

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

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ANN RILEY & ASSOCIATES, LTD.

1612 K St. N.W., Suite 300
Washington, D.C. 20006
(202) 293-3990

9202280257 920212
PDR ADOCK 05003348
T PDR

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1 UNITED STATES OF AMERICA

2 NUCLEAR REGULATORY COMMISSION

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4 In the Matter of: : Docket No. 50-348-CivP

5 ALABAMA POWER COMPANY : 50-364-CivP

6 [Joseph M. Farley Nuclear Plant, : ASLBP No 91-626-02-Civ1

7 Units 1 and 2] :

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9 Nuclear Regulatory Commission

10 5th Floor Hearing Room

11 East-West Towers

12 4350 East West Highway

13 Bethesda, Maryland

14 Wednesday, February 12, 1992

15
16 The above-entitled matter came on for hearing
17 pursuant to notice, at 9:01 o'clock a.m.

18
19 BEFORE: THE HONORABLE G. PAUL BOLLWERK III, Chairman of
20 Atomic Safety and Licensing Board
21 THE HONORABLE DR. JAMES H. CARPENTER, Member of
22 Atomic Safety and Licensing Board
23 THE HONORABLE DR. PETER A. MORRIS, Member of the
24 Atomic Safety and Licensing Board
25

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. BACHMANN, ESQUIRE

20

EUGENE J. HOLLER, ESQUIRE

21

ROBERT M. WEISMANN, ESQUIRE

22

Nuclear Regulatory Commission

23

Washington, D.C. 20555

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1 [continued next page]

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3 On behalf of Bechtel Corporation:

4

5 CHRISTINE E. CLEARWATER, ESQUIRE

6 Bechtel Corporation

7 9801 Washingtonian Boulevard

8 Gaithersburg, Maryland 20878-5356

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P R O C E E D I N G S

JUDGE BOLLWERK: On the record.

Whereupon,

JAMES LUEHMAN,

ULDIS POTAPOVS

and

HAROLD WALKER

resumed the stand as witnesses on behalf of the Nuclear Regulatory Commission and, having been previously duly sworn, were further examined and testified as follows:

CONTINUED CROSS-EXAMINATION

BY MR. MILLER:

Q All right. When we left off yesterday, we were talking about the modified enforcement policy, and particularly its implementation. And let's take a moment and see if we can go through how the modified enforcement policy is supposed to work.

Will you get a copy of 88-07 in front of you, which is Staff Exhibit -- who knows? Staff Exhibit 4. And just get that -- I'll see if we can create some kind of chart.

Now the first one will be the inspection, that's the first one.

You have to say so, Mr. Luehman.

A [Witness Luehman] Yes.

1 Q And then I take it we get some kind of alleged
2 deficiency, right?

3 A [Witness Walker] May I ask a question here, sir?

4 Q You sure may.

5 A [Witness Walker] The inspection is actually the
6 second aspect of this.

7 Q And what is the first?

8 A [Witness Walker] The Staff SER, I believe.

9 Q All right. So the SER -- this is the one -- wait,
10 hand me the orange one.

11 The Staff SER, at least in this case, is the one
12 that says: We have complied with the EQ -- our program
13 complies with 50.49?

14 A [Witness Walker] I believe that's the one.

15 A [Witness Potapovs] Just to complete the record
16 for the first bullet that you have.

17 Q All right.

18 A [Witness Walker] Inspection would identify items
19 subject to enforcement. Another way these can be, and have
20 been, identified is through self-identification by the
21 licensee. And if those are identified as unqualified
22 equipment, then those items may also be subject to
23 enforcement.

24 Q All right. So, but in any event, we come up with
25 our alleged deficiencies. I see. Right?

1 A [Witness Luehman] Yes.

2 Q All right. Then the next thing we decide is, is
3 this a 50.49 violation? It sounds simple, but that's sort
4 of what we are here to talk about, right?

5 A [Witness Luehman] That's correct.

6 Q You then find your way to the modified enforcement
7 policy, if you have met all of these.

8 And now we get to timing. Did the violation exist
9 before November 30, 1985? How am I doing, Mr. Luehman?

10 A [Witness Luehman] So far so good.

11 Q All right. Now the importance of that, of course,
12 is that even though the inspection occurs in '87, you go
13 back to 1985 for purposes of the modified enforcement
14 policy, true?

15 A [Witness Luehman] That's correct.

16 Q It would be improper to have an '87 inspection,
17 and use '87 standards, and '87 knowledge, and '87 learning
18 that occurred since '85, and backdate them or retroactively
19 apply them to a licensee if they existed in November of '85?

20 A [Witness Luehman] That was one of the purposes of
21 the Board.

22 Q That's right. Improper to do that, no question
23 about it. You're onboard with that, aren't you?

24 A [Witness Luehman] Yes.

25 Q Okay. If we meet all those milestones, then we go

1 to the next one, which is Section 2, did the licensee
2 clearly know, or should have known. Everybody agree?

3 A [Witness Luehman] Yes.

4 Q Okay. Just to focus on that. It's not did they
5 know, or should they have known; but did they clearly know,
6 based on pre-'85 knowledge. Are we right so far?

7 A [Witness Luehman] That's correct.

8 Q And with that -- we probably ought to put that in.
9 Based on pre-11/30/85 knowledge. Right so far?

10 A [Witness Luehman] I guess the only thing I would
11 quibble with is, I guess, the word "knowledge." I mean, I
12 would rather use the word "information" rather than
13 knowledge. Because whether -- we didn't have to decide
14 whether somebody had the knowledge or not, we just had to
15 decide whether the information, which is information that
16 somebody should have clearly known about, was there.

17 I mean, if a licensee -- if there was 10 documents
18 out there that said you had to do something, but a licensee
19 wasn't -- didn't have that knowledge, that doesn't excuse
20 the fact that they didn't read the documents, if that was
21 the case.

22 So I guess I want to make sure what the word
23 "knowledge" means is clear.

24 Q Well, if you'll forgive me, but I'm going off what
25 88-07 says, and it uses "knowledge." It doesn't say

1 "information," does it?

2 A [Witness Luehman] I'm just saying -- I'm just
3 telling you how that's applied. I mean --

4 Q Oh, I understand. Make no mistake about it. We
5 contend that you misapplied. Which is why we have to go
6 back to see what it says, instead of how you used it against
7 us.

8 But you said what you had to say. And let's focus
9 on this: If the determination is made, that based on pre-
10 '85 knowledge the licensee didn't clearly know, or should
11 have known -- no violation. Right?

12 A [Witness Luehman] That's correct.

13 Q All right. Let's take a timeout.

14 How many of the licensee enforcement actions that
15 this panel reviewed, when it sat as an enforcement, an FO
16 enforcement review panel, on how many occasions did you
17 conclude that the opposed notice of violation should be
18 rejected in total or in part because the licensee didn't
19 clearly know, or should have known, of the proposed
20 violations?

21 We'll take you, Mr. Luehman.

22 A [Witness Luehman] I can recall a number of
23 occasions, I can't quantify them, where it actually got to
24 the panel. I can also recall discussions that were held,
25 even prior to one getting to the panel where, in concert

1 with the Plant Systems Branch which Mr. Walker is a member
2 of, and the Office of Enforcement, and the Region, where
3 Regions were considering actions. And even before it got to
4 the panel, they were dropped because the licensee --

5 Q How many times did the panel reject a proposed NOV
6 on the basis of the absence of meeting the clearly knew or
7 should have known standard?

8 A [Witness Luehman] I cannot quantify it, but I
9 know that it happened.

10 Q The best you can say is you know it happened in
11 the panels that you sat on?

12 A [Witness Luehman] That's right, because we
13 reviewed 23 different actions, and I don't have specific
14 memory of all of them.

15 Q We'll go to Mr. Potapovs. How many do you
16 remember that were rejected when you sat as a panel on the
17 basis of what we've been describing?

18 A [Witness Potapovs] I likewise cannot quantify
19 that, and I will second the statement that Mr. Luehman made
20 that when these --

21 Q I understand. You want to say that all that was
22 taken care of earlier.

23 A [Witness Potapovs] All of these things were
24 considered, and that was one of my personal responsibilities
25 in looking at and reviewing all proposed enforcement

1 actions.

2 Q You have not prepared any type of, say, scoreboard
3 of --

4 A [Witness Potapovs] No, I haven't.

5 Q -- of how many that got rejected on that basis?

6 A [Witness Potapovs] No, I have not.

7 Q You have not prepared, Mr. Luehman, a scoreboard
8 of what got rejected on that basis?

9 A [Witness Luehman] No, we have not.

10 Q Mr. Walker?

11 A [Witness Walker] No, I have not.

12 Q Can you recall for us, despite the failings of the
13 other two witnesses and their memory, can you identify for
14 us just one, just pick one, one licensee that came to you as
15 a member of your enforcement panel review board, this
16 consistency check, and identify for us one time that you
17 rejected a proposed NOV in whole or in part based on the
18 inability to meet the clearly knew standard? Can you just
19 name us one?

20 A [Witness Walker] Perhaps.

21 Q Do the best you can.

22 [Witness conferring off the record.]

23 BY MR. MILLER:

24 Q Okay, Mr. Walker, you have now conferred with the
25 other two members of the panel.

1 A [Witness Walker] Well, I was trying to make sure
2 I got the plant right.

3 Q Well, absolutely. No question about it. I take
4 it you could not have done that on your own; you had to
5 confer with them.

6 A [Witness Walker] That's correct because --

7 Q All right.

8 A [Witness Walker] -- we went through many of these
9 things and --

10 Q Now that we have had this conference, can you
11 identify for us one?

12 A [Witness Walker] Perhaps Robinson.

13 Q The best you can say is perhaps Robinson.

14 A [Witness Walker] Yes. I remember the discussion,
15 the extensive discussion. It had to do with the instrument
16 loop accuracy. As a matter of fact, it was my opinion that
17 that was misunderstood from the beginning.

18 Q Tell us another one.

19 A [Witness Walker] I --

20 Q Can't do it.

21 A [Witness Walker] -- would probably get into the
22 area of speculation. I think I may know another one, but
23 I'm not absolutely sure about it.

24 Q Don't speculate. Can we say, though, that of the
25 23 times you sat as a panel, the best you can do besides

1 this vague recollection is H.B. Robinson, perhaps? That's
2 the best you can do?

3 A [Witness Potapovs] Well, I think the rationale as
4 to why this is the case is important because all of these
5 things were considered before these items ever got to the
6 panel.

7 Q I'm sure they were. But my question stands, and
8 your answer is, "That's the best I can do."

9 A [Witness Luehman] Well, the reason that is, is
10 because it really had no relevance to us. We weren't
11 keeping score.

12 Q Isn't it true -- that's the best you can do? Just
13 answer the question. It's a simple yes/no.

14 A [Witness Luehman] Yes, that is the best we can
15 do, and it makes no difference.

16 Q To you. If we go to Section 3 and you decide that
17 clearly knew or should have known exists, then you make a
18 determination of whether or not it's significant or not, and
19 that's what we discussed yesterday, correct?

20 A [Witness Luehman] That's correct.

21 Q Okay. If it's not significant or meets the
22 requirements or the language of Section 3, you go to a
23 Severity Level 4 or 5, no civil penalty, okay? Do I have it
24 right so far?

25 A [Witness Luehman] That's not completely correct.

1 Q All right. Make it right, then.

2 A

3 A [Witness Luehman] Well, the part that's right is
4 the 4 or 5, but there is not an automatic exclusion of a
5 civil penalty.

6 Q I see. I see. We'll just do 4 or 5.

7 What does the phrase mean "is not considered
8 sufficiently significant for assessment of civil penalties"?
9 That's what my Section 3 says.

10 A [Witness Luehman] Well, that's correct, but you
11 have to read further on. I think that further on in the
12 policy, it says that if there is enough Severity Level 4 and
13 5 violations --

14 Q You aggregate them.

15 A [Witness Luehman] You can make an aggregation for
16 program breakdown.

17 Q So let's make this correct. No CP without
18 aggregation.

19 A [Witness Luehman] That's correct.

20 Q Okay. Once we worked our way through that, then
21 we go to Section 4, right? And that has the categorization
22 and aggregation, right? Are you with me?

23 A [Witness Luehman] Yes.

24 Q And then you go through the mitigation and
25 escalation.

1 A [Witness Luehman] That's correct.

2 Q And then you come up with the civil penalty? Is
3 the chart right?

4 A [Witness Luehman] Yes.

5 Q Okay. Let's go back and look at clearly knew or
6 should have known. Wasn't there some guidance put out by
7 the Office of Enforcement in 1988 about how to apply the
8 clearly knew or should have known standard?

9 A Yes, there was.

10 Q And didn't that take the form of a memo of June
11 21, 1988 from Mr. Lieberman to the various regional
12 administrators?

13 A [Witness Luehman] I know that it was a memo, it
14 was an enforcement guidance memo from Mr. Lieberman. I
15 don't recall the specific date.

16 MR. MILLER: I will show you what we'll mark for
17 identification purposes as Alabama Power Company Exhibit 86,
18 and ask you to take a moment to look at that while we get
19 assistance in marking it. And I'll call your attention
20 particularly to page three. You can look on mine. You, of
21 course, are always free to look at the entire part, but I'll
22 ask you about that. Do you need six?

23 [Document proffered to witness and the Board.]

24 MR. MILLER: Tell me when you've had a chance to
25 look at it.

1 JUDGE BOLLWERK: Could you go ahead and identify
2 that again?

3 MR. MILLER: Yes, sir. Would you mind if I use
4 this to identify that? Alabama Power Company Exhibit 86 is
5 a memorandum of June 21, 1988 from James Lieberman,
6 Director, Office of Enforcement, to the various regional
7 administrators for Regions I, II, III, IV and V. Subject:
8 Guidance for the preparation of enforcement cases related to
9 EQ violations. And we'll be discussing, particularly, this
10 morning, page three, the second full paragraph.

11 JUDGE BOLLWERK: Let the record reflect that APCo
12 Exhibit 86 has been marked for identification.

13 [APCo Exhibit No. 86 was marked
14 for identification.]

15 MR. HOLLER: If opposing counsel isn't using this
16 chart right now, could we remove it?

17 MR. MILLER: I am going to use it.

18 MR. HOLLER: Oh, sorry.

19 WITNESS LUEHMAN: We're ready.

20 BY MR. MILLER:

21 Q As a general matter, why don't we ask Mr.
22 Lieberman -- I'm sorry, Mr. Luehman -- would you go ahead
23 and tell us what prompted the promulgation of this
24 particular memorandum?

25 A [Witness Luehman] Basically, the promulgation --

1 the promulgation of the memorandum wa the -- was, in part,
2 really the natural result of the fact that we had a new --
3 or we had the issuance of the modified enforcement policy
4 under the Generic Letter in April of 1988.

5 The Office of Enforcement found it necessary to
6 issue the Enforcement Guidance Memorandum to the regions
7 because the -- the information contained in some of the
8 early submittals to the Office of Enforcement -- the early
9 cases considered under the modified policy -- in all cases,
10 the discussion wasn't sufficient in the -- in the action,
11 and some of the supplemental and supporting documentation
12 that was being provided by the regions to allow headquarters
13 personnel to evaluate whether the standards of the modified
14 policy were being met was lacking.

15 And, therefore, the Office of Enforcement put this
16 memorandum out to ensure that the regions prepare the
17 packages properly and supported them with the documentation
18 necessary so that the decisions could be made.

19 Q Okay. You had determined or had found, as a
20 result of the inspection reports, that the inspectors were
21 not providing enough information for the headquarters office
22 to implement the clearly knew or should have known standard
23 in 88-07?

24 A [Witness Luehman] That's not quite correct. The
25 inspections had all been performed before Generic Letter 88-

1 07 went out. So the inspection reports, in and of
2 themselves, didn't necessarily contain that information.

3 However, some of that information was contained in
4 other places, such as if there was an applicable information
5 notice or another piece of documentation. And, therefore,
6 we had to make sure that the -- because -- in part, because
7 the inspection reports didn't -- weren't laid out in the
8 manner or didn't discuss all the information explicitly that
9 was in 88-07, we had to ensure that we got the documents
10 from the region that would allow these --

11 Q Okay.

12 A [Witness Luehman] -- determinations to be made.

13 Q Let me ask you one other thing while I've got you.
14 Let's turn to page two, paragraph four. It says the Region
15 should hold an Enforcement Conference?

16 A [Witness Luehman] That's correct.

17 Q In the Enforcement Conference -- I'll ask it to
18 you this way:

19 Is one of the purposes of the Enforcement
20 Conference to attempt to resolve the matter with the
21 licensee, have them agree and have the staff agree with
22 whatever the appropriate resolution of the proposed
23 deficiency is? Mitigate the civil penalty if one is being
24 considered, things of that nature?

25 A [Witness Luehman] No. The purpose of the

1 Enforcement Conference is to present -- for the staff to
2 present its position relative to the inspection findings,
3 and to allow the licensee an opportunity to respond -- to
4 make its case for whether the violations existed; whether it
5 agrees that any violations existed; whether it agrees that
6 they're as significant as the staff is alleging them to be;
7 and, obviously, to address the -- address the potential
8 enforcement action that might result from that.

9 Q Would the staff encourage full and fair disclosure
10 in an attempt to at least resolve the potential and for an
11 enforcement action at the enforcement conference? Is that a
12 fair statement?

13 A [Witness Luehman] Full and fair disclosure of
14 what?

15 Q Of whatever the licensee had to say? Its
16 positions on all points, and in an attempt to resolve the
17 matter then, so it would go no further.

18 A [Witness Luehman] If the licensee makes
19 persuasive arguments, the staff is not going to go forward
20 --

21 Q Okay.

22 A [Witness Luehman] -- if it agrees with the
23 licensee's positions.

24 Q Okay. All right. We're back over now on page
25 three. And let's -- let's look at this paragraph that

1 begins: "In the same way, if an extensive (Category A) EQ
2 problem is identified..." Do you see that paragraph?

3 A [Witness Luehman] Yes.

4 Q It says here:

5 "Escalation for the lack of best efforts requires
6 more support than just being based on the number of
7 violations."

8 Did I read that correctly?

9 A [Witness Luehman] That's correct.

10 Q All right. As I understand that, and you correct
11 me if I'm wrong, that you can't just look at the violations
12 and say their mere existence means a lack of best efforts;
13 is that true?

14 A [Witness Luehmar.] That's not completely true. I
15 think if you look at the --

16 Q Well, it's partially true. And you'll tell me how
17 to make it completely true.

18 A [Witness Luehman] Yes. The bottom of the
19 paragraph states that if the licensee has a lot of
20 violations and those violations involve fundamental EQ
21 concerns -- in other words, there were very basic things
22 that a licensee in getting those violations missed -- then
23 clearly in the staff's mind, if they missed very basic
24 things, they obviously couldn't have demonstrated best
25 efforts.

1 Q All right. Okay. But, that's under the heading
2 of more support, is that true?

3 The fact that they have a number of violations is
4 insufficient to base escalation for the lack of best efforts
5 on which to base escalation for the lack of best efforts. I
6 paraphrased a little bit, but didn't I say the sentence
7 right?

8 A [Witness Luehman] You said the sentence right,
9 but I'm -- I'm --

10 Q Okay.

11 A [Witness Luehman] I'm going to the end of the
12 paragraph to tell you that although, in most cases, that was
13 the case, I can recall a couple of cases where best efforts
14 was, in part -- or our consideration of best efforts on the
15 panel was, in part, considered on the nature of the
16 violations themselves.

17 Q I understand that, but you will agree with me that
18 the so-called double-counting would not be right. That is,
19 you have these violations, and accordingly, you are
20 escalated because of lack of best efforts. Said that way, I
21 said it right.

22 A [Witness Luehman] With the caveat, unless the
23 violations at a particular -- were -- were so fundamental to
24 the program that -- that their mere existence --

25 Q Okay.

1 A [Witness Luehman] -- in and of themselves
2 demonstrates best efforts.

3 Q That's one caveat, the other being that -- and it
4 appears in the next sentence -- other facts should be used
5 to provide the basis that the licensee failed to exercise
6 best effort --

7 A [Witness Luehman] That's correct.

8 Q -- such as prior NRC inspection or licensee
9 audits. Did I say it right?

10 [Pause.]

11 A [Witness Luehman] That's what it says.

12 Q All right. What does that mean? Or I'll strike
13 that and ask it to you this way: such as a prior NRC
14 inspection or audits of EQ requirements?

15 A [Witness Luehman] That's correct.

16 Q Such as a prior NRC inspection like Mr. Gibbons
17 did in 1980?

18 A [Witness Luehman] In my opinion, no.

19 Q Well, if that's not a prior NRC inspection of EQ
20 requirements, what is it?

21 A [Witness Luehman] It is, but I --

22 Q All right.

23 A [Witness Luehman] I don't think that I -- we
24 would have used that one is what I'm saying.

25 Q How about the audit by the EQ branch of Unit 2 in

1 1980? Is that a licensee audit such as described here in
2 the --

3 A [Witness Luehman] It is a licensee audit as
4 described. However, the -- the depth of the information in
5 it would not have allowed the staff to -- to -- to use that
6 to -- in any significant way to make a determination of best
7 efforts.

8 Q I understand, but if you look at plant Farley and
9 you're looking for prior NRC inspections or licensee audits
10 of EQ requirements, you only have a limited number of
11 choices, and we talked about those, too, didn't we?

12 A [Witness Luehman] That's correct.

13 Q Can you identify for us a prior NRC inspection of
14 NRC requirements at Plant Farley that found a violation?

15 A [Witness Luehman] No.

16 Q How about a prior licensee audit at plant Farley
17 that found a violation or a deviation?

18 A [Witness Luehman] No.

19 Q So, what you're telling us is that this
20 fundamental EQ issues or components, the second area, is the
21 one where best efforts gets escalated.

22 A [Witness Luehman] No.

23 Q All right. Well, we're going to let somebody sort
24 that out for us, but you will agree with me that you can
25 identify -- strike that.

1 Are you telling us that the EQ violations at
2 Farley involved fundamental EQ issues or components?

3 A [Witness Luehman] I --

4 Q Yes or no?

5 A [Witness Luehman] No. We -- it --

6 Q All right.

7 A [Witness Luehman] We did not find that the -- the
8 violations at Farley were so fundamental in and of
9 themselves and so obvious that that would -- they would form
10 the basis of the escalation for best efforts.

11 [Counsel for APCo conferring off the record.]

12 BY MR. MILLER:

13 Q One of the things that I do need to ask you about
14 -- and we're backing up just a little bit -- and that is on
15 the "clearly knew or should have known" standard. We have
16 decided and talked about the fact that the standard is based
17 on pre-'85 knowledge.

18 I'm summarizing a little bit, but that's generally
19 what we have described. Is that so?

20 A [Witness Luehman] That's correct.

21 Q All right.

22 There were, Mr. Luehman, in the Office of
23 Enforcement. Did you make any attempt to talk with those in
24 the EQ branch that existed back in the '80 and two or three
25 years thereon timeframe but were no longer at the NRC?

1 A [Witness Luehman] No, that wasn't practical.

2 Q Okay. You say it wasn't practical?

3 A [Witness Luehman] That's correct.

4 Q You couldn't have just called them up on the
5 phone.

6 A [Witness Luehman] No, that's not -- it wasn't
7 necessary. We had enough people in the agency that had been
8 there pre-'85 --

9 Q Okay. So, your answer is --

10 A [Witness Luehman] -- plus documentation.

11 Q Your answer is no.

12 A [Witness Luehman] That's correct.

13 Q I take it as that encompasses Mr. DiBenedetto and
14 Mr. Noonan. You didn't talk to them.

15 A [Witness Luehman] I had no need to talk to them.

16 Q Incidentally, did you, by any chance, look at the
17 affidavit they filed in connection with Alabama Power
18 Company's response to the notice of proposed violation?

19 A [Witness Luehman] Yes, I did.

20 Q And in looking at that, did you prepare a response
21 to that affidavit?

22 A [Witness Luehman] There was no response prepared
23 to their affidavit explicitly.

24 Q Are you aware of anyone who prepared such a
25 response, whether or not it was ultimately sent to Alabama

1 Power Company?

2 A [Witness Luehman] No, I am not.

3 Q You will admit, though, that Mr. DiBenedetto was
4 the first section chief of the EQ branch, won't you, sir?

5 A [Witness Luehman] If you tell me he was.

6 Q All right. Well, you can take it subject to
7 check.

8 MR. MILLER: This has disaster written all over
9 it. Hold on a minute.

10 [Pause.]

11 BY MR. MILLER:

12 Q Let's see what we can do. We've sort of worked
13 our way through the modified enforcement policy. Let me ask
14 you something about training now, and I want to reference
15 particularly the training of the EQ inspectors.

16 Is anybody on the panel familiar with the training
17 the NRC did or the staff did for its EQ inspectors?

18 A [Witness Potapovs] I am.

19 Q Was there training -- well, let me strike that and
20 ask it to you this way:

21 We heard yesterday that an inspector need not be
22 an engineer if he was properly qualified. Is that correct,
23 Mr. Potapovs?

24 A [Witness Potapovs] I would say that's correct.

25 Q Was it preferred that an inspector of electrical

1 equipment be at least an engineer, if not an electrical
2 engineer?

3 A [Witness Potapovs] Yes.

4 Q Was there some affirmative attempt made to recruit
5 electrical engineers to be EQ inspectors?

6 A [Witness Potapovs] Are you talking now about what
7 the total population of the EQ inspectors consisted of?
8 That means the regional offices, the Office of Nuclear
9 Reactor Regulation.

10 Q I'll ask you to define it in the best way that you
11 can, please, sir. If your answer is yes, go ahead and
12 explain your answer. If your answer is no, we'll move on.

13 A [Witness Potapovs] We generally requested that
14 the regional offices nominate to us individuals that had the
15 right background --

16 Q Okay.

17 A [Witness Potapovs] -- and then additional
18 training was provided to those individuals.

19 Q Now I understand. When you say "the right
20 background," can we agree that that is -- what you looked
21 for was engineering degree and, better yet, an electrical
22 engineer degree?

23 A [Witness Potapovs] That was preferred, plus
24 experience with equipment of that type.

25 Q Good. So experience in a power plant of some

1 type?

2 A [Witness Potapovs] Yes.

3 Q And why is it that you preferred electrical
4 engineers to come to the EQ training program?

5 A [Witness Potapovs] Because of their background,
6 they would be more readily trained in the areas, and it was
7 not limited to electrical engineers. We also had some
8 mechanical engineers because much of this equipment is
9 electro-mechanical in nature.

10 Q I see. So the preference would extend to either
11 an electrical engineer or a mechanical engineer?

12 A [Witness Potapovs] That would be the preference.

13 Q And I think, and I'm not trying to put words in
14 your mouth, but I think what you're telling us is that it's
15 important to have that because you're basically dealing with
16 electrical and mechanical equipment.

17 A [Witness Potapovs] That's correct.

18 Q And you found over time that those with
19 disciplines in the two areas we've described made the best
20 EQ inspectors and could be trained in the most efficient
21 manner?

22 A [Witness Potapovs] I can't say that.

23 Q All right. Well, we'll see what we can do. All
24 right.

25 Was there from time to time seminars provided by

1 the staff or one of the contractors to the staff to give EQ
2 training?

3 A [Witness Potapovs] There were seminars. There
4 were meetings that covered either technical or policy issues
5 regarding the inspection.

6 Q I see.

7 A [Witness Potapovs] And there were a number of
8 those provided since the initiation of the EQ inspections.

9 Q All right. The EQ inspections were initiated in
10 about what year?

11 A [Witness Potapovs] I believe it was '84.

12 Q Okay. And from '84 and thereafter, you say there
13 were a number of seminars and training --

14 A [Witness Potapovs] On a reasonably regular basis
15 for -- well, a number of the inspections were going on. We
16 had, I believe, yearly seminars, and then we had training
17 that was not as formal, but in a meeting format.

18 Q Yearly seminars and meeting format of training
19 connected with EQ inspections and technical matters?

20 A [Witness Potapovs] In addition to that, we also
21 hosted a number of public meetings where we passed this
22 information on to the utilities and other interested
23 parties, including our inspectors that were doing the
24 inspections.

25 Q Okay. And when were these public meetings held?

1 P [Witness Potapovs] In the same time frame.

2 Q On up into '87?

3 A [Witness Potapovs] I can't be positive, but I
4 believe that there may have been some in '87.

5 Q Okay. We know we can go back and check and find
6 out exactly when those meetings were.

7 A [Witness Potapovs] Right.

8 Q Would it be fair to say that at these meetings,
9 and I guess we ought to reference those that are to train
10 the EQ inspectors, that the staff would promulgate
11 information that it was learning as it went through the
12 process of EQ inspections?

13 A [Witness Potapovs] The training covered technical
14 issues --

15 Q I see.

16 A [Witness Potapovs] -- including such things as
17 evaluation of specific EQ requirements such as aging,
18 specific qualification techniques, testing requirements, and
19 it included also discussion of the enforcement policy and
20 how it was to be applied throughout its evolution, from the
21 generic letters to the one that promulgated the modified
22 enforcement policy.

23 Q I see what you're saying, and that is the -- or
24 I'll strike it and ask it to you this way:

25 Would it be fair to say that on the technical

1 side, these seminars had as one of their purposes to update
2 the participants on what the NRC was determining about
3 various items of electrical equipment?

4 A [Witness Potapovs] I don't believe that's
5 correct. On the technical side, it was primarily going
6 through qualification methodology --

7 Q I see.

8 A [Witness Potapovs] -- and training inspectors in
9 those skills to be able to review a test report for
10 compliance with the 50.49 rule.

11 Q I see. But when you say -- I thought you said
12 training in qualification methodology is not -- that at
13 these various seminars and training sessions, one of the
14 purposes was to report on recent findings and occurrences
15 out in the field as the EQ inspections progressed.

16 A [Witness Potapovs] In some of these trainings,
17 that may have been an agenda item as case history discussion
18 of typical --

19 Q Okay.

20 A [Witness Potapovs] -- enforcement findings or
21 findings that were considered for enforcement or EQ
22 deficiencies in general, and then a connection was made
23 between those and the technical training format of the
24 seminar.

25 Q Was there such a seminar conducted by Sandia

1 National Laboratories in August of 1987?

2 A [Witness Potapovs] There was probably one
3 conducted in that time. I think there were about -- at
4 least three of those type of seminars conducted at Sandia
5 National Laboratories.

6 Q And did you --

7 A [Witness Potapovs] And that year may have been
8 one of the times.

9 Q And did you attend that seminar?

10 A [Witness Potapovs] I believe I attended every one
11 of them.

12 Q In fact, did you not have a role as a teacher or
13 trainer at this seminar?

14 A [Witness Potapovs] We were the group that
15 sponsored the seminar, and I had several presentations that
16 I made during the course of that seminar and in the
17 discussions that were a part of that seminar.

18 Q Have you made any attempt prior to coming to
19 testify with us today to review your materials and handouts
20 and agenda from that seminar?

21 A [Witness Potapovs] I have not.

22 Q When was the last time you have done that?

23 A [Witness Potapovs] I can't recall, but I believe
24 last year when the discovery for this --

25 Q Proceeding was --

1 A [Witness Potapovs] -- proceeding was in effect.
2 I looked at what I had in my notes on EQ in general, and I
3 believe I went and I submitted whatever documents that I had
4 that were pertinent.

5 Q I see.

6 I show you what we have marked as Alabama Power
7 Company Exhibit 1 for identification purposes. It's
8 entitled "Agenda, Equipment Qualification Seminar, Sandia
9 National Laboratories, Albuquerque, New Mexico, August 26
10 through 28, 1987." I'll represent to you that we got it
11 through discovery and ask you to look at that for a moment,
12 please.

13 JUDGE BOLLWERK: Let the record reflect that APCo
14 Exhibit 1 has been marked for identification.

15 [APCo Exhibit No. 1 was
16 marked for identification.]

17 WITNESS POTAPOVS: That is my copy of the agenda
18 because I recognize my handwriting.

19 MR. MILLER: You know, that answers a long
20 misunderstood question. All right.

21 BY MR. MILLER:

22 Q Well, that's interesting. That means you gave the
23 opening remarks? Is that right?

24 A [Witness Potapovs] That's what the agenda would
25 imply, and I believe that to be true. I have no personal

1 recollection whether I did or did not.

2 Q All right.

3 A [Witness Potapovs] But I probably did.

4 Q Let's make sure we can interpret this correctly.
5 I see the "UP", and that's you.

6 A [Witness Potapovs] That's me.

7 Q Now, right underneath that, it's hard to read, but
8 I think that says "RW".

9 A [Witness Potapovs] That's correct.

10 Q Who is RW?

11 A [Witness Potapovs] Richard Wilson.

12 Q Dick Wilson?

13 A [Witness Potapovs] Right.

14 Q The same person who came to the Farley plant to
15 inspect --

16 A [Witness Potapovs] Same individual.

17 Q A few months later, right?

18 A [Witness Potapovs] Right.

19 Q Of course, we know you came to the Farley plant a
20 few months later.

21 A [Witness Potapovs] Well, one of the inspections,
22 I was present for, I believe, two days.

23 Q Now, let's turn the page, and I see on the
24 lefthand side by Item 3 "NJ". Who is that?

25 A [Witness Potapovs] That would be Mark Jacobus,

1 Sandia National Labs.

2 Q He came to the Farley plant for its inspection.

3 A [Witness Potapovs] Yes, he did.

4 Q Well, let's go down to Thursday, August 27th,
5 under Item 4, "JJ".

6 A [Witness Potapovs] I cannot be positive, but I
7 believe that would be Jeff Jacobsen.

8 Q Did he come to the Farley plant?

9 A [Witness Potapovs] I don't believe so, but I am
10 not sure.

11 Q Next, we have "SA". Is that Steve Alexander?

12 A [Witness Potapovs] That is correct.

13 Q He came to the Farley plant to inspect?

14 A [Witness Potapovs] Yes, he did.

15 Q Next, we have "MJ". Is that Mark Jacobus again?

16 A [Witness Potapovs] That's correct.

17 Q We know that he was there. "RW" is next.

18 A [Witness Potapovs] That's correct.

19 Q We know that he was there. And then we have, next
20 to "terminal blocks", "Mark Jacobus" and "Steve Alexander".

21 A [Witness Potapovs] That's correct.

22 Q Steve Alexander, the solenoid valves, on over to
23 the next page, the transmitters and limit switches, right?

24 A [Witness Potapovs] Your question was again?

25 Q I'm interpreting this correctly --

1 A [Witness Potapovs] Yes.

2 Q -- that -- all those "SA"s. And then we have
3 "Mark Jacobus", "Mark Jacobus", and "Richard Wilson"
4 finishing out that column.

5 A [Witness Potapovs] Correct.

6 Q Regional perspective, I have an "AG". Who is AG?

7 A [Witness Potapovs] It would be Aneil Gautam.

8 Q And under that, I have -- I can't tell, is that a
9 PG or an RG?

10 A [Witness Potapovs] I'm sorry, I can't help you.

11 Q You are then shown, for three of the --

12 A [Witness Potapovs] Okay. I think Mr. Luehman
13 helped me --

14 Q All right.

15 A [Witness Potapovs] -- reconstruct that. That was
16 probably Ron Gardner, who is a regional section chief.

17 Q You had the next three items for Friday, August
18 28th, followed by HW for EQ enforcement policy.

19 A [Witness Potapovs] That's correct.

20 Q Howard Wong.

21 A [Witness Potapovs] That's correct. We're doing
22 good.

23 Q All right.

24 A [Witness Potapovs] Can I -- can I just interject
25 one thing?

1 Q I have found that, when one of you three start
2 interjecting one thing, you typically don't stick to the
3 question --

4 A [Witness Potapovs] It will be one thing --

5 Q -- and I never enjoy what you have to say --

6 A [Witness Potapovs] -- pertinent to the question.

7 Q -- but you go ahead.

8 A [Witness Potapovs] You seem to make a point that
9 all of those individuals were subsequently at Farley. The
10 same individuals --

11 Q That's insightful of you, yes. Go ahead.

12 A [Witness Potapovs] The same individuals, if you
13 will look at the major inspection reports of most utilities,
14 will also appear on those inspections. They were the
15 individuals that we considered best qualified to perform
16 this type of training.

17 Q Actually, that does make my point, and my point is
18 that as these people went throughout the country, they
19 learned more about these items of electrical equipment, went
20 to a seminar, talked about it to anybody that was there, and
21 showed up at plant Farley and, miracle of miracles, found
22 these deficiencies. Is that what you're trying to tell us?

23 A [Witness Potapovs] No. I'm saying these
24 individuals had the most experience in doing EQ inspections
25 and, therefore, made the best-qualified individuals to give

1 this type of training.

2 Q By "most experience," you mean the most number of
3 hours in operating plants learning what licensees were doing
4 in attempting to qualify their equipment. Is that true?

5 A [Witness Potapovs] They had the largest knowledge
6 of equipment qualification.

7 Q And what they did was go from plant to plant and
8 start sticking the licensees with things they learned at the
9 last plant?

10 A [Witness Potapovs] They went from plant to plant
11 to do equipment-qualification inspections to a scope that
12 was defined.

13 Q And these are the same individuals, what you're
14 telling us, who conducted these numerous EQ inspections up
15 until the time they went to the Sandia seminar that we just
16 finished discussing.

17 A [Witness Potapovs] These are some of the
18 individuals, and when we made up an inspection team, we
19 tried to include at least one experienced individual in the
20 role of the team leader or in a role of a supporting
21 technical individual.

22 A [Witness Luehman] The other thing I would add is
23 that I think that your timelines are a little bit incorrect
24 in regard to the inspections, Mr. Miller.

25 Q Most -- or I should say, within the staff, these

1 are the people who had the most knowledge about EQ?

2 A [Witness Potapovs] These were the people that
3 were most qualified to perform this training.

4 Q And they were qualified because of this evolving
5 state of knowledge as they went through that --

6 A [Witness Potapovs] No, that is not correct.

7 Q Okay. Then they were not qualified because of
8 that.

9 A [Witness Potapovs] It helped them to become more
10 valuable inspectors.

11 Q I see exactly what you're saying.

12 A [Witness Potapovs] But Mr. Wilson, for example,
13 was selected for his role because he was involved with the
14 NRR EQ branch at one time, which preceded the time that we
15 were discussing.

16 He was also a very highly-qualified instrument and
17 control engineer, and that's why he was selected as the most
18 suitable individual to do some of the inspections, as well
19 as perform some of this training.

20 Q And that's why you sic'ed him and the others on
21 the various licenses out there. Is that what you're telling
22 us?

23 MR. MILLER: I withdraw the question. There is no
24 question pending.

25 JUDGE CARPENTER: Mr. Miller, may I interrupt,

1 please?

2 MR. MILLER: Yes, sir.

3 JUDGE CARPENTER: As a technical member of this
4 Board, I am very reluctant to ask for more paper, but I
5 question how much weight we're going to be able to give to
6 these three pages in Alabama Power Company's Exhibit 1.

7 I'd like to ask, in discovery, whether you were
8 provided with the handouts that were associated specifically
9 with the items discussed on Thursday, August the 27th, or
10 not.

11 MR. MILLER: We were provided with a large number
12 of documents. My memory on that -- and we can check it and
13 have a more definitive answer for you -- is that there were
14 big gaps in the pages.

15 If I recall right, we got some from Mr.
16 Merriweather, maybe some from Mr. Potapovs, but there were
17 -- I seem to recall that we'd go to page 23 and then we'd
18 skip to page 68, and I'm not trying to imply anything
19 sinister.

20 I don't think that at the time the discovery
21 occurred, that all of those documents were bound together,
22 but I would very interested, if it is within the power of
23 those who attended this seminar, if they would ensure that
24 there be a full and correct copy of the day you just
25 described, of the materials on that day.

1 JUDGE CARPENTER: Well, my point, if we are -- and
2 these are things we're going to talk about for some days
3 now, and to have some of the technical perspective that
4 existed at that point in time available to this Board would
5 be very useful --

6 MR. MILLER: I share that --

7 JUDGE CARPENTER: -- not is a hunting list or not
8 a hunting list but simply what did the professor think at
9 that point in time?

10 MR. MILLER: I will represent to the Board we will
11 do our best to reconstruct what we have, and I would ask the
12 staff, to the extent there may be -- and again, I am not
13 suggesting anything sinister, but to the extent there may be
14 pockets of documents of some sort that haven't been --

15 JUDGE CARPENTER: Well, I'm just asking in the
16 sense of helping the Board have a better technical
17 perspective on these issues. These might be very useful.

18 MR. MILLER: We'll do the best we can, and if the
19 Board would permit us, we'll have it for you tomorrow.
20 We've got all our materials here.

21 JUDGE CARPENTER: Thank you very much.

22 MR. HOLLER: Judge Carpenter, what we will do is
23 review the documents that we turned over in discovery and
24 make those available to the Board.

25 JUDGE CARPENTER: We accept best efforts.

1 MR. MILLER: Well, Judge, I can't resist saying
2 that they clearly knew or should have known this was going
3 to be an issue.

4 Let me take one minute, please.

5 [Counsel for APCo conferring off the record.]

6 MR. MILLER: If you would be nice enough to look
7 at what we will mark for identification purposes as Alabama
8 Power Company Exhibit 87.

9 [Document proffered to witness.]

10 MR. MILLER: I will tell you in advance that the
11 purpose is to ask you to authenticate that exhibit as an NOV
12 arising out of Indian Point 2.

13 And, for the record, while we're looking at it, I
14 will identify Alabama Power Company Exhibit No. 37 is a
15 November 3rd, 1988 Notice of Violation and Proposed
16 Imposition of Civil Penalty against Indian Point 2.

17 JUDGE BOLLWERK: Let the record note that it's
18 been -- Alabama Power Exhibit 87 has been marked for
19 identification.

20 [APCo Exhibit No. 87 was marked
21 for identification.]

22 MR. MILLER: And I will mark, for identification
23 purposes, Alabama Power Company Exhibit 88, and describe it
24 as a September 21, 1988 Notice of Violation and Proposed
25 Imposition of Civil Penalty against Indian Point 3.

1 JUDGE BOLLWERK: Let the record reflect that
2 Alabama Power Company Exhibit 88 has been marked for
3 identification.

4 [APCo Exhibit No. 88 was marked
5 for identification.]

6 MR. MILLER: And, again, I'll mark for
7 identification purposes Alabama Power Company Exhibit 89,
8 and describe it as a September 19, 1988 Notice of Violation
9 and Proposed Imposition of Civil Penalty related to
10 Pennsylvania Power and Light Company, Susquehanna Units 1
11 and 2.

12 JUDGE BOLLWERK: Let the record reflect that
13 Alabama Power Company Exhibit 89 has been marked for
14 Identification.

15 [APCo Exhibit No. 89 was marked
16 for identification.]

17 BY MR. MILLER:

18 Q Let me just tell you up front, the purpose of this
19 is to ask you to authenticate these NOVs, assure that they
20 are true and accurate copies promulgated by the NRC to the
21 best of your knowledge. And then I'll ask you whether any
22 of you recall sitting as an EQ Review Board member for any
23 of these three NOVs. I'll represent to you I'm not going to
24 ask you about the particulars of it.

25 A [Witness uehman] They appear to be the NOVs and

1 civil penalty -- proposed civil penalties that were issued.
2 I have no reason to -- I don't think any of us have any
3 reason to not believe that.

4 And although I don't recall the specifics of
5 these, I think I recall that on at least two of them I was a
6 member of the EQ Review Panel when it reviewed these, and
7 maybe all three.

8 Q Okay. Can you tell us which two you recall being
9 a member of that panel?

10 A [Witness Luehman] Specifically, Susquehanna and
11 Indian Point 3.

12 Q I see.

13 Mr. Potapovs?

14 A [Witness Potapovs] I cannot specifically recall
15 being or not being on any of these panels. But, I sat in, I
16 would say, 90 percent of the panels, at least. So, the
17 chances are that I was present at probably all of them.

18 Q Mr. Walker?

19 A [Witness Walker] My answer is basically the same.
20 I assume I was at all of them. I may have missed one or
21 two, but I wouldn't be able to tell you which one.

22 Q Just by way of inquiry, and relying purely on your
23 memory and your personal knowledge, can you tell us whether
24 or not you spent more than two hours on -- when you sat as a
25 panel for these two?

1 I'll strike that and ask it to you this way:

2 With respect to the licensees identified in each
3 of the three Exhibits 87, 88 and 89, can you pick one of
4 those where you have a present recollection of spending more
5 than two hours, when you sat as the EQ Review Panel?

6 A [Witness Potapovs] No. I cannot.

7 A [Witness Luehman] Neither can I.

8 A [Witness Walker] No.

9 Q Just -- you told us yesterday you sat on the
10 Farley NOV less than two hours. Is that normal or the
11 standard or about the average for each of your Review Board
12 activities?

13 A [Witness Luehman] I think that the Farley Panel
14 was probably one or the more extensive --

15 Q I see.

16 A [Witness Luehman] -- longer ones.

17 Q I see. Okay.

18 So it would be the high end of the scale?

19 A [Witness Luehman] That's probably correct.

20 MR. MILLER: If we could have just a moment,
21 please.

22 [Counsel for APCo conferring off the record.]

23 MR. MILLER: If it please the Board, in order to
24 try and be more efficient, may we propose that we take our
25 morning break a little bit early, give us an opportunity to

1 discuss with each other to determine if there is an
2 additional line of cross examination we need to pursue?

3 JUDGE BOLLWERK: All right. Why don't we take a
4 15-minute break at this point?

5 [Brief recess.]

6 JUDGE BOLLWERK: Let's go back on the record.
7 Mr. Holler, you want to say something?

8 MR. HOLLER: Yes, sir, if I may, before Mr. Miller
9 continues with his cross examination.

10 With reference to Judge Carpenter's request for
11 the documentation associated with training, during the break
12 we had an opportunity review the list of documents that we
13 released, and in fact, all of the documents that were
14 identified by the staff during discovery were released to
15 the licensee.

16 There are approximately 14 of those. They range
17 in size from 319 pages, a couple are 95 and 40 pages, down
18 to a few pages.

19 I wanted to make the point that we could make
20 those available to -- our originals -- to Mr. Miller, if he
21 chooses to do any cross examination on those while the panel
22 is still available here today, and the second point would be
23 if the Board desires to have three copies of each of those
24 documents or would like to review them first and pick the
25 ones they want.

1 [Board members conferring off the record.]

2 JUDGE BOLLWERK: Why don't you provide us with one
3 copy to start with, and if we need to make more, we'll do it
4 at that point.

5 MR. HOLLER: Yes, sir. Thank you, sir.

6 And Mr. Miller, I don't know whether you want --

7 MR. MILLER: Yes. We'll take a look at it, and
8 since they are going to be here, what I would propose to do,
9 since I am right towards the end of what we have, is we'll
10 let -- Mr. Luehman is going to stay, but we'll let them go
11 for the moment.

12 If we want to do cross examination on them, we'll
13 just put them back in the box and wrap it up on that little
14 issue.

15 MR. HOLLER: And you would anticipate that within
16 a day or two?

17 MR. MILLER: Oh, yes, we'd do it either today or
18 tomorrow would be my guess, but we're down to the last thing
19 for this panel.

20 MR. HOLLER: Okay.

21 Thank you, sir.

22 MR. MILLER: While we're back on the record, we
23 are in the copying mode.

24 So, we only have one copy of this, but we'll
25 represent to you that we'll get it, and we'll mark it for

1 identification purposes as Alabama Power Company Exhibit No.
2 90, and we'll identify it for the record as something called
3 the EQ scoreboard, and I will hand it to Mr. Luehman and ask
4 him if he can tell us what that is.

5 [Document proffered to witnesses.]

6 WITNESS LUEHMAN: Yes, I can.

7 BY MR. MILLER:

8 Q Will you tell us what the EQ scoreboard is,
9 please, sir?

10 A [Witness Luehman] Yes.

11 It was -- was a document that was prepared
12 originally by Howard Wong, who was then the deputy director
13 of the Office of Enforcement, to be able to keep abreast of
14 where the various -- at what stage the various civil
15 penalties taken under the modified enforcement policy --
16 what stage of the process they were at, whether the civil
17 penalty had been proposed, whether it had been proposed and
18 then paid, whether it had been contested, and whether it had
19 been an order issued based on a licensee's contesting the
20 civil penalty, and whether, based on that order, the civil
21 penalty had subsequently been paid after issuance of the
22 order.

23 Q You make it sound so formal, Mr. Luehman. What
24 you have before you is a handwritten copy. Surely there is
25 a typed version of such a formal document.

1 A [Witness Luehman] No.

2 Q Is that in your handwriting or Mr. Wong's
3 handwriting?

4 A [Witness Luehman] No. This -- this copy right
5 here was given to me, as indicated by the -- by the note in
6 the righthand top corner. The --

7 Q That note says "JSL, please keep current."

8 A [Witness Luehman] "JGL, please keep current," and

9 --

10 Q And you are that person.

11 A [Witness Luehman] And that's -- the initials
12 under that are "JL." That's Jim Lieberman, director of the
13 Office of Enforcement.

14 And the purpose of this document was -- from time
15 to time, we got inquiries from senior NRC staff management
16 as to, you know, where we were in the process of -- of
17 getting all the modified policy cases through the system and
18 when would we be able to basically stop using the modified
19 policy and go back to the regular enforcement policy.

20 Q Did you get inquiries from senior management of
21 the NRC how about the scoreboard is looking? Those are the
22 kind of inquiries you got?

23 A [Witness Luehman] No.

24 Q Did you say to the senior management of the NRC,
25 we're keeping a scoreboard down here in the Office of

1 Enforcement?

2 A [Witness Luehman] Those -- no, I did not, and
3 those were not words I chose.

4 Q Did anyone in the Office of Enforcement, you
5 included, look at the EQ scoreboard as a game, a point
6 system?

7 A [Witness Luehman] Absolutely not.

8 Q Have you even heard of something called an EQ
9 game?

10 A [Witness Luehman] Absolutely not.

11 Q You have never heard of that.

12 A [Witness Luehman] Yes, I have heard of that.

13 Q And tell me the context that you have heard of an
14 EQ game.

15 A [Witness Luehman] The context of the EQ game that
16 we were talking -- that you're talking about is, when Mr.
17 Howard Wong left the Office of Enforcement, I made -- I made
18 up a game for him that was called "EQ, The Game." It was a
19 practical joke.

20 Q "EQ, The Game," as a practical joke, Mr. Luehman?

21 A [Witness Luehman] That's correct.

22 Q EQ, the scoreboard, as a point system, Mr.
23 Luehman?

24 A [Witness Luehman] No.

25 Q It does say "EQ Scoreboard," does it not?

1 A [Witness Luehman] Like I said, those were not my
2 words.

3 Q And who besides yourself worked on "EQ, The Game"?

4 A [Witness Luehman] Myself only.

5 Q And what form did "EQ, The Game" take, Mr.
6 Luehman?

7 A [Witness Luehman] It was a --

8 Q Game?

9 A [Witness Luehman] It was a piece of paper that
10 had a bunch of blocks on it.

11 Q And those blocks were ones that you drew up for
12 the benefit of Mr. Wong. Is that so?

13 A [Witness Luehman] That's correct.

14 Q Mr. Wong took that with him, I take it.

15 A [Witness Luehman] I -- I guess he did.

16 Q In the discovery request in this case, did you
17 call up Mr. Wong and ask him to return "EQ, The Game"?

18 A [Witness Luehman] Not specifically.

19 Q Does "not specifically" mean you talked to him at
20 some other point?

21 A [Witness Luehman] No. We notified all the
22 regions that they had to provide all the necessary
23 documents. Since this was just on a piece of paper, I -- I
24 hadn't even thought of it.

25 It doesn't have -- it really doesn't have any

1 relevance to what we're talking about. I don't even know if
2 Mr. Wong kept it.

3 Q It has no relevance except that you treated EQ
4 with a scorecard or scoreboard and a game. True or false?

5 A [Witness Luehman] No.

6 Q You didn't do that, yet you see that document
7 before you, do you not?

8 A [Witness Luehman] As I stated, I did not make --
9 make this up.

10 Q No, that's right. You took this and made up the
11 EQ game.

12 A [Witness Luehman] That's not correct.

13 Q So, you made up the EQ game with an entirely
14 different set of information from what the scoreboard says.

15 A [Witness Luehman] That's correct. It had nothing
16 to do with any actual cases or anything to deal -- dealing
17 with the -- the activities that were going on.

18 Q I am sure we would all agree, if we could all see
19 copies of the "EQ, The Game." You wouldn't mind getting us
20 a copy of it; would you?

21 A [Witness Luehman] I don't think I can re-invent
22 it.

23 MR. HOLLER: I object, Your Honor. If counsel has
24 a request for documents, I request that he address them
25 through --

1 JUDGE BOLLWERK: Is it a problem with discovery?

2 BY MR. MILLER:

3 Q Let me just point out that at one time it was a
4 document that you prepared and had in your control; is that
5 so?

6 A [Witness Luehman] That is correct.

7 Q And you gave that document away and you've made no
8 attempt to get it back?

9 A [Witness Luehman] That's correct, and I made no
10 secret of that because, in fact, the people -- two of the
11 people that probably got the biggest kick out of "EQ, The
12 Game," were at the party where I gave it to Mr. Wong, were
13 from Mr. Repka's firm.

14 Q I'm sure it was delightful, Mr. Luehman.

15 JUDGE BOLLWERK: Let the record reflect that APCo
16 Exhibit 90 is being marked for identification.

17 [APCo Exhibit No. 90 was
18 marked for identification.]

19 BY MR. MILLER:

20 Q Any other games, Mr. Luehman, for example,
21 Modified Enforcement Policy; was that a game? Have you
22 made up one of those?

23 A [Witness Luehman] [No response.]

24 Q Say yes or no, Mr. Luehman.

25 A [Witness Luehman] I have not made up any games.

1 Q "50.49, The Game"?

2 MR. HOLLER: I object, Your Honor. The witness
3 has answered the question as to any more games.

4 BY MR. MILLER:

5 Q You've made up no other games related to EQ?

6 A [Witness Luehman] No, I haven't. Nobody wanted
7 to market them.

8 [Counsel for APCo conferring off the record.]

9 MR. MILLER: I have one final exhibit to mark.
10 We're going to mark this -- one final matter: we'll mark
11 this for identification purposes as Alabama Power Company
12 91, and describe it for the record as a September 22, 1988
13 Notice of Violation issued to Consumers Power Company, Big
14 Rock Point Nuclear Plant.

15 Why don't I show that to you, the purpose being
16 the same series of questions we asked you for the other one.
17 I'll have to get a copy for you. I have exactly 6.

18 JUDGE BOLLWERK: Let the record reflect that APCo
19 Exhibit 91 has been marked for identification.

20 [APCo Exhibit No. 91 was
21 marked for identification.]

22 BY MR. MILLER:

23 Q What our goal is going to be is to authenticate it
24 and ask you if anybody remembers sitting on that EQ
25 Enforcement Review panel. I might as well give that one to

1 you.

2 [Witnesses reviewing document off the record.]

3 A [Witness Luehman] We're ready.

4 Q Is that, as far as you can tell, an accurate copy
5 of the Notice of Violation I described?

6 A [Witness Luehman] Yes, it is.

7 Q Does anyone on the panel remember sitting on the
8 Enforcement Review Panel for that particular NOV?

9 A [Witness Luehman] I do.

10 Q Mr. Potapovs?

11 A [Witness Potapovs] I also remember sitting on
12 that one.

13 Q Mr. Walker?

14 A [Witness Walker] I'm sure I was on it. I can't
15 say I recall specifically this one.

16 Q All these ones, these and the other two we talked
17 about, Indian Point; the -- one of your tasks was the
18 consistency check we've heard about?

19 A [Witness Luehman] That's correct.

20 Q Okay.

21 MR. MILLER: No further questions. Thank you,
22 sir. Thank you, gentlemen.

23 JUDGE BOLLWERK: Mr. Holler do you have any
24 redirect?

25 MR. HOLLER: I do. If it please the Court, I

1 recognize that we've just come from a break, but can we take
2 a brief -- keep it to an actual 10 minutes, and we should be
3 able to finish prior to lunchtime.

4 JUDGE BOLLWERK: Okay, we'll do that and take 10
5 minutes then.

6 [Brief recess.]

7 JUDGE BOLLWERK: Why don't we go back on the
8 record.

9 Mr. Holler, are you ready to proceed?

10 MR. HOLLER: Yes, sir.

11 REDIRECT EXAMINATION

12 BY MR. HOLLER:

13 Q Mr. Potapovs, in your testimony during cross
14 examination, you made reference to NRC communications.
15 Would you please explain to the Board the time frame that
16 these communications issued and which of these
17 communications in terms of, not particulars, but in the
18 issuing of them, you took into account in considering
19 actions under the modified enforcement policy?

20 A [Witness Potapovs] The primary means of
21 communicating information on issues of the type that were
22 discussed would be the information notices put out by NRC,
23 and information notices were put out throughout and
24 preceding the period when the inspections began and
25 continued after the equipment qualification deadline.

1 The particular ones that were considered in the
2 enforcement deliberations would be those information notices
3 that were issued by the Commission prior to the November
4 1985 deadline.

5 Q Did information notices continue to issue after
6 1985?

7 A [Witness Potapovs] Yes.

8 Q Is it your testimony, then, that those -- explain
9 to the Board how they were dealt with in inspections that
10 were taken for enforcement actions under the modified
11 enforcement policy?

12 A [Witness Potapovs] The information notices issued
13 after the 1985, November 30th deadline date were not
14 considered as providing information to a licensee that he
15 should have known before the deadline.

16 Q Yesterday, the panel, in cross examination, agreed
17 with Mr. Miller that Generic Letter 86-15 had superceded
18 Generic Letter 85-15. Could the panel explain to me what
19 they meant by that?

20 A [Witness Luehman] Well, I think what we meant is
21 that -- superceded may have been a poor choice of words, if
22 we used it. I think that what we really meant was that 86-
23 15 supplemented what was discussed in 85-15 and some of the
24 information used in both 85-15 and 86-15 in fact continues
25 and appears in Generic Letter 88-07.

1 Q Mr. Walker, yesterday, I believe in your cross
2 examination you referred to the December 13th, 1984 SER
3 issued to Alabama Power Company as superseding the previous
4 SERs. Can you explain for me and the Board what that means?

5 A [Witness Walker] Yes. What I meant was that all
6 the work that took place prior to that SER was considered.
7 There were a lot of deficiencies identified in the prior
8 work. That SER was supposed to take into consideration all
9 the things done prior to that time and represent the staff
10 effort to date, and therefore, those things that were at one
11 point no longer qualified and now found to be qualified, it
12 would be reflected in that SER.

13 A [Witness Luehman] In fact, I would add that the
14 Commission issued a policy statement on environmental
15 qualification that, you know, I think in the '83 time frame,
16 that put licensees on notice that that was going to be in
17 fact the case that a set of SERs would -- or SERs would be
18 issued to all the operating plants pulling together all of
19 the previous SERs for the individual plants, and that SER
20 went on to talk about how at that point, the point of the
21 policy statement, that most of the plants were considered
22 Category 1. If you recall from yesterday, Category 1 was
23 used in some of those check lists that Mr. Miller showed us
24 indicating equipment qualified.

25 So in '83, the Commission had recognized that most

1 of the plants had made -- I think that they call it in the
2 policy statement reasonable efforts to comply, and that a
3 set of, you know, SERs pulling together all the information
4 from previous SERs and the deficiencies and how they would
5 be resolved would be issued to every plant.

6 Q Earlier this morning, Mr. Luehman, you testified
7 in answer to Mr. Miller's question regarding the use of the
8 word "knowledge" in the modified enforcement policy. I
9 wonder if you could clarify for the Board how knowledge and
10 information are addressed in the modified enforcement
11 policy.

12 A [Witness Luehman] Well, the only point that I was
13 trying to make is that there is a distinction, and I think
14 that that distinction is called out in the modified policy,
15 that knowledge is, in my opinion, the -- would involve
16 information that is known by a particular individual.

17 My point was that the informant may have been
18 available, and we did not try to determine if the licensee
19 knew the information. We only tried to determine if, in the
20 form of a generic letter, or an information notice, or some
21 other type of, you know, vendor document, that the
22 information was available to them, and the presence of that
23 information before the deadline could be used as a basis for
24 making a "clearly should have known" finding.

25 In fact, if you bear with me just a second, on the

1 top of Page 2 of the modified policy itself, if you read the
2 paragraph that continues on the top of Page 2, the word
3 "information" is used a number of times. It's not the word
4 "knowledge", it's the word "information", and that's the
5 only point I was trying to make.

6 Q Let me address this to the panel as a whole. On
7 cross examination, you offered quite a bit of testimony
8 regarding clearly should have known and those things taken
9 into account. Were there any other organizations within the
10 NRC that participated in the input that you considered with
11 regard to clearly should have known?

12 A [Witness Luehman] Obviously. The first cut at the
13 "clearly should have known" criteria in modified policy was
14 made by the Regional office proposing the civil penalty, or
15 submitting the proposed civil penalty, the draft notice of
16 violation to the Office of Enforcement.

17 I guess I'll have to -- I assume, and I think that
18 Mr. Walker and Mr. Potapovs could add something to this,
19 that during the normal process of enforcement this -- these
20 actions are reviewed by other offices, such as the Office of
21 Nuclear Reactor Regulation.

22 And I would say that it was our expectation in the
23 Office of Enforcement that those other offices, in fact,
24 looked at other criteria that had to be met and made those
25 judgments.

1 A [Witness Potapovs] Well, I can speak for the view
2 at the Office of Inspection/Enforcement, which was later
3 part of the Office of Nuclear Reactor Regulation. These
4 escalated cases were staffed through the technical branches,
5 and I and my staff at that time also reviewed these notices
6 proposed by the Region before they went to the panel for
7 final leveling.

8 Q And by notices, Mr. Potapovs, you are referring to

9 --
10 A [Witness Potapovs] The proposed notice of
11 violation that the Region sent in.

12 Q I see.

13 A [Witness Walker] And I happen to be a member of
14 one of those branches that was referred to, as the branches
15 that that information was provided to for review and
16 concurrence or comment.

17 Q Okay. If Mr. Miller will indulge me, I make
18 reference to the chart, the timeline chart that we used
19 here. And if I am ahead of myself, I will apologize, and
20 withhold my question. But at what point --

21 MR. MILLER: We brought that chart to be used, and
22 you can have your way with it.

23 BY MR. HOLLER:

24 Q At one point on this chart, as we reach the
25 November 30, 1985 deadline, I believe it indicates

1 "inspections." And it's labeled: Staff conducts numerous
2 EQ inspections.

3 Am I ahead of you, sir, or is that a fair
4 description of what it says?

5 MR. MILLER: That's what it says.

6 BY MR. HOLLER:

7 Q And I'm going to ask the panel:

8 Are the dates, in their opinion, that are
9 indicated for the first -- for the "Staff conducts numerous
10 EQ inspections nationwide" -- correct? And for your
11 benefit, it begins January, 1986 and terminates August,
12 1987.

13 A [Witness Luehman] I think that those dates are
14 not correct. In fact, as early as 1984 the staff was going
15 out to conduct the inspections. The earliest of these
16 inspections were to gather, get some experience and gather
17 some information from which the temporary instructions that
18 were subsequently drafted were -- I mean, those inspections
19 were used as a resource.

20 So really, the inspections went back, at least
21 I've seen inspections as early as 1984, with inspectors, in
22 particular some of the inspectors that are listed on that
23 outline, as participating in or leading those inspections.

24 Q And as to the cut-off date, sir, does the Board
25 have any comment with regard to that? The last inspections?

1 A [Witness Luehman] Well obviously -- I don't have
2 any reason to dispute that inspection. Because I think that
3 the Farley inspections are after that date. And I think
4 that there may have been, in my recollection, some
5 inspections in other Regions after the Farley inspection.
6 But, clearly, I don't think that they have any -- I don't
7 think they are pertinent information for this proceeding.

8 A [Witness Potapovs] I believe that that is
9 correct, that inspections of this type were started in 1984.
10 And I believe they did continue somewhat after August 1987.

11 [Counsel for NRC conferring off the record.]

12 MR. HOLLER: That concludes my redirect.

13 JUDGE BOLLWERK: Mr. Miller, do you have any
14 recross?

15 MR. MILLER: Yes, sir.

16 REXCROSS EXAMINATION

17 BY MR. MILLER:

18 Q Let's make it right, men. Let's try and make it
19 right.

20 You say that the inspections, the EQ inspections,
21 started in 1984?

22 A [Witness Luehman] That is correct.

23 Q And when in '84 did they start?

24 A [Witness Luehman] The earliest I know of is, I
25 think, is October 1984. But I think that they are -- that's

1 the earliest date that I know of. There might have been a
2 couple before that.

3 Q So, but for the purposes of the proof in this
4 proceeding, the earliest that we can say is October 1984?
5 Right?

6 A [Witness Luehman] That's correct.

7 Q And you say it was done by the same people that
8 subsequently went to the Sandia Lab?

9 Well, strike that.

10 That at least those people began their efforts
11 back then?

12 A [Witness Luehman] As I recall, some of the
13 individuals -- I don't think that any one of those
14 inspections had all these same individuals.

15 A [Witness Potapovs] The inspections were done
16 under the same organizational unit. They used substantially
17 the same people.

18 Q All right. And that's when they started these
19 efforts leading up to the EQ inspection at Farley?

20 A [Witness Potapovs] That's correct.

21 A [Witness Walker] I feel --

22 Q I'm sorry, go ahead.

23 A [Witness Walker] I feel the urge to interject, if
24 I may.

25 Q Okay.

1 A [Witness Walker] There were inspections before
2 1984. But I think he said the inspection that is related to
3 this effort. Now I don't think he is suggesting that there
4 were no EQ inspections before 1984 at all.

5 Q How about first-round EQ inspections; is that what
6 you are describing?

7 A [Witness Walker] That's right.

8 Q Okay.

9 A [Witness Walker] That's more accurate, yes.

10 Q Why don't we make these first round. I'll say --
11 we'll put in numerous first round. How is that? Does that
12 make it correct?

13 A [Witness Walker] I believe so.

14 A [Witness Potapovs] As long as we define a term.
15 And the first round would be the type of inspections that
16 were conducted -- at Farley were conducted, at every
17 operating plant. And that would be the first round.

18 Q All right. Well, that tells us, if I read the
19 timeline correctly, that by the time these inspectors showed
20 up at Plant Farley in the Fall of 1987, they had three years
21 of EQ experience under their belts, true?

22 A [Witness Potapovs] Some of the inspectors, that's
23 correct.

24 Q That's right. And this so-called body of
25 knowledge had been building for three years by the time they

1 walked in our door?

2 A [Witness Luehman] And was available to the
3 licensee.

4 Q We're going to talk about that. But the answer to
5 the so-called body of knowledge -- whether or not it was
6 available to the licensee -- is a point. But we know that
7 it was available to the NRC. True or false?

8 A [Witness Luehman] That's correct.

9 Q Now, actually, since we're on the chart -- this
10 chart is missing one other thing, isn't it? Didn't we talk
11 yesterday about the evaluation of the Unit 2 license
12 condition? Do you recall that testimony?

13 A [Witness Potapovs] Yes.

14 Q Didn't we determine yesterday that in the summer
15 of 1985 the Unit Two license condition referencing EQ
16 qualification was deemed to be met?

17 A [Witness Luehman] Yes.

18 Q All right. So, let's put that in there, so we'll
19 make it accurate or more accurate, how's that -- and
20 complete.

21 You with me on that?

22 A [Witness Luehman] Yes.

23 Q If I recall, and your memory may be better, it was
24 Unit 2s and NUREG-0588 plant. If that's not right, somebody
25 tell me so. Is that right? That is right? Everybody out

1 here says yes. What do you say?

2 A [Witness Walker] I am not even sure if I know
3 what that means. But --

4 A [Witness Potapovs] I believe that's correct --

5 Q All right.

6 A [Witness Potapovs] -- in the terminology that we
7 used.

8 Q Well, having had an opportunity to look at the
9 chart, do you see anything else about it that you believe to
10 be inaccurate?

11 A [Witness Luehman] No.

12 Q Okay.

13 What we'll do then, for the purpose of the
14 records, is we will -- this is not working, I'm just telling
15 you right now.

16 We'll mark this chart as Alabama Power Company
17 Exhibit 92. And we'll have to work on this logistically,
18 but we'll find some way to reduce it to a smaller version so
19 it can be included in the record. And we'll define Alabama
20 Exhibit 92 as a timeline showing various milestones along
21 the way associated with the Farley EQ enforcement
22 proceedings.

23 MR. HOLLER: If I may, insofar as we've gone up to
24 November 30th and the inspections, I believe -- I can't see
25 the chart from here -- if we could -- to the extent that

1 there are no other items on the end, we've addressed those
2 -- I reserve the right to correct the chart as that becomes
3 necessary.

4 MR. MILLER: Or supplement it.

5 JUDGE BOLLWERK: I take it we can at this point
6 mark it for identification. Have that marked.

7 [APCo Exhibit No. 92 was marked
8 for identification.]

9 BY MR. MILLER:

10 Q Okay. Let's see if we can go back and review some
11 of these things.

12 Mr. Luehman, you said that knowledge in the
13 modified enforcement policy, and you said these words --
14 that knowledge is the same as information and if it is known
15 by the licensee. Did you mean to say clearly known by the
16 licensee?

17 A [Witness Luehman] Well, I think that, in the
18 context of the modified policy, I guess that that is
19 correct.

20 Q Thank you, sir.

21 Now, and you pointed us to the paragraph at the
22 top of page two referring to the statement "information
23 provided to the licensees by the NRC will be taken into
24 consideration," and you see that?

25 A [Witness Luehman] To that statement, as well as

1 there's another statement in that same paragraph.

2 Q Right. Now, but there's yet another discussion
3 that goes something like this. I'll paraphrase it as best I
4 can. If one licensee determines an EQ deficiency existed,
5 the staff would not assume that all licensees should also
6 come to the same conclusion.

7 Am I right so far?

8 A [Witness Luehman] That's correct.

9 Q "Unless," the modified enforcement policy goes on
10 to say, "information about this specific deficiency had been
11 widely dissemination within the industry or by the NRC."

12 A [Witness Luehman] That's correct.

13 Q Now, how many licensees participated in the 1987
14 Sandia Laboratory EQ Seminar?

15 A [Witness Potapovs] I don't believe anybody did.

16 Q How many licensees had sent to them by the staff
17 of the NRC the agenda from that seminar?

18 A [Witness Potapovs] I'm not sure that anybody did.

19 Q How many licensees had the papers and discussions
20 on limitorques, splices and terminations that were discussed
21 at the '87 Sandia Seminar sent to them by the NRC?

22 A [Witness Potapovs] I believe a lot of those
23 documents were publicly available.

24 Q In the PDR?

25 A [Witness Potapovs] I am not sure that the vendor-

1 related information would normally be placed in PDR unless
2 it happens to be part of the submittal to NRC. I cannot
3 speak to that.

4 Q Okay. So, you can't say whether or not they were
5 in the PDR?

6 A [Witness Potapovs] The information exchanged with
7 the licensees that I alluded to in my earlier testimony was
8 in reference to other meetings that we had with the same
9 body of people participating that were held in the
10 Washington area and were publicly noticed.

11 Q I see.

12 What about those of us down in the Dothan area?
13 Did you send any down to the Houston County Library?

14 A [Witness Potapovs] You were all invited to
15 participate.

16 Q Uh-huh. But your answer is that this seminar
17 agenda and the associated materials was not widely
18 disseminated by the NRC to the licensees?

19 A [Witness Potapovs] The seminar was an internal
20 NRC training session.

21 Q Thank you, sir.

22 Now, you told us, Mr. Potapovs, that the primary
23 means of communications with the licensees was information
24 notices. And I should have added prior to '85.

25 A [Witness Potapovs] That's one of the primary

1 methods of communicating information to licensees on these
2 types of subjects.

3 Q We have heard you say, at great length, all
4 members of the panel, that things like SERs should be read
5 carefully and not tried to -- expanded upon. Is that the
6 same thing -- same principle holds true with information
7 notices?

8 A [Witness Potapovs] I'm not sure that there's any
9 specific direction how people should read information
10 notices. There is some statement in each notice that
11 describes the purpose of the notices.

12 Q Is there -- are you familiar with a statement that
13 says no specific action or response notice is required?

14 A [Witness Potapovs] That is correct.

15 Q And what does that mean, please, sir?

16 A [Witness Potapovs] That means that NRC does not
17 solicit or expect any written response from the licensee
18 that they have complied with whatever is in the information
19 notice or taken any action with respect to it.

20 Q Or taken any action with respect to it. Weren't
21 those your words?

22 A [Witness Potapovs] What we do expect --

23 Q Weren't those your words, Mr. Potapovs?

24 A [Witness Potapovs] You took a half of a sentence.
25 My words were "taken any action." Only specific methods

1 were -- were directions specified in that notice. What NRC
2 does expect that the recipient of the notice does review an
3 information notice and --

4 Q For applicability to their facilities?

5 A [Witness Potapovs] It is exactly right.

6 Q And if it's not applicable to their facilities, no
7 specific action?

8 A [Witness Potapovs] That's correct.

9 Q You said, and I may have misunderstood this, that
10 86-15 did not supersede 85-15, it supplemented 85-15?

11 A [Witness Potapovs] That's correct.

12 Q And I have to confess, I got a little lost there.
13 Did you say that 88-07 supplemented 86-15 and 85-15? If I
14 missed it, please correct me.

15 A [Witness Luehman] That's essentially correct, but

16 --

17 Q Okay. And --

18 A [Witness Luehman] -- but I would go to add that
19 -- that, ultimately, 88-07 was the document that the
20 Commission directed the staff to apply, rather than the 85-
21 15 or 86-15.

22 Q The two earlier generic letters, 85-15 and 86-15
23 -- I don't know to say it -- were supplemented by 88-07,
24 were collapsed into 88-07, they formed the basis for 88-07.
25 You can choose whichever one of those you want.

1 A [Witness Potapovs] I don't believe that the
2 operability discussion from the earlier notice was carried
3 on into the 88-07 document. So, that still remained as a
4 requirement.

5 MR. MILLER: Okay.

6 [Counsel for APCo conferring off the record.]

7 MR. MILLER: Could we have just one minute?

8 JUDGE BOLLWERK: Certainly.

9 [Counsel for APCo conferring off the record.]

10 MR. MILLER: No further questions. Thank you very
11 much, gentlemen.

12 JUDGE BOLLWERK: Mr. Holler?

13 MR. HOLLER: May I have just 30 seconds?

14 [Counsel for NRC staff conferring off the record.]

15 MR. HOLLER: I thank the Board for the time. I
16 was just conferring with regard to the training materials.

17 If the duplication machines did not break down, we
18 should have copies available for Mr. Miller and for the
19 Board sometime after lunchtime today, and that concludes the
20 staff's testimony.

21 I would, at this time, move that the staff's
22 testimony, including Exhibits 1 through 15, number 30, and
23 number 56, be moved into evidence.

24 JUDGE BOLLWERK: Okay.

25 MR. MILLER: No objection.

1 JUDGE BOLLWERK: All right.

2 Let's do one thing. We should have done this up
3 front in terms of identifying them, and we didn't. Can you
4 give us a brief identification of each one, and let's move
5 them in individually?

6 I want to make sure there is no question about the
7 record here, what we have let in, especially since we have
8 some numbers that are duplicates. So, it will take a couple
9 of seconds, but I think it would be worthwhile.

10 MR. HOLLER: The staff moves the following
11 documents, which have been marked for identification, be
12 moved into evidence: Staff Exhibit No. 1, NRC staff
13 professional qualifications.

14 MR. MILLER: No objection.

15 MR. HOLLER: Staff Exhibit No. 1, notice of
16 violation and proposed imposition of civil penalty, dated
17 August 15, 1988.

18 MR. MILLER: It may help if we just say one time
19 we have no objection to any of these exhibits coming in.

20 JUDGE BOLLWERK: Can you just identify them all?

21 MR. HOLLER: Staff Exhibit No. 3, order imposing
22 civil monetary penalty, dated August 31, 1990.

23 Exhibit No. 4, modified enforcement policy
24 relating to 10 CFR 50.49, short title Generic Letter 88-07.

25 Staff Exhibit No. 5, a Commission paper which is

1 styled as SECY Paper 87-255, proposed modification of policy
2 on enforcement, dated October 13, 1987.

3 Staff Exhibit No. 6, SECY 85-220, environmental
4 qualification program actions resulting from April 2, 1985,
5 Commission meeting, dated June 18, 1985.

6 Staff Exhibit No. 7, information relating to the
7 deadlines for compliance with 10 CFR 50.49, short title
8 Generic Letter 85-15, dated August 6, 1985.

9 Staff Exhibit No. 8, SECY 86-122, policy for
10 enforcement of environmental qualification requirements,
11 dated April 21, 1986.

12 Staff Exhibit No. 9, information relating to
13 compliance with 10 CFR 50.49, short title Generic Letter 86-
14 15, with enclosure, dated September 22, 1986.

15 Staff Exhibit No. 10, SECY 88-63, proposed generic
16 letter on modified enforcement policy related to 10 CFR
17 50.49, dated March 2, 1988.

18 Staff Exhibit No. 11, NRC inspection reports
19 numbers -- docket numbers 50-348, 50-364, inspection numbers
20 87-25, dated October 19, 1987. An enclosure is included
21 with Staff Exhibit No. 11.

22 Staff Exhibit No. 12, NRC inspection report with
23 enclosure, docket numbers 50-348, 50-364, inspection number
24 87-30, dated February 4, 1988.

25 Staff Exhibit No. 13, enforcement conference

1 summary, dated April 13, 1988.

2 Staff Exhibit No. 14, SECY 88-213, notice of
3 violation and proposed imposition of civil penalty for EQ
4 violations at Farley Nuclear Plant.

5 Staff Exhibit No. -- relating to Staff Exhibit No.
6 14, I don't have the date here. The identification number
7 on that is EA, for enforcement action, 88-40.

8 Staff Exhibit No. 15, response of Alabama Power
9 Company to the notice of violation and proposed imposition
10 of civil penalty, dated August 15, 1988. The actual date of
11 the response is November 14, 1988.

12 Staff Exhibit No. 30, electric hydrogen recombiner
13 splices, justification for continued operation, with
14 enclosure, dated September 23, 1987.

15 Staff Exhibit No. 56, SECY 90-093, status of
16 enforcement actions taken under the modified enforcement
17 policy relating to 10 CFR 50.49, dated March 12, 1990.

18 JUDGE BOLLWERK: Thank you. I appreciate that.

19 Counsel for Alabama Power having indicated no
20 objection, Staff Exhibits 1 through 15, No. 30, and No. 56
21 will be received in evidence.

22 [Staff Exhibit Nos. 1 through 15,
23 30, and 56 were received in
24 evidence.]

25 MR. MILLER: M it please the Board, on behalf of

1 Alabama Power Company, we move the admission of Exhibits 83
2 to 91, recognizing that the timeline is marked as 92 but may
3 require some additional comments or supplementation.

4 So, at this time, we'll move the admission of
5 those exhibits. They have been previously identified for
6 the record.

7 JUDGE BOLLWERK: Any objection?

8 MR. HOLLER: Staff has no objection.

9 JUDGE BOLLWERK: APCo Exhibits 83 through 91 are
10 received into evidence.

11 MR. MILLER: We may make one quick calibration
12 check.

13 Pat, did I get my numbers right? I did. Okay.
14 Good.

15 JUDGE BOLLWERK: So, Exhibits 83 through 91 for
16 Alabama Power are moved into evidence.

17 [APCo Exhibit Nos. 83 through 91
18 were received in evidence.]

19 JUDGE BOLLWERK: I think the members of the Board
20 have a couple of questions for this panel, briefly. I think
21 Judge Carpenter would like to begin.

22 EXAMINATION BY THE BOARD

23 JUDGE CARPENTER: I would like to get your help
24 and I am in the process of still trying to understand this
25 modified enforcement policy. You all have lived with that

1 policy day-in and day-out for a good many years. So, if I
2 could ask questions which just speak to the narrow legal
3 interpretation, but primarily in the sense of how it
4 operated when you were doing your reviews.

5 I'd like to just see what happened in your reviews
6 as a result of some words in the policy. The first one is a
7 little one:

8 On the unnumbered page, the first page of Modified
9 Enforcement Policy, at the bottom of the page, under the
10 List of Factors the NRC Will Examine, No. 4 is, "Did other
11 licensees identify similar problems and correct them before
12 the deadline?"

13 I'd like to ask, in your reviews, how you could
14 address that question? And, of course, if this Board chose
15 to look at that question, that would help me understand how
16 I might go about it.

17 WITNESS LUEHMAN: Well, I think that --

18 JUDGE CARPENTER: Is there some place a tabulation
19 of all the problems that licensees found before the deadline
20 that one could look at?

21 WITNESS LUEHMAN: No. We had access to the
22 inspection reports that document the types of problems that
23 were found before the deadline. But I think that at least
24 the way I think that we applied this is, if there was a
25 problem that recurred at a number of plants and, clearly,

1 let's say, 90 percent of the plants that had that problem
2 discovered it before the deadline -- for instance, if they
3 reacted to a particular Information Notice that the NRC had
4 issued prior to the deadline and 90 percent of the plants
5 that ultimately had the problem found the problem because of
6 the Information Notice, I think that that would give a
7 strong indication to the members of the panel that a
8 licensee that did not draw a similar conclusion with respect
9 to that information, whether it be an Information Notice,
10 notification from a vendor or whatever, that that licensee
11 was an outlier and that the Board -- or that the Panel
12 should consider that in determining whether a licensee
13 clearly should have known.

14 Clearly -- I mean, if all the other licensees
15 picked up on it, based on that information, why didn't this
16 one or two licensees do it?

17 JUDGE CARPENTER: That's the reason I asked the
18 question. I don't see how you get the factual basis for
19 that. Where do you look to find out?

20 WITNESS POTAPOVS: May I can respond to that a
21 little bit, since my group was in charge of conducting
22 inspections early on. But there is a temporary instruction
23 which was issued to provide guidance in doing these
24 inspections, and it did include a basis for selecting
25 certain types of equipment and documentation to support

1 qualification of that equipment.

2 So, in looking at these particular equipment
3 models, we must recognize that they are not unique to a
4 specific operating plant. Much of this equipment is used
5 over and over again in different power plants, and the same
6 information is applicable to all of this equipment,
7 depending, of course, on its specific environmental profile
8 at that power plant.

9 So, if a specific piece of equipment requires a
10 moisture seal for it to operate properly, that would be
11 something that would be looked at for all plants and then
12 the specific documents reviewed would be whether or not that
13 particular plant profile was considered in providing this
14 moisture seal for that equipment to operate.

15 Now, if the particular licensee did not even
16 recognize that a moisture seal was needed to operate that
17 equipment, then -- and everybody else did -- then obviously
18 you would consider that there was a problem with that
19 licensee not receiving information. We would then continue
20 looking at that.

21 JUDGE CARPENTER: To focus more narrowly, with
22 respect to these papers that I've only read once or twice
23 which lead down to an assessment of the basis for assigning
24 a fine for the issue; where in those papers would I find the
25 documentation that NRC, in fact, did examine with respect to

1 Item No. 4?

2 WITNESS POTAPOVS: I am not sure.

3 JUDGE CARPENTER: Well, as a layman, I pretty much
4 almost expect what you just said. But I'm saying, with
5 respect to this case, with respect to Farley, where -- how
6 can I go to see whether the things that were found at Farley
7 had been previously found by other licensees, which is what
8 No. 4 says should be done? Or maybe I'm making it too
9 simple.

10 [Witnesses conferring off the record.]

11 WITNESS LUEHMAN: I think one of the ways that we
12 gathered that information is, for instance, if an
13 Information Notice came out prior to the deadline, a lot of
14 times, in many instances, the -- that information -- the
15 results of various 'licensees' inspection of that or their
16 equipment with regard to that Information Notice would be
17 fed back to the NRC, as well as to the Nuclear Utility Group
18 on Environmental Qualification or a number of other people
19 that were out there.

20 Information on what specific findings the NRC had
21 prior to the deadline, and did they correct them, is
22 available in NRC inspection reports that were issued prior
23 to the deadline. Also, Franklin TERS point out specific
24 problems that were found at individual plants.

25 WITNESS WALKER: In addition to that, though, with

1 Information Notices and inspections, one of the things that
2 we always ask or look for is the way Information Notices are
3 handled.

4 For example, -- and I'm going to cite you a
5 specific case that nobody got penalized for, so I don't get
6 in trouble here -- 86-03, I believe it was, had to do with
7 internal wiring.

8 We, at least on the inspections I've been on, we
9 ask what did you do about 86-03? And in most cases, people
10 had -- would have a documented evidence that they looked at
11 the internal wiring. Those that didn't have it, we would
12 want to know why.

13 If I remember correctly, I think everybody
14 probably took care of that problem. If there were other
15 Information Notices, we would handle it the same way. And
16 if most people took care of the problem, then we assumed
17 that, of course, everyone had the opportunity and, you know,
18 we'd have to try to figure out why didn't a particular
19 licensee take care of the problem that everyone else seemed
20 to have taken care of.

21 WITNESS POTAPOVS: The way we would get into that
22 is that a typical inspection would identify representative
23 equipment that will be examined for qualification, and this
24 will include such things as wiring, solenoids, motors,
25 different pieces of equipment, a standard list, maybe 50 or

1 so, up to that many packages of information.

2 The assigned inspector will review that
3 information for qualification in accordance with the
4 guidance specified in the rule, the 50.49 rule.

5 If discrepancies are identified in this review,
6 then we get into this mode of why is the discrepancy there,
7 and that's when we look at what the previous history of this
8 particular item was.

9 JUDGE CARPENTER: Well, staying right with that
10 context, it's only the degree which might lead you to do
11 this, if it was sufficiently significant.

12 My real question is, for these deficiencies that
13 were identified in 1987 at the Farley power plant, how many
14 of these deficiencies falling in the category specified by
15 item 4 had been previously identified before the deadline by
16 other licensees? Is it one, two, three, all, or what?

17 WITNESS POTAPOVS: Many.

18 JUDGE CARPENTER: Many. Well, how is it
19 documented?

20 WITNESS LUEHMAN: How is what documented?

21 JUDGE CARPENTER: That other licensees did. How
22 can this Board make a finding to that effect?

23 WITNESS LUEHMAN: Well, I guess the first thing is
24 --

25 JUDGE CARPENTER: I'm really asking whether I

1 missed the point in the testimony, at this point in time, or
2 not, but I thought you all were the review group and you had
3 to look at what these people did before it came to you.

4 So, I would avail myself of your perspective from
5 being the last in line.

6 WITNESS LUEHMAN: Well, that's -- that's -- that's
7 correct.

8 If we were -- we did -- like I said, earlier, we
9 -- we did have the availability of (a) the inspection
10 reports of previous -- of the -- of the previous inspections
11 that identified this and the knowledge of the people on the
12 panel who were in the -- who were either, in Mr. Potapovs'
13 and Mr. Walker's case, having performed these inspections,
14 and if we were aware that this -- if they were aware that a
15 particular item that was under consideration under one of
16 these plants had been previously identified and had not --
17 and that fact had not been identified to us by, let's say,
18 the region, because sometimes the region would say we found
19 piece X unqualified, this is similar to what we found at
20 plant -- you know, at another plant prior to the deadline in
21 their response to information notice, whatever.

22 If that wasn't the case, if the region didn't
23 bring to our attention, I guess I -- I would say that, not
24 having been involved in the EQ inspections, I relied
25 primarily on Mr. Walker and Mr. Potapovs to bring that to

1 the panel.

2 However, in many cases, the genesis of the
3 information notices that were issued, although they don't
4 talk about specific plants, the genesis of the information
5 notices is that that deficiency was discovered at other
6 plants, and therefore, the information notice was issued,
7 and so, though the -- the information notice doesn't talk
8 about the particular plant, because that's not really
9 relevant, to spread the name of the plant all over the
10 country necessarily, but the -- most -- a lot of the
11 information notices were -- were -- were arrived at because
12 of a deficiency that was found somewhere or at maybe more --
13 in many cases, it was at more than one place, because
14 obviously, if you find an -- every isolated problem, you
15 don't issue an information notice, but if you find that
16 problem 6 or 10 times, then you issue the information
17 notice.

18 WITNESS POTAPOVS: Maybe I can be just a little
19 more specific.

20 JUDGE CARPENTER: Let me please try to bring you
21 back specifically to a very narrow question. Where can I
22 find this information about the deficiencies which were
23 identified at the Farley plant in 1987?

24 WITNESS POTAPOVS: You mean in relation to other
25 plants.

1 JUDGE CARPENTER: It says the factors --

2 WITNESS WALKER: Are you asking if there is a
3 tabulation someplace of all the --

4 JUDGE CARPENTER: I am just curious as to how --
5 it says "Did other licensees identify similar problems and
6 correct them before the deadline?", and I was curious as to
7 how you answer that question.

8 WITNESS LUEHMAN: Yes.

9 JUDGE CARPENTER: It ends with a question mark.

10 WITNESS LUEHMAN: But, I guess, two things: One
11 is that only -- that only forms part of the deliberation we
12 made. I mean there may not be, for a particular -- there
13 may not -- we consider all of these four factors.

14 We do not have to find information under each one
15 of these numbered items to conclude "clearly should have
16 known." In other words, there may be a particular item
17 where no other licensees had this deficiency report.

18 JUDGE CARPENTER: I absolutely agree. I asked a
19 very simple question. Is there someplace that you can put
20 your finger on this and make it known to the Board?

21 WITNESS LUEHMAN: Yes.

22 JUDGE CARPENTER: Is it in some of these papers
23 that I am looking at and I haven't found it yet?

24 WITNESS LUEHMAN: Pre-deadline -- pre-November 30,
25 1985, inspections indicate -- the inspection reports -- I

1 think there were 10 inspections done before the deadline and
2 a number of them in which the NRC or the licensee identified
3 deficiencies similar to the ones that we're discussing in
4 the Farley case in particular.

5 WITNESS POTAPOVS: And also, as we stated before,
6 the -- the Franklin TER and the resolution of the Franklin
7 TER open items or deficiencies is a matter of record, and
8 the inspectors did review that information before going on
9 the inspections as part of the preparation, at least in
10 early stages.

11 Now, what -- what the -- the way it was
12 considered, the relation to enforcement policy, was pretty
13 much like what was stated. The region would make the first
14 cut, applying all of this existing information. Then it
15 would be staffed through the NRR technical branches.

16 Both of these bodies would have the Franklin TER
17 information available, as well as previous inspection
18 reports available, and at that point, this information would
19 be considered in making the proposed notice that will be
20 later staffed through the agency.

21 JUDGE CARPENTER: Well, I'm not going to belabor
22 this, but let me just summarize to see if I understand.

23 Within this "clearly knew or should have known"
24 analysis, it's not necessary to have a documented, item-by-
25 item consideration of whether that kind of deficiency met

1 criteria 4; namely, it had been previously identified before
2 the deadline by one, some, or many licensees. There is no
3 clean statement of this anyplace.

4 WITNESS POTAPOVS: If you mean a checklist, no.

5 JUDGE CARPENTER: Yes.

6 WITNESS POTAPOVS: There was no such document.

7 JUDGE CARPENTER: Or even a line-by-line or
8 paragraph-by-paragraph tabulation.

9 WITNESS LUEHMAN: I think we, in the proposed
10 Notice of Civil Penalty, we outlined in summary form some of
11 the documents that we relied on for the violations. That's
12 the closest thing to a tabulation that there is.

13 JUDGE CARPENTER: Thank you.

14 Turning over to page three, and I'm asking this
15 question in an information sense, not in a sense that I'm
16 asking you to do a legal interpretation of the policy. In
17 the last paragraph on page three, in the middle of that
18 paragraph begins a sentence that says the NRC will not
19 underline a number of items -- will not consider
20 refinements, et cetera, running all the way along to
21 additional analysis or testing, et cetera.

22 The concluding sentence, I'd like to get your
23 perspective on. It says, "This assumption is made for
24 enforcement purposes, in order to reduce the resources
25 anticipated to be spent by the licensees and the NRC to

1 evaluate in detail whether system operability was in
2 question."

3 As a layman, I've never been on an inspection, and
4 I've never been the recipient of a violation; but if I'm
5 operating a nuclear power plant and I've got a violation, I
6 think the first thing I've got to do is convince the NRC I
7 can keep on operating the plant; isn't that true?

8 WITNESS POTAPOVS: That's correct.

9 WITNESS LUEHMAN: That's correct.

10 JUDGE CARPENTER: So, in that sense, the NRC is
11 going to have to review my statement?

12 WITNESS LUEHMAN: That's correct.

13 JUDGE CARPENTER: So, am I really going to save
14 any resources? Can I avoid all those things in the previous
15 sense?

16 WITNESS LUEHMAN: I think this statement is made
17 purely from the contexts of -- for enforcement purposes.
18 Obviously, for operation of the plant, the NRC is going to
19 consider a licensee's justification for continued operation.

20 JUDGE CARPENTER: I'm not asking you to interpret
21 what I see here. The words say what they say. But I was
22 just looking from a technical point of view. Still, those
23 things have to be done. Or otherwise, turning to the next
24 page, under mitigation escalation factors, number three
25 speaks to corrective actions, including the time taken to

1 make an operability or qualification determination.

2 So, while the previous page tells me that this
3 will save the licensee and NRC some resources, the next page
4 is telling me that if there's a hope for a mitigation,
5 things better proceed without delay. Do I read this right?

6 WITNESS LUEHMAN: I think largely you do, but I
7 think the one -- the one point that needs to be made is
8 determining what the corrective action for a particular
9 deficiency needs to be may be a straightforward -- may -- in
10 many cases, it can be a fairly straightforward process.
11 Evaluating -- if that corrective action is not taken,
12 evaluating the ultimate impact that that -- that deficiency
13 left uncorrected, would have had on the plant, may be a very
14 hard thing to determine. And I think that that's the point
15 that your policy was getting at.

16 We, I think, discussed in our pre-filed testimony
17 and it was discussed in one of the papers that was presented
18 to the Commission, that the problem that would be presented
19 is if a deficiency was found in a certain piece of
20 equipment, evaluating that deficiency by itself, if that was
21 the only deficiency, is pretty straightforward. But when
22 you start having to evaluate a multitude of deficiencies
23 that may -- I mean, a multitude of qualification problems --
24 in other words, if they -- if you determine you have 10
25 components that may be affected by a steamline break,

1 evaluating the overall consequences of one of those things
2 failing, or two, or the whole matrix, up to all 10 failing,
3 or nine out of the 10 and the whole, you know, series of
4 matrices that you would have to make, as far as the -- the
5 components and figuring out which would be the worst case
6 and what the ultimate impact on the plant is, would be a
7 very difficult situation.

8 JUDGE CARPENTER: I quite agree. The more
9 violations, and/or the more that that violation is spread
10 through the plant, the more difficult it is to do the
11 analysis.

12 But my question, and my reading on page four under
13 mitigation about corrective actions, whether hard or not,
14 somebody is probably going to try to do it.

15 WITNESS LUEHMAN: Well, I think that they are
16 going to correct the deficiency. I don't know whether
17 they're necessarily going to try to evaluate -- if they
18 correct the deficiency, I think that they will make a good
19 faith effort to, if they have to -- for instance, if they
20 have to report it to the NRC -- if a licensee has to report
21 that the deficiency caused a problem, I think they'll make a
22 good faith effort to make a general determination of what
23 the potential impact on that -- of that equipment is going
24 to be on the plant.

25 I don't know that they're going to evaluate in

1 excruciating detail every possible aspect of the
2 qualification problem, given the difficulties I just talked
3 about.

4 They're going to say we've fixed it, and it would
5 have had some impact or it wouldn't have, and give some
6 general summary. I doubt they're going to go through an
7 item-by-item recount of exactly how each one of these items
8 is going to affect the plant.

9 JUDGE CARPENTER: Well, stepping back from the
10 leaves and the trees to look at the forest. I'm trying to
11 get some help with whether I understand that on page three
12 it says don't pay much attention to this, in fact, don't
13 consider it. And on page -- on page four it says, well,
14 that's so, but then, having said that, it won't consider
15 extensive operability arguments, et cetera, et cetera, for
16 the purposes that are specified, in terms of deciding a
17 violation category, et cetera.

18 Now, having done that, having said that --
19 remember, I'm stating this, but I'm asking a question --
20 having said all of that, is it true that what page four
21 tells you and, therefore, would tell this Board, that you do
22 consider those things for -- in the mitigation analysis?

23 WITNESS POTAPOVS: Again, if we can separate the
24 operability from the standpoint of safety, and operability
25 from the standpoint of enforcement; if, for instance, a

1 utility would self-identify an unqualified condition which
2 would put them into tech spec shutdown situation, if it went
3 uncorrected, and went on and corrected that condition, they
4 would still be subject to the enforcement policy under this
5 modified policy.

6 Having done so, all we're saying is that at this
7 point, the main thrust is the fact that the situation was
8 corrected, and we would not try to justify or spend a lot of
9 utility and staff resources trying to justify if another way
10 could have been done or accomplished to provide basis to
11 qualify that equipment, or provide some additional
12 justification, testing, or analysis.

13 If, for instance, the equipment was not qualified
14 because a certain test was not done and, therefore, the
15 condition of the equipment was indeterminate, the licensee
16 chose to replace that equipment, we're saying we don't
17 expect the licensee, after having replaced that equipment,
18 go back and contract for testing to possibly qualify this
19 piece of equipment and thereby reduce the civil penalty by
20 mitigation.

21 JUDGE CARPENTER: Is the corrective action -- is
22 what's included in the brackets the boundary of some
23 possible corrective action -- the exact case where there was
24 immediate attention and a corrective action was taken?

25 WITNESS PC"APOVS: That would be considered.

1 JUDGE CARPENTER: So that the safety issue became
2 very, very small very rapidly. Is that the sort of thing
3 that this mitigation --

4 WITNESS POTAPOVS: That's correct.

5 JUDGE CARPENTER: -- item three is all about?

6 WITNESS LUEHMAN: That's correct.

7 JUDGE CARPENTER: You know, I expect we're going
8 to hear some arguments about this in the coming weeks. And
9 I just want to be sure whether I look on page three and say
10 no, we're not going to consider, or yes, we are going to
11 consider.

12 WITNESS LUEHMAN: We would consider those things
13 in the context of corrective action, but we would not have
14 considered them in the context of whether enforcement was
15 going to be taken or not.

16 If a licensee rapidly corrected something, that's
17 fine for corrective action, but that doesn't -- that doesn't
18 preclude the fact that the violation existed up until it was
19 corrected.

20 JUDGE CARPENTER: So, what you're telling me, that
21 it pretty much, as you all have operated with it, has gone
22 just the way it reads? This operability business is not an
23 excuse for the violation. You're not going to get out of
24 the violation. The violation was an operability argument
25 that doesn't lead to a single conclusion that the equipment

1 is qualified.

2 But, having said that, an operability argument, in
3 terms of prompt reponse, adequate response, et cetera, can
4 still be considered under the mitigation part of the policy?

5 WITNES^S LUEHMAN: That is correct.

6 JUDGE CARPENTER: That is all I wanted to find
7 out. Thank you.

8 JUDGE BOLLWEFK: Judge Morris?

9 JUDGE MORRIS: I have a few questions, but before
10 I start, Mr. Holler, can you tell us today whether it's your
11 intention to have this panel back for your rebuttal
12 testimony?

13 MR. HOLLER: No, sir. If I may remind the Board,
14 as I understand it, our rebuttal testimony will be submitted
15 21 days, at the completion of cross examination on direct
16 testimony, both NRC staff and APCo licensees. So we do not
17 intend to have -- present this staff today for cross
18 examination on rebuttal testimony.

19 Maybe I misunderstand your question. I apologize.

20 JUDGE MORRIS: Well, let me explain my reason for
21 the question and you may want to comment on that. I would
22 like some time to ask this panel some questions based on the
23 Applicant's rebuttal or surrebuttal, whatever it is.

24 MR. HOLLER: I understand now, Judge Morris.

25 After --

1 JUDGE MORRIS: I'm sorry, not on surrebuttal, but
2 on their direct testimony, and I'm wondering whether I
3 should ask now questions which you will answer in your
4 rebuttal?

5 MR. HOLLER: May we have a minute?

6 [Counsel for NRC Staff conferring off the record.]

7 MR. HOLLER: Judge Morris, if I may, let me see if
8 I can take a crack at this: The dilemma that we were
9 discussing or that we see is, the organization, Alabama
10 Power Company, chose to use for their direct testimony. I
11 have difficulty squaring our panels up directly with theirs.

12 I don't want to cut myself off by saying at this
13 point that we do not anticipate rebuttal testimony that
14 would be sponsored by this particular panel. However, I'm
15 not prepared to say that definitely I will.

16 If I may offer as a compromise, even if we do not
17 sponsor rebuttal testimony with this panel, the Staff
18 certainly can make this panel available in May when the
19 rebuttal testimony is offered for questions by the Board.
20 Would that -- does that address your concerns?

21 JUDGE MORRIS: Maybe we can agree on the following
22 procedure: that I not ask any questions based on the
23 licensee's direct testimony at this time, and then you can
24 choose your own witnesses at the later date to respond.

25 MR. HOLLER: If I understand, sir, then the

1 questions you may have on direct will be addressed to
2 whatever witnesses we have available to rebut that
3 testimony?

4 JUDGE MORRIS: Yes, and if you don't have the
5 witnesses, that's your problem.

6 MR. HOLLER: Yes, sir, and the testimony stands
7 that he's given. 7 It sounds acceptable. Yes, sir, thank
8 you, sir.

9 JUDGE MORRIS: Now, I direct my questions to the
10 panel at large, and whoever chooses to answer is fine. And
11 my questions are directly largely to make sure I understand
12 what you're saying.

13 If we turn to page 3 of your testimony, in the
14 second paragraph, you state:

15 "All such listed items, by definition, perform
16 important safety functions. Thus, safety significance is
17 inherent with respect to each item on the list or each item
18 that should be on the list."

19 WITNESS LUEHMAN: Yes, we have that.

20 JUDGE MORRIS: My question is are all items on the
21 list considered equally important?

22 WITNESS LUEHMAN: As a general rule, we would say
23 yes.

24 WITNESS POTAPOVS: For the purposes of the
25 enforcement policy, it would be a yes.

1 JUDGE MORRIS: That was my understanding. But is
2 it your opinion that that is not really true from a safety
3 point of view; for example, doing a safety analysis or
4 probabilistic risk assessment?

5 WITNESS POTAPOVS: Certainly, I think you could
6 make that statement that some items, as identified in the
7 Generic Letters and the policy, would be more important than
8 other items, if you considered the application and
9 consequences of inoperability of that item.

10 JUDGE MORRIS: Thank you.

11 At the bottom of the same page, you state:

12 "The Commission developed Categories A, B, and C,
13 based on the extensiveness of the violations, which reflect
14 the overall pervasiveness and general safety significance of
15 the significant EQ violations."

16 WITNESS LUEHMAN: Yes, sir.

17 JUDGE MORRIS: Is safety significance based only
18 on the number of the items or an analysis of the effects or
19 consequences of design basis accidents, environments for the
20 violations?

21 WITNESS POTAPOVS: Actually, it would be both
22 counts. The number of items is a measure of the safety
23 significance, and that's why it was chosen as a
24 categorization measure. If we went back to the Generic
25 Letter 85-15, which proposed a substantially larger civil

1 penalty per item, it would get rather unrealistic to assess
2 that on a per-item basis when many items are involved.

3 That's why we tried to accomplish the same
4 graduation of the safety significance by combining the items
5 in system sense.

6 WITNESS LUEHMAN: The other thing I would add is
7 that strictly accounting of the number of components or the
8 number of systems didn't always lead or wouldn't always lead
9 the Panel to a result that made -- well, complete sense, in
10 that, for instance, if you had one plant that had one EQ
11 violation, for instance, they did not qualify a particular
12 component that was used extensively in the plant, and
13 therefore there were many components affected, that would be
14 one case.

15 And then as compared to another case, for
16 instance, where you had a similar number of total components
17 affected, however, they were affected by maybe six or seven
18 different types of violations -- whether in one case, it
19 would be splices, the one case it would be splices alone and
20 they were used extensively in the plant, and in another
21 case, they had splice problem -- a few splice problems plus
22 a few limitorque operator problems plus a few solenoid valve
23 problems, but the total number of components in both cases
24 came up to the same number, you can make arguments both ways
25 as to which problem is more significant.

1 We didn't think that in all cases, simply counting
2 the number of systems and components was completely proper.

3 JUDGE MORRIS: In the specific case of Farley, is
4 it correct that you do not limit yourself simply to counting
5 the numbers of things?

6 WITNESS LUEHMAN: Not strictly counting the number
7 of components, that's correct. We looked at the systems
8 affected, and we looked at the fact that they had a number
9 of different of types of violations. In other words they
10 had splice problems, problems with terminal blocks. There
11 was not one problem that caused all the equipment at issue
12 to be unqualified.

13 JUDGE MORRIS: So, is it correct to say that in
14 addition to the numbers of systems and components, you did
15 consider safety significance?

16 WITNESS LUEHMAN: Again in a general sense, as you
17 stated earlier, we did not go to the extent of doing in-
18 depth assessments of the components and what the individual
19 component or group of components -- the likely result of
20 their failure would be, because the policy directed us not
21 to get into that. And we weren't equipped to do it, either.

22 JUDGE MORRIS: I am not sure I have a complete
23 understanding. Did you make some judgment about the overall
24 significance other than numbers of systems and components?

25 WITNESS LUEHMAN: Yes.

1 JUDGE MORRIS: And was safety a factor in that
2 judgment?

3 WITNESS POTAPOVS: Yes.

4 JUDGE MORRIS: Thank you.

5 With respect to the "clearly should have known"
6 concept -- I believe I read somewhere in the submitted
7 testimony or exhibits that I think it was in a discussion
8 with the Commission, the word "clearly" was added to an
9 earlier use of just "should have known"; is that correct?

10 WITNESS LUEHMAN: That is correct. The Commission
11 directed the addition of the "clearly" into the policy.

12 JUDGE MORRIS: Can you provide the Board with some
13 background as to why the Commission did that, what their
14 intent was by doing it?

15 WITNESS LUEHMAN: I cannot -- I can't give you any
16 direct -- I don't have any direct knowledge on why the
17 Commission decided to do that.

18 JUDGE MORRIS: Any other members of the panel?

19 WITNESS POTAPOVS: I think it had to do with a
20 perception of what type of information and to what extent
21 was this information available to the responsible licensee
22 personnel that did the qualification. There was
23 deliberation about the fact that only existence of such
24 information by itself would not be sufficient, that
25 information would have needed to be broadly disseminated and

1 there was a large confidence level that this information
2 should have been available to the individuals responsible
3 for the qualification activity. It was a matter of focusing
4 on the availability of the information.

5 I don't recall the specific -- I don't recall that
6 there was any specific written direction to do that. It was
7 deliberation between the NRC Staff and comments from the
8 Commission and the Commission Staff that resulted in this
9 language.

10 JUDGE MORRIS: Would it be correct to assume that
11 it was added to make sure that the Staff had more than just
12 a reasonable assurance that something should have been
13 known?

14 WITNESS LUEHMAN: I think we can get into -- I
15 really don't know that we can get into the semantics. I
16 think the standard, as we applied it, was that an engineer
17 that was knowledgeable in environmental qualification, had
18 he had this information or was it shown that it was
19 available to him, that he should have reached the
20 conclusions -- in other words, the person receiving the
21 information had to be more than simply an engineer at the
22 plant or the person that had the information available to
23 him. It had to be a person versed in EQ. What should have
24 he done -- what would the reasonable EQ engineer do with the
25 information? That is the standard, basically, as we applied

1 it.

2 So, it is a higher threshold than just giving the
3 information to an engineer, you know, just a plant person,
4 not necessarily knowledgeable in the area, but should an
5 engineer with an EQ background have done the right thing
6 with the information? That is the standard as we applied
7 it.

8 So, I don't know whether that is a reasonable
9 assurance, how the distinction of "should have known" and
10 "clearly should have known" is drawn. That is the standard
11 as we applied. We told the Commission in a SECY paper that
12 that was the standard that we were applying, that -- the EQ
13 engineer with the information, and that is what the Board
14 used.

15 JUDGE MORRIS: I think you have used the word
16 "knowledgeable" before. Would it be correct to say that a
17 knowledgeable professional in the EQ field would have
18 recognized?

19 WITNESS LUEHMAN: That is basically the standard
20 we used, yes.

21 JUDGE MORRIS: Thank you.

22 It is my understanding that the inspection effort
23 of the NRC uses inspection modules or something of that kind
24 to give guidance to the field inspectors as to how to
25 conduct their inspections, is that correct?

1 WITNESS LUEHMAN: That's correct.

2 JUDGE MORRIS: Was there some comparable guidance
3 given to the environmental quality inspection that was made
4 at Farley?

5 WITNESS LUEHMAN: Yes, there was.

6 JUDGE MORRIS: What form did that take?

7 WITNESS POTAPOVS: That was a temporary inspection
8 and I believe the number's TI 2515/76 -- I'm sorry, that's
9 the program or maybe that is the --

10 WITNESS LUEHMAN: Basically the 2515 refers to,
11 that's the operating reactor section of the NRC inspection
12 program and the 76, if that's the correct number, designates
13 the number of the temporary instruction in sequential order
14 to the operating inspection program.

15 JUDGE MORRIS: Did this instruction apply only to
16 the team that went to Farley or to all the teams?

17 WITNESS POTAPOVS: It would apply to all of these
18 series of inspections and it was developed, as we mentioned
19 earlier, during the early stages of the inspection starting
20 in '84 ,and it was issued some time after development, but
21 it was in effect and used at the time the Farley inspection
22 was conducted.

23 WITNESS LUEHMAN: Just to clarify -- or not
24 clarify but add to what Mr. Potapovs said, the earlier '84
25 inspections were done -- I mean they did some before the

1 deadline to determine what kind of guidance they would have
2 to give to inspectors and then later on in those
3 inspections, as you know, a draft of the TI was, you know,
4 put together.

5 Then on subsequent inspections they refined it
6 till they got the TI that was published for final use in
7 subsequent inspections.

8 I am not aware, and maybe Mr. Potapovs or Mr.
9 Walker is, exactly which was the first inspection that the
10 final Temporary Instruction was used at.

11 WITNESS POTAPOVS: I don't know.

12 JUDGE MORRIS: Was it prior to the Farley
13 inspection?

14 WITNESS POTAPOVS: Yes.

15 JUDGE MORRIS: Was it prior to the seminar at
16 Sandia?

17 WITNESS POTAPOVS: Yes.

18 JUDGE MORRIS: So that the instruction was not
19 modified after the Sandia seminar?

20 WITNESS POTAPOVS: I don't think it was.

21 JUDGE MORRIS: I will ask both parties whether or
22 not this document is in the record anywhere.

23 MR. MILLER: I don't think it is yet but we'll be
24 happy to provide it and make it available.

25 MR. HOLLER: Judge Morris, I can tell you that is

1 one of the documents that was made available on discovery
2 and we can certainly produce the document.

3 JUDGE MORRIS: If you would, please.

4 MR. MILLER: It may be pertinent to point out that
5 the inspection module doesn't list the equipment that is
6 going to be inspected.

7 JUDGE MORRIS: I would understand that.

8 WITNESS POTAPOVS: It does list the equipment by
9 type.

10 [Pause.]

11 JUDGE MORRIS: That is all I have. Thank you.

12 JUDGE BOLLWERK: I don't have any questions.

13 Judge Morris has gone into the areas I was interested in.

14 At this point I think, Mr. Luehman and Mr. Walker,
15 we'll be seeing you again.

16 Mr. Potapovs, we appreciate your service to the
17 Board and your testimony and you are excused subject to
18 being recalled for any purpose that might be necessary.

19 WITNESS POTAPOVS: Thank you.

20 JUDGE BOLLWERK: Thank you very much.

21 [Panel excused.]

22 JUDGE BOLLWERK: If the parties have nothing else
23 at this point, we could take our luncheon break now.

24 MR. MILLER: It may help, Judge Morris, to know
25 that it was issued on March 27th, 1986, TI 2515-76. We'll

1 make a copy of it over the lunch break.

2 MR. HOLLER: The Temporary Instruction Mr.
3 Potapovs referred to was issued on the 4th of April, 1985.
4 We'll also make that available.

5 MR. MILLER: Thank you. I take that back. You
6 have a copy.

7 MR. HOLLER: What number do we want to give it?

8 MR. MILLER: Board Exhibit?

9 JUDGE BOLLWERK: Let's mark it as one of your
10 exhibits, if you don't mind, if that is acceptable to you.

11 MR. MILLER: Which I will identify for the record
12 as the Temporary Instruction 2515-76, issue date March 27th,
13 1986, evaluation of licensee's program for qualification of
14 electrical equipment located in harsh environments.

15 JUDGE BOLLWERK: APCo Exhibit 93 is marked for
16 identification.

17 [APCo Exhibit No. 93
18 was marked for identification.]

19 MR. MILLER: Move the admission of that exhibit,
20 please.

21 JUDGE BOLLWERK: Any objection from the Staff?

22 MR. HOLLER: No objections.

23 JUDGE BOLLWERK: APCo Exhibit 93 is received into
24 evidence.

25

1 [APCo Exhibit No. 93
2 was received into evidence.]

3 JUDGE CARPENTER: Mr. Miller, while you're up
4 here --

5 MR. MILLER: Yes, sir?

6 JUDGE CARPENTER: -- I keep thinking that I want
7 to ask a question about your Exhibit 92.

8 MR. MILLER: Yes, sir.

9 JUDGE CARPENTER: About all this paper I keep here
10 in reference to one thing and another, for some simple place
11 to go, the vertical arrangement to find the order,
12 chronology, all these things people are talking about.

13 Is there any chance you could convert that from
14 the horizontal to the vertical in a form where at least it
15 might fit in a notebook, it might even fit in a final
16 decision some day, as a neat summary of what everybody is
17 talking about?

18 MR. MILLER: We'll have it for you in the morning.

19 JUDGE CARPENTER: Not necessary. September's
20 fine.

21 MR. MILLER: No time like the present.

22 JUDGE MORRIS: If you took longer, perhaps you
23 could include the dates of the critical documents that
24 affect this development of the EQ problem.

25 MR. MILLER: We can do it and I know I may have

1 overpromised for the morning for that, but why don't we
2 undertake to do that and we'll have it for you promptly.

3 JUDGE MORRIS: At your convenience, thank you.

4 MR. MILLER: Yes, sirs.

5 JUDGE BOLLWERK: Why don't we go ahead, if there
6 is nothing else, and take our luncheon break.

7 Why don't we make it back here -- we'll come back
8 at 1:30 then.

9 [Whereupon, at 12:12 p.m., the hearing was
10 recessed for lunch, to reconvene at 1:30 p.m. this same
11 day.]

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AFTERNOON SESSION

[1:32 p.m.]

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3 JUDGE BOLLWERK: Let's begin the afternoon
4 session.

5 Before we begin with the next staff panel I have
6 one procedural issue I want to raise with the parties.

7 Mr. Miller has provided us with a copy of a cross
8 examination plan that he prepared for Staff Panel No. 1.
9 And under the Commission's Rules 2.743(b), I believe it is,
10 it provides that we are to generally hold cross examination
11 plans until an initial decision has been issued and then
12 file them with the Office of Secretary for inclusion in the
13 record.

14 It occurs to me that if the parties have no
15 objection, one thing that we can do which might make more
16 sense in terms of the way the record is set up, is to go
17 ahead and include the cross examination plan, bind it into
18 the record after the cross examination is completed. We can
19 do whatever the parties feel comfortable with.

20 MR. MILLER: When you say included, do you mean
21 after the cross examination of May 18th?

22 JUDGE BOLLWERK: Your cross examination of Panel 1
23 is now completed. I would propose to have it bound into the
24 record at that point. If that doesn't make you comfortable,
25 we can do it the way the Rule provides.

1 MR. MILLER: I have to confess that we would
2 prefer to go ahead and follow the Rule.

3 JUDGE BOLLWERK: Okay, that is not a problem.

4 MR. MILLER: Thank you, sir.

5 MR. HOLLER: Judge Bollwerk, one other
6 administrative item.

7 Prior to breaking, Mr. Miller was kind enough to
8 give you a copy of the temporary instructions. The Staff
9 indicated that it had also the draft temporary instruction
10 2515 that was referred to in the testimony. If it please
11 the Board, we can mark it out for identification now and
12 provide those copies.

13 JUDGE BOLLWERK: All right, why don't we do that.

14 MR. HOLLER: This would be for identification
15 purposes Staff's Exhibit No. 57. And for the record, draft
16 temporary instruction, 2515/XX marked in the upper right-
17 hand column, 4/16/85 comments.

18 JUDGE BOLLWERK: Let the record reflect that Staff
19 Exhibit No. 57 has been identified for the record.

20 [Staff Exhibit No. 57 is marked
21 for identification.]

22 MR. HOLLER: If I may, Judge Bollwerk, one other
23 item. We do, in fact, have the training materials on the
24 Sandia course. If you would like it at the end of the day's
25 session, I can pass those out, or would you prefer to mark

1 the one copy for identification?

2 [Board members conferring off the record.]

3 JUDGE BOLLWERK: Why don't you provide us with a
4 copy, and we will make a determination at that point whether
5 it is necessary to put them into evidence, given they look
6 rather extensive. We don't want to waste any additional
7 paper if we don't have to.

8 MR. HOLLER: Yes, sir. I will make that
9 available.

10 JUDGE BOLLWERK: Is there anything further?

11 MR. BACHMANN: No, sir.

12 JUDGE BOLLWERK: All right. Why don't we go ahead
13 when and swear in the next panel.

14 MR. BACHMANN: Do you want them to rise
15 individually as we did?

16 JUDGE BOLLWERK: Yes.

17 Whereupon,

18 JAMES G. LUEHMAN

19 NORMAN MERRIWEATHER

20 CHARLES J. PAULK, JR.

21 PAUL C. SHEMANSKI

22 and

23 HAROLD WALKER

24 were called as witnesses on behalf of NRC Staff and, having
25 been first duly sworn, were examined and testified as

1 follows:

2 DIRECT EXAMINATION

3 BY MR. BACHMANN:

4 Q I am going to address the entire panel. Do each
5 of you have in front of you -- and I would like you to
6 answer starting with Mr. Shemanski and then proceed down for
7 the convenience of the court reporter -- have in front of
8 you a document entitled Testimony of James G. Luehman,
9 Norman Merriweather, Charles J. Paulk, Jr., Paul C.
10 Shemanski and Harold Walker on behalf of the NRC Staff
11 concerning the V-type tape splices.

12 A [Witness Shemanski] Yes, I do.

13 A [Witness Merriweather] Yes, I do.

14 A [Witness Paulk] Yes, I do.

15 A [Witness Luehman] Yes, I do.

16 A [Witness Walker] Yes, I do.

17 Q Did each of you assist in the preparation of this
18 particular piece of testimony?

19 A [Witness Shemanski] Yes, I did.

20 A [Witness Merriweather] Yes, I did.

21 A [Witness Paulk] Yes, I did.

22 A [Witness Luehman] Yes, I did.

23 A [Witness Walker] Yes, I did.

24 Q Do any of you have any changes or corrections to
25 be made of this testimony?

1 A [Witness Shemanski] I have no corrections.

2 A [Witness Merriweather] I have some corrections.

3 On Page 5 where we show the exhibit, we want to
4 show that as being Exhibit 21, Staff Exhibit 21.

5 MR. BACHMANN: I would just note for the reporter
6 that these changes have been made in the copies provided to
7 the reporter.

8 JUDGE BOLLWERK: Thank you.

9 WITNESS PAULK: I have a correction on Page 16,
10 the sixth line. It states, "it was not a self vulcanizing
11 tape." It should state, "was an unvulcanized (uncured)
12 tape".

13 BY MR. BACHMANN:

14 Q Do you have any corrections, Mr. Luehman?

15 A [Witness Luehman] No.

16 Q Mr. Walker?

17 A [Witness Walker] Yes, I have one, maybe two small
18 corrections.

19 On page 17, line 4, where the sentence begins,
20 "The tests conducted by Wyle Laboratories was terminated,"
21 that should have been "was apparently terminated."

22 Page 18, second line from the bottom, it says
23 "environment condition." That should have been
24 "environmental condition."

25 Q I will address the panel in order again. Does

1 this testimony, as corrected, is it true and correct to the
2 best of your knowledge and belief?

3 A [Witness Shemanski] Yes, it is.

4 A [Witness Merriweather] Yes, it is.

5 A [Witness Paulk] Yes, it is.

6 A [Witness Luehman] Yes, it is.

7 A [Witness Walker] Yes, it is.

8 JUDGE BOLLWERK: Could we have Mr. Paulk give his
9 correction again?

10 WITNESS PAULK: Yes, sir. It's on page 16. It
11 stated "was not a self-vulcanizing tape." It should read
12 "was an un-vulcanized (uncured) tape."

13 JUDGE BOLLWERK: Thank you.

14 MR. BACHMANN: At this point, I would move the
15 Board that this testimony be bound into the record as read.

16 MR. MILLER: No objection.

17 JUDGE BOLLWERK: It will be bound into the record.

18 [The testimony of James G. Luehman, Norman
19 Merriweather, Charles J. Paulk, Paul C. Shemanski, and
20 Harold Walker follows:]

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

TESTIMONY OF JAMES G. LUEHMAN, NORMAN MERRIWEATHER,
CHARLES J. PAULK, JR., PAUL C. SHEMANSKI AND HAROLD WALKER
ON BEHALF OF THE NRC STAFF CONCERNING V-TYPE TAPE SPLICES

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

A1. James G. Luehman, Senior Enforcement Specialist, Office of Enforcement (OE).

Norman Merriweather, Reactor Inspector (Electrical), Region II.

Charles J. Paulk, Jr., Reactor Inspector, Plant Systems Section, Division of Reactor
Safety, Region IV.

Paul C. Shemanski, Senior Electrical Engineer, License Renewal Project Directorate,
Office of Nuclear Reactor Regulation (NRR).

Harold Walker, Senior Reactor Systems Engineer, Plant Systems Branch, Division of
Systems Technology, Office of Nuclear Reactor Regulation (NRR).

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 support the Staff's position regarding the violations of the environmental qualification (EQ) requirements for the V-type tape splices at the Farley nuclear plant as set forth in the Notice of Violation (NOV), dated August 15, 1988 (Staff Exh. 2), and the Order Imposing a Civil Penalty (Order), dated August 21, 1990 (Staff Exh. 3).

Q4. What are the EQ requirements and how were they violated?

A4. (All) The EQ requirements and the nature of the violations are stated in the NOV, page 1, under the heading "Violations Assessed A Civil Penalty" (Violation I.A.1) as follows:

10 CFR 50.49(d), (f) and (j), respectively, require in part that (1) the licensee shall prepare a list of electric equipment important to safety covered by 10 CFR 50.49, (2) each item of electric equipment important to safety shall be qualified by testing of, or experience with, identical or similar equipment, and that such qualification shall include a supporting analysis to show that the equipment to be qualified is acceptable; and (3) a record of the qualification of the electric equipment important to safety shall be maintained in an auditable form to permit verification that such equipment is qualified and that it meets the specified performance requirements under postulated environmental conditions.

Contrary to the above, from November 30, 1985 until the time of the inspection which was completed on September 18, 1987:

1. Alabama Power Company (APC) had V-type electrical tape splices installed on numerous safety-related electrical components including solenoid and motor operated valves. These tape splices were installed in various configurations and material compositions which were not documented as being environmentally qualified to perform their function under postulated accident conditions at the Farley Nuclear Plant (FNP) Units 1 and 2. The various configurations of V-type electrical tape splices had not been previously tested or demonstrated to be similar to an appropriately tested configuration. Furthermore, these tape splices were not installed in accordance with approved electrical design details or notes for splices or terminations, and were not identified on the environmental

qualification (EQ) Master List of electric equipment required to be qualified under 10 CFR 50.49.

Q5. What was your role, if any, in the September 1987 inspection referenced in the NOV?

A5. (Merriweather) During the September 14-18, 1987 inspection, I served as team leader.

(Paulk) During the September 1987, inspection, I reviewed the licensee's design drawings and engineering instructions. I also reviewed a qualification document for taped splices.

Q6. What was the reason for the inspection?

A6. (Merriweather) The September 1987 inspection was a "reactive" inspection and resulted because Alabama Power Company (APCo or licensee) reported that it had identified deficiencies with the qualification of V-type tape splices in solenoid valve circuits, Limitorque valve operators, and containment fan coolers. A reactive inspection is an unplanned inspection which inspectors do not normally prepare to conduct as part of the routine inspection program. These types of inspections are performed to respond to events that have occurred. APCo had submitted Licensee Event Report (LER) 87-012-00, dated July 30, 1987 (Staff Exh. 16) addressing problems with the configuration of EQ solenoid valve splices and terminations. NRC Inspection Report Nos. 50-348/87-17 and 364/87-17, dated September 1, 1987 (Staff Exh. 17), documented these deficiencies as three separate unresolved items. Region II had a copy of the Justification for Continued Operation (JCO) transmitted by Bechtel Letter AP-13169, EQ Solenoid Valve

Splices - Justification for Continued Operation (Staff Exh. 18), and APCo JCO transmitted by letter NS-87-0229 from G. Hairston to J. Woodard dated July 21, 1987 (Staff Exh. 19). The Region had information that tape splice problems had been identified at Calvert Cliffs, a plant in another region.

I was notified at some point that a team consisting of C. Faulk, C. Smith, W. Levis and myself (team leader) would be going to Farley to follow up on the splice problems. We also evaluated the reason the licensee inspected the containment fan motor splices/terminations and the method they chose: each component taken out of service, inspected for splice deficiencies and then repaired one at a time.

Q7. What do you recall about the inspection itself, with regard to the V-type splices?

A7. (Merriweather and Paulk) The NRC inspection team conducted a series of interviews during the inspection with electricians, foremen and the craft training instructors. The purpose of the interviews was to learn if the licensee could have known the configuration of the containment fan motor splices (i.e., V-type tape splices and the tape material used) prior to the series of visual inspections and reworking the splices. The results of the interviews indicated that the craft would routinely install V-type tape splices on EQ equipment, particularly the containment fan motor terminations that were determined and reterminated for outage work during each refueling. The team also reviewed some procurement records on tape, installation details for splices and terminations, JCOs on solenoid valve splices and Limitorque motor operator splices. A review of the maintenance records showed that tape splices were installed. Based on the discussions

the team concluded that the taped splices were not in-line type and that the craft would not always use both the Okonite T-95 and No. 35 tapes inside containment, as documented in the Okonite Test Report (NQRN-3) (Staff Exh. 21). In fact, some electricians stated to us that they were allowed to use only T-95 tape inside containment. In addition, the maintenance records did not always show that safety-related materials were used to make the splices. Furthermore, it was learned that the splices were being documented on the Maintenance Work Request as being completed in accordance with design by the peer inspection program.

During the inspection we had discussions with J. Love (Bechtel Engineering) regarding the qualification of the V-type splices. The team disagreed with his opinion that the splices could be qualified by just doing volts per mil analysis, without taking into account the performance of the tape during accident conditions at elevated temperatures, pressures, radiation levels and with the effects of aging. The team believed that the splice configuration was important in establishing the qualification of the splices. The configuration would include such information as type of tape used, seal length of the tape, numbers of layers of tape and overlap of the tape, orientation (in-line versus V-type), and hardware. We looked at one or more JCOs that had been documented by the licensee. We also saw some information from the test reports of tests performed by Wyle Laboratories for Commonwealth Edison Company (CECO) (Staff Exh. 20). Based on our review of this information and the Okonite Test Report (NQRN-3) (Staff Exh. 21) that was included in the licensee files at that time, we concluded that the V-type splice was not the same configuration as the 5 kV in-line shielded power cable splice tested by

Okonite. To determine if the in-line splice was applicable to the Farley splices we requested information on the actual configuration of the V-type tape splices. D. Jones (APCo) informed us that the plant design required Raychem heat shrinkable material with sealing capabilities and that the plant installation drawings did not provide a detail for these types of splices/terminations. At the September inspection the only information that was provided regarding the configuration of some of the V-type splices was to show that they were similar to the splices in the CECO report with T-95 and/or No. 35 tapes. We concluded that this information was not adequate to qualify the splices because the CECO reports clearly showed that these failed to demonstrate qualification of the splices. The CECO test reports tested the splices in what we would consider the worst case condition in that the splices were in contact with the ground plane allowing a direct path for the leakage current to ground. In this configuration the splices failed. However, the licensee had not established whether any of the V-type splices in the plant were in the bottom of housings, condulets or junction boxes, and therefore did not know if grounding was a concern. In addition, based on the responses from the craft, the splices may not have been configured with both the T-95 and No. 35 tapes as were the splices in the CECO test reports. There was no way of knowing whether the installed splices used the same materials or safety-related materials.

During the course of this inspection and at the exit meeting we informed the licensee that the V-type splices were considered unqualified as defined by Generic Letter 85-15 (Staff Exh. 7). During the inspection, J. Woodard (APCo) remarked that they disagreed that the splices were unqualified; it was just that the splices had not been tested

yet. The team was not aware that a test program had been undertaken by the licensee until the EQ meeting held September 24, 1987 at the NRC offices in Bethesda. This meeting was memorialized in a letter from APCo to the NRC Region II Administrator, dated September 30, 1987 (Staff Exh. 22).

Q8. What were the Staff's findings regarding the V-type splices as a result of the September 1987 inspection?

A8. (Merriweather) The Staff's findings regarding the V-type splices are summarized in NRC Inspection Report Nos. 50-348/87-25 and 50-364/87-25, dated October 16, 1987 (Staff Exh. 11). I adopt the following from Section 5 of the Report as part of my testimony:

During the weeks of May 11-22, 1987, and June 1-5, 1987, a Procurement and Vendor Technical Interface Program Inspection was performed by NRC [at the Farley plant]. In order to address concerns expressed by the NRC inspection team and recent EQ maintenance problems experienced by other utilities (such as Calvert Cliffs), Farley management formed an Environmentally Qualified Equipment Document Verification task team on June 15, 1987, to review maintenance records to verify that EQ equipment had been maintained in a qualified status.

On July 16, 1987, the licensee's task team noted a potential problem with the electrical connection between the solenoid pigtailed and the field wires. Plant inspection of a sample solenoid valve on July 20, 1987, confirmed that the connection was not in accordance with design and the licensee subsequently notified NRC. A JCO was prepared for the solenoid valves to allow for continued operation based on the operability requirements of the solenoid valves.

Further review by the licensee's task team indicated that the potential problem also existed with MOV motor lead splices and other 600V motor terminations. A JCO was prepared for the MOVs on July 30, 1987. Three MOVs in each containment were not capable of justification for

continued operation and required immediate configuration verification. These valves were inspected and subsequently repaired on July 31, 1987 and August 1, 1987.

Q9. What was your role in the preparation of the Inspection Report?

A9. (Merriweather) I received inputs from each member of the team to prepare the inspection report.

(Paulk) I prepared, in part, Section 5 of the Inspection Report. My contributions were the last four paragraphs of Section 5 on Page 3. My main findings, which I adopt as part of my testimony, are as follows:

On August 4, 1987 the licensee's task team identified the same potential splice problem with containment fan motors. There were ten fans involved per unit, which affected several systems. Instead of preparing a JCO for these fans as recommended by Generic Letter 86-15 and as done previously with the SOVs and MOVs, the licensee chose to inspect the motor terminations one train at a time and correct deficiencies as they were found. In this manner, the train was declared inoperable during the inspection [...] repair[ed] and later declared operable upon completion of repairs. All splices/terminations for the containment fan motors were found to be deficient and required replacement. The work was accomplished for Unit 1 from August 7-13, 1987, and for Unit 2 from August 13-19, 1987.

During the week of September 14-18, 1987, NRC Region I performed a Reactive Inspection to follow up on the EQ splice deficiencies identified by the licensee on solenoid valves, motor operated valves, and inside containment fan motors. The inspection concluded that there was not sufficient documentation to establish qualification of the installed splices. The splices were determined to be unqualified as defined by Generic Letter 85-15. The unqualified configuration is a type V-stub connection splice using T95 tape for insulation and [No.] 35 tape for jacket material. This configuration is not covered by design drawings or engineering instructions and has not been environmentally tested for Design Basis Accidents (DBA) (e.g., Loss of Coolant Accident (LOCA), High Energy Line Break (HELB)) by APCo. This type of splice is not completely

sealed. It can allow moisture to travel along the cables to the V-stub connection. The root cause of these unqualified configurations was determined to be due to incomplete design drawings/engineering work instructions and misinterpretation of electrical notes and details by craft.

It should be noted that the drawing did not address the V-type stub connection but indicated that the Raychem splice kit for in-line splices should have been used in the above applications.

The splice issue for SOVs, MOVs, and the containment fans were previously identified as Unresolved Items 50-348, 364/87-17-01, 02, and 03, respectively, and will remain open. Additionally, potentially unqualified splices may exist in electrical penetrations and instrumentation circuits inside containment. The licensee did not perform adequate walkdowns prior to November 30, 1985, to ensure compliance with 10 CFR 50.49.

Q10. What was your role in the preparation of the V-type tape portion of the Notice of Violation (NOV)?

A10. (Merriweather) I prepared the original version of the NOV and reviewed the final version, that is, I prepared the initial draft of the violation and specifically reviewed the changes if any occurred. I reviewed and concurred on the final version.

(Paulk) I wrote Violation I.A.1 of the NOV regarding taped splices which is quoted above as A4. I obtained concurrence from NRR and SANDIA consultants that the examples were justified and correct.

(Luehman) I reviewed and edited the NOV prior to issuance, both as OE reviewer and as a member of the EQ Enforcement Review panel. When the draft NOV was submitted by the Region, I reviewed and revised it. I was primarily responsible for revising and enhancing the Region's discussion of the "clearly should have known" finding.

(Walker) I had no involvement in the actual preparation of the NOV. However, I was a member of the EQ Enforcement Review panel which reviewed the NOV prior to issuance.

Q11. Did you review APCo's response to the NOV, dated November 14, 1988 (Staff Exh. 15)?

A11. (Merriweather) I reviewed the licensee's response to the NOV. I helped prepare the initial draft response to the licensee's answer to the NOV and reviewed the final NRC Order Imposing dated August 21, 1990.

(Paulk) I assisted N. Merriweather in the review of APCo's response. We discussed the issue with other inspectors and our SANDIA consultants.

(Luehman) I reviewed it extensively following receipt, had discussions with various other offices concerning how the Staff would approach responding to it, and used the response to validate the Appendix of the Staff's Order prior to issuance.

Q12. What was your role in the preparation of the Staff's Order Imposing a Civil Penalty, dated August 21, 1990 (Order)?

A12. (Merriweather) As stated above, I helped prepare the initial response to APCo's answer to the Notice of Violation for all of the proposed violations, not just V-type tape splices. I was assisted in this effort initially by C. Paulk prior to his departure from Region II. This initial response was later changed several times over a period of approximately a year. This was based on the review of the licensee's response dated November 14,

1988. I also was involved in reviewing markups and rewrites of the Order and responded to Staff questions regarding the Order.

(Paulk) N. Merriweather and I worked on the original draft of our response to APCo for NRC management, that is, we worked on Region II's input to the Order. We coordinated with various groups within the NRC to come up with the final draft that was accepted. I left Region II prior to the Order being finalized. I reviewed APCo's response along with other members of the NRC Staff. I concurred that APCo's response was not adequate. APCo did have Wyle Labs perform some testing; however, the results were never formally presented to NRC for review. I provided my input along with the findings/concurrence of NRR and SANDIA to N. Merriweather.

(Luehman) I prepared portions, reviewed and edited the entire document prior to issuance. When the draft Order was conceived a meeting was held with Region II by phone to divide up responsibility for responding to the licensee's submittal of November 14, 1988. Basically, Region II handled the specific technical issues, NRR was responsible for the general technical issue such as engineering judgment, walkdowns, etc. and OE was responsible for discussion of the application of the Modified Policy. Region II then assembled the document which had to undergo extensive reformatting by me after it was submitted by the Region.

(Walker) I'm the primary author of three sections of Appendix A to the order imposing a Civil Penalty dated August 21, 1990; those sections are, NRC Staff's Evaluation of Licensee Response in Attachment 2. Sections V.A.1 (engineering judgment), V.A.2 (walkdowns) and V.A.3 (document deficiencies). In addition, I was

a member of the NRC EQ Enforcement Review panel that reviewed all NOV's related to Generic Letter 88-07 which involved escalated enforcement. My involvement with the Order was the EQ Enforcement Review panel. The panel reviewed the Order to assure consistency with Staff positions on the various issues represented by the Order.

Q13. Is it your opinion that the V-type splices were required to be on APCo's EQ Master List?

A13. (Merriweather) I believe that V-type splices are not the same as the in-line splices that were addressed in the qualification file that was reviewed at the site during the September 14-18, 1987 inspection. Based on this finding and the fact that tape splices are considered electrical equipment, 10 C.F.R. § 50.49 indicates that it should be included on the list of electrical equipment required to be qualified. In my opinion, it would be acceptable if the licensee qualified the splices as part of an end device qualification, in which case it would be acceptable for the termination/splice not to be identified separately on the EQ Master List. The licensee would have maintained configuration control by including this information as part of the qualification file for the end device. However, the licensee did not address the splices in the qualification for the end devices. The licensee could have also qualified the splices on a generic basis, in that the EQ Master List may have identified tape splices and the EQ file would have established qualification for the V-type splices based on the accident environment they would be required to perform, including appropriate electrical performance characteristics for the circuits in which these splices are installed, and the identification of the areas in the plant where these splices are located. All of these examples provide configuration control which

that the EQ files are auditable and the qualification of the EQ components in the plant can be verified, yet it may not result in each V-type splice or termination being separately identified on the EQ Master List. Without similar provisions the splices would have to be separately identified on the EQ Master List consistent with the position discussed in NRC's Order Imposing dated August 21, 1990. NUREG-0588 (Staff Exh. 23) provided information to the industry that equipment interfaces must be "recognized and addressed" in the qualification process. In addition to the above, Enclosure 2 to IE Bulletin 79-01B (Staff Exh. 24) provided a method to the industry that was acceptable to NRC for addressing "cable splices" on a typical EQ Master list example. The typical list identified a cable splice and tape as a component requiring qualification in accordance with the bulletin. Furthermore, the licensee admitted that it failed to address the configuration of terminations and splices in the EQ program submitted to NRC as stated in LER 87-12 dated July 30, 1987.

(Luehman) The Staff does not assert that splices necessarily have to be separately listed on the EQ Master List. As stated on page 19 of Appendix A to the Order, "10 CFR 50.49 required splices to be on the master list as separate items or to be explicitly considered as parts of other equipment." Documents supporting this position include NUREG-0588 (see page 17 of Appendix A to the Order).

(Shemanski) 10 C.F.R. § 50.49 does not require that V-type splices or any other specific type of electrical equipment important to safety be identified on the EQ Master List. Electric equipment important to safety identified by the requirements of 10 C.F.R. § 50.49(b)(1), (b)(2), and (b)(3) comprise the Master List. The licensee has the option

as to how the equipment is categorized and listed on the Master List. Splices, for example, can be qualified individually or as part of a larger assembly. Industry practice has been to qualify splices separately since it is usually impractical to qualify a splice and its associated equipment such as a cable, penetration, motor, etc. In my experience, licensees normally include splices separately on a EQ Master List since industry test reports qualify individual splices and not subsystems.

Q14. Have you reviewed the Wyle test report (Staff Exh. 25) on the splices cited by APCo in its November 14, 1988 response to the NOV?

A14. (Merriweather) During the course of the November inspection, D. Jones (APCo) stated to me that they had the final test report for V-type splices. I was never asked to review the report and, as far as I know, none of the team members reviewed this report. I was aware of the fact that there were 14 configurations tested and that the configurations were capable of conducting the specified currents. It was my understanding that this report only addressed control and power circuits where leakage currents can be tolerated at much higher levels. Therefore, it would not qualify the application of V-type splices in instrumentation circuits. I had received the results of the test and a copy of the 14 splice configurations that were in the test program prior to the inspection. The splices tested were representative of those in solenoid valve circuits, Limitorque operators, fan motors and pump motors. (This information had been annotated on the copy of the test data that I had in my possession). However, there was no information to support the use of these splices in instrumentation circuits. At the time I was planning the inspection it was my

understanding that the splices were being replaced and the enforcement guidance available at the time clearly indicated that if the splices were not qualified at the time of the inspection (September 1987), subsequent testing and analysis would not be considered as far as enforcement. Based on the information included in the test data it confirmed my initial conclusion made during the September inspection that a similarity analysis had not been established to the CECO test reports and that the licensee was not certain as to the actual configuration of the splices/terminations. And since the licensee did not assure that the splices were installed in accordance with design I concluded that a generic qualification had not been made. Thus a review of the test report was not considered as part of the November inspection. I considered the issue resolved as far as corrective action and all that remained was for NRC to assess what if any enforcement was appropriate.

(Paulk) The Staff cannot accept or evaluate a report that was not presented to it. The licensee commenced testing taped splices after it was informed there was a qualification issue, but failed to inform NRC until it was summoned to the September 24, 1987 meeting to discuss why Farley should continue operating. The test was designed to run 30 days, but was secured shortly after the meeting was over, after being run for 45 hours.

The Wyle Report was formally submitted to the NRC for review in 1989, but not by APCo. Two Entergy Operations sites were using this test to support qualification of their splices. NRR reviewed this report in 1990 and concluded that it was not sufficient to support qualification of the splices APCo stated represented those at Farley. Arkansas

Nuclear One (ANO), an Entergy Operations site, decided to conduct additional tests on these splices, after its taped splice configurations were held to be unqualified by the NRC. The testing did not begin until after all questionable splices had been replaced with fully qualified splices. After the testing was halted, ANO informed Region IV of the results. The testing, and the licensee's discussions with Okonite, the manufacturer of the tape, revealed that the T-95 tape (insulation tape) was ^{an unvulcanized (uncured)} ~~not a self-vulcanizing~~ tape and was highly viscous at room temperature because it lacked peroxides. The manufacturer also stated that it had repeatedly told its customers that the T-95 had to be completely encased. The testing by ANO showed that as temperature rose the T-95 tape expanded and began to run as it became less viscous and more fluid, similar to the way glass responds.

(Walker) This licensee did not have acceptable qualification information in their files at the time the inspection was conducted on September 14-18, 1987. In accordance with Generic Letter 88-07, this is sufficient reason for the Staff to conclude the item in question is not qualified. If a test is conducted after November 30, 1985, the deadline for establishing environmental qualification, that fact alone would not be sufficient to justify Staff rejection of a test report. Licensees are expected to update files if and when new information becomes available. However, the Staff did not accept the test report because the test had not been conducted prior to the completion of the September inspection. Even if this particular test had been conducted, it would not have demonstrated qualification. I reviewed the October 1987 test report 17947-01 prepared for the Farley plant by Wyle Laboratories. However, I reviewed the report when it was

submitted on behalf of the Waterford plant, the second of the Entergy plants, in November 1989. My evaluation of the report prepared for Farley, and of other test reports for taped splices, is contained in an NRC Memorandum dated May 16, 1990 (Staff Exh. 26). The test conducted at Wyle was ^{apparently} terminated prior to its completion, and without sufficient information to demonstrate qualification for the Farley application.

Q15. APCo has asserted in its Response to the NOV that if the EQ program provides installation instructions, and another group within the utility, namely the craft, does not follow those instructions, this would not be an EQ violation. What is the Staff's position?

A15. (Merriweather) I disagree with the licensee's position that adequate installation instructions had been provided to the craft to ensure EQ splices/terminations were installed in accordance with design. At the time of the September inspection a licensee representative indicated that the design required the use of heat shrink material in these applications. The fact that unqualified V-type splices were installed is a breakdown in the EQ program to assure that the as-installed configuration is similar to the way it was tested. The tested configuration was an in-line shielded power cable tape splice by Okonite (Report NQRN-3). The failure to assure that the as-built configuration was similar to the tested configuration and the failure to address tape splices as a component required to be qualified on the EQ Master list is an appropriate violation to be cited against 10 C.F.R. § 50.49. It may be true that violations can be cited against other

regulatory requirements. However, this violation was caused by the lack of an adequate EQ program as it related to splices/terminations.

(Luehman) With specific regard to the Staff's response to this argument, that can be found on page 14 of Appendix A of the Order. The violations cited may well violate other requirements but in so far as they affect EQ the licensee can be cited under 10 C.F.R. § 50.49. Of course, this argument is not needed for the splices as there were no specific installation instructions so this is not a case of simply not following procedures. It is a case of not having controls to ensure EQ is maintained.

(Shemanski) The Staff's position is that the licensee must establish a program for qualifying the electric equipment identified in 10 C.F.R. § 50.49(b). Inherent in an EQ program is the responsibility of the EQ coordinator to ensure that all aspects that contribute to the qualification status of each item of electric equipment important to safety be verified. Since multiple groups within a utility can impact the qualification status of an item, oversight is mandatory. APCo's claim is not only weak but, it shows a lack of understanding of basic engineering validation/verification practices.

(Walker) As stated in Regulatory Guide 1.89, the purpose of qualification is to demonstrate that the electric equipment is capable of performing its safety function under environmental stresses resulting from a design basis accident. General Design Criterion (GDC) 4 states, in part the "structures, be designed to accommodate the effects of and to be compatible with the environment^{al} conditions associated with normal operation, maintenance, testing and postulated accidents, including loss-of-coolant accidents." This

position is reiterated in the DOR Guidelines (Encl. 4 to Staff Exh. 24). The Staff position is that a piece of equipment cannot be expected to accomplish these tasks if it is not properly installed or not installed at all. It is the responsibility of the licensee to assure that all requirements are met and maintain, and that the licensee is responsible for the actions of its employees as far as meeting the licensing requirements.

Q16. On what basis do you assert that APCo "clearly should have known" the V-type tape splices were not environmentally qualified?

(Luehman) The "clearly should have known" test is set forth in 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), dated April 7, 1988 (Modified Policy) (Staff Exh. 4). (A detailed discussion of the Modified Policy and how it was applied in this case is found in the Testimony of James G. Luehman, Uldis Potapovs and Harold Walker on Behalf of the NRC Staff Concerning Enforcement, also filed in this proceeding.) As stated in the Modified Policy, the NRC will examine four factors in determining whether a licensee clearly should have known that its equipment was not qualified:

1. Did the licensee have vendor-supplied documentation that demonstrated that the equipment was qualified?
2. Did the licensee perform adequate receiving and/or field verification inspection to determine that the configuration of the installed equipment matched the configuration of the equipment that was qualified by the vendor?

3. Did the licensee have prior notice that equipment qualification deficiencies might exist?

4. Did other licensees identify similar problems and correct them before the deadline?

The basis for asserting that APCo clearly should have known of the requirement for environmental qualification of the splices is set forth in the Staff's Order. The Staff's position, which I adopt as my testimony, is as follows:

The NRC staff considered all four factors listed in the Modified Policy in making the determination that APCo clearly should have known that the V-type tape splices were not qualified. As explained earlier, the NRC staff does not balance these factors. Moreover, all four of the factors provide information to show that APCo clearly should have known of this violation before the deadline.

Factor number one was applicable because the Okonite splice documentation, available in the qualification file prior to the deadline, clearly only addressed shielded power cables and therefore should have alerted the licensee to the need for more specific information.

Factor two applied because APCo records did not show what kind of splice was installed in a particular location, nor did its quality control procedures assure that these splices were installed according to drawings for an environmentally qualified splice. In fact, only one qualified splice, for 4160 volt power circuits, was shown on the drawings. Moreover, licensee walkdowns or field verifications were inadequate because they did not consider electrical connections which were components that licensees were required to account for in demonstrating qualification.

Factor three was considered applicable because NUREG-0588 states that it is necessary to recognize and address equipment interfaces to qualify equipment. In addition, while the NRC staff did not specifically identify V-type splices as causing qualification deficiencies, the NRC staff did give the licensee prior notice of splice problems by issuing generic documents, as described below.

Factor four was considered applicable because other licensees had identified qualification problems with cable splices. For example, NRC Circular 78-08, at page 3, describes when electrical cable splices

associated with electrical penetration assemblies were determined to be unqualified by a licensee during a search for qualification documentation. In addition, NRC Circular 80-10 identifies another example where the wrong class of insulating material had been used on the motor leads of a containment fan cooler. In that Circular the NRC staff emphasized the "...importance of properly installing and maintaining environmentally qualified equipment which clearly requires more than a review of QA records."

Furthermore, the Okonite splice documentation that was in the file only addressed a very specific splice configuration (4160v shielded power cable), yet the licensee used this to demonstrate qualification for numerous configurations at varying voltages without any adequate similarity analysis.

Q17. Does this conclude your testimony?

A17. (All) Yes.

1 MR. BACHMANN: Next, this testimony encompasses
2 some of the previous testimony which has already been
3 admitted into evidence and also Exhibits 16 through Exhibit
4 26. Those are staff exhibits. They have been pre-numbered.

5 The reporter has been furnished with three copies,
6 also pre-numbered, of these exhibits, and we would like to
7 ask the Board to have these considered marked for
8 identification as Staff Exhibits 16 through 26.

9 JUDGE BOLLWERK: They have already been identified
10 for the record earlier. So, they are marked for
11 identification as 16 through 26.

12 [Staff Exhibit Nos. 16 through 26
13 were marked for identification.]

14 JUDGE BOLLWERK: What I will ask to do is, when we
15 move them into evidence at, I guess, the close of the cross
16 examination again, I would ask that you identify each one
17 briefly as we move it in. I'd appreciate that.

18 MR. BACHMANN: Yes, sir.

19 At this point, I would offer the panel for cross
20 examination.

21 JUDGE BOLLWERK: Thank you.

22 CROSS EXAMINATION

23 BY MR. MILLER:

24 Q Mr. Merriweather, the way we understand it, you
25 are the lead witness of this panel. Is that correct?

1 A [Witness Merriweather] I don't know that, but --

2 Q No one has told you that your lawyers identified
3 you in the brief as the lead witness?

4 A [Witness Merriweather] Okay.

5 Q All right, sir. You're the lead witness, and I
6 understand -- will you also tell the Board that you were the
7 team leader of the EQ inspections at Plant Farley in 1987?

8 A [Witness Merriweather] Yes, I was.

9 Q There was an EQ inspection in September of that
10 year, and you were the team leader.

11 A [Witness Merriweather] Yes, I was.

12 Q And there was another EQ inspection in November of
13 that year.

14 A [Witness Merriweather] That's true.

15 Q And I take it that, as the team leader, you look
16 at those inspections as the "first-round" inspection of
17 plant Farley. Is that true?

18 A [Witness Merriweather] The September inspection
19 was a reactive inspection. It was not part of the first-
20 round inspections.

21 Q So --

22 A [Witness Merriweather] The November inspection
23 was considered the first-round inspections.

24 Q Oh, I see. So, the first-round inspection was the
25 November inspection. Is that what you have to say?

1 A [Witness Merriweather] That's what I just said.

2 Q All right.

3 Now, I'll ask you whether or not your
4 understanding is that the modified enforcement policy
5 applies only to the first-round inspection.

6 A [Witness Merriweather] I don't -- I don't -- I
7 don't know if that's true or false.

8 Q You haven't learned that one way or the other in
9 your capacity as team leader?

10 A [Witness Merriweather] No.

11 Q Is that so?

12 A [Witness Merriweather] I said I don't know if
13 that's true or false. That's what I said. I don't know.

14 Q All right.

15 Well, then, tell me, in your judgment, which
16 enforcement policy was applicable or is applicable today to
17 the reactive inspection you conducted in September of 1987.

18 A [Witness Merriweather] We understand that 88-07
19 is applicable.

20 Q That's applicable?

21 A [Witness Merriweather] Right.

22 Q You agree then or you're at least testifying today
23 that 88-07 applies to that inspection as well as the
24 November inspection?

25 A [Witness Merriweather] True.

1 Q Are you saying that they should be looked at for
2 purposes of 88-07 as one inspection?

3 A [Witness Merriweather] I don't believe that's
4 true.

5 Q Well, how can we divide them if they are different
6 inspections but the same modified policy?

7 A [Witness Merriweather] There were two -- there
8 were two different inspections. All -- all I can tell you
9 is there was one in September, there was one in November.
10 One of them was specific -- to look at specific
11 issues, and the other one was -- was considered a EQ
12 inspection where we actually implemented the TI.

13 Q I see. And if -- if Generic Letter 88-07 speaks
14 in terms of sufficient data existing or developed during the
15 inspection, which inspection would that be, please, sir?

16 A [Witness Merriweather] It could be either one of
17 those.

18 Q I see. Okay. Any data developed during either
19 the September inspection or the November inspection. Is
20 that what you're telling us?

21 [Witnesses conferring off the record.]

22 A [Witness Merriweather] Excuse me. Ask the
23 question again?

24 Q If it would help, Mr. Paulk, do you need to assist
25 Mr. Merriweather on that?

1 A [Witness Paulk] It would depend on which issue
2 you're talking about.

3 Q I'm talking --

4 A [Witness Paulk] I^l it was -- if it was
5 information for something that was identified during the
6 September, it would have to be during, or shortly
7 thereafter, the September inspection.

8 You cannot say that because I developed something
9 in November for the September, that it's within the same
10 timeframe.

11 Q I see. Now I understand.

12 You tell me if this is right: For purposes of the
13 modified enforcement policy, there was an inspection in
14 September and an inspection in November, both of which are
15 governed by this document, and I'm holding up Generic Letter
16 88-07. Is this true?

17 A [Witness Merriweather] I believe that's true.

18 Q But for purposes of providing additional data, the
19 phrase "inspection" in this document doesn't control. It
20 has to be added to say "inspections." Is that what you're
21 telling us, Mr. Paulk?

22 A [Witness Paulk] I didn't understand.

23 Q I will ask you to look at page two. I will ask
24 you to look at this word, and does it not say "inspection"?

25 A [Witness Paulk] Yes, sir.

1 Q And for purposes of this policy, you are telling
2 this Board "inspection" is both inspections, correct?

3 A [Witness Paulk] In this case, there were two
4 inspections.

5 Q And for purposes of providing the additional data,
6 though, that cannot be done during the "inspection" but must
7 be done either in inspection one or inspection two. Is that
8 what you're telling us?

9 A [Witness Paulk] It depends on which issue you're
10 talking about.

11 Q I see. No. I understand exactly. You want to
12 play it both ways. You want to have data in one inspection
13 but both inspections governed by the entire policy. Is that
14 what you're telling this Board?

15 A [Witness Paulk] If you had three inspections, all
16 three of them you have to -- you have to apply the policy to
17 each inspection individually.

18 Q Can we say, then --

19 A [Witness Paulk] We -- we put them all together in
20 aggregate and issued one proposed violation.

21 Q Can we say, then, that the September inspection --
22 the results of that inspection control the activities
23 conducted there? Right? The inspection -- I'll strike that
24 and ask it to you this way:

25 Can we say that the inspection report for the

1 September inspection controls the activities of that
2 inspection?

3 [Witnesses conferring off the record.]

4 Q Can somebody say a yes?

5 [Witnesses conferring off the record.]

6 WITNESS MERRIWEATHER: I don't believe I
7 understand your statement there.

8 MR. MILLER: Okay. All right.

9 BY MR. MILLER:

10 Q You understand that there was a September
11 inspection which you have called the reactive inspection.

12 A [Witness Merriweather] True.

13 Q We're going to talk about that in just a minute,
14 but Mr. Paulk says, for purposes of providing additional
15 data, that inspection was closed in September.

16 That's the way I understand it, Mr. Paulk.

17 A [Witness Paulk] For the enforcement purposes,
18 yes.

19 Q All right. For purposes of imposing the civil
20 penalty under the modified policy, that inspection wouldn't
21 close, then. That inspection goes on into November. Is
22 that what you told us? If it isn't, say so.

23 A [Witness Luehman] That's correct.

24 Q Okay. Your right to provide the additional data
25 is cut off in September. Your obligation or your exposure

1 for escalated enforcement runs to November. That's what you
2 told us, isn't it?

3 A [Witness Luehman] And I think that's consistent
4 with the modified policy.

5 Q That's all right. As long as that's what you're
6 telling us, we'll let that, the modified policy, speak for
7 itself.

8 So now I'm going back to the September inspection.
9 There was an inspection report issued, was there not?

10 A [Witness Merriweather] Yes, there was.

11 Q And if I look at that inspection report, I'm going
12 to see the results of those inspections and whether any
13 violations or deficiencies were identified.

14 A [Witness Merriweather] There is a results section
15 in the report.

16 Q All right. And what I asked you earlier, and I'll
17 ask you again, is that the inspection report, and the
18 conclusions therein control this first, first of the two EQ
19 inspections?

20 A [Witness Merriweather] I believe that inspection
21 report is clear in terms of what was looked at and what was
22 found, and there is a result section in the report.

23 Q Okay.

24 A [Witness Merriweather] Now, that's the way I
25 understand it.

1 Q Can you tell us what that results section says?

2 A [Witness Merriweather] I don't know. We can look
3 at the report.

4 [Pause.]

5 BY MR. MILLER:

6 Q While we're looking for it, I'll ask you this, Mr.
7 Merriweather:

8 If the September inspection was a reactive
9 inspection, why wasn't the -- why weren't any alleged
10 violations arising out of it handled under Part 2, Appendix
11 C, instead of the modified enforcement policy?

12 A [Witness Merriweather] Basically -- okay. Here
13 we go. The guidance I was given is that we were going to
14 identify these items as unresolved.

15 Q I see. And that's the point where we are.

16 You have Staff Exhibit 11 in front of you, do you
17 not?

18 A [Witness Merriweather] Is that the inspection
19 report?

20 Q Yes, sir. For purposes of the record, that's the
21 inspection --

22 A [Witness Merriweather] 87-25.

23 Q Yes, sir.

24 A [Witness Merriweather] All right.

25 Q The inspection report, October 19th, 1987 is the

1 date, and it refers to Reports Number 5348/87-25 and
2 5364/87-25.

3 JUDGE BOLLWERK: Let me just interrupt you.
4 Do you have a cross examination plan for this
5 panel?

6 MR. MILLER: As a matter of fact, I do, and I'm
7 sitting here holding that instead of handing it out.

8 JUDGE BOLLWERK: I just thought it would be more
9 useful if we had it.

10 MR. MILLER: I don't know, Judge. I get cranked
11 up and there's no telling where I'm going. There you are,
12 sir.

13 [Documents proffered to the Board.]

14 BY MR. MILLER:

15 Q All right. You've got it there in front of you?
16 Do you, Mr. Merriweather?

17 A [Witness Merriweather] Yes, I do.

18 Q And the question that we're trying to determine is
19 that if this is a reactive inspection --

20 A [Witness Merriweather] Okay.

21 Q -- and I understand you said it wasn't a first-
22 round EQ inspection, why, then, if you know -- and you may
23 not -- was it not covered under Part 2, Appendix C
24 enforcement policy?

25 A [Witness Merriweather] The way I understand it,

1 we did have some guidance out. I think 86-15 may have been
2 out, 85-15.

3 Q 85-15?

4 A [Witness Merriweather] Right. 85-15, and I think
5 86-15 was out.

6 Q I see.

7 A [Witness Merriweather] And that would have
8 subjected them to the \$5,000 a day civil penalty, and I
9 believe that was then in question, as to whether we were
10 going to carry out or implement 86-15, and --

11 Q You know, that may explain something.

12 A [Witness Merriweather] Let me finish.

13 Q Oh, I'm sorry.

14 A [Witness Merriweather] Let me finish.

15 Q Go ahead.

16 A [Witness Merriweather] The previous EQ
17 inspections, I believe, that had been done had been
18 categorized in items as potential enforcement/unresolved
19 items is just a way we did business in Region II. We don't
20 have potential enforcement/unresolved items; we only have
21 unresolved items. So we did what we normally do in Region
22 II, which is categorize these items as unresolved items.

23 Q Okay. Let me ask this just to make sure I
24 understand it, because I think you've clarified one thing.

25 At the time you conducted the inspection, there

1 was no Generic Letter 88-07?

2 A [Witness Merriweather] Right.

3 Q And you understood at that time that you were
4 proceeding under Generic Letter 85-15 and 86-15?

5 A [Witness Merriweather] I believe that's true,
6 yes.

7 Q Okay. We'll talk more about it, but I recall
8 seeing that in your testimony.

9 I'll ask you now if you will turn to the summary
10 page of your inspection.

11 A [Witness Merriweather] Okay.

12 Q And read into the record the results of this
13 special announced inspection.

14 A [Witness Merriweather] Okay. The results say,
15 "No violations or deviations were identified."

16 Q Okay. And that is your way of saying that there
17 were some open items, and they hadn't been resolved yet?

18 A [Witness Merriweather] No. I think this is
19 standard practice when we wrote reports. If you didn't have
20 a violation that was attached to the letter, we just
21 identified it in the results section that no violations were
22 identified in the report. Now --

23 Q Okay. So -- I'm sorry, go ahead.

24 A [Witness Merriweather] That does not address
25 unresolved items. Unresolved items can become violations.

1 Q I understand that. But can we say, though, at the
2 time that this inspection was conducted, had you seen a
3 clear violation, you would have said so?

4 A [Witness Merriweather] No. What I said was we
5 were given guidance to identify EQ issues or EQ violations
6 as unresolved items which is consistent with headquarters'
7 potential enforcement/unresolved item category.

8 Q Okay.

9 A [Witness Merriweather] We did not have a
10 potential enforcement/unresolved item category in Region II.
11 We just couldn't put it on our computer database. We have
12 an old computer system, and we just don't do it that way.
13 We can either make it an unresolved or a potential
14 enforcement item. That's it.

15 Q All right.

16 A [Witness Merriweather] And we make it an
17 unresolved item. Period. That's it.

18 Q You couldn't say -- you mean you didn't have a
19 third choice to say violation? That wasn't one of your
20 choices?

21 A [Witness Paulk] It would be identified as a
22 potential violation in the report until the violation was
23 issued.

24 Q Wait. You say it would not be identified as a
25 potential violation until the violation --

1 A [Witness Paulk] There's a difference between a
2 potential violation and a violation.

3 Q I didn't understand what you said. Did you say it
4 would be so identified or would not?

5 A [Witness Paulk] It could be.

6 Q Okay.

7 A [Witness Paulk] We did not have that terminology
8 in Region II, potential enforcement or potential
9 violation/unresolved item.

10 Q I understand. So the most you could do when you
11 went down there, no matter what you saw, was say unresolved
12 item?

13 A [Witness Paulk] Yes.

14 A [Witness Merriweather] That's not necessarily
15 true.

16 A [Witness Luehman] It could have been --

17 Q Wait a minute. Time out. Time out. Mr. Paulk
18 says yes. Somebody says that's not true. Somebody else
19 wants to explain. You're going to all get your chance, but
20 we have to help the court reporter out and do it one at a
21 time.

22 Now, who is it that says Mr. Paulk is wrong?

23 [Laughter.]

24 MR. MILLER: The interesting thing about that
25 though, Judge, is of the five people, Mr. Paulk said I'm

1 wrong and nobody else said he was.

2 All right. Let's go back. We're not here to play
3 games. We are trying to get to the truth.

4 WITNESS LUEHMAN: Simply stated, the reason that
5 it was left unresolved is (a) they didn't call it anything
6 else is because that's what their tracking system allowed
7 them to do.

8 The reason that it was left as an unresolved item
9 was not that the inspectors had necessarily reached a
10 conclusion that there was no violation here but because of
11 the decision that had yet to be made as to which enforcement
12 policy, given that revisions to the 86-15 enforcement policy
13 were being discussed for the per item, per day basis, so
14 until that policy decision was resolved, the guidance to
15 inspectors was to leave these things as unresolved items and
16 put the licensees on notice that the inspectors did not
17 agree to some extent with their conclusions but that at this
18 point enforcement action wasn't being taken.

19 BY MR. MILLER:

20 Q Can we say, though, that at the end of the
21 September inspection at least we know these things, the
22 status of these inspected items was unresolved for
23 enforcement purposes, yes or no?

24 A [Witness Luehman] What enforcement action was
25 going to be taken was unresolved.

1 Q All right.

2 Well, wait a minute. Do you mean to say that
3 there was a violation but the enforcement action hadn't been
4 selected yet?

5 A [Witness Luehman] I'll say that the inspectors do
6 not make the final decision on whether something is going to
7 be called a violation by the Staff or not.

8 Q I understand that and we really ought to ask Mr.
9 Merriweather, since he is the team leader and I am trying to
10 decipher what his report means that he signed out in October
11 16th of 1987.

12 So I'll ask you, Mr. Merriweather, at the time
13 this inspection was over with, was it your understanding
14 that no violations at Farley had been identified? Was that
15 your understanding?

16 A [Witness Merriweather] What I'm saying is that
17 the way we wrote our reports, if there's not a violation
18 cited in the details, specifically cited, that result
19 section will reflect that there are no violations in these
20 details --

21 Q All right --

22 A [Witness Merriweather] Let me finish.

23 Q All right.

24 A [Witness Merriweather] -- identified with a
25 number. That doesn't mean an unresolved item is not a

1 violation. All I am saying is when you look in the details
2 you're not going to find violation umpty-squat.

3 Q Okay.

4 A [Witness Merriweather]" Okay, but if you read the
5 details, you will find that we specifically stated whether
6 something was qualified or not and we gave our opinion in
7 the details.

8 Q Okay.

9 A [Witness Merriweather] The enforcement aspect is
10 a different issue. We were given guidance to identify an EQ
11 issue that appeared to be a violation or apparent violation,
12 or whatever you want to call it, as an unresolved item until
13 the enforcement policy was decided.

14 Q Did you have it within your power, had you so
15 concluded that a violation had been identified, to write
16 those words in your inspection report?

17 A [Witness Merriweather] Basically, the way I
18 worked, I reported to my supervisor and he has to review and
19 approve anything that I do. Anything we say is subject to
20 management review or change or whatever.

21 Now as far as whether I could cite something as a
22 violation, I had to have that approved with my supervisor.

23 Q If your supervisor had so approved, was it within
24 the power of Region II, as you understood it, in your
25 capacity as team leader that they could write down a

1 violation was identified if they wanted to?

2 A [Witness Merriweather] The way I understand it,
3 and this is the direction I got from my boss, which we will
4 identify them as unresolved items. That's all I know.

5 Q All right, so the most you can do is write down
6 any alleged violation as unresolved --

7 A [Witness Merriweather] For EQ -- let me clarify,
8 for EQ.

9 Q For EQ. That's what brings us here today, I
10 promise you that.

11 In those words, by "unresolved," do you mean to
12 suggest that it could be resolved in favor of the licensee
13 or be resolved as a violation at some later point?

14 A [Witness Merriweather] Well, I think in this
15 context it was strictly from the enforcement standpoint.

16 Q Okay, all right. What you are telling me then, as
17 I understand it, is that the phrase "unresolved" in this
18 inspection report really should read violation but we hadn't
19 decided what enforcement we're going to pursue?

20 A [Witness Merriweather]" I think that's a clearer
21 statement.

22 Q Okay. You'd identified this and described it as a
23 "reactive inspection"?

24 A [Witness Merriweather] Yes.

25 Q And is that a phrase that you have selected to

1 suggest that an LER had been filed or submitted by Alabama
2 Power Company?

3 A [Witness Merriweather] It could relate to an LER.
4 It just could relate to a event that was reported to the
5 Commission or that we became aware of.

6 Q Was that the case in this instance?

7 A [Witness Merriweather] I think in this case we
8 had a copy of an LER.

9 Q I see.

10 A [Witness Merriweather] And an inspection report.

11 Q I see.

12 Tell me, if you know, did that LER prompt a
13 meeting on September 24th, 1987 between the NRC Staff and
14 Alabama Power Company representatives?

15 A [Witness Merriweather] I don't know if it was the
16 LER by itself. It may have been a combination of LER and
17 our inspection report.

18 Q Do you know that such a meeting was held?

19 A [Witness Merriweather] September the 24th --

20 Q Yes.

21 A [Witness Merriweather] In Washington?

22 Q Yes, sir.

23 A [Witness Merriweather] Yes. I am aware of that.

24 Q Did you attend that meeting?

25 A [Witness Merriweather] I attended that meeting.

1 Q And you know that Alabama Power Company made a
2 presentation about the V-type electrical splices at the
3 Farley site?

4 A [Witness Merriweather] Yes, I do.

5 Q And you know part of their presentation was that
6 the V-type splices, they considered the V-type splices
7 qualified?

8 A [Witness Merriweather] Well, I understand their
9 position, yes.

10 Q Okay, and can you tell me whether or not as a
11 result of this presentation that the NRC Staff went out and
12 had a caucus?

13 A [Witness Merriweather] They had a caucus at one
14 time, yes.

15 Q What is a caucus?

16 A [Witness Merriweather] Basically the way I
17 understand it, they had listened to the licensee's
18 presentation and then had made a decision, because I think
19 it was a choice between whether we were going to issue an
20 order to shut them down. That's what you caucus about.

21 Q All right --

22 A [Witness Merriweather] If they should continue to
23 operate.

24 Q Wasn't the consensus of the NRC Staff at that time
25 that they would accept Alabama Power Company's judgments

1 that the splices are qualifiable, as best you recall?

2 A [Witness Merriweather] I don't know if were
3 qualifiable, but I know they allowed them to continue to
4 operate, based on the fact that they had a test, and I think
5 there was an indication that they were 24 hours in the test
6 and they hadn't had any failures up to that point.

7 Q I see.

8 A [Witness Merriweather]" That was the key that
9 allowed the Staff to make a decision.

10 Q Tell us the name of that test.

11 A [Witness Merriweather] I don't know the number,
12 but it was a Wyle test.

13 Q Okay. Perhaps that's the Wyle test report Davey
14 Jones told you about during the inspection?

15 A [Witness Merriweather] Yes.

16 Q Okay. I see.

17 So this Wyle test report that you were told about
18 during the inspection was --

19 A [Witness Merriweather]" Wait, wait, wait -- are
20 you talking November or September?

21 Q Well, you mentioned in your testimony that Davey
22 Jones gave you this Wyle test report and you never looked at
23 it.

24 A [Witness Merriweather] He never gave me a test
25 report. It depends on which one we are talking about.

1 There are other Wyle reports, but I think the one you are
2 referring to -- I'm talking about the one that was done in
3 September that we were informed in that meeting that they
4 were 24 hours into the test.

5 Q I see.

6 A [Witness Merriweather] Okay?

7 Q Okay. You are referring to the Wyle test that was
8 being performed in September of 1987?

9 A [Witness Merriweather] Right.

10 Q And as a result of that test and hearing its
11 description, the NRC Staff concluded that Plant Farley could
12 continue to operate?

13 A [Witness Merriweather] The way I understand it,
14 yes.

15 Q Is that the same thing as saying that it had a
16 reasonable assurance of public health and safety of the
17 plant operations were --

18 A [Witness Merriweather] I would imagine that to
19 allow them to continue to operate, yes.

20 Q Okay, all right.

21 Now we'll do this just for the purposes of the
22 record and I'll ask that this summary be marked as Alabama
23 Power Company Exhibit 94.

24 While we are getting our copies, I'll ask you to
25 look at that, Mr. Merriweather, and see if that is not a

1 true and accurate copy of the NRC Summary of the meeting
2 just described.

3 [Witness reviewing document.]

4 [Pause.]

5 JUDGE BOLLWERK: Could you give us, again, a brief
6 summary description of this?

7 MR. MILLER: Yes, sir. This is Alabama Power
8 Company Exhibit 94. It is a memorandum signed by Edward A.
9 Reeves, Sr., Project Manager of the Farley Plant, employee
10 of the NRC, dated November 5th, 1987, and it's subject is,
11 Summary of Meeting Held on September 24, 1987 Between NRC
12 Staff and APCo Representatives To Discuss Recent Problems
13 Related To Qualification of V-Type Electrical Splices at
14 Farley Site.

15 JUDGE BOLLWERK: Let the record reflect that APCo
16 Exhibit 94 has been marked for identification.

17 [APCo Exhibit No. 94 was
18 marked for identification.]

19 BY MR. MILLER:

20 Q Would you mind, Mr. Merriweather, if you've got
21 the time, to see if the copy I handed you had attached the
22 enclosure? Do you see the enclosure with the attendee list?

23 A [Witness Merriweather]" Yes.

24 Q Okay, good. Well, that's interesting. I just
25 noticed that, Mr. Walker, you were there.

1 A [Witness Walker] I don't remember that.

2 Q Were you part of the consensus that the V-type
3 splices were qualifiable, or were you a dissenting vote?

4 A [Witness Walker] I don't know if I had a vote at
5 all.

6 Q Well, does -- you know, that's interesting.

7 Does that mean that when it says the staff
8 consensus, that everybody agreed on that, or you don't
9 recall any dissent to that?

10 A [Witness Walker] Staff consensus does not
11 necessarily mean everyone agrees.

12 Q All right, but it does mean it's the position on
13 the Staff?

14 A [Witness Walker] That's correct.

15 Q Okay. Let's turn now to the signature page, Mr.
16 Merriweather, and let's make sure we've got it right.

17 All right, let's read Item 1, the heading being,
18 "Following the NRC staff caucus, Mr. Grace presented the NRC
19 Staff consensus as, will accept the APCo judgment that
20 splices are qualifiable at this time."

21 A [Witness Merriweather] Right.

22 Q Okay, and when you say "qualifiable," does that
23 mean qualifiable to the EQ Rule, as far as you know?

24 A [Witness Merriweather] I don't think that's so.

25 Q Wait a minute, the question was --

1 A [Witness Merriweather] Qualifiable --

2 Q Do you think it's so, or is that what Mr. Luehman
3 just told you was so?

4 A [Witness Merriweather] No. Well, in this
5 context, it's probably qualified by the fact that they told
6 us they were 24 hours in the test and they didn't have any
7 failures.

8 Q Qualifiable to what standard?

9 A [Witness Merriweather] I have no idea what they
10 mean by that. That's what I'm saying, but that's -- I'm
11 telling you the context of -- I was there at the meeting.
12 It was based on -- they said -- and we were 24 hours in the
13 test. We haven't had any failures. So, one would think
14 that would be enough information to say, yes, these things
15 may be qualifiable.

16 Q All right. That's all right. Okay, so, let's see
17 if I've got this right:

18 You know that you're sitting there on that panel
19 because the NRC has determined that the V-type splices were
20 not qualified under the Modified Enforcement Policy.

21 A [Witness Merriweather] True.

22 Q And when you say that -- or, strike that.

23 You say that at the same time that the NRC allowed
24 the plant to operate with these V-type splices?

25 A [Witness Merriweather] I think I explained that

1 that was the reason why we had the one-day meeting.

2 Q Okay, I understand that.

3 A [Witness Merriweather]" Now, as -- what I'm saying
4 is the fact that they -- and I'm not the Staff; I'm not
5 totally the Staff, and I didn't make the decision about
6 continued operation. I was there at the meeting, but I did
7 not make the decision.

8 It was basically done at a much higher level. But
9 I believe what swayed the procedure was the fact that -- the
10 decision, was the fact that they had an ongoing test. They
11 were 24 hours into the test and they indicated they had no
12 failures.

13 Q I understand that. Don't misunderstand me, Mr.
14 Merriweather. Let's just make this simple point:

15 The NRC was satisfied that the plant could operate
16 with the V-type splices and you know that to be the case?

17 A [Witness Merriweather] Based on that meeting,
18 yes.

19 Q And the NRC came back later and said, these
20 splices are not qualified under the Modified Enforcement
21 Policy and, in part, based the civil penalty on that, and
22 you know that to be the case?

23 A [Witness Merriweather] Okay.

24 Q For plant operations, qualifiable; for enforcement
25 action, no.

1 A [Witness Paulk] I believe if you substitute
2 qualifiable -- for qualifiable, operable, it would be more
3 accurate. The terminology that Mr. Reeves used may not be
4 -- reflect those in the EQ inspection field.

5 Q Mr. Paulk, I have learned that we are forever
6 accusing those outside of this hearing room of making poor
7 word choices.

8 A [Witness Paulk] You're asking us to interpret his
9 words.

10 Q Can we say, though, that the V-type splices were
11 operable?

12 A [Witness Paulk] Reading this, I would have to say
13 that that's the decision they made.

14 Q The decision made by the NRC staff?

15 A [Witness Luehman] Based on the amount of
16 information that they had.

17 Q We all agree that operable means they can perform
18 their intended function? It's fairly straightforward stuff.

19 A [Witness Paulk] Under a certain environment.

20 Q Okay, all right.

21 You know I've got to ask you, Mr. Merriweather,
22 you mentioned Generic Letter 85-15. We had heard some
23 testimony earlier this morning that 85-15 was not superceded
24 by 86-15, but supplemented; is that your understanding?

25 A [Witness Merriweather] If that's what somebody

1 said, I really don't know, but I think it was -- 85-15, I
2 think, was supplemented by 86-15.

3 Q I see. And let's see if we can turn to page 6.

4 A [Witness Merriweather] Which exhibit?

5 Q Of your testimony, Question 7, Answer 7, which
6 actually starts on page 4 and by you and Mr. Paulk.

7 A [Witness Merriweather] Where are you?

8 Q I'm on page 6, down at the bottom paragraph -- the
9 first full paragraph. It starts off or says:

10 "During the course of the inspection and at the
11 exit meeting, we informed the licensee that V-type splices
12 were considered unqualified as defined by Generic Letter 85-
13 15."

14 A [Witness Merriweather] Yes.

15 Q Do you see that?

16 A [Witness Merriweather] I see that.

17 Q All right. Let's -- before we go any further, V-
18 type splice, right?

19 A [Witness Merriweather] Right.

20 Q All right, now, --

21 JUDGE BOLLWERK: Do you want the record to reflect
22 that you've given us something?

23 MR. MILLER: There was a time in my life when I
24 didn't know what a V-type splice was.

25 Yes, sir, would the record reflect that we have

1 provided the Board with two V-type splices, and can provide
2 more, if you so desire.

3 JUDGE BOLLWERK: I think these will do for the
4 time being.

5 MR. MILLER: All right, we need to get Staff
6 Exhibit 7 also. Would you mind getting that in front of
7 you, please? Incidentally, that is 85-15.

8 [Witnesses reviewing documents.]

9 BY MR. MILLER:

10 Q All right, tell me when you have it please, sir.

11 A [Witness Merriweather] I have it in front of me.

12 Q And this will be principally directed to Mr.
13 Merriweather and Mr. Faulk as they sponsored this action.

14 I will start with you, Mr. Merriweather. Here is
15 our interpretation and tell me if we have it right.

16 The reason that you considered these V-type
17 splices unqualified, as defined by generic letter 85-15, is
18 because of Footnote 1 of that generic letter. Are we right
19 or wrong?

20 A [Witness Merriweather] That's not the reason that
21 we found it unqualified, but during the inspection it seemed
22 we had a communication problem. We would say, well, you
23 didn't have adequate documentation, that is poor
24 qualification for the splices. And then they'd say, well --
25 they would tell us something else. So, to be on the same

1 page we said, well, unqualified means what is defined in the
2 85-15, which means that not adequate documentation to
3 establish the equipment is qualified.

4 Q I see.

5 A [Witness Merriweather] So, that's what we meant.

6 Q That's what we are trying to focus on.

7 A [Witness Merriweather] We didn't evaluate them
8 against 85-15.

9 Q Fair statement. Then you took this definition you
10 just read -- and incidentally, that was read out of Footnote
11 1 --

12 A [Witness Merriweather] Right.

13 Q And what you said was, you don't have the
14 documentation so we say it's unqualified.

15 A [Witness Merriweather] I believe that's correct.

16 Q Okay. Now, let's go back to the Wyle test report.
17 Did they not tell you about the Wyle test report at this
18 time?

19 A [Witness Merriweather] No.

20 Q When did they tell you about the Wyle test report?

21 A [Witness Merriweather] That was in that one-day
22 meeting the first time I ever heard about the test.

23 Q Okay, in September.

24 A [Witness Merriweather] September the 24th, I
25 believe, at the one-day meeting.

1 Q All right.

2 A [Witness Paulk] I didn't hear about it until the
3 following Monday.

4 Q The following Monday of what?

5 A [Witness Paulk] September -- whatever -- after
6 the 24th.

7 Q Can we say, though, that you heard about it
8 shortly after the inspection that you conducted in
9 September?

10 A [Witness Merriweather] It depends on what you
11 mean by shortly after.

12 Q Well, I mean --

13 A [Witness Merriweather] The inspection ended on
14 the 18th and we found out about it on the 24th. So, the
15 week after the inspection we had several conference calls
16 with the licensee and I don't think it was ever mentioned in
17 any of those conference calls. Like I said, the first time
18 it was ever mentioned was in that one-day meeting, and
19 that's it. That's all I can tell you.

20 Q We know, though, that by September 24th or in your
21 case two or three or four days later, Mr. Paulk, you knew
22 the awareness of the Wyle test report?

23 A [Witness Merriweather] In that one-day meeting, I
24 can say on the 24th, we knew that they were 24 hours into
25 the test.

1 Q Okay.

2 A [Witness Merriweather] We don't know what they
3 were testing, we knew that they were testing V-type splices,
4 okay, but that's about it.

5 Q And since that matter was in the unresolved
6 category, surely you then asked to see a copy of the test
7 report.

8 A [Witness Merriweather] I didn't.

9 Q Mr. Paulk?

10 A [Witness Paulk] I believe we asked for it, but we
11 were told that it wasn't ready.

12 Q All right. And then when did you later -- strike
13 that.

14 You then asked for it again; did you not?

15 A [Witness Paulk] I did.

16 Q And when was that?

17 A [Witness Paulk] In the November inspection.

18 Q And did you review it in the November inspection?

19 A [Witness Paulk] No, sir, it wasn't given to us.

20 Q Pardon me?

21 A [Witness Paulk] It wasn't given to me.

22 Q You mean to tell me that you asked for the Wyle
23 test report in the November inspection and they didn't give
24 it to you?

25 A [Witness Paulk] Yes, sir.

1 Q And to whom did you direct your question?

2 A [Witness Paulk] I believe it was Mr. Jones.

3 Q Mr. Davey Jones, who is here with us today?

4 A [Witness Paulk] Yes, I believe so.

5 Q And tell me the circumstances about this request.

6 Who was present at the time you made it?

7 A [Witness Paulk] I do not remember.

8 Q Can you tell us where it occurred?

9 A [Witness Paulk] On-site.

10 Q Where on the site?

11 A [Witness Paulk] The little conference room,
12 Birmingham Room, I guess.

13 Q I see. And was anyone else in the immediate
14 vicinity that could have overheard this request?

15 A [Witness Paulk] Maybe.

16 Q Who would that person be or persons?

17 A [Witness Paulk] It could have been anybody on the
18 team.

19 Q And tell us as closely as you can the words that
20 Mr. Jones said to you when you asked for the Wyle test
21 report.

22 A [Witness Paulk] It wasn't finalized.

23 Q Have you seen the Wyle test report since?

24 A [Witness Paulk] Since then? Yes.

25 Q Have you noticed that it is dated October, 1987?

1 A [Witness Paulk] I didn't look at the date.

2 Q All right. But you testified today that you asked
3 Mr. Jones for this test report in November, 1987 and he told
4 you that it wasn't finalized?

5 A [Witness Paulk] I believe so.

6 Q You say you believe so. Are you certain that is
7 what he said?

8 A [Witness Paulk] I didn't get it.

9 Q On how many occasions did you ask for it?

10 A [Witness Paulk] Just once.

11 Q Did you report to your team leader that you asked
12 for it and was told that it wasn't finalized?

13 A [Witness Paulk] I don't remember.

14 Q Mr. Merriweather, you tell us where this
15 conversation took place, that is the one where Mr. Paulk
16 tells you that he asked for it --

17 A [Witness Merriweather] I don't remember that.

18 Q Mr. Merriweather, I will ask you to look at the
19 testimony before you on Page 14, Question 14, and Answer 14.
20 And tell me when you are there, please.

21 A [Witness Merriweather] Okay. Answer 14?

22 Q Yes, sir. Does it not say that during the course
23 of the November inspection, D. Jones stated to me that they
24 had the final test report for V-type splices.

25 A [Witness Merriweather] That's what it says.

1 Q Now, is D. Jones there the same Davey Jones that
2 is here with us today?

3 A [Witness Merriweather] Yes, it is.

4 Q And you testified here that you were told there
5 was a final test report.

6 A [Witness Merriweather] Well, what you had asked
7 before was did I remember a conversation where he asked me
8 about the test report.

9 Q But I just asked you right now is that you were
10 told there was a final test report.

11 A [Witness Merriweather] I was told, I believe, at
12 some point in time that he had the report. Now, I don't
13 know what week that was, whether that was a walk-down week
14 or -- I think it was the last week of the 16th to the 20th.

15 Q It was during the course of the November
16 inspection?

17 A [Witness Merriweather] Right.

18 Q Let's make sure -- you are not saying that the
19 words here on your printed testimony are wrong; are you?

20 A [Witness Merriweather] To the best of my
21 knowledge he indicated that he had the report.

22 Q Final report.

23 A [Witness Merriweather] Well, he had a report --
24 that is what he told me. If I say "final" that's the final
25 report, okay.

1 Q All right. So, he had the final report?

2 A [Witness Merriweather] Right.

3 Q And he told you that?

4 A [Witness Merriweather] He told me that.

5 Q Mr. Paulk, he said you said you asked for the
6 final report and he said there wasn't one.

7 A [Witness Paulk] I asked for a rate report.

8 Q And he told you that there wasn't any final
9 report?

10 A [Witness Paulk] That is what I understood.

11 A [Witness Merriweather] I may want to clarify
12 something here is that the week of the walk-down --

13 Q Do you think that that was a poor choice of words?

14 A [Witness Merriweather] Well, to clarify it being
15 -- let me straighten out something here. The week of the
16 walk-down, a lot of their files were in transition, they
17 were trying to put them together. I don't know if we looked
18 at any files the week of the walk-down. So, if he had asked
19 for the file during the week of the walk-down, it may not
20 have been available because they were putting it together.
21 I don't know.

22 Q Just a minute. I am trying to resolve what is
23 clearly a discrepancy and inconsistency of the two witnesses
24 who sponsored this part of the testimony. One man says
25 David Jones told him the report wasn't final and he couldn't

1 have it. You say that David Jones told you that there was a
2 final test report but you didn't ask to look at it.

3 Am I right so far?

4 A [Witness Merriweather] Well, what I tried to
5 clarify to you is that the week of the walk-down, a lot of
6 the reports were not available for review. That doesn't
7 mean they didn't have it, that says that they didn't have
8 the file in the proper format for us to look at; okay? So,
9 like I said, if he asked during the week of the walk-down,
10 he may have told him that. I didn't ask for it the week of
11 the walk-down.

12 Q I can't reconcile what you and Mr. Paulk are
13 telling me, so let's move on.

14 You were told by Mr. Jones that there was a final
15 test report. Did you then ask to look at it?

16 A [Witness Merriweather] I did not ask for it.

17 Q Did you then tell Mr. Jones that Mr. Paulk was
18 doing that part of the inspection --

19 A [Witness Merriweather] He didn't ask --

20 Q -- and he said give it to him --

21 A [Witness Merriweather] I don't remember a
22 conversation about Mr. Paulk with Mr. Jones.

23 Q Then tell me the words you said when Mr. Jones
24 told you that Alabama Power Company had a final test report
25 for the V-type splice?

1 A [Witness Merriweather] I don't remember what I
2 told him.

3 Q Well, when during the inspection did you look at
4 the final test report?

5 A [Witness Merriweather] I did not look at the test
6 report.

7 Q Have you ever looked at the test report?

8 A [Witness Merriweather] I have never looked at the
9 test report. I have looked at some data that came out of
10 the report, which was made available to me back in
11 September, I think, or October. I guess it was October.

12 Q What year?

13 A [Witness Merriweather]" '87, prior to the
14 inspection. I knew that there were 14 configurations. That
15 information I knew.

16 We also had a copy of a letter that came from Wyle
17 to Alabama Power Company which indicated that all the
18 splices were able to carry current at rated voltage. I knew
19 that.

20 Q Mr. Paulk, you told us that you asked for a report
21 and couldn't get it, correct, and then if I remember right
22 you told us you went to see Mr. Merriweather and told him.

23 A [Witness Paulk] I said I believe I did.

24 Q Can you tell us whether or not Mr. Merriweather
25 then said to you --

1 A [Witness Paulk] I --

2 Q -- copy of the final test report?

3 A [Witness Paulk] I do not remember.

4 Q Had he done so, surely you would have looked at it
5 then?

6 A [Witness Paulk] Probably.

7 Q Okay. Let's see if we can focus on this because
8 we've got to move on.

9 Let's go back to 85-15 and we have talked about
10 the definition of unqualified equipment for purposes of
11 enforcement, as equipment for which there is not adequate
12 documentation to establish that the equipment will perform
13 its intended function.

14 Are you with me so far, Mr. Merriweather?

15 A [Witness Merriweather] Yes.

16 Q Now do you recognize that the Wyle test report
17 that Mr. Jones told you about was at least additional
18 documentation on the V-splices?

19 A [Witness Merriweather] I don't believe that is
20 additional documentation. I believe that's what they're -- I
21 didn't look at the files so I don't know what they are
22 claiming as qualification but obviously they may be able to
23 use that test report to establish qualification for some
24 type of V-type splice configuration.

25 Q Okay. I know you didn't look at it, which is why

1 I purposefully didn't ask you about its content. All I am
2 asking you is that do you recognize that it fits the status
3 of "more documentation" or "additional qualification
4 documentation?"

5 A [Witness Merriweather] Well, we considered that
6 test report outside the inspection. It was testing done
7 subsequent to the inspection.

8 Q I see, so it was, you know, additional -- what is
9 the phrase that you use after the fact?

10 A [Witness Merriweather] After the fact.

11 Q And as you understand the policy at the time and
12 certainly as you understand this definition here in Footnote
13 1 of 85-15, there is no additional testing allowed or after
14 the fact testing?

15 A [Witness Merriweather] After the fact testing.

16 Q How about earlier analyses that would go to
17 qualification or qualifiability? Would you accept that and
18 by "that" I mean documents existing before September, 1987?

19 A [Witness Merriweather] If the licensee had
20 provided that information during the inspection and we had
21 reviewed it, we would have considered it, but after the
22 inspection, if they had to do additional analysis, it was
23 outside the bounds. It's after the fact.

24 Q Additional testing or analysis is outside your
25 view of acceptability of this documentation?

1 A [Witness Merriweather]" Well, I said after the
2 inspection if they did additional testing or analysis.

3 Q Okay. We have typed this up and I'll ask you
4 whether or not you agree with this:

5 "If on the other hand the NRC identifies equipment
6 for which documentation is insufficient to permit NRC
7 verification of qualification but which there is a
8 sufficient basis to anticipate that the particular equipment
9 can and will be qualified, the violation should be
10 categorized as Severity Level IV" -- did I read it right so
11 far?

12 A [Witness Merriweather] Okay.

13 Q "Examples of such deficiencies in the
14 documentation may include additional testing or analysis is
15 necessary to fully establish qualification." That's on
16 their (1) in parentheses and under (2) "As installed
17 configuration differs from test configuration to the extent
18 that additional testing or analysis is necessary to maintain
19 equipment qualification" -- I'm reading it right, aren't I?

20 A [Witness Merriweather] Okay.

21 Q "Violation involving procedures which are not
22 sufficiently adequate to satisfy all 50.49 requirements may
23 also be categorized as Severity Level IV violations."

24 A [Witness Merriweather] Okay.

25 Q Got it! Ever seen that before?

1 A [Witness Merriweather] I don't know where that --
2 I don't know where that came from specifically. I mean --

3 Q Do you agree with it? I mean it clearly says
4 additional testing or analysis. Are you telling me you
5 disagree with it?

6 A [Witness Merriweather] Well, let me read it
7 again.

8 Q Read it again.

9 [Witness Merriweather reviewing document.]

10 JUDGE BOLLWERK: Oh, bring it closer to the eyes.

11 MR. MILLER: You and I are about the same age,
12 which means our arms are getting ready to get to be too
13 short.

14 JUDGE BOLLWERK: Would it help to put it on the
15 easel?

16 MR. MILLER: I'm afraid you all might want to get
17 up because he wants to read it.

18 WITNESS MERRIWEATHER: Okay, I think the key point
19 here is it says that verification and qualification but for
20 which there is a sufficient basis to anticipate that
21 particular -- at the time of that inspection there was no
22 basis to support that this stuff would be qualified, so --

23 BY MR. MILLER:

24 Q Okay. We're going to talk about it.

25 A [Witness Merriweather] Okay.

1 Q But you agree though -- well, do you agree with
2 this sentence? I'll ask you that.

3 A [Witness Merriweather] I think I agree with that,
4 yes.

5 Q You do?

6 A [Witness Merriweather] Right.

7 Q That additional testing or analysis is allowed?
8 That's what it says.

9 A [Witness Merriweather] All right.

10 Q Examples of such documentations may include --

11 A [Witness Merriweather] [Reviewing document.]

12 Q Agree or disagree?

13 A [Witness Merriweather] I don't believe I agree
14 with that.

15 Q You don't agree with that. Let your lawyer look
16 at it. Tell us what a SECY paper is.

17 A [Witness Merriweather] You're asking me a
18 question?

19 Q Yes, sir.

20 A [Witness Merriweather] I believe that's something
21 the Staff presents to the Commission.

22 Q What's the significance of a SECY paper for NRC
23 Staff?

24 A [Witness Merriweather] I believe that's a policy
25 document. I'm not certain.

1 Q You told us about 85-15. Have you read the SECY
2 paper associated with 85-15?

3 A [Witness Merriweather] I don't know; I may have.
4 I can't say right now that I have. I can't say I haven't.

5 Q Perhaps you have read your Staff Exhibit 6? Can
6 you tell me whether you have read your Staff Exhibit 6?

7 A [Witness Merriweather] I haven't seen it yet.
8 [Document proffered to the witness.]

9 BY MR. MILLER:

10 Q I hand you a copy of Staff Exhibit 6 and ask you
11 to compare the highlighted version of that SECY paper, 85-
12 220 with what we have typed up and presented to you, and
13 which I don't have to remind you, you said you disagreed
14 with.

15 A [Witness Merriweather] [Reviewing document.]
16 [Pause.]

17 b. MR. MILLER:

18 Q The question to you, Mr. Merriweather, is can you
19 compare the highlighted portion of the Exhibit I gave to you
20 --

21 A [Witness Merriweather] It looks the same.

22 Q -- with what you and I just read.

23 A [Witness Merriweather] Yes, it looks the same.

24 Q It's the same; isn't it?

25 A [Witness Merriweather] Okay.

1 Q All right.

2 [Counsel for APCo conferring off the record.]

3 BY MR. MILLER:

4 Q Mr. Paulk, would you be nice enough to turn to
5 page 8 of the testimony, Question 9 and Answer 9, and tell
6 me when you're there, please, sir?

7 A [Witness Paulk] I'm there.

8 Q You said you prepared, in part, Section 5, the
9 Inspection Report?

10 A [Witness Paulk] Yes.

11 Q And then you go ahead and set this out?

12 A [Witness Paulk] Yes, sir.

13 Q Which parts did you prepare? Okay, maybe I've got
14 that wrong. What you have set out here is the part you
15 prepared?

16 A [Witness Paulk] Yes, sir.

17 Q Let's turn the page to page 9, the last sentence.
18 "The licensee did not perform adequate walkdowns prior to
19 November 30, 1985 to ensure compliance with 10 CFR 50.49."

20 A [Witness Paulk] Yes, sir.

21 Q You prepared that sentence?

22 A [Witness Paulk] Yes, sir.

23 Q Where were you in the years 1980 to 1985?

24 A [Witness Paulk] Well, in the Spring of 1980, I
25 was down on the Farley site interviewing with them, but most

1 of that time, I was working with another utility.

2 Q Interviewing for what position?

3 A [Witness Paulk] Whatever position they had open
4 at the time. I was getting out of the Navy.

5 Q I see. And you went to another utility?

6 A [Witness Paulk] Yes, sir.

7 Q Which one was that?

8 A [Witness Paulk] Carolina Power and Light.

9 Q Were you working for the NRC during 1980 and 985?

10 A [Witness Paulk] No, sir.

11 Q Would you turn over to page 11, Mr. Paulk? It
12 says here, APCo -- I'm sorry, let me give you a better cite.
13 We're about, oh, 6 or 8 lines down, maybe 9, "APCo did have
14 Wylie Labs perform some testing, however, the results were
15 never formally presented to NRC for review."

16 A [Witness Paulk] Yes, sir.

17 Q Is that what you mean to say when you described
18 your conversation with David Jones earlier?

19 A [Witness Paulk] Yes, sir.

20 Q You asked for it and didn't get it?

21 A [Witness Paulk] Yes, sir.

22 [Pause.]

23 BY MR. MILLER:

24 Q Mr. Shemanski, would you mind turning to page 18,
25 please?

1 A [Witness Shemanski] Okay.

2 Q And by your name, I see a couple of sentences
3 about the Staff's position that a licensee must establish a
4 program for qualifying electrical equipment identified in 10
5 CFR 50.49(b).

6 A [Witness Shemanski] Yes.

7 Q Okay, and then you go on to talk about what is
8 inherent in an EQ program, correct?

9 A [Witness Shemanski]" Yes, that's correct.

10 Q By program, do you mean to describe
11 identification, qualification and documentation of Class I-E
12 electrical equipment?

13 A [Witness Shemanski] I would extent that to the EQ
14 Rule which talks about equipment important to safety.

15 Q I see.

16 A [Witness Shemanski] And that includes safety-
17 related equipment, non-safety-related, and the Reg Guide
18 1.97.

19 Q Okay, so equipment subject to EQ, the program
20 should identify it, qualify it and document the
21 qualification?

22 A [Witness Shemanski] Yes, that's correct.

23 Q And that's what you mean when you talk about an EQ
24 program?

25 A [Witness Shemanski] Yes.

1 Q Mr. Luehman, if you will turn to Page 20.

2 A [Witness Luehman] Yes.

3 Q This is your answer to the "clearly knew or should
4 have known" question.

5 A [Witness Luehman] Okay.

6 Q And you go down on the last paragraph on Page 20
7 and the top of Page 21, where you are discussing Factor 4.

8 A [Witness Luehman] That's correct.

9 Q And you cite NRC Circular 78-08?

10 A [Witness Luehman] That's correct.

11 Q As the basis for the applicability of Factor 4.

12 A [Witness Luehman] In part.

13 Q Right. And NRC Circular 80-10.

14 A [Witness Luehman] That's correct.

15 Q And you say that those are examples of why Factor
16 4 is applicable under 88-07.

17 A [Witness Luehman] In helping the staff reach the
18 "clearly knew or should have known" finding, that's correct.

19 Q I'm sorry, go ahead -- say that again for us.

20 A [Witness Luehman] Yes. Those were two of the
21 information notices that we relied on under Factor 4 to help
22 in arriving at a "clearly should have known" finding.

23 Q This is the -- did other licensees identify
24 similar problems and correct them before the deadline.
25 That's Factor 4.

1 A [Witness Luehman] That's correct.

2 Q Okay. And you say because of these, 78-08 and
3 80-10, other licensees identified these similar problems and
4 corrected them before the deadline?

5 A [Witness Luehman]" The generic correspondence was
6 issued in response to -- was issued in response to problems
7 found with various types of splices.

8 Q Any reasonable licensee would have looked at this
9 generic correspondence and seen to go out and look at its
10 splices.

11 A [Witness Luehman] They would have been on notice
12 that splices were something that was required to -- splices
13 and terminations were something that was required to be
14 looked at by a licensee.

15 Q Suppose an NRC staff inspector came to their plant
16 after the issuance of these two notices and said their
17 splices were all right.

18 A [Witness Luehman] I don't know -- well, all right
19 doesn't equal qualification, so I'd like to -- I guess I'd
20 have to know what he said.

21 Q Well, suppose he looked at them for qualification
22 purposes and said that no violations or deviations were
23 found?

24 A [Witness Luehman] Again, as I testified, I think,
25 yesterday or the day before -- well, yesterday, actually,

1 I'd have to read all the words that he used. I'd have to
2 see if he inspected the file as well as inspected the
3 installed equipment and the drawings to ensure that he
4 looked at the whole trail of documentation and installation
5 that was required to establish qualification.

6 Q You can't just take him at his word?

7 A [Witness Luehman] I could take him at his word.
8 If he said they were qualified, then they were qualified.

9 Q You know who we're talking about, don't you?

10 A [Witness Luehman] I assume you're talking about
11 Mr. Gibbons.

12 Q Uh-huh. And can you tell us that these two
13 circulars were out and issued by the NRC by the time Mr.
14 Gibbons came to the Farley plant in December of 1980?

15 A [Witness Luehman] I can tell you that the 78-08
16 definitely was. I don't know the issuance date of Circular
17 80-10.

18 Q Okay.

19 MR. MILLER: Can we take just a minute, please.

20 JUDGE BOLLWERK: Yes.

21 [Counsel for APCo conferring off the record.]

22 BY MR. MILLER:

23 Q Mr. Merriweather, let's go back to the September
24 24, 1987 meeting, and I'll ask you, sir, whether or not, at
25 that meeting, Alabama Power Company told the staff that the

1 V-type splices would perform their intended function and
2 were qualified?

3 A [Witness Merriweather] I don't remember.

4 Q Okay.

5 A [Witness Merriweather] Okay.

6 Q Can you tell us, though, from your memory, whether
7 or not the LER that was submitted took the position that the
8 V-type splices were qualified?

9 A [Witness Merriweather] We can look at it.

10 Q That's what we're getting ready to do as soon as
11 we can -- if you'll get Staff Exhibit 16, and I guess we
12 ought to just check and make sure we're talking about the
13 LER dated 7/21/87.

14 A [Witness Merriweather] 7/21?

15 Q '87. Staff Exhibit 16.

16 A [Witness Merriweather] I've got July 30th, '87.

17 Q What did I say? Did I say something wrong?

18 A [Witness Merriweather] You said July 21.

19 Q July 21, '87. I'm reading the numerical. Did I
20 confuse you? Oh, I see. No, you're reading the transmittal
21 letter and I was reading the LER itself. Actually, I was
22 reading the --

23 A [Witness Merriweather] That's the month and the
24 day it was identified.

25 Q We're looking at the same thing.

1 A [Witness Merriweather] Okay.

2 Q Okay. I got you.

3 MR. MILLER: So the record will be clear, we're
4 all looking at Staff Exhibit 16.

5 BY MR. MILLER:

6 Q All right. You will see here in the first
7 paragraph that the company says it was determined that no
8 system covered by technical specifications would be rendered
9 inoperable as a result of adverse effects by design basis
10 accidents on the subject solenoid valves. Am I right so
11 far?

12 A [Witness Merriweather] Correct, yes.

13 Q I mean, we're talking about the splices,
14 obviously, going to the solenoid valves.

15 A [Witness Merriweather] Right.

16 Q And then on the next page, description of Event
17 Number 2, the operability of each affected system was
18 determined. It goes on to say, "No system covered by
19 technical specifications would have been rendered inoperable
20 as a result of potential adverse effects by design basis
21 accidents on the solenoid valves." All right?

22 A [Witness Merriweather] Where are you reading
23 that? I missed that.

24 Q I read it off Page 2, description of event.

25 A [Witness Merriweather] Description of event.

1 Okay.

2 Q Yes. Item Number 2.

3 A [Witness Merriweather] Okay.

4 Q Okay. I read it right? You can't testify today
5 that you ever heard anyone from Alabama Power Company say
6 that these splices were not operable, can you?

7 A [Witness Merriweather] Right.

8 [Counsel for APCO conferring off the record.]

9 BY MR. MILLER:

10 Q We're trying to focus on other materials, besides
11 the Wyle test report that we discussed. Did Alabama Power
12 Company -- strike that.

13 Didn't Alabama Power Company provide the staff
14 with other materials supporting their conclusion that the
15 splices were qualified, besides the Wyle test report?

16 A [Witness Merriweather] Qualified? I would say
17 no. They provided us some JCOS for continued operation, to
18 show that these systems may be operable. That's what the
19 supports to operability are.

20 Q I see. I know. We tend to use the words
21 interchangeably. But when you say operable, that means they
22 are capable of performing their intended function in the
23 design?

24 A [Witness Merriweather] Well, not necessarily.
25 The JCOS were specific. Whether they analyzed saying:

1 These things, even if they fail, this may happen; but still
2 we have alternate methods to do something. That's what the
3 operability knowledge was.

4 Q Wait a minute, wait a minute. Are you describing
5 a generic JCO, or are you describing a JCO sent in by
6 Alabama Power Company?

7 A [Witness Merriweather] Well, one of the JCOs was
8 the one on solenoid valves. And I knew that they analyzed
9 solenoid valves, say, in the main steam valve room. And
10 they analyzed both ones that are deenergized, which are
11 shortly into the event. And they analyzed the effect if
12 they did have a fault or something, because they had already
13 performed their safety function.

14 That doesn't say it's qualified. It just says:
15 Okay, you think it's operable.

16 Q All right. But you recall Staff Exhibit 18 being
17 provided to you -- strike that.

18 I'll ask it to you this way: Being available to
19 you prior to the inspection in September, 1987?

20 A [Witness Merriweather] I would have to say it was
21 probably available before. So that's why I stated it that
22 way in my testimony. I think I had it before I went there.

23 Q Okay.

24 MR. MILLER: If we could take just a couple of
25 minutes, please.

1 JUDGE BOLLWERK: Are you at a break point, or do
2 you want to continue on for a couple of minutes?

3 MR. MILLER: If I could consult here for just a
4 couple of minutes. We may be getting close to this panel's
5 end.

6 JUDGE BOLLWERK: Fine.

7 [Counsel for Alabama Power Company conferring off
8 the record.]

9 BY MR. MILLER:

10 Q Did you get the deposition, a copy of your
11 deposition that we took from you? And let me tell you I
12 would like for you to look at -- here you go. You've got a
13 copy of your deposition, don't you?

14 A [Witness Merriweather] Yes.

15 Q Volume 3, page 38. And while you are looking at
16 that -- tell me when you've got it.

17 A [Witness Merriweather] I've got it. Page 38?

18 Q Yes, sir. Now, let's see if we can explain what
19 we're doing here. We were talking in your deposition about
20 the Sandia training seminar, were we not?

21 A [Witness Merriweather]" Yes.

22 Q And you went to that seminar, didn't you?

23 A [Witness Merriweather] Yes, I did.

24 Q And didn't you tell us that the purpose of that
25 seminar was to bring the inspectors up to speed about what

1 was going on throughout the industry?

2 A [Witness Merriweather] Where did I say that?

3 Q Well, I'm asking you if you recall that from your
4 testimony?

5 A [Witness Merriweather] I can't say I recall that
6 from my testimony, but --

7 Q Okay. All right. We'll work on that in just a
8 second. What do you understand to be the purpose of the
9 Sandia seminar?

10 A [Witness Merriweather] As I recall, in '87 I was
11 aware of the fact that they were going to being doing EQ
12 inspections. And that's what I think that was -- training
13 to get prepared for the EQ inspections.

14 Q You heard the discussion this morning, or I'll
15 strike that, and ask it to you this way.

16 Were you in the hearing room this morning when we
17 talked about the Sandia seminar?

18 A [Witness Merriweather] Right.

19 Q Why don't we do this. Why don't you and I read
20 the question and answer that we had. And we'll start on
21 page 38, line 9.

22 A [Witness Merriweather] Okay.

23 Q And I'll read for me, and you read for you.

24 A [Witness Merriweather] Okay.

25 Q We're looking at the agenda for Thursday, August

1 27, 1987, at your Sandia training seminar.

2 A [Witness Merriweather] Right.

3 Q Are you with me?

4 A [Witness Merriweather] Right, I'm with you.

5 Q It shows that you got presented, as I understand
6 it, the most current and latest thought on limiter torque
7 operators by whoever J.J. is.

8 A [Witness Merriweather] Okay.

9 Q And then when you got to the Farley plant, you
10 found violations of limiter torques, didn't you?

11 A [Witness Merriweather] Yes.

12 Q It shows that you got presented the most current
13 and latest thought process on splices and terminations by
14 Steve Alexander on that Thursday, didn't you?

15 A [Witness Merriweather] There is some information
16 on splices and terminations.

17 Q You got to the Farley plant and found violations
18 on splices. As a matter of fact, you went there three weeks
19 after this presentation, didn't you?

20 A [Witness Merriweather] Yes.

21 Q It shows that you got the latest and greatest on
22 terminal blocks by Mark Jacobus and Steve Alexander on this
23 Thursday, didn't you?

24 A [Witness Merriweather] There was some information
25 on terminal blocks, yes.

1 Q You got to the Farley plant and found terminal
2 block violations?

3 A [Witness Merriweather] There were violations on
4 terminal blocks.

5 Q Let's turn to page 20 of the same volume.

6 A [Witness Merriweather] Twenty?

7 Q Page 20, yes, sir.

8 A [Witness Merriweather] Twenty, okay.

9 [Witness reviewing documents.]

10 Q Here is my question to you. Maybe another way of
11 saying it is awareness -- that there was a growing awareness
12 in '87 about snlice and termination issues, in part, because
13 of the RayChem experience and, in part, because of just a
14 general?

15 A [Witness Merriweather] Okay. That's a fair --

16 Q Fair statement?

17 A [Witness Merriweather] -- statement, yes.

18 Q And let's turn to -- if you'll get to volume one,
19 page 39, and tell me when you're there?

20 A [Witness Merriweather] Okay, I'm there.

21 Q And my question, at the top, starting on line two,
22 would it be fair to say though that, at the beginning, with
23 your first involvement, in 1979, that over time, your
24 understanding and knowledge about the EQ requirements of the
25 NRC have evolved as you've learned more, conducted more

1 inspections, gotten more experience?

2 A [Witness Merriweather] Well, I would say that
3 from '79 I was only involved in one inspection that I know
4 about, and then I wasn't involved in EQ for a long time.

5 Q We'll skip down to -- well strike that.

6 I'll say, I'll pick up again on line 11, IC?

7 A [Witness Merriweather] Okay.

8 Q All right?

9 A [Witness Merriweather] That's a -- so, I don't
10 know if it involved -- when I went to the most recent
11 training, whichever, whatever one that was -- the last two
12 training courses, and when I was given responsibility for
13 EQ, then I had to go back and review a lot of documents.

14 Q I see.

15 A [Witness Merriweather] Okay. So whatever
16 knowledge I have, that's where it came from. It didn't
17 evolve -- it didn't evolve, I guess is what I'm saying.

18 Q All right. And what you're referring to there is
19 these two training courses?

20 A [Witness Merriweather] Yes.

21 Q The one in '85, put on by Sandia?

22 A [Witness Merriweather] Right.

23 Q And the one in '87 put on by Sandia?

24 A [Witness Merriweather] That's correct.

25 Q Just a second. Can you tell us whether or not Mr.

1 Paulk went to the 1987 Sandia seminar?

2 A [Witness Merriweather] I believe he did.

3 Q Incidentally, while we're on the topic, can you
4 tel. us how it was that you selected Mr. Paulk to be on your
5 EQ Inspection Team?

6 A [Witness Merriweather] I didn't select Mr. Paulk.

7 Q I'm not suggesting anything sinister, but how is
8 it that he got to be on your team?

9 A [Witness Merriweather] Basically, the supervisor.
10 He's the one that schedules the inspections and gives
11 assignments, things like that.

12 A [Witness Paulk] Would you like to know how I got
13 on there?

14 Q We're going to get to that in just a minute. But
15 I take it it was some terrible misfortune in your life.

16 A [Witness Walker] As a matter of fact --

17 Q Hearing no objection from the witness, I think I
18 hit the nail on the head. We're going to talk about that in
19 just a second. But, let me ask you this, Mr. Merriweather.
20 Did you agree with what Mr. Potapovs told us this morning,
21 that is, typically, they look for mechanical or electrical
22 engineers to go on these EQ inspections?

23 A [Witness Merriweather] I have no knowledge on how
24 they selected the teams.

25 Q I'm sorry. We did that as a time filler. Let's

1 go to your Volume II, page 109.

2 A [Witness Merriweather] Page -- excuse me, could
3 you repeat the page number?

4 Q Yes, sir. Volume II, or day two, page 109.

5 A [Witness Merriweather] Okay.

6 Q And we were talking there about the materials from
7 your August 1987 Sandia seminar. Do you see that?

8 A [Witness Merriweather] Yes. Right.

9 Q I don't want to get this record confused. So,
10 we'll say -- I'm going to paraphrase my question. You had
11 the materials from your August 1987 EQ seminar with you when
12 you went to plant Farley; did you not?

13 A [Witness Merriweather] I believe I did, yes.

14 Q And you -- and now I'm back on line seven. And
15 you say you typically took it with you on EQ inspections?

16 A [Witness Merriweather] Yes.

17 Q And that's because this is the latest and greatest
18 EQ stuff, I take it? And what was your answer?

19 A [Witness Merriweather] Well, at the time, it was
20 the latest and greatest.

21 Q And the last one, let's see, is in Volume III,
22 page 16.

23 A [Witness Merriweather] I'm there.

24 Q And I'll start at my line three. Do you remember
25 though, Mr. Merriweather, back in this timeframe, and that

1 is '84, '85, '86 and '87, that there was a growing
2 realization throughout the industry that splices may not
3 have been conducted in accordance with procedures, but may
4 have been conducted in accordance with skill of the craft?

5 A [Witness Merriweather] There are a lot of issues
6 that came up. I know I have gone to the RayChem training.
7 And I don't know when I went to that, because, you know, I
8 can't give you timeframe dates. But, it had to be somewhere
9 between '86-'87, somewhere in there.

10 Q Okay. I see.

11 A [Witness Merriweather] It could have been '88.
12 But, I mean --

13 Q Okay. All right. We can put down the
14 depositions. Can't you agree with me though, Mr.
15 Merriweather, that the purpose of this Sandia -- that's all
16 right, I'll get it -- the purpose of the Sandia seminar was
17 to inform the inspectors, the EQ inspectors of the latest
18 and greatest of what was happening in the EQ inspections
19 that have been going on since 1984?

20 A [Witness Merriweather] I believe the information
21 was current, yes.

22 Q Yes. Okay. And then, of course, we talked about
23 right after that inspection you came down to the Farley
24 plant?

25 A [Witness Merriweather] Shortly after that, some

1 period of time after that.

2 [Counsel for APCo conferring off the record.]

3 BY MR. MILLER:

4 Q Mr. Walker?

5 A [Witness Walker]" Yes.

6 Q I think you testified, in this pre-file testimony,
7 that you reviewed the Wyle test report?

8 A [Witness Walker] Yes.

9 Q Did you review it in conjunction with the Farley
10 inspection?

11 A [Witness Walker] No, I did not.

12 Q Did you review it in conjunction with your -- in
13 your capacity as the E -- on your EQ Review Panel?

14 A [Witness Walker] No, I did not.

15 JUDGE CARPENTER: Which file is this report? You
16 asked him if he had reviewed the Wyle report. Is there more
17 than one?

18 MR. MILLER: October 1987. Why don't we get the
19 Wyle test report.

20 JUDGE BOLLWERK: Would you like to take a break?

21 MR. MILLER: We've got it right here, unless --
22 well, it is time for our -- why don't we do that, and we'll
23 have the Wyle test report for you.

24 JUDGE CARPENTER: While you're doing that, do you
25 think you'll be asking some questions about some testing

1 that went on in 1987?

2 MR. MILLER: Yes, sir.

3 JUDGE CARPENTER: Did a report come out of that?

4 MR. MILLER: Yes, sir.

5 JUDGE CARPENTER: I have one report, it's your
6 Exhibit 25. If you could identify the other Wyle test
7 report for me after the break, I would appreciate it.

8 MR. MILLER: If you'll hold up the front of it,
9 and let's make sure that we don't inundate you with paper
10 you already have.

11 JUDGE CARPENTER: I have 25.

12 MR. MILLER: I've got it. Thank you, sir.

13 JUDGE CARPENTER: It's the linear splice.

14 MR. MILLER: Why don't we, if it's acceptable to
15 the Board, we are at our mid-afternoon break point?

16 JUDGE BOLLWERK: Your 25 is staff 21. You might
17 want to --

18 MR. MILLER: Okay.

19 JUDGE BOLLWERK: -- check that.

20 MR. MILLER: We'll correlate that and make sure we
21 don't do more paper than we have to.

22 JUDGE CARPENTER: I guess I misspoke, Mr. Miller.
23 I happened to be reading that when you asked the question
24 and I didn't quick look back and see that it was -- it is
25 only an Okonite test report I was looking at. Excuse me.

1 MR. MILLER: We'll straighten it out.

2 JUDGE BOLLWERK: All right. Why don't we take a
3 break. We'll come back at 20 after 3:00.

4 [Brief recess.]

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

6 BY MR. MILLER:

7 Q Let's go ahead and see if we can make sure that
8 the record is complete. Let's take Staff Exhibit 18, which
9 I will identify as the Bechtel Eastern Power Corporation
10 correspondence, dated July 21, '87, to W.G. Hairston from
11 Mr. K.C. Gandhi.

12 All right. And I'll ask you, Mr. Merriweather or
13 Mr. Paulk, did you have that available to you during the
14 Farley inspection in September?

15 A [Witness Merriweather]" Yes, we did.

16 Q Turn to Staff Exhibit 20. I will identify that as
17 a memorandum to Nuclear Utility Group on equipment
18 qualification, dated January 9, 1987, from Phil Holzman, H-
19 O-L-Z-M-A-N, subject: CECo splice qualification test
20 information.

21 I'll ask you, Mr. Merriweather and Mr. Paulk,
22 whether you had that available to you at the inspection at
23 the Farley plant.

24 A [Witness Merriweather] I'm not certain. I had
25 it, but I am not certain when I had it.

1 Q Mr. Paulk?

2 A [Witness Paulk] I don't recall.

3 MR. MILLER: Okay.

4 And I'll mark for identification purposes as
5 Alabama Power Company 95, which I will identify for the
6 record as a September 28, 1987, letter, with attachments,
7 from Wyle Laboratories to Alabama Power Company discussing
8 qualification plans for splices fabricated with 3M Scotch
9 plastic electrical tape for use in Farley Nuclear Plant, and
10 -- just one minute.

11 BY MR. MILLER:

12 Q We'll get this one and let you look at it, Mr.
13 Merriweather. The question to you will be have you not seen
14 the cover letter there and had available the attachments to
15 that for your inspection? I'm sorry, for your review.

16 JUDGE BOLLWERK: Let the record reflect that APCo
17 Exhibit No. 95 has been marked for identification.

18 [APCo Exhibit No. 95 was marked for
19 identification.]

20 BY MR. MILLER:

21 Q Take whatever time you need, Mr. Merriweather.

22 [Pause.]

23 BY MR. MILLER:

24 Q Perhaps I should not exclude Mr. Paulk. You might
25 want to look at that, also.

1 [Pause.]

2 A [Witness Merriweather] Okay. I've seen the
3 letter.

4 Q I see.

5 A [Witness Merriweather] Okay. And I have seen
6 some of the attachments. Now, I think some of this other
7 stuff -- I don't remember seeing all this.

8 Q You do recall seeing the letter and some of the
9 attachments?

10 A [Witness Merriweather] Yes. I think these
11 pictures.

12 Q Okay. The photographs attached?

13 A [Witness Merriweather] The photographs, right.

14 Q Okay. All right. And when do you recall seeing
15 all of that?

16 A [Witness Merriweather] Sometime in October, I
17 believe.

18 Q 1987?

19 A [Witness Merriweather] 1987.

20 Q All right.

21 I'll ask you to look at Staff Exhibit 25, which is
22 titled "Qualification Test Program on Splices Fabricated
23 with 3M Scotch Super-33 Plus Vinyl Plastic Electrical Tape,"
24 etcetera, under date of October 1987.

25 Tell me when you have that before you, Mr.

1 Merriweather and Mr. Paulk.

2 A [Witness Merriweather] I've got it.

3 Q We have talked earlier today about --

4 A [Witness Paulk] I've got it.

5 Q I'm sorry. I didn't mean to interrupt.

6 We have talked earlier today about the Wyle test
7 report. Is that the Wyle test report you meant to refer to,
8 as we use that phrase?

9 A [Witness Paulk] Yes.

10 Q This is the Wyle test report that you never looked
11 at, Mr. Merriweather.

12 A [Witness Merriweather] If it's the Wyle test
13 report, yes.

14 Q Yes, sir. This is the Wyle test report that you
15 looked at in 1989, Mr. Paulk, or '90.

16 A [Witness Paulk]" Yes, sir.

17 Q Which year was it?

18 A [Witness Paulk] '89 or '90.

19 Q Sorry?

20 A [Witness Paulk] It was either late '89 or early
21 '90.

22 Q All right.

23 And Mr. Walker, this is the Wyle test report that
24 you looked at in 1989.

25 A [Witness Walker] I believe it was.

1 Q All right.

2 Just so we can state -- let me just show something
3 -- this Wyle test report is for the V-type splices that we
4 have here in the hearing room with us, and I refer you to
5 the photographs in the test report.

6 [Pause.]

7 BY MR. MILLER:

8 Q Said another way, this is a Farley-specific Wyle
9 test report. Everybody agree with that? Mr. Merriweather.

10 A [Witness Merriweather] Yes.

11 Q Mr. Paulk.

12 A [Witness Paulk] Agree with which?

13 Q This -- this Wyle test report is for the splices
14 that we're talking about here in this enforcement
15 proceeding. This is not for another utility or another
16 plant or another splice.

17 A [Witness Paulk] The test report is for -- for
18 Wyle. That does not necessarily represent the exact
19 splices.

20 Q Okay. We'll let this splice that I hold in my
21 hand and the splice in the picture be reconciled by those
22 that observe them.

23 Now, Mr. Merriweather, one of your
24 responsibilities as team leader was to ensure that your team
25 inspectors looked at the qualification documentation, was it

1 not?

2 A [Witness Merriweather] Yes, it was.

3 Q And who was your team inspector for the V-type
4 splices we are here on today?

5 A [Witness Merriweather] The way I understand it,
6 it was --

7 Q Mr. Paulk.

8 A [Witness Merriweather] Paulk was -- he was one of
9 the inspectors that was on the team.

10 Q Mr. Paulk was the inspector who wrote up and has
11 testified to in his prefiled testimony about the V-type
12 splice issue, is he not?

13 A [Witness Merriweather] He provided input for the
14 report, yes.

15 Q You agree with that, do you not, Mr. Paulk, that
16 you wrote that up?

17 A [Witness Paulk] The portions I have stated to
18 you, yes, sir.

19 Q Yes, sir.

20 And Mr. Merriweather, I will ask you, sir, in
21 evaluating the qualification documentation, what is the role
22 of engineering judgement associated with evaluating
23 qualification -- EQ qualification documentation of
24 electrical splices?

25 A [Witness Merriweather] I do not understand your

1 question, what is the role of engineering judgment.

2 Q Do you agree with me that -- let me strike that
3 and ask it to you this way: This V-type splice refers to an
4 electrical termination, does it not?

5 A [Witness Merriweather] A termination can be a
6 splice.

7 Q Okay. And what we're talking about here is a
8 termination, is it not?

9 A [Witness Merriweather] We're talking about --
10 well, if you want to call it termination, that's what we're
11 talking about, okay?

12 Q All right. And it is electrical, is it not?

13 A [Witness Merriweather] It is electrical, yes.

14 Q And you understand that Alabama Power Company had
15 as its advisors electrical engineers, did you not?

16 A [Witness Merriweather] They had -- yes.

17 Q Mr. Love and Mr. Sundergill are electrical
18 engineers, aren't they?

19 A [Witness Merriweather] I don't know their
20 qualifications, but I know the --

21 Q And you understand that the issue is the ability
22 of this electrical termination to perform -- to be
23 documented as qualified and to perform its intended
24 function.

25 A [Witness Merriweather] Right.

1 Q And you say that your advisor on this issue is Mr.
2 Paulk?

3 A [Witness Merriweather] I said Paulk was one of
4 the members on the team.

5 Q I see.

6 Mr. Paulk, will you tell Mr. Merriweather where
7 you got your electrical engineering degree.

8 A [Witness Paulk] I do not specifically have an
9 electrical engineering degree. I do have an electrical
10 engineering background.

11 Q Perhaps you will tell Mr. Merriweather where you
12 got your engineering degree.

13 A [Witness Paulk] I do not have an engineering
14 degree.

15 Q Perhaps you will tell the Board where you got your
16 master's in business administration.

17 A [Witness Paulk] I got it at Campbell University.

18 Q And your business degree.

19 A [Witness Paulk] North Carolina, Wesleyan. And my
20 bachelor of physics I got -- bachelor of science in physics
21 I got from the University of the State of New York.

22 Q While you were in the Navy.

23 A [Witness Paulk] Yes.

24 Q By correspondence.

25 A [Witness Paulk] No.

1 Q You attended classes?

2 A [Witness Paulk] Yes, sir. Three of the years
3 were also in electrical engineering. I was an electrician
4 in the Navy for nine years.

5 MR. MILLER: Nothing further for the panel. Thank
6 you very much, gentlemen.

7 JUDGE BOLLWERK: You're finished with this panel,
8 then?

9 MR. BACHMANN: We still have redirect.

10 JUDGE BOLLWERK: Right. We recognize that. Any
11 redirect, then?

12 MR. BACHMANN: Sir, we would like about three to
13 four minutes, and then we'll start the redirect.

14 JUDGE BOLLWERK: All right.

15 MR. BACHMANN: The panel can stay where they are.

16 [Recess.]

17 REDIRECT EXAMINATION

18 BY MR. BACHMANN:

19 Q Mr. Luehman, earlier in the cross examination, Mr.
20 Merriweather was questioned on this unknown document which
21 turned out to be Staff Exhibit -- a portion of Staff Exhibit
22 Number 6, SECY 85-220. Could you explain to the Board just
23 what effect a SECY paper would have on the staff.

24 A [Witness Luehman] A SECY paper is a staff
25 prop. sal to the Commission. I think in the case of this

1 SECY paper, this paper was presented to the Commission but
2 was not adopted as written and, therefore, is not binding on
3 the staff.

4 Q All right. You have before you Staff Exhibit
5 Number 11, which is the inspection report that was written
6 by Mr. Gibbons, do you not? Excuse me. APCo Exhibit
7 Number 11. I'm sorry.

8 A [Witness Luehman] Yes, I do.

9 Q All right. There was a question as to the
10 reliance someone could place on that document insofar as
11 whether they -- Mr. Gibbons indicated that those splices
12 were qualified. Did you find anything in that report that
13 would cause a licensee to rely upon that report for the
14 thesis that the equipment was qualified?

15 MR. MILLER: Well, may it please the Board, we
16 object to the question of Mr. Luehman giving his opinion
17 about what would cause a licensee to rely upon it. We're
18 the licensee and we're in the best position to testify on
19 what we rely on. Mr. Luehman is with the staff.

20 MR. BACHMANN: Your Honor, the question was
21 hypothetical towards any licensee looking at a report such
22 as this. One of Mr. Luehman's functions on the review panel
23 was to make the "clearly should have known" determination,
24 and he was questioned earlier on whether or not the licensee
25 should or should not be able to rely on that report, and I

1 think it's a perfectly proper question, that he's looking at
2 the report and he can explain why he felt the licensee could
3 not rely on it.

4 MR. MILLER: If I could just respond, there is no
5 question about the fact that every time we put up an NRC
6 document, this witness has tried to tell us what the issue
7 is. But the issue is, the question to the witness is, can
8 you tell us why or what a licensee can do or should rely on,
9 and only licensees can answer that question.

10 He can give the staff's position, as long as we
11 all understand this is the way he views it from his
12 perspective as the staff.

13 JUDGE BOLLWERK: I will allow the question on that
14 basis. I think that's what he can testify to, what the
15 staff's position would be.

16 WITNESS LUEHMAN: I think it's very
17 straightforward. Mr. Gibbons nowhere in the report says
18 that the equipment that he looked at is qualified.

19 BY MR. BACHMANN:

20 Q Okay. Now, we had a discussion earlier on
21 operability and, in fact, I seem to recall Mr. Miller saying
22 words to the effect that the licensee uses operability and
23 qualification interchangeably. Would you explain to the
24 Board the staff's position on the concept of operability
25 versus qualification so we can get it down? You will be

1 speaking for the staff. This is, I think, what we will
2 consider the definite position on how we look at it.

3 A [Witness Luehman] I think we went over it a
4 little bit yesterday, but basically if a deficiency is found
5 that causes a piece of equipment not to meet whatever
6 standard it has -- in this case environmental qualification
7 -- then there is a question of qualification. Even if
8 qualification can't be established, the licensee through the
9 justification for continued operation process can make an
10 argument that a piece of equipment continues to be operable
11 even though it is not qualified. And they can do that by
12 providing information such as a determination that there is
13 other equipment that can perform the function, that it is
14 going to be a limited time until they can in effect
15 corrective actions. And the Staff may accept continued
16 operation and interimly basically consider the equipment to
17 be operable. But accepting that position does not confirm
18 the Staff's position that the Staff believed that the
19 equipment was qualified.

20 Q Mr. Luehman, would you take a look at Staff
21 Exhibit 18.

22 A [Witness Luehman] Yes.

23 Q Would you state for the record exactly what Staff
24 Exhibit 18 is?

25 A [Witness Luehman] Staff Exhibit 18 is a letter

1 from the Bechtel Eastern Power Corporation to Mr. W.G.
2 Hairston, III of Alabama Power Company. It is dated July
3 21, 1987, and it's a justification for continued operation.
4 Actually, the title is "EQ Solenoid Valve Splices
5 Justification for Continued Operation".

6 Q Okay. Now, in that justification for continued
7 operation or JCO as we like to refer to them, can you
8 explain -- does that show in any way that those particular
9 splices are qualified?

10 A [Witness Luehman] Well, there are mentions of the
11 word of "qualified" or "qualified tape" and
12 "qualifications", but the thrust of NRC review with regard
13 to this document would be, we would not use this as a basis
14 to make a qualification determination, rather we would look
15 at a JCO to determine whether there is enough information to
16 allow the licensee to continue to operate with that
17 condition in the plant.

18 Q Mr. Paulk, did you attend the August, 1987 Sandia
19 seminar?

20 A [Witness Paulk] Yes, sir.

21 Q We have established that you were a major
22 contributor to the inspection report and indeed the NOV and
23 the order concerning splices. Was there a lot of latest and
24 greatest discussion on splices at that seminar?

25 A [Witness Paulk]" No, sir.

1 Q Was there any material presented on splices at
2 that seminar?

3 A [Witness Paulk] There was some information, but
4 it was testing that had been performed prior to the
5 deadline. There was nothing new.

6 Q You were presented with no information on splices
7 that happened after November 30, 1985; is that correct?

8 A [Witness Paulk] As far as I can recollect, no.

9 Q Going back to the Wyle test report, Staff Exhibit
10 25, it states in the test report on Section 6.0 that they
11 tested 14 different splice constructions; do you see that?

12 A [Witness Paulk] Yes, sir.

13 Q Is there any way of telling from this report if
14 those 14 constructions are a good representative of what was
15 in the plant?

16 A [Witness Paulk] No, sir.

17 Q And why not?

18 A [Witness Paulk] They came up with 14 after
19 looking at approximately 80-82 splices out of the hundreds
20 or possibly thousands that existed in the plant, and just
21 said that we assume these 14 represent everything.

22 Q Would that be, in your view, sufficient to reject
23 the report as a qualification document for all of these
24 splices?

25 A [Witness Paulk] For all of these splices? Yes.

1 Q I have no further questions.

2 JUDGE BOLLWERK: Mr. Miller.

3 RECROSS EXAMINATION

4 BY MR. MILLER:

5 Q Mr. Paulk, I don't recall, did you and I talk on
6 the cross? I don't recall that you and I talked about
7 Section 6.0 of the Wyle test report; did we?

8 A [Witness Paulk] I don't think we talked about it.
9 You referred to the test report.

10 Q All right. But you would agree with me that the
11 questions you were just asked about the test specimen
12 descriptions were not covered in the cross examination; were
13 they?

14 A [Witness Paulk] In a way it was, sir. You asked
15 if the splice you held up was representative and if the test
16 report represented the splices at Farley.

17 Q All right. And that's what you say forms the
18 basis for the 6.0 discussion we just heard?

19 A [Witness Paulk] I believe so, sir.

20 Q You told us that you say these 14 specimens are
21 not representative of those at Plant Farley.

22 A [Witness Paulk] It is representative of 14
23 splices at Farley, not all.

24 Q You cannot say that; can you, sir?

25 A [Witness Paulk]" I cannot say that, but neither

1 can APCo demonstrate to the NRC that it encompasses
2 everything.

3 Q Listen, I know that we can't demonstrate much to
4 the NRC while you are going to be one of the inspectors, but
5 the issue is you cannot say that; can you? Weren't those
6 the words you just used?

7 A [Witness Paulk] I said that I could not say that
8 that was all.

9 Q All right.

10 [Counsel for APCo conferring off the record.]

11 BY MR. MILLER:

12 Q Mr. Luehman, you were asked questions about SECY
13 paper 85-20; is that wrong?

14 Didn't you tell us that this was the Staff
15 position?

16 A [Witness Luehman] Yes.

17 Q And can't I look at Staff Exhibit 6, an exhibit
18 that you sponsored, and understand that you thought it was
19 important enough to be included in this hearing.

20 A [Witness Luehman] For historical purpose it has
21 some importance.

22 Q Okay. But you are certainly not telling this
23 Board to ignore SECY paper 85-220; are you?

24 A [Witness Luehman] No, I would not do that.

25 Q In fact, because you introduced it as an exhibit,

1 you want them to read it and read it carefully; do you not?

2 A [Witness Luehman] I assume they will read it.

3 Q And apply to it the weight that its due, whatever
4 that weight might be?

5 A [Witness Luehman] That is correct.

6 Q And you are not denying that what I have
7 highlighted in yellow and what we have here was the Staff
8 position on or about June 18, 1985, the date which this
9 exhibit shows?

10 A [Witness Luehman] I am not denying that that was
11 the position that the Staff put forth for the Commission.

12 Q All right. I thought you told -- well, strike
13 that, and I'll ask it to you this way: Did you tell us that
14 the Commission rejected SECY paper 85-220?

15 A [Witness Luehman] I think I said -- I may have
16 used that word, but I think that I followed on to say that
17 the Commission ultimately adopted alternative language.

18 Q Okay. Now, by that you mean 86-15 and 88-07?

19 A [Witness Luehman]" Ultimately, 88-07.

20 Q We can say, can't we, that as of the deadline;
21 that is, November 30, 1985, this represented the Staff
22 position, this being Staff Exhibit 6, the SECY paper at
23 issue here?

24 A [Witness Luehman] The -- that paper did not
25 represent the Staff position. The only position that was

1 put out to the industry were the Generic Letters.

2 Q Wait a minute. Didn't this paper represent the
3 Staff position as of the date it bears?

4 A [Witness Luehman] The Staff position is -- that's
5 the Staff's proposed position. Until the Commission
6 approves it, the Staff doesn't have a position.

7 Q All right. Well, then, we can say, can't we, that
8 as of the deadline, the most current version of the Staff's
9 proposed position is what we see here at Staff Exhibit 6,
10 and exhibit you sponsored?

11 A [Witness Luehman]" I don't think that that's
12 correct.

13 Q Well, --

14 A [Witness Luehman] I think that the Generic Letter
15 was issued prior to the deadline, and Generic Letter 85-15
16 represented the Staff position.

17 Q All right, okay. And that Generic Letter was
18 explained, in whole or in part, in this SECY letter?

19 A [Witness Luehman] That's correct, but it's not
20 unusual for the Staff to adjust the basis, based on
21 discussions and Staff Requirements Memorandums from the
22 Commission, so I can't say that at the time the Generic
23 Letter was issued, that everything that's encompassed in
24 that paper, based on the discussions between the Staff and
25 the Commission, that none of that negated some of the parts

1 of this SECY paper.

2 Q Well, you can say that you don't have any other
3 piece of paper and you didn't sponsor any other exhibit on
4 that issue; can't you?

5 A [Witness Luehman] That's true.

6 [Counsel for APCo conferring off the record.]

7 MR. MILLER: No further questions.

8 JUDGE BOLLWERK: Anything further from Staff?

9 MR. BACHMANN: I have a few clarifying questions.

10 FURTHER REDIRECT EXAMINATION

11 BY MR. BACHMANN:

12 Q The words, Staff position, have been used. Would
13 it be more correct to say that that SECY paper represented
14 an internal Staff position, as opposed to one that would be
15 used in dealing with licensees?

16 A [Witness Luehman] Yes, I think that that's a
17 correct statement, because the Staff position -- we would
18 not issue an interim Staff -- an interim Staff position
19 would not go out to the licensees. They wouldn't see that.

20 Q So, the inspectors would not pay any attention to
21 the statements made in the SECY paper?

22 A [Witness Luehman] I think, by and large, I would
23 be surprised that very many inspectors even saw this -- the
24 SECY paper, and so I don't know how they could have been
25 influenced by it in any way.

1 MR. BACHMANN: I have no further questions.

2 MR. MILLER: We learned that today. Mr.
3 Merriweather not only never saw it, he disagreed with it. I
4 have nothing else.

5 JUDGE BOLLWERK: All right.

6 MR. MILLER: We're done with this panel.

7 JUDGE BOLLWERK: Questions from the Board. Judge
8 Carpenter?

9 EXAMINATION BY THE BOARD

10 JUDGE CARPENTER: Mr. Paulk, you made a point of
11 correcting your testimony to read on page 16, instead of
12 self-vulcanized, that the T-95 tape was unvulcanized or
13 (uncured) and was highly viscous at room temperature because
14 it lacked peroxides. In all innocence may I ask why you
15 tell us that? What does that tell you, in your judgment,
16 about this T-95 tape?

17 WITNESS PAULK: This was information we obtained
18 from another licensee during an inspection effort. They had
19 some testing performed on the T-95 tape. They had purchased
20 or obtained, rather, the test report that Farley had, the
21 one we've been referring to here, to try and demonstrate
22 qualification for some of their splices. It was rejected
23 for their use, so they attempted to do some additional
24 testing.

25 And this statement came out of the results of that

1 testing. The tape started melting and flowing as the
2 temperature increased.

3 JUDGE CARPENTER: Well, as I understand it, the
4 way these splices or connections were made in the Okonite
5 test report, which is Alabama Power Company Exhibit 25,
6 there was this T-95 tape and then for some reason, they
7 chose to wrap the splice with another kind of tape.

8 WITNESS PAULK: Yes, sir.

9 JUDGE CARPENTER: Could it have been that the
10 first tape had good insulating properties and the second
11 tape didn't flow at high temperature?

12 WITNESS PAULK: The T-95 tape does the flowing.
13 Okonite has told the licensees and the purchasers that the
14 T-95 tape is good only if it's encapsulated so that it will
15 not run. The No. 35 tape was a tape that they tested it
16 with in the Okonite report. It provided adequate sealing to
17 keep the T-95 encapsulated.

18 The Scotch 33 tape that Arkansas tested back in
19 1989, 1990 timeframe, shrank. As the T-95 was expanding, it
20 ripped and the T-95 leaked out.

21 JUDGE CARPENTER: What I am trying to get a feel
22 for is whether you would sort of by inspection question the
23 possibility of qualifying the splice that used the T-95
24 tape?

25 WITNESS PAULK: I didn't understand it, sir.

1 JUDGE CARPENTER: You told us that it is
2 unvulcanized, uncured tape. And I am simply saying does it
3 follow that in your opinion therefore any splice using that
4 tape probably won't be able to be qualified?

5 WITNESS PAULK: No, sir. It was qualified by the
6 Okonite NQRN-3 Report. I believe that is Staff Exhibit 21,
7 I believe, sir.

8 JUDGE BOLLWERK: I think Staff 21 and APCo 25 are
9 the same, under the same label; is that correct?

10 JUDGE CARPENTER: Backing away and trying to
11 understand that specific sentence in your testimony, I would
12 like to ask and still from all that I've read, it is not
13 clear to me whether Staff's skepticism about these V-splices
14 comes from the material or the geometry. That is sort of
15 the fundamental division. What is wrong here?

16 WITNESS PAULK: I think I understand now.

17 JUDGE CARPENTER: I get a linear splice that is
18 qualified and that material was qualified and that geometry.
19 Now, what happens when somebody makes -- and I am not sure
20 that this is a qualified splice -- but something that
21 grossly looks like it.

22 WITNESS PAULK: Using the splice you've got there,
23 sir, hold up the two loose ends and pull it apart and you
24 can look down the center.

25 JUDGE CARPENTER: Only with a knife.

1 WITNESS PAULK: Well, moisture can get down in
2 there.

3 JUDGE CARPENTER: Well, I don't know what happens
4 at the midpoint. I am very frustrated that there is no
5 drawing of the devices at issue this afternoon that we can
6 look at, because it is clear that as there is a transition
7 from the individual conductors being wrapped to their being
8 wrapped together, it depends very critically whether there
9 is overlap.

10 WITNESS PAULK: A V-type splice can be qualified
11 if it is wrapped as if it were an end-line splice. The way
12 they wrapped it there is no sealing mechanism down the
13 length of the conductors to prevent moisture intrusion or
14 seepage of the T-95 out. I can demonstrate by drawing.

15 JUDGE CARPENTER: I accept what you said, but what
16 I am trying to find out on this record is which is the case?

17 WITNESS PAULK: The case for them is that they did
18 not wrap it as if it were a single end-line or a straight
19 splice.

20 JUDGE CARPENTER: Did you discover that by looking
21 at some drawings that was in their qualification file?

22 WITNESS PAULK: They didn't have a drawing of what
23 was out there. All they had was they were either supposed
24 to use RayChem or straight connections. And they were using
25 V connection. We asked for documentation for the V and they

1 had none.

2 JUDGE CARPENTER: But you say you are of the
3 opinion -- and it is certainly a sound one -- that there
4 could be wraps that are qualified and there could be wraps
5 that are not qualified?

6 WITNESS PAULK: Yes, sir. They look different.

7 JUDGE CARPENTER: All right, now we are getting
8 there.

9 How did you come to the conclusion that the
10 particular ones at Farley were in the class that you would
11 question, as you say almost by inspection?

12 WITNESS PAULK: A V-type splice that is wrapped as
13 an end-line will be more bulbous on the end. And the two
14 lines will be sticking out further apart rather than close
15 together.

16 JUDGE CARPENTER: So that the materials
17 accumulated between the two branches?

18 WITNESS PAULK: Yes, sir, to seal the connection.

19 JUDGE CARPENTER: Now, I puzzled about this for so
20 long and the answer is so simple.

21 JUDGE MORRIS: Could I follow up on that for just
22 a moment?

23 WITNESS PAULK: Yes, sir.

24 JUDGE MORRIS: Is the device that you described
25 which could be qualified represented by one of the

1 photographs in the report and it's not?

2 WITNESS PAULK: No.

3 JUDGE MORRIS: And it's not. So, Wyle did not
4 have such a configuration?

5 WITNESS PAULK: As far as I know they didn't.

6 JUDGE CARPENTER: If I may continue with that
7 line. Therefore, why did they splice this shown in the
8 photographs of Alabama Power Company 95, this Wyle Report,
9 September 28, 1987. Why did those splices -- the second
10 photograph is not very good, the first photograph I would
11 say is reasonable -- there is some suggestion there that
12 some of them show that spacing that you described as being
13 critical might be the same diameter as the cable diameter.
14 Would you have guessed looking at those that they were of
15 the type of construction that you would expect to be
16 successful?

17 WITNESS PAULK: These are similar to the ones that
18 were destructively opened at another plant that I inspected.

19 JUDGE CARPENTER: I am looking at Page 0066949 of
20 the Wyle Report.

21 WITNESS PAULK: I do not have those numbers, sir.

22 [Document proffered to witness.]

23 WITNESS PAULK: I am looking at the wrong exhibit.

24 I am sorry.

25 These are still the same. They are similar in

1 shape and construction as ones of another site that I
2 inspected, and the licensee cut them open to determine how
3 they were wrapped and they were not wrapped in accordance
4 with how I described as an end-line splice, filling the void
5 between the cables.

6 JUDGE CARPENTER: Well given that, and given that
7 the test series doesn't necessarily include all of the
8 geometries of all the splices at Farley, still these 14
9 which don't meet your visual criteria pass the test. That
10 surprises me considering what you just testified to.

11 WITNESS PAULK: They completed a 45-hour test,
12 sir. That was supposed to have been 30 days or more, but
13 there were more problems than just geometry, I believe. The
14 reviews that we did for another site -- we did not review
15 this report --

16 JUDGE CARPENTER: I accept the limitation that
17 this was a 45-hour test.

18 With respect to developing a leakage path
19 sufficient to cause a short to ground that would disqualify
20 them, would you expect them to occur early in a local
21 environment or only towards the end of the 30 days?

22 WITNESS PAULK: Can't tell. We have seen failures
23 that have happened early and we have seen them happen just
24 at the end of the test.

25 JUDGE CARPENTER: Mr. Walker, from your

1 perspective of oversight and sort of sitting on the side,
2 would you agree about this ability to look at V-type splices
3 and tell whether they're likely to be qualifiable or not?

4 WITNESS WALKER: Well, I can accept his
5 determination. I personally have not reviewed a test report
6 with V-type splices that I concluded was, had demonstrated
7 the splice was qualified.

8 JUDGE CARPENTER: So you have not seen any
9 successful V-splices?

10 WITNESS WALKER: Taken to full term for the
11 purpose for which they were being tested for, I have not;
12 taken to full term meaning completed qualification for the
13 required time.

14 JUDGE CARPENTER: And yet as a layman these are
15 quite commonly used when there isn't an issue of
16 qualification, right?

17 WITNESS WALKER: Well, I don't know if I would --
18 I know they are used. I don't know how common they are.

19 I've seen over the years I guess I've seen other
20 type splices a lot more frequently than I have seen these.

21 JUDGE CARPENTER: So in your opinion Farley
22 perhaps has a greater abundance of those that you are
23 familiar with?

24 WITNESS WALKER: You are going to get me in
25 trouble. I don't know. I really don't know if they have

1 more than --

2 JUDGE CARPENTER: I withdraw the question. Thank
3 you very much.

4 JUDGE BOLLWERK: Judge Morris.

5 JUDGE MORRIS: Mr. Paulk or anyone else, it's not
6 clear to me exactly who performs this operation of making
7 the splice, whether it is an electrical worker or some other
8 kind of craft worker or is there some standard person that
9 does it?

10 WITNESS PAULK: I am not sure exactly how Farley
11 did it. Most places it's either an electrician or an
12 instrument and control technician making splices.

13 They divide their equipment up. I'm not sure --
14 at Farley we talked to electricians who made some splices.

15 JUDGE MORRIS: And did you question them as to
16 what kind of instructions or guidance they had in performing
17 that operation?

18 WITNESS PAULK: Yes, sir.

19 JUDGE MORRIS: And what was typical?

20 WITNESS PAULK: Typical was lay the wires back to
21 back and wrap the tape around them as if it were a -- you
22 were rolling a cigar leaf.

23 Two electricians told us that, well, we can only
24 use T-95 only in containment; we don't have to put any
25 jacketing equipment on because that's the way we were

1 trained -- we don't have to do that.

2 JUDGE MORRIS: Did the workers have pieces of
3 paper in their possession while they were doing this kind of
4 work or did they just look at a blueprint and go out and --

5 WITNESS PAULK: Skill of the crafts.

6 JUDGE MORRIS: Pardon?

7 WITNESS PAULK: They relied on skill of the craft.
8 I believe there were some notes and details available. I am
9 not sure -- you know, I was not there when the splices were
10 being made so I do not know if they had that with them and
11 that's my recollection. The detail did not address a V-type
12 splice. It was an in-line splice or a Raychem heat
13 treatable splice.

14 JUDGE MORRIS: Would this kind of operation be
15 subject to quality assurance control?

16 WITNESS PAULK: Yes, sir.

17 JUDGE MORRIS: Under the QA program or under the
18 EQ program?

19 WITNESS PAULK: Well, first of all, you've got to
20 understand that Farley is a little unique. They do not
21 really have a QA program or a QC program per se. They have
22 Peer QC.

23 I can go out and do a splice and my buddy or my
24 foreman can come over and sign for it -- a lot of room for
25 error in there. A mechanical person could come and sign for

1 it.

2 JUDGE MORRIS: What kind of guidance does he have?

3 WITNESS PAULK: Skill of the craft.

4 JUDGE MORRIS: Nothing in writing?

5 WITNESS PAULK: Nothing -- unless they had the
6 note and detail out there, but coming up after the fact you
7 can't, you wouldn't be able to tell.

8 JUDGE MORRIS: Is there any other material inside
9 this splice termination besides the wrapping?

10 WITNESS PAULK: I'm not sure if Farley uses the
11 Okonite cement or not on theirs but some licensees even go
12 so far as adding that in. That was included in the Okonite
13 NQR N-3 report as a filler on the high voltage splice.

14 Some licensees -- I did evaluations and decided
15 they didn't need the cement as long as they made the splice
16 properly.

17 JUDGE MORRIS: Would the presence of the cement
18 make a difference in the qualification?

19 WITNESS PAULK: No, sir, not in our opinion.

20 JUDGE MORRIS: Would it make a different in
21 performance in the environment of DBE?

22 WITNESS PAULK: I don't believe so, sir.

23 WITNESS LUEHMAN: Sir, the one thing that I think
24 should be added is that some of the splices at Farley were
25 not made with T-95 or T-35. There were some electrical vinyl

1 tape used in a number of the splices that was neither of
2 those kinds of tape, which were the tape I guess based on
3 the inspector's review were the types of tape that were
4 called for.

5 JUDGE MORRIS: On page 17, Mr. Merriweather, you
6 state, "The fact that unqualified V-type splices were
7 installed is a breakdown in the EQ program"

8 WITNESS MERRIWEATHER: Excuse me, could you repeat
9 that?

10 JUDGE MORRIS: Yes. Your answer, A-15, on page
11 17.

12 WITNESS MERRIWEATHER: Okay.

13 JUDGE MORRIS: "The fact that unqualified V-type
14 splices" et cetera.

15 WITNESS MERRIWEATHER: Okay, hold on just a
16 minute.

17 Yes.

18 JUDGE MORRIS: You characterize this as a
19 breakdown in the EQ program.

20 WITNESS MERRIWEATHER: Yes.

21 JUDGE MORRIS: And I guess people are sensitive to
22 a breakdown in the program as opposed to some number of
23 violations.

24 A breakdown in a program suggests a real pervasive
25 problem in the overall program. Is that what you had in

1 mind?

2 WITNESS MERRIWEATHER: What I am saying is that
3 they did not adequately address the qualifications for the
4 splicers. That's what I meant. They didn't address it as
5 part of their program.

6 JUDGE MORRIS: And that, in your mind, constituted
7 a breakdown --

8 WITNESS MERRIWEATHER: Yes.

9 JUDGE MORRIS: -- in the overall program?

10 WITNESS MERRIWEATHER: Yes, it's in one area of
11 the program there's a breakdown, yes.

12 JUDGE MORRIS: So it's not an all-pervasive
13 breakdown of the entire EQ program?

14 WITNESS MERRIWEATHER: Right. I don't think I'm
15 trying to indicate that, no.

16 JUDGE MORRIS: Okay, thank you very much.

17 WITNESS MERRIWEATHER: Okay.

18 JUDGE BOLLWERK: Anything else? All right, I
19 don't have any questions. I think at this point we may have
20 some exhibits, or you have something you want to say, Mr.
21 Miller?

22 MR. MILLER: I would like to say that we
23 appreciate the opportunity to have the Board ask our
24 witnesses those questions at the appropriate time. I would
25 like to be able to respond to that.

1 JUDGE BOLLWERK: All right. If the Board members
2 feel it's appropriate, then we'll certainly do that.

3 MR. MILLER: Thank you, sir.

4 JUDGE BOLLWERK: Do you all have some exhibits you
5 want to move into evidence?

6 MR. BACHMANN: Yes, sir. If I could have a little
7 water here before I do that.

8 JUDGE BOLLWERK: Sure. I recognize you have a
9 little reading to do here. I appreciate that.

10 MR. BACHMANN: I suppose we could excuse the panel
11 now, so they don't have to sit and listen to me read this.

12 JUDGE BOLLWERK: Why don't we go ahead and do
13 that. We don't have anything else for them.

14 You all are excused. I guess all of you are on
15 the next panel, so we'll see you tomorrow.

16 WITNESS WALKER: Weather permitting.

17 JUDGE BOLLWERK: Weather permitting. We'll have a
18 discussion about that after we're finished here, and we'll
19 go off the record.

20 MR. BACHMANN: Maybe it's appropriate to do that
21 now so they'll hear it.

22 JUDGE BOLLWERK: I don't want to do it on the
23 record, but if they want to stick around for a second, you
24 can relay the information to them.

25 [Whereupon, the panel was excused.]

1 MR. BACHMANN: The staff moves the Board to accept
2 into evidence Staff Exhibits 16 through 26. And I will
3 identify them individually.

4 Staff Exhibit 16 is Licensee Event Report LER 87-
5 012-00, with enclosure, dated July 30, 1987.

6 Staff Exhibit 17 is Inspection Reports Docket
7 Numbers 50-348 and 50-364, and Report 87-17, concerning the
8 inspection conducted from July 10 to August 18, 1987.

9 Staff Exhibit 18 is entitled EQ Solenoid Valve
10 Splices - Justification For Continued Operation, Bechtel
11 File E-91AP-13169, with enclosure, dated July 21, 1987.

12 Staff Exhibit 19 is Justification For Continued
13 Operation, Energized Solenoid Valves And Environmental
14 Qualification Scope, dated July 21, 1987.

15 Staff Exhibit 20 is entitled -- and these are
16 initials -- CECO Splice Qualification Test Information, with
17 attachments, dated January 9, 1987.

18 Staff Exhibit 21 is Nuclear Environmental
19 Qualification Report For Okoguard Insulated Cables T-95, and
20 Number 35 Splicing Tapes, Okonight Report NQRN-3.

21 Staff Exhibit 22 is entitled Environmental
22 Qualification Meeting Of September 24, 1987, it's a letter
23 from J.N. Grace -- excuse me, a letter to J.N. Grace from
24 R.P. McDonald, dated September 30, 1987.

25 Staff Exhibit 23 is NUREG 0588 REV 1, which is

1 entitled Interim Staff Position On Environmental
2 Qualification For Safety-Related Electrical Equipment.

3 Staff Exhibit 24 is IE Bulletin 79-01B
4 Environmental Qualification Of Class 1-E Equipment, and
5 parenthetically we have for identification that the DOR
6 Guidelines is enclosure 4, and it's dated January 14, 1980.

7 Staff Exhibit 25, Nuclear Environmental
8 Qualification Test Report From Wyle Laboratories, dated
9 October, 1987, concerning qualification test program on
10 splices.

11 Staff Exhibit 26 is Qualification Of Tape Splices
12 For Use In Instrument Circuits Subject To Harsh
13 Environments, Waterford Steam Electric Station Unit 3, with
14 enclosure, it's a memorandum to Samuel Collins and Leonard
15 Callan from Gary Holahan, dated May 16, 1990.

16 Staff moves that these be admitted into evidence.

17 JUDGE BOLLWERK: Any objections?

18 MR. MILLER: No objections.

19 JUDGE BOLLWERK: Staff Exhibits 16 through 26 are
20 received into evidence.

21 [Staff Exhibits 16 through 26
22 were received into evidence.]

23 MR. MILLER: Alabama Power Company moves the
24 admission of Alabama Power Company Exhibits 93, 94, 95,
25 which have previously been identified for the record.

1 JUDGE BOLLWERK: Any objection?

2 MR. BACHMANN: No objection.

3 JUDGE BOLLWERK: Alabama Power Company Exhibit 93,
4 being previously received into evidence -- Alabama Power
5 Company Exhibits 94 and 95 are now received into evidence.

6 [Alabama Power Company Exhibits
7 94 and 95 were received into
8 evidence.]

9 JUDGE BOLLWERK: Is there anything else that
10 counsel would like to talk about on the record today?

11 No? All right. Why don't we consider ourselves
12 adjourned until 9:00 tomorrow morning.

13 [Whereupon, at 4:20 p.m. the hearing was recessed,
14 to reconvene the following day, Thursday, February 13, 1992
15 at 9:00 a.m.]

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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

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.

Lynn Estep

Official Reporter
Ann Riley & Associates, Ltd.