

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))

) DOCKET: 50-443-OL
) 50-444-OL
) OFFSITE EMERGENCY
) PLANNING
)

PAGES: 12487 through 12782

PLACE: Concord, New Hampshire

DATE: May 25, 1988

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

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

10 Wednesday,
11 May 25, 1988
12 Room 302
13 Legislative Office Building
14 Concord, New Hampshire

15 The above-entitled matter came on for hearing,
16 pursuant to notice, at 9:04 a.m.

17 BEFORE: JUDGE IVAN W. SMITH, CHAIRMAN
18 Atomic Safety and Licensing Board
19 U.S. Nuclear Regulatory Commission
20 Washington, D.C. 20555
21 JUDGE GUSTAVE A. LINENBERGER, JR., MEMBER
22 Atomic Safety and Licensing Board
23 U.S. Nuclear Regulatory Commission
24 Washington, D.C. 20555
25 JUDGE JERRY HARBOUR, MEMBER
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

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(No Appearances)

21
22
23
24
25

I N D E X

1				
2	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>
3	<u>Panel:</u>			
	ROBERT BORES			
4	WILLIAM LAZARUS			
	by Mr. Oleskey	12499		
5	by Mr. Backus	12562		
	by Mr. Brock	12578		
6	by Ms. Weiss	12594		
	by Mr. Turk		12610	
7	by Mr. Dignan			12636
	by Mr. Oleskey			12637
8	by Mr. Turk		12642	
9	<u>Panel:</u>			
	RICHARD KRIMM			
10	GRANT PETERSON			
	DAVID MCLOUGHLIN			
11	by Mr. Flynn	12649		
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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>
<u>MASS. AG:</u>				
26	prev.	12493		2 pages, memo, 9 Jan. '86, Lutz to Thomas
27	prev.	12493		2 pages, letter, 14 Jan, '86, Bickerton to Thomas
28	prev.	12493		2 pages, memo, 13 Jan. '86, Oleson to Thomas
29	prev.	12493		2 pages, memo, 15 Jan. '86, Church to Thomas
32	12496	12496		Multipage, 7 May, '87 Rospenda to Swiren, Chan, Flynn; FEMA responses to contentions

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I N L E X

INSERTS:PAGE:

Massachusetts Attorney General
Exhibits 26, 27, 28, 29, 30,
and 31

12494

Massachusetts Attorney General
Exhibit 32

12497

Massachusetts cross-examination
plan on Bores and Lazarus

12644

P R O C E E D I N G S

(9:04 a.m.)

JUDGE SMITH: Good morning.

Is there any preliminary business?

MR. OLESKEY: Just a couple of matters, Judge. We have provided the reporter with three copies of Massachusetts Attorney General identification Exhibits 26, -7, -8, and -9 which were the other responses from non-NRC RAC members to Mr. Thomas's memo of December 31, 1985. So I'd like to move at this time that those be entered as formal exhibits pursuant to our discussion of yesterday.

JUDGE SMITH: Are there objections?

MR. TURK: Your Honor, what's the purpose of the offer?

MR. OLESKEY: The same purpose as the purpose stated repeatedly in colloquy between Mr. Turk and myself and myself and the bench, to show the historical evolution of the RAC position as it represented the only responses which these witnesses are aware of to the Thomas inquiry of December 31, '85 in writing up until Dr. Bores's work a year later.

MR. TURK: Your Honor, I can't object for the historical purpose offer. I don't agree with the characterization that these witnesses were aware of these responses or if in fact they know of other responses that were provided to Mr. Thomas, which they've not yet seen.

1 But for historical purposes I don't object to the
2 offer.

3 MR. OLESKEY: I didn't represent anything about these
4 witnesses's state of knowledge. If counsel will listen
5 carefully we'll save a lot of time today.

6 JUDGE SMITH: So there is no objection for the
7 purpose offered. And the exhibits are received.

8 (The documents referred to,
9 having been previously
10 marked for identification as
11 Mass. AG Exhibits 26, 28,
12 29, were received in evidence.)

13 JUDGE SMITH: Do you want these bound into the
14 transcript?

15 MR. OLESKEY: I think --

16 JUDGE SMITH: They don't automatically go there
17 unless you request it.

18 MR. OLESKEY: No, I recognize that. Now, why don't
19 we do that.

20 JUDGE SMITH: Do you want your Exhibit 30 and 31
21 bound in, too?

22 MR. OLESKEY: Yes.

23 JUDGE SMITH: All right. So, we've already received
24 30 and 31, and so we will ask that the reporter bind in
25 Exhibits 26 through 31 into the transcript.

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(Mass. AG Exhibits 26, 27, 28,
29, 30, and 31 follows:)

MAG
Exhibit
26

REGIONS I and II

DEPARTMENT OF TRANSPORTATION
REGIONAL EMERGENCY TRANSPORTATION COORDINATOR
FIRST COAST GUARD DISTRICT
150 CAUSEWAY STREET
BOSTON, MASSACHUSETTS 02114

9 JAN 1986

MEMORANDUM

From: Regional Emergency Transportation Representative,
Regions 1 & 2
To: Chairman, Regional Assistance Committee, Region 1
Subj: SEABROOK EMERGENCY PLANS
Ref: (a) Your memo Dec 31, 1985 number R1-TH-85-~~88~~²⁷, same
subject

1. My comments on the issues raised by reference (a) are as follows:

a. The Transient Beach Population

I think the State has done a pretty good job of attacking this problem in Appendix F of Volume 4 regarding decision making. As I read it, they will close the beaches when the plant is unstable or under certain wind conditions at ALERT and they will evacuate at SITE AREA EMERGENCY under degrading plant condition. I like this precautionary action to handle the special problem of the beach population. However, I would recommend a few changes to simplify and expedite the decision process.

As an old meteorologist I am very uncomfortable with their use of wind direction to decide safety precautions in the summer time along the shore. Along the coast in summer time we have many days of light winds which are inherently variable in direction. We have thunder storms which can cause winds from any direction and we have land effects and day and night effects which cause changes in wind direction, especially in the summer time. With the sensitive issue they are facing at Seabrook, I recommend that the precautionary actions directed between May 15 through September 15 not be dependent on the frequently uncertain wind direction. Since time will be of the essence, the precautionary actions should be as automatic as possible. The State should avoid the delays caused by waiting for meteorologists and plant engineers to get their acts together and to make uncertain forecasts.

Accordingly, I suggest that at "ALERT" the State automatically act to restrict access to the beaches and at "SITE AREA EMERGENCY" they automatically evacuate the beaches for all weather conditions and even if the plant is considered stable.

MASS AG 26

b. Occupants of Unwinterized Accommodations

I cannot fully judge this RAD health problem. However, I feel that the precautionary actions discussed in "A" above will also help to lessen the danger from unwinterized accommodations since that will reduce the population on the road system and allow the people in unwinterized accommodations to move to more substantial structures or to voluntarily evacuate the area.

2. Are the plans in adequate shape for a full scale exercise?

Overall, I believe the plan did a good job for most of my assigned criteria. However, it seems inherently very unwise for a full scale exercise to be conducted when the RAC has not seen the missing parts of the State plan.

Paul Lutz
Paul Lutz

1780

New Hampshire

MAG
Exhibit
27
(ED)

JAN 14 1986

Mr. Edward A. Thomas
Division Chief, Natural and
Technological Hazards
Federal Emergency Management Agency, Region I
John W. McCormack Post Office and Courthouse
Boston, Massachusetts 02109

Dear Mr. Thomas:

This is in reply to your memorandum of December 31, 1985, concerning the Seabrook emergency plans. Upon completion of our review of the New Hampshire plans, we reviewed the California, Delaware, New Jersey, and Virginia State plans for information that may have been included regarding beach populations, and we have incorporated any appropriate data in our response.

A. The Transient Beach Population

Issue. Is the current planning acceptable or nearly acceptable?

USDA Response. Evacuation time estimates should be completed and reviewed by the RAC before the New Hampshire plans are considered acceptable.

In developing evacuation time estimates, special consideration should be made for weekends and holidays. As a precautionary measure, the Virginia plan provides for evacuation of their beach population at an earlier phase than for the residents. The New Jersey plan provides three different scenarios for evacuation. They have also considered time for mobilization, time on feeder roads and time on highways to the edge of the EPZ. For your information, procedures for determining EPZ roadway capacity were based on the Highway Capacity Manual, published by the Transportation Research Board or the National Research Council and the Traffic Engineering Handbook, published by the Institute of Transportation Engineers. The Delaware State plan considers the use of ferry boats with assistance from the Coast Guard. This may not be possible for New Hampshire. Evacuation seems to be the only action to be taken, since the New Hampshire plan states on page 2, 6-8 that "Sheltering may not be considered as a protective action on the seacoast beaches during the summer."

Regarding the use of cars for sheltering for several hours, we feel it is not a viable consideration. Several reasons such as the heat (no air conditioning could be turned on), need for water, and other human needs make this an unrealistic solution. The New Hampshire State Implementing Procedures state that an EBS message will be developed. The section of the plan that includes EBS messages does not include one for transient population during the height of the summer season. A message should be included with the other messages in the plan.

B. Occupants of Unwinterized Accommodations

Issues. If this is a problem, we should raise it now to afford State/local governments time to quantify the problem and deal with it.

USDA Response. We did not find this problem addressed in any of the other State plans we reviewed. However, we feel it is a problem that should be addressed. Occupants of unwinterized cottages, motel rooms, or campsites may not be aware that the structures are not designed to resist penetration of radiological materials. A survey could be made and the owners notified. Another concern would be what is the most cost effective way to winterize these dwellings, or would it be more expedient to evacuate these shelters at the same time as the day trippers are evacuated? These are a few concerns that should be addressed.

In regard to your concern as to the desirability of a full-scale exercise as planned at the end of February, we feel that if the scenario provides for a summertime exercise, the plans would have to be upgraded to include the stated concerns before the exercise. Ms. Dorothy Nevitt of my staff attended the drill in December and apprised me of the problem areas that were discussed at the post-meeting. If the major problems have not been resolved, then it is doubtful that they are ready for an exercise.

We hope these comments will be of assistance to you and if we can be of further assistance, please let us know.

Sincerely,

George E. Bickertor, Director
Office of Emergency Planning

FSIS:PP:EP:DRNevitt:1-14-86

MAG
Exhibit
28
(10)

January 13, 1986

MEMORANDUM FOR: Edward A. Thomas, Division Chief
Natural & Technological Hazards

FROM: Fred B. Oleson, Health Physicist
Emergency Management & National
Preparedness Programs Division

SUBJECT: Seabrook Emergency Plans

Regarding the issue of probable exposure or contamination which would produce health effects on the "beach population" during an accidental release from Seabrook Station:

ISSUE #1

Assume transient beach population could be evacuated by car or bus in a 7-8 hour period. (Preliminary estimates are that the entire beach population including summer residents could be evacuated in that time period). Since all credible accident scenarios would not result in loss of all containment and since over 18-20 hours of warning could be expected before any major leakage would occur (again conservative), evacuation of the "transient beach" population would be feasible before significant releases (affecting health or producing surface contamination) would occur. This is to be sure a personal opinion but it is shared by many of my health physics colleagues.

The population most at risk would be the individuals or family groups who would have travelled to the beaches on a hot summer day by automobile. This segment of the risk population could be evacuated first at the Site Emergency level or denied access as early as an Alert condition.

All of these people would not be expected to have been exposed or contaminated at all. They could return to their homes without having to go through reception centers. We need to know what number of the "transient population" is in relation to the maximum summer beach population.

The next important segment to be evacuated would be residents (year round plus summer) in the area from 0-.5 mile. This segment should be accorded the same priority as the first group, re preventative evacuation.

All residents from .5 to 2 miles should be sheltered during the preventative evacuation time frame. No release has occurred containment is intact. What number is involved in this option not counting emergency workers required to implement evacuation?

Further evacuation should only be considered based on serious deterioration of plant conditions or breach of containment. This would be recommended based on the met conditions, estimated source terms, etc., downwind distance of EPZ towns, capacity of road network, constraints (weather conditions, time of day, etc.).

If this sequence of evacuation and sheltering is applied to the preventive action guidance, the issue importance will be minimized.

If maximum off-site dose rates of 1 rem/hr are predicted downwind at 0.5 mile for a duration of 3-5 hours the beach population (now reduced) could be evacuated out to 3 or 5 miles (or even 5 to 10 miles) depending on the iodine and particulate components of the plume and wind stability.

If people in these zones evacuate before the plume has been detected or any dosimeter readings observed there will be minimal requirements for decontamination at reception centers. For the majority of persons evacuating by car or bus from a plume affected area serious exposure, contamination or ingestion will not occur during evacuation or continued sheltering since the vehicle or house/cottage affords a degree of protection against contamination, moderate protection against ingestion and minimizes requirements for personal decontamination at a future time such as transit to reception centers.

Since the unimpeded transit times are of the order of 2 hours and in view of the intermittent nature of the plume exposure, no serious health effects are expected even if these levels of predicted exposure occur and require evacuation.

ISSUE #2

Whether or not the plans are "in adequate shape" is not as important as whether the communications and warning systems are in place, whether the people assigned to execute or operate the plans are trained, available and willing to be exercised (especially at local level), and whether all three States are going to be able to coordinate in the matter of public advisories.

The drill did not demonstrate that these requirements for a successful exercise could be in place by February.

Radiological teams, laboratory equipment/procedures, decontamination capability at local EOCs or reception centers, equipment or instruments for local and state emergency worker exposure control, etc., are not yet in place or understood.

The New Hampshire Emergency Broadcast System is not useable for the emergency programming needed to implement the Seabrook Station REP. Arrangements are being made with an FM Station in Dover for emergency warnings to the public in the Seacoast Area. However, this should not be confused with the Emergency Broadcast System plan in existence which can only be changed with FCC and FEMA approval.

MAG Exhibit
2462

UNITED STATES GOVERNMENT

memorandum

DATE: January 15, 1986

REPLY TO
ATTN OF:

Warren Church, FDA, RAC Member

SUBJECT:

Seabrook Emergency Plans

TO:

Edward A. Thomas, Division Chief
Division of Technological Hazards, FEMA

[Handwritten signature]

In response to your December 31, 1985 request, I would like to offer the following comments regarding the State of New Hampshire's emergency plans for their beach population.

A. Transient Beach Population

1. The concept of closing the beaches during the early stages of a radiological emergency at Seabrook has merit. Certainly it is realistic to assume a minimum of several hours between the initial recognition of a potential problem (alert stage) and the need to escalate to a higher emergency level where protective actions are normally indicated. (The probability of a fast breaking event where there would be little or no warning is much too low to plan for).

There would be very little cost in automatically closing the beaches at the "alert" level because this is a relatively rare event (approximate every 10 reactor years). Also there is approximately only one chance in 50 that it would occur when the beaches were populated.

2. The procedures for closing the beaches would have to be simple and they would have to be implemented within a short period of time in order to be effective in the "worst case" scenario where the emergency is rapid escalating. This may mean that the beaches would have to be automatically closed at the "alert" stage.
3. Before the effectiveness of this concept can be fully evaluated two questions need to be answered.
 - a. If the beaches are full, and the closure takes place, how long will it take to empty the beaches?
 - b. What percentage of beach evacuees would actually leave the seacoast area?
4. If the beaches can be evacuated within a 2 - 3 hour period and a good percentage of the evacuees leave the seacoast area, then I believe this concept to be sound and acceptable.

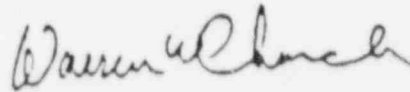
B. Occupants of Unwinterized Accomodations

The protection afforded by sheltering in unwinterized cottage and motel rooms will definitely be less than normal single floor woodframed houses. The exact protection factor will of course be dependent on many parameters including the radionuclide composition of the plume and the length of the sheltering period.

The limited sheltering protection offered by this type of housing should definitely be factored into New Hampshire's plans and emergency decision making process.

Campgrounds should be assumed to offer no sheltering protection. Public sheltering should be identified for this population.

I hope the above comments concerning protection of beach populations will be helpful in New Hampshire's emergency planning process for Seabrook. My comments on the other radiological health aspects of this plan are being submitted under separate cover.



Warren W. Church

MAG Exhibit 31



Federal Emergency Management Agency

Washington, D.C. 20472

May 1, 1987

Mr. Edwin Reis
Office of General Counsel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Reis:

Re: Offsite Emergency Planning Hearings, Seabrook Nuclear Station

This will confirm our telephone conversation today in which I requested that Dr. Robert J. Bores, Technical Assistant, Division of Radiation Safety and Safeguards, Nuclear Regulatory Commission (NRC), Region I, be made available as a witness in the offsite emergency planning hearings for the Nuclear Power Station. These hearings are scheduled to begin June 1, 1987, in Concord, New Hampshire, although the schedule may have been changed by the time you receive this letter.

The Regional Assistance Committee (RAC), chaired by Mr. Edward A. Thomas, Chief, Natural and Technological Hazards Division, Federal Emergency Management Agency (FEMA), Region I, has recently examined in depth the issue of the safety of the transient beach population within the Emergency Planning Zone (EPZ) for Seabrook. It was the sense of the RAC that certain factors specific to the Seabrook EPZ might preclude a finding that reasonable assurance that adequate protective measures can be taken to protect the public in the event of an accident at Seabrook. The most important of those factors are the virtual unavailability of sheltering for the transient beach population and evacuation time estimates ranging up to more than four hours.

On the other hand, Dr. Bores, who serves as NRC's RAC Representative for the Seabrook Station, has provided information that resolved many of the RAC's reservations about the safety of the beach population. A particularly important part of this information is that the probabilistic risk assessments for the Seabrook Station justify an assumption that it is highly unlikely that there will ever be an accident at the plant involving a serious release of radiation within one half hour of the onset of the emergency condition.

As you can see, the technical material provided by Dr. Bores is essential to the RAC's deliberation on this issue. Because of the familiarity and expertise in this area which no one else on the RAC has, the RAC has determined that it is essential to the effective presentation of FEMA's testimony on this issue that Dr. Bores be available to explain the basis for the RAC's conclusions.

Thank you for your cooperation.

Sincerely,

H. Joseph Flynn
Assistant General Counsel

JUL 23 '87 10:33

NRC MILLSTONE 1 P82

*Congressman
Brahnett
Van Nis
Parrotte
Hirke*

*Received by Region 2 July 21 1987
Sent to J. Schumacher (RAC)*



FEDERAL EMERGENCY MANAGEMENT AGENCY
John W. McCormack Post Office and Courthouse
Boston, Massachusetts 02109

*M6
Exhibit
31*

INFORMATION AND GUIDANCE MEMORANDUM

DATE: June 17, 1987

NUMBER: R1-TH-87-14

MEMORANDUM FOR: Regional Assistance Committee (RAC)
Radiological Emergency Preparedness
Task Force (REP)

FROM: Edward A. Thomas
RAC Chairman

SUBJECT: FEMA's Seabrook ASLB Submission

Attached are two sets of materials. The first is the package which FEMA submitted to the Seabrook Off-Site Atomic Safety and Licensing Board on June 4, 1987. This represents FEMA's response to the interrogatories directed at this Agency, including FEMA's position on the admitted contentions to this ASLB proceeding (Appendix A of package). FEMA's position on the contentions found in Appendix A is based primarily on the RAC review performed on Rev. 2 of the New Hampshire plans submitted to FEMA and the RAC in August of 1986.

One area in particular which requires discussion here is FEMA's response to the contentions dealing with the issue of protective actions for the beach populations around Seabrook. The response to those contentions are found on pages 38 and 39 of Appendix A. As you will remember, a special RAC meeting was held in Boston on April 15 of this year to deal with the adequacy of the New Hampshire State planning for the beach population. The end result was basically the adoption of the February 18, 1987 Bores position paper on the Protection of New Hampshire Beach Populations (with very minor modifications) by FEMA and the RAC to support a finding of adequacy for New Hampshire planning in this area (Appendix D of attachment). A crucial component of this position paper was the inclusion of expert technical opinion, and by assumption future testimony by NRC, on the exceptional nature of Seabrook's containment system which would result in a planning base for Seabrook way in excess of the current 1/2 hour minimum described in NUREG-0654/FEMA REP-1. Subsequent to the April 15 RAC meeting, it was decided in Washington by NRC that it did not think it wise to include any references to the utility's PRA study and Brookhaven National Laboratory's review of that study. Therefore, all references to those two issues were dropped from the February 18 position paper which the RAC reviewed and adopted on April 15.

Information & Guidance Memo R1-TH-87-14

21

In its response to those contentions dealing with the beach population issue (pages 38-39 of Appendix A), FEMA therefore was compelled to make a negative finding with respect to this issue, instead of the positive finding which was originally anticipated.

A copy of the revised Beach Population paper, dated June 4, 1987, which contains no reference to enhanced containment, is included for your review and information.

Should you have any questions, please contact me or Bruce Swiren of my staff at FTS 223-9561.

Attachments

P.S. WE'LL BE HAVING A RAC MEETING ON BEACH ISSUE WEEK OF JULY 6.

1 MR. TURK: Your Honor, just for clarification, this
2 is 26, 27, 28 and 29 that the offer is now --

3 JUDGE SMITH: Right. Yesterday -- 30 and 31 were
4 dealt with yesterday; today we're just binding them into the
5 transcript.

6 MR. OLESKEY: Secondly, Your Honor, through the
7 courtesy and assistance of Mr. Flynn, I now have given them
8 better copies of the attachment to Dr. Bores's memorandum,
9 Exhibit 2, and this is Attachment 12 which was the telex from
10 Mr. Rospenda to Ms. Chan containing some draft testimony that
11 we went over yesterday. You will recall the copy in the record
12 is very poor.

13 JUDGE SMITH: All right.

14 MR. OLESKEY: The only difference that I can
15 determine between what I'm providing now and what is part of
16 Exhibit 2 is that there are two additional transmittal pages in
17 the front of this: one to Mr. Swirin at Region 1, FEMA; and a
18 second to Mr. Flynn at FEMA headquarters. The other page
19 you've already seen as the transmittal to Elaine Chan, because
20 the original document that came from Dr. Bores's files
21 apparently was provided to him by her after it was telexed to
22 her from Mr. Rospenda at Argonne.

23 I would suggest that this be separately marked
24 because for any resort anyone wishes to make of this material,
25 this is by far the clearest version.

1 And I would therefore offer it as a separate exhibit
2 at this time, namely, Massachusetts Attorney General Exhibit
3 32, with the record to recognize that with the exception of the
4 two additional telex pages, as far as I can determine, it is a
5 clearer version since it appears to be from Mr. Rospenda's
6 files of what was otherwise Attachment 12 to Exhibit 2 and 2-A.
7 And in fact, it appears in Exhibit 2-A beginning at global page
8 43.

9 (The document referred to was
10 marked for identification as
11 Mass. AG Exhibit 32.)

12 JUDGE SMITH: Are there any objections?

13 (No response)

14 JUDGE SMITH: Massachusetts Attorney General Exhibit
15 32 is received.

16 (The document referred to having
17 been previously marked for
18 identification as Mass. AG
19 Exhibit 32 was received in
20 evidence.)

21 MR. OLESKEY: And may that be bound in as well, Your
22 Honor.

23 MR. TURK: Your Honor, just one notation, we
24 obviously have not done a line by line comparison or even page
25 by page comparison. Well, I'll accept counsel's representation

1 that it's the same document as attached to.

2 MR. OLESKEY: I haven't done a line by line either;
3 I've just taken a quick look at it, and that's why I said it
4 appears to be a copy. And since I believe Mr. Flynn got it
5 from Mr. Rospenda, that was an additional basis for my
6 judgment.

7 MR. FLYNN: I will confirm what Mr. Oleskey just
8 said, that I provided that document to Mr. Oleskey, and it came
9 to me from Mr. Rospenda.

10 MR. TURK: Your Honor, I do note there are some
11 additional markings on the attachment to Staff 2 and 2-A. For
12 instance, on global page 57 there's a bracketing which
13 apparently was done by some reader of the document. But in
14 general the document appears to be similar.

15 JUDGE SMITH: We've already received the exhibit and
16 we will direct that it be bound into the transcript.

17 (Mass. AG Exhibit 32 follows:)

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21

22

23

24

25

ENERGY AND ENVIRONMENTAL SYSTEMS DIVISION
TELECOMMUNICATION MESSAGE

Thursday
Date: 5-7-87 Total Pages: 16

FROM:

Robert Rosperda
Argonne National Laboratory
(312) 972-7643
Telex: (312) 972-7819

TO:

Bruce Swiren
FEMA Region I - Boston
Fax # 8-223-1812 9519

COMMENTS:

NUCLEAR REGULATORY COMMISSION

Packet No. 50-443444-02 Official Ex. No. 32
In the matter of Seabrook
SEARCHED _____ IDENTIFIED
SERIALIZED _____ RECEIVED
INDEXED _____ REJECTED _____
DATE 5/25/88
Mass Atty Gen *Bores, Lazarus*
KA

ENERGY AND ENVIRONMENTAL SYSTEMS DIVISION
TELECOMMUNICATION MESSAGE

Thursday
Date: 5-78 Total Pages: 16

FROM: Robert Rosperda
Argonne National Laboratory
(312) 972-7643

Telefax: (312) 972-7819

TO: Elaine Chan
NRC - Bethesda, MD

TeleFax: 8-492-7921

COMMENTS: _____

ENERGY AND ENVIRONMENTAL SYSTEMS DIVISION
TELECOMMUNICATION MESSAGE

Thursday

Date:

5-7

Total Pages:

16

FROM:

Robert Rospenda
Argonne National Laboratory
(312) 972-7643

Telex: (312) 972-7819

TO:

Joseph Flynn
FEMA HQ - Washington

Telex - 8-202-646-2464
8-202-646-2531

COMMENTS:

**REVISED TOWN OF HAMPTON
CONTENTION VIII TO REVISION 2**

FEMA Response

FEMA has addressed the Town of Hampton Revised Contention VIII and its basis of inadequate protective actions for the beach population by applying Planning Standard J (Evaluation Criteria J.9, J.10.a, J.10.g and J.10.m) in FEMA-REP-1.

The December 15, 1986 RAC review of the State and municipal plans, the amended portions of the RAC review dated _____, and the RAC position paper on the beach population issue transmitted to the State of New Hampshire dated _____ reflect FEMA's views on this issue. Specifically, FEMA's review comments on the New Hampshire State plan on this issue are provided on pages 64, 74, 86, 87, 88, and 91 of Section I. FEMA's review comments on the municipal plans on this issue are provided on page 17 of Section II. FEMA's review comments on the Evacuation Time Estimate (ETE) on this issue are provided on page 4 of Section VI.

FEMA relied upon the following documents in forming its conclusions on this issue: Revision 2 to the Hampton plan; Revision 2 to the New Hampshire State plan; and the Applicant's Motion for Summary Disposition of the Town of Hampton Revised Contention VIII dated March 25, 1987.

As indicated in the December 15, 1986 RAC review (page 64, Section I), determination of the adequacy of protective responses for the beach population remained open pending final review by the RAC of planned protective measures, and pending receipt of information from the state on the number of transients who would need transportation during an evacuation. The RAC has recently concluded (see RAC position paper dated _____) that the beach population can be appropriately protected by implementing provisions of the current (Rev. 2) New Hampshire emergency plans and that there appears to be no unique problem relative to the beach population that has not been adequately addressed.

The bases for the RAC's conclusion on the beach population issue are provided in the position paper transmitted from FEMA to the State of New Hampshire on May __, 1987. Work on this position paper was initiated by a 12-31-85 memorandum from the RAC Chairman to the RAC members requesting their review and comments on the adequacy of plans for protecting the beach population (i.e., the transient beach population, and summer residents who inhabit unwinterized accommodations on or near the beach), and the possible need for special protective actions to protect the beach population. Written comments in response to the memorandum were received by the RAC Chairman during 1986 and 1987. A special meeting of the RAC was convened in April 1987 to review all comments and, if possible, to arrive at a unified position on whether the plans were adequate or inadequate to protect the beach population. On the basis of this review, the RAC resolved that, contingent on the completion of action by the State to resolve the other RAC concerns with the New Hampshire and local plans, those plans appropriately provide for dose savings for the spectrum of possible accidents and are adequate to provide reasonable assurance that the beach and unwinterized housing populations will be protected and that these plans will essentially meet the criteria of NUREG 0654 and the intent of the ^{RAC} regulations in this area. x

The following considerations were utilized by the RAC in arriving at its conclusion relative to the beach population:

- NH state and local plans essentially meet NUREG 0654 criteria generically
- Special provisions for beach populations in place
- No identified problems requiring unique or unaddressed solutions
- Provisions for early warning of beach populations
- Adequate transportation resources available for those needing public transit

- Beaches are nearly two miles from station affording delay in plume arrival and dilution and dispersion of plume
- Sea breezes would tend to keep plume from traveling directly toward beach when beaches are most populated
- ETEs for beaches are relatively small
- Containment at Seabrook is very strong; probability of prompt containment failure is negligible
- Containment bypass is unlikely to cause severe offsite problems
- Site specific studies for Seabrook indicate risks at two miles are comparable to NUREG 0396 analyzed risks at 10 miles
- "Reasonable assurance" does not equate with "absolute safety," i.e., guarantee of no exposures or exposures above the PAGs.

The above are described in further detail in the RAC position paper transmitted to the State of New Hampshire on May __, 1987.

Although the RAC has reached a conclusion on the beach population issue, the RAC still awaits receipt of information from the State of New Hampshire on the number of transients who would need transportation during an evacuation. The State Plan (ETE, Volume 6, Table 11-6) presently provides estimates of permanent residents who would require transportation, but does not include estimates for transients requiring transportation (RAC review, Section VI, comment 17, page 4). Although the number of transients without transportation is expected to be small and well within the available transportation resources (RAC review, Section I, page 74) identified in the plan, this information has not yet been provided to FEMA.

Because of the potentially large seasonal beach population, special precautionary protective actions for the beach population have been established by the State of New Hampshire (New Hampshire Plan, NHCDA Procedures, Appendix F), including early precautionary evacuation. The use of public buildings for sheltering of transients without

transportation may be implemented on an "ad hoc" basis (RAC review, Section I, page 64).

As indicated in the RAC position paper on the beach population issue, provisions have been made in the plans to consider closing the beaches or restricting public access to the beach at the Alert emergency classification. At this classification level, no offsite action would be ordinarily warranted to protect the public, but its consideration beaches or prevent additional public access to the here would provide additional time to clear the beach, just in case the situation worsens. Even at the Site Area Emergency classification, one would ordinarily expect that offsite protective actions would not be necessary to protect the public. As noted in the State plan (page 2.1-13) precautionary protective actions for the beach population will be considered during the period of heaviest beach use, from May 15 through September 15. Details on the early precautionary protective actions for the beach population, including precautionary evacuation, are provided in the State plan procedures (NHCEA Procedures, Appendix F).

The use of early precautionary protective actions such as beach closing and evacuation are not the sole means for protection of the beach population. The beach population is, in effect, also protected by the unusually strong containment system at the Seabrook Station. As indicated in the RAC position paper on the beach population issue, Brookhaven National Laboratory (BNL) reviewed analyses performed by the Applicant and performed additional analyses of the systems and features of Seabrook Station. BNL concluded that (t)here is negligible probability of prompt containment failure (at Seabrook). Failure during the first few hours after core melt is also unlikely and the timing of overpressure failure (of containment) is very long compared to the RSS. Most core melt accidents would be effectively mitigated by containment spray operation. BNL reviews of containment bypass accident scenarios also indicated that significant releases from such accidents were also not likely in the first hours after a severe accident.

The RAC position paper further indicates that, in view of the New Hampshire plans for beach closure and access control as early as the Alert classification, the cited "negligible probability of prompt containment failure" at Seabrook and low consequence/low probability of serious containment bypass sequences, the plume travel time to the beach areas and the relatively short (2 to 4 hours) time estimated to clear the beaches, it appears that risks to the beach population are a small fraction of the cited risks in NUREG 0396 for this distance. Thus, even if there were a prompt, severe, contaminating release and a portion of the beach population were caught in or under the plume for two hours during the evacuation process, their exposure to deposited radioactivity would only be approximately 2/24 or less than one-tenth of the code assumed dose. In addition, they would be avoiding any additional exposure to the plume(s) after leaving this area.

FEMA Response (Further Basis)

FEMA has addressed the Town of Hampton Revised Contention VIII and its further basis of inadequate protective actions for residents of the Seacoast Health Center by applying Planning Standards H and J (Evaluation Criteria H.4, H.11, J.10.d, J.10.g, J.10.m) in FEMA-REP-1.

The December 15, 1986 RAC review of the State and municipal plans reflects FEMA's views on this issue. Specifically, FEMA's review comments on the New Hampshire State plan on this issue are provided on pages 67, 74, and 88 of Section I. FEMA's review comments on the municipal plans on this issue are provided on page 19 of Section II. FEMA's review comments on the State Compensatory Plan on this issue are provided on pages 6 and 8 of Section IV (Compensatory Plan subsection).

FEMA relied on the following documents in forming its conclusions on this issue: Revision 2 to the Hampton plan; Revision 2 to the New Hampshire State plan; and the Applicant's Motion for Summary Disposition of the Town of Hampton Revised Contention VIII dated March 25, 1987.

On the basis of the RAC review of Revision 2 of the State and municipal plans, FEMA has not yet received sufficient information to have assurance that the residents of the Seacoast Health Center will be properly evacuated in a timely manner in the event of a radiological emergency if Hampton does not implement the emergency response plan. Since Hampton has indicated that it will not participate in the planning and response to an accident at the Seabrook Station, it is necessary to determine the State's ability to implement compensatory measures for the Town of Hampton and to, therefore, provide for evacuation for the residents of the Seacoast Health Center.

The Hampton plan (page II-30) indicates that in the event of the evacuation of special facilities (such as the Seacoast Health Center), the Hampton Public Works Director will coordinate transportation services. However, if the Town of Hampton does not participate in the implementation of its response plan, the State will assume responsibility for coordinating the provision of transportation resources for the evacuation of the residents of the Seacoast Health Center. The concept of operations for the State's compensatory measures is provided in Appendix G of the State Plan. As indicated in this appendix and in the NHCDA Procedures (Volume 4 of State Plan), if a municipality is unable to respond to the emergency, an IFO Local Liaison will be assigned to coordinate the provision of transportation resources for evacuation. Although the RAC had no comments on the adequacy of this plan concept *per se*, the RAC has questioned the adequacy of the numbers of Local Liaison persons to be assigned and the adequacy of available communications resources available to implement this aspect of the compensatory plan. These items (NUREG elements H.4 and H.11, pages 6 and 8 of Section IV RAC comments on Compensatory Plan) were left open by the RAC pending provision of additional supporting information by the State. This information has not yet been provided to FEMA.

Relative to the special facilities plans themselves (i.e., those included as Appendix F of the municipal plans), ~~municipal plans~~ FEMA concludes that the health

care facility special plans, including that for the Seacoast Health Center, have been adequately revised and now contain adequately detailed procedures for evacuation and relocation of patients (RAC review, Section I, page 67). Although there are still numerous inconsistencies in the plan in bus needs estimates, all estimates indicate that overall the number of buses provided for in the letters of agreement are adequate and that additional transportation resources available from other organizations provide a large redundancy of resources (RAC review, Section I, page 74).

The bus boarding time of 10 minutes for residents of special facilities is provided in the State Plan Evacuation Time Estimate study, page 11-21. The RAC had no comment on this revised estimated bus boarding time.

In regard to sheltering residents of the Seacoast Health Center, the State indicates that sheltering is the preferred protective action. FEMA concludes that the plans have been adequately revised to take into account the sheltering protection factors for special facilities, including the Seacoast Health Center. A special tabulation of specific protection factors for each of the facilities, including the Seacoast Health Center, is present in Table 2.6-3 of the State plan (RAC review, Section I, page 67). The RAC review (Section I, page 88) indicates that the flow diagram in the State plan (Fig. 2.6-7) now properly reflects the decision-making process for the election between sheltering and evacuation, and that the treatment of institutionalized persons is now adequately detailed.

SAPL CONTENTION 16

FEMA Response

FEMA has addressed SAPL Contention 16 and its basis that plans do not make adequate provisions for the sheltering of various segments of the populace in the EPZ by applying Planning Standard J (Evaluation Criteria J.9, J.10.a, J.10.d, J.10.m) in FEMA-REP-1.

The December 15, 1986 RAC review of the State and local plans, the amended portions of the RAC review dated _____, and the RAC position paper on the beach population issue transmitted to the State of New Hampshire dated _____ reflect FEMA's views on this issue. Specifically, FEMA's review comments on the New Hampshire State plan on this issue are provided on pages 64, 67, 87, 88, 89 and 91 of Section I. FEMA's review comments on the municipal plans on this issue are provided on page 17 of Section II.

FEMA relied on the following documents in forming its conclusions on this issue: Revision 2 to the New Hampshire State and local plans; and the Applicant's Motion for Summary Disposition of SAPL Contention 16 dated March 25, 1987.

FEMA does not yet have all information to be provided by the state. As indicated in the December 15, 1986 RAC review (page 64, Section I), determination of the adequacy of protective responses for the beach population remained pending final review by the RAC of planned protective measures, and pending receipt of information from the state on the number of transients who would need transportation during an evacuation. The RAC has recently concluded (see RAC position paper dated _____) that the beach population can be appropriately protected by implementing provisions of the current (Rev. 2) New Hampshire emergency plans and that there appears to be no unique problem relative to the beach population that has not been adequately addressed. The basis for the RAC's conclusion on the beach population issue

are provided in the position paper transmitted from FEMA to the State of New Hampshire on May _____, 1987. Details on how this position paper was developed, and a discussion on the key considerations used by the RAC in arriving at its conclusion are provided in the FEMA response to Revised Town of Hampton Contention VIII. Although the RAC has reached a conclusion on the beach population issue, the RAC still awaits receipt of information from the State of New Hampshire on the number of transients who would need transportation during an evacuation. Although the number of transients without transportation is expected to be small, this information has not yet been provided to FEMA. This also applies to NUREG element J.10.m as indicated by the RAC review comments on page 87 of RAC review Section I. x

State Plan Section 2.6.5 indicates that New Hampshire relies on two protective actions for limiting the direct exposure of the general public within the Plume Exposure EPZ. These two protective actions are sheltering and evacuation (State plan, page 2.6-4). The decision whether to shelter or evacuate is based on several variables, including dose reduction factors due to sheltering (State Plan, page 2.6-29). Sheltering can apply to the permanent resident population, institutionalized persons, and transients.

State Plan Section 2.6.5 (page 2.6-6) indicates that New Hampshire employs the "Shelter-in-Place" concept if sheltering is the chosen protective action. The plan indicates that "those at home are to shelter at home; those at work or school are to be sheltered in the workplace or school building" (State Plan page 2.6-6). As indicated in the RAC review comments (Section I, page 64) on the State plan, the use of public shelters is not proposed during a Seabrook Station emergency. The only exception is the possible use of public buildings for shelters for transients without transportation. Transients with transportation and "without access to an indoor location," including those at beaches and at campgrounds, will be advised to evacuate in their own vehicles. The use of public buildings for sheltering of transients without transportation is acceptable since the transients without transportation are expected to be a very small number. The

plan (p. 2.6-6) states that "Public buildings may be set up and opened as shelters for transients, on an ad hoc basis".

Because of the potentially large seasonal beach population, special precautionary protective actions for the beach population have been established by the State of New Hampshire (New Hampshire Plan, NHCDA Procedures, Appendix F), including early precautionary evacuation. The use of public buildings for sheltering of transients without transportation may be implemented on an "ad hoc" basis (RAC review, Section I, page 64).

As noted above, the use of public shelters is not proposed during a Seabrook Station emergency. As noted in the State plan (^Ppage 2.1-13), precautionary protective action such as early closing and evacuation of the beaches will be considered during the period of heaviest beach use, from May 15 through September 15. The use of precautionary protective actions are not the sole means for protection of transients such as visitors to beaches and campgrounds. They are, in effect, also protected by the unusually strong containment system at the Seabrook Station. This is described in detail in the RAC position paper on the beach population issue transmitted to the State on May _____, 1987, and is also summarized in the FEMA response to Revised Town of Hampton Contention VIII. Included is a discussion of the negligible probability of prompt containment failure at Seabrook. X

In regard to sheltering residents of special facilities such of hospitals, nursing homes, and jails, the State indicates that sheltering is the preferred protective action (State Plan, page 2.6-7). FEMA concludes that the plans have been adequately revised to take into account the sheltering protection factors for special facilities (RAC review, Section I, page 67). A special tabulation of specific protection factors for each of the facilities is present in Table 2.6-3 of the State Plan (RAC review, Section I, page 67). The RAC review (Section I, page 88) indicates that the flow diagram in the State Plan (Fig. 2.6-7) now properly reflects the decision-making process for the election between

sheltering and evacuation, and that the treatment of Institutionalized is now adequately detailed.

The State indicates that the tabulation of specific sheltering protection factors referenced above (Table 2.6-3 of State Plan) is only for special facilities such as health care facilities and jails for which independent determinations of appropriate protective actions are made during an emergency (see State response on page 91 of RAC review Section I). The State indicates that "other types of special facilities such as schools and day care centers will follow the protective action recommendations prescribed for the general population." The State continues that the "protective action recommendation process utilizes conservative sheltering protection factors for general population decision-making." Section 2.6.5 of the State Plan now includes a generic external sheltering factors table which shows the levels of protection that can be expected from various building types in the EPZ (Table 2.6-4, page 2.6-10 of the State Plan).

AMENDED NECNP CONTENTION RERP-8

FEMA Response

FEMA has addressed NECNP Contention RERP-8, and its basis that there is no reasonable assurance that sheltering is an adequate protective measure for all members of the public who may need it, by applying Planning Standard J (Evaluation Criteria J.9, J.10.a, J.10.d, J.10.m) in FEMA-REP-1.

The December 15, 1986 RAC review of the State plan, the amended portions of the RAC review dated _____, and the RAC position paper on the beach population issue transmitted to the State of New Hampshire with FEMA letter dated _____ reflect FEMA's views on this issue. Specifically, FEMA's review comments on the New Hampshire State plan on this issue are provided on pages 64, 67, 87, 88, 89, and 91 of Section I.

FEMA relied on the following documents in forming its conclusions on this issue: Revision 2 to the New Hampshire State plan; and the Applicant's Motion for Summary Disposition of NECNP Contention RERP-8 dated March 25, 1987.

FEMA does not yet have all information to be provided by the state. As will be noted later in this response, this missing information consists of the number of transients who would need transportation during an evacuation.

State Plan section 2.6.5 indicates that New Hampshire relies on two protective actions for limiting the direct exposure of the general public within the Plume Exposure EPZ. These two protective actions are sheltering and evacuation (State Plan, page 2.6-4). The decision whether to shelter or evacuate is based on several variables, including dose reduction factors due to sheltering (State Plan, page 2.6-29). Sheltering can apply to the permanent resident population, institutionalized persons, and transients.

State Plan section 2.6.5 (page 2.6-6) indicates that New Hampshire employs the "Shelter-in-Place" concept if sheltering is the chosen protective action. The plan

indicates that "those at home are to shelter at home; those at work or school are to be sheltered in the workplace or school building" (State Plan page 2.6-6). As indicated in the RAC review comments (Section I, page 64) on the State plan, the use of public shelters is not proposed during a Seabrook Station emergency. The only exception is the possible use of public buildings for shelters for transients without transportation. Transients with transportation and "without access to an indoor location" will be advised to evacuate in their own vehicles. The use of public buildings for sheltering of transients without transportation is acceptable since the transients without transportation are expected to be a very small number. The plan (p. 2.6-6) states that "Public buildings may be set up and opened as shelters for transients, on an ad hoc basis".

As indicated in the December 15, 1986 RAC review (page 64, Section I), determination of the adequacy of protective responses for the beach population remained open pending final review by the RAC of planned protective measures, and pending receipt of information from the state on the number of transients who would need transportation during an evacuation. The RAC has recently concluded that the beach population can be appropriately protected by implementing provisions of the current (Rev. 2) New Hampshire emergency plans and that there appears to be no unique problem relative to the beach population that has not been adequately addressed. The bases for the RAC's conclusion on the beach population issue are provided in the position paper transmitted from FEMA to the State of New Hampshire on May __, 1987. Details on how this position paper was developed, and a discussion on the key considerations used by the RAC in arriving at its conclusion are provided in the FEMA response to Revised Town of Hampton Contention VIII. Although the RAC has reached a conclusion on the beach population issue, ←

The RAC still awaits receipt of information from the State of New Hampshire on the number of transients who would need transportation during an evacuation. Although the number of transients without transportation is expected to be small, this information

has not yet been provided to FEMA. This also applies to NUREG element J.10.m as indicated by the RAC review comments on page 87 of RAC review Section I.

Because of the potentially large seasonal beach population, special precautionary protective sections for the beach population have been established by the State of New Hampshire (New Hampshire Plan, NHCDA Procedures, Appendix F), including early precautionary evacuation. The use of public buildings for sheltering of transients without transportation may be implemented on an "ad hoc" basis (RAC review, Section I, page 64).

As noted above, the use of public shelters is not proposed during a Seabrook Station emergency. As noted in the State plan (page 2.1-13), precautionary protective actions such as early closing and evacuation of the beaches will be considered during the period of heaviest beach use, from May 15 through September 15. The use of precautionary protective actions are not the sole means for protection of transients such as visitors to beaches and campgrounds. They are, in effect, also protected by the unusually strong containment system at the Seabrook Station. This is described in detail in the RAC position paper on the beach population issue transmitted to the State on May ____, 1987, and is also summarized in the FEMA response to Revised Town of Hampton Contention VIII. Included is a discussion of the negligible probability of prompt containment failure at Seabrook.

In regard to sheltering residents of special facilities, the State indicates that sheltering is the preferred protective action (State Plan page 2.6-7). FEMA concludes that the plans have been adequately revised to take into account the sheltering protection factors for special facilities (RAC review, Section I, page 67). A special tabulation of specific protection factors for each of the facilities is present in Table 2.6-3 of the State plan (RAC review, Section I, page 67). The RAC review (Section I, page 88) indicates that the flow diagram in the State plan (Fig. 2.6-7) now properly reflects the decision-making process for the election between sheltering and

evacuation, and that the treatment of institutionalized persons is now adequately detailed.

The State indicates that the tabulation of specific sheltering protection factors referenced above (Table 2.6-3 of State Plan) is only for special facilities such as health care facilities and jails for which independent determinations of appropriate protective actions are made during an emergency (see State response on page 91 of RAC review Section I). The State indicates that "other types of special facilities such as schools and day care centers will follow the protective action recommendations prescribed for the general population." The State continues that the "protective action recommendation process utilizes conservative sheltering protection factors for general population decision-making." Section 2.6.5 of the State Plan now includes a generic external sheltering factors table which shows the levels of protection that can be expected from various building types in the EPZ (Table 2.6-4, page 2.6-10 of the State Plan).

1 MR. OLESKEY: One other matter, Your Honor,
2 preliminarily, we had had some discussion, I think yesterday,
3 off the record about the January so-called deposition testimony
4 of Messrs. Thomas and Bores, and I had said that I thought it
5 was important in terms of the evidence that is now being
6 adduced that what was said then be in the record.

7 I don't want to take the time this morning in view of
8 the schedule we have to go back with Dr. Bores and bring out
9 all the things that were said at that point in January, to
10 which he either assented or, because of the way the deposition
11 went with he and Thomas sitting side by side, concurred by his
12 silence, which would be my reading of what happened.

13 I would suggest therefore, if it's agreeable to all,
14 that assuming Mr. Thomas is going to testify we deal with it at
15 that time, and if he doesn't testify or if there's any other
16 eventuality we'll come back as Intervenors to the issue of
17 whether and to what extent it's appropriate to offer some or
18 all of that testimony as evidence rather than his deposition
19 material.

20 JUDGE SMITH: All right.

21 MR. TURK: May I ask a favor. If Mr. Oleskey has an
22 amplifying mike could he bring it closer to him.

23 Thank you.

24 MR. OLESKEY: May I begin?
25

1 Whereupon,

2

ROBERT BORES

3

WILLIAM LAZARUS

4 having been previously duly sworn, resumed the witness stand
5 herein, and was examined and further testified as follows:

6

RESUME CROSS-EXAMINATION

7

BY MR. OLESKEY:

8 Q Gentlemen, in attempt to speed things up and also to
9 clarify, I have redone my cross-examination for you today, we
10 will touch on some matters that we touched on yesterday by way
11 of clarification, which I want to make with you after some
12 reflection last night; and I think we can move along very
13 rapidly.

14 Dr. Bores, do you have Exhibit 2-A there, which is
15 the master copy of your memo with the attachments?

16 A (Bores) Yes.

17 Q All right. I'm going to ask you a few more questions
18 about this issue of your position as a RAC member and the
19 position of Mr. Thomas and his agency regarding the discussion
20 of the containment and risk factors, which your memo of
21 February had put before the RAC.

22 At global page 17 which is your Attachment 17 there's
23 a copy of your letter to Mr. Thomas of February 18, '87 which
24 conveyed your paper or memo to him for the RAC; correct? That
25 was your transmittal letter?

1 A (Bores) Yes, it is.

2 Q And you list there in the second sentence starting
3 with the words, "My response is based on Revision 2 of the
4 plan," a series of references which I understand to be the
5 material which was the basis for the paper, which was your
6 letter, sent to Mr. Thomas; is that an accurate interpretation?

7 A (Bores) Yes.

8 Q And the third item or so in that line, "My response
9 is based on" is the analyses of specific Seabrook Station
10 features; correct?

11 A (Bores) That is correct.

12 Q And by that, I take it, you meant the references to
13 the containment, the risk factors, and possibly other things,
14 but at least those two matters; is that right?

15 A (Bores) Yes.

16 Q Was there anything else that you included in that
17 reference or intended to include in that reference?

18 A (Bores) I would tend to include, I think, the
19 distance of the beaches, perhaps the meteorological
20 considerations.

21 Q All right. So you thought when you sent along the
22 letter to Mr. Thomas that those elements of your paper were
23 important enough to be singled out and drawn to his attention
24 in your transmittal letter as aspects of your process which you
25 had included in your paper; correct?

1 A (Bores) That's correct.

2 Q Okay. Now, I'd like to direct you to page global 59
3 in the same exhibit which is the transmittal letter that was
4 sent on June 4th with the later revision of your paper.

5 A (Bores) I have it.

6 Q All right. Now that's signed by Dr. Martin on your
7 behalf; correct?

8 A (Bores) It's Mr. Martin, yes.

9 Q All right. Mr. Martin. And that's because you were
10 on vacation at that time?

11 A (Bores) That's correct.

12 Q Did you draft this letter before you went?

13 A (Bores) Yes, sir.

14 Q Okay. So he simply signed your name to something you
15 had already done?

16 A (Bores) Yes.

17 Q Now, if this came -- this letter went to Mr. Thomas
18 for the RAC after these discussions in April and May with your
19 headquarters people at NRR and the Office of General Counsel
20 and the work that you, yourself, had done in an effort to
21 revise the original paper following the RAC meeting of April
22 15th; correct?

23 MR. TURK: Clarification, please. You're asking
24 whether this letter, the cover letter went to headquarters or
25 the attachment?

1 BY MR. OLESKEY:

2 Q No. I prefaced the question by saying, this letter
3 to Mr. Thomas on behalf of the RAC went after all these things
4 had happened in April and May with your headquarters, and with
5 your own earlier revisions to the first draft to which you
6 testified to yesterday; correct?

7 A (Bores) Okay. In light of Mr. Turk's question
8 there, I am not sure whether the letter itself went. Certainly
9 the enclosure did.

10 Q You're not sure that the letter was sent?

11 A (Bores) To headquarters?

12 Q My question didn't have anything --

13 A (Bores) I thought you were referring to the letter.

14 Q No, that's Mr. Turk's understanding.

15 A (Bores) Okay.

16 Q I say, the letter went to Mr. Thomas as it appears on
17 its face; isn't that right?

18 A (Bores) Yes.

19 Q Yes.

20 A (Bores) Okay, I'm sorry.

21 Q The only reference to headquarters is, the letter was
22 sent to Mr. Thomas after all these discussions in April and May
23 with your headquarters and your General Counsel's Office and
24 with Mr. Rospenda and Mr. Thomas, everything you testified to
25 yesterday between April 15th and early June; correct?

- 1 A (Bores) Yes.
- 2 Q It's just a linking question --
- 3 A (Bores) Okay.
- 4 Q -- nothing tricky about it. Okay.
- 5 A (Bores) I'm just trying to understand where --
- 6 Q I appreciate it.
- 7 A (Bores) -- what it is. Okay.
- 8 Q And in it -- in this letter at page 59 you're -- it's
- 9 your effort to tell Mr. Thomas why it is, for the record of the
- 10 RAC, that what you're now submitting is different than what you
- 11 submitted in February; isn't that right?
- 12 A (Bores) Yes.
- 13 Q All right. And the first thing you say that -- you
- 14 concluded was important enough to put in the letter was that
- 15 after the RAC meeting, seven days later, the Licensing --
- 16 Safety and Licensing Board issued its memorandum of April 22nd
- 17 on the public service petition for a one-mile EPZ; right?
- 18 A (Bores) That's correct.
- 19 Q And you give your own summary of what you feel the
- 20 Board said in that statement, in that memorandum and order;
- 21 right?
- 22 A (Bores) Yes.
- 23 Q And this is -- this whole first paragraph is in there
- 24 because you want Mr. Thomas and the RAC to understand that
- 25 there's something about what the Licensing Board did on April

1 22nd which, in your judgment at least, made it appropriate to
2 revise your paper from the form it originally presented to the
3 RAC in February; isn't that right?

4 A (Bores) That was one of the factors, yes.

5 Q All right.

6 A (Bores) It wasn't the only factor.

7 Q All right. Was this point you're making here about
8 the Board's order of April 22nd of last year something that you
9 would discuss with your headquarters in Washington as an
10 important reason why the paper should be revised?

11 A (Bores) It was one of the factors that we had
12 discussed; yes.

13 Q And what was it about the order of this Board of
14 April 22nd that required your paper to be revised from the form
15 in which it had been previously sent to the RAC?

16 A (Bores) There was nothing about the order that
17 required the paper to be revised.

18 Q Was it something about what you and your headquarters
19 concluded the order meant that required the paper to be
20 revised?

21 A (Bores) Not specifically, no.

22 Q Then what was it, in your understanding, that led you
23 to tell Mr. Thomas and the RAC that the paper needed to be
24 revised because of something this Board had done in denying the
25 petition to reduce the EPZ to one mile?

1 A (Bores) Discussions had occurred between NRR and me
2 relative to the response to contentions, as I had said, and
3 part of that discussion did include the fact that we now had
4 the Atomic Safety and Licensing Board's memoranda and order of
5 April 22nd.

6 But in addition, NRR was -- had indicated to me that
7 since the containment features were not essential to the
8 position, that in fact, these features were really outside of
9 the considerations for emergency planning; we really shouldn't
10 be including them in terms of the considerations and
11 evaluations of the plans itself.

12 Q But this letter is your only written effort in the
13 spring of 1987 to explain to the RAC why this paper which had
14 brought everybody into concurrence in April was going to be
15 filed in a different form; isn't that right?

16 A (Bores) That's the only written memoranda; yes.

17 Q And there's nothing in here that says anything about
18 a conclusion that you have or anybody else has on the staff
19 that the containment or risk matters are extraneous to the
20 deliberations of the RAC or not necessary to reaching a
21 determination of adequacy or reasonable assurance; is there?

22 A (Bores) Not in my letter; no.

23 Q No. The only thing in here that you rely upon, other
24 than discussion with the staff in reference to its review of
25 all the issues in some studies, is this decision by the Board;

1 isn't that right?

2 A (Bores) It's the only one that's point out; yes.

3 Q Is there a link between what the Board did on April
4 22nd and these studies which you discuss in your letter in
5 paragraph two?

6 A (Bores) There is a link in that the BNL studies as
7 well as the Public Service, New Hampshire studies on
8 containment issues were utilized in the petition for the one-
9 mile EPZ; yes.

10 Q All right. So what you were saying, I take it, was
11 since the Board on April 22nd had not found the BNL study or at
12 least the utility's own studies dealing with risk probability
13 sufficient to convince it to reduce the zone, you didn't think
14 the same material should be in your paper and used as a basis
15 for the RAC judgment; is that right, in substance?

16 A (Bores) In substance; yes.

17 Q And that's why this paragraph is in the letter; isn't
18 it, the first paragraph?

19 A (Bores) Essentially, yes.

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20 (Continued on next page.)

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1 Q In fact, you were aware at the time you sent the
2 letter, weren't you, that the Brookhaven study had come out and
3 said that it couldn't substantiate in technical respects that
4 it considered important all the Seabrook risk estimates that
5 had been provided to the NRC and to this Board by the utility;
6 isn't that right?

7 A (Bores) Okay. Would you repeat that question again,
8 please?

9 Q Yes. At the time you wrote the letter you were
10 aware, were you not, that the BNL study had said it couldn't
11 substantiate in significant technical respects all the material
12 that the utility had supplied to the NRC and to this Board in
13 support of its position to reduce the EPZ.

14 A (Bores) It could not.

15 Q Yes.

16 A (Bores) Yes.

17 Q All right.

18 I'd like you to turn back to global Page 42 of the
19 same exhibit, which is your letter to Mr. Thomas of April 24,
20 which is Attachment 11.

21 This letter went out about nine days after the RAC
22 meeting; isn't that right?

23 A (Bores) From my calculations, that's correct.

24 Q All right. And you sent it because you had promised
25 at the RAC meeting to deal with an issue of risk relating to

1 the two-mile, 10-mile-from-the-station issue that you felt
2 people were confused about at the meeting; isn't that right?

3 A (Bores) Yes.

4 Q And this letter comes, as we've just said, about a
5 week and a half after the RAC meeting at which, it's your
6 testimony, that you tried to make it clear that the RAC
7 members, including but not limited to Mr. Thomas, should
8 understand that the risk issue and containment issue was
9 extraneous to a determination that the plans were adequate
10 under the regulations and guidance; isn't that right?

11 A (Bores) Yes, it is.

12 Q But there's nothing in this letter that emphasizes or
13 says anything about those issues being extraneous or not being
14 critical, in your view, to a determination of the plan's
15 adequacy, is there?

16 A (Bores) There isn't, and the reason is because this
17 was specifically dealing with a single sentence within the
18 context of the paper, and this was to provide a clarification
19 of that single sentence.

20 Q Well, isn't it a fact that the first time in any
21 writing that's at least in evidence before this Board, or that
22 I've seen, if that helps you, the first time you said anything
23 in writing to anybody about the containment and the risk issues
24 being extraneous to a determination of the plan's adequacy or
25 to any other determination, for example, reasonable assurance,

1 was in your memo to Sherwin Turk of October 15, 1987?

2 And I direct you, if it helps, to Paragraphs 5 and 6
3 of that memo, which are on Page 2 of the memo, but global Page
4 3 of Exhibit 2-A.

5 A (Bores) You're asking if this is the first time in
6 writing I've conveyed that the containment issues are
7 extraneous --

8 Q Yes.

9 A (Bores) -- to the finding?

10 Q Yes.

11 A (Bores) It's perhaps the first time it says that
12 directly. However, if you go back to the two letters that I
13 had written, certainly we had in there, and you can -- I can
14 point to some paragraphs where we talk abt . an accident
15 happening. So, in fact, you know, we're not using the
16 containment features, or was not using the containment features
17 to say an accident of this sort cannot happen. You don't have
18 to plan for it.

19 So the letter itself in both instances certainly talk
20 about the possibility of a fast-breaking, you know, severe
21 accident impacting the beach. So those things are not
22 exclusive, --

23 Q When you talk --

24 A (Bores) -- mutually exclusive of this.

25 Q I'm sorry.

1 MR. TURK: Could we ask the witness before you go n?

2 MR. OLESKEY: I beg your pardon, counsel.

3 BY MR. OLESKEY:

4 Q Were you finished, Dr. Bores?

5 A (Bores) I am now.

6 Q By the two letters, do you mean the papers or
7 memoranda of February and June?

8 A (Bores) That's correct.

9 Q Okay. And those are the documents which we reviewed
10 yesterday.

11 A (Bores) That is correct.

12 Q All right. I'm asking you if outside the scope of
13 those two documents, the interpretation of which is in dispute
14 in this issue, there is anything else from April 15th to
15 October 15th that says in substance what you said in your memo
16 of October 15th. The RAC doesn't understand that the
17 containment and risk features, the site-specific features are
18 extraneous to its determinations and to FEMA's; that they're
19 enhancements, they're not necessities to the plan.

20 MR. DIGNAN: Object to the form of the question,
21 including the editorials as to what is in dispute.

22 Could we have a direct question to the witness?

23 MR. OLESKEY: I think that's a direct question.

24 MR. DIGNAN: Sure got there by way of going around
25 the barn.

1 MR. TURK: It's argumentative.

2 MR. DIGNAN: Objection. Argumentative, bad form, and
3 includes editorials.

4 JUDGE SMITH: Well, how do you want me to proceed?
5 Do you want me to have the question read back --

6 MR. OLESKEY: No.

7 JUDGE SMITH: -- and take it apart or do you want --

8 MR. OLESKEY: No, I always like to think that I can
9 phrase a question that gets an answer that also gets
10 concurrence from my brothers, so let me try that way.

11 BY MR. OLESKEY:

12 Q Is there anything else from April the 15th to October
13 15th, other than your memo to Sherwin Turk in October, that
14 states in writing that in the view of yourself at least as the
15 RAC representative these site-specific features are extraneous
16 to any determination of plan adequacy, or reasonable assurance,
17 either by the RAC or by FEMA?

18 A (Bores) Okay, I'm not aware of any. However, one of
19 the things that we had indicated in previous testimony is that
20 we had been awaiting a revision by FEMA and the RAC of wording
21 to their prefiled responses to contentions as well as to the
22 RAC position.

23 So while we were waiting for this, we would have
24 anticipated that those sorts of things could have been cleared
25 up in that correspondence, but that never did occur.

1 So as a result of that, this is the first written as
2 far as I'm aware of.

3 Q Well, are you saying that you hoped that FEMA would
4 recede from its June position by September in the testimony,
5 and you'd never have to address the issue of whether or not the
6 site-specific features were extraneous to a determination of
7 adequacy or reasonable assurance?

8 MR. TURK: Could I have that again?

9 BY MR. OLESKEY:

10 Q Are you saying that you were waiting to see whether
11 the FEMA testimony in September made it unnecessary for you to
12 deal with the question of whether the site-specific features
13 were extraneous to a determination of plan adequacy or of
14 reasonable assurance?

15 MR. TURK: I'm going to object. I haven't heard
16 anything about waiting for a September filing of testimony.
17 What we've heard is that the witnesses were not aware of the
18 scheduling deadlines.

19 MR. OLESKEY: No, this --

20 MR. TURK: His testimony yesterday was they were
21 expecting Mr. Thomas to send in a revision to the paper.

22 MR. OLESKEY: With all due respect, I sometimes
23 wonder if we're in the same courtroom. He has just given a
24 somewhat long answer about waiting for some change from FEMA
25 in filings. I took it he was referring to the testimony. I

1 asked the follow-up question to clarify it, and I think Dr.
2 Bores understand exactly what I'm talking about.

3 JUDGE SMITH: He may answer.

4 THE WITNESS: (Bores) We were not waiting for FEMA's
5 prefilled testimony, because we weren't aware of what, or when
6 they were going to file.

7 What we were awaiting is the promised revisions to go
8 out to the RAC relative to the RAC position as well as to the
9 prefilled contentions. response to the prefilled contentions.
10 That did not occur.

11 I would have anticipated, as expected from the words
12 of Mr. Thomas, that we would have another RAC meeting to go
13 over this again.

14 BY MR. OLESKEY:

15 Q When was it that you first became aware personally
16 that FEMA was busy in August and September and October dealing
17 with these hearings and testimony they had to file in these
18 hearings?

19 A (Bores) We all were busy.

20 Q I understand that. That's not my question.

21 You didn't learn, I take it, until sometime like
22 October that FEMA had actually filed testimony here on the
23 beach population issue; is that right?

24 A (Bores) I knew they had prefilled testimony, but I
25 did not see the final version, no.

1 Q Did you know in September that they had prefiled
2 testimony on the beach population issue?

3 A (Bores) I can't tell you that. I mean, I really
4 don't know.

5 Q Did it occur to you at some time as a RAC member
6 who's sitting there waiting to see a revised FEMA position that
7 maybe, just maybe what had happened was that the position that
8 FEMA was taking was the position it took in testimony before
9 this Board?

10 A (Bores) Well, it occurred to me that it had occurred
11 some time down the road, obviously, yes.

12 Q Sure. And therefore --

13 A (Bores) Because they provided the testimony.

14 Q Therefore, that maybe there would never be a RAC, at
15 least in the short run a revised RAC position because FEMA was
16 embroiled in these hearings and had taken a position in these
17 hearings.

18 Did you understand that?

19 A (Bores) Yes, sir, but that's beyond the window when
20 we had hoped to get a response and have another meetings.

21 Q Yes, which was July or August.

22 A (Bores) Well, August.

23 Q August or September, okay.

24 A (Bores) August probably.

25 Q Fine.

1 All right, now I want to turn you to a related topic,
2 and that's the topic of reasonable assurance, because I want to
3 clarify something that I think is important that we understand,
4 and let me see if you can I can do that.

5 You understand that FEMA, in its review of plan,
6 makes a distinction between a finding of adequacy, or a
7 determination of adequacy using these NUREG-0654 guidelines,
8 and a finding of reasonable assurance?

9 A (Bores) The finding of a reasonable assurance, to
10 me, is the overall bottom line relative to plans as transmitted
11 to the NRC.

12 Q Overall -- I'm sorry.

13 A (Bores) Overall, yes.

14 Q By, by FEMA?

15 A (Bores) By FEMA.

16 Q All right.

17 A (Bores) Based normally on some finding of adequacy
18 for each of the NUREG elements that it does a review on.

19 Q Well, is it your understanding from your involvement
20 in these various RACs over these years that from FEMA's
21 perspective to get to an ultimate finding of reasonable
22 assurance as the plan goes through FEMA to the NRC, what it
23 does is to sit down with these hundred or so NUREG-0654
24 elements in one hand and the plan in the other, and match them
25 up? And when there's congruence or determination of adequacy,

1 FEMA says that's it; now there's reasonable assurance?

2 A (Bores) I have no knowledge how they do that,
3 because this is unique, particularly in this region.

4 Q By the way, to remind me, have you been on any RAC
5 other than Seabrook?

6 A (Bores) Yes, I was the RAC member for all of Region
7 1 at one time. I was the RAC member for Regions 2 and 3.

8 Q Okay. And in your own memo of February 18, which is
9 Exhibit 5, Staff Exhibit 5, you mention both reasonable
10 assurance and the concept of adequacy right there in the first
11 paragraph of the memo on Page 1; isn't that right?

12 MR. TURK: Page 1 of the enclosure?

13 MR. OLESKEY: Yes. I don't think that has a global
14 number, does it, Sherwin?

15 MR. TURK: No, as far as I know.

16 THE WITNESS: (Bores) Okay, in the first paragraph
17 you're talking about?

18 BY MR. OLESKEY:

19 Q Yes, that first paragraph, I take it, was your effort
20 to summarize in a general fashion some of your understanding
21 about pertinent regulations and guidance leading to
22 determinations of adequacy and ultimately to findings by FEMA
23 and the NRC that there's reasonable assurance that a plan will
24 protect the public health and safety; isn't that right?

25 MR. FLYNN: I'd like to ask for a clarification of

1 the question and the line of questioning.

2 I take it that the line is intended to probe what
3 FEMA's interpretation of the regulations is, but I'm not
4 hearing anything from the witness or anything in the questions
5 that would draw from the witness how he knows what FEMA's
6 interpretation is. The question seemed designed to be asking
7 the witness what his interpretation is, and I submit that's
8 irrelevant.

9 MR. OLESKEY: I'm sorry if I've mislead my brother to
10 that extent. The question is designed to probe the witness's
11 understanding as a pivotal RAC member for his agency, at least,
12 of how FEMA understood these criteria, because I suggest his
13 understanding of FEMA's perspective was important for him to
14 function competently as a RAC member, the RAC being an advisory
15 to FEMA which to make the ultimate finding of reasonable
16 assurance, and pass that on to the NRC.

17 So I don't think he could function effectively as a
18 RAC member unless he had some notion of what FEMA was all about
19 as it went through this consultative process on to making its
20 own determination of reasonable assurance.

21 MR. FLYNN: Thank you. I will accept that
22 clarification.

23 MR. OLESKEY: Thank you, counsel.

24 MR. TURK: Your Honor, I'm going to ir erpose an
25 objection.

1 If the point of this is to determine what the
2 regulations require, then I don't think this witness is the
3 proper one. We'll address that in legal briefs.

4 MR. OLESKEY: Well, the --

5 JUDGE SMITH: I think he explained it adequately what
6 the purpose is.

7 BY MR. OLESKEY:

8 Q The pending question was, I take it that the first
9 paragraph here of your paper was an effort to summarize in a
10 general fashion your understanding of some of the regulations
11 and guidance both at FEMA and the NRC that related to a
12 determination of plan adequacy and also of this determinational
13 finding of reasonable assurance.

14 A (Bores) That's about half correct.

15 Q All right, why don't -- give me both the correct half
16 and the incorrect half so we have 100 percent correct, if you
17 would.

18 A (Bores) Okay. This is a summarization of the NRC
19 regulations as I understand them, and how the NRC views the
20 findings from FEMA and what the regulations require are
21 relative to making that finding of reasonable assurance.

22 Q Okay. Then I'd like to direct you to Page 10 which
23 is the last page of the same memo, the last paragraph.

24 Is it fair to say that that last paragraph beginning
25 with, "Based on the above it appears contingent upon the

1 completion of action by the state.' and so forth, that's an
2 attempt to say that the RAC, in its function a collegiat
3 body to advise FEMA, should find, based on your paper, or
4 should determine, based on your paper, that the plans are
5 adequate for the reasons stated, and that they provide
6 reasonable assurance that the beach population will be
7 protected?

8 A (Bores) This is my statement, yes, to RAC, and
9 hopefully it would be persuaded.

10 Again, it's an individual input to RAC to provide, if
11 nothing more, points of discussion so that we can eventually
12 resolve the issue.

13 Q I understand that.

14 And then in the last clause of that summary, you
15 says, "and that these plans will essentially meet the criteria
16 of NUREG-0654 and the intent of the NRC regulations in this
17 areas."

18 That's a big, general summary of what you hoped your
19 paper would do. It would wind up the issue of compliance with
20 0654, and lead the RAC to recommend to FEMA that a reasonable
21 assurance finding be made based on whatever FEMA takes into
22 account when it makes such a finding, right?

A (Bores) That's correct.

Q Okay. And you were saying to the RAC, everything
before this in my paper, the dot points on Page 10 for emphasis

1 and discussion can and ought to be taken into account in making
2 these two determinations: The match-up of the elements of 0654
3 with the plan, and the ultimate determination that there's
4 reasonable assurance; isn't that right?

5 A (Bores) I'm not sure I read that much into it. What
6 I'm trying to point out is that these are the things that I
7 looked at certainly.

8 Q And what you were saying to the RAC is everything in
9 my memo ought to be taken into account in making these
10 determinations as recommendations to FEMA.

11 A (Bores) Again, I guess I would say that that's
12 probably reading an awful lot into it, taking everything. I'm
13 just pointing -- you know, providing my point of view to RAC.
14 They can pick and choose, or saying I'm dead wrong on some of
15 it, but this is my input to them, okay?

16 Q Oh, I think that couldn't be clearer, but the import
17 is everything that's in your paper.

18 A (Bores) Is what I had --

19 Q Sure.

20 A (Bores) -- looked at.

21 Q All right. And is it fair to say that when you wrote
22 the paper you understood that whatever the RAC's view or your
23 own might be, FEMA would look, in reaching the reasonable
24 assurance determination, beyond simply matching up the elements
25 of 0654 to the aspects of a plan that were relevant?

1 A (Bores) That's correct. When we go back to the
2 first paragraph of my enclosure, the FEMA finding is primarily
3 based on a review of state and local emergency plans, any other
4 information already available to FEMA may be used in
5 considering whether there is reasonable assurance that plans
6 can be implemented.

7 Q All right.

8 A (Lores) Okay.

9 Q And that would include, as you understood it, if FEMA
10 thought it important such aspects as the containment and these
11 risk analyses studies; isn't that right; that would be up to
12 FEMA?

13 A (Bores) FEMA provides, you know, the reasonable
14 assurance finding so.

15 Q With whatever it wants to take into account.

16 A (Bores) Presumably that's true.

17 Q All right. And isn't that why you put the
18 containment and risk materials in your February memo in the
19 first place, Dr. Bores?

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1 A (Bores) Not specifically.

2 Q But you knew when you did it, or you certainly knew
3 at the April 15th RAC meeting that FEMA thought those things
4 were important in moving beyond the mere match-up of the NUREG
5 criteria with the plan to the added level of responsibility it
6 had to make a finding of reasonable assurance; isn't that
7 right?

8 MR. TURK: The question is FEMA.

9 MR. OLESKEY: Yes.

10 THE WITNESS: (Bores) I can't say that, because the
11 paper -- let me go back to that -- tried to take a look at
12 where we were with each of the NUREG elements.

13 When we get into the containment features that only
14 deals with probability and perhaps reducing the probability of
15 having that severe accident type thing. It doesn't mean that
16 you can't have an accident like that. In fact, the plans do
17 discuss, in my opinion, adequately the provisions for those
18 severe accidents which do impact the beach population and which
19 in fact could occur in the short-term time frame.

20 Therefore, relative to the adequacy of the plans, and
21 this is the message I was trying to get across, it appears that
22 the plans as they exist were adequate.

23 However, relative to the probabilities, what it was
24 trying to say is that if you look at these features relative to
25 some other plants, you would expect, or perhaps could expect

1 that the probabilities of such severe accidents might be less
2 here because of those features than at another site. It
3 doesn't mean that the plants -- plans as they exist are not
4 adequate.

5 MR. OLESKEY: I understand.

6 THE WITNESS: (Bores) And that is the whole gist of
7 this particular aspect when I did include the probability.
8 That's what I was trying to show.

9 BY MR. OLESKEY:

10 Q But plan adequacy is a term of art as you used that
11 phrase there. It means a determination that the NUREG elements
12 are met by a plan; isn't that right?

13 A (Bores) Yes.

14 Q All right. And this probability material in fact, at
15 least as you understood FEMA's judgment by the time of the
16 April 15, 1987 meeting, goes to this added level of
17 responsibility that's FEMA's of making a determination of
18 reasonable assurance which goes beyond mere adequacy.

19 MR. TURK: Your Honor, I'm going to object. I think
20 we've been through it. It's bordering on argumentative
21 already. We've had testimony on direct already about Mr.
22 Thomas's early expressed interest in these matters. Dr. Bores
23 has given an explanation of why these things were in the paper.
24 I think we're really harassing the witness already.

25 JUDGE SMITH: Sounds familiar.

1 MR. OLESKEY: I'm sure that harassment doesn't sound
2 familiar.

3 JUDGE SMITH: No, I don't mean -- I mean the line of
4 questioning.

5 MR. OLESKEY: Yes, because as we'll all see when we
6 look at the transcript, I haven't always had direct answers to
7 my questions, and I'm a tidy and orderly person. I like to
8 loop things up, and I'm trying to get an answer to this
9 question, and then I can move beyond this topic.

10 MR. TURK: I think the witness has been very direct,
11 Your Honor.

12 MR. FLYNN: I have an additional objection.

13 The question assumes that Dr. Bores had some
14 understanding, had some communications from FEMA about how it
15 interpreted the reasonable assurance question and what things
16 it took into account, and that has not been established
17 that --

18 JUDGE SMITH: I understand the question to be probing
19 solely Dr. Bores's purpose, and nothing else as I understood
20 it.

21 MR. FLYNN: Well, it seems to me quite clear that the
22 point of the question is to get Dr. Bores to say that this is
23 what FEMA does. This is what FEMA has in mind when it makes a
24 reasonable assurance finding. This is what FEMA takes into
25 account. And I don't want Dr. Bores announcing FEMA policy.

1 JUDGE SMITH: Well, that's -- nobody understanding
2 him doing that. Everybody understand that he's testifying
3 concerning his, or he's being asked to testify concerning his
4 perception of FEMA's policy and practices.

5 MR. FLYNN: But what troubles me is that there's
6 no -- we don't know what the basis is for that perception.

7 MR. OLESKEY: The basis, counsel, is his involvement
8 with the Seabrook RAC and a number of other RACs, and
9 particularly his involvement on this issue in his papers and in
10 his discussions with the RAC with Mr. Thomas, especially the
11 April 15 RAC where, as he's testified, this issue was very much
12 a topic of discussion.

13 MR. FLYNN: I submit that the narrow issue that
14 you're addressing now has not been, and I'd be more comfortable
15 hearing that from the witness.

16 MR. OLESKEY: Shall I try to rephrase my question,
17 Judge?

18 JUDGE SMITH: If you wish.

19 MR. OLESKEY: Sure.

20 BY MR. OLESKEY:

21 Q Dr. Bores, didn't you know at least by the time the
22 April 15, 1987 RAC meeting was over that for FEMA, particularly
23 for Mr. Thomas as the chair of the R/C, the issue of making a
24 finding of reasonable assurance as distinguished from
25 determining plan adequacy was involved especially with such

1 issues as the Seabrook containment, its strengths, the
2 likelihood of a bypass accident and these risk studies, all of
3 which you had laid out in your paper?

4 A (Bores) I don't know that I would say that I knew
5 that this is where they were going, because I had indicated at
6 the RAC meeting, as I stated in my memo of the 15th of October,
7 that in fact when Mr. Thomas started to indicate that because
8 of these features the plan was adequate, I stopped him, and
9 indicated the position that I had taken, to mean that the plans
10 were adequate and the containment features were additional, in
11 addition to meeting the adequacy that dealt with the
12 probabilities. They were not necessary for adequacy.

13 Q So in your mind, in a way, Mr. Thomas confused the
14 issue by linking these plan features with adequacy rather than
15 with reasonable assurance?

16 A (Bores) I think he confused it by linking it to
17 either of those, both to adequacy and reasonable assurance.

18 Q That would be based on your understanding of where
19 the RAC had to go as a matter of performing its duties; is that
20 right?

21 A (Bores) No, it's a matter of understanding what Mr.
22 Thomas had stated, and then seeing the prefilled testimony and
23 the prefilled response to contentions.

24 Q All right.

25 So taking into account all those things, what he said

1 in April, the June filing and the FEMA testimony filed in
2 September, you thought there was some confusion about the
3 application of the standards by FEMA and reliance on these
4 site-specific features; is that right?

5 A (Bores) I thought after the April 15th RAC meeting
6 because I had made the correction and I thought that Mr. Thomas
7 understood what I was saying, it was my belief that the other
8 RAC members understood what I was saying; that in fact we did
9 not have a continued problem in terms of reliance on
10 containment or containment features --

11 Q To determine plan adequacy.

12 A (Bores) That is correct.

13 Q Okay.

14 A (Bores) And as far as making the overall projection
15 of reasonable assurance, that was not really discussed at that
16 time.

17 Q At least as to your recollection now.

18 A (Bores) As to my recollection now, that is correct.

19 Q Okay. Let me turn to a different topic. I want to
20 clarify something that came up yesterday I think with Mr.
21 Lazarus while you were absent.

22 The question was the agencies who were present at the
23 April 15, 1987 RAC meeting. And to help you, I had understood
24 that you had said last week that some time after the April
25 meeting two of the RAC members who you had thought were there

1 in April said to you separately that they were not;
2 specifically, Mr. Fish of Energy, and Mr. Church of FDA.

3 Do you recall that testimony here on direct?

4 A (Bores) Yes.

5 Q What was the context in which they gave you this
6 information?

7 A (Bores) The context of this was at the January RAC
8 meeting, I believe, following Mr. Thomas's circulation of this
9 October 15th memo.

10 Q Yours?

11 A (Bores) Yes.

12 Q Not Mr. Lazarus's, just yours?

13 A (Bores) I'm not sure exactly how much he had
14 circulated, whether he had included Mr. Lazarus's, or just my
15 memo without attachments. I can't be certain at this point.

16 But Mr. Church and Mr. Fish had indicated that they
17 were not present there. And so at that point I asked if there
18 were any other discrepancies that they had recognized or
19 thought might be pertinent to the rest of the memo. And --

20 Q Well, let's hold that because --

21 MR. TURK: Could we have the answer --

22 MR. OLESKEY: No.

23 MR. TURK: -- finished, please?

24 MR. OLESKEY: No, it's my question, and I have got an
25 answer to the question I asked. And if I choose not to elicit

1 hearsay beyond that, I'm entitled to restrict the answer .

2 MR. TURK: The question --

3 MR. OLESKEY: And I --

4 MR. DIGNAN: Come on.

5 MR. TURK: The question was what was the context.

6 MR. DIGNAN: Let's get it in.

7 MR. TURK: The question was what was the context.

8 He's giving you the context.

9 MR. OLESKEY: Mr. Dignan can shout all he wants and
10 Mr. Turk can interject all he wants. If we're going to go into
11 the other RAC members' recollections of both meetings other
12 than to clarify the correction the witness himself offered on
13 direct, then I'd like to have them brought in.

14 MR. DIGNAN: Mr. -- I'm sorry.

15 MR. OLESKEY: Which is a subject we've discussed
16 before that I understand the Board is thinking about.

17 MR. DIGNAN: I believe the question that was put to
18 the witness is what context did you learn that in, and that's
19 broad enough to include what he's getting now.

20 Now, if he wanted a sharp question, he should have
21 asked a sharp question. He asked the witness in what context.
22 It's a wide question. He's free to answer it.

23 MR. OLESKEY: It's my --

24 JUDGE SMITH: Mr. Oleskey, although we give deference
25 to your order of cross-examination, I think that you must

1 concede that would be much more efficient if you allow the full
2 answer rather than having it tomorrow or later this morning.

3 MR. OLESKEY: Well, I would object to it later, but
4 if you're saying it's going to come in some time today, they're
5 going to offer it, let's have it in now over my objection, I
6 understand.

7 BY MR. OLESKEY:

8 Q Continue, Dr. Bores.

9 A (Bores) Okay. So at that point when these
10 individuals had indicated that they had not been present at the
11 April meeting, I then asked the RAC members who were present if
12 they had any other concerns or differences relative to my
13 October 15th memorandum, and no one had any other discrepancies
14 that they had identified for me.

15 Q Was this is open session of the RAC or --

16 A (Bores) Yes, it was.

17 Q -- in colloquy?

18 A (Bores) No, it was open session.

19 Q Okay. Do I understand that based upon what Fish and
20 Church told you, you corrected here your memorandum by
21 eliminating them as people who you now believe were not at that
22 April 15th meeting?

23 A (Bores) That's correct.

24 Q Okay.

25 MR. OLESKEY: I think that clears up the issue that

1 was raised yesterday, Judge, on that point.

2 BY MR. OLESKEY:

3 Q Was -- and the Interior Department was also not
4 present at the April 15th meeting, correct, Mr. Patterson?

5 A (Bores) Mr. Patterson was not present.

6 Q Turning you -- directing you to a question relative
7 to the people who were at the July 30th RAC meeting.

8 You indicated in your memorandum that the NOAA, the
9 weather people were not there either.

10 A (Bores) They were not at the July 30th meeting.

11 Q Right. And the Interior Department was not there.

12 A (Bores) That is correct.

13 Q But every other RAC member was there.

14 A (Bores) Well, those that I had indicated here were
15 there. We sometimes have a representative from the Red Cross
16 present.

17 Q They're not an official member of the RAC, are they?

18 A (Bores) They provide, I guess, consultant services,
19 if you would, to the RAC on specific aspects, yes.

20 Q They're not an official federal agency member by
21 definition, are they?

22 A (Bores) The Red Cross, no, but there is an HHS
23 member who -- Health and Human Services member who does provide
24 medical evaluation as well. He was not there either. So --

25 Q Then let me ask you this, because this came up

1 yesterday while you were out of the room too.

2 Is there an HHS representative on the RAC who is
3 different than the FDA representative?

4 A (Bores) He comes and attends the meeting. We do not
5 really distinguish between them. He has not been present at
6 the last number of RAC meetings, but his area is primarily the
7 medical treatment, medical expertise area.

8 Q He being the HHS representative?

9 A (Bores) He, Mr. Stepp, who attended in that fashion,
10 yes.

11 Q All right. So if you're counting agencies, both HHS
12 and FDA have separate representation on the RAC.

13 MR. TURK: As official RAC members?

14 MR. OLESKEY: Yes.

15 THE WITNESS: (Bores) I'm not sure if it's official
16 representation. I guess you might say each -- Health and Human
17 Services sometimes sends two representatives; one with more of
18 a radiological background; one with a medical expertise.

19 BY MR. OLESKEY:

20 Q And Mr. Church is the radiological person, and he's
21 from the FDA. Mr. Stepp is the health background person, and
22 he's from Public Health, HHS; is that right?

23 A (Bores) That is my understanding.

24 Q All right, and it was pursuant to that understanding
25 that you attached this list of RAC committee members to your

1 memo to Mr. Turk, being Attachment 6; isn't that right?

2 A (Bores) Yes.

3 I assume it's Attachment 6 if you tell me it is.

4 Q I believe it is.

5 A Yes.

6 Q All right. Had you talked to any of the RAC members
7 between -- after the April meeting up to the July 30 meeting,
8 other than Ed Thomas?

9 (Pause.)

10 A (Bores) I did not pick up the phone and call anyone.
11 I can't recall whether I may have met them at another meeting
12 or another event at which they may have been present.

13 Q All right, I appreciate your careful answer.

14 Let me ask then, did you have any discussion with any
15 of the RAC members other than Mr. Thomas after April but before
16 the July 30 meeting about the subject matters that had been
17 discussed in April, however the conversation came up?

18 A (Bores) I don't recall any specific conversations.

19 Q Or any meetings where you might have had such
20 conversations, other RACs or any other functions?

21 A (Bores) Not other RACs. I can't recall whether
22 there was any exercise where I may have been present or
23 something in between. I'm not sure.

24 Q Did you and Mr. Lazarus talk in advance of the July
25 30 meeting about any objectives that you had as the NRC

1 representatives for that meeting?

2 He's already answered yesterday, so I would like to
3 get your answer today.

4 A (Bores) Oh. I can't recall any conference on that
5 point.

6 Q Did you discuss that it might be desirable to take a
7 poll or a vote?

8 A (Bores) No.

9 Q Did you know that he was going to suggest a poll or a
10 vote before he did it?

11 A (Bores) No.

12 Q At the July 30 meeting.

13 A (Bores) No, I did not.

14 Q Okay. I would like you to look at Attachment 17 to
15 your Exhibit 2 and 2-A.

16 JUDGE SMITH: Page, please.

17 MR. OLESKEY: Global Page 76, Your Honor.

18 BY MR. OLESKEY:

19 Q Now, as I understand your joint testimony to this
20 point, any kind of vote or poll involving a formal showing of
21 hands or an eye and nay type of thing was unprecedented in your
22 experience in Region 1 RACs, right?

23 MR. TURK: Object to the form of the question if the
24 word "formal" stays in. That's my problem.

25 MR. OLESKEY: Well, I then gave several examples.

1 Your Honor, so there wouldn't be any confusion.

2 MR. TURK: I distinguish between a formal vote and --

3 JUDGE SMITH: Does he understand?

4 Do you understand the question?

5 THE WITNESS: (Bores) Let me restate what I
6 understand.

7 MR. OLESKEY: Sure.

8 THE WITNESS: (Bores) And see if the response to
9 that is satisfactory.

10 You're asking whether it's unusual to get a polling
11 of members relative to their positions on any particular topic.

12 MR. OLESKEY: Yes.

13 THE WITNESS: (Bores) In the Region 1 RAC.

14 BY MR. OLESKEY:

15 Q In the form of hands up, or aye and nay vote, that
16 kind of formal statement as distinguished from people's
17 discussion of their positions around the table.

18 JUDGE SMITH: When you use that word, if you saw Mr.
19 Turk, as I did, he gets very nervous. And I used it before,
20 and he got particularly nervous, and I try to use specific now.
21 Is that better? Do you like that, specific?

22 MR. TURK: As opposed to formal.

23 JUDGE SMITH: Yes.

24 MR. TURK: Sure.

25 MR. OLESKEY: One advantage of sitting here is I

1 don't have to watch Mr. Turk get nervous, and it helps the flow
2 of my questions.

3 All right, I'll be happy to use specific.

4 BY MR. OLESKEY:

5 Q Do you understand the distinction that the judge is
6 helping me to make between a specific position called for by
7 the chair on a hands up, or an aye or nay basis, and simply a
8 statement of position?

9 A (Bores) I understand your distinction.

10 Q All right.

11 And as I understand your testimony, such a specific
12 statement of position of that type was extremely unusual in RAC
13 meetings in Region 1, in your experience.

14 A (Bores) There were times when we'd go around the
15 table to find out if an individual had a particular problem
16 with an area as we planned to resolve it, or did not. And so
17 essentially we had a polling of members that way. You know, do
18 you have a problem with that, by assen: --

19 Q Sure.

20 A (Bores) -- or by negative statements.

21 Q You can't remember a time when Ed Thomas as chair
22 ever said, all right, let's put it to a vote. Ayes, in favor;
23 nays, opposed; let me see your hands on this one?

24 A (Bores) I can't recall that at all, no.

25 Q Is it fair to say that Mr. Thomas, perhaps to an

1 excessive degree in a sense, emphasizes consensus in running
2 RAC meetings?

3 A (Bores) We've not had a problem, you know, in
4 reaching consensus, I believe, on any --

5 Q It's something he obviously values as a method of
6 using the RAC to reach positions to help FEMA; isn't that fair
7 to say?

8 A (Bores) I think it's fair to say, but I'm not sure
9 it's unusual --

10 Q All right.

11 A (Bores) -- in the RACs that I've been on.

12 Q All right, I'll accept that.

13 Now, this Attachment 7 at global Page 76 is the
14 agenda for that RAC meeting on July 30, together with notes
15 that you made during the course of the meeting.

16 A (Bores) Yes, sir.

17 Q All right, and you've indicated that the pluses and
18 minuses alongside the agency and individual names at the bottom
19 right represent, as your handwritten note says, position noted
20 by statements at the meeting.

21 A (Bores) That is correct.

22 Q By which, as I understand it, you mean this is the
23 conclusion that you drew about where people were with respect
24 to plan adequacy at least because of what they said, or in the
25 case of Ms. Nevitt, didn't say during the course of the

1 meeting?

2 A (Bores) Yes.

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3 (Continued on next page.)

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T/2 1 Q And when the meeting was concluded this Attachment
2 17 constituted the whole of your notes, such as they are, for
3 that meeting from 10:00 or 11:00 in the morning until 2:00 or
4 2:30 on July 30; isn't that right?

5 A (Bores) I can't give a definite yes to it; I may
6 have had some other notes somewhere else.

7 Q Well, you don't have them today, I take it?

8 A (Bores) I don't have them today.

9 Q And you don't have any recollection of them?

10 A (Bores) I would typically, you know, certainly have
11 a pad of paper there where I may jot things down. But I do not
12 know, in this particular instance, whether I had other notes or
13 not.

14 Q All right. But whether you had them or not, this is
15 what survives?

16 A (Bores) Yes.

17 Q And the most unusual, and to you, unexpected
18 development that day was this poll near the end of the meeting;
19 isn't that right?

20 A (Bores) Would you restate that?

21 Q Yes. The most unusual thing that happened at the
22 meeting, and it was certainly unexpected to you, was this poll
23 that your colleague, Mr. Lazarus, called for at the end of the
24 meeting; isn't that right?

25 A (Bores) I'm not sure I'd say that was the most

1 unusual type of situation. I mean, we're dealing with a single
2 issue here, I think, at this whole meeting, that in itself is
3 rather unusual.

4 Q Well, the issue had been around since at least, in a
5 formal sense, December 31, 1985; isn't that right?

6 A (Bores) Yes, but not discussed in its entirety
7 throughout the meeting.

8 Q All right. And the concluding event, as you see it,
9 to this long meeting was this poll that your colleague called
10 for, to put people --

11 A (Bores) Yes.

12 Q -- on the record as to where they stood?

13 A (Bores) Yes; very near the end.

14 Q And there's absolutely nothing on this Attachment 17,
15 which are your notes, that reflects that vote; isn't that
16 right?

17 A (Bores) That's correct.

18 Q Now, the same day there was discussion about the
19 RAC's position in connection with the review that FEMA had
20 undertaken of the emergency evacuation plans for Pilgrim
21 Station in Massachusetts; isn't that right?

22 A (Bores) There was discussion of the status of the
23 FEMA review.

24 Q It's item 10 on your agenda, Attachment 17; isn't it?
25 And also item 9?

1 A (Bores) I don't recall any detailed discussion here
2 of this review. I think at this point we were still looking
3 for information and status of this review. I think it was just
4 a status report really of it, and the fact that RAC may get
5 involved in the review of the FEMA self-initiated review.

6 Q Do you recall any discussion that day about the
7 status of the FEMA self-initiated review --

8 MR. TURK: Objection. Your Honor, we're straying
9 into Pilgrim here. It may be of interest to Massachusetts, but
10 it's not relevant to this hearing.

11 MR. OLESKEY: It is relevant. We discussed it
12 briefly yesterday. I held it until Dr. Bores came back, and if
13 I'm allowed to finish my question, and Mr. Turk still objects,
14 you can make a ruling. It goes to the issue of consistency of
15 position of this agency and of the RAC as we discussed
16 yesterday. Let me now restate the question, if I may.

17 BY MR. OLESKEY:

18 Q Do you have any recollection of discussion at this
19 meeting by the RAC of the status of FEMA self-initiated review
20 of the emergency evacuation plans for Pilgrim Station in
21 Massachusetts, and specifically of discussions about provisions
22 of the existing plans to make adequate provision for the
23 protection of the beach population in that area?

24 MR. TURK: Objection, Your Honor, same reason and I'm
25 going to add to it. One, it's irrelevant. Two, it's going to

1 the merits of what the position is or should be from either NRC
2 or FEMA with respect to the beach population. The witnesses
3 are proffered to discuss what happened at these meetings, with
4 respect to Seabrook, that's the issue and nothing further.

5 MR. OLESKEY: I'm entitled to determine if a
6 consistent position has been taken by both agencies, which we
7 have here, now the NRC and shortly FEMA.

8 JUDGE SMITH: Well, we've always come up to this
9 point and never get it resolved. Are you or are you not
10 claiming that you can litigate the merits of the RAC review
11 now?

12 MR. OLESKEY: I'm only saying that I'm entitled to
13 show where similar or dissimilar positions are taken on
14 substantially similar facts, and where here, it's the same
15 time, the same RAC, and the same representatives from the NRC
16 and FEMA; it's particularly clear that I ought to be able to do
17 that.

18 JUDGE SMITH: Well, yes, if it is explain it?

19 MR. OLESKEY: Because the two situations are
20 essentially similar. You have two plants on the sea coast as
21 to which review is going on of emergency evacuation plans at
22 the same time, and the issues were almost essentially the same;
23 was there adequate protection in the plans for transient beach
24 population, in the case of Pilgrim on the Massachusetts and the
25 case of Southeastern Massachusetts and the case of Seabrook on

1 the coast of New Hampshire and Massachusetts.

2 MR. FLYNN: Your Honor --

3 MR. OLESKEY: You happen to have the coincidence of
4 both items being on for discussion the same day by the same RAC
5 with the same agencies.

6 MR. FLYNN: That introduces a very large factual
7 issue and that is whether the Seabrook site is comparable to
8 the Pilgrim site, and I submit if we get into the merits of
9 that the hearing is expanded beyond anything we've seen so far.

10 (Board conferring)

11 JUDGE SMITH: The Board does not, of its own
12 knowledge, know that the situations are similar, and we don't
13 authorize an inquiry into whether they are similar. Even if we
14 did know there's doubt as to whether we would allow you to
15 inquire into it anyway. But we don't reach that point.

16 MR. OLESKEY: All right. What you are saying in
17 part, that I can't inquire of these witnesses in a prefatory
18 fashion to establish the similarities, because even if I did
19 you wouldn't let me then pursue the questions that I've
20 indicated I want to ask.

21 JUDGE SMITH: Didn't get that far.

22 MR. OLESKEY: I'm just trying to understand --

23 JUDGE SMITH: We don't have to go that far, although
24 probably if you got that far we wouldn't let you go into the
25 merits of the RAC review, in any event, which is the only

1 reason I can see that you're offering it.

2 MR. OLESKEY: I just --

3 JUDGE SMITH: But we're not going to digress into a
4 litigation for the small amount of value it could possibly
5 have, as to the similarities between Pilgrim and Seabrook.

6 MR. OLESKEY: Just so that --

7 JUDGE SMITH: We understand that they're both on
8 water, and that's about it.

9 MR. OLESKEY: And just so that my position is clear,
10 for the record, I want to do it to show that the same criteria,
11 the NUREG criteria, the reasonable assurance standard, such as
12 you may conclude it is, as applied by FEMA and the NRC, may
13 have been applied inconsistency -- inconsistently at the same
14 period of time to two, in this respect, comparable locations.
15 And I just want to make sure that position was clear.

16 JUDGE SMITH: Okay. But my problem is, after you
17 make that position you never go any place with it; we always
18 stop at that point, and therefore, I do understand your
19 position as far as it goes.

20 MR. OLESKEY: Well, I'm ready to go forward, but I
21 think you're telling me not to, and that's the clarification
22 I'm seeking. That is, I would ask some questions to --

23 JUDGE SMITH: All right. That's the clarification
24 that you are -- put in the record where you intend to go, and
25 I'm clarifying that I don't know where that goes.

1 MR. OLESKEY: And therefore I shouldn't take it?

2 JUDGE SMITH: Among other reasons.

3 MR. OLESKEY: Okay. That's what I wanted to
4 understand.

5 JUDGE SMITH: Yes.

6 MR. BACKUS: Your Honor, I'd just like to say that I
7 think the merits of the RAC position should be relevant and
8 admissible here, because I believe we're going to hear from the
9 FEMA witnesses that to some extent the present testimony
10 they're going to give is going to be based upon the RAC
11 positions at various points along the way. And therefore, I
12 think that the merits of the RAC positions are indeed relevant
13 and should be subject to questioning.

14 JUDGE SMITH: Our ruling may be different when it
15 comes to the FEMA position on the merits.

16 MR. BACKUS: Well, this witness has input to the RAC.

17 JUDGE SMITH: The FEMA testimony on the merits, I
18 mean.

19 MR. FLYNN: Well, I think we'd have to explore that
20 with these witnesses now; I don't anticipate we're going to get
21 them back again.

22 MR. TURK: Let me just note, Your Honor, Dr. Bores is
23 not the PAC member for Pilgrim.

24 THE WITNESS: (Bores) That is correct.

25 MR. TURK: On behalf of NRC. He is the RAC member

t/103

1 for Seabrook.

2 THE WITNESS: (Bores) In addition, the Pilgrim
3 review was a FEMA review; it was not a RAC review.

4 BY MR. OLESKEY:

5 Q Yes, but it was on the agenda for discussion --

6 A (Bores) Status was on --

7 Q Yes.

8 A (Bores) -- for discussion.

9 Q On July 30?

10 A (Bores) Yes.

11 Q All right.

12 Mr. Lazarus, there was this individual, John
13 Schumacher, who reported to you who attended, as I understand
14 your testimony, both the April 15 and July 30 RAC meetings in
15 1987; is that right?

16 A (Lazarus) That's right.

17 Q As I further understand your testimony, when Mr. Turk
18 contacted Dr. Bores for these memos summarizing recollections
19 of NRC regional attendees at these meetings, you then called in
20 Schumacher and said that you'd like a memo from him?

21 A (Lazarus) Yes, that's correct; to the same extent,
22 the separately developed memo of his recollections of what
23 transpired at the April 30th and July -- April 15th and July
24 30th meetings.

25 Q Did you ask him if he had any notes?

1 A (Lazarus) No, I did not.

2 Q You do not know whether, in fact, he had notes even
3 today as you sit here; is that right?

4 A (Lazarus) No, I don't.

5 Q Okay. And the memo that he produced in its entirety
6 is the memo that was marked Staff Exhibit 4 for identification;
7 isn't that right?

8 A (Lazarus) I believe so; I don't have a copy in front
9 of me right now, but I believe that's the Staff Exhibit No.

10 MR. OLESKEY: Mr. Turk, can you help me, was that
11 finally admitted for a limited purpose as a full exhibit or
12 not?

13 THE WITNESS: I have a copy now; that's correct.

14 MR. TURK: It was admitted, and the purpose was not
15 as limited as other papers that had been admitted.

16 MR. OLESKEY: Thank you, Judge.

17 BY MR. OLESKEY:

18 Q Was Schumacher there throughout both meetings, April
19 15th and July 30?

20 A (Lazarus) Yes, he was.

21 Q Did he stay to the end of the July 30 meeting?

22 A (Lazarus) Yes, he did.

23 Q And you all left together?

24 A (Lazarus) Yes.

25 Q Okay.

1 MR. OLESKEY: Judge, I want to expand the offer of
2 this document in a limited fashion beyond the basis on which it
3 was originally offered which was to show the historical record.

4 I want to offer it for the additional limited purpose
5 on behalf of the Intervenors of impeaching or contradicting the
6 testimony of these two witnesses, to the extent it may do that,
7 because it says nothing about any vote or poll of members on
8 the issue or the adequacy of the plans, and for no other
9 purpose.

10 MR. DIGNAN: I object to the offer for impeachment
11 purposes. Impeachment must be by an inconsistent statement by
12 the same witness in normal course of events; and this is the
13 problem with the hearsay. The memo is written independently,
14 we don't know what went through, and we don't know what
15 Schumacher would say on the witness stand were his recollection
16 refreshed by appropriate suggestion as to what he did or did
17 not hear. That's why it cannot be offered for impeachment
18 purposes.

19 MR. OLESKEY: I think you can impeach testimony by an
20 agency which has to come through people, after all, not through
21 agencies themselves, by --

22 MR. DIGNAN: Witnesses -- I'm sorry, Mr. Oleskey.

23 MR. OLESKEY: -- by a statement from someone else
24 equally situated to the witnesses whose recollection differs in
25 the material respect; and it's for that reason I offer it and

1 for that reason only.

2 MR. DIGNAN: The witnesses are not here speaking for
3 the agency in terms of testifying as to the actual events of
4 that meeting; the witnesses were brought here as attendees of
5 the meeting to contradict prior testimony given by another
6 attendee at that meeting. That is not the same as testifying
7 as an agency.

8 And this Schumacher memorandum cannot come in for
9 impeachment, it is not a statement by either of these
10 gentlemen, and Schumacher is apparently not being made
11 available so that his recollection could be refreshed and so
12 forth and so on, to see whether he would in fact contradict the
13 testimony.

14 If all he is saying in the memorandum or would say on
15 the stand is he has not recall one way or another, that does
16 not impeach.

17 JUDGE SMITH: If it goes in, it will go in for
18 whatever purpose the Board thinks it's probative of.

19 MR. TURK: Do I understand then that there's no
20 further expansion beyond --

21 JUDGE SMITH: Unless it comes in for general
22 purposes. That if he -- in general, that if he -- if he
23 testified he would testify to that purpose -- to that --

24 MR. CLESKEY: I only have --

25 JUDGE SMITH: So you don't want to offer it for that

1 purpose?

2 MR. OLESKEY: I'm sorry, I may have --

3 JUDGE SMITH: Well, I'm saying that if you -- we
4 won't accept your offer which mandates the inference that we
5 would have to draw from it. If it is offered -- the only way
6 we would receive it -- well, I'm not even sure we would receive
7 it then because I think Mr. Dignan might object to it on
8 hearsay.

9 MR. FLYNN: And so will I.

10 JUDGE SMITH: So will you. But the only way we would
11 receive it along the lines that you're suggesting is for
12 whatever inference we would give it ourselves, our own reading
13 of it; not one dictated by your offer.

14 But the hearsay objections obtain.

15 MR. OLESKEY: I'm willing to have it come in on that
16 basis.

17 JUDGE SMITH: However, the general hearsay objection
18 is still there.

19 MR. OLESKEY: Well, that's true, but then we go --

20 MR. DIGNAN: Are you changing your offer to an offer
21 of the document for the truth of the matters contained?
22 Because on that basis I'll have no objection.

23 JUDGE SMITH: Well, Mr. Flynn does.

24 MR. DIGNAN: I have no objection if it's put in for
25 the truth of the matters contained.

1 JUDGE SMITH: I wasn't sure what your position was,
2 but --

3 MR. FLYNN: I'm -- now I'm confused about where we
4 stand. It is already in evidence for the limited purpose --

5 JUDGE SMITH: It's only in evidence to demonstrate
6 that one of the persons attending the meeting did in fact make
7 a report; that's all.

8 MR. FLYNN: I don't understand what the additional
9 offer is?

10 JUDGE SMITH: The offer is --

11 MR. DIGNAN: It's now offered for the general truth
12 of the matters contained.

13 MR. FLYNN: Then I have the original problem that I
14 had when I first objected and that is hearsay.

15 JUDGE SMITH: All right. On that basis then, it
16 cannot be received for the truth of the matters contained in
17 there.

18 MR. OLESKEY: May I proceed?

19 JUDGE SMITH: Yes, please.

20 MR. OLESKEY: I have two other short areas and then
21 I'm through, gentlemen.

22 BY MR. OLESKEY:

23 Q Is either one of you familiar with the document
24 entitled "Proposed Rebuttal Testimony of NRC Staff Concerning
25 New Hampshire, RERP Protective Actions for Seabrook Area,

1 Seasonal Beach Populations," that was submitted at least to
2 counsel in this proceeding in early October of '87?

3 MR. TURK: May I ask for a clarification. Is that
4 the staff's proposed rebuttal outline?

5 MR. OLESKEY: It is, counsel.

6 THE WITNESS: (Bores) I would have to see it in
7 order to comment on it.

8 BY MR. OLESKEY:

9 Q Let me show you a transmittal letter to the Court
10 together with a two page document bearing the title I indicated
11 and ask you if it's something you've ever seen?

12 (Pause)

13 THE WITNESS: (Loras) I believe I have seen it.

14 BY MR. OLESKEY:

15 Q My question is, did you -- either one of you have any
16 part in consulting with Mr. Turk or anybody else --

17 MR. TURK: Objection, Your Honor.

18 BY MR. OLESKEY:

19 Q -- on the preparation of that document?

20 MR. TURK: Objection, Your Honor.

21 MR. DIGNAN: Is that confined to a yes or no answer?
22 You're not looking for communications?

23 MR. OLESKEY: It is, counsel, yes.

24 MR. DIGNAN: No objection.

25 JUDGE SMITH: What's the document?

1 MR. OLESKEY: It's that proposed staff rebuttal
2 outline of two pages, Your Honor, that, as I recall, Mr. Turk
3 has said was inadvertently distributed to the parties but never
4 sent to the Board or at least not sent in October, perhaps it
5 was later. Is that --

6 MR. TURK: No. The document was sent to the Board in
7 October, and in addition I transmitted a duplicate of it to the
8 Board members following our May 10th conference call. It's the
9 staff's proposed rebuttal testimony outline, Your Honor.

10 JUDGE SMITH: Yes, I know.

11 MR. TURK: With a cover letter from me to the Board
12 and service on the parties.

13 JUDGE SMITH: What's the question?

14 BY MR. OLESKEY:

15 Q The question was, did either one of you consult with
16 Mr. Turk or anybody else in connection with preparing that
17 material?

18 MR. TURK: Your Honor, I'm going to object. I'm not
19 getting into attorney/client privilege on this, but I think
20 it's way beyond the scope of what these witnesses are here to
21 testify about. It really gets, again, to the merits. It has
22 nothing to do with why the witnesses are here.

23 JUDGE SMITH: As a matter of fact, it goes to
24 questions, as a matter of fact, I even asked of the Board and
25 that is to the panel, and that is what they did on this issue

1 before the October 15th memorandum; and I think that this is a,
2 at the very least, it could be a memory refresher or I don't
3 know. It's overruled.

4 Well, first of all, what is your purpose?

5 MR. OLESKEY: I wanted to find out the extent to
6 which, in connection with this particular work these two
7 gentlemen had been drawn into working on the litigation team,
8 because I think that might bear on the Board's assessment of
9 their bias not in a corrupt sense, but just in their interest
10 in having a particular version of history accepted here by the
11 Board.

12 JUDGE SMITH: And their spontaneity and the --

13 MR. OLESKEY: Sure.

14 JUDGE SMITH: -- October 15th --

15 MR. OLESKEY: Sure.

16 JUDGE SMITH: -- memorandum.

17 BY MR. OLESKEY:

18 Q Mr. Lazarus?

19 A (Lazarus) I have no recollection of this memo, and I
20 did not participate in any development of it.

21 Q All right.

22 Dr. Bores?

23 A (Bores) I had had some discussions with, at least,
24 the Office of Nuclear Reactor Regulation, some of the
25 individuals down there, and I may have had some discussions

1 with Mr. Turk as well.

2 Q In connection with what turned out to be this
3 document?

4 A (Bores) Of some version of it.

5 Q Okay. Did you come to the hearings, Dr. Bores,
6 physically to play some role, as soon as they began early
7 October?

8 A (Bores) No.

9 Q When was the first time you were here?

10 A (Bores) The first time I was here, I believe, was in
11 January, the -- following the January 8th and 9th RAC meeting.

12 Q Mr. Lazarus, when were you first here?

13 A (Lazarus) Last week.

14 MR. OLESKEY: Okay. I don't think that document is
15 in the record, and I would like to mark it as an exhibit and
16 offer it only to show that it was examined upon to the limited
17 extent it was, and the witnesses's involvement in this
18 preparation, for the reasons I previously stated. In other
19 words, it's a historical document; I'm not offering it because
20 I know Mr. Turk is offering that evidence only to show that
21 some litigation preparation was done in early October just
22 before the memorandum of October 15th, and this witness has
23 acknowledged participating in it.

24 MR. TURK: I'm going to object to this, Your Honor.

25 MR. DIGNAN: Before I decided whether I want to

1 object to it, I have a concise statement of what the -- if
2 there is an offer into evidence, more than marking for
3 identification; is there, Mr. Oleskey?

4 MR. OLESKEY: Yes, there is, counsel.

5 MR. DIGNAN: All right. What is the purpose of the
6 offer, then, so I can decide whether I want to object?

7 MR. OLESKEY: To show that in late September or early
8 October the NRC staff was engaged in developing a position
9 described as rebuttal, which has been previously testified and
10 remarked upon as being in contradiction or opposition to that
11 of FEMA; and that this witness who has now offered for certain
12 historical recollections about the entire period, was to that
13 extent, drawn into the litigation preparation by his agency.

14 JUDGE SMITH: Well, my problem with the document is
15 that it may be satisfactory for your first purpose, that the
16 NRC was preparing a position, but it does nothing -- it has no
17 probative value with respect to Dr. Bores's testimony which
18 was -- have you ever seen that document before?

19 THE WITNESS: (Bores) I'm not sure I saw it in this
20 form. I saw some of the areas, certainly.

21 JUDGE SMITH: The subject matter you're familiar
22 with?

23 THE WITNESS: (Bores) Yes, generally.

24 JUDGE SMITH: That's the best evidence you're going
25 to have on it.

1 MR. OLESKEY: I think I agree. Let me withdraw the
2 offer.

3 The last series of questions principally to you, Mr.
4 Lazarus.

5 BY MR. OLESKEY:

6 Q As I understand your testimony last week here, Mr.
7 Harpster who is now the Director of Emergency Preparedness for
8 New Hampshire Yankee was until approximately May of '86 your
9 direct supervisor at NRC, Region 1?

10 A (Lazarus) That's correct; approximately May '86,
11 April or May I believe.

12 Q All right. And he is also, stemming back to those
13 days, a personal friend of yours; is he not?

14 A (Lazarus) We were on a friendly basis, yes. I did
15 not know him prior to entering the Emergency Preparedness
16 Section.

17 Q All right. And it's correct, is it not, that on
18 occasion when you've come to New Hampshire you've stayed at his
19 home?

20 A (Lazarus) No, that's not correct.

21 Q Is it not correct that when you come to New Hampshire
22 you've had meals with him?

23 A (Lazarus) No, that is not correct.

24 Q You've never socialized with him outside -- you've
25 never socialized with him since he left the NRC, is that right?

1 A (Lazarus) No, I have not.

2 Q Okay. Have you ever been cautioned by your
3 supervisors against socializing with him?

4 A (Lazarus) Yes, I have.

5 Q All right. And what was the reason -- strike that.
6 In what context were you cautioned by your supervisors not to
7 associate with Mr. Harpster?

8 A (Lazarus) On a -- we're not to associate on a social
9 basis, just for the appearances of conflict of interest.

10 Q All right. When was that, at the time he left or
11 after that?

12 A (Lazarus) It was discussed before he left and
13 subsequent to that.

14 Q All right. From July 30 to October 7th of 1987, did
15 you discuss anything about the July 30 RAC with Mr. Harpster?

16 A (Lazarus) Yes, I believe I did.

17 Q What was that, sir, and when was it?

18 A (Lazarus) I believe I was on site in August of 1987,
19 following the July 30th RAC meeting, for inspection involving
20 another issue, I believe it was the East Kingston siren
21 followup. During the discussion of Mr. Harpster I discussed
22 scheduling and indicated that we'd probably have to have
23 another RAC meeting to discuss the beach population issue, the
24 issues had not been resolved and that there was disagreement
25 with the RAC, and that the position was supposed to be

1 redrafted and submitted for further review.

2 Q Is it fair to say, from what you just said, that you
3 gave him a quick summary of what happened at the July 30 RAC
4 meeting?

5 A (Lazarus) Yes, I think that's fair.

6 Q Is he the only person outside Dr. Bores, Mr.
7 Schumacher, and your superiors to whom you disclosed anything
8 that occurred at the July 30 RAC meeting until you prepared
9 your memorandum for Sherwin Turk on October 15th.

10 A (Lazarus) I believe he's the only person outside my
11 agency and, you know, my immediate family and people around the
12 Nuclear Regulatory Commission.

13 Q And when you had that conversation with him you knew
14 that he was the senior person in charge of planning for New
15 Hampshire Yankee?

16 A (Lazarus) Yes, I believe so.

17 Q And that the -- that the RAC considered its
18 deliberations to be confidential?

19 A (Lazarus) No, I did not believe that to be the case
20 at this point, especially since we were at a point where I
21 thought the question was mooted by the fact the position was
22 going to be redrafted.

23 Q So you felt free to talk to anyone, if the occasion
24 arose, about the deliberations of the RAC on July 30 or any
25 other time; is that right?

1 A (Lazarus) It did not enter my mind at the time that
2 there was anything incorrect about it.

3 Q But the only person to whom you made the disclosures
4 about what went on, and that in August shortly after the
5 meeting, outside of your family or your agency was Mr.
6 Harpster; is that right?

7 MR. TURK: Asked and answered.

8 THE WITNESS: (Lazarus) Yes, I indicated that's
9 correct.

10 MR. OLESKEY: That concludes my examination, Your
11 Honor.

12 JUDGE SMITH: Other Intervenors?

13 MR. BACKUS: Yes.

14 MR. TURK: How are we dealing with the morning break,
15 Your Honor?

16 MR. BACKUS: I need to get a couple of documents.

17 JUDGE SMITH: All right, ten minutes.

18 MR. TURK: And may I also ask how much cross-
19 examination other Intervenors feel they have?

20 MS. WEISS: Ten minutes.

21 MR. TURK: Oh, incidentally, Your Honor, are we done
22 with sequestration?

23 JUDGE SMITH: As far as I know, yes.

24 MR. OLESKEY: I would think so.

25 MR. TURK: Thank you.

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(Whereupon, a brief recess was taken.

(Continued on next page.)

1 JUDGE SMITH: You may proceed when you have
2 witnesses.

3 MR. BACKUS: Gentlemen, I'm just going to follow up
4 with some brief questioning on the basis of what Attorney
5 Gleskey has done on his cross.

6 CROSS-EXAMINATION

7 BY MR. BACKUS:

8 Q Dr. Bores, you said you came here in January and, of
9 course, you testified on January 12th and 13th as a part of a
10 panel on a Board-supervised deposition of Mr. Thomas.

11 Do you recall that?

12 A (Bores) Yes, sir.

13 Q And the subject of that testimony was the RAC meeting
14 that was held on January 7th and 8th, by and large, was it not?

15 A (Bores) Yes.

16 Q And in the course of that discussion of that RAC
17 meeting, Mr. Thomas stated that of the agencies represented on
18 the 7th and 8th, I believe two agencies did not express
19 agreement that the plans were adequate. One being Mr.
20 Patterson from Interior, and the other a Mr. Wasserman from the
21 National Oceanographic and Atmospheric Administration.

22 Do you recall that?

23 A (Bores) Did you say they did or did not?

24 Q Did not express agreement with the plans as they
25 stood were adequate.

1 A (Bores) That is correct.

2 Q And is that your recollection of their positions at
3 that January 7th and 8th meeting?

4 A (Bores) Yes, sir.

5 JUDGE HARBOUR: Mr. Backus, excuse me. Put a year on
6 this meeting.

7 MR. BACKUS: 1988. Thank you, Judge Harbour.
8 January 7 and 8, 1988.

9 BY MR. BACKUS:

10 Q Now, Mr. Bores, have I heard you correctly testify,
11 and I don't have a particular reference, but I have a
12 recollection that you testified in terms of evaluating
13 emergency plans you have to assume an accident probability of
14 1; is that right?

15 A (Bores) Essentially that's what we're doing. In
16 other words, you assume that a particular accident or scenario
17 or a sequence or a spectrum of accidents occurs, and we
18 evaluate the plan in that fashion.

19 Q And in assuming that an accident probability is 1,
20 for emergency planning purposes you're assuming that you will
21 have to deal with an accident, correct?

22 A (Bores) That's correct.

23 Q And the accident that we're dealing with is those
24 that are within the planning spectrum; is that right?

25 A (Bores) Yes, sir

1 Q And that would certainly include what we called here
2 the fast-breaking type of accident as well as other accidents,
3 or within that spectrum; is that your understanding?

4 A (Bores) Yes, sir.

5 Q Okay. Now, sir, at the meeting on April 15th, the
6 RAC meeting of April 15, 1987, did you make that statement that
7 the accident probabilities had to be assumed to be 1?

8 JUDGE SMITH: In those words, is that what your
9 question --

10 MR. BACKUS: In those words or in substance.

11 THE WITNESS: (Bores) I don't think I expressed it
12 in those words. However, some of the discussions did in fact
13 get around to the fact that, you know, we're looking at an
14 accident as having occurred certainly if we're considering
15 plume coming over the beaches and things like that. We're not
16 talking about a probability. We're talking about an accident
17 of that sort occurring.

18 BY MR. BACKUS:

19 Q Did you say in substance to the other members of the
20 RAC, regardless of what's in my memo, gentlemen -- ladies and
21 gentlemen, I guess -- we have to assess these plans on the
22 assumption that an accident which could include a fast-breaking
23 accident will occur? Did you say that in substance?

24 A (Bores) Not in those words, but I believe in
25 substance, yes.

1 Q All right. And Mr. Lutz from the Transportation
2 Department was one of those in attendance on April 15, 1987?

3 A (Bores) Yes, sir.

4 Q And he was also one of those in attendance on July
5 30, 1987; is that correct?

6 A (Bores) Yes, sir.

7 Q And in your memo, which is Staff Exhibit 2, or the
8 attachment to Staff Exhibit 2, you describe the DOT
9 representative making certain statements, and that's Mr. Lutz
10 as I understand; is that correct?

11 A (Bores) Yes, sir.

12 Q On global Page 4, the last paragraph.

13 In fact, you have him with a direct quote as saying,
14 "You have a problem." Then, "We have a problem that we need to
15 come together on." He said that whether or not the paper
16 discussed the plant features did not change the facts of the
17 construction.

18 Now is the he there Mr. Lutz?

19 A (Bores) Yes, sir.

20 MR. TURK: Could we also just continue that quotation
21 from the memo where it says, "He felt that the plans were
22 adequate and the best he had reviewed. Similar responses were
23 provided by DOE, EPA and HHS."?

24 MR. BACKUS: I guess you've done it. Could save that
25 for redirect if you prefer.

1 BY MR. BACKUS:

2 Q Dr. Bores, you have him down for two specific quotes
3 of all the members in the PAC in your memo recalling this of
4 October 15th, right?

5 A (Bores) Yes, sir.

6 Q Now, would I correctly interpret his comments that he
7 still thought the containment was a factor that should be
8 considered here in the RAC's deliberations?

9 A (Bores) It certainly was in his mind.

10 Q Okay. Now when he made these statements that so
11 stuck out in your mind that you could remember exactly what he
12 said, did you respond in any way?

13 A (Bores) I don't think I had the opportunity at that
14 point because there was a colloquy between he and Mr. Thomas.

15 Q Well --

16 A (Bores) And other members of the RAC jumped in, so I
17 don't believe that I had the opportunity to respond at that
18 time.

19 Q Well, did anybody from NRC who was in attendance
20 during the course of that meeting say anything to the effect
21 of, now, wait a minute, Mr. Lutz. You've got to assume an
22 accident could happen. We've ruled out the containment. What
23 you've said is just wrong. You've got to get it out of your
24 mind.

25 Did anybody say anything like that to him?

1 A (Lazarus) Yes, I did. At this point was
2 approximately the time that I interjected the fact that we
3 should not be talking about probabilities of an accident. We
4 had to assume that an accident existed and look at the plans to
5 see whether they were adequate. That an accident had occurred,
6 ignoring the probabilities, and pursue whether or not the plans
7 were adequate.

8 Q Okay, and is that discussed in your memorandum which
9 is Staff Exhibit 3?

10 A (Lazarus) Yes, it is.

11 Q And was that something you said in direct response to
12 Mr. Lutz?

13 A (Lazarus) It maybe may not have been in direct
14 response to Mr. Lutz. But hearing those continued arguments, I
15 wanted to make that clear.

16 Q Now, Mr. Lutz went on to say apparently, and this is
17 going over to Page 4, that he also questioned the high numbers
18 of beachgoers that were supposed to use the beaches in the
19 summer. He stated that on three separate weekends he had
20 traveled the full length of the beaches and observed only a few
21 hundred people on the beaches on each occasion.

22 Dr. Bores, did you say anything to Mr. Lutz to
23 indicate that the beaches did contain on peak summer weekends
24 more than a few hundred people?

25 A (Bores) No, sir, I did not, because I had no -- I

1 had no direct knowledge of that. I have seen other studies of
2 it as I believe all of us have.

3 Q Did anybody suggest to Mr. Lutz that the beaches did
4 contain more than a few hundred people on peak summer weekends?

5 A (Bores) Yes, sir.

6 Q Who did that?

7 A (Bores) Well, certainly the RAC chairman did, and we
8 had all seen the studies.

9 I think he was just pointing out -- Mr. Lutz was just
10 pointing out his own personal observations here.

11 Q Well, Dr. Bores, in light of the fact that Mr. Lutz
12 was still talking about the containment as a factor to be
13 considered in measuring plans in July, were you taken aback
14 that he still held that opinion after you say you had
15 specifically indicated that that was not your position back on
16 April 15th?

17 A (Bores) Yes, sir.

18 Q Now we've been furnished here with a new exhibit
19 today, which has been marked Massachusetts Attorney General No.
20 32, which I take it is a clean copy of what was Attachment 12
21 to Staff Exhibit 2 and 2-A; is that correct?

22 A (Bores) We have not seen it.

23 Q Okay. Would you just take a look and if you can
24 confirm that what we've got here with Mass. AG No. 32 is
25 indeed -- well, I used the term "clean copy" -- a fully legible

1 copy of what was part of Staff Exhibit 2-A as Attachment 16.

2 MR. TURK: Your Honor, I --

3 THE WITNESS: (Bores) I do not have a copy.

4 MR. TURK: I would also like to note that we have
5 done a line-by-line comparison. When the document was
6 introduced, it was with the understanding from Mr. Flynn that
7 this was the same document. Mr. Oleskey said it appeared to be
8 the same, but we've never compared.

9 MR. BACKUS: Well, all right. Then subject to your
10 right to compare to see if it's different, can we agree, so I
11 can just go on with this examination, that what is here as far
12 as we know a copy of Attachment 12?

13 JUDGE SMITH: Yes.

14 MR. BACKUS: All right. Then if we can do that --

15 JUDGE SMITH: Well, I said yes. Is it in fact
16 Attachment 12?

17 JUDGE HARBOUR: Yes.

18 MR. BACKUS: Yes.

19 JUDGE SMITH: All right.

20 BY MR. BACKUS:

21 Q And it would seem to me what we have on Page 2 of the
22 new exhibit is the same thing that is global Page 45 on Staff
23 Exhibit 2 and 2-A, except that there, due to apparently a
24 photocopy problem, some of the text was not clear whereas we
25 have a clear page on the new exhibit; is that right?

1 MR. TURK: It appears to be a problem in the
2 telecopy transmission rather than a photocopy problem.

3 MR. BACKUS: Okay.

4 BY MR. BACKUS:

5 Q But if I'm correct, Page 2 on the exhibit is supposed
6 to be the same document as global Page 45, then let me ask you,
7 Dr. Bores, is it in fact true that this statement, which I
8 take it is an Argonne National Lab transmission of the summary
9 of the RAC meeting of April 15th, the conclusions of the RAC
10 meeting, on Page 2 and 3 adopt verbatim the bulleted items you
11 had on Page 2 of your memorandum of February 18th?

12 MR. TURK: Can we have a moment to compare documents?

13 MR. BACKUS: Yes, you may.

14 THE WITNESS: (Bores) I can't really make that
15 comparison because I don't have a copy of the clean copy.

16 MR. BACKUS: Can the witness be furnished a copy of
17 Mass. Exhibit 32?

18 (Document proffered to witness.)

19 THE WITNESS: (Bores) This appears to be an
20 identical enclosed portion.

21 MR. BACKUS: Okay.

22 BY MR. BACKUS:

23 Q And it took everyone of the 10 or so items that you
24 had put forth on Page 10 of your memorandum of February 18th,
25 which is Staff Exhibit 5, and incorporate them in this draft

1 RAC response to the issues discussed, correct?

2 A (Bores) Again, it's a draft FEMA response. The RAC
3 does not file a response to contentions.

4 Q All right. And it's all following a heading which
5 says, "The following considerations were utilized by the RAC in
6 arriving at its conclusion relative to the beach population."
7 correct?

8 MR. TURK: That's in the Rospenda paper.

9 MR. BACKUS: That's in the Rospenda paper, Mass. AG
10 Exhibit 2 --

11 THE WITNESS: (Bores.) Yes, sir.

12 MR. BACKUS: -- Page 2.

13 THE WITNESS: (Bores) Yes, sir.

14 MR. BACKUS: Okay.

15 BY MR. BACKUS:

16 Q Now the cover letter would indicate that this was
17 transmitted by Mr. Rospenda from Argonne to Elaine Chan on
18 Thursday, May 7th of 1987, I believe, correct?

19 A (Bores) That's what it says.

20 Q When did this come to your attention?

21 A (Bores) I think I already indicated yesterday I
22 don't believe I had seen this until mid to end of the May.

23 Q All right. And that's my recollection, too.

24 So you did see this before you went on leave last
25 summer, 1987?

1 A (Bores) Yes. I did not read it closely, but I had
2 seen it.

3 Q And what response, if any, did you make upon seeing
4 this document?

5 MR. TURK: Well, we've been through this already, Mr.
6 Backus. Mr. Oleskey went through a line of questions about
7 whether he called anyone about this or --

8 MR. BACKUS: All right. I'll withdraw it. That's
9 been covered.

10 BY MR. BACKUS:

11 Q Dr. Bores, the memoranda that you prepared, and
12 particular the one that's Staff Exhibit 5, the February 18th
13 memoranda, was in response, as I understand it, to Mr. Thomas's
14 memorandum of December 31, 1985, asking for input to the RAC on
15 the beach issue; correct?

16 A (Bores) My letter to Mr. Thomas, yes.

17 Q And isn't it true, in fact, that Mr. Thomas's
18 memorandum of 12-31-85 was reviewed by personnel at NRC before
19 it was sent out?

20 A (Bores) I'm sorry, would you repeat that, please?

21 Q Was there any review, to your knowledge, by anyone at
22 NRC, either at Region 1 or elsewhere, of the 12-31-85
23 memorandum from Mr. Thomas when it was in draft before it was
24 sent out to the RAC?

25 A (Bores) I had never seen it, and I'm not aware of

1 anyone else within our agency who had seen this memo in draft.

2 Q So there was no consultation about Mr. Thomas's
3 memorandum between Mr. Thomas and anybody at NRC before it was
4 sent out, to your knowledge?

5 A (Bores) Not to my knowledge.

6 Q All right. How about you, Mr. Lazarus?

7 A (Lazarus) No, there was not; not to my knowledge.

8 Q I guess the only other thing is to go back again to
9 the reference in your paper, that's your memoranda of February
10 18th and June 4th, that the ETEs for Seabrook are relatively
11 short. That's a statement you made in both memoranda as I
12 understand it; is that correct?

13 A (Bores) Yes, sir.

14 Q Okay. And the "relatively short" you've explained by
15 referring to the text at Page 8 and 6 of the June 4th
16 memoranda; is that right?

17 MR. TURK: I'm sorry. Could you ask that again?

18 BY MR. BACKUS:

19 Q The "relatively short" is further explained by
20 further references to the text at Page 6 and 8 of the
21 memoranda.

22 MR. TURK: For clarification, the exact wording on
23 Page 10 is, "ETEs for beaches are relatively small".

24 MR. BACKUS: Okay, relatively small.

25 MR. TURK: And you're asking where in the paper is

1 that addressed.

2 MR. BACKUS: Right.

3 BY MR. BACKUS:

4 Q And that's addressed at the top of Page 8 where the
5 "relatively short" is defined in brackets, or in parenthesis,
6 two to four hours, and further discussed on Page 6, where a
7 broader range is discussed?; correct?

8 MR. TURK: I'm having trouble finding that.

9 Mr. Backus, you're looking at the June paper, not the
10 February paper.

11 MR. BACKUS: Right. I believe the same material is
12 in both papers but not perhaps in the same places.

13 THE WITNESS: (Bores) Okay, I have the two places.
14 Was there a question?

15 BY MR. BACKUS:

16 Q The question was, is that where you attempted to
17 elucidate what you meant by relatively small ETEs?

18 A (Bores) That's the only reference I made to the
19 ETEs, yes.

20 Q And when you used the words "relatively small ETEs",
21 that was relative to what?

22 A (Bores) I guess relative to the entire EPZ in
23 general. We're looking at -- well, you know, relatively short
24 compared to the overall EPZ clearance certainly.

25 Q Okay. In other words, relatively short means the

1 beach clearance times by evacuation or relatively short
2 compared to the time to clear the entire Seabrook EPZ? Is that
3 what you mean?

4 A (Bores) Yes. What I was looking at was the Appendix
5 6 of the New Hampshire plan.

6 Q All right. So it was not relative in terms of
7 comparing it to other sites?

8 A (Bores) No, sir.

9 Q And not relative in comparison to the planning
10 guidance for plume travel times in NUREG-0654?

11 A (Bores) No, sir.

12 Q Okay. Now, you also attended a RAC meeting for which
13 a transcript was prepared on February 29, 1988, did you not?

14 A (Bores) Yes, sir.

15 Q And do you recall the discussion at that RAC meeting
16 about how to characterize people who might be stuck in cars for
17 several hours in the event of an accident at Seabrook?

18 A (Bores) Perhaps you could --

19 MR. TURK: Could we have a moment, please?

20 MR. DIGNAN: Well, before we pursue this too far,
21 could I note a relevancy objection given the purpose these
22 witnesses are offered for?

23 I haven't heard one question about that February 29th
24 meeting until now. So I object on grounds of relevancy.

25 MR. BACKUS: Well, I've indicated that I do believe

1 that in light of the testimony that I anticipate from the FEMA
2 witnesses that the merits of the RAC position indeed are going
3 to have to be dealt with in their testimony. And I think the
4 only time I can deal with it through these witnesses is now
5 while they are here.

6 So I agree it's something that I'm doing in
7 anticipation to what I expect to have come before us with the
8 FEMA witnesses.

9 MR. TURK: Your Honor, I have --

10 MR. DIGNAN: Well, I --

11 MR. TURK: -- a problem.

12 MR. DIGNAN: Excuse me. It's my objection, at least
13 at this juncture.

14 Counsel, having stated quite candidly that he is
15 trying to explore the merits of the RAC position, I object to
16 the question based on the prior ruling of the Board.

17 MR. FLYNN: And I join in that objection.

18 MR. TURK: I have a different sort of problem, Your
19 Honor. The RAC meeting of February was transcribed and we all
20 have copies of it, or at least we should, the parties at least.

21 MR. BACKUS: Well, I'll be glad to withdraw that if
22 we could agree that, or I'd like to offer the RAC transcript
23 from February 29th as a part of this proceeding.

24 JUDGE SMITH: Well, not now.

25 MR. TURK: For what purpose?

1 JUDGE SMITH: Not now.

2 The objection is sustained. You can come back to
3 that when it's appropriate.

4 MR. BACKUS: Well, I can only say that I was going to
5 discuss this witness's statements for which there is a
6 transcript, and it's going to be a little hard to come back to
7 that.

8 JUDGE SMITH: Well, for your purpose -- that's the
9 problem. For your purpose, they're not here testifying for the
10 purpose that you intend to examine them.

11 MR. BACKUS: Well.

12 BY MR. BACKUS:

13 Q Well, then let me go back to the question I was
14 pursuing before, in light of the Board's ruling.

15 You say that the relatively small ETEs are relative
16 to the entire EPZ as compared with the clearance time for the
17 beach population, Dr. Bores.

18 What did you understand the clearance time for the
19 entire EPZ was?

20 A (Bores) Well, it depends on the scenario that you're
21 looking at. And what I have captured here is the clearance
22 times for individual beaches as a function of, you know,
23 weather conditions, other conditions.

24 So when you apply the same sort of constraints on it,
25 the EPZ times are somewhat longer.

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t/5 1 Q Well, as I understand it, you've explained that when
2 said ETEs for beaches are relatively small, you meant
3 relatively small compared to the evacuation times for the
4 entire Seabrook EPZ; correct?

5 A (Bores) Yes, sir.

6 Q And I'm just asking you, what was the range of times
7 for clearing the entire EPZ through evacuation?

8 A (Bores) I don't have that in my memory right now,
9 looking at it before, but I don't have the numbers now.

10 MR. BACKUS: Okay. I have nothing further in view of
11 the Board's ruling.

12 JUDGE SMITH: Mr. Brock?

13 MR. BROCK: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. BROCK:

16 Q Mr. Lazarus, I just first wanted to followup on a
17 point raised by Mr. Backus. As I understand, at the July 30
18 meeting you were concerned that Mr. Lutz had again raised the
19 issue of containment as a basis for his opinion that the plans
20 could be adequate, is that right, you were concerned about
21 that?

22 MR. TURK: Excuse me, the question was to Dr. Bores
23 initially.

24 MR. BROCK: The question's to Mr. Lazarus. I believe
25 he answered a question to Mr. Backus along those lines.

1 THE WITNESS: (Lazarus) I indicated that I had -- I
2 heard that response still included -- I don't know if it's
3 directly attributable to Mr. Lutz, but I clearly heard that
4 response that the containment is there, the containment is
5 still there; and that's when I, approximately at that time,
6 that I injected that we should not be talking about things that
7 effect probability or risk. But, you know, assuming --
8 eliminating those things, assume that an accident occurs and
9 address the plans for that accident.

10 BY MR. BROCK:

11 Q Okay. And so you endeavored to explain to Mr. Lutz
12 that he should not be considering containment and risk in
13 evaluating the adequacy of the plant; is that fair?

14 A (Lazarus) I was explaining that to the group; I
15 don't know that it was directed specifically at Mr. Lutz.

16 Q Okay. Following your discussion was it your
17 understanding that the RAC, with the exception of Mr. Thomas,
18 accepted that view?

19 A (Lazarus) Yes, it is.

20 Q Now, Dr. Bores, is your recollection the same as Mr.
21 Lazarus's as far as that discussion he had with the RAC?

22 A (Bores) Yes, sir.

23 Q So in your opinion, after Mr. Lazarus again advised
24 the RAC they should not be considering containment and risk, in
25 your view, the RAC did accept that position?

1 A (Bores) Yes, sir.

2 Q All right. I want to refer you to the transcript of
3 January 12, 1988 at page 8687, and I don't know if you have a
4 copy of that available to you. Let me read a portion in, and
5 you're welcome to look at this, if you'd like.

6 "The Department of Transportation representative, Mr.
7 Paul Lutz indicated as follows:" and this is Thomas speaking:
8 "Answer: That we may not have the testimony of the NRC on the
9 containment, but the containment was enormous. There never was
10 going to be an accident at Seabrook, that we should realize
11 that New Hampshire has the best plans he's ever seen, and that
12 we should quit the legalisms," he indicated, "with all respect
13 to the chairman."

14 I'm sorry, if you want to get that page that's 8687.
15 Do you have that?

16 A (Bores) I have that, yes.

17 Q Let me just continue with the quote: "Indicated that
18 there were worse sites from an emergency planning perspective,
19 that we had done our job. The state had done its job, and that
20 no one should wear a black hat. The plans were adequate in
21 this respect."

22 "Question: Okay. I'm going to ask you to stop for a
23 moment and I'll ask Dr. Bores if that agrees with his
24 recollection of what Paul Lutz said."

25 "Answer," on to the next page, "I believe that's

1 pretty accurate, yes."

2 Now, isn't it fair, Dr. Bores, that even as of
3 January 12, 1988 that Mr. Lutz was still sticking to his
4 position that the reason, principally, these plans were
5 adequate was because of containment and risk factors?

6 MR. TURK: Could we have a moment, please.

7 JUDGE SMITH: While he's doing that, think about the
8 date.

9 MR. BROCK: I take your hint, Your Honor, as I
10 understand the RAC meeting was actually on the 7th and 8th of
11 January rather than the 12th.

12 BY MR. BROCK:

13 Q Do you understand the question, Dr. Bores?

14 A (Bores) I understand the question. I want to get
15 back to where we're talking here in context. Are we talking
16 what occurred at the January meeting or are we talking what
17 happened in July?

18 Q At the January meeting, January RAC meeting, isn't it
19 fair to say that Mr. Lutz was still of the view that a
20 principal reason that he would support these plans as adequate
21 was due to the containment and to risk factors?

22 A (Bores) I had indicated that that is fairly
23 accurate; yes. I don't know that he said an accident at
24 Seabrook can never happen; I think those are Mr. Thomas's
25 words. But I don't know if Mr. Lutz said that.

1 Q All right. But he was still speaking containment and
2 risk as of January 1988?

3 A (Bores) Yes, sir.

4 MR. BROCK: Could I just have a moment, Your Honor.

5 JUDGE SMITH: Sure.

6 Mr. Dignan, will you be having examination?

7 MR. DIGNAN: At this juncture, no, Your Honor.

8 BY MR. BROCK:

9 Q Dr. Bores, I'd like to refer you to Staff Exhibit
10 2-A, global page three, and just following up and I'll quote a
11 sentence from the middle of the third paragraph to read: "The
12 specific containment and plant features cited in my paper were
13 in addition to and not necessary for the NH, RERP provisions
14 making the plan adequate. The RAC accepted the above position
15 as representing their views on the beach issues."

16 Now, you would agree that based on our conversation
17 we just had about Mr. Lutz, that statement is not accurate; is
18 that fair?

19 A (Bores) This was my understanding of this situation
20 at the time.

21 Q Let me refer you to global page four of the same
22 exhibit.

23 MR. TURK: May I ask for a clarification. Dr. Bores
24 said, this was my understanding, what -- I'd like to ask, just
25 so it's right here, what was his understanding at the time?

1 MR. BROCK: Well, why don't you ask that on
2 redirect, Mr. Turk.

3 BY MR. BROCK:

4 Q Dr. Bores, I'm referring you to page four of Staff
5 Exhibit 2-A at the bottom, and I believe Mr. Backus referenced
6 this quote, but just for clarity: "He," and I believe that's
7 Mr. Lutz said, "that whether or not the paper discusses these
8 specific plant features, did not change the facts of the
9 construction. He felt that the plans were adequate and the
10 best he had reviewed. Similar responses were provided by DOE,
11 EPA, and HHS."

12 Now, when you say, similar responses, following just
13 after the discussions of containment and construction, is it
14 fair to say that other agencies on the RAC were voicing their
15 support that containment and risk factors were going into their
16 mix in determining whether or not these plans were adequate?

17 A (Bores) That was not the intent of my sentence. My
18 sentence was more to the similar responses was to capture the
19 adequacy of the plans as they had reviewed them, that they
20 thought they were good plans, for the best plans that they had
21 reviewed.

22 Q But it's your testimony that those similar responses
23 don't refer to Mr. Lutz's comments on the construction
24 features?

25 A (Bores) They were not intended to respond -- to

1 correspond to those.

2 Q Now, Dr. Bores, if I understand correctly, at the
3 April 15 RAC meeting NOAA expressed some concerns about your
4 paper on meteorological issues you had raised in what we've
5 described as Bores 1; is that correct?

6 A (Bores) I'm not sure that they raised any, you know,
7 strong concerns. There was a number of discussions relative to
8 what their understanding was of the sea breeze situation, the
9 location of the plant relative to the shore land, or inland
10 areas, and what might be expected in terms of sea breezes.

11 So, as a result of those discussions there were some
12 relatively minor word changes, and I think you'll see those
13 reflected if you go between what's called Bores 1 and Bores 2
14 in the same area.

15 Q So as a result of NOAA's comments concerning
16 meteorology, wind direction, those kinds of issues, you amended
17 Bores 1 when you were drafting Bores 2; is that right?

18 A (Bores) That is correct. And it took, you know,
19 those relatively minor word changes which were agreed on at the
20 RAC meeting, and simply incorporated them.

21 Q And some of those concerns involved a recirculation
22 of the plume or potential recirculation of the plume over the
23 beach areas; is that right?

24 A (Bores) That's correct. And discussion as to how
25 much would come back or what sort of concentration problems one

1 might have, and relatively large volumes of dilution; yes.

2 Q So in response to those comments in Bores 2 you made
3 some change in the language; is that my understanding?

4 A (Bores) Yes.

5 MR. TURK: Bores 1.

6 BY MR. BROCK:

7 Q You changed Bores 1 to address those concerns?

8 A (Bores) Yes, sir.

9 Q Thank you.

10 Did NOAA prior to the July 30 RAC meeting, to your
11 knowledge, approve the changes you had made as adequate to
12 address the concerns they had expressed on April 15?

13 A (Bores) The wording changes were written down at the
14 RAC meeting on the 30th -- on April 15th, so that everybody
15 pretty much knew what the wording changes were. And the NOAA
16 representatives had agreed that that was what we would have.

17 I may have inserted one additional word which says,
18 "directly" into the thing, which indicated that if the winds
19 -- if there were sea breezes they would not -- the plume would
20 not directly come over the beach areas, but allowing the fact
21 that there may be recirculation.

22 Q But it's your testimony that NOAA essentially
23 approved the exact language appearing in Bores 2 relative to
24 the meteorological issues at the April 15 meeting?

25 A (Bores) I don't want to say they approved the exact

1 wording; they approved the essence of the word.

2 JUDGE SMITH: How much do you have to go on NOAA?
3 You seem to be going into the merits. There was some marginal
4 relevance to NOAA absence.

5 MR. BROCK: If I could just -- actually, I think I
6 have only one more question on this point, Your Honor.

7 JUDGE SMITH: All right.

8 BY MR. BROCK:

9 Q Whatever NOAA may have agreed to on April 15, first
10 of all, you will agree they were not present on July 30 when
11 the vote was taken, which you've testified to; is that correct?

12 A (Bores) Yes, sir.

13 Q Okay. And it's also fair to say that, at the January
14 '88 RAC meeting NOAA did not approve the plans as adequate; did
15 they?

16 A (Bores) They did not. However, we had a different
17 representative.

18 JUDGE SMITH: How much do you have all together?

19 MR. BROCK: Your Honor, I have one more line; a few
20 minutes.

21 JUDGE SMITH: Okay.

22 BY MR. BROCK:

23 Q Dr. Bores, I'd just like to refer you to Staff
24 Exhibit 6, I believe that's Bores 2, if I'm correct. And on
25 page seven of that exhibit, again, let me just read a short

1 paragraph here and I want to ask a couple of questions about
2 it. "It is also noted that when large seasonal beach crowds
3 are likely to be present (on hot sunny days) the typical wind
4 pattern is from the offshore, cooler surface to the onshore,
5 warmer surfaces of the land masses. This means that any sea
6 breezes would likely prevent the plume from traveling directly
7 to the nearby beach areas when the beaches are most heavily
8 populated. The sea breeze would also dilute a short-term
9 plume, even if a portion of it was recirculated to beach
10 areas."

11 Now, is that, in substance, the basis for your
12 conclusion on page nine following one of the bullets which
13 says, "Sea breezes would tend to keep plume from traveling
14 directly toward beach when beaches are most populated?"

15 A (Bores) Yes, sir. This is the language that was
16 essentially approved at the April meeting.

17 Q By NOAA?

18 A (Bores) Yes, sir.

19 Q I believe you previously testified that you had seen
20 the Lutz response to Mr. Thomas's memo of December 31, '85, and
21 I believe that's been marked as Mass. AG Exhibit 26, do you
22 have a copy of that?

23 Do you have that in front of you, Dr. Bores?

24 A (Bores) Yes, sir.

25 Q Now, can you tell me, first of all, you have

1 previously seen this document; is that correct?

2 A (Bores) Yes, sir.

3 Q Okay. Can you tell me when was the first time that
4 you received this document or when -- yes, when did you first
5 receive the document?

6 A (Bores) I really don't know.

7 Q Was it before you drafted Bores 1?

8 A (Bores) I believe so.

9 Q Is it fair to say then, that this information was
10 available to you when you were composing that paper?

11 A (Bores) If I had the paper before that, then it
12 would have been available for me; yes.

13 Q Now, I'm referring to the second paragraph on the
14 first page there, let me quote that: "As an old
15 meteorologist," and this is Mr. Lutz, "I am very uncomfortable
16 with their use of wind direction to decide safety precautions
17 in the summertime along the shore. Along the coast in
18 summertime we have many days of light winds which are
19 inherently variable in direction. We have thunderstorms which
20 can cause winds from any direction. And we have land effects,
21 and day and night effects which cause changes in wind direction
22 especially in the summertime.

23 With the sensitive issue they are facing at Seabrook,
24 I recommend that the precautionary actions directed between May
25 15 through September 15 not be dependent on the frequently

1 uncertain wind direction. Since time will be of the essence,
2 the precautionary action should be as automatic as possible.
3 The state should avoid the delays caused by waiting for
4 meteorologists and plant engineers to get their acts together
5 and to make uncertain forecasts."

6 MR. TURK: Could we have the last paragraph from that
7 page read as well.

8 MR. BROCK: You're welcome to read it when you
9 redirect.

10 MR. TURK: For context.

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11 (Continued on next page.)

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1 BY MR. BROCK:

2 Q Dr. Bores, is it fair to say that paragraph --

3 JUDGE SMITH: Now, if it's something in addition you
4 want in, read it on redirect. If he is taking it out of
5 context, let's find it and see if he has.

6 MR. BROCK: I'm not aware of that, Your Honor.

7 JUDGE SMITH: I didn't think it was.

8 MR. TURK: The context, Your Honor, is Mr. Lutz
9 therefore recommends that the state do exactly what they have
10 done, which is to consider beach closing at the alert stage.

11 MR. BACKUS: That's not what they've done. It says
12 automatically close the beach at the alert stage. That's not
13 the plan.

14 JUDGE SMITH: All right. We're getting into the
15 merits again.

16 BY MR. BROCK:

17 Q I would just like to ask Dr. Bores, the paragraph
18 which I have just read from, the Lutz response, isn't it fair
19 to say, Dr. Bores, that you disregarded this information in
20 preparing both Bores 1 and Bores 2?

21 MR. DIGNAN: Objection. As I understand it, the
22 witness testified he doesn't remember when he had it, and he
23 said it two or three times.

24 MR. BROCK: He's testified his best recollection is
25 he had it prior to Bores 1, as I understand his testimony.

1 JUDGE SMITH: Well, at least he had it prior to
2 Bores 2, in any event.

3 But what is your testimony on that?

4 THE WITNESS: (Bores) I believe I had it before
5 Bores 1 also.

6 Let me put in context of what he's addressing. He's
7 not addressing the meteorological conditions per se. What he
8 is addressing is the statement that was carried over in the New
9 Hampshire plan that would indicate that precautionary closing
10 of the beach, beaches or beach evacuation actions would be
11 taken when the wind was blowing toward the beach areas. That
12 is what he was addressing.

13 MR. BROCK: Okay.

14 THE WITNESS: (Bores) And so the wind variability
15 aspects came into the fact that he wanted the beaches to be
16 closed regardless of what the wind direction was if the plant
17 indications indicated we had a serious accident, or had a
18 potentially serious accident there.

19 So it was really not directing here -- I mean
20 addressing the variability per se, but only the fact that he
21 did not prescribe to only closing it when the wind was from a
22 certain direction. And that I think has been addressed.

23 BY MR. BROCK:

24 Q Is that your answer?

25 A (Bores) Yes, sir.

1 Q Isn't it fair to say that you did not discuss,
2 address or include the issue of the variability of the winds in
3 the beach areas when you were composing Bores 1 and 2?

4 MR. TURK: Well, is the question whether he
5 considered it or whether he discussed it expressly in his
6 paper?

7 MR. BROCK: The question was the question, Mr. Turk.

8 BY MR. BROCK:

9 Q Can you answer the question?

10 JUDGE SMITH: You're asking him to comment as to what
11 is actually in his papers.

12 MR. BROCK: I'm asking -- he' already testified that
13 this information was available to him.

14 JUDGE SMITH: Right.

15 MR. BROCK: As I read this, this is at variance with
16 his own opinion, and now what I'm trying to first establish is
17 that he will agree with me that he did not, you know, utilize
18 this information. In fact, put in information which
19 contradicted it. And the second point would be why he did
20 that.

21 JUDGE SMITH: Would you agree with his
22 characterization of what you did?

23 THE WITNESS: (Bores) No, sir.

24 BY MR. BROCK:

25 Q Dr. Bores, tell me why you do not agree with the

1 characterization I provided.

2 MR. TURK: Well, we're several minutes down the road
3 here. If you're going to ask Dr. Bores to take apart your
4 characterization, I'm going to have it reread and have each
5 element discussed.

6 Could we just move to another question, or rephrase
7 it?

8 MR. BROCK: I'll withdraw that question, and I'll try
9 one more time, Dr. Bores.

10 BY MR. BROCK:

11 Q Your statements contained on Page 7 of Staff Exhibit
12 6, which discusses a typical wind pattern, which would likely
13 prevent the plume from traveling directly to nearby beach areas
14 is at variance with Mr. Lutz's statements that you can't
15 predict how the winds are going to be blowing over the beach
16 areas, and that that should not be used as a basis for
17 emergency planning; isn't that true?

18 A (Bores) We're talking about two different wind areas
19 here, in general. One is talking -- mine is talking about the
20 sea breeze situation. And Mr. Lutz is talking about the
21 variability of the wind as measured in-land coming out toward,
22 or as indicated at the plant where the wind is blowing to. And
23 in fact what he is discussing here is, as I had mentioned
24 before, don't use the indicated on-land, if you will,
25 indication as saying the wind is going to hold from that

1 direction for a number of hours, and therefore take no
2 protective action if it is, let's say, not coming toward the
3 beach area.

4 Q It's your testimony that Bores 2 is consistent with
5 the Lutz statement I've read here?

6 A (Bores) It can be read that way, yes.

7 MR. BROCK: I have nothing further, Your Honor.

8 JUDGE SMITH: Ms. Weiss, I expressed surprise that
9 you had examination. The reason I was surprised is that I had
10 seen you working with Mr. Oleskey. I had overlooked the fact
11 that you had not had your own questions.

12 MS. WEISS: I just have two lines of follow up. I'm
13 not going to open up any new areas.

14 MR. TURK: I do note, Your Honor, I'm making a lot
15 more marginal notes today than I had in the prior two days, so
16 my direct is going to be more than six questions I anticipated
17 yesterday.

18 CROSS-EXAMINATION

19 BY MS. WEISS:

20 Q You don't dispute, Dr. Bores, do you, that the
21 aspects of Bores 1 dealing with the Seabrook containment and
22 the probability and timing of releases were very important to
23 FEMA Region 1 in its consideration of whether the plans provide
24 reasonable assurance of protection to the beach population?

25 MR. TURK: We've been through that line extensively.

1 Your Honor, by Mr. Oleskey.

2 MS. WEISS: If you'll bear with me, Your Honor, I
3 have a few questions. I need to lay a foundation.

4 THE WITNESS: (Bores) Based on the responses of FEMA
5 to the contentions and in the early prefiled testimony, I would
6 have to agree with that.

7 BY MS. WEISS:

8 Q And in fact Mr. Thomas had had several conversations
9 with you, hadn't he, in the time period before Bores 1 was
10 completed and given to FEMA where he said in substance, if not
11 in words, we, meaning FEMA Region 1, don't see how we can make
12 the reasonable assurance findings with regard to the beach
13 population considering the assumptions that we're required to
14 make regarding quickly developing accidents and the long times
15 required to evacuate people from the beaches, didn't he?

16 A (Bores) I don't recall any conversations in that
17 particular context, no.

18 Q You don't recall Mr. Thomas or other members of FEMA
19 Region 1 staff making comments to you of that substance?

20 A (Bores) That we cannot make a reasonable assurance
21 finding --

22 Q We are having difficulty making the reasonable
23 assurance finding, or making the finding that the plans are
24 adequate because of the assumptions we're required to make that
25 an accident may develop quickly and the long time required to

1 evacuate people from the beach.

2 A (Bores) What sort of time frame are we talking about
3 here?

4 Q Well, I'm not specifying any time frame or
5 representing that he specified a time frame from you.

6 But don't you recall conversations along those
7 general lines?

8 MR. TURK: Your Honor, we had an extensive line of
9 questions already about the conversations with Mr. Thomas. I
10 got into it, Mr. Oleskey got into it. There has been some
11 testimony along this line. I don't see that letting Ms. Weiss
12 do it a third time is going to get us somewhere, and I don't
13 want the record anymore clouded by our attempt to rush through
14 now and conclude without careful consideration be given to each
15 question.

16 MS. WEISS: Mr. Chairman, I sat here for Mr Turk's
17 well over a day's direct, everybody else's cross. We have
18 coordinated, and I have a small amount of follow up, and I
19 press the question and ask that he be allowed --

20 JUDGE SMITH: The question -- his objection is that
21 it's been asked and answered, and I --

22 MS. WEISS: No, my recollection --

23 JUDGE SMITH: So many questions have been asked and
24 answered, I don't have any independent memory.

25 MS. WEISS: You may be sure that if I believe that

1 question was asked and answered, I wouldn't be pursuing it.

2 JUDGE SMITH: I believe you.

3 MR. OLESKEY: I'll represent that I don't recall
4 asking that question, much less having an answer.

5 MR. TURK: Well, there certainly were questions by
6 Mr. Oleskey about conversations held between Dr. Bores and Mr.
7 Thomas, and he was very careful to lay out the time sequence;
8 after Bores 1, before the July meeting.

9 JUDGE SMITH: Overruled.

10 THE WITNESS: (Bores) Okay, would you repeat the
11 question, please?

12 BY MS. WEISS:

13 Q The question is whether you didn't have conversations
14 with --

15 A (Bores) Whether I did or didn't?

16 Q Did, did you.

17 A (Bores) Did, did have.

18 Q Did you --

19 A (Bores) Okay.

20 Q -- have conversations with Mr. Thomas, recognizing
21 that I don't have the exact words, but where in substance he
22 represented that FEMA Region 1 was having a difficult time
23 making the finding of plan adequacy given the assumptions they
24 had to make about a quickly developing accident and the times
25 required to get people off the beaches?

1 You remember conversations with that substance, don't
2 you?

3 A (Bores) Never came out in terms of the context that
4 FEMA was, you know, on the hot seat making a finding at that
5 point.

6 Mr. Thomas had expressed his interest in getting our
7 opinion certainly in terms of the probability and risk along
8 that line. It never came about that, you know, this was needed
9 for a finding.

10 Q And, in fact, you responded, also in substance, I am
11 writing the paper to address your concerns, your concerns FEMA
12 1, to demonstrate that the assumptions about accident, timing
13 and probability that are generically made don't apply to
14 Seabrook because it has special features.

15 Didn't you respond along those lines?

16 A (Bores) No, sir. No, ma'am.

17 Q You didn't?

18 A (Bores) Not then.

19 Q There's testimony -- along those lines, in substance,
20 not exact words.

21 JUDGE SMITH: When? When?

22 MS. WEISS: While he was preparing Bores 1.

23 MR. TURK: And this is along the lines that you don't
24 have --

25 THE WITNESS: (Bores) No, I don't recall.

1 MR. TURK: You don't have to use NUREG-0654 because
2 you've got these special features?

3 MS. WEISS: No, that's not what I said at all.

4 MR. TURK: That's the question.

5 MS. WEISS: That's not the question.

6 MR. TURK: That's the question.

7 JUDGE SMITH: Mr. Turk, let her ask her question.
8 The problem was only when.

9 THE WITNESS: (Bores) You ask me for a response
10 before I prepared my beach memorandum?

11 BY MS. WEISS:

12 Q When you were in the process of preparing Bores 1,
13 didn't you say to Mr. Thomas, I am preparing Bores 1. I'm
14 preparing a paper. Of course, you didn't know it was going to
15 have a number at that time. But I'm preparing a paper, the
16 purpose of which is to address those concerns, and I will lay
17 out for you why those assumptions regarding accident, timing
18 and probability that concern you with regard to the beach
19 population don't apply to Seabrook because of its special
20 containment?

21 A (Bores) No, I did not.

22 Q So if there's testimony to that effect by another
23 witness, that would be incorrect?

24 MR. TURK: If there is.

25 MS. WEISS: If there is.

1 THE WITNESS: (Bores) That was not the substance of
2 the discussion. I never had indicated that Seabrook ought to
3 have any special consideration because of plant features.

4 The purpose of any discussions I had with Mr. Thomas
5 along this line in terms of preparing the memorandum, or the
6 letter with its enclosure, was basically to outline where we
7 were at this point in time in terms of considering those items
8 that were still open relative to the protection of the beach
9 effort.

10 There had not been any gathering in any one place of
11 the information that we had available to us and the current
12 status. So as part of that content, format, areas that I would
13 be looking at, I discussed with Mr. Thomas, but I never
14 indicated that we ought to have special considerations. That
15 was never an intent on my part, nor as far as I know from
16 anyone on the NRC staff.

17 BY MS. WEISS:

18 Q Didn't you prepare Bores 1 for the precise purpose of
19 responding to FEMA Region 1's concerns?

20 A (Bores) I prepared it in response to the December
21 31, 1985 memoranda.

22 Q Right. And at the April 15th meeting, when you said
23 that you believed that the plans were adequate even without
24 consideration of those materials on accident probability and
25 timing, you indicated that that was your view as the NRC RAC

1 member, correct?

2 A (Bores) Yes, ma'am.

3 Q And the other RAC members at that point in time did
4 not express views one way or another on whether they agreed
5 with you, did they?

6 MR. TURK: About what?

7 MS. WEISS: Press the question.

8 MR. TURK: Your Honor, this is a rehash.

9 JUDGE SMITH: Well, even if the witness understands,
10 Mr. Turk has a right to understand too.

11 MS. WEISS: Well, you know, that's, of course, true,
12 Your Honor. It's just that Mr. Turk has a propensity for
13 making argument and doing his redirect when somebody else is
14 trying to do their cross.

15 MR. TURK: Your Honor, Ms. Weiss is saying no one
16 agreed with your position. We've had extensive discussion
17 about what the RAC did at that meeting.

18 MS. WEISS: I asked a careful question. Now try and
19 listen.

20 BY MS. WEISS:

21 Q The question was, at the time you expressed your view
22 at the outset of the April 15th RAC meeting, you said, I, as
23 the NRC member of the RAC, believe the plans are adequate even
24 without considering any of this material that I've written down
25 regarding accident timing and probability, correct?

1 A (Bores) Yes.

2 Q Now at that time, in response to that precise
3 statement, did any of the RAC members speak up and say, yes, I
4 agree, just at that moment in time?

5 A (Bores) I do not recall any doing that.

6 Q And, in fact, the great bulk of the meeting on the
7 14th that followed after the introductory statements was
8 devoted to discussion of those aspects of Bores 1 dealing with
9 the Seabrook containment and accident timing and probability;
10 isn't that correct?

11 MR. DIGNAN: Objection as to form.

12 THE WITNESS: (Bores) No.

13 MR. DIGNAN: I believes you inadvertently said 14th,
14 and I assume you meant the 15th.

15 MS. WEISS: Yes. With that correction.

16 THE WITNESS: (Bores) No.

17 BY MS. WEISS:

18 Q You would disagree that most of the RAC meeting was
19 spent discussing the back half of Bores 2 -- Bores 1?

20 A (Bores) Yes, I would.

21 Q You would?

22 Can you give me some estimate of what proportion of
23 time it's your recollection was devoted to that part of the
24 discussion?

25 A (Bores) There really wasn't that much devoted to

1 those aspects, the containment aspects at all. The discussion
2 that we had along that line was primarily along the way of
3 understanding a particular sentence or two relative to the way
4 I had expressed the risk aspect.

5 Q Right.

6 A (Bores) But it was an understanding problem in terms
7 of the RAC. We did not spend a lot of time devoted to the
8 containment issues per se, or anything along that line.

9 We also spent a good bit of time in listening to the
10 NOAA representatives and the meteorological indications.

11 Q Well, that was another aspect of risk, correct?

12 MR. TURK: Objection.

13 JUDGE SMITH: Overruled.

14 THE WITNESS: (Bores) Meteorological conditions
15 could enter into the risk considerations, yes.

16 MS. WEISS: All right.

17 BY MS. WEISS:

18 Q And at any rate it was only after all of that
19 discussion on April the 15th that consensus was reached in the
20 RAC; is that correct?

21 A (Bores) I believe consensus was -- probably could
22 have been gotten in the first two minutes of the RAC meeting.

23 Q But you don't know that. I mean, no vote was taken
24 in the first two minutes.

25 A (Bores) No, but there was no --

1 Q And there was lots of discussion.

2 A (Bores) But there was no -- no one said, hey, I
3 think it's wrong. There was nothing along that line. We were
4 looking at refinements as we were going through the papers.
5 Everybody had had copies of the memoranda. Everybody came to
6 the meeting generally knowing, I think where we were going. We
7 had copies of several other memoranda with us, and thought we
8 were going to the meeting to try and close it out.

9 So I don't think there was any disagreement with
10 where we were heading.

11 Q Well, I think we can agree, can't we, Dr. Bores, that
12 the people -- that the members of the RAC were never asked the
13 question, because it hadn't arisen at that time and it wasn't
14 in anybody's mind, do you think that the plans are adequate
15 with the special containment features, or do you think that the
16 plans require -- I mean, the plans are adequate without special
17 containment features? That wasn't an issue that was before the
18 RAC, correct?

19 A (Bores) That's correct.

20 Q Now one more line of questioning briefly about
21 Massachusetts Exhibit 31 -- 32, the telefax transmission from
22 Mr. Rospenda at Argonne, which I think is global 43, but I'm
23 looking at the cleaner copy. This is the --

24 A (Bores) It's Attachment 12 of my memoranda.

25 Q Correct, correct.

1 A (Bores) Yes.

2 Q The draft FEMA response to contentions, and if you'll
3 look at global -- I guess global 47, but it's Page 4 of Mass.
4 AG 32.

5 MR. DIGNAN: Ms. Weiss, there's more than one Page 4.

6 MS. WEISS: Oh-oh.

7 MR. TURK: There are three contentions. Each one has
8 a separate write up.

9 MS. WEISS: Okay.

10 MR. DIGNAN: If you go up on the left-hand corner,
11 you'll get the contention numbers, so if you can give us that.

12 MS. WEISS: It's Hampton VIII.

13 MR. DIGNAN: Hampton VIII, Page 4.

14 MS. WEISS: Page 4.

15 MR. DIGNAN: Thank you.

16 MS. WEISS: Which I guess is the first Page 4.

17 THE WITNESS: (Bores) Page 4-1.

18 MS. WEISS: Page -- we can have miniglobals and
19 maxiglobals.

20 (Laughter.)

21 BY MS. WEISS:

22 Q Let me just focus on the first sentence of the second
23 full paragraph, and I'll read it.

24 "The use of early precautionary protective actions
25 such as beach closing and evacuation are not the sole means for

1 protection of the beach population. The beach population is in
2 effect also protected by the unusually strong containment
3 system at the Seabrook Station."

4 I've read that accurately?

5 A (Bores) Yes.

6 Q Now, you say that you didn't read this material
7 closely when you received it from Mr. Rospenda?

8 A (Bores) No, I didn't.

9 Q Can you tell me if you made written comments to Mr.
10 Rospenda on any aspects at all --

11 MR. TURK: Asked and answered.

12 MS. WEISS: -- of this paper?

13 MR. TURK: Asked and answered very clearly, Your
14 Honor.

15 MS. WEISS: No, he was asked -- my recollection he
16 was asked did he make comments or express his disagreement with
17 this kind of material.

18 Now I'm asking did he make comments on any other
19 aspects, just to complete the record.

20 MR. TURK: Your Honor, I'm going to have to ask Ms.
21 Weiss to listen closer to answers. It's clearly been
22 addressed.

23 MS. WEISS: I don't remember that that question was
24 asked.

25 JUDGE SMITH: If we are strictly to go by

1 probabilities, it has probably been asked and answered many
2 times. But I just have no memory of that flavor of it.

3 MR. TURK: The response, as I recall it, was he did
4 not give any written comments to Mr. Rospenda with respect to
5 this.

6 MS. WEISS: Well, then --

7 MR. TURK: If I have to go back to my notes each time
8 Ms. Weiss asks a duplicative question, I will. It's only going
9 to tie us up more.

10 MS. WEISS: If you let the witness --

11 MR. DIGNAN: Let's let him say it twice and get out
12 of here.

13 MS. WEISS: If you would let the witness answer --

14 MR. BACKUS: How about that, Judge.

15 MS. WEISS: -- I think you could probably trust him
16 to give the same answer twice.

17 MR. TURK: I trust Dr. Bores to tell the truth as he
18 has done consistently.

19 MS. WEISS: Right. Well, let's get a --

20 BY MS. WEISS:

21 Q I see you nodding your head, Dr. Bores. I take it
22 then that you made no written comments on any aspect of this
23 paper to Mr. Rospenda.

24 A (Bores) As I had discussed yesterday in response to
25 a question, which was if not the same one, one very similar to

1 it, that by the time I became aware of this paper I was
2 already, or I already had discussions with NRR relative to
3 revisions in the paper.

4 Q Okay. And I take it also then that you made no phone
5 calls to Mr. Rospenda on this subject taking issue with any
6 parts of this paper.

7 A (Bores) No, I didn't because of the same --

8 MS. WEISS: Okay. I have no further questions, Your
9 Honor.

10 JUDGE SMITH: All right, anything further with the
11 exception of Mr. Turk?

12 (No response.)

13 JUDGE SMITH: All right, Mr. Turk, the timing is in
14 your hands. Now would you tell Mr. Flynn or Mr. Watson when
15 they could have their witnesses here?

16 MR. TURK: Your Honor, I'll need about a half an hour
17 with the witnesses.

18 JUDGE SMITH: All right.

19 MR. TURK: Personally I would prefer simply to break
20 for lunch. It is five minutes to 12.

21 JUDGE SMITH: Right.

22 MR. TURK: And come back, do it, and then have FEMA's
23 witnesses appear next.

24 JUDGE SMITH: Can we get by with 45 minutes today?
25 Now I promised you some time.

1 MR. OLESKEY: I don't -- I won't need the time until
2 after they're through their direct --

3 JUDGE SMITH: Okay.

4 MR. OLESKEY: -- which I understand may take hours.
5 If we could tuck it in at the end.

6 JUDGE SMITH: All right, let's return at 12:45.
7 That's 50 minutes from now.

8 (Whereupon, at 11:54 o'clock a.m., the hearing was
9 recessed, to reconvene at 12:45 p.m., this same day, Wednesday,
10 May 25, 1988.)

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1 A F T E R N O O N S E S S I O N

2 (12:52 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: You may proceed, Mr. Turk.

9 REDIRECT EXAMINATION

10 BY MR. TURK:

11 Q Dr. Bores, I'd like to refer first to a series of
12 questions and answers on May 19th in my direct examination of
13 you. Do you recall the discussion about Mr. Keene, the
14 Environmental Protection Agency's representative with respect
15 to the protective action guides?

16 A (Bores) Yes.

17 MR. OLESKEY: If this is a line that goes back to
18 counsel's direct I think there's a misapprehension about the
19 purpose of redirect.

20 (Laughter)

21 JUDGE SMITH: So much for a half hour. Is this
22 retribution or is this --

23 (Laughter)

24 MR. OLESKEY: I just wanted to flag that up front.

25 MR. TURK: Your Honor, this is a clarification; I

1 frankly don't recall if it was a subject of Mr. Oleskey's cross
2 as well. I started it in my direct examination.

3 MR. BACKUS: I thought you would perfectly follow the
4 cross.

5 JUDGE SMITH: I didn't understand your last comment.

6 MR. TURK: I picked up the clarification as being
7 necessary as part of my direct. I don't recall if Mr. Oleskey
8 covered the same matter in his cross.

9 MR. TURK: So you're saying that -- you're conceding
10 that it is direct, but for some reason you didn't cover it on
11 direct?

12 MR. TURK: No, Your Honor, it's a clarification that
13 Dr. Bores has brought to my attention.

14 JUDGE SMITH: Oh, I see. All right.

15 BY MR. TURK:

16 Q Dr. Bores, could you indicate whether your testimony
17 with respect to Mr. Keene's discussion of PAGs requires
18 correction or clarification?

19 A (Bores) It's -- there is a clarification I wish to
20 make, and it is not directly to Mr. Keene, but it's more in
21 relation to a question or a statement made by Mr. Church. I
22 had indicated that I thought Mr. Church had raised a discussion
23 in terms of evaluating plans to the effect that the plans were
24 adequate if doses would not exceed the EPA protective action
25 guides. And I had indicated that I thought this had occurred

1 at the July meeting.

2 In reviewing some of the transcripts it is now my
3 recollection that that particular statement raised by Mr.
4 Keene -- raised by Mr. Church had occurred at the January 7th
5 and 8th RAC meeting and not at the July 30th RAC meeting.

6 So --

7 Q So you're correcting the date upon which the comments
8 were made?

9 A (Bores) That is correct. Mr. Keene had made --
10 certainly made other statements relative to the EPA, PAGs at
11 both of those meetings, but the particular reference raised to
12 Mr. Church had, I now believe, occurred in January. This is so
13 that I don't mislead anyone.

14 Q All right.

15 Mr. Lazarus, with respect to your testimony in
16 sequestration I'd like to raise a question which I don't know
17 has been covered, and that is simply, is it customary for an
18 NRC region to take a position on an issue before the RAC?

19 A (Lazarus) No, it is not.

20 Q And has NRC, Region 1 taken a position with respect
21 to the beach shelter issues for Seabrook?

22 A (Lazarus) To my knowledge, there is no NRC, Region 1
23 position on the beach sheltering issue.

24 Q Also, Mr. Lazarus, do you know whether anyone at NRC
25 headquarters in Washington customarily reviews offsite

1 emergency plans for adequacy?

2 A (Lazarus) No, they do not.

3 Q Where is such a review conducted?

4 A (Lazarus) In the Regional Assistance Committee and
5 through our support and other agency support to that committee.

6 Q Now, when you say, our support, do you mean --

7 A (Lazarus) NRC.

8 Q Regional RAC members?

9 A (Lazarus) Yes.

10 Q Also, Mr. Lazarus and Dr. Bores, there was some
11 discussion on direct and cross-examination about Mr. Thomas's
12 indication that he would have his position or the position
13 revised as a result of the July RAC meeting. And, Mr. Lazarus,
14 you had indicated that the position, as you understood it, was
15 the prefiled FEMA response to contentions; do you recall that?

16 A (Lazarus) Yes, I do.

17 Q Gentlemen, I'd like to ask you, was there any other
18 position extant at that time which would be subject to revision
19 based on the RAC comments?

20 A (Lazarus) I don't believe so.

21 A (Bores) I think Mr. Thomas's comments could be
22 related to two separate aspects. One was the FEMA's prefiled
23 response to contentions. And the second one was a revised
24 position, if you would, for RAC.

25 I had asked Mr. Thomas specifically whether in terms

1 of producing some revisions he was referring to either or both,
2 and he was somewhat vague, but let the impression that
3 revisions could occur in either

4 Q He was just not specific?

5 A (Bores) He was not specific.

6 Q Moving up to this week's examination, yesterday, Mr.
7 Lazarus, there is some questioning of you with respect to
8 discussions in the RAC in April, and as I recall there was a
9 question asked as to whether there was a discussion, if the
10 population or beach population could be evacuated in time, do
11 you recall whether there was a discussion in April as to
12 whether the beach population could be evacuated prior to
13 arrival of the plume?

14 A (Lazarus) No, I don't believe that it was ever
15 discussed in that context.

16 Q Also, Mr. Lazarus, at one point Mr. Oleskey indicated
17 and you concurred that you had seized Mr. Thomas's prerogative
18 as the chair of the RAC in asking for your show of hands.
19 Having considered that testimony, do you believe it's correct
20 as stated?

21 A (Lazarus) I think that the action was probably
22 extraordinary based on what my familiarity with RAC process has
23 been, but I believe that -- I believe that it was a collegial
24 discussion, we were all free to state our positions and try to
25 clarify the issues at any point during the meeting. So from

1 that standpoint I don't think that that was really seizing his
2 prerogative.

3 Q Dr. Bores, I'm going to turn to Massachusetts
4 Attorney General Exhibit 30 which is the letter from Joseph
5 Flynn to Edwin Reis; do you have a copy of that?

6 A (Bores) Yes.

7 Q And I'd like to ask you whether certain portions of
8 this letter are consistent with your understanding of the RAC's
9 position, at least as of May 1, 1987.

10 First of all, in the second full paragraph Mr. Flynn
11 states that, quote: "It was the sense of the RAC that certain
12 factors specific to the Seabrook EPZ might preclude a finding
13 that reasonable assurance, that adequate protective measures
14 can be taken to protect the public in the event of an accident
15 at Seabrook. The most important of those factors are the
16 virtual unavailability of sheltering for the transient beach
17 population, and evacuation time estimates ranging up to more
18 than four hours," close quote.

19 My first question is, do you believe that this
20 statement, these two sentences accurately depict the sense of
21 the RAC?

22 A (Bores) It certainly doesn't depict the sense of the
23 RAC at the -- as of the April meeting, in that, we didn't see
24 certain factors specific to -- well, there was not really any
25 discussion as to what factors might preclude the finding of

1 reasonable assurance. We were working toward resolving the
2 issues as we moved along.

3 So -- and as to the second sentence there which
4 talked about the virtual unavailability of shelter for the
5 transient beach population, we really didn't get into a review
6 of the studies of the shelters that hadn't been made available
7 even at this time, that is, the preliminary indication.

8 So, we really didn't look at shelter availability at
9 all.

10 MS. WEISS: At the April 15th meeting?

11 THE WITNESS: (Bores) At the April 15th meeting;
12 yes.

13 BY MR. TURK:

14 Q Would you then conclude that these two sentences do
15 not accurately portray the sense of the RAC as of May 1, 1987?

16 A (Bores) I would draw that conclusion; yes.

17 Q Turning to the next paragraph in this exhibit, the
18 paragraph reads as follows, quote: "On the other hand Dr.
19 Bores who serves as NRC's RAC representative for the Seabrook
20 Station has provided information that resolved many of the
21 RAC's reservations about the safety of the beach population,"
22 close quote.

23 Do you believe that this sentence accurately states
24 that the reservations were those of the RAC?

25 MR. OLESKEY: Objection. It's not at all clear from

1 the context as to whether or not that's a statement by Flynn, a
2 position of FEMA, or of the RAC; and therefore, the question
3 isn't a fair one because it doesn't track the sentence.

4 MR. TURK: I certainly don't understand that
5 objection, Your Honor.

6 MR. OLESKEY: Well, I'm not surprised, but I press
7 it. You have to ask a question that fairly summarizes the
8 sentence. You didn't fairly summarize the sentence, so you
9 can't have the question.

10 MR. TURK: I read the sentence.

11 JUDGE SMITH: Well, no, you read the sentence and
12 then you posed a question based upon the sentence.

13 MR. TURK: Yes.

14 JUDGE SMITH: And I had trouble with the logic of it
15 when you read it.

16 MR. TURK: All right.

17 JUDGE SMITH: And I was pondering it when the
18 objection came.

19 MR. TURK: Let me try it again.

20 BY MR. TURK:

21 Q Looking at that same sentence, Dr. Bores, which
22 indicates that, information provided by you resolved many of
23 the RAC's reservations about the safety of the beach
24 population. Do you believe that there were reservations by the
25 RAC about the safety of the beach population?

1 A (Bores) I wouldn't use the word "reservations," we
2 still had some areas that we needed to come to closure on. And
3 as to providing information, I think what I tried to do is
4 gather the information that most of us had available in some
5 form or other with some new perspective, perhaps.

6 Q All right.

7 A (Bores) But it was basically the information that we
8 had to look at.

9 Q The next sentence reads, quote: "A particularly
10 important part of this information is that the probabilistic
11 assessments for the Seabrook Station justify an assumption that
12 it is highly unlikely that there will ever be an accident at
13 the plant involving a serious release of radiation within one
14 half hour of the onset of the emergency condition," close
15 quote.

16 Now, my question with respect to this sentence is, do
17 you believe that anything in your first paper of February 18th,
18 1987 was, with respect to containment or risk or specific plant
19 features was a particularly important part of your
20 presentation?

21 MR. OLESKEY: Isn't that highly impressionistic and
22 subjective to the writer? And isn't this the kind of
23 examination that drives lay people crazy with lawyers for
24 trying to count angels on the head of a pin.

25 MS. WEISS: I have another objection to that one.

1 Your Honor. It's clear that this sentence is referring to the
2 writers or FEMA's view of what was important. We went over and
3 over this; there's really nothing probative to be gained by the
4 witnesses's further views about whether FEMA -- it was really
5 important to FEMA or not.

6 MR. BACKUS: Let me add also --

7 MS. WEISS: This is clearly referring to FEMA -- what
8 FEMA felt was important.

9 JUDGE SMITH: Well --

10 MR. TURK. Your Honor, I didn't offer the exhibit.
11 I'm content if Mass. AG wants to withdraw it.

12 MS. WEISS: It's --

13 MR. TURK: For the first time we have a witness who
14 can comment on the letter. It was admitted into evidence
15 without any sponsor, without any cross-examination of Mr. Flynn
16 as to its accuracy or its probative value.

17 JUDGE SMITH: The -- you're asking Dr. Bores to
18 comment on what he believed his February '87 memorandum implied
19 about the importance of PRAs. You're not asking what the RAC
20 -- the parallel question, what he thought that the RAC thought
21 about it.

22 MR. TURK: All right.

23 JUDGE SMITH: I don't see any probative value to your
24 question at all. We can read the memorandum.

25 MR. TURK: I will revise the question as stated.

1 What I'm getting at is, whether the RAC considered the
2 discussion of containment to be a particularly important aspect
3 of his presentation.

4 MS. WEISS: Well, that's even worse because this
5 sentence clearly is not saying anything about the RAC; this
6 sentence is talking about FEMA's view of what was important.

7 JUDGE SMITH: Well, no, it follows on from the
8 preceding question, Ms. Weiss, as I read it; RAC had
9 reservations, information resolved the reservations, and now a
10 particular part of that information which resolved -- I read
11 it, maybe its interpretation, we should have this question and
12 answer anyway, that the RAC thought a particularly important
13 part of the information was a probable PRA.

14 MS. WEISS: I don't think it says that.

15 JUDGE SMITH: Well, it doesn't say that, I agree.
16 It's an interpretation, and since we're sitting over here,
17 that's our ruling.

18 (Laughter)

19 MS. WEISS: You can't quarrel with that.

20 MR. BACKUS: My objection, Your Honor, is, I don't
21 see how he can say what was in the minds of the RAC members and
22 interpret this for them.

23 MR. TURK: Well, how can --

24 MR. BACKUS: And I also object that it was leading.

25 JUDGE SMITH: Well, overruled. And that goes for the

1 angels on the head of the pin, too.

2 MR. OLESKEY: I assume that was swept into your
3 ruling.

4 BY MR. TURK:

5 Q Dr. Bores, do you need me to restate the question?

6 A (Bores) Please.

7 Q If you look at this paragraph as a whole, its first
8 sentence and its second sentence --

9 MS. WEISS: Now we get another question.

10 BY MR. TURK:

11 Q -- the first sentence discussing RAC's reservations;
12 the second sentence discussing what is ascribed as a
13 particularly important part of information you provided as to
14 PRAs; do you believe that following the April RAC meeting, that
15 the RAC believed that the PRA discussions was a particularly
16 important part of the material which resolved their
17 reservations, if any, about the Seabrook beach issues?

18 MR. OLESKEY: Same objection, notwithstanding your
19 ruling, Judge.

20 JUDGE SMITH: Well, you agree that the same ruling
21 would apply it's just that you'd reserved --

22 MR. OLESKEY: I think it would, it's just that he
23 rephrased it and I wanted to protect my rights, that's all.

24 THE WITNESS: (Bores) It would be my assessment that
25 the RAC did not lay particularly heavy importance on the PRA.

1 MR. LEWALD: That probably needed some
2 help.

3 BY MR. TURK:

4 Q And at the end of the April RAC meeting, is it your
5 -- do you believe that the RAC understood that the plans or had
6 agreed that the plans were adequate without regard to
7 containment or risk?

8 MR. BACKUS: Objection, leading. Calling for
9 hearsay.

10 MS. WEISS: And the witness already testified that
11 the question was never put and was never discussed in those
12 terms on April 15th. He agreed with me, just wasn't an issue
13 at that point, because we didn't know this was all going to
14 blow up.

15 JUDGE SMITH: That's my memory. Sustained.

16 BY MR. TURK:

17 Q Turning to the third paragraph of this exhibit, could
18 you, first of all, read that paragraph to yourself.

19 MR. OLESKEY: Do you mean the fourth paragraph,
20 counsel?

21 MR. TURK: The paragraph which begins, "As you can
22 see," the fourth paragraph on the page.

23 MR. OLESKEY: Thank you.

24 BY MR. TURK:

25 Q My first question is, was the material you presented

1 with respect to containment and risk essential to the RAC's
2 deliberations with respect to the beach population issues?

3 MR. OLESKEY: Objection.

4 JUDGE SMITH: Would you repeat your question? The
5 first few words of your question were not clear.

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6 (Continued on next page.)

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1 BY MR. TURK:

2 Q The question is, was the material that Dr. Bores
3 presented with respect to risk containment essential to the
4 RAC's deliberation with respect to the Seabrook beach
5 population issues.

6 MR. OLESKEY: Objection. His subjective judgment
7 about whether their judgment or FEMA's is right on that
8 question is of no value.

9 JUDGE SMITH: Well, he's been testifying for several
10 days now as to his impressions of the RAC process, and how does
11 this differ? You know, that's not a bad objection, but we
12 could have saved a heck of a lot of time if it had been made
13 last week.

14 MR. OLESKEY: This moves largely from the realm of
15 what did folks say, what did the do, to what do you think about
16 Joe Flynn says about whether --

17 JUDGE SMITH: No.

18 MR. OLESKEY: -- something's essential to the RAC.

19 JUDGE SMITH: No, I disagree.

20 MR. OLESKEY: It's much more attenuated.

21 JUDGE SMITH: I disagree. It's overruled.

22 THE WITNESS: (Bores) Would you restate the question
23 again, Mr. Turk, please?

24 MR. TURK: Certainly.

25

1 BY MR TURK:

2 Q Was the material that you presented with respect to
3 containment and risk essential to the RAC's deliberation with
4 respect to the adequacy of plan provisions -- strike that.
5 With respect to the adequacy of the New Hampshire plan on
6 Seabrook beach population issues?

7 A (Bores) Do not deal with the plan.

8 Q So this statement in the letter then would be
9 incorrect, in your view?

10 A (Bores) Yes.

11 Q In the next sentence in the letter states, "The RAC
12 has determined that it is essential to the effective
13 presentation of FEMA's testimony on this issue that Dr. Bores
14 be available to explain the basis for the RAC's conclusions."

15 Was there any discussion along that line in the RAC?

16 A (Bores) The RAC certainly did not determine that.
17 There was no discussion at this point by the RAC itself. Mr.
18 Thomas had alluded to the fact that FEMA had not yet determined
19 who their witnesses would be, or had indicated.

20 Q So this statement in the letter then is incorrect?

21 A (Bores) Yes, sir.

22 MR. TURK: I'd like to see if we can get some sort of
23 an understanding from counsel as to the genesis of this letter.

24 JUDGE SMITH: Well, you see, remember this letter was
25 the subject of some debate yesterday, and we pointed out that

1 the ruling that we made on it was messy. This letter -- this
2 letter is of slight probative value, and maybe we should have
3 kept it out for that reason alone. It was -- but it met all of
4 the tests we saw of a letter generated in the regular course of
5 business, and --

6 MR. TURK: I understand, Your Honor. I would ask Mr.
7 Flynn one question, and let me pose that question and see if
8 the Board will permit it be answered.

9 And that is, was this letter written at the request
10 of, and based upon information provided by Mr. Thomas?

11 MR. OLESKEY: If Mr. Flynn is going to answer
12 questions, I want some to put to Mr. Turk later.

13 JUDGE SMITH: Well, now, just a moment here.

14 No one disputes the fact that Mr. Flynn was not at
15 meeting. You were not at that meeting?

16 MR. FLYNN: I certainly was not.

17 JUDGE SMITH: All right. Why was the person that you
18 usually do business with with respect to RAC business?

19 MR. FLYNN: Well, that would normally be the RAC
20 chairman. In this case, Mr. Thomas.

21 JUDGE SMITH: Okay. Let's don't kill this, you know.

22 MR. TURK: I'll move on, Your Honor.

23 JUDGE SMITH: Did you said you had nothing further?

24 MR. TURK: No, I'm ready to move on.

25

1 BY MR. TURK:

2 Q Dr. Bores, earlier today Mr. Oleskey had asked you
3 about your knowledge of FEMA being busy in the September and
4 October time frame getting ready for hearings.

5 When did you first become aware that FEMA was
6 involved in preparing for hearings in that time frame?

7 MR. OLESKEY: I'm sorry, was the time frame
8 September - October, correct?

9 MR. TURK: FEMA's business was in that time frame.
10 The question is when was Dr. Bores first aware of FEMA's
11 activities in that time frame.

12 THE WITNESS: (Bores) Well, I was aware that FEMA
13 had to respond to contentions, but they had already prefiled
14 responses in that area.

15 I was not aware of, you know, what specifically FEMA
16 had to do in this area and under what sort of time frame
17 There were a lot of other things a lot of us were doing, so
18 was not, you know, kept aware on a daily basis as to what they
19 were doing and what their high priorities were.

20 BY MR. TURK:

21 A And when you say that they had to prefile response to
22 contentions, and they had already done so, are you referring
23 now to the June filing?

24 A (Bores) To the June filing, I'm referring, yes.

25 Q In your -- in discussing the adequacy of law

1 Hampshire plans and NUREG-0654, and your discussion of the
2 reasonable assurance finding which FEMA is to make, did you
3 intend to state, or did you -- did you state that the
4 containment features for Seabrook should provide part of the
5 basis for any finding by FEMA in this regard?

6 A (Bores) No, I did not.

7 Q And did you mean for them to take containment or risk
8 into consideration with respect to either plan adequacy,
9 NUREG-0654, or a reasonable assurance finding?

10 A (Bores) I guess I would have to say I really didn't
11 think down the road to what they would do on that. I certainly
12 didn't intend that this was the road they ought to follow.

13 Q Also, there was some discussion about two individuals
14 who in January indicated to you that they had not been at the
15 earlier 1987 RAC meeting. These were the individuals from DOE
16 and HHS; is that correct?

17 A (Bores) That's correct.

18 Q Do you have an independent recollection as to whether
19 or not they were present in April as you sit here at this time?

20 A (Bores) Not different than that, no. No, I don't
21 have an independent recollection. This was my sense at the
22 time I had prepared the memo, that they were there.

23 Q In October of '87, you believed that they had been
24 present?

25 A (Bores) That's correct.

1 Q And that in January, they told you they had not been?

2 A (Bores) That is correct.

3 Q Now I understand that you accept their statements to
4 you as true.

5 A (Bores) I do.

6 Q Is that based upon your own recollection or simply
7 your willingness to accept their recollections in lieu of your
8 own?

9 A (Bores) I will take their recollections here.
10 That's what I have done.

11 Q Mr. Lazarus, there was a discussion at the close of
12 Mr. Oleskey's cross-examination with respect to a conversation
13 you had with Mr. Harpster.

14 Can you tell us approximately or more specifically
15 when that conversation took place?

16 A (Lazarus) Yes, I checked my travel records, and I
17 believe that was the 18th, or the 19th, 20th, 21st of August,
18 some time during an onsite inspection that I was involved in at
19 Seabrook.

20 Q And that's approximately three weeks after the RAC
21 meeting of July 1987?

22 A (Lazarus) Yes.

23 Q When you went out to the Seabrook site in August, did
24 you have any intention of discussing the RAC meeting with Mr.
25 Harpster or anyone else for the utility or state?

1 A (Lazarus) No, I did not.

2 Q Is it fair to say that the conversation simply arose
3 spontaneously without any intention on your part?

4 MR. OLESKEY: Objection.

5 MS. WEISS: Leading.

6 MR. OLESKEY: Grossly leading.

7 MR. TURK: I'll ask it in the proper form, Your
8 Honor.

9 MR. OLESKEY: Good.

10 BY MR. TURK:

11 Q Did you have any intention of raising that matter
12 before the subject arose in your August discussion with Mr.
13 Harpster?

14 A (Lazarus) No, I did not.

15 Q And approximately how long did that whole
16 conversation take place with respect to your quick summary of
17 the RAC meeting?

18 A (Lazarus) I'd estimate two to three minutes.

19 Q And, Dr. Bores, there was some discussion also in
20 question'ng by Mr. Brock today about an encounter with Mr. Lutz
21 in the January RAC meeting. Well, I guess it was not really an
22 encounter. It was his comments on the January meeting with
23 respect to containment and risk.

24 What was the context in which he expressed his views
25 with respect to containment and risk?

1 A (Bores) Mr. Lutz, I think, was becoming impatient
2 at not being able to resolve the issue that he felt was laying
3 before the RAC; that is, the adequacy of protection for the
4 beach population. He saw the members of the RAC essentially
5 split with a majority on one side, which he was a member, and
6 FEMA and two other members on the other direction.

7 And I think what he was trying to do is saying, hey,
8 we've got to get on and resolve this, and then said, you know,
9 we've looked at the plans. We've looked at precautionary
10 actions that are incorporated there. We've looked at these
11 issues, you know, from all different angles. We believe the
12 plans are the best. And, in fact, while we aren't talking
13 directly about the containment, we know the containment is
14 there. It is strong, so that the risk ought to be lower,
15 something along that line.

16 Q You indicated that there was a majority and a
17 minority view. Had the other individuals in the minority
18 position agreed with Mr. Thomas with respect to the -- well, in
19 what way -- what were the minority views as you have now
20 referred to them?

21 A (Bores) Well, the NOAA representative had indicated
22 that he believed that the plans would be adequate if in fact
23 there were a provision for sheltering.

24 As regard to Mr. Patterson of the Department of
25 Interior, I have no idea what his views were since he did not

1 say anything at the RAC meeting.

2 Q And just so I understand one thing about the
3 statement in your memo to me of October, and this is Staff
4 Exhibit 2-A, global Page 4. At the bottom of the page where
5 you say, "Similar responses were provided by DOE, EPA, and
6 HHS," just to clarify something that arose in Mr. Brock's
7 cross-examination, when you refer to similar responses, are you
8 referring to responses concerning the plan provisions?

9 A (Bores) That's correct.

10 Q So that those individuals were saying the plan
11 provisions were adequate?

12 A (Bores) Yes.

13 Q Also, there was some questioning about Mr. Lutz's
14 January 1986 comments. This is Massachusetts Exhibit 26. And
15 Mr. Brock asked you some questions about the meteorological
16 statements contained in this document.

17 Is it your testimony that these statements referred
18 to an earlier version of the New Hampshire plans than is before
19 the Board at this time; i.e., something other than New
20 Hampshire RERP, Revision 2?

21 A (Bores) The earlier -- yes, the earlier plans had
22 discussed precautionary evacuations or precautionary closings
23 of beaches when the plant came to an alert or site area
24 emergency and the wind was such that it would impact the beach
25 areas. That is the way the plan had been written.

1 And what Mr. Lutz was pointing out is I had several
2 other RAC members had indicated that because the wind is likely
3 to change in a time frame much shorter than it would take to
4 take precautionary actions, simply because the wind is not
5 directed toward the beaches at a particular time should not
6 preclude taking those precautionary actions. That's what Mr.
7 Lutz is getting at with this.

8 Q Has New Hampshire plan been revised in this respect
9 to no longer contain that kind of provision?

10 A (Bores) Without checking the plan, I do not know,
11 but I thought it had been.

12 Q Well, as you understand New Hampshire's plan,
13 Revision 2, do you believe that the provisions for protection
14 of the beach population are dependent upon prevailing wind
15 directions?

16 A (Bores) No, sir.

17 MR. DIGNAN: Could I have that question and answer
18 back, please?

19 JUDGE SMITH: Would you read it?

20 (Accordingly, the record was read by the court
21 reporter.)

22 (Continued on next page.)

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1 MR. DIGNAN: I guess what I'd like for clarification
2 is Revision 2 which we've thrown around in this hearing room,
3 which is 2/86, I believe, the revision that was placed in at
4 the start. There is Revision 2, 2/88, and which Revision 2 is
5 being referred to in the quest'ion?

6 MR. TURK: My question pertains to the Revision which
7 had been litigated all along in this hearing.

8 MR. DIGNAN: The 2/86.

9 MR. TURK: August 1986.

10 MR. DIGNAN: Excuse me, 8/86.

11 MR. TURK: August --

12 MR. DIGNAN: The 1986 versions.

13 MR. TURK: August 1986.

14 BY MR. TURK:

15 Q And I would ask Dr. Bores, if his answer meant to
16 refer to that revision as well?

17 A (Bores) Yes.

18 Q Dr. Bores, there is a short series of questions with
19 Ms. Weiss pertaining to the containment aspects of your paper
20 of February 1987, and you indicated that there was not much
21 discussion of the containment aspects in the April 1987
22 meeting, but that the discussion really focused on a couple of
23 sentences in your paper dealing with risk. Could you identify
24 what that discussed entailed or what was the subject of that
25 discussion, more specifically?

1 A (Bores) Let me try and find the paragraph.

2 Q Maybe I could ask a leading question to speed things
3 along. Was that the discussion of the relative safety of
4 persons within the two mile boundary from Seabrook when
5 compared to the 10 mile boundary to other plants?

6 A (Bores) Yes. And as I had it worded, it was the
7 relative risk and it was a problem or perception in RAC as to
8 understanding the importance of risk which is the inverse of
9 safety in this particular context.

10 Q So it was just those -- that sentence or those
11 particular sentences which were discussed, in order to get a
12 clarification of what was meant by them?

13 A (Bores) Yes. This is not to say that, you know, in
14 general the paper wasn't gone over, but the particular context
15 we spent a bit of time on there trying to explain what I meant.

16 Q And just one concluding question, Dr. Bores, based on
17 what you now know about the RAC's treatment of the Seabrook
18 beach population issues, is it fair to say that the RAC
19 currently -- that the majority of the RAC believes the New
20 Hampshire plans are adequate in that regard?

21 A (Bores) Yes, sir.

22 MR. TURK: That does it.

23 JUDGE SMITH: Any recross?

24 MR. DIGNAN: Your Honor, may I have a question, since
25 usually it's viewed that I'm on the direct side, may I have a

1 question?

2 JUDGE SMITH: All right.

3 MR. DIGNAN: And then -- because then you want to
4 cross further, right.

5 RECROSS-EXAMINATION

6 BY MR. DIGNAN:

7 Q Dr. Bores, you answered a question just now
8 indicating that it was your understanding that the wind
9 direction was no longer included as one of the factors to be
10 considered in ordering the beach closure with respect to the
11 volume of the plan -- excuse me, the issuance of the plan, Rev.
12 2, of August '86; did I hear you correctly?

13 A (Bores) I'm not sure I said that it was no longer.
14 I said, I believed that it was no longer there, but I couldn't
15 verify that.

16 Q I'd just like to show you what I represent to you as
17 Applicants' Exhibit 5 in this proceeding is Rev. 2, 8/86; and
18 I'm directing your attention in particular to Appendix F of
19 Volume 4 and pages F-3 and F-4 in particular, and anything else
20 you'd like to look at. I wonder if that refreshes your
21 recollection as to whether or not in that particular version of
22 the plan wind direction is still playing a part?

23 A (Bores) In this particular version wind direction is
24 still in, in the precautionary actions.

25 MR. DIGNAN: Thank you.

1 That's all I had, Your Honor.

2 JUDGE SMITH: The Board is very impatient with the
3 wind direction aspects of this; we could have deleted the whole
4 thing, it would not have affected anybody's position in the
5 litigation.

6 MR. DIGNAN: Well, I apologize if I treaded on the
7 patience of the Board, Your Honor, the problem was that --

8 JUDGE SMITH: I saw it coming.

9 MR. DIGNAN: -- the witness had given a wrong answer,
10 and I thought you --

11 JUDGE SMITH: We should have entered into it very
12 early and cut it out, but we wasted hours on it.

13 MR. DIGNAN: Well, I apologize, Your Honor. If I did
14 I -- it was clear to me the witness had --

15 JUDGE SMITH: There's no apology necessary. You got
16 caught up in a chain of events that none of us seemed to be
17 able to escape from.

18 Do you have recross?

19 MR. OLESKEY: One brief line.

20 RECROSS-EXAMINATION

21 BY MR. OLESKEY:

22 Q Mr. Lazarus, you just told Mr. Turk that your
23 conversation with Terry Harpster took place between the 19th
24 and the 21st of August in New Hampshire; is that right?

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

1 Q And it wasn't a preplanned conversation, it was just
2 one where you seized the opportunity being with your former
3 boss to pass on this information; correct?

4 MR. TURK: Objection.

5 THE WITNESS: (Lazarus) No, that's not correct.
6 That's not a correct characterization of the conversation.

7 BY MR. OLESKEY:

8 Q You're having a conversation --

9 MR. TURK: Your Honor, I'd like to ask the witness to
10 wait if there's an objection pending.

11 JUDGE SMITH: The answer is out.

12 MR. TURK: Yes, it is.

13 JUDGE SMITH: Forget it. All right. Go ahead.

14 BY MR. OLESKEY:

15 Q You were having a general conversation with him and
16 you used the opportunity to tell him about some events at the
17 RAC meeting three weeks earlier; isn't that right?

18 A (Lazarus) I did tell him about it; yes.

19 Q At a time when you were angry at Mr. Thomas and FEMA
20 personally for destroying the consensus in the RAC that existed
21 about the beach population in April; isn't that right?

22 A (Lazarus) No, that's not correct.

23 Q You were upset about that, you've testified to that;
24 isn't that right?

25 A (Lazarus) At this time --

1 Q In August after the July meeting --

2 JUDGE SMITH: Let him answer.

3 MR. OLESKEY: Excuse me.

4 THE WITNESS: (Lazarus) In August, at this time we
5 were still waiting for the revised position, and at that point
6 I believed that we had -- we arrived at a consensus of the RAC.

7 BY MR. OLESKEY:

8 Q Now, haven't you testified that you were -- and your
9 memo says it, you couldn't understand why you didn't get the
10 revised position, even promised right after the RAC meeting?

11 MR. TURK: Well, wait a minute, you're talking about
12 the October memo?

13 MR. OLESKEY: No, sir. I'm not talking --

14 MR. TURK: You're asking his state of mind in August;
15 make sure he understands what you're asking him.

16 MR. OLESKEY: I can't possibly understand what
17 you're --

18 JUDGE SMITH: You can do better, because I don't
19 know, I didn't have the time reference of your question either.

20 BY MR. OLESKEY:

21 Q You've testified, it's in your memo, it's in your
22 direct testimony that you expected a revised position out of
23 the RAC immediately after the July meeting because Mr. Thomas,
24 according to you, promised such a position; isn't that right?

25 A (Lazarus) That is not correct. I'd never, to my

1 recollection, said I expected it immediately after the meeting.

2 Q You expected it at some point after the meeting, and
3 your October memo says that you still don't understand why you
4 didn't get it; isn't that right?

5 MR. TURK: In October.

6 THE WITNESS: (Lazarus) I --

7 BY MR. OLESKEY:

8 Q You still didn't understand in October why it had
9 never been forthcoming; isn't that right?

10 A (Lazarus) That's correct.

11 Q And you knew that the issue of the beach population
12 and where your agency and FEMA stood was a very important one
13 in the determination of the adequacy of the plan; isn't that
14 right?

15 A (Lazarus) Yes, I knew that.

16 Q And you knew that Mr. Harpster was the principal
17 planning official for Public Service of New Hampshire, which is
18 a party to this case?

19 A (Lazarus) Yes.

20 Q And you knew these hearings were about to begin in
21 September or October; isn't that right?

22 A (Lazarus) I don't -- I did not know at that time
23 when the hearings were going to begin.

24 Q You knew they were coming on in the fall of '87;
25 isn't that right, sir?

1 A (Lazarus) Yes.

2 Q And you had been cautioned by your superiors not to
3 have this kind of contact; isn't that right?

4 MR. TURK: What kind of contact?

5 BY MR. OLESKEY:

6 Q This kind of socializing or conversation about agency
7 matters with former employees including Mr. Harpster?

8 A (Lazarus) I do not consider this conversation to
9 fall into that category.

10 Q You thought this was okay?

11 A (Lazarus) Yes, I did.

12 MR. OLESKEY: Okay. Nothing else.

13 JUDGE SMITH: Gentlemen, you may step down. Thank
14 you.

15 MR. TURK: Your Honor, I take it the sequestration
16 order is lifted, the witnesses are free to talk about their
17 testimony.

18 JUDGE SMITH: Yes.

19 MR. TURK: I am going to allow them to leave the
20 hearing now, if they wish, they're welcome to stay, but I see
21 no further need for them to remain unless --

22 JUDGE SMITH: It's all right to read the transcript,
23 if they want to, it's all over.

24 MR. TURK: Your Honor, before they leave, may I ask
25 one --

1 JUDGE SMITH: Oh, if you open up a new line.

2 MR. TURK: It's Mr. Oleskey's last line, Your Honor.

3 JUDGE SMITH: It's not necessary. It's up to you,
4 it's your discretion.

5 MR. TURK: One quick question.

6 JUDGE SMITH: I'm telling you, if you open up another
7 line of inquiry.

8 (Laughter)

9 JUDGE SMITH: Okay.

10 MR. DIGNAN: I'll object. I don't care what the
11 question is, I'll object.

12 (Laughter)

13 MR. DIGNAN: And I'm going to give a speech.

14 MR. TURK: Here's the question.

15 MR. BACKUS: I think I'll ask for clarification.

16 MR. TURK: Mr. Lazarus --

17 MR. BACKUS: No matter what the question is.

18 FURTHER REDIRECT EXAMINATION

19 BY MR. TURK:

20 Q In August 1987 when you had that brief discussion
21 with Mr. Harpster, did you have any anger or resentment towards
22 Mr. Thomas?

23 MR. DIGNAN: I object. I object for a simple reason.

24 MR. TURK: I withdraw.

25 MR. DIGNAN: Who cares why he told it to Harpster.

1 Who cares whether they were social friends. It's not relevant
2 to anything in this case.

3 JUDGE SMITH: Well, the question is withdrawn, unless
4 you want an answer to your question. Who cares.

5 MR. DIGNAN: Well, if the Judges would like to advise
6 me, I'm all ears.

7 JUDGE SMITH: You're excused, gentlemen.

8 (The witnesses were excused.)

9 MR. OLESKEY: Your Honor, I would suggest that Ms.
10 Weiss and I move back in view of the fact that we're starting
11 with new witnesses.

12 JUDGE SMITH: You've got -- don't forget your cross-
13 examination plan.

14 MR. OLESKEY: I've given it to the reporter.

15 JUDGE SMITH: All right. In addition to that, do you
16 still have your handwritten one?

17 MR. OLESKEY: No, I tore it up when I was redoing
18 this one.

19 JUDGE SMITH: Well, just circulate it among -- the
20 handwritten one circulate it among the parties, because the
21 purpose of publishing the cross-examination plan is to relieve
22 any ex-parte considerations.

23 MR. OLESKEY: Do you want me to circulate both?

24 JUDGE SMITH: No, you will accomplish notice on the
25 other one by having it bound in the transcript. Just let them

1 see it, you know, that there's no poison barbs in there or
2 anything.

3 MR. OLESKEY: I think Ms. Keough should have a copy.
4 I did tailor up --

5 JUDGE SMITH: Well, there's one right there.

6 MR. OLESKEY: Oh, okay.

7 (Mass. AG cross-examination plan
8 on Bores and Lazarus follows:)

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Updated Massachusetts Attorney General
Cross-Examination Plan

Robert Bores, William Lazarus, NRC

Beginning May 20, 1988

I. Robert Bores

Detailed examination on his October 15, 1987 "historical" memo to S. Turk, NRC OGC, its 17 attachments, and his direct testimony May 18-19, 1988 to ALSB.

- i. Establish Bores' pertinent experience;
- ii. positions and roles at NRC;
- iii. NRC reporting structure;
- iv. RAC consideration beach population issue 1985 - 1988 and NRC involvement in this RAC process and related proceedings (e.g., EPZ Coordination meetings);
- v. knowledge historical "NRC position" on, and evaluation of beach population issue;
- vi. NRC relationship/involvement with FEMA outside RAC meetings on this issue; sequestered examination on April 15 and July 30, 1987 RAC meetings.

II. William Lazarus

- i. Examination same as Bores, above, to extent relevant, including sequestered examination on April 15 and July 30, 1987 RAC meetings;

ii. explore his relationship after May 1986 to his former boss, NRC Region I official Terry Harpster (after that date, Harpster becomes Director of Emergency Planning at Seabrook Station, immediate superior of Anthony Collendrello);

iii. explore role former NRC Region I official J. Schumacher, 3rd NRC staffer at 7/30/87 RAC meeting and Seabrook RAC member 6/86 to 1/87.

III. Cross-Examination Objectives

To show, inter alia:

(1) NRC-FEMA cooperated in RAC process until June, 1987, to resolve long-standing, difficult, beach population protection issues at Seabrook; context generally was intimidating RAC review of various drafts of NHRERP: Robert Bores was main player for NRC Region I.

(2) FEMA, through RAC Chairman Edward Thomas, pressed NRC through RAC process to provide an "NRC position" on beach population issue that would let RAC find NHRERP adequate on beach population issue when tracked against NUREG-0654 elements, especially J-9 and J-10-M, and applicable Regs. (and ultimately FEMA on reasonable assurance finding).

(3) NRC Region I, especially Bores, at least from early 1986 on had few meaningful reservations about adequacy of NHRERP measures to protect beach population; NRC pushed this position strongly at RAC meetings and in memos, especially

Bores I (2/18/87) and Bores II (6/4/87). This effort enhanced greatly as Bores was most active, prolific and, on technical issues regarding nuclear plant operations and accident consequences. By far most knowledgeable RAC member. Hence, other agencies on RAC, including FEMA, gave considerable deference to NRC views. 3

(4) Bores I, although in NRC view not an "NRC position", is crafted to look like one and was reasonably taken by RAC members, including Thomas, to be just that. This paper, which came 14 months after Thomas's 12/31/85 memo request for just such assistance for RAC on beach population issue, was intended to provide basis for RAC to find NHRERP adequate on beach population issue given, *inter alia*, facially authoritative treatment and emphasis on superior containment and risk probability assessments.

(5) Bores I was not officially "cleared" or "concurred in" by NRC headquarters. This allowed headquarters to order its withdrawal as any type of "NRC position", including Bores' own, in late spring 1986 following: (a) concerns by NRC CGC (Turk), who was not in original review "loop", that paper was not consistent with evolving NRC position on contentions on NHRERP; (b) concerns from Attorney Turk that paper would lead to protracted technical litigation over containment and risk probability (concerns previously voiced by NHY attorneys); (c) decision by ASLB in 1987, denying NHY petition to contract EPZ

from 10 miles to one mile, for failing to meet its burden of proof (petition rested in part on risk assessment studies also cited in Bores I).

(6) Proposed revision of Bores' paper did not provide FEMA sufficient comfort on beach population issue, given stricken discussion of containment and risk possibility issues, to allow it to make a reasonable assurance finding. FEMA and NRC part company for moment June 2, 1987, at high level interagency meeting in DC (FEMA: Wilkerson, Krimm, Wingo, Cumming, Thomas, Lawless; NRC: Congel, Matthews, Nerses, Attorney Turk)(Bores and probably Lazarus, although not present, must have known of meeting, both before and after. However, any mention of it, or its significance, is absent from their October 15, 1987 memos to Turk and their May 18-19, 1988 direct examination).

(7) Bores mails Bores II to FEMA 6/4/87, very day NRC knows FEMA answers to contentions must be filed with ASLB, and with obvious knowledge by NRC headquarters that FEMA headquarters has already rejected, or is likely to reject, revised decision (6/8/87 discussions) as not satisfactory for FEMA's purposes in reading reasonable assurance finding.

(8) NRC is frustrated and angry in summer-fall of 1987 at FEMA position on beach population expressed 6/4/87 (and in parallel testimony 9/11/87 with ASLB). NRC uses 7/30/87 RAC meeting to "position" Edward Thomas on beach population issue and isolate FEMA from other RAC agencies on NHRERP adequacy on

beach population. NRC developed strategy of portraying Thomas as isolated and out of touch with RAC, and own agency, a strategy which results in omission or minimization of important facts and issues from process overview presented in Bores and Lazarus materials filed with ASLB on May 18, 1988 (10/15/87 memos), and in their direct testimony, and in argument that FEMA's ultimate position lacks merit if it does not follow a contrary RAC position, however expressed.

(9) Someone at NRC, possibly William Lazarus, "leaks" NRC version of July 30, 1987 RAC meeting to NHY and it is obvious basis for Attorney Dignan's unscheduled and unexpected "voir dire" of Thomas October 7 and November 4, 1987 (October 7 is 8 days before Bores and Lazarus finish their historical review memos for Attorney Turk).

(10) NRC and FEMA "agree to disagree" over diminishing issues regarding beach population protection in RAC meetings January 8-9 and February 29, 1988.

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1 JUDGE SMITH: Ladies and gentlemen, we're ready to
2 proceed. We'll go off the record for just a moment while Mr.
3 Flynn acquaints the members of -- his witnesses with the
4 participants in the hearing.

5 MR. FLYNN: Thank you, Your Honor.

6 (Discussion off the record.)

7 JUDGE SMITH: Would you rise and be sworn, please.

8 Whereupon, RICHARD KRIMM

9 GRANT PETERSON

10 DAVID MCLOUGHLIN

11 having been first duly sworn, was called as witnesses herein,
12 and was examined and testified as follows:

13 MR. FLYNN: Your Honor, before I begin my direct
14 examination I have some documents to distribute and I want to
15 identify the documents.

16 In the response to the request for production from
17 the Massachusetts Attorney General I claimed privilege as to
18 two documents, the claim of privilege was later overruled and I
19 distributed those documents in response to the Board's ruling.

20 However, it turns out that there was a second page to
21 one of the documents which I was not aware of at that time. I
22 have reproduced the document in its entirety and will
23 distribute it at this time.

24 The other document or the second document which I'm
25 about to distribute is a photocopy of Mr. Peterson's notes of

1 the meeting of March 4, 1988.

2 JUDGE SMITH: This -- we don't need this; this has
3 not been --

4 MR. FLYNN: Well, it's not in evidence.

5 JUDGE SMITH: Right. We don't particularly want it
6 unless it is.

7 MR. FLYNN: Okay. But I will distribute that then to
8 the attorneys.

9 JUDGE SMITH: All right.

10 MR. FLYNN: I have gone over the subpoenas with each
11 of the witnesses and we have determined that the only documents
12 which respond to the subpoena duces tecum which have not
13 already been served on the parties is this set of notes, and it
14 is for this reason that I am distributing them at this time.

15 The third document that I have is something which I
16 undertook to obtain at the request of the parties, it is the
17 sign in log for the area of FEMA where the meeting of January
18 19th was held. It arrived by courier service this afternoon, I
19 have not had an opportunity to make copies. I can do one of
20 two things, I can either hold it until tomorrow morning and
21 distribute copies then, or I can give it to the intervenors and
22 let them make the copies with the understanding that I get the
23 original back tomorrow morning.

24 JUDGE SMITH: Is it going to be a possible exhibit in
25 the case?

1 MR. BACKUS: How do we know, we haven't seen it.

2 JUDGE SMITH: Well, circulate it, and if it's going
3 to be then they can -- we can arrange for copies, if not, they
4 can give it back to you. The contents possibly can be
5 stipulated to.

6 MR. FLYNN: Whatever, I'm open to any suggestion.

7 I would like to outline for the Board the structure
8 of the examination which I intend to conduct. I will begin by
9 asking the names and titles of the witnesses; then I will go on
10 to ask them what their backgrounds are and the experience that
11 they bring to the positions that they hold.

12 I will then go into the substance of our testimony,
13 and I will ask the witnesses to focus on four dates, the four
14 events. The first being the filing of the statement of
15 position on June 4, 1987.

16 The next being the statement of the filing of FEMA's
17 prefilled testimony on September 11, 1987.

18 The third event is the filing of FEMA's supplemental
19 testimony on January 25th, 1988.

20 And the fourth of these events is the filing of
21 prefilled testimony by FEMA on March 14th, 1988.

22 And then I will go back and ask the witnesses in turn
23 what events were significant in the development of the
24 positions that were taken at those various times. What
25 opinions, information, events, and so on, were influential.

1 I will begin with Mr. McLoughlin because his
2 involvement predates that of Mr. Peterson. And after I have,
3 had Mr. McLoughlin take us through the period of time up
4 through the middle of March, I will go back and ask Mr.
5 Peterson to relate his involvement in the development of those
6 positions beginning in late 1987 or early 1988.

7 The questions that I intend to put to Mr. Krimm
8 concern primarily the meeting of the January 19th, 1988,
9 because I understand that was the reason why he was -- his
10 presence was requested.

11 MR. OLESKEY: May I just inquire preliminarily
12 if -- of Mr. Flynn through Your Honor, if the general thrust of
13 the presentation is to get a historical view of the evolution
14 of the FEMA position?

15 MR. FLYNN: It is that, but it is something else in
16 addition. The Board has expressed concern or a desire to
17 understand what it is that -- what FEMA's position is; why FEMA
18 has taken the position is; and what the relationship is between
19 the earlier position and the current position.

20 And it is my intention to develop that -- to develop
21 the reasons for the different positions in this direct
22 testimony.

23 JUDGE SMITH: That's right. That's correct.

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1 DIRECT EXAMINATION

2 BY MR. FLYNN:

3 Q Mr. McLoughlin, I'll start with you. Will you state
4 your name and title?

5 A (McLoughlin) My name is Dave McLoughlin, I'm the
6 Deputy Associate Director for State and Local Programs and
7 Support for the Federal Emergency Management Agency.

8 Q Mr. Peterson, your name and title?

9 A (Peterson) My name is Grant Peterson, I'm the
10 Associate Director for State and Local Support Programs for the
11 Federal Emergency Management Agency.

12 Q Mr. Krimm?

13 A (Krimm) My name is Richard Krimm, I'm the Assistant
14 Associate Director for the Office of Natural and Technological
15 Hazards, State and Local Programs and Support, Federal
16 Emergency Management Agency.

17 Q Mr. McLoughlin, -- no, excuse me, I'm -- I may
18 address this question to Mr. Peterson. Can you summarize for
19 us what your principal responsibilities are within FEMA?

20 A (Peterson) I have a number of responsibilities as
21 Associate Director, over a broad spectrum of programmatic
22 areas. There are approximately eight areas that I believe
23 would be interested in this Board that I deal with as the
24 Associate Director.

25 The first area that I deal with is the Civil Defense

1 for the United States which is all of the United States and
2 American properties. I can give you budget figures and
3 personnel, if you want, but I'll move on and if you want more
4 I'll give you that.

5 So, Civil Defense for the United States is the first
6 area.

7 The second area is the Food and Shelter program for
8 the United States.

9 The third is the Disaster Relief program for the
10 United States which is the President's Disaster Relief which is
11 a response from the Governor's in catastrophic events that
12 exceed the ability of the state and local governments to
13 provide resources to mitigate that disaster.

14 I have the Earthquake program for the earthquakes in
15 the United States and American properties.

16 I have the program that is before us today, which is
17 Radiological Emergency Preparedness.

18 I have the Hurricane programs for the United States.
19 The Dam Safety programs for the United States. The Hazardous
20 Materials programs for the United States. And the Superfund in
21 relationship to the relocation for structures and victims.

22 Q I'd like you to tell us what background you have that
23 you bring to this program that bears on your qualifications or
24 your familiarity with the programs that you administer?

25 A (Peterson) I think that I would go back to probably

1 my career in the Air Force where I served five years in the
2 United States Air Force, four years with a straight enlistment,
3 the additional nine months was volunteered because my career
4 field was about 500 percent undermanned.

5 Q Excuse me, what period of time are you talking about?

6 A (Peterson) This is 1962 through 1966, very nearly
7 through 1966. I served four of those years in NATO in Europe.
8 And my role there was a nuclear weapon specialist. I worked on
9 a NATO base dealing with nuclear weapon systems in the area of
10 maintenance, in the area of fusing capsule insertions, those
11 type of things, training of the NATO forces, general oversight
12 of the handling of those systems in NATO aircraft.

13 And so I have that degree of nuclear weapons
14 background.

15 Q Did any of that -- did any of the training that you
16 received in that position deal with the nature and effects of
17 radiation?

18 A (Peterson) Obviously, if you're putting your hands
19 on and in weapons you have training along those lines.

20 Q Okay. Will you go on from that period of time, then?

21 A (Peterson) I returned in late October -- late 1966
22 to my hometown area of Spokane, Washington, where I entered
23 into college and shortly thereafter began my own businesses. I
24 was married at the time with one small child, while the GI Bill
25 was greatly welcomed, it was not sufficient to put me through

1 college so I began to work in my own businesses as a Vice
2 President of a company at that time in electronics field.

3 I worked in the electronics field in that business
4 for about three years at which time I sold it, which
5 capitalized me sufficiently to go to the university where I was
6 working on my degree.

7 I opened my own business in 1971.

8 Q Excuse me, which university?

9 A (Peterson) Eastern Washington University. And ran a
10 business there for 13 years, and acquired my degree at Eastern
11 Washington University in psychology and minors in business.

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12 (Continued on next page.)

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1 In 19 -- I sold that business, a part of it in 1981;
2 the remainder in 1986. I was nominated to fill a vacated
3 position at the Spokane County Commissioner level, which I was
4 nominated and went through the search process, and was
5 selected. And then ran for elected office the following year,
6 and served a four-year term as an elected official in Spokane
7 County as one of the three-men of the county commission.

8 That ran through December 31st of 1986, 1 January
9 '77.

10 Q What were the responsibilities that you executed as
11 county commissioner?

12 A (Peterson) Substantially I had been interested in
13 some of the structure in the eastern portion of the United
14 States, and the structure in the West is considerably
15 different.

16 We're full-time county commissioners. We have the
17 responsibility of all the budgetary aspects of the county. We
18 have administration responsibilities for the county. We have
19 legislative responsibilities for the county, and some judicial
20 responsibilities, if I can put it in that term. We had the
21 responsibility of hearing all de novo hearings on all land use
22 issues that were appealed.

23 The county I resided in. 1700 square miles, 1700
24 square miles. Our general budget was around \$100 million. We
25 had around 2200 employees, and set the budget for the county as

1 well as all elected officials.

2 Q You've mentioned an elective position that you held.
3 During the period of time when you lived in Spokane, what civic
4 activities did you engage in which have some bearing on the
5 work that you do now?

6 A (Peterson) Possibly in environmental issues. I
7 served on the city's land use planning commission for six years
8 where I was chairman for two years, where all land use issues,
9 environmental impact statements, et cetera, were dealt with at
10 that level, and served in many other civic capacities such as
11 reserve police officers and presidents of chambers and those
12 types of things that you do as a businessman when you're
13 involved with your community.

14 Q You may have already told us this, but it escaped me.
15 During what period of time were you county commissioner?

16 A (Peterson) From 1981 through 1986.

17 Q Have you brought us up to the point when you were
18 nominated to be associate director of FEMA?

19 A (Peterson) That's a process that I think is often
20 misunderstood. If I could take a moment to elaborate on that
21 process, I would do so because it's not something that happens
22 overnight.

23 I came to Washington, D.C. in late January.

24 Q Of what year?

25 A (Peterson) Of 1987, for the purpose of looking to

1 work at the federal level which is an area that had always
2 intrigued me having had a lot of local experience in dealing
3 with the state legislature and county legislature. And talked
4 to many of my friends that I knew back here; had about six or
5 seven interviews.

6 After having those interviews, I went to the White
7 House and indicated that I had a desire to come to Washington,
8 D.C. to support the administration and have a federal position
9 in the federal government in support of that administration.

10 Went back home. Received a phone call in February
11 saying that they had been looking at my resume and they felt
12 that my resume was compatible, hand in glove, they said, with
13 the position of associate director for state and local programs
14 for FEMA, and would I be interested.

15 Q Now there has been testimony earlier in this hearing
16 about the time when you were nominated when your nomination was
17 confirmed by the Senate and when you were sworn in. And
18 there's an interval in there that I would like you to walk us
19 through.

20 What was your relationship to FEMA between the time
21 of your nomination and your confirmation?

22 A (Peterson) The formal nomination did not come until
23 late in September, and there's a very good reason for that.
24 Two reasons are that the administration wants to do a very
25 extensive background check through the FBI on their

1 presidential nominees.

2 Secondly, the position I hold here has significant
3 classified roles, especially in the area of civil defense and
4 national preparedness which would require clearances of a
5 fairly high degree in the departmentalization.

6 Therefore, the President would not nominate until all
7 of those FBI checks had been completed, and that took well into
8 September before those were completed and before I was
9 nominated by the President to the Senate on September 17th.

10 During that period of time, as you might expect, it's
11 very few people who can wait a year for a job to materialize,
12 they offered a consulting position for FEMA. And the role that
13 you have in that position is knowing, first off, you're not an
14 official; secondly, you may or may not one day in time be
15 official. That depends on the President's nomination, the
16 hearings of the Senate, and the confirmation of the Senate.

17 Therefore, you are to familiarize yourself as best
18 you can with the scope, general scope of the position that you
19 may hold.

20 I would like to make it very clear at that period of
21 time that I was very sensitive to the fact that I had no formal
22 authority, and that Mr. McLoughlin had all of the authorities
23 that were rightly his as the acting associate director through
24 that period of time.

25 Q Can you elaborate a little bit on that?

1 What steps did you take to preserve that distinction
2 that you've just explained to us?

3 A (Peterson) First, I made it very pointedly clear to
4 Mr. McLoughlin that he was in charge, and that I would never
5 place him in any position where he had to be concerned about
6 who was making the calls; that that would be disruptive, and
7 that was not my style.

8 And he concurred that that was appropriate, and even
9 to the extent when we had meetings that I would attend, he
10 would always assume the chair position which is a physical
11 position in the conference rooms, et cetera.

12 Q And when were you confirmed?

13 A (Peterson) I was sent -- my name was sent forward on
14 September the 17th. I had my hearing before the Senate on
15 December the 1st. Then there is a several week waiting period
16 while all the members of that committee reflect upon the
17 hearing and the hearing process.

18 Then they nominate, or reject to nominate the name to
19 the Senate, full Senate. I believe that happened -- it went
20 forward on December the 17th, and I think I was the only person
21 that went forward with unanimous subcommittee vote at that
22 time, and the confirmation was on December the 19th, of
23 December.

24 There is another process that you have to go through
25 before you are formally in the position, and that is, you have

1 to go through a swearing-in ceremony. You have to have that
2 documented and notarized, and that process was not completed
3 until January the 5th of this year, and that was my official
4 day in FEMA.

5 Q I will now turn to Mr. McLoughlin.

6 How long have you held the position that you now
7 hold?

8 A (McLoughlin) I became the deputy in state and local
9 programs in August of 1982.

10 Q How long have you worked for the United States
11 Government?

12 A (McLoughlin) Joe, next week I will finish 31 years
13 with Uncle Sam.

14 Q I'd like you to walk us through the experience that
15 you've had with the government, and I'm not asking you for
16 intimate details of 31 years of service, but I want you to
17 concentrate on those positions that you've held that have some
18 bearing on the work that you do now.

19 A (McLoughlin) I started -- the first half of my
20 career was in the Civil Defense Staff College and associated
21 training activities, essentially in Battle Creek, Michigan. So
22 I spent 14 years there. Most of that time was spent with
23 respect to the technical aspects of weapons, weapons effects,
24 particularly radioactive fallout.

25 JUDGE SMITH: May I interrupt for just a moment.

1 THE WITNESS: (McLoughlin) Sure.

2 JUDGE SMITH: I know that time is precious to these
3 gentlemen and I also know that he's prepared a professional
4 background which is attached to the supplement to the FEMA
5 testimony. I assume everybody's read it and you can simply
6 offer it into evidence if you wish.

7 It's your call. I'm just thinking about your own
8 desire to save time.

9 MR. FLYNN: I'm not prepared at this moment to offer
10 it.

11 JUDGE SMITH: All right.

12 MR. FLYNN: I have it. I think this will be more
13 expeditious.

14 BY MR. FLYNN:

15 Q You may continue.

16 A (McLoughlin) With that admonition, let me simply be
17 brief.

18 I spent also five years as the deputy regional
19 director in one of our regions.

20 Q Excuse me. What period of time are we talking about?

21 A (McLoughlin) Up until 19 -- the first half of my
22 career was up through 1971. That was about 14 years, and I
23 spent that in the training business, principally on weapons
24 effect and emergency management activities.

25 My whole career has been in emergency management.

1 I then spent five years as the deputy, or as the
2 deputy regional director in one of the regions, and then came
3 to Washington to work for a second of the agencies that
4 ultimately became FEMA. But during that three-year period, I
5 spent two years of that on the President's Reorganization Task
6 Force that brought FEMA into existence, that created FEMA.

7 When FEMA was then created in '79, I became the
8 director of training for FEMA for about 18 months, until a
9 change in the administration.

10 I then worked -- ran one of the offices in state and
11 local programs and support. And in '82, was asked to be, by
12 the then political appointee, the deputy director for state and
13 local, to keep --

14 Q Who was the political appointee?

15 A (McLoughlin) It was Lee Thomas.

16 I have worked for three political appointees in this
17 administration: Lee Thomas, who is now at EPA; Sam Speck, who
18 is now the president of Muskingum College in Ohio; and Grant
19 Peterson.

20 In between those three people, I served in between
21 Lee Thomas and Sam Speck. I served for a year as the acting
22 associate director. Between Sam Speck and Grant Pederson, I
23 served for about a year and a quarter as the acting associate
24 director.

25 The importance of that part is it occurred -- Sam

1 left in about December of '86, and Grant, as just pointed out,
2 was sworn in in January of '88, and I served in that interim
3 period of time -- I'm sorry. Sam left in September, not
4 December, September of '86.

5 And it was during much of that time that our early
6 formation of positions on the Seabrook issue were being formed
7 within FEMA.

8 And so I now occupy the normal position I have, which
9 is deputy associate director.

10 Q We have referred to the program within FEMA that
11 deals with Seabrook as the Radiological Emergency Preparedness
12 Program.

13 A (McLoughlin) Right.

14 Q And within FEMA, we call it the REP program so
15 everyone will understand what I mean by the REP program.

16 What other responsibilities besides the REP program
17 do you currently exercise?

18 A (McLoughlin) Well, essentially, in being Grant's
19 deputy, or deputy to any one of the associate directors, it is,
20 in effect, to deal with the entire range of activities the same
21 as he does. I don't direct. We have individual assistant
22 associate directors like Mr. Krimm who deal with the day-to-day
23 direction of the individual program elements. Dick is
24 responsible for the REP program.

25 My job is to assist Grant in what he asks me to do.

1 and also I have a whole series of day-to-day kinds of things
2 that we have shared the responsibilities for in order to free
3 his time to deal with policy-level issues, which is what a
4 presidential appointee is expected to do.

5 Q I'll now turn to Mr. Krimm.

6 How long have you held the position that you now
7 hold?

8 A (Krimm) Since September 1981.

9 Q And can you describe for us briefly what your current
10 responsibilities are?

11 A (Krimm) Certainly. I am responsible for five
12 programs: the National Earthquake Hazards Reduction Program,
13 the National Hurricane Preparedness Program, the National Dam
14 Safety Program, a Hazardous Materials Program, and the
15 Radiological Emergency Preparedness Program.

16 In addition for FEMA, I chair several inter-agency
17 committees; one of them being the Federal Radiological
18 Preparedness Coordinating Committee which is composed of nine
19 other federal agencies which make recommendations to FEMA on
20 radiological emergency preparedness and planning relating to
21 state and local governments.

22 I also am the FEMA co-chair of the FEMA-Nuclear
23 Regulatory Commission Steering Committee.

24 Q How long have you worked for the United States
25 Government?

1 A (Krimm) Including two years in the Army, 19 years.

2 Q When did you first become involved with radiological
3 emergency preparedness?

4 A (Krimm) September 1981. Prior to that time, I was
5 involved with the National Flood Insurance Program. I was the
6 assistant administrator for the National Flood Insurance
7 Program which is a program designed to provide floor insurance
8 to people living in flood-prone areas. In return, the local
9 governments adopt land use measures to guide people out of the
10 flood plains.

11 So, I've been really -- and part of that time I was
12 involved in insurance. So for 23 years I've been involved in
13 risk management.

14 Q I'll now turn back to Mr. McLoughlin.

15 You heard my statement earlier about the four focal
16 points of the testimony which I wish to develop. I will ask
17 you to focus first on the statement of position which FEMA
18 filed on June 4, 1987.

19 My question is, what events and opinions and other
20 influences were significant in the development of that
21 position?

22 A (McLoughlin) The thing that I understand my mission
23 to be here is to -- is to lay out basically the things that
24 impacted me as having to be accountable for the decisions that
25 FEMA was making at that point.

1 I want to make a couple of early statements about
2 that, Joe, but I want to be sure that that is accurate, and I
3 state that so that if it's not accurate on the part of the
4 judges, that I can focus my comments as precisely as I can.

5 Q Well, that was my intention in asking the question,
6 yes.

7 A (McLoughlin) Okay. The first point I want to make
8 as a background statement has to do with our -- my view of our
9 process as it relates to the regional vice -- yes, regional
10 assistance committee, or RAC activity.

11 My view is that the RAC is indeed advisory to FEMA.
12 Its role is advisory to FEMA. That the FEMA chair in each of
13 our regions is intended to make the decision, and that
14 decision, in effect, will stand for FEMA unless it is
15 overridden with cause, or with reason by the regional director.

16 In the headquarters -- those decisions in the region
17 are all submitted to the headquarters. The headquarters can
18 and has overruled regional decisions, RAC chair, but again it
19 is with reason or with cause.

20 It is important in my mind to state that because it
21 will impact the decisionmaking process that we used.

22 The second point that I want to make, and I am going
23 not to -- try, in order to be sure that I weave a thread that
24 has a logic to it and a rationale to it, in my mind at least.
25 I will try to hit only the high points as I go through.

1 I don't intend to try very much in the way of
2 explaining these in detail. I'm sure within the next couple of
3 days I'll have adequate opportunity to describe those in
4 sufficient detail, but at the moment I want to hit the high
5 points so that there are some stepping stones that we can --
6 that I can trace.

7 The second point I want to call to your attention is
8 the Christenbury memo to Spence Perry, our general counsel at
9 the time, in June of '86. The Christenbury memo had four
10 conclusions to it that dealt with dose savings, and no minimum
11 evacuation time estimates, the full range of accidents, and no
12 particular times for completion of protective actions. But
13 those are not necessarily the key elements that impacted me in
14 the early decisionmaking process.

15 Earlier in that memo there is a statement that says
16 something to the effect, without quoting it precisely, that the
17 overall objective of emergency planning from the NRC standpoint
18 is to provide maximum dose savings.

19 Now, that is going to play a role in my later
20 decisions. That's the reason I want to call attention to it
21 now.

22 The next point that I would like to make is that I
23 was aware in July of the July '86 CLI-86-13 decision on the
24 part of the Commission itself, the Nuclear Regulatory
25 Commission, which says in effect that their regulations do not

1 require preset minimum dose and minimum ETE. I will use ETE if
2 that's acceptable with everybody, meaning evacuation time
3 estimates.

4 Q It is acceptable so long as it's clear.

5 A (McLoughlin) Okay.

6 Q But I have another question for you, and that is, you
7 just said that you were aware of the Commission decision
8 CLI-86-13.

9 When did you become aware of it?

10 A (McLoughlin) Joe, I wish I had an answer to that.
11 The only honest answer I can give you is I am not sure. There
12 are -- in the course of events in our decisionmaking process,
13 there are new -- there is always new information that I become
14 aware of at each meeting, undoubtedly. I simply do not know
15 when I became aware of that, and I would be less than candid if
16 I suggest anything else.

17 But I was sufficiently aware of it early in the
18 process from our staff people that my belief is that it was a
19 key decision element.

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1 Now, I want to -- I certainly was aware in '86 and
2 early '87 of Seabrook and the plans being submitted, and the
3 fact that the RAC is normally operating.

4 Typically what would happen is that I would not be
5 normally aware of any specific issues in the RAC -- in the
6 program until it became a problem. You know, as long as
7 everything is moving along satisfactorily, Dick is doing that
8 job on a day-to-day basis with his people; and my task across
9 the board, at that time, deals with all of the programs that
10 Grant has mentioned.

11 Therefore, I normally would not get involved until an
12 issue began to get surfaced that it became apparent that I
13 needed to get involved with.

14 So that the RAC meetings would normally happen, and a
15 lot of RAC meetings have happened that I never know anything
16 about.

17 My earliest recollection of how the Seabrook beach
18 population issue, which I understand to be the focus of this,
19 these deliberations was probably -- it was after a meeting that
20 our headquarter staff, Dick and his people had, with the NRC on
21 May 19th of '87.

22 And the issue that was being brought to me at that
23 time is that, the NRC was withdrawing the Bores's memo of
24 February 18th, known I assume by everybody here, as it is to
25 me, by Bores 1. I will refer to that and if that's not

1 appropriate, then you help me.

2 Q We understand what you're referring to.

3 A (McLoughlin) Okay. Now, I did not -- I was not
4 aware of Bores 1 memo before that, I want to make that clear.
5 I was not even aware before May of the April 15th RAC meeting
6 when it happened, because subsequent to this, if I in
7 hindsight, what I know now about the April 15th meeting is
8 that, from the RAC chairman's standpoint in the region, that
9 the -- there was agreement on the part of the RAC and Ed Thomas
10 to the position that FEMA would hold relative to the beach
11 population. And it was a positive issue. Obviously, I don't
12 want to say positive finding, because we don't make findings on
13 the basis of individual criteria elements like J-9 and J-10-M,
14 which I'll get to in a few minutes.

15 But the -- so in May I was brought the issue of, that
16 NRC was withdrawing the Bores 1 memo and was going to replace
17 it with a new memo, a significant and salient feature which was
18 to withdraw the containment.

19 Q Did you attend that meeting?

20 A (McLoughlin) No, I did not attend the May 19th
21 meeting, I did not. It was subsequent meetings that Dick and
22 his people brought to me after that, which is typically the way
23 it would have happened. I normally would not have attended
24 that meeting.

25 Q So, you're relating your understanding of what took

1 place at the meeting?

2 A (McLoughlin) That's correct.

3 Q Go ahead.

4 A (McLoughlin) What was reported to me from that
5 meeting. Now, at that point, which was, you know, a few weeks
6 -- a couple of weeks, actually, before we filed on June 4th,
7 the -- Ed Thomas ultimately came to a meeting that we had on
8 the 2nd of June. And we had some meetings before that time.
9 And as I understood the issues at that point, that Ed's
10 position had been that as long as the containment was there he
11 was quite satisfied with the beach population protection issue
12 because there was, in the memo, a low probability of failure of
13 the containment, and a very unlikely bypass of that
14 containment. I understood that.

15 In our meeting of January -- I'm sorry, June 2, which
16 was the meeting that we had in a relatively short period of
17 time after I became aware of the problem, that we tried to
18 bring to resolution then what our statement of position was
19 going to be. That I understand the Board had asked for at that
20 point. The --

21 Q I'd like to focus on that --

22 A (McLoughlin) Sure.

23 Q -- meeting because -- obviously, because it was just
24 a couple of days before the position was filed --

25 A (McLoughlin) Right.

1 Q -- it was instrumental in the development of the
2 position. Who was there?

3 A (McLoughlin) Dick Krimm, Bob Wilkerson, who is no
4 longer with us but who was the Division Chief for the RERP
5 program, Craig Wingo, who was a Branch Chief for Field
6 Operations in the RERP program, Ed Thomas, myself, and to be
7 honest about it, I don't know if Bill Cumming was there off our
8 legal counsel staff or not. I failed to check that with Bill,
9 and I should have but I didn't; so I don't know if Bill was
10 there. But he was instrumental ultimately, and I will tell you
11 how in a moment.

12 Q Okay. And how long did the meeting last?

13 A (McLoughlin) Oh, it was couple three hours, I
14 suppose. Dick, you were there. As far as I know, it was a
15 couple three hours in duration.

16 Q And can you summarize the different views that were
17 expressed?

18 A (McLoughlin) Yes. Ed Thomas clearly took the view
19 that J-9 and J-10-M had not been met. Significant in his
20 consideration was the containment factor, as I understood it.
21 He was concerned that with the withdrawal, which we -- I want
22 to make sure it's clear that we had not received the withdrawal
23 memo yet, in fact we did not receive that withdrawal memo until
24 the 4th of June. But we did know it was coming, and it was
25 instrumental in our decision, knowing the fact that it was

1 going to be -- the containment feature was going to be removed.

2 And I also am well aware, as I'll tell you later, the
3 fact that the NRC continues to argue that that was not
4 instrumental, the containment, in their decision, but I will
5 deal with that in a few minutes.

6 Now, the advice that I was getting, particularly from
7 Bob Wilkerson and Craig Wingo is that all options -- all
8 options had not been fully explored for maximum dose savings.

9 The reason I mentioned the Christenbury before is
10 that Bob and Craig were clearly using -- I don't know if they
11 made reference a lot to the Christenbury memo, but I do know
12 that they were dealing with the issue of maximum dose savings,
13 and whether or not we had dealt with the issue of maximum dose
14 savings.

15 JUDGE SMITH: Excuse me, can I interrupt.

16 THE WITNESS: (McLoughlin) Yes.

17 JUDGE SMITH: Would you please try to remember to use
18 last names.

19 THE WITNESS: (McLoughlin) Okay, excuse me. Yes,
20 sir.

21 MR. FLYNN: I was about to ask him --

22 JUDGE SMITH: It's going to be more consistent with
23 the rest of the record and we're not always clear who the --
24 who all of the first names are.

25 THE WITNESS: (McLoughlin) All righty.

1 BY MR. FLYNN:

2 Q I also wanted to interrupt you and ask you what
3 positions Bob Wilkerson and Craig Wingo held?

4 A (McLoughlin) Okay. Bob Wilkerson was a Division
5 Chief reporting directly to Dick Krimm and responsible
6 specifically for our Technological Hazards Program. He had
7 responsibility for RERP, and responsibility for hazardous
8 materials.

9 Craig Wingo worked directly for Bob Wilkerson, and he
10 was one of two branch chiefs. Craig Wingo runs the Field
11 Operations Branch in the Division.

12 Q Okay. Now, I interrupted you, go back to the
13 expression of views in the meeting?

14 A (McLoughlin) Okay. I've outlined what Ed's views
15 were. I began to outline what Bob Wilkerson and Craig Wingo's
16 views, because they were essentially the same as I interpreted
17 them. So I have lumped those together as they impacted on what
18 decision I had to make; that all options were not fully
19 explored. And they kept -- I remember that explicitly because
20 that's a different issue than whether or not the containment
21 protected people out there.

22 And it ultimately becomes later on, in the sequence
23 of events, an important issue that I think has been an
24 important element throughout our decisionmaking process.

25 The second thing that I was well aware of at that

1 time, because I had heard this long before we ever went into
2 this and the beach population became an issue, there were a
3 number of alternatives that had been expressed. And I don't
4 know for sure who all was expressing them, but I was certainly
5 aware of the issues of the potential for seasonal closing of
6 the Seabrook facility from May 15th to September 15th as one
7 possible way of dealing with the beach issue.

8 I was aware of sheltering, additional sheltering
9 aspects. I even recall discussions of skating rinks at one
10 point in time being built as a potential way to deal with this.

11 There were issues of alternate evacuation routes that
12 were considered. And I may be in error on this, I may -- and I
13 acknowledge that up front, but my belief is that I also had
14 heard that the state might litigate the special containment
15 features at Seabrook even if the NRC decided not to do that.

16 Now, I am not as clear on the other one as I am on
17 the first three. But I am well aware of the first three that
18 were definitely issues that were being considered.

19 Q In that meeting?

20 A (McLoughlin) In -- well, they were brought up in
21 that meeting, yes. They were clearly brought up in that
22 meeting. But even before that meeting, and before May 19th, I
23 was aware of Seabrook. I mean, that's my job to be partially
24 aware of these things, even -- and the problems had not been
25 brought to me, and I don't think I necessarily focused on them.

1 but I certainly was aware of these other things being
2 discussed, because I'd had discussions with both Henry Vickers
3 and discussions with Ed Thomas on these issues. And I don't
4 -- and I can't remember when.

5 The third point that I would make out of -- that I
6 think was instrumental at that point, and the thing that really
7 was of concern to me was the consistency of our decision at
8 this point.

9 One of the questions had asked is whether or not we
10 had ever made a positive finding with respect to any facility
11 other than Seabrook. Ed generally took a position that
12 Seabrook was unique, and therefore, we ought to treat it
13 uniquely.

14 Craig Wingo and Bob Wilkerson, generally speaking,
15 viewed this as a more -- much more generic kind of issue,
16 because in San Onofre, in particular, that they brought up at
17 the meeting we had made a positive finding and shelters were
18 not required for the beach population.

19 Now, clearly the beach population was a much less
20 number than my understanding is, and I know there's some
21 divergence of views on the number of beach population -- the
22 amount of beach population at Seabrook, but still at San Onofre
23 they were less.

24 The concern I had, though, is what is the difference
25 between these two? And what I remember being pointed out to me

1 is that, in the case of San Onofre there were no shelters; we
2 didn't have the option. In the case of Seabrook, there are
3 shelters out there. Certainly, there are facilities out there
4 that potentially could offer shelter. And therefore, the thing
5 in my mind was that, that we needed to be sure that we were
6 treating as much as we can generically the issues as
7 consistently as we can.

8 Our job is to deal with the adequacy of offsite
9 preparedness of public health and safety. That's why maximum
10 dose sticks in my mind as a key feature.

11 Now, Bill Cumming, I don't want to characterize this
12 that he gave me this at the meeting, but if he was not at that
13 meeting, which I should have asked him, clearly, he was giving
14 this advice very, very early. His legal advice said, your
15 position, ultimately turned out the position that we took on
16 June 4th, was legally supportable and defensible.

17 What he said, as I recall, was that this may very
18 well turn on a legal issue, and the one strategy that we have
19 is to deal with this essentially as a legal matter or as a
20 legal issue.

21 Programmatically, to be honest about it, that --
22 because I come from a program and not the legal side -- that is
23 not something that I would automatically jump at, because it
24 seems to me that we ought to be more substantive in the way in
25 which we deal with this issue. And I'm not, you know, in

1 hindsight I may change my views given all of the issues that
2 are associated with this, but at that time, I thought that the
3 programmatic thrust was the proper way to go.

4 Now, the key to me -- there were several keys, and
5 I'm going to wrap up June 4th, first of all, there was no time
6 pressure on us, in my judgment, other than what the Board asked
7 in the way of giving this on a certain time frame. There was
8 no pressure, by that I mean, there was no pressure on FEMA
9 dealing with the New Hampshire plan, principally because we had
10 55 exercise deficiencies, which I was well aware of at that
11 time. We had over 30 plan inadequacies. And it was -- I
12 couldn't understand why this one issue was so much more than
13 all the other 55 and the 30 such that all of them had to be
14 corrected before we dealt with any kind of positive finding,
15 because we don't make positive findings on the basis of
16 individual decisions.

17 I subsequently have learned that this is a much
18 bigger issue, and it has expanded into a much bigger issue than
19 I might have recognized at that point.

20 Q In what sense is it a bigger issue?

21 A (McLoughlin) Well, much more focus on the beach
22 population as a single inadequacy in the plan. I have not
23 taken the time to look at all the other 30 inadequacies, but my
24 guess would be, and clearly labeled a guess, that if I did that
25 there would be other things in there that I would think may be

1 even as important as this one, to be sure that we're cleared up
2 as well as the shelter beach population.

3 Please believe me, I am not in any way, shape or form
4 suggesting that this is not a crucial issue, and that over
5 100,000 people on the beach is not a crucial issue with respect
6 to public health and safety, it clearly is.

7 But it did surprise me that this issue got moved into
8 the arena of -- probably treads onto dangerous grounds -- but
9 as the principal area of focus for FEMA's consideration.

10 Q Before I interrupted you, you were telling us how the
11 issues that you identified in that meeting of June 2nd were
12 brought to some resolution?

13 A (McLoughlin) Okay. The first thing that was in my
14 mind was that there -- I didn't see any time pressure with
15 respect to this issue, you know, other than getting the Board
16 what it had asked for. It seemed to me that the Board was not
17 meeting, that there was still plenty of time for us to resolve
18 this issue, and for us to begin to -- well, to resolve the
19 issue, let me just leave it at that.

20 The other thing that was in my mind is that I was
21 convinced at that point that we had not, based on the questions
22 I had asked, we were -- we had not looked at the shelter option
23 fully, because it simply was not explored, as I understand it,
24 in the plan.

25 Now, if our -- it's why the Christenbury issue in

1 that memo was important to me, and it remains important to me,
2 and I hope I stay consistent with that issue clear up to the
3 tail end meetings that I'll describe in a moment, that it is
4 important to us to look at the -- whether or not we have dealt
5 with options that will provide maximum dose savings.

6 Now, we cannot specify what those maximum dose
7 savings are, but we can look at the options that will provide
8 dose savings.

9 Now -- so we filed. I agreed that we would go ahead
10 and file the statement of position which said that until the
11 beach population issue is resolved FEMA could not make a
12 finding of reasonable assurance.

13 I saw absolutely no reason at that point in time to
14 overrule the RAC chairman. I had pointed out in the beginning
15 that it is important in my judgment that if I was going to
16 overrule our RAC chairman I needed a reason to do that, and I
17 didn't have a reason at that point.

18 It seemed to me that while my views were somewhat
19 different than Ed Thomas's views, Ed relied heavily, as I
20 recall, on the containment feature. My concern was more
21 directed towards the fact that the shelter option had not been
22 completely explored.

23 Now, so that we -- while we had like views, I think,
24 at that time, we may have had different reasons for those
25 views. That's not to suggest that I didn't think containment

1 was a decent issue, because I think it was, in his case.

2 Now, I want to --

3 Q Well, I think we were at the point where we can go on
4 and talk about the September position, but I sense that you
5 have something more to tell us?

6 A (McLoughlin) Yes. I want to say one more thing and
7 then I'll, then, move to where you want me to.

8 I want to acknowledge the fact, because it's relevant
9 to this period in time, on the 5th of June Governor Sununu
10 called. It was not the first time we had talked with Governor
11 Sununu, he had been in to meet with the director before. He
12 had called us before. In fact, I had talked with him, with Sam
13 Speck at some earlier periods of time. Governor Sununu was
14 concerned about the fact that he just became aware of FEMA's
15 filing and FEMA's position; and he became aware of that through
16 the press.

17 One of the commitments that we had made to him in the
18 previous meetings when he was explaining his views and which
19 he's entitled to, certainly, and we would always support that,
20 that we would not try to deal with issues in the press. From
21 the headquarters's standpoint we have clearly not tried to deal
22 with this issue in the press until after this hearing. And
23 that's come at some great expense to us, by the way.

24 But it seems important that if we're in a litigation
25 process that we make our sworn statements first and then deal

1 with this as a press issue.

2 Q Can I get you back to the call from Governor Sununu?

3 A (McLoughlin) Yes, okay. The -- Governor Sununu was
4 concerned about his not having known about this ahead of time
5 and his having found out in the press. He reminded me of our
6 commitment that he would not find out significant issues in the
7 press. And so I committed to him at that time that we would
8 send him a letter outlining our position, which we subsequently
9 did on the 11th of June, in a letter from Ed Thomas to Dick
10 Strome.

11 Now, I want to make one point about that letter, too,
12 because it's crucial in my mind later. That letter said a
13 couple of things. First of all it said, if any decisions that
14 are included -- any of the information that you find, however
15 you find it, you believe that we have used inconsistently or in
16 the wrong way, please let us know, so we have a chance to deal
17 with that.

18 Secondly, it asked him specifically what New
19 Hampshire had in mind with respect to seasonal closing,
20 shelters, and alternate evacuation routes. We asked for that
21 information on the 11th of June.

22 Now, to the best of my ability, that's what I
23 remember were the significant salient features up through that
24 point in time.

25 JUDGE SMITH: Would this be a good time to take a

1 short afternoon break?

2 MR. FLYNN: Yes, Your Honor.

3 JUDGE SMITH: You're going to change subject matter?

4 MR. FLYNN: Yes.

5 JUDGE SMITH: Ten minutes, please.

6 (Whereupon, a short recess was taken.)

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7 (Continued on next page.)

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1 JUDGE SMITH: Proceed.

2 MR. FLYNN: Thank you, Your Honor.

3 BY MR. FLYNN:

4 Q Mr. McLoughlin, I now want to go into the subject of
5 the testimony which FEMA filed on September 11, 1987, and I'd
6 like you to explain for us what significant events occurred and
7 what the influences were that shaped that testimony.

8 A (McLoughlin) Joe, let me just make -- I was
9 admonished a couple of times by a couple of people in the break
10 that I speak quite rapidly. I don't want to be discourteous to
11 anyone here, but I must be able to move at the rate that I feel
12 comfortable with, and my thought processes go. Go --

13 JUDGE SMITH: I think you're doing all right.

14 THE WITNESS: (McLoughlin) Okay.

15 (Laughter.)

16 MR. FLYNN: Let the record reflect that you were not
17 admonished by the Board.

18 THE WITNESS: (McLoughlin) All right.

19 MR. DIGNAN: And those are the only admonishments
20 that count.

21 JUDGE SMITH: Well, as a matter of fact, Judge
22 Harbour had a conversation with the reporter. And as I
23 understand, you're not having any trouble, are you?

24 THE REPORTER: No, sir.

25 JUDGE SMITH: All right.

1 THE WITNESS: (McLoughlin:) Okay, thank you.

2 The first point I would make about the period between
3 June and September is that as an agency at the headquarters,
4 and I believe also at the region, we did not focus on this
5 issue nearly as much as maybe we should have, but we were
6 clearly overtaken by other events, particularly in the REP
7 area. We were also overtaken by events on disasters and a lot
8 of other things in time. So I didn't focus on this a great
9 deal until the tail end of that time period.

10 But also our REP staff did not focus on it. We had
11 two ASLB hearings at Shoreham, the OL-3 Board and the OL-5
12 Board dealing with the exercise and the planning aspects were
13 consuming the great bulk of our time at that point at the
14 headquarters, plus the other events that we have to carry on in
15 the REP program because of the operating sites.

16 In addition, in Region 1 we had initiated on our own
17 a review of the Massachusetts plan with respect to the Pilgrim
18 site. And the reason for that is that New Hampshire had -- I
19 mean, sorry, excuse me -- Massachusetts had also advised us of
20 certain things relative to their plan, and we felt it important
21 for us to do that. And the Region 1 staff was essentially
22 spending a great deal of time on the Pilgrim one.

23 So as an agency, we did not spend a great deal of
24 time on the New Hampshire beach population issue.

25 Now, significant events -- well, there were three

1 things that were happening at that point that related to this
2 though that I think it's important for the Board to understand.

3 We were relooking at FEMA's role, we were looking at
4 the issue of reasonable assurance and its definition, and we
5 were relooking and reexamining the shelter issue. And let me
6 just say a couple of words about each of those if I can.

7 The issue on FEMA role had to do with some differing
8 discussions that we having with both Ed Thomas and Dick's
9 staff, and others, on what our role was relative to assuring
10 maximum dose savings, and it had to do with the issue of the
11 NRC, if you remember, talks about in that CLI-86-13 issue, it
12 talks about reasonable and feasible dose savings under the
13 circumstances which were in there.

14 Now, what -- we were having some discussions about
15 what that meant, because, clearly, Ed had some views about what
16 it meant, and in understanding his views, I had to understand a
17 little bit more about what our technical position was with
18 respect to the maximum versus minimum dose savings, because
19 that was important to me in terms of looking at that shelter
20 option that New Hampshire had not included.

21 We ultimately decided that it is important for us, in
22 a conclusionary way, important for us to look at a full range
23 of protective actions. Even if they are not going to be used
24 in the plan, we clearly want to see them addressed.

25 The second issue had to do with reasonable assurance.

1 And Ed Thomas had sent to us a memo in October of '86 raising
2 some fundamental issues on reasonable assurance. We owed Ed an
3 answer. And so we were having discussions with your shop, with
4 our general counsel's shop and our program people and others on
5 this issue. And it essentially boiled down to this, if I can
6 streamline it, to 350.5(a) and (b) parts.

7 350.5(a) says --

8 BY MR. FLYNN:

9 Q Excuse me. Just for the sake of the record, you're
10 referring to Title 44 of the Code of Federal Regulations,
11 Section 350.5(a) and 350.5(b)?

12 A (McLoughlin) That's correct.

13 Q Okay.

14 A (McLoughlin) That's correct.

15 Q You may continue.

16 A (McLoughlin) Those discussions, in my mind, boiled
17 down to this, because we had long, lengthy discussions on
18 these, and it clearly continued for some time.

19 350.5(a), there wasn't much discrepancy on. That is,
20 we look at NUREG-0654, we go down the 212 criterion elements,
21 and make judgments on those.

22 The second part of this is 350.5(b), and that's where
23 the -- where the differing views were coming in. Ed's
24 position, Ed Thomas's position, as I understood it, was that if
25 all criterion elements in 350 -- in the NUREG-0654 were met,

1 that (b) enabled you to make some judgments using your
2 professional background as an emergency manager on the final
3 reasonable assurance finding.

4 The staff view essentially was, and one that I became
5 persuaded by ultimately, is that's not accurate. That the way
6 in which we interpret 350.5(b) is that if all items in (a), in
7 that NUREG-0654 are positive, which seldom is ever the case,
8 but if they are, then we would be required to make a positive
9 finding under (b).

10 What (b) really addresses is most all plans do not
11 have positive -- I mean, all plans have some inadequacies. The
12 real question in (b) is what is the judgment, in FEMA's
13 viewpoint, professional judgment of the inadequacies that we
14 have found in the plan. Are those inadequacies of such
15 substance that we ought to make a finding, a negative finding
16 versus a positive finding.

17 That's where I ultimately became persuaded that that
18 was the most appropriate legally defensible position in that
19 discussion.

20 Q But I want you to relate this to the filing on
21 September 11, 1987.

22 Had you come to that conclusion by the time that
23 prefilled testimony was submitted?

24 A (McLoughlin) The direct answer to that question is
25 yes.

1 I want to also acknowledge, though, that subsequent
2 events, as we've continued to discuss this over time, -- wait a
3 minute, did you ask me September 11th because that's --

4 Q Yes.

5 A (McLoughlin) Okay. By that time I had reached that
6 conclusion, but it has only been reinforced more in my mind
7 subsequent to that time by continuing discussions. But I had
8 reached it.

9 Q Okay, but you understand the question is, why did you
10 file -- why did FEMA file --

11 A (McLoughlin) Yes.

12 Q -- the testimony that it did on September 11, '87 --

13 A (McLoughlin) I'm going to get to that.

14 Q -- which repeated verbatim the --

15 A (McLoughlin) Yes.

16 Q -- statement of position of June 4th.

17 A (McLoughlin) Exactly right. At least in my mind,
18 whether or not it's acceptable to anybody else, there is a
19 rationale in my mind which I will get to, and I take that that
20 you want me to get there quickly.

21 But it's important for me, if I'm going to share with
22 people what my thought processes are, I -- there are certain
23 things that I have to be able to get on the record.

24 Q Take as much time as you need.

25 A (McLoughlin) Okay.

1 Q We want this to be complete.

2 A (McLoughlin) Okay.

3 The third issue had to do with sheltering, and we
4 were -- it was clear in my mind at that point, and I -- we can
5 document this, I'm confident, that there was building in our
6 technical staff an uncertainty about our knowledge of the
7 shelter issue, not as it related to Seabrook particularly, but
8 generically, in providing guidance to our regions in the
9 shelter area.

10 Dick and his people, Dick Krimm and his people had,
11 in our normal day-to-day business, we have our own management
12 information system in which we track 300 and some odd projects
13 that are ongoing in slips at all times. One of those projects
14 that we put in there in August of this year was a guidance
15 memorandum on sheltering.

16 Q August of '87?

17 A (McLoughlin) August of '87. Yes, August of '87.

18 I make that point because I want to acknowledge
19 freely that there were some issues that were troubling with
20 respect to shelter. There is no question that that was the
21 case on the part of our technical staff as well.

22 Now, I'm well aware of the RAC meeting that occurred
23 on 7/30, July 30th of '87. I am also well aware of the fact,
24 and was well aware of the fact before the September -- the
25 September 11 filing, that the majority of the RAC was in

1 opposition to FEMA's position.

2 Q What was your understanding of why?

3 A (McLoughlin) It was my understanding of why, and to
4 be honest about it, I'm not all that sure whether or not that
5 clarity was in my mind at that time.

6 When I read the Bores memo of October 15th, which we
7 didn't get until December, and I know I'm moving over into the
8 next period of time, and it's hard for me always, to be honest
9 about it, to define exactly when I knew what, et cetera, and
10 I've done the best I can to making my recollections, but I have
11 to accept the fact that my knowledge of things grows each time,
12 and it's always hard to make sure exactly what you knew.

13 But I was aware of the RAC meeting. I was aware that
14 the RAC was essentially saying, as I understood it, that it
15 didn't make any difference whether or not containment was or
16 wasn't included in the Bores 1 memo.

17 Rather, it was that their view of the New Hampshire
18 plans at that time did indeed meet J-9 and J-10-M.

19 JUDGE HARBOUR: Their views being who?

20 THE WITNESS: (McLoughlin) Their being the RAC, the
21 majority of the RAC, and that being everybody except three. As
22 I understand and I'll get to later, the opposition was
23 essentially six to three. And Department of Interior, and
24 NOAA, and FEMA were the three that took the minority view.

25 Now I want to give the RAC credit later, but I don't

1 want to give them credit at this point for really helping us
2 drive this issue, because they have done us a very real service
3 in FEMA in doing our job, but I want to comment on that later.

4 At this point in time the RAC was saying that it
5 didn't make any difference whether or not containment was there
6 or not; that the plan itself was the issue, and not things at
7 the plant -- kind of as I understood what was going on.

8 But in my mind that was not one of the crucial
9 issues. In my mind what continued to be crucial is that the
10 shelter plan had not been fully identified and dealt with in
11 the New Hampshire planning process.

12 We had asked New Hampshire on June 11th to tell us
13 where they were going with these three options. I outlined that
14 earlier. New Hampshire, in effect, and believes me, I'm not
15 critical of this. I simply am not critical of anybody, and I
16 don't want to be interpreted that way, I simply want to say
17 what the facts were that were available to us at that point.

18 We did not have new information from New Hampshire,
19 to my knowledge, at that point, prior to September 11th, except
20 for we ultimately got submitted to us on the 4th of September,
21 not received until the 9th of September, the shelter survey.

22 Now, the fact that we received that did -- go ahead.

23 BY MR. FLYNN:

24 Q You're referring to the Stone & Webster report of
25 August --

1 A (McLoughlin) Yes.

2 Q -- 1987?

3 A (McLoughlin) I wanted to come to that. I'm
4 acknowledging that the fact that it was submitted late did not
5 influence my decision. But I was aware, had been aware, made
6 aware of this by the staff that New Hampshire was clearly doing
7 things with the Stone & Webster shelter survey.

8 And subsequent to that, you know, I had flipped
9 through it and looked at it, but the thing that was in my mind
10 was that if New Hampshire is doing something with the shelter
11 survey, why is it not logical then that they are going to do
12 something with that with respect to dealing with the shelter
13 issue in their plans.

14 So, what I was left with -- my view of what I was
15 left with was that we began to have some troubling aspects of
16 our own analysis in this case. We came to our filing date late
17 with issues -- after Shoreham and Seabrook -- I'm sorry --
18 after Shoreham ASLBs, and after the Pilgrim issues, and we
19 began to refocus on this for our filing.

20 We had a meeting on September 1st. Ed Thomas was at
21 that meeting, essentially Dick Krimm and his staff, the same
22 people that had been at previous meetings. We agreed in that
23 meeting, we finalized a memoranda to the NRC on that date,
24 which is documentable, and if we haven't provided it, we
25 certainly will, of September 2 that Dick Krimm sent to Frank

1 Congel at the NRC. It clearly said, please tell us what your
2 view is of how we ought to be treating the containment issue
3 and the -- ah, I need to go -- the containment issue, oh, and t
4 he seasonal closing, the seasonal closing, as the -- as a way
5 of resolving the beach population issue. We asked them for
6 that on September 2.

7 As an aside, we don't have an answer to that memo.

8 So we decided we needed that information. We did not
9 have, and I'm concluding right now with these points. We did
10 not have an answer to that by the time we filed.

11 Two, we did not -- I did not know for sure whether
12 the NRC -- what they would tell us. We did not have any change
13 in the New Hampshire plans that dealt with this issue, to my
14 knowledge. So we had no change from that perspective.

15 And, thirdly, we were in this business of being
16 troubled about our own position.

17 Because of all of that, we asked you, the two of you
18 right there, and you will, I'm sure, acknowledge this, we did
19 ask you to postpone our filing on the 11th of November from a
20 programmatic standpoint, the 11th of September.

21 Q When you say you, you're referring to me and --

22 A (McLoughlin) Joe Flynn.

23 Q -- George Watson?

24 A (McLoughlin) Yes. To our own general counsel staff.
25 We wanted to delay our filing to the Board, because

1 we were uncomfortable with -- a growing uncomfortableness with
2 our position. The problem I had was that we did not have any
3 new information; simply did not have any new information, and
4 did not have new information by which I would overrule the RAC
5 chairman. Regardless of whether or not we reached all these
6 conclusions in the same way, there was no reason to overrule
7 the RAC chairman. I did not have it at that point, and I will
8 clearly go into more depth if we need to.

9 So, you then -- our general counsel's office told us
10 that they did not want to delay the hearing; did not want FEMA
11 to be responsible for delaying the hearings, and argued
12 strongly that we needed to file on September 11th.

13 We acquiesced to that, which is appropriate that we
14 do that, because your view of how to deal with the Board is
15 better than our view is, and so we filed.

16 Clearly, we had no basis for making a different
17 judgment. And in my mind, I would have made a different
18 judgment if I'd had a reason to do it. But I did not have a
19 sufficient set of reasons that I believe I could have overruled
20 Ed Thomas's view at that point.

21 Q You have mentioned in the answer to my previous
22 question some technical concerns that you had. And this might
23 be an appropriate time to do it, or are we ready to go on to
24 the next event which was the supplemental testimony in January
25 of '88?

1 A (McLoughlin) I want to get to the technical part in
2 the next sequence.

3 Q I assume it's also relevant to that.

4 A (McLoughlin) Yes, that's correct.

5 Q Then this sounds like a good time to go on to that
6 next phase, is it?

7 A (McLoughlin) Yes, Joe. I want to make one
8 intervening statement if I can in that transition.

9 I want to make my comments about Grant's role at that
10 point, because it's important, I think, for the Board to
11 understand this.

E113

12 (Continued on next page.)

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1 My job -- this job that I was assigned by the
2 Director of the Agency was to run state and local programs
3 during this period of time, between the time when Sam Speck
4 left and Grant Peterson came aboard in January of '88.

5 Grant's job at that time, as I understood it, was
6 to -- as he's already explained it, was to come aboard, become
7 familiar with the programs including going to the regions and
8 essentially get himself prepared so he can hit the road running
9 when he was confirmed and sworn in.

10 My counsel to him at this point was, Grant, there are
11 certain discussions that you ought to sit in on; and he did
12 periodically sit in on some of the REP meetings that we had.

13 My further counsel was, you ought to stay away from
14 certain decisionmaking meetings that we have, like, meetings
15 that we have with disaster relief program. We have to make
16 recommendations to the President on whether or not we go up or
17 down with certain disasters. The President makes a decision, I
18 want that clearly understood, we make a recommendation. But he
19 ought not to have to deal in his confirmation process with any
20 perception at all that he was involved in those decisionmaking
21 processes.

22 My view to him was, you ought not to be there.
23 Likewise in this area. In the REP area I -- you know, it
24 doesn't -- didn't take much at that point in time to know that
25 this a pretty sensitive issue. And my counsel was, you ought

1 not to be involved at any of the decisionmaking meetings that
2 we have relative to this. Not so much that I was afraid that
3 he would somehow try to influence it, but rather the perception
4 of his involvement in that process, and that perception being
5 difficult to deal with in his confirmation process was
6 important plus simply the legal aspects. He was not expected,
7 as a consultant, to have any role. Therefore, I want to be
8 sure that it is clear that I take full responsibility for those
9 decisions and do not feel that Grant influenced my decisions in
10 any way, shape, or form at that point and subsequent to this
11 right now.

12 There was a shift in our relationship in January of
13 '88, and that's when the shift occurred.

14 Q Now, let's address that. You gave Grant Peterson
15 some counsel about which meetings he should attend --

16 A (McLoughlin) Yes.

17 Q -- which meetings he should not attend, and how he
18 should act in those meetings?

19 A (McLoughlin) Yes.

20 Q How did he deal with your advice, what did he do?

21 A (McLoughlin) My view is, he asked me why, you know,
22 when I would make a statement, and that seems to be quite
23 normal. He'd ask me why. I would relate to him. He'd ask a
24 few questions about it, and then we would reach agreement. If
25 he had a different view, then we consciously came to a

1 conclusion of those rather than hopefully letting them hang.

2 Q I'm sorry, my question wasn't clear. I don't mean,
3 how did he receive your advice, what I meant was, after you had
4 that conversation how did he carry it out? Did he attend
5 meetings? Did -- if --

6 A (McLoughlin) Yes. He attended some meetings. But
7 if he was attending meetings that I thought were difficult
8 meetings, either we simply went ahead with him. Some of them
9 we didn't have to do anything because he might have been on
10 travel, for example.

11 But I would indicate that, you know, -- if you're
12 going to ask me when I did this, I don't know. But the
13 impression I have and I'm left with is, I would have tried to
14 explain to him what we were trying to deal with in a given
15 meeting and -- and I don't know even that I said very often,
16 this isn't a meeting you ought to come to; I think he just knew
17 that there were certain meetings he ought not to come to.

18 Q Since we're having trouble with the dates I won't ask
19 you to be specific. But during the period of time between when
20 he started as a consultant from FEMA until he was confirmed and
21 sworn in --

22 A (McLoughlin) Yes.

23 Q -- when he did attend meetings, to what extent did he
24 participate?

25 A (McLoughlin) Well, there was a growing participation

1 on his part from March through December, which seems to me to
2 be quite logical. Early, I would characterize -- for the first
3 three or four months, I would characterize him as listening,
4 you know. He's brand new to the programs. He knows something
5 about national security. He doesn't know much about the REP
6 program. He doesn't know much about disaster relief, as I
7 interpreted in our discussions, and so he listened to most of
8 that.

9 As time went on, I would characterize his
10 participation essentially by asking questions. He began to be
11 more involved in asking questions, and I would characterize
12 those as information kind of questions.

13 Q Okay.

14 A (McLoughlin) But I was alert to the fact that my job
15 was to be responsible for making the decisions, and I -- and
16 the reason this is important to me is because I had already had
17 one session like this; it wasn't as if I didn't have some
18 experience in this arena. I had spent a year, as I
19 acknowledged earlier, in between Lee Thomas and Sam Speck. Sam
20 Speck had come before, also, and our working relationship I
21 learned from, and knew more precisely how to structure that
22 relationship probably than I did the first time around.

23 Q Let's come back now to the question which I started
24 to ask you and that is, walk us through the process that led to
25 the --

1 A (McLoughlin) Okay.

2 Q -- to the January 25th supplemental testimony?

3 A (McLoughlin) Okay. The -- I have already
4 acknowledge which was in the beginning of September, after our
5 September 1st meeting which tends -- simply crystallized this,
6 there was -- we had some continuing meetings after that and I
7 began to be more increasingly more troubled with the position
8 that we were having, from a legal standpoint, a technical
9 standpoint, and a programmatic standpoint. And I'll get to
10 each of these in turn in just a moment, if I can.

11 But the -- it -- we had the RAC on the one hand
12 clearly differing with us. We cannot ignore that advice. I
13 acknowledged already on September 11th we went ahead with that
14 because we didn't have and did not -- the advice was troubling,
15 but my view was still that we -- that shelter option had not
16 been explored.

17 So, we did receive then on the 9th of September the
18 shelter survey from Massachusetts -- I'm sorry, New Hampshire.
19 When we did, though, it was not included in the plan. New
20 Hampshire sent us the Stone & Webster, the survey, and they
21 indicated that it was provided, I believe the words were for
22 technical assistance.

23 Now, we're glad to provide that technical assistance.
24 They have a right to expect that, and we will provide it. But
25 it was unclear then, I think, about how they intended to use

1 this in the plan.

2 And again, make sure that -- I want everybody to
3 understand that I am not critical of New Hampshire when I say
4 that. It's a factual statement of when the issue came in.

5 The -- in September, though, driven by our
6 uncertainty in the areas, particularly technical area, our
7 technical people, Dick Krimm and his people, asked Joe Keller
8 at Idaho Nuclear Engineering Lab that we have a contract with,
9 to do a technical analysis for us of shelters relate -- I'm
10 sorry, the technical aspects of fast breakers, and the
11 relationship of those accident sequences to the use of shelter
12 and it's impact on the use of shelter. I hope I've articulated
13 that clearly. Because that --

14 JUDGE SMITH: When was this?

15 THE WITNESS: (McLoughlin) This was in September.
16 Your Honor, I don't know exactly when in --

17 JUDGE SMITH: That's fine.

18 THE WITNESS: (McLoughlin) -- September, but it was
19 in the neighborhood of right after our filing, I believe, at
20 that point.

21 The point is, that we knew that we did not have a
22 solid technical base. Clearly, we had evidence of others that
23 were opposed to our position.

24 So, in October, then, the consequence of that effort,
25 on the part of Joe Keller, he came in to meet with our

1 technical staff and subsequent to that I got thoroughly briefed
2 on those issues. And his points -- I want to make clear that
3 that discussion, as I understand it, dealt not only with that
4 technical analysis that he did with us, but also dealt with
5 NUREG-1210, which I want to clearly acknowledge that I am not
6 thoroughly familiar with; I just, you know, I don't get
7 thoroughly familiar with every document. But I am aware enough
8 of it, of the discussion, that to know that that was a factor
9 in this as well.

10 And he gave us four conclusions, which I think are
11 important, and they relate to the technical, then I'll get to
12 the other issues, the legal aspects.

13 Well, the technical aspects, what he said were these
14 four things. And I want to tell you what that means to me,
15 because I think that's what you're looking for.

16 First of all, he said, that the major contribution to
17 the dose to the beach population is from ground shine in
18 relation to major releases in severe core melts. And that they
19 can indeed have early health effects.

20 Now, what he -- his conclusion out of that issue was,
21 it is best to evacuate these structures. And, Joe, here's
22 where I want to digress just a moment, if it makes sense,
23 because I want to be sure that the Board knows that I have some
24 reasonable background by which to make some interpretations in
25 that area.

1 My undergraduate work is in technical area,
2 chemistry, and physics, and math, et cetera. And I spent, as I
3 acknowledge earlier, the first half of my career in dealing
4 with -- in the civil defense arena. But the very early part of
5 it I was thoroughly familiar with weapons effects, radioactive
6 fallout, the decay process from that, and the effects of
7 nuclear weapons, and nuclear detonations.

8 Now, I want to also acknowledge so that it's clear
9 that I am not in any way, shape, or form suggesting that the
10 releases from nuclear -- from powerplant releases, potential
11 releases are in any way, shape, or form the same as nuclear
12 detonations because -- and radioactive fallout because that's
13 not the case.

14 But the point that I want to make is that, I believe
15 my background was sufficient to be able to, I would say, haul
16 that aboard and understand what it was that he was telling me.
17 Subsequent to that, in later meetings that we had that Grant
18 will tell you about, I drew some graphs which I know has been
19 included in the testimony, to make sure that I understood what
20 Joe Keller was saying. I want to reconfirm what I knew at this
21 time that he was -- that there are people reporting to us.

22 And the point is, that if the major contribution
23 comes from ground shine, what that means is that, if the shape
24 of the curve is increasing and then decreasing after the cloud
25 passes, and as decay is the principal reduction in the rate,

1 that if you shelter people and if it's a 10 percent reduction
2 in dose, that's essentially what you get, you get a 10 percent
3 reduction in that curve on the delivery of the dose. Now, the
4 dose curve is different than that, it's a cumulative curve.

5 All right.

6 BY MR. FLYNN:

7 Q Let me stop you.

8 A (McLoughlin) Am I getting too technical?

9 Q No, it's not that, it's that what you're saying isn't
10 as clear as it needs to be. You described two different shape
11 curves, one of them has to do with dose rate and the other has
12 to do with cumulative dose --

13 A (McLoughlin) Yes.

14 Q -- and I would ask you to go through that carefully
15 and make it clear which you're talking about at which time.

16 A (McLoughlin) Okay. Let me stick, first of all, with
17 the dose rate curve then. If the ground shine is, you know,
18 increases and then decreases in the decay --

19 Q You're talking about dose rate?

20 A (McLoughlin) I'm talking about dose rate. I'm
21 talking about, basically, a curve that I have in my mind that
22 deals with dose rate versus time. And that if you then look at
23 the impact of shelter on that curve what you simply get is,
24 essentially, the same shape curve whenever shelter is applied
25 as a protective measure, but reduced in this case by roughly a

1 10 percent reduction because that's what I'm taking for granted
2 that the Stone & Webster 10 percent reduction on their shelters
3 is accurate; that's where my 10 percent comes from. Now,
4 that's for the dose part of it. For the, excuse me, the
5 inhalation part of it.

6 A normal home would normally reduce that by about 50
7 percent. So there's a difference between a home and the
8 inhalation dose.

9 Q I'm sorry, I did not understand that. There's a
10 difference -- say that again, there's a difference between what
11 and what?

12 A (McLoughlin) I have obviously -- I'm getting in more
13 technical than I really wanted to, but since I'm in there I
14 guess I'm going to have to deal with it.

15 The inhalation dose is reduced by a structure,
16 essentially, by 10 percent until it comes to equilibrium in
17 some way, and even then -- let me just leave it at that. And
18 I'll
19 try to --

20 Q All right.

21 A (McLoughlin) -- substantiate this later when I'm
22 questioned on it.

23 JUDGE SMITH: At this point, the purpose of the
24 witnesses here is to trace the evolution of FEMA's position,
25 and they were not offered, as everyone understood, as merits or

1 merits witnesses, as technical witnesses.

2 MR. FLYNN: That's correct.

3 BY MR. FLYNN:

4 Q Let's go back to the point where -- before you
5 started to explain --

6 A (McLoughlin) sure.

7 Q -- the curves and the explanation that Mr. Keller
8 gave you?

9 A (McLoughlin) Let me try to get myself out of this,
10 if I can, and I'm there at that later -- the key point that I
11 was trying to make with that discussion, and I obviously got
12 too wound up with it, the key point that I was trying to make
13 is that, I believe, I could understand what Joe Keller was
14 saying to us about, because the major contribution is from
15 ground shine. I could understand the fact that evacuation was
16 the primary option. Now, I'm simply going to leave it at that,
17 and I will come back to that if somebody asks me questions.
18 But that's the first point.

19 Q Right.

20 A (McLoughlin) The second point that he made, Joe
21 Keller did not make those points, and I need to make sure
22 because I haven't said this, Joe Keller did not make those
23 points directly to me. These points got made to me through
24 Dick Krimm and his staff people. That's how I essentially have
25 these.

1 The evacuation provides significant dose savings in
2 fast breakers; that was the second key point. That it does
3 provide. Now, intuitively given the other one, I think I would
4 have arrived at that point, but his conclusions, and what I
5 understand came out of those October discussions clearly made
6 that point.

7 The third point that was made that seemed to me to be
8 a very significant point is that, be careful of your use of
9 shelter since usually evacuation is the primary -- the
10 preferred option or the appropriate option in accidental
11 sequences that have early releases.

12 Now, that's crucial, I believe, because he's saying
13 what I have said all along up to this time, that I wanted to be
14 sure that the New Hampshire plan looked at the shelter option.
15 That was the key because there was potential there, up until I
16 began to get these kinds of issues, there was potential there,
17 in my mind, of additional dose savings.

18 Now, given that -- let me -- do this was important,
19 what he was saying about shelter.

20 The fourth point that I would make out of this is
21 that, why I was told is that because of the uncertainties
22 related to release projections that it was more important than
23 ever to evacuate as the appropriate countermeasure. That if
24 indeed you were uncertain of what the dose is, going to be
25 delivered to people, the best you're able to do is to get out

1 of there; that's the fundamental, in my vernacular, what I was
2 picking up from those discussions.

3 So, I felt comfortable at that point that I was
4 getting significant information and additional evolution, in my
5 thinking, of what the technical aspects of that were.

6 Now, the second thing I want to deal with is the
7 legal aspects. And there were three events that occurred that
8 I -- in this period of time that began to be important, not
9 began, were important.

10 On the 5th of October Mr. Turk filed before this
11 Board the NRC rebuttal outline to FEMA's position. Now, here's
12 an agency that we are advisory to, that's going to essentially
13 rebut our testimony. That means to me that we better be on
14 solid grounds with respect to what it is that we're doing in
15 that. So that's a caution to begin with.

16 That filing included the statement that shelter does
17 not contravene, the lack of shelter does not contravene the NRC
18 regulations. That was the issue.

19 The second thing that happened on the 3rd of November
20 was that the NRC issued the utility plan -- that their rule
21 relating to utility plan -- to utility plans in the absence of
22 state and local government plans.

23 Q You're talking about evacuate -- not evacuation, but
24 radiological emergency response plans sponsored by utilities as
25 opposed to those sponsored by state and local governments?

1 A (McLoughlin) That's correct.

2 Now, that was important because they reiterate, once
3 again, in their preamble to that rule that no minimum dose
4 savings was required. Now, as an aside, and I know I shouldn't
5 do this, but I -- I guess maybe I just need to, and that is,
6 there are many people who believe we succumb to pressure from
7 the NRC. For those people, they should read our response, our
8 memorandum that I call the choke memorandum that I signed to
9 the NRC on this rule. We clearly took an opposite view
10 publicly stated, we had several -- two hearings before the
11 Congress on our views on that rule. And we clearly did not
12 agree with its issuance.

13 But our job is to serve in an advisory role to the
14 NRC. It is their decision, not FEMA's, just like we would want
15 to be sure that we preserve the right to deal with our
16 regulations without their interference. They completely have
17 their right to issue their rules and interpret their
18 regulations and their statutes the way they feel is
19 appropriate. It was our responsibility to comment on it, which
20 we did. They decided to do it. We have followed it since that
21 time. And the key point is that that included a discussion
22 about no minimum dose required.

23 The third thing that happened was with respect to
24 this Board. On the 6th of November this Board ruled the Sholly
25 testimony inadmissible. And my view, as I -- as it has been

1 explained to me is that, what that does is indicate once again
2 that there is no preset minimum dose or minimum -- minimum dose
3 and minimum ETE, obviously, are not the same thing. But in my
4 mind, they -- one leads to the other.

5 No minimum dose means, in effect, no minimum ETE.
6 Because as soon as you establish a minimum ETE you've got to
7 define the dose that's associated with that; and that you can't
8 do. That's the only way you can get there from here, as I
9 envision it.

10 So, those are the three legal issues that were
11 involved. I would continue to be concerned from a programmatic
12 standpoint about our application of shelter to, generically to
13 these decisions. We revisited, once again, the San Onofre
14 decision, because I wanted to be sure that my understanding of
15 that, which I've already related to the group and I'll not go
16 through again, that my understanding of that was accurate; and
17 that there were truly differences in that -- in the San Onofre
18 decision that we made versus the beach population in New
19 Hampshire. Whereas, I'm sure that there are technical people
20 on our staff that will be able to do a better job than I am. I
21 was persuaded by the arguments that it was different, and I
22 remain so today.

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23 (Continued on next page.)

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1 Now, I am now at the December time frame right
2 before our filing. Grant was sworn in, I think you said on the
3 5th of January.

4 A (Peterson) That's when all the paperwork was done.

5 A (McLoughlin) Okay.

6 A (Peterson) And when the notarization took place of
7 the oath, and that's the first official day.

8 A (McLoughlin) Okay. Given that, we had discussions
9 about how to make this transition. You know, we've got clearly
10 a transition. On the 5th of January he's the boss and I'm his
11 deputy. We have -- but I had been working at this for 15
12 months, all the programs, and I have full responsibility to
13 make an orderly transfer of this.

14 Now, obviously, we had talked about this before. It
15 wasn't the first time we had talked about it on January 5th.
16 But we had major issues in civil defense that were occurring in
17 one state on a civil defense issue. And Grant said that
18 required his attention, and we agreed to that.

19 What we agreed to with respect to this issue was that
20 because I had been involved, and my reasoning processes were
21 included in this, that I should continue to try to bring this
22 issue to closure for any supplemental filings that we were
23 doing.

24 I was, in December, fast approaching a decision that
25 we had to do something with the filings that we had on. We had

1 no basis to change in September, but it was becoming
2 increasingly clear to me that we had to make a change in our
3 subsequent filings, whenever those were going to be.

4 Now, the next thing that occurred was the RAC
5 meeting, and the RAC meeting on January 7th and 8th essentially
6 said the same thing, as I understand it, that the July 30th RAC
7 meeting said. The positions were reaffirmed six to three that
8 the position that FEMA was holding was a minority view, and I
9 believe increasingly an issue that we -- that we were not
10 understanding it -- by the way, there's an issue that I want to
11 refer to that occurred earlier than this and acknowledge.

12 We were having discussions from the NRC staff to Dick
13 Krimm's staff at the technical level. There were those
14 discussions that were occurring in September that we're
15 acknowledging from the NRC's perspective, that we were not
16 understanding the technical issues of shelter, as it related to
17 this, properly.

18 Now, I view that clearly in my mind not as pressure.
19 I believes that they not only had a right but a responsibility
20 to do that, and I would encourage them to do that. The last
21 thing that I want to be responsible for is a position that I
22 put FEMA in of not being a sound legal, technical and
23 programmatic decision. So, I think that's appropriate.

24 So I was getting that in these meetings as well. I
25 think I was getting that in some of the debriefs that we were

1 getting from the Keller testimony in October.

2 So, we are now at --

3 Q Excuse me, you said Keller testimony.

4 A (McLoughlin) I'm sorry. Excuse me. The briefings
5 that I was getting from our staff on the results of the work
6 that we had asked Joe Keller to do for us.

7 Q Okay.

8 A (McLoughlin) Okay.

9 Q To bring you back to the January 7th and 8th RAC
10 meeting in 1988, what was the source of your information about
11 that meeting?

12 A (McLoughlin) Mostly from the staff. There was a --
13 you were there. You were giving me some information about what
14 was happening there. We had a meeting -- don't remember the
15 dates so I'd better not say it.

16 Joe, essentially I was getting that information from
17 the staff who, including yourself, who was there, and the rest
18 of the staff was essentially getting it from Ed Thomas.

19 Q Okay. And what was your understanding of the
20 discussion that took place in that RAC meeting and the outcome
21 of the meeting?

22 A (McLoughlin) Well, I sensed there may be something
23 there that I'm not adding to this, but my --

24 Q No, just wanted to resume the narrative.

25 A (McLoughlin) -- inclination -- my memory is that,

1 and I was dealing with bottom line issues at this point. The
2 RAC said, and reaffirmed once again that they disagreed, the
3 same position that they had in July. And by that time we had
4 access to the Bores memo that we didn't get until December some
5 time, I believe.

6 Q His memo of --

7 A (McLoughlin) Of October 15th that said that their
8 position was that -- by the way, there may be something that's
9 helpful on that.

10 It's my understanding that the -- that those who were
11 in opposition to the FEMA position were in agreement with the
12 position of the Bores memorandum. That's what I understood was
13 true. And that the intent of the Bores memorandum, Bores 2, in
14 effect was -- this may be a little bit too much, but it was the
15 containment was certainly not the heart of their issue.

16 It was that the -- that the plan in itself dealt
17 adequately, from their perspective, with the shelter issue.

18 Now, I want to be as straightforward as I can with
19 respect to the RAC. We differed with the RAC in some ways I
20 wish we had taken aboard more rapidly some of the views of the
21 RAC, but I give them high marks for the consistency of the
22 position that they took. That was helpful to us even though it
23 was -- that I wasn't in the meetings. It was helpful to me
24 because here were a number of agencies that we asked to give us
25 advice, and that we cannot ignore that advice.

1 The question where I feel most vulnerable on is why
2 didn't you take that advice in July. And I have already tried
3 to explain why I didn't. And I know I'm going to get asked
4 that question again, so I simply will acknowledge the fact that
5 whenever, belatedly or whenever, it did make sense to me, after
6 the Keller input through the staff, that that issue was
7 important, and we could no longer begin to not modify our
8 position.

9 I felt a growing comfort with rationale and reasons
10 for having a different view than our RAC chairman.

11 Go ahead. I'm sorry.

12 Q Let me call your attention to the beginning of the
13 hearings in Concord in January of 1988, and you are undoubtedly
14 aware of the events at that time and reports that I first
15 announced to the Board and the people assembled that FEMA was
16 reconsidering a position.

17 A (McLoughlin) Yes.

18 Q And then a few days -- two days later announced
19 that --

20 A (McLoughlin) We did.

21 Q -- you were not changing your position.

22 A (McLoughlin) Yes.

23 Q And I want you to --

24 A (McLoughlin) Comment on that?

25 Q -- explain what your understanding was of those

1 events and what the reasons behind all of that were.

2 A (McLoughlin) It was my understanding that the Board
3 asked you where FEMA was going, kind of; you know, in my
4 language. And my counsel to you at that time, which I take
5 whatever responsibility I have to take, for the garble in that
6 message, and I will clearly accept my responsibility for that
7 garble. Is that my counsel was don't suggest anything at all
8 about changing our position now, because I am not yet
9 comfortable -- Grant had asked me to try to reach closure. I am
10 not yet comfortable that we -- that I have synthesized all that
11 I was learning at that point in order to be able to overrule
12 our RAC chief. That's a -- it's important, particularly in
13 this issue if we're going to overrule the RAC chief, that we
14 indeed do have sound reason for it.

15 I have explained some technical reasons already. I
16 have explained some legal reasons why, in my view, there was a
17 growing awareness. So what my counsel, I thought, was don't
18 tell the Board yet that we are changing our position until we
19 get it changed. Otherwise, what we're likely to do is have a
20 third position out there that we're going to have to defend,
21 and it doesn't make any sense to me to have to do that. We've
22 got enough trouble right now filing our supplemental testimony.

23 Now, somehow in the course of that deliberations and
24 the word that you passed on, it came out a little different
25 than that, I know. And I say I accept whatever responsibility

1 I had for that. But at least that's what my counsel was
2 intended to do, because on the 25th, which is a shade two weeks
3 later than this, we were obviously changing our position.

4 The next thing that happened that I think was
5 influential was we were in a meeting on Seabrook in Grant's
6 office on the 15th of July.

7 Q I'm sorry. Are we talking about January?

8 A (McLoughlin) I'm sorry, excuse me. Fifteenth of
9 January, and Vic Stello called, and he called for Grant. Grant
10 left the meeting, took the call in my office, and came back,
11 had a few comments to me that I'll let him share with you at
12 that point. But the bottom line was that we needed to call Vic
13 Stello back, because he had some concerns about what was
14 happening in the testimony, or at the hearings.

15 And so we called him back. We were on a conference
16 call. And the upshot of that call was that we needed to meet,
17 and we agreed to meet on the 19th of January. And Mr. Stello,
18 Vic Stello had some agenda items that he wanted to do. One of
19 the reasons that we agreed to that meeting is because we had
20 some additional items that we wanted to talk about: To include
21 Shoreham, and Pilgrim, and exercise date, and redacted
22 information on the Massachusetts side of the Seabrook plan, and
23 some other things that I'll let Grant talk about because he
24 was -- took the call.

25 But the bottom -- we had the meeting then on the

1 19th, senior level meeting. I'll let the description of that
2 because I will be prepared to answer any additional questions
3 on the meeting, but I want to just get to the heart of it for
4 this deliberation.

5 The thing that happened in that meeting that I
6 believe was important to this issue is we questioned Vic Stello
7 on whether or not shelter was really required. We had
8 discussions on that issue. And Bill Olmstead --

9 Q Excuse me, I --

10 A (McLoughlin) I'm sorry.

11 Q I think most of us are aware of who Mr. Stello is,
12 but I don't want to assume that. Can you explain his position?

13 A (McLoughlin) He's executive director for operations
14 for the NRC.

15 Q Okay.

16 A (McLoughlin) And he had some additional staff people
17 over there, and I can go through the list of people if you want
18 to, but I'll leave that issue aside.

19 Q No, I'm not asking you to do that.

20 But as you mention different names, I will ask you to
21 tell us who they are.

22 A (McLoughlin) Okay. What happened to this decision
23 in our January 25th filing that was central, in my view, of
24 trying to do what Grant had asked to do, bring this to closure,
25 was that the NRC regulations did not require shelter, and did

1 not contravene -- the lack of shelter did not contravene.
2 That's the way we were phrasing it at the time, and that's
3 important because I want to get to Mr. Turk's memo in just a
4 moment.

5 But the -- but Vic said to us -- Grant asked him
6 clearly, would you put that in writing to us, and he said, yes,
7 I will. And I know him to be straight when he says things he
8 will do.

9 Subsequently we got the February 18th memo from Mr.
10 Turk dealing with this issue. I want to make a comment about
11 that, because included in that memo is a reason why we had such
12 difficulty in this area sometimes, and I'm not being critical.
13 I'm simply trying to point out to the Board that an issue of
14 whether or not shelter does or does not contravene the NRC
15 regulations is not an issue that you come by lightly as I
16 understand the whole litigation process and dealing with the
17 rules.

18 The -- and I want to make a statement out of that and
19 then I'll come back, Joe. But it's important to me to make
20 this statement, because Mr. Turk's memorandum to us in
21 February, which Mr. Stello had told us we would get outlining
22 this, clearly makes the statement that the NRC -- that the only
23 ones who could interpret the NRC regulations are the Commission
24 and the Commission's general counsel. That's what I remember
25 out of that memo.

1 He further went on to say that the NRC staff views
2 the regulations as not requiring that there be a range of
3 protective actions that include both sheltering and evacuations
4 for all accidents, at all times, and at all locations within
5 the EPZ.

6 Now, we interpret that to mean -- now we're
7 interpreting on top of interpretation at the moment. We
8 interpret that to mean that the lack of shelter does not
9 contravene the NRC regulations. That's not the words that were
10 there. But it is important to understand in this process the
11 difficulty that program people like myself, who are not
12 lawyers, I am not trained as a lawyer, but I have to deal with
13 the litigation process and being sure that our decisions will
14 stand up in this kind of an arena. And they may or may not
15 stand up in this arena, our decision on this one, and I'm fully
16 aware of that.

17 I'm going to do my darnedest to be sure that our
18 position does indeed stand up from our perspective.

19 The issue is that Mr. Turk's memo even to us clearly
20 says that the NRC staff can't interpret those regs. That's one
21 of the reasons, in my view, why there is difficulty that we
22 have and why it takes so inordinately long sometimes to deal
23 with the issues.

24 JUDGE HARBOUR: Excuse me. I think you said the NRC
25 staff cannot interpret the NRC regs?

1 THE WITNESS: (McLoughlin) Well, I know enough not
2 to be the authority to answer on that question. But it is my
3 understanding --

4 JUDGE HARBOUR: I thought I heard you say that.

5 THE WITNESS: (McLoughlin) That's right. It is my
6 understanding that the NRC staff, and it says so in that memo,
7 that the NRC staff cannot interpret NRC regs; only the
8 Commission and the general counsel of the Commission can do
9 that.

10 Now, that's no criticism. That's no implied
11 criticism. It is an explanation of why it sometimes takes us
12 longer than I would like to see it take us sometimes to make
13 decisions on these issues. That's the only point I wanted to
14 make about that.

15 BY MR. FLYNN:

16 Q I'm not ready to leave the meeting of January 19th
17 yet .

18 A (McLoughlin) Okay.

19 Q I want to go into some detail.

20 A (McLoughlin) All right.

21 Q How long did the meeting take?

22 A (McLoughlin) The meeting took -- we started about
23 1:30 and went until about fivish, 5:30, that order of
24 magnitude.

25 Q Was there an agenda that was circulated among --

1 A (McLoughlin) No.

2 Q -- the participants?

3 A (McLoughlin) NRC -- what I think we agreed to, we
4 had no prepared agenda that I was aware of for that meeting.
5 The NRC came. We knew that they were coming to talk about the
6 Seabrook issues that they wanted to talk about that came from
7 the hearings, and we wanted to talk about the other things.

8 Now, we went in there with a mindset that say we want
9 to talk about these things. We collectively kind of agreed to
10 that upfront but there was no structured agenda.

11 Q How much of the time, or what percentage of the
12 entire meeting time was spent on this sheltering issue?

13 A (McLoughlin) Roughly a quarter of it. We had some
14 major issues: Talk about exercises, and Shoreham, and -- you
15 know, that we're still involved with in exercises week after
16 next and that sort of thing. So we had major staff resource
17 issues. We only have 27 people in the headquarters, of which
18 right now nine of those are vacant. So we have a limitation on
19 our staffs to be able to deal with this.

20 Q Okay, let's focus on the sheltering issue.

21 A (McLoughlin) Okay.

22 Q What was it that the NRC wanted from you?

23 A (McLoughlin) Well, ultimately the way in which I
24 would interpret it is that they wanted to be sure that we
25 weren't in the business of interpreting their regulations.

1 That was clear in my mind. That they interpret their
2 regulations, and that's right.

3 You know, I have no problem with that. FEMA has no
4 business of interpreting the NRC regulations. And I understood
5 that Vic Stello asked us some questions about where we were
6 heading in this area. And I can't remember all the lengthy
7 discussion that we had on it, but the issue essentially was
8 that we need to interpret our regulations, and you need to
9 understand that, FEMA, that we're going to interpret our
10 regulations. And we have no question about that, in my mind at
11 least.

12 Q Were you talking about any other regulation other
13 than what you've already told us about?

14 A (McLoughlin) Well, the specific that we were dealing
15 with was the shelter part of this reg. The generic issue was
16 we were just misinterpreting their regulations anyway, in any
17 area.

18 Q Was anybody on the NRC side of the room advocating a
19 particular conclusion as to the -- to FEMA's testimony?

20 A (McLoughlin) Well, I recall Bill Olmstead, their
21 legal person that they brought with them, saying that clearly
22 the lack of shelter did not contravene their regulations.
23 That's what his advice was to Vic Stello.

24 I'm not with you, am I.

25 Q No, that wasn't the point of my question.

1 Did anyone on the NRC side of the room advocate that
2 FEMA reach a concern conclusion, whatever it was --

3 A (McLoughlin) Oh, absolutely not.

4 Q -- as to adequacy or reasonable assurance?

5 A (McLoughlin) Absolutely not.

6 The NRC people asked us to explain our view, which we
7 did. The NRC clearly would have been upset if we had somehow
8 suggested we were going to interpret their regulations. But at
9 no time do I recall their trying to suggest to us that we ought
10 to change our position.

11 They were -- I have already acknowledge that as far
12 back as September they had suggested to us that we were
13 interpreting shelter technically incorrectly. And I think
14 ultimately they were right. We had some homework to do which I
15 think we did responsibly. But they did not ask us to change
16 our position in that meeting.

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1 And -- let me just add this, the view that I was
2 holding at that meeting and continue to hold today is that, the
3 need to examine the shelter option in the New Hampshire plan
4 continued to be important. There was nothing that came out of
5 that meeting that shifted in my mind, though, from suggesting
6 that FEMA still should not deal with the issue of looking at
7 the opportunities that shelter could provide in the New
8 Hampshire plan.

9 Now, --

10 Q Okay. There's been a suggestion that you went into
11 the meeting with one view and came out with another one.

12 A (McLoughlin) Oh.

13 Q In what --

14 A (McLoughlin) Yes.

15 Q -- in what sense, if any, did your position change as
16 a result of that meeting?

17 A (McLoughlin) The -- I went into the meeting with a
18 position that I kind of described to you just then, and came
19 out of the meeting with a firmer held conviction, because here
20 were the senior level people from the NRC telling us that we
21 are right and that they would give it to us in writing, that
22 the lack of shelter did not contravene their regulations.

23 And I came out of that meeting with the same thing,
24 essentially, that I went into the meeting with, but with a
25 reaffirmed understanding that the NRC regulations could be

1 interpreted the way we were now beginning to understand it.

2 Q There's also been a suggestion that NRC declared war
3 on FEMA in that meeting?

4 A (McLoughlin) Yes.

5 Q What does that relate to?

6 A (McLoughlin) Well, there was a statement and the
7 word "war" was used, but it was -- the issue was, if FEMA is
8 going to be in a position, Vic Stello said this, if FEMA is
9 going to be in a position to contravene -- I'm sorry, to
10 interpret the NRC regulations, we would go to war.

11 And I tell you, if I had his style, that is not an
12 unreasonable statement at all to have made. It is simply a
13 recognition straight out that it's none of our business -- it
14 is none of our business in FEMA to interpret their regulations.
15 And that's the way I interpreted it.

16 Q And what was FEMA's -- what was the response from the
17 FEMA side of the room?

18 A (McLoughlin) Well, Grant said something like, let's
19 see, rough and tough and hard to bluff, and, you know, we can
20 go on with this but it won't be very productive; something to
21 that effect, I don't know if I characterized it quite right,
22 but that's --

23 A (Peterson) I'll cover it later.

24 A (McLoughlin) -- a loose characterization.

25 Q [redacted] going to ask Mr. [redacted] on the same question.

1 A (McLoughlin) I'm sure you will.

2 Q What was the -- what was your interpretation of that
3 interaction?

4 A (McLoughlin) Well, Joe, I don't know that I can do
5 anymore than say what I've said which is, having been in a
6 number of meetings with Vic Stello, I have a great deal of
7 respect for him and the way in which he comes directly at an
8 issue. And I like that in someone in the meetings, because it
9 is -- you don't have to worry about where you stand. And I
10 interpreted that statement essentially in that way.

11 He was saying, I stand here and I want you to know
12 clearly that you guys don't interpret our regulations; we do
13 that. And as I said, I didn't take any offense of that. I
14 clearly wouldn't. It wasn't intended in any way to be
15 pressured. I don't feel any pressure out of that. It wasn't
16 intended, I don't believe, to be disrespectful. It is simply
17 the way he talks in meetings.

18 Now, that -- I'm going to get in trouble, I suspect,
19 for that last statement, because I didn't mean that -- to say
20 that he says, we're going to go to war in every meeting. I
21 simply mean to acknowledge the fact that he talks very
22 straight.

23 Q He's a very direct --

24 A (McLoughlin) He's very direct.

25 Q -- his language is very direct?

1 A (McLoughlin) That's right.

2 Q I want to go on to the next event leading up to the
3 testimony which was filed on January 25th and I will direct
4 your attention to January 22nd, 1988 and ask you to explain the
5 significance of that date?

6 A (McLoughlin) Okay. That was kind of the concluding
7 event that I was -- that was the concluding event that I had to
8 bring as much closure as I could, for Grant, this issue.

9 And we refer to it internally as our "would-could
10 meeting" on January 22nd. And we had -- I'm going to explain
11 what I mean by, would-could.

12 The -- it was a meeting in which we had all of our
13 key personnel there except for Grant. That was a conscious
14 decision. He had asked me to bring it to closure. And only
15 come to him at that point if indeed there were some unresolved
16 issues, and because he was dealing with other issues. It
17 wasn't because he was separating himself from this, but it was
18 because I had a certain continuity, and he had other items on
19 his plate that he needed to deal with, that I'll let him tell
20 you about.

21 Now, we had all of our key people there except
22 Grant's, and we discussed all of these issues at length.

23 Q Who was there?

24 A (McLoughlin) Dick Krimm, Craig Wingo, Margaret
25 Lawless, Bill Cumming, you, Joe Flynn, I think Marshall Sanders

1 was there.

2 Q Was Ed Thomas there?

3 A (McLoughlin) Sure, Ed Thomas was. Who did I leave
4 out? Did I say, Bill Cumming?

5 Q Yes.

6 A (McLoughlin) That's essentially it, as I recall.

7 Q Okay. And how long did the meeting last?

8 A (McLoughlin) Sometimes it seems interminable in some
9 of those meetings that we've been in. But, Joe, I just don't
10 know. I don't know. It was -- it was a lengthy meeting.
11 Whatever it was, it was a lengthy meeting. You know, it was
12 -- by that I mean, couple, three hours sort of thing, as I
13 recall.

14 Q Now, before I interrupted you, you were starting to
15 explain your reference to "would or could," can you go on with
16 that?

17 A (McLoughlin) Yes. By the 22nd, after the NRC
18 meeting, you know, they clearly said how they interpret their
19 regs, I was, you know, at a certain point in that meeting. So
20 I did go into the meeting of January 22nd with a tentative
21 position. The people in FEMA will tell you that that's
22 something that I normally will do.

23 I will say, here's my tentative position and I want
24 you to drive me off of this position, because what I want to do
25 is to find the weaknesses in my own arguments. And the best

1 way to hold those up is to get somebody who holds a different
2 view.

3 We clearly had in that meeting some people who had
4 different views. Ed Thomas certainly being one of them.

5 Q Can you summarize the discussion?

6 A (McLoughlin) Yes. The discussion boiled down -- we
7 had draft testimony. We had the draft testimony of the 25th in
8 front of us, and we were working through the issues, as we
9 understood them, on that draft testimony and trying to find out
10 whether or not everybody could buy off on -- that it was agreed
11 to our testimony.

12 The conclusion of that meeting was this, all of the
13 staff, Dick and his technical staff, were arguing at that point
14 that the New Hampshire plan as submitted, and we had it at that
15 time, would meet the requirements of J-9 and J-10-M.

16 I held an alternative position to that. Ed Thomas
17 and Bill Cumming agreed to the position that I was holding.
18 And it was that, I was still uncomfortable with the same thing
19 that I was uncomfortable with back in January -- June 4th
20 filing, that I had tried to suggest runs a thread through all
21 of this, is that the New Hampshire plan still did not deal with
22 the shelter option.

23 And regardless of that time, whether or not they were
24 going to use them, my view continued to be that I am now a
25 decisionmaker, and an emergency has occurred at New Hampshire

1 -- at Seabrook, if that occurred. I am the decisionmaker, I am
2 an emergency manager and what I have to do -- I have a plan in
3 front of me, I want that plan to tell me up front what it is
4 that I ought to be doing with respect to shelter, so that it is
5 thoroughly technically considered, even if it's not going to be
6 used, because as a decisionmaker I would not necessarily know
7 whether or not it had adequately been used, and shelter is
8 clearly a viable protective measure. And if it is not
9 explained in the plan that it may have limited use, there was
10 an uncertainty in my mind that the decisionmaker in that
11 emergency may use that wrongly.

12 Now, people will argue with me, I suspect, that that
13 tends to be self-serving, and it may very well be; and I accept
14 that. But it is a position that I held -- I know you want to
15 interrupt me, but I want to finish this statement -- I know
16 that -- I have tried to say that that's been an important
17 element in my decision all the way throughout this testimony.
18 And I believe -- my own belief is, and this is where it may
19 very well be self-serving, I acknowledge that up front, that
20 the Massachusetts plan ultimately as it will -- I'm sorry.

21 Q New Hampshire.

22 A (McLoughlin) The New Hampshire ultimately, as I
23 believe it will finally get revised, will be a better plan,
24 because it will point out how the limitations of shelter in
25 this -- in event of an accident for the beach population. And

1 it will also include the fact that shelter has some utility for
2 those transportation dependent transients.

3 Q The question was, how -- what's the "would-could"
4 controversy?

5 A (McLoughlin) Okay, very good. That's good. Dick
6 and his staff said, Dick Krimm and his staff said, the plan as
7 it stands today would meet that -- those criteria, J-9 and
8 J-10-M.

9 My view, Ed Thomas's view, which may have been held
10 for differing reasons, but his view was, as expressed in that
11 meeting as I understood it, and Bill Cumming's view was, it
12 could meet it if indeed they dealt with the shelter issue.
13 That was essentially the "would-could" shorthand that we were
14 using.

15 Q And how was that particular issue resolved?

16 A (McLoughlin) Well, at that point in time I was
17 comfortable in my mind, I was holding a position of could, and
18 it was clear in my mind and still is today that that's the
19 right position. The -- but I have enough respect for the other
20 people in that group, Craig Wingo, Dick Krimm, Margaret
21 Lawless, you, others, that I thought that was an important
22 enough decision that I ought to ask Grant to make that one.
23 Make the decision on "would-could."

24 I left the room, went out, talked to him, briefed him
25 quickly on what happened. Asked him to come into the meeting.

1 after we'd been there for three hours. The point that I tried
2 to make is, I think it brought this to resolution. I come out
3 of that meeting with a strong position, but you need to
4 understand what the other position is that is there.

5 It also in my mind made sense to go at this a step at
6 a time rather than all the way until we understood -- because
7 they had the shelter survey out there, it simply wasn't
8 incorporated.

9 So, Grant came into the meeting, asked some questions
10 that he wanted to ask in that group, and ultimately made the
11 decision to go with could, that is, if certain things happened
12 in the Massachusetts plan to deal with the shelter rationale --

13 Q The New Hampshire plan.

14 A (McLoughlin) Excuse me. New Hampshire plan, J-9 and
15 J-10-M could be met. Now, in the actual testimony when it was
16 drafted, that word "could" got changed to "may or may not" and
17 got underlined. So the may or may not, in my vernacular
18 relates to the "could" as we came out of our would-could
19 meeting.

20 Q Was there any further discussions?

21 A (McLoughlin) No.

22 Q That was the end of the meeting?

23 A (McLoughlin) We prepared the testimony. That was
24 the end of the meeting. We had agreed on a position. We filed
25 our supplemental testimony on the 25th.

1 MR. FLYNN: May we go off the record for a moment? I
2 need a break.

3 JUDGE SMITH: All right.

4 (Whereupon, a brief recess was taken.)

5 JUDGE SMITH: Go ahead.

6 BY MR. FLYNN:

7 Q Mr. McLoughlin, the next phase of the questioning
8 that I am conducting deals with the testimony which was filed
9 on March 14th, 1988. We left on January 25th, can you resume
10 at that point?

11 A (McLoughlin) Well, at this point it was clear, after
12 that filing, that Grant was going to take the responsibility
13 for going to the next step, and making the next decision with
14 respect to whatever happened, and came as a result of our
15 September -- I mean, our January 25th filing.

16 So what I will relate to you, not is -- is only my
17 own personal participation in that. And we got the plans from
18 New Hampshire on the 11th or 19th of -- I shouldn't -- I'm
19 sorry. We didn't get plans, we got a statement from New
20 Hampshire on February 11th and February 19th that was
21 essentially their rationale for the use of shelter in this
22 situation with respect to the beach population.

23 Our technical people reviewed that and their advice
24 was, they're totally regional people, their advice was that
25 this does indeed meet the standards. In my mind it also met.

1 while not required by the RAC members who differed with our
2 position, they had consistently said from the outset that there
3 was an enhancement that might of value to the plan. They were
4 clear -- at least it's clear in my mind that they thought they
5 were ready to go at that point approving a plan, but even they
6 acknowledged the fact that the plans could be enhanced with a
7 description of shelter.

8 So we got the plans from New Hampshire, the rationale
9 statement from New Hampshire, felt it was acceptable. Grant
10 then called and chaired a meeting on the 4th of March. The
11 meeting was an all day meeting.

12 Every -- we went around the table. Who --

13 Q Who was there?

14 A (McLoughlin) Who was there? Grant, me, Ed Thomas,
15 Henry Vickers, Dick Krimm, Craig Wingo, Margaret Lawless,
16 Marshall Sanders, Joe Flynn, Bill Cumming --

17 A (Peterson) Joan Hock.

18 A (McLoughlin) -- Joan Hock. I think that was it.
19 Oh, I forgot Joe Keller. I think I said Thomas -- Ed Thomas
20 was there and Henry Vickers were there and Joe Keller was
21 there. We had asked him to come because we wanted to be sure
22 that we got all of -- everything straight with respect to what
23 he had told us, so that we were -- so that it was indelibly
24 clear in our mind that we were understanding the technical
25 issues clearly.

1 Grant conducted the meeting, and in essence, we went
2 around the table in order. Everybody had the opportunity to
3 bring up an issue, and then we talked about the issue. And we
4 continued all day long until everybody in effect passed. By
5 that I mean, everybody said, I don't have anything new to bring
6 up or to add.

7 And I'll let Grant talk about that meeting because he
8 chaired it and is much firmer on that. At the tail end of it,
9 he simply asked a couple of questions, whether or not we could
10 support it and whether or not we could -- were professionally
11 in tune with it. And everybody said, yes, to the first one,
12 and there were two people that said, no, to the second one; and
13 I'll let him explain that unless you want me to do that.

14 JUDGE SMITH: What is the "it" that you referred to?

15 THE WITNESS: (McLoughlin) The -- I'm sorry. Excuse
16 me, I -- the conclusion of the meeting. And the conclusion of
17 the meeting was that the rationale as submitted by the State of
18 New Hampshire was that it did indeed meet the -- if it was
19 incorporated into the plan, and if there were some procedural
20 aspects included in there to support that rationale, that the
21 plan was adequate and would meet J-9 and J-10-M.

22 BY MR. FLYNN:

23 Q There's a little bit of further explanation that's
24 required. You said, everyone agreed to the first, but not
25 everyone agreed to the second, and I believe you're referring

1 to two separate questions --

2 A (McLoughlin) Yes.

3 Q -- but you haven't told us what those separate
4 questions were?

5 A (McLoughlin) Well, the -- I really prefer to let
6 Grant do it, because they were his questions, but I will tell
7 you what my recollection was of the questions.

8 The first question was, can you support this
9 testimony? Because we were working from draft testimony, and
10 he focused our attention early on to the concluding paragraph,
11 which is what, Your Honor, you just asked me about, which is,
12 it does meet J-9 and J-10-M.

13 His first question was, can you support that
14 position? And everybody said, yes.

15 The second question, essentially, was, can you
16 support it professionally and personally, I believe? And
17 everybody except Ed Thomas and Bill Cumming said, yes, to that.
18 And Ed felt that there was, and we had had long discussions
19 with it which I will only go into if you ask me to, Ed felt
20 that there was, quote, "still too much risk." I believe those
21 were his words, "too much risk."

22 Bill felt on a different issue. Bill continued --
23 Bill Cumming continued to maintain that the issue -- that this
24 is likely to turn on a matter of law rather than on technical
25 and programmatic issues. I acknowledged up front, back before

1 we ever went into this whole process in June that that was
2 Bill's essential position and he didn't change that. And
3 that's the reason, I understand, he gave a, no, to Grant.

4 Q And were there any other significant events between
5 the 4th of March and the 14th of March when the testimony was
6 filed?

7 A (McLoughlin) Well, we got Mr. Turk's memorandum that
8 I made reference to earlier on the 18th, which they had
9 committed to the meeting on the 19th. On the 18th of February
10 we did get his memo that -- I won't go into it again -- and
11 talked about their interpretation of their regs.

12 No, none that I know of, Joe, that's the end of it.

13 Q Okay. Thank you.

14 I will now address a series of questions to Mr.
15 Peterson.

16 Mr. Peterson, at what point did you first become
17 involved in discussions about the beach population, the
18 sheltering issues that are the subject of this hearing?

19 A (Peterson) I think when I formally became involved
20 was after the confirmation, and more specifically, after the
21 1st of January. I did attend some meetings, most of which I
22 did not attend for the total length of the meetings that I was
23 attending.

24 I had gained considerable confidence in Mr.
25 McLoughlin's abilities as an administrator; his understanding

1 of this issue; and the continuity that I knew he possessed.

2 I had a lot of other things on my plate, not to say
3 that this was not a very important issue, but I had a lot of
4 other things on my plate, and I quite frankly, after a number
5 of discussions that Mr. McLoughlin has relayed to you
6 previously on how we were going to handle the fact that I was
7 there and he was in the formal position.

8 I finally said, Dave, I want you to feel comfortable
9 to move forward on this and you tell me what meetings prior to
10 my confirmation that I need to attend. So there was very few
11 meetings that I was in prior to my confirmation.

12 Q Do you recall when those meetings were?

13 A (Peterson) I do not recall specifically when they
14 were. I think there was a meeting in September around the 9th
15 or so that I was in for five or ten minutes. I can remember
16 being involved in a meeting or a discussion around December
17 13th or 14th relative to management issues in Region 1, it was
18 with the Regional Director there, and that was prior -- that
19 was not prior to my hearings, but I think it was prior to my
20 formal confirmation, right in between the two.

21 But when you get to the point where you have been
22 confirmed by the Senate things start looking a little more real
23 and you can take a real breath, the first one in nine months.

24 But I think where it's appropriate really to start is
25 around the 1st of January time frame.

1 Q Is that when you first took an active role in this?

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T117 1 A (Peterson) Around that time I had said, okay; you
2 know, we're confirmed. We have the process in place, Dave, and
3 I need a lot of briefings on a lot of things. However, I want
4 to get a heads up on the Seabrook issue.

5 And so in the first week of January, and again on
6 January the 15th, we were in briefings relative to the Seabrook
7 issue.

8 And I would just like to take a moment to let you
9 know a few of the things that were on the plate besides that.
10 I was dealing with trying to make myself available to all the
11 congressional hearings that had anything to do with any of my
12 programmatic areas. I thought that was important because I
13 have to testify before Congress as I did this year and justify
14 all of our budget positions.

15 Secondly, I was preparing the budget for the head-on-
16 head with OMB, which gives us our mark for all of our
17 programmatic areas, and it's around \$600 million worth. So I
18 was working in those areas.

19 Additionally, I have 10 regional offices. I was
20 trying to get into the field and find out what a regional
21 office looked like. And additionally, I was trying to make
22 conferences such as the Hurricane Conference in Florida, and
23 the Hazardous Materials, or the Natural Hazards Conference in
24 Boulder.

25 So those were the type of things we were doing up

1 until the confirmation.

2 I'd like to cover, if I may, around the 1st of
3 January, a few of the things that may be a little repetitious,
4 but I think you need to know what was flagged to me around that
5 period of time when Mr. McLoughlin and the staff, and I would
6 say for the most part the staff that was included in my
7 briefing was, of course, Mr. McLoughlin, Mr. Krimm as the
8 assistant associate director in charge of the day-to-day
9 operations down there, Mr. Craig Wingo was in a number of those
10 meetings, Mr. Cumming, and you attend some of those meetings,
11 Mr. Flynn.

12 But a few of the things that were flagged to me, and
13 I don't want to be repetitious, but I think you have to
14 understand my thought process, too, and I'll list four or five
15 of them because I think they're important, that transpired
16 between the September filing and by the time we got to the
17 January time frame.

18 And the first thing that popped up in October was the
19 NRC filing of the proposed rebuttal plan for the staff
20 concerning the New Hampshire radiological emergency
21 preparedness protective actions for Seabrook for the seasonal
22 beach population.

23 And what was key there to me was that this included a
24 statement that NRC regulations were not contravened by the
25 absence of shelter for the beach population.

1 Now, I understand that was never made a part of the
2 record, and I want to bring that up because it became an issue
3 in the January 19th meeting, and was one of the issues that I
4 wanted to resolve although at that time, the 1st of January, I
5 did not know we were going to have a January meeting with Mr.
6 Stello, but it was a flagged issue.

7 Additionally, there was the influence of the ASLB
8 determination of the admissibility of the Sholly testimony, and
9 there was basically two things that I understood about that.

10 One, that it was very compatible and supportive to
11 the context of CLI-86-13. And basically what that meant to me
12 is that emergency planning requirements do not require that an
13 adequate plan achieve a preset minimum in dose savings, or a
14 minimum evacuation time for the plume EPZ in the event of a
15 serious accident. It says that very clearly.

16 And the other thing that needed to be thrown up that
17 they were giving to me as a flag was the requirement -- a
18 specific requirement statement that the requirement is that the
19 plans attempt to achieve reasonable and feasible dose savings
20 under the circumstances. And these -- these things transpired
21 after the September filing time frame.

22 In November again --

23 JUDGE SMITH: Well, what flagged that latter concept
24 to you?

25 THE WITNESS: (Peterson) In the briefings, the

1 decision on Sholly --

2 JUDGE SMITH: I see.

3 THE WITNESS: (Peterson) -- on the dose figures,
4 when you rejected that it supported, in my mind, CLI-86-13, and
5 the discussion in there as something that was a specific
6 direction to us.

7 BY MR. FLYNN:

8 Q How did that come to your attention?

9 A (Peterson) There was five or six items that in the
10 meetings I said I need to know -- I know you've got a
11 discomfort feeling, because I've had a number of you tell me
12 you have a discomfort feeling in the position that we filed on
13 September 17th, and I was also aware, after the fact, that
14 there had been a request for an extension because of some
15 of -- of the filing date, because of some of the concerns that
16 were coming up. It wasn't brought to conclusion by any means,
17 but there was this concern that was beginning to raise, okay?

18 So I asked specifically of the staff, flag some
19 things to me that you think are pertinent at this point in time
20 that need to be considered overall that has raised some of your
21 levels of concern as to where you were in September, and where
22 we may be going. It was a confidence issue.

23 At that point in time there was a serious question in
24 my mind that our headquarters staff had confidence in the
25 September position. So I wanted to know what are some of the

1 things, not, you know, don't give me a two-year scenario, but
2 give me some of the things.

3 And so I was given five or six items.

4 Q Have you mentioned all of them?

5 A (Peterson) I just want to touch a couple more that I
6 think would be appropriate, if I might.

7 NRC finalized their role in the utility plan, and
8 their assumptions that no minimum dose savings were -- and no
9 minimum ETEs.

10 Now, why I bring that up is because I think that
11 prevails now and is underlying for not only utilities but also
12 for state plans. But it was the state, or the utility plan
13 that reemphasized that point, and that happened in November.

14 Technically, from a technical position if I may,
15 INEL, which is Mr. Keller's company, Idaho National
16 Laboratories, I believe it is, he had worked through the
17 technical analysis that Mr. McLoughlin had talked to you about
18 before, specifically relating to fast-breaking core melt
19 situations.

20 And what was coming out of that loud and clear, to me
21 in these briefings, and I did not get this from Mr. Keller at
22 that time, but I did get it through the staff during that first
23 couple of weeks in January, was that it was Mr. Keller's
24 opinion that during fast-breaking accidents, that evacuation
25 has the very best potential for dose savings, and that, in my

1 lay language, I would say what he's telling us that in a fast-
2 breaking situation core melt your best possible action for your
3 citizens is to get them out of there over sheltering, and that
4 was raised to me.

5 The other thing that really weighed fairly heavily
6 with me, and I think I need to emphasize that, is that we
7 seemed to consistently have a regional advisory council within
8 the region of Region 1 who disagreed with FEMA's position.

9 In July 30th, they felt that the New Hampshire plan
10 was adequate relative to the beach population. I had no longer
11 signed my form and had it notarized on January 5th, and they
12 had another RAC meeting on January 7th and the 8th, and again
13 went through the New Hampshire plan and focused on the beach
14 population issue.

15 And once again we ended up, as relayed to me through
16 staff, that we had the Department of the Interior, and that we
17 had NOAA again, and our FEMA representative who disagreed --
18 who were the minority position, and that the two-third majority
19 reconfirmed that previous majority position; that the New
20 Hampshire plan was adequate with respect to the beach
21 population.

22 They threw a little caveat on the end of that though
23 that said although additional shelter information would be an
24 enhancement, and I'd like to throw that up because it had some
25 impact on me, quite frankly, in the would/could meeting that

1 Mr. McLoughlin talked about.

2 And, so, those were things that nappened right
3 almost immediately upon the time that I arrived, was the
4 briefings, the positions of the RAC, and again another review
5 by the RAC January 7th and 8th, and we were consistently, FEMA,
6 coming out in the minority position, and that concerned me
7 greatly.

8 And the other thing that it did, not to be
9 repetitive, but it showed to me and had the cumulative effect
10 at that point in time after the January 7th and 8th RAC
11 meeting, quite frankly, that our staff, in my opinion, did not
12 have confidence; that at this time frame in January, that the
13 September filing would for that matter, or could for that
14 matter stand, and I really feel there was that concern
15 throughout the headquarters staff.

16 Q I want to focus your testimony for a moment on your
17 role in the testimony which was file on January 25th. Can you
18 tell us what that was?

19 A (Peterson) Okay. I'm going to skip over the January
20 15th and 19th to go to the 25th, if you would like. Is that
21 what you're asking me to do, sir?

22 Q Well, no, if those things are important, tell us
23 about those too.

24 A (Peterson) Okay.

25 Q Did you say January 15th? I'm sorry.

1 A (Peterson) Right, yes, because I ---

2 Q Yes, I'm getting ahead of myself.

3 A (Peterson) -- think it's appropriate here for me to
4 get into the January 19th meeting, because we formulated the
5 final draft of the January 24th after that meeting, and I want
6 to cover that. I'm glad to have the opportunity to here to do
7 that, quite frankly.

8 On January 15th, in the afternoon, I said previously
9 that that was one of the dates that I remember where I was
10 having a briefing on these Seabrook issues, because I was
11 trying to get up to speed on this. And it, to me, was a
12 considerably complex issue, quite frankly, to be very candid in
13 saying that.

14 And in that meeting, which was held in my office, I
15 got -- my secretary came in and said you have a phone call from
16 Mr. Stello, and I said, fine. You carry on if you would and
17 get the next agenda item set, and I'll go and take it in Dave's
18 office.

19 I took that call in Dave's office. And Mr. Stello
20 indicated to me that his call was generated because of reports
21 that he had been getting out of these hearings, and was
22 somewhat surprised and concerned that we had this much of a
23 problem with the New Hampshire beach is ue.

24 And then, as my memory recollects, he framed
25 something else that me being new on the job gave me pause to

1 think for a moment. He said, why haven't we been made aware of
2 this, or something to that effect.

3 And so I said, well, I don't know why you haven't
4 been made aware of it. I would assume that you would have
5 been, but let me check that out.

6 So I hung up and went back in the meeting, and that's
7 when I turned to Dave and I said, Dave, why aren't you keeping
8 NRC up to speed on this stuff. At which time Dave said, I
9 don't know why NRC isn't up to speed on this, but we're
10 assuming they knew this issue. We filed our testimony and they
11 have representative in the RAC, and quite frankly, I think I
12 overreacted a little bit there with Dave, because I didn't
13 totally have a full grasp of the process.

14 I then called Mr. Stello back, and he indicated that
15 he -- you know, he wanted to get together at a headquarters
16 level to discuss some issues of concern; that he had a number
17 of issues that he felt we needed to talk about, and let's get
18 these things discussed. I saw absolutely nothing wrong with
19 that. It appears to me that's a very appropriate process. And
20 so we set up a meeting. I cleared my calendar, set up a
21 meeting for January 19th that we concurred on, and I had what I
22 thought was some basic parameters for that meeting, and one was
23 that it was going to be limited to headquarters, high-level
24 people.

25 And when I say that, I considered that myself, I

1 considered that Mr. McLoughlin, and I considered that Mr.
2 Krimm, and that I assumed that Mr. Stello would come over and
3 bring a couple of his people, and we wanted to keep it at that
4 level. You know, this was the first, I believe the first time
5 I'd ever been in a meeting with Mr. Stello, you know, where I
6 was a real live entity, and I felt that it was very appropriate
7 for the headquarters people to talk back and forth and discuss
8 what was going on and if there was any issues that we needed to
9 discuss. So we set that meeting up.

10 It was agreed that he would come over to FEMA, and he
11 did so. But when NRC did arrive, the cast had expanded a
12 little bit to not beyond the headquarters people, but it had
13 expanded slightly. And so at the very last minute we expanded
14 our people as well, and brought in Mr. Craig Wingo, who is
15 certainly a very technically qualified person with an
16 engineering degree; and we brought in Margaret Lawless; and we
17 had intended to bring our legal people with us as we had. So
18 we had, as I recall, Mr. Cumming, and we had Mr. Watson.

19 And you did not come, Mr. Flynn, to that meeting, as
20 I reflect, until NRC was done and was leaving, because you had
21 other business you were taking care of.

22 So that brings us to the January 19th meeting, if I
23 may.

24 Q Was there an agenda for that meeting agreed on in
25 advance?

1 A (Peterson) There was no agenda that I am aware of
2 that was agreed upon by our agency whatsoever.

3 Q Well, what did you understand to be the topics to be
4 discussed?

5 A (Peterson) Okay. I had a couple of things that I
6 had triggered myself, and I alluded to one of them, and that
7 was, you know, where are we on the lack of shelter not
8 contravening NRC regs.

9 No one in headquarters could point to anything that
10 said, or gave a conclusive statement to that issue. So I was
11 going to bring that up. That was one of my personal agenda
12 items.

13 Also, because Mr. Stello showed in my phone
14 conversation some surprise that we had this kind of concerns
15 about the beach issue, I thought it was extremely appropriate
16 for me to have another agenda item, and that was to make sure
17 before we left that meeting that he was aware that there was
18 also 30 planning inadequacies, and over 50 exercise
19 deficiencies in the New Hampshire plan.

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1 And so we were a long ways from being able to deal
2 with the decisionmaking process of what is bottom line
3 reasonable assurance or not. We had this many deficiencies out
4 there, and I wanted to make sure he understood that.

5 And we went into the meeting. Those were basically
6 the two items that I had that I wanted to discuss. However, I
7 knew that there was a lot of things going on in the REP program
8 relative to not only Seabrook, but Shoreham and Pilgrim, and I
9 had talked to Mr. Krimm and said, you need to visit and take
10 the lead on the issues of Seabrook, Shoreham and Pilgrim if we
11 get into such things as scheduling and those kind of events.
12 So you work out some things that you want to talk and discuss
13 with Mr. Stello, but let's let him lead, but we need -- if
14 those issues come about, you're the program manager there, and
15 you take the lead on that.

16 And as I recollect in the meeting, he certainly did
17 do that.

18 Q Well, we know that there were a number of topics
19 discussed at the meeting, and I want you to summarize for me
20 the discussion on the sheltering issue.

21 A (Peterson) Well, I wanted to find out specifically
22 from NRC, as I said before, if the lack of shelter would
23 contravene the NRC's regs. And we talked about that for a
24 time, and I've been trying to remember how I led into this, but
25 I know we had been talking about the issue, and I said

1 something along this line, but it's going to be a paraphrase.

2 I said, Mr. Stello, what if we demanded that
3 sheltering be required at the beach population, and we said the
4 reason we're demanding it is because NRC's regs require it.
5 Then what would you say to that.

6 And he said basically, if you did that and said that
7 and you're trying to interpret our regulations to say that,
8 then we would go to war over that issue. And he -- excuse me.

9 Q And you said?

10 A (Peterson) And he said it relatively forcefully,
11 which there's nothing out of line or not responsible for doing
12 that in a meeting between people.

13 And I said back to him, I said, Mr. Stello, you know,
14 we can assume this rough, tough, and hard to bluff stature if
15 you wish, but it isn't going to get you or me or anyone else
16 anything.

17 And at that time I grinned at him, and he grinned
18 back, and a few people giggled a little, and he said, well, you
19 know, where do you want to go from here. And I said, I want to
20 take a caucus for a couple of minutes.

21 And so we did. I got my people off to the side and I
22 said, well, we've got the issue on the floor, and how do you
23 think we ought to bring it to fruition. And they said, the
24 only way we can deal with this is NRC has to provide us that
25 information in writing.

1 So we came back, and we put that to NRC. And we
2 said, what you're telling me then is that the lack of shelter
3 will not contravene your regulations; is that right. And they
4 said, yes, that's right.

5 Then I said, all right, we want it in writing. Now I
6 can't remember if I said we want it in writing, or if I put
7 that in the lead of someone else, but the question was very
8 specifically stated to NRC that we wanted it in writing. And
9 they said, you'll have it. And as far as I was concerned, I
10 felt that that was a word of statement, and I expected to
11 receive it in writing, and later we did receive a piece of
12 information on that.

13 There was from there a fair amount of exchange on
14 when can you do exercises, and Mr. Krimm handled most of those
15 issues, and I can try to relay those discussions, but I think
16 they would be much more correctly relayed to this body if Mr.
17 Krimm did it.

18 Q I'll ask you the same questions I asked Mr.
19 McLoughlin earlier.

20 Did anyone in the NRC side of the room advocate a
21 certain conclusion as to adequacy of the plans or reasonable
22 assurance?

23 A (Peterson) No.

24 Q In what sense, if any, did you come out of the room
25 with a different position than you went into the room?

1 A (Peterson) I didn't have any position leaving that
2 room that was any different than when I went into the room
3 other than the fact that I anticipated getting a written
4 statement from NRC.

5 In fact, I've thought about this extensively, and was
6 concerned in that -- prior to that meeting and in that meeting
7 that I left an opinion -- a statement with NRC, and we said a
8 statement before I left that I think speaks to the issue. And
9 I basically explained towards the end of that meeting that I
10 still wanted to see that the sheltering option had received
11 full consideration by New Hampshire, and that I intended to ask
12 them to do that.

13 Q And you said that in the meeting?

14 A (Peterson) We said that in the meeting. Now that's
15 a paraphrase, but it got out.

16 Q And how did the NRC people react to that?

17 A (Peterson) There was really no reaction one way or
18 the other. They understand that was the course we were going
19 to be on.

20 Q There's a report circulating that you negotiated away
21 a reasonable assurance finding. How do you react to that?

22 A (Peterson) That is an absolutely incorrect report or
23 assumption.

24 Q Okay, is there anything else you found significant
25 about the meeting of January 19th?

1 A (Peterson) No, I think that pretty well terminated
2 it. It ran from about -- it was supposed to start about 1:00;
3 didn't really get started until 1:30 or so, and somewhere
4 around 5:00 we adjourned.

5 I would like to say overall, you know, it was a
6 discussion of headquarters people, and I felt absolutely no
7 duress by what was said in that meeting, and it was an exchange
8 amongst executives, and there was no -- I perceived no threat
9 or duress there whatsoever, and I think that needs to go on the
10 record.

11 Q Even the supposed declaration of war, you didn't
12 consider that duress?

13 A (Peterson) No, that really didn't bother me. I've
14 been in a lot of meetings in five years as an elected official,
15 and, you know, that statement really is much milder than a lot
16 of them I've heard, and I didn't take it that way, and I felt
17 that he basically was saying, look, if you're going to try to
18 interpret our regulations, then, you know, we cannot tolerate
19 that, and we would go to war was the word, and I assumed that
20 meant that we would legally address it. That's what I assumed
21 it meant.

22 Q Okay. From Mr. McLoughlin's account, the next
23 significant event occurred on January 22nd. Would you --

24 JUDGE LINENBERGER: Mr. Flynn, before we leave
25 January 19th, I'd kind of like to get Mr. Peterson to close the

1 loop on something he said was in his mind before he went into
2 that meeting; namely, he thought it was important to get an
3 understanding of whether Mr. Stello realized there had been
4 inadequacies and discrepancies in the plan.

5 Did you come away with a feeling that he did
6 understand that?

7 THE WITNESS: (Peterson) I think when it was put to
8 him very forthrightly, that I recognized a certain degree of
9 surprise in his reaction.

10 JUDGE LINENBERGER: As though he were hearing it for
11 the first time, perhaps?

12 THE WITNESS: (Peterson) Well, I don't know that he
13 was hearing it for the first time, sir, but I would say that,
14 in observing his reaction to it, that I don't think he had
15 an -- he may not have an understanding at that time of the
16 severity of 30-some planning problems and 50-some exercise
17 problems.

18 JUDGE LINENBERGER: Thank you.

19 Sorry, Mr. Flynn.

20 MR. FLYNN: Quite all right, Your Honor.

21 BY MR. FLYNN:

22 Q Well, in that line, Mr. Peterson, do you -- was it
23 your impression that he had an appreciation of those thing when
24 he left the meeting?

25 A (Peterson) I think he had an appreciation of those

1 when he left, and I got the feeling that he would probably be
2 quite well briefed from that point on.

3 Q I want to turn now to January 22nd, unless you feel
4 there is something in between the 19th and the 22nd that we
5 need to talk about.

6 A (Peterson) I don't have anything in my memory, Mr.
7 Flynn, that, you know, is a trigger between the 19th and the
8 22nd.

9 Q I'd like to hear your account of your involvement in
10 the meeting at -- in the would-could meeting.

11 A (Peterson) I would first like to say that the
12 January 19th meeting did not trigger the January 22nd meeting
13 in any way.

14 We've talked at some length about the concerns and
15 considerations that Mr. McLoughlin has put on the record here.
16 I was receiving similar support for those concerns from Mr.
17 Krimm, from Mr. Wingo, and certainly from Mr. Cumming on a
18 repeated basis.

19 And so my thrust was, at that time, that all of the
20 concerns that had been -- has been voiced here and any other
21 that might raise should be put on a table and should be
22 discussed. And if there was merit in filing a modified
23 position, that it should be addressed sooner rather than later.

24 I felt that there was one individual who was the very
25 best qualified to continue to do this, and that was Mr.

1 McLoughlin. He had absolute -- I think he had very good
2 knowledge of this issue. It had been raised to a substantially
3 higher level over the last number of months, by his own
4 testimony, and he had continuity, and I asked him if he would
5 chair that issue, because I had a number of things coming down
6 at that time, and one of those was the fact that I had a
7 serious problem with the civil defense program in the State of
8 Oregon, and I had 49 states signed on the Comprehensive
9 Cooperative Agreement for civil defense, and I did not have the
10 State of Oregon on, and it was a difficult issue. It had
11 gotten into the press, and it was very obvious to me that I was
12 going to have to go to Oregon personally and discuss the issue
13 with the governor. And so that was a driving factor at that
14 time.

15 But even if that had not been there, I very well may
16 have made the choice to let Mr. McLoughlin carry through on
17 that.

18 So he called the meeting together, and he has
19 expressed who was there. And I asked him to bring this thing
20 to closure, this issue to closure if it was possible. And if
21 it was not possible to bring it to closure, and there was some
22 issues that needed to be visited by me, to feel free to have my
23 assistant look me up where I was and get me down there, and I
24 would entertain those discussions.

25 And it was later in the day when Mr. McLoughlin came

1 out and he said, we do have one issue that I think you need to
2 come in and hear about. He gave me a real quick update, and I
3 said, okay, but I want to get in there and hear what everybody
4 has to say.

5 I think my memory is very parallel to what Mr.
6 McLoughlin said, and it was the would/could issue that was a
7 disagreement, and I viewed it this way. That New Hampshire
8 presented, you know, an adequate explanation for not requiring
9 sheltering in their plan then that could meet the range of
10 protective actions, or would it.

11 And to me, that's very pivotal, because if I would
12 have said "would" meet the ranges of protective actions, this
13 issue would have been determined by FEMA at that point in time.
14 And if you look at the filing, you'll find that that would-
15 could on Page 2 turned into "may or may not", and reads, if I
16 may read it for a moment to bring some continuity into my
17 thought process, let me get it in the context.

18 It says, "Briefly put, FEMA's position is: (a) that
19 it is appropriate to consider further the adequacy of emergency
20 response plan for the transient population at the beach within
21 the Seabrook emergency planning zone during the summer; that
22 is, from May 15 to September 15 as indicated in the New
23 Hampshire Radiological Emergency Response plan that is required
24 under NUREG-0654 for a range of protective actions may or may
25 not be satisfied by evacuation alone."

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1 And it goes down further at the bottom, and this is
2 what I alluded to earlier in the RAC meeting when they said,
3 sheltering could be further viewed. It says, "If the State of
4 New Hampshire intends not to employ sheltering for the tran-
5 sient beach population, which is not presently clear from the
6 NH RERP, then FEMA expects the state to develop the rationale
7 for such choice and to provide it to FEMA for review."

8 Q Just for the clarity of the record, you used an
9 acronym NH RERP, and you're referring to the NH RERP, the New
10 Hampshire, Radiological Emergency Response Plan?

11 A (Peterson) That's correct. But I wanted to leave it
12 in "could" context, and the "may" context; and be in support of
13 the RAC's position. I should give that probably to you
14 verbatim. And not put us in a position that we were going to
15 say, it would or that it will.

16 It was responsible, I felt at that point in time, to
17 request that New Hampshire further address the issue. To
18 present to us their rationale for exclusion of sheltering in
19 most cases. And then, we as a policy people and as a technical
20 people could sit down and look at that and see if we felt that
21 it was rational and that it met the criteria.

22 MR. FLYNN: Your Honor, I'm about to go on to another
23 subject. I have about another half hour of questions for the
24 panel, we can either break here or I can continue until I'm
25 finished. Continue?

1 JUDGE SMITH: It's our preference to go unless
2 there's a strong objection?

3 (No response)

4 JUDGE SMITH: All right. Then that way it will all
5 be in the transcript for tomorrow, too.

6 MR. FLYNN: Yes.

7 THE WITNESS: (Peterson) I just think it's important
8 to reemphasize that, even at that point in time we were still
9 saying, we're going to take a look at New Hampshire response to
10 our request for their rationale on their sheltering issue. I
11 would -- go ahead, excuse me.

12 BY MR. FLYNN:

13 Q There's been a suggestion that FEMA had already made
14 up its mind that the plans were adequate, but simply was not
15 prepared to say so at that time; how would you respond to that?

16 A (Peterson) I had not made my mind up, and I think
17 just by the very fact that we came into a room and discussed
18 the issue and chose the "could" aspect of it, certainly
19 verified, you know, that we were searching for the correct and
20 absolute position on this. And I had not made my mind up. And
21 I don't believe that Mr. McLoughlin had made his mind up, at
22 that point in time, and he can certainly speak to that. But
23 specifically, I had not made my mind up at that point in time.

24 Q Well, now we're moving on to the testimony which was
25 filed in March, at which point FEMA did make up its mind. Can

1 you tell us what persuaded you that the position that has been
2 set forth in the prefiled testimony of March 14th, 1988 was
3 correct?

4 A (Peterson) Do you want me to go to March 4th?

5 Q Yes?

6 A (Peterson) Okay. Can I give you three bullets that
7 I think are important that happened between --

8 Q Yes.

9 A (Peterson) -- January 25th. I think it's important
10 to note that on -- in February that New Hampshire responded to
11 FEMA's supplemental testimony by submitting additional
12 information on their rationale for using shelter option, only
13 for the transient beach population, so that came in.

14 February 18th NRC counsel, Mr. Turk, wrote to FEMA
15 counsel, Mr. Flynn, that's you, on NRC's understanding of
16 FEMA's supplemental testimony of January the 25th of '88. And
17 the letter confirmed NRC staff interpretation of NRC's regs,
18 not requiring that there be a range of protective actions that
19 include both sheltering and evacuation options for all
20 accidents at all times and at all locations in the EPZ. So, we
21 received NRC's response.

22 Q You understood that to be the letter that Mr. Stello
23 had promised?

24 A (Peterson) Absolutely. And in February 29th meeting
25 of Region 1, RAC, that occurred as I understand it on the 29th

1 of February, isn't that correct? And again, the majority of
2 the RAC supported the New Hampshire plan for the beach
3 population, specifically addressed the J-9 and J-10-M issue and
4 the preponderance of that Advisory Committee supported the
5 position that J-9 and J-10-M had been met.

6 So I think those are three things that need to be
7 flagged as happening between January the 25th filing and March
8 4th.

9 And I'll go to March 4th, if you'd like, sir.

10 Q Yes.

11 A (Peterson) I asked that we put together a meeting, I
12 did it through Mr. McLoughlin and my assistant to get some
13 players together, if I can use that terminology, for March 4th.
14 And prior to the meeting beginning on March 4th, several days
15 before that I asked that we bring together general counsel
16 people, our legal people; that we bring together our technical
17 people; and we bring together some policy people. We have some
18 people in FEMA who, you know, were involved in the very
19 beginnings of the writing of 0654, 44 CFR 350, 351, in fact the
20 name of Marshall Sanders is in there that says, if you have any
21 information of what these regs say call him, and he's one of
22 our people. So certainly, I wanted him in on these meetings,
23 so he could check off on what our regs say and what our
24 guidance is.

25 And I asked them to bring together a document that

1 would contain a conclusion that we could use as a information
2 piece to work off of in the March 4th meeting.

3 And so that group of people got together and put
4 together this basic structure, and a conclusion with supporting
5 information to the conclusion. Because I wanted to have a
6 piece to work from when we walked into a room and sat down.

7 And they put that together, and I think the first
8 time we saw it was March the 3rd, if I'm not mistaken. I
9 believe that's the correct date. And on March 4th I had asked
10 for some specific people to be there and I would like to go
11 through those people because I had a rationale for asking them
12 to be there.

13 And I was there because I felt that I was probably
14 going to have to make the final call. But I had a lot of other
15 people there, because I knew that it was imperative that I rely
16 on the advice of my staff, and my technical people, and the
17 attorneys in formulating this policy position. And I expected
18 that I would make that decision on their advice.

19 So I asked Mr. McLoughlin to be there because of his
20 programmatic knowledge and his continuity. I asked Mr. Krimm
21 to be there because he's the Assistant Associate Director of
22 NTH, has been involved in this all along. I asked Joan Hock to
23 be there who is the Division Chief for the Radiological
24 Emergency Preparedness Program. I asked Mr. Wingo to be there
25 because he was the Headquarter Branch Chief for Field

1 Operations. I asked Margaret Lawless to be there because she's
2 the Headquarter Team Leader for Field Operations. I asked
3 Marshall Sanders to be there because he was the Branch Chief
4 Program and Policy Development person, and I talked to his
5 credential before. I wanted Henry Vickers there because he's
6 Region 1, Director of the Region. I wanted Mr. Thomas there
7 because he's the Region 1, Division Chief for NTH, Natural and
8 Technological Hazards. I wanted you there, Mr. Flynn, because
9 your from our General Counsel's Office and had been working
10 here. Mr. Cumming from the General Counsel Office, I wanted
11 him to be there for sure. And I wanted Joe Keller to be there,
12 from Idaho Nuclear Engineering Labs.

13 And I wanted to bring the best people and the best
14 minds we had together from the headquarters and in Region 1 to
15 address this issue, and work it, and work it, and work it until
16 we had all the issues on the table.

17 Q You didn't mean to leave Mr. Watson off your list of
18 the best minds, did you?

19 A (Peterson) I think Mr. Watson had his hands full at
20 that time. I don't believe you were there, but I --

21 Q No, oh.

22 MR. WATSON: Yes, in fact, California.

23 THE WITNESS: (Peterson) Oh, I don't know -- I
24 didn't know how that came about, but I certainly would not have
25 excluded him.

1 But I needed to have that group of people with their
2 historical knowledge, their technical ability, their legal
3 advice, and their policy knowledge in that meeting to discuss
4 this. And so we brought them together.

5 And I felt very sincerely that I needed these people
6 to bring this conclusion, and I knew I would rely on my staff's
7 recommendations. And I want to say that again, and I felt this
8 group of individuals had the knowledge, and they had the
9 ability to bring this issue to consensus, based upon legal
10 merit, technical merit, and to make sure that it was compatible
11 with our guidance and regulations. And that was my rationale
12 for that meeting.

13 This meeting started about 9 o'clock in the morning.
14 It was a marathon meeting. It lasted six and one half hours.
15 Everybody in attendance at that meeting without exception spoke
16 to the issues, some more than others, but everyone repeatedly.

17 To show you the extent that we went through in that
18 meeting, there was 60 responses, as we went around the room.
19 People talked 60 different times on these issues.

20 The discussion was centered on the beach issues.
21 There was a full review of the conclusion statement that was
22 put before everyone. Staff indicated the conclusions comported
23 to NRC regulations. In other words, we weren't crossways with
24 NRC.

25 And there was primarily three areas of contention

1 raised, that I think I need to point to. And they were raised
2 by Mr. Thomas. Basically the issues were, there is not
3 adequate range of protective actions, in his mind. So, J-9 and
4 J-10-M, in his opinion, were not met.

5 The two percent issue, and it was referred to in that
6 meeting as two percent population, that's the transit-dependent
7 transient beach population, as I understood it, was as he said,
8 a mild concern for him or a mild problem; and that stemmed out
9 of a lack of sufficient detail in the New Hampshire plan.

10 BY MR. FLYNN:

11 Q Excuse me, the reference to two percent was that,
12 those people were approximately two percent of the total beach
13 population?

14 A (Peterson) Yes. Thank you.

15 And the other thing that came out, which was the
16 third issue, I think fairly loud and clear was that, Ed was not
17 sure, and I have this in my notes, that this was a technical
18 matter so much, but was a professional or judgmental call as
19 what is an acceptable risk.

20 And also was said underneath that, that there was no
21 absolute right or wrong, but a judgment call on this risk
22 issue.

23 That's really the three issues that it finally
24 focused on and that we spent a lot of time on.

25 JUDGE SMITH: Incidentally, Judge Harbour has left

1 the room, but he can hear the testimony.

2 THE WITNESS: (Peterson) Okay.

3 JUDGE SMITH: He's with us.

4 THE WITNESS: (Peterson) Thank you, sir.

5 BY MR. FLYNN:

6 Q I won't ask you to go through line by line and tell
7 us what all happened, but I will ask you to tell us what you
8 found significant about the discussion?

9 A (Peterson) Well, there was considerable discussion
10 relative to J-9 and J-10 on the technical matter relevant,
11 frankly, to rather there had been a range of protective actions
12 that had been met.

13 And the preponderance of conclusion, in fact -- the
14 preponderance of discussion, in fact I think everyone besides
15 Mr. Thomas felt that the range of protective actions had indeed
16 been met, and there was justification for that. And I'm not a
17 technical person, but some of the things that were discussed
18 was the beach closure. There was the access control. And it
19 was the consideration of these under J-9.

20 The evacuation aspect that we were dealing with. The
21 sheltering issue relative to a small portion of the population,
22 that was addressed. And there's another one that is escaping
23 me at the moment. I'll get it in a bit, if I can come back to
24 it.

25 Q If you remember feel free, remind us.

1 A (Peterson) And there definitely was, you know, a
2 very clear preponderance of support in that room from these
3 technical people and that J-9 and J-10 had been met.

4 And I think what is important to say here is that,
5 towards the end of this meeting Ed Thomas himself recanted his
6 concerns relative to J-9 and J-10-M and said, he had been
7 convinced.

8 Q Were those his words?

9 A (Peterson) I can give them to you out of my notes,
10 but that's very close. The word 'I recant my position on this
11 issue and the two percent,' he certainly used the word
12 "recant."

13 (Continued on next page.)

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1 And that was after considerable discussion. So he
2 recanted the issue that there not be an adequate range of
3 protection, and he also recanted the issue that the
4 insufficient or lack of extended detail relative to the 2
5 percent transit-dependent transients could be mitigated in the
6 plan. And so he recanted those two concerns, which really left
7 us down to a bottom line position.

8 One of the three, and that concerned voice was that
9 there was just too much risk, and that he felt that that risk
10 issue was a judgment or a professional call.

11 Q I want you to elaborate on that a little bit, because
12 not only was that a central topic for discussion in that
13 meeting, but it also perhaps is perhaps the central issue in
14 this case, or this phase of the case.

15 I want you to summarize the discussion in the meeting
16 of March 4th on the subject of risk.

17 A (Peterson) Well, I don't think that there was a
18 great deal of consensus, if any, with the position that, first
19 off, the definition of risk was within FEMA's ballpark; that
20 the definition of the risk primarily was within the scope of
21 NRC; and that we were not, because of the previous statement of
22 no minimum dose, pre-minimum dose, no minimum, pre-ETEs; that
23 that was more so in the purview of NRC.

24 Q And I'd like to suggest to you that you mean
25 determination of risk rather than definition of risk.

1 A (Peterson) Yes, I'm sorry.

2 Q Okay.

3 A (Peterson) Was certainly one issue. And I'll try to
4 walk through this other one, because it does get fairly
5 technical in relationship to the interpretations of the reg. I
6 believe, and I think it speaks to 350.5(b) in 44 CFR 350, where
7 you have the reasonable assurance statement.

8 And I'd like to -- can I read that to try to get some
9 continuity here and what they say. I want to -- it says, "In
10 order for the state or local plans and preparedness to be
11 approved, such plans and preparedness must be determined to be
12 adequate protection for the public health and safety by
13 providing reasonable assurance." And then it goes on to say
14 what reasonable assurance is. And it says, "reasonable
15 assurance that appropriate protective measures can be taken
16 offsite in the event of a radiological emergency.

17 And you look at appropriate protective measures, and
18 I think that drives you back to 44 CFR 350.5(a), and NUREG-0654
19 where you have 16 planning standards there, and 212 evacuation
20 criteria to deal with in the evaluation of your plans within
21 the scope of your regulations.

22 And once the discussion went to the fact once you
23 have done that, you give that to the NRC, and the NRC rolls
24 that into their onsite issues, and they determine what our MOU
25 says.

1 Basically, I'd like to kind of look at a statement
2 here on our MOU if I might. And it says, "The general
3 principles agreed to in previous MOUs and reaffirmed in this
4 MOU are as follows. FEMA coordinates all federal planning for
5 offsite impact to radiological emergency and takes the lead for
6 assessing offsite radiological emergency response plans and
7 preparedness; makes findings and determinations as to the
8 adequacy and the capability of implementing offsite plans; and
9 communicates these findings," FEMA communicates these findings,
10 "and determinations to the NRC. The NRC reviews those FEMA
11 findings and determinations in conjunction with the NRC's
12 onsite findings for the purpose of making determinations on the
13 overall state of emergency preparedness. These overall
14 findings and determinations are used by NRC to make
15 radiological health and safety decisions in the issuance of
16 licenses."

17 So I may not have the total context, you know,
18 totally locked as to the discussion that went on for several
19 hours, but there was a basic consensus in the room that we had
20 a job to do in relationship to our regulations, and that we had
21 to have a proper procedure in place, and that we had to provide
22 information on the plans and evacuation exercise of that. And
23 that once everything was adequately met, and I'm not saying it
24 always is, but once everything is adequately met and you have
25 done all of this, then you have reasonable assurance. And the

1 question is can you go beyond that and say, we've done
2 everything but I'm going to reflect on the degree of risk.

3 Q Done all of what?

4 A (Peterson) Pardon?

5 Q In your response you made repeated references just
6 now to once you have done all of this, but you didn't explain
7 what this was.

8 A (Peterson) Well, once you have met all the
9 requirements of 44 CFR 350.5(a) and NUREG-0654, and those have
10 all been adequately and satisfactorily met are you then capable
11 and able to make a reasonable assurance finding. And I think
12 350.5(b) alludes to that, if it doesn't say that; that the
13 process must be in place.

14 And I think the MOU that I read to you delineates the
15 difference between FEMA and the NRC's role, clearly, and that
16 is some of the discussion that went on.

17 I'm not saying that out of that discussion that Mr.
18 Thomas changed his position at all. He did not in fact, and I
19 hope I have correctly relayed the comments that were made in
20 that meeting by very technical people, and, you know, I
21 wouldn't want to stand totally on concrete that everything I
22 have said is totally concurrent with all of the technical and
23 policy people's positions, but the issue was, the only thing
24 unresolved in that meeting out of the three major issues that
25 was brought forward was the statement that, I think it's a

1 personal judgment and I personally feel there is too much risk.

2 Q Okay, I want to clear something up. You've actually
3 identified two different issues. One is the role of FEMA
4 vis-a-vis the NRC, and the other is the relationship between
5 the assessment of plans against NUREG-0654 vis-a-vis the
6 reasonable assurance finding. Let's take them one at a time.

7 In the question of assessment of risk, or the
8 determinant of risk, I want you to relate the understanding
9 that you came away from that meeting with as to the respective
10 roles of the two agencies.

11 A (Peterson) Well, I am going to try to answer your
12 question, but I'm trying to focus on the standpoint that in the
13 meeting there was one issue that was unresolved in Ed Thomas's
14 mind, and that was that he felt it was a professional call to
15 still say there was too much risk on this issue. And the rest
16 of the group did not concur with that position, but Mr. Thomas
17 did not recant it.

18 Q Was the rest of the group saying the risk was fine,
19 or were they saying something different?

20 A (Peterson) I think they were saying that we have to
21 meet the requirements of our regs, and that the ultimate
22 determination of risk is in NRC's ballpark. Now that's what I
23 thought I heard in that meeting.

24 Q Okay. And then that leads you to the other issue
25 which is once all the requirements, or once all the planning

1 standards in NUREG-0654 have been satisfied in FEMA's
2 judgement, what does that imply about the reasonable assurance
3 finding, and what was the substance of that discussion?

4 A (Peterson) Well, I think once you've reached a point
5 where you have met those requirements, and they are all met,
6 then by your own regs, and as I -- you know, by your own
7 regulations you have a reasonable assurance finding.

8 Q Okay, want to move ahead now to the conclusion of
9 that meeting.

10 A (Peterson) Okay.

11 Q And Mr. McLoughlin gave us a little detail about the
12 questions that you asked at the end of the meeting, but perhaps
13 we can get a more complete picture if you tell us about that
14 discussion.

15 A (Peterson) When we reached the point in time where
16 the two issues, the J-9 and J-10 issue had been recanted, and
17 the 2 percent population issue had been recanted, and the risk
18 statement was left, I continued to go around the room until no
19 one had anything more to say.

20 Well, when no one has anything more to say, it's time
21 to decide where you're going to go. And so I developed a
22 process that I felt was fair, and I started to my left, and I
23 asked the first person there, I said, can you support this
24 conclusion that we've been working off of as the policy for
25 this agency.

1 And we went all the way around the room, and
2 everybody that was in that room said, yes, I can support that
3 position as policy for this agency.

4 And because of the discussion, and the personal
5 feeling of too much risk, I felt that it was responsible on my
6 part to ask a second question. And I said, can you support
7 this conclusion as policy personally and professionally. And
8 we started going around the room again.

9 And when we got to Mr. Thomas, he said, I can support
10 this policy as an agency position. However, I differ with it
11 from a personal and professional level.

12 Mr. Cumming said, I do not agree with it
13 professionally, because I think we should be arguing this on
14 its legal merit, not its technical merit. However, I believe
15 this is legally supportable, and I would support it.

16 So out of everyone in the room we really had two
17 people who said that they could not support it personally and
18 professionally for two different reasons, but that everyone
19 could support it as an agency policy. And I think that's a
20 pretty strong consensus.

21 Q At that point in the meeting when Mr. Thomas said
22 that he had personal and professional reservations, what
23 reservations did he articulate?

24 A (Peterson) That there was too much risk.

25 Q Was there any further discussion in that meeting?

1 A (Peterson) Yes, there was.

2 Q What happened then?

3 A (Peterson) I think you know fairly well, Mr. Flynn,
4 because I believe you're the one that asked the question to Mr.
5 Thomas about how would you feel about not giving testimony.

6 Q Of course, I know, but the other people may not.

7 A (Peterson) Okay. And you asked that question, and
8 he said that he felt he could give the testimony. He could
9 support the agency's position, but he personally could not
10 support the conclusion.

11 And I believe you said that at that point in time you
12 did not feel that it was proper or appropriate for Mr. Thomas
13 to give the testimony because he didn't personally and
14 professionally agree with that aspect, and that it was unfair
15 to place that burden upon him. And quite frankly, I think that
16 that was a responsible and a caring thing to do.

17 I would have -- and your recommendation to me was
18 that he not give testimony. Your recommendation was that, and
19 I further believe that your recommendation was to use Mr.
20 Keller, and Dr. Joan Hock and Bill Cumming, but you kind of
21 left that as a recommendation at that point, if I remember
22 correctly.

23 But I would have -- you know, and I concurred with
24 that, and I thought that it was a proper thing to do and a
25 caring thing to do at that point in time.

1 Q I'm about to move on and ask Mr. Krimm some
2 questions, but before I do that, Mr. Peterson, I want to ask
3 you if there is anything else that I may have left out of my
4 questions.

5 Is there anything else in this process of developing
6 the position that FEMA has now filed that you feel is
7 significant?

8 A (Peterson) No, I don't think so. We did file the
9 conclusion and the supporting documentation with some
10 modification, I understand, on the supporting documentation on
11 the 14th with the witnesses that you recommended.

12 And I think the only way I would bottom line that
13 was -- the meeting -- is, I think, everyone came out of that
14 meeting feeling that it was a pretty, although a very grueling
15 meeting, that it was a pretty responsible way to go about
16 coming to conclusion on an issue, and an issue, you know, that
17 needed to be brought to some form of consensus if it was
18 possible, and I think there was a preponderance of support, and
19 I know there's a preponderance of support technically, legally
20 and in reference to our guidance for this position.

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1 I hope I have not misrepresented anyone's technical
2 analysis of the risk issue. I would like to put that caveat on
3 there. I'm not a technical person.

4 JUDGE LINENBERGER: Mr. Flynn?

5 MR. FLYNN: Yes.

6 JUDGE LINENBERGER: I think perhaps a very short
7 comment here for the benefit of some of the people attending
8 this meeting, an acronym that Mr. Peterson used twice, MOU,
9 might perhaps be explained. Would you do that, please, sir?

10 THE WITNESS: (Peterson) Well, it's a memorandum of
11 understanding between the Nuclear Regulatory Commission and the
12 Federal Emergency Management Agency that was dated here as
13 Thursday, April 18th, 1985.

14 JUDGE LINENBERGER: Thank you.

15 THE WITNESS: (Peterson) Yes, sir.

16 BY MR. FLYNN:

17 Q Mr. Krimm, as I stated at the outset of the direct
18 examination, I intended to ask you about the meeting of January
19 19th, and rather than pose a long series of questions I'll
20 simply ask you, what happened at that meeting?

21 A (Krimm) Okay. There was a discussion of many items,
22 and you've heard both Dr. McLoughlin and Mr. Peterson talk
23 about the discussion on the sheltering of the beach population.

24 From my standpoint the major items of the discussion
25 were the scheduling of the Shoreham exercise, when we could do

1 it.

2 The question of whether or not there would be an
3 exercise around the Pilgrim Nuclear Powerplant prior to June
4 30th, and the reason I was particularly interested in that is
5 because we would not have the resources to do it.

6 We also discussed the question of receiving the
7 redacted information from the New Hampshire plan, these were
8 the names of people who would be carrying out things for the
9 utility in an exercise or in an emergency. And the utility was
10 reluctant to, as I understand it, was reluctant to divulge
11 these names because of possible repercussions against them by
12 people who were opposed to the opening of the Seabrook plant.
13 And we did have to have these names for our review of the plan
14 and they were --

15 JUDGE SMITH: You're referring to the Massachusetts
16 plan?

17 THE WITNESS: (Krimm) I'm sorry, the Massachusetts
18 plan, excuse me; I'm sorry.

19 The other issues we discussed related to the
20 Massachusetts part of the Seabrook plan, the alert notification
21 issue because in the Commonwealth of Massachusetts some of the
22 communities had chopped down the sirens that had been erected.
23 And there was a lawsuit that took place and the Court upheld
24 the right of those communities to take down the sirens. And
25 again, this dealt with the Massachusetts plan.

1 I'm trying to think if there was anything else that I
2 may have missed that we discussed. That's to my recollection.

3 BY MR. FLYNN:

4 Q I'd like to focus your attention on the discussion of
5 the sheltering issue and can you recount that for us?

6 A (Krimm) Well, basically, as Dr. McLoughlin and Mr.
7 Peterson said, the issue dwelt around the NRC's regulations and
8 their right to interpret those regulations.

9 Q Would you have anything to add to the accounts that
10 Mr. McLoughlin and Mr. Peterson had given about the so-called
11 declaration of war?

12 A (Krimm) Well, I'll make a personal observation. I
13 come from a town in Pennsylvania, small town called
14 Williamsport which is in a lumbering area, and Vic Stello comes
15 from a town called Shamokin which is in the coal regions. And
16 every year Shamokin beats Williamsport High School in football.
17 And so I've known Vic Stello since 1981 and I've always found
18 him to be a very fair, very honest man, very forceful. And he
19 certainly did play football, he was a very good tackle, I
20 believe, for the Shamokin High School.

21 So I really took his statement as in somewhat jest,
22 you know, it didn't bother me at all. And maybe it's because
23 I've known him through the years and have dealt with him long
24 before he was the Executive Officer at the Nuclear Regulatory
25 Commission. And I really didn't take the statement very

1 seriously, and I don't think anybody else -- anybody else did.

2 MR. FLYNN: Thank you.

3 Your Honor, this is a convenient breaking point. I
4 may not have anymore questions, but I would like to have the
5 opportunity overnight to go over my notes. If I do, it won't
6 be anymore than 15 minutes.

7 JUDGE SMITH: All right, that's fine.

8 We'll adjourn then until tomorrow at 9:00.

et/121

9 (Whereupon, at 5:25 p.m. the hearing was adjourned to
10 reconvene tomorrow morning at 10:30 a.m., Thursday, May 26,
11 1988, at the same place.)

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1 CERTIFICATE

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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 25, 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) Kent Andrews

(Signature typed): KENT ANDREWS
Official Reporter
Heritage Reporting Corporation