

UNITED STATES ATOMIC ENERGY COMMISSION

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IN THE MATTER OF:

KERR-MC GEE CORPORATION

Docket No. 1010

Place - Washington, D. C.

Date - Tuesday, 14 August 1973

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UNITED STATES OF AMERICA  
ATOMIC ENERGY COMMISSION

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In the matter of: :  
: :  
Kerr-McGee Corporation : Docket No. 1010  
: :  
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Court Room #1  
U. S. Tax Court  
1111 Constitution Avenue, N.W.  
Washington, D. C.

Tuesday, 14 August 1973

The prehearing conference in the above-entitled matter  
was convened, pursuant to notice, at 10:00 a.m.

BEFORE:

JOHN FARMAKIDES, Chairman, Atomic Safety and  
Licensing Board.

DR. DALE BABCOCK, Member.

LESTER KORNBLITH, Member.

APPEARANCES:

On behalf of the Applicant:

FRANCIS S. IRVINE, Esq., Kerr, Davis, Irvine, Burbage  
& Foster, Inc., 600 Fidelity Plaza, Oklahoma City,  
Oklahoma.

On behalf of the Intervenor Natural Resources Defense  
Council:

SHELDON, Karin, 1712 N Street, N. W., Washington,  
D. C. 20008.

On behalf of the Regulatory Staff:

ROY E. KINSEY, JR. Esq. and JAMES P. MURRAY, JR., Esq.,  
U. S. Atomic Energy Commission, Washington, D. C.

P R O C E E D I N G S

CHAIRMAN FARMAKIDES: It is now 10:00 o'clock,  
and the hearing will be in order.

This is a prehearing conference in the matter of  
application of Kerr-McGee Corporation to amend its source  
material license so as to authorize subsurface disposal  
of certain liquid radioactive waste.

On July 10, 1973, the AEC issued a notice of  
hearing, published in the Federal Register at 38 FR 18921,  
directing that a hearing be held to consider this application  
by the Kerr-McGee Corporation.

The application was filed on May 10, 1972.

The amendment requested would permit the licensee  
to utilize deep well disposal of Raffinate wastes generated  
from its solvent extraction, uranium purification process  
at its Sequoyah facility.

By letter dated September 29, 1973, the Deputy  
Director advised the licensee that its amendment request  
had been denied and specified the reason therefor.

After consideration of additional information  
submitted by the licensee, the Deputy Director, by letter  
dated March 14, 1973 affirmed the denial of September 29,  
1972. On April 5, 1973, the licensee requested a hearing  
on the matter of the denial pursuant to the provisions of  
10 CFR 2.103.

1           The notice of hearing directed this Board to  
2 consider and to decide as the issues in this proceeding  
3 whether, pursuant to AEC Act of 1954 as amended and in  
4 accordance with 10 CFR 40.32 (c) and (d), the following  
5 two issues:

6           (1) The licensee's equipment, facilities and  
7 procedures proposed for use pursuant to the requested amend-  
8 ment are adequate to protect health and minimize danger,  
9 life or property, and

10          (2) The issuance of the amendment will be  
11 inimical to the health and safety of the public.

12          This Board is composed of Dr. Dale Babcock, to  
13 my right, a nuclear engineer. To my left is Mr. Lester  
14 Kornblith, also a nuclear engineer. My name is John  
15 Farmakides. I am an attorney.

16          I would like to have the parties state their  
17 appearance, please.

18          MR. IRVINE: Francis S. Irvine, attorney, Oklahoma  
19 City, Oklahoma.

20          CHAIRMAN FARMAKIDES: Staff?

21          MR. KINSEY: Roy Kinsey, counsel for the  
22 Regulatory Staff.

23          MR. MURRAY: I am James P. Murray, Jr., associated  
24 with Mr. Kinsey. I am chief rulemaking and enforcement  
25 counsel, AEC.

1 CHAIRMAN FARMAKIDES: Thank you.

2 Gentlemen, I think there are any number of ways  
3 we can proceed. One that I think would be pertinent in  
4 this case, and perhaps would lead to an orderly disposition  
5 of the proceeding is to suggest to the parties that they  
6 frame a statement or joint statement of the issues before  
7 this Board, and that this joint statement reflect not only  
8 those issues which are in agreement between the parties,  
9 but also those issues on which they do not agree.

10 We think that would be an extremely important  
11 assist in helping the Board resolve the issues  
12 before us. This would indicate to you that the Board does  
13 not quite understand the joinder of issues between the  
14 parties, and we think this could be clarified considerably  
15 by the two parties.

16 Secondly, we thought that one way of proceeding  
17 here is to have the parties certify for the Board, if you  
18 will, the record that has previously been made with respect  
19 to the application for amendment of the Applicant, and then  
20 to advise the Board how you wish to augment the record.

21 I understand at our last prehearing conference  
22 that discovery will be minor, that the position of the two  
23 parties is, as far as they are concerned, pretty well  
24 established, and they can proceed.

25 Am I correct, gentlemen?

1 MR. IRVINE: That's correct, sir.

2 MR. KINSEY: That's correct, Mr. Chairman.

3 CHAIRMAN FARMAKIDES: In other words, you are  
4 saying no further discovery is necessary, and you can  
5 proceed without any further documentation of the record  
6 except for what the Board has just indicated to be necessary?

7 MR. IRVINE: Yes, as far as the Applicant is  
8 concerned, there will be no further documentation needed.  
9 I think we have essentially all the documents that have been  
10 submitted at any time by either of the parties, so far as  
11 we know.

12 MR. KINSEY: That is right.

13 CHAIRMAN FARMAKIDES: For the Staff?

14 MR. KINSEY: Yes, Mr. Chairman, we have no need  
15 for further discovery.

16 CHAIRMAN FARMAKIDES: Of course, the Board has  
17 questions. We find the record before us is not adequate,  
18 and Dr. Babcock will address that point later, and insofar  
19 as we find the record is not adequate, we will expect you  
20 to augment that record.

21 Is there anything else that you would like to  
22 raise at this time?

23 MS. SHELDON: Mr. Chairman, I am Karin Sheldon,  
24 representing the National Resources Defense Council.

25 We filed with you a petition requesting the

1 reissuance of the notice in this proceeding, and I wonder  
2 if this would be an appropriate time to make a comment on  
3 this, or if you would prefer to let the petition stand on  
4 its own.

5 CHAIRMAN FARMAKIDES: I would very much appreciate  
6 a comment. Let me ask the parties if there is anything else  
7 of a preliminary nature that you want to raise with respect  
8 to the proceeding as it is now scheduled.

9 Mr. Irvine?

10 MR. IRVINE: You are speaking primarily of this  
11 proceeding today?

12 CHAIRMAN FARMAKIDES: Yes, sir. Well, we are  
13 preparing for the evidentiary sessions.

14 MR. IRVINE: Yes, I realize that, but the time  
15 of the evidentiary sessions may or may not need to be  
16 changed depending on what occurs here today. So we are not  
17 addressing ourselves specifically to that at this time.

18 CHAIRMAN FARMAKIDES: All right.

19 MR. KINSEY: Mr. Chairman, you have before you  
20 the Staff response.

21 CHAIRMAN FARMAKIDES: Yes, which we haven't read  
22 yet.

23 MR. KINSEY: If I could briefly summarize the  
24 Staff's response, we would interpose no objection.

25 CHAIRMAN FARMAKIDES: Fine. Before you do that,

1 let me ask Ms. Sheldon to make an appearance and ask  
2 about the notification here. Please address yourself to the  
3 fact that your first two lines indicate that you are  
4 petitioning the AEC, which would seem to indicate you are not  
5 petitioning this Board.

6 However, at the very end of your petition, you  
7 indicate that you have, in the last paragraph, you are  
8 simultaneously filing this petition with the Commission.  
9 So I am not really -- the Board isn't quite sure what you are  
10 doing and what this, in fact, is. If you could, address  
11 yourself to that.

12 MS. SHELTON: I will. I am representing the  
13 National Resources Defense Council with respect to this  
14 petition. Basically, the issue at hand is what is the best  
15 way to effectuate what we consider to be an AEC policy as  
16 well as a matter that is stated in AEC regulations, that  
17 persons whose interests are affected by AEC proceedings have  
18 a right to intervene and participate in those proceedings.

19 The petition which we have filed was intended to  
20 be addressed to you, because we feel that you do have the  
21 authority to decide this matter, and to order a reissuance  
22 of the notice of hearing, if you so wish.

23 By stating the Atomic Energy in the first sentence,  
24 this included you as representatives of the Commission.

25 CHAIRMAN FARMAKIDES: Well, let's clarify that.

1 I don't think we are representatives of the Commission.  
2 We are a body separately established. We have no direct  
3 connection at all. We have a connection in a sense that  
4 our decision can be reviewed by the Commission. Is that what  
5 you mean?

6 MS. SHELDON: Yes, that is what we mean. We  
7 mean you are carrying out adjudicatory functions as part  
8 of the Atomic Energy Commission, not the commissioners  
9 themselves, but the Commission as a regulatory and  
10 adjudicatory agency.

11 The question that we have and the reason that  
12 we included the statement in the last paragraph was to  
13 assure timely resolution of this matter, and to prevent  
14 any problems that might arise if you decided that you did  
15 not have the jurisdiction to reissue the notice of hearing.

16 In that case, we wanted this matter to go to  
17 the Commission itself quite rapidly, so that there would be  
18 no delay of these hearings, and with respect to notice,  
19 and one could be issued promptly if found to be necessary.

20 We were not trying to drag the proceedings out.  
21 Certainly we have no intention of doing that, because as is  
22 clear from this, we are not even intervening at this point.  
23 The only question that we are addressing in this petition  
24 concerns the notice which was issued about the hearings.

25 CHAIRMAN FARMAKIDES: Do I understand you correctly

1 that you are not seeking to intervene at this point?

2 MS. SHELDON: No. I think the petition, as you  
3 will see, is not sufficient to be a petition for interven-  
4 tion. It does not state what our interests are in this  
5 matter, and does not meet the requirements of 10 CFR 314.  
6 I have no authority, for example, to intervene on behalf of  
7 NRDC in this proceeding. So we are asking the notice be  
8 reissued, because we feel the rights of persons affected  
9 by this proceeding, those rights which are stated in the  
10 Commission's regulations, are meaningless unless persons who  
11 are able to exercise those rights are informed of their  
12 existence.

13 There may be questions that the rights to inter-  
14 vene are limited to construction license or operating  
15 license for a production facility, or a nuclear power plant.  
16 However, a review of 10 CFR 40 reveals that no particular  
17 procedures are specified therein, and certainly no different  
18 procedures which are to be applicable to hearings conducted  
19 for source material licenses. If we read the whole of  
20 10 CFR Part 2, which specifies general rules of practice  
21 for the Commission, we see that in 2.1, which covers the  
22 scope of the rules, it indicates that the rules are to be  
23 applicable to all proceedings under the Atomic Energy Act,  
24 and that includes, of course, proceedings such as the one  
25 that is being contemplated here for an amendment to the

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1 source license.

2 Now, the problem, as we see it, and as it is  
3 addressed in our petition, is that the petition set forth  
4 all the requirements of the hearing without notifying persons  
5 that they had a right to intervene, specifying the amount of  
6 time that they had a right to exercise this right of inter-  
7 vention, or stating the procedures to be followed.

8 Now. in the response of the Staff, which I have  
9 briefly read this morning, they indicate they have no  
10 objection to this notice of reissuance of the notice, and  
11 they acknowledge that this right does in fact exist, and  
12 that people should be informed of it.

13 The difficulty which the Staff finds with our  
14 petition involves our interpretation of Section 2.105.  
15 It is this section that we have determined indicates what  
16 should be specified in the notice of hearing.

17 Now, I would like to say that even if it is  
18 determined that Section 2.105 does not apply to hearings of  
19 this kind, the policy and the regulations set forth in  
20 Section 2.714 and 715 mean that some means must be available  
21 to the public to notify them of their rights to intervene.  
22 Even without a specific notation of what is to be included  
23 in a notice of hearing, there must be some provision which  
24 sets forth in the notice that the public has a right to  
25 intervene.

1 CHAIRMAN FARMAKIDES: Let me interrupt. Perhaps  
2 at this time we might go back and accept the Staff's offer  
3 to discuss their response to our motion, since you are,  
4 in effect, responding to theirs. We will give you plenty of  
5 time to respond to their response, as it were.

6 The thought I would like to ask, too, is that you  
7 might, while the Staff is responding to your petition,  
8 and before you then respond to their response, could you  
9 address the penultimate paragraph on page 5 of your  
10 petition in which you say that we do have authority, and  
11 could you also address that in view of the interaction of  
12 7103, 7105, and -- I am sorry -- 2.103, and 2.105, and  
13 2.703?

14 We very much would welcome your help in outlining  
15 for us what authority you feel we have here, and especially  
16 as to the interaction of 104 and 105 and 703. So I will  
17 give you some time to consider that, and we can go, I think,  
18 at this time -- unless you want to clarify your petition  
19 further.

20 MS. SHELDON: Why don't I do that briefly, so  
21 I leave in your minds a clear idea of what we are getting  
22 at?

23 CHAIRMAN FARMAKIDES: What we will do following  
24 that is let them respond to your petition, and you can  
25 reply to them.

1 All right. Okay.

2 MS. SHELDON: Really, the argument can be stated  
3 very simply. It is rather an equitable, fundamental due  
4 process argument. The Commission has, through its  
5 regulations and through its policy, granted persons whose  
6 interests are affected by their proceedings the right to  
7 intervene, and participate. This is a rather fundamental  
8 right.

9 CHAIRMAN FARMAKIDES: All proceedings?

10 MS. SHELDON: All proceedings, unless otherwise  
11 specifically specified. This is the right that exists on  
12 the one hand.

13 On the other hand, that right, in order to be  
14 exercised by persons who are eligible to exercise that  
15 right, must be an informed one. In other words, the right  
16 without a notice of the existence of that right is meaning-  
17 less, and the notice which the Commission provides through  
18 the Federal Register indicating when hearings are going to  
19 be held, and unless in the Federal Register notices,  
20 specified statements are included to tell people that they  
21 have a right to intervene and tell them what procedures are  
22 to be followed, then the rights themselves are unable to  
23 be exercised and are, as we said, therefore, meaningless.

24 CHAIRMAN FARMAKIDES: You are saying the rules as  
25 published by the Commission are not an effective means of

1 putting people on notice as to their rights?

2 MS. SHELDON: I would venture to say very few  
3 people, members of the public, whom I generally represent  
4 in proceedings of this kind, have access to the Code of  
5 Federal Regulations or would have familiarity with it. Most  
6 of them are not represented by counsel. They learn of these  
7 things through newspapers and through the Federal Register.

8 Thank you.

9 CHAIRMAN FARMAKIDES: Sir?

10 MR. KINSEY: Two points which are contained in  
11 our response which we filed with you this morning:

12 The first point is that we do not believe that  
13 either 2.104 or 2.703, which govern the issuance of notices  
14 of hearing, requires any explicit statement inviting interested  
15 persons to intervene in these proceedings. The regulations  
16 are clear on their face under 2.714 in the Atomic Energy  
17 Act of 1954, which is exclusively clear that any interested  
18 person whose interests may be affected by a proceeding may  
19 petition to become a party to that proceeding.

20 CHAIRMAN FARMAKIDES: Is that your response to  
21 Ms. Sheldon's comment that rules are really not available  
22 and they cannot act as proper notice as to the right of  
23 petitioner to intervene?

24 MR. KINSEY: Yes. In that regard, I might say  
25 the rules are available, but are not available normally to

1 persons who wish to intervene.

2 CHAIRMAN FARMAKIDES: Proceed.

3 MR. KINSEY: Insofar as their argument on Section  
4 2.105 requiring notice of proposed action and also pursuant  
5 to that provision requiring specific language inviting  
6 persons to intervene, it is the Staff's position that this  
7 section is inapplicable to the instant proceeding in that  
8 this is a hearing required under the act and therefore there  
9 would be notice under 104.

10 CHAIRMAN FARMAKIDES: Come back again on that.  
11 You are saying this is a proper hearing under 2.104?

12 MR. KINSEY: That's correct, sir, and therefore  
13 it is a hearing required pursuant to the Atomic Energy Act.  
14 Section 2.105 concerns notices of proposed action.  
15 That is, prior to the Director of Regulation taking action  
16 in granting the license, he publishes a notice in the Federal  
17 Register indicating he proposes to take this action.  
18 Specific language pursuant to 105 must be incorporated  
19 inviting the Applicant to request a hearing and inviting  
20 any interested person whose interests may be affected by  
21 the granting of a license or an amendment also the right to  
22 petition to intervene and request a hearing.

1 CHAIRMAN FARMAKIDES: Mr. Kinsey, let me be clear  
2 here. Under 2.104A, "In the case of an application on which  
3 a hearing is required by the Act," is this proceeding required  
4 by the Act?

5 MR. KINSEY: I believe so, sir.

6 CHAIRMAN FARMAKIDES: What part of the Act?

7 MR. MURRAY: Section 189.

8 CHAIRMAN FARMAKIDES: So you are maintaining this  
9 proceeding is required by the Act?

10 MR. MURRAY: Yes, sir.

11 CHAIRMAN FARMAKIDES: All right. I am sorry.  
12 Proceed, sir.

13 MR. KINSEY: That basically is the point, or  
14 the two points, contained in our response. Notwithstanding our  
15 arguments with respect to the petitioner's arguments, Staff  
16 would interpose no objection should the Board determine that  
17 as a matter of policy that a supplementary notice of hearing  
18 should issue.

19 CHAIRMAN FARMAKIDES: By whom?

20 MR. KINSEY: We also believe in this regard that  
21 the Board under the notice of hearing issued by the Commission  
22 would have jurisdiction to issue such a notice in that you  
23 now have jurisdiction over this case, and by the same token  
24 you also have jurisdiction to set time, place and date.

25 CHAIRMAN FARMAKIDES: In other words, you are

1 suggesting that this Board could very easily issue an order  
2 in which we -- a prehearing conference order, for example,  
3 in which we narrate what has happened today, and in which we  
4 then advise the public that petitions to intervene will be  
5 accepted up to three days from that notice.

6           Once that happens, that would, in fact, then be --  
7 supplement the actual notice of hearing issued by the  
8 Commission?

9           MR. KINSEY: That is right.

10           CHAIRMAN FARMAKIDES: All right. Anything else,  
11 Mr. Kinsey?

12           MR. KINSEY: No.

13           CHAIRMAN FARMAKIDES: Mr. Irvine?

14           MR. IRVINE: As the Applicant here, we want to  
15 be in the position that whatever is done by this Board is  
16 done in a lawful sort of way. We don't want to be in the  
17 position of going up to appeal on some kind of notice  
18 technicality, so to speak.

19           However, we do feel that we agree with the Board's  
20 position that this is a hearing required by law, and that the  
21 notice of this under Section 104 has been given and is proper.

22           CHAIRMAN FARMAKIDES: Are you saying you agree with  
23 the Staff's position?

24           MR. IRVINE: Yes, I agree with the Staff's position  
25 on that. Therefore, we feel the notice has been given, that

1 the notice is proper.

2 I do not know that I necessarily agree with the  
3 Staff's position that this Board may now give a new notice  
4 or order a new notice, although I suppose that you may order  
5 done almost anything that you desire to have done. But in  
6 order to give this Board authority, the notice has to be  
7 published, and then the Board is appointed, as I understand  
8 the regulations. So that the Board becomes a functioning body  
9 as a result of the requests for hearing and the publication of  
10 the notice.

11 So, therefore, I am not certain that the Board,  
12 therefore, has the authority to go back and to say the notice  
13 was improper and, therefore, new notice must be issued.

14 CHAIRMAN FARMAKIDES: Thank you, sir.

15 Ms. Sheldon, would you like to respond now, or do  
16 you want a couple more minutes?

17 MS. SHELTON: This is fine. I trust these comments  
18 will be responsive.

19 To begin with, Mr. Chairman, it is our position  
20 that the Section 2.104 notice of hearing is not applicable  
21 to these proceedings.

22 Section 2.105 is.

23 For this reason, the Section 2.103 gives the  
24 Applicant the right to demand a hearing if he so wishes,  
25 after the Director of Regulations has taken initial action.

1           The hearing is at the option of the particular  
2 licensee involved. He does not have to demand if it he does  
3 not wish to.

4           Consequently, I don't feel this makes this a hearing  
5 which is required under the Act.

6           Now, our view of what is a hearing which is  
7 required under the Act is one which is set forth as absolutely  
8 required. It must take place. It is not the option or within  
9 the discretion of any party to hold or not to hold a hearing.  
10 It is specified as one which must take place.

11           In this case, if Kerr-McGee had not demanded a  
12 hearing we wouldn't be here today. Therefore, we don't feel  
13 2.104 applies, but 2.105 does apply because this hearing is  
14 not required by the Act.

15           CHAIRMAN FARMAKIDES: To that point, isn't that  
16 point moot if we accept the Staff's suggestion that all we  
17 need do at this point in time is to issue an order which out-  
18 lines an opportunity for the public to petition to intervene  
19 say thirty days from the date of that order?

20           Doesn't that accommodate your position?

21           MS. SHELDON: Certainly.

22           CHAIRMAN FARMAKIDES: Then the position of whether  
23 this is a 104 or 105 is no longer pertinent, if you agree with  
24 the Staff's position on the authority of this Board to issue  
25 an order in which we permit petitions to intervene for thirty

1 days.

2 MS. SHELDON: The important thing to us is granting  
3 persons whose interests are affected the right to intervene,  
4 or notifying them that this right exists. We would accept the  
5 order of the Board or reissuance of the notice on this matter  
6 as an appropriate response, regardless -- this is not as  
7 critical to the argument as the question of exercising.

8 CHAIRMAN FARMAKIDES: You can appreciate our  
9 position. If we can solve a problem at one level, there is no  
10 sense going to a different level.

11 MS. SHELDON: Yes.

12 CHAIRMAN FARMAKIDES: It seems to me the Staff is  
13 in agreement with the Natural Resources Defense Council, and  
14 the Applicant stated at one point that it also agreed with  
15 Staff's position, and then it went on to perhaps disagree to  
16 a certain extent.

17 Is there anything further with respect to these  
18 points made by Ms. Sheldon, Mr. Kinsey?

19 MR. KINSEY: I would concur in your remarks that if  
20 we can resolve it at one level, there is no need to take it  
21 to another.

22 Again, our position is that we would have no  
23 objection in this instance to the Board taking what action is  
24 deemed necessary.

25 CHAIRMAN FARMAKIDES: Without joining issue on 104

1 and 105?

2 MR. KINSEY: Correct.

3 MS. SHELDON: Mr. Chairman, may I ask you, then, if  
4 the suggestion of an order is the solution?

5 CHAIRMAN FARMAKIDES: This is going to be a Board  
6 action, and it isn't mine, and I haven't talked to my colleagues  
7 yet.

8 It seems to me that if you two in essence -- and I  
9 think you have agreed in essence that this would be proper  
10 notice or sufficient notice for your purposes, this would be a  
11 very preferred course of action.

12 Now --

13 MS. SHELDON: The only thing that troubles me about  
14 that -- and this is -- I don't know what the immediate scope of  
15 this proceeding is -- what will happen the next time around?

16 CHAIRMAN FARMAKIDES: What do you mean?

17 MS. SHELDON: If a situation of this kind arises  
18 again and the notice is put in the Federal Register and does  
19 not contain what we feel is the requisite information, if we  
20 will have to proceed once more on this.

21 CHAIRMAN FARMAKIDES: Well, if you are suggesting  
22 this is a good test case for you to take up, that will be your  
23 decision to make, but in terms of this Board we are here to  
24 resolve an issue.

25 MS. SHELDON: That is the only thing that troubles

1 me.

2 CHAIRMAN FARMAKIDES: Well, you will have to think  
3 about that.

4 MS. SHELDON: We feel the Staff's position and  
5 ours is close enough so that no further difficulty is ahead  
6 of us.

7 CHAIRMAN FARMAKIDES: In view of that, I was going  
8 to ask for briefs this morning. I read the petition, of  
9 course, and I wasn't quite sure to whom it was addressed or  
10 whether it was properly before us, but assuming it was it  
11 doesn't appear I now need briefs, unless you people think you  
12 want to file briefs.

13 MR. MURRAY: Of course you have our position,  
14 Mr. Chairman, in the response to the petition.

15 CHAIRMAN FARMAKIDES: I haven't read it yet,  
16 Mr. Murray.

17 MR. MURRAY: That constitutes our brief and legal  
18 argument, demonstrating our views.

19 CHAIRMAN FARMAKIDES: Do the other two parties  
20 want to file a paper here?

21 MR. IRVINE: We received this rather late, and I  
22 was away from Oklahoma City yesterday and over the weekend,  
23 so I have not had an opportunity to prepare anything.

24 If you would like, we would be happy to prepare  
25 a response along the lines we have suggested.

1 CHAIRMAN FARMAKIDES: No, sir. I am just asking  
2 you if you wish to respond to it.

3 I think at this point in time I feel confident  
4 that we have enough information here to resolve the issue.  
5 But I am asking you if you would like to respond to the  
6 petition to require litigation filed by the National  
7 Resources Defense Council.

8 No?

9 MR. IRVINE: No.

10 MS. SHELDON: Mr. Chairman, if you would like a  
11 more complete statement of our reasons and perhaps a more  
12 detailed response to your questions this morning, I would be  
13 happy to provide you with that.

14 CHAIRMAN FARMAKIDES: Ms. Sheldon, I welcome that.  
15 It appears to me again that if you and the Staff are so close  
16 perhaps you are really in agreement and the application is  
17 basically in agreement.

18 I don't see that we have to beat a dead horse, and  
19 I think we can resolve it very easily.

20 I have to talk to the other members to see if  
21 this is a Board position or merely a proposal.

22 Is there anything further on this petition?

23 (No response.)

24 Thank you.

25 Let me, Ms. Sheldon, ask one more thing. Assuming

1 we go that route, do you have any advice to give the Board as  
2 to whether or not you would petition to intervene?

3 MS. SHELDON: Not at this point I don't. I know  
4 the National Resources Defense Council has been very  
5 interested in the question of disposition of nuclear waste  
6 materials and has been involved in other proceedings on this  
7 issue.

8 I also know they are collecting information on this  
9 particular issue and are seeking to be as informed as  
10 possible.

11 That will be a decision which they will have to  
12 make themselves, and most likely if they do, they will  
13 intervene on their own behalf, since most of their  
14 members have lawyers.

15 I would assume that intervention would be made  
16 by one of their own counsel.

17 CHAIRMAN FARMAKIDES: Let's make the assumption  
18 that they do intervene. How much discovery time would you  
19 need?

20 MS. SHELDON: I have not looked at the materials.  
21 That I really am not in a position to say. I really don't  
22 know what they have, or how long they would need to do that.

23 CHAIRMAN FARMAKIDES: All right. Let's make  
24 certain assumptions just to be certain that the record is  
25 ample for our consideration, the Board's consideration.

1           This is August 14. Assuming an order of the time  
2 we are talking about issues in a couple of days, let's say just  
3 for using round numbers August 20, then thirty days will  
4 expire September 20, on or about September 20.

5           Perhaps then we will be able to respond to any  
6 petitions to intervene within a matter of a week or two weeks.  
7 So that means we will be prepared to proceed with a second  
8 prehearing conference, if necessary, October 15, the week of  
9 October 15.

10          We then would be able to go to evidentiary hearing,  
11 assuming no time for discovery, within a couple of weeks.

12          Assuming time for discovery, I would think we would  
13 be going into December.

14          MR. MURRAY: Mr. Chairman, one of our principal  
15 witnesses is a professor of geology at the University of  
16 Missouri. He starts back to school on the 27th. It looks like  
17 he will be out for Christmas vacation at the time this hearing  
18 goes forward.

19          CHAIRMAN FARMAKIDES: Do you have any suggestions,  
20 Mr. Murray?

21          MR. MURRAY: I suggest that the Chairman give  
22 consideration to cutting down on the period you are talking  
23 about, the thirty-day period for interventions.

24          If NRDC wants to intervene, it seems to me they  
25 are on actual notice. There is no question about that.

1 CHAIRMAN FARMAKIDES: Yes. We could certainly ask  
2 NRDC that if they wish to intervene they commence informal  
3 discovery immediately.

4 MR. MURRAY: And the public document room is  
5 filled with materials on this proceeding, as you know.

6 CHAIRMAN FARMAKIDES: Let me put NRDC on notice. If  
7 you do wish to intervene I think you should begin informal  
8 voluntary discovery at the earliest time and that you could  
9 petition to intervene at an early moment so that we can  
10 proceed without delay.

11 Mr. Murray, I am not thinking of NRDC, but with  
12 respect to the position with respect to the public, are you  
13 suggesting that we give less than thirty days' notice?

14 MR. MURRAY: I am suggesting that the public is  
15 already on notice as of the notice of hearing that was filed  
16 in the Federal Register in this proceeding, fully on notice in  
17 conjunction with the Atomic Energy Act and the regulations,  
18 and any additional notice that the Board deems appropriate  
19 to give will be simply a gratuitous notice.

20 CHAIRMAN FARMAKIDES: That is contrary to the  
21 position stated earlier.

22 MR. MURRAY: No, sir. We have no objection to the  
23 notice. It is not contrary to our view, as the filing made  
24 clear. Therefore, the opportunity should be taken to cut  
25 down the period of notice given.

1           We are all in favor of notice, and we think it has  
2           been adequate. We don't think thirty days' additional notice  
3           is required.

4           MS. SHELDON: The problem is that without specifying  
5           that persons have a right to intervene, the notice falls short  
6           of putting persons on notice that they have to get busy with  
7           discovery and participate.

8           If they don't know that they have a right to do so,  
9           how can they exercise that? And cutting down that time  
10          period certainly in our view is an abrogation of the rights  
11          that we are trying to establish.

12          Now, our concern is not with NRDC alone, although  
13          I am representing them here. Our petition was for all the  
14          members of the public, particularly people in the area of  
15          concern in Oklahoma, that they receive proper notice which  
16          advises them that this hearing is going to be held and tells  
17          them how they can become involved if they feel their interests  
18          are going to be affected thereby.

19          We feel this is legally required, and we would like  
20          to see every possible step taken without dragging this hearing  
21          out intolerably to provide the right time of notice, which  
22          not only includes the fact that a hearing is going to be held,  
23          but a statement of participation and procedures and so on.

24          CHAIRMAN FARMAKIDES: I understand your position,  
25          Ms. Sheldon.

1 MR. IRVINE: Let me address myself to this one more  
2 time. Equity cuts both ways, and Kerr-McGee now has followed  
3 through with every procedure possible in order to bring this  
4 thing to as early a hearing as we possibly can do.

5 Now, we are looking three more months down the line  
6 for the continuation of this hearing.

7 Now, quite frankly, the people who are interested  
8 in Oklahoma are quite well aware of the situation that has  
9 been developed. It has been taken through the Oklahoma  
10 Public Health Service, the Oklahoma Public Health Service, the  
11 Oklahoma Water Resources Board, the state agencies who are  
12 particularly interested in this aspect of this matter, or the  
13 disposal of wastes in deep wells.

14 It has also been before our Corporation  
15 Commission and that is a great deal to do with the disposal  
16 of underground wastes by oil wells.

17 As a consequence, these people are well aware of  
18 this, and as a matter of fact I was asked to present today  
19 a letter from the Oklahoma Public Health Service to go as a  
20 part of the record in here in which they recognize and are  
21 aware of this.

22 So I think that to go back now and to say we must  
23 issue an order and notify the public at large that they have  
24 a right to intervene would be not necessarily contrary to the  
25 spirit, but certainly contrary to the exact language of the

1 regulations.

2 CHAIRMAN FARMAKIDES: Mr. Irvine, excuse me, sir.  
3 How would the thirty-day delay affect adversely the Kerr-McGee  
4 Corporation?

5 MR. IRVINE: Well, sir, we have several pits out  
6 there in which we are now under temporary license from the  
7 AEC disposing of this material. If it is at all possible, we  
8 need to get those pits emptied out.

9 We have had a lot of rain in Oklahoma this year  
10 and we need to get started emptying these pits into the well  
11 if it is at all possible.

12 An additional three months' delay gives us that many  
13 more problems that we have to deal with from a physical stand-  
14 point.

15 CHAIRMAN FARMAKIDES: Can you be more specific?  
16 What does this mean in terms of your time schedules, your  
17 costs? Do you have any information in hand that you can supply  
18 the Board?

19 MR. IRVINE: I did not have specifically the costs  
20 at hand, but it will mean within a short period of time that  
21 we either are going to have to dig additional pits at  
22 considerable cost on there to temporarily handle these wastes,  
23 unless we can get some sort of relief to put them into this  
24 well.

25 Now, I can get you chose, and I will submit those

1 to you if you desire.

2 CHAIRMAN FARMAKIDES: I think we have had enough  
3 information provided to us on this point. Let's now go to the  
4 second point which is perhaps more substantive, and that is  
5 the question of adequate documentation for the record.

6 Dr. Babcock has a number of questions on which he  
7 wishes to clarify, and I think it is terribly important that  
8 the Applicant take notes.

9 I guess you will have the transcript, too, but  
10 it would seem that absent this kind of information the Board  
11 will not have a sufficient basis on which to make a finding.

12 Also, the Staff is going to be asked to supply  
13 certain documentation.

14 Dr. Babcock?

15 DR. BABCOCK: I assume that Kerr-McGee is placing  
16 major reliance on the fact that this well will, or will not  
17 be a satisfactory mechanism for the disposal of the wastes.  
18 Major reliance is being placed upon the tests in which you  
19 pump water down the well. You have got the response to this  
20 pumping by shutting the thing off and measuring the decay  
21 of the pressure. Then you submitted certain data to  
22 a computer, and you attempted to duplicate the pressure  
23 responses that you had made.

24 CHAIRMAN FARMAKIDES: We are quoting from  
25 documentation that has been available to us and is now in

1 the record.

2 MR. IRVINE: You are quoting from Mr. Gruy's report,  
3 Exhibit A to our application?

4 DR. BABCOCK: Yes, Exhibit A.

5 Yes. I believe it would be quite helpful to this  
6 Board if, at the next meeting, if Kerr-McGee would give some  
7 kind of resume of experimental work that was done and the  
8 input that was fed to the computer and how they took this  
9 input and arrived at the conclusions that you present.

10 In other words, I have difficulty, and I believe  
11 the other members of the Board also have difficulty, in  
12 seeing how the data that was given can be translated into  
13 the conclusions that you came up with.

14 In other words, we want to be a little more  
15 knowledgeable about the process that you people went through.

16 MR. IRVINE: Mr. Farmakides and Mr. Babcock, is it  
17 permissible to interrupt you as we go along and perhaps  
18 clarify these things?

19 DR. BABCOCK: If you are asking me, yes.

20

21

22

23

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25

1           MR. IRVINE: Sir, both the Staff attorneys and  
2 myself have conferred in connection with this matter, and  
3 although we are aware of the fact that the regulations provide  
4 that testimony will be submitted in written form, we had both  
5 felt that testimony in this instance might better be given in  
6 verbal form, and it was our intention to give an extensive  
7 verbal testimony in connection with this very matter.

8           We would, I suppose now would be as good a time as  
9 any to find out whether this would be an acceptable matter or  
10 not.

11           CHAIRMAN FARMAKIDES: I would like to know why.  
12 I prefer written testimony. I think it makes good sense. It  
13 helps the Board move, and provides the technical members with  
14 sufficient time to absorb the material before the fact, and  
15 we can then cross-file, I think, more effectively.

16           Is there a reason why you are suggesting oral  
17 testimony? Is there a problem you have?

18           MR. IRVINE: Not a specific problem. We intended  
19 to bring Mr. Gruy here to explain the system he used and how  
20 he did it, and we felt he could explain it more fully by  
21 verbal testimony.

22           CHAIRMAN FARMAKIDES: Why couldn't he do it in  
23 written testimony?

24           MR. IRVINE: You can do almost anything in written  
25 form that you could verbalize, but I felt the testimony would be

1 more effective, would answer specific questions.

2 CHAIRMAN FARMAKIDES: I would hope he would be here  
3 anyway, even if he presented written testimony.

4 Excuse me. (Pause.)

5 I think we prefer to go along with the rules and  
6 require written testimony, sir, and you can certainly  
7 summarize it orally, and I think that would be to the advantage  
8 of the Board and the parties, especially if we have an inter-  
9 vention. I think it would be very clear that written  
10 testimony is preferred.

11 Perhaps in order to expedite the hearing this  
12 morning, or the hearing conference here, Dr. Babcock might  
13 simply give you the areas in which we need clarification, and  
14 then you and the Staff could get together on those areas later  
15 and decide if there is any discovery needed. I don't see that  
16 there is any such need.

17 However, if we can proceed this way, I think we will  
18 save some time.

19 DR. BABCOCK: What I have given so far has been kind  
20 of a generality situation. I will now give you a few examples  
21 of the types of specific questions we would like to see  
22 delineated further.

23 Question one: What are the constants that were  
24 introduced into the simulation run?

25 Two: What are the variables that were then left to

1 be adjusted by the simulation operator?

2 MR. IRVINE: Dr. Babcock, I am trying to write these  
3 down.

4 CHAIRMAN FARMAKIDES: You will have the transcript.  
5 It is just for additional clarification.

6 MR. IRVINE: Thank you.

7 DR. BABCOCK: Question three: How accurate a fit of  
8 the simulator data to the actual data is required in order to  
9 say for sure that:

10 (a) The well casing does not have a leak that  
11 communicates to a vertical fissure and allows major escape of  
12 the waste water that eventually leaks to the surface?

13 (b) Let us assume that there is a quarter-inch  
14 pipe that penetrates the arbuckle formation. Would the  
15 leakage through this pipe be detected in the simulator test?

16 (c) How much leakage through the nearest fault can be  
17 detected or predicted by the simulator test? In other words,  
18 I am trying to get an idea of the magnitude of possible error  
19 in your conclusion that there is not major leakage.

20 Going to question four now: I note that the  
21 computer printout does not basically follow the pressure fall-  
22 off as measured. The computer printout falls off less slowly  
23 than the measured during the initial portion of the test. It  
24 falls off more rapidly than the actual test in the final  
25 portion.

1           The question I am asking you is, is that a  
2 significant item? Are you greatly concerned about that  
3 deviation which you did not discuss?

4           Question five: What is the significance of the  
5 continued divergence between the simulator and the actual data  
6 beyond the test duration, which I believe was something like  
7 150 hours. You are obviously concerned with many tens of  
8 thousands of hours, and if there is a divergence there at the  
9 end of 150 hours, does this affect the conclusions that you  
10 have given?

11          Question six: I note that you predict that there is  
12 a fault some 1100 feet from the well, but in the verbal  
13 description of faults, you say the nearest fault is  
14 approximately one mile away. I would like to have this  
15 divergence discussed.

16          MR. IRVINE: Pardon me, Dr. Babcock. Just to be  
17 specific, sir, what verbal discussion of this were we  
18 referring to, sir? I don't recall.

19          DR. BABCOCK: I am sorry. I was using verbal in the  
20 sense that it is words, not oral. I was speaking about this  
21 document (indicating), the engineering study by H. J. Gruy.  
22 That report mentioned the fact that there were known faults  
23 around the simulator test -- the simulator test predicted a  
24 fault at a further distance, and I wanted that explained.

25          MR. IRVINE: Fine. Thank you, sir.

1 DR. BABCOCK: The next set of questions is of a  
2 somewhat different nature, so I will take up this next set and  
3 we will start a new numbers system, because you will note  
4 they are not quite like the others.

5 These are really related to alternatives that might  
6 be something different than what you have proposed as your  
7 mechanism of putting this water down the well.

8 My question one is: Would an increase in the  
9 density of the injected fluid be helpful in keeping the water  
10 that is injected from eventually finding a way to the  
11 surface?

12 My point there is, I am wondering if the fact that  
13 the injected fluid would be more dense than the fluid that is  
14 there now, would that give it a vector to go down as opposed  
15 to a vector to go up in the present situation?

16 If this has any merit at all, I would like to have  
17 some kind of a discussion of the cost of doing this kind of  
18 thing.

19 If the mechanism of increasing the density of the  
20 water that you considered turned out to be evaporation, which is  
21 the most obvious way of doing it, would the reduction in the  
22 amount of water that you got in order to increase the density,  
23 would the reduction be helpful in your well injection  
24 procedure?

25 I believe that is a sample of what I am talking

1 about. Just a moment. (Pause.)

2 Mr. Farmakides thought my last question was not  
3 quite as precise as it ought to be.

4 When I say would it be helpful, what I meant was  
5 would there be benefits accrued to the Kerr-McGee operation  
6 by reducing the volume one third in addition to the benefit  
7 that you would get if you did increase the density?

8 MR. KORNBLITH: I don't have questions as finely  
9 honed as Dr. Babcock, but I would like to make one point that  
10 we were talking about before. The Board members, at least  
11 one of the Board members, had a good technical background, but  
12 not related to the areas of petroleum engineering, well  
13 evaluation, and this sort of thing, and we would -- or I  
14 would -- like to see included in this written testimony we have  
15 discussed enough material to give a person with a reasonable  
16 but not specialized technical background an appreciation of how  
17 one goes about evaluating the performance of a well as it  
18 affects this application.

19 I think this sort of thing is the sort of thing  
20 that I might want to read once or twice before I come into  
21 the hearing, rather than to rely upon having to absorb it  
22 orally while I am sitting here, and I think this is basically  
23 the reason why the Board has asked that this testimony be put  
24 in writing.

25 I am sure there will be a number of detailed

1 questions during the hearing that by their nature have to be  
2 answered orally, but I think what I was referring to basically  
3 is background material, which we would like to have in written  
4 form.

5 In addition to the types of areas that Dr. Babcock  
6 has been addressing, I feel we need some additional information  
7 from the Staff in order to relate their conclusions to the  
8 material that has been provided in the record. We have a  
9 substantial amount of data that the applicant has submitted  
10 that Dr. Babcock has been discussing. We have some rather  
11 short, brief evaluations of these data by the Staff consultants,  
12 and we have some ultimate conclusions by the Staff, but we  
13 don't have much that serves to connect these three things.  
14 This is one of the things the Board would like to see.

15 Thank you. That is all I have.

16 CHAIRMAN FARMAKIDES: Do you have any questions of  
17 the Board we could be helpful on?

18 MR. IRVINE: May I ask, Mr. Kornblith, is the  
19 information that you are particularly interested in in  
20 connection with wells the method, general methods of operation  
21 of disposal wells?

22 MR. KORNBLITH: I am concerned more with the  
23 question of methods of determining the suitability of a well  
24 for disposal purposes.

25 MR. IRVINE: That helps me. Thank you.

1 MR. KORNBLITH: How one gets from the physical data  
2 that one can measure to an understanding of the performance  
3 of the well, disposal well.

4 MR. IRVINE: Thank you.

5 MR. KINSEY: Mr. Chairman?

6 CHAIRMAN FARMAKIDES: Mr. Kinsey?

7 MR. KINSEY: This may be premature in light of our  
8 earlier discussions concerning the petition.

9 Do you want to discuss document stipulation at this  
10 point?

11 CHAIRMAN FARMAKIDES: I don't know that it is neces-  
12 sary to discuss them, if you people get together and agree.  
13 That is perfect. We can do it as soon as you are ready to  
14 submit it. That will be fine with us, or perhaps if we do go  
15 along with the resolution of the issue posed this morning by  
16 giving 30 days' notice, and if we do that, I have been looking  
17 at the calendar, and now I see that if we issued an order today  
18 or tomorrow with respect to the resolution of the issue, and  
19 this gives the assumption that for purposes of planning we  
20 do give 30 days, and then that 30 days expires on September 14,  
21 we could then have another prehearing conference that could  
22 occur the very next Monday or Tuesday, September 18, and that,  
23 then, would indicate that we could go to an evidentiary  
24 hearing, I would feel, within a very short period of time  
25 thereafter, unless there is a real reason why discovery has

1 got to be implemented.

2 MR. IRVINE: Yes, sir.

3 CHAIRMAN FARMAKIDES: How does that schedule meet  
4 with the approval of the parties, or with your disapproval?

5 MR. IRVINE: It certainly meets with our approval  
6 a great deal more than thinking about some time in December.

7 CHAIRMAN FARMAKIDES: Fine.

8 Mr. Kinsey?

9 MR. KINSEY: That is agreeable with us.

10 CHAIRMAN FARMAKIDES: Of course, this all depends  
11 on what happens when the notice goes out.

12 MR. KINSEY: I might add in that regard, insofar as  
13 discovery would be concerned, there is, I have to say, not that  
14 much documentation entailed in this as opposed to other types  
15 of proceedings.

16 CHAIRMAN FARMAKIDES: This additional time may well  
17 be helpful in the applicant's ability, or his opportunity to  
18 resolve questions posed by Dr. Babcock.

19 MR. IRVINE: I might say, not only the opportunity,  
20 but the absolute necessity to do so.

21 CHAIRMAN FARMAKIDES: All right. We feel the same  
22 thing. We felt the record had to be documented more.

23 MR. IRVINE: It would take us more time than  
24 between now and the hearing date now set to do it adequately.

25 CHAIRMAN FARMAKIDES: I think what we will do -- is

1 there anything further, gentlemen?

2 What we will do is recess. The Board will continue  
3 its thinking on the matter and come up with a resolution this  
4 morning or this afternoon, and we will issue an order as  
5 quickly as possible, probably today or tomorrow. Then that  
6 order will govern the proceedings.

7 It would seem to me that in view of the questions  
8 posed by Dr. Babcock and Mr. Kornblith that the 27th of August  
9 date is unrealistic, and we perhaps should abandon it in any  
10 event.

11 Is that agreeable with the parties?

12 MR. IRVINE: Yes.

13 CHAIRMAN FARMARIDES: All right.

14 So, let's consider the hearing scheduled now for  
15 the 27th and 28th could be canceled, and we will come out with  
16 another date for that hearing.

17 We have one more request to make.

18 DR. BABCOCK: The operation we were just describing,  
19 pumping water down the hole, stopping the pumping and allowing  
20 the decay of the pressure to take place, and then put on  
21 a simulator, is a relatively well understood and relatively  
22 common technique for chemical engineers to analyze. This is  
23 similar to a radioactive decay. In other words, it is a decay  
24 to a steady state.

25 MR. IRVINE: Yes.

1 DR. BABCOCK: The methods used for analyzing radio-  
2 active decay or other diffusional operations, those that decay  
3 to a steady state, are well recognized by chemical engineers,  
4 and you can draw straight lines, for example, through various  
5 portions of the data and can draw conclusions from these  
6 straight lines.

7 I was wondering if Kerr-McGee had done such an  
8 analysis of the data, and if they have, would they present that,  
9 also.

10 MR. IRVINE: Yes, sir.

11 DR. BABCOCK: In other words, I want the first order  
12 analysis of the data on graph form using appropriate equations  
13 or appropriate scales that are different from the linear  
14 scale that you showed me.

15 MR. IRVINE: Yes, sir.

16 CHAIRMAN FARMAKIDES: Is there anything further?

17 MR. IRVINE: Yes. May we address ourselves to the  
18 earlier requests on framing a joint statement of the issues?

19 Both the Staff and myself have visited in connection  
20 with this matter, and I am not at all sure that we can frame  
21 anything that really says it much better than the issues are  
22 stated in the notice here.

23 CHAIRMAN FARMAKIDES: We can't litigate on those  
24 issues; they are so broad.

25 MR. KINSEY: Not the issues for the Board to resolve,

1 sir.

2 MR. IRVINE: On page 2 of the notice.

3 MR. MURRAY: On page 2.

4 CHAIRMAN FARMAKIDES: Right, but they are so broad.

5 I think you can join issue on much more specific facts or  
6 points than the general issues posed on page 2.

7 Off the record.

8 (Discussion off the record.)  
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1 CHAIRMAN FARMAKIDES: Back on the record.

2 Is there anything further, gentlemen?

3 MR. IRVINE: What timing are we looking at for  
4 the submission of written testimony? Or will that be  
5 decided at the next prehearing conference?

6 CHAIRMAN FARMAKIDES: We could certainly do it  
7 at that time. I feel the very best way to get a proceeding  
8 underway and get it concluded to the satisfaction of all the  
9 parties and the Board is to let the parties make as many  
10 decisions as possible, consistent, of course, with the  
11 desire of the Board to develop a full and complete record.

12 If you people get together and come up with a  
13 proposed schedule, that would be very welcome by the Board.  
14 As a matter of fact, we would be looking to you to suggest  
15 what is your best schedule for proceeding, and then in the  
16 light of what is convenient for you, the Board would then  
17 be able to also fit its schedule into your full schedule,  
18 if at all possible; and if not, we could certainly adapt  
19 a compromise schedule.

20 So what you can do in the course of you people  
21 speaking to each other, you can certainly develop a  
22 schedule that will meet your needs and will meet the rules.  
23 The Staff has certain commitments under the rules.  
24 You can present that schedule to us. This has been done  
25 time and time and time again by licensing Boards and it

1 works very well.

2 If we do modify that schedule, it won't be very  
3 much, and that gives you tremendous flexibility coming up  
4 with a schedule that is agreeable to both parties.

5 Now, if other parties become involved, of course,  
6 you have to talk to those parties, too.

7 MR. KORNBLITH: In this particular case, the  
8 technical material we have submitted is a little outside  
9 the scope of the matters we normally consider in these hear-  
10 ings. It would therefore be helpful to the Board if we had a  
11 little more time to study and review that material before  
12 the hearing than we otherwise might have done.

13 MR. MURRAY: You are referring to the five-  
14 difficulty prescription?

15 MR. KORNBLITH: I think if we could have the  
16 material in our hands 10 days or two weeks before the  
17 hearings, it would be helpful.

18 CHAIRMAN FARMAKIDES: Yes. That is just a  
19 caution to you that when you prepare your proposed schedule,  
20 give us some time. Otherwise, we won't accept it or will  
21 modify it to suit what Mr. Kornblith indicated.

22 MR. IRVINE: We are not looking at a further pre-  
23 conference hearing until some time shortly after the 14th of  
24 September.

25 CHAIRMAN FARMAKIDES: If there is no petition to

1 intervene, we can go to hearing on the 14th of September.  
2 If there is, then what you said is out. If there is no  
3 petition to intervene, let's be very clear. We are ready to  
4 go to trial that week.

5 MR. MURRAY: We really won't know until the final  
6 day is up, and these folks file usually on the last day.

7 CHAIRMAN FARMAKIDES: Well, we will play it the  
8 way it occurs, you know.

9 MR. IRVINE: You do not anticipate a further pre-  
10 conference hearing unless there is a petition to intervene?

11 CHAIRMAN FARMAKIDES: That is right, unless you  
12 people can see a reason for it.

13 MR. IRVINE: I might state at this stage of the  
14 game that I have been furnished the copy of the list of  
15 documents that have been submitted by the Staff, and so far  
16 as that list is concerned, since there may not be a further  
17 pre-conference hearing, we would stipulate as to authenticity  
18 of those, unless you need that in writing.

19 CHAIRMAN FARMAKIDES: We would like to have it  
20 in writing, sir.

21 MR. IRVINE: All right.

22 CHAIRMAN FARMAKIDES: That will be fine, and the  
23 fact that you are aware of all those documents, and you  
24 have no objection to having them made available to us,  
25 we would appreciate that.

1           Could we have a copy of that, too, Mr. Kinsey?

2           MR. KINSEY: Yes.

3           CHAIRMAN FARMAKIDES: I appreciate receiving those.  
4           There is one more thing that I welcome in the hearings. I  
5           welcome communication between the parties. I think it is  
6           essential for an expeditious and an efficient hearing, and if  
7           you need me, if you need me either as a legal member or  
8           as Chairman of the Board, call me in a conference call and  
9           I will talk to you all. If you have any problem on discovery,  
10          call that. The telephone is a marvelous tool, and we can  
11          use it.

12          MR. MURRAY: I have heard it called other things.

13          CHAIRMAN FARMAKIDES: I am aware of that, too.

14          MR. KINSEY: One final question: In the possi-  
15          bility that we may not have another prehearing conference,  
16          and that is, the Staff would like to reserve the right to  
17          qualify and use a technical interrogator during the course  
18          of the proceeding.

19          CHAIRMAN FARMAKIDES: I have found that that  
20          helps a lot. We lawyers have -- some people say we lawyers  
21          have limitations, you know.

22          MR. IRVINE: Obviously a mistake.

23          CHAIRMAN FARMAKIDES: Gentlemen, thank you very much.  
24          This will conclude the prehearing conference.

25                 (Whereupon, at 11:18 a.m., the conference was  
adjourned.)