

ORIGINAL
OFFICIAL TRANSCRIPT OF PROCEEDINGS

Agency: Nuclear Regulatory Commission

Title: Alabama Power Company (Joseph
M. Farley Nuclear Plant, Units
1 and 2)

Docket No. 50-348-CivP, 50-364-CivP
ASLBP No. 91-626-02-Civ1

LOCATION: Bethesda, Maryland

DATE: Tuesday, February 11, 1992

PAGES: 1 - 225

TR-01
o/i

ANN RILEY & ASSOCIATES, LTD.

1612 K & N.W., Suite 300
Washington, D.C. 20006
(202) 293-3950

120001

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

- - - - -x

In the Matter of: : Docket No. 50-348-CivP
ALABAMA POWER COMPANY : : 50-364-CivP
[Joseph M. Farley Nuclear Plant, : ASLBP No. 91-026-02-Civ1
Units 1 and 2] :

- - - - -x

Nuclear Regulatory Commission
5th Floor Hearing Room
East-West Towers
4350 East West Highway
Bethesda, Maryland
Tuesday, February 11, 1992

The above-entitled matter came on for hearing,
pursuant to notice, at 9:01 o'clock a.m.

BEFORE: THE HONORABLE G. PAUL BOLLWERK III, Chairman of
Atomic Safety and Licensing Board
THE HONORABLE DR. JAMES H. CARPENTER, Member of
Atomic Safety and Licensing Board
THE HONORABLE DR. PETER A. MORRIS, Member of the
Atomic Safety and Licensing Board

1 APPEARANCES:

2

3

On behalf of the Alabama Power Company:

4

5

BALCH & BINGHAM

6

by: JAMES H. MILLER II, ESQUIRE

7

JAMES H. HANCOCK JR., ESQUIRE

8

1710 North Sixth Avenue

9

Post Office Box 306

10

Birmingham, Alabama 35201

11

12

WINSTON & STRAWN

13

by: DAVID A. REPKA, ESQUIRE

14

1400 L Street, Northwest

15

Washington, D.C. 20005-3502

16

17

NUCLEAR REGULATORY COMMISSION, OFFICE OF THE

18

EXECUTIVE LEGAL DIRECTOR

19

by: RICHARD G. BACHMAN, ESQUIRE

20

EUGENE J. HOLLER, ESQUIRE

21

ROBERT M. WEISMANN, ESQUIRE

22

Nuclear Regulatory Commission

23

Washington, D.C. 20555

24

25

1 [continued next page]

2

3 On behalf of Bechtel Corporation:

4

5 CHRISTINE E. CLEARWATER, ESQUIRE

6 Bechtel Corporation

7 9801 Washingtonian Boulevard

8 Gaithersburg, Maryland 20878-5356

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

| Witness | Direct | Cross | Redirect | Recross |
|----------------|--------|-------|----------|---------|
| James Luehman | 23 | 27 | | |
| Uldis Potapovs | 23 | 27 | | |
| Harold Walker | 23 | 27 | | |

E X H I B I T S

| Exhibit Number | Identified | Received |
|-------------------------|------------|----------|
| Staff Exhibit 1 - 56 | 28 | |
| APCo Exhibit 10, 11 | 86 | |
| APCo Exhibit 83 | 103 | |
| APCo Exhibit 84 | 108 | |
| APCo Exhibit 85 | 119 | |
| APCo Exhibit 12 | 138 | |
| APCo Exhibit 14, 18, 19 | 163 | |
| APCo Exhibit 21 | 173 | |
| APCo Exhibit 16 | 181 | |
| APCo Exhibit 20 | 183 | |

| | |
|--|----|
| OPENING STATEMENT BY COUNSEL FOR THE NRC STAFF | 10 |
| OPENING STATEMENT BY COUNSEL FOR ALABAMA POWER COMPANY | 13 |

P R O C E E D I N G S

[9:01 a.m.]

JUDGE BOLLWERK: Good morning.

We are here today to begin an evidentiary hearing in this Nuclear Regulatory Commission adjudicatory proceeding convened at the request of Alabama Power Company.

In this proceeding, Alabama Power Company challenges the validity of a \$450,000 civil penalty imposed upon Alabama Power by the NRC staff.

That civil penalty was levied for the utility's alleged noncompliance with section 50.49 of Title X of the Code of Federal Regulations at the two reactor units at Alabama Power's Farley nuclear plant.

Section 50.49 requires that nuclear facility electrical equipment important to safety must be qualified as able to remain functional during the harsh environmental conditions that will exist during and after a design-basis accident.

This three-member Atomic Safety and Licensing Board has been appointed to conduct this proceeding.

To my left is Dr. James Carpenter. Dr. Carpenter holds a Doctorate in chemistry, serves as an environmental scientist on a full-time basis with the Atomic Safety and Licensing Board panel.

On my right is Dr. Peter Morris. Dr. Morris, who

1 is a physicist, formerly was a full-time member of the
2 Licensing Board panel and now serves in a part-time
3 capacity.

4 I am Paul Bollwerk. I am a lawyer and a full-time
5 member of the Licensing Board panel, and I serve as the
6 Chairman of this Board.

7 As the parties are aware, I was named as Chairman
8 recently to replace Administrative Judge John Frye when he
9 left the Licensing Board panel to accept an appointment as
10 an Administrative Law Judge with the Occupational Safety and
11 Health Review Commission.

12 At this point, I would ask that counsel for the
13 parties introduce themselves for the record, if they would.

14 MR. BACHMANN: Chairmar Bollwerk, Judge Morris,
15 Judge Carpenter, my name is Richard Bachmann. I am counsel
16 for the staff of the Nuclear Regulatory Commission.

17 With me, also representing the staff of the
18 Nuclear Regulatory Commission, is Eugene Holler.

19 JUDGE BOLLWERK: Thank you.

20 MR. MILLER: My name is Jim Miller. I'm a lawyer
21 with the firm of Balch & Bingham. I represent Alabama Power
22 Company.

23 With me is Dave Repka, of the firm of Winston &
24 Strawn, who also represents Alabama Power and Jim Hancock,
25 who is here from my firm. He represents Power.

1 We have also Jack Woodard, who is a Vice President
2 of Southern Nuclear Operating Company, the company who is
3 currently licensed to operate the Farley nuclear plant.

4 Bob Stewart, Julie Williams, David Jones are also
5 here to help support this effort.

6 Christina is here, and she is from Bechtel
7 Corporation, and she is here because two of the witnesses
8 sponsored by Alabama Power Company are from that
9 corporation, and she has already filed an entry of
10 appearance to represent the interests of Bechtel when those
11 witnesses are on the stand.

12 MS. CLEARWATER: Good morning.

13 JUDGE BOLLWERK: Good morning. Did you give me
14 her full name? I'm sorry.

15 MR. MILLER: Oh, I'm sorry. It's Christina
16 Clearwater.

17 THE COURT: Thank you.

18 Before we swear in the first witnesses, we'll
19 afford the parties an opportunity to make an opening
20 statement, if they wish to do so.

21 Before that, however, we would like to discuss one
22 substantive matter, the motion in limine that was submitted
23 by the NRC staff.

24 The staff's motion, which was filed on February 4,
25 1992, in accordance with our order of January 31, 1992, asks

1 that we strike certain specific portions of the direct
2 testimony of several Alabama Power witnesses on the ground
3 that the testimony improperly seeks to introduce evidence
4 regarding either the operability of certain equipment found
5 by the staff to be in violation of section 50.49 or the
6 safety significance of an actual failure of that equipment.

7 In its February 6, 1992, response, Alabama Power
8 opposes the staff's request, arguing that the testimony is
9 relevant to determinations that the Board must make
10 regarding a number of matters, including whether the alleged
11 infractions are, in fact, violations of section 50.49 and
12 whether the enforcement sanction imposed by the staff was
13 appropriate.

14 There seems little doubt about the safety
15 significance of an item of electrical equipment that is
16 appropriately on the master environmental qualification list
17 for the Farley facility.

18 What is less clear to us at this juncture is the
19 role that safety significance plays vis a vis the
20 Commission's enforcement policy, as set forth in Generic
21 Letter 88-07.

22 In particular, we are concerned about what
23 function, if any, that concept has relative to parts 3 and 4
24 of that Generic Letter.

25 After reviewing the pre-filed testimony of both

1 parties, we have concluded that we will be in the best
2 position to decide this issue after the evidentiary record
3 has been fully developed.

4 Accordingly, we'll reserve ruling on the staff's
5 motion and resolve the overarching issue posed by its
6 evidentiary objection as part of our initial decision.

7 We would add that, if the staff lodges an
8 objection to any Alabama Power cross-examination question or
9 answer on the same ground as that specified in its February
10 4th motion, we'll permit the answer to be recorded, subject
11 to later disposition in our initial decision.

12 Are there any other preliminary matters that
13 either of the parties wants to bring to the attention of the
14 Board at this point?

15 [No response.]

16 JUDGE BOLLWERK: All right.

17 Mr. Bachmann, would you like to make an opening
18 statement?

19 MR. BACHMANN: The opening statement will be made
20 by Mr. Holler.

21

22

23

24

25

1 OPENING STATEMENT BY COUNSEL FOR THE NRC STAFF
2

3 MR. HOLLER: Chairman Bollwerk, Judge Carpenter,
4 Judge Morris, the Commission requires that the licensees
5 have assurance that nuclear power plant equipment and safety
6 of their plants will be able to perform in safety functions
7 throughout the equipment's installed life.

8 To gain that assurance, licensees are required by
9 10 CFR 50.49 to establish and execute a program for
10 environmentally qualifying electrical equipment important to
11 safety, including maintaining a record of the qualification
12 in audible form to permit verification of that
13 qualification.

14 The absence of documentation is a violation of 10
15 CFR 50.49. The safety significance of that violation comes
16 from a licensee not having the knowledge that an item
17 important to safety equipment will function in harsh
18 environments after a design basis event.

19 10 CFR 50.49, which was published in January, 1983
20 clarified and strengthened the methods contained in national
21 standards, regulatory guides and other NRC publications for
22 environmental qualification of the electrical equipment. It
23 codified the requirement to document the qualification of
24 that equipment and establish a compliance deadline of
25 November 30, 1985.

1 This hearing involves a licensee who did not
2 accomplish effective environmental qualification by the
3 compliance deadline. Alabama Power Company told the NRC
4 that in Alabama Power Company's judgment all electrical
5 equipment important to safety within the scope of 10 CFR
6 50.49 was environmentally qualified.

7 The NRC staff audited the environmental
8 qualification files at the Farley Nuclear Plant for the
9 purpose of verifying that those files contained the
10 appropriate analysis and the other documentation necessary
11 to support Alabama Power Company's conclusion that the
12 equipment was qualified.

13 The NRC staff found violations of 10 CFR 50.49 in
14 that equipment important to safety affecting many systems
15 and many components that Farley did not have sufficient
16 documentation to verify that qualification.

17 Because of these violations the NRC staff using
18 the guidance of the Modified Enforcement Policy, Generic
19 Letter 8807, the policy approved by the Commission arrived
20 at the enforcement action which Alabama Power Company is
21 challenging here.

22 The Modified Enforcement Policy requires that a
23 licensee clearly knew or should have known of an equipment
24 qualification deficiency before the compliance deadline as a
25 prerequisite for the enforcement action. That requirement

1 is met by satisfying either condition. The NRC staff need
2 not show that the licensee knew of the violation. They
3 clearly should have known the condition of the standard
4 requires only that the NRC staff show that sufficient
5 information was available prior to November 30, 1985 to put
6 the licensee on notice that an equipment qualification
7 concern required attention.

8 In making your factual findings in this case, the
9 NRC staff asks the Board to focus on two things. First,
10 that the environmental qualification files at Farley did not
11 support qualification of certain equipment as that equipment
12 was installed at the plant. And, secondly, that enough
13 information was available to Alabama Power Company prior to
14 November 30, 1985 such that Alabama Power Company clearly
15 should have known that it needed to address those matters
16 that the NRC staff found to be in violation of 10 CFR 50.49.

17 Testimony in this hearing will show that because
18 Alabama Power Company did not implement and execute an
19 adequate environmental qualification program pursuant to the
20 requirements of 10 CFR 50.49, significant violations of the
21 environmental qualification requirement occurred. And that
22 based on those qualifications the civil penalty imposed
23 should be sustained.

24 Thank you.

25 JUDGE BOLLWERK: Mr. Miller.

1 OPENING STATEMENT BY COUNSEL FOR ALABAMA POWER COMPANY

2
3 MR. MILLER: May it please the Board, the last
4 phrase I just heard from the Staff went something like this
5 -- and I think I have it fairly accurately.

6 Testimony in this case, says the staff, will show
7 that Alabama Power Company did not implement an adequate
8 program to comply with 10 CFR 50.49. We deny that. We say,
9 and will have evidence to demonstrate, that our equipment
10 was qualified. It was qualified on November 30, 1985, a
11 date about which we will speak more in a moment, and it was
12 qualified during the inspection. And we have the technical
13 expertise and the testimony to show that.

14 But one of the first things we want to point out
15 is that the NRC staff told us on November 13, 1984 words
16 exactly contrary to what this Board was just told. On that
17 day the NRC staff sent us a Safety Evaluation Report for
18 both of our units. And on that day it said, not in words to
19 this effect, it said these precise words: "Based on our
20 reviews, we conclude that Alabama Power Company equipment
21 qualification program is in compliance with the requirements
22 of 10 CFR 50.49." But that begs the question, what are the
23 reviews? What sort of historical context is this
24 enforcement hearing proceeding, both on the regulatory side
25 and on the enforcement side? And that is what we will show

1 in our evidence. We will show the chronological development
2 of both the EQ Rule and the Enforcement Rule. We will show
3 how at each milestone along the way, beginning with Circular
4 78-08 and going through 79-01B and its requirement for a
5 master list, the licensee of Unit 2, a point about which
6 this Board has not heard, we will show that each time a
7 requirement was placed on Alabama Power Company we fulfilled
8 that requirement, we were audited by the NRC staff, we
9 received test evaluation reports, safety evaluation reports
10 in 1981 and 1983, we received an operating license for Unit
11 2, and in each milestone we were told that you comply with
12 the EQ Rule.

13 Let's take just a minute because we have an
14 exhibit which demonstrates how we believe the evidence can
15 best be presented.

16 We are going to use the easel and if we can take a
17 minute while setting up --

18 Let's do a couple of things. Let's revisit the
19 significance of what we see as the chronological development
20 and how we think the evidence will be presented and best
21 evaluated in this proceeding.

22 EQ did not arise in a vacuum. It started back
23 with a petition from the Union of Concerned Scientists, it
24 went to a Circular 78-08, but it really got started with 79-
25 01B, which was a bulletin, and that is the far left side.

1 And that started the process for licensees not just
2 evaluating environmental qualification that is related to
3 electrical equipment, the Class 1-E equipment, but it
4 started the process of communication flows back and forth
5 between the licensees and the NRC. That had not occurred in
6 the 78-08, no response was required from that circular.

7 79-01B said provide a master list and written
8 evidence of qualification, and that was back in 1980. That
9 was also a time when our Unit 2 was in the CP stage and was
10 moving to the operating license stage. So, unlike a number
11 of other licensees we had two events. It was not just a
12 single reactor that had to qualify to the EQ requirements,
13 we had a reactor that was going from the construction permit
14 stage to the operating license stage.

15 We did what the Commission asked us to do, and the
16 documents associated with that are voluminous. The reason
17 they have significance here is because of the modified
18 enforcement policy, and we're going to see a correlation
19 between, as EQ rule develops, how the enforcement policy
20 develops because it's a unique moment in time in the history
21 of enforcement.

22 You can see what happened in September. We had an
23 audit on Unit 2 by the EQ Branch, Mr. DiBenedetto's branch,
24 and Mr. DiBenedetto will testify for us and will say that
25 the results of that audit was satisfactory.

1 In December of 1980, we had another EQ inspection
2 of both units where the NRC staff looked at our interfaces,
3 looked at many of the items of equipment that we are here on
4 today and gave us an inspection report which will be in
5 evidence and which says no deviations, no violations.

6 You're beginning to see a pattern that we do what
7 we're asked to do. The communication comes back from the
8 NRC, "You're doing fine."

9 We then move over -- in 1980, there's a test
10 evaluation report and the author of that report is in this
11 room with us today, Mr. Norman Merriweather, and we expect
12 to ask him questions and have evidence on that.

13 As you move through '81 into the operating license
14 of Unit 2, there is actually a proceeding up here. There
15 are statements on the record about our compliance with EQ,
16 and you can see the process developing, you can see our
17 response, and you can see the favorable communications.

18 No one is saying to Alabama Power Company, "You
19 are not making your best efforts. You clearly should know
20 that there are problems." Instead, deficiencies are
21 identified and away just like that.

22 Then we enter into what we call the Franklin
23 years. The NRC decided that it didn't have the staff and
24 the resources to evaluate what was going to be a major
25 program, and so they employed FRC, and the evidence will

1 show that FRC got documents from us, and that was going on
2 in the '82 and '83 time frame.

3 The process back then was for Franklin to identify
4 a deficiency, the licensee would work on it. The goal was
5 that by '84, the Commission would have issued safety
6 evaluation reports for each of the operating reactors and
7 would say whether or not there were any deficiencies in the
8 EQ program, anything that needed to be done, and that's
9 exactly what we did.

10 The correspondence is clear. We sent in our
11 materials to Franklin. They issued a report for each
12 reactor, went over items of electrical equipment on the
13 master list, compared it to a staff developed master list
14 for a pressurized water reactor, had a meeting on January
15 11th, 1984. The purpose of that meeting was to resolve
16 deficiencies identified by Franklin, and we've got
17 correspondence that shows the results of that meeting.

18 The end result of this effort, starting back in
19 '79 and going up to and including December 1984, is
20 encompassed in the safety evaluation report which I just
21 read to you, and the staff says, "Oh, but wait a minute,
22 that was subject to audit."

23 Here is where the enforcement program and the
24 regulatory side go into a head-on collision because the
25 enforcement program said, "We will only hold you responsible

1 for civil penalties if you clearly or should have known as
2 of November 30th, 1985." Alabama Power Company did not
3 think up that standard. The staff did.

4 What has happened is during the period of post-
5 deadlines, as the staff proceeded through its EQ inspections
6 and went to other reactors and other licensees, they
7 developed a different theory of what constitutes
8 qualification. Levels of documentation that were adequate
9 in '84 and resulted in favorable SERs were no longer
10 adequate.

11 Engineering judgment, walkdowns, issues like that
12 were perfectly acceptable before the deadline and formed the
13 basis for issuing operating licenses, issuing SERs, were
14 adequate then, but they're not adequate anymore. That's
15 what happened.

16 All this can be seen in the Sandia Laboratory
17 seminar that was held on August of 1987. In that year and
18 in that month, the staff held this seminar to train this EQ
19 inspector, and on the agenda -- if you take the agenda from
20 that seminar and compare it to our notice of violation, you
21 will see that it was a roadmap. T-drains, limitorques, V-
22 type splices -- they are there in the seminar, and six weeks
23 later, they show up in our inspection.

24 This is important to us not for the regulatory
25 side. We accept the burden of always trying to get better

1 every day. That is no secret and we don't run from that.
2 But when the staff says, "We will stop the clock on November
3 30th, '85 on what you knew or should have known," and then
4 comes along in November '87 and creates this fiction of what
5 you should have known back then, we call time out and we ask
6 for this proceeding because don't think that's fair, and we
7 think the evidence is going to show that as we go our way
8 through it.

9 We sat around and said, "Who is in a best position
10 to tell us what the staff expected back then?" And the
11 answer to that is Mr. DiBenedetto. He was head of the EQ
12 Branch. Mr. Noonan, who was his superior. So we got them
13 and they are testifying for us, and they don't say what the
14 staff has told you in their testimony or expects to present
15 today.

16 Well, you can see, then, that it is not a
17 straightforward look at the file -- is the file qualified or
18 not? There are numerous sub-issues because the file has to
19 be viewed in the context of an enforcement policy that stops
20 back then. It has to be viewed in the context of an
21 enforcement policy that says, "If you can develop data
22 during the inspection or shortly thereafter, then we will
23 consider that for purposes of imposing a civil penalty."
24 All of which you will see, as the evidence develops, is
25 present in this case.

1 What we will ask the Board to do is a series of
2 things. First, it's important to us that this Board
3 conclude that our equipment was qualified, because we think
4 it was. Second, it's very important to us that this Board
5 conclude that the modified enforcement policy is being
6 improperly implemented as to us, that the fiction of the
7 November 30, 1985 as a deadline for enforcement purposes has
8 been abused in this case, and we are being asked to pay
9 \$450,000, one of the alleged worst in the country, on the
10 basis of numerous communications that said we were doing
11 fine, and we're going to point evidence out that says that's
12 the case.

13 We think, as a matter of law, just as a matter of
14 pure legal principle, that you cannot correlate an SER
15 that's in '84, December of '84, that says, "Your program
16 meets 50.49." That excludes the possibility that in
17 November of '85, you clearly should have known of all the
18 deficiencies that are in the NOV. We think that the
19 issuance of the operating license is strong evidence that we
20 clearly did not know of all of these alleged safety
21 deficiencies. The Commission would not have issued that
22 license were it not the case.

23 Well, our evidence then will ask the Board to
24 find, not necessarily in this order, but we were qualified,
25 that there is no basis for the imposition under clearly-

1 knew-or-should-have-known standard, and if there is, we
2 certainly made our best efforts and are entitled to any
3 mitigation associated with that.

4 In those areas where the inspectors failed or
5 refused to consider evidence that we developed during the
6 inspection, we'd ask the Board to examine that evidence and
7 reach the conclusion that we have reached, which is that
8 this enforcement proceeding should be either dismissed,
9 mitigated back to zero and declared null and void against
10 Alabama Power Company.

11 Thank you, sir.

12 JUDGE BOLLWERK: Just as one preliminary matter --
13 I think it's fairly standard in these types of cases -- one
14 counsel for each side will be making objections. I'll
15 assume -- is that going to be Mr. Holler or Mr. Bachmann for
16 the staff?

17 MR. HOLLER: If it pleases the Board, the staff
18 has addressed this on an initial basis, and we've discussed
19 this with counsel for Alabama Power Company. We will
20 announce, for the Board's information, who will be the
21 counsel defending a particular panel.

22 JUDGE BOLLWERK: Okay. That's fine. That's
23 great.

24 MR. HOLLER: In the case of the enforcement panel,
25 I will be defending the enforcement panel.

1 JUDGE BOLLWERK: Okay.

2 MR. MILLER: May it please the Board, we have no
3 objections to that. I mean we're all in what is the closest
4 thing to a trial-type setting, and if somebody gets excited
5 and wants to make an objection, we can live through some of
6 that.

7 JUDGE BOLLWERK: Okay.

8 MR. MILLER: As long as it doesn't get abused, we
9 came to try this case on the evidence.

10 JUDGE BOLLWERK: All right.

11 Well, we would obviously prefer that one counsel
12 or the other take the lead and make the objections. It just
13 makes for a clear record, and if, at some point during the
14 proceeding, you decide to switch off in a given panel, just
15 let us know.

16 It makes no difference to us as long as we know
17 who it is. That's our main thing.

18 I guess we're ready to swear in the first panel.

19 MR. HOLLER: May it please the Board, I'll ask the
20 enforcement panel to please take seats in the witness box.

21 JUDGE BOLLWERK: I'm going to go ahead and swear
22 you in each individually.

23

24

25

1 Whereupon,

2 JAMES LUEHMAN,

3 ULDIS POTAPOVS,

4 and

5 HAROLD WALKER,

6 were called as witnesses on behalf of the Nuclear Regulatory
7 Commission and, having been first duly sworn, were examined
8 and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. HOLLER:

11 Q Will each of the members please state their full
12 name for the benefit of the court reporter and their
13 position at the NRC?

14 A [Witness Luehman] My name is James George
15 Luehman. I'm a Senior Enforcement Specialist in the Office
16 of Enforcement.

17 A [Witness Potapovs] My name is Uldis Potapovs. I
18 am a Section Chief in the Vendor Inspection Branch in the
19 Office of Nuclear Reactor Regulation.

20 A [Witness Walker] My name is Harold Walker. I'm a
21 Senior Reactor Systems Engineer in the Plant Systems Branch.

22 Q I'll ask the participants of the panel, do you
23 have a copy of your pre-filed testimony?

24 A [Witness Luehman] No.

25 A [Witness Potapovs] No.

1 A [Witness Walker] No.

2 Q I'm going to ask --

3 MR. HOLLER: Maybe I will ask the Board or
4 opposing counsel, is there any objection to the members
5 having their pre-filed testimony with them as they are cross
6 examined.

7 MR. MILLER: No. If they have a copy of the staff
8 exhibits, it might be helpful also.

9 MR. HOLLER: We have those available. We can
10 produce them as they are required.

11 MR. MILLER: Just as a matter of logistics, Gene,
12 I think they might as well go ahead and get them now. We'll
13 have some questions to ask them. I don't want to interfere
14 with what you're doing. Maybe there is a better place to do
15 it.

16 MR. BACHMANN: Chairman Bollwerk, could we go off
17 the record for a moment while we arrange the logistics of
18 this panel?

19 JUDGE BOLLWERK: Sure.

20 [Discussion held off the record.]

21 JUDGE BOLLWERK: Let's go back on the record.

22 BY MR. HOLLER:

23 Q I will ask the participants in the Enforcement
24 Panel if they have before them a copy of what has been
25 labeled for identification Testimony of James G.

1 Luehman, Otis Potapovs and Harold Walker on behalf of the
2 NRC staff concerning enforcement.

3 A [Witness Luehman] Yes, we do.

4 Q I will ask each of you if you participated in the
5 preparation of this document?

6 A [Witness Luehman] Yes, I did.

7 A [Witness Potapovs] Yes, I did.

8 A [Witness Walker] Yes, I did.

9 Q I will ask at this time if there are any
10 corrections to the testimony that you have before you?

11 A [Witness Luehman] Yes, there is one correction.

12 On Page 19 of the testimony, Line 4, there was an
13 extra "not" put in at the end of the line and that word
14 "not" should be deleted from the testimony. The Staff
15 counsel indicated that to the Board in a letter dated
16 December 31, 1991.

17 Q Any other corrections from the panel?

18 [No response.]

19 I will now ask the panel if the testimony that you
20 have before you is true and correct to the best of your
21 knowledge and belief?

22 A [Witness Luehman]" Yes, it is.

23 A [Witness Potapovs] Yes, it is.

24 A [Witness Walker] Yes, it is.

25 MR. HOLLER: At this time I move the testimony of

1 Mr. Luehman, Mr. Potapovs and Mr. Walker into the record.

2 JUDGE BOLLWERK: Any objection?

3 MR. MILLER: No.

4 [The written testimony of Witnesses Luehman,
5 Potapovs and Walker follows:]
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
ALABAMA POWER COMPANY) Docket Nos. 91-348-CivF
) 50-364-CivP
)
(Joseph M. Farley Nuclear Plant,)
Units 1 and 2))
) (ASLBP NO. 91-626-02-CivP)

TESTIMONY OF JAMES G. LUEHMAN,
ULDIS POTAPOVS AND HAROLD WALKER
ON BEHALF OF THE NRC STAFF CONCERNING ENFORCEMENT

Q1. State your full name and current position with the NRC.

A1. James G. Luehman. Senior Enforcement Specialist, Office of Enforcement.

Uldis Potapovs, Chief, Reactive Inspection Section 1, Vendor Inspection Branch, Office of Nuclear Reactor Regulation.

Harold Walker, Senior Reactor System Engineer, Plant Systems Branch, Office of Nuclear Reactor Regulation.

Q2. Have you prepared a copy of your Professional Qualifications?

A2. (All) A copy of each of our Professional Qualifications is included in Staff Exh. 1.

Q3. What is the purpose of your testimony?

A3. (All) The purpose of our testimony is to describe the safety significance of the violations of the NRC requirements for environmental qualification of electrical equipment important to safety for nuclear power plants which led to the civil penalty that is the

subject of this hearing. We also will describe the process, utilizing the Commission's Modified Enforcement Policy Relating To 10 C.F.R. § 50.49, by which the Staff reached its decision to impose a civil penalty in the amount of \$450,000.00 for the eight violations set forth in the Notice of Violation (NOV), dated August 15, 1988 (Staff Exh. 2), and the Order Imposing a Civil Penalty, dated August 21, 1990 (Staff Exh. 3).

LICENSED ACTIVITIES

- Q4. Please describe the activities which Alabama Power Company (APCo) was licensed to perform at the time of the alleged violations.
- A4. (All) APCo is the holder of NRC License Nos. NPF-2 and NPF-8 which required APCo, at the time of the alleged violations to operate the Farley Nuclear Plant, Units 1 and 2, in conformity with, among other things, the regulations of the Commission. 10 C.F.R. § 50.49 (1991), "Environmental Qualification of Electrical Equipment Important to Safety For Nuclear Power Plants" codifies the environmental qualification methods and criteria that meet the Commission's requirements for the environmental qualification of electric equipment important to safety. 10 C.F.R. § 50.49 (1991), was applicable to License Nos. NPF-2 and NPF-8 from February 22, 1983 through August 21, 1990.

SAFETY SIGNIFICANCE

- Q5. Please describe the safety significance associated with the Commission's requirements for the environmental qualification of electric equipment important to safety for nuclear power plants, 10 C.F.R. § 50.49 (1991).

A5. (All) The safety significance of EQ violations is summarized in the Order Imposing A Civil Monetary Penalty, (Staff Exh. 3). We adopt the following from that summary as part of our testimony. The Commission in promulgating 10 C.F.R. § 50.49 determined that a licensee's failure to demonstrate the environmental qualification of electrical equipment important to safety was a significant safety matter. In the area of environmental qualification, a licensee's inability to present documented knowledge of whether equipment important to safety is capable of operating in a harsh environment indicates that the licensee cannot predict whether such equipment will operate in the event of an accident in which it is called upon to perform its intended safety function. Accordingly, a licensee who lacks such reasonable assurance cannot assure protection of the public health and safety in the event of an accident resulting in a harsh environment.

The environmental qualification regulations require licensees to qualify each item of electrical equipment important to safety. The regulations further require each licensee to list each item of electrical equipment important to safety on a master list. All such listed items, by definition, perform important safety functions. Thus, safety significance is inherent with respect to each item on the list or each item that should be on the list.

As explained in the Modified Enforcement Policy (Staff Exh. 4), the Commission has aggregated individual violations of 10 C.F.R. § 50.49 to determine the extensiveness of the qualification problem represented by those individual violations in order to assess a civil penalty. The Commission developed Categories A, B, and C based on the extensiveness of the violations, which reflect the overall pervasiveness and general safety significance of the significant EQ violations. In instances where a licensee committed

isolated individual violations, the licensee could not assure the operation during an accident of a limited number of systems affected by the isolated individual violations. Because a small number of safety systems or components could fail during an accident as a result, such violations are classified as Category C. If the violations affected a moderate number of systems, the violations would be more significant than those in Category C because the licensee could not ensure that a correspondingly greater number of systems would operate in the event of an accident. Accordingly, the likelihood that an accident could endanger public health and safety would be increased and such violations are classified as Category B. An extensive problem would be most significant because the licensee's lack of reasonable assurance of equipment qualification would extend to many systems and the licensee would be unable to assure that these systems would perform their intended functions in an accident resulting in a harsh environment. Therefore, such violations are classified as Category A. In summary, while this method does not consider the specific effects of the postulated failure of each unqualified item of electrical equipment important to safety, it does provide an appropriate measure of the safety significance of environmental qualification violations.

A licensee's failure to provide assurance prior to the deadline that the electrical equipment important to safety was qualified is a safety significant violation. The Staff requires licensees to have detailed knowledge of the quality of installed electrical equipment important to safety in the plant to ensure that licensees have a technically sound basis for making assessments of plant safety. While a licensee's action to qualify equipment after the discovery of the violations is important corrective action, which the

Staff considers in deciding whether to take further enforcement action, including assessing further civil penalties, a licensee's performance of new analysis or collection of new data that yield fortuitously positive results does not affect a licensee's prior lack of reasonable assurance. Neither the licensee nor the Staff could have known in advance whether the new analysis or data would indicate that such equipment would function when called upon to do so during an accident resulting in a harsh environment. The regulations required a licensee to have reasonable assurance whether electrical equipment important to safety would function as intended during and following a design basis event before operating its nuclear reactor after November 30, 1985. A licensee's failure to qualify electrical equipment important to safety, and its consequent lack of knowledge concerning that equipment, results in the licensee's inability to assure that such equipment would function in the event of an accident, which is a significant safety violation.

THE MODIFIED ENFORCEMENT POLICY RELATING TO 10 C.F.R. § 50.49

- Q6. Please describe the Commission's enforcement policy relating to 10 C.F.R. § 50.49, environmental qualification of electrical equipment important to safety for nuclear power plants.
- A6. (All) The Commission's Enforcement Policy is set forth in Appendix C to 10 C.F.R. Part 2, and provides the Commission's guidance as to the general enforcement policy to be followed in NRC enforcement actions. The "Modified Enforcement Policy relating

to 10 C.F.R. § 50.49, 'Environmental Qualification of Electrical Equipment Important to Safety For Nuclear Power Plants'" (Generic Letter 88-07) (Staff Exh. 4) provides a modification, approved by the Commission, to the Commission's general enforcement policy, for environmental qualification (EQ) violations applicable to licensees who were required to be, but were not, in compliance with the requirements of 10 C.F.R. § 50.49 as of November 30, 1985. As explained in the Modified Enforcement Policy, the Commission has aggregated individual violations of 10 C.F.R. § 50.49 to determine the extensiveness of the qualification problem represented by those individual violations in order to assess a civil penalty. The Commission developed Categories A, B, and C based on the extensiveness of the violations, which reflect the overall pervasiveness and general safety significance of the significant EQ violations. In instances where a licensee committed isolated individual violations, the licensee could not assure the operation during an accident of a limited number of systems affected by the isolated individual violations. Because a small number of safety systems or components could fail during an accident as a result, such violations are classified as Category C. If the violations affected a moderate number of systems, the violations would be more significant than those in Category C because the licensee could not ensure that a correspondingly greater number of systems would operate in the event of an accident. Accordingly, the likelihood that an accident could endanger public health and safety would be increased and such violations are classified as Category B. An extensive problem would be most significant because the licensee's lack of reasonable assurance of equipment qualification would extend to many systems and the licensee would be unable to assure that these

systems would perform their intended functions in an accident resulting in a harsh environment. Therefore, such violations are classified as Category A. In summary, while this method does not consider the specific effects of the postulated failure of each unqualified item of electrical equipment important to safety, it does provide an appropriate measure of the safety significance of environmental qualification violations.

The Staff, in SECY-87-255 (Staff Exh. 5) at page 4, considered approaching the assessment of safety significance through a component by component analysis when the Modified Enforcement Policy was formulated. The following two problems with such an approach were among those considered by the Staff. First, addressing each unqualified component in isolation did not account for the functional interdependence, under a given accident scenario, that may exist between two or more unqualified components. Therefore, such an approach would tend to underestimate a given unqualified component's safety significance by failing to address its effects on the function of other unqualified equipment or vice versus.

Second, if an attempt is made to more rigorously account for the interdependence of unqualified components, a complex matrix of components and accident scenarios would have to be evaluated. In the case of Farley, the Staff would have had to evaluate the potential interactions of well over one hundred components in various scenarios (i.e., loss of coolant accident/main steam line break accidents both inside and outside containment). Given all the possible combinations, it is readily apparent that while such an approach might give a clearer picture of a component's individual significance, the incremental improvement over the Modified Enforcement Policy's approach would have

to be weighed against the resources needed to arrive at such an analysis. More importantly, ensuring consistency in evaluating the safety significance of these complex analyses would be a difficult task.

Q7. Describe the process by which the Commission approved the Modified Enforcement Policy.

A7. (Luehman) In June 1985 SECY-85-220 (Staff Exh. 6) was submitted to the Commission. The appendix to that paper proposed daily civil penalties of \$1,000 per day per violation and for significant programmatic breakdowns discussed penalties up to \$100,000 per violation per day (The days being counted from November 30, 1985). Subsequent to that SECY paper the Staff issued, with the Commission's approval, Generic Letter 85-15 (Staff Exh. 7) August 6, 1985, which indicated that penalties for operation after November 30, 1985, with unqualified components could result in civil penalties up to \$5,000 per day per item. For the purposes of enforcement Generic Letter 85-15 (Staff Exh. 7) defined "unqualified equipment" to be that equipment "for which there is not adequate documentation to establish that the equipment will perform its intended function in the relevant environment." Generic Letter 85-15 also introduced the concept of "clearly knew or should have known." In April 1986 SECY-86-122 (Staff Exh. 8) and subsequently Generic Letter 86-15 (Staff Exh. 9) refined the application of the \$5,000 per day per item approach. SECY-87-255 (Staff Exh. 5) forwarded to the Commission in October 1987 reflected the Staff's attempt to apply the \$5,000 per day per item approach to actual inspection findings. In two sample cases looked at to test this

approach, the resultant civil penalties were in the millions of dollars and were found by the Staff "to be inconsistent with civil penalties given in the past, including those for significant operational events (Davis-Besse and Salem), and do not properly reflect the significance of the EQ deficiencies . . ." The Staff in that paper proposed an alternative approach to EQ Enforcement which aggregates significant EQ violations. With some modifications that approach was adopted by the Commission after it considered SECY-88-063 (Staff Exh. 10) in March 1988. The resultant policy was issued to the industry as Generic Letter 88-07 (Staff Exh. 4) on April 7, 1988.

Q8. Did licensees have knowledge prior to the November 30, 1985 deadline as to how the NRC was going to exercise its enforcement discretion in environmental qualification cases?

A8. (Luehman) Yes. On August 6, 1985, the NRC's Director of Licensing sent Generic Letter (GL) 85-15 (Staff Exh. 7) to all licensees of operating reactors informing them of how the Commission intended to exercise its enforcement discretion, in accordance with the General Enforcement Policy, in response to violations of 10 C.F.R. § 50.49. Thus, on August 6, 1985, well before the 10 C.F.R. § 50.49 deadline of November 30, 1985, the Commission informed licensees that violations of environmental qualification requirements would be dealt with differently from most other violations. Furthermore, GL 85-15 stated that the Staff would impose daily civil penalties for any unqualified item of electrical equipment and that such an item is unqualified if there is not adequate documentation to establish that it will perform its intended safety functions in the relevant

environment. GL 85-15 prospectively gave notice that the Commission would treat every individual violation of 10 C.F.R. § 50.49 as safety significant.

Q9. How was the Modified Enforcement Policy implemented?

A9. (All) The Office of Enforcement (OE) and the regional offices were the offices primarily responsible for implementation of the Modified Enforcement Policy. However, because NRC staff management had a concern that, given a special enforcement policy solely for EQ, there might be inconsistent application of the policy because there was no experience dealing with it, the EQ Enforcement Review Panel was formed. Howard Wong of the Office of Enforcement was the Chairman, Uldis Potapovs, NRR, Harold Walker, NRR, Robert Weisman, OGC and James Luehman, Office of Enforcement were the permanent members. Additionally, the NRR project manager for the affected plant would be on the panel. The panel as indicated above was a consistency check. As such, the panel reviewed both Modified Enforcement Policy EQ escalated enforcement actions prior to issuance as a proposed action and if necessary, as was the case with Farley, at the imposed stage, just prior to issuing the Order Imposing Civil Penalty. The way the panel was run was that the enforcement specialist who worked on preparing the particular action would make a brief presentation to the panel at which time the other panel members would be able to ask questions and request particular changes. Of particular concern to the panel were 1) the categorization of the violations (were they appropriate under the Modified Enforcement Policy for consideration as escalated) 2) Did the licensee know or should the licensee clearly have known of the violations (also was this

element properly articulated by the Staff) 3) Were the violations in the aggregate properly categorized as Category A, B or C, and 4) application of the escalation/mitigation factors. The standard the panel used for "clearly should have known" was whether a knowledgeable engineer with pertinent information on EQ issues available prior to November 30, 1985 should clearly have been aware of the issue.

Q10. How were enforcement responsibilities allocated among the Staff?

A10. (All) The Office of Nuclear Reactor Regulation (NRR) or the regional offices conducted inspections and made an initial determination as to whether an enforcement action is appropriate for violations of NRC requirements related to EQ and, if so, what type of action was appropriate. In general, after a review by Uldis Potapovs, NRR, if a violation was determined to meet the clearly should have know test and to be of minor significance under the Modified Enforcement Policy, the violation could be issued to the licensee as a Severity Level IV or V violation. (Mr. Potapovs was relied on by the EQ Enforcement Review Panel to ensure that violations that might appropriately be considered for escalated action were not issued at lesser severity levels.) If the Region determined that a particular violation or group of violations met the Modified Enforcement Policy's threshold for escalated action, the Region prepared a draft action for submission to the Office of Enforcement and concurrent review by NRR and OGC. In the package it would send forward the Region would have, in addition to supporting documents such as inspection reports, a Notice of Violation citing the violations and a cover letter describing the reasons the violations met the threshold for escalated

enforcement, why the licensee knew or clearly should have known of the violations, the categorization of the violations and the applications of the escalation/mitigation factors. After the concerns of the reviewing offices had been addressed the package would be sent to the EQ Enforcement Review Panel and then to the Deputy Executive Director for concurrence prior to the applicable Regional Administrator issuing the action. The above process was the normal routing of Modified Enforcement Policy enforcement actions. For cases of \$300,000 or more, after the Deputy Executive Director had concurred, the EDO would review the action and then send it to the Commission for approval prior to issuance. Sending reactor licensee enforcement actions with civil penalties of \$300,000 or more to the Commission is a routine practice prescribed in the general enforcement policy that was also followed when warranted under the Modified Enforcement Policy.

- Q11. Describe the enforcement options that are available under the Modified Enforcement Policy.
- A11. (All) In addition to what is discussed above in Answers 6., 9. and 10., the Staff had the option of aggregating findings, for which the licensee clearly should have known but were of minor significance, into a civil penalty under the normal enforcement policy. This was never done as there were never any cases in which there were a sufficient number of minor findings to warrant such action.

THE ENFORCEMENT ACTION IN THIS CASE

Q12. Describe how the enforcement process which led to the civil penalty that is the subject of this hearing began.

A12. (All) The Staff conducted inspections at Farley Units 1 and 2, during the period September 14-18, 1987, November 2-6, 1987, and November 16-20, 1987, to review the program for the environmental qualification of electrical equipment. (NRC Inspection Reports Nos. 50-348, 364/87-25 (Staff Exh. 11) and 50-348, 364/87-30 (Staff Exh. 12)). The findings from those inspections are described in separate Staff testimony in this proceeding. As a result of the findings from those inspections, an enforcement conference was held with APCo on March 15, 1988 at the Region II office in Atlanta, Georgia.

Q13. Describe what took place during the enforcement conference.

A13. (Luehman) The purpose of an enforcement conference is described in section IV. of the General Enforcement Policy, 10 C.F.R. Part 2, Appendix C.

(Potapovs) I attended the enforcement conference. A formal summary of the enforcement conference was prepared and is attached hereto as Staff Exh. 13.

Q14. What action was taken by the Staff following the enforcement conference?

A14. (All) Following the enforcement conference NRC Region II prepared a draft action based on the inspections and the enforcement conference discussions. James Luehman was assigned review responsibility for the Office of Enforcement and Edward Reeves, NRR

Project Manager coordinated the NRR review. Once the final action was prepared it was submitted to the EQ Enforcement Review Panel of which we were all members. The panel went over the eight violations and most of the discussion concentrated on the "clearly should have known" and significant enough to warrant consideration for escalated enforcement criteria. Once it was agreed those were satisfied, the categorization of the Farley action as a category A action was addressed. Largely because the V-type splices included many items in many systems, the Chico A/Raychem seals were in many applications and the terminal blocks were found in many applications the panel concluded the "many systems and components" criterion was met. This conclusion was compared to the outcomes of previously evaluated cases which, at that time in the consideration of actions under the Modified Enforcement Policy, consisted of approximately six cases, some of which had been found to be either Category A or Category B. At least two of those actions had already been reviewed by the Commission (Calvert Cliffs (Category A) and Dresden (Category B)) and therefore the panel had guidance as to the intended use of the three categories.

The escalation and mitigation factors were then considered. With respect to identification and reporting the panel concluded that the recommended partial mitigation of 25% was appropriate. The license identified on its own five of the violations, the NRC one, and the licensee two others in response to NRC concerns. Further, with respect to components included in each identified area, the licensee identified the V-type splice issue which includes many components while the NRC identified the terminal block issue which involved many components and the NRC caused the licensee to

identify the Chico A/Raychem problem which also involved many components.

With regards to best efforts the panel, based on the inspection experience of the panel, the inspection reports, and input from individual inspectors associated with the inspection, concluded that the licensee's programmatic efforts in the 1979-85 time frame were not any more extensive than that of the average licensee. The panel agreed that the licensee's efforts to ensure that the Farley implementation and verification efforts were sound, were at best minimal. Despite numerous NRC Circular and Information Notice notifications little was done as far as walking down equipment to ensure qualification. In the Staff's estimation, some of the work which went on after the deadline, such as review of procurement records, should have been done prior to the deadline. The Staff concluded that 50% escalation was appropriate. The Staff's conclusions in the area are not inconsistent with the licensee's own comments made at the enforcement conference. These comments were summarized in a meeting summary issued by NRC Region II following the conference (Staff Exh. 13).

With regards to corrective actions once the violations were identified the Staff concluded and the panel agreed that overall, the licensee's corrective actions were acceptable. The only violation for which the Staff was dissatisfied with the corrective action was the V-type splices in the containment fan motor issue. Once the first questionable splice was found in Unit 1 the licensee sequentially went through the fans and replaced the splices. The sequential replacement for Unit 1 was appropriate because once the first acceptable splice was installed, the applicable Technical Specification (TS) allow 72 hours for a second fan to be made operable. For Unit 2 that same course of

action was not followed. Even though the license should have suspected the Unit 2 splices as well, nothing was done to address them until about 9 days (well after the TS required action) following initial discovery of this problem. The Staff, and the Enforcement Review Panel when the panel reviewed this issue, realized that discovery of a qualification problem does not necessarily mean there is a TS operability problem, however, such a conclusion could only be reached by performing an analysis (Justification for Continued Operation) as discussed in Generic Letters 85-15 (Staff Exh. 7) and 86-15 (Staff Exh. 9). Therefore, based on the fact that the licensee neither complied with the TS for Unit 2 nor prepared a Justification for Continued Operation (JCO) to justify that no operability concern existed, the Staff concluded the licensee's corrective action was inadequate in this instance warranting partial escalation.

The final proposed action was forwarded to the Commission in SECY-88-213 (Staff Exh. 14) July 25, 1988, and the Commission subsequently approved issuance. On August 15, 1988, the Staff issued a Notice of Violation and Proposed Imposition of Civil Penalty (Staff Exh. 2) based upon the results of the September-November 1987 inspections alleging nine violations of 10 C.F.R. § 50.49 (eight violations were assessed a civil penalty, one violation was evaluated as a severity level IV with no civil penalty proposed). A civil penalty of \$450,000 was proposed.

Q15. What was APCo's response to the Notice of Violation issued on August 15, 1988?

A15. (All) On November 14, 1988, APCo responded to the notice of violation (Staff Exh. 15), denying all but two of five parts of one violation regarding Limitorque motor operators.

APCo argued that, among other things, that there were no violations for a number of the proposed violations, and for the others, "the clearly know or should have known" test was not met and the violations were not "sufficiently significant" to warrant a civil penalty. APCo also argued that the Modified Enforcement Policy was illegal and that the NRC had significantly changed its policies for 10 C.F.R. § 50.49 since the time of the alleged violations in November 1985.

Q16. What action did the Staff take in consideration of APCo's response, regarding the notice of violation and proposed civil penalty?

A16. (Luehman) The Staff gave careful consideration to the points made by the licensee in its response. Not only was the licensee's response reviewed by the applicable technical Staff offices but it was reviewed by members of the EQ Enforcement Review Panel. It should be noted that by the time of that review Howard Wong was no longer in the Office of Enforcement and I was the Chairman of the Review Panel. During the panel's review of the Order Imposing, there was some concern expressed by panel members about the inclusion of the terminal block violation (I.B.1) given the earlier removal of an instrument loop violation in the H. B. Robinson action. However, after further discussion it was concluded that the accuracy of a specific component was a very different issue from loop accuracy and in fact, the need to properly qualify terminal blocks had been specifically addressed in NRC generic correspondence. By the time the panel considered the Farley Order Imposing Civil Penalty, more than twenty other actions had been taken under the Modified Enforcement Policy. Given this data base the

panel had a good basis on which to conclude this case was a Category A. Following that review the Commission was informed of the pending Order Proposing Civil Penalty against APCo via SECY-90-083 (Staff Exh. 56) March 12, 1990, and notified upon issuance of the Order to APCo by the normal enforcement notification process. Consequently, the Staff imposed a civil monetary penalty of \$450,000 by Order dated August 21, 1990 (Staff Exh. 3). An appendix to the Order contains a discussion of the Staff's considerations.

Q17. Does the Staff consider that its imposition of a civil penalty of \$450,000 is correct and appropriate in view of the Staff not pursuing items I.C.1.a (mixed grease^r in the Limatorque gear compartment), I.C.1.e (Aluminum Limit Switch Housing), I.C.2 (Target Block head vent solenoid valves), from consideration as part of the civil penalty?

A17. (All) Yes. The Staff's determination was based upon a careful consideration of the facts in this matter and sound application of the Commission's Modified Enforcement Policy and its determination to aggregate these violations as an EQ Violation Category A problem and its imposition of a civil penalty in the amount of \$450,000.00 is correct and appropriate under the Commission's Modified Enforcement Policy. The Staff has reconsidered all the facts pertinent to this matter and has concluded that, as discussed earlier, the V-type spiece issue, the Chico A/Raychem issue and the terminal block issue collectively affected many systems and many components. Therefore, if those violations and portions of others are considered together it is clear that not pursuing items noted above in the civil penalty action does not change the categorization of this action as a

Category A problem. With regard to the escalation and mitigation factors, under identification and reporting no change in partial escalation is appropriate. With regard to the other escalation/mitigation factors the only violation that directly affects them would be the discussion of V-type splices in corrective actions and V-type splices are not being pursued for civil penalty consideration. Therefore, not pursuing the items noted above for civil penalty consideration has no effect on the Staff's civil penalty determination and its determination to aggregate these violations as an EQ Violation Category A problem. The Staff's imposition of a civil penalty in the amount of \$450,000.00 is correct and appropriate under the Commission's Modified Enforcement Policy. The Staff is aware of no information, submitted by the Licensee or otherwise, which would lead it to alter or modify this determination.

Q18. Does the Staff consider that the imposition of a civil penalty of \$450,000.00 for the alleged violations by APCo is appropriate in view of the civil penalties assessed other licensees for EQ violations?

A18. (All) Yes. We have reviewed the Farley case and consider the application of the Modified Enforcement Policy in the Farley EQ case to be consistent with the application of the Modified Enforcement Policy in applicable EQ cases at other plants.

Q19. Does this conclude your testimony?

A19. (All) Yes.

1 MR. HOLLER: May it please the Board, the panel is
2 ready now for cross-examination.

3 CROSS EXAMINATION

4 BY MR. MILLER:

5 Q Mr. Luehman, do I understand correctly that you
6 are the lead witness on the panel?

7 A [Witness Luehman) Yes, I am.

8 Q Unfortunately, none of the members of the panel, I
9 don't think, had the benefit of the chart I was showing, but
10 you were here when I gave the opening statement, were you
11 not?

12 A [Witness Luehman) Yes, I was.

13 Q And you heard, of course, the short rendition of
14 the chronology associated with the EQ development; is that
15 correct?

16 A [Witness Luehman) Yes, I am.

17 Q I am not asking you to pass judgment on the
18 accuracy of it, but that will come up.

19 We are going to take a moment and let you see
20 this, but before we do this let me make sure that I have got
21 a picture of what the panel is expected to testify on and
22 that is you will testify about the Modified Enforcement
23 Policy and its implementation to Alabama Power Company; will
24 you not?

25 A [Witness Luehman) Yes, we will.

1 Q And in that you will testify about those facts
2 associated with meeting t.h.s clearly new or should have known
3 standard; will you not?

4 A [Witness Luehman) Yes, we will.

5 Q Same question. And that is to say you will
6 provide testimony about the facts associated with the
7 rejection of best efforts and escalation of 50 percent for
8 lack of best efforts; will you not?

9 A [Witness Luehman) With regard to determining the
10 civil penalty?

11 Q Yes, sir. With regard to determining the civil
12 penalty under the Modified Enforcement Policy?

13 A [Witness Luehman) Yes, we will.

14 Q And, of course, the corrective actions in the 25
15 percent mitigation associated with that? I am sorry, I said
16 "mitigation", I should have said "escalation" associated
17 with that.

18 A [Witness Luehman) That is correct.

19 Q Just by way of interest, was any member of the
20 panel associated with the development of the EQ Rule back in
21 1978 and '79?

22 A [Witness Luehman) I can only speak for myself. I
23 was not.

24 A [Witness Potapovs) I was not.

25 Q Mr. Walker?

1 A (Witness Walker) I was in the branch that was
2 called the Equipment Qualification Branch. I may have read
3 it. I don't recall if I made any major contributions to it.
4 I don't think I did, as a matter of fact.

5 Q Mr. Walker, you say you were in the EQ Branch?

6 A (Witness Walker) Yes.

7 Q That was the one where the section -- that was the
8 section headed up by Mr. DiBenedetto?

9 A (Witness Walker) Yes.

10 Q And subsequently -- not subsequently, but also by
11 Mr. Noonan who had a higher management level, I understand.

12 A (Witness Walker) Yes, he was the Branch Chief.

13 Q Would it be fair to say that at some point during
14 your career at the NRC you worked either directly or
15 indirectly for Mr. DiBenedetto and Mr. Noonan?

16 A (Witness Walker) That is correct. However,
17 during the time the Rule was being developed, I believe the
18 branch was headed by someone else.

19 Q Who was that?

20 A (Witness Walker) Mr. Rosztoczy.

21 Q He is not going to be a witness here today as far
22 as you know?

23 A (Witness Walker) That is correct.

24 Q All right, but while you were at the EQ Branch, if
25 I understand it correctly you may have read some of these

1 developing programs and requirements, but you did not
2 participate actively in their development?

3 A [Witness Walker] I think that is fairly accurate,
4 yes.

5 Q Can we say, though -- well, I will ask this
6 question to the panel. Is there anyone here who is not
7 familiar with the fact that there was a Circular 78-08?

8 [No response.]

9 Hearing no answer, I take it that all of you were
10 at least familiar with the Circular 78-08; is that correct?

11 A [Witness Luehman] I guess I would ask for a
12 clarification. Do you mean were we knowledgeable at the
13 time or are we now knowledgeable? I guess I am asking, at
14 what point in time are you asking me if we were
15 knowledgeable of the circular?

16 Q That is a good point. So, I will ask you, Mr.
17 Luehman, when did you first begin to look at and evaluate,
18 if you ever have, Circular 78-08 and its requirements?

19 A [Witness Luehman] I think that the first time
20 that I recall evaluating Circular 78-08 in any detail was
21 when I became a member of the staff in the Office of
22 Enforcement in 1987.

23 Q Was that associated with the Farley Notice of
24 Violation?

25 A [Witness Luehman] No. The first time I got

1 involved in it was not with regard to the Farley Notice of
2 Violation.

3 Q I guess I will ask the same question to Mr.
4 Potapovs.

5 A [Witness Potapovs] Would you repeat the question?

6 Q Yes, sir. The question was, when did you first
7 read and evaluate Circular 78-08, if you ever have?

8 A [Witness Potapovs] I don't believe that I have
9 ever evaluated for any particular purpose. I was aware of
10 its existence and I was involved with it in the early '80s.

11 Q I see.

12 Mr. Walker, do you understand the question?

13 A [Witness Walker] I believe I do. I first became
14 aware of it probably around 1980 timeframe. When you say
15 "evaluate it", sure -- you know, I can't remember the first
16 time I read it, but I am know I have seen it.

17 Q I see.

18 A [Witness Walker] I don't know if evaluating it is
19 something that I've done.

20 Q Mr. Walker, do you recognize Circular 78-08 as one
21 of the starting points of the development of the current EQ
22 Rule?

23 A [Witness Walker] I recognize it as a document
24 that requested information from licensees. And, if I recall
25 correctly, we didn't get a lot of information that was

1 requested by that circular.

2 Q It is your memory that 78-08 required a licensee
3 response?

4 A [Witness Walker) I don't believe it did.

5 Q I see.

6 Well, can we go on to the next step and I will ask
7 you this question, whether or not you recognize Bulletin 79-
8 01 and actually 79-01B as one of the initial major
9 milestones associated with the development of the EQ
10 requirements?

11 A (Witness Walker) I think that that is fairly
12 accurate. I think so.

13 Q A fair statement on my part?

14 A [Witness Walker) Yes.

15 Q Does anyone on the Board disagree? If so, please
16 say so.

17 No disagreement, Mr. Luehman?

18 A [Witness Luehman) No, I agree with that
19 statement.

20 Q Mr. Potapovs?

21 A [Witness Potapovs] Well, I think the terminology
22 used as tying 79, the bulletin, to the development of the
23 Rule itself -- I am not sure that the bulletin was
24 specifically a factor in developing the Rule. It required
25 licensees to submit certain information.

1 Q You may be able to help us. Didn't it require
2 licensees to submit a master list of Class IE electrical
3 equipment associated with the --

4 A [Witness Potapovs] Yes, it did.

5 Q And actually, I should have said it, a master list
6 of engineered safety feature systems.

7 A [Witness Potapovs] Yes, it did.

8 Q And didn't it also require written evidence of the
9 IE electrical equipment -- I'll strike that question and ask
10 it to you this way: Isn't it also true that 79-01B required
11 written evidence of the environmental classification of
12 Class IE electrical equipment?

13 A [Witness Potapovs] Yes, it did. Like I said, it
14 required licensees to submit information.

15 Q I understand that there was some evolutionary
16 process associated with the later promulgation of 50.49, but
17 can't you say, as I believe the other two members of the
18 panels have said, that 79-01b could be recognized as an
19 initial major milestone in development of the EQ
20 requirements?

21 A [Witness Potapovs] There is a connection.

22 Q Okay. That connection being whatever we can make
23 of it, I assume.

24 Well, let me ask you this: Isn't it a fact that
25 79-01B required licensees to communicate with the NRC and to

1 respond to the request we just described? Mr. Luehman,
2 you're the lead witness.

3 A [Witness Luehman] That's correct. 79-01B
4 required that licensees submit to the NRC a certain amount
5 of information in specific regard to environmental
6 qualification of electrical equipment.

7 Q Can you tell me, just by way of inquiry, what the
8 standards were associated with 79-01B? By that, I mean were
9 the standards DOR guidelines, NUREG 0588, if you know?

10 MR. HOLLER: I will object to that question. It's
11 outside the scope of the panel's direct testimony.

12 MR. MILLER: Well, may it please the Board, this
13 panel has testified that it is going to provide evidence on
14 the topic of both best efforts and clearly knew or should
15 have known.

16 The evidence is clear that the standards
17 established in the early years for Farley Unit 1 and Farley
18 Unit 2, being the DOR guidelines for Unit 1 and NUREG 0588,
19 Category 2 for Unit 2, were those standards that were
20 implemented in the late '70s and the early '80s, and that is
21 direct, relevant and material evidence to the best efforts
22 Alabama Power Company put forth to comply with EQ
23 requirements and whether or not they clearly knew or should
24 have known of any outstanding deficiencies.

25 I call the Board's attention to 50.49.K, which

1 mandates that a unit such as Unic 1 or 2 that complies with
2 the previous standard is not required to requalify its
3 equipment.

4 JUDGE BOLLWERK: I'm going to allow the question.
5 I think the problem we run into is that it strikes me from
6 what this panel has testified to, their historical knowledge
7 may be somewhat limited. But we'll allow it to that degree.

8 MR. MILLER: Okay. It may help the panel if I
9 repeat the question, then. It may have gotten involved.

10 BY MR. MILLER:

11 Q So, Mr. Luehman, I will ask you this:

12 Will you agree with me that the appropriate
13 standards for Farley Unit 1 were the DOR guidelines as you
14 have come to understand and know them as you sit there
15 today?

16 A [Witness Luehman] Well, you know, I'm not going
17 to -- I think that you recited them correctly. I don't have
18 any reason to believe that you didn't. You know, not having
19 those documents in front of me, not having the requirements
20 in front of me, I'm not going to say that that's an
21 absolute. But I think that, you know, the guidelines were
22 what was followed by Alabama Power and what were required to
23 be followed.

24 Q I understand what you're saying. You don't want
25 to give up anything, but you don't think I said it wrong.

1 Is that right?

2 A [Witness Luehman] That's right.

3 Q Let me show you Alabama Power Company Exhibit 8,
4 and I'll ask you if you'll look at that, Mr. Luehman. Take
5 whatever time you think is necessary and let us know when
6 you've looked at . . .

7 A [Witness reviewing document.]

8 JUDGE BOLLWERK: Why don't we go off the record
9 one second? I want to take up a procedural matter with
10 counsel.

11 [Discussion off the record.]

12 JUDGE BOLLWERK: Okay. Why don't we go back on
13 the record, then.

14 Let's take care of -- we went off the record for a
15 procedural matter that we need to deal with here in terms of
16 the exhibits and getting them admitted into evidence, at
17 least 1 through 15, Number 30 and Number 56, which are
18 sponsored by this testimony.

19 I think my preference would be to go ahead and
20 have them identified and each one moved in briefly so that
21 we know that those are admitted into evidence. Do you have
22 any problem with that?

23 MR. BACHMANN: Chairman Bollwerk, I think the
24 concept would be that at the conclusion of cross examination
25 and any redirect, if there would be any, then once we knew

1 that we were not going to have any changes of numbers for
2 whatever reason or any objections to the exhibits, that we
3 would consider them having been marked for identification at
4 this point, and at the conclusion of the examination, we
5 would then move them into the record as evidence.

6 JUDGE BOLLWERK: All right. Why don't we do that,
7 then? We'll consider, then, 1 through 15 and Number 30 and
8 Number 56 all marked for identification at this point.

9 MR. MILLER: What I think would make it easier is
10 that we take the staff as the baseline exhibits and assume
11 all of their exhibits are marked for identification
12 purposes. Then, between now and the time ours are
13 introduced, we'll try and correlate some way so that we
14 don't talk about the same document in terms of two different
15 numbers.

16 JUDGE BOLLWERK: That is my concern.

17 MR. MILLER: But I think the way to handle that is
18 just to say on the record Staff 1 through -- what's your
19 last number? -- 1 through last number is marked for
20 identification purposes. 1 through 15 is introduced. But
21 to the extent you want to talk about something that's not
22 introduced, at least you've got a common thread that you're
23 going --

24 JUDGE BOLLWERK: I don't have a problem with that
25 as long as you -- I mean, these witnesses have only

1 sponsored 1 through 15, 30 and 56. I don't want to get
2 ahead of the game, but, again, if you have no objection to
3 that, we can do that.

4 MR. MILLER: We don't have any objection. We
5 understand that they are sponsoring for introduction
6 purposes the exhibits you identified --

7 JUDGE BOLLWERK: Correct.

8 MR. MILLER: -- but for cross examination
9 purposes, they have said they are going to testify on some
10 conclusions, and some exhibits are pertinent to those
11 conclusions even though they choose not to introduce them.

12 JUDGE BOLLWERK: Okay. All right. If the staff
13 doesn't have any objection, then we'll go ahead and mark --
14 do you have another option or something else you want to
15 discuss, Mr. Bachmann?

16 MR. BACHMANN: No, sir. I was going to say I
17 agree with the concept that we would consider Staff Exhibits
18 1 through 56 as being marked for identification at this
19 point.

20 JUDGE BOLLWERK: Okay. Why don't we do that,
21 then. We will revise what I said a little earlier. We will
22 mark for identification Staff Exhibits 1 through 56.

23 [Staff Exhibits 1 through 56
24 were marked for identification.]

25 BY MR. MILLER:

1 Q During the short break we had, has the panel had
2 an opportunity at what was identified for you earlier as
3 Alabama Power Company Exhibit 8 but now should properly be
4 referred to as 24, Staff Exhibit 24?

5 A [Witness Luehman] We have looked at the document
6 that is -- and it's indicated as being Alabama Power Exhibit
7 8, and we'll take your word that it's Staff Exhibit 24.

8 Q I'm not fibbing to you, Jim. I promise I'm not.
9 Really, it is. These guys are here. They'll tell you about
10 it. Okay.

11 Well, let's call it Staff 24 just so we can
12 protect the integrity of the record, and really, just by way
13 of inquiry. Mr. Luehman, when is it that you first looked at
14 and evaluated this particular document?

15 A [Witness Luehman] I would say that the first time
16 that I had any knowledge or interface, if that's the right
17 word, with this document was in 1983, when I became the
18 resident inspector at the North Anna nuclear power station.

19 Q I see.

20 Let me jump ahead just for a second and ask you,
21 is it not true that each of the members of the panel sat on
22 the EQ review -- enforcement review panel?

23 A [Witness Luehman] That's correct.

24 Q All right. The panel --

25 A [Witness Potapovs] That's correct.

1 Q -- that you've all described in your testimony.
2 While you were sitting on that panel, how many
3 minutes or hours, how long did you spend evaluating 79-01B
4 and what it brought to the enforcement proceeding for Farley
5 Nuclear Plant?

6 A [Witness Luehman] I guess I'd like a little bit
7 of clarification on that point. Are you talking about -- I
8 mean we had a number of panels relative to the -- the Farley
9 enforcement action, if you could be more specific as to what
10 stage of the process you're talking about.

11 Are you talking about the -- the proposed
12 imposition of civil penalty or the imposition of civil
13 penalty? And maybe that can help us narrow down.

14 Q Yes. This may help, and I don't want to belabor
15 the point -- I just want to make sure I've got the structure
16 correct -- correctly. You sat on an EQ enforcement review
17 panel for Farley Nuclear Plant, did you not?

18 A [Witness Luehman] I think I just said that we had
19 more than one for Farley Nuclear Plant.

20 Q And when the first civil penalty was proposed,
21 part of your responsibilities -- and by "you," I mean all
22 three members of the panel -- were to review the evidence to
23 determine if there was a consistency check, as I understand
24 it.

25 A [Witness Luehman] That's correct.

1 Q And this occurred in what month, as best you
2 recall?

3 A [Witness Luehman] I recall that it took place in
4 early 1988.

5 Q All right.

6 In that meeting, this initial meeting where you
7 were asked to do the things we are talking about, how much
8 time was spent by the panel looking over 79-01B and its
9 requirements and discussing how Alabama Power Company
10 responded to that bullet, if any?

11 A [Witness Luehman] As I recall, we did make
12 reference to 79-01B, as well as other documents, in that
13 deliberation, but I can't put any amount of -- I can
14 quantify the amount of time we spent on any one particular
15 document.

16 Q Can we say whether it was over 15 minutes or under
17 15 minutes?

18 A [Witness Luehman] I would prefer not to
19 speculate.

20 Q Okay. You just couldn't say one way or the other.

21 A [Witness Luehman] No, I couldn't.

22 Q Okay.

23 Can we say, though -- getting back to 79-01B, can
24 we say, though, that it mandates the preparation of a master
25 list of Class 1-E equipment, Mr. Luehman?

1 A [Witness Luehman] I guess I would -- I guess I
2 would like to know what "mandates" means, because at the
3 time we had the panel, 10 CFR 50.49 was the -- the
4 regulation that we were considering and not what 79-01B may
5 or may not have required or demanded.

6 Q You cannot even tell me whether or not 79-01B
7 mandated preparation of a master list by a licensee such as
8 I have described as you sit here today.

9 A [Witness Luehman] Again, I guess I would say
10 that it's clear that 79-01B did require licensees to have a
11 master list.

12 Q Okay. How about require licensees to provide
13 written evidence of its environmental qualification?

14 A [Witness Luehman] I think that that's all in 79-
15 01B, yes, that's correct.

16 Q All right. And what form did the licensee's
17 response take, if you know? If anyone on the panel knows,
18 please tell me.

19 A [Witness Luehman]" Who wants to answer that?

20 A [Witness Walker] I can answer.

21 A [Witness Luehman] Go ahead.

22 A [Witness Walker] If I recall correctly, we
23 received reams of documents from -- from all licensees that
24 responded to 79-01B.

25 Q I see.

1 A [Witness Walker] Looseleaf binders in some
2 cases; some cases it was other more -- I don't know -- a
3 different kind of binder. I mean it was various -- various
4 documents came in various forms.

5 Q SCEW sheets? Were SCEW sheets part of the
6 submittals by the various licensees?

7 A [Witness Walker] That was one of the things that
8 we expected, yes.

9 Q I see.

10 A [Witness Potapovs] Can I -- can I just enter one
11 question?

12 I think -- I am not sure what -- where we are
13 heading, but the way that the panel functioned was that the
14 panel was presented with a draft notice of violation that
15 was prepared by the Region that included the identified
16 deficiencies, and the panel did not go back to the raw data
17 and try to reconstruct the basis for the enforcement that
18 was proposed.

19 Q I see.

20 A [Witness Potapovs] The panel took the enforcement
21 and deliberated the level of enforcement that was proposed.

22 Q I see.

23 Isn't it also true that the panel's responsibility
24 was to make a consistency check about the application of
25 "clearly knew or should have known"?

1 A [Witness Potapovs] Very definitely.

2 Q And wasn't it also true that the panel's charge or
3 challenge was to have a consistency check about the question
4 of best efforts by the licensee?

5 A [Witness Luehman]" Yes, it was, and I think that,
6 as I -- as I indicated earlier, that we did make reference
7 back, when there were questions raised by members of the
8 panel, about specific issues, specific technical issues, as
9 far as what pre-deadline -- let me talk specifically to
10 "clearly should have known."

11 We did frequently make reference back to documents
12 such as 79-01B, various other generic documents, various
13 vendor publications, if that was applicable in the
14 particular case, and as I said, I recall, in the case of the
15 Alabama Power Company or our deliberations on the Alabama
16 Power Company civil penalty, that we did refer back to
17 documents such as 79-01B and various information notices and
18 -- and circulars.

19 Q Good. You say you referred back to them, and what
20 I am interested in is the depth of this reference that you
21 just described, and so, I will ask you this question.

22 In order to make a determination about the efforts
23 of Alabama Power Company and whether or not those were
24 consistent with the others in the industry, isn't it true
25 that what you did or what I hear you saying is you went back

1 to see what efforts were made by other licensees responding
2 to 79-01B?

3 A [Witness Luehman] I guess I'll start that. I
4 guess our testimony clearly states that -- that we do not
5 fault --that the staff made the determination that they --
6 that they did not fault Alabama Power's efforts with regard
7 to preparation of a program.

8 In other words, their -- their programmatic -- the
9 programmatic preparation that was laid out and submitted to
10 the -- the NRC staff was extensive and I think that there's
11 a number of people on the staff that have testified to that
12 fact.

13 I think we -- we -- we present testimony on that
14 fact, and -- and I think that -- that other licensees made
15 similar efforts, I think, as Mr. Walker just indicated.
16 There were volumes of records brought in from -- from many
17 licensees.

18 Our -- our determination of the best efforts of
19 Alabama Power Company are -- were -- or our determination
20 that Alabama Power Company's best efforts were somehow
21 lacking or less than some other licensee's was not based on
22 their programmatic preparation but, rather, their
23 implementation and verification of the program as it was
24 implemented in the field.

25 So, I guess what I would say is, as far as

1 submittals of 79-01B and subsequent documents, we felt
2 Alabama Power Company was as good as any other licensee as
3 far as the program that they were -- they submitted to the
4 agency, and having done that, we did not intentionally
5 scrutinize that program, because I think that we felt that
6 it was adequate.

7 Q Just to make sure that we've got it in clear
8 context, you felt then -- and feel today -- that Alabama
9 Power Company's response to 79-01B was certainly as good as
10 any other licensee in the country; true statement?

11 A [Witness Luehman] I'm not going to say that
12 because I did not have responsibility for review of 79-01B.
13 What I will say is that to the extent that those documents
14 were reviewed by the panel, that it was the panel's opinion
15 that the program proposed by Alabama Power Company was of
16 sufficient quality to not warrant escalation on a program -
17 on the programmatic portion of it, and --

18 Q Excuse me just a second. You said, sufficient
19 quality to not warrant escalation on the basis of the
20 programmatic aspect?

21 A [Witness Luehman] That's right, the actual
22 presented -- well, what I meant is, the presented program;
23 that the program -- if that program was fully implemented,
24 that would have been a fully -- probably a fully adequate
25 program. Of course, that's a little bit of speculation on

1 my part, but I think that's the way that the panel viewed
2 it.

3 Harold?

4 A [Witness Potapovs] I don't think we deliberated
5 at the panel, the adequacy of the program that Farley had
6 for complying with the rule. And as the SER stated or
7 Safety Evaluation Report stated, the program is determined
8 to be adequate.

9 Q Okay.

10 A [Witness Potapovs] The problems with the program
11 were the program's implementation, and those were the issues
12 that the panel deliberated.

13 Q Okay, what you're telling me then -- I think I
14 understand it -- is that with regard to its efforts to
15 comply with 79-01B -- that's the only focus we've got right
16 now -- as far as you could tell and as far as you can say
17 today, you have no facts that indicate that Alabama Power
18 Company did not exert its best efforts to comply with
19 whatever 79-01B requires.

20 A [Witness Potapovs] That's not correct.

21 Q Well, do you have facts to the contrary, sir?

22 A [Witness Potapovs] I did not say with the effort
23 to comply with 50.49 or 79-01B because the effort to comply
24 would involve both the program and the program's
25 implementation. And they were lacking in the implementation

1 of the program, and therefore the total effort was not
2 adequate.

3 Q Just for a minute, we're talking about 7901-B, not
4 50.49. We're going to get to that in just a minute.

5 Have you any facts, as you sit there today, to
6 suggest that Alabama Power Company did not engage in its
7 best efforts to comply with 79-01B -- any member on the
8 panel?

9 A [Witness Potapovs] If you condition the 79-01B as
10 requiring only submission of documents and establishing the
11 list, then we did not have a problem with what was submitted
12 and what was presented to the Commission as evidence of
13 compliance with the Bulletin.

14 Q Okay.

15 A [Witness Luehman] Again, I would add that that
16 was not our -- our purpose was not to review 79-01B as a
17 document and the -- and to review the licensee's submittal
18 in any great detail. We only reviewed it to the extent
19 where there were questions and we had --and we resolved
20 those questions satisfactorily. Our testimony indicates
21 that from a programmatic standpoint, not only 79-01B, but
22 other submissions made by the licensee were, in our
23 estimation, to the degree we reviewed them -- and I can't
24 say that that was very extensive, because we didn't have any
25 questions -- were adequate.

1 Q Okay, so you have no facts contrary to what we've
2 been talking about then? Am I right about that? If you had
3 them, you'd certainly tell me now; wouldn't you?

4 A [Witness Luehman] We have no facts that -- and we
5 don't think that any -- that there's any facts that are
6 really relevant to that.

7 Q Okay. Let me just ask this because it's come up -
8 - and I apologize because it's a little out of focus -- but
9 I'll ask you if you're trying to draw a distinction between
10 the program and the implementation of the program? It
11 sounds like you are and I'm getting a yes over there.

12 A [Witness Luehman] Yes, clearly we are.

13 A [Witness Potapovs] Yes.

14 Q Okay. The program -- I think what you're telling
15 me is that the program, as we talked about it for 79-01B and
16 50.49, the panel and the staff found the program to be
17 adequate.

18 A [Witness Walker] May I respond to that?

19 Q Please do. If I said it wrong, please say it
20 right.

21 A [Witness Walker] I feel the urge to do what -- to
22 clarify at least my understanding of the questions. If
23 you're asking if the panel went back and looked at the
24 original submittal made by Alabama Power Company in response
25 to 79-01B at the time we were formed as a panel, the answer

1 is no.

2 Q Okay. All right.

3 A [Witness Luehman] But with regard to your
4 question, the answer is, yes, we are trying to make a
5 distinction between the proposal of a program on paper and
6 the implementation of that program at the plant.

7 Q Would you say then that the purpose of the
8 inspection was to review the implementation of the program?

9 A [Witness Walker] Yes.

10 Q Anybody disagree with that? If so, please say so
11 now.

12 A [Witness Luehman] I think that the purpose of the
13 inspection is more clearly delineated in the SER. I think
14 that it talks about a number of things, including
15 implementation. It talks about file review and some other
16 issues, so I would say that the purpose of the inspection
17 was as delineated in the SER which said we would do --
18 that's the December 1984 SER which said that the NRC staff
19 would do followup inspection and the inspection would
20 include certain areas; that's what --

21 Q I get the sense, though, that the distinction is,
22 you draw a distinction between program which was reviewed by
23 Franklin and formed the basis for the SER, and the
24 inspection in '87. And if you'll permit me, I'll say you
25 say that the inspection of 1987's purpose was to review the

1 implementation of the program, not the program itself?

2 A [Witness Walker] At least one of the purposes of
3 the inspections was to do what we said we would do in the
4 SER. We -- I believe the SER stated that we agreed that you
5 presented a program and that we would at some point come out
6 and verify, or at least convince ourselves that we could
7 agree with the program as presented.

8 Q Okay, you may have done it, and let's try this,
9 Mr. Walker: The SER says, based on our reviews, we
10 concluded that Alabama Power Company Equipment Qualification
11 Program is in compliance with 10 CFR 50.49; we agree that's
12 what it says?

13 A [Witness Walker] Yes. I believe it says that.

14 Q All right. And so what you're saying is that the
15 purpose of the inspection is not to review the program,
16 since that's already been done, but it's to review
17 implementation.

18 A [Witness Walker] No. That's not what I'm saying
19 at all.

20 Q All right. Then you tell me what --

21 A [Witness Walker] I'm saying that Alabama Power
22 presented a program to us on paper, and we reviewed that and
23 agreed that, based on that presentation, we thought you were
24 in compliance. Then we went on to say that at some point we
25 would come out and take a look at the files and the hardware

1 to see if we continue to believe that you have compliance.

2 A [Witness Lushman] I would just add to what
3 Harold was saying, that the SER clearly states, as I tried
4 to say before -- and I guess I'm remembering a little bit
5 more. The SER states that we're going to look at the
6 analysis and documentation supporting the qualification
7 statements made by Alabama Power. We're going to look at
8 the installation of the equipment. And so, clearly -- and I
9 guess the other issue I would add is the SER makes it clear
10 that the NRC, to this point -- inspections and the SER,
11 itself, that we had only audited Alabama Power's efforts, at
12 that point. And consistent with any other type of NRC
13 inspection, we're going to come out and look for ourselves
14 at the plant.

15 Q All right. I'm going to try it again this way.
16 It sounds like though, that the purpose of the inspection
17 was to do more than just review the EQ Program, whatever
18 more that else would require. How's that?

19 A [Witness Lushman] That's correct.

20 Q How are we doing on that? And let's say it this
21 way. Before the SER was issued, it says in there, based on
22 our review. And I'll ask you whether or not you have
23 prepared or have any piece of paper that shows what reviews
24 were conducted by the NRC before the SER was issued?

25 MR. HOLLER: If I may object to that question.

1 This panel hasn't introduced the SER or -- I'm sorry. I
2 objec: to that question. This panel hasn't introduced the
3 SER nor offered testimony in support of it.

4 MR. MILLER: May it please the Court, this goes
5 back to the two themes that we are trying to demonstrate
6 here, which is why they reached the conclusion that we
7 clearly knew or should have known, given this statement by
8 this -- reviews by the staff and the statement that we
9 qualified under 50.49 a few months before the deadline.
10 And, second, whether or not we had exercised our best
11 efforts. I know what they're saying. They're saying we
12 didn't bother to look at all of that. But one of our
13 contentions is that in order to do a proper analysis, under
14 the modified enforcement policy, you ought to look at that.
15 You ought to look at the historical context. And for that
16 reason, we think the objection ought to be overruled.

17 JUDGE BOLLWERK: To the degree the objection goes
18 simply to the question of whether they've looked at it or
19 not, I have no problem with the question. Let's let it
20 proceed and see where we go.

21 MR. MILLER: Okay. Well, it may help it this way:

22 BY MR. MILLER:

23 Q You have told us in words to the effect that the
24 inspection is supposed to do more than just review the
25 program. And I'm summarizing a little bit. But, do I pick

1 up where you left off, Mr. Luehman?

2 A [Witness Luehman] Yes.

3 Q All right. Let's take your testimony on page 13.
4 And tell me when you have that before you. Question 12 and
5 answer 12. Do you have it there?

6 A [Witness Luehman] Yes.

7 Q You were asked how the enforcement process began,
8 were you not?

9 A [Witness Luehman] Yes.

10 Q And your answer says that the staff conducted
11 inspections at Units 1 and 2; correct?

12 A [Witness Luehman] Yes.

13 Q During the period of September and November 1987;
14 correct?

15 A [Witness Luehman] That's correct.

16 Q Tell me if I read this correctly. To review the
17 program for the environmental qualification of electrical
18 equipment. Did I read that accurately?

19 A [Witness Luehman] Yes, you did.

20 Q Those were the words that you used on that
21 occasion

22 A [Witness Luehman] That's correct.

23 Q You did not say to review the implementation of
24 the program, did you?

25 A [Witness Luehman] No, I didn't.

1 Q It was a binding piece --

2 A [Witness Luehman] No, we didn't.

3 Q -- of paper when you got ready to type it up,
4 wasn't it?

5 A [Witness Luehman] Yes.

6 Q You could have said what -- you could have said in
7 this testimony what you've just said in that chair, couldn't
8 you?

9 A [Witness Luehman] I guess so.

10 Q It says right here, to review the program for
11 environmental qualification. And I'll ask you, sir, isn't
12 that the same word that is used on the December 13, 1984 SER
13 as you remember those words existed? Yes or no?

14 A [Witness Luehman] Yes.

15 Q Now, we were going back to 79-01B, because you
16 want to try and pick up our chronologica' thread. Can you
17 tell me -- and, Mr. Walker, you may be the best one to do
18 this -- whether there was any particular review panel
19 established to determine compliance with 79-01B by the
20 staff?

21 A [Witness Walker]" I am not aware of one having
22 been determined. A panel had been developed for that
23 purpose.

24 Q Were there SERs issued as a result of the
25 licensee's submissions to 79-01B?

1 A [Witness Walker] I believe there were, yes.

2 Q And are you aware what the SER issued to Alabama
3 Power Company said, if you know?

4 A [Witness Walker] I may know in general terms, but
5 frankly I haven't read that in a while, so --

6 Q Okay. That's all right. Tell me, in general
7 terms, what you recall the SER issued to Alabama Power
8 Company said.

9 A [Witness Walker] If I remember correctly, the
10 SER -- there were more than one SER issued to Alabama Power
11 company. Now, if you -- if you want to focus in on one
12 particular -- on one in particular, perhaps we -- you know,
13 you might want to tell me which one you were talking about.

14 Q Well, while we work our way towards that, can you
15 tell me whether or not there were any inspections of
16 licensees, to determine compliance of 79-01B?

17 A [Witness Walker] There may have been.

18 Q Do you recall, based on your personal knowledge,
19 whether any of those inspections existed for Alabama Power
20 Company?

21 A [Witness Walker] Based on papers that I've read
22 recently, I believe there was an inspection.

23 Q You say the papers you read recently? And what
24 papers were those?

25 A [Witness Walker] Well, I've seen testimony

1 presented by Alabama Power Company that indicated that there
2 was an inspection.

3 Q And you saw a reference in that testimony to
4 inspections performed in 1980 by the staff?

5 A [Witness Walker] Or thereabouts, yes.

6 Q Was that the first time you were aware of those
7 inspections?

8 A [Witness Walker] It was not the first time I was
9 aware of an inspection having been taken place. I had not,
10 prior to that time, focused on Alabama Power Company, in
11 particular.

12 Q I see.

13 You knew generally there were inspections. You
14 did not know that there was one on Alabama Power Company in
15 1980?

16 A [Witness Walker] Well, I may have known it in
17 1980. I mean, I -- I knew that some inspections had taken
18 place during that period.

19 Q I understand.

20 A [Witness Walker] I cannot list for you the number
21 of the individual licensees who were inspected at that time.

22 Q I see.

23 That tells me that, for purposes of the EQ
24 enforcement and review panel, you did not focus on any 1980
25 inspections at Alabama Power Company for compliance with 79-

1 01B or the EQ requirements.

2 A [Witness Walker] Do you mean as a panel?

3 Q Individually or as a panel.

4 A [Witness Walker] Well, you know, as a member of
5 the panel. I cannot tell you that my knowledge of -- of EQ
6 or any particular licensee began and ended in that room that
7 we conducted meetings in.

8 You know, I've been in this business for a fairly
9 long time, and you know, what's in 79-01B and the various
10 other documents has been with me for a long time.

11 Q Yes, sir.

12 Does that mean that, as you sit here today, you
13 cannot recall anything said or any documents reviewed, when
14 you sat as the EQ enforcement and review for Farley Nuclear
15 Plant, that discussed, called out, evaluated, or focused on
16 an EQ inspection performed by the staff in December of 1980?

17 A [Witness Walker] I do not recall having
18 discussed that particular inspection.

19 Q Wouldn't it be fair to say that the first time you
20 really focused on the inspection I just described was after
21 you read the testimony Alabama Power Company filed in this
22 case?

23 A [Witness Walker] Well, I don't know if I can --
24 focused on it to the extent that, yes, it came to my
25 attention. If "focused on it" means that do I know what was

1 in the trip report or inspection report, then the answer is
2 no.

3 Q Have you ever looked at the inspection report, as
4 you sit here today?

5 A [Witness Walker] Which -- the one of 1980?

6 Q Yes, sir.

7 A [Witness Walker] Ever? I don't know.

8 Q You have no memory of doing so?

9 A [Witness Walker] I don't specifically recall
10 doing that.

11 Q Mr. Luehman, same question to you.

12 A [Witness Luehman] Yes. I did -- I did -- I do
13 recall having conversations with this -- about this report,
14 I think what some of the people in the Region II office.
15 Now, my mind becomes a little bit blurry as to if it was
16 just this report or the reports in general.

17 Having not -- I came to the Office of Enforcement
18 in 1987 having not been involved in EQ prior to that point
19 and then being put on the panel.

20 I wanted to get a feel for the -- the depth of the
21 inspection and auditing that had gone on in the 1979 through
22 maybe '81 timeframe, because there were various trip reports
23 and inspection reports for various licensees, not just
24 Alabama Power Company.

25 So, I had conversations with various people in the

1 regions, the regional inspectors, to get a feel for the
2 depth and -- and type of inspection that was conducted.

3 So, I -- in general, I can -- I can state that I
4 specifically looked -- all right. Excuse me.

5 In general -- I can state, in general, that I
6 looked at this -- this -- this era of inspection reports,
7 and I think, though I am not 100-percent sure, that I looked
8 at the -- some of the information for Alabama Power.

9 Q All right. The best you can say is that you think
10 you may have looked at the December 1980 inspection report?

11 A [Witness Luehman] At this time, that's -- that's
12 correct.

13 Q Yes, sir. Do you think that you can tell us what
14 the conclusion from that inspection report was?

15 A [Witness Luehman] Yes. I think that the
16 conclusion was that the inspector found no deficiencies.

17 Q And no violations?

18 A [Witness Luehman] Well, that would -- that
19 would make sense, since there wasn't any equipment
20 qualification rule in 1980 -- in the 1980 timeframe.

21 Q Do you think you can tell us whether or not the
22 inspection in 1980 was to review areas of installed
23 equipment with respect to IE Bulletin 79-01B and NUREG-0588?
24 Do you think that you can tell us that?

25 A [Witness Luehman] Well, what I can tell you is

1 that, based on my conversation with the regional -- with
2 various regional people in -- in our different regions that
3 sent many of the inspectors that did those inspections out,
4 my understanding of the inspections were they were primarily
5 general plant walkdowns to verify -- to do an audit of
6 nameplate data, to make sure that the equipment corresponded
7 to the equipment that a licensee has submitted on its master
8 list, and that inspectors went out and looked at the general
9 condition of the equipment in the plant.

10 In other words, they did a -- the conclusion that
11 I drew from my conversations was that they did some cursory
12 walkdowns of the equipment to make sure it was the -- the
13 same equipment and that the general condition appeared to be
14 good.

15 Q Well, I mean what you're saying is that they did
16 an implementation review.

17 A [Witness Luehman] No, I'm not.

18 Q Wait a minute. Are you suggesting that the staff,
19 at that time, did not do what was necessary to reach the
20 conclusions stated in its inspection report?

21 A [Witness Luehman] Again, I can't -- I can't tell
22 you what -- what an individual inspector did, because I
23 wasn't there.

24 All I can tell you is that, in preparation for my
25 participation in the EQ review panel, I was -- I was aware

1 that there were many -- there were a number of 1980
2 inspections.

3 I was aware that plants had been issued SERs that
4 had -- many plants had been issued SERs that had language
5 similar to the language that is in the -- that you're
6 reciting from the Alabama SER cover letter.

7 I was -- I wanted to know the -- I -- I wanted to
8 learn from our inspectors and from the staff, if I could,
9 the extent that -- of those inspections, whether they were
10 audits, whether they were just walkdowns, whether we went
11 and looked at the full file, whether they actually could --
12 whether they actually opened equipment and to what extent,
13 because on its face, you know, we had to know those things
14 to make a proper "clearly should have known" decision.

15 Q All right. You admit, then, that this is an
16 important or at least relevant consideration for your proper
17 "clearly knew or should have known" consideration. Is that
18 what you just said?

19 A [Witness Luehman] I don't know that this -- that
20 the individual inspection report is. I think that, clearly,
21 the extent of the -- the general -- the general tone and
22 quality and scope of the inspections is.

23 Q I show you Exhibit -- Alabama Power Company
24 Exhibit No. 11, which I do not believe is a staff exhibit,
25 and ask you to look at that. Tell me when you have done so.

1 [Witness reviewing document.]

2 A [Witness Luehman]" Yes, I have looked at it.

3 MR. MILLER: Does the Board have that exhibit
4 before it?

5 JUDGE BOLLWERK: Yes.

6 BY MR. MILLER:

7 Q Mr. Luehman, you say you have that exhibit before
8 you, do you not?

9 A [Witness Luehman] Yes, I do.

10 Q And we have talked about the standards or the
11 requirements for environmental qualification of electrical
12 equipment. Have we not?

13 A [Witness Luehman] Yes.

14 Q And for Unit 1, it says here on Details, upper
15 righthand corner, Bat... stamp 56301 --

16 JUDGE BOLLWERK: Why don't we identify the exhibit
17 a little more carefully for the record. Can you give us
18 just a brief background of what it is?

19 MILLER: Yes, sir. Alabama Power Company
20 Exhibit 11 is Inspection Report 50-348/80-38, and Inspection
21 Report 50-364/80-49. It is a report referring to a special
22 inspection conducted by Mr. Gibbons of Region II from
23 December 2nd through 5th of 1980 and, more particularly, an
24 inspection involving review of installed equipment with
25 respect to IE Bulletin 79-01B and NUREG 0588.

1 BY MR. MILLER:

2 Q Now, Mr. Luehman, the question to you is, do you
3 not recognize IE Bulletin 79-01B and the DOR guidelines as
4 those applicable to Unit 1 as stated on the first page known
5 as Details of the inspection report?

6 A [Witness Luehman] Well, they are applicable.
7 That's correct.

8 Q Now, it says here, not from what you've heard, the
9 most important thing is what this man did. You would agree
10 with that, wouldn't you?

11 A [Witness Luehman] That's correct.

12 Q I mean, not what you heard from various
13 inspectors. And it says here at the bottom of that page
14 that a physical examination was made of installed electrical
15 instrumentation and control equipment, and it goes on to
16 list the systems, does it not?

17 A [Witness Luehman] Yes, it does; however, I would
18 call your attention to the end of the report, the very last
19 page. The equipment inspected was examined for proper
20 installation. Overall interface integrity and
21 manufacturer's nameplate data was obtained.

22 That's consistent with the discussions that I had
23 with various regional inspectors and some regional
24 supervisors as to the depth of this inspection. I would
25 call it primarily an equipment walkdown inspection where

1 they looked at, again, just as this states, the overall
2 condition and they verified the nameplate data. There is no
3 reference here to inspecting the equipment in any great
4 detail such as a file review or something like that.

5 Therefore, I don't -- again, I don't recall this
6 specific report, but this report with this type of
7 terminology in it, I drew the conclusion that these were
8 exactly what I think that these words mean, very cursory
9 report -- very cursory inspections to supplement our
10 understanding or spot-check licensee's master list
11 submittals.

12 Q Okay. I understand that.

13 Now, you told us about these conversations you had
14 and they occurred in 1987, did you not?

15 Q [Witness Luehman] That's correct.

16 Q So what you got was what somebody told you in 1987
17 and, more particularly, the standard of walkdowns that they
18 thought should be applied in 1987.

19 A [Witness Luehman] I would answer that and say
20 yes, but I would clarify it further by saying some -- I
21 recall some of the people that I talked to, and I recall
22 having this type of conversation, were either inspectors or
23 supervisors in this time frame.

24 In particular, I think that Mr. Conlon, who was
25 the section chief who approved this report, I recall is one

1 of the people I talked to in this regard.

2 Q Okay. All right. Mr. Conlon, whom you talked to,
3 was also the one who approved the report we're discussing
4 right now?

5 A [Witness Luehman] That's correct.

6 Q Wouldn't it be fair to say -- well, strike that,
7 and I'll ask it to you this way: You told us that you
8 described this as a cursory inspection?

9 A [Witness Luehman] I described my understanding of
10 this type of inspection as a walkdown primarily to gather
11 nameplate data, to look at the overall condition of
12 equipment. In other words, to make sure that there were no
13 striking or obvious problems with the installation of the
14 equipment.

15 Q Okay. And you are surely not suggesting that,
16 tested against the standards of walkdowns in 1980, the NRC
17 issued an inspection report of a cursory walkdown, are you?

18 A [Witness Luehman] I guess I don't understand the
19 question.

20 Q Well, are you telling us that Mr. Gibbons, who did
21 the inspection, was just cursory in what he did as compared
22 to what was expected in 1980?

23 A [Witness Luehman] Again, I can't recall -- I
24 can't tell you the level of detail in Mr. Gibbon's
25 particular inspection --

1 Q Okay.

2 A [Witness Luehman] -- because I was talking about
3 inspections in general of this time frame.

4 Q It would be fair to say that whatever he did in
5 1980 was what was expected to be done in 1980. The NRC
6 would certainly not approve a report that was below that
7 standard.

8 A [Witness Potapovs] I don't believe that this
9 inspection addressed the implementation of the environmental
10 qualification program.

11 Q Well, we're going to let the inspection speak for
12 itself, but what I have before me is a statement that Mr.
13 Gibbons performed that cursory inspection, and my question
14 to you is this --

15 A [Witness Potapovs] The scope of that inspection
16 is described in the inspection report, and to the extent
17 that the inspection met the scope stated, that's all it was.

18 Q And was it done in accordance with the standards
19 at the time or are you suggesting --

20 A [Witness Potapovs] For that type of an
21 inspection.

22 Q Then your answer is yes.

23 A [Witness Potapovs] Yes to what?

24 Q That it was done in accordance with the inspection
25 standards at the time.

1 A [Witness Potapovs] It depends -- inspection
2 standards for what? There were no specific standards at
3 that time established for inspecting compliance to the 50.49
4 rule.

5 Q Have you any facts to suggest that Mr. Gibbons,
6 any facts that you have personal knowledge of, to suggest
7 that Mr. Gibbons did not conduct this inspection in
8 accordance with approved standards of inspectors at the time
9 it was done?

10 A [Witness Potapovs]" I certainly don't. I'd also
11 like to add that I was aware of this inspection report. It
12 was discussed and considered in deliberating the enforcement
13 action for the subsequent inspection for the program
14 implementation.

15 Q Undoubtedly, it was pointed out that Mr. Gibbons
16 looked at interfaces of many of the same equipment that NOV
17 found violations. Is that true?

18 A [Witness Potapovs]" It depends for what purpose he
19 looked at the interfaces.

20 A [Witness Luehman] Well, I would just --

21 Q Well, wait just a second. You mean he's supposed
22 to look at the interface for one purpose and not for
23 another?

24 A [Witness Potapovs] If he's looking at interface
25 for compliance with the qualification requirement, it's

1 different than looking for interface with respect to
2 qualification of electrical requirements for standard
3 planned installation. Without looking at each one of those
4 equipments -- I have not done that; I have looked at the
5 list that's contained in the report -- I'm not sure which
6 one of these are environmentally qualified and which ones
7 aren't.

8 Q Well, all right. Let's be fair. If he looked at
9 the equipment for compliance with NUREG 0588, right? If he
10 does, then his conclusion, you would agree, has to be tied
11 back to that standard and that compliance?

12 A [Witness Luehman]" I would just say, going back
13 again to the type of inspection or the depth of inspection
14 that the last page of the report indicates, which I
15 testified is consistent with the level of the walkdowns that
16 were done at other plants --

17 Q Okay.

18 A [Witness Luehman] An inspector can go look at a
19 splice or can go look at a termination if it's available, if
20 you can see it, and I mean, he can tell if the tape's
21 falling off of it. He can tell if it's obviously made, for
22 instance, with black electrician's tape, that that's a
23 general no-no in the environmental qualification space, and
24 therefore, there is an obvious -- there's an obvious
25 problem.

1 However, just seeing a splice or just seeing a
2 junction box that's fully, properly bolted up, he find -- he
3 would find that acceptable. That is not to say that that
4 configuration meets all qualification standards, because the
5 inspectors only looked at it, and there's only so much that
6 you can tell by looking at something.

7 Q Well, all right, I hear what you're saying, Mr.
8 Luehman, but let me ask you this:

9 Do you expect that the licensee is supposed to
10 stand there, have an inspector look at the item of
11 electrical equipment issue a report to say there's no
12 violations, and the licensee is supposed to think, well, I
13 clearly should know that there are; is that what you're
14 telling us?

15 A [Witness Luehman] Again, I'm not saying that.
16 I'm saying, if a licensee is knowledgeable of what the man
17 did, and that he -- and inspected -- and he inspected
18 something in detail, if a -- for instance, I'll just give
19 you a hypothetical: If this report went on to say that Mr.
20 Gibbons inspected the file, compared the file for the
21 qualification of a particular piece of equipment against the
22 installation that he viewed in the plant and looked at the
23 test reports that went along with that, and found that all -
24 - in total, all of that was acceptable, then I would have a
25 hard time saying that the staff would -- could meet the

1 "clearly should have known" standard for that particular
2 equipment.

3 However, this report does not say that; it just
4 says Mr. Gibbons went out in the plant, looked at the
5 equipment. The general condition of the equipment appeared
6 good; that the nameplate was apparently as the licensee had
7 submitted in their master list, and found it acceptable.

8 Q And if he had seen violations of 79-01B or NUREG
9 0588, he would have said so; do you agree with that?

10 A [Witness Luehman] Well, I would say that I don't
11 know that -- I don't know that you could make a violation
12 against -- you definitely couldn't make a violation against
13 a NUREG, and 79-01B, I don't know what the -- how that was -
14 - how that is enforced, so I would say you can't make
15 violations against those.

16 Q If he had seen a deficiency, he would have said
17 so; wouldn't he?

18 A [Witness Luehman]" I assume if he had seen a
19 deficiency within the scope of his inspection, he would have
20 said so.

21 Q All right.

22 A [Witness Potapovs] Again, I think the
23 deficiencies that we're talking about should be taken in
24 context of the scope of this inspection. If you look at the
25 last page, it clearly states the equipment inspected was

1 examined for proper installation, overall interface
2 integrity, and manufacturer's nameplate data was obtained.
3 That's it.

4 Q But it goes on to say that minor differences were
5 identified, so you know he was looking for something; wasn't
6 he?

7 A [Witness Potapovs] Well, just what I mentioned
8 he was looking for: proper installation, nameplate data.

9 Q And he did that because that was the standard at
10 the time?

11 A [Witness Luehman] Let me just clarify something:
12 Further in my -- you know, in my discussions with
13 inspectors and as well as some of the people in
14 headquarters, my understanding of what the NRC's concern in
15 1980 was, at this time, was that we were concerned -- we,
16 the staff, were concerned that licensees get all of the
17 equipment onto the list. That was the initial concern; that
18 their lists actually reflected the sum total of all
19 environmental qualification equipment.

20 At that time, I think the first step was, let's
21 make sure all the licensees get the equipment on the list.
22 There was a certain amount of confidence that once the
23 equipment was on the list, that licensees would properly
24 qualify the equipment.

25 Obviously, the first step is to get it on the list

1 to make sure it gets qualified, and that's what Mr. Gibbons
2 was making sure was done.

3 Q Okay.

4 A [Witness Potapovs] And that's why the reference
5 to the nameplate data, which was then compared to the list
6 to see if it was truly was what the list contained.

7 Q At least one of the end products, then, of all of
8 this effort, is to determine if the master list was complete
9 and acceptable; is that true?

10 A [Witness Luehman] Again, Mr. Gibbons only
11 audited the -- as inspection shows, he looked at various
12 pieces. He didn't look at everything on the master list, so
13 I don't think that you can draw a conclusion from this
14 inspection that, based on this inspection, the master list
15 was complete in all respects.

16 Q But can you draw that conclusion if the NRC sends
17 you a Safety Evaluation Report that says the master list is
18 complete and acceptable? Would that be a proper conclusion
19 to draw?

20 A [Witness Luehman] If the SER says that and that
21 alone, the I guess you could probably say that.

22 Q You can take them at their word, can you not?

23 A [Witness Luehman] To the extent he is
24 performing an auditing function.

25 A [Witness Potapovs] The master list is also a

1 dynamic document, and at any point in time, you cannot say
2 that this is the list that you should have for that client.

3 Q You're saying it's evolutionary?

4 A [Witness Potapovs] No. I'm saying gets deleted
5 from it; things get added to it as you identify additional
6 items or equipment, or as you made plant modifications. It
7 is not a list that is locked in time.

8 Q But to the extent that a licensee gets a Safety
9 Evaluation Report that says the master list is complete and
10 acceptable, it can rely on that?

11 A [Witness Potapovs] I don't believe that NRC ever
12 looked at all items in the plant and verified that those
13 items are only items that should be on the master list and
14 made such a finding in an SER.

15 Q All right, we're going to do that in just a
16 minute.

17 JUDGE BOLLWERK: Why don't we take a short break
18 and come back at 11:00.

19 [Brief recess.]

20 JUDGE BOLLWERK: Let's begin.

21 BY MR. MILLER:

22 Q We were focusing on your use of the word
23 "cursory." Can you please tell us me where the word
24 "cursory" appears in that inspection report?

25 A [Witness Luehman] The word doesn't appear in the

1 report, as far as I looked at it.

2 Q Well, you recall, from your participation in this
3 matter that Unit 2 was subject to licensing in 1980, do you
4 not?

5 A [Witness Luehman] Yes, I do.

6 Q And have you made a determination whether or not
7 the Equipment Qualification Branch audited Alabama Power
8 Company's test data in September of 1980?

9 A [Witness Luehman] I don't think I've made a
10 determination.

11 Q Do you know whether or not that was the case?

12 A [Witness Luehman] I can't state that for fact.

13 Q Have you reviewed a trip report from those who
14 conducted such an audit at Alabama Power Company on the
15 dates I just mentioned?

16 A [Witness Luehman] I may have.

17 Q And can you tell us when that occurred?

18 A [Witness Luehman] No.

19 Q Was it within the last three years, if you know?

20 A [Witness Luehman] My review?

21 Q Yes, sir?

22 A [Witness Luehman]" It was clearly within the last
23 three -- well, it was in the last five years.

24 Q You don't recall whether or not you have looked at
25 such a trip report within say the last two or three months?

1 A [Witness Luehman]" No, I can't recall.

2 Q Mr. Walker, perhaps you have? Have you -- oh, I'm
3 sorry. Go ahead and do that. Have you looked at such a
4 trip report, that is, one conducted by the Equipment
5 Qualification Branch at Farley Unit 2 in September 1980?

6 A [Witness Walker] In what timeframe? Have I ever
7 looked it or --

8 Q Yes, sir?

9 A [Witness Walker] Probably.

10 Q All right. And can you give us your best judgment
11 on when the first time was that you looked at this trip
12 report?

13 A [Witness Walker] It might have been the 1980
14 timeframe. I mean, we -- we routinely got copies of the
15 trip report.

16 Q I see.

17 Was it part of your responsibility, at the time,
18 to review these trip reports for accuracy and completeness?

19 A [Witness Walker] Well, only if I had been a
20 member of the group that went out.

21 Q I take it --

22 A [Witness Walker] Otherwise, it was just for
23 information purposes.

24 Q Well, I take it there was a process whereby such a
25 trip report would be checked for accuracy?

1 A [Witness Walker] Well, you know, the person who
2 would write it or the group of people who wrote it may have
3 -- I would assume or I would hope that they would try, yes.

4 Q Since you were in that section at about that time,
5 can you tell us whether or not trip reports, such as we're
6 talking about and trip audits such as we're discussing, are
7 expected to be cursory?

8 A [Witness Walker] At that time -- I'm not sure if
9 I understand the word cursory in this context.

10 Q With regard to any trip report or trip audit that
11 you were aware of, as you sit here today, would you describe
12 any of them as cursory?

13 A [Witness Walker] I would describe them as not
14 being conducted with the intent of -- of deciding
15 conclusively that a plant is completely or not completely in
16 compliance. I think they had a purpose.

17 Q I see.

18 A [Witness Walker] And to the extent that -- if --
19 and usually the purpose is stated within the trip report.

20 Q Okay.

21 A [Witness Walker] If you mean cursory, in that
22 context, then the answer is yes.

23 Q Well, with regard to whatever was expected to be
24 done on the trip report, can't you tell us, from your
25 experience, that the expectations of the NRC staff were that

1 the task were to be accomplished in a professional manner?

2 A [Witness Walker] Oh, I think the answer is yes to
3 that question.

4 Q And that words were not to be put down in the trip
5 report if they were inaccurate?

6 A [Witness Walker] Well, inaccuracy is sometimes in
7 the eyes of the beholder. Certainly to the person who's
8 writing the trip report, it should not be inaccurate.

9 Q All right. And can't you agree with me that
10 whatever they did on these trip audits, they did not do them
11 in a cursory manner, but, instead, did them to the best of
12 their ability, in a professional manner? You were there at
13 the time and we weren't. Can you tell me if --

14 A [Witness Walker] I think --

15 Q -- I said that accurately?

16 A [Witness Walker] Well, I don't know that I was in
17 the branch at that particular time. But, if I may answer
18 your question, I think --

19 Q Do you think it can?

20 A [Witness Walker] -- to the extent that a trip
21 report identified its purpose, then I would agree that I
22 would -- I would think that the person who conducted the
23 report did it to the best of his ability.

24 Q Have you any facts, based on your experience and
25 participation in the branch at that time, or things that you

1 have come to know, up until the time that you sit here
2 today, that suggest to you, in any way, that the trip report
3 and audit of Alabama Power Company's test data and
4 documentation concerning environmental qualification of
5 electrical equipment conducted September 22nd to 24, 1980
6 was a cursory, inaccurate or unprofessional audit? Any
7 facts --

8 A [Witness Walker] Okay. First --

9 Q -- whatsoever?

10 A [Witness Walker] -- of all, I'm not absolutely
11 sure I was in the branch at that time. But, to --

12 Q Based on what you know, as you sit there today?

13 A [Witness Walker] Based on what I know, if I sit
14 -- as I sit here today --

15 Q It's a yes or no. If you have the facts, tell us.

16 A [Witness Walker] Well, I don't --

17 Q If you don't have the facts, say no.

18 A [Witness Walker] I don't have facts, but I think
19 you asked me for an opinion also.

20 Q I think I asked you for facts. And if you have no
21 facts, say I have no facts.

22 A [Witness Walker] I have no facts.

23 Q Now --

24 A [Witness Luehman] I want to clarify one thing,
25 because I think that you misconstrued the word that I used.

1 I don't -- I think that you misconstrued the word
2 "cursory," and now you've extended it out to inaccurate and
3 unprofessional.

4 If an inspector is sent to do a particular job and
5 that job has a limited scope, that can be called cursory.
6 That does not mean it's unprofessional, nor does it mean
7 that it's incomplete or somehow inaccurate.

8 I think that the length that this -- as far as
9 this test -- I mean, as far as the inspection report goes,
10 you can tell by the detail in the inspection report, that it
11 is, in fact, a cursory report. And that in no way makes it
12 inaccurate, unprofessional or any of those other adjectives
13 that you seem to have attached to the word cursory.

14 Q You admit, then, don't you, Mr. Luehman, that what
15 Mr. Gibbons did in 1980, as far as you know, having not been
16 there and having no contrary personal experience, was
17 professional? Do you admit that, as far as you know?

18 A [Witness Luehman] Yes, it was professional within
19 the scope that it was done.

20 Q That's exactly right. When you say cursory, you
21 mean cursory as compared to what you were told in 1987.

22 A [Witness Luehman] I don't know -- recall what you
23 were telling me, in 1987.

24 Q I thought you told me that you went and talked to
25 other people in 1987 when you went to the Enforcement Branch

1 section?

2 A [Witness Luehman] That's correct. I talked to
3 people that had performed or that had firsthand knowledge of
4 the types of inspections that were performed in the 1981 and
5 '80 time frame.

6 Q And it was based on those conversations that you
7 concluded that what Mr. Gibbons did was cursory?

8 A [Witness Luehman] Cursory within these -- that he
9 had a limited scope of inspection, that's correct.

10 Q Okay. But you admit that to the extent that he did
11 something, he did it well and reported it accurately?

12 A [Witness Luehman] I have no facts to the
13 contrary.

14 Q I'm sorry, I cut you off, Mr. Walker. Go ahead
15 and tell me what you had to say.

16 A [Witness Walker] Well, if you look at what
17 appears to be in that test report, and frankly, I don't --
18 I'm sorry, the trip report or inspection report, and I'm not
19 even sure what the title of it is, but in this document, the
20 scope as read here certainly was cursory in the sense that
21 even at that time, that effort would not represent the
22 effort that we would have made to determine whether someone
23 was in compliance with a qualification requirement.

24 Q I see.

25 What you are saying is that what Mr. Gibbons did

1 in December of 1980 was not really an audit of the
2 documentation, that it was just a walkdown --

3 A [Witness Walker] Well, I don't know that he
4 looked at the documentation.

5 Q Okay. All right. And what you're saying is you
6 can't make a determination about compliance with the EQ
7 regulatory requirements unless there is an audit of the
8 documentation in the test data. Is that right?

9 A [Witness Walker] I'm saying you cannot determine
10 whether or not something is qualified by simply looking at
11 hardware and nameplate data.

12 Q That's right, and I understand what you're telling
13 me. I'm not trying to trick you. I really am not. But I
14 think what Mr. Luehman is saying, too, is that you've got to
15 take the next step. You've got to go audit the test data
16 and the -- whatever it is, the qualification documentation.

17 A [Witness Walker] Well, I think all these things
18 should be involved, yes.

19 Q Okay. And if you -- but if you do that, that's
20 the way to reach a conclusion about qualification.

21 A [Witness Luehman] Well, obviously we would reach
22 that conclusion about the particular equipment that was
23 audited. That's correct. Again, as I stated earlier, if
24 Mr. Gibbons had had a hypothetical piece of equipment where
25 he had done all that, then the staff would have -- would

1 probably have a difficult time making the clearly-should-
2 have-known finding.

3 Q Okay. If Mr. Gibbons had done an audit of the
4 equipment qualification documentation and the test data,
5 then you would not describe what he did as cursory, would
6 you?

7 A [Witness Luehman] No.

8 Q And if he had concluded that there were no
9 deficiencies, you would say the staff would have a hard time
10 making a clearly-knew-or-should-have-known, had he done the
11 things we described?

12 A That's correct with one caveat.

13 Q Okay.

14 A Obviously, this was 1980. The rule didn't become
15 effective until November 30th, 1985. In the intervening
16 period -- well, the deadline was '85, November 30th, '85.
17 The rule became effective in 1983, and in that intervening
18 five-year period until the deadline, there were numerous
19 generic correspondence put out by the NRC with regards to
20 EQ, and there was other information available in the
21 industry. As long as none of that information, you know,
22 contradicted or, you know, impacted the equipment that was
23 in question, I would say that that's a true statement.

24 Q Okay.

25 A [Witness Potapovs] One more point I would like to

1 make in addition to that, and that relates to the fact that
2 if an inspector reviewed five or six or a dozen pieces of
3 equipment and found no deficiencies, again, I don't think
4 you can extend that to concluding that all of the equipment
5 is qualified and implementation of the rule has been
6 adequately demonstrated.

7 We don't do complete inspections and sign-offs on
8 licensee equipment. The ultimate responsibility is the
9 licensee's.

10 As Mr. Luehman pointed out, there have been a
11 number of information notices and other documents
12 promulgated by the NRC since the time of that inspection and
13 since equipment qualification deadline, and I think the
14 licensee should have also then considered that information
15 as part of his determination of compliance at the deadline
16 time when the equipment qualification rule became effective.

17 Q Okay. What you are saying is that, you know, if
18 he looks at the qualification documentation and test data
19 and says that it meets the EQ requirement, it's good for
20 that moment and, you know, as time marches on, you may have
21 to look again.

22 A [Witness Potapovs] That's correct.

23 Q Okay. Is anyone on the panel aware of whether or
24 not an audit of qualification documentation and test data
25 was conducted at Farley Nuclear Plant in 1980?

1 A [Witness Potapovs] An audit by who?

2 Q The division -- the Equipment Qualification
3 Branch.

4 A [Witness Potapovs] I would not --

5 Q You are not so aware?

6 A [Witness Potapovs] Please?

7 Q You're not aware of one?

8 A [Witness Potapovs] I know that you just mentioned
9 an audit that was conducted.

10 Q And that's the first you've heard of it?

11 A [Witness Potapovs] No. I have heard of it
12 before.

13 Q I see.

14 A [Witness Potapovs] And it has been discussed
15 before.

16 Q Okay. Mr. Walker, when did you first learn of the
17 audit? At Farley Nuclear Plant, now, not just a general
18 audit.

19 A [Witness Walker] I may have known about it when
20 it occurred. I mean, I'm not sure when I first knew --
21 heard about it.

22 Q I'll ask you to look at Alabama Power Company
23 Exhibit Number 10, please. Would you take whatever time is
24 necessary for you to look at it and tell me when you're
25 ready.

1 [Witnesses reviewing documents.]

2 JUDGE BOLLWERK: Why don't we go ahead and
3 identify that for the record and consider it marked for
4 identification.

5 MR. MILLER: Yes, sir. That is a trip report
6 dated May 27, 1981. It is a memorandum for Mr. Rosztoczy,
7 R-o-s-z-t-o-c-z-y, with a copy through Philip A.
8 DiBenedetto. It's from four people of the Division of
9 Engineering, Equipment Qualification Branch. The subject is
10 a trip report, audit of Alabama Power Company's test data
11 and/or documentation concerning the environmental
12 qualification of electrical equipment per NUREG 0588 for
13 Farley 2.

14 For ease of reference, I have a slightly larger
15 version.

16 JUDGE BOLLWERK: I take it the staff has seen it
17 and has no problems with it, your slightly larger version?

18 MR. MILLER: I'm not trying to be facetious, but I
19 show it to them every time I see them.

20 JUDGE BOLLWERK: Let's see. Eleven has been
21 marked for identification also.

22 [APCo Exhibits 10 and 11
23 were marked for identification.]

24 BY MR. MILLER:

25 Q Tell me when you're ready. If it will help, I

1 will point to you the areas that I think are significant,
2 but I don't want to prevent you from looking at whatever you
3 need to now.

4 Let's see if we can do a couple of preliminary
5 things just to protect the integrity of the record.

6 This is, this Exhibit 10, Alabama Power Company
7 Exhibit 10, is a trip report from the EQ Qualification
8 Branch to the Chief of that branch through the Section
9 Leader; is that true?

10 A [Witness Walker] Yes, I believe so.

11 Q And it does refer to an audit of Alabama Power
12 Company's test data, does it not?

13 A [Witness Walker] Yes, it does.

14 Q Refer to an audit of Alabama Power Company's
15 documentation?

16 A [Witness Walker] Yes.

17 Q Am I right so far?

18 A [Witness Walker] Correct.

19 Q Test data documentation concerning -- you read
20 these words, Mr. Walker, what is that?

21 A [Witness Walker] Concerning environmental
22 qualification of the electrical equipment per new Reg 0588,
23 Farley 2 Nuclear Station.

24 Q I see. We know from that, as I stated, these four
25 people went to the plant to do this audit per NUREG 0588;

1 are we agreed?

2 A [Witness Walker] According to that, yes.

3 Q Just to make sure that we have a data point, NUREG
4 0588 is the one applicable to the Unit 2, Category 2?

5 A [Witness Walker] Yes.

6 Q All right. This is for Unit 2 and is for a full
7 power license; are we together on this so far? Any
8 disagreement? If so, say so; if not we will move on.

9 A [Witness Walker] Yes, I think that indicates that
10 Unit 2 has a full power license.

11 Q Now, if you will be so kind, Mr. Walker, will you
12 read to us and for the purposes of the record, the purpose
13 of the trip that we are examining right now and that
14 occurred on September 22-24, 1980?

15 A [Witness Walker]" "September 22-24, 1980, staff
16 members from EQB and QAB visited the Farley 2 Nuclear Power
17 Plant in Dothan, Alabama for the purpose of auditing
18 applicant environmental qualification documentation and/or
19 test data for safety related electrical equipment. The list
20 of attendees is provided in Enclosure 1."

21 Q All right. Now, let's look now at Page 2, the
22 trip report, and let's determine what they found about the
23 documentation. And can you tell us what they found about
24 the documentation?

25 A [Witness Walker] Are you asking me to read the

1 highlighted portion, the portion that you just highlighted
2 there?

3 Q Yes, sir.

4 A [Witness Walker] "The documentation supported in
5 the environmental qualification of the audit items was found
6 satisfactory except in two cases. In one case the applicant
7 will ask for clarification from the manufacturer --"

8 Q It is not necessary to read that. The pertinent
9 sentence being that the documentation was found satisfactory
10 except in two cases.

11 A [Witness Potapovs] Again, of the items audited.

12 Q Well, there is no suggestion, is there, sir, that
13 they were stopped from auditing any item they wanted?

14 A [Witness Potapovs] No. I am just mentioning what
15 was the scope of the audit. If they are talking about the
16 totality of all the equipment in the plant, and without that
17 information you can't make any kind of conclusion about the
18 overall status of the program.

19 Q Oh, I understand. There is no doubt about it that
20 this Enforcement Panel wants to denigrate the work that was
21 done in 1980.

22 A [Witness Potapovs]" I am not attempting at all to
23 denigrate the work. I am just stating that in order to make
24 any kind of conclusions about the number of items qualified
25 versus unqualified, you should try to understand the scope

1 of this audit as to what was looked at. And as I stated
2 before, during inspections -- and when I say we, the staff
3 does not do 100 percent audits of every piece of equipment.
4 It is a selective audit.

5 Q Have you any facts -- any facts, sir -- that
6 suggest that when they went to the Farley Plant in 1980 they
7 were prohibited from looking?

8 A [Witness Potapovs] Certainly not.

9 Q Have you any facts to suggest that what they
10 looked at was not statistically accurate to support the
11 conclusions that they reached?

12 A [Witness Potapovs] All I am doing is questioning
13 the statistics. I am not sure what the number of items
14 audited as opposed to the items identified to be deficient
15 was.

16 Q I understand that. I can see that you are
17 questioning. But have you any facts to support your
18 questions other than just raising it?

19 A [Witness Potapovs] I am raising a question, that
20 is all that I am doing.

21 A [Witness Walker] May I interject? When you ask
22 are there any facts to support the idea that they were
23 prohibited from looking at whatever they wanted to look at
24 then --

25 Q Correct.

1 A [Witness Walker] The scope was limited. You
2 know, for example, if they wanted to look at every item in
3 the program, they could not do that. So --

4 Q Whose choice was that? Not physically --

5 A [Witness Luehman] They physically probably
6 couldn't do that within the time allotted.

7 A [Witness Walker] When we go out on inspections --
8 and certainly we went out then -- there are guidelines which
9 you are expected to follow, and those guidelines come from
10 the management.

11 Q I see. The management of the NRC?

12 A [Witness Walker] The NRC.

13 Q Okay.

14 A [Witness Walker] And at that time, if I recall
15 correctly, I don't believe we are looking at the entire
16 program, every item in the program. I mean, I just don't
17 recall that as being the thing that was being done at that
18 time.

19 Q I understand. But let's be absolutely clear about
20 it. At the time this type of audit and inspection was
21 conducted, there were audit and inspection guidelines; is
22 that true?

23 A [Witness Walker] Well, yes.

24 Q All right. And isn't it also true that it was the
25 staff of the NRC that set those audit and inspection

1 guidelines?

2 A [Witness Walker] I am sure they would have --

3 Q Isn't it also true that they could have set them
4 within whatever parameters their regulatory judgment
5 established; isn't that true?

6 A [Witness Walker] Well, I can't speak for
7 management.

8 Q Isn't it also true that whatever they did in
9 September of 1980, they did so because they chose to do it
10 that way, not because the licensee refused to --

11 A [Witness Walker] No, I am not suggesting in any
12 way that the licensee refused to allow an inspection of
13 their records.

14 Q And faced with this audit of equipment
15 qualification documentation and audit of test data for
16 safety related electrical equipment against the standard of
17 NUREG 0588, the most this Enforcement Panel can do is say,
18 well, I question whether they did all that they should have
19 done?

20 A [Witness Potapovs] That is not true, no.

21 A [Witness Walker] And that doesn't take you --
22 On the contrary, I think they did good work in
23 that committee.

24 Q I am with you, Mr. Walker.

25 A [Witness Walker] However, to imply that what was

1 done in 1980 was the final decision by NRC on whether a
2 plant was in compliance is not correct.

3 Q Would it be fair to imply that at the time Alabama
4 Power Company received this, they had done a good deal of
5 work?

6 A [Witness Walker] Yes.

7 Q Would it be fair to imply that at the time Alabama
8 Power Company received this, it could look at it and say,
9 with these two exceptions, my documentation supporting
10 environmental qualification is satisfactory?

11 A [Witness Potapovs] No. I think they should not
12 draw that conclusion.

13 A [Witness Walker] In your words, I don't have any
14 facts to support -- to support that conclusion.

15 Q So, you're saying that Alabama Power Company
16 should not believe this document sent to it by the NRC.

17 A [Witness Potapovs] No.

18 A [Witness Walker] That's not what I --

19 A [Witness Potapovs] Okay. Again, you're taking a
20 lot of things out of context. You're trying to extrapolate
21 the two findings as absolute and measuring them up against
22 an undefined number of items audited.

23 If you are going to take the two negative findings
24 and try to determine a percentage of defective equipment,
25 then you should take a percentage of the number of items

1 audited and then compare that to the percentage of items on
2 the master list to reach some kind of a conclusion as to the
3 overall population.

4 What you just said is that if I was a licensee and
5 if I read that report, I could make a reasonable conclusion
6 that, with the exception of those two items, all my
7 equipment is qualified. I'm saying that's not a reasonable
8 conclusion.

9 Q Is the licensee entitled to believe this word,
10 this phrase? "The documentation supporting the
11 environmental qualification of the audited items was found
12 satisfactory."

13 A [Witness Walker] Of the audited items.

14 Q Okay.

15 A [Witness Luehman] And the other thing I've got to
16 add, too, is that, you know, you want to go back to this
17 1981 document, but the licensee, in the context of this
18 enforcement action, was responsible for everything up -- up
19 through and including November 30, 1985, and in -- given
20 that this was in 1981, again, as I previously stated, this
21 information and these reports have to be evaluated against
22 subsequent NRC issuances.

23 For instance, on page -- or Table 2 of this
24 report, it -- it lists as the method of acceptance of
25 environmental qualification status for a number of solenoid

1 valves and limit switches as being certificates of
2 conformance.

3 There are subsequent documents published prior to
4 the deadline by the NRC that say -- that caution licensees
5 that mere acceptance of a certificate of conformance is not
6 an adequate basis for qualification.

7 Therefore, the inspectors at the time accepted a
8 certificate of conformance. However, other subsequent, pre-
9 deadline information provided by the licensees clearly
10 voided that type of conclusion.

11 Q Okay.

12 A [Witness Walker] As a matter of fact, I believe,
13 in DOR guidelines, which I believe this plant was expected
14 to follow, it states that a certificate of conformance is
15 not sufficient to demonstrate qualification.

16 Q Okay. I understand that, but let's make sure we
17 have at least one data point established.

18 As of this date, Alabama Power Company has a
19 communication from the NRC that says, with respect to the
20 audited items -- and certainly, everyone who was there would
21 know what those items were -- we have no document
22 deficiencies --

23 A [Witness Luehman] I don't think we're going to
24 argue with the clear words of what it says.

25 Q Okay.

1 A [Witness Luehman] We just want to put it in the
2 right context.

3 A [Witness Potapovs] All it means is that NRC
4 audited a number of items, and of those items, some were
5 qualified, some were not.

6 Q Okay. All right. And what you're telling me is
7 that, as time moves on, standards change, the level of
8 documentation requirements go up. Isn't that what you're
9 saying?

10 A [Witness Potapovs] In the case of Farley, the
11 standard would not change other than for items that were
12 upgraded or subsequently installed in plant after deadline.

13 Q So, the standard should be the same in '87 as it
14 was, at least for enforcement purposes --

15 A [Witness Potapovs] The guidelines will still be
16 in effect.

17 Q Important point. Mr. Luehman was going to agree
18 with me that the level of documentation was an evolutionary
19 process.

20 A [Witness Luehman] Excuse me?

21 Q We'll move on.

22 A [Witness Luehman] I don't think I was going to
23 agree with you, but --

24 Q You were ?

25 A [Witness Luehman] No. I don't want to put it on

1 the record, because I don't think I was going to agree with
2 you.

3 Q Well, then let's --

4 A [Witness Luehman] Because I'm not sure what you
5 were saying.

6 Q All right. But then let's see if we can take just
7 a time out.

8 By 1980, in December, we had had the inspection
9 and audit that you see there before you, and you agree to
10 that, do you not?

11 A [Witness Luehman] Yes.

12 Q And we had had Mr. Gibbons' inspection that we
13 talked about a few minutes ago.

14 A [Witness Luehman] Yes.

15 Q So, if you took the discussions we have had, at
16 least those things had occurred in the history of Unit 1 and
17 Unit 2.

18 A [Witness Luehman] That's correct.

19 Q Incidentally -- and you may not know this -- do
20 you recall whether or not Unit 2 got a license condition
21 that required it to comply with EQ regulations?

22 [Pause.]

23 Q Do you recall whether or not that's the case?

24 A [Witness Luehman] I don't recall specifically
25 what the Unit 2 license says.

1 Q Mr. Walker.

2 A [Witness Walker] Frankly, I don't specifically
3 recall the Unit 2 license.

4 A [Witness Potapovs] I believe there was a license
5 condition, but I am not 100-percent positive.

6 Q All right.

7 Our next exhibit number is -- I show you what
8 we'll mark for identification purposes as Alabama Power
9 Company Exhibit 83, and we'll hand out some copies of that
10 in just a minute. And I call your attention specifically to
11 item 18.

12 [Witnesses reviewing document.]

13 Q I understand there is not much you can add to it,
14 but --

15 A [Witness Walker] This -- this is a page from a
16 document. I'm not sure what -- what it's from.

17 Q I will tell you that this is principally for the
18 purposes of the record, to ask you if -- if you have ever
19 seen that document before.

20 JUDGE BOLLWERK: Since we haven't got it, could
21 you at least describe it for us?

22 MR. MILLER: Yes, sir. It's coming right now.

23 [Pause.]

24 BY MR. MILLER:

25 Q This is principally for the record purposes, but

1 do you recognize -- well, I'll strike that and ask it to you
2 this way:

3 I will represent to you that that is a page out of
4 the Unit 2 license when it was issued, and you can take that
5 subject to check. But I will ask you whether or not any of
6 you have ever seen this page or this license condition?
7 I'll start with Mr. Luehman; say yes or no.

8 A [Witness Luehman] I guess I'd ask a question.
9 You said that this is the license as it was -- when it was
10 issued?

11 Q That's my understanding.

12 A [Witness Luehman] I guess I --

13 Q I'm sorry, I did say when it was issued; didn't I?

14 A [Witness Luehman] I'm wondering if it has '83
15 amendments when it was issued.

16 Q I'm sorry, I did say, when it was issued, and my
17 answer to that is, I'm not sure.

18 A [Witness Luehman] '83 amendments --

19 Q Yes, there's a bar sign. Okay, well, then the
20 best I can do is say -- tell you, is that I'll represent
21 that it was -- it is from the Farley license during the
22 pertinent time period, and we'll refine that time period for
23 you tomorrow or this afternoon when we can.

24 A [Witness Luehman] Okay, because I see some of the
25 part -- you know, you've highlighted No. 18, and there's

1 some barred items under there, so I don't know.

2 Q Right. But the question still stands; have you
3 ever seen it before?

4 A [Witness Luehman] I think that I've either seen
5 this one or other ones like it.

6 Q Yes, sir?

7 A [Witness Potapovs] I don't believe I've seen that
8 particular one in this form. I was aware of its existence.

9 Q Mr. Walker?

10 A [Witness Walker] My answer is probably the same
11 as Jim; I've seen other ones like that one. I don't know
12 that I've seen this particular one.

13 Q Okay, all right. The significance -- and I'll ask
14 you whether or not you agree with this -- that -- well, let
15 me strike that and ask you it this way:

16 In your capacity in the EQ Enforcement Review
17 Board, did you determine whether licensees against whom
18 civil penalties were levied had CP/OL proceedings going on
19 in the qualification period of, say, 1980 to November 30,
20 1985?

21 A [Witness Luehman] Yes, we did.

22 Q And can you tell me how many other were similarly
23 situated to Farley, plant Farley?

24 A [Witness Luehman] Well, I can't say that out --
25 you know, that I can give you an exact number of that. I

1 think that our major concern in this area was what I will
2 call -- is plants that were in a dual condition as of
3 November 30th.

4 That was our major concern, and what I mean by
5 that 's, the enforcement policy -- the modified enforcement
6 policy was written to encompass licensees that already had a
7 license prior to November 30th, 1985. At some of the plants
8 that were inspected, one unit would have a license prior to
9 November, 1985, and the other unit would not have a license
10 at -- would not have had a license as of November 30 of '85,
11 or with respect to the modified -- and then we also
12 encountered that same problem for plants when they were
13 inspected; in other words, at the time of the inspections
14 in '86 or '87, one unit would still be -- would have fallen
15 within the modified policy and the other unit would not.

16 So, we did check the dates of the licenses to make
17 sure that they fell within the period that would encompass
18 the deadline and to make it consistent with the modified
19 policy. So, to that extent, I think I probably --
20 personally probably looked at what the dates of the licenses
21 were.

22 Q Okay, but can you tell the Board what an NTOL or
23 Near Term Operating License plan is with respect to EQ
24 qualifications?

25 A [Witness Luehman] With respect -- well, --

1 Q Or you can start at NTOL. Go ahead, Mr. Walker.

2 A [Witness Walker] What that meant was that they
3 did not have a license to operate.

4 Q I see. And how or what role, if any, did that
5 have with EQ requirements?

6 A [Witness Walker] You mean at that time?

7 Q Yes, sir, in the '80 to '85 timeframe.

8 A [Witness Walker] We inspected a plant before they
9 got a license. As far as meeting all the requirements for
10 qualification, probably most of them did not.

11 Q Okay.

12 A [Witness Walker] And those that did not would
13 receive a license condition up until, I believe, probably
14 around November of '85. You know, I don't know that anyone
15 received license conditions after that time.

16 Q I see. Just so I can -- and I didn't realize
17 this, I guess, but they would get a license condition and
18 then that would be a separate way of implementing EQ on the
19 NTOL plants?

20 A [Witness Walker] Well, basically, what it meant
21 was that there are things that had to be done before we
22 would concluded that they was in compliance with whatever
23 requirement they are supposed to be in compliance with.

24 Q I get it; they could --

25 A [Witness Walker] And they had to at some point

1 submit a letter or notify the NRC in some way that they were
2 now in compliance, in their opinion.

3 Q I see.

4 Okay, so, at some point, they would have to meet
5 the license condition?

6 A [Witness Walker] Well, yes, the license condition
7 typically would say that by a certain date, you have to --
8 you have to accomplish certain tasks.

9 JUDGE BOLLWERK: We're going to go ahead and mark
10 -- consider Exhibit 83 marked -- Applicant Exhibit 83 as
11 marked for identification.

12 [APCo Exhibit No. 83 was
13 marked for identification.]

14 MR. MILLER: Thank you.

15 BY MR. MILLER:

16 Q What is the significance -- well, I'm not sure --
17 let's see if I can -- Mr. Walker, you were telling us about
18 it, and I guess you are the best one to ask. If meeting the
19 EQ requirements is a license condition as we see there in
20 the exhibit before you, how -- what is the process whereby
21 the license condition is met?

22 Do the best you can on that for us.

23 A [Witness Walker] If I understand your question,
24 in the license condition, they typically state that if a
25 licensee performs certain tasks, and those tasks may be laid

1 out in an SER, --

2 Q I see.

3 A [Witness Walker] At the end of that period, or
4 when those tasks were completed, then they would have been
5 in compliance.

6 Q I see.

7 A [Witness Walker] Prior to completing those tasks,
8 those things were -- I mean, we could not conclude that they
9 were in compliance.

10 Q Does the licensee ever get a piece of paper from
11 the NRC that says, you've met the license condition?

12 A [Witness Walker] Well, usually, I believe, it's
13 the other way around. The NRC would get a piece of paper
14 from the licensee saying -- that might have said that we
15 have now completed Task X, Y, Z or whatever they were --

16 Q I see.

17 A [Witness Walker]" -- and this is our statement
18 that we have.

19 Q Well, if the licensee has a condition that says,
20 complete and auditable records are available and maintained,
21 all safety-related electrical equipment is qualified in
22 accordance with NUREG 0588 -- and I'm paraphrasing some from
23 the exhibit before you -- I mean, does the NRC ever do
24 something whereby, either on the docket or formally, whereby
25 it says that license condition is met?

1 A [Witness Luehman] Well, I think that the answer
2 to that is, I think Harold gave a partial -- I mean, part of
3 the answer. Some license conditions remain as part of the
4 license forever. I mean, they're --

5 Q I was focusing on this one, though.

6 A [Witness Luehman] Well, you know, this license
7 condition -- you know, if you read the requirements of, for
8 instance, 18A, it says such records shall be maintained --
9 updated and maintained, current, as equipment is replaced,
10 further testing or otherwise, further qualified, to document
11 compliance no later than --

12 Q Right.

13 A [Witness Luehman] Okay, so, that has an ongoing
14 nature to it.

15 Q Okay, I see. So, then, you would say that if you
16 get something from the NRC that says this license condition
17 is met, it's good for that day and not the ongoing part of
18 it, at least under the license condition you just read?
19 Does that help any?

20 I'll strike it and ask it to you this way: --

21 A [Witness Luehman] Well, I think that you have to
22 go back. The other thing that I think you have to add is,
23 you have to go back to the preamble of the license which
24 includes this item, and I think that the preamble to the
25 license under which this is an amendment, states that the

1 staff has reasonable assurance or something to that effect.
2 It doesn't give absolute, iron-clad, this is all that's got
3 to be done.

4 Q Would it be fair to say then that by meeting this
5 license condition, Alabama Power Company would give the
6 staff reasonable assurance of A, B, and C items that you see
7 there? I think I used your words.

8 A [Witness Luehman] They would give the staff --
9 they would give the staff reasonable assurance, as of this
10 date, that they had done the things that are described in
11 here as having been done and we would have, I guess, a
12 reasonable expectation -- or the staff would have a
13 reasonable expectation that those things that were
14 documented as going to be done, were going to be done.

15 Q And if the staff wrote back and says, you know, we
16 deem that you meet the license conditions, certainly that's
17 --

18 A [Witness Walker] What that means usually is that
19 we take your word for it.

20 A [Witness Luehman] Yes. I think Harold's right.
21 I think that usually the staff does not un-solicit --- in an
22 unsolicited manner, come back and say, you meet this license
23 condition.

24 Usually what happens is, the licensee submits a
25 document that says, with regard to, you know, License

1 Condition XX, we have completed the following tasks, and we
2 say that the license condition is met. Then the NRC might
3 issue a document that says, based on your certification that
4 this is met, either we are going to inspect or we are going
5 to take your word for it.

6 Q In other words, whatever the staff writes back,
7 it's going to say, you know, it's based on what you did or
8 what we did, one of the two.

9 A [Witness Walker] It could say based on what
10 you've told us you did.

11 Q Can you tell us what the results are of this
12 particular license condition?

13 A [Witness Walker] I have no idea.

14 Q Do you know whether or not the staff has ever
15 written Alabama Power Company and said that this condition
16 has been met?

17 A [Witness Walker] I don't know.

18 Q You told us earlier that such a communication
19 would be based either on what the NRC or what the licensee
20 said it had done, did you not?

21 A [Witness Walker] I believe.

22 Q Suppose, well --

23 MR. MILLER: Let's mark for identification
24 purposes Alabama Power Company Exhibit 84.

25

1 [APCo Power Company Exhibit 84
2 was marked for identification.]

3 MR. MILLER: It may help shorten things to focus
4 on this page right here, which is not numbered but you can
5 see which one I am clearly talking about.

6 [Witnesses reviewing documents.]

7 BY MR. MILLER:

8 Q Tell me when you've read it.

9 A [Witness Luehman] I think we've all read that--

10 Q All right, I'm sorry --

11 JUDGE BOLLWERK: Are you going to describe it very
12 briefly?

13 MR. MILLER: Yes. Alabama Power Company Exhibit
14 No. 84 is a letter dated May 23rd, 1985 from Steven A.
15 Varga, Chief of Operating Reactor Branch No. 1, Division of
16 Licensing, to Mr. R. P. McDonald, Senior Vice President,
17 Alabama Power Company.

18 Its subject is the evaluation and status of
19 license conditions for Joseph M. Farley, Unit 2. Of
20 particular significance is the page entitled Evaluation and
21 Status of Certain Licensing Conditions, Joseph M. Farley
22 Nuclear Plant, Unit 2, Introduction and Item No. 1.

23 JUDGE BOLLWERK: All right. We will consider that
24 marked for identification.

25 MR. MILLER: Thank you.

1 BY MR. MILLER:

2 Q And now I will ask, I guess, Mr. Walker -- well,
3 why don't I just say this:

4 Can the panel agree with me that in the
5 Introduction, the last sentence says that the "NRC's
6 evaluation of your submittal and status of each of these
7 license conditions follows"?

8 Did I read that accurately?

9 A [Witness Luehman] Yes.

10 Q Okay. Can we look at that sentence and will you
11 agree with me that the NRC did something -- that is, they
12 evaluated the submittals of the licensee? Will you at least
13 agree with me on that?

14 A [Witness Walker] That appears to be the case.

15 Q Is that a yes?

16 A [Witness Luehman] The NRC did something.

17 Q And that something at a minimum has to be the
18 evaluation of the submittals and the status of each of the
19 license conditions?

20 A [Witness Walker] Well, submittal or letter, it
21 depends how you phrase it, but my guess is we got something
22 from the licensee. We looked at it and made a decision.

23 Q Just a second. You say that's your guess. You
24 have no personal knowledge?

25 A [Witness Walker] I don't remember even --

1 Q So let's go with the printed page. Isn't their
2 heading described Discussion and Evaluation?

3 A [Witness Walker] That's right.

4 Q And isn't the first item the environmental
5 qualification of electrical equipment in License Condition
6 2(C)18?

7 A [Witness Luehman] Yes, it is.

8 Q The license condition we just marked as Exhibit
9 83, correct?

10 A [Witness Luehman] Yes.

11 Q The license condition that requires all safety-
12 related electrical equipment in the facility shall be
13 qualified in accordance with the provisions of NUREG-0588.
14 Isn't that 18(c)?

15 Didn't I read that accurately?

16 A [Witness Luehman] I guess the confusion comes
17 from the page that you gave us. It only has an 18 on it so
18 we can't really say that it's 2(c)18, but that's an 18, so I
19 guess I will assume that.

20 Q Subject to check, but 2 is there. The 2(c)18, the
21 C follows in parentheses and it is in lower case "c."

22 Are you with me?

23 A [Witness Walker] That's the 18(c)?

24 Q Yes, sir.

25 A [Witness Walker] It says no later than June 30.

1 Is that what you're reading from?

2 A Yes, sir.

3 Q Did I read it accurately? And if I didn't, you
4 read it into the record.

5 A [Witness Walker] 18(c):

6 "No later than June 30, 1982, all related
7 electrical equipment in the facility shall be qualified in
8 accordance with the provisions of NUREG-0588."

9 Q Now let's look at what the United States Nuclear
10 Regulatory Commission said about that license condition.
11 And you have got that before you as Exhibit 84, do you not?

12 A [Witness Luehman] Yes.

13 A [Witness Walker] Yes.

14 Q And it is dated May 23rd, 1985, is it not?

15 A [Witness Luehman] Yes, it is.

16 Q Some three or four months before our deadline, is
17 that correct?

18 A [Witness Luehman] That's correct.

19 A [Witness Walker] That's correct.

20 Q And three or four months before the deadline, I'll
21 ask you, sir, whether or not this is what the U.S. NRC said
22 to Alabama Power Company by a letter dated December 13,
23 1984:

24 "We provided a safety evaluation which concludes
25 that the EQ program is in compliance with the requirements

1 of 10 CFR 50.49."

2 Have I read it right, sir?

3 A [Witness Walker] Correct. You're correct.

4 Q Tell me, if you will, Mr. Luehman, read into the
5 record the last sentence of that discussion and evaluation.

6 A [Witness Luehman] It says "Therefore license
7 condition 2(c)18 has been met."

8 Q Can you find any word that suggests that Alabama
9 Power Company did not exercise its best efforts, as of May
10 23rd, 1985, to comply with EQ requirements for Farley Unit
11 2? Find the word, if it's there. If not, say it's not.

12 A [Witness Luehman] The only word that's there is
13 the reference to the SER.

14 Q And it says we, referencing the staff, provided an
15 SER; correct?

16 A [Witness Luehman] That's correct. And the SER
17 stated that we were going to come and inspect.

18 Q But can you find any qualification to that effect
19 in the sentence that says, "Therefore, license condition
20 2.C.(18) has been met";

21 A [Witness Luehman] No.

22 Q Will you agree with me that a licensee that
23 receives this communication is entitled to think, if I am to
24 clearly know or should know of a failure to comply with
25 50.49, certainly they would tell me so?

1 A [Witness Walker] No, sir. I do not agree.

2 Q Do you think that the NRC is in the business of
3 sending licensees letters that say, you have met your
4 license condition while simultaneously --

5 A [Witness Walker] I'll say, here --

6 Q No, wait. Let me finish the question.

7 A [Witness Walker] Okay.

8 Q I want the record absolutely clear on this point.

9 You are telling this Board that the NRC sends a
10 letter that says you've met your license condition, that the
11 licensee cannot accept that, but must be in danger and in
12 peril of clearly knowing it has not met the license
13 condition. Is that your testimony? If it is, say so.

14 A [Witness Walker] That is not my testimony.

15 Q It has to be your testimony -- that if the NRC
16 says the license condition is met, the licensee is entitled
17 to assume it's met, true or false?

18 A [Witness Walker] Only if you include all the
19 things that -- that was considered when it was -- when that
20 statement about meeting the license condition is made.

21 Q Only if you include all of the things that are
22 considered in the statement, therefore the license condition
23 has been met?

24 A [Witness Walker] No. It says, we send you an
25 SER, sir.

1 Q By letter dated, we provided --

2 A [Witness Walker] Yes.

3 Q -- an SER?

4 A [Witness Walker] That's correct. Yes.

5 Q And that, therefore, means, and based on it, we
6 conclude the licens condition has been met. Tell me if
7 that's not true.

8 A [Witness Luehman] Well, you are only telling part
9 of the story. And the other parts of the story that you
10 aren't telling, like I said, one is that the SER also
11 includes the fact that we're going to inspect the SER also
12 includes the statement, two letters submitted by Alabama
13 Power that state that Alabama Power certifies that their
14 program is in compliance. That's in the JCO section of the
15 SER, I believe. And, therefore, you have to take all that
16 information.

17 Clearly, what this is doing is closing out this
18 license condition, because this license condition has been
19 superceded by other --

20 Q By the December '84 SER? Is that what you were
21 getting ready to say?

22 A [Witness Luehman] By other information.

23 Q This license condition is dated May 23rd, 1985, or
24 I should say, this evaluation is dated? And what, tell me
25 -- what occurred between May 23rd, 1985 and November 30th,

1 1985 that Alabama Power Company should clearly know that its
2 license condition was not met? Can you name something for
3 me?

4 A [Witness Walker] The content of the SER, sir, is
5 what we believe that should have been a clue to -- it's
6 specifically stated that we would be inspecting your program
7 or words to that effect.

8 Q And under what heading does that statement occur
9 in the SER?

10 A [Witness Walker] I can't recall that at the
11 moment.

12 Q I'll give it to you. Why don't you read it into
13 the record? Proposed resolution of identified deficiencies.

14 A [Witness Luehman] Oh, so what you're saying is
15 that Alabama Power didn't read that. They just read the
16 heading and didn't read the words of the sentence that
17 include that, then?

18 Q We're saying that Alabama Power Company took you
19 at your word and we don't have to run and hide from what we
20 say.

21 A [Witness Luehman] Well, then, please, rather than
22 just holding up that, can we read the sentence that we're
23 referring to out of that document?

24 Q We're going to do that. You can bet we're going
25 to do that now.

1 JUDGE BOLLWERK: I think, for the purpose of the
2 record, we need to have some reflection of what that
3 document -- of what you held up to him.

4 MF. MILLER: That was the December 13th, 1984
5 topic about which we will discuss in great length.

6 WITNESS POTAPOVS: There is one more issue that I
7 think should be made in the context of closing out that
8 licensing condition. And that license condition, as Mr.
9 Luehman indicated earlier, at least part of it, is of a
10 continuous nature, where you have to maintain your program
11 to be consistent with the applicable rules.

12 BY MR. MILLER:

13 Q And for enforcement purposes, it's not continuous,
14 it stops at November 30th, 1985; true or false?

15 A [Witness Potapovs] No. False.

16 A [Witness Walker] For the purposes of Generic
17 Letter 88-07, then your statement is correct. But, when you
18 say for enforcement purposes, that is not the same -- at
19 least it is not conducted to denote the same thing.

20 A [Witness Potapovs] You would still be taking
21 enforcement action, but maybe not against the modified
22 policy.

23 Q I see. For the purpose of --

24 A [Witness Potapovs] I'm talking about in context
25 of qualifying your equipment for safety-related use.

1 Q For the purposes that we are here on today, the
2 target enforcement date is November 30th, 1985, the so-
3 called deadline.

4 A [Witness Potapovs] For the modified policy,
5 correct.

6 Q And if you can't agree with me on anything else
7 -- and you haven't so far -- you will at least agree with me
8 that in late spring, May of 1985, we had a license condition
9 that required compliance with NUREG 0588 and a communication
10 from the NRC that said that license condition had been met.
11 Those are the words on this piece of paper.

12 A [Witness Potapovs] And the stipulation in that
13 license condition that certain activities will be
14 maintained.

15 A [Witness Luehman] I would like to add one other
16 thing. When you read the cover letter to this -- the letter
17 from Steve Varga, you'll note that the first sentence says,
18 my letter is dated February 8, October 12, 1982, and January
19 7, 1983, which superseded the October 19 letter, you
20 requested that certain license conditions be formally
21 closed.

22 In other words, this was not an act on the part of
23 the likes of the NRC coming out and saying, well, you know,
24 we've inspected this to such sufficient detail, we were
25 clearly relying on statements made by Alabama Power, when

1 Mr. Varga issued this letter. This -- this -- the closing
2 of this license condition was initiated by them, by Alabama
3 Power Company and not because of the staff's resolution of
4 these issues.

5 Q They don't have to close it if they don't agree
6 with it, do they, Mr. Luehman?

7 A [Witness Luehman] Again, we go back to the basis
8 of --

9 Q Yes, or no? Do they have to --

10 A [Witness Luehman] -- that we --

11 Q -- close if it they disagree with it?

12 A [Witness Luehman] That's correct. They don't.

13 Q All right. And it does say "we have completed our
14 review of these submittals," doesn't it, Mr. Luehman? Does
15 it say it or not?

16 A [Witness Luehman] Yes, it does.

17 JUDGE BOLLWERK: Shall we break?

18 MR. MILLER: We've had all the fun we can stand.

19 JUDGE BOLLWERK: All right. Why don't we take a
20 lunch break? Why don't we be back at 1:30?

21 [Whereupon at 12:05 o'clock p.m., the above-
22 entitled hearing was recessed for lunch, to reconvene at
23 1:30 o'clock p.m. this same day.]

24

25

1 AFTERNOON SESSION

2 [1:30 p.m.]

3 JUDGE BOLLWERK: We will go back on the record.
4 Mr. Miller, I think your cross examination is
5 continuing.

6 MR. MILLER: I tell you, we need to clean up one
7 other matter.

8 We will mark for identification purposes Licensee
9 Exhibit 85 and describe it for the record as an Order
10 modifying the Unit 1 license dated August 29, 1980.

11 [Whereupon, APCo Ex. No. 85 was
12 marked for identification.]

13 Whereupon,

14 JAMES LUEHMAN

15 ULDIS POTAPOVS

16 and

17 HAROLD WALKER

18 resumed the witness stand as panel members, and having been
19 previously sworn, continued to be examined and continued to
20 testify as follows:

21 CONTINUED CROSS EXAMINATION

22 BY MR. MILLER:

23 Q Will the members of the Panel please tell me when
24 they have had an opportunity to review the exhibit. I call
25 their attention to Page 2 and the bottom of Page 2,

1 particularly the sentence beginning "the Commission also
2 directed the Staff" et cetera, and going on up to Page 3.

3 Look for a moment on Page 2, and just so the
4 record will be complete, as I understand this order -- let
5 me strike that and we will go back and make sure it is
6 established correctly.

7 We talked earlier about the license condition for
8 Unit 2 because, and these are my words, it was an NTOL
9 license and that is part of the way that they handled EQ for
10 those kinds of licensees. Are you with me so far?

11 A [Witness Potapovs] Yes.

12 Q Okay. And now we are looking back to the license
13 for Unit 1, which was already operating in this time period.
14 And here is my understanding, and correct me if I am wrong,
15 that this order modifies the license for the purpose
16 obviously as stated here, but was to fulfill something of a
17 similar function as to what the license condition for Unit 2
18 did. If that is not the case, somebody comment on it and
19 tell us the origins and the purposes of this.

20 A [Witness Luehman] Well, Page 5 of the order says
21 that the license is amended and it quotes the words with
22 regard to information which fully and completely responds to
23 Staff's request as specified in 70.01B shall be submitted.
24 So, that is the purpose of this.

25 I think, if I am recalling it correctly, that the

1 license condition for Unit 2 was a little bit more extensive
2 in its wording.

3 Q I agree with you. But let's put this at least in
4 a chronological time line.

5 This order modifying the Unit 1 license is dated
6 in September of 1980; correct?

7 A That is correct.

8 Q And we had heard some earlier testimony that in
9 doing the work that Mr. Gibbons did in December of 1980 and
10 in doing the work done by the EQ Branch in -- I think that
11 was in September, 1980 -- let me strike that because that
12 was for Unit 2 -- but focusing back on Mr. Gibbons, someone
13 suggested, I think, that there were no clear standards
14 against which we could test Mr. Gibbons work. Do you recall
15 that suggestion? And if I said in inaccurately, please tell
16 me so. You can't help on that?

17 Mr. Walker, you have to say so for the Court. I
18 know you shook your head no, but you have to say that.

19 A [Witness Walker] I can't say I recall making that
20 statement.

21 Q Let me try saying it this way. There was some
22 discussion about the significance of Mr. Gibbons' work. Can
23 we look at this order and know by looking at Page 2 and Page
24 3, that DOR guidelines or NUREG 0588 were a license
25 condition for operating reactors throughout the country?

1 A [Witness Potapovs] I guess you're right. You're
2 looking for the tie-in to that inspection report, and I
3 don't know that there is one.

4 Q Well, that may be the point, and I see why you say
5 that, but can you tell me, though, that, by order of the
6 Commission and also by an order modifying the license that
7 related -- safety-related electrical equipment in the case
8 of Unit 1, anyway, should be qualified to the DOR
9 guidelines, and that is a license --

10 A [Witness Potapovs] Yes.

11 Q Okay.

12 A [Witness Potapovs] If that's your point, yes.

13 Q That's my point, and that is, you know, that at
14 least it appears that raises the level of attention, that
15 you have gone from, say, a bulletin, or a circular in the
16 case of 78-08, to a bulletin in the case of 79-01B, and now
17 there is a license. There's an order modifying the license.
18 Is that -- do you agree with that?

19 A [Witness Walker] Yes, the -- the chronological
20 order and purpose?

21 Q Right. And with that raising of the regulatory
22 imposition, don't you agree that whatever it is Mr. Gibbons
23 did in 1980, in December, after this modification took
24 place, that the licensee is entitled to view that
25 communication by him as on par with the regulatory

1 requirement?

2 A [Witness Potapovs] I believe that the report is
3 fairly explicit what purpose it -- what purpose of the
4 inspection was and what was looked at, and licensees should
5 take that in context with measuring what was done during the
6 inspection and what the results were and evaluate that
7 against his environmental qualification program and see how
8 it comes out.

9 Q All right. But we know that, when Mr. Gibbons
10 showed up in December 1980, he certainly knew that there was
11 a license condition --

12 A [Witness Luehman] I don't know that.

13 A [Witness Walker] I don't know that.

14 Q Well, wait a minute. Are you telling me that he
15 didn't know what had been imposed?

16 A [Witness Walker] I don't know what he knew.

17 Q Well, then let's say that maybe he didn't know it,
18 but the Commission as a whole certainly knew that, when he
19 showed up, there was a license condition on the identical
20 topic he was there to --

21 A [Witness Potapovs] Well, I guess if you are
22 trying to suggest that the inspection was for the purpose of
23 evaluating the licensee's compliance to the license
24 condition, I don't think that comes across in the report.

25 Q It's pretty clear you and I can't agree on what

1 comes across in the report, but what we can at least agree
2 on is the circumstances surrounding its preparation, and you
3 will agree with me that the inspection occurred at a time
4 shortly after a license -- the license was modified. Will
5 you agree with me on that?

6 A [Witness Potapovs] Yes.

7 Q Will you also agree with me that the inspection
8 references NUREG-0588 as --

9 A [Witness Potapovs] Yes.

10 Q -- within the scope of the inspection?

11 A [Witness Potapovs] Yes.

12 Q Okay. And that the modification to the license
13 similarly references qualification to the DOR guidelines in
14 NUREG-0588. It says that. I'm not making it up.

15 A [Witness Luehman] But I think that the -- you
16 know, again, you have to go the -- to the -- what -- what is
17 ordered by this license condition, and if the ordering
18 paragraph of this license condition says what I already
19 partially read, which is that -- that they licensee has to
20 provide all the information which responds to the -- the --
21 to the NRC's request, and we have already stated that Mr.
22 Gibbons' inspection, in part, went down there and, on an
23 audit basis, looked at some of that information.

24 Q Will you also agree that, on page two, at the
25 bottom, it clearly shows that the Commission directed the

1 staff to review the information sought from the licensee by
2 Bulletin 79-01B?

3 A [Witness Luehman] That's correct.

4 Q And went on to say that it should complete its
5 review of EQ safety-related equipment, including the
6 publication of safety evaluation reports. With me? Did I
7 say it right?

8 [Pause.]

9 A [Witness Walker] That's correct.

10 Q Okay. All right. I know that we cannot agree on
11 the effect of Mr. Gibbons' inspection, but we can agree it's
12 a data point: license modified, instructions to the staff
13 to review compliance with 79-01B, Mr. Gibbons shows up two
14 or three months later and conducts that kind of inspection.
15 True or false?

16 A [Witness Walker] Conduct the kind of inspection
17 he conducted.

18 Q Whatever it says, it says, and he found no
19 violations or deficiencies.

20 A [Witness Potapovs]" Well, again, it gets back to
21 the scope of the inspection and the purpose why it was
22 conducted, and that's stated in the report.

23 I don't think you can read anything more into the
24 inspection report, but he looked at certain systems and
25 certain equipment and verified that the equipment nameplates

1 matched with the master list and that the interfaces were
2 generally there.

3 Q Okay. All right.

4 A [Witness Potapovs] I don't think we can read
5 anything more into that report. It is not the sole basis
6 for the -- either Region II or the NRR staff to determine
7 the extent of licensee's compliance with either the DOR
8 guidelines or the NUREG-0588.

9 Q You said it is not up to them to determine
10 compliance?

11 A [Witness Potapovs] It's not the sole basis for
12 the staff to determine the licensee's compliance with either
13 DOR guidelines or NUREG-0588.

14 Q Well, wait a minute. We weren't controversial
15 until you said that. Mr. Gibbons went down there to inspect
16 against 79-01B and NUREG-0588. Isn't that what it says in
17 the inspection report?

18 A [Witness Potapovs]" I am not sure exactly what his
19 inspection direction was.

20 Q Look at the inspection report.

21 A [Witness Potapovs] Well, okay. Let's get it out.

22 It says that equipment inspected was inspected for
23 proper installation, overall interface integrity, and
24 manufacturer's nameplate data was obtained.

25 [Pause.]

1 Q What does it say under "Areas Inspected"?

2 A [Witness Potapovs] "Areas Inspected: This
3 special announced inspection involved 31 inspector hours on-
4 site in the areas of installed equipment review with respect
5 to IA Bulletin 79-01 and NUREG-580.

6 Q All right. We had decided among ourselves that he
7 meant NUREG-0588. If you have any information to the
8 contrary, say so now.

9 A [Witness Potapovs] I would assume that's a
10 reasonable deduction.

11 Q All right. But now, look, this man is down there.
12 You can't agree with me, but I will ask you this question:
13 If he sees something that violates one of those standards,
14 one of the things that he writes there, is he supposed to
15 remain silent or should he say so?

16 A [Witness Potapovs] Certainly, he should not
17 remain silent.

18 Q All right. So, in some way or another, he is
19 supposed to communicate his displeasure or his observation.

20 A [Witness Potapovs] That's right.

21 Q And if he does no such communication -- and here
22 is where we disagree -- we say he saw none, correct? And
23 you tell me whether or not you know from your personal
24 experience that he did see something contrary to those
25 standards.

1 A [Witness Luehman] We never said that he saw
2 something contrary to those standards I don't think. I
3 don't think any of us have said that.

4 Q Are we back to where you just questioned what he
5 did and had no evidence to the contrary?

6 A [Witness Potapovs] I don't know exactly to what
7 extent he reviewed the equipment that he looked at. He
8 states, in the "Areas Inspected," that he used those
9 documents as broad guidelines.

10 He develops more specific definition of what he
11 looked at in the last paragraph which I read.

12 Q All right. I know you don't know the extent of
13 what he did, but you do know that, had he seen something
14 violating what he was there to inspect, he would have said
15 so.

16 A [Witness Potapovs] I'm sure he would have.

17 Q And he didn't say so, did he?

18 A [Witness Potapovs] No, he didn't.

19 MR. MILLER: All right. Let's see if we can move
20 on.

21 [Pause.]

22 BY MR. MILLER:

23 Q Let's look at page four, and you see at the top
24 the hydrogen recombiner. Is that correct?

25 JUDGE BOLLWERK: This is page four of APCo Exhibit

1 11? Is that correct?

2 MR. MILLER: Yes, sir.

3 JUDGE BOLLWERK: A blown-up --

4 MR. MILLER: Yes, sir.

5 JUDGE BOLLWERK: -- exhibit.

6 BY MR. MILLER:

7 Q Are you with me now?

8 A [Witness Luehman] Yes, we've got it right here.

9 Q Can you tell me whether or not the hydrogen
10 recombiner mentioned on page four is the same hydrogen
11 recombiner a violation is alleged in this enforcement
12 proceeding?

13 A [Witness Potapovs] I can't tell that, but if you
14 have verified that, I have no reason to dispute it.

15 A [Witness Luehman] The only qualification to that,
16 I would say, is we don't -- we don't allege in our notice of
17 violation that the hydrogen recombiner itself was the -- not
18 qualified. The -- the unit itself, as far as we can tell,
19 is -- and the inspectors can tell -- was qualified.

20 Q And you say, instead, that the 5:1 splice was not
21 qualified?

22 A [Witness Luehman] That's correct.

23 Q And that is -- would you describe that 5:1 splice
24 as a termination or an interface or an installation, all of
25 the above?

1 A [Witness Luehman] We would call it a termination
2 and not a splice.

3 Q You would call it a termination and not a splice?

4 A [Witness Luehman] Or an interface.

5 Q Will you agree with me that he examined the
6 hydrogen recombiner for proper installation and overall
7 interface integrity?

8 A [Witness Luehman] Yes, that's what he said in the
9 report.

10 Q Will you agree with me that that is the same
11 splice or termination that you identify in your Notice of
12 Violation as the 5:1 splice?

13 A [Witness Luehman] I can assume that the -- I
14 guess I'll assume for the point -- I mean, I don't know that
15 he looked at every interface for every one of these pieces
16 of equipment. He talks in general, but for the sake of this
17 discussion, we'll assume that he did look at that splice.

18 Q Well, I don't want to assume it. I want you to
19 tell me if you have evidence suggesting that there are other
20 interface integrity besides the 5:1 splice that you have
21 identified in the NOV.

22 A [Witness Luehman] No. What I'm saying is, I will
23 take the general language in the report and make the
24 assumption that for every piece of equipment that's listed
25 there, he may have looked at the interface, whether it be a

1 termination, a splice, a junction box or whatever.

2 Q All right, will you also agree with me that he
3 inspected the interface integrity, proper installation and
4 found no identified violations?

5 A [Witness Luehman] I will agree with that.

6 A [Witness Potapovs] I think the issue there is
7 interface integrity. And I'm not sure exactly what
8 interface integrity is defined as. It doesn't state that he
9 looked at the qualification of the splices. There may have
10 been other interfaces such as -- I would say that interface
11 is a fairly broad term.

12 A [Witness Luehman] Well, the other thing that I
13 would add is, as I stated before, that simply looking at any
14 kind of splice, whether it be the 5:1 or whether it be an
15 inline splice, an inspector can't necessarily tell. A
16 splice, from the outside, could be -- appear perfectly
17 properly made.

18 I mean, that doesn't tell you anything about the
19 qualification because you looked at it.

20 A [Witness Potapovs] And I speculate that's why he
21 used the broad term, overall interface integrity, rather
22 than qualification.

23 Q You speculate?

24 A [Witness Potapovs] I speculate as much as you did
25 about what the term means.

1 Q Well, all right, let's do this: Here's the piece
2 of paper he wrote. Find the place on the piece of paper
3 where he says it's not qualified.

4 A [Witness Luehman] I would ask you to show me the
5 place where he said that he inspected the file that went
6 along with it.

7 Q Find the place on the piece of paper where he says
8 it's not qualified.

9 A [Witness Luehman] He doesn't say that.

10 A [Witness Potapovs] It says several differences
11 were identified in the licensee's report as being updated.
12 I'm not sure what he means by that; whether that casts doubt
13 on the interfaces. But I think that since it says "minor,"
14 I would assume that they're not very significant problems.

15 Q I understand. We need to take a time out, guys.
16 We need to focus on this because we have a clear
17 miscommunication. Constantly, one of the themes that you
18 all are trying to play back to us is what's not here, and
19 therefore, what's not here should be viewed badly.

20 All we're trying to tell you is that they go, they
21 can see whatever they want to, they get to write any report
22 they want to, they're the master of the page, not us. And
23 don't -- this is my question:

24 Don't you agree with me that if we get an order
25 modifying the license, if we get an inspector who comes down

1 here, he sees this equipment, at least in early '81 when we
2 got his inspection report, Alabama Power Company is entitled
3 to have a datapoint that says I have passed an inspection
4 and I have no identified violations?

5 A [Witness Luehman] That's true with any
6 inspection.

7 Q All right, and with respect to what goes on in the
8 life of Alabama Power Company, isn't it entitled to say, as
9 of that moment in time, if he knew of a violation, he would
10 have identified it and told me so; is that true?

11 A [Witness Luehman] That's true; he probably would
12 have.

13 Q Us sitting around here, 12 years later, saying,
14 well, we don't know whether he looked at this, we don't know
15 whether he looked at that, is true, but there are people in
16 this world who were there, and they do know what was looked
17 at.

18 So that means that what they say ought to be the
19 prevailing view; true or false?

20 A [Witness Potapovs] I have not heard what they're
21 saying.

22 Q We're going to work on that point. But can't you
23 also then say -- and this is a very straight-up question
24 men. I'm asking you plainly, if Gibbons goes down there and
25 looks at the hydrogen recombiner, and he looks at interface

1 integrity and proper installation and identifies no
2 violations, and he does that against NUREG 0588 and 79-01B,
3 can't Alabama Power Company say, you know, at least for that
4 splice or termination, this guy says I have no problems
5 against those standards.

6 A [Witness Potapovs] I cannot speak for Alabama
7 Power Company, but if I was in charge of the equipment
8 qualification for this equipment and if I looked at this
9 report, I would not take that report as telling me that that
10 equipment is qualified.

11 I would look for such terms as qualification, and
12 qualification of what. When I look a piece of paper, I look
13 at it for what it contains. I don't try to read things into
14 it. I mean, it does not contain very much.

15 If somebody's telling me that the overall
16 interface integrity was okay, it does not mean to me that
17 the interfaces or the splices, all of them, are qualified.

18 Q Let's try this: Can you at least agree with me
19 that if it does nothing else, at that moment in time, the
20 licensee is entitled to think, at least there's not a
21 deficiency about which I clearly should know? Okay, are you
22 with me, and do you agree with me?

23 A [Witness Luehman] I don't believe so.

24 Q Again, it did not occur to you that if the
25 licensee clearly should know about a deficiency in this

1 interface, this termination with the hydrogen recombiner, on
2 this occasion, that it would have been called out by Mr.
3 Gibbons?

4 A [Witness Luehman] No, that's not true because
5 there's no indication that he looked at the qualification
6 data supporting that. And if he had, I think that he would
7 have, because we have many other reports where -- and pre-
8 deadline reports where the inspectors called out exactly
9 what they looked at.

10 Q All you're saying is that you don't know what he
11 looked at, so therefore you're not going to spot me that
12 point. What I'm telling you is that he can look at anything
13 he wants to, and he ought to be bound by the words that he
14 uses.

15 And if he wants to say, but I didn't look at the
16 qualification data, he ought to say so. True or false?

17 A [Witness Luehman] No, I don't think so. He
18 should say what he looked at, and he looked at -- he said
19 what he looked at, and the qualification data wasn't one of
20 the things he looked at, obviously, because he didn't put it
21 down.

22 Q The data was compared to the information contained
23 in the licensee's report which tells you that he looked at
24 the licensee's report.

25 A [Witness Luehman] The name plate data.

1 Q We are going to cover that. But doesn't it tell
2 you that he looked at the licensee's report, at a minimum?
3 That's what it says.

4 A [Witness Luehman] That's perfectly believable.
5 There was a report from Westinghouse on the qualification of
6 the recombiner. The data of what recombiners they probably
7 got was probably indicated on the report that this
8 corresponds to recombiners of such number. He looked at
9 that and said, yeah, this one is covered by this report.

10 A [Witness Potapovs] And there may have been a
11 generic qualification of that equipment provided that it had
12 been properly installed with proper interface.

13 Q How much of what each of you just told me do you
14 know from your own personal knowledge?

15 A [Witness Potapovs] Of this particular item?
16 Nothing.

17 Q All right.

18 A [Witness Luehman] I guess I want to clarify that.
19 Do we know that he did that or do we know that that is, in
20 fact, how the recombiner tests --

21 Q Do you know that he did that?

22 A [Witness Luehman] No.

23 Q But you can agree with me, as you just said, that
24 he looked at the Westinghouse Qualification Report. The
25 extent of that view --

1 A [Witness Potapovs) I can't agree to that.

2 Q Mr. Luehman just said that that is what he did.
3 Isn't that the report that --

4 A [Witness Potapovs) Nowhere does it say that he
5 looked at the Westinghouse Report, it said licensee's
6 report, and I am not sure that Westinghouse is the licensee.

7 Q You can't say whether Westinghouse is an NRC
8 licensee?

9 A [Witness Potapovs) Well, they do have a materials
10 license probably, but not a power license.

11 A [Witness Luehman] I will go so far as to say that
12 I interpret that to mean that if he looked at the report
13 that was in the licensee's possession, which was the
14 Westinghouse Report for the qualification of the recombiner.

15 Q All right.

16 A [Witness Luehman] That is the way I read it.

17 Q All right, let's see if we can move on because we
18 are about to get out of 1980.

19 I will ask you -- excuse me just a minute.

20 Let's everybody look at Alabama Power Company
21 Exhibit No. 12. It is the TER dated December 10, 1980
22 entitled "Environmental Qualification of Safety Related
23 Electrical Equipment, IE 79-01D".

24 JUDGE BOLLWERK: APCo Exhibit 12 is marked for
25 identification.

1 [APCo Ex. No. 12 is marked
2 for identification.]

3 [Witnesses reviewing document.]

4 BY MR. MILLER:

5 Q What I want to do is to make sure that we
6 interpret this, and particularly these charts on the back,
7 check-off sheets correctly, so if you would take some time
8 to look at those and let's see if we can work through that.
9 Just let me know when you are ready.

10 All right.

11 If someone knows -- Mr. Walker, you were
12 personally involved in some respects back then. What was
13 the purpose for a TER associated with IE 79-01D such as you
14 see there before you as Alabama Power Company Exhibit No.
15 12?

16 A [Witness Walker] Well, first of all I haven't
17 seen this report before now.

18 Q I see.

19 A [Witness Walker] But the purpose of a TER was to
20 usually do as most TER's state, they look at the technical
21 aspects of the program, if it was an EQ program. It often
22 was used to identify equipment and the same as the other
23 report indicated, verify nameplate data and that sort of
24 thing.

25 Q We can go more specifically to this, so let me ask

1 it to you this way.

2 Can you draw any correlation between this TER and
3 its date of December, 1980 and its requirement in the order
4 which we just finished discussing that there be a
5 publication of a Safety Evaluation Report by February 1,
6 1981?

7 A [Witness Walker] Certainly I don't think this TER
8 would determine whether we agreed or perhaps disagreed
9 whether the equipment was qualified or not.

10 Q Okay. We see some correlation that the Staff was
11 under a mandate to issue an SER by February, '81, and the
12 precursor to that was a TER in the case of Unit 1, December,
13 1980.

14 A [Witness Walker] Well, yes. I don't know for a
15 fact that the purpose of this TER was to fulfill the
16 requirement that was in that order.

17 Q Is it logical to conclude that obligation for an
18 SER in February of '81 prompted the TER of December, 1980?

19 A [Witness Walker] It's a reasonable deduction.

20 Q Okay, fair enough.

21 Let's turn to the chart -- probably I should say
22 charting -- Attachment 1, and I have got a blow-up that
23 might help us. It might help us if we all worked off the
24 same blow-up.

25 JUDGE BOLLWERK: Do you want to use the easel?

1 MR. MILLER: I think so, Judge.

2 But while I am getting this set up, how about you
3 all turning to Page -- I don't know --

4 I have Reactor Coolant Steam Generator, Page 1 of
5 2, and a Bates Stamp No. 05346.

6 [Witnesses reviewing document.]

7 MR. MILLER: It may help the Board to look at Page
8 5-3460. Everybody have it? Everybody ready? You ready,
9 Mr. Walker?

10 WITNESS WALKER: Yes.

11 BY MR. MILLER:

12 Q I know Mr. Luehman is the lead witness, but he
13 didn't come to this until much later. Mr. Walker, I
14 probably ought to direct these questions towards you.

15 Help us understand how this -- call it what you
16 will -- check sheet operates, if you could do that for us
17 please.

18 A [Witness Walker] This --

19 MR. HOLLER: If I may, I'm going to object to
20 this. I know that we're allowing this in for the purpose of
21 showing best effort, but the witness has testified that the
22 first time he has seen the report today. If the questions
23 are directed to how he took this in consideration or how he
24 would for best efforts, that's one thing.

25 I might also point out to the Board that we have

1 the author of this report as a witness in this case, if
2 there are questions directed to what the report means.

3 MR. MILLER: In reverse order of response, he's
4 treating Mr. Merriweather as the author of the report, and
5 he's here with us. The topics that he has been identified
6 are not necessarily those covered in this aspect of the
7 report.

8 It is also true that the significance of this
9 report is yet another milestone in the chronological
10 development of Alabama Power Company's responses to the
11 various EG requirements promulgated by the Commission, and
12 to that extent, we think it's both material and relevant
13 that this Board know and appreciate that a TER was done, a
14 TER was done by the person who later became our lead
15 inspector in our '87 inspection, and that TER had a number
16 of opportunities available to the staff, ranging from
17 inspector or reviewer needs additional information to
18 qualify it, and that in virtually every instance, the
19 equipment that we're here on today was deemed to be
20 qualified.

21 No question about it, there will be some excuse
22 about why we shouldn't requalify it as qualified, but it is
23 at least a data point on our clearly-should-have-known path
24 and our best-efforts path that, once again, we have passed
25 with flying colors another milestone put out by the NRC and

1 ostensibly inspected by the staff.

2 For that purpose, we think it's both material,
3 relevant and very credible evidence.

4 JUDGE BOLLWERK: Is it your intention to ask Mr.
5 Merriweather about this particular chart?

6 MR. MILLER: I can't say that no discussion of Mr.
7 Merriweather will be had on this chart, but he's not the
8 principal one testifying on best efforts and clearly knew or
9 should have known.

10 [Board members conferring off the record.]

11 JUDGE BOLLWERK: Let me ask one question. It says
12 at the top under "System" RB coolant steam generator. How
13 does that have anything to do with electrical equipment?

14 MR. MILLER: We selected that because we're trying
15 to understand how it works. Once you understand the process
16 of how you get graded, then you can turn to the various
17 items of electrical equipment and know what each one stands
18 for.

19 I mean, it's not -- there is not anything
20 particularly significant about choosing this system; it's
21 these numbers and the check sheets that count. Once you
22 understand that, each page can then be interpreted properly.
23 We can go to another page.

24 JUDGE BOLLWERK: I guess in the historical context
25 we're going to allow this testimony to go on, the

1 questioning to go on, but I am concerned about exactly what
2 Mr. Walker can testify to given, as he said, he's only seen
3 it within the -- I guess today, basically.

4 MR. MILLER: Judge, there's no doubt about it, if
5 they say they can't interpret this, then, I mean, we push
6 on. I don't mean to give them a king-sized loophole, but if
7 they announce that they don't understand it and can't
8 interpret it, then we've got to go to something else.

9 JUDGE BOLLWERK: All right. We'll see where this
10 goes. We'll allow a couple of questions.

11 MR. MILLER: Okay. Just tell me when you're
12 ready.

13 BY MR. MILLER:

14 Q Let's try and walk on it, Mr. Walker, and see if
15 we can at least interpret how this TER operators and the
16 meaning of the various columns. We have a blow-up and we've
17 turned to the page of the steam generator, Page 1 of 2. You
18 see Mr. Merriweather's signature in the lower righthand
19 corner, do you not?

20 A [Witness Walker] On your copy, yes.

21 Q Okay. On your copy, it's not --

22 A [Witness Walker] It's illegible.

23 Q All right. Well, nothing in life is perfect.

24 A [Witness Walker] Because I lost the footnotes.

25 Q Okay. It may be that we'll have to go to another

1 page, then, but let's try and at least understand the far
2 righthand column, category of items. Let's look down
3 underneath the chart and identify the various things that
4 were available to, in this case, Mr. Merriweather as he
5 worked his way through these items of equipment shown on the
6 left side, okay?

7 A [Witness Walker] Okay.

8 Q What does a "1" mean?

9 A [Witness Walker] Frankly, I can't read it.

10 Q Let's try -- can you find another page and read
11 it?

12 A [Witness Potapovs] It says, "Equipment -- and
13 there are two illegible letters, and then it says
14 "qualified."

15 Q We're not necessarily tied to this particular
16 blowup. Let's just try and figure out what a "1" means.

17 A [Witness Walker] "Equipment is qualified." I
18 believe that's what it says.

19 Q All right. And what does a "2" mean?

20 A [Witness Potapovs] Aging is less than life of
21 plant with licensee's indicating --

22 A [Witness Walker] Indicating periodic replacement.

23 Q Okay. Three, equipment requires modifications.

24 Give some examples under parentheticals. Do you agree with
25 me?

1 A [Witness Walker] I believe that's correct, yes.

2 Q Yes. Okay.

3 Well, lets look at 4. Tell us about 4. What does
4 that code mean?

5 A [Witness Walker] The qualification of equipment
6 unresolved, I believe it says.

7 Q I see. And the three subcategories?

8 A [Witness Walker] A is testing scale of the
9 schedule, but not complete; B, reviewing these additional
10 information; C, qual record search still in process.

11 Q I see. And 5.

12 A [Witness Walker] Equipment not qualified.

13 Q Okay. On the numerical coding, then, can you
14 agree with me that that coding correlates to the far
15 righthand column under "Category of Items"?

16 A [Witness Walker]" Yes.

17 A [Witness Luehman] Well, it appears to, yes.

18 Q Okay. Will you also agree with me that, at least
19 on this occasion, Mr. Merriweather had available to him a
20 full range of options, ranging from 1, equipment qualified,
21 to the various subse.s of aging status unresolved to not
22 qualified?

23 A [Witness Walker] I agree that he had those
24 options according to the way the chart is made out, but he
25 clearly states in this report, and if you permit me to read

1 --

2 Q Please do.

3 A [Witness Walker] -- Paragraph 2.3, the evaluation
4 of the licensee report, "Each component as addressed on the
5 component evaluation worksheet" -- and I believe this may be
6 one of these sheets --

7 Q I see.

8 A [Witness Walker] -- "of the licensee report was
9 examined for completeness and accuracy to the criteria given
10 in the bulletin. This examination assumes qualification
11 documents (analysis, test reports, et cetera) referenced by
12 the licensee their submittal are acceptable."

13 Q Fin. You have read accurately. I did 2.3,
14 right?

15 A [Witness Walker] Yes.

16 Q Now, does it not also refer to the onsite
17 inspection there in paragraph 2.2?

18 A [Witness Walker] Yes. The paragraph beginning
19 with that statement.

20 Q All right. But can't we say though that this
21 report reflects the combination of the onsite inspection and
22 an examination of the component evaluation worksheet for
23 completeness and accuracy to the criteria given in the
24 bulletin?

25 A [Witness Walker] I believe it says that.

1 A [Witness Pctapovs] Again, you have to condition
2 it to the fact that when we're looking at the sheets, we're
3 looking maybe at the whole list of equipment. The paragraph
4 2.2 relates to inspections made on selected IE equipment.
5 So, I'm not sure, again, the extent of these inspections and
6 the scope of these inspections. And perhaps Mr.
7 Merriweather would be the best person to provide more detail
8 on that.

9 Q I could be. It could be. We didn't ask this.
10 And you may be raising a good point. When was the first --

11 A [Witness Potapovs] And we also have this same
12 statement which I made before about the interfaces -- we're
13 talking about overall interface integrity. Again, I am not
14 sure whether we are alluding to qualification of the
15 interface or the fact that the interface was installed and
16 existent -- it was in existence.

17 Q I am satisfied that you will disparage the
18 conclusions in this report at every opportunity. It does
19 say, however, does it not, that there was an onsite
20 inspection and review of the component evaluation,
21 worksheets and examine them for completeness and accuracy to
22 the criteria. And to that extent, this report comments on
23 those topics; correct?

24 A [Witness Luehman] What topics are those topics?

 Q The onsite inspection, shown in paragraph 2.2 and

1 an examination of the CEWS.

2 A [Witness Luehman] Well, I think, clearly, if the
3 onsite inspection had looked at the analysis and supporting
4 files, then there would have been no need to make the caveat
5 in Section 2.3 of the report. If the onsite inspector had
6 looked at that, surely the preparer of the report would have
7 known that and it wouldn't have had to make the caveat in
8 Section 2.3 of the report that it clearly made.

9 Q I understand what you're saying. We're back in
10 1980 with a datapoint. And we've got a communication from
11 the NRC and we're trying to interpret this communication.
12 And do you agree with me that the item one, in the far
13 right-hand column, indicates qualified?

14 A [Witness Luehman] With the caveat, as Mr. Walker
15 and Mr. Potapovs stated.

16 Q And will you also agree with me that as you look
17 down these sheets, without regard to the numerical accuracy
18 of my statement, that there is a large number of ones? As
19 you turn the pages, you see ones, a couple of twos, ones,
20 here's some threes. But you see ones right after another.

21 A [Witness Luehman] I guess I can comment on that.
22 I've reviewed this -- these sheets a number of times -- at
23 various times during this -- the course of this action.
24 I've reviewed these types of sheets, to some extent in other
25 actions as -- in working in the Office of Enforcement on the

1 modified enforcement policy. And it's clear to me, again,
2 based on the -- the type of things, along with the
3 inspections that were done in 1980, were a concern to me,
4 coming into this in 1987, wanting to understand what these
5 sheets mean.

6 Clearly, the interpretation of the sheets that --
7 that is -- that -- that I think that you have to arrive at,
8 if you read the caveats that are in there is that we did a
9 check to make sure that the licensee submitted all the
10 documents that were required to reach a sufficient level of
11 documents to -- to fill in all the required holes for
12 documentation to ensure qualification. But we did not make,
13 as that caveat said, a determination on the quality, only
14 that the necessary documents were there.

15 Q Okay. And based on what you just said, that is,
16 there was a review of the documents, the reviewer had
17 available the full range of choices and he chose one.

18 A [Witness Luehman] Well, I would say, in reviewing
19 the signatures on some of the documents, and being familiar
20 with some of the personnel on this document, I would say
21 that clearly, in at least one case, I know that the person
22 was not an environmental qualification person. So, I have
23 to assume that his range of -- his range of choice was
24 limited to solely, as I've stated, making sure that all the
25 documents that were required were received.

1 Q Who was that?

2 A [Witness Luehman] Mr. Virgil Brownlee.

3 Q Was not an engineer?

4 A [Witness Luehman] He was an engineer, but he was
5 not responsible for environmental qualification, at least
6 that I'm aware of.

7 Q And you say that because he was an engineer, but
8 not an EQ engineer, his review capabilities are not equal to
9 those who do have such tasks?

10 A [Witness Luehman] No, that's not what I'm saying
11 at all.

12 Q Tell me what you said.

13 A [Witness Luehman] What I'm saying at all is that
14 obviously, a person who is going to review these to make
15 sure that you've got all the required documents is going to
16 have to have a certain level of technical expertise to make
17 sure that the document that's presented to him could, in
18 fact, if it's the right document, because, again, we -- we
19 make the caveat. If it's the right document, this is a test
20 report and, therefore, it fits in this bin right here. And,
21 therefore, there is a test report for this piece of
22 equipment.

23 But, I don't think -- and, again, I'll say -- I'm
24 speculating, I don't think, given the wording of the
25 document and some of the people -- knowing some of the

1 people that were involved that that was necessarily -- there
2 was any in-depth review of what was received. And that's
3 why the caveat is in the cover letter.

4 Q Let's take them in the order that you gave them.
5 You recognize that there requires a certain amount of
6 technical expertise to evaluate a qualification file.

7 A [Witness Luehman] That's right.

8 Q And you say, or at least I heard you say that Mr.
9 Brownlee, as nice a man as he probably is, did not have that
10 requisite amount of technical expertise?

11 A [Witness Luehman] I -- I -- if I said that, I
12 meant to say that I assumed that he didn't, because --

13 Q He was not in EQ?

14 A [Witness Luehman] That's correct.

15 Q Wouldn't you say that at least you have to be an
16 engineer, which Mr. Brownlee was?

17 A [Witness Luehman] I would say, in order to make
18 sure that the documents that were received in fact could
19 fill those holes, you would have to have some training or
20 some technical background, that's correct.

21 Q All right. You wouldn't have to be an engineer,
22 as a minimum?

23 A [Witness Luehman] Not necessarily.

24 A [Witness Walker] If you are defining an engineer
25 as a person who has an engineering degree from a -- I guess

1 a college, then the answer is no, you don't have to have
2 that.

3 Q Okay. You just have to have some training. Well,
4 all right.

5 Well, let's go on then. Can we at least agree
6 that, as it respects a data point, we have yet another piece
7 of paper from the NRC to the licensee that has an
8 opportunity to call out deficiencies, based on whatever they
9 reviewed, and in many instances, didn't do that. Some it
10 did, some it didn't.

11 A [Witness Walker] What does -- as I looked at it
12 for a minute or two minutes here, and I -- and the first
13 thing, one of the first things I saw was paragraph 2.3.
14 What does this mean to me, just on the basis of that is that
15 he did not look at test reports. I mean, you cannot
16 determine whether something is -- an item is qualified or
17 not if you don't look at a test report, an analysis or those
18 things that we rely on to determine the quality of their
19 product.

20 Q Would you also say that if you did look at the
21 test report and have the requisite technical accuracy -- I'm
22 sorry -- expertise, then your judgment should be sustained?
23 That is, you say it's qualified; it's qualified.

24 A [Witness Potapovs] One more thing is needed, and
25 that is looking at the installed condition of the equipment.

1 Q Okay, plus --

2 A [Witness Potapovs] And if you have those three,
3 then you can make a determination.

4 A [Witness Walker] When I say look at a test
5 report, I mean in conjunction with looking at all the other
6 things. If you look at everything else and don't look at
7 the test report, I don't think you're going to be able to
8 make a fair judgment on qualification.

9 If you look at the test report only, and don't
10 look at the other things, you cannot conclude -- you cannot
11 make a final conclusion. You can decide whether or not the
12 test report itself appears to be okay, but you still haven't
13 looked at the installed condition and the various other
14 things you have to look at.

15 Q Was any other effort expected by a licensee to
16 respond to 79-01B besides, do the things asked of it, and
17 then stand by for the inspections that the TERS that were
18 issued?

19 A [Witness Walker] The things asked of it in 79-
20 01B?

21 Q Yes, sir.

22 A [Witness Walker] Those were the things that were
23 expected.

24 Q And the way it's going to find out whether or not
25 it does those things is by communications from the NRC; is

1 that right?

2 A [Witness Luehman] That's correct, and in the
3 context of the way that those things are transmitted and
4 what they will state.

5 A [Witness Walker] The way he will find out if we
6 agree that he does or thinks, is by communication with the
7 NRC, yes.

8 Q Is there anything that you're aware of -- and I
9 know you just got this test report, Mr. Walker, for the
10 first time -- but is there anything you're aware of as a
11 result of your discussions and participation on the EQ
12 Enforcement Panel, where someone has said, this test report
13 should not be relied upon by the licensee for the purposes
14 of what it says?

15 A [Witness Walker] Test report?

16 Q I'm sorry, this Test Evaluation Report.

17 A [Witness Walker] This particular one?

18 Q The Technical Evaluation.

19 A [Witness Walker] I'm not aware of anyone having
20 said that this TER should not be relied upon for any
21 purpose.

22 Q Can we say also that until I showed it to you
23 today, you had never seen it before?

24 A [Witness Walker] I had never seen it before;
25 that's correct.

1 Q Doesn't that also mean that in your EQ Enforcement
2 Review Panel, this topic was never discussed and the
3 relevancy or weight it should be afforded was never
4 discussed?

5 A [Witness Walker] This particular TER?

6 Q Yes, sir.

7 A [Witness Walker] Well, frankly, I -- yes, I can
8 say it was never discussed, and even today, I don't see the
9 relevance of this in reaching the conclusion we may have
10 reached about Alabama Power in the -- on the Enforcement
11 Panel.

12 A [Witness Potapovs] I think, in general, when we
13 looked at the best effort area, we looked at the activities
14 that went on before the deadline in order to reach
15 compliance with the deadline. We pretty much assumed that
16 everybody had what we call a clean TER in response to the
17 Bulletin 79-01, which was the case.

18 So, we did not dwell much on what transpired
19 before the 79-01 Bulletin.

20 Q You mean, for purposes of enforcement on a
21 modified enforcement policy, you assumed that all the
22 licensees had a clean 79-01B response?

23 A [Witness Potapovs] The issues were resolved.

24 Q The issues had been resolved? What does that
25 mean?

1 A [Witness Luehman]" Well, I think that --

2 Q Wait. I need to make sure we understand what that
3 means.

4 A [Witness Potapovs] I don't know how much more
5 explicit I can be.

6 Q Well, then, I'll ask it to you this way: Did you
7 assume for purposes of the modified enforcement policy
8 implementation that all of the qualification or deficiency
9 issues associated with the licensee's response to 79-01B had
10 been resolved?

11 A [Witness Potapovs] To the extent that the TER
12 stated that the required documents were submitted and the
13 licensee has made the commitments that the Bulletin required
14 to be made.

15 We may not have reviewed -- again, we get back to
16 implementation. The validity of the documents that were
17 submitted to support qualification, this was to be handled
18 as part of the implementation verification down the road.

19 A [Witness Luehman] I would say that, you know, --
20 just to follow on on what Uldis said with respect to the 79-
21 01B response, I would say that, clearly, with regard to best
22 efforts, we felt that with only one exception in all the
23 reviews that we did, that licersees' programmatic responses,
24 including their response to 79-01B, knowing of no licensee
25 that got an order for failure to respond to 79-01B, or

1 ultimately didn't respond to 79-01B, that as Uldis said,
2 they took the necessary efforts to comply and supply all the
3 information under 79-01B.

4 So, on that point under the issue of best efforts,
5 we felt pretty much, all the licensees had exhibited about
6 the same amount of effort in their programmatic reviews.

7 Q And Alabama Power Company was at least up to that
8 standard; was it not?

9 A [Witness Luehman] With regard to formulating a
10 program and resolving the identified deficiencies in the
11 programmatic review of the paper and the -- how the program
12 was going to be implemented, yes.

13 Q Now, tell me what you know, if you know anything,
14 about the Unit I Safety Evaluation Report issued on or about
15 May 21, 1981.

16 A [Witness Walker] I'm sorry, the date on that is
17 what? '81, you say?

18 Q May 21, 1981, Alabama Power Company Exhibit 14.

19 A [Witness Luehman] I don't know anything about it.

20 Q Mr. Walker?

21 A [Witness Walker] I only know that SERs was issued
22 by the -- around that time. I certainly don't know the
23 content. I don't know the specific content. You know, I
24 probably could speculate on what I think it may contain.

25 Q Did you, by any chance, review that SER as --

1 A [Witness Walker] For Alabama Power Company?

2 Q Yes, sir, in conjunction with your role on the EQ
3 Enforcement Review Panel?

4 A [Witness Walker] No, sir, I don't see where it
5 had any bearing on what we were doing at that point.

6 Q I can understand that, but I'll ask Mr. Luehman if
7 you have reviewed that in conjunction with your --

8 A [Witness Luehman] Yes, I have.

9 Q And when did that review occur?

10 A [Witness Luehman] I reviewed a number of times
11 during this -- since this -- you know, we got the proposal
12 from the Region for a civil penalty in this regard, and to
13 pick out when the first time and when the last times were,
14 would be impossible.

15 Q But you say you did review it before the civil
16 penalty was proposed and the Notice of Violation issued?

17 A [Witness Luehman] I recall that I did.

18 Q Mr. Walker, did Mr. Luehman share with you, the
19 results of his review when the EQ Enforcement Panel met?

20 A [Witness Walker] I certainly do not recall what
21 was said. I mean, what typically happened, he would -- we
22 would have -- a panel would intervene and he would summarize
23 what was to be covered and the information he had at his
24 disposal.

25 Q Can you tell me what the purpose of an SER is, Mr.

1 Walker?

2 A [Witness Walker] I think the title of it sort of
3 speaks for itself. It says Safety Evaluation Report.

4 Q Just by way of inquiry, do you know whether or not
5 plants are allowed to be licensed on the basis of a Safety
6 Evaluation Report?

7 A [Witness Walker] Certainly that is one of the
8 components that is used for licensing, yes.

9 Q Not just at the CP stage, but also at the OL
10 stage?

11 A [Witness Walker] I believe that's correct.

12 Q Wouldn't you agree with me that a Safety
13 Evaluation Report is a major piece of NRC work?

14 A [Witness Walker] Yes, it is.

15 Q It is not something to be entered into lightly; is
16 it?

17 A [Witness Walker] I agree.

18 Q It is important for the Commission to do the
19 Safety Evaluation Reports accurately so that the public will
20 have confidence that the Commission is fulfilling its role;
21 isn't that a true statement?

22 A [Witness Walker] I don't want to claim that I
23 speak for the Commission, but that is a reasonable
24 explanation of it.

25 A [Witness Luehman] I would add that that is only

1 within its stated scope. Different SER's have different
2 scopes, just like different inspections have different
3 scopes.

4 Q And if there is a problem, they're supposed to be
5 called out in the SER; is that a true statement, Mr. Walker?

6 A [Witness Walker]" If there's a problem that is
7 within the scope of the SER, yes, it should be called out.

8 Q Isn't it the intent of the Staff and the
9 Commission in issuing SER's for the licensee to rely on?

10 A [Witness Walker] Well, I don't think so. The SER
11 relies primarily on what the licensee provided to the NRC.

12 Q So, the licensee is not entitled to rely on the
13 SER?

14 A [Witness Walker] He can rely on the fact that we
15 have done what the SER says it has done.

16 Q All right. And he can rely on the statements in
17 it; can't he?

18 A [Witness Walker] He can rely on the statements of
19 the -- Well, certainly. He can't just pick and choose the
20 ones he likes, he must rely on all of the information in the
21 SER, in my opinion.

22 Q No cherry picking; isn't that what you're saying?
23 You can't choose one that you like and rely on it and not
24 rely on something else?

25 A [Witness Walker] I think that that is exactly

1 what I am saying.

2 Q That same principle applies to the Staff; doesn't
3 it?

4 A [Witness Walker] With the SER?

5 Q With the SER? They can't pick up on one phrase
6 that they like and reject one they don't like; right?

7 A [Witness Walker] If the Staff wrote the SER then
8 I would expect that the Staff wrote what they believed to be
9 accurate at that time.

10 Q Go ahead, Mr. Luehman.

11 A [Witness Luehman] I was just going to say,
12 instead of -- why don't you just give us the SER and comment
13 on the specifics of what you are talking about, rather than
14 hypothetical.

15 Q I am going to give you an opportunity to do that.

16 Okay, we have talked about the SER for Unit 1,
17 that is Alabama Power Company Exhibit 14, and we will get to
18 that in our testimony. But I understand that other than Mr.
19 Luehman, that nobody else looked at that during their EQ
20 Enforcement Review Panel?

21 A [Witness Potapovs] I didn't say that. I said I
22 didn't know anything about it at this time. I may have
23 looked at it and most likely I have looked at most of the
24 SER's at some time. I don't recall specifically anything
25 unique about the Farley SER, other than the standard

1 phraseology is quite similar, and an SER at this stage
2 basically it is a vehicle to identify resolution of issues,
3 not as much as to raise issues.

4 A [Witness Walker] If your question is referring to
5 -- well, I am not sure what SER you are referring to any
6 more. There are several. Certainly, I looked at one of the
7 SER's and perhaps two of them.

8 Q When did you do that? In your EQ --

9 A [Witness Walker] Well, if you're asking me when
10 was the first time I did it, I don't know. If you are
11 asking me did I do it during the time that we were looking
12 at the Farley imposition of the civil penalty, the answer is
13 yes, I did look at it.

14 Q All right. You looked at the '81 SER then?

15 A [Witness Walker] The one that I am thinking of is
16 the '84 SER, I believe. I am not sure about the date of it.

17 Q Well, let's look at the -- let's just do this, and
18 I don't anticipate that we will spend a lot of time on it.

19 I am going to show you APCo Exhibit 14, 18 and 19.
20 And the sole purpose of this is to ask you whether or not
21 you looked at those during your evaluation period as you sat
22 on the EQ Enforcement Review Panel?

23 [Reviewing documents.]

24 JUDGE BOLLWERK: Could you identify each one of
25 those for the record, please?

1 MR. MARTINEZ: Yes, sir.

2 The Exhibit No. 14 is the SER dated May 21, 1981
3 for Farley Unit 1, subject Environmental Qualification of
4 Safety Related Electrical Equipment. Exhibit No. 19 is the
5 SER dated February 4, 1983, Farley Unit 2, subject Safety
6 Evaluation Report for Environmental Qualification of Safety
7 Related Electrical Equipment. And Exhibit 18 is the same
8 date, same subject, except that it refers to Farley Unit 1.

9 And the question to the panel is did you review
10 those Safety Evaluation Reports on the day that you met as
11 the EQ Enforcement Review Panel prior to issuance of a
12 Notice of Violation, which brings us together today?

13 JUDGE BOLLWERK: Let the record reflect that APCo
14 Exhibits 14, 18 and 19 have been identified.

15 [APCo Ex. Nos. 14, 18 and 19
16 are marked for identification]

17 JUDGE BOLLWERK: Just for your information, Mr.
18 Miller, we would like to break around three, if that's
19 possible.

20 MR. MILLER: Yes, sir, that's fine. I don't
21 anticipate this being much. I just wanted to have the
22 record reflect that these events occurred and they are part
23 of the chronological path.

24 JUDGE BOLLWERK: All right.

25 MR. MILLER: We'll go from that to one other minor

1 item which should put us in a position to stop for our mid-
2 afternoon.

3 [Witnesses reviewing documents.]

4 BY MR. MILLER:

5 Q Were those SERs, being the one of '81 and the two
6 1983 SERs, the topic of any discussion whatsoever as the
7 panel met in its capacity as the EQ enforcement review panel
8 prior to issuance of the NOV to Farley Nuclear Plant?

9 A [Witness Walker] Is that directed to the panel or
10 --

11 Q Any one of you can answer the question.

12 A [Witness Luehman] I don't recall that we reviewed
13 these in any -- in the panel meetings.

14 Q Just by way of interest, since it probably may be
15 relevant, how long did the panel meet before making its
16 determination and on how many occasions?

17 A [Witness Luehman] Are you -- are you talking
18 about the proposed civil penalty stage?

19 Q Yes, sir.

20 [Pause.]

21 A [Witness Luehman] I think that this -- the panel
22 on this one probably met -- I'd -- I'd be guessing, but I'll
23 guess it's probably more than an hour on Farley, because it
24 was one of the more extensive -- it had a lot of issues in
25 it.

1 Q You said you met for one hour on the Farley?

2 A [Witness Luehman] It was more than one hour, I
3 said.

4 Q Is it more than two hours or less than two hours?

5 A [Witness Luehman] I don't recall.

6 Q Two hours or less?

7 A [Witness Luehman] That's probably fair.

8 Q That's it? That was the entire scope of the
9 enforcement and review panel's effort?

10 A [Witness Luehman] You have to -- well, you have --
11 -- no, that's -- but that's not completely correct.

12 Q Well, wait a minute. Then let's make sure that we
13 are completely correct. You mean your meeting on the NOV we
14 are here on today was less than two hours?

15 A [Witness Luehman] Well, I think that we have to
16 also include in the fact that --

17 Q Is that a true or false statement? Was it less
18 than two hours, the meeting of this EQ enforcement and
19 review panel we've been talking about?

20 A [Witness Luehman] That's correct.

21 Q And in that meeting, you did all that was
22 necessary to conclude your consistency check?

23 A [Witness Luehman] That's not -- that is not
24 correct.

25 Q So, then you were working independently before the

1 meeting.

2 A [Witness Luehman] That -- that is correct to a
3 certain extent.

4 Q That certain extent being you will now give me all
5 or identify for us all of the pieces of paper that you
6 compiled before you went into this less-than-two-hour
7 meeting.

8 A [Witness Luehman] Well, I can't give you a list
9 of all the paper that -- that was worked on this, but I know
10 that, personally, that I worked on this.

11 Q I understand that. You said you don't have any
12 paper -- or maybe you didn't. Do you have any notes,
13 minutes, or other documents arising out of this less-than-
14 two-hour meeting to tell us what was discussed? Anybody on
15 the panel.

16 A [Witness Luehman] All our -- all the notes,
17 documents, and everything to do with the panel have been
18 provided to the staff counsel.

19 Q So, you say that you do have some, and they have
20 been given to your lawyers.

21 A [Witness Luehman] Any that we had were given to
22 our -- were given to counsel.

23 Q What quantity of documentation are we talking
24 about?

25 A [Witness Luehman] About the review panel itself?

1 Q Yes, sir, on the Farley now. I can't worry about
2 the other licensees in this world. I'm talking about this
3 less than two hours on the Farley.

4 A [Witness Luehman] It's probably a couple -- it's
5 probably, if I recall, the standard -- the standard letter
6 for the review panel is on the order of -- it's a two-page
7 letter.

8 Q That's it?

9 A [Witness Luehman] Yes.

10 Q That's the extent of the documentation turned over
11 to the counsel?

12 A [Witness Luehman] I didn't say that.

13 Q I thought that that was the question I asked, and
14 with that clarification, I will ask you that question.
15 Describe the volume of documentation turned over to the
16 lawyers.

17 A [Witness Luehman] With regard to the specifics of
18 the EQ review panel --

19 Q For Farley.

20 A [Witness Luehman] -- for Farley, I would say it
21 was probably a two-page note, letter, whatever, the standard
22 two-page note or letter that was issued for each one of the
23 reviews.

24 So, there would have been more than one for
25 Farley, because this -- we also met at the imposed stage,

1 and as I recall, we met a couple of times at the imposed
2 stage for Farley.

3 Q Before it was proposed, do I understand correctly
4 that this enforcement and review panel met for less than two
5 hours and, as a result of that meeting, turned over a two-
6 page standard letter to the lawyers?

7 A [Witness Luehman] That's correct.

8 A [Witness Potapovs] You have to understand that
9 each of the members of the enforcement panel had put in
10 many, many hours before the panel ever met in reviewing
11 documentation pertaining to enforcement actions and was
12 completely knowledgeable of all of the factors to be
13 considered and had reviewed the proposed notice in great
14 detail, and I have personally spent many, many hours
15 discussing the specific technical issues with the technical
16 people involved, reviewing inspection reports, and also
17 personally reviewing some submittals by the licensee.

18 Q I understand what you're saying.

19 A [Witness Walker] For example, my branch is also
20 responsible -- have the general responsibility for
21 environmental qualification. The notice came to my branch
22 chief for review before it was issued.

23 It was provided to me for my comment for him
24 before the review panel met, and I reviewed it at that
25 point, and that's generally how all the notice of violations

1 was handled.

2 A [Witness Luehman] And I guess I would add to that
3 that, because -- because the panel only met for probably on
4 the order of less than two hours with regard to that, we on
5 the panel, as well as -- as -- had conversations among
6 ourselves individually, myself with Harold, myself with
7 Uldis, myself with Bob Weisman, who was the other permanent
8 member of the -- of the panel, or Howard Wong, who also
9 worked in my office and was on the panel for a certain
10 number of months, until he left our office, and also with
11 the individual project manager of the plant involved.

12 So, the actual meeting was the culmination of all
13 these activities, because in addition to the reviews that --
14 that Harold talks about that were done in the EQ branch, the
15 -- the Projects branch of -- of NRR had already looked at
16 it, the technical people in the region had already looked at
17 it, and therefore, the -- the -- the panel was the last
18 consistency check, but a lot of review had been done way
19 before that, before the panel met.

20 Q Mr. Potapovs, as you sit here today, do you have a
21 present recollection of reviewing the inspection report
22 signed out by Mr. Gibbons in December 1980?

23 A [Witness Potapovs] I have reviewed the inspection
24 report.

25 Q Had you -- do you have a present recollection of

1 reviewing that report before you went into this less-than-
2 two-hour meeting we have been discussing, as you sit in that
3 chair today?

4 A [Witness Potapovs] I'm not sure how I can define
5 present recollection. I can say that I reviewed every
6 escalated action that went out on the EQ inspections. I also
7 reviewed all standard enforcement actions for consistency.

8 Most of the inspections were conducted from our
9 office. I personally signed off on every inspection report
10 and I reviewed personally every inspection report.

11 When the function was turned over to the regions,
12 I reviewed every inspection report to the best of my
13 recollection to some detail and especially ones involving
14 violations for potentially escalating enforcement.

15 Q I am talking about the 1980 inspection report of
16 Gibbons that we talked about this morning.

17 A [Witness Potapovs] Oh.

18 Q Do you have a present recollection of reviewing
19 that before you went into this less than two hour meeting?

20 A [Witness Potapovs] No, I do not.

21 Q Do you have a present recollection of reviewing
22 the trip report by the people from EQ branch that went down
23 to examine EQ at Farley Unit 2 in September of 1980 before
24 you went into this less than two hour meeting?

25 A [Witness Potapovs]" I have seen many of these

1 inspection reports but I do not have a specific --

2 Q Can you tell us today whether or not you saw the
3 Farley one before you --

4 A [Witness Potapovs] I cannot answer you
5 positively.

6 Q Can you tell us whether or not you saw Mr.
7 Merriweather's technical evaluation report of December 1980
8 before you went into that two hour meeting?

9 A [Witness Potapovs] I can say that I saw every
10 inspection report before any escalating enforcement action
11 was taken. I cannot tell you what date or at what
12 particular time I looked at that report.

13 Q I am asking a very particular question.

14 You said that everybody did their work before they
15 went in there and I am asking you to tell me whether or not
16 you saw Mr. Norman Merriweather's technical evaluation
17 report book before you went in that meeting.

18 A [Witness Potapovs] Like I said, I can't -- I
19 cannot tell you.

20 Q How about the 1981 SER? Can you say that you
21 looked at that?

22 A [Witness Potapovs] I said I looked at one SERs.
23 I did not tell you specifically that I looked at 1981 Farley
24 Unit 1 SER or Unit 2 SER.

25 Q I have the 1983 SERs. Let's find something you

1 can tell us today that you know you saw before you went into
2 this two-hour meeting.

3 A [Witness Potapovs] I think that you --

4 Q Wait, wait, wait. I'm going to let you say it in
5 just a second but he has told us that he was well prepared
6 and I am trying to find something that he looked at before
7 he went in.

8 A [Witness Potapovs] I looked at all of those
9 documents that I mentioned and those would be the inspection
10 reports, the proposed actions, staff evaluations of the
11 proposed actions.

12 I cannot tell you at what date, at what particular
13 time I looked at them, and I would be less than --

14 Q Honest?

15 A [Witness Potapovs] Well, I'm trying to phrase it
16 correctly. I cannot recall the specific event when I looked
17 at this particular document but I can say with considerable
18 assurance that I looked at those documents.

19 Q Can you say with considerable assurance that
20 before you went into the two hour or less than two hour
21 meeting that we have heard about, this consistency check
22 meeting, that you looked at the December 13th, 1984 SER
23 marked as APBCo Exhibit 21?

24 Can you say that?

25 A [Witness Potapovs] Yes, I can say that.

1 Q And you know for a fact as you sit here today that
2 if nothing else that we have talked about so far in this
3 enforcement proceeding, you looked at this document?

4 A [Witness Potapovs] Yes, I can say that.

5 Q And in so doing, did you pay attention to the
6 sentence in it that says the staff concludes that Alabama
7 Power Company's program is in compliance with 10 CFR 50.49?

8 A [Witness Potapovs] Yes. I am familiar with that
9 statement. It also is conditioned by the following
10 statement.

11 Q Every time I say "compliance," you say
12 "condition." Let's call it a wash and take a break.

13 [Laughter.]

14 JUDGE BOLLWERK: Why don't we mark that for
15 identification.

16 MR. MILLER: It is marked as APBCo Exhibit 21.

17 For a more precise identification, it's a December
18 13, 1984 letter with Enclosures 1 and 2 being Safety
19 Evaluation Reports for Units 1 and 2 of the Farley Nuclear
20 Plant.

21 JUDGE BOLLWERK: Please mark that as identified
22 for the record.

23 [APBCo Exhibit No. 21
24 was marked for identification.]

25 JUDGE BOLLWERK: All right. Well, let's adjourn

1 for about, what, ten minutes? Fifteen?

2 Why don't we adjourn for 15 minutes. We'll come
3 back at ten after 3:00.

4 [Brief recess.]

5 JUDGE BOLLWERK: Let's go back in session.

6 Mr. Miller.

7 BY MR. MILLER:

8 Q Let's see if we can do something of a status check
9 and make sure we have got some chronological picture of
10 where we are.

11 We've got this exhibit -- and you all may not have
12 it --

13 Well, there has to be some levity in these things.
14 There is not a lot of funny things in EQ, I haven't found
15 them yet.

16 All right, let's see what we can do.

17 We are going to say that the objective is to try
18 and see how we are proceeding on our milestones -- not our
19 milestones, but our chronology. We talked about 79-01B,
20 everyone remembers that.

21 Are you with me?

22 A [Witness Walker] Yes.

23 Q That came, of course, in January -- well back in
24 late '79 or January of '80. And then we had the audits of
25 September of Unit 2 in September of '80 and the inspection

1 of December of 1980; do you recall our discussions on that?

2 A [Witness Luehman] Yes, we do.

3 Q We had Mr. Merriweather's TER in December of 1980
4 and we have talked about that; right?

5 A [Witness Luehman] Yes.

6 Q March, 1981, SER for Unit 2 and the May, 1981 SER
7 for Unit 1, we've talked about those two. Are you with me
8 so far?

9 A [Witness Luehman] Yes.

10 Q One thing we haven't talked about and we probably
11 ought to cover briefly, is issuance of the full power
12 license.

13 There was a discussion up here when the full power
14 license for Unit 2 was issued on -- well, the meeting was on
15 March 11, 1981. By chance, did any of you three attend that
16 meeting?

17 A [Witness Luehman] No.

18 A [Witness Walker] No.

19 A [Witness Potapovs] No.

20 Q Can we say, subject to check, that the Unit 2
21 license was issued on March 31, 1981? If somebody has
22 contrary information on that say so, but I am pretty sure
23 that is right.

24 A [Witness Luehman] Yes.

25 Q All right. Let's talk just for a second as we

1 look down the road and we see Franklin Research Center
2 coming up. I will ask, Mr. Luehman since you're the lead,
3 tell us who Franklin Research Center is and what did they
4 have to do with EQ, so others can join in to answer that
5 question if they feel the need to do so?

6 A [Witness Luehman] The Franklin Research Center
7 was a NRC contractor that was contracted by the NRC to
8 review licensee's environmental qualification submittals.
9 They sort of issued technical evaluation reports on which
10 the Staff subsequently based Safety Evaluation Reports in
11 that 1983 timeframe.

12 Q What type of documentation was submitted for final
13 analysis, if you know?

14 Mr. Walker, go ahead.

15 A [Witness Walker] Whatever the licensees provided
16 in response to 79-01B, I believe it was.

17 Q And the purpose of Franklin was to take these
18 documents and review the standards of what?

19 A [Witness Walker] The memoranda and order. There
20 was an order that included -- I don't remember what was all
21 included, but it was to review the requirements of the
22 memorandum and audit. I believe that that included 79-01B.

23 Q Okay. The work part of the Franklin, you say, was
24 a TER?

25 A [Witness Walker] Yes.

1 Q I have one here marked as Alabama Power Company
2 Exhibit 16. We won't have to go into it, but just for our
3 purposes, can you tell me whether or not that appears to be
4 an FRC TER for an operating license?

5 A [Witness Walker] Yes, it does.

6 Q I am going to guess for purposes of the record
7 that if someone is interested, it looks to me to be about
8 three or four inches thick and fairly detailed.

9 Is that typical of Franklin TER's?

10 A [Witness Walker] That appears to be a Franklin
11 TER, and the fact that it is three or four inches thick may
12 not be typical, because it may have been printed on both
13 sides.

14 Q Good point. But it does appear then to be --

15 Okay, in the Franklin TER's, is there some way
16 that we can generally discuss the kinds of things that
17 Franklin was asked to do, Mr. Walker?

18 A [Witness Walker] I suppose that we can discuss
19 them in general terms.

20 Q Do that, please.

21 A [Witness Walker] I think that they were expected
22 to look at the information provided in trying to determine
23 whether the information provided was sufficient to conclude
24 that the items that they were looking at, based on the
25 requirements identified by the licensee, were qualified.

1 Q Thank you.

2 If I understand what you are telling us then,
3 Franklin's task was to take the documents sent to it by the
4 licensee and review those documents for purposes of
5 determining qualifications?

6 A [Witness Walker] I don't want to oversimplify it
7 here. Franklin primarily reviewed test reports, as I
8 understand it.

9 Q I see.

10 A [Witness Walker] And complete qualification you
11 need to do more than just review a test report.

12 Q You have to go down and look at it?

13 A [Witness Walker] You have to see if things are
14 installed, for example, if they are tested in identifying
15 test reports. That is another one of the components, yes.

16 A [Witness Luehman] I think, generically, I would
17 add that Franklin's TER, as a general rule, made a -- made a
18 number of disclaimers about what they looked at, and one of
19 them was the completeness of the information as far as
20 master list information provided by the licensee.

21 Franklin, for its review, I think, assumed that
22 the licensee submitted a complete master list, and Franklin
23 did not try to verify that all of the equipment that should
24 have been on the master list was, in fact, there.

25 Q Okay.

1 Generally, though, can we say that Franklin
2 conducted an extensive document review, qualification
3 document review, for items of electrical equipment submitted
4 to it by the licensee?

5 A [Witness Walker] We can say that Franklin
6 conducted a review of all the documentation submitted --
7 well, I believe they did -- of all the documentation
8 submitted by the licensee.

9 However, there were -- there were major problems,
10 in some cases, in getting the documentation -- all the
11 documentation requested by Franklin.

12 So -- so, to imply that Franklin review was all-
13 inclusive, I believe, would be misleading.

14 Q Can you say that the staff, though, relied heavily
15 on what Franklin did in order to promulgate its -- an SER?

16 A [Witness Walker] I think that's correct.

17 Q And was the staff -- or did the staff work very
18 closely with Franklin and have constant contact with
19 Franklin?

20 A [Witness Walker] I guess that's a reasonable
21 statement, yes. We worked fairly close with them.

22 Q Occasionally, did the staff look to see what type
23 of information would be submitted by the licensees to
24 Franklin?

25 A [Witness Walker] Well, I believe the -- the

1 submittals came to the NRC, and then we transmitted them to
2 Franklin.

3 Q I see.

4 A [Witness Walker] At least that's my recollection
5 of the way things went.

6 Q Okay. And then, we actually jumped ahead, but as
7 I understand it, these 83 SERs, in part, transmitted the
8 Franklin TERS to the licensee. Do you recall that there
9 were SERs transmitting the Franklin TERS to the licensees?

10 A [Witness Walker] Yes.

11 Q Okay.

12 A [Witness Walker] Now, one -- one point of
13 clarification here: My answers assume we are talking about
14 the 1984 TER timeframe. I believe there was another set of
15 TERS before that, also developed by Franklin Research.

16 Q You'd better help us on that, because I am not
17 sure we know what you're talking about.

18 A [Witness Walker] Well, if I recall correctly, in
19 1981 timeframe, around the 1981 SER, there may have been
20 TERS also written by Franklin.

21 Q I see. They were for -- you mean for the Farley
22 Nuclear Plant or for some operating license?

23 A [Witness Walker] Well, for nuclear power plants.
24 I don't know that Farley was -- I just know there was two
25 efforts.

1 Q I see. It may help, then, for our purposes, to
2 refer to Alabama Power Company Exhibit 16, and let me do
3 this for the record, if I haven't already done it. That
4 exhibit is the TER for Farley Nuclear Plant, Unit 1, dated
5 January 14, 1983, and that's my point. We are discussing
6 the '83 TER.

7 A [Witness Walker] Okay.

8 JUDGE BOLLWERK: The record should note that APCo
9 Exhibit 16 has been marked for identification.

10 MR. MILLER: Okay.

11 [APCo Exhibit No. 16 was marked for
12 identification.]

13 BY MR. MILLER:

14 Q And in looking again at our chronology, once the
15 Franklin '83 TERs were concluded and sent to the licensees,
16 what was the next kind of event that is going to occur as we
17 move towards the EQ deadline of November 30, 1985?

18 A [Witness Walker] Well, I believe the TERs, in
19 most cases, identified a significant number of deficiencies.

20 Q I see. So, was the expectation of the staff that,
21 after receiving this TER, the licensees would work through
22 the deficiencies identified in it?

23 A [Witness Walker] That's -- well, yes.

24 Q Okay.

25 A [Witness Walker] What -- what actually happened,

1 if -- as I recall, is that the licensee came in, would
2 propose solutions.

3 Q I see.

4 A [Witness Walker] And we -- I believe we listen to
5 those solutions and, at some point, reach an agreement that,
6 if -- if those solutions were implemented, we would be able
7 to conclude that they were in compliance.

8 Q Okay. And in the case of Alabama Power Company,
9 did anyone here attend a meeting on January 11, 1984, that
10 was for the purpose just exactly described by Mr. Walker?

11 Mr. Luehman, I know you didn't.

12 A [Witness Walker] I don't know. I attend some of
13 the meetings, and whether or not I attended the one with
14 Alabama Power Company, I clearly cannot recall.

15 Q Okay.

16 A [Witness Walker] Because a lot of meetings were
17 taking place at that time. It may have been a different
18 utility every day or at least two or three a week.

19 Q I see.

20 Anyone else recall attending that meeting?

21 [No response.]

22 MR. MILLER: Let's mark, for identification
23 purposes, Alabama Power Company Exhibit 20, which is a
24 letter dated February 29, 1984, that reports on the meeting
25 held January 11, 1984. It has a series of attachments to

1 it, and --

2 [Pause.]

3 JUDGE BOLLWERK: Let the record reflect the
4 identification of APCo Exhibit 20.

5 [APCo Exhibit No. 20 was marked for
6 identification.]

7 BY MR. MILLER:

8 Q Why don't you take just a minute and look at that?

9 [Witnesses reviewing document.]

10 BY MR. MILLER:

11 Q I think we have established that the only possible
12 attendee of you three is Mr. Walker, and you could not
13 recall whether you did or you did not. Is that correct?

14 A [Witness Walker] Well, that's correct. Frankly,
15 I probably did not, but I don't know. I mean, I went to a
16 few of those meetings, but I was not the primary person
17 attending those meetings.

18 Q Mr. Walker, I had earlier heard, or maybe I had
19 earlier understood you to say that the purpose of this
20 meeting was to identify the deficiencies and the proposed
21 resolutions.

22 A [Witness Walker] Well, the purpose of the meeting
23 was to listen to the proposed resolutions identified in the
24 Franklin TER.

25 Q Okay. So in that sense, the Franklin TER defined

1 the agenda for this, in our case, January 11th, 1984.

2 A [Witness Walker] I don't know if you can say
3 defined the agenda, but yes, it was an integral part of this
4 meeting, yes.

5 Q All right. And in the case of Alabama Power
6 Company, if you'll look there at the second paragraph,
7 Alabama Power Company provided an attachment summarizing
8 each identified TER deficiency discussed with the staff. I
9 know you'll agree with me that I read that correctly.

10 A [Witness Walker] I agree, yes.

11 Q And you'll agree with me that that attachment is
12 actually a part of the letter.

13 A [Witness Walker] I agree that there is an
14 attachment, yes.

15 Q Yes. But I think we can see from this that we had
16 a meeting, a discussion of the TER deficiencies, an
17 attachment prepared, and hence, this letter of February
18 29th, 1984. Is that how it appears to you?

19 A [Witness Walker] Yes.

20 Q Can we also point to the second page of this
21 transmittal letter, the fourth paragraph down, and I call
22 your attention to the fact that the -- that Alabama Power
23 Company requested a supplemental SER be issued to indicate
24 that the EQ program meets the requirements of the regulation
25 defined there, and that all deficiencies noted in the SERs

1 dated February 4, '83 are resolved.

2 A [Witness Walker] Yes, that's in here.

3 Q Just by way of inquiry, do you know of any other
4 licensees that wrote such a letter -- that is, one that
5 provided an attachment of the identified deficiencies and
6 also requested a supplemental SER be issued?

7 A [Witness Walker] I believe all licensees wrote a
8 letter. Whether or not they requested a supplemental SER, I
9 don't know.

10 Q Can you identify for us today any other licensees
11 that you have a current memory as having requested a
12 supplemental SER?

13 A I cannot.

14 Q Same question to the other two members of the
15 panel.

16 A [Witness Luehman] No.

17 A [Witness Potapovs] No.

18 Q Can you identify for us any other licensees who
19 took the time and trouble to prepare an attachment such as
20 the one you see attached to that letter marked as Exhibit
21 20?

22 A [Witness Walker] You are asking me for my
23 recollection.

24 Q Yes, sir. What is your memory?

25 A [Witness Walker] I believe everyone who came in

1 had their program laid out. It may not have been in this
2 manner, but it was an identification of all the deficiencies
3 and they all had it in writing, yes.

4 Q I understand that, and that's what you told us
5 when they came in. But I'm talking about after their
6 meeting --

7 A [Witness Walker] Yes.

8 Q -- can you identify another licensee who took the
9 time and trouble to prepare an attachment such as you see
10 attached to Exhibit 20?

11 A [Witness Walker] I do not know what other
12 licensees did in response to what they agreed to in the
13 meeting.

14 Q Same question to the other two members of the
15 panel.

16 A [Witness Potapovs] I did not see any of the
17 licensee submittals, including Farley's, so I really can't
18 speak to the issue.

19 Q Mr. Luehman, I'm going to say you weren't involved
20 at this time, so you're not going to be able to help us.

21 A [Witness Luehman] That's right. I don't recall
22 seeing any supplemental responses.

23 Q Okay. Except, of course, for the one prepared by
24 Alabama Power Company.

25 A [Witness Luehman] Okay.

1 Q Okay. And you saw that at what time, Mr. Luehman?

2 A [Witness Luehman] I can't recall exactly when the
3 first time I saw it was.

4 Q Just by way of inquiry, what type of discipline or
5 NRC area of responsibility would attend this kind of
6 meeting? That didn't come out right. Let me try it again.

7 Mr. Luehman said earlier something about Mr.
8 Brownlee not having the technical expertise. At a meeting
9 such as this, Mr. Walker, would the people with the
10 requisite technical expertise attend?

11 A [Witness Walker] Well, frankly, those may have
12 been public meetings. If you're talking about participants,
13 my answer might change.

14 Q Well, I'm talking about whose going to be there
15 from the NRC. Are they going to be technically competent
16 people or --

17 A [Witness Walker] Yes. Yes.

18 Q Okay. All right.

19 How long in this less than two hour meeting did
20 you spend reviewing this letter in the attachment, Mr.
21 Luehman?

22 A [Witness Luehman] I don't think that in the
23 meeting proper that we reviewed any of this letter or its
24 attachment.

25 Q Mr. Walker, how long prior to the meeting did you

1 spend reviewing this letter and the attachment?

2 A [Witness Walker] This particular letter?

3 Q Yes, sir.

4 A [Witness Walker] And this attachment?

5 Q Yes, sir.

6 A [Witness Walker] I don't recall reviewing this
7 just prior to the meeting.

8 Q Can you tell me whether or not the December, 1984
9 SER's which we have discussed, were issued in response to
10 Alabama Power Company's request to a supplemental SER as
11 indicated in Paragraph 4 of Page 2?

12 A [Witness Walker] I don't know, they may have
13 been. I really don't know.

14 Q I am trying to determine, and you may not know,
15 whether those SER's would have been issued regardless of
16 this request? Does anyone know the answer to that question?

17 A [Witness Walker] If you are asking me what I
18 think, we initially issued an SER that identified a
19 significant number of deficiencies in most of the operated
20 plants that those SER's were issued. One of the ways of
21 cleaning that up is for the Staff to receive additional
22 information and then you write another SER to clear that up.

23 Now, if you are asking would an SER have been
24 written, even if they had not requested it, I can't say for
25 sure. My guess is probably.

1 Q All right, okay. I see what you're saying. I was
2 just focusing on the fact that, you know, we started getting
3 SER's on the EQ going back to 1981. We got them for Unit 2,
4 Unit 1.

5 A [Witness Walker] May I just say something about
6 that?

7 Q Do I have to let you say something about it?
8 Oh, go ahead, say what you will.

9 A [Witness Walker] I have been listening obviously
10 here all this afternoon. You seem to be focusing in on what
11 it is the panel did prior to its deliberations.

12 Q Yes, sir.

13 A [Witness Walker]" I mean, just to clean things up,
14 I and I believe most of us focus in on two primary
15 documents. Number one, was the '87 inspection report,
16 number two was that I believe the '82 and '83 SER. That
17 SER, I believe, superceded all the others because, for
18 example, the '81 SER while I was aware of it, I know that
19 most of those SER's contain a significant number of
20 deficiencies. I mean, there was a lot of stuff wrong. The
21 '84 SER or '83 -- I can't remember the dates -- but they
22 superceded them because it, I hope, gave credit to all of
23 the work that had been done in between those times. So, I
24 think we focused primarily on those two documents, the '84
25 SER and the inspection report.

1 Q In the case of Farley, as you said earlier --

2 A [Witness Walker] I think it was true for all of
3 the meetings we had for all of the other plants also.

4 Q Okay. Can we say then that in your less than two-
5 hour meeting, the focus was principally on those two
6 documents and the associated discussions of them?

7 A [Witness Walker] I believe that is correct. I
8 mean, my time on those documents was spent before the
9 meeting.

10 Q I see.

11 A [Witness Luehman] It was only questions that
12 arose based on those reviews or questions that were raised
13 in the meeting that we sometimes got the documents out and
14 discussed the various documents, whether it would be the
15 inspection report, the SER or whatever it was.

16 Q You say you sometimes -- and I really -- all the
17 other licensees had to fend for themselves. I am going to
18 focus on the Farley plant.

19 Can you tell me whether or not from your personal
20 knowledge you did that for the Farley plant?

21 A [Witness Luehman] All I can say is that the panel
22 reviewed 23 of these, including SERS and inspection reports,
23 21 of which had civil penalties and my memory can't sort
24 those out.

25 Q If I understand what you told us, Mr. Walker, you

1 used the phrase that the latest SER, be it in our case
2 December the --

3 A [Witness Walker] I don't know if it is the
4 latest, but the SER that was written that determined that if
5 Farley --

6 Q That the program complied with --

7 A [Witness Walker] That's correct, that one,
8 whatever date that was.

9 Q That is our '84 SER.

10 A [Witness Walker] Okay.

11 Q And if I understand what you're saying, it was
12 deemed at least by you to supercede the other SER's?

13 A [Witness Walker] Yes.

14 Q And in the case of Farley that would mean the two
15 SER's issued in '83 and the two SER's issued in '81?

16 A [Witness Walker] Of course.

17 Q But I think to be fair, it looks like what you're
18 saying is that you didn't undertake to learn or evaluate or
19 appreciate for that matter all of the work that went into
20 meeting these milestones as they came along.

21 A [Witness Walker] That is not true. At least it
22 was my impression that that work was reflected in that '84
23 SER.

24 Q I see.

25 A [Witness Walker] At least my review of that work

1 was reflected there.

2 Q Would a licensee have gotten this -- we'll call it
3 a final SER -- if the Staff thought at the time there were
4 EQ deficiencies that the licensee clearly knew about and
5 hadn't resolved? It is a straight forward question. Would
6 they have gotten one under those circumstances?

7 A [Witness Walker] If the Staff thought at that
8 time that the licensee had misrepresented himself to the
9 agency, I don't believe he would have gotten an SER.

10 Q All right. If the Staff thought -- well, I will
11 ask it to you this way. If the Staff clearly knew of a
12 deficiency that the licensee had not resolved, would it be
13 fair to say that the Staff would never have issued this
14 final or in our case December of '84 SER?

15 A [Witness Walker] Well, there are people on the
16 Staff who might have believed there may have been
17 deficiencies, but they certainly didn't clearly know that
18 there were deficiencies.

19 Q All right. So, the fact that we got an SER at
20 least illustrates that the Staff as of this time did not
21 clearly note of any deficiencies in the EQ --

22 A [Witness Walker] The fact that you got an SER
23 indicated that the Staff was reading what the licensee said
24 in his correspondence to the Staff.

25 Q And had the Staff clearly known otherwise, it

1 would not have issued the SER; would it?

2 A [Witness Walker] Had the Staff totally known
3 otherwise, the SER may have been issued, but the conclusion
4 that they were in compliance may have been different.

5 Q Okay, so the fact that you got the SER that says
6 your program complies, --

7 A [Witness Walker]" Indicated that the Staff had no
8 physical evidence that what the licensee said in his
9 correspondence was any different from the way he represented
10 it.

11 Q All right, now we're getting somewhere. Then we
12 have a letter -- and you may not have ever seen this -- a
13 letter of January 1985, certifying compliance with EQ?

14 A [Witness Walker] Well, what's the date?

15 Q A letter from Alabama Power Company, you have seen
16 it?

17 A [Witness Walker] I think I have seen it.

18 A [Witness Luehman] I have seen it, yes.

19 A [Witness Walker] Yes, I believe.

20 Q We'll talk about that in just a moment, but we're
21 now up to the deadline, and we'll have some real discussion
22 on it, but let's establish at least this datapoint.

23 November 30, 1985 is the deadline for enforcement under the
24 modified enforcement policy; is that right, Mr. Luehman?

25 A [Witness Luehman] For plants that were --

1 A [Witness Walker] Well, may I? It's the deadline
2 for compliance, yes. It's the deadline for compliance,
3 right.

4 Q For plants like Farley, okay?

5 A [Witness Luehman] That's correct.

6 Q All right, and actually, Mr. Walker said it
7 better. That's the deadline for compliance and under the
8 modified enforcement policy, enforcement action and the
9 imposition of civil penalties will not be taken unless the
10 licensee clearly knew or should have known of EQ
11 deficiencies prior to that date; did I say that right?

12 A [Witness Luehman] That's correct.

13 Q Okay, we heard earlier that -- I mean, it's
14 always an evolutionary process. You're always learning, and
15 for the regulating process, that's true, but for the
16 enforcement process, we are agreed, are we not, that
17 November 30, 1985, that's the day for the enforcement
18 process? Mr. Walker?

19 A [Witness Walker] Well, if I understand your
20 question, I believe the answer is yes, but, you know, you
21 stated it in a way in which I would not state the question,
22 because --

23 Q That's the difference between the lawyer and the
24 witness.

25 A [Witness Walker] All the enforcement took place

1 after November, '85.

2 Q Right, but on the basis of knowledge existing
3 before November, 1985?

4 A [Witness Walker] That's correct.

5 Q Actually, to be more precise, on not just the
6 basis of what the licensees knew -- that's a lower standard;
7 is it not, than what they clearly knew; we can agree on
8 that?

9 A [Witness Walker] Clearly should have known.

10 Q All right, not the -- in fact, the standard is not
11 what the licensee knew or should have known, but what the
12 licensee clearly knew or should have known; is that true?

13 A [Witness Luehman] That's correct.

14 Q There is, and you recognize it, a distinction in
15 those two standards that I just stated.

16 A [Witness Luehman] That's right.

17 A [Witness Walker] Yes.

18 Q Well, that means we now have to search for how we
19 find out whether or not a licensee clearly knew or should
20 have know, and it turns us to the enforcement policies. In
21 19 -- strike that.

22 When was the first enforcement policy, particular
23 to EQ, issued, Mr. Luehman?

24 A [Witness Luehman] The first enforcement policy
25 issued on EQ?

1 Q I said particular to EQ. We're not talking about
2 Appendix --

3 A [Witness Walker] You referred to the first
4 Generic Letter, as we call it?

5 Q That's what I would think.

6 A [Witness Luehman] 85-15, I think, was the first -
7 - Generic Letter 85-15, and I don't recall the particular
8 date of it.

9 A [Witness Walker] It was in the August timeframe.
10 I'm not sure of the exact date. I guess it was August of
11 '85, maybe.

12 MR. MILLER: All right, we need to get 85-15 for
13 you, and let's see, just a minute. What's that exhibit
14 number?

15 MR. HOLLER: Staff 7.

16 MR. MILLER: That's Staff Exhibit 8.

17 MR. HOLLER: That's the SECY paper, Staff Exhibit
18 7.

19 BY MR. MILLER:

20 Q Staff Exhibit 7. I'll ask you if you'll get that.

21 [Witnesses reviewing documents off the record.]

22 JUDGE BOLLWERK: There was not an APCo Exhibit
23 that matched it.

24 MR. MILLER: Does everybody have Staff Exhibit 7
25 in front of them?

1 MR. LUEHMAN: Yes.

2 BY MR. MILLER:

3 Q Let's see, I understood that 85-15 -- did it
4 create the concept of clearly knew or should have known?

5 A [Witness Potapovs] Yes.

6 Q Am I right about that?

7 A [Witness Potapovs] Yes.

8 Q So, we have this Generic Letter that has been
9 identified as the origins of that phrase, true?

10 MR. HOLLER: If I may, Your Honor, I'm pointing
11 out the staff's direct testimony, this particular item
12 question is addressed. If it would be helpful to counsel,
13 it's Staff Question 7.

14 BY MR. MILLER:

15 Q Let's look at that for just a second. We have a
16 three-part test there. Is that how we defined -- I'm going
17 to strike that and let me back up. We'll see if we can do
18 this again.

19 Let's go back to 85-15. Are we comfortable that
20 the members of the panel are familiar with 85-15 and its
21 requirements?

22 A [Witness Walker] I think so.

23 A [Witness Luehman] Yes.

24 Q Under 85-15, if a licensee -- strike that. Under
25 85-15, if the NRC identifies equipment for which there is

1 inadequate qualification documentation, can the licensee
2 engage in additional testing or analysis in order to avoid
3 imposition of a civil penalty, Mr. Luehman?

4 A [Witness Luehman] Just give me a second.

5 Q Yes. Please take the time you think is
6 necessary.

7 [Witness reviewing document.]

8 MR. HOLLER: If the Board please, I'm going to
9 have to raise an objection here. If the question is --
10 rather, the issue here isn't enforcement action taken under
11 85-15, the issue here is the enforcement action proper, as
12 it was taken under 88-07. So, I don't know if I see the
13 relevancy of what is going to --

14 JUDGE BOLLWERK: Mr. Miller?

15 MR. MILLER: Well, actually, while I disagree with
16 the objection for the moment, I'll withdraw the question and
17 we'll pick it up when we get to that.

18 JUDGE BOLLWERK: All right.

19 BY MR. MILLER:

20 Q Let's go back to 85-15. We've identified that as
21 a starting point. And let's go to 86-15. And can we agree
22 that it supersedes 85-15? And, for the record, 86-15 is
23 Staff Exhibit 9 in this Generic Letter 86-15 obviously.

24 The question to the panel is if we're going to try
25 to see how the enforcement policies are developed over time,

1 as we've seen how the EQ requirements developed. And we
2 started with 85-15. And the question to you is, didn't 86-
3 15 supersede and further define the enforcement policy for
4 latest EQ violations?

5 A [Witness Luehman] That's, in part what it did,
6 yes.

7 Q Tell me what else it did.

8 A [Witness Luehman] I think it made clear -- 85-15
9 talked, in limited detail, about what a licensee was
10 supposed to do if they found a deficiency.

11 I think that 86-15 expanded upon the -- in
12 addition to further defining the enforcement policy,
13 expanded on what a licensee was supposed to do if they found
14 a -- or, not just if they found, but if they -- a
15 qualification problem was found.

16 Q All right. Well tell me what you mean by that.
17 What does 86-15 require licensees to do if they find a
18 deficiency?

19 A [Witness Luehman] Well, they're supposed to make
20 a -- they're suppose to come up with or perform -- put
21 together, whatever word you want to -- whatever phrase you
22 want to use as justification for continued operation.

23 Q And what does that get them in the enforcement
24 arena?

25 A [Witness Luehman] It just -- that just allows

1 them to continue to operate.

2 Q Okay. Well, does that mitigate any civil penalty?

3 A [Witness Potapovs] Are you asking if the
4 justification --

5 Q Yes, sir.

6 A [Witness Potapovs] -- for continued operation
7 mitigated a penalty, no.

8 Q Okay. It allows them to continue to operate.
9 But, for enforcement purposes, it has no effect?

10 A [Witness Potapovs] That's correct.

11 Q Let's go to the topic we discussed earlier.
12 Suppose the NRC identifies a deficiency, but the licensee,
13 by additional testing, is able to show that the component
14 was qualified.

15 Is that allowed under 86-15?

16 A [Witness Luehman] Well, I guess we would say that
17 the panel never applied 86-15. So, you're speaking of a
18 hypothetical.

19 Q Well, hypothetical it may be. But, let's see if
20 we can understand how 86-15 was supposed to work. And then
21 we'll compare it to 88-07 and how it works.

22 MR. HOLLER: Your Honor, I'm going to raise an
23 objection here. This panel has put forward to testify how
24 they applied 88-07, and they made no proffer in the direct
25 testimony they have any expertise in applying 86-15.

1 MR. MILLER: If they'll stipulate that they have
2 no reliance whatsoever on the development of the EQ --
3 modified EQ policy, that being predicated on 85-15 and 86-
4 15, we'll move on.

5 MR. HOLLER: If I may be heard?

6 JUDGE BOLLWERK: Surely.

7 MR. HOLLER: I'm not suggesting that this panel
8 doesn't have the expertise as to the parts they played in
9 the development, merely that in the practical application of
10 86-15.

11 JUDGE BOLLWERK: Well, on that basis, I take it
12 we'll recognize that we're talking hypothetically here. And
13 what that's worth, I'll be frank with you, in terms of a
14 hypothetical to the decision we're going to have to make,
15 strikes me as tenuous at best.

16 Go ahead and ask your question.

17 BY MILLER:

18 Q Be: mindful of the tenuous nature of it, let's
19 see what we can do. And I'm going to jump ahead and then
20 we'll back up and show how all this is connected.

21 Won't you agree with me that Generic Letter 88-07
22 has a Section three in it?

23 A [Witness Luehman] Yes.

24 Q Why don't you get that in front of you and let's
25 all look at it.

1 A [Perusing document.]

2 Q Do you have that there?

3 A [Witness Luehman] Yes, I do.

4 MR. HOLLER: If Mr. Miller would identify more
5 fully for the record since this is a pertinent --

6 MR. MILLER: Sure. We're looking at page 2 of
7 Staff Exhibit 4 and we're particularly focusing on roman
8 numeral III, EQ violations not sufficiently significant to
9 merit a civil penalty under the modified policy.

10 BY MR. MILLER:

11 Q Do you have that?

12 A [Witness Luehman] Yes.

13 Q All right, and in that paragraph we have a
14 sentence that is seven or eight lines down that begins with
15 the phrase, "However although not in the qualification
16 file."

17 Do you see that sentence?

18 A [Witness Luehman] Yes.

19 A [Witness Walker] Yes.

20 Q And it says, in summary, if sufficient data exists
21 or is developed during the inspection to demonstrate
22 qualification, the deficiency is not considered sufficiently
23 significant for assessment of civil penalties.

24 I summarized it slightly but did I get the sum and
25 substance of it?

1 A [Witness Luehman] Yes.

2 A [Witness Walker] Yes.

3 Q Now this panel has previously said that on page --
4 hold on a minute -- on page 4 and 5 of the testimony that
5 they swore to today, here it is -- tell me if I read it
6 right: While the licensee's actions to qualify equipment
7 after the discovery of the violation is important collective
8 action, the Staff considers in deciding whether to take
9 further enforcement action including assessment -- including
10 assessing further civil penalties a licensee's performance
11 of new analysis or collection of new data that yield
12 fortuitously positive results does not affect a licensee's
13 prior lack of reasonable assurance.

14 You swore to that testimony this morning, did you
15 not?

16 A [Witness Luehman] That is correct.

17 Q All right. What we are going to do now is engage
18 in an evaluation of the sentence in Section III of 88-07 and
19 the sentence in your testimony right here.

20 Do you understand what our objective is for the
21 remainder of this afternoon?

22 A [Witness Luehman] Yes.

23 Q As an incentive when we do that I'll recommend to
24 the Board that we call it quits for the day.

25 JUDGE BOLLWERK: A powerful incentive.

1 MR. MILLER: The Court Reporter just quit the
2 microphone; she wants to go home! All right, let's see
3 what we can do.

4 BY MR. MILLER:

5 Q Now we are back to 85-15 and 86-15 and what I am
6 trying to determine is we know that it's in 88-07, the one
7 you purport to be enforcing here today.

8 Did this thought come up in 85-15 or 86-15? Where
9 did it come from?

10 A [Witness Potapovs] It evolved as the result of
11 evaluating numerous findings in the early rounds of the
12 inspection and the main purpose of it was to define those
13 instances where sufficient qualification documents were not
14 available.

15 Q Okay.

16 A [Witness Potapovs] But they were not available
17 mainly because the licensee did not have them fully
18 developed or they're not auditable but there was sufficient
19 knowledge in existence either with the licensee or with NRC
20 inspection team, hopefully both, that the item itself was
21 qualifiable. That's the term that was evolved.

22 That means that you could make sufficient judgment
23 at the time of discovery or shortly thereafter that the item
24 was in fact qualifiable and the documentation was the major
25 problem that precluded it from being identified as qualified

1 equipment.

2 Q In other words, if it is not a fortuitous event,
3 more on the order of a confirmatory event, then that's the
4 sort of additional data you understand to be allowed under
5 this Section III?

6 A [Witness Luehman] No, I don't agree with,
7 completely agree with that statement.

8 Q Well, wait just a second. I didn't ask you the
9 question. I asked it of Mr. Potapovs.

10 A [Witness Potapovs] I am not sure what you meant
11 by fortuitous.

12 Q Sir, look at your testimony. What did you mean by
13 fortuitous?

14 A [Witness Potapovs] That if the licensee can
15 provide calculations or analysis during the time of the
16 inspection and the results of that first analysis supports
17 the qualification, then we would have fortuitous results and
18 the equipment would be considered to have been qualifiable
19 at the time of discovery.

20 Q Then no civil penalty would be imposed?

21 A [Witness Potapovs] That's correct.

22 Q Mr. Luehman, do you agree with that statement?
23 It's the man on your left that just said it.

24 Tell us whether or not you agree with it.

25 A [Witness Luehman]" With regard to the way we

1 addressed that when we said "yield fortuitous results," I
2 think that what we were referring to there is consistent
3 with what is in Section IV --

4 Q Mr. Luehman, do you agree with --

5 A [Witness Luehman] -- Section IV of the policy.

6 Q -- with it, Mr. Luehman?

7 A [Witness Luehman] I can't agree or disagree. I
8 can only explain what my position is.

9 Q You are incapable of telling us whether or not you
10 agree or disagree.

11 A [Witness Luehman] I could say that Mr. Potapovs,
12 if the licensee -- I agree with Mr. Potapovs in that when he
13 states that if the licensee had the data and it was only a
14 matter of doing an additional calculation on the data or
15 documenting something that they already had to make the
16 point clear that that would not be considered for civil
17 penalty, that's correct.

18 Q All right. How about confirming a pre-existing
19 conclusion by additional testing, for example?

20 A [Witness Luehman] Section IV of the policy
21 clearly does not allow additional testing.

22 If the licensee has to do additional testing to
23 show that their equipment is in fact qualified, then that's
24 -- that's what this statement refers to.

25 If that test then yields fortuitous results, while

1 that's good for the licensee and we are all glad of that,
2 but that does not take them out of the realm of civil
3 penalty.

4 A [Witness Potapovs] Can I clarify my position to
5 the extent that maybe there was misunderstanding as I
6 understood from your second question.

7 I think the type of analysis that the licensee
8 would need to have or perform to avoid the civil penalty,
9 that would be something that would be not extensive and
10 something that would merely substantiate the conclusion
11 during the time the inspection is in progress.

12 It does not mean that he would send out for
13 additional complicated seismic analysis.

14 It means that maybe he has another report in a
15 data file and all he has to make is some cross references or
16 make some similarity demonstration to the inspector to
17 convince him that the documentation covers that equipment.

18 Q All right.

19 A [Witness Potapovs] It does not mean an extensive
20 re-analysis of the qualification basis.

21 Q You tend to suggest that minor data analysis is
22 acceptable. Anything beyond just minimum is unacceptable.
23 How is that?

24 A [Witness Potapovs] That's reasonable.

25 Q Now I'm going to back up to Mr. Luehman. You told

1 us that Section 4 specifically prohibits -- tell us again,
2 what does Section 4 prohibit?

3 A [Witness Luehman] Section 4 policy clearly says
4 that the NRC will not consider refinements on operability
5 arguments such as the actual time equipment is required,
6 administrative measures or controls available to assure the
7 safety functions are accomplished, the degree to which
8 operability of a system is effective, or that through
9 additional analysis and testing, the equipment may be
10 demonstrated to be qualified or qualifiable.

11 Q Okay. What about Section 3? That's the section
12 I'm focusing on. It says if data exists or is developed
13 during the inspection to demonstrate qualification of the
14 equipment.

15 A [Witness Potapovs] I covered that in my previous
16 sentence, I believe.

17 Q I understand. You say that that sentence means
18 only minor stuff.

19 A [Witness Potapovs] Well, if you are talking about
20 data that can be developed during the inspection or shortly
21 thereafter, if you want to say that, that generally would
22 not permit doing equipment qualification tests or performing
23 extensive analysis.

24 Q Okay.

25 A [Witness Luehman] For instance, the example that

1 I'll use is simply that if a licensee makes a best fit curve
2 on a graph and doesn't plot the data point on the best fit
3 curve out beyond -- out to encompass the envelope, and the
4 inspector questions that, and let's say the data point went
5 out -- the last data point was 300 degrees and it had to go
6 out to 310, and the inspector looked at the licensee's best
7 fit analysis, and clearly, that curve could be extended out
8 to 310, he puts the curve out, he draws the curve down and
9 demonstrates to the inspector, yes, we didn't take it far
10 enough, but he did a quick enhancement to the curve,
11 clearly, that's the type of deficiency that we're talking
12 about. The data point was provided. It did not take
13 extensive analysis, it did not take an extra test, and you
14 expect the inspector would accept that.

15 Q All right. So when you and Mr. Potapovs look at
16 the phrase "If sufficient data exists or is developed,"
17 you're talking about just take what you see -- in your case,
18 Mr. Luehman, add another line on the curve; in Mr. Potapovs'
19 case, a little minor stuff -- nothing serious. Is that how
20 you interpret that phrase?

21 A [Witness Luehman] That's correct.

22 A [Witness Potapovs] That seems reasonable.

23 Q Okay. And has it always been the case under that
24 -- at least that philosophy under 86-15 and 85-15, if you
25 know?

1 A [Witness Potapovs] That definition has been
2 applied to all EQ enforcement in classifying the items and
3 severity level.

4 Q Okay. And by that, you mean it has been applied
5 going back as far as 85-15, if you know?

6 A [Witness Luehman] No. 85-15 and 86-15 were never
7 applied in enforcement cases.

8 A [Witness Potapovs] 86-15 really had no
9 enforcement policy clarification in it other than the
10 operability issues that we discussed.

11 Q I see.

12 A [Witness Potapovs] We were not processing any EQ
13 enforcement until these guidelines were pretty much
14 established, and as a result of looking at many of these
15 inspection results cumulatively, we defined the point at
16 which a deficiency becomes significant to give the licensee
17 benefit of doubt when something that was relatively minor
18 and could be fixed and --

19 Q Right then --

20 A -- a body of knowledge existed during the
21 inspection that the equipment really was qualifiable and we
22 could be convinced of that, then that was not considered
23 sufficiently serious to escalate.

24 Q Okay. I'm going to say it back. Let's make sure
25 you and I understand each other. If the body of knowledge

1 existed during the inspection and it was of minor character,
2 then that's what this Section 3 is meant to apply to? Mr.
3 Luehman, Mr. Potapovs?

4 A [Witness Luehman] Well, I guess I'm troubled a
5 little bit about the body of knowledge.

6 Q It was a phrase Mr. Potapovs used; I just picked
7 it up.

8 A [Witness Luehman] Well, I'm just saying maybe
9 that, at least in my opinion, that may be a little broad.
10 Because it existed out there somewhere, that's in the body
11 of knowledge of all those people that are knowledgeable in
12 EQ. But I don't know how much that may or may not help a
13 particular licensee.

14 A [Witness Potapovs] Can I perhaps clarify that?

15 Q Help me, Mr. Potapovs. Did you mean the body of
16 knowledge existing within the licensee?

17 A [Witness Potapovs] No. I meant within the
18 inspection team and the licensee. Particularly what I was
19 referring to, that if, for instance, there was an item at a
20 licensee's facility for which clear documentation did not
21 exist, but the inspector was sufficiently knowledgeable that
22 this particular item was qualified for those conditions --

23 Q Or qualifiable.

24 A [Witness Potapovs] Or -- well, I will get to
25 qualifiability.

1 Q All right.

2 A [Witness Potapovs] If the inspector had
3 sufficient knowledge to identify that it was qualifiable and
4 could communicate that to the licensee, and they would
5 jointly develop that basis for that equipment during the
6 inspection, then this would not be considered significant.

7 Q Okay.

8 A [Witness Luehman] That caveat, the knowledge of
9 the inspector, was in there such that if the inspector knew
10 -- if we had a particular licensee that didn't have, for
11 instance, a well known industry report that qualified a
12 piece of equipment and this particular licensee did not have
13 it in his file, but it clearly existed and qualified that
14 equipment by itself, you know, then the inspector was within
15 his latitude to say that that's well known and, for whatever
16 reason, you don't have it.

17 Q Okay.

18 A [Witness Potapovs] That's a good point. As a
19 matter of fact, there have been cases where the inspector
20 has identified such a report to the licensee during the
21 course of inspection. The licensee had obtained a telecopy
22 of the pertinent page of that report during the inspection
23 and corrected his files to reference that report.

24 Q Okay. We keep talking about during the
25 inspection. Is it your view that additional data developed

1 during the inspection or at least before it ends or shortly
2 thereafter -- I take it you would say that if it's developed
3 after the inspection ends, it doesn't count under this
4 Section 37

5 A [Witness Luehman] No. I think that we have
6 accepted data that was developed shortly after the
7 inspection with the caveat, again, that that data was not
8 developed based on extensive analysis -- in other words,
9 doing a full blown -- or doing a full blown EQ test to
10 qualify the piece of equipment.

11 For instance, if, on the last -- to follow on to
12 what Mr. Potapovs said, if on the last day of the inspection
13 the inspectors come upon the case that Mr. Potapovs talked
14 about of knowing that a report existed, the licensee -- the
15 inspectors exit the site, but the licensee gets the report,
16 and by the time the inspectors get back to the region, the
17 licensee says, "Yes, we've gotten that report. We've
18 verified, as you told us, that it's a report that could
19 qualify our equipment, and we've done this, that and the
20 other thing to make it clear that it's applicable," then
21 that would be information gotten shortly after the
22 inspection that the licensee can include.

23 Q As long as it is in this body of knowledge that we
24 have been talking about, even though it's acquired shortly
25 after the inspection concludes, it will be considered for

1 qualification purposes; am I right so far?

2 A [Witness Potapovs] Yes, and generally, shortly
3 thereafter would mean that a commitment is made during
4 inspection to provide the specific piece of document to the
5 inspector to verify.

6 Q So, you read the phrase, "if data exists or is
7 developed," your phrase or your interpretation of the phrase
8 is "developed," really doesn't mean go out and develop new
9 information; it means develop something that explains
10 further, the knowledge you already have?

11 A [Witness Potapovs] That's correct.

12 A [Witness Luehman] That's right, otherwise, it
13 would be in contradiction with Section IV.

14 Q Okay, and by explaining further, the knowledge
15 that the licensee already has, let me ask you this question:

16 If the licensee has reasonable assurance that an
17 item of equipment will perform its intended function, and an
18 inspector questions that, under Section III, is the licensee
19 entitled to develop knowledge that explains further, the
20 basis for its reasonable assurance?

21 A [Witness Potapovs] Well, you threw in the
22 capability of performing its intended function. I guess
23 you're alluding to operability of the equipment as a JCO.

24 Q I thought there was a part of the qualification
25 under 10 CFR 50.49 that required --

1 A [Witness Potapovs] If you look at the definition
2 in Generic Letter 85-05, that is the document --

3 A [Witness Luehman] 85-15.

4 A [Witness Potapovs] 85-15; I'm sorry. That is the
5 definition that has been consistently used as unqualified
6 equipment, and it states that for purposes of enforcement,
7 unqualified equipment means equipment for which there is not
8 adequate documentation to establish that this equipment will
9 perform its intended function in a relevant environment.

10 Q Okay, let's make sure we're back on track here.
11 What I'm asking you is; if the licensee, using its body of
12 knowledge that it has in existence during the inspection,
13 develops additional data demonstrating qualification of the
14 equipment -- and by that I mean what you have said --
15 refines this body of knowledge a little bit more, then you
16 say that's a Section III candidate and no civil penalty
17 should be imposed?

18 A [Witness Potapovs] If the inspector accepts that
19 information, yes.

20 Q What I think you're saying then is that
21 qualification means operability in the intended environment
22 and also documentation.

23 A [Witness Potapovs] Right.

24 Q Mr. Walker is saying no. You all need to decide
25 whose right on this.

1 A [Witness Walker] I think you continued and said
2 what I thought should be said, so it's okay.

3 Q Okay, everybody agrees on what I said, all right.

4 A [Witness Luehman] It's both.

5 A [Witness Potapovs] It's both, yes.

6 Q Now, -- I mean, we're trying hard over here, I
7 promise you we really are, but if there is a JCO that shows
8 that the equipment is qualified, is that what you mean by
9 additional data?

10 A [Witness Potapovs] There are no JCOs to show that
11 equipment is qualified. There are JCOs to show that
12 equipment is operable.

13 Q I see.

14 A [Witness Potapovs] JCO has nothing to do with
15 qualification.

16 Q Okay, I stand corrected. If there is a JCO that
17 shows that the equipment is operable, is that a Section III
18 event?

19 A [Witness Walker]" No, sir.

20 A [Witness Luehman] No. One has to do with
21 operability and one has to do with qualification.

22 Q Wait a minute, wait a minute, wait a minute. One
23 has to do with operability and one had to do with
24 qualification?

25 A [Witness Luehman] That's correct..

1 A [Witness Potapovs] Can I back up on that a little
2 bit? The regional definition for a JCO was a submittal by
3 the licensee to permit operation with unqualified equipment
4 after the deadline. And I believe there were a few
5 instances where this occurred.

6 Under those conditions, the licensee, in effect,
7 was exempted from qualifying that equipment based on the
8 JCO. And under those conditions, enforcement action would
9 not be taken. But those JCOs would have been in place
10 before the deadline.

11 Actually, when we're talking about the JCO as used
12 subsequently and as stated in the Generic Letter 86 whatever
13 --

14 Q Fifteen?

15 A [Witness Potapovs] Right. That would mean an
16 identification of unqualified equipment after the deadline,
17 and under those circumstances, the licensee would have to
18 determine operability and compliance with technical
19 specifications, so the plant and -- and also consider
20 reportability under Part 21.

21 Now, that could be subject to any enforcement
22 action under the modified policy. It would be a licensee-
23 discovered, or maybe an NRC-discovered item of non-
24 compliance in an operating plant where the licensee could
25 demonstrate further operation of the plant.

1 Q Okay. You threw a lot at us. Let's see if we can
2 break it up into some smaller parts so we can grapple with
3 it. What I understand you to be saying is that the Section
4 III allowance for additional or sufficient data existing or
5 developed during the inspection to demonstrate
6 qualification, should have nothing to do with operability;
7 is that correct, Mr. Luehman?

8 A [Witness Luehman] That's right.

9 Q Okay, all right, and the concept of the JCO
10 applies to whether or not the plant can continue to operate
11 under its tech specs?

12 A [Witness Potapovs] That's correct, with the --

13 Q They are two completely different concepts at work
14 here?

15 A [Witness Potapovs] With the previous
16 clarification that I mentioned about the JCOs that were
17 granted before the deadline.

18 Q Does this mean, though, that under the modified
19 policy, a plant whose equipment is operable will receive
20 escalated enforcement on the basis that the documents don't
21 show the reality?

22 A [Witness Luehman] I think that you're a little
23 bit misstating that. The equipment -- a JCO will define the
24 equipment to be operable in the condition that it's
25 discovered in.

1 In other words, if a plant's operating at a
2 hundred percent power and let's say a deficiency in the
3 environmental qualifications is discovered at a hundred
4 percent power, the licensee has a deficiency in the EQ
5 program. Right away, he knows it's deficient or it's
6 potentially deficiency with respect to EQ.

7 Not only does he have to make a determination
8 whether this is purely something that will affect him if he
9 should get into an accident environment, which is where the
10 qualification of the equipment is called on, but he also had
11 to see if this deficiency that he's discovered would affect
12 the operability of the equipment in the condition he's
13 presently operating in; in other words, that the equipment
14 would perform at 100 percent power.

15 So, the licensee can, in fact, make a
16 determination that the equipment -- its qualification and
17 its ability to operate in the accident environment, might be
18 in question, or, in fact, might not -- or it might not be
19 able to operate in the accident environment. However, the
20 equipment might be fully capable of performing at the
21 present -- in the present plant conditions, and, therefore,
22 the licensee can consider some other things, such as to
23 continue on operating at that present power, the length of
24 time it's going to take them to fix it, the other equipment
25 that they have that can perform that function, whether or

1 not that equipment is necessarily taken credit for in the
2 safety analysis, and then they could present that to -- they
3 could make that argument to the NRC.

4 - So qualification does not equal operability. Once
5 you have a deficiency, you have to evaluate it for both.
6 First, does it affect operability, because obviously that is
7 the most important thing, and then does it affect
8 qualification, which is the ability to function in the
9 accident environment.

10 Q All right, let's see what we can do here so that
11 we can wrap this up.

12 I am looking at Section 3. I see a phrase that
13 says, "if sufficient data exists or is developed during the
14 inspection to demonstrate qualification of the equipment,"
15 it goes on to say "the deficiency is not sufficiently
16 significant for assessment of civil penalties". That is our
17 starting point. Does everybody see that?

18 A [Witness Luehman] Yes.

19 Q I understand what you are saying is that this
20 phrase, "data existing or is developed" -- right? Is
21 developed to me is a future event. Is it a future event to
22 this panel?

23 A [Witness Luehman] Yes.

24 Q All right. That phrase is qualified because the
25 "is developed" does not govern performing new analysis or

1 collection of new data; is that right? That is your
2 testimony. I ask you if you stand by it.

3 A [Witness Walker] Wait a minute, I think I missed
4 something there.

5 Q Yes, sir. I read this "is developed" during the
6 inspection or shortly thereafter -- not in there, but we
7 have agreed on that -- I read that phrase to mean the
8 licensee can develop sufficient data to demonstrate
9 qualification.

10 A [Witness Luehman] Well, I would say that this
11 statement here is wholly consistent with what's there,
12 because if you read the full statement it says, whether to
13 take further enforcement action, including assessing further
14 civil penalties. It doesn't say that -- that statement does
15 not say that if data is developed that the civil penalty is
16 the only result that can happen. There is data that you can
17 develop, as we have described, that you will get a
18 violation. It will still be a violation under the modified
19 policy, or it can be, but it won't be assessed a civil
20 penalty.

21 Q I see.

22 A [Witness Potapovs] I think we spent quite a bit
23 of time discussing the extent of the data to be developed.
24 And I think that is a factor to be considered.

25 Q That is what I am trying to focus on. Under this

1 panel's interpretation of the allowance that data -- that
2 sufficient data may either exist or is developed during the
3 inspection, you say that means there's a limit on what may
4 be developed.

5 A [Witness Luehman] And that limit is defined in
6 Section 4.

7 Q Just a minute, just a minute. We're not in
8 Section 4. I'm in Section 3. Section 3 does not say minor
9 data development; does it?

10 A [Witness Luehman] No.

11 Q It says if sufficient data exists or is developed;
12 doesn't it?

13 A [Witness Potapovs]" Correct.

14 Q You have read into that this minor or --
15 Wait, wait, wait, I need to finish the question
16 and then you give the answer. We can't do more than that.
17 You have read into that, haven't you, this minor
18 development cap that you have put on it; haven't you, Mr.
19 Potapovs?

20 A [Mr. Potapovs] I have never seen anybody able to
21 perform a complete seismic analysis or major environmental
22 qualification reanalysis during the course of an inspection.
23 In practical matters it boils down to doing those types of
24 calculations, extrapolations or whatever you may call them,
25 that would prove beyond reasonable doubt that the equipment

1 is, in fact, qualified.

2 Q Wait a minute, let's halt on the beyond a
3 reasonable doubt. That's a reasonable stance. We're at
4 reasonable assurance.

5 Look, I am not trying to be facetious, I know you
6 all think of yourselves as the EQ police, but let's stay
7 away from the criminal standard. Go ahead.

8 If the data is developed to provide reasonable
9 assurance, what do you say to that?

10 A [Mr. Potapovs] Then there would be no escalated
11 enforcement.

12 Q And by data do you mean to say sufficient data?

13 A [Mr. Potapovs] Sufficient in inspector's
14 judgment.

15 Q And by sufficient data, do you mean to say data
16 that may not have existed at the start of the inspection but
17 existed at the end of the inspection?

18 A [Mr. Potapovs] Typically, the data would have
19 existed. It's the manipulation of existing data as opposed
20 to a generation of new data.

21 Q Restating your reasonable assurance basis in a
22 different way?

23 A [Mr. Potapovs] No, providing an analysis that was
24 not obvious to everybody that had reasonable understanding
25 of the EQ process and the EQ technology.

1 Q Providing an analysis that was not obvious to the
2 inspector even though it was obvious to you all along?

3 A [Mr. Potapovs] I am not sure if I follow you on
4 that.

5 Q If the inspector says, I don't understand it, then
6 you provide a different analysis. It is the same body of
7 knowledge, you don't change your understanding, you just use
8 it to try and convince him; how's that?

9 A [Witness Luehman] And that happened during the
10 inspection.

11 Q Yes, and if it did you'd say it fits into Section
12 3.

13 A [Witness Luehman] Yes.

14 Q So, if you had reasonable assurance that your
15 components -- strike that.

16 May we have two minutes please?

17 JUDGE BOLLWERK: Yes.

18 [Counsel conferring off the record.]

19 MR. MILLER: If there is no objection, we will
20 propose to adjourn for the day and reconvene in the morning.

21 MR. HOLLER: No objection.

22 JUDGE BOLLWERK: Fine, we will adjourn and start
23 again at 9:00 o'clock tomorrow morning.

24 [Whereupon, at 4:36 p.m., the hearing was
25 recessed, to reconvene the following day, Wednesday,

1 February 12, 1992, at 9:00 a.m.)

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

REPORTER'S CERTIFICATE

This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission

in the matter of:

NAME OF PROCEEDING: Alabama Power

DOCKET NUMBER: 50-348-CivP, 50-364-CivP

PLACE OF PROCEEDING: Bethesda, Maryland

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission taken by me and thereafter reduced to typewriting by me or under the direction of the court reporting company, and that the transcript is a true and accurate record of the foregoing proceedings.

Marilynn Estep

Official Reporter
Ann Riley & Associates, Ltd.