

NUCLEAR REGULATORY COMMISSION

ORIGINAL

ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:

CONSUMERS POWER COMPANY )  
Midland Plant, Units 1 and 2 ) DOCKET NO. 50-329 OL & OM  
50-330 OL & OM

DATE: July 15, 1981 PAGES: 2256 - 2481

AT: Midland, Michigan

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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In the matter of:                   :  
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CONSUMERS POWER COMPANY           :  
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Midland Plant, Units 1 and 2.:  
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DOCKET NOS. 50-329 OL & OM  
50-330 OL & OM

Midland County Courthouse  
301 West Main Street  
Midland, Michigan

Wednesday, July 15, 1931

Evidentiary hearing in the above-entitled  
matter was convened, pursuant to notice, at 9:00 a.m.

BEFORE:

- CHARLES BECHHOEFER, Esq., Chairman,  
Atomic Safety and Licensing Board
- FRED COWAN, Member
- RALPH DECKER, Member



## 1 APPEARANCES:

2 On behalf of the Applicant, Consumers Power Company:

3 Michael Miller, Esq.,  
4 RON ZAMARIN, Esq.,  
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10 On behalf of Mapleton Intervenors:

11 WENDEL H. MARSHALL

12 Appearing pro se:

13 BARBARA STAMIRIS

14 On behalf of the Regulatory Staff:

15 WILLIAM PATON, Esq.,  
16 ELLEN BROWN, Esq.,  
17 JAMES THESSIN, Esq.,  
Office of Executive Legal Director,  
18 United States Nuclear Regulatory Commission,  
19 Washington, D.C.  
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C O N T E N T S

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WITNESS:

DIRECT CROSS REDIRECT RECROSS EXAM.

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Eugene J. Gallagher (Resumed)

By Ms. Stamiris	2260		
By Mr. Zamarin	2333		
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By Mr. Zamarin	2370		
By Mr. Decker			2420
By Chairman Bechhoefer			2421
By Mr. Paton		2444	
By Ms. Stamiris			2446

E X H I B I T S

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IDENTIFIED

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K1L1

P R O C E E D I N G S

(9:05 a.m.)

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2  
3 CHAIRMAN BECHHOEFER: Good morning, ladies and  
4 gentlemen.

5 Are there any preliminary matters this morning?

6 MR. ZAMARIN: Yes, there is, if I may just have  
7 one moment, please.

8 (Pause.)

9 MR. ZAMARIN: Yes. Before we begin, I just  
10 have some information that I would like to provide to the Board,  
11 and it relates to the statement yesterday by Mr. Paton that--  
12 I believe it was while Mr. Keppler was testifying--that they  
13 had received some information from an informer with regard to  
14 the small pipe matter, and I think that what should be added  
15 to that, since we didn't know at the time precisely what that  
16 involved, was that that information had been provided by an  
17 individual apparently named Saunders who was here yesterday.  
18 I did not know at the time who he was, although he had  
19 approached some of us yesterday, and that this really wasn't  
20 news. Consumers had been aware of it, had conducted an  
21 investigation, and had visited with him and interviewed him and  
22 had previously provided all that information to the NRC.

23 I just thought that in order to complete that,  
24 that you should be made aware of that.

25 I think the one statement Mr. Burton reminds

1 me of, of course, is that we can't be certain that all the  
2 things he said in the letter yesterday have been covered by  
3 our previous investigation, because obviously we haven't  
4 seen that letter, although one of our attorneys saw part of  
5 it because he showed it to her yesterday. That was all I have.

6 CHAIRMAN BECHHOEFER: I might add, I've been  
7 told by my colleagues that Mr. Saunders is referred to as an  
8 allegator in the transcript.

9 MR. ZAMARIN: Yes, which, as an aside that  
10 can be off the record--

11 (Discussion off the record.)

12 CHAIRMAN BECHHOEFER: Back on the record.

13 Is there anything further before we resume with  
14 Mr. Gallagher?

15 MR. PATON: No, Mr. Chairman. Shall we proceed?

16 CHAIRMAN BECHHOEFER: Yes.

17 EUGENE J. GALLAGHER

18 resumed the stand as a witness on behalf of the Applicant and,  
19 having been previously duly sworn by the Chairman, was  
20 examined and testified further as follows:

21 CHAIRMAN BECHHOEFER: Ms. Stamiris, you may  
22 continue your cross examination.

23 CROSS EXAMINATION (Resumed)

24 BY MS. STAMIRIS:

25 Q Mr. Gallagher, I would like to get some background

K1L3

1 information about this period of prior to December 6th, 1979,  
2 and I'd like to do it by going through your testimony, the  
3 answers that you had prepared, and asking you some more ques-  
4 tions about that.

5 A Okay.

6 Q First of all, on Page 6 of your testimony--

7 MR. ZAMARIN: Excuse me. When you refer to  
8 "his testimony", are you referring to his testimony or your  
9 exhibit?

10 MS. STAMIRIS: Stamiris Exhibit 3. I'm not sure.

11 I want the prepared text that went ahead of the attachments.

12 MR. ZAMARIN: Yes. He has testimony which has  
13 been presented which--

14 MS. STAMIRIS: No, I don't mean that.

15 MR. ZAMARIN: Then that's Stamiris Exhibit 3  
16 for identification.

17 MS. STAMIRIS: Okay.

18 CHAIRMAN BECHHOEFER: Well, I guess the attach-  
19 ments are still part of that, although some of the attachments  
20 have been admitted into the record.

21 MR. ZAMARIN: That's correct. It is just if  
22 she refers to "his testimony", I think it is going to be confusing.  
23 It is not his testimony, it is Exhibit 3 for identification.

24 CHAIRMAN BECHHOEFER: Right.

25 Q (By Ms. Stamiris) On Page 6 you were talking--



K1L4

1 the question was, "Under what circumstances is a 10 CFR 50.55(e)  
2 report required", and would you summarize again very briefly  
3 your understanding of that? And I know we have gone over  
4 it.

5 A 50.55(e) notification to the NRC is generally  
6 required for any deficiency that might be found in the  
7 design and/or the construction, which if it were left  
8 uncorrected, could have adversely affected the operations,  
9 safe operations, of the power plant.

10 Q Okay. Thank you. And the next page, on Ques-  
11 tion 11, you discuss the investigation reports, and at the  
12 bottom, three bases were given as the reasons for the inspection.

13 Now, those three bases that were given, did  
14 those apply particularly to 78-12 or did they apply to 78-20  
15 also? Was there a distinction made in the two investigations?

16 A The three reasons for our investigation, which  
17 was later documented in Report 78-20, are listed in Question 11  
18 on Page 8, which included, No. 1, whether there was in fact a  
19 breakdown in the quality assurance program, whether Consumers  
20 had reported this case within the required time period, and  
21 whether or not the safety analysis report submitted by Consumers  
22 was consistent with the design and construction requirements  
23 of the Midland project.

24 Q When it came to determining whether--the  
25 second question--whether the occurrence had been reported



K1L5

1 properly, I don't know if you addressed it in your testimony  
2 or if you can just remember and tell me how you went about  
3 determining that. Do you remember the process, particularly?

4 A All of the details are included in Report  
5 78-20.

6 Q Okay.

7 A But the conclusion that we reached was that  
8 Consumers had notified us in the proper manner within the  
9 required time period.

10 CHAIRMAN BECHHOEFER: Mr. Gallagher, one  
11 clarification. When you set forth the circumstances when  
12 10 CFR 50.55(e) reports are to be filed on Page 6, are the  
13 four items you listed precisely verbatim reproductions of the  
14 terms of the regulation?

15 THE WITNESS: Yes, they are.

16 Q (By Ms. Stamiris) We spoke, I believe in Mr.  
17 Keeley's testimony, about the Bechtel/Consumers Power task force  
18 that was addressed to making the remedial action decisions.  
19 Were you aware of the existence of that group at your first  
20 inspection? And I mean 78-12, if that's the best way to refer  
21 to it.

22 A It's been a long time ago--I guess 1978--but  
23 I'm not certain whether that task force had been formed in  
24 October, but when we had returned for the investigation, they  
25 had been organized and were working concurrently with Oliver.

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K1L6

1 Q I believe Mr. Keeley said that they were formed,  
2 but you don't--at least you were not aware of it, or are you  
3 saying-- Are you saying that you were not aware, or are you  
4 saying you just don't remember?

5 A If I recall correctly, in October when I first  
6 did an inspection, there were people who were looking into what  
7 had occurred, but I don't think-- I think it was more of an  
8 ad hoc group rather than a formal task force that was later  
9 formed.

10 Q At the conclusion of the summary of findings  
11 from your 78-20 inspection are four statements on Page 10,  
12 and it says that these were your conclusions, and in Report  
13 78-20, did you also address those three questions that you had  
14 asked at the outset, and I mean whether a breakdown in the  
15 quality assurance program had occurred, whether the occurrence  
16 had been reported properly, and whether the FSAR was consistent  
17 with design construction. Do you remember if those are  
18 addressed specifically in the body of the 78-20 report?

19 A Yes, I believe they are.

20 Q Would you briefly explain what those conclusions  
21 were?

22 A Well, to answer the first question that we set  
23 out to look into, yes, we did feel that there was essentially  
24 a breakdown or ineffective quality assurance program in the  
25 area of soils placement activities.

K1L7

1           The second item, we concluded that they had  
2 reported the significant deficiency properly, and regarding  
3 the third item, we determined that the safety analysis report  
4 did contain inconsistent or incorrect--or information that  
5 could not be fully supported, and all of those details are  
6 incorporated into Report 78-20 as well as in further detail  
7 in the December 6, 1979 order.

8           Q     Attachment 3 was a summary of the December 4th  
9 meeting, and there were items listed on-- I'm going to ask  
10 you about your impression of Dr. Peck's statements that were  
11 in that. They were alphabetically put in order, and I'm having  
12 trouble finding them.

13           MR. ZAMARIN: Excuse me, Chairman Bechhoefer.  
14 Based upon that preface, I object to that line of questioning.  
15 Again, this is a rehearsal of what we went through the other  
16 morning. Dr. Peck's statements are with regard--he is a con-  
17 sultant, a geotechnical expert for Consumer Power Company.  
18 That relates to an issue that could be addressed at a later  
19 portion of this proceeding, and in no way is relevant or related  
20 to Mr. Gallagher's testimony with regard to Contention 3, which  
21 is all that is before us now.

22           MS. STAMIRIS: My questions are directed not  
23 exclusively to Contention 3, but to what was his prepared  
24 testimony and is now Stamiris Exhibit 3, and I wanted to ask  
25 Mr. Gallagher what his understanding of a statement by Mr. Peck

K1L8

1 was. I want to know what his particular impression was, if  
2 he had one.

3 CHAIRMAN BECHHOEFER: Let me add something  
4 for clarification. This is the attachment that you have  
5 asked a question about. If my research is correct, this  
6 is also Attachment 11 to the Staff testimony in Contention 1.

7 Now, my question is, how do you plan--how  
8 does the Staff plan to divide Mr. Gallagher's testimony?

9 I mean I assume that you prefer that he address  
10 matters of this sort when you get into the--

11 MR. PATON: I think, Mr. Chairman--

12 CHAIRMAN BECHHOEFER: He's here now, and I don't  
13 have any--

14 MR. PATON: Let me just say this. We had  
15 planned to ask Mr. Gallagher to address Contention 3 and then  
16 Contentions 1 and 2. In other words, we were going to try  
17 to draw some fine lines in an attempt to keep the record clear.

18 Mr. Zamarin indicated an intent to cross examine  
19 Mr. Gallagher while he is still on the stand here with respect  
20 to Contention 1, so I don't--

21 MR. ZAMARIN: Excuse me. I--

22 MR. PATON: May I finish, Mr. Zamarin, please?

23 MR. ZAMARIN: Not when you are mischaracterizing  
24 my statement.

25 MR. PATON: What I'm saying to the Board is we



K1L9

1 want to do whatever is possible to keep the record clear. If  
2 it is efficient to let her cross over to Contention 1, or  
3 whatever, if she would so indicate, that's fine with the  
4 Staff. All we want to do is do whatever we can to keep the  
5 record from getting too mixed up; but if she wants to go on  
6 to Contention 1, then we think it appropriate that she let  
7 us know what she is doing, and then I won't object.

8 MR. ZAMARIN: Mr. Chairman, two things: I  
9 don't know how Mr. Paton got the impression I was going to  
10 cross examine on Contention 1. There is a statement in  
11 Contention 1 which is the same as one in Contention 3 in  
12 regard to the administration building, and rather than cross  
13 examining him twice, I was going to point out to Mr. Gallagher  
14 those are the same, and the questions I would ask would apply to  
15 both.

16 I think that what Mr. Paton is suggesting is  
17 that there ought to be cross examination concurrently on all  
18 of Mr. Gallagher's testimony with regard to contentions, and  
19 I think he ought to do what I suggested he do, and that is  
20 put all his direct testimony in now. Let's do it that way.

21 MR. PATON: I think we prefer to try our case  
22 our way, Mr. Chairman, and Mr. Zamarin can try his case his  
23 way.

24 MR. ZAMARIN: If that's the case, all we have  
25 before us is Contention 3, and his suggestion that we go outside

K1L10

1 of that is a little absurd.

2 MR. PATON: I didn't suggest that. I said if  
3 you think it is appropriate and efficient, we would not  
4 object.

5 Mr. Chairman, before we get back to this, I'd  
6 like to--unless the question is still pending, I'd like to  
7 have it read again, please.

8 MS. STAMIRIS: I haven't asked it yet.

9 MR. ZAMARIN: She just made a preparatory  
10 statement indicating she was going to ask him about his impres-  
11 sions of Dr. Peck's statement, and it was at that point,  
12 rather than going down the road, that I would make an objectio..  
13 before she got into it.

14 Q (By Ms. Stamiris) Mr. Gallagher--

15 MR. ZAMARIN: Wait. He hasn't ruled yet.

16 CHAIRMAN BECHHOEFER: No, we haven't ruled yet.

17 MR. ZAMARIN: If I may--

18 CHAIRMAN BECHHOEFER: What I was trying to  
19 figure out, it was my impression that Dr. Peck was going to  
20 address a certain aspect of Contention 3 as well, and just  
21 because he isn't here now, he will be here later, the next  
22 session, I'm not sure that we should restrict cross examination  
23 of the Staff's witness on that.

24 MR. ZAMARIN: Well, Dr. Peck's information with  
25 respect to Contention 3 would be with regard to the substance



K1L11

1 of Contention 3, which does not--which deals with managerial  
2 attitudes. It does not deal with the technical aspects of  
3 the preload program, which is what Ms. Stamiris intends to  
4 go into as set out in Attachment 3 to her exhibit, and with  
5 regard to its relevance to Contention 1, Attachment 11 is  
6 in Contention 1 with regard to her contention that there was a  
7 reluctance to provide equipment, and it is there for the pur-  
8 pose of a discussion, I believe, of qualification of compaction  
9 equipment. It is not relevant to Contention 1 either with  
10 regard to the diesel generating building. That's something  
11 Dr. Peck and the appropriate technical witnesses will be here  
12 to address. It is simply not relevant either to Contention 3  
13 or 1 on this point.

14 (Continued on next page.)  
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1 MS. STAMIRIS: You haven't heard my question  
2 yet.

3 CHAIRMAN BECHHOEFER: Yes, let's hear the  
4 question. One of my problems is that I hate to be in a  
5 position where we have to keep bringing Mr. Gallagher back to  
6 ask him a couple of simple questions. He is here, and I don't  
7 know whether he will be back at the time Dr. Peck is here or  
8 not. But since he's here-- I don't know what the Staff's  
9 plans are, but I don't think you want to have Mr. Gallagher  
10 sitting here through the whole hearing.

11 MR. PATON: I agree with you totally, Mr.  
12 Chairman. I think if we can finish Mr. Gallagher, we'd like  
13 to do that, if it's possible. I would not like to bring him  
14 back for something that we could do at this time. I agree  
15 with that.

16 I'm not totally satisfied that we've ever heard  
17 the question, though. I think it would be great to hear the  
18 question, so we'd know what we're talking about here. I think  
19 she should be allowed to state the question.

20 CHAIRMAN BECHHOEFER: Well, the Board will not  
21 sustain any objection at the moment on the entire attachment.  
22 We'll see where we go.

23 Q (By Ms. Stamiris) Mr. Gallagher, I was going  
24 to ask you to look at .f on page 3 and tell me what your  
25 interpretation of that is.

1 CHAIRMAN BECHHOEFER: Let me find it first.

2 MR. ZAMARIN: I'll renew the objection, now  
3 that she has specifically asked the question. This has  
4 nothing to do with Contentions 1, 2 or 3, nor is it relevant.

5 MR. PATON: Mr. Chairman, could I ask Mrs.  
6 Stamiris if this has any relation to quality assurance?

7 CHAIRMAN BECHHOEFER: Yes.

8 MS. STAMIRIS: Yes.

9 MR. PATON: Would you answer that?

10 MS. STAMIRIS: I said yes. Would you like me  
11 to explain how?

12 MR. PATON: I would like her to. I don't know  
13 whether the Board would.

14 CHAIRMAN BECHHOEFER: I think the Board would  
15 like to see how you plan to connect it up. What was the  
16 specific page again, so I can find it?

17 MR. ZAMARIN: It's on page 3 of Attachment 3,  
18 number 4.f. She asked him for his understanding of that.

19 THE WITNESS: In 4.f., Dr. Peck--

20 MS. STAMIRIS: Wait. You're not supposed to  
21 answer yet.

22 CHAIRMAN BECHHOEFER: Well, to the extent that  
23 this relates or this may relate to managerial attitude, you  
24 can ask the question. To the extent it relates to which is the  
25 best approach, technically, I think it should wait; although,

1 again, I'd hate to bring Mr. Gallagher back.

2 MR. PATON: I do not object to the question,  
3 if it may relate to managerial attitude.

4 CHAIRMAN BECHHOEFER: Certainly insofar as it  
5 relates to managerial attitude, we will allow the question.

6 MR. ZAMARIN: So my objection is overruled?

7 CHAIRMAN BECHHOEFER: Yes.

8 MS. STAMIRIS: I have to ask a question, because  
9 I thought it would--

10 CHAIRMAN BECHHOEFER: Well, he can answer the  
11 question.

12 MS. STAMIRIS: Well, I need to ask a question  
13 about my procedure, then.

14 A. In this item, Dr. Peck is really stating that  
15 there are two alternatives to resolution of the diesel genera-  
16 tor building fill problem; one being that you go in and remove  
17 all of that material down to the glacial till, or you proceed  
18 with the so-called preload program, which, in fact, was  
19 selected.

20 Q (By Ms. Stamiris) I want to ask you if you  
21 believe this is a mischaracterization of a statement, and I  
22 want to change two words:

23 COTTON Do you think that the meaning is the same-- Well,  
24 I'm not going to ask that, because you gave me your answer.

25 What about .h in the same column; do you believe



1 that the preload was a necessary first step to the removal and  
2 replacement option?

3 A. No, I don't.

4 MR. PATON: Ob-- I'm sorry. I was too late with  
5 my objection.

6 A. (Continuing) Dr. Peck was, I believe, merely  
7 stating that if other alternatives other than removal of the  
8 fill were to be done later on, that the preload could be  
9 utilized as a first step, in any event, and that that part of  
10 the operation would not be a total loss in any event.

11 Q. (By Ms. Stamiris) Going back to the first part  
12 of your own testimony, the questions and answers--

13 MR. ZAMARIN: We're going to his testimony now,  
14 or--

15 MS. STAMIRIS: Stamiris Exhibit 3.

16 CHAIRMAN BECHHOEFER: What page?

17 MS. STAMIRIS: On page 14, at the bottom.

18 Q. (By Ms. Stamiris) I'm wondering if this  
19 apparent concern with quality assurance as it applied partic-  
20 ularly to soils became apparent after the more complete  
21 investigation in 78-20?

22 MR. ZAMARIN: I object. I don't know what she's  
23 talking about.

24 CHAIRMAN BECHHOEFER: I was going to ask her.  
25 I don't know what you're talking about. Are you referring to

1 the view of this particular writer, or--

2 Q (By Ms. Stamiris) Would you explain briefly  
3 why you included this portion?

4 MR. ZAMARIN: You're talking about the last  
5 paragraph?

6 MS. STAMIRIS: The last paragraph, yes.

7 CHAIRMAN BECHHOEFER: I won't try to pronounce  
8 the name, but--

9 MR. ZAMARIN: I'd like to hear the witness  
10 pronounce it.

11 THE WITNESS: I believe the proper pronouncia-  
12 tion is Chibatarioff [Tschebotarioff] who is a consultant  
13 in the geotechnical engineering field. What I was attempting  
14 to impress was that there are many people in the geotechnical  
15 field that feel that foundation work has a special need, over  
16 and above other activities, to have continuous and competent  
17 inspection throughout all aspects of the placement of fill  
18 activities. And I share that view.

19 Q (By Ms. Stamiris) Would you explain why it  
20 deserves this special importance?

21 A The reason is that it's so important to all  
22 work that follows. It's the very foundation of the entire  
23 plant that the structures will be founded on. It's inaccessible  
24 from 'hat point on, unlike other work activities like a piping  
25 system which could continually be observed, reinspected,



1 retested. And it's of tremendous importance that it be done  
2 correctly the first time.

3 The best way to assure that is to have capable  
4 and competent people providing technical direction from the  
5 beginning.

6 Q Thank you.

7 On page 15, I'd like to go down this list of  
8 inconsistencies and problems that were identified.

9 First, I'd like to ask you for your definition  
10 of specification.

11 A A specification is an instruction that provides  
12 the requirements for certain activity to be accomplished, in  
13 what form, and what design basis.

14 Q Would you elaborate on how a specification  
15 relates to a design?

16 A The specification provides the framework in  
17 which the design will be accomplished; provides the methods  
18 and the manner in which to proceed, in order to accomplish  
19 the task desired.

20 Q Would you say that if a specification is not  
21 followed, that the portion of the design to which it relates  
22 would be wrong?

23 MR. PATON: I object. Mr. Chairman, could we  
24 get a proffer from Mrs. Stamiris as to how she's connecting  
25 this up with managerial attitude, or perhaps the matter of the

1 administration building? I'm not able to make a connection.

2 MS. STAMIRIS: That reminds me of the question  
3 I said I wanted to ask you, about how I was to proceed in  
4 this. I think I expressed my view very clearly that Saturday  
5 morning when I attempted to introduce what had been the prior  
6 testimony of Mr. Gallagher, and if I am expected to relate  
7 each and every question, and take it one step at a time and  
8 prove to you, to everyone's satisfaction, that that one thing  
9 in itself relates directly to quality assurance or managerial  
10 attitude or something else, it will make it extremely difficult.  
11 Because, as I said, where I'm going and what I've tried to do  
12 from the start, is get a background of information, build a  
13 broad base, look at everything, draw it all in together, and  
14 then decide.

15 I don't believe that any one thing in itself  
16 represents bad managerial attitude or breakdown in quality  
17 assurance, or anything else. And I haven't even drawn a final  
18 conclusion as to whether these things occurred. I just want  
19 to find out what did happen, and if I have to stop each and  
20 every step of the way, it's going to be extremely difficult  
21 for everyone.

22 MR. PATON: May I respond, Mr. Chairman?

23 CHAIRMAN BECHHOEFER: Well, I do want to  
24 repeat--I think I ruled on Saturday that you had to at least  
25 connect this in its entirety, and perhaps in some of its

1 particular parts, to the QA program today, and how these things  
2 had been taken care of is one of the things we're here to look  
3 at.

4 MR. ZAMARIN: If I may respond-- Oh, I thought  
5 you were finished.

6 CHAIRMAN BECHHOEFER: That was just a comment,  
7 as background.

8 MR. ZAMARIN: I join in Mr. Paton's objection,  
9 although I object again to this line of questioning. I think  
10 this is simply a trap-door effort to introduce the totality  
11 of the testimony regarding pre-December, 1979, that has not  
12 been offered by the Staff, and to my knowledge, they do not  
13 intend to offer. And it certainly has no established bearing  
14 so far, or relation to managerial attitude as it would reflect  
15 on into the future upon quality assurance, or the likelihood,  
16 as Mrs. Stamiris is proceeding.

17 She indicates it may be difficult, but there  
18 are certain rules that we all have to proceed by in order to  
19 have an orderly proceeding, and that's the reason why we have  
20 those rules. Oftentimes none of us like them, as lawyers, but  
21 we have to live with them. And while certain latitude is  
22 provided to pro-se intervenors, as it should be, there's a  
23 limit, and we simply have to, I think, establish those rules  
24 and abide by them, or else we're going to have no order to  
25 the proceeding and no end to the proceeding.

1 I simply think that this entire interrogation  
2 so far has been improper, and it continues to be, with regard  
3 to anything relevant before this Board now on Contentions  
4 3 or 1 or 2, and I object.

5 MS. STAMIRIS: I would like to object to his  
6 characterization of why I introduced it. I would like to  
7 characterize it as a front-door effort to introduce testimony  
8 that had previously been prepared by the NRC.

9 Yes, I do want to address that testimony. I  
10 believe it's relevant, and I think I've stated a lot of times  
11 why. And if everybody wants to hear my reasons one more time,  
12 I'll be happy to.

13 MR. PATON: May I respond, Mr. Chairman?

14 CHAIRMAN BECHHOEFER: Yes.

15 MR. PATON: I have in mind your ruling on the  
16 matter before the December 6, 1979, testimony, and I don't have  
17 any trouble with that. But a question of what Mr. Gallagher's  
18 definition of "specification" is, just doesn't lend itself  
19 to what you indicated would be admissible on this issue.

20 Again, I would like to make one other point. I  
21 think Mrs. Stamiris said again recently, and has stated  
22 repeatedly, things that she would like to know. We're past  
23 that stage. We've had discovery. There are certain issues  
24 before the Board. And things that she would like to know is  
25 just not appropriate.



2wel 10

1 MS. STAMIRIS: These are things that I would  
 2 like the Board to know, too. Perhaps they already know the  
 3 definition of "specification," on how it relates to design.  
 4 But they might be interested in knowing what my end result  
 5 is.

(The Board conferring.)

end 2

(Continued on following page.)

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MILLERS FALLS  
 ERASE  
 COTTON CONTENT

1 CHAIRMAN BECHHOEFER: Ms. Stamiris, we are  
2 going to allow questioning concerning how these matters have  
3 been taken care of, or whether they have been taken care of  
4 in the current program.

5 I'm not sure I see the connection with your  
6 last question, and we will sustain the objection to the last  
7 question, but these have to be--maybe not individually linked  
8 up, but you should-- What we are focusing on is how--well,  
9 first, whether they represent poor managerial attitude, but  
10 second, whether the particular matters have been taken into  
11 account in the current QA plan, and there has to be some  
12 connection along that line.

13 I might also add that we would be much more  
14 interested in some of these underlying documents than in the  
15 testimony itself that is associated with Exhibit 3. The  
16 testimony itself does not appear, at least offhand, to have  
17 much weight. It is testimony that was never given, and it  
18 doesn't add much to the underlying documents.

19 Now, if you want--these matters are obviously  
20 connected with an underlying document, which I think is in  
21 the record already, but I don't think the fact that it was  
22 his testimony earlier has any significance whatsoever, and at  
23 least to the extent the testimony merely reflects the under-  
24 lying documents, you ought to focus on that, because I don't  
25 think the testimony itself is worth very much unless you can



K3L2

1 show there's some inconsistency between it and some othe  
2 statements.

3 I just can't see the value of the testimony  
4 itself as distinguished from the exhibits, the attachments  
5 to it.

6 MS. STAMIRIS: I think I should explain why  
7 I'm going at it through his testimony, and it is simply because,  
8 as I attempted to review this, it seemed that his testimony  
9 drew it together in a very coherent way, and it just seemed  
10 to be the most expeditious and logical way to approach it,  
11 as opposed to just taking one-- I started out doing that the  
12 last time. I was going to go through one attachment at a time.  
13 This seemed to be the better way, and I have all my questions  
14 prepared that way, and I will try and shift gears if I have  
15 to, but the only reason I'm going at it through his testimony  
16 is because he talks about things, he draws things together  
17 that are included in this massive volume of documents.

18 MR. ZAMARIN: If I may respond very briefly--

19 CHAIRMAN BECHHOEFER: Yes.

20 MR. ZAMARIN: I think Ms. Stamiris put her  
21 finger on it, and she is relying on his testimony because it  
22 draws the document together in a very coherent way, and that  
23 is true. Unfortunately, it draws it together with regard as  
24 to whether there was a basis for the December 6th, 1979 order,  
25 which is really not what this Board has ruled is the purpose

K3L3

1 for which they are allowing this interrogation, and that is  
2 whether these problems which have been identified in the  
3 past--whether something has been done to take care of those  
4 in the future, and I think that's really the difficulty,  
5 that she continues to use it the way he drew it together for  
6 the pre-December 6, to establish there was a basis for issuing  
7 the order, when in fact she ought to be using it as you  
8 indicate--and I agree it would be perfectly proper--as you  
9 questioned on Saturday, which I took to be a demonstration  
10 hopefully of the way it would go, just to simply ask questions  
11 to make sure that something has been done so that these things  
12 don't happen again.

13 I think that's--

14 CHAIRMAN BECHHOEFER: I might say that the item  
15 that's listed on Page 15-A-1 is one of the items that we asked  
16 some questions about and that we are interested in, so certainly  
17 whether that has been taken care of and whether Mr. Gallagher  
18 has any opinions on that, we are interested in that.

19 MR. ZAMARIN: That's right. I would not object  
20 to questions along that line.

21 CHAIRMAN BECHHOEFER: So the question should  
22 be focused in that way. I don't care if you want to go through,  
23 for organizational purposes, and use the same order, but just  
24 remember that the focus of the inquiry is not on whether there  
25 was a basis for the earlier order, which we have agreed that

K3L4

1 the Staff--the Applicant agreed not to contest that.

2 MS. STAMIRIS: I understand that that has  
3 already been established, and that I'm not to try and pick out  
4 the details to reprove that, and that's not what I'm trying to  
5 do. I am trying to use this as an organizational format to  
6 proceed at the information that I want to get at in a, like  
7 I said before--because I think it approaches it in a coherent  
8 way.

9 Now, when you say that I have to--that every  
10 question I ask has to be related somehow to your question  
11 of whether or not it has been taken care of--in other words,  
12 this most recent inspection and this most recent evaluation  
13 that's been presented by Consumers and the NRC has taken  
14 care of these past problems, then you are forcing me to abide  
15 by the rules of the stipulation, which I did not agree to.

16 MR. MARSHALL: Correct.

17 CHAIRMAN BECHHOEFER: That's not right.

18 MS. STAMIRIS: Well, I thought that I was going  
19 to be--

20 CHAIRMAN BECHHOEFER: All we are forcing you to  
21 do is not to prove what's already been proved.

22 MS. STAMIRIS: I'm not trying to do that.

23 CHAIRMAN BECHHOEFER: That's maybe taking the  
24 stipulation as a fact of life, but the situation we are in is  
25 that we are trying to see whether--really whether there is any

ERASE

K3L5

1 basis for the third paragraph of the stipulation, and if you  
2 look at it broadly--

3 MS. STAMIRIS: That's what I am trying to go  
4 at, but I won't be able to prove it at each and every step of  
5 the way.

6 CHAIRMAN BECHHOEFER: Well, but the question  
7 should be focused along that line, and you may not have to  
8 defend every question, but some background questions obviously  
9 may be asked; but the general focus of your line of inquiry  
10 should be along those lines.

11 DR. COWAN: I just wanted to say, Ms. Stamiris,  
12 that the members of the Board and most of the people here read  
13 and understand all of the terms in these 13 places, and it will  
14 have a lot of trouble and objections if you don't try to  
15 establish the meaning of all those things, because they are well  
16 understood, and confine your questions along the line of what  
17 Judge Bechhoefer said.

18 MS. STAMIRIS: I would just like to say that I  
19 don't intend to ask a lot of definitions, and I don't think I  
20 have. I hope I haven't in the past, because I do appreciate  
21 that I don't understand these things perhaps to the same degree  
22 as everyone else.

23 MR. COWAN: Well, we did have an objection along  
24 those lines.

25 CHAIRMAN BECHHOEFER: Well, we sustained the



K3L6

1 last objection as to the question.

2 Q (By Ms. Stamiris) On Page 16 of Stamiris  
3 Exhibit 3, you are talking about-- I'd like to read a sentence  
4 in about the middle, at the paragraph that starts with  
5 "Consultant reports", and it says, "Consumers indicated that  
6 consultant reports were subject to being 'misconstrued as  
7 commitments'", and then there is a discussion that follows  
8 about the PSAR and about the Dames & Moore Report.

9 I'd like to ask you, the Dames & Moore Report  
10 was presented as an amendment to the PSAR, is that correct?

11 A It was included as an attachment to PSAR  
12 Amendment 1, yes.

13 Q I wonder if this--and this relates to a discussion  
14 of the root cause of some of these problems at the bottom  
15 paragraph on Page 17. I'm wondering whether if in your  
16 opinion the PSAR requirements, as represented by the Dames &  
17 Moore Report, had been followed, do you believe that they would  
18 have provided a sound nuclear plant?

19 MR. ZAMARIN: Excuse me. I object to the charac-  
20 terization of the testimony and the form of that question, and  
21 I would ask that it be read back.

22 (Question read by the reporter.)

23 MR. ZAMARIN: Specifically I object to the  
24 characterization that the "PSAR requirements as reflected by  
25 the Dames & Moore Report"--I don't believe it's been established



K3L7

1 anywhere there were PSAR requirements as reflected by the  
2 Dames & Moore Report, and that being in the predicate of the  
3 question, that makes it--

4 MS. STAMIRIS: I will go back and break it  
5 down more specifically, then.

6 Q (By Ms. Stamiris) Can you tell me what was your  
7 impression of what the commitment is with a PSAR?

8 MR. ZAMARIN: I object to the form. If she  
9 says "understanding" rather than "impression"--

10 Q (By Ms. Stamiris) What is your understanding  
11 of what a PSAR is?

12 A It is my understanding--

13 MR. PATON: I object to that question, what a  
14 PSAR is. She's changed the question now.

15 MS. STAMIRIS: I mean what it is for. I didn't  
16 mean to change the question.

17 MR. PATON: Could we hear the question again,  
18 or ask her to rephrase it again?

19 MS. STAMIRIS: It is probably incoherent, so  
20 I will rephrase it.

21 CHAIRMAN BECHHOEFER: Why don't you rephrase  
22 it?

23 MS. STAMIRIS: Yes.

24 Q (By Ms. Stamiris) Mr. Gallagher, what is your  
25 understanding of the Applicant's commitment in relation to the

K3L8

1 PSAR?

2 MR. ZAMARIN: And the Dames & Moore Report?

3 MS. STAMIRIS: No, just the PSAR. I'm asking  
4 at every nuclear plant.

5 MR. PATON: I'm not sure-- We are not here  
6 about every nuclear plant. Could we go back and have the ques-  
7 tion?

8 CHAIRMAN BECHHOEFER: I think it is just a general  
9 question of what the witness believes the purpose of a PSAR  
10 is.

11 MR. PATON: All right. I won't object to that.

12 MR. ZAMARIN: I would not object to that question  
13 either.

14 A The PSAR is to inform the NRC of the manner  
15 in which the Applicant is to proceed with construction of their  
16 nuclear facility, and the attachments that are incorporated  
17 as part of the amendments to the PSAR provides information to  
18 the Staff, which is understood as being a manner in which  
19 they are going to proceed, and those commitments that were  
20 recommendations that were included in the attachment to the  
21 PSAR were in fact understood to be the manner in which they  
22 would proceed with construction, and are relied on heavily  
23 by the Staff.

24 CHAIRMAN BECHHOEFER: Mr. Gallagher, let me ask  
25 you a question right here before we get away from it.

K3L9

1           The fact that an attachment is prepared by a  
2 consultant to an Applicant, does that affect the way the  
3 NRC regards that attachment? Would the NRC regard an attach-  
4 ment prepared by a consultant as commitments that--let's  
5 rephrase it.

6           Commitments contained in an attachment prepared  
7 by a consultant, would the NRC regard that any differently  
8 than if the commitment had appeared in the body of the PSAR  
9 as prepared by the Applicant or utility?

10           THE WITNESS: Well, within the body of the PSAR  
11 the attachment is referenced without any discussion as to what  
12 specific items are to be adhered to or not. I would think  
13 that the reviewer would understand that the recommendations  
14 which the Applicant was seeking from a consultant would in  
15 fact be followed and relied on.

16           CHAIRMAN BECHHOEFER: And if the consultant  
17 recommended that certain criteria be followed, and the body  
18 of the report merely incorporates the consultant's report,  
19 would the NRC then understand that those criteria--that the  
20 Applicant is committing itself to utilize those criteria, at  
21 least absent any affirmative statement otherwise?

22           THE WITNESS: Yes, I believe so.

23           CHAIRMAN BECHHOEFER: I don't know if that--

24           Q     (By Ms. Stamiris) Do you believe that the  
25 substance of the PSAR, as you have just defined it, was sound?

K3L10

1 MR. ZAMARIN: I object to the form.

2 MR. PATON: I object also.

3 CHAIRMAN BECHHOEFER: That one I will sustain.

4 I'm not sure what--

5 Q (By Ms. Stamiris) I want to know what your  
6 understanding was of the substance of the PSAR with the Dames  
7 & Moore attachments.

8 A I'm not exactly sure what you are asking.

9 MR. ZAMARIN: I will join in Mr. Gallagher's  
10 objection.

11 MR. PATON: You mean the subject that was  
12 addressed? Is that what you mean?

13 Q (By Ms. Stamiris) I want to know if that  
14 report--if the PSAR and the Dames & Moore attachments had  
15 been followed, do you think it would have resulted in a safe  
16 situation at the nuclear plant?

17 CHAIRMAN BECHHOEFER: Could we change that?

18 MR. DECKER: Could we change that, that had the  
19 Dames & Moore recommendations be followed, the difficulties  
20 which have been experienced would have been avoided?

21 MS. STAMIRIS: Yes, that's what I'm going after.

22 Q (By Ms. Stamiris) Can you answer it that way?

23 A Absolutely, if each and every one of the  
24 recommendations contained in the Dames & Moore Report were  
25 followed, we would not be here debating the subject today.

K3L11

1 I'm certain of that.

2 Q Did you state before in your testimony that  
3 you believed that the Applicant's quality assurance program--  
4 and I mean to say it with that emphasis because I'm referring  
5 to the program as it is set forth in the plan and on paper--  
6 did you state before that you believed that the Applicant's  
7 QA program itself was sound if it had been properly implemented,  
8 or did--perhaps those words are not exact, but did you express  
9 that idea?

10 THE WITNESS: Could I have the question repeated,  
11 please?

12 (Question read by the reporter.)

13 MR. ZAMARIN: In fairness to the witness, I  
14 think that he is entitled to know, when she says "testimony",  
15 whether she is referring to Stamiris 3, which she is inquiring  
16 about, or earlier in the testimony in this proceeding, or  
17 somewhere else. That's an appropriate manner of proceeding,  
18 in fairness.

19 CHAIRMAN BECHHOEFER: What were you referring  
20 to?

21 MS. STAMIRIS: I don't remember. I just  
22 remember him making a statement to that effect, and I can't  
23 remember to what it was related.

24 MR. ZAMARIN: I think it would be fair to ask  
25 him if he's ever made a statement to that effect, rather than



K3L12

1 referring to "testimony", because it might be somewhere  
2 else.

3 MS. STAMIRIS: I asked if he stated before--  
4 I meant--I thought that when he was sitting up there  
5 Saturday morning, that that was considered his testimony.  
6 We have used that term interchangeably, haven't we? Is he  
7 not testifying now?

8 MR. ZAMARIN: If she is referring to Saturday  
9 morning testimony, then out of fairness, the witness ought to  
10 know that.

11 That's all.

12 A I think I stated that the program that Consumers  
13 had had from the inception of the project has been always  
14 acceptable to the NRC. It's been with the execution and  
15 implementation of that program that we have not been satisfied  
16 with over the years.

17 CHAIRMAN BECHHOEFER: Mr. Gallagher, let me ask  
18 you one question here. I don't know whether Ms. Stamiris  
19 is through yet in this general area, but do you regard the  
20 difference between the Bechtel construction specifications  
21 C-210 referred to on Page 17 of Stamiris Exhibit 3, and the  
22 criteria of the Dames & Moore Report--is that one of the  
23 instances when you regard the Applicant as failing to make the  
24 drawings or specifications which are to be used for construction  
25 conform to--well, commitments in a document like the PSAR or

K3L13

1 FSAR.

2 I think there was some testimony in here about an  
3 FSAR. Is this an example of the same type of problem?

4 THE WITNESS: This is an example where the  
5 PSAR--

6 CHAIRMAN BECHHOEFER: Right.

7 THE WITNESS: --commitments as contained in  
8 the Dames & Moore Report attached to it were not correctly  
9 translated into the implementing procedures of construction  
10 specifications.

11 CHAIRMAN BECHHOEFER: Is this at least analogous  
12 to some of the previous testimony we have had about similar  
13 or comparable failures?

14 Maybe I shouldn't use the words "similar" or  
15 "comparable", because that's what I'm asking you; but failures  
16 to conform the specifications with FSAR commitments. Is this  
17 the same type of problem?

18 THE WITNESS: Rather than having the specifica-  
19 tions conform with the PSAR commitments, what should have been  
20 the case was the FSAR should have reflected accurately as to how  
21 the construction specifications were developed and implemented.

22 CHAIRMAN BECHHOEFER: All right.

23 THE WITNESS: In other words, the PSAR is  
24 translated into the construction specifications, and then what  
25 is actually performed during construction ought to be translated

K3L14

1 into the FSAR for the Staff to perform their safety evaluation  
2 review.

3 CHAIRMAN BECHHOEFER: Thank you.

4 Q (By Ms. Stamiris) I wondered who writes the  
5 PSAR.

6 A Consumers Power Company submits the PSAR.

7 Q Do you know if it was designed or written by  
8 Bechtel?

9 A Yes. There are, you know, many people working  
10 on the development of the P and FSAR, and Bechtel as well as  
11 the N-Triple-S supplier provide the input necessary to develop  
12 that document, but the primary responsibility is with Consumers  
13 for that document to be correct and accurate and reflect what  
14 is intended.

15 CHAIRMAN BECHHOEFER: What do you mean by  
16 "primary"?

17 THE WITNESS: They are held accountable and  
18 responsible for the document to be accurate, and in doing so,  
19 they should provide a careful review of those inputs that  
20 consultants or architect engineering firms are inserting.

21 CHAIRMAN BECHHOEFER: I recognize that. What  
22 I was really trying to drive at was should "primary" be solely--  
23 is Bechtel or B & W in any way responsible so far as NRC  
24 is concerned?

25 Maybe I should ask your counsel.

K3L15

1 MR. PATON: Yes. I never object to a Judge's  
2 question, but I will admit that that was fairly legally  
3 connected.

4 I think our theory would be, since Consumers  
5 gets the license, they are the one responsible.

6 CHAIRMAN BECHHOEFER: That's what I was asking,  
7 what you meant by "primary", but I wanted to see what technical  
8 people thought on that.

9 THE WITNESS: It would seem to me that when a  
10 licensee comes to the NRC with the idea of building a power  
11 plant, that they present the entire team, and all parties  
12 that would participate in that project, and that we would hold  
13 all of those parties responsible for the work that they are  
14 charged with, and I guess legally, however, the NRC  
15 holds the Applicant primarily responsible.

16 CHAIRMAN BECHHOEFER: All right. I just wanted  
17 to see how the technical reviewing staff approached the problem.

18 I guess we can get back to Ms. Stamiris.

19 Q (By Ms. Stamiris) In Attachment 9, which is the  
20 Consumers' response to 54(f) Question 1, there is the third  
21 paragraph which discusses the FSAR being submitted early.  
22 Can I read it and make it--

23 MR. PATON: What page are you on?

24 MS. STAMIRIS: I'm sorry. It is Page--it  
25 says 1-2.

K3L16

1           Q     (By Ms. Stamiris) In the third paragraph  
2 where it says that the FSAR was submitted early to provide  
3 additional time for the operating license here--and it goes on  
4 to say that, "Consequently, some of the material required to  
5 be included was not available at the time of its initial  
6 submittal, or was supplied based upon preliminary design informa-  
7 tion."

8                     Do you believe that-- how important of a  
9 problem-- I want to know, this problem with the FSAR being  
10 submitted early, how much do you think it contributed to the  
11 overall soils settlement problem?

12                   MR. ZAMARIN: Chairman Bechhoefer, I object. I  
13 think the Board has made it clear on more than one occasion  
14 that Ms. Stamiris is allowed to ask questions through these  
15 attachments and this testimony to the extent they relate some-  
16 how to the issues here, and that being, is there something  
17 that has been done or change in circumstance that would some-  
18 how prevent the same type of thing from happening in the  
19 future, and she simply is not doing that, and I object.

20                   In fact, this very item comes out of another  
21 contention which is addressed by Mr. Hood in his testimony.  
22 It has nothing to do with this. I simply object. I don't  
23 think that she is following the Board's direction.

24

25



1 MR. PATON: Mr. Chairman, I also object. The  
2 main basis is the fact that this is in Contention 2, to be  
3 addressed by Mr. Hood. If it was something to be addressed by  
4 Mr. Gallagher, I might not object. But this clearly is to be  
5 addressed by Mr. Hood, in Contention 2, unless she is somehow  
6 trying to connect this to managerial attitude; this is the  
7 only possible basis.

8 MS. STAMIRIS: Well, I must admit that I'm  
9 not putting everything in the same boxes that everybody else is.  
10 I mean I'm just going at this thing, and trying to go at it in  
11 a logical manner. I don't object to waiting to ask Mr. Hood  
12 that question.

13 CHAIRMAN BECHHOEFER: That particular question  
14 seems to relate directly to one of your other contentions, and  
15 Mr. Hood is the proper one to ask on that.

16 MS. STAMIRIS: Okay.

17 Q (By Ms. Stamiris) I wanted to ask some questions  
18 about Attachment 4. On page 5, there's a discussion of two  
19 amendments to the PSAR, and I wonder if you have direct  
20 knowledge of this PSAR Amendment 3. Did you look into that  
21 when you were doing your investigation?

22 A. Yes, we did.

23 MR. PATON: May I inquire, Mr. Chairman? Are  
24 you referring to somewhere in Attachment 4?

25 MS. STAMIRIS: Yes. It's page 5.

1 MF. PATON: Thank you.

2 Q (By Ms. Stamiris) I have to ask, because when  
3 I was reading through the amendment to the PSAR, Amendment 3,  
4 I could not find any reference to-- Well, under "Drainage  
5 System," is that another term that would be-- Does that mean  
6 the same thing as a dewatering system?

7 MR. PATON: I object. May I inquire whether  
8 this relates to managerial attitude or the administration  
9 building?

10 MR. ZAMARIN: In addition, before the Board  
11 rules, I object. I think this is discovery. This entire issue  
12 has been ruled irrelevant to these proceedings, by this Board.

13 MR. PATON: I couldn't agree more.

14 CHAIRMAN BECHHOEFER: How does this relate?  
15 Particularly since this seems to relate to the corrective  
16 action-- Maybe I'm not reading it correctly--

17 MR. PATON: If that's the direction she's going,  
18 I would not object.

19 MR. ZAMARIN: I continue to object, and I think  
20 on the same basis that the Board should find it just as  
21 irrelevant now as they did when we were on the discovery  
22 request to get into this line.

23 MS. STAMIRIS: Well, the reason I raised it is  
24 because I think we're talking about a--I thought we were talking  
25 about a dewatering system then, and a dewatering system now.

5wel 3

1 And I think there's some relevance, just on the subject matter.

2 I was also of the understanding that--and I'm  
3 not saying that in particular reference to this one, because  
4 I could be wrong, but I had a general understanding that some  
5 of the discovery requests that I had made, which had been  
6 denied or that I didn't get answers to, that I was going to  
7 be able to ask informational questions to a certain degree in  
8 the proceeding.

9 CHAIRMAN BECHHOEFER: Yes, but what I'm trying  
10 to drive at is that this witness is not here to discuss  
11 either the corrective actions which have been proposed, or  
12 alternatives which might have been proposed. I'm not sure  
13 that this is the right witness for that.

14 MR. ZAMARIN: I think that's right. The Board  
15 already ruled on this question. And in fact, I'm not aware  
16 of the Board saying that with regard to matters which were  
17 deemed irrelevant that there would be an opportunity to  
18 conduct discovery during the hearing. I think that's simply  
19 not true.

20 CHAIRMAN BECHHOEFER: Well, it was with regard  
21 to some of the late matters, perhaps.

22 MR. ZAMARIN: That's correct.

23 CHAIRMAN BECHHOEFER: Well, be that as it may,  
24 I think this is not the right witness to answer this question  
25 at this time.

1 MR. PATON: Mr. Chairman, we do have Contention  
2 4.D, about dewatering, which will be addressed later.

3 MR. ZAMARIN: I think a similar line of  
4 questioning was asked of Mr. Keeley, and this Board ruled that  
5 it was irrelevant and foreclosed by the ruling on discovery.

6 MS. STAMIRIS: I am not trying to go at the  
7 geotechnical merits of dewatering. I'm trying to go at  
8 attitudes and how commitments were followed and not followed.  
9 And that's basically where I'm going with this.

10 CHAIRMAN BECHHOEFER: Well, do you intend-- Are  
11 you trying to show that elimination of a certain reference is  
12 an example of managerial attitude? Unless you're prepared to  
13 try to show that, I can't see any relevance, at least in your  
14 question right now. Later on, you may want to ask the right  
15 witness whether certain types of systems would do the job  
16 better than whatever is proposed. But that's not appropriate  
17 at this time.

18 MS. STAMIRIS: Okay. I'll tell you what my  
19 understanding of my role is. I thought that I was to go at  
20 these matters and get answers to questions that I had, and try  
21 to get a basis in fact for the issues in this proceeding. And  
22 I also thought I was told that I could ask questions to the  
23 period prior to December 6, 1979, since I was not a party to  
24 the stipulation.

25 Now, the objection I have to--I've already

1 expressed my objection--the difficulty I'm having at trying to  
2 relate each isolated instance; and we've certainly talked  
3 about that problem in other ways before. But I thought I  
4 was not supposed to draw these together and tell you what my  
5 conclusion is until I made my proposed findings of fact at  
6 the end.

7 CHAIRMAN BECHHOEFER: That's certainly true.  
8 But what I'm trying to say is that you have to ask the  
9 questions of the right witness, and if you're exploring the  
10 adequacy of certain proposed fixes, this is not the right  
11 witness for that, and I don't believe the Staff was going to  
12 use Mr. Gallagher for that purpose; maybe I'm wrong.

13 MR. PATON: That's correct, for Contention 4.D.

14 CHAIRMAN BECHHOEFER: Yes. And the only thing  
15 I was driving at is, if you're going to try to connect it to  
16 managerial attitudes, it's perhaps permissible, and that's why  
17 I was asking you the purpose of it.

18 MS. STAMIRIS: Maybe we misunderstood each  
19 other. I did not intend to address it to the remedial fixes.  
20 I intended to direct it to the areas of quality assurance and  
21 managerial attitude.

22 MR. ZAMARIN: Chairman Bechhoefer, she ought to,  
23 then, simply ask him if the Amendment 3 to the FSAR in any way,  
24 in his understanding, reflected on managerial attitudes. And  
25 if he says "No," then we can move on.



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1 CHAIRMAN BECHHOEFER: Well, you may-- That's  
2 the kind of question you may ask in this context, and then  
3 later on you can ask the other kinds of questions of the  
4 right witness, when the right witness is on the stand for  
5 that purpose.

6 It's just a question of who is prepared to  
7 testify to what information.

8 Q (By Ms. Stamiris) Mr. Gallagher, do you believe  
9 that an applicant's-- Well, do you believe that the question of  
10 PSAR amendment could relate to managerial attitude?

11 MR. PATON: Mr. Chairman, I think I'd object.  
12 What is possible is inappropriate.

13 CHAIRMAN BECHHOEFER: I've heard it said that  
14 anything is possible.

15 Q (By Ms. Stamiris) Mr. Gallagher, do you believe  
16 that a commitment or lack of commitment to follow an amendment  
17 to the PSAR could reflect on managerial--or in relation to  
18 other things, reflect on managerial attitude?

19 MR. ZAMARIN: I'll object. It's calling for  
20 speculation, and also to the form of the question.

21 MS. STAMIRIS: You told me to ask that question.  
22 So I asked it.

23 MR. ZAMARIN: No. I would be happy to restate  
24 what I suggested that you ask, which I think is the direct way  
25 to go, is whether the Amendment 3 to the PSAR, in his

1 understanding, reflected in any way upon management attitude.

2 MS. STAMIRIS: Well, as I said before, I don't  
3 want to know about each isolated incident. What I want to  
4 know is if Mr. Gallagher believes that Amendment 3 to the  
5 PSAR, taken in relation with other amendments and commitments  
6 to them, reflects on managerial attitude at the Midland Plant.

7 THE WITNESS: PSAR Amendment 3, as far as I'm  
8 concerned, does not reflect poorly on managerial attitude.

9 However, the fact that a number of inconsis-  
10 tencies between the PSAR and the FSAR as shown in the specifica-  
11 tions did exist in my opinion does relate to management  
12 attitude, in that it shows that there was not, perhaps, a  
13 dedication to adequate attention to details that are required  
14 for the Staff to rely on.

15 And it would seem that one of management's  
16 principal functions is to provide all of those necessary  
17 tools and people to assure that adequate attention to detail  
18 is provided, and I believe Mr. Keeley's testimony stated as  
19 well that, up and down the line of the Consumers organization,  
20 there just simply wasn't adequate attention to detail.

21 CHAIRMAN BECHHOEFER: Let me interrupt.

22 Mr. Gallagher, would that reflect on managerial  
23 attitudes or managerial competence, or both--the attention to  
24 detail which you mentioned?

25 THE WITNESS: I don't separate the two so

1 distinctly. It would seem that if management is not fully  
2 aware that details are important, and that tools and people  
3 are required to assure that details are taken into account,  
4 then I would think that that would reflect on their attitude  
5 as well.

6 MR. MARSHALL: Could I ask one question here  
7 at this point? Just one?

8 MS. STAMIRIS: I don't object.

9 CHAIRMAN BECHHOEFER: Well, I guess--

10 MR. MARSHALL: I'd like to ask this witness,  
11 on the question of the PSAR, you said that the PSAR is  
12 compiled by the Applicant and submitted. If they take a  
13 departure from what's contained in that particular PSAR,  
14 that's reflecting on managerial attitudes, is it not, since  
15 they submitted it in the first place? They're supposed to  
16 follow it. Isn't that true? And a failure to follow it would  
17 reflect back on managerial attitudes, if they take a  
18 departure from it?

19 MR. PATON: May I ask Mr. Marshall to clarify  
20 his question? Do you mean that every failure to follow the  
21 PSAR would necessarily reflect on managerial attitude?

22 MR. MARSHALL: No, but I have some in mind for  
23 later, for the proper witness, and I just wanted to get this  
24 into the record. That's all.

25 I would say it this way: The law imposed a duty

1 upon them to follow the PSAR. That's what I'm saying.

2 MR. PATON: Is that a question?

3 MR. MARSHALL: No. I'm saying that I'm  
4 asking, in my understanding, that the law imposed a duty upon  
5 them to follow the PSAR. Taking a departure here and there,  
6 and then failure--or becoming argumentative over it with the  
7 Staff or with the people who find it, the inspectors that you  
8 sent in, or their inspectors--whoever; I don't care who--  
9 that's bad managerial--it reflects bad back upon management, I  
10 feel. And that's what I'm asking.

11 MR. PATON: Do you understand the question?

12 THE WITNESS: I'm not sure I understand.

13 MR. PATON: Perhaps he could rephrase the  
14 question.

15 MR. MARSHALL: What I'm saying is that Staff  
16 prepares for the NRC the PSAR that they propose to build--

17 CHAIRMAN BECHHOEFER: Off the record.

18 (Discussion off the record.)

19 CHAIRMAN BECHHOEFER: Back on the record.

20 MR. MARSHALL: What I'm saying is that Applicant  
21 prepares that proposal to build this particular structure. It  
22 contains within that PSAR the different features of it that  
23 have to be followed.

24 Now, if it's submitted to NRC and their  
25 engineers, they assume that it's going to be followed according

1 to what's in this PSAR.

2 Now, departure from that, without consulting  
3 with the NRC, would be a bad thing on the part of management,  
4 would it not, if they were aware of it?

5 MR. PATON: I'll have to object, Mr. Chairman.  
6 "A bad thing on the part of management--"

7 MR. MARSHALL: Well, it would be bad management  
8 if they were notified from inspectors, and they didn't--if  
9 they failed to follow it, it would be taking a departure from  
10 their own specs--I'll call it specs--that's contained in the  
11 PSAR, this would be bad managerial on their part.

12 MR. PATON: That was a rather lengthy question.  
13 Could we ask the witness if he has the question in mind?

14 THE WITNESS: I think my response to the  
15 previous question is likewise to this. It appears that to  
16 the extent that there were a sufficient number of inconsisten-  
17 cies and conflicts between design documents and the basis  
18 which was submitted to the NRC, it would appear to me that  
19 in this case, due to management's lack of attention to details,  
20 it reflects only and is inconsistent with good managerial  
21 attitude with respect to good quality assurance principles.

22 MR. MARSHALL: That's exactly my point I was  
23 asking. That answers my question.

24 Q (By Ms. Stamiris) Mr. Gallagher, I think that  
25 I need to define what I mean by managerial attitude, so that



1 you understand when I ask you a question about it; and what  
2 I want to say is that I do not, by saying "poor managerial  
3 attitude," mean to make a distinction between whether it's  
4 deliberate or intentional attitude, as opposed to something  
5 that has just happened. I don't think it's important how or  
6 why it's happened, but just the approach that's taken.

7 I want to ask you that, because my next  
8 question--or I wanted to give my definition so you'd under-  
9 stand for my next question, that when you speak of managerial  
10 attitude in this way, do you believe that it has contributed  
11 to other things besides the quality assurance problem?

12 MR. ZAMARIN: I'll object. I think when she  
13 says, "When you think of managerial attitudes in this way,"  
14 she's referring to the way in which she has defined it, and  
15 I think that she has to ask the witness what his understanding  
16 of managerial attitude is, when he refers to it, and as it's  
17 been referred to innumerable times during this proceeding, and  
18 then ask him in the context of his definition, not one that  
19 she now seeks to lay over all the previous representations in  
20 testimony about managerial attitude. It's simply incompetent.

21 MR. PATON: Mr. Chairman, I don't agree with  
22 that. I think the Board is obviously not bound by her  
23 definition of managerial attitude, but I think she can ask  
24 him a question and say, "In this respect," or "With this view  
25 of managerial attitude," and then ask him a question. The

1 Board is not bound by it. I think it's a perfectly proper  
2 question.

3 MR. ZAMARIN: I disagree with Mr. Paton.

4 CHAIRMAN BECHHOEFER: I think the question may  
5 be asked. Do you understand the question?

6 THE WITNESS: Could we have it read back?

7 (Whereupon, the Reporter read from the record,  
8 as requested.)

9 CHAIRMAN BECHHOEFER: I think the witness can  
10 answer the question. But "if" should be substituted for  
11 "when," I think. With that modification, could you answer  
12 that?

13 THE WITNESS: I think before I answered that,  
14 I'd have to state as to how I understand what managerial  
15 attitude is all about, and it would seem that an effective,  
16 both corporate and facility management, needs to recognize  
17 the needs for both qualified personnel and materials to support  
18 the quality organization, as well as the design and construction  
19 organization; and, in addition to that, an effective management  
20 reacts responsibly to identified safety concerns and initiates  
21 corrective actions, without waiting for an expressed concern  
22 by the NRC, or when identified by the NRC, responds appropriately.

23 In this case, prior to December 6, 1979, and  
24 based on an extensive investigation into the background as to  
25 why the settlement--causes of the soil settlement issue, it was

1 my opinion that a managerial attitude inconsistent with good  
2 quality assurance principles and full attention to detail,  
3 was a major contributor in the causes of this problem. And  
4 whether that was caused by just mere complacency or lack of  
5 alertness or lack of managerial competence, I'm not certain.  
6 But any one of those things is an attitudinal problem that  
7 management did not correct.

8 (Continued on following page.)

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1 CHAIRMAN BECHHOEFER: Would you regard it as  
2 more serious if you found that the activities were undertaken  
3 intentionally?

4 THE WITNESS: Absolutely it would be more  
5 serious. Nonetheless, it is serious even in view of the  
6 lack of alertness, attentiveness or competence.

7 Q (By Ms. Stamiris) What I wanted to ask you,  
8 and I'd be happy to use your own definition of "managerial  
9 attitude", because I think we agree--do you believe that this  
10 managerial attitude you speak of contributed to the design  
11 inconsistencies in the FSAR?

12 A Had good management controls been in effect  
13 while the FSAR was being prepared, specifically with respect  
14 to Section 25 on foundation problems, that we would have  
15 precluded these problems from occurring through their  
16 dedication to attention to detail, their finding that design  
17 controls are in effect, design interfaces are in effect,  
18 getting down to the real nitty-gritty details. Management  
19 should be involved at that level.

20 MS. STAMIRIS: I'm sorry, I just draw a complete  
21 blank. I don't know if anybody else has any other questions.  
22 I'm sure I have others. I just--

23 CHAIRMAN BECHHOEFER: I think at this point it  
24 would be a good time for a morning break, in any event, so  
25 take 15 minutes.

K5L2

1 (Recess.)

2 CHAIRMAN BECHHOEFER: Ms. Stamiris, do you have  
3 any further questions at this time?

4 MS. STAMIRIS: Yes.

5 Q (By Ms. Stamiris) I want to focus on what  
6 I'm going to call the three basic questions that were asked,  
7 on which I believe the investigation 78-20 was based, and a  
8 full investigation of the soils settlement problem.

9 Taking them one at a time, the question of  
10 whether a breakdown in quality assurance occurred, it is my  
11 understanding that your position has been that a breakdown  
12 in quality assurance did occur with respect to soils.  
13 Would it be correct to say that?

14 MR. FARNELL: I object to that. That's going  
15 back into the facts that have already been dealt with in this  
16 hearing, and it is cumulative, and I believe the Board has  
17 already determined we don't want to go into this area.

18 MR. PATON: Mr. Chairman, it seems to me like a  
19 background question. I agree with Mr. Farnell technically,  
20 but I don't object to the question.

21 CHAIRMAN BECHHOEFER: Is it as a background for  
22 some further questions?

23 DR. COWAN: You are replying to that question?

24 MS. STAMIRIS: Yes.

25 CHAIRMAN BECHHOEFER: Is it as background?



K5r 3

1 MS. STAMIRIS: Yes, it is a background question.

2 MR. FARNELL: I mean--

3 MS. STAMIRIS: If it is a leading ques-  
4 tion, I will skip right to my next question.

5 CHAIRMAN BECHHOEFER: We will overrule the  
6 objection. As to a background question, it could be answered.

7 MR. DECKER: Excuse me just one moment, please.  
8 When you say "you", did you mean "you", Mr. Gallagher personally,  
9 or "you" the NRC, or "you" Region III or--

10 MS. STAMIRIS: Okay. I thought I had to ask  
11 it "you", Mr. Gallagher, but I would really like to ask "you",  
12 the NRC, so I will ask it that way and see how I go with it,  
13 because I want to know did the NRC establish, as an answer to  
14 that question, that there was a breakdown in quality assurance  
15 with respect to soils.

16 MR. PATON: May I inquire? I assume she means  
17 at the time of the report, the 78-20 report. Is that what you  
18 mean?

19 MS. STAMIRIS: Yes, at the time of the 78-20  
20 report.

21 CHAIRMAN BECHHOEFER: Then I think your word  
22 should be not "established", but "considered".

23 MS. STAMIRIS: Okay.

24 CHAIRMAN BECHHOEFER: Did the NRC, at the time  
25 of that report, consider that there was a quality assurance

K5L4

1 breakdown with respect to soils?

2 THE WITNESS: Yes, we did, and this was  
3 referred to our Headquarters Staff in Washington in the  
4 Enforcement Division, and although it took a considerable  
5 length of time between the issuance of the 78-20 report and  
6 the issuance of the December 6th order, the conclusion of  
7 myself, Region III and both I and E and NRR, was that a sub-  
8 stantial breakdown in the quality assurance program occurred,  
9 and that was the very--one of the very reasons for issuing  
10 the December 6th order.

11 Q (By Ms. Stamiris) Is the prepared text of  
12 this testimony the very same prepared text that was once  
13 submitted as a summary disposition motion by the Staff?

14 MR. ZAMARIN: I will object to the form of the  
15 question. I think she is referring to Stamiris 3 by "the  
16 testimony". It is not clear.

17 MS. STAMIRIS: I'm referring to Stamiris Exhibit  
18 3.

19 A Yes, that was.

20 CHAIRMAN BECHHOEFER: I was going to ask if I  
21 heard any relevancy objection.

22 MR. PATON: I have no objection.

23 MR. ZAMARIN: I do. I also was going to say I  
24 don't see the relevance to that question.

25 CHAIRMAN BECHHOEFER: I personally don't think

K5L5

1 whether he's prepared it for summary disposition or whether  
2 he's prepared it as later testimony--what relevance does that  
3 have for us?

4 MS. STAMIRIS: Well, the next question I ask,  
5 maybe it will be clear.

6 Q (By Ms. Stamiris) I wondered if-- I remember  
7 a statement from the summary disposition motion that this  
8 breakdown in quality assurance or this conclusion that the  
9 NRC had reached as to the breakdown in quality assurance  
10 would have warranted--if it had been known ahead of time,  
11 would have warranted--I think it was failure to issue a  
12 construction permit, is that correct?

13 MR. PATON: I object, Mr. Chairman. I think--  
14 That's in the regulations. That's Part 50 Section 100. I don't  
15 think she should inquire of the witness about that.

16 MR. ZAMARIN: I think she's also asking for--  
17 With regard to the basis for the record, it is not relevant.  
18 Second, she is asking for a legal conclusion of the witness,  
19 who in my understanding is a civil engineer.

20 MS. STAMIRIS: I'm asking about the testimony  
21 because--Stamiris Exhibit 3, formerly his testimony, which he  
22 said was the same as had been previously submitted for the  
23 summary disposition motion, and what I want to go at is not  
24 the legal details of it, but how it represents the NRC position,  
25 is what I want to understand; if Mr. Gallagher, representing

K5L6

1 the NRC, believes that the quality assurance breakdown that  
2 we have referred to was the same quality assurance breakdown  
3 which was mentioned in respect to the summary disposition.

4 MR. PATON: I object, Mr. Chairman. If she  
5 has a precise place in the motion for summary disposition--  
6 that was a lengthy document. I am not sure I see the relevance,  
7 but certainly if she has reference to certain words at a  
8 certain place, I think we ought to know what they are.

9 MR. ZAMARIN: Chairman Bechhoefer, I would add  
10 also to my objection as to relevance, if she can find it in  
11 there or not, it is simply not relevant to the extent that  
12 if there were a breakdown in quality assurance program with  
13 regard to soils, that there be some legal ramification of the,  
14 that is a question for this Board and not for any witness,  
15 let alone a lay witness for the Board. and finally that's  
16 simply not relevant.

17 The order states--the allegation, that there  
18 was a breakdown in quality assurance with regard to soils.  
19 The testimony of the Staff in this proceeding has alleged  
20 that, and it has been stipulated that that conclusion will not  
21 be contested, and this is simply cumulative at best.

22 MS. STAMIRIS: I will tell you where I'm going  
23 with it, and I'm not trying to argue the legal technicalities  
24 of a label. I'm not interested in that.

25 What I'm trying to use it for is to establish



K5L7

1 the weight for the importance of this quality assurance  
2 breakdown. I mean--because I want to question-- The question  
3 comes to mind from Mr. Keppler's testimony about defining a  
4 breakdown in quality assurance, or a broad breakdown in quality  
5 assurance, and I want to know-- I'm trying to get at the weight  
6 of this within the NRC.

7 MR. PATON: Mr. Chairman, I don't see the--

8 MS. STAMIRIS: Judge Bechhoefer, I would like  
9 to withdraw that line of questioning.

10 CHAIRMAN BECHHOEFER: All right. I was just trying  
11 to figure a way to preface it for you.

12 MS. STAMIRIS: I think it is getting into areas  
13 that I don't mean to get into.

14 Q (By Ms. Stamiris) The second of those three  
15 bases that we talked about, being whether the occurrence  
16 of the settlement of the diesel generator building had been  
17 reported properly--and you testified this morning in so many  
18 words that you believed the NRC position was that it had been  
19 reported properly--I want to go into more detail on the NRC's  
20 definition of a 55(e) reportability requirement.

21 When you said that it was a 55(e) problem that  
22 needed to be reported, was a problem that if it went undetected--  
23 Would you like to put it in your words? I think it would be  
24 better than me.

25 A I think it was clearly stated before what the



K5L8

1 regulations of 55(e) require, and we have concluded that  
2 Consumers had abided by those regulations.

3 Q Okay. What I want to ask you is--and I think  
4 I remember clearly your definition that you stated, and it  
5 is clearly stated in the regulations. Do you believe that  
6 55(e) reports are to report problems that have a potential of  
7 significance in that manner?

8 A I don't believe that the regulation uses the  
9 word "potential".

10 Q It doesn't.

11 A Significant construction deficiency. I think  
12 they have to make a decision whether it is or it isn't, and  
13 then report it to the NRC. In this case they had made the  
14 initial decision that it was in fact a significant construction  
15 deficiency, and did in fact report it accordingly.

16 Q Are 55-- I'm perhaps going to be asking  
17 the same question again. Are 55(e) reports supposed to report  
18 on it problems that could be serious if forgotten--or I  
19 don't mean forgotten. Let's just put a period after "serious".

20 MR. ZAMARIN: I object, Chairman Bechhoefer.  
21 That's the third time she's asked the question, and it's  
22 been asked and answered.

23 CHAIRMAN BECHHOEFER: I might say that the terms  
24 of 50.55(e)1 do spell out the situations where a 55(e) report  
25 is required.

K5L9

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MS. STAMIRIS: Okay.

CHAIRMAN BECHHOEFER: It talks about if deficiencies were to remain uncorrected, it could have certain effects.

Q (By Ms. Stamiris) I want to ask Mr. Gallagher if he believes that it would have been a better managerial decision of Consumers Power to report the diesel generating building settlement, even if it had been a month earlier, to report it as soon as they knew it, as opposed to as soon as it exceeded the values in the FSAR.

MR. ZAMARIN: I object to the characterization of the testimony--or the characterization of facts in there as being inaccurate, and also as to a lack of relevance, and it simply is just speculative at best.

MR. PATON: I also have an objection, Mr. Chairman, insofar as I believe she's asking him whether or not it would be better managerial practice to exceed the regulations. I may have misconstrued the question, but, of course, there is no requirement to exceed the regulations.

MS. STAMIRIS: That's what I'm trying to get at, whether that would be exceeding the regulations or meeting the regulations, because I'm not clear by the wording of the regulation.

MR. ZAMARIN: She's asked him several times whether it met the regulatory requirements, and in his

K5L10

1 opinion it did so. I would add, if that's the intent of it,  
2 it has been asked and answered.

3 CHAIRMAN BECHHOEFER: Well, I think the way  
4 you have asked the question, I will sustain the objection,  
5 but let me ask the witness this just maybe for clarification  
6 purposes.

7 Was the 55(e) report on this the current--  
8 or on the settling problem, the one that was submitted on  
9 September 29, 1978, actually the one that appears, I think,  
10 as Attachment 1 to the Stamiris Exhibit?

11 THE WITNESS: That was the formal notification.  
12 The licensee is required to, first, notify us verbally, which  
13 they did on--I believe it was August 22, through our resident  
14 inspector, and then within a 30-day period, the regulations  
15 require them to make a formal written report with certain  
16 content to be included, which is Attachment 1 to Stamiris  
17 Exhibit No. 3.

18 CHAIRMAN BECHHOEFER: Now, was that submitted  
19 within the 30 days of the initial discovery of the settlement  
20 problem? Was it within 30 days of the oral reporting?

21 I see that there is a statement here in your testimony that  
22 the oral reporting is on August 21, and--September 29 isn't  
23 quite 30 days, and I wanted to inquire whether you considered  
24 that report as being timely submitted.

25 THE WITNESS: In other words, you are looking at

K5L11

1 the date September 29, and it is more than 30 days.

2 CHAIRMAN BECHHOEFER: It is more than 30 days  
3 from the date that you mention in here, in Stamiris Exhibit  
4 3, Question 8, which is August 21.

5 THE WITNESS: The 30 days is a requirement of  
6 the regulation, but oftentimes--and I'm not sure in this  
7 case--a licensee will inform us that due to getting all  
8 of the facts and figures, there is a need for a short extension,  
9 and it is--the 30 days is just not a critical number. As  
10 long as we are informed of it initially and can proceed with  
11 some investigation of our own, we are satisfied, although  
12 this September 29 submittal did satisfy their formal written  
13 requirements.

14 CHAIRMAN BECHHOEFER: As far as you are  
15 aware, you are satisfied with the time limits, or Region III  
16 was satisfied with the time limits of that submission?

17 THE WITNESS: Yes.

18 MR. PATON: There appears to be that provision  
19 in the regulations right at the very end of 50.55, indicating  
20 that you can file an interim report.

21 Q (By Ms. Stamiris) Mr. Gallagher, I wanted to  
22 ask--and perhaps you can make it clear to me if I'm mis-  
23 understanding this. I thought I remembered reading some place  
24 that the Applicant was first aware of the settlement problem  
25 in July, and I wouldn't want to put a date--



K5L12

1           A     No. It is my understanding that Bechtel,  
2 in July, during a routine survey for construction purposes,  
3 had identified that settlement on the order of perhaps an  
4 inch or slightly over an inch had occurred, and that they  
5 would then begin to take settlement readings on a more closer  
6 frequency than their original settlement monitoring program  
7 required, which I believe was on a 60-day basis, and at that  
8 point in time they had not even approached the settlement  
9 that had been inspected as part of the design basis.

10           Q     Then I want to ask about the third basis for  
11 that investigation, being whether the FSAR was consistent  
12 with design and construction of the Midland project, and  
13 when I asked Mr. Keppler this, I believe his answer was that  
14 there was not an attempt by the NRC to look beyond the soils  
15 settlement problems at the FSAR. Is that your understanding  
16 of the NRC's position?

17           A     Yes.

18           Q     Were you not concerned that there may be generic  
19 mplications beyond the soils area regarding the FSAR problems?

20           MR. ZAMARIN: Mr. Chairman, I object. I don't  
21 see any relevance, as to whether he was concerned, to any of  
22 the issues in this case.

23           MS. STAMIRIS: The NRC.

24           MR. ZAMARIN: It would be the same objection.

25           CHAIRMAN BECHHOEFER: Mr. Paton, do you have an



K5L13

1 objection to that?

2 MR. PATON: No, I have no objection.

3 MR. ZAMARIN: We are talking now about a time  
4 period in December and January of 19--December of 1978 and  
5 January of 1979.

6 CHAIRMAN BECHHOEFER: I think we will overrule  
7 the objection.

8 A Yes, we were concerned, and when we issued  
9 the 50.54(f) request, Question No. 1, Item B, stated that what  
10 assurances exist, that the apparent areas of contradictions  
11 in the PSAR and FSAR as described by I and E during the  
12 meeting of February 23 and March 5, 1979, do not exist in  
13 other sections of the PSAR and FSAR dealing with matters  
14 other than fill. Consumers responded to that, as well as  
15 subsequent to that in Question 23, by committing and  
16 performing a re-review of the FSAR in order to identify if any  
17 other conflicts exist, and to correct them, and we accepted  
18 that as being adequate corrective action to print up the  
19 FSAR.

20 Q And was that re-review addressed in your  
21 investigation reports? Was it-- Do you remember which investi-  
22 gation report it was addressed in?

23 MR. ZAMARIN: Mr. Chairman, I think this was  
24 inquired into and testified to on Saturday morning by this very  
25 witness in some detail, this entire matter.

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MS. STAMIRIS: By me?

THE WITNESS: You are correct. I did reference the inspection report 80-32, which followed up on this item.

MS. STAMIRIS: I will ask other questions then.

Q (By Ms. Stamiris) On Page 9 of Stamiris 3, previously your testimony, the list of findings that's presented here, does this listing represent the findings from your 78-20 report?

A It lists the preliminary investigation findings preceding the publishing of Report 78-20. We wanted to provide a preliminary summary of our findings to the Company, and this is a listing of those findings.

They were presented to Consumers on February 23 at the Region III office.

MS. STAMIRIS: I think it would probably be helpful if-- What I want to do is compare these findings with Report 78-12, which was Attachment 4, I believe.

CHAIRMAN BECHHOEFER: Wait. Attachment 78-12 is Attachment 2.

MR. ZAMARIN: Chairman Bechhoefer, again--

CHAIRMAN BECHHOEFER: We had a number of questions about that earlier.

MR. ZAMARIN: Comparing? I just simply don't see the relevance to anything in comparing the preliminary

K5L15

1 investigation findings for 78-20 to 78-12.

2 MS. STAMIRIS: Okay. Then I will just ask  
3 some questions. I thought that everybody would want to check  
4 on the comparisons.

5 MR. ZAMARIN: That's the purpose of discovery  
6 and preparation for this, and I just don't think it proper  
7 during the hearing.

8 MS. STAMIRIS: Well, I have drawn some compari-  
9 sons, and I'd like to ask Mr. Gallagher some questions about  
10 them.

11 Q (By Ms. Stamiris) Mr. Gallagher, looking at  
12 these starred items, had the first one referring to the FSAR  
13 inconsistency regarding fill material been identified in  
14 your October inspection?

15 MR. ZAMARIN: Again, this line of questioning  
16 is clearly irrelevant as to whether he had identified it  
17 earlier. The fact remains that he had. It is in the testimony.  
18 It bears no relation to any of the issues as to whether  
19 these problems have been corrected or just anything now  
20 before this Board. It simply is taking an inordinate amount  
21 of time which should not be spent on these areas.

22 There are plenty of important areas that  
23 should be explored.

24 MR. ATON: Mr. Chairman, could I comment?  
25 There may be some possible connection to the issues that the

K5L16

1 Board has set before it. Could we ask Ms. Stamiris what  
2 connection this has with what issue is before the Board?

3 MS. STAMIRIS: Well, I can certainly jump ahead  
4 and go at it without giving each example or drawing the  
5 comparison out, and what it relates to is the fact that between  
6 Report 78-12 and Report 78-20, something very significant,  
7 in my mind, happened, which was the diesel generator building  
8 was preloaded, and when Report 78-20, and this February  
9 preliminary investigation report came out, it is my understanding  
10 that the preload surcharge had already been applied.

11 That's why it is significant to me to find out  
12 the timing on this as it relates to what should have been done  
13 when, as far as the ultimate questions that were decided  
14 about the attitudes, quality assurance decisions, and I've  
15 been very direct in this before, and it does relate on what  
16 action the NRC took or didn't take.

17 MR. PATON: Mr. Chairman, on the basis of that  
18 explanation, I renew my objection. Ms. Stamiris to me seemed  
19 to indicate she was interested in a lot of history, and  
20 right toward the end of that the words "managerial attitude"  
21 were in there, which were the magic words, but I just don't  
22 see the connection about something between 78-12 and 20 and  
23 loading the diesel generator building. That doesn't seem to  
24 relate to an issue before the Board.

25 If she could be just a little precise. What does



K5L17

1 this relate to?

2 MR. ZAMARIN: I think that the lack of connec-  
3 tion is even more apparent in the fact that she should simply  
4 ask the witness, "Wasn't it true that Report 78-20 referred  
5 to the most recent inspection in January of 1979, and that  
6 did in fact precede the diesel generator preload?"

7 That was not until after the 78-20 time  
8 period, so that she does have the timing off, and if that  
9 was th purpose of her questions, I think maybe that will clear  
10 it up.

11 CHAIRMAN BECHHOEFER: I gather what you said  
12 happened between 78-12 and 78-20 didn't happen; it happened  
13 after that, so--

14 MS. STAMIRIS: I appreciate that clarification,  
15 because I was confused.

16 Q (By Ms. Stamiris) Mr. Gallagher, was the  
17 Applicant aware of all of these--what word should I use?

18 A Findings?

19 Q --findings when the surcharge was first placed?

20 A Yes, they were.

21 Q Was the NRC aware of them basically? Now,  
22 we can go through it by example, but was the NRC basically  
23 aware of these findings in October?

24 MR. ZAMARIN: October of what?

25 MS. STAMIRIS: 1978.



K5L18

1           A     To some extent the findings in Report 78-12  
2 paralleled those in 78-20. When we came back from the inspec-  
3 tion--when I came back from the inspection that resulted in  
4 Report 78-12, the Region III management made a decision to  
5 provide a more extensive investigation into why this issue  
6 became a problem, and we were asked to perform an in-depth  
7 investigation starting in December and ending in the end of  
8 January.

9                           (Continued on next page.)

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1 Q What I want to know is, obviously the informa-  
2 tion was available then, in January, and it was, I believe  
3 you would then say basically available in October.

4 MR. PATON: Mr. Chairman, I guess I would object  
5 to "basically available." I don't think that helps the record.

6 Q (By Ms. Stamiris) What I want to know is-- I'll  
7 drop that first line of questioning.

8 What I want to know is, the information had  
9 been compiled. I wonder if the conclusion had also been  
10 drawn that, indeed, this represented a breakdown in quality  
11 assurance?

12 A Not at the time. In October of '78 we knew  
13 that there were major problems there that we wanted to under-  
14 stand and learn more about the details of the problems, and  
15 we instituted an in-depth investigation which resulted in the  
16 78-20.

17 Q Do you believe that-- Would it be correct to  
18 say that the significance of the facts that you discovered in  
19 your October '78 report indeed led you to ask the broader  
20 questions of whether the breakdown in quality assurance had  
21 occurred?

22 A Yes.

23 Q And whether it had been reported properly?

24 A Yes.

25 Q And whether the FSAR was consistent with the

1 design of the Midland project?

2 A. Yes.

3 Q. Except for No. 2, "Reporting," the findings were  
4 affirmative, were they not?

5 A. Yes.

6 Q. Did the NRC believe that preloading the diesel  
7 generator building was going to make evaluation of the sub-  
8 soils more difficult?

9 MR. PATON: I object. Mr. Chairman, you've  
10 allowed her to get into issues prior to December 6, 1979, that  
11 may reflect on managerial attitude or remedial measures, but  
12 what the NRC thought is not an issue.

13 MR. ZAMARIN: Mr. Paton beat me to that  
14 objection, so I join in that objection.

15 (The Board conferring.)

16 CHAIRMAN BECHHOEFER: The Board is going to ask  
17 a question. I think as asked, we'd have to sustain the  
18 objection.

19 But the Board would like to find out what the  
20 witness' view-- Did the fact that Consumers proceeded to take  
21 some corrective action on surcharge, et cetera, prior to the  
22 time that the NRC had completely evaluated it and concurred in  
23 it, does that in any way reflect on management attitude, or  
24 is there an adverse implication to be drawn from that with  
25 respect to Consumers' management attitude?

1 THE WITNESS: In this case, it's my own  
2 personal opinion that it would have been more prudent and  
3 responsible not to proceed with that construction action until  
4 the issues had been satisfactorily resolved with the technical  
5 staff.

6 CHAIRMAN BECHHOEFER: I don't want to get  
7 into this in detail at this time, but did the technical staff  
8 have differences of opinion either way, a surcharge should  
9 have been used or carried out, or--

10 THE WITNESS: I'm not sure what the rest of  
11 the Staff feels with regard to that. I would seem to me,  
12 though, that all of those details, all of the plans, methods,  
13 and the way they were going to proceed with that remedial  
14 measure, ought to have been worked out between the appropriate  
15 technical people in the NRC, the structural engineering  
16 branch, geotechnical engineering branch, and the Consumers'  
17 design organization.

18 That's my personal opinion. I have no idea  
19 what the rest of the Staff felt.

20 CHAIRMAN BECHHOEFER: That's one of the things  
21 that--

22 THE WITNESS: It would seem extremely prudent  
23 to know where you're going, how you're going to get there,  
24 before you start doing it. It would seem logical to me, at  
25 least.



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## COTTON CONTENT

1 MR. DECKER: Mr. Gallagher, since that preloading  
2 did take place, regardless of whether it should or shouldn't  
3 have, but since it did take place, in your opinion, has that  
4 action prevented Consumers and the NRC from obtaining certain  
5 critical information concerning the state of the soils under  
6 and around that building?

7 THE WITNESS: I'm not sure of that. I  
8 haven't studied the details of the surcharge program or the  
9 results of that, to the extent required to answer that  
10 question.

11 I would think that the technical staff will  
12 be testifying to that, and that particular remedy would be  
13 best addressed at that time.

14 MR. PATON: Judge Decker, there will be a  
15 witness here at the next session. I think Mr. Kane would be  
16 the right person, I believe, to answer that question.

17 MR. DECKER: Thank you.

18 CHAIRMAN BECHHOEFER: You may continue.

19 MS. STAMIRIS: I don't have any further  
20 questions at this point, but I didn't bring with me my  
21 Contention 3, and I believe that's where some other attachments  
22 are. If I got it at noon, could I possibly ask another  
23 question about that at that time?

24 MR. PATON: I may have another copy.

25 MR. ZAMARIN: I think that she ought to do it



1 now.

2 CHAIRMAN BECHHOEFER: It is repeated in the  
3 beginning of Mr. Gallagher's testimony.

4 MS. STAMIRIS: I wouldn't be able to do it  
5 right now.

6 MR. PATON: If you want an extra copy, I've  
7 got one.

8 CHAIRMAN BECHHOEFER: Mrs. Stamiris, at the  
9 beginning of Mr. Gallagher's testimony, Contention 3 is set  
10 forth in its entirety.

11 MS. STAMIRIS: Well, I'm honestly not prepared.  
12 I have some notes on my own copy at home, but I'm honestly  
13 not prepared to do justice to it now. I'm asking if I might  
14 be able to address it later.

15 MR. ZAMARIN: It should be no surprise that  
16 Mr. Gallagher was going to testify this week, and we started  
17 on Saturday. I think if Mrs. Stamiris has some more questions  
18 that she ought to ask them now, rather than simply dragging  
19 this out, without any light at the end of the tunnel.

20 I have no objection to her asking relevant  
21 questions now, but I simply don't think that it's appropriate,  
22 on the basis of her claim that she's unprepared now, to come  
23 back at her pleasure and reopen it.

24 MR. PATON: Mr. Chairman, I'd like to respond  
25 to that. I don't think we need to press Mrs. Stamiris to that

1 extreme. I think that if her question can be posed to Mr.  
2 Gallagher today, we have no problem with that at all.

3 MR. ZAMARIN: You say "question." Is she  
4 talking about a question? That wasn't my understanding.

5 MR. PATON: I would have no objection to some  
6 limited cross-examination. I just don't think we need to  
7 press her to that extreme. He's available today.

8 (The Board conferring.)

9 CHAIRMAN BECHHOEFER: I think the Board will  
10 allow you to ask some questions after lunch. We will limit  
11 it to Contention 3, however. We'll limit it to the area of  
12 Contention 3.

13 MS. STAMIRIS: All right.

14 CHAIRMAN BECHHOEFER: Which is essentially  
15 management attitude. And maybe Mr. Zamarin can start his  
16 cross-examination now. We don't have too much time before  
17 lunch, in any event. But we will expect you to be prepared  
18 as soon as you get back from lunch, and it will be limited  
19 to--

20 MS. STAMIRIS: I may not have any, and if I  
21 do, it would be relatively brief.

22 MR. ZAMARIN: I have no objection to proceeding  
23 in that fashion, if she wants to come back, and if it's very  
24 limited.

25 CHAIRMAN BECHHOEFER: Yes, right after lunch.

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MR. ZAMARIN: I have no objection.

CHAIRMAN BECHHOEFER: Off the record.

(Discussion off the record.)

CHAIRMAN BECHHOEFER: Back on the record.

MR. ZAMARIN: Are you ready for me to proceed?

CHAIRMAN BECHHOEFER: Yes.

BY MR. ZAMARIN:

Q Mr. Gallagher, is it your present opinion that managerial attitude is consistent with implementation of quality assurance regulations with respect to soil settlement problems presently?

A Yes, it is.

Q And is that opinion based upon the NRC Staff's testimony assessing the present implementation of the quality assurance at the Midland plant, as well as your first-hand knowledge of the present quality assurance implementation at the Midland Plant?

A Yes, it is.

CHAIRMAN BECHHOEFER: Pardon me. What is the reference-- Which testimony did you just refer to?

MR. ZAMARIN: Contention 3. I mean I'm cross-examining on Contention 3, to the extent that there's any cross-examination on--or recross on--

CHAIRMAN BECHHOEFER: Well, there was some other testimony that had a title very similar to what you just--

1 MR. ZAMARIN: Well, all of my questions and  
2 all my references to testimony will be Mr. Gallagher's testi-  
3 mony with regard to Contention 3. I may have cross-examination  
4 on other matters, but I will not refer directly to other  
5 testimony.

6 CHAIRMAN BECHHOEFER: I just wanted to clarify  
7 it for the record. Thank you.

8 Q. (By Mr. Zamarin) Would you describe the positive  
9 aspects of the present implementation of quality assurance  
10 at the Midland Plant that caused you to reach your conclusion  
11 that managerial attitude is consistent with implementation of  
12 quality assurance regulations with respect to soil settlement  
13 problems?

14 A. First, I think it begins with the appointment  
15 of a corporate officer to the Midland project, and his  
16 involvement in the day-to-day decisions are a major basis for  
17 my statement that managerial attitude is consistent, that they  
18 are sufficiently involved, aware, providing sufficient direction,  
19 to lead me to believe that their attitude has been reformed  
20 to a satisfactory level.

21 Q. And would this appointment of a corporate  
22 officer to the project also satisfy the concern that you had  
23 stated about the earlier portion of the project history with  
24 regard to adequate management controls?

25 A. Yes.

COTTON CONTENT



1 Q Is it your opinion that this appointment of a  
2 corporate officer to the project would also satisfy the  
3 concern that you referred to as one of attention to detail?

4 A Yes, it does.

5 Q Do you believe that this now, then, satisfies  
6 the concerns with regard to management being fully aware of  
7 the importance of details?

8 A Yes.

9 Q Do you have any direct evidence that-- Excuse  
10 me. Had you completed your testimony with regard to the  
11 positive aspects of the quality assurance program at the  
12 Midland Plant which lead you to your present opinion that  
13 managerial attitude is consistent with implementation? Did you  
14 have anything else to add, besides the appointment of the  
15 corporate officer to the project as a positive aspect of the  
16 program?

17 A Yes. I'm sufficiently confident that the  
18 current Midland project quality assurance department has been  
19 well established and is working relatively well at this point  
20 in time, based on the current inspection performed during May  
21 18 through the 22nd, 1981.

22 Q Is there anything else?

23 A The Bechtel organization, both on the design as  
24 well as the construction side of the house, has also established  
25 a strong leadership which provides me the necessary confidence



1 that the design organization will improve and perform their  
2 functions, as well as the construction organization, under-  
3 standing the tasks that they have to do and how it has to be  
4 done to satisfy their commitments and our requirements--the  
5 NRC requirements.

6 Q I believe that at some time prior to this week  
7 it had been your recollection that you first learned of the  
8 administration grade beam failure from somebody at either  
9 Bechtel or Consumers, sometime in January, 1979, rather than  
10 at an earlier time during the site visits or related meetings  
11 in late 1978, is that correct?

12 A In preparation of our testimony for Contention  
13 1, Question 11, on page 14, prior to this week I had recalled  
14 that I was first informed by the Bechtel office in Ann Arbor  
15 during the month of January, 1979, about the administration  
16 building.

17 Q That was simply based upon your best recollection  
18 as you could recall the events some nearly three years later,  
19 is that correct?

20 A In saying that the investigation began in  
21 December of '78 and was completed in the middle of '79, and  
22 when I sat down to prepare this, I had originally thought it  
23 had occurred in January. I have since recollected that it was  
24 probably during the month of December that we were in Ann  
25 Arbor in the Bechtel office, and had intention to correct the

1 record when Contention 1 was put into the record.

2 Q But you and I had discussed this in the  
3 presence of your counsel yesterday, in fact?

4 A That's correct.

5 Q And I believe that your recollection was  
6 refreshed somewhat by some project quality assurance services  
7 daily log sheets that I showed you, kept by Don Horn, one of  
8 which recorded a telephone conversation on December 21st of  
9 1978 at 11:17 to 11:26 a.m., in which it indicated that you  
10 called and had requested more information on the problem, and  
11 then lists the information, is that correct?

12 A That's correct. The important point that we  
13 were attempting to make in response to Contention 1, Question  
14 11, is that we had first been informed of the administration  
15 building problem by the Bechtel organization during our  
16 investigation. That was the important and pertinent informa-  
17 tion trying to be conveyed in that response.

18 Q You don't have any reason to believe that  
19 anyone made an intentional effort to withhold or hide any  
20 information from you with regard to that, do you?

21 A I have no basis to believe that it was  
22 intentionally withheld upon starting our investigation. The  
23 fact remains, we were not informed, and it is our opinion  
24 that when we first learned about it, that we perhaps should  
25 have been informed of a previous incident, which would have

1 given us a better insight into prior problems, and a path to  
2 start our investigation to the current diesel generator  
3 building problems.

4 Q I hadn't intended to get into this this fully,  
5 because that is Contention 1. But let me just tie that  
6 up. And in fact, my recollection of the testimony on  
7 Contention 1 is that you had cited the failure to inform you  
8 of the administration building grade beam failure problem  
9 until January of '79, rather than during the meeting and  
10 related site visits in late 1978. And it seems to me that if  
11 you found out about it during the meetings or the related  
12 site visits during late 1978, that that satisfies the criticism  
13 at least as is testified to in the Contention 1 testimony.

14 Would you agree with that?

15 MS. STAMIRIS: I would like to object and ask,  
16 because I think he is characterizing one of my contentions, and  
17 I'm not sure if I agree with his characterization.

18 MR. ZAMARIN: I'm characterizing his testimony.

19 MS. STAMIRIS: I guess I would like to hear it  
20 read back, to know whether--

21 MR. PATON: And I will object to it, Mr.  
22 Chairman, in that it's a rather lengthy dissertation, followed  
23 at the end by a question, "Would you agree with that?"

24 I don't know if the witness can handle that.  
25 If he can, okay. But it seems like a lot of premises and

1 arguments to put all together and agree with.

2 MR. ZAMARIN: I'd be happy to have it read  
3 back.

4 MR. PATON: I think it should be broken up  
5 into question-and-answer form, rather than a lengthy story and  
6 then say, "Do you agree with that?" I don't think that helps  
7 the record.

8 MR. ZAMARIN: I think it's appropriate as  
9 asked, and I have no objection to its being read back.

10 MR. PATON: But if the Board overrules that  
11 objection, I will certainly ask that it be re-read.

12 CHAIRMAN BECHHOEFER: Well, I think it should  
13 be re-read before we rule on the objection.

14 (The reporter read from the record, as  
15 requested.)

16 CHAIRMAN BECHHOEFER: My inquiry is whether  
17 there's any foundation for the fact that the meetings and  
18 related site visits took place in 1978, particularly with  
19 respect to the administration building matter.

20 Is there any foundation for that at this point?

21 MR. ZAMARIN: No, there's no suggestion that  
22 the meetings took place with regard to the administration  
23 building grade beam failure matter. The contention to which  
24 Mr. Gallagher referred in his answer we've broken down as  
25 l.b.5, and in there the statement is that Mrs. Stamiris is



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1 correct in her statement that Consumers Power Company did not  
2 discuss the settlement of the administration building grade  
3 beam failure with the NRC during early meetings on the diesel  
4 generator building settlement or associated site visits in  
5 late 1978.

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1 MR. PATON: Mr. Chairman, could I be heard?

2 MR. ZAMARIN: In fact, the substance of my  
3 question is simply now that his recollection has been corrected  
4 to show that these meetings--that this information was pro-  
5 vided to them in the meetings or associated site visits of  
6 late 1978, doesn't that satisfy that criticism?

7 MS. STAMIRIS: Which criticism?

8 MR. PATON: If the witness understands the  
9 question, I will withdraw my objection. If he doesn't  
10 understand it, he can say so.

11 A I believe I understand what Mr. Zamarin is  
12 asking. Let me try to characterize it this way.

13 CHAIRMAN BECHHOEFER: I might say that Ms.  
14 Stamiris' objection referred to her--I believe her own  
15 contention rather than the testimony itself, and Mr. Zamarin  
16 was characterizing the testimony rather than-- So I will  
17 have to overrule that objection.

18 MS. STAMIRIS: I understand it now.

19 CHAIRMAN BECHHOEFER: Okay. The witness may  
20 answer.

21 A The pertinent point that we are trying to make  
22 here was, No. 1, that we were not informed by Consumers  
23 Power Company, and in our opinion, my opinion, there were  
24 certainly many occasions since October of 1978, when I had  
25 first come to the site, to inform me that a previous incident

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1 on a, granted, non-safety related structure had occurred,  
2 and whether it was just forgotten--for lack of a better word--  
3 I'm not certain, but in response to the contention Supplement  
4 1-5, I believe, Contention 1, Supplement 5, we are stating  
5 that, yes, it was initially withheld by Consumers, and, yes,  
6 it was certainly relevant to our continuing investigation  
7 into the Diesel generator building, but we have no basis  
8 for saying that it was intentionally withheld, for whatever  
9 reason.

10 Q (By Mr. Zamarin) And it is true, isn't it,  
11 that at the time you did attest to this statement, that in  
12 Contention 1, Supplement 5, that you believed that you had  
13 not been advised of it until January of 1979; is that correct?

14 A Initially when I had prepared that.

15 Q And therefore, now knowing that in fact you  
16 had learned of it in meetings on the diesel generator building  
17 settlement or associated site visits of late 1978, then that  
18 statement in the testimony in response to Contention 1,  
19 Supplement 5, would not be accurate; is that right?

20 THE WITNESS: Could I have the question repeated  
21 again?

22 (Question read by the reporter.)

23 MR. PATON: Mr. Chairman, may I have just a  
24 minute, please? I have to check something.

25 (Pause.)

1 MR. PATON: Mr. Chairman, I object to the  
2 question in that in response to Item 5 it addresses more than  
3 just the correction that Mr. Zamarin is looking for. The  
4 question is addressed--when he addresses the entire answer  
5 to Item 5, he is asking for more than the correction that  
6 he's just established a foundation for.

7 For example, we would agree at the top of  
8 Page 14 that where it says, in the third line, January '79,  
9 that should be corrected to say "December '78".

10 MR. ZAMARIN: Excuse me.

11 MR. PATON: We don't agree that the rest of  
12 his answer to Contention 5 is erroneous.

13 MR. ZAMARIN: I'm not suggesting that. It is  
14 nonsense to suggest that when it says late 1978, and  
15 change that to December 1978--if in fact that's what he is  
16 saying, that's my point. The statement reads--and I only  
17 referred to this once--that Ms. Stamiris is correct in her  
18 statement that Consumers Power Company did not discuss this  
19 settlement of the administration building grade beam failure  
20 with the NRC during early meetings on the diesel generator  
21 building settlement or associated site visits of late 1978,  
22 and my question is now that he realizes that he did get  
23 the information in late 1978, isn't that an incorrect statement.

24 That's all. I'm giving him an opportunity to  
25 correct it. I'm not suggesting anything else is wrong with the



1 response. We will get to that later.

2 CHAIRMAN BECHHOEFER: Mr. Paton, do you object--  
3 or have any objection to the question being asked now,  
4 or would you prefer to have that wait until--

5 MR. PATON: No, we don't object to it having  
6 been asked.

7 CHAIRMAN BECHHOEFER: It clearly calls for one  
8 or two follow-up questions, which I'm not sure I want to ask  
9 now or later.

10 MR. ZAMARIN: The reason I ask it now is  
11 this issue did come up in this testimony by answer of the  
12 witness. I want to tie it up here and then it will be explored  
13 further when we get to Contention 1, but I think it is needed  
14 to get the record tied up here.

15 CHAIRMAN BECHHOEFER: I have no objection to  
16 it.

17 MR. ZAMARIN: Rather than going back in the  
18 record, I'd be happy to restate the question.

19 CHAIRMAN BECHHOEFER: Okay.

20 Q (By Mr. Zamarin) Knowing now that you learned  
21 of the administration grade beam failure in 1978, and sometime  
22 prior to December 21st of 1978, rather than in January of  
23 1979, would you agree that the statement that Consumers Powe  
24 Company did not discuss the settlement of the administration  
25 building grade beam with the NRC during early meetings on the

K7L5

1 diesel generator building settlement or associated site visits  
2 of late 1978 is incorrect?

3 A That's not a yes or no answer. It will need  
4 some explanation, apparently, or some--

5 Q Well, first can you answer whether that  
6 statement in its entirety is incorrect?

7 A I would prefer to explain it rather than answer  
8 it yes or no. The explanation is that, No. 1, we have  
9 not--we were not informed, or we did not discuss settlement  
10 of the administration building in early meetings, specifically  
11 in the meeting we are referring to as the December 3rd and  
12 4th meetings.

13 No. 2, Consumers had not informed the NRC  
14 about--initially had not informed the NRC about the visits  
15 to the administration building.

16 A Bechtel employee, while at the Ann Arbor  
17 office, most likely in December, informed us initially.

18 After that initial notification from the Bechtel  
19 design group supervisor, then I pursued it telephonically with  
20 the quality assurance people on site.

21 Q So we know, it was at least prior to December  
22 21st, 1979, but if you don't know it was--or '78, but if  
23 you don't know it wasn't in January, how can you be certain  
24 it wasn't mentioned to you by this Bechtel individual associated  
25 with Consumers at the December 4th meeting?

K7L6

1 A Because my recollection is quite clear, and we  
2 memorialized that, the contents of that meeting, as an  
3 attachment to one of our contentions, I believe Contention  
4 1.

5 Q So you say your recollection is quite clear  
6 as to the December 4th meeting, but it was not quite as clear  
7 as to what happened in January 1979, sometime more recent  
8 in your memory?

9 A There were a number of JRC Staff members  
10 at the December 3rd and 4th meeting, all of which cannot  
11 recollect being informed or even discussing the administration  
12 building.

13 Q All right. You don't know when you first  
14 learned of the administration grade beam failure from this  
15 Bechtel individual, do you?

16 A Yes, I do.

17 Q When was it?

18 A It was about December '78. It was by Mr.  
19 Gordon Tubeson. I was standing in a conference room  
20 where we had set up our investigation offices, and really  
21 out of a casual conversation with Mr. Tubeson, he did  
22 inform us that the administration building had a similar  
23 problem.

24 Q Your recollection of that is vivid, is that  
25 correct?

1 A I can see him saying it right now.

2 Q Did you see anybody else in that room, in your  
3 recollection at least today or yesterday, that you now remember  
4 wasn't there?

5 A I recall Mr. Jerry Phillips, who was the  
6 chief investigator.

7 Q I'm talking about Mr. Horn. Didn't you initially  
8 think Mr. Horn was there when you initially heard about this?

9 A I had understood that he had been tailing  
10 us for the entire investigation, and I thought as long as we  
11 were in Ann Arbor, he would be our shadow.

12 Q So your recollection was, however, was it not,  
13 that Mr. Horn was there when Mr. Tubeson told you about  
14 this?

15 A I would expect him having been present, yes.

16 Q Rather than you expect, didn't you tell me  
17 this morning that Mr. Horn was there when Mr.--

18 A Yes, I did.

19 Q And you now recall that that recollection was  
20 incorrect also, right?

21 A It's been three years.

22 Q I understand.

23 MR. PATON: Mr. Chairman, may he be allowed to  
24 finish the answer?

25 MR. DECKER: I'd like to interrupt a minute.



K7L8

1                    Could you, Mr. Gallagher, refresh my memory  
2 on when Consumers first learned about the problem with the  
3 administration building?

4                    THE WITNESS: Based on our interviews during  
5 the investigation of December and January, December '78,  
6 January '79, we were informed and it is memorialized in our  
7 summary of findings that at least the project engineer,  
8 project manager, had not been fully informed of the administra-  
9 tion building. That's our recollection.

10                   MR. DECKER: When did Consumers first realize  
11 it had a problem with the administration building?

12                   THE WITNESS: Well, certain people in Consumers  
13 were aware of the problem in August of '77, when it in fact  
14 occurred. I am of the understanding that the project  
15 superintendent was fully aware of it, and--

16                   MR. DECKER: The Consumers' project--

17                   THE WITNESS: --project superintendent, Mr.  
18 Tom Cook, was aware of the problem.

19                   MR. DECKER: Well, speaking of repetitive  
20 questions, and asking significant questions, it seems to me  
21 we are way off on a tangent. The difference between December  
22 and January is of really no consequence.

23                   The question is, the issue is, why did it take  
24 so long for the NRC to find out about this? And a difference  
25 of a month is immaterial, it seems to me.

K7L9

1 THE WITNESS: That precisely has been my  
2 point. There were certainly many occasions where Consumers  
3 had the opportunity to inform us of it, and especially at least  
4 in October when I had first come on site to do a follow-up  
5 to the 50.55(e) of the settlement of the diesel generator  
6 building.

7 Q (By Mr. Zamarin) I thought perhaps there  
8 was some significance attached to it since the testimony of  
9 the Staff is based upon it. That may have been an erroneous  
10 assumption on my part.

11 However, in October of 1978, you thought  
12 the administration building was a Category I structure, didn't  
13 you?

14 A The administration building?

15 Q Yes.

16 A Absolutely not. I know then and I know now  
17 that any administration-- Administration building, did you  
18 say?

19 Q Yes.

20 A Did you say Category I?

21 Q Yes. A safety-related structure.

22 MR. PATON: Is that a new question?

23 MR. ZAMARIN: Category 1 or safety-related  
24 structure.

25 MR. PATON: Which question?

K7L10

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MR. ZAMARIN: It is a new question.

Q (By Mr. Zamarin) Were you of the impression that in October of 1978, that the administration building was a safety-related structure?

A I'm pretty certain that I had no impression that the administration building was a safety-related structure, having had some experience in what structures are identified in general at nuclear power plants as being safety-related. It is really an office complex for the administrative staff, and houses only those support people for the operations of the plant.

CHAIRMAN BECHHOEFER: Just as a matter of clarification, if the building--or a building such as this would have--or could impact certain safety structures or types, shall we say, would that make the administration building a safety-related structure, assuming a safety-related type-- I'm talking about now, Category 1.

THE WITNESS: Yes, as you described it, it wo 'd. However, having been to, you know, a dozen or more nuclear power plants, I had prior experience that administration buildings in general are located so that they do not have any consequence on a safety-related structure system or component.

It would be, you know, sort of absurd to require an intended non-safety-related structure to be designed and inspected and constructed in accordance with safety-related

K7L11

1 requirements just because of its proximity to safety-related  
2 items.

3 CHAIRMAN BECHHOEFER: Refresh my recollection  
4 again. I'm not sure if you were asked this.

5 THE WITNESS: Okay.

6 CHAIRMAN BECHHOEFER: But there is a reference  
7 in the testimony on Contention 1 to a December 1977 report.  
8 Now, was that report one from--well, no--one to Consumers  
9 Power, or was it to Bechtel?

10 THE WITNESS: It was developed by the Bechtel  
11 geotechnical organization, and I'm not certain whether it was  
12 submitted to Consumers. I assume that it had been. I have  
13 the report available.

14 CHAIRMAN BECHHOEFER: I see. The first time  
15 that report was--the first time the NRC found out about that  
16 report was in either this December '78 or January '79--whichever  
17 date may be correct--but that was the general time period?

18 THE WITNESS: That's correct.

19 CHAIRMAN BECHHOEFER: So that report was  
20 out around a year before the NRC was made aware of it?

21 THE WITNESS: That's correct.

22 Q (By Mr. Zamarin) In October of 1978, did you  
23 believe that the administration building was subject to quality  
24 assurance requirements?

25 A The administration building, you say?

Q Yes.



K7L12

1 A No, I did not.

2 Q I have at Page 10 of Stamiris Exhibit 3 for  
3 identification, a statement, and it is in brackets. It says,  
4 "We subsequently determined that the last two items should  
5 not have been listed as quality assurance deficiencies  
6 because the administration building is not subject to quality  
7 assurance requirements."

8 Now, did you believe at one time that the items  
9 with regard to the administration building should have been  
10 listed as quality assurance deficiencies?

11 A No.

12 Q Who did?

13 A I have no idea who did.

14 Q This is out of your testimony, and you say  
15 "we". Can you tell me--

16 MR. PATON: Mr. Chairman, I object. If he is  
17 going to offer this in evidence, offer it.

18 THE WITNESS: Which report are you referring to,  
19 Mr. Zamarin?

20 MR. ZAMARIN: I'm referring to--I believe  
21 this is a discussion of Report 78-12, which appears at Page  
22 10 of Stamiris Exhibit 3 for identification, the statement,  
23 and it is in brackets. It says, "We subsequently determined  
24 that the last two items should not have been listed as quality  
25 assurance deficiencies because the administration building

ERASE

K7L13

1 is not subject to quality assurance requirements."

2 MR. PATON: Mr. Chairman, I'm not sure whether  
3 there is a question pending, but if there is, I object to it.

4 MR. ZAMARIN: Whatever it is.

5 It is from the February 23, 1979 preliminary  
6 findings.

7 MR. PATON: I object on the basis that the  
8 document is not in evidence.

9 CHAIRMAN BECHHOEFER: Attachment 4 at the  
10 moment is in evidence.

11 MR. ZAMARIN: And this is just used, if you  
12 will, for impeachment purposes.

13 MR. PATON: It is still not in evidence.

14 CHAIRMAN BECHHOEFER: Attachment 4 is.

15 MR. PATON: I'm sorry. I thought he was reading  
16 from the testimony.

17 CHAIRMAN BECHHOEFER: The testimony isn't in  
18 evidence, but Attachment 4 is, and I think one is a repetition  
19 of the other.

20 MR. PATON: I thought he was asking--

21 MR. ZAMARIN: I'm asking him about the statement  
22 on Page 10, however, and it is used, if you will, for impeach-  
23 ment purposes, and you certainly don't have to have a document  
24 in evidence to do that. I can impeach somebody with a phone  
25 directory.

K7L14

1 CHAIRMAN BECHHOEFER: I think that is a correct  
2 statement, that that document does not--it has to be identified,  
3 which it is.

4 THE WITNESS: May I respond? I think I can  
5 clear this up. It is a simple problem.

6 When we had made our preliminary findings  
7 in February 23, 1979, which is Attachment 4 to Stamiris  
8 Exhibit 3, as well as, I believe, Board Exhibit No. 1-C,  
9 if you would look on Page 11 of that report, Mr. Chairman,  
10 I refer you to the finding that is made on that page which  
11 states that we had determined that an item of noncompliance  
12 with 10 CFR 50 Appendix B Criterion 16, corrective action,  
13 would be appropriate. That finding was not made because  
14 we had understood or intended the administration building  
15 to be safety-related, Category 1, and appropriately so had been  
16 withdrawn as an item of noncompliance when we fully documented  
17 our findings in Report 78-20 because upon more careful review  
18 by our enforcement coordinators, they informed us that there  
19 was no basis for issuing an item of noncompliance for a struc-  
20 ture that is non-safety-related.

21 We in fact informed him--and I believe it was  
22 Mr. Chuck Nurilios at that time--that we made this determina-  
23 tion that it was an item for noncompliance, and we were in fact  
24 not certain whether that was a legitimate finding in view of the  
25 fact that the administration building was in fact non-safety-  
related.

K7L15

1 He acknowledge! that to be a correct point, and  
2 we withdrew it appropriately when we issued Report 78-20.

3 This is in no way--this Page 11 is in no way  
4 an understanding that the administration building was non-  
5 safety-related.

6 Q You mean was safety-related?

7 A Excuse me. Was safety-related. Anyone who  
8 is familiar with the structures, systems and components  
9 of a nuclear power plant would immediately say an administration  
10 building, as with the guardhouse, is not safety-related. It  
11 just doesn't have anything to do with the safe operation  
12 and shutdown of a reactor, and I knew then and I know now that  
13 the administration building is and was never safety-related,  
14 and I don't know of any power plant in this country that has  
15 an administration building that is safety-related. in this  
16 world.

17 Q The reason I asked that was because my under-  
18 standing--and again I certainly don't have the experience  
19 or expertise that you do--of Appendix B to 10 CFR 50 applies  
20 only to safety-related Category 1 structures.

21 A You are absolutely correct, and as I said  
22 before, we incorrectly identified that as an item of non-  
23 compliance, not because we understood the administration building  
24 to be safety-related, because we overextended the bounds of  
25 10 CFR 50, and appropriately so withdrew it.



K7L16

1 Q Was there any reporting requirement, to your  
2 knowledge, with regard to the administration grade beam failure  
3 prior to, say, October of 1978, as a non-safety-related non-  
4 Category 1 structure?

5 A That's correct. There is no specific  
6 reporting requirement for problems associated with non-safety-  
7 related structures.

8 Q Going back to my original questions with regard  
9 to when you learned of the administration grade beam failure,  
10 is it correct to say that other than in December of 1978, that  
11 your recollection is not precise with regard to that date?

12 A It is not precise with respect to what date  
13 of the month. I'm fairly certain at this point, as I sit  
14 here now, that it was in December that we had been in the  
15 Bechtel Ann Arbor office. I recall coming back in a blizzard  
16 through Detroit, and nearly being stuck there for the Christmas  
17 holidays, so I do recall being in the Detroit-Ann Arbor  
18 area during December of that year.

19 It's been a long time, but these memories  
20 have lingered on for what seems like a long nightmare.

21 Q Okay. However, it is fair to say that you cannot  
22 remember what day in December you were in the administration  
23 building, is that correct?

24 MR. PATON: Mr. Chairman, I think we have sort  
25 of beat this one to death. I object to the question.

WL17

1 MS. STAMIRIS: I object.

2 MR. ZAMARIN: He hasn't answered it yet. That's  
3 the problem.

4 MS. STAMIRIS: I don't know, but I think Judge  
5 Decker objected in form.

6 CHAIRMAN BECHHOEFER: If my recollection is  
7 correct, the question was answered, but I will ask the witness,  
8 did you not say that you didn't--weren't informed of it at a  
9 December 4th, I think, meeting; it was sometime later in the  
10 month, that you did not remember what day?

11 THE WITNESS: That's correct.

12 CHAIRMAN BECHHOEFER: If you didn't say that,  
13 you can answer, but if you did, then it's asked and answered.

14 THE WITNESS: That's precisely what I stated,  
15 that we were not informed of it at the December 3rd and 4th  
16 meeting, but sometime later in that month during our continuing  
17 investigation.

18 CHAIRMAN BECHHOEFER: And you did not remember  
19 the precise date?

20 THE WITNESS: No, I do not.

21 CHAIRMAN BECHHOEFER: Mr. Zamarin, I don't know  
22 what progress, or how much more you have to go, but we will  
23 want to break within a few minutes, five or 10 minutes, for  
24 lunch; but if you'd prefer to--

25 MR. ZAMARIN: I was going to move back to the

K7L18

1 substance of Contention 3, where I stated to you I was going  
2 to stay, and out of which I was promptly taken.

3 CHAIRMAN BECHHOEFER: So maybe this might be a  
4 good time.

5 MR. ZAMARIN: I'm going to get back now to  
6 Contention 3.

7 DR. COWAN: Will it take a while?

8 MR. ZAMARIN: Oh, yes.

9 CHAIRMAN BECHHOEFER: You are not going to be  
10 through in five or 10 minutes?

11 MR. ZAMARIN: No. We are looking at a more  
12 lengthy time. I hate to give an estimate, because they are  
13 never correct.

14 CHAIRMAN BECHHOEFER: Well, I was looking for a  
15 convenient breaking point. We will break for an hour and 15  
16 minutes.

17 (Whereupon, at 12:35 p.m., the hearing was  
18 recessed to reconvene at 1:50 p.m. this same day.)

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K7L19

AFTERNOON SESSION

(2:00 p.m.)

1 CHAIRMAN BECHHOEFER: On the record.

2 Mr. Zamarin, do you want to continue?

3 MR. ZAMARIN: I have no objection to Ms. Stamiris  
4 finishing up now, as you indicated. She does have some further  
5 questions.  
6

7 CHAIRMAN BECHHOEFER: Would you prefer her to go  
8 now, or after you finish?  
9

10 MR. ZAMARIN: I think it probably would be easier  
11 for her to go now, and then later again I will be able to  
12 try to tie things up. I assume it wouldn't be too terribly  
13 long.

14 CHAIRMAN BECHHOEFER: Okay.

15 EUGENE J. GALLAGHER

16 resumed the stand as a witness on behalf of the Applicant and,  
17 having been previously duly sworn by the Chairman, was  
18 examined and testified further as follows:

19 CROSS EXAMINATION (Resumed)

20 BY MS. STAMIRIS:

21 Q Mr. Gallagher, I wanted to ask you a few ques-  
22 tions about Attachment 3 to NRC Staff testimony on Contention  
23 3, and I believe the first report we can-- Well, I'm not  
24 going to talk about the 78-20 report that we have already  
25 talked about. I'd like to talk about Report 80-32, which I



K7L20

1 believe is dated January 12, 1981.

2 What was the purpose of this inspection?

3 A 80-32 was a follow-up to Consumers' response  
4 to the 50.54(f) Question 23 formed in the Bechtel offices in  
5 Ann Arbor.

6 Q Would it be correct to characterize this report  
7 as oriented more towards evaluating the program as opposed  
8 to the implementation?

9 A It was more towards reviewing those corrective  
10 actions that Consumers had specifically identified in their  
11 response to Question 23.

12 Q Okay.

13 CHAIRMAN BECHHOEFER: Let me ask one question  
14 just for a technicality.

15 On the front page of that report there is a  
16 reference to 80-32, and also 80-33. I wondered if one of  
17 them is a typo.

18 THE WITNESS: No, it isn't. Each of the units--  
19 Unit 1 having a Docket 329 and Unit 2 having a Docket 330--  
20 has an individual inspection report number, and it just so  
21 happens that Unit 2 happened to have one extra inspection  
22 in the year 1980, and therefore it is correct as written.

23 It's actually--technically the correct identifica-  
24 tion is Report 329/80-32 and 330/80-33.

25 CHAIRMAN BECHHOEFER: But this was the same

K7L21

1 inspection?

2 THE WITNESS: It is one inspection, just  
3 different identification for each unit.

4 CHAIRMAN BECHHOEFER: Okay. Pardon me for  
5 that.

6 MS. STAMIRIS: That's fine.

7 Q (By Ms. Stamiris) Your description of the  
8 investigation--I mean inspection, as the scope being  
9 related to Question 23, it was Questions 1 and 23, wasn't  
10 it?

11 A That's correct.

12 Q Okay. And when you were at the Bechtel Company  
13 in Ann Arbor, would you say that--would you tell me more  
14 specifically, or try and tell me in another way what you  
15 were looking at regarding why you were not on site? I mean  
16 this-- This inspection took place in Ann Arbor, and would  
17 I be correct to say that what you were looking at then is the  
18 performance and the commitment on these objectives as it  
19 relates to the program? I mean you weren't inspecting work  
20 that was being done, obviously.

21 A We were inspecting the results of work that had  
22 been done, and the results were contained in completion  
23 packages that contained the results of reviews that had been  
24 made of procedures and whatever findings had been made.

25 Specifically what we did look at is included

K7L22

1 as an attachment to that report. It very neatly itemizes  
2 each one of the specific actions that Consumers committed to,  
3 and the manner in which we verified those actions as being  
4 satisfied.

5 Q Do you think that-- Well, I will be more specific.  
6 On Appendix A, in the notice of violation, the last paragraph  
7 at the end of those, under Column 1, refers to a failure to  
8 initiate preventive action to preclude repetition of not  
9 identifying design documents for the remaining re-review  
10 packages.

11 Does this violation, in your mind, represent  
12 the same sort of thing that was happening that led to the  
13 soils settlement FSAR inconsistencies?

14 A No, it doesn't. The identification of this  
15 item was regarding a procedural--a deviation from a procedural  
16 requirement per their re-review commitments.

17 They had stated that in performing this re-  
18 review of the FSAR, that they would identify those documents  
19 that were used to compare, so that there would not be any  
20 conflicts.

21 I believe we had determined that they were in  
22 fact doing that comparison, but they were not identifying  
23 or listing those on the particular form that they had developed,  
24 so it was more of a procedural deviation rather than a devia-  
25 tion that would cause a real problem.

K7L23

1 We were fairly--we were well satisfied with  
2 their effort in performing their re-review of the FSAR.

3 Q Well, I'm wondering whether you believe that  
4 the type of procedural error you just talked about, was that  
5 not a contributor to--if it was not a main part, as I'm  
6 taking your answer to be, was it not a contributor to the  
7 problems that happened in soils settlement prior to December  
8 6th?

9 A The items that we identified in the investigation  
10 report certainly were associated with that, with what you  
11 described. This particular one that we are identifying in  
12 Report 80-32 does not relate so specifically to the one pre-  
13 viously.

14 We determined that they were in fact doing what  
15 their procedure required them to do, other than the formality  
16 of documenting and listing all of those design reports.

17 Q Well, on Page --and it is about the middle--  
18 it says that Question 1 provided 26 action items, and the  
19 NRC verified 18 had been satisfactorily accomplished, while  
20 eight remained open.

21 Question 23: "Of the 57 action items, 34  
22 were satisfactory and 23 remained open."

23 Do you feel that this is commendable performance?

24 A As of that point in time, that's all that  
25 they had completed, and I don't think it reflects whether it



K7L24

1 was commendable or not. It was a lot of work that they  
2 had committed to do in response to Question 23, and as of  
3 December 8th to the 11th, 1980, this is all that we were able  
4 to verify as being complete.

5 Q When did they first commit to those? Did they  
6 commit to those in their response to Question 1 and Question  
7 23?

8 A That's correct.

9 Q So sometime in 1979?

10 A In April of '79, their response to Question 1  
11 was submitted, and I believe in November of '79 their response  
12 to Question 23 was submitted. Their response to both of those  
13 questions went way beyond the narrow area of the soils settle-  
14 ment issue. They went into multi-discipline review in order to  
15 verify that the problems that we had identified in the soils  
16 area were not also occurring in other areas, and it was a  
17 long and exhaustive task.

18 Q Consumers Power Company knew that they were  
19 going to be evaluated-- I don't mean that they knew when  
20 you were coming, or anything like that, but would I be  
21 correct in assuming that they assumed they would be  
22 evaluated on their commitments?

23 A I would think so, yes.

24 Q Okay. Let me ask you whether you think that  
25 the trending program that we talked so much about yesterday

K7L25

1 should have or could have--I want to really say "could  
2 have precluded some of these repetitive problems"?

3 A Which ones?

4 MR. ZAMARIN: I will object to the form of the  
5 question.

6 Q (By Ms. Stamiris) All right. The first--in  
7 Appendix A violations, No. 1, they did not initiate preventive  
8 action to preclude repetition of nonidentified design docu-  
9 ments.

10 A The trend analysis program could not have  
11 identified those problems. There were isolated cases where  
12 this had occurred. It wasn't a matter of a continuous repetitive  
13 sort of problem. The trend analysis--discussion of the trend  
14 analysis program in general, I think, is well documented  
15 in this latest inspection report, 80-12--81-12, which is Staff  
16 Exhibit 1, and I think it's been exhaustively discussed over  
17 the last few days, and I think we all understand that there  
18 are problems in that area. We have identified the problems.  
19 Consumers is well aware of the problems as of right now,  
20 and we fully expect that we will get them resolved in short  
21 order.

22 (Continued on next page.)  
23  
24  
25

1 Q Well, what you're answering is really not quite  
2 the question I intended to go at, because I'm very interested  
3 in the process, and I'm very interested in how this system  
4 works or doesn't work. I'm not interested at this time in  
5 whether or not it could have led to something significant--you  
6 know, how important an area it occurred in. Just the fact  
7 that it occurred-- I'm sorry. That was not a question. I  
8 want you to keep that in mind, though, when I ask about Report  
9 81-01, which I think is the next attachment to this Contention  
10 3 set.

11 Well, I don't see a page number, but near the  
12 beginning, Appendix A, where the notice of violation is given--

13 A Which one are you referring to?

14 Q Number 1. Do you believe that this is a  
15 problem that the trend analysis program could have picked up?

16 A It's not a problem that the trend analysis  
17 should have picked up. It's a problem that a routine audit  
18 of soils testing activities should have identified.

19 Item 1 of 81-01 identifies the fact that  
20 complete and adequate procedures for soils testing had not  
21 been developed as of January 1, 1981.

22 Q Were you surprised to find that?

23 A Yes, I was quite surprised, as a matter of fact.

24 Q And would you say that it relates to this  
25 same sort of soil settlement problem that led to the December

1 6 order?

2 A. Yes. This should have been fully corrected  
3 subsequent to the December 6 order.

4 Q. I'll just go through each of these violations  
5 that are noticed, and the next one, No. 2, "Test Forms Not  
6 Being Controlled." Do you think that this is repetitive of  
7 some procedural problems that led to those noticed in Report  
8 78-20?

9 A. No. We had not identified this in the past as  
10 a problem, so it's a new issue that we identified, and it's  
11 been completely resolved as of this point.

12 Q. I mean the same type of problem; let's say lack  
13 of attention to details.

14 A. On this particular item, I'm referring to  
15 Consumers' response as well as our response to theirs, and  
16 upon reviewing more complete information, we had withdrawn  
17 this item as an item of non-compliance.

18 Q. On the next page of this appendix, there's a  
19 violation noted with reference to an inspector observing that  
20 report sheets were rubber-stamped with the name of the on-site  
21 geotechnical engineer. Would you describe the circumstances  
22 surrounding this?

23 A. The Bechtel field procedure for review of test  
24 results required that an on-site geotechnical engineer review  
25 and initial all acceptable test reports. While we were on the



1 site, we had determined that there was a rubber stamp applied  
2 to each one of the test reports, and we had some reservations  
3 about the use of such a stamp, perhaps not being completely  
4 controlled, perhaps getting into the hands of others who might  
5 apply that stamp without review.

6 But once again, here, based on Consumers'  
7 response and then subsequently getting in touch with the  
8 individual, we withdrew this item of non-compliance, since we  
9 were able to verify that he and only he had used the stamp  
10 of his name, and that he and no one else had access to that.

11 Q How were you able to verify that?

12 A Based on conversations with him. We got in  
13 touch with him.

14 Q Do you think--

15 A Let me explain. We don't like the use of rubber  
16 stamps, for the reasons that I've stated before, and we  
17 encourage that they not be used. But in this case where it  
18 has been used, we went to the extent necessary to verify that  
19 it was used properly, and we, therefore, withdrew that item.

20 Q You have said before that-- Well, you have told  
21 us what the basis for your verification was, so I won't  
22 question that any further.

23 Did you ask him why he used a rubber stamp  
24 instead of initialing it?

25 A Yes.

1 Q What was his answer?

2 A There were quite a few reports, hundreds of  
3 reports, and just as a mere convenience in applying a stamp  
4 rather than having to go through the task of writing out his  
5 name, he just chose to use it.

6 Q I thought he only had to initial it.

7 A He initialed many, you know, and applied the  
8 signature, testifying the report is correct, accurate and  
9 acceptable.

10 Q What was the purpose of the original require-  
11 ment--if you can call it that--by the NRC to have each report  
12 initialed?

13 A The main purpose was to make certain that test  
14 reports were being reviewed by the on-site geotechnical  
15 engineer.

16 Q And is, in fact, the only way that you could be  
17 certain would be by having his own initials on that report?

18 A That's correct; or some other method of  
19 verification that he had reviewed the report. Many people  
20 use rubber stamps for their names and initials in business  
21 in general. When you're dealing with quality records, it's not  
22 a good idea to use it, only because it's easily reproducible.

23 Q Would you think that, in fact, it violated the  
24 intent of the commitment?

25 A No, it didn't. We verified that he, and only he,

1 applied the stamp; reviewed it, accepted it and approved each  
2 one of those test reports. We were well satisfied with that.  
3 We spoke directly to the person.

4 MR. DECKER: Mrs. Stamiris, if you're ready to  
5 leave this area, I have a question I'd like to ask.

6 MS. STAMARIS: Please do.

7 MR. DECKER: First of all, will the practice  
8 of using a stamp continue, as far as you know?

9 THE WITNESS: I believe we sufficiently discouraged  
10 that practice at the Midland site and I don't believe they are  
11 using that at this point in time.

12 MR. DECKER: Secondly, to review a test report  
13 might take a certain amount of time. To add one's initials to it  
14 would take a certain amount of time. Do you think that the  
15 time it takes to initial something is very significant  
16 in comparison to the time it takes to do an adequate review of  
17 such a report?

18 THE WITNESS: No, it doesn't, and I agree that  
19 it's certainly a lazy way of doing your job but, as I said,  
20 we, I think, sufficiently discouraged them and did that by  
21 trying to issue some sort of an enforcement action that would  
22 make them respond to it. I do not see that method of initialing  
23 very often.

24 Q (By Ms. Stamiris) I would like to ask--and I  
25 ask this because I honestly-- Do you believe that there is a

1 black-and-white cutoff between-- You know, is December 6th  
2 some kind of magic date with the NR/

3 MR. ZAMARIN: I'll object to the form and  
4 relevance, calling for speculation, and every other form of  
5 objection in the book on that one.

6 MR. DECKER: The Board doesn't know-- Well, I  
7 understand December 6, but--

8 MS. STAMIRIS: What I want to ask Mr. Gallagher  
9 is if he thinks all the problems that we've talking about  
10 prior to December 6, 1979--and I'm sure I know his answer--  
11 were resolved on December 7th, 1979.

12 THE WITNESS: No, they weren't.

13 Q (By Ms. Stamiris) Why... I don't know how to  
14 ask what I want to ask....

15 MS. STAMIRIS: I have no other questions at this  
16 time.

17 MR. ZAMARIN: May I proceed?

18 CHAIRMAN BECHHOEFER: Yes.

19 BY MR. ZAMARIN:

20 Q What is a Severity V, or a Severity Level V  
21 violation? Is there something to which that's a reference?

22 A Yes. It's a recent enforcement policy, and the  
23 manner in which we categorize the significance or importance  
24 of the finding, item 1 being the most severe and item 6 being  
25 the least severe.



1 Q So it's in rank order from I, being the most  
2 severe, to VI, being the least; kind of on a scale of 1 to 6?

3 A That's right.

4 Q You testified earlier about a portion of your  
5 testimony that referred to a text written by Tschebotarioff,  
6 in which you indicated your agreement with his statement that  
7 a foundation work inspection requires special attention and  
8 special needs; and I believe you were here when Director  
9 Keppler testified that during the period of 1975 to 1977,  
10 because of manpower constraints within Region III, the area  
11 of foundation really received little attention by the NRC,  
12 and that it had been cut out or cut back because of those  
13 manpower constraints.

14 Does that demonstrate there are differing  
15 views with regard to Dr. Tschebotarioff and others with regard  
16 to the special importance that should attach to foundation  
17 inspection?

18 A It apparently does. I might add that the  
19 reason Mr. Keppler indicated that a lot of attention wasn't  
20 given to the foundation work was because simply they did not  
21 have, at that time, on the Region III staff, people who were  
22 well skilled in that area. In fact, there was not a civil  
23 engineer on the Region III staff until I was first employed.

24 Q I believe his testimony also referred to the  
25 fact that in addition to manpower constraints, there also was

1 simply a lack of the number of people also, is that correct?

2 A. Region III office was probably one-third to  
3 one-half the size it is today, in 1975, '76, '77.

4 Q. With regard to the task force that was  
5 assembled to investigate the soil settlement problems in  
6 October, you indicated that you weren't aware that the task  
7 force had been assembled, but there was at least an ad hoc  
8 group working.

9 Do you know for a fact, however, whether what  
10 you saw was at least a portion of that task force that were  
11 investigating soils?

12 A. Yes.

13 Q. Do you know that it was not a portion of the  
14 task force? You're certain of that?

15 A. The task force hadn't--at least to me--hadn't  
16 been well defined as of that point in time. But certainly I  
17 was dealing with members who later were, you know, appointed  
18 to that task force.

19 CHAIRMAN BECHHOEFER: Will you explain what  
20 "well-defined" means? I mean isn't it either set up or not  
21 set up? What is "well-defined"?

22 THE WITNESS: There were certainly people who  
23 were interested in knowing why these problems had occurred,  
24 but I don't think they had--at least at that point in time I  
25 wasn't well aware that they had a specific scope and depth and

1 charter to develop precisely what the causes were.

2 CHAIRMAN BECHHOEFER: Well, were they the same  
3 people working together, or was it just--or different people  
4 approaching the problem, or--

5 THE WITNESS: Yes, there were a number of  
6 different people, both on Consumers staff as well as Bechtel  
7 staff, who had an interest in knowing why the problem had  
8 occurred; and at least at that point in time, perhaps they  
9 weren't working only in concert with one another, but later  
10 I was well aware that they had established a group of people  
11 who would develop a complete and thorough list of what might  
12 have caused the problems.

13 Q (By Mr. Zamarin) You're also aware, are you not,  
14 that prior to that time--"that time" being October of 1978--  
15 that consultants had been engaged to assist in the investiga-  
16 tion and evaluation, and those consultants, at least some  
17 among them, being world-renowned experts in the area, is that  
18 correct?

19 A That's correct. On my first visit to the site  
20 in October, I was informed that Dr. Peck and others were  
21 consultants to Bechtel.

22 Q There was a statement earlier mentioned in  
23 your testimony, and I couldn't catch it and I don't know how  
24 it's going to read in the transcript, and that was that you  
25 had learned--or the NRC had learned that, prior to the

1 observation of the unusual or unexpected diesel generator  
2 building settlement, that the project manager--and I don't  
3 know whether you said "and" or "or"--project engineer, had  
4 been unaware of the administration building grade beam  
5 settlement problem.

6 Then I note that in the Consumers' response,  
7 dated, I believe, March 9, to the February 23rd, 1979,  
8 findings, there was a statement that the project engineer  
9 was aware--the project manager was aware of the problem, and  
10 that has also been indicated in Mr. Keeley's testimony.

11 So I'd like to know whether that is consistent  
12 with your understanding and whether, in fact, you did say  
13 project manager and engineer, or project manager or engineer.

14 A. I did say both project engineer and project  
15 manager, and that reflected our findings that were presented  
16 in the February 23rd, 1979, report, which is Board Exhibit 1C.  
17 On page 11 we do state that management, both corporate project  
18 engineer and manager, were not properly informed of the  
19 administration building settlement.

20 To the best of my knowledge, that was how we  
21 understood it and reported it at that point in time.

22 Q. It was then a Consumers response which was  
23 followed by the final report, 78-20, is that correct?

24 A. That's correct.

25 (Continued on following page.)



1 Q (By Mr. Zamarin) And was that preliminary  
2 notation with regard to the project manager being unaware of  
3 the administration building grade beam failure translated  
4 into Report 78-20?

5 A No, it was not.

6 Q Is it your opinion that what has been described  
7 as a breakdown in the quality assurance was limited to the  
8 area of the soils activities?

9 A I haven't gone beyond that area, although it  
10 is the consensus of the office that it had not gone beyond  
11 that.

12 Q You are not aware of any evidence or indication  
13 that it did go beyond the soils work, are you?

14 A No.

15 Q With regard to the diesel generator building  
16 settlement, wasn't it the quality assurance settlement monitoring  
17 program over the life of the plant that did detect that  
18 deficiency?

19 A If I recall, it was the-- It wasn't that part  
20 of the program that first identified it. It was in placing  
21 some of the upper elevations of the building and the form  
22 work when the normal construction survey crews assisting that  
23 part of the work activity couldn't close what they call a  
24 traverse in surveying, and that first caused them to look into  
25 it further, and upon doing it a second time and perhaps more

K9L2

1 times, they were still unsuccessful in closing the loop.

2 Q The subsequent monitoring that finally determined  
3 that there was unexpected settlement was a function of the  
4 quality assurance program, was it not?

5 A I don't believe that the quality assurance  
6 was really overseeing that part of the work activity.  
7 There was a separate group of people performing the monitoring  
8 of the settlement of structures on the site, and that was  
9 being reported directly to the Bechtel design office on a  
10 periodic basis.

11 Q The specification with regard to monitoring  
12 it was followed, and the result of which was the determina-  
13 tion of the unexpected settlement. Is that in your opinion a  
14 part of the quality assurance activity?

15 A It should be, yes.

16 Q Was it at the Midland site?

17 A To be honest with you, I never really  
18 characterized it.

19 Q So you don't know one way or the other as you  
20 sit here now?

21 A That's correct.

22 Q You referred to earlier a Dames & Moore Report,  
23 which I believe was an attachment to an amendment to the  
24 PSAR, is that correct?

25 A Yes.

1 Q And did that Dames & Moore Report have any  
2 QA procedures in it?

3 A It had recommendations for certain procedures  
4 and final results to be included in the construction specifica-  
5 tions which are a part of the quality assurance system.

6 Q Did it actually call out quality assurance  
7 procedures, if you recall?

8 A I don't recall at this point in time, so  
9 specifically I don't think Dames & Moore refers to those sort  
10 of recommendations as quality control, although they might  
11 well be understood that way.

12 Q You indicated that you understood the attachment  
13 of a consultant's report to a PSAR as the manner in which a  
14 licensee is going to proceed, and in reaching that conclusion,  
15 do you consider the language that attaches the attachment  
16 to the PSAR to be important in defining its scope and purpose?

17 A Yes.

18 Q And you indicated that if the consultant's  
19 report is referenced in the body of the PSAR, that the  
20 reviewer understands that the recommendations would in fact  
21 be followed and relied on. Would you also agree that that  
22 depends on the way it is referenced in the body of the PSAR?

23 Do you understand my question?

24 A Well, if, for example, the text of the main  
25 part of the PSAR says that we hereby attach a consultant's

K9L4

1 report, but have no intent to utilize the recommendations,  
2 then certainly not. I don't know why they would do that.  
3 Obviously if they include a consultant's report as a distinct  
4 part of their application, I would think that they are trying  
5 to demonstrate to the Staff that these are items that are  
6 going to be utilized.

7 Q Certainly you entertain some other reference  
8 than what I suggest.

9 For example, a statement of commitment and  
10 then a reference to a consultant's report for a description  
11 of a procedure or a basis for that. That would be a little  
12 different than understanding the consultant's report as a  
13 commitment and a part of the PSAR, wouldn't it?

14 MR. PATON: I object, Mr. Chairman.

15 Mr. Chairman, if the Applicant has the manner  
16 in which the Dames & Moore Report was referenced in the PSAR,  
17 why doesn't he just bring it out and let's see what it is instead  
18 of speculating about whether it said this or that or the  
19 other thing.

20 MR. ZAMARIN: This is recross examination,  
21 Mr. Chairman, and I am taking it out of the answers he gave.  
22 He was simply talking about a consultant's report. I'm simply  
23 recrossing the questions that he answered.

24 MR. PATON: It seems like a rather inefficient  
25 way to go, but I still object.



1                   CHAIRMAN BECHHOEFER: The Board will overrule  
2 the objection. I might say, you have used a hypothetical,  
3 and I assume there is some foundation for the hypothetical  
4 which I hope you will bring out at some point.

5                   MR. ZAMARIN: The hypothetical I used was  
6 the question-- The basis for that question was the question  
7 and answer that was provided in response to Ms. Stamiris'  
8 question, the line of which was allowed under my objection.  
9 I'm taking it verbatim from Ms. Stamiris' questions.

10                   CHAIRMAN BECHHOEFER: What I think the Board  
11 was hoping was at some point you would bring out the actual--  
12 at some point, whatever the language was that incorporated  
13 the Daves & Moore Report into the PSAR would be brought out.

14                   MR. ZAMARIN: I'm not prepared to do that today.  
15 I did not expect this to be gone into in Ms. Stamiris' ques-  
16 tions. I don't have that language.

17                   CHAIRMAN BECHHOEFER: If we have to make a  
18 decision on it, I hope we are not left in the dark. I think  
19 we ought to have the language before us.

20                   MR. ZAMARIN: It may well be there wasn't any  
21 language in there, but I will at some time during the  
22 proceedings--and, as I say, I'm not prepared to do it today.  
23 I'm simply doing it as recross.

24                   CHAIRMAN BECHHOEFER: I'm not sure whether we  
25 will have to make a finding on it or not, but I hate to do it

K9L6

1 as a hypothetical.

2 MR. ZAMARIN: We will provide it sometime  
3 before we bid farewell.

4 CHAIRMAN BECHHOEFER: Oh, I don't mean today.

5 MR. ZAMARIN: All right. We will do that.

6 MR. ZAMARIN: Do you still recall the question,  
7 Mr. Gallagher? If you do, you have a better memory than I  
8 have.

9 MR. PATON: Could we have it read back, Mr.  
10 Chairman?

11 (Question read by the reporter.)

12 A To go with--rather than to deal with the hypo-  
13 theoretical, for the benefit of those who would like to know,  
14 I have in front of me Amendment 1 to the PSAR, which I  
15 believe was dated February 3rd, '69, and the first sentence  
16 of that amendment says, "This amendment presents the summarized  
17 results of studies of the foundation investigation phase  
18 of the environmental study at the proposed Midland Nuclear  
19 Power Plant, together with a report entitled 'Foundation  
20 Investigation and Preliminary Exploration for Borrow Materials'",  
21 and that Dames & Moore Report is attached in its entirety without  
22 further explanation as to what is or is not.

23 Q (By Mr. Zamarin) Are you aware that the  
24 Dames & Moore--

25 MR. PATON: Mr. Chairman, the witness is

K9L7

1 not--obviously has not finished his answer.

2 MR. ZAMARIN: I thought he had. I'm sorry.

3 CHAIRMAN BECHHOEFER: Finish your answer.

4 THE WITNESS: I was finished.

5 MR. ZAMARIN: That's what I thought.

6 I certainly--if I do unintentionally interrupt you, will you  
7 let me know.

8 Q (By Mr. Zamarin) Are you aware that the  
9 Dames & Moore Report was submitted in that fashion because  
10 the NRC had requested that consultants' reports be docketed?

11 A No, I wasn't aware of that, but I could certainly  
12 understand why they would want consultants' reports to be  
13 docketed.

14 Q And if in fact that was done in response to  
15 such a request by the NRC, it wouldn't be surprising, would  
16 it, that it wasn't specifically referenced in any way since  
17 it was merely being docketed in order to accede to the wishes  
18 of someone at the NRC?

19 A I would think that you would agree that to  
20 dangle in front of the Staff a geotechnical report that includes  
21 numerous common sense requirements such as "filling operations  
22 should be performed under the continuous technical supervision  
23 of a qualified soils engineer", the Staff would rely that  
24 what you are hereby submitting would be included in the construc-  
25 tion specification control, otherwise I would think that your

K9L8

1 amendment would specifically identify those things that you  
2 don't intend; and absent of that, I would think a reasonable  
3 reviewer who would be granting a construction permit would  
4 rely on those facts.

5 Q You are saying then that you would completely  
6 disregard or not give any credit to the individual or to the  
7 Staff in simply requesting copies of consultants' reports,  
8 and knowing that they are being submitted in response to that?

9 MR. PATON: I object, Mr. Chairman. I don't  
10 think the witness said anything like that.

11 MS. STAMIRIS: I object because I think it is  
12 getting away from the main issues we are involved in.

13 It sounds like we are trying to place blame,  
14 and I didn't think that's what we were here for.

15 MR. ZAMARIN: Excuse me. I'm not trying to place  
16 blame. It is just that I'm exploring his understanding of what  
17 I believe to be the facts, and that is that that was simply  
18 submitted in response to a request for copies of consultants'  
19 reports, and that therefore the person submitting that would  
20 certainly be aware that that was the reason it was submitted,  
21 why it was not in the PSAR originally and not taken as a  
22 commitment across the board.

23 MR. PATON: The only words to that effect come  
24 from Mr. Zamarin. The witness said he did not know whether  
25 it came in at the request of the Staff. There is no evidence



K9L9

1 of record that the examiner is predicating questions on  
2 that premise, but he is the only one that said that so far.  
3 That's not in evidence in this case.

4 MR. ZAMARIN: That's right. I'm asking about  
5 his knowledge. He made some statements about what he considered  
6 to be commitments, and I'm asking what his knowledge is  
7 upon which that is based, and it may well be that we will find  
8 out later perhaps one of the premises upon which he based it  
9 was in error, and maybe not.

10 MR. DECKER: My own opinion is that there may  
11 be some good reason I don't understand in pursuing this line  
12 of questioning, but I do agree with Ms. Samiris that we  
13 are wandering afar from the substantive issues in this case.

14 MR. ZAMARIN: I have three pages in my notes  
15 of her direct and his answers to those direct questions  
16 just this morning on this area, and that's the only reason  
17 I'm asking, otherwise I would not have even gotten into  
18 it.

19 CHAIRMAN BECHHOEFER: Before I rule, what  
20 exactly was your latest question? I want to get the exact  
21 question.

22 MR. ZAMARIN: I am afraid we will have to have  
23 it read. I don't recall the exact words. I'm sorry.

24 (Question read by the reporter.)

25 CHAIRMAN BECHHOEFER: I think that is a

K9L10

1 mischaracterization of what the witness stated, so I think  
2 I will sustain the objection, but on that basis rather than  
3 on any other basis.

4 MR. ZAMARIN: I was not attempting to charac-  
5 terize it.

6 CHAIRMAN BECHHOEFER: I would like to know  
7 one thing. Maybe the witness can put this in at this point.

8 If the Staff, way back at that particular  
9 time--which I guess was 1969, someone said--expected these  
10 materials to be docketed, was an amendment to the PSAR the  
11 only way that a company could docket something in the record?

12 MR. PATON: Are you asking the witness to  
13 respond?

14 CHAIRMAN BECHHOEFER: I'm asking the witness  
15 to the extent he knows.

16 THE WITNESS: I have no idea, Chairman Bechhoefer.

17 CHAIRMAN BECHHOEFER: Okay. What I was trying  
18 to drive at, are you aware of instances where a utility might  
19 have just sent a letter in and "Enclosed for your information  
20 is information which the Staff wishes docketed in this  
21 proceeding, and please see that it is put into the record"?

22 THE WITNESS: I would think that an Applicant  
23 who would do that would make it very clear, with some caution,  
24 that they do or they do not intend to follow certain aspects  
25 of it, otherwise they run the risk of putting before a reviewer

K9L11

1 recommendations, data, that they may or they may not agree  
2 with or they may not plan to incorporate as part of their  
3 procedures.

4 I would think it would be pretty reasonable  
5 to expect the utility to make it clear as to how they intend  
6 to utilize that report, and to what extent.

7 CHAIRMAN BECHHOEFER: Well, would you draw  
8 any distinction between the type of submission which I  
9 just described, which is an "enclosed for your information"  
10 almost submission, or to the contrary, "attached is Amendment--  
11 whatever is--to the PSAR", you know--would you draw any  
12 distinction between those?

13 THE WITNESS: Absolutely. You know, on the  
14 one hand, responding to a letter in the form of another  
15 letter versus responding in the form of an amendment to your  
16 license application, it seems like there is a very distinct  
17 difference in the manner in which the information is going  
18 to be utilized. There is a very formal method of amending  
19 an application to a construction permit.

20 CHAIRMAN BECHHOEFER: Do you see now that's  
21 the one thing I was trying to draw, that distinction?

22 MR. ZAMARIN: I think his response highlights  
23 the reason why I asked the previous question, and I will try  
24 to rephrase it.

25 Q (By Mr. Zamarin) You indicated that you thought

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1 that an Applicant would make it very clear that such a report  
2 was not being submitted as adding commitments to the PSAR.  
3 However, would you agree that where the Staff simply asks  
4 for a consultant's report to be docketed, and then receives  
5 it in that fashion, that the Applicant is entitled to rely  
6 on the good sense of the Staff and at least that individual  
7 in knowing that's being submitted in response to their request?

8 MR. PATON: I object. The question contains  
9 facts not in evidence in this case. The only person in this  
10 room that has indicated that the report was submitted because  
11 the Staff requested it is Mr. Zamarin.

12 MR. ZAMARIN: Chairman Bechhoefer, he just  
13 responded to your question by saying he thought it would be  
14 very clear in the minds of the licensee that they should put  
15 those in. All I'm asking him now is if he doesn't also  
16 agree that if the Staff asks for a report and it is submitted,  
17 that the licensee might be quite reasonable in relying on the  
18 fact that that Staff recipient will know that it had been  
19 submitted pursuant to his request, and nothing more.

20 MS. STAMIRIS: May I ask a question that  
21 people have asked me, in objection? Well, I will do it by way  
22 of objecting, because I don't believe that what he is  
23 pursuing is relevant to any of the issues that we are here to  
24 decide.

25 CHAIRMAN BECHHOEFER: This is my understanding,



K9L13

1 and maybe it is way off base, but I had thought that some  
2 weight was being given in the context of managerial commitments  
3 to whether the Company was following an amendment which it  
4 submitted to its PSAR, and I do view it as relevant in that  
5 context which is, I think, the only context we have before  
6 us.

7 MR. ZAMARIN: That's correct.

8 MS. STAMIRIS: I will withdraw my objection  
9 then.

10 CHAIRMAN BECHHOEFER: So that's what I am trying  
11 to ascertain in my own mind, and I do think if there is a  
12 misunderstanding between the Staff and the Applicant on this  
13 matter, we should be aware of it, so I think I will overrule  
14 the last objection and the witness may answer that question.

15 THE WITNESS: Are you waiting for a response?  
16 May I have it read back, please?

17 (Question read by the reporter.)

18 A If the Staff had asked for a consultant's  
19 report to be submitted as part of the docket, that is all the  
20 more reason for the Applicant to identify those specific  
21 items that are to be incorporated or not to be incorporated,  
22 because now you have a report that is directly incorporated  
23 as part of your application. All the more reason.

24 Q (By Mr. Zamarin) So you base your judgments  
25 and opinions, then, regarding FSAR commitments, on what you have

K9L14

1 testified to here today, is that correct?

2 CHAIRMAN BECHHOEFER: PSAR?

3 MR. ZAMARIN: I meant PSAR.

4 THE WITNESS: Would you repeat that, please?

5 Q (By Mr. Zamarin) You then base the testimony--  
6 Strike that.

7 Your opinion with regard to whether a consultant's  
8 report, such as the Dames & Moore Report, represents commit-  
9 ments, PSAR commitments, is based upon your response to the  
10 last question and the testimony that you have provided in  
11 this area today, is that correct?

12 A That's correct.

13 Q And there is nothing else to which you would  
14 refer or make reference in supporting or providing a basis  
15 for that opinion that we haven't heard about today, is that  
16 right?

17 A That's correct; only that statement that I read  
18 as submitted with Amendment 1.

19 Q The NRC Staff wasn't surprised when Consumers  
20 Power Company started applying preload to the diesel generator  
21 building, were they?

22 A When you say "surprised"--

23 Q Indicating a lack of previous knowledge that  
24 that was going to occur.

25 A They had informed us at the December 4, 1978

K9L15

1 meeting that they had the intention of doing so.

2 Q And in fact, in November of 1978, are you aware  
3 that Dr. Lyman Heller in NRR had been telephoned and advised  
4 of the plan to do that?

5 A I had not known that one month prior to that  
6 he had, although he was at the December 4th meeting along  
7 with myself and Darl Hood.

8 Q I mean as you sit here today, you are not  
9 aware prior to today--you hadn't heard that Lyman Heller had  
10 been made aware of it as early as November of 1978?

11 A No, I wasn't.

12 Q Was Dr. Peck, to your knowledge, involved in  
13 the plan to go ahead with the preload which was presented  
14 at the December 4th, 1978 meeting?

15 A Yes.

16 Q And was he there?

17 A Yes, he was.

18 Q And you were there also?

19 A Yes, I was.

20 Q And in your opinion, did he know at that time,  
21 with regard to the preload that he was recommending, where he  
22 was going and how he was going to get there?

23 MR. PATON: Mr. Chairman, could I ask that the  
24 question be read again?

25 (Question read by the reporter.)

K9L16

1           A     I don't believe he gave us too many particulars  
2 as to where he was going. That's not to say that he didn't  
3 have a plan of his own, you know, absent of me knowing pre-  
4 cisely what he was thinking. I really can't respond to that.

5           The point I was making earlier was that it was  
6 somewhat less than prudent on the part of Consumers for  
7 proceeding with such an enormous task and risk without  
8 some understanding that this is an acceptable manner in which  
9 to proceed.

10          Q     Acceptable manner from a geotechnical engineering  
11 aspect, or from some other aspect?

12          A     From the aspect of having this part of the project  
13 licensible.

14          Q     Okay. So when you said this morning--and  
15 now you said less than prudent. This morning I think you said  
16 it seems extremely prudent to know where you are going and  
17 how you are going to get there before you start. You were  
18 responding in terms of making sure that the Staff was with you  
19 in a view toward licensing as opposed to the soundness of the  
20 engineering judgment.

21          A     It just seems reasonable to expect that when  
22 you undertake a task of this size, that all of the parties,  
23 both the owner as well as the regulator, understand whether  
24 or not this is an acceptable method of performing a remedy  
25 and laying out a detailed plan as to what the results would



K9L17

1 mean, what the acceptable limits might be prior to just  
2 literally shooting in the dark.

3 Q You say "shooting in the dark." Are you  
4 suggesting that shooting in the dark refers to the basis,  
5 the geotechnical engineering basis, for what they did?

6 A Just that alternative in general. Any alterna-  
7 tive. It seems reasonable to be able to establish a well-  
8 defined plan, method, acceptable criteria, for any alternative  
9 prior to proceeding with it, in conjunction with the regula-  
10 tory agency who is responsible for licensing that.

11 Q That's really what I'm saying. You put  
12 "in conjunction with." If you left off the "in conjunction  
13 with," would you agree that there was no reason to doubt Mr.  
14 Peck's prudence or ability or expertise in recommending the  
15 preload program from a geotechnical engineering viewpoint,  
16 leaving off the regulatory--

17 A I wasn't doubting his expertise at all. I was  
18 commenting on the manner in which Consumers cooperates with  
19 the regulatory agency in resolving certain problems, and it  
20 would seem that when you have a problem of this magnitude,  
21 an Applicant should be able to work very closely with the Staff  
22 in knowing what their requirements are in order to have this  
23 item licensible.

24 Q Did anyone in the NRC, to your knowledge, tell  
25 Consumers that they should stop with their plan to preload the

K9L18

1 diesel generator building?

2 A No, they didn't.

3 Q In fact, wasn't it the position of the Staff  
4 that if Consumers Power Company went ahead with the preload  
5 program, it would simply be doing so at its own risk?

6 A A statement to that effect was made at that  
7 meeting. Sometimes it is unfortunate that the Staff doesn't  
8 have the fortitude to explicitly say what is and is not  
9 required, and in that case, in retrospect, it is unfortunate  
10 for the NRC that they didn't.

11 Q But the fact remains that they didn't, isn't  
12 that right, that the Staff didn't?

13 A They didn't, that's correct.

14 CHAIRMAN BECHHOEFER: Let me interrupt. Was  
15 there any discussion at all that might cause any problems,  
16 safety problems, problems that would bear upon licensibility  
17 and that aspect of the project? Maybe short of a direction  
18 to stop, but was there any sort of discussion of possible  
19 potential problems?

20 MR. PATON: Mr. Chairman, could I suggest the  
21 project manager is indicating to me that the nature of that  
22 inquiry he would be able to respond better than the witness.  
23 I'm not saying don't ask him, but I'm just saying--

24 CHAIRMAN BECHHOEFER: Well, we may ask both.  
25 This witness was there, and--

K9L19

1 MR. PATON: Sure.

2 CHAIRMAN BECHHOEFER: Let's see what he has to  
3 say.

4 MR. PATON: It's more within the responsibility  
5 of the project manager than Mr. Gallagher, but I didn't mean  
6 to object.

7 THE WITNESS: I don't believe we understood  
8 all of the ramifications at that point in time.

9 CHAIRMAN BECHHOEFER: Was there any discussion  
10 to this effect with Consumers' representatives?

11 THE WITNESS: I believe that there were a number  
12 of unanswered questions at that point in time as to what the  
13 results would mean, what the acceptance criteria would be,  
14 and I might add that at that point in time, without the benefit  
15 of this retrospect, I personally had recommended to Consumers  
16 that they remove the fill material in that portion of the  
17 structure that had been completed as of that point in time  
18 because I was sure that it would be a licensing problem.

19 They took it upon themselves to proceed, and  
20 I'm now certain that it's been a licensing problem.

21 CHAIRMAN BECHHOEFER: Well, let me get this  
22 straight. Was the fill in the building at that time, just in  
23 terms of-- When you say you advised them to remove it, was  
24 that before this December meeting or--

25 Wait a minute. Maybe I misunderstood something.

9L20

1 By "fill", you mean surcharge, or you mean something else?

2 THE WITNESS: No, the fill beneath the building  
3 is what I was speaking to.

4 CHAIRMAN BECHHOEFER: Okay. My last question  
5 then was--

6 THE WITNESS: Based on my impression of the  
7 type of material that was there, and the problems that I had  
8 discovered as a result of the investigation, or the results  
9 that I had discovered as the result of the first inspection,  
10 78-12, I knew it would be a major problem and that, as I  
11 said, I have the benefit of looking back on it now, and I am  
12 convinced that it was a major problem.

13 Q (By Mr. Zamarin) When you say "major  
14 problem", you mean major licensing problem, is that right?

15 A That's exactly right.

16 Q You don't believe, do you, that Consumers  
17 Power Company's election to accept the recommendation and  
18 advice of Dr. Ralph Peck rather than yourself demonstrates  
19 bad manager .l attitude, do you?

20 A Not at all.

21 MS. STAMIRIS: I-- I can't object.

22 Q (By Mr. Zamarin) Do you believe that there  
23 was some other expert in the world that they shou'd have gone  
24 to rather than Dr. Peck, for this kind of a question?

25 MR. PATON: Good question, Mr. Gallagher.



K9L  
(121)

1 A They went to the best. That's for sure.

2 Q (By Mr. Zamarin) You indicated earlier today  
3 that Inspection Report 78-20 had a purpose, several purposes,  
4 one of which was to determine whether there'd been a breakdown  
5 with regard to quality assurance--I think you may have said  
6 with respect to soils.

7 Is there a finding in Investigation Report  
8 78-20 that there was a breakdown in quality assurance with  
9 respect to soils? I couldn't find it.

10 A Well, the word "breakdown" is not used in Report  
11 78-20. Generally we don't use such strong language in the  
12 text of the report.

13 Before that sort of a determination would have  
14 to be made, it needed a review of a number of other parties,  
15 including our enforcement people in Washington.

16 However, I think it is clear from the conclu-  
17 sions that are outlined in the findings of that 78-20 report,  
18 that certainly there was a breakdown in the quality assurance  
19 program.

20 (Continued on next page.)

21

22

23

24

25

1 Q Notwithstanding, however, that the stated  
2 purpose in the document was to determine whether there was a  
3 quality assurance breakdown with respect to soils, it was  
4 never so stated. In fact, there's no mention anywhere in  
5 78-20 of a quality assurance breakdown, is that correct?

6 A That's correct.

7 Q With regard to the reporting of the administra-  
8 tion grade beam failure, I believe your testimony on Contention  
9 3 states something to the effect that that information was  
10 clearly relevant to the soil settlement issue.

11 Do you recall what that language was, or can  
12 you refer to it?

13 A In Contention 1, page 14--

14 Q Oh, I'm sorry. All right. It's actually in--

15 CHAIRMAN BECHHOEFER: It's in 3, and the state-  
16 ment you referred to might be incorporated by reference at  
17 pages 21 through 23 of 78-20. I'm trying to track this down.

18 THE WITNESS: In 78-20 we also referred to the  
19 similarities between the problems.

20 Q (By Mr. Zamarin) What I'd like to direct your  
21 attention to is your statement with regard to Contention 3,  
22 that you agreed with the statement that the settlement should  
23 have served as a quality indicator. And then what really ties  
24 in with that is your statement which I believe, as you pointed  
25 out, is also in Contention 1, that it was clearly relevant to

1 the soils problems associated with the diesel generator  
2 building.

3 A. Can you refer me to where in Contention 3 I  
4 said that?

5 CHAIRMAN BECHHOEFER: On page 4 there's a  
6 statement that says he agrees with the Contention.

7 MR. ZAMARIN: Right.

8 CHAIRMAN BECHHOEFER: I think he says that the  
9 settlement should have served as a quality indicator. I  
10 don't know if that's direct enough, but it's an indirect way  
11 of getting there.

12 MR. ZAMARIN: Yes, it is.

13 Q. (By Mr. Zamarin) Would you disagree with  
14 Director Keppler's characterization of the relationship between  
15 the settlement of the administration building and the diesel  
16 generator building problems, wherein he characterizes it at  
17 page 197 of his deposition, taken on January 16, 1981, as  
18 being a problem known or identified with a non-safety  
19 related structure that conceivably could have ramifications  
20 for safety-related structures?

21 A. It's not only conceivable. It did.

22 MR. PATON: What page are you on?

23 MR. ZAMARIN: 197.

24 Q. (By Mr. Zamarin) What I'm asking you is: Would  
25 you disagree with his characterization that it could have

1 conceivably had ramifications, as opposed to being clearly  
2 relevant?

3 A. I would understand him to be saying that  
4 because Mr. Keppler, not having first-hand knowledge of all  
5 of the details and similarities, would certainly not state, as  
6 I have, in such a manner of the relevancy.

7 I can understand him falling short of that  
8 specific claim, without having all of the details.

9 Q. I think you indicated earlier today that the  
10 quality assurance concerns were a part of--or at least a  
11 basis for--the December 6, 1979 order; is that correct?

12 A. Yes, I did. I believe so.

13 Q. And would you agree that the order, however,  
14 was based primarily on a refocus of the technical aspect of  
15 the problem?

16 MR. PATON: Could I have the question read  
17 again?

18 (The re... read from the record, as  
19 requested.)

20 A. I would certainly include it as one of three  
21 bases for the order.

22 Q. (By Mr. Zamarin) Now I think I understand what  
23 you meant by bases. When you said it was based upon that, are  
24 you meaning that the content of the order has that in it,  
25 rather than the basis for the decision to issue the order?



1 A. Both. I believe I'm saying both. Quality  
2 assurance deficiencies were an integral part of making that  
3 decision, as well as the specific examples of those  
4 deficiencies being part of the order, Appendix A.

5 Q. Would you disagree, then, that the decision to  
6 issue the order was based primarily on a refocus of the  
7 technical aspect of the problem?

8 MR. PATON: Mr. Chairman, I do not understand,  
9 in a case where we have a stipulation between the Applicant  
10 and the Staff concerning the appropriateness of the issuance of  
11 the order based on quality assurance, why this line of  
12 questioning is relevant to anything.

13 Let me ask Mr. Zamarin: You're not backing  
14 out of the stipulation, are you?

15 (Laughter.)

16 MR. ZAMARIN: No, I'm just trying to clarify--  
17 He testified this morning about a basis for the order, and  
18 I just--

19 MR. PATON: I just have to check that, every  
20 now and then.

21 (Laughter.)

22 MR. PATON: I withdraw my objection.

23 MR. ZAMARIN: No, I'm just trying to clarify an  
24 answer that was given this morning.

25 Q. (By Mr. Zamarin) I'll repeat the question.

1                   Would you agree that the decision to issue the  
2 order was based primarily on a refocus of the technical  
3 aspect of the problem?

4                   A.     From my point of view, not primarily.  
5 Obviously, I had made findings of quality assurance deficiencies.  
6 I was interested in that aspect, while other people in the  
7 Agency, specifically on the Licensing Review side of the house,  
8 were more concerned with the unresolved safety issues.

9                   In addition, I might add that I was not an  
10 explicit party to all of the words or meetings that led up  
11 to the development of the December 6 order. So it's difficult  
12 for me to know exactly what, primarily, precipitated the  
13 issuance.

14                  Q.     Okay. On January 6, 1981, Director Keppler  
15 testified--and it appears at page 34 of that transcript,  
16 beginning at line 21, that the decision to issue the order  
17 was based primarily on a refocus of the technical aspect of  
18 the problem.

19                  Would it then be your conclusion that that  
20 states the position at least of Region III with respect to  
21 the primary basis for the decision to issue the order?

22                  A.     Well, Mr. Keppler represents, as the Director  
23 of Region III-- It's at least his understanding as to the  
24 primary reason for the issuance.

25                  Q.     He speaks for Region III, doesn't he?

1 A. Yes.

2 Q. You don't consider it an indication of bad  
3 management attitude, simply to make mistakes or have a  
4 judgment about an interpretation of something which later  
5 proves to be wrong, do you?

6 A. No.

7 Q. Would you consider it to be indicative of bad  
8 management attitude if a licensee were to disagree with your  
9 interpretation of an ANSI standard, for example?

10 A. It could be.

11 Q. The fact of disagreement, as long as it was  
12 based on an honest disagreement, would not, though, constitute,  
13 in your mind, a poor management attitude, would it?

14 A. It's not the fact of a disagreement that  
15 might exist. It's the fact when the NRC brings to the  
16 attention of management an expressed concern that people may  
17 not be qualified, and then does not take necessary corrective  
18 action to preclude that, in fact, from happening, based on  
19 that set of circumstances I would say that it was in poor  
20 judgment, and perhaps reflecting poorly on management's  
21 attitude.

22 Q. Well, I prefer generally the ANSI Standards,  
23 and my experience with those is that they say how far to space  
24 rungs on ladders, as well as qualification. And I was really  
25 asking in general.

1 A. I had in mind ANSI-N45.2.6, Qualification of  
2 Inspection and Testing Personnel, specifically.

3 Q. My question was that, simply because there's  
4 a difference of judgment, and notwithstanding the fact that  
5 one of those judgments is yours, or the NRC's, doesn't, in and  
6 of itself, indicate poor management attitude, does it?

7 A. No.

8 MS. ST. MIRIS: I object to the question,  
9 although I think it might have been answered.

10 CHAIRMAN BECHHOEFER: Yes, I think it's been  
11 answered.

12 MS. STAMIRIS: Well, it just seems like  
13 management attitude was defined. If we're talking about my  
14 contention, it was defined very clearly, many times; and I  
15 don't want it to be considered on one isolated incident at  
16 a time. You know, I'm talking about overall, and that was  
17 the characterization.

18 MR. ZAMARIN: I think this is one element of  
19 the big picture.

20 CHAIRMAN BECHHOFFER: I think the question--  
21 It's been answered, but I would have overruled the objection  
22 to it on that basis.

23 Q. (By Mr. Zamarin) In fact, within ANSI they  
24 have standards committees, because of differences of interpre-  
25 tation of the standards coming up with regularity, isn't that



## COTTON CONTENT

1 true?

2 A. Differences do exist, yes.

3 Q. And ANSI has committees to which those questions  
4 are brought for resolution, is that right?

5 A. I presume they do, yes.

6 Q. You're not aware of the standards committees  
7 that people submit differences to?

8 A. If they're still active groups, they're on a  
9 committee.

10 Q. And if they're not active, then usually the  
11 chairman of that committee, even if the committee is not  
12 active, is designated as the one who ordinarily resolves  
13 differences under ANSI, isn't that right?

14 A. Yes.

15 Q. Do you know when, if ever, prior to December 6,  
16 1979, management attitude was communicated by the NRC to  
17 Consumers Power Company as a problem with regard to soils  
18 settlement?

19 A. Not in that context.

20 Q. To your understanding, is it correct that there  
21 had been no such communication prior to December 6, 1979 in  
22 that context?

23 A. I have not had any communication directly with  
24 them. I'm not certain that other NRC management had not  
25 expressed any concern.

10 wel 9

1 Q Okay. But you are not aware of anyone else  
2 having expressed that, are you?

3 A No.

4 Q Do you agree with Director Keppler's testimony  
5 of January 6, 1981, at which time you were present, where he  
6 stated, with regard to the administration building grade beam  
7 failure, that "We," being Region III, "satisfied ourselves  
8 through our investigative effort that there was not a misreport-  
9 ing problem to the NRC," because he recalled that that was  
10 one of the things that he specifically asked to be reviewed?

11 A With regard to the--

12 Q --administration grade beam failure.

13 A Administration building?

14 Q Yes.

15 A (Pause.)

16 Q Well, why don't I give you the question and  
17 answer, to put it in context.

18 "Q Did you ever learn whether the Company  
19 had conducted any investigation regarding the  
20 administration building grade beam failure, that  
21 would have either provided a clue as to whether there  
22 was this problem, or whether there was not this  
23 problem?

24 "A (Mr. Keppler) I don't recall any of the  
25 details of the Company's investigation, but let me

1 say that we satisfied ourselves, through our  
2 investigative effort, that there was not a mis-  
3 reporting problem to the NRC, because I recall that  
4 that was one of the things I specifically asked to  
5 be reviewed."

6 MR. PATON: Can we have the page number?

7 MR. ZAMARIN: Page 12, beginning with line 18,  
8 running over on page 13 through line 5.

9 Q (Continuing) Do you disagree with Director  
10 Keppler's testimony?

11 A I believe he was referring to reporting  
12 requirements with regards to our regulations of 50.55(e).  
13 Since the administration building does not fall into the  
14 Category I or safety-related type structure, yes, they were  
15 in compliance. They need not be in compliance with 10 CFR  
16 50.55(e) requirements for reporting.

17 Q So would you agree that, as he testifies, that  
18 there was not a misreporting problem to the NRC, regarding the  
19 administration grade beam failure.

20 A With regards to our regulations, that's correct.  
21 The point I made earlier this morning, however, dealt with  
22 Consumers not bringing it to our attention once we had  
23 instituted an investigation.

24 Q Do you have any evidence that anyone at  
25 Consumers thought that it was important or relevant for you to

ERASE

1 have that information, but notwithstanding that knowledge,  
2 withheld it from you?

3 A. I have no idea.

4 Q. And similarly, you don't have any such evidence  
5 that anyone at Bechtel or associated with Consumers, or  
6 Consumers' and Bechtel's consultants, believed that such  
7 information was relevant, and that, notwithstanding that,  
8 withheld it from you?

9 A. Apparently Mr. Tubeson felt it was relevant,  
10 and--

11 Q. And he told you?

12 MR. PATON: Could he continue with his answer?

13 CHAIRMAN BECHHOEFER: Did you finish your  
14 answer?

15 THE WITNESS: Well, Mr. Zamarin attempted to  
16 add three words as I was saying it.

17 Yes, Mr. Tubeson apparently felt it was  
18 relevant and reported it to us.

19 Q. (By Mr. Zamarin) The question was, however, that  
20 you don't know of anyone associated with Consumers Power or  
21 with Bechtel or any of their consultants, who believed that  
22 the information was relevant to your investigation or the  
23 soil settlement problem, and notwithstanding that belief and  
24 knowledge, failed to report it to you?

25 A. I believe as part of the discovery for this



1 hearing, there was information that showed that Consumers had  
2 informed their consultants about the circumstances behind  
3 the administration building, but had not informed us as of  
4 that point in time.

5 Q Tell me who that was, that they had purportedly  
6 informed?

7 A I don't have that information readily available.  
8 I understand that there are records to that extent, that  
9 indicate minutes of meetings with their consultants, that the  
10 subject was discussed.

11 MR. ZAMARIN: Could I have that answer read  
12 back, please?

13 (The reporter read from the record, as  
14 requested.)

15 Q (By Mr. Zamarin.) With the amount of discovery  
16 which we've had in this case, it's a little difficult to keep  
17 things handy.

18 Are you referring to a response to an  
19 interrogatory, where I believe it was Dr. Hendron, indicated  
20 that he believed that it had been mentioned to him at a  
21 meeting?

22 A I'm not certain of that. It may have well  
23 been through that part of discovery.

24 Q Or are you testifying that there's something  
25 beyond that that we ought to know about?

1 A. No, not that I know of. I had just been  
2 informed that meetings had taken place with Consumers and  
3 their consultants at which the administration building might  
4 have been discussed. If that is, in fact, the case--and I  
5 admit that I cannot substantiate that--then it would seem  
6 that we ought to have been similarly informed.

7 Q. Who, by the way, was it that told you there  
8 was something in the discovery that indicated that there were  
9 meetings at which consultants had been advised of the  
10 administration building grade beam failure?

11 A. I don't recall.

12 Q. If, in fact, that information is not accurate,  
13 then beyond that you would not have any evidence whatsoever  
14 that anyone at Consumers or the consultants or anyone  
15 associated with them had any idea, prior to the time Mr.  
16 Tubeson told you about the administration building grade beam  
17 failure, that it might be relevant to your investigation; is  
18 that right?

19 A. That's correct.

20 CHAIRMAN BECHHOEFER: Mr. Zamarin, at some  
21 point now we'd like to take a break, but is this--

22 MR. ZAMARIN: This is fine.

23 CHAIRMAN BECHHOEFER: I assume you still have  
24 more to go?

25 MR. ZAMARIN: Not much more, but that will give

1 me an opportunity to organize it, so I think it's a fine  
2 time for a break.

3 CHAIRMAN BECHHOEFER: All right.

4 (Recess.)

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K11L1

1 CHAIRMAN BECHHOEFER: Back on the record.

2 Mr. Paton, do you wish to make a statement?

3 MR. PATON: Yes, Mr. Chairman. I talked to  
4 the witness about his recent testimony, and on reflection  
5 he'd like to indicate some further thoughts he had on a state-  
6 ment that he just made just before we broke.

7 Mr. Gallagher, do you know the matter I am  
8 referring to?

9 THE WITNESS: Yes.

10 MR. PATON: Okay. Would you make your state-  
11 ment, please?

12 THE WITNESS: During the break I referred to a  
13 document which I thought had provided me this information  
14 about Consumers informing their consultants about the adminis-  
15 tration building, and the document did not, as I thought,  
16 ma' that determination; and I just wanted the Board to know  
17 that I was not able to verify that as being fact.

18 MR. PATON: Mr. Gallagher, I think what you  
19 meant was you have no basis to say that Consumers' consultants  
20 were informed before the Staff, is that what you--

21 THE WITNESS: That's correct.

22 MR. PATON: That's all I have, Mr. Chairman.

23 CHAIRMAN BECHHOEFER: Let me clarify that.

24 THE WITNESS: Yes.

25 CHAIRMAN BECHHOEFER: You must have had some



1 basis for your statement. Is there anything else you can  
2 think of? How did this thought come in your head?

3 THE WITNESS: I believe it was similar to  
4 what Mr. Zamarin referred to as a response to interrogatories  
5 during the discovery period, where one of their consultants  
6 had referred--or had responded to knowing of the administra-  
7 tion building situation.

8 I don't have any other details than that.

9 CHAIRMAN BECHHOEFER: But you do think that  
10 one of Bechtel's consultants, I presume the consultants in that  
11 case, may have been informed about the administration building  
12 settlement problem prior to the time that the NR was informed--  
13 prior to the time Mr. Tubeson, I guess is the way it is  
14 pronounced, informed you?

15 THE WITNESS: I was under that impression, and  
16 as Mr. Paton just stated, I cannot put my hand on the basis  
17 of that, and in lack of something more concrete, I hesitate  
18 to make that a definitive statement.

19 I was relying on my best recollection as,  
20 you know, based on information read during discovery, to  
21 make that statement previously.

22 CHAIRMAN BECHHOEFER: Right. I take it, though,  
23 you would not--you could not positively state that you knew  
24 that Consumers or Bechtel's consultants were not informed  
25 prior to the time Mr. Tubeson informed you?

K11L3

1 THE WITNESS: That's correct.

2 CHAIRMAN BECHHOEFER: Thank you.

3 MR. ZAMARIN: If I could just follow that up.

4 CHAIRMAN BECHHOEFER: Certainly.

5 MR. ZAMARIN: It's so close to a "When did you  
6 stop beating your wife" type question, but I didn't want to  
7 object.

8 Q (By Mr. Zamarin) By the same token, I take  
9 it that you don't have any evidence as you sit here now that  
10 the consultants of Consumers Power or Bechtel were told prior  
11 to the Staff, is that correct?

12 A I don't have any direct basis for that at this  
13 point in time. Again, the whole point of this scenario  
14 that we have been discussing, what seems longer than deserves  
15 attention--

16 Q I couldn't agree more.

17 A --is when we started our investigation in October,  
18 it would have seemed reasonable for Consumers to have informed  
19 us at that point in time, knowing well that a year prior to  
20 that, a year-plus prior to that, there had been a similar  
21 incident on a structure adjacent to the diesel generator  
22 building.

23 Q By that you don't imply that you have any  
24 evidence that anyone knew that you should know about that,  
25 but intentionally didn't tell you?

A No.

K11L4

1 Q All right. Would you agree that it is  
2 inevitable that there are going to be some inconsistencies  
3 between FSAR and design documents?

4 A No.

5 Q You disagree that it would be inevitable that  
6 there are going to be some inconsistencies between FSAR and  
7 design documents?

8 A There doesn't have to be.

9 Q I didn't say there had to be. My question was  
10 whether it was inevitable that when you have these 12, 14  
11 or 30 volumes full of discussions of the plant, that there  
12 would be some inconsistencies between the FSAR and the design  
13 documents.

14 A Not if there is a careful review of those  
15 consultants' reports and disposition of those recommendations  
16 and how they have been translated into the construction  
17 specifications. "Inevitable" seems like for some distant  
18 eternity.

19 Q Do you recall that on December 16, 1980, that  
20 you had your deposition taken in this matter, and at that time  
21 you were represented by counsel for the Staff, Mr. Bradley  
22 Jones, and that I took your deposition at that time in my  
23 office? Do you recall that?

24 A Yes.

25 Q Do you recall at that time that you were under

K11L5 1

1 oath and sworn to tell the truth just as you are today?

2 A Yes.

3 Q And at Page 458--

4 MR. PATON: What page?

5 MR. ZAMARIN: Page 458.

6 MR. PATON: Thank you.

7 Q (By Mr. Zamarin) Do you recall this question  
8 and this portion of the answer that's relevant to it?

9 "Question: So you would agree with  
10 anyone who said that it is 'vitable,  
11 that there are going to be some inconsistencies  
12 between FSAR and some design documents?"

13 MR. PATON: Could I show this to the witness so  
14 he may follow along?

15 MR. ZAMARIN: No.

16 MR. PATON: You don't want the witness to follow  
17 you along on this?

18 MR. ZAMARIN: No.

19 MR. PATON: You want to do it the hard way.

20 MR. ZAMARIN: No; t'he proper way.

21 MR. PATON: He cannot see this document?

22 MR. ZAMARIN: That's right.

23 MR. PATON: Mr. Chairman, I think the witness  
24 should be able to follow along with the deposition. He is  
25 being interogated on his own deposition. Mr. Zamarin wants to



1 read it and not let him read it.

2 MR. ZAMARIN: I've gone through this impeach-  
3 ment process thousands of times, and--

4 MR. PATON: That doesn't make it right.

5 CHAIRMAN BECHHOEFER: Well, I think it is a  
6 question of--well, I shouldn't say credibility, but--

7 MR. ZAMARIN: But he will want an opportunity  
8 to explain it and--

9 MR. PATON: The question will be does the  
10 witness recollect every word Mr. Zamarin reads of his own  
11 recollection without seeing a piece of paper. That's going  
12 to be the question.

13 MR. ZAMARIN: In Courtrooms across the country  
14 every day it is done as a matter of routine, and it is always  
15 done the same. It is called refreshing his recollection.

16 MR. PATON: That doesn't make it the proper way  
17 to do it. That's a little ridiculous. I have the document  
18 here. He can ask him about the document, but he doesn't want  
19 him to see the document. I don't know where he gets that.

20 MR. ZAMARIN: I'm asking if he recalls certain  
21 testimony and that's for impeachment. I'm not examining  
22 on the document.

23 MR. PATON: Then I will instruct the witness  
24 to rely on his memory of every word Mr. Zamarin reads.

25 MR. ZAMARIN: Fine.

K11L7

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Q (By Mr. Zamarin) Do you recall on that day, back in December of 1980--I don't recall whether it was a snowstorm just before that Christmas--but that you were giving a deposition, testimony under oath, and I asked you this question:

"Question: So you would agree with anyone who said that it is inevitable that there are going to be some inconsistencies between FSAR and some design documents?

"Answer: I don't think I would disagree with them when they say it is inevitable. There are certainly going to be, in the 12 to 14 volumes full of discussions about the plant, some inconsistencies."

Do you recall that question and that answer?

A Yes.

MR. ZAMARIN: I have no further questions.

CHAIRMAN BECHHOEFER: I think the witness may wish to give you-- Can you explain? I don't have it in front of me, but does the question you were asked earlier have any attributes of inevitability?

MR. ZAMARIN: I'm sorry, I didn't hear your question.

K11L8

1 CHAIRMAN BECHHOEFER: I said were there any  
2 attributes of inevitability to the question that was asked  
3 about his deposition, or was it merely did he know of whether  
4 in the context of projects which had already occurred?

T 5 There was something that was earlier that this  
6 was a follow on, which is what I'm not sure of.

7 MR. ZAMARIN: I asked if it was inevitable,  
8 and what I did when I was asking the question, I was reading  
9 from the question that had been asked in the deposition,  
10 so the questions are identical.

11 CHAIRMAN BECHHOEFER: But I mean the earlier  
12 part that--the question the deposition followed from. I was  
13 wondering whether that defined inevitability, because this was  
14 seemingly a follow on to an answer, and I just wanted-- Is  
15 there any context that you could put on the first deposition?

16 THE WITNESS: I don't recall the details of  
17 that line of questioning during the deposition. Now that  
18 he's read that to me, I do recall him asking me that and  
19 responding to it that way.

20 When I responded today, however, I was at least  
21 thinking in terms of precisely the problems associated with  
22 the inconsistencies between these documents and--or rather  
23 the FSAR for the Midland project and the construction specifica-  
24 tions for the project, and under that response I certainly  
25 answered correctly then and will continue to answer correctly

K11L9

1 now, that given the care and attention to developing construc-  
2 tion specifications for the Midland project, no, it was not  
3 inevitable that discrepancies occur.

4 At the deposition, if I recall, it was for a  
5 totality of all projects, including the Midland project,  
6 and yes, I had known of previous places, and in fact the  
7 D. C. Cook case, where material false statements had been  
8 issued, reflecting on that, how could I possibly answer any-  
9 thing but yes, it is inevitable.

10 There had already been a precedent that it had  
11 occurred.

12 MR. ZAMARIN: Chairman Bechhoefer, I think  
13 that that's--I had not intended to restrict my last question  
14 in the fashion Mr. Gallagher did. I think that if I can ask  
15 a couple of follow-ups just to clarify his response--

16 CHAIRMAN BECHHOEFER: All right. I was just  
17 trying to get it clarified for the record.

18 MR. ZAMARIN: I now understand what he was  
19 thinking of when I asked the question prior to using the deposi-  
20 tion.

21 Q (By Mr. Zamarin) Was it your understanding  
22 I was asking you whether it was inevitable that the inconsis-  
23 tencies seen that were found in the Midland FSAR and design  
24 documents had to occur?

2 A Today?



K11L10

1 Q Yes.

2 A Yes.

3 Q And in the deposition, that was not the thrust  
4 of the question, nor did you understand it that way, did  
5 you?

6 A That's correct.

7 Q Nor did I intend the question that way today.

8 CHAIRMAN BECHHOEFER: I think that helps.

9 MR. ZAMARIN: I do have one more. I made  
10 a mistake once and said I had no further questions. I just  
11 have one more.

12 Q (By Mr. Zamarin) In your opinion, as a reactor--  
13 from your experience as a reactor inspector and civil engineer  
14 for Region III, is the number of man hours of inspection devoted  
15 to a particular project related to the number of noncompliances  
16 that are found?

17 A In a general sense, you would expect that the  
18 greater the level of inspection or the intensity of the  
19 inspection, that the higher the number of noncompliances might  
20 be identified, although that's-- I'm not a well-established,  
21 you know, principal of inspection. It depends on people who  
22 are doing the inspection, the level and depth at which they  
23 perform their inspection, and what area they are in fact  
24 inspecting. Certain areas are more difficult, and therefore  
25 you find more items of noncompliance.

K11L11

1                   Those statistics that are kept are, in my  
2 opinion, not very suitable for evaluating the performance  
3 of licensees, quite frankly.

4                   Q     In fact, the number of noncompliances really  
5 go to the substance of the noncompliances, is that right?

6                   A     That's right. One item of noncompliance could  
7 be 10 times more significant than dozens of others.

8                   Q     Okay. So therefore looking at numbers of  
9 noncompliances really isn't of much substantial value, in your  
10 opinion as a reactor inspector and civil engineer, is that  
11 correct?

12                   A     That's correct.

13                   MR. ZAMARIN: I have nothing further.

14                   DR. COWAN: I guess we are ready to proceed  
15 with the Board questions. I only have one.

16                                   BOARD EXAMINATION

17                                   BY MR. DECKER:

18                   Q     Mr. Gallagher, I believe you testified that  
19 at the time that the FSAR was being prepared, that you felt  
20 that there were managerial deficiencies that had not been  
21 corrected. You may have touched on them in your other  
22 testimony. I want to ask whether now, considerable time  
23 having elapsed since that period when the FSAR was being  
24 written, have those managerial deficiencies to which you  
25 referred been corrected, or are there some that still have to

K11L12

1 be corrected?

2 A It is my opinion that management is well aware  
3 of this problem and has corrected it to a sufficient level  
4 for NRC satisfaction.

5 MR. COWAN: That's the only question I have.

6 BY CHAIRMAN BECHHOEFER:

7 Q I'm going to ask a few fairly specific ques-  
8 tions. First, there was some discussion in Report 78-12,  
9 which is Attachment 2 to the Stamiris Exhibit 3, and at one  
10 point in the testimony, which isn't testimony as such, you  
11 mentioned that you had made a mistake--the Commission had made  
12 a mistake in stating that there were no items of noncompliance  
13 with the NRC requirements. That statement appears in the third  
14 paragraph of the November 17-19, 1978 cover letter.

15 I just wanted to know why you think that statement  
16 is in error? Is that an after-the-fact assessment, or were  
17 you meaning to say that back then there were some items  
18 of noncompliance with NRC requirements?

19 A At the time of the 78-12 inspection, the real  
20 purpose of that was to go out and get as much information as  
21 quickly as possible to inform management of the significance  
22 of the settlement problem, and at that point in time we  
23 had not given very careful consideration towards the enforcement  
24 aspects of our office, and we fully intended to proceed with a  
25 thorough and comprehensive investigation, at which time we

K11L13

1 would come to grips with whatever enforcement action would  
2 be necessary, and that paragraph in the cover letter of 78-12  
3 is a boiler plate paragraph that the regional office uses,  
4 and it was overlooked by myself as well as the reviewers  
5 of the document, and simply an error in our judgment, released  
6 that document.

7 Q I take it just for a matter of example, the  
8 item that appears on Page 6 of the report, Item 3, that's  
9 the type of thing which-- Is that the type of thing for which  
10 maybe the cover letter statement was inaccurate?

11 A Yes.

12 Q I'm not trying to be exclusive now, but--

13 A Yes. There were others as well contained in  
14 that report that were later identified as so-called items  
15 of non-compliance with regulatory requirements.

16 Q Now, just as a question of timing, as I read  
17 Inspection Report 79-06, which is in early April of 1979, as  
18 I understand it, this surcharge procedure was being used at that  
19 time, is that correct?

20 A Report 79-06, the inspection was conducted  
21 March 28-29, 1979. I don't believe I recall whether the sur-  
22 charge had begun or not at that point in time.

23 Let me refer to the report and see if it makes  
24 that clear.

25 On Page 3 of that report it does state that the



K11L14

1 program of applying a surcharge of sand material in and around  
2 the building has continued.

3                   Apparently it had begun at that point in  
4 time.

5                   Q     And when Report 78-20 was issued, and at least  
6 the cover letter for that was on March 22, 1979, I guess  
7 the inspection had started at least some point earlier--I  
8 believe you testified, did you not, that the surcharge program  
9 was not in effect at the time of the 78-20 investigation?

10                  A     During the investigation, it had not begun.  
11 The inspection of 78--that is documented in Report 78-20  
12 ended toward the end of January. January 25, I believe, 1979.

13                  Q     So that somewhere between the end of January  
14 and the end of March, that surcharge program was begun, is  
15 that correct?

16                  A     Apparently, yes.

17                  Q     Now, you testified, I believe, that you did not  
18 think, at least from a regulatory standpoint, that it was pru-  
19 dent for the CPC to have begun that program prior to receiving  
20 the concurrence, or at least discussing it with the NRC Staff,  
21 is that correct?

22                  A     Correct.

23                  Q     Turn to Page 5 of 79-06, Report 79-06. Under  
24 Item 4, which says "Profiles of Underground Piping," could  
25 the surcharge--could the initiation of the surcharge have any

1 effect on underground piping?

2           What I'm trying to figure out is if the problem  
3 that was pointed out in this Item 4, which is the stress  
4 analysis, the differential settlement of pipelines--what  
5 I would like to know is whether that in itself could be  
6 affected by the surcharge, and if that was perhaps one of the  
7 regulatory issues which are still open.

8           A     It is my opinion that the surcharge could very  
9 well affect the piping and further induce stresses in the  
10 piping along with the surcharge program.

11           Q     Turn now to Item 5, which is on the next page.  
12 Would another difficulty with beginning the surcharge program  
13 have been whether or not the strain gage measurement devices  
14 should be installed?

15           A     Certainly the surcharging of a diesel generator  
16 building might have induced stresses as well in the structure,  
17 and my point of identifying this in this Paragraph was to  
18 state that some attempt at taking measurements as to the effects  
19 of the surcharge on the structure should be instituted,  
20 and one method of doing that is by installing strain gages  
21 to measure the direct effect of the load due to the sand.

22           Q     Now, was any of the remedial action planned  
23 for the surface water structure underway at that time?

24           A     At that point in time I don't believe they had  
25 taken sufficient borings around the surface water intake

K11L16

1 structure to determine whether or not the fill material there  
2 was also affected. In that paragraph I point out that there  
3 were visual cracks in the structure, and once again at that  
4 point in time there were no plans on installing any measuring  
5 devices to see if there had been--would be any changes in the  
6 future; but to answer your question directly, I don't believe  
7 that at that point in time there had been the determination  
8 made that the fill beneath the surface water intake structure  
9 was inadequately compacted.

10 Q Did you believe that these measuring devices--  
11 as I read this, I guess, Staff believed that they should be  
12 installed on surface water structures as well, is that  
13 correct?

14 A I'm not sure of what the Staff had intended.  
15 I was trying to point out that it might well be a good idea  
16 to install those type of devices in order to at least  
17 collect some data for the Staff's review.

18 Q Do you think that there is any reflection on  
19 management commitment, which is revealed by a couple of items  
20 I'm asking about in this report?

21 A Prior to your asking me this question, I hadn't  
22 given it much thought. I guess it goes along with what I  
23 said before. You should have a well-developed plan and some  
24 foresight as to what you are going to be--what sort of data  
25 you are going to be collecting so you could make some semblance

K11117

1 of order of it later, and it would seem that management  
2 would provide that sort of direction to their Staff.

3 Q Do you think that management today is more  
4 likely to do so, better equipped to do so?

5 A Yes, I do, just because of the lessons learned  
6 as a result of this experience.

7 Q Turn to the next report, 79-10, which was attached.  
8 On Page 4, Item 2, I'm correct, am I not, that this item  
9 indicates that the Staff believed that there were some  
10 deficiencies in both the training and qualification of certain  
11 QC inspectors?

12 A That's correct.

13 Q Now, I realize this isn't specifically in soils  
14 work, but was it your opinion about that time that they had  
15 some deficiencies in the inspectors for the soil work?

16 A I don't believe they had made the finding that  
17 the special people were not qualified for the soils work,  
18 but reflecting on the fact that there had been problems in the  
19 soils area, and I had followed up on inspection of the contain-  
20 ment prestressing system, I wanted to make certain that those  
21 people performing that inspection were in fact qualified.

22 This inspection took place in May of '79, prior  
23 to that work activity commencing, with the anticipation that  
24 Consumers would take the warning to heart and do something  
25 about it.



K11LJ8

1                   Unfortunately, that didn't occur, and in  
2 Attachment 12 of Stamiris Exhibit 3, which was conducted in  
3 September of '79, I did make the finding at that time that the  
4 inspectors for the containment prestressing system were not  
5 adequately qualified.

6                   Q     I was going to get to that. Really, my  
7 follow-up question is, there has been a finding in your most  
8 recent inspection report, Staff Exhibit 1, that you didn't  
9 think the inspection personnel--or you didn't think the  
10 Company had adequate inspection personnel for the soils remedial  
11 work. If this was true, given the experience you had earlier  
12 with these other inspection personnel, what can we expect  
13 with respect to your recommendation or finding in Staff Exhibit  
14 1, that the soils people are not now qualified?

15                   A     Well, Mr. Marguglio testified, I guess last  
16 week, that Consumers has acknowledged that finding in Staff  
17 Exhibit 1, that they are in fact going to respond by getting  
18 the type of people necessary to provide the assurances that  
19 the future remedial work is done correctly, and we intend to  
20 follow up on that point and make certain that they are in fact  
21 available and ready well before the remedial work begins.

22                             This item was discussed at some length during  
23 this inspection of May '81, and I believe that we have convinced  
24 Consumers that it is in their interest as well as ours that  
25 they obtain the necessary personnel to get the job done.

12 wel 1

1 Q In connection with the containment prestressing  
2 system, the inspection personnel, had the Applicants or CPC  
3 made similar commitments to you prior to--or at the time of  
4 the--the first inspection to which I refer, 79-10, at that  
5 point had they made a similar type of commitment?

6 A Well, they have always had the commitment to  
7 have qualified people on site. We have not always agreed with  
8 them. We've used our best steerings and judgment and determined  
9 whether the people were sufficiently capable and experienced,  
10 and when I had made that finding earlier in May, yes, I  
11 expected that they would provide better personnel.

12 I was somewhat distressed in September, when I  
13 followed up on that work activity, to find that they had not.  
14 And we dealt with that in a fairly severe manner by getting  
15 Consumers, Bechtel and the NRC management together and  
16 discussing it, and understanding what their needs were, and  
17 capabilities of the people were, and after some ado, we were  
18 able to get what we wanted.

19 Q Well, is the commitment that you're going to--  
20 Do you expect that the commitment that you're going to get,  
21 or that we agree that you've actually gotten, with respect to  
22 the finding in Staff Exhibit 1, is that any different? What  
23 can we expect, is really what I'm driving at?

24 A Well, we expect a lot, actually. We expect them  
25 to get those people. And I think based on Mr. Keppler's

1 testimony, that his office is prepared to do whatever is  
2 necessary to make certain that they have those people.

3 I would hope that in the complete resolution  
4 of this finding in Report 81-12 in Staff Exhibit 1, that  
5 Consumers would respond to that by presenting to us the  
6 entire plan of coverage, the numbers of people, the capabil-  
7 ities of the people, and for each remedy, and that we would  
8 have an opportunity to review and be satisfied.

9 Q You testified that Consumers fulfilled all  
10 NRC requirements with respect to reporting in connection with  
11 the administration building grade beam failure. Consumers  
12 has testified that in terms of reporting, it errs on the side  
13 of conservatism.

14 If one took that philosophy into account, did  
15 the Company err on the side of conservatism with respect to  
16 the administration building settlement question?

17 A. No, they didn't. I believe that testimony is  
18 contained in Mr. James Cook's submittal to the Board, and  
19 he was not an integral part of the Company at the time when  
20 the administration building problem occurred. And I, at least,  
21 understood that he was at least speaking to the current manner  
22 in which Consumers will be proceeding

23 Q In view of Consumers' actions in these two  
24 time periods, do you think that the Company has become more  
25 conservative in terms of their reporting, during Mr. Cook's

1 tenure?

2 A. Perhaps. And I might say also that they have  
3 been conservative in reporting 50.55(e)'s in the past,  
4 especially when they are relative to safety-related structures,  
5 systems and components.

6 Q. Turning back to 79, there's one other thing  
7 I wanted to ask you about. The first item summarizes the--  
8 the first item in the notice of violation, was this result  
9 likely to--or was this result likely to lead to the non-  
10 application of a QA program to areas where it should have  
11 been applied?

12 A. That was my concern in identifying this  
13 item. When I reviewed the soils placement specification and  
14 read that concrete material could be substituted for soil  
15 materials, I was concerned that there was a provision that  
16 that material, that concrete material, could be made with  
17 what they identified as non-Q material and workmanship.

18 And that identification of safety-related  
19 material as not being encompassed in the quality organization,  
20 and with all of the material and inspection testing require-  
21 ments, did concern me.

22 Q. Was this a unique situation, or are you aware  
23 of other occasions where this same type of circumstance might  
24 have occurred in the Midland project?

25 A. I'm not aware of any other circumstances. I



1 was somewhat surprised to see this included in the specifica-  
2 tion in September of 79, after we had already just gone  
3 through this earlier process of identifying causes and  
4 specification deficiencies.

5 I think it was just simply poor judgment on  
6 the part of the persons developing or revising the specifica-  
7 tion.

8 Q Do you think the Company's QA program or QC  
9 program is sufficient to prevent this type of thing from  
10 happening--maybe not in all instances, but at least in a few?

11 A I think they're learning; the hard way, granted.  
12 but they're learning.

13 Q Well, is that good enough?

14 A In this case it wasn't good enough for me,  
15 but I think we've made the point clear to the Company that  
16 they have to be more attuned towards these details. There has  
17 to be a better review by the technical reviewers as well as  
18 the quality assurance staff. And I think they are learning  
19 how to do it the right way.

20 Q Do you think that there are sufficient numbers  
21 QC personnel employed by the Company? I'm talking about  
22 numbers now, not qualifications.

23 A In the soils area?

24 Q Well, I was going to ask that next.

25 A In total, for the entire--

1 Q First in total, and then in the soils area.

2 A I think the numbers are important. I think  
3 it's more important, though, to look at how experienced and  
4 capable the individuals are.

5 And while I would probably agree that they have  
6 suitable numbers, it's my opinion that the industry standards  
7 in this regard for qualifications and experience of inspection  
8 and testing personnel are sufficiently lax by permitting  
9 just too much latitude in provisions for waivering both  
10 educational and experience requirements. And at the Midland  
11 site, as well as a number of other sites that we've dealt  
12 with in this issue, that waiver of requirements is the most  
13 abused paragraph in any of the ANSI Standards that I've dealt  
14 with.

15 That paragraph permits waivering of education  
16 and experience requirements in lieu of demonstration of--  
17 quote--suitable proficiency. And I think good judgment is not  
18 always exercised in knowing what "suitable proficiency" means.  
19 For example, Mr. Marguglio testified last week that he is  
20 way ahead of the industry standards in this regard of qualify-  
21 ing people to very specific areas. I don't accept that as  
22 being way ahead. In fact, I think it's way behind the industry  
23 standard. Rather than going out and getting a whole person,  
24 qualified in a total area, instead, Consumers as well as other  
25 companies, go out and get people who are experienced in no areas.

12 wel 6

1 and train them in a very particular area, and expect them to  
2 do a very thorough job.

3 My position is that they can't do that, because  
4 they are so nearsighted they only are looking at a very  
5 specific point, when they're missing the total picture.

6 You have to have people, in my opinion, who  
7 are divers in both experience and education, related to the  
8 function that they're doing.

9 As far as I'm concerned, this is the single  
10 biggest problem in our industry today.

11 Q Would there be any way of writing a qualifica-  
12 tion standard with an appropriate philosophy, or....

13 A Well, I have made it clear to those people in  
14 the NRC who deal with these standards, in particular the  
15 manner in which the standards are being executed, and  
16 unfortunately I have not been very successful in impressing  
17 upon them, the people who sit on those standards committees  
18 and who develop regulatory guides, in putting forth a higher  
19 degree of experience and education to get the job done right  
20 the first time.

21 Q Let me ask you, if a standard like that is not  
22 in effect, would there be justification for imposing such a  
23 standard in a situation where particular facts may have  
24 occurred in the past, and you felt they were warranted?

25 A I think so.

1 Q Let me ask you another question, then.

2 Whether you take that standard, or whether you  
3 take the standard that Applicants are proposing to use, would  
4 waiver of provisions generally apply? Would there be  
5 mechanisms for waiver, and should there be? Two questions.

6 A I think there should be some provision for  
7 waivering of very specific high standards of educational  
8 experience.

9 Similarly, Cordell Williams yesterday testified  
10 that good judgment has to be used.

11 But that waiver should not be the norm within  
12 an organization. It should be the exception. And, instead,  
13 we see it as a routine matter, at Midland and at any number  
14 of other facilities.

15 And, as an inspector attempting to provide the  
16 necessary confidence that things will be done when we're not  
17 around to make sure it's going to be done, or to verify that  
18 it's been done, I personally would like to see some better and  
19 more specific guidelines as to when and how an organization  
20 can exercise that waiver. And the standard is just sufficiently  
21 lax in providing that. I might add that I was quite surprised  
22 to learn that Mr. Marguglio was Chairman and on the working  
23 committee for that particular standard, ANSI N-45.2.6. Quite  
24 surprised.

25 Q I take it that particular standard did not



1 include the selected training that Mr. Marguglio mentioned?

2 A. I don't see it in there as being such. I think  
3 that standard--at least my understanding of it--the intent  
4 was to provide a person in a particular area that has diverse  
5 experience. For example, in the area of concrete inspection,  
6 I would expect an inspector to have sufficient experience  
7 regarding the materials, testing--all of the materials, cement,  
8 concrete, aggregates--the physical properties, how they  
9 provide strength to the structure, what it all means. Rather  
10 than just going out there with a "go, no-go" gauge, and  
11 saying it's good or it's bad, I think the experience, know-  
12 ledge of an individual, definitely helps in, you know,  
13 aiding that individual in detecting broader problems than  
14 that specific area that he's inspecting.

15 Q. And do you think there should be additional  
16 training in that specific area, plus the broad experience?  
17 Or, alternatively, does someone with broad experience really  
18 know how to inspect the very specific matters to the  
19 construction specifications?

20 A. Both through construction specifications and  
21 the standards for testing and inspection, which are very  
22 detailed and clear.

23 What I'm saying is that instead of going out  
24 and getting numbers of people--more people than perhaps you  
25 really need--in very narrow areas, I propose to go out and get

1 fewer people, who are more diverse, more capable, more  
2 experienced. Because in the long run, even on just a cost-  
3 benefit point of view, it has to be more desirable, the way  
4 I see it, as well as better from the quality point of view  
5 in detecting and precluding major problems from occurring.

6 Q. Would you have the additional experience  
7 requirements applied across the board to QC inspectors, or  
8 would you have a sliding scale of experience, depending on  
9 the particular assignment?

10 A. Yes. And there are provisions for that  
11 sliding scale, depending on what level of inspector you are.  
12 There are three different levels, 1, 2 and 3, and the  
13 standard does require specific educational, as well as related  
14 work experience.

15 Q. That's the existing standard?

16 A. The existing standard, yes.

17 Q. Now, how about the one you wanted to apply?

18 A. I would propose to maintain that part of the  
19 standard, having different levels of inspection positions  
20 versus different standards of experience and education.

21 BY MR. DECKER:

22 Q. There was some testimony by Consumers to the  
23 effect that they had had difficulty finding and hiring  
24 qualified people. So it could be said that your recommendation  
25 is easier said than done. Do you agree with that?

1           A.    My recommendation is easier said than done.  
2 I agree. But on a project like Midland, which has had, as  
3 we have heard, a long history of problems, it's got to be  
4 done at this stage of the game.

5           Q.    With respect to the problem of accurately  
6 identifying root causes, is it your opinion that the adequate  
7 corrective action has now been taken to rectify this?

8           A.    Based on the last inspection in May of '81,  
9 there was positive evidence that when items of--or non-conform-  
10 ance reports were written, that there was a concerted effort  
11 to identify beyond just the end-process cause of the non-  
12 conformance and get more to the substance of the problem.

13           My associate, Dr. Landsman, reviewed a number  
14 of non-conformance reports in the civil area, and was quite  
15 satisfied with the manner in which they identified and--  
16 described the non-conformance and identified the corrective  
17 action in getting to the real problem at hand.

end 12

18   (Continued on following page.)  
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21  
22  
23  
24  
25

K13L1

1 Q (By Mr. Decker) Do you think there's any  
2 problem when deficiencies or discrepancies, or whatever they  
3 are, are discovered, in recognizing possible systems implica-  
4 tions?

5 By that I mean, the plant is one big system,  
6 and failure in one portion of the plant affects proper operation  
7 in another portion of the plant.

8 A Based on what I have seen, I don't think that  
9 is readily done. I think the identification of the non-  
10 conformances emphasizes the correction of that specific  
11 problem, rather than the implication of that affecting some  
12 other part of the structure.

13 Q I suppose one would have to be very well  
14 qualified to anticipate possible implications from a systems  
15 point of view. Let me just ask, do you consider this to be a  
16 problem both at Midland and within the industry?

17 A Well, I hadn't really given it much thought  
18 until you brought it up. It seems certainly reasonable  
19 that perhaps when a deficiency is identified, that one does  
20 a risk analysis as to how that item, if it were left undetected,  
21 might have affected that system during operation.

22 Q I guess I'm venturing out into areas beyond  
23 current regulatory requirements, so I will not pursue that  
24 further.

25 In your opinion, is the U.S. Testing now fully



K13L2

1 up to speed, fully capable of doing, performing the work  
2 which it must do properly to assure that remedial action  
3 work is successfully done?

4 A Yes, I do.

5 Q Are there any management actions you would  
6 like to see taken aimed at strengthening future construction,  
7 or QA efforts in the soils area?

8 A I guess I was sort of anticipating that ques-  
9 tion today, sitting out in the audience earlier this week,  
10 and I struggled with that for some time last night.

11 There is one item that might sound somewhat  
12 unorthodox, but nonetheless might be a step in a positive  
13 direction.

14 It seems to me that part of the past problems  
15 have been the lack of holding certain management responsible  
16 and accountable for their performance. In other words, it  
17 seems to me that the buck has to stop some place.

18 What I would propose--and this is without  
19 discussion with any NRC management; this is only my own  
20 views speaking at this point--is to have Mr. Selby himself  
21 report to the NRC on a fairly routine periodic frequency  
22 with regard to the remedial soils actions, and specifically  
23 identify what goals had been establishing during that previous  
24 reporting period, and which of those goals were achieved and  
25 which were not, what deficiencies had been identified and for

K13L3

1 what reason. In other words, sort of establish some manage-  
2 ment by objectives approach for Consumers to get the remedial  
3 measures done successfully.

4 In my estimation, it is would hold the chief  
5 executive officer of Consumers responsible for the success  
6 or failure of the Midland project from this point on.

7 I think the Company has to be--has to appoint  
8 someone personally and responsibly accountable for the  
9 future work. We are at a point where there are no tomorrows  
10 with regard to the soil fixes.

11 Q Mr. Selby is the chief executive officer,  
12 is that correct?

13 A That's correct.

14 Q Why do you think Mr. Selby--it would be  
15 more important for Mr. Selby to do this as opposed to Mr.  
16 James Cook, the Vice President?

17 A Only because he is the top man in the company,  
18 and I think by having Mr. Selby directly involved in this  
19 sort of future remedial work, all of his staff beneath him,  
20 all of the people who are going to have to execute these  
21 complex tests, will understand the significance and importance  
22 to the Company and will provide just that much greater  
23 motivation to get it done without any major problems.

24 Q Are you personally in full agreement with the  
25 reasonable assurance findings contained in Mr. Keppler's

1 post-December '79 testimony?

2 A To be honest with you, I have some real diffi-  
3 culties with that phrase "reasonable assurance". I'd  
4 like to ask the Board what you understand "reasonable assurance"  
5 to mean, because, quite frankly, I'm not certain.

6 Q Well, may I ask-- I don't know whether this  
7 will help. I will try.

8 In what areas do you have reservations about  
9 this statement?

10 MR. PATON: Judge Decker, could I interject?  
11 I think he said he had reservations as to the meaning of the  
12 word.

13 MR. DECKER: I understand that.

14 A I would agree that there is certainly the  
15 necessary tools and systems in effect to provide some acceptable  
16 level of confidence that the task can be accomplished.  
17 The reservation that I have is that having been so close  
18 to this problem for two and a half to three years, and  
19 knowing that simply the Company could not take soil material  
20 from one point of the site and place it in a sufficient  
21 manner to support the structures on another place on the site,  
22 and then recognize that we have extremely complex sophisticated  
23 and, in some cases, unprecedented remedial actions at a nuclear  
24 power plant, I have to have some reservation as to whether or  
25 not it can be successfully accomplished, and that may be just

1 from my own shortcomings of what is technically feasible;  
2 but nevertheless, I certainly have some uneasiness about the  
3 suitability that the fixes can be accomplished successfully.

4 CHAIRMAN BLCHHOEFER: Let me interrupt for  
5 one thing. If your recommendation concerning Mr. Selby,  
6 together with the recommendation on qualifications of QC  
7 inspectors--those were both put into effect, would you have  
8 less reservations, or is there anything else you can suggest  
9 to us as well?

10 THE WITNESS: What I'm simply saying is that  
11 the complexity of the remedy itse'f is somewhat difficult  
12 to come to grips with.

13 I do have one other, I guess, provision that  
14 might provide some better reasonable confidence that this  
15 task can be accomplished, and that is that the NRC as well  
16 provide a full-time geotechnical representative to observe,  
17 to witness, to inspect, to take independent measurements  
18 throughout the remedial fixes, and in doing so, provide the  
19 NRC with continuous confidence information, starting with the  
20 dewatering system installation, the monitoring of structures,  
21 preloading of the borated water storage tank, valve pits,  
22 underpinning the auxiliary building and field water valve  
23 pits, and piping systems embedded in the fill.

24 In other words, have the NRC have independent  
25 and continuous observation of the soils settlement remedies.



K13L6

1 I think with that, with Consumers getting  
2 the necessary staff to provide the assurance for the soils  
3 settlement issues, for the Company's corporate executive  
4 to be intimately involved and responsible for the activities,  
5 certainly I would have some better assurance that this  
6 task can be successful.

7 Q (By Mr. Decker) I'd like to ask you this,  
8 Mr. Gallagher. You have stated that in your opinion this  
9 is a very, very difficult task, the remedial work, complex,  
10 and you are concerned as to whether or not it can be done  
11 adequately; but to differentiate, do you have concerns that  
12 errors with significant consequences could go undetected?

13 Let me ask you the question another way.  
14 Suppose they attempt all this and fail; so far no one is  
15 hurt, we don't have a safety problem, public safety problem.  
16 The only way we can get a public safety problem is if a  
17 serious deficiency existed and were undiscovered and un-  
18 corrected.

19 Are you similarly concerned that that might  
20 be the case, that there might be serious deficiencies which  
21 would go undetected?

22 A No, I'm not. I am more concerned that they  
23 make the provisions that they are successful rather than  
24 allow the Company to get into a situation where they are not  
25 successful. Fortunately, a lot of these fixes are sort of

K13L7

1 fail-safe. If they aren't successful, they are generally  
2 observable.

3 MR. DECKER: I don't have any more questions,  
4 Mr. Chairman.

5 CHAIRMAN BECHHOEFER: Those are all the  
6 questions the Board has at this time. Mr. Paton, did you have  
7 any?

8 MR. PATON: I have a few, Mr. Chairman.

9 REDIRECT EXAMINATION

10 BY MR. PATON:

11 Q Mr. Gallagher, the idea you have just presented  
12 to the Board with respect to future suggestions, am I correct  
13 that you have not had an opportunity to discuss those with your  
14 management?

15 A That's correct.

16 Q Judge Decker asked a question, I think two  
17 days ago, about cost/benefit analysis. What would it have  
18 taken, in your opinion, by way of expenditures to prevent the  
19 problem, the soils settlement problem? Do you have an  
20 opinion in that regard?

21 A In 1975, 1976, 1977, in my best estimation,  
22 one 30-thousand-dollar-a-year geotechnical engineer would  
23 have prevented each and every one of these problems on site.

24 Q When you participated in the inspection of May  
25 28 through 22, did you have with you a draft stipulation between

K13L8

1 the Applicant and the Staff?

2 A Yes, I did.

3 Q Okay. What was the purpose in your having  
4 that stipulation with you? And I'm not asking you for the  
5 content of the document. What was the purpose of having it?

6 A The purpose of having it was to utilize the  
7 conditions that had been set forth in that stipulation by  
8 going to those areas and attempting to verify and ascertain  
9 whether or not the facts that were contained in the stipula-  
10 tion were true and accurate and could be relied on.

11 Q Did anyone tell you that the Applicant wanted  
12 you to have the stipulation with you for that purpose?

13 A Yes.

14 Q Did the stipulation in any way affect your conclu-  
15 sions with respect to the inspection?

16 A No, it did not.

17 MR. PATON: That's all I have, Mr. Chairman.

18 CHAIRMAN BECHHOEFER: Mr. Gallagher, let me  
19 just ask you--Mr. Paton just asked you did anyone tell you  
20 that the Applicant wanted you to have the stipulation with  
21 you. You said yes. Was the person who told you someone else  
22 who was connected with the inspection?

23 THE WITNESS: No, it was not.

24 MR. PATON: Mr. Chairman, I don't want-- I have  
25 no problem about who told him.

K13L9

1 Mr. Gallagher, who told you that? Who gave  
2 you that information?

3 THE WITNESS: NRC counsel.

4 CHAIRMAN BECHHOEFER: Well, I just was asking  
5 the question to see if it confirmed some other information  
6 we had gotten.

7 MR. PATON: I understand.

8 CHAIRMAN BECHHOEFER: Mr. Marshall or Ms.  
9 Stamiris, do you have further questions?

10 MS. STAMIRIS: I have a few, but if you have  
11 some, I'd prefer you go first.

12 CHAIRMAN BECHHOEFER: No, we have finished our  
13 questions.

14 MR. MARSHALL: I have no questions.

15 CHAIRMAN BECHHOEFER: This is on the Board's  
16 questioning.

17 MS. STAMIRIS: Well, I have some follow-up  
18 questions that I'd like to ask.

19 RECROSS EXAMINATION

20 BY MS. STAMIRIS:

21 Q On Page 5 of the February 2nd, 1981 report,  
22 I think we have referred to it as 81-01, there are a list of  
23 soil tests that were failing in 1979, and I wonder if you are  
24 also aware of--I believe it was Stamiris Exhibit 2, some  
25 audit reports that I presented when I was cross examining



K13L10

1 Mr. Marguglio, that had to do with soils. Were you ever--  
2 Did you ever receive those audit reports?

3 A I would have to take a look at them.

4 Q Well, that's all right. I just-- Did the  
5 fact that these-- I will just refer to the ones here. I  
6 don't need--

7 A I need to see those in order to answer the  
8 questions.

9 CHAIRMAN BECHHOEFER: What page are you on?

10 MS. STAMIRIS: Page 9 of Report 81-01.

11 CHAIRMAN BECHHOEFER: Yes. I have the report.

12 Q (By Ms. Stamiris) My question is, when you  
13 see-- I'm sorry. You haven't answered the question.

14 A Your question was had I seen the nonconformance  
15 report identified on this order, and the answer is yes. Non-  
16 conformance Report 3041 had been brought to my attention and  
17 is documented on Page 9 of Report 81-01.

18 Q That wasn't really my question. I think--  
19 and I did say that it was-- I asked you if you had received  
20 or seen those other reports. Had you ever been given that  
21 information, the audit reports themselves, that were written  
22 up by Consumers in August of 1980?

23 A I can't recall whether I had.

24 Q Okay.

25 A I don't recall even if it was there in

K13L11

1 August of 1980.

2 Q I don't know how much you have had a chance  
3 to look at those. Do you think it would be correct to charac-  
4 terize that as a series of approximately, oh, I think it was  
5 six audit reports on soil problems that were the same sort  
6 of soil problems that were going on prior to the settlement  
7 of the diesel generator building?

8 A There are different types of soil test  
9 reports that are occurring now. I don't relate them directly  
10 to things that--

11 Q Do they have to do with density and compaction  
12 and procedures and quality assurance, Q listing of soils  
13 areas?

14 A Yes, in that respect they are generally, but  
15 the specific types of deviation had not been, you know,  
16 identified previously.

17 Q Mr. Gallagher, I will ask you a very direct  
18 question. Because of the reasonable assurance position that  
19 the NRC has offered prior to this hearing, do you feel  
20 compelled to defend problems that Consumers has in quality  
21 assurance?

22 A I don't think I have, and, no, I'm not compelled,  
23 and when I do not have to, I won't.

24 Q Do you think that-- What I want to ask  
25 about is the trending program, and perhaps I'm not applying

K13L12

1 the specific program, but the fact that there is such--  
2 What I want to get at is the idea of listing non-conformances,  
3 if they are always listed just as if a problem is always  
4 identified. Does that in itself give you assurance, or do you  
5 hope that-- I mean are you again surprised to see that these  
6 things are going on in 1979 and 1980?

7 A Oh, not really. Not really. Don't forget,  
8 these are a certain number of tests that are failing the  
9 requirements, but there are many, many, many tests that are  
10 taken, and any sort of a testing program will detect and  
11 should detect failing or unacceptable items. That is an inte-  
12 gral part of any quality control system.

13 Q I can understand that then it is a proper  
14 function of a quality control system to pick up failing  
15 density tests, and I don't have mine with me, but in the audit  
16 reports you have in front of you, the problems that relate  
17 more to the earlier problems, in my mind, and I want to ask  
18 you about, are the ones that have to do with Q listing of  
19 certain soil areas.

20 Does that particular problem--and maybe you  
21 are not familiar with where it is in the audit report.

22 A In this audit report that I have?

23 Q Yes.

24 A Could you point me to the right direction?

25 Q I'm sorry. I couldn't. I will withdraw the  
question and ask you about something else then in Report 81-01.

K13L13

1                   We have talked about the reportability of 50.55(e)  
2 problems, and although I believe that there is a potential  
3 set forth in the wording of 55(e), I do also believe that  
4 it is open for interpretation; but in view of the statements  
5 that were made about reporting or on the site--Consumers'  
6 new attitude to err on the side of conservatism, would you  
7 tell me if you think that the situation involving the  
8 identification of the borated water storage tank problem--  
9 First I want to ask, was this borated water storage tank  
10 problem reported to you? Were you the inspector that had this  
11 exchange?

12                   A     No, it was not I. It was reported to the--  
13 It was reported to me while on site, that cracks had developed,  
14 but at that time they had not determined whether it was  
15 reportable under 50.55(e).

16                   It was subsequent to forming the general  
17 terms that they were looking into because of the cracks,  
18 and I might add that in this report, 81.01, we included  
19 the preliminary safety evaluation that the Applicant had  
20 performed a short time before they notified me.

21                   Q     The point I'm trying to make is that they  
22 didn't come forward with this until the inspector came on  
23 site--or I don't know whether the inspector asked for it  
24 first, but the problem--it was obviously a problem they had  
25 already identified, because they had a report already written



K13L14

1 up on it, and my understanding of how I read this is that--  
2 Well, I should perhaps read it into the record.

3 A Ms. Stamiris, the report says that at that  
4 point in time it was not reportable and that they had certain  
5 plans on further investigation. Only after completing  
6 those steps were they able to determine that it was in fact  
7 reportable, and then reported it to us precisely the way we  
8 require them to.

9 Q Do you think it would have been better judgment,  
10 or would have shown a more conservative judgment had they  
11 reported this to you before the inspector came on site,  
12 because of its potential for affecting something later if it was  
13 not discovered?

14 A I don't think it was a matter of being--having  
15 to be on site for them to report to us. I just happened to be  
16 on site when they--

17 Q Do you think it was just a coincidence you  
18 were there the day they decided to turn that report--

19 A As a matter of fact, the timing was just that.

20 Q When you talked about-- When you talk straight-  
21 forwardly about your reservations about the reasonable assurance  
22 judgment, you mentioned several things. Not directly, but  
23 indirectly, the line of questioning related to some improve-  
24 ments that perhaps would help, and the first one had to do  
25 with more well-rounded qualifications of people doing the work.

K13L15

1 The second one had to do with an idea that perhaps Mr.  
2 Selby would take some kind of a public accounting or some  
3 kind of objective accounting for the solis problem. I want  
4 to ask you about that one.

5 Who do you think is-- Do you believe that  
6 your suggestion would apply equally as well to Mr. Cook  
7 if the objective points that you mentioned were somehow reported  
8 by Mr. Cook?

9 CHAIRMAN BECHHOEFER: We asked that. I think  
10 we asked that same question. Judge Decker asked that same  
11 question.

12 MR. ZAMARIN: That's right; and he answered  
13 it.

14 CHAIRMAN BECHHOEFER: That's right.

15 Q (By Ms. Stamiris) The other thing that you  
16 mentioned was--the third thing was having to do with a  
17 full-time---sometime of full-time geotechnical person from  
18 the NRC to inspect the difficult remediation work. It seem  
19 that your reasonable assurance rests not with Consumers'  
20 current quality assurance organization in light of those  
21 recommendations that you made, but perhaps again with--

22 CHAIRMAN BECHHOEFER: Is this a question?

23 Q (By Ms. Stamiris) Does it rest--does your  
24 reasonable assurance rest with the NRC?

25 MR. ZAMARIN: Excuse me. I will object to two

K13L16

1 things: One is the form of the question. I don't know  
2 if the other people know what she means by "rest with the  
3 NRC." I object to the characterization of the testimony,  
4 and my recollection might be faulty, but I thought those items  
5 he indicated were in response to a question fo things he  
6 would like to see done rather than things which would provide  
7 a reasonable assurance.

8 I think he responded to those questions in saying  
9 that he didn't know what reasonable assurance meant.

10 I think it is a mischaracterization of the  
11 testimony.

12 CHAIRMAN BECHHOEFER: I also don't think he is  
13 the one that has made the reasonable assurance finding  
14 for the Staff at this point.

15 MS. STAMIRIS: I was asking him about his  
16 own personal reasonable assurance.

17 MR. ZAMARIN: Then it is irrelevant, and I  
18 would object as to relevancy.

19 MR. PATON: I join in the objection.

20 The last one was "Does reasonable assurance rest with the NRC".  
21 I think I join in the objection made by the Applicant, and I  
22 don't really understand it.

23 CHAIRMAN BECHHOEFER: I think that we better  
24 rephrase the question. I think as asked, it is objectionable;  
25 but what I think Ms. Stamiris is driving at--correct me if I'm

K13L17

1 wrong--but if we were to make a reasonable assurance finding,  
2 would you think--or would you recommend that any such finding  
3 that we made be premised upon the additional NRC participation  
4 which you mentioned in, I guess, the form of the geotechnical  
5 engineer?

6 THE WITNESS: Let me try to respond this  
7 way. No. 1, I wholly support Mr. Keppler's determination  
8 of reasonable assurance only because, No. 1, he is the most  
9 experienced person to make that determination; and you are  
10 correct, Chairman Bechhoefer, in saying that that perhaps is  
11 not my position here to do that. I was responding to your  
12 question whether I had any reservations and I stated that I  
13 did, and for what reasons, and that what things might provide  
14 some better confidence that reasonable assurance can be  
15 accomplished, and it's the Board's judgment, as I understand,  
16 to make that decision.

17 It seems like you are asking me to put some  
18 provisional acceptance on your decision. I don't see that  
19 is being my place.

20 CHAIRMAN BECHHOEFER: Well, I was trying to  
21 rephrase in terms of what decision we have to make, Ms.  
22 Stamiris' question.

23 MS. STAMIRIS: I might add that the reason  
24 I ask is because I feel like I would like to have Mr. Gallagher,  
25 if he feels he has given his personal opinion, which is a sort



1 of reasonable assurance that things are okay now, you know,  
2 in this prior testimony--

3 THE WITNESS: As I have said in my testimony,  
4 I think there is a managerial attitude consistent with what  
5 should be in quality assurance. I support Mr. Keppler's  
6 conclusions entirely, but, yes, I would like to see some  
7 other things to be included.

8 MS. STAMIRIS: I understand that. I just  
9 want to say that I would not have asked if it had not been  
10 asked--it had been accepted in one positive way before, so  
11 I wanted to be able to approach it myself.

12 CHAIRMAN BECHHOEFER: I do think he's answered  
13 the question.

14 MS. STAMIRIS: I don't have any more questions.

15 CHAIRMAN BECHHOEFER: Mr. Zamarin.

16 MR. ZAMARIN: Yes, I do.

17 CHAIRMAN BECHHOEFER: I knew you would.

18 RE-CROSS EXAMINATION

19 BY MR. ZAMARIN:

20 Q I'd like to refer you to the April 9th--at  
21 least the document is dated April 9th, and has been referred  
22 to as Report No. 79-06, on Page 5 thereof. You will recall  
23 this is the document Chairman Bechhoefer asked you some  
24 questions about.

25 CHAIRMAN BECHHOEFER: I think it is Attachment 8

K13L19

1 to Stamiris Exhibit 3.

2 MR. ZAMARIN: Unfortunately I didn't catch  
3 that designation. All right. Attachment 8 to Stamiris  
4 Exhibit 3.

5 Q (By Mr. Zamarin) Have you located that?

6 A Paragraph 4?

7 Q You are anticipating me, but you are doing it  
8 correctly. Yes, Paragraph 4.

9 With regard to your testimony that the preload  
10 of the diesel generator building could have affected the  
11 profiles of the underground piping, you are aware, are you  
12 not, that Consumers Power Company had committed to profiling  
13 the pipes both before and after the preload program, in  
14 order to make sure that no problem resulted on account of that,  
15 are you not?

16 A Yes, I am.

17 (Continued on next page.)

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1 Q On page 6, with regard to paragraph 5, I have  
2 a bit of confusion.

3 I understand that paragraph to say that the  
4 strain gauge measurements were being monitored in the diesel  
5 generator building. Is that correct?

6 A That is correct. I misstated before. They  
7 were on the diesel generator building. I stated here that  
8 they were not on the service water structure. That's correct?

9 Q And the preload of the diesel generator  
10 building did not have any effect on the service water  
11 structure, did it?

12 A Obviously not.

13 Q So in paragraph 5, there's really no indication  
14 there that they're not doing the strain gauge monitoring, is  
15 that correct?

16 A They were collecting data from the diesel  
17 generator building. I believe the question was whether or not  
18 I thought that the surcharge might affect the structure.

19 Q "Might affect the structure," referring to the  
20 diesel generator building?

21 A Correct.

22 Q But not the service water intake structure?

23 A That's correct.

24 MR. MARIN: Quite frankly, I had some  
25 confusion about your question. I don't know whether I cleared

1 it up but--

2 CHAIRMAN BECHHOEFER: I thought I had asked  
3 him if the remedial actions planned for the service water  
4 intake structure required that kind of monitoring, and the  
5 witness answered the question.

6 Q. (By Mr. Zamarin) In fact in light of the fact  
7 that the profiling of the underground piping, both prior to  
8 and subsequent to the diesel generator building had been  
9 committed to, and the fact that strain gauge measurements with  
10 regard to the preloaded structure were being taken, would that  
11 indicate to you foresight with regard to the data to be  
12 collected with regard to those two areas?

13 A. Yes.

14 Q. The American National Standards Institute is  
15 comprised of committees which are representative of collections  
16 of supposed experts in certain areas, in order to derive  
17 industry-wide standards for particular disciplines. Would you  
18 agree with that?

19 A. That's correct.

20 Q. And have you ever had an first-hand experience  
21 by service on an ANSI committee?

22 A. No, I haven't.

23 Q. Would you agree that generally a member of a  
24 working ANSI committee would be conversant, if not an expert,  
25 in the area in which that committee operates?



1           A.    I would think they should be experienced with  
2 the provisions of the standard, yes.

3           Q.    And aren't, in fact, those committees comprised  
4 of people who have demonstrated expertise in the area?

5           A.    Expertise in what area?

6           Q.    Expertise in the area with which the committee  
7 promulgates standards.

8           A.    That's not always the case. Companies appoint  
9 people to those standards committees so that they can be  
10 involved in the development of standards. Not necessarily  
11 are they expert in those areas.

12          Q.    The NRC has a representative on the standards  
13 groups, do they not?

14          A.    Yes, they do.

15          Q.    Have you ever asked the standards chairman for  
16 the NRC to do anything about this waiver provision of ANSI N  
17 5.2.6?

18          A.    Yes, I have.

19          Q.    And what did he tell you?

20          A.    The NRC has only one vote on that committee, and,  
21 yes, they have attempted at various times to do something  
22 about it.

23          Q.    I take it that when you say "attempted," that  
24 it was the judgment of the committee that it shouldn't be  
25 changed; is that right?

1 A. Perhaps.

2 Q. Don't say "perhaps." Tell me what you mean  
3 by "They attempted to change it."

4 A. Well, it's been discussed, debated, and at  
5 least further consideration given to modifying it.

6 Q. But it hasn't been changed?

7 A. Not as of yet.

8 Q. And you referred earlier, I believe, to, when  
9 I had asked you generally about ANSI Standards, you referred  
10 to, I believe, N45.2.6, and was what you had in mind this  
11 post-tensioning personnel issue?

12 A. I believe so.

13 Q. Okay. So we weren't talking--I just want to  
14 make sure that there's no impression that you were referring  
15 to two separate incidents.

16 A. No. Specifically with the post-tensioning  
17 inspection personnel.

18 Q. And that problem--if I can refer to it as a  
19 problem--or "that situation" is a better way--that situation  
20 centered around a judgment by Consumers Power that the waiver  
21 provision applied and was met, and your contrary judgment that  
22 the training was not sufficient to satisfy the waiver of the  
23 education and experience requirements, is that right?

24 A. That's correct.

25 Q. With regard to the lean concrete Q listing matter

1 that Chairman Bechhoefer inquired about, would you agree that  
2 the design engineer, is an individual who is in the best  
3 position to determine the necessity for Q-listing of a  
4 material in order to meet the design criteria that he has  
5 established?

6 A. He's certainly in a good position to make that  
7 determination.

8 Q. And do you recall that during the course of  
9 your discussions with Consumers' QA personnel about this  
10 Q-listing of concrete, that, in fact, the design engineer had  
11 been consulted and you had been advised that he had expressed  
12 the opinion that because of the properties of concrete and  
13 strength of concrete, that it was not necessary in order to  
14 satisfy the design criteria, to have that a Q-listed item when  
15 it was being used in lieu of soils?

16 A. Yes, I have. And in my estimation, that was  
17 an incorrect and poor quality decision on his part as a  
18 responsible design engineer in providing and categorizing those  
19 items that, by regulatory requirements, ought to be included  
20 within the quality assurance system.

21 Q. But there was a difference, then, in judgment  
22 between two engineers, is that right?

23 A. You can say that, yes. There was also a  
24 clear regulatory requirement to include those items that can  
25 affect safety to be included and incorporated in the quality

1 assurance program.

2           There is also another point that if an item  
3 is identified as non-Q at the Midland facility, and is not  
4 incorporated in the quality assurance system, then it is beyond  
5 the jurisdiction of the NRC inspection program, and I wasn't  
6 about to see that happen in this case, specifically since we  
7 had a problem in the soils area, and now here is a provision  
8 being included in the specification that specifically says  
9 non-Q material can be replaced for Q material, and that it  
10 shall be on non-Q workmanship--whatever the hell that means.

11           Q     So I take it that what you're saying is that  
12 your judgment, then, was based at least in good part upon  
13 a regulatory judgment, rather than a design engineering basis  
14 judgment as the design engineer's was?

15           A     In addition to a regulatory judgment, common  
16 sense judgment.

17           Q     You haven't answered, really, my question. I  
18 appreciate that answer. However, would you agree that your  
19 judgment then was based more upon a regulatory-based judgment  
20 than on a design-basis judgment, as was the design engineer's?

21           A     That's correct.

22           Q     You indicated some strong concerns about being  
23 able to place soils and not have problems occur. Are you  
24 aware of any soils problems on any other nuclear sites?

25           A     There have been soils problems at other nuclear



1 sites, to a much different degree, however.

2 Q But there have been, in fact, problems on other  
3 nuclear sites with something as simple as soils, haven't  
4 there?

5 A To a much lesser extent. The degree of the  
6 problem is what's important here. The extent of what has  
7 occurred at the Midland facility is unprecedented at any  
8 other facility.

9 Q The point remains, however, that other people  
10 have had some problems with something as simple as soils, or  
11 haven't they?

12 A Yes, of course.

13 Q In fact, a recent bulletin has been issued  
14 covering not only Midland but other plants as well, is that  
15 right?

16 A I wrote the bulletin.

17 Q So the answer is that, yes, a recent bulletin  
18 has been issued with regard to soils for not only this plant,  
19 but others?

20 A Excuse me. It was a circular; Inspection and  
21 Enforcement Circular.

22 Q To someone like me, they're the same. I'm  
23 sorry.

24 A It has a different regulatory posture.

25 Q So your answer is, yes, in fact there has been

1 one that has been recently circulated with regard to soils  
2 at Midland and other sites; is that correct?

3           A. That's correct. And the reason for issuing  
4 that circular is to preclude circumstances like this from  
5 occurring in the future.

6           Q. You answered a question with regard to the  
7 finding of no items of non-compliance, in Report 78-12, and  
8 you indicated that the cover letter was a boiler plate, and  
9 I think you said that you simply didn't catch the mistake on  
10 the cover letter.

11                   I notice it's also in the body of the report.  
12 Do you agree with that?

13           A. It's throughout the report. That's correct.

14           Q. So that statement doesn't just appear on the  
15 cover letter, right?

16           A. That's correct.

17           Q. And rather than that being a typing or a  
18 proofreading problem, isn't it a fact that that simply  
19 represented an error in judgment as to categorization on the  
20 non-compliance at the time?

21           A. Precisely. I remind you and the Board that the  
22 purpose of that initial assessment was merely to identify to  
23 management information so that they can proceed with decisions  
24 that they felt were appropriate, based on those facts. And  
25 there was no attempt to categorize or classify the extent of

1 failure to follow the regulatory requirements at that point  
2 in time, with the full intent that a much more in-depth  
3 and comprehensive investigation would follow, which in fact  
4 did, and which in fact we identified those violations with  
5 regulatory requirements.

6 Q The fact is, however, that that report said  
7 what you intended for it to say at that time, is that right?

8 A That's correct.

9 Q You've made errors, I take it, in the past,  
10 in your duties as a reactor inspector civil engineer for  
11 Region III, I take it?

12 A Lots of them.

13 Q You've made errors in judgment with regard to  
14 items which you might have listed as a non-compliance, which  
15 you later withdrew; is that correct?

16 A There's been a couple of those.

17 Q Do you then-- And that's not unusual, I take  
18 it, within the NRC; I mean everybody makes those kinds of  
19 mistakes on occasion, I would assume?

20 A I assume.

21 Q Do you believe that, in light of that, that  
22 someone for example like Mr. Denton ought to be held account-  
23 able in a mismanagement type of analysis?

24 A They are held accountable to the agency.

25 Q Well. I'm talking about being held accountable

1 in the same kind of a way that we were talking about Mr.  
2 Selby.

3 A. I think you're comparing apples and oranges  
4 here. You're talking, one, about a failure to identify an  
5 item of non-compliance or withdrawing an item of non-compliance,  
6 and on the other hand, you're talking about a \$27 million-plus  
7 fiasco.

8 There are no comparisons. You're talking about  
9 a plant that's 70 percent complete, that is crippled. You're  
10 not talking about an insignificant error in an inspection  
11 report.

12 Q. Actually, Mr. Gallagher, what we're talking  
13 about, I think, is a reasoned business judgment, a managerial  
14 judgment by the chief executive officer of a large utility,  
15 who has had years of experience in that, versus the judgment  
16 of a reactor inspector civil engineer.

17 I appreciate the fact that you note there are  
18 differences, because in fact there are. And it seems to me  
19 that simply stating that the chief executive officer ought to  
20 be held accountable doesn't take into account or consideration  
21 how large companies are run. And I wonder if you are really  
22 familiar with that?

23 MR. PATON: I object, Mr. Chairman. Mr.  
24 Gallagher was asked if he had any ideas which would be helpful  
25 to the Board, and because he made a suggestion, he's now



1 attempting to turn this around and get Mr. Denton involved.

2 I don't think this Board is really concerned  
3 with whether Mr. Denton should be involved because Mr.  
4 Gallagher once made a mistake. I just don't think he should  
5 be allowed to continue with this discussion.

6 MR. ZAMARIN: If I may respond, that was  
7 illustrative. In fact, that question was answered. And I'm  
8 not criticizing Mr. Gallagher for what he believes he would  
9 like to see. I think he sincerely believes that, and I  
10 certainly wouldn't criticize that.

11 I think the question is really whether there  
12 is a basis beyond that being something that he'd like to  
13 see, and that is whether, in fact, it is a reasoned,  
14 reasonable basis for that. I think he indicated he came  
15 up with this last night.

16 It really depends on the weight that the  
17 Board would intend to attach to that statement. If it's  
18 simply taken as something he'd like to see, fine. If it's  
19 going to be considered a proposal, I think it needs to be  
20 explored. And that may be unfair to do that.

21 DR. COWAN: I think he can answer the question,  
22 but I, for one, understood the basis on which he made his  
23 suggestion as just his own personal suggestion that he had  
24 given a long period of time of consideration to.

25 CHAIRMAN BECHHOEFER: I think he mentioned

1 management involvement as-- Anyway, I think he may answer the  
2 question, which is, as I understand it, whether he took into  
3 account the way large companies operate when he made that  
4 recommendation.

5 I think he could answer that.

6 THE WITNESS: I considered the importance of  
7 the project to this Company, and I respect the position that  
8 the chief executive officer holds. And based on those two,  
9 it would seem that he should have some direct involvement in  
10 turning this project around.

11 So, yes, I did take into account what that  
12 officer of the Company has to do in order to come to this  
13 proposal.

14 Q (By Mr. Zamarin) The question really had to  
15 do with whether you took into account the way large corporations  
16 or companies are structured and work, and had analyzed that  
17 in coming to that proposal.

18 A I have not analyzed every large structure of  
19 how the Company works. I have a reasonable understanding of  
20 the organization of Consumers Power Company based on my  
21 involvement with the project. I've seen the organization  
22 charts, and I know that based on discussions with Mr. Keppler  
23 that Mr. Selby is concerned and wants to be directly involved.

24 Q Have you ever been a part of management of a  
25 large company?

1 MR. PATON: I object, Mr. Chairman.

2 Mr. Chairman, if we are going to discuss with  
3 Mr. Gallagher how large companies work--I don't know what that  
4 phrase means, but I don't see any benefit in pursuing this.  
5 I think Mr. Gallagher has indicated his familiarity with  
6 the organization, and why he made the suggestion.

7 CHAIRMAN BECHHOEFER: We'll overrule the  
8 objection. The witness may answer.

9 THE WITNESS: No, I have not.

10 Q. (By Mr. Zamarin) Do you know of anyone else  
11 within the NRC who agrees with your feeling that the NRC  
12 should provide a full-time geotech individual to observe,  
13 witness and inspect throughout the remedial fixes?

14 A. Yes, I do.

15 Q. And who would that be?

16 A. Joe Kane. Perhaps Lyman Heller.

17 (Continued on following page.)

end 14 18

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24

1 Q (By Mr. Zamarin) Have you discussed that at  
2 all with your management?

3 A To some extent, yes.

4 Q And to your knowledge, does your management,  
5 that being Region III--when I say "your management", you  
6 now have a different management than with most of this--  
7 I'm sorry.

8 I should say, have you discussed this with the  
9 management of Region III?

10 A I discussed that briefly with Region III  
11 supervision.

12 Q Do you know what position they have with regard  
13 to this full-time NRC geotech?

14 A I think you heard Cordell Williams and Mr.  
15 Keppler both yesterday say that they were aware of the needs  
16 for the project, and that they would provide adequate coverage.  
17 I'm simply making an additional proposal, and would hope  
18 that it would be in their interests as well.

19 Q Do you know whether they agree that this full-  
20 time geotech NRC individual would be required, or should be  
21 there?

22 A I don't believe they have made any final conclu-  
23 sion as of yet.

24 Q All right. You indicated that you had a copy  
25 of a proposed--or some kind of a stipulation with you when



K15L2

1 you conducted the investigation on May 18 to May 22, 1981,  
2 to find out if the items there were true and accurate and  
3 could be relied on.

4 Did you find out whether they were true and  
5 accurate and could be relied on?

6 A I took a few of the items.

7 Q And did you find them to be true and accurate  
8 and such that they could be relied on?

9 A One I did not. It regarded Criterion 16,  
10 corrective action with respect to the trend analysis program,  
11 and that is identified in Report 81-12.

12 In that respect, having a stipulation was  
13 perfect, because you sent me right to the spot where certain  
14 weaknesses existed.

15 Q And you indicated that NRC counsel--

16 A And I appreciate that.

17 Q And you indicated that NRC-- Rather than  
18 it being gratuitous, let me make sure that it is fully  
19 appreciated by everyone here.

20 When NRC counsel told you that it was Appli-  
21 cant's desire--and I suppose by "Applicant" he might be  
22 referring to Applicant's counsel--that you have such a  
23 proposed document, did he tell you it was for the purpose  
24 of making sure, before anything was finally proposed, that  
25 every item was absolutely true and accurate and could be

K15L3

1     relied on?

2             A     That's right.

3             Q     Did he also tell you that that document was  
4     something that--up until that point it was something that  
5     had simply been put together by a group of lawyers, and that  
6     we really wanted somebody who knew something about it to  
7     take a hard look at it?

8             A     No, he didn't tell me that.

9             Q     Well, that's the fact.

10            I just have a teeny bit more. This time I  
11     will stick to my word and it will be teeny.

12            Do you have any evidence at all that the  
13     corporate vice president could not satisfy the requirements  
14     that you have described in your scenario that you would like  
15     to see Mr. Selby fulfill?

16            A     Not really. I was just merely going to the  
17     top of the ladder to impress upon the Company that it was  
18     an important provision that I brought to the Board's  
19     attention.

20            MR. ZAMARIN: Thank you. I have nothing  
21     further.

22            CHAIRMAN BECHHOEFER: The Board has no further  
23     questions.

24            Mr. Paton, Do you have any further questions  
25     at this time?

K15L4

1 MR. PATON: No, I have no further questions.

2 CHAIRMAN BECHHOEFER: How about you?

3 MS. STAMIRIS: I hate to say that I do.

4 CHAIRMAN BECHHOEFER: Only based on Mr.  
5 Zamarin's--

6 MS. STAMIRIS: Yes, definitely only based on  
7 that, and believe me, if there was anybody else I could ask  
8 this question of, I would.

9 MR. ZAMARIN: She said that in the singular.

10 FURTHER RECROSS EXAMINATION

11 BY MS. STAMIRIS:

12 Q I will try and ask it broadly first, and if  
13 that works, it will save time.

14 Mr. Gallagher, on Page 9 of Stamiris Exhibit 3,  
15 in the question and answer portion of your testimony, there  
16 are listings of findings from Report 78-20; is that correct?

17 A Yes.

18 Q Am I correct in assuming that these were the  
19 bases for the December 6th order?

20 A They were one of the bases for the December 6th  
21 order.

22 MR. ZAMARIN: That one got out. I don't see  
23 that as being--

24 CHAIRMAN BECHHOEFER: That doesn't relate to  
25 Mr. Zamarin's questions.

K15L5

1 MS. STAMIRIS: It is going to.

2 Q (By Ms. Stamiris) What I want to know is--  
3 I started to approach this this morning. Would you agree  
4 that-- Let's go down the list very quickly. That Item A  
5 was identified--

6 CHAIRMAN BECHHOEFER: I don't think you can do  
7 this at this time.

8 MS. STAMIRIS: Why?

9 CHAIRMAN BECHHOEFER: Because it doesn't relate  
10 to Mr. Zamarin's most recent questioning.

11 MS. STAMIRIS: That's all I wanted-- He was--  
12 I want to ask Mr. Gallagher, but I can't ask him unless I set  
13 forth something first. I want to ask why these things were  
14 not reported in October.

15 CHAIRMAN BECHHOEFER: There was no question  
16 about reporting.

17 MS. STAMIRIS: All right. The question was  
18 whether--

19 Q (By Ms. Stamiris) Are you saying that it was  
20 just a difference in identification? Maybe it is just an  
21 honest misunderstanding. When you responded to Mr. Gallagher's  
22 question--I mean Mr. Zamarin's question that had to do with  
23 Report 78-12, whether that meant what you really meant it  
24 to mean, and the boiler plate paragraph, and that discussion--  
25 Do you know what I'm referring to now?



K15L6

1 Q Yes.

2 A Okay. Is it to be understood then that the  
3 facts were identified in October, but they just had not been  
4 given--they had not been given the criterion and label?

5 A I think I explained that too at least once,  
6 perhaps twice.

7 MR. ZAMARIN: Twice that's been asked and  
8 answered.

9 THE WITNESS: Do I need to explain it any  
10 further, Chairman Bechhoefer?

11 CHAIRMAN BECHHOEFER: I don't think so.  
12 He explained it in response to my question, and he repeated it  
13 in response to yours. I don't think that's-- I think that  
14 question has been asked and answered.

15 MS. STAMIRIS: Okay.

16 Q (By Ms. Stamiris) Do you think that if these  
17 items had been given their identification as far as what  
18 criterion, or anything like that, do you think that would have  
19 helped resolve the issue any sooner?

20 A No. We waited three years already. You think  
21 just the fact that we applied the quality assurance deficiency  
22 to Report 78-12 would have sped this process up any faster?  
23 Forget it.

24 Q I'm trying to come to terms with, if all these  
25 facts were known, are you concerned at how long it took from

K15L7

1 your October initial investigation report in which the basic  
2 core of factual information existed-- Are you concerned  
3 that it took from October 1978 until December 1979, and  
4 all the remediation that took place in between, of course,  
5 is what I'm focusing on, that it had gone that far before  
6 the order came out?

7 MR. ZAMARIN: Again I think that's just way  
8 outside any of the recross. I object.

9 CHAIRMAN BECHHOEFER: I think that's outside  
10 the scope of what you can do on recross.

11 MS. STAMIRIS: Okay.

12 CHAIRMAN BECHHOEFER: Before we excuse the  
13 witness, perhaps we should resolve what happens to Stamiris  
14 Exhibit 3 for identification.

15 I don't think we should release the witness  
16 without this.

17 MR. ZAMARIN: I don't think we should release  
18 the witness either, but we have to.

19 CHAIRMAN BECHHOEFER: Ms. Stamiris, is it your  
20 position still that this whole exhibit should be admitted into  
21 evidence, or would you agree that only the reports--and  
22 then I want to ask the other parties what they think about  
23 the attachments, at least the ones that aren't in evidence  
24 already.

25 MS. STAMIRIS: I would like the whole thing to

K15L8

1 go in as evidence, including the question and answer  
2 testimony at the beginning.

3 CHAIRMAN BECHHOEFER: My inquiry now is  
4 do the parties have any objection to that? I'm not sure  
5 what the utility of the top testimony is, but do you object  
6 to that?

7 I view the attachments and the investigative  
8 reports, inspection reports and other documents, as somewhat  
9 different.

10 MR. ZAMARIN: Yes. The delegation from this  
11 side of the room would maintain the position we have taken  
12 from the beginning, and that is that we do not object to the  
13 attachments, and we do object to the question and answer  
14 portion which has been referred to as his pre-December 6th,  
15 1979 testimony.

16 There is simply no basis for admission of  
17 that document. There was ample opportunity to the extent  
18 that anyone felt that if there was a basis for impeachment,  
19 or any other proper purpose for such a document, to be asked  
20 upon it. That evidence is in the record, and it is just  
21 simply improper to include in the record as an exhibit that  
22 testimony which was not presented as direct testimony.

23 We have no objection to the exhibits--or the  
24 attachments, excuse me.

25 CHAIRMAN BECHHOEFER: What about the Staff?

K15L9

1 MR. PATON: We have no objection to any portion  
2 of Stamiris Exhibit 3 coming in. I'm not offering any portion  
3 of it, but I don't object to any portion of it coming in.

4 MS. STAMIRIS: I might state that my reason  
5 for wanting in the question and answers--

6 CHAIRMAN BECHHOEFER: That's the only part  
7 that's--

8 MS. STAMIRIS: Yes. That's in question.

9 CHAIRMAN BECHHOEFER: --that's in question.

10 MS. STAMIRIS: Because I think it is important  
11 to go into the record for a complete understanding of--as it  
12 relates to the quality assurance stipulation, and the whole  
13 thing, that I think we all realize now how interconnected it  
14 is.

15 I think it is important to show this is what  
16 the NRC had prepared and then decided not to submit, and I  
17 just think for reasons of fully understanding this whole  
18 proceeding, it should go in complete.

19 MR. ZAMARIN: I think Ms. Stamiris' statement  
20 and the purpose why she feels it should go in was to see what  
21 they had prepared and then didn't decide to go forward on  
22 the issue for the basis of the order is no longer really con-  
23 tested, and there is testimony to the fact it ought not to go  
24 in, and if it does go in, then it would be necessary to  
25 cross examine Mr. Gallagher on every item in here, and he has



K15L10

1 already presumably been cross examined on those items which  
2 are pertinent, at least as determined by this Board, and  
3 I thought that was exhaustive--and the parties--and those  
4 items are in. There is no need now to put in some 30-odd  
5 pages in which would require cross examination on all of it.

6 I think the pertinent stuff has been cross  
7 examined on, and that's in.

8 CHAIRMAN BECHHOEFER: The Board has decided  
9 not to admit the top testimony, but to admit the other--well,  
10 to admit all of the other attachments, but a few of them are  
11 already admitted.

12 We have done this because we have not been  
13 shown how this could usefully add to the record, and the  
14 questions, of course, concerning this, which are in the record,  
15 stand. The answers are part of the record.

16 We do not think that there's been any showing  
17 why this testimony, which wasn't given, has any independent  
18 utility in the document. So we will accept the attachments.

19 (The document referred to,  
20 previously marked for identifi-  
21 cation as Stamiris Exhibit No.  
22 3 for identification, except  
23 the question and answer testimony  
24 contained therein, was received  
25 in evidence.)

K15L11

1 MR. PATON: Mr. Chairman, before we get to it,  
2 could we discuss tomorrow's schedule?

3 CHAIRMAN BECHHOEFER: We better do this quickly.  
4 I'm told that somebody has the room reserved for 6:30,  
5 which was five minutes ago.

6 MR. ZAMARIN: My understanding is we are  
7 going to start with Jim Cook.

8 MR. PATON: All right.

9 MR. ZAMARIN: At 9:00 a.m.

10 CHAIRMAN BECHHOEFER: We will continue our  
11 Cook's tour of the Midland facility at 9:00 a.m. tomorrow.

12 (Whereupon, at 6:35 o'clock p.m., the hearing  
13 was recessed, to reconvene at 9:00 o'clock a.m., Thursday,  
14 July 16, 1981.)

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This is to certify that the attached proceedings before the  
Nuclear Regulatory Commission, Atomic Safety and Licensing Board

in the matter of:

Date of Proceeding: July 15, 1981

Docket Number: 50-329 OL & OM - 50-330 OL & OM

Place of Proceeding: Midland Michigan

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

William E. Landon  
Kathryn Powers

Official Reporter (Typed)

*Kathryn Powers*  
*W. E. Landon*

Official Reporter (Signature)