

ORIGINAL

OFFICIAL TRANSCRIPT OF PROCEEDINGS

Agency: U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board

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

Docket No. 50-348-Civp;
50-364-Civp;
ALSBP No. 91-626-02-Civp

LOCATION: Bethesda, Maryland

DATE: Monday, May 18, 1992

PAGES: 1320 - 1583

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1612 K St. N.W., Suite 300

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1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION

3 ***

4 ATOMIC SAFETY AND LICENSING BOARD

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6 In the Matter of: : Docket Nos. 50-348-CivP,
7 Alabama Power Company : 50-364-CivP
8 (Joseph M. Farley Nuclear Plant, : ASLBP No. 91-626-02-CivP
9 Units 1 and 2) :

10 - - - - -x

11 Nuclear Regulatory Commission
12 Fifth Floor Hearing Room
13 4350 East-West Highway
14 Bethesda, Maryland

15
16 Monday, May 18, 1992
17

18 The above-entitled matter came on for further
19 hearing, pursuant to notice, at 9:00 o'clock a.m., before:

- 20 The Honorable G. Paul Bollwerk, Chairman
21 The Honorable James H. Carpenter, Member
22 The Honorable Peter A. Morris, Member

23 Atomic Safety and Licensing Board, U.S. Nuclear Regulatory
24 Commission, Washington, D.C. 20555
25

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1 APPEARANCES:

2

3 ON BEHALF OF ALABAMA POWER COMPANY:

4

5 James H. Miller, III, Esquire

6 James Hancock, Esquire

7 Balch & Bingham

8 P.O. Box 306

9 Birmingham, Alabama 35201

10

11 David Repka, Esquire

12 Winston & Strauss

13 1400 L Street, N.W.

14 Washington, D.C. 20005

15

16 ON BEHALF OF THE NRC STAFF:

17

18 Richard G. Bachmann, Esquire

19 Eugene Holler, Esquire

20 Office of the General Counsel

21 U.S. Nuclear Regulatory Commission

22 Washington, D.C. 20555

23

24

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1 I N D E X

2	Witnesses	Direct	Cross	Redirect	Recross
3					
4	JAMES G. LUEHMAN	1333			
5	PAUL C. SHEMANSKI,	1333			
6					
7	DAVID HUBER JONES,	1337	1341		
8	BERNARD D. MCKINNEY	1337	1341		
9	VINCENT S. NOJANAN,	1337	1341		
10	ULDIS POTAPOVS		1474		
11			1481		
12	BOARD EXAMINATION				1452
13					1552

14

15

E X H I B I T S

16	Exhibit	Description	Identified	Received
17				
18	Staff 62 - 81	Staff's letter dated		
19		May 11, 1992, be bound		
20		into the record.	1329	1329
21				
22	APCo 112 - 123,	as corrected by Mr. Miller	1330	1330

23

24

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E X H I B I T S [Continued]

2	Exhibit	Description	Identified Received	
3				
4	Staff 83	Subject: Joseph M. Farley Nuclear Plant, Composite Audit Report No. 83/19, SAER File A35.94.1, dated December 2nd, 1983, to Mr. McDonald and Mr. W.G. Hairston.	1511	1582
10				
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P R O C E E D I N G S

[9:00 a.m.]

1
2
3 JUDGE BOLLWERK: Good morning, everyone. We are
4 here today to begin the second and final phase of the
5 evidentiary hearing in this Nuclear Regulatory Commission
6 Adjudicatory Proceeding convened the request of Alabama
7 Power Company. In this proceeding Alabama Power Company
8 challenges the validity of a \$450,000 civil penalty imposed
9 upon Alabama Power by the NRC Staff.

10 That civil penalty was levied for the utility's
11 alleged non-compliance with Section 50.49 of Title 10 of the
12 Code of Federal Regulations at the two reactor units of
13 Alabama Power's Farley Nuclear Plant.

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

19 During February of this year, the Board conducted
20 eight days of evidentiary hearings in this proceeding in
21 which the parties presented direct testimony and cross
22 examined opposing witnesses. The second phase of the
23 hearing will encompass the parties' rebuttal and surrebuttal
24 presentations.

25 Since it's been some time since we have been

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1 together, I thought I would again introduce members of the
2 Atomic Safety and Licensing Board.

3 To my left is Dr. James Carpenter. Dr. Carpenter,
4 who holds his doctorate in Chemistry, serves as an
5 environmental scientist on a full-time basis with the Atomic
6 Safety and Licensing Board.

7 On my right is Dr. Peter Morris. Dr. Morris, who
8 is a physicist, formerly was full-time member of the
9 licensing board panel and now serves in a part-time
10 capacity.

11 I am Paul Bollwerk, and I am lawyer and a full-
12 time member of the licensing board panel and I serve as the
13 Chairman of this Board.

14 At this point I would also ask that counsel for
15 the parties introduce themselves for the record, please.

16 MR. HOLLER: Thank you, Judge Bollwerk. My name
17 is Eugene Holler, counsel for NRC Staff, and to my left is
18 Richard Bachmann, co-counsel for NRC Staff.

19 MR. MILLER: I am Jim Miller, with the law firm of
20 Balch & Bingham, representing Alabama Power Company. On my
21 right is Dave Repka, with the law firm of Winston & Strawn,
22 representing Alabama Power Company; and Jim Hancock is here,
23 also with the firm of Balch & Bingham, representing Alabama
24 Power Company.

25 JUDGE BOLLWERK: Thank you very much.

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1 Before we begin with the rebuttal/surrebuttal
2 phase of the proceeding, because we intend to utilize
3 procedures that are somewhat unusual, I think it is
4 appropriate that the record contain some explanation about
5 how we will be proceeding.

6 In CLI 81-8, 13 NRC 452, 1981, which is a
7 Commission Policy Statement on the conduct of NRC
8 adjudicatory proceedings, on page 457 the Commissio
9 endorses a practice for rebuttal and surrebuttal testimony
10 whereby opposing witnesses are impaneled at the same time so
11 that each witness will be able to comment immediately on the
12 opposing witness's answer to a question.

13 After consultation with the parties, we have
14 decided to employ this technique for the rebuttal/
15 surrebuttal phase of this proceeding. During a telephone
16 conference on April 30th, the Board and the parties
17 discussed various guidelines to govern the conduct of
18 counsel and the witnesses in utilizing this procedure.
19 Suffice it to say that the Board anticipates that counsel
20 have informed their witnesses of those guidelines so that
21 everyone will be able to derive the maximum benefit from
22 what we anticipate will be a very useful tool in bringing
23 into the sharpest possible focus the complex technical
24 issues that permeate this case.

25 Before we impanel the witnesses however, we would

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1 like to begin with the identification and admission of the
2 additional exhibits that the parties have utilized to
3 support their rebuttal and surrebuttal testimony.

4 Previously we requested that both parties prepare
5 a list of those exhibits that we would have bound into the
6 record to serve as identifying those exhibits. At this
7 point, why don't we start with the Staff list

8 MR. HOLLER: May it please the Board, by letter
9 dated May 11th, 1992, the Staff prepared a list of those new
10 exhibits that were introduced in the NRC Staff's rebuttal
11 testimony.

12 Let me just clarify something, Judge Bollwerk.

13 JUDGE BOLLWERK: Yes.

14 MR. HOLLER: If I understand it, now we will
15 provide three copies of this to the Court Reporter?

16 JUDGE BOLLWERK: That's correct, and we'll have it
17 bound into the record.

18 MR. HOLLER: If I may, we will obtain the
19 additional copies now but the NRC --

20 JUDGE BOLLWERK: You may be short because I have
21 some extras. I anticipated -- I didn't know if there was
22 going to be a problem.

23 I have got three here so you can use as many as
24 you need.

25 MR. HOLLER: Thanks. In order to avoid confusion,

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1 too, shall we mark these as exhibits or merely identify them
2 by the cover letter?

3 JUDGE BOLLWERK: We'll just identify them as being
4 listed on that list and then we'll bind the list into the
5 record so we don't have to read them all.

6 MR. HOLLER: At this time, then, the Staff would
7 move that Staff Exhibits Nos. 62 through 81 as identified on
8 the Staff's letter dated May 11, 1992, be bound into the
9 record.

10 JUDGE BOLLWERK: Any objection?

11 MR. MILLER: No objection.

12 JUDGE BOLLWERK: All right, then Staff Exhibits -
13 -62 is the first one?

14 MR. HOLLER: Yes, sir.

15 JUDGE BOLLWERK: -- through 81 will be identified
16 as per the list that is going to be bound into the
17 adjudicatory record.

18 THE REPORTER: And are they received?

19 JUDGE BOLLWERK: And -- well, one second here. If
20 there are no changes to that list, if the list is correct as
21 you have provided it to us?

22 MR. HOLLER: That's correct, sir.

23 JUDGE BOLLWERK: Okay. At this point then, if
24 there is no objection from Alabama Power Company we will
25 move those exhibits into the record.

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1 MR. MILLER: No objection.

2 JUDGE BOLIWERK: All right, then, per the list
3 that's being provided for the record, Staff Exhibits 62
4 through 81 are received into evidence.

5 [Staff Exhibits 62 through 81,
6 inclusive, were marked for
7 identification and received into
8 evidence.]

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New Exhibits Introduced with
the NRC Staff's Rebuttal Testimony

Staff #

- 62 **GENERIC LETTER 84-24**
Certification of Compliance to 10 C.F.R.,
EQ of Electric Equipment Important to
Safety for Nuclear Power Plants
Dated: December 27, 1984
- 63 **INSPECTION NO. 50-317/84-27**
Docket No. 50-317 - Calvert Cliffs
ATTN: A.E. Lundvall, Jr.
Dated: January 29, 1985
- 64 **INSPECTION NO. 50-285/85-09**
Docket No. 50-285 - Fort Calhoun
ATTN: R.L. Andrews
Dated: July 26, 1985
- 65 **INSPECTION NO. 50-302/85-09**
Docket No. 50-302 - Crystal River
ATTN: Walter S. Wilgus
Dated: June 10, 1985
- 66 **INSPECTION NO. 50-266/85013;**
50-31/85013
Docket No. 50-266; 50-301 - Point Beach
ATTN: C.W. Fay
Dated: November 1, 1985
- 67 **Ltr. to: M. Spinelli**
From: C.J. Crane
Subject: MLEA Project 90009
 Thermal Behavior of T-95
 & Scotch 33
Serial no. 90-159
Dated: July 12, 1990
- 68 **MEMO. TO: FILE FROM: J.A. MURPHY**
Subj: ANO Tape Splice Test, Info.
 Received from Okonite Regarding
 Thermal Properties of Okonite
 T-95 Splicing Tape
Dated: June 19, 1990
- 69 **SYSTEM COMPONENT EVALUATION WORKSHEET**
Farley Nuclear Plant
Component: Terminal Block
Dated: 6/16/87

- 70 SYSTEM COMPONENT EVALUATION WORKSHEET
Farley Nuclear Plant
Component: Electrical Penetration
Dated: 6/16/87
- 71 EQ INSPECTION TRACKING SHEET
Farley Nuclear Plant EQ Ques. #026
Inspector: D. Brosseau
Component: States Term. Block
Dated: 11/17/87
- 72 EQ INSPECTION TRACKING SHEET
Farley Nuclear Plant EQ Ques. #027
Inspector: D. Brosseau
Component: States Term. Block
Dated: 11/17/87
- 73 NRC NUREG/CR-3418
SAND83-1617 RV
Title: Screening Tests of Terminal
Block Performance in a Simulated
LOCA Environment
Dated: August 1984
- 74 NRC NUREG/CR-3691
SAND84-0422 RV
Title: An Assessment of Terminal
Blocks in the Nuclear Power
Industry
Dated: September 1984
- 75 TABLE 1: REGULATORY GUIDE VARIABLE
CROSS REFERENCE TO VARIABLE NO.
Type A - Type E Variables
Tables 1-12
Dated: None available
- 76 IEEE TRANSACTIONS ON NUCLEAR SCIENCE
Vol. 33, No. 1
Westinghouse Setpoint Methodology for
Control and Protection Systems
C.R. Tuley R.B. Miller
Dated: February 1986
- 77 IE INFORMATION NOTICE 85-39
Auditability of Electrical Equipment
Qualification Records at Licensees'
Facilities
Dated: May 22, 1985

- 78 **INSTALLATION & MAINTENANCE MANUAL**
Series 800/1000/2000/3000
Axivane Fans Adjustable Pitch
Direct Connected Single and Two
Stage Axial Flow Fans
NP 408
- 79 **LUBRICATION GUIDE**
EPRI NP-4916
Final Report (2 pages)
Dated: January 1987
- 80 **IEEE STD 382-1980**
IEEE Standard for Qualification of
Safety-Related Valve Actuators
(Rev. of IEEE Std 382-1972)
Dated: Copyright 1980
- 81 **IE INFORMATION NOTICE 79-03**
Limitorque Valve Geared Limit
Switch Lubricant
Dated: February 9, 1979

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(Rev. of IEEE Std 382-1972)
Dated: Copyright 1980
- 81 **IE INFORMATION NOTICE 79-C2**
Limitorque Valve Geared Limit
Switch Lubricant
Dated: February 9, 1979

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- 81 **IE INFORMATION NOTICE 79-03**
Limitorque Valve Geared Limit
Switch Lubricant
Dated: February 9, 1979

1 JUDGE BOLLWERK: Mr. Miller, we would like to do
2 the same thing with your list.

3 MR. MILLER: Yes, sir.

4 On behalf of the licensee, we have identified
5 Exhibits 112 through 123, inclusive, and have a list, three
6 copies of which we will make available to the court
7 reporter, describing each of those exhibits.

8 We do have one correction. On page 2, under the
9 heading "Terminal Blocks," that should read Limitorque T-
10 Drains, and we have made a pencil correction on the list we
11 have provided to the court reporter, and at this time, we
12 move the admission of the list describing our additional
13 exhibits to the surrebuttal testimony.

14 JUDGE BOLLWERK: Any objection from the staff?

15 MR. HOLLER: No objections here.

16 JUDGE BOLLWERK: Then the Alabama Power list of
17 exhibits marked from 112 through 123, as corrected by Mr.
18 Miller, will be identified for the record, that list will be
19 bound into the record, and those exhibits will be received
20 into evidence.

21 [APCo Exhibit Nos. 112 through 123
22 were marked for identification and
23 received in evidence.]

24 [The above-referenced list of exhibits follows.]

25

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

LIST OF EXHIBITS TO
ALABAMA POWER COMPANY SURRENTTAL TESTIMONY

ENFORCEMENT

112. 01/07/83 correspondence from APCO to NRC requesting that nine completed license conditions be closed out.

V-TYPE TAPE SPLICES

113. 12/28/82 internal NRC correspondence from Thomas M. Novak to William V. Johnston transmitting Supplement to Safety Evaluation Report for Shoreham Nuclear Power Station, Unit 1.
114. 05/03/91 correspondence from NRC to Connecticut Yankee Atomic Power Company, transmitting Electrical Distribution System Functional Inspection (EDSFI) of Haddam Neck, Inspection Report No. 50-213/91-80 and Appendix A, Notice of Violation.
115. 11/21/89 telephone contact report; call from Jim Gleason, Wyle, to Mark Jacobus, Chuck Paulk, and Harold Walker, all of NRC.

5-TO-1 SPLICES

116. Westinghouse Electric Corporation Drawing No. 1366C51, Electric Heater-Wire Bill and Diagram.
117. 11/09/87 Farley inspector notes.

CHICO A/RAYCHEM

118. 10/08/81 Raychem installation instructions for nuclear cable breakout kits.
119. U. S. Department of Labor, Occupational Safety and Health Administration, Material Safety Data Sheet filed for Chico A Sealing Compound, indicating hazardous components; prepared 10/86, last revised 1/91.
120. 02/10/92 Information Notice 92-12: Effects of Cable Leakage Currents on Instrument Settings and Indications.

LIMITORQUE - T. DRAIN'S
TERMINAL BLOCKS

121. Two pages missing from all copies of Limitorque Report 600198: Limitorque Valve Control Test Report (original document introduced as APCO Exhibit 68 and Staff Exhibit 52, with the Staff document actually received into evidence, at Tr. 643).
122. 10/13/80 correspondence from Limitorque Corporation to Bechtel Power Corporation regarding qualification standards for various actuators.

GEMS LEVEL TRANSMITTERS

No exhibits

PREMIUM RB GREASE

123. Joy Nuclear Containment Axivane Fan Operators Handbook; dates within the handbook range from January 1973 to February 1975.

James H. Miller, III

James H. Miller, III

David A. Repka

David A. Repka

COUNSEL FOR ALABAMA POWER COMPANY

1 JUDGE BOLLWERK: Let me raise one other question
2 about exhibits.

3 We had requested, if it were possible, examples of
4 the terminal blocks that are at issue here. Is that a
5 possibility?

6 MR. MILLER: Yes, sir. We have those with us.
7 Would the board like to have them now?

8 JUDGE BOLLWERK: I guess my question is, last time
9 when we'd talked about some of the physical exhibits, some
10 explanation had been provided the board. Is that necessary
11 at this point, or is that useful?

12 MR. MILLER: I'm not sure I can answer that
13 question. Maybe the thing to do is to show the staff and
14 their witnesses the terminal blocks that we have with us,
15 and then we can make a determination whether some additional
16 explanation is required.

17 MR. HOLLER: If I may add, it may be more useful
18 if we were to do that when the terminal block panel is
19 seated, since the experts will be here and will provide an
20 opportunity to either comment or answer comments on the
21 particular terminal blocks.

22 MR. MILLER: Judge, why don't we undertake to
23 show, then, these terminal blocks at a break, and then, if
24 it turns out there are some additional comments or
25 explanatory remarks, we'll make them at the time that they

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1 are proffered into evidence.

2 JUDGE BOLLWERK: Fine. That's acceptable to the
3 board, then.

4 By the way, has there been provided to our court
5 clerk all the copies of the exhibits we have just admitted?
6 We need to get those to her so she can start marking them.

7 Why don't we go off the record for a second so
8 that can be done?

9 [Discussion held off the record.]

10 JUDGE BOLLWERK: I think, at this point, we're
11 ready to impanel the staff and the APCo witness panels on
12 the topic of enforcement. All these witnesses have been
13 previously sworn and remain under oath.

14 Why don't we start with the staff's surrebuttal
15 testimony, have that moved and bound into the record? Then
16 we'll seat that panel. Then we'll do the APCo surrebuttal
17 testimony on that issue, have that bound into the record,
18 and then we can begin the cross-examination.

19 MR. HOLLER: Yes, sir.

20 One question: The board had asked that Mr.
21 Potapovs also participate in this phase of the hearing
22 again. Shall we have him impaneled now and identified, even
23 though he is not supporting this testimony as such?

24 JUDGE BOLLWERK: Right. I think I would prefer to
25 wait until the board has questions, and let's have him

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1 seated at that point.

2 MR. HOLLER: Yes, sir.

3 JUDGE BOLLWERK: He does not support -- he is not
4 supporting this portion of the testimony we're going to be
5 conducting cross-examination on. So, let's wait until the
6 board has questions for him.

7 MR. HOLLER: Yes, sir.

8 At this time, then, I'd ask Mr. Paul Shemanski and
9 Mr. James Luehman to please take a position -- I believe the
10 NRC staff will use the tables here. Is that correct?

11 JUDGE BOLLWERK: Whatever you all have agreed to,
12 that's fine with us.

13 Whereupon,

14 JAMES G. LUEHMAN

15 and

16 PAUL C. SHEMANSKI,

17 called as a panel for rebuttal testimony by counsel for the
18 NRC staff and having been previously duly sworn, were
19 examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. HOLLER:

22 Q Beginning with Mr. Luehman, would you please state
23 your name and current position with the NRC?

24 A [Witness Luehman] My name is James G. Luehman.
25 I'm a Senior Enforcement Specialist with the Office of

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1 Enforcement.

2 A [Witness Shemanski] My name is Paul Shemanski.
3 I'm a Senior Electrical Engineer with the License Renewal
4 Project Directorate.

5 Q And do you each have before you a document that's
6 titled "Rebuttal Testimony of James G. Luehman and Paul C.
7 Shemanski on Behalf of the NRC Staff Concerning
8 Enforcement"?

9 A [Witness Shemanski] Yes, I do.

10 A [Witness Luehman] We have a copy.

11 Q I'll ask each of you if you have participated in
12 the preparation of the document in front of you.

13 A [Witness Luehman] Yes, I have.

14 A [Witness Shemanski] Yes, I have.

15 Q Are there any corrections to the document?

16 A [Witness Shemanski] I have no corrections.

17 Q Mr. Luehman, do you have any corrections to the
18 document?

19 A [Witness Luehman] Yes. I -- I have a -- a couple
20 of corrections. Specifically -- I'm trying to locate them.

21 Specifically, on page 22, answer to question 12,
22 about the fourth line from the bottom, the sentence --
23 starting in the middle of the sentence, it says ". . . kept
24 abreast of technical and regulatory developments and was
25 aware," rather than -- I would -- the correction would be to

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1 strike "was" and put "should have been aware of this and
2 other pre-deadline inspections."

3 The next correction would be on page 27, third
4 line from the bottom. The sentence -- the -- the line
5 begins, "Bechtel" and then "(the company that was APCo's EQ
6 consultant . . .)", and then I would insert in the paren
7 "which had a representative at the Calvert Cliffs
8 inspection."

9 And then, finally, on page 30, the first line of
10 the answer to question 17 begins, "Originally." I would
11 strike "Originally" and just begin the sentence, "The NRC
12 staff intended to inspect . . ."

13 MR. HOLLER: For the record, I will note that the
14 corrections Mr. Luehman has given have been marked on the
15 copies of the testimony provided to the court reporter.

16 JUDGE BOLLWERK: All right.

17 BY MR. HOLLER:

18 Q Mr. Shemanski, do you have any corrections to the
19 testimony?

20 A [Witness Shemanski] No, I don't have any
21 corrections.

22 Q Then I will ask you each individually, is the
23 testimony, your rebuttal testimony, true and correct to the
24 best of your knowledge and belief?

25 A [Witness Shemanski] Yes, it is.

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1 A [Witness Luehman] Yes, it is.

2 MR. HOLLER: At this time, I move that the
3 rebuttal testimony of James G. Luehman and Paul C. Shemanski
4 on behalf of the NRC staff concerning enforcement be bound
5 into the record as if read.

6 JUDGE BOLLWERK: Any objection?

7 MR. MILLER: No objection.

8 JUDGE BOLLWERK: Then, the testimony of James G.
9 Luehman and Paul C. Shema i on behalf of the NRC staff
10 concerning enforcement, the rebuttal testimony, will be
11 bound into the record.

12 [The rebuttal testimony of James G. Luehman and
13 Paul C. Shemanski on behalf of the NRC staff concerning
14 enforcement 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)

REBUTTAL TESTIMONY OF JAMES G. LUEHMAN AND
PAUL C. SHEMANSKI ON BEHALF OF THE NRC
STAFF CONCERNING ENFORCEMENT

- Q1. State your full name and current position with the NRC.
- A. James G. Luehman, Senior Enforcement Specialist, Office of Enforcement.
Paul C. Shemanski, Senior Electrical Engineer, License Renewal Project
Directorate, Office of Nuclear Reactor Regulation.
- Q2. Have you prepared a copy of your Professional Qualifications?
- A. (All) A copy of each of our Professional Qualifications has been admitted
previously into evidence as Staff Exh. 1.
- Q3. What is the purpose of your testimony?
- A. (All) The purpose of our testimony is to rebut portions of the Alabama Power
Company (APCo) testimony regarding the violations of the NRC requirements for
environmental qualification of electrical equipment important to safety for nuclear

power plants which led to the civil penalty that is the subject of this hearing. The APCo testimony which is the subject of this rebuttal testimony is contained in Direct Testimony of David Huber Jones and Bernard Douglas McKinney, Jr. on Behalf of Alabama Power Company (ff. Tr. 897) (hereafter J/McK), Direct Testimony of William B. Shipman on Behalf of Alabama Power Company (ff. Tr. 953), Direct Testimony of Jesse E. Love, James E. Sundergill and David H. Jones on Behalf of Alabama Power Company (ff. Tr. 978) (hereafter L/S/J), Direct Testimony of Vincent S. Noonan on Behalf of Alabama Power Company (ff. Tr. 1225) (hereafter Noonan), and Direct Testimony of Philip A. DiBenedetto on Behalf of Alabama Power Company (ff. Tr. 1227) (hereafter DiBenedetto).

DECEMBER 1984 SER

- Q4. Messrs. Jones and McKinney have testified that with the issuance of the December 13, 1984 Safety Evaluation Report (SER), Alabama Power Company understood that it complied with all of 10 C.F.R. § 50.49. In your opinion, did the December 13, 1984 SER convey to APCo NRC Staff acceptance of APCo compliance with all of the requirements of 10 C.F.R. § 50.49? (J/McK Q&A 17, pp.33-35)
- A. (Shemanski) No. To begin with, I am very familiar with the final environmental qualification SERs that were sent to each licensee for the 71 operating reactors.

I attended each of the one-day meetings with the 52 licensees of the 71 operating reactors in 1984 to discuss the licensee's proposed method of resolution of the environmental qualification deficiencies identified in the 1982-83 SERs. I had responsibility for drafting each of 71 SERs issued in 1984-85.

The December 13, 1984 SER (APCo Exh. 21) for the Farley facility does not state what APCo attempts to attribute to the document. Messrs. Jones and McKinney, and other APCo witnesses, have taken the statement, "Alabama Power's [sic] electrical equipment environmental qualification program complies with the requirements of 10 C.F.R. § 50.49" in the Conclusions section on page 9 of the SER out of context and assert that the statement meant that APCo was in compliance with the requirements to 1) identify equipment required to be identified, 2) qualify that equipment, and 3) document the qualification of the equipment.

That interpretation simply is not reasonable given the wording of the entire SER and the information promulgated by the Commission at the time licensees were meeting with the NRC Staff to resolve environmental qualification issues. The Conclusions section on page 3 of the SER states that the conclusions are based on the SER Evaluation which, in turn, is based on the NRC Staff's audit review of 1) the licensee's proposed resolutions of the environmental qualification deficiencies identified in the January 31, 1983 SER and January 14, 1983 FRC

TER, 2) compliance with the requirements of 10 C.F.R. § 50.49, and 3) justification continued operation (JCO) for those equipment items for which the environmental qualification is not yet completed. Each of these three basis for the NRC Staff's evaluation is discussed in detail in the SER. The "Compliance With 10 C.F.R. 50.49" section begins on page 5, discusses the "approach" used by APCo to identify equipment within the scope of paragraph (b)(1) of 10 C.F.R. § 50.49, the "method" used to identify equipment within the scope of paragraph (b)(2), and the "approach" to identify equipment within the scope of paragraph (b)(3). The findings of the NRC Staff regarding compliance with 10 C.F.R. § 50.49, as stated on pages 6 and 8 of the SER were that the NRC Staff found APCo's "approach" and the "methodology" being used to identify items within the scope of 10 C.F.R. § 50.49 acceptable. The NRC Staff was not approving specific items on the Farley Master List nor can the SER reasonably be read to draw such a conclusion.

The "Proposed Resolutions of Identified Deficiencies" on page 4 of the SER, (APCo Exh. 21) describes how the NRC Staff discussed proposed resolutions for equipment qualification deficiencies identified in the January 31, 1983 SER that were discussed with APCo during the January 11, 1984 meeting with the licensee. The section clearly states that the NRC Staff has not reviewed additional analyses or documentation and that "[t]he licensee's equipment

environmental files will be audited by the Staff during follow-up inspections to be performed by Region II, with assistance from IE Headquarters and NRR staff as necessary." The section goes on to state that "the primary objective of the file audit will be to verify that they contain the appropriate analyses and other necessary documentation to support the licensee's conclusion that the equipment is qualified." The section concludes on page 5 with the NRC Staff finding that the licensee's approach for resolving the identified environmental qualification deficiencies was acceptable.

The "Justification for Continued Operation" section on page 8 of the SER (APCo Exh. 21) simply restates APCo's own statements to the NRC in APCo's letters of March 14 and May 13, 1983, that it was the judgment of Alabama Power Company that all electrical equipment important to safety within the scope of 10 C.F.R. § 50.49 at Farley Units 1 and 2 was environmentally qualified and Justifications for Continued Operation were not necessary.

The interpretation Messrs. Jones and McKinney, and other APCo witnesses, have given the statement, "Alabama Power's [sic] electrical equipment environmental qualification program complies with the requirements of 10 C.F.R. § 50.49," also is not reasonable given the nature of the one-day meetings the NRC Staff had with each licensee. During the one-day meeting, the format was generally the same. Although I don't recall the specifics in every detail, I do

recall the format of each meeting. The intent of the meeting was to go over each and every deficiency, identified by the Franklin T&ER, and from the licensee, hear how these deficiencies were going to be resolved, either through testing, additional analysis, or replacement. The NRC Staff, during the meeting, gave guidance to the licensee as to whether or not the licensee's proposed method of resolving these deficiencies would be acceptable.

Again, since the meetings took place approximately seven years ago, it is difficult to recall any specific details, but I do recall that we also spent time with the licensee about the verification inspections that were planned. We tried to give the licensee some advance knowledge as to what we would be looking for. During the meetings with the licensees, we discussed the two-phase approach to the inspection itself where we would devote two to three days reviewing documentation including test reports analyses, that type of information, and then it would be followed up by a plant walkdown, a physical inspection of the equipment selected from the master list to be audited or inspected. We also told the licensees we would be looking to ensure that the orientation of the equipment, the way it is physically installed in the plant, matches the way it was tested in the autoclave, the EQ test chamber, and that there was a correlation between the test report and the physical installation of the component. While a component could be qualified as tested, its qualification status could be voided simply through

installation errors. We alerted the licensees that we would be looking for these types of things and of our expectations during the verification inspections.

In summary, when the NRC Staff wrote the December 13, 1984 SER (APCo Exh. 21), we made a finding that APCo's methodology was sufficient to substantiate compliance with 10 C.F.R. § 50.49. The NRC Staff had not reviewed in detail any of APCo's or any other licensee's documentation at the time of the late 1983 and early 1984 meetings with the licensees. The final environmental qualification SER issued to each licensee was based on the Franklin TER, the meeting with the licensee, and the submittal each licensee made after the licensee had met with the NRC Staff. Throughout this process, the NRC Staff regarded the independent review it would conduct during the follow-up inspection as the final verification of a licensee's compliance with the requirements of 10 C.F.R. § 50.49 and the SER clearly stated this process.

- Q5. What was the rationale for the NRC Staff stating that continued operation will not present undue risk to the public health and safety in the Conclusions of the December 13, 1984 SER, and the final environmental qualification SERs issued to other licensees in the 1984-85 time frame?
- A. (Shemanski) Pending independent NRC Staff review, we relied upon the assertions and analysis by the licensees that their equipment was qualified or that

a Justification for Continued Operation (JCO) assured that the plant could go to and maintain a safe shutdown in the event of a design basis accident. For those licensees that submitted JCOs, we reviewed the JCO for deficiencies requiring shutdown. Alabama Power Company asserted that all of their equipment was qualified and they did not submit any JCOs. The testimony of APCo's own witness, Mr. Noonan, corroborates the NRC Staff practice of relying on licensees' assertions when he testifies in response to a question from Judge Bollwerk, (Tr. 1293)

JUDGE BOLLWERK: But again, given the recognition that it's the licensee's responsibility for safe operation, would the staff, consistent with that idea, make some kind of a broad safety finding?

WITNESS NOONAN: Yes, sir. The staff was always under direction to make a safety finding, but only on the basis that the utility made the statement. That was historically, in every SER that I was involved with when I was at the staff, it was always our contention that the utility has to say first it's okay to operate. And then we would come in and concur with that position.

And every SER that I was ever involved with, that's exactly the basis for the SER. We wrote, early on we wrote something we called EERs, which were engineering evaluation reports. And the reason we called those EERs was, after the final review of the document -- it started out to be a safety evaluation, it started out that way.

After we got done, if we found that the utilities could not make the statement first that the plant was safe to operate because of the lack of data, we withdrew our safety conclusions, and issued an engineering evaluation.

Basically, it said: Here's where you stand. Now come back and fill in the holes. So if the utility can't draw the

conclusion first, then as a staff member in 1984, and before that, I can't draw a conclusion either.

Q6. Was the Commission aware of this policy of allowing plants to operate while licensees' assertions of environmental qualification were still undergoing NRC Staff review?

A. (Shemanski) Yes they were. In fact, the Commission explained their rationale for relying on licensees' assertions pending independent NRC Staff review in a Commission Policy Statement on environmental qualification published in the *Federal Register* on March 7, 1984. 49 Fed. Reg. 8422, March 7, 1984 (Staff Exh. 61). The policy statement explained the Commission's response to a court decision regarding a Commission rule which removed the June 30, 1982 deadline for the completion of environmental qualification from certain power plant licenses, and described the actions the NRC was taking regarding environmental qualification. Section IV, Current Commission Policy, stated the technical and policy reasons why the Commission relied on licensees' assertions regarding environmental qualification pending independent NRC Staff review. Those reasons included the determination the NRC had made during the licensing process that a licensee was technically capable of operating its plant safely.

Q7. APCo asserts that the NRC Staff "approved" the Farley Master List and documentation submitted in support of the environmental qualification of electrical equipment at Farley in the earlier SERs issued by the NRC Staff. Did these early SERs reflect review and approval by the NRC Staff of detailed environmental qualification documentation and master lists? (J/McK Q&A4, pp.3-6; Tr. 907, and Tr.1055)

A. (Shemanski) No they did not. It may be helpful here to go back to the same policy statement I referred to in the answer to question 6, above. That policy statement, 49 Fed. Reg. 8422, March 7, 1984 (Staff Exh. 61), also outlined the background of the environmental qualification rule, including licensees' submittals in response to IE Bulletins 79-01 and 79-01B. The Background section describes the 1981 and the 1983 rounds of progressively more detailed safety evaluations for all operating reactors and the NRC Staff reliance on the licensees' assurances during these early reviews.

The conclusions in the 1981 SER were made with regard to compliance with Commission Memorandum and Order CLI-80-21, 11 NRC 707, a 1980 document. That was the first attempt by licensees to compile EQ documentation, which resulted in the Franklin Technical Evaluation Reports. That documentation was old, although it was the best the licensees had at the time. The NRC Staff recognized that there were many deficiencies in this documentation. Licensees

in a lot of cases simply did not have adequate documentation to demonstrate qualification. The early documentation provided a starting point, but it was not by any means considered to be the final word. APCo's own witness, Mr. Noonan, agrees with this point when, in answer to Judge Bollwerk's question regarding SERs, Mr. Noonan testifies, (Tr. 1293, ll.13-17)

Because back in 1979 and 1980 we didn't have much to go on. There wasn't much qualification data available to the staff to review. You can see that by looking at those early SERs and TERs. There are just a lot of holes. So it was like that.

It is also helpful to bear in mind that the Final Rule on the Environmental Qualification of Electrical Equipment Important to Safety (10 C.F.R. § 50.49) was not published until January 21, 1983. In promulgating that rule, with its compliance deadline date of November 30, 1985, the Commission stated that it was amending its regulations to clarify and strengthen the criteria for environmental qualification of electrical equipment important to safety. In the Summary of the Statement of Considerations for 10 C.F.R. § 50.49, 48 Fed. Reg. 2729, January 21, 1983, the Commission stated,

Specific qualification methods currently contained in national standards, regulatory guides, and certain NRC publications for equipment qualification have been given different interpretations and have not had the legal force of an agency regulation. This amendment codifies the environmental qualification methods and criteria that meet the Commission's requirements in this area.

The second round of SERs issued in 1983 were to adopt the Franklin Research Center's conclusions regarding Information submitted by licensees in 1981. Although the early documentation submitted was rather weak, it allowed us to conduct the one-day meetings and discuss the deficiencies with the licensees. The NRC Staff told the licensees that it would verify, through the inspection process, that the documentation fully supported environmental qualification.

The 1984-85 SERs were the first time the NRC Staff addressed environmental qualification after promulgation of 10 C.F.R. § 50.49. Keeping in mind, that the information looked at was old, it was the best available at the time. It served its purpose of providing information for the one-day meetings and allowed the NRC Staff to generate an SER. The NRC Staff found the plants in compliance with 10 C.F.R. § 50.49 if the licensee's assertions regarding methodology for complying and any justifications for continued operation the licensee submitted seemed appropriate, subject to audit during follow-up inspections.

The 1981 and 1983 SERs were part of a series of reviews conducted by the NRC Staff based on submittals and subsequent submittals by the licensee, beginning with the licensee's response to Bulletin 79-01B. It was a process where the licensee sent in information, Franklin evaluated the information, the NRC Staff issued a preliminary TER, wrote an SER, a final TER, and a final SER. It

was a series of documents, each one being somewhat more detailed than the previous one regarding the qualification status of the licensee's program.

- Q8. Even if APCo incorrectly understood that the December 13, 1984 SER conveyed NRC Staff acceptance of APCo compliance with all of the requirements of 10 C.F.R. § 50.49, did not Generic Letter 84-24, which was issued on December 27, 1984, put APCo on notice of what was necessary for licensee certification of compliance with 10 C.F.R. 50.49?
- A. (Luehman and Shemanski) In our opinion, absolutely yes. First of all, certification of compliance with a Commission regulation must come from the licensee. The Commission relies on its licensees to carry out regulatory requirements in a responsible manner, subject to NRC Staff review and audit. It is the licensee's technical capability to operate and know its plant, and not the NRC Staff's limited audit reviews, that must form the basis for a finding that a licensee is in compliance. Notwithstanding this underlying licensee responsibility for determining compliance with Commission requirements, the NRC Staff and licensees were aware, as of December 1984, that the NRC Staff had not yet begun the verification inspections of licensee compliance with the equipment qualification rule. Therefore, certification of compliance could only come from each licensee to specifically ensure that all the requirements of 10 C.F.R. § 50.49, which had

been published well after the early NRC inspections regarding any type of EQ matters, were properly addressed. The information needed for this certification included (1) response to generic correspondence, (2) completeness of the Master List, (3) documentation file adequacy, and (4) in-plant implementation and verification. As Mr. Shemanski has discussed in his testimony above, these matters were not addressed in the December 13, 1984 SER (APCo Exh. 21).

Generic Letter 84-24 (Staff Exh. 62) stated that 10 C.F.R. § 50.49 had clarified and strengthened the criteria for environmental qualification of electric equipment important to safety and included a copy of the rule for the information of licensees. The NRC Staff recognized that generic correspondence regarding environmental qualification had issued before, during, and after the NRC Staff one-day meetings conducted with the 52 licensees during 1984, and which Mr. Shemanski has described in his testimony above. To account for this, paragraph 3 of Generic Letter 84-24 (Staff Exh. 62) made clear that,

The certifications described in (a), (b), and (c) above should specifically address all IE Bulletins and Information Notices that identify EQ problems, to the extent that such bulletins and notices are relevant to the licensee's facility. The following Bulletins and information Notices are considered applicable to these certifications: IE Bulletin 82-04, IE Information Notices 82-11, 82-52, 83-45, 84-23, 84-44, 84-47, 84-57, 84-68 and 84-78.

In Alabama Power Company's case at least three of the IE Information Notices called out in Generic Letter 84-24 (Staff Exh. 62), clearly should have made APCo knowledgeable of problems which were identified as violations in the subsequent EQ verification inspection. IE Information Notice 84-47 (Staff Exh. 48), concerning terminal block leakage, dated June 15, 1984; IE Information Notice 83-72 (Staff Exh. 55), concerning environmental qualification testing experience, dated October 28, 1983, and which addressed the Limitorque Motor Operator terminal block and T-Drain issues; and IE Information Notice 84-57 (Staff Exh. 44), concerning operating experience related to moisture intrusion in safety-related electrical equipment, dated July 24, 1984, directly addressed the States and GE terminal block, the Limitorque Motor Operated Valve, and the Chico A/Raychem Seal deficiencies identified in the EQ verification inspection at Farley. At the very least, a review of the summary sections of the SANDIA reports referenced in IE Information Notice 84-47 (Staff Exh. 48), which APCo has testified it did (Tr. 1098), clearly should have alerted APCo that what it had proposed for resolution of terminal block leakage in January 1984 did not address the issue discussed in the June 1984 information notice.

In summary, Generic Letter 84-24 (Staff Exh. 62) required each licensee to certify, under oath or affirmation, that its plant was in compliance with the Commission's environmental qualification requirements. Further, Generic

Letter 84-24 alerted licensees, when making that certification, to "specifically address all IE Bulletins and Information Notices that identify EQ problems, to the extent that such bulletins and notices are relevant to the licensee's facility," and listed those IE Bulletins and Notices of concern, some of which, as in the case of Alabama Power Company, had issued well after the licensee's one-day meeting with the NRC Staff, which was the most recent information input for APCo's December 1984 EQ SERs (APCo Exh. 21).

- Q9. Did any licensee assessed a civil penalty under the Modified Enforcement Policy, other than APCo, assert to the NRC Staff that the final EQ SER issued in the 1984-85 time frame was an NRC Staff finding that the licensee was in compliance with all of the requirements of 10 C.F.R. § 50.49?
- A. (Luehman) No. We issued over 20 civil penalties under the Modified Enforcement Policy and only Alabama Power Company has asserted that the December 13, 1984 SER (APCo Exh. 21) issued to it conveyed the NRC Staff finding that Farley was in compliance with all of the requirements of 10 C.F.R. § 50.49. Some other licensees, in response to civil penalties under the Modified Enforcement Policy, asserted that their final EQ SER conveyed an NRC Staff finding that a qualification approach was acceptable or that a particular item of equipment had previously been accepted as qualified. However, no other licensee

asserted that the SER conveyed the finding that all of the requirements of 10 C.F.R. § 50.49 had been met.

(Shemanski) The final EQ SERs Mr. Luehman is referring to were issued to the 52 licensees in the 1984-85 time frame and all contained similar language regarding the NRC Staff's conclusions and the evaluation that was the basis for those conclusions.

ENFORCEMENT MATTERS

- Q10. How do you respond to the statements made by various APCo witnesses that the NRC Staff and Alabama Power Company routinely used undocumented engineering judgment to determine equipment qualification but now, for enforcement purposes, that standard has changed? (J/McK Q&A5, pp.6-11; DiBenedetto Q&A68, pp.60-61; Noonan Q&A33, pp.25)
- A. (Luehman) The NRC Staff has in the past and continues to accept oral statements from licensees during various meetings and proceedings that based on engineering judgment a particular piece of equipment was qualified or operable. However, the NRC Staff has operated on the premise that the Licensee if called upon could follow-up such statements and provide a documented basis for reaching such conclusions. This position is consistent with that the NRC Staff articulated in the

Order Imposing Civil Penalty which states that undocumented engineering judgment does not provide a complete auditable record and cannot be independently scrutinized. As stated on page 4 of the Safety Evaluation Report transmitted to APCo via a letter dated December 13, 1984 when discussing follow-up inspections that would take place, "Since a significant amount of documentation has already been reviewed by the NRC Staff and Franklin Research Center, the primary objective of the file audit will be to verify they contain the appropriate analyses and other necessary documentation to support the licensee's conclusion that the equipment is qualified." Clearly, this statement addresses analyses APCo may have told the NRC Staff it had made or judgments it had made without providing written support. If the NRC Staff had reviewed everything to the final necessary level of detail as APCo alleges and if, as APCo's witnesses assert, documentation of engineering judgment was unnecessary, then there would have been no need for the statement in the SER, and file review during the follow-up inspections would have been unnecessary.

APCo's witnesses' claim that the level of detail required by the NRC Staff increased significantly in the 1986-87 timeframe is not supported by fact. First and most importantly, following the reviews done on the APCo EQ program in the 1979-81 timeframe, 10 C.F.R. § 50.49, and specifically 10 C.F.R. § 50.49(j), became effective increasing the showing necessary to demonstrate qualification.

Following that significant milestone, the NRC Staff undertook a number of pre-deadline inspections to monitor industry progress. For instance, an inspection was performed at the Calvert Cliffs Nuclear Power Plant in October 1984. In the inspection report issued January 29, 1985 that documents that inspection (Staff Exh. 63), the inspectors reviewed various qualification files and stated in p.2 of the report that an auditable file for the purposes of 10 C.F.R. § 50.49 is information which is "documented and organized so as to be readily understandable and traceable to permit independent verification of inferences or conclusions based on the information." (emphasis added). The report then goes on to describe findings in EQ files which are very similar with regard to level of detail to the NRC Staff's concerns with the APCo files. Interestingly, Mr. LaGrange, who previously provided a joint affidavit on behalf of APCo in response to the Notice of Violation and Proposed Imposition of Civil Penalty, was a member of the NRC team that produced that report and Mr. Noonan, an APCo witness, was then NRC Staff's Chief of the Equipment Qualification Branch, and was sent a copy of the report. Further, Mr. R. Bell an employee of the Bechtel Power Corporation, the same company that provided both pre- and post-deadline EQ consulting services to APCo, was a utility EQ consultant listed in the inspection report. Other inspections such as the one performed at Ft. Calhoun Station during April and May of 1985 and documented in an inspection report

dated July 26, 1985 (Staff Exh. 64) illustrate the level of documentation the NRC Staff found necessary to comply with 10 C.F.R. § 50.49 and that documentation is clearly of the same type and detail as required by the NRC Staff at Farley in 1987.

Q11. How do you respond to the statements made by various APCo witnesses that the NRC Staff, for enforcement purposes, relies on an evolving level of knowledge obtained after the deadline and that the agenda from the August 1987 seminar at Sandia National Laboratories supports that contention? (J/McK Q&A5, pp.6-11; L/S/J Q&A34, p.43; DiBenedetto Q&A33, pp.33-34)

A. (Luehman) The NRC Staff agrees that the level of knowledge in the EQ area has continued to increase over the years. However, as the NRC Staff stated in: Appendix A to the Order Imposing Civil Penalty (Staff Exh. 3), depositions, and direct testimony, the NRC Staff carefully applied only pre-deadline knowledge in applying the Modified Enforcement Policy in this case. The following are some examples that will illustrate the correctness of the NRC Staff's position. Each will be expanded upon in addressing the corresponding individual equipment violations. Before going into the examples, I will state that the NRC Staff has never denied that many of the types of findings discussed at the Sandia seminar

were in fact found at Farley. The issue is whether those types of findings resulted from post-November 30, 1985 knowledge.

The NRC Staff's interest in and concern with terminal block leakage currents is documented in the Ft. Calhoun report (Staff Exh. 64) (see report p. 12), in an inspection report for Crystal River 3 which was issued June 10, 1985 documenting a March 1985 inspection (Staff Exh. 65) (see report p. 14), and finally on p. 12 in a Calvert Cliffs inspection report dated January 29, 1985 (Staff Exh. 63) documenting an October 1984 inspection.

GEMS level transmitters were also inspected in the March 1985 Crystal River inspection (Staff Exh. 65) (see report p. 13). Reviews of licensee responses to IE Information Notice 83-72 (Staff Exh. 55) including the documenting of licensee initiated internal complete walkdowns (which a number of APCo witnesses have testified were not industry practice prior to the deadline) are contained on p. 12 of the above referenced Calvert Cliffs report (Staff Exh. 63) as well as on p. 15 of a November 1, 1985 report documenting a July 1985 inspection at Point Beach (Staff Exh. 66). Finally, the NRC Staff's concern with lubrication as a qualification issue is discussed on p. 13 of the above referenced May 1985 Ft. Calhoun report (Staff Exh. 64).

Q12. Did the NRC Staff, as various APCo witnesses assert, require walkdowns of the internals of electrical equipment? (L/S/J Q&A18, pp. 19-20; DiBenedetto Q&A42, p. 44; Noonan Q&A24, pp. 20-21)

A. (Luehman) No, the NRC Staff has never asserted that such walkdowns were required. However, the NRC Staff maintains that certain information APCo had in its possession should have highlighted the necessity of such walkdowns. Contrary to the assertions of APCo witnesses, other licensees were responding to NRC generic issuances such as IE Information Notice 83-72 (Staff Exh. 55) by performing internal component inspections. Mr. R. Bell of Bechtel Power Corporation, who was an EQ consultant to the Baltimore Gas & Electric was present during the NRC inspection at Calvert Cliffs in October 1984 (Staff Exh. 63) where such actions were reviewed by the NRC inspectors. Specifically, review of the results of licensee initiated walkdowns based on the notice were documented. Information concerning such an inspection would have been available to APCo as Bechtel was its primary EQ contractor. Mr. DiBenedetto, who as he states on p. 9 of his Direct Testimony (DiBenedetto p.9), kept abreast of technical and regulatory developments, ^{Should have been} ~~was~~ aware of this and other pre-deadline inspections, such as Point Beach, that looked at this area. Additionally, with respect to the Calvert Cliffs inspection both Mr. Noonan, an APCo witness, and Mr. LaGrange.

who submitted a joint affidavit with Messrs. Noonan and DiBenedetto, were in supervisory positions overseeing NRC EQ efforts at the time of the inspection.

Q13. Is APCo's position correct that under a 1987 inspection approach, the NRC Staff inspector could simply ask a question and because of a lack of understanding on the part of the inspector, create a violation? (L/S/J Q&A29, pp.32-34)

A. (Luehman) That is simply not true. Before determining whether a violation exists, an inspector discusses his findings with other inspectors, his supervisor, and his regional management. A review of inspection reports for Farley and other licensees shows that there were numerous issues that the inspectors questioned the licensees about extensively, and in some cases identified as "unresolved," that ultimately, were never cited as violations.

Q14. How do you respond to the assertion of APCo's witnesses that "...others more versed in qualification issues, would often not have needed such detailed documentation to understand (i.e., "audit") the bases for conclusion documented in the files.?" (L/S/J Q&A29, pp.32-34)

A. (Luehman) Clearly, APCo's witnesses imply that the NRC inspectors that participated in the Farley inspection were not technically versed enough in the EQ area to understand what APCo's witnesses allege are obvious correct engineering

judgments. The NRC inspectors were well versed in EQ. For example, and as demonstrated by their resumes (Staff Exh. 1), in addition to having performed numerous EQ inspections for the NRC prior to Farley, Mr. Wilson had worked for an engineering firm doing consulting in the EQ area, Dr. Jacobus has a Ph.D. in Electrical Engineering and in addition to acting as an NRC contract inspector has done testing work in the EQ area, Mr. Levis was also an industry consultant in EQ prior to becoming an NRC inspector, Mr. Paulk previously worked for a nuclear utility and had done work in the EQ area, and Mr. Merriweather has a masters degree in electrical engineering and was involved with some of the initial work done by the NRC Staff on EQ at Farley.

MITIGATION AND ESCALATION

- Q15. How do you respond to APCo's claim that NRC Inspectors' statements concerning APCo's efforts to comply with 10 C.F.R. § 50.49 show that APCo demonstrated best efforts in the context of the Modified Enforcement Policy? (J/McK Q&A5, pp.6-11)
- A. (Luehman) I do not agree that Mr. Merriweather's statement regarding APCo efforts until December 1984 confers either his or the NRC Staff's overall assessment of APCo's best efforts. The NRC Staff is already on the record

(page 41 of Appendix A of the Order Imposing) (Staff Exh. 3) as stating that APCo's programmatic efforts in the 1979-1985 time frame were considerable.

The NRC Staff went on to say that such efforts do not single out APCo over other licensees. In the Commission policy statement concerning environmental qualification issued March 7, 1984 (Staff Exh. 61), the Commission recognized that all utilities had expended considerable resources in addressing 10 C.F.R. § 50.49. It was with efforts to that point, as a baseline reference, that best efforts were evaluated.

Escalation of the civil penalty for best efforts was made because of APCo's lack of proper implementation and verification of the program that had been designed. Despite numerous generic issuances raising questions in the EQ area prior to the deadline APCo was largely satisfied to rely on the Franklin Research Center TER when many other licensee's were proactively responding to NRC issuances and finding problems. Mr. Jones, the engineer who oversaw the program from the corporate office, was initially a very inexperienced non-electrical engineer who by his own testimony relied on outside expertise. (J/McK Q&A9, p. 25). While such an arrangement was acceptable, it could, and did in this case, place APCo in a position where, with a deadline approaching, industry known problems were not being properly evaluated. For example, Mr. Love testified in his deposition (pp. 66-68):

Q. Okay. Now, in general, with regard to (sic) Generic Letters and information notices, that touched on environmental qualifications, would you offer specific advice to the client, in this case Alabama Power Company?

A. Specifically to Alabama Power Company; that is the question/ How would that --

Q. Yes, sir?

A. -- process work? With Alabama Power Company, the initial responsibility for looking at the IE Notices or Circulars, remained with them. In other words, the agreement which existed was that they would do the initial evaluation. If they required Bechtel assistance, then they would prepare a request for that assistance which, again, would be in the format of say, licensing support or - request or a letter requesting us to do a specific evaluation.

Q. Okay. Is it fair to say then, if a client, in this case, Alabama Power Company, did not ask for specific advice, with regard to a particular information notice or bulletin, then you would not provide that to them?

A. That is correct. If they did not ask for a specific advice, we would not specifically provide it on a project; that is correct.

Mr. Love went on to "clarify" his answer by testifying,

THE WITNESS: Okay. What -- I am talking about formal responses and formal requests. That is not to say that, in my discussions with David Jones or one of the personnel at APCo, if I was aware of something, that's possible. I may have discussed it with them on the phone, to see if they've seen it, you know, or are they working on it, whatever -- bring it to their attention type of thing. That is a possible that would be done, whether or not it is a formal request of this.

This above description by Mr. Love indicating that the initial responsibility for generic issuances was APCo's and that only if they required Bechtel assistance

would a request be made, contrasts sharply with Mr. Sundergill's description in his deposition (pp.34-35) of his relationship with the utility on the Grand Gulf project where he stated,

Q. It may sound like I've asked this before, but I just want to pin it down a certain way. There was not a situation that you recall where you would wait for the utility to task you with something, let's say, an information notice.

A. We would not have performed any work that the utility did not direct us to. There were contractual obligations.

Q. I'm speaking in terms of I've got this information notice, I'm Mr. Sundergill, and I think something needs to be done. You wouldn't sit and wait to see if the utility was going to tell you to do something. You would bring it to their attention.

A. Yes. If they hadn't contacted us first, we would contact them. In the case that we thought there was some impact, we evaluated information that came through and it was determined there was no impact; something that, like I say, it was a BWF reactor and if there was something to do with steam generators, we probably wouldn't have called them.

As discussed elsewhere, many of the problems identified at Farley, in addition to being the subject of generic issuances, were discovered in NRC pre-deadline inspections. The results of these inspections were known to the NUGEQ (who had representatives present during a number of the inspections), Bechtel (the company that was APCo's EQ consultant), ^{WHICH HAD A REPRESENTATIVE AT THE CRYSTAL RIVER INSPECTION} NUS Corporation (another company providing EQ consulting services, who had representatives at the Crystal River inspection), and the utilities involved. APCo was apparently unaware of

these issues because of its inexperienced lead engineer, a sometimes one-way relationship with its prime EQ consultant, and an admittedly overly confident attitude as summarized in the April 13, 1988 summary of the enforcement conference (Staff Exh. 13). Finally, while APCo undertook an extensive review of its EQ program implementation following the deadline, many other licensees did that before the deadline. For example, Mr. Levis testified (Tr. 613-14) that prior to joining the NRC, he worked for a company that performed EQ audits, including walkdowns, in the 1984-85 timeframe for six different utilities at 10 different sites. Additionally, the reports documenting pre-deadline NRC inspections at various reactor sites demonstrate that utilities were also performing similar internal audits based on generic issuances such as Information Notices 83-72 (Staff Exh. 55) and 84-47 (Staff Exh. 48). All of the above factors support the NRC Staff escalation for best efforts.

- Q16. How do you respond to Mr. Shipman's position concerning APCo's action with respect to the change-out of the V-type splices in the containment for motors? (Shipman Q&A 10, pp.8-10; Q&A 11, pp.10-11)
- A. (Luehman) First of all, it is clear from the way Q10 was posed to Mr. Shipman for his direct testimony, APCo still does not understand the NRC Staff's concern. The NRC Staff does not assert that APCo was required to issue a justification for

continued operation and immediately declare the remaining fan motors inoperable. Rather, APCo was required to do one or the other. By Mr. Shipman's own testimony APCo did not complete the justification for operation and hence without justification, operation of Unit 2 should have ceased. Unit 1 was unaffected because even though the justification was never completed the replacement of the splices on that Unit brought it into compliance with the Technical Specification Action Statement within the time required.

Mr. Shipman notes that while a justification for continued operation was never completed "we made a prompt determination of operability". While I understand what a justification for continued operation with regard to environmental qualification is and the level of documentation that it required (because of the existence of Generic Letters 85-15 and 86-15), I have no idea what determination Mr. Shipman is referring to or how he felt it was acceptable if it didn't meet the NRC's written guidance. Again with respect to Q11, the NRC Staff never alleged that simply because an environmental qualification concern was discovered Technical Specification action had to be taken. A completed justification for continued operation would have been sufficient.

With regard to Mr. Shipman's statement that the NRC Staff's concern is a new allegation I would simply point out this concern was addressed in the Notice of Violation and Proposed Imposition of Civil Penalty and was discussed

in detail in the Order Imposing Civil Penalty. The fact that the NRC Staff never issued a violation for failure to adhere to the Technical Specification is within the NRC Staff's discretion as the improper response to the issue was considered in escalating the civil penalty for improper corrective action.

Finally, with respect to Mr. Shipman's argument that APCo's actions were more conservative than required by the Generic Letter guidance, I fail to understand how waiting nine days to address the first splice on Unit 2 was conservative.

INSPECTIONS CONDUCTED AT FARLEY

- Q17. During cross-examination on the NRC Staff's direct testimony APCo counsel questioned the V-type splice panel extensively on the relationship of the inspection in September 1987 and the one conducted in November 1987. Can you explain the relationship between the two inspections and what, if any, bearing the performance of two inspections had on application of the Modified Enforcement Policy? (Tr. 345-54)
- A. (Luehman) ~~Originally,~~ The NRC Staff intended to inspect APCo with one two-week inspection (one week for walkdown and one week for file review). That inspection is the one that took place in November 1987 (Staff Exh. 12). However, prior to that inspection, in response to findings reported by APCo that

were similar to those previously reported by another licensee, NRC Region II management made the decision to conduct a reactive (non-routine) inspection to evaluate what we call the V-type splice issue. That inspection was conducted in September 1987. At the end of that inspection the V-type splice issue was left as an unresolved item in an inspection report (Staff Exh. 11). The item was left unresolved not because the NRC Staff had questions about the splices' qualification status, but rather because the issue of how to handle enforcement of the issue had yet to be resolved.

For purposes of the Modified Enforcement Policy the findings of the two inspections were considered together. This is consistent with other "first round" inspections where licensees identified issues after the November 30, 1985 deadline. Further, the Modified Enforcement Policy (Staff Exh. 4) makes an accommodation for this circumstance by providing for mitigation for licensee identified items. Such items were considered together with inspection identified items if they met the standards of the Modified Enforcement Policy for "clearly should have known" and sufficiently significant. The only difference in the APCo case was that rather than wait for the regularly scheduled inspection a safety decision was made to conduct an earlier inspection of the V-type splice issue.

The one difficulty that this situation of two inspections created was one of how to handle any additional information provided by the licensee "during or

shortly after the inspection" as provided for in the Modified Enforcement Policy. For the V-type splices the question would be, did that time period encompass only the first inspection period or both. As it turns out, that became a non-issue for Farley as the only additional significant new information APCo provided was the Wyle test results (Staff Exh. 25). Such testing performed after the deadline was unacceptable, regarding a violation under the Modified Enforcement Policy, whenever it was provided.

Q18. Does this complete your testimony regarding these matters?

A. (All) Yes.

1 MR. HOLLER: At this time, Mr. Shemanski and Mr.
2 Luehman are available for cross-examination concerning
3 enforcement.

4 JUDGE BOLLWERK: Mr. Miller.

5 MR. MILLER: Would you like us to put on our
6 surrebuttal at this time?

7 JUDGE BOLLWERK: Yes.

8 MR. MILLER: We would ask Mr. David Jones, Vince
9 Noonan, and Doug McKinney to take the stand.
10 Whereupon,

11 DAVID HUBER JONES,

12 BERNARD DOUGLAS MCKINNEY,

13 VINCENT S. NOONAN,

14 witnesses, were called for surrebuttal testimony by counsel
15 for Alabama Power Company and, having been first duly
16 sworn, were examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. MILLER:

19 Q Beginning with Mr. Jones, would you state your
20 full name for the record, please?

21 A [Witness Jones] David Huber Jones.

22 Q Mr. McKinney?

23 A [Witness McKinney] Bernard Douglas McKinney, Jr.

24 Q Mr. Noonan?

25 A [Witness Noonan] Vincent S. Noonan.

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1 Q Have you prepared and filed surrebuttal testimony
2 in this proceeding?

3 A [Witness Jones] Yes, I have.

4 A [Witness McKinney] Yes, I have.

5 A [Witness Noonan] Yes.

6 Q Do you have a copy of that before you?

7 A [Witness Jones] Yes.

8 A [Witness McKinney] Yes.

9 A [Witness Noonan] Yes.

10 Q Mr. Jones, on the stand you have a correction.
11 Would you tell us what that correction is?

12 A [Witness Jones] Yes. On page 10, the second
13 paragraph, the eighth line, the line begins with the word
14 "Staff." After the word "staff" insert the word "not." It
15 should read: "Staff not tell us."

16 Q Are there any other corrections to the prefiled
17 surrebuttal testimony?

18 A [Witness Jones] No.

19 A [Witness McKinney] No.

20 A [Witness Noonan] No.

21 MR. MILLER: We will make that correction on the
22 copies provided to the court reporter.

23 At this time, we move the admission of the
24 surrebuttal testimony of Alabama Power Company sponsored by
25 Mr. Jones, Mr. McKinney and Mr. Noonan.

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1 MR. HOLLER: No objection from the NRC staff, sir.

2 JUDGE BOLLWERK: Let me just ask one question
3 about the surrebuttal testimony. In it there are several
4 references to Mr. LaGrange, an affidavit that he had filed
5 previously in this proceeding. He is a former NRC employee.
6 I take it that the staff has no problems with his testimony
7 in light of the questions that were raised with Mr. Noonan
8 about Mr. DiBenedetto?

9 MR. HOLLER: Subject to the cross-examination
10 questions the staff will have regarding the testimony, the
11 staff has no objections to the affidavit as such, sir.

12 JUDGE BOLLWERK: So there is no problem with an 18
13 USC 207 violation here in any way?

14 MR. HOLLER: None that the staff has identified,
15 sir.

16 JUDGE BOLLWERK: I take it Alabama Power has
17 checked that and is not concerned as well?

18 MR. MILLER: We are not concerned, and we would
19 like to add that the staff originally introduced this
20 affidavit as one of its exhibits, Exhibit No. 15, and raised
21 Mr. LaGrange first as a credible witness.

22 JUDGE BOLLWERK: Right. It was attached.

23 There being no objection, the surrebuttal
24 testimony of David Jones, Bernard McKinney and Vircent
25 Noonan on behalf of Alabama Power Company will be received

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1 and bound into the record.

2 [The surrebuttal testimony of David Huber Jones,
3 Bernard Douglas McKinney, Jr., and Vincent S. Noonan, on
4 behalf of Alabama Power Company concerning enforcement
5 follows:]

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

SURREBUTTAL TESTIMONY OF DAVID HUBER JONES,
BERNARD DOUGLAS MCKINNEY, JR. AND VINCENT S. NOONAN
ON BEHALF OF ALABAMA POWER COMPANY
CONCERNING ENFORCEMENT

I. INTRODUCTION

Q1. Please state your name and describe your current employment.

A: (Jones) My name is David Huber Jones. I am Manager of Engineering Support, Farley Nuclear Plant, for Southern Nuclear Operating Company, Inc.

(McKinney) My name is Bernard Douglas McKinney, Jr. I am employed by Southern Nuclear Operating Company, Inc., as the Manager of Nuclear Engineering and Licensing for Farley Nuclear Plant.

(Noonan) My name is Vincent S. Noonan. I am employed by HALLIBURTON NUS Environmental Corporation as General Manager

of the Rocky Mountain Center (RMC) and Safety and Licensing Divisions.

Q2. Have you previously testified in this proceeding?

A: (Jones, McKinney, Noonan) Yes. Each of us have previously provided Direct Testimony in this proceeding on behalf of Alabama Power Company.¹

Q3. What is the purpose of your testimony?

A: Our purpose is to provide Surrebuttal Testimony to that filed by James G. Luehman and Paul C. Shemanski on Behalf of the NRC Staff Concerning Enforcement. To do this, our testimony is generally organized so that it responds to the questions and answers of the Staff's witnesses in the order presented. For ease of reading, we have organized our Surrebuttal Testimony under the same four headings utilized by the Staff in their Rebuttal Testimony: December 1984 SER, Enforcement Matters, Mitigation and Escalation, and Inspections Conducted at Farley.

¹Unless otherwise indicated, the responses to each questions will be sponsored by Mr. Jones and Mr. McKinney. Mr. Noonan's responses will be separately identified.

II. DECEMBER 1984 SER

Q4. In his response to Q4, Mr. Shemanski contends that Alabama Power Company's understanding of the significance of the December 1984 SER is erroneous, is taken "out of context," and "simply is not reasonable given the wording of the entire SER and the information promulgated by the Commission at the time licensees were meeting with the NRC Staff to resolve environmental qualification issues." (Rebuttal Testimony, at pages 2-7). What is your perspective of Mr. Shemanski's testimony?

A: As an initial matter, we observe that the thrust of the Staff Rebuttal Testimony under this heading, and the one entitled "Enforcement Matters," is an attempt to snore up its evidence that Alabama Power Company "clearly knew or should have known" of the alleged EQ violations. There are other, less obvious issues raised, of course, but by discussing the meaning of the December 1984 SER, the meaning of various Information Notices, and, for the first time, contending that Alabama Power Company should have read EQ inspection reports from other utilities, the Staff is clearly focusing on the Modified Enforcement Policy and its mandate that, "[i]f the licensee does not meet the 'clearly knew or should have known' test, no enforcement action will be taken." Our Surrebuttal Testimony will refute the Staff's contention and fully demonstrate the basis for our

conclusion that Alabama Power Company should not clearly have known of these violations.

As for Mr. Shemanski's testimony, it is our belief that the December 1984 SER, which was issued after more than five years of hard work by Alabama Power Company to comply with various EQ requirements, was a major milestone acknowledging Alabama Power Company's compliance with EQ regulations, as compliance was generally understood at that time. Because of the many times Alabama Power Company submitted documents, test reports and data to the NRC and its contractors, and the corresponding favorable NRC responses it received, it is also our belief that the December 1984 SER precludes a finding by the Board that Alabama Power Company "clearly knew or should have known" of the alleged EQ deficiencies in the Notice of Violation. We explained our EQ compliance efforts to the Staff in detail, particularly at a January 11, 1984, meeting. If deficiencies existed about which Alabama Power Company clearly should have known, then we believe that the Staff, with its knowledge about EQ, clearly should have told Alabama Power Company about them instead of communicating that its EQ program complied with 10 CFR 50.49 and that the Unit 2 EQ license condition had been met.

Q5. Please continue your discussion about Mr. Shemanski's testimony and the December 1984 SER.

A. First, it is undisputed that the December 1984 SER, and its associated transmittal letter, referred to the deficiencies identified in earlier Safety Evaluation Reports, the Franklin Research Center Technical Evaluation Reports, and the discussion held between the NRC Staff and Alabama Power Company on January 11, 1984, as documented in our letter dated February 29, 1984. Moreover, it is undisputed that additional letters dated March 14 and May 20, 1983, provided additional information to the Staff. Ultimately, the Staff concluded:

Based on our reviews, we conclude that the Alabama Power Company Equipment Qualification Program is in compliance with the requirements of 10 CFR 50.49, that the proposed resolution for each of the environmental qualification deficiencies identified for Farley Units 1 and 2 is acceptable, and that the continued operation of Farley Units 1 and 2 will not present undue risk to the public health and safety.

(APCo Exhibit 21, at pages 1-2).

We understood that the word "program" as used in this SER referred to Alabama Power Company's efforts to identify, qualify, and document, its compliance with DOR Guidelines and NUREG-0588 (Category II).² The NRC Staff has provided testimony that reinforces this interpretation. In fact, at the hearing, Mr. Shemanski testified that an EQ program should

²Under 10 CFR 50.49(k), Alabama Power Company must qualify its equipment to these two standards.

identify and qualify equipment subject to EQ requirements, and document that qualification. (Tr. 390). For ease of reference, the relevant portion of the transcript is reproduced below:

Q: I see a couple of sentences about the Staff's position that a licensee must establish a program for qualifying electrical equipment identified in 10 CFR 50.49(b).

A: [Witness Shemanski] Yes.

. . .

Q: By program, do you mean to describe identification, qualification and documentation of Class I-E electrical equipment?

A: [Witness Shemanski] I would extent [sic] that to the EQ Rule which talks about equipment important to safety.

Q: I see.

A: [Witness Shemanski] And that includes safety-related equipment, non-safety-related, and the Reg Guide 1.97.

Q. Okay, so, equipment subject to EQ, the program should identify it, qualify it and document the qualification? (Emphasis added).

A: [Witness Shemanski] Yes, that's correct. (Emphasis added).

Q: And that's what you mean when you talk about an EQ program? (Emphasis added).

A: [Witness Shemanski] Yes. (Emphasis added).

(Tr. 390). In their Direct Testimony, Messrs. Luehman, Potapovs and Walker describe the purpose of the inspections at Farley Nuclear Plant as "to review the program for environmental qualification of electrical equipment." (Staff Direct Testimony Concerning Enforcement, at page 13, A12).

It seems to us that, as used in these three important documents, the word "program" should retain its same meaning. If, for purposes of sworn testimony, an EQ program encompasses identification, qualification, and documentation of safety-related electrical equipment then, for purposes of an SER, it should be interpreted similarly. If, for purposes of an EQ inspection, the word "program" includes evaluating a licensee's EQ documentation then, for purposes of the December 1984 SER, the word "program" should be interpreted similarly.

Thus, it appears to us that we did not misinterpret or take out of context the meaning of the SER's conclusion that Alabama Power Company's program complied with the requirements of 10 CFR 50.49. We interpreted the SER to mean that our EQ "program," in which we identified, qualified, and documented our compliance with 10 CFR 50.49, had been reviewed and approved by the Staff.

In this Surrebuttal Testimony we have not restated all of the activities Alabama Power Company undertook to comply with EQ

requirements from 1979-1985, but such efforts were extensive. They are discussed in our Direct Testimony (Jones, McKinney), at pages 17-25.

Q6. Will you also provide your perspective of why the SER, standing alone, precludes a finding that Alabama Power Company "clearly knew or should have known" of any EQ deficiencies?

A: (Jones, McKinney) On page 3 of the SER, under the Evaluation section, it says:

The evaluation of the acceptability of the licensee's electric equipment environmental qualification program is based on the results of an audit review performed by the staff of: (1) the licensee's proposed resolutions of the environmental qualification deficiencies identified in the January 31, 1983 SER and January 14, 1983 FRC TER; (2) compliance with the requirements of 10 CFR 50.49; and (3) justification for continued operation (JCO) for those equipment items for which the environmental qualification is not yet completed.

(APCo Exhibit 21).

This statement clearly demonstrates that the Staff performed an audit review of Alabama Power Company's EQ program for purposes of determining compliance with the requirements of 10 CFR 50.49. As representatives of the licensee who received this SER, we can state that, prior to the deadline, we did not suspect that there were EQ issues or deficiencies about which

Alabama Power Company "clearly knew or should have known." Of course Alabama Power Company knew that there would be an EQ inspection. Given the pattern of compliance efforts by Alabama Power Company, and favorable NRC responses in such important documents as SERs, however, we do not understand how a 1987 EQ inspection, ostensibly utilizing the state of knowledge existing in 1985, could ignore the conclusions of contemporaneous audit reviews and meetings described in the SER. Such conclusions were based on what was known by Alabama Power Company and the NRC Staff about the Farley EQ program and it is illogical to say now that Alabama Power Company "clearly knew or should have known" about any deficiencies. Indeed, had such EQ deficiencies been as patently obvious as the Staff now suggests, then we would expect the Staff to have said something to Alabama Power Company in our January 11, 1984 meeting or in a specific piece of correspondence. The Staff never did this, choosing instead to tell Alabama Power Company that based on the results of its audit review, its EQ program complied with 10 CFR 50.49.

- Q7. Mr. Shemanski suggests that Alabama Power Company's interpretation of the SER is "not reasonable" because of the wording of the entire SER and the information promulgated by the Commission at the time licensees were meeting with the NRC Staff. (Rebuttal Testimony, at page 3). What is your response to this suggestion?

A: We believe that, read in its entirety, the SER supports our belief that no deficiencies in our EQ program, i.e., the identification, qualification, or documentation of qualification, existed before the deadline. Even if some documentation issues remained subject to inspection, the SER states plainly that, "Based on our discussions with the licensee and our review of its submittal, we find the licensee's approach for resolving the identified environmental qualification deficiencies acceptable." (APCo Exhibit 21, at page 5).

It is patently unfair for the Staff to tell us in 1984 that our approach to resolving deficiencies was acceptable and our program was in compliance with 10 CFR 50.49, and then in 1988, to conclude that a "programmatic breakdown" in EQ existed at Farley Nuclear Plant and that deficiencies existed that we clearly knew or should have known about. (Staff Exhibit 2, at pages 1-2). If it was so clear in 1984, then why did the Staff ^{not} tell us? If it was so clear in 1984 and early-1985, then why did the Staff not say so, instead of leading us to believe that we had fulfilled our regulatory requirements? This is particularly true with respect to terminal blocks, since that was the only matter for which there was a "proposed resolution" outstanding. The resolution was discussed with the Staff in January 1984 and expressly accepted in the SERs.

(Noonan) I know for a fact that when I was on the Staff, it had nationwide knowledge about EQ compliance programs and anything Alabama Power Company "clearly knew or should have known" about would certainly have been known by the Staff. The Staff told Alabama Power Company its EQ program complied with 10 CFR 50.49, that its approach for resolving environmental qualification deficiencies was acceptable, after discussing the proposed resolutions "in detail" on a item-by-item basis with the licensee during the January 11, 1984, meeting. The Staff concluded that continued plant operation would not present undue risk to the public health and safety. If there were deficiencies that the Staff knew of, the Staff's practice was to tell licensees. We did not tell Alabama Power Company of any such "deficiencies" at the January 11, 1984 meeting or anytime prior to the deadline.

The fundamental work product of the NRC Staff that forms the basis for licensing atomic energy plants is a Safety Evaluation Report. In the context of EQ, the Safety Evaluation Reports were specific to the appropriate Farley unit, gave detailed discussion about the EQ compliance efforts of Alabama Power Company, and reached specific conclusions. By contrast, Information Notices were mere correspondence that may have some applicability to some plants licensed by the NRC. These necessarily broad and wide-ranging

documents did not supplant the specifics contained in a Safety Evaluation Report.

Q8. In his answer to Question 7, Mr. Shemanski contends that the NRC Staff never approved the Farley Master List. (Rebuttal Testimony, at page 10). He also contends that the 1981 SERs did not reflect "review and approval" by the NRC Staff of detailed environmental qualification documentation. (Id. at 10.) What is your response to this testimony?

A: The best response is found in the words of the 1981 SERs. (APCo Exhibit 14 - Unit 1, APCo Exhibit 15 - Unit 2). For Unit 1, the purpose of the SER was to identify equipment whose qualification program did not provide sufficient assurance that it would perform its intended function in a hostile environment. (APCo Exhibit 14, at page 2). To perform this task, the Staff conducted "an on-site inspection of selected Class 1E equipment and an examination of the licensee's report for completeness and acceptability." (APCo Exhibit 1, at page 2). The criteria described in the "DOR Guidelines and in NUREG-5888, in part, were used as a basis for the Staff evaluation of the adequacy of the licensee's qualification program." (APCo Exhibit 14, at page 2). The Staff issued a TER, which evaluated Alabama Power Company's response to Commission Memorandum and Order CLI-80-21 and IE Bulletin 79-01B. (APCo Exhibit 14, at page 2). The Staff also conducted

an on-site verification inspection of selected safety-related electrical equipment. (APCo Exhibit 14, at page 2). The Staff developed a generic Master List of systems and equipment required to mitigate a loss of coolant accident (LOCA) and a high energy line break (HELB) basing such a list "upon a review of plant safety analyses and emergency procedures. (APCo Exhibit 14, at page 3). Alabama Power Company prepared a similar list and, the list of safety-related systems provided by the licensee was reviewed against the Staff-developed Master List." (APCo Exhibit 14, at page 3). The Staff assessed 703 items of equipment identified by Alabama Power Company. (APCo Exhibit 14, at page 3). Then, in the SER, the Staff makes this statement:

Based upon information in the licensee's submittal, the equipment location references, and in some cases subsequent conversations with the licensee, the staff has verified and determined that the systems included in the licensee's submittal are those required to achieve or support: (1) emergency reactor shutdown, (2) containment isolation, (3) reactor core cooling, (4) containment heat removal, (5) core residual heat removal, and (6) prevention of significant release of radioactive material to the environment. The staff therefore concludes that the systems identified by the licensee (listed in Appendix D) are acceptable, with the exception of those items deferred in Section 5 of this report.

(APCo Exhibit 14, at page 3).

³For purposes of this enforcement hearing, Section 5 has no relevance.

The Staff also reviewed the service conditions of the affected equipment including temperature, pressure, and humidity conditions inside and outside containment, submergence, aging, and radiation. (APCo Exhibit 14, at pages 3-6). After doing this work, the Staff "determined that the licensee's listing of safety-related systems and associated electrical equipment whose ability to function in a harsh environment following an accident is required to mitigate a LOCA or HELB is complete and acceptable" (Emphasis added). (APCo Exhibit 14, at page 9).

From the licensee's perspective, it is very difficult to receive such a document and conclude, as Mr. Shemanski has done, that the NRC Staff did nothing to review or approve Alabama Power Company's Master List or equipment qualification documentation. The Staff may now be taking that position, but it appears to us to be glaringly at odds with the words they used in 1981.

- Q9. Mr. Shemanski suggests that promulgation of 10 CFR 50.49, which did not occur until January 21, 1983, clarified and strengthened "the criteria for environmental qualification of electrical equipment important to safety." (Rebuttal Testimony, at page 11). Is this true in the case of Alabama Power Company?

A: No, it is not. Farley Nuclear Plant environmental qualification standards are described in the DOR Guidelines and NUREG-0588, Category II, and this is explicitly recognized in 10 CFR 50.49(k). It is our opinion that promulgation of 10 CFR 50.49 did not change the qualification standards applicable to Farley Nuclear Plant.

We note, also, that Mr. Shemanski agrees that the information provided by Alabama Power Company to Franklin (and which was later used to support the December 1984 SERs) was the "best available at the time." (Staff Rebuttal Testimony Concerning Enforcement, at page 12, A7). To us, this is clear evidence that the finding of the enforcement staff that Alabama Power Company "clearly knew or should have known" of other information is little more than retroactive application of 1987 knowledge. Said another way, if the information provided by Alabama Power Company to support the Staff's 1984 SERs was "the best available at the time," that necessarily precludes a finding that Alabama Power Company "clearly knew or should have known" of the kind of information that the NRC Staff now alleges it should have possessed.

Q10. What about the SER issued in March 1981 for Unit 2? Will you please comment on it?

A: Our conclusions regarding this SER are very similar to those regarding the one issued for Unit 1. Of course, Unit 2 was the subject of an operating license proceeding during this time frame and statements in the operating license hearing have been previously addressed by us in our Direct Testimony. The conclusion of the SER for Unit 2 was that Alabama Power Company's "listing of safety-related systems and associated electrical equipment whose ability to function in a harsh environment following an accident is required to mitigate a LOCA or HELB is complete and acceptable" (Emphasis added.) Even a cursory review of this SER reveals that extensive effort and review was undertaken by the Staff to reach this conclusion, both in the context of EQ requirements and a plant operating licensing proceeding.

Q11. In Question 8, Mr. Luehman and Mr. Shemanski contend that Generic Letter 84-24 "put APCo on notice of what was necessary for licensee certification of compliance with 10 CFR 50.49." Do you have a response to this contention?

A: Yes. We have previously pointed out that promulgation of 10 CFR 50.49 had no effect on the qualification standards applicable to Farley Nuclear Plant. Those standards were NUREG-0588 (Category II) and the DOR Guidelines. Generic Letter 84-24 identified certain Information Notices applicable to EQ. Thus, the issue is whether these subsequent

Information Notices can be used by the Staff to undermine its previous conclusions. To us, the answer is clearly no. We have previously testified about the specificity of the Staff's SER. We believe that specific correspondence on specific EQ issues overrides preceding "informational" correspondences.

Moreover, by letter dated January 7, 1983 (APCo Exhibit 112), Alabama Power Company wrote the NRC and requested, among other things, that the license condition 2.C(18)(a), (b) and (c) related to Unit 2's compliance with NUREG-0588, "be formally closed by the NRC." That license condition, shown as APCo Exhibit 83, required that all safety-related electrical equipment in Unit 2 be qualified in accordance with the provisions of NUREG-0588 and that complete and auditable records demonstrating such qualification be maintained.

By letter dated May 23, 1985 -- a few short months before the compliance deadline -- the NRC wrote Alabama Power Company regarding the "Evaluation and Status of License Conditions for Joseph M. Farley Unit 2." The transmittal letter said, "the enclosure to this letter indicates the current evaluation and status of our review of your submittals relating to the identified license conditions" (Emphasis supplied).

(APCo Exhibit 84). The NRC concluded:

The license condition required certain remedial actions or alternative actions no later than June 30, 1982. Commission

regulation 10 CFR 50.49 negated the June 30, 1982 completion date. By letter dated December 13, 1984, we have provided a safety evaluation which concludes that the EQ Program is in compliance with the requirements of 10 CFR 50.49.

Therefore, License Condition 2.C(18) has been met.

(APCo Exhibit 84, at page 1).

In our opinion, this affirmative statement from the NRC regarding the status of Alabama Power Company's equipment qualification efforts is not equivocal. It says plainly that the EQ license condition "has been met." It does not inform Alabama Power Company that there are EQ deficiencies about which it clearly knew or should have known.

The Information Notices on various items of electrical equipment are discussed in the context of the specific issues. These notices may, at most, indicate that certain items of equipment needed to be qualified. However, none provided notice, as the Staff now asserts, that our approach on the various issues was flawed. Further, none should receive greater weight and credibility than a specially prepared "Evaluation and Status of Certain License Conditions" by the NRC Staff. It would be inconsistent for the NRC Staff to tell Alabama Power Company, in the summer of 1985, that its EQ license condition is met, basing its statement on a current evaluation and review of EQ submittals, and then later contend

that, during that same summer, Alabama Power Company "clearly knew or should have known" of multiple EQ deficiencies. These are mutually exclusive events.

Again, these Information Notices have previously been addressed in our Direct Testimony and Surrebuttal Testimony on the various technical issues allegedly raised by them. However, the important thing to keep in mind here is that none of these notices provide the recipients with a clear basis for a "clearly should have known" finding, as the enforcement staff is now suggesting. Some have nothing to do with the issues in controversy. They just happen to involve similar equipment, e.g., the alleged splice notice. (APCo Exhibits 4 and 41). Some are inconclusive, e.g., the T-drain notice. (Staff Exhibit 55). Another, IN 84-47 (Staff Exhibit 48), must be viewed in the context that the gist of that notice was discussed with the Staff in a January 11, 1984 meeting, and the Staff accepted Alabama Power Company's proposed resolution.

Q12. Mr. Luehman justifies the Staff's actions by noting that over 20 civil penalties were issued under the Modified Enforcement Policy and only Alabama Power Company has asserted that the December 13, 1984 SER "conveyed the NRC staff finding that Farley was in compliance with all the requirements of 10 CFR 50.49." What is your response to this?

A: It is irrelevant to us how other licensees interpreted their SERs. No attempt is made by either Mr. Luehman or Mr. Shemanski to correlate the issues raised in this enforcement hearing with the 20 civil penalties referenced in the testimony. We do know about the effort put forth by Alabama Power Company to comply with EQ; the many hours of work, the interaction with the NRC and its consultants, the audit reviews, TERS and SERs. To us, that is what counts in this enforcement proceeding, not what other utilities' may or may not have done.

III. ENFORCEMENT MATTERS

Q13. How do you respond to the testimony by Mr. Luehman answering Question 10 in his Rebuttal Testimony regarding undocumented engineering judgment and the necessity to document this judgment in a licensee's qualification file? (Rebuttal Testimony, at pages 17-18).

A: (Noonan) Mr. Luehman admits that the Staff "has in the past and continues to accept oral statements from licensees" regarding the qualification of a particular piece of equipment. (Staff Rebuttal Testimony Concerning Enforcement, at page 17, A10). He also admits that the December 1984 SER recognizes that a significant amount of documentation had already been reviewed by the NRC Staff and Franklin Research Center so that the primary objective of any subsequent file audit was to "verify" that the appropriate analyses and documentation exist in the file. (Staff Rebuttal Testimony Concerning Enforcement, at page 18, A10). The significance of this admission is that shortly before the deadline, Alabama Power Company had conveyed to the Staff, sometimes in writing and sometimes orally, its then-current state of knowledge regarding qualification of each item of Class 1E electrical equipment. The Staff had already undertaken "a number of pre-deadline inspections to monitor industry progress" (Staff Rebuttal Testimony Concerning Enforcement, at page 19, A10)

and, thus, had superior knowledge about the issue in 1985. Our policy was that we would never have accepted statements or documents by Alabama Power Company regarding equipment qualification that were clearly erroneous.

Q14. Mr. Luehman identifies Bob LaGrange as a member of the inspection team that produced the Calvert Cliffs Inspection Report. (Staff Exhibit 63). He suggests that such a report illustrates the level of documentation the NRC Staff found necessary to comply with 10 CFR 50.49 implying, of course, that Alabama Power Company should have read that inspection report. (Rebuttal Testimony, at page 19). Do you have a response to this?

A: (Noonan) Mr. LaGrange was Section Leader of the Environmental Qualification Section, Equipment Qualification Branch, Division of Engineering, Office of Nuclear Reactor Regulation, U. S. Nuclear Regulatory Commission, subsequent to Mr. DiBenedetto. He remained in that position until the Equipment Qualification Branch was disbanded in 1985. During that time frame, Mr. LaGrange supervised the EQ reviews and evaluations performed by the NRC Staff and its consultants for all operating nuclear power plants and those under construction. He was involved with the NRC's EQ efforts for the entire six years the Equipment Qualification Branch existed. He then went to work with me at HALLIBURTON NUS as a senior executive

consultant and provided consulting services regarding EQ to various nuclear utilities.

(Jones, McKinney) The Board should know that Mr. LaGrange executed a joint affidavit in which he addresses the issue of engineering judgment raised by Mr. Luehman. (Staff Exhibit 15) This affidavit provides his view, as he recalled it in 1982, regarding the level of documentation needed to meet 10 CFR 50.49. For ease of reference, the relevant part of this affidavit follows:⁴

Q: In your opinion, what is the proper role of engineering judgment in complying with the EQ regulations as you helped develop them?

A: Engineering judgment has long been recognized by the Staff as an area where significant regulatory and utility discretion is appropriate. Within many engineering disciplines, multiple reasonable conclusions, based on the same set of facts, are possible. As the regulator of the nuclear industry, the NRC has recognized that utility engineers can sometimes reach reasonable, albeit different, engineering conclusions even though presented with identical information. Therefore, for areas that require significant judgmental decisions, the Staff should be properly receptive to alternate views and hence, differing engineering judgments. The Staff has recognized this reality by developing its own internal "differing professional opinions" policy. In short, in our opinion, engineering judgment plays an

⁴To avoid any appearance of impropriety, Mr. Noonan's name has been removed from this affidavit, even though it is contained in a Staff exhibit.

important and necessary role in complying with EQ regulations.

Staff management has always been aware of the potential for judgment calls by licensees that differed from the Staff's preferred approach. While we were at the Staff, the test applied to licensee's compliance with EQ regulations was whether the licensee's technical position was reasonable. If it was, then the Staff may have still exercised its regulatory authority and required a licensee to adopt the Staff position that additional documentation was required, however, enforcement action regarding the differing view would not be, in our opinion, considered appropriate.

This same philosophy was anticipated in 1985 for 10CFR50.49 requirements and should accordingly be applied to Alabama Power Company. However, based on our current involvement in this Enforcement Action, it appears that the Staff has inexplicably retracted its prior acceptance of reasonable engineering judgment. We refer specifically to alleged violations of 10CFR50.49(j) where Alabama Power Company and the Staff have differing engineering opinions about whether a document properly demonstrates equipment qualifications. As we discuss the violations later in this affidavit, we will call attention to these differences of engineering judgment.

- Q. While you were at the Staff, did you interpret 10CFR50.49 as requiring that all exercises of engineering judgment be documented in the licensee's files?
- A. No. We are unaware of any regulatory requirement in 1985, or today, that requires a licensee to document its methodology for arriving at an engineering judgment (excluding, for example, a detailed analysis or systems evaluations). In the event a documented basis for the engineering judgment would be desired by the Staff, a licensee should be able to, at that time, document

its engineering judgment without being penalized. Nothing more has been required in other regulatory areas and nothing more should be required for equipment qualification.

- Q. Does the opinion you just expressed comport with the requirement of 10 CFR 50.49(j) which states that the licensee must provide qualification documentation in an "auditable form."
- A. Yes. We note that 10CFR50.49(j) only requires that, "a record of the qualification, including documentation in paragraph (d) of this section, must be maintained in an auditable form for the entire period during which the covered item is installed in the nuclear power plant . . ." The list provided in 10CFR50.49(d) does not require or imply that documentation of engineering judgments must be maintained in written form or in the EQ file. As a practical matter, engineering judgments are frequently and continuously made during operation of a nuclear plant. It would therefore be impractical to document each "judgment". We, as former Staff EQ managers, never intended nor anticipated that the Staff now would require complete documentation of all engineering judgments in order to avoid imposition of a civil penalty. We obviously never communicated any such requirement to utilities, like Alabama Power Company, when we were on the Staff, and in our opinion it is inappropriate to conclude today that Alabama Power Company clearly knew or should have known of this requirement.

(Staff Exhibit 15, Affidavit, at pages 15-17).

Q15. Mr. Luehman testified that the NRC Staff carefully applied only pre-deadline knowledge in this case and further denies that the agenda from the August 1987 seminar at Sandia

National Laboratories has any relevance in this case. (Rebuttal Testimony, at pages 20-21). Do you have a response to this?

A: We simply cannot accept the implication that the remarkable similarity between the agenda at the Sandia Laboratories seminar in August 1987 and the violations found at Farley a few months later were coincidental. This is particularly true because the inspection team leader, Mr. Merriweather, admitted that, "The purpose of the Sandia seminar was to inform the inspectors, the EQ inspectors, of the latest and greatest of what was happening in the EQ inspections that have been going on since 1984." (Tr. 405).

It is not reasonable to suggest that the inspectors ignored this current state of knowledge while conducting the inspection. Nor do we agree that the NRC Staff "carefully" applied only pre-deadline knowledge in applying the Modified Enforcement Policy. The Modified Enforcement Policy had not been promulgated at the time of the Farley inspection. Of course, the EQ review panel met on this entire enforcement matter for less than two hours and no such evaluation was conducted by them.

(Jones) In addition, during the course of the inspection in September 1987, on numerous occasions I saw Mr. Merriweather

refer to the Sandia seminar handouts or ask another inspection team member to recall the NRC position during the seminar when determining whether an identified deficiency needed to be pursued further. This is how I first learned of the seminar.

Q16. In Q/A 12, the suggestion is made that Alabama Power Company clearly knew or should have known of issues related to terminal blocks, GEMS, and lubrication because the Staff's interest in these issues had been documented in other inspection reports; for example, at Baltimore Gas & Electric's Calvert Cliffs Generating Station. It is also suggested that Alabama Power Company should have been on notice of these facts because a Bechtel employee was at Calvert Cliffs during the inspection, and Bechtel was a primary EQ consultant to Alabama Power Company. (Rebuttal Testimony, at page 22). What is your response to this?

A: In our opinion, it is absolutely unfair to impute knowledge to a licensee, such as Alabama Power Company, on the basis of inspection reports from other utilities. In his deposition, Mr. Potapovs agreed with our position, at page 46:

Q: [B]ut my specific question is, are you critical in any way of Alabama Power Company from what you know about its conduct in this matter for not looking at inspection reports in the public document room?

. . .

A: I'm not critical of Alabama Power Company for not having done that.

Along this same line, it is improper to impute knowledge of the Nuclear Utility Group on EQ to Alabama Power Company. Mr. Potapovs apparently agrees with this conclusion as well:

Q: Can we say, though, that based on what you know you cannot give me your opinion that Alabama Power Company failed to exercise its best efforts because it did not join the Nuclear Utility Group on EQ? I'm not asking you to speculate or make something up, I'm just asking you to base your opinion on what you know now as you sit in that chair.

A: Participating in the EQ group is not a requirement, and I cannot fault the utility for not doing it.

(Potapovs deposition, at page 47).

Finally, we believe that it is improper to suggest that the knowledge of Russ Bell, an employee of Bechtel Power Company, should be imputed to Alabama Power Company. We have determined that Russ Bell was at Baltimore Gas & Electric for approximately two and one-half years under circumstances in which he was a loaned employee who worked exclusively in Baltimore Gas & Electric's facility and was supervised by the EQ coordinator for the Calvert Cliffs facility. It is unfair for the NRC Staff to impute to Alabama Power Company, through Bechtel, alleged knowledge that a loaned employee may or may not have had, when that individual was working exclusively for

Baltimore Gas & Electric at its facilities and has very little, if any, actual contact with Bechtel during this time frame, much less any actual contact with other employees working on other projects within Bechtel. It is our opinion that if this information is so important then the NRC has the responsibility to notify the industry in a clear, unambiguous and understandable manner.

IV. MITIGATION/ESCALATION

Q17. Mr. Luehman, purporting to interpret Mr. Merriweather's sworn testimony, contends that Alabama Power Company did not exercise its best efforts to comply with EQ regulations by the deadline. (Rebuttal Testimony, at page 24). Please provide a response to this testimony.

A: Mr. Luehman's post-deadline perspective clashes with the affidavit of Mr. DiBenedetto and Mr. LaGrange⁵ on this issue in 1988. For ease of reference, it is incorporated here as follows:

Q. One of the mitigation factors which the Staff says it will consider in determining a proposed civil penalty under the Modified Policy is whether the licensee exercised its "best efforts to complete EQ within the deadline." Do you have an opinion whether Alabama Power Company exercised its best efforts to complete its EQ program by November 30, 1985?

A. (Mr. LaGrange) Yes [I] do. In [my] opinion, the level of effort that Alabama Power Company devoted to the implementation of its EQ program was indicative of a licensee that exercised its best efforts to complete its EQ Program by November 30, 1985. As [I] have previously testified, [I was] instrumental in reviewing the EQ programs of virtually every nuclear utility in the United States during the 1980-84 time frame. In [my] dealings with Alabama Power Company, [I] found them to be responsive to any questions raised; they

⁵To avoid any appearance of impropriety, Mr. Noonan's name has been removed from this affidavit, even though it is contained in a Staff exhibit.

quickly provided the Staff with requested information and proceeded responsibly in their EQ efforts. This enabled the Staff to draft, review and issue Alabama Power Company's final SER in a timely manner. It is clear to [me] that Alabama Power Company's efforts to comply with environmental qualification in general met the best efforts of the other nuclear utilities in the country.

(Mr. DiBenedetto) I had several occasions to review and participate in the development and implementation of Alabama Power Company's EQ program. While at the Staff, I supervised the NTOL review of Unit 2 and reviewed the IEB-79-01B response of Unit 1. I also conducted similar reviews for virtually all other operating plants and NTOL's in the country. In my opinion, Alabama Power Company's EQ program was complete, responsive to the pertinent issues and was among the best of the EQ programs I evaluated. For example, in the Staff reviews prior to issuing the Unit 2 operating license, Alabama Power Company's EQ program was one of the few that was approved after only one visit. This meant that the Staff was not required to expend additional resources by re-inspecting this Unit.

Since becoming involved with Alabama Power Company in 1987, I have become aware of the efforts it undertook to comply with EQ after I left the Staff in 1981. In my opinion, the level of effort expected by Alabama Power Company thereafter increased, not diminished, and thus I believe that it maintained its best efforts to complete EQ within the deadline.

(Mr. DiBenedetto and Mr. LaGrange) One additional matter which we would all like to address is the statement in the Notice of Violation transmittal letter on page three that Alabama Power Company lacked "best efforts to complete environmental qualification of electrical equipment by the November 30, 1985 deadline". We were the designated management of the Staff during this time period with responsibility for evaluation of all EQ programs at NRC licensed utilities. We disagree with the NOV and base this disagreement on our personal knowledge of Alabama Power Company's responsiveness, desire

and effort to excel in this area. Illustrative of this desire to excel are the corrective actions taken by Alabama Power Company after the EQ audit. They quickly and efficiently resolved any perceived problems in a conservative and prudent manner. Thus, in our opinion, Alabama Power Company should have afforded maximum mitigation for its best efforts to comply with the EQ deadline and, moreover, should not be subject to any penalty escalation.

(Staff Exhibit 15, Affidavit, at pages 19-21).

Two things are important about this affidavit: First, it is the affidavit signed by Mr. LaGrange, a witness whose credibility has now been accepted by the Staff. Second, the affidavit represents the joint opinions of two of the three NRC Staff individuals most knowledgeable about the efforts of licensees to comply with EQ prior to the compliance deadline. Nothing Mr. Luehman says in 1992 to justify his enforcement decisions can diminish this testimony.

Moreover, it is disingenuous for Mr. Luehman to fault Alabama Power Company for relying on outside expertise such as provided by Bechtel. It was typical in the industry then for utilities to seek advice from other consultants, and Alabama Power Company certainly was no different from any other utilities in this regard. For its own part, the NRC used Franklin Research Center as a major consultant and had Sandia design an EQ seminar.

What is really at work here is a clear recognition by the enforcement staff that the evidence strongly supports Alabama Power Company's position that it complied with the regulatory requirements of 10 CFR 50.49, as those requirements were understood prior to the deadline. The Staff cannot demonstrate that Alabama Power Company failed to engage in best efforts to comply with the EQ requirements, nor is there any credible proof that Alabama Power Company "clearly knew or should have known" of EQ deficiencies. The suggestion that such a conclusion can be supported by examining other utilities' inspection reports is not only unfair but completely different from anything expected by the NRC Staff. Even if such an approach was proper, there is no documented evidence that the enforcement staff performed such a review prior to imposing the \$450,000 fine. (Response of Mr. Luehman to questions from Judge Carpenter. Tr. 306-316).

One additional matter, in their Direct Testimony the Staff says that it concluded that Alabama Power Company's efforts to comply with EQ "were not any more extensive than that of the average licensee." It seems unfair to use such a conclusion to escalate a civil penalty by 50% if, as it appears under the Staff's testimony, Alabama Power Company was consistent with the industry average.

Q18. Mr. Luehman suggested that Alabama Power Company still does not understand the NRC Staff's concern regarding changing out the V-type splices in the containment for fan motors. Specifically, he contends that Alabama Power Company was required to issue a Justification for Continued Operation (JCO) or immediately declare the fan motors inoperable. What is your response to this testimony?

A. We do not agree with Mr. Luehman. In Generic Letter 86-15, (Staff Exhibit 9, at page 1) it says:

When a licensee discovers a potential deficiency in the environmental qualification of equipment (i.e., a licensee does not have an adequate basis to establish qualification), the licensee shall make a prompt determination of operability, shall take immediate steps to establish a plan with a reasonable schedule to correct the deficiency, and shall have written justification for continued operation. This justification does not require NRC review and approval.

Regarding these three requirements stated in the Generic Letter, Alabama Power Company made a prompt determination of operability and we have previously testified on that point. (See Direct Testimony of Love, Sundergill, Jones, Q/A 40-43, at pages 48-54.) The conclusions regarding operability of the splices, and the JCO, were documented in a letter dated September 30, 1987. (APCo Exhibit 108). In a meeting with the Staff held in Washington, D.C. on September 24, 1987, Alabama Power Company also explained this determination to the

Staff and the Staff consensus was that it would, "accept the Alabama Power Company judgment that splices are qualifiable at this time." (APCo Exhibit 94). This operability determination was later validated by Wyle, as documented in its test report. (APCo Exhibit 39).

As illustrated in Mr. Shipman's Direct Testimony (APCo Direct Testimony, Shipman, at pages 7-8, A9), Alabama Power Company also took immediate steps to establish a plan to correct the deficiency. As it turns out, this plan, which called for changing out the V-type splices in favor of Raychem splices, was implemented within eighteen days. Although Alabama Power Company had previously initiated a JCO, it was decided that the work to correct the deficiency could be completed prior to completion of the JCO and, accordingly, efforts on the JCO development were stopped. To us, Alabama Power Company went beyond the Generic Letter recommendation to, "take immediate steps to establish a plan with a reasonable schedule to correct the deficiency" by replacing promptly all fan motor splices with approved Raychem material. Moreover, it seems to us that it was appropriate to terminate action on the JCO since it obviously was no longer needed.

In any event, should Mr. Luehman continue to insist that a JCO should have been prepared, then we believe that the substance of the minute notes from the September 24, 1987 meeting (APCo

Exhibit 94) and the September 30, 1987 letter (APCo Exhibit 108) should certainly satisfy this concern. A specific JCO on the fan motors/room coolers would have been premised largely on our position that the splices would be operable in an accident environment, as articulated in APCo Exhibit 108.

V. INSPECTIONS CONDUCTED AT FARLEY

Q19. In response to Question 17, the Staff witness testified that, "For purposes of the Modified Enforcement Policy, the findings of the two inspections were considered together." He then goes on to say that the Wyle Test Report (APCo Exhibit 39), which applied to the V-type splices was "unacceptable." How do you respond to this testimony?

A: This testimony is inherently inconsistent with that provided by Mr. Merriweather and Mr. Paulk at the hearing in February. Mr. Luehman suggests that for purposes of the Modified Enforcement Policy, the findings of the two inspections would be considered together, yet Mr. Merriweather testified that he refused to consider the Wyle Test Report because it was not prepared during the inspection. (Tr. 383-384). It seems to us that if enforcement action is going to be taken on the basis of two inspections "considered together," then the opportunity under Section III of the Modified Enforcement Policy to provide additional information during the inspection should also last that long. The testing by Wyle was begun in August, 1987, and the report was available in October, 1987, well before the conclusion of the November 1987 inspection.

For enforcement purposes, the Staff wishes to combine the inspections and use the alleged violations in aggregate to

impose a hefty civil penalty. Yet for mitigation purposes, or for demonstrating that the alleged violation was not sufficiently significant to justify civil penalty under Section III of the Modified Enforcement, the team leader refuses to even review the test report, saying that the inspection was concluded.

These two positions do not square. If the Staff views the September and November inspections as separate, it would be required to treat September as the "first round" inspection under the Modified Enforcement Policy. The November inspection deficiencies, if any, would be treated for enforcement purposes under Part 2, Appendix C, and a safety significant evaluation would then have to be conducted.

Q20. Does this conclude your testimony?

A. (Jones, McKinney, Noonan) Yes.

1 JUDGE BOLLWERK: At this point, I believe the
2 staff panel is available for cross-examination.

3 I would remind all the witnesses again, you have
4 previously been sworn and you remain under oath.

5 CROSS-EXAMINATION

6 BY MR. MILLER:

7 Q Mr. Shemanski, you told us that you were
8 instrumental in the preparation of the safety evaluation
9 report for the Farley Units 1 and 2 dated December 1984. Is
10 that correct?

11 A [Witness Shemanski] Yes, that is correct.

12 Q At the time that safety evaluation was prepared,
13 for whom did you work?

14 A [Witness Shemanski] I worked for Vince Noonan.

15 Q And was he your chief or your section leader?

16 A [Witness Shemanski] He was the Chief of the
17 Equipment Qualification Branch at that time.

18 Q And who was your section leader at that time?

19 A [Witness Shemanski] Bob LaGrange.

20 Q The same Mr. LaGrange we discussed a few minutes
21 ago?

22 A [Witness Shemanski] Yes.

23 Q And did you prepare this SER as a result of your
24 instructions and teachings from, among others, Mr. LaGrange
25 and Mr. Noonan?

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1 A [Witness Shemanski] Yes. It was a group effort.
2 The development of the SER. This was one of 71 SERs.

3 Q As I understand it, you were instrumental in
4 preparation of each of the 71 SERs, is that correct?

5 A [Witness Shemanski] That is correct. I was the
6 lead engineer for what was referred to as multi-plant action
7 B-60.

8 Q As the lead engineer, did you participate in
9 evaluation of any of the documentation submitted to Franklin
10 Research Center in an effort to prepare these 71 SERs?

11 A [Witness Shemanski] Yes, I did.

12 Q In that regard, did you do so with respect to the
13 Farley Nuclear Plant?

14 A [Witness Shemanski] With regard to the Farley
15 Nuclear Plant, I reviewed the submittal, several submittals
16 that follow the meeting we had with Farley in 1984.

17 Q That was the January 11, 1984, meeting?

18 A [Witness Shemanski] That is correct.

19 Q You attended that meeting?

20 A [Witness Shemanski] I attended that meeting,
21 correct.

22 Q Did Mr. Noonan attend that meeting?

23 A [Witness Shemanski] I don't believe so, not to my
24 knowledge.

25 Q How about Mr. LaGrange?

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1 A [Witness Shemanski] I believe Mr. LaGrange was in
2 attendance at that meeting.

3 Q We will talk more about that. If I understand it,
4 your participation and evaluation of the Franklin work did
5 not begin until after that January 11th, 1984, meeting, at
6 least with respect to the Farley Plant?

7 A [Witness Shemanski] The exception to that may
8 have been the previous SER that was written, I believe, in
9 1983. I may have been involved reviewing the documentation
10 submitted by Farley in preparation. Keep in mind, again,
11 there were a series of TERS and SERs.

12 Q Yes. There was quite a substantial amount of work
13 done in this regard, wasn't there?

14 A [Witness Shemanski] Yes, there was.

15 Q And you say you may have been involved. Can you
16 tell us, from your independent recollection, that you were
17 involved and, if so, on what issue?

18 A [Witness Shemanski] I don't recall specifically.
19 I did generate the previous SERs in the 1982/1983 time
20 frame. To the best of my knowledge, I was involved in the
21 preparation of the Farley SER at that time.

22 Q Were you also involved in the preparation of SERs
23 for other utilities and other operating reactors?

24 A [Witness Shemanski] Yes, I was.

25 Q Let's see if we can fix for us what your role was.

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1 I understood that you were the lead engineer. Is that
2 correct?

3 A [Witness Shemanski] That is correct.

4 Q Were there other lead engineers who participated
5 in this effort with you?

6 A [Witness Shemanski] There were other engineers
7 that participated in this effort with me. However, I was
8 designated as the lead engineer. I had the responsibility
9 for preparing the safety evaluation reports.

10 Q How many other engineers reported to you?

11 A [Witness Shemanski] We had a technical assistance
12 contract with EG&G Idaho.

13 Q I see.

14 A [Witness Shemanski] And they provided, on the
15 average, three or four engineers that participated in EQ
16 inspections, and also assisted us in the preparation of the
17 safety evaluation reports.

18 Q So we have three or four other engineers that
19 reported to you. Any others?

20 A [Witness Shemanski] Occasionally I did receive
21 help from other individuals in our section.

22 Q Who was it that worked directly with the Franklin
23 Research Center?

24 A [Witness Shemanski] I was the main contact. I
25 had the contract. I was the technical monitor on that

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1 particular technical assistance contract.

2 Q All right. And for some historical perspective,
3 as I understand it, Franklin would request data or documents
4 from the licensees. They would then be provided to Franklin
5 via the staff, or would they go directly to Franklin?

6 A [Witness Shemanski] We used both vehicles.
7 Initially the information came into the staff as a result of
8 -- of bulletin 79-01B.

9 Q Right.

10 A [Witness Shemanski] The staff subsequently sent
11 the information up to Franklin. Now, as Franklin proceeded
12 to evaluation this information, and they requested
13 additional information, the information was sent by the
14 licensees directly to Franklin or directly to the staff.

15 Q To the extent it went directly to Franklin, would
16 you get involved in it as the lead engineer?

17 A [Witness Shemanski] Not at that point, no.

18 Q Can you tell us, again, from an independent
19 recollection, of any specific documents or issues you
20 examined for each -- either Farley Unit?

21 A [Witness Shemanski] The documents I specifically
22 recall reviewing, again, were following the January 1984
23 meeting -- the submittals that Farley sent in.

24 Q Go ahead and remind us what those documents were.

25 A [Witness Shemanski] Well, one of them was the

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1 meeting minutes that Farley prepared following the January
2 1984 meeting.

3 Q Did you review them?

4 A [Witness Shemanski] And then --

5 Q Go ahead. I'm sorry. I didn't mean to interrupt.

6 A [Witness Shemanski] There were a series of
7 submittals by Farley.

8 Q And what was in those series of submittals, if you
9 recall?

10 A [Witness Shemanski] Basically, their response to
11 their resolution of the deficiencies identified in the
12 Franklin Technical Evaluation Report.

13 Q Okay.

14 A [Witness Shemanski] And I think there were a
15 total of, I believe, three submittals.

16 Q All right. You reviewed each one of those
17 submittals?

18 A [Witness Shemanski] Yes I did, again, with
19 assistance from EG&G Idaho.

20 Q Perhaps it might be more accurate to say you
21 caused those submittals to be reviewed by those who were
22 working for you?

23 A [Witness Shemanski] Yes. That's true. However,
24 I did play an active role in reviewing the submittals. I
25 did review them on my own also.

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1 Q Okay. Incidentally, you mentioned that the
2 Franklin Research Center identified proposed -- I'm sorry.
3 Let me strike that and say it this way. You mentioned that
4 the Franklin Research Center identified deficiencies; is
5 that correct?

6 A [Witness Shemanski] Yes, they did.

7 Q And those appeared in the TER that Franklin
8 prepared for each unit?

9 A [Witness Shemanski] That is correct.

10 Q Was that the source of the deficiencies that were
11 discussed at this January 11th meeting?

12 A [Witness Shemanski] Yes. During the January 11th
13 meeting, the basis of that meeting was to review the
14 Franklin Technical Evaluation Report and to go over each and
15 every deficiency identified by Franklin.

16 Q I think it would be fair to say that the reason
17 the parties got together on January 11th, 1984 was to review
18 those deficiencies in the Franklin TER; is that correct?

19 A [Witness Shemanski] Yes, it was.

20 Q And it was part of the objective and intent of
21 that meeting for Alabama Power Company to tell the staff how
22 it proposed to resolve those deficiencies?

23 A [Witness Shemanski] That is correct.

24 Q And as a result of that meeting, Alabama Power
25 Company made the statements that we'll talk about and also

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1 provided a written submittal of the minutes of that meeting,
2 did they not?

3 A [Witness Shemanski] Yes, they did.

4 Q You have reviewed that submittal, have you?

5 A [Witness Shemanski] The meeting minutes?

6 Q Yes, sir.

7 A [Witness Shemanski] Yes.

8 Q And at that meeting the staff was in a position to
9 either accept or reject whatever Alabama Power Company said
10 about how it would resolve the identified deficiencies?

11 A [Witness Shemanski] Not really. The intent of
12 that meeting was not to make a final determination from the
13 staff's viewpoint. We were there, again, to review the
14 deficiencies identified in the Technical Evaluation Report,
15 to listen to the resolution, the proposed method of
16 resolving these deficiencies by Farley and to give guidance
17 in various areas involved with environmental qualification.
18 However, we did not verify or give final word basically on,
19 you know, any decision at this meeting.

20 Q Perhaps we can -- pardon me, I didn't mean to --

21 A [Witness Shemanski] That was not the intent of
22 the meeting with the staff.

23 Q Perhaps we can say it this way. If Alabama Power
24 Company had proposed a resolution that was unacceptable, the
25 staff would have said so at that time?

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1 A [Witness Shemanski] Yes, we would have. Again,
2 we were giving our best guidance at the time as to what we
3 thought that we could accept.

4 Q Sure. You exchanged information and knowledge
5 with Alabama Power Company about these identified
6 deficiencies, did you not?

7 A [Witness Shemanski] That is correct.

8 Q And if there was something about one of these
9 identified deficiencies in this proposed resolution, someone
10 on the staff would have spoken up and said so?

11 A [Witness Shemanski] Yes. It depends on what
12 depth the deficiency -- the resolution of that deficiency
13 was defined in. It could have been simply a statement by
14 Alabama, you're going to replace it with qualified
15 equipment. That would have satisfied the staff. However,
16 later on we would verify that, in fact, that equipment was
17 qualified.

18 Q Okay.

19 A [Witness Shemanski] But, at that point in time,
20 that was a sufficient statement.

21 Q All right, sir. But, let's be clear about this.
22 You had this meeting in January 11th, in which the staff had
23 such an awareness opportunity or an opportunity to speak,
24 did it not?

25 A [Witness Shemanski] Yes.

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1 Q You subsequently got a submittal dated February
2 29th, 1984, did you not?

3 A [Witness Shemanski] Yes, we did.

4 Q And you have told us that you reviewed that
5 submittal, didn't you?

6 A [Witness Shemanski] I reviewed it in accordance
7 with EG&G Idaho.

8 Q And I think you've told us that you had three
9 other engineers. Can you tell me how many additional
10 engineers working for you reviewed Alabama Power Company's
11 submittal?

12 A [Witness Shemanski] At that point, I had none
13 working directly for me, in terms of a supervisory capacity.
14 I was the technical monitor for several technical assistance
15 contracts -- Franklin and EG&G Idaho. So, indirectly, these
16 engineers were supporting me; they weren't working directly
17 for me.

18 Q Did any of them review Alabama Power Company's
19 February 29th, 1984 submittal?

20 A [Witness Shemanski] To the best of my knowledge,
21 they did, yes.

22 Q All of them?

23 A [Witness Shemanski] As a minimum, one, probably
24 three. I'm talking about the people at EG&G Idaho.

25 Q How about Franklin. Did you send the February 29,

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1 '84 submittal to Franklin for its review and evaluation?

2 A [Witness Shemanski] I don't believe we did at
3 that point. We had the Technical Evaluation Report from
4 Franklin, and we did not require their assistance at that
5 point.

6 Q Fair to say that the Franklin TER was the base
7 document then?

8 A [Witness Shemanski] That is correct. It is the
9 base document for the meeting and the subsequent Safety
10 Evaluation Report.

11 Q I think you told us that there were three
12 submittals submitted by Alabama Power Company?

13 A [Witness Shemanski] Well, following the meeting,
14 we had the meeting summary. You had the February, I
15 believe, 29th, 1984 submittal.

16 Q I see.

17 A [Witness Shemanski] And there were, if I recall,
18 subsequent submittals in the May timeframe.

19 Q Would it be accurate to say that on each of these
20 submittals, however many there were, they went through the
21 same review regimen you have described for us?

22 A [Witness Shemanski] Yes, they did. Yes.

23 Q Okay. And all of that occurred, I take it, before
24 you wrote the SER?

25 A [Witness Shemanski] That is correct. Yes.

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1 Q Okay. Let me ask you this question. Will you
2 agree with me that the staff had an opportunity during its
3 review process to call up Alabama Power Company and say one
4 of its proposed resolutions is nonacceptable?

5 A [Witness Shemanski] We had that opportunity.

6 Q Hypothetically, can you -- will you agree with me
7 that had either you or one of these engineers that reviewed
8 Alabama Power Company's submittal determined that a proposed
9 resolution of a deficiency was unacceptable, you would have
10 said so?

11 A [Witness Shemanski] If we felt it was
12 unacceptable, we would have notified them, yes.

13 Q And certainly at this time, which I take it to be
14 the spring and summer of 1984, the staff had full awareness
15 of the most current EQ issues in the industry. Is that a
16 true statement?

17 A [Witness Shemanski] Yes.

18 Q Can you identify anyone else who had more
19 awareness of the current EQ issues in the industry besides
20 the staff?

21 A [Witness Shemanski] I can't think of anyone.

22 Q And, with respect to the staff, can you identify
23 anyone else who had more awareness of the current EQ issues
24 than you and the three engineers you had available to you to
25 review these submittals from the licensees?

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1 A [Witness Shemanski] We were not the only people
2 knowledgeable about EQ. There were other staff members in
3 our Section that had equal knowledge, even though they were
4 not directly involved in reviewing the Farley submittals.

5 Q I see, but these other Staff members eventually
6 reported to Mr. LaGrange as the Section Leader, and then to
7 Mr. Noonan?

8 A [Witness Shemanski] That's correct.

9 Q Okay. But if we stop the clock back in, say, the
10 summer of 1984, would it be fair to say that the Section
11 headed up by Mr. LaGrange, and the Chief of which was Mr.
12 Noonan, had the most current state of knowledge about EQ
13 issues in the nuclear power industry?

14 A [Witness Shemanski] That's a fair statement.

15 Q Okay. And with that body of knowledge, you
16 commenced to write the 71 SERs?

17 A [Witness Shemanski] That is correct.

18 Q Now, let me ask you something: Before the SER was
19 written -- and let's back up, say, into 1981, '82 and '83;
20 would it be fair to say that as a result of the various
21 submittals to the staff by the licensees, that there had
22 been a in-depth review of all of the documentation, EQ
23 documentation submitted to the staff?

24 A [Witness Shemanski] Yes.

25 Q And by that, I mean -- well, let me strike that

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1 and ask it to you this way: I understood, either from your
2 earlier testimony or maybe your deposition, that you
3 concurred that EQ development in the '81, '82, '83 and on -
4 - timeframe, was an evolutionary process?

5 A [Witness Shemanski] That is correct, yes.

6 Q As the parties -- and by that, I mean, the Staff
7 and the nuclear power industry -- learned more about EQ,
8 then, of course, that was reflected in the various
9 submittals and pronouncements by the Staff?

10 A [Witness Shemanski] That's correct.

11 Q And during this period, if I understand what you
12 just told us, the Staff and its contractor, Franklin, and
13 perhaps these other contractors you've identified for us,
14 were conducting an in-depth review of the documentation and
15 submittals made to it by the power reactor licensees?

16 A [Witness Shemanski] Yes.

17 Q The objective was to get the best work product
18 that they could; is that true?

19 A [Witness Shemanski] That's correct.

20 Q From time to time, the Staff would issue an IE
21 Notice, if it felt it was appropriate?

22 A [Witness Shemanski] As information became
23 available to the Staff, there were a series of Information
24 Notices that were issued with regard to various equipment
25 qualification problems.

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1 Q Certainly, it was never intended that the Staff
2 would not disclose an important issue about equipment
3 qualification; would it?

4 A [Witness Shemanski] Correct.

5 Q And I think you've identified in your testimony,
6 perhaps your rebuttal testimony, there was actually a policy
7 statement issued by the NRC?

8 A [Witness Shemanski] Yes, there was.

9 Q Reflecting sort of the history of EQ development?

10 A [Witness Shemanski] [No audible response.]

11 Q I'm sorry. You have to say something.

12 A [Witness Shemanski] That's correct.

13 Q Okay. Now, let's think about the SER. Would it
14 be fair to say that the SER was the staff's way of making a
15 pronouncement about the licensee's equipment, about
16 qualification of the licensee's electrical equipment
17 important to safety?

18 A [Witness Shemanski] It was, but the way you
19 stated it, gives the appearance --

20 Q Well, let's take it one at a time.

21 A [Witness Shemanski] Okay.

22 Q My answer was, yes, it was; is that true?

23 A [Witness Shemanski] Restate that question,
24 please.

25 Q Okay, well, I'll do that in a second. Do you wish

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1 to retract your sentence, "it was"?

2 A [Witness Shemanski] Yes, I do.

3 Q All right, and tell me what the reason for that
4 is.

5 A [Witness Shemanski] Well, the way you stated it
6 initially, it sounds as though when we wrote the SER, our
7 word was final with regard to the Environmental
8 Qualification of equipment.

9 Q So?

10 A [Witness Shemanski] And that is not the exact
11 intent of those particular Safety Evaluation Reports.

12 Q You do not agree that they were final SERs?

13 A [Witness Shemanski] They were final SERs, yes. I
14 agree with that.

15 Q You do not agree that they were to address the EQ
16 or Equipment Qualification of electrical equipment important
17 to safety for each licensee?

18 A [Witness Shemanski] The purpose of those final
19 SERs was to find -- or, make a finding that the licensee's
20 Equipment Qualification Program was in compliance with
21 50.49.

22 Q Do you agree that each of the final SERs addressed
23 the environmental qualification of electrical equipment
24 important to safety for the 71 power reactor licensees?

25 A [Witness Shemanski] Yes.

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1 Q And that was their purpose, which was to address
2 the qualification of electrical equipment; was it not?

3 A [Witness Shemanski] It addressed it in the sense
4 that it approved the approach offered by the licensees, and
5 it approved the methodology offered by the licensees;
6 however, there is still one more phase that needs to be done
7 which is referenced in the Safety Evaluation Report, and
8 that's called the Verification Phase.

9 Q All right. We're going to talk about that in just
10 a second, but let's see if we have a good starting point.
11 Do you agree with me that the purpose of each of these final
12 SERs was to address the environmental qualification of
13 electrical equipment important for safety for the 71 power
14 reactor licensees?

15 A [Witness Shemanski] Yes, that is correct.

16 Q And by "address," you do not mean to suggest that
17 the SER would fail to call out an unacceptable situation at
18 a licensee; do you?

19 A [Witness Shemanski] The SER would call out an
20 item as you just described as an open item, if --

21 Q If there was one?

22 A [Witness Shemanski] If there was one, it would be
23 identified in the SER as a open item.

24 Q If there was not one, it would not be so
25 identified?

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1 A [Witness Shemanski] If the Staff had no knowledge
2 at that particular time --

3 Q Okay.

4 A [Witness Shemanski] -- it would not identify any
5 alternatives.

6 Q Can we say though that the final SER issued by the
7 staff at least indicated the current state of knowledge
8 about EQ of electrical equipment important to safety at the
9 point in time it was issued?

10 A [Witness Shemanski] That is generally correct.
11 However, the SER was a reflection of the information
12 provided to the staff by the licensee.

13 Q I see. Okay. Generally correct, though, at least
14 as for that point in time?

15 A [Witness Shemanski] Yes.

16 Q I'll ask it to you a slight different way: If
17 there was some equipment deficiency the staff clearly knew
18 of, it would have said so in the SER; is that true?

19 A [Witness Shemanski] If the staff was aware of
20 that information provided by the licensee, it would have,
21 again, as I mentioned, be identified as an open item.

22 Q Does that not mean to you that if there was no
23 such deficiency identified, the licensee is entitled to look
24 at his SER and say, well, there's nothing the staff clearly
25 knows about that's a deficiency; is that true?

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1 A [Witness Shemanski] Again, we're talking about
2 the approach offered by the licensee, methods in their
3 resolution, and we must maintain or keep in mind that there
4 is a verification phase which, obviously, the staff, at that
5 point in time, cannot address.

6 Q Okay.

7 A [Witness Shemanski] So --

8 Q I understand that's your position, and you
9 understand we disagree, but let's make sure our Q and A,
10 true up.

11 When the licensee gets his SER and looks at it,
12 isn't it reasonable for the licensee to conclude that there
13 is no equipment qualification deficiency that the staff
14 clearly knows about, if it doesn't appear in the SER?

15 A [Witness Shemanski] That's correct.

16 Q Let's turn to the SER. Have you a copy of Al-Co
17 Exhibit 21?

18 A [Witness Shemanski] I have a copy of the December
19 13 --

20 Q Okay.

21 A [Witness Shemanski] -- 1984 SER.

22 Q That's 21.

23 A [Witness Shemanski] Right.

24 Q If you don't mind, please, Mr. Shemanski, let's
25 turn --

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1 WITNESS JONES: Could we get a copy of that for
2 our records, as well?

3 MR. MILLER: You should have it right there behind
4 you.

5 WITNESS JONES: It's missing from the document.

6 MR. MILLER: That's because your lawyer took it
7 out.

8 WITNESS JONES: I just like to follow along.

9 MR. MILLER: All right.

10 If the board will permit us --

11 JUDGE BOLLWERK: At some point, Mr. Miller, we're
12 going to be interested to see what Mr. Noonan has to say
13 about some of the responses we're hearing. So, I don't know
14 if it's now or later -- I'll leave that up to you.

15 MR. MILLER: Sir, while we're doing this
16 logistical thing, we'll ask -- let's ask Mr. Noonan if --
17 would the board like to ask a question?

18 JUDGE BOLLWERK: I think it's fairly simple. You
19 heard some of the responses that Mr. Shemanski is giving.
20 Do you disagree, have any comments on anything that he said
21 up to this point?

22 WITNESS NOONAN: I have heard Mr. -- Mr.
23 Shemanski's responses. I -- I have a problem with some of
24 the statements that he is making, given the -- given the
25 situation that existed at the time when I was Branch Chief

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1 in -- in the '82 to '85 timeframe.

2 The staff SER, as always, the history of the --
3 the history of the -- of the commission, was to make a
4 determination as to safe operations of the plant and also as
5 to the public safety and health, health and safety.

6 It -- it meant -- it was a very important
7 document. It was not to be taken lightly. It was never --
8 it was never written conditionally, except for some cases
9 where near-term operating licenses were given. They were
10 given license conditions.

11 But that -- that document was -- carried a lot of
12 weight with -- not only with -- with myself but my
13 management and also, eventually, with the -- with the
14 commission.

15 The reason we went through all of the -- the pain
16 and misery of these -- these meetings was in order that we
17 could write that -- write that evaluation.

18 We had -- we had a couple of choices in our -- in
19 front of us. We could send -- we could send teams of people
20 out to the site to do it. That required a lot of resources
21 and a lot of time, and we were trying to get this program to
22 come to an end by, you know, in the shortest time possible.

23 We took -- we took what we call the one-day
24 meeting approaches, and that's a little of a misnomer,
25 because they're more than one day sometimes, but we took

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1 that approach so that the staff could look at everything the
2 licensee had -- had at its disposal to make this
3 determination in the final safety evaluation.

4 When -- when the -- when the staff and the utility
5 parted from those meetings, they're really on -- they're
6 really on an equal level. I mean all the knowledge that the
7 staff had and the knowledge that the utility had was -- was
8 pretty equal at that point in time.

9 There were no new deficiencies that existed out
10 there by either the staff or the utility that were not
11 known.

12 So, they came out -- they came out on what I call
13 an equal basis. They both had -- they both had equal
14 knowledge of what was going on.

15 When the -- if something would have occurred that
16 -- that caused the staff to have second thoughts about the -
17 - the conclusions of the safety evaluation, it was our
18 practice to immediately call in the utility.

19 We would not have hesitated to do that, at least
20 get on a conference call with them and talk to them about
21 any kind of deficiencies that might have been brought to our
22 attention that maybe we -- we either missed or for some
23 reason we didn't address properly in the SER.

24 In this case here, in the Alabama case, that --
25 that never occurred. In some other utilities, it did occur.

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1 In fact, in one case, I even went -- I was even personally
2 involved. I had to go up to the site.

3 We decided we -- that's the only way we could
4 really get our hands around the problems that we saw at that
5 particular utility. So, there was -- there was a lot of
6 effort by the staff to write that final SER.

7 I -- I now hear words like -- well, this was
8 really -- it's more -- almost like the words conditional
9 SER, and in my -- in my estimation, a conditional SER does
10 not exist. There is no such thing as a conditional SER,
11 other than, like I said, for NTOLs, where we put in certain
12 license conditions.

13 This thing was written. This SER for Alabama
14 Power was written. There were no known deficiencies at that
15 point of time, and the staff -- the staff drew a conclusion.

16 There -- there was a -- there was a caveat in
17 there about some inspection, but that inspection was
18 involved to only -- to only address those items that the
19 staff felt was necessary in that part of the SER, and if I
20 may refer to it here quickly, on page four of the -- of the
21 SER, "Proposed Resolutions of Identified Deficiencies," and
22 there -- there, we did make a determination that we would
23 have an inspection to verify that what the staff said is the
24 way they're -- way they're resolving these deficiencies.

25 There would be some inspection involved to -- to

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1 verify that information, and that was the intent of the --
2 of the inspection. That was the only condition -- and that
3 was mainly because the staff was not at the site to look at
4 those test reports, look at that documentation itself.

5 JUDGE MORRIS: I want to be sure I understand, Mr.
6 Noonan, the verification process. Are you telling me that
7 the verification would be only for those items identified in
8 the SER?

9 WITNESS NOONAN: Yes.

10 JUDGE MORRIS: Mr. Shemanski and Mr. Luehman, do
11 you agree with that?

12 WITNESS LUEHMAN: No. No, we don't, sir.

13 If you read further down on page four of the SER,
14 it says that the -- it says that the -- "The licensee's
15 equipment qualification files will be audited by the staff
16 during the follow-up inspection," and it does not limit that
17 to just files that the deficiencies were identified in.

18 WITNESS NOONAN: If I may -- may respond to that,
19 unfortunately Mr. Luehman was not present at this time of
20 the -- when the -- when this program was put in place. We
21 can -- we can -- we can argue about the words, that maybe
22 the words are not quite clear enough or more explicit
23 enough.

24 The intent of these inspections was to address
25 only the data that was raised in this SER. That's all it

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1 was for, and -- and I bring that -- I emphasize that point.

2 Had the staff been at the site, they would have
3 looked at -- they would have looked at the documentation
4 necessary for them to reach the conclusion in this SER, and
5 that's all.

6 They would not have gone on a full -- full-blown
7 inspection of -- of the whole plant. It never happened that
8 way.

9 This document was -- this -- this wording in this
10 document was intended to resolve -- was intended to inspect
11 the licensee's assertion that he had certain documentation
12 regarding these proposed deficiencies, and that was it.

13 JUDGE BOLLWERK: You've heard Mr. Luehman, Mr.
14 Shemanski. You were there at the time. Do you have any
15 comments on that?

16 WITNESS SHEMANSKI: Yes. I disagree with Mr.
17 Noonan on that particular point.

18 With regard to the EQ inspections or audits,
19 whatever they were called in those days, we had no
20 constraints as to only looking at the items that Franklin
21 identified deficiencies for.

22 When we planned the inspection, we requested the
23 master list from the utility, and we typically took a 10-
24 to-15-percent sample of items from the EQ master list, and
25 we really, as far as I'm concerned, had no constraints as to

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1 only looking at a specific set of items on there where
2 Franklin identified deficiencies.

3 I feel that we had wide-open latitude. We -- we
4 tried to get a good cross section of components that we
5 looked at, terminal blocks, ASCO solenoid valves and so
6 forth, but again, we got the master list from the licensee,
7 and that was our -- our start, basically, to develop the EQ
8 inspection.

9 That's all.

10 WITNESS NOONAN: If I may -- may comment again.
11 What Mr. Shemanski says is -- is correct for the near-term
12 operating licensees.

13 When we -- when we -- when we did our inspections
14 and our writing of our SERs at those -- at those particular
15 utilities, we actually went -- sent a team of people at the
16 site. They spent -- spent about a week, average, sitting at
17 the site and -- and looking at a number of things that the -
18 - the staff wanted to look at.

19 It -- it identified -- it identified -- it
20 identified those items to the utility, what the staff was
21 looking for, including if the staff decided it wanted to
22 look at something else on those meetings. It had the
23 freedom to do so.

24 We're not talking about that here. What we're
25 talking about here is this -- this particular SER and what

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1 was the intent of the wording in this SER.

2 This SER -- the -- the intent of this SER was to
3 verify the accuracy of the -- of the licensee's assertions
4 regarding the proposed deficiencies.

5 It goes without saying that the -- if the -- if
6 the inspection team wants to go in there and -- and check
7 the -- the plant at some later date and look -- look for
8 things, they -- they always had that freedom to do that.

9 There is no restraints put on any -- any NRC
10 inspector to go out and look at things that he feels it's
11 necessary to look at.

12 I want to talk here, though -- what was -- what
13 were the words intended in this SER, and this SER was
14 intended basically to -- to look at the proposed
15 deficiencies that the utility -- what the utility was going
16 to fix before the -- before everything was okay at that
17 plant.

18 We had to write an SER. We wanted to bring the
19 program to a close, and that was our method of doing so.

20 JUDGE BOLLWERK: Does the staff have any further
21 comments?

22 WITNESS LUEHMAN: I would make just one more
23 comment. That is, if you read the top of page 5 of the SER,
24 clearly when we go into, "The inspection will verify the
25 licensee's program for surveillance and maintenance of

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1 environmentally qualified equipment as adequate," clearly
2 looking at the surveillance and maintenance goes way beyond
3 looking at the identified deficiencies.

4 Those are programmatic areas, and I don't know how
5 Mr. Noonan can draw the narrow conclusion that he has based
6 on those rather broad statements there.

7 If the program was simply to look at the
8 deficiencies, I don't think that it is reasonable to say
9 that the SER would have a statement with broad categories
10 like maintenance and surveillance of the environmental
11 qualification in there. The intent was only to address the
12 specific deficiencies.

13 WITNESS NOONAN: If I may make just one more
14 point, if you take what Mr. Luehman said, and go back and
15 read the first sentence, because we are taking it out of
16 context -- also, I contend we are trying to put something in
17 an SER some years later that was not intended at the time we
18 wrote these SERs.

19 JUDGE BOLLWERK: Let me get the exhibit numbers so
20 that we can pull it and just take a look at that page.

21 MR. MILLER: It is Alabama Power Company Exhibit
22 21, and this is addressing pages 4 and 5.

23 JUDGE BOLLWERK: This is on page 5 we are talking
24 about?

25 MR. MILLER: It starts on the bottom of page 4,

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1 and goes over to page 5.

2 JUDGE BOLLWERK: Okay. Thank you.

3 WITNESS NOONAN: If I may add, on the bottom of
4 page 4, that lower paragraph there starts out with the word
5 "Approach described by the licensee," as you read through
6 that paragraph, you see that in all context we are talking
7 about the proposed deficiencies, the resolution of proposed
8 deficiencies as presented by the licensee.

9 I would like to quote, out of context, I will
10 quote the last sentence, and it says, "Assistance from IE,
11 since a significant amount of documentation has already been
12 reviewed by the staff and Franklin Research Center, the
13 primary objective of the final audit will be to verify that
14 they contain the appropriate analysis and necessary
15 documentation to support the licensee's conclusion that the
16 equipment is qualified."

17 That conclusion I refer to is a conclusion that
18 was made in this January meeting.

19 WITNESS JONES: If I may add, from a licensing
20 perspective, the licensee's perspective, if Mr. Luehman
21 wants to cloud the issue by saying that our surveillance and
22 maintenance program was unacceptable, that, again, was
23 discusse^d 'n the January '84 meeting which I attended and,
24 of course, which Mr. Luehman was not there. Our approach
25 was discussed in detail and well documented.

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1 WITNESS LUEHMAN: The only thing I would add is,
2 below that sentence on page 5 that I read, it goes on to
3 say, "The method used for tracking periodic replacement
4 parts, implementation of commitments and actions -- e.g.,
5 regarding the placement of equipment will also be verified,"
6 those are, again, very general statements which are very
7 consistent with the type of inspection that was done at this
8 plant as well as at other plants which went way beyond the
9 mere verification of a number of deficiencies that were
10 identified in the Franklin Research TERS.

11 My position is whether or not I was at that
12 meeting or not, I think the words speak for themselves.

13 WITNESS JONES: I will just respond by saying that
14 the minutes speak for themselves regarding our maintenance
15 and surveillance program.

16 JUDGE MORRIS: Mr. Shemanski, did you write those
17 words?

18 WITNESS SHEMANSKI: Keep in mind that there were
19 71 SERs, and the format in the 71 SERs was quite similar. I
20 don't recall if I wrote these words specifically. It was
21 kind of a group effort developing the first SER.

22 WITNESS NOONAN: If I may comment, I think I
23 remember the evidence. As Mr. Shemanski said, yes, there
24 were 71 SERs that we had to complete, and Mr. Shemanski,
25 basically, has the job of lead engineer, and he had some

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1 support from Idaho to help us with this thing.

2 These words were basically written as a group.
3 They were probably written by Mr. Shemanski, probably some
4 of the people of Idaho were involved. It eventually came to
5 Mr. LaGrange, and it eventually came to me.

6 In all cases, these words were probably modified
7 by a number of people, so the final product we see here is a
8 group effort by a number of people, not any one particular
9 person.

10 JUDGE MORRIS: So similar words were in all or
11 most of the 71 SERs?

12 WITNESS NOONAN: Yes, sir. We did that because of
13 the fact that we just did not have the staff to rewrite
14 every SER. That is consistent with the history of the NRC
15 staff on any SER. There is a lot of stuff that we call
16 boilerplate that is taken from SER to SER to write it. It
17 doesn't mean that the staff didn't do a thorough review of
18 that. It just means that the words were picked up and put
19 into the SER.

20 JUDGE MORRIS: Mr. Shemanski, as a participant, at
21 least in putting these words together, what was your
22 understanding of the intent?

23 WITNESS SHEMANSKI: My understanding of the intent
24 was that we would have a two phased approach here. The SER,
25 as written, was Phase No. I, basically, in which we approved

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1 the approach offered by the licensee and the methodology
2 they presented to us regarding the resolution of the
3 deficiencies in the Franklin TER. Phase II was the
4 verification phase referred to in this SER as the audit or
5 inspection phase.

6 Clearly, we could only go so far during the
7 meetings. We basically discussed the deficiencies with the
8 licensees, and accepted their word. If they told us a piece
9 of equipment was qualified, we had no reason to challenge
10 them during the meeting.

11 However, during the verification phase, we had an
12 opportunity to substantiate that finding by the licensee.
13 In other words, we looked. So, the SER, again, found their
14 program in compliance with 50.49.

15 However, you have to read the entire SER, and keep
16 in mind that there is part 2, the verification phase, which
17 involves the inspection.

18 JUDGE MORRIS: Which was not limited to those
19 items?

20 WITNESS SHEMANSKI: Which was not limited to that
21 items we had identified. We had an inspection, and I know
22 how they were conducted.

23 I discussed with the licensees what our approach
24 would be. Again, we got the master list, and we chose a
25 number of items from the master list, and went in there and

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1 looked at the documentation for those items, looked at the
2 physical configuration. As Mr. Luehman pointed out, we
3 looked at surveillance and maintenance aspects regarding EQ.
4 We also did some verification of the master list.

5 Again, these inspections were not narrowly focused
6 on just the items identified as being deficient by Franklin.

7 JUDGE BOLLWERK: When were those first inspections
8 conducted?

9 WITNESS LUEHMAN: I was going to add, Judge
10 Bollwerk, I think that the first ten of the inspections were
11 done before the November 30th, 1985, deadline. I think that
12 that is the number. There were ten inspections actually
13 done before the deadline. I may be wrong on the exact
14 number, but in the enforcement part of our testimony, I make
15 reference to some of those inspections in my testimony
16 pointing out that we inspected areas that are at issue here
17 in this proceeding.

18 JUDGE BOLLWERK: Those would have been done while
19 you were still there, Mr. Noonan?

20 WITNESS NOONAN: Yes, I believe so.

21 When the baton was to be passed from NRR to I&E,
22 we were now looking at the time when the branch would be
23 dissolved.

24 We had a number of meetings with NRR management
25 and I&E management on how this would progress. It was

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1 decided that we would try to have ten inspections, two from
2 each region. So, we could do a number of things in these
3 inspections.

4 Number one, we could have the actual inspectors
5 from each region involved for the first time with the NRR
6 staff in going through the process and how it was to be
7 handled.

8 We would determine -- we would determine, based on
9 the sample of 10, what was adequate documentation, because --
10 - because, clearly, in some staff's mind, there was -- there
11 was disagreement as to what was necessary to call adequate
12 documentation. So, that approach was adopted.

13 The first utility was Calvert Cliffs that this was
14 done for. Unfortunately, we never got through 10. We only
15 go through Calvert Cliffs and one other one if my memory
16 serves me correctly, which was, I believe, Zion, and I'm not
17 sure if that, to be honest with you, but we never got
18 through the full 10.

19 So, we never had -- we never got our sample of 10
20 to look at to make determinations as to, for example, what
21 was adequate documentation, and the reason -- why didn't we
22 get there? Because people were pulled in different
23 directions.

24 I was -- I was taken off of the -- off of the
25 program and put into Comanche Peak, became a full-time --

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1 you know, became a full-time job.

2 The -- the branch was dissolved in November of
3 1985, and at that point in time, the various EQ members were
4 given new assignments, and they were put off into different
5 jobs.

6 So -- so, while our -- while we had hoped to do
7 it, we just never got there because of the fact of -- of
8 what I call, you know, other circumstances that pulled staff
9 members around.

10 So, we never did -- we never did our 10.

11 WITNESS LUEHMAN: I think I'd like to clarify.

12 I think that what Mr. Noonan said is -- is
13 correct, that -- it may be correct that the EQ branch, per
14 se, did not do the 10 inspections, but I do think that,
15 prior to the November 30, 1985, deadline, that there were
16 two inspections performed per region.

17 Whether that was by the EQ branch, by I&E, by some
18 of the people in NRR or a combination thereof, I think that,
19 when Mr. Potapovs comes up, he's probably in the best
20 position to answer that, although since Mr. Shemanski was on
21 those inspections, he might be able to -- to clarify that,
22 but I think that there were 10 inspections prior to the
23 November 30, '85, deadline.

24 WITNESS SHEMANSKI: To the best of my
25 recollection, that is correct. I did personally attend at

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1 least the first 10 or 12 EQ inspections.

2 JUDGE BOLLWERK: Again, just so this is clear to
3 me, you're saying that the scope of those inspections is not
4 consistent with what Mr. Noonan is saying that it would have
5 been. I don't want to put words in your mouth.

6 WITNESS SHEMANSKI: If I understand correctly, Mr.
7 Noonan is stating that the inspections primarily focused on
8 only those items where Franklin identified deficiencies, and
9 while I agree that we concentrated on those areas, we were
10 not limited to just looking at items where Franklin
11 identified deficiencies.

12 We inspected items where the licensees claimed
13 they were qualified. We called their -- we called their
14 bluff, basically. We wanted to verify that, in fact, their
15 claims were correct.

16 So, as far as I'm concerned, I don't recall any
17 limitations being put on me when we went in and developed
18 the inspection plan.

19 MR. MILLER: If I may interject for a second, I
20 object to the phrase "we called their bluff." That is
21 completely unprofessional.

22 There has been no evidence anywhere in this record
23 that any licensee, let alone this one, ever bluffed the NRC
24 staff, and I would move to strike any suggestion that power
25 reactor licensees in the United States bluffed the staff.

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1 JUDGE BOLLWERK: Perhaps you could rephrase it,
2 Mr. Shemanski.

3 WITNESS SHEMANSKI: We challenged their assertion
4 that, in fact, they had documentation showing the equipment
5 was qualified.

6 JUDGE BOLLWERK: Is that acceptable, Mr. Miller?

7 MR. MILLER: I'd like to cross examine on that
8 point.

9 JUDGE BOLLWERK: All right. Let us finish up this
10 line. I recognize we certainly have made mincemeat out of
11 your cross-examination up to this point, but let's just
12 finish this round of questions, and we'll go back.

13 WITNESS NOONAN: If I may just add one other
14 point, the 10 inspections that I talked about were the ones
15 that we originally set up to -- to sort of set the -- the
16 policy for future -- future inspections.

17 Mr. LaGrange was to be in charge of those, and to
18 the best of my knowledge, he -- they only -- he only
19 attended two of those inspections that I -- that I can best
20 remember.

21 If there were other inspections, they were
22 probably done after I left the branch that I was not -- that
23 I was not aware of, and to this date, I am not aware of
24 those particular inspections, but I -- but I would then
25 question were these inspections set up to really do the

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1 initial purposes that we wanted to do; in other words, sit
2 down with the inspectors, with -- with people that are
3 experienced in doing this kind of work, particularly NKR-
4 type people that had been doing it for a number of years,
5 and sitting with those inspectors and -- and going through
6 these things and then -- then coming to a consensus at the
7 end of all 10 as to what we should be looking at from a
8 standpoint of how much is enough documentation. For
9 example, are there other areas that we should be looking at
10 that we -- that we have failed to look at prior -- at prior
11 times?

12 Those kinds of questions needed to be answered.
13 And to my -- best of my recollection, I don't recall that
14 ever being documented.

15 JUDGE BOLLWERK: If there is nothing else from
16 either of the witness panels, we'll allow you to continue,
17 Mr. Miller, if you know where you were. We apologize, but
18 this has been very useful to us.

19 MR. MILLER: I'll struggle around and find
20 something to talk about, and we understood this was how it's
21 going to go, and that's fine. We support any type of
22 exchange among the witnesses and the board.

23 BY MR. MILLER:

24 Q You told us, Mr. Shemanski, that the staff
25 challenged the licensee's assertions. Are those the words

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1 you used?

2 A [Witness Shemanski] Those are the words I used,
3 yes.

4 Q The licensee's assertions that appeared in the
5 79.01(b) response? Are you referring to those?

6 A [Witness Shemanski] Wherever you made a statement
7 that equipment was, in fact, qualified.

8 Q Yes, sir. And in those documents, the staff
9 conducted an in-depth review, did it not?

10 A [Witness Shemanski] On paper.

11 Q But it did so before these SERs were issued, did
12 it not?

13 A [Witness Shemanski] The staff, in accordance --
14 or in conjunction with Franklin Research.

15 Q It employed Franklin to do an in-depth review of
16 all the documents, the EQ qualification documents, did it
17 not?

18 A [Witness Shemanski] The documentation that was
19 supplied by the licensees, correct.

20 Q They provided you with other engineers, and you
21 yourself looked at those documentations, didn't you?

22 A [Witness Shemanski] We looked at the submittals
23 you made. Franklin still maintained the -- the copies of
24 the original test reports and so forth.

25 Q Well, that's right. Well, Franklin was an NRC

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1 contractor.

2 A [Witness Shemanski] Right. So, combined --
3 combined, Franklin, NRC, and EG&G looked at all the
4 information that was supplied by --

5 Q Looked at all of the information.

6 A [Witness Shemanski] -- Farley.

7 Q You're not suggesting Franklin did a poor or
8 incompetent job, are you?

9 A [Witness Shemanski] Not for -- not for one
10 minute. no.

11 Q Yes, sir. And it was their TER that was adopted
12 by the staff in, say, 1983 through a Safety Evaluation
13 Report, wasn't it?

14 A [Witness Shemanski] Their TER formed the basis,
15 along with the submittal --

16 Q And it was Franklin's TER that was the base
17 document for these 1984 meetings, wasn't it?

18 A [Witness Shemanski] Yes, it was.

19 Q And all the assertions, all the submittals, all of
20 the representations in the documentations that the NRC staff
21 had was reviewed in-depth by it and its contractors before
22 these 1984 meetings, wasn't it?

23 A [Witness Shemanski] It was reviewed. I won't say
24 it was reviewed in-depth.

25 Q You will not agree with me that it was reviewed

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1 in-depth?

2 A [Witness Shemanski] Keep in mind, Franklin was
3 reviewing information for 71 licensees in a very short time
4 -- timeframe. They -- they did a quality professional-type
5 review. By "in-depth," they had -- they did not have the
6 opportunity, in fact, to verify that information was
7 correct.

8 Q You deny --

9 A [Witness Shemanski] That's -- that what I see as
10 an in-depth review, to verify.

11 In other words, if you sent them a test report,
12 they would review the test report and use it to the best of
13 their knowledge. They would not go in and evaluate
14 anomalies that were identified in the test report, that type
15 of thing.

16 So, when I -- when you talk about in-depth, I
17 think we're talking about a much lower level, and the staff
18 typically does not do those type of analyses.

19 Q Do you deny, then, that there was an in depth
20 review by the NR staff and FRC by, say, April of 1983 of all
21 the submittals?

22 A [Witness Shemanski] I'm not denying there was an
23 in depth review. The staff and Franklin and EGGG Idaho did
24 a review of the documentation supplied.

25 Q All of this work formed the basis of at least two

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1 TERs and two SERs for Farley nuclear plant. Is that
2 correct?

3 A [Witness Shemanski] That is correct.

4 Q And all of these assertions could have been
5 challenged at any time from 7901B up until the issuance of
6 the December 13th, 1984 SER, couldn't they? Couldn't they,
7 Mr. Shemanski?

8 A [Witness Shemanski] It depends because the
9 verification involves looking at the as-installed equipment,
10 and that simply was not possible. A-1 we could verify or
11 all we could evaluate was what was supplied to us. That is
12 basically a paper review. We're talking here about a paper
13 review.

14 Q Then you will agree with me that any assertion
15 contained in the paper submitted could have been challenged?

16 A [Witness Shemanski] It could have been
17 challenged, yes.

18 Q And as far as you know, whatever those challenges
19 were, if there were any, they showed up in this SER. Is
20 that correct?

21 A [Witness Shemanski] The challenges in terms of
22 deficiencies identified by Franklin were in the TER.

23 Q I see. And then they were resolved, the
24 methodology for resolution --

25 A [Witness Shemanski] During the meeting we had

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1 with you in January.

2 Q We're going to get back to that. Now, a couple of
3 other things. When you wrote the -- or when you conducted
4 the reviews and wrote the SERs, is it fair to say you were
5 looking -- you being the staff -- looking for compliance
6 with the EQ rule, and that the focus of the SERs was to have
7 the licensee show compliance with the EQ rules?

8 A [Witness Shemanski] Yes, that's correct.

9 Q Okay. So as you did this work, you looked at
10 50.49, and the focus of the SERs was to show compliance with
11 50.49?

12 A [Witness Shemanski] Yes, it was.

13 Q All right. Let's take the SER, and you tell me
14 when you have it before you.

15 A [Witness Shemanski] I have it.

16 Q Now, before we do that, I need to ask Mr. Luehman
17 this question. You did not participate in drawing up this
18 SER?

19 A [Witness Luehman] No, I did not.

20 Q You were not a member of the EQ branch?

21 A [Witness Luehman] No, I was not.

22 Q You did not come to enforcement until '88? Is
23 that correct?

24 A [Witness Luehman] I arrived in the Office of
25 Enforcement in 1987.

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1 Q You are here today to enforce the civil penalty,
2 are you not?

3 A [Witness Luehman] I'm here to discuss what my
4 testimony's on.

5 Q You have told us about the meaning of this SER,
6 but in truth, it's just the way you read it and interpret
7 it, isn't it?

8 A [Witness Luehman] I think it's in plain English.

9 Q Yes, sir. Those are words that you didn't write
10 and you didn't participate in, did you?

11 A [Witness Luehman] No. That's correct. But I did
12 --

13 Q They are words that you did not write --

14 A [Witness Luehman] Would you let me finish?

15 Q -- or you did not participate in. It's a yes or
16 no question.

17 A [Witness Luehman] I had to interpret those words
18 based on the fact that we applied the enforcement policy and
19 its clearly should have known standard to this SER and this
20 action. So in that sum, I did have responsibility for
21 interpreting and understanding those words.

22 Q I understand that. But you did not have that
23 until long after it was written.

24 A [Witness Luehman] Well, that's obvious.

25 Q Now, Mr. Shemanski, let's look over here on Page 3

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1 under the heading of "Evaluation."

2 A [Witness Shemanski] Okay.

3 Q It says that the evaluation -- and I'll paraphrase
4 -- is based on the results of an audit review performed by
5 the staff. Is that correct?

6 A [Witness Shemanski] That's correct.

7 Q Of -- and I'll go to Number 2 -- compliance with
8 the requirements of 10 CFR 50.49.

9 A [Witness Shemanski] Well, that's one of the three
10 items.

11 Q Yes, sir. Let's look at that. Would it be a fair
12 interpretation to say that the staff has conducted some type
13 of audit review of Alabama Power Company for compliance with
14 the EQ rule? Is that a reasonable interpretation?

15 A [Witness Shemanski] It's reasonable.

16 Q And would it also be reasonable for a licensee to
17 think, if I was out of compliance with the EQ rule, the
18 staff would say so?

19 A [Witness Shemanski] That's correct, but it's not
20 reasonable within the entire wording of the SER. You just
21 can't read one particular phrase on a page and make a final
22 conclusion as to where you stand. I think that's being very
23 shortsighted.

24 Q We're going to read all the words and invite
25 others to do the same. But with respect to an audit review

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1 performed by the staff for compliance with the requirement
2 of the EQ rule, you agree with me that the licensee is
3 reasonable in interpreting that to mean if it was out of
4 compliance, it would show up somewhere?

5 A [Witness Shemanski] That's correct.

6 Q Now, we have heard about this so-called
7 verification inspection, and I will ask you if the basis for
8 your statement about that does not appear at the bottom of
9 Page 4.

10 A [Witness Shemanski] Would you restate that again,
11 please?

12 Q Yes, sir. You told us about this verification
13 inspection.

14 A [Witness Shemanski] That's correct.

15 Q And I think that you referenced a sentence down at
16 the bottom of Page 4 that refers to an audit of the EQ files
17 during follow-up inspections.

18 A [Witness Shemanski] Yes. It states the primary
19 objective of the file audit will be to verify that they
20 contain the appropriate analyses and other documentation to
21 support the licensee's conclusion.

22 Q Is it not so that that sentence and paragraph is
23 under the heading "Proposed Resolution of Identified
24 Deficiencies."

25 A [Witness Shemanski] Yes, it is.

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1 Q All right. And then we have another heading of
2 "Compliance with 10 CFR 50.49."

3 A [Witness Shemanski] That's right.

4 Q Is that correct? Now, would it be fair for a
5 licensee to get this SER and assume, I'm in compliance. Is
6 that a reasonable assumption for the licensee to make?

7 A [Witness Shemanski] In compliance with 50.49?

8 Q Yes, sir. I'll ask it to you this way: Can you
9 see how a licensee could reach such a conclusion?

10 A [Witness Shemanski] Sure.

11 Q All right. And would that be a reasonable
12 conclusion for the licensee to reach at the point in time it
13 receives the SER?

14 A [Witness Shemanski] If he understood the full
15 meaning of the SER.

16 Q Yes, sir. I'll ask it to you again. Would that
17 be a reasonable assumption for the licensee to reach at the
18 point in time that they received the SER -- that is, I'm in
19 compliance with the EQ rule?

20 A [Witness Shemanski] It's reasonable to assume
21 that from the licensee standpoint, but again, he must --

22 Q Perhaps I should ask it this way: Is there
23 anything wrong with the licensee making that conclusion at
24 that point in time, and in Alabama Power Company's case,
25 it's December 1984?

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1 A [Witness Shemanski] I mean, no, they could assume
2 anything they want to.

3 Q Is it reasonable for them or is there something
4 wrong with them making that assumption as of --

5 A [Witness Shemanski] As I mentioned before, I
6 think it's an assumption they can make; however, you've got
7 to read the entire SER and be aware that there would be a
8 forthcoming inspection. To me, if I were a licensee, that
9 is a red flag.

10 Q Okay.

11 A [Witness Shemanski] I don't think I would accept
12 the words in this SER and just stop right there.

13 I would be curious and pay attention to the
14 forthcoming verification phase of the inspection.

15 Q I understand that, but we've got to get ourselves
16 over this hurdle. All right, but let's see if we can agree
17 on some things. The licensee can, or has reasonable
18 assurance that his program complies with 50.49; doesn't he?

19 A [Witness Shemanski] Yes, I think the licensee
20 could develop a fairly warm feeling that he's on the right
21 track in compliance with 50.49.

22 Q Fairly warm feeling that --

23 A [Witness Shemanski] Fairly warm, keeping in mind
24 there will be the verification phase. I mean, you just
25 cannot discount the verification phase of the inspection.

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1 Q Well, we're getting warmer. Fairly warm feeling
2 that it's in compliance with 50.49; isn't that the same
3 thing as reasonable assurance in nuclear power industry
4 lingo?

5 A [Witness Shemanski] Yes.

6 Q All right. Now, we have talked at some length
7 about reading the SER in context. Is it not also your
8 testimony that other information provided to the licensee
9 has some significance about compliance with 50.49?

10 A [Witness Shemanski] That is correct.

11 Q All right, and would it -- well, let me strike
12 that and ask it to you this way: Can you tell us what the
13 deadline for compliance with the EQ rule was, at least for
14 enforcement purposes?

15 A [Witness Shemanski] Well, the EQ deadline for
16 compliance with 50.49 was the November 30, 1985 date.

17 Q All right, are you aware of any information
18 provided to Alabama Power Company after the December 1984
19 SER indicating that it had complied with 50.49 -- and, let
20 me change that slightly: After the December '84 SER, but
21 before the EQ deadline of November, 1985?

22 A [Witness Shemanski] No, I'm not aware of any.

23 Q Do you recall in the testimony, either in this
24 surrebuttal testimony or in the direct testimony, about the
25 Unit II license condition?

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1 A [Witness Shemanski] Not in detail, no.

2 Q You recall, though, that there was a license
3 condition on Unit II; do you not?

4 A [Witness Shemanski] [No audible response.]

5 Q I said that too narrowly. A license condition on
6 Unit II, associated with compliance with EQ?

7 A [Witness Shemanski] I'm not sure.

8 Q Okay. Can we get a copy of Licensee Exhibit 83
9 and 84? And if you don't have one of those before you,
10 we'll get it for you.

11 A [Witness Shemanski] What is that document?

12 Q Sorry, sir?

13 A [Witness Shemanski] What is that document?

14 Q It's 83 and 84. 83 is the part of the Unit II
15 license, referencing EQ compliance, and 84 is the
16 determination by the NRC on that license condition, and
17 we'll take just a minute and get it for you. Do you all
18 have it over there? If the Board would let us do this for
19 just a second?

20 While she's doing that, though, are you familiar
21 enough with the Modified Enforcement Policy to talk about
22 the phrase, "clearly knew or should have known"?

23 A [Witness Shemanski] In general terms.

24 Q Are you aware of that under the Generic Letter 88-
25 07, that in making such a determination, one of the factors

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1 is going to be the information provided to the licensee by
2 the NRC?

3 A [Witness Shemanski] Yes.

4 Q Would you agree with me that correspondence on --
5 Julie, he needs -- would you agree with me that
6 correspondence on an EQ license condition would be the kind
7 of information referenced in Modified Enforcement Policy?

8 A [Witness Shemanski] I believe so.

9 Q All right. Well, with that background, would you
10 mind looking at Exhibits 83 and 84 that you have before you?
11 Tell me when you've had a chance to look at them, and on 84,
12 just to shorten matters, the transmittal letter is
13 significant and discussion and evaluation of Item No. 1 is
14 significant. I don't intend to cross examine on the other
15 parts of 84.

16 A [Witness Shemanski] [Perusing document.]

17 Q All right, let's look at 83, which is the license
18 condition, and you see there, Item No. 18; do you not?

19 A [Witness Shemanski] Yes, I do.

20 Q And you see that it has three parts to it?

21 A [Witness Shemanski] Yes.

22 Q And the first is to have complete and auditable
23 records -- and I'll paraphrase slightly -- demonstrating
24 compliance with the EQ qualification regulations?

25 A [Witness Shemanski] Yes.

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1 Q And the second one talks about missing
2 documentation, corrective actions; I'm paraphrasing again,
3 but that's a fair representation?

4 A [Witness Shemanski] Yes.

5 Q And the third one says, no later than June 30th,
6 1982, all safety related electrical equipment in the
7 facility shall be qualified in accordance with the
8 provisions of NUREG 0588; did I read that correctly?

9 A [Witness Shemanski] Yes, you did.

10 Q And we understand, and I'm sure you understand,
11 that is the applicable NUREG to Unit II?

12 A [Witness Shemanski] Yes, it is.

13 Q All right.

14 A [Witness Shemanski] Category II.

15 Q Okay, now, let's take Exhibit 84 -- and tell us
16 the date of that correspondence.

17 A [Witness Shemanski] November -- I mean, May 23rd,
18 1985.

19 Q Now, this is May 23rd of '85, some -- oh, I don't
20 know -- five or six months before the EQ deadline?

21 A [Witness Shemanski] That's correct.

22 Q And do you see there in this correspondence where
23 is says that the enclosure to this letter -- this is the
24 second paragraph -- indicates the current evaluation and
25 status of our review of your submissions relating to

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1 identified license conditions?

2 A [Witness Shemanski] Yes, I do.

3 Q By "current evaluation," do you interpret that as
4 I do, that it means on or about May of 1985?

5 A [Witness Shemanski] Yes.

6 Q Well, let's turn to Discussion and Evaluation No.
7 1.

8 A [Witness Shemanski] Okay.

9 Q Now, let's read this sentence. But before we do
10 that, I'll ask you if you will not agree with me, License
11 Condition 2-C-18 is the same one we just reviewed in Exhibit
12 83?

13 A [Witness Shemanski] Yes, it is.

14 Q That is the one that says all safety related
15 electrical equipment must be EQ-qualified?

16 A [Witness Shemanski] That's correct.

17 Q And does it not say in this information provided
18 by the NRC to the licensee, therefore, License Condition 2-
19 C-18 has been met?

20 A [Witness Shemanski] Yes, it states that.

21 Q Now, do you understand that phrase?

22 A [Witness Shemanski] Yes, I do.

23 Q Doesn't it mean to you, as it means to me, that
24 the License Condition referencing qualification of all
25 safety related electrical equipment has been met?

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1 A [Witness Shemanski] Well, it doesn't say that.
2 It says by letter dated December 13, '84, we provided a
3 safety evaluation which concludes that the EQ program is in
4 compliance with the requirements of 50.49.

5 Q And then it says the License Condition has been
6 met.

7 A [Witness Shemanski] Yes, it does.

8 Q It doesn't say the License Condition may be met
9 and we'll let you know later; does it?

10 A [Witness Shemanski] That's correct.

11 Q It doesn't say there are equipment qualification
12 deficiencies about which you should clearly know you have
13 not met; does it?

14 A [Witness Shemanski] No, it does not.

15 Q Would you agree with me that a licensee, any
16 licensee who gets this in May of 1985, is entitled to think
17 there are no EQ deficiencies about which I should clearly
18 know because if there were, they would tell me so? Isn't
19 that a reasonable assumption for a licensee to make?

20 A [Witness Shemanski] I don't believe that's a
21 reasonable assumption with a licensee who has an SER in his
22 hand that said there will be a verification phase. I think
23 the licensee should not stop and believe that he is in total
24 compliance at that point, recognizing that there will be yet
25 one more phase in his program, his EQ program.

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1 Q You say you don't agree with that because the
2 licensee has a copy of the SER.

3 A [Witness Shemanski] That's correct. It states in
4 the SER that the documentation will be verified through an
5 inspection phase.

6 Q It speaks for itself. But isn't it also fair to
7 say that the Staff has a copy of the SER?

8 A [Witness Shemanski] That's correct.

9 Q Isn't it also fair to say that if the Staff wanted
10 to qualify this sentence in any way, it could have done so?

11 A [Witness Shemanski] It could have done so, but
12 there was no need, because it's qualified in the SER.

13 Q Isn't it also fair to say that if there was an
14 equivalent qualification deficiency that was so clear the
15 licensee should know about it, the Staff would have known
16 about it at the time this License Condition document was
17 issued?

18 A [Witness Shemanski] If the Staff had looked, if
19 it was aware of it, yes.

20 Q Okay, so without regard to whatever else may have
21 happened in the history of EQ, as of this point in time,
22 isn't it a reasonable assumption for the licensee to say, my
23 License Condition is met. At least there's nothing that I
24 should clearly know about.

25 A [Witness Shemanski] That's an interpretation the

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1 licensee can make, yes.

2 Q It is a reasonable interpretation?

3 A [Witness Shemanski] From your standpoint, yes;
4 from mine, no.

5 Q Okay.

6 A [Witness Shemanski] So, you know, you're each
7 entitled -- I think we're both entitled to our
8 interpretation.

9 Q All right, but at least from my standpoint, being
10 the licensee, I'm entitled to that reasonable
11 interpretation.

12 A [Witness Shemanski] Sure.

13 Q You agree with that?

14 A [Witness Shemanski] I agree with you.

15 Q All right.

16 MR. MILLER: It might be a good point, Judge --
17 we're roughly at a good break point.

18 JUDGE MORRIS: All right, that's what we're just
19 nodding about ourselves. Why don't we go ahead and take a
20 ten-minute break and be back at 20 till.

21 [Brief recess.]

22 JUDGE BOLLWERK: Let's go back on the record, and
23 I think the actual cross examination is going to continue.

24 BY MR. MILLER:

25 Q All right, Mr. Luehman, you have your testimony

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1 there before you; do you not?

2 A [Witness Luehman] Yes, I do.

3 Q In there, you talk -- and, in fact, you made some
4 corrections today about some other inspection reports, and
5 let's find that for us; can we? I'm sorry, I'm not right on
6 it, but there was a part of your testimony --

7 A [Witness Luehman] There was a number of places.

8 Q We'll find the first one, if we may. Let's see,
9 is it on page 19 when you talked about the Calvert Cliffs
10 inspection report?

11 A [Witness Luehman] Yes, it looks like it appeared
12 -- starts on page 19 and then on 20 and 21, I go into some
13 more detail.

14 Q You just asked this sort of general question. It
15 appears to me that what you're suggesting there is -- well,
16 let me strike that and say it this way:

17 You call out that the Calvert Cliffs inspection
18 report was issued on January 29, 1985?

19 A [Witness Luehman] That's correct.

20 Q All right, now, it was issued that day. Have you
21 any idea when it got to the Public Document Room?

22 A [Witness Luehman] No, I don't have any knowledge
23 of when it was in the Public Document Room.

24 Q And you have called out that particular inspection
25 report, I think -- and you correct me if I'm wrong -- to

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1 suggest the level of detail associated with EQ qualification
2 files?

3 A [Witness Luehman] On page 19, that's correct, but
4 later on, I also refer to that report again.

5 Q As it's significant in --

6 A [Witness Luehman] In other areas.

7 Q But the other area, if I recall correctly, is
8 because of something about walkdowns and something about a
9 Mr. Bell, and I've lost my spot on that, but am I right
10 about that?

11 A [Witness Luehman] Yes, sir, I think that's on
12 page 21.

13 Q Okay, but let's see if we can take the first one,
14 and that is the reason or one of the reasons you called out
15 the Calvert Cliffs inspection report, is because it
16 demonstrates the level of detail in the qualification files?

17 A [Witness Luehman] Well, I think that I
18 specifically quote the language that was used in the
19 inspection report for what the level of documentation that
20 is required and, in fact, I think that that quotation is
21 taken from a generic document, and I think that that was
22 extracted from a generic document, whether it be the DOR
23 Guidelines or another standard. I think that that's
24 consistent, that language is consistent with what's used in
25 that generic --

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1 Q Now, you say the Calvert Cliffs language was
2 extracted from another, more generic guideline -- I'm sorry,
3 generic document?

4 A [Witness Luehman] I think that's correct, yes.

5 Q Now, tell me, when an inspection report such as
6 this is issued, is it routinely mailed to all power reactor
7 licensees?

8 A [Witness Luehman] No, it is not.

9 Q Well, does it -- is it so that each operating
10 reactor has its own specialized mailing list?

11 A [Witness Luehman] Yes, that's correct.

12 Q You have made a determination, I assume, whether
13 or not Alabama Power Company was on the Calvert Cliffs
14 mailing list?

15 A [Witness Luehman] I do not think that they were.

16 Q All right, well, it has to be important to you
17 that this inspection report was issued. Perhaps you assumed
18 that Alabama Power Company checked the Calvert Cliffs file
19 from time to time?

20 A [Witness Luehman] No, I did not assume that.

21 Q Are you telling us that Alabama Power Company
22 should have checked the Calvert Cliffs' file from time to
23 time?

24 A [Witness Luehman] All I can say in answer to that
25 is that Alabama Power Company had that opportunity when in

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1 Information Notice 85-39 they were informed that the results
2 of the staff's audits that had been done prior to the
3 issuance of that notice were available now. We didn't --
4 because that information notice is exactly that, it's only
5 information, it's up to the licensee, if they want to go
6 back and look at that information, which was not
7 specifically on their docket.

8 Q I see. But let's ask the question directly. Are
9 you suggesting, Mr. Luehman, that Alabama Power Company
10 should have gone to look at the Calvert Cliffs' Inspection
11 Report you identified there in your testimony?

12 A [Witness Luehman] That is not the purpose of its
13 use in my testimony.

14 Q I'll ask you this question, sir. Do you say that
15 Alabama Power Company should have looked at this Calvert
16 Cliffs' Inspection Report?

17 A [Witness Luehman] For the purposes of this
18 enforcement action, I think it would have been a good
19 practice, given that 85-39 let licensees know that there
20 were inspection reports out there are the results of the
21 audits that the NRC had done up until the time of the
22 issuance of that -- of that Information Notice. But I won't
23 -- I will not say that -- and I will not say that they had
24 to or that they should have looked at that Inspection
25 Report. That's up to them.

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1 Q You agree then that they didn't -- I'll strike
2 that and ask it to you this way. You agree that it was not
3 an EQ requirement to look at this inspection report or any
4 other inspection report?

5 A [Witness Luehman] That's correct. And that was
6 not -- but that's -- those are still not the purpose of why
7 it's in my testimony. Q I understand.

8 MR. MILLER: Excuse me just a moment.

9 [Counsel for APCo conferring off the record.]

10 BY MR. MILLER:

11 Q All right. So then can we know from that that you
12 are not critical in any way of Alabama Power Company for not
13 having sought out this Calvert Cliffs' Inspection Report?

14 A [Witness Luehman] At what time are you talking
15 about?

16 Q January 29th, 1985 and thereafter.

17 A [Witness Luehman] I am critical of them for not
18 seeking it out thereafter.

19 Q At what point should they have sought it out?

20 A Well, obviously, in preparing for this hearing,
21 Alabama Power should have sought out that testimony because
22 Alabama Power alleges, as part of this proceeding, that the
23 staff's level of documentation -- the types of equipment
24 that it looked at after the EQ deadline were a -- were, in
25 fact, much different than the types -- level of

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1 documentation and the types of equipment that we looked at
2 before the deadline.

3 This Inspection Report, as well as the other
4 Inspection Reports that I've referenced clearly demonstrate
5 -- or are samples of Inspection Reports that clearly
6 demonstrate that the NRC's -- the type of equipment we were
7 looking at -- terminal blocks, whether we were looking at
8 whether lico sees did walk-downs, whether we were looking at
9 -- for T-drains, as an enforcement issue or as a
10 qualification issue at that point, those were included in
11 pre-deadline inspections. And, therefore, for Alabama to
12 come in -- Alabama Power Company to come in and allege at
13 this proceeding that the staff has somehow made a leap in
14 the amount and the type of inspection activity that we've
15 done or that we've required much more documentation after
16 the November 30th deadline, does not -- is not consistent
17 with these inspection reports, and that's why the inspection
18 reports were included in the testimony.

19 Q You have given us your understanding of Alabama
20 Power Company's position I take it?

21 A [Witness Luehman] In part, yes.

22 Q And you have told us that the review of the
23 Calvert Cliffs' Inspection Report, which you have identified
24 in your testimony, need not have been undertaken by Alabama
25 Power Company until this enforcement process began?

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1 A [Witness Luehman] There was no requirement.
2 That's correct.

3 Q All right. And by saying no requirement
4 also agree -- and it's my phrase -- that you're not critical
5 of Alabama Power Company up to and including November 30,
6 1985 for not looking at this particular Inspection Report?

7 A [Witness Luehman] Only to the point that they
8 were given the opportunity in Information 85-39 and they
9 evidently chose not to pursue this or other documents that
10 the NRC made them aware would be available.

11 Q Okay. This being one of those pieces of
12 information -- or I'll strike it and ask it to you this way.
13 Do you claim that this inspection report was a piece of
14 information contemplated by the 88-07 Modified Enforcement
15 Policy?

16 A [Witness Luehman] It could have been.

17 Q Okay. This could have been the same thing as yes
18 it is or no it isn't?

19 A [Witness Luehman] Well, I think, within the
20 context of Generic Letter 88-07, Generic Letter 88-07 says
21 something about one of the factors is information available
22 to the licensee about other violations that were identified
23 by other licensees. I don't think that in our "clearly
24 should have known" finding that we cited that in this case,
25 because we had no evidence that Alabama Power knew or had

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1 documents in their possession that demonstrated they knew of
2 violations of other licensees. But, again, that's not the
3 context which -- the clearly should have known context is
4 not the context with which I offered these pre-November
5 30th, 1985 deadlines -- inspections in my testimony.

6 Q I know. You're just trying to say that the level
7 of documentation the staff required has been the same since
8 day one.

9 A [Witness Luehman] No. I don't say that either.

10 Q Oh, it's changed then?

11 A [Witness Luehman] It has.

12 Q It's evolved I take it?

13 A [Witness Luehman] And Mr. Shemanski has testified
14 to that -- that the level of expectation that the NRC has
15 evolved. The question is where was -- when did the
16 evolvment occur, November 30th, 1985 or before; November
17 30th, 1985 or after? These reports are offered to show that
18 -- that the inspection at Alabama Power in 1987 -- that the
19 level of documentation and the types of issues that were
20 looked at are consistent with a number of inspections that
21 were performed before the deadline.

22 Q I take it this is offered, in part, to show that
23 they're -- that the inspection in 1987 was not to ferret out
24 any recently identified equipment qualification-specific
25 issues?

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1 A [Witness Luehman] I think that the inspection
2 reports that I've offered in the testimony speak for
3 themselves.

4 [Counsel for APCo conferring off the record.]

5 BY MR. MILLER:

6 Q Can you tell us whether or not this inspection
7 report that you have called out is the one that references
8 V-splices, or wasn't that one later in the summer of '87?

9 A [Witness Luehman] Yes. This -- this is the -- I
10 think that this is the first inspection that was done at
11 Calvert Cliffs, and I don't think that V-splices were an
12 issue in this inspection.

13 Q Did I understand you correctly that the -- it's
14 your feeling that the inspection at Alabama Power Company in
15 1987 did not in any way inspect recently-identified
16 equipment qualification activities?

17 A [Witness Luehman] I -- I didn't say -- I -- I --
18 if I said that, I didn't mean to say the recently-
19 identified.

20 The -- the issue is not when they were identified.
21 The issue is -- the issue is what was the state of the
22 industry relative to any deficiency that was identified?

23 For inst^e f a deficiency that -- that the --
24 the whole industr knew was a deficiency was -- in 1982 --
25 was then identified in 1987, that deficiency is a

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1 deficiency where the staff could make a "clearly should have
2 known" finding, because that type of deficiency would be a
3 deficiency that the licensee could have discovered in -- in
4 1982 in my hypothetical case.

5 However, if a particular issue -- if the -- if the
6 -- the technical merit of the issue was not something that
7 was known about until 1987 or '88 and it was subsequently
8 identified, clearly the -- the staff would have a hard time
9 saying that a licensee clearly should have known that based
10 on November 30, 1985, knowledge.

11 Q We had a lot of testimony there. Let's see if we
12 can break it down into some parts.

13 I think what you told us is, if the equipment
14 qualification deficiency was one that was clearly known in
15 the industry prior to November 30, '85, enforcement action
16 is appropriate.

17 A [Witness Luehman] Well, I -- I don't -- I don't
18 think that's quite what I said. What I said was the type -
19 -I mean there -- there are variations of -- there are
20 variations and not on -- on particular deficiencies.

21 For instance, on -- you can have unqualified
22 splices, for instance, and we may not have identified every
23 type of unqualified splice or every configuration or every
24 way that it got to be unqualified, whether it be an
25 unsatisfactory test report, an unsatisfactory makeup of the

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1 splice.

2 But clearly, the general issue of unqualified
3 splices or improperly made-up slices would be an issue that
4 would have been known prior to November 30, 1985. So,
5 that's what I'm saying.

6 Q Let's try the other side of it and see if we can
7 work on that.

8 I thought you said -- of course, the record will
9 bear it out, but I thought you said, if an equipment
10 qualification issue is identified after November 30, 1985,
11 then enforcement action is not appropriate.

12 A [Witness Luehman] Not if it's identified, only if
13 -- if -- not the identification of the particular issue.
14 It's only whether the state of knowledge in the industry
15 occurs prior to November 30, 1985, within the license.

16 Then, would the NRC, even if it was discovered
17 after that deadline, be able to apply the "clearly should
18 have known" finding?

19 If the state of the industry was such that, as of
20 November 30, 1985, we did not understand -- we, the industry
21 and the NRC did not understand the implications of this type
22 of problem, then clearly we could not hold a licensee
23 responsible for that, because we didn't have the knowledge
24 and they didn't have the knowledge pre-November 30, 1985.

25 That's slightly different than whether the -- when

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1 the deficiency was identified, because the deficiency could
2 have been identified after the deadline, but the knowledge
3 of that type of deficiency, if it existed prior to the
4 deadline, the "clearly should have known" argument could be
5 made.

6 Q Well, I think I'm getting closer. Let's try my
7 hypothetical.

8 If there is an equipment qualification problem
9 identified in 1987 --

10 A [Witness Luehman] Okay.

11 Q -- does that mean an enforcement action under the
12 modified enforcement policy is not appropriate?

13 A [Witness Luehman] No, that does not -- that's not
14 -- it does not mean that.

15 Q You say that, even if the problem is not
16 identified until 1987, that the modified enforcement policy
17 still would support enforcement action.

18 A [Witness Luehman] No. At that point, you -- you
19 could attempt to apply it. Now, you would have to say
20 what's the deficiency?

21 Then you would have to examine the -- the standard
22 given under the modified policy for "clearly should have
23 known," and you would have to say there was -- there was
24 enough -- there was enough information and enough knowledge
25 in the industry prior to November 30, 1985, that -- that

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1 would have established that the licensee clearly should have
2 known of that deficiency prior to the deadline.

3 Q I see. All right.

4 So, if I understand you right, if there is a
5 problem, you then go back to say, well, you know, is there
6 enough knowledge out there pre-November 30, '85.

7 A [Witness Luehman] And enough being that type --
8 the type and amount of knowledge as discussed in the -- in
9 Generic Letter 88-07, the modified policy.

10 Q We can look at 88-07 to find the methodology for
11 quantifying this so-called enough knowledge.

12 A [Witness Luehman] Yes.

13 Q Incidentally, did you, by any chance, attend the
14 Sandia seminar in '87?

15 A [Witness Luehman] No, I did not.

16 Q I think I'm accurate in saying that Mr.
17 Merriweather described that seminar as one in which the
18 latest and greatest in EQ was discussed. Do you recall
19 whether or not he was the one that made that description, or
20 was it someone else?

21 A [Witness Luehman] My recollection is that it was
22 Mr. Merriweather that made such a statement, yes.

23 Q Have you undertaken to compare the agenda from the
24 '87 Sandia seminar with the inspection report at the Farley
25 plant in November of that same year?

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1 A [Witness Luehman] Yes, I have.

2 Q Have you undertaken to talk with members of the
3 NRC staff -- for example, Mr. Potapovs -- about the issues
4 in the '87 seminar and the inspection report?

5 A [Witness Luehman] Yes, I have. I have talked to
6 them about this.

7 Q Did Mr. Potapovs specifically -- I'll ask you this
8 question about him -- tell you that the purpose of the
9 Sandia seminar was to discuss recently-identified equipment
10 qualification-specific problems?

11 A [Witness Luehman] That is not what he told me.

12 Q Do you understand from any source, whether it's
13 Mr. Potapovs or otherwise, that the purpose of that seminar
14 was to discuss recently-identified equipment qualification-
15 specific problems?

16 A [Witness Luehman] Well, I would say -- I would
17 say that was -- that is part of the reason that they gave,
18 but they also gave the reason that we had -- that they were
19 going to bring up -- they were going to train new inspectors
20 and that, by and large, that the -- the overall training
21 that was done at those seminars was to bring inspectors up
22 to a requisite level of knowledge on all things, dating back
23 to the beginning of EQ, if necessary, for certain inspectors
24 and that, then, an additional portion of those -- of that
25 training would then be to address any new issues that may

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1 have been found.

2 Q Okay.

3 So, you agree with me that one of the topics of
4 the Sandia '87 seminar was recently-identified equipment-
5 specific qualification problems.

6 A [Witness Luehman] That's my understanding.

7 Q All right. And can you tell us what those
8 recently-identified equipment-specific qualification
9 problems were?

10 A [Witness Luehman] No, I cannot.

11 Q All right.

12 Have you, by any chance, read through the
13 materials resulting from that seminar, the '87 seminar now?

14 A [Witness Luehman] Some of it.

15 Q Okay.

16 Have you read through the ones from the '85
17 seminar?

18 A [Witness Luehman] No, I don't think I have.

19 Q Have you -- strike that, and I'll ask it to you
20 this way: Do you know of anyone who has undertaken to
21 compare the '85 seminar materials with the '87 seminar
22 materials?

23 A [Witness Luehman] I don't know of any.

24 Q As far as you know, was the 1985 Sandia Seminar
25 the same or similar to the purpose of the 1987 Seminar?

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1 A [Witness Luehman] I think it was.

2 Q And that is, the '85 seminar is going to give the
3 latest and greatest among other topics, just as the '87
4 seminar did?

5 A [Witness Luehman] That is probably true.

6 Q Remind me who Bob LaGrange was?

7 A [Witness Luehman] Bob LaGrange was the Section
8 Chief of the EQ Branch when it existed.

9 Q You mentioned him here on page 19?

10 A [Witness Luehman] That's correct.

11 Q You say that he provided a joint affidavit, and
12 you go on to describe him as a member of the NRC team that
13 produced the Calvert Cliffs report?

14 A [Witness Luehman] Yes.

15 Q I am paraphrasing, but that is accurate?

16 A [Witness Luehman] That's correct.

17 Q I take it you read Mr. LaGrange's affidavit, did
18 you not?

19 A [Witness Luehman] Yes, I did.

20 Q And did you read it before you called his name out
21 on page 19 of your testimony?

22 A [Witness Luehman] Yes, I did.

23 [Counsel for Alabama Power Company conferring off
24 the record.]

25 BY MR. MILLER:

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1 Q As far as you know, is this reference to that
2 affidavit the only response the staff has ever made
3 concerning that affidavit?

4 A [Witness Luehman] No, it is not.

5 Q There has been a response to that affidavit in
6 some other filing by the staff?

7 A [Witness Luehman:] We considered that that the
8 joint affidavit made as part of our determination of whether
9 the licensee clearly should have known.

10 Q Did you also consider it when making your
11 determination about mitigation and escalation?

12 A [Witness Luehman] Yes, we did.

13 Q Did you, by any chance, talk to Mr. LaGrange?

14 A [Witness Luehman] No, I did not.

15 Q Do you know of anyone on the enforcement staff who
16 had such a conversation with Mr. LaGrange?

17 A [Witness Luehman] No, I do not.

18 Q Did you accept what he said in that affidavit as
19 true?

20 A [Witness Luehman] I had no reason to doubt his
21 opinion.

22 Q I take it that means you did accept what he said
23 in that affidavit as true?

24 A [Witness Luehman] Offered as an opinion, yes.

25 Q You have a Mr. Bell identified here?

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1 A [Witness Luehman] Yes.

2 Q He is an employee of Bechtel Power Corporation?

3 A [Witness Luehman] That's correct.

4 Q And the purpose, I take it, that you identified
5 him is to call him out as a source for information available
6 to Alabama Power Company?

7 A [Witness Luehman] No. The reason I called him,
8 as well as Mr. LaGrange, as well as making references to
9 another EQ consulting company, and the nuclear utility group
10 on EQ who had representatives at the inspection is to
11 establish that not only were the inspections done prior to
12 the deadline, was the information available to the licensees
13 as notified through 85-39, but that there were certain --
14 and these were the only people that I could state for a
15 fact -- people on the industry's side that were
16 knowledgeable of this type of information, so that it wasn't
17 just the NRC people.

18 Again, that is not in testimony to support a
19 clearly should have known finding. We do not allege that
20 Alabama Power should have talked to Mr. Bell. All we are
21 simply stating is that the level and inspection done in 1985
22 was known to people outside the NRC.

23 Q And the people that you could identify that had
24 such knowledge, you put in your testimony?

25 A [Witness Luehman] That's correct. There were

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1 obviously a lot of utility people that I didn't include for
2 the specific utilities that had exit meetings for those
3 inspections.

4 Q How many inspections were conducted, EQ
5 inspections were conducted at the Farley Nuclear Plant?

6 A [Witness Luehman] How many inspections were done?

7 Q EQ inspections, yes, sir.

8 A [Witness Luehman] I would say that there was one
9 inspection, one -- Let me start that again.

10 There was one inspection for the purposes of
11 modified policy.

12 Q We all agree, don't we, that there was an
13 inspection in September of 1987?

14 A [Witness Luehman] That's correct.

15 Q And we all agree that there was an inspection in
16 November of 1987?

17 A [Witness Luehman] That's correct.

18 Q And it is the position of the enforcement staff
19 that there was but one inspection for purposes of the
20 modified enforcement policy?

21 A [Witness Luehman] That's correct.

22 MR. MILLER: Could I have just a few minutes,
23 please, sir?

24 JUDGE BOLLWERK: All right.

25 Can I interrupt?

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1 MR. MILLER: Yes, sir.

2 JUDGE BOLLWERK: There are a couple of points that
3 have come up, and I would like to get some response from the
4 members of your panel.

5 MR. MILLER: Please do.

6 JUDGE BOLLWERK: This is going back a little bit,
7 and I apologize, I should have been a little more prompt
8 with these questions.

9 Mr. Shemanski spoke earlier about the question of
10 the near-term operating license, and the review that was
11 done, and the sign-off on APCO Exhibit 84, and the meeting
12 and significance of that.

13 Mr. Noonan, do you have any response, in terms of
14 your knowledge in 1985 about such matters?

15 WITNESS NOONAN: May I see the copy of the
16 exhibit?

17 I don't think I have that in front of me.

18 JUDGE BOLLWERK: It is APCO 84 and APCO 83.

19 [Document proffered to the witness.]

20 WITNESS NOONAN: Yes, sir, I am familiar with this
21 document.

22 What was the question, please?

23 JUDGE BOLLWERK: I don't want to mischaracterize
24 what Mr. Shemanski said, and if I am misquoting you, Mr.
25 Shemanski, you can correct me.

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1 I take it your point was, basically, yes, these
2 were sign-offs on the license conditions subject to
3 verification in the inspections. Maybe I am oversimplifying
4 your response?

5 WITNESS SHEMANSKI: Well, it is not exactly worded
6 that way. I think, basically, the license condition has
7 been satisfied, the initial qualification date, June 30,
8 1982, was lifted, and reference is also made to the fact
9 that the staff issued an SER in which Alabama Power was
10 found in compliance with 50.49.

11 That document does not mention anything about the
12 forthcoming inspection, or the verification phase.

13 JUDGE BOLLWERK: What I'm wondering, Mr. Noonan,
14 is what significance do you see that document have in terms
15 of Alabama Power's knowledge or the degree to which they
16 could treat that as some kind of a sign-off by the NRC
17 staff.

18 WITNESS NOONAN: I think I can respond to that, if
19 I may. If you noticed, the original letters that were
20 submitted by the utility were submitted in February and
21 October of 1982 and January of 1983 requesting that that
22 license condition be lifted. I think that's the proper
23 terminology, be removed.

24 We made a determination on these plants not to
25 raise -- not to remove those license conditions until after

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1 such time that the final SER was written.

2 Now, there really was no need from a safety aspect
3 to lift that condition, and so we wanted to wait until
4 actually the final SERs were written before we made any
5 determination for any utility regarding license conditions.

6 I cannot equivocally say that we held that in all
7 cases, but I know, for many of the cases, we decided to wait
8 until the SER was written.

9 If you notice, this letter basically says that
10 they have met -- that the program is in compliance with the
11 EQ rule, and therefore they have listed the license
12 condition. I think that is very significant from the
13 standpoint that the staff put no conditions on removing this
14 license condition. The staff was -- the staff was
15 convinced, if I may use those words, that Alabama Power had
16 complied with the EQ rule.

17 I'm having difficulty with Mr. Chemancki's
18 statement about a verification phase. During my tenure with
19 the branch -- at the branch chief and even before that as
20 assistant director for where this branch came under my
21 direction, I knew of no verification phase. We did not
22 intend to do that.

23 I've said it before, that the branch was
24 effectively put out of -- was disbanded in November of 1985,
25 and we did that with the intent to bring this program to a

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1 close. The program was probably the most -- one of the most
2 extensive programs ever undertaken by the NRC. It started
3 even before the Commission memorandum order of 1980. Very
4 intense by both the staff, by the utilities, various
5 consulting firms including Franklin Research, very intensive
6 effort.

7 The NRC management became convinced that this
8 program now was under control and we had basically complied
9 with the rule. When I say "we," the utilities had complied
10 with the rule. So therefore, we decided to -- the branch
11 was no longer required as a branch itself, and it was also a
12 demonstration to the utilities that we felt that way. We
13 put the branch basically out of business.

14 I don't know what Mr. Shemanski refers to as a
15 verification phase. It must have occurred sometime after I
16 -- I was not involved in the thing. And I don't know of any
17 official pronouncement by the NRC about a verification
18 phase.

19 But I think this letter is very significant in the
20 fact that it quotes and it lifts the condition without any
21 restrictions.

22 JUDGE BOLLWERK: Mr. Shemanski, do you have
23 anything that you want to add?

24 WITNESS SHEMANSKI: Well, the condition it lists
25 is primarily the June 30, '82 deadline. The June 30, '82

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1 deadline was established by Commission memorandum and order
2 80-21, and, of course, that was superceded when the rule was
3 published. So I don't see that as being a very significant
4 license condition. It simply removed that deadline and it
5 simply referenced the safety evaluation report on EQ.

6 I would say, with regard to the verification
7 phase, upper management felt it very important that we go
8 out and inspect all operating reactors. In fact, there were
9 71 EQ inspections at operating reactors, and prior to
10 getting a license, the near term operating license plants
11 all received EQ inspections. So the staff was directed to
12 go out and conduct EQ inspections for approximately 110 or
13 115 operating reactors. Every operating reactor has had an
14 EQ inspection. So I feel that -- that's what I referred to
15 as the verification phase, and even though the branch went
16 out of existence through a reorganization, that inspection
17 phase still continued. So that's what I'm referring to as
18 the verification phase.

19 JUDGE MORRIS: Mr. Shemanski, just so I
20 understand, was there some difference in the organizations
21 who were dealing with this problem -- for example, a group
22 that did SERs and a group that did inspections -- or was
23 there a field group and a headquarters group? Were
24 different people doing different things?

25 WITNESS SHEMANSKI: Well, the safety evaluation

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1 reports were generated by the Equipment Qualification
2 Branch, of which Mr. Noonan was the branch chief.

3 We initially had a plan of conducting ten or
4 twelve pilot inspections, basically two per region; that is,
5 to train additional people from the region to assist in the
6 forthcoming inspections. It was recognized that all plants
7 would need to be inspected.

8 At that point, we had a reorganization and the
9 Equipment Qualification Branch was dissolved; however, the
0 inspection phase continued through the Office of Inspection,
11 and that office later was dissolved. But the inspection
12 phase continued.

13 WITNESS NOONAN: Dr. Morris, some of the things
14 that Mr. Shemanski and are talking about here, there is --
15 there seems to be a disconnect in our thinking, and I don't
16 deny that.

17 The branch was spoken of being dissolved probabl
18 a good two years before it actually occurred sometime in the
19 1983 time frame. I recall a meeting I had with the branch
20 and told them that NRC management felt that this program now
21 was starting to come under control where we did not have a -
22 - we had a controllable product on our hands, and that we -
23 - all we had to do now was go out and finalize the SERs,
24 write a final SER and bring the program to a close.

25 I don't remember the exact date of that meeting,

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1 but I do remember having it with people, and I do not recall
2 whether Mr. Shemanski was there or not, but I believe he
3 was.

4 So about two years prior to the actual date; so it
5 wasn't something that just occurred, I mean just happened
6 suddenly. It was planned that the branch would eventually
7 come to an end.

8 Also, I brought out before that these meetings we
9 had, what we called the one-day meetings, we needed to have
10 those in order to bring information to the table so the
11 staff could finalize their SER.

12 The disconnect that Mr. Shemanski and I have is on
13 these inspections, and I can state unequivocally that when I
14 told my management that these inspections, these inspections
15 were to be confined to the words written in the SER and to
16 verify the approaches taken by the licensee and all of the
17 pronouncements that they made to the staff, that was the
18 intent of the inspections. What happened after I left the
19 branch I can't comment on, but clearly, I'm telling you that
20 was our intent.

21 WITNESS SHEMANSKI: I would add, as a result of
22 the initial EQ inspection, we did develop an inspection
23 module which was used for the subsequent or followon
24 inspections, and that was used by the Special Inspection
25 Branch.

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1 JUDGE MORRIS: This module contained what?

2 WITNESS SHEMANSKI: This module contains guidance
3 to the NRC inspectors as to how an equipment qualification
4 inspection should be conducted. It gives the guidance as to
5 how to select the equipment, how to audit the files, the
6 equipment qualification files; it gives overall guidance as
7 to how to conduct an equipment qualification inspection.

8 JUDGE MORRIS: When was that module made
9 available?

10 WITNESS SHEMANSKI: I can't testify. It was
11 developed during the initial pilot program inspection phase
12 in which they inspected 10 or 12 plants before it was
13 finally turned over to the Regions, probably sometime in --
14 it was being developed in the '84-'85 timeframe. I'm not
15 sure when it was finalized. I don't have a copy of it in
16 front of me, but it was used for the vast majority of the
17 following EQ inspections.

18 JUDGE MORRIS: If I understand correctly, that was
19 not limited to those things identified in the SERs?

20 WITNESS SHEMANSKI: That's correct. It included
21 other areas.

22 WITNESS NOONAN: The inspection module that Mr.
23 Shemanski has -- and I don't remember the exact date of that
24 myself -- but it was not in existence at the time we brought
25 the Branch to an end, and that was in November of '85. To

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1 the best of my recollection, it was not in existence at that
2 point in time, November 1985.

3 WITNESS SHEMANSKI: The final was not available
4 then, but I do recall working on a draft.

5 JUDGE BOLLWERK: I take then, Mr. Shemanski, from
6 your viewpoint, there is really not distinction between the
7 way operating plants and near-term operating plants were
8 treated in terms of the requirements of EQ or the
9 significance of the inspections that were -- that you say
10 were coming up to verify their compliance with the
11 Environmental Qualification Rule?

12 WITNESS SHEMANSKI: Yes, that's correct. The only
13 difference is that the operating reactors, the majority of
14 them had to meet the DOR, Division of Operating Reactors'
15 Guidelines. Some of the near-term operating licenses had to
16 meet higher requirements, NUREG 0588, Category I or II, so
17 some of the newer plants coming in to be licensed had to
18 meet slightly higher requirements.

19 But basically, the EQ inspections were conducted
20 in a similar fashion. There were no differences, no major
21 differences between the 71 operating reactors that were
22 inspected or the near-term operating license reactors that
23 were inspected. It was -- the format and the inspection was
24 essentially the same.

25 JUDGE BOLLWERK: Mr. Noonan, did you want to say

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1 something?

2 WITNESS NOONAN: Yes, if I understand your
3 question correctly, there was a major difference, and I have
4 a major disagreement with Mr. Shemanski on this.

5 Had we started on this program treating both the
6 operating plants and the NTOLs the same, we could have done
7 that. We could put together a program where we treated
8 plants coming into the licensing stage, and we could have
9 put the operating plants in there; we could have assigned
10 people to it, and we could have gone through and followed
11 the same process for the NTOLs as we did for the operating
12 plants.

13 It was not -- it was decided not to do it that
14 way. And the reason for it was, basically, was the -- was
15 that the NTOLs were to be handled by the Staff, and the
16 Staff resources at that time, supplemented by assistance
17 from Idaho National Engineering Laboratories. The operating
18 plants, of which there were 71 of them, were to be treated
19 as a separate class of plants, and basically those reviews
20 were done under Franklin Institute.

21 Dr. Xenon Zudans was the person in charge of those
22 at Franklin. He was the -- he had the ultimate
23 responsibility for running those reviews -- his staff did.
24 But he had the ultimate responsibility for making sure those
25 reviews were completed.

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1 JUDGE MORRIS: Could you spell the name for the
2 reporter?

3 WITNESS NOONAN: Zudans, Z-U-D-A-N-S, Dr. Zudans.

4 JUDGE MORRIS: Thank you.

5 WITNESS NOONAN: But Dr. Zudans was the one that
6 has the responsibility for it. And we split it that way for
7 reasons that we felt that the resources of the Staff could
8 handle the NTOLs adequately. The bulk of the operating
9 plants were to be handled separately, and I think that was
10 even recognized in the wording in the rule. In the rule, it
11 so states that.

12 That was an intent from the -- from day one, even
13 in the formulation of the rule.

14 JUDGE BOLLWERK: So that then there was some
15 heightened level of -- what do I want to say -- inspection
16 or review that was done for the near-term operating plants,
17 as opposed to the 71?

18 WITNESS NOONAN: The near-term operating plants
19 was the -- the review done by those plants was done by the
20 EQ staff themselves. They were the ones that were doing the
21 actual reviews, supplemented by assistance from Idaho
22 Engineering Laboratories.

23 The operating plants, basically -- the basic
24 review was the paper -- what they called the paperwork
25 review, was done by Franklin Institute, with the caveat

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1 being that when we decided to try to get the final SERs
2 written, we knew we did not have the time to do the same
3 type of review for the operating plants as we had it -- as
4 we did for the near-term operating reactors.

5 So, we put in place what I called the one-day
6 meetings for all of the utilities, for each plant; one day
7 for each site, is exactly what it was. It wasn't one day
8 per utility, unless we felt that we could get through there.
9 That process worked fairly well, because, number one, the
10 Staff was very knowledgeable in the EQ area, probably the
11 most knowledgeable group of people in the country.

12 When the utilities brought their information to
13 them, it was -- you're talking common language. I mean,
14 there wasn't major disconnects. Those that came to me were
15 basically disconnects because of either credibility of some
16 statements that were being made, and we handled those
17 separately on the thing, and there was very few, very minor.
18 I mean, not minor, but very few utilities that we ever
19 really questioned the validity of the statement.

20 So, the language was a common language. I mean,
21 they knew what they were talking about. The utilities
22 recognized the Staff, and the Staff was very knowledgeable
23 on this issue. And when the utility talked about a certain
24 test report, the Staff had probably already seen that test
25 report, most like, or knew of its existence.

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1 So, the meetings actually worked very well. And
2 then, again, I guess I come back to the point where we said
3 at the end, the Staff did not actually go out and look at
4 the files; they did not do that, basically because of the
5 time element and trying to get this work done.

6 So, that's why we put in the statement about the
7 inspection audits, to go verify what the utilities talked
8 about in relationship to the fir ERs; that was the end.

9 JUDGE BOLLWERK: That is both for the operating
10 plants and the NTOLs; am I correct?

11 WITNESS NOONAN: No. The NTOLs really had their
12 own inspections because they were done in conjunction with
13 writing the SER. The actual inspection was done prior to
14 writing the SER, where, on the operating plants, it was done
15 after the SER was to be written; that's the major difference
16 in the program.

17 JUDGE BOLLWERK: Mr. Shemanski, do you have
18 something to add?

19 WITNESS SHEMANSKI: Well, the difference was one
20 plant had a license; the other one didn't. So you had to do
21 the inspection -- I mean, that was the difference -- why it
22 was phased that way.

23 I think what Mr. Noonan is referring to here as
24 the major difference between the operating reactors and the
25 NTOLs was really a resource problem. I don't see any

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1 significant difference in the way the safety evaluation
2 reports were generated or the inspections that were
3 conducted.

4 I think it's a resource problem simply because we
5 had 71 operating reactors, we had to write 71 SERs, and
6 that's why we utilized Franklin. It was a large contract
7 over a two- or three-year period.

8 The NTOLs were being done one at a time, so that
9 was why the staff was able to handle it internally, and
10 that's where I see the so-called difference here, is
11 difference in resources, how we solved the problem. But the
12 actual implementation, the way the SERs were generated, we
13 didn't use different levels of standards for generating the
14 SERs, and similarly, the inspections for the operating
15 reactors and NTOLs were conducted in very similar manners.

16 So I guess I disagree with the statement that, you
17 know, there are significant differences between the two. I
18 don't see it that way. I see it as a resource problem.

19 WITNESS NOONAN: I think what Mr. Shemanski is
20 saying is a resource problem is not really correct. If you
21 look at the rule, the rule was actually starting to be
22 written in the 1980 time frame, about the time the branch
23 was being formulated. It was written by the research
24 organization over there.

25 You will notice in that rule that we speak

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1 differently of NTOLs and operating plants, and I really
2 don't think -- eventually, resources played a big part.
3 There's no question about it. But at the time the rule was
4 being formulated, I don't think that was really a major
5 concern of the NRC management as to the resource problem.

6 JUDGE BOLLWERK: Let me put the question this way,
7 and maybe I'm not understanding something. There was an
8 inspection prior to the granting of the operating license
9 for Farley 2.

10 WITNESS NOONAN: That's correct.

11 JUDGE BOLLWERK: That's correct. And that
12 included -- that had some EQ aspects to it. How was that
13 inspection different from the inspection that was conducted
14 in 1987? I guess that's my question.

15 WITNESS NOONAN: I can't speak to the 1987.

16 JUDGE BOLLWERK: Right.

17 WITNESS NOONAN: But I can talk about the 1982
18 inspection. That inspection was done by the EQ staff
19 itself. They put people on site -- I don't recall the exact
20 time frame, but at least a week, and it could have possibly
21 been longer than that -- where they went through the files,
22 the EQ files at Farley, and they would have made a
23 determination of the adequacy of the documentation
24 supporting qualification of all the equipment on Unit 2.

25 It's hard for me to now think in terms of big

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1 disconnects between Unit 1 and Unit 2 because Unit 1 and
2 Unit 2 are sister units. Normally the staff would only look
3 at -- under normal circumstances back in those days, the
4 staff would only look at -- on Unit 2 would only look at
5 those items unique to Unit 2 and say Unit 1 was already
6 covered in its review. Here, we look at Unit 2 first.

7 So there, the staff went through and made a
8 determination that the equipment qualification program at
9 Unit 2 and the files, including the files, including the
10 whole program, was in compliance and eventually was licensed
11 with the stipulation on the -- with the license condition.

12 I can't talk about the difference of the 1987
13 inspections because I'm not -- I can only talk about when I
14 was there.

15 JUDGE BOLLWERK: Right.

16 WITNESS NOONAN: But someone surely can make that
17 -- someone from the staff can maybe make that -- I mean from
18 the Alabama staff could talk about those differences and
19 explain them to you better than I can.

20 JUDGE BOLLWERK: Let me get Mr. Shemanski to try
21 to -- if you could respond to my question. Am I confused?
22 Am I not understanding something? That's what I'm trying to
23 -- what is the distinction between the inspection and the EQ
24 aspects of it that were done prior to the grant of the
25 Farley Unit 2 license and the 1987 inspection that was

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1 conducted? Were they different in scope?

2 WITNESS SHEMANSKI: The 1987 inspection, that was
3 done on an operating reactor. I believe the -- and that was
4 Unit 1. Unit 2 -- wait a minute.

5 Instead of speaking directly about the Farley Unit
6 1 and 2 inspections. let me just say in general that the
7 operating reactors had their inspection following receipt of
8 the Safety Evaluation Report.

9 The plants that were yet to be licensed, the near
10 term operating licenses, they received their inspection
11 prior to getting that license. That was usually the last
12 inspection that was conducted and it was conducted generally
13 very close to a plant receiving its license.

14 So we're only talking about a difference in
15 timing. The actual conduct of the inspections here are
16 there were no significant differences between the
17 inspections for operating reactors or the ones that were
18 conducted for near term operating licenses. So I don't see
19 any major differences in the inspection.

20 JUDGE BOLLWERK: All right. Let me ask this
21 question. In '87 -- well, has the Farley Unit 2 reactor
22 been inspected twice for EQ or only once?

23 WITNESS LUEHMAN: Well, I would answer that
24 question by saying that in 1981, there was an inspection
25 done at Farley Unit 1. I mean, there had been inspections

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1 prior to the -- there had been inspections or audits,
2 whichever one you want to call them, at both units prior to
3 the deadline. But I think --

4 JUDGE BOLLWERK: Right. What I'm concerned about
5 is the deadline inspection, the one that you are basing this
6 enforcement action on.

7 WITNESS LUEHMAN: That's correct. And those
8 inspections were done after the November 30th, 1985 deadline
9 in the case of Farley. That was the -- when the rule --
10 that's the inspection that they -- we had to base from an
11 enforcement standpoint any enforcement, because if you
12 inspect a licensee before the rule, the effective date of
13 the rule, you wouldn't be in violation of anything.

14 I think that -- I understand what your question
15 is, Judge Bollwerk, but I think one of the intervening
16 documents that comes in and plays an important part in that,
17 as referred to in our testimony, is the Commission policy
18 statement on environmental qualification which was issued in
19 1984.

20 It comes out and it recognizes that there were
21 varying levels of detail in prior NRC inspections, audits
22 and SERs, and basically, in 1984, it recognized that and
23 said we're going to issue a final set of SERs -- I mean, I'm
24 putting it in my words -- a final set of SERs, and then
25 we're going to come out and we're going to do the

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1 verification inspection because many things have continued
2 to change and we want to get the playing field level for all
3 the inspections that are going to be done.

4 So, yes, there were inspections done on Unit 2
5 prior to other inspections done on Unit 2, but there were
6 other inspections done on Unit 1, also.

7 JUDGE BOLLWERK: Your point is that the critical
8 inspection was the '87 because there was no rule in effect
9 when the NTOL inspection was done.

10 WITNESS LUEHMAN: That's correct.

11 MR. MILLER: The standards were the same, 50.49(k)
12 clearly does not raise the standards for us.

13 David?

14 WITNESS JONES: That is correct. That is just
15 what I wanted to point out.

16 According to (k) our regulation requirements and
17 standards were established, and nothing should have changed,
18 but obviously something did change in the '87 inspection,
19 the inspections we had pre-deadline, and that is why we are
20 here today.

21 MR. MILLER: David, we had inspections at Unit 1
22 back in the '80-81 time frame, did we not?

23 WITNESS JONES: Yes, we did.

24 MR. MILLER: We had inspections at Unit 2 by
25 DiBenedetto's group, that Vince Noonan referred to?

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1 WITNESS JONES: We did.

2 MR. MILLER: It was our operating license against
3 the same standards that are supposedly being enforced today
4 at this hearing?

5 WITNESS JONES: That's correct.

6 JUDGE BOLLWERK: I think Mr. Luehman wants to say
7 one thing.

8 WITNESS LUEHMAN: The other things that we would
9 add, clearly that there was a lot of information that came
10 out between the time of those inspections and the deadline
11 in which the staff and the Commission clearly acknowledged
12 that the level of documentation and what we knew about EQ
13 was evolving, and that is one of the reasons the Commission,
14 I think, put out the policy statement, and that is one of
15 the reasons that we include in the generic letter, and the
16 clearly should have known standards, that the staff has to
17 make that finding.

18 BY MR. MILLER:

19 Q Isn't that one of the reasons that you had in mind
20 when you issued a discussion that says, "The license
21 condition relevant to EQ compliance has been met"?

22 A [Witness Luehman] I think Mr. Shemanski addressed
23 that, that the license condition was basically not needed
24 because it addressed the June 30th, 1982, deadline, which
25 was not relevant anymore.

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1 Q What is ambiguous about the phrase "license
2 condition 2(c)(18) has been met"?

3 A [Witness Luehman] And I acknowledge that
4 licensing condition 2(c)(18) was met. The June 30th, 1982,
5 deadline was not in existence. Therefore, the condition was
6 irrelevant.

7 Q Let's make sure I have this, Mr. Luehman. So you
8 see this discussion and evaluation of Exhibit 84 as, the
9 only thing it does is lift the June 30, '82, deadline?

10 A [Witness Luehman] No, that is not the only thing.

11 Q All right. We will let it speak for itself.

12 Mr. Shemanski, I will ask you this question, do
13 you see this discussion and evaluation about the license
14 condition as only lifting the June 30, '82, deadline?

15 A [Witness Shemanski] No.

16 MR. MILLER: Go ahead, Dave.

17 WITNESS JONES: As you start back with the license
18 in Unit 2, and the hearing we had before we got our license,
19 and I am paraphrasing, but it says, basically no safety
20 issue exists. There are some documentation, paperwork,
21 issued that we need to resolve, but there is no safety issue
22 out there. So they granted us our Unit 2 license.

23 Followed up by that, Franklin Research did the
24 detailed documentation review. After that review, then we
25 had this final true-up meeting in January of '84 to discuss

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1 any open deficiencies that were remaining.

2 We got proposed resolutions to those issues
3 followed up with our safety evaluation in December of that
4 year, so there should have been no outstanding issue, or no
5 reopening of the EQ through a verification inspection.

6 Granted, we recognize that standards may change.
7 They may come at some later date, and want us to do
8 something different than what we agreed to prior to the
9 deadline, and we accept that responsibility, but don't
10 enforce they clearly should have known and, therefore, a
11 civil penalty against us for not knowing that.

12 WITNESS LUEHMAN: I would just add that what Mr.
13 Jones has left out is the fact that nowhere was the staff
14 told of the number of the conditions, or the configurations
15 that are the subject of this hearing. The staff was not
16 knowledgeable, nor does the SER address issues such as the
17 Chico A/Raychem configuration. We never had the
18 opportunity. That was not presented to us as something
19 that was going to be reviewed.

20 Similarly, the V-type splices were never
21 identified to the staff as being used in the plant.
22 Therefore, I think it is unreasonable for the licensee to
23 argue that we reviewed and accepted all this stuff, because
24 the staff was simply not knowledgeable that some of these
25 conditions or these configurations even existed in the

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1 plant.

2 MR. MILLER: David, since Mr. Luehman wasn't
3 there, why don't you tell him what you told the staff about
4 terminal blocks in the January '84 meeting?

5 WITNESS LUEHMAN: I am sorry, I didn't say
6 anything about terminal blocks.

7 MR. MILLER: I understand that, but you are
8 getting ready to hear about terminal blocks.

9 Go ahead, David.

10 WITNESS LUEHMAN: That is because you want to
11 testify for him.

12 MR. MILLER: I will let him give the testimony,
13 Mr. Luehman.

14 WITNESS JONES: At the meeting in January '84, the
15 technical issue was recognized by the NRC, and we sat there
16 and discussed the technical issue. Alabama Power Company
17 proposed their resolution to that is ue, documented it in
18 the meeting minutes in February of that year, and was
19 accepted through the SER in December of '84.

20 So clearly, in my mind, an open issue was
21 discussed in the meeting, a proposed resolution was given by
22 Alabama Power Company, and accepted by the NRC.

23 WITNESS SHEMANSKI: I disagree with that. We
24 didn't accept anything during that meeting. That meeting
25 was to provide guidance. We discussed the terminal block

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1 issue because we wanted to make sure licensees were aware of
2 the leakage current problem.

3 In terms of accepting anything, going to meeting,
4 it was a working level meeting. We had a lot of items on
5 the agenda. There was no way that we were able to do an in-
6 depth review or analysis of any documentation provided
7 during the meeting.

8 So my position is that we did not accept anything
9 during that meeting. We offered guidance. When the
10 licensee told us of a proposed resolution, if it seemed
11 reasonable, we told them, fine, go ahead with that.

12 But that meeting should not be construed as NRC's
13 total acceptance of anything because we didn't look at that
14 point. We were just relying on statements made by the
15 licensee, and if they seemed reasonable, we said, fine, but
16 that did not construe our total acceptance, and that cannot
17 be inferred in the SER. You can't infer from the SER that
18 we accepted anything during that meeting.

19 BY MR. MILLER:

20 Q Ms. Shemanski, get the SER before you, please, on
21 page 4.

22 A [Witness Shemanski] I have it.

23 Q You told us that there was discussion about
24 terminal blocks and leakage current, did you not?

25 A [Witness Shemanski] That is not mentioned in the

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1 SER.

2 Q I asked you whether or not you testified that
3 there was such a discussion in the January 1984 meeting?

4 A [Witness Shemanski] To the best of my knowledge,
5 there was a discussion of terminal blocks because that was
6 one of my major agenda items.

7 Q All open items identified in the SER dated January
8 31, '83, were discussed and a resolution has been found
9 acceptable by the staff. That is a true statement, isn't
10 it?

11 A [Witness Shemanski] That's correct.

12 We also go on to say that we did not review the
13 additional analyses or documentation. However, they will be
14 audited at a later date.

15 So we accepted what you told us verbally, but at
16 that point we did not see any physical evidence, that is,
17 documentation.

18 Q Let's make sure that the record is clear. Do you
19 deny accepting Alabama Power Company's proposed resolution
20 on the terminal block issue, yes or no?

21 A [Witness Shemanski] I don't recall at this point
22 what their proposed resolution was, so I can't --

23 Q The best you can say is you don't recall?

24 A [Witness Shemanski] I don't recall. We did have
25 a discussion on terminal blocks, however, and it was a

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1 cautionary type discussion making sure that you understood
2 the concern we had with the leakage current. At that
3 point --

4 MR. MILLER: David, Mr. Shemanski says that he
5 can't recall. Will you tell the Board what the resolution
6 was, and whether or not it was accepted by the staff?

7 WITNESS JONES: It was discussed during the
8 meeting. Our specific resolution was documented in our
9 February 29th, 1984, letter, which is referenced in the SER
10 and accepted.

11 WITNESS MCKINNEY: Also, I was at that meeting in
12 January of 1984, and when I walked away from that meeting, I
13 felt that all the issues were resolved. In my mind, all the
14 issues we discussed, if we implemented that, then that would
15 resolve the EQ issue at that time.

16 Also, I heard a lot of discussion about what I'd
17 call paper reviews by the staff and a lot of reviews, maybe,
18 that they didn't go into a lot of detail.

19 I guess, just sitting here, thinking about all the
20 involvement I had and all the issues that went on, I think
21 it's important to understand that Farley nuclear plant
22 equipment was required to be qualified for NUREG-0588. That
23 was back in the early '80s.

24 Even when the rule was issued, 10 CFR 50.49, that
25 did not change our qualification requirements. NUREG-0588

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1 was still the criteria we had to meet, and I think it's very
2 important to understand all the mileposts along the way that
3 ended up with the '84 SER, and then you asked about the
4 license conditions, which I want to speak to in a minute.

5 But we had a -- we had an on-site inspection by
6 the NRC staff, and the criteria we were using was NUREG-
7 0588, and I think we talked about that in our last hearing,
8 and then -- and then there was a lot of information that was
9 submitted to the staff.

10 We got '81 SERs, we got '83 SERs, and TERS from
11 Franklin. Franklin was reviewing a lot of information from
12 us and other utilities. So, it wasn't just a paper review.

13 I mean NRC staff came on-site for several days and
14 -- and looked at our equipment in our plant and evaluated it
15 and had a very positive statement about it, and then, we had
16 the January '84 meeting.

17 Also, I went to the full-power hearing for Farley
18 Unit 2 and -- and listened to discussion about EQ and the
19 fact that that ended up being a -- a license condition, even
20 though that did not hold up our -- our full-power license.

21 So, when we got to the '84 SER, I mean there was a
22 lot of -- there was a lot of water under the bridge that had
23 gone on.

24 So, yes, when we met in '84, January '84 meeting,
25 it wasn't required to spend a lot of time, because there had

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1 been a lot of work done before.

2 So, one day -- we -- we would have spent whatever
3 it took. If it had taken three days, we'd have stayed there
4 for three days.

5 Whatever it took we would have done to resolve the
6 issues, because we were up there to make sure any of the
7 issues on EQ was addressed, and when we walked away, we knew
8 that we would have an agreement, at least in my mind, on
9 what that resolution was, and we went and did it.

10 So, later on that year, we go an SER, and I think
11 -- and then you asked the question about the license
12 condition. I'd like to talk about that.

13 There were many license conditions in the Unit 2
14 license, and after we got operating, we went back to the
15 commission and tried to get several of these deleted,
16 because they were done.

17 Several of these items were go implement a
18 modification by a certain time, and we had done that, and
19 so, we went back to the commission and tried to get that
20 removed from the license, because we wanted our license just
21 to have the -- the active ongoing items.

22 So, in response to your question about what the
23 Unit 2 license condition means, when I got the letter and
24 looked at this letter that says our Unit 2 license condition
25 was met, I mean that was very significant.

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1 I mean we've got the SER that said that we comply
2 with 50.49, plus then -- and then, after that, we had made a
3 request that the NRC agree that our license condition had
4 been met on EQ, and when we got the letter saying that our
5 license condition had been met, to me that was very
6 significant, because if you look at one of the things that
7 the license condition talked about, it was talking about
8 documentation or evaluation that would demonstrate
9 compliance of equipment with NUREG-0588.

10 So, in 1985, I mean we were still talking about
11 the same criteria back in 1980 when these on-site
12 inspections were done.

13 So, from my perspective, there were several
14 mileposts down the road that we were getting feedback from
15 NRC. We had the on-site inspections. We had the '81 SERs.
16 We had the full-power hearing. We had the -- the SER for
17 Unit 1 and Unit 2. We had the license condition.

18 Then, we -- then, we get the letter that says the
19 license condition has been met. So, to me, that was very
20 significant.

21 I think I put a lot more weight on that than what
22 I heard earlier. I thought that was very significant. It -
23 - it was not easy to get a license condition satisfied and
24 actually removed from the license. That was a major
25 accomplishment.

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1 So, that was very significant to me, in answer to
2 your earlier question.

3 WITNESS LUEHMAN: I'd like to make one
4 clarification to something Mr. McKinney said.

5 I think, in our -- in our earlier round of
6 testimony, when we discussed, for instance, the on-site
7 inspection that was done relative to the 1983 -- I think it
8 was 1983 on-site visit -- or '82 -- that was done for Unit
9 2, one of the things that I think that I pointed out at that
10 time and I think bears reiterating here is that there were --
11 -- there was language in that on-site inspection report that
12 alluded to the fact that -- that -- that told us what the --
13 --the standard the staff used to accept certain pieces of
14 equipment, and I think that, at that time, that I printed
15 out that subsequent documents issued by the NRC -- I don't
16 know whether they were information notices or whatever --
17 clearly pointed out to the licensees that -- that acceptance
18 on that basis was -- was not adequate.

19 I think that the -- in the 1983 case, the -- one
20 of the ways that the staff indicated they were accepting the
21 qualification of certain pieces of equipment was based on
22 certificates of conformance.

23 At the time, that might have been an acceptable
24 standard.

25 However, later on, we -- we -- we -- it evolved --

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1 -it became understood that those weren't always reliable and
2 mere acceptance on a certificate of conformance that the
3 qualification was an adequate basis means that, clearly --
4 that, in 1983, that might have been adequate, but then there
5 was subsequent information that came along that told you
6 that you couldn't necessarily rely on that, and therefore,
7 to go back and say, well, I had an inspection in 1983, and
8 they told me everything was -- was good, but then more --
9 further information comes along, to just ignore that that
10 basis is no longer valid and still rely on that 1983
11 inspection, on its face, without evaluating it on the
12 subsequent information, is not necessarily the best thing to
13 do.

14 JUDGE BOLLWERK: Mr. Miller, how much more cross
15 examination do you have, you think?

16 MR. MILLER: If I could have a few minutes to talk
17 with my panel, I would propose that we are close to being
18 done or there.

19 JUDGE BOLLWERK: All right.

20 Let me raise, then, one other question with the
21 panel, and then we'll let you finish up.

22 Mr. Noonan, did you have anything to do with the
23 Calvert Cliffs inspection or setting the standards for that?

24 WITNESS NOONAN: Yes, sir. I was involved with
25 the Calvert Cliffs inspection. Mr. LaGrange actually ran

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1 the inspection for us. I made one or two trips to the -- to
2 the offices when they -- while the inspections were going to
3 see how the progress was -- what progress was being done.

4 I didn't -- I didn't actually get involved in a
5 detailed look at the records. Mr. LaGrange handled that.

6 JUDGE BOLLWERK: Do you have any comments on Mr
7 Luehman's discussion about the Calvert Cliffs inspection and
8 the scope of it, the importance of it in terms of the
9 information notice?

10 WITNESS NOONAN: As I -- as I stated earlier, the
11 -- Calvert Cliffs was to be the first of -- first of 10
12 inspections that were going to be looked at for -- from the
13 standpoint of trying to get the regulatory staff and the
14 inspection staff together and reach a common ground as to
15 what was acceptable in these inspections.

16 The -- the intent was, after -- after these 10
17 inspections were done, then we would publish -- we would
18 publish a document that would tell -- tell the utilities
19 here's -- here's the way the EQ inspections are going to be
20 -- be carried out in the future.

21 Like I said, unfortunately, at least from my
22 viewpoint, that never -- never was culminated in that -- in
23 the way it was originally planned, and I know of -- and I --
24 -I don't know of any document, other than the inspection
25 module that was referred to earlier -- and I don't recall

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1 the date of that module, to be honest with you, but I think
2 it occurred well after the -- after the deadline, but I -- I
3 can't recall the actual date.

4 MR. MILLER: Judge Bollwerk, it may help -- that
5 inspection module was promulgated in March of '86, and it is
6 Alabama Power Company Exhibit 93.

7 JUDGE BOLLWERK: Is there anything in that
8 inspection module that you're aware of that -- that confirms
9 the sort of -- at least, as I understand you're representing
10 to the board -- the scope of those inspections?

11 WITNESS NOONAN: I -- I can't -- I can't recall
12 what that module -- module looked like. At that point in
13 time, I was -- I was working on Comanche Peak pretty much
14 full-time, and I don't recall that, what that module looked
15 like. I -- I really don't recall.

16 JUDGE BOLLWERK: Thank you.

17 Would you like to spend a couple of minutes
18 talking with your folks?

19 MR. MILLER: I'd like to spend a few minutes with
20 the panel.

21 JUDGE BOLLWERK: Certainly.

22 MR. MILLER: Because we are very close to the end.

23 JUDGE BOLLWERK: Is five minutes enough?

24 MR. MILLER: Yes, sir. That's fine.

25 JUDGE BOLLWERK: We'll take a five-minute recess,

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1 and we'll come back at noon time.

2 [Brief recess.]

3 JUDGE BOLLWERK: Please be seated. We will go
4 back into session.

5 Mr. Miller, do you have any further cross
6 examination?

7 MR. MILLER: We have no further cross examination.

8 JUDGE BOLLWERK: Would you like to your redirect
9 now?

10 MR. HOLLER: If I may, in the interest of economy,
11 I think, because of the procedure we're using here, that the
12 redirect could be incorporated into my cross examination.

13 JUDGE BOLLWERK: All right. Well, if there's
14 nothing else at this point in terms of the cross examination
15 of the staff --

16 MR. HOLLER: One minor item to bring up, Judge
17 Bollwerk. We have Mr. Potapovs here. Mr. Potapovs does
18 have another commitment tomorrow. I would ask the --
19 personally, I have no questions, and Mr. Miller has
20 authorized me to say that he has no questions that he knows
21 of now for Mr. Potapovs. It may be better to examine Mr.
22 Potapovs on the questions that the Board has immediately
23 after lunch or pick a time such as 3:00 or so, if we're
24 still going, to call a halt and then examine him.

25 JUDGE BOLLWERK: We do want to get him today,

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1 there's no question about that. Why don't we do it
2 immediately after lunch then. When we come back, before you
3 start your cross examination, we'll go ahead and have the
4 questions for him?

5 MR. HOLLER: If that's acceptable.

6 MR. MILLER: That's fine.

7 JUDGE BOLLWERK: That's fine. All right. That
8 way we want tie him up all afternoon. So, why don't we say
9 1:30 and we'll reconvene. Is there anything else at this
10 point?

11 [No response.]

12 JUDGE BOLLWERK: If not then we will take our
13 luncheon break and come back at 1:30. Thank you.

14 [Whereupon, at 12:02 o'clock p.m., the above-
15 entitled hearing was recessed for lunch, to reconvene at
16 1:30 o'clock p.m. this same day.]

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1 AFTERNOON SESSION

2 [1:28 p.m.]

3 JUDGE BOLLWERK: Please be seated.

4 Good afternoon, everyone. Why don't we go ahead
5 and get started with our Afternoon Session.6 I think the first order of business is some
7 questions for Mr. Potapovs.8 MR. HOLLER: Yes. We'll ask Mr. Uldis Potapovs
9 please to take a seat at the NRC witness table.10 JUDGE BOLLWERK: The questions I have for Mr.
11 Potapovs in part may have some relevance to some things I
12 would like to ask Mr. Luehman as well if it's possible to
13 have him -- in fact why don't you have he and Mr. Shemanski;
14 Mr. Potapovs is sort of an addition to the panel rather than
15 a panel by himself.16 You had a preliminary question you wanted to ask
17 or do you want me to go ahead?

18 MR. HOLLER: Go ahead.

19 JUDGE BOLLWERK: All right.

20 Whereupon,

21 ULDIS POTAPOVS,
22 a witness called by the Board and having been previously
23 duly sworn, joined JAMES LUEHMAN and PAUL C. SHEMANSKI on
24 the Rebuttal NRC Staff Panel Concerning Enforcement, and
25 DAVID JONES, BERNARD D. MCKINNEY, JR., and VINCENT S.**ANN RILEY & ASSOCIATES, Ltd.**Court Reporters
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1 NOONAN, APCo's Surrebuttl Panel Concerning Enforcement, all
2 witnesses having been previously duly sworn, continued to be
3 examined and testified further as follows:

4 BOARD EXAMINATION

5 JUDGE BOLLWERK: We have three basic areas I
6 think, one of which we mentioned to the Staff, two of which
7 have come up since we had the discussions with the Staff in
8 a phone conference back in April. One deals with the
9 seminar that was held in Sandia in 1987, I believe it was.
10 The second one is something that's come up in the APCo
11 surrebuttal testimony that I would like to ask you about.
12 The third one is a question of your knowledge of some of the
13 inspections that have been talked about today. I understand
14 you may know something about those.

15 Let me start first with the seminar, the Sandia
16 seminar.

17 Can you give the Board some general idea of why
18 the seminar was called, what was the purpose of it, what
19 were you aiming at, what were you trying to do?

20 WITNESS POTAPOVS: The seminar was one of at least
21 three such seminars held at least annually for the purpose
22 of training the inspectors that would be involved in EQ
23 inspection process in both generic equipment qualification
24 practices and also in the inspection procedures and
25 approaches and later on in the classification of identified

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1 deficiencies in relation to potential enforcement actions.

2 JUDGE BOLLWERK: Did you have some further
3 question you wanted to ask him about the basis --

4 JUDGE MORRIS: That was a general answer, yes.

5 JUDGE BOLLWERK: Let me get my notes then.

6 JUDGE MORRIS: It might help, Mr. Potapovs, if you
7 had the agenda before you.

8 WITNESS POTAPOVS: I do. As a matter of fact I
9 have a copy.

10 JUDGE BOLLWERK: Excuse me. What I want to ask you
11 about is Staff Exhibit 59, which was a fairly lengthy
12 document, a specific part of that.

13 It's divided I guess into sub-parts and the one I
14 am looking at is marked 39-J. If you need a second to find
15 that, why don't you go ahead and do that. It's toward the
16 back of the document.

17 WITNESS POTAPOVS: I have it.

18 JUDGE BOLLWERK: All right, and the document
19 identified, just so that it's clear what we are talking
20 about is an August 6, 1987 memorandum for individuals on the
21 attached list from Mr. Partlow, who is the Director of the
22 Division of Reactor Inspection and Safeguards of the Office
23 of Nuclear Reactor Regulation.

24 The subject is equipment qualification seminar and
25 it is signed for Mr. Partlow by Brian Grimes.

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1 What we are interested in is I believe it's the
2 third sentence in that memorandum. It talks about "The
3 topics covered will include a review of applicable
4 regulatory requirements, inspection programs/procedures, and
5 a discussion of recently-identified equipment specific
6 qualification problems and Staff positions on generic
7 issues."

8 Then the memorandum references you as the contact
9 for additional information and that is why we have you here
10 and want to ask you some questions about it.

11 What did you mean in that memorandum by "recently
12 identified equipment specific qualification problems?"

13 WITNESS POTAPOVS: More or less a review of case
14 histories of identified equipment qualification deficiencies
15 in the generic sense, by actually explaining to the
16 inspectors how the process of applying the equipment
17 qualification rules to the particular items and how the --
18 and the basis for these deficiencies with respect to the
19 rules that would be applicable.

20 JUDGE BOLLWERK: I guess our concern is given
21 Alabama Power's contentions about the evolving nature of
22 environmental qualification the term "recently identified"
23 could be read to read that these are ones that you have
24 identified very recently, i.e., in 1987 or '86.

25 Why is that not true or why should we not read

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1 those words as they appear -- in the meaning they appear to
2 have?

3 WITNESS POTAPOVS: I'm trying to -- I did write
4 that memorandum and there certainly was no implication to
5 convey the message that we recently identified some new
6 problems. I guess the idea was to put it in somewhat of a
7 state-of-the-art context from the standpoint of where we are
8 and what types of problems we had identified during the
9 inspections that have been conducted to date.

10 This was probably about two years into the
11 inspection cycle so I guess when I say "recently," it would
12 probably mean more to provide up-to-date information of what
13 types of deficiencies are being identified in the program
14 and how they are related to the requirements for equipment
15 qualification.

16 It was more or less a case history type of
17 approach to bring inspectors up to speed in what they can
18 expect to find.

19 JUDGE BOLLWERK: Let me be a little more specific:
20 You drafted this memorandum then?

21 WITNESS POTAPOVS: I believe I did.

22 JUDGE BOLLWERK: Can you give me an example then
23 of what you meant by a recently identified equipment
24 specific qualification problem? Is there a specific example
25 you can give us? I recognize this requires you to think

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1 back a couple years, but --

2 WITNESS POTAPOVS: Well, I think such items such
3 as the Limitorque valve operators and different items that
4 would be considered in qualifying the Limitorque like
5 possibly the cable issue, the terminal block issues in the
6 Limitorques, the T-drains or lack of T-drains. It would be
7 a discussion of those types of potential problems with this
8 piece of equipment.

9 Also, another area would be like solenoid valves,
10 whether or not a moisture-proof enclosure is required for a
11 solenoid valves and under what conditions such moisture-
12 proof enclosure would be required, and what inspection
13 history has shown the condition of these types of equipment
14 being.

15 JUDGE BOLLWERK: Let me take -- for example, you
16 gave us the T-drains. How would that be considered, as
17 you've indicated here, recently identified; how was that --
18 I mean, what aspect of it was recently identified? I guess
19 that's what I'm not understanding.

20 WITNESS POTAPOVS: Well, I believe the fact that
21 T-drains were required was known all along. There were some
22 modifications, though, on that issue where some utilities
23 apparently had test reports which, under certain conditions,
24 could support qualification of Limitorques without the T-
25 drains, if they had a certain type of a motor attached to

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1 the Limatorque operator. It was more or less to provide a
2 complete information that would identify what conditions had
3 been reviewed in the past and how these would help the
4 inspectors in the future.

5 JUDGE BOLLWERK: I think you also mentioned
6 terminal blocks. How would that be recently identified, in
7 the meaning that you ascribe to it in the memo?

8 WITNESS POTAPOVS: In that particular case, I know
9 that, again, different types of terminal blocks had been
10 used in conjunction with Limatorque operators, some of which
11 were qualified, some of which were qualified for certain
12 usage ranges, so it was more or less a discussion of
13 limitations of that type of equipment that you've identified
14 and was acceptable for service based on reports that we had
15 reviewed.

16 It would also convey to the inspector, specific
17 information that if he was aware of the particular
18 inspection report which would qualify a piece of equipment
19 and then he would be conducting an inspection in a licensee
20 facility and the licensee did not have that report, then
21 under the program that we worked, this inspector could then
22 use his knowledge to determine whether or not that
23 particular equipment was qualifiable, based on his knowledge
24 of additional information.

25 It was basically to assure that our inspectors

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1 were aware of the latest information, state-of-the-art in
2 equipment qualification.

3 JUDGE BOLLWERK: Do you have any questions?

4 JUDGE MORRIS: Just to follow up on that, in your
5 list in Item 4 on page 2, I guess, of the agenda, the
6 subject is listed as equipment-specific qualification
7 issues, and I guess it should be plural, and you've listed a
8 number of items, some of which is mentioned. I get the
9 feeling that many of these items were known not to have
10 fully qualified records, at least at some of the utilities.

11 WITNESS POTAPOVS: That's correct.

12 JUDGE MORRIS: But I get the feeling that because
13 of inspections that took place during this period of
14 November of '85 to '87, that there was increased knowledge
15 on the part of the Staff, based on their inspection
16 activities, based on possible tests at Sandia or other
17 places; is that true?

18 WITNESS POTAPOVS: The increased knowledge, I
19 guess I would have to qualify more or less in terms of the
20 inspectors that have conducted these inspections on an
21 ongoing basis, would obviously improve their ability and
22 also gain additional knowledge of specific equipment
23 qualification issues related with specific components and
24 the qualification documents related to these components.

25 I guess what we were trying to do is to provide as

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1 much information as possible to these specific identified
2 categories of components to make sure that the inspectors
3 were fully knowledgeable and up to date on any aspects of
4 the qualification basis, such as I mentioned previously
5 where we identify additional basis for qualification of
6 particular type of item. We would want to be aware that the
7 inspectors are knowledgeable of that.

8 JUDGE MORRIS: But would you agree that there was
9 an evolution of the -- at least the amount of information
10 available which you were imparting at the seminar to the
11 inspectors?

12 WITNESS POTAPOVS: I don't believe that -- I guess
13 I look at evolution of qualification information as being
14 that somebody performed a new test to qualify an item, or
15 identify that an item could not be qualified. I guess that
16 would be new information, and in a sense, like the
17 information notice that we put out on the terminal blocks
18 back in '84, which was based on Sandia testing, was new
19 information.

20 I'm not aware of too much new information being
21 generated in the timeframe that these inspections covered
22 which would significantly alter the qualification basis of
23 equipment, if you compared it to what was available in
24 December '85 or November '85.

25 JUDGE MORRIS: So you are telling me that you are

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1 unaware of technical data which would change your approach
2 to judging qualification?

3 WITNESS POTAPOVS: I do not know that I can make a
4 completely blanket statement. I think there were a number
5 of instances where we came across special testing having
6 been performed by a licensee within a particular use range
7 of equipment which would qualify that equipment for this
8 application, but that would be not a generic type of
9 information.

10 JUDGE MORRIS: Well, in the sense of increased
11 understanding of the qualification problems with these
12 items, there was some evolution.

13 WITNESS POTAPOVS: Well, obviously, we -- again,
14 whether you attribute this to inspectors becoming more
15 proficient, it -- an inspector would identify a problem in a
16 particular -- related to a particular item. Obviously he's
17 going to use this knowledge in the future and apply that to
18 future inspections. If that's the kind of evolution we're
19 talking about, that's obvious.

20 JUDGE MORRIS: Well, in what same sense, then,
21 what about evolution of interpretation of requirements. Did
22 you see any of that in that time period?

23 WITNESS POTAPOVS: I don't believe -- and again,
24 when I'm talking about the requirements, I'll speak at this
25 time classifying the deficiencies at the inspection level as

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1 to violations without trying to go and apply any particular
2 enforcement policy to them. I don't believe there was any
3 evolution in that since the start of the inspection process
4 back in '84.

5 JUDGE MORRIS: Thank you.

6 JUDGE BOLLWERK: Do you have anything else?

7 JUDGE CARPENTER: No. Thank you.

8 JUDGE BOLLWERK: Thank you very much.

9 Let me raise two other subjects with you briefly.
10 One relates to the APCo surrebuttal testimony that's been
11 filed with respect to the enforcement. On Page 27 -- I
12 don't know if anybody up there has a copy of that they can
13 provide to Mr. Potapovs.

14 While you are looking at that, does anyone on the
15 APCo panel have anything to say about what Mr. Potapovs has
16 just told us?

17 WITNESS JONES: I would just like to say that
18 based on what you have heard here today and based upon the
19 meeting agenda, it's clear that the interpretation had
20 changed through inspection, through knowledge that the
21 inspectors learned from other inspections, and they applied
22 them to future inspections, and we were inspected against
23 the latest criteria.

24 JUDGE BOLLWERK: What I am referring to is at the
25 very bottom. It's the answer to Question 16, and it goes on

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1 to the top of Page 28.

2 WITNESS POTAPOVS: I have read the question and
3 answer.

4 JUDGE BOLLWERK: Do you agree with the statement
5 there?

6 WITNESS POTAPOVS: The response that I made
7 previously?

8 JUDGE BOLLWERK: Well, I recognize that you made
9 the response previously, and you are under oath -- you were
10 then as you are now. I guess what I am wondering about, it
11 says, "In his deposition, Mr. Potapovs agrees with our
12 position." Do you agree with that statement? And on the
13 next page, it says it agrees with this conclusion.

14 WITNESS POTAPOVS: I guess I would have to
15 interpret their position a little bit. If their position is
16 that we should not be using information contained in other
17 reports as establishing basis for clearly should have known
18 type of a question, then I would say I would agree with that
19 position that we would not use the information in other
20 reports as the basis for establishing the fact that a
21 licensee should have known that the equipment in question
22 was or was not qualified.

23 I also would say that I would not expect that the
24 licensee would be reading everybody else's inspection
25 reports to bring themselves up to state of current

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1 technology, but also it is common knowledge that the utility
2 groups that were actively involved did extract from these
3 reports and did prepare other auxillary documents that were
4 widely circulated between utilities.

5 So in general, this was a source of information
6 for utilities as such, and the information certainly was
7 available to anybody that was interested in it.

8 JUDGE BOLIWERK: Anybody on the APCo panel have
9 any response to that?

10 WITNESS JONES: Well, again, I would just, in
11 reiterating my testimony at the bottom of Page 26, is that
12 they gained more knowledge. The latest and greatest
13 information was identified in the Sandia seminar, and then
14 in September, when the team leader, Mr. Merriweather came on
15 site, he would refer to the Sandia handouts in making a
16 determination whether something was an issue or not.

17 So it became very clear in my mind that they were
18 using evolutionary knowledge and applying it retroactively
19 to Farley.

20 WITNESS LUEHMAN: I guess I would have to say that
21 I don't know how Mr. Jones can make that statement given the
22 fact that he doesn't know what Mr. Merriweather was reading
23 or what he was thinking, and given that it was clear, as in
24 the inspection reports that we presented, the Calvert Cliff
25 inspections, the Fort Calhoun inspection and the other ones

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1 that we referenced in the enforcement testimony, that those
2 inspection reports were performed in 1984 and '85 and
3 present the same type of issues and the same level of detail
4 as were subsequently performed at Farley.

5 So I don't know how you can square those two
6 things given that he doesn't know what Mr. Merriweather knew
7 and given that those inspection reports talk about the same
8 type of issues, and those were before the deadline.

9 MR. MILLER: Did you see Mr. Merriweather reading

10
11
12 WITNESS JONFS: I would like to respond to that by
13 Mr. Luehman was not there. Mr. Merriweather and I were
14 there. We discussed what he was looking at and he agreed
15 that he was referring to his Sandia notes.

16 WITNESS LUEHMAN: I have no problem with saying
17 that -- we acknowledge that he had the Sandia notes. We
18 acknowledge that Sandia notes talk about these specific
19 issues. The question is whether these specific issues were
20 inspection issues that the NRC was interested in prior to
21 November 30, 1985, and I think that we provided a sample of
22 reports that clearly indicate that they were, at least the
23 issues that we knew about, because, obviously, there was a
24 couple of issues that we didn't even know about at Farley,
25 such as the Chico A/Raychem seals and the V-type splices, to
mention two.

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1 WITNESS POTAPOVS: Can I add a little bit to that
2 since I was there? And I have this -- as a matter of fact,
3 participated in all three of the seminars that they held.
4 We did not, to my knowledge, have any handout that could be
5 considered a list of equipment to -- with problems or
6 something like that that inspectors should be focusing on.

7 We did have the topics identified in the agenda
8 that were used. We also had a lot of generic topic notes
9 on such things as similarity, like for like replacements,
10 generic qualification topics, but I don't recall that we
11 ever had any handouts that could be considered as targets
12 for inspection or anything like that.

13 WITNESS JONES: I would just like to respond that
14 Mr. Potapovs, I don't think you can walk away from the words
15 in your cover letter that says recently identified
16 equipment-specific qualification problems, and page 2 that
17 lists specific qualification issues.

18 WITNESS POTAPOVS: Well, that's -- I stated
19 before, if you want to make sure that the inspectors are
20 aware of the latest state of art information in
21 qualification, I think they would not be doing a good job at
22 the seminar if he had not strived for that.

23 WITNESS JONES: I agree with that, and that's what
24 Mr. Merriweather brought with him to Farley in September of
25 '87.

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1 WITNESS POTAPOVS: You mean this book that was six
2 inches thick?

3 WITNESS JONES: His meeting notes.

4 JUDGE BOLLWERK: All right, let's move on to a
5 different subject. There was some discussion this morning
6 about the inspections that had been held, a number of
7 different inspections, the Calvert Cliffs inspection, among
8 others.

9 Do you have any knowledge of the Calvert Cliffs
10 inspection and the scope of that inspection?

11 WITNESS POTAPOVS: Yes, I do. I attended the --
12 at least part of the inspection since I was responsible for
13 it at that time.

14 JUDGE BOLLWERK: And this was the one, the 1984
15 inspection that was pre-deadline, correct?

16 WITNESS POTAPOVS: It was about the Fall of 1984,
17 and it was pre-deadline.

18 JUDGE BOLLWERK: And, I take it, you heard the
19 dialogue between Mr. Shemanski and Mr. Noonan about the
20 scope of inspections or there were verification or simply
21 looking at deficiencies in the SER, whether they were
22 broader than that? Do you have any knowledge you can impart
23 to the Board on that subject?

24 WITNESS POTAPOVS: The scope was definitely
25 broader than the resolution of SER deficiencies. The scope

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1 of that inspection was verification of implementation of the
2 50.49 program. It involved selecting equipment
3 qualification packages that were representative of several
4 classes of equipment, and looking at the detailed
5 documentation supporting qualification for these issues, and
6 it involved a walkdown of selected items and reviewing the
7 as-installed condition and geometry and orientation of these
8 items to make sure that it was similar to what was
9 represented in the qualification documents.

10 The resolution of SER deficiencies was one
11 component of that inspection.

12 JUDGE BOLLWERK: So, if I'm hearing you correctly,
13 the inspection that was conducted in 1984 at Calvert Cliffs
14 was, in scope, at least, similar to the one that was done,
15 for instance, in Farley in 1987, the --

16 WITNESS POTAPOVS: Correct.

17 JUDGE BOLLWERK: The post-1985 inspections?

18 WITNESS POTAPOVS: Correct. We did not have at
19 that time, an inspection module to conduct that inspection.
20 That module was developed later, and, I believe, was issued
21 in '85, or the draft was issued in '85, but the finalized
22 module was issued in '86, early '86, I believe.

23 JUDGE BOLLWERK: To what degree, if any, was the
24 scope of the inspection that was done at Calvert Cliffs in
25 1984 different from the scope of the inspection that was

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1 done for Farley for its NTOL, the Farley-2, if you can -- if
2 you know?

3 WITNESS POTAPOVS: I guess I am a little bit at a
4 disadvantage. I was not in charge of the NTOL inspections.
5 I have participated in at least one such inspection. The
6 main difference was, I believe, how the inspection findings
7 were treated and classified, whereas the NTOL inspection was
8 geared primarily to producing a safety evaluation report and
9 identifying items that needed to be corrected before the SER
10 is finalized.

11 The scope was somewhat similar in that both
12 involved some degree of walkdown of equipment and onsite
13 review of several packages. I believe, if I can generalize
14 a little bit, that the -- that the operating plant
15 inspections, post-deadline, were somewhat more comprehensive
16 in scope.

17 JUDGE BOLLWERK: Then, just so I'll understand,
18 there was an additional inspection done for Calvert Cliffs
19 post-1985?

20 WITNESS POTAPOVS: Yes.

21 JUDGE BOLLWERK: And how did that differ from the
22 pre-'85 inspection?

23 WITNESS POTAPOVS: I don't believe -- I was not
24 involved in that inspection. I believe that was performed
25 by the Region. At that time, the inspection program was

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1 turned over to the Region, and I believe that the same
2 module was being used for that inspection.

3 JUDGE HOLLWERK: What would distinguish that --
4 the pre-'85 inspection from the post-'85 inspection in terms
5 of Calvert Cliffs being able to come in and make the same
6 argument as Alabama Power is making here, which is, you
7 looked at us pre-'85. Now you're coming in and fining post-
8 '85 problems. You've already given us an inspection and, in
9 theory, some kind of report, why isn't that control? You're
10 now coming in after 1985 and inspecting us again.

11 WITNESS POTAPOVS: The -- again, the primary
12 reason, of course, is the pre-deadline versus post-deadline
13 from the standpoint of complying with the 50.49 Rule, as far
14 as the -- somebody getting a clean bill of health as a
15 result of an NRC inspection, I don't believe that any
16 responsible party would ever take such a view, recognizing
17 the limited scope of an inspection that we perform.

18 And the limited sample of items that we select for
19 inspection, many times if you repeat an inspection and you
20 select different specific equipment during the inspection,
21 you may find somewhat different results for specific pieces
22 of equipment. The only condition, I believe, where you
23 could possibly take such an approach would be if you looked
24 at a specific item, qualified a specific set of requirements
25 previously and had stated that this item was satisfactorily

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1 qualified, and, two years down the road, you come in and
2 reverse your position. I don't expect that would happen.

3 JUDGE BOLLWERK: So, the Calvert Cliffs
4 inspection, the first one, the pre-'85 inspection, gave the
5 utility very little assurance that it might not have
6 problems post-'85? I don't --

7 WITNESS POTAPOVS: As a matter of fact, they found
8 quite a few problems in the first inspection, as we did also
9 in the second inspection, if I recall.

10 Both inspectors identified fairly significant
11 problems.

12 JUDGE BOLLWERK: Do you have a question?

13 JUDGE MORRIS: No.

14 JUDGE CARPENTER: No.

15 JUDGE BOLLWERK: Does anyone from the Alabama
16 Power panel have any comments on what Mr. Potapovs is doing?

17 I think Mr. Luehman had something?

18 WITNESS NOONAN: I have one comment regarding the
19 Calvert Cliffs inspection. If you remember correctly, I
20 said there were supposed to be ten of these inspections that
21 were to be set up, and mainly these inspections were to
22 familiarize the various regions, each region were having two
23 inspections as a region with the EQ program. They had not
24 been involved in an EQ program before.

25 The fact that Calvert Cliff talked about a range

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1 of things, it is not inconsistent with that because they
2 were talking about, basically -- I kind of hate to use the
3 word, but basically training inspectors on what the EQ
4 program was about.

5 There was a lot of discussion going back and forth
6 on various aspects of the EQ program during those sessions.
7 As Mr. Potapovs said, one of the elements was how to look at
8 the resolution of the issues raised in the SER, and that is
9 a true statement.

10 The Calvert Cliffs inspection, or the ten
11 inspections that were visualized to train in the region were
12 not the inspections that we talked about in those SERs. We
13 have to draw that distinction.

14 The SERs talk about specific things, proposed
15 resolution of deficiencies. Those inspections referred to
16 in the SERs were basically to make sure that the information
17 that the utility talked about in these meetings was, in
18 fact, there.

19 It is illogical for me to even put that statement
20 in an SER just to give the enforcement body, or the
21 inspectors the right to go into a utility. They don't need
22 that. They don't need a statement in the SER to go out and
23 look at a plant. They can look at a plant anytime they want
24 to. That statement was not put in there for the purpose of
25 them with these other ten inspections involved.

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1 The ten inspections that we are talking about
2 here, at least the first one, the Calvert Cliff one, was
3 more or less a training inspection for people who have not
4 been involved with EQ program before.

5 So it is very logical that we would discuss a lot
6 of different items in that inspection.

7 WITNESS JONES: I would just like to add to that a
8 couple of points.

9 Unlike Calvert Cliffs, prior to the deadline
10 Farley was not getting feedback through inspections, or
11 reviews of file audits, our meeting in January of '84, that
12 Farley was way off-base for having made these deficiencies.
13 In fact, we were getting quite the contrary feedback over
14 this five-year period that we were right on line. We were
15 doing the things that they expected us to do to resolve our
16 deficiencies and, therefore, culminated with the SER.

17 So I think there is a distinction there that needs
18 to be made.

19 WITNESS POTAPOVJ: I would just like to add one
20 thing to what Mr. Noonan said about the SER, and how it was
21 perceived within the agency, and by the inspection groups.

22 I think, clearly, when you make a determination
23 that the licensee is in full compliance with the equipment
24 qualification rule, to make that determination, I think you
25 need to verify the as-installed condition of the equipment.

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1 The only way you can do that would be either to verify it
2 yourself, or accept the licensee's description of how this
3 equipment was installed.

4 We have always assumed that a spot check of the
5 as-installed condition of equipment was a requirement, and
6 we also found that to be one of the biggest problems that we
7 identified during these inspections where, in many cases,
8 the equipment was not installed as reflected in the
9 assumptions that the qualification was based on.

10 WITNESS JONES: If I may respond to that, in 1980,
11 Mr. Gibbons' inspection, I think he stated he spent 33 hours
12 on plant, or at the plant site. I think that is more than
13 just a spot inspection. That is almost equivalent to a week
14 of being at the plant looking at interfaces.

15 JUDGE BOLLWERK: Does anybody else have any
16 questions?

17 JUDGE MORRIS: No.

18 JUDGE CARPENTER: No.

19 JUDGE BOLLWERK: Any other subject that you want
20 to Mr. Potapovs about?

21 JUDGE MORRIS: No.

22 JUDGE BOLLWERK: I think that concludes our
23 questions for Mr. Potapovs.

24 We appreciate your service to the Board, sir,
25 coming back, we know it was a hectic morning, but we have

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1 found it very helpful.

2 WITNESS POTAPOVS: Thank you.

3 JUDGE BOLLWERK: Mr. Miller?

4 MR. MILLER: May I ask Mr. Potapovs some
5 questions?

6 JUDGE BOLLWERK: I will allow a couple. Can we
7 keep it short, is that possible?

8 MR. MILLER: It depends on Mr. Potapovs.

9 JUDGE BOLLWERK: Mr. Holler, you will have the
10 opportunity of redirect, then.

11 MR. HOLLER: Sure.

12 CONTINUED CROSS-EXAMINATION

13 BY MR. MILLER:

14 Q You told us that there were three Sandia Seminars?

15 A [Witness Potapovs] There may have been more than
16 three, at least three, going back in time, '87, '86 and '85.

17 Q And there was an '86 Sandia Seminar you say?

18 A [Witness Potapovs] I believe there was.

19 Q And the materials for that, have you seen those in
20 the Exhibit 59 that you have before you?

21 A [Witness Potapovs] I have not really scrutinized
22 the exhibit.

23 Q We know about the '85 and the '87, but tell us
24 about the '86 seminar, was that to provide the inspectors
25 with the latest and greatest?

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1 A [Witness Potapovs] I never qualified the '87 as
2 providing the inspectors with the latest and greatest
3 either, but I would say that the '86 seminar was similar in
4 nature, except, I think, it probably did not focus as much
5 on the enforcement policy since the enforcement policy had
6 not been as far advanced as it was in '87.

7 Q I understand that.

8 You told us that you wrote this memorandum to all
9 the attendees that you have been asked about?

10 A [Witness Potapovs] I believe I drafted it.

11 Q That's right.

12 And you wrote it, I take it, somewhere on or about
13 August of 1987, did you not?

14 A [Witness Potapovs] Very likely.

15 Q And you knew at the time you wrote it that there
16 had been a seminar in '86 on similar topics, did you not?

17 A [Witness Potapovs] I sure did.

18 Q And with that in mind, you selected the phrase,
19 "The topics covered will include" -- I will paraphrase -- "a
20 discussion of recently identified equipment specific
21 qualification problems."

22 You selected that phrase, did you not?

23 A [Witness Potapovs] Obviously.

24 Q And it would be fair to say, then, that when you
25 used the phrase "recently identified," it would not have

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1 gone back further than the '86 seminar, would it?

2 A [Witness Potapovs] That is not a very good
3 assumption. There seminar that we held in '87 was probably
4 attended by quite a few people that did not attend the 1986
5 seminar.

6 Q Then the question is, Mr. Potapovs, just how
7 recent is recent?

8 A [Witness Potapovs] I think your interpretation is
9 probably as good as mine.

10 Q Great. I say it is since or it is after November
11 30, 1985, as a result of all the inspections. Is that fair?

12 A [Witness Potapovs] With respect to the specific
13 equipment deficiencies that I described before, I think that
14 would be a fair assumption.

15 Q It is a fair statement, and it is common knowledge
16 that a number of inspections had been conducted after
17 November 30, 1985, correct?

18 A [Witness Potapovs] Correct.

19 Q And all this body of knowledge was being
20 accumulated by the various inspectors throughout the
21 country, is that correct?

22 A [Witness Potapovs] Knowledge was being
23 accumulated.

24 Q This seminar didn't just spring up of its own.
25 Who told you or asked you to begin the process of putting it

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1 together?

2 A [Witness Potapovs] I believe that it was a mutual
3 determination based on my discussions with the inspectors. I
4 was initiator of the seminar.

5 To carry it a little bit farther, to make sure
6 that the information is properly characterized, in my
7 opinion, the information disseminated at that seminar was
8 probably more helpful to providing qualification basis in
9 the field for equipment which was not properly qualified as
10 presented to the inspector.

11 In other words, the inspectors, with the knowledge
12 that they gained at the seminar, may be able to determine
13 qualifiability of that equipment rather than look for
14 problems with that equipment.

15 Q I'm sure that's the case, sir. Now, let's look at
16 your list of attendees, and tell me when you have that
17 before you.

18 A [Witness Potapovs] Is that --

19 Q Yes, sir. It's attached to your recently
20 identified memo.

21 A [Witness Potapovs] I don't have it attached to my
22 memo, but --

23 Q It should be the last page.

24 WITNESS LUEHMAN: Are you talking about the August
25 6th memo?

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1 MR. MILLER: Yes. Look at the last page.

2 WITNESS POTAPOVS: Are you talking about
3 addressees?

4 MR. MILLER: Yes, sir.

5 WITNESS POTAPOVS: Oh, okay.

6 BY MR. MILLER:

7 Q Are these the people on the attached list that the
8 memorandum is written for?

9 A [Witness Potapovs] That's correct.

10 Q And I noticed that they are from the various
11 regions throughout the country.

12 A [Witness Potapovs] That's correct.

13 Q Do these people identified here at the time this
14 memo was written have the responsibility for conducting EQ
15 inspections?

16 A [Witness Potapovs] These people were at the
17 division director level, so obviously they had the overall
18 responsibility for providing the staff to participate.

19 Q And it says on your memorandum that this is an
20 important form for information exchange.

21 A [Witness Potapovs] I believe it is.

22 Q Yes. And you expected the inspectors and managers
23 involved in the conduct of first-round EQ inspections to
24 attend.

25 A [Witness Potapovs] That's correct.

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1 Q Obviously the point was to have everybody talk and
2 tell what they had found throughout this two years of
3 inspections.

4 A [Witness Potapovs] I don't believe there was a
5 main reason for the attendance that was requested. It was
6 for the purpose of assuring that the inspector -- the
7 regional based inspector in this case -- would have a proper
8 interface through his management, through our management,
9 and myself, who was at that time administering the
10 inspection program on a day to day basis, and also that any
11 findings would be properly dispositioned and categorized.

12 Q I'll ask you for your best judgment of how many
13 first-round inspections, EQ inspections, had been conducted
14 by the time this '87 seminar was held?

15 A [Witness Potapovs] More than half.

16 Q Can you identify for me any power reactor licensee
17 that was inspected after this seminar, before the Farley
18 inspection in September of '87?

19 A [Witness Potapovs] You mean between the time that
20 the seminar occurred and --

21 Q Yes, sir.

22 A [Witness Potapovs] I would have to go back to my
23 calendar. I can't do it off-hand.

24 Q But it would be fair to say that after receiving
25 all this information exchanged on the specific qualification

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1 problems recently identified, the Farley nuclear plant was
2 the first or one of the first to be inspected. Is that
3 true?

4 A [Witness Potapovs] I would doubt very much that
5 at the time that this seminar was conducted we even knew or
6 had targeted inspections that far in advance. We may have,
7 but that was not the typical case.

8 Q Well, certainly the people from our region knew
9 that Farley hadn't been inspected.

10 A [Witness Potapovs] Surely.

11 Q And they knew that as they sat there in your
12 seminar.

13 A [Witness Potapovs] Right. But neither were a
14 number of other plants.

15 MR. MILLER: That's it, sir. Thank you, sir.

16 JUDGE BOLLWERK: All right. Any redirect, Mr.
17 Holler?

18 MR. HOLLER: I have no questions.

19 JUDGE BOLLWERK: Mr. Potapovs, again, thank you.

20 WITNESS POTAPOVS: Thank you.

21 [Witness Potapovs excused.]

22 JUDGE BOLLWERK: Are we ready to move to the cross
23 examination, then, of the APCo panel?

24 MR. HOLLER: Yes, sir.

25 JUDGE BOLLWERK: All right.

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CROSS EXAMINATION

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BY MR. HOLLER:

Q Let me address this to the panel, and I'll address it to Mr. Jones and anyone else who would like to answer may.

You've testified in your prefiled testimony that prior to Decerber 13th, 1984, the date of the SER, that Alabama Power Company had submitted all the req.ired EQ data and information to the NRC. Is that fair?

A [Witness Jones] Yes. There were a number of documents that were submitted.

Q Okay. You've also testified that because you provided the EQ information to the NRC that the NRC should have told you if any deficiencies existed. Is that a fair characterization?

A [Witness Jones] That's partially true. I would -

Q Okay. Help me out. Which part is true and which isn't?

A [Witness Jones] Okay. All right. The meeting of '84, I mean, I think that was a very important meeting to true up any issues that they had on their mind that they knew were clear issues or clear deficiencies in EQ that weren't known to Alabama Power Company. I would have expected at that meeting -- which they were very candid and

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1 not afraid to come out and express concerns that they had
2 during that meeting, which they very well did. We discussed
3 in that meeting -- we discussed our resolutions that we were
4 proposing to resolve those issues.

5 Q Okay. And this is the January --

6 A [Witness Jones] '84 meeting.

7 Q -- 1984 meeting.

8 A [Witness Jones] That's correct.

9 Q All right. Let me go down, so that we can sort
10 out some of the things. Either in the information you
11 provided or in the discussions of the January 1984 meeting,
12 was the topic of tape splices brought up or information
13 regarding tape splices at Farley submitted to the NRC?

14 A [Witness Jones] Not that I recall, no, not during
15 that meeting.

16 Q Okay. Chico A/Raychem seals; again, any
17 information regarding the seals or the qualification tests
18 for the seals identified to the staff either before or
19 during the meeting?

20 A [Witness Jones] No.

21 Q Okay. GEMS level transmitters, the fact that
22 subsequently the staff discovered some with lower levels,
23 was that something brought up or discussed?

24 A [Witness Jones] The --?

25 Q I'm sorry. The GEMS level transmitters.

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1 A [Witness Jones] Okay. It's a two-part question.
2 GEMS level transmitters was a document that was reviewed by
3 Franklin, as I recall. That was an item on our master list
4 in the report that was submitted. The --

5 Q And the item -- oh, I'm sorry.

6 A [Witness Jones] The specific issue regarding low
7 oil level was not discussed.

8 Q Okay. Is it fair enough to say that the
9 documentation associated with the GEMS supported the GEMS
10 level transmitters with the silicone oil level topped off or
11 at the appropriate level?

12 I'll rephrase that for you. The documentation
13 that you submitted, and it was reviewed by TER, supported
14 operation of the GEMS level transmitters with the full
15 amount of the silicone oil?

16 A [Witness Jones] Yes.

17 Q T-drains and limitorque operators, distinguishing
18 between those operators that would operate for seven days
19 and those operators who operated for 30 days; do you recall
20 if that was discussed or brought up?

21 A [Witness Jones] Yes. Limitorques got a great
22 length of discussion during that meeting regarding -- there
23 were some deficiencies in limitorques identified by
24 Franklin. I recall that the IE notice was even mentioned in
25 the meeting and discussed, and there was a lengthy

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1 discussion about third-party modifications to limitorques
2 which was the thrust of the discussion there, or buying
3 limitorque operators from some third-party vendor, or, in
4 your own shop, modifying the limitorques once you receive
5 them prior to installation.

6 There was a lengthy discussion about APCO's
7 procurement program, APCO's QC program, APCO's maintenance
8 activities, surveillance programs. All of these programs
9 that were in place to ensure qualification of the equipment
10 was maintained was discussed.

11 Q Okay. In that long list, I didn't detect, and
12 perhaps you can help me, was there a discussion that the
13 qualification test that supported operation or testing of
14 the limitorque for in excess of 30 days -- strike that.
15 For seven days could be used to support a limitorque motor
16 operator used for greater than seven days?

17 A [Witness Jones] I do not recall that specific
18 discussion of seven day tests versus a 30 day test.

19 Q Now let me get one other one, substitution of
20 grease in the fan motors. That you can recall, any
21 information that came up that addressed this matter of
22 substituting Texaco Premium grease for Chevron in the fan
23 motors?

24 A [Witness Jones] No. Not discussed.

25 Q Terminal blocks. I think we have talked about

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1 that a couple times this morning and you address that in
2 your inspection report.

3 Let me ask it to you this way. As best you can
4 recall, isn't it true that you told the NRC that you didn't
5 require the terminal blocks except to initiate corrective
6 actions or to initiate responses after a design-basis event
7 to survive a LOCA and then to provide instrumentation that
8 these are the terminal blocks used instrumentation circuits
9 to provide instrumentation after the containment
10 temperatures had returned to near normal conditions.

11 Now I may have inartfully stated that. I am
12 trying to get at the basis --

13 A [Witness Jones] I would rather go back and read
14 our meeting minutes and see exactly what we told the NRC
15 Staff.

16 Q Okay, we'll start there.

17 A [Witness Jones] -- our proposed resolution which
18 they accepted.

19 Q Okay, I think that's APCo 21, is that correct,
20 sir?

21 A [Witness Jones] 20.

22 Q Or APCo 20, sorry.

23 A [Witness Jones] APCo Exhibit 20.

24 [Document proffered to Witness Jones.]

25 [Witness Jones reviewing document.]

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1 BY MR. HOLLER:

2 Q And in particular, Appendix --

3 A [Witness Jones] Attachment to page 6, I believe
4 and it's NRC Comment No. 4, discussion was regarding states
5 of terminal blocks and its effect on equipment and the scope
6 of 50.49.

7 Q Just so that we're all on page 6, and this
8 Attachment 2 to what's been identified as APCo Exhibit 20-
9 -

10 A [Witness Jones] Right.

11 Q For resolution to specific NRC Staff comments
12 identified in the January 11th, 1984 meeting.

13 A [Witness Jones] Right. I think the fourth
14 sentence says "Instrumentation was attached to the terminal
15 blocks at the conclusion" --

16 Q Wait, wait, wait a minute, we're skipping --

17 A [Witness Jones] Oh, excuse me.

18 Q Allow me to start at the -- again, just so we are
19 clear on this, we'll go through this first. This is your
20 recollection of APCo's proposed resolution to the concerns
21 raised by the NRC with regard to terminal blocks and their
22 effects of equipment within the scope of 10 CFR 50.49.

23 A [Witness Jones] Yes.

24 Q Okay. Go ahead, sir.

25 A [Witness Jones] I think the third sentence,

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1 "Instrumentation was attached to the terminal blocks at the
2 conclusion of the LOCA test and the leakage current values
3 were recorded."

4 Q Okay. Let me ask you, sir, was there any
5 discussion of when to the best of your knowledge of when the
6 instrumentation circuits that use these terminal blocks were
7 required at the Farley Nuclear Plant?

8 A [Witness Jones] I'm not sure I understand that
9 question. Are you talking about the LOCA envelope returned
10 to --

11 Q Yes, sir. That's the case but simple enough is my
12 question to you, is there a certain instrumentation circuits
13 that employ terminal blocks --

14 A [Witness Jones] Correct.

15 Q With me so far? And that certain of this
16 instrumentation which is included in the testimony was
17 required before, perhaps during, and after a design-basis
18 event?

19 A [Witness Jones] Correct.

20 Q Okay, and my question to you is, was there any
21 discussion at the January 11th, 1984 meeting as to when this
22 instrumentation was required at the Farley Nuclear Plant, as
23 best you recall?

24 A [Witness Jones] I'm hesitating on the answer
25 because I know there was a Westinghouse employee there,

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1 specifically there, to discuss several instrumentation
2 issues. I can't recall specifically if the question that
3 you asked was discussed or not but I would suspect that it
4 was, due to the nature of the meeting and the fact that we
5 brought specifically a Westinghouse representative to that
6 meeting to address such topics as you are discussing here.

7 Q Okay. Well, again, sir, you were there. I guess
8 -- I don't know if Mr. McKinney was there as well, so you
9 gentlemen are probably -- I don't believe Mr. Noonan -- let
10 me ask if you were there at the meeting, sir?

11 A [Witness Noonan] I was not at the meeting.

12 Q So you gentlemen are all we have and what I am
13 trying to determine is we have had a lot of discussion about
14 who was where when, to the best you both remember, and you
15 may not remember -- that's fine -- but to the best that you
16 remember, if it was discussed and so I am not asking for you
17 to guess if it was but if you can remember if that specific
18 item was discussed, and by that I mean when the blocks were
19 required.

20 A [Witness Jones] I don't remember specifically
21 that discussion.

22 A [Witness McKinney] I don't recall.

23 Q Okay. Well, let me ask you then in your position
24 as the person in charge or coordinating the environmental
25 qualification effort, do you recall what your understanding

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1 was as of January, 1984 regarding when terminal blocks and
2 instrumentation circuits were required at Plant Farley?

3 A [Witness Jones] As we stated here, we had
4 Westinghouse develop the emergency operating procedures and
5 as part of developing the emergency operating procedures
6 they would identify when the equipment was required to
7 operate and apply the instrument uncertainty calculated
8 values to those instrumentations --

9 Q Okay, let me be clear on this now, so if I
10 understand you, you are saying that you may not have known
11 that but depended on Westinghouse to identify to you when
12 they would be required?

13 A [Witness Jones] That's correct -- through the
14 development of the procedures.

15 Q Okay, now you have told me here -- I think we read
16 the third sentence that said instrumentation was attached to
17 the terminal blocks at the conclusion of the LOCA test and
18 leakage current values were recorded, is that correct?

19 A [Witness Jones] That's correct.

20 Q All right. But now you have just told me too that
21 you are not, you at least back in January, 1984, you didn't
22 know when the instrumentation would be required, whether or
23 not it was required during the LOCA or after the LOCA.

24 A [Witness McKinney] Let me see if I can put this
25 in perspective.

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1 Q Please do, sir.

2 A [Witness McKinney] I don't remember all the
3 details that was discussed that you were asking earlier but
4 what I do remember was the issue of terminal blocks and how
5 we would want to address terminal blocks at Farley was
6 discussed at the meeting and what I recall was that the
7 issue was discussed and, my recollection, it was agreed that
8 we would take the information about the leakage current
9 values and apply that to our emergency procedures setpoints
10 that Westinghouse was developing for us.

11 Farley Nuclear Plant implemented the Westinghouse
12 Owners' Group Emergency Procedures that the rest of the
13 Westinghouse plants implemented. We had Westinghouse
14 calculate the various setpoints utilized in that procedure
15 to respond to various accidents, so my recollection was the
16 issue was discussed. We agreed that we would go back and
17 apply this leakage information into the setpoint calculation
18 that Westinghouse performed for us. That's what we did.

19 Q Let me break that up into a couple of points.
20 And, let me ask you -- of course, both you gentlemen were
21 charged with environmental qualification. If I were to say
22 to you that those instruments were required at elevated
23 temperatures, would you find it unreasonable that you were
24 going to apply leakage currents taken post-LOCA? Now, you
25 may not know. If you don't know, fair enough. I'm just

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1 asking you if you had that knowledge then or if you have
2 that knowledge now?

3 A [Witness Jones] I think what we're doing here is
4 applying today's knowledge in a retroactive manner back into
5 January of 1984. This was the data that we had available in
6 our test report. This was the data that we told the NRC
7 that we were going to use in revising our emergency set
8 points. And that was agreed to. We left the meeting with
9 that agreement. Both the Alabama Power Company and the NRC
10 agreed to that.

11 Q Okay.

12 A [Witness Jones] Rightfully or wrongfully today,
13 with us sitting here, this is what we agreed to.

14 Q Okay. A couple of things in there. Let me back
15 up first and ask you this. -- I say "if" -- if the NRC
16 had understood from Alabama Power Company that the terminal
17 blocks and instrumentation circuits were not required until
18 containment temperatures, post-design basis accident, had
19 returned to normal or near normal conditions -- are you with
20 me so far? Then would it have been unreasonable for the NRC
21 to say that use leakage currents or insulation resistant
22 measurements that were taken post-LOCA. I am asking you if
23 that sounds reasonable, if you know, or if you don't have an
24 opinion on that?

25 A [Witness Jones] I don't think that's what

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1 happened.

2 Q But you just told me you don't know what happened;
3 is that correct?

4 A [Witness Jones] There was a discussion about
5 instrument circuits -- in terminal blocks and instrument
6 circuits. There was a discussion about how we were going to
7 apply that to our emergency operating procedures.

8 Q Okay.

9 A [Witness Jones] Agreement of that -- and that's --
10 - the point here is that we agreed to this position -- both
11 the NRC, with their level of knowledge at that time, also
12 Alabama Power Company, with their level of knowledge at that
13 time.

14 Q I don't disagree with you, and I am not
15 challenging -- you want to go to the conclusion with me and
16 fine. I have no problems with that. I'm trying to go one
17 step before the conclusion. I'm asking you if it would have
18 been unreasonable for the NRC to agree to this, if the NRC
19 understood that the terminal blocks were not required until
20 containment temperatures had returned to near normal
21 conditions?

22 A [Witness Jones] I don't think that would be
23 unreasonable, assuming the "if" statement that you applied
24 to that question.

25 Q Yes, sir, if the NRC understood that. Okay. But

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1 you also have testified that you don't know for sure what
2 that discussion was or you don't know that particular
3 scenario was presented to the NRC; is that correct?

4 A I don't recall that specific scenario.

5 Q Okay. Now, you made one other statement. Rightly
6 or wrongly, that's what was agreed to then. And I'll ask
7 you, is it your opinion now that that was a wrong decision
8 or wrong premise?

9 A [Witness Jones] I don't back away from what was
10 stated in this timeframe. Obviously, there were more
11 instrument test data available in this timeframe and, given
12 the '87 state of the knowledge and our discussion with the
13 NRC's concerns in the '87 inspection, I wanted to get closer
14 to their position. Not that what we had done was wrong at
15 the timeframe; but with the evolutionary knowledge process
16 then, we wanted to get closer to the NRC position. So, we
17 changed out and did something that they wanted us to do.
18 Not that what we did here was incorrect at that timeframe.

19 A [Witness McKinney] I think that's a very good
20 point to make sure everybody understands. You know, as I
21 see it earlier this morning, there were a lot of things
22 going on for several years. What we were trying to do was
23 to make sure we met the NRC requirements on the
24 environmental qualification. And so that's why we dealt
25 with NRC on the discussion about whether other utilities

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1 were doing other inspection reports. And my point was we
2 were working with NRC to try to satisfy NRC criteria.
3 That's why we were working with NRC.

4 So, David made a good point. In '84, this was
5 what the state of the knowledge was, this was what we agreed
6 to, and was what we went and did. Later on things may have
7 changed, things may have evolved or whatever from a
8 regulatory point of view. That's fine. We will be -- you
9 know, our intent is to get -- you know, stay close to the
10 NRC position as it evolves and we did that. But, from an
11 enforcement point of view, the point is, you know, this was
12 what was discussed and this was what we had agreed to back
13 in this timeframe, in the '84 timeframe prior to the SER.

14 Q Yes, sir. And, again, I'll repeat, my question
15 doesn't go to the agreement of the bottomline here, my
16 question goes to if either one of you gentleman can testify
17 for us today if you recall what the basis was for arriving
18 at that agreement? And not to belabor the point. If I may,
19 I believe you both testified that you can't recall the
20 bases?

21 A [Witness Jones] Well, I think the written words
22 here speak for themselves.

23 Q Let me --

24 A [Witness Jones] And we were going to use the
25 instrumentation that was attached at the conclusion of the

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1 LOCA test.

2 Q Okay. And do you gentlemen recall -- let me ask
3 it this way. Is it not true that any EOPs that may have
4 resulted or reports from Westinghouse using this or these
5 insulation resistance values, those from the Wyle Test
6 Reports -- that that has not been introduced or identified
7 or discussed in this proceeding; is that correct?

8 A [Witness McKinney] I'm not sure I understand the
9 quest'on.

10 Q Let me try to simplify it down. I believe -- if I
11 understand, Mr. Jones, you're telling me that you agree that
12 you would take the Wyle Test data for current leakage and
13 provide it to Westinghouse. Correct so far?

14 A [Witness Jones] That's what we did.

15 Q Right. And then Westinghouse would develop EOPs
16 based on that data; is that correct?

17 A [Witness McKinney] To calculate the set points
18 using emergency procedures.

19 Q Fine. And I'm asking you is there any report or
20 other information from Westinghouse that I've missed that's
21 been introduced in this proceeding that reports how
22 Westinghouse did that?

23 Do you understand the question?

24 A [Witness McKinney] Yes.

25 Q And you may not know.

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1 A [Witness McKinney] I don't know.

2 Q If you don't know, that's fine. We'll have the
3 technical folks in a day or two. I'm just asking you
4 gentlemen --

5 A [Witness Jones] If you're referring to
6 calculations that have been submitted, I don't know of any -
7 -

8 Q Okay. And again --

9 A [Witness Jones] -- what Westinghouse had in their
10 file.

11 Q Yet you reviewed -- I believe you testified before
12 in your direct testimony, that you and Mr. Lalor and other
13 gentlemen that you -- that would be responsive to you,
14 reviewed the information that came in to provide support
15 documentation for environmental qualifications; is that
16 fair?

17 A [Witness Jones] Yes.

18 Q Okay. And that you do not recall, this first set
19 at least, Westinghouse calculations based on the Wyle Test
20 Report data? If you recall?

21 A [Witness Jones] No. I don't recall reviewing
22 that.

23 Q Okay. Mr. McKinney, I'll ask you the same
24 question.

25 A [Witness McKinney] I don't remember. We have a

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1 document -- I don't remember receiving the document. I had
2 an engineer that was working on that project as far as
3 calculating the set points. So, yes, we received it, and we
4 reviewed the emergency operating procedures set point
5 document. So, we have that document.

6 Do you remember what timeframe that was in?

7 A [Witness McKinney] I believe implementing the
8 emergency procedures was another Three Mile Island issue.
9 And I believe we implemented that -- I believe it was July
10 of '84. I believe that's when we implemented the emergency
11 procedures required after Three Mile Island.

12 Q Okay. I want you to be clear on this, sir, if you
13 can remember it now. I recognize it's going back far. Are
14 you testifying now that you specifically recall that those
15 EOPs were developed using the Wyle Test Report data, if you
16 remember?

17 A [Witness McKinney] Let me say it this way. As
18 this document says, the February 29th letter says we
19 provided the test leakage current information to
20 Westinghouse. Westinghouse developed the set points for
21 emergency operating procedures, gave that to Alabama Power
22 Company. We took that and incorporated those set points
23 into our emergency procedures. That's true.

24 Q That is true, sir, but my question is, do you
25 recall from your personal knowledge, that that had used the

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1 Wiley test report data?

2 A [Witness McKinney] I believe it was.

3 A [Witness Jones] But I don't have any reason that
4 they didn't use it. I know there was documentation that
5 transpired between Bechtel and Westinghouse, Bechtel
6 providing the results of our meeting minutes, formally
7 requesting Westinghouse to factor this information into
8 their emergency operator procedures.

9 Westinghouse is a very reputable company, fully
10 qualified, can perform calculations and we do periodic
11 audits on them to verify that they do provide the
12 information and do the things that we ask them to do.
13 Specifically in this case, I did not or don't recall
14 reviewing this specific instance, but I have no reason to
15 believe that they didn't do it.

16 Q Fair enough. Mr. McKinney, you don't recall the
17 specifics either?

18 A [Witness McKinney] No.

19 Q Fine, that's fine. Before I leave this, both you
20 gentlemen referred to this, and I'm referring now to APCo
21 Exhibit 20, Attachment 2, page 6, I notice the second
22 sentence which we went over -- we skipped over, but the
23 second sentence is, the States terminal blocks were LOCA
24 tested with an applied voltage of 137.3 volts DC, I guess,
25 VDC, which is the normal operation voltage of the terminal

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1 blocks.

2 Do either of you gentlemen know if, in fact,
3 that's the normal operation voltage for the terminal blocks
4 in the instrumentation circuits?

5 A [Witness Jones] No, that's not the normal
6 voltage.

7 Q Do you recall if there was any discussion with
8 regard to this?

9 A [Witness Jones] I don't recall specific questions
10 from the NRC questioning the fact that we were going to use
11 the voltage that was applied of 137.5 to the circuit.

12 Q Oh, no, sir, that wasn't my question.

13 A [Witness Jones] I don't recall any concern that
14 they had with that at that timeframe.

15 Q Again, that's not my question, sir: that you would
16 use that voltage in order to test or determine the
17 insulation resistance or leakage current. My question was,
18 is, in fact, that the normal operation voltage of the
19 terminal blocks used in instrumentation circuits?

20 A [Witness Jones] I said no.

21 Q It isn't?

22 A [Witness Jones] It is not.

23 Q So, on its face, at least, that would seem not to
24 be clear; is that correct?

25 A [Witness Jones] Clear? I don't understand your

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1 question. I mean, the written words here, again, it was
2 submitted to the NRC. They reviewed this at that timeframe
3 in '84, obviously had no problem with us doing this at that
4 timeframe.

5 Q Okay, let me try it this way: --

6 A [Witness Jones] Based upon the SER.

7 Q Let me try it this way then: Are there circuits,
8 for example, those using solenoid valves, that, in fact,
9 operate at 137.5 volts and that would be subject or would be
10 within the scope of 10 CFR 50.49, if you know?

11 A [Witness Jones] I'm not sure I understand. There
12 is equipment that operates at that voltage that is in the
13 scope.

14 Q And uses terminal blocks?

15 A [Witness Jones] Yes.

16 Q So, it would not be -- and the title of this is
17 Address the Current Leakage ... States Terminal Blocks and
18 its Effects on Equipment Within the Scope of 10 CFR 50.49 is
19 that correct?

20 A [Witness Jones] That's correct.

21 Q So, it would not be unreasonable for a reviewer to
22 read this, perhaps thinking we're talking about those
23 terminal blocks for which the normal operation voltage is
24 137.5?

25 A [Witness Jones] Well, I think the last sentence -

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Q I'm talking about -- if you'll address this one first?

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A [Witness Jones] Well, it's cleared by the last sentence talking about the FNP Emergency Operating Procedures. Obviously, that's talking about instrumentation that used in emergency operating procedures; that's not talking about limit switches or solenoid valves.

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Q I agree with that, sir, but I think we've also testified -- correct me if I'm wrong -- you said it would not be unreasonable for the NRC, if they understood that the terminal blocks and instrumentation circuits or those instruments wouldn't be required until containment temperatures had returned to near normal conditions. It would not be unreasonable then to the NRC to use post-LOCA data.

17

18

19

20

MR. MILLER: Excuse me just a minute. We've sat silently by, but there's no timing element of your question. In which state of knowledge is when, '87 or '84, when these conversations actually --

21

22

23

MR. HOLLER: It should be in January of 1984, specifically in February of 1984 when Alabama Power Company is drafting its response to the NRC.

24

25

MR. MILLER: But what you're saying is that the NRC's, this hypothetical state of knowledge of their's would

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1 be an '84 state of knowledge?

2 MR. HOLLER: That's correct, sir. I'll ask the
3 witness now, after that discussion.

4 BY MR. HOLLER:

5 Q Do you understand the question?

6 A [Witness Jones] Based upon your hypothetical, if
7 they assume that, then I would suspect that's a reasonable
8 conclusion to make.

9 Q Okay.

10 A [Witness McKinney] I guess I'm not sure what the
11 point of your question was, but the point of 137.5 -- our
12 normal DC system is 125 volts, and there can be some
13 fluctuation in that, so, you know, 137 volts, I guess I
14 might -- I don't really know what your point is.

15 Q Let me be straightforward so there's no confusion
16 here, sir. My question was, do the instrumentation circuits
17 at Farley which employ terminal blocks, normally operate at
18 137.5 volts, give or take ten volts?

19 A [Witness McKinney] Normal DC system is 125 volts,
20 so, that's our normal distribution system.

21 Q So, you, sir, would not find this unusual then?

22 A [Witness McKinney] I mean, like I say, our normal
23 distribution system in the auxiliary is 125 volts, so that's
24 what we have our plant -- we provided the information to
25 Westinghouse so they could calculate set points.

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1 Q Sir?

2 WITNESS LUEHMAN: Mr. Holler, I'd like to
3 interject a little bit about what Mr. Jones said that
4 because the last sentence talks about the EOPs, that it's
5 obvious that we're talking about instrumentation circuits.
6 I don't know of any restriction that only instrumentation
7 circuits can be discussed in emergency operating procedures.

8 Emergency operating procedures contain the
9 function of equipment, you know, valves and solenoids and
10 the like, that could operate, that could be affected by
11 that, so I don't know that it's -- if there's any exclusion
12 of the operation of such equipment on the EOPs.

13 WITNESS MCKINNEY: No, but that's what was
14 discussed on the terminal blocks.

15 WITNESS LUEHMAN: I was just citing -- Mr. Jones
16 said that it was obvious because the EOPs were discussed,
17 that it had to be instrumentation circuits, but EOPs can
18 contain the operation of things that are not instruments;
19 that's the only point I was making.

20 WITNESS JONES: Let me clarify that by saying I
21 was at the meeting, Doug was at the meeting, Mr. Luehman,
22 you were not at the meeting. We discussed terminal blocks
23 and instrument circuits.

24 MR. LUEHMAN: I wasn't discussing anything.

25 WITNESS JONES: Mr. Shemanski has already

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1 testified earlier that the NRC was concerned about terminal
2 blocks in instrument circuits, only a few days before our
3 January meeting. That was the focus of this discussion.

4 WITNESS LUEHMAN: That's fine, but that's not the
5 statement. I wasn't responding to what was said or not said
6 at the meeting. I was just responding to the statement you
7 made that it's obvious that instrument circuits were talked
8 about because that sentence says they referred to EOPs.
9 That statement, whether it was in the context of the 1984
10 meeting or the context of a meeting today, is not
11 intuitively obvious because EOPs can contain statements on
12 equipment that does operate at 137.5 volts; that's the only
13 point I was making.

14 WITNESS JONES: The Staff can make a lot of
15 hypotheticals about what may have gone on in that meeting,
16 but for the people who were who know what went on --

17 WITNESS LUEHMAN: I didn't say anything about the
18 meeting, Mr. Jones.

19 WITNESS JONES: -- and what the discussion was.

20 JUDGE BOLLWERK: Let me ask one question: Mr.
21 Shemanski, were you at that meeting?

22 MR. SHEMANSKI: Yes, I was.

23 JUDGE BOLLWERK: Do you have any recollection of
24 what was said or what wasn't said?

25 WITNESS SHEMANSKI: Not specifically, however,

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1 with regard to terminal blocks, it didn't take up a whole
2 lot of time during the meeting itself. That was one portion
3 of the meeting. The focus was on going over each of the
4 deficiencies identified by Franklin, so I think we're trying
5 to add a little too much in this discussion here as to the
6 level of detail that went on with the terminal blocks.

7 Our main focus was to caution the licensee that
8 there are potential problems with terminal blocks used
9 inside containment in instrumentation circuits in which one
10 milliamp of leakage current could get you into trouble, and
11 the industry practice was to replace terminal blocks with
12 qualified splices, and that was the main message we were
13 getting across. And that's the best of my recollection with
14 regard to the discussion.

15 The level of detail we're getting into here, I
16 simply don't recall a lot of these details.

17 WITNESS MCKINNEY: Let me see if I can clarify the
18 emergency operating procedure issue. Westinghouse issued to
19 the industry emergency procedures. In those procedures, it
20 would say operate valves, operate various equipment.

21 Also, when there was a setpoint, it would put a
22 blank there in a footnote. So we went back to Westinghouse
23 to get the calculated setpoints to put in those various
24 footnotes. We would not need to go back to Westinghouse to
25 find out information on how to operate a valve. I mean, if

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1 the procedure said open a valve, we already knew that, we
2 did not need to go back to Westinghouse to ask that.

3 So the only reason for going back to Westinghouse
4 was to get the setpoint information that was not in the
5 generic procedures that were sent out because for various
6 points, it would be different numbers.

7 JUDGE BOLLWERK: Yes.

8 WITNESS JONES: I would just like to add to Mr.
9 Shemanski's statement that on Page 6 of his rebuttal
10 statement, he says, "Again, since the meetings took place
11 approximately seven years ago, it's difficult to recall any
12 specific details."

13 So he says here in his testimony that he attended
14 so many he could not clarify exactly what was said at each
15 meeting. I only went to one and I remember what was said.

16 JUDGE BOLLWERK: Let me just ask Mr. Shemanski.
17 You asked the APCo panel about a number of other different
18 pieces of equipment and whether they were discussed at the
19 meeting. I wonder if he has any recollection as to those.
20 I can go through them again if you don't remember what they
21 were, or Mr. Holler can put them out again.

22 MR. HOLLER: If it would help Mr. Shemanski and
23 Alabama Power Company, I'll just enumerate them. The first
24 was the tape splices.

25 WITNESS SHEMANSKI: We went over the items on EQ

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1 on the list provided by Franklin in the TER, and that is the
2 list that I recall going over. I don't recall any specific
3 discussions with regard to, you know, individual components
4 here.

5 JUDGE BOILWERK: So all the items that Mr. Holler
6 went over, you have no recollection of those?

7 WITNESS SHEMANSKI: No. I conducted 52 of these
8 meetings, and there is no way I'm going to recall
9 specifically from each meeting with the utilities specifics
10 about individual components.

11 I do remember what the format was and, in
12 particular with regard to terminal blocks, I wasn't so much
13 concerned about the specifics on their own terminal blocks;
14 it was a caution that we are giving them with regard to the
15 problems that we are aware of regarding terminal blocks --
16 again, leakage current problems with terminal blocks inside
17 containment -- and our recommendation was to take a look at
18 those. The practice, again, what utilities were doing was
19 removing terminal blocks inside containment and replacing
20 them with qualified splices.

21 So our focus in this meeting was not so much what
22 they have, when they need them, it was just to alert them
23 that they need to take a very close look at their particular
24 terminal blocks. So a lot of these details we're going over
25 now were not that much of a concern during this particular

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1 meeting. We wanted to make sure that we got our message
2 across about the terminal block issue, however.

3 JUDGE BOLLWERK: Fair enough.

4 Sir?

5 WITNESS JONES: I would just add that replacing
6 terminal blocks was not the only acceptable option that the
7 NRC would accept. As documented in the IE Notice 84-47,
8 there were other alternatives of which Alabama Power Company
9 approach was as stated in the meeting minutes and was
10 accepted by the NRC.

11 JUDGE BOLLWERK: Anything else, Mr. Holler?

12 MR. HOLLER: Yes, sir, if I may. There was a lot
13 of discussion and I'll beg the indulgence of the Board and
14 just make two things crystal clear.

15 BY MR. HOLLER:

16 Q As Mr. Jones has pointed out, that was the only
17 meeting, and you've testified, in fact, you told the NRC you
18 would apply the -- or you would submit the Wylie test data
19 to Westinghouse for calculation of the EOPs. Is that fair?

20 A [Witness Jones] Correct.

21 Q And secondly, you've testified that you cannot
22 recall now if Alabama Power Company specifically discussed
23 when the terminal blocks and instrumentation circuits were
24 or were not needed following a design basis accident. Is
25 that fair?

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1 A [Witness Jones] That's fair.

2 Q Thank you, sir.

3 Okay. Let me move on to the issue of -- I believe
4 you testified in your surrebuttal testimony that the
5 conclusions of the 1984 SER were based on contemporaneous
6 audit reviews, and I think that's on Page 9 of your
7 testimony, if I'm not mistaken. And I'm looking, oh, it
8 must be in the answer to Question 6, about halfway down the
9 page. Take a minute and familiarize yourself with that.

10 [Witness Jones reviewing document.]

11 WITNESS JONES: Yes.

12 BY MR. HOLLER:

13 Q I think you have also testified that Alabama Power
14 Company can't understand how the NRC 1987 inspection could
15 ignore the conclusions of the contemporaneous audit reviews.
16 Is that a fair statement?

17 A [Witness Jones] Yes, sir.

18 Q And also that it's logical to say now that Alabama
19 Power Company should have known about any deficiencies is a
20 fair statement, again referring to your testimony? I'm just
21 trying to understand the flow here.

22 A [Witness Jones] I'm not sure I understood the
23 last part of that question.

24 Q Okay. Earlier, you testified in here, and let me
25 see if I can pick it out --

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1 A [Witness Jones] Oh, okay.

2 Q Just below there, "Is it logical to say now that
3 Alabama Power Company clearly knew or should have known
4 about any deficiencies." Is that true, sir?

5 A [Witness Jones] And now -- yes. I didn't read
6 far enough. That's true.

7 Q Okay. Let me return for a second to this concept
8 of contemporaneous audit reviews, and I will ask you, sir,
9 if you recall, isn't it true that the only documented
10 evidence of an audit review by the Farley EQ organization of
11 the Farley EQ -- I'm sorry, strike that -- of the Farley QA
12 organization of the Farley EQ program prior to the EQ
13 deadline was one audit conducted in October to November of
14 1983? Do you recall that, sir?

15 A [Witness McKinney] I am not sure I understand the
16 question.

17 A [Witness Jones] Are you saying the
18 contemporaneous audit reviews here, or are we referring to
19 our internal audit reviews?

20 Q I am trying to discover just what all the
21 contemporaneous audit reviews are.

22 A [Witness Jones] I think the intent of the audit
23 reviews there was the NRC audit reviews in '80 and '81.

24 Q Let me ask you then, what about the Alabama Power
25 Company audit reviews, do you recall any?

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1 A [Witness Jones] I can't recall specific dates,
2 but I believe that there were some that did occur. That is
3 about the extent of my knowledge.

4 Q Maybe this will help.

5 MR. HOLLER: If I may mark for identification
6 Staff Exhibit 82.

7 JUDGE BOLLWERK: Could you go on and identify it,
8 and then we will mark it and receive it?

9 MR. HOLLER: Yes, sir.

10 I have provided the witness with a copy of an
11 inter-company correspondence, Subject: Joseph M. Farley
12 Nuclear Plant, Composite Audit Report No. 83/19, SAER File
13 A35.94.1, dated December 2nd, 1983, to Mr. McDonald and Mr.
14 W.G. Hairston.

15 JUDGE BOLLWERK: Let the record reflect that Staff
16 Exhibit 82 has been marked for identification.

17 [Staff's Exhibit No. 82 was
18 marked for identification.]

19 [Document proffered to witness.]

20 [Witnesses reviewing document.]

21 JUDGE BOLLWERK: Would this be a good point to
22 take a break?

23 MR. HOLLER: I have certain questions on it, but
24 if you would like to.

25 WITNESS JONES: I agree.

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1 JUDGE BOLLWERK: Is it going to be brief, or is it
2 going to be lengthy?

3 MR. HOLLER: Depending upon the responses.

4 JUDGE BOLLWERK: Why don't we go ahead and take 15
5 minutes right now, and we will come back at 3:15.

6 [Brief recess.]

7 JUDGE BOLLWERK: Back on the record.

8 Let's be seated and go back into session.

9 Mr. Holler, you are cross-examining this panel.

10 MR. HOLLER: Yes, sir.

11 BY MR. HOLLER:

12 Q I believe Mr. Jones and Mr. McKinney have had a
13 chance to take a look at what has been identified as NRC
14 Staff Exhibit No. 82, and I will ask those gentlemen if they
15 are ready for questions now?

16 A [Witness Jones] Yes.

17 Q I brought this out to ask you, are you aware of
18 any other audits that were conducted by the Alabama Power
19 Company QA?

20 Maybe I should say here that I notice the letters
21 SAER, is that Safety Audit and Engineering --

22 A [Witness McKinney] Review.

23 Q -- Review?

24 Any other audits conducted by the SAER of the
25 environmental qualification program that you are aware of?

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1 A [Witness McKinney] I don't know, but it is a
2 normal business practice for this group to audit various
3 issues, so there y have been, but I don't know.

4 Q Turning to page 3 of 4 of the report, and I am
5 looking at Paragraph D, which would seem to indicate that
6 this was the first audit?

7 A [Witness Jones] Yes. That is what it would
8 indicate to me.

9 Q I believe that is reflected again on page 4 of 4.
10 An interesting one, just in passing, if I may, for
11 the record, is on page 3 of 4 under Paragraph C, Item 3(b),
12 I believe it says, "No model number is listed on the
13 acceptance test reports list for limitorque MOVs."

14 Is that correct, sir?

15 A [Witness Jones] That is what this sentence says,
16 yes, that is correct.

17 Q Let me ask you, do you recognize this as an audit
18 report by the Alabama Power Company EQ?

19 A [Witness Jones] Yes. It just simply stated
20 here -- here is another example of where not just myself, an
21 alleged inexperienced engineer worked on ensuring the
22 qualification with the EQ requirements, but a number of
23 people worked on this. The SAER group was just another
24 example of where Alabama Power Company was trying to ensure
25 that they met the requirements as they were known at that

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1 time.

2 Q On page 4 of 4, would you read for us then what
3 this auditor's conclusion was that you just described for
4 us, this is the paragraph 4 on page 4 of 4?

5 A [Witness Jones] No. 4?

6 Q Yes, sir.

7 A [Witness Jones] "Auditor's evaluation of the
8 effectiveness of the OQA program elements audited as a
9 result of the above findings, the environmental
10 qualification program does not yet fully comply with the
11 requirements of 10 CFR 5049. In its present state the
12 development of the program does not provide assurance that
13 the environmental qualification of equipment will be
14 maintained throughout the life of the plant."

15 Q I will just ask you, sir, are you aware of any
16 other audits that were performed by the SAER in Alabama
17 Power Company prior to November 30th, 1985?

18 A [Witness McKinney] They may have, I don't know.

19 A [Witness Jones] They may very well have, I just
20 don't know.

21 Q Let me move on. You have testified that
22 information or correspondence such as, I believe you
23 described them, the NRC information notices can't be used to
24 undermine conclusions, in your words --

25 Sir?

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1 WITNESS NOONAN: May I just approach them for one
2 minute?

3 MR. HOLLER: Please.

4 [Alabama Power Company panel of witnesses
5 conferring off the record.]

6 WITNESS JONES: May I just add that before we
7 leave the QA audit report, did you notice, as mentioned
8 here, this was addressed from Mr. McGowan to Mr. McDonald
9 and Mr. Hairston, who are executives within the Power
10 Company within at time frame. By requirement, they review
11 these outstanding issues periodically and ensure there is
12 timely resolution to them.

13 So I just wanted to make that point.
14 Procedurally, they are required to review it and approve
15 resolution.

16 BY MR. HOLLER:

17 Q Would you continue and tell us what the timely
18 resolution was?

19 A [Witness Jones] I don't know specifically what
20 the procedure states, but if it goes beyond a certain time
21 period -- Let me back up.

22 When a non-compliance is identified, then,
23 obviously, the responsible organization or group related to
24 the deficiency is required to develop a corrective action
25 report, and in that corrective action report, they identify

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1 a time by when they will complete all proposed resolution to
2 the identified deficiencies. That is reviewed by executive
3 management, and the time frame is approved by them.

4 Then, if the group responsible for the corrective
5 action does not complete it within their specified time
6 frame, then it has to go back through executive review for
7 an extension.

8 Q Are you aware of that having occurred in this
9 case?

10 A [Witness Jones] I am sure it occurred in this
11 case.

12 Q You are sure from personal knowledge that it
13 occurred, and you are familiar with the results?

14 A [Witness McKinney] I guess what we are trying to
15 say is, there would be a written response to this. I
16 personally don't know what that written response said, but a
17 written response would be developed in response to this.

18 A [Witness Jones] Procedural Requirements require a
19 response to this.

20 Q I understand.

21 Let me be clear then, I think what we have
22 established to the best of your knowledge is, certainly, the
23 first, on its face it is the first audit, and you have
24 testified that you know of no others.

25 With that as background, my question to you is,

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1 can you recall, on this one audit what happened?

2 A [Witness Jones] I will be glad to get the answer
3 to that to you. I don't have that sitting here, but I feel
4 confident that there is an answer to this.

5 Q There may very well be, sir. But my question to
6 you is, here we are after many months of going through this,
7 if you recall, just as you recall the meeting with the NRC,
8 and other things, what the results were of the resolution of
9 the problems identified, either you do or you don't, sir?

10 A [Witness Jones] I can't sit here from memory and
11 say exactly what the response was.

12 Q That is all I am asking.

13 A [Witness Jones] I can confidently say that
14 procedurally there is a response required, and if you would
15 like to see that, I am sure that we could find that for you.

16 Q Fair enough, sir.

17 Did you have another comment?

18 A [Witness Jones] No.

19 Q Let's move on then. Again, I started by saying,
20 you have testified that informational correspondence such as
21 NRC information notices can't be used to undermine
22 conclusions in specific correspondence, and I believe that
23 was on page 17 of your testimony.

24 [Witnesses reviewing document.]

25 BY MR. HOLLER:

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1 Q That should be more specifically in response to
2 Question No. 11, which began on page 16.

3 A [Witness Jones] I see it.

4 Q Let me ask you whether you are familiar with
5 Generic Letter 84-24, which has previously been identified
6 and admitted into evidence as Staff Exhibit 10. I have a
7 copy. You'll need one. Strike that.

8 It's been identified as Staff Exhibit 62. Sorry.

9 [Document proffered to witnesses.]

10 [Witnesses reviewing document.]

11 BY MR. HOLLER:

12 Q I would direct your attention to the third
13 paragraph, and the one that reads -- pardon me -- the third
14 paragraph that reads "The certifications described in a, b,
15 and c above" and then certifications again, "The licensee's
16 requirement to certify its program in compliance should
17 specifically address all, i.e., bulletins and information
18 notices that identify EQ problems to the extent that such
19 bulletins and notices are relevant to the licensee's
20 facility."

21 Then that is followed by a listing of information
22 notices and bulletins, is that correct, sir?

23 A [Witness Jones] That's correct.

24 Q Okay, and in fact Alabama Power Company responded
25 to Generic Letter 84-24, didn't it?

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1 A [Witness Jones] Yes.

2 Q And the January 28th, 1985 letter, which I believe
3 is admitted into evidence as APCo Exhibit 22, are you
4 gentlemen familiar with that letter?

5 A [Witness McKinney] I know we responded. I do not
6 know the exhibit number.

7 Q Let me try it this way. In your response -- well,
8 no.

9 Let me just give you a copy and I'll just direct
10 your attention to the last paragraph in this -- on page 2 of
11 this letter and again the letter is APCo Exhibit 22.

12 [Documents proffered to witnesses.]

13 [Witnesses reviewing documents.]

14 BY MR. HOLLER:

15 Q The last two sentence of APCo 22, the January 28th
16 letter, in the next to the last paragraph, read "Responses
17 to, i.e., information notices are not required to be
18 submitted to the NRC" -- true enough. Then, "However it is
19 Alabama Power Company policy that all notices are reviewed
20 for applicability to Farley Nuclear Plant and formally
21 documented in the plant files for permanent retention."

22 Is that correct?

23 A [Witness Jones] correct.

24 Q Would it be fair to say then that this was
25 specific correspondent to the NRC that Farley in fact

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1 reviewed all notices for applicability?

2 A [Witness Jones] Yes.

3 A [Witness McKinney] Yes.

4 Q And also directing you to your testimony on page
5 29, and the last sentence on that page, which you testified,
6 "It is our opinion that if this information is so important,
7 then the NRC has the responsibility to notify the industry
8 in a clear, unambiguous and understandable manner."

9 I'll ask you, sir, wouldn't you agree that the NRC
10 communicated to you through Generic Letter 84-24 that they
11 wanted to know or wanted Alabama Power Company to address
12 those particular information bulletins and notices in the
13 certification required by the Generic Letter?

14 A [Witness Jones] To the extent that they applied
15 to Farley, I agree.

16 Q Okay.

17 A [Witness Jones] But that does not say that that
18 can undermine any of the previous conclusions that were
19 drawn, taken in the light that you dissect and look at each
20 specific IE Notice -- for example, 83-72, and all other
21 previous IE Notices that are listed here.

22 They were discussed to the extent applicable to
23 Farley during the January '84 meeting. Again, while I think
24 84-47 on terminal blocks has applicability to Farley, while
25 that notice was not issued, the technical issue was

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1 understood by the Staff and Alabama Power Company at that
2 time frame so while your statement may be correct and is
3 correct that we have the responsibility for reviewing IE
4 Notices applicable to Farley, it doesn't undermine the
5 conclusions in the SER that references back to our meeting
6 where we discussed a number of these.

7 Q Yes, sir. There are two parts to that.

8 First of all, let me take the obvious part and
9 that is you are not telling me that when the NRC asked you
10 to review that or let me be specific, that the
11 certifications described in a, b, and c of Generic Letter
12 84-24 should specifically address all IE Bulletins and
13 Information Notices that identify EQ problems to the extent
14 that they are relevant to the Licensee's facility, that you
15 did not do that.

16 A [Witness Jones] Oh, we did. We did that.

17 Q Fair enough, and the second part, you've referred
18 to the SER and I believe you have already testified and
19 we'll have more testimony on that tomorrow or the next day
20 with regard to the terminal blocks, but then the SER doesn't
21 address any other specific matters that are mentioned in
22 here, does it, sir, as such, any specific Information Notice
23 or bulletin?

24 A [Witness Jones] The SER references back to the
25 meeting minutes, is one issue, and I think you'll find in

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1 the meeting minutes where IA notices, in a generic sense,
2 were discussed in what APCo's position was, that we review
3 all the ones applicable to Farley and have them on record
4 for future NRC audit.

5 Q Yes, sir, which is perfectly consistent with your
6 January 28th response that you would review the notices.

7 A [Witness Jones] Correct.

8 Q Thank you, sir. Okay, let me try this: Let me go
9 on to page 14 of your testimony, or go back to page 14 or
10 your testimony.

11 Okay, you testified here that the NRC pronounced
12 the Farley EQ master list complete and acceptable in the
13 1981 SER.

14 A [Witness Jones] Yes.

15 Q Okay, but then I'm looking at the middle paragraph
16 on page 14, and I'll -- well, let me read it directly. You
17 go on to say that it's very difficult to receive such a
18 document, referring to the 1981 SER, and conclude, as Mr.
19 Shemanski has done, that the NRC Staff did nothing to review
20 or approve Alabama Power's master list or equipment
21 qualification documentation; is that correct, sir?

22 A [Witness Jones] Yes.

23 Q But did Mr. Shemanski really say the NRC did
24 nothing to review or approve APCo's master list or equipment
25 qualification documentation?

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1 A [Witness Jones] Yes, I believe he did. We'll
2 have to turn back a few pages and find the direct quote. It
3 may take a minute, but bear with me.

4 Q Sure.

5 A [Witness Jones] It's about -- I think it's in
6 reference to Mr. Shemanski's Q and A 7 on page 10 where the
7 Q-7 says "APCo asserts that NRC Staff approved the Farley
8 master list."

9 Q Yes, sir?

10 A [Witness Jones] Then the second sentence starts
11 with, "Did this early SER reflect review and approval by the
12 NRC staff?" And the answer is, "Shemanski, No, they did
13 not." I guess that was the basis for my response.

14 Q Maybe -- I apologize. I've lost you. You're on
15 page 10 of your --

16 A [Witness Jones] I'm on page 10 of the Shemanski
17 testimony, and that was the basis for our response there.

18 Q Okay, now, let me just ask you, sir, though, is it
19 fair to characterize that as a "did nothing to review" then,
20 or would you agree with me that Mr. Shemanski is talking
21 that there were progressively more detailed reviews after
22 1981?

23 A [Witness Jones] I take the question for what it
24 says, and the question says, "Did these early SERs reflect
25 review and approval by the NRC staff?" And the answer

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1 being no, led me to the conclusion that obviously they
2 didn't do anything.

3 Q So, that's your conclusion from that, but would
4 you disagree if asked you -- or do you disagree with the
5 notion that there were more detailed reviews after 1981?

6 A [Witness Jones] Yes.

7 Q There were more detailed reviews?

8 A [Witness Jones] Yes, from the standpoint that I
9 think Franklin did some more detailed reviews relative to
10 the documentation in that arena in the '83 timeframe.

11 Q No, sir, I take the yes as, yes, you agree with
12 that statement, and, no, you don't disagree that there were
13 more detailed reviews?

14 A [Witness Jones] There were more detailed reviews,
15 but I think it was from the test report standpoint. I don't
16 know how much more detailed review was done on the master
17 list, per se. I just can't predict how detailed their
18 review was on that.

19 Q Do you recall the master lists that existed at
20 plant Farley in 19 -- as of November 30th, 1985, was that
21 the same as the master list which you had submitted in 1981?

22 A [Witness Jones] I can't say that, but I believe
23 it was the same master list that was submitted in 1983
24 timeframe, because, here, again, starting in 1980 on up,
25 there was questions, feedback. We would make a submittal to

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1 the NRC. We would have deficiencies. We'd make another
2 submittal.

3 We'd add to -- I mean, Reg Guide 197, Monitoring
4 Instrumentation, came along, so the master list was
5 constantly being revised, becoming more detailed, and it was
6 -- so, from that standpoint, I believe it was revised since
7 '81, but again, it was submitted, I know, at least one more
8 time in '83 to the NRC for a subsequent review.

9 Q With revisions, and, again, prior to 1985?

10 A [Witness McKinney] also, I recall the 7901
11 Bulletin itself being revised to require additional
12 equipment to be added to the master list. So, we obviously
13 would make those submittals as well.

14 Q Yes, sir, and, again, this is prior to November
15 1985?

16 A [Witness McKinney] Yes.

17 Q And it's your testimony -- your testimony doesn't
18 differ with Mr. Jones' then that between 1981 and 1983, that
19 there were additions to the master list?

20 A [Witness McKinney] Yes, there were additions. As
21 far as whether it was before or after '83, I can't say.

22 A [Witness Jones] But then don't construe that to
23 mean that there was one master list that was submitted in
24 1981 and it was totally revised and there was some
25 differently that was submitted in '83 or '84.

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1 It was an added list, based upon our tweaks to the
2 list, based upon questions or lack of equipment on the list,
3 due to meeting Reg Guide 197 requirements and other issues.

4 Q Yes, sir. Things had reflected progressively more
5 detailed reviews that occurred or information that occurred
6 between 1981 and 1985? Fair statement?

7 A [Witness Jones] Yes.

8 Q Let me go to page 23 in your testimony. This page
9 here, I believe, is the -- where you've provided excerpts
10 of a joint affidavit by -- this here is DeBenedetto, Noonan
11 and LaGrange and, I will point out, as you've noted here,
12 Mr. Noonan's name has been removed for -- because of -- in
13 order to avoid any appearance of impropriety, so, if I may,
14 I'll address these questions to Mr. McKinney and Mr. Jones.

15 Are you with me so far, sir?

16 A [Witness Jones] Yes.

17 Q Mr. DeBenedetto, although he'll be appearing
18 later, is not on this panel; is that correct?

19 A [Witness McKinney] That's true.

20 Q Okay, so, we're left with Mr. LaGrange who is not
21 a witness, but we have his affidavit, and you gentlemen, who
22 are sponsoring it?

23 A [Witness Jones] Yes.

24 MR. MILLER: Wait, wait. You say they sponsored
25 it. It came out of a Staff exhibit. All they did was give

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1 you the words out of a Staff exhibit, Staff Exhibit 15.

2 MR. HOLLER: Yes, fair enough, sir, but just to
3 clarify that it's being offered as part of Alabama Power
4 Company testimony, and, in particular, the enforcement panel
5 testimony.

6 MR. MILLER: It's being offered as a Staff
7 exhibit. I assume the staff offered it for probative value
8 which only the Staff understands. Alabama Power Company
9 restated portions from a Staff Exhibit.

10 MR. HOLLER: Fair enough, sir. Is it not -- well
11 --

12 BY MR. HOLLER:

13 Q Are you not offering the staff exhibit, or this
14 excerpt from the staff exhibit to provide the Board with
15 what is purported to be Mr. LaGrange's view, or at least his
16 view on engineering judgment at the time he executed the
17 affidavit?

18 MR. MILLER: Pardon me. That exhibit was in
19 evidence before this surrebuttal testimony was ever written.
20 The exhibit was offered by the staff, which bears the burden
21 of whatever the exhibit says, good, bad, or somewhere in-
22 between.

23 All these witnesses did, as you will see in Mr.
24 Luehman's testimony, when LaGrange was identified, they just
25 said what the staff exhibit said. They just called

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1 attention to what the staff has previously sponsored and
2 placed into evidence.

3 MR. HOLLER: Fair enough, sir.

4 The witnesses, since they are merely placing it
5 in, would have no opinion on whether or not Mr. LaGrange had
6 addressed documents such as IEEE-323 1971, and there is no
7 need to question them on that.

8 They are merely pointing this document out for
9 what it says on its face?

10 MR. MILLER: I am going to leave that up to you,
11 but I will represent to you that I think it is absolutely
12 accurate retyping of what the staff exhibit says.

13 MR. HOLLER: Okay. Fair enough, sir.

14 BY MR. HOLLER:

15 Q With that as background, let me ask the witnesses
16 this, first of all, a preliminary question, I will ask Mr.
17 McKinney and Mr. Jones if they are familiar with IEEE-323
18 1971, which has been previously identified as APCO Exhibit
19 No. 37.

20 I asked if these gentlemen were familiar with --

21 A [Witness McKinney] IEEE-323, yes.

22 Q And just for the benefit for identification, APCO
23 Exhibit 37 is the IEEE Trial Use Standard, General Guide for
24 Qualifying Class I Electrical Equipment for Nuclear Power
25 Generating Stations.

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1 A [Witness McKinney] Yes.

2 Q I will also ask if you have a copy of that
3 document?

4 A [Witness McKinney] Yes, we have APCO Exhibit 37.

5 Q Is it fair to say, I am looking at page 6 of the
6 document, under Section 5 that deals with method and
7 documentation.

8 A [Witness McKinney] We are there.

9 A [Witness Jones] Yes.

10 A [Witness Jones] Okay.

11 Q And it explains operating experience data?

12 A [Witness Jones] Okay.

13 Q And also discusses analysis?

14 A [Witness Jones] Correct.

15 Q I would ask you now, is it fair to say that in his
16 affidavit, Mr. LaGrange does not address these issues, is
17 that correct, and by issues I mean under IEEE-323 1971, or
18 the specific issues of the analysis as discussed in IEEE-
19 323, and lastly operational data is discussed there.

20 MR. MILLER: I would like to interpose an
21 objection. It appears the staff is trying in a conceptual
22 sense to impeach their own witness. They are the ones that
23 put the affidavit of Mr. LaGrange into evidence, for
24 whatever probative value the staff attaches to it.

25 Now, although I am not exactly sure, but it does

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1 appear that they are trying to impeach Mr. LaGrange, and to
2 me the rules of evidence forbid them from impeaching their
3 own witness in this manner, particularly in absentia, when
4 Mr. LaGrange is not here.

5 MR. HOLLER: If I may be heard, I think we are
6 stretching a little bit when we say the staff has put the
7 affidavit in. The staff has included the affidavit in its
8 exhibits for Alabama Power Company's response to the notice
9 of violation. The staff has made reference to Mr.
10 LaGrange's participating in inspection. The staff has not
11 offered his affidavit for a particular point which the staff
12 wants to make.

13 Instead Alabama Power Company has offered that
14 affidavit, and the staff now is merely attempting to have
15 the Board give it the weight it deserves, and recognizing
16 that it was initially offered as a response by Alabama Power
17 Company to the notice of violation.

18 MR. MILLER: On that point, may it please the
19 Board, the rules of evidence are pretty clear, and I recall
20 the staff moving the admission of all of its exhibits, this
21 one, obviously, included. Whatever burdens that come with
22 such a motion should be borne by the staff.

23 Alabama Power Company did not introduce this
24 exhibit, did not sponsor the affidavit as introduced here.
25 That was done by the staff. All Alabama Power Company is

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1 saying is, look at this exhibit and see what it says. It
2 is inconsistent with what the staff's witnesses are
3 currently saying, and it is no different than if it were a
4 staff exhibit relating to a policy statement, or something
5 else.

6 The staff introduced it. We call attention to the
7 part that is inconsistent, prior inconsistent statement and
8 position of the staff with the position they are currently
9 taking. If they wish to impeach that position, that is
10 fine. Go get Mr. LaGrange, sponsor him as a staff witness,
11 and I will cross-examine him.

12 JUDGE BOLLWERK: I guess the problem I am having
13 is, in looking back at the testimony, the reason this was
14 provided, it was cited in the testimony as being Alabama
15 Power Company's response to the notice of violation. That
16 is what it is, and it is clear and it has all the
17 attachments to it.

18 If the staff had tried to introduce that without
19 this affidavit to it, I would have been annoyed because we
20 wouldn't have had the entire exhibit.

21 On the other hand, it strikes me that these
22 witnesses can look at this affidavit, and indicate whether
23 it does or doesn't contain something. If they see that it
24 does, then they can say so, if they see that it doesn't,
2 they can say so.

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1 MR. MILLER: To be fair, Judge, all of us can do
2 that.

3 JUDGE BOLLWERK: The Board can do the same thing.
4 So I don't know what it adds to the proceeding to ask him
5 that question, but for whatever it is worth, he can ask it.

6 MR. MILLER: The most famous rule of evidence, it
7 speaks for itself.

8 JUDGE BOLLWERK: There is something to that right
9 here.

10 MR. MILLER: We made our objection.

11 JUDGE BOLLWERK: I'm going to overrule the
12 objection. Why don't you ask the question with the
13 understanding that, frankly, all these witnesses can do is
14 look at this piece of paper and say whether it does or
15 doesn't cite this document, which certainly the Board can do
16 the same thing.

17 BY MR. HOLLER:

18 Q With that, I'll just ask the witness that
19 question, whether or not that document is cited in Mr. La
20 Grange's affidavit.

21 A [Witness Jones] The document speaks for itself.

22 Q And one last question, and we'll leave this, and
23 I'll ask you gentlemen, from your knowledge of IEEE 323,
24 1971, does it address the subject of engineering judgment?

25 A [Witness Jones] IEEE 71?

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1 Q Yes, sir. IEEE 323, 1971.

2 [Witnesses reviewing document.]

3 WITNESS MCKINNEY: I don't see a specific heading
4 called engineering judgment in IEEE 323, 1971; however, I
5 guess with respect to engineering judgment, that is that
6 process that an engineer uses to document the results of a
7 review and evaluation. But there is no specific definition
8 or other such heading called engineering judgment here, no.

9 WITNESS JONES: I agree. I don't specifically see
10 a heading called engineering judgment.

11 BY MR. HOLLER:

12 Q And as Mr. McKinney says, that means that an
13 engineer uses to document his -- what were your words, sir?

14 A [Witness McKinney] Evaluation.

15 Q Okay. Fair enough. And as Mr. Miller has pointed
16 out to us, without Mr. La Grange, we will never know why he
17 didn't include it.

18 Let me move on, then. Let me go to Page 35 of
19 your testimony. In the middle of Page 35 in the discussion
20 of the JCO that was initiated in connection with the
21 containment fan motors -- and I believe this was occasioned
22 by the changing out of the V-type slices. Am I right so
23 far?

24 A [Witness Jones] On containment fan motors.

25 Q Yes, sir.

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1 A [Witness Jones] I think that's correct, yes.

2 Q Okay. You testified that although Alabama Power
3 Company -- and I'm about the middle of the page now --
4 although Alabama Power Company had previously initiated a
5 JCO, a justification for continued operation I believe that
6 is, it was decided that the work to correct the deficiency
7 could be completed prior to completion of the JCO and
8 accordingly, efforts on the JCO development were stopped

9 A [Witness Jones] Yes.

10 Q Is that correct, sir?

11 A [Witness Jones] Yes.

12 Q But isn't it also true that you continued to
13 operate Unit 2 for nine days while you changed out the V-
14 type splices in the containment fan.

15 A [Witness Jones] Yes.

16 Q Okay.

17 A [Witness Jones] Nine days -- I'm not -- I accept
18 it's nine days.

19 Q I'll represent to you that it was nine days plus
20 or minus, but in that area; more than a week, less than two.

21 A [Witness Jones] I think you are right.

22 Q And isn't it fair to say, then, that during that
23 time, since Alabama Power Company had decided to stop
24 efforts on the JCO, that you relied on undocumented judgment
25 for the operation of the fans while the splices were changed

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1 out.

2 A [Witness Jones] There was documentation that we
3 had developed for V-splices and solenoid valves prior to
4 this time frame where --

5 Q Yes, sir. Sir, we're clear on that. I'm talking
6 August, and correct me if I'm wrong --

7 A [Witness Jones] And the CECO report was
8 available. There was a lot of documented evidence that
9 these splices were qualified.

10 Q Yes, sir.

11 A [Witness Jones] However, putting it in the format
12 of a, quote, "JCO" for specifically the containment fan
13 coolers, that was not done.

14 Q Okay. Or -- bear with me for a minute -- is it
15 fair to say putting it in the format of step-by-step
16 description so a person reasonably skilled in analyses could
17 follow the reasoning was also not done at that time?

18 A [Witness Jones] That's correct.

19 Q Okay. Mr. Noonan, if I could just clarify a
20 couple of things, isn't it true that you did not
21 specifically review the SERs for Alabama Power Company for
22 the Farley plants when they were issued? And I'm talking
23 about the final review when they went out the door, which
24 would have been December, presumably the end of November
25 1984.

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1 A [Witness Noonan] That particular SER was written
2 after I was involved with the Comanche project, and yes,
3 that's -- it's possible that I did not review that then,
4 although I can't say emphatically I did not. I don't
5 remember.

6 Q Yes, sir. Again, you wouldn't disagree with me if
7 I were to tell you that on the review sheet, someone else
8 has signed off.

9 A [Witness Noonan] Someone else signed off. Yes,
10 sir.

11 Q Also, isn't it true that you did not attend -- I
12 believe you testified to this -- the January 1984 meeting
13 between NRC and Farley?

14 A [Witness Noonan] I did not attend the meeting,
15 but I was briefed afterwards.

16 Q By Mr. Shemanski?

17 A [Witness Noonan] Mr. La Grange.

18 Q By Mr. La Grange.

19 A [Witness Noonan] And I don't recall if Mr.
20 Shemanski was there or not. I don't remember. It would have
21 been -- probably he was there. I just don't recall.

22 Q Okay. Just briefly returning to the Calvert
23 Cliffs inspection in late 1984, I want to be clear on this.
24 Isn't it true that there were no EQ inspections of operating
25 reactors that were led by EQ branch people? I know they

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1 participated on them, but I want to make clear on this
2 leading the inspection or not leading it. Do you recall
3 that?

4 A [Witness Noonan] I don't know what you mean by
5 leading.

6 Q Well, on a team inspection, there would be a team
7 leader who would organize his team to presumably carry out
8 the inspection. Am I correct so far that that was the
9 approach?

10 A [Witness Noonan] I believe Mr. La Grange was a
11 co-team leader, I believe, with that. I don't recall who
12 the Region J leader was.

13 Q Okay. Well, maybe you can help me, and I'm sure
14 you remember much better than I do. Staff Exhibit 63, which
15 is the Calvert Cliffs inspection and -- you don't have a
16 copy of that, do you, sir?

17 A [Witness Noonan] No, I do not.

18 MR. HOLLER: Again, I will leave the microphone
19 just to bring this over to you.

20 [Document proffered to witnesses.]

21 [Witness Noonan reviewing document.]

22 BY MR. HOLLER:

23 Q Again, I just want to clarify it for myself. The
24 very first sentence which introduces it says "This refers to
25 the special team inspection conducted by Mr. G.T. Hubbard."

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1 A [Witness Noonan] Yes.

2 Q Is Mr. Hubbard -- he's identified as an Equipment
3 Qualification and Test Engineer, but was he in your
4 organization or was he in another organization?

5 A [Witness Noonan] Mr. Hubbard was in the I&E
6 organization.

7 Q Okay, and lastly then, are you aware of any where
8 the team leader on an EQ inspection was a member of -- what
9 was organization back in 1984-85?

10 A [Witness Noonan] I'm sorry, I didn't hear.

11 Q Do you recall any inspections, any EQ team
12 inspections where the team leader was a member of your
13 previous organization?

14 A [Witness Noonan] Team leader, for operating
15 reactors?

16 Q Yes, sir, for operating reactors.

17 A [Witness Noonan] For the operating reactors the
18 team leader would have always been, would have been an I&E
19 person.

20 Q I see, okay. One last thing, while we are on
21 inspections. Isn't it true that a draft temporary
22 instruction that was the predecessor, and I believe Mr.
23 Potapovs borrowed mine -- maybe Mr. Luehman will help me out
24 here, with a temporary instruction regarding EQ inspections.
25 Can't help me out?

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1 Let me go to the list. It's previously been
2 identified as APCo Exhibit No. 93, if memory serves me
3 right, and my question to you, sir, is isn't it true that
4 there was a draft TI -- if you recall -- let me rephrase
5 that.

6 Do you recall a draft temporary instruction of
7 that same subject being available in the time frame March of
8 1985?

9 A [Witness Noonan] March of '85?

10 Q Yes, sir, if you recall.

11 A [Witness Noonan] I don't -- I heard Mr. Shemanski
12 said he reviewed a draft but I don't recall ever seeing a
13 draft, to the best of my knowledge. I don't recall it.

14 Q Okay. All right, well, let me leave that, please.

15 I just want to be clear on one last thing and
16 that's your testimony regarding the safety evaluation
17 report, do I understand your testimony to be that the NRC
18 would inspect, as you understood it, only those items
19 identified in the SER during the EQ audit?

20 A [Witness Noonan] My testimony is that the
21 statement that is included in that SER was put in there so
22 that the -- to put the utility on notice that some time at a
23 later date somebody would inspect the proposed resolution,
24 proposed resolution of deficiencies as stated in the SER,
25 resolution of identified deficiencies as stated in the SER,

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1 and that statement was put in there primarily, primarily so
2 the Staff would be comfortable in writing their final safety
3 evaluation.

4 I think I also stated it would have been illogical
5 for me to put a statement in there to have the, to say that
6 the I&E would inspect the utility because they could do that
7 without any statement from NRR. They don't need an NRR SER
8 to make that statement, so it was really intended to limit,
9 this inspection talked about here was to put in perspective
10 the details talked within this SER and have somebody go out
11 and check and make sure the details were correct.

12 Q For those things that were identified in the SER?

13 A [Witness Noonan] In the SER, that's correct.

14 Q Okay, and isn't it true though that the SER was
15 based on what the licensee had asserted to the NRC and to
16 Franklin or what the licensee had provided to the NRC and to
17 Franklin?

18 A [Witness Noonan] That is a true statement.

19 Q And -- just continuing what was discussed in the
20 one day meetings?

21 A [Witness Noonan] Yes, sir.

22 Q Okay, so then it is your testimony, or is it fair
23 to say from that if the licensee didn't tell the NRC about
24 an item then the NRC could not or should not have looked at
25 that item to determine if the licensee was in compliance on

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1 the subsequent inspection?

2 A [Witness Noonan] It's my testimony that the NRC
3 knew better, knew better than the licensee what the problems
4 in EQ were. The NRC Staff knew better than anybody in this
5 country as to the problems, EQ problems.

6 If there was a problem out there that the Staff
7 was concerned about, they would have raised it, no question.
8 They would have raised that issue. They would have raised
9 it with the utility and if the utility failed to bring it
10 up, the Staff would have brought it up, and many times, the
11 Staff brought up known EQ problems to see how the utility
12 was resolving that particular issue.

13 A [Witness Jones] I could just add that an example
14 of that is terminal blocks. It was concern on the NRC's
15 mind. They brought it up in the meeting.

16 Q Yes, sir. If I may, I'll deal with those all --
17 that's right. Let me ask of Mr. Jones first -- no, I mean
18 you have brought it up. If I could just put Mr. Noonan on
19 hold for a second, but Mr. Jones, you have testified and you
20 were there, you remember the meeting, that you can't recall
21 what basis Alabama Power Company used for or what basis the
22 Alabama Power Company conveyed to the NRC for the
23 qualification of the blocks.

24 By that I mean, we have agreed that Alabama Power
25 company told the NRC they were going to use the Wiley Test

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1 Report data, and submit it to Westinghouse for calculation
2 of the EOPs, true?

3 A [Witness Jones] In instrument circuits.

4 Q In instrument circuits, absolutely, yes, sir. But
5 you have also testified that you don't recall or can't
6 recall at this time the conversations as to what was the
7 basis that that proffer was made. Is that a fair statement?

8 A [Witness Jones] You asked some specific
9 questions, did I recall specific statements that went on at
10 that meeting and I said no but I could tell you that the
11 discussion of terminal blocks and instrument circuits was a
12 concern by the NRC, new information to Alabama Power
13 Company, and they brought it up in the meeting.

14 Q Yes, sir. We're absolutely in perfect agreement
15 with that, and I just want to be clear before we leave and
16 especially since Mr. McKinney is here today and I know
17 you'll be back is that you are not telling me though that
18 you recall the detailed discussions that the technical
19 people may have had as to when Alabama Power Company relied
20 on the terminal blocks in their instrumentation circuits.

21 Is that a fair statement?

22 A [Witness Jones] Yes.

23 Q Okay, fair enough. Now I'll go back to Mr.
24 Noonan.

25 A [Witness McKinney] Let me make one more --

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1 Q Yes, sir.

2 A [Witness McKinney] You talk about doing what I
3 would consider a paper review. I want to keep making sure
4 that everybody understands that the NRC did an on-site
5 audit, you know, a few years earlier. They did go down and
6 look at our equipment installed in the plant but let's don't
7 forget that.

8 Q Yes, sir, and I believe, now so that we are clear
9 on this, you are referring to the report from Mr. Gibson, is
10 that correct?

11 A [Witness McKinney] Yes.

12 Q Now I'll return to Mr. Noonan, if I may.

13 MR. MILLER: And the NTOL audit by DiBenedetto.

14 WITNESS MCKINNEY: Right, that one too.

15 BY MR. HOLLER:

16 Q Should I take that as your testimony or as Mr.
17 Miller's testimony?

18 MR. MILLER: As long as it is in the record!

19 [Laughter.]

20 BY MR. HOLLER:

21 Q Well, let me ask -- Mr. Noonan, please bear with
22 me, we will get to you with these questions but since you
23 have brought that up, are you aware, Mr. McKinney, other
24 than the statements that may have been in the NTOL SER, if I
25 could use that terminology, the SER that supported licensing

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1 of Unit 2 of any inspection report that flowed from the Unit
2 NTOL audit review inspection.

3 A [Witness McKinney] There was a letter written by
4 the NRC that documented the results of the NTOL onsite audit
5 at Farley and I remember that document. I don't remember
6 the date of the letter or what exhibit number it is but
7 there was that letter and I believe there was also, I
8 believe there was a letter that discussed Mr. Gibbons' --

9 Q Now Mr. Gibbons is an inspection report. I think
10 we have discussed that one and we have reviewed it.

11 I am interested in a report from the NTOL effort.

12 A [Witness McKinney] I recall something discussed
13 the NTOL onsite inspection.

14 As far as the reference to the document, I don't
15 remember what it is right now.

16 Q Fair enough. Now as promised, let me get on to
17 Mr. Noonan. Mr. Noonan, I'll just recap, I think you said
18 and you have expressed it much more eloquently than I can
19 that the focus of the inspection was to go and to look at
20 those problems that have been identified in the SER. Is
21 that correct?

22 A [Witness Noonan] That's correct.

23 Q And that the NRC knew better than any licensee
24 what the problems were, so therefore if there were a problem
25 the NRC would have told the licensee.

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1 A [Witness Noonan] Would have told the licensee,
2 yes.

3 Q I guess the problem I have is how you square that
4 with the Commission's statement in their policy statement of
5 March 7th, 1984, which has been identified as Staff Exhibit
6 61 in which the Commission near the end said there were
7 persuasive technical and policy reasons why NRC -- strike
8 that -- there are persuasive technical and policy reasons
9 why licensees' assertions and analysis may be relied on
10 pending independent NRC Staff review.

11 My question to you is, is what you are telling me
12 inconsistent with that?

13 A [Witness Noonan] I don't believe so. I don't
14 believe so. The assertions made in the NRC are based upon
15 what the Staff and what the utility, what the utility
16 discussed in that January meeting and the information that
17 was provided by the utility in the meeting minutes.

18 The inspections were to make sure that those
19 assertions were correct and that information. I don't see
20 anything inconsistent.

21 Q Yes, sir, but now the licensee also asserted that
22 all this equipment was qualified. Isn't that true?

23 A [Witness Noonan] That's a true statement.

24 Q And my question to you is then the NRC could rely
25 on that assertion pending -- I'll use the words here --

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1 independent NRC Staff review.

2 A [Witness Noonan] The NRC Staff, again I'll go
3 back, the NRC Staff had at its disposal a lot of
4 information. When the NRC Staff met with the utilities they
5 knew, they knew pretty much in advance what equipment was
6 qualified and what equipment was not qualified, what the
7 problems were.

8 If the licensee came back and said I have test
9 reports on so-and-so to show that, most likely the NRC was
10 aware of that test report and had probably looked at it or
11 somebody had looked at the report, so the thing that we
12 hon . in on was the questions on the information provided
13 that we did not get a chance to look at regarding the
14 proposed, resolution of proposed deficiencies, mainly the
15 deficiencies pointed out in the Franklin TER.

16 The Staff was uncomfortable with the fact that
17 they couldn't, they couldn't really verify that that
18 information was all there as stated, so then we put the
19 statement in there that the licensee would be audited on
20 those facts, as proposed in that SER.

21 You have to remember now, we are bringing this
22 issue to a close. We are trying to make the problems
23 smaller, not bigger. We're trying to follow the Commission
24 guidelines and plus NRR management guidelines as to
25 eventually bring this thing to an end.

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1 It is inconsistent to me to say that I give
2 blanket approval to go out and do -- I heard the word
3 "verification." I never heard of that word before until
4 this meeting today. I don't know what that meant nor do I
5 propose to know what it means. I just know that the SER,
6 there was an SER to bring to an end the final safety
7 evaluation and with the caveat in there somebody would go
8 check and say that facts that you told us today are true.
9 If you said you had this report in place that showed that,
10 how you are going to fix it, we'll have somebody out there
11 to check it.

12 That is what I can testify to.

13 Q Sir, if I say -- I will come to you, Mr. Jones, I
14 promise but just so we are on this and I am clear, so I
15 think we have had testimony at least with regard to the
16 Chico A/Raychem seals, that the NRC was unaware of the
17 document that supported its qualification, so if I
18 understand your answer, sir, the NRC would say your program
19 is qualified; Alabama Power Company could rely on that; and
20 yet when the NRC went out and found that there was a piece
21 of equipment there for which it had not reviewed or the
22 licensee had not offered up, that was not fair game to look
23 at. Is that correct?

24 A [Witness Noonan] No, sir, no sir. I'm not saying
25 that at all.

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1 The NRC always has the right to go out and inspect
2 the plant. They do it all the time and if there is
3 something that appeared out there that was not addressed in
4 the meeting, then that is up to the NRC to go look at that
5 thing, if they know about it.

6 We try to make -- we try to make, we try to tell
7 the utility all the problems, all the deficiencies that we
8 are aware of. We try to find that and then how are they
9 going to resolve the deficiencies as outlined in the TER and
10 then write a safety evaluation so we could say that their
11 program is in compliance with 10 CFR 50.49.

12 Q Yes, sir.

13 A [Witness Noonan] What I am trying to tell you,
14 that that statement in that SER was put in there because we
15 wanted to have an inspection on those items discussed in
16 that SER.

17 I'll go back and say it again. The enforcement
18 staff doesn't need a statement from the regulatory staff to
19 say what inspection they can do and what they can't do.
20 It's not logical for me to put some kind of statement in an
21 SER to say that. Doesn't make sense.

22 Q Let me try it this way then. Isn't it fair to say
23 then that the SERs' statement, even if you were to read them
24 broadly, that everything was okay with Alabama Power Company
25 and is in compliance, it is only as good as the information

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1 that Alabama Power Company had supplied to the Staff.

2 A [Witness Noonan] Every plant we license in the
3 United States has that caveat.

4 Q And if that information was faulty then the
5 conclusion would be faulty?

6 A [Witness Noonan] It's faulty. Then eventually -
7 -it will come out. It will be found.

8 Q If I could just take a minute --

9 A [Witness Jones] Could I amplify on something?

10 Q Oh, I'm sorry. I did promise.

11 A [Witness Jones] You forgot to come back to me.
12 [Laughter.]

13 Q Yes.

14 A [Witness Jones] I just want to amplify one thing
15 that at one point that Mr. Noonan is making is if you look
16 at our meeting minutes that were developed, there is an
17 Attachment 1 which discusses all of the deficiencies
18 identified in the TER development by Franklin.

19 Attachment 2 is entitled Resolutions of Specific
20 NRC Staff Comments Identified in the January Meeting --
21 which meant the NRC was not bashful of only looking at what
22 we told them or what Franklin identified as a deficiency.

23 They brought up the state of the level of
24 knowledge that they knew at that time and known deficiencies
25 or issues that they were aware of to make sure that Alabama

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1 Power Company knew about them and was addressing them to
2 their satisfaction.

3 Q Fair enough, sir. If I may ask you though, sir,
4 and I'm sure we'll get into this in the technical area, if
5 in fact there is a technical issue the Staff was not aware
6 of, then you would not have expected the Staff to ask you
7 about that?

8 A [Witness Jones] As I said, that was the state of
9 the knowledge both by the NRC and Alabama Power Company as
10 of the date of that meeting.

11 I mean NRC didn't know about a new issue; Alabama
12 Power Company didn't know about a new issue.

13 Q Let me rephrase that then, sir, and let me take a
14 specific example -- Chico A/Raychem seals.

15 Certainly the Staff knew about entrance seals but
16 Alabama Power Company I believe there's been testimony did
17 not tell them specifically of the seal that had been
18 developed at Farley, is that correct?

19 A [Witness Jones] That's true.

20 Q And you are not telling me then that you would
21 have expect the Staff to say, oh, you have a special seal,
22 we have looked at this report you haven't given us and there
23 is a problem there.

24 A [Witness Jones] I wouldn't expect that level of
25 detail. On the other hand, if they were concerned about the

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1 moisture intrusion, they would have brought that up if that
2 was a major concern at that time frame.

3 Q Okay. Fair enough, sir.

4 MR. HOLLER: I have no additional questions.

5 JUDGE BOLLWERK: Any redirect?

6 MR. MILLER: May we have two minutes?

7 JUDGE BOLLWERK: Yes. Right. I also would like
8 to know if Mr. Luehman or Mr. Shemanski have anything to say
9 about anything that has been said here in the past hour.

10 [Discussion off the record.]

11 MR. MILLER: No redirect, sir.

12 JUDGE BOLLWERK: Any response from any of the
13 staff witnesses to any of the responses we've heard from the
14 APCo panel?

15 WITNESS LUEHMAN: I just have one quick comment.
16 Mr. Noonan said that the -- he made a true statement which
17 is that the IE staff didn't need any written justification
18 from the regulatory staff to do an inspection at any power
19 plant. But the comment that's in there, I don't think is
20 for the benefit of the -- is not the -- is not NRR's staff's
21 permission for the inspection staff to do an inspection.

22 It's rather -- it's a note in there for the
23 licensee's benefit, that there will be a followup
24 inspection. The note is in a document that's sent to the
25 licensee, not a document that's being sent to the IE staff.

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1 That's the only comment I would make.

2 WITNESS NOONAN: One more thing: That note is not
3 in there -- it's in there for two full purposes. It is in
4 there for the utility, and it was also put in there for the
5 staff's purposes so that we could get a final signoff on the
6 SER. The staff was concerned about writing a final SER, not
7 having looked at documents, particularly on the ones where
8 we said that there's the proposed resolutions for
9 deficiencies.

10 You know, oh, my god, you want me to sign up and
11 say it's okay, but I haven't looked at the paperwork, so we
12 let somebody else go through that for you. In order to meet
13 our time schedule, we'll let somebody else go take a look at
14 that thing, and they'll come back and tell you whether or
15 not that document is, indeed, in the files like they said it
16 was. That's all I've got to say.

17 JUDGE BOLLWERK: At this point, we'll have the
18 Board questions for these two panels. Do you want to start,
19 Judge Carpenter?

20 JUDGE CARPENTER: Yes.

21 BOARD EXAMINATION

22 JUDGE CARPENTER: Looking at -- going back to page
23 23 of your surrebuttal testimony, first of all, the footnote
24 says that Mr. Noonan's name has been removed from the
25 affidavit. I think that's associated primarily with events

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1 of a particular time period, and my questions won't be
2 focused on any particular time period, but very general, so
3 we might reflect, Mr. Noonan, as to whether you can respond
4 to my question or not, or leave it to the other two
5 gentleman.

6 As a non-engineer but somebody who's worked with a
7 lot of engineers during my life, I find the broad, sweeping
8 generalization within many engineering disciplines. Now, I
9 emphasize disciplines. Multiple, reasonable conclusions
10 based on the same set of facts are possible.

11 I mean, that's intellectual anarchy. It can't be
12 what the words say. Aren't there any cases where one would
13 conclude that there aren't enough facts for anybody to come
14 to any conclusion, rather than multiple conclusions can be
15 reached from the same set of facts.

16 Aren't there any limits on this generalization,
17 or, if there are, I'm sorry, I'd really like to know how you
18 tell the difference between what I think of as a WIG, a
19 Wild, Intuitive Guess, and a sound engineering judgment?
20 Any hints?

21 WITNESS NOONAN: I can talk about the engineering
22 judgment as we started out back in the late '79 and in 1980.
23 For some reason or the other, this particular paragraph has
24 been one of the most controversial paragraphs for the whole
25 rule. I think -- I really think the reason is because many

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1 people are afraid of the word, engineering judgment, because
2 it requires a judgment based on either my or your expertise.

3 We've been through it, we know what is expected
4 and we make a judgment on how this particular event is going
5 to occur, I think. We base it on our personal expertise.

6 Somebody -- there is the possibility that somebody
7 could have a piece of data or gone through an experience
8 where it didn't work; that's possible. And he might not
9 want to agree with that particular judgment.

10 I think I can best illustrate it by the fact that
11 when we licensed some plants in the early 1980 timeframe
12 after TMI, and we were talking about the hydrogen burn.
13 There was very little data on hydrogen burn, other than what
14 we postulated under the TMI accident, and we really didn't
15 have good data there.

16 We were trying to figure it out because of what
17 happened. When we licensed one of our first plants
18 afterwards, we had a series of igniters put into the plant
19 to ignite the hydrogen before it got to an explosive mixture
20 --flow not large enough to where it caused a large explosion
21 burn, slow burn, you know, in the term of burning, to be a
22 slow burn.

23 The Commission asked how we reached the conclusion
24 that when you have a heat front passing a black box at about
25 2,000 feet per second, how do I know that the equipment in

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1 there is not going to be seared to a crisp? Well, we know
2 that from a number of things:

3 We know that from some analysis that we've done in
4 the past on heat transfer work. We know it from the
5 standpoint that the wave is passing at such a fast rate that
6 the heat response time takes a while to get there, so the
7 equipment in there can function before it even gets to that
8 peak thing. And we reached the conclusion that that
9 equipment would survive this heat burn.

10 And what I'm trying to point out to you here, we
11 had very little data on this burn. We were postulating the
12 thing, but we basically said to the Commission that we
13 reached this conclusion based on engineering judgment.

14 Now, we didn't have a lot of documentation, we
15 didn't have a lot of analysis.

16 JUDGE CARPENTER: Well, see, that's my point.
17 This sentence says, given an extensive set of facts, two
18 engineers could come to different conclusions.

19 WITNESS NOONAN: That's correct.

20 JUDGE CARPENTER: Now, what you're saying is, in
21 the absence of sufficient facts, two engineers could come to
22 different conclusions, which is a given, you know, which is
23 certainly true. So, I didn't get that feeling out of that
24 sentence at all, and I'm pretty sure I've read this
25 someplace before, sometime in the last ten or twelve years.

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1 It seems so strange to say, given the same set of
2 facts and a sufficient set of facts, that an engineer would
3 come to a different conclusion.

4 WITNESS NOONAN: That's possible, yes. I'm
5 assuming that when reasonable engineers sit down and look at
6 the same set of facts, that there are facts there, that
7 there are sufficient facts there for us to reach a judgment.

8 JUDGE CARPENTER: I just miss the point for some
9 reason.

10 WITNESS NOONAN: I'm having a hard time hearing
11 you.

12 JUDGE CARPENTER: I say, I just miss the point.
13 I'm just not hearing your words correctly. See, I think
14 you're saying that given a sufficient set of facts, and
15 given and educated, disciplined engineer well aware of the
16 laws in his field, that two of those people would come to a
17 different conclusion.

18 WITNESS NOONAN: It has happened. I would hope
19 that these two engineers could sit down and they could
20 eventually reach the same conclusion after they discussed it
21 through and talked about it.

22 JUDGE CARPENTER: That is my point of resolving
23 it. There must be some aspect of one or more facts that one
24 was thinking about and the other one wasn't?

25 WITNESS NOONAN: That is possible, yes.

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1 JUDGE CARPENTER: How else could it be?

2 It just seems such a broad sweeping
3 generalization that given two engineers that you may get
4 different answers. One says the bridge will fall down, and
5 the other one says no. That surprises me.

6 WITNESS NOONAN: I guess it was written, in a
7 sense, to convey that it is possible. I agree that maybe
8 the statement is broad.

9 JUDGE CARPENTER: I think a little bit of the
10 feeling is coming out now, and I thank you.

11 I am correct that just as it reads, it isn't
12 entirely the thought that is being conveyed?

13 WITNESS NOONAN: I am sorry, I didn't hear the
14 last few words?

15 JUDGE CARPENTER: Just the way it reads,
16 literally, that given a set of facts, and a sufficient set
17 of facts, that two engineers would come to different
18 conclusions, is not really the thrust?

19 WITNESS NOONAN: It is not, that is right.

20 JUDGE BOLLWERK: Do you want to try and see if
21 staff has any response to anything that has just been said?

22 JUDGE CARPENTER: I just wanted to get the authors
23 of this. I am very concerned. We are in a lot of
24 exploration of in-detail aspects of what is before us, and I
25 have been sitting here all day trying to think about, what

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1 finding of fact is that going to be and what finding of
2 fact is that going to be.

3 Given that, if staff wants to comment, fine.
4 Otherwise, I am happy.

5 JUDGE BOLLWERK: Hearing nothing, we will go on.
6 Dr. Morris.

7 JUDGE MORRIS: Mr. Luehman, if I remember
8 correctly from the direct testimony, there was a statement
9 made for enforcement purposes, the violations were
10 aggregated into a Category A. Am I right so far?

11 WITNESS LUEHMAN: That's correct.

12 JUDGE MORRIS: And that the basis for this was
13 principally three items, the V-type splices, the Chico
14 A/Raychem seals, and the terminal blocks?

15 WITNESS LUEHMAN: That's correct.

16 JUDGE MORRIS: Supposing we eliminated two of
17 those three, in your mind, would that affect the
18 categorization?

19 WITNESS LUEHMAN: Right off hand, I think that it
20 probably would not, although I would have to go back and
21 look at the number of terminal blocks that are involved.

22 If the terminal block issue was the only remaining
23 issue, given the way the staff applied the policy with
24 regard to the number of systems and components affected on
25 the other EQ civil penalties, that one issue by itself may

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1 have not been sufficient to, by itself, be a Category A, if
2 that was the only remaining issue.

3 But I would have to sit down and look at the
4 numbers. I think that EQ Review Panel would have to sit
5 down and look at the number of systems, and components with
6 regard to that one.

7 With regard to the other two, if either one of
8 those were sustained by the Board, based on the way the
9 modified policy was applied, I think that those would put
10 this into a Category A.

11 JUDGE MORRIS: Thank you. I appreciate that
12 answer.

13 Elsewhere you made the statement in your direct
14 testimony that programmatic efforts by Alabama Power were
15 not any more extensive than that of the average licensee.
16 Do you recall that?

17 WITNESS LUEHMAN: Yes, that is correct.

18 JUDGE MORRIS: And later on, but not very far
19 later on, you make the statement that you conclude that the
20 efforts were, at best, minimal at Farley. Does that employ
21 that the average effort of the industry was minimal, or am I
22 missing something?

23 WITNESS LUEHMAN: I don't recall that exact
24 statement. I think, in the context that it was spoken, is
25 that the licensee's pre-deadline programmatic reviews --

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1 In ot'er words, to develop a program to get things
2 on to the master list, to respond to the NRC on the issues
3 that the staff would raise, for instance for the TERS and
4 everything like that, was on par with other licensees in the
5 industry.

6 In a general sense, the Commission's policy
7 statement in 1984 reflected that fact that overall the staff
8 felt that all licensees had done about as good a job across-
9 the-board. There may have been the individual licensee who
10 did not respond to the staff as well as the average, but I
11 don't think that Alabama Power Company was one of those.

12 I think that the minimal, when we talk about the
13 minimal efforts, one of the things that I think I was
14 referring to was their efforts regarding verification of the
15 implementation of those programmatic aspects that we felt
16 were, in general terms, as good, a little bit better, a
17 little bit worse, than the rest of the industry.

18 So it was with regard to what they did as far as
19 verifying that now that they have this programmatic vehicle
20 to implement an EQ program, that they went out and verified
21 that that, in fact, happened. Walk-downs is one way that
22 you would make that determination. The independent audits
23 of their program by their QA people. There is a myriad of
24 things. Look at their procurement, and maintenance and
25 surveillance programs.

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1 There are a number of things that are actually
2 looking at the hardware, looking at the implementation that
3 it is the staff's position that Alabama Power didn't do, and
4 not the creation of the paper program, which we felt was as
5 good, or maybe -- I am not going to say that it wasn't a
6 little bit better than the average licensee, but it was in
7 the ball park of all the other licensees.

8 JUDGE MORRIS: Thank you.

9 Mr. Jones, in Staff Exhibit 13, which I guess is
10 the enforcement conference summary, there is a statement by
11 Alabama Power that there was a mindset from 1984 to mid '87
12 that -- and I am guessing what that mindset was -- that you
13 were in compliance with all that you thought was necessary
14 for qualification of the electrical equipment. But the
15 statement goes on to say that you did then recognize
16 deficiencies existed.

17 Was this in your view because of a mindset of
18 Alabama Power or because it's your belief that there were
19 changing requirements or changing interpretations or levels
20 required of the documentation and so forth? How do you
21 explain -- or give me some background on the mindset that
22 existed and what made you change?

23 WITNESS JONES: I think you said it, and the
24 mindset was the fact of all the work that had gone on five
25 years leading up to the '84 SER, there was reasonable

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1 assurance in our minds that we met the requirements of EQ as
2 of the November '85 deadline. The SER license condition for
3 Unit 2 gave us that assurance.

4 After that fact, based upon seeing in the summer
5 of '87 the fact that the NRC had changed their
6 interpretation and the level of documentation that they were
7 requiring in the '87 time frame made us draw the conclusion
8 that we needed to change to make ensure that we met the new
9 interpretation.

10 JUDGE MORRIS: Does the staff wish to respond?

11 WITNESS LUEHMAN: Again, I think that going back
12 to some of the inspection reports that have been introduced
13 in staff testimony, it's clear that the type of inspection
14 findings that we had in plants in 1984 and 1985 is the same
15 type of inspection findings we had at Farley in 1987.

16 We provided pre November 30th, 1985 information
17 notices and other documents that provide a basis for clearly
18 should have known prior to the November 30th, '85 deadline,
19 and so while there were evolving issues in the EQ arena, I
20 can't agree with Mr. Jones that the issues here are issues
21 that meet that criteria.

22 JUDGE MORRIS: Mr. Jones?

23 WITNESS JONES: My turn? I would just respond to
24 that by stating that Mr. Luehman has said here today that
25 he's not basing other inspection reports as a basis for I

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1 clearly should have known that I was not in compliance as of
2 the deadline. He's only simply bringing out those reports
3 as an example of the level of documentation that they were
4 looking for.

5 I don't deny and it's very clear to me that
6 auditable files were required, and Alabama Power Company had
7 files. It's a matter of the level of documentation that
8 they were looking for after the deadline is one of the main
9 thrusts of why we're here today.

10 JUDGE MORRIS: And I quote from your testimony,
11 "The staff now would require complete documentation of all
12 engineering judgments in order to avoid imposition of civil
13 penalty."

14 WITNESS JONES: I believe that, yes.

15 JUDGE MORRIS: You believe that.

16 Do you wish to respond?

17 WITNESS LUEHMAN: Well, I think that since neither
18 of the two of us were members of the team, I would simply go
19 to -- I would summarize what some of the things that they've
20 said are, and you can ask them yourself specifically.

21 I know Mr. Wilson looked at a number of issues at
22 the Farley plant during the course of the inspection,
23 solenoid valves being a prime example, in which he had to
24 request numerous documents. He asked numerous questions
25 with respect to that issue.

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1 Clearly, if the staff's standard was that it had
2 to be an idiot-proof roadmap that any engineer could follow,
3 if that was the standard, Mr. Wilson in particular and
4 probably some of the other inspectors that were at that
5 inspection would have written many more violations if that
6 was the standard because, in talking to them, they did have
7 to elicit a lot of information that wasn't in the files from
8 the licensee before they could make a determination on
9 issues, like I said, like solenoid valves that a violation
10 did not exist.

11 So I just don't think that the facts of the Farley
12 inspection and the fact that other violations weren't found
13 support Mr. Jones' position because there would have been
14 more violations if we had such a high standard.

15 MR. MILLER: For purposes of the record, I would
16 just like to observe that Mr. Luehman's identification of
17 solenoid valves is not an issue in this proceeding having
18 been withdrawn by the staff.

19 JUDGE MORRIS: You acknowledge that, Mr. Luehman?

20 WITNESS LUEHMAN: Well, I guess I would just
21 clarify one thing that Mr. Miller said. There were, in the
22 original enforcement action, there were two solenoid valves
23 -- or there were some solenoid valves of issue.

24 I was not specifically talking about those; I was
25 talking about the larger issue of solenoid valves, many of

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1 which never even reached the issue in a generic sense, not
2 the head-bent solenoid valves, didn't even reach the
3 proposed civil penalty stage. So it's even more generic
4 than what Mr. Miller is trying to clarify, but the point
5 being that if that was our standard, we would have had other
6 violations.

7 JUDGE MORRIS: Any further comment, Mr. Jones or
8 Mr. McKinney?

9 WITNESS JONES: Well, he was not there and you had
10 to be there, and I think you have seen some of the cross
11 examination that's gone on during the hearing here, and why
12 we're here, any question could be asked, and there was no
13 bounds on the NRC inspectors as to what question could be
14 asked, and if we could not provide written documentation to
15 respond to that question, it became a violation.

16 I think as we've seen in Raychem Chico, Mr. Wilson
17 can go off and ask any question he deems that may be
18 remotely related to the issue, and if we didn't have written
19 documentation that proved or gave an answer to that, then it
20 resulted in a violation. To me, that was an unreasonable
21 expectation by the NRC inspectors.

22 JUDGE MORRIS: Weren't you allowed a reasonable
23 time to supply such documentation?

24 WITNESS JONES: Yes, we did, and we did that. But
25 the problem is once we answered one set of questions, we got

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1 a new set of questions. So we kept playing this game of,
2 well, here's a new issue. Since you've answered that one,
3 I've got a new one for you. And that continued well beyond
4 the inspection.

5 JUDGE MORRIS: On the same components or on
6 different issues?

7 WITNESS JONES: On the same components. The
8 example I'm using is Raychem Chico. We left the inspection
9 thinking that bonding to the Raychem -- or bonding of the
10 boot to the nipple was the issue. We supplied subsequent
11 information to address that issue, a lengthy document to
12 talk about the chemical interactions of the Raychem to the
13 nipple. Subsequent to that, there were new and a laundry
14 list of other issues that have subsequently been identified
15 by Mr. Wilson on Raychem Chico, and I think that will come
16 out later in the week.

17 JUDGE MORRIS: I do not want to question this too
18 far, but if there was Question A, and you supply it, and
19 Answer A, and Question B and Answer B, and so on, did you
20 have a reasonable time to supply documentation after each
21 succeeding question or was it cut off somewhere?

22 WITNESS JONES: Obviously, there was a cut-off
23 made when our inspection report was issued in that they told
24 us when they left the inspection in November that we would
25 have some time to respond.

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1 We subsequently submitted some information up
2 through January of '88. We never got a response back from
3 the NRC as to whether that answer was acceptable to the
4 issue or not.

5 Subsequent to the inspection report enforcement
6 hearing, notice of violation in the process through this
7 proceeding, we have heard even new issue come out through
8 rebuttal and surrebuttal.

9 JUDGE MORRIS: Can you give me an example?

10 WITNESS LUEHMAN: On Raychem Chico, I guess, as I
11 said, the original was the nipple and the bonding, and then,
12 I think, it has extended just recently in this hearing to,
13 did we pour the Raychem Chico down in the boot, or did we
14 actually use one of these Tygon tubes. That suddenly became
15 a concern to Mr. Wilson in this hearing that, at least, I
16 had never heard before this.

17 JUDGE MORRIS: Mr. McKinney, have you heard of
18 that issue before the hearing?

19 WITNESS MCKINNEY: No, sir, but Mr. Jones was the
20 one involved. I was not involved in the '87 time frame.

21 JUDGE MORRIS: Does the staff have any final word?

22 WITNESS LUEHMAN: I would just say that I think
23 that our technical witnesses and the technical panels can
24 focus on the issues that we are discussing here.

25 What I would ask the Board in considering this

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1 issue to do is, look at the numerous issues in the
2 inspection report that were not cited for violations
3 indicating, and look at the description of those issues, and
4 see some of the iterations that the staff went through with
5 Alabama Power as far as providing documents, or ask staff
6 about other issues that were not brought up for enforcement,
7 and you will see that the staff made a reasonable effort to
8 allow the licensee to provide documents.

9 One of the reasons that, in cases like Chico
10 A/Raychem, that there were a lot of questions is, once the
11 licensee provided one document that did not completely
12 answer the staff's question, it is logical that that is
13 going to raise other questions. If they had had an
14 auditable trail, we wouldn't have had such questions.

15 I think Mr. Wilson is much more suited to get into
16 how Question A led to Question B, and why Question B led to
17 Question C.

18 My point is that there were a lot issues discussed
19 in the inspection that did not result in enforcement, and if
20 the staff had such a high standard, it seems to me that
21 there would have been a lot more.

22 WITNESS JONES: I will just use another example.
23 The V-splice test report that Alabama Power Company tested,
24 and had documented in October of '87 was not reviewed until,
25 I believe, the '89 time frame by any NRC inspector.

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1 JUDGE MORRIS: Thank you.

2 I think we will terminate this discussion. I
3 didn't want to get into the details. We will certainly do
4 that later in the week, but I wanted to get a flavor for the
5 attitude of Alabama Power's mindset, and the change and
6 reasons for the change.

7 WITNESS JONES: I hope I have provided that to
8 you.

9 JUDGE MORRIS: Counsel can take it from there.

10 MR. MILLER: I think I can say we have had all we
11 can stand for one day.

12 JUDGE BOLLWERK: I will try to make this brief.

13 Following up on some Judge Morris' questions, I am
14 wondering what the staff's position is, at least in the
15 matter of policy, in terms of its ability to use arguments
16 that arise, or to cite deficiencies or problems in this
17 adjudicatory proceeding that aren't mentioned in the notice
18 of violation, or in the order imposing the civil penalty?

19 Do you have any feel in terms of policy?

20 I take, since you have done it, anything goes, or
21 at least you have been alleged to do it, and maybe I am
22 mischaracterizing it.

23 WITNESS LUEHMAN: I guess I am no lawyer, but what
24 are specifically are you talking about?

25 JUDGE BOLLWERK: Do you feel in any way bound by

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1 the arguments that are made in the notice of violation, or
2 in the proposed civil penalty, or the civil penalty that is
3 imposed in terms of what you can assert before this Board as
4 support for the violations?

5 WITNESS LUEHMAN: I think the answer to that is
6 that simply, very much as I responded in Judge Morris'
7 question, I think that just as Alabama Power asserts that
8 the NRC has subsequently raised new arguments in the process
9 of this hearing, I think that the staff feels the same way
10 about the licensee, and that some of our new arguments
11 really find their genesis in some of the expanded or new
12 arguments that the licensee has raised.

13 So I really think that it is important to
14 understand whether the issue is something that the staff has
15 come up with out of thin air, or whether it is something
16 that is in response to some argument that the licensee has
17 made, either in their testimony or in their response to the
18 notice of violation, which all came after the staff asserted
19 its original positions.

20 I think that the staff's original positions in the
21 notice of violation are fairly general in that we assert
22 that a piece of equipment wasn't qualified. We don't
23 necessarily go into excruciating detail on every little fact
24 that went into that determination.

25 JUDGE BOLLWERK: To the degree that you do give a

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1 reason, do you feel that you have the opportunity here to
2 present additional reasons?

3 Again, if you believe this calls for a legal
4 conclusion, don't answer the question. I am asking you as a
5 matter of policy to some degree.

6 WITNESS LUEHMAN: The policy answer that I would
7 give is simply, if we alleged that something is unqualified,
8 and I think that we are bound to a certain extent by the
9 specificity of what we say. If we say it is for this
10 reason, X-Y-Z, then to a certain extent we are bound by
11 that.

12 There is, obviously, discretion in there given how
13 general or how specific our allegation is.

14 JUDGE BOLLWERK: We will perhaps leave that for
15 the lawyers at some point. Do you have any response to
16 that?

17 WITNESS JONES: My only response is, lack of
18 review of the V-type test report by Alabama Power Company on
19 NRC's part is not a new issue, and the fact that they chose
20 to ignore to review it, and then issue the notice of
21 violation, and subsequently start poking holes in our test
22 report, and raising technical issues is just unfair.

23 WITNESS LUEHMAN: I think, Mr. Jones, I don't know
24 whether he does it intentionally, but I think that he is
25 missing the point with regard to the staff's position on

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1 that.

2 The staff's position on the test report is that,
3 originally, it is our position that we don't find it
4 necessary to critique the report because our main objection
5 to the report is that they cannot demonstrate that the
6 splices that are tested in that report are representative of
7 the splices that were in the plant.

8 Given that finding, we do not need to proceed,
9 unless we are forced to, which we were by Alabama Power, to
10 critique the report at length, which we have done because
11 that is what they want to do.

12 Our original argument is that they have a test
13 report: A, it is outside the bounds of the modified policy;
14 and, B, even if it wasn't outside the bounds of modified
15 policy as being an extra test outside the scope of the
16 policy, they can't provide us reasonable assurance that
17 those splices are representative.

18 As a tertiary level of review, we get into
19 arguments about the quality of that test.

20 JUDGE BOLLWERK: Mr. Jones?

21 WITNESS JONES: If we only had one inspection
22 which ended on November 20th of 1987, and my report was
23 issued in October '87, I felt like the NRC should be
24 obligated to review that, and that was within the bounds of
25 the inspection.

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1 JUDGE BOLLWERK: We will leave it at that.

2 Mr. Luehman, you have mentioned in the past that
3 you have drawn a distinction between post-'85 EQ
4 deficiencies, and pre-'85 EQ deficiencies.

5 Can you give us an example of a post-'85 EQ
6 deficiency, something that has arisen that you would not
7 cite as a problem in an inspection conducted after 1985,
8 November '85?

9 WITNESS LUEHMAN: First of all, I will start by
10 try to clarify what I meant in the general sense.

11 In the general sense, obviously, any type of issue
12 can be identified after November 30th, 1985. It could be an
13 issue that was known in 1979. So I think that when we talk
14 about identifying a particular non-compliance, that means
15 one thing, but I think the real factor is, what is the
16 genesis of the staff concluding that that thing is a
17 violation. When did the basis for concluding that that is
18 a violation occur?

19 If we had that position prior to November 30th,
20 1985, that Component X was unqualified, and we found it in
21 1987, then we can attempt to make the clearly should have
22 known argument for that component.

23 However, if the basis for the NRC concluding that
24 a component is unqualified only existed in 1986, and we
25 found it in 1987, then the staff would be hard pressed to

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1 demonstrate that the licensee should have clearly known of
2 that prior to November 30th, 1985, simply because the basis
3 for us knowing that it was a violation, or determining it
was a violation wasn't determined until 1986.

So the date of identification of the issue is not
the important factor. The important factor is the date of
the identification of the basis of that issue that is found
to be a violation.

9 Examples of that, the only one that comes to mind
10 in my mind that I know that the staff has researched
11 extensively on a Region 3 plant is the issue of Bunker Ramo
12 containment penetrations. It wasn't until after the
13 November 30th, 1985, deadline, due to really a lack of
14 documentation from the vendor, that the NRC understood that
15 there was qualification problems with such penetrations.

16 There had been some discussion about Bunker Ramo
17 penetrations even before the deadline, but the staff did not
18 reach a conclusion that they had a real problem with those
19 until after the deadline.

20 Clearly, we didn't go back to the licensees where
21 that issue may have been identified prior, and give them a
22 civil penalty because the staff didn't reach a determination
23 that there was enough information to conclude a problem
24 until after the deadline.

25 That is about the only example I can think of

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1 right off hand.

2 JUDGE BOLLWERK: Mr. Jones?

3 WITNESS JONES: I am glad he brought up the Bunker
4 Ramo issue. I will refer you to our response to Generic
5 Letter 8424, which is the certificate of compliance letter
6 that Alabama Power Company submitted, there is reference
7 there to IE Notice 8204, which is regarding Bunker Ramo.

8 Mr. Luehman is ~~is~~ here, even though an IE
9 Notice was issued in 1982 on Bunker Ramo, that is an
10 emerging issue.

11 But on the other hand, he talks about terminal
12 blocks, and other things that have IE Notices issued with
13 them that apply to Farley are not emerging issues. The two
14 just do not match up.

15 JUDGE BOLLWERK: Any response?

16 WITNESS LUEHMAN: I think the response is simple,
17 that, if we felt that Bunker Ramo was an issue, we put some
18 information on it. I am not particularly knowledgeable of
19 the information that was put out on Bunker Ramo, and we
20 asked licensees to look into it. I don't know how much
21 specificity was in the information notice that would
22 conclude that the NRC had a specificity was in the
23 information notice that would conclude that the NRC had a
24 specific problem at that time. We may have only had a
25 general concern. I can't speak to that information notice.

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1 WITNESS JONES: If I may clarify it or Mr.
2 Luehman, that information notice is referenced as one of
3 the specific IE Notices in the Generic Letter 8424 that the
4 licensee needs to address.

5 JUDGE BOLLWERK: If there is nothing further, we
6 will move on to the next question.

7 A question about the policy statement, and the way
8 it looks at mitigation, and the aggregation. Any time that
9 you have aggregated to Level A, does that preclude any kind
10 of mitigation for best efforts?

11 In other words, if you find a Level A violation,
12 are you ever going to mitigate for best efforts?

13 WITNESS LUEHMAN: I am trying to think of an
14 example where we mitigated for best efforts.

15 JUDGE BOLLWERK: Even though you had a Level A
16 violation? That's my question. In other words, if you
17 found it at the top level of violation, would you ever then
18 mitigate for someone having best efforts?

19 WITNESS LUEHMAN: You can. I guess I understand
20 -- I think the only condition that you would probably do
21 that, and I don't think that we had that condition because I
22 think that the two cases where that was -- there was --
23 excuse me. There was one case where that possibly could
24 have occurred, one or two cases, and I think rather than
25 mitigate the civil penalty for best efforts when it was --

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1 the staff exercised judgment, and rather than mitigate for
2 best efforts, I think what we did is -- let me take that
3 back. Let me start over.

4 I think what we did -- the answer is yes, we
5 could, but the answer is we didn't. The case that comes to
6 mind that would warrant maybe mitigation for best efforts
7 even though they were Category A is a licensee who had one
8 specific problem and it affected many systems and many
9 components, and they just didn't pick it up, okay?

10 Under the modified policy, that would be a
11 Category A, many systems, many components, but if we look at
12 their program as a whole, we say, well, they only made --
13 they only had one error in their program and they just
14 didn't pick it up. They got blind-sided by it; they, you
15 know, didn't have a file on it. Whatever happened, they
16 didn't get -- but everything else in their program is really
17 good. They did good -- they did good verification, they had
18 a good program, but it's this one issue, whether it be, I
19 don't know, splices, terminal blocks, whatever, that
20 permeates a lot of their equipment, and so they made one bad
21 decision. In a case like that, I could see, even though
22 they were Category A, mitigating for -- mitigating for best
23 efforts in such a case.

24 JUDGE BOLLWERK: I appreciate that answer. We're
25 trying to understand how the policy statement works and

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1 that's very useful to us. Thank you.

2 I think one final question, and you were not on
3 the panel dealing with the GEMS level transmitters. I just
4 want to ask you a general enforcement policy question
5 relating to that.

6 WITNESS LUEHMAN: Yes, sir.

7 JUDGE BOLLWERK: I take it that, and this may be
8 something we talked about before, that you would agree that
9 the important part in lookin at that equipment in terms of
10 the level of the oil is the level of the oil as of November
11 30th of 1985. That is a critical issue or is it not in your
12 opinion?

13 WITNESS LUEHMAN: Yes, sir.

14 JUDGE BOLLWERK: So --

15 WITNESS LUEHMAN: With regard to the modified
16 policy.

17 JUDGE BOLLWERK: Right. So that then will
18 determine -- our finding as to what the oil level was in
19 1985 in November will be up or down to some degree on that
20 issue.

21 WITNESS LUEHMAN: Yes.

22 JUDGE BOLLWERK: All right.

23 Mr. Noonan, let me ask you one brief question. To
24 what degree -- in looking at the inspections and what you
25 see as what the inspections were designed to do, you don't

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1 seem to me to be addressing the importance, which I guess
2 you could say the policy statement highlights it, of the
3 November 30th, 1985 date. I mean, that established a date
4 by which some people -- everyone had to be in compliance,
5 and then there was a separate set of, frankly, enforcement
6 standards that applied after that date.

7 I mean, does the SER -- and it strikes me that
8 those documents go to the pre-85 and to some degree what you
9 are addressing may go to the post '85. Am I misreading what
10 you are saying?

11 WITNESS NOONAN: I think so. I can only talk to
12 the things pre 1985.

13 JUDGE BOLLWERK: Okay. I recognize that.

14 WITNESS NOONAN: If you're talking about the
15 statement in the SER -- I believe that's what you're talking
16 about.

17 JUDGE BOLLWERK: Right.

18 WITNESS NOONAN: That statement -- I'll try to
19 make it a little bit clearer. When we were trying to get
20 these final SERs written, we needed to go through the
21 concurrence chain and final sign-off. The staff was
22 concerned about accepting certain assertions by the utility
23 without actually looking at the utility, particularly on how
24 the identified deficiencies were going to be resolved, those
25 particular items.

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1 The statement that we put in there for the
2 inspection about an audit inspection was to have someone go
3 out and verify what the staff was told in the meetings that
4 took place during the whole period of 1983 and 1984, those
5 meetings, and also information that was used for the final
6 staff SER in writing off the -- on the EQ program.

7 Am I making myself clear on that?

8 JUDGE BOLLWERK: Well, I guess your statement is
9 that the -- you didn't have to have a statement in there
10 about being able to go out and inspect because you can
11 always go out and inspect. That's true.

12 WITNESS NOONAN: That's right.

13 JUDGE BOLLWERK: But in this instance, you had a
14 date which to some degree set two different enforcement
15 policies in terms of the way you were going to look at the
16 enforcement. In one respect, it was going to fall under the
17 general enforcement policy. Prior to 1985, it was going to
18 fall under a special enforcement policy. Does that have
19 anything to do with --

20 WITNESS NOONAN: No, sir. When we wrote that --

21 JUDGE BOLLWERK: -- the type of inspections?

22 WITNESS NOONAN: When we wrote that SER, we did
23 not even talk in terms of enforcement. That was not in our
24 bailiwick, so to speak. It was not in our area of
25 responsibility. So we strictly stuck to the fact that the

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1 SER ought to be written on the sufficiency of the licensee's
2 program regarding 10 CFR 50.49.

3 JUDGE BOLLWERK: All right.

4 Any response from the staff on that?

5 WITNESS IUEHMAN: No.

6 JUDGE BOLLWERK: I think that concludes all our
7 questions. We had indicated earlier we would offer you an
8 opportunity to redirect on anything we've asked the panel
9 about, if you have anything.

10 MR. MILLER: Nothing from us.

11 MR. HOLLER: Nothing from the staff.

12 JUDGE BOLLWERK: I think we have one exhibit we
13 need to take care of. Let me thank both of the panels for
14 your attention and your answers today. This procedure may
15 have been a little trying for you all, but it's been very
16 useful for the Board and we very much appreciate it.
17 I think, Mr. Shemanski and Mr. Noonan, we will not be seeing
18 you again. Thank you very much. You are dismissed subject
19 to being recalled for any reason that might be necessary.

20 [Panels excused.]

21 JUDGE BOLLWERK: Okay. I guess we need to take
22 care of Exhibit Number 82.

23 MR. HOLLER: Yes, sir. At this time, the NRC
24 staff moves what has been previously identified as NRC Staff
25 Exhibit 82 be moved into evidence.

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1 JUDGE BOLLWERK: Any objection?

2 MR. MILLER: No objection.

3 JUDGE BOLLWERK: Then let the record reflect that
4 Staff Exhibit Number 82 has been received into evidence.

5 [Staff Exhibit No. 82 was
6 received in evidence.]

7 JUDGE BOLLWERK: Anything else from the parties
8 procedurally? Judge Carpenter has something.

9 JUDGE CARPENTER: Mr. Miller, a week or so ago,
10 the Board had a request for supplementation of one of
11 Alabama Power's exhibits. It wasn't so much that the Board
12 has an overwhelming thirst for knowledge, but more that that
13 single one-page exhibit -- it's very difficult to put much
14 weight on a finding from one page, particularly when the one
15 page is not comprehensible.

16 In response to that, I get a big pile of paper,
17 half of which is illegible, and I'm not going to play Easter
18 Bunny dancing through there trying to find which pages you
19 might think important.

20 What I was really trying to do was offer you an
21 opportunity. If you want to improve the exhibit, fine. If
22 you don't, so be it. For example, I thought it would be
23 nice to know what the test set-up looked like, and this is
24 what I'm given. If you don't think we need to know, that's
25 your point.

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1 MR. MILLER: We are absolutely anxious to resolve
2 this.

3 JUDGE CARPENTER: A word to the wise. That's the
4 end of it.

5 MR. MILLER: All right, sir. We will undertake to
6 try and clarify that and explain the significance of that
7 piece of paper and how --

8 JUDGE CARPENTER: Any of these pieces of paper,
9 some of which are legible and some of which are not, that
10 you really want to put into evidence we might think about.

11 MR. MILLER: All right, sir.

12 JUDGE CARPENTER: But I just think, in all
13 fairness, if you're really going to depend on that one page,
14 you should be warned.

15 MR. MILLER: All right, sir. Thank you, sir.

16 JUDGE BOLLWERK: Is there anything else?

17 [No response.]

18 JUDGE BOLLWERK: All right. At this point, we
19 stand adjourned until nine o'clock tomorrow morning.

20 [Whereupon, at 5:00 p.m., the hearing recessed, to
21 reconvene the following day, Tuesday, May 19, 1992, at 9:00
22 a.m.]

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NAME OF PROCEEDING: Alabama Power Company

DOCKET NUMBER: 50-348-Civp
50-364-Civp

PLACE OF PROCEEDING: Bethesda, Maryland

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