

UNITED STATES NUCLEAR REGULATORY COMMISSION

ORIGINAL

IN THE MATTER OF:

EVIDENTIARY HEARING

HOUSTON LIGHTING AND POWER COMPANY

ET AL

(SOUTH TEXAS PROJECT UNITS 1 AND 2)

DOCKET NO:

STN 50-498 OL

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

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6 In the Matter of: : DOCKET NO.
7 HOUSTON LIGHTING AND POWER : STN-50-498-OL
8 COMPANY, ET AL., : STN-50-499-OL
9 (South Texas Project Units 1 & 2 :
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11 University of Houston
12 Teaching Unit II, #215
13 Houston, Texas
14
15

16 Friday, 19 July 1985
17

18 The hearing in the above-entitled matter was
19 convened, pursuant to adjournment, at 9:12 a.m.,

20 BEFORE:

21 JUDGE CHARLES BECHHOEFER, Chairman,
22 Atomic Safety and Licensing Board.
23 JUDGE JAMES C. LAMB, Member,
24 Atomic Safety and Licensing Board.
25

1 JUDGE FREDERICK J. SHON, Member,
2 Atomic Safety and Licensing Board.
3

4 APPEARANCES:

5 On behalf of the Applicants:

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19 On behalf of the Intervenor:

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24 Nuclear Power.
25

C O N T E N T S

WITNESSES: DIRECT CROSS BOARD REDIRECT RECROSS
DR. JAMES R. SUMPTER 12822 12871 12908
12865

EXHIBITS FOR ID IN EVD.
CCANP Exhibit 98 12681 12863
Applicants No. 71 12905

P R O C E E D I N G S

JUDGE BECHHOEFER: Good morning, ladies and gentlemen. Before we resume the cross-examination of Dr. Sumpter, are there any preliminary matters, not including subpoenas?

MR. SINKIN: No, Mr. Chairman.

MR. REIS: The only thing I want to inform the Board, I'm going to need time to argue on the Staff witnesses and I presume -- I think my argument is going to take between twenty minutes and an hour. So, it is not -- we need sufficient time to do that.

JUDGE BECHHOEFER: Right. Well, we may well do it witness by witness, by the way.

MR. REIS: Well, I have a general presentation on the law as well.

JUDGE BECHHOEFER: Well, that can start.

We'll probably do it the same way with you. I think it's easier to discuss it witness by witness.

MR. AXELRAD: That's fine, Mr. Chairman.

I do have one other --

JUDGE BECHHOEFER: But general presentations will be permitted when we start out.

MR. AXELRAD: I do have one other matter pertaining to the sequence in which witnesses will be presented. As the Board will remember, the Staff had

1 indicated the other day that their witness, Mr. Tapia,
2 will be leaving the country and should be -- that they
3 would prefer that he be able to testify by -- before the
4 week or by the week of August 5th.

5 We also have some difficulties with some of
6 our witnesses who would not be available during the week
7 of August 5th, so we are going to rearrange the schedule
8 of our witnesses in the following fashion.

9 When we return next Monday, we will present
10 Mr. Lawrence Stanley who was the witness who was
11 scheduled to be next. And then after Mr. Stanley, we
12 would propose putting on Mr. Bernsen and Lopez, the
13 panel from Bechtel. And then after they are finished,
14 we would propose putting on our panel on soils which
15 would then be immediately followed by the NRC Staff
16 witness on soils.

17 Our --

18 MR. REIS: That's agreeable to the Staff to
19 have the soils all together then.

20 MR. AXELRAD: Our expectation would be that
21 the cross-examination of Mr. Stanley probably would not
22 take more than one day and the testimony of the panel of
23 Bernsen and Lopez probably will not take more than one
24 or two days. So, there shouldn't be any difficulty
25 reaching the soils panel no later than Thursday, August

1 1st. But if somehow our expectation is not met, we
2 would interrupt whatever is happening at that time in
3 order to take our soils panel to be followed by Mr.
4 Tapia so that the soils matter can be concluded next
5 week.

6 JUDGE BECHHOEFER: The week after next.

7 MR. AXELRAD: I'm sorry. Yeah, that's right,
8 the first week after the recess.

9 And then after our soils panel and the NRC
10 witness on soils is complete, we would then take the
11 rest of our witnesses, which would be Mr. Oprea followed
12 by Mr. Frazar followed by Mr. Wisenburg.

13 I have one last preliminary matter. CCANP
14 filed a written motion to strike testimony, portions of
15 testimony of some of our witnesses. Rather than filing
16 a written response to the motion to strike, we would
17 just as soon reply orally when each of the witnesses'
18 testimony comes up, unless the Board insists that we
19 file a written response.

20 JUDGE BECHHOEFER: Not at all. We handled
21 some of those already.

22 MR. AXELRAD: Right. But that was in a timely
23 fashion. If we had to file a written response, the time
24 would be coming up. We don't want to be held in failure
25 of having met the time schedules.

1 JUDGE BECHHOEFER: Right. No, not at all.

2 MR. SINKIN: I think the panel of Bernsen and
3 Lopez is --

4 MR. FRANTZ: Taylor also, I believe.

5 MR. SINKIN: Taylor?

6 MR. FRANTZ: Yes.

7 MR. AXELRAD: I guess the Staff's response
8 would be due now also.

9 MR. REIS: We'll respond orally.

10 JUDGE BECHHOEFER: Again, you're free to do
11 so.

12 MR. AXELRAD: We have no further preliminary
13 matters, Mr. Chairman.

14 JUDGE BECHHOEFER: That sequence sounds fine
15 to us.

16 MR. AXELRAD: Thank you, Mr. Chairman.

17 JUDGE BECHHOEFER: So, Mr. Sinkin, you can
18 resume.

19 MR. SINKIN: Thank you, Mr. Chairman.

20

21 CROSS-EXAMINATION (Cont'd)

22 BY MR. SINKIN:

23 Q Good morning, Dr. Sumpter.

24 A Good morning.

25 Q Page 13 of your testimony at line 18, you

1 state that after May the 8th, you subsequently reviewed
2 each of the Quadrex findings with Mr. Robertson and
3 provided him with the benefit of your knowledge of the
4 findings and to consider again whether any of the items
5 which should have been reported had been missed.

6 When did you meet with Mr. Robertson?

7 A The best of my recollection, that meeting
8 occurred, or series of meetings occurred in June -- I
9 think in June or July, in the summer of 1981.

10 Q And had you gained additional knowledge about
11 the findings between May the 8th, the Quadrex findings
12 between May the 8th and the first time you met with Mr.
13 Robertson in the summer of '81?

14 A No. The purpose of the meetings with Mr.
15 Robertson, he had been -- he as head of the licensing
16 department had been given responsibility by Mr. Goldberg
17 to essentially follow-up all of the Quadrex items and
18 close them out. Since he had just joined Houston
19 Lighting & Power Company in March of 1981, he wanted to
20 get the benefit of my experience with the whole Quadrex
21 review and my understanding of each of the issues
22 involved so that he could better carry out that
23 responsibility that was given to him by Mr. Goldberg.

24 Q So, you were assisting him in trying to close
25 out all the Quadrex items?

1 A No, I was just providing him my knowledge of
2 everything that went on.

3 Q How many of those meetings took place that you
4 remember?

5 A I don't know the exact number. I believe we
6 met over a space of about three weeks or so. We might
7 meet for a couple days and then take off for a day and
8 then meet again. It was off and on I think, oh, around
9 three weeks or so.

10 Q When you say meet for a couple days, you mean
11 you'd meet like two days straight?

12 A Yes. Maybe a couple days straight, maybe four
13 hours the next day.'

14 Q And to the best of your recollection, that's
15 in June, July, 198 --

16 A June and July, 1981.

17 Q When you say to consider again whether any
18 items which should have been reported had been missed in
19 our prior reviews, were you specifically including the
20 generic findings?

21 A Yes, we reviewed the entire report.

22 Q Did you specifically review the generic
23 findings as a possible separate item which might be
24 potentially reportable? Do you follow my question? As
25 opposed to the discipline findings, did you look at the

1 generic findings and make a determination on just the
2 generic findings as to whether they might be potentially
3 reportable?

4 A The emphasis in our meetings were really for
5 me to explain to Mr. Stanley my understanding of each of
6 the findings based on my knowledge of what went on. The
7 reportability was an aspect of that. I mean, we were
8 sensitive that if we uncovered something that we hadn't
9 thought about on May 8th, you know, we'd report that.
10 The gist was really just to go on what went on.

11 MR. REIS: Mr. Chairman, may I have the
12 witness tell me who he's meeting with again?

13 THE WITNESS: Mr. Robertson.

14 MR. REIS: Mr. Robertson. Thank you.

15 A Mr. Robertson and I did not convene a meeting
16 for the express purpose of doing a reportability review
17 all over again.

18 Q (By Mr. Sinkin) The purpose of the meeting
19 was really for you to give him additional information
20 since he was relatively new to the company?

21 A That's correct.

22 JUDGE BECHHOEFER: Where were these meetings?
23 In either of your offices?

24 THE WITNESS: They were primarily held in his
25 office at the Baybrook facility where we were located at

1 that time south of Houston.

2 Q (By Mr. Sinkin) When you say you went over
3 all the findings, did you actually go over each finding
4 in the Quadrex report with Mr. Robertson?

5 A The best of my recollection, yes, we went over
6 every single finding.

7 Q I can see now why it might take two days at a
8 stretch.

9 Let me go back for a minute, Dr. Sumpter, to
10 the meeting, the afternoon -- no, let me get this --
11 what did you do the morning of May 8th?

12 A I believe in the morning of May 8th Mr.
13 Robertson and I had a brief meeting with Mr. Goldberg to
14 fill him in on what occurred at the meeting in the
15 previous evening with Brown & Root.

16 Q And how long did your meeting with Mr.
17 Goldberg last on that topic?

18 A I really can't recall. I know we didn't start
19 at 8:00 o'clock and go all the way till noon or anything
20 like that, but it could have been an hour or less.

21 Q And then what time did you and Mr. Goldberg
22 and Mr. Robertson convene your review on May the 8th?

23 A I believe we got the Brown & Root letter and
24 their information hand delivered to us, I think it was
25 around 12:30, sometime around noontime, around there.

1 Q And that Brown & Root document was a series of
2 sheets that Brown & Root had prepared where each finding
3 they had said each specific -- let me -- well, Brown &
4 Root didn't review all the findings for reportability;
5 is that correct?

6 A No, they were instructed on May 7th to review
7 the most serious discipline findings.

8 Q Okay. So, limiting my question to the most
9 serious discipline findings. The document that you
10 received at noon on May the 8th were the series of
11 sheets that Brown & Root had prepared, one for each
12 serious discipline finding?

13 A That plus a cover letter from Mr. Saltarelli
14 that addressed the points in response to Mr. Goldberg's
15 letter that he wrote on May 6th.

16 Q And you and Mr. Goldberg and Mr. Robertson
17 then sat down to review that response?

18 A No, we sat down to go through all the findings
19 from a reportability viewpoint and we used that Brown &
20 Root information as a major source of input.

21 Q And how long did you all meet?

22 A We went all afternoon, about to 6:00 or 7:00
23 o'clock. We went on for pretty long.

24 Q Do you remember from the Quadrex report how
25 many most serious findings there are?

1 A I've really never sat down and counted them
2 all. There's a fair number. More than two or three,
3 let's put it that way. I don't know exactly whether
4 it's fifty or a hundred or something like that.

5 Q As you're doing your review of each finding,
6 have you assigned one person responsibility to keep
7 track of what you're deciding as you go?

8 A I believe Mr. Goldberg made some notes on
9 his -- the sheets he had from Brown & Root and I'm sure
10 one of us noted -- if we had determined that something
11 was going to be potentially reportable, we noted that.

12 Q Did you take notes?

13 A No, I didn't take notes.

14 Q To your knowledge, did Mr. Robertson take
15 notes?

16 A I can't recall if he did or not.

17 Q Let me jump back to the day before, May the
18 7th, when you were attending the Brown & Root meeting.
19 Did you take notes at that meeting?

20 A To the best of my recollection, I did not take
21 notes at that meeting. We were given I guess draft
22 copies of the Brown & Root sheets and then -- I can't
23 recall whether I kept those or not. They were still a
24 draft. Brown & Root was going to work on them later
25 that evening and then they were going to give us their

1 final. So, I may have given those back to Brown & Root,
2 I can't recall.

3 Q Page 14, line 1, the question is, Dr. Sumpter,
4 when prior to May the 7th did Mr. Goldberg indicate to
5 you that a copy would not be sent to the NRC Staff, copy
6 of the Quadrex report.

7 A I can't recall when during anywhere from
8 January to April we had that conversation. We did have
9 conversations at various times about -- or I was made
10 aware that he had contacted Mr. Sells in January and
11 that he had planned -- he planned to discuss the Quadrex
12 report with Mr. Sells during the hearings, you know, if
13 we met our deadline of getting it in on May the 7th.
14 But I can't recall when during that time frame he
15 mentioned that his intention was to inform the NRC that
16 we had to report. And they had been free to look at it
17 in our offices, but he was not going to formally
18 transmit the report to the NRC. At least relative to as
19 far as the information he was getting from Quadrex and
20 myself that there may be some reportable items, but
21 there did not appear to be a major indication there was
22 a very large flaw in the whole design process.

23 Q Let me get clear what you just said. I missed
24 a little piece of the answer there. That Mr. Goldberg
25 intended to send to the NRC anything that was

1 potentially reportable but not the report because the
2 report itself didn't demonstrate --

3 A Well, the information that I would give him,
4 whenever we'd meet he asked how are things going and in
5 my view all the things -- Quadrex had not uncovered the
6 view that there was a major design flaw in the whole
7 design process. They were finding problems here and
8 there, but we did not have that type of situation.

9 Q Are you aware of the Quadrex reviewer having
10 the opinion that there was no well thought out basis for
11 design?

12 A Yes, I believe that's mentioned in the
13 report.

14 Q But you do not view the lack of a well thought
15 out basis for design as a major flaw in the design
16 process?

17 A Well, what is -- no, I don't, because what I
18 believe is important is is the design conservative, does
19 it meet the requirements and does the design fit
20 together.

21 My understanding of that statement from
22 Quadrex -- I guess maybe you better ask Quadrex what
23 they felt their understanding was. I had my own views
24 on that, but I did not consider that in the manner in
25 which you were -- or in the context in which you were

1 putting it.

2 Q You did not consider that the absence of a
3 well thought out basis for design might result in a
4 design that would not fit together?

5 A No, it doesn't necessarily lead to that
6 assumption at all.

7 Q In the conversations -- excuse me. When Mr.
8 Goldberg indicated to you that a copy would not be
9 transmitted to the NRC Staff in your testimony, page 14,
10 did he say why it would not? You discussed the fact
11 that it would not, but did he say why it would not?

12 A He asked -- at some point in time during this
13 period he would ask me, I don't remember, whether it was
14 HL&P's standard policy in our dialogue with the NRC
15 whether we routinely submitted to the NRC consultant
16 reports whether they were required or not and I
17 indicated no, it was not. And he indicated -- and we
18 had -- I guess we had a discussion, I don't know if he
19 asked me or not, on whether it was required that we send
20 this report to the NRC under any NRC regulation and
21 concluded that it was not.

22 Q Mr. Goldberg asked you if it was required?

23 A Well, I don't know if he asked me
24 specifically. I know we had that discussion.

25 Q Is it your view that the Quadrex report as a

1 whole did not need to be turned over to the NRC Staff on
2 May 8, 1981?

3 A Yes, it is.

4 Q Why? Or why not?

5 JUDGE BECHHOEFER: Are you asking his view
6 today or his view then?

7 Q (By Mr. Sinkin) I'd like to have your view
8 then.

9 A Then?

10 Q Yes.

11 A Well, I guess I looked at it for two reasons.
12 One, if I'm going to report something to the NRC that
13 meets the reportability criteria of 50.55(e), you first
14 have to identify a deficiency. So, when you look at the
15 whole report -- I'm not going to turn in a whole
16 report. I don't turn in reports, I turn in
17 deficiencies.

18 So, I looked at is there some deficiency that,
19 if you will, this whole report is telling me. And it
20 was my opinion from everything that I had been involved
21 with on the Quadrex report and review that from a
22 quality viewpoint, Quadrex was not telling me that I had
23 a major breakdown in the design process that was
24 resulting in defective products or that I had major
25 design flaws. By flaw I mean the design was not meeting

1 the requirements that we had committed to in the PSAR
2 and FSAR.

3 I think -- and it became very clear very
4 quickly when we started getting responses from Brown &
5 Root that, as you recall, we met with Brown & Root in
6 February and we asked them, we went over the questions
7 so they could understand what the questions were and
8 Brown & Root described for us what evidence they would
9 submit to Quadrex to support their answer. And it
10 became very clear very soon in the review that the
11 evidence Brown & Root was giving to us was evidence from
12 the '75, '76, '77, maybe '78 time frame. They very
13 rarely gave us calculations done in 1980, 1979. And it
14 became very clear that they were very far behind.

15 And that's the final bottom line is what
16 Quadrex told me was that Brown & Root was very far
17 behind in the engineering of particularly what I call
18 the component end, cable trays, equipment, that sort of
19 thing.

20 Q Were you concerned in May -- actually, let me
21 do the follow-up. Is it your view today that on May the
22 8th, 1981, you should have turned the Quadrex report
23 over to the NRC Staff?

24 A No, my view hasn't changed at all.

25 Q Okay.

1 When you saw what Brown & Root was providing
2 Quadrex, these calculations from the '75-'78 period, but
3 seemingly nothing from '79- '80, I believe that's what
4 you --

5 A Not nothing but very little.

6 Q Well, very little. Did that cause you any
7 concern as to the quality of the work that would be
8 coming out of that engineering organization?

9 A When that intelligence started to come to our
10 attention, we then looked at, well, what was the quality
11 of the work that Brown & Root was supplying to Quadrex.
12 And, you know, with a few exceptions, there was no
13 indication that there were major inadequacies in that
14 work.

15 We did, if you will, shift the focus of the
16 review then to discuss with the Brown & Root individuals
17 now for work that they hadn't done, well, how do you
18 plan to approach this problem. In some cases they had
19 draft documents, in some cases they had no documents.
20 And the only way they could answer some of the questions
21 was to really verbally enunciate to Quadrex, well, this
22 is how we plan to approach this particular area.

23 Q It sounds to me like there may actually be
24 sort of three different Quadrex studies here. Study
25 number one, Quadrex goes in to ask for, if you will, the

1 basic design documents to review, system descriptions,
2 one-line drawings, all that sort of thing. Then what's
3 produced is often old material with gaps in certain
4 years where nothing has been done so that then there is
5 a shift to look at the quality of the work that has been
6 done. And then aware that there's a lot of work that
7 hasn't been done, there's a shift to look at what hasn't
8 been done.

9 So, it seems like we have three phases, if you
10 will, of the Quadrex study. Is that an accurate
11 characterization of what you testified to?

12 MR. GUTTERMAN: Mr. Chairman, I'm going to
13 object to the question just because it's so long and
14 involved that I can't believe an answer to that yes or
15 no would be meaningful. I think the testimony speaks
16 for itself on what his characterization was. To have
17 CCANP's representative now recast that lengthy, that
18 long story in such an involved way, I can't believe the
19 witness could follow it. Certainly I had trouble
20 following everything he said.

21 JUDGE SHON: I couldn't follow it.

22 MR. SINKIN: Well, if Judge Shon couldn't
23 follow it, I'll definitely do it again.

24 JUDGE BECHHOEFER: Yes, I wasn't sure if --

25 Q (By Mr. Sinkin) Okay. Let's start with the

1 task given Quadrex that they would be responding to by
2 writing out the questions for Brown & Root. What are
3 they trying to achieve in the questions they're writing
4 out to Brown & Root?

5 A As per our discussion with Quadrex, they were
6 looking at the status of engineering and also taking a
7 look at how Brown & Root was dealing with some of the
8 more unique nuclear issues that in our experience we
9 knew other folks had to struggle with.

10 So, Quadrex asked a series of questions that
11 in their view would be able -- they would be able to
12 ascertain Brown & Root's capabilities in those areas,
13 their degree of sophistication, were they appropriately
14 handling some of these tough nuclear issues and where
15 was the design.

16 I think Quadrex goes into their rationale in
17 the beginning of the report as to -- and in each
18 discipline area as to what certain groups of questions
19 were trying to get at.

20 Q You said that Quadrex developed a series of
21 questions that in their view would ascertain Brown &
22 Root's capability. Did you agree that those questions
23 could achieve the job?

24 A HL&P commented on those questions. In the
25 final analysis, it was going to be Quadrex' review.

1 Their experts were going to be responsible for the
2 findings and were going to have to defend the findings.
3 So, while we made comments, we left the final decision
4 on what questions would be included and how they would
5 be worded up to Quadrex.

6 Q The questions are written, sent to Brown &
7 Root, responses start to flow. And this situation
8 arises where it seems that Brown & Root is producing
9 primarily evidence from the '75 to '78 time frame, very
10 little of the '79- '80 time frame. And then because
11 they're finding this absence of work in that time
12 period, Quadrex refocuses to some extent, they don't
13 shift the whole study, but they refocus their attention
14 to some extent on the quality of the work being produced
15 by the Brown & Root organization?

16 MR. GUTTERMAN: If that's a question, I'm
17 going to object on the same grounds that I objected
18 before, that it's such a long wind-up to the question
19 that I'm not sure how the answer can really be taken to
20 be commenting on such a long wind-up. Who could keep it
21 all in mind?

22 JUDGE BECHHOEFER: Well, were you trying to
23 ask whether Quadrex shifted its focus --

24 MR. SINKIN: I'm focusing on, I'm focusing on
25 a particular shift. There's more than one it appears.

1 I'm trying to lineate the boundaries of the first one.

2 The boundaries, as I understood them, were
3 that Quadrex sent in the questions, got responses, saw
4 gaps in the data and then shifted focus to look at the
5 quality of the work. Now, that's the basic question I
6 laid out. But if there's a problem with that being
7 understood, I'll try again.

8 MR. GUTTERMAN: All I'm asking for is a simple
9 direct question. I think Mr. Sinkin's gotten his
10 wind-up fully delivered. I assume the witness --

11 MR. SINKIN: Okay.

12 MR. GUTTERMAN: -- would then be focused on
13 the point in time. But if the question could just be a
14 simple direct question.

15 JUDGE BECHHOEFER: I think at this point the
16 witness probably could understand the question.

17 MR. SINKIN: Well, I --

18 JUDGE BECHHOEFER: If you don't understand,
19 please say so and Mr. Sinkin can try again.

20 THE WITNESS: Well, a lot of the statements
21 Mr. Sinkin was making I'm not sure are correct relative
22 to what really went on in his lead-up to the question,
23 so I was trying to jot those down plus the question.
24 So, that's what makes it very complicated to try to
25 figure out how to answer this.

1 Q (By Mr. Sinkin) Let me try and make it
2 simpler.

3 When Quadrex found that there was a
4 significant period of time with very little work, did
5 they then begin examining the quality of the actual work
6 that had been produced?

7 A No, that's not what happened.

8 Q What did happen?

9 A They always intended to look at the quality of
10 the work.

11 Q They always intended to look at the quality?

12 A Yes.

13 Q Well, the next shift I saw was --

14 A Well, there hasn't been a shift yet.

15 Q I'm sorry. I did say that I saw.

16 A Oh, okay.

17 Q Okay?

18 A And that -- well --

19 Q We won't debate that point. Let me just ask a
20 simple question.

21 Was it always Quadrex' intention to look at
22 what work had not been done by the Brown & Root design
23 engineering organization? Was it always their intention
24 to see what had not been done?

25 A No. They were to go in and look at the

1 engineering. We had no preconceived notions of what was
2 or was not done. We knew from the progress reports that
3 there was supposed to be around 60 percent engineering
4 done and that was taken into account when Quadrex wrote
5 the questions.

6 Q I guess what threw me off, Dr. Sumpter, was
7 what I heard you to say which was they at some point had
8 shifted focus to the work not done. Did that -- did the
9 work that had not been done become a more serious
10 concern in the middle of the Quadrex report than it had
11 been at the beginning?

12 A We had developed questions assuming there was
13 roughly 60 percent engineering done. So, we didn't ask
14 questions, for instance, about test results because they
15 hadn't gotten that far.

16 When we got into the review, some of the
17 questions Brown & Root was unable to produce evidence on
18 how they were going to deal with that issue because they
19 hadn't got around to it yet and we'd expect that they
20 would have already. I didn't mean to imply there it was
21 all of a sudden we shifted the way we were doing
22 business. We just said, all right, we still want to get
23 an answer to this question. If you don't have written
24 documentation on how you plan to answer the question,
25 then let's talk about how you think you're going to do

1 things in the future.

2 All that happened really was we had perhaps
3 spent more time in verbal discussions than we had
4 initially anticipated. And that when Brown & Root -- in
5 the February meetings we did not identify specific
6 document numbers that Brown & Root was going to produce
7 as evidence, we identified that Brown & Root would
8 produce a document. It would probably be an SDD or a
9 drawing or something that they would use to demonstrate
10 their answer to the question. In many cases, in the
11 review meetings Brown & Root indicated that they were
12 not going to be able to supply that document, so then we
13 discussed, well, what other document can you give us.
14 And we reached agreement on that and then those
15 documents were sent to Quadrex and that's what caused
16 the review to go on into April. Quadrex was still
17 getting documents from Brown & Root in April.

18 Q In February you identified the type of
19 documents that Brown & Root would supply to respond to
20 the questions.

21 A Generally the type. We'd say, all right,
22 we'll give you a calculation to demonstrate this. They
23 didn't identify what type.

24 Q But when the questions came in, Brown & Root
25 in some instances couldn't produce that kind of

1 documentation but had other documentation?

2 A Yes. They may have had a calculation that was
3 an old one. We said do you have a more updated one? No
4 or we haven't yet done that calculation. So, then we'd
5 say, well, can we talk to the people that are going to
6 do the calculation, maybe they can explain to us how
7 they plan to do it, that type of thing.

8 Q Okay. That's slightly different to me. But
9 there's one instance where Quadrex asked -- you agree
10 that Brown & Root's going to supply a certain kind of
11 documentation. Quadrex asked the question. That kind
12 of documentation was not available, but other kind of
13 documentation is as opposed to oral conversation, which
14 I think was your example.

15 A That happened.

16 Q There were instances where other kinds of
17 documentation was available?

18 A Yes.

19 Q But then there were some instances where the
20 only way for Quadrex to determine was through oral
21 conversation with Brown & Root personnel?

22 A In some instances, yes.

23 Q In the course of that study, which instance
24 where only oral conversation was available stood out in
25 your mind as a place where you would have expected to

1 find documentation?

2 A You're going to have to give me a few minutes
3 to thumb through this report, if that's all right.

4 Q That's all right. And I'm really looking for
5 highlights, you know, ones that stood out in your mind,
6 not every instance.

7 Dr. Sumpter, do you perceive this to be a
8 relatively long undertaking?

9 A One that comes to mind, I just wanted to
10 check, was pipe break outside containment. Brown & Root
11 had a draft document that it published in 1976 on how it
12 planned to do that. EDS was doing the pipe break inside
13 containment and Brown & Root was planning to adopt
14 inhouse the computer codes and the methods that EDS was
15 using to do pipe break outside containment.

16 And to the best of my recollection at this
17 time, Brown & Root had not fully documented all that of
18 how they were planning to do that. And that was one
19 area where I -- we thought should have been already
20 taken care of, particularly at least having all the
21 computer codes inhouse, up, running and everything ready
22 to go and they were still working on that.

23 (No hiatus.)

24

25

1 Q Did the absence of the analysis on the pipe
2 break outside containment cause you any concern about the
3 qualifications for equipment already installed?

4 A No, not at that time, Because the -- this plant
5 was perhaps unique compared to most other pressurized
6 water reactors in that there was not that much high
7 energy piping outside containment.

8 We had an IVC where the main steam and
9 feedwater went through which is an enclosed structure.
10 Our RHR system was inside containment. Almost I think
11 every other PWR is outside containment.

12 So there were very few lines outside
13 containment that needed pipe break analysis compared to
14 most other pressurized water reactors. We have already
15 reported that the auxiliary feedwater pump motors inside
16 the IVC were not qualified to the proper temperature, and
17 that was the major area where we could run into a
18 situation of not having pipe break done, may result in
19 not -- equipment not qualified to proper temperature.

20 I can't think of any other piece of safety
21 related equipment outside containment that was close to
22 high energy lines that might be affected. I think there
23 was a let down line, maybe a CVCS line, but there is no
24 safety related equipment outside containment near high
25 energy lines, as far as I can recollect, except possibly

1 in the fuel handling building where they have the safety
2 injection pumps.

3 But at that time, the major area had already
4 been reported to the NRC.

5 Q I'm sorry, you said the safety injection pumps
6 in the fuel handling building?

7 A Right, the fuel handling building.

8 Q The problem in the feedwater pumps, if you
9 could elaborate that a little further, why it was
10 notified they were not qualified?

11 A As you recall, as I mentioned yesterday in my
12 testimony, in that IVC cubicle, we and the NRC had agreed
13 that we would be required to postulate a crack break.
14 That means that the primary impact from that break will
15 be pressurization of that IVC cubicle and increased
16 temperature and humidity from the steam escaping.

17 Therefore, any safety related let's say motors,
18 for instance, that are in that cubicle, have to be
19 designed to withstand that environment. And we
20 discovered that the auxiliary feed pump motors had been
21 qualified to a lower temperature than actually would be
22 experienced when that crack break was analyzed.

23 Q If the pipe break outside containment analysis
24 had been done before the auxiliary feedwater motors were
25 selected, would that problem have been avoided?

1 MR. GUTTERMAN: Objection, that calls for
2 speculation.

3 MR. SINKIN: I don't believe -- I hope it
4 doesn't.

5 Q (By Mr. Sinkin) Well, let me change the
6 question. Was there any relationship between the fact
7 that the pipe break outside containment analysis had not
8 been done and the fact that the auxiliary feedwater
9 motors had been installed without proper qualification?

10 A That's hard to answer that question, because I
11 normally would buy those motors before I had analyzed and
12 installed piping for stress analysis. So what normally
13 is done is that early in the job, the HVAC engineer, in
14 combination with the nuclear analysis people, estimate
15 what the temperatures are going to be in these various
16 areas and those are put into the specifications. And
17 then when I do the pipe break analysis, I will confirm if
18 in fact those are the correct numbers.

19 The fact that the preliminary data assumed for
20 the auxiliary feedwater pump motor was incorrect you
21 could trace to just an incorrect assumption way back
22 then. It's not necessarily related to the fact that they
23 hadn't got around to doing pipe break outside
24 containment.

25 Q I realize you would buy them. Would you

1 actually install them?

2 A Yes, you could install them.

3 Q You could install them even though --

4 A Yes.

5 Q How did you discover that the data was
6 incorrect?

7 A I don't recall how that deficiency was
8 discovered.

9 Q Let me just stay with that for just a second
10 because you said that when you did your pipe break
11 analysis outside containment, you would confirm the
12 temperature of the equipment was qualified and that I saw
13 as the ultimate process coming around. But we're finding
14 out Brown & Root hadn't done the pipe break -- I'm sorry,
15 pipe break analysis outside containment, so my question
16 is trying to get out how could they know then the
17 temperatures were right or wrong?

18 A They hadn't done it from a stress viewpoint.
19 But as you recall yesterday, I think it's mentioned in
20 the Quadrex report, NUS had analyzed a double ended break
21 in the IVC which was far more conservative than we are
22 required by the NRC. And that could have, I'm not
23 absolutely sure, but that could have -- you know, why do
24 that analysis. Well, that would be to get the energy
25 release into that cubicle and therefore this temperatures

1 and the humidity arrangements, and that could have been,
2 I'm not absolutely sure, that could have been the
3 analysis that resulted in that discovery of that
4 particular deficiency.

5 Q Once the Quadrex report was delivered to HL&P
6 and Brown & Root on May the 7th, were you responsible for
7 distributing that report to various people?

8 A Yes.

9 Q Do you remember how many copies you
10 distributed?

11 A Mr. Stanley, delivered I think fifteen copies
12 to me. I can't recall how many I distributed, or who
13 they were distributed to.

14 Q Did you make additional copies to the fifteen?

15 A I can't -- as I said, I can't recall who I sent
16 them to or how many copies were sent out.

17 Q I am not -- I'm just taking about Mr. Stanley
18 delivered fifteen to you then do you go to the copy shop
19 and make ten more? That doesn't have to do with were
20 they go.

21 A I said before, I don't know how many I sent out
22 or who I gave them. So I don't know if it was more than
23 fifteen or less than fifteen.

24 Q I'm sure you think you're answering my
25 question. I'm not sure you are.

1 A Try me again.

2 Q Without consideration for how many you sent out
3 or who you sent them to, when Mr. Stanley delivered the
4 report, did you have additional copies made for whatever
5 reason?

6 A In what time frame, around this time frame?

7 Q Let's say May 8th, the next week, two weeks.

8 A I really can't recall.

9 Q Okay. Were you given any instructions that you
10 were to limit that distribution to HL&P and Brown & Root
11 personnel?

12 A Limit in what sense?

13 Q Send it only to HL&P and Brown & Root personnel
14 as opposed to non-HL&P, non-Brown & Root individuals?

15 A My responsibility was distribution within HL&P.

16 Q Only, not Brown & Root?

17 A I don't have responsibility for sending it to
18 Brown & Root or anything. That has to go through the
19 project manager.

20 Q Did you send copies to the management committee
21 of the project?

22 A No, I did not. Again, I reiterate, my
23 responsibility was only for distribution within HL&P.
24 What other copies were sent to other people outside that,
25 I had no responsibility for.

1 Q On the copies you sent out, did you include a
2 cover letter that explained what the report was?

3 A I really can't recall if I did or not. I'm
4 thinking about that, if that question -- that question's
5 be asked a few days earlier, and I can't recall if I
6 attached a cover memo to it or not.

7 JUDGE BECHHOEFER: Dr. Sumpter, did you just
8 indicate that Mr. Robertson was the person who had
9 responsibility for distributing outside HL&P?

10 THE WITNESS: No, I didn't mean to imply that.
11 For instance, on transmittal of documents to Brown &
12 Root, our procedure was that had to go through HL&P's
13 project manager Mr. Barker.

14 JUDGE BECHHOEFER: Okay.

15 THE WITNESS: I'm not sure who was responsible
16 for sending things to the management committee, you know,
17 within HL&P. That may have been Mr. Barker; it may not
18 have.

19 Q (By Mr. Sinkin) In May, 1981, May 8th, 1981,
20 were you aware, Dr. Sumpter, of the obligation of a
21 construction permit holder under the rules of the NRC to
22 advise a licensing board of new information that could
23 affect the licensing board's decision on matters before
24 them?

25 A I'm generally aware of that requirement, yes.

1 Q Did you know it as the McGuire rule at that
2 time?

3 A I may or may not have. I can't recall back
4 then if I knew it under that terminology.

5 Q And you have participated in preparing evidence
6 for various licensing hearings; is that correct?

7 A Some licensing hearings, yes.

8 Q Let me read a short list to you and you tell me
9 if you participated in preparing evidence for these
10 hearings. Lasalle I and II construction permit?

11 MR. GUTTERMAN: I'm not sure we have an
12 understanding of what "preparing evidence for a licensing
13 hearings" means. Obviously safety analysis reports come
14 in and there's a lot of things that come into evidence in
15 proceedings. May be some ambiguity in the question.

16 Q (By Mr. Sinkin) Let me start by establishing
17 which licensing proceedings you may have had a
18 professional relationship with and then we'll get into
19 which professional relationship you had with other -- are
20 you following me? Okay.

21 MR. GUTTERMAN: I have one other objection to
22 this line of questioning, that's relevance. I can't see
23 what difference it makes. The witness has testified that
24 he was aware of the obligations of a -- well, I guess the
25 question was construction permit holder. I think the

1 obligation really goes to a party to the proceeding
2 rather than the licensees per se. But what difference it
3 makes, whether he was involved in the Lasalle proceeding
4 or some other proceeding seems beyond the scope of this
5 hearing to me.

6 MR. REIS: Mr. Chairman, in that connection I
7 want to call your attention to the fact that Dr. Sumpter
8 started working for Houston Lighting & Power power in
9 1972; he was employed by Sargent & Lundy from October
10 1970 to August 1972. I'm not sure that it has any
11 probative value what he might have been doing in that two
12 year period or maybe even before that.

13 MR. SINKIN: Well, let me ask this one question
14 and then we'll see if it elicits anything.

15 Q (By Mr. Sinkin) Have you at any time during
16 your involvement with the nuclear industry, when you were
17 working in utilities involved in nuclear power plants,
18 have you at any time had occasion to inform a licensing
19 board of new information that could affect its decision
20 regarding matters under its review?

21 A You mean myself personally contact a licensing
22 board?

23 Q Well, you may have contacted them through an
24 attorney or otherwise, but you decided that here was some
25 new information that the licensing board needed to see.

1 A No, I have not.

2 MR. PIRFO: You have no recollection -- I'm
3 sorry. Pardon the interruption.

4 MR. SINKIN: You want to come over here and
5 join me on cross?

6 MR. PIRFO: It just seemed a natural follow up.
7 I'm sorry, I apologize.

8 THE WITNESS: "No" means I have no
9 recollection.

10 MR. PIRFO: I didn't finish my question.

11 MR. SINKIN: I'd be happy to interrupt my cross
12 if -- never mind.

13 Q (Ey Mr. Sinkin) Did you at any time in the
14 April 1981, May 1981, June 1981, that period. did you at
15 any time discuss with attorneys for Houston Lighting &
16 Power whether the Quadrex report should be given to the
17 NRC staff?

18 A To the best of my recollection, no, I did not.

19 Q Did you at any time discuss with the attorneys
20 for Houston Lighting & Power in that same time frame,
21 whether the Quadrex report should be given to the
22 licensing board.

23 A No, I did not.

24 Q Did you discuss with Mr. Golderg whether
25 Quadrex would be given to the licensing board?

1 A No; to the best of my recollection, I did not.

2 Q Did you discuss with anyone else in that time
3 period whether the Quadrex report should be turned over
4 to the licensing board?

5 A To the best of my recollection, I did not
6 discuss -- have that discussion with anyone.

7 Q Did it ever cross your mind that the licensing
8 board should see the Quadrex report?

9 A I can't recall, you know, sitting down and
10 thinking about doing an analysis about that particular
11 subject.

12 Licensing was no longer my responsibility, so
13 that really wasn't what I was primarily interested in or
14 working on in those days.

15 Q Whose responsibility was licensing?

16 A Mr. Robertson's.

17 Q Overall, did you find, based on the Quadrex
18 study that was done that you participated in, that Brown
19 & Root had an understanding of the significant nuclear
20 engineering technical issues of then current concern in
21 the industry?

22 A Just an understanding?

23 Q An adequate understanding.

24 A Adequate understanding.

25 Q Thank you.

1 A I don't know if I can put a adjective on that,
2 on adequacy. The understanding I had was certainly not
3 resulting in the production of inadequate designs as far
4 as meeting NRC requirements. It was clear that Brown &
5 Root certainly, in my view, needed some more experience,
6 and perhaps some more sophistication in their analytical
7 methods, design methods. But there was no indication
8 that they were major inadequacies in the way they were
9 approaching things.

10 Q Overall, based on your participation in the
11 Quadren study, did you find that Brown & Root understood
12 the task before them in the nuclear design and
13 engineering area?

14 A That's a pretty broad question relative to
15 "understood the task."

16 Q Excuse me, I am seeking your sort of overall
17 view.

18 A I don't think that Brown & Root understood the
19 task relative to how they were going to complete this
20 project, particularly from a scheduler viewpoint. I
21 think Mr. Saltarelli was bringing on some people on to
22 the project that were more experienced than those that
23 were presently there who certainly had an understanding
24 of the technical task before them.

25 But at this point in time, it wasn't clear from

1 a management viewpoint that they understood how to get
2 from hear to the end of the job.

3 Q To get from here to the end of the job sounds
4 to me like a planning function. Overall, did the Quadrex
5 report indicate to you that Brown & Root was adequately
6 planning its design activities?

7 A I don't think Quadrex drew any conclusions
8 relative to planning. They just made observations that
9 things were not done; they didn't conclude why.

10 Q Okay. Let me rephrase the question a little
11 bit. Based on your participation in the Quadrex study,
12 was it your view that Brown & Root was adequately
13 planning their activities?

14 A I did not explore and I'm really not an expert
15 in the area of scheduling nuclear projects. I guess my
16 conclusion would be if the job isn't being done when it
17 should be, then it's not being planned correctly.
18 That's, you know, that's as far as I can go. You know,
19 I'm not an expert in scheduling out nuclear projects.

20 Q Overall, did your participation in the Quadrex
21 report indicate to you that Brown & Root was carrying out
22 an adequately controlled design process?

23 A Controlled from an Appendix B context, yes. In
24 my view, they were carrying out an adequately controlled
25 engineering process.

1 Q Outside the Appendix B context, did you feel
2 they were adequately controlling the design process.

3 MR. REIS: Mr. Chairman, -- I object do the
4 question on relevance. Can I continue? We are here
5 looking at things that the NRC controls and regulates.
6 Unless it's tied to some other matter within the
7 regulatory scheme, I don't think the question is proper.
8 If it is asking, for instance, for non-safety related
9 equipment, whether the administrative building it STP
10 which might have general offices not of a safety related
11 kind, are being adequately -- the building of them is
12 adequately controlled, or other matters, it's not
13 relevant to this proceeding. I just think the question
14 is much too broad. And therefore I object to the
15 question.

16 MR. SINKIN: Well, Mr. Chairman, the witness
17 indicated to me, by his answer, there were some areas he
18 thought were not adequately controlled, perhaps. I
19 wanted to find out what those areas were and that would
20 enlighten me as to the witness' application of Appendix B
21 to this project.

22 MR. GUTTERMAN: Mr. Chairman, it seems to me
23 the question was "Well, you told me there's nothing
24 relevant that you have to say, now tell me everything's
25 that's irrelevant so I can tell whether you have a good

1 sense of what's relevant or not." That seems outside the
2 bounds, to me.

3 JUDGE BECHHOEFER: Well, would you be willing
4 to limit your question to safety related engineering?

5 MR. SINKIN: I'll withdraw the question, Mr.
6 Chairman, effectively destroyed anyway.

7 JUDGE BECHHOEFER: Well, the reason I mentioned
8 safety related, that may go beyond Appendix B, may or may
9 not.

10 MR. SINKIN: We will try that.

11 JUDGE BECHHOEFER: Important to safety or
12 safety related.

13 MR. REIS: That's fine.

14 Q (By Mr. Sinkin) Let me try that. Dr. Sumpter,
15 were there areas to be addressed by the Brown & Root
16 design and engineering program including all
17 subcontractors, that you found were not adequately
18 controlled and were Either safety related or important to
19 safety?

20 A No. That's what my previous answer meant to
21 cover.

22 Q Overall, did your participation in the Quadrex
23 report review indicate to you that Brown & Root was
24 conducting its design process in an orderly manner?

25 A The answer to that question again I have to put

1 "orderly," you know, it can have many variety of
2 definitions. "Orderly" in the context as mentioned I
3 guess in N45211, and the answer to that is yes, they were
4 conducting their engineering design in an orderly
5 process.

6 Q Between the time HL&P received the Quadrex
7 report and the announcement of Brown & Root's removal
8 from the project, were there significant changes in Brown
9 & Root's engineering program?

10 A You what do you mean by significant changes.

11 Q Changes that would fundamental changes, real
12 changes, that would influence your view of their work?

13 A I really can't answer that, I was not over on
14 the project interfacing with Brown & Root on a daily
15 basis. My only interface with Brown & Root in that time
16 frame, other than normal interaction with my staff, was
17 assisting in developing their response to Quadrex.

18 So I don't know if I -- I really can't answer
19 overall if there was some fundamental basic changes going
20 on over there.

21 Q Let me just clarify your role in the Quadrex
22 review. You were the coordinator --

23 A Yes.

24 Q -- for HL&P. You would attend the meetings
25 between HL&P and Quadrex. There was some briefings.

1 A Yes.

2 Q You would attend -- you attended at least one
3 meeting were Brown & Root was present, HL&P was present,
4 perhaps through you; Quadrex was present and there was an
5 effort to define how Brown & Root would answer questions
6 posed by Quadrex?

7 A Yes, I think I attended almost all of those
8 meetings, in February.

9 Q All of those kind of meetings?

10 A Uh-huh.

11 Q I guess the next level of detailed involvement
12 would be when the reviewers started sitting there looking
13 at what Brown & Root had sent; were you ever side by side
14 with the Quadrex people while they were actually looking
15 at material sent by Brown & Root?

16 A Let me explain what happened. We would come in
17 in the morning and Brown & Root would go through their
18 answers to the questions. And I was there, some of my
19 staff was there, Quadrex people was there and Brown &
20 Root staff was there.

21 Brown & Root would then present some of there
22 documents. We made all, at that time, cursorily go
23 through all those; later on in the day, there were
24 instances when a Quadrex reviewer and a Brown & Root
25 individual may go off and look at some calculation.

1 We generally agreed on an approach that in
2 order to save duplicating costs and to help speed Quadrex
3 going through a calculation, we weren't just going to
4 send them a calculation and not have someone from Brown &
5 Root there to help lead them through it.

6 So we agreed that all that kind of review as
7 much as we could do would be done in Brown & Root's
8 offices. So there were instances where a Quadrex
9 individual and a Brown & Root individual would go off
10 somewhere by themselves and go through auto calculation
11 or a drawing; I was present at some of those but
12 certainly not all of them.

13 Q Dr. Sumpter, I'm going to show you what I ask
14 be marked as CCANP 98?

15 JUDGE BECHHOEFER: Mr. Sinkin, I was going to
16 ask you what would be a good time for a morning break.

17 MR. SINKIN: As soon as I introduce this.

18 JUDGE BECHHOEFER: Okay.

19 (CCANP Exhibit 98 marked
20 for identification.)

21 Q (By Mr. Sinkin) And ask you if you recognize
22 this document.

23 What is this document, Dr. Sumpter?

24 A This appears to be a copy of the statement
25 taken down by Mr. Driskill from the Nuclear Regulatory

1 Commission on February 10th, 1982.

2 MR. SINKIN: Mr. Chairman, I would move CCANP
3 98 into evidence.

4 MR. REIS: Mr. Chairman, I have one question on
5 voir dire.

6 Dr. Sumpter, did you --
7 you signed this report, right? This statement?

8 MR. SINKIN: The last page, Dr. Sumpter.

9 THE WITNESS: Yes.

10 MR. REIS: And this is the statement you
11 signed?

12 THE WITNESS: This is a copy.

13 MR. REIS: The original that you signed, did it have t
14 stamp "confidential" on the top of each page?

15 THE WITNESS: No, I don't think it did.

16 MR. REIS: Okay. With the understanding that
17 when he signed it, did it not have the stamp
18 "confidential," I have no objection.

19 MR. SINKIN: Fine.

20 MR. GUTTERMAN: With the same understanding,
21 Applicants have no objection.

22 JUDGE BECHHOEFER: Okay. CCANP 98 will be
23 admitted into evidence, I guess without the
24 "confidential" stamp.

25

1 (CCANP Exhibit No. 98 admitted
2 into evidence.)

3 MR. SINKIN: This is good time for a break, Mr.
4 Chairman.

5 (Recess.)

6 (No Hiatus.)

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1 JUDGE BECHHOEFER: Back on the record.

2 Q (By Mr. Sinkin) I just want to clarify one
3 point, Dr. Sumpter. By the time the questions from
4 Quadrex were submitted to Brown & Root, were you
5 satisfied that the areas which you and Quadrex had
6 agreed would be covered were adequately reflected in the
7 questions?

8 A I think I can answer that only in the areas
9 that maybe I was technically cognizant of. Other areas
10 where I was not an expert in, I had to rely on Quadrex'
11 judgment.

12 Q As far as the areas in which you were
13 technically cognizant, were you satisfied that the
14 questions submitted by Quadrex adequately covered what
15 you and Quadrex had agreed would be covered?

16 A I guess I'm having trouble with what you mean
17 by the word adequately.

18 Q Did the questions adequately reflect what you
19 wanted Quadrex to evaluate in the Brown & Root program?

20 A Yes, I think they would cover those areas.
21 There was a question in a discussion between myself and
22 Mr. Goldberg on whether they were too detailed. And
23 again, I think we made clear to Quadrex what we wanted
24 done in the review and we did not pursue that matter
25 with Quadrex. If they felt this was the kind of detail

1 they needed, then so be it.

2 MR. SINKIN: That concludes my
3 cross-examination of Dr. Sumpter.

4 MR. PIRFO: Just a few questions, Mr.
5 Chairman.

6
7 CROSS-EXAMINATION (Cont'd)

8 BY MR. PIRFO:

9 Q Dr. Sumpter, you used the term nuclear
10 analysis capability in your testimony. Could you define
11 that phrase for me?

12 A On nuclear analysis -- let me take first
13 nuclear analysis as a discipline.

14 It is in my view analysis that deals with
15 areas that are uniquely nuclear and primarily result or
16 deal in calculations concerning accidents, pressure
17 temperature transients, transients in the plant,
18 radiological calculationss, those types of things.

19 Q Is that the same way you understand that
20 Quadrex used the terms?

21 A Yes. When we defined the discipline of
22 nuclear analysis, those are the types of areas we were
23 looking at.

24 Q To the best of your understanding, is that the
25 same way Mr. Goldberg used it in his testimony?

1 A Gee, I'd have to go back and look.

2 Q You might refer to page 4 of Mr. Goldberg's
3 testimony if you have it in front of you. If not, I'd
4 be happy to give it to you.

5 A I've got a copy of his transmittal.

6 Q He uses the phrase at line 16, page 4.

7 A In this context he's talking about discussions
8 with his engineering staff which in the nuclear analysis
9 area was primarily my responsibility and my staff's
10 responsibility. So, in those conversations, that was
11 the area that we were discussing.

12 Q It's the same term?

13 A Same term, yes.

14 Q Okay.

15 What did you think the Quadrex report meant by
16 the phrase that it was not a well thought out and
17 consistent basis for design?

18 A Let me take a second and check the context of
19 that statement.

20 Q You can refer to I believe it's 3-8 of Quadrex
21 and following that.

22 A If you look at the following sentence, I think
23 it explains what Quadrex meant by that where they say
24 much of the plant design basis is rooted solely in
25 engineering judgment and the rationale for this judgment

1 has not been documented in a retrievable manner. In
2 other words, when Quadrex would look at the calculation
3 and there would be an input assumption, let's say,
4 normally in a calculation when you make an assumption
5 you indicate the basis for that assumption, either I got
6 it, this is a piece of input data from somewhere else
7 and here's the reference or this is why I'm making this
8 assumption. And it's perfectly permitted to indicate
9 this is my engineering judgment as to what this
10 assumption ought to be.

11 And the question is if that person is no
12 longer with the company and you see a calculation and
13 you question an assumption, it just says engineering
14 judgment and you say, well, I don't agree with that
15 judgment, I wonder what the first person was talking
16 about, I think that was the type of things Quadrex was
17 doing here.

18 Now, the Brown & Root approach, there was
19 nothing wrong with that. That's what's done in the
20 industry. If you are an engineer expert in that area,
21 someone makes an assumption he says is an engineering
22 judgment, you usually, since you are knowledgeable in
23 that area, have an understanding of that assumption and
24 probably a good idea of what the judgment was.

25 Q You said in response to one of Mr. Sinkin's

1 questions that given that phrase or that statement by
2 Quadrex, it does not necessarily follow that the parts
3 won't fit. Could you explain why that does not
4 necessarily follow?

5 A Well, in the context of Quadrex stating here
6 that much of the plant design basis is rooted solely in
7 engineering judgment. If that judgment is a sound
8 judgment, then we shouldn't have any difficulties in any
9 aspects of the design, including the adequacy of
10 individual components and the adequacy of how well they
11 fit together.

12 Q Okay. Now, turning your focus to when you
13 received copies of the Quadrex report, were these copies
14 numbered to keep track of the number of copies you
15 received?

16 A I don't believe they were.

17 Q Was there any notation or direction on their
18 cover restricting distribution thereof?

19 A From Quadrex to us?

20 Q Either.

21 A Quadrex had no markings like that and Houston
22 Lighting & Power Company didn't stamp these confidential
23 or anything like that.

24 Q Were you directed in any way to restrict
25 distribution orally?

1 A No. I may have had discussions with Mr.
2 Goldberg on -- remember again my responsibility was only
3 within HL&P.

4 Q I understand.

5 A And I may have had discussions with him as to
6 who we would route it to in HL&P as far as who needed
7 this information for the conduct of their job.

8 Q But you were not directed to --

9 A I wasn't directed to not send it to, you know,
10 anyone.

11 Q Okay. Now, turning to the point at which I
12 surreptitiously interrupted Mr. Sinkin's
13 cross-examination, you testified that you didn't -- that
14 no information you provided to your attorneys was
15 supplied to any licensing Board that you know of. Now,
16 do you know for a fact it was not supplied or do you
17 know -- you simply don't know whether it was supplied?
18 You do not know for a fact that it was supplied? Did
19 you follow that?

20 MR. GUTTERMAN: I'm not sure the
21 characterization of the testimony is accurate.

22 Q (By Mr. Pirfo) Let me start again.

23 In response to a question from Mr. Sinkin, you
24 said that you never provided information to a licensing
25 Board. I believe that was your testimony.

1 A Yes, he --

2 Q Under McGuire.

3 A He asked me that question and I asked him back
4 did he mean have I personally contacted a licensing
5 Board or I believe contacted an attorney to give
6 information to a Board.

7 Q That's right.

8 A And my answer to that was no.

9 Q Right. So, you were not the moving force in
10 any of those cases. But, now, do you know for a fact
11 that something an attorney asked for might have been
12 provided to a licensing Board?

13 Let me ask it this way. Is it possible an
14 attorney would have asked something from you that he
15 would have provided to a licensing Board?

16 A Well, I've reviewed testimony that's been
17 presented to licensing boards.

18 Q No, I'm thinking of something under the
19 McGuire document, something that -- what I'm getting at,
20 you would not necessarily know if an attorney needed
21 some information that he felt was important to the Board
22 under McGuire. He would have simply asked you for the
23 information, you would not have known what he was doing
24 with it?

25 A Oh, yeah, no attorney has ever come to me and

1 said because of the McGuire Rule or something like that
2 I need to supply information to a board, can you give it
3 to me. That's never happened.

4 Q Precisely.

5 MR. PIRFO: That's all the questions I have.

6 JUDGE SHON: I only have about two questions.

7

8 BOARD EXAMINATION

9 BY JUDGE SHON:

10 Q Dr. Sumpter, if you would look at what has
11 been marked CCANP 94 and 95.

12 A Okay.

13 Q They have to do with the erroneous use of this
14 3.3 --

15 A Yes, sir.

16 Q And one of them is the Incident Review
17 Committee meeting concerning this, that's number 95, the
18 report on it by Mr. Powell; is that right?

19 A Yes, that's correct.

20 Q Is this typical of the kind of information
21 that goes into the files on something that the IRC looks
22 at and that it then decides is not reportable, for
23 example? Does the IRC do this much for things that are
24 not reportable as a rule?

25 A Yes. Our procedure at that time required that

1 the IRC document its deliberations, both if it decided
2 something was reportable and if it decided something was
3 not. So, yes, this is typical.

4 Q I just wanted to make sure that this sort of
5 thing is typical.

6 A Yes.

7 Q It's a readily retrievable thing in the form
8 of a report or a memo or something like that?

9 A Yes, that's correct.

10 Q The other question that arose in the course of
11 Mr. Sinkin's cross-examination concerns the fact that
12 these auxiliary feedwater pumps in the IVC were not
13 qualified for sufficiently high temperature.

14 A Uh-huh.

15 Q He seemed to be attempting to elicit from you
16 the notion that this mistake, error occurred because
17 things were done out of sequence.

18 I got the impression -- first of all, I'm of
19 the impression that normally when you're confronted with
20 a situation like this, no analysis has been done, you
21 use a number for design purposes and for specification
22 purposes that is very conservative. In this case you
23 probably would have used a very high temperature; is
24 that right? You would have hoped to use a higher
25 temperature?

1 A Oh, yes, that's correct.

2 Q In this case that was done, but it later
3 turned out, as I understood your testimony, that that
4 high temperature was not high enough, it should have
5 been higher; is that right?

6 A That's correct.

7 Q Then the error it seems was made by the person
8 that selected the temperature on a preliminary basis and
9 did not select a high enough temperature; is that right?

10 A That's correct. The temperatures around the
11 plant were selected initially in 1973-1974. And the man
12 who made those selections had come from another
13 architect engineering firm and I knew him and he was --
14 you know, he was an experienced design engineer and he
15 selected those temperatures.

16 The agreement with the NRC as to how to treat
17 a break in this cubicle was not reached until 1975 when
18 we were having discussions on closing out everything
19 having to do with the construction permit. So, that was
20 after that fact.

21 So, you're correct, that's a logical sequence
22 and the error was made by the person who selected the
23 temperatures initially.

24 Q Had he not made that error, it wouldn't have
25 mattered that you didn't have the actual data until

1 later? If he picked a high enough temperature,
2 everything would have been okay; is that right?

3 A If he had picked a high enough temperature, it
4 would have not have been a deficiency, that's correct.

5 Q Thank you.

6 JUDGE SHON: That's all I have.

7 Q (By Judge Lamb) Dr. Sumpter, following
8 further on Judge Shon's question about CCANP 94 and 95.

9 A Okay.

10 Q Is my understanding correct that this type of
11 documentation was not provided with respect to the items
12 in the Quadrex report?

13 A Oh, you mean as far as a detailed --

14 Q Right.

15 A -- memo from the IRC?

16 Q Yes.

17 A Not in this form. We did have the Quadrex
18 report and we did have the Brown & Root response which
19 included all the sheets. And in most cases, those
20 sheets contained a rationale as to why the item was not
21 reportable, which is really the function of these
22 documents, what are the facts behind the situation and
23 what is the decision of the IRC as to whether it's
24 reportable or not.

25 Q Did those sheets contain a rationale for each

1 item in the Quadrex report?

2 A I think in general -- there may have been a
3 couple of sheets that did not, but in general every
4 sheet had a rationale written at the bottom as to why it
5 was not reportable.

6 Q Were those other items in the Quadrex report
7 referred to the IRC, that is the ones that were viewed
8 by you and others who met with you as being
9 non-reportable?

10 A Can you clarify what you mean by referred to
11 the IRC?

12 Q Okay. You and Mr. Goldberg and Mr. Robertson,
13 as I understand it, met and decided that there were
14 three items which were reportable.

15 A Right.

16 Q And that the remainder were not reportable.

17 A Yes.

18 Q Were those items referred to the IRC for
19 investigation?

20 A No, they were not.

21 Q Was that in line with the customary procedure
22 for handling items of that type?

23 A Well, I guess I'll try to answer that this
24 way. Myself, Mr. Goldberg and Mr. Robertson I guess
25 were acting as the IRC, performing that function on that

1 day. And, so, we performed the same role. We
2 determined which was reportable and what was not
3 reportable.

4 The IRC did go back and look at the items that
5 we did report. They did not go back and look at the
6 items we determined that were not reportable I guess
7 because we were the IRC, if you will, for that one day.

8 I don't know if I answered your question or
9 not.

10 Q Okay, I think you have. But in that instance
11 where the three of you served as the IRC for this
12 particular situation, did you provide similar
13 documentation for the items that were not reportable?

14 A I think we relied primarily on the Brown &
15 Root documentation.

16 Q In other words, you adopted, if you will, the
17 Brown & Root documentation?

18 A I don't want to imply that we took Brown &
19 Root's documentation as the sole record on that. It had
20 a major role in our decision since they had considerably
21 more information than we did.

22 Q What I'm wondering about is do you have a
23 paper trail that could be referred to which gives the
24 specific reasons why each item was considered
25 non-reportable?

1 A Yes, I believe in almost all cases we have
2 that paper trail documentation that's equivalent to what
3 the function or purpose of these documents are, yes.

4 Q Now, what -- did the three of you prepare that
5 documentation?

6 A No, the documentation I am referring to is --
7 we have the Quadrex report which contains the
8 information which is sort of equivalent to maybe Mr.
9 Poole's memo and we also had Brown & Root's information
10 which also has information in it partly that's
11 equivalent to what's in Mr. Poole's and Mr. Powell's
12 memos. And then we had the blocks that Brown & Root
13 checked for reportability which is a decision on
14 reportability which is similar to the information found
15 in Mr. Powell's memo. And we have the record for those
16 items where we disagreed with Brown & Root, those were
17 reported to the NRC. So, I think we have, if you will,
18 all the paper that's sort of equivalent to what's here.

19 Q Do you have, though, the paper that documents
20 the reasons beyond Brown & Root that you referred to a
21 few minutes ago? You indicated a few minutes ago that
22 there were reasons in addition to those cited by Brown &
23 Root that the three of you considered and which resulted
24 in your decision that it was not reportable. I'm
25 wondering if you have documentation of that?

1 A Let me answer it this way. If the Brown &
2 Root reason was sufficient, then that's the
3 documentation we have. But if we had additional reasons
4 that would also add onto that -- I didn't take any
5 notes of the meeting. Mr. Goldberg may have -- was
6 writing stuff down on the Brown & Root sheets, but I
7 don't know if that document still exists or not and I'm
8 not -- I don't know if Mr. Robertson kept notes at that
9 particular meeting.

10 Q Now, with respect to how much of the Quadrex
11 report should have been or should not have been reported
12 to NRC under 50.55(e), you were part of that decision
13 making process, I gather; is that correct?

14 A Yes.

15 Q Who actually made the decision, the final
16 decision with respect to those matters?

17 A On what would be reported to the NRC?

18 Q What would be and what would not be.

19 A The only reason I'm hesitating, I guess -- we
20 had discussions on each issue and pretty much reached a
21 consensus. So, there wasn't a need for someone to say,
22 well, I'm going to make the decision. You know, that
23 usually occurs when there is perhaps different views.

24 So, we all reached a consensus and I guess,
25 you know, in the final analysis Mr. Goldberg was the one

1 who the responsibility ultimately rested with. But we
2 were in consensus, we agreed, so let's call the NRC.

3 Q In other words, you agree fully with each on
4 those decisions?

5 A Yes. There weren't any of these decisions
6 when we got done as far as I can recall that there was
7 a, if you will, a dissenting vote.

8 Q Either on the ones that you reported or the
9 ones that you did not report?

10 A Yes, in either case, that's correct.

11 Q Do you feel that the items discussed in the
12 Quadrex report amounted to a breakdown in QA?

13 A No, I did do not.

14 Q What else --

15 A As far as an overall view. There were two
16 items -- we did report on computer codes and shielding
17 we viewed as a breakdown in QA, yes.

18 Q Well, what I had in mind was with respect to
19 the question of submitting the entire report as a
20 breakdown in QA.

21 A No, I don't believe that the report indicated
22 that.

23 Q What would be needed in your view in addition
24 in order to make you believe that? In other words, what
25 elements were missing in the pattern that led you to

1 conclude that it was not a breakdown?

2 A I think there are several types of scenarios
3 that could have arisen where we may have reported the
4 whole report. One would be that there were a number of
5 deficiencies that we felt were reportable that indicated
6 there was a problem, a common problem in a large number
7 of groups, more than just one group, let's say like
8 HVAC, with that same set of deficiencies. There was a
9 common thread in them and that common thread was
10 appearing in three, four, five groups. That might be
11 one scenario.

12 I think -- I can't give an exact number, but I
13 think if we had a considerable number of reportable
14 items, and, you know, I can't say if it was ten, twenty,
15 fifty or whatever, but if we just had a large number and
16 even though we at that point in time couldn't identify
17 that, there may be a common cause which may indicate a
18 breakdown in QA somewhere, but there were just by the
19 sheer volume a large number, we may have reported the
20 whole report.

21 And, like I say, I can't say how many or it
22 depends on what type they were, how significant they
23 were and how many there were. It's a number of
24 combination of factors that would have to go into that
25 type of evaluation. But that would be another scenario.

1 I think the third type of scenario would be if
2 I had some reportable items, and there may not be a very
3 large number, but we were able to identify that their
4 cause was affecting -- their cause may -- the
5 significance of those items may be so large that the
6 ramifications could affect many groups. In other words,
7 there may only be a couple, but the ramifications of
8 those were so significant that we really didn't have an
9 idea how far that permeated into the organization and
10 how widespread it was. I think that would be the third
11 scenario where we may have considered reporting the
12 whole report.

13 Q Was the question of reporting the entire
14 report discussed by the three of you?

15 A As best I can recollect, Mr. Robertson and I
16 on May 7th, and I'm not sure if it was in the afternoon
17 or the evening, sometime during the meeting with Brown &
18 Root, as we were going through this ourselves and
19 listening to the information we were getting, did raise
20 the question among the two of us whether we should
21 report this whole report, is there a potential for that.

22 By the time we met with Mr. Goldberg the next
23 morning on May 8th, and both of us had I think probably
24 stayed up fairly late going through the whole report, we
25 both discussed it, Mr. Robertson and I, and we may have

1 discussed it in Mr. Goldberg's presence, I can't recall,
2 but we had concluded that even though we hadn't done a
3 reportability review, there did not appear to us to be
4 any significant widespread design flaw in Brown & Root's
5 design engineering that would necessitate that the whole
6 report would go in, you know, just from that context.

7 And then after we had done our reportability
8 review on the afternoon of May 8th, I can't recall that
9 we, per se, had a conversation in the meeting along the
10 lines of what about the whole report type of thing. I
11 think in our own minds the conditions and the items we
12 discussed had not reached a level, a threshold level, if
13 you will, where that thought was any longer present in
14 our mind. We had determined earlier in the morning it
15 didn't appear to be any major reason to turn in the
16 whole report, and then in the afternoon after we'd gone
17 through all the items under additional types of
18 consideration, it didn't appear to be the case either.

19 Q To your knowledge, did the NRC staff at any
20 time suggest that it should have been reported?

21 A The only way I know that is through -- I don't
22 know if this is called hearsay or what. I was aware
23 that that conversation took place I guess in September
24 or August.

25 Q This was not mentioned to you?

1 A It may have been. I was not present at the
2 meeting, so it wasn't a direct conversation. I was
3 never in any meetings where it was mentioned to me
4 directly that the NRC had made that request.

5 Q And they didn't make the request of you?

6 A No, they did not make it of me.

7 Q Do you feel now that the report should have
8 been submitted as a QA breakdown?

9 A No, I have never -- I have not changed my mind
10 over the intervening years that our interpretation of
11 this report was not correct. That, in fact, it did not
12 indicate there was a QA breakdown in Brown & Root's
13 design control.

14 Q Now, the three items that were reported under
15 50.55(e) came to your attention in your meetings with
16 Quadrex and discussions with them and B&R before the
17 report was finally issued; is that correct?

18 A Yeah, there were discussions on those areas.
19 The -- go ahead.

20 Q What I'd like to ask you is why you didn't
21 initiate the IRC procedure with respect to those
22 questions before the report was finalized?

23 A We had experts in each of these areas from
24 Quadrex. They had some information. They had -- they
25 went back to California and they were looking at a lot

1 of information in detail that I did not have access or I
2 had access to it, but I didn't look at it, and they were
3 evaluating the significance of that information.

4 So, if you will, all during these meetings,
5 once the Quadrex reviewer went back to California, I
6 really was not in contact with them insofar as what they
7 were concluding and really didn't even know there was a
8 deficiency. There were indications and observations of
9 this and that, but where Quadrex was really valuable to
10 Houston Lighting & Power was their ability to look at
11 that information and determine its meaning and its
12 significance. And I did not get that feedback, you
13 know, during all of March because they were back in
14 California working on that.

15 During a large part of April they were still
16 receiving documents from Brown & Root and still
17 undergoing this evaluation. I did start in about
18 mid-April to -- I started to review the questions and
19 answers and assessments. But again, those were just
20 initial assessments. And putting together of all those
21 assessments and drawing conclusions and the significance
22 of that was what was discussed in Volume 1. And I --
23 you know, I didn't have access to that either. Until
24 really the day we got the report is the first time I saw
25 all of it put together as to how Quadrex viewed

1 everything, particularly relative to its significance
2 and any conclusions they drew that this information
3 indicated either I did or did not have a problem type of
4 thing.

5 In the one case I did mention, that was so
6 obvious, you know. I did not follow-up to see if our
7 IRC ever met on that or not because I didn't know if we
8 had a deficiency. I just had an identification that a
9 number used in a Brown & Root spec was not the number
10 called for in the code. That's not a deficiency until I
11 find out if the actual stress calculated is more than
12 that. If it's not more than that, then there's not even
13 a deficiency, it's just a wrong number in the code. And
14 when I asked Brown & Root to look at that, the
15 individual came back and said we're below that value, so
16 it wasn't even a deficiency. And I wasn't aware, I
17 guess, until sometime after Quadrex that the IRC had
18 even gone through with their full procedure in looking
19 at that.

20 Q Were you a participant in the HL&P decision
21 not to submit the Quadrex report to NRC for their
22 information?

23 A I was present when dialogue was held on some
24 of that, but I was not asked my view on whether we ought
25 to do that or not. Mr. Goldberg asked me did we

1 routinely send these types of reports to the NRC and he
2 indicated to me that he would probably not gratuitously
3 send it to the NRC. But I wasn't asked my opinion on
4 that, he made that decision.

5 Q So, this was not your decision?

6 A No, it was not.

7 Q Did you agree with that decision?

8 A Did I agree with that decision? I didn't have
9 any problem with it. I didn't feel -- I didn't disagree
10 with it to the extent that I was going to challenge Mr.
11 Goldberg, you know. If he makes a decision and I'm
12 comfortable with that decision, okay, we'll do it that
13 way. Sometimes he -- in many cases he may make a
14 decision based on information that, you know, I'm not
15 privy to, I may not understand why he made it. But in
16 this case I was comfortable with that decision.

17 (No hiatus.)

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1 Q With respect to turning the report over to this
2 Board, before September, were you part of that decision?

3 A I really wasn't involved in that at all.

4 Q You were not aware or were you aware that the
5 decision had been made on that?

6 A I really wasn't aware of any discussions or any
7 decisions made to either turn it over or not turn it over
8 to the Board at all?

9 Q Were you aware that the NRC staff either asked
10 or did not ask that it should be submitted?

11 A I'm aware of the conversations that were held
12 in I think September, that it should be turned over.

13 Q But prior to that --

14 A Prior to that, no.

15 Q During the period before September, before the
16 report was turned over to the Board, was there any effort
17 or suggestion by anyone in management of HL&P that the
18 report should be treated as confidential or secret?

19 A It depends on how you define confidential and
20 secret. Normally, any consultant report we get is what I --
21 is termed proprietary. In other words, it's normally
22 kept within HL&P. And if the NRC would like a copy, they
23 can either come look at in it our office or they may
24 request that we send it to them. We don't send it out to
25 everybody in the world, if you will. That's the only way

1 we treated this report, that's the way we treat any
2 report, or any memos we have within the company, are
3 pretty -- I consider what we call proprietary and we
4 don't send them out to everybody in the world.

5 Q What I was really driving at is whether there
6 was any effort or any suggestion that the report should
7 be retained confidential or secret with respect to, let's
8 say, this Board?

9 A No. There was no -- as far as I'm aware, there
10 was no indications from anyone that we should keep this
11 secret, not, from the Board or from the NRC.

12 Q To what degree, to your knowledge, to what
13 degree was Mr. Oprea involved in the decision that the
14 Quadrex report should not be submitted in its entirety
15 under 50.55(e)?

16 A I was not privy to any of the discussions with
17 Mr. Goldberg or Mr. Oprea or --

18 Q Did Mr. Oprea attend meetings in which this was
19 discussed?

20 A Not that I was at, no, he did not.

21 Q And how about other meetings; for example,
22 questions relating to submitting the report to NRC or
23 submitting it to this Board before September. Did you
24 have any interplay or are you aware of any involvement
25 with Mr. Oprea had in those decisions?

1 A No, I'm not personally, no.

2 JUDGE LAMB: Thank you.

3 Q (By Judge Bechhoefer) Dr. Sumpter, turn to
4 page 14 of your testimony. Line -- the first line. Does
5 your answer to question 27 indicate that prior to the
6 meetings that you had on May 7 and May 8, '81, the
7 decision already had been made not to furnish the entire
8 report to NRC under 55(e)?

9 A Well, my answer meant, meant to indicate here,
10 that Mr. Goldberg indicated to me that we would not
11 gratuitously send the report to the NRC, obviously, if
12 because the report pointed out major deficiencies in our
13 view that would necessitate the entire reporting to the
14 NRC, then we would have done that. But this was a
15 gratuitous, if you will, connotation.

16 Q So this wasn't the -- well, shall we say, the
17 basic foundation for your review on the 7th and 8th for
18 reportability.

19 A No.

20 Q You didn't say, "Well, this isn't to be turned
21 over and let's justify it"?

22 A I think that's the context. If --

23 Q Let's justify not turn it over.

24 A Well, start that again. No.

25 Q When you went into the meeting, did you have in

1 mind, you and the other members of the committee, that
2 you did not wish to turn the report over and you would
3 find reasons for not doing so?

4 A No. Definitely not. And as I indicated, in
5 fact, Mr. Robertson and I had that discussion I think on
6 May 7th first, where we asked ourselves should we return
7 the whole the report in because of what it was saying.

8 So we were not, if you will, already prejudging
9 that no matter what came up, we were not going to turn
10 this report in; definitely not.

11 Q And this indication from Mr. Goldberg was
12 purely if it should be gratuitous?

13 A Yes, that's the context I understood it, that's
14 correct.

15 Q Now, you had some discussion with Dr. Lamb
16 about items which arose prior to the delivery of the
17 Quadrex report. Were you, at that time, in the spring of
18 1981, familiar with the I&D guidance on potential
19 reportability?

20 A Yes, I was.

21 Q What was your understanding of how the -- when
22 I rear to 14 day guidance, do you know what I'm talking
23 about?

24 A Yes, I do.

25 Q I could show you a copy if you want?

1 A I know what you're talking about.

2 Q What was your understanding as to how that 14
3 day guidance was to be applied?

4 A My understanding was that -- I think they
5 delineated out in the chart in the back of that guidance,
6 that when you went down the tests of 50.55(e), and you
7 had determined that you had determined that there was a
8 deficiency, and you had determined let's say that it had
9 been released for construction and it was significant,
10 but you needed time to do an evaluation to determine if
11 it could adversely affect the safety of operations of the
12 plant, and that's where you had the 14 days to do that
13 evaluation, you may have a deficiency but the question is
14 is that deficiency going to affect adversely the
15 operations of the plant.

16 That may take you some time to do that. And
17 it's my understanding of that guidance was that that's
18 what the 14 day was, you know, roughly 14 days to do
19 that. If at the end of that time frame, you were unable
20 to make a decision that it did or did not affect the
21 safety of operations of the plant, the NRC then wanted
22 you to go ahead and call that in as a potential.

23 Of course if you decided it did not, then you
24 wouldn't call it in. But that -- they -- the way I
25 viewed that was they were trying to, if you were going to

1 at least get a handle on problems that had the potential
2 to be reportable but they were going to take you some
3 time to do the analysis to see if it would affect the
4 safety of the operations of the plant and they wanted to
5 not let things drag out for six or nine months, you know,
6 while you were trying to perform this evaluation, so
7 that's my understanding of what the 14 days applied to.

8 Q Now, at the your various contacts with Quadrex
9 personnel prior to the final delivery of the report, did
10 you consider whether any of the preliminary information,
11 if you will, fell into that category?

12 A No, because what Quadrex, in all their
13 deliberations and evaluations was doing was really first
14 identifying whether I even had a deficiency. And I
15 really wouldn't have that information until the final
16 report came in. And the 14 days doesn't apply to that.
17 I first have to know do I even have a deficiency. And
18 that's the information that Quadrex was really going to
19 be giving me in the final report as their conclusions
20 from all their evaluations. Or at least they if they
21 didn't draw that conclusion, at least give me enough
22 information where I could draw a conclusion as to whether
23 or not I even had deficiency.

24 Q Well, specifically, going to -- I'll just use
25 one as an example. How do you look at Applicants'

1 Exhibit 65?

2 MR. SINKIN: Would you identify that a little
3 further?

4 JUDGE BECHHOEFER: 65, it's the letter dated
5 March 16, 1981, from Mr. Stanley to Dr. Sumpter --

6 MR. SINKIN: Oh.

7 JUDGE BECHHOEFER: -- on ALARA questions.

8 THE WITNESS: Okay.

9 Q (By Judge Bechhoefer) As of the time you
10 received this letter, why would you think that this
11 letter, for instance, would not set off the review
12 process for 55(e) reportability?

13 MR. AXELRAD: I'm sorry, Mr. Chairman, would
14 you repeat the question.

15 Q (By Judge Bechhoefer) Why would Dr. Sumpter
16 not think that this letter, for instance, was a reason
17 for starting the 50.55(e) review process, i.e., referral
18 to IRC, et cetera?

19 A As I explained, tried to explain yesterday, as
20 far as we were concerned, Brown & Root's ALARA review was
21 adequate in that they were doing what was common or
22 normal for most of the rest of the industry.

23 We had two situations here; one, the design had
24 undergone a number of changes, and ALARA is a continually
25 ongoing process because as the design changes, you need

1 to relook again at the changed aspects for ALARA.

2 So at this point in time, there had been enough
3 changes going that had occurred in the plant that an
4 ALARA re-review was going to be a major effort, that was
5 point one.

6 And Brown & Root was going to need some
7 resource assistance to conduct that review in an
8 expeditious manner. And discussions were underway with
9 Brown & Root for HL&P with its own staff of health
10 physicists to supply that resource assistance.

11 In addition, I guess HL&P took a very special
12 interest in ALARA because it affects us quite
13 considerably, because particularly as to the operation of
14 the plant for the next 40 years. And we had gone out and
15 hired our own health physicists, we'd given him
16 responsibility for ALARA; most folks had not yet done
17 that.

18 We had set up a whole program within the
19 corporation for ALARA; we had an ALARA policy manual
20 signed by, I think, either Mr. Oprea or Mr. Goldberg,
21 that committed the corporation to ALARA in all phases of
22 design and operation of not only the nuclear power plant,
23 but also our health physics laboratories that we were
24 going to have.

25 We had then gone out and developed what we

1 called an ALARA design review manual; we looked at ALARA
2 as something that really had to be done basically by
3 every engineer who was designing a system that was in the
4 radioactive environment, that the health physicists could
5 spot check things, but there was no way they had the
6 resources and they really weren't expert in designing,
7 let's say, fluid systems.

8 So the way a fluid system is laid out and what
9 type of valves are used and everything is really
10 something that a -- a decision that's made by the design
11 engineering and he needed to understand some basic
12 radiation effects, principals, so that he could do his
13 design in an ALARA context, instead of health physicists
14 coming back two years later and saying, "Well, you need
15 to do this; you need to do that." And then we have to go
16 back and start all over again.

17 So we felt it was more efficient and
18 expeditious if the design engineers understood ALARA and
19 put features in the design which would help minimize
20 exposure to people when they operated the plant.

21 So we developed a design review manual and a
22 videotaped training program and our plans were to give
23 that to every single engineer working in our shop and in
24 Brown & Root's and BEASCO's shop on Allens Creek. And
25 have them put that in their procedures so that we would

1 get this ALARA sensitivity, if you will, deep down into
2 the design organization.

3 We were the first utility in the country that
4 had developed that type of philosophy as far as
5 implementing; we were the first people that had a
6 training program, the first people that had this design
7 manual. EBASCO, Brown & Root, and even Bechtel today
8 have incorporated that design manual in their procedures
9 and our training program. And we have also given that
10 design manual and training program the to other
11 utilities.

12 So when Mr. Stanley reviewed this design with
13 the Quadrex people, it was clear that an ALARA review was
14 needed, some of the features were no ALARA because they'd
15 been changed and we were still going through an ALARA
16 review.

17 Brown & Root, in our view, was a little slow in
18 agreeing to adopt what we wanted. And, you know, I don't
19 want point the finger at Brown & Root; we were very
20 aggressive and pushing very hard. And so Mr. Stanley and
21 I talked to our health physicists and the Brown & Root
22 health physicists; we were almost ready to commence this
23 big re-review with HL&P essentially going on Brown &
24 Root's staff.

25 Mr. Stanley and I agreed that he would write

1 this letter, and I would use this letter to meet with
2 Brown & Root and, if you will, give them the final push
3 from here's an outside party saying you ought to do this,
4 too. And we hope that that would be the final push
5 needed to get Brown & Root to agree to undergo this
6 program.

7 In fact, we had that meeting, and Brown & Root
8 committed in their response back to us, to do everything
9 that we thought was necessary. That's the context of
10 this. I didn't view that Brown & Root's ALARA program
11 was defective, deficient; it was meeting, at that time,
12 normal industry standards.

13 Really we, from HL&P, were really pushing to
14 the state of the art, we were way beyond anybody else.
15 And all this letter was trying to do, and I reviewed it
16 before it was sent in, I agree with everything that was
17 in it, was to use it as a mechanism to get Brown & Root
18 to commit to what we wanted them to to.

19 And that's really the purpose of this letter.

20 Q Did the words "inconsistency in the conduct of
21 ALARA reviews," which I gather you wrote, but did that
22 signify a deficiency, which should have at least
23 triggered further specific review for reportability, or
24 at least triggered the 14-day period?

25 MR. SINKIN: Excuse me, Mr. Chairman. I

1 believe you've quoted some words that Mr. Stanley wrote.

2 JUDGE BECHHOEFER: Well, Dr. Sumpter just said
3 he drafted the letter.

4 MR. SINKIN: I see.

5 THE WITNESS: No, no, I didn't mean to imply I
6 drafted the letter. I'm not -- I reviewed --

7 JUDGE BECHHOEFER: You dictated --

8 THE WITNESS: No, the 14 day period, again, in
9 my mind, occurs once you've identified a deficiency and
10 that deficiency's been released for construction. And
11 the 14 day period is used to determine whether that's
12 that's going to adversely affect the safety of the
13 operations of the plant.

14 And this, in my mind, didn't indicate there was
15 a deficiency, only that some of the design had been
16 changed and it had not undergone the full ALARA review
17 and so some of the parts of the plant had ALARA features
18 in it, some of them did not.

19 And I think whether Quadrex looked at that,
20 well, they say that's inconsistent and the reason for the
21 inconsistency was the sequence in timing of the review;
22 part of the plant had been changed and hadn't undergone a
23 full ALARA revision; part had pretty much stayed the same
24 and it had already begun a full ALARA review. So it was
25 that type of context.

1 Q (By Judge Bechhoefer) Well, in terms of a QA
2 breakdown, would that -- could the 14 day period be used
3 for that, to see whether there was a significant QA
4 breakdown?

5 A No, it was my understanding of that guidance
6 from the NRC that the 14 days applies to the time that
7 the licensee takes to determine if the deficiency
8 represents something that will adversely affect the
9 safety of operations.

10 I don't take 14 days to determine if I had a QA
11 breakdown; I take 14 days to determine if the deficiency
12 would adversely affect safety of operations.

13 That's the way I read and interpreted their
14 guidance:

15 Q Now, do you interpret or do you interpret the
16 inconsistency referred to here in terms of a QA
17 breakdown, leave off significant for the moment, but is
18 that a type of QA breakdown?

19 A No, I think it's -- Brown & Root had committed
20 to do an ALARA review in their procedures. And this was
21 just again a question of timing; they had done the whole
22 plant initially and part of the plant had changed and
23 they were in the process of catching up and reviewing
24 that part of the plant. And when Quadrex came in and
25 they took a snapshot, part of the plant had ALARA

1 features, part of the plant may not have had as good
2 ALARA features, and that was just a timing problem, not a
3 QA breakdown.

4 JUDGE BECHHOEFER: Could your counsel show you
5 a document which was No. 1, of the documents that were
6 sent to us.

7 Q (By Judge Bechhoefer) Have you ever seen this
8 document before?

9 A Yes, I have.

10 MR. GUTTERMAN: Mr. Chairman, maybe we ought to
11 identify --

12 JUDGE BECHHOEFER: I would like to have Dr.
13 Sumpter explain what it is. It's a one piece, one sheet
14 document, which has a date which I think is wrong on it
15 and I was going to ask Dr. Sumpter that.

16 MR. SIMKIN: Excuse me, are there extra copies
17 available at this time?

18 Q (By Judge Bechhoefer) There's a note on here
19 that says that this is a note from you to Mr. Stanley.
20 When we were given this document, a transmittal letter
21 said that the note was from Mr. Stanley to you, and maybe
22 you can clarify that first.

23 A I very well remember these notes. These were
24 notes that Mr. Stanley and I, this is my handwriting.
25 Mr. Stanley and I had a phone conversation and these

1 notes were to be, if you will, our statement at the Brown
2 & Root meeting, which we held in response to that letter
3 that we talked about before. And this was the statement
4 we were going to make to Brown & Root, that the Quadrex
5 was going to make, if you will, to summarize this letter,
6 this opening statement. And that's what this was. He
7 and I talked about this statement over the phone and I
8 wrote it down and then when he came here for the meeting,
9 this is the statement he made.

10 MR. GUTTERMAN: Mr. Chairman, I wonder just to
11 clarify the record, I wonder if he can, when he referred
12 to letter he discussed before, I think he was referring
13 to Applicants' Exhibit 65.

14 JUDGE BECHHOEFER: Well, yes, that's the letter
15 I was asking about.

16 THE WITNESS: That's the March 16th, '81
17 letter.

18 JUDGE BECHHOEFER: Yes. Yes.

19 THE WITNESS: I know your next question, I
20 think.

21 JUDGE BECHHOEFER: Try answering it, then.

22 THE WITNESS: There's a word in here
23 "breakdown."

24 Q (By Judge Bechhoefer) Yes.

25 A I think the sentence says: This same review

1 would appear to indicate a breakdown in ALARA review.

2 Q Yes.

3 A I remember that word well because Mr. Stanley
4 and I discussed that word. Along the lines of, well,
5 from hist viewpoint, I shouldn't use that word because
6 that indicates a QA breakdown. And I said I want to get
7 Brown & Root's attention, I want to use provocative words
8 in your opening statement, and that will get their
9 attention.

10 And I remember that conversation, because he
11 said I shouldn't use that word because it implies a QA
12 breakdown from an Appendix B viewpoint. And I said I
13 want to use provocative words to get their attention.
14 That's the context in which that word finally ended up.

15 JUDGE BECHHOEFER: That was my question.

16 Q (By Judge Bechhoefer) In using this then, did
17 you not have in mind QA breakdown as used in the -- in
18 50.55(e)?

19 A No, I did not.

20 Q Could you also just clarify that the date is
21 not a 1980 date but presumably a 1981 date?

22 A That's 1981, a few days before the meeting,
23 that's correct. Should be March, I guess, 13th, 1981.

24 Q Well, was this done before the letter was
25 written, the letter is March 16th. And --

1 A I'm trying to recall when we had the meeting
2 with Brown & Root.

3 This was all being done concurrently, I guess.
4 I'm not -- this is not my handwriting on this date up
5 her. So I'm not sure which -- if the 13th is exactly the
6 correct date.

7 It was all done about the same time frame and
8 the meeting with Brown & Root was held shortly after the
9 16th. I don't know the exact date. Mr. Stanley probably
10 has that --

11 MR. CUTTERMAN: Maybe I can help. If we ask
12 the witness to look at CCAMP Exhibit 93, that might
13 refresh his recollection.

14 THAT WITNESS: Okay, this is CCAMP 93, is a
15 letter from Brown & Root to Mr. Blau from Mr. Hawks. And
16 in the opening paragraph says: On March 16th, 1981, in a
17 meeting between EL&P and Brown & Root, a letter
18 containing preliminary findings of the engineering review
19 of Brown & Root was presented. So that indicates to me
20 that the meeting we held with Brown & Root was on March
21 the 16th.

22 Q (Ey Judge Bechhoefer) And these notes then,
23 were your preparation for that meeting?

24 A Preparation for that meeting, that's correct.

25 JUDGE BECHHOEFER: The Applicants' by any

1 chance know what the numbers of Board exhibits to date
2 have been or should we just put this as Exhibit A? We
3 would like, I think, to put it either in the record or at
4 least have it along with the record.

5 MR. GUTTERMAN: We discussed this the other
6 day, Mr. Chairman, I don't think any of us knew if there
7 were any Board exhibits in Phase I. I think we decided
8 to make the exhibit we were discussing then an
9 Applicants' exhibit just to solve that problem. We can
10 do that with this one, too, if that would make it easier
11 for handling.

12 JUDGE SEOW: Suits me.

13 JUDGE BECHHOEFER: Okay, why don't we do that.
14 There may not have been any Board exhibits; I'm not sure.
15 We didn't list any, but I sort of recollect that there
16 may have been one or two.

17 MR. GUTTERMAN: Mr. Chairman, I think that
18 would make this Applicants' Exhibit 71. And I think we
19 have copies for the reporter.

20 JUDGE BECHHOEFER: Everybody else has copies,
21 all the parties, at least, have copies.

22 MR. GUTTERMAN: We just have distributed copies
23 to the other parties, Mr. Chairman.

24 JUDGE BECHHOEFER: Okay, fine.

25 JUDGE BECHHOEFER: Does anyone have any

1 objection to this exhibit, under the nomenclature of
2 Applicants' 71, does anybody have any objection to this
3 going into the record?

4 MR. SINKIN: No, Mr. Chairman.

5 MR. PIRFO: The staff has no objection.

6 MR. GUTTERMAN: No objection.

7 JUDGE BECHHOEFER: Okay, this document will be
8 admitted into evidence as Applicants' 71.

9 (Applicants' Exhibit 71
10 received in evidence.)

11 Q (By Judge Bechhoefer) Dr. Sumpter, going back
12 to your discussion with Dr. Lamb about the documentation
13 which the review of the Quadrex report received as
14 distinguished from IDC documentation, do you -- are you
15 familiar with answer 47 of Mr. Goldberg's testimony, or
16 could you look at it?

17 A I'll look at it.

18 Q The first sentence of that answer 47, Mr.
19 Goldberg like yourself, testified that the Brown & Root
20 responses to each finding were one of the basis but that
21 other information went into determining whether it was or
22 was not reportable. And this coincides with what you
23 said.

24 Do you think it would have been better for some
25 formal documentation system to have existed or been used

1 with respect to the Quadrex report findings?

2 A Better than what?

3 Q Well, better than what was actually used,
4 something more comparable to what the IRC would have
5 done; something which would have captured the additional
6 thoughts that the committee, the committee of you three,
7 added to the process?

8 A If Brown & Root had a reason -- like for
9 instance, it's not a deficiency, then you really don't
10 even apply any other tests. And if we agreed with that
11 reason, I guess we felt that record would stand.

12 Q Right. Now I'm thinking of the things where
13 you had either some other reason or some different reason
14 for not reporting it.

15 A As best I can recall, we agreed with at least
16 the reason Brown & Root gave, you know, in most cases,
17 except for the the ones that we reported, that they felt
18 shouldn't have been reported. You know, I guess you
19 could say it would be nice if we had had a detailed
20 record of everything, of all the major things we did that
21 day if there was a lot of additional information
22 supplied. I guess we didn't feel it was necessary.
23 That's about the best I can do on that.

24 Q Did your committee ever consider whether you
25 might send, after you made your determinations, whether

1 you might send the report to the IRC for its review, at
2 least of the items that you determined were not
3 reportable?

4 A Our committee did not. The IRC, since Mr.
5 Powell came to the meeting, was aware of the report. And
6 on their own, undertook a review on the items we did
7 report.

8 Q Right. I'm aware of that. That was in Mr.
9 Goldberg's testimony.

10 A But we did not discuss that among ourselves of
11 directing the IRC to do anything.

12 Q Did Mr. Powell, to your knowledge, suggest that
13 the IRC might do a review at least for purposes of
14 documentation?

15 A Not that I can recall. I don't think he did.
16 At least in a conversations where I was present.

17 Q Did your committee discuss documentation of
18 non-reported -- matters you determined to be
19 non-reportable?

20 A You mean in the context should we create
21 additional documentation other than what he already had?

22 Q Yes.

23 A No, we did not discuss that.

24 (No Hiatus.)

25

1 JUDGE BECHHOEFER: I believe that's all I
2 have.

3 Do the Applicants have redirect? And, if so,
4 would you like to do it after lunch?

5 MR. GUTTERMAN: I'm not sure whether I would
6 or not, Mr. Chairman. I would like to do it after
7 lunch.

8 JUDGE BECHHOEFER: Okay, why don't we break
9 for lunch -- off the record.

10 (Discussion off the record.)

11 JUDGE BECHHOEFER: Okay. Let's aim to see if
12 we can get back by 1:00, but it may fall a few minutes
13 late.

14 (Luncheon recess taken.)

15 JUDGE BECHHOEFER: Back on the record.

16 Mr. Gutterman, do you have redirect?

17 MR. GUTTERMAN: No, Mr. Chairman.

18 JUDGE BECHHOEFER: Recross, Mr. Sinkin?

19 MR. SINKIN: Yes, Mr. Chairman.

20

21 RECROSS EXAMINATION

22 BY MR. SINKIN:

23 Q Dr. Sumpter, you discussed with Mr. Pirfo the
24 Quadrex finding regarding no well thought out and
25 consistent basis for design. Do you remember reviewing

1 that? It's on page 3-8 of the Quadrex report.

2 And you discussed with him this concept of
3 engineering judgment that Quadrex refers to at the last
4 line on page 3-8, which says that the rationale for the
5 engineering judgment has not been documented in a
6 retrievable manner.

7 What I wanted to do was clarify the word
8 rationale. You talked about assumptions that an
9 engineer makes while doing a calculation in the same
10 context and maybe somebody later wants to or thinks he
11 might disagree with the assumption.

12 Is the assumption the engineer makes the
13 rationale or is it the basis for selecting that
14 particular assumption that is the rationale that is not
15 documented?

16 A The basis for selecting the assumption, the
17 rationale is engineering judgment. The rationale used
18 in -- or the reason -- let me use a different word so we
19 don't get it confused with the rationale word used in
20 the Quadrex report.

21 The calculation procedure requires that you
22 identify --

23 Q Excuse me. I didn't hear that word.

24 A The calculational --

25 Q Calculational, okay.

1 A -- procedure requires you identify your
2 assumptions and the basis for that assumption. Now,
3 your basis may be engineering judgment. The rationale
4 that Quadrex was referring to is what went on in the
5 engineer's mind that led him to select this number. In
6 other words, how did he come up with this judgment. In
7 other words, he looked at -- whatever reason he had, he
8 may say, well, for my twenty years experience, this is a
9 good number to use. You know, whatever the reasons were
10 in his judgment resulted in this assumption. That's the
11 rationale that I believe Quadrex means in this context.

12 Q Okay.

13 In response to a question from Judge Lamb, you
14 discussed the fact that the IRC did look at the three
15 findings that your review team, the three-person review
16 team determined should be notified to the NRC; is that
17 correct?

18 A That's my understanding, yes.

19 Q Are you aware of whether the IRC looked at
20 more than those three items in the Quadrex report after
21 May the 8th?

22 A I do not know -- I am not aware that they did,
23 to the best of my knowledge, look at any others other
24 than those three. They may have. I don't have any
25 personal knowledge of that.

1 Q In talking about the item found in the midst
2 of the Quadrex report, the error in the code, you said
3 in response to a question I think from Judge Bechhoefer,
4 I could be wrong, that after Quadrex you became aware
5 that the IRC looked at that particular item. Can you
6 tell me when you became aware that the IRC looked at the
7 code error item?

8 A One second.

9 The date on the memo from Mr. Powell to Mr.
10 Jacobi indicated the IRC had met is dated April 27th. I
11 did not receive a copy of that memo, so I really can't
12 tell you when I became aware of that. I know that while
13 the Quadrex review was going on all the way up till May
14 7th, I had very little time to go back to my office and
15 check incoming mail and that sort of thing. So, I
16 really just can't recall when I became aware of that at
17 all.

18 Q You would not have received that memo
19 according to the memo; is that correct?

20 A That's correct. So, I would have heard about
21 it probably from one of my staff or somebody on the
22 project.

23 Q So, before I showed you the IRC report itself
24 yesterday, you had been aware that the IRC had, in fact,
25 conducted a review of that item?

1 A Yeah, I vaguely remember having gone through
2 both these memos at some time, but I can't recall when.

3 Q In response to questions from Judge Lamb as to
4 the turning over of the whole report, you were giving
5 various criteria of why you might have turned over the
6 whole report.

7 Would the number of potentially reportable
8 deficiencies in a single report in and of itself be a
9 reason to turn over the report or not turn over the
10 report?

11 MR. GUTTERMAN: I think that's asked and
12 answered, Mr. Chairman. I'll object to it.

13 MR. SINKIN: Well, I think the answer went on
14 to include other factors. He'd answered, for example,
15 he would consider the number of reportable items -- oh,
16 I think you're absolutely right. And even if he could
17 not determine a common cause, he would turn it over.

18 Q (By Mr. Sinkin) So, you would consider the
19 number of reportable items as one criteria?

20 A That would be a consideration. That doesn't
21 necessarily mean I would or would not turn over the
22 report. It depends on the character of those items.

23 Q Right. Have you ever seen a single report at
24 HL&P or Brown & Root during your term at this project
25 that contained as many as three potentially reportable

1 items in it?

2 A I guess that's very difficult for me to answer
3 because there have been many reports on the project ever
4 since 1973 and I have a hard time off the top of my head
5 recalling what those were.

6 Let me answer it this way. We had never done
7 a study of engineering of the magnitude relative to
8 depth and width or broadness that Quadrex did. But as
9 far as other reports, I just can't answer it off the top
10 of my head. I'd really have to go back and --

11 Q Do you remember HL&P making three potentially
12 reportable findings to the NRC in one day?

13 A Up through --

14 Q Through May 8th, 1981.

15 A Well, let me answer it this way. Up through
16 1978 when really the responsibility for evaluation of
17 reportable deficiencies and notification to the NRC
18 shifted from my direct responsibility to the project, to
19 the best of my recollection, I can't recall that at
20 least up to '78. I don't think I could give a
21 definitive answer after '78 because I wasn't in close
22 contact with, you know, day to day project business.

23 Q And if you would refresh my memory, in '78 the
24 responsibility shifted to whom?

25 A In '78 we went into a matrix organization.

1 Q And who had the responsibility?

2 A And responsibility for evaluation of
3 reportable deficiencies and reporting those to the NRC
4 went to people on the project, Mr. Barker, Mr. Powell,
5 those folks. I was not in the normal loop of review for
6 those types of decisions.

7 Let me also clarify that.

8 Q Yes.

9 A Up to the period of '78, I only had
10 responsibility for design deficiencies. So, there are
11 things that occurred at the site I'm not in a position
12 to comment on relative to whether they had any three
13 that occurred in one day.

14 Q I understand.

15 You testified in response to a question from
16 Chairman Bechhoefer that on May the 7th you and Mr.
17 Robertson had a discussion regarding whether the whole
18 report should be turned over to the NRC. Do you
19 remember that?

20 A Yes.

21 Q Did you at any time between that discussion
22 and the notification to the NRC by Mr. Powell the night
23 of the 8th, in that time period, did you talk -- did you
24 tell Mr. Goldberg that you and Mr. Robertson had had
25 that discussion?

1 A Yes. I believe, as I mentioned earlier, on
2 the morning of May 8th, Mr. Robertson and I met with Mr.
3 Goldberg to inform him of what happened the previous
4 evening with Brown & Root. And though I'm not
5 absolutely sure, I know Mr. Robertson and I on the
6 morning of May 8th went back to that point and both of
7 us agreed at least on the face of what Brown & Root was
8 telling us there did not appear to be any major
9 breakdown in the design control process and therefore
10 the whole report would not be reported as indicating
11 that type of breakdown.

12 I believe that was in the presence of Mr.
13 Goldberg, though I'm not absolutely sure.

14 MR. SINKIN: I think that's all I have, Mr.
15 Chairman.

16 MR. PIRFO: The Staff has none.

17 MR. GUTTERMAN: Applicants have nothing
18 further.

19 JUDGE BECHHOEFER: Dr. Sumpter, I guess you're
20 excused.

21 THE WITNESS: Thank you.

22 JUDGE BECHHOEFER: Let's go off the record for
23 just a second.

24 (Discussion off the record.)

25 JUDGE BECHHOEFER: We're now going to hear

1 oral argument on the motions to quash particular
2 subpoenas with respect to the Applicants' witnesses or
3 the witnesses associated with the Applicants which CCANP
4 desires to call as witnesses, and thereafter I think
5 we'll do the same with the staff.

6 Let's start with the Applicants' witnesses.

7 We have the Applicants' motion to quash. We
8 also have CCANP's request for witnesses. I think CCANP
9 should lead off. And bearing in mind the claims of
10 cumulative testimony which the Applicants have
11 described, I think CCANP should attempt to respond to
12 the position of the Applicants as to each witness.

13 You may, as a course, set forth any general
14 position you have at the beginning and then we'll hear
15 the Applicants and the Staff if the Staff wishes to take
16 a position with the Applicants' witnesses,
17 Applicant-associated witnesses.

18 MR. AXELRAD: If I can beg your indulgence,
19 I've left some papers in the next room. If I could have
20 just a moment to go get them, please.

21 JUDGE BECHHOEFER: Fine. Off the record.

22 (Discussion off the record.)

23 JUDGE BECHHOEFER: Back on the record.

24 MR. SINKIN: Mr. Chairman, we are asking that
25 three witnesses be called. But before we get into

1 discussion of that, I need to have clear in my own mind
2 the state of the arguments we make here today in the
3 context of the sequestration order.

4 The sequestration order covered testimony
5 given in these proceedings, that individuals will not
6 discuss the testimony with them, they should not see the
7 transcripts, should avoid television and newspaper
8 accounts, not be briefed by lawyers or witnesses
9 regarding what the testimony has been. At the same
10 time, the lawyers for the Applicants are permitted to
11 talk to the witnesses.

12 I guess what I'm asking is what the status is
13 of anything I say today about evidence we might have,
14 questions we might intend to ask, any of that sort of
15 information, whether the Applicants' attorneys are free
16 to communicate that to the witness. I just need to
17 know. These are hostile witnesses, these are not
18 voluntary witnesses.

19 JUDGE BECHHOEFER: I would say the
20 sequestration order extends to what they will hear this
21 afternoon as well. But only for two witnesses, two
22 persons.

23 MR. SINKIN: The two sequestered witnesses.

24 MR. AXELRAD: Mr. Chairman, I'm not sure that
25 I understand what that statement means. Obviously we

1 have no intention of leaving this room if the witnesses
2 are to be subpoenaed and if they are sequestered and
3 telling them of any of the developments in this room or
4 what Mr. Sinkin alleges they're going to say or things
5 of that kind. But to the extent that Mr. Sinkin might
6 mention a document or something like that which is
7 something that those witnesses would normally review in
8 preparation for being called here, it seems to me
9 there's no reason why they shouldn't be able to do
10 that.

11 MR. REIS: Mr. Chairman, it might interfere
12 with the attorney/client relationship to do that in this
13 particular case. They are employees of the corporation
14 and as employees of the corporation they're entitled to
15 counsel from the corporation unless they are adverse to
16 the corporation in some way that has not been shown so
17 far. And I wouldn't think that they could tell them
18 anything that was testified to, but normal trial
19 preparation of any witness, I think they can give them
20 normal trial preparation.

21 Now, it's a thin line and a hard line, but I
22 would say that any normal trial preparation could go
23 forward.

24 MR. AXELRAD: In addition to which I'm not
25 sure I understand even what we're talking about. Mr.

1 Sinkin was required under the Board's order to identify
2 ahead of time what the basis was for his seeking to call
3 these witnesses and any information he had as to why he
4 would expect them to testify in that fashion.
5 Presumably he's already identified that. Those were the
6 matters which I'm sure the witnesses are already aware
7 of. They knew about that information before the hearing
8 even started.

9 If Mr. Sinkin has anything further to add at
10 this point, it would seem to me that that's completely
11 inappropriate and should not be permitted because he was
12 supposed to make that showing back on June 26th.

13 MR. SINKIN: No, I would disagree, Mr.
14 Chairman, in the sense that there are matters that have
15 come up during this hearing, the testimony of other
16 witnesses.

17 MR. AXELRAD: Okay, I'm not going to talk to
18 them about the testimony of other witnesses. We've
19 agreed to that. That was what the sequestration order
20 said.

21 MR. SINKIN: All I'm saying is if I specify
22 that I want to ask him about a certain matter and the
23 reason I want to ask him is a certain witness testified
24 a certain way, if they then go and say you are going to
25 be asked about this matter, we want to hear your answer,

1 if they get into that kind of dialogue, then the witness
2 is -- it almost defeats the purpose of sequestration to
3 some extent.

4 MR. AXELRAD: We understand our obligation not
5 to inform the witnesses of testimony that was presented
6 in this proceeding whether or not Mr. Sinkin separately
7 specifies it. We are not going to discuss the testimony
8 presented in this proceeding with the witnesses.

9 MR. SINKIN: I understand. I'm not even
10 alleging that you would.

11 I don't think you're quite understanding what
12 I'm saying. If I say witness A testified to X and I
13 intend to ask witness B about X, if witness B is put on
14 notice that witness B is going to be asked about X, he
15 can be put on notice he's going to be asked about X
16 without being told witness A testified about it or said
17 anything about it, I just want to know if that's
18 permissible. I'm not saying it is or isn't, I just want
19 to know before I present what I'm going to present.

20 JUDGE BECHHOEFER: I think we'll give our
21 response only by way of an example.

22 The Board had some questions about the
23 document that once was numbered -- the document which
24 was known as number 44, I think it was, which I believe
25 involved Mr. Poston. I don't think we can preclude Mr.

1 Poston from reviewing that document or any other that he
2 was involved in. I do think that he should not be
3 allowed to be briefed on even the general subject matter
4 of the questions I asked about that or the other parties
5 asked about that in the proceeding.

6 MR. AXELRAD: Well, we would not brief him
7 with respect to testimony that anybody else gave on that
8 subject, but we obviously would intend to -- document
9 number 44 was identified a long time ago. We would
10 fully expect that we would be able to discuss with Mr.
11 Poston prior to the time he appears at the hearing his
12 recollection of each of the items in document number
13 44. We'd ask him what do you recall about this, what do
14 you recall about that. That's normal trial
15 preparation.

16 We would never tell him what question anybody
17 asked, nor would we tell him what answer anybody else
18 gave. We want to make sure that he refreshes his
19 recollection as to what that document was about. That's
20 standard trial preparation.

21 JUDGE BECHHOEFER: Yes, that we are not trying
22 to preclude. But you wouldn't want to give him any
23 clues as to what about one item particularly he should
24 be particularly versed in.

25 MR. AXELRAD: No, we would just ask him

1 questions to refresh his recollection of those
2 particular documents.

3 JUDGE BECHHOEFER: That would be okay. That's
4 the only way we can draw the line.

5 MR. SINKIN: Okay. But you didn't -- in your
6 example you really don't address the question I raised.
7 I think the question of questions asked in the midst of
8 testimony was already covered by the sequestration
9 order. I'm talking about our conversation here today.

10 If I said I intend to take document 44 and ask
11 Mr. Poston about item 12 and I expect that he's going to
12 testify Z, then he could be put on notice of exactly
13 what I'm going to ask about, exactly what I expect him
14 to testify to on that particular item and the purpose of
15 sequestration might be defeated.

16 JUDGE BECHHOEFER: We would include you
17 couldn't tell, just for example, Mr. Poston about
18 specific questions that Mr. Sinkin says he's going to
19 put to him, but you could ask him to review the
20 particular document.

21 I would treat Mr. Sinkin's statements this
22 afternoon in the same context I'd treat testimony.

23 MR. AXELRAD: Well, I'm not sure I understand
24 that, Mr. Chairman. Mr. Sinkin's statements are not
25 testimony. I would not be telling Mr. Poston -- in this

1 hypothetical I would not be telling Mr. Poston that
2 somebody else said blankety-blank about item 12 or about
3 line 14. I would just be asking him what is it, you
4 know, what do you remember about line 14, what do you
5 remember about line 18.

6 JUDGE BECHHOEFER: As I said, the latter is
7 permissible. But to state that you are going to be
8 asked questions because Mr. Sinkin said so this
9 afternoon about line 14, that you should not tell him.
10 You should treat Mr. Sinkin's statements the same way
11 you would treat testimony.

12 MR. AXELRAD: Well, Mr. Chairman, let me put
13 it this way. I'm not sure until I know exactly what's
14 happening in his oral argument where that line is
15 possibly to be drawn. I understand what the Board is
16 saying. If there's some difficulty with it after we
17 finish the oral argument, after we decide whether or not
18 there are any witnesses to be called, then we will ask
19 the Board for further guidance. I'm not trying to
20 unduly delay the argument.

21 JUDGE BECHHOEFER: This discussion, of course,
22 only applies to two persons in any event.

23 MR. REIS: Mr. Chairman, I'm not an expert on
24 sequestration. First I will say that. But it is my
25 understanding it only applies to the testimony that goes

1 on in the proceeding and not to the oral arguments or
2 anything else.

3 MR. AXELRAD: As a matter of fact, I seem to
4 recall a case where there was an attempt to sequester a
5 witness before the oral argument and that was explicitly
6 denied, that there was no reason why the witness
7 couldn't hear oral argument. In essence, that's what
8 we're doing here.

9 I guess I really would reiterate my objection
10 to what the Board proposes.

11 The whole purpose is to avoid having, in Mr.
12 Sinkin's own terms, having one witness harmonize his
13 testimony with another witness'. Now, we would not do
14 anything that would tell one of these witnesses what
15 somebody else has said. But what kind of arguments
16 people have raised, I don't see how what Mr. Sinkin is
17 going to say today varies in quality or with substance
18 with what he's already said in his documents before.

19 He said he expected Mr. Robertson to testify
20 blankety-blank. I don't see why the fact he's decided
21 to give us some new things I don't think he's permitted
22 to say, but if he's going to say some new things, why
23 they should be in a different category than the things
24 he said on June 19 and June 26.

25 MR. SINKIN: Well, Mr. Chairman I think we're

1 pointing at precisely the problem I had and why I raised
2 the question. I considered that in the specification of
3 testimony I provided enough specification to meet the
4 guidelines of the Board. I did not go through every
5 question I intended to ask the witness or every document
6 I intended to introduce through the witness. One of the
7 reasons I did not go into even greater detail is that
8 this document would certainly not be under the
9 sequestration order. And if the witness were given this
10 document and it had all the details of what I was going
11 to ask the witness and what I expect him to answer and
12 what documents I was going to introduce, then we can
13 forget sequestration to a great extent. It wouldn't
14 have any meaning.

15 MR. AXELRAD: Mr. Chairman, what Mr. Sinkin
16 has just said is that he explicitly flouted this Board's
17 order which told him to provide the identification of
18 why he expects the witness to testify the way he was
19 stating. And it seems to me that he should not have the
20 opportunity to provide any such additional information
21 to the Board today. And if he cannot do that, then it
22 seems to me we're having a completely academic argument
23 because there is nothing else additional that would be
24 brought forth at this time.

25 MR. SINKIN: There was no effort to flout the

1 Board's order. There was an effort to provide the Board
2 with specific specification of the testimony to meet the
3 Board's need to understand whether these witnesses
4 should be called or not.

5 There was not -- the NRC Staff asked that I be
6 required to provide every question that I wanted to
7 ask. The Board didn't require that. So, there was a
8 range of things I could provide from one blanket
9 statement everything he knows to a detailed statement of
10 everything I intended to ask him and what I expected him
11 to answer on every question and every document I
12 intended to introduce. I put this somewhere in between
13 at a place where I thought gave the Board enough
14 specification that they could determine whether the
15 witness should be called.

16 MR. AXELRAD: I understand that's what Mr.
17 Sinkin did and that's exactly what his subpoena request
18 should be based on. He made his own judgment as to what
19 he was going to provide in response to the Board's
20 request. And if what he has provided is sufficient, in
21 which case the Board will keep the subpoena in effect;
22 and if what he provided was not sufficient, in which
23 case the subpoena should be quashed.

24 This is not a second chance at answering the
25 Board's order. Mr. Sinkin completely misunderstands

1 what the purpose of today's argument is. The purpose of
2 today's argument is to be based upon the materials he's
3 already provided.

4 MR. SINKIN: Or anything that could have come
5 up in the hearings, any questions I might now have
6 because of testimony I've already heard.

7 Mr. Chairman, I have one other response. The
8 criteria for a subpoena in 10CFR2.720 is to provide a
9 showing of general relevance of the testimony of
10 evidence sought. We did that with our first pleading
11 and the Board agreed with us on the subpoenas they
12 issued we had shown general relevance.

13 Then there was a special kind of requirement
14 that was made that isn't a normal -- normally what would
15 have happened. Then our job's over. They file a motion
16 to quash. We get a hearing on the motion to quash and
17 at that hearing on the motion to quash we present our
18 full-blown reasons --

19 JUDGE BECHHOEFER: That's what this is.

20 MR. SINKIN: And that's what this is. Now,
21 there was some intermediate step where you asked for
22 greater specificity than we had given on general
23 relevance and we did that.

24 MR. REIS: Mr. Chairman I just looked at the
25 rule on 615, Federal Rules of Evidence, exclusion of

1 witnesses. It says the court shall order witnesses
2 excluded so that they cannot hear the testimony of other
3 witnesses. And that's what it is.

4 MR. SINKIN: Of course, I think that same rule
5 provides that sequestration is a matter of right, but
6 the NRC doesn't apply that. So, they do modify the
7 Federal Rules.

8 MR. AXELRAD: Right. But even on the
9 circumstances it was granted as a matter of right, it
10 has a limited application.

11 Mr. Chairman, I'd like to add just one
12 additional thing. What Mr. Sinkin is asking for flirts
13 very close to the inability of a witness to avail
14 himself of the right to counsel. If the Board is
15 thinking in any way of granting anything of the type
16 that Mr. Sinkin requests, that is a very serious matter
17 and we're not sure under no circumstances we'll be able
18 to produce those witnesses and we might very well have
19 to ask for direct certification to the Appeal Board.

20 This is not a matter to be taken lightly.
21 Witnesses are going to be appearing before you and if
22 they are subpoenaed on important matters, they are
23 entitled to the proper preappearance advice of counsel
24 in preparation. And what Mr. Sinkin is asking for is
25 completely uncalled for. It's not consistent with

1 anything either in the Federal Rules of Evidence or
2 that's been discussed here before.

3 MR. REIS: Let me add to --

4 JUDGE BECHHOEFER: Mr. Axelrad, the Board's
5 thought is that the right of cross-examination where
6 matters of credibility are involved does not normally
7 involve the telegraphing of the cross-examiner's
8 questions early. We don't want to issue any sort of an
9 order which would undercut the effectiveness of
10 cross-examination which Mr. Sinkin would undertake as
11 applied to the particular witness. That is the problem
12 we see.

13 MR. REIS: That's Mr. Sinkin's problem and a
14 burden he has to bear.

15 I'd like the Board, though, to keep in -- in
16 other words, that's his problem. That's the problem of
17 every attorney or every representative in any trial. If
18 he goes out and he tells the newspaper, he makes a
19 statement anywhere other than where it is, that's his
20 burden. That's just the way it is. And there is no way
21 to protect him against that.

22 I want to point the Board to two things,
23 though. The Upjohn case in the Supreme Court which
24 extended the attorney/client relationship to other than
25 the management employees of the company, and the other

1 thing is the recent Appeal Board case, and I don't know
2 which way it cuts but I just want to call the Board's
3 attention to it, involving the order where the Licensing
4 Board I believe issued an order that the attorneys for
5 the intervenor could not talk to any of the employees of
6 the utility during the course of the hearings. That was
7 overturned in that case. And I don't know which way
8 that cuts here and I can't remember the name of the
9 case, but it's a recent case.

10 MR. SINKIN: I think that's a rather different
11 kind of situation.

12 MR. REIS: Yeah, but I just want to call the
13 Board's attention to --

14 JUDGE BECHHOEFER: I sort of recollect that
15 one. I can't tell you either what case it was, but I
16 have read it.

17 MR. SINKIN: That is not the situation we're
18 in, but the situation we're in is a situation where I am
19 calling a hostile witness and one of the key elements of
20 that is to test the credibility of the other witnesses,,
21 that was the whole purpose of sequestration.

22 I don't have an opportunity to in a sense
23 prepare these witnesses because I'm not their counsel.
24 That's why I raised the problem specifically.

25 And I understand Mr. Reis' position on the

1 Federal Rules saying that it only applies to testimony.
2 I know that it is not out of the question for the NRC to
3 apply the Federal Rules differently in their proceedings
4 than they're normally applied in other proceedings. If
5 the Board wants to expand that rule to cover other
6 matters, I think they may have the discretion to do that
7 within the Administrative Procedures Act.

8 I realize it's a difficult question. I don't
9 necessarily have the answer and that's why I raised it.
10 But I think perhaps I can resolve the problem, maybe I
11 can resolve the problem --

12 JUDGE BECHHOEFER: I was going to ask you,
13 could you structure your argument so that you don't have
14 to get into the specific questions? I'm not sure you
15 can.

16 MR. SINKIN: I will do my best to structure my
17 argument to where I won't have a problem. Now, if we
18 get to the point --

19 JUDGE BECHHOEFER: We also would like all the
20 parties to note that we are going to allow any matter
21 that appears during the course of testimony thus far to
22 form a basis perhaps for determining whether the
23 evidence either -- the testimony either is or is not
24 cumulative. We never meant to exclude that. And where
25 it has appeared that certain witnesses can't answer

1 questions or haven't been able to answer questions on
2 certain subjects, that clearly may be taken into
3 account -- we will take it into account as to whether
4 the testimony is or is not cumulative.

5 MR. SINKIN: Well, I'll go ahead and do my
6 argument and see if there arises a problem. I just
7 wanted to have the parties on notice that there might
8 be.

9 What I'd like to do is to give a general
10 overview of the three witnesses and why we are wanting
11 to call them, then focus on the first witness, Mr.
12 Robertson, and perhaps then we can discuss Mr. Robertson
13 and come back to the witnesses one at a time.

14 We are asking that Mr. Clint Robertson, Mr.
15 Michael E. Powell and Mr. Jesse Poston be called as
16 witnesses for the intervenors. We see these three
17 individuals as providing the complete picture to the
18 Board of what went on inside the Applicants'
19 organization in regard to whether the Quadrex report
20 should be turned over to the NRC or otherwise released
21 outside the confines of the partners.

22 And I would say that, if I can lay my hands on
23 it, we do consider that the partners in the project are
24 an integral part of the Applicants. Public Service
25 Company of Indiana, Incorporated (Marble Hill Nuclear

1 Generating Station, Units 1 and 2) ALAB-459, 7 NRC 179,
2 at pages 198 and 201, 198 through 201, states clearly
3 that the co-owners of a project are co-Applicants so
4 that Mr. Poston, the role of the management committee,
5 that's all part of the operation of the Applicants for
6 this operating license.

7 (No hiatus.)
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1 In the three individuals, what we do is you
2 start with Mr. Robertson, and you complete the picture of
3 the team of three that made the decisions on what would
4 or would not be notified To the Nuclear Regulatory
5 Commission.

6 There are various other interactions of Mr.
7 Robertson with the Quadrex process that I will touch on
8 specifically when discussing him. But a key element is
9 that he does complete the picture of who made the
10 decision how the decision was made, why the decision was
11 made.

12 And on that point, the Applicants have argued
13 in their motion to quash a generalized argument on
14 cumulative testimony.

15 And obviously we recognize that Mr. -- in
16 saying Mr. Poston, Mr. Robertson completes the team of
17 three, that that's the same general discussions that are
18 going on among the team of three. Now, some go on with --
19 all three, some go on with just two. Sometimes it's just
20 Mr. Sumpter and Mr. Robertson.

21 Obviously on the meeting on May the 8th, it's
22 all three of them in the same room. But we don't think
23 that the fact that that even exists, just that one event
24 is all three of them together, that that's cumulative, if
25 what you're testing is credibility.

1 You've had two witnesses testify where one
2 witness has had an opportunity to listen to the testimony
3 of another witness. Mr. Robertson is sequestered. He
4 doesn't know how Mr. Goldberg and Dr. Sumpter testified
5 about their joint meeting. Therefore, he provides us an
6 opportunity to test -- to test credibility that was not
7 available in our view when the two witnesses who were
8 going to testify could hear each other's testimony.

9 Then then we have Mr. Powell. Mr. Powell is
10 the chairman or was the chairman, at least, at the time
11 of the Quadrex report, of the incident review committee,
12 a committee specifically set up to make determinations on
13 whether potentially reportable deficiencies should be
14 sent to the Nuclear Regulatory Commission.

15 Mr. Powell has appeared in the testimony of
16 others but the internal operations of the incident review
17 committee are not available through any other witness
18 being called in this proceeding. And the specifics of
19 what they did or did not do in the time frame of the
20 Quadrex study, the Quadrex report, the notifications to
21 the NRC, is not available through the testimony of any
22 other witness.

23 You then have Mr. Poston.

24 JUDGE BECHHOEFER: Do you have any question
25 concerning Dr. Sumpter's testimony this morning on that --

1 some of that general topic?

2 MR. SINKIN: I prefer not to discuss that.

3 JUDGE BECHHOEFER: I see. Okay, continue.

4 MR. SINKIN: Mr. Poston is the chairman of the
5 management committee. The management committee has
6 certain responsibilities in this project that are
7 separate and apart from those of either Mr. Goldberg's
8 team of three or the Incident Review Committee.

9 As co-applicants, they have responsibilities to
10 see that the Nuclear Regulatory Commission is kept
11 informed of significant developments of this project,
12 they have a responsibility if they disagree with the
13 actions of an employee of the company to take action
14 themselves to see that the rules and regulations and case
15 law rules of the Nuclear Regulatory Commission are
16 enforced.

17 So we think that in these three witnesses, Mr.
18 Robertson, Mr. Powell and Mr. Poston, you complete the
19 picture of the entities and individuals who had
20 responsibility for the issues that are at the heart of
21 this proceeding, specifically the turning over of the
22 Quadrex report to the Nuclear Regulatory Commission,
23 making more than one finding report, turning it over to
24 the licensing board.

25 All of those items are available through these

1 witnesses in a way that they're not necessarily available
2 through any other witness that has been called in the
3 proceedings to date, or will be called, even.

4 Now, to turn our attention directly to Mr.
5 Robertson, we would intend to explore with Mr. Robertson
6 his involvement with the Quadrex study, the Quadrex
7 report, the Quadrex notification to the NRC, in such
8 areas -- by the way, maybe I'll bring this up now just as
9 a suggestion.

10 Should any of these witnesses be called, I
11 think it would be useful to all parties to have a
12 background and qualifications history, positions held at
13 HL&P kind of document rather than have me elicit that in
14 time consuming direct. And perhaps the Applicants can
15 provide it as they have for other witnesses; that's just
16 a suggestion.

17 We would intend to explore with Mr. Robertson --
18 his involvement in the Quadrex study, the Quadrex report
19 notification from the beginning when he first found out
20 about it; his participation in the various meetings where
21 Quadrex briefed HL&P; his participation in the meetings
22 on -- with Mr. Goldberg and Dr. Sumpter; the various
23 meetings at which he's involved; discussions with Mr.
24 Goldberg about reportability; and discussions with Mr.
25 Goldberg about the briefing of Don Sells, which Mr.

1 Robertson apparently has some knowledge about.

2 We would also explore with Mr. Robertson his
3 involvement or knowledge of the NRC investigation that
4 actually surfaced the Quadrex report.

5 Now, on Mr. Robertson, we know that during the
6 period from January 1, 1981 to October 1, 1981, Mr.
7 Robertson was manager nuclear licensing, HL&P. Nuclear
8 licensing is that portion of the HL&P operation that
9 clearly has the responsibility for reviewing the
10 Applicants' obligations to the NRC and assuring that
11 those obligations are met.

12 As manager of that department, Mr. Robertson,
13 in the period in question, would have had a special
14 responsibility to assure that any obligations to NRC were
15 met.

16 Now, until April of 1981, HL&P had no separate
17 Licensing Department. At that time, in April of 1981,
18 just prior to Quadrex delivering their final report,
19 licensing was split off from nuclear services. And
20 licensing, that was Dr. Sumpter's operation, if I
21 remember correctly, and Mr. Robertson was given a new
22 responsibility as head of this independent Licensing
23 Department at Houston Lighting & Power.

24 He was directly responsible for management of
25 the engineering group which in turn was responsible for

1 overall coordination of HL&P's activities in implementing
2 10 CFR 50.55(e).

3 There are some unique areas of knowledge that
4 apply to Mr. Robertson, apparently, from the testimony
5 given to date.

6 For example, Mr. Goldberg had never seen the
7 memorandum on the front of CCANP Exhibit 71, which is the
8 procedure that was in place at Houston Lighting & Power
9 during the Quadrex period, for deciding whether to report
10 potentially reportable findings to the NRC, that's the
11 PEP 11 document.

12 MR. AXELRAD: I'm sorry, Mr. Sinkin, can you
13 repeat who you said had never seen --

14 MR. SINKIN: Mr. Goldberg had never seen the
15 memorandum on the front which details procedural changes
16 in that -- well, changes in that procedure. And as a
17 memorandum from Mr. Barker to Mr. Robertson -- Mr. Barker
18 is not being called as a witness by any party. That's
19 one of the reasons I seek Mr. Robertson, to explore that
20 memorandum with him.

21 Mr. Goldberg, in fact, stated in his testimony,
22 that perhaps Mr. Robertson's memory would be better than
23 Mr. Goldberg's on that matter.

24 Mr. Goldberg was asked if he had had
25 discussions in the May, June, July 1981 period with Mr.

1 Jordan and Mr. Oprea, regarding whether the release of
2 the Quadrex report to the NRC or the ASLB would create a
3 problem because it would get to the public?

4 Mr. Goldberg said he had not had such a
5 discussion with Oprea and Jordan, but might have had such
6 a discussion with Mr. Robertson. And indeed, Mr.
7 Robertson's sworn statement given to the Nuclear
8 Regulatory Commission does reflect that such a discussion
9 was held.

10 Now, there's one point on Mr. Robertson that
11 simply stands as a conflict in the record which I would
12 hope to resolve through Mr. Robertson.

13 Mr. Goldberg testified that the afternoon of
14 May the 7th, after the Quadrex report was delivered to
15 HL&P and Brown & Root, that on that afternoon, he met
16 with Mr. Stanley and Dr. Sumpter. He said Mr. Robertson
17 was with the Brown & Root people at the time.

18 Now, later, I think his testimony was Mr.
19 Robertson was actually at the Brown & Root meeting. Now,
20 he may have meant that Mr. Robertson was over talking to
21 the Brown & Root people about what had gone on in the
22 morning while Mr. Goldberg was meeting with Dr. Sumpter
23 and Mr. Stanley.

24 Well, there we have at least one interaction
25 between HL&P and Brown & Root regarding the ultimate

1 decisions about the Quadrex reported that is not
2 available through any other witness since they were all
3 elsewhere.

4 I think those are the key points I would like
5 to make on Mr. Robertson. And I would stop there and
6 give the other parties a chance to respond to Mr.
7 Robertson, or the overall presentation.

8 JUDGE BECHHOEFER: In terms of order, shall we
9 ask for the staff first and with the Applicants finally
10 responding, or do you think we should go Applicants and
11 then the staff later?

12 MR. PIRFO: I would assume we are going next
13 since we are responding to written motion. With respect
14 to Mr. Robertson, the staff has no particular view as to
15 his being called. The case of Robertson is --

16 JUDGE BECHHOEFER: You're not taking a position
17 whether it would be cumulative or whether calling him to
18 be cumulative or not?

19 MR. PIRFO: Well, I'd later -- not with respect
20 to Mr. Robertson.

21 JUDGE BECHHOEFER: Okay, Mr. Axelrad?

22 First, does the staff have have any general
23 statements with regard to standards for quashing
24 subpoenas and that kind of thing that it wishes to make,
25 not as applied to staff witnesses now.

1 MR. PIRFO: Well, yes we do. I think clearly --

2 JUDGE BECHHOEFER: I guess this will probably
3 be the best time to do that.

4 MR. PIRFO: Well, I'll give you our general
5 response, it will take the matter of a few minutes. With
6 regard to Messrs. Robertson and Poston, we do not support
7 nor oppose the motion to quash the subpoenas.

8 With regard to Mr. Powell, however, we think
9 that the subpoena should be quashed because on its face,
10 there is nothing that Mr. Powell can add that is not
11 already in the record that's uncontraverted at this
12 point, or is of any relevance.

13 We see nothing in the face of the subpoena or
14 nothing of the proffer, to specification or
15 identification that was made by CCANP that would lead to
16 anything relevent in this proceeding.

17 JUDGE BECHHOEFER: We'll get to Powell later.
18 I meant is there anything in terms of general standards
19 you wanted to advise us of or --

20 MR. PIRFO: Basically --

21 JUDGE BECHHOEFER: Well, let must me ask you a
22 specific question.

23 MR. PIRFO: That might be helpful.

24 JUDGE BECHHOEFER: How different would you
25 judge testimony -- proposed testimony would have to be to

1 warrant saying it is or isn't cumulative.

2 MR. PIRFO: How different would it have to be?

3 JUDGE BECHHOEFER: Or can't you answer that in
4 the abstract.

5 MR. PIRFO: I'm afraid I can't answer in the
6 abstract. Mr. Reis feels he can answer in the abstract.

7 MR. REIS: Mr. Chairman, the first question on
8 cumulative testimony, and I haven't reserved the cases
9 the Applicants cite and they might be different. But the
10 first point on cumulative testimony is you usually look
11 to cumulative for witnesses from the same side.

12 Here we have Mr. Sinkin choosing witnesses that
13 he says might not be cumulative. It is only the
14 Applicant that says, "Well, they were at the meeting, too
15 and therefore their testimony would be cumulative."
16 Therefore, we don't have the usual cumulative situation
17 where the one side wants to call the 6th witness to
18 testify to the same transaction.

19 So I'm not sure, I haven't researched the
20 cases, we didn't look back at the cases, I'm not sure
21 exactly whether this is all cumulative and whether it
22 falls under that umbrella.

23 It may be that Applicant can educate us and
24 say, "Yes, these cases are ones where it was another side
25 trying to call the -- a witness to a transaction or a

1 participant to the same transaction that others had
2 testified to." So I don't know at this point.

3 JUDGE BECHHOEFER: Would you happen to know
4 whether the circumstance that testimony might be
5 cumulative is sufficient to quash a subpoena as
6 distinguished from the fact that given a certain
7 question, an objection as to being cumulative might be
8 upheld.

9 MR. REIS: Usually the situation, if the party
10 wishing to subpoena somebody to testify to the same facts
11 that he's subpoenaed or produced other people to testify,
12 that would all be on the same side. And the problem we
13 have here is it's on the other side. So I'm not sure
14 what the cumulative cases add in this situation. And I
15 really don't know. We haven't looked at it, the staff
16 hasn't looked at it.

17 JUDGE BECHHOEFER: Unfortunately, the Board
18 hasn't either.

19 MR. PIRFO: I think just to -- I think
20 cumulative testimony is a little like pornography.
21 You'll know it when you see it. It's a little bit tough
22 to make that determination beforehand.

23 JUDGE BECHHOEFER: Right. So then really we
24 should wait until the questions are asked of the
25 particular witnesses.

1 MR. PIRFO: Except whereas we said in the case
2 of Mr. Powell, where on its face we see no possible way
3 of getting anything relevant out of the witness and I
4 will refer to our original position, with regard to Mr.
5 Powell.

6 We would support the motion to quash, as
7 Messrs. Roberston and Poston we really don't have any
8 particular view.

9 JUDGE BECHHOEFER: Mr. Axelrad.

10 MR. AXELRAD: Yes, Mr. Chairman.

11 JUDGE BECHHOEFER: I guess general position
12 plus Robertson at the moment.

13 MR. AXELRAD: Just to respond to that last
14 question that the Board raised of the staff. Section
15 2.757 specifically provides that to prevent unnecessary
16 delays or unnecessarily large record, the presiding
17 officer may: A, limit the number of witnesses
18 who's testimony may be cumulative.

19 So clearly the regulations contemplate that you
20 would limit -- you can, under the appropriate
21 circumstances, limit the number of witnesses. It's not
22 that you just let the witness come in and then see if
23 you're going -- if you're going to exclude any particular
24 line of questioning.

25 It's clear that the Board can limit the number

1 of witnesses and limit the witness that's provided to
2 provide cumulative testimony. And even though we have
3 not done thorough research with respect to the question
4 that was raised about it, Mr. Reis, as to whether that
5 principal of law has been applied in instances where
6 someone is trying to call a witness and it's held to be
7 cumulative to witnesses called by someone else, I know
8 that at least one of the cases cited on page two, the
9 Metal and Walker Drilling Company versus Phillips
10 Petroleum, that was a case where the plaintiff was
11 calling -- was offering to call -- it's not a subpoena
12 case, it was a witness case, where he was going to
13 provide testimony by expert witnesses who would as
14 described give the same kind of evidence that had already
15 been introduced by experts for the defendant.

16 And the Board excluded that testimony as being
17 cumulative. So there is at least one instance and maybe
18 others where a cumulative testimony is testimony which
19 somebody other than the person who introduced the
20 original testimony is going to provide.

21 JUDGE BECHHOEFER: Did that case involve a
22 matter of credibility or was it just exactly the same
23 material?

24 MR. AXELRAD: I really don't recall that in
25 particular. I would imagine that if it was the testimony

1 of expert witnesses that it might not be a matter of
2 credibility. I would like to get back to the basic
3 points that we are exploring here, however.

4 With respect to Mr. -- well, I think it's
5 better read than trying to discuss the general
6 principals, I can apply them just as well as we get to
7 individual witnesses.

8 With respect to Mr. Robertson, very clearly
9 there are two reasons that we have set forth why Mr.
10 Robertson should not be called. One is that his
11 testimony would be cumulative and duplicative. There
12 have been two witnesses who have provided to you
13 information with respect to what happened on May 8th. We
14 have felt that it was not necessary to have a third
15 witness testify to those same events.

16 We believe that the testimony that's been
17 provided by those two witnesses has been extensive,
18 they've been subject to as much cross-examination as
19 anyone wanted to provide. Mr. Goldberg in particular
20 spent many days on the witness stand testifying
21 particularly with respect to the events of May 8th.

22 Now, Mr. Sinkin says, "But I will have Mr.
23 Robertson testify. And presumably he will testify to
24 something different."

25 But the Board dealt with that type of question

1 very precisely in its order. It asked Mr. Sinkin to
2 identify why he thought that any witness he would call
3 would give the type of testimony that he is expecting to
4 get from him. And what Mr. Sinkin said is that Mr.
5 Robertson is expected to testify that during his
6 participation in the HL&P review of the Quadrex report,
7 Mr. Goldberg made it clear that even though he thought
8 there might be a need to report many of the findings in
9 the Quadrex report and even turn over the entire report
10 to the NRC, the goal of the review was to minimize the
11 number of reports to be made.

12 Mr. Sinkin has provided not the slightest
13 amount of support for making that statement. He simply
14 hopes that Mr. Robertson will so testify without any
15 basis for that hope. He has not provided any reference
16 to any statement or memorandum or any other document that
17 would lead to even an inference that Mr. Robertson would
18 so testify.

19 To the extent that there is any information
20 available, there is the fact that the NRC in report No.
21 82-02 took sworn statements from three witnesses, from
22 Mr. Goldberg, Dr. Sumpter and Mr. Robertson and there is
23 no discrepancy in those statements with respect to the
24 matters that Mr. Sinkin is alluding to; there is simply
25 no basis at all for Mr. Sinkin's hopes that Mr. Robertson

1 would contradict the testimony of other witnesses.

2 Now, he says that cumulativeness should not be a
3 test if you're testing for credibility. But there is no
4 credibility question here. He has not raised any
5 question with respect to the credibility of Mr. Goldberg
6 or Dr. Sumpter.

7 If there were any reason to believe that you
8 were not getting credible testimony, then perhaps
9 additional witnesses would be appropriate. But he has
10 yet to point to any question that would lead to that. He
11 has identified in his argument a number of things that he
12 wishes to examine Mr. Robertson on. I would urge this
13 Board to note that he is now planning to go beyond the
14 matters that he had identified in his specification.

15 The specification that he filed on June 26th
16 dealt solely with Mr. Robertson's recollection of the
17 events surrounding HL&P's decision to report only three
18 findings from the Quadrex report to the NRC May 8, 1981
19 and to see if their recollection of events coincides with
20 the testimony to be provided by Mr. Goldberg and Dr.
21 James R. Sumpter.

22 At the oral argument that was held on July
23 11th, last Thursday, at page 11461, I made very clear in
24 my understanding that the witnesses -- if they were to be
25 subpoenaed, would be called only on the matters that Mr.

1 Sinkin has previously identified.

2 As I said, he is limited his scope in the
3 developments that Mr. Sinkin has filed, he cannot enlarge
4 upon that scope. That would be the -- even if we loose
5 the motion to quash, they would testify only with respect
6 to those subjects, those subjects identified.

7 Judge Bechhoefer says, "Yes, there were two
8 different documents." That's the identification of
9 specification, but, yes, there was documents.

10 Mr. Sinkin has now enlarging beyond that. And
11 this is an improper time to either identify new witnesses
12 to be subpoenaed or to increase upon the scope of what he
13 had previously indicated they were to be subpoenaed on.

14 Now, let me turn one by one to the items he
15 identified. He intends to explore in the first place,
16 Mr. Robertson's involvement with the Quadrex study, the
17 Quadrex report notification beginning, participation from
18 beginning, discussions re reportability, and re briefing
19 of Don Sells.

20 To the extent that that deviates from the
21 events on May 7th and May 8th, that is clearly beyond the
22 scope of what Mr. Sells identified in his specification
23 of issues -- Mr. Sinkin identified in his specification
24 of issues.

25 Secondly, he is going to question him

1 concerning his involvement or knowledge of the NRC
2 investigation. That is wholly beyond and outside the
3 scope of why what he identified in his specification of
4 issues. He then wants to discuss the -- as best could I
5 gather from my notes -- his responsibilities since the
6 time he became licensing manager and his responsibilities
7 as manager for the engineering group and and his
8 responsibilities for implementing 50.55(e).

9 To the extent he would plan to examine Mr.
10 Robertson on any of those matters, those are well beyond
11 what he identified in his specification of issues.

12 He then indicates one area where Mr. Goldberg
13 had said he had never seen the memorandum in front of the
14 procedure -- to 50.55(e) procedures that identifies the
15 deviation and that he has said that Mr. Robertson's
16 memory may well be better.

17 That may be what Mr. Goldberg said but it is
18 very clear to me that Mr. Goldberg identified the types
19 of changes from the procedure which he knew were in
20 effect at that time, such as who was -- whether Region IV
21 was notified as opposed to just the resident inspectors,
22 of 50.55(e)'s., but in any event that has nothing to do
23 with the matters that Mr. Sinkin previously indicated in
24 his specification of issue he would be examined on, Mr.
25 Robertson would be examined on, and certainly the

1 relevance consideration as to whether Mr. Goldberg has
2 seen or not seen a particular memorandum with respect to
3 the procedures is no basis for calling Mr. Robertson.

4 JUDGE BECHHOEFER: Isn't the awareness of
5 Houston Lighting & Power officials who have
6 responsibility at the time of May 7, 8, 1981,
7 responsibility for reviewing the Quadrex report, the
8 responsibility for reviewing the Quadrex report, isn't
9 the awareness of those officials of procedures usually
10 reviewed -- usually used to review matters such as that?

11 And discrepancies, if any, from those
12 procedures which were actually followed with regard to
13 the Quadrex report; isn't that fairly relevant both to
14 this proceeding generally and to the specification that
15 Mr. Sinkin provided earlier?

16 MR. AXELRAD: Those are two different
17 questions.

18 JUDGE BECHHOEFER: I realize that.

19 MR. AXELRAD: Certainly, knowledge of
20 procedures would be relevant. I think that the extent to
21 which the vice-president of nuclear engineering and
22 construction is specifically aware of every document and
23 every procedure as opposed to being generally familiar
24 with the procedures that are implemented and the general
25 objective of the procedures and the general need to

1 satisfy NRC requirements, certainly those are relevant
2 matters.

3 And Mr. Goldberg was cross-examined at length
4 on that subject and his cross-examination is the best
5 evidence of Mr. Goldberg knows or doesn't know on that
6 subject.

7 Now, whether any infirmity, again if the Board
8 perceives it that way, any infirmity that Mr. Goldberg
9 may have had in his knowledge of those procedures,
10 whether that has -- provides any basis for having Mr.
11 Robertson testify, that I don't -- I don't perceive that
12 connection at all.

13 So certainly Mr. Robertson should not be called
14 because of that reason. And as to what Mr. Robertson's
15 knowledge is of the procedures back in 1981, that is not
16 a reason for subpoenaing him as a witness.

17 If he, in fact, appears as a witness for some
18 other reason, if Mr. Sinkin, putting that matter aside,
19 has an appropriate basis for calling him that's
20 consistent with the specification of issues that he
21 provided to this Board, specification of testimony,
22 provided to this Board, then he might be questioned on
23 his knowledge of that procedure at that time.

24 But that's a completely different question than
25 whether that should provide a basis for calling him.

1 Have I answered the Chairman's question?

2 JUDGE BECHHOEFER: Not completely, because his
3 knowledge of procedures would seem to be comprehended by
4 the description that Mr. Sinkin already provided. His
5 participation in the review certainly includes his
6 participation with certain knowledge of how reviews are
7 conducted. I can't see why they're different.

8 MR. AXELRAD: Mr. Chairman, I understand. I'm
9 not suggesting that as to his knowledge of the procedures
10 on May of 1981 if he is called that he cannot be
11 questioned on that. What I am disputing at this point is
12 what I understood to be the thrust of what Mr. Sinkin was
13 arguing, is that because he, Mr. Robertson, has a unique
14 area of knowledge as to the procedures, that is a basis
15 for calling him.

16 And what I'm saying is that is not the basis
17 that he sets forth in his specification of issues. He
18 didn't say we should -- I want to call Mr. Robertson
19 because I want him to testify with respect to the
20 procedures and that is a unique knowledge that he has to
21 provide that is not being provided by any other witness.

22 JUDGE BECHHOEFER: Well, isn't that just sort
23 of naturally comprehended within the terms quote "events
24 surrounding HL&P's decision to report only three
25 findings" end quote?

1 MR. AXELRAD: No, I don't believe so. He is
2 calling Mr. Robertson to test his recollection of the
3 events surrounding HL&P's decision, and to see if their
4 recollection of the events coincides with the testimony
5 provided by Mr. Goldberg.

6 It's a far stretch from those statements to say
7 that he was calling Mr. Robertson to test his knowledge
8 of the procedures and to see if that knowledge of the
9 procedures coincides with Mr. Goldberg's knowledge of the
10 procedures. I don't believe that at all.

11 You'll have your turn, Mr. Sinkin.

12 JUDGE BECHHOEFER: I was going to say, why
13 don't you proceed with proceed with your statement,
14 because of sort of interrupted you 6789.

15 MR. AXELRAD: Let me make sure that the Board
16 understands, I am going through these items because I'm
17 trying to explain that they are not appropriate bases for
18 not quashing the subpoena.

19 Mr. Sinkin is arguing that those are basis for
20 not quashing the subpoenas. These are the reasons why
21 this particular witness should testify. and I am
22 explaining, trying to explain to you, why these
23 statements do not provide that type of basis in light of
24 the duplicative and cumulative test and in light of the
25 narrow specification of issues which he had previously

1 provided.

2 Next item, if I understood Mr. correctly, was
3 whether -- Mr. Goldberg was asked if he had discussions
4 in 1981 with Mr. Jordan or Oprea; he did not, but said he
5 may have had such a discussion with Mr. Robertson. And
6 Mr. Robertson's sworn statement so said.

7 Now, again, the events around May 8th do not
8 include the discussions which Mr. Goldberg did or did not
9 have with Mr. Jordan or Mr. Oprea. And if Mr. Sinkin had
10 intended to include within that the discussions with
11 respect to Mr. Robertson as he has himself indicated, he
12 knew that all along from the sworn statement that Mr.
13 Robertson had provided in 82-02 and that would have been
14 or should have been included in his specification of
15 issues.

16 Finally, Mr. Sinkin points to an alleged
17 conflict in the record. As I understand it, Mr. Sinkin
18 recollects that Mr. Goldberg said that in the afternoon
19 of May 7th, he met with Mr. Stanley and Dr. Sumpter and
20 that at that time, Robertson was with Brown & Root and
21 for the life of me, I'm not sure I understand what the
22 discrepancy might or might not be.

23 But whether or not Mr. Robertson was with Brown
24 & Root in the afternoon of May 7th, Mr. Goldberg has
25 himself, in the course of his testimony, further

1 explained that he wasn't sure whether that meeting with
2 Mr. Robertson -- with Mr. Stanley and Dr. Sumpter took
3 place in the afternnon or shortly after the morning
4 meeting at Brown & Root.

5 The discrepancy, if any, that exists in that is
6 surely with respect to in a relevent matter and provides
7 no basis at all for calling Mr. Robertson.

8 MR. REIS: Mr. Chairman, in view of the hour --
9 I thought Mr. Axelrad was through.

10 MR. AXELRAD: I just have one --

11 MR. REIS: I'm sorry.

12 JUDGE BECHHOEFER: I did have a question to ask
13 you, also. In making your comments, did you, or could
14 you elaborate, whether the statement that Mr. Robertson
15 should testify quote "regarding his role in the decision
16 making process regarding which items in the Quadrex
17 report would be notified to the Nuclear Regulatory
18 Comission staff, and whether the Quadrex report has as a
19 whole would be turned over to the ASLB, that statement
20 there has no confining dates. Do you think, or not think
21 that that statement wouldn't be clearly covered some of
22 the additional items Mr. Sinkin mentioned, even if they
23 would not be included on the May 7th and 8th discussions?

24 MR. AXELRAD: I'm sorry, where were you reading
25 from, Mr. Chairman?

1 JUDGE BECHHOEFER: I'm reading from.

2 MR. SINKIN: It's the identification of
3 witnesses.

4 JUDGE BECHHOEFER: CCANP identification of
5 witnesses provided to the Board and parties by letter
6 dated June 13, 1985.

7 MR. AXELRAD: Mr. Chairman, I regard the
8 operative document as being the specification of
9 testimony sought from CCANP witnesses which was filed by
10 CCANP on June 26, 1985, were the Board specifically asked
11 Mr. Sinkin to identify exactly the testimony he was
12 seeking and the why he thought the witnesses would
13 testify to that extent.

14 JUDGE BECHHOEFER: Right. You quoted me to the
15 effect that both documents would be taken into account.
16 That's what I meant. That's one of the two, that's the
17 first of the two.

18 MR. AXELRAD: Okay. But taking into account in
19 the sense that the second one was narrowing the first
20 one, the a second one had -- it's not everything in the
21 first plus everything in the second. That's my position,
22 Mr. Chairman.

23 JUDGE BECHHOEFER: Okay.

24 MR. AXELRAD: He has not provided anything in
25 the second document which provides any justification for

1 anything that's in the first document that's beyond what
2 was in the second document. He really has not provided
3 any justification for what's in the second document, let
4 alone for what's in the first.

5 I would like to just briefly summarize my
6 position with with respect to Mr. Robertson, you have had
7 two people active with respect to what happened on May
8 7th and May 8th.

9 Mr. Sinkin wants to produce a third one without
10 giving you any reason to believe that you're going to
11 hear from the third one anything different than you've
12 heard from the first two and his argument was if there
13 were six then so we might as well as hear the third.

14 I assume if there was six, we'd hear from six.
15 Obviously there is a record to be protected here, there
16 is a matter of how protracted you want the hearings to
17 be; how many times you feel you need to hear the same
18 kind of evidence from additional people; it's obviously a
19 judgmental call; we sincerely believe that you need to
20 hear it only from two.

21 It's obviously going to be your decision
22 whether you want to hear if from three without any
23 indication from Mr. Sinkin as to why credibility is in
24 fact an issue or why he would expect that the third
25 witness would testify any differently than the first two.

1 JUDGE BECHHOEFER: Mr. Reis.

2 MR. REIS: I wanted to say in view of the hour
3 and the staff has an argument, too, on its witnesses, I
4 don't think there should be second rounds on these
5 things. And I want to make -- I want to make a very -- I
6 think that we could be here, we'll be here tomorrow
7 morning if there is going to be continued argument. I
8 think the Board has to say one round and that's it on
9 each witness.

10 MR. SINKIN: Then I think as the -- As the
11 proponents, we get to go last?

12 MR. REIS: Well, I mean everyone.

13 MR. SINKIN: There's another problem with what
14 you've raised, Mr. Reis, and that there are other items
15 that I wanted to bring up that are in the testimony today
16 which I have been reviewing.

17 MR. REIS: He had his opportunity.

18 JUDGE BECHHOEFER: Mr. Sinkin, we don't think
19 you should have anything more to say on this because
20 we've decided not to quash the subpoena for Mr.
21 Robertson. So I assume you don't have to say anything
22 more about that.

23 MR. SINKIN: That simplifies that.

24 MR. AXELRAD: Mr. Chairman, I would like to
25 have one clarification, though. The testimony of the

1 subpoenaed witness is going to be limited to the matters
2 covered by the specification of testimony that was filed
3 on June 26th. It was very clear in all our minds, I
4 believe at the time, that we were providing our
5 testimony, we meaning the Applicants and the NRC staff,
6 were providing their testimony, prefiling it that day,
7 and in essence what Mr. Sinkin has to do on that day, on
8 June 26 in his specific indication of testimony, was to
9 essence identify the case he was expectation to draw out of
10 these people.

11 I think it's going to be incredibly unfair if
12 we're now going to permit Mr. Sinkin to broaden what he
13 can examination subpoenaed witness on because he didn't
14 prefile testimony. So I hope the Board will reaffirm its
15 ruling that the limitation of testimony will be to what
16 is specified in that document.

17 Now, we may have arguments as to what that
18 document includes or does not include.

19 (No Hiatus.)
20
21
22
23
24
25

1 MR. SINKIN: I think we'd better do that up
2 front rather than wait till the witness is here and
3 wrangle. The --

4 MR. REIS: Wait a second.

5 MR. SINKIN: The specification of testimony
6 for Mr. Robertson addresses to test his recollections of
7 the events surrounding HL&P's decision to report only
8 three findings of the Quadrex report to the NRC. Well,
9 the events surrounding that are Robertson's involvement
10 in a process by which decisions were made whether to
11 report findings to the NRC. The process began when he
12 first learned about the Quadrex study. It continued
13 through the meetings, since one of the issues in this
14 proceeding is the drafts of the Quadrex report and
15 whether they should have been sent to the NRC, and it
16 continues through his discussions with Mr. Goldberg
17 after the three reports had been made on whether further
18 reports should be made and that's where it concludes on
19 that aspect.

20 There is then an investigation by the NRC
21 seeking information and a question arises will HL&P give
22 the Quadrex report to the NRC investigators. Mr.
23 Robertson plays a role in that decision and that's his
24 final act as far as we know in the scenario of the
25 events surrounding HL&P's reporting of Quadrex report

1 findings to the NRC. That is the case we intend to ask
2 Mr. Robertson about.

3 We have given some specific examples and I
4 would be happy to provide the Applicants with other
5 specific examples of where testimony from this
6 proceeding has raised questions we intend to ask Mr.
7 Robertson. But I think they all fall -- well, I'll save
8 those,. We'll see. Maybe we'll argue as to those as to
9 whether they fall into this ambit.

10 But that's exactly what we want from Mr.
11 Robertson, his involvement in this entire episode.

12 MR. REIS: Mr. Chairman, I think the only
13 thing -- I agree with the Applicant that we all were
14 proceeding on a supposition that the specifications,
15 however narrow or broad they may be, are the only thing
16 that these witnesses, whether they be staff witnesses or
17 Applicant witnesses, can be questioned about. But I
18 don't think we can deal with this in the abstract by an
19 argument now. We have to wait for the questions. And I
20 would suggest we wait for the questions.

21 The only thing I would say to the Board is,
22 yes, the test of whether they will testify, reaffirm the
23 test as to whether they will testify as to the last
24 matters that CCANP said he would seek to have them
25 testify about. In other words, the filings of the 26th

1 of June.

2 MR. SINKIN: I would urge the Board to resolve
3 this issue now or we're going to spend the entire
4 hearing wrangling over every question.

5 MR. REIS: It can't be resolved.

6 MR. SINKIN: The phrase is to test his
7 recollection of events surrounding HL&P's decision to
8 report only three findings on May 8th. I have defined
9 what I see as those events that Mr. Robertson was
10 involved in. I would urge the Board to say that they
11 see that as the purpose for which he's being called to .
12 testify as to those events, from the time he got .
13 involved to the time the NRC investigators came and
14 asked to see various documents.

15 MR. AXELRAD: Mr. Chairman, the Board will be
16 able to make that decision and any other decision in
17 light of any testimony sought by Mr. Sinkin at that
18 time. I don't believe that we can possibly spend the
19 rest of the afternoon and get to the NRC staff witnesses
20 if we're going to be arguing matters of interpretation.
21 We can interpret it at that time. All I want to do is
22 make sure I did understand the Board that the June 26
23 document was the operative document.

24 JUDGE BECHHOEFER: I think the Board wants to
25 make clear that it's the two documents. I think that's

1 what we said at the prehearing conference. We did not
2 necessarily mean that the later specification would
3 supersede the other. It would give some specific
4 examples which was to help us with decisions of this
5 sort. If the two documents put together -- and I
6 thought we said that at the prehearing conference, in
7 fact, you quoted me.

8 MR. SINKIN: That is exactly what the purpose
9 of the document, the second document was, was to give
10 you additional information so you could decide whether
11 to quash these subpoenas.

12 JUDGE BECHHOEFER: Right. We have always had
13 in mind and we've always looked at both documents to
14 determine the scope of what you hope to obtain from your
15 witnesses. So, we --

16 MR. SINKIN: It would seem to me, Mr.
17 Chairman, that on each of these arguments, in document
18 one I provided a sufficient ground for the subpoena to
19 be issued. It was issued. Document two I provided a
20 greater specification to help the Board decide whether
21 it should be quashed. So, in any argument they both
22 have to be together.

23 MR. REIS: Mr. Chairman, the Board has ruled
24 in Mr. Sinkin's favor. I don't know why he's still
25 arguing.

1 JUDGE BECHHOEFER: We've ruled in your favor.
2 Don't shoot yourself in the foot. You've won already.

3 MR. SINKIN: I'll try not to.

4 Should I move on to Mr. Powell now?

5 JUDGE BECHHOEFER: Yes.

6 MR. SINKIN: On Mr. Powell, as I stated
7 earlier, in the period from January 1, 1981 to October
8 1, 1981, Mr. Powell was team leader of nuclear licensing
9 for HL&P and that that is a key component of the HL&P
10 operation that interfaces with the NRC and makes sure
11 that the Applicants are complying with the requirements
12 of the NRC in their activities.

13 Mr. Powell as chairman of the Incident Review
14 Committee got involved in the Quadrex report it turns
15 out now on two occasions. One was the earlier error in
16 the code problem that the Incident Review Committee took
17 up and decided was not reportable and the other is the
18 later review of the three findings.

19 Actually he meets with Mr. -- he meets with
20 the team of three reviewers on May the 8th for a brief
21 period of time, gets some information from them about
22 Quadrex, about the three findings and then later
23 convenes various Incident Review Committee meetings to
24 review those findings.

25 One of the things that we note in Mr.

1 Goldberg's testimony, Mr. Goldberg did not remember if
2 the IRC reviewed three potentially reportable findings
3 identified on May the 8th. And it was the Chairman's
4 question, I believe, to Dr. Sumpter, I can't find
5 exactly who asked it, about whether Mr. Powell suggested
6 the IRC actually review the Quadrex report for purposes
7 at least of documenting the decisions made by the team
8 of three. And Dr. Sumpter's answer was that he could
9 not recall while he was present whether that request had
10 been made. We would see that as an inquiry that would
11 be very interesting for Mr. Powell to provide us
12 information about. Relevant material, admissible and
13 interesting.

14 Furthermore, there is at least tangential
15 evidence available that the Incident Review Committee,
16 when they reviewed the three potentially reportable
17 findings, in fact, reviewed more than the three. And it
18 raises questions about the Incident Review Committee
19 made independent determinations on findings that, in
20 fact, were not among the three that were referred to
21 them and decided not to report those findings.

22 And again, the testimony -- as the testimony
23 of Dr. Sumpter I think now has made clear, that while we
24 may have expected Mr. Powell to testify that the IRC
25 procedures were not -- were not followed during the

1 Quadrex review, in fact, for a period of time they were
2 followed. At least in the code error event they did
3 follow the appropriate procedure, but that when the
4 Quadrex report was delivered, they no longer followed
5 that procedure. We would certainly want to explore that
6 with Mr. Powell.

7 JUDGE BECHHOEFER: Mr. Sinkin, don't we
8 already have two witnesses saying that at least the
9 formal IRC procedures were not followed with respect to
10 the --

11 MR. SINKIN: But I'm saying that in the period
12 prior to the delivery of the report they were followed
13 because they did review the error in the code event.

14 JUDGE BECHHOEFER: Right. Well, that is on
15 record as well.

16 MR. SINKIN: I understand. So that at some
17 point a decision was made that the procedure to refer
18 matters to the IRC would no longer be followed and we
19 would like to explore that point with Mr. Powell.

20 JUDGE BECHHOEFER: You may continue.

21 MR. SINKIN: Those are the major items besides
22 what's in our two pleadings that we bring to you today
23 as reasons Mr. Powell should be called.

24 I noted that Mr. Axelrad chose not to respond
25 to my general argument that may be an adversity to

1 generic findings. I consider the general argument very
2 relevant, that the purpose of the Board is to have a
3 complete record. And if they do not have in the record
4 of this hearing how the committee that was supposed to
5 deal with Quadrex findings as to whether they were
6 potentially reportable actually did deal with them from
7 the beginning through the end of the Quadrex event, then
8 they don't have a complete record. And that the
9 deliberations of the IRC are an integral part of a
10 complete record and that there is no witness being
11 called from the IRC. So, we called the chairman.

12 That concludes my remarks.

13 JUDGE BECHHOEFER: Does the Staff have
14 anything to add?

15 MR. PIRFO: Yes, Mr. Chairman. I think Mr.
16 Sinkin has made a better argument for not calling Mr.
17 Powell than I can possibly make. He's pointed out, as
18 the Board has pointed out to him, everything that he
19 wants to prove is already on record, it's
20 uncontroverted. There's nothing of relevance that the
21 IRC did at that point that is relevant to the issues in
22 this proceeding.

23 Mr. Sinkin keeps maintaining that he wants a
24 complete record. Well, a complete record does not mean
25 an encyclopedia of everything that HL&P did for the last

1 five years. There is simply no need for Mr. Powell.
2 What he -- his offer of proof, what he hopes to prove
3 from Mr. Powell is in the record, is uncontroverted. To
4 the extent it's material, it's already there.

5 Anything he's indicated he wants to -- he's
6 indicated it's interesting. Sure, it will be
7 fascinating for Mr. Sinkin to go down and talk about
8 these things, but they're not going to be probative of
9 anything that this Board has to decide.

10 JUDGE BECHHOEFER: Mr. Axelrad? Before you
11 start, I would like to ask you, are the Applicants going
12 to raise any objections to the weight of the testimony
13 we have already had concerning the procedures in the IRC
14 for documenting decisions not to report an item?

15 Now, both Mr. Goldberg and Dr. Sumpter
16 testified on that matter and I believe Mr. Wisenburg
17 will later testify, but he was not the person
18 responsible back in the May 1981 time frame. We
19 probably don't have the best evidence of what those
20 procedures were. Will the Applicants raise any
21 objection to the evidence that we do have on that
22 subject?

23 MR. AXELRAD: I'm not sure I understand --

24 JUDGE BECHHOEFER: For the reason it is not
25 best evidence.

1 We asked Dr. Sumpter whether one of the
2 particular documents which recorded an IRC determination
3 not to report was an example of how the IRC would deal
4 with such an item and he confirmed that it was. But Dr.
5 Sumpter was not directly responsible at that period of
6 time for that function.

7 Now, will the Applicants object to our using
8 the testimony already in the record or which could be
9 provided by Mr. Wisenburg perhaps as to what the
10 procedures were in May and June, '81, IRC procedures?

11 MR. AXELRAD: We may be talking about two
12 different things, Mr. Chairman, so I'd like to make sure
13 I understand. One is that my recollection is that the
14 procedures that were in effect at the time, that's with
15 the memorandum on top of Mr. Robertson and Mr. Barker or
16 vice versa, that is an exhibit before you and that is
17 obviously the procedures that applied at that time. So,
18 there's no question about that and I assume that the
19 Board is not referring to that particular document.

20 What I assume you're referring to is the
21 testimony with respect to how the IRC documented a
22 decision of non-reportability in one particular
23 instance, the testimony that Dr. Sumpter gave with
24 respect to those two memoranda.

25 JUDGE BECHHOEFER: That's correct. We would

1 like a record to show what the procedures in general
2 were for that type of thing back in 1981, May 1981.

3 MR. AXELRAD: Yes. Mr. Wisenburg, who will be
4 testifying with respect to the current procedures and
5 how they deviate from previous procedures, will have
6 sufficiently reviewed the records of the company and
7 he'll be able to testify on the basis of his review of
8 those records what the procedure was then, how it is
9 now. So, Mr. Wisenburg will be able to testify as to
10 that subject.

11 JUDGE BECHHOEFER: I know we asked Dr.
12 Sumpter. I'm not sure he's the person to provide the
13 best, quote, best evidence. He certainly was
14 knowledgeable.

15 MR. AXELRAD: You'll be able to get additional
16 information on that subject from Mr. Wisenburg.

17 JUDGE BECHHOEFER: Okay. Now you can --

18 MR. AXELRAD: I don't have much to add to what
19 the Staff said in response to Mr. Sinkin's argument.

20 I do think this is the classic case where a
21 record should not be burdened with additional
22 duplicative and cumulative testimony with respect to
23 uncontroverted matters.

24 On page 9 of our response we identify all of
25 the matters that we believe are in the record on that

1 subject and are presently uncontroverted. We would, in
2 fact, be willing to stipulate to those matters.

3 There is no reason at all for any of the items
4 that Mr. Sinkin has cited as to why additional testimony
5 is needed. Everything that he wants to prove is in the
6 record. The one instance when during the course of a
7 Quadrex review an item was identified with sufficient
8 specificity to be reviewed by the IRC, it was reviewed
9 by the IRC. That has nothing to do with the review that
10 was done of the Quadrex report.

11 And, in any event, the facts are clear, the
12 IRC was not used in the review of the Quadrex report.
13 That review was conducted by a three-member review
14 team. And the facts are clear that the chairman of the
15 IRC reported those three items to the NRC at whose
16 direction he reported them on.

17 And the record is also clear that those items
18 were subsequently, two of them were subsequently found
19 to be reportable and continued under the reportability
20 process and one of them was found to be not not
21 reportable and was withdrawn. And Mr. Sinkin had ample
22 opportunity to cross-examine anyone he wanted to on
23 those subjects and there's nothing in the record that's
24 in issue on those subjects.

25 MR. SINKIN: May I reply, Mr. Chairman,

1 briefly?

2 JUDGE BECHHOEFER: Yes.

3 MR. SINKIN: First of all, in the
4 specification -- the stipulation form of page 9, let's
5 say page 9 of the Applicants' pleading, there are two
6 items that are, in fact, in controversy which we now
7 know. Number two states the portions of the HL&P
8 procedures providing for the determination of
9 reportability of deficiencies by the IRC were not used
10 in the review of the Quadrex report.

11 Well, we know that at least in one instance
12 they were used. So, that is not an accurate statement
13 because the review was made of the computer error -- I
14 mean the code error.

15 Secondly, the item 6 says neither the IRC nor
16 its individual members reviewed the Quadrex report to
17 determine its reportability other than the three items
18 which were reported by the NRC -- to the NRC by Mr.
19 Powell on May 8th, 1981.

20 As I stated in my reasons for calling Mr.
21 Powell, there is tangential evidence that the IRC
22 reviewed findings other than those three findings and
23 that is one of the key things that we would like to ask
24 him about.

25 MR. AXELRAD: Mr. Chairman, if I could respond

1 very briefly. There are two statements that Mr. Sinkin
2 has made, one of which is false and the second of which
3 I do not understand.

4 The first item was that the code question was
5 an item in the Quadrex report that was reviewed by the
6 IRC. The testimony made very clear that that item, that
7 question came up before the Quadrex report was ever
8 issued. That item was not reviewed by the IRC as part
9 of the review of the Quadrex report. The facts are
10 quite clear that the Quadrex report and no portion of it
11 was reviewed by the IRC.

12 And when he alludes to at least tangential
13 evidence that they reviewed something else in the
14 Quadrex report, I'd like to know what that evidence is.
15 I haven't heard any tangential evidence.

16 MR. SINKIN: Okay. I'll give it to you.

17 I'd ask that this be marked as CCANP 99 for
18 identification.

19 MR. REIS: Mr. Chairman I object to this
20 process. Let's move on with this thing. We've had
21 arguments from both sides. We're going to a third
22 counter rebuttal here and it is time that the Board
23 rule.

24 MR. SINKIN: This is a critical point in the
25 argument, Mr. Reis. I think it's worth a few minutes.

1 MR. REIS: This is not critical.

2 MR. PIRFO: We object to his marking this for
3 identification. You don't do that in an argument on a
4 motion to quash a subpoena.

5 JUDGE BECHHOEFER: We won't mark it at this
6 point.

7 MR. SINKIN: I wish you'd hold on to it,
8 please. I was doing that to make sure it would stay
9 around.

10 MR. AXELRAD: This is the follow-up of one of
11 the three items that were notified to the NRC.

12 MR. SINKIN: All right. Just a moment, Mr.
13 Axelrad. If we read very carefully the second
14 paragraph, it states that, "During a recent technical
15 assessment of Brown & Root, several concerns were
16 identified regarding Brown & Root's approach to computer
17 program code verification. These concerns are that many
18 of the Brown & Root computer codes that are presently
19 used are unverified at the present time and the
20 possibility exists that their use on STP might result in
21 an inadequate design. In addition, the verification
22 program for a particular code lacks visibility to the
23 user," we think that was the reported finding, "to the
24 user as to whether or not the program versions of the
25 code in use have been verified. Lastly, there are some

1 concerns as to how computer codes are controlled by
2 Brown & Root procedures with regard to safety-related
3 applications."

4 Am I misunderstanding and do you want to
5 clarify?

6 MR. AXELRAD: Yes, this is all one in the same
7 item. He discussed the various aspects that were
8 troublesome and these are the three matters that were
9 carried through in the review of this item that was
10 notified to the NRC.

11 MR. SINKIN: Well, I would point out, Mr.
12 Chairman, that the response of the IRC -- hold on one
13 second.

14 MR. PIRFO: Why is the response of the IRC
15 relevant? That's what I do not understand and which Mr.
16 Sinkin has failed to say.

17 MR. SINKIN: If the IRC reviewed other than
18 the visibility notification which is what they notified
19 the NRC about was the visibility, whereas this document
20 distinguishes three different findings, one is
21 visibility and there's two others, if the IRC reviewed
22 something other than what was notified to the NRC, then
23 we have a different situation. And I think this
24 document brings --

25 MR. PIRFO: What is the showing of relevance

1 here? It escapes me.

2 MR. SINKIN: If the IRC reviewed something
3 other than what was notified, then we're already at the
4 point where the decision on what should be notified to
5 the NRC is potentially reportable involves a new group
6 that wasn't previously involved and that's the IRC.

7 JUDGE BECHHOEFER: The Board has agreed that
8 we will quash this subpoena.

9 We don't read this document, by the way, as
10 referring to anything other than one deficiency which
11 was reported to the IRC. Now, that's not a final ruling
12 on it if we should be asked to rule on that document
13 later. But for purposes of the subpoena at least, we
14 don't think it would warrant --

15 MR. SINKIN: Mr. Chairman --

16 JUDGE BECHHOEFER: Anyway, we've decided that
17 one. Why don't you proceed on the third one, Mr.
18 Poston.

19 MR. SINKIN: Okay. I do want to do something
20 as an offer of proof at this point in the record just on
21 this --

22 MR. PIRFO: The ruling has been made.

23 MR. SINKIN: I understand. I'm not rearguing
24 the ruling. I just want in the record --

25 MR. PIRFO: This is not the point to -- we're

1 arguing a motion to quash subpoenas. We don't have a
2 witness on the stand. We're not in evidentiary
3 hearing.

4 MR. SINKIN: Okay. Fine. Fine.

5 Mr. Poston, as I stated is the chairman of the
6 Incident -- yeah, I wish -- chairman of the management
7 committee. And, as we stated, we wanted to call him
8 regarding the deliberations of the management committee
9 in relation to the Quadrex report and what was said and
10 by whom.

11 We already have -- we have these very sketchy
12 minutes of Mr. Thrash that raised certain questions
13 about whether Mr. Goldberg said he'd have to report all
14 of the most serious findings to the NRC, whether Mr.
15 Goldberg refused to turn over the report to the NRC.
16 And we have Mr. Goldberg saying he doesn't recall saying
17 that he was refusing to turn it over to the NRC. And we
18 don't feel that these particular documents give us --
19 provide in the record sufficient information to know
20 exactly what Mr. Goldberg said and that the calling of
21 Mr. Poston can certainly clarify those matters.

22 He does provide in a more general sense the
23 unique perspective of an outsider in not being inside
24 Houston Lighting & Power or Brown & Root, but rather
25 sitting on the management committee and reviewing their

1 work. But he is well-informed about their work at the
2 same time in that he did sit continuously on the
3 management committee and continues to do so.

4 Since the -- we also raised the issue earlier
5 of the management committees oversight function as it
6 relates to 50.55(e) responsibility. We know that they
7 did discuss Quadrex and whether it should be turned over
8 to the NRC, that Mr. Goldberg apparently said he was not
9 going to, but the management committee made no effort to
10 overrule him.

11 The Applicants argue that they don't have the
12 expertise to make that kind of decision. I think that's
13 more of a finding than it is a reason not to talk to
14 them. If they lack expertise, that may reflect on their
15 competence. They can certainly go out and bring in a
16 consultant to help them understand 50.55(e) if they
17 don't understand it now. But we may well find that they
18 do understand it and incorrectly applied it in this
19 situation.

20 The Applicants have argued on page 6 and 7 of
21 their motion that whether Quadrex was viewed as a major
22 problem by the management committee is irrelevant to
23 this proceeding. I think that will very much depend on
24 how the management committee viewed it as a major
25 problem. If they viewed it as a major quality assurance

1 problem as opposed to simply a productivity problem, you
2 might well have evidence that should have indicated to
3 Mr. Goldberg or others that the report should be turned
4 over to the NRC if the management committee itself
5 didn't have the expertise to understand that.

6 The Applicants, by the way, in their motion to
7 quash do state correctly that the minutes available
8 reflect Mr. Poston's questions whether Quadrex would be
9 turned over only once. I do remember saying that he
10 repeatedly questioned it. And I can only imagine that I
11 momentarily confused the line of question immediately
12 above him which is Mr. Hancock which led up to Mr.
13 Poston, then asking Mr. Hancock are you going to turn it
14 over to the PUC. Then he asked are you going to turn it
15 over to somebody else, I forget. He asked at least two
16 questions as to whether it was going to be turned over
17 and then Mr. Poston asked the third question as to
18 whether it was going to be turned over.

19 That was the repetition that was in my mind.
20 We certainly do reject Applicants characterizing that
21 statement by CCANP at the time as a lie. I think that
22 was simply confusing Mr. Hancock's questioning with Mr.
23 Poston's questioning.

24 (No hiatus.)
25

1 By the way, we do feel very strongly that the
2 obligations of McGuire apply to this management committee
3 as well. It's not just 50.55(e). They are the
4 Applicants. So if the Applicants have an obligation
5 under McGuire, the management committee does too. I
6 think I will stop there, Mr. Chairman.

7 JUDGE BECHHOEFER: Mr. Reis.

8 MR. PIRFO: As we've stated, we have no
9 position with regard to Mr. Poston.

10 JUDGE BECHHOEFER: Mr. Axelrad?

11 MR. AXELRAD: Well, I know it's getting late,
12 but I really should take just a few minutes to go through
13 these items one by one with respect to Mr. Poston.

14 JUDGE BECHHOEFER: You might start out by
15 asking -- by explaining how else can we get the
16 information concerning the June 26, '81 management
17 committee where Mr. Poston is reportedly -- reportedly
18 said something about providing copies to intervenors and
19 the witnesses have not been able to -- and the witnesses
20 have not been able to respond to what that meant.

21 It's a question I asked and the -- Mr.
22 Goldberg, at least, was not able to even remember that
23 that subject was discussed. That is of course attributed
24 to Mr. Poston. And that is in one of the meetings, one
25 of the documents that CCAMP previously designated as one

1 that they wished to question Mr. Poston about. So you
2 may want to address that directly.

3 MR. AXELRAD: Yes. Well, I have just two
4 answers to that. One is Mr. Goldberg did not recall but
5 he gave you his recollection of what happened at that
6 meeting; I believe Mr. Jordan was at that meeting, he
7 appeared and no one asked him. Mr. Oprea will be
8 appearing. I'm not sure whether he has any recollection
9 of what happened at the June 26th meeting, either. I
10 would urge the Board to consider whether what was in fact
11 said or not said with respect to intervenors at that June
12 26 meeting, whether that is a material matter that we
13 that would justify an official of one of the Applicants
14 to appear.

15 It appears to us, at least, to be very
16 tangential, not to provide any real light on the issues
17 to be heard before this Board, and that it's not very
18 likely that anyone else would have a recollection of what
19 had happened four years ago with respect to a matter
20 that's so slight in importance.

21 So I just don't believe that that particular
22 matter can form a basis for calling Mr. Poston.

23 With respect to the other matters as to which
24 Mr. Sinkin relies, he first argues that Mr. Poston should
25 apparently be called to testify with respect to what Mr.

1 Goldberg said at the meeting of April 27th with respect
2 to reportability of the Quadrex report findings which had
3 not yet been received; Mr. Goldberg explained is his
4 prefiled testimony why the changes in the definition of
5 "most serious" from what he had proposed on April 15th to
6 what they actually were in the final report would have
7 been the basis for any statement that appeared in those
8 minutes; he was available for cross-examination on that
9 subject and to the best of my recollection, Mr. Sinkin
10 did not have enough interest to even cross-examine him on
11 it.

12 Dr. Sumpter, is also was also available, he had
13 in his testimony a discussion of how the definition of
14 "most serious", changed over a period of time. I wasn't
15 in the hearing throughout Dr. Sumpter's testimony but I
16 don't recall if he was asked about that subject.

17 And of course Mr. Oprea can also be questioned
18 on that subject when he appears.

19 Again, to us, it would appear that calling Mr.
20 Poston would be cumulative and duplicative. As to
21 whether or not the Quadrex report became a major problem
22 recognized by the partners, I just do not understand Mr.
23 Sinkin's argument, to whatever extent the management
24 committee had problems with respect to the cost and
25 schedule of the project that is not a matter of any great

1 interest to this Board. Quadrex report list eleven major
2 problems, and I just don't see how that could influence
3 this Board's decision.

4 It appears to me to be completely irrelevant,
5 and that is of course a separate ground for quashing a
6 subpoena.

7 The final matter that Mr. Sinkin has raised is
8 whether the members of the management committee were
9 familiar with the requirements of 50.55(e) but took no
10 steps to independently assure that the decisions
11 regarding Quadrex were appropriate, that is really an
12 argument that is without foundation and preposterous.

13 It is clear that under the license and under
14 the NRC regulations, HL&P is the only one of the
15 Applicants who has the technical staff or familiarity and
16 the responsibility to make those judgments. It is
17 completely irrelevant to this proceeding what the other
18 Applicants may or may not have in the way of technical
19 knowledge; it is the competence and character of HL&P
20 which is at issue here and we're really, we would really
21 be going into quite tangential, peripheral and irrelevant
22 matters to start exploring what the expertise is of the
23 other Applicants.

24 MR. SINKIN: Are you finished?

25 MR. AXELRAD: Yes.

1 MR. SINKIN: If I could just respond very
2 briefly, Mr. Chiarmen on that later point. Again, I did
3 provide the citation on the case that says co-owners are
4 co-applicants. I think Mr. Axelrad's argument would
5 indicate that if a co-owner of a nuclear power plant who
6 is not the managing partner of the project had a concern
7 about safety that the management of the project was not
8 adequately responding to a particular item, that they
9 would be relieved of responsibility because they lacked
10 the expertise to re-evaluate the decision of the managing
11 partner.

12 I don't believe that that is in any way in the
13 interest of the public health and safety certainly and I
14 don't think it is what is envisioned in the Nuclear
15 Regulatory Commission rules and regulations.

16 MR. AXELRAD: May I have just one sentence on
17 that subject. If Mr. Sinkin and CCANP had intended to
18 raise an issue in this proceeding that competence and
19 the actions of the other owners, they had ample
20 opportunity to do so many times throughout the course of
21 this proceeding. I think it is clear beyond a shadow of
22 a doubt that throughout Phase I and throughout Phase II
23 what's been in question has been the competence of and
24 character of HL&P. There has not been a single scintilla
25 of evidence with respect to evidence with respect to

1 competence and character of any of the other Applicants
2 and I think truly has Mr. Sinkin has raised a red herring
3 before this Board.

4 MR. REIS: I just want to remind the Board that
5 there are some projects where there are 30 owners and
6 some of them have two tenths of one percent of the
7 ownership, and are we going to open all NRC proceedings
8 to look at what is the character and competence of each
9 of those many many owners in many other cases.

10 MR. SINKIN: Except in this particular
11 proceeding, Mr. Chairman, which is about the Quadrex
12 report, we know that the Quadrex report per se was
13 discussed at the management committee and that at least
14 two members of the management committee raised questions
15 about whether that report was going to be turned over to
16 other regulatory bodies. And the minutes record Mr.
17 Goldberg as refusing to turn it over to the Nuclear
18 Regulatory Commission.

19 I think if a member of a management committee
20 of a project has such a question in their mind and it's a
21 serious question, and the management of the project says
22 no, we're not going to do it, then they do have an
23 obligation.

24 I don't care if they only have two tenths of
25 one percent. If they know of something that gives them a

1 safety concern that they don't think the managing partner
2 is handling properly, yes, they have a responsibility to
3 do something. And I would hate to see you say otherwise.

4 JUDGE BECHHOEFER: The Board has decided not to
5 quash that subpoena. Mr. Poston will be called.

6 MR. AXELRAD: Mr. Chairman, may I ask that the
7 subpoena, if it's not quashed, to be modified to be
8 limited to the precise matters as to which Mr. Sinkin has
9 made any showing of relevance and importance? I
10 understand that the Board, from previous questioning, is
11 interested, for example, in asking Mr. Poston or having
12 Mr. Poston testify with respect to the events at the
13 meeting of June 26th.

14 JUDGE BECHHOEFER: That actually was included
15 in Mr. Sinkin's earlier statement.

16 MR. AXELRAD: I understand.

17 JUDGE BECHHOEFER: As were two other meetings.

18 MR. AXELRAD: Okay. Well, I would like to ask,
19 because I think it's important considering that this is
20 not even an employee of of HL&P, he's an employee of one
21 of the co-owners I would like to make sure that we have a
22 narrow scope that he knows what it is he's going to be
23 testifying on.

24 Can we limit the subpoena, modify the subpoena
25 so that it applies only to the events at the meetings of

1 April 27th and June 25th?

2 MR. SINKIN: I would object to that. I think
3 Mr. Poston can be shown what his probably already has
4 been shown what is in CCANP's identification of witnesses
5 and specification of testimony sought from witnesses and
6 that is what we will expect him to testify about.

7 MR. AXELRAD: I understand that's Mr. Sinkin's
8 expectation. But obviously when this there is an
9 argument with respect to a subpoena, there are two events
10 which can take place as result of a that. The subpoena
11 can be quashed or the subpoena can be modified. It's not
12 an all or nothing situation and I would assume that the
13 Board in its deliberations understood that some of the
14 matters that Mr. Sinkin was raising were matters which
15 they thought justified having Mr. Poston appear. I would
16 believe that they didn't give the same weight to some of
17 the other matters that Mr. Sinkin must have raised. And
18 I would appreciate the Board's consideration of limiting
19 the subpoena to the subject matter of those two meetings.

20 MR. SINKIN: Mr. Chairman, I'm sorry to
21 interrupt. Could you delay your decision for two minutes
22 while I go to the bathroom?

23 JUDGE BECHHOEFER: Maybe it will take that
24 long. Off the record.

25 (Discussion off the record.)

1 JUDGE BECHHOEFER: The Board will limit it in
2 only one respect. We will delete the last item starting
3 with "finally in the June 26th memorandum," the last
4 sentence. But in deleting that, we will nevertheless
5 permit questioning on how familiar with 50.55(e) Mr.
6 Poston is; we don't believe that the management committee
7 has any independent responsibility, but to the extent
8 that committee made recommendations to Mr. Goldberg or
9 others to either report or not report, we think that
10 might be relevant.

11 So we will allow questioning along that line
12 only, not to show that there was any independent
13 responsibility which we don't think there is. And I'm
14 saying I don't remember the Marble Hill case that was
15 cited to us but I don't think it holds that. But I'd
16 have to review it.

17 Anyway, we are holding that that sentence is
18 out, except for exploring Mr. Poston's background.

19 MR. SINKIN: You said 50.55(e), are you
20 excluding McGuire, that whole doctrine of the licensing
21 board?

22 JUDGE BECHHOEFER: You can explore familiarity.

23 MR. SINKIN: Familiarity, that's all I'm
24 asking.

25 JUDGE BECHHOEFER: We will not allow to you

1 explore whether they have any independent responsibility
2 to they, themselves, tell us.

3 MR. SINKIN: I think that is a matter of law.

4 JUDGE BECHHOEFER: We don't think they do. So
5 now -- so we will limit it but only in that way. Shall
6 we go to the staff?

7 MR. REIS: The staff would like to -- we
8 received HL&P's request and we'd like to lead off in
9 replying to it.

10 JUDGE BECHHOEFER: I think that would be
11 appropriate.

12 I would like the -- one second.

13 MR. REIS: CCAMP's request.

14 JUDGE SHOH: I was wondering about that.

15 JUDGE BECHHOEFER: Please be sure to cover the
16 question I raised the other day about Mr. Dircks'
17 statement to Congress.

18 MR. REIS: Right. As far as the staff would
19 like to start off talking about it. The first thing will
20 be an analysis of the regulation, then a comparison to
21 the rules of -- federal rules of civil procedure, then
22 the cases on privilege and particularly involving
23 intra-agency memoranda and mental processes, then an
24 analysis of the matters that CCAMP wishes to seek from
25 each witness in an application of the law and then the

1 procedures, if they should be called.

2 Now this is a very important matter to the
3 staff and the staff will reserve any rights it might have
4 to appeal these matters to ask for interlocutory appeal
5 depending upon the rulings of the Board.

6 MR. SINKIN: Excuse me.

7 MR. REIS: As the Board --

8 MR. SINKIN: Excuse me, Mr. Reis. Mr.
9 Chairman, I think we have about half an hour until we
10 adjourn. And it sounded like a fairly substantive
11 presentation by Mr. Reis. I'm wondering if this isn't
12 more appropriate for a brief or a motion to be filed by
13 the NRC that we would all respond to the minute we
14 reconvened.

15 MR. REIS: No. We're coming back in two weeks.
16 I'm going to put this in the record I want to put this in
17 the record now.

18 MR. SINKIN: Okay.

19 MR. REIS: As the Board has ruled, it is only
20 under 2.730(h)(ii) --

21 JUDGE BECHHOEFER: 720.

22 MR. REIS: 720, that's correct, instead of 730.
23 As a general rule, staff witnesses cannot be deposed or
24 called for testimony unless they are so designated by the
25 staff.

1 However, in the regulation, itself, there's a
2 provided clause that deals with exceptional
3 circumstances. Which says that in such instances, in
4 instances -- in instances where there's a particular NRC
5 employee who has directs personal knowledge of a material
6 fact not known to the witnesses made available by the
7 staff, the Board in its discretion could require that
8 witness to be called.

9 Now, the elements of that is that there be a
10 named employee, that he have direct personal knowledge,
11 thus not matters learned from others and not even if
12 those matters should be learned in the course of his
13 duties, it has to be his personal knowledge of matters
14 and the Board has no jurisdiction or ability to call him
15 to other matters.

16 Further it must be as to material facts and not
17 opinion; facts not -- and further it must be facts not
18 known to others. Further, there are other limitations in
19 the regulation, itself, and that deals with matters
20 relevant and not privileged.

21 I want to outline quickly the federal rules of
22 civil procedure, though they deal mostly with
23 depositions, they are meaningful here because the federal
24 rules of civil procedure has very similar language to the
25 calling of government witnesses and witnesses and that's in

1 rule I believe it is 26 -- 30, federal rule of civil
2 procedure 30(b)(6); which indicates that corporations or
3 government agencies may designate people for examination.

4 I'd also like to call the Board's attention in
5 considering this to rule 26C3 that limits the matters of
6 examination for deposition and recognizes that things
7 might be limited to written interrogatories.

8 Similarly, rule 32A32, the court can allow
9 depositions as evidence, and rule 33B, that the court can
10 allow the use of interrogatories as evidence and can
11 allow people to proceed that way.

12 As I said, the court, these court rules and the
13 court cases apply similar matters as those in rules -- in
14 NRC's rule 2.720(h)(ii), as in any motion, also, we must
15 keep in mind the burden is on the movant and in this
16 case, that would be CCAMP.

17 Going to the privileges themselves, there's the
18 intra-agency privilege, there's the privilege as to the
19 mental processes of an executive, and there's a privilege
20 as to investigatucw material that may be relevant though
21 it isn't exactly clear at this point. As to
22 intra-agency, it's important that there -- that advice to
23 the executive be free from examination so that people
24 will allow for the free flow of communications to
25 executives; this is shown most strongly in the NLRB

1 versus Sears Robuck case at 421 U.S. 132.

2 Then we come to mental processes of the
3 executive who decides matters or reaches a conclusion and
4 this not only reaches what his particular mental
5 processes are, also the matters to which he might reach a
6 decision, the matters considered, contributing
7 influences, and the rule of the work of others.

8 None of these can be inquired to under the Fort
9 Logging case and I would particularly point the Board in
10 that case to the Carl Sykes, case -- by the way, the --
11 for the Morgan case, is at 313 U.S. 403 and particularly
12 Page 422, the Carl Sykes is a 40 Federal 2d -- Federal
13 Rules Decision, 318, page 25, affirmed on below at 384
14 Fed 2d 949, certiori was denied.

15 Also, I would call, there's an excellent
16 discussion of this whole field by Judge Weinstein which I
17 had the privilege to have for evidence, in Henry Frank
18 National Bank Securities litigation at 478 Fed Supplement
19 5777. He also has written the treatise of Weinstein on
20 Evidence, the very well known treatise.

21 Even if a witness is called in any event, he
22 can only testify as to facts not opinions or
23 recommendations, and that's an EPA versus Mink at 410
24 U.S. 73 and the matters must be separated out.

25 There are many other cases, one NRC case that

1 deals with this is the Consumers Power case an ALJ case
2 at 12 NRC 117.

3 I would also like to call the Board's attention
4 to U.S. versus Exxon at 87 Federal Rules Decision 624,
5 Universal Airlines versus Eastern Airlines, 198 Fed 2d
6 993, Community Federal Savings and Loan Association,
7 versus Federal Home Loan Bank Board, 96 Federal Rule
8 Decision, 619, plus other cases.

9 Those are just some of the cases that deal of
10 the very important question that this Board has to face
11 before calling any of these witnesses whether the matters
12 that are going to be sought to be inquired into are
13 privileged.

14 (No Hiatus.)
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1 Now, when you call a high government official,
2 Mr. Dircks in this case, and I'm talking mostly about
3 Mr. Dircks, we have to consider that it is particularly
4 important to show that he has personal knowledge not
5 otherwise obtainable and that's called in such cases as
6 Sykes versus Brown at 90 Federal Rules Decision 77,
7 Sweeney versus Bond, 669 Fed. 2d 542, and there again
8 certiorari was denied. You must show essential
9 information not otherwise available and an absolute need
10 for the information.

11 . Again, the key is personal knowledge of the
12 facts, not matters learned from others.

13 I might as well go directly to Mr. Dircks
14 because of the time limitations, although I have -- can
15 discuss each of them. And that's it is doubtful that
16 Mr. Dircks and there is no showing that Mr. Dircks has
17 direct personal knowledge of anything here.

18 Mr. Dircks,, as the Board is well aware, is
19 the executive director of operations for the Nuclear
20 Regulatory Commission. Others report to him. He wasn't
21 out in the field. He didn't see these things. I think
22 the Franklin National Bank case which I pointed to is --
23 indicates that it's on the movement to show the personal
24 knowledge of the person, relevant unique firsthand
25 knowledge, and again Sykes versus Brown, Sweeney versus

1 Bond.

2 Obviously, Mr. Dircks in Washington acts on
3 reports to him. Intra-agency memoranda again can't be
4 gone into, and his mental processes or the judgments he
5 reaches as to those matters cannot be gone into.

6 Further, it must be shown that there are not
7 other people otherwise available to testify as to these
8 matters. For instance, on the congressional testimony,
9 Mr. John Collins was there at the time. Obviously, as
10 to personal knowledge Mr. Collins would know much more
11 than Mr. Dircks.

12 JUDGE BECHHOEFER: Mr. Reis, Mr. Collins is
13 another of the NRC personnel requested.

14 MR. REIS: Yes, he is.

15 JUDGE BECHHOEFER: But he's not going to be
16 produced either, so -- unless you're going to offer --

17 MR. REIS: Well, I'm telling the Board that if
18 they have to choose one, choose Mr. Collins, that he has
19 more direct personal knowledge. He was involved in more
20 of the incidents than Mr. Dircks.

21 JUDGE BECHHOEFER: Now, let me ask you, my
22 question earlier was was the Staff -- will the Staff
23 have a witness whom they've already designated, such as
24 one or more of the Region IV personnel, who could
25 address the subject of this communication to Congress?

1 MR. REIS: Not directly. But Mr. -- the
2 subject matter, the matters within it, certainly Mr.
3 Johnson and the other witnesses from the region will be
4 able to address. Mr. Sells can address the chronology
5 and what went on. The investigations that went on can
6 be addressed by Mr. Sells and Mr. Phillips.
7 Particularly as to the other two memoranda cited, the
8 matters to Congress, we can get the direct material
9 facts.

10 This communication to Congress is not the
11 direct material facts that we have here. And we are
12 putting in people who know the direct material facts.
13 Why should we put in someone or produce someone with a
14 little knowledge when we're putting people on with much
15 more direct knowledge on what happened. No matter what
16 we look to for whatever it is, the other people have
17 much more direct knowledge of the facts and that's what
18 this Board is to look to is the direct knowledge of the
19 facts to make their determination of what happened. It
20 is the material facts, not only opinions and
21 recommendations.

22 Now, Mr. Dircks doesn't have direct knowledge
23 of the facts. I mean, just from his position he
24 wouldn't have direct knowledge of the facts. He doesn't
25 go out and look at things in the field.

1 JUDGE BECHHOEFER: Mr. Reis, can we take
2 official notice of this statement to Congress? I'm
3 assuming now that this one that we've been provided --

4 MR. REIS: You can take official notice of it
5 that it was given. There is no question that there was
6 testimony to Congress and in that sense you can take
7 official notice of it.

8 As for the truth of the matters therein,
9 although they were certainly believed to be true at the
10 time and there's no question of that, the truth of the
11 matters, you have to judge what happened and that you
12 are to judge from people, from normal witnesses who saw
13 it, not from a statement made at a time when little was
14 known and there was not as much known as later.

15 JUDGE BECHHOEFER: Well, if we should ask --

16 MR. REIS: And a statement made --

17 JUDGE BECHHOEFER: I didn't want to interrupt
18 you. I had a question, but I didn't want to interrupt
19 yours either.

20 MR. REIS: What is your further question.

21 JUDGE BECHHOEFER: My further question is
22 could we question the witnesses from Region IV or indeed
23 a single witness from headquarters at least on the
24 linkage which the NRC might have drawn back in 1981
25 between the Quadrex report and the earlier QA violations

1 which were the subject of the show cause order as is
2 apparently drawn by this statement here?

3 MR. REIS: Yes, that's provided you could show
4 that they are the -- I mean, if they see that linkage,
5 you can ask them about it. If there was not a breakdown
6 of QA in regard to design, if that should be proven by
7 the factual matters, then, you know, there are problems.

8 Now, there is no question -- there is also a
9 jurisdictional question, by the way, which I did not get
10 to, of whether -- and I don't know -- of whether 720 H
11 itself allows you to pull people, it applies to the
12 executive director as well. It is not clear in the
13 regulation, in the wording of the regulation.

14 Also, there is another question of whether NRC
15 employees --

16 JUDGE BECHHOEFER: I'm sorry. Would it apply
17 to Mr. Collins?

18 MR. REIS: Oh, I think you could ask Mr.
19 Collins these questions.

20 I also think there is the very definite --
21 there is the question, and I'm not willing to take a
22 position on this question on behalf of the Staff, but it
23 occurred to me last night that can NRC employees be
24 questioned in hearings on matters given in congressional
25 testimony or is there an immunity that applies to that

1 itself? I am not sure about that at all. And I would
2 have to consult on that.

3 But at any rate, to go on, there is no
4 question the cases also show that I've cited before that
5 the higher the official, the stronger the requirement of
6 showing of need to have direct personal knowledge of the
7 facts. The cases indicate that.

8 Now, as to the congressional testimony, as to
9 the facts, we have witnesses. We have Sells, we have
10 Phillips, we have Taylor, we have Johnson, we have
11 Goldberg, we have Oprea, we have others testifying as to
12 what happened. As to the mental processes of Mr.
13 Dircks, you just can't inquire into it. I mean, there's
14 the Community Federal case, the Franklin National Bank,
15 Morgan 4, Carl Sykes, EPA versus Minx. Another one is
16 Montrose Chemical, case 491 Fed. 2d 63 at page 70, and
17 that is whether it be the methods considered,
18 contributing influences, the roles of others, the
19 working of his own mind, you can't go into any of that
20 with the witness. Similarly, you can't go into what
21 evidence he had before him when he gave -- that led to
22 this testimony. And that's interagency communication,
23 Franklin National Bank, NLRB versus Sears.

24 As I said, Mr. Collins was first deputy
25 regional administrator and then regional administrator.

1 He accompanied Mr. Dircks when Mr. Dircks made this
2 testimony.

3 There are memos -- a memo from -- Mr. Sinkin
4 also wished to inquire about a memo from Dircks to
5 Commissioner Bradford. When we look at the matters
6 attached to those, it's plain that either Mr. Sells, Mr.
7 Phillips or the people from the region can testify as to
8 all those matters to show the chronology there and the
9 truth or the lack of truth of those matters. They refer
10 to these very people.

11 As to the last memo, Dircks to the
12 Commissioners, similarly we have the witnesses here.
13 The Board can get firsthand information, not thirdhand
14 hearsay. Interpretations of events in the memo is
15 events in the memo attached -- from that memo from
16 Dircks to the Commissioners is Mr. Sinkin's
17 interpretation and he is here if there is any matter
18 within his particular knowledge that the Board thinks
19 they need.

20 But those who are -- make conjectures are not
21 the best evidence. Again, there's no personal firsthand
22 knowledge and the unique knowledge -- there has to be
23 unique knowledge of the personal facts and that's shown
24 in such cases as we've cited many times, Sykes versus
25 Brown, Sweeney versus Bond and the others.

1 So, in sum, we feel that under 2.720, at least
2 as to Mr. Dircks, there is absolutely no basis upon
3 which you can call him because there is no matter which
4 you can inquire into as to him. The matters essentially
5 are privileged. As to any matters of fact, you have
6 better witnesses and they're being produced. They are
7 the ones with more firsthand knowledge.

8 Now, I don't know whether I should at this
9 point go on to my other witnesses. I can go on to the
10 others and go through them quickly and spend more time
11 with that -- it will take me another five minutes to go
12 through the rest of them.

13 MR. AXELRAD: Shouldn't we take these one at a
14 time, Mr. Chairman?

15 MR. SINKIN: Well, they will only take five
16 minutes.

17 JUDGE BECHHOEFER: For five minutes why don't
18 you go on.

19 MR. REIS: Okay. As to Richard Herr, CCANP in
20 its pleadings itself --

21 MR. AXELRAD: I'm sorry. I hate to interrupt,
22 but I really think that we should take up these
23 witnesses one by one. I think the arguments to each of
24 them are different.

25 He's now covered Mr. Dircks. I think we

1 should be able to speak on Mr. Dircks and Mr. Sinkin
2 should be able to speak on Mr. Dircks.

3 MR. SINKIN: I'd prefer him to go ahead and
4 finish them and then come back to Mr. Dircks and start
5 there. At least we'll have an idea in the record now --
6 that's what he wanted to do was put into the record now
7 what the NRC position was and I think he should go ahead
8 and do that.

9 JUDGE BECHHOEFER: I think we're going to have
10 to adjourn before we finish all of the witnesses, maybe
11 not. I don't know.

12 MR. AXELRAD: Okay.

13 MR. REIS: As to Mr. Herr, as CCANP
14 recognizes, all right, Mr. Phillips has the facts that
15 he wishes from him. It was a joint investigation that
16 he wants. No showing that there are other different
17 documents than Mr. Phillips asked for.

18 He mentions access engineering. There's no
19 showing that that's an issue.

20 Deficiencies are covered in the report. You
21 can't go beyond the basis of those reports. It's plain
22 there's both investigative privilege and the basis of
23 the others.

24 Again, as to HL&P talks about whether a stop
25 work order should be issued, there's no showing that an

1 investigator Mr. Herr has any expertise. And
2 particularly in connection with Mr. Herr, I would call
3 the Board's attention to U. S. versus Exxon.

4 Donald Sells will testify as to myself.
5 Generally, I think any knowledge I had has already been
6 brought out from Mr. Goldberg.

7 John Collins, Eric Johnson was on
8 investigative report 82-02, he would testify he had more
9 firsthand knowledge.

10 As to interagency memoranda, we don't know
11 which ones. If they haven't been released, they are
12 privileged. There is also, as to some matters with Mr.
13 Collins as indicated by Mr. Sinkin, there's
14 investigative privilege.

15 Conversations with HL&P can be gotten through
16 HL&P and thus not otherwise available within the
17 confines of what is talked about in 720.

18 There was no question that the reports were
19 turned over to the Staff when requested in August and to
20 the Board in September. There's just know facts there.

21 We know that there was an inquiry if the whole
22 Quadrex report should have been subject to a 50.55(e)
23 report that was asked of them. There is no question
24 that was asked of them. There's nothing more to be said
25 on that.

1 The preliminary conclusions of Mr. Collins
2 have no probative value. The question is why should the
3 Board judge now on what preliminary conclusions were
4 based on little evidence when the Board is getting much
5 more knowledge? It's on the Board to interpret the
6 regulations and the Board to make the ultimate
7 determination here, not Mr. Collins. We shouldn't be --
8 foreclose ourselves from using the more knowledge here
9 and possibly looking back to the little knowledge that
10 might have been had earlier.

11 The rest of what Mr. Sinkin seeks Mr. Collins
12 on is only conjectural and would be based on hearsay.

13 I want to point out in U. S. versus Exxon, the
14 court really ruled that you can't inquire into
15 individual agency employee's interpretations of
16 regulations.

17 And this argument --

18 MR. SINKIN: Could you say that again? You
19 cannot inquire?

20 MR. REIS: You cannot.

21 As to Seyfrit, you certainly don't need both
22 Mr. Collins and Mr. Seyfrit. Reading both of them, it
23 seems very redundant as to any matter for Mr. Seyfrit.

24 As to the first matter that Mr. Sinkin listed,
25 HL&P's request to proceed with safety-related

1 construction, that's in the record. And the nature of
2 their requests and when they made them is all in the
3 record in the first hearings.

4 The fact that they knew or what they knew
5 about the Quadrex report in headquarters at that time
6 can come in through Mr. Phillips, Mr. Johnson and Mr.
7 Sells.

8 Whether there was knowledge of Quadrex would
9 influence a decision could not be inquired into in any
10 event. It's privileged and it's not relevant to the
11 issues here.

12 And as to the preliminary position of the
13 region to turn over the Quadrex report, certainly the
14 arguments I made as to Mr. Collins would be the same
15 here.

16 As to Mr. Driskill, and I guess it's report
17 82-02 that they want Mr. Driskill on, Eric Johnson is
18 here as the witness to speak to that. The report speaks
19 for itself. There is investigative privilege and you
20 can't get impressions of people as to their -- the
21 workings of their mind, that's privileged.

22 Lastly, I want to say that if there are any
23 procedures for these people, and particularly as to Mr.
24 Dircks, the appropriate way to go is to have Mr. Sinkin
25 supply written interrogatories which we are willing to

1 answer. And I would ask you to compare Rule 26 C of the
2 Federal Rules of Procedure. Although it's a discovery
3 rule, we feel that it allows a way to be used herein
4 that the answers to the written interrogatories can be
5 put into evidence then.

6 It's appropriate to use written
7 interrogatories for examination of high government
8 officials, and that's in Kyle Engineering Company versus
9 Kleppe, 600 Fed. 2d 226, Peoples versus U.S.D.A., 427
10 Fed. 2d 561, Capital Vending versus Barker, 36 Federal
11 Rule Decision 45, Wirts versus Local 30, 34 Federal
12 Rules Decision 13, Sykes versus Brown, 90 Federal Rule
13 Decision 77.

14 And let me say that there are cases, and I'm
15 not going to recite them here, where this rule on
16 interrogatories of high officials even who don't have
17 firsthand knowledge even applies to the heads of
18 corporations. And I have three cases here if the Board
19 wants them on that. Not only to government officials.

20 JUDGE BECHHOEFER: Do the Applicants have any
21 view on --

22 MR. AXELRAD: Yes, Mr. Chairman. With respect
23 to Mr. Dircks, our position would be that as this Board
24 is well aware, the NRC functions in essence through
25 either its regional offices or through the working

1 offices at headquarters, depending upon the subject
2 matter being looked at.

3 The Staff is providing testimony from a number
4 of witnesses from the region. It's providing testimony
5 by Mr. Sells who is the NRC project manager at
6 headquarters and therefore is fully familiar with the
7 reviews that were being undertaken at headquarters. It
8 appears to us that that is ample testimony with respect
9 to the subject matters of the reviews of HL&P's actions
10 in the Quadrex report at that time. That it's very
11 doubtful that Mr. Dircks has personal knowledge, and
12 that the arguments of Mr. Reis are very convincing.

13 I would add only that it appears to me that
14 if, as in this case, a high NRC official is testifying
15 before Congress on a general matter, he was testifying
16 at hearings on quality assurance in nuclear power plant
17 construction back in 1981, if the remarks that he makes
18 or whatever their base is, he has to be concerned about
19 if he says something he may be called by an intervenor
20 in one or many of the NRC proceedings all over the
21 country, that would obviously have a very chilling
22 effect on the ability of the NRC to communicate with
23 Congress. And I think this Board should be very careful
24 before it requires the testimony of Mr. Dircks.

25 I do want to respond just very briefly to two

1 separate notes that have come up in the course of this
2 conversation. One is with respect to the Board's
3 mentioning of the possibility of taking official notice
4 of Mr. Dircks' statement. We would object very very
5 strongly to do that. It seems to me that there is no
6 fact as to which the Board could properly be taking
7 official notice of under these circumstances. And if at
8 any point the Board is giving serious consideration of
9 that as a possibility, we would urge that they not do so
10 before permitting all the parties to file briefs on that
11 subject because I think that's very very improper under
12 these circumstances.

13 With respect to the suggestion by Mr. Rejs
14 that perhaps written interrogatories may be a solution,
15 we were not aware of that as a possible proposal by the
16 Staff. We have not reviewed whether that would be
17 appropriate in these circumstances. And similarly we
18 want to preserve our position as to whether or not
19 that's an appropriate action to be taken at this time.

20 Discovery is long since over. We can live
21 with-Dircks not testifying. I think we can live with
22 Mr. Dircks testifying. I'm not sure that we can except
23 anything in between that doesn't preserve the full
24 rights of the Applicants in this proceeding in this
25 licensing state.

1 As to various other individuals mentioned by
2 Mr. Reis, as to Mr. Herr, I would just bring to the
3 Board's attention that the specific investigation that
4 is mentioned in the request is investigation number --
5 that was reported in I&E report 81-28, that was the
6 subject of litigation Phase I, that was CCANP's
7 contention 1.8 A and B. Mr. Herr and Mr. Phillips, in
8 fact, both testified at that time and the particular
9 subject of that investigation which was litigated was
10 the alleged need for a stop work order in access
11 engineering and the matters addressed at page 2276 of
12 the opinion on a partial decision. So, I really do not
13 think it's appropriate to call Mr. Herr on this subject.

14 With respect to Mr. Collins and Mr. Seyfrit,
15 it appears to us that since the individuals in I&E who
16 have the firsthand knowledge of the facts will be
17 testifying, that there is no necessity for the Board to
18 call either Mr. Collins or Mr. Seyfrit. And similarly
19 with respect to Mr. Driskill, since one of the other
20 investigators is testifying, I don't believe that the
21 intervenor has made any showing that there is a need for
22 additional testimony.

23 JUDGE BECHHOEFER: Mr. Sinkin, can you -- in
24 view of the -- were you finished?

25 MR. AXELRAD: Yes, I am.

1 JUDGE BECHHOEFER: I'm sorry. Mr. Sinkin, you
2 don't have an awful lot of time.

3 MR. SINKIN: I know.

4 JUDGE BECHHOEFER: Are there --

5 MR. SINKIN: Let me just try and touch a few
6 high points.

7 First of all, on Mr. Dircks, we have made
8 repeated offers to the staff to work out something less
9 than his being called. And I had the sense that
10 probably the Applicants would find that unacceptable and
11 I'm not surprised to hear that they have expressed that
12 possibility now.

13 We would be happy to take the three documents
14 that we want in evidence and have Mr. Dircks specify
15 through an affidavit that he did give this testimony to
16 Congress and that he did write these two memorandums to
17 the Commission that dealt with the Quadrex report and
18 leave it at that. I don't know that that's satisfactory
19 to all the other parties.

20 Well, let me say I would like a little time to
21 respond to all of the information put forward by Mr.
22 Reis before you make your ruling. This may not be the
23 time to do that. I'd certainly be happy to try and get
24 you something in writing before we reconvene a week from
25 now or eight days from now in response to Mr. Reis'

1 remarks.

2 I don't know if Mr. Reis has -- it looks
3 handwritten. I don't know if he intended to Xerox that
4 and distribute it or not. But we would like an
5 opportunity to review those cases and perhaps give you
6 our insights on the calling of these witnesses.

7 (No hiatus.)
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1 Again, we don't -- mean to inconvenience Mr.
2 Dircks. It's just in this particular event, he's made
3 some very striking statements that seem to stand in
4 contradiction to the current position of the staff, but
5 may well represent his early understanding of and view of
6 the Quadrex report and we think that's material to this
7 proceeding because we're looking at the 24 hour period,
8 which HL&P had to make notification.

9 We're not looking at what you thought after
10 years later of evaluation. It's a case of first
11 impression: What do you think within 24 hours? And it
12 may be that Mr. Dircks' views represent that -- that's
13 all I heard Mr. Reis arguing in terms of Mr. Dircks'
14 level of knowledge or whatever. I don't think Mr. Reis
15 directly represented that Mr. Dircks had never seen the
16 Quadrex report; and that he would lack the ability to
17 make a judgment as to whether it was a quality assurance
18 document or a quality assurance breakdown.

19 So I --

20 MR. REIS: I can make the representation that
21 Mr. Dircks never saw the Quadrex report.

22 JUDGE BECHHOEFER: Be that as it may, my
23 question to you is in view of what Mr. Reis said, would
24 you -- I'm not saying we would rule this way, but would
25 you be as satisfied with Mr. Collins on that subject that

1 you have raised for Mr. Dircks?

2 MR. SINKIN: Well, Mr. Collins might have a
3 different view than Mr. Dircks and that's --

4 JUDGE BECHHOEFER: Well, given the fact that --

5 MR. SINKIN: I will fully expect that --

6 JUDGE BECHHOEFER: -- that the staff has to
7 designate witnesses at least firsthand, is it not
8 appropriate at least to even though we wouldn't -- may
9 not rule right now, isn't it clear that the staff is
10 saying that if anybody testifies on this subject, Mr.
11 Collins should?

12 MR. SINKIN: That may be what the staff is
13 saying. I would point out, Mr. Chairman --

14 JUDGE BECHHOEFER: Under 720, don't they have
15 the right to do that?

16 MR. SINKIN: Mr. Reis focused I think on a
17 critical issue, testifying as to facts. This proceeding
18 is not simply as to facts, but it also raises the
19 question do the facts reflect on the character and
20 competence of the company. Our argument with Mr. Dircks
21 is obviously, if to the executive director of operations
22 of the NRC, the Quadrex report revealed a potentially
23 more serious quality assurance breakdown at this project
24 than was revealed in the investigation which led to the
25 order to show cause, that that gives you some way to

1 measure the weight that should be given if. If you do
2 find that it should have been turned over, your next
3 question is they didn't do it, what does it mean about
4 competence and character.

5 Here's the executive director of operations for
6 the NRC saying this was a very serious document, that
7 gives you some measure on competence and character.

8 So it's not just the facts, you're going to
9 have to make that second determination of what the facts
10 say about competence and character. That's one place
11 that Mr. Dircks' testimony fits.

12 JUDGE BECHHOEFER: Mr. Reis.

13 MR. REIS: Mr. Chairman, the only thing I can
14 say is that we're producing people who examined the
15 Quadrex report from a point of view of what could be
16 learned within 24 hours. Mr. Dircks didn't do that.
17 We're putting on the people who can give that testimony.

18 JUDGE BECHHOEFER: Well, you're not putting on
19 Mr. Collins and Mr. Collins, you said yourself, had some
20 knowledge of Mr. Dircks' statement, at least.

21 Before we rule on Collins, do or should we wait
22 to see what the other staff witnesses who know about this
23 subject know about how the statement to Congress got
24 generated?

25 MR. REIS: I don't think any of them can

1 testify as to that, any of them that I have designated.
2 I have to say very frankly that I cannot, that none of
3 them would be in a position to learn how the statement
4 was generated.

5 JUDGE BECHHOEFER: Would you be opposed to
6 bringing Mr. Collins on to testify only to that one
7 matter.

8 MR. REIS: I would have to think very very
9 carefully of the chilling effect this would have on staff
10 testimony in Congress and whether the staff is subject to
11 examination on matters they might bring before Congress
12 in a licensing hearing. There's a very very serious
13 question.

14 MR. SINKIN: Mr. Chairman, are you intending to
15 rule on this question today?

16 JUDGE BECHHOEFER: Perhaps on Mr. Dircks.

17 MR. SINKIN: Perhaps on Mr. Dircks.

18 JUDGE BECHHOEFER: I'm not sure we're going to
19 rule on anything else.

20 MR. SINKIN: Then I do have further response on
21 Mr. Dircks that may or may not be relevant to your
22 decision. I had sort of been holding my fire since Mr.
23 Reis presented so much material. I thought we might have
24 a chance to respond to Mr. Dircks in more detail.

25 (Discussion off the record.)

1 JUDGE BECHHOEFER: The Board has decided that
2 we can reach a decision on all of them right now. And we
3 think the rule gives the staff a chance to designate its
4 own witnesses. And that for all of the witnesses,
5 exclude for the moment Mr. Dircks and Mr. Collins, but
6 excluding those for the moment, the staff is presenting
7 witnesses who can deal with all of the subjects specified
8 by Mr. Sinkin.

9 If it should turn out later that those
10 witnesses cannot deal with those subjects, we may
11 reconsider as to particular witnesses. But we would give
12 the staff witnesses a chance to address all of those
13 topics.

14 With respect to Mr. Dircks, we think that the
15 staff has identified that it would prefer at least Mr.
16 Collins. And that on that basis, under the rule, we
17 would rule out Mr. Dircks. We tentatively think that Mr.
18 Collins would be necessary; we will entertain further
19 arguments from the staff why he shouldn't be called.

20 But we think that he may have information,
21 likely to have information that the other witnesses
22 addressed do not have. And we think the staff should
23 produce either bring Mr. Collins on that one limited
24 topic, not on the linkage -- well, the general topic of
25 the statement to Congress, which the staff advises he

1 does have knowledge of; if the staff has further
2 objections to that, we will hear those whether we come
3 back.

4 MR. REIS: Okay.

5 JUDGE BECHHOEFER: So that's our tentative
6 conclusion, that Mr. Collins is the only one of the
7 designated witnesses who would be necessary.

8 MR. REIS: Mr. Chairman, let me make clear,
9 though, that I did inquire whether Mr. Collins wrote that
10 testimony, because I was looking for that. I know that
11 Mr. Collins did not. I don't know who wrote the
12 testimony. I did try and find that out in preparation
13 for this argument. But Mr. Collins is the one,
14 officially, who probably could testify best as to the
15 matters therein that in that --

16 JUDGE BECHHOEFER: I didn't hear.

17 MR. REIS: That could testify as to the matters
18 therein, because he was most involved, the one higher
19 official.

20 JUDGE BECHHOEFER: He is the only one that we
21 see any need for of the ones designated.

22 Now, if it turns out just for an example, that
23 Mr. Johnson can't answer certain questions that it
24 appears that Mr. Driskill could answer, it may be
25 necessary later on to call Mr. Driskill. We don't think

1 that will be necessary. Mr. Driskill, I guess was the
2 investigator; Mr. Johnson was the supervisor who also
3 signed off on the report.

4 So we will presume that he has knowledge of
5 what went on in that investigation, or inspection as the
6 case may be. I forget. But 82-02 in any event.

7 So basically, we think that is all we need to
8 know at the moment.

9 MR. SINKIN: Mr. Chairman, I will just note for
10 the record that while the Applicants and the staff got to
11 make their arguments on the NRC witnesses other than Mr.
12 Dircks, I never got an opportunity to say a single word
13 about anyone but Mr. Dircks. I think that's not fair,
14 and I hope that if later on I ask that these people be
15 called, it will be taken into account that I never got to
16 make an argument against the motion to not call them.

17 JUDGE EICHENHOEFER: Well, our resolution was
18 based on the fact that the staff has designated witnesses
19 for all of the topics that you have specified. If they
20 can't deal with those topics, we have said that we will
21 consider further whether the other people should be
22 called. So I think the staff under the NRC rules, under
23 720, has the right to designate witnesses for particular
24 topics.

25 That's all we're saying is that the staff has

1 done so and that we're just -- we will see if they can
2 deal with it or not. But I think the rule ought to be
3 given a chance to work as it's written. So that's
4 basically what our ruling is.

5 So at this point, we will -- are there further
6 matters that we have to take up before we come back; I
7 hope not. At this point, we will adjourn --

8 MR. SINKIN: I'm sorry, Mr. Chairman. I did
9 have one final matter I wanted to bring up after we find
10 all of this. We would seek at this point for Mr. Poston
11 a subpoena duces tecum that Mr. Poston be required to
12 bring with him to testify the management committee
13 minutes held by the City of San Antonio for the meetings
14 at which the Quadrex report was discussed. We make this
15 motion at this time because the evidence has now emerged
16 that while Mr. Thrash took notes that included Quadrex
17 information, that information apparently did not end up
18 in the final minutes of HL&P.

19 We think the -- that in itself says something.
20 We think that when Mr. Poston comes, in order that he not
21 be limited to responding to what Mr. Thrash might have
22 jotted down as opposed to written in full, that it would
23 be appropriate for him to bring with him the minutes that
24 the City of San Antonio has on that meeting that so that
25 he can be questioned about which would not only assist

1 him in refreshing his memory but assist the record in
2 getting a clear picture of what was recorded at that time
3 as to the actual substance of the management committee.

4 So what we're seeking is a new subpoena from
5 Mr. Poston or just an order from the Board might be
6 appropriate. I'm not sure.

7 MR. AXELRAD: Mr. Chairman, I would urge that
8 if the intervenors have any motions to file, they be
9 required to file them in writing, give everyone a chance
10 to answer them in writing and have the Board give
11 complete and thorough consideration.

12 I think it's preposterous when the intervenors
13 realize that there's a need to adjourn this hearing on
14 this particular afternoon, after nine hard days, to bring
15 up a new matter. I think he should be required to file
16 any motion in writing.

17 MR. FIRFO: Furthermore, Mr. Chairman, the
18 subpoena duces tecum may be obtained ex parte, then a
19 motion to quash can be filed. I don't understand why
20 he's taking our time when people are trying to leave
21 town, he come up with a motion for a request for subpoena
22 which can be issued ex parte.

23 MR. SINKIN: I didn't realize that, of course.

24 JUDGE BECHHOEFER: That's correct. The only
25 standard is general relevance, which I believe is fairly

1 clear. So off the record. We'll adjourn until 9:30, a
2 week from Monday, August 29, 1985.

3 (Hearing Adjourned at 4:20, p.m.)
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CERTIFICATE OF OFFICIAL REPORTER

This is to certify that the attached proceedings before
the UNITED STATES NUCLEAR COMMISSION in the matter of:

NAME OF PROCEEDING: EVIDENTIARY HEARING
HOUSTON LIGHTING AND POWER COMPANY,
ET AL (SOUTH TEXAS PROJECT, UNITS 1
AND 2)

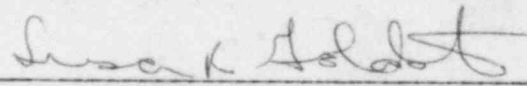
DOCKET NO.: STN 50-498-OL
STN 50-499-OL

PLACE: HOUSTON, TX

DATE: Friday, July 19, 1985

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


R. Patrick Tate, CSR


Susan R. Goldstein, CSR

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