

ORIGINAL

UNITED STATES NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:

EVIDENTIARY HEARING

PUBLIC SERVICE COMPANY OF

NEW HAMPSHIRE, et al

(SEABROOK STATION, UNITS 1 AND 2)

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DOCKET: 50-443-OL
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OFFSITE EMERGENCY
PLANNING

Pages: 12026 through 12228

Place: Concord, New Hampshire

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1 UNITED STATES NUCLEAR REGULATORY COMMISSION
 2 ATOMIC SAFETY AND LICENSING BOARD

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3 In the Matter of:)
 4)
 5 PUBLIC SERVICE COMPANY OF) Docket Nos.
 6 NEW HAMPSHIRE, et al.,) 50-443-OL
 7) 50-444-OL
 8 (SEABROOK STATION, UNITS 1 AND 2)) OFF-SITE EMERGENCY
 9) PLANNING
 10 EVIDENTIARY HEARING)

11 Friday,
 12 May 20, 1988
 13 Room 210
 14 Legislative Office Building
 15 Concord, New Hampshire

16 The above-entitled matter came on for hearing,
 17 pursuant to notice, at 9:11 a.m.

18 BEFORE: JUDGE IVAN W. SMITH, CHAIRMAN
 19 Atomic Safety and Licensing Board
 20 U.S. Nuclear Regulatory Commission
 21 Washington, D.C. 20555

22 JUDGE GUSTAVE A. LINENBERGER, JR., MEMBER
 23 Atomic Safety and Licensing Board
 24 U.S. Nuclear Regulatory Commission
 25 Washington, D.C. 20555

JUDGE JERRY HARBOUR, MEMBER
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 U.S. Nuclear Regulatory Commission
 Washington, D.C. 20555

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(No Appearances)

I N D E X

1			
2	<u>WITNESSES</u>	<u>DIRECT CROSS REDIRECT RECROSS EXAM</u>	
3	<u>Panel:</u>		
	ROBERT BORES		
4	WILLIAM LAZARUS		
	by Mr. Turk	12032	
5	by Mr. Dignan		12057
	by Mr. Flynn		12071
6	by Mr. Oleskey		12083
	by Mr. Backus		12216
7	by Mr. Dignan		12226
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	I N D E X				
	<u>EXHIBITS:</u>	<u>IDENT</u>	<u>REC 'D</u>	<u>REJ</u>	<u>DESCRIPTION</u>
1					
2					
3	<u>NRC STAFF:</u>				
4	2-A	12034	12034		Same as Exhibit 2 but with sequential pagination
5					
6	<u>MASS. AG:</u>				
7	22	12118			1 page agenda, Seabrook EPZ Coordination Committee, 21 January 1986
8					
9	23	12182			Comprises Mass. AG Exhibits 23-A, 23-B
10					
11	24	12190	12194		Multipage, 10/30/86, information and guidance memo, FEMA
12					
13	23-A	12184			Multipage, draft
14	minutes, Coordination				Committee meeting, Seabrook EPZ 6/23-24/86
15					
16	23-B	12184			1 page, attendance
17	list, Coordination				Committee meeting, Seabrook EPZ, 6/23/86
18					
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P R O C E E D I N G S

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(9:11 a.m.)

3

JUDGE SMITH: On the record.

4

Mr. Turk.

5

Whereupon,

6

ROBERT BORES

7

WILLIAM LAZARUS

8

having been previously duly sworn, resumed the witness stand

9

herein, and was examined and further testified as follows:

10

MR. TURK: Thank you, Your Honor.

11

Your Honor, the witnesses and I have looked at

12

yesterday's transcript this morning, there is a correction that

13

needs to be brought out at this time. And this is in response

14

to Board's questions towards the end of yesterday's sessions,

15

and I'm looking at page 12019.

16

Your Honor may recall that you were engaged in

17

questioning about the preparation of the witnesses' October

18

memos to me, and there's the following question and answer, I'd

19

like to ask Mr. Lazarus to provide some clarification on it,

20

and I'll read from the transcript:

21

"Judge Smith: And after that time you did not --

22

when you consulted did you have any agreement that that would

23

be your story if called upon to restate it or did you just

24

compare memories?"

25

"The Witness: (Lazarus) No, Your Honor, we did not

1 agree that that would be our story if we were called upon to
2 compare it. At the time we really thought it was moot because
3 we were waiting for another draft of the FEMA position." Close
4 quote.

5 DIRECT EXAMINATION (RESUMED)

6 BY MR. TURK:

7 Q Mr. Lazarus, could you explain to us what it is that
8 you thought was moot at that time?

9 A (Lazarus) The question of disagreement with FEMA,
10 Region 1 on the RAC position.

11 Q Did you mean to indicate that you thought whether or
12 not there was a vote or a show of hands, that that question was
13 moot?

14 A (Lazarus) No, I did not.

15 Q All right. Now, I'd like to ask you one further
16 thing.

17 MR. TURK: Further on that page, Your Honor, the
18 following colloquy occurs, quote:

19 "Judge Smith: When did it first occur to you that it
20 was not moot?"

21 "The Witness: (Lazarus) When we saw the copy of the
22 FEMA submitted position, I believe, in October; and we had not
23 up to that time received the promised revision to the FEMA
24 testimony." Close quote.

25

1 BY MR. TURK:

2 Q Mr. Lazarus, what was it that you saw in October?

3 A (Lazarus) We're still -- at that time we're still
4 referring to the FEMA prefiled response to the contentions that
5 I believe was filed in September. We were --

6 Q That's the prefiled testimony on writing?

7 A (Lazarus) Yes.

8 Q Had you, prior to the preparation of your October
9 15th memo to me, had you seen the transcript of Mr. Thomas's
10 first voir dire examination on the beach shelter issue?

11 A (Lazarus) No, we had not.

12 Q Had you had conversations with anyone about that voir
13 dire examination of Mr. Thomas?

14 A (Lazarus) No, I did not.

15 Q So, is it fair to say then, that when you prepared
16 your October 15th memo you were not aware of his testimony on
17 voir dire examination?

18 A (Lazarus) Yes, it is.

19 Q Is that your view also, Dr. Bores?

20 A (Bores) Yes, it is.

21 MR. TURK: Thank you.

22 JUDGE SMITH: Mr. Dignan.

23 MR. DIGNAN: Thank you, Your Honor.

24 Mr. Turk, do the witnesses have a copy of yesterday's
25 transcript at the table, if not I can supply them with one?

1 MR. TURK: If you have an extra.

2 Your Honor, before Mr. Dignan starts I want to make
3 one other preliminary matter. If Your Honor will recall,
4 yesterday I undertook to make some copies of Staff Exhibit No.
5 2 and I put global page numbering at the bottom, and I've
6 distributed copies of those to the parties already.

7 I'd like at this time to offer into evidence as Staff
8 Exhibit 2-A this numbered version of Staff Exhibit 2.

9 (The document referred to was
10 marked for identification as
11 NRC Staff Exhibit 2-A.)

12 JUDGE SMITH: I assume there are no objections, and
13 it will be received.

14 (The document referred to having
15 been previously marked for
16 identification as NRC Staff
17 Exhibit 2-A, was received in
18 evidence.)

19 MR. DIGNAN: Your Honor, I assume the admission of
20 2-A is to be restricted to the same extent 2 was. If you
21 recall, 2 was admitted for the truth of the matters contained,
22 as I recall, insofar as we're talking about the cover memo, the
23 substantive Bores memo. But that the balance had been admitted
24 for the purposes of demonstrating a historical sequence.

25 JUDGE SMITH: It's the same purpose. And in effect,

1 the only thing that is being admitted is the numbering.

2 MR. TURK: Your Honor, is it received into evidence?

3 JUDGE SMITH: Yes.

4 MR. TURK: And, Your Honor, I have one other matter
5 to raise. Yesterday when I indicated that I would not be doing
6 further examination of these witnesses, it was based upon my
7 belief that the voir dire examination of Mr. Thomas would not
8 be used for substantive findings, and if used at all, would go
9 to credibility.

10 In my understanding of that, in my postponement of
11 doing any further examination, I had assumed that the question
12 of credibility was the credibility of Mr. Thomas. And I'd like
13 a confirmation that that's correct.

14 The reason for my concern is if those -- if that voir
15 dire examination is going to be used by anyone with respect to
16 the credibility of staff witnesses, then I will need to address
17 it now.

18 MS. WEISS: As far as I'm concerned, Mr. Turk, you
19 have to make your own decision.

20 JUDGE SMITH: I'm sorry, what did you say, Ms. Weiss?

21 MS. WEISS: I said, I think he'll have to make his
22 own decision about where he goes. I'm not going to say that
23 only Mr. Thomas's credibility is in question.

24 JUDGE SMITH: Mr. Turk, if it is in for the purpose
25 of examining Mr. Thomas's credibility, and Mr. Thomas's

1 credibility will be examined in light of what these witnesses
2 say, then necessarily the credibility of these witnesses is
3 related to that testimony, if we select between one or the
4 other as to a particular aspect of disputed facts.

5 MR. TURK: All right. In that case, Your Honor, in
6 light of Ms. Weiss's comment, I will need to do a small amount
7 of further direct examination.

8 (Pause)

9 MR. TURK: Can we go off the record for a moment?

10 BY MR. TURK:

11 Q Dr. Bores, I've placed in front of you copies of the
12 transcripts of October 7th and November 4th, 1987; do you have
13 those?

14 A (Bores) Yes, I do.

15 Q I'd like to ask you to turn first to page 3115 at
16 lines 10 through 13 on that page.

17 A (Bores) I have that.

18 Q Where Mr. Thomas indicates in substance that, in
19 preparation of their June position on contentions, quote: "We
20 had discussions with individual members of the RAC," close
21 quote. Did anyone from FEMA have discussions with you apart
22 from your presence in the RAC meeting of April 30th, prior to
23 their preparation of their June filing?

24 A (Bores) No.

25 Q I believe I said April 15th of the RAC meeting, if I

1 said something else --

2 A (Bores) I was hearing April 15th.

3 Q All right.

4 MS. WEISS: What was the time period between April
5 15th and July 30th, I just didn't hear it?

6 MR. TURK: Let me ask the question again, apparently
7 I've confused it.

8 BY MR. TURK:

9 Q Between the period of April 15th, 1987 and the date
10 on which FEMA filed its position on June 4th, 1987, had you had
11 conversations with anyone in FEMA concerning the beach shelter
12 position?

13 A (Bores) Not in terms of the position -- of the FEMA
14 position per se. I did relate yesterday that when I had talked
15 to Mr. Thomas prior to sending my second letter, that the
16 removed materials that Mr. Thomas had indicated that he would
17 no longer support the finding or the reasonable assurance
18 finding that the RAC had made before or to -- let me rephrase
19 that, because we don't think a reasonable assurance finding of
20 RAC, but rather --

21 MR. OLESKEY: Dr. Bores, I can't hear you, I'm
22 afraid. Could you slow down and speak up, please.

23 THE WITNESS: (Bores) I will try.

24 MR. OLESKEY: Thank you. Start that again because I
25 lost most of the last part of that answer.

1 THE WITNESS: (Bores) Okay.

2 MR. OLESKEY: About the reasonable assurance.

3 THE WITNESS: (Bores) All right. I had indicated
4 that the only conversations with anyone in FEMA relative to the
5 beach shelter position was, in fact, my conversations to Ed
6 Thomas when I had, in fact, discussed that the NRC staff was
7 recommending that I withdraw those particular paragraphs from
8 my original February letter to him.

9 And that Mr. Thomas had indicated that if I did
10 withdraw those paragraphs he would no longer hold that the
11 beach population could be adequately protected. That was the
12 only conversation, and there was nothing on or discussions of
13 the FEMA position as filed.

14 BY MR. TURK:

15 Q And in that conversation with Mr. Thomas, did you
16 make any statements or any indications which could be
17 interpreted to support the FEMA position on contentions as it
18 was filed on June 4th?

19 A (Bores) I did not.

20 Q On page 3116, starting at line 10, Mr. Thomas
21 indicated, quote: "The answer developed by the RAC was, if I
22 may summarize it, was still a, no, but with the caveats on
23 that, no, were generally considered by the RAC members to be
24 extremely minor and readily solvable by some plan changes, and
25 some research, and possibly by some colloquy with the State of

1 New Hampshire," close quote. That's page 3116. Could you
2 indicate for us, first of all, whether you believe that
3 properly characterizes the position of the RAC prior to June
4 1986 -- I'm sorry, June 1987?

5 A (Bores) In all fairness, I think I need to go back
6 and take a look at the context of this.

7 (Pause)

8 THE WITNESS: (Bores) I guess from attending the RAC
9 meeting, I would not have characterized the RAC's feeling that
10 way. It was my view that the RAC position, after leaving that
11 meeting, was that we had with respect to the beach population
12 found that it was -- the protection was adequate, and that any
13 other items that remained outstanding were the same items that
14 might apply generically to the rest of the EPZ areas, and that
15 there were no specific problems that related uniquely to the
16 beach population that was still outstanding.

17 BY MR. TURK:

18 Q I'd like to ask you to turn to page 3123, and by way
19 of context, it's my understanding that this is a colloquy
20 concerning the July RAC meeting. At the top of page 3123 a
21 question by Mr. Dignan, quote: "Was a vote taken of any kind?"

22 "Answer: (Thomas) No, sir, it was not."

23 And then he goes on to say, let me paraphrase this,
24 that the only decision reached by the RAC was a consensus that
25 they would have to come back and look at the issue again.

1 Could you look at lines 1 through 11 on that page
2 and indicate whether you believe that response of Mr. Thomas
3 accurately reflects the way in which the beach issue was
4 resolved in the July RAC meeting?

5 MR. OLESKEY: The way in which the beach issue was
6 left in the RAC meeting.

7 MR. TURK: I'll accept that.

8 THE WITNESS: (Bores) With respect to whether a vote
9 of any kind was taken, if a vote is meant to be a formal vote
10 or a vote as asked for by the chairman, then that is correct.
11 If it is meant to imply, was there a polling, whereby one would
12 determine the positions of RAC members by anyone there, then it
13 is not correct.

14 With regard to a decision by consensus that to
15 adjourn the meeting, that we weren't going anywhere that day, I
16 don't think that that is correct. I think that was chairman
17 prerogative at that point, that he did not want to continue the
18 meeting at that point.

19 BY MR. TURK:

20 Q On lines 12 through 17 of that same page, the
21 question and answer is, quote: "Did any -- first of all, did
22 the NRC RAC member attend that meeting?"

23 "Answer: (Thomas) Again, I don't want to mislead
24 you, but the NRC has a RAC representative concerning Seabrook
25 and he happens to be different than the RAC member." Close

1 quote.

2 Would you indicate whether or not that accurately
3 characterizes the position occupied by the NRC representative
4 at the RAC meeting?

5 MS. WEISS: Mr. Chairman, I'm going to object at this
6 point, this ground was plowed in this transcript and he went on
7 to qualify it and answer it.

8 JUDGE SMITH: I thought it was clarified. I think
9 you clarified that in January, and I think --

10 MR. TURK: I think you're right, Your Honor.

11 JUDGE SMITH: -- it's also -- I beg your pardon?

12 MR. TURK: I think that's right, Your Honor.

13 JUDGE SMITH: So, I think there's really no need to
14 go into it now, is there?

15 BY MR. TURK:

16 Q Let me turn then to page 3124 and continuing on to
17 page 3125, the question raised by Mr. Dignan was the following,
18 quote: "Did any other member of the RAC express disagreement
19 with the FEMA position?"

20 "Answer: (Thomas) I am thinking."

21 "Question: Take your time "

22 "(Pause)"

23 "The Witness: (Thomas) I have to answer your
24 question as being, no. And let me be -- but again, I don't
25 want to mislead you, there were a lot of very pointed questions

1 directed at FEMA. Disagreement, I would have to say, no. But
2 there certainly were -- I don't want to be accused of
3 misleading you -- there certainly were a number of RAC members
4 who had a lot of questions in their mind that they felt needed
5 to be resolved before they would endorse that position." Close
6 quote.

7 Would you indicate whether that fairly characterizes
8 the discussions at the RAC meeting of July?

9 A (Bores) It does not characterize the discussions.
10 There in fact was voice disagreement by most members of the
11 RAC.

12 Q Disagreement with what?

13 A (Bores) With the position espoused by Mr. Thomas.

14 Q And as I recall your testimony yesterday, the only
15 person who did not indicate disagreement through statements was
16 Ms. Nevitt; is that correct?

17 A (Bores) That is correct.

18 Q And in the polling or show of hands, it's my
19 recollection that you indicated even Ms. Nevitt raised her hand
20 showing a concurrence with Mr. Lazarus's and your position; is
21 that correct?

22 A (Bores) That is correct.

23 (Continued on next page.)

et/66

24

25

7
1 Q And, Mr. Lazarus, is that also your recollection?

2 A (Lazarus) Yes, it is.

3 Q And also, if you look at Page 3126 of the transcript,
4 Line 20?

5 MR. BROCK: Page cite, Mr. Turk?

6 MR. TURK: 3126.

7 "Did any other member of the RAC, whether or not they
8 took a position with you, indicate concurrence in the NRC
9 position."

10 Answer: "(Thomas) No, sir."

11 BY MR. TURK:

12 Q Dr. Bores, does that accurately characterize the
13 events at the RAC meeting?

14 MR. OLESKEY: I'd like that to be put in context,
15 counsel, that the question that you read clearly relates about
16 eight lines up to the prior question.

17 "The NRC member in fact did take the position that
18 the FEMA announced position included or constituted a wrongful
19 interpretation of NUREG-0654; is that correct?"

20 Can we agree that that was the context in which the
21 question you just put was asked?

22 MR. TURK: No, I continue to ask the following
23 question.

24 MR. OLESKEY: Then I object -- excuse me. Then I
25 object to the question.

1 MR. TURK: Your Honor, Mr. Oleskey raised the
2 question that appears two questions before the one I referred
3 to. For proper context, I would insert the next question and
4 answer as it appears in the transcript as well.

5 JUDGE SMITH: We don't have the transcript.

6 MR. TURK: I can read it, Your Honor.

7 JUDGE SMITH: All right.

8 MR. TURK: The next --

9 JUDGE SMITH: Read from the beginning all the way
10 through to the end so we have the full context, would you?

11 MR. TURK: Mr. Oleskey, where would you like me to
12 begin reading for context?

13 MR. OLESKEY: I think you should begin actually --

14 MR. TURK: Page 3000.

15 Sorry.

16 MR. OLESKEY: You know, this is not a laughing
17 matter. You had no right to put on direct for a day and a half
18 that wasn't prefiled. And now to go to the transcript like
19 this is outrageous. So please bear with me while I at least
20 attempt to make some sense of the record.

21 Page 3125, Your Honor, starting with Question 22 --
22 Line 22, excuse me.

23 MR. HUNTINGTON: Your Honor, would you like a copy of
24 the transcript? You can certainly use mine.

25 JUDGE SMITH: Yes, that really would be helpful.

1 Thanks.

2 MR. TURK: Starting with Page 3125, Line 17. The
3 question as rephrased by Mr. Dignan was as follows:

4 Your Honor, may we go off the record for a moment?

5 JUDGE SMITH: All right.

6 (Discussion off the record.)

7 MR. OLESKEY: I just want to observe, Judge, that to
8 the extent there was disagreements of memory or otherwise as to
9 what happens in this meeting, it seems to me the record's more
10 than ample. I don't perceive a great deal of additional value
11 coming out of this, and we've all made a great deal out of time
12 and desire to get one of these witnesses back to his duties. I
13 will say no more.

14 JUDGE SMITH: Well, my impression is the general
15 flavor of their conversation yesterday seems to have addressed
16 each of these points.

17 MR. TURK: All right.

18 JUDGE SMITH: And you're taking them up a point at a
19 time makes it quite clear --

20 MR. TURK: Your Honor, I would --

21 JUDGE SMITH: -- it will give you some, and we defer
22 somewhat to your judgment on it, but I'm not surprised by any
23 of their answers this morning in view of their testimony
24 yesterday.

25 MR. TURK: In that case, Your Honor, rather than go

1 through a more or less redundant examination, I would like to
2 continue on Page 3160 of the transcript.

3 JUDGE SMITH: Thirty-one what?

4 MR. TURK: 3160, and let me see if I can put this in
5 proper context. The discussion here relates to the withdrawal
6 of the plant-specific features and containment references from
7 Dr. Bores's first memorandum of February 1987, and then the
8 issuance of the revised memorandum on June 4, 1987 by Dr.
9 Bores.

10 MS. WEISS: Is there a line?

11 BY MR. TURK:

12 Q And, Dr. Bores, I'd like you to look at the question
13 and answer appearing on page 3160 starting at Line 18. Let me
14 read that.

15 Question: "Now I want you to tell us what the impact
16 of that withdrawal of the information was on the position."

17 Answer: "(Thomas) Well, in essence, it -- well, as
18 we understand it, it required FEMA to develop a position using
19 the standard parameters for emergency planning which are set
20 forth in NUREG-0654, FEMA Rep. 1, Revision 1, the joint
21 guidance document issued by FEMA and the NRC, and not to give
22 special consideration to, in essence, disregard the special
23 features of the containment at Seabrook. And using that
24 information in NUREG-0654 or FEMA Rep. 1, using that as a base,
25 together with the facts of the situation at Seabrook, led to

1 the development of the FEMA posture."

2 Dr. Bores, I would like to ask you whether at any
3 time you or anyone else in the NRC suggested that NUREG-0654,
4 the guidelines of NUREG 0654 need not be applied to Seabrook?

5 MR. OLESKEY: I object. The question that's asked
6 doesn't directly track and challenge the answer just quoted
7 from the transcript at 3160.

8 There the answer was with respect to FEMA's
9 understanding of the basis on which it viewed 0654, and
10 accordingly developed a position.

11 The question just asked doesn't challenge that. It
12 simply asks if the NRC fed any additional information into FEMA
13 anytime. Therefore, the answer, if informative, couldn't be
14 used to challenge the testimony that's been quoted.

15 MR. TURK: Well, let me see if I can take care of
16 that, Your Honor, by rephrasing the question.

17 BY MR. TURK:

18 Q Dr. Bores, Mr. Thomas indicates an understanding on
19 his part of what FEMA was now --

20 MR. OLESKEY: No, I object. He indicates
21 understanding using the word "we" which means in the context of
22 his agency; a common mistake you've made throughout your
23 examination, counsel.

24 BY MR. TURK:

25 Q Dr. Bores, Mr. Thomas uses the word "we" and

1 indicates that this undefined we, at least as it appears here,
2 understood --

3 JUDGE SMITH: No, that's not -- you're getting into a
4 little bit too fine of an argument with Mr. Oleskey here.

5 MR. OLESKEY: I think it's quite clear. It's FEMA.
6 He says, as we understood, it required FEMA to develop a
7 position. There's nothing ambivalent or ambiguous about it at
8 all.

9 JUDGE SMITH: We're all looking at it.

10 MR. TURK: It's a semantic difference, Your Honor.

11 JUDGE SMITH: I know.

12 MR. TURK: Mr. Oleskey would like to apply to all of
13 FEMA --

14 JUDGE SMITH: Well, that's what it says. So let's --

15 MR. TURK: Well, I'll accept --

16 MR. OLESKEY: What the transcript says.

17 MR. TURK: -- the plain meaning of the words.

18 JUDGE SMITH: The plain meaning of FEMA?

19 MR. TURK: Of "we". I don't concede that it meant
20 everyone at FEMA, Your Honor.

21 JUDGE SMITH: All right. Go ahead. I mean we see
22 what it says.

23 BY MR. TURK:

24 Q Dr. Bores, do you believe that, or to your knowledge,
25 had anyone from NRC, including yourself, indicated to Mr.

1 Thomas or FEMA that they were then required in June of 1987 to
2 develop a position relying on NUREG-0654, and that that was any
3 different from what they had been required to do previously?

4 MS. WEISS: Mr. Chairman, I object.

5 There is no possible answer to that question that's
6 relevant to what Mr. -- or could be competent on the issue of
7 what was in Mr. Thomas's mind and FEMA's mind. This
8 questioning is cumulative. It's not adding anything to the
9 record. It's just gilding the lily. We've had well over a day
10 of direct. I just think it's time -- we'd like to get
11 something done this week.

12 MR. TURK: I'll -- I withdraw, Your Honor.

13 BY MR. TURK:

14 Q Dr. Bores, at Page 3166, starting at Line 22 -- in
15 fact, let's do the whole question and answer beginning with
16 Line 13.

17 I ask you, first of all, to read that to yourself in
18 order to save transcript space.

19 Let me ask you if the following statement correctly
20 characterizes positions expressed by NRC employees, to your
21 knowledge.

22 MR. OLESKEY: Well, let's confine the question, if
23 it's going to be a proper question, to whatever the witness is
24 said to have conveyed to Mr. Thomas, not "employees of the
25 NRC".

1 BY MR. TURK:

2 Q Well, let me read the answer and then ask you whether
3 it characterizes fairly your understanding.

4 Question by Mr. Dignan: "My question as I put it to
5 you was, was it your understanding that the information which
6 we have been discussing was withdrawn by the NRC because a
7 conclusion had been reached that the information was
8 erroneous?"

9 Answer: "(Thomas) If I can expand on that to make
10 sure that we are not misleading anyone, and I think this
11 answers gets to the nature of what is going on in the RAC, why
12 there is disagreement. It's simply this. That the NRC very
13 clearly feels that, and they've verbalized this to us, that in
14 fact Seabrook should have special treatment; that the walls
15 are, as I understand it, four and a half feet thick, and there
16 is a 5-foot vacuum space and an 18-inch, another containment,
17 and there is an inch of steel in there someplace too, and it
18 should have special treatment, and that this whole issue of the
19 beach population is really quite, if I may say, silly in the
20 mind of a number of the RAC members, and the minds of the NRC
21 folks."

22 Dr. Bores --

23 MS. WEISS: Read the rest of the answer.

24 MR. OLESKEY: Well, let's complete the answer,
25 counsel, if you would.

1 MR. TURK: You're welcome to do that later.

2 MR. OLESKEY: No, would you? It's your examination.

3 JUDGE SMITH: Well, let's do it now. Go ahead.

4 MR. TURK: The answer continues.

5 "The information was withdrawn, as I understand it,
6 because the -- what was articulated to me was that the NRC was
7 not willing to carry forward litigation."

8 BY MR. TURK:

9 Q Dr. Bores, I'd like to focus on three elements of
10 that answer.

11 First of all, have you ever expressed to Mr. Thomas
12 or FEMA that Seabrook should have special treatment because of
13 its containment or plant-specific safety features?"

14 A (Bores) I have not. And to the best of my
15 knowledge, I know of no one else from the NRC who had indicated
16 that Seabrook ought to get special treatment.

17 Q Secondly, do you believe it is correct, as Mr. Thomas
18 alleges, that the beach population issue is silly in the minds
19 of NRC folks?

20 MR. FLYNN: I --

21 BY MR. TURK:

22 Q Do you believe that is an accurate characterization
23 of views which may have been expressed by yourself, to either
24 Mr. Thomas or FEMA?

25 MR. FLYNN: I object. There are two questions, first

1 of all, and specifically the first question that I'm objecting
2 to where the witness is being asked to comment on Mr. Thomas's
3 credibility.

4 MR. TURK: No, I am not. I'm asking for a -- look at
5 the testimony and a review of the statements.

6 JUDGE SMITH: I don't read it as being a comment on
7 his credibility, but just as a comment on the accuracy of the
8 statement.

9 MR. FLYNN: I would agree that the second of those
10 two questions was more to that point, yes.

11 If that's the sense of the question, I'll withdraw
12 the objection.

13 MR. TURK: Let me reask it, if I may.

14 BY MR. TURK:

15 Q Dr. Bores, have you or anyone else, to your
16 knowledge, within NRC expressed to Mr. Thomas or FEMA that the
17 whole beach population issue was silly?

18 A (Bores) I certainly have not expressed that the
19 whole treatment, or the beach population was silly.

20 As I had indicated yesterday in my testimony that I
21 had been involved in a review of the New Hampshire plans since
22 the very first plan was submitted for technical review, and
23 certainly among those of us who have reviewed it, we have
24 always taken the beach concerns as being very serious.

25 So I have never expressed the view that it was a

1 silly situation, and I know of no instance where an NRC person
2 would or did express this view. I know of no indication of
3 that.

4 Q And, finally, in that same answer Mr. Thomas
5 indicates that it had been articulated to him that the NRC was
6 not willing to carry forward litigation.

7 Have you ever made such a statement to him, or are
8 you aware of such statements by any NRC persons?

9 MR. OLESKEY: Well, let's make it clear.

10 That answer was given in the context of the question
11 on the previous page. "Was it your understanding that the
12 information which we've been discussing was withdrawn by the
13 NRC because a conclusion had been reached that the information
14 was erroneous."

15 And the final part of his answer is, "That
16 information was withdrawn", which was the first Bores memo, "as
17 I understand it, because what was articulated to me was that
18 the NRC was not willing to carry forward litigation." And
19 there was testimony about that yesterday.

20 With that context, I have no objection.

21 JUDGE SMITH: Do you? I mean is that your
22 understanding?

23 MR. TURK: Of the context?

24 JUDGE SMITH: Yes.

25 MR. TURK: Well, Your Honor, the context is

1 uncertain. The voir dire had gone on for sometime at that
2 point, and there was no specific reference in the question
3 which would clearly identify the context.

4 JUDGE SMITH: Well, then if the context is not
5 certain, I don't know how the answer to the question is going
6 to be of any value.

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1 MR. TURK: Finally, then -- I'll withdraw the
2 question, Your Honor

3 BY MR. TURK:

4 Q Dr. Bores, I'd like to ask you to turn to the
5 transcript of November 4, 1987 and ask you to look at page
6 5126?

7 A (Bores) What was that page again, please.

8 Q 5126.

9 A (Bores) I have it.

10 Q And starting at line 11 the question is as follows,
11 I'm going to read down to the bottom of the page: "But since
12 that RAC meeting," and I presume this is the July RAC meeting.

13 MR. OLESKEY: Well, let's not presume anything, if
14 you're asking a question.

15 MR. TURK: Would you agree it's the July RAC meeting,
16 Mr. Oleskey?

17 MR. OLESKEY: I'm trying to determine myself, having
18 just opened the transcript, of what it is, but I think it is
19 important that we be clear.

20 MR. TURK: I'll wait for your confirmation.

21 MR. OLESKEY: I would say it is the July, the July
22 30th meeting. I would say it is the July 30 meeting which is
23 being discussed on that page.

24 BY MR. TURK:

25 Q Dr. Bores, let me read the transcript starting with

1 line 11:

2 "Question: But since that RAC meeting you do know
3 that a majority of the RAC does not agree with you, and you
4 know in particular that the NRC does not agree with you; is
5 that not right?"

6 "Answer: (Thomas) Excuse me, I mean, maybe that is
7 the distinction that I am trying to draw here. We have a
8 direct disagreement with the NRC representatives."

9 "Question: And you have a disagreement with the
10 majority of the RAC, if I heard you earlier?"

11 "Answer: (Thomas) No, that is -- I am trying to say
12 that they did not disagree. You said, did they agree? And,
13 no, it was a grey area as I understand."

14 "Question: Except that you have a non-agreement with
15 the majority of the RAC and a disagreement with the NRC; is
16 that correct?"

17 "Answer: (Thomas) I think that is a fair
18 characterization." Close quote.

19 Dr. Bores, do you believe that that is a fair
20 characterization of the RAC position as of the July 30th
21 meeting?

22 MR. OLESKEY: Well, the -- objection. The question
23 there was Thomas's interpretation of the position of people,
24 not whether or not it's objectively correct. It was.

25 JUDGE SMITH: Well, so much of yesterday's testimony

1 was addressed to that very point that it's cumulative.

2 MR. TURK: Your Honor, I have nothing further.

3 JUDGE SMITH: Mr. Dignan.

4 MR. DIGNAN: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. DIGNAN:

7 Q Mr. Lazarus, if you would be kind enough to take the
8 microphone, sir, and if you would turn with me to page 11953 of
9 yesterday's testimony?

10 A (Lazarus) Yes, I have that.

11 Q I would like to direct your line to --

12 MS. WEISS: Just a second. Have we got a copy over
13 here, I want to see if we can --

14 MR. DIGNAN: Is the Board without a transcript now,
15 Your Honor?

16 JUDGE SMITH: I can share.

17 MR. DIGNAN: Everybody on base?

18 JUDGE LINENBERGER: 11953?

19 MR. DIGNAN: 11953, Your Honor, yes.

20 BY MR. DIGNAN:

21 Q Mr. Lazarus, I would like to direct your attention to
22 the colloquy that starts, oh, in approximately line 8 and goes
23 down through the middle of the page, and would you just review
24 that briefly, sir?

25 A (Lazarus) Yes.

1 (Witness reviewing document)

2 THE WITNESS: (Lazarus) Yes, I've read it.

3 BY MR. DIGNAN:

4 Q Now, in that colloquy you indicated that when Mr. --
5 when Mr. Thomas declined to take a vote he indicated correctly
6 that NOAA, and that's the National --

7 A (Lazarus) Oceanic Atmospheric Administration.

8 Q -- Oceanic Atmospheric Administration, NOAA,
9 representatives that attended the previous meeting weren't
10 there, and he declined to take a vote on the issue. Did he
11 give any other reason -- did he articulate any other reason as
12 to why he did not wish to take a vote?

13 A (Lazarus) Not particularly on taking a vote. He'd
14 addressed the fact that he would prefer to redraft the position
15 and reconvene another meeting to discuss the issue.

16 Q Prior to the show of hands you requested, has it been
17 your experience that there ever was a vote or show of hands
18 taken in the RAC, Region 1 while you attended?

19 A (Lazarus) No, that generally was not done.

20 Q How about you, Dr. Bores, do you ever recall another
21 time when a show of hands or vote was taken on a matter?

22 A (Bores) I cannot recall the occasion when we used
23 the show of hands, I think; although, we do go around and ask
24 for position statements per se, but it's very seldom that you
25 ever get into a situation where it's not obvious that, you

1 know, what the positions are.

2 Q Dr. Bores, could you now take that transcript and
3 turn to page 11958-59?

4 MR. TURK: Page again, please?

5 MR. DIGNAN: 11958.

6 THE WITNESS: (Bores) I have it.

7 MR. DIGNAN: And 59.

8 BY MR. DIGNAN:

9 Q And would you review that testimony just briefly to
10 yourself, sir?

11 (Pause)

12 THE WITNESS: (Bores) Okay.

13 // MR. DIGNAN:

14 Q Now, in that testimony you indicated that you could
15 not recall at which RAC meeting Mr. Thomas had made his
16 statements concerning FEMA's definition of reasonable
17 assurance?

18 A (Bores) That is correct.

19 Q Is that still the state of your memory, that you
20 can't recall at which RAC meeting he made those? This is one
21 of these silly preliminary lawyer questions. Have you
22 exhausted your memory on whether or not, as to which RAC
23 meeting it was, sir?

24 A (Bores) It is my recollection it was the July
25 meeting, but I'm not absolutely certain.

1 Q Let me show you pages -- global pages 4 and 5 of what
2 has been marked Staff Exhibit 2-A, which are pages 3 and 4 of
3 your substantive memorandum, and ask you to peruse paragraph 9,
4 the three paragraphs -- three or four paragraphs that follow
5 the number, and in particular the carryover paragraph between
6 global pages 4 and 5 and ask you, does that refresh your
7 recollection that in fact the statements were made on July
8 30th?

9 A (Bores) Okay, I have read it. And with that, then,
10 I would say it was the July meeting that he did say that.

11 Q Gentlemen, would you now, Dr. Bores in particular,
12 would you turn to -- I'm sorry, Mr. Lazarus, if you would take
13 the -- I apologize, Dr. Bores, would you take the transcript
14 and turn to page, again, 11991-92, and I would ask you to
15 review the testimony that begins with the question at the top
16 of 991 and runs through line 8 on 992, for just a moment,
17 please?

18 A (Bores) Okay.

19 Q Now, to begin with, as of yesterday you indicated you
20 weren't sure of the date of the RAC meeting at which the
21 meeting between you and Mr. Thomas, as to which your testifying
22 took place, have you since had an opportunity to refresh your
23 recollection as to the date of that RAC meeting?

24 A (Bores) Yes, it was January 7th and 8th, 1988.

25 Q Thank you.

1 Now, you testified there that during a conversation
2 with Mr. Thomas he indicated with reference to your memo that
3 is in a part of Staff Exhibit 2-A, that he was upset about it
4 and he essentially felt he had been stabbed in the back by it.

5 My question to you is, did he use the words "that he
6 had been stabbed in the back," or is that a characterization by
7 you?

8 A (Bores) As close as I can remember he used the words
9 "stabbed in the back."

10 Q All right. Did he state in form or substance that he
11 felt your memorandum, that he had read, contradicted the
12 version of events of the July 30th meeting that he had already
13 testified to in this proceeding?

14 A (Bores) Could you ask the question again, please.

15 Q Yes, sir. Did he state to you in form or substance
16 that he was upset because your memorandum contradicted the
17 version of events which, at the July 30 meeting, which he had
18 given in this proceeding while testifying?

19 A (Bores) I can't say that he stated that he felt the
20 memoranda contradicted him. I think it was more along the line
21 that, you know, if we felt we had such a different perspective
22 of what happened, then we should have come to his counsel.

23 Q Since that meeting has Mr. Thomas ever indicated to
24 you personally or in conversation with you that, in fact, it is
25 now his judgment that your memorandum does not differ from his

1 recollection all that much?

2 A (Bores) Since that RAC meeting we have not had very
3 many discussions related to the Seabrook beach issues other
4 than the business meetings per se; and he has not stated that.

5 Q Has he ever indicated to you or did he in that
6 conversation state to you that the differences between your
7 memorandum and his recollection of events were not significant?

8 A (Bores) He did not state that.

9 Q Per contra, did he state to you in form or substance
10 that they were significant?

11 MR. OLESKEY: Well, why don't we simply find out, to
12 the extent we haven't already, what was said. I thought we had
13 established it, and this form of negative pregnant question
14 proves nothing.

15 MR. DIGNAN: Pray Your Honor's judgment.

16 MF OLESKEY: I pray Your Honor's judgment.

17 MR. DIGNAN: Now you're getting Evidence 301 from the
18 Superior Court, Your Honor, in Massachusetts.

19 JUDGE SMITH: He may answer, but I also think that in
20 full context we should be aware that Dr. Bores was sitting at
21 the same counsel table with Mr. Thomas when he talked about
22 these very matters. And I wonder -- oh, you're alluding to
23 private conversations. He may answer.

24 MR. TURK: Your Honor, for clarification, the
25 context, as I understand the historical evolution, there's the

1 July RAC meeting, there's Thomas's voir dire, there's the
2 January encounter between Mr. Thomas and Dr. Bores, and then
3 Dr. Bores and Mr. Thomas took the stand in January.

4 JUDGE SMITH: That's right.

5 MR. FLYNN: I'd like to suggest that the Board made a
6 slight mistake in saying that Mr. Bores -- Dr. Bores and Mr.
7 Thomas were sitting at the same counsel table; I believe you
8 meant to say witness table.

9 JUDGE SMITH: Yes, I did; thank you.

10 MR. OLESKEY: My objection is that the answer to the
11 question, did he ever say that disagreements weren't
12 significant, proves nothing standing alone. What's significant
13 is, what was said, and he's already testified to what was said.

14 JUDGE SMITH: That was said between Thomas and Bores?

15 MR. OLESKEY: Yes.

16 JUDGE SMITH: Yes.

17 MR. OLESKEY: And he apparently has testified to
18 that, to my hearing today. And I know, as you pointed out,
19 Judge Smith, there was testimony in January under oath by both
20 of them, sitting side by side at the witness table.

21 JUDGE SMITH: I do not recall whether the questions
22 put to Dr. Bores are sufficient to have produced specifically
23 the answer which Mr. Dignan seeks.

24 MR. DIGNAN: They are not. I will represent that to
25 the Board. I've got the testimony in front of me of Mr. Thomas

1 and Dr. Bores at that time.

2 JUDGE SMITH: On the other hand, I don't particularly
3 favor a series of example questions. The other one was
4 appropriate, and just let this one be appropriate; then if
5 you're going to go further just ask him to --

6 MR. DIGNAN: I just want -- I mean, this is a per
7 contra wrap-it-up question.

8 JUDGE SMITH: Okay.

9 BY MR. DIGNAN:

10 Q My per contra question is, did he ever state to you,
11 in conversation, that the differences --

12 MR. DIGNAN: -- now, which one have I asked, I
13 haven't wrote -- I can't remember now.

14 JUDGE SMITH: If the differences were significant --

15 MR. DIGNAN: What?

16 JUDGE SMITH: You asked if the differences were
17 significant and he said, no. Now you're asking, did he ever
18 state that the differences were not significant.

19 MR. DIGNAN: Yes.

20 BY MR. DIGNAN:

21 Q Did he ever say that the differences were not
22 significant?

23 A (Bores) He did not.

24 MR. DIGNAN: I think it is the other way.

25

1 BY MR. DIGNAN:

2 Q Did he ever say the differences were significant?

3 A (Bores) Not to my recollection.

4 MS. WEISS: Are there anymore possibilities.

5 JUDGE SMITH: How does that last one differ from the
6 one before that?

7 MR. DIGNAN: Because I think we had flipped them. I
8 had said not significant twice, Your Honor. The one I had --
9 when the shooting starting on the right, that was the question
10 before the witness, and I forgot it.

11 MS. WEISS: One was a double negative; one was a
12 negative; and one was a positive.

13 MR. OLESKEY: May the description --

14 MS. WEISS: For what it's worth.

15 MR. OLESKEY: May the description, right, as
16 characterized on this side, be taken to be a geographical
17 description and not a political one, Your Honor.

18 BY MR. DIGNAN:

19 Q Mr. Lazarus, if you would turn to page 12021 of
20 yesterday's transcript.

21 A (Lazarus) Yes, I have it.

22 Q And if you would review, oh, approximately lines 7
23 through 13, and if you need to review before that to get it in
24 full context, the answer you're giving begins over at line 25
25 of 12020.

1 A (Lazarus) Excuse me, how far did you want me to
2 review this?

3 Q Just down -- well, just down through -- well,
4 anything you want to, Mr. Lazarus, but right down --
5 particularly, I'd like you to go down through line 13 on 12021.

6 A (Lazarus) All right, I've completed that.

7 Q You have. Now, in that testimony you testified that
8 after you and Dr. Bores left the July 30, '88 (sic) meeting you
9 briefed your management of what had happened at the meeting,
10 and in particular, you briefed them on the show of hands that
11 you had called for. And I believe you testified or you
12 testified in there that one of your motives in briefing your
13 management was that there might be, to use your words, "There
14 may be some repercussions on this." And I understood that
15 "this" to turn the -- to refer back to the show of hands you
16 had requested; am I correct in that?

17 A (Lazarus) Yes, partly that. But also the fact that
18 at that point in the meeting I was taking more control of the
19 meeting, I believe, than Mr. Thomas was. He, at that point,
20 wished to adjourn and I was opposed to that position.

21 Q My question to you is, were there any repercussions?

22 A (Lazarus) Yes, there were.

23 Q Could you describe them for the Board?

24 A (Lazarus) At several months later, actually it was
25 early to mid-December Mr. Bellamy who is my supervisor, was in

1 FEMA, Region 1 on another purpose and stopped by Mr. Thomas's
2 office or was called into Mr. Thomas's office.

3 MR. OLESKEY: If this is about to be a hearsay
4 conversation between Thomas and Bellamy I object.

5 THE WITNESS: (Lazarus) I will relate what Mr.
6 Bellamy related to me, Your Honor.

7 MR. OLESKEY: It's still hearsay, double hearsay.
8 Evidence 4- --

9 MR. DIGNAN: I'd ask the witness what the --

10 MR. OLESKEY: Evidence 401.

11 MR. DIGNAN: -- what the repercussions were on him.

12 MR. OLESKEY: I don't care what happens to this
13 witness unless it's something which can come in because it's
14 relevant to an issue in the case. It seems to me we're going
15 the other way on that, number one. Number two, it's double
16 hearsay.

17 JUDGE SMITH: All right. It's only really single
18 hearsay, but it's enough. However, --

19 BY MR. DIGNAN:

20 Q What did Mr. Bellamy say to you, if that was the
21 repercussion?

22 MR. OLESKEY: That's still hearsay if he's relating
23 something Thomas said, which appears he's going to.

24 JUDGE SMITH: Can you characterize repercussion
25 without characterizing the conversation between Bellamy and

1 Thomas? What you understood to be a conversation between
2 Bellamy and Thomas create a situation affecting you in any way?

3 THE WITNESS: (Lazarus) Yes, Your Honor, it did.

4 JUDGE SMITH: And what was that situation?

5 THE WITNESS: (Lazarus) My professional conduct was
6 impugned.

7 BY MR. DIGNAN:

8 Q What, if anything, did you do after you had learned
9 that your professional conduct had been impugned?

10 A (Lazarus) I contacted Dr. Bores who attended the
11 meeting to talk to Mr. Bellamy to explain what he saw occur at
12 that meeting?

13 Q And did that end the matter?

14 A (Lazarus) Yes, that pretty much ended the matter
15 there.

16 MR. DIGNAN: That's all I have, Your Honor.

17 JUDGE SMITH: We'll take the morning break early.
18 And do you have your cross-examination plan or do you still
19 want to stick with that one that you --

20 MR. OLESKEY: Yes.

21 JUDGE SMITH: Well, do you have a better feeling for
22 breaking up the sequestration?

23 MR. OLESKEY: Yes, I do. What I -- I had said
24 yesterday at Mr. Turk's request and at the Board's, that I'd do
25 Lazarus first.

1 JUDGE SMITH: Yes.

2 MR. OLESKEY: So what I'm going to do -- I don't care
3 if Bores is there or not, until I get to April 15th, '87, at
4 that point I'm going to ask Mr. Bores to be sequestered until I
5 finish the examination running through the balance of --

6 JUDGE SMITH: All right.

7 MR. OLESKEY: -- of '87. But really in the main it's
8 July.

9 JUDGE SMITH: The actual events at the RAC is the
10 thrust of your sequestration.

11 MR. OLESKEY: Yes.

12 MR. TURK: May I ask also the approximate time for
13 the sequestration, so we know if Dr. Bores has time to check
14 out of the motel?

15 MR. OLESKEY: I can't answer that, Mr. Turk.

16 JUDGE SMITH: Well, he'll certainly have time to
17 check out of the motel. He certainly -- he certainly is
18 not --

19 MR. OLESKEY: I also want him out while I discuss the
20 circumstance under which these memoranda were originated by Mr.
21 Turk.

22 JUDGE SMITH: He's going to -- I mean, certainly he's
23 not going to be back before lunch.

24 MR. OLESKEY: I'm sure that's true.

25 JUDGE SMITH: We'll take our morning break. Let's

1 Keep it to 10 minutes.

2 (Whereupon, a brief recess was taken.)

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3 (Continued on next page.)

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1 JUDGE SMITH: You may proceed.

2 MR. OLESKEY: Mr. Flynn said he had a few questions,
3 and I said it would certainly be agreeable if he did them now.

4 MR. FLYNN: I have a short examination which I
5 believe will take no more than five minutes so I -- and the
6 clock is running, yes.

7 CROSS-EXAMINATION

8 BY MR. FLYNN:

9 Q Dr. Bores, I want to begin by asking you a few
10 questions about what you understood to be the importance that
11 Mr. Thomas attached to the discussion of the containment.

12 Now, you've testified at some length about your own
13 perceptions of the importance of it. But my question to you
14 is, what did you understand to be the importance that Mr.
15 Thomas attached to that?

16 And let's put the question in context. I'm talking
17 about the period of time from April through the time when the
18 FEMA testimony was filed in June of 1987.

19 MR. DIGNAN: I object. Calls for the witness to go
20 inside Mr. Thomas's mind, and I don't know what the word
21 "importance" means in context, nor what statements about the
22 containment we're talking about. The witness has testified
23 to --

24 MR. FLYNN: I'll rephrase the question.

25 MR. DIGNAN: -- a number of dissertations on

1 containment.

2 BY MR. FLYNN:

3 Q Dr. Bores, did Mr. Thomas discuss that subject with
4 you either within the context of a RAC meeting or privately?

5 A (Bores) That is, the subject of the Seabrook
6 containment features?

7 Q Yes.

8 A (Bores) Yes, Mr. Thomas had discussed containment.

9 Q Can you summarize those discussions for us?

10 A (Bores) Mr. Thomas, in his discussions of Seabrook,
11 appeared to place important -- let me start that over.

12 Mr. Thomas appeared to rely heavily on the
13 containment features, or at least wanted to rely on them. And
14 in discussions with me, and I know with other NRC staff, had
15 desired, I guess, from me or from NRC staff some statements as
16 to the strength and other features of this containment which
17 might support a position, I guess.

18 Q Did you have conversations with him where he said, in
19 essence, if that's -- if the NRC is willing to say those
20 things, get out a sheet of NRC letterhead, write it down, sign
21 the paper, send it to FEMA?

22 A (Bores) In essence, he had such discussions with us.

23 Q Can you tell us how often and when?

24 A (Bores) Discussions of that nature occurred on a
25 number of occasions, probably going back to 1984 time frame

1 already, to a number of us.

2 Q I want to move on to a somewhat different subject
3 now.

4 You've testified both this week and I believe at the
5 session in January of this year about discussions within the
6 RAC about the meaning of the term "range of protective actions"
7 or the requirement for the range of protective actions.

8 My question is, when was that topic introduced into
9 the RAC discussions? When was the first time that it came up
10 in the RAC discussions?

11 A (Bores) I don't believe I testified to it yesterday,
12 but I did discuss it in January.

13 That topic had first arisen, I think, in the January
14 7th and 8th meetings.

15 MR. OLESKEY: 1988.

16 THE WITNESS: (Bores) 1988, yes.

17 MR. FLYNN:

18 Q For the sake of clarity, you understood the question
19 to be asking about the interpretation of the phrase "range of
20 protective actions".

21 A (Bores) That 's correct.

22 Q At any time before the January 1988 RAC meeting, had
23 you had any discussions with Mr. Thomas privately on that
24 subject?

25 A (Bores) Not to my knowledge.

1 Q On the subject of reasonable assurance, that is to
2 say FEMA's reasonable assurance finding, in any of the RAC
3 meetings which you have attended was there a discussion about
4 what the role of the RAC was in relationship to FEMA's overall
5 reasonable assurance finding?

6 A (Bores) There were discussions in RAC meetings from
7 time to time as to the RAC's role versus FEMA's role in making
8 a finding.

9 Q And what was your understanding of that role?

10 A (Bores) Okay. My understanding --

11 MR. TURK: As it was expressed in the RAC meetings?

12 MR. FLYNN: I will accept that addition to my
13 question, yes.

14 THE WITNESS: (Bores) My understanding of the RAC
15 role and the RAC's understanding as discussed in the meetings
16 was fairly unanimous in that the RAC viewed itself really as a
17 technical advisory body to FEMA, and it was FEMA's role to make
18 the reasonable assurance finding.

19 BY MR. FLYNN:

20 Q When you say advisory, would you accept that the
21 context of your advice was limited to the applicability of
22 NUREG-0654?

23 MR. TURK: Well, that's a slightly different
24 question. Are you asking the advice that he expressed in the
25 RAC meeting?

1 MR. FLYNN: The question is, in the context of the
2 discussions in the RAC which he has just referred to, would he
3 accept that the understanding was that the role of the RAC was
4 to advise on the applicability of NUREG-0654.

5 THE WITNESS: (Bores) I don't think the discussions
6 were that specific so that one could say it was limited to that
7 particular understanding, or that particular understanding was
8 expressed.

9 BY MR. FLYNN:

10 Q I want to refer you now to Staff Exhibit 2, your
11 memorandum of October 15th with the attachments, and I'll refer
12 you specifically to Page 71.

13 MR. TURK: That's 2-A, Your Honor.

14 BY MR. FLYNN:

15 Q That would be the second page of your Attachment 15.
16 Do you see that?

17 A (Bores) I have it.

18 Q And I will refer you specifically to your handwritten
19 notation in the margin where you wrote "no" with two
20 exclamation points.

21 My question is, did you communicate your disagreement
22 with the statement to Mr. Thomas or anyone else at FEMA?

23 MR. TURK: In what time frame.

24 BY MR. FLYNN:

25 Q At any time after you made the notation.

1 A (Bores) I did not relate this to Mr. Thomas in any
2 specific, that is, pointing to this document and saying, I
3 disagree with this.

4 I think in the context of what was discussed in the
5 subsequent RAC meetings, the context here was certainly
6 discussed; that is, within the confines of the RAC meeting.

7 Q Can you elaborate on that a little bit?

8 What was it that was discussed in the RAC meeting
9 from which Mr. Thomas would have inferred that you disagreed
10 with that statement?

11 A (Bores) I'm not sure that he would yet know that I'm
12 disagreeing with this particular statement specifically unless
13 you led him to the statement.

14 The discussions were relative to sheltering as an
15 option in general, its advisability, under what conditions, et
16 cetera.

17 In other words, from discussions in the RAC meetings,
18 I don't think he could be led to this particular statement.

19 MR. FLYNN: Thank you.

20 MR. TURK: I'd note, Your Honor, for clarification,
21 yesterday I had indicated that when I was going to be making
22 copies of Exhibit 2-A, that I had marked some bracketing
23 notations around some words on two pages. In fact, if you look
24 at global Page 70 and 71, there are some words which are framed
25 by brackets or underlining. That is my notation.

1 The word "no" with two explanation points, as Dr.
2 Bores testified yesterday, is the entry he made prior to
3 sending the document to me.

4 JUDGE SMITH: Thank you.

5 MR. TURK: In fact, on his reading of the document.

6 JUDGE SMITH: It necessarily follows that any time
7 there is a notation on 2-A that doesn't appear on 2. that would
8 be your product?

9 MR. TURK: To my knowledge, this is the only --

10 JUDGE SMITH: This is the only one?

11 MR. TURK: This is the only one, Your Honor, except
12 up at the -- well, yes, that's the only one, Your Honor.

13 BY MR. FLYNN:

14 Q In the direct examination which Mr. Turk conducted
15 this morning, he asked you some questions about comments that
16 you or someone made about the beach population issue being
17 silly.

18 The question I will put to you is, was that in fact
19 not a fair characterization of comments made by Paul Lutz?

20 MR. TURK: May I just seek clarification?

21 I think the question is did Mr. Lutz indicate that
22 the beach issue was silly.

23 BY MR. FLYNN:

24 Q That's a little more specific than my question, but I
25 will ask you if you can answer the question the way it has been

1 modified.

2 A (Bores) And let me see if -- let me seek a further
3 clarification.

4 Are you asking me did Mr. Lutz say that this was
5 silly, using the word "silly"? Or is it a characterization of
6 other words?

7 Q No, I'm not asking you to comment on whether what Mr.
8 Lutz said was silly. I'm asking you did he use that term.

9 A (Bores) Did he specifically use the term "silly"; is
10 that what you asked?

11 Q Yes, that's my question.

12 JUDGE SMITH: Answer it, yes.

13 THE WITNESS: (Bores) Okay. I cannot -- I do not
14 know whether he used the term "silly".

15 JUDGE SMITH: There's a miscommunication here. His
16 clarification was -- go ahead.

17 THE WITNESS: (Bores) The clarification I asked was,
18 did he use the term "silly", is what I understand your question
19 to be.

20 MR. FLYNN: Maybe it would help if I put it in
21 context.

22 BY MR. FLYNN:

23 Q I would suggest to you that the substance of Mr.
24 Lutz's comments was, we know that this has a strong
25 containment. We're being asked to approach the problem as if

1 it weren't there, and that's silly.

2 And I'll ask you --

3 JUDGE SMITH: Those may not be his exact words, but
4 that was the essence of his comments; is that your point?

5 BY MR. FLYNN:

6 Q Yes. I'm not attempting to quote Mr. Lutz, but I'm
7 asking you if you would agree that that was in essence what he
8 said.

9 A (Bores) Okay. In the context -- let me start over
10 on this.

11 (Pause.)

12 THE WITNESS: (Bores) In the context that we were
13 essentially stalled where we were going in the RAC meeting in
14 that the RAC, majority of the RAC, if you wish, had one view.
15 Mr. Thomas had a second view. Both positions appeared to be
16 fairly fixed. Mr. Lutz made statements relative to the
17 containment and the containment features, that it was removed.
18 We still know it's there; in essence, the conversation.

19 MS. WEISS: May I have a clarification, Your Honor?

20 Is this the July 30th RAC meeting or the January 1988
21 RAC meeting?

22 THE WITNESS: (Bores) It's my recollection it would
23 be the July 30th RAC meeting.

24 So in the context of we're stalled, we've looked at

25 (Continued on next page)

1 these issues, the sides are fixed, RAC's view, Mr. Thomas's
2 view, we know the containment is strong, whatever. That has
3 been removed from the position; still know it's there. I think
4 if you want to use the context, or the characterization of what
5 Mr. Lutz says, it's silly to be sitting here arguing these
6 positions and not going anywhere. And the context is not that
7 the beach situation is silly.

8 BY MR. FLYNN:

9 Q Yes. I have one final subject that I want to ask you
10 about. I would refer you to your letter of February 18, 1987,
11 to Mr. Thomas which has been introduced as Staff Exhibit 5, and
12 which we've referred to as the Bores 1 memo.

13 You indicated in your testimony yesterday that that
14 was intended to be a discussion piece; a straw man, I believe,
15 is how you put it.

16 I ask you, does that memorandum say "draft"?

17 A (Bores) It does not. It is my input to the RAC
18 process.

19 Q Is there anything in the memorandum which would
20 indicate to a reader that it had not been cleared by whoever
21 needed to clear it at the Nuclear Regulatory Commission?

22 MR. TURK: Your Honor, if we're going to ask that
23 question, I'd like to have the witness take the time to read
24 the cover page of that memorandum.

25 Do you have that in front of you?

1 THE WITNESS: (Bores) Yes, I do.

2 JUDGE HARBOUR: Does this memorandum have an Exhibit
3 number?

4 THE WITNESS: (Bores) It's Staff No. 5.

5 (Pause.)

E69 6 (Continued on next page.)

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1 THE WITNESS: (Bores) Okay, the question as I
2 understand it, does the letter to Mr. Thomas indicate anywhere
3 that it is a draft position, or does it show concurrence of any
4 staff or anyone else before coming in.

5 Is that the question?

6 BY MR. FLYNN:

7 Q Well, more precisely, is there anything that a reader
8 who didn't already know the fact would be able to learn from it
9 that it had not been concurred in by other people at NRC.

10 MR. TURK: Your Honor, I'm going to object. The
11 document is in front of us. It contains words. We've had
12 testimony from Dr. Bores that there was a prior discussion,
13 prior to February 1987, in which he advised Mr. Thomas that NRC
14 staff headquarters could reject his position after Dr. Bores
15 filed it.

16 I don't know who we're talking about. If we're not
17 talking about Mr. Thomas who had this prior conversation with
18 Dr. Bores, then what's the point of the question?

19 MR. FLYNN: The point of the question is other people
20 at FEMA.

21 MR. TURK: I see.

22 THE WITNESS: (Bores) May I answer?

23 JUDGE SMITH: Go ahead. You may answer.

24 THE WITNESS: (Bores) The letter does not indicate
25 that anyone or no one has concurred in it. This being, as I

1 explained yesterday, an input to the RAC process, and as such
2 the only people who would normally have access to RAC input
3 would be FEMA and RAC members, and as such, it would be
4 treated, as I would understand, as protected under the Freedom
5 of Information Act.

6 This is consistent with all other input that I have
7 provided to RAC in the past.

8 MR. FLYNN: I believe that's all the questions I
9 have. Thank you.

10 JUDGE SMITH: Mr. Oleskey.

11 MR. OLESKEY: Thank you, Your Honor.

12 MR. TURK: Your Honor, I'd like to note that I'm
13 sitting directly behind Mr. Oleskey, with him in between myself
14 and the witness. Because of that, I'm going to have to ask Mr.
15 Oleskey to speak up so I can hear him. I can't observe him,
16 but I do need to hear him well.

17 JUDGE SMITH: Well, he's got the amplifying
18 microphone there.

19 MR. OLESKEY: Mr. Turk has asked if he could take our
20 former seat, and I said fine, if that would be better.

21 MR. TURK: I'll move during the lunch break so as not
22 to delay things.

23 CROSS-EXAMINATION

24 BY MR. OLESKEY:

25 Q Gentlemen, I think we've met at least once. I'm

1 Steve Oleskey, representing the Commonwealth of Massachusetts.
2 Principally, I'm going to be directing my questions
3 to you, Mr. Lazarus.

4 JUDGE SMITH: I think maybe since you're speaking
5 away from the major parties, you'd better get the --

6 MR. OLESKEY: Sure.

7 JUDGE SMITH: -- mike up close.

8 BY MR. OLESKEY:

9 Q Principally, Mr. Lazarus, as I indicated earlier, I'm
10 going to be directing the bulk of my questions to you. And
11 then at an appropriate point we've discussed, I'll be asking
12 Dr. Bores to leave the room.

13 May I say, if there's a question that I direct to Mr.
14 Lazarus which upon answering it you want to add some thing too,
15 Dr. Bores, as we did in the January interrogation of you and Ed
16 Thomas, go ahead. But I'd like to get the answer from Mr.
17 Lazarus first.

18 Mr. Lazarus, as I understand it, you've been involved
19 in some respect or other with issues involving Seabrook and the
20 beach population since some time in 1985; is that accurate?

21 A (Lazarus) That's correct.

22 Q Your first involvement, as I understood it from your
23 prior testimony, was August or September of 1985?

24 A (Lazarus) Yes, that's approximately the correct
25 date.

1 Q And that was -- that involvement was an assignment as
2 a RAC member for the NRC to FEMA Region 1 RAC, correct?

3 A (Lazarus) Yes. I'm not positive that there was an
4 official RAC assignment at that time. I know that I did attend
5 some meetings with FEMA Region 1 starting about that time. So
6 it was a de facto, if nothing else, representation from the
7 NRC.

8 Q Well, was there someone else who was a more official
9 representative of the NRC to the RAC from the middle of 1985
10 forward than yourself?

11 A (Lazarus) No, sir, I don't believe so. The section
12 chief and I, Mr. Harpster, attended several meetings together
13 during that time frame.

14 Q That time frame was August - September '85 to June
15 '86?

16 A (Lazarus) Yes, sir, I believe that's correct.

17 Q So at that point for about almost a year there were
18 two representatives from the NRC to the FEMA Area 1 RAC?

19 A (Lazarus) I believe that's a fair representation.

20 Q Yourself and Terry Harpster?

21 A (Lazarus) That's correct.

22 Q And Terry Harpster was then the section chief of what
23 section?

24 A (Lazarus) Emergency Preparedness Section.

25 Q And you were the senior emergency preparedness

1 Specialist; is that right?

2 A (Lazarus) That's correct.

3 Q So that you were his direct subordinate?

4 A (Lazarus) That's correct.

5 Q Is Mr. Harpster here today in the audience?

6 A (Lazarus) Yes, I believe he is.

7 Q Can you point him out?

8 A (Lazarus) He's raised his hand in the back.

9 Q Thank you.

10 Now, at some point, apparently the middle of 1986,
11 approximately June, you no longer were the NRC representative
12 to the FEMA Region 1 RAC; is that right?

13 A (Lazarus) I'm sorry, would you repeat it, please?

14 Q Yes.

15 About June of '86, you stopped being a NRC
16 representative to the FEMA Region 1 RAC; is that right?

17 A (Lazarus) About that time I was promoted to the
18 section chief position. I'm not positive at that time whether
19 there was an officially designated RAC representative. I don't
20 recall any sequence of official RAC meetings that were going on
21 at that time where substantive decisions were being made. So
22 there may have not been someone officially designated for some
23 period of time there.

24 Q There were also these coordination committee meetings
25 that took place which you attended during this period, correct?

1 A (Lazarus) Yes, that's correct.

2 Q Coordination of the Seabrook planning process

3 A (Lazarus) Yes, that is correct.

4 Q Involving the State of New Hampshire, New Hampshire
5 Yankee, Massachusetts when appropriate, FEMA, those kinds of
6 parties; correct?

7 A (Lazarus) Yes.

8 Q Do I understand that when Mr. Harpster left the NRC,
9 you assumed the position he had had?

10 A (Lazarus) Yes, approximately one month later I was
11 promoted into that position.

12 Q All right. And when did he leave the NRC?

13 A (Lazarus) It was some time in May of 1986, I
14 believe.

15 Q All right. And he left to become Director of
16 Emergency Planning for New Hampshire Yankee, the Applicant,
17 correct?

18 A (Lazarus) That is correct.

19 Q But up until that time you and he both attended RAC
20 meetings of FEMA Region 1, including RAC meetings for the
21 Seabrook project; correct?

22 A (Lazarus) Yes, it is.

23 I would like to correct one point on that.

24 Approximately April of 1986, I was designated as
25 acting section chief for the emergency preparedness section for

1 all issues dealing with Seabrook.

2 Q And how did that come to be?

3 A (Lazarus) That came to be because at that point Mr.
4 Harpster was negotiating for a position with New Hampshire
5 Yankee, or Public Service, New Hampshire.

6 Because of that negotiation, he was removed from any
7 responsibilities regarding emergency preparedness for Seabrook.

8 Q All right. So he stepped aside in April from
9 Seabrook responsibilities, left in May, and you assumed his
10 duties in June.

11 A (Lazarus) That's correct.

12 MR. TURK: Officially. The witness already indicated
13 he was already acting as of April.

14 BY MR. OLESKEY:

15 Q Yes, you took his post officially as of June.

16 A (Lazarus) June.

17 Q But had those duties, as Mr. Turk has pointed out,
18 from April on.

19 A (Lazarus) Yes, and those are approximate dates. I'm
20 not positive of the exact. We're talking approximate,
21 approximately April; it could have been March. I'm not
22 positive of the exact dates when the acting began.

23 Q All right. And then by June you were, where
24 appropriate I take it, dealing with him in his new capacity as
25 Director of Emergency Planning at New Hampshire Yankee.

1 A (Lazarus) Yes, we did have some contact in that
2 regard.

3 Q Now, there have been various other names used about
4 people, I take it, either at the NRC region or in Washington at
5 the headquarters, and I would like you to help me put them in
6 the context to make these documents and your testimony
7 understandable.

8 There's been a reference to a Dr. Bellamy. Taking us
9 back to the period you were discussing, beginning with your
10 role in the RAC in August or September of 1985, would you tell
11 us what position Dr. Bellamy had and what responsibility you
12 had with respect to him in that position?

13 A (Lazarus) Yes. Dr. Bellamy, in 1985, was the branch
14 chief of the branch known as the emergency preparedness,
15 radiological protection branch, in NRC Region 1. The name has
16 since changed, but it's the same function.

17 Q Well, was the hierarchy then you reporting to
18 Harpster, and Harpster reporting to Bellamy?

19 A (Lazarus) That's correct.

20 Q All right. And does Dr. Bellamy still have that
21 position?

22 A (Lazarus) Yes, he does.

23 Q But now you report to him directly.

24 A (Lazarus) Yes, that's correct.

25 Q All right. Then there's been a name of a Dr. Martin

1 used. I think it's Dr. Tim Martin.

2 A (Lazarus) Yes, I'm not positive it's Dr. Tim Martin,
3 but it's Tim Martin.

4 Q Dr. Bores, can you help us there?

5 A (Bores) It's Mr. Martin.

6 Q Mr. Martin. Fine.

7 Starting in August-September 1985, what was Mr.
8 Martin's position at the regional office of the NRC?

9 A (Lazarus) He was the division director for the
10 division of radiological safety and safeguards, radiation
11 safety and safeguards.

12 Q So he was a divisional director in the same division
13 you're in?

14 A (Lazarus) That's correct.

15 Q But in a different branch, or area; is that right?

16 A (Lazarus) No, he oversaw the branches, including the
17 emergency preparedness, radiological protection branch in that
18 division.

19 Q All right. Well, in the hierarchy we've established
20 with yourself reporting to Harpster and Harpster reporting to
21 Bellamy, where did Mr. Martin fit?

22 A (Lazarus) He was Dr. Bellamy's supervisor.

23 Q Okay. And does he remain so?

24 A (Lazarus) He does. He is in a temporary position, a
25 six-month assignment at headquarters, NRC Region 1 presently.

1 and we've had -- Mr. Frank Congel was acting division director
2 of that division for the past three months, and we Mr. or Dr.
3 Glenn Sjoblum, who was acting division director, for
4 approximately the next three months.

5 Q Mr. Bores, I know you've talked about reporting, I
6 think, to Mr. Martin. And for completeness as we try to
7 understand these relationships, would you clarify that now,
8 please?

9 A (Bores) Yes, I report directly to the division
10 director. So back in '85 time frame, I reported directly to
11 Mr. Martin.

12 Q And still do?

13 A (Bores) And I still report to the division chief,
14 yes.

15 Q All right.

16 MR. TURK: Division?

17 THE WITNESS: (Bores) Division of radiation safety
18 and safeguards.

19 MR. TURK: Division director.

20 THE WITNESS: (Bores) That's correct. So, Dr.
21 Bellamy and I report to the same individual.

22 BY MR. OLESKEY:

23 Q So, it's a division, a branch and a section they have
24 in the regional office; is that correct?

25 A (Bores) That is the organizational layout, but we

1 are a division, and within our division are two branches, and
2 then within each branch are a number of sections.

3 I am not in one of the line organizations, but staff
4 directly to Mr. Martin.

5 Q You are a kind of executive assistant, if you will;
6 is that right?

7 A (Bores) If you will. It's called technical
8 assistant.

9 Q But you fill a kind of executive assistant role, as I
10 understand it.

11 MR. TURK: Well, how do we have a definition of that?

12 MR. OLESKEY: All right.

13 BY MR. OLESKEY:

14 Q As most people would understand it --

15 MR. TURK: I don't understand it.

16 MR. OLESKEY: Doesn't surprise me.

17 BY MR. OLESKEY:

18 Q You're his aide or right-hand man, is that it, Dr.
19 Bores?

20 A (Bores) In terms of technical matters, yes.

21 Q Yes. Thank you.

22 There's also been reference to a Mr. or Dr. Matthews.
23 Do you recall that name?

24 A (Lazarus) Yes, I do.

25 Q Would you tell us, beginning in August-September

1 1985, who Mr. Matthews was at the NRC?

2 A (Lazarus) Dr. Matthews was the branch chief of the
3 emergency preparedness branch at the NRC headquarters.

4 I'm sorry, Mr. Matthews.

5 Q So that who is it ultimately in the region who
6 reported to him? Mr. Martin?

7 A (Lazarus) There's no direct line from the region to
8 Mr. Matthews.

9 Q In the section that you were and are in, Mr. Lazarus,
10 who was it who was the immediate superior in the headquarters
11 branch of the NRC to whom reporting was done?

12 MR. TURK: I'm sorry, what's -- you're asking in Mr.
13 Lazarus's branch?

14 MR. OLESKEY: Yes.

15 MR. TURK: Whom at headquarters they reported to?

16 MR. OLESKEY: Yes.

17 THE WITNESS: (Lazarus) There was no direct line
18 reporting from our branch to headquarters.

19 BY MR. OLESKEY:

20 Q Does the regional administrator report for all the
21 branches in the region to someone in Washington? Is that how
22 it works?

23 A (Lazarus) That's correct.

24 Q And the regional administrator at this time was Dr.
25 Murley; is that right?

1 MR. TURK: At which time?

2 MR. OLESKEY: Starting in August or September of
3 1985.

4 THE WITNESS: (Lazarus) Yes, that's correct.

5 BY MR. OLESKEY:

6 Q And is he still?

7 A (Lazarus) No, he is not.

8 Q He now heads some branch of the NRC in Washington; is
9 that correct?

10 A (Lazarus) He heads the office of the NRC in
11 Washington.

12 Q All right. And who took his place as the regional
13 administrator in Region 1?

14 A (Lazarus) Dr. or Mr. William Russell.

15 Q And Region 1 of the NRC is in King of Prussia,
16 Pennsylvania; is that right?

17 A (Lazarus) That's correct.

18 Q Is that where you and Dr. Bores work when you're not
19 in the field?

20 A (Lazarus) That's correct.

21 Q About how many employees are there there?

22 A (Lazarus) Between 250 and 300 people.

23 Q And does that region have offices in the field on a
24 permanent basis?

25 A (Lazarus) They do. There are resident inspector

1 assignments at each of the power reactor facilities in NRC
2 Region 1.

3 Q But no other offices in places like Boston?

4 A (Lazarus) No.

5 Q There's also been reference made to a Frank Congel;
6 do you recall that?

7 A (Lazarus) Yes.

8 Q Starting in August or September of 1985, what
9 position did he have at the NRC?

10 A (Lazarus) I don't recall.

11 Q He was in Washington, not in the region?

12 A (Lazarus) Yes, that is correct.

13 Q Except that recently he's worked in the region in an
14 acting capacity?

15 A (Lazarus) Yes, he was temporarily assigned to the
16 region; just completed a three-month temporary assignment as
17 division director of the division of which I am a part of.

18 Q Other than for that temporary assignment in the
19 region, Dr. Bores, can you place Mr. Congel's responsibilities
20 at headquarters NRC?

21 A (Bores) Well, there was a reorganization in that
22 time frame. So in the '85 time period, I'm not really sure
23 what this position was.

24 MR. OLESKEY: Now, Your Honor, could I ask, not to
25 slow things down now but for clarification as we go on next

1 week and then as apparently Congel and Matthews coming in, that
2 Mr. Turk produce an organizational chart. I personally find
3 these acronyms in divisions and branches and sections and
4 offices somewhat confusing, and I think it might help all of us
5 if we had --

6 JUDGE SMITH: An organizational chart for that time
7 period. It may be somewhat hard to do.

8 MR. OLESKEY: Well --

9 JUDGE SMITH: Can it be just one that he draws up?

10 MR. OLESKEY: Well, I was thinking of one that would
11 have been made up and prepared. But if they could do something
12 that would show this and that we could put in the record, I
13 think it would be quite helpful.

14 MR. TURK: Your Honor, there is an existing
15 organizational chart which can be produced. I don't think it's
16 going to be very easy to go back in time and find each
17 organizational chart as they went through the numerous
18 revisions that they did.

19 JUDGE SMITH: It would show the blocks but perhaps
20 not the people.

21 MR. TURK: No, there were even changes in blocks,
22 Your Honor.

23 JUDGE SMITH: Blocks.

24 MR. TURK: If Mr. Oleskey will accept it, we will
25 provide the current one.

1 MR. OLESKEY: Sure.

2 MR. TURK: And this is for headquarters and Region 1?

3 MR. OLESKEY: Yes, Mr. Turk.

4 BY MR. OLESKEY:

5 Q Now there's also been reference in the documents and
6 the testimony to regional counsel.

7 Do you recall that, Mr. Lazarus?

8 A (Lazarus) Yes.

9 Q I take it that refers to a lawyer or lawyers who are
10 in Region 1 and serve in a legal capacity; is that right?

11 A (Lazarus) Yes, sir.

12 Q From August - September 1985 forward, was there a
13 head of that regional counsel office for NRC Region 1?

14 A (Lazarus) Yes, sir.

15 Q And who was that person?

16 A (Lazarus) That was Mr. Jay Gutierrez.

17 Q G-U-I?

18 A (Lazarus) G-U-T-T-I-E-R-R-E-Z, I believe.

19 Q Is he still there in that position?

20 A (Lazarus) Yes, he is.

21 Q And what's the role of the regional counsel to Region
22 1, generally speaking?

23 MR. TURK: Objection. I think if Mr. Oleskey wishes
24 to, he can find the NRC manual and get a description of duties
25 of each person's office.

1 MR. OLESKEY: Well --

2 MR. TURK: I don't know if the witness is competent
3 to testify to Mr. Gutierrez's duties.

4 MR. OLESKEY: I don't doubt that that's true. And if
5 I had it and could summarize it quickly, I probably would. But
6 I'm trying to move ahead with my examination, and I've never
7 had the chance to talk with this gentleman before, and I'm just
8 trying to --

9 MR. TURK: Your Honor.

10 MR. OLESKEY: Excuse me, Mr. Turk.

11 I'm just trying to lay out a framework that makes
12 sense, at least to me.

13 MR. TURK: Your Honor, I would note that the Staff
14 voluntarily came forward -- well, excuse me. The Staff
15 produced Mr. Lazarus on the Applicants's subpoena. At no time
16 has Mr. Oleskey or any of the Intervenors requested his
17 presence. So we are going rather far afield into discovery of
18 this gentlemen that had never been requested previously.

19 MR. OLESKEY: I didn't put 17 attachments and a
20 memorandum --

21 JUDGE SMITH: Is there any, absolutely anything, no
22 matter how trivial, that when the people get in the mood that
23 you will forbear arguing about?

24 Do you know what Mr. Gutierrez -- what's your
25 question?

1 MR. OLESKEY: Would you describe generally his duties
2 as regional counsel in NRC Region 1.

3 JUDGE SMITH: He advises the regional administrator?

4 THE WITNESS: (Lazarus) Yes, Your Honor.

5 BY MR. OLESKEY:

6 Q And does he also advise section and division chiefs
7 from time to time with respect to legal issues that may arise?

8 A (Lazarus) Yes, I believe that's an accurate
9 characterization.

10 Q And where he's been shown as a person receiving
11 copies on some of these documents, that's because they go to
12 him for his file or for review, whatever is appropriate in the
13 particular case, correct?

14 A (Lazarus) Yes, I believe that's correct.

15 Q Now, you testified on direct that in June of '86, a
16 Mr. Schumacher became the RAC representative to FEMA Region 1;
17 is that right?

18 A (Lazarus) yes, approximately that time frame.

19 Q Until January when Dr. Bores assumed so much of Mr.
20 Schumacher's responsibilities as involved the Seabrook FEMA
21 Region 1 RAC; is that right?

22 A (Lazarus) Yes, sir.

23 Q All right. And Schumacher reported to you from June
24 of '86 until he left, I take it, in October of 1987.

25 A (Lazarus) Yes, sir, that's correct.

1 Q Now why was it that Dr. Bores was assigned in place
2 of Mr. Schumacher in early 1987 to FEMA Region 1 only for the
3 Seabrook RAC?

4 A (Lazarus) Because of Dr. Bores's extensive history
5 going back with prior issues and his extensive experience in
6 the area of emergency preparedness.

7 Q All right. Now, there was testimony on direct that
8 Dr. Bores, even though he didn't report to you normally, would
9 brief you in connection with RAC meetings that he attended for
10 the Seabrook RAC; do you recall that?

11 A (Lazarus) Yes.

12 Q And were those briefings in writing on any occasion?

13 A (Lazarus) No, not generally. I don't remember any
14 of them being in writing.

15 Q So he would come back from a RAC meeting concerning
16 Seabrook and tell you what went on?

17 A (Lazarus) Yes, sir.

18 Q And -- I'm sorry, did you want to add something?

19 (Witnesses confer.)

20 THE WITNESS: (Lazarus) Yes, Dr. Bores has indicated
21 as indicated in the record, that I pretty much received carbon
22 copies of the correspondence between him and the RAC.

23 BY MR. OLESKEY:

24 Q All right, but you didn't ask him for regular memos
25 summarizing what went on?

1 A (Lazarus) No, sir.

2 Q From September of '85 on, what's your first
3 recollection of a RAC meeting or a coordination committee
4 meeting for Seabrook involving this beach population which as
5 been the subject of your testimony on direct?

6 A (Lazarus) I don't recall a specific date or a time.
7 I remember one or two meetings in FEMA Region 1 during that
8 time period. I don't recall whether they were full RAC
9 meetings. I can remember discussing the issues surrounding the
10 beach population.

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11 And the coordination meetings at that time I believe
12 were being held monthly; meeting with the State of New
13 Hampshire, State of Massachusetts Civil Defense, and the
14 Applicant to discuss the submission of plans and the schedule
15 for review of plans.

16 Q There's been a lot of testimony about a memorandum
17 that Ed Thomas sent out to the RAC at the end of December 1985,
18 and that document's in evidence.

19 Do you recall what I'm talking about?

20 A (Lazarus) Yes, sir.

21 Q Did that document come to your attention --

22 A (Lazarus) Yes, it did.

23 Q -- in January '86?

24 A (Lazarus) Yes, it did.

25 Q All right. So you understood that FEMA Region 1,

1 through its chair, Mr. Thomas, was asking the NRC for certain
2 assistance as well as other RAC members in dealing with this
3 beach population issue?

4 A (Lazarus) Yes, he was asking the NRC RAC member for
5 that input.

6 Q Did the region have a position in January 1986,
7 whether or not the existing New Hampshire RERP made adequate
8 provision to protect the beach population?

9 MR. TURK: Could I hear the question one more time,
10 please?

11 BY MR. OLESKEY:

12 Q Did the NRC region have a position in January of
13 1986, whether the existing New Hampshire RERP provided adequate
14 protection for the beach population at Seabrook?

15 A (Lazarus) No, sir, I don't believe a position had
16 been developed at that time.

17 Q All right. Do you recall the first time that the
18 region, whether or not in connection with the RAC process,
19 developed a position about the adequacy of the New Hampshire
20 RERP to protect the beach population?

21 A (Lazarus) It was in February 1987, with the
22 submission of Dr. Bores's memo to Ed Thomas in response to his
23 December '85 request, I believe.

24 Q Dr. Bores --

25 JUDGE SMITH: Wait a minute. He wants to consult.

1 MR. OLESKEY: I thought he wanted to say something.
2 But either way, it's fine with me.

3 (Witnesses confer.)

4 MR. TURK: If Mr. Oleskey doesn't mind, perhaps Dr.
5 Bores could take the microphone for a minute.

6 MR. OLESKEY: I've already said I didn't mind, but
7 let's let him handle it his own way for the moment.

8 THE WITNESS: (Lazarus) Just a clarification. As
9 was previously pointed out by Dr. Bores, that submission in
10 February of 1987 was really his position as a RAC member and
11 not a NRC or NRC Region 1 position.

12 BY MR. OLESKEY:

13 Q So you'd like to correct the testimony you just gave
14 that that was the first time that the region had a position on
15 the adequacy of the plan; is that right?

16 A (Lazarus) That's correct. That was Dr. Bores's
17 position on the adequacy of the plan.

18 Q All right. Then I take it that it wasn't until some
19 time after February of 1986 that the region first had a
20 position on the adequacy of the plan to protect the beach
21 population; is that your testimony?

22 MR. TURK: Your Honor, if we might since Dr. Bores is
23 the RAC member and is most familiar with the issue, why don't
24 we just ask him to relate the answer?

25 MR. OLESKEY: Well, I'm interested in what Mr.

1 Lazarus says. I'm going to get, as I've indicated repeatedly,
2 to Dr. Bores in a separate examination that's still to come.

3 BY MR. OLESKEY:

4 Q I think I said 1986. I apologize.

5 Is it your testimony that there was no NRC regional
6 position on the adequacy of the New Hampshire plan to protect
7 the beach population until some time after February of 1987?

8 A (Lazarus) Yes, and I'm not positive to date there is
9 a NRC Region 1 position on the adequacy of the beach population
10 issue.

11 Q Although you've remained, I take it, among those in
12 the region who were involved with considering the NRC's
13 position about the New Hampshire plan generally, including the
14 beaches; correct?

15 A (Lazarus) Dr. Bores is the official RAC
16 representative for FEMA Region 1. I have attended meetings
17 with him, but his position to the regional assistance committee
18 is the official position.

19 Q All right. So whatever Dr. Bores says about the NRC
20 position on the beach population is something that you'd
21 accept.

22 A (Lazarus) I believe that I have indicated that I
23 personally have accepted that position.

24 Q All right. But you don't, as you sit here, know that
25 the region today has a position on the adequacy of the New

1 Hampshire plan for the beach population?

2 MR. TURK: Objection; asked and answered.

3 JUDGE SMITH: I think that's correct.

4 MR. OLESKEY: Okay. Sometimes on cross-examination
5 you give way to the impulse to emphasize, and it may have
6 happened to me here, Judge. Let me continue.

7 MR. DIGNAN: Your Honor, if we're going to pursue
8 this line, could we have a foundation question asked as to
9 whether it is customary for NRC regions as regions to take
10 positions of this nature?

11 JUDGE SMITH: I was just going to ask, are you making
12 a studied difference between region and division and NRC?

13 MR. OLESKEY: I'm -- the questions -- we're dealing
14 with the position of the region.

15 JUDGE SMITH: The region.

16 MR. OLESKEY: As opposed to the entire organization
17 which would include the headquarters.

18 JUDGE SMITH: All right, and that's a studied -- is
19 there a reason for you picking -- happen to be picking that
20 unit of organization?

21 MR. OLESKEY: Yes. The great bulk, almost all of the
22 testimony that's been given on direct for a day and a half has
23 dealt with the activities of these two gentlemen who were at
24 the region.

25 JUDGE SMITH: It's because they're at the region.

1 MR. OLESKEY: Yes.

2 JUDGE SMITH: Okay.

3 MR. TURK: Your Honor, let's --

4 MR. DIGNAN: Could we have the foundation question
5 put as to whether it's the custom of a NRC region as a region
6 to take a position in matters of this nature.

7 JUDGE SMITH: Well, I do think it would be helpful if
8 we did have some feeling as to what the position process is.
9 It could be developed by you or anybody.

10 MR. OLESKEY: I'll be happy to do that, Judge.

11 BY MR. OLESKEY:

12 Q Mr. Lazarus, do you feel competent to answer the
13 questions I'm going to ask you now about how positions are
14 developed by your organization as between the region where you
15 are and headquarters in Washington?

16 MR. TURK: I don't understand that. Your Honor,
17 there's a pending --

18 MR. DIGNAN: I object to that.

19 MR. TURK: There's a pending question. Mr. Dignan
20 asked for a clarification as to whether the witnesses know if
21 there is a customary practice of the region to adopt a
22 position. If we get that established, maybe that will help Mr.
23 OlesKey's examination.

24 JUDGE SMITH: Well, I interceded here. Let's go
25 straight to it. Let's find out what the process is for

1 arriving at an NRC position, be it one in the RAC, or be it on
2 in hearings, or be it one or both, or be it one to decide not
3 to take a position or whatever. We need some help on it,
4 unless you have a particular reason for objection, Mr. Turk. I
5 mean, is it --

6 MR. TURK: Well, I don't want the record to reflect
7 something that's inaccurate, Your Honor, and I think ---

8 JUDGE SMITH: Exactly.

9 MR. TURK: And I think the foundation question, the
10 clarification would be useful to all of us.

11 JUDGE SMITH: And that being what?

12 MR. DIGNAN: Whether it is the custom and practice
13 for NRC regions as regions to take positions on what is given
14 to the RAC.

15 JUDGE SMITH: And that certainly would be subsumed by
16 my request that it be developed.

17 MR. DIGNAN: Yes, it was.

18 JUDGE SMITH: Yes.

19 MR. DIGNAN: And the next question that the
20 interrogator gave was hardly designed to develop that.

21 MR. OLESKEY: My question --

22 MR. DIGNAN: It was an either/or; pick one and no --

23 JUDGE SMITH: All right. I think he's trying to
24 develop it, and certainly the witnesses know now what we want.

25 MR. OLESKEY: My question was whether Mr. Lazarus

1 felt competent to handle that line. If now, I was going to
2 turn to Dr. Bores; that's all.

3 MR. TURK: Well, Your Honor, the question was did Mr.
4 Lazarus feel competent to answer the questions that Mr. Oleskey
5 is about to ask. I don't think any of us know what the
6 question is until it is asked.

7 MR. OLESKEY: And we talked about --

8 MR. TURK: I think a foundation is entirely proper.

9 MR. OLESKEY: Shall I continue, Judge?

10 JUDGE SMITH: Yes, please.

11 BY MR. OLESKEY:

12 Q I'm going to ask you some questions, Mr. Lazarus,
13 about policy development at the NRC.

14 Are you and I clear on that, at least?

15 A (Lazarus) Yes.

16 Q All right. If you don't feel comfortable, but Dr.
17 Bores is, we'll let him take a turn, okay?

18 A (Lazarus) I understand.

19 Q Thank you.

20 Now is it customary for an NRC region to develop a
21 position that goes to a regional RAC without what I guess you
22 all have referred to as concurrence by headquarters of the NRC?

23 MR. TURK: Well, there's an improper element to that
24 question. Mr. Oleskey's question asks is it customary for the
25 region to submit a position. We haven't established that a

1 region does submit a position.

2 I think it's an important point, and it's going to
3 come up later in argument, I think. I would like to have the
4 record clear before we get it missed.

5 JUDGE SMITH: Well, I'm how about sharing with the
6 Board the importance of the point, at least how --

7 MR. DIGNAN: The importance of the point to me is the
8 way the question was put. He's never asked the question that
9 I've been asking him three times to ask, which is does an NRC
10 region customarily develop such a position.

11 Instead, he hits him with a question that goes, is it
12 customary to develop such a position without concurrence of the
13 NRC, and that assumes a position. I want to find out if they
14 even take positions on this.

15 JUDGE SMITH: That's right. We'll find that out.
16 We're going to find that out.

17 MR. DIGNAN: Well, we're not going to do it if
18 counsel won't put the direct question.

19 JUDGE SMITH: All right, we're going to find that
20 out. If we don't do anything else today, we're going to find
21 that out.

22 (Laughter.)

23 MR. OLESKEY: Let me --

24 MR. DIGNAN: How long do you want to drag it out, Mr.
25 Oleskey?

1 MR. OLESKEY: I think I -- I'm not going to respond
2 to these interjections, Judge. I'm going to continue with my
3 questioning if I may.

4 MR. DIGNAN: Well, the objections, I assume, will be
5 sustained.

6 MR. OLESKEY: If you want me --

7 JUDGE SMITH: All right, don't pull Mr. Oleskey down
8 from the high road. Let him --

9 MR. OLESKEY: Took me long enough to get here.

10 JUDGE SMITH: Yes.

11 MR. OLESKEY: Let me continue on.

12 BY MR. OLESKEY:

13 Q Mr. Lazarus, would you feel more comfortable with a
14 more general type of question and if so --

15 MR. DIGNAN: I object. I don't --

16 MR. TURK: I object, Your Honor. I don't feel that
17 the witness is uncomfortable.

18 MR. DIGNAN: I beseech the Board -- I beseech the
19 Board --

20 (Simultaneous conversation.)

21 JUDGE SMITH: Gentlemen, you are interfering with Mr.
22 Oleskey's cross-examination. He is trying his best, in my
23 view, to meet your concerns.

24 MR. DIGNAN: Well, then, I beseech the Board to put
25 the question which I have articulated three times and which I

1 understood the Chair to say the Chair wanted the answer to.

2 JUDGE SMITH: We want the answer to, but we don't
3 want you to manage Mr. Oleskey's cross-examination. He will
4 get the answer.

5 MR. DIGNAN: I'm not trying to manage. I'm just
6 objecting, Your Honor.

7 JUDGE SMITH: All right. Objection overruled. But,
8 however, you can raise the point if we don't make progress.

9 Now only one person can easily come up with a
10 organization that is going to lead to the answer and it is Mr.
11 Oleskey's position. He's up at the counsel table now.

12 MR. OLESKEY: Thank you, Judge.

13 JUDGE SMITH: If he does not develop it, it will be
14 developed.

15 BY MR. OLESKEY:

16 Q Let me try it in a more general sense, Mr. Lazarus.

17 Tell us, in your experience now covering almost three
18 years since the fall of '85, what you know about the
19 development of the position by the NRC, whether at the region
20 or with involvement or concurrence with headquarters in
21 Washington, that's going to be given to a regional RAC like
22 FEMA Region 1 as a position coming from the NRC.

23 Do you understand that question? It's a general
24 question that lets you be expansive and tell us what you
25 understand about that process.

1 A (Lazarus) The positions developed are developed by
2 a regional assistance committee representative to the RAC.
3 That person's position is his position based on his own
4 technical expertise. It does not represent, necessarily
5 represent the views of anyone else in the regional office.

6 Positions presented to the RAC are for the RAC
7 discussion and resolution. The idea being that the regional
8 assistance committee will develop the answers to the necessary
9 questions they need through the collegial process of the people
10 who are represented from the various agencies.

11 Q And that is, in your experience, always the way the
12 process works with respect to the development of a position by
13 the RAC that includes input from the NRC?

14 A (Lazarus) It has been my experience that that has
15 always been the case up to the point of the review of the
16 positions that NRC Region 1 RAC representatives submitted for
17 the July 30th regional assistance committee meeting.

18 Q Are you saying that the involvement of the NRC in
19 Washington in the review of Dr. Bores's RAC submittal of
20 February '87 was a unique event, in your experience with this
21 RAC process and --

22 MR. TURK: Objection.

23 MR. OLESKEY: May I please finish?

24 BY MR. OLESKEY:

25 Q And the NRC, Mr. Lazarus?

1 MR. TURK: Objection. The witness testified to the
2 submission for the July RAC meeting. Mr. Oleskey's question
3 referred to the February memorandum.

4 BY MR. OLESKEY:

5 Q Weren't you talking about the involvement of the
6 Washington headquarters in reviewing Dr. Bores's memo to the
7 RAC after it went in February, but before it was withdrawn and
8 filed again in June?

9 Wasn't that what you were talking about, sir?

10 MR. TURK: Judge --

11 MR. OLESKEY: Please, let him answer.

12 THE WITNESS: (Lazarus) What I was referring to was
13 the position that was submitted, the revised RAC position from
14 NRC Region 1 representative that was submitted for the July
15 30th RAC meeting.

16 BY MR. OLESKEY:

17 Q Well, it was actually submitted on June 4th, or
18 mailed on June 4th, correct?

19 A (Lazarus) Yes, I believe that's correct.

20 Q And you were copied on it, right?

21 A (Lazarus) Yes.

22 Q And what you're saying is that never before in your
23 experience in the region had Washington been involved in a
24 position that the regional RAC representative took with the
25 Region 1 RAC, whether for Seabrook or any other, correct?

1 A (Lazarus) Not unless that person decided that he
2 needed additional technical expertise or input to answer some
3 questions in his mind.

4 Q All right. But in terms of a position that had been
5 approved in Washington as distinguished from technical advice
6 given to the regional RAC representative, this is the only
7 instance you are familiar with; that is your testimony.

8 A (Lazarus) I'm not sure that this position was
9 approved in Washington as you indicated.

10 Q All right.

11 A (Lazarus) I believe that it was reviewed and
12 discussed in Washington with Dr. Bores.

13 Q All right. In any event, this is the only time that
14 the regional representative had his position paper gone over by
15 headquarters personnel in Washington, and then told to go ahead
16 and file it, in your experience; correct?

17 A (Lazarus) Yes, sir.

18 Q Now when that happened as of June 4, 1987, was it
19 your understanding that the NRC as an entity had then taken a
20 position on the adequacy of the New Hampshire plan to protect
21 the beach population?

22 A (Lazarus) No, sir, it was not.

23 Q That still did not represent an NRC position on the
24 adequacy of the plan on that issue; is that --

25 A (Lazarus) No, sir.

1 Q It did not.

2 A (Lazarus) I don't believe that it did, sir.

3 Q And I think you said earlier that you do not know to
4 this day if the agency has a position on the adequacy of the
5 plan for the beach population?

6 A (Lazarus) Yes, sir, I did indicate that.

7 Q All right.

8 A (Lazarus) Correction. You asked about the NRC
9 region taking a position on that, and that's the only knowledge
10 that I have, and that's what I was referring to.

11 Q Well, I'm asking you if the NRC, given this review in
12 Washington that took place some time last spring of Dr. Bores's
13 paper before it went back to the RAC on June 4th, to your
14 understanding now has taken a position that the plan is
15 adequate to protect the beach population.

16 MR. DIGNAN: I'm going to object. I'm not trying to
17 start a fight here. My problem is this.

18 Mr. Oleskey has now asked a ultimate question of
19 whether the NRC as an agency has taken a position that the plan
20 is adequate.

21 NRC cannot have a final position on the plan being
22 adequate until this Board speaks. I mean this is the problem
23 I'm having with this. If he wants to say NRC staff
24 headquarters or something, I'll be happy. But just saying the
25 NRC forgets that the ultimate decision lies in the first

1 instance with this Board and then on up an adjudicatory line.

2 JUDGE SMITH: Well, I understood it to be the portion
3 of the NRC that reports to the executive director of
4 operations.

5 MR. OLESKEY: I'm referring to the staff, gentlemen,
6 when I talk about the NRC.

7 BY MR. OLESKEY:

8 Q You understood that, didn't you, Mr. Lazarus?

9 MR. TURK: I'm sorry. Could I have the question
10 back?

11 JUDGE SMITH: Would you read the question?

12 (Whereupon, Mr. Olesky elected to withdraw the
13 pending question and asked the following question:)

14 (Continued on the next page.)

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1 BY MR. OLESKEY:

2 Q Is it your testimony that the NRC staff, even
3 today -- strike that. Do you know if the NRC staff, even
4 today, has a position with respect to the adequacy of the New
5 Hampshire plan to protect the beach population?

6 A (Lazarus) No, I do not know.

7 Q Okay. Now, I'd like to ask you some questions about
8 specific meetings that you went to, to try to understand the
9 evolution of FEMA's position as it played back against the
10 activities at NRC, Region 1 that you and Dr. Bores have
11 testified to.

12 Do you recall a Seabrook Emergency Planning Zone
13 Coordination Committee meeting in January of 1986?

14 A (Lazarus) No, I don't recall it specifically.

15 Q I'm going to show you an agenda for such a meeting
16 and see if it refreshes your recollection?

17 (Pause)

18 BY MR. OLESKEY:

19 Q I've put in front of you an agenda for a Seabrook EPZ
20 Coordination Committee meeting of January 21, '86, which has on
21 the right hand side a list that appears to be a list of people
22 who were there, that includes your name under NRC-Bill Lazarus;
23 does this document refresh your recollection about a meeting of
24 the Coordination Committee on January 21, '86? A time when you
25 were the RAC representative for NRC, Region 1?

1 A (Lazarus) Well, there were several such meetings, I
2 don't recall this specific meeting.

3 Q All right. Do you recall -- you don't recall the
4 agenda either?

5 A (Lazarus) No, sir, I don't.

6 Q Dr. Bores?

7 A (Bores) I was not there.

8 MR. OLESKEY: Okay. Let's mark that for
9 identification, Your Honor, since the witness can't --

10 THE WITNESS: (Bores) Since I didn't use the
11 microphone --

12 MR. OLESKEY: -- further identify it.

13 THE WITNESS: (Bores) -- let me just indicate to
14 make sure it's on the record, I was not there.

15 MR. OLESKEY: I think that would be Mass. AG Exhibit
16 22 for identification, Your Honor.

17 (The document referred to was
18 marked for identification as
19 Mass. AG Exhibit 22.)

20 BY MR. OLESKEY:

21 Q Mr. Lazarus, there is about a 14 month period from
22 December '85 to February '87 spanning the date from Mr.
23 Thomas's request of the RAC for assistance in developing the
24 beach population position to the date that Dr. Bores sent in
25 his first memo in the middle of February; correct?

1 A (Lazarus) That's correct.

2 Q And what Mr. Thomas had asked in this attachment to
3 the memorandum by Dr. Bores that's in -- that's Attachment 1 in
4 evidence, was for assistance from the RAC to give technical
5 assistance to the State of New Hampshire in planning; correct?

6 MR. TURK: Your Honor, may I -- I'd like to note one
7 thing, the Board may recall, as I'm sure Mr. Oleskey does, that
8 my direct examination yesterday was almost exclusively with Dr.
9 Bores except with respect to certain meetings which Mr.
10 Lazarus's memos indicates that he had attended.

11 This is not cross of anything that I've examined the
12 witness on, and I don't see that it relates to anything in the
13 documents, in Mr. Lazarus's memorandum of October 15th, 1987.
14 And I think it's -- if we're going to get a productive and
15 useful record the questions really should be directed to the
16 person who has -- who had been examined on direct with respect
17 to these matters.

18 MR. OLESKEY: Well, I don't want to waste time. As I
19 understood it, both witnesses were offered and both were asked
20 a series of questions. I'm trying to get through Mr. Lazarus
21 so he can go home, and I can focus on Dr. Bores. I did this at
22 Mr. Turk's request.

23 I'm very happy to start with Dr. Bores and go right
24 on through.

25 MR. TURK: That's not --

1 MR. OLESKEY: Mr. Lazarus can come back. But having
2 accommodated myself to repeated request to change the form of
3 examination --

4 JUDGE SMITH: That's not the point. The point is, do
5 you object to having the person best able to answer these
6 questions answering them?

7 MR. OLESKEY: I don't know whether that's the case
8 with respect to this line until I ask some more.

9 JUDGE SMITH: But -- you know, you're not -- this is
10 not a sequestered examination; try to get the best answer --

11 MR. OLESKEY: Correct.

12 JUDGE SMITH: -- the background answer. So, do you
13 object to having the best person -- putting the question to the
14 panel and the best person capable of answering it, answer it?

15 MR. OLESKEY: No, I don't. If it turns out to be Dr.
16 Bores, I think that I'll probably go by that and finish Lazarus
17 and come back and handle it in his examination.

18 JUDGE SMITH: Okay. Or you could just allow Dr.
19 Bores to answer then and there and save the time, you know, and
20 have --

21 MR. OLESKEY: All right. I just don't want to be
22 accused later of having held over Mr. Lazarus into Tuesday. I
23 was trying to get him through. But I understand what you're
24 saying.

25 THE WITNESS: (Lazarus) Are we clear to go ahead and

1 address the question, Your Honor?

2 JUDGE SMITH: Yes.

3 THE WITNESS: (Lazarus) I -- as I understand your
4 interrogatory regards the delay, the 14 month delay in
5 responding to the December 31st, 1985 memorandum?

6 BY MR. OLESKEY:

7 Q The question was, I believe it was actually the
8 pending question, you understood that Mr. Thomas had asked RAC
9 members to provide assistance in the beach population which
10 could be used to give technical advice to the State of New
11 Hampshire; is that fair to say?

12 A (Lazarus) I'm sorry, is this in reference to the
13 December 31st memorandum?

14 Q Yes.

15 A (Lazarus) No. My understanding of that memorandum
16 was -- well, let me take a second and review it --

17 MR. OLESKEY: Judge, I should have said one more
18 thing in our colloquy, this is the period when Mr. Lazarus is
19 the RAC representative through June of '86, so I think in fact
20 he is the most appropriate person to be asked about meetings of
21 the RAC and the development of the position by the NRC at the
22 Region to the RAC. But after June he goes out and he isn't. I
23 should have made that clear, I'm sorry.

24 THE WITNESS: (Lazarus) Yes, I believe that's an
25 accurate characterization, for technical assistance to the

1 State in the development of their plans.

2 BY MR. OLESKEY:

3 Q All right. So that as the RAC representative in
4 December of '85 for the NRC, this request from Ed Thomas came
5 to you to be dealt with by the NRC, Region 1; correct?

6 A (Lazarus) Yes, sir.

7 Q What did you do beginning in January '86 faced with
8 Mr. Thomas's and FEMA's request for technical assistance from
9 FEMA to the RAC for New Hampshire on the beach population
10 issue?

11 A (Lazarus) In this -- not specifically in this
12 memorandum, but in separate discussions from Mr. Thomas, he was
13 indicating that he would like, if possible, an NRC position on
14 the beach population issue.

15 Q And you understood by that statement, an NRC
16 position, what, sir?

17 A (Lazarus) Beyond the person's position who
18 represented the Regional Assistance Committee.

19 Q He wanted that which the NRC finally gave in June of
20 '87?

21 MR. TURK: Objection, Your Honor.

22 BY MR. OLESKEY:

23 Q -- is that -- is that what you're saying --

24 MR. TURK: Objection.

25

1 BY MR. OLESKEY:

2 Q -- just understands your answer, he wanted the kind
3 of thing that happened in June of '87?

4 MR. TURK: Objection. I don't -- Your Honor --

5 JUDGE SMITH: Don't answer.

6 Go ahead with your objection.

7 MR. TURK: The objection goes to the witness's
8 understanding of what that June document represented, and also,
9 as to whether that was something in Mr. Thomas's mind as to
10 what Mr. Thomas was looking for. I don't think we have proper
11 foundation.

12 MR. OLESKEY: Well, he was dealing with Thomas. He
13 had to act on what Thomas was asking him for. He used the term
14 "NRC position." I'm trying to understand what that was. And I
15 went to June '87 which is the only thing that he's testified
16 to, as I've understood it, that constitutes some kind of NRC
17 position, and asked if that was in effect what he understood
18 Thomas was asking for. I don't think that's very argumentative
19 or confusing.

20 MR. DIGNAN: I think, Your Honor --

21 MR. TURK: I think what we generally get is Mr.
22 Oleskey's characterization of the June paper as an NRC
23 position.

24 JUDGE SMITH: Well, that's what I thought you were
25 going to object to, but it didn't come out.

1 MR. TURK: No.

2 JUDGE SMITH: And so that's why I got confused.

3 MR. DIGNAN: That's what I'm objecting to.

4 JUDGE SMITH: So you don't, therefore, you agree or
5 disagree with the characterization of that June "paper" as an
6 NRC position?

7 THE WITNESS: (Lazarus) No, sir, I do not agree with
8 that characterization as an NRC position.

9 BY MR. OLESKEY:

10 Q Well, it was a document that went to the RAC from Dr.
11 Bores that had been reviewed extensively at the Region;
12 correct?

13 A (Lazarus) I'm sorry.

14 Q It had been reviewed extensively at the -- at NRC,
15 Region 1; correct?

16 A (Lazarus) We're to the June --

17 Q Yes.

18 A (Lazarus) May I let Dr. Bores address that?

19 Q All right.

20 JUDGE SMITH: It's his memo.

21 THE WITNESS: (Bores) I'm not sure I'd characterize
22 the review at the Region as being extensive.

23 BY MR. OLESKEY:

24 Q Well, would it be fair to say that everybody at the
25 Region who was in the chain of command to look at a document

1 that had become controversial and important looked at it, that
2 is, your supervisors?

3 A (Bores) My supervisors had certainly looked at it.

4 Q And said, go ahead, Bob, file it in substance; isn't
5 that right?

6 A (Bores) Let me say that, beyond the Region -- the
7 whole reason we got back into reviewing this was, as I had
8 indicated yesterday, the staff in headquarters was developing
9 responses to contentions. And in that favor, they wanted to
10 see what my input had been to the RAC, so that their responses
11 to contentions, if they agreed with my input, could parallel,
12 you know, my --

13 Q Sure.

14 A (Bores) -- my response. And so that it was not
15 necessarily a regional position. It was brought, you know, to
16 the staff at headquarters to take a look, and it was from that
17 basis that it had received, you know, the intensive review, not
18 necessarily from the Region.

19 Q The people in Washington who had to litigate this
20 case wanted to make sure that you weren't telling the RAC
21 something that was radically different from what they were
22 going to litigate --

23 MR. TURK: Objection.

24 BY MR. OLESKEY:

25 Q -- that was your understanding?

1 MR. TURK: Objection.

2 BY MR. OLESKEY:

3 Q Correct?

4 MR. OLESKEY: That's all.

5 JUDGE SMITH: Overruled.

6 THE WITNESS: (Bores) It's my understanding that the
7 staff wanted to develop the consistent position.

8 MR. OLESKEY: Sure.

9 THE WITNESS: (Bores) Correct.

10 BY MR. OLESKEY:

11 Q Very reasonable thing for an agency to do, isn't it?

12 A responsible thing, too?

13 A (Bores) Absolutely.

14 Q All right. And so, after the revision of your
15 memorandum which went on in April or May had been looked at in
16 the region by your superiors and by people in Washington
17 including the Office of General Counsel, you were told to go
18 ahead and file it; isn't that right?

19 A (Bores) Yes.

20 Q All right.

21 Now, Mr. Lazarus, the pending question to you before
22 the diversion was, when Mr. Thomas asked you, back in December
23 or January '85-'86 as the RAC representative for the NRC, to
24 give him an NRC position, what did you -- on the beach
25 population, what did you understand he meant?

1 A (Lazarus) That he wanted more than the RAC
2 representative's position on the issue.

3 Q Did you have a discussion with him about what it
4 would take from the NRC, going to the RAC and thus to FEMA, to
5 satisfy Mr. Thomas and his agency for what you're calling an
6 NRC position?

7 A (Lazarus) I'm sorry, I don't understand the
8 question.

9 Q Did you understand what it was, how many hoops had to
10 be jumped in the NRC, how many approvals had to be gotten, what
11 kind of concurrence there had to be for FEMA to be satisfied
12 that they had an NRC staff position?

13 A (Lazarus) No, I didn't understand what would have to
14 be done to do that, at the time.

15 Q But you knew he was asking for it?

16 A (Lazarus) Yes, I did.

17 Q And you were the RAC representative?

18 A (Lazarus) Yes.

19 Q So it was important for you to understand to
20 discharge your duties, what it was that Thomas, at the sister
21 agency, needed to have this RAC process go forward; right?

22 A (Lazarus) Yes.

23 Q So did you ask him what he meant?

24 A (Lazarus) I understood what he meant.

25 Q Well, what was it?

1 MR. TURK: Your Honor --

2 THE WITNESS: (Lazarus) He wanted an NRC position.

3 MR. TURK: -- we've had that twice already. Asked
4 and answered, argumentative.

5 MR. OLESKEY: No, we haven't had the answer to this
6 question.

7 MR. TURK: Twice.

8 JUDGE SMITH: Well, if he did it escaped me. So --

9 MR. TURK: Mr. Oleskey doesn't need to go on the
10 offensive with these witnesses. He can ask his question and
11 get his answer.

12 JUDGE SMITH: He's not being on the offensive. I
13 don't see it that way. As far as I can see, we still have
14 unresolved, if there was an understanding of what Mr. Thomas
15 wanted by way of NRC dependability, I think is what was the
16 objective. Mr. Thomas was apparently trying to get an NRC
17 position, is the best way to state it, that would be dependable
18 be it by the RAC member or whatever.

19 I think if it's important, and I don't know why it's
20 important, but if it is important and no one is disputing that;
21 then the questions are very logical.

22 I'm learning something here, too, about how the NRC
23 moves into these matters.

24 MR. OLESKEY: I'd be happy to ask that question,
25 Judge.

1 BY MR. OLESKEY:

2 Q Can you tell us how you responded to this request
3 from Mr. Thomas for the RAC and his agency for an NRC position
4 on the beach population?

5 A (Lazarus) Yes. I indicated that I would contact
6 those responsible in my region and at NRC headquarters to
7 discuss the issue with them.

8 Q And did you have any further discussion with him, at
9 that time or ever, about what he meant by an NRC position?

10 A (Lazarus) No, sir, I don't believe I did.

11 Q Did you discuss this with your superiors in the
12 region?

13 A (Lazarus) Yes.

14 Q With whom?

15 A (Lazarus) I'm sure at least with Dr. Bellamy and
16 possibly Tim Martin at the same time or around that time.

17 Q Well, in January of '86 Mr. Harpster was there, so he
18 would have been --

19 A (Lazarus) Yes.

20 Q -- your immediate superior?

21 A (Lazarus) Yes.

22 Q So you would have discussed it with those people?

23 A (Lazarus) Yes, sir.

24 Q And out of that discussion were you given any
25 instructions or advice about what to tell Mr. Thomas and the

1 RAC about what the NRC would do to develop a position for the
2 RAC in order that New Hampshire would have technical advice on
3 the beach population protection?

4 A (Lazarus) No, sir, I don't recall any specific
5 guidance. The principal guidance that I received came from our
6 headquarters's contacts.

7 Q All right. What guidance did your headquarters's
8 contacts give you in connection with carrying out this
9 responsibility as the RAC representative for the NRC?

10 A (Lazarus) The -- I don't recall the specific words
11 or guidance, but the bottom line was that they wished it to be
12 developed through the RAC and not as an NRC position.

13 Q When was this, approximately, if --

14 A (Bores) Can I have just a moment, please?

15 Q Yes, please.

16 (Witnesses conferring)

17 THE WITNESS: (Lazarus) It was just -- we're
18 speaking just in amplification of what I explained as I was
19 attempting to get at that time an NRC position, either to FEMA,
20 Region 1 or from NRC headquarters to FEMA headquarters on the
21 issue. There was a resistance at our headquarters to do that,
22 and their position was that it should go through the RAC
23 representative to the RAC and be worked out at that point,
24 which is eventually what transpired at the end of that 14 month
25 period.

1 BY MR. OLESKEY:

2 Q This is in January or so of '87?

3 A (Lazarus) Yes, sir.

4 Q Of '86, excuse me.

5 A (Lazarus) It would have been in that quarter of the
6 year, January, February, March time frame that these
7 discussions took place.

8 Q All right. So you were trying to get either a
9 regional position to give the RAC or a position that Washington
10 approved?

11 A (Lazarus) Yes, sir.

12 Q And Washington told you that, for whatever reason,
13 neither a regional or a Washington position would be given to
14 the RAC, only the position of the RAC representative?

15 A (Lazarus) Yes, sir. They were explaining that that
16 was the appropriate method to resolve the issues.

17 Q All right.

18 JUDGE SMITH: Let me interpose here. Was it also
19 your understanding that the position of the RAC representative
20 should express -- should be within the bounds of established
21 NRC policy?

22 THE WITNESS: (Lazarus) Principally through the --
23 yes, Your Honor, through the planning guidance published in
24 NUREG-0654.

25 (Witnesses conferring)

1 BY MR. OLESKEY:

2 Q Dr. Bores, I -- you know, I think it might speed it
3 up if you would make the clarifications you want directly
4 instead of giving them to Mr. Lazarus and him giving them to
5 me, I'd be happy to have you do that.

6 A (Bores) What I was just relating to Mr. Lazarus is
7 that, I believe if an NRC position had been obtained it would
8 not have been fed back through the RAC, as you had indicated,
9 but would have been given directly to Mr. Thomas.

10 Q All right.

11 A (Bores) As input to Mr. Thomas rather than as a RAC
12 input. The NRC does not develop, to my knowledge, a position
13 to feed back through the NRC RAC representative to RAC.

14 Q Now, who was it in Washington who told you to handle
15 it in this fashion as the RAC representative there in early
16 1986, Mr. Lazarus?

17 A (Lazarus) Most of my contacts would have been with
18 Mr. Paul Kantor and Mr. Dave Matthews.

19 Q The legal people weren't involved at this point?

20 A (Lazarus) No, sir.

21 Q The lawyers. Okay.

22 Did you go back and tell Mr. Thomas what you had been
23 told by headquarters?

24 A (Lazarus) Yes, sir; I did.

25 Q About when was that?

1 A (Lazarus) It would have been some time in the
2 spring of 1986.

3 Q Okay. What did -- was that at a RAC meeting that you
4 told him that?

5 A (Lazarus) I don't recall, sir.

6 Q Okay. What did he say, if anything, when you told
7 him what the response was to the request for an NRC position?

8 A (Lazarus) He still indicated that he needed some
9 sort of guidance from the NRC, that he thought the guidance
10 that he had was insufficient.

11 Q All right. And what did you do as a result of that
12 further conversation?

13 A (Lazarus) At that point I don't recall doing
14 anything further. We --

15 Q Well, what is it now, April, May of '86?

16 A (Lazarus) Yes, sir, I guess that's the approximate
17 date.

18 Q All right. And the plan review process is going on,
19 New Hampshire is sitting there wanting technical advice from
20 the RAC as you understood it; correct?

21 A (Lazarus) Yes, sir. There were other things going
22 on that had stopped or slowed down this, because during that
23 period of time we also had the full-scale Seabrook exercise and
24 the onsite appraisal issues were being pursued. So I don't
25 recall any series of meetings at that time that were being held

1 to further review of the plans.

2 Q No series of RAC meetings?

3 A (Lazarus) Yes, sir.

4 Q But you understood that there was this continuing
5 request that Mr. Thomas was making to the NRC through you as
6 the RAC representative, please give us some technical advice
7 that we can use in the RAC to tell New Hampshire how to improve
8 the plan to protect the beach population?

9 MR. TURK: Objection to the characterization. I
10 don't hear that it's continuing -- we had indication of one
11 conversation with Mr. Thomas, I don't think that establishes a
12 continuing repeated line of requests.

13 MR. OLESKEY: There's the memo on December 31; then
14 there are the conversations in early '86; and now there's a
15 conversation April or May, that's three, to me that's a
16 continuing request.

17 JUDGE SMITH: Well, we don't need anymore
18 clarification, I'm sure the witnesses won't be confused.

19 THE WITNESS: (Lazarus) Sir, could you repeat the
20 question.

21 BY MR. OLESKEY:

22 Q Yes. You understood that there was still an
23 outstanding request from the RAC chairman to the NRC for
24 technical advice that would ultimately flow through New
25 Hampshire, that would help it improve the plan in respect to

1 the beach population?

2 MR. TURK: Objection. So far we know about Mr.
3 Thomas's request. We don't know that the State of New
4 Hampshire had a similar request or that this request of Mr.
5 Thomas's was prompted by New Hampshire.

6 JUDGE SMITH: I thought we knew that.

7 MR. TURK: I don't, Your Honor.

8 JUDGE SMITH: I thought I heard that there was before
9 the RAC a request for technical assistance on it.

10 MR. TURK: It hasn't been established that this was
11 the issue with respect to which New Hampshire had asked for
12 technical assistance.

13 MR. OLESKEY: Mr. Lazarus --

14 MR. TURK: That's --

15 JUDGE SMITH: Okay.

16 BY MR. OLESKEY:

17 Q Mr. Lazarus, didn't you and I agree, after I referred
18 you to Attachment 1 here which is Mr. Thomas's December 31, '85
19 memo, that what was going on before and after that point in the
20 RAC was an effort to develop technical assistance and advice
21 for New Hampshire through the RAC on the issue of protecting
22 the beach population at Seabrook?

23 A (Lazarus) If I may read a sentence from the memo I
24 think it will help to clarify it. In the second paragraph on
25 the first page -- is there a global -- I don't have the

1 global --

2 Q Six.

3 A (Lazarus) -- it's -- sentence one, first page.

4 MR. TURK: Global 6.

5 THE WITNESS: (Lazarus) Global page 6. "At the
6 earliest possible time in the RAC review process I proposed
7 that we focus in on the beach population to determine if
8 special technical assistance from the RAC may be needed to
9 assist state and local government refine their plans to protect
10 this group."

11 So it's a request to determine whether or not
12 technical assistance is needed.

13 BY MR. OLESKEY:

14 Q All right. And you knew New Hampshire was in a
15 process, that's still continuing to this day, of revising the
16 New Hampshire RERP?

17 A (Lazarus) Yes, sir.

18 Q And the RAC in its technical assistance phase, and
19 its issue identification work is part of that process that has
20 to do with an evolving plan; correct?

21 A (Lazarus) Yes, sir.

22 Q All right. So you knew -- strike that. And you
23 knew, as it has been testified on direct, that Mr. Thomas and
24 FEMA didn't have specialized technical expertise about nuclear
25 powerplants, or releases following accidents, or risk

1 probabilities; correct?

2 A (Lazarus) That's correct.

3 Q So you understood that there were technical issues
4 having to do with the operation of a nuclear plant as it might
5 affect the beach population at Seabrook, which the RAC was
6 being asked to deal with from December 31, '85 on; correct?

7 A (Lazarus) I'm sorry.

8 (Witnesses conferring)

9 BY MR. OLESKEY:

10 Q Mr. Bores, I'd rather have it on the record because
11 it's faster and --

12 A (Lazarus) We're --

13 Q -- you're --

14 A (Lazarus) -- we're just trying to clarify what
15 your -- just please repeat the question.

16 Q Sure.

17 MR. OLESKEY: It's 12:00, my ability to remember what
18 I just said is flagging.

19 Can we have lunch now?

20 JUDGE SMITH: All right. Return at 1:00.

et/73

21 (Whereupon, at 11:59 a.m. the hearing was recessed to
22 reconvene at 1:00 p.m. this same day, Friday, May 20, 1988, at
23 the same place.)

24

25

T/74

1

A F T E R N O O N S E S S I O N

2

(1:04 p.m.)

3

Whereupon,

4

ROBERT BORES

5

WILLIAM LAZARUS

6

having been previously duly sworn, resumed the witness stand

7

herein, and was examined and further testified as follows:

8

JUDGE SMITH: During lunch the Board pondered the

9

possibility of not proposing as much as suggesting to the

10

parties that a small factual issue could be taken out of the

11

litigations; and I wondered if a stipulation might be in order.

12

I didn't have your cross-examination plan, and I have

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more doubts about whether it can be done now, but I going to

14

suggest it anyway.

15

One is, it's the issue -- the subissue is to what

16

extent is Mr. Thomas's perception called into doubt by the

17

issue of the NRC's position on the containment features. And I

18

think there is a possibility that that can be just cut out as

19

an issue with a stipulation to the order that, given the

20

spectrum of technical expertise involved, all the way from NRC

21

staff to, as Mr. Thomas says he has none on it, and the

22

philosophy of NRC regulations.

23

That it might be that a stipulation to the effect

24

that reasonable persons could differ, and that no inferences

25

can be drawn one way or the other as to Mr. Thomas's or this

1 panel's credibility on those points.

2 But if it's not going to take long to go through it,
3 it probably might be faster and easier just to litigate it
4 rather than to worry about a stipulation. But I just don't see
5 it leading any place.

6 MR. FLYNN: Your Honor, I think you had suggested
7 that there was another item that you were going to suggest and
8 consider or was it just the one?

9 JUDGE SMITH: Just the one.

10 MR. TURK: Your Honor, I have two problems with that.
11 And I recall testimony from Dr. Bores that there were two
12 conversations: one before he submitted his February memo, which
13 he indicated that he was developing something with the NRC
14 staff -- I don't recall the exact words, he's characterized it
15 to me properly as they could cut it off, chop it off, something
16 like that. And that was before the February memo was
17 submitted.

18 And then again in May when he indicated to Mr. Thomas
19 that, their discussions with headquarters and they had problems
20 with certain portions and they were leaning -- headquarters was
21 leaning towards recommending that the containment, and the
22 plant-specific features be taken out.

23 I think, to me it's clear that, during that period, I
24 believe on the first occasion and certainly on the second
25 occasion it should have reasonably been clear to Mr. Thomas

1 that the position was that expressed by NRC RAC representative
2 and not of the NRC staff. And I don't think I can stipulate to
3 something different.

4 JUDGE SMITH: I'm not asking you to stipulate to
5 anything different. I'm asking -- we're not asking anything
6 either. We're wondering if it might be stated that no
7 inferences can be drawn as to the credibility of witnesses from
8 the subfactual issue.

9 Mr. Dignan?

10 MR. DIGNAN: If I heard correctly the definition of
11 how far that stipulation reaches, maybe yes. But just let me
12 convey to the Board my concern.

13 I don't think the credibility issue is whether or not
14 Mr. Thomas, quote, "understood" the NRC's position,
15 technically. The credibility question, as I see it, arises
16 from his testimony, which the record speaks for itself, in
17 which he took the basic position on voir dire that when the NRC
18 pulled the so-called containment material, this required a
19 change in the position, and that he, in essence, had relied
20 upon that and understood it to be critical to the NRC's
21 position.

22 The Bores memorandum makes clear, to me at least,
23 that Dr. Bores had explained way back on the 15th of April that
24 that material was not critical to the NRC position.

25 So to the extent that Mr. Thomas has, if he has, I

1 believe he has, testified that he had no idea that the
2 containment wasn't a critical component of NRC's reasonable
3 assurance belief, I think his credibility is in question.

4 In other words, I'm drawing a distinction between --

5 JUDGE SMITH: See, I think we're -- I don't think a
6 stipulation is going to be possible. It --

7 MR. DIGNAN: Well, before you -- if the Board can
8 follow my distinction, if what I'm being asked to stipulate to
9 is that there is no credibility inference to be drawn on Mr.
10 Thomas or anybody else, that they did not understand the
11 technical ramifications of the NRC position, I certainly am
12 glad to stipulate to that.

13 What I couldn't --

14 JUDGE SMITH: No, I mean the regulatory implications.

15 MR. DIGNAN: The regulatory implications?

16 JUDGE SMITH: And the implications to NUREG-0654. I
17 just --

18 MR. DIGNAN: To the regulatory -- yes. As Your Honor
19 says that, I could probably stipulate to that. My problem with
20 Mr. Thomas's testimony is very simple, as I heard and read his
21 testimony he was saying to me under oath, I had no appreciation
22 as of June 4th, in essence, that the containment wasn't
23 critical to the NRC's position. And Bores has said in a
24 memorandum, that on April 15th Thomas said, the containment is
25 part of this position; and Bores said, no, it is not. And

1 that's the credibility question here, not whether he understood
2 regulatory implications or whether he understood technical
3 implications.

4 And as long as I'm not being asked to stipulate that
5 credibility question away, I'll stipulate that any reasonable
6 person could have doubts as to what the regs and the technical
7 aspects are.

8 JUDGE SMITH: Credibility in, even a narrower sense
9 and that is, credibility as a matter of candor.

10 MR. DIGNAN: That's right, Your Honor.

11 JUDGE SMITH: All right. See, our concern was, we'd
12 spend more time arguing, and then, in trying to arrive at a
13 stipulation than a full record on it might be easier.

14 MR. FLYNN: Your Honor, I don't want to give up on it
15 yet.

16 JUDGE SMITH: Well, see, we almost didn't suggest it
17 because we thought we'd run it off on a side argument. I don't
18 want to say tangent, it's not that.

19 MR. OLESKEY: Your Honor --

20 MR. DIGNAN: Here's the point, Your Honor -- excuse
21 me, I'm sorry, Mr. Oleskey, go ahead, I apologize.

22 MR. OLESKEY: I don't think the issue is that,
23 ultimately is important as whether the NRC thought that the
24 containment was critical to its reasonable assurance, ultimate
25 finding, it is whether FEMA --

1 JUDGE SMITH: Yes.

2 MR. OLESKEY: -- reason to believe -- reasonably
3 believed it was to FEMA's finding. And Thomas is saying that
4 in his judgment it was; and apparently, my colleagues are
5 saying, they don't think that he understood it correctly
6 because the NRC didn't see it that way.

7 MR. DIGNAN: That's --

8 MR. OLESKEY: Well, I don't view the credibility
9 issue then quite the way they do.

10 MR. DIGNAN: Well, that's the point. But what -- my
11 position of credibility is fairly summed up in a motion I filed
12 with the Board and I said it this way: FEMA's lead witness
13 described the, quote, "withdrawn," unquote, information as
14 being information, quote, "which we," and I think it's fair to
15 say that refers to RAC, "which we had relied upon very, very
16 heavily," unquote, TRR-11-3114, in reaching the previous and
17 favorable to Applicants's position in the beach shelter issue.

18 He further described it as, quote, "A chunk that we
19 had used to reach a collegial result in the RAC," unquote, that
20 was at 3115.

21 Then he went on and I go on to say, he described that
22 information as, in essence, the containment visit.

23 And my point is that the Bores memo reveals that in
24 April 15th, according to Dr. Bores, he fully explained to the
25 entire RAC the containment was not critical to the NRC

1 position. And as I read the Bores memo when the RAC voted on
2 April 15th it did not believe it was critical. And that's the
3 candor question, right there.

4 JUDGE SMITH: Okay.

5 MS. WEISS: That's the 10/15 memo you're referring
6 to?

7 MR. DIGNAN: I'm sorry?

8 MS. WEISS: The October 15th memo? When you say,
9 Bores memo, you mean the October 15th memo?

10 MR. DIGNAN: The October 15th memo.

11 MR. OLESKEY: I don't want to argue this all now
12 because it's going to some of my cross-examination which if
13 we're not going to resolve --

14 JUDGE SMITH: Okay. Well, see, let me assure the
15 parties that we will also disregard the arguments that have
16 been made, so we don't need any last shot at it. If you really
17 want to be heard -- I just see it as not feasible to work out a
18 stipulation.

19 MR. FLYNN: I don't want to offer any comment, I just
20 perceive that we may be close to an agreement. I think that
21 Mr. Dignan's suggestion.

22 MR. DIGNAN: We're not going to make it. We're not
23 going to make it in good faith, I think. We're not going to
24 make it, and I think Mr. Oleskey will agree with me on this and
25 so will my opposition, when you try to stipulate around a

1 candor question it gets very difficult, Your Honor, because
2 everybody is trying to protect their position. I really think
3 we'll go faster if Mr. Oleskey proceeds on what he wants to do.

4 JUDGE SMITH: I was only suggesting that no
5 inferences be drawn, that's all, but let's move on, it's not
6 feasible.

7 MR. OLESKEY: While we're on this topic I'd like to
8 suggest the possibility of a different kind of stipulation, but
9 also on candor. It's a followup to what Joe Flynn raised
10 yesterday afternoon at 5:00.

11 I think that we should consider the possibility of,
12 in essence, stipulating out whether or not there was a vote on
13 July 30th as a candor question affecting Thomas. Because
14 otherwise I'm in a position, and I believe my colleagues among
15 the Intervenors are, we're going to ask you either for limited
16 discovery of the RAC members and the other FEMA members at the
17 July 30 meeting or to bring them in here, because we believe
18 from what Mr. Flynn has represented, from what Mr. Thomas
19 previously testified that, at best, from the NRC, Applicant,
20 position there was confusion about what happened, and at worse
21 from their side, there was no vote as anybody would understand
22 it. I think that's beginning to come out here, too, in the
23 careful testimony of these gentlemen.

24 I think we should take that severable, discrete issue
25 out and not let anybody draw any inferences against any witness

1 as to whether or not there was a vote.

2 MR. TURK: Your Honor --

3 MR. OLESKEY: You've got all the testimony about
4 disagreements and discussions --

5 MR. DIGNAN: I've got two for stipulation, and you'll
6 never get it out of me, Mr. Oleskey, so draw your subpoenas.

7 MR. TURK: I can do one thing, I can stipulate there
8 was no vote, but I do not include in that there was not polling
9 or show of hands requested and obtained. I'm ready to say that
10 there was no formal vote, but I won't go further.

11 JUDGE SMITH: Well, I don't think that would satisfy.

12 MR. OLESKEY: Not unless they're going to tell me
13 that they're not going to ask for any findings that flow from
14 the distinction between whatever it was, poll or vote, that
15 these gentlemen believe --

16 MR. DIGNAN: It is, so there can be no mistake on
17 this, Mr. Oleskey, it is my position that Mr. Thomas stated
18 there was no show of hands. It is this witness's -- these
19 witnesses's testimony under oath there was a show of hands.

20 JUDGE SMITH: We're not going to get to that.

21 MR. DIGNAN: And I intend to make all use I can out
22 of that distinction.

23 JUDGE SMITH: All right. One last shot, we have to
24 continually remind ourselves or try to remind ourselves why
25 we're hearing this. You know, what -- how is it going to plug

1 in to the final conclusions of an initial decision. We have to
2 keep coming back to that, because it tends to escape us.

3 Is there any possibility that the entire issue can
4 just be dropped? As I see it now, we stated before that it is
5 not going to be very likely that the intervenors can come out
6 of the RAC/FEMA Thomas situation with a rebuttable presumption.

7 What your goal now is to shoot down any rebuttable
8 presumption favoring the Applicant. Maybe you're willing to
9 accept better now that the only value that there may be to the
10 controversy we have now is, does it tend to undermine the
11 present FEMA position. Other than that, we have to be reminded
12 again how this is going to fit into our decision.

13 MR. OLESKEY: I think that's a good analysis, and
14 there's one other point I would make and that's this, I believe
15 that when we conclude this examination, I don't mean these
16 gentlemen, but the bundle of examination we're contemplating
17 here, you will also justifiably place less credence in the
18 NRC's position here, what its witnesses have said, especially
19 the legal -- the legal conclusions it's arguing for because of
20 what you understand about the interrelated process at these two
21 agencies.

22 JUDGE SMITH: Let's assume for argument that that's
23 true, without suggesting that we believe that's true, but let's
24 assume for argument that's true, where do we go from there?
25 What do we do with that?

1 MR. OLESKEY: I think you're going to make -- you
2 would make findings that would tend to discount whatever it is
3 that Mr. Turk ultimately asks you --

4 JUDGE SMITH: In his proposed findings?

5 MR. OLESKEY: In his proposed findings.

6 MR. TURK: Based on --

7 JUDGE SMITH: Mr. Turk will be making proposed
8 findings solely -- well, we will only consider his proposed
9 findings based solely upon the evidentiary record.

10 MR. OLESKEY: I understand that. And I'm saying that
11 the evidentiary record is going to show, I believe, that the
12 NRC has not conducted itself throughout, at least in this
13 period we're now discussing, but '85 on the way we want an
14 administrative agency to conduct itself.

15 JUDGE SMITH: Assume that that's the case, what are
16 we going to do with it? And what am I going to do with it in a
17 decision?

18 MR. OLESKEY: You're going to make findings to that
19 effect, and you're going to look at the evidence that has been
20 presented by all the parties in light of how that evidence was
21 developed on the way it got here. I think you --

22 JUDGE SMITH: I know, but --

23 MR. OLESKEY: -- will weigh it differently.

24 JUDGE SMITH: Will you please -- this is the thing
25 that I was trying to get Ms. Weiss to do, too, and I've never

1 been able to follow all the way to the very end, what -- where
2 do we come out at the bottom line that, yes or no, the -- as to
3 the sheltering issue there is reasonable assurance. How do we
4 factor NRC's ineptness or dereliction of duty or whatever it
5 is, if that be the case, how do we factor that in?

6 MR. OLESKEY: I would say, if you conclude that they
7 didn't arrive at a well reasoned and sound position that stands
8 on its own two feet on the merits, when you've looked at it on
9 the merits and as it was developed, then you would reject the
10 position.

11 JUDGE SMITH: Their position?

12 MR. OLESKEY: Yes.

13 JUDGE SMITH: They don't have any; that's the
14 problem.

15 MR. DIGNAN: That's the point. You're either going
16 to beat --

17 JUDGE SMITH: Maybe you can stipulate that.

18 MS. WEISS: I think, if I may, beyond that, our
19 position is that FEMA and the NRC at this time are essentially
20 standing together.

21 JUDGE SMITH: All right.

22 MS. WEISS: That FEMA has become a mouthpiece for the
23 NRC. That's what --

24 JUDGE SMITH: You just give me any kind of factual
25 situation that you can reasonably or unreasonably infer from

1 the evidence and please tell us how we can use it in the
2 ultimate decision we have to make?

3 MS. WEISS: Let me just run through what I see. The
4 position of the Intervenors on the merits of this case is, if
5 not precisely very close to what FEMA's position was in June
6 and September, that's the position that our witnesses have
7 taken.

8 And we also intend to subpoena Mr. Thomas, and
9 through Mr. Thomas to additionally develop that that was a
10 reasonable position.

11 JUDGE SMITH: Okay.

12 MS. WEISS: Now, on the other side we have the
13 current FEMA/NRC position. I don't think there's any -- I
14 think they're one and the same. I don't think FEMA has anymore
15 independence, and I think that when you hear the testimony of
16 FEMA they're going to corroborate that.

17 JUDGE SMITH: Okay. And then let's say that you just
18 trounce them and you destroy anything that any element of
19 belief from the FEMA's regulatory rebuttable presumption.

20 MS. WEISS: Then I think we're entitled to win the
21 case on the merits.

22 (Simultaneous conversation)

23 MS. WEISS: Wait a minute, can I finish please.

24 MR. DIGNAN: You're forgetting, I put testimony on,
25 Ms. Weiss.

1 MS. WEISS: Please -- can I finish, please.
2 MR. TURK: As long as we're talking about --
3 MS. WEISS: Can I finish, please.
4 JUDGE SMITH: Let her finish.
5 MR. DIGNAN: No.
6 MS. WEISS: There are two issues --
7 (Laughter)
8 MS. WEISS: Thank you. You said, yes?
9 MR. DIGNAN: No.
10 MS. WEISS: Oh, you said, yes.
11 MR. DIGNAN: You're asking me.
12 MS. WEISS: One is the merits; and two, which can't
13 be separated is credibility. It can't be separated from the
14 merits.
15 Now, we're going to --
16 JUDGE SMITH: But please give me your best case and
17 then let me plug it into the, why.
18 MR. OLESKEY: The best case I think would be that you
19 discredit the evidence from the two agencies because of the way
20 it was developed.
21 JUDGE SMITH: All right.
22 MR. OLESKEY: And the evidence that's left is the
23 Applicants's evidence and our's.
24 JUDGE SMITH: Right. Exactly. And we decide --
25 MR. OLESKEY: That's right. We're willing to have -

1 MR. BACKUS: Wait a minute. There's one other thing
2 we think is very important that has not been addressed and that
3 is, we think we are entitled to a FEMA position in this
4 proceeding.

5 JUDGE SMITH: A FEMA rebuttable presumption.

6 MR. BACKUS: Yes. It can go as part of this
7 proceeding. But one of the issues here --

8 JUDGE SMITH: If you insist upon that argument, then
9 there will never be any possibility of a stipulation. I was
10 assuming that the state of the record as now, you would be
11 willing to forsake for the Intervenors a FEMA rebuttable
12 presumption, but use the reasonableness of their first
13 presumption to shoot down the present presumption.

14 MR. BACKUS: But for SAPL I'll say, that doesn't do
15 it. We think, as part of the citizens FEMA is supposed to
16 represent here, we are entitled to have them present in this
17 proceeding findings and determinations arrived at properly with
18 consideration of proper factors, which will be a subject we'll
19 all be addressing.

20 JUDGE SMITH: Let's say that you're correct --

21 MR. BACKUS: And we think that we don't have that
22 now.

23 JUDGE SMITH: And let's say that you're correct, do
24 you think that you can revive the previous position and elevate
25 it to that stature, so that it survives a rebuttable -- any

1 attack on any evidentiary attack?

2 MR. BACKUS: I think that is something we are
3 entitled to try and do.

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1 MR. TURK: Are you asking for a stipulation?

2 MS. WEISS: No.

3 MR. BACKUS: No, of course not.

4 MR. OLESKEY: The Board was trying to have us all
5 articulate where we're heading I think which is --

6 JUDGE SMITH: That's right.

7 MR. OLESKEY: -- the reasonable thing to do.

8 JUDGE SMITH: Because even to this very moment, given
9 your very best case, and I don't think Mr. Backus's
10 expectations are at all reasonable. I might say that.

11 You know, just think what a project you have in mind
12 here to take FEMA testimony which has not even been offered,
13 and again let me select words that are not studied words, and
14 rehabilitate it to the point where it is a rebuttable
15 presumption which rebuttable presumption survives all the other
16 evidence which is hard for any rebuttable presumption to do no
17 matter how well arrived at. See, that's --

18 MR. BACKUS: I'm saying -- I'm saying two things.
19 I'm saying, one, we have to have a right to try and do that,
20 and it may be in the Board's view a difficult task. We have a
21 right to try and do that.

22 And I'm saying, number two, that if the first FEMA
23 position is out for whatever reason, and the second FEMA
24 position is out, as you said in the telephone conference we're
25 not zero, we're not even at that point.

1 JUDGE SMITH: You want to know why you lost one to
2 zero.

3 MR. BACKUS: No, no.

4 JUDGE SMITH: Why you were at one time ahead one/zero
5 and now you're zero/zero.

6 MR. BACKUS: Yes.

7 JUDGE SMITH: You want to know why. But you've got
8 to use that, you have to put that to use, and that's what I am
9 struggling to find how you're going to put that to use.

10 MS. WEISS: Can I --

11 MR. BACKUS: I'm saying that one of the things I
12 think we're doing here with all this is that as part of this
13 proceeding and as parties that don't want to see the
14 Applicants' case adopted by this Board, we are entitled to have
15 FEMA arrive at a position and be a part of this proceeding.

16 JUDGE SMITH: Well, you'd better get a mandamus,
17 because I don't know how you can --

18 MR. BACKUS: Well, that's a position we'll take at
19 the end.

20 JUDGE SMITH: All right.

21 MR. BACKUS: That we've been deprived of a right we
22 were intended to have because FEMA is going to end up here
23 without --

24 JUDGE SMITH: If that's the case, you still
25 haven't --

1 MR. BACKUS: -- a defensible position.

2 JUDGE SMITH: Nobody has explained to the Board how
3 we can use it, how we can use it in our decision, and I would
4 like to hear it.

5 We'll let Ms. Weiss speak now.

6 MS. WEISS: You know, what I fully expect and what I
7 think has been the purport of an awful lot of the questioning
8 over the past few days is proposed findings from behind me,
9 saying that the previous FEMA position, which is essentially
10 the same as ours, is completely unreasonable.

11 And why? Because every member of the RAC disagreed
12 with it wher Ed Thomas took it.

13 JUDGE SMITH: I think it's altogether possible --

14 MR. BACKUS: That is not my position.

15 JUDGE SMITH: -- we may make no findings in the
16 previous FEMA position.

17 MS. WEISS: Well, it seems to me that --

18 JUDGE SMITH: As such.

19 MS. WEISS: I fully expect to see an argument that
20 that's a completely unreasonable position because all the
21 members of the RAC, or most of the members of the RAC disagreed
22 with it, and Ed Thomas was the lone holdout. That was a
23 completely unreasonable position.

24 And from my point of view --

25 MR. BACKUS: That is not my position.

1 MS. WEISS: -- I think that's why it's important to,
2 you know --

3 JUDGE SMITH: But you agree, Ms. Weiss --

4 MS. WEISS: -- I don't think that's an accurate
5 representation of what happened, and I think we are entitled to
6 develop that.

7 JUDGE SMITH: Okay. And I think I'm getting closer
8 to understanding your position than Mr. Backus's.

9 I do recognize there is some value in reviving the
10 previous FEMA position to show its reasonableness to undercut
11 the present FEMA position too.

12 MS. WEISS: And to support ours.

13 JUDGE SMITH: And to support yours.

14 That's where I think you might not go. But, all
15 right, I'll give that to you.

16 Let's see, you mean that would be cumulative to
17 yours.

18 MS. WEISS: Exactly.

19 JUDGE SMITH: But you don't really realistically
20 expect to get a rebuttable presumption out of that for --

21 MS. WEISS: Well, I think Mr. Backus has an
22 interesting legal argument that I haven't --

23 JUDGE SMITH: Well, I'm not going to ask you to --

24 MS. WEISS: -- but that's not central to -- that's
25 not central to what I'm saying.

1 JUDGE SMITH: That's not central to your argument.

2 MS. WEISS: I'm not talking about how you weigh the
3 evidence. I think it's important in how you weigh the
4 evidence. If we can establish --

5 JUDGE SMITH: So you're bringing.

6 MR. WEISS: -- that the previous position was a
7 reasonable one, and it was reasonable in the context of the RAC
8 review, and it was not this, you know, wall of dissent and
9 disagreement that we've been hearing.

10 JUDGE SMITH: You want it actually as -- not
11 necessarily as a rebuttable presumption, but as base evidence.

12 MR. OLESKEY: Other evidence.

13 JUDGE SMITH: Other evidence.

14 MS. WEISS: Additional reason for believing that the
15 position we bring to you, which is in all important respects
16 identical to the previous FEMA position, is the correct way to
17 look at this case.

18 JUDGE SMITH: Well, whether you are right or wrong,
19 it's clear we can't make any stipulation.

20 MS. WEISS: But that's just for purposes of
21 explaining what I think I'm about.

22 JUDGE SMITH: Right. Okay.

23 MR. FLYNN: Your Honor, I'd like to suggest that even
24 though it seems pretty clear we're not about to arrive at a
25 stipulation, nevertheless this discussion is useful because it

1 goes to relevancy questions which will come up throughout the
2 hearing.

3 I have not taken the position that -- the position
4 that Mr. Thomas held and continues to hold and which FEMA
5 originally took is unreasonable because of the way the RAC
6 divided.

7 What I have been arguing over and over again is that
8 the issue of credibility is entirely separate from the question
9 of whether the position is reasonable or not. I have tried to
10 present the case, and my evidence will be structured in order
11 to show that what happened was the interpretation of what the
12 appropriate standard to apply was changed and --

13 JUDGE SMITH: Well, I want to put you at your ease.
14 This discussion doesn't in any way reflect that we don't
15 understand what you're saying or agree with what you're saying.
16 And there is also a recognition that FEMA has a big stake in
17 this, and this argument that we just had postulated facts and
18 conclusions and things like that just for the purpose of
19 figuring out potential relevancy. And nobody said anything,
20 including the Board, which in any way suggests the state of the
21 record, the state of the evidentiary record. We're only
22 postulating the possibility of stipulating out an issue and
23 wondering what the true relevance is to the evidence that we're
24 receiving today, and we have to postulate different things to
25 do it.

1 We're not talking about the merits. We're not even
2 commenting upon the merits of FEMA's position.

3 MR. FLYNN: I appreciate that.

4 JUDGE SMITH: So you should not feel any obligation
5 to defend FEMA's position at this time.

6 MR. FLYNN: That's not what I'm trying to do. What
7 I'm trying to suggest is that the whole question of who is more
8 credible, who is more trustworthy is something that has
9 consumed enormous amounts of time and printed space in the
10 record, and it doesn't get to the real issue, which is has FEMA
11 applied the right standard and have we applied it correctly.

12 MR. DIGNAN: Your Honor -

13 JUDGE SMITH: That is an issue, right.

14 MR. DIGNAN: -- if this might be of assistance to the
15 Board and for following up on Mr. Flynn.

16 I would submit to the Board that we should think
17 through as to whether this has to go on -- why the issue of
18 credibility of this one individual is still alive in the case.
19 He was presented as the sole FEMA witness as a matter of policy
20 with the prefiled testimony.

21 JUDGE SMITH: Now, wait a minute. I would prefer
22 that right now you not do anything more --

23 MR. DIGNAN: I'm not going to do anything more --

24 JUDGE SMITH: -- on the merits of the case --

25 MR. DIGNAN: I'm not going to anything more with the

1 merits.

2 JUDGE SMITH: -- because that would just invite and
3 require arguments.

4 MR. DIGNAN: Understand.

5 JUDGE SMITH: All right.

6 MR. DIGNAN: And at that time it behooved me as
7 counsel for the party that was hurt by that prospective
8 evidence to attack the evidence. And one way you attack
9 evidence is to attack credibility, and everybody knows that's
10 what I set out to do.

11 The FEMA testimony then was withdrawn, and the new
12 testimony -- a new testimony was filed with Mr. Thomas on that
13 second panel, I believe. And then a third set was filed
14 without Mr. Thomas.

15 You will recall that ever since then I have told the
16 Board, I'm not trying to subpoena Mr. Thomas back here. The
17 only reason his credibility is alive as an issue in this case
18 as far as I'm concerned is that I understand the Commonwealth
19 insists on his returning and testifying further; presumably in
20 support of their case.

21 JUDGE SMITH: All right.

22 MR. DIGNAN: And that being the case, I insisted on
23 going forward, and in fairness to me the Board had said they
24 wanted to see Bores and Lazarus, too, although as I understand
25 they did that because I had made the motion and they thought I

1 was entitled to it. And for that reason, I want Bores and
2 Lazarus, because I know Thomas is coming behind.

3 JUDGE SMITH: Well, I understand that.

4 MR. DIGNAN: Now that being the case, all I'm saying
5 is all I have to be told is that Mr. Thomas has given his last
6 testimony in this case. And as far as I'm concerned, Mr. Bores
7 and Mr. Lazarus can go home. The credibility issue is gone.

8 JUDGE SMITH: You just heard -- you just heard that
9 they are going to, for the reasons stated most recently by Ms.
10 Weiss.

11 MR. DIGNAN: I understand that, but let's understand
12 the path to stipulation does not lie with the government or the
13 Applicant.

14 My only concern, the only concern I've ever had with
15 that witness's credibility is as long as he is a witness
16 against my client. He ceased to be, I thought, when the new
17 panel came up and nothing he had said before on this issue
18 bothered me in terms of the case that needed me to have him
19 further, and the only reason these two gentlemen are here, as
20 far as I'm concerned, and I'm the one who asked for them, and
21 why there is a drawer full of cross ready here, and the
22 credibility question is alive because the Commonwealth wants
23 Mr. Thomas back.

24 Now that's it. And if they want to get rid of -- say
25 no more Mr. Thomas, the credibility issue disappears as I am

1 concerned.

2 MR. OLESKEY: This is a revisitation of part of what
3 we discussed yesterday afternoon, because we discussed whether
4 or not Thomas would come back and what would flow from that.
5 And in effect, what some of my colleagues are saying are they
6 want they want the benefits of what they got in the record so
7 far, and leaving us with the burdens and all that flows with
8 it.

9 MR. DIGNAN: There is no finding I can propose if he
10 doesn't testify.

11 JUDGE SMITH: I -- we have to go back to what we said
12 before. I still have -- the Board still has doubts that all
13 this extensive sublitigation here is going to have a big impact
14 upon the final decision. We'll have to, of course, wait and
15 see because of the rule that we've stated often. You know,
16 what happens to rebuttable presumption when it's attacked.

17 You have cast it in a light I have never fully
18 appreciated before. You are seeking basic evidence with or
19 without rebuttable presumption, and you're going to get it.

20 Now, clearly we can't stipulate, so it may very well
21 turn out -- it may very well turn out after all this litigation
22 we may give it a paragraph or two and that's it, you know, but
23 it's your case.

24 MR. BACKUS: Well, I just would recall the Board's
25 statements that the Board itself had a concern about public

1 confidence in these proceedings.

2 JUDGE SMITH: That's right, that's right.

3 MR. BACKUS: And that that was a part of what we were
4 doing here too.

5 JUDGE SMITH: Right.

6 MR. BACKUS: And I certainly endorse that concern and
7 think it should be followed.

8 JUDGE SMITH: Right, it's just how far, how far we
9 have to go a result.

10 MR. BACKUS: Well, it certainly going to be followed
11 to the cross-examination of these witnesses. They can't be
12 stopped now.

13 JUDGE SMITH: Well, if it -- I would say that unless
14 it had a substantive aspect, substantive aspect that we would
15 try to foreshorten it, but you do have a substantive goal and
16 you should pursue it.

17 MR. TURK: Your Honor, I want to make a few brief
18 remarks.

19 First, I heard Mr. Dignan refer to the paper of Dr.
20 Bores, or one or both of his 1987 letters to Mr. Thomas as the
21 NRC position. I take issue with that characterization.

22 MR. DIGNAN: I apologize, Mr. Turk.

23 MR. TURK: Thank you. That was not the witness's
24 testimony.

25 JUDGE SMITH: Let's have an agreement that nothing

1 said since lunch to this moment is going to come back to haunt
2 anybody with respect to the merits of the case.

3 MS. WEISS: Shall we take a show of hands?

4 MR. BACKUS: I'll stipulate to that, Your Honor.

5 (Laughter.)

6 MR. TURK: Your Honor, for those persons in my agency
7 who may from time to time be tempted to pound the table, let me
8 indicate I disagree with the characterizations of the NRC as
9 given by Ms. Weiss and Mr. Oleskey. I'll say nothing more on
10 that.

11 And, third, let me say that I think the whole beach
12 issue can be stipulated away if the parties were willing. I
13 think the existence of available shelter is well known to us.
14 The New Hampshire plan's provisions are well known.

15 MR. OLESKY: Oh, sure.

16 MR. TURK: The only issue is a legal one. Do the
17 provisions of the New Hampshire plan satisfy the legal standard
18 which this Board must address. And I think if the parties were
19 willing, we could simply end this litigation, get to the heart
20 of it which is the legal issue, and move on.

21 JUDGE SMITH: Well, I don't think the -- go ahead,
22 approach them, but I think we ought to get on with the
23 testimony.

24 MR. TURK: I'm willing.

25 JUDGE SMITH: Go ahead.

1 MR. FLYNN: You have my vote.

2 MS. WEISS: Is he proposing a stipulation?

3 JUDGE SMITH: Yes.

4 MR. OLESKEY: Let's hear it.

5 MS. WEISS: That these are all legal issues?

6 (Simultaneous conversation.)

7 JUDGE SMITH: Maybe the proposal can be there is a
8 range of this, a range of that, and given it, put it -- put it
9 on a legal test. Given your case, apply a legal test.

10 MS. WEISS: Well, I think --

11 JUDGE SMITH: Given your factual case, apply a legal
12 test. I think that's what he said.

13 MS. WEISS: Well, I think if Mr. Turk wants to draft
14 up something, I certainly would be willing to look at it. I
15 would be particularly curious about the articulation of what
16 the legal standard is, but I'll await that. I think maybe for
17 this afternoon, we had better get --

18 MR. TURK: I wouldn't think I could be capable of
19 framing the issues the Intervenors would want to. If they are
20 interested in pursuing it, I would be willing to see what they
21 draft up. I think we would have to recite each of the
22 provisions, each of the factual provisions that we could all
23 agree exist, and then say, you know, take these --

24 JUDGE SMITH: Submit it on the law.

25 MR. TURK: Submit it on the law.

1 MR. FLYNN: I had a facetious suggestion which had a
2 kernel of seriousness to it, and I'll make it now with the
3 understanding that it is facetious, but it attempts to capture
4 the essence of the issue.

5 My offer jokingly a stipulation that there is lousy
6 shelter and lousy evacuation times, and that's the whole case.

7 MS. WEISS: We'll take it.

8 (Laughter.)

9 MR. FLYNN: But the serious points to --

10 MR. BACKUS: Care to substitute lousy for inadequate?

11 MR. FLYNN: Well, the serious point to be made is
12 that the evidence can be interpreted that at best the
13 sheltering offers .9 shelter protection factor, and we might be
14 able to work out an agreement about the range of numbers for
15 whom sheltering might be available. We might be able to work
16 out a stipulation as to the range of evacuation times. I think
17 it's close to established, and I don't want to commit the
18 Applicant because I'm sure I'll get an objection on this.

19 But it seems to me there is much evidence that tends
20 to show that there will be people on the beach who will not be
21 able to evacuate under some circumstances before a plume
22 passes. So I think the facts are pliable. They are such that
23 we might be able to come to some agreement if not on a single
24 set of facts, maybe on a range of facts.

25 And then the issue becomes, as I have suggested many

1 times, what is the standard to apply and how should it be
2 applied, and that's essentially a legal argument.

3 JUDGE SMITH: Do you think that's possible?

4 I don't think it can be done this afternoon, but do
5 you think it's worth exploring?

6 If you do, don't even say it. I mean just do it. Do
7 not -- if you think it's worth exploring, do it. You are not
8 required to say it has merit. I mean I don't ask you to say
9 that.

10 Okay.

11 MR. OLESKEY: Gentlemen.

12 THE WITNESS: (Lazarus) Your Honor, I'd like to
13 clarify and correct one statement that was made just prior to
14 the lunch break if I could.

15 There was a -- the question involved the December 31,
16 1985 submittal from FEMA Region 1 to NRC and the remainder of
17 the regional assistant committee members for review. And the
18 question involved technical assistance review.

19 To my knowledge, there was no outstanding request
20 from the state for a technical assistance review at that time.

21 To clarify a little bit, technical assistance, in my
22 understanding and what Dr. Bores understands, I believe, is
23 that the technical assistance review is an unofficial review of
24 the plans, not necessarily to the technical merits or to the
25 technical details of the plans.

1 Further, so that Mr. Oleskey may be able better to
2 direct his questions, I myself did not at any point review the
3 New Hampshire Radiological Emergency Response Plans as part of
4 my RAC committee responsibilities.

5 MR. OLESKY: Thank you.

6 Do you have anything else, Mr. Lazarus?

7 THE WITNESS: (Lazarus) No, sir.

8 BY MR. OLESKEY:

9 Q Just before the break in testifying about the report
10 you made to headquarters in Washington concerning the request
11 of Mr. Thomas for FEMA and the RAC in the December 31, '85
12 memo, you said that there was resistance to giving either a
13 regional RAC position or a NRC position; do you recall that;

14 A (Lazarus) Yes, sir.

15 Q Were you told what the resistance was, or why that
16 was said?

17 A (Lazarus) The resistance was that the issues should
18 be worked out through the regional assistance committee members
19 and a FEMA position developed rather than having an NRC
20 position put into the RAC process. It should be worked out
21 from the individuals through a collegial process to develop a
22 FEMA position.

23 Q And the end product of the FEMA position would be an
24 NRC position. Is that a corollary as you understood it?

25 MR. TURK: Could I hear that again?

1 BY MR. OLESKEY:

2 Q Did you understand that after FEMA had developed a
3 position, the NRC would ultimately take its own position on the
4 adequacy of the plans for the beach population?

5 A (Lazarus) It is my understanding they would either
6 accept that position, or if they disagreed with it, it would
7 have to take a separate position.

8 Q Okay. Now where we left off is this, as I recall, I
9 had asked you after you came back to Mr. Thomas with that
10 report from your headquarters, and he had asked you again for
11 an NRC position, and this is April or May as I understand it,
12 of 1986, what did you do next as the RAC representative for the
13 NRC?

14 A (Lazarus) I explained to him that I could not
15 provide that based on the guidance I had received as a as a NRC
16 position. I'm sorry, was that your question?

17 Q yes.

18 A (Lazarus) Could not provide him an NRC position,
19 which is what he had continued to ask for was an NRC position
20 on this issue.

21 Q All right. The RAC still had this concern both of
22 you testified about as of April or May of '86. Was there a
23 real issue about the beach population? What was it, and how
24 would it be resolved under the plans?

25 MR. TURK: Objection. I don't know that there is any

1 testimony that the RAC had a concern. The concern of Mr.
2 Thomas was before the RAC.

3 BY MR. OLESKEY:

4 Q Gentlemen -- Dr. Bores, let me put this to you.

5 Isn't the substance of a great deal of your testimony
6 that there were concerns at the NRC, at FEMA that boiled along
7 for years? You yourself said you had concerns back to 1981 or
8 '82 about the beach population.

9 Isn't that beyond dispute at this point?

10 A (Bores) I think that's entirely different. I had
11 concerns.

12 Q Yes.

13 A (Bores) I mean when I reviewed the plan, plans
14 because of the different versions, I took seriously the
15 provisions or lack thereof for dealing with the beach
16 populations.

17 I'm not sure I'd necessarily characterize those as
18 the RAC's concerns. Certainly Mr. Thomas had concerns along
19 there. All I was trying to relate to you is that we certainly
20 considered that beach, you know, somewhat special.

21 Q Sure, and Thomas and other people in FEMA had them
22 and other RAC member agencies had them, didn't they?

23 Haven't you testified about that for almost two days
24 this process of trying to resolve those concerns for these
25 various members?

1 A (Bores) The other RAC members were certainly drawn
2 into --

3 Q Of course.

4 A (Bores) -- the discussion here, yes.

5 Q Of course. That's all I mean when I say that was an
6 issue at the RAC.

7 Do you understand that now, Mr. Lazarus?

8 MR. TURK: Your Honor, let me clarify to Mr.
9 Oleskey --

10 MR. OLESKEY: I don't think it needs clarification.
11 I'm doing very well with the witnesses if I'm allowed to
12 proceed.

13 JUDGE SMITH: Mr. Turk is being very careful.
14 What is it that you wanted to clarify?

15 MR. TURK: Whether the concern is that expressed by
16 Mr. Thomas in his memorandum with respect to risk and
17 containment and probability features, or simply concern about
18 provisions for the beach population.

19 JUDGE SMITH: I thought it was just generalized.

20 MR. TURK: I know, I don't want a later argument with
21 Mr. Oleskey about the context as we had a little earlier this
22 morning.

23 MR. OLESKEY: I wish I was half as clever as Mr.
24 Turk's objections would suggest.

25 MR. TURK: I'm sure you are more clever than me.

1 MR. OLESKEY: May I continue?

2 JUDGE SMITH: yes.

3 MR. OLESKEY: Thank you.

4 THE WITNESS: (Lazarus) Could you repeat the
5 question, please?

6 MR. OLESKEY: Yes, sir.

7 BY MR. OLESKEY:

8 Q There you were in April or May of 1986, in a sense as
9 a kind of stand off because Mr. Thomas has asked you several
10 times for an NRC position and you have told him at least once
11 clearly that there could not be any such position, correct?

12 A (Lazarus) Yes, sir.

13 Q But the RAC has these spread sheets that track all
14 the elements of NUREG-0654 and the regulations. All these A,
15 B, Cs and Js, correct?

16 A (Lazarus) Yes.

17 Q And it's working through them to try to match up a
18 feature of the plan with one of the elements from these federal
19 regulations; isn't that right?

20 MR. TURK: Could we have a time frame?

21 MR. OLESKEY: April or May of 1986.

22 THE WITNESS: (Lazarus) As Dr. Bores was one who
23 had the input to those spread sheets. Do you mind if he
24 addresses that?

25 BY MR. OLESKEY:

1 Q I'm just asking you if that was the process at that
2 time, because that's my understanding in working with spread
3 sheets.

4 A (Lazarus) Yes.

5 Q Okay. And there were spread sheet items called
6 J-9 and J-10-1; which had issues relating to the beach
7 population, and there's been a lot of testimony about that;
8 isn't that right?

9 A (Lazarus) Yes, sir.

10 Q So my question is very simple. When you and Mr.
11 Thomas had arrived at this impasse between what he said the RAC
12 and his agency needed and what your headquarters told you it
13 was willing to have given, which was apparently only input from
14 the RAC member and you were the RAC member, what did you do
15 next there in the spring of 1986?

16 A (Lazarus) We did not pursue the issue at that time.
17 We did not provide any input to FEMA Region 1 as a RAC position
18 at that time. There were no -- to clarify a little bit, there
19 were not urgency to that request because I think the plan
20 review had reached a point where there were a few outstanding
21 issues. Dr. Bores can elaborate on that. And there were other
22 things going on at the time such as the exercises that tied up
23 both the NRC and FEMA as far as the exercise, exercise follow
24 up.

25 Q The exercise was in February and you did some follow

1 up work to give a report, correct?

2 A (Lazarus) That's correct.

3 MR. TURK: Who?

4 Your Honor, could we ask for a clarification that Mr.
5 Oleskey has not asked for yet?

6 Mr. Lazarus has indicated that he has not reviewed
7 the plan. He has never reviewed an emergency plan for New
8 Hampshire. Could we ask for the clarification who, in the
9 period of 1986, be it April or May or later that year, whatever
10 Mr. Oleskey wants to ask, who was doing the review of the New
11 Hampshire plans at that time within the NRC?

12 MR. OLESKEY: I'm happy to have that question
13 answered.

14 THE WITNESS: (Lazarus) Dr. Bores was doing the
15 review.

16 BY MR. OLESKEY:

17 Q Even though he wasn't the RAC member, he was
18 reviewing the plans.

19 A (Lazarus) That's correct.

20 Q And why was that? How did that come to be?

21 A (Lazarus) We just -- it was mostly an administrative
22 lack of documenting his continued involvement in the process.
23 He had the history of the previous work in the area. He was
24 the only one, to my knowledge, who had any substantive input
25 into the New Hampshire plan review, and he continued to do that

1 on occasion.

2 I believe there was only one meeting in FEMA Region 1
3 that discussed those plans during 1986.

E76

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1 Q So, because Dr. Bores had more expertise than
2 anybody else in the region, he continued to review the plans,
3 but you continued on the RAC; is that the substance of it?

4 A (Lazarus) That's correct.

5 Q So, you would consult with him in connection with any
6 matter that arose from the RAC that had to do with an
7 evaluation of a plan, while you were the RAC representative?

8 A (Lazarus) No. Anything that dealt specifically for
9 the Seabrook, New Hampshire RERP, as far as official RAC input,
10 Dr. Bores still attended those meetings and provided that input
11 verbally at those -- or in writing at those times.

12 Q Together with you?

13 A (Lazarus) Yes, I also -- I believe I also attended
14 the one meeting that transpired in 1986, but I don't recall
15 specifically.

16 Q So this is perfectly clear, was your continued
17 involvement anymore than administrative formalities?

18 A (Lazarus) No.

19 Q Were you contributing very much or doing very much?

20 A (Lazarus) No.

21 Q It was really Dr. Bores?

22 A (Lazarus) Yes, sir.

23 Q And that was true right back until -- was that true
24 back to the middle of 1985 when you began as a RAC member?

25 A (Lazarus) Yes.

1 (Witnesses conferring)

2 THE WITNESS: (Lazarus) Just for clarification we're
3 talking, Dr. Bores was involved in plan reviews and official
4 input on assessment of those plans. I attended coordination
5 meetings which were not really official RAC functions, and you
6 have Massachusetts Attorney General Exhibit No. 22 which
7 documents an agenda for one of those coordination meetings,
8 which just involved several agencies and state agencies, but
9 was not a RAC meeting as such.

10 BY MR. OLESKEY:

11 Q Well, do you recall a RAC meeting on June 23 and 24,
12 1986 between the State of New Hampshire Civil Defense and the
13 RAC which you did attend together with a number of others?

14 A (Lazarus) I believe I attended such a meeting, but I
15 don't recall specifically what transpired at the meeting.

16 Q Well, let me show you some draft minutes and a signup
17 list and see if that helps you explain what it was you were
18 doing at that meeting in connection with any issue on the
19 table, which I understand from the sequence you've laid out,
20 included the beach population issue?

21 A (Lazarus) I do recall the meeting.

22 Q Okay. And as you recall it, am I correct, that there
23 was an item that dealt with the beach population which was
24 listed as an open issue by the RAC at that time?

25 MR. TURK: Could we ask if the witness needs to see

1 any document on this?

2 THE WITNESS: (Lazarus) Yes, I would like to see the
3 documents.

4 BY MR. OLESKEY:

5 Q Fine. Let me show you some draft minutes for that --
6 those RAC meetings of those two days and a signup list that
7 I've been furnished, and see if it refreshes your recollection.
8 I direct you particularly to page two, near the end where the
9 heading on page one is "Draft minutes of meeting with RAC,
10 supplemental, June 23 and 24, 1986."

11 MR. TURK: Could we have a moment to have the
12 documents to be distributed, please.

13 MR. OLESKEY: Sure.

14 (Pause)

15 JUDGE SMITH: These people have remarkably similar
16 handwriting, this couldn't be a signup sheet.

17 MR. OLESKEY: I think you're right, it looks more
18 like an attendance list that somebody kept.

19 BY MR. OLESKEY:

20 Q When you look at the attendance list, and had a
21 chance to look at the document itself, will you tell me that
22 you're ready.

23 A (Lazarus) Sir, could I ask the location of this June
24 22nd -- June 23, 24th meeting, please.

25 Q I can't answer that.

1 MR. TURK: Well, can we ask if the witness has a
2 recollection.

3 MR. OLESKEY: Perhaps Mr. Turk can. The attendance
4 list, I think, shows you in attendance. Certainly Mr. Flynn
5 was there according to the attendance list.

6 MR. TURK: I don't see my name.

7 Could we ask if the witness has a recollection of
8 where the meeting took place?

9 MR. OLESKEY: I assume that's why he asked me.

10 MR. TURK: I would accept an agreement that he has no
11 recollection of that.

12 THE WITNESS: (Lazarus) Yes, I believe it was in
13 Merrimack.

14 MR. OLESKEY: Merrimack --

15 THE WITNESS: (Lazarus) We may have some firm
16 evidence here.

17 MR. TURK: I'd like to note that the witnesses are
18 looking through their own personal documents to try to find an
19 answer.

20 JUDGE SMITH: Does anybody know?

21 MR. DIGNALL: What's the question?

22 MR. OLESKEY: Mr. Turk wanted me to ask where it was,
23 I think.

24 MR. TURK: No. We're looking to establish the
25 witness's recollection of those events, and so far he's

1 indicated he doesn't remember where it was; I want that clear.

2 MR. DIGNAN: If I can -- because I think I know where
3 the meeting was, but I won't say if Mr. Oleskey doesn't want me
4 to.

5 MR. OLESKEY: Anyone who can help the witness --

6 MR. DIGNAN: My understanding is Merrimack.

7 MS. WEISS: That's what the witness thought.

8 MR. DIGNAN: Merrimack, New Hampshire.

9 MR. OLESKEY: Okay.

10 THE WITNESS: (Lazarus) Yes.

11 MR. OLESKEY: Good. Thank you both.

12 THE WITNESS: (Bores) That's my, you know, what I
13 would guess on because of the extensiveness and the attendance
14 here.

15 MR. OLESKEY: You'll have to speak up, Dr. Bores.

16 Could we mark this, Judge, as Mass. AG Exhibit
17 identification 23, please.

18 MR. DIGNAN: Have we identified the document, the
19 authorship or what it is?

20 MR. OLESKEY: He's recalled there was such a meeting.
21 I want to mark it for identification.

22 MR. DIGNAN: I'm sorry. I'm sorry. Identification
23 you can mark the phone book.

24 MR. OLESKEY: I think we've marked the attendance and
25 the document as one exhibit.

1 JUDGE SMITH: What number is that?

2 MR. OLESKEY: 23, Your Honor.

3 (The document referred to was
4 marked for identification as
5 Mass. AG Exhibit 23.)

6 BY MR. OLESKEY:

7 Q Mr. Lazarus, would you turn to page four, counting
8 from the back forward, it's entitled "Draft meetings -- of
9 minutes," page two and starts with section G-1 at the top of
10 that.

11 MR. TURK: That's three from the back.

12 THE WITNESS: (Lazarus) I'm sorry, the fourth page
13 from the back?

14 MR. TURK: Where are you putting the attendance list,
15 last page?

16 MR. OLESKEY: I'm not counting the attendance list.
17 All right, three from the back.

18 THE WITNESS: (Lazarus) Yes, starting with the top
19 block as G-1?

20 BY MR. OLESKEY:

21 Q Yes. Do you see under section G-10-M?

22 MR. TURK: J.

23 MR. OLESKEY: J-10-M, thank you.

24 BY MR. OLESKEY:

25 Q "Open issue in general about the adequacy of

1 protective use for people on the beach."

2 A (Lazarus) Yes, I see that.

3 Q Does that refresh your recollection as someone who
4 attended this meeting between the RAC and the Civil Defense of
5 New Hampshire, that at that time one of the open issues carried
6 by the RAC in its review was the beach population issue?

7 A (Lazarus) Based on this comment, having not seen
8 these minutes prior to this, I would assume that that's what
9 this indicates.

10 MR. TURK: Could we --

11 BY MR. OLESKEY:

12 Q You don't have any independent recollection?

13 A (Lazarus) No, I don't.

14 Q Dr. Bores?

15 A (Bores) Yes, I recall the meeting, and I recall the
16 purpose of the meeting. You will also note with this 1-J-10-M
17 that there was nothing ordered in terms of a response by New
18 Hampshire Yankee, that's because RAC was waiting to come to a
19 position.

20 Q So it was indeed an open issue for the RAC at that
21 time?

22 A (Bores) Of course.

23 Q Okay. Do you recognize the list of the attendees in
24 these draft minutes as being --

25 A (Bores) I recognize the list of attendees.

1 Q Okay. But not the draft minutes?

2 A (Bores) I've never seen them before.

3 Q Okay.

4 MR. OLESKEY: Let's simply mark the attendance list
5 separately then as an Exhibit 23-B, and the document that the
6 witnesses can't identify which are the draft minutes will
7 remain 23-A for identification.

8 (The documents referred to were
9 marked for identification as
10 Mass. AG Exhibits 23-A and
11 23-B.)

12 MR. OLESKEY: May 23-B be admitted simply as the
13 attendance list for that RAC meeting.

14 JUDGE SMITH: I have them backwards.

15 MR. TURK: I'm sorry.

16 MR. OLESKEY: Mark the attendance list as Exhibit
17 23-B, and I'll offer it to show the attendance. And I cannot
18 offer 23-A at this time because it cannot be identified by
19 these witnesses.

20 JUDGE SMITH: Any objections to --

21 MR. DIGNAN: Yes. I just want to be sure what the
22 witness answered, if I could. Did Dr. Bores identify the
23 document or identify the people as there?

24 THE WITNESS: (Bores) I can only identify the people
25 -- some of the people as being there and --

1 MR. DIGNAN: You've never seen the document before?

2 THE WITNESS: (Bores) I've never seen that document.

3 MR. DIGNAN: I didn't think so.

4 MR. OLESKEY: Okay. Then I don't think I should
5 offer the attendance list.

6 BY MR. OLESKEY:

7 Q But your testimony is that the -- that that list
8 coincides with your recollection of who was there?

9 A (Bores) I can recognize that some of the names as
10 people who were there. When I look at the list, I guess I am
11 surprised at this point that some of these people were there in
12 that. I would not have recalled them separately. But on the
13 other hand, I certainly am not going to say that they weren't
14 there.

15 Let me say, I'm fairly confident I know which meeting
16 this was.

17 Q Do you have an independent recollection of any
18 discussion about the beach population issue at that meeting?

19 A (Bores) I do not.

20 Q Now, Mr. Lazarus, we're coming up to June of '86,
21 shortly after -- well, about the time of this meeting, and this
22 is about the time that you ceased being the official RAC
23 representative; correct?

24 A (Lazarus) That's correct.

25 Q And Mr. Schumacher began attending instead?

1 A (Lazarus) That would have been sometime later,
2 approximately October of that year. I'm not sure
3 administratively if there was someone designated as a RAC
4 member for a period of time.

5 Q Do you recall a RAC meeting in October of 1986?

6 A (Lazarus) No, I don't.

7 Q Dr. Bores?

8 A (Bores) Yes.

9 Q Do you recall that the beach population issue was a
10 topic of discussion at that meeting?

11 A (Bores) I cannot specifically recall the beach
12 population per se being a major topic of discussion. There
13 were certainly areas related peripherally to the beach
14 population. I don't recall a detailed discussion of the beach
15 population per se.

16 Q Was there an effort at that meeting to go through
17 these RAC spread sheets and address issues that needed
18 resolution?

19 A (Bores) Yes.

20 Q As a result of that, was a summary of the comments on
21 the open issue sent out to the RAC members following that
22 meeting?

23 A (Bores) I do not know.

24 MR. OLESKEY: Your Honor, I did not copy this because
25 I didn't know whether the witnesses will recall and it was so

1 big and bulky, that with the copying facilities I have in New
2 Hampshire I just wasn't able to do it. So let me show it to
3 him and anyone else -- to you and anyone else, and then ask if
4 he can identify it.

5 JUDGE SMITH: Well, why don't you see if they can
6 identify it, and then you might save yourself the rest of the
7 walk.

8 (Pause)

9 BY MR. OLESKEY:

10 Q I gave you an October 30, 1986 cover memo from Mr.
11 Thomas to RAC members, did I not?

12 A (Bores) You did.

13 Q And the subject matter of which is, this memo
14 contains spread sheets from the RAC meeting of October 8 and 9,
15 '86?

16 A (Bores) To answer it carefully, I would have to
17 compare it to, you know, another document.

18 Q Just to --

19 A (Bores) But it appears to be the spread sheets.

20 Q But that's what the cover memo claims is enclosed, in
21 any event?

22 A (Bores) That's what it does.

23 Q Does this appear to be a copy from your own files?

24 MR. TURK: A copy of what's in his files?

25 MR. OLESKEY: The cover memo with a spread sheet from

1 his files.

2 MR. TURK: Well, from -- you're asking if it's from
3 his files?

4 MR. OLESKEY: The original, does it appear to be a
5 copy --

6 MR. TURK: Of what's in his files.

7 MR. OLESKEY: -- of what's in his files.

8 THE WITNESS: (Bores) It is -- it appears to be --
9 let me strike that. The cover letter appears to be a copy of
10 what I have.

11 BY MR. OLESKEY:

12 Q And it has Robert Bores in the top right hand corner?

13 A (Bores) It does.

14 Q And on the bottom it says, "Thanks much for your
15 continued help and support, EDT or ET?"

16 A (Bores) It does.

17 Q Is that a note from Mr. Thomas to you?

18 A (Bores) I'm not sure it's from Mr. Thomas to me or
19 to -- this may be the way he sent it out to all the RA
20 members. But in that sense it is -- since I got a copy it's to
21 me.

22 Q Indeed. Do you want to take a look and make sure the
23 spread sheets are the ones that were the originals?

24 MR. TURK: Your Honor, if we could note, the document
25 consists of approximately 150 or 200 pages. If Mr. Oleskey

1 would focus on the particular pages he wants identification of,
2 that would help greatly. I think I know which elements he
3 wants Dr. Bores to look at, and that would -- if he could
4 identify the pages, we could move quickly.

5 JUDGE SMITH: Is that where you had your markers?

6 MS. WEISS: Yes.

7 (Laughter)

8 MR. OLESKEY: I find J-10-M at page 86 of 134.

9 THE WITNESS: (Bores) The exhibit you gave me or the
10 document you gave me has the same page as the document I have a
11 copy of.

12 BY MR. OLESKEY:

13 Q Okay. Other than that page, as you take a quick look
14 at it and I'm happy to have you come back at 5 o'clock and tell
15 me you had second thoughts or Tuesday morning, does it appear
16 to be in substance the document you got in early November of
17 '86 from the RAC?

18 MR. TURK: Your Honor, I'm going to object. There is
19 a focus on particular pages, I don't think we have to ask Dr.
20 Bores to go through a line by line comparison of a document in
21 his possession; I think that's unreasonable.

22 MR. OLESKEY: I don't want him to go through --

23 MR. TURK: It is a long document.

24 MR. OLESKEY: I don't want him to go through a line
25 by line comparison; I'm just trying to understand if this is

1 the package he got as far as he can tell. And to save time, if
2 when he looks at it tonight or Monday he finds there are
3 discrepancies, they can correct them on Tuesday happily.

4 JUDGE SMITH: Just does it look like it, so we can
5 get on with it.

6 THE WITNESS: (Bores) It looks like it.

7 MR. OLESKEY: Fine. I'd like to mark it as Exhibit
8 24, and offer it.

9 (The document referred to was
10 marked for identification as
11 Mass. AG Exhibit 24.)

12 MR. TURK: May we inquire of Mr. Oleskey, before I
13 know if I'm going to object or not, what's the trail of
14 possession on this document, as Mr. Oleskey has it, did he
15 receive it from the NRC staff?

16 MR. OLESKEY: That's my belief, counsel.

17 MR. TURK: With that stipulation, I would accept this
18 to be a document which Dr. Bores has seen previously and can
19 positively identify it.

20 MR. OLESKEY: These are in your production early
21 December or late December, there were two as I recall.

22 MR. DIGNAN: As we roll along here, am I going to get
23 a copy of this thing while this examination continues or can I
24 come up and sit beside you or what?

25 MR. OLESKEY: Sure, come up and sit beside us. I

1 only have a couple of copies.

2 MR. DIGNAN: Would you mind moving, Ms. Weiss, so I
3 can sit down beside him.

4 THE WITNESS: (Bores) Since I have what looks like
5 another copy, somebody may be free to utilize this. I'll use
6 the copy that you have provided.

7 MR. OLESKEY: Is this yours?

8 MS. WEISS: No.

9 MR. OLESKEY: Let's give the clean copy to the Board
10 and get back your copy from the Board. Mr. Dignan, my soul
11 mate, can sit down here.

12 MR. TURK: I'd like to note that the witness does
13 have his own copy of the document from his files here today,
14 assuming it is the same document, and he is going to be
15 referring to that document from his own files during his
16 questioning and I'll be looking at the exhibit as Mr. Oleskey
17 produced it today.

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18 (Continued on next page.)

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1 JUDGE SMITH: The exhibit has been offered. Is
2 there an objection?

3 MR. DIGNAN: What's the purpose? There's a lot of
4 hearsay and other stuff in this. Is it in for the truth of the
5 matters contained or what?

6 MR. OLESKEY: It's in to show the status of the RAC
7 review of the beach population issue as of the date of the
8 meeting with the subsequent revisions that may be identified
9 and testified to by the witnesses as we go along.

10 JUDGE SMITH: I guess a puzzled look isn't neither an
11 objection nor an acquiescence or --

12 MR. DIGNAN: The puzzled look I guess is an
13 objection. I'm being asked to go along with an exhibit that's
14 coming in to be modified by the witness.

15 If it's offered for the purpose of showing what the
16 RAC review was as of the date of that document, no objection.

17 MR. OLESKEY: It is.

18 MR. DIGNAN: No objection.

19 MR. OLESKEY: Great.

20 JUDGE SMITH: All right. Massachusetts --

21 MR. DIGNAN: See, I get up here and we're moving
22 right along.

23 MR. OLESKEY: You should be up here more often.

24 MR. DIGNAN: I bet there would be a stipulation if I
25 had this chair.

1 (Laughter.)

2 JUDGE SMITH: This is the entire document you are
3 putting in?

4 MR. OLESKEY: Well, I didn't want to pick and choose.
5 Then we have a very incomplete record. I know it's very long.
6 I am not insistent that it be bound into the record.

7 JUDGE SMITH: No.

8 MR. OLESKEY: Frankly.

9 So if it's not going to be bound in, I will furnish
10 the three copies --

11 JUDGE SMITH: All right.

12 MR. OLESKEY: -- Tuesday morning.

13 MR. DIGNAN: And one for every party.

14 MR. OLESKEY: And one for every party.

15 JUDGE SMITH: The exhibit is received on the
16 condition that you provide the reporter with the three copies
17 Monday.

18 MR. OLESKEY: Sure. Tuesday?

19 JUDGE SMITH: Tuesday.

20 MR. OLESKEY: We will do that.

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1 (The document referred to,
2 having been previously marked
3 for identification as
4 Massachusetts Attorney General's
5 Exhibit No. 24 was received in
6 evidence.)

7 BY MR. OLESKEY:

8 Q Dr. Bores, would you turn to the page labeled 64 of
9 134?

10 A (Bores) I have it.

11 Q All right. You see in the left column the reference
12 NUREG-0654 elements? And then under that, J-9?

13 A (Bores) I do.

14 Q Okay. Would you look across under the column RAC
15 comments, recommendation, state response, action, and then RAC
16 evaluation of state response, and tell me if, with respect to
17 Element J-9 as it's been testified to here, this page
18 accurately sums up where the RAC was on that element following
19 the meeting of October 8 and 9, 1986?

20 A (Bores) Yes, it does.

21 Q Specifically, the RAC position at that time was as
22 stated here, "Although no response was required, this element
23 will remain open pending, (1) resolution of FEMA's December
24 1985 memorandum concerning protection of the beach population,"
25 and then there is a parentheses that describes that; and,

1 "(2) information from the State of New Hampshire on the number
2 of transients who need transportation during an evacuation."

3 A (Bores) That's what it states.

4 Q Okay, and that's where the RAC was on that element at
5 this time, correct?

6 A (Bores) Yes.

7 May I just check the cover page --

8 Q Sure.

9 A (Bores) -- to see if this represents where we were
10 before the meeting, after the meeting?

11 Q Sure.

12 A (Bores) From the cover page, I note that this is the
13 position after the RAC meeting as understood by Mr. Rospenda
14 awaiting comments.

15 Q Okay.

16 A (Bores) That is the qualification on that.

17 Q Mr. Rospenda is this individual who works at the
18 Argonne National Laboratory?

19 A (Bores) That is correct.

20 Q Does he serve as a kind of secretary to the RAC?
21 Takes the official minutes and comments?

22 A (Bores) He is the FEMA contractor who is generally
23 tasked with updating the spread sheets.

24 Q All right.

25 A (Bores) And providing other work as requested by

1 FEMA Region 1.

2 Q Have you found in your own experience his work is
3 generally reliable?

4 A (Bores) His work is generally reliable. There are
5 times when the essence may not have quite come through.

6 Q One of those five-hour meetings and there is an issue
7 about what the consensus was, or whether there was one?

8 A (Bores) I'm not alluding to that at all, no.

9 Q What did you mean?

10 A (Bores) As some of the attachments we went through
11 yesterday in terms of some of the wording, what was captured
12 and what --

13 Q All right.

14 A (Bores) Slight modification sometimes in the wording
15 or the context.

16 So, in general, to assure that we get the right
17 comments, I mean this is why this is circulated back to the RAC
18 members, to assure that the proper context and understanding is
19 represented there.

20 But in terms of his work, generally reliable, yes.

21 Q Is he a lawyer, or a planner, or something else? Do
22 you know?

23 A (Bores) I'm not aware of what his background is.

24 Q Following down that page to Element J-10-A.

25 A (Bores) J-10-A, yes.

1 Q That relates to an evacuation map; is that right?
2 Evacuation route map and identification of shelters?

3 MR. TURK: Just for clarification, are you looking
4 only at this one page now?

5 MR. OLESKEY: Yes, I am.

6 THE WITNESS: (Bores) What is your question?

7 BY MR. OLESKEY:

8 Q The question was, the discussion of that element
9 relates to evacuation route maps and whether or not public
10 shelters would be available; is that correct?

11 A (Bores) Well, it discusses it, but then there is a
12 qualification. So when you look at the resolution of that
13 particular item, that particular item is marked adequate.

14 Q Right. And it was marked adequate because the state
15 response and the plan revisions at that time indicated that
16 public shelters were not proposed during an emergency except
17 possibly for shelter for transients without transportation;
18 correct?

19 A (Bores) We're not speaking here -- shelters as
20 proposed here was not for the beach population.

21 Q For others.

22 A (Bores) This is population within the EPZ.

23 Q Okay. And the response by the RAC was that which is
24 indicated in that column, correct?

25 A (Bores) That is correct.

1 Q Okay. Now if you'd turn to Element J-10-M.

2 MR. TURK: Well, can I have a clarification, please?

3 I heard the witness indicate that next to this
4 discussion of shelters there is the letter "A", or that was
5 marked adequate as I heard the witness state it.

6 MR. OLESKEY: I heard that, too.

7 MR. TURK: As I understand this current question,
8 it's with respect to the letter "I" that appears in the second
9 to the right column. Is that the question that the -- is the
10 question whether the RAC found this element to be inadequate?

11 Maybe I'm missing something.

12 MR. OLESKEY: Actually I hadn't asked that, because I
13 understood from his answer that it didn't relate to the beach
14 population. I was going to move on.

15 MR. TURK: Okay.

16 JUDGE SMITH: But I heard him say adequate.

17 MR. OLESKEY: Yes, he said adequate, and I think Mr.
18 Turk is pointing out that the column response is actually "I".

19 MR. TURK: And there is a reason for that stated in
20 the text.

21 THE WITNESS: (Bores) The inadequacy does not relate
22 to shelters. The inadequacy is the point on the next page.

23 BY MR. OLESKEY:

24 Q The grid map was insufficient.

25 A (Bores) That's correct.

1 Q All right.

2 Now, would you turn to Pages 86, 87, 88, 89, 90, 91
3 and 92 of 134?

4 Is that the treatment of Element J-10-M as relates to
5 the beach population as of that date by the RAC?

6 A (Bores) Don't recall from memory. I'll have to look
7 at those elements.

8 Q Okay. I'm not going to question you in detail. I
9 just want to establish for our record here that this is where
10 the RAC was in the fall of '86.

11 MR. TURK: Could we ask also -- perhaps this would
12 help -- if Dr. Bores ever submitted comments addressing whether
13 or not this presented a correct statement of the RAC's
14 position?

15 MR. OLESKEY: Let me ask my questions --

16 MR. TURK: I'd be happy to.

17 MR. OLESKEY: -- and if that's important, then you
18 can ask it or I'll ask it for you.

19 THE WITNESS: (Bores) My cursory review and
20 recollection would indicate that this was the RAC position
21 after that meeting.

22 I might note of all those pages it appears that there
23 is only one element that was left open, one subelement out of
24 seven that were listed. The rest are all indicated as now
25 being adequate. That open is indicated by the question mark.

1

2

BY MR. OLESKEY:

3

Q That's on Page 86?

4

A (Bores) Both on Page 86 and then under the first
5 element on Page 87.

6

Q Page 86 says, "Overall rating is open," is that --

7

A (Bores) That is correct.

8

Q That means the overall rating for this element is
9 open?

10

A (Bores) That is correct.

11

Q Which meant unresolved?

12

A (Bores) Unresolved, if you will, depending on how
13 you use the word.

14

Q All right.

15

And subject to whatever comments all the RAC members
16 made, was this the RAC's position going into the now famous
17 meeting of April 15, 1987?

18

That is, did the spread sheets that came out of this
19 process become, with whatever comments there were, the spread
20 sheets that you all had on April 15th of 1987?

21

A (Bores) My assumption is that if there were no
22 additional RAC meetings in between, that this is what we would
23 have gone into the meeting on April 15th.

24

Q I don't know of any, but I don't have as much
25 information as you do.

1 MR. TURK: Could we ask if the witness recalls?

2 BY MR. OLESKEY:

3 Q Do you recall any other meetings between October and
4 April?

5 A (Bores) I don't recall, but I could check.

6 Q Would you do that so we know, please?

7 MR. TURK: I'd like to see if Mr. Oleskey would
8 accept a further clarification as to whether Dr. Bores is able
9 to determine for sure whether this was the position going into
10 the April meeting beyond his assumption.

11 MR. OLESKEY: Sure.

12 THE WITNESS: (Bores) I could give you a qualified
13 answer.

14 What I've done is check my travel. I did not go to
15 another RAC meeting between those dates.

16 BY MR. OLESKEY:

17 Q And, Mr. Lazarus, you don't have any recollection of
18 any reports from Mr. Schumacher or Dr. Bores about any other
19 meetings between October and July?

20 A (Lazarus) No, sir, I don't.

21 Q October and April.

22 A (Lazarus) No, I don't.

23 A (Bores) Okay. Just a couple more questions on this
24 and then we're going to move on.

25 The reason this issue of the beach population under

1 Item J-10-M was left open here, as I understand the sheet, is
2 the same reasons that were listed in J-9 that we already
3 discussed earlier.

4 Is that accurate, Dr. Bores?

5 A (Bores) That's correct.

6 Q Okay.

7 MR. TURK: Mr. Oleskey, I don't recall if there was
8 discussion of J-9.

9 MR. OLESKEY: I had interrogated him about that a few
10 moment ago, I thought.

11 MR. TURK: J-10-A.

12 MR. OLESKEY: No, I started with J-9.

13 BY MR. OLESKEY:

14 Q Finally, let --

15 A (Bores) Excuse me. Let me go back.

16 Was the question was there any discussion at this
17 particular RAC meeting relative to the beach issues?

18 Q No.

19 A (Bores) No.

20 Q The question was, as I understand the spread sheets,
21 the reason that J-10-M was left open relating to the beach
22 population was the same reason already discussed in J-9, and
23 you testified about that a few moments ago.

24 MR. TURK: Your Honor --

25 MR. OLESKEY: Right?

1 MR. TURK: I don't recall the line of questioning,
2 Mr. Oleskey.

3 MR. OLESKEY: Well, let me try a different way.

4 BY MR. OLESKEY:

5 Q What the spread sheet says is we're leaving J-10-M
6 open for the same reasons expressed under Element J-9; isn't
7 that right?

8 A (Bores) That is essentially correct.

9 Q So, and you move to Page, I think it was 64, and the
10 material we reviewed there dealt with why J-9 was left open,
11 right?

12 MR. TURK: I would note that on that Page 64 there
13 are two elements, J-9 and J-10-A.

14 MR. OLESKEY: I know, Mr. Turk. I'm only asking him
15 about J-9.

16 MR. TURK: Fine.

17 THE WITNESS: (Bores) Okay, there were two
18 subelements under J-9.

19 MR. OLESKEY: Yes.

20 THE WITNESS: (Bores) Okay.

21 BY MR. OLESKEY:

22 Q And they are both listed on Page 64, aren't they?

23 A (Bores) They are both listed on 64, and the overall
24 rating for J-10-M appears only to be related to the first of
25 those elements in J-9.

1 Q Which was?

2 A (Bores) That was the response to the FEMA December
3 1985 memorandum to the RAC.

4 Q So to wrap it up if I can, the RAC is saying that
5 J-9 and J-10 are still open issues with it because the process
6 that Mr. Thomas's December 31, 1985 memo initiated hasn't been
7 brought to a resolution.

8 A (Bores) That's as of this point. It doesn't mean
9 that once the memoranda have been received, of course, that it
10 would close.

11 What we were looking was input to resolve the issue.

12 Q Ever since December 31, '85.

13 A (Bores) The issue was never closed, so I mean I
14 wouldn't say that that's the beginning point.

15 Q And your -- as you've said on direct, your memorandum
16 or paper of February '87, was intended, at least by you, as a
17 response.

18 MR. TURK: To what?

19 BY MR. OLESKEY:

20 Q To this process that was kicked off or continued, at
21 least, by the Thomas memo of December 31, '85; correct?

22 A (Bores) My memoranda of February 1987 was my RAC
23 member input in response to that memoranda.

24 Q Right. Fine.

25 Now at this meeting of October '86, the spread sheets

1 for which we have just reviewed, was there discussion about any
2 of these elements that subsequently you treated in your
3 February paper: containment strength, risk probabilities,
4 weather? That's W-E-A-T-H-E-R. Were any of those things
5 discussed by the RAC?

6 MR. TURK: Could I -- I don't understand the
7 question. I'm sorry, Mr. Oleskey.

8 MR. OLESKEY: All right, let me restate it.

9 BY MR. OLESKEY:

10 Q Taking you back to the meeting which preceded these
11 revised sheets which we just marked Exhibit 24, the meeting of
12 October 8 and 9, 1986. I'm asking you if any of the topics
13 that were subsequently treated in your February '87 paper or
14 document, specifically, containment, risk and the effect of
15 weather, all as they relate to the beach population, were
16 topics of discussion at the RAC.

17 MR. TURK: In October '86.

18 MR. OLESKEY: Yes, counsel.

19 THE WITNESS: (Bores) I cannot specifically recall
20 any of those topics. I do recall, however, a discussion by Mr.
21 Thomas encouraging those RAC members who had not yet submitted
22 a response to submit a response, noting that in fact, you know,
23 these areas were open, and we weren't going to get anywhere, it
24 appeared, until we had sufficient information to resolve the
25 issue.

1 I do not recall anything specifically related to
2 containment, et cetera.

3 BY MR. OLESKEY:

4 Q But did everybody on the RAC agree that you had to
5 move along with some input to get that issue resolved?

6 MR. TURK: Who is the you?

7 MR. OLESKEY: You would relate back, in my judgment,
8 to the members of the RAC, the original subject of the
9 sentence.

10 BY MR. OLESKEY:

11 Q Can you answer the question with that clarification,
12 if it was a clarification.

13 A (Bores) Please ask me the question again.

14 Q Sure. Was there general agreement at the RAC that
15 there had to be more input made on this issue for the RAC to
16 close out the item and move forward with the plan review?

17 MR. TURK: I don't want to interrupt, Mr. Oleskey,
18 but please identify the issue. Are you talking about risk
19 containment and probability?

20 MR. OLESKEY: The witness just testified, Mr. Turk,
21 that, as I understood it, the discussion he recalls from the
22 RAC was there had to be more input on these two elements to
23 resolve the status of the issue which was open.

24 I simply asked him, having heard that, whether there
25 seemed to be a general understanding of all the RAC members

1 that that needed to be done.

2 MR. TURK: And my problem is, I want to make sure the
3 answer and the question match. When you talk about this issue,
4 I'm asking you specifically are you talking about the issues
5 listed on the RAC spread sheets, or are you talking about the
6 Thomas memorandum listing risk containment and probability
7 issues? Let's get them matched so there is no confusion.

8 BY MR. OLESKEY:

9 Q You and I, Dr. Bores, have been talking about
10 Elements J-9 and J-10, which are technical elements derived
11 from NUREG-0654, which have been used here to assess -- to
12 assess the adequacy of the protection for the beach population
13 in the judgment of the RAC, correct?

14 A (Bores) That is correct.

15 Q All right. And all I'm asking is if there seemed to
16 be a general understanding among the RAC members that there had
17 to be technical input as to those elements in order to move
18 them from open status to a closed, which I guess in your
19 parlance is an adequate status.

20 MR. TURK: Objection. Same problem. I mean now
21 we're referring to technical input. If I get Mr. Oleskey to
22 say he's not talking specifically about containment and risk of
23 probability, I have no problem, but I --

24 JUDGE SMITH: Well, he's talking about J-9 and J-10,
25 whatever they are.

1 MR. TURK: That's right.

2 JUDGE SMITH: And it probably would not be that.

3 MR. TURK: Well, Mr. Thomas's position has been that
4 those risk elements relate to J-9 and J-10-M. That was the
5 initial piece of testimony that FEMA filed. And I want
6 clarification from Mr. Oleskey what he's talking about now.

7 MR. OLESKEY: I can't make it any clearer. There are
8 two elements. This man was on the RAC off and on for three
9 years. There's a memo that's in evidence that asks for input
10 on the beach population which the RAC, in my understanding,
11 tracked into these elements, J-9 and J-10-M.

12 Whatever it was that a RAC member might think was
13 relevant to the resolution of the beach population issue under
14 those elements would come in.

15 JUDGE SMITH: I see no nexus in that question to the
16 Thomas memorandum.

17 MR. TURK: No, the nexus was clearly stated by Mr.
18 Oleskey. He said there is this Thomas memorandum of December
19 '85, and he's asking was there an understanding of the RAC that
20 there had to be more progress made on that memorandum in order
21 to resolve J-9 and J-10-M.

22 That memorandum contains many things, including risk
23 and probabilities. And, in addition, general questions about
24 the adequacy of planning, and I'm sorry that we couldn't get a
25 clear question on it. Maybe the witness is able to answer.

1 particularly based on this discussion.

2 MR. OLESKEY: I think he is actually.

3 BY MR. OLESKEY:

4 Q Why don't you take a whack at it, Dr. Bores.

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5 (Continued on next page.)

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1 A (Bores) Okay. There's a general agreement among
2 those participating in the meeting that at least a better
3 analyses had to be done of the information we had. What we
4 sort of had, at this point in time, was, a gut level feeling,
5 perhaps, without anything to lay a solid basis to. And so
6 therefore, more information, in that sense, needed to be
7 provided. Does that answer your question?

8 Q Yes. And the gut feeling was what?

9 A (Bores) I don't want to hazard a guess. I can only
10 talk about my own gut level feeling.

11 Q What was that?

12 A (Bores) My gut level feeling was probably adequate,
13 but I needed to take a look at it.

14 Q And then you began the work that led to the paper you
15 submitted in February?

16 A (Bores) That is correct.

17 Q Fine.

18 Had any other position papers been undertaken by the
19 NRC in the region before you began yours, by anybody, Dr.
20 Bellamy, Mr. Martin, Mr. Harpster, had anybody done any work to
21 try to grapple with some of the issues that might be thought to
22 be responsive to Mr. Thomas's memo of December 31, '85?

23 A (Bores) You're asking me?

24 Q Yes?

25 A (Bores) My answer to that is, I am not aware of any.

1 Q Mr. Lazarus?

2 A (Lazarus) I'm not specifically aware of any. I may
3 have started a draft at some point in that time, and it was
4 never progressed beyond that point; it was never used.

5 Q So you didn't have the benefit of anybody else's work
6 in the region, Dr. Bores?

7 A (Bores) That is correct.

8 MR. OLESKEY: Could I have a moment, Your Honor.

9 (Pause)

10 BY MR. OLESKEY:

11 Q I'd like to move to Mr. Lazarus's October 15, '87
12 memo which is the original document that was proffered as the
13 basis for his testimony.

14 MR. OLESKEY: I'd therefore like to ask that the
15 sequestration with respect to Dr. Bores begin.

16 MR. BACKUS: Well, Your Honor, we've got a little
17 problem, I asked just before lunch, Attorney Turk, if he would
18 mind if I withheld any cross-examination until Mr. Oleskey was
19 finished with his examination. And after lunch time he
20 informed me that if I had questions that went to the --
21 anything for Mr. Lazarus that didn't pertain to April 15th to
22 July 30th he would not agree to me deferring those until after
23 Mr. Oleskey had finished.

24 I'd still prefer to let Mr. Oleskey finish his exam
25 and not have to shuffle around and go back and come back, but

1 that's apparently a problem I can't resolve with Mr. Turk.

2 In other words, I guess he's objecting, if I ever get
3 to ask questions and I ask questions that go beyond April 15th
4 and April 30th unless I do them now.

5 MR. TURK: No, Your Honor. What I've indicated to
6 Mr. Backus is that, Massachusetts has requested sequestration
7 for certain specific purposes, and I had agreed to that. We
8 had argued that. What I've told Mr. Backus is, I'm not going
9 to agree to a further sequestration beyond the purposes for
10 which Mr. Oleskey has requested.

11 And I've indicated to Mr. Backus, also, that I
12 believe the witnesses should appear as a panel except for the
13 sequestration purposes of Mr. Oleskey's concern.

14 JUDGE SMITH: My trouble is, I don't understand the
15 relationship between sequestration and Mr. Backus's desire
16 to -- what is it you want to do? You want to --

17 MR. BACKUS: I have a few questions that might be
18 fairly characterized as not pertaining to the April 15th, April
19 30th RAC meetings, as to which I understand there is a
20 sequestration.

21 JUDGE SMITH: Right.

22 MR. BACKUS: I would prefer to withhold all my
23 questioning until Mr. Oleskey, and I guess Attorney Weiss are
24 done with this witness and then ask them, rather than go
25 forward now with those questions that don't pertain to April

1 15th and April 30th.

2 JUDGE SMITH: Right. At which time they will be back
3 together unsequestered.

4 MR. BACKUS: Well, maybe, I don't know.

5 JUDGE SMITH: If they wish.

6 MR. TURK: Is that right?

7 JUDGE SMITH: Right.

8 MR. TURK: Well, Your Honor, maybe it's a question of
9 witness convenience. I assumed that all the questioning
10 directed to Mr. Lazarus, up to this point, would now culminate
11 in a sequestered portion, and he would then be free to return
12 to his home without having to revisit these hearings.

13 Mr. Backus's request puts me in an uncomfortable
14 position of having to possibly ask Mr. Lazarus to return,
15 because I do not want any of my witnesses appearing separately
16 except for the credibility sequestration purposes that Mr.
17 Oleskey is concerned about.

18 MR. OLESKEY: If it helps, just looking at what I
19 have and I think what Ms. Weiss has, reflecting on the fact
20 that you've indicated, Judge Smith, that we would stop at 3:30,
21 it would seem unlikely to me that we would be through with Mr.
22 Lazarus under any circumstances before 3:30. Maybe that helps
23 to resolve the log jam that these two have.

24 JUDGE SMITH: That would seem to be the case, Mr.
25 Turk, which is going to have a bigger problem -- we're just

1 going to have a bigger problem next week.

2 I'm sorry, but I'm missing exactly --

3 MR. TURK: So am I.

4 JUDGE SMITH: -- if you had everything you want, just
5 what exactly would it be, Mr. Turk?

6 MR. TURK: If I could have everything I want it would
7 be that Mr. Lazarus be able to go home today. Mr. Oleskey --

8 JUDGE SMITH: How would you like to accommodate Mr.
9 Backus?

10 MR. TURK: At his pleasure. If he wants to start
11 pitching now while the panel is together on nonsequestered
12 items, fine. I really can't -- I don't know how much cross-
13 examination Intervenors have. If -- maybe the best thing to
14 do, Your Honor, would be to have the witnesses continue to
15 appear together until it's clear to everyone that the only
16 things remaining are the matters relating to those two
17 meetings, and if that means Mr. Lazarus has to come back, I
18 guess we'll have to ask him. That may make the most sense.

19 I mean, do all the examination of the panel together,
20 leave off sequestered items, pick those up last next week,
21 which is a little different from my understanding coming in
22 here today because I thought we were going to be doing
23 sequestered items today and that would be the end of it.

24 MR. OLESKEY: I'm not sure where we are. I'm ready
25 to go, or have anybody else go. But I do think we should go

1 because time is a-wasting.

2 JUDGE SMITH: Let's -- go ahead and pose your
3 examination and then we'll see what happens.

4 MR. TURK: Your Honor, I'd also ask Mr. Oleskey if
5 he's finished with all the examination he wishes to conduct
6 other than sequestered matters? Because, out of fairness and
7 orderliness, the best thing we could have Mr. Oleskey continue
8 his joint examination, leaving off until the end the
9 sequestered matters.

10 JUDGE SMITH: No matter what happens you find a
11 reason not to like it. I just don't understand. What are the
12 different qualifications, conditions now that you want to
13 impose?

14 MR. TURK: None, Your Honor. I was making a
15 suggestion for Mr. Oleskey's convenience. I have no concern
16 either way, as long as it's understood that I don't want
17 further sequestration beyond the credibility issues of those
18 two meetings.

19 JUDGE SMITH: That's the understanding.

20 THE WITNESS: (Lazarus) Your Honor, could I request
21 a very short break, five minutes.

22 JUDGE SMITH: Let's take a very short break, five
23 minutes.

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24 (Whereupon, a brief recess was taken.)

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25 MR. BACKUS: Your Honor, it's my understanding that

1 Attorney Olesky has now reached a point where is going to ask
2 to have the witnesses sequestered, and then I, and perhaps
3 others, have a few questions that pertain to matters that do
4 not involve the April 15th and July 30th meetings. And because
5 we are not going to attempt to enlarge the sequestration and
6 Attorney Turk's request, I would like to go forward now with
7 those few questions.

8 CROSS EXAMINATION

9 BY MR. BACKUS:

10 Q Gentlemen, I think you know who I am. I am Robert
11 Backus for the Seacoast Anti-Pollution League.

12 You were furnished, gentlemen, as Exhibit 22 by the
13 Massachusetts Attorney General with an agenda item for the
14 Seacoast Emergency Planning Zone Coordination Committee.

15 What, Mr. Lazarus, is the Seabrook Emergency Planning
16 Zone Coordination Committee?

17 A (Lazarus) I believe this is the first time that I
18 had really seen that title for this particular group. It
19 appears to involve all of the agencies who have some stake in
20 this; at least the federal agencies, the states of
21 Massachusetts, New Hampshire and the utility or the Applicant
22 in the emergency planning process as far as exercises and
23 procedures.

24 Q Am I correct, Mr. Lazarus, or Mr. Bores, either of
25 you may answer, that the coordination committee is different

1 from the RAC in that it is an ad hoc committee working on
2 Seabrook problems, and not anything that has status by virtue
3 of any agency regulation or guidelines that you are aware?

4 A (Lazarus) It is a group of people who are involved
5 in the process and are really participants in the process to
6 determine planning and schedules for various events that are
7 upcoming.

8 Q Am I correct that it is not a group like the RAC as
9 to which FEMA has an organized procedure for input in order to
10 form a position on the adequacy of plans?

11 A (Lazarus) That's correct.

12 Q Okay. And am I correct that as part of that group in
13 its meeting would be included representatives of the Seabrook
14 builders, the utilities?

15 A (Lazarus) Yes, that is correct.

16 Q And am I correct that that group met from at least
17 March of 1985, periodically thereafter?

18 A (Lazarus) Yes, I came into the picture somewhat
19 later, but I believe that's approximately correct.

20 Q And how often did that group hold meetings,
21 approximately?

22 A (Lazarus) The attempt was to have a meeting once per
23 month, and I don't believe that goal was met. That was the
24 attempt at the time.

25 Q And through the process of those coordination

1 meetings, would the utility representatives be kept advised as
2 to the status of federal reviews, both -- for the agencies
3 involved, primarily FEMA and NRC?

4 A (Lazarus) Yes, I believe so.

5 Q You agree with that, Dr. Bores?

6 A (Bores) Since I have never been to one of these
7 meetings, I can't answer.

8 Q Okay.

9 A (Bores) No question -- no basis for answering.

10 Q Okay. You've never been to a Seabrook coordination
11 meeting; is that your testimony?

12 A (Bores) That is my testimony.

13 Q How about you, Mr. Lazarus, have you been to some of
14 them?

15 A (Lazarus) I believe I attended two or three of these
16 meetings.

17 Q And at the ones you attended, would the utility be
18 advised as to the status of reviews, the extent to which there
19 were open items, inadequate items and so forth, generally?

20 A (Lazarus) I can say generally. I don't recall a
21 specific conversation, but I would expect that to be part of
22 the briefing. As I recall, that probably was part of the
23 briefings.

24 Q And for how long a period of time did these meetings
25 go on, if you know?

1 A (Lazarus) I don't recall the last one that I
2 attended, but I believe that -- I believe they stopped some
3 time prior to the February 1986 exercise.

4 Q All right.

5 A (Lazarus) Many of the discussions were leading up to
6 scheduling for that exercise.

7 Q Okay. Am I correct that Mr. Harpster would have
8 attended some of these meetings as an NRC representative?

9 A (Lazarus) Yes, he did.

10 Q Did he ever attend any Seabrook coordination meetings
11 as a New Hampshire Yankee representative after he left the
12 agency?

13 A (Lazarus) Yes, he did.

14 Q Okay. Now the other thing that I wanted to turn your
15 attention to was yesterday's transcript, Mr. Lazarus, at Page
16 12019, if you have that available to you, and that was
17 questioning by Judge Smith. 12019, questioning by Judge Smith.
18 And you can take a moment to look at that. I want to direct
19 your attention to the question and answer at Line 18.

20 I think Judge Smith was asking you there at Line 18,
21 "When did it first occur to you that it was not moot," and I
22 think the reference, and I'll be glad to ask you to confirm
23 this if you agree, the reference there is the request for
24 something further from FEMA as a result of the July 30th
25 meeting; is that right?

1 MR. TURK: Objection. Your Honor, we had
2 clarification this morning as to that question and answer, and
3 that was the first thing we did.

4 MR. BACKUS: Well, I certainly didn't hear it.

5 JUDGE SMITH: That's right.

6 MR. BACKUS: They did?

7 JUDGE SMITH: Yes, that was covered.

8 MR. BACKUS: Okay.

9 MR. OLESKEY: I thought he had a different point to
10 make about this.

11 MR. BACKUS: All right, maybe I do.

12 JUDGE SMITH: Asked him to identify what was moot.

13 MR. BACKUS: Oh, that was clarified?

14 JUDGE SMITH: Yes.

15 MR. BACKUS: Okay. Can somebody tell me so I don't
16 take up time here?

17 MR. TURK: The fact that the majority of the RAC
18 disagreed with Mr. Thomas.

19 MR. BACKUS: All right. Okay.

20 BY MR. BACKUS:

21 Q Then your answer at Page 12019, Line 20, was, "When
22 we saw the copy of the FEMA submitted position, I believe in
23 October, and we had not up to that time received the promised
24 revision to the FEMA testimony."

25 Is that correct?

1 MR. TURK: Your Honor, this paragraph also was the
2 subject of clarification this morning.

3 MR. OLESKEY: No, I don't believe so.

4 MR. TURK: Yes, it was. There were two
5 clarifications. This one dealt with the fact that what he saw
6 in October was the prefiled testimony of September.

7 MR. BACKUS: Is there an objection, or am I going to
8 be allowed to get an answer to this question?

9 JUDGE SMITH: Well, why are you covering the same
10 ground? Is there a particular reason? Or were you not here?

11 MR. BACKUS: Yes, I think I was here and I don't
12 remember this being covered. But if somebody thinks that
13 question has been answered, let me go to another one.

14 BY MR. BACKUS:

15 Q You testified yesterday that you had been promised a
16 revision of the FEMA testimony; is that correct, Mr. Lazarus?

17 A (Lazarus) To the FEMA position that we had been
18 discussing in the RAC.

19 Q That's what I wanted to know.

20 When you told Judge Smith yesterday that you had been
21 promised a revision of the FEMA testimony, did you strictly
22 mean FEMA testimony?

23 A (Lazarus) No, I was inaccurate in the use of that
24 word.

25 Q What did you mean?

1 A (Lazarus) The prefiled response to the contentions
2 that FEMA had submitted in June. We subsequently had a RAC
3 meeting where it was further discussed, July 30th. And at the
4 conclusion of that meeting FEMA agreed that they would take our
5 comments and revise the position and send it out to the RAC for
6 review.

7 Q So it's your testimony that you were promised that
8 the FEMA position which had been filed on June 4th, and which
9 we are all very familiar with on the beach population, that
10 they had promised you that that would be revised at the RAC
11 meeting; is that your position? Is that your testimony?

12 A (Lazarus) It is my position that Mr. Thomas stated
13 that he would revise that, have that position revised and send
14 it out to the RAC for review. That is my understanding.

15 Q Not review, but actually it would be changed; is that
16 your testimony?

17 A (Lazarus) Yes, that they would take our response,
18 review that position, revise it, and send it out to the RAC for
19 further review.

20 Q So it would be sent to the RAC for further review; is
21 that your testimony?

22 A (Lazarus) That is my understanding of what the
23 commitment was.

24 Q Are you further saying that at that time there was a
25 commitment made that the FEMA testimony to be presented to this

1 Board would be changed?

2 A (Lazarus) No, I do not represent that.

3 Q Okay.

4 JUDGE SMITH: Or would be changed. From what?

5 MR. BACKUS: From what had been filed as in June.

6 MR. TURK: Your Honor, we're talking --

7 MR. DIGNAN: First of all, it wasn't filed in June.

8 MR. TURK: We're talking about July 1987. The only
9 thing that was out -- that had been issued at that time was the
10 response to contentions of June 1987. And Mr. Lazarus is
11 testifying that it was his understanding that that position
12 would be revised. That has nothing to do with testimony.

13 JUDGE SMITH: Did -- you misspoke, because the first
14 testimony, as I understand it, was filed in September.

15 MR. BACKUS: Well, perhaps I did. What I'm trying to
16 find out is, and let me ask this witness.

17 BY MR. BACKUS:

18 Q Are you saying, sir, that some sort of a commitment
19 was made by somebody at FEMA that the June statement of
20 position that FEMA had filed would not be filed as testimony in
21 this proceeding; is that what you're saying?

22 A (Lazarus) It is my understanding that Mr. Thomas at
23 the July 30th RAC meeting apologized to us for sending in the
24 June 4th submission without further consultation with the RAC,
25 based on the July 30th RAC meeting, and all the comments we

1 made at that time, that he agreed to make revisions to that and
2 send it out to the RAC for further review.

3 Q And by sending it out to RAC for review, you're not
4 indicating that there was any commitment as to what testimony
5 would be filed before this Board in this proceeding; is that --

6 A (Lazarus) That's correct.

7 Q Okay. At the time when you say this commitment was
8 made as you've described it, were you aware of the filing
9 deadline for prefiled testimony in this proceeding?

10 MR. TURK: Could I ask for that again?

11 THE WITNESS: (Lazarus) The question was, was I
12 aware of the prefiled deadline for testimony.

13 MR. BACKUS: In this proceeding.

14 MR. TURK: In July, was he aware of the --

15 MR. BACKUS: Right.

16 MR. TURK: -- of the September deadline, or any
17 deadline.

18 THE WITNESS: (Lazarus) No, I was not.

19 BY MR. BACKUS:

20 Q You had not been asked to prepare testimony for this
21 proceeding to meet any deadline of September 11th or
22 thereabouts; is that right?

23 A (Lazarus) No, sir.

24 MR. BACKUS: Okay, that's all I have at this time.

25 JUDGE SMITH: Mr. Oleskey.

1 MR. TURK: Your Honor, I'd like to clarify something.
2 It's my request and understanding that the parties
3 understand that I would like all of the examination, other than
4 sequestered examination, to continue now so that we don't have
5 a problem of --

6 JUDGE SMITH: So that you can talk to your witnesses
7 over the weekend.

8 MR. TURK: That's right.

9 JUDGE SMITH: Without --

10 MR. TURK: Without fear of stepping over a line.

11 MS. WEISS: All the questioning of Lazarus?

12 MR. TURK: Anything that's not going to be
13 sequestered.

14 MS. WEISS: Of Lazarus.

15 MR. TURK: Of anyone.

16 (Simultaneous conversation.)

17 JUDGE SMITH: As I understand what he's trying to is
18 do not get into any sequestration this afternoon so he's free
19 this weekend to talk to his witnesses without fear of crossing
20 over the line.

21 We have a half-hour. Do you have anything more than
22 you can -- is that what you're seeking? It's the freedom to
23 consult with your witnesses over the weekend that you're
24 seeking, isn't it?

25 MR. TURK: Yes. And also freedom during the coming

1 day or two of their testimony, whatever that may be, to be able
2 to consult until we reach sequestered items. Let me explain
3 some thing.

4 MR. OLESKEY: We're there, Sherwin.

5 MR. TURK: You may be, but I don't hear Ms. Weiss or
6 anyone else saying that they are there.

7 MS. WEISS: We agreed, because you asked us, that we
8 would go through everything of Mr. Lazarus, and then go into
9 his sequestration, and finish his sequestered testimony, and
10 then go to Mr. Bores. That's how we've been proceeding all day
11 today.

12 I know Mr. Oleskey turned his cross-examination plan
13 inside out.

14 MR. TURK: May we go off the record for a moment?

15 MS. WEISS: Are you changing the rules?

16 JUDGE SMITH: We're off the record.

17 (Discussion off the record.)

18 FURTHER CROSS-EXAMINATION

19 BY MR. DIGNAN:

20 Q Mr. Lazarus, I just want to ask you this.

21 You had indicated in earlier testimony that you
22 thought Mr. Harpster had attended this coordinating committee
23 meetings as an NHY, New Hampshire Yankee employee. Do you
24 recall that testimony?

25 A (Lazarus) Yes, sir.

1 Q I am going to ask you to think very carefully on
2 that.

3 When was the last of those meetings?

4 If you have no memory --

5 A (Lazarus) I really don't recall.

6 Q If you have exhausted your memory, let me know.

7 A (Lazarus) I don't recall the last meeting.

8 Q I suggest to you that February '86 was the last of
9 those meetings. Does that refresh your recollection at all?

10 A (Lazarus) Yes, I also stated I believed the last one
11 was prior to the exercise.

12 Q All right. Do you recall earlier indicating when Mr.
13 Harpster left the agency, and went to work for New Hampshire
14 Yankee?

15 A (Lazarus) It was after that time.

16 Q In light of that, do you --

17 A (Lazarus) Yes, I would --

18 Q -- still believe he --

19 A (Lazarus) No.

20 Q -- ever attended a coordinating committee meeting?

21 A (Lazarus) I will correct that testimony. I do not
22 believe he attended as New Hampshire Yankee employee.

23 MR. DIGNAN: Thank you.

24 JUDGE SMITH: Okay. We do want to leave the hearing
25 room here at about 3:30. People want to move their packages

1 over to the office, if they're going to do that. I think we
2 ought to adjourn now until 10:00, Tuesday morning.

3 (Whereupon, at 3:10 o'clock p.m., the hearing was
4 recessed, to resume at 9:30 o'clock a.m., Tuesday, May 24,
5 1988.)

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CERTIFICATE

This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission in the matter of:


Name: PUBLIC SERVICE COMPANY OF
NEW HAMPSHIRE, et al.

Docket Number: 50-443-OL, 50-444-OL

Place: CONCORD, NEW HAMPSHIRE

Date: May 20, 1988

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission taken electronically by me and, thereafter reduced to typewriting by me or under the direction of the court reporting company, and that the recording is a true and accurate record of the foregoing proceedings.

/s/ 

(Signature typed): KENT ANDREWS

Official Reporter

Heritage Reporting Corporation