

1 problem with this field summary report and what Mr.  
2 Harrelson testified, they had a long time including  
3 Mr. Harrelson's two day deposition or here to say,  
4 "Mr. Burgess said this. Why did you say something  
5 else?"

6 To now just have it come in -- Well, I  
7 took Your Honor as saying it was rejected and I did  
8 not think Mr. Campbell made a case to have this  
9 composite exhibit even considered except to the extent  
10 that Your Honor said he could. If there is something  
11 in it that contradicts then fine. But to have it come  
12 in as evidence I did not think it was --

13 CHIEF JUDGE SIPPEL: My ruling is as it  
14 stands. It's not going to be received into evidence.  
15 However, I'm trying to be fair to Mr. Campbell in  
16 terms of what he's seeking to do here with this and as  
17 I say, first anything specifically that the witness  
18 testified to the same as my rulings with respect to  
19 the earlier exhibits that I rejected. But I take it  
20 we don't have that situation here. It's not quite  
21 here.

22 MR. CAMPBELL: We do not other than I

1 relied on it to some extent or another. That's the  
2 testimony we have. And Your Honor, for example --

3 CHIEF JUDGE SIPPEL: Let me ask you this.  
4 It's 11:40 a.m. Why don't take our regular luncheon  
5 break and then we can come back a little bit early,  
6 say at 1:00 p.m., and you can cross examine him on  
7 this stuff.

8 MR. CAMPBELL: Can I have a moment with  
9 co-counsel?

10 CHIEF JUDGE SIPPEL: Yes. Go off the  
11 record. Sure.

12 (Whereupon, the foregoing matter went off  
13 the record at 11:38 a.m. and went back on the record  
14 at 11:39 a.m.)

15 CHIEF JUDGE SIPPEL: Let's go back on the  
16 record.

17 MR. CAMPBELL: We do not believe that we  
18 want to conduct any further examination of this  
19 witness on these documents. The point of these  
20 documents is that some of that contained admissions by  
21 the Complainants in this case. This is one of the  
22 issues we attempted to confront when we requested

1 permission to call them as adverse witnesses in our  
2 case. If we were granted that permission we could  
3 have had them on the stand.

4 We could have authenticated the document,  
5 moved it into evidence and we don't have to question  
6 the witness about the document. We can the document  
7 be admission to speak for itself. And we can compare  
8 and contrast it to the testimony that we did get in  
9 the case. That's how you create conflicting  
10 testimony. You don't always have to ask about every  
11 single exhibit. They're moved into evidence unless  
12 there is some objection that's noteworthy to relevance  
13 or prejudice or something with that effect and we just  
14 don't have that here nor did we have the opportunity  
15 to bring those witnesses in and cross examine those  
16 witnesses about the documents.

17 So all we can do is let the documents  
18 speak for themselves and that's what we're attempting  
19 to do here. That's with respect to the communications  
20 from the Complainants through the lawyer to the  
21 expert.

22 With respect to the various drafts of

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1 reports and summaries that are contained in this  
2 exhibit, it's the same ruling that the Court make on  
3 Exhibit 90. That goes to the issuance of credibility  
4 and bias. Now I am quite sure that if I get Mr.  
5 Harrelson on cross examination again and I say, "Did  
6 this affect you in any way in your testimony? Were  
7 you biased?" he's going to say no. "Do you have  
8 credibility problem?" I trust he would say no.

9 So I don't see what additional cross  
10 examination could do that the documents have to speak  
11 of themselves and they're their documents. I can't  
12 see what the difficulty is here and again if there's  
13 prejudice it's us being prejudiced by the lack of the  
14 opportunity to get the Complainant's representatives  
15 up here and talk to them about the pictures they made  
16 and cross examine them on the pictures they made. So  
17 all we can do is take them at face value and that's  
18 what we would to do with them, Your Honor. And we  
19 retender them into evidence at this time.

20 CHIEF JUDGE SIPPEL: All right. My ruling is  
21 going to stand as it was. It's not going to be  
22 received into evidence. It's rejected. It's a

1 composite. It has multiple problems with it in that  
2 respect, confusion amongst others, possible prejudice.

3 But on the other hand, you do have a point  
4 and I'm going to permit you to proffer admissions out  
5 of these documents, whatever of these documents you  
6 feel are probative of an admission. You certainly  
7 offer that in proposed findings and as I said earlier  
8 with respect that anything Mr. Cook sent him and I'm  
9 taking that as being trial preparation as opposed to  
10 whatever this other material may have been and if you  
11 find inconsistency or you find that it turns out to be  
12 an attorney recasting of an document or something  
13 that's being considered, you certainly may use that in  
14 the same context as I permitted with, I guess, it was  
15 No. 90, wasn't it?

16 MR. CAMPBELL: Correct.

17 CHIEF JUDGE SIPPEL: But because of the -  
18 and I'm not going to use Mr. Seiver's word mischief,  
19 but because of the confusion it could cause if it were  
20 received in this form as an exhibit, I'm not going to  
21 do that. But I think that my ruling is clear enough  
22 to experienced counsel that you know what I mean and

1 we do have an opportunity for reply briefing. Be that  
2 as it may, that's my ruling.

3 Ninety-one subject to how I have qualified  
4 this, 91 is rejected as an exhibit. It's relying  
5 primarily on under Federal Rule of Evidence No. 403  
6 and this is the first time by the way, I should  
7 mention this for the record too, that this document  
8 was submitted as a composite prepared by Counsel for  
9 Gulf Power on the same date that it was identified and  
10 offered into evidence.

11 (The document referred to  
12 having been previously marked  
13 for identification as Gulf  
14 Power Exhibit No. 91, was  
15 rejected.

16 CHIEF JUDGE SIPPEL: Okay. That's it,  
17 gentlemen and ladies. Where do we stand?

18 MR. CAMPBELL: Your Honor, I think that  
19 concludes the proceedings.

20 CHIEF JUDGE SIPPEL: Ms. Lien, does the  
21 Bureau have any questions or anything to comment on or  
22 say about this?

1 MS. LIEN: No Your Honor. Thank you.

2 CHIEF JUDGE SIPPEL: Thank you very much.  
3 Then I just have nothing to do but set dates I guess.  
4 Right?

5 MR. CAMPBELL: And you're going to do that  
6 in chambers, Your Honor.

7 CHIEF JUDGE SIPPEL: I'm going to do it  
8 right now. Mr. Cook?

9 MR. COOK: I just had one question really  
10 for the court reporter. I wondered about when the  
11 period for transcript transmission was.

12 CHIEF JUDGE SIPPEL: Leave the reporter  
13 out of it. I'm leaving allowance for a ten day  
14 delivery of today's transcript and I'm going to throw  
15 in business days just to be generous or a couple of  
16 them will be business days and so here come the dates.  
17 Today is the 1st of May. Okay. Allowing for a rough  
18 estimate of when you're going to get today's  
19 transcript I'm setting June 23rd which is a Friday for  
20 proposed findings. Then the following week on June  
21 29th, there will be oral argument.

22 MR. SEIVER: And the replies, Your Honor?

1 CHIEF JUDGE SIPPEL: Right. Let me tell  
2 you why. June 29th will be oral argument which is a  
3 Thursday. Now what that does is that permits even a  
4 more refined record and a more refined position to  
5 which I would like to see responses made. So you come  
6 up with your proposed findings. You make your oral  
7 arguments on June 29th. On July 19th, the Bureau  
8 comes in with its comments on the proposed findings  
9 and on the oral argument. Then on August 9th, we have  
10 reply findings. So you'll have an opportunity to  
11 address everything that was raised in proposed  
12 findings, everything that was raised on oral argument  
13 and everything that was raised by the Bureau's  
14 comment.

15 And I also took allowances of the fact  
16 that there is a July 4th holiday and that type of  
17 thing. So that's it. I don't think there's anything  
18 more to do and as far as anything further of an  
19 administrative business concern, that would be  
20 primarily taken up with my paralegal, Sheila Parker,  
21 and I thank everybody very much and I'm going to  
22 terminate the testimonial aspect of this hearing as of

1 11:45 a.m. today May 1, 2006. Thank you very much.

2 (Chorus of thank you's.)

3 CHIEF JUDGE SIPPEL: Close the record.

4 (Whereupon, at 11:47 a.m., the above-  
5 entitled matter was concluded.)

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