broader than that, but you're asking for a
17 particularized discovery on particularized grounds.
18 You could very well have deposed Dr. Zebroski on the
19 full range of discovery that we authorize in this
20 hearing.

21 MS. BERNABEI: No, I understand that.

22 I'm concerned, however, about discovery
23 somewhat broader than Licensee has offered. In other
24 words, there are very few documents in the document
25 room. And I have reviewed those. It appears to me

1 that some limit of discovery of Dr. Zebroski in terms
2 of production documents is appropriate. And what I
3 would suggest is that we work with his counsel to
4 limit the subpoena. Again, the only --

5 JUDGE SMITH: Fine, if you can work it out
6 that's great. However, I think as far as the Board is
7 concerned, given the particular reasons for this
8 deposition, the only basis that you have for deposing
9 him beyond discovery at this time is the fact that
10 he's going to be a witness. Given that the documents
11 that you are required to are those that pertain to his
12 testimony as a witness.

13 MS. BERNABEI: Oh, I have no quarrel with
14 that at all. What I'm saying is that Licensee is
15 unduly restricting us to a few documents which they
16 choose to identify for us. It appears to me that he
17 has other documents relevant to his testimony. I have
18 no problem with that limitation.

19 JUDGE SMITH: Okay.

20 MS. BERNABEI: But relevant to his testimony
21 which have not been produced. That's all we're
22 requesting.

23 JUDGE SMITH: They're not relevant to his
24 testimony, upon which he depends in his testimony
25 whether expressly or not. I mean the documents

1 relevant to his testimony could incorporate again
2 virtually the entire accident.

3 MS. BERNABEI: That's not what we're
4 interested in.

5 JUDGE SMITH: Well --

6 MS. BERNABEI: Obviously, what we're
7 interested in is those documents that give us a basis
8 either to cross-examine or view the support for his
9 testimony. I assume upon representations made here
10 today, he's going to testify as to his involvement up
11 through some point in April and analyzing the accident
12 and Mr. Herbein's involvement along with him.

13 It seems to me that that requires certain
14 production of documents that go beyond what had
15 previously been produced in the document room. I
16 don't think it requires extensive discovery, but
17 certainly I think we're entitled to discovery in that
18 period.

19 JUDGE SMITH: See, you once again find
20 yourself in a situation of your own making. I'm
21 looking at page three of the subpoena duces tecum that
22 I signed -- or the application for it.

23 Presumably, it is repeated in the subpoena.
24 And we began on page three of it. You have Categories
25 A, B and C. A is all personal notes, files, logs or

1 data Dr. Zebroski or staff collected during the course
2 of conducting a National Safety Analysis Center
3 investigation and analysis of the accident including,
4 but not limited, to any personal notes or
5 conversations with GPU Utilities, GPU Service
6 Corporation, Ltd., or other GPU subsidiaries
7 concerning the TMI 2 accident. That's for openers.

8 That's for openers. B, all correspondence
9 and other written communications to licensee and NSAC
10 and/or EPRI concerning investigation analysis
11 conducted by NSAC or EPRI of the TMI 2 accident. That
12 embellishes it a little bit. You want -- you have
13 asked for the moon, see, and if you --

14 MS. BERNABEI: Can I state why, Judge Smith?
15 The reason is we had no indication of what he was
16 going to testify at the time we applied for the
17 subpoena. The representation in licensee's
18 supplemental response announcing him as a witness was
19 -- said that he was to testify as, and I am quoting,
20 "the state of knowledge of technical personnel at the
21 site and Mr. Dieckamp's state of mind."

22 We had no idea other than knowing from our
23 own research that Dr. Zebroski was head of the -- or
24 was one -- the director of the NSAC analysis. We had
25 no idea what he was going to testify to. The state of

1 knowledge of technical personnel at the site and Mr.
2 Dieckamp's state of mind is very broad and that's why
3 our subpoena requested information that was very
4 broad.

5 JUDGE WOLFE: Prior to October 11th, which
6 was the date of your application for subpoena, were you
7 aware of Dr. Zebroski's involvement in this case?

8 MS. BERNABEI: Involvement? I'm sorry.

9 JUDGE WOLFE: Were you aware of Dr.
10 Zebroski's involvement in this case, not that he was
11 being called as a witness, but his involvement in the
12 case?

13 MS. BERNABEI: I had no knowledge that he
14 had information or testimony --

15 JUDGE WOLFE: I'm not asking about whether
16 he had information. Does his name appear in the
17 various documents that you had received during the
18 course of production. Be careful on your answer, now.

19 MS. BERNABEI: The only -- I had not
20 personally observed his name with regard to the NSAC
21 analysis. I had not personally known or seen his name
22 in connection. If I had, it didn't register because I
23 did not, other than meeting him at a conference, had
24 not -- now, you have to know for the moment that I
25 entered this case in June. I had not previously been

1 involved so I didn't know of Dr. Zebroski's
2 participation any earlier time.

3 (Short discussion held off the record.)

4 JUDGE WOLFE: Mr. Blake, would you respond
5 to that in the course of production documents to TMIA
6 and/or during the course of the licensee's responses
7 to written interrogatories during taking of
8 depositions, was Dr. Zebroski's name brought up at
9 all?

10 MR. BLAKE: Judge Wolfe --

11 JUDGE WOLFE: Or involvement in this case?

12 MR. BLAKE: I have no recollection of Dr.
13 Zebroski's name being explicitly referenced in the
14 interrogatory answers up until we supplemented, made
15 the decision and supplemented, to identify him as a
16 witness. Whether or not his name came up, I think it
17 only would have if there, and I don't recall it in Mr.
18 Dieckamp's deposition, and in terms of the 40,000 or
19 more documents, the date of the documents we have
20 produced, I just don't -- certainly it would be --
21 report but I don't know.

22 (Short discussion held off the record.)

23 JUDGE SMITH: The Board will enforce a
24 subpoena only to the extent that the documents on
25 which Dr. Zebroski depends on his testimony and those

1 in which he used in preparing his testimony. I mean,
2 the documents that, for example, he used to refresh
3 his memory as it appears in this testimony, even
4 though the document itself is not -- even though the
5 testimony does not fail in the absence of the
6 document.

7 MR. MC BRIDE: My impression is that that
8 will be entirely agreeable with Dr. Zebroski.

9 JUDGE SMITH: Thank you.

10 And that you will arrange to get those into
11 the hands of the participants?

12 MR. MC BRIDE: Well, either Mr. Voigt or I
13 will. I personally, although it may come as a
14 surprise to you, do not even have the documents that
15 are in the licensee discovery rule. I have not tried
16 to involve myself in every aspect of this thing --

17 JUDGE SMITH: Sure.

18 MR. MC BRIDE: -- but only to defend his
19 interests as they appear before you and that -- but
20 I'm sure that between the two of us and EPRI we can do
21 that.

22 JUDGE SMITH: Okay.

23 Then I might also say in respect to this
24 that I am absolutely confident that a telephone
25 deposition is workable and we don't want to hear that

1 it is not workable because I can, myself, figure out
2 how to do it in just a moment. I mean, it's not
3 difficulty. You won't have any difficulty doing it,
4 I'm sure.

5 MR. MC BRIDE: Could I just make one
6 suggestion, Mr. Chairman?

7 JUDGE SMITH: Sure.

8 MR. MC BRIDE: We just -- could I just
9 suggest a date right now and see if it's agreeable
10 with the parties. Because my experience in these
11 sorts of things is not just in this proceeding but in
12 lots of proceedings like this is that you try to
13 arrange it by making all kinds of phone calls later on
14 and end up with all kinds of conflicts.

15 JUDGE SMITH: Yes, it's indeed efficient to
16 do it if you want to do it now. We can go off the
17 record for that, I suppose.

18 MR. MC BRIDE: Well, I have a very easy
19 suggestion. My understanding is that the testimony
20 will be filed on November 1st. I assume Ms. Bernabei
21 will file it by November 2nd, which is a Friday, and if she
22 turns to that as the top piece on the pile, we can
23 probably resolve that day, you know, exactly when
24 we're going to do it. But I would assume we could do
25 it on November 6th and if my understanding of your

1 schedule is that that would accommodate the parties
2 and the hearing is to begin on the 14th. And I just
3 propose that unless that's a problem for other people.

4 MS. BERNABEI: As long as we have the
5 documents by that date, I have no problem.

6 MR. MC BRIDE: I don't -- I haven't proposed
7 this to Mr. Blake. I just would like to inquire
8 whether it's workable for him. If it's not, I'll make
9 another suggestion.

10 JUDGE SMITH: I see that participants are
11 going to their calendars. I don't think they're ready
12 to respond yet.

13 MR. BLAKE: That's definitely an agreeable
14 schedule date for me.

15 JUDGE SMITH: Mr. Goldberg?

16 MR. GOLDBERG: Yes. That's fine.

17 MR. MC BRIDE: And one final detail, if I
18 could. Do we have an understanding that because TMIA
19 is calling this deposition that it will take the
20 responsibility for and incur the expense of setting up
21 this conference call?

22 JUDGE SMITH: I don't -- the Board has an
23 interest of its own in having testimony well tested.
24 And I don't know if they have the facilities, for
25 example. That is why I stated if resources become a

1 problem, they call upon the Board for help. In fact,
2 if you can't work out the details of it as the
3 deposing officer, how an oath is administered and that
4 type of thing, we could have, for example, a special
5 master of the Board conduct it for you or whatever.
6 But I don't wish to make the ruling now to further
7 complicate the situation at TMI. What would be -- the
8 expense would be?

9 Just the normal expense they would have in a
10 deposition plus the telephone lines.

11 MS. BERNABEI: I could foresee some
12 problem. I'm not sure if our telephones could
13 accommodate it, but assuming that can be worked out I
14 see no problem.

15 JUDGE SMITH: All right.

16 Fine.

17 MR. GOLDBERG: Judge Smith, I've just been
18 reminded that depositions of the Staff's witness on
19 training begin on November 5th and possibly will go
20 over to November 6th. I hope that's not the case but
21 Judge Wolfe had a week or ago ruled that UCS could
22 depose the Staff's training witnesses beginning on
23 November 5th.

24 I don't know what the interest of the other
25 parties is in attending the depositions of the Staff's

1 training witnesses. For my own part, I don't believe
2 it will be a problem even if the depositions do go
3 over to the 6th. We still can cover both the
4 depositions of the Staff's training witnesses and the
5 deposition of Dr. Zebroski. But I just point out for
6 everyone's information that there is the possibility
7 of depositions -- witnesses on the 6th.

8 JUDGE SMITH: But UCS is primarily
9 interested in that?

10 MR. GOLDBERG: Yes. That's correct.

11 JUDGE SMITH: Yes.

12 MR. GOLDBERG: UCS and the Staff. Right.

13 JUDGE SMITH: Well, do you think that Mr.
14 Jordan and his wife should be informed of that? They
15 know what the subject matter, that this is going to be
16 the subject matter today but I wonder if you would
17 undertake to inform them because there'd be sometime
18 before the transcript is available to them.

19 MR. GOLDBERG: Yes. I don't believe they
20 have been even attending the depositions on the
21 Dieckamp mailgram. So I don't suspect it'll be a
22 problem for them.

23 JUDGE SMITH: His wife's expressed no
24 interest in the whole area when I informed her about
25 the session today.

1 JUDGE WOLFE: Mr. Goldberg, where are those
2 depositions being taken?

3 MR. GOLDBERG: They're being taken in
4 Bethesda.

5 JUDGE WOLFE: I see.

6 JUDGE SMITH: All right.

7 Is there anything further on that point?
8 Let's move, then, to the request to observe or
9 participate in Mr. Stier's interviews. And let me
10 open the discussion by stating that, as I understand
11 it, having read the letter of February, 1984, that Mr.
12 Stier is being given a great deal of latitude in how
13 he conducts his interviews and that his preference not
14 to have others present, for that reason should be
15 given a great deal of deference.

16 On the other hand, I learned for the first
17 time in reading that letter today that apparently one
18 of the purposes of his interviews is to present -- is
19 to prepare a report, and we should corrected on this
20 if I'm wrong, is to prepare a report for the very
21 purpose of this hearing, prepare evidence for this
22 hearing which creates, as you well know, an
23 evidentiary problem.

24 I hope he would address that. I mean, if
25 there were a question of Mr. Stier -- is it Stiers or

1 Stier?

2 MR. BLAKE: Stier.

3 JUDGE SMITH: Stier. Conduct interviews
4 which are a part of the licensee's business without
5 relation to the litigation, I don't think we would
6 even have the authority to require participation by
7 outsiders. And I don't know that we have the
8 authority to require participation by outsiders in any
9 event. However, I am concerned about the problem
10 which is created where there is a generation of data
11 and the foundation of -- for a report, which in part
12 is being created as evidence in our case.

13 Now that, I think, you have to deal with.
14 If it wasn't for that, I don't think you would have a
15 chance of getting anywhere near those interviews.

16 MS. BERNABEI: May I address specifically --
17 I don't want to interrupt you. May I address
18 specifically that point. We did, as Mr. Voigt said,
19 receive the response yesterday evening and I haven't
20 had a chance to review it in depth.

21 However, what I'd like to -- I'd like to
22 pick up on the point you raised, Judge Smith. My
23 understanding, and I was not at the meeting but Ms.
24 Doroshow was, is that on September 20th there was a
25 meeting between Mr. Stier and the NRC Staff. Mr.

1 Stier, at that time, discussed his investigation. Mr.
2 Russell, I believe, asked Mr. Stier directly, given
3 the criminal conviction, given the fact that GPU has
4 agreed to violating his procedures, and given the NRC
5 Staff's very position on this issue that leak rates
6 were falsified in Unit 2 as it was expressed in NUREG
7 0680, why are you doing this investigation.

8 And my understanding is that Mr. Stier
9 stated directly that meaning we're doing it for
10 purposes of the Restart Proceeding. Our point, and
11 really the reason we brought the motion at this time,
12 is that -- well, we understand the issue before this
13 Board is, given what's gone on on the leak rate 2
14 issue in the past, is really very -- is somewhat
15 limited. It seems to me that there is a -- that the
16 corporation has pled guilty to violating procedures.
17 It appears that the Staff has reached a position that
18 leak rates were falsified.

19 The questions, to me, before this Board is
20 whether or not that reaches above those positions in
21 management which the U.S. Attorney found and that was
22 the senior site personnel, the Miller/Herbein level.
23 Number one and number two, I expect the licensee's
24 response will be, in large part, we've taken measures
25 to insure that that won't happen again, given the

1 restart of Unit 1 or that the people that were
2 involved will not be involved in the Unit 1 operation.

3 We see the Stier investigation as part of
4 that licensee response. I was a little bit surprised
5 by the representation that it was somehow independent
6 because the prior Stier investigation was, in fact,
7 pretty much viewed as an internal investigation.
8 That's the way Mr. Stier represented himself at the
9 interviews, as retained by the company to do an
10 investigation.

11 But in any case it's part of the licensee
12 response and we expect it to be a big part of their
13 case. That is, that no matter what went on in the
14 past, no matter what levels of management were
15 involved, we've taken adequate measures to insure that
16 won't happen again, the Stier investigation being part
17 of that response. Given that fact, we think at some
18 point discovery on the investigation itself would be
19 appropriate.

20 Certainly, what we're trying to do is short-
21 circuit that and shorten whenever discovery is
22 eventually necessary.

23 JUDGE WOLFE: Well, you're not arguing that
24 you have a right to participate in these interviews.
25 You're just suggesting that by being permitted to

1 participate, that this would reduce -- would expedite
2 these proceedings and lessen the discovery burden in
3 the future. Isn't that your position?

4 MS. BERNABEI: That's true.

5 JUDGE SMITH: You have not made the argument
6 that I suggested and that is an investigation done for
7 litigation may not -- may have some pretty big
8 problems, not the least of which are the hearsay rule,
9 when it comes to hearing. You have not made that
10 argument. However, we have to -- we have our own
11 responsibility to worry about those things. I was
12 wondering if -- there, of course is a public interest
13 and there's a Board interest in having Mr. Stier's
14 investigation be the best it can be done. And I
15 don't believe having your participation is going to
16 improve the investigation with respect to the candor
17 of the persons interviewed and that -- I think it's
18 going to be an impediment to an efficient good
19 investigation. I may be wrong about that and I'll
20 hear from you.

21 On the other hand, if Mr. Stier is going to
22 come before the Board and testify that he interviewed
23 a lot of people for the purpose of bringing a report
24 which is evidence in this hearing, that's going to be
25 big problems. And it's not investigation done in the

1 normal course of one's business as -- like an I and E
2 investigation is or a policeman's or somebody else's.
3 It's one that is apparently being done in material
4 part to produce evidence at our hearing. So I'd like
5 to hear from whoever wishes to talk about that.

6 MR. BLAKE: Let me start. Is the question
7 that you raised, Judge Smith, prompted by the
8 statement in Mr. Clark's letter?

9 JUDGE SMITH: Yes.

10 MR. BLAKE: That the report will be provided
11 to the NRC and the Board?

12 JUDGE SMITH: Yes.

13 MR. BLAKE: Well, let me say, it is hard
14 these days for GPU to separate its internal business
15 and ongoing activities from what has been a continuum
16 of the hearing activities over the last four or five
17 years. But this investigation is being done for the
18 purposes that Mr. Clark's letter states on the first
19 page. It states it's being done to complete an
20 understanding of what was being done and to fully
21 understand the cause of any deficiencies. That's what
22 prompts the investigation.

23 His statement that -- on page two that the
24 report will be provided to the NRC and to the Board, I
25 don't think reflects any more than the continued

1 sensitivity that the company has that anything that's
2 related to the proceedings pending before the NRC,
3 we're sending out and providing to people.

4 JUDGE SMITH: As you're required by law to
5 do.

6 MR. BLAKE: Yes, sir. I don't view this as
7 being done for the purpose of providing a GPU position
8 or being done for the purpose of providing evidence
9 in a hearing on leak rate testing. But there's no
10 doubt in my mind by the same token that it will be
11 involved in any such hearing. It will be, from our
12 standpoint at least, the most comprehensive evidence
13 of the subject and therefore, I envision it as being
14 involved in the hearing. I can't envision the hearing
15 on leak rate testing without its being involved. But
16 as to the purpose, I look to the first page of Mr.
17 Clark's letter and his observation that it will be
18 provided to the NRC and to the Board as no more than
19 that.

20 MR. GOLDBERG: Judge Smith, I'm sure it's
21 the licensee's hope that there will be no hearing on
22 leak rate matters because that's one of the issues
23 pending before the Commission now which the parties
24 have recently addressed in briefs and which they'll be
25 further addressing in reply briefs this coming Monday.

1 But, however the Commission decides that
2 issue and should they decide that it's not necessary
3 to have a hearing on leak rate matters, perhaps we
4 could get a statement from the licensee as to whether
5 they would conduct that investigation and complete
6 that investigation even if there weren't going to be a
7 hearing on leak rate matters.

8 MR. BLAKE: We are and we will.

9 JUDGE SMITH: I see Mr. Clark's -- strike
10 that.

11 Well, the letter can be taken in two lights
12 and I do see that Mr. Clark's language is a simple
13 reflection of the law of the Commission and, in fact,
14 the law of this case or at least a consideration in
15 this case, where as I was monitoring the early aspects
16 of this proceeding, questions were raised as to your
17 failure to provide an earlier report. And I would
18 expect you to be quite careful in making sure that in-
19 house investigations are provided to the Commission.

20 I guess the way I read it is it's neutral
21 and, based upon your representation and the --
22 considering the fact that the law does require any
23 such report to be provided to the Presiding Officer in
24 NRC, I don't see that there may be a problem.
25 However, that's a factual issue.

1 If it should turn out that the report is in
2 part prepared, knowing -- with the intent of it being
3 an exhibit, if that is a material part of the
4 direction of the investigation, you're going to have
5 big hearsay problems, I believe. If it's an internal
6 investigation, which would happen anyway, and is not
7 influenced by the fact that it will be an exhibit or
8 evidence in our hearing, then I think it is nothing
9 different than any other type of investigation or
10 audit or whatever you might have internally or an I
11 and E report and audit or any other thing which is
12 done in the normal course of business. That's the way
13 I see it. That's a factual question.

14 Now, with respect to your point that you're
15 going to do GPU a favor and relieve their discovery
16 burdens later on, they have a right to accept your
17 offer or not and they're rejecting that, apparently.

18 MS. BERNABEI: May I just state what I
19 observed. The reason we proposed this, my
20 understanding is that the Commission direct -- removed
21 the stay from this issue, thereby instructing or
22 guiding the licensee where to go forth in the
23 discovery. As you remember, both the Commonwealth and
24 TMIA requested the discovery go forward in an
25 expeditious manner on the two leak rate issues, TMI 1

1 and TMI 2.

2 The Board suggested, given the other
3 present business, that there be informal discovery
4 between the parties on these two issues, the leak rate
5 issues, and that at some point in the future that
6 formal discovery be instituted. We attempted to do
7 that. That is, we said what we see is that the Stier
8 interviews are essentially depositions that are being
9 taken by one of the parties, that is the licensee.
10 Why don't we -- if we can participate that will be
11 informal discovery. It appears to me that if the
12 licensee is not going to agree to this informal type
13 of discovery, then the Board should order or permit
14 formal discovery.

15 What we're suggesting is essentially that
16 the discovery licensee is conducting at this period be
17 participated in by all the parties that wish to. In
18 terms of impeding Mr. Stier's investigation, I think
19 the biggest impediment, and we mentioned this in our
20 motion at a former time, was the operator's and other
21 personnel's potential criminal liability. We have had
22 representation from Mr. Voigt that that no longer
23 exists. That is, that the operators, at least the
24 ones he represents, no longer feel they need to or
25 have a right to assert a Fifth Amendment privilege

1 because the Statute of Limitations has passed on both
2 these issues. And in conversations -- in other
3 conversations that it's been clarified that that is
4 their position.

5 I think that's the biggest impediment to the
6 operators and other personnel speaking freely. Given
7 that that's gone I don't see how participation by
8 another party will do anything but lessen the burden
9 on the operators --

10 JUDGE SMITH: Ms. Bernabei, I don't
11 understand that the Stier endeavor is the taking of
12 depositions. I understand it to be an investigation.
13 An investigation requires judgment, talent, art even,
14 intuition, all the things that an investigator does.
15 An investigator might ask totally off-the-wall
16 irrelevant questions if he feels intuitively it's
17 going to aid him in his investigation. It's that type
18 of impediment that I had in mind. An investigation of
19 this nature is complex and it cannot take the formal
20 route that you would give it. Well, putting that all
21 aside, I don't believe that we have the authority to,
22 in the face of objections by the utility, I don't
23 believe we have the authority, even if we were so
24 inclined, to grant you relief. I mean, they're
25 conducting internal business, not depositions.

1 Now, I still think that they may have some
2 big problems in getting that report into evidence. I
3 don't know. I don't want to second guess -- I don't
4 want to anticipate problems. I just -- there may be
5 some problems. That may be a very difficult situation
6 we may be faced with. The need on one hand to have a
7 complete record in everything that is done; on the
8 other hand to reconcile an investigation which is
9 being conducted with the certain knowledge that the
10 product will be viewed at in an adjudicatory sense.
11 It's just a problem that we'll have to wrestle with
12 and everybody should be prepared to deal with.

13 JUDGE SMITH: Do you wish to be heard, Mr.
14 Voigt or Mr. McBride?

15 MR. VOIGT: Yes, Judge Smith. I'd like to
16 just briefly state the position of the employees. And
17 they would be opposed to having the staff or TMIA or
18 anybody else, sit in on these informal, off the record
19 interviews.

20 I might point out that we had a meeting with
21 Mr. Stier, at his request, my colleagues and I, and he
22 and his colleagues. And he explained the nature and
23 purpose of his investigation. And he told us that he
24 wanted to have the opportunity to talk to people
25 informally, off the record, to try to get the most

1 candid possible explanation of these events that took
2 place five years ago.

3 And he also made it very clear that he was
4 running his own investigation. He wasn't notifying
5 the company of what he was doing or how he was doing
6 it and it was his purpose to be completely independent
7 from the company. And I'm satisfied that that's the
8 case.

9 We've had three interviews, so far. Two of
10 them I don't think the company even knew about. The
11 third one happened to be one of an employee and,
12 therefore, the company, presumably, at least was aware
13 that the employee was being called upon for the
14 interview.

15 The interviews have been deep and informal
16 and, largely, nonconfrontational. And it's our
17 conviction that the insertion of any third party would
18 have a chilling effect on the ability of our clients
19 to try to explain what happened in an informal and
20 candid matter.

21 Let me just touch upon two other points.
22 It's my understanding that Mr. Stier intends to
23 continue the informal interview process while the
24 hearings are taking place before this Board, starting
25 in two weeks. We have no problem with that. But I

1 don't see how the parties to this proceeding could go
2 forward with the hearings and, at the same time,
3 participate in Mr. Stier's interviews as TMIA has
4 requested.

5 Also, the interviews will be conducted, must
6 be conducted, at the place of each individual's
7 present business or residence. And I question how
8 feasible it would be for the parties to follow Mr.
9 Stier around the countryside and attend these
10 interviews.

11 But putting apart these questions of
12 feasibility, I simply believe that it is not right to
13 intrude third parties in an informal interview. So
14 that's our position.

15 JUDGE LINENBERGER: Mr. Voigt, perhaps you
16 can assist the Board here on this -- on the last point
17 you were making, where, if I understood you correctly,
18 you first observed that the Stier effort will time
19 wise overlap Board hearings, and that the Stier effort
20 will be distributed amongst a number of geographic
21 locales and, therefore, you commented, if I understood
22 you correctly, on the practicality of TMIA being able
23 to participate in our hearings and at the same time
24 participate in the -- or sit in on the Stier efforts.
25 Do I characterize correctly what you said?

1 MR. VOIGT: That is exactly right, Judge
2 Linenberger.

3 JUDGE LINENBERGER: Well, now, let me ask
4 you a question here. I don't -- I guess what I'm
5 struggling with is the relevance of that comment to
6 the propriety of TMIA's participation in the Stier
7 efforts. If they are willing to accept the logistical
8 problems and the possible penalties that go with the
9 kinds of things you talked about, why isn't that up to
10 them? And how is that observation of yours relevant
11 to the question we're wrestling with of the
12 appropriateness of their involvement?

13 MR. VOIGT: It is marginally relevant only,
14 Judge Linenberger, because it's part of the larger
15 problem of slowing up or impeding the completion of
16 Mr. Stier's informal interviews. If there were no
17 hearing, presumably, he could, you know, progress a
18 little more rapidly. That's the only reason I brought
19 it up.

20 But you're right. Our basic problem here is
21 that it's going to interfere with the informal, off
22 the record, candid nature of the interviews, not the
23 timing.

24 JUDGE LINENBERGER: Thank you, sir.

25 MR. GOLDBERG: Judge Linenberger, I would

1 like to make a comment, which addresses the question
2 you had for Mr. Voigt, and that is that the Staff has
3 viewed the Stier investigation as an independent
4 investigation which the licensee has commissioned be
5 done. And it was always our understanding that it
6 would be conducted in that fashion.

7 If the Board does permit one party to this
8 proceeding to attend those interviews so that it
9 becomes, in a sense, an informal discovery mechanism,
10 then I would think that if one party is permitted to
11 do so, other parties would be permitted to do so. And
12 we'd be in a situation where the other parties may
13 feel that to protect their interest in this
14 proceeding, that they may have to attend or may wish
15 to attend the interviews also.

16 And you quickly get in the situation where
17 there clearly, in our view, will be a chilling effect
18 on the statements made by the individuals as opposed
19 to being confronted by one individual asking some
20 informal questions. There's a room full of people who
21 suddenly had an interest in everything that's being
22 said because the results may find their way into the
23 hearing process.

24 We recognize this, as the Board has
25 indicated, that there may be some evidentiary problems

1 associated with the ultimate report. But that's not
2 uncommon. There will be hearsay problems. At the
3 time, the Board can deal with them. It may be that
4 the document is admitted for whatever weight the Board
5 deems appropriate, recognizing that when there are a
6 lot of witnesses that have something to say about the
7 heart of the issues, that their testimony before the
8 Board may be accorded more weight than the hearsay
9 statements in the Stier report.

10 But in any event, I do see some great
11 practical problems flowing from opening up what is now
12 a private investigation to public participation.

13 MR. BLAKE: Judge Smith, may I say two
14 things?

15 MS. BERNABEI: May I also comment too before
16 you answer this one?

17 JUDGE SMITH: Ms. Bernabei?

18 MS. BERNABEI: I'd just like to respond to a
19 few things that have been said. I was taken, I think
20 it was by your comment, that perhaps you didn't have
21 the authority to do this. I'd like to give you a
22 little background on why we made the request and also,
23 which I think will answer your question, that you do
24 have the authority to order this.

25 The interviews that were conducted in the

1 course of the Stier investigation into leak rate ones,
2 were done in a deposition form. In other words, the
3 witnesses were sworn in. There was an on the record
4 deposition and they were asked questions in a formal
5 manner. Today, for the first time, I understand that
6 that has not been done, these are to be off the record
7 discussions. I had never previously understood that.
8 And, if that is the case, then I think we're in a
9 different situation.

10 My understanding was it would be formal
11 depositions with witnesses sworn in and their
12 testimony transcribed. Given that, I think that is
13 essentially a -- that is a discovery tool, which this
14 Board has authority to state another party should be
15 present and allowed to participate.

16 The second point is, if they are to be
17 informal, off the record discussions and not
18 depositions, then I would suggest that if we're not
19 permitted to participate, then perhaps that we should
20 be allowed a formal discovery. I think the informal
21 discovery method does work if the parties cooperate
22 with each other and can work out something.

23 In this case, it does not appear that we
24 will gain access to the operators and other
25 individuals who we would wish informal discovery of

1 through this process. So perhaps formal discovery
2 would be appropriate.

3 The third point is that the reason we
4 brought this motion is because, since you wanted to
5 ask for formal discovery, and we understood in context
6 of Mr. Stier's depositions it would be a formal
7 discovery mechanism and we should be allowed to
8 participate. At the present time, we have no access
9 to the available interviews of the operators.

10 There is an extensive Grand Jury record. It
11 has, on four prior occasions as I understand, been
12 denied to particular individuals, the company,
13 criminal defendants and others by Judge Rambo on the
14 ground that a sufficient showing has not been made.
15 Without formal discovery, we can't ask for those Grand
16 Jury -- we can't even begin to ask for them and try to
17 make that showing.

18 But given the fact that other access to
19 licensing witnesses is cut off, we suggested this
20 method given. If the licensee will not agree, I
21 suggest we do -- that this Board as TMIA and the
22 common law suggested, open up formal discovery.

23 JUDGE SMITH: Well, of course, it is our
24 intention to provide the full resources of the
25 commissions discovery authority where appropriate.

1 It's just a question of when.

2 Mr. Voigt?

3 MR. VOIGT: Just so that no one will
4 misunderstand, I didn't intend to represent that there
5 may not be formal, recorded interviews taken by Mr.
6 Stier. And, in fact, he has told us that he may wish
7 to do that. But we're not anywhere close to that,
8 yet. And at the present time, he is proceeding in the
9 informal mode.

10 JUDGE SMITH: Okay.

11 Do you think that when it reaches the formal
12 reported interview stage, that the parties position
13 may be different as far as the participation of Ms.
14 Bernabei or somebody from TMIA?

15 MR. VOIGT: I would be willing to reconsider
16 my position. But I would have to, first of all, find
17 out how Mr. Stier felt about it.

18 JUDGE SMITH: Yes. Mr. Stier made the will
19 to look at what we had to say about Mr. John Wilson's
20 investigation on the cheating. A certain amount of
21 formality, I believe, is essential. A series of
22 unreported oral -- unrecorded oral interviews would be
23 a very large burden for Mr. Stier to incorporate in
24 any valuable report, I would think. You know what I'm
25 referring to?

1 MR. VOIGT: Yes, sir.

2 JUDGE SMITH: Yeah.

3 MR. BLAKE: Judge Smith, let me say -- I
4 said earlier I wanted to say two things. Those two
5 have not been based on Ms. Bernabei's comments, but
6 let me sort the two.

7 First, our opposition to the involvement of
8 the parties, including TMIA, in Mr. Stier's interviews
9 includes both informal and formal interviews. I don't
10 make any distinction between those. And I think the
11 problems that I see and what I understand Mr. Stiers
12 position to be, to be applicable to both informal and
13 formal interviews. In the past, Mr. Stier has
14 employed both in his investigative techniques. And I
15 believe him to be intending to do that in this
16 investigation.

17 JUDGE SMITH: Do you think it would be
18 inconsistent to your commitment to Mr. Stier to fail
19 to argue that and to now ask him to change? Is
20 that --

21 MR. BLAKE: No, sir. I had not intended to
22 argue distinction. And when I asked for the letter
23 from Mr. Stier on his position, I don't believe he had
24 any such distinction in mind. I mean it to cover
25 both.

1 JUDGE SMITH: Well, yeah. Mr. Blake, I
2 might say that your position must be given a great,
3 great deal of deference on this, because to the extent
4 that your relationship with Mr. Stier does not permit
5 participation by TMIA. To that very extent, as Ms.
6 Bernabei has pointed out, to some other method of
7 verifying the basis for the report will have to be
8 looked at. I mean, she's going to have to depose the
9 people upon whom he relies on his report, I would
10 imagine, at least most of them, or some of them, those
11 who are important.

12 I think she has a good point there.
13 However, that's your burden. It's not Mr. Stiers
14 either, I guess. He'll have a report he'll be done
15 with. But that's your burden.

16 MR. BLAKE: The second point I wanted to
17 make, Judge Smith, was with regard to, again, the
18 purpose or the use of the report. I have stated that
19 this report would be done whether or not there were
20 hearings. But that Mr. Stier is aware that there --
21 of this proceeding, that this subject has been
22 reopened, that in all likelihood his report would
23 become evidence in that proceeding. I think this is
24 without doubt. And I don't know how to avoid that.

25 And this company's activities have involved

1 and been in the face of hearings now for years and
2 still off in that life. I don't know how to divorce
3 the two. And, therefore, we may well come up against
4 what you are saying, but it would not be proper for me
5 to represent to you that it is being done as a normal
6 internal investigation. I believe that to be the
7 case. But it certainly can't be divorced from the
8 fact that the company's aware we're having hearings.

9 JUDGE SMITH: Okay.

10 MR. BLAKE: Let me -- well, I'll leave it at
11 just those two things. It's not Respondent's --

12 MR. GOLDBERG: Judge Smith, I would just
13 like to make a brief comment about the legal issue
14 that's raised, and that is the Board's authority to
15 order the licensee to allow the participation of a
16 party in their investigation, over their objection.

17 Because the Board has never suggested that
18 there won't be formal discovery provided to the
19 parties under the Commission's rules of practice, I
20 view this as simply a matter for the company to make.
21 It's a private decision, which they recognize may
22 reduce their burden later on in formal discovery, if
23 they accept the requests. And if they decide to
24 decline it, realize that there may very well be
25 subsequent depositions of the same individuals who had

1 to participate in Mr. Stier's interviews.

2 But I'm concerned about the precedent that
3 would be set by an order allowing parties to
4 participate in one party's private investigations,
5 because the staff conducts investigations and
6 inspections. And whether or not the results of those
7 may be relevant material to issues that appear before
8 the Board, and whether or not inspection reports of
9 the staff may find their way into evidence, it
10 certainly would present a significant problem to the
11 Staff if we had ordering the participation of party's
12 to proceedings in our inspections and in
13 investigations that are conducted.

14 For the same reason that it's basically an
15 individual's business how he conducts his own business
16 until such point there is formal discovery, in which
17 case, compliance with the rules of the Commission are
18 required.

19 (The Judges conferred.)

20 JUDGE SMITH: It's the Board's ruling that
21 we have no authority to require participation of TMIA
22 in the Stier interviews. We think that the situation
23 has been explained quite well. And it's entirely the
24 utilities responsibility to proceed as they see fit.
25 And they recognize the evidentiary problems that we

1 have presented and the additional discovery problems.
2 And it's entirely up to them.

3 We will provide adequate discovery in due
4 time, due course. We, perhaps, will listen, if you
5 wish, to some modification of our order to allow
6 discovery to proceed earlier. But as we -- remember
7 what we said in that order, saying the discovery will
8 proceed upon the find of proposed findings.

9 As to the schedule we've put now -- put out
10 now, absorbs our capacity. And we can't manage
11 discovery disputes like this while we are trying to
12 preside over a hearing and I don't think the parties
13 can either. We'd want them to do a more deliberate
14 study job than discovery. So with those comments
15 we'll move on to the next issue.

16 Let's take a ten minute break and then we'll
17 return. Mr. Voigt.

18 MR. VOIGT: Based upon what you said
19 previously, Mr. Chairman, Mr. McBride and I will not
20 return afterwards.

21 JUDGE SMITH: All right.

22 Thanks for coming.

23 MR. VOIGT: Thank you.

24 (Whereupon, a short recess was taken.)

25 JUDGE SMITH: The Board has before it all of

1 the papers that if we have been following ordinary
2 procedure, we would have needed to rule upon the
3 motion to extend discovery period for specific newly
4 discovered evidence. And I might say with respect to
5 that, it's largely a factual question on each of the
6 five issues.

7 And it's one on which we regarded Three Mile
8 Island -- of Three Mile Island alert of having the
9 burden of showing that the matter is of such
10 importance that discovery should be extended. And in
11 no incidence were we convinced of it.

12 The explanation would involve almost a
13 recitation of the facts that the applicant has
14 produced in response to it. And I guess we'll --
15 about the only thing we can do here is give you an
16 opportunity to refute those facts, which is a third
17 round of argument.

18 There was one area on which we've, although
19 we were satisfied with the licensee's factual
20 response, that is the meeting in the afternoon of
21 March 29th. I think that's probably the most
22 important of the five that you suggested. We were
23 satisfied with it. We do believe that that, as a
24 subject matter, is important.

25 The others as a subject matter, given the

1 explanations, are not all that important. But this I
2 believe, given the issue of what it is, was important.
3 And I would recommend that you touch on that, and
4 explain to us why, if such be the case, you do not
5 believe that Mr. Blake's answer is adequate.

6 The one thing that we were taken by the
7 answer on that afternoon meeting, was the fact that
8 the discussion, or that the hydrogen, in fact, had
9 been generated by other than zirc water reaction. It
10 was memorialized a long time ago that the -- was
11 vitually positive of the matter.

12 I don't want to take you out of your order.
13 I just wanted to tell you just what we thought about
14 it. You take any order that you wish.

15 MS. BERNABEI: Let me start with the one you
16 mentioned, because we do consider it important. The
17 licensee has essentially responded saying that Mr.
18 Kunder, in prior interviews and depositions, has
19 spoken about or mentioned being made of hydrogen.
20 However, as a result of aluminum, a long term aluminum
21 reaction, the response basically did not address what
22 we consider truly newly discovered evidence, which was
23 not mentioned by Mr. Abromovici in his prior
24 deposition.

25 That is, he mentioned specifically in his

1 deposition on October 15th that hydrogen was produced
2 beyond contaminant design limits of four percent. He
3 mentioned specific number and specific amount. He
4 also mentioned that Mr. Kunder gave the briefing to a
5 group of assembled technical personnel, including
6 other GPU Service Corporation personnel sent to the
7 sight to form a task force, and Mr. Lowe, the
8 licensee's consultant who is going to testify in this
9 proceedings.

10 The new part of what Mr. Abromovici said was
11 that Mr. Kunder briefed the group on production of
12 hydrogen above four percent. Our understanding, and
13 this was confirmed by questioning Mr. Lowe in his
14 deposition, is the technical personnel at that
15 meeting, including Mr. Lowe, knew that hydrogen over
16 designed limits, the the contaminant designed limits
17 of four percent, could only be produced in two days
18 through zirconium steam reaction.

19 There were technical personnel, including
20 Mr. Lowe. I assume the other personnel knew this as
21 well. But Mr. Lowe knew on March 29th, when this
22 meeting took place, that four percent could -- that
23 quantity of hydrogen, could only be produced through
24 zirconium steam reaction.

25 That's why we think that limited additional

1 discovery at this point is valid. There were
2 personnel at this and Mr. Lowe has testified in his
3 deposition he knew that at that time, that that was
4 the only way in which one could reach this limit.

5 JUDGE SMITH: He knew that late in the
6 evening on the 29th after the meeting.

7 MS. BERNABEI: No, no, no. Let me -- I
8 probably haven't explained myself.

9 Mr. Abromovici's new testimony on the 15th,
10 has to do with equanimity of hydrogen produced. We knew
11 that he had testified at previous depositions. He
12 neither was concerned about hydrogen, but the concern
13 was related to this long term aluminum reaction.

14 No, as far as I know, it was in Mr.
15 Abromovici's testimony on October 15th. For the first
16 time he said, "Mr. Kunder briefed us on a specific
17 concern about hydrogen over design limits of four
18 percent." So four percent came into the picture for
19 the first time on that date.

20 As I understand it, there were technical
21 personnel, including Mr. Lowe, at that meeting
22 Thursday afternoon, who knew that four percent, that
23 kind of production of hydrogen in two days, could only
24 be produced by zirconium steam reaction. Mr. Lowe
25 testified in his deposition to that affect.

1 JUDGE SMITH: All right, but did you
2 confront Mr. Lowe with Mr. Abromovici's testimony?

3 MS. BERNABEI: Yes, yes. And Mr. Lowe's
4 testimony was that he did not recall a discussion of
5 hydrogen either in the general meeting or what he has
6 described as a subsequent conversation with Mr.
7 Kunder. He did not remember that.

8 He also stated that he remembers, in a
9 rather vague way, that there was a mention made of
10 pressure spike. But he also remembers a statement
11 that it was a spurious -- it was spurious. It was not
12 a real pressure spike. That's the first time we ever
13 had that testimony from Mr. Lowe. But he could not
14 remember a conversation about hydrogen at this 3:30
15 meeting on March 29th.

16 We consider it significant because it -- I
17 think it speaks to Mr. Lowe's credibility and the
18 company's credibility. When we're talking about, for
19 the first time, and understanding that hydrogen has
20 been produced by a zirconium steam reaction. We get
21 testimony, and this is basically why we hadn't
22 inquired into it in more depth, Mr. Kunder and others
23 that -- he either was his -- Mr. Kunder's general
24 concern about this aluminum reaction, which everyone
25 knew could not be a significant hazard in a two-day

1 period.

2 For the first time, we heard the term, with
3 the quantity four percent. And that was stated by Mr.
4 Abromovici, who, coincidentally, is some kind of an
5 expert on hydrogen recombiners, which is why he was
6 involved in this discussion. The specific amount of
7 four percent was discussed for the first time. And we
8 now know that there were technical personnel and Mr.
9 Lowe, at that meeting, that understood that four
10 percent could only be produced in two days through
11 zirconium steam reaction.

12 Therefore, we think that there is a reason
13 to discuss the other individuals who were at this
14 meeting, which was quite a formal and important
15 meeting. It was the first meeting of the task force.

16 JUDGE SMITH: Does anybody deny the accuracy
17 of Mr. Abromovici's testimony or deposition?

18 MS. BERNABEI: The only person we've spoken
19 to subsequent -- specifically about this meeting, has
20 been Mr. Lowe. Mr. Lowe doesn't remember that
21 discussion.

22 JUDGE SMITH: What you have right now is the
23 testimony of Mr. Abromovici, that hydrogen production
24 over the four percent design limit was discussed at
25 the meeting and the testimony of Mr. Lowe, who said

1 that he doesn't recall it and that he made his first
2 determination of zirc water reaction, hydrogen and
3 core damage several hours later.

4 MS. BERNABEI: Eight hours later.

5 JUDGE SMITH: Eight hours later?

6 Now, what you wish to do is produce the
7 testimony of more witnesses in addition to Mr.
8 Abromovici, who would testify. Aren't you just sort
9 of accumulating that? Or do you think that you can
10 better tie the design limit exceeding to Mr. Lowe?

11 MS. BERNABEI: Oh, I can --

12 JUDGE SMITH: If establish that other people
13 recalled it, have you established any better that Mr.
14 Lowe should have recalled it?

15 MS. BERNABEI: I think so, in the sense that
16 to have an understanding of the meeting is this, I
17 think this 3:30 meeting on March 29th, was the first
18 formal meeting of the task force. It was set up by
19 the service corporation, Mr. DeCamp, specifically. At
20 that meeting, apparently, according to Mr. Abromovici,
21 there was a briefing by Mr, Kunder, who's a high level
22 site personnel person.

23 Mr. Kunder, apparently during this briefing,
24 gave them some idea about the production of hydrogen.
25 It appears to me that if other people confirm him, Mr.

1 Abromovici, in his testimony that this was a subject
2 and a significant subject of conversation, then that
3 throws doubt on Mr. Lowe's testimony that the first
4 time this ever came up was eight hours later, when he
5 did his calculations.

6 I's also say that we -- I don't know if we'd
7 attach it as an exhibit, but there is a questionnaire
8 from Mr. Crimmons, who is as I understand it, a
9 manager/employee of one of the subsidiaries. I can be
10 corrected if I'm wrong. Mr. Crimmons, during this
11 period, or at least part of this recovery period,
12 served as a deputy to Mr. Lowe.

13 We read his deposition in the discovery
14 room, and it was unclear, exactly, what was discussed.
15 He talks about --

16 JUDGE SMITH: His questionnaire, you mean?

17 MS. BERNABEI: His questionnaire, right.

18 He talks about the discussion about the
19 pressure spike, or hydrogen production, or the
20 containment sprays being started in an afternoon
21 session with a briefing by George Kunder. At that
22 time, we assumed that he was talking about this
23 aluminum reaction. He was talking about what Mr.
24 Kunder talked about at a previous time. And we pretty
25 much ignored it because we didn't understand that

1 there had been a full-blown, according to Mr.
2 Abromovici, a full-blown discussion about hydrogen
3 over four percent.

4 MS. BERNABEI: I think a fair reading of Mr.
5 Kunder's questionnaire would indicate that he would
6 incur with Mr. Abromovich in his description of what
7 happened at this meeting. We didn't read it because
8 we had no independent information to indicate that's
9 what went on.

10 In any case what we're asking for is a
11 limited deposition of a few people that were at the
12 meeting, again who have not already been deposed since
13 it's -- you know the people that have been deposed
14 really already have their story whatever it is in the
15 record. But other people that may or may not confirm
16 this Abromovich rendition of what happened at that
17 meeting.

18 JUDGE SMITH: Mr. Blake.

19 MR. BLAKE: Let me say two things. First,
20 I believe, and I don't have this with me today, but I
21 believe Mr. Abromovich's June 11, 1979 I and E
22 interview includes the 4 percent figure. I cannot
23 confirm that for you now but we have notes here that
24 reflect that it would.

25 Second, I think I'm hearing quite a

1 different request than what I was facing when I
2 responded in the motion to compel.

3 JUDGE SMITH: Well, yes. That was my
4 reaction too.

5 MR. BLAKE: If we're narrowing it now to an
6 opportunity to question some named people other than
7 those who have been previously deposed as to whether
8 or not hydrogen was discussed at that meeting then it
9 strikes me that an interrogatory along those lines
10 could be framed and we would go after those named
11 people and try to get TMIA answers.

12 But that's really quite different from what
13 I was coping with when I responded to their motion to
14 compel.

15 JUDGE SMITH: Have you already deposed
16 Crimmons?

17 MR. BLAKE: No.

18 JUDGE SMITH: He's the one that you
19 think --

20 MS. BERNABEI: Might confirm Abromovich's
21 testimony, that's right.

22 JUDGE SMITH: I beg your pardon?

23 MS. BERNABEI: He might confirm Abromovich's
24 testimony.

25 JUDGE SMITH: One of the difficulties I

1 have is putting this all in the proper matrix of the
2 issue.

3 Where we are is that you would like to
4 depose, for example and probably in particular, Mr.
5 Crimmons to see if he can support Mr. Abromovich's
6 testimony that hydrogen in excess of 4 percent
7 design limits was discussed so that you can impute to
8 Mr. Lowe that it was before -- eight hours later than
9 evening -- very, very late the 29th, that he knew that
10 zirc water reaction thus core damage had occurred.

11 Therefore, for that we infer that Mr.
12 Dieckamp somehow has some evidence that he has up till
13 now apparently presumably denied having. That's where
14 everything falls apart for me, just one area where
15 everything falls apart. Fill me in that void.

16 What if Mr. Lowe says, "You know by golly,
17 you're right. I suspected four percent hydrogen that
18 afternoon. I didn't confirm it until I did some
19 calculations that night."

20 But assuming that you're correct, how does
21 it fit into the whole issue? I'm having a hard time
22 sticking it all together.

23 MS. BERNABEI: First of all it would be very
24 much counter to the Licensee's theory that somehow for
25 the first time someone looked -- and this is what I

1 understand their position to be again from the
2 documents I've reviewed and the testimony we've had
3 just in this proceeding.

4 Someone brought to Mr. Lowe the pressure
5 spike and/or the alarm printer for that period of time
6 at 2:00 p.m. late in the evening about 11:00 or so on
7 March 29th. At that point this electrical engineer,
8 Mr. Bensel, had some premonitions about what this
9 mean. Mr. Lowe looked and discovered, and I think in
10 some document it says like instantaneously, "Oh, my
11 God, this looks like the production of hydrogen."

12 I think that testimony would be much less
13 credible and that whole position is much less credible
14 if, in fact, there had been a long intense discussion
15 on this eight hours prior with site personnel of the
16 highest order and Mr. Kunder saying. "Gee, we're
17 really concerned about that." That's --

18 JUDGE SMITH: Well but couldn't he --
19 excuse me. I'm sorry.

20 MS. BERNABEI: The second point -- and
21 you're quite right that I have not made this clear in
22 the pleadings.

23 It seems to me that if Mr. Kunder comes to a
24 meeting of a task force especially set up by Mr.
25 Dieckamp at 3:30 p.m. on March 29th and tells him

1 we're real concerned about production of hydrogen to
2 these amounts and there's a general discussion
3 pursuing about insulation of a hydrogen recombiner, I
4 think that would provide some evidence that Mr. Kunder
5 and site personnel knew at a earlier time -- we think
6 it's March 28th -- that there was production of
7 significant amounts of hydrogen.

8 I'm not saying it's conclusive of the fact
9 that he knew on March 28th but I think it infers that
10 he certainly knew sometime prior to 3:30 p.m. on March
11 29 that there was hydrogen produced above design
12 limits, that is above 4 percent.

13 I think together with other evidence it
14 indicates site personnel knew on March 28th and
15 certainly sometime prior to 3:30 p.m. on March 29th
16 and perhaps March 28th that there was production of
17 hydrogen --

18 JUDGE SMITH: Ms. Bernabei, I'm sorry. I
19 just lost you there entirely. I don't know how in the
20 world you got back to March 28th. I just missed that.

21 MS. BERNABEI: Mr. Kunder, in order to make
22 the kind of briefing he made obviously I would assume
23 had prepared. He and Gary Miller together were
24 probably the top site personnel, generally dealing
25 with GPU Service Corporation and consultants, as I

1 understand it, the first three days of the accident.
2 I assume that in order to brief this task force he
3 would have to do some preparation, talk to other
4 people to come to a conclusion in this nature.

5 Given that fact I assume he concluded that
6 sometime prior to 3:30 p.m. that hydrogen had been
7 produced in significant amounts. I think together
8 with other evidence it indicates that -- I'm not
9 saying just this alone -- but with other evidence I
10 think it indicates they knew on March 28th that
11 significant amounts of hydrogen had been produced.

12 In any case, I think it's evidence tending
13 to prove they knew prior to certainly prior to 11:00
14 p.m. and I think prior to 3:30 p.m. given the nature
15 of this briefing. Again that goes for Mr. Dieckamp's
16 statement that site personnel didn't understand, the
17 pressure spike didn't understand hydrogen production.

18 JUDGE SMITH: You're postulating, it seems
19 to me, a situation where -- sit down, please -- where
20 you have Mr. Lowe going over his calculations and his
21 strip charts, whatever it is and suddenly in a
22 blinding flash of light the thought comes to him, "By
23 golly there is zirconium and there's water there and
24 there's temperatures there and there could have been a
25 zirc water reaction and hydrogen."

1 Some of you can produce pretty strong
2 evidence that 4 percent design limits was discussed.
3 You don't have a smoking gun. I don't know what you
4 have. The view of mine is, it doesn't work exactly
5 the way I think you're suggesting it does. It very
6 well be that Mr. Lowe certainly must have known that
7 such a reaction is possible and that when he finally
8 arrived at a degree of certainty I believe is the
9 issue.

10 I mean I just don't understand. You attack
11 one tenuous thing to another tenuous thing to another
12 tenuous thing to yet another, and all the way from the
13 control room on the 28th to Mr. Dieckamp. You just
14 haven't persuaded me that additional discovery is
15 going to help you any.

16 MS. BERNABEI: Well I can just state
17 Licensee's position and as I understand it is that Mr.
18 Lowe for the first time around 11:00 p.m. on March
19 29th discovered that there was production. The
20 pressure spike indicated production of hydrogen.

21 JUDGE SMITH: Discovered it.

22 MS. BERNABEI: That's my understanding from
23 the phrasing of the documents that have been produced
24 in the document room and also from the discovery
25 responses that we received in this case, that it was a

1 sudden thing. That's from Mr. Bensel's deposition
2 testimony, it's from written documents by Mr. Lowe,
3 and it's also from Mr. Dieckamp's response to the
4 interrogatories. It was a sudden thing.

5 Now if it were common knowledge on March
6 29th that there was this amount of hydrogen and they
7 were taking steps to install a hydrogen recombiner to
8 get rid of it, it seems to me that kind of -- it
9 simply wasn't the case that there was this kind of
10 discovery at 11:00 p.m.

11 If it were common knowledge on the site and
12 some kind of conclusion had been reached that steps
13 had to be taken to get rid of this kind of hydrogen at
14 an earlier meeting, then it just simply isn't the case
15 that was discovered at 11:00 p.m.

16 JUDGE SMITH: Mr. Blake.

17 MR. BLAKE: Ms. Bernabei is right in that
18 it is Licensee's understanding that it was Mr. Lowe on
19 the evening of the 29th, when brought the chart that
20 had the pressure spike on it, said that looks like a
21 hydrogen explosion. I don't know what he words were.
22 He can testify to what his words were. But that was
23 the point in time when that determination was made.

24 She absolutely loses me beyond that. If we
25 focus on the 29th meeting what she has, what we have,

1 what you have already are statements by the one
2 person, and there's no disagreement about it, who
3 raised hydrogen at that meeting and the extent to
4 which it was raised. It was Mr. Kunder. We have his
5 statements about what was on his mind.

6 Hydrogen following an event even as they
7 understood it on the 29th has several sources.
8 There's always the radiolytic generation of hydrogen,
9 not a short-term big problem, but a source. There is,
10 as Mr. Kunder was apparently focused on, the
11 generation of hydrogen from chemical combinations on
12 metals in the containment, thiosulfate with aluminum.

13 He also makes references to some water and
14 metal. I'm not sure exactly what he intended there.
15 But nobody, nobody has said that they were focused on
16 or thought about that point zirc water. I just can't
17 get beyond that much less tie it into this.

18 JUDGE SMITH: The 4 percent design limit
19 doesn't persuade you that was so obviously zirc water.

20 MR. BLAKE: No. Well, let me reflect on
21 what Ms. Bernabei said about Mr. Lowe. She confronted
22 him with first, "Did you hear about hydrogen? Do you
23 recall any discussions of hydrogen at that meeting?"
24 Mr. Lowe's testimony was, "No, I don't recall any
25 discussion of hydrogen either at the meeting proper

1 or in the discussion I had with Mr. Kunder immediately
2 after the get together."

3 She then said, "Well, we have testimony that
4 greater than 4 percent hydrogen was discussed at that
5 meeting. If there were greater than 4 percent, is
6 there any source other than zirc water that could
7 account for that in that short period of time after an
8 accident?" Mr. Lowe's testimony was as I recall it,
9 "I don't think so. I'd have to think more about it
10 but I don't think so." I think that -- in terms of
11 the entire containment volume.

12 He first focused on greater than 4 percent.
13 "Well, gee, you could have greater than that in for
14 example the rad waste tanks where they were worried
15 about the gaseous build up, where a 500 component
16 would be hydrogen."

17 In terms of the total containment volume
18 that's my recollection of what his testimony was. I
19 put all of that together.

20 JUDGE SMITH: You suggested earlier that
21 there may be ways to accommodate a limited further
22 inquiry by TMIA and that would be by interrogatories
23 or what?

24 MR. BLAKE: It's the first time that I've
25 heard some softening of the position or something

1 other than the whole which I opposed.

2 JUDGE SMITH: Now you're not going to get
3 the whole thing, Ms. Bernabei. You won't get that.

4 MS. BERNABEI: What we're suggesting is
5 limited further discovery.

6 JUDGE SMITH: For what? Be exact, would
7 you?

8 MR. BLAKE: The limit that they currently
9 set is everybody at that meeting.

10 JUDGE SMITH: I realize that. But you're
11 not going to get that.

12 MS. BERNABEI: I stated that in terms of
13 those individuals who we've already deposed, we really
14 don't have an interest in redeposing.

15 What I would suggest is -- well, there's Mr.
16 Wilson, Mr. Wallace, Mr. Reppert who we have not been
17 previously deposed, who were the top level GPU Service
18 Corporation personnel at the meeting and Mr. Crimmons
19 considering that Mr. Crimmons' questionnaire --

20 JUDGE SMITH: I looked at Mr. Crimmons
21 questionnaire. I read it before. Where in his
22 questionnaire do you find support for your proposal?
23 I cannot remember -- he says on the final page "I
24 cannot remember such details as such that were
25 initially discussed by one or another technical

1 support personnel, Williams, Lowe and others -- no,
2 this doesn't help.

3 MS. BERNABEI: The specific question is --
4 it is 7(a) on which you focused. The specific
5 question has to do with conversations or
6 communications about hydrogen burn, the pressure spike
7 or containment spray actuation.

8 The way I read Mr. Crimmons' answer is
9 that --

10 JUDGE SMITH: Where? Be specific.

11 MS. BERNABEI: The subjects were initially
12 discussed, and I assume he was referring now to the
13 three subjects in the question, hydrogen burn,
14 pressure spike, containment spray actuation, that
15 occurred at TMI 2 at about 1:50 p.m.

16 The subjects were initially discussed by me
17 and other technical personnel on the afternoon of
18 March 29th and into the evening. The discussions were
19 initiated by a briefing by George Kunder on the
20 afternoon of March 29th. I assume that means that the
21 briefing that Mr. Abromovich testified about has to do
22 with the production of hydrogen beyond design limits.

23 I would also note that he says the subjects
24 and I would assume that refers to all three subjects,
25 hydrogen burn, pressure spikes and containment spray

1 actuation. Given that fact it appears that they were
2 discussed at that meeting and he remembers the meeting
3 being led off or initiated by a briefing by George
4 Kunder.

5 Therefore I think his memory at least as
6 it's expressed in this questionnaire, is that not only
7 hydrogen production, but it tied into the pressure
8 spike and possibly actuation containment spray, that
9 was initiated in this afternoon meeting.

10 JUDGE SMITH: We just don't see anything
11 about Mr. Crimmons' answer that's inconsistent with
12 Mr. Lowe's testimony or with Mr. Kunder's testimony or
13 supports your -- we've narrowed down, as I understand
14 it, your position that "viola," for the first time
15 you've learned that Mr. Abromovich discussed the 4
16 percent.

17 MS. BERNABEI: Above design.

18 JUDGE SMITH: Above design. That's for the
19 first time. And everybody apparently knew that that
20 could only be produced by zirc alloy. Nothing
21 Crimmons says anywhere comes near that precision.

22 MS. BERNABEI: It seems to me, though, I
23 mean he is even close to the mark than -- we're
24 talking about zirc water reaction. He's talking here
25 about the pressure spike and hydrogen burn being

1 discussed at this afternoon meeting. That gets us
2 much closer to the mark of the Dieckamp Mailgram.

3 JUDGE SMITH: You're just starting discovery
4 all over again. You're not basing that upon
5 Abromovich and 4 percent design limits. You
6 just started your discovery from the very beginning.

7 Do you want to make a proposal to
8 accommodate this very, very limited inquiry, but we're
9 not going to permit you to start deposing people on
10 it. You haven't made it. It's a tenuous one. I
11 thought maybe the solution might be to maybe select
12 Crimmons, and you could depose him. But reading his
13 questionnaire it is not close enough, it's not hardly
14 even related to the precision of your request.

15 You're asking us to infer from Mr.
16 Abromovich's testimony on the 4 percent design limit
17 being exceeded, that there was general knowledge at
18 that meeting that there was core damage and zirc
19 water. And you point to Crimmons and it isn't there.
20 You haven't made it.

21 What can be done to lay this point to rest?
22 I mean it is an important point. I don't want it
23 dangling unnecessarily if it can be resolved without
24 disruption and the inconvenience and the burden that
25 is involved.

1 MS. BERNABEI: Can I just try once more?

2 MR. BLAKE: I will try.

3 MS. BERNABEI: Can I just try once more? I
4 don't want to interrupt, Mr. Blake, but let me just
5 try once more with Crimmons' questionnaire.

6 MR. BLAKE: Mr. Crimmons is not an employee
7 of the company. So I don't know what my ability is to
8 make good on the proposal that I'm about to make but
9 I'll make every effort to make it work if it's
10 acceptable.

11 I will go to Mr. Crimmons. I will ask him
12 whether or not these subjects, pressure spike, et
13 cetera, the list of items that are involved in this
14 proceeding, were discussed at that meeting on the
15 afternoon of the 29th.

16 I will also ask him to describe to the best
17 of his recollection discussions about hydrogen which
18 he recalls. I will provide that with I hope Mr.
19 Crimmons' affidavit in support of it as promptly as I
20 can.

21 MS. BERNABEI: Can I just speak to the prior
22 point and I'll try once more.

23 My understanding is that the hydrogen burn,
24 technically it's called, occurred at such a point as
25 hydrogen -- there had been a sufficient amount of

1 hydrogen produced by the zirconium water reaction.

2 The pressure spike was an indication of that
3 burn or explosion. I think therefore that it is not
4 at all -- if there was a discussion about hydrogen
5 burn I assume that there was a discussion about
6 hydrogen production and how in the world it could have
7 gotten to the level where there could have been a
8 hydrogen burn or explosion.

9 In other words I see the issues as
10 intimately linked which is what took me back. In any
11 case, if we're talking about limiting discovery I
12 think perhaps a way to do it would either be to do a
13 deposition of Mr. Crimmons and I would suggest that a
14 few other individuals at the meeting do a selected
15 number of interrogatories. That's what I propose.

16 MR. BLAKE: In that Mr. Crimmons is an ex-
17 employee, we're talking subpoena here, and I seriously
18 question that this juncture of whether or not there is
19 good cause at the end of discovery to subpoena Mr.
20 Crimmons. I've suggested what I believe to be a
21 reasonable alternative here.

22 As I understand Ms. Bernabei, not only is
23 she talking about a deposition of Mr. Crimmons after
24 the end of discovery but as well interrogatories
25 involving others. I think my proposal which I don't

1 think I'm obligated to make here under these
2 circumstances and to show that she's made any of that.
3 But I am willing to do that to try to make this
4 problem go away.

5 JUDGE SMITH: This solution may be
6 recognized as somewhere in the order of a quotient
7 verdict you might say. We don't have a lot of
8 confidence in the area of discovery. We recognize the
9 importance of it is probably one of the more important
10 issues.

11 This would depend upon Mr. Blake's
12 cooperation and I think we'll receive it. You alluded
13 to five people that you have not yet deposed. Pick
14 two of them and send interrogatories to them.

15 MS. BERNABEI: Okay.

16 JUDGE SMITH: Will you cooperate on
17 that?

18 MR. BLAKE: Yes, sir.

19 MS. BERNABEI: Well we're going to have
20 problems with Mr. Crimmons in that he's not a --

21 JUDGE SMITH: If he's one of your choices
22 and it doesn't work, well, Mr. Crimmons could be told
23 that the Board is interested in his cooperation on it,
24 too. And I'm not really proud of that ruling but it
25 just seems to satisfy everybody and you have two out

1 of five chances there.

2 MR. BLAKE: Judge Smith, the nature of the
3 interrogatories would be to inquire into the subjects
4 of the March 29th afternoon meeting and specifically
5 whether or not hydrogen was discussed and what they
6 recall about it?

7 JUDGE SMITH: Yes.

8 If you'll reshoot your interrogatories, if
9 you make them too broad, you will have lost the
10 patience and support of the Board. I'm sure you know
11 -- that you see the need to narrow this down, to focus
12 it now.

13 MS. BERNABEI: I understand.

14 JUDGE SMITH: Now with respect to the
15 other four, we just don't have any sympathy for you.

16 MS. BERNABEI: Can I address those four?

17 JUDGE SMITH: Sure.

18 MS. BERNABEI: I can do it fairly quickly, I
19 believe.

20 The first one has to do with the original of
21 Mr. Keaten's notes. I'd like to say something --
22 preface the remarks both about the originals and Mr.
23 Keaten's originals of the strip chart.

24 That was included -- and I haven't checked
25 this morning -- but I believe it was included within

1 our original document request, that is we asked for
2 original and not copies. In other words, I think it
3 should have been produced together with the first
4 response by the Licensee. If it had been produced at
5 that time, obviously we would have had time to do
6 follow up discovery at that time and we would not now
7 be asking for an extension discovery period.

8 In any case, the request to see the
9 originals was made at a much earlier time than October
10 8th. It was made in informal conversations with Mr.
11 Blake which he asked me to formalize in a letter to
12 him.

13 Starting off with the original of the Keaten
14 notes. The original of the Keaten notes, which we did
15 not see until October 15th at Harrisburg, they have
16 dates in the -- the entry we're concerned with and
17 we're only concerned with one entry. It has the date
18 of March 29th, 1979? March 30th, 1979.

19 And the copy, obviously the colors of the text
20 and the dates do not come up. When we saw the original
21 we understood that the March 29th date was in the same
22 coloring as the text of the notes themselves. The
23 March 30th date as well as the question mark were in
24 red and apparently written at a different time. We
25 were aware, in Licensee's motion, that in fact they

1 written at a different time.

2 JUDGE SMITH: In the response, you mean?

3 MS. BERNABEI: In the response, yes, the
4 response to our motion to extend the discovery period.

5 That's really the first time that we knew
6 the date of those notes. Mr. Keaten has represented
7 in prior testimony to the NRC that these were written
8 on March 30th. He has also testified that at such
9 time as he took those notes, he first telephone Mr.
10 Dieckamp and then he went to talk to him about the
11 notes. That is, what he took down in the notes which
12 includes the notation explosion and containment.

13 We want on his testimony that, in fact, there
14 were two dates on the notes. He says it was March
15 30th and we had no way to question one date as being
16 more probative than the other other than in the
17 context of the notes themselves. When we saw the
18 originals we had reason to believe that in fact they
19 were written on March 29th.

20 The information in the notes as has been
21 testified to by I believe Mr. Keaten, I could be
22 corrected, but at least by Mr. Broughton is that the
23 initials that appear at the top are from a Mr.
24 Broughton that was sent to the site on March 28th and
25 apparently at some point after that reported back to

1 Mr. Keaten his findings.

2 It appears to me very significant that if
3 these notes were written on March 29th that Mr. Keaten
4 received information about an explosion in the
5 containment of March 29th and by his own testimony
6 passed that on to Mr. Dieckamp very shortly
7 thereafter.

8 If this conversation took place as we
9 believe is indicated on March 29th, it indicates Mr.
10 Dieckamp had knowledge of the hydrogen burn or
11 hydrogen explosion at a much earlier time than
12 previously indicated.

13 I would also note there's supporting
14 evidence to indicate this occurred on March 29th and
15 not on March 30th. First of all, the two notations on
16 the first page of the notes under that entry what are
17 appear to be Mr. Dieckamp's schedule for the day, that
18 is his being at the airport presumably for his flight
19 from Parsippany to the site and a congressional
20 briefing in the afternoon. That is Mr. Dieckamp's
21 schedule as I understand it, not Mr. Keaten's. Mr.
22 Keaten did not go to the site. He stayed in
23 Parsippany.

24 Secondly, we have testimony that Mr.
25 Broughton returned to the hotel very late on March

1 28th in an attempt to report back to Parsippany, Mr.
2 Keaten presumably. This testimony is from a colleague
3 of his, Mr. Lentz.

4 We asked Mr. Lentz if he knew if Mr.
5 Broughton got through to Mr. Keaten on late night of
6 March 28th. He said no he didn't know if he got
7 through that night or the next morning. He didn't
8 really know but he knows that he returned to the -- he
9 did get testimony that he returned to the hotel
10 specifically before the others in order to make that
11 attempt.

12 MS. BERNABEI: I think a fair reading of the
13 notes would indicate that it could have been taken as
14 early as Thursday morning prior to Mr. Dieckamp's
15 departure to the site.

16 If that is the case, it would indicate that
17 Mr. Dieckamp was informed at some time in the morning
18 of March 29th about the explosion in the containment,
19 and I think that would be significant new information.

20 And I would indicate that we had no reason
21 given Mr. Keaton's past testimony, Mr. Dieckamp's past
22 testimony and Mr. Brauten's past testimony to have any
23 firm grasp that these notes weren't backwritten on
24 March 29th. I think we do not.

25 CHAIRMAN SMITH: And all of this flows from

1 red ink saying April 30?

2 MS. BERNABEI: I think it's a good inference
3 from that.

4 CHAIRMAN SMITH: March 30.

5 MS. BERNABEI: Yes. We're all confused.

6 The -- I think it's a good inference that
7 the notes -- Mr. Keaton's an intelligent man, he's in
8 a high position with the company and those were very
9 serious days for the company.

10 I think it's a very good inference that he
11 was correct when he wrote the date originally on those
12 notes, which we now understand is March -- the date he
13 wrote when he wrote it originally is March 29th, March
14 30th was written later.

15 I think it's a good inference they were
16 written on the date.

17 CHAIRMAN SMITH: Did you depose him?

18 MS. BERNABEI: No, we did not.

19 CHAIRMAN SMITH: Is he going to testify?

20 MR. BLAKE: No, sir, not scheduled.

21 I've offered in my response that Mr. Keaton
22 will provide an affidavit describing how those dates
23 came to be.

24 (A discussion was held off the record.)

25 JUDGE WOLFE: When you looked at this

1 document, Ms. Bernabei, you say weren't alerted to any
2 problem with dates. It was only when you looked at the
3 original and saw one of these dates in red ink that
4 you were alerted that there might be some problem with
5 the dates. Is that what you've said?

6 MS. BERNABEI: No, that's not what I said,
7 Judge Wolfe.

8 What I said is that it was clear from the
9 beginning there were two dates on those notes and he
10 asked -- for instance, we asked Mr. Brauten who
11 appeared before us about that fact. And when the
12 information that he apparently communicated was
13 communicated, he gave us an answer that basically said
14 well, part of it was on the 29th and part of it was on
15 the 30th.

16 We, of course, read Mr. Keaton's deposition
17 and Mr. Keaton said -- indicates in his deposition to
18 the NRC that it all happened on the 30th. Now we had
19 no special reason to -- other than our understanding
20 of what went on to contradict either of those.

21 I think now with the different color inks,
22 it casts some doubt on an indication that those notes
23 were written on the 30th.

24 JUDGE WOLFE: Well, as a -- didn't the
25 appearance of a question mark, symbol for a question

1 mark, didn't that alert you to ask why there was a
2 question mark --

3 MS. BERNABEI: It did.

4 JUDGE WOLFE: -- when you took the
5 deposition, I take it, of Mr. Brauten.

6 MS. BERNABEI: The question mark is in red,
7 sir.

8 JUDGE WOLFE: It's also in black.

9 MS. BERNABEI: No, I understand. We asked
10 questions on that. I'm not saying that. We had no
11 reason to believe that the entire notation was not
12 made at one time. It is --

13 JUDGE WOLFE: There was a question mark
14 there.

15 MS. BERNABEI: After the fact.

16 JUDGE WOLFE: There was a question mark by
17 one of the dates. It seems logical that you would ask
18 why the question mark was there. It was in black --

19 MS. BERNABEI: I did.

20 JUDGE WOLFE: -- on a xerox copy. And what
21 was the statement?

22 MS. BERNABEI: Mr. Brauten said that part of
23 the information was given on the 29th and part of it
24 was on the 30th. We did ask precisely that question
25 of Mr. Brauten.

1 JUDGE WOLFE: Did you ask him about the
2 question mark?

3 MS. BERNABEI: He told us all he knew about
4 that.

5 JUDGE WOLFE: Did you ask him about the
6 question mark?

7 MS. BERNABEI: In effect we did.

8 JUDGE WOLFE: Expressly, did you ask him
9 about the question mark?

10 MS. BERNABEI: He -- I asked him --

11 JUDGE WOLFE: Expressly.

12 MS. BERNABEI: I think it's fair to say my
13 question expressly asked about the dates including the
14 question mark.

15 JUDGE WOLFE: Okay.

16 (A discussion was held off the record.)

17 CHAIRMAN SMITH: We're satisfied with the
18 offer to produce the affidavit.

19 (A discussion was held off the record.)

20 CHAIRMAN SMITH: I might point out this is
21 more than just a response, it's the papers filed by
22 you yourself.

23 Before the significance of any of this
24 became known, the INE interview of Mr. Keaton covered
25 it quite well, and that was in June. And we just

1 don't believe it's worth any further inquiry. But the
2 affidavit, in any event, is welcome and satisfies us.
3 Okay.

4 You want to try again?

5 MS. BERNABEI: Well, I'll take the other
6 point, that the third point, which, again, I think is
7 fairly important --

8 CHAIRMAN SMITH: The third point?

9 MS. BERNABEI: Well, the third in the list
10 of five that I would like to bring up which has to do
11 with Mr. Porter being identified.

12 CHAIRMAN SMITH: Oh, I thought the third
13 point was Kunder meeting.

14 MS. BERNABEI: Well, I'm proceeding at a
15 different -- in a different order than that.

16 CHAIRMAN SMITH: Okay.

17 This is the instrumentation?

18 MS. BERNABEI: Right.

19 CHAIRMAN SMITH: Yes.

20 MS. BERNABEI: The chief INE engineer.

21 Again, since it's not clear from licensees
22 response, perhaps it wasn't clear in my pleading. The
23 point was that Mr. Porter was identified for the first
24 time in Mr. Lentz's deposition as the person who took
25 the complete set, 51, in core thermocouple readings on

1 March 28th.

2 That was the first time I have ever heard in
3 any of this record he has been identified as the
4 person who took them. Mr. Lentz further testified
5 that he saw the readings that Mr. Porter took. It was
6 in a notebook, two columns in apparently Mr. Porter's
7 handwriting. He said saw them personally, he
8 discussed them personally with Mr. Porter.

9 Now the -- Mr. Lentz, to give the Board some
10 background, is an engineer. He was formally at TMI
11 for some period of time prior to the accident. He had
12 recently been sent or transferred to Parsippany.

13 He was expressly sent to the site on the day
14 of the accident by service corporation management to
15 collect data because he was so familiar with the site.
16 I would assume given that background that he knew Mr.
17 Porter and perhaps knew him well from his prior
18 experience at TMI 2.

19 This is the first time, again, that we know
20 that Mr. Porter was a person that took the 51
21 readings.

22 Now, let me just recap why I think this is
23 important because I did not go through this background
24 in the pleading.

25 The Board, as I understand it, understood

1 that the in core thermocouple data as it recorded
2 temperatures greater than 2,200 degrees and in some
3 cases greater than 2,500 degrees Fahrenheit on the
4 morning of the accident was significant because at
5 those temperatures one could draw no other conclusion
6 that a zirconium steam reaction had taken place and
7 significant amounts of hydrogen had been produced.

8 We have in our depositions of the site
9 personnel a question to them as to their technical
10 knowledge at the time of the accident that that was,
11 in fact, the case. And I could be corrected if I'm
12 wrong, but I believe Mr. Miller testified that he did
13 understand that on the day of the accident.

14 The debate or the record up to this point in
15 time, and I'm talking now about the record compiled by
16 the NRC, like how many Commission rogovin, has always
17 been that there were two sets of in core thermocouple
18 data. There was -- well first there was the fact that
19 the computer was reading off scale high in the early
20 morning around 7:30 or so a.m.

21 Mr. Miller, because of a concern to know
22 these temperatures and because of his prior Naval
23 experience, asked Mr. Porter, the chief INE engineer,
24 please go take in core thermocouple readings prior to
25 input into the computer.

1 Mr. Porter, and this is all pretty much
2 acknowledged, at some point asked these four
3 instrument men to do what Mr. Miller had directed him
4 to do. Okay?

5 At that point the stories diverge a little
6 bit but essentially the record has shown that there
7 were two sets of in core thermocouple data taken, both
8 by digital voltmeters, one set by fluke thermometer,
9 and a digital voltmeter, and the other set by digital
10 voltmeter. In any case it was all prior to input into
11 the computer.

12 One set of data Mr. Porter says he knew
13 about, he reported to Gary Miller, Gary Miller says he
14 knew about it and they were discounted to some degree
15 because of the disparity in temperatures. Mr. Porter
16 has said that in his deposition. Mr. Miller has said
17 that in his deposition in these proceedings.

18 Mr. Porter and Mr. Miller up to this point
19 have never acknowledged any knowledge at the time of
20 the accident of these 51 readings. Mr. Porter's
21 testimony has been in substance that these were taken
22 by these instrument men, I didn't order it, I never
23 knew about it until weeks after the accident when the
24 data showed up.

25 This is the first time we have, by someone

1 who I think is a highly credible witness since he was
2 not involved in this area, he knew Mr. Porter, he was
3 at the site on the days after the accident, that Mr.
4 Porter was, in fact, the person who took, wrote down
5 and used those 51 readings.

6 I think we have a good inference that if Mr.
7 Porter took the trouble to do that then Mr. Miller may
8 well have been informed of those readings and known by
9 the time the pressure spike occurred at 2:00 p.m. that
10 they had temperatures that indicated steam reaction
11 was taking place such as to produce significant
12 amounts of hydrogen.

13 I think it's a significant new fact that has
14 not previously occurred. Up to this point Mr. Porter
15 and Mr. Miller have always said they had no indication
16 of these 51 readings, whatever these instrument men
17 were doing they were doing on their own, it was not
18 pursuant to directions from them.

19 I don't think that position is tenable given
20 the fact that we have testimony it was Mr. Porter who
21 took the readings.

22 I would also mention another point, which is
23 really an auxiliary point that came up in discovery.
24 We deposed Mr. Yeager who has been identified
25 previously as instrument man B. He was one of the two

1 instrument men, he and Mr. Wright, who actually
2 physically took the recordings.

3 He testified in his deposition that he was
4 not at all familiar with this complete set of in core
5 thermocouple temperatures, he had never seen them in
6 his life. He left the company shortly after the
7 accident, I think in September of '79, and that he and
8 his partner, Mr. Wright, certainly weren't the ones
9 that took that data.

10 That was the first time we ever heard that.
11 -- conventional wisdom in this case, the record in
12 this case had always suggested that that had been
13 taken by the same four instrument men that took this
14 other data.

15 Now we have a disavowal by one of those
16 instrument men that that's his data and he never saw
17 it prior to his deposition in this case, and we also
18 have what I believe is very credible testimony by Mr.
19 Lentz that it was Mr. Porter that took it. He saw the
20 handwritten figures, that the handwritten figures
21 accord with the second thermocouple.

22 I think if we take Mr. -- we give Mr.
23 Lentz's testimony credibility it leads to an inference
24 that Mr. Porter not only knew about it but Mr. Miller
25 knew about. Mr. Miller knew about it at 2 o'clock

1 when he saw the pressure spike. I think given that
2 background it's not believable that Mr. Miller would
3 not have interpreted the pressure spike to indicate
4 production of hydrogen burn.

5 (Discussion held off the record.)

6 CHAIRMAN SMITH: Mr. Blake, is there
7 anything new you wish to address?

8 MR. BLAKE: No. I -- only to say maybe --
9 emphasize what was said in our answer.

10 I find it remarkable at this juncture that
11 we would embark now on additional discovery. Even
12 assuming that Mr. Lentz's testimony has been correctly
13 represented, that this is an engineer one of a -- as
14 the testimony's been represented, several days after
15 the accident he heard that Porter had taken in core
16 thermocouples.

17 This is one of hundreds at that point of
18 engineers around that site that day, several days
19 after the accident who could well have heard this.
20 But, my gosh, how in the world do you compare that
21 with the rath of testimony, including that by Porter,
22 not just on once, not just up twice, not just three,
23 four, this fellow has been asked about this subject
24 over the years, time after time after time, including
25 in a deposition by Ms. Bernabei.

1 And I just don't think we're headed anywhere
2 useful except to take more time.

3 MS. BERNABEI: Mr. Lentz did not say he
4 heard about these. He said he discussed them
5 personally with Mr. Porter and he stated, and I'm not
6 sure if we're talking about several days or several
7 weeks after the accident, he saw Mr. Porter's
8 handwriting on a notebook and those temperatures noted
9 down.

10 At that point we showed him a document which
11 has been identified as the second set of in core data
12 and he said, "I didn't see it in this form, I saw it
13 in a handwritten form. But these look like the same
14 temperatures to me." That's what he said. He didn't
15 say he just happened to talk to him off the cuff.

16 MR. BLAKE: I'm only going from what Ms.
17 Bernabei said in her motion, I was not either at the
18 deposition nor do I even have a copy of it yet.
19 Accepting what she has said, I think we're headed down
20 some useful path and I don't think it's -- useful.

21 (Discussion held off the record.)

22 CHAIRMAN SMITH: You just haven't convinced
23 us, it's denied.

24 (Pause)

25 You have one more left?

1 MS. BERNABEI: Two more. One has to do with
2 the original and the pressure chart -- pressure spike.

3 I have two --

4 CHAIRMAN SMITH: Well, let me ask you. What
5 type of expertise does it take to look at those
6 charts?

7 MS. BERNABEI: Basically someone who's
8 familiar, I think, with the machine, something that is
9 similar.

10 CHAIRMAN SMITH: This isn't a question of
11 just continuity in the line?

12 MS. BERNABEI: That's correct. In the novel
13 --

14 CHAIRMAN SMITH: Couldn't you see that?

15 MS. BERNABEI: You can't see it on a xerox
16 copy. In fact, we didn't see it at all on the xerox
17 copy. Ms. Doroshov reviewed the -- you could possibly
18 see that if you had access to the original you could
19 identify that. You can't see it in the xerox copy
20 we've been provided.

21 I think, given our original discovery
22 request, which was the copy and the original, that
23 that should be produced in Washington.

24 MR. BLAKE: To say now after we've been
25 involved in discovery, not just for a couple of weeks

1 but now for a couple of months, that we're in arrears
2 on providing originals is silly. They can look at the
3 documents that we provided initially in response to
4 their request. It is obvious that they are not
5 originals of the script chart or of others.

6 Goodness gracious. Now to complain about
7 that is far past the crime. We promptly provided that
8 original, Mr. Smith, after she asked for it.

9 MS. BERNABEI: But when I represented --

10 CHAIRMAN SMITH: You what? You provided the
11 original?

12 MR. BLAKE: Yes, sir, they viewed the script
13 chart. We pulled the script chart out of where it's
14 securely kept at TMI, took it over to them so that
15 they could look at it.

16 CHAIRMAN SMITH: Yes?

17 MS. BERNABEI: What we did notice is that
18 there is what appeared, Ms. Doroshow reviewed it, does
19 appear that there is an anomaly at a certain point in
20 the chart and we would like it examined by someone who
21 knows about script charts.

22 CHAIRMAN SMITH: Are we looking at -- is
23 there continuity of the lines at the point where it's
24 cut and at both points where they were cut?

25 MS. DOROSHOW: Why don't I express what I

1 saw in the chart and I think that there is an
2 indication that there -- there is an indication the
3 chart may have possibly been removed on the evening on
4 the 28th on this basis.

5 Some might --

6 JUDGE WOLFE: This is apparent what? From
7 the copy or the original?

8 MS. DOROSHOW: From the original.

9 JUDGE WOLFE: All right.

10 MS. DOROSHOW: The original, as you know,
11 has been cut at approximately 10 p.m. on March 28th.
12 Some time after that, at approximately midnight on the
13 chart and then again at approximately 1 a.m. on March
14 29th there are slight drops in the pen line, which
15 would indicate or which may indicated that if the
16 chart were removed from the drum at those particular
17 times, the pen may have moved on the chart. And it
18 would indicate that possible the chart was physically
19 removed at that time.

20 And it --

21 CHAIRMAN SMITH: But you have continuity.

22 MS. DOROSHOW: No, but what Mr. Lentz
23 explained in his deposition was that it was very
24 possible to remove the chart this way.

25 That as the chart moved onto the second

1 spool after it had passed under the pen lines that you
2 could cut it at the time it was being put onto the
3 second spool, which seems logical in this situation
4 since there are cuts both at 10 p.m. and around
5 approximately 2 a.m. on March 28th which was some time
6 before the actual trip.

7 So in other words, it is conceivable that
8 the chart, sometime on the evening of March 28th, may
9 have been physically cut as it moved off the second --
10 as it moved onto the second spool. And these two
11 particular anomalies would indicate that it's possible
12 the movement may have taken place at those times,
13 sometime either midnight on the 28th or early in the
14 morning of the 29th.

15 It is not required that the pens be lifted
16 off and the chart physically taken from the drum or
17 from the spools in order to remove the chart. All you
18 had to do was to cut it after it had passed under the
19 pens. And those are the types of anomalies that
20 appear at midnight and possibly 1 a.m. on the 29th
21 that we think it's necessary somebody with some
22 technical expertise just take a look at it to
23 determine if those are indeed the kind of things that
24 may have happened if the chart was physically cut off
25 at that time.

1 CHAIRMAN SMITH: Would you remind me about
2 what is new about this, your theory?

3 MS. DOROSHOW: If you look at the xerox of
4 the strip chart, not only do you not see that the
5 chart itself was cut but you cannot see these
6 anomalies.

7 And what I did when I looked at the
8 original, I took the xerox with me and I was able to,
9 having the xerox with me, indicate where at what time
10 on the xerox those anomalies occurred. But it's very,
11 very difficult to see those because the pen itself
12 does not xerox very well.

13 And if you look at the chart you can see
14 that it's not a very clear line, the xerox just
15 doesn't pick it up very well. So it's very hard to
16 see a definite drop in the pen line that does appear
17 on the original.

18 CHAIRMAN SMITH: I don't think you directly
19 addressed my question is, what's new?

20 MS. DOROSHOW: The drops on the -- anomalies
21 on the chart.

22 CHAIRMAN SMITH: They're five years old.

23 MS. DOROSHOW: We had no opportunity to see
24 the original until October 15th. And our
25 understanding of NRC -- right -- and other testimony

1 in this is that an NRC inspector testified he saw no
2 anomaly and he saw no point where the pen line --
3 where the pen was actually picked up and put down
4 again.

5 And what we learned in deposition with that
6 is that that is not the only way the chart could have
7 been removed, and we just learned that recently also.

8 JUDGE WOLFE: When you say you just learned
9 that recently, would you turn to page four, licensee's
10 answer to TMI motion to extend discovery period.

11 What is this NUREG-0600, Ms. Doroshow? Now
12 that, I understand, according to what is in this
13 submission the licensee maintains that as early as
14 what, sometime in 1979. You should have been aware
15 that the strip recorded chart had been cut.

16 MS. DOROSHOW: Our understanding of this,
17 and this was confirmed by Mr. Frampton of the Rogovin
18 Commission, was that they had examined the chart to
19 see if there had been some sort of lifting of the pen
20 to see whether -- where if the pen had been lifted up
21 it would have made some sort of mark at the point
22 where it was lifted.

23 And they saw no such mark on the pen line
24 and we didn't see one either but we saw something
25 else. And it was not the argument that -- at least

1 our arguing of 0600 and it was certainly very
2 definitely presented that way by Mr. Frampton in his
3 memo to Congressman Udall of March 4th, 1980.

4 JUDGE WOLFE: Tell me again what that other
5 thing was that you saw?

6 MS. DOROSHOW: An anomaly. It was a
7 consistent line but it was a slight drop in the level
8 of the pen.

9 MR. BLAKE: Mr. Smith --

10 (Discussion held off the record.)

11 CHAIRMAN SMITH: Tell me the page of your
12 filing which discusses the strip chart type -- keep
13 passing by more notes -- oh, I got the wrong document,
14 excuse me.

15 MS. DOROSHOW: You're talking about TMI's
16 previous --

17 CHAIRMAN SMITH: Oh, I have it. I'm sorry.

18 MS. BERNABEI: Page 9.

19 JUDGE SMITH: Page 9.

20 MS. BERNABEI: We've identified it by it's
21 document number.

22 JUDGE SMITH: Okay.

23 But from the office, you put a heading on
24 the Keaton notes but you didn't put it on the strip
25 chart?

1 MS. BERNABEI: You are right. It's
2 confusing.

3 I didn't go into great detail --

4 JUDGE SMITH: That's our problem. See, we
5 saw the cutting allegation -- we saw the explanation,
6 but then you talk about an entirely new thing here,
7 entirely new thing.

8 MS. BERNABEI: It's not a new thing to us.
9 We had no indication that --

10 JUDGE WOLFE: Well, we had no indication
11 from the top of page 9 of what you're now trying to
12 say you were trying to say. All you speak of in page
13 9 is the cutting of the strip chart, period.

14 MS. BERNABEI: Let me just state what --

15 JUDGE WOLFE: Yes or no?

16 MS. BERNABEI: -- is required. What's on
17 the page is on the page, I have no fault with that.

18 JUDGE SMITH: So Ms. Doroshow is raising, for
19 the first time, a new basis for the motion.

20 MS. BERNABEI: That wasn't in our thinking.
21 That's what I was trying to explain to you.

22 Our thinking was that the conventional
23 wisdom of this case, up to the time we reviewed the
24 chart, was that the chart could not have been cut from
25 the drum without somehow creating anomalies in the

1 chart or otherwise disrupting the chart.

2 We learned with Mr. Lentz and in our review
3 of the original, that in fact it was cut in such a way
4 and it was to indicate removal prior to 10:00 p.m. and
5 that there were anomalies such that when that cut
6 occurred could have caused anomalies in the chart. I
7 agree it's not explained at all in the motion.

8 But those two facts, the anomalies and the
9 fact it was cut at 10:00 p.m. is different than what
10 had been, what I would term the conventional wisdom in
11 this case, that that could not -- that there were no
12 anomalies and that it couldn't have been cut without
13 -- there were no anomalies after 10:00 p.m. and that
14 it couldn't have been removed without some anomalies
15 other than the ones that were already acknowledged.

16 JUDGE SMITH: Miss, were you aware before
17 yesterday or today that the cut section of the chart
18 was discussed in Nureg-O600? This is in the
19 Licensee's answer.

20 MS. BERNABEI: I was not personally
21 notified.

22 JUDGE SMITH: This is the first you've
23 learned about it?

24 MS. BERNABEI: But that's really not the --
25 I guess I wouldn't separate it from -- our concern is

1 determining when it was cut. And --

2 JUDGE SMITH: But I want to talk to you
3 about something more important. And that is full and
4 open disclosure to the Board when you make a motion.

5 MS. BERNABEI: No, I agree. I will agree
6 that we did not know about this part in Nureg-0600.
7 But that was not our -- the cut itself was not our
8 concern. The time when it was cut is of concern.

9 JUDGE SMITH: Well, I read that thing that
10 you have up there on the 9th. You say, here we are,
11 you found you have new evidence, strip chart cut and
12 taped back together. And boy, if I ever saw an
13 investigative lead, that's one. That really got my
14 attention. And you need a technical expert. And here
15 comes this explanation, a perfectly rational
16 explanation.

17 Now, you get us excited about something and
18 it just fritters away. How many times do you think
19 you can do that?

20 MS. BERNABEI: We were not -- I can say, we
21 were not aware of Nureg-0600 --

22 JUDGE SMITH: All right.

23 Then you fail on that and then Ms. Doroshov
24 comes up with some anomalies that she saw that is not
25 even in the slightest alluded to in your motion.

1 MS. BERNABEI: That was the basis of -- that
2 was the basis of the motion, to determine at the time
3 at which the strip -- the reason I'm a little confused
4 is that it doesn't seem to be to make any difference
5 to this motion whether we knew the strip chart was cut
6 at 10 o'clock.

7 The point is when it was cut at that time.
8 In other words, if there are anomalies in the chart so
9 as to demonstrate when that cut was made, the fact
10 that we knew or did not know of the cut at a previous
11 time really is not relevant because the record
12 established that there were no anomalies.

13 It was only on our examination that we
14 discovered anomalies. The record in this case is it
15 was cut, and I'm not talking about what we knew about
16 it. The record in the case is that it was cut at
17 10:00 p.m., there were no anomalies. Therefore, we
18 can't say it was cut on the evening of March 28.

19 JUDGE SMITH: Okay.

20 So --

21 MS. BERNABEI: What we're saying is we want
22 to look -- have our experts or someone who knows about
23 these things look at the strip chart to determine when
24 the cut was made. It --

25 JUDGE SMITH: To determine when it was made?

1 MS. BERNABEI: That's right.

2 Physically it's a chart that rolls from one
3 roller on one side of the drum to the other side. And
4 it can be cut at such point as it rolls off the drum
5 onto the second roller.

6 MR. BLAKE: It doesn't just roll, for gosh
7 sakes, I think those things work by pulling.

8 MR. BERNABEI: Yes.

9 MR. BLAKE: You can't push one of these
10 charts through the pen recorder. It's normally pulled
11 onto the second drum. And you can't just cut it.

12 JUDGE LINENBERGER: It is normally pulled.
13 And I will not presume to testify here but there are
14 strip chart recorders that manage the paper by a
15 mechanism known as sprockets which sprockets like the
16 sprockets on 35 milimeter film in a camera will not
17 allow the paper to be shifted transversly to the
18 direction of motion. There are other strip charts
19 that don't have such sprockets that do permit the
20 paper to be shifted transversly to its direction of
21 motion.

22 Can anybody here tell the Board which type
23 of strip chart is involved here?

24 MS. BERNABEI: What I can tell you is what
25 Mr. Lentz testified to and I'm not sure I understand,

1 Judge Linenberger -- what I understand him to say is
2 that it could be cut at such time --

3 JUDGE LINENBERGER: Excuse me.

4 Your saying you don't know the answer to my
5 question?

6 MS. BERNABEI: Well, I'm trying to explain
7 what Mr. --

8 JUDGE LINENBERGER: Are you saying you don't
9 know the answer to my question?

10 MS. BERNABEI: I think I might, but I'm not
11 sure. I think I might.

12 JUDGE LINENBERGER: Okay.

13 That's fair enough. I just didn't want to
14 pursue this any further but there's a -- depending on
15 which type of chart recorder, which type of -- take up
16 spools are used, you could have a variety of
17 possibilities here that would just be wild goose
18 chases. We have heard the kinds of things that --

19 JUDGE SMITH: Tell me once again, what is
20 the basis for your suspicion that the cutting of the
21 charts, early and late cuts, did not take place at the
22 time that it was alluded to in -- as represented on
23 the times on the charts and the times it was alluded
24 to in the Nureg-0600 report.

25 Is it your position that that is something

1 that could happen or do you have any basis for
2 suspecting that it did happen?

3 MS. BERNABEI: We have two things. One, Mr.
4 Lentz, who was at TMI and apparently understood how
5 this particular strip chart operated, said it could be
6 cut.

7 JUDGE SMITH: Could be cut.

8 MS. BERNABEI: It could be cut as long as
9 the paper was then reattached to the second spool so
10 that it continued pulling through under the recorders.

11 JUDGE SMITH: But how about the time
12 indications?

13 MS. BERNABEI: Well, what we're trying to
14 determine is if and it appears, and this is what's new
15 to us, is that it's anomalies at certain points. It
16 is --

17 JUDGE SMITH: Where?

18 MS. BERNABEI: At 12 and one.

19 JUDGE SMITH: But not at the point of
20 cut?

21 MS. BERNABEI: They wouldn't appear at the
22 point of cut. The point of the cut has to come off
23 the machine enough for it to be cut. At that point,
24 there may be anomalies at a later time of the
25 recording.

1 In other words, it's two spools and pretty
2 much the paper is being pulled through. Mr. Lentz
3 testified you could cut it. This is not the usual
4 business practice. He said, "We don't cut it. We
5 wait for the paper to run out and then we store as a
6 usual rule."

7 He said you can, however, cut it as long as
8 you keep the paper flowing through to the second spool
9 and attach it in some manner. However, we believe
10 that an anomaly would occur at the time it was cut.
11 Therefore, if you look at the chart, when there's an
12 anomaly, that could indicate when the 10:00 p.m. --
13 the cut at 10:00 p.m. was made.

14 It certainly wasn't made at the time it was
15 going under the recorder. It was made at some later
16 time after the paper had rolled off the machine
17 nearing the second spool. And that's what --

18 JUDGE SMITH: Well, what is the significance
19 of it?

20 MS. BERNABEI: There has been testimony that
21 at prior time, at this point it's recanted -- that
22 copies of the strip chart -- photocopies were made on
23 the evening of March 28. That has subsequently been
24 recanted.

25 JUDGE SMITH: It's a question of when the

1 photocopies were made, not a question of whether the
2 timeline on the chart is accurate; is that your point?

3 MS. BERNABEI: No.

4 JUDGE SMITH: Are you challenging the
5 timeline on the chart? Is there a timeline on it? I
6 mean, that's what it's all about; isn't it?

7 MS. BERNABEI: That's right. That's right.

8 No, no, no. What we're talking about is
9 when the cut was made. Okay?

10 JUDGE SMITH: But what's the significance of
11 when the cut was made?

12 MS. BERNABEI: If the cut were made around
13 11:30 or 12:00, it would indicate that it was perhaps
14 cut in order to make photocopies as has originally
15 been testified and then testimony recanted it.

16 It might also indicate that Mr. Lentz, who
17 was in there in order to collect hard data, took that
18 back to the observation center and analyzed it that
19 night.

20 JUDGE LINENBERGER: Let me just inquire into
21 something here that puzzles me.

22 There are a lot of people interested in what
23 had gone on and what was going on at the time. And the
24 feed and take up spools on strip charts frequently
25 have roller shaped type springs in them that maintain

1 tension on the paper, irrespective of whether they're
2 managing the paper by use of sprockets or not.

3 And it is not at all unusual for a plant
4 operator interested in prior history to walk up to a
5 strip chart, take hold of it, unroll it in the manner
6 of a window shade for a few minutes or a few hours of
7 time on the chart to see what had gone on before, then
8 release it after he had satisfied his interest and
9 things go on moving and recording.

10 Now, it is also not unusual that that kind
11 of interest, that kind of examination of the chart
12 might have caused some lateral displacement of the
13 paper and imposed an anomaly on the chart that had
14 absolutely nothing to do with the chart's having been
15 cut or not cut.

16 Now then, I'm leading to a question which
17 is, what is your basis for believing that any
18 anomalies, as you have characterized them, can be or
19 should be used to impugn anybody's allegation about
20 when the chart was cut? The anomalies could come
21 there just because somebody walked up, pulled the
22 paper out a few inches to see what had happened and
23 let it go, no cutting having taken place at all.

24 What is your basis for believing that these
25 anomalies have anything to do with cutting the chart

1 at all?

2 MS. BERNABEI: I assume -- there's no
3 controversy that the chart was cut at 10:00 p.m.
4 There is also testimony that that would not have been
5 done under normal operating circumstances. That is,
6 that was something that was not the usual operating
7 procedures.

8 According to Mr. Lentz, in most cases the
9 paper was allowed to complete it's run through the
10 machine.

11 In response to your question, what we're
12 looking for is what anomaly created the -- what
13 anomaly, if any, was created by cutting at 10:00 p.m.
14 and at what time.

15 JUDGE LINENBERGER: Excuse me, Ms. Bernabei,
16 but do you consider that what you've just said
17 answered my question because I don't. And if you do,
18 then there's a vast gap between our two understandings
19 here.

20 MS. BERNABEI: It may be that an anomaly
21 could be created in the manner you've described. It
22 may also be that it may be created by a cut at 10:00
23 p.m. It may be that we would have to consider what
24 kind of -- the kind of anomaly would be created by the
25 viewing that you suggested versus the cut.

1 That's obviously a technical point and we
2 don't presume to have that expertise. But I don't
3 think it's -- I think it's a fair inquiry to see what
4 kind of anomaly was created and whether that could
5 have been created by a cut as opposed to viewing that
6 you suggested.

7 I would secondly say that what we're
8 suggesting is really in line with what the NRC did
9 apparently in their Nureco-0600.

10 JUDGE SMITH: Did you understand Judge
11 Linenberger's question?

12 MS. BERNABEI: Yes.

13 JUDGE SMITH: What was it?

14 MS. BERNABEI: How would you determine from
15 an anomaly whether, I assume, whether -- how would you
16 determine from an anomaly whether or not it would be
17 created by viewing.

18 MR. LINENBERGER: I'm sorry, that was not my
19 question. My question was what is your basis for
20 believing that any observed anomalies had to be
21 attributed to the cutting of the chart as opposed to
22 being attributed to someone interested in the data on
23 the chart, walking up and pulling out the paper a bit
24 to see what past -- recent past history might be
25 there.

1 I only asked for your basis in believing
2 that it had to be one or the other, or could be one or
3 the other and that was the question.

4 JUDGE SMITH: I think there's been enough
5 discussion. Your motion was sparse. The answer was
6 good and dispositive. We've had a thorough discussion
7 and you presented no reason to believe -- for us to
8 believe that there's any basis.

9 You only have presented argument that a
10 certain event could have happened, not that there's
11 any basis that it did happen.

12 So move on to your final point. We've ruled
13 on that now, that's done.

14 MS. BERNABEI: The final point is the notes
15 of Mr. Morrell. I see that there is a disagreement in
16 terms of when these notes appeared in the discovery
17 room.

18 There is no index to the documents in
19 Lisensee's discovery room. I have personally reviewed
20 the documents three times -- that is the entire
21 responses to TMIA's first discovery request, that is
22 the first set of interrogatories and first request for
23 production. Mr. Morrell's notes is a part of that
24 response.

25 I viewed it on two occasion prior to -- I

1 believe it was October 18. Ms. Doroshow reviewed it
2 in its entirety a time after that and she saw the
3 Morrell notes. That was the first indication, we
4 believe, we had of the Morrell notes.

5 Lisensee says they were always there. We do
6 differ from them on that. I don't think there's any
7 way to prove either one of our positions since there
8 is no index of the documents. I would just note that
9 the particular file, which I think I've noted in a
10 footnote, is D-8 (71).

11 I know on my first review of the documents
12 in September and on my second there were -- the
13 numbers didn't go up that high. These are, I think it
14 was personal files. I didn't see them but we have no
15 way of demonstrating that.

16 But I would say that the significance of it
17 is that it does show knowledge in Parsippany. Mr.
18 Morrell was a nuclear systems engineer in Parsippany
19 who, according to some testimony, was assigned an
20 interface role between the GPU service corporation
21 people in Parsippany and those sent to the site.

22 It shows some knowledge of actuation. It
23 appears at the containments phrase in Parsippany on
24 the first day of the accident, possibly also of the
25 pressure spot given -- there's a notation.

1 (Judges confer)

2 JUDGE SMITH: One of the things that -- Mr.
3 Blake, did you want to comment beyond your answer?

4 MR. BLAKE: Well, there's a simple dispute.
5 I don't know how to characterize it other than a
6 challenge to the facts as I've represented them after
7 checking into this.

8 JUDGE SMITH: I wanted to approach it
9 somewhat differently. I think that the most we can
10 see here is that it may have been overlooked, but
11 there's no basis to suggest that there was an
12 intentional insertion -- deceptive insertion of notes.

13 But one of the things that surprised me when
14 I read your motion was, why are we at such a
15 fundamental level? Are the events indicated by Mr.
16 Morrell's notes in dispute?

17 MS. BERNABEI: There's no indication by the
18 GPU's Service Corporation personnel, as least to my
19 knowledge in Parsippany, there's no acknowledgment
20 that they knew about the pressure spike on March 28th,
21 or actuation of the containment sprays or the logic of
22 the sprays.

23 At least I know of no individual in
24 Parsippany that has acknowledged that. I could be
25 challenged on that but I don't know of anybody who's

1 acknowledged that.

2 JUDGE SMITH: How about the containment
3 spray? You don't have anybody that's acknowledged
4 that the containment spray actuated?

5 MS. BERNABEI: I don't think so, not from --
6 that is Service Corporation people in Parsippany. I'm
7 not talking now about -- Mr. Abromovich says he was
8 informed of it. He was at the site and he remembers
9 he was informed at the site. Not anybody in
10 Parsippany.

11 I can be corrected on that but that's my
12 knowledge.

13 JUDGE SMITH: So the essence here is where
14 Mr. Morrell is headquartered. Is that the essence of
15 your discovery?

16 MS. BERNABEI: Well, that information about
17 containment sprays moved to corporate headquarters and
18 apparently to the person who is said to be the
19 interface with the site, that is Mr. Morrell.

20 I don't know of any acknowledgement that
21 anyone in Parsippany knew on March 28 of the actuation
22 of the containment sprays.

23 JUDGE SMITH: And you want to develop that
24 information of Mr. Morrell?

25 MS. BERNABEI: Right.

1 JUDGE SMITH: Mr. Blake, do you have
2 anything to add?

3 MR. BLAKE: No, I've stated I think they
4 missed their opportunity. I wish I were in a better
5 position to advise you substantively about the notes
6 and cure what I sense you're searching for. I can't
7 do it, Judge Smith.

8 I believe the basis for their's was a recent
9 discovery and I believe that it's been there now for
10 -- since the beginning of discovery available to them
11 in a file that they looked at.

12 And therefore, I hit their basis. I did not
13 go on substantively to discuss the notes.

14 (Judges confer)

15 JUDGE SMITH: What is the area of commonly
16 accepted knowledge as to the recognition of the
17 existence of containment -- actuation of containment
18 spray on the 28th? Is that still in dispute?

19 MS. BERNABEI: Not by site personnel, but
20 there's nothing in the record and I --

21 JUDGE SMITH: By this particular person,
22 that's the thing that you're --

23 MS. BERNABEI: No, no, no, no.

24 By corporate headquarters. We don't care if
25 it's Mike Morrell or Mr. Keaton or whoever it is.

1 It's the fact that Parsippany headquarters knew about
2 it.

3 There's also a suggestion, I don't want to
4 say it's stronger than that, that he understood the
5 logic of the containment spray. That is, that it
6 takes 30 p.s.i. and two out of three independent
7 sensors to indicate that.

8 The reason it's important is because it's
9 always -- the conventional knowledge in this case is
10 that site personnel knew about containment spray
11 actuation on the site, and certainly they turned them
12 off. But that there wasn't a real appreciation of the
13 logic. That is that it had to indicate a real
14 increase in pressure to at least 28 or 30 p.s.i.

15 As far as I know, the record has never been
16 developed --

17 JUDGE SMITH: Do you have reason to believe
18 that Mr. Morrell had particular knowledge that
19 containment spray indicated contained -- indicated 28
20 p.s.i.?

21 MS. BERNABEI: Let me just take a look at
22 his. It says, "Spray at 30 p.s.i.g. RB or," and then
23 there's a pressure indicator for reactor coolant
24 system.

25 As I understand it, this spray at 30

1 p.s.i.g., the only way the containment spray's can
2 come on is of if there are two out of three
3 independent pressures sensors indicating high
4 pressure. I believe the figure's over 28 p.s.i., 30
5 p.s.i.

6 This indication -- it looks like he has some
7 knowledge of actuation containment sprays. To my
8 knowledge, no one in Parsippany has ever acknowledged
9 that they had knowledge, that there was knowledge off
10 the site of that fact.

11 JUDGE SMITH: Off the site.

12 MS. BERNABEI: Off the site.

13 It would also indicate that the GPU Service
14 Corporation people are technically, I would say that
15 whatever question could be raised perhaps about some
16 of the site personnel, that service corporation people
17 are the, probably the top technical people. And I
18 think there's much less question as to whether or not
19 they would understand the technical --

20 JUDGE SMITH: So this is a difference in
21 degree of sophistication of perception of conditions.

22 MS. BERNABEI: Well, it's -- yes. But I
23 think it is significant in the sense it's either
24 corporate management or near corporate management.
25 It's the top technical people in the corporation, that

1 is the service corporation people. And just the fact
2 that this would get transmitted off the site gives it
3 a certain significance.

4 I assume that what they were transmitting to
5 Parsippany was not of the minor, less important
6 indicators, but the significant indicators of what the
7 condition of the reactor were.

8 JUDGE SMITH: Well, the standard that we're
9 looking at is that it's a missed discovery
10 opportunity. Is it of such significance that the
11 Board, on its own, would be moved to inquire into it?

12 I for one don't have a good enough feeling
13 as to the significance of information or no
14 information of containment spray actuation on the 28
15 to Parsippany. I don't know how that little piece
16 fits in to the whole story. So in that account, I
17 myself, left without further information, wouldn't be
18 moved to it.

19 MR. BLAKE: Mr. Smith, I suggest one other
20 thing. And as I say, I hit only what I understood to
21 have been the basis for their good cause.

22 JUDGE SMITH: Yes, I understand. But we've
23 already looked at everything to see whether we would
24 inquire too.

25 MR. BLAKE: That's right.

1 And not I'm going to try to provide you
2 another reason why I don't think you need to here.

3 As I look at this document right now, the
4 portion of it which is of interest to TMI, which is
5 the top portion of what are purported to Mr. Morrell's
6 notes in Parsippany on March 28.

7 JUDGE SMITH: Exhibit 4?

8 MR. BLAKE: Yes, sir.

9 These do not strike me as values Mr. Morrell
10 was necessarily receiving from TMI or, in fact, from
11 any other place about what was occurring at TMI or
12 elsewhere.

13 In fact, they rather strike me as
14 information about certain plant parameters or when
15 safety systems take effect. If I just look at the way
16 they're written, it's unnecessary to tell me that it
17 isn't based on a report of what actually was occurring
18 at TMI but rather is no more than a sort of a slate of
19 parameters of plant values, not actual values but
20 imitation sort of.

21 JUDGE SMITH: That can be inferred from the
22 series on, for example, reactor trip.

23 MR. BLAKE: That's correct, sir.

24 JUDGE SMITH: Because some of those events,
25 in fact, did not happen.

1 MR. BLAKE: Well there certainly was a
2 reactor trip that day but it just seems to be that --

3 JUDGE SMITH: Well, my point is a reactor
4 did not trip on low pressure and on high pressure and
5 all those things did not happen.

6 MR. BLAKE: No, that's right.

7 And if I look at -- even in the next series
8 where the values weren't filled in at this time and
9 apparently never were. It just strikes me --

10 JUDGE SMITH: -- your release?

11 MR. BLAKE: There --

12 JUDGE SMITH: They're a listing of the
13 safety --

14 MS. BERNABEI: There aren't some notations
15 on here that have particular times. For instance,
16 almost at the end of the page it says 600 millirems
17 per hour. I don't know if that's a correct reading --

18 MR. BLAKE: I don't quarrel with the bottom
of the page. It looks to me -- what we're focused on
top of the page above what appears to be a line
through it. And we're all here trying to focus
whether or not there's some real prospect that this
is going to be enlightening. And I suggest it's not.

MS. BERNABEI: If I could just say, we don't
25 know what these notes represent. That's why we wanted

1 discovery. Mr. Blake's representations are not an
2 interpretation of the notes.

3 (Judges confer.)

4 JUDGE SMITH: It seems to be as I look over
5 here or I look over that list that many, perhaps most
6 of those events did not, in fact, happen on the 28th.
7 You've just made a listing of these pertinent things.

8 That motion is denied.

9 Do you want to take a break for lunch and
10 come back with your interrogatories? Will an hour be
11 satisfactory? That be satisfactory? That be
12 sufficient for you?

13 (Whereupon, at 12:57 p.m. the meeting was
14 recessed to reconvene this same day.)

15

16

17

18

19

20

21

22

23

24

25

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

2 JUDGE SMITH: Ready now to take up the
3 TMIA's motion to compel Licencee's response to its
4 four set of interrogatories and fourth request for a
5 production of documents.

6 First, we would ask if there has been any
7 progress in resolving this dispute. And if there has
8 not been, has there been any change in your position,
9 Ms. Bernabei, as a consequence of Licencee's response,
10 which I realize that you didn't have until this
11 morning?

12 MS. BERNABEI: I guess I could represent
13 that since we filed our motion I do understand that
14 Mr. Blake, correct me if I'm wrong, that those
15 particular interrogatories that are listed on the
16 first page, they do intend to attempt a supplemental
17 response. So, I think that, basically, what you have
18 before you is the entire area of dispute.

19 MR. BLAKE: No.

20 MS. BERNABEI: Is that wrong?

21 MR. BLAKE: That's wrong.

22 MS. BERNABEI: Okay.

23 MR. BLAKE: It is wrong only in that
24 Interrogatory 4 is listed on the first page and that
25 is inconsistent with both what we discussed on October

1 the 16th and with the remainder of your document where
2 you moved to compel on four. Otherwise, it is
3 correct. And I have undertaken to try to get answers
4 to those, supplemental answers.

5 MS. BERNABEI: Okay.

6 The reason why I listed four was I assumed
7 that there were two objections, one of which we
8 thought we might get over and the other one we did
9 not. So I listed it in my motion. There was also --
10 to my understanding my notes reflect that, I guess
11 wrongly, that they were going to get a clarifying
12 response. That's fine.

13 Then you have before you the full extent of
14 our dispute and it probably has not been any progress.

15 JUDGE SMITH: Well, then, rather than
16 proceeding interrogatory by interrogatory, would there
17 be any benefit in reviewing the reach of our previous
18 orders on this? It seems that the basic dispute, as I
19 understand it, is the need to go back and redo
20 discovery in response to interrogatories when our
21 ruling was that it would apply only to the inquiry
22 into -- elevated core temperatures would be limited
23 only to future discovery, future discovery being
24 discovery as of the time of our prehearing conference.

25 MS. BERNABEI: All right. That's the way

1 that we understood it.

2 What I can represent is that, and I didn't
3 address it in my motion. The Licencee has made an
4 objection to answering questions that were raised and
5 answered during depositions. I have no problem with
6 agreeing to limit our discovery requests to those
7 things which were not specifically inquired into in
8 discovery. To that degree, those individuals who we
9 have deposed and asked these questions I have no
10 problem if licencee stands by their answers. So, to
11 that degree it is limited.

12 MR. BLAKE: I would like to think that that
13 is something good and would narrow the field --

14 JUDGE SMITH: Yes.

15 MR. BLAKE: -- but I'm not sure I understand
16 it. And the reason that I don't, if we were able to
17 wipe out at this point anyone who's been deposed,
18 where during the course of the depositions -- I
19 understood from the Board's rulings that they were
20 allowed to inquire into inquiries. Then -- and I
21 wiped out everybody that had been deposed. That is a
22 step forward and I understand that.

23 But if she adds in addition, not only those
24 -- the only people that she is willing to exclude are
25 those who were deposed and those to which she put the

1 questions, I don't know how to determine that. I
2 don't know whether I've really gotten that far ahead.

3 JUDGE SMITH: That wasn't your intention,
4 was it?

5 MS. BERNABEI: No, I pretty much covered --
6 I mean --

7 JUDGE SMITH: Everybody who has been deposed
8 is now out of the picture?

9 MS. BERNABEI: Yes.

10 JUDGE SMITH: All right.

11 MS. BERNABEI: We didn't fight about because
12 I think that is reasonable. My only caveat would be
13 unless Licencee is going to take the position in this
14 hearing that is contrary to those person's testimony
15 but I don't hear that. If I can have representation
16 that Licencee is not going to take a position in the
17 hearings contrary to those people's testimony, I have
18 no problem wiping them out.

19 MR. BLAKE: I can't make that stipulation.
20 I don't even have the transcripts yet of the
21 depositions. I don't know that. In fact, people's
22 testimonies are inconsistent as you would expect their
23 memories would suggest after five years. I can't make
24 that general stipulation. I don't even see the need
25 for it.

1 MS. BERNABEI: The whole purpose of
2 discovery, at least in my mind, is to pin down exactly
3 what the company's position is going to be and to get
4 certain facts discovered in discovery. I mean, if the
5 company doesn't have a position, I think it should so
6 state. And that is the purpose of discovery as I
7 understand it, in large part.

8 JUDGE SMITH: Well, yes, that is one of the
9 purposes of discovery but determining that position
10 through the depositions of nonmanagement employees is
11 another matter.

12 MS. BERNABEI: Well --

13 JUDGE SMITH: Or management employees, as
14 far as that's concerned.

15 MS. BERNABEI: I understand. That is why we
16 did it in an interrogatory form. We wanted the
17 company's position.

18 JUDGE SMITH: I see, okay.

19 MR. BLAKE: If we are there at no longer
20 needing the -- no longer would these interrogatories
21 apply to anyone that has been deposed, then, in view
22 of the Board's order, it seems to me that our offer
23 covers what they are entitled to. I guess I don't
24 understand the argument.

25 JUDGE SMITH: Your offer being what?

1 MR. BLAKE: Our offer being to take
2 everybody who's named in the interrogatory and ask
3 them about what they knew about in-cores on March
4 28th. I mean, that is what we are willing to do.

5 JUDGE SMITH: Would it be helpful -- well,
6 what is your response to that, Ms. Bernabei?

7 MS. BERNABEI: Well, the questions don't
8 simply ask that. The questions ask about specific
9 conversations that have been previously identified.
10 They also go into March 29th, to which I think the
11 Board's ruling did extend. I attempted to state my
12 understanding of the Board's guidance at that
13 prehearing conference.

14 And, essentially, I understood that while he
15 did not wish to put the burden on Licencee to canvass
16 the 200 or 400 employees that previously canvassed,
17 which I think is very reasonable, that however
18 discovery from that point forward could cover or focus
19 on in-core thermocouple temperatures.

20 In accord with what I understood the Board's
21 ruling to be, we went ahead and posed specific
22 questions to specific individuals, and they are
23 largely management individuals, I would say largely,
24 if not all, were all management individuals, that we
25 knew, or we had good reason to believe, had

1 information about certain kinds of communications.
2 And we limited all our questions, as far as I can
3 tell, to those individuals.

4 Subsequently to posing the interrogatories,
5 we took their deposition. And if the company is
6 willing to stand by their answers in deposition, we
7 don't want to put them to the expense of answering
8 them again. But I do think the Board's order was
9 broader than Licencee's offer to talk about specific
10 communications on one particular day by day
11 thermocouple temperature. I think it was broader than
12 that. And we have attempted, I think, to narrow our
13 requests to fit within the Board's order. So I don't
14 think that Mr. Blake's offer goes far enough in light
15 of what I understood the Board's ruling to be.

16 I might just state here, it might be an
17 appropriate time, GPU has said that what we are trying
18 to do is open up all the reporting aspects of the
19 accident and all the issues that were raised at former
20 times. We really have not. In fact, I think, the
21 particular objection, as you well know, raised to
22 these interrogatories is that in-core thermocouple
23 temperatures is not an area that can be inquired into.
24 That, I understand, was precisely the ruling of this
25 Board on September 17th.

1 Let's not go over old ground but from
2 discovery here on in we think it is so closely tied to
3 the production of hydrogen that it may be inquired
4 into. What we tried through the interrogatories to do
5 is follow this Board's guidance and, specifically, not
6 to make the Licencee go back over old territory but
7 just to question those individuals we had good reason
8 to believe were at the meetings, had the
9 communications, or where in the relevant area.

10 JUDGE SMITH: Including people who had
11 already been deposed?

12 MS. BERNABEI: They hadn't been deposed at
13 the time we posed the interrogatories.

14 JUDGE SMITH: Okay.

15 MS. BERNABEI: You see, that's part of the
16 problem. The depositions came later. I think these
17 interrogatories were posed -- my belief is that a
18 large number of the people were deposed after.

19 MR. BLAKE: Well, let's just focus on what
20 Ms. Bernabei has just said. She meant to narrow it
21 and keep it within. Take a look at the
22 interrogatories 3(b), 4, and 20.

23 JUDGE SMITH: May I suggest --

24 MR. BLAKE: They just don't square.

25 JUDGE SMITH: All right, some of them are

1 quite broad.

2 May I suggest that we, perhaps, have a
3 working document? And one that seems to be very good
4 is GPU's answer to the motion to compel. No, not that
5 one. GPU's answer to the interrogatories, answering
6 the objections.

7 Could you repeat the interrogatory and you
8 make your basic point. So, let's sort of follow that
9 document through as a point of common reference. And
10 we want to start with what, Interrogatory 3? Well,
11 that is not included in her motion to compel.
12 Apparently she accepted your --

13 MR. BLAKE: What's that, 3? No, it is
14 included in her motion to compel.

15 MS. BERNABEI: Yes, the first numbers that
16 appear on page five. It is one, two, three, four, and
17 then they continue.

18 JUDGE SMITH: I'm sorry, I'm having
19 difficulty hearing this afternoon, which I did not
20 have this morning.

21 MS. BERNABEI: We may not be speaking loud.
22 On page five, the numbers appear under the
23 interrogatories for which we move to compel.

24 MR. BLAKE: All right.

25 JUDGE SMITH: That's right, yes.

1 Well, we are looking at Interrogatory 3 now
2 as an example. Well, it certainly is a broad
3 interrogatory, isn't it?

4 MS. BERNABEI: May I just point out that it
5 is limited in time to March 28th, 1979.

6 JUDGE SMITH: Well --

7 MS. BERNABEI: It is one date, March 28th,
8 1979. I think that's pretty -- and if you will note,
9 the particular parameters we are questioning about
10 appear in Subsection C which are the parameters that I
11 understood that you permitted our inquiry into on
12 September 17th.

13 JUDGE SMITH: To the contrary. Some of
14 these parameters were, specifically, the subject of a
15 protective order, as I recall? That is some time ago.

16 MS. BERNABEI: Not the -- the only one that
17 was not the subject -- the only one that did fall
18 within the protection of the protective order was the
19 in-core thermocouple readings.

20 JUDGE SMITH: All right.

21 MS. BERNABEI: I understood from our
22 September 17th prehearing conference that you had
23 allowed inquiry. This is --

24 JUDGE SMITH: All right.

25 We did have --

1 MS. BERNABEI: -- a limited inquiry into
2 that.

3 JUDGE SMITH: We did have hydrogen that was
4 permitted, and containment sprays. I suppose the
5 direction to activate equipment is subsumed by
6 hydrogen.

7 Well, you are correct in that C does seem to
8 have nothing except Board approved subject matter, do
9 you agree with that?

10 MR. BLAKE: Clearly, other than with respect
11 to inquiry which we later came to -- which the Board
12 later said had an attachment and came to include.

13 JUDGE SMITH: With that conditional one?

14 MR. BLAKE: There is some difference here in
15 what was decided on September 17th, Judge Smith. I
16 think we have a difference of opinion. What we were
17 looking at on the 17th when the Board decided to allow
18 inquiries but not require a redo were really a slate
19 of depositions and that's where we were headed, that's
20 what we had on the table, that's what we were focused
21 on.

22 And what happened after the 17th was, not
23 only did we go into those depositions where they asked
24 about and got answers to in-core thermocouple
25 information but we then got these two sets of

1 subsequent interrogatories which we regarded, frankly,
2 as an end run on the Board's ruling.

3 That is why there is a difference here when
4 we get interrogatories which would lead to an
5 additional production, additional inquiry of people
6 into the in-core area. I don't know that any of us
7 really focused on it. At least, I didn't have it on
8 my mind on the 17th. We didn't have any
9 interrogatories in front of us or any subsequent
10 discovery in front of us other than a slate of
11 depositions. And there was no question in my mind.

12 JUDGE SMITH: And at that time you had
13 already been through what?

14 MR. BLAKE: Oh, I don't know how many.

15 JUDGE SMITH: But a large number of
16 interrogatories which you generated your
17 questionnaires from?

18 MR. BLAKE: That's right.

19 JUDGE SMITH: Right.

20 And that was exactly that, that we did not
21 want them to have to go back to make a wide scale
22 inquiry into a lot of employees.

23 MS. BERNABEI: Exact? and that's --

24 MR. BLAKE: But let me say that even taking
25 that into account to the extent -- although, I didn't

1 have interrogatories on my mind -- to the extent the
2 Board intended that inquiries ought to be gone into in
3 addition in interrogatories, that is the nature of our
4 offer, and that is why we made the offer that we did.
5 To the extent we misunderstood, or we were wrong,
6 we've offered to do that and maintain that offer.

7 MS. BERNABEI: May I just state that --

8 MR. BLAKE: But not everything else.

9 MS. BERNABEI: I understand that.

10 I really do not understand Mr. Blake's
11 objection. We had a prehearing conference on
12 September 17th filed a little over a month ago. At
13 that time, in addition to saying, "This is an area
14 that we, the Board, think is so closely connected it
15 can be a legitimate area of inquiry," I understood
16 that you extended the discovery period. My
17 understanding was that no party is under a restriction
18 as to the type of discovery he or she may use.

19 Certainly, it doesn't make sense to me to
20 say, "You can ask certain questions in terms of a
21 deposition. You can't ask certain questions in terms
22 of interrogatories." In fact, I would think that an
23 interrogatory is much less burdensome in terms of
24 expense to the Licencee.

25 JUDGE SMITH: Well, yes, I know. But you

1 had interrogatories which required the Licencee to go
2 to many, many, many employees and ask what they
3 happened to know about containment spray initiation,
4 spike, and those things. Now you are asking them to
5 do the same thing.

6 MS. BERNABEI: No, there is a difference.
7 Let me just count for a moment.

8 JUDGE SMITH: Not as many employees but --

9 MS. BERNABEI: Well, in fact --

10 JUDGE SMITH: -- K of them, A through K of
11 them.

12 MS. BERNABEI: In fact, there is ten. K is
13 someone whose name we misread on these particular
14 notes. It is Mr. Moore. There is only, in fact, ten
15 people we've asked them to talk about. At this point,
16 given the depositions, which we did not know about at
17 that time, we've limited it to, probably, about five
18 people. Essentially what Mr. Blake is saying is, "You
19 could have asked these people questions if you took
20 them on deposition, if you incurred that expense. You
21 can't do it because you asked about it in an
22 interrogatory."

23 We attempted to narrow, as much as we could,
24 these interrogatories to the particular people we had
25 reason to believe had information. We deposed a

1 number. By my count, four of these people. We now
2 have left about six people. That doesn't seem like an
3 incredible burden to me. And to any of the degree
4 their questionnaire has already answered the question
5 there is no need to go back to them. They can just
6 refers to the questionnaires.

7 To the degree it asked about inquiry of the
8 thermocouple temperatures, I think it is not an
9 unreasonable demand to ask those six people, at least
10 by my reading they are management people in the
11 service corporation, about those temperatures. These
12 interrogatories are specifically drafted to comply
13 with the Board's order.

14 MR. BLAKE: We've offered to do that. I'm
15 willing to do that.

16 MS. BERNABEI: Well, he is not going to ask
17 them the particular question we asked. I mean, that
18 is the problem.

19 MR. BLAKE: I'm not going to double-check
20 what I get from them with everybody else in the
21 organization, which is precisely what you asked us to
22 do. That's the questionnaire. That is the entire
23 survey. I don't think that is what the Board ruling
24 was on September 17th. I think it was just the
25 opposite. But I am willing to ask these folks about

1 in-cores and their knowledge on the 28th.

2 MS. BERNABEI: If there is any question,
3 what this interrogatory says is they are to be
4 answered with respect to the following individuals.
5 We specifically listed a number of people because
6 those are the only people that we would expect the
7 question to be asked of.

8 MR. BLAKE: That is what I offered. And
9 when we discussed this you said, "That's not good
10 enough. You have to double-check. You have to check
11 what other people knew that they knew." Right?

12 MS. BERNABEI: No, no, no.

13 What you offered to do was ask six or ten
14 people one question. I said, "If you are willing to
15 do that for the different questions we particularly
16 ask, I have no problem with that." What you said is
17 you will ask them one question of six to ten people.
18 I said, "I don't think that covers their
19 interrogatories."

20 MR. BLAKE: Well, let's go on and take a
21 look at the rest of the interrogatory then. It
22 doesn't just ask them what -- I'm willing to ask them
23 what they knew about in-cores. But your interrogatory
24 says, "What were all the conclusions and evaluations
25 reached as a result? What were all the actions taken

1 by GPU as result of any response or conclusion? What
2 is all that business?" That requires me to go to a
3 whole lot of people and I'm not willing to do that.
4 I don't think that's fair at this juncture.

5 MS. BERNABEI: It is limited to one date,
6 March 28th, 1979.

7 MR. BLAKE: And I still don't think it is
8 fair. That is what the questionnaire was limited to,
9 to essentially one date and what people knew. And it
10 takes a whole lot of work to go out and survey lots of
11 people. I think it is too late in the day.

12 MS. BERNABEI: We are not talking about
13 surveying lots of people. We are talking about six
14 people at this point. We are talking about asking six
15 people about what they did on March 28th, 1979. And
16 we are asking them to be asked six questions by my
17 reading.

18 JUDGE WOLFE: I think Mr. Blake is referring
19 to, and we are now speaking of Interrogatory 3, is
20 that right?

21 MR. BLAKE: Yes, sir.

22 JUDGE WOLFE: And if we look at
23 Interrogatory 3, parenthetical E, you're going beyond
24 those six or seven people that are listed at the
25 bottom of page eight. Isn't that a fact? Even though

1 you are limiting it to one day, E is rather an
2 encompassing and very broad question.

3 Ms. Bernabei?

4 MS. BERNABEI: I don't think that is right.
5 I'm sorry, with all due respect, I disagree. To this
6 point in this hearing there has been no
7 acknowledgement other than by Mr. Moore. In fact,
8 none of the people that I'm familiar with in this list
9 has ever acknowledged he was aware of in-core
10 thermocouple temperatures on March 28th. Given that
11 fact, I think the answer to most of these questions is
12 going to go very well beyond the part C.

13 JUDGE SMITH: It seems to me that this
14 Interrogatory 3, in its entirety, would take a rather
15 sophisticated computer program to respond to, you
16 know, if you take it all.

17 I guess my difficulty is my having trouble
18 talking about it in its entirety all at once. But at
19 the risk of repeating our point -- let's begin with A.
20 Now, you really want the location of 12 individuals at
21 all times at every point during the day?

22 MS. BERNABEI: They've already answered
23 that.

24 MR. BLAKE: We've given it up.

25 JUDGE SMITH: You've given up, okay.

1 MS. BERNABEI: We've no problem with that.

2 JUDGE SMITH: That's amazing.

3 At all points during the day --

4 MS. BERNABEI: Well, Your Honor --

5 JUDGE SMITH: That's fine, I don't want to
6 borrow trouble. If you have already done it, that's
7 fine.

8 MS. BERNABEI: We are just talking about
9 their work location. We don't care -- we're just
10 talking about Parsippany or the site. That is what we
11 are talking about.

12 JUDGE SMITH: Okay.

13 Then B -- well, I think that one is not too
14 difficult. C, all right. Now, D. Conclusions or
15 evaluations reaches the result of any information any
16 individual possessed concerning any of the above
17 listed conditions of the reactor on the 28th.

18 MS. BERNABEI: That has to do with -- any of
19 the listed individuals.

20 JUDGE SMITH: Any of the listed individuals?

21 MS. BERNABEI: These people may say, I --
22 maybe Ron Williams, let's just take an example, says,
23 "I knew something about hydrogen." We just want to
24 know any evaluation or conclusion he reached or other
25 person reached based on his knowledge.

1 JUDGE SMITH: That the individual reached?

2 MS. BERNABEI: Right, based on the
3 information that Mr. Williams made available to him.

4 JUDGE SMITH: What?

5 MS. BERNABEI: If Mr. Williams says, "I
6 never heard of these things on March 28th," that is
7 the end of the inquiry. There is no D. This has only
8 to do with conclusions or evaluations reached as a
9 result of the information these particular individuals
10 possessed. If they didn't have any information, that
11 is the end of the inquiry, as far as I can tell.

12 We are just seeing if any of these persons
13 who, my understanding is they are all management
14 people or near management in the service corporation,
15 if their knowledge on the date generated any
16 particular management actions on that date on the
17 parameters that we care about, hydrogen or in-core
18 thermocouple temperatures.

19 JUDGE SMITH: Okay.

20 So then you have E, all actions taken by any
21 GPU personnel as a result of a response to any of D,
22 right?

23 MS. BERNABEI: Right.

24 JUDGE SMITH: Of any conclusion. And the
25 person taking such action, the time and date of taking

1 such action and the purpose or reason for taking such
2 action.

3 So if any one of those A through K people
4 reached any conclusion or evaluation based upon the
5 information they received on those subject matters in
6 C, all actions taken by any GPU personnel would have
7 to be produced. Now that is where I get into the
8 computer program that is going to be required.

9 MS. BERNABEI: I would bet money on this.
10 Most of these -- there are only two people I know on
11 the list right now that have ever testified -- well,
12 in fact, there is no one I know on this list who has
13 ever testified that he or she had knowledge of any of
14 those parameters on March 28th. And I don't know but
15 I would assume that if any of these individuals did,
16 he may have generated certain management actions.
17 That is what we are after.

18 I would be willing to bet money that you are
19 not going to get more than one or two people out of
20 this list that acknowledges information about any of
21 those conditions. And as a result, I can't see how if
22 there were management actions generated on the basis
23 of his knowledge of what are significant parameters,
24 the hydrogen or the in-cores, I think that is
25 relevant as to the attention and the understanding of

1 that parameter at the time by management personnel.
2 That is all this question is getting to.

3 And so far in this case, we have had no
4 knowledge by the people who were deposed on this
5 list that they knew about those parameters or took any
6 action regarding them.

7 JUDGE SMITH: Mr. Blake?

8 MR. BLAKE: I didn't know whether you were
9 going to go all the way through the list and discuss
10 them with Ms. Bernabei or you wanted to discuss them
11 one at a time.

12 JUDGE SMITH: No, actually, Mr. Blake, I
13 think my problem is my capacity to get around the
14 basic problem has been overloaded. I just don't --

15 MR. BLAKE: Judge Smith, I mean, that's the
16 agony but I can't even get over B, which you thought
17 was fairly --

18 JUDGE WOLFE: What was the letter?

19 MR. BLAKE: B.

20 JUDGE WOLFE: B as in Bobby?

21 MR. BLAKE: Baker, yes.

22 JUDGE WOLFE: B?

23 MR. BLAKE: Yes.

24 JUDGE WOLFE: All right.

25 MR. BLAKE: All communications any of these

1 individuals had at any time during the day with
2 Licencee personnel, NRC, Commonwealth of -- I mean,
3 what in the world? Why do we need to know all that
4 business?

5 JUDGE WOLFE: Well, didn't Ms. Bernabei
6 limit that --

7 MR. BLAKE: That's about any subject at
8 all.

9 JUDGE WOLFE: -- by saying that she was only
10 referring to that information reflected in paragraph
11 C. Isn't that what --

12 MR. BLAKE: There is nothing here to --

13 JUDGE WOLFE: I'm sorry?

14 MR. BLAKE: I don't read that in the
15 interrogatory.

16 JUDGE SMITH: I guess it is not there but
17 that is the way I read it, too. I mean, you have to
18 read it that way otherwise it is --

19 MR. BLAKE: Yes?

20 JUDGE SMITH: C and B should have been
21 reversed, I would imagine.

22 MR. BLAKE: All right.

23 If I read it that way, we already have
24 questionnaires that cover everything in there but in-
25 cores.

1 JUDGE SMITH: Well, my memory is, when we
2 were here before our first memorandum and order on the
3 first discovery dispute, I remember seeing, tell what
4 the following people know about this, and about that,
5 and about everything else. And there was Robert
6 Arnold and there was Arnold Dieckamp and there was one
7 or two others there specifically. But isn't this
8 almost seeking information from people and almost
9 exactly the same information that you tried to get or
10 that you got about them on your first round of
11 interrogatories?

12 Don't you already know from your earlier
13 interrogatories what Robert Arnold knows about the
14 possible generation of combustion of hydrogen?

15 MS. BERNABEI: We do ask in the deposition.
16 We do at this point and I have no problem, again, with
17 the people as long as we ask them those questions. We
18 are asking in a interrogatory form the same questions
19 we asked of people in their positions.

20 JUDGE SMITH: But didn't you get this
21 information also in earlier interrogatories? Do you
22 agree with that?

23 MR. BLAKE: At least as to Mr. Dieckamp.

24 JUDGE SMITH: Yes.

25 MS. BERNABEI: Oh, those people I have no

1 problem with. This question is broader than -- well,
2 I do not think that we got all the information with
3 regard to Dieckamp at an earlier time, no. But
4 through the deposition we have. So I have no problem
5 now with Arnold Dieckamp, Lentz, or Broughton because
6 we've done deposition with those people.

7 JUDGE WOLFE: What do you mean, you have no
8 problem? He's listed -- Mr. Dieckamp is listed as one
9 of these persons to answer the interrogatories. He is
10 listed on the bottom of page eight. Are you striking
11 his name now?

12 MS. BERNABEI: We've agreed to do that.
13 We've taken depositions of these people.

14 JUDGE WOLFE: Okay.

15 MS. BERNABEI: The people we have taken
16 depositions of -- we did not, at the time that we
17 filed the interrogatories, we had not taken
18 depositions of those individuals. We now have. And
19 we agreed to strike those four people we've taken
20 depositions of. That is what I represented in the
21 beginning.

22 JUDGE SMITH: All right.

23 You did, but you will have to excuse us
24 because you are so saturated in this subject matter
25 and we are not. And it is very, very confusing.

1 MR. BLAKE: At the moment, Judge Smith, this
2 interrogatory, for our current purposes, should be
3 viewed as with striking in the list of names Arnold,
4 Dieckamp, Lentz, Broughton, and the last name Noonan,
5 which is actually Moore. That is a typo in this
6 reading. So we are focused on those six people.

7 JUDGE SMITH: Yes, but the reason -- I
8 recall you saying that and the reason I, nevertheless,
9 I asked the question about Arnold and Dieckamp is to
10 see if by example I could distinguish between this
11 interrogatory and the earlier interrogatories that we
12 had in which you asked a very long series of questions
13 about hydrogen spike -- well, it was the first set.

14 Well, I think I understand now. Arnold was
15 excused from answering but he had been required --
16 Arnold previously -- the Licencee had previously been
17 required to report back to you through interrogatory
18 what Arnold and Dieckamp knew about the subject matter
19 of C; isn't that true? I mean, just to let me
20 understand how the purpose of this interrogatory
21 differs from the earlier one.

22 MS. BERNABEI: These individuals listed here
23 were people who we had reason to believe were in
24 meetings in Parsippany.

25 JUDGE SMITH: Well, I know that but just

1 answer the simple question.

2 Am I wrong, do I recall seeing an
3 interrogatory which I spent a lot of time reading
4 which says, "As to the following people, tell us what
5 they knew about various matters such as hydrogen,
6 containment spray, sparks from equipment." And then
7 listed above those names were Arnold and Dieckamp.

8 MS. BERNABEI: Right.

9 JUDGE SMITH: Did I see that?

10 MS. BERNABEI: That's right.

11 JUDGE SMITH: Now, that being the case, I
12 understand that Arnold and Dieckamp are no longer
13 involved because of your agreement. That being the
14 case, how does this interrogatory differ in that
15 respect from your earlier one?

16 MS. BERNABEI: Because there are certain
17 evaluations requested that build on what, apparently,
18 would be the prior response.

19 JUDGE SMITH: Your earlier interrogatory
20 then did not build. You didn't ask for conclusions or
21 evaluations?

22 MS. BERNABEI: That's correct.

23 JUDGE SMITH: All right.

24 Then you have, with respect -- you had, with
25 respect to Arnold and Dieckamp, the information in C

1 simply to move into D and E?

2 MS. BERNABEI: C, except for the in-core
3 thermocouple.

4 JUDGE SMITH: Except for the in-core
5 thermocouple?

6 MS. BERNABEI: That's correct.

7 JUDGE SMITH: Of course, Dieckamp was
8 obliged to answer that anyway.

9 MS. BERNABEI: Right, but not E and F.
10 That's right.

11 JUDGE SMITH: All right.

12 MS. BERNABEI: Not D, E or F.

13 JUDGE SMITH: Well, okay.

14 MS. BERNABEI: And I can state, and Mr.
15 Blake can confirm this, we have no purpose in asking
16 him to repeat any answers. If they said those answers
17 are contained in questionnaires, that's fine.

18 For purposes of the interrogatories, it's
19 much cleaner to put forth the full interrogatory
20 rather than saying five people should answer C through
21 E, four people should answer D through F. It is just
22 much cleaner because it is apparent what the direction
23 of the interrogatory is.

24 Obviously, if someone says, "Look at their
25 questionnaire, that's their answer," I have no problem

1 with that for parts A through C. That is really not
2 an argument between us.

3 JUDGE SMITH: All right.

4 Now we are stating the fact that we later
5 ruled in the interrogatories, earlier interrogatories,
6 that persons other than Mr. Dieckamp did not have to
7 answer -- no, wait a minute.

8 Consistent with the fact that your initial
9 interrogatory inquired into a large range of plant
10 conditions including the very relevant ones, hydrogen,
11 and containment spray, and the others mentioned in C,
12 why were not Wallace, Williams, Hirst, Cronenberg,
13 Capodanno, and Lehmann included in those
14 interrogatories?

15 MS. BERNABEI: They were.

16 JUDGE SMITH: They were?

17 MS. BERNABEI: Right, everybody at GPU was.

18 JUDGE SMITH: All right.

19 So to that extent then, what you are doing
20 now is the same you are doing with Arnold and
21 Dieckamp. You have those there and you are repeating
22 C so that you may lead it to D, E and F. And I say
23 you are repeating C with exception of the --

24 MS. BERNABEI: That's correct, the in-cores.

25 JUDGE SMITH: All right.

1 MS. BERNABEI: Right.

2 JUDGE SMITH: Now, we're focusing really on
3 (d) and (e) and (f). Are we, Mr. Blake?

4 MR. BLAKE: Yes, sir.

5 JUDGE SMITH: All right.

6 So then we come back to this again. You,
7 just on the face of these, not knowing -- not anyone
8 having the discussion we've had today, on the face of
9 these I would still sit by my initial observation,
10 stand by it, that (d), (e) and (f) would probably
11 require a -- I overstated.

12 I said a large computer program, let me just
13 say a middle-sized computer program. So we see this
14 pattern. You make a very, very large discovery
15 request. It's objected to, we come down here and
16 then, and then for the first time, we begin to bargain
17 a little bit and narrow it and narrow it and narrow
18 it.

19 But right on the face of them, those are --
20 that's a huge, huge demand. All actions taken by, I'm
21 reading from (e), "All actions taken by any GPU
22 personnel as a result of or in response to any
23 conclusion or evaluation identified in (d) and the
24 person taking such action, the time and date of taking
25 each such action and the purpose or reason for taking

1 each action," that is a massive discovery request.
2 And (f), then (f) builds upon (e). You know, (e) is
3 massive and (f) builds upon that. It's a huge, big
4 pyramid --

5 MS. BERNABEI: Can I just state my
6 understanding. I don't think it's -- and let me state
7 why I don't think it's a huge discovery request.
8 We're basically talking about two parameters. It
9 would make the production hydrogen, in-core
10 thermocouple temperatures above 2,200, 2,500 degrees.
11 Those are the two plant parameters.

12 There's been no testimony up to discovery in
13 this hearing that anybody in Parsippany knew about it
14 or any GPU Service Corporation person even at the site
15 knew about those. Nobody's ever said they knew about
16 this so we have reason to believe there may be an
17 answer, there were no actions taken by anybody.

18 Wait, let me finish the argument. Based on
19 the knowledge possessed by these individuals. All
20 we're asking about here is were there actions taken
21 based on these people's understanding of those two
22 parameters and their evaluation is significant of
23 those two parameters. That's all we're asking for.
24 Maybe there was none and I think that's the likely
25 response.

1 I think for -- and that's what, given the
2 investigations in this case and the record up to the
3 point we posed this interrogatory, we have no reason
4 to believe that any of these people won't answer --
5 give any answer to (c), (d), (e) or (f). I don't
6 think it's a massive thing at all.

7 We're just asking if any of these people
8 reached a conclusion or evaluation, based on knowledge
9 of hydrogen production on the first day or based on
10 knowledge of in-core thermocouple temperatures above
11 2,200 degrees on the first day, and whether they took
12 any action based on that evaluation, as managers of
13 the corporation.

14 My guess, and unless the record's, you know,
15 anybody can point to the record differently, none of
16 these people are going to acknowledge having any
17 information or knowledge about any of those parameters
18 and therefore there's nothing to build on.

19 JUDGE WOLFE: Yes, but how many people have
20 to be contacted to determine that nobody knows?
21 That's what the question is.

22 MS. BERNABEI: Ten people -- six people.

23 JUDGE WOLFE: Six?

24 MS. BERNABEI: Six people said they had no
25 knowledge, there's certainly nothing that could build

1 on no knowledge. We're talking about six people.

2 JUDGE WOLFE: We're talking now about (e)
3 now, paragraph (e). Well, we don't have to inquire
4 based upon the six. Any of the six that might --

5 JUDGE WOLFE: When you say all actions taken
6 by any GPU personnel are you speaking only about any
7 of the six listed GPU personnel?

8 MS. BERNABEI: We're talking about any
9 action taken by GPU personnel in response to knowledge
10 or direction of those six. If these six people didn't
11 know anything about the two parameters, which I think
12 they'll probably -- my guess would be the record thus
13 far says they didn't know anything, then how can there
14 be any actions to talk about. They didn't direct --

15 JUDGE SMITH: Then our interrogatory will be
16 over.

17 MS. BERNABEI: That's right. That's right.

18 JUDGE SMITH: All right.

19 Would you remind me again, you just said
20 that Wallace, Williams, Hurst, Cronenberg, Capadanno
21 and Lehmann were included in the first interrogatory.

22 MS. BERNABEI: Everybody was.

23 JUDGE SMITH: Everybody was and the first
24 interrogatory covered the plant conditions and other
25 conditions that you now have in (c). I mean, -- no,

1 covered -- those in (c) --

2 MS. BERNABEI: Except for in-cores, right?

3 JUDGE SMITH: Except for in-cores. Did you
4 get answers to those interrogatories?

5 MS. BERNABEI: I think everybody but Ron
6 Williams, yes.

7 JUDGE SMITH: Well then, you should know
8 whether they know anything about the parameters in
9 (c).

10 MS. BERNABEI: Except in-cores. Except in-
11 cores. We do not know, however, if any actions were
12 built on those people's knowledge or lack of
13 knowledge.

14 JUDGE SMITH: All right.

15 So can we cross out everything except in-
16 core in (c)?

17 MS. BERNABEI: Basically that's right. Yes.

18 JUDGE SMITH: Okay.

19 So now we want to know what those six knew
20 about in-cores and any actions taken as a consequence.

21 MS. BERNABEI: Right.

22 JUDGE SMITH: All right.

23 Mr. Blake, I know I've asked you ;this
24 before but what do you think about that now?

25 MR. BLAKE: We're getting awful close to

1 what my offer was some weeks ago, which was -- I guess
2 not weeks. The 16th. It seems like weeks.

3 JUDGE SMITH: All right.

4 Would you remind us what the offer was?

5 MR. BLAKE: I offered to go through all the
6 names of people, other than those who have been
7 deposed which is what we're down to now, and ask them
8 what their knowledge was about in-cores. That was it.
9 Now we're talking about adding what actions might have
10 taken on the basis of that knowledge about in-cores
11 and as long as I'm talking only about asking those
12 folks what their knowledge is of actions which were
13 taken based on their knowledge of in-cores, I'm
14 willing to do that as well.

15 JUDGE SMITH: See, that's clear that's all
16 we're talking about now.

17 MS. BERNABEI: That's right.

18 JUDGE SMITH: We're talking only about six
19 people and in-core temperatures.

20 MS. BERNABEI: I mean, I could be -- the
21 only person on this list that I questioned about in
22 terms of the hydrogen and pressure spike, and they'll
23 have to help me out in this, is Ron Williams. I
24 understood there was some problem in getting his
25 questionnaire back so we don't know what his position

1 is --

2 JUDGE SMITH: Yes. Well, okay.

3 So are you satisfied that the questionnaires
4 of others have satisfied?

5 MS. BERNABEI: Right.

6 JUDGE SMITH: So you only have one?

7 MS. BERNABEI: No, no, no.

8 JUDGE WOLFE: You missed --

9 MS. BERNABEI: I'm talking about in-cores
10 and all these responses. I could be corrected but all
11 these people have said they either have no knowledge
12 or do not remember anything about pressure spike
13 hydrogen. Is that right?

14 That's my understanding except for Mr.
15 Williams whom we don't know about yet.

16 JUDGE SMITH: All right.

17 That's a reservation of your previous
18 commitment.

19 MS. BERNABEI: Right.

20 JUDGE SMITH: Don't have that.

21 MS. BERNABEI: So we don't have Williams but
22 otherwise I think you've stated it correctly, since
23 these other people said they don't have any knowledge
24 of it.

25 JUDGE SMITH: So I think that we're almost

1 at an agreement.

2 As Judge Linenberger pointed out that we
3 have not -- we have identified the parameter in (c)
4 and the people. But we have not yet moved into what
5 should be done about (e), questionnaire (e) and you
6 were about to comment with respect to those people
7 and that parameter except for Williams.

8 MR. BLAKE: It had not been previously a
9 part of my offer to go on and inquire as to all
10 actions which may have been taken, but as I now
11 understand it, in order to make this problem go away
12 I'll add that.

13 JUDGE SMITH: You'll accept that?

14 MR. BLAKE: That is, to the extent I only
15 have to go to Mr. Wallace, ask him now about his
16 knowledge of in-cores, on March 28th if he had any
17 knowledge, what you know about any -- who did he
18 communicate it to, what's he know about any actions
19 that were taken as a result of this knowledge. I can
20 do that. That's not horrendous and I can do that.

21 JUDGE SMITH: Well, the question is are you
22 going to do it? I mean, we're not asking and we're
23 not telling you we haven't resolved it yet but we're
24 just trying to identify how much problem we have left.

25 MR. BLAKE: I'm willing to do that and I

1 hope that that resolves it.

2 Now, I have to identify to the Board and to
3 Ms. Bernabei that not all of these are current
4 licensee people and so I might be overstepping my
5 bounds on what I can come through with, because Mr.
6 Hurst, at least to my current recollection, Mr. Hurst
7 and Mr. Williams are no longer with the company. I
8 don't know whether I can get in touch with them but
9 I'll give it a good faith effort to ask just what I've
10 outlined.

11 JUDGE SMITH: Some heretofore unrecognized
12 perspective on this. Extending this discovery to in-
13 core temperatures was done at a pre-hearing conference
14 in which Judge Linenberger was not present. And it
15 was predicated upon a reading from NUREG 07600, I
16 believe, why I know that, I believe it was page 18 and
17 it was a subparagraph or it was a partial paragraph
18 which says, in effect, in hindsight that it should
19 have been recognized.

20 And based upon that, well, he said, well
21 there is an official NRC document which says that in
22 hindsight they should have recognized that these core
23 temperatures could be an indication of a degraded
24 core. Had Judge Linenberger been present we may
25 not have arrived at that conclusion.

1 Nevertheless, we discussed it and we decided
2 that it's marginal, we should let the order stand. So
3 in our view, here you've got six of them, if you get
4 four out of the six, that statistically you'll have a
5 good shot at finding out whether anybody did. And we
6 don't think it's such a big deal. But statistically
7 you'll have a good shot at it.

8 You always have to come back to the basic
9 rule that we've set in this discovery. And that is
10 your unencumbered right to depose and discover about
11 Mr. Dieckamp is your basic capture. And that it is
12 not possible for you to have all the discovery that
13 you would like, given an infinite amount of time to
14 cover every possible base. All you can have is a
15 reasonable shot at it.

16 I think that you have a reasonable response
17 now from Mr. Blake. If he can't get two people, so
18 what. You don't have any reason to believe that those
19 two particular people possess the key to this case
20 anyway.

21 MS. BERNABEI: I have no objection to that.
22 That's a reasonable offer and it does appear that
23 there has been or is there an ongoing attempt to get
24 Mr. Williams to answer his questionnaire. I appreciate
25 that.

1 MR. BLAKE: One of them was in Oyster Creek
2 and the other guy in San Diego, in any event. But
3 I'll give it a go.

4 JUDGE SMITH: Okay.

5 Just a fair shot at it and if you don't,
6 that's it. You know, it's --

7 MS. BERNABEI: That's no problem.

8 JUDGE SMITH: You will have had, by the time
9 this is over, a very, very broad sampling of the
10 people who have had an opportunity to know, not a
11 sampling. You have had them. Well, it's a sampling
12 in that it's not 100 percent but you will have had,
13 beyond the possibility that there could not be a
14 representative sample. Okay.

15 So we're done with three. All right. Judge
16 Linenberger is a little bit concerned that you may
17 have over-promised with respect to (e). As I
18 understand, you'll go to Mr. Wallace, for example, and
19 say what did you know about in-core, if anything. He
20 says, well, as a matter of fact I did and then you'll
21 say well, who did you communicate that to. And you'll
22 attempt to follow the trail.

23 MR. BLAKE: Yes, sir.

24 JUDGE SMITH: And --

25 MR. BLAKE: With Mr. Wallace.

1 JUDGE SMITH: With Mr. Wallace?

2 MR. BLAKE: Right.

3 I mean to ask of Mr. Wallace, one, do you
4 know anything about in-cores? If he says, yes, I did.
5 Who did you talk with? If he says no one, that's the
6 end of the ball game.

7 JUDGE SMITH: Right.

8 MR. BLAKE: If he says, gee, I talked with
9 Joe and Joe, then I ask what did they do with it, to
10 the best of your knowledge or what actions occurred as
11 a result of your having passed it to Joe, and that's
12 to the best of your knowledge? I'm not going to go to
13 Joe and Harry or try to track all the chains or
14 whatever occurred. That's my offer.

15 JUDGE SMITH: Well, if Wallace says to you,
16 gee, I don't know, and not only that but I would not
17 have been in a position to know. Then perhaps you
18 better report that back.

19 MR. BLAKE: Okay.

20 JUDGE SMITH: But I certainly don't believe,
21 based upon where we are now, that a survey of any GPU
22 personnel is even remotely justified. I think his
23 basic approach is begin the trail with Wallace and see
24 where it goes is perfectly satisfactory.

25 MS. BERNABEI: That's fine. That's fine.

1 JUDGE SMITH: Okay. All right.

2 So, having -- we've resolved three, shall we
3 go back to one? Reading more notes is moot.

4 MS. BERNABEI: I think the only remaining
5 question with regard to one, we did depose Mr. Moore
6 and ask him -- we did depose Mr. Moore and ask him
7 these questions, is whether the corporation stands by
8 his testimony. We did ask him all these questions in
9 his deposition. We'd just like the corporate position
10 as to whether that's, in fact, the case.

11 Specifically, Mr. Moore didn't remember --
12 well, he remember only that he told Mr. Broughton
13 about the temperatures, Mr. Broughton doesn't remember
14 that. And in any case, the only thing we want with
15 regard to Interrogatory 1 is to know if the company's
16 position is the same as that which we've heard on the
17 record, Mr. Moore's position.

18 JUDGE SMITH: As I understand it now, you've
19 deposed Mr. Moore, you've asked him these questions
20 and you want licensee to abide by his fact testimony,
21 as a litigative position.

22 MS. BERNABEI: Or not, whatever they -- we
23 just want to know know the company's position.

24 JUDGE SMITH: Well, how -- yes.

25 MS. BERNABEI: And Mr. Moore's deposition

1 has been transcribed quite a period of time now.

2 JUDGE SMITH: All right.

3 JUDGE WOLFE: Well, now this type of thing,
4 won't you have your relief in the event that licensee
5 presents a witness, for example, Mr. Moore, who
6 testifies contrary to this. Won't you have your
7 relief with your deposition for Mr. Moore? I don't
8 know how you can ask anybody to, as a litigative
9 position, to adopt Mr. Moore's deposition.

10 MS. BERNABEI: These are directed to GPU --
11 or to the licensee. They're not directed, unless it's
12 otherwise stated, to particular individuals. I think
13 we have a right in discovery to determine generally
14 the litigative position of the party, which is the
15 licensee.

16 JUDGE WOLFE: Yes. That's true. You do.

17 MS. BERNABEI: We really don't -- I mean, in
18 a basic sense we don't care if the individuals are or
19 are not telling the truth. We just want to know the
20 company's position.

21 JUDGE WOLFE: All right.

22 For example, Mr. Moore, here is
23 Interrogatory 1A. Explain the circumstances under
24 which Mr. Moore took all notes which appear as an
25 attachment to our memorandum, include in your

1 explanation several things such as the purpose of the
2 notes and where he was and several other categories.
3 Now, you're satisfied, you've deposed him as
4 thoroughly as you wish. Now you want them to adopt
5 his deposition or not, as their litigative position of
6 the facts of the case?

7 MS. BERNABEI: That's right.

8 JUDGE WOLFE: Okay.

9 As to which they're bound.

10 JUDGE SMITH: That's rather a strange way of
11 securing admissions. Is this an admission or seeking
12 a stipulation or --

13 MS. BERNABEI: These interrogatories are
14 close to the --

15 JUDGE WOLFE: Yes, but it's not clear on its
16 face. This was the purpose for these interrogatories.

17 MS. BERNABEI: I don't think it has to be.
18 That's the purpose of interrogatories in general, that
19 is, to bind the party that's asking them to a
20 particular position.

21 JUDGE SMITH: That's one of the purposes.

22 JUDGE WOLFE: Where is this put out in -- in
23 this particular interrogatory?

24 MS. BERNABEI: It doesn't have to. That's
25 the general rules of civil procedure and that's the

1 general rules of this --

2 JUDGE SMITH: Well, I think I understand
3 your point. I think, however, your point is
4 incomplete. Is that the purpose of all of your
5 interrogatories? Interrogatories have another
6 purpose, of course, and that is to gather information.

7 MS. BERNABEI: And it's the -- well, I think
8 that's right but it's information that the licensee
9 will stand behind in the hearing, that is, that we
10 assume they will not take a position contrary to that.

11 JUDGE SMITH: Or explain why it's
12 inaccurate.

13 MS. BERNABEI: That's right. Exactly.

14 JUDGE SMITH: Okay.

15 MS. BERNABEI: In other words, it's a
16 position they can be bound to.

17 JUDGE SMITH: So with respect to Mr. Moore,
18 at least, the only thing you want is do they feel
19 bound by his testimony. I understand your position
20 that interrogatories are for the purpose of learning
21 -- for one purpose is to learn in your adversary's
22 litigative position.

23 But I might say that I have never seen an
24 interrogatory for that purpose, which goes down to the
25 detail of a deposed witness' testimony. I have never,

1 never seen that. That's new.

2 MS. BERNABEI: If I could just suggest, I
3 think the purpose of all interrogatories is to get the
4 company's position. In most cases I don't think we
5 have the case where witnesses contradict each other or
6 perhaps individuals within the company contradict each
7 other, which has occurred, and probably will continue
8 to occur in this issue.

9 Therefore, I think it's -- the purpose which
10 is usually behind the interrogatories -- will be a
11 company position is necessary to state.

12 JUDGE SMITH: Well, could you have
13 accomplished the same thing by saying we've deposed
14 Mr. Moore on this -- these subject matters and we've
15 produced this information. Do you have any
16 information inconsistent with that or do you plan to
17 take a position in this case contrary to Mr. Moore's
18 deposition. I mean, wouldn't that be --

19 MS. BERNABEI: With regard to these
20 particular items, I suppose we could have done it that
21 way. I think it might have been a little more --
22 well, we're trying --

23 JUDGE SMITH: I just can't imagine you
24 putting to Mr. Blake (a) (iii), the persons to whom Mr.
25 Moore communicated. I just can't imagine you putting

1 an admission, if that is the case. Admissions of this
2 nature are usually on a much more higher level, or
3 broader litigative position, not on the details.

4 MS. BERNABEI: Well, this is -- I mean, it's
5 really not in the nature of an admission. It's in the
6 nature of determining the litigative position of the
7 company in this proceeding. Frankly, I don't care
8 about Mr. Moore one way or the other. The reason we
9 had to depose particular individuals is because the
10 company only speaks to particular individuals.

11 I have no -- TMIA has no concern in binding
12 -- a certain position. It's the company, so to the
13 degree that GPU feels free to discount or go against
14 Mr. Moore's testimony we have a problem and that's all
15 I'm trying to do through the interrogatories that we
16 otherwise have answered.

17 JUDGE WOLFE: Are there any other
18 interrogatories that can be so simplified as to what
19 you intended?

20 MS. BERNABEI: I think all of them with
21 regard to the people that have already been deposed.
22 In other words, the questions asked here have already
23 been asked to all those individuals in depositions.
24 Those persons who have been deposed, what we would
25 like is a statement from the company that either

1 adopts or rejects to some degree their position.

2 So to that degree, we wipe out all the
3 people who have been already deposed.

4 JUDGE SMITH: Couldn't there be a -- in the
5 first place, does the licensee inform itself of these
6 depositions?

7 MR. BLAKE: We have gotten copies now and
8 Mr. Moore's is a transcript that I've seen gone -- go
9 through the office so we have a copy of Mr. Moore's
10 transcript.

11 But, Judge Smith, you've got to understand
12 that if I do it now for Mr. Moore, I don't even know
13 what it means for -- to ask the company now to accept
14 Mr. Moore's testimony as its position because we now
15 have -- Ms. Bernabei knows we've got inconsistent
16 pieces of testimony from people in this proceeding in
17 depositions. It's just bound to occur and I just
18 can't accept everybody's, doggone it, as what the
19 company's position is.

20 JUDGE WOLFE: But in any event, Ms. Bernabei
21 has the chance to cross-examine and impeach. Isn't
22 that right in these matters?

23 JUDGE SMITH: Well, maybe Mr. Moore's not
24 going to testify.

25 JUDGE WOLFE: Is Mr. Moore --

1 MR. BLAKE: He hasn't been proposed by
2 anybody.

3 JUDGE WOLFE: He has not?

4 MR. BLAKE: No, sir.

5 JUDGE WOLFE: Oh.

6 MR. BLAKE: Moore has been deposed.

7 JUDGE WOLFE: Right.

8 MR. BLAKE: But he's not been proposed as a
9 witness.

10 JUDGE WOLFE: Oh, proposed. I'm sorry.

11 MS. BERNABEI: So, I think Mr. Blake made my
12 point. The point is we've got lots of conflicting
13 testimony. The licensee in this proceeding is GPU
14 Nuclear. It's not Mr. Moore and -- we need the
15 company's position and that's what's important to this
16 licensing board as well.

17 JUDGE SMITH: I just don't believe that
18 that's enforceable. What you're asking now is
19 something that I have never seen before but, in
20 effect, it's this. You have deposed an individual and
21 you've gathered a lot of information, taking up
22 virtually a full page of single-spaced details of what
23 that man did on a particular day. And you've deposed
24 him to your satisfaction.

25 Now you're asking for them to abide by the

1 accuracy of that deposition which could only be done,
2 in my view, with an extremely detailed investigation
3 created, not for their own business, but created for
4 the purpose of your interrogatory.

5 How did they know -- how could they know the
6 persons to whom Mr. Moore communicated the
7 information?

8 MS. BERNABEI: The purpose of -- let me
9 state real clearly. The purpose --

10 JUDGE SMITH: -- better than Mr. Moore
11 knows. How can they validate that better than what
12 Mr. Moore says?

13 MS. BERNABEI: The purpose of the
14 interrogatory is to indicate whether information that
15 Mr. Moore had about in-core thermocouple temperatures
16 in excess of 2,500 degrees reached Parsippany. That
17 is, whether he communicated to his superiors in
18 Parsippany that information on the first day of the
19 accident. It seems to me that the licensee can and
20 should be bound to a position on that, whether or
21 not, okay?

22 JUDGE SMITH: Okay.

23 I don't have any trouble with that type of
24 thing but you've put it through --

25 MS. BERNABEI: That's the gist of it,

1 obviously. I mean, I think, obviously, that's what we
2 care about is the reporting relationship. We don't
3 care whether he arrived at the observation center at
4 2:00 or 2:15. That's not what we care about. We care
5 about the reporting relationship.

6 JUDGE SMITH: See, we really don't learn
7 what you want by your interrogatories until we push
8 you and push you and press you and then we find out,
9 then you back up to a reasonable position. I think
10 you made a request for admission as to whether anybody
11 in Parsippany knew those things or not.

12 Well, I think you've run up against an
13 impermissible area. We have a rule of evidence that,
14 in the Federal Rules, that a party need no longer even
15 vouch for the accuracy of the witnesses they sponsor.
16 Here you're asking them to vouch for the accuracy of a
17 deposition about events that took place five years
18 ago.

19 MS. BERNABEI: What I'm asking, the gist is
20 that I'm not asking them to vouch for Mr. Moore. I'm
21 asking for the company position on his testimony or on
22 anybody's testimony. What is their position about
23 whether information he acquired was transmitted to
24 Parsippany.

25 JUDGE SMITH: Okay.

1 How about this. What if you get back an
2 answer from Mr. Blake that says, hey, we don't have
3 any position, which I infer is his position -- which I
4 infer is the state of affairs today.

5 MS. BERNABEI: I would find that astounding.
6 I would find it astounding that information of this
7 nature, they do not have a position whether it was
8 transmitted to corporate management, that is,
9 temperatures in excess of 2,500 degrees --

10 JUDGE SMITH: All right.

11 That one they might. You've salvaged from
12 there the thing that it may be all about. And if that
13 had been your position, if that had been what we've
14 been talking about today, I think we may have been out
15 of here a long time ago.

16 JUDGE WOLFE: Either that or you could have
17 approached Mr. Blake and say, will you stipulate to
18 such and such, that Mr. Moore's -- well, that Mr.
19 Moore --

20 You state the policy or whatever GPU, or and
21 once again I'm not going to advise you on the trial
22 tactics but it would seem to me that you're trying to
23 engage in the technical way you conduct your handling
24 of the trial. If there is something that Mr. Moore
25 says that -- or has deposed to, it would seem to me --

1 and it was to your mind adverse to GPU, you can call
2 the witness as your witness or subpoena him if he is
3 not willing to testify.

4 But I don't know where you were going -- or
5 I understand now where you were going with these
6 interrogatories, but it was hidden behind a lot of
7 excess verbage that didn't mean anything to us.

8 MS. BERNABEI: Let me just say real clearly
9 that the only way that I know how to do discovery and
10 it's the -- this is the only way that it is done in
11 Federal Court which the NRC's Rules provide for.
12 You have specific factual questions which in turn lead
13 to certain legal arguments. You can only build your
14 legal arguments on certain facts.

15 I can assure you right now that if I asked
16 Mr. Blake prior to finding the Moore notes, prior to
17 deposing Mr. Moore, will you agree that information
18 about in-core thermocouple temperatures in access of
19 2500 degrees reached Parsippany, the answer would be a
20 flat no.

21 The Licensee is not interested in making
22 admissions in this case as, you know, I'm sure that's
23 a good litigative position for that. The only way
24 that we have is to track down the facts and attempt to
25 determine what the companies position is going to be

1 on them in this hearing, and that's what we've done.
2 Interrogatories is a legitimate way to get the
3 company's position. And whether it's a company or
4 whether its a party in the proceeding. And that's
5 what these are attempting to do.

6 JUDGE SMITH: Yes.

7 Here we have -- to back up. Here we have
8 (a), "Explain the circumstances under which Mr. Moore
9 took all notes which appeared as an attachment to the
10 Arnold memorandum including your explanation or
11 identification of the following."

12 Then we go to sub six, "Whether on March 28
13 or up to 12 p.m. on March 29, 1979 the information
14 that in-core thermocouple temperatures had exceeded
15 2500 degrees led to any discussion about the possible
16 generation of hydrogen or the possibility of serious
17 core damage."

18 That somehow is tied to (a), "The
19 circumstance under which Mr. Moore took all notes is
20 tied" -- (a), to back up, here is the general
21 category, the broad category. "The circumstance under
22 which Mr. Moore took all notes." Subcategory under
23 that is what I just read.

24 Six, "Whether on March 28th or up to 12 p.m.
25 on March 29 the information that in-core thermocouple

1 temperatures had exceeded 2500 degrees, et cetera."
2 Is that a subcategory of the circumstances under which
3 Moore took notes?

4 MS. BERNABEI: That's another -- I'm afraid
5 I don't understand your question, Judge Smith.

6 JUDGE SMITH: I read (a), we will bind this
7 into the transcript, but I read (a) as being the large
8 category which subsumes all of the eight
9 subcategories. Then we start out quite logically
10 enough the purpose for Moore taking notes.

11 In number two, where he was when he took the
12 notes. And then to whom did he communicate the notes.
13 Then we get into a little bit of trouble here. "The
14 action, if any, that any person to whom the
15 information was communicated took."

16 Now, this is -- I'm still going back under
17 the large category of the circumstances under which he
18 took all notes, okay, including the following. And
19 then we go to an absolutely basic issue in the whole
20 case applying, apparently, to the whole corporation
21 and litigative position and that is whether the
22 information about elevated temperatures led to any
23 discussion about the possible generation of hydrogen.
24 All of that is subsumed under the conditions under
25 which -- circumstance under which Moore took notes.

1 This is absolutely an unenforceable
2 interrogatory on the face of it, the fact that you are
3 permitted to come here today and even argue a bit
4 further is simply because we want to give you every
5 possible opportunity to make your case. But we simply
6 don't have the time or the inclination or anything
7 else to sit here interrogatory after interrogatory,
8 which on the face of them simply could never be
9 enforced, and then permit you to reconstruct them and
10 reconstruct them and try to make them viable. And
11 that's what's happening.

12 MS. BERNABEI: We're not asking anybody to
13 reconstruct any interrogatory. We're asking if the
14 company's position is the same as the Licensee
15 witness, Mr. Moore. Maybe they have no position, I
16 don't know. That's all we're trying to get at is the
17 position.

18 JUDGE LINENBERGER: Ms. Bernabei, excuse me,
19 but you keep emphasizing the company's position. You
20 keep emphasizing Parsippany. And then you set down
21 these things and a motion to compel these
22 interrogatories in which you show no relation to
23 company position or what went on in Parsippany. And
24 not only that, but as Judge Smith has -- Chairman
25 Smith has abundantly pointed out, even a technical

1 turkey like me cannot follow the logic of introducing
2 a whole bunch of requests by a category (a) to which
3 the request don't relate.

4 Now, the logic of that must somehow make
5 some impact on you, the illogic of it, excuse me.
6 There is no logic to it. The illogic of it must make
7 some impact on you and your only answer is you're only
8 concerned about the company's position and, a little
9 earlier, about what was known in Parsippany. We have
10 trouble seeing how this goes together.

11 JUDGE SMITH: Do you sense a feeling of
12 frustration on the Board's part. There is an out and
13 out non-sequitur here. You've never explained it and
14 as hard as we've tried we don't understand what you're
15 doing. You may repeat several times again, if you
16 wish, you're simply trying to find the company's
17 position. But this is a non-sequitur.

18 MS. BERNABEI: I can understand confusion in
19 terms of the circumstances. It may be that not all
20 those numbered paragraphs applied in these
21 circumstances under which --

22 JUDGE SMITH: You bet.

23 MS. BERNABEI: I do think that there is a
24 logic to all of those questions and I think if you run
25 them --

1 JUDGE SMITH: Standing alone there may be.
2 But the way you've tied them in, the way you've mixed
3 them up -- I mean, standing alone, I don't question
4 that you, sometime during this discovery period, you
5 may have been entitled to learn about six or maybe
6 seven not reading them carefully.

7 But tying them into Moore's notes just took
8 off in a direction that we never had any idea that you
9 were going to. We never had any idea on that. It
10 just seems to me, honestly, like it's an after the
11 fact argument.

12 MS. BERNABEI: I can see it very clearly and
13 I'm a little confused by the Board's criticism. I can
14 state that with no --

15 JUDGE WOLFE: The Board is certainly not
16 confused about our criticism.

17 I know it seemed to me that if you had
18 complied with the Board's suggestion of sometime ago
19 that we want to know these sort of things, informally
20 go to other counsel, adverse counsel, and say, "Will
21 you agree that such and such is GPU policy?" If he
22 says no, well, I don't know where you can go with that
23 because certainly you couldn't come to the Board and
24 say, "I want you to compel GPU to agree that whatever
25 Mr. Moore stated is the policy."

1 So you've lost us. You've really lost us
2 here.

3 MS. BERNABEI: Let me just say on the record
4 very clearly what we think Moore's notes show and what
5 the questions were intended to discover.

6 Mr. Moore took certain notes which are
7 labeled 5 p.m. March 28th the first day of the
8 accident. He was one of the service corporation
9 engineers sent to the site in order to analyze the
10 accident and possibly provide technical support if
11 required.

12 He arrived at 2 p.m. He was briefed at 5
13 p.m. apparently by Mr. Bensel's site personnel about
14 the accident. During that briefing by Mr. Bensel, he
15 was told that there were in-core thermocouple
16 temperatures read in excess of 2500 degrees. This was
17 5 p.m. on March 28th.

18 That was the first indication that any one,
19 those notes, anyone in Parsippany, anyone from
20 Parsippany knew about in-core thermocouple data that
21 would -- of 2500 degrees or greater on the first day
22 of the accident.

23 Given his position, we had good reason to
24 believe that that information should have been
25 transmitted to Parsippany. Mr. Moore acknowledged

1 during his deposition he understood from those
2 temperatures that that indicated that it was core
3 damage more seriously than he had believed at the time
4 he went to the site.

5 Those are the intent of the questions, to
6 find out whether he transmitted that information which
7 would indicate serious core damage as well as
8 production of significant amounts of hydrogen was ever
9 transmitted to his superiors in Parsippany. Mr. Moore
10 was a what I would consider a -- person.

11 JUDGE SMITH: Okay.

12 Now, how could you be so concise and
13 articulate and so directly to the point as you have
14 been now and ask us to rule upon this interrogatory
15 for the purpose for which you now explain it. At the
16 -- it's -- you've just made a very logical, coherent
17 statement as to what it's all about. But this is the
18 first we've really learned what you're after. I mean,
19 at least I understood it as being a coherent statement
20 and an understandable one. I can see what you're
21 doing.

22 MS. BERNABEI: We didn't know that when we
23 wrote that interrogatories. You have to remember this
24 was before we took Mr. Moore's deposition.

25 JUDGE SMITH: Well, then your motion to

1 compel should have helped us.

2 MS. BERNABEI: Well, that may be true.

3 JUDGE SMITH: Or something.

4 (Judges confer.)

5 JUDGE SMITH: As Judge Linenberger was
6 suggesting, the Board has conferred on what seems to
7 be a thread here. And that is if somebody is from
8 Parsippany, somehow you impute the information they
9 gather to Parsippany. Does that thread appear in your
10 arguments? You made it with respect to interrogatory
11 number three I believe, or there.

12 MS. BERNABEI: What were trying to do is see
13 if the information was in fact communicated from the
14 site to Parsippany by means of the GPU Service
15 Corporation sent to the site. We've asked some very
16 particular questions about that. We don't impute it,
17 I don't think you can impute it.

18 JUDGE SMITH: But those would be the most
19 logical sources?

20 MS. BERNABEI: Right. Exactly.

21 JUDGE SMITH: Okay.

22 It was the Board's conclusion that we can't
23 enforce this interrogatory number 1.

24 Number two?

25 MR. GOLDBERG: Excuse me, Judge, but I would

1 like to ask the Board a question off the record.

2 JUDGE SMITH: Off the record?

3 MR. GOLDBERG: Off the record, yes.

4 JUDGE SMITH: All right.

5 Off the record, please.

6 (Off the record discussion.)

7 JUDGE SMITH: Well, since we've completed
8 the discussion on one interrogatory before we get to
9 the next, because we are running out of time for the
10 day, are two other items that we had on the agenda
11 that should not require long.

12 One is, I was quite concerned that we were
13 unable to find a hearing space to begin the hearing in
14 Harrisburg large enough to accommodate those expected.
15 As a matter of fact as it turns out, appearing the
16 noon break, I learned that Mr. Owl has secured the
17 Senate majority caucus room at the main Capitol
18 building which has a capacity of 120 people for the
19 14th through the 16th. So we will be able to begin
20 the hearing in Harrisburg, and it will begin at 1 p.m.
21 on the 14th.

22 Now, I might point out that after that, we
23 are -- the best we can do, and this is after very
24 extensive inquiry, the best we can do is move to the
25 University Center. I don't have the address here

1 before me. But it's the University Center Library.
2 That seems to be the largest hearing room that's
3 available to us. And that seats only 60 people, but
4 it is one that has table space.

5 We've been turned down by the federal court.
6 The Utilities Commission has done the best they can
7 do, but they cannot guarantee it will not be bounced
8 the first day. The Harristown II Building is all
9 booked up. In any event, they will not lease anymore
10 to outside agencies. The courthouse, six courtrooms,
11 all booked up. There are others here. We've inquired
12 every place we can. We got a letter from the mayor
13 urging us to come to Harrisburg. And we've informed
14 him indeed we want to. And if he has any helping
15 offers, we would like to accept it.

16 MS. DOROSHOW: Judge Smith, I was informed
17 yesterday that the Harrisburg City Counsel chambers
18 are available during the day, the first day of the
19 hearing and I don't have any contact with them --

20 JUDGE SMITH: Well, my Secretary has been in
21 touch with the Mayors office. When I received his
22 letter the other day, I thought well there is a good
23 prospect. We'll take him at his word.

24 In any event, we will begin at 1 p.m. at the
25 Senate Majority Caucus Room.

1 Now, has everyone had an opportunity to read
2 the memorandum in order of the respect to identify and
3 propose exhibits? We didn't make it applicable to
4 this issue for two reasons. One, you weren't a party
5 to that conference call. Two, I wasn't sure that it
6 was appropriate because you have, apparently, a very,
7 very large number of exhibits and some are stipulated
8 and I don't know. But I'd ask you to consider that if
9 that is the pleasure of the parties.

10 Are you able to comment on that now?

11 MR. BLAKE: I am, Judge Smith.

12 I have reviewed it. I think the parties on
13 the mailgram issue need to get together and add to the
14 stipulated evidentiary subjects that we've previously
15 identified and which the Board has accepted.

16 In addition it might be that the individual
17 parties have exhibits beyond the stipulated list,
18 which they intend. And I would endorse this concept
19 of having each of the parties identify it's proposed
20 or intended exhibits at the same time that it puts in
21 its testimony. I'm agreeable to it.

22 JUDGE SMITH: Of course, the stipulation
23 would be automatic compliance of that order.

24 MR. BLAKE: Yes, sir.

25 JUDGE SMITH: What's your view, Ms.

1 Bernabei? Does that order seem to be --

2 MS. BERNABEI: I --

3 MR. BLAKE: I don't know physically whether
4 we'll get our act together collectively to get to you,
5 for example, by November the 1st. All that stuff in
6 the stipulation --

7 JUDGE SMITH: Right.

8 We want the advanced testimony but most
9 exhibits we want produced primarily for the benefit of
10 the party's and not for the Board's. The written
11 testimony will be what we will focus on. So we
12 wouldn't require that if the parties don't want us to.

13 MS. BERNABEI: I think Mr. Blake's
14 suggestion is a good one. We still have a number of,
15 you know, it's primarily interviews, I think, to add
16 to the mailgram stipulation. I think that will
17 require some time, hopefully not too long after
18 November 1st. So I would request --

19 MR. BLAKE: Well, I hope we do it by
20 November 1st, and reach that agreement so that we
21 know. And just like the Board has indicated, the time
22 the testimony is in, what the exhibits are among the
23 parties, those that we've agreed to and those that we
24 haven't and what each party has in mind so that at
25 some point --

1 MS. BERNABEI: Let me finish what I was
2 saying.

3 MR. BLAKE: -- decide what the case is going
4 to be.

5 JUDGE SMITH: Okay.

6 MS. BERNABEI: If I can just finish stating
7 the position --

8 JUDGE SMITH: All right, Ms. Bernabei.

9 MS. BERNABEI: I think there are a number of
10 interviews that we had not previously known were
11 relevant to the stipulation. At the time that we
12 signed the stipulation Mr. Blake and I agreed that
13 either party could add interviews, NRC interviews,
14 primarily those kind of materials that we felt would
15 be relevant to the stipulation. We haven't compiled a
16 list.

17 And my opinion is, it's going to take at
18 least a good day, at least of my time, to figure out
19 what those are going to be. I have -- we have one
20 problem which I think we're resolving, which involves
21 the staff. Mr. Gamble, as you know, we proposed as a
22 witness. We will be filing pretrial testimony.

23 He has requested or we have requested on his
24 behalf certain access to his prior NRC files in the
25 office of the inspector and auditor. I understand

1 that that is proceeding, and that they will be able to
2 provide him with some -- well, that they hope to be
3 able to provide him some kind of access to those
4 files. I understand that they may be a problem
5 because O.I.A. is a commission level office.

6 However, what I would request is some
7 dispensation from any order requiring all exhibits to
8 be filed at the time of testimony only for Mr. Gamble,
9 in that he may not have access on November 1st to his
10 files. But we will attempt at such time as he has
11 access to identify those documents and provide them to
12 the parties and the Board.

13 My sense is from the way we're working that
14 that --

15 JUDGE SMITH: That doesn't require a
16 dispensation. If you don't have them, you don't have
17 them.

18 MS. BERNABEI: I just don't want to be
19 foreclosed on November 1st from producing them at a
20 later time.

21 JUDGE SMITH: Of offering them at a later
22 time?

23 MS. BERNABEI: Of offering them at a later
24 time --

25 JUDGE SMITH: Yes.

1 MS. BERNABEI: Yes.

2 MR. GOLDBERG: If I could just clarify a
3 statement that Ms. Bernabei has made.

4 A couple of days ago she called me and
5 identified, essentially, four documents and a fifth
6 category of documents which she believes are in
7 O.I.A.'s files which she would like to have. I
8 pointed out to her that I would ask O.I. whether they
9 had the documents, to search for the documents,
10 identify whether they have them and attempt to
11 ascertain, if they did have them, whether O.I.A. had
12 any objection to their being produced to Ms. Bernabei.

13 I clearly indicated to her that O.I.A. is a
14 commission level office. I don't represent them but I
15 would make the attempt to ascertain whether they had
16 the documents and had any objection to their being
17 produced. If they didn't have any objection, I would
18 get them and provide them to Ms. Bernabei.

19 O.I.A., in fact, is looking through their
20 files to see whether the documents which were
21 identified exist. And if they exist, we'll make a
22 determination of whether they have any objection to
23 their being introduced. As soon as they can provide
24 that information to me I'll pass it on to Ms.
25 Bernabei.

1 JUDGE SMITH: Didn't the Office of
2 Investigations take over some of the documents, some
3 of the files or did they all remain with O.I.A.?

4 MS. BERNABEI: Not these.

5 MR. GOLDBERG: The Office of Investigations
6 took over some files that were previously in I and E
7 because the investigative function of the commission
8 used to be performed by the Office of Inspection
9 Enforcement. O.I.A., the Office of Inspector and
10 Auditor, has always existed as a separate office. And
11 these files always were and still are part of O.I.A.'s
12 files.

13 JUDGE SMITH: All right.

14 Are you satisfied with that?

15 MS. BERNABEI: Yes.

16 The only reason that I brought it up -- I
17 mean, I think that Mr. Goldberg is doing all that he
18 can to try to get us access. I'm just worried a
19 little bit about the November 1st deadline. I think
20 we'll be able to work it out, but we may not be able
21 to do it by November the 1st.

22 MR. GOLDBERG: Certainly if O.I.A doesn't
23 identify them and introduce them before November 1st,
24 there's no objection to her identifying them later on.

25 JUDGE SMITH: Well, do what you have to do,

1 yes. As soon as it's prudent for you to make the
2 reservation, however, appreciate it.

3 All right. Then let's move on to the next
4 interrogatory.

5 MR. GOLDBERG: May I be excused, Judge
6 Smith?

7 JUDGE SMITH: Yes.

8 MR. GOLDBERG: I thank the Board and the
9 parties for allowing us to take those two matters up
10 at that time.

11 MR. BLAKE: I think two is subsumed by our
12 agreement on three.

13 JUDGE SMITH: Yes, it seems to be.
14 Do you agree?

15 MS. BERNABEI: Yes.

16 JUDGE SMITH: It has just struck me at this
17 moment, what was meant by Interrogatory 3(a). That's
18 the location of the individual at all points during
19 the day. That's all points of the day.

20 MR. BLAKE: Yes.

21 JUDGE SMITH: Yes.

22 All right. I thought you were referring to
23 all points of the facility. Okay. Great.

24 MR. BLAKE: I may have misspoken here. I
25 see on two that Mr. Keaten appears under two. And I

1 don't think he was -- he's not one of the six under
2 three, but add Mr. Keaton to the list. Let's move on.

3 We will answer Interrogatory 2.

4 JUDGE SMITH: Okay.

5 For those other than those who -- folks who
6 have been deposed. Now we move to four.

7 JUDGE LINENBERGER: Perhaps with respect to
8 four, Ms. Bernabei can enlighten the Board with
9 respect to the same observation that -- who has made
10 the same observation that Mr. Blake made.

11 TMIA's submittal of 10/17/84 indicates that
12 Interrogatory 4 on page one indicates that
13 Interrogatory 4 is one of several that are being held
14 in abeyance pending response of GPU. And yet later on
15 in that same document you hit Interrogatory 4 square
16 on as though maybe there was no such agreement with
17 respect to it now. Have I misunderstood something or
18 can you --

19 MS. BERNABEI: I think what -- the reason I
20 included it originally, and I'll let Mr. Blake speak
21 for himself, is that I think he had agreed to consider
22 -- I thought he had agreed to consider a portion of
23 the interrogatory, that is to answer a portion.

24 I included it in a motion to compel that
25 portion which I understood he had not agreed to

1 consider. He tells me today that no, in fact, it was
2 excluded from our agreement of understanding and, in
3 fact, it should be included in the motion to compel.

4 JUDGE LINENBERGER: He told you that today?

5 MS. BERNABEI: Yes.

6 JUDGE LINENBERGER: And is that the reason
7 that your submittal of several days ago includes it?

8 MS. BERNABEI: No.

9 JUDGE LINENBERGER: Well, then my question
10 still stands.

11 MS. BERNABEI: Okay.

12 That explains -- okay. I included it in the
13 motion to compel because it was only handled in
14 portion by what I understood our agreement to be, our
15 understanding on that date. That is, he said he'd
16 take back to his client consideration in certain
17 respects of Interrogatory No. 4. I said that it was
18 only in certain respects.

19 The motion to compel covers respects other
20 than those which he said he would bring back to his
21 client and that's what I specifically include in the
22 motion to compel.

23 MR. BLAKE: I don't have any explanation. I
24 have no recollection of that. I don't know what
25 portion she's talking about and I can't read her

1 motion to compel where she addresses this on page
2 seven as being narrow in any respect from what the
3 interrogatory asks for.

4 JUDGE SMITH: All right. Thank you.

5 All right. It is narrow.

6 MR. BLAKE: I'd say it is.

7 MS. BERNABEI: Specifically, the portion
8 that Mr. Blake has always represented they would have
9 a problem answering has to do with the lines of
10 communication and responsibility of GPU Service
11 Corporation personnel in Parsippany on March 28th.
12 That's what page seven addresses.

13 Mr. Blake has stated or discovered
14 conferences and then I think he'll restate today that
15 that is not something they considered they have a
16 responsibility to respond to. That's why it's
17 included in the motion to compel.

18 There were other differences that we agreed
19 to consider. I felt we had agreed to consider a
20 reassessing but apparently not. But in any case, this
21 was one area in which GPU had said it was not going to
22 consider answering. So that's why we included it in
23 our motion to compel.

24 Specifically it has to do with certain
25 meetings, conversations that is it has been testified

1 previously occurred. And what we want to know is what
2 functions and responsibilities a certain limited
3 number of individuals had with regard to a number --

4 MR. BLAKE: That's number five.

5 MS. BERNABEI: Aren't we on number four?

6 MR. BLAKE: We're on number four, yes.

7 MS. BERNABEI: I thought we were on --

8 MR. BLAKE: No, we're --

9 MS. BERNABEI: Mr. Blake, if you'd just let
10 me speak for a moment. We're talking about
11 Interrogatory 4 which asks about particular
12 conversations and a small number of individuals. The
13 reason we want this information is to determine their
14 general responsibilities and communications on that
15 day, therefore. That's what I think the motion to
16 compel says. That's what the interrogatory asks for.

17 Again, we have deposed Mr. Arnold and Mr.
18 Moore. And we've asked some questions about these
19 meetings at this point so we can strike them from the
20 list. What we're asking about essentially is the
21 information for four individuals.

22 JUDGE SMITH: So under the -- using the
23 device of finding out their knowledge of all plant
24 conditions -- and I assume you're talking about
25 transients, accident conditions -- you're trying to

1 identify, what, the basic duties of these individuals?

2 MS. BERNABEI: The duties and what they did
3 on the first day of the accident.

4 JUDGE SMITH: Why does that not exceed the
5 limitation imposed upon your discovery?

6 MS. BERNABEI: Because it may be that the
7 individuals involved are not going to be telling the
8 truth about what they knew about certain parameters in
9 the plant. And it appears to me that a certain
10 definition of what they were doing and the decisions
11 they're making. Again, just in in regard to two
12 specific conversations primarily which we have
13 testimony did take place I think is probative of what
14 they, in fact, did during that day.

15 Let me just give you as an example. Mr.
16 Arnold has acknowledged that he participated and
17 perhaps was a moving factor in starting a reactor
18 coolant pump sometime in the late afternoon of March
19 28. I would imagine that Mr. Arnold would not make
20 that decision without acquiring or obtaining a great
21 deal of technical knowledge to make sure that he was
22 making the correct decision and without consulting
23 with a number of technical people as well.

24 Mr. Arnold has said he didn't know about the
25 in-core thermocouple temperatures. He didn't know

1 about the pressure spike. He didn't know about any
2 hydrogen production on March 28. If, in fact, he knew
3 about many other parameters, if, in fact, he had
4 others say that there was information of the engineers
5 on site about hydrogen and temperature, it seems to me
6 probative that given he knew about other factors, he
7 was told other things by others on site to help him
8 make this decision in the evening of March 28, it
9 doesn't seem to me that his current testimony that he
10 didn't know about in-core thermocouple temperature, he
11 didn't know about hydrogen production, is credible.

12 JUDGE SMITH: Well, when we first addressed
13 this subject matter of your discovery, didn't we begin
14 with the assumption that discovery works, that people
15 answer truthfully in discovery and that was one of the
16 reasons why we would not permit an inquiry into all
17 plant conditions.

18 Now I think you've done, again, what we've
19 complained about. This simply is not where you can
20 justify your opening paragraph in Interrogatory 4 with
21 our previous rulings without some explanation.

22 MS. BERNABEI: My explanation to you is that
23 there are certain conversations that were identified.

24 JUDGE SMITH: Now, the certain
25 conversations, I understand that, but I'm just looking

1 at the plain sentence structure of your interrogatory,
2 "Identify all conversations on March 28, 1979 between
3 persons at the TMIA site and Licensee's offices in
4 Parsippany concerning the conditions of the reactor or
5 events occurring at the reactor site in which the
6 following individuals participated or which the
7 following individuals were aware: Arnold, Wallace,
8 Keaton, Moore, Williams and Hertz."

9 Then you go, "include." Now, I understand
10 what the word "include" means, that, you know, it
11 means include. There's others, you know. There's a
12 larger category but make sure that you have these in
13 there. That's entirely different from what you're
14 arguing and -- this is what you should have done in
15 this interrogatory, motion to compel. First, I think
16 you should acknowledge the fact that the opening
17 paragraph for the interrogatory in itself appears to
18 violate our earlier scope of discovery and explain why
19 in view of that you believe that the discovery is,
20 nevertheless, permissible.

21 MS. BERNABEI: Okay.

22 JUDGE SMITH: But I picked this up and the
23 only thing I see is, well, she didn't understand or
24 she -- I don't know. I mean, I don't know why you
25 would be coming back to us in clear disobedience of

1 our rule of discovery and ask for it again without a
2 better explanation.

3 That's the point I want to make about being
4 open and forthcoming in your pleadings and in your
5 statements. Make sure we know the bad side of your
6 position as well as the good side, otherwise we find
7 out the bad side and you're discredited.

8 MS. BERNABEI: On page seven we say why we
9 want the information. It's concerning the general
10 lines of communication and responsibilities for
11 service corporation managers in Parsippany on March
12 28.

13 Now, it didn't go into a full explanation.
14 I can see that this whole set of interrogatories has
15 to do with communications from, in general,
16 communications which we did not know prior to
17 obtaining the Moore notes existed between GPU Service
18 Corporation people sent to the site and people backing
19 Parsippany on the first day of the accident. We
20 didn't know until we had reviewed the Moore notes,
21 until we had learned of those lines of communication.

22 These interrogatories, I don't want to say
23 all, but nearly all of them are intended to probe that
24 relationship between the service corporation --

25 JUDGE WOLFE: Yes, but it's still the

1 subject matter of your motion to compel. Why did you
2 move to compel if you already have gotten the answers
3 pursuant to depositions?

4 MS. BERNABEI: Not for these people.
5 There's two people that we have deposed. We have not
6 deposed the other individuals.

7 JUDGE WOLFE: Which two are those?

8 MS. BERNABEI: Arnold and Moore.

9 JUDGE WOLFE: I've read the Licensee's
10 response to the motion to compel at page three.
11 Perhaps, Mr. Blake, you could explain that. You
12 indicate at page three that the Licensee has already
13 identified the methods and lines of communications,
14 true?

15 MR. BLAKE: Yes, sir.

16 JUDGE WOLFE: And where?

17 MR. BLAKE: Well, in our prior responses to
18 TMIA's interrogatories, including in the end an agreed
19 upon resolution of communications where it boiled down
20 to what were the open lines and when to start and when
21 to finish, which we provided.

22 MS. BERNABEI: I beg to differ. That was
23 not provided in discovery. Our specific questions
24 were between the company and NRC, the company in
25 Pennsylvania, B & W and the NRC. It had nothing to do

1 with communications within the corporation. We did
2 not think to ask that question because we didn't know
3 until we reviewed the Board notes about internal
4 company communications. They have never answered this
5 question before.

6 And what Mr. Blake is talking about in terms
7 of the general lines of communication
8 responsibility he's talking about saying there's a
9 telephone from the site to Parsippany. We know that.
10 What we're talking about is what these people were
11 doing and what was the general reporting relationship
12 on the first day of the accident, what they talked
13 about, what kinds of communications in general. That
14 has never been asked before because we didn't know
15 enough to ask that question.

16 The specific interrogatories have to do with
17 GPU in the NRC, GPU in Pennsylvania, B & W in
18 Pennsylvania, B & W in the NRC. Internal corporate
19 communications was not a subject of those
20 interrogatories.

21 MR. BLAKE: I refer, Ms. Bernabei, to pages
22 12 and 13 of our response to our fifth set.

23 JUDGE WOLFE: Response to what?

24 MR. BLAKE: To TMIA's fifth set.

25 MS. BERNABEI: The fifth set is after these.

1 These are --

2 MR. BLAKE: Yes, but you got the
3 information, doggone it.

4 JUDGE WOLFE: Your response to the fifth set
5 is dated what?

6 MR. BLAKE: October 15th.

7 JUDGE WOLFE: October 15th.

8 And your motion to compel is dated what, Ms.
9 -- dated October 17th.

10 MS. BERNABEI: I don't consider this an
11 adequate response. What page are you taking it from?

12 JUDGE WOLFE: Twelve and thirteen.

13 MS. BERNABEI: What this says is there were
14 telephone communications. That is not the information
15 we're requesting. We're requesting the types of
16 communications. That is, what were the people at the
17 site telling the people back in Parsippany. We know
18 telephones existed. We didn't have to ask these
19 interrogatories to find that out.

20 JUDGE WOLFE: And we're back into how broad
21 an inquiry is allowed. And we previously provided
22 information about the subjects which are involved in
23 the Dieckamp mailgram. In fact, in this very
24 interrogatory answer we say the communications which
25 you specifically asked about did not concern or were

1 not related to hydrogen generation, subsequent
2 combustion, actuation of containment sprayer pressure
3 spike.

4 I think we've given a reasonable answer,
5 Judge Smith.

6 MR. BLAKE: I don't understand.

7 MS. BERNABEI: Let me state because it is --
8 Mr. Blake, I don't interrupt you and I'd appreciate
9 the same courtesy.

10 We didn't know until we got the Board notes
11 and other documents in discovery that there was a line
12 of communication set up between the GPU Service
13 Corporation people sent to the site, or perhaps there
14 wasn't, and Parsippany headquarters.

15 We also didn't know that those GPU Service
16 Corporation people sitting in the observation center
17 had information about thermocouple temperatures in
18 excess of 25 degrees. That's the first time --

19 MR. BLAKE: Okay.

20 MS. BERNABEI: -- anybody has suggested
21 that.

22 MR. BLAKE: I'm with you.

23 MS. BERNABEI: Okay.

24 We also -- what we're trying to do is
25 establish what, if any, lines of communications late

1 in the day on March 28th or early in the day on March
2 29th existed between those Service Corporation people
3 specially sent to the site and the people up in
4 Parsippany.

5 And frankly, the testimony we're getting, at
6 least, you know, they can't remember if they ever
7 called the office in two days. They can't remember
8 whether they ever communicated with their superiors in
9 this rather serious situation. Some of the testimony
10 is not credible. That's why we asked this
11 interrogatory, to find out if they say they didn't
12 communicate for 25 degrees what were they talking
13 about, what was being communicated?

14 That's the kind of information we want. And
15 I think we're entitled to know the general types of
16 communications. If they say they weren't telling you
17 about 2,500 degrees, then what they were talking
18 about? What were they talking about at the first day
19 of the accident if they weren't telling them that
20 there were in-core thermocouple rings of 2,500
21 degrees.

22 And other than asking about -- and what I'm
23 trying to do is base it on conversations we have
24 testimony did occur. And this specifically tied into
25 Mr. Walsh's deposition in GPU, B & W litigation.

1 And frankly, we've asked two of these
2 people. We've asked Mr. Arnold and we've asked Mr.
3 Moore. And frankly, the testimony is not credible.
4 Their testimony is -- Mr. Moore's testimony is he
5 doesn't know if these temperatures ever got up there.
6 And Mr. Arnold's testimony is he is making significant
7 decisions --

8 JUDGE SMITH: You're asking us then to do
9 something which is not really the rule of presiding
10 officer presiding over discovery. You are indeed
11 asking us to reconsider our rule of the case. And
12 that is the assumption that discovery works, that when
13 we outline a permissible area of discovery, and in
14 this case the very narrow area of hydrogen combustion
15 and those, that your answers will be accurately and
16 fully produced.

17 Now, you're asking us to intercede in
18 discovery, abandon that premise and begin a trail down
19 with you in which you believe people are not being
20 forthcoming in discovery. And that isn't the
21 traditional rule. However, it is not -- that doesn't
22 shine through here.

23 No matter what you say is your purpose it is
24 still extremely broad. I don't know quite how to
25 satisfy your concerns. I think that -- I'm sure that

1 I don't want to get into every area where you feel
2 that you're not getting the answers, accurate answers,
3 in discovery. You're going to have to pursue your
4 remedy in a more precise way.

5 You're just saying, in effect, that the
6 general tenor of these responses is not credible. Now
7 you want discovery to demonstrate that it is not
8 credible.

9 MS. BERNABEI: I don't think that's a fair
10 characterization. We have pursued particular
11 questions, "Did you transmit information about 2,500
12 degree Fahrenheit temperatures to your corporate
13 management given the fact that you were sent down here
14 to analyze" --

15 JUDGE SMITH: Right.

16 MS. BERNABEI: We've pursued that. And what
17 I'm saying to you is either people don't remember --
18 the people we've deposed -- now, we haven't gotten any
19 answers from four out of those six people. The two
20 people who have answered I think have not given
21 credible answers.

22 We're not asking you to make a decision on
23 that. What we're asking is some establishment threw
24 what we consider a very narrow question. We're
25 essentially talking about asking this question of four

1 people --

2 JUDGE SMITH: What narrow question?

3 MS. BERNABEI: Four, which would identify
4 the lines and methods -- the communications which took
5 place on the first day of the accident. We're
6 essentially talking about four people that have not
7 been deposed, two of whom I understand left the
8 company.

9 What we're really talking about is probably
10 two people, Mr. Keaten and Mr. Wallace, being asked
11 about their communications with the site on the first
12 day of the accident.

13 JUDGE WOLFE: We're still on interrogatory
14 4, correct?

15 MS. BERNABEI: Right.

16 JUDGE WOLFE: And you say that what you've
17 asked for is very specific and limited. I don't see
18 that -- it may be specific but it's certainly not
19 limited. You want to know all conversations regarding
20 or concerning the conditions of the reactor or events
21 occurring at the reactor site. I've never seen a more
22 coverall sort of question in a long time.

23 JUDGE SMITH: This is almost exactly the
24 same argument that we had here on our first day in
25 this room in which you're arguing that you have to

1 have information about all plant conditions to assure
2 yourself that the discovery responses as to the
3 relevant plant conditions are credible.

4 And we said, well, we're going to expect
5 them to be credible. And we're going to expect that
6 Mr. Trowbridge engaged in that conversation. It's
7 going to take imagination. It's going to take good
8 faith. And it's going to take a diligent effort on th
9 part of the licensee to make sure that the responses
10 that they receive do not unreasonably exclude
11 information about the relevant plant parameters,
12 simply because they don't happen to hit magic words.

13 And I believe that that's the best we can
14 do. And I think this is -- how does this argument
15 today differ from that area we had resolved at the
16 very beginning?

17 MS. BERNABEI: We're talking about very
18 specific management people that were making decisions
19 about bringing that reactor to a stable condition.

20 JUDGE SMITH: Indeed, those people were
21 listed in the interrogatory dispute. Mr. Arnold was.

22 MS. BERNABEI: I think the general
23 interrogatory which you're talking about, which is the
24 major part of our dispute center, had to do with the
25 canvass of all employees of GPU.

1 JUDGE SMITH: No, no. You had
2 questionnaires about a whole list of plant parameters.
3 And then the next interrogatory says with respect to
4 all of these plant parameters tell us what all of
5 these long lists of people knew about. And we said
6 no. And you said, "Well, we've got to have it to know
7 if they've been unduly restrictive in what they know
8 about hydrogens and pressure spike and continuous
9 spray actuation. And we said, "No, we proceed on the
10 assumption that responses are full and accurate." And
11 now you're asking us to reconsider that basic premise.

12 And I might say that discovery is predicated
13 upon that. There are penalties for false answers to
14 discovery. And there are litigative penalties too.
15 Unless --

16 MS. BERNABEI: It's fair to say we are
17 asking you to reconsider, but only to the degree that
18 we have information of people who were making
19 decisions and we have other evidence that indicates
20 the general types of communications that were ongoing.
21 We're not asking for a general canvass of even a large
22 number of individuals.

23 We're asking a very small number of
24 individuals who we have reason to believe, through Mr.
25 Wallace's deposition, had a certain part to play in

1 the -- I can understand the Board's ruling if your
2 ruling is that you're not going to reconsider, fine.

3 JUDGE SMITH: All right.

4 Yes. We're not going to reconsider unless
5 -- we wouldn't say that we would never reconsider
6 under any circumstance, but the basis upon which you
7 have explained to us that the testimony at the
8 deposition you received is not credible is not
9 sufficient.

10 But it would have been really very, very
11 helpful if you had come to the recognition that, in
12 effect, you were asking for a reconsideration in a
13 narrow area right from the very beginning. We have to
14 drag that information out of you.

15 I'm asking you to bear in mind that your
16 knowledge of the facts of this case is so much greater
17 than ours and that what seems to be obvious to you is
18 not obvious to us. So you're going to have to be
19 patient with us.

20 And I might point out to you too, Mr. Blake,
21 you've been living with this for so long that you've
22 said, "Well, as the Board well knows, Mr. Stire was
23 employed in February of '84." Well, as a matter of
24 fact, I only had passing awareness of that fact when
25 it happened. And I'm going to ask you just assume

1 really, we don't know anything. I mean, if you want
2 us to know something we're going to have to be told
3 about it.

4 I doubt if my colleagues had any better
5 background information on Stire than I did, probably
6 not. But I noted -- you know, made it clear. But I
7 noted your assumption that we were thoroughly
8 familiar, and we're not. Okay.

9 We move then to which one?

10 MS. BERNABEI: Five and six I think we have
11 no problem with. The next one is seven.

12 JUDGE WOLFE: What have you said on 5 and 6?

13 MR. BLAKE: At the moment, Judge Wolfe,
14 there is no motion to compel pending on 5. And the
15 reason for that is that when Ms. Bernabei and I met on
16 October the 16th I agreed to go back and see if I
17 could do better on 5.

18 JUDGE SMITH: We skipped to 7. I didn't
19 pick that up. Six is not included in the motion. All
20 right.

21 We move to 7 then.

22 MS. BERNABEI: I think 7 would really --
23 that is, that you did not sustain our position
24 interrogatory 4. We're really talking about documents
25 identified with respect to interrogatory No. 3. With

1 that limitation I don't know what the licensee's
2 position would be.

3 JUDGE SMITH: Mr. Blake, that seems to be a
4 logical extension of what you're agreed to.

5 MR. BLAKE: I am willing to add to my
6 questions of the six people that we identified with
7 regard to interrogatory 3 the question, "Are you aware
8 of documents which record any communications on in
9 core thermocouples which occurred on March 28?"

10 JUDGE SMITH: And identify them?

11 MR. BLAKE: Sure.

12 JUDGE SMITH: Okay.

13 MR. BLAKE: To the extent they know them.

14 JUDGE SMITH: That seems reasonable.

15 Ms. Bernabei, do you agree?

16 MS. BERNABEI: Yes.

17 JUDGE SMITH: All right, 8.

18 MS. BERNABEI: Eight, I think again if we
19 map out the people from whom we had testimony, that is
20 that we had depositions -- I'm talking about Mr.
21 Frederick G, Mr. Zewe -- excuse me, F, Mr. Wallace M,
22 as in Mary, and Robert Keaten, N as in Nancy. We're
23 simply talking about four people. And I guess it's
24 these people we'll be talking about with regard to
25 interrogatory 9, 10, 11 -- 9 and 10.

1 JUDGE SMITH: What is your position, Mr.
2 Blake? When you refer to general objection No. 1 that
3 caused me confusion going through your document
4 because you didn't make it clear in general objection
5 No. 1 that the permissible scope of discovery had been
6 extended to temperatures. You discussed that at the
7 end thoroughly.

8 So first reading that it seemed like, you
9 know, you were not cognizant of the Board's ruling
10 when you read general objection No. 1.

11 MR. BLAKE: Well, I was cognizant of it.
12 But as I say, I'm not sure that we have redressed
13 interrogatories or other types of requests. I think
14 all that we really had in front of us when we talked
15 about that extension were the depositions. So there
16 was a question in my mind, Chairman Smith. And that's
17 why I made the offer to go into in cores when this
18 dispute arose, to cover the prospect that I was wrong
19 and the Board meant whatever form of discovery from
20 here on out.

21 JUDGE SMITH: I see.

22 Well, that hasn't been discussed today,
23 however.

24 MR. BLAKE: I thought I said that earlier.

25 JUDGE SMITH: Yes, you said it but you

1 didn't get any response from us. Our basic intent was
2 that no work already done had to be repeated. And we
3 did not have in mind the form of discovery which was
4 yet to come, but that the intervener would have to
5 take the ruling as they find it at the time they find
6 it. And we weren't focusing on the type of discovery.
7 But if you want to point out the language there, I'm
8 going entirely by memory now.

9 MR. BLAKE: We're all going by memory on
10 that day's prehearing. My only point was all we had
11 in front of us at that point were depositions. And
12 that's all I really focused, that's all, I think. And
13 then we got hit with a slate of interrogatories after
14 the fact, which I felt was an end run on your ruling.
15 That's all.

16 JUDGE SMITH: And in particular, we did not
17 want you to have to go back to people you'd already
18 canvassed in your questionnaire.

19 With that in mind, what is the dispute that
20 remains with interrogatory 8?

21 MS. BERNABEI: Again, the only people on
22 controversy are Frederick, Zewe, Keaten and Wallace.

23 JUDGE SMITH: And you don't have any
24 knowledge that they know that those temperatures were
25 in violation and that exceeded those specified in

1 50.46?

2 MS. BERNABEI: That's correct.

3 JUDGE SMITH: I think that certainly is
4 relevant to that issue. And 9, we can take 9
5 together.

6 MS. BERNABEI: I think 10 goes together too,
7 the 3 of them are coupled.

8 JUDGE SMITH: I don't know if 10 is -- 10,
9 although I don't really agree with the wording of it,
10 but certainly the import of it is -- it's all part of
11 the same package.

12 MR. BLAKE: Judge Smith, I think it makes
13 some sense to look at the set as a package, narrow it
14 just on four people, Zewe, Frederick, Wallace and
15 Keaten. I'd like to suggest that what we do is ask
16 them 9, and depending upon their answer to 9, whether
17 or not we go to 10 or 8.

18 I mean, if they didn't know anything about
19 it I don't know how relevant or material it is.

20 JUDGE SMITH: Oh, yes. The general -- yes,
21 I think that you have to agree that the ordering, the
22 sequence, is not as logical as it should be.

23 MS. BERNABEI: Well, that's fine. We have
24 no problem.

25 JUDGE SMITH: What you're trying to

1 establish is if anybody knew about the temperatures
2 and knowing that, did they know that those
3 temperatures 50.46 standards. And if they knew it and
4 they didn't believe that it violated you wanted
5 another reasoning?

6 MS. BERNABEI: That's correct.

7 JUDGE SMITH: Well, as I said, I have some
8 problem with the logic of 10 because it presupposes
9 that there is a basis for them to believe that such
10 temperatures violated. But I'm sure it can be
11 addressed. I mean, the answer could be "I never even
12 thought about it."

13 MS. BERNABEI: It could be.

14 JUDGE SMITH: "I knew what the temperatures
15 were but I never thought about it."

16 MS. BERNABEI: We haven't heard it yet but
17 it's possible. It's really possible.

18 JUDGE SMITH: So are we in agreement on
19 those?

20 MS. BERNABEI: Sir, we're essentially
21 reordering and telling if anyone of the four that
22 answers yes to 9, 8 and 10, our answers. Is that
23 right, Ernie?

24 JUDGE SMITH: Yes, he's saying yes. I think
25 that's understood. Eleven, this one is -- eleven

1 certainly seems to me to be -- to violate the
2 protective order against going back.

3 MS. BERNABEI: If I could suggest, I think
4 there are very few GPU -- the reason we restricted it
5 to conversations between GPU and B & W's, I think
6 there were very few people communicating with B & W on
7 that date.

8 MR. BLAKE: The interrogatory covers among
9 GPU personnel or between GPU and B & W personnel. And
10 on this communications business, Judge Smith, you've
11 got to understand that part of the reason that we take
12 them on is look at their instruction D on
13 communications when we agreed to respond to an
14 interrogatory, my goodness, the whole host of things
15 we're supposed to do.

16 And we just thought this was outside. And
17 I'd like to suggest to the Board now that if we work
18 our way through these we stick with the named people
19 which Ms. Bernabei today has said many times is the
20 tailoring which she tried to take and which she tried
21 to identify the important people who may have been in
22 a chain of importance.

23 And I'd like to get beyond these types of
24 interrogatories to just say all communications or have
25 no people at that point.

1 JUDGE SMITH: Well, certainly, the fact
2 that --

3 MS. BERNABEI: We'll do that.

4 JUDGE SMITH: Right, I agree.

5 MS. BERNABEI: I assume we're going to be
6 talking now about the management level of people as
7 well as some of the people on 8.

8 JUDGE SMITH: Well, you don't have an
9 understanding. I thought you agreed that it would be
10 limited to those specifically named. You better name
11 them here and now.

12 MS. BERNABEI: Okay.

13 MR. BLAKE: They're already named in here.

14 JUDGE SMITH: Well, I know. But some are
15 crossed out and some survive. To which names are you
16 referring, Mr. Blake?

17 MR. BLAKE: I'm referring to the six that
18 appear in interrogatory 3, Mr. Keaten which was
19 answered by -- 6 with respect to 3 and 7, 4 with
20 regard to 2 and 4 with regard to 9, 8 and 10.

21 MS. BERNABEI: That's fine.

22 JUDGE SMITH: All right.

23 MR. BLAKE: Let's move on to 12. There
24 isn't anything in 11. What are we going to ask these
25 folks?

1 JUDGE SMITH: I'm sorry, I didn't hear you,
2 Mr. Blake.

3 MR. BLAKE: I'm going to ignore 11.

4 MS. BERNABEI: I thought we just identified
5 the persons we're talking about with regard to 11.

6 JUDGE SMITH: I thought you had agreed to
7 respond to 11 with respect to the persons we had just
8 named, that you had just named.

9 MR. BLAKE: I just plain misspoke.

10 JUDGE SMITH: All right.

11 MR. BLAKE: My suggestion was that -- and I
12 guess I just plain misspoke. I had meant that where
13 they had identified specific people I thought we were
14 there on the interrogatories. But this business of
15 all communications and all people, I thought we ought
16 to ignore those.

17 JUDGE SMITH: I thought you focused upon all
18 people and we resolved that. Now, your problem is all
19 communications.

20 MS. BERNABEI: We're talking about one --

21 JUDGE SMITH: All communications by those
22 named people. That is not satisfactory because you're
23 concerned about what's meant by communication.

24 MS. BERNABEI: We'll limit it to oral
25 communications if that's the problem. I see we're

1 what talking about --

2 JUDGE SMITH: Give Mr. Blake a chance to
3 correct his thoughts here.

4 (Pause.)

5 MR. BLAKE: Let me just see if I understand
6 how you'd have me read that interrogatory first.
7 "Identify communications on March 28th that you had
8 concerning the in-core thermocouple readings of
9 temperatures in excess of 2,200 degrees and the U
10 would be?"

11 JUDGE SMITH: I think you're reading
12 something wrong. What U? You're looking at --

13 MR. BLAKE: That's where my confusion came
14 because what --

15 JUDGE SMITH: What are you looking at?

16 MR. BLAKE: I'm looking at 11. All I'm
17 trying to do is understand what you thought I agreed
18 to.

19 JUDGE SMITH: I would have understood you to
20 have agreed to identify all communications on March
21 28th among the named GPU personnel, among them, or
22 between any of the named GPU personnel and B & W
23 personnel. That's what I understood.

24 Then I understood your problem was at this
25 point then the definition of communications. Are you

1 reading the exact same language I'm reading? It
2 appears on page 14 of your objections?

3 MR. BLAKE: We're focused on the same thing.
4 I was just, by way of explanation of what I thought
5 you understood me to have agreed to --

6 JUDGE SMITH: Yes, that was the sense of it.

7 MR. BLAKE: All right.

8 Changed the language which I would then
9 address to whatever the number of people were, you
10 know. "Identify all communications you were involved
11 in concerning --

12 JUDGE SMITH: That's how you would put
13 it --

14 MR. BLAKE: That's what I was -- so I
15 understand what I'm agreeing to. "Identify all
16 communications you were involved in concerning the
17 fact that in-core thermocouple readings -- all
18 communications you were involved in on March 28th
19 concerning the fact that in-core thermocouple readings
20 of temperatures in excess of 2,200 had been measured
21 on that date." That's what you understood. And I
22 would do that for each of the named people.

23 JUDGE SMITH: No, this is the way I would
24 understand it to be. You're asking these people,
25 "Identify all the communications that you were

1 involved in on the X subject matter that we're
2 discussing with the following named GPU personnel."

3 And then, of course, the person getting the
4 letter -- say that there's nine of them and there's
5 eight but a different eight on each letter or each
6 memorandum. Each GPU personnel on your list is
7 required to identify the communications that he had
8 with each other GPU personnel on your list and
9 communications with B & W personnel.

10 MR. BLAKE: Is that agreeable to you?

11 MS. BERNABEI: Yes.

12 I think we're talking about very few
13 communications. I would just suggest that it be
14 phrased to these people what communications that you
15 have within the company, within GPU or with the B and
16 W people. I think that would capture essentially the
17 same thing as my people.

18 CHAIRMAN SMITH: The problem on discovery
19 sometimes of this type is not how much it produces but
20 how big a -- you have to cover to produce it.

21 MS. BERNABEI: Well, you're going to be
22 asking the same people in any case. My only
23 suggestion is that when you're talking about a non-GP
24 personnel that you don't do it among the eight or ten
25 named individuals but any communications they had with

1 other people within the company. That's all I'm
2 suggesting. I think you may very well get the same
3 answers. It's just -- that's really the question.

4 CHAIRMAN SMITH: I'm glad you said what you
5 said because that's different from my understanding of
6 it.

7 MR. BLAKE: Right.

8 Can I have another minute here to just work
9 this out?

10

11 CHAIRMAN SMITH: Yeah.

12 (Discussion off the record.)

13 CHAIRMAN SMITH: On the record.

14 MR. BLAKE: I appreciate the opportunity to
15 collect our thoughts here.

16 First let me say that I understand we are
17 now talking about nine people to which we would
18 address an interrogatory to answer in that 11, 12, and
19 13. And those nine --

20 CHAIRMAN SMITH: 13 is not -- I lost my list
21 of -- 13 isn't on your list; is it?

22 MS. BERNABEI: Yes, it is.

23 CHAIRMAN SMITH: All right.

24 MS. BERNABEI: I think we're talking about
25 11.

1 MR. BLAKE: I thought I said 11, 12, and 13.

2 CHAIRMAN SMITH: Yeah, he said --

3 MS. BERNABEI: There are -- no, 11 people.

4 I'm sorry.

5 MR. BLAKE: Well, then I guess -- that's
6 part of the reason I wanted to collect my thoughts. I
7 come up with Wallace, Williams, Hirst, Cronenberg,
8 Capodanno, Lehmann, Keaten, Zewe, and Frederick, which
9 I count as nine.

10 MS. BERNABEI: I still get 11. You get
11 nine? I get Wallace, Williams, Hirst, Cronenberg,
12 Capodanno, Lehmann, Keaten, and then the four in the
13 site.

14 MR. BLAKE: Two of those were Wallace and
15 Keaten on Interrogatories 9, 8, and 10.

16 (Pause.)

17 MS. BERNABEI: You're right.

18 MR. BLAKE: Right?

19 MS. BERNABEI: Right, right.

20 MR. BLAKE: Okay.

21 Now --

22 CHAIRMAN SMITH: We know the people.

23 MR. BLAKE: All right.

24 Now, I want to -- I'm going to ask at the
25 end of this, having identified those nine, to drop two

1 of them in all respects here.

2 CHAIRMAN SMITH: Okay.

3 MR. BLAKE: Two reasons. One, they weren't
4 around that day. One of them was in San Diego, and
5 one of them was over at Oyster Creek. And it just --
6 there also happened to be the two people that are no
7 longer with the company, and it makes it more painful
8 to try to run them down. But what I ask to grant me
9 is to get rid of those two folks, who are Williams and
10 Hirst.

11 CHAIRMAN SMITH: Okay.

12 MR. BLAKE: And I just delete them from each
13 of our bargains through here.

14 CHAIRMAN SMITH: Yeah.

15 MR. BLAKE: So I'm down to seven people, and
16 I -- my proposal is to ask each of those seven people,
17 in essence, what is sought in Interrogatories 11, 12,
18 and 13. And I'd like to state what I plan to ask
19 them, which is going to be broader than the way you
20 phrased it.

21 CHAIRMAN SMITH: Yes, I think the way I
22 raised it was not very logical.

23 MR. BLAKE: Right, it's not necessarily that
24 these happen to be people who were talking with each
25 other, and I don't know that we can get anything out

1 of that.

2 CHAIRMAN SMITH: Right.

3 MR. BLAKE: I would propose to ask these
4 people or give them the following question. Identify,
5 for example, number 11. "Identify communications on
6 March 28, 1979 in which you were involved concerning
7 the fact that in core thermocouple readings of
8 temperatures in excess of 2200 degrees Fahrenheit had
9 been measured that day or on March 28, 1979."

10 CHAIRMAN SMITH: With anybody in the whole
11 world?

12 MR. BLAKE: Yes, sir.

13 CHAIRMAN SMITH: Okay.

14 That certainly seems to take care of it.

15 MR. BLAKE: That goes beyond in two respects
16 what you had suggested, both as to who they might have
17 talked with and even outside of GPU for that. I don't
18 expect to pick up vibes here or things like that.

19 I would make a similar type of change to the
20 language in 12, but it would have the same sense.

21 CHAIRMAN SMITH: Well, I think we understand
22 the essence of them. I don't think there's any
23 confusion. Do you?

24 MS. BERNABEI: No.

25 CHAIRMAN SMITH: I think it's clear.

1 MR. BLAKE: But understand that I'm -- as to
2 12 and 13, I mean to talk about the 28th of March,
3 which has also been admitted and which was another
4 reason for my opposing 12 and 13, I mean to date it on
5 March 28th.

6 MS. BERNABEI: That's no problem. And that
7 was --

8 MR. BLAKE: So I think we're there.

9 CHAIRMAN SMITH: All right. Good enough.
10 Interrogatory 20, then, is the last, 20?

11 MS. BERNABEI: 20?

12 (Pause.)

13 MS. BERNABEI: If I could just state for a
14 moment the relevance of this interrogatory.

15 CHAIRMAN SMITH: I can't hear you.

16 MS. BERNABEI: If I can just state the
17 relevance behind the interrogatory, why the
18 information is relevant.

19 MR. BLAKE: What interrogatory are we
20 talking about?

21 CHAIRMAN SMITH: 20, the last one.

22 MS. BERNABEI: 20.

23 Okay. At the risk of repeating myself, Mr.
24 Lentz was one of the five Service Corporation
25 engineers sent to the site on the first day of the

1 accident from Parsippany. He was specifically the one
2 familiar with unit 2, having worked there at a prior
3 time. He was given the assignment in the late
4 evening. I think the testimony is around 7:00 p.m. of
5 going into unit 2 control room to gather hard data for
6 the others to analyze.

7 The others including he were originally
8 stationed in the observation center where they stayed
9 for the remaining portion of the evening of March 28th
10 and some of them through the night into the early
11 morning of March 29th. Mr. Lentz, in his earlier
12 depositions or in an earlier deposition to the NRC,
13 stated specifically that he had gathered 12 hours of
14 the alarm printer. We also have 12 hours of data
15 which he suggested that it was the alarm printer.

16 We have testimony that if in fact one had
17 the alarm printer for the 1:50 p.m. period one could
18 determine from the print out and the actuation of the
19 sprays and the other alarms when that occurrence
20 happened that there was a hydrogen burn. In fact, Mr.
21 Bensel who apparently testified, he showed the
22 pressure spike to Mr. Lowe, testified that it was in
23 fact from the alarm printer. He determined there was
24 production of hydrogen at 1:50 p.m.

25 What we want to do is determine what

1 information people have about what Mr. Lentz brought
2 back from the unit 2 control room on the evening of
3 March 28th. Mr. Lentz originally testified -- the
4 reason we are asking this interrogatory is because Mr.
5 Lentz is now -- has what I would consider radically
6 different testimony than what he originally gave to
7 the NRC. He stated to the NRC I believe it was in
8 June of 1979, I brought back 12 hours of the alarm
9 printer -- of data which in my understanding was the
10 alarm printer.

11 He -- GPU stated in response to this
12 particular interrogatory that Mr. Lentz copied and
13 made about six hours -- well, it was for a period
14 shortly before 4:00 a.m., the trip and for several
15 hours thereafter. Mr. Lentz came to his deposition on
16 October 15th and said that he was absolutely sure,
17 under no circumstances did he copy any of the alarm
18 printer.

19 I think -- we have reason to believe his
20 testimony near to the time of the incident was, in
21 fact, more credible. That is, that he copied 12 hours
22 of the alarm printer and, in fact, brought it back.
23 What we're trying to do is get information about other
24 people within the corporation about what Lentz brought
25 back to the control room for the GPU Service

1 Corporation people to a . . .

2 It appears that if . . . had the alarm
3 printer, and there's corroborative evidence that they
4 did in fact have the alarm printer, those people may
5 well have determined that the pressure spike which
6 occurred at 1:50 p.m. indicated production of hydrogen
7 or hydrogen burn. And they would have been in a
8 position similarly to communicate that information to
9 Mr. Keaten on the morning of March 29th. Therefore,
10 what the question is asking for is the communications
11 of Mr. Lentz in terms of the information he collected
12 to any of these individuals.

13 CHAIRMAN SMITH: Have you looked at Mr.
14 Lentz's deposition, Mr. Blake?

15 MR. BLAKE: I don't think we have it yet.

16 MS. BERNABEI: Mr. Wilson was present.

17 JUDGE WOLFE: Mr. Blake, what's your
18 objection or has been your objection, just that it's
19 overly broad; is that what your objection has been in
20 the past?

21 MR. BLAKE: Yes, and again on this one we
22 had indicated that we were willing to ask these four
23 people, which I understand now because of the
24 deposition position of TMIA would be two, Wallace and
25 Keaten, but whether or not they were informed on the

1 28th of any data that Mr. Lentz collected related to
2 the pressure spike. I mean that was our offer in our
3 response.

4 MS. BERNABEI: And also Mr. Dieckamp. Mr.
5 Dieckamp is --

6 MR. BLAKE: Mr. Dieckamp's not even in the
7 interrogatory to begin with, for goodness sake.

8 MS. BERNABEI: 20, the last sentence is
9 "State whether any person identified above transmitted
10 any of this information to Mr. Dieckamp."

11 MR. BLAKE: On the 28th?

12 MS. BERNABEI: Well, it's not limited to the
13 28th. It appears from Mr. Keaten's notice and may be
14 on the 29th. The interrogatory is not limited to the
15 28th, and I think it's fair to say that if it were on
16 the 29th that would be relevant since the appreciation
17 of the information came on the 28th.

18 CHAIRMAN SMITH: All right.

19 Now, as I understand it, you wish this
20 information so you can either confirm or dispute Mr.
21 Lentz's recollection that he did not make copies on
22 the computer alarm printer or a period of time which
23 embraced the pressure spike. That's the reason for
24 it.

25 MS. BERNABEI: Correct.

1 CHAIRMAN SMITH: And the way you're going to
2 do that is to find out what kind of information he did
3 impart and determine whether any of that information
4 necessarily came from the computer alarm printer.

5 MS. BERNABEI: That's correct.

6 CHAIRMAN SMITH: Is that -- that's what
7 we're doing.

8 MS. BERNABEI: Right.

9 CHAIRMAN SMITH: Now, isn't there a better
10 way to do that? How will you know anyway, when you
11 get the answer?

12 MS. BERNABEI: Because there's certain kinds
13 of data which one -- well, from which, in fact, it
14 wasn't for the hydrogen burning taking place. The
15 alarm print out according to Mr. Bensel, obviously the
16 pressure spike itself --

17 CHAIRMAN SMITH: No, but you're testing the
18 veracity of Mr. Lentz as to his testimony as to how
19 long he analyzed the alarm printer. So, say that Mr.
20 Keaten says, well, we've got information about, I
21 don't know what, but some -- X information. How will
22 you know whether that is information that was beyond
23 or about the time of the -- what are we talking about,
24 the pressure spike. How will you know that?

25 MS. BERNABEI: I think it's a little

1 different question. The question is not whether it's
2 around the time necessarily but if it comes from a
3 particular type of data.

4 CHAIRMAN SMITH: Alarm printer data.

5 MS. BERNABEI: Exactly.

6 CHAIRMAN SMITH: But it's got to be not only
7 alarm printer data but it's got to be alarm printer
8 data which will embrace the period of time that
9 you're --

10 MS. BERNABEI: That's correct. But Mr.
11 Lentz's current testimony is that he took no alarm
12 printer data out of there.

13 CHAIRMAN SMITH: Not around whatever. So
14 any alarm printer data, any data that necessarily came
15 from alarm printer and necessarily came from Mr. Lentz
16 would suggest to you that Mr. Lentz is not telling the
17 truth.

18 MS. BERNABEI: Right.

19 And we also have -- I'll tell you another
20 piece of corroborative evidence. Mr. Broughton has
21 testified he looked during his deposition at two plots
22 that he and Mr. Lentz made. And I asked him where did
23 the data from that come from. He said most of it came
24 from post-trip monitor. He said but we did have an
25 alarm printer -- we did get one point on that draft

1 which again was the early part of the accident from an
2 alarm printer.

3 CHAIRMAN SMITH: Now, wait a minute. You're
4 overloading --

5 MS. BERNABEI: I'm sorry.

6 CHAIRMAN SMITH: I just had an inconsistent
7 recollection. I thought that you told me that Mr.
8 Lentz testified on deposition that indeed he had
9 analyzed or he had access to the computer alarm
10 printer but that it was for a period far shorter than
11 that which was necessary to reach up into the pressure
12 spike. You didn't say that.

13 MS. BERNABEI: That was -- well, that was
14 his intermediate testimony. Let me just go through
15 again. To the NRC he said, "I took 12 hours of alarm
16 printer data."

17 CHAIRMAN SMITH: Now, is that well
18 established?

19 MS. BERNABEI: Yes. That's in an interview.

20 CHAIRMAN SMITH: And that was back in '79.

21 MS. BERNABEI: Right.

22 CHAIRMAN SMITH: All right.

23 MS. BERNABEI: Now, in answer to -- GPU has
24 provided us with an answer to this interrogatory which
25 appears in his objections in his response, that he

1 took out the alarm printer for a period shortly before
2 4:00 a.m. and for several hours thereafter. When --

3 CHAIRMAN SMITH: GPU tells you that.

4 MS. BERNABEI: Yes. That's theirs. Okay?

5 We asked Mr. Lentz, and this would be his
6 third answer on his deposition, did you take out of
7 there --

8 CHAIRMAN SMITH: His third answer or his
9 second answer in GPU's single answer?

10 MS. BERNABEI: It's the third answer.

11 CHAIRMAN SMITH: Third answer.

12 MS. BERNABEI: That's the point. His answer
13 is, "I took none of the alarm printout." And we said
14 to him, well, Mr. Lentz, it appears that GPU
15 apparently based on an affidavit or information from
16 you, says that you took out alarm printer for several
17 hours, a little bit before the trip and several hours
18 thereafter. Did you give that information to the GPU
19 lawyers? And he said, "Yes, I did. I gave that
20 information to the lawyers, but I now have a memory.
21 And I'm sure that I took no alarm printout data from
22 that plant."

23 So we now have three answers. And our point
24 is that we believe that the answer closer in time is
25 probably more reliable, and we're seeking

1 corroborative evidence of that earlier time, 1979
2 testimony, especially given the fact that he's given
3 three different answers to --

4 CHAIRMAN SMITH: You say three different
5 answers. All right, so the second answer being the
6 answer he gave to GPU in response to the
7 interrogatory.

8 MS. BERNABEI: Right. And he acknowledges
9 giving.

10 CHAIRMAN SMITH: Okay.

11 Now, if you establish that indeed he had
12 access to the alarm, he took data from the computer
13 alarm printer, and that was exactly the case, what
14 will you have established, faulty memory or --

15 MS. BERNABEI: That he had access -- he and
16 the other GPU Service Corporation personnel had access
17 on the evening of March 28th to the information that a
18 hydrogen burn had occurred at 1:50 p.m. Mr. Bensel
19 and I believe Mr. Lowe are both the technical
20 personnel that will testify that from the alarm
21 printer one can determine that, and in fact Mr. Bensel
22 very eloquently explained how that could be done.

23 CHAIRMAN SMITH: Okay.

24 Now, so you yourself have been a little bit
25 inconsistent. I've heard you be a little bit

1 inconsistent. One, you think it's going to be
2 significant if you establish that he had took any
3 computer alarm data, even if it's well beyond --
4 before the pressure spike. That you believe would be
5 significant because he denied now ever having it.
6 That would be significant. What would that signify?
7 This is before any pressure spike.

8 MS. BERNABEI: That he is not a credible
9 witness --

10 CHAIRMAN SMITH: He's not a credible
11 witness.

12 MS. BERNABEI: -- at this time.

13 MR. BLAKE: We're back to revisit the Porter
14 -- I mean they relied on this analysis. Why isn't she
15 here to make other arguments? This is an odd
16 situation here.

17 MS. BERNABEI: I can see it.

18 CHAIRMAN SMITH: Well, she's using --
19 apparently she's using the man's own contradictory
20 statements to make her case, which is entirely
21 different than the situation that we wouldn't accept
22 earlier today. I mean, before it was -- I mean here
23 she is at least alluding specifically to three
24 inconsistent statements.

25 MR. BLAKE: I can't believe her

1 inconsistencies, but I understand this.

2 CHAIRMAN SMITH: But assuming that that's
3 the case, we still have to wrestle with what does it
4 mean. So I want to wrestle with one of those at a
5 time. One thing it means is that he's not credible,
6 either faulty memory or is lying. All right. Now,
7 what will that do in our case?

8 MS. BERNABEI: The second one is, given that
9 fact, on I think the most credible testimony that he
10 has given and that is before motive to dissemble or
11 otherwise misrepresent the situation came in this
12 interview with the NRC. I would assume that is that
13 he had 12 hours of alarm printer data that he brought
14 back to unit 2, the observation center for he and the
15 other GPU Service Corporation people to analyze.

16 CHAIRMAN SMITH: So you're saying that -- of
17 course, the more incredible you make him the more you
18 weaken his testimony to the NRC in that first
19 instance. But your theory is that well, that was
20 spontaneous; that was before he understood the
21 significance of it. Now that he understands the
22 significance of it, he's dissembling. Is that the
23 theory of your case?

24 MS. BERNABEI: He's certainly pulling back,
25 yes. Yeah, that's essentially correct.

1 CHAIRMAN SMITH: Well, Mr. Blake? It's been
2 a long day.

3 MR. BLAKE: Let me make one comment because
4 again our increased knowledge of the case, not
5 necessarily yours. It's intended more for Ms.
6 Bernabei, and that is I hope that she will take that
7 position with respect to others as well who have
8 changed their story with time. But --

9 CHAIRMAN SMITH: The changes go in both
10 directions; right?

11 MR. BLAKE: You're right.

12 I'm not sure that I understand that a
13 question is being put to me at this point.

14 CHAIRMAN SMITH: Well, the question's being
15 put to you, hasn't she not made an argument which
16 would allow her a certain amount of inquiry as to
17 whether Messrs. Wallace and Keaten have received data
18 which could have come from no place other than Mr.
19 Lentz and the computer alarm printer. I don't
20 understand how that's going to be done. But assuming
21 it can be done, if she can establish through inquiries
22 from Wallace and Keaten that they received data that
23 must have come from no other source but Lentz and the
24 computer alarm printer, then there's -- she has an
25 argument.

1 MR. BLAKE: And I've already agreed to ask
2 Mr. Wallace and Mr. Keaten whether or not they were
3 informed on the 28th of any data Mr. Lentz collected
4 related to the pressure spike.

5 CHAIRMAN SMITH: Well, then I think you --
6 what your problem is is that you better broaden it and
7 see if they were informed of any data from Mr. Lentz.
8 See, here's the void. Before we start inquiring of
9 these people we've got to know that there's some use
10 of this information.

11 MS. BERNABEI: I understand.

12 CHAIRMAN SMITH: And the void that hasn't
13 been filled in yet is how you're going to know that
14 the data that they received was necessarily from no
15 source except from Lentz and the computer alarm. Now,
16 how are you going to know that --

17 MS. BERNABEI: Okay.

18 We --

19 CHAIRMAN SMITH: -- because I suspect that
20 that's going to be very hard.

21 MS. BERNABEI: Okay.

22 We -- one way, and I'm not saying absolutely
23 we would know that, we went through with Mr. Broughton
24 who went with Mr. Lentz to the site. We went through
25 in his deposition the kind of hard data his group used

1 to analyze data. Mr. Broughton was the head of the
2 GPU Service Corporation, Accident Analysis Group. I'm
3 not sure of the exact title. Because of the
4 seriousness of this event he was sent to the site,
5 which he usually doesn't do.

6 CHAIRMAN SMITH: Okay.

7 MS. BERNABEI: He went to the site, and we
8 have actually some notes from Mr. Lentz which lays out
9 the kind of data that they went intending to collect.
10 And I won't burden you with what that is, but it's
11 things like post-trip monitor data, reactimeter data,
12 sometimes actually pressure charts, things of that
13 sort. We went through with him what all that data
14 would tell you. We then asked him what he remembers
15 receiving that evening.

16 And he told us what he remembered receiving.
17 He also showed us, and this was an exhibit in the B
18 and W trial, he showed us some plots he did that
19 evening with Mr. Lentz in the observation center after
20 Mr. Lentz came back with the data. And we went
21 through with him exactly what on the plots -- what
22 data he derived from the information he had. His
23 testimony was that his plots were made, one, data from
24 the post-trip monitor data and two, apparently at
25 least one point from the alarm printout. That was his

1 testimony. I think --

2 CHAIRMAN SMITH: Apparently one point.

3 MS. BERNABEI: Right. And so I think what
4 we can do is from the type of information figure out
5 in terms of the categories that Mr. Broughton set up
6 for us, we can determine where that probably came
7 from. It may not be possible, but at least he's
8 worked out a framework for us to work from.

9 CHAIRMAN SMITH: But before you've made your
10 case you have to establish, I would say since you're
11 trying to establish that someone is dissembling --
12 lying -- you have the preponderance of the evidence,
13 reliable probative substantial evidence that the data
14 came from Lentz and it came from the computer alarm
15 printout.

16 MS. BERNABEI: Do you understand that?

17 CHAIRMAN SMITH: And you don't really know
18 how you're going to do that.

19 MS. BERNABEI: We have sworn testimony of
20 Mr. Lentz that he took it --

21 CHAIRMAN SMITH: No, you have sworn
22 testimony from -- you're being circular. Well, I'm
23 sorry. Finish your statement.

24 MS. BERNABEI: We may not be able to prove
25 that. You're right.

1 CHAIRMAN SMITH: All right.

2 See, this is -- it took us so long to get to
3 that point because you passed over it two, maybe three
4 times in my previous questioning, that the whole thing
5 depended upon you having some predicate that you could
6 establish that it is Lentz and the computer alarm
7 printout. And so now you just don't know; you may not
8 be able to prove it. Do you have any idea how you'd
9 prove it?

10 MS. BERNABEI: Yes.

11 CHAIRMAN SMITH: How?

12 MS. BERNABEI: Put Mr. Lentz on the stand,
13 confront him with his prior testimony that he took 12
14 hours of the alarm printout out; present corroborating
15 testimony that in fact he did bring alarm printout
16 data out; put Mr. Bensel on the stand, Mr. Bensel says
17 any technical person worth his salt could determine
18 from the alarm printout that, in fact, a hydrogen burn
19 had occurred at 1:50 p.m. from the alarm printout; put
20 Mr. Lowe on the stand, they're going to put Mr. Lowe
21 on the stand and cross-examine him and say isn't this
22 an indication of anyone who understood the alarm
23 printout, any technical person, even someone of Mr.
24 Bensel's stature could understand that that would
25 indicate a hydrogen burn.

1 CHAIRMAN SMITH: Okay.

2 Now, that -- see, you've changed it. You're
3 turned it upside down. You told us you wished to
4 establish -- yes, one of the things you want to
5 establish is that a hydrogen burn, establish from the
6 data but that is entirely outside of what you've been
7 arguing. You've been arguing that you want to go to
8 credibility of Mr. Lentz. And you just didn't come
9 anywhere near Mr. Lentz's credibility. You went to
10 whether you could assume that there was a hydrogen
11 spike. Tell me again how you can challenge the
12 credibility of Mr. Lentz with respect to the --

13 MS. BERNABEI: Mr. Lentz's current testimony
14 -- there's two things you establish through this line
15 of questioning. And I misspoke if I said all we want
16 -- obviously Mr. Lentz's testimony is only relevant
17 because it's relevant to some issue in this hearing.

18 CHAIRMAN SMITH: I understand.

19 MS. BERNABEI: And that's relevant --

20 CHAIRMAN SMITH: It doesn't seem to be an
21 essential link to where you're going.

22 MS. BERNABEI: Right. And I've just
23 explained how what he did on the night of March 28th
24 is relevant to this hearing. The second point is I
25 don't believe his current testimony is credible.

1 CHAIRMAN SMITH: Right.

2 MS. BERNABEI: Okay.

3 The way you prove that is by his prior
4 inconsistent statements and others who may or may not
5 corroborate. Yeah, Mr. Lentz told me he collected
6 this data at such and such a time. If they say, yeah,
7 he passed it on to me, and he said this at a prior
8 time in 1979 and now he says no, I never got a look at
9 that.

10 CHAIRMAN SMITH: See, I'm just trying to
11 keep it narrow. Now, would it be satisfactory to you
12 if a question was put to Mr. Wallace and Mr. Keaten,
13 did Mr. Lentz communicate to you information known to
14 be from the computer alarm printer.

15 MS. BERNABEI: That's fine.

16 CHAIRMAN SMITH: That's satisfactory. Can
17 you do that?

18 MR. BLAKE: Is there any timeframe
19 associated with it?

20 MS. BERNABEI: I think it should be March
21 28th and 29th. Obviously the question asked for March
22 28th for Keaten and Wallace. However, I think with
23 regard to Mr. Dieckamp it's broader.

24 MR. BLAKE: I just can't get Dieckamp -- I
25 can't understand for the life of me. Is the

1 suggestion that Lentz communicated with Dieckamp?

2 MS. BERNABEI: No. The suggestion is that
3 the people, the GPU Service Corporation people at the
4 site communicated with Mr. Keaten who was in
5 Parsippany and Mr. Keaten communicated with --

6 CHAIRMAN SMITH: Hey, wait a minute. Just
7 please stick with one narrow issue and don't go beyond
8 it. You're now -- I don't want to talk about anything
9 else.

10 MS. BERNABEI: I know.

11 CHAIRMAN SMITH: Not one thing more than Mr.
12 Lentz's credibility. Not one thought more than that.
13 And his credibility being tested as to whether others
14 received data that came from two essential sources,
15 Lentz and the computer printout, a computer alarm
16 printer. Okay. Don't talk about anything else,
17 right? Don't tell me about Mr. Dieckamp being the
18 ultimate source of it. Okay?

19 Stop with that boundary. Okay.

20 Now, why would it not be all right, as you
21 agreed, to put to Mr. Wallace and Mr. Keaten, did you
22 receive information from Mr. Lentz, which necessarily
23 had to come from the computer alarm printer or,
24 broader, did you receive information which necessarily
25 had to come from the computer alarm printer and Mr.

1 Lentz.

2 MS. BERNABEI: I have no problem.

3 CHAIRMAN SMITH: Okay.

4 MS. BERNABEI: I have agreed to that.

5 CHAIRMAN SMITH: Now we talk about when,
6 March 28th and when, 29th or March 28th or what, 29?

7 MS. BERNABEI: I would request both days.

8 CHAIRMAN SMITH: I, myself, have lost the
9 thread. I would accept Mr. Lentz's credibility.

10 MR. BLAKE: Well, my only problem is that
11 the big deal they're making of this is Mr. Lentz came
12 into TMI 2 the evening of the 28th and came back, but
13 as we've discussed earlier, by the 29th you've got a
14 whole bunch of people in there and I don't know who's
15 working at the alarm printer --

16 CHAIRMAN SMITH: Let's put it this way. It
17 doesn't matter. If they received information
18 concerning the activities of the 28th which had to
19 come from Mr. Lentz and the computer alarm printout,
20 well, it wouldn't mean anything if it came a week
21 later. At any time -- well, it seems to me it should
22 be. When did he go back? When did Lentz go back?

23 MS. BERNABEI: Oh, many days later.

24 CHAIRMAN SMITH: Okay.

25 Well, it seems --

1 MR. BLAKE: Go back.

2 MS. BERNABEI: We're just talking about two
3 days, so that's --

4 CHAIRMAN SMITH: Two days. It seems to me
5 that you've done it.

6 MR. BLAKE: I'd normally have no problem
7 with the two days. My only problem, Judge Smith, is
8 that on the 29th you have Mr. Lentz and several other
9 engineers now at TMI 2 potentially with access to the
10 alarm printer.

11 CHAIRMAN SMITH: I agree.

12 MR. BLAKE: And I think you're running, you
13 know, potential --

14 CHAIRMAN SMITH: That's her problem. See,
15 the more you extend the time, the more you'll say, I
16 don't know where I got it. See, if you want to narrow
17 it the more precise you have a right for them to be.
18 If they say, yeah, I've got some computer alarm
19 printout data, I don't know who extracted it, you're
20 shot down or yeah, I got some information from Lentz
21 but I don't know where he got it, you're shot down.
22 And the broader you make the period the more it's
23 likely to happen.

24 It's a very narrow question to them, that
25 they received information that they know that the

1 initial source -- I state it different every time I
2 stated it. We will agree upon it sooner or later.
3 Did they receive information known to them to have
4 derived initially from both Lentz and the computer
5 alarm printer. Now, what days do you want now?

6 MS. BERNABEI: We can say Lentz and the
7 computer alarm printout and his gathering of that on
8 March 28th.

9 CHAIRMAN SMITH: March 28th.

10 MR. BLAKE: All right.

11 And I'm going to -- when you phrase it that
12 way, that is, that Lentz gathered on March 28th, I'm
13 also only willing to ask them did --

14 CHAIRMAN SMITH: That's right.

15 MR. BLAKE: -- they receive any information
16 over a couple of days because --

17 CHAIRMAN SMITH: That's right. So it has to
18 be Lentz and computer printout communicated on the
19 28th and gathered on the 28th. Naturally if we limit
20 to communicated it would be -- we're obviously talking
21 about the 28th, gathered on the 28th.

22 Now, have we explored what happens if they
23 say yes?

24 MR. BLAKE: No.

25 CHAIRMAN SMITH: Well, what do you think we

1 ought to do about that? They better say what that
2 information is. Okay. All right? Are you satisfied?

3 MS. BERNABEI: Yes.

4 CHAIRMAN SMITH: I think we've concluded
5 then, for the evening.

6 JUDGE WOLFE: What about the Interrogatory
7 21? Has it been -- alluded now; has it been?

8 CHAIRMAN SMITH: Yes. All right.

9 The reporter has to leave. Anything further
10 this evening? I really think we're done.

11 MS. BERNABEI: We had 22, but I'll forego
12 that. That's okay.

13 CHAIRMAN SMITH: I'm sorry. I simply cannot
14 find that page where they're all listed.

15 MS. BERNABEI: 22 is just the -- it's the
16 duties and responsibilities of Mr. Bensel.

17 CHAIRMAN SMITH: Well, perhaps we can do it
18 off the record and let the reporter go. He's going to
19 have a hectic time.

20 MS. BERNABEI: Okay.

21 CHAIRMAN SMITH: All right.

22 Let's go off the record. And we'll just
23 work it out informally off the record.

24 (Whereupon, at 4:56 p.m., the proceedings
25 were concluded.)

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

CERTIFICATE OF PROCEEDINGS:

This is to certify that the attached proceedings,

IN THE MATTER OF:

NRC-202

METROPOLITAN EDISON COMPANY

DATE: OCTOBER 26, 1984

PLACE: BETHESDA, MARYLAND

were had as herein appears and that this is the original transcript thereof for the file of the Commission.

REPORTER: MILES ANDERSON

SIGNED: *Miles Anderson*

TRANSCRIBER: NEAL R. GROSS

SIGNED: *Neal R. Gross*