

ORIGINAL

**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:)	
EVIDENTIARY HEARING)	
PUBLIC SERVICE COMPANY OF)	DOCKET: 50-443-OL
NEW HAMPSHIRE, et al)	50-444-OL
(SEABROOK STATION, UNITS 1 AND 2))	OFFSITE EMERGENCY PLANNING

Pages: 12783 through 13054
Place: Concord, New Hampshire
Date: May 26, 1988

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

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

12 Thursday,
 13 May 26, 1988

14 Room 302
 15 Legislative Office Building
 16 Concord, New Hampshire

17 The above-entitled matter came on for hearing,
 18 pursuant to notice, at 10:35 a.m.

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

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

JUDGE JERRY HARBOUR, MEMBER
 Atomic Safety and Licensing Board
 U. S. Nuclear Regulatory Commission
 Washington, D.C. 20555

1 APPEARANCES:

2 For the Applicant:

3 THOMAS G. DIGNAN, JR. ESQ.
4 KATHRYN A. SELLECK, ESQ.
5 GEORGE LEWALD, ESQ.
6 Ropes & Gray
7 225 Franklin Street
8 Boston, Massachusetts 02110

9 For the NRC Staff:

10 SHERWIN E. TURK, ESQ.
11 Office of General Counsel
12 U. S. Nuclear Regulatory Commission
13 Washington, D.C. 20555

14 For the Federal Emergency Management Agency:

15 H. JOSEPH FLYNN, ESQ.
16 GEORGE WATSON, ESQ.
17 Federal Emergency Management Agency
18 500 C Street, S.W.
19 Washington, D.C. 20472

20 For the State of New Hampshire:

21 GEOFFREY M. HUNTINGTON, ESQ.
22 State of New Hampshire
23 25 Capitol Street
24 Concord, New Hampshire 03301

25 For the Commonwealth of Massachusetts:

CAROL SNEIDER, ASST. ATTY. GEN.
STEPHEN OLESKEY, ESQ.
Commonwealth of Massachusetts
One Ashburton Place, 19th Floor
Boston, Massachusetts 02108

For the New England Coalition against Nuclear
Pollution:

ELLYN R. WEISS, ESQ.
Harmon & Weiss
2001 S Street, N.W.
Washington, D.C. 20009

1 APPEARANCES: (Continued)

2 For the Seacoast Anti-Pollution League:

3 ROBERT BACKUS, ESQ.
4 Backus, Meyer & Solomon
5 116 Lowell Street
6 Manchester, New Hampshire 03105

7 JANE DOUGHTY, DIRECTOR
8 Seacoast Anti-Pollution League
9 5 Market Street
10 Portsmouth, New Hampshire 03801

11 For the Town of Hampton:

12 MATTHEW T. BROCK, ESQ.
13 Shaines & McEachern
14 25 Maplewood Avenue
15 P.O. Box 360
16 Portsmouth, New Hampshire 03801

17 For the Town of Kensington:

18 SANDRA FOWLER MITCHELL, EMERGENCY PLANNING DIR.
19 Town Hall
20 Kensington, New Hampshire

21 For the Towns of Hampton Falls and North
22 Hampton and South Hampton:

23 ROBERT A. BACKUS, ESQ.
24 Backus, Meyer & Solomon
25 116 Lowell Street
Manchester, New Hampshire 03105

For the Town of Amesbury:

(No Appearances)

I N D E X

1
2 WITNESSES DIRECT CROSS REDIRECT RECROSS EXAM

3 Panel:

4 DAVID MCLOUGHLIN
5 GRANT PEDERSON
6 RICHARD KRIMM
by Mr. Mr. Dignan 12788
by Mr. Backus 12800

7

8 EXHIBITS: IDENT REC'D REJ DESCRIPTION

9 Applicants':

10 No. 38 12790 12796 4 pages, letter,
11 13 May '88,
Becton to Glenn

12

13 Massachusetts Attorney General's:

14 No. 33 12807 12815 5 pages, FEMA
internal
15 newsletter, HQ,
Jan-Feb 1988

16 No. 34 12813 12815 1 page, personnel
17 chart, FEMA state
and local programs
18 and support
directorates

19 No. 35 12859 12862 3 pages, letter
20 from Thomas to
Strome, with 2-
page attachment

21 No. 36 12884 12891 2 pages, memo,
22 2 Sept. '87,
Krimm to Congel

23 No. 37 12906 12933 1 page, letter,
24 5 Oct. '87, Turk
to Board, with 2-
25 page attachment

1	No. 38	12927	12933	5 pages, FEMA's Response to Motion in Limine, 30 Oct. '87
2				
3	No. 39	13006	13021	2 pages, letter, 18 Feb. '88, Turk to Flynn
4				
5				
6	No. 40	13017	13020	3 pages, letter, 12 May '88, Flynn to Smith, Harbour, Linenberger
7				
8				
9				

10				
11	<u>INSERTS:</u>			<u>PAGE</u>
12	Mass. AG's Exhibit No. 34			12815
13	Applicants' Exhibit No. 38			13054
14	Mass. AG's Exhibit No. 35			13054
15	Mass. AG's Exhibit No. 37			13054
16	Mass. AG's Exhibit No. 39			13054
17	Mass. AG's Exhibit No. 40			13054
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1

P R O C E E D I N G S

2

(10:33 a.m.)

3

JUDGE SMITH: Good morning

4

Ready to proceed.

5

MR. FLYNN: Your Honor, at the end of the day I

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indicated that I might have some additional direct examination.

7

At this time I do not have any further direct examination, so

8

the witnesses are available for cross-examination.

9

MR. DIGNAN: Your Honor, I have one or two items

10

which shouldn't take more than five minutes. And I talked with

11

my brothers representing the Intervenors and I told them I'd go

12

ahead of them, if that's agreeable to the Board.

13

JUDGE SMITH: Go ahead.

14

MR. DIGNAN: Thank you.

15

The record will show I'm placing before Dr.

16

McLoughlin a copy of yesterday's transcript.

17

Whereupon,

18

RICHARD KRIMM

19

GRANT PETERSON

20

DAVID MCLOUGHLIN

21

having been previously duly sworn, resumed the witness stand

22

here, and was examined and testified further as follows:

23

CROSS-EXAMINATION

24

BY MR. DIGNAN:

25

Q Doctor, would you be kind enough to turn to page

1 12688 and 12689 in that transcript, if you would, please?

2 A (McLoughlin) 12688?

3 Q Yes.

4 A (McLoughlin) Yes.

5 Q I'd like to direct your attention to line 22 on
6 12688, if you will read along with me. You stated there:
7 "Now, I'm well aware of the RAC meeting that occurred on 7/30,
8 July 30th of 1987. I'm also well aware of the fact, and was
9 well aware of the fact before the September, the September 11
10 filing that the majority of the RAC was in opposition to FEMA's
11 position," unquote.

12 Who advised you, prior to the September 11 filing,
13 that the majority of the RAC was in opposition to the FEMA
14 position?

15 A (McLoughlin) Well, the best I can recall, and the
16 thing that I normally would have expected is that the -- Dick
17 Krimm and his staff people would have advised me. And my -- as
18 far as I can recollect that's what happened.

19 Q Okay.

20 Mr. Krimm, who advised you of the fact that the
21 majority of the RAC was in opposition to FEMA's position prior
22 to September 11th?

23 A (Krimm) Craig Wingo of my staff.

24 Q And did Craig Wingo indicate how he had learned that?

25 A (Krimm) I believe that he heard it either from Ed

1 Thomas or from Jack Dolan, I'm not sure which.

2 Q And just for identification purposes, Mr. Dolan is
3 Mr. Thomas's assistant in Region 1?

4 A (Krimm) Yes, that's correct. Right.

5 Q Thank you.

6 JUDGE SMITH: Off the record.

7 (Discussion off the record.)

8 JUDGE SMITH: On the record.

9 MR. DIGNAN: The record will show I'm handing the
10 reporter a document that I'll ask him to mark Applicants's
11 Exhibit 38 for identification.

12 (The document referred to was
13 marked for identification as
14 Applicants's Exhibit 38.)

15 BY MR. DIGNAN:

16 Q Mr. Peterson, I have placed before you and the other
17 members of the panel, but primarily before you, a document
18 which has been marked Applicants's Exhibit 38 for
19 identification, can you identify that document, sir?

20 A (Peterson) This is a letter to The Honorable John
21 Glenn, Chairman of the Committee of Governmental Affairs,
22 United States Senate, and it is signed by The Honorable Julius
23 W. Becton, Jr., Director of the Federal Emergency Management
24 Agency.

25 Q Did you have any input into that letter, Mr.

1 Peterson?

2 A (Peterson) I concurred in this letter, as I believe
3 everyone sitting at this dais has, sir.

4 Q And can I take it then, as far as you're concerned,
5 the contents of that letter are true and correct to the best of
6 your knowledge?

7 A (Peterson) To the best of my knowledge they are;
8 yes, sir.

9 Q And is that true for you, also, Dr. McLoughlin?

10 A (McLoughlin) Yes, it is.

11 Q And for you, Mr. Krimm?

12 A (Krimm) Yes.

13 MR. DIGNAN: I would offer the Applicants's Exhibit
14 38 for identification into evidence, Your Honor.

15 JUDGE SMITH: Are there objections?

16 MR. BACKUS: I'd like to know for what purpose this
17 could be --

18 MR. DIGNAN: Truth of the matters contained. The
19 witnesses have adopted it as true.

20 BY MR. DIGNAN:

21 Q It's a statement by the Chairman as I -- excuse me,
22 the Director, as I understand it, of your agency who is the
23 superior of you, Mr. Peterson, is that correct?

24 A (Peterson) That is correct.

25 Q Concurred then by the three of you?

1 A (Peterson) That is correct.

2 MR. DIGNAN: For the truth of the matters contained,
3 Mr. Backus, that's what it's offered for.

4 MR. BACKUS: I think it rather goes to the merits,
5 but we'll not object; I think it opens up some merits issues.

6 MR. DIGNAN: Well, take your best shot.

7 MR. OLESKEY: Okay. No, there's no objection.

8 JUDGE SMITH: Well, we haven't read the letter. I've
9 read only the portion about how it came to pass that Mr. Thomas
10 was unable to support without reservations, some of the
11 testimony and how general counsel recommended that some other
12 witness appear. And the rest of it I haven't read.

13 The part that I have read is cumulative to this
14 testimony. I have a concern that isn't well formulated in my
15 mind yet in terms of the Rules of Evidence. But I have an
16 almost intuitive reluctance to have information provided to a
17 Congressional Committee and created for that purpose, to be
18 produced into our hearings.

19 MR. DIGNAN: Well, Your Honor, I would point out --

20 JUDGE SMITH: It creates potentially a great deal of
21 difficulty and possible conflict as the legislative needs
22 differ from the administrative hearing needs. I just haven't
23 thought about it -- I just -- there's a warning signal in my
24 mind here that I have to think about a little bit.

25 MR. DIGNAN: All right. Your Honor, the only thing I

1 would point out to you is, that is why I deliberately, before I
2 did anything with it, obtained that the three gentlemen had
3 concurred in it, and as far as they're concerned it's true and
4 correct to the best of belief.

5 In terms of relevancy, I'm sure if Your Honor reviews
6 the document you will find it relevant.

7 JUDGE SMITH: I'm not certain about that.

8 MR. DIGNAN: And as I understand their testimony
9 having concurred in it, they're subject to cross-examination.
10 I really don't see that the fact that it's a letter to -- I
11 offer -- to me there's no significance that it's written to
12 John Glenn. What is significant is what starts out, "The Dear
13 Senator Glenn," and finishes prior to "Sincerely."

14 The fact that it went to Senator Glenn, to me, is
15 irrelevant, but this is the vehicle that the testimony is in.

16 JUDGE SMITH: It's not the fact that it went to
17 Senator Glenn; it's the fact that it was prepared in obedience
18 to a Congressional request.

19 As I say, I haven't thought it out. I think we want
20 to think about it a little bit. And if nothing else, read the
21 letter.

22 MR. DIGNAN: Well, it's offered, and as I understand
23 your ruling is --

24 JUDGE SMITH: So far it's -- we're taking it under
25 advisement.

1 MR. DIGNAN: Thank you.

2 JUDGE SMITH: It will, however, be your
3 responsibility to make sure that it isn't dropped.

4 MR. DIGNAN: See you after the break.

5 With that my examination is concluded, Your Honor.
6 Well, I guess, Your Honor, having said that --

7 JUDGE SMITH: Well, you're entitled to a ruling
8 before you quit; right?

9 MR. DIGNAN: Well, no, it's not that. I'm not
10 concerned about quitting before the ruling, what I am concerned
11 about is, other people are going to go forward and I suppose
12 they're entitled to know whether this is in or not.

13 JUDGE SMITH: Well, there's no objections. It's
14 clearly relevant. The witnesses have adopted it.

15 MR. DIGNAN: May I respectfully suggest the Board
16 admit it, because it is always subject to reconsideration by
17 the Board upon further reflection, and that way we have a clean
18 record that it's in; if people want to cross it, they can.

19 JUDGE SMITH: I am concerned about the commingling of
20 legislative inquiries with Administrative Procedure Act
21 inquires, the potential for confusion.

22 Give us just a few minutes. We will remain in place,
23 but give us just a few minutes.

24 (Board conferring)

25 JUDGE SMITH: There are no objections to this letter.

1 right. So then, it is relevant. It has been adopted by these
2 people on the witness stand. And it is reliable and it meets
3 every single test competence that I can imagine. We, I think,
4 are obliged to receive it into evidence, which we do.

5 But the reluctance that we've had is that, this
6 letter demonstrates what we simply know, simply by unavoidable
7 reading in the newspaper, and that this proceeding has gathered
8 the attention of very powerful people in the country. And we
9 try to operate in an environment in which that is irrelevant
10 and immaterial; and it is.

11 We know that. We know that this hearing in the
12 Seabrook proceeding has gathered a lot of attention. But let
13 me assure that anybody who's interested in our viewpoints that
14 not only does it not influence us or mean anything to us, but
15 it's, in time, just downright boring. I mean, we're accustomed
16 to it and it just is meaningless. It is one of the least
17 important aspects of our judicial life.

18 The fact is, we don't even bother frequently even
19 reading news accounts of these events. We -- it just isn't
20 interesting to us, let alone does it have any bearing upon our
21 deliberations, adjudications.

22 We do try to avoid and successfully ex parte
23 information, whether it's brought to us by a party or not.
24 With that the letter is received.

25 What is your exhibit number?

1 MR. DIGNAN: 38.

2 (The document referred to was
3 marked for identification as
4 Applicants Exhibit 38.)

5 MR. DIGNAN: Well, Your Honor, if Your Honor has a
6 personal question about such a document coming in, I'm prepared
7 to withdraw the exhibit.

8 JUDGE SMITH: I don't think we have any choice, Mr.
9 Dignan.

10 MR. DIGNAN: I heard Your Honor's comments, and if I
11 may respectfully address them. There certainly was no desire
12 on my part to mention powerful people --

13 JUDGE SMITH: I know that.

14 MR. DIGNAN: -- what this document does --

15 JUDGE SMITH: I'm not --

16 MR. DIGNAN: -- in my judgment is, these witnesses
17 have been here and are going to be cross-examined on their
18 testimony. This demonstrates, in my humble judgment and will
19 be argued to you, is a thoroughly consistent story with the
20 story that these three gentlemen told us yesterday.

21 I think it is of evidentiary significance that the
22 story they told is precisely in line with the story that
23 they --

24 JUDGE SMITH: You don't have to argue that.

25 MR. DIGNAN: -- their director gave the Oversight

1 Committee of Congress. I think that lends credibility to what
2 they have said. And I don't understand the Chair's reluctance
3 to accept it, they having adopted it.

4 JUDGE SMITH: I don't --

5 MR. DIGNAN: I'm not trying to slide it through a
6 back door by the witnesses --

7 JUDGE SMITH: Mr. Dignan, you're arguing a straw man.

8 MR. DIGNAN: Okay.

9 JUDGE SMITH: I mean, you're doing it very well, but
10 it's a pointless argument. We don't, and for one minute, fail
11 to acknowledge the evidentiary value of the letter and its
12 relevance.

13 I'm just telling you that we, professionally, do not
14 like or would prefer to insulate ourselves as much as possible
15 from external concerns about the merits of this proceeding.
16 That is -- and I might say it's almost intuitive feeling rather
17 than a rational feeling. This letter has been accepted into
18 evidence and --

19 MR. DIGNAN: But, Your Honor, I want to be sure on
20 one thing, because if the Board feels that by this offer I have
21 somehow broken that insulation, I will withdraw the document.

22 JUDGE SMITH: Now --

23 MR. DIGNAN: It is not my intention.

24 JUDGE SMITH: It is just a step in that direction.

25 MR. DIGNAN: Well, I take that as a personal

1 remonstrance with me, Your Honor.

2 JUDGE SMITH: No, I don't --

3 MR. DIGNAN: I told you that was not its intent.

4 JUDGE SMITH: No, I don't. I don't. This is a sua
5 sponte concern of our own that I've felt, the Board members
6 feel that we have a job to do and we want to keep it as clean
7 and as simple as possible. The fact that there's a lot of
8 attention in it, in the political arena. It has come to our
9 attention -- as a matter of fact, we have even acknowledged the
10 fact that the presidential candidates have made an issue in
11 their campaign when we talked about -- well, we know all of
12 this. It's just to the extent that we can possibly keep it
13 away from this hearing room. I think it should be kept away.

14 MR. DIGNAN: Well, Your Honor --

15 JUDGE SMITH: We're big boys. We are perfectly
16 capable of conducting a proceeding totally immune from any
17 pressure. I mean, there is no pressure that anybody can bring
18 up on us. No conceivable pressure, because of our status in
19 government and our role, that could affect our decisions.

20 It's just that we have a feeling that we would like
21 to keep this hearing room separate from anything except the
22 Administrative Procedure Act, and the Atomic Energy Act.

23 MR. DIGNAN: Well, Your Honor, your remarks indicate
24 that you feel I've been trying to put pressure on you; and I'm
25 sorry, I am not.

1 JUDGE SMITH: I understand, Mr. Dignan. You don't
2 have to say that. I'm just telling you, this is a concern that
3 I'm bringing up on my own. With that, the letter is received
4 and we'll move on.

5 MR. DIGGAN: I have nothing further, Your Honor.

6 MR. BACKUS: Your Honor, I'm going to be the lead
7 examiner this morning, in terms of going first, and I have
8 prepared a very sketchy cross-examination plan I'll make
9 available to the Board at this time.

et/122 10 (Continued on next page.)
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T123

1

CROSS EXAMINATION

2

BY MR. BACKUS:

3

Q Good morning, gentlemen.

4

A (Peterson) Good morning.

5

Q I think we've met, but my name is Robert Backus. I

6

represent the Seacoast Anti-Pollution League in this

7

proceeding.

8

Gentlemen, yesterday when you were testifying, I

9

noticed that at least Mr. McLoughlin and Mr. Peterson appeared

10

to be testifying on the basis of notes that you had before you;

11

is that correct, Mr. McLoughlin?

12

A (McLoughlin) I was using a set of notes that I had

13

prepared for my own purposes; that's correct.

14

Q And you, Mr. Peterson?

15

A (Peterson) I also have a set of notes that I

16

prepared independently for my own personal use.

17

Q And when did you prepare those notes?

18

A (McLoughlin) I prepared them on the plane on the way

19

here.

20

Q Mr. Peterson?

21

A (Peterson) I wrote these up last night; the night

22

before I came in here yesterday.

23

Q Okay. And, Mr. Krimm, did you also prepare notes?

24

A (Krimm) I do have some notes, and I prepared them

25

on -- I'm trying to think of the time frame -- Tuesday night.

1 Q All right. Would you gentlemen have any problem if
2 we requested an opportunity to review those notes during a
3 break here?

4 A (Peterson) I'd like to -- no.

5 MR. FLYNN: I have a problem. I want to object, and
6 I want to find out the -- I want to make sure a predicate is
7 laid for the production of those documents, and I don't see
8 that it has been done at this point.

9 MR. BACKUS: Well, pretty traditional, I think, that
10 when a witness takes the stand with notes that the examining
11 attorney is entitled to look at them -- and testifies from them
12 as these gentlemen say they have done.

13 JUDGE SMITH: I guess it's traditional. You're more
14 likely to find it in a dog bite case, or a contested divorce.
15 You're not as likely to find it in this type of proceedings,
16 but they don't object. I mean -- they testified from the
17 notes. The notes are relevant to their testimony. They may
18 have overlooked something. They may have -- whatever.

19 MR. BACKUS: Okay.

20 BY MR. BACKUS:

21 Q All right, now, Mr. Peterson, I have a few questions
22 on your background testimony that you delivered yesterday.

23 You say you came to Washington in January of 1987 for
24 the purpose of looking for a federal job; is that correct?

25

1 A (Peterson) That's correct.

2 Q And I think you said that you were interested in
3 doing that as part of supporting the administration; is that
4 correct?

5 A (Peterson) I had -- that was one of the reasons that
6 I came here was to be a part of this administration.

7 Q And I think you said you went to the White House.

8 A (Peterson) That's correct.

9 Q And who did you see at the White House?

10 A (Peterson) I saw Sue Phillips at the White House. I
11 saw Bob Tuttle at the White House, and personally interviewed
12 with both of them. And I interviewed very casually with
13 another individual and, I'm sorry, I can't pull his name
14 right now.

15 Q And did you have that access to the White House in
16 part because of activities you'd engaged in in the State of
17 Washington?

18 A (Peterson) I would assume that's correct, yes.

19 Q And had you been involved in the presidential
20 campaign at all before coming to Washington?

21 A (Peterson) I was.

22 Q And what was your role?

23 A (Peterson) In 1984 -- are you asking specifically --
24 1984 was the presidential election, and I was the state
25 chairman for the State of Washington for the reelection of

1 President Reagan and Vice President Bush.

2 Q Okay. You also mentioned that you had held an
3 elected position in the State of Washington as a Spokane County
4 Commissioner?

5 A (Peterson) That's correct.

6 Q And when were you elected to that position?

7 A (Peterson) I first filled the vacancy in '81. And
8 as you know or may not know, the law requires that then you
9 stand for election at the next regular election cycle. And I
10 stood for election and was elected to a four-year term in 1982.

11 Q So you stood for election in 1982 for a term that
12 expired in 1986; is that correct?

13 A (Peterson) It expired on the evening of December 31,
14 1986.

15 Q Did you run for reelection to a county commissioner
16 position?

17 A (Peterson) Yes, I did.

18 Q And did you win that election?

19 A (Peterson) No, I lost by one and a half percent.

20 Q Okay. So it was the month after you lost that
21 election in January of '87, or I'm sorry, the month after your
22 term expired and you had not been reelected that you went to
23 Washington to the White House; is that correct?

24 A (Peterson) No, I think I went to the White House in
25 the month of February.

1 Q All right. Now, when you got to the White House you
2 said that you had some interest, and I think you said some six
3 or seven jobs in the federal government.

4 A (Peterson) Um-hmm.

5 Q What other jobs were you interested in other than the
6 one that you ended up with?

7 A (Peterson) There was a position in Indian Affairs.

8 Q I'm sorry?

9 A (Peterson) Indian Affairs. There was a couple of
10 positions in GSA.

11 MR. FLYNN: Excuse me. Can you explain the reference
12 to GSA? Tell us what that means.

13 THE WITNESS: (Peterson) General Services
14 Administration.

15 I had looked at potential positions in the Department
16 of Interior, and I believe that was, to the best of my
17 recollection at that time.

18 BY MR. BACKUS:

19 Q And, of course, the job with FEMA which you presently
20 hold; is that right?

21 A (Peterson) No, that was not in issue until after I
22 had talked to the White House.

23 Q Okay. So did you come to the White House with a
24 request to be considered for these specific agencies you've
25 mentioned: GSA, Indian Affairs and Interior?

1 A (Peterson) I believe that a person has an
2 obligation to do his homework, and so when I went to the White
3 House I told them that I had -- oh, excuse me, there was one
4 more potential. That was in EPA, Environmental Protection
5 Agency, in the office in Denver, Colorado.

6 And so I told them I was aware of that these
7 positions were upcoming, and that I would like to be
8 considered, have those positions considered. However, I wanted
9 them to review my background and see if they had any positions
10 that they felt my background more appropriately fit, because I
11 wanted to be sure that I had credible background and abilities
12 in whatever position might be available at that time.

13 Q So is it correct that somebody then at the White
14 House suggested to you consideration of a FEMA position?

15 A (Peterson) This was after I returned home. I
16 received a phone call from the White House saying they had
17 reviewed my background, and because of my experience at the
18 local level, that they would like for me to consider a position
19 that interacted very heavily with state and local governments,
20 and they felt that my five years as an elected official at
21 state and local governments made a lot of sense.

22 Also, the position was very heavily involved in civil
23 defense and national security, and my nuclear weapons
24 background, they felt, would enhance my ability to perform in
25 that area, and would I be interested in looking at a job in

1 FEMA.

2 Q Am I correct that your confirmation to your present
3 position resulted in an article in an internal FEMA newsletter
4 that was published in January-February 1988?

5 A (Peterson) I didn't have a hand in that. There was
6 some internal articles written, I believe, and I'm certainly --
7 you know, if they're there, they're there.

8 MR. BACKUS: Your Honor, I have handed to the
9 witness, the Board and the parties a document entitled FEMA
10 Newsletter, January-February 1988, which was marked as Exhibit
11 3 in the deposition of Dr. Joan Hock. And I'd like to have
12 that marked for identification at this time.

13 JUDGE SMITH: Whose exhibit?

14 MR. BACKUS: As a SAPL Exhibit, and I'm not sure --

15 JUDGE SMITH: Well, I don't know either.

16 MR. BACKUS: -- of the number we're up to.

17 THE REPORTER: You're up to 6. The next exhibit is
18 7.

19 JUDGE SMITH: I wonder if Intervenors might agree to
20 continue the Massachusetts Attorney General series of exhibits.

21 MR. BACKUS: Oh, that would be fine. Sure. It's
22 easier.

23 JUDGE SMITH: I think it sort of fits even though
24 you're offering it.

25 Is that all right?

1 MR. OLESKEY: Sure.

2 MR. BACKUS: No pride of title. Mass. 33.

3 JUDGE SMITH: No -- yes, that's right.

4 (The document referred to was
5 marked for identification as
6 Massachusetts Attorney General's
7 Exhibit No. 33.)

8 BY MR. BACKUS:

9 Q Now am I correct, Mr. Peterson, that he description
10 of your background is at Page 6?

11 A (Peterson) That's where the article appears.

12 Q Okay. Is everything that's stated in that article
13 about your background, and I understand it's not complete, but
14 is what's stated there accurate and true?

15 A (Peterson) I would say it's generally correct.

16 Q Okay.

17 A (Peterson) I would -- if you want me to go word by
18 word, I'd want a little more time, but I would say it appears
19 to be generally correct.

20 Q It says on the next to the last paragraph in the
21 middle column, "Peterson has held executive positions in the
22 electronics industry."

23 What positions have you held in the electronics
24 industry, sir?

25 A (Peterson) You know, I think that really has to deal

1 with the fact that I was a vice president in a business in
2 Spokane, and then I owned my own business in electronics,
3 primarily that dealt in electronics, in Cheney, Washington, and
4 had a business in Airway Heights at the same time for a period,
5 which is another small city.

6 Q Okay, you said you were a vice president in the
7 company in Spokane?

8 A (Peterson) Yes.

9 Q What company was that?

10 A (Peterson) That was G&G Electronics, Incorporated.

11 Q What was its business?

12 A (Peterson) It was electronics retail primarily.

13 Q What sort of products were sold?

14 A (Peterson) In the first -- in the first one,
15 primarily products that would be of interest to the homeowner
16 in the electronics arena with electronics repair facilities.

17 Q Would this be things like stereos and TVs and things
18 like that?

19 A (Peterson) Yes, that's correct.

20 Q Okay. Then you say, "And from 1971 to 1983, was
21 president of the Town & Country Television, Inc."

22 A (Peterson) Right.

23 Q That was the business that you owned?

24 A (Peterson) Yes.

25 Q And what was the business of Town & Country

1 Television, Inc.?

2 A (Peterson) It started out in the electronics field,
3 primarily in repair and retail sales. Expanded into computer
4 sales. Expanded there into electronic surveillance systems,
5 security systems. Expanded into two-way radio communications
6 business, sales with microwave transmission capabilities.
7 Expanded from there into a full repair facility for electronics
8 items such as business band radios and home equipment.
9 Expanded into a rental business. Expanded to computer sales.
10 Expanded from there into items that were utilized in homes,
11 because we began then to get into commercial sales where we
12 would do the carpeting, tile, appliances, intercom systems,
13 television cabling systems within homes and businesses.

14 So we ended up going from primarily electronics
15 servicing to retail and wholesale and commercial sales.

16 Q Okay. So was the -- fair to describe that the major
17 business here was sales to homeowners and commercial users of
18 this type of equipment?

19 A (Peterson) I think that would be appropriate.
20 Commercial sales as well to other businesses and providing
21 services to other businesses, and we got into some federal
22 contracting.

23 Q Is the Town & Country Television, Inc. still in
24 business?

25 A (Peterson) No, it's not in business as of 1983.

1 Q Okay. So when you became a county commissioner, you
2 got out of this line of work?

3 A (Peterson) I began to. I had been in that line
4 work for almost 14 years, and it served me well in getting me
5 through college and raising my family. And when I was elected,
6 I found out that being a county commissioner was not an eight-
7 hour-a-day job, but a 14-hour-a-day job, and I made a
8 commitment to the public and was elected as such, and sold out
9 portions of the business, and devoted myself full time to
10 serving the public.

11 Q Now let me furnish you a chart for -- an organization
12 chart, Mr. McLoughlin, for the state and local program
13 directorate.

14 Mr. Peterson or Mr. McLoughlin, I have showed you a
15 diagram chart entitled State and Local Programs and Support
16 Directorate which was marked as Exhibit 2 in the deposition of
17 Mr. Thomas, and ask you if that's a reasonably accurate diagram
18 of the chain of command for your directorate, the state and
19 local program and support directorate?

20 A (McLoughlin) Yes, it is.

21 Q And is it current insofar as the names that are
22 associated with these offices are concerned?

23 A (McLoughlin) Let me just check a minute.

24 No, there are some corrections to be made on there.
25 In the second row, in the far right under disaster assistance

1 office, it shows Joe Winkle. Joe just left us and went to be
2 the EPA deputy administrator in Region 6, and we have an acting
3 in there, Dennis Kwiatkowski.

4 Q Okay.

5 A (McLoughlin) In the next row, Joan Hock is no longer
6 in the Technological Hazards Program Division. She has moved
7 to a similar position in the civil defense office.

8 If you continue on down that row, you will come to
9 Frances Dias. Frances Dias retired and Joan Hock was asked to
10 accept that position because of our need to deal with the
11 national security decision director that the President assigned
12 last year.

13 As you move on down the line here, Dennis
14 Kwiatkowski, who is shown in the Individual Assistance
15 Division, is now is the acting where Joe Winkle was. And
16 Dennis Kwiatkowski has been replaced by Glenn Garcelon as the
17 acting in that position.

18 Q All right.

19 A (McLoughlin) On the next line down --

20 Q Well, before you go on, Mr. McLoughlin --

21 A (McLoughlin) Sure.

22 Q -- just maybe to shorten this up, am I correct that
23 the REP, or Radiological --

24 A (McLoughlin) Emergency Preparedness.

25 Q -- Emergency Preparedness -- thank you -- Program is

1 administered through the Office of Natural and Technological
2 Hazards Programs of which Mr. Krimm is the assistant associate
3 director?

4 A (McLoughlin) That's correct.

5 Q So with regard to those boxes that report up to that
6 office, which are on the left-hand side of this column, other
7 than Dr. Hock, are there any other changes?

8 A (McLoughlin) Fred Sharrocks, in the field operations
9 branch in the lower left-hand corner, is on detail to the REP
10 program right now because of the extensive needs that we have
11 to deal with many situations in that area, including this
12 hearing, but he will ultimately return to that after his detail
13 is concluded.

14 Q Okay.

15 A (McLoughlin) Other than that, the answer is yes.

16 MR. BACKUS: I'd like to have this marked at this
17 time, if I could.

18 JUDGE SMITH: Mass. G 34.

19 MR. FLYNN: Excuse me. Is this going to be bound
20 into the record at this point? If it isn't, it's going to be
21 misleading.

22 MR. BACKUS: Well, I think that's a good idea. I
23 would like to ask to have this bound into the record and --

24 JUDGE SMITH: Massachusetts Attorney General 34?

25 MR. BACKUS: Right.

1 (The document referred to was
2 marked for identification as
3 Massachusetts Attorney General's
4 Exhibit No. 34.)

5 JUDGE SMITH: Have you decided not to offer 33?

6 MR. BACKUS: I'd like to offer that, too, include
7 that in the record.

8 JUDGE SMITH: All right, going back to 33.
9 Are there any objections?

10 (No response.)

11 JUDGE SMITH: All right, 34, are there any
12 objections?

13 (No response.)

14 JUDGE SMITH: Do you want to conform the copy that is
15 bound into the record to Mr. McLoughlin's testimony?

16 MR. BACKUS: I don't --

17 JUDGE SMITH: Well, you would object to doing it.

18 MR. BACKUS: Well, I don't know quite how we'd do
19 that.

20 JUDGE SMITH: Well, do it, do it.

21 MR. BACKUS: All right. If somebody wants to provide
22 a copy with these name changes on it, that's fine. I think the
23 testimony has explained them.

24 JUDGE SMITH: It doesn't matter.

25 THE WITNESS: (Mr. McLoughlin) The only point, I did

1 not complete it. That's the only point, it seems to me, that's
2 important for us to make clear.

3 BY MR. BACKUS:

4 Q You did not complete you description of --

5 A (McLoughlin) I did not complete the corrections you
6 were asking me for. You asked me to shorten it up, which I
7 did.

8 Q All right.

9 A (McLoughlin) And only responded to the specific
10 portions that you asked me.

11 Q So you would like to make it clear, Dr. McLoughlin,
12 that there are some other changes in the divisions that are not
13 associated with the REP program; is that right?

14 A (McLoughlin) There -- yes, there are a couple of
15 additional changes that are in that that would need to be made
16 if you wanted that an accurate record.

17 But if you only want to reflect the left-hand portion
18 of that in Natural Technological Hazards, that portion is
19 correct.

20 Q Okay, that's sufficient.

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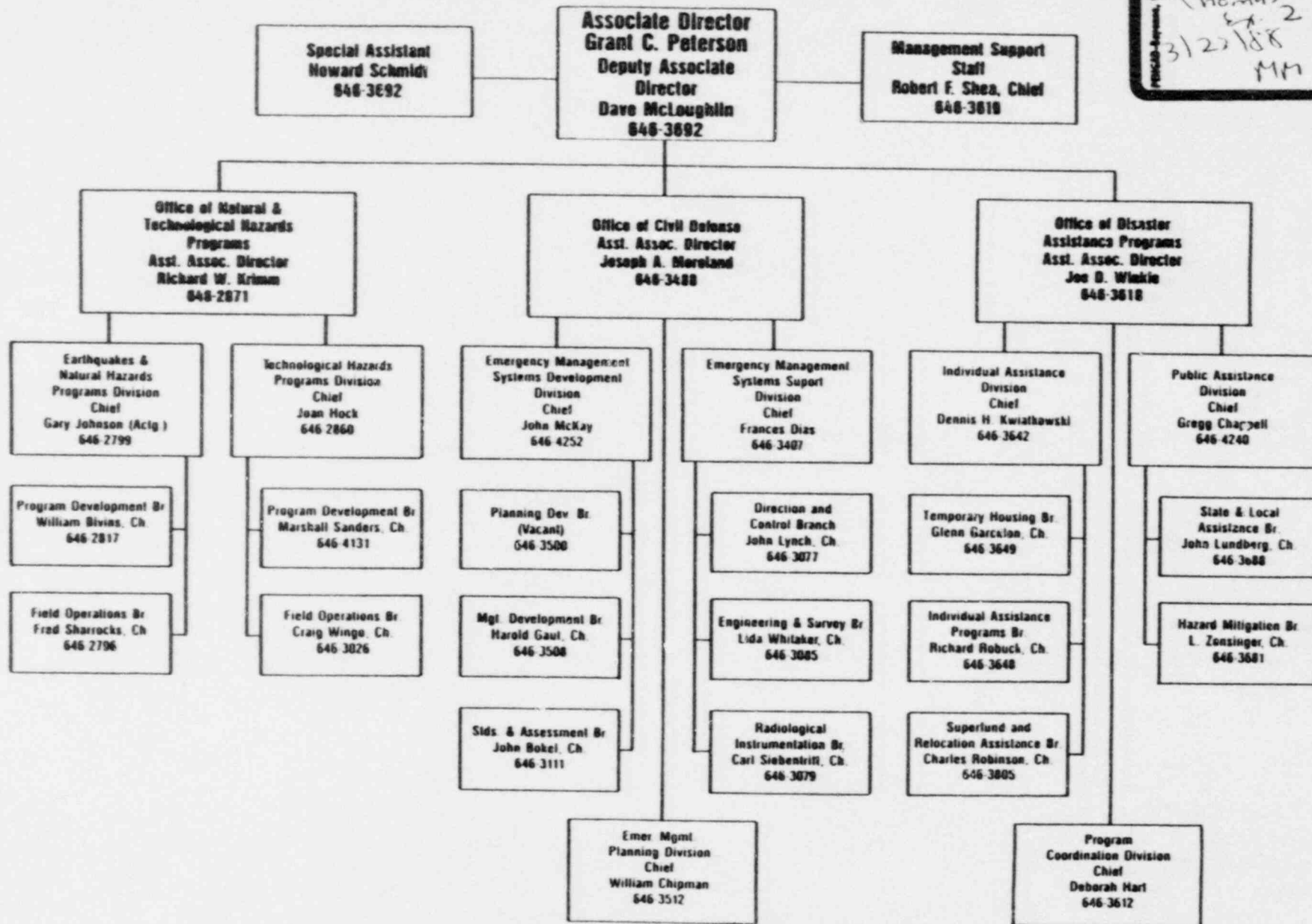
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(The documents referred to, having been previously marked for identification as Massachusetts General Counsel's Exhibit Nos. 33 and 34 were received in evidence.)

(Massachusetts Attorney General's Exhibit No. 34 follows.)

STATE AND LOCAL PROGRAMS AND SUPPORT DIRECTORATE

Thomas
 Ex-2
 3/2/88
 MM



1 BY MR. BACKUS:

2 Q Now, Mr. Peterson, you said yesterday that you knew
3 at least as early as I believe March of 1987 that the White
4 House was prepared to nominate you for this position at FEMA;
5 is that correct?

6 A (Peterson) That is not correct.

7 The White House was willing as early as March to
8 consider me for a nomination.

9 Q All right.

10 A (Peterson) They were not willing to nominate until
11 September the 17th.

12 Q And at some point during this period between their
13 willingness to nominate you and the time when your nomination
14 formally went to the Senate, you were acting in some consulting
15 capacity to FEMA?

16 A (Peterson) That's what the personnel action will
17 show that the director assigned -- the agency assigned me to,
18 yes.

19 Q And at what time did you start acting in this
20 consulting role?

21 A (Peterson) Late May. Or late March, excuse me.

22 Q Okay. And one of the things I believe you said you
23 were doing during the time you were in this consulting role was
24 attending conferences; is that right?

25 A (Peterson) We attended some conferences, yes.

1 Q And I think you said yesterday that one of those
2 conferences was a conference in Boulder, Colorado, in the
3 summer of 1987.

4 A (Peterson) That is correct; yes, sir.

5 Q And what was that conference?

6 A (Peterson) That was Natural Technological Hazards.

7 Q And at that conference did you have occasion to meet
8 Mr. Edward Thomas?

9 A (Peterson) For the first time, yes.

10 Q You had not met him before then, I take it.

11 A (Peterson) I had not met him nor had I spoken to
12 him.

13 Q Okay. Did you have a conversation with Mr. Thomas at
14 that time?

15 A (Peterson) I had an introduction to Mr. Thomas at
16 that time.

17 Q Did you say to Mr. Thomas anything about your feeling
18 that it was unfortunate that a nuclear plant here in New
19 Hampshire costing several billion dollars was idle because of
20 emergency planning consideration?

21 A (Peterson) May I put that in a little context?

22 Q Well, what I'd prefer is if you can say if you told
23 him that in substance, and then explain your answer.

24 A (Peterson) No, I did not tell him that in substance.
25 I did not recom -- I do not remember anything in our discussion

1 along those lines.

2 Q Okay.

3 A (Peterson) And I'd like to put it in context.

4 Q Please do.

5 (Continued on next page.)

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1 A Thank you.

2 The conference was over, I had not been introduced
3 nor identified Mr. Thomas at any time during that convention or
4 that conference. There was a closing picnic, as I understand
5 it, where most of the attendees went up to a person's private
6 ranch at about the 8,000-foot level on the mountains of
7 Boulder, Colorado.

8 I came to that picnic with Mr. Krimm, because Mr.
9 Krimm was very familiar with most of the people there, and I
10 was interested in trying to put -- to meet some people.

11 We saw -- this is a barbecue, we saw Mr. Thomas. Mr.
12 Krimm identified that Mr. Thomas was standing over there; he
13 was from Region 1. Mr. Krimm took me over there, introduced me
14 to Mr. Thomas and said, this is Mr. Thomas. I said, I'm
15 pleased to meet you, Mr. Thomas. The conversation lasted
16 probably no more than 30 seconds at which time I walked off
17 with another person from one of the other regions that I had
18 seen earlier; and Mr. Krimm talked to Mr. Thomas for
19 approximately, I don't know, I noticed for a long period of
20 time. But my conversation was very short. It was not much
21 more than an introduction. I do not remember anything along
22 the lines that you have spoken to.

23 Q Well, do you have a memory that you did not make any
24 statements along those lines, are you saying you don't remember
25 either way?

1 A (Peterson) I do not remember, if you're saying was
2 the word "Seabrook" or any of the plants mentioned, I do not
3 recollect any discussion of any of the plants. And quite
4 frankly, sir, I probably didn't even know exactly where -- what
5 plants were at that point in time.

6 Q Is it your testimony you'd never heard of Seabrook by
7 that time?

8 A (Peterson) I had heard of Seabrook, but I was
9 working very hard to try to identify where the 10 regions were
10 and who was associated with the regions. And, you know, what
11 was in those regions. I had heard the word "Seabrook" before,
12 you bet; that's true.

13 Q So, I just want to make sure that I'm clear on what
14 you're saying here. You're saying that to the best -- you
15 don't recall exactly what you said to Mr. Thomas on that
16 occasion?

17 A (Peterson) I don't recall exactly what I said to Mr.
18 Thomas other than the introduction, but I do not remember
19 talking about or alluding to any nuclear powerplant facilities
20 in that discussion; and Mr. Krimm was there during that
21 discussion.

22 Q So, does that leave open the possibility in your mind
23 that you may have said something like that and you don't
24 remember it or are you foreclosing that possibility?

25 A (Peterson) I do not remember any discussion along

1 that line that you have alluded to, sir.

2 Q Well, Mr. Krimm, Mr. Peterson says you were there; do
3 you remember that conversation?

4 A (Krimm) I remember introducing Ed Thomas to Mr.
5 Peterson. I do not remember Mr. Peterson say anything more,
6 probably, it's nice to meet you, some such thing like that,
7 because basically, Ed wanted to have a conversation with me,
8 and I do not recall or remember there was Seabrook -- the name
9 Seabrook even came up in that very brief meeting with Mr.
10 Peterson.

11 Q So it's your testimony that you don't remember?

12 A (Krimm) I don't remember and I don't think anything
13 was said; that's the best I can tell you.

14 Q But you're not sure?

15 A (Krimm) I'm not sure, no.

16 Q All right. Were you there for the entire
17 conversation?

18 A (Krimm) Yes.

19 Q You say that you went on there afterwards --

20 MR. FLYNN: Excuse me, I think you interrupted Mr.
21 Krimm --

22 MR. BACKUS: Oh, I'm sorry.

23 MR. FLYNN: -- I think he had something more to add.

24 THE WITNESS: (Krimm) No, that's all right.

25

1 BY MR. BACKUS:

2 Q You say you then went on to have a conversation with
3 Mr. Thomas yourself?

4 A (Krimm) Yes.

5 Q What was that about?

6 A (Krimm) It was about our working relationship.

7 Q Well, did it involve anything about the FEMA role in
8 reviewing the Seabrook emergency plans, either the New
9 Hampshire or the ones you might be getting from Massachusetts?

10 A (Krimm) I don't recall that that subject came up.
11 We talked for about an hour and a half, and I will have to give
12 you a little history. I hired Ed Thomas in 1974 when we were
13 setting up our -- I was responsible for setting regional
14 offices for the National Flood Insurance Program in the Federal
15 Insurance Administration.

16 Q I'm sorry, I missed that?

17 A (Krimm) I'm going to have to give you a whole
18 history in order to answer your question.

19 MR. FLYNN: Excuse me. Your Honor, I'd like to
20 suggest that this answer is not responsive to the question.
21 The question was, whether the subject of Seabrook or the
22 adequacy of the New Hampshire plan came up, and obviously, the
23 answer relates to the discussion about the working relationship
24 to Mr. Thomas. I submit not only is it not responsive to the
25 question, but it's irrelevant.

1 JUDGE SMITH: Do you want to --

2 MR. BACKUS: I just didn't hear what the witness
3 said. There wasn't a question pending.

4 JUDGE SMITH: Well, he began to talk about his
5 working relationship with Mr. Thomas, and how he hired him
6 under the Flood Insurance Program in the Federal Insurance
7 Agency.

8 MR. BACKUS: Okay.

9 BY MR. BACKUS:

10 Q Is that correct?

11 JUDGE SMITH: And that's when Mr. Flynn has objected
12 now to this being nonresponsive.

13 MR. BACKUS: All right. I'm just trying to put it in
14 context. And I wanted to make sure I -- I thought I heard what
15 you just said.

16 BY MR. BACKUS:

17 Q You said, you hired Mr. Thomas in 1974; is that
18 right, Mr. Krimm?

19 MR. FLYNN: Your Honor, if we're about to get into
20 the history of the relationship between Mr. Krimm and Mr.
21 Thomas I suggest that it's irrelevant and I object.

22 MR. BACKUS: Well, I would respectfully differ, Your
23 Honor. We've had a great deal of testimony yesterday from this
24 panel on the relationship between people here and people in
25 Region 1, particularly Mr. Thomas, so I think it's certainly

1 part of the testimony that has been presented.

2 JUDGE SMITH: The testimony, as I recall, concerning
3 Mr. Thomas was simply his attendance at meetings, and it had
4 nothing to do with his institutional relationship with
5 headquarters. I don't know if you've covered any direct
6 examination, that I recall.

7 MR. BACKUS: Well, I think I am; there was a great
8 deal of testimony, admittedly most of it came from Mr.
9 McLoughlin that we have a chain of command here about when and
10 under what circumstances Washington, and I guess that primarily
11 Dr. McLoughlin would overrule the Regional RAC Chairman.

12 JUDGE SMITH: Okay. Well, that has little to do with
13 1974 and flood insurance. Unless you believe that that
14 relationship is relevant to the decision to -- which was
15 testified to yesterday -- to modify FEMA's position and to have
16 another official present FEMA's position.

17 MR. FLYNN: Your Honor, may I, your comment is
18 entirely appropriate, but relevant is the term of art. And to
19 put it in layman's terms, I think what you're suggesting is,
20 the question to be answered is whether that relationship
21 influenced the decision.

22 JUDGE SMITH: That's right. If it --

23 MR. FLYNN: Well, I want the witness to understand
24 that.

25 MR. BACKUS: Now --

1 JUDGE SMITH: I don't say influence. I mean, let
2 relevant be there. That's a term that I'm sure that Mr. Krimm
3 understands.

4 MR. BACKUS: Your Honor, this all came up because Mr.
5 Krimm says he was there at the time of this conference in
6 Colorado, he spoke, and he himself wanted to explain something
7 about going back to 1974 and hiring Mr. Thomas. I'm just
8 trying to give him an opportunity to explain that.

9 MR. DIGNAN: Your Honor --

10 JUDGE SMITH: We also want Mr. Krimm to understand,
11 and the panel to understand that we are interested in only
12 matters relevant to the issues before us; and if it's not,
13 well, he knows whether it's relevant or not and I think he has
14 all the instructions he needs.

15 MR. DIGNAN: Your Honor, could I point out, unless I
16 missed something, the witness testified in response to the
17 question before the one that's before him now, that the
18 conversation he had with Mr. Thomas did not mention Seabrook or
19 anything, but dealt with his business relationship, as I
20 understood it, with Mr. Thomas.

21 Now, right there I think even asking him, well, what
22 was said, is no good without a further foundation as to how
23 that relationship has something to do with Seabrook.

24 JUDGE SMITH: Or Mr. Thomas.

25 MR. DIGNAN: Or Mr. Thomas. And I don't see why the

1 relationships between government officials, unless they're
2 demonstrated to be with preliminary questions to be totally
3 relevant to the subject at hand, has any place in this
4 courtroom.

5 JUDGE SMITH: I might also point out that there is a
6 Privacy Act privilege to federal employees concerning their
7 personnel records which is for the benefit of the employee and
8 not for the government, that privilege like any privilege can
9 be set aside when it is necessary to a decision. So we just
10 don't go lightly into Mr. Thomas's personnel background unless,
11 and I'm sure Mr. Krimm understands now and the panel
12 understands, unless it is relevant to Mr. Thomas's role and the
13 issues about which you are testifying. I think that's enough
14 guidance for them.

15 MR. FLYNN: Perhaps you could answer that particular
16 question before you go on.

17 MR. BACKUS: Oh, for heavens sake, can't I ask my own
18 questions?

19 JUDGE SMITH: Well, it --

20 MR. FLYNN: What's the pending question?

21 MR. BACKUS: The pending question is a very simple
22 one and it came up on testimony that's already been delivered.
23 I was just asking Mr. Krimm if in fact he was testifying that
24 it was through him that Mr. Thomas was hired, I gather in 1974.
25

1 BY MR. BACKUS:

2 Q Is that correct?

3 A (Krimm) That's correct.

4 Q Okay. Now, we have here as Mass. AG 34 this flow
5 chart for the state and local programs and support directorate.
6 And you, Mr. Krimm are on here as the Assistant Associate
7 Director of the Office of Natural and Technological Hazards
8 Programs; is that correct?

9 A (Krimm) That's correct. Yes, sir.

10 Q How long have you held that position?

11 A (Krimm) Since September 1981.

12 Q Okay. Now, what is your role in relating to the
13 regions?

14 A (Krimm) In each regional office there is a Natural
15 and Technological Hazards Division. The head of that division
16 would be equivalent to my counterpart in the region.

17 Q Okay.

18 A (Krimm) And we deal with them on all of the
19 programs. In most cases, if I would deal with the chief of
20 that division, when I would call.

21 Q And in the case of --

22 A (Krimm) And also members of my staff who deal with
23 the division chief or staff members, depending on the
24 situation.

25 Q So -- and in Region 1 that person who is the chief of

1 that division for Region 1 is Mr. Edward A. Thomas; is that
2 correct?

3 A (Krimm) That's correct, yes.

4 Q And how long has he had that position?

5 A (Krimm) I believe also since September 1981. I
6 think that -- and I'd ask Mr. McLoughlin -- Dr. McLoughlin to
7 correct it, but I think the region -- regional offices were set
8 up in that same format about that time.

9 Q Okay.

10 A (Peterson) Would it be appropriate if I could have a
11 moment to confer with Mr. Krimm?

12 JUDGE SMITH: Do you object?

13 MR. BACKUS: No.

14 THE WITNESS: (Peterson) Thank you very much.

15 (Witnesses conferring)

16 BY MR. BACKUS:

17 Q Is there something you want to add as a result of
18 your conference with Mr. Peterson?

19 A (Krimm) Yes, perhaps just to clear up. I said that
20 Mr. Thomas or any of the NTH chiefs in the region are my
21 counterpart; they're not equal in position and grade, just to
22 make that very clear.

23 Q Okay. So the position in Washington outranks, in
24 civil service parlance the regional positions?

25 A (Krimm) Yes, that's correct. And also, in my

1 position I do recommend policy.

2 Q Okay. Now, the Radiological Emergency Preparedness
3 Program or REP program comes within your office; is that right?

4 A (Krimm) That's correct.

5 Q And insofar as the regions, Technological and Hazard's
6 Divisions are dealing with that program, the reporting is to
7 you; is that right?

8 A (Krimm) No. The regions report to the regional
9 director.

10 Q All right.

11 A (Krimm) The regional director in turn reports to the
12 director of the agency.

13 Q Okay. What then is the reporting relationship
14 between Mr. Thomas, as head of that division in the region, and
15 you, as head of that office in Washington?

16 A (Krimm) There is no reporting authority.

17 Q Was there frequent discussions between you and Mr.
18 Thomas concerning radiological emergency planning for Seabrook
19 starting in 1981 or 1982?

20 A (Krimm) There were periodic discussions. He also
21 talked to members of my staff. And basically, there is a
22 division chief, and he would have talked to the division chief
23 more frequently than he talked to me in that regard.

24 Q And that would be?

25 A (Krimm) Okay. From -- in 1981 the division chief

1 was Vernon Adler, and I believe he was division chief to some
2 time in 1982. After that Gary Johnson served in an acting
3 capacity. And in late 1983 or early -- I'm sorry, it was early
4 1984, approximately March of 1984 Robert Wilkerson was
5 appointed to that position. He was the division chief until
6 June 30th of 1987. From July of 1987 until December 21st, 1987
7 I was acting division chief. From December 21st, 1987 until
8 some time in April of 1988 Dr. Joan Hock was the division
9 chief. At the current time I am acting division chief as well
10 as the associate director for the office.

11 Q So from July 1 of '87 you were the acting division
12 chief?

13 A (Krimm) Until December 21st, 1987.

14 Q And during that period would you be the person that
15 Mr. Thomas would primarily report to about REP matters
16 concerning Region 1?

17 A (Krimm) Not necessarily. He would talk to me about;
18 it if I was unavailable he would sometimes talk to members of
19 my staff.

20 Q Okay. Now, in turn, when you need to report on
21 what's going on at the Office of Natural and Technological
22 Hazards programs, who do you report to?

23 A (Krimm) I report to Mr. Peterson directly. At times
24 I will inform Mr. McLoughlin if Mr. Peterson is not available.

25 Q And I assume that during the time, before Mr.

1 Peterson was confirmed and sworn in, and Mr. McLoughlin was the
2 acting --

3 A (Krimm) I reported to --

4 Q -- director, you reported to him?

5 A (Krimm) That's correct.

6 Q All right.

7 Now, Mr. McLoughlin, let me turn to you and your
8 testimony concerning the meeting on June 2 of 1987. Do you
9 recall describing a meeting at FEMA on that date?

10 A (McLoughlin) I do.

11 Q And that was in Washington FEMA headquarters?

12 A (McLoughlin) That's correct.

13 Q And who was present at that meeting?

14 A (McLoughlin) Let me see if I can tell you exactly
15 what I said yesterday. Bob Wilkerson, Craig Wingo, Dick Krimm,
16 Ed Thomas, myself, and I indicated yesterday I was not certain
17 whether or not Bill Cumming was at that meeting of our legal
18 staff, I simply failed to check that with him; didn't have an
19 opportunity when it occurred to me.

20 Q All right. Now, you said yesterday at the transcript
21 page 12673: "That at that meeting there was some discussion of
22 alternatives to resolve the beach issue at Seabrook;" is that
23 right?

24 A (McLoughlin) There -- I think I testified, I'd have
25 to check the record, that I was aware of those, and that they

1 also, as far as I can recall, were discussed at that meeting;
2 yes.

3 Q You mentioned on that page of the transcript
4 something about additional shelters being built, and you even
5 mentioned skating rinks?

6 A (McLoughlin) That's correct.

7 MR. FLYNN: Excuse me, what line are we on?

8 MR. BACKUS: That's nine.

9 MR. FLYNN: Thank you.

10 MR. TURK: May I ask for one clarification. This is
11 the internal FEMA meeting on June 2?

12 MR. BACKUS: That's right.

13 BY MR. BACKUS:

14 Q Who, I take it these were to be enclosed skating
15 rinks?

16 A (McLoughlin) Mr. Backus, I'm not sure, to be honest
17 about it. And certainly the option of shelter, additional
18 shelter was discussed at that meeting. The question -- the
19 only question I had in my mind is whether or not in that
20 meeting we talked about them as potentially ice skating rinks.
21 But I certainly had heard, and was aware of that being an issue
22 that was discussed.

23 Q In other words --

24 A (McLoughlin) I don't know whether it was seriously
25 considered or not.

1 Q In other words, somebody brought up the issue of
2 constructing additional facilities of some kind to provide
3 shelter?

4 A (McLoughlin) We discussed a series of options, and
5 as far as I can recall the sheltering -- additional sheltering
6 was considered to be an option; yes.

7 Q And who brought that up?

8 A (McLoughlin) I don't know. I simply don't know.

9 Q Do you have any recollection of whether anybody said,
10 this has been discussed by the Applicant or was this just
11 something that came up out of FEMA's head or somebody at FEMA's
12 head?

13 A (McLoughlin) Mr. Backus, I'd tell you if I
14 remembered it, but I don't.

15 Q You also mentioned at that same page, you said:
16 "There were issues of alternate evacuation routes that were
17 considered."

18 A (McLoughlin) Yes.

19 Q Now, what's that mean, building new roads?

20 A (McLoughlin) The -- boy, stretch a long ways back,
21 where a year ago, certainly no notes -- I made no notes in that
22 meeting. To the best of my recollection we talked about those
23 as options. I don't recall any in-depth exploration of
24 alternative evacuation routes. I clearly said that yesterday
25 and I acknowledge that. And it was -- and I do remember it as

1 part of that meeting. But if you mean by that, did we consider
2 Route A versus Route B, I don't recall any discussions of that
3 kind.

4 Q Well, do you recall any discussions about whether
5 this meant additional routes rather than merely preferring
6 Route A or Route B?

7 A (McLoughlin) No, I don't.

8 Q Okay. You went on to say: "And I may be in error on
9 this, I may, and I acknowledge that up front, but my belief is
10 that I also had heard that the state might litigate the special
11 containment features at Seabrook even if the NRC decided not to
12 do that."

13 A (McLoughlin) That's correct.

14 Q Do you recall making that statement yesterday?

15 A (McLoughlin) Yes, I said that.

16 Q Now --

17 A (McLoughlin) Its --

18 Q -- back there on June 2 you had said that you were
19 aware by that time that the Bores 1 memorandum that we've all
20 come to know and love, was going to be revised to remove
21 references of the containment features at Seabrook; is that
22 right?

23 A (McLoughlin) That's correct.

24 MR. FLYNN: Let the record reflect that Mr. Backus
25 does not speak for everyone in saying that we love Bores 1,

1 that's an editorial comment.

2 MR. BACKUS: Well, let the record show I was smiling
3 when I said that.

4 MR. FLYNN: Thank you.

5 MR. BACKUS: It was a jest.

6 MR. DIGNAN: I liked it.

7 (Laughter)

8 BY MR. BACKUS:

9 Q So, everybody at the meeting understood that the
10 containment references in Dr. Bores's memo that had gone to the
11 RAC earlier that year was going to be revised and containment
12 features were going to be eliminated; is that right?

13 A (McLoughlin) That the containment features were
14 eliminated from the memo, yes.

15 Q Right?

16 A (McLoughlin) That's correct.

17 Q Okay. And you think you heard that somebody at the
18 state might litigate the special containment features at
19 Seabrook even if NRC decided not to do that?

20 A (McLoughlin) I said that, and I stand by that. I
21 clearly acknowledged yesterday that I don't recall exactly how
22 I knew that, but if I'm going to tell you what I knew, that's
23 exactly right.

24 Q Well, do you recall who said anything about the state
25 maybe litigating that issue?

1 A (McLoughlin) No, I do not.

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2 (Continued on next page.)

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1 And in fact, to be honest about it, if I'm going to
2 be candid with you, I don't know for sure if I got it in that
3 meeting or whether or not I got it from other discussions that
4 were prior to that meeting. It's not as if, you know, you come
5 by information and recall it specifically in that meeting.

6 I come by a lot of information in the course of
7 discussions with a lot of people. And I suspect -- I wish I
8 knew because I'd like to give you a direct answer, but I simply
9 don't.

10 Q Well, were you aware by that time of the fact that
11 there had been a petition filed by the Seabrook Applicants to
12 reduce the emergency planning zone at Seabrook from 10 miles to
13 one mile?

14 A (McLoughlin) When you -- what I don't want to do is
15 get caught up in the fact of precisely what I knew whether or
16 not it was an Applicants's -- you know, the Applicant had made.

17 Q Right.

18 A (McLoughlin) But I was aware of an issue that dealt
19 with the reduction of the emergency planning zone from 10
20 miles, I thought it was down to two miles, but it may have been
21 one mile.

22 Q All right. Were you aware that by April, the end of
23 April, this Board had issued a decision which, in substance,
24 denied the request? Were you aware of that?

25 MR. FLYNN: In June?

1 MR. BACKUS: In June.

2 THE WITNESS: (McLoughlin) In June. I just don't
3 know.

4 BY MR. BACKUS:

5 Q Okay. And then can you relate in any way this memory
6 you have about the state litigating containment to that issue
7 of the shrinking of the emergency zone and the decision of this
8 Board on that?

9 A (McLoughlin) Well, no. You know, the only thing I
10 could do is to begin to speculate. Your question goes to what
11 consciously I remember right now about that issue. I simply
12 have to tell you directly that I don't recall that much about
13 it.

14 But I certainly indicated yesterday that I was not
15 unaware of that, and I've got a couple of things in my mind
16 right now, but if I say them, my guess is they are speculation,
17 and I want to clearly label them if you ask me to do it,
18 because I -- I have a sensing of why that would have happened,
19 and I think that is part of the specula -- how I deal with it
20 from a speculation standpoint.

21 But in specific terms, the answer to that is, no, I
22 don't know.

23 Q Okay. Well, if you was to have a sense of why that
24 would have happened, understanding that this is a long time ago
25 and memories are less than perfect with the passage of time,

1 would you give us that?

2 MR. DIGNAN: I object. The witness has already
3 labeled that what he's about to give us is pure speculation.
4 And at that point, I object.

5 JUDGE SMITH: We --

6 MR. BACKUS: I think --

7 JUDGE SMITH: -- have to accept only reliable,
8 probative, and substantial evidence. And the objection is
9 sustained.

10 MR. BACKUS: All right.

11 BY MR. BACKUS:

12 Q Mr. Krimm, I understand that you were at this meeting
13 on June 2nd.

14 A (Krimm) Yes, sir.

15 Q Do you have any recollection of anybody at this
16 meeting making any mentioned about the state litigating
17 Seabrook containment features?

18 A (Krimm) I'm sorry, I don't.

19 Q Do you have any notes of that meeting?

20 A (Krimm) Regretfully I don't.

21 Q Okay. Do you know of anybody who does have notes of
22 that meeting?

23 A (Krimm) I don't, no.

24 MR. BACKUS: All right. Just a second.

25 THE WITNESS: (Krimm) Your Honor, excuse me, would

1 it be --

2 JUDGE SMITH: Wait until they get done.

3 (Counsel confer.)

4 JUDGE SMITH: All right, wait a minute.

5 Mr. Krimm.

6 THE WITNESS: (Krimm) Would it be possible to take a
7 short break?

8 JUDGE SMITH: Certainly. Let's take a -- well, would
9 this be a good time to break for lunch or not?

10 MR. BACKUS: Sure.

11 JUDGE SMITH: Well, let's take a short break and --
12 well, since we're broke we might as well break for lunch and
13 come back -- return at 12:30.

14 MR. BACKUS: Twelve-thirty?

15 JUDGE SMITH: Is that satisfactory? That's short,
16 but is that satisfactory?

17 MR. BACKUS: Yes, sure, fine.

18 (Whereupon, at 11:44 o'clock a.m., the hearing was
19 recessed, to resume at 12:30 p.m., this same day, Thursday, May
20 26, 1988.)

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A F T E R N O O N S E S S I O N

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(12:32 p.m.)

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JUDGE SMITH: Before we begin, there is two items that should be stated on the record.

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One is, we had forgotten to mention that on Monday afternoon we drove over to the beach area, and drove around in a very unstructured, wandering way just simply looking, mindful of Mr. Backus's request that we do that. The fact that it was a beautiful spring day had absolutely nothing to do with it.

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(Laughter.)

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JUDGE SMITH: But it took away some of the burden of the duty, however, and that we report.

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We also have not put on the record that we started late this morning, at 10:30, to provide additional time for preparation of the cross-examination. And the Board has instructed the parties that his phase of the hearing must be concluded by 3:30 Friday afternoon, tomorrow afternoon, May 27th.

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MR. TURK: Your Honor, in that regard, I'd just like to note that I probably will have a few questions totalling --

JUDGE SMITH: That's correct, and we have to provide for some additional questioning, and possible redirect. So the allocation of time will have to be taken into account and we'll remain until we see what the needs are.

1 Whereupon,

2

RICHARD KRIMM

3

GRANT PETERSON

4

DAVID MCLOUGHLIN

5 having been previously duly sworn, were recalled as witnesses
6 herein, and were examined and testified further as follows:

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CROSS-EXAMINATION (Continued)

8

BY MR. BACKUS:

9 Q All right, Mr. Peterson, I have one further question
10 that came up on the resume of your background that is in the
11 FEMA Newsletter which was marked as a Mass. Exhibit 33.

12 It states there that you had served in the Air Force
13 from 1961 to 1966. And what was your rank, sir?

14 A (Peterson) I was an enlisted man, and I came out a
15 top sergeant.

16 Q All right. And it says your duties were special
17 weapon system monitor. What did that entail?

18 A (Peterson) I will tell you as much as I think I can
19 tell you without getting into classified arenas. I worked on
20 and with nuclear weapons. It was part of the NATO response
21 where the United States was providing weapons systems to NATO
22 military aircraft.

23 The duties entailed maintenance of the weapon
24 systems, maintenance of what are called fire control systems,
25 which are the aircraft electronics for weapon-associated

1 equipment. It included -- these were fusion type of weapons.
2 It included the handling of radioactive materials associated
3 with the weapon, including capsule insertions, which I did, and
4 included training the British, or the NATO personnel in proper
5 handling techniques for mating to aircraft.

6 Q Okay. So it had something to do with the assembly
7 and preparation of weapons, including nuclear weapons, for
8 association with delivery systems?

9 A (Peterson) Strictly nuclear weapons.

10 Q All right.

11 A (Krimm) And the fusing of those.

12 Q All right. Now, Mr. McLoughlin, you've been
13 testifying about the meeting of June 2nd that you discussed
14 yesterday. And at that meeting was Mr. Thomas present?

15 A (McLoughlin) Yes, he was.

16 Q All right. Was there another meeting on June 2nd,
17 Mr. McLoughlin, that you're aware of involving personnel from
18 NRC?

19 A (McLoughlin) Not that I was in. Dick Krimm may be
20 able to answer that question if there was another meeting. But
21 I was not in, as I recall, another meeting on June 2nd with any
22 NRC people.

23 Q Mr. Krimm, was there a meeting on June 2nd involving
24 personnel from NRC?

25 A (Krimm) Yes, there was.

1 Q And was Mr. Thomas also at that meeting?

2 A (Krimm) I believe he was.

3 Q And were you at that meeting?

4 A (Krimm) Yes.

5 Q And at that meeting did you discuss the fact that
6 FEMA's position as it was intended to be filed to meet the
7 deadline on June 4th was going to be affected by the
8 anticipated change in the Bores memorandum?

9 A (Krimm) I believe that was discussed at that
10 meeting.

11 Q And was the NRC people that were in attendance at
12 that meeting advised of what the FEMA position was going to be
13 or probably going to be when it was filed on June 4th?

14 A (Krimm) Yes, to the best of my recollection.

15 Q All right. Now, Mr. McLoughlin, at the meeting on
16 June 2nd, I think you said you were uncertain whether Mr.
17 William Cumming, one of your attorneys, was there or not; is
18 that right?

19 A (McLoughlin) That's correct.

20 Q Okay. In any event, you apparently had some
21 understanding that he had some legal opinions about the FEMA
22 position that you were anticipating taking on June 4th; is that
23 right?

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

25 Q And you said yesterday that you thought the

1 programmatic thrust was the proper way to go in regard to your
2 position.

3 A (McLoughlin) That's correct.

4 Q The FEMA position.

5 A (McLoughlin) That's correct.

6 Q Okay. And by that do you mean to indicate, sir, that
7 as far as you were concerned that beyond the legal issues that
8 Mr. Cumming was presenting to you, you felt that you had a
9 program responsibility associated with the protection of the
10 citizens in the Seabrook area, particularly on the beaches?

11 A (McLoughlin) Yes.

12 Q All right. So you had a concern about taking an
13 appropriate position that went beyond the legal concerns that
14 Mr. Cumming was discussing?

15 MR. FLYNN: Excuse me. I'm not sure I heard the
16 question correct. You said it went beyond legal concerns?

17 MR. BACKUS: Right, right.

18 THE WITNESS: (McLoughlin) I don't want to give the
19 impression that the legal issues were not consistently in my
20 mind and being sure that whatever we did was legally
21 defensible, supportable.

22 But it is also true, as you're implying, that my
23 belief was and still is, for that matter, that if we can deal
24 with the substantive issues that are involved with it, that we
25 ought to try to do that. After all, we are in the business of

1 trying to provide advisory, consultive role to the NRC on the
2 adequacy of offsite preparedness, and that's what was -- that's
3 our mission and that's what I was trying to accomplish.

4 BY MR. BACKUS:

5 Q All right. Now you've made it very clear that in
6 regard to the filing of the FEMA response to contentions and
7 statement of positions on June 4th, that was done with your
8 concurrence; is that right?

9 A (McLoughlin) That's correct.

10 Q And at that time you were the acting director of the
11 state and local program and support directorate.

12 A (McLoughlin) That's correct.

13 Q Okay. And you had the authority at that time to
14 finally sign off, if you will, on what the FEMA position would
15 be; is that correct?

16 A (McLoughlin) That's correct.

17 Q Now, you testified that the next day, June 5th, you
18 got a call from Governor Sununu.

19 A (McLoughlin) That's correct.

20 Q Was this the first time Governor Sununu had called
21 you in connection with FEMA's activities in regard to Seabrook?

22 A (McLoughlin) It's the first time that I can recall
23 that he called me in the capacity. It is not the first time
24 that I talked to him on the phone. He had called earlier,
25 several months earlier to talk to Sam Speck, who was -- who was

1 the associate director at that time. And since Mr. Speck was
2 not in, I did take the call in that case.

3 Q Okay. And was that generally in regard to the issue
4 of when the exercise that was eventually held in February of
5 '86 would be held, or was that in regard to something else?

6 A (McLoughlin) Boy, that's a couple of years ago. It
7 certainly was about Seabrook; that I know and that I would
8 acknowledge.

9 The specifics of whether or not it was about the
10 exercise per se, I just don't know.

11 Q Okay.

12 A (McLoughlin) I just don't know.

13 Q Do you remember on -- so you've talked to him twice,
14 up at least to June 5th.

15 A (McLoughlin) That's correct.

16 Q Do you remember anything about what he said on the
17 first occasion he called?

18 A (McLoughlin) Well, he was -- the Governor was
19 concerned about the fact that -- that we keep him -- that he
20 wanted to be sure that he was aware of where we stood at any
21 point in time with respect to the actions we were taking and
22 the comments that we were making on the plans that he
23 submitted.

24 And he did indeed have some concerns, I think, about
25 the way in which our processes were operating. And we talked

1 about those. From my perspective, they were entirely
2 appropriate questions that he was asking. That's about -- Mr.
3 Backus, that's about all I can remember of it.

4 Q Okay. Now, under your regulations as I understand
5 it, Mr. McLoughlin, when a state submits a radiological
6 emergency plan to FEMA for review, it is required to have a
7 certification from the governor or his representative that
8 those plans in the state's opinion provide reasonable assurance
9 of adequate protection; is that right?

10 A (McLoughlin) That's correct.

11 Q And, of course, Governor Sununu or his designee had
12 done that in regard to the plans that were the subject of the
13 exercise, and the plans that have become known here as Revision
14 2, correct?

15 A (McLoughlin) Well, I tell you, I can't -- I don't
16 know that I have ever specifically asked that question. That's
17 a question that is generally handled in our regional office.

18 If you're asking me do I have specific knowledge of
19 the Governor having signed off on a set of plans, Mr. Backus, I
20 do not have.

21 My belief is that if there was anything improper with
22 respect to what we were doing at that point, that that would
23 have been called to my attention, and it's just not something I
24 would normally have checked on, because it's a procedural
25 matter and --

1 Q All right.

2 A (McLoughlin) Yes.

3 Q So, although you have no personal knowledge of this,
4 in compliance with the regulations you would expect that that
5 would have been done in regard to the submission of the New
6 Hampshire plans?

7 A (McLoughlin) That's correct.

8 Q All right. Now on the June 5th occasion the call
9 came to you?

10 A (McLoughlin) Yes, the call was to me.

11 Q And --

12 A (McLoughlin) The call, I don't think, came
13 personally to me. The call was to essentially the associate
14 director of state and local program support office, and I was
15 the acting one. The secretary referred it to me.

16 Q And what did the Governor say to you?

17 A (McLoughlin) He was -- he had just found out about
18 our filing on June 4th, and he was upset that -- concerned --
19 upset's probably -- let me just use the word "concerned" if I
20 can. He was concerned that the -- that he had found out about
21 it through the press, and he felt that that was inconsistent
22 with his request to us to know kind of where we stand relative
23 to the New Hampshire plan.

24 Q Did he say anything about these are very good plans,
25 or these plans have been worked on a long time, or anything

1 like that?

2 A (McLoughlin) I simply don't remember.

3 Q All right. In any event, I take it that as a result
4 of his call on June 5th, you felt it was appropriate to have a
5 letter written responding to -- as a response to that call.

6 A (McLoughlin) That's correct.

7 Q And am I correct that that letter, as it eventually
8 went out, was this letter of June 11th, signed by Mr. Thomas,
9 to Mr. Richard Strome, Director of New Hampshire Civil Defense
10 Agency?

11 A (McLoughlin) That is correct.

12 MR. BACKUS: Okay, I'd like to have that made
13 available and marked.

14 Just for the record, this is already a part of Staff
15 Exhibits 2 and 2-A as one of the attachments to that material
16 that was furnished by the NRC Staff.

17 At this time I would like to have it separately
18 marked?

19 JUDGE SMITH: Why? I mean, can't you use it the way
20 it is?

21 MR. BACKUS: Well, all right. I guess I can.

22 JUDGE SMITH: I think that would be better.

23 JUDGE HARBOUR: Is that global Page 70?

24 MR. BACKUS: I don't have that pagination in front of
25 me.

1 MR. HUNTINGTON: Yes, it is.

2 MR. BACKUS: All right, thank you.

3 BY MR. BACKUS:

4 Q Now, Mr. McLoughlin, did you participate in the
5 drafting of this letter?

6 A (McLoughlin) No, I did not. I was -- as I recall, I
7 was about ready to leave for, it was either travel or a
8 classified assignment that I have. I'm not sure exactly what,
9 but I was leaving the office, and I asked Mr. Wilkerson, in
10 particular, who was -- who works for Mr. Krimm, to be sure --
11 to begin the development of that letter, which did indeed
12 happen.

13 Q So this letter had its genesis in Washington, in the
14 Washington headquarters?

15 A (McLoughlin) The -- we generally, as I recall,
16 drafted the letter, and Ed Thomas, who ultimately signed it, Ed
17 was out at a conference on the West Coast, and we -- or else
18 was on annual leave maybe on the West Coast -- and we tracked
19 Ed down, to be honest about it, got in touch with him, and I
20 believe sent the letter to him, or had it datafaxed to our
21 regional office, I'm not exactly sure how we got it to him, so
22 that he would have an opportunity to review it as it was
23 prepared.

24 My view is it's entirely appropriate. I was the one
25 who committed to the Governor to respond to this, and we would

1 have normally asked Ed Thomas to send this, or Henry Vickers.
2 I would not have cared who signed that. Normally it should
3 have gone, though, from our regional office to the state.

4 Q And so even though it started in Washington, that's
5 the reason it was sent out over Mr. Thomas's signature?

6 A (McLoughlin) That's correct.

7 Q Okay. Did this letter as it went out --

8 A (McLoughlin) Excuse me, Mr. Backus.

9 I just -- I had asked Mr. Krimm that if anything I
10 have said is different from his recollection, to correct me on
11 that.

12 Is our recollection same as mine?

13 Q Well, I'm gong to come back to --

14 A (McLoughlin) All right, very good.

15 Q -- Mr. Krimm on this anyhow.

16 A (McLoughlin) Very good. Okay.

17 Q Did this letter, as it went out over Mr. Thomas's
18 signature, have your approval?

19 A (McLoughlin) No. I did not -- as I recall, I did
20 not see that letter before it went out. And the reason is I
21 knew I wasn't going to be able to see it when I left. That is
22 why I set in process a -- set in motion a process that was
23 going to assure that the letter did get to the Governor. I did
24 not consider this letter, you know, a terribly sensitive
25 letter. What I committed to the Governor was that we would

1 send to him our position at the time, and that's what I think
2 we accomplished.

3 Q Okay. You have since seen this letter, I take it.

4 A (McLoughlin) Yes, I have.

5 Q And is there anything about this letter that would
6 have prevented you from approving it since you've seen it?

7 MR. FLYNN: I would ask that the witness read the
8 letter, and take as much time as necessary to satisfy himself
9 of the correctness of his answer.

10 (Pause.)

11 MR. BACKUS: While Mr. McLoughlin is reading this, I
12 could go on with some questions about this to Mr. Krimm if
13 nobody objects just to perhaps save a little time.

14 MR. FLYNN: I would not --

15 JUDGE SMITH: Unless Mr. McLoughlin is already quite
16 familiar with this letter, there are a lot of things in it that
17 I wonder if it's fair to ask him to see if he agrees with all
18 aspects of it with just a brief reading. It's --

19 MR. BACKUS: Well, all right. Let me go on to Mr.
20 Krimm then.

21 MR. TURK: Well, could I suggest, since Dr.
22 McLoughlin may want to listen to Mr. Krimm's answers as well,
23 you simply lay this aside until tomorrow morning, let him
24 review it overnight. It is a four-page letter. It is single-
25 spaced and has been the subject of extensive hearings already.

1 JUDGE SMITH: It's a thought-intensive letter.
2 There's a lot of ideas in it, and they are not simple ideas.
3 And I don't think it's fair to ask him --

4 MR. BACKUS: Well, I think it is fair to ask him,
5 Your Honor.

6 JUDGE SMITH: Well, okay, it's --

7 MR. BACKUS: He's testified that this was generated
8 in Washington.

9 JUDGE SMITH: There's a tie on it.

10 MR. BACKUS: I think he's indicated he has a pretty
11 good familiarity with the subject of it.

12 JUDGE SMITH: Let's put it to him.

13 Do you feel comfortable in answering that question?

14 THE WITNESS: (McLoughlin) Your Honor, I do not. I
15 have some concerns and would want to think a minute about an
16 issue on the bottom of the first page where we talk about being
17 unique to Seabrook. I need to think about that for a minute
18 because of some testimony I have made.

19 There is an area on the top of the second page that I
20 want to relook at once again, and an area in the second page
21 that I have marked, and that's as far as I had gotten at the
22 moment before I -- and I haven't read beyond that.

23 JUDGE SMITH: All right.

24 THE WITNESS: (McLoughlin) I'm prepared to do it at
25 your --

1 JUDGE SMITH: All right. I think the suggestion that
2 we come back to it tomorrow is appropriate.

3 MR. BACKUS: Well, of course, I can't come back
4 tomorrow morning, but perhaps somebody else can pick it up.

5 All right, let me go on to Mr. Krimm then.

6 BY MR. BACKUS:

7 Q Mr. Krimm, this letter of June 11th, were you
8 involved in the preparation of this letter or any drafts that
9 preceded it?

10 A (Krimm) Yes.

11 Q Who else in Washington was involved in the
12 preparation of this letter?

13 A (Krimm) Robert Wilkerson.

14 Q Okay. Were there drafts of this letter that preceded
15 the final product as sent out by Mr. Thomas on June 11th?

16 A (Krimm) To the best of my knowledge, there were
17 because I worked very closely with Ed Thomas on the letter, and
18 we faxed copies back and forth. He was in Seattle, Washington
19 at the time attending a flood plain managers conference.

20 Q And as this letter went out, having in mind that you,
21 as you said, had faxed copies back and forth, did this letter
22 go out with your approval?

23 A (Krimm) The final draft?

24 Q Yes.

25 A (Krimm) I mean the final copy?

1 Q Yes, the one we've got.

2 A (Krimm) Yes.

3 Q Okay.

4 JUDGE SMITH: Mr. Backus, I'm sorry. I was thinking
5 about your problem.

6 You've asked him to express an opinion about an
7 entire large document. You have an alternative. If you have
8 something in mind, you can direct his attention to particular
9 parts of it, and then take care of it while you're still here
10 if you have something in mind.

11 MR. BACKUS: Well, we may come back and --

12 JUDGE SMITH: It's your choice. But just to ask him
13 to agree or disagree with an entire large document, or
14 unattested document like that is not right. But I just want to
15 point out to you that you can come back to it.

16 BY MR. BACKUS:

17 Q And was this letter --

18 A (McLoughlin) What is the direction to me? Am I to
19 read this tonight and to --

20 JUDGE SMITH: The way it stands now, unless Mr.
21 Backus revisits it, you should be prepared tomorrow morning
22 when you return to indicate whether you agree or disagree with
23 the letter, and why.

24 THE WITNESS: (McLoughlin) Very good.

25

1 BY MR. BACKUS:

2 Q Mr. Krimm, at the time you approved this letter in
3 its final draft, you were holding the same position you do now,
4 I take it; is that correct?

5 A (Krimm) Yes.

6 Q And so was there any higher level approvals of this
7 letter than your own?

8 A (Krimm) No.

9 Q And did you feel then and now that you were
10 authorized to approve this letter in the form in which it went
11 out under Mr. Thomas's signature?

12 A (Krimm) Yes.

13 Q Okay. Now, the version that you have in front of
14 you --

15 A (Krimm) I don't have a copy. I'm sorry.

16 Q Okay, let's get you one.

17 If I'm correct, that is a clean copy; is that so, Mr.
18 Krimm? There's no marginal notations or anything?

19 A (Krimm) The letter is dated June 11th. From what I
20 see, it's a clean copy, yes.

21 Q All right.

22 A (Krimm) Except for a little note at the top that
23 says Thomas Exhibit B, 3/24/88.

24 Q Okay. All right, now, I'm going to show you
25 another copy of that letter which is a part of NRC Staff

1 Exhibit 2 and 2-A, and in 2-A it's at global Pages 70 and 71.

2 Page global 71 or page 2 of the letter, there is a
3 sentence about midway down in the paragraph --

4 A (Krimm) I'm sorry. What page, Mr. Backus?

5 Q Page 2 of the letter. The sentence about midway down
6 in the first paragraph which says, "The availability of shelter
7 as an option in the more fast-breaking scenarios is considered
8 to mitigate the need for some hard time objective for
9 evacuation."

10 And then off to the margin on the right-hand side is
11 written the word "no" with two explanation points. Do you see
12 that?

13 A (Krimm) Yes.

14 Q Do you have any idea who wrote that?

15 A (Krimm) No.

16 Q Do you have any reason to believe it was anybody at
17 FEMA that would have written that marginal notation?

18 MR. JURK: Your Honor, Dr. Bores has already
19 indicated --

20 JUDGE SMITH: I don't know why he's asking it, but
21 don't -- if he has a cross-examination purpose, let him do it.
22 I am noting it, however, as an unproductive use of time on my
23 notes here.

24 THE WITNESS: (Krimm) Mr. Backus, I don't remember
25 this at all.

1 BY MR. BACKUS:

2 Q Okay. Did anybody from NRC ever indicate to you a
3 disagreement with the sentence in that letter, so far as you
4 know?

5 MR. FLYNN: What period of time are you talking
6 about?

7 MR. BACKUS: Anytime.

8 THE WITNESS: (Krimm) I don't recall discussing this
9 letter with anyone at the NRC.

10 MR. BACKUS: All right.

11 JUDGE SMITH: Now, Mr. Backus, I wasn't aware when
12 you asked to have the clean version of this letter marked that
13 there were differences in it. I just thought if that met your
14 purposes, use the one that's already in evidence for
15 simplicity. But I see this one has a date and it is a clean
16 version. If that is material to your case, you are certainly
17 free to --

18 MR. BACKUS: I think it would be appropriate to mark
19 the clean copies because there are some differences.

20 JUDGE SMITH: That's Massachusetts Attorney General
21 Exhibit for identification 35.

22 (The document referred to was
23 marked for identification as
24 Massachusetts Attorney General's
25 Exhibit No. 35.)

1 MR. BACKUS: And I'd like to offer it as an exhibit.

2 JUDGE SMITH: Are there any objection?

3 It's received.

4 MR. DIGNAN: Yes.

5 JUDGE SMITH: What --

6 MR. DIGNAN: Yes, there are.

7 Is it offered for all purposes, or what?

8 The 2-A, you will recall, Your Honor, that portion of
9 it, I believe, has a restriction on it as being limited to
10 historical purposes. Now what is the purpose of this offer?

11 MR. BACKUS: It is offered generally, yes.

12 MR. DIGNAN: It's offered generally?

13 MR. BACKUS: Yes.

14 MR. DIGNAN: I object.

15 JUDGE SMITH: Who elicited the information from Dr.
16 Bores that he disagreed with the statement on Page 2?

17 MR. FLYNN: Your Honor, I know that I went into that
18 on cross-examination of Dr. Bores. I don't recall if anyone
19 else did

20 MR. TURK: I believe I did some of that on direct as
21 well, Your Honor.

22 And as I recall, he indicated that that "no" was
23 addressing the entire paragraph, not just --

24 JUDGE SMITH: Our ruling will remain the same.

25 Well, what particular purpose do you have to offer

1 this in that we already have it? I mean what --

2 MR. BACKUS: We are here to determine the evolution of
3 FEMA's position, and I suggest to what bases that position has.
4 I think this letter is relevant to that issue --

5 MR. DIGNAN: I have no problem ---

6 MR. BACKUS: -- and should be admitted on those
7 issues.

8 MR. DIGNAN: I have no problem for the offer, as I
9 said, for historical purposes like the other one was; to show a
10 FEMA position. But Mr. Backus said he wanted a general offer
11 which means for the truth of the matters contained.

12 Among other things, unless the version I was given is
13 different, we have as an attachment the old FEMA position. I'm
14 not going to go along with that going in for the truth of the
15 matters contained?

16 JUDGE SMITH: This is for the reasons that FEMA has
17 offered for their change in their position.

18 (Continued on next page.)

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1 Not for the established truth and merits of those
2 reasons, but for the reasons that they have used to change.

3 MR. BACKUS: I don't see how -- I have the same
4 problem Attorney Oleskey addressed a couple of days ago, I just
5 don't think it's possible to separate those two things out.

6 JUDGE SMITH: Take your choice.

7 MR. BACKUS: Well, if it's only going to be admitted
8 for a limited purpose, that's what we'll do. My offer is for
9 it to be admitted generally; if that's denied I'll offer it for
10 the limited purpose.

11 JUDGE SMITH: All right. It's offered for the
12 limited purpose of demonstrating the basis or the reasons for
13 FEMA's evolution of its position.

14 (The document referred to was
15 received in evidence as
16 Mass. AG Exhibit 35.)

17 BY MR. BACKUS:

18 Q Now, Mr. Krimm, you say that involved in the
19 preparation of this letter, in addition to you is Mr.
20 Wilkerson?

21 A (Krimm) Yes.

22 Q Anybody else in Washington work on the preparation of
23 this letter?

24 A (Krimm) I do not recall specifically if anyone else
25 or who may have done it at this point.

1 Q How many versions went back and forth between
2 Washington and Seattle by FAX, if you know?

3 A (Krimm) It's difficult for me to remember precisely;
4 two, maybe three.

5 Q Okay.

6 A (Krimm) I'm not sure.

7 Q So, would it be fair to say that the language used in
8 this letter was carefully considered by you and Mr. Wilkerson
9 and Mr. Thomas?

10 A (Krimm) Yes.

11 Q All right. Now, on page three of the letter -- I'm
12 sorry, page two of the letter, second paragraph, the final
13 sentence is and I quote: "Although sheltering is an
14 alternative, we doubt if the use of existing public or private
15 facilities would be acceptable." Is that correct?

16 A (Krimm) That's what the letter says; yes.

17 Q And in that case, I would take it from your
18 testimony, that the "we" was intended to, in general, to refer
19 to FEMA?

20 A (Krimm) It would read that way; yes.

21 Q And insofar as the individual's concerned that make
22 up FEMA in this instance, it would be you, Mr. Wilkerson, and
23 Mr. Thomas; is that right?

24 A (Krimm) The final letter was really worked out
25 between Mr. Thomas and me.

1 Q And you?

2 A (Krimm) Yes.

3 Q All right.

4 Mr. McLoughlin, with regard to that particular
5 sentence, would you approve or would you have approved the
6 inclusion of that sentence as part of this letter?

7 A (McLoughlin) I had marked that as a specific one
8 in -- as I had -- was originally reading it. You know, you're
9 asking me to make a judgment a year later on whether or not
10 that I would have done this at that time, given the fact that
11 there are a whole intervening set of information that I now
12 have available to me.

13 To be honest about it, I don't know how to give you
14 an answer to that.

15 Q All right.

16 A (McLoughlin) I think that's honest.

17 Q All right. If you don't know, that's fine.

18 MR. TURK: For clarification, Your Honor, if Mr.
19 Backus doesn't mind. When Dr. McLoughlin said, specific one, I
20 take it he's referring to a specific concern. Do you mind if
21 we ask?

22 MR. BACKUS: I'd rather you wait.

23 BY MR. BACKUS:

24 Q Now, would it be reasonably accurate to say -- now,
25 Mr. Krimm, would it be fair to characterize this letter, as in

1 generally, restating the position that FEMA had filed on June
2 4th regarding the beach population?

3 A (Krimm) Mr. Backus, I haven't looked at this letter
4 in a long time, and I would really need to read it before I
5 answer that question.

6 Q All right. Well, in order to move along then, let me
7 just go right to the final paragraph on page two of the letter
8 which goes over to page three. In there you and Mr. Thomas
9 basically ask the state three questions that could affect
10 what's going to happen to the FEMA position that had been taken
11 on June 4th; is that right?

12 A (Krimm) May I read the letter?

13 MR. BACKUS: Sure.

14 (Pause)

15 THE WITNESS: (Krimm) I'm sorry, would you mind
16 repeating your question.

17 BY MR. BACKUS:

18 Q I was just characterizing the final paragraph, there
19 are three questions that are presented that the state could
20 answer that might have an affect on FEMA's position that had
21 been filed --

22 A (Krimm) Yes.

23 Q -- as it was filed on June 4th; is that right?

24 A (Krimm) Yes.

25 Q And the first one was, "If you could tell us, prior

1 to our filing testimony: (a) if the facts we have discussed
2 and set forth in the current FEMA position are incorrect?"
3 Right?

4 A (Krimm) That's -- yes.

5 Q Are you aware of what the facts that were set forth
6 in the FEMA position filed on June 4th were in regard to the
7 beach population?

8 A (Krimm) Yes, I remember the filing and what led up
9 to the filing.

10 Q Okay. And that was a fairly extensive document, and
11 there was a page 39 on which there were three numbered
12 paragraphs that set forth certain matters; you're aware of
13 that?

14 A (Krimm) I would really have to go back and check
15 documents.

16 MR. FLYNN: Mr. Backus --

17 MR. BACKUS: Can we furnish him with that?

18 MR. FLYNN: It's attached.

19 MR. DIGNAN: It's attached to your exhibit.

20 MR. BACKUS: Is it? Okay.

21 THE WITNESS: (Krimm) Oh, I'm sorry.

22 MR. BACKUS: Thank you.

23 THE WITNESS: (Krimm) Thank you.

24 This page --

25 MR. BACKUS: Okay.

1 THE WITNESS: (Krimm) -- it looks like it's 3- --
2 page 38 or --

3 MR. BACKUS: 38 and 39.

4 THE WITNESS: (Krimm) Okay.

5 BY MR. BACKUS:

6 Q And I was going to refer you to page 39, and this
7 isn't the first time you've seen this, is this?

8 A (Krimm) No.

9 Q Okay. You were a part of the team that prepared this
10 position, were you not?

11 A (Krimm) Yes.

12 Q And on page 39 there were three numbered paragraphs
13 and then a paragraph which follows that starts, "Therefore,"
14 and goes on; correct?

15 A (Krimm) Yes.

16 Q Okay. Am I correct that in this letter of June 17th,
17 the part I just read to you, would refer to those facts up in
18 paragraphs one through three on page 39?

19 MR. FLYNN: I'd like to get a clarification here.
20 The facts I believe you're referring to are those set forth in
21 the numbered paragraphs on page 39. The concluding paragraph
22 on that page is clearly conclusory, you're not including that
23 in the facts, are you?

24 MR. BACKUS: Not -- no, I'm not.

25 MR. FLYNN: Thank you.

1 THE WITNESS: (Krimm) I really would like to study
2 this a little bit before I answer your question.

3 MR. BACKUS: Okay.

4 (Pause)

5 MR. TURK: Could I hear the pending question over,
6 please?

7 JUDGE SMITH: All right. If he hadn't asked for it,
8 I think I would have to.

9 MR. BACKUS: All right.

10 JUDGE SMITH: Just tell us quickly. Just remind us,
11 don't go and read it back.

12 MR. BACKUS: All right.

13 BY MR. BACKUS:

14 Q I'm asking the witness, if it isn't in fact true,
15 that the question to the state about, "Whether the facts we
16 have discussed and set forth in our FEMA position are
17 incorrect," are not those facts set forth in numbered
18 paragraphs one through three on page 39 of the attached FEMA
19 position?

20 A (Krimm) I believe those are some of the facts; yes.

21 Q All right. Indeed, if you go up to the next to the
22 last paragraph on this letter, page two, the second sentence
23 says, does it not: "However, if the facts set forth in the
24 paragraphs numbered one through three of page 39 of the current
25 FEMA position are shown to be incorrect or are modified, then

1 our position will be subject to review and modification as
2 necessary;" correct?

3 A (Krimm) That language is there; yes.

4 Q All right. Now, with regard to the facts set forth
5 on page -- paragraphs one through three on page 39, did the
6 state ever advise you that any of the facts stated in those
7 paragraphs were indeed incorrect?

8 A (Krimm) I did not personally receive anything from
9 the state.

10 Q Okay. Do you know if anybody in FEMA received
11 anything from the state to indicate that the facts in those
12 paragraphs, one through three of 39, were incorrect?

13 A (Krimm) I don't know. I just don't know. I can't
14 answer the question.

15 Q Okay. Have you made any inquiry to see if there was
16 ever any response from the state to that question, about
17 whether the facts were incorrect?

18 A (Krimm) I don't recall making an inquiry.

19 Q Do you have any reason to believe, as of this date,
20 that any of the facts stated on pages 39, paragraphs one
21 through three, are incorrect?

22 MR. FLYN: Your Honor, I think we've just moved into
23 another subject area, and I raise a question about relevance.
24 The last two or three questions had to do with, had there been
25 a response from the state, to the best of Mr. Krimm's

1 Knowledge.

2 The pending question is, does he believe that these
3 facts are correct, and now we're getting into the merits.

4 JUDGE SMITH: Well, as Mr. Backus has argued all
5 along that there has to be a certain amount of overlap in
6 merits. I take his word for it that he's complying with the
7 Board's guidance that this is for the purpose of testing the
8 evolution of the change.

9 MR. BACKUS: Right.

10 MR. FLYNN: Very well, I'll withdraw the objection.

11 MR. TURK: Well, it might be appropriate to lay a
12 foundation first, and determine if these witnesses are familiar
13 with the current status of the plans, so they can make a
14 judgment.

15 JUDGE SMITH: Well, that's something that you might
16 well have done when you were examining, but Mr. Backus is doing
17 it now.

18 THE WITNESS: (Krimm) I really apologize, I have to
19 keep coming back and asking you to repeat the questions.

20 BY MR. BACKUS:

21 Q Have you become aware of any information coming to
22 you or to your knowledge, other persons at FEMA headquarters
23 that would indicate that the facts stated on paragraphs one
24 through three of page 39 are incorrect?

25 A (Krimm) From other sources?

1 Q From any source?

2 A (Krimm) Yes.

3 Q You are aware of things that would indicate some of
4 those facts are incorrect today?

5 A (Krimm) Yes.

6 Q Okay. -Which facts stated in any of these paragraphs
7 do you believe is no longer a correct statement?

8 A (Krimm) Well, in just looking, and I think it's in
9 paragraph two, and I maybe should spend more time reading it,
10 but on the question -- okay. I may have misspoken, Mr. Backus.
11 What I'm trying to drive at is that in paragraph two we talk
12 about the fact that the shelters are not adequate.

13 Information that I've received since this date would
14 indicate that sheltering is not the best protective action.

15 Q Does that --

16 A (Krimm) And that -- I'm not sure if I'm going too
17 far in saying that. You know, I've had no indication of a
18 change in the shelters per se, but I've received information
19 that sheltering is not the best protective action.

20 Q And isn't it in fact true that that is entirely
21 consistent with what went out in the letter of June 11th as set
22 forth in the last sentence on paragraph two which states:
23 "Although sheltering is an alternative, we doubt if the use of
24 existing public or private facilities would be acceptable?"

25 JUDGE SMITH: The antecedent to that is in doubt. He

1 just stated he had received information that the sheltering
2 would not be preferred. And you said, well, isn't that. And
3 are you referring to "that" on paragraph two or the "that" that
4 sheltering is -- would not be preferred?

5 MR. BACKUS: Gentlemen, I would just as soon you not
6 confer at this particular point.

7 THE WITNESS: (Peterson) Sure. Sorry.

8 MR. BACKUS: And I withdraw the question, and let me
9 ask this one.

10 BY MR. BACKUS:

11 Q I asked you, sir, if there were any facts stated here
12 that you now have reason to believe were incorrect. And, Mr.
13 Krimm, you referred me to page two and statements about --
14 well, what statement were you referring to that you might now
15 take issue with, statement of fact?

16 A (Krimm) I'm sorry, it was on page two of the
17 attachment.

18 Q Right.

19 A (Krimm) And basically, what I was saying is that,
20 this talks about sheltering, and since the time or this date of
21 this letter facts had been brought to my attention which
22 indicate that sheltering is not the best alternative.

23 Q Is there a fact stated here that suggests sheltering
24 is the best alternative?

25 A (Krimm) No, it just really discusses the shelters

1 that -- the protection afforded by sheltering in these
2 structures will definitely be less than that afforded by a
3 normal wood frame house is kind of the conclusion.

4 Q Do you agree that's a correct statement of fact, that
5 if there are unwinterized cottages and motels, quote: "The
6 protection afforded by sheltering in these structures will
7 definitely be less than that would be afforded by a normal wood
8 frame house;" is that correct?

9 A (Krimm) I'm not a sheltering expert, and I don't
10 think that -- I mean, I would really want to refer that to a
11 member of my technical staff that might be more familiar with
12 sheltering.

13 Q Do you have any reason to believe that's -- I
14 understand you're not claiming to be an expert, and I'm not
15 asking now to verify the statement, but do you, of your own
16 knowledge, have any reason to doubt that that is a correct
17 statement of fact?

18 A (Krimm) At the time this was written and based on
19 the best knowledge available, the statement was correct in June
20 of 1987.

21 Q Thank you.

22 And is there anything that you now know, from your
23 staff or anywhere else, that suggests that that is still not a
24 correct statement as of May 1988?

25 A (Krimm) We're talking just about the shelters

1 themselves; is that correct?

2 Q I'm talking about this statement that you referred us
3 to, protection afforded by sheltering in these structures,
4 which is the antecedent for that is, unwinterized cottages and
5 motel rooms will definitely be less than that afforded by a
6 normal wood frame house?

7 (Continued on next page.)

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1 A (Krimm) As of this date I do not recall receiving
2 any additional information, or I have not personally read any
3 additional information that would prove that to be incorrect.

4 Q Okay. Mr. McLoughlin, that was a correct statement
5 when made; it's a correct statement today, isn't it?

6 A (McLoughlin) That's correct.

7 Q Okay. Do you, Mr. McLoughlin, know of any statements
8 of fact in these three paragraphs, numbered paragraphs on Page
9 39 of the FEMA position filed on June 4th, that you know today
10 to be incorrect?

11 A (McLoughlin) Mr. Backus, you know that New Hampshire
12 submitted on February 11th and 19th of this year a rationale
13 for the sheltering option in response to our supplemental
14 testimony of January 25th.

15 Q Yes, I do.

16 A (McLoughlin) My believe is that when you say, we
17 understand that plans contain no sheltering, of sheltering the
18 day trippers because on summer day and so forth, clearly those
19 new plans talk about a 2 percent sheltering of the transit-
20 dependent transients. That's a mouthful, I know. But the 2
21 percent population as typically been called.

22 And it seems to me that that does modify that fact.

23 We understand the plans contain no consideration of
24 sheltering the day trippers because on summer days it's not
25 possible, et cetera. So does that modify it, in my judgment.

1 Q All right. So would it be correct to summarize your
2 answer as saying that for the 98 percent, these statements of
3 fact are still correct?

4 A (McLoughlin) That's correct.

5 Q All right.

6 A (McLoughlin) There is no sheltering for them.

7 Q All right. And we'll come back to the sheltering for
8 the --

9 A (McLoughlin) Other than the shelters that are
10 defined in the Stone & Webster study which generally talk about
11 having a -- you know, a 10 percent reduction only in the
12 inhalation dose.

13 Q All right. And you understand that the Stone &
14 Webster study has not resulted in sheltering being incorporated
15 in the plan as a protective action for those on the beach that
16 are not transit-dependent, correct?

17 A (McLoughlin) That's correct.

18 Q Okay. Now, to go back, Mr. Krimm, to these other
19 questions that were asked of the state in this letter of June
20 11th.

21 The second one was, if the State of New Hampshire is
22 considering steps which might change these facts.

23 Sir, would that mean to include such things as the
24 construction of shelters? Would that be one example of a thing
25 that would change these facts?

1 A (Krimm) Yes.

2 Q All right. Are there others that you can think of?

3 A (Krimm) Well, I -- there are many alternatives; many
4 things that could be done. And I would have to say that I know
5 the State of New Hampshire has submitted a new -- some updates
6 of the -- the annual update of Revision 2.

7 I have not been briefed on that nor have I read it.
8 I don't know what, you know, what is in that particular update.

9 Q To your knowledge, has the State of New Hampshire to
10 this time responded in a way which would indicate it is
11 considering steps which might change these facts which I think
12 we now have established are the facts set forth in Paragraphs 1
13 through 3 of Page 39?

14 A (Krimm) I have not seen anything at this point.

15 Q Have you, Mr. McLoughlin?

16 A (McLoughlin) Please restate the question, Mr.
17 Backus.

18 Q Okay, and maybe I ought to put aside the issue of
19 whether the 2 percent --

20 A (McLoughlin) Okay, very good.

21 Q -- are going to be sheltered as part of the plan.

22 A (McLoughlin) That's correct.

23 Q Apart from that, are you aware of anything that the
24 State of New Hampshire has done since June 11th which would
25 constitute the taking of steps which might change the facts

1 stated in the FEMA position on June 4th?

2 A (McLoughlin) Well, only what I referenced a minute
3 ago; their contributions on February 11th and 19th of this
4 year. Those are the only things that I am aware of.

5 Q All right. And the last one, just to wrap this up,
6 is if you are aware of intentions of anyone else to exercise
7 options to change the fact, has the State of New Hampshire ever
8 gotten back to either of you, or anybody else, to your
9 knowledge, in FEMA, with a response to that?

10 A (McLoughlin) Is that a question to me?

11 Q Sure.

12 A (McLoughlin) The answer is, no, I'm not aware of it.

13 Q Are you aware of any such thing, Mr. Peterson? I
14 mean, Mr. Krimm. Sorry.

15 A (Krimm) No.

16 Q Not to leave you out, I assume you're not either,
17 right, Mr. Peterson?

18 A (Peterson) That's a good assumption, sir.

19 Q Thank you.

20 Now, Mr. Krimm, it's clear that as of June 4th, FEMA
21 had a position and it included recognition that existing
22 shelter was not likely to make the plans acceptable, right?

23 A (Krimm) Yes.

24 Q Okay. Mr. McLoughlin, you've said this position, as
25 taken by your RAC chairman, Region 1, Mr. Thomas, and approved

1 by you would not be changed without, and I think your words
2 were "reason or cause"; is that correct?

3 A (McLoughlin) That's correct. I would not override
4 it without having been able to state a reason for overriding
5 it.

6 Q Okay. And you've made it very clear in your
7 testimony yesterday that as of June 4th, when the position was
8 filed, you had no such reason.

9 A (McLoughlin) That's correct.

10 Q Now as of that time you knew, or at least FEMA
11 already knew about the Shoreham decision that you've
12 referenced, CLI-86-13, which had come down --

13 A (McLoughlin) That's correct.

14 Q -- beforehand, right?

15 A (McLoughlin) That's correct.

16 Q That was a decision that had been made in July 1986?

17 A (McLoughlin) That's correct.

18 Q Okay. You already had the Christenbury memo to your
19 former general counsel, Mr. Spence. That had been out in June
20 of '86, right?

21 A (McLoughlin) It's Mr. Perry, Spence Perry.

22 Q Spence Perry, thank you.

23 You already had knowledge that the regional
24 assistance committee -- I noticed you're referring to Mr.
25 Peterson's briefing book.

1 Is there something you wanted to add?

2 A (McLoughlin) I was just checking the date, whether
3 or not I wanted to agree with the date. He was showing me the
4 date on the CLI-86-13.

5 And did you reference that in July of '86?

6 Q July 24, 1986; is that correct?

7 A (McLoughlin) Yes, yes, that's correct.

8 Q All right. And the Spence Perry memo is June 18,
9 1986, correct?

10 A (McLoughlin) That's correct.

11 Q Or Christenbury to --

12 A (McLoughlin) Christenbury to Spence Perry.

13 Q -- Spence Perry.

14 A (McLoughlin) Yes.

15 Q Okay. You already knew that the, or you had reports
16 that the regional assistance committee position was not the
17 same as FEMA's position.

18 A (McLoughlin) I had reports that the April 15th
19 meeting it was consistent with FEMA's position. I mean, that
20 FEMA's position and the RAC position were one and the same;
21 that the RAC supported FEMA's position as of the April 15th
22 meeting.

23 Now, and I think the answer to you question is, I'm
24 not going to agree with it because on the May 19th meeting of
25 our staff with the NRC is when we knew that they were going to

1 withdraw the Bores 1 memo.

2 Now, there was no, to my recollection, between May
3 19th and June 2, there was no intervening RAC meeting at that
4 point.

5 Q All right. So a more accurate statement would be
6 that you really didn't know what the RAC position would be
7 because there had been information before the RAC of April 15th
8 that had been withdrawn, and you couldn't know what impact that
9 would have on the opinions of the RAC members; is that a fair
10 statement.

11 A (McLoughlin) I -- yes, that seems to me to be a fair
12 conclusion, yes.

13 Q And you certainly knew at that point that the NRC was
14 revising the Bores 1 memo to delete reference to containment
15 features and risk.

16 A (McLoughlin) That's correct.

17 Q Okay. Now you mentioned, Mr. Krimm, that I believe
18 on -- if I can read my notes correctly -- on September 2, you
19 sent a memo to the NRC on containment issues and seasonal
20 closing of Seabrook?

21 Did you say that yesterday?

22 A (Krimm) No, I did not. That was in Mr. McLoughlin's
23 testimony.

24 Q Okay.

25 A (McLoughlin) Yes.

1 Q I'm sorry. We had to work with a transcript for just
2 a very brief time this morning.

3 Was it you that sent that memo then?

4 A (McLoughlin) No, no, it was a memo. I was the one
5 who referenced that memo yesterday in my testimony as an
6 element that came out of our September 1st meeting in which we
7 finalized a memo to the NRC that included in it, among other
8 things, it included in it a request for any information that
9 the NRC had relative to two issues, as I recall.

10 One was the seasonal closing, and the other had to do
11 with the containment, and if they had any information that
12 would cause us to -- that would mitigate the shelter beach
13 issue at the Seabrook facility.

14 Q All right.

15 A (McLoughlin) You know, we can -- if you don't have a
16 copy of that -- well.

17 Q Yes, we do..

18 And that is a memo of September 2 from Mr. Krimm for
19 Mr. Congel --

20 A (McLoughlin) That's correct.

21 Q -- of the NRC; is that correct?

22 A (Krimm) Yes.

23 JUDGE HARBOUR: May I have a year, please, Mr.
24 Backus?

25 MR. BACKUS: 1987. Thank you. September 2, 1987.

1 BY MR. BACKUS:

2 Q Now, in this memo, Mr. Krimm, you requested a meeting
3 to discuss the concerns addressed in that memo, correct?

4 This is on Page 2, the last -- next to the last
5 paragraph.

6 MR. TURK: Do you have a copy of that?

7 MR. DIGNAN: Is this -- is this in evidence?

8 MR. BACKUS: No. I'd be glad to have it marked.

9 MR. DIGNAN: Fine. Could I have a copy so I can, you
10 know, be abreast of what's going on?

11 MR. BACKUS: Sure.

12 MR. DIGNAN: Fine.

13 THE WITNESS: (Krimm) That's right.

14 BY MR. BACKUS:

15 Q Okay. Indeed, you requested that that meeting --

16 MR. DIGNAN: Mr. Backus --

17 JUDGE SMITH: Wait a minute.

18 MR. DIGNAN: -- if you are going to examine on the
19 memo, would you let me get a copy of it in front of me? Thank
20 you.

21 MR. BACKUS: I'm just real concerned that the clock
22 is ticking, but I apologize.

23 MR. DIGNAN: Apology is noted and accepted.

24 THE WITNESS: (Peterson) Your Honor, I've had to
25 much coffee. Would anybody mind if I slipped out for 30

1 seconds?

2 MR. BACKUS: No. Can I continue this --

3 THE WITNESS: (Peterson) Yes.

4 MR. BACKUS: Because this part does not involve you?

5 JUDGE SMITH: Go ahead.

6 MR. BACKUS: Is that all right if I continue --

7 JUDGE SMITH: Just go ahead.

8 THE WITNESS: (Peterson) Thank you.

9 (Witness Peterson temporarily leaves room.)

10 MR. BACKUS: Okay, does everybody have the memo?

11 Can I have that marked for identification? Mass. 35?

12 JUDGE SMITH: Thirty-six.

13 MR. BACKUS: Thirty-six, thank you.

14 (The document referred to was
15 marked for identification as
16 Massachusetts Attorney General's
17 Exhibit No. 36.)

18 BY MR. BACKUS:

19 Q Okay, Mr. Krimm, this memorandum went to Mr. Congel.
20 And as it says on Page 2, you requested a meeting with you,
21 which I presume is Mr. Congel, on September 10th, to discuss
22 the items mentioned above as well as any issues you may want to
23 add to the agenda.

24 Was a meeting held on September 10th?

25 A (Krimm) Unfortunately I don't have my calendar, and

1 I don't recall.

2 Q Well, was a meeting held as a response to this
3 request for a meeting?

4 A (Krimm) As I recall, there was a meeting in October,
5 and that meeting dealt with the utility plan criteria. It did
6 not answers the questions -- did not answer the questions
7 relating to Seabrook.

8 Q All right. Two of the questions that you raised in
9 this memo, and this is the last paragraph on the first page,
10 were: Special design features at the Seabrook plant such as
11 double containment; and, two, reduction of plant operations
12 during the summer months.

13 A (Krimm) That's correct.

14 Q Right?

15 A (Krimm) Yes.

16 Q And reduction of plant operations, that's what you
17 mean by seasonal closing, or what Mr. McLoughlin referred to by
18 seasonal closing; is that right?

19 A (Krimm) Yes.

20 Q You don't operate it from Memorial Day to Labor Day
21 or something like that.

22 A (Krimm) Right.

23 Q Okay. When you had this meeting, whenever it was, in
24 October, did NRC provide any answers to those questions?

25 A (Krimm) To the best of my knowledge, they did not.

1 Q All right. I notice you also requested that -- as
2 this is stated in the next to the last paragraph on Page 2 --
3 "To accomplish our goals as efficiently as possible, I suggest
4 the meeting also include Victor Stello and other staff as
5 appropriate."

6 Did Victor Stello attend the meeting in October?

7 A (Krimm) The October meeting that I have reference to
8 regarding the development of the utility plan evaluation
9 criteria, Mr. Stello did attend.

10 Q Okay. Was there ever a meeting with NRC --

11 MR. TURK: I'm sorry, I didn't hear the answer.
12 Did?

13 THE WITNESS: (Krimm) He did attend, yes.

14 BY MR. BACKUS:

15 Q Was there ever a meeting at which the issue of
16 seasonal closing and special containment features was the
17 subject that was held with NRC staff subsequent to this memo?

18 A (Krimm) No, to the best of my knowledge, it was
19 never discussed.

20 Q Okay. So, so far as you know these two concerns that
21 were raised, consideration given to special or several risk
22 mitigation features, there was never a response from NRC to
23 those; is that correct?

24 A (Krimm) That's correct to the best of my knowledge.

25 MR. BACKUS: Okay, I'd like to mark this I guess

1 presumably we're going on the same basis of completing a
2 historical record. I'd like to mark that for that purpose.

3 MR. DIGNAN: I object even for that purpose. I'd
4 direct the Board's attention to the subject of the memorandum.
5 Supposedly we're here to talk about the evolution of the
6 agency's position on the New Hampshire plan. This memorandum
7 is entitled as Participation at Meetings Regarding Proposed
8 Seabrook Utility Plan for the Commonwealth of Massachusetts.

9 MR. BACKUS: Well, I understand that, but the parts
10 I'm dealing with certainly would be a part of the
11 considerations that might be involved in the FEMA decision on
12 the New Hampshire plans as well.

13 MR. DIGNAN: Well, had you gotten any answers to that
14 effect, I might go along, Mr. Backus. But as I heard the
15 testimony that he gave you, he said they didn't discuss those
16 matters after all.

17 MR. BACKUS: The point is that the memo requests them
18 to discuss this matter and they did not get that discussion.
19 That's precisely the point.

20 JUDGE SMITH: It does prove that.

21 MR. DIGNAN: Well, it proves that, but what's that
22 got to do with the evolution of the FEMA position on the New
23 Hampshire plan that they didn't discuss something that somebody
24 wanted to discuss at a meeting on Massachusetts?

25 JUDGE SMITH: That they thought it was appropriate to

1 discuss I guess is the point. I don't know.

2 MR. DIGNAN: It was in connection with the
3 Massachusetts plan. What's that got --

4 JUDGE SMITH: Oh, no.

5 MR. DIGNAN: Yes, Your Honor. That s all this deals
6 with.

7 MR. BACKUS: No, Your Honor. Right on the bottom it
8 says after the part I've been quoting, "Addressing these issues
9 may assist in the resolution of the so-called beach population
10 issue."

11 MR. DIGNAN: Under the Massachusetts plan.

12 JUDGE SMITH: Well, let's read it.

13 (Pause.)

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14 (Continued on next page.)

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t/129 1 JUDGE SMITH: Mr. Backus, on rereading it, it does
2 seem like, although my first reading was, that was in addition
3 to the Massachusetts plan; when I read it more carefully, the
4 last paragraph, premises the discussion in that paragraph --
5 the last paragraph on page one, as something desirable before
6 initiating a review of a utility-based plan. It does seem to
7 relate to it. Certainly, also functional. I mean, the ideas
8 could relate to any beach.

9 But -- well, you better clarify it.

10 MR. BACKUS: Let me ask --

11 JUDGE SMITH: I don't know. I mean, this is
12 nothing --

13 MR. BACKUS: -- a few more questions to Mr. Krimm,
14 then.

15 BY MR. BACKUS:

16 Q Mr. Krimm, on this paragraph, the last paragraph on
17 the first page --

18 A (Krimm) Yes.

19 Q -- the memo that you sent says, "Before initiating
20 any utility-based plan review, we would like NRC to advise us
21 of any consideration being given to several other risk
22 mitigation features discussed in the past including," and then
23 the two questions that we've been discussing; is that correct?

24 A (Krimm) (No verbal response)

25 Q Now, those things that were discussed in the past

1 about special containment and reduction of plant operations
2 were related to the things you were doing in reviewing the
3 adequacy of the New Hampshire emergency response plans; were
4 they not?

5 A (Krimm) Mr. Backus, this -- to set the time frame
6 and so forth for this memorandum and to help you as well as the
7 Judge and so forth, as I recall at the time we had heard that
8 the Seabrook Utility -- I'm sorry, the Public Service, New
9 Hampshire at Seabrook Utility was going to send us a plan for
10 communities in the Commonwealth of Massachusetts.

11 Our concern was, because of our limited resources, we
12 wanted to know all the facts as they related to Massachusetts.
13 And these refer to things that had been discussed in the past
14 that would relate to both New Hampshire and to Massachusetts.

15 MR. BACKUS: Okay. I'll renew the offer.

16 JUDGE SMITH: Well, I don't know what it does for
17 you, Mr. Backus.

18 MR. DIGNAN: I'm going to renew the objection. You
19 know, on that theory we could drop a newspaper article in front
20 of a witness and say, I see the word special design features,
21 didn't you talk about those in New Hampshire? Yes, I did.
22 Offer it. This has nothing to do with the development of the
23 agency position on the New Hampshire plan.

24 (Board conferring)

25 JUDGE SMITH: Mr. Backus, you lose on this one. It

1 doesn't --

2 MR. BACKUS: Now, I -- I don't think I should lose on
3 this one, Your Honor.

4 JUDGE SMITH: Well, --

5 MR. BACKUS: This -- the only time that they've
6 talked about special containment in the past was at the April
7 RAC meeting and the withdrawal of Bores 1 memo and the Bores 2;
8 all that had to do with their evaluation of the New Hampshire
9 plans, and they're raising them again.

10 Now, I understand it also pertains to their need to
11 get on with figuring how to review a utility plan; that was
12 part of it. But it's not unrelated to what they had been doing
13 about assessing the New Hampshire plans.

14 And when we're putting in materials to show the
15 evolution of a position, I don't understand why this should be
16 left out as part of the historical record.

17 JUDGE SMITH: I understand your frustration which is
18 evidenced both by your articulate argument and your tenor.
19 Nevertheless, it is of slim probative value and the objection
20 is sustained.

21 MR. OLESKEY: Let me just make a few points, Your
22 Honor, I haven't had a chance to be heard.

23 First of all, this comes right after the July 30 RAC
24 meeting, and it's clear that the issue of the containment is
25 very much before the two agencies as it bears on the beach

1 plan.

2 Secondly, I think Mr. McLoughlin will confirm, as he
3 testified yesterday in his own summary of what was important,
4 that this memo had gone out in early September and there had
5 never been an answer.

6 JUDGE SMITH: See, there's another --

7 MR. OLESKEY: It had nothing to do with the beach --
8 nothing to do with the Massachusetts plan which is part of what
9 he said when he was explaining the evolution of their position
10 on the New Hampshire plan.

11 JUDGE SMITH: He is here.

12 MR. EACKUS: That's the point, we're just following
13 the testimony where it led. He referenced this in his
14 testimony yesterday.

15 JUDGE SMITH: He is here. Ask him about it.

16 MR. BACKUS: Okay.

17 BY MR. BACKUS:

18 Q Mr. McLoughlin --

19 JUDGE SMITH: If this memorandum were essential to
20 your case, maybe some of the infirmities of it could be
21 overlooked, but the man is right here. And there's other
22 problems with it, and so we're not going to accept it. It is
23 an exhibit that is capable of being abused. We don't have to
24 do that. You can establish your case with the man who wrote it
25 right here. So you're not being prejudiced by having this

1 by having this exhibit rejected.

2 BY MR. BACKUS:

3 Q Mr. McLoughlin, just so the record will be perfectly
4 clear, you did reference this memo in your direct testimony
5 yesterday, did you not?

6 A (McLoughlin) That's correct.

7 Q Okay. To your knowledge, sir, was the concern about
8 special design features and reduction of plant operations
9 during the summer something that could bear on the agency's
10 assessment of the adequacy of the New Hampshire plans?

11 A (McLoughlin) That's correct.

12 Q And to your knowledge, did NRC ever respond to your
13 asking us to advise -- asking NRC to advise you whether any
14 consideration had been given to those two items?

15 A (McLoughlin) Not directly. Only, I would say,
16 indirectly in the sense that we did get a copy of the, that I
17 referenced yesterday, of the October 15th memo that Dr. Bores
18 wrote, I believe, to Mr. Turk. And I believe you'll find
19 reference in that memo, which we did not get until December, so
20 I -- and I clearly acknowledged that yesterday.

21 But I do believe that they make a case in that memo,
22 I'd have to check this, that there are reasons for the NRC not
23 doing this. I think there was some reference to it not doing
24 it.

25 So in the sense that they decided that they were not

1 going to, in that sense, they gave us an answer, but it wasn't
2 a direct answer other than by a copy of that memo.

3 Q Well, what they said essentially in the Bores memo of
4 October 15th was, no, they were not going to give any
5 consideration --

6 A (McLoughlin) That's right.

7 Q -- to containment as bearing on assessing the
8 adequacy of the New Hampshire plans; right?

9 A (McLoughlin) Mr. Backus, that's right. And I
10 interpret that to be an answer, you know, to your question.

11 Q All right.

12 Now, as of September 11, 1987, Mr. McLoughlin, you
13 filed the FEMA testimony in identical form as the position had
14 been filed on June 4th in regard to the beach population;
15 correct?

16 A (McLoughlin) That's correct.

17 MR. FLYNN: Excuse me, I need to clarify a little
18 here. I don't accept that the entire 60 pages or so of
19 testimony were identical.

20 MR. BACKUS: I'm referring to pages 38 and 39.

21 MR. FLYNN: Yes, I will accept that those were
22 identical.

23 MR. BACKUS: Okay. Thank you.

24 BY MR. BACKUS:

25 Q So that necessarily means that as of that date,

1 September 11th you had no reason or cause to reverse the
2 position of your FEMA-1 RAC chairman on this issue?

3 A (McLoughlin) I did not have a sufficiently
4 substantive reason, in my mind, at that time to overrule it;
5 that is correct. But you will also, if you read my testimony
6 yesterday, I did -- do believe that I referenced the fact that
7 both before and particularly right afterwards that there began
8 to be some troubling issues with this. But I did not believe,
9 in my mind, that I had a substantive reason to overrule him.

10 And you recall I also testified that we had asked our
11 general counsel for a delay, so that we could consider that;
12 and they felt that they did -- well, let me not go on because
13 the record is clear from yesterday.

14 Q All right. As of that September 11th date, as you
15 testified yesterday, there had been another RAC meeting chaired
16 by Mr. Thomas, and you knew basically what the results of that
17 RAC meeting were; is that correct?

18 A (McLoughlin) That's correct.

19 Q And you knew that there was a majority opinion that
20 the plans were adequate, without regard to the containment
21 features that had been previously dealt with in the RAC?

22 A (McLoughlin) That's correct.

23 Q Okay. Did you know at that time, according to Dr.
24 Bores, did you know at that time that according to him at least
25 one of those RAC members was still relying on the containment

1 at part to justify his feeling that the plans were adequate?

2 MR. TURK: Objection, that's not the testimony of Dr.
3 Bores.

4 MR. BACKUS: I think you can recharacterize it when
5 it's your turn, if you don't think it is.

6 JUDGE SMITH: Well, no, no; that's not the standard.
7 Would you read it back, please.

8 (Whereupon, Mr. Backus, with the permission of the
9 Chairman, elected to ask the following question instead.)

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10 (Continued on next page.)

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1 BY MR. BACKUS:

2 Q Dr. McLoughlin, you have said that in December some
3 time you got the memos to Sherwin Turk from Dr. Bores, dated
4 October 15th; is that correct?

5 A (McLoughlin) The agency got them. I don't know,
6 I -- to be honest about it, I don't remember for sure when I
7 first read it, but certainly -- certainly, after we got it my
8 expectation was, because this is an important issue, that the
9 staff did inform me of the general contents of that; yes.

10 Q As a result of reading that memorandum, did you have
11 any knowledge that the DOT, Department of Transportation
12 representative, had stated to Mr. Thomas, quote: "You have a
13 problem!" Unquote. Then, quote: "We have a problem we need
14 to come together on," unquote. He said, "That whether or not
15 the paper discussed the specific plant features did not change
16 the facts of the construction."

17 Were you aware that one of the RAC members said that
18 the facts of the construction hadn't changed regardless of the
19 change of the Bores memorandum?

20 A (McLoughlin) Mr. Backus, clarify for me what time
21 frame you're asking me that question? Prior to November 11th
22 or after November 11th?

23 MR. FLYNN: Do you mean September?

24 THE WITNESS: (McLoughlin) Well, I'm sorry. Excuse
25 me, September 11th, you're right. Clearly, you can't be asking

1 me about it before September 11th because the memo wasn't
2 written until October 15th.

3 BY MR. BACKUS:

4 Q Right.

5 A (McLoughlin) So you must be asking me, at the time
6 that I was made aware of this, was I also made aware of the
7 fact that DOT still was using containment as a -- as part of
8 their basis for their position.

9 Q Right. When did you become aware of that or did you
10 ever become aware of that?

11 A (McLoughlin) To be honest about it --

12 MR. TURK: Well, wait a minute, Mr. Backus. Your
13 Honor, for context let's read the next sentence of that same
14 quote that Mr. Backus read which is as follows: "He," meaning
15 Mr. Lutz, "felt that the plans were adequate and the best he
16 had reviewed," close quote.

17 JUDGE SMITH: That wasn't the point. I -- part of
18 the confusion is, I do think you misspoke, I think you said
19 September when you meant to say December.

20 MR. BACKUS: Right. I did, thank you.

21 THE WITNESS: (McLoughlin) I apologize, Mr. Backus,
22 but I don't know for sure what -- I mean, you were asking me to
23 respond to right this moment.

24 BY MR. BACKUS:

25 Q Have you become aware, as a result of it, at some

1 point receiving the Bores 3 memorandum which is Staff Exhibit 2
2 and 2-A, that at least one member of the RAC in July was still
3 relying on containment as part of his opinion on plant
4 adequacy?

5 MR. TURK: Objection.

6 JUDGE SMITH: Well, wait a minute, that's right. He
7 has a right to object to your characterization of what --

8 MR. BACKUS: All right, we'll do it differently.
9 It's going to take longer because I got to read the whole thing
10 to satisfy NRC counsel here.

11 MR. TURK: Thank you.

12 BY MR. BACKUS:

13 Q Were you -- did you become aware some time after
14 receiving the Bores 3 memorandum, whenever that was in
15 December, that one RAC member, the DOT member, had said:
16 "Whether or not the paper discussed the specific plant features
17 did not change the facts of construction?"

18 A (McLoughlin) Well, I'm still not sure I know how to
19 answer this question, but let me give you a cut and you reask a
20 question.

21 I have read the October 15th memorandum from -- of
22 Mr. Bores. I have therefore read that statement. Now, are you
23 asking me the question, did it register somehow?

24 Q Yes?

25 A (McLoughlin) Well, I think the answer to that is,

1 yes. I read the memo. I clearly -- I have acknowledged to you
2 that I have not -- that I do not recall when I first read that
3 memo. I know we didn't get it until December. I testified a
4 couple of minutes ago that my belief is that the staff advised
5 me kind of what was in that memo before I read it. And I
6 cannot recall specifically when I first read that October 15th
7 memo.

8 Q But at some point you read it and it did register?

9 A (McLoughlin) Yes.

10 Q And when it registered you understood that at least
11 one RAC member still had containment considerations in his
12 mind?

13 A (McLoughlin) I would have to say, yes, to that.

14 Q Okay. Now, let me go generally to the RAC. You've
15 testified, Mr. McLoughlin, very clearly that FEMA considers the
16 RAC to be advisory to it; is that correct?

17 A (McLoughlin) That's correct.

18 Q And it's advice that you then used to assist FEMA in
19 arriving at a position?

20 A (McLoughlin) That's correct.

21 Q But you were certainly clear that FEMA is not bound
22 by the RAC and has its own responsibility to arrive at its
23 professional judgment on emergency planning matters; correct?

24 A (McLoughlin) That's correct.

25 Q Okay. Is it fair to say that in utilizing the RAC in

1 its advisory capacity you tend to defer to agencies within
2 their own fields of expertise?

3 A (McLoughlin) I believe that's a fair
4 characterization in all of our regional offices; yes.

5 Q So, for example, the Department of Agriculture has
6 got somebody there and you tend to listen particularly
7 carefully to what they might say about radioactive
8 contamination of food, for example; correct?

9 A (McLoughlin) That's correct.

10 Q And transportation, you might pay particular
11 attention to what they have to say about Coast Guard
12 involvement?

13 A (McLoughlin) We certainly would want to consider
14 that very seriously. The answer is, yes.

15 Q And it is FEMA, is it not, Mr. McLoughlin, and I
16 think you used this in commenting to the NRC's rule change to
17 Congress, that has the expertise in assessing state and local
18 response plans; is that correct?

19 A (McLoughlin) In their totality, that's correct.
20 But, Mr. Backus, I would also say in giving a response to the
21 testimony that you just -- the question you just asked me,
22 clearly, we want to take aboard, it's our responsibility to
23 deal with the whole thing.

24 It is our, also, responsibility to listen to EPA and
25 DOT and others in the advice that they give us. I would not

1 want to say, we are the only ones that know anything about
2 state and local emergency plans.

3 Q All right. Now, at the time you filed the September
4 11th position or testimony, I'm sorry, you were aware of the
5 RAC meeting and the general results, as you've previously said;
6 is that correct?

7 A (McLoughlin) Of the July 30th RAC meeting?

8 Q That's right?

9 A (McLoughlin) That's correct.

10 Q Okay. And at the time that you filed the interim
11 testimony of January 25th on which you were listed a witness,
12 you knew about the January 7th and 8th RAC meeting?

13 A (McLoughlin) That's correct.

14 Q Of 1988?

15 A (McLoughlin) That's correct.

16 Q And it's fair to say that your understanding is that
17 the positions of the agencies represented at these two meetings
18 were basically the same on January 30th as they were on July
19 30th and January 7th and 8th; isn't that correct?

20 A (McLoughlin) That's correct.

21 Q Okay. Another thing that you mentioned yesterday, as
22 you say your mind was beginning to be concerned about the
23 position was that, on September 9th, I think you said, you got
24 the Stone & Webster sheltering survey; is that correct?

25 A (McLoughlin) That's correct. We knew that it was in

1 preparation, but I also acknowledged yesterday that that was
2 not a major factor at that point, the receipt of that at least,
3 in our November or September 11th filing.

4 Q Did the Stone & Webster survey, at any point, become
5 an important determinant to your assessment of the FEMA
6 position?

7 A (McLoughlin) Well, in -- in the information that
8 they submitted on February 11th and 19th, it's my understanding
9 that, in essence, the -- Mr. Backus, I think I'd have to read
10 that once again, but my belief is that the intent of the State
11 of New Hampshire was to use the results of the Stone & Webster
12 survey as shelter for the, quote, "two percent" population.

13 And, you know, I -- that's my recollection right
14 here.

15 Q Now, you're aware, aren't you, Mr. McLoughlin, that
16 on October 5th of 1987 these hearings with this Board began?

17 A (McLoughlin) Yes. I did not -- I knew they began
18 early October.

19 Q Did you have set up for yourself and Mr. Peterson
20 -- well, let me just ask you first. Did you have set up for
21 yourself a reporting system by which you would be kept informed
22 of what was happening at these hearings?

23 A (McLoughlin) Well, if you mean a structured system
24 by which I had, you know, asked somebody to report to me every,
25 you know, weekly or so, the direct answer to that question is,

1 no. On the other hand, there is an expectation that I -- my
2 belief is, that will be confirmed by others, that knowing that
3 they're going on, that both our General Counsel's Office and
4 Mr. Krimm's shop who are the people who would most likely keep
5 up with this, would indeed certainly keep me informed of
6 significant events that are happening.

7 Now, that does not mean, and I want to be clear about
8 this, I would not expect them to keep me informed on, you know,
9 every daily happening here. But things that would come up like
10 a requirement for us to make a filing; a significant event; or
11 ruling that this Board made, the direct answer to that question
12 is, I would have expected them, and I think they did, generally
13 speaking.

14 Q Okay. So either the attorneys, Mr. Cumming or
15 Mr. Flynn --

16 A (McLoughlin) Right.

17 Q -- or Mr. Krimm, you think understood that they
18 should and did keep you up to date on significant filings --

19 A (McLoughlin) That's correct.

20 Q -- developments that would affect the FEMA testimony?

21 A (McLoughlin) That's correct.

22 Q Okay. Was the daily transcript of this proceeding
23 available to FEMA in Washington?

24 A (McLoughlin) I believe the answer to that is, yes.
25 The -- I'm looking at the attorney to see if he can give me any

1 help on that. My general belief is that the answer to that is,
2 yes. And the reason I say that is that, I was given
3 periodically things to read that the attorneys in particular
4 felt it was important that it be called to our attention. This
5 was true both on Shoreham, and I believe on anything on
6 Seabrook.

7 Mr. Cumming, in particular, was -- tried to be very
8 alert, I believe, to letting us know these significant events
9 that were happening.

10 Q Now, one of the events that's happened, and I believe
11 you referenced it in your testimony yesterday, was that on or
12 about October 5th, which I'll represent were the day these
13 hearings or at least opening statements got started, NRC filed
14 or made available to the parties a proposed rebuttal testimony
15 outline?

16 A (McLoughlin) That's correct.

17 Q Are you aware of that?

18 A (McLoughlin) I referenced that yesterday.

19 MR. BACKUS: Okay. I'd like to make copies of that
20 available.

21 Your Honor --

22 MR. DIGNAN: If this is going to be offered for the
23 truth of the matter as contained, the Applicant has no
24 objection.

25 (Laughter)

1 MR. BACKUS: It's very helpful.

2 I'd like to have this marked for identification at
3 this point. And for the record it is an October 5 letter from
4 Sherwin Turk to the Judges on this panel, and attached a two-
5 page proposed rebuttal testimony of NRC staff concerning NH
6 RERP protective actions for Seabrook area, seasonal beach
7 populations.

8 JUDGE HARBOUR: Mass. 37.

9 MR. BACKUS: Thank you.

10 MR. TURK: That's identification at this point,
11 right?

12 JUDGE SMITH: Yes. It hasn't been offered.

13 MR. BACKUS: All right.

14 (The document referred to was
15 marked for identification
16 as Mass. AG Exhibit 37.)

17 BY MR. BACKUS:

18 Q Well, when was this proposal to file this rebuttal by
19 NRC staff brought to your attention, Mr. McLoughlin,
20 approximately?

21 A (McLoughlin) My belief is, Mr. Backus, that Mr.
22 Cumming -- I think it was Mr. Cumming, told me of the NRC's
23 intent to do this, since the hearings had not started I assumed
24 what that meant was that they couldn't do it until the hearings
25 started, in September some time.

1 I was aware of the fact that the NRC was considering
2 rebutting our testimony. Well, I answered the best I can, some
3 time in September.

4 Q Okay. So even before this letter was distributed to
5 the Judges and the parties on the date indicated, you were
6 aware of the possibility that NRC would file testimony that was
7 not in conformity with the testimony FEMA was supporting; is
8 that correct?

9 A (McLoughlin) That's correct.

10 Q How did you learn that?

11 A (McLoughlin) Well, I just told you, I believe. I
12 think my answer to that was --

13 Q Mr. Cumming?

14 A (McLoughlin) -- Mr. Cumming.

15 Q All right.

16 A (McLoughlin) I don't want to think -- say I think my
17 answer to that is, I think it was Mr. Cumming.

18 Q Okay.

19 JUDGE SMITH: Incidentally, just so Mr. Cumming does
20 not despair, at least some of us know that his name is --
21 doesn't have a terminal "S" in it. I'm sure he'll be reading
22 this transcript.

23 MR. BACKUS: All right.

24 BY MR. BACKUS:

25 Q When you were told about the possibility of NRC

1 filing rebuttal testimony, was it told to you that in substance
2 it would say, "The absence of sheltering as an alternative
3 protective response for Seabrook area, seasonal beach
4 populations does not contravene NRC regulations and guidance
5 and is consistent with the level of planning in place at other
6 nuclear plant sites?"

7 A (McLoughlin) No. Mr. Backus, the -- I do not recall
8 anyone, including Mr. Cumming, saying to me that --
9 specifically kind of what the outline would be included.
10 Because I don't believe, at the moment, that he knew what he
11 was reporting to me was what I think -- my recollection is, is
12 that from his discussions with NRC attorneys that the potential
13 for doing this was there. I don't believe that -- I don't
14 believe at that time that he told me specifically any of the
15 contents of how the argument would go.

16 Q Okay. Mr. Krimm, let me just turn to you. Were you
17 aware prior to October 5th that NRC might be taking an
18 evidentiary position opposed to FEMA's in the hearings?

19 A (Krimm) I would say that somebody told me at the
20 time, Mr. Backus, whether it would have been Bill Cumming or a
21 member of my staff who had talked to Mr. Cumming; I vaguely
22 recall somebody mentioning it to me.

23 Q Did anybody tell your witness about this, Mr. Thomas,
24 before October 5th?

25 A (Krimm) That I don't know. I would assume, again -

- 1 Q Well, don't assume, please.
- 2 A (Krimm) Okay.
- 3 Q Please, please.
- 4 A (Krimm) Then I don't know.
- 5 Q Do you know if anybody told your witness about this?
- 6 A (McLoughlin) I absolutely do not know.
- 7 Q All right. Mr. Krimm, did you on or about October
- 8 5th or shortly thereafter have this rebuttal outline that's
- 9 been marked here available to you?
- 10 A (Krimm) I don't have a copy in front of me,
- 11 but --
- 12 Q One's coming.
- 13 A (Krimm) Okay, thank you very much.
- 14 Mr. Backus, I don't know the exact date I received
- 15 it, but I know that at some point in time I did receive a copy
- 16 of it.
- 17 Q Would it have been some time, do you think, in
- 18 October?
- 19 A (Krimm) I'm sorry I can't tell you exactly.
- 20 Q Do you know if you would have received this some time
- 21 in October, Mr. McLoughlin?
- 22 A (McLoughlin) Mr. Backus, it's my belief -- I made
- 23 reference yesterday to the fact that this did influence my
- 24 continuing concerns about the position that we had taken; and I
- 25 used this as a specific example.

1 What I can't answer specifically is, when precisely I
2 read this for the first time. I simply do not remember that.
3 But it certainly was in the window between our two filings.

4 Q You mean, between the filing of September 11th and
5 January 25th?

6 A (McLoughlin) That's correct.

7 Q All right.

8 Can you parse it down any finer than that, what was
9 the latest you reasonably think you might have seen this
10 document dated October 5th?

11 A (McLoughlin) Well, Mr. Cumming, and I think I had
12 been guilty of using the "S" on it, too, Mr. Cumming -- he is
13 very conscientious about trying to be sure that we get
14 information that is -- that he believes is important to us at
15 the earliest possible time.

16 My belief is that shortly after Mr. Cumming would
17 have gotten this or someone on our general counsel staff, that
18 they would have given us a copy of it.

19 So what I'm hinging it on is when they got a copy of
20 it, and I don't know that. But my guess is that I would have
21 received it within a couple, three days after they got copies
22 of it.

23 Q All right, that's fine.

24 And when you got it, did you note the statement on
25 page two of the plan as "F" about the absence of sheltering

1 does not contravene NRC regulations and guidance, did you note
2 that?

3 A (McLoughlin) Yes. I made specific reference to that
4 yesterday, because that was one of the -- you know, that was
5 one of the things that was beginning to be troubling to us in
6 which I had referenced to yesterday.

7 Q Okay. Had you some belief prior to seeing this that
8 NRC regulations -- NRC regulations did require sheltering; had
9 somebody told you that?

10 A (McLoughlin) I don't believe so.

11 Q All right.

12 MR. FLYNN: Mr. Backus, may I suggest you're
13 overlooking the entire discussion of the January RAC meeting
14 where the meeting of range of protective actions was discussed
15 for a day and a half.

16 JUDGE SMITH: Mr. Flynn, I don't know if Mr. Backus
17 appreciated your advice, but I think he might prefer, if you
18 want to give him advice like that, slip him a note or something
19 because it would also, at the same time, refresh your
20 witnesses' memories.

21 MR. FLYNN: I will accept that correction, Your
22 Honor.

23 MR. BACKUS: Okay. I wonder if I might ask for maybe
24 five minutes. I don't want a long break, because I know time
25 is short, but I am in need for a little relief.

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JUDGE SMITH: All right.

(Whereupon, a brief recess was taken.)

(Continued on next page.)

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1 JUDGE SMITH: Judge Harbour likes to stretch a
2 little, but he can hear the testimony quite well.

3 MR. BACKUS: So we should resume.

4 JUDGE SMITH: Yes, right.

5 MR. BACKUS: Here comes Judge Harbour.

6 BY MR. BACKUS:

7 Q So, Mr. McLoughlin, as of early in October, 1987, in
8 all probability you had two things that had come up since the
9 September 11th filing, or had been assessed since the September
10 11th filing. One was the Stone & Webster survey. The other
11 was the NRC's rebuttal outline.

12 Now, did those two things give you cause or reason at
13 that time to overrule your RAC chairman and your witness?

14 MR. FLYNN: Excuse me. At which time?

15 MR. BACKUS: In mid-October.

16 THE WITNESS: (McLoughlin) No, they did not.

17 MR. BACKUS: Okay.

18 THE WITNESS: (McLoughlin) I -- well.

19 BY MR. BACKUS:

20 Q Now, were you made aware, Mr. McLoughlin, that there
21 was a motion to strike the FEMA testimony, and the FEMA
22 testimon, I'm talking about is the testimony on Pages 39 and 39
23 about the beach population that had been made during the course
24 of the hearing?

25 A (McLoughlin) Is -- Is that your term -- does the

1 term "in limine", is that the term that is used?

2 The answer to that then is, yes. I'm not familiar
3 with the legal terms and I don't want to misstate, but I am
4 familiar, if that what that term means that there was a
5 particular motion to strike our testimony, if all that, yes.
6 yes.

7 Q All right. And you are in fact more accurate than I
8 was. It was styled a motion in limine.

9 And you did become aware of that?

10 A (McLoughlin) Yes. I don't know exactly when, but I
11 became aware of that, yes.

12 Q Okay.

13 A (McLoughlin) It would have been in the window.

14 Q Okay. Was there discussion at FEMA in Washington, of
15 which you were aware, about how FEMA should respond to that?

16 A (McLoughlin) Well, the direct answer to that
17 question, I believe, is yes.

18 Q All right.

19 A (McLoughlin) Because -- well, yes. I'll leave it at
20 that.

21 Q Were you aware or party to those discussions about
22 how FEMA should respond to the Applicants' motion to strike or
23 in limine with regard to the FEMA testimony, Mr. Krimm?

24 MR. FLYNN: Was that Mr. Krimm or Mr. McLoughlin?

25 MR. BACKUS: Mr. Krimm.

1 THE WITNESS: (Krimm) Mr. Backus, I don't remember
2 the discussion.

3 BY MR. BACKUS:

4 Q You don't remember any discussions about that?

5 A (Krimm) I don't remember the discussions. I'm not
6 sure I sat in them or not. I think it may -- I was aware of
7 what was happening, but I believe that members of my staff may
8 have discussed it with the Office of General Counsel.

9 MR. BACKUS: I wanted to get a filing here and my
10 girl Friday isn't here.

11 (Pause.)

12 BY MR. BACKUS:

13 Q Mr. McLoughlin, I'm going to have to wait for a
14 document here, but let me just ask you, did you participate in
15 discussions leading to a decision to instruct FEMA counsel to
16 object to that motion to strike the FEMA testimony?

17 A (McLoughlin) I don't recall that, Mr. Backus, not
18 participating in a discussion in terms of directing that our
19 legal counsel to do that, no.

20 Q Okay. Did you, Mr. Krimm?

21 A (Krimm) I just don't recall them right offhand. I'm
22 sorry, I just don't remember.

23 Q Well, Mr. McLoughlin, in fact as of some time in
24 October the issue had been joined about whether that testimony
25 should go forward; isn't that true, and you were aware of that?

1 A (McLoughlin) What does the word -- you mean -- I'm
2 only asking you to clarify for me if you will what the word
3 "joined" means or "enjoined". I'm not sure what you meant.

4 Q All right, let me withdraw that.

5 You had become aware that an issue had been raised
6 about whether the FEMA testimony should actually go forward or
7 be presented through this motion in limine, right?

8 A (McLoughlin) In a general way, yes.

9 MR. FLYNN: Excuse me, before you answer. Let me
10 suggest that the question is ambiguous. It can be interpreted
11 to mean that the position was wrong. It could be interpreted
12 to mean that we agreed or did not agree with the assertion that
13 it was simply a matter of law. And I want to make sure the
14 witness understand which of those two possible interpretations
15 you're proposing.

16 JUDGE SMITH: Well, the issue was before the Board.
17 Is that what you --

18 MR. BACKUS: Right.

19 BY MR. BACKUS:

20 Q You were aware that the issue was before the Board.

21 A (McLoughlin) I was aware that the -- yes, yes.

22 Q And you had some discussions with your counsel about
23 filing an objection to that motion in a timely manner; is that
24 right?

25 A (McLoughlin) I do not recall -- that's what I want

1 to be clear about, Mr. Backus. I do not recall ever
2 participating, and I may have, but I don't recall participating
3 with our general counsel in a meeting dealing specifically with
4 the issue of whether or not we were or were not going to
5 disagree with the NRC position -- rebuttal outline. I do not
6 recall ever being in that kind of a --

7 Q Well, the question was a little different than that,
8 Mr. McLoughlin.

9 Did you ever discuss the issue of whether or not to
10 oppose the Applicants' motion in limine, or to strike the FEMA
11 testimony?

12 A (McLoughlin) What I need to tell -- I don't want to
13 be evasive, but I also don't want to give you a wrong answer.

14 What was -- what my concern is, and was about this
15 issue was the fact that here we are a consultant to the NRC
16 doing what we can do to give our best response to the whole
17 issue of offsite shelter.

18 MR. FLYNN: I'd like to suggest that the witness
19 doesn't understand the question. The witness seems to be
20 talking about the rebuttal outline, and the question talks
21 about the Applicants' motion to strike the testimony.

22 THE WITNESS: (McLoughlin) I'm sorry, you're right.

23 MR. FLYNN: And they're not the same.

24 THE WITNESS: (McLoughlin) You're exactly right.
25 You're exactly right.

1 MR. BACKUS: Thank you.

2 THE WITNESS: (McLoughlin) And I was the one who
3 misspoke at that point.

4 But, Mr. Backus, I don't know how to respond at the
5 moment and get us back on track, because that was my error
6 doing that because I should have made reference --

7 JUDGE SMITH: Start with a fresh question.

8 MR. BACKUS: Let me just start over again.

9 THE WITNESS: (McLoughlin) Okay.

10 BY MR. BACKUS:

11 Q Was there discussion in which you either participated
12 or was aware about what position FEMA should take in regard to
13 the Applicants' motion in limine, or to strike the FEMA
14 testimony on the beach population?

15 MR. DIGNAN: Mr. Backus, I've got a form
16 objection.

17 It's conceivable I made the title that bad, but I
18 don't think I did.

19 JUDGE SMITH: Well --

20 MR. DIGNAN: It was a motion in limine in the nature
21 of an objection to the receipt.

22 MR. BACKUS: Okay.

23 MR. DIGNAN: Okay?

24 MR. BACKUS: I'm just trying to not -- he obviously
25 knows what the word means, so was there -- let me adopt it that

1 way.

2 BY MR. BACKUS:

3 Q Was there a discussion in Washington in either which
4 you participated or became aware about what response the FEMA
5 lawyers should make to the Applicants' motion in the nature of
6 a motion in limine to the admission into evidence of a certain
7 portion of FEMA's prefiled testimony?

8 MR. DIGNAN: You're learning.

9 (Laughter.)

10 THE WITNESS: (McLoughlin) I think I --

11 MR. DIGNAN: It's the first time Michigan Law School
12 ever taught Harvard Law School anything.

13 THE WITNESS: (McLoughlin) I do not specifically
14 recall -- I recall the issue, that's what I recall, the fact
15 that there was the potential for that happening, but I do not
16 recall participating specifically in discussions on the
17 decision relative to what FEMA was going to do about it.

18 BY MR. BACKUS:

19 Q Okay, who did?

20 A (McLoughlin) Who did what?

21 Q Participate in the decision as --

22 A (McLoughlin) I don't know.

23 Q -- to what FEMA was going to do about it?

24 A (McLoughlin) I don't know.

25 Q Do you know, Mr. Krimm?

1 A (Krimm) I wish my memory is better. I vaguely
2 remember some of my staff discussing this with me, and I
3 believe I told them to work directly with Office of General
4 Counsel on it. That's my recollection. I'm sorry, I don't
5 remember details and so forth.

6 Q Well, I'm going to ask this to the panel.

7 Is it the testimony of this entire panel that none of
8 you can recall discussing the position FEMA was going to take
9 in regard to the motion in limine to the admission of your
10 evidence?

11 A (McLoughlin) The direct answer to that question in
12 my case is yes. I do not recall that.

13 Q Do you, Mr. Peterson?

14 A (Peterson) I don't recall that discussion; no, sir.

15 Q You do not, Mr. Krimm?

16 A (Krimm) Other than what I stated previously, I do
17 not recall the details. I'm sorry.

18 Q Are you aware, Mr. McLoughlin, that on or about
19 October 30th, FEMA counsel did file an objection to the
20 Applicants' motion in limine?

21 A (McLoughlin) If I answer yes to all of that, on
22 October 30th, I am not specifically aware of dates, et cetera,
23 on that issue, no.

24 MR. FLYNN: Mr. Backus, do you have the document?

25 MR. BACKUS: I do. I thought I had multiple copies

1 of it, but I don't know where Ms. Keough is but --

2 JUDGE SMITH: Well, we don't need a lot of copies of
3 it. I don't know if we really need any.

4 MR. TURK: What's the date, 10/30?

5 JUDGE SMITH: October 30.

6 BY MR. BACKUS:

7 Q Mr. McLoughlin, I'm not asking you to verify a
8 particular date, although the document I'm showing you is dated
9 October 30th. I'm just asking you, were you aware that, as of
10 about that date, FEMA was objecting to the motion to have the
11 beach testimony not admitted as a result of this motion in
12 limine?

13 A (McLoughlin) Well, I have already testified that I
14 do not recall participating in discussions on this decision,
15 and I don't. But I am -- but I would indicate that I
16 ultimately became aware at some point in time that the agency
17 would have taken that position. They -- we would have gotten a
18 copy of that, and I would have, my guess is read it. But if
19 you're asking me to put that in a time frame, Mr. Backus, I
20 simply cannot do that.

21 Q Well, can we agree that, as of approximately this
22 date, the agency was still prepared to defend the prefiled
23 testimony as of September 7th and believe it should go forward
24 in the hearing?

25 A (McLoughlin) September 11th.

1 MR. FLYNN: Objection, that calls --

2 MR. BACKUS: September 11th.

3 MR. FLYNN: I object. That calls for a legal
4 conclusions. The issues are subtle, and the fact that that
5 document was filed may or may not be read to support the
6 proposition that Mr. Backus has put forward.

7 MR. BACKUS: It seems to me it's not at all subtle.
8 If they thought the testimony was not supportable as of the
9 date, I don't suppose they would have filed an objection to the
10 motion in limine.

11 MR. FLYNN: That's a different issue.

12 We have testified -- these witnesses have testified
13 about looking for legal support, technical support, policy
14 support for the position, and this goes only to whether it was
15 legally -- whether the testimony was a question of law or not,
16 and that doesn't cover the entire spectrum.

17 MR. BACKUS: Well, I suppose this is all a matter for
18 argument. I think all I'm trying to do is make a point, which
19 I guess is not disputed on the record, that as of that date --
20 Mr. Flynn, maybe you can stipulate the agency was objecting to
21 the striking of the Thomas testimony.

22 MR. TURK: As any --

23 MR. DIGNAN: No, no.

24 MR. TURK: As any organization would do in a hearing.

25 MR. DIGNAN: This is why -- I know that he jumped me.

1 but I wanted to get on the record what the motion really was.

2 A motion in limine has a very special purpose. It
3 brings to the Court's or the Board's attention in advance an
4 objection that is going to be made, and allows a ruling to be
5 made in the future. And, indeed, in this particular
6 proceeding, Your Honor, if Your Honor might recall, the Board
7 made a point of hoping people would go that route so that we
8 could all know before we actually sat down in the hearing room
9 what was in and out and the Board's views on this.

10 Now you can't take the position an attorney takes on
11 a motion in limine, and then translate that into saying that
12 the client he represents was sitting there with a conscious
13 decision that at a future date, come hell or high water, they
14 were going to defend that testimony. They hadn't offered the
15 testimony as such yet. And that's the problem.

16 JUDGE SMITH: Can, can, depends on what the position
17 was.

18 MR. DIGNAN: That's true. But the problem is we're
19 not making any progress here.

20 If one of these witnesses had said, yeah, they
21 brought into me, I went over it, and I said you make that
22 objection, Joe, because, by God, we're going to defend it,
23 that's one thing.

24 He hasn't got that kind of a frame work here and he's
25 trying to take --

1 JUDGE SMITH: Well, how do you know? He hasn't --

2 MR. DIGNAN: He hasn't put the --

3 JUDGE SMITH: Nobody's let him answer the question
4 yet .

5 MR. DIGNAN: Well, then, what's he offering that kind
6 of a stipulation for.

7 JUDGE SMITH: See, there was part of the debate back
8 and forth between counsel, it was not addressed to the Board,
9 that we missed because we're disciplined not to listen to your
10 arguments back and forth. So we don't know.

11 The only thing I know is that the question that he
12 put to that witness could perhaps elicit an answer that, well,
13 that's a legal matter; I don't know. Or, yes, sir, we
14 decided -- we decided. We made a study decision to stick to
15 the merits of our prefiled testimony. I don't know what his
16 answer is.

17 As a matter of fact, I don't remember FEMA's
18 objections.

19 MR. FLYNN: The argument that I offered, Your
20 Honor --

21 MR. DIGNAN: There's no question pending.

22 MR. FLYNN: -- was very, very brief. I said Mr.
23 Dignan's arguments have merit, and the argument he made was
24 that this is simply a question of law. But I said, Your Honor,
25 I don't know how you can go forward without hearing from FEMA.

1 End of argument.

2 MR. TURK: That was the intention of your paper.

3 MR. FLYNN: Yes.

4 JUDGE SMITH: That was -- see, I don't actually
5 recall, but these witnesses are fully capable of understanding
6 what the position was and also understanding whether they
7 participated in it or not, or endorsed it, or whatever.

8 I mean if in fact it is so purely legal that they
9 can't, well, then we'll learn that, too.

10 MR. DIGNAN: Well, I think what Mr. Flynn's point is,
11 Your Honor, and if I could prevail on -- tread on the
12 sensibilities of the Board, is the Board might want to review
13 what FEMA said. It's being -- the witnesses are being
14 questioned as though the FEMA response contains statements it
15 doesn't contain.

16 I'm going to ask the Board to -- and I've got a copy
17 here -- to review the FEMA response. And I think that's what's
18 setting up the problem.

19 JUDGE SMITH: What's the pending question.

20 MR. BACKUS: I don't think there was one.

21 MR. FLYNN: No, there was.

22 JUDGE SMITH: Yes, there was a pending question. It
23 was --

24 MR. BACKUS: There was a pending question. Mr.
25 Oleskey reminds me.

1 BY MR. BACKUS:

2 Q As of about October 30th, is it not correct that FEMA
3 was still prepared to support the prefiled testimony of
4 September 7th?

5 A (McLoughlin) That FEMA was still prepared to support
6 the testimony of September 11th?

7 Q Yes.

8 A (McLoughlin) Correct. I know of no reason why we
9 weren't willing to support that testimony.

10 MR. BACKUS: Okay, I'd like to just mark this for
11 identification.

12 JUDGE SMITH: Was that the motion or just --

13 MR. BACKUS: The response. I know it's in the
14 record, but for continuity of this particular transcript --

15 JUDGE SMITH: Well, we're getting a lot of paper
16 here, and what is the probative value of Mr. Flynn's pleading
17 with respect to the testimony of this panel?

18 MR. BACKUS: Well, I think it may have some -- I'm
19 just going to mark it for identification because we've been
20 talking about it.

21 MR. TURK: Well, if you're going to do that, I hope
22 you will bear in mind Mr. Flynn's clarification which he
23 mentioned right here today a few minutes ago. And that was the
24 intention of his paper was simply to say, Your Honor, whatever
25 may be the law, I don't think you can go ahead without a

1 position from FEMA, and here is our position.

2 MR. BACKUS: Good argument, good argument. I wish we
3 could swear Mr. Flynn in and I would ask him, but I understand
4 that --

5 MR. TURK: Well, he stated that.

6 MR. BACKUS: He's making argument of counsel and so
7 are you.

8 I'm going to mark the --

9 MR. TURK: Isn't that what all legal pleadings are,
10 Mr. Backus?

11 MR. BACKUS: I'm going to ask the reporter to mark
12 the October 30th FEMA response as an exhibit for
13 identification.

14 JUDGE SMITH: Massachusetts Attorney General Exhibit,
15 for identification, 38.

16 (The document referred to was
17 marked for identification as
18 Massachusetts Attorney General's
19 Exhibit No. 38.)

20 THE WITNESS: (Peterson) Your Honor, I need a point
21 of clarification.

22 I was asked relevant to this.

23 MR. BACKUS: Yes.

24 THE WITNESS: (Peterson) And my response to you was
25 I never viewed this or was involved in any discussions. It was

1 not meant to be that I supported the FEMA position at that
2 time.

3 MR. BACKUS: All right.

4 BY MR. BACKUS:

5 Q But you were not playing a decisional role in this at
6 that time, is that --

7 A (Peterson) That's right. That's my point and I
8 don't want it to be misinterpreted.

9 Q Indeed, at that time you, as I understand it, had
10 been nominated but had no votes on your confirmation had been
11 held; is that right?

12 A (Peterson) A long ways off from its finality, yes.

13 Q Are you suggesting, Mr. Peterson, that, by speaking
14 up as you just did, that by that time, on or about the end of
15 October, you had formed a position about -- a personal position
16 about FEMA's position?

17 A (Peterson) I think my response is quite clearly the
18 contrary.

19 I wanted to clarify in my mind and in your mind that
20 I had not endorsed any position at that time, nor was I even
21 aware of this document at that time, or any discussions related
22 thereto.

23 Q All right.

24 MR. DIGNAN: Do I understand that his has been marked
25 as an exhibit? And if so, can I have a copy of it? Marked for

1 identification.

2 MR. BACKUS: I thought everybody said they didn't
3 want more paper, but we've got it now.

4 MR. DIGNAN: I love paper.

5 MR. TURK: Have another one?

6 JUDGE SMITH: If you're going to offer it, you'd
7 better give the Board one, too.

8 MR. BACKUS: Yes, coming right up.

9 Okay, and I will offer that for the limited purpose
10 of following a historic record even though it's a part of the
11 proceedings as a pleading.

12 That's Massachusetts Exhibit 37.

13 MS. KEOUGH: Thirty-eight.

14 MR. TURK: I object to that, Your Honor.

15 JUDGE SMITH: Well, this is simply a convenience
16 when he wishes to make it. It's already a matter of record.
17 It was brought to the Board, the parties addressed it. He
18 could cite it by name, or he could cite it conveniently by
19 Exhibit number. But that's the only value it has. I think he
20 can offer it. Simply we have an exhibit which is a shorthand
21 term, and it's there for everybody to read.

22 MR. DIGNAN: What's the purpose of the offer?

23 MR. BACKUS: It's offered as a document that bears in
24 the historical evolution of the FEMA position.

25 MR. DIGNAN: Intending to prove what?

1 MR. BACKUS: That's going to be left to the argument.

2 MR. DIGNAN: Then I object. The only offer is that
3 it's a document that "bears" on an evolutionary position.
4 That's not good enough. I can't go along with it for that
5 purpose.

6 MR. BACKUS: Not every document has to be dispositive
7 of the ultimate issue. It's relevant to the issue.

8 MR. TURK: It's a legal pleading.

9 MR. FLYNN: Your Honor, it's not necessary to admit
10 it.

11 JUDGE SMITH: Well, this is -- I don't know if
12 anybody's characterized this the way that I would characterize
13 it. I think that FEMA is making two points here. The first
14 point is a self-destruct by saying that that's immaterial. But
15 they do say that FEMA stands by its original position.
16 Substance of the Applicants' argument against the introduction
17 of FEMA's testimony is that FEMA's position asserts nothing
18 more than legal argumentation and its conclusions are legally
19 incorrect. FEMA, of course, asserts its conclusions are
20 legally correct.

21 (Continued on next page.)

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1 But then it goes on to say, correct or incorrect,
2 their position has to be known. However, let me say, no matter
3 what it says, I mean, characterize it my way or your way or
4 anybody else's way, it does nothing to augment or help or
5 anything or anything about this witness's testimony that I
6 could see, and I don't know what probative value it has. The
7 only thing, it seems to me, is that we look at as a shorthand
8 way to refer to it, and it is a milestone, but it has no value
9 that I can see with these witnesses.

10 MR. BACKUS: I guess I also didn't offer it, and I'd
11 like to offer on the same basis, Exhibit 37, which was the
12 October 5th letter from Mr. Turk and the attached proposed
13 rebuttal testimony of NRC staff.

14 MR. DIGNAN: Now, what's that offered for?

15 MR. BACKUS: The same basis.

16 JUDGE SMITH: Well, this wasn't --

17 MR. DIGNAN: This isn't FEMA's position; it's the NRC
18 staff's position.

19 JUDGE SMITH: This is the NRC staff position as to
20 which FEMA looked in one of the milestones of this evolution.
21 But we do not have the same for the 38, that's why I don't
22 understand what we're going to do with it; the thing is going
23 to be a free-floating piece of information that will prove
24 nothing.

25 MR. BACKUS: Well, I think it bears on the

1 credibility of the position these witnesses are taking about
2 their -- the evolution of their position. I'm not going to try
3 and lay that all out, but I think it does bear on that.

4 MR. TURK: Your Honor, if you're going to rule on 37
5 I want to object as well.

6 JUDGE SMITH: Yes, I'm going to rule on 37. I'm
7 going to rule unless --

8 MR. TURK: Well, I have an objection to be noted.

9 JUDGE SMITH: -- unless you're mighty persuasive in
10 the next few minutes.

11 MR. TURK: I would simply call your attention and the
12 attention of the parties in the room to the cover letter which
13 accompanied that transmittal. It's a rather long sentence, but
14 let me emphasize as follows, it states that on September 4th
15 the Board had advised the Board and parties, quote: "That it
16 may wish to submit rebuttal testimony with respect to the beach
17 shelter issue," close quote.

18 It goes on to say, in accordance with that
19 commitment, quote: "The staff hereby submits a draft outline of
20 the areas it may wish to address in its rebuttal testimony in
21 the event the staff determines following cross-examination that
22 such rebuttal testimony is appropriate," close quote.

23 My point is simply that this paper was a draft. It
24 constituted the state of certain thinking at that time and it
25 should not be interpreted any different way.

1 JUDGE SMITH: It is not being offered in the
2 slightest to represent anything that the NRC staff thought or
3 is thinking; it's only what Mr. McLoughlin thought the NRC
4 staff was thinking. And it's perfectly appropriate.
5 Overruled.

6 (The document referred to having
7 been previously marked for
8 identification as Mass. AG
9 Exhibit 37, was received in
10 evidence.)

11 MR. BACKUS: So, 37 is in. Have you made a ruling on
12 38, which is the --

13 JUDGE SMITH: 38 is out; there's no probative value
14 to it. Nevertheless, it is one of the most insignificant
15 rulings that we have made in the history of this proceeding,
16 because it is in the record. I don't think that you even got
17 anybody to acknowledge that they even was aware of this paper.

18 I don't know. Did anybody ever say that they were
19 even aware of this response to the motion in limine?

20 THE WITNESS: (McLoughlin) I became ultimately aware
21 of the fact that FEMA was going to support. Certainly, my
22 expectation was to support it.

23 JUDGE SMITH: The subject matter, but not the paper
24 itself?

25 THE WITNESS: (McLoughlin) No.

1 JUDGE SMITH: Not the pleading itself.

2 MR. BACKUS: Okay.

3 BY MR. BACKUS:

4 Q But you did know at some time around the time when
5 this response was due that you were going to support the FEMA
6 testimony as filed on September 11th against a challenge to
7 that testimony going into the record, you knew that?

8 A (McLoughlin) Mr. Backus, obviously, this is very
9 important to you and I don't want to do anything but give you
10 an honest answer to it.

11 Q Well, that's all I want, Mr. McLoughlin.

12 A (McLoughlin) But for the life of me, you have come
13 back at me about a half a dozen times on this issue. I have
14 given you as accurately as I can what I understand to be the
15 case.

16 Q Well --

17 A (McLoughlin) Now, I don't know how many times --
18 what I'm afraid of will happen here, to be honest about it, is
19 that somehow there will be a change in your question that I am
20 not able to pick up, and somehow I will give you two different
21 answers when I didn't intend to do that; and that's what my
22 concern is. And if you will please ask me the question once
23 again, I will do my best to give you your answer.

24 Q I'm not trying to ask you any trick questions. If
25 you made an inadvertent error in response to a question, you

1 will have an opportunity to make a correction. And I'm sure
2 counsel will see to that on redirect. So try not to worry
3 about that and just answer the question.

4 JUDGE SMITH: Now, wait a minute. There is a problem
5 that the Board and witnesses and everybody has and that is,
6 when you perceive that a question has been asked before, and it
7 has in fact been asked before, well, you try to impute a
8 different meaning to the question because you think that you've
9 answered it and you try to impute some rationale in asking a
10 similar question. So, it does play mind tricks with people.

11 MR. BACKUS: I'm not doing that.

12 JUDGE SMITH: I know you're not trying to, but this
13 is the witness's concern.

14 MR. BACKUS: All right.

15 JUDGE SMITH: Now, what is the --

16 MR. BACKUS: Let me alleviate his concern and just
17 see if I can ask the question and -- because I don't think it's
18 been answered.

19 BY MR. BACKUS:

20 Q The question is, as you've testified, you had some
21 awareness that your FEMA testimony was under challenge by means
22 of a motion that had been filed?

23 A (McLoughlin) Yes.

24 Q And you were aware that FEMA counsel was going to
25 oppose that challenge on or about October 30th or that time

1 range, and you approved that?

2 A (McLoughlin) That's not -- I'm sorry, and I approved
3 of that?

4 Q Well, strike that. Were you aware that FEMA counsel
5 was going to resist the challenge to the FEMA testimony?

6 A (McLoughlin) I did not -- I have stated I have -- I
7 did not participate in discussions that led to that decision,
8 that's one.

9 Two, I don't -- my belief is that our general counsel
10 would have given me a copy of that. There's no reason in the
11 world that they would not have. But I do not specifically
12 recall dealing with that as an issue.

13 I certainly am aware of the fact that we were wanting
14 to support our testimony. But, Mr. Backus, I view this as an
15 entirely, a legal matter. You know, I didn't even know what
16 the term in limine meant until I had to ask questions about it.
17 And when I did, it obviously sticks with me because it's an
18 unusual term that I had -- was not familiar with.

19 Q Well, -- I'm sorry.

20 A (McLoughlin) And so I am aware of the fact that
21 FEMA's position is to do what it has to do to support our
22 position. And if there's a challenge to that, I would expect
23 our lawyers, when its appropriate, to take the appropriate
24 steps so that legally to deal with that.

25 Now, those are not programmatic issues from my

1 perception; and that's what I'm concerned about.

2 Q All right.

3 Now, in your testimony yesterday, Mr. McLoughlin, you
4 mentioned a couple of other milestones that came up thereafter?

5 A (McLoughlin) That's correct.

6 Q One, and I want you to tell me if I'm omitting
7 anything here, was this Board's ruling, you said it was
8 November 6th, I believe the record will show it was November
9 16th, excluding some dose testimony offered by the Attorney
10 General of Massachusetts, Sholly-Beyea; and the other was the
11 NRC's new rule on utility plans which was adopted at the end of
12 the month?

13 A (McLoughlin) That's correct.

14 Q Did these two events provide cause or reason to
15 reverse your RAC chairman and your FEMA witnesses?

16 JUDGE SMITH: Do you -- I don't fully understand the
17 reach of the question, and I wonder if he does. Are you
18 saying, standing alone do they or --

19 MR. BACKUS: Good point. Let's take them up
20 separately.

21 BY MR. BACKUS:

22 Q Did this Board's ruling of November 16th excluding
23 the Sholly-Beyea testimony, in your mind, constitute cause or
24 reason to reverse Mr. Thomas's position?

25 JUDGE SMITH: That doesn't satisfy -- see, I'll have

1 this discussion with you in the absence of witnesses, if you
2 wish, but I don't think it's necessary. But there's two
3 approaches that they could have to it, and that is -- you got
4 it.

5 MR. BACKUS: All right. All right. I'm not -- well.

6 JUDGE SMITH: And I don't want to interfere. I just
7 want him to understand.

8 MR. BACKUS: All right.

9 JUDGE SMITH: I just want you to understand your
10 question, too.

11 MR. BACKUS: All right. I think --

12 BY MR. BACKUS:

13 Q -- well, Mr. McLoughlin, let me go back again. As we
14 get up to the end of October it's my understanding that FEMA
15 was still supporting the September 11th testimony as filed; is
16 that true?

17 A (McLoughlin) Mr. Backus, I testified yesterday that
18 even as late as January 12th that my counsel to Mr. Flynn, in
19 answer to a question from this Board, was we hold that position
20 until we have a new one.

21 JUDGE SMITH: I'm sorry, you're -- see, he asked you
22 that question which is the question you think has been asked to
23 you many times. Now, and indeed it has been. He asked it to
24 you to place in context the next series of questions. So it
25 really is not -- it's only a contextual question.

1 THE WITNESS: (McLoughlin) Okay. What I --

2 JUDGE SMITH: See, he's getting ready for his next
3 question. Just say, yes, yes, and then he'll go on.

4 (Laughter)

5 THE WITNESS: (McLoughlin) Your Honor, what I want
6 to be clear about, because it is -- the sequence of the events
7 and the totality of the events in culmination are what caused
8 us to deal with the issue. I am not prepared to give Mr.
9 Backus an answer that would say, as of October 30th or 3 or 11
10 and so forth, that any one of those single events --

11 JUDGE SMITH: He's coming to that. Now, just --

12 THE WITNESS: (McLoughlin) Okay.

13 JUDGE SMITH: But that's good help, I'm sure he
14 appreciates that.

15 BY MR. BACKUS:

16 Q Do you want the question?

17 A (McLoughlin) Please.

18 Q My understanding is that, up through the end of
19 October basically FEMA was still prepared to defend the
20 testimony that had been filed on September 11th; is that
21 correct?

22 A (McLoughlin) That's correct. I would say that we
23 were not prepared to change it.

24 Q Okay. And have we discussed all the factors that
25 might affect a decision to change it up to that time?

1 A (McLoughlin) No.

2 Q Okay. What else is there?

3 A (McLoughlin) Well, as I testified yesterday,
4 there --

5 JUDGE SMITH: No, what was the factors that came to
6 your attention up until approximately the end of October, not
7 subsequent factors, but the factors that came to your
8 attention --

9 THE WITNESS: (McLoughlin) Yes.

10 JUDGE SMITH: -- up to that time?

11 THE WITNESS: (McLoughlin) He has not dealt with all
12 of them, Your Honor.

13 JUDGE SMITH: All right.

14 MR. BACKUS: All right, that's what I want to know.

15 THE WITNESS: (McLoughlin) That's what I understood
16 his question to be. And what I testified to yesterday was
17 that -- what you have done is, so far is to go through a legal
18 track, and those were indeed the things that were beginning to
19 build and beginning to cause me some concern about the legal
20 supportability of our position.

21 But there were other things that I testified to
22 yesterday. Clearly, the technical issues. I had testified --

23 MR. BACKUS: Okay.

24 BY MR. BACKUS:

25 Q This is the Keller business?

1 A (McLoughlin) This is the Keller business,
2 certainly. And I testified yesterday that the Keller
3 discussions with our staff as they were reported to me did
4 occur in, the best I can recall, in the October, late October
5 sequence, some place around that time; maybe the 1st of
6 November, but essentially, the tail end of October. And those
7 were --

8 Q Now, Mr. -- I'm sorry.

9 A (McLoughlin) Excuse me.

10 Q Finish up. Anything more?

11 A (McLoughlin) No.

12 Q Okay. Now, Mr. Keller is the individual from the
13 Idaho Engineering Laboratory?

14 A (McLoughlin) That's correct.

15 Q Who you called in for technical assistance on the
16 sheltering issue?

17 A (McLoughlin) That's correct.

18 Q Okay. And, of course, he is a witness on the March
19 14th testimony that we've had filed in this proceeding, is he
20 not?

21 A (McLoughlin) That's correct.

22 Q And isn't the gist of his testimony that indeed
23 sheltering is not likely to be a preferred option for the
24 close-in population around nuclear plants in the event of a
25 fast breaking accident?

1 MR. TURK: Objection.

2 MR. FLYNN: Excuse me, are we shifting time frames
3 here that the -- the testimony is different in content from the
4 discussion in October; and I think that was clear from the
5 direct testimony yesterday. So if you're asking about the
6 influence of the information in the testimony you're talking
7 about a different period of time.

8 MR. BACKUS: I didn't understand it.

9 JUDGE SMITH: I think you missed the purpose. What
10 happened is, in the progression of events that have entered
11 into the evolution, would come to Mr. Keller. And now he is
12 stopping and examining on that basis.

13 MR. FLYNN: But that's --

14 JUDGE SMITH: And one of the ways he's doing it is
15 identifying that's the very same Mr. Keller who has testified
16 or will be testifying on the March 14th prefiled testimony to
17 certain things; that's where we are.

18 MR. TURK: I hear Mr. Flynn's objection to be that,
19 what may have been discussed in October is not necessarily the
20 same thing as what appears in the January testimony.

21 JUDGE SMITH: It may very well be. It may very well
22 be. But it is indeed the one in the same Keller who did -- who
23 has been offered as a witness as to things in the March 14th
24 testimony.

25 MR. FLYNN: Well, I certainly don't dispute that.

1 BY MR. BACKUS:

2 Q Do you have the question?

3 A (McLoughlin) I must have it, Mr. Backus, yes.

4 Q Okay. You'd like me to phrase -- rephrase the question?

5 A (McLoughlin) Well, the last question I recall, the
6 answer is, yes.

7 Q All right. You said that the other factor that I
8 left out in my progression to the point of October or the end
9 of the October --

10 A (McLoughlin) Yes.

11 Q -- was the fact that you had decided or somebody
12 decided to contact Mr. Keller for some technical assistance on
13 the efficacy of sheltering as a protective action for the
14 close-in population?

15 A (McLoughlin) That's correct.

16 Q Okay. And we have Mr. Keller's testimony as filed on
17 March 14th; is that correct?

18 A (McLoughlin) That's correct.

19 Q And do I correctly characterize that testimony as
20 saying, that based on the things he discusses, he concludes
21 that generally speaking sheltering is not a good protective
22 action or as good as evacuation for the populations within two
23 miles of a nuclear facility?

24 A (McLoughlin) That is one of the conclusions, yes.
25 That is not the only conclusion, I would say.

1 Q Is there other conclusions of his testimony or work
2 that you would cite as important to the decision?

3 A (McLoughlin) Surely.

4 MR. FLYNN: And for what period of time?

5 JUDGE SMITH: Well, see I think --

6 MR. BACKUS: Today.

7 JUDGE SMITH: Well, yes, let's make it clear, because
8 within the context of the way you asked the question it could
9 be that you have equated it as one in the same, the March 14th
10 testimony of Mr. Keller and the report Mr. Keller gave in
11 October. And that is what concerns Mr. Flynn and Mr. Turk. If
12 that's what your intention is, well, let's make clear that
13 that's what it is.

14 MR. BACKUS: All right.

15 BY MR. BACKUS:

16 Q Hasn't it been Mr. Keller's position consistently,
17 since you've been dealing with him on this, that sheltering is
18 not a good protective response for the populations within two
19 miles of the Seabrook reactor?

20 A (McLoughlin) My knowledge is that subsequent to the
21 meetings in which I was informed of in October, the answer is
22 that that is one of the conclusions that Joe Keller has been
23 specifically supported, yes.

24 Q Okay. And what are the other conclusions that you
25 believe are important that he supports?

1 A (McLoughlin) That evacuation, number one,
2 evacuation does indeed provide significant dose savings.

3 And two, that evacuation is indeed undoubtedly a -- I
4 want to withdraw the word "undoubtedly," that evacuation is, in
5 most instances, the preferred protective measure.

6 And one of the additional conclusions that is
7 important to me is the fact that the uncertainties that are
8 associated with dose projections, because of the uncertainties
9 related to the releases in the reactor, that is an additional
10 support, in my mind, why evacuation is the probable preferred
11 protective action.

12 Now, when I say that I don't want to in any way,
13 shape, or form leave out other protective actions such as:
14 access control; monitoring; those issues as well.

15 JUDGE SMITH: Well, wait a minute now. Just keep
16 your answer limited to what you gained from Mr. Keller's input
17 in October as leading to the evolution of your position.

18 THE WITNESS: (McLoughlin) Yes, will do.

19 JUDGE SMITH: And if that was what you were going to
20 do -- I mean, if that was elaboration on that, if it was in
21 addition to it, I prefer you wouldn't do that.

22 THE WITNESS: (McLoughlin) Your Honor --

23 MR. FLYNN: Excuse me, Your Honor, I --

24 JUDGE SMITH: What?

25 MR. FLYNN: -- I don't want to belabor this point.

1 but I did not understand the question to be asking about Mr.
2 Keller's conclusions in the October time frame.

3 JUDGE SMITH: This has been Mr. Keller's -- what he
4 learned from -- what he learned, as a consequence of Mr.
5 Keller's work in October as well as other times because the
6 question to him was, has it not been consistently Mr. Keller's
7 position.

8 THE WITNESS: (McLoughlin) Yes, then I was in error
9 in adding the other ones. I was only -- I was in error in
10 adding the rest of it, yes.

11 BY MR. BACKUS:

12 Q And I wanted to restrict to Mr. Keller's conclusions
13 about sheltering as a protective action.

14 A (McLoughlin) All right.

15 Q Now, having in mind that I want to restrict you to
16 his conclusions about sheltering for protective action, would
17 you agree that from the time he's been working on this, up to
18 the time he filed the testimony, his conclusion about
19 sheltering is that it's not a good protective action for the
20 close-in two-mile ring around a nuclear plant including
21 Seabrook?

22 A (McLoughlin) Mr. Backus, his -- my belief of what he
23 has consistently said is to be very careful about sheltering.
24 He has been -- he has been -- my belief is, he supports the two
25 percent, the sheltering for the two percent. And therefore,

1 I'm reluctant to agree to something that doesn't suggest that
2 Mr. Keller would support that, because I believe he does.
3 That's my --

4 Q Okay. Granted.

5 For the 98 percent, am I correct, that his conclusion
6 as expressed to you in October and up to the time of the filing
7 of the testimony was that sheltering is not a good protective
8 action for the 98 percent in the close-in area?

9 A (McLoughlin) No, that is not accurate; and it is not
10 the way in which I have characterized it consistently.

11 JUDGE SMITH: All right, let me interrupt here. Are
12 you -- is it the purpose of your question to capture all of the
13 nuances of Mr. Keller's viewpoint on it, which may not be
14 evident in the question or is it simply to identify, generally
15 speaking, the gist of Mr. Keller's position.

16 MR. BACKUS: It's the latter, Your Honor.

17 JUDGE SMITH: It's the latter.

18 THE WITNESS: (McLoughlin) Then I'm -- the concern
19 that I have, Your Honor, is the fact that Mr. Keller has been,
20 because I had asked him specifically these questions. He has
21 never said, and it's my understanding, is that he does not take
22 the position that shelter is always the best option.

23 His position has been, rather, that in most instances
24 shelter is not the preferred countermeasure, but he has clearly
25 said to me that there may be instances in which shelter could

1 conceivably be, under some sets of circumstances, a reasonable
2 protective action to take.

3 And so what I don't want to do is to agree to
4 anything that excludes shelter -- the opportunity to use
5 shelter as a protective measure; that's my only concern.

6 JUDGE SMITH: This series of questions, I think,
7 would be unfair to Mr. McLoughlin if we didn't understand that
8 there are shades of -- there are nuances to many of these
9 answers and since you're just trying to establish milestones
10 now, that -- well, he's prudent in making sure that his
11 statement is accurate. But we do have a problem here.

12 MR. BACKUS: Well --

13 MR. TURK: Your Honor, for clarification, I believe
14 the witness may have misspoken. I believe he said that Keller
15 has never said that shelter is always the preferred option, or
16 something along that line, I think he meant to say evacuation.

17 THE WITNESS: (McLoughlin) I'm sorry. Can I restate
18 it, so that I'm clear? What I should have said, if I did not,
19 is that Mr. Keller has never said to me or taken a position, as
20 I understand it, that shelter is not an option in some sets of
21 circumstances.

22 That generally speaking, shelter is not the preferred
23 option in most fast breaking events.

24 (Continued on next page.)

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1 BY MR. BACKUS:

2 Q I'd like to relate that back to the statement made in
3 the letter of June 11th that we previously discussed, the last
4 sentence on Page 2.

5 JUDGE SMITH: What exhibit number is that?

6 MR. BACKUS: It's 35.

7 BY MR. BACKUS:

8 Q Which states, "Although sheltering is an alternative,
9 we doubt if the --

10 JUDGE SMITH: Excuse me, Mr. Backus. Where are you?

11 MR. BACKUS: Page 2 --

12 (Interruption from audience.)

13 JUDGE SMITH: Go ahead, Mr. Backus.

14 BY MR. BACKUS:

15 Q The statement we previously discussed is, "Although
16 sheltering is an alternative --

17 THE WITNESS: (McLoughlin) Please --

18 JUDGE HARBOUR: Page number.

19 THE WITNESS: (McLoughlin) Could I get where you
20 are?

21 MR. BACKUS: Page 2 of the June 11th letter which was
22 marked as Exhibit 35; also appears as Page 71 of Staff Exhibit
23 2-A.

24 THE WITNESS: (McLoughlin) I'm on Page 2. If you're
25 going to read something, just help me get to it.

1 MR. BACKUS: Okay, it's the last sentence on the
2 second paragraph.

3 THE WITNESS: (McLoughlin) Okay.

4 MR. BACKUS: "Although sheltering is an alternative,
5 we doubt if the use of existing public or private facilities
6 would be acceptable."

7 BY MR. BACKUS:

8 Q Correct?

9 A (McLoughlin) That's what it says, yes.

10 Q Now, doesn't the Keller hypothesis that in most
11 accidents sheltering is not going to be the protective action
12 of response of choice for the close-in --

13 A (McLoughlin) Right.

14 Q -- population reinforce that, for the 98 percent.

15 A (McLoughlin) Yes, I would say it does.

16 Q Okay. Now, we've discussed the factors --

17 MR. TURK: Your Honor, could we have just two minutes
18 to regroup after that interruption?

19 MR. BACKUS: Well, I'm fully grouped.

20 MR. TURK: I'm not. Just a stand in place for a few
21 minutes.

22 JUDGE SMITH: All right, that's a good idea.

23 (Whereupon, a recess was taken.)

24 BY MR. BACKUS:

25 Q Now, Mr. McLoughlin, we had gotten up to roughly the

1 end of October, and I had asked you if I had captures the
2 factors that were significant that might bear on altering the
3 FEMA position of September 11th. And you said, no.

4 We then got to discussing Mr. Keller and his work.

5 A (McLoughlin) Correct.

6 Q With that inclusion, have I now omitted anything that
7 was significant in terms of reassessing the FEMA position
8 between September 11th and the end of October?

9 A (McLoughlin) No, I don't believe so.

10 Q All right. Would I then be correct that the next
11 event that you adverted to in your direct testimony would be
12 the Board's ruling of November 16th, on the Sholly-Beyea
13 testimony?

14 A (McLoughlin) Did we talk about the November 3rd
15 filing, or rule? Have you -- we did not talk about that, did
16 we?

17 Q Okay.

18 A (McLoughlin) And that --

19 Q I was going to treat that as being a late November,
20 because I think it was finally adopted in late November, but I
21 may be wrong.

22 But you mean the rule change?

23 A (McLoughlin) Yeah. As long as we're -- put that in
24 the November time frame, I'll wait until your question comes
25 then.

1 Q Okay. You agree we captured everything that you feel
2 is significant up to November then.

3 A (McLoughlin) Yes.

4 Q And in November, there were the two events that you
5 just adverted to: The Board's ruling on November 16th on
6 Sholly-Beyea, and the NRC Commission adoption of the rule
7 change on utility plans.

8 A (McLoughlin) That's correct.

9 Q Okay. Of course, both of these are legal
10 developments; is that correct?

11 A (McLoughlin) That's correct. I think I labeled
12 those as such yesterday.

13 Q Okay. Now, did -- you chronologically, I think, put
14 the rule change as the first of those, so let me --

15 A (McLoughlin) Yes.

16 Q -- just deal with it in that light.

17 Did the rule change then constitute cause or reason
18 to override our Region 1 RAC chairman and witness on the FEMA
19 position?

20 A (McLoughlin) You mean in and of itself?

21 Q Yes.

22 A (McLoughlin) No.

23 Q Okay. Did the November 16th ruling of this Board on
24 the Sholly-Beyea testimony give you cause or reason to override
25 your RAC chairman in Region 1 and witness, in and of itself?

1 A (McLoughlin) The answer to that is, no, but it --
2 but I want you to understand that there is a growing concern
3 on my part at that point as we get additional elements of
4 information that at some point, you know, it's got to tip the
5 balance, and it is not -- we are not there in November, but we
6 certainly are, as I said at the end of September, right after
7 the September filing and right before that, we were concerned.
8 These are issues that are clearly causing concern on our part,
9 but as of the end of November had not reached a final
10 conclusion that we ought to change.

11 Q All right. And, accordingly, I take it, Mr.
12 McLoughlin, you had not at this point in any way indicated to
13 Mr. Thomas that he should not be anticipating to go forward to
14 defend the September 11th testimony.

15 A (McLoughlin) The September 11th?

16 Q September 11th filing.

17 A (McLoughlin) Now, wait a minute. I'm in November
18 now and you are --

19 Q No, let me ask it again.

20 A (McLoughlin) All right.

21 Q Up to the end of November --

22 A (McLoughlin) Yes.

23 Q -- had you in any way indicated to Mr. Thomas, who
24 was the sole FEMA witness on the issue of the beach population
25 in the testimony filed on September 11th --

1 A (McLoughlin) Oh.

2 Q -- that you were no longer -- that you were thinking
3 of no longer supporting his position?

4 A (McLoughlin) No, I don't -- wait a minute. I'm not
5 sure -- you're asking -- the question is -- let me give you the
6 question so I think I understand it.

7 You're asking me whether or not at that point in time
8 I had said anything to Mr. Thomas to suggest that our position
9 is changing.

10 Q Right.

11 A (McLoughlin) Mr. Backus, I don't -- boy, you know,
12 the answer for me personally is, no.

13 Q All right, let me ask Mr. Krimm.

14 Had you?

15 A (Krimm) Yes.

16 Q You have?

17 A (Krimm) Yes.

18 Q When did you so indicate it to him?

19 A (Krimm) I'm not sure exactly the time frame, Mr.
20 Backus. As data, as technical data was becoming available that
21 would tend to make FEMA change its position, I had told my
22 staff that I wanted to continue support Ed Thomas.

23 And my staff would come in and tell me certain things
24 which certainly -- which gave me concern, and also the things
25 that were happening with the Board rulings, et cetera.

1 And from time to time I talked to Ed about the
2 technical data, the Keller data, and other things that were
3 happening.

4 I was trying very hard to continue to support Ed
5 Thomas because he is our Region 1 RAC chairman. And when our
6 conversations took place, I'm sorry, I cannot give you the
7 exact dates and so forth. But based on my recollection, these
8 would have been late November, early December, some time like
9 that.

10 We were also involved at that time with the Pilgrim
11 self -- well, the negative finding and so forth at Pilgrim.
12 And so I was talking to Ed quite frequently about the Pilgrim
13 situation along with the Seabrook situation.

14 Q Okay. You understood I am only interested in
15 Seabrook, right?

16 A (Krimm) Yes, I'm sorry. I'm just saying that there
17 were a lot of things going on at that time, and I really
18 regret -- if I had ever known I was going to be in this
19 position -- that I didn't take meeting notes, and didn't keep
20 telephone logs and things like that, because everyone runs
21 together for me. But I do recall talking to him as members of
22 my staff would come in and tell me things.

23 Q And I'm not interested in particular dates.
24 When you were talking to him, you say in late
25 November, early December, you referenced technical data. Is

1 that again Mr. Keller?

2 A (Krimm) That was Mr. Keller's data and some other
3 things that were happening. Probably the Board ruling on
4 Sholly and things like that.

5 Q I've been through this --

6 A (Krimm) I didn't remember specifically. I remember
7 more specifically the Board.

8 Q Okay. I've tried to go through this in some detail
9 with Mr. McLoughlin, and you've been here listening.

10 A (Krimm) Yes.

11 Q Are there any things other than what I've discussed
12 with Mr. McLoughlin, which certainly includes the Board ruling,
13 the NRC rule change and the Keller business, that led you to
14 suggest to Ed Thomas that his position as the FEMA witness
15 supporting a certain position was in doubt?

16 A (Krimm) I just don't -- I just don't recall if there
17 were other issues or not. I think many of the things you
18 discussed with Mr. McLoughlin were pretty much what I had
19 probably talked to Ed Thomas about.

20 Q Okay.

21 A (Krimm) I do think you should know, Mr. Backus, that
22 my staff did want me to change the position, or recommend to
23 Mr. McLoughlin that the position be changed.

24 Q Who's that?

25 A (Krimm) Craig Wingo and Margaret Lawless.

1 Q And on what basis?

2 A (Krimm) On the basis of the Keller data primarily.

3 Q All right. Of course, I'm not going to get into the
4 merits of Mr. Keller's position because he's going to be
5 offered as a witness here.

6 A (Krimm) Certainly.

7 Q You made a reference yesterday, and I'm sorry I
8 didn't note which witness it was -- it was certainly either Mr.
9 Krimm or Mr. McLoughlin -- that by December you had known that
10 the NRC staff disagreed with FEMA's position on sheltering. I
11 take it this refers to the September 11th testimony. And you
12 had acknowledgement from NRC's perspective that we were not
13 understanding the technical issues of shelter.

14 A (McLoughlin) I testified to that yesterday.

15 Q Okay. I have a note it's at 12711 of the transcript
16 if you need to refer to what -- and I guess I do.

17 A (Peterson) We no longer have a copy, sir.

18 Q I have one here I can give you.

19 Okay. I gather that's you, Mr. McLoughlin; is that
20 correct?

21 A (McLoughlin) That's correct.

22 Q And I was referring to the --

23 A (McLoughlin) Yes.

24 Q -- third paragraph, Line 12. "We were having
25 discussions from the NRC staff to Dick Krimm's staff at the

1 technical level. There were those discussions that were
2 occurring in September that we're acknowledging from the NRC's
3 perspective, that we were not understanding the technical
4 issues of shelter, as it related to this, properly."

5 Correct?

6 A (McLoughlin) That's correct.

7 Q All right, let me turn to Mr. Krimm then.

8 You heard Mr. McLoughlin say that yesterday --

9 A (Krimm) Yes.

10 Q -- and repeat it today.

11 Who were you discussing your position on sheltering
12 with at NRC?

13 A (Krimm) It was probably Frank Congel and Dave
14 Matthews. There may have been others, Mr. Backus, but those
15 two names would be the most likely.

16 Q And when was this discussion, approximately?

17 MR. TURK: May we ask if this is a guess or if this
18 is recall?

19 MR. BACKUS: I'm sorry?

20 MR. TURK: I heard the witness say it probably would
21 have been those individuals. I don't know if that's his
22 speculation or if this is something he recalls.

23 BY MR. BACKUS:

24 Q Do you recall discussing this with Mr. Congel and Mr.
25 Matthews?

1 A (Krimm) I don't recall specifically, Mr. Backus.
2 But in all likelihood, it probably would have been discussed in
3 connection with the FEMA-NRC steering committee meetings. And
4 Mr. Congel is the co-chair, and Mr. Matthews always attended
5 those meetings.

6 Q Okay. The NRC-FEMA steering committee meetings.

7 A (Krimm) Yes.

8 Q How often do they occur?

9 A (Krimm) They vary in -- it's irregular. But when
10 there are issues that we feel need to be discussed, we call the
11 meetings.

12 Q All right. And are you the senior FEMA person that
13 ordinarily attends such a meeting?

14 A (Krimm) Yes, that's correct.

15 Q And who would be the senior NRC person that would
16 ordinarily attend such a meeting?

17 A (Krimm) Okay. At this time and since, I believe,
18 early fall, it has been Frank Congel.

19 Q And would you make a report of these meetings to Mr.
20 McLoughlin?

21 A (Krimm) If I thought it was appropriate to bring
22 certain issues to his attention.

23 Q And is it through a report that you made to him that
24 he would have known about this -- well, I should ask this to
25 Mr. McLoughlin.

1 Was it through reports from Mr. Krimm that you knew
2 about this discussions with Dr. Krimm's staff at the technical
3 level that you --

4 A (McLoughlin) I'm sure that it must have been,
5 because that's the normal route that I would have become aware
6 of this, yes.

7 Q Okay. And what did these NRC people tell you you had
8 wrong about the sheltering issue? FEMA had wrong.

9 A (Krimm) Okay. To the best of my recollection, their
10 argument was that we were contravening the NRC regulations;
11 that the NRC regulations did not require sheltering as a
12 protective action. It was not mandatory.

13 Q Okay. Nobody ever suggested it was precluded, I take
14 it.

15 A (Krimm) No, no, I don't recall that. I'm just --
16 but this is the basis of my discussion. Again, I'm sorry I
17 didn't keep notes.

18 Q And what response did you make to this suggestion
19 that you were misinterpreting NRC's regulations?

20 (Continued on next page.)

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1 A (Krimm) The reason I'm smiling is that at sometimes
2 these meetings get very stormy. And --

3 Q Not only when Mr. Stello is there; otherwise too.

4 A (Krimm) I think our meetings sometimes are a lot
5 more stormy than when Mr. Stello is there.

6 I think at the time we felt -- we probably said,
7 well, let us go back and discuss this with legal counsel.
8 That's somewhat my recollection, Mr. Backus.

9 Q You didn't have any lawyers representing FEMA in
10 these meetings?

11 A (Krimm) Not always. Only when we asked, and usually
12 the way that works is we tell NRC we're going to bring a
13 lawyer, and NRC then brings a lawyer to the meeting also.

14 Q Well, if you were in substance getting from the NRC
15 representatives that you were misinterpreting regulations,
16 would you then bring a lawyer to deal with that issue to the
17 next meeting?

18 A (Krimm) Yes, and I've forgotten exactly what
19 transpired in between there but I think, you know, this was
20 again something we were talking about, talking with the general
21 counsel's office about and so forth.

22 Q Did you get some advice from general counsel's office
23 about -- did you feel a need to consult with general counsel
24 about how to respond to a suggestion that you were somehow
25 misapplying or misinterpreting NRC regulations?

1 A (Krimm) I believe that my staff may have talked to
2 them. I don't know. We did not -- I think we were debating it
3 back and forth, and we were -- as I recall, Mr. Backus, we
4 discussed this along with the Keller data and so forth as
5 concerns that our position as we were now taking, or had taken
6 on September 11th was probably wrong.

7 Q Did NRC's people suggest to you anything else was
8 wrong with your sheltering position other than if you thought
9 their regulations required sheltering, you were wrong? Is
10 there anything else?

11 A (Krimm) I don't recall.

12 Q Did anybody from the FEMA attendees at these meetings
13 say, in substance, hey, we got our own regulations?

14 A (Krimm) Not that I recall.

15 Q Do you have your own regulations?

16 A (Krimm) We do have our own regulations, that's
17 correct.

18 Q Do they require a finding of reasonable assurance of
19 adequate protection for offsite populations?

20 MR. TURK: Objection. This is legal argumentation.

21 MR. BACKUS: I'll withdraw it.

22 BY MR. BACKUS:

23 Q Okay, was there more than one NRC-FEMA steering
24 committee meeting where this was discussed?

25 A (Krimm) I'm sorry, I really can't tell you, Mr.

1 Backus. There were several meetings going on at that time and
2 a number of issues. There were some meetings which were
3 FEMA-NRC steering committee meetings. There were other
4 meetings where just some of the staff met. There were other
5 times we talked on the telephone and so forth.

6 And there were really just a lot of issues, you know,
7 being discussed, a variety of things at that time. I mean, you
8 have to understand, and I know Seabrook is really important to
9 you, but we --

10 Q Important to a lot of people.

11 A (Krimm) I realize that, and I'm going to apologize
12 to you that we also have to look at 75 other plants or sites in
13 the country, and I apologize that in not being able to answer
14 your questions better.

15 Q So the short answer to the question is you don't
16 know.

17 A (Krimm) I don't know. That's right.

18 Q Okay. Anybody keep notes of NRC-FEMA steering
19 committee meetings?

20 A (Krimm) There are some -- there are some notes taken
21 at those meetings, not at all of them.

22 Q Would there be notes that you know of to the meeting
23 where NRC discussed your not treating the sheltering issue
24 properly?

25 A (Krimm) I don't know, but I will be glad --

1 MR. TURK: I'm going to object to that
2 characterization.

3 MR. BACKUS: All right. I'll use the exact language.
4 Isn't it perfectly clear what we're talking about?

5 MR. TURK: No.

6 BY MR. BACKUS:

7 Q Do you understand what I'm talking about, Mr. Krimm?

8 A (Krimm) Yes.

9 Q Okay. Would you then look to see if you have notes
10 of the NRC-FEMA steering committee meetings where was
11 discussion of whether or not FEMA was incorrectly applying, or
12 attempting to apply NRC regulations?

13 A (Krimm) Yes. I shall do that, but it will have to
14 be next week.

15 Q All right.

16 Were you aware of the exhibit that was marked by the
17 Applicant here at the beginning: the letter to Senator Glenn of
18 May 13, 1988, Mr. Krimm?

19 A (Krimm) Yes, yes.

20 Q Did you have any part in reviewing that letter before
21 it was sent to the Senator?

22 A (Krimm) Mr. Backus, I drafted the letter.

23 Q Okay. And the last --

24 A (Krimm) Within -- excuse me, may I say I drafted the
25 letter and I did --

1 JUDGE SMITH: Off the record.

2 (Discussion off the record.)

3 BY MR. BACKUS:

4 Q Okay, Mr. Krimm, you say you drafted the May 13th
5 letter to Senator Glenn?

6 A (Krimm) Yes. I do want to make a very strong point,
7 though, that various people did give me their input which I,
8 you know, put into the letter.

9 Q Okay. The last sentence on the first page says,
10 "Likewise, it was discussed by the FEMA-NRC steering committee
11 at its regular meetings over a period of a year or more."

12 Correct?

13 A (Krimm) Yes.

14 Q And that's the beach sheltering issue; is that
15 correct?

16 A (Krimm) Right.

17 Q And I understand that you will make a search and see
18 if you have any notes pertaining to this subject that we're
19 discussing where NRC expressed a concern about the FEMA
20 position on sheltering?

21 A (Krimm) Yes, I will when I return next week.

22 JUDGE SMITH: You're not going to return here next
23 week.

24 THE WITNESS: (Krimm.) No, no.

25 JUDGE SMITH: I mean it's up to you; you can return

1 next week.

2 THE WITNESS: (Krimm) No, thank you. I want to
3 return to my -- when I return to my office. I'm sorry, sir.
4 Thank you.

5 MR. BACKUS: Okay.

6 BY MR. BACKUS:

7 Q Mr. Peterson, you told us yesterday that it was on
8 December 17th that there was a subcommittee vote on your
9 nomination?

10 A (Peterson) I believe that's correct, sir. I believe
11 it was December 17th where the subcommittee voted; yes, sir.

12 Q Mr. McLoughlin, was Mr. Vickers Mr. Thomas's superior
13 on the Region 1 director in Washington on or about December
14 18th?

15 A (McLoughlin) I believe he -- it was -- it certainly
16 was mid-December he was in there, into the headquarters, yes.
17 And whether or not it was specifically December 18th, I'd have
18 to do some checking, but I think -- I don't dispute that date,
19 and it was close to when he was there.

20 Q Mr. Peterson, on or about that time did you tell Mr.
21 Vickers to sign a request for assistance on the Seabrook case?

22 A (Peterson) No, I did not direct him to sign it.

23 Q Did you request him to sign such a letter?

24 A (Peterson) No, I did not request him to sign such a
25 letter.

1 Q Okay. Did you, Mr. McLoughlin?

2 A (McLoughlin) Please restate what it is I'm asking --
3 I'm responding to.

4 Q Was there a request by headquarters that Mr. Vickers
5 sign a letter requesting assistance on the Seabrook case in
6 addition to Mr. Thomas's participation?

7 A (McLoughlin) There is an issue there that I will
8 acknowledge and -- but I'm not prepared to give you a yes or no
9 answer to that issue.

10 If we're going to do it, I need to give you a little
11 bit more of the context within which that occurred.

12 Q Well, what is the issue, Mr. McLoughlin?

13 A (McLoughlin) The issue that you've just asked is
14 whether or not we asked Mr. Vickers to sign a memo -- let's
15 see -- whether or not we asked Mr. Vickers to sign a memo to do
16 something, and I forget exactly what your words were.

17 Q To direct -- request the assistance on evaluating
18 plans for Seabrook for Region 1?

19 A (McLoughlin) The implication of your question is
20 what's troubling me.

21 A (Peterson) Yes, me, too.

22 A (McLoughlin) The implication is that we told him to
23 sign it, and that's -- what I don't want to deny is that we had
24 discussions about a letter, that kind of a letter, because
25 clearly we did. But what I don't want to do is to imply in any

1 way, shape or form that Mr. Vickers was directed to sign that
2 letter.

3 So I will leave it at that until you follow up with
4 some additional questions.

5 JUDGE SMITH: No Flash; available light only.

6 THE PHOTOGRAPHER: No one told me that.

7 JUDGE SMITH: Well, I'm telling you now.

8 BY MR. BACKUS:

9 Q Mr. McLoughlin.

10 A (McLoughlin) Yes.

11 Q I'm trying to ask the questions as best I can, and I
12 understand you may have a concern about where the questions
13 lead. If the question needs explanation, I'm going to and I
14 think I have given you full opportunity to explain. But I'd
15 just like you to try and concentrate on the questions without
16 worrying about the motivation for them, okay?

17 A (McLoughlin) Well, but I cannot -- yes.

18 Q Okay. Did Mr. Vickers, as a result of being in
19 Washington, come back and sign a letter requesting assistance
20 on reviewing the Seabrook plans?

21 MR. FLYNN: Objection. I have two bases for the
22 objection.

23 One has to do with relevancy of the whole line. What
24 the question is asking about is discussions and a memorandum
25 having to do with assignment of personnel to review the

1 Massachusetts plan, and I submit that that has no bearing on
2 the subject matter before this board.

3 The other goes to the characterization in the
4 question about as a result of being in Washington, which is
5 designed to elicit from the witnesses that they made Mr.
6 Vickers sign the letter when indeed the testimony is that
7 that's not the case.

8 JUDGE SMITH: I don't understand the last one, but I
9 do understand the first one.

10 MR. TURK: I think it's an inference of cause and
11 effect, Your Honor.

12 MR. BACKUS: Is there an objection?

13 JUDGE SMITH: Yes, there is an objection.

14 MR. FLYNN: I said that at the beginning.

15 MR. BACKUS: Okay. I don't know quite how to deal
16 with that objection. Merely because this may involve in some
17 way the review of the utility plan for Massachusetts doesn't
18 mean it's unrelated to the change in what FEMA was doing in
19 regard to the New Hampshire plans, and I believe there is a
20 connection, and I certainly think we're entitled to explore it.

21 JUDGE SMITH: Well, what's the connection though?

22 See, I have not understood your objective in this
23 line of questions to begin with, so I can't be helpful.

24 MR. BACKUS: Well, you may not be aware of the
25 information we have from our depositions about this matter, but

1 I'm sure these witnesses are, and I can -- well, let me ask --

2 JUDGE SMITH: Is that on your cross-examination -- I
3 don't know. I mean, we've got to know something about what
4 you're doing before we can rule.

5 MR. BACKUS: Let me ask another question. Let me
6 withdraw the question.

7 BY MR. BACKUS:

8 Q Was Mr. Vickers summoned to Washington in order to
9 direct him to ask for assistance in reviewing the Seabrook
10 emergency plans?

11 A (McLoughlin) Direct answer to that question is, no.
12 Mr. Vickers was asked, not summoned, asked to come to
13 Washington to review with us the work load in the region.

14 Q Was there some statements made that Mr. Thomas is
15 stubborn and we need to get somebody else working on this?

16 MR. FLYNN: Your Honor, let me note a continuing
17 objection to this entire line of questioning on relevancy
18 grounds.

19 JUDGE SMITH: Well, is it related to solely the
20 future of the Massachusetts plan, or is it related to work
21 right now on the New Hampshire plan? I didn't understand any
22 limitation in your question.

23 MR. BACKUS: I don't know.

24 JUDGE SMITH: All right. Overruled.

25 THE WITNESS: (McLoughlin) Are you waiting for me to

1 answer a question?

2 MR. BACKUS: Yes.

3 THE WITNESS: (McLoughlin) Please restate it then.

4 MR. BACKUS: Can I have it back?

5 THE WITNESS: (McLoughlin) I had answered your
6 question. If your question was did we summon Mr. Vickers to
7 the headquarters, I --

8 JUDGE SMITH: No, this was about Thomas being
9 stubborn and --

10 THE WITNESS: (McLoughlin) Oh, I'm sorry, excuse me.
11 Yes.

12 JUDGE SMITH: That's a paraphrase, right.

13 THE WITNESS: (McLoughlin) Please repeat the
14 question then so I'm sure what I'm answering.

15 BY MR. BACKUS:

16 Q Was comment made about Mr. Thomas being stubborn and
17 that was part of the reason why Mr. Vickers was going to be
18 requesting assistance in reviewing the Seabrook plans?

19 A (McLoughlin) I don't recall that specific statement
20 being made by anybody, Mr. Backus. I don't. The troubling
21 aspect of this is that it is clear continually that Mr. Thomas
22 was -- held a strong view in this area, and that he was central
23 to the work that we had to accomplish in the region.

24 And whether or not he was stubborn or not stubborn,
25 in my mind, would have -- I don't know what relevance that

1 would have to anything that we were doing at that point. We
2 were concerned with Mr. Vickers about the work load in the
3 region. We have both the New Hampshire and the Massachusetts
4 side. We had had, I believe, in December I believe we were
5 expecting a request, if we hadn't had it already -- certainly
6 we talked about this in the January meeting -- of exercises
7 that were going to occur in -- well, you know at Seabrook for
8 both sides, and we were concerned about whether or not we had
9 the resources both in the headquarters and in the region to
10 perform those missions. That's what I recall of the reason we
11 were asking Mr. Vickers to come in and discussion this with us.

12 Q So you want to leave it that it was solely a concern
13 about the work load at Region 1?

14 A (McLoughlin) I surely do.

15 Q Okay.

16 A (McLoughlin) Yes, that's --

17 Q Mr. Krimm, have you said at any time to Mr. Thomas
18 that he was a red flag to the NRC?

19 A (Krimm) No.

20 Q You had never made such a statement?

21 A (Krimm) no.

22 Q Okay. Now let me move into January of this year.

23 I take it that the first event that happened in
24 January that's of significance here probably was, Mr. Peterson,
25 you were officially sworn in on the job as of January 5th; is

1 that right?

2 A (Peterson) That's correct, sir.

3 Q And then as we all know, there was a meeting of the
4 Region 1 RAC on January 7th and 8th; is that correct?

5 A (Peterson) That's correct, sir.

6 Q Okay. Now within the first two weeks in January, Mr.
7 Peterson, had you made any decisions about what the FEMA
8 position in regard to the beach population at Seabrook should
9 be?

10 A (Peterson) Absolutely not.

11 Q Had you, Mr. McLoughlin?

12 A (McLoughlin) You mean a final decision?

13 I said yesterday that one of the ways that my mind
14 works is to make tentative decisions so that I've got something
15 to work against. A tentative decision, in my mind, is clearly
16 different than a final decision.

17 So if your questions deals with had I made a final
18 decision at that point, the answer is, no.

19 Q Okay. Were you aware that on January 11th before
20 this Board that the FEMA counsel, Mr. Flynn, announced that as
21 a result of the RAC meeting recently held, FEMA intends to
22 prepare supplemental testimony?

23 MR. FLYNN: May we have a reference to the
24 transcript, please?

25 MR. BACKUS: Yes, the 11th. It's Page 8390, at the

1 very beginning.

2 BY MR. BACKUS:

3 Q And was that done at your direction?

4 A (McLoughlin) Well, I was not -- it would not have
5 been done specifically at my direction because Mr. Peterson was
6 there at the moment, and I certainly would not have done that
7 without having discussed that.

8 We knew that we were going to be preparing new
9 testimony probably --

10 Q So was the answer, yes, this statement by Mr. Flynn
11 was done at your direction?

12 A (McLoughlin) Well, no, it would not have been done
13 at my direction. That is not what I would have done, because I
14 was certainly conscious at that point that Mr. Peterson was on
15 board, and that I would not have unilaterally have done
16 something of that nature without having consulted with him
17 or -- in fact, to be honest about it, I don't recall
18 discussions surrounding that at the moment, but I was certainly
19 well aware in that time frame of the fact that we were going to
20 be doing this.

21 Q Okay. When had you decided to do this?

22 A (McLoughlin) I don't recall. That's kind of what I
23 just said. I don't specifically -- if you're looking for, you
24 know, a specific date in which that happened, I don't recall
25 when that was. It may very well have been on the 11th of

1 January.

2 Q Okay. have I captured everything that went into the
3 decision to discussion with FEMA counsel the filing of
4 additional testimony up through that time?

5 A (McLoughlin) Well, I would make one comment. You
6 asked me to look at a piece of testimony from yesterday in
7 which I made reference to the fact that we were beginning to
8 get information from the NRC in September that our analysis --
9 that our technical analysis of the shelter was in error.

10 You then followed up with a series of -- well, let me
11 read to you what you specifically asked to me and what I said.
12 That we were not understanding the technical issues of shelter.

13 The only thing I want to correct is the fact that we
14 never did explore that. Mr. Krimm began to talk to you about
15 the NRC regulations not -- the lack of shelter not contravening
16 them. That is not what I had specific reference to when I made
17 that statement which isn't -- because those are two different
18 things in my mind.

19 Q Yes. Okay, let me just go back to that. You were
20 referring to Page 12711, that you had said that you, meaning
21 FEMA, were not understanding the technical issues of shelter,
22 right?

23 A (McLoughlin) That's correct. That's correct.

24 Q Who at NRC told you you were not understanding the
25 technical issues of shelter?

1 A (McLoughlin) Nobody told me.

2 Q Mr. Krimm, who told you that FEMA was not
3 understanding the technical issues of shelter as opposed to
4 this legal issue of the NRC regulations?

5 A (Krimm) I cannot answer it specifically. I can only
6 tell you who may have.

7 MR. TURK: Your Honor, if it's speculation, I'd
8 rather just keep the record clear and not go into it.

9 BY MR. BACKUS:

10 Q Did somebody from NRC tell you FEMA did not
11 understand the technical issues of shelter?

12 A (Krimm) I seem to recall at some point in time that
13 that may have been brought up. I don't know.

14 Q And you can't tell us who.

15 A (Krimm) I'm really sorry. I just don't remember.

16 Q And you can't tell us when, even approximately.

17 A (Krimm) Maybe some time during the fall.

18 Q And you can't tell us what was said, or can you?

19 A (Krimm) I don't remember the -- you know, it's very
20 vague in my mind. I'm sorry. I just, you know, kind of
21 remember it being discussed, but I don't remember the details.

22 Q Do you have any recollection at all of where you
23 people had it wrong on the technical issues of sheltering?

24 A (Krimm) I'm sorry. I just can't remember at this
25 point.

1 Q Do you, Mr. McLoughlin?

2 A (McLoughlin) Yes. I --

3 Q From NRC?

4 A (McLoughlin) I have already testified that I have
5 not had specific discussions with the NRC on this issue of that
6 fact, but I am not -- I in no way back off the statement I made
7 yesterday.

8 If it was -- you asked me the question early which
9 caused you to change your focus of your discussion to Mr.
10 Krimm, and you asked the question whether or not I -- how I
11 would have learned of that. Mr. Krimm made reference to the
12 fact that it was discussed in -- probably in the steering
13 committee meeting.

14 You asked me whether or not I would then be --
15 normally have gotten that from Mr. Krimm. The answer I gave
16 you to that was, yes, and that's what I would have expected.
17 It's entirely possible I did not get it from Mr. Krimm.

18 If I did not, I know that I would have gotten it from
19 Mr. Wingo. I know in subsequent meetings that Mr. Wingo was the
20 one who indeed went into some more detail. I thought your
21 question related specifically to the first time I learned about
22 that. It may or may not have been with Mr. Krimm. But I want
23 to be clear that Mr. Wingo was indeed and did subsequent, in
24 the September - October time frame, clearly point out to me
25 that the NRC was concerned about our understanding of the

1 technical aspects of the use of shelter in this case.

2 My belief is that that is one of the reasons why Mr.
3 Wingo asked Mr. Keller to begin to do some additional
4 analytical work for us that I testified to yesterday.

5 So the point that I want to make is that from my
6 perspective what was influencing me at that time was that Mr.
7 Wingo had been influenced, who I have a great deal of respect
8 for, based on his technical discussions with the NRC that we
9 may be misunderstanding how the application of shelter in this
10 case is appropriate.

11 And my belief is that's one of the things, and I
12 don't know that I ever explored with him all of the things that
13 may have caused him to ask Mr. Keller to start this analytical
14 work.

15 (Continued on next page.)

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T/135 1 Q We don't have Mr. Wingo here, but I'm going to have
2 to ask you about this even though it's going to involve a
3 level of hearsay, as we say.

4 You think it was Mr. Wingo who told you that the NRC
5 people thought you had the technical issues of sheltering
6 wrong; is that right?

7 A (McLoughlin) It would have been someone on Dick
8 Krimm's staff, Mr. Backus. That, you know, I can attest to.
9 It would have either been Dick Krimm; it would have been Craig
10 Wingo; it would have been possibly Margaret Lawless, but
11 because of the technical aspects of this my belief is that it
12 was undoubtedly Mr. Wingo.

13 Q All right. Did he identify the NRC people who
14 thought you had the technical issues of sheltering
15 misunderstood?

16 A (McLoughlin) No.

17 Q Did he tell you why NRC thought you had the technical
18 issues of sheltering misunderstood?

19 A (McLoughlin) No. I would -- as I recall the
20 discussions, my concern was, Craig, are you convinced that
21 there is an issue here that we need to explore. Without
22 getting into the nitty-gritty of what the issue is, what I
23 would have done is to say, Craig, is this -- is this issue of
24 -- serious enough that we ought to deal with it.

25 Q I would rather you not tell us what you would have

1 done.

2 A (McLoughlin) Well, I --

3 Q I want to know what happened and what you were
4 informed about where NRC people thought you had it wrong on a
5 technical basis, if you can tell me?

6 A (McLoughlin) I can't tell you the date of the
7 conversation. I can only tell you a general time frame. I've
8 done the best I can with telling who I'm -- I think the
9 conversation came from.

10 Q All right. Let me ask some specific things.

11 Did anybody convey to you that NRC thought that the
12 protection factor for the shelters should be other than .9 or
13 10 percent dose reduction; did anybody say that?

14 A (McLoughlin) No. From the NRC?

15 Q Yes?

16 A (McLoughlin) No.

17 Q Did anybody say that the, as referred to on page 39
18 of the prefiled testimony, that the motel rooms and
19 unwinterized cottages would have less dose protective
20 capability than yearround houses, did anybody challenge that?

21 A (McLoughlin) From the NRC?

22 Q Right.

23 A (McLoughlin) To me? No.

24 Q Or through Mr. Wingo to you?

25 A (McLoughlin) No.

1 Q Okay.

2 A (McLoughlin) Not specifically, no.

3 Q So you have no idea, at this point, from Mr. Wingo,
4 if he was the one, as to why somebody at NRC thought you were
5 misunderstanding the technical issues of shelter; is that true?

6 MR. FLYNN: I object, that's a mischaracterization of
7 what the witness has said. He has tried to be very careful
8 about what he remembers and what he doesn't remember, and what
9 he remembers less than perfectly. And you've said, if you
10 don't remember perfectly, don't speculate. And now because
11 he's being candid with you, you're saying, well, you have no
12 idea; and that's unfair.

13 MR. BACKUS: I've never asked for a perfect memory.
14 None of my questions.

15 JUDGE SMITH: Well, to character is -- to
16 characterize his testimony is he has no idea as -- that's a
17 fair complaint, I think.

18 BY MR. BACKUS:

19 Q Do you have any idea as to what was the basis on
20 which some people at NRC thought you had the technical issues
21 of shelter misunderstood?

22 A (McLoughlin) The general response that I have to
23 that is, it does indeed deal with the, essentially, the four
24 major conclusions that came out of the Keller work. That's
25 what I think they had referenced to.

1 Q This NUREG-1210 business about --

2 A (McLoughlin) Yes.

3 Q Okay.

4 A (McLoughlin) Yes.

5 Q All right. In any event, Mr. Krimm had it from the
6 NRC that the regulations of the NRC were being misapplied by
7 FEMA; is that correct, Mr. Krimm?

8 A (Krimm) Yes.

9 Q And you had it from your -- from Mr. Krimm's staff,
10 probably Mr. Wingo that NRC was saying, even on a technical
11 basis you've misunderstood the sheltering issue; correct?

12 A (McLoughlin) That we've misunderstood the sheltering
13 issue? What I testified to was that, we -- that we were not
14 understanding properly that -- the technical analysis in
15 sheltering, yes, the use of sheltering.

16 Q Now, on June 12th Mr. Flynn appeared before this
17 Hearing Board -- I'm sorry, thank you, January 12th before this
18 Hearing Board at page 8511 of the transcript, and referred to
19 his statements of the prior day, I believe, about the new FEMA
20 testimony, about the RAC meeting, said, quote: "We heard the
21 views of the RAC members on the issue." And then said: "Now,
22 getting FEMA to incorporate those views into its testimony is
23 something like turning an ocean liner around, it doesn't happen
24 in an instant."

25 MR. FLYNN: May we have a reference to the

1 transcript?

2 MR. BACKUS: 8511.

3 And then he asked for some time to file some
4 additional FEMA testimony.

5 BY MR. BACKUS:

6 Q Were you aware that that was being stated to this
7 Board?

8 A (McLoughlin) That we were about ready to file some
9 new testimony?

10 Q Right.

11 A (McLoughlin) I don't know that I was aware of
12 specifically the day on which it was going to occur, but I
13 certainly knew at that time that we were going to be filing new
14 testimony.

15 Q Okay. Did you believe at that time, that that
16 testimony would be of such a major change from the prior
17 testimony that it could be characterized as an ocean liner
18 turning around?

19 A (McLoughlin) That's Mr. Flynn's characterization.
20 My belief is --

21 MR. FLYNN: Yes, that's right. I'd like to point out
22 for context that the sentence was, quote: "Now, getting FEMA
23 to incorporate those views," referring to the RAC views, "into
24 its testimony is something like turning an ocean liner around,
25 it won't happen in an instant," end of quote.

1 MR. TURK: Which is quite different from saying that
2 there's going to be 180 degree turn in the testimony.

3 BY MR. BACKUS:

4 Q Did you anticipate, Mr. McLoughlin, that this Board
5 was going to be informed by Mr. Flynn at the start of this
6 hearing week on January 11th that FEMA was going to file new
7 testimony and it was going to involve a major change in
8 position; did you understand that he was going to say something
9 to that effect?

10 A (McLoughlin) Well, I testified yesterday to what I
11 understood about that, and I will repeat as best I can what
12 that is. Mr. Flynn, to the best of my knowledge, my counsel to
13 him when I believe he was asked by the Board -- I believe
14 that's what happened. My counsel to Mr. Flynn was, don't say
15 anything about a change in FEMA's position until we get a
16 change in that position. Because what I was concerned about
17 was getting, clearly in the early January, late December time
18 frame, I was having -- was drawing tentative conclusions in my
19 mind that I wanted to lay out on the table and get people to
20 challenge where they differed with those views.

21 So my counsel to Mr. Flynn, at the time, was in
22 effect to say, don't put anything before this Board that would
23 suggest that we're going to be making a move until we get ready
24 to make that move, otherwise we've got two or three positions
25 to defend.

1 Now, with respect to the ocean liner issue, I have --
2 I understand, I believe that characterization quite -- I
3 understand that characterization. It had taken us from
4 September until January, which -- and use Mr. Flynn's words,
5 that is like turning an ocean liner around. I wish we could
6 operate more rapidly than that on a responsible way.

7 But my belief is that we deliberately -- we made
8 deliberate progress on the change in our position during that
9 period of time, and it did take us a long time. I -- God,
10 there's no way I'm not going to acknowledge that.

11 I wish it could have happened more rapidly than that.

12 But it does take us a long time to try to assure that in a
13 litigatory process like this, a litigation process, that we
14 have a solid defendable position from a legal, technical, and
15 programmatic standpoint.

16 And since this was going to be a change, all the
17 things that I was involved at the head of making these
18 decisions, I wanted to be sure that it was a deliberate
19 process. That we had looked at every element that was going to
20 weaken our argument, and to assure that we had a solid case for
21 the change. So I can understand both the ocean liner comment;
22 and I can -- I told -- yesterday I acknowledged any fault that
23 I might have had in the garble, in that message in terms of
24 getting to the Board. Because I understood yesterday that the
25 question that Mr. Flynn asked me was, his statement to the

1 Board that said we were not going to change our position.

2 And that was essentially what I was responding to
3 yesterday when I said that I accepted some of the
4 responsibility for that garble.

5 Q As of June 11th --

6 MR. FLYNN: January.

7 MR. BACKUS: I'm wishing it was June.

8 BY MR. BACKUS:

9 Q As of January 11th, did FEMA, in your person, support
10 the September 11th testimony?

11 A (McLoughlin) Support the September 11th testimony?

12 Q Yes.

13 A (McLoughlin) Well, I have acknowledged that I had
14 backed off -- began to back off of that on a gradual basis as
15 more information became available to me. And I had, I think I
16 said yesterday that I took a tentative position into the
17 January 22nd meeting, which undoubtedly in this time frame that
18 you're talking about, I would have been making tentative
19 conclusions in my mind that I wanted to argue for a change in
20 the FEMA position.

21 Because the overwhelming preponderance of information
22 that I was getting suggested that that ought to be the case.
23 So whether or not in my mind I had made a final decision, I
24 just said a while ago that I would not make a final decision on
25 that kind of an issue until I was forced to make a final

1 decision.

2 And on January 11th I was not forced to do that, so I
3 would always keep that open until I had to come down on it in a
4 final way.

5 Q Did you direct Mr. Flynn or request him in any way to
6 advise this Board on January 11th or 12th that FEMA wished to
7 file new testimony?

8 A (McLoughlin) I had discussions with him on filing
9 new testimony. Are you saying, did I direct him to do that?

10 Q Or request?

11 A (McLoughlin) What I think happened out of that --
12 out of the discussions, I don't think I either asked him or I
13 don't think I directed him. I think what happened was that,
14 out of the discussions that we were having on, to do this,
15 there was a consensus that emerged that that was what we should
16 do.

17 Now, we agreed that that ought to happen. You're
18 asking me whether or not somehow I directed Mr. Flynn to do
19 that, and I can't specifically recall saying, Mr. Flynn, will
20 you go to the Board and do that.

21 But I can recall that, certainly, a consensus emerged
22 out of all the discussions we had to do that.

23 JUDGE SMITH: Mr. Backus, I don't know, you're
24 running out of time. I think you're giving too much emphasis.
25 I recall it, and I took from there, not from Mr. Flynn that

1 FEMA had arrived at a different position, but that FEMA needed
2 some time. And I don't know how precise he was in expressing
3 it, but that's what I came away from on it.

4 And I don't know what you're going to do. I mean,
5 you know, this -- I think you're overanalyzing a comment made
6 by counsel here.

7 MR. BACKUS: All right, let me just ask this.

8 BY MR. BACKUS:

9 Q Were the statements that Mr. Flynn made on the 11th
10 and 12th about filing new testimony and needing time, were they
11 pursuant to conversations with you?

12 A (McLoughlin) Yes.

13 Q Thank you.

14 Now, on January 13th Mr. Flynn advised this Board
15 that in substance the new testimony was not going to be a new
16 position on the part of FEMA; are you aware of that?

17 A (McLoughlin) Yes. In fact, that's what I thought I
18 was talking about that, was that issue.

19 Q Okay. He said at page 8960, quote: "I've talked
20 with the people in Washington since then," and I think the
21 reference is since the prior statements that week, "and I mean,
22 again, I'm not prepared to say what the details will be, but
23 I've gotten a very clear indication that the position we'll be
24 taking is that which we had already stated."

25 Are you aware that Mr. Flynn made that statement?

1 A (McLoughlin) Yes, that's -- he asked me that
2 specifically yesterday. Yes.

3 Q And the reference to, "I've talked with people in
4 Washington," that person would be you?

5 A (McLoughlin) Well, it would have been several of us.
6 My guess is, it was all three of us here at the table plus,
7 probably additional attorneys. I don't know specifically, but
8 typically we don't do this sort of thing without having
9 considerable input from people who have any contribution to
10 make to that decision.

11 Q Okay. Mr. Flynn did talk with you as one of the
12 people in Washington?

13 A (McLoughlin) Yes.

14 Q Did he talk with you as one of the people in
15 Washington prior to making this statement on January 13th, Mr.
16 Peterson?

17 A (Peterson) And what is the January 13th statement
18 again; you've got two statements here and I want to make sure
19 I'm getting to the right one.

20 Q The statement is from page 8960 of the transcript,
21 Mr. Flynn speaking: "I've talked with the people in Washington
22 since then and I mean again, I'm not prepared to say what the
23 details will be, but I've gotten a very clear indication that
24 the position we will be taking is that which we have already
25 stated."

1 A (Peterson) That was a conference call the night
2 before the 13th. I believe it was the night of the 12th.

3 Q That would follow.

4 A (Peterson) I was there, Mr. McLoughlin was there,
5 and I believe Mr. Krimm was there. And it was, as my memory
6 serves me, Mr. McLoughlin's concern that a statement should not
7 be made premature to the agency taking a firm position.

8 Q Mr. Krimm, were you on the conference call?

9 A (Krimm) Yes.

10 Q Okay. Mr. Peterson, on that conference call, did you
11 direct or authorize Mr. Flynn to say, he had a clear indication
12 that the position we will be taking is that which we have
13 already stated?

14 A (Peterson) I don't believe it was in that context.
15 I believe it was in the context, and I certainly would not be
16 the one to say that I directed, it was a discussion, and I
17 believe the discussion was, because of the concerns, as I
18 remember it, that Mr. McLoughlin articulated, that we have not
19 come to a different conclusion at this point in time, and that
20 it would be improper to relay that there was a different
21 position until there had been a consensus and further
22 discussions on the issue.

23 Q Okay.

24 A (Peterson) That's how I understand that discussion,
25 sir.

1 Q And the way you communicated that, was that
2 sufficient in you mind to support Mr. Flynn's statement that he
3 had a clear indication that the position we will be taking is
4 that which we have already stated?

5 A (Peterson) I don't think that I would buy into that.
6 I think what our concern was that, we should not, through again
7 Mr. McLoughlin's concerns, be telling this body that we were
8 going to make a change when we had in fact not come to a
9 conclusion on that.

10 Q Okay. Now, Mr. Peterson, as I understand your
11 testimony from yesterday it was exactly two days after this on
12 the 15th, which was a Friday I believe, that you got a call
13 from Mr. Stello when you were at a meeting on Seabrook in Mr.
14 McLoughlin's office, is that right?

15 MR. TURK: I'm sorry, two days prior?

16 MR. BACKUS: Two days subsequent.

17 THE WITNESS: (Peterson) On the 15th in the
18 afternoon I had set up a meeting to be briefed, and I was
19 getting a lot of briefings on a lot of things there, but that
20 was to be briefed on the Seabrook issue. And I received -- a
21 call came in, we were having the meeting in my office, and the
22 call came in and I took it in Mr. McLoughlin's office.

23 MR. BACKUS: Okay. Thank you. You did say that and
24 I reversed it. Thank you.

25

1 BY MR. BACKUS:

2 Q Was this the first time you'd ever had a call from
3 Mr. Stello?

4 A (Peterson) I believe it was.

5 Q Okay. And you said yesterday that he was surprised
6 and concerned about reports about the FEMA position; is that
7 right?

8 A (Peterson) I don't know if that's exactly the way I
9 said it, but I think in context it's generally -- it certainly
10 is correct, Mr. Backus, that he showed concern relative to some
11 briefing or information he had received about the hearings that
12 were going on here.

13 Q Did you take it from that, Mr. Peterson, that his
14 call might have been related to the statements we've been
15 discussing that FEMA counsel had made on the record on the
16 13th?

17 MR. TURK: Is this speculation that you're asking
18 for, Mr. Backus?

19 MR. BACKUS: We'll ask him if he knows.

20 THE WITNESS: (Peterson) Restate your question, I'm
21 sorry.

22 BY MR. BACKUS:

23 Q Did anything Mr. Stello said to you indicate that his
24 call was prompted by the statements that FEMA counsel had made
25 at these hearings in the prior few days?

1 A (Peterson) I have clear recollection that it was
2 relevant to issues being discussed in this hearing. And he had
3 received a briefing or, you know, or information, I'm assuming
4 from his people.

5 Q Maybe his lawyer?

6 A (Peterson) I don't believe -- I'm quite sure there
7 was no names mentioned.

8 Q Okay.

9 A (Peterson) And he voiced concern that he was not
10 aware that FEMA had such -- had problems with the New Hampshire
11 plan or the Seabrook planning process, and I think -- well, I
12 don't want to go farther than that. But he showed concern that
13 he did not know that we had serious concerns with the Seabrook
14 plan.

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1 And he also said, why don't I know this. Why
2 haven't I been told this.

3 Q Did he express concerns -- well, you said he was
4 concerned. Did that concern encompass the FEMA prior position,
5 in the validity of the FEMA prior position, was there concern
6 expressed about that?

7 A (Peterson) I don't -- I don't believe that we got
8 into any discussion on previous decision, what are you going to
9 do, or any of that -- that was not part of the discussion, as I
10 remember it.

11 Q In any event, you felt -- you recognized Mr. Stello
12 was a very high official at the Nuclear Regulatory Commission,
13 I take it?

14 A (Peterson) Well, I recognized that he had a high
15 position at NRC; yes, sir.

16 Q And you figured that you better get a call back to
17 him real quick on why he hadn't known about this; is that
18 right?

19 A (Peterson) I said, "Mr. Stello, I don't know why you
20 aren't informed about these things. But I will go in and talk
21 to my people and call you back."

22 Q Did it come as a surprise to you, Mr. Peterson, that
23 he didn't know -- he said he didn't know about the status of
24 FEMA's position?

25 A (Peterson) I don't know if he was talking about the

1 status of our position. I think it was in more general terms
2 that I spoke, and I'd like to go back, I believe, to what I
3 previously said, that he did not understand that we had such
4 problems with the Seabrook plans. I think that was the
5 context.

6 I was surprised that he asked me why he didn't know
7 about those things.

8 Q That's what I was wondering; weren't you surprised?

9 A (Peterson) But I was new to the process, and that's
10 why I came in, and quite frankly, was a little more abrupt than
11 I probably should have in asking Mr. McLoughlin why we hadn't
12 informed NRC properly, because from Mr. Stello's conversation I
13 kind of took it that we had an obligation to be doing something
14 that we weren't doing.

15 Q Okay.

16 A (Peterson) And so, you know, after -- I had a
17 little bit of ignorance on the process at that time.

18 Q Now, this meeting that occurred on January 19th --

19 A (Peterson) Yes, sir.

20 Q -- at FEMA headquarters, did that arise out of this
21 call that Mr. Stello made to you on the 15th in some way?

22 A (Peterson) Yes, it did.

23 Q So it was something to the effect, look, I've got a
24 concern here, I've been surprised by the fact that things are
25 happening in the hearing that I'm not aware of, and we've got

1 to have a meeting; is that sort of what happened?

2 A (Peterson) That and I believe that the context was
3 broader than that. We have some things -- other things we
4 should be talking about, and we would like to have a meeting,
5 type of thing.

6 Q All right.

7 A (Peterson) And I concurred.

8 Excuse me.

9 MR. TURK: I'm sorry, Mr. Stello was saying that?

10 THE WITNESS: (Peterson) Yes. I believe my
11 recollection is that Mr. Stello initiated the request for the
12 meeting.

13 BY MR. BACKUS:

14 Q Okay. And you agreed to have this meeting, I take it
15 was at the FEMA headquarters on the 19th; is that right?

16 A (Peterson) No, I agreed to have the meeting, and I
17 said, but I, you know, I'm just on board, I've got a lot of
18 things coming down and I'd like for you -- would you mind
19 coming over here. And he said, no, I don't have a problem with
20 that.

21 And then I talked with him about, well, who would,
22 you know, who should we have in this meeting? I would like to
23 have my headquarters people at a fairly high level, and I'm
24 assuming that's what you will do. So we set some parameters on
25 it from that standpoint. And he -- there was that concurrence,

1 and I expected three or four people from his side and three or
2 four people from my side.

3 Q Was there any discussion about whether or who would
4 take notes?

5 A (Peterson) In the meeting?

6 Q Either in the meeting or in this phone call where you
7 set up the meeting?

8 A (Peterson) I don't remember discussions about -- do
9 you mean was there discussions we were going to have a recorder
10 or something?

11 Q Yes, or not have one?

12 A (Peterson) No.

13 Q Okay. Now, this week of the -- I think it was the
14 18th, as I look at my calendar the 18th was a federal holiday,
15 I think it was Martin Luther King Day?

16 A (Peterson) That's correct.

17 Q So the work week started on Tuesday which was the
18 19th, which was the day of this meeting; is that right?

19 A (Peterson) Actually, you're refreshing my memory. I
20 am assuming that's correct.

21 Q Okay. Subject to your checking with your calendar, I
22 think that's correct.

23 And am I correct that Mr. Thomas was in Washington
24 that week to consult with people at the FEMA headquarters in
25 matters that included Seabrook?

1 A (Peterson) I believe that's incorrectly stated.

2 Q I thought I saw Mr. McLoughlin nodding, is that
3 incorrectly stated?

4 A (Peterson) I think it should be more specific than
5 that.

6 Q Was Mr. -- okay, go ahead.

7 A (Peterson) I believe Mr. Thomas was in Washington,
8 D.C. at that time, and that he was there working with general
9 counsel, specifically Mr. Cumming in testimony preparation.

10 Q Okay. Now, let's go to this meeting of the 19th.
11 You both said, I think, that there was no agenda for this
12 meeting?

13 A (Peterson) Are you -- I'll wait until you direct it
14 to someone.

15 Q Mr. McLoughlin, did you say that yesterday that there
16 was no agenda at this meeting?

17 A (McLoughlin) Yes. I said that that was my
18 recollection, there was no agenda. In fact, I'm confident
19 there was no agenda that we agreed to.

20 Q And is that your recollection, also, Mr. Peterson?

21 A (Peterson) I told you yesterday that I had a
22 personal agenda; that agenda was not written down, but I had a
23 couple of points that I wanted to try to get resolved in that
24 meeting.

25 Q Okay.

1 A (Peterson) And I believe that Mr. Krimm had a number
2 of things he wanted to get resolved in that meeting. But if
3 you're asking me was there a written formal agenda, I have no
4 written formal agenda.

5 Q We've been furnished by your counsel, gentlemen, with
6 a document that came with a transmittal letter of May 12th
7 entitled "FEMA-NRC Agenda, January 19th, 1988," are you aware
8 of that?

9 A (Peterson) I'm aware of that, if you're directing it
10 to me. The first time I became aware of that was during
11 discovery. It was showed to me by general counsel. I did not
12 see that nor use it in the January 19th meeting.

13 Q Okay. Who did prepare this agenda for the January
14 19th meeting?

15 A (Peterson) I believe that that's Mr. Krimm's agenda,
16 and he's probably much, I'm not trying to tell you what, but I
17 think it's appropriate he would address that because I believe
18 it's his agenda.

19 Q Is that your agenda, Mr. Krimm?

20 A (Krimm) May I look at the document, because there is
21 a problem. Okay. This is not my agenda for the meeting, Mr.
22 Backus. I don't recall ever seeing this paper until last week.
23 And I don't know where it came from.

24 Q Okay.

25 A (Krimm) And I want you to know that I asked a lot of

1 people in my office and nobody recalls seeing it.

2 Q Nobody recal's preparing this agenda for the meeting?

3 A (Krimm) No.

4 Q Okay. So it's your recollection this agenda was not
5 used at the meeting by anybody or --

6 A (Krimm) It was not used at the meeting, and the
7 reason I'm somewhat dumfounded by it is that there are just
8 some errors.

9 Q We were also furnished in that same transmittal
10 letter of May 12th after claim of executive privilege was ruled
11 on with something entitled "Talking points for Stello meeting,"
12 do you --

13 A (Krimm) That's mine.

14 Q That is yours?

15 A (Krimm) Yes.

16 A (Peterson) That's what I was in reference to
17 specifically, sir, as I believe to being Mr. Krimm's.

18 Q There is on one copy we got of this, the one we
19 originally were furnished, some handwritten notes around the
20 margins and interlinear; are those your notes, Mr. Krimm?

21 A (Krimm) Yes, they are.

22 Q Okay. Did anybody else from FEMA that attended this
23 meeting take any notes?

24 A (Peterson) Not to my knowledge.

25 Q Was that by any agreement or decision?

1 A (Peterson) Not to my knowledge.

2 Q When did you prepare these "talking points for Stello
3 meeting," Mr. Krimm?

4 A (Krimm) They were prepared on the 19th by my -- at
5 my request they were prepared by my staff. And then
6 subsequently we had a meeting on them and I made these notes.

7 MR. TURK: May we go off the record for a moment?

8 JUDGE SMITH: Yes.

9 (Discussion off the record.)

10 MR. HUNTINGTON: Edward Thomas faxed a motion to
11 modify his subpoena, up to our office, and asked us to
12 distribute it to the parties today, and so I wanted to do that
13 for everyone now.

14 JUDGE SMITH: Okay. Thanks.

15 (Whereupon, a brief recess was taken.)

16 MR. BACKUS: Mr. Krimm --

17 JUDGE SMITH: Just a moment, Mr. Backus. Mr. Thomas
18 filed a motion to modify the subpoena, and in one respect to
19 change the requirement that he appear tomorrow morning to a
20 date to be determined by the Board.

21 I requested Mr. Watson to try to reach Mr. Thomas to
22 tell him that we granted that request, and I understand that
23 he's trying to do that right now.

24 So, go ahead.

25 MR. BACKUS: Okay.

1 BY MR. BACKUS:

2 Q Mr. Krimm, I think when we broke you had just
3 identified yourself as the author of the "talking points for
4 Stello meeting," and said that these were prepared on the
5 morning of the 19th of January 1988; is that right?

6 A (Krimm) Yes.

7 Q And then the handwritten notes that are in there, are
8 those notes that you took during the course of the meeting?

9 A (Krimm) No. These were taken prior to the meeting
10 when I discussed these items with my staff.

11 Q Okay. Did you share these talking points with Mr.
12 Peterson?

13 A (Krimm) No.

14 Q Mr. Peterson, you said that you had a personal agenda
15 when you went in the meeting as opposed to a written agenda,
16 what was your agenda?

17 A (Peterson) I testified to that yesterday. I felt
18 that we needed to get as clear a definitive statement of the
19 NRC position relative to the sheltering issue or the lack of
20 sheltering contravened their regs; that was one thing I believe
21 I mentioned yesterday.

22 The second thing I believe I mentioned yesterday that
23 if Mr. Stello had some degree of surprise, that perhaps, we
24 should make sure that he's informed at that time, in history,
25 January 19th, that my understanding was we still had 30

1 planning inadequacies and over -- I think I should say over 30
2 planning inadequacies, and over 50 exercise deficiencies.

3 And I did cover those two items with him. And I
4 remember that I did ask Mr. -- you know, I said to Mr. Krimm,
5 there's probably going to be other things that are going to
6 come up and I'm going to expect you to carry, you know, you
7 should carry the ball on some of those.

8 Q Okay. Now, with regard to the number one item, did
9 the sheltering contravene the regs, did you have some
10 understanding from anybody at FEMA that the FEMA position on
11 sheltering -- let me strike that. Did you have any
12 understanding from anybody at FEMA that the NRC regs might
13 require sheltering?

14 A (Peterson) There's no question in my mind that this
15 issue, rather lack of sheltering contravened their regulations
16 or not, was an issue in-house.

17 Q Whose house?

18 A (Peterson) In the FEMA house.

19 Q Okay.

20 A (Peterson) I can tell you that because it came out
21 of the briefings.

22 Q All right. And I would like to know who at FEMA had
23 the idea that the NRC regulations would require sheltering in
24 order to determine plan adequacy; who held that opinion?

25 A (Peterson) Say your question again, sir?

1 Q Who at FEMA held the opinion that the NRC regulations
2 might require sheltering as a condition of determining plan
3 adequacy?

4 A (Peterson) I believe it was couched to me in the
5 briefings. And I'll try to relay this to the best of my
6 memory. That NRC had raised the issue to the surface in the
7 proposed rebuttal that they drafted that said, a lack of
8 sheltering does not contravene their regulations.

9 And that -- and I may be getting in deep water here,
10 but from my recollection, they said that that had never been
11 filed. And we did not have FEMA, Mr. Backus, a clear
12 definitive statement on that issue; and that we needed one.

13 Q Okay.

14 A (Peterson) Now, I'm not quite sure why that was in
15 that much of a context, but it was certainly an issue.

16 Q Okay.

17 A (Peterson) And I wanted to get it resolved.

18 Q All right. And the resolution you got of that turned
19 out to be Mr. Turk's letter of February 18th, 1988; is that
20 right?

21 A (Peterson) I think I got two things. One was a fairly
22 definitive statement from Mr. Stello, in that meeting, saying,
23 no, lack of shelter, you know, lack of sheltering does not
24 contravene our regs. We asked him to put something in writing.
25 And then we did get a response from Mr. Turk to FEMA's counsel,

1 Mr. Flynn, somewhere around February 18th that spoke to the
2 issue of sheltering.

3 Q Okay. And made it clear that only the Commission or
4 its general counsel could interpret NRC regulations
5 authoritatively; correct?

6 A (Peterson) I think I have to speak to what I
7 understood was content, not a who had the authority to say it,
8 but, you know, this came as I understood it from NRC's counsel,
9 I would have taken, personally, I would have taken that as an
10 authoritative position.

11 Q Okay.

12 A (Peterson) And the statement that I thought was
13 pertinent was that they not require -- they're not requiring
14 that there be a range of protective actions that included both
15 sheltering and evacuation options.

16 Q Okay. Have you --

17 A (Peterson) For all accidents at all times in the
18 EPZ, spoke to that sheltering issue.

19 Q Okay. Have you got Mr. Turk's letter of February
20 18th in front of you?

21 A (Peterson) No, I don't, sir.

22 MR. BACKUS: Let's furnish that and I want to mark a
23 copy for identification.

24 MR. TURK: I'm going to object to its offer, Mr.
25 Backus, that's the intention. I certainly don't have any

1 problem with the letter itself.

2 MR. BACKUS: What a surprise.

3 MR. TURK: I like my name --

4 MR. BACKUS: This would be 38, thank you.

5 JUDGE HARBOUR: 39.

6 MR. BACKUS: 39, thank you very much, Judge Harbour.

7 (The document referred to was
8 marked for identification as
9 Mass. AG Exhibit 39.)

10 BY MR. BACKUS:

11 Q Can we agree, Mr. Peterson, that Mass. 39 for
12 identification, the letter of February 18th is the letter we've
13 been discussing from Mr. Turk that you got as a result of the
14 discussions on this January 19th meeting?

15 A (Peterson) I believe this is the letter that spoke
16 to the issue, but I'm having a little trouble getting the
17 terminology I just quoted to you out of here, I thought it was
18 on the second page, but I can't find it right offhand.

19 Q All right. Well, I'm not going to hold you to
20 whether you correctly quoted Mr. Turk's letter. But it does
21 say here on page two, first full paragraph: "That authoritative
22 interpretations of NRC regulations may be rendered only by the
23 Commission or its general counsel;" correct?

24 A (Peterson) Okay.

25 Q Is that right?

1 A (Peterson) That's what it says.

2 Q Did you understand Mr. Turk to be the general counsel
3 to the NRC?

4 A (Peterson) That's what I understood NRC general
5 counsel Mr. Turk.

6 Q Okay. He signs it, "Senior supervisory trial
7 attorney;" is that correct?

8 A (Peterson) That's what it says on the letter; yes,
9 sir.

10 Q Were you aware that he was the attorney representing
11 the NRC staff as a party in these proceedings?

12 A (Peterson) I was not at that time.

13 Q Okay. Were you aware that he was the one that had
14 submitted to the Board and the parties the proposed rebuttal
15 plan of October 5th dealing with the requirement or not for
16 sheltering?

17 A (Peterson) I had not put that connection together,
18 sir.

19 Q Does it bother you that as a result of this meeting
20 of January 19th, what you've gotten is another piece of paper
21 from Mr. Turk saying the same thing that you got on October 5th
22 or thereabouts?

23 A (Peterson) No, it didn't. Maybe it should have
24 raised a flag to me but it did not. I assumed that this was a
25 response in good faith from NRC's counsel supporting Mr.

1 Stello's statement in the January 19th meeting.

2 JUDGE SMITH: Mr. Backus, let's save time on this,
3 there's no way that you can possibly convince the Board that if
4 Mr. Stello, the Executive Director of Operations, tells Mr.
5 Peterson that he will have someone present the NRC position,
6 that he has to question the qualifications of an attorney from
7 NRC to do that. I mean, it's --

8 MR. BACKUS: That wasn't the purpose of the
9 questioning.

10 MR. TURK: Also --

11 MR. BACKUS: That wasn't the purpose of the
12 questioning.

13 JUDGE SMITH: Well, sure, that's what it seemed to
14 me, the only possible --

15 MR. BACKUS: No, no, that wasn't the purpose of the
16 questioning.

17 MR. TURK: Mr. Backus, I also refer you to NRC
18 regulations which contain the same type of a statement.

19 JUDGE SMITH: Do what?

20 MR. TURK: Contain the same type of statement as to
21 who may give an authoritative interpretation of NRC
22 regulations.

23 MR. BACKUS: Well, I just pointed -- well, let me
24 ask.

25

1 BY MR. BACKUS:

2 Q Mr. McLoughlin, you said yesterday in your direct
3 testimony that you did have some concern about this in view of
4 the fact that as the letter states, either from that or other
5 knowledge, you knew that NRC regulations could only be
6 interpreted authoritatively by the Commission or its general
7 counsel; right?

8 A (McLoughlin) Yes. But I think I was making a
9 different point than you are making. If you'll check the
10 record I believe the point that I was making out of it was
11 that, even with as much effort as we had gone to, to get an
12 authoritative response from the NRC on this issue because it
13 was important to us to have that, so that we were on firm legal
14 grounds that I used it to make the point that it takes a long
15 time to get interpretations, to get that information back and
16 forth between agencies, and to be sure that you're getting the
17 right information. And that that was one of the elements that
18 was taking -- that took us a long time to make our decision.

19 I was not using it as a means of questioning whether
20 or not I thought that was the intent of the NRC to interpret it
21 that way.

22 Q Okay. All right, Mr. Peterson, let me go back to the
23 other question. Who at FEMA had ever suggested to you that NRC
24 regulations might require sheltering as a condition to plan
25 approval?

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(Continued on next page.)

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1 A (Peterson) I believe that I spoke to this before,
2 and I believe it was in the context that FEMA does not have a
3 definitive written position on this from NRC. And I believe
4 that it was Mr. Cumming who said, you know, this is something
5 you need to get locked down as an agency.

6 Q Okay. So you believe it was Mr. Cumming that
7 suggested it might be a requirement of NRC regulations that
8 sheltering be a part of the plan; is that your testimony?

9 A (Peterson) No, I think you're putting things into my
10 mouth again.

11 Q All right. Say it again.

12 A (Peterson) I don't mean to say it that way, sir.

13 Q I just want to make sure I get it.

14 A (Peterson) I just wan' to be -- you know --

15 JUDGE SMITH: That was pretty accurate.

16 (Laughter.)

17 JUDGE SMITH: That's not what he said at all.

18 MR. BACKUS: Thank you. I thought it was, but I want
19 to give the witness every opportunity.

20 MR. TURK: I think it was accurate that he put things
21 in his mouth.

22 JUDGE SMITH: Go ahead. In any event, let's get his
23 answer.

24 THE WITNESS: (Peterson) There was a concern within
25 the agency as I had viewed it in the briefings that we did not

1 have a definitive statement relative to NRC's rules in the
2 sheltering issue, and that we should get that pinned down.

3 MR. BACKUS: Okay.

4 THE WITNESS: (Peterson) And I tried to do that in
5 the January 19th meeting.

6 MR. FLYNN: Mr. Backus, may I make a suggestion. I
7 think this will save a little time.

8 I'm not sure the witness understand the point of your
9 question. I think what you're asking is what was the position
10 that was advocated within FEMA and who was the advocate that
11 gave rise to the issue in the first place.

12 MR. BACKUS: Well, no. No, I'm not, Mr. Flynn.

13 BY MR. BACKUS:

14 Q The witness has said that there was a large concern
15 on his part, and maybe others, that NRC regulations might
16 require sheltering as a necessary element to approving an
17 emergency plan; is that right?

18 A (Peterson) There was a concern that this agency did
19 not have a definitive position on NRC's regulations on that
20 issue, and I wanted to get it resolved, and I wanted to see
21 what they had to say in writing about it so that I could get
22 that issue put to bed.

23 (Continued on next page.)

24

25

1 Q Okay.

2 A (Peterson) Because, you know, we were going to have
3 to make some calls down the road here.

4 Q And I was inquiring as to where within the agency did
5 that concern come from. And you've give me the name of Mr.
6 Cumming.

7 A (Peterson) And I said I believe it was Mr. Cumming
8 in some of the briefings who raised up the fact that this
9 agency doesn't have that locked down, and that we probably
10 should get a definitive statement.

11 Now I think that came out of general counsel, and I
12 think it was Mr. Cumming that was concerned about us just get
13 this things resolved.

14 Q Okay, if you have any additional memory later on,
15 you'll --

16 A (Peterson) I'm sure if there's any, you'll get it.

17 Q Mr. Krimm, you told us that back in the October time
18 frame you had NRC-FEMA steering committee meetings at which NRC
19 people had told you that any indication that FEMA -- that the
20 NRC regulations requiring sheltering was wrong; is that right?

21 A (Krimm) That's correct.

22 Q And you had had that conveyed to you, Mr. McLoughlin;
23 is that right?

24 A (McLoughlin) That's correct, Mr. Backus, but I'll
25 tell you before you get too far, I need -- you have asked the

1 question about whether or not -- who said to me, as being part
2 of this, who said to me ever that the NRC regulations did
3 require it. That's not the way in which that was ever an issue
4 from my perspective.

5 Q All right.

6 A (McLoughlin) There's another way but I'll leave
7 that.

8 Q So it's your testimony, Mr. Peterson, that you had
9 some concern that if FEMA went ahead and changed its testimony
10 to indicate that the plans were adequate even though there was
11 no sheltering plan for the 98 percent, the NRC would think that
12 would violate its regulations; is that your testimony?

13 MR. TURK: Could I hear that again?

14 THE WITNESS: (Peterson) I don't think that's what
15 I've said.

16 MR. TURK: Never mind.

17 MR. BACKUS: I'll just ask, I'll just ask.

18 JUDGE SMITH: He said -- well, and you have a
19 negative answer to your last question if you didn't hear it.

20 MR. BACKUS: Oh, I did? Okay.

21 THE WITNESS: (Peterson) I said I don't believe
22 that's what I said.

23 BY MR. BACKUS:

24 Q What was the concern about NRC regulations?

25 A (Peterson) That we did not have a definitive

1 statement from NRC relating to the shelter issues period. And
2 if I am to be in a policy and decisionmaking role, Mr. Backus,
3 I would like to see something in writing if it has been raised
4 as a concern at all within my agency. I think that's a
5 responsible act.

6 Q Okay. Mr. Krimm, your talking points for the Stello
7 meeting, Paragraph 1 --

8 JUDGE SMITH: Are these going to be offered?

9 MR. BACKUS: Yes, why don't we mark them. Let me
10 offer the whole package. There's three documents. One is the
11 agenda, one is the talking points with notations, and one is
12 the talking points on the second page with no notations.

13 MR. DIGNAN: I object.

14 MR. FLYNN: I object certainly to the agenda. That
15 has not been identified.

16 MR. TURK: Why don't we just tear off the last page,
17 Bob?

18 JUDGE SMITH: You're not going to get the agenda.
19 Why don't you just simplify it now.

20 MR. BACKUS: All right, if you don't want the agenda,
21 forget the agenda.

22 I thought Mr. Krimm said he prepared it, and he's a
23 witness.

24 JUDGE SMITH: No, no, he didn't.

25 MR. DIGNAN: No.

1 JUDGE SMITH: Talking points.

2 THE WITNESS: (Krimm) These are different.

3 BY MR. BACKUS:

4 Q All right, you said you didn't know who. It's a
5 mystery agenda.

6 A (Krimm) That I don't know anything about.

7 Q FEMA can't explain it.

8 A (Krimm) The talking point for the Stello meeting is
9 what I'm talking about.

10 MR. BACKUS: Why the hell did you claim executive
11 privilege for it if you can't even identify who prepared it?

12 MR. DIGNAN: Your Honor, could I find out exactly
13 what is now being offered, because I object to the cover
14 letter.

15 JUDGE SMITH: He agreed he --

16 MR. BACKUS: I'm not offering the cover letter.

17 JUDGE SMITH: All right, so --

18 MR. DIGNAN: All right. So all we're offering is the
19 last page, this thing called talking points?

20 MR. BACKUS: Right.

21 MR. DIGNAN: One page.

22 MR. BACKUS: There's another one, a clean one with
23 two pages.

24 MR. DIGNAN: Well, which one are we offering? The
25 one that's been shown to the witness, as I understand it, is

1 Page 1 which he's identified as having his handwriting on it.

2 Now what's being offered?

3 MR. BACKUS: Okay, let me offer the talking points
4 for Stello meeting prepared by Mr. Krimm with handwritten notes
5 as the next exhibit.

6 MR. DIGNAN: One-page document.

7 MR. BACKUS: One-page document.

8 MR. DIGNAN: Thank you. You've got a number?

9 JUDGE SMITH: Forty.

10 (The document referred to was
11 marked for identification as
12 Massachusetts Attorney General's
13 Exhibit No. 40.

14 MR. DIGNAN: And that's being offered into evidence?

15 MR. BACKUS: Yes.

16 MR. DIGNAN: With any limitations or generally or
17 what?

18 MR. BACKUS: Any way you want it. I don't care.

19 MR. TURK: Historical.

20 MR. DIGNAN: For the purpose --

21 MR. BACKUS: Historical.

22 MR. DIGNAN: Well, Mr. Backus -- Your Honor, could we
23 have a definitive decision here on what it's being offered for
24 and admitted for?

25 I hate to keep banging away at the record, but my

1 problem is my experience is two Court of Appeals later nobody
2 knows what happened if it's not clear in the record. Now, I
3 think I'm entitled to be told the purpose of the offer so I can
4 decide whether I want to object or not.

5 MR. BACKUS: All right. The purposes of the offer is
6 that his reflects Mr. Krimm's understanding of his position on
7 certain issues as of the time this was prepared. It's for that
8 purpose. And of his agency, I gather.

9 MR. DIGNAN: This reflects the position of Mr. Krimm
10 on the issues discussed in this document and that of FEMA?

11 I object. You haven't established that.

12 JUDGE SMITH: I don't see what the quarrel is. It is
13 what it says it is; that it's a paper that Mr. Krimm prepared
14 to take to the meeting, and it establishes that. It's no more,
15 no less.

16 MR. DIGNAN: If it's offered to show that this is a
17 paper that Mr. Krimm took to the meeting, fine, but that's not
18 the purpose of the offer as I heard it articulated by counsel.

19 JUDGE SMITH: I didn't hear him say that it
20 represented an official FEMA position.

21 MR. DIGNAN: He just said it, Your Honor. I'm sorry.
22 I noticed you were reading when he said it, but that's what he
23 just said.

24 MR. BACKUS: Well, okay, I did say that, and I'll say
25 it represents Mr. Krimm's position on the issues that he took

1 to the meeting with him.

2 JUDGE SMITH: All right, then there's no objection,
3 right?

4 MR. DIGNAN: No, I haven't heard Mr. Krimm say that
5 yet, that this --

6 JUDGE SMITH: He prepared it to take to a --

7 MR. DIGNAN: He prepared it, but it doesn't say it
8 represents his position. It starts out talking points. Among
9 other things, he's talking about what he understands to be a
10 RAC majority view. That doesn't mean everything on here is his
11 position.

12 JUDGE SMITH: I said position. I should have said
13 issues.

14 MR. DIGNAN: No problem, Your Honor. The issues that
15 Mr. Krimm wanted to talk about. I've got no problem with that.

16 JUDGE SMITH: That's what it is, isn't it, Mr. Krimm?

17 THE WITNESS: (Krimm) Yes.

18 JUDGE SMITH: All right. Is that all right with you,
19 Mr. Backus?

20 MR. BACKUS: Sure.

21 JUDGE SMITH: All right, received, Massachusetts
22 Attorney General's Exhibit 40.

23

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(The document referred to,

1 having been previously marked
2 for identification as
3 Massachusetts Attorney General's
4 Exhibit No. 40 was received in
5 evidence.)

6 MR. BACKUS: I guess I'd also like to -- while we are
7 talking about exhibit I'd like to mark in Exhibit 39, which is
8 the letter from Mr. Turk to Mr. Flynn of February 18th, as a
9 historical document.

10 MR. TURK: In what sense? Same as prior documents?
11 That this was a document received by the witnesses and
12 considered by them -

13 MR. BACKUS: And it was --

14 MR. TURK: -- in formulating their position?

15 MR. BACKUS: Yes, and it evolved as the witnesses
16 have described.

17 JUDGE SMITH: Okay?

18 MR. TURK: No objection.

19 JUDGE SMITH: It's received.

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(The document referred to,

1 having been previously marked
2 for identification as
3 Massachusetts Attorney General's
4 Exhibit No. 39 was received in
5 evidence.)

6 BY MR. BACKUS:

7 Q Mr. Krimm, on Page -- Exhibit 4, Item 1, beach
8 population issues, it says at the beginning, "FEMA's view",
9 okay?

10 A (Krimm) I'm sorry, where are you talking from?

11 Q I'm talking about your talking points for Stello
12 meeting which we've marked Mass. AG 40.

13 A (Krimm) Oh, okay.

14 Q Paragraph 1. It says, beach population issues. And
15 then set off by a dash "FEMA's views", correct?

16 A (Krimm) Yes.

17 Q Okay, does what follow represent FEMA's views?

18 A (Krimm) It represents the -- I can't say it was
19 really FEMA's view, and that's probably a misnomer. It
20 represents my view at that time which was somewhat consistent
21 with the January 25th filing that came later.

22 Q Okay. If it's consistent with the January 25th
23 filing, does it represent FEMA's views as of that time?

24 A (Krimm) On this date, I'm sorry I put FEMA's view
25 in. This was really kind of where my staff and I were coming

1 from. In other words, what we were, you know, basically saying
2 that the New Hampshire plan should consider the sheltering
3 option.

4 Q Mr. Krimm, the question was you wrote down there
5 "FEMA's views" and some text follows.

6 A (Krimm) Mm-hmm.

7 Q Is it accurate what you said what follows is FEMA's
8 view?

9 Can that be answered yes or no?

10 A (Krimm) No. It's my view and I'm sorry it says
11 FEMA's view.

12 Q All right. Now it says, you know, that sheltering
13 issues options must be fully considered in the plans.
14 Currently they are not.

15 And then the last sentence of that paragraph says,
16 "As we currently see things today, the sheltering survey is not
17 sufficient to fulfill this requirement because it is not a
18 shelter plan."

19 Correct?

20 A (Krimm) That's correct.

21 Q Was that your view?

22 A (Krimm) Yes

23 Q Is it still your view?

24 A (Krimm) Well, the shelter plan was strictly an
25 inventory. And at that point New Hampshire had not --

1 MR. FLYNN: Correction. The witness said shelter
2 plan. He meant shelter survey.

3 THE WITNESS: (Krimm) Excuse me. Thanks, Joe.

4 The shelter survey was an inventory, and at that time
5 New Hampshire had not told us how that was going to be
6 incorporated, or how they were going to use that. So it did
7 not. Today they have submitted a plan for using shelter for 2
8 percent of the population.

9 BY MR. BACKUS:

10 Q So is it correct today as it was on January 19th that
11 the sheltering survey is not sufficient to fill this
12 requirement because it is not a shelter plan for the 98 percent
13 of the beach population?

14 A (Krimm) For 98 percent of the beach population.

15 Q Okay. Now you started out there --

16 JUDGE SMITH: Well, there's a failure of logic there,
17 I think.

18 The second sentence -- the third sentence refers back
19 to the first sentence. And it says that the shelter survey
20 does not fill the requirement that sheltering issues must be
21 fully considered in the plan.

22 You asked if that is still true today, but if his
23 view as to the first requirement, the first sentence has
24 changed, then the sentence is a non sequitur. I don't think
25 I've helped.

1 As I understand FEMA's position now that they believe
2 that New Hampshire has considered the plans.

3 THE WITNESS: (Krimm) That's right, yes.

4 JUDGE SMITH: Therefore, the third sentence which
5 alludes to that requirement is -- it's a non sequitur to attach
6 the third sentence to the first sentence.

7 MR. BACKUS: All right. I see.

8 BY MR. BACKUS:

9 Q In any event, whatever the status of the New
10 Hampshire plans as to the utilization of sheltering, it remains
11 true that the survey in and of itself is not sufficient to meet
12 the requirements for a plan because it is indeed not a plan; it
13 is an inventory.

14 Is that a fair statement, Mr. Krimm?

15 A (Krimm) Yes, it's an inventory is correct.

16 Q Okay. Mr. Peterson, you have said, and Mr.
17 McLoughlin has said, but I'll direct this to you first.

18 A (Peterson) Yes, sir.

19 Q That when Mr. Stello in this meeting talked about in
20 some way war between your agencies, it was over the possibility
21 that FEMA might attempt to interpret or utilize the NRC's
22 regulations; is that right?

23 MR. TURK: No. I object to the characterization.

24 MR. BACKUS: For heaven sakes. Are you the witness?

25 JUDGE SMITH: You don't have -- do you have an

1 objection?

2 MR. TURK: If that's a characterization, I object,
3 Your Honor. It's not a correct one.

4 JUDGE SMITH: I don't understand that it was a
5 characterization. It was a flat-out question as I thought.

6 MR. TURK: We've heard the testimony already and it's
7 not correct -- that does not correctly represent the testimony.

8 JUDGE SMITH: I don't guess I have to have a -- I did
9 not hear the question as a characterization. I heard the
10 question as a question, and maybe the exact question was asked
11 yesterday, or different question on the same subject matter,
12 but I didn't hear it as a characterization.

13 Let me hear it back.

14 (Accordingly, the pending question was read back
15 by the court reporter.)

16 (Continued on next page.)

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1 MR. DIGNAN: It's a good answer; it's a better
2 objection. My problem is to throw out "interpret or utilize."
3 To interpret a regulation is one thing; to utilize is quite
4 another. So I object to it as being a compound question.

5 JUDGE SMITH: Start again.

6 MR. BACKUS: Let me withdraw it.

7 BY MR. BACKUS:

8 Q When did Mr. Stello threaten there could be war
9 between your agencies?

10 A (Peterson) It had to do with the shelter question,
11 and if we interpreted his regulations to mean that we, FEMA,
12 had to require sheltering, then how would he respond to that.
13 And that's, you know, we're paraphrasing here. But it had to
14 do with the fact that if we required sheltering and interpreted
15 his regulations to say that, then how would NRC respond.

16 Q Okay.

17 A (Peterson) And I believe I had commented a little
18 differently first and did not get the definitive answer I
19 wanted out of the meeting.

20 Q Now, was the predicate to that, Mr. Peterson,
21 something you might have said along the lines, we may conclude
22 that you -- your regulations, NRC, require sheltering; did you
23 say something like that?

24 A (Peterson) I think I kept it in the interpret mode.

25 Q In other words, you said, we might interpret your

1 requirements to require sheltering?

2 A (Peterson) We were -- I believe that's where I was.
3 That if we were to interpret your regulations or say that your
4 regulations required sheltering, and stood on that, then how
5 would you respond. Paraphrased.

6 Q And what did he say?

7 A (Peterson) He said basically that if we interpreted
8 his regulations to require sheltering and utilized that
9 premise, that then we would go to war over that issue.

10 Q Okay. And I take it, that immediately disabused you
11 of any notion that NRC might have any doubt that their
12 regulations required sheltering?

13 A (Peterson) Well, I think we were getting a pretty
14 strong signal that they didn't think we should be interpreting
15 their regulations in that way. First, probably we shouldn't be
16 interpreting their regulations.

17 And secondly, that if you used mine -- if we used my
18 analysis that we would be on a confrontation course between the
19 two agencies.

20 Q Okay. And so there was also a concern about you
21 interpreting their regulations?

22 A (Peterson) Well, I think I threw that in there.

23 Q And that didn't sit very well with Mr. Stello either;
24 correct?

25 A (Peterson) I think his response was pointed.

1 Q Now, isn't it in fact true, Mr. McLoughlin, that the
2 Keller testimony that's been filed on March 14th cites as a
3 basis an NRC guidance document, NUREG-1210?

4 A (McLoughlin) Yes, I believe that's correct. If you
5 want to check it for sure, but I think that's correct.

6 Q To your knowledge, Mr. Peterson, has anybody at NRC
7 suggested any problem for FEMA in Mr. Keller's testimony,
8 insofar as it relies on NRC guidance documents?

9 A (Peterson) Would you restate the question.

10 Q Has anybody from NRC indicated that they have a
11 problem with your witness, Mr. Keller, utilizing an NRC
12 guidance document as a basis for his testimony?

13 A (Peterson) It has never been brought up to me as an
14 issue.

15 Q Now, you said yesterday, Mr. Peterson, that when he
16 said this you said something to the effect, you can bluff and
17 huff or something, but it's not going to get us anywhere; is
18 that right?

19 A (Peterson) That's not exactly what I said, but it's
20 -- I said in so many words, you can assume this rough, tough,
21 and hard to bluff attitude, if you wish, but it isn't going to
22 you or us anywhere. And I want to emphasize, at that point
23 that I smiled at him and he smiled back, there was some
24 giggling in the room, and I think that it's not appropriate to
25 put too much emphasis on that.

1 Q Okay. Was the giggling of a nervous character?

2 A (Peterson) I don't think it was nervous. I think
3 there was an exchange and after that, I think the comment was
4 made, okay, where do we go from here.

5 Q And where you went from there, as we've been over
6 before, was a commitment that you would get something in
7 writing that NRC's regulations indeed did not require
8 sheltering?

9 A (Peterson) We caucused and we asked that they put
10 their views on this issue in writing.

11 Q Okay. And your understanding is that writing is the
12 letter of February 18th that we previously discussed?

13 A (Peterson) I certainly took it as, you know, as the
14 response from Mr. Stello.

15 Q Now you said, Mr. Peterson, at that time you felt no
16 pressure in regard to what the FEMA position should be; is that
17 right?

18 A (Peterson) Are you --

19 Q I'm sorry, FEMA position should be?

20 A (Peterson) I don't feel that I had felt any
21 pressure, no. Are you speaking specifically to the NRC
22 meeting?

23 Q Yes.

24 A (Peterson) No.

25 Q Okay. You already knew, did you not, Mr. Peterson,

1 that people below Mr. Stello's level in the NRC thought you
2 were off base if you thought the regulations required
3 sheltering; did you know that?

4 A (Peterson) Did I know specifically that NRC staff
5 was telling our staff?

6 Q Yes.

7 A (Peterson) I can't speak specifically to tracing
8 that back at all. I don't have that. The issue came up in
9 briefing from my people relative to the concern of the
10 definitive statements.

11 Q So you don't know whether you had been informed by
12 Mr. Krimm that in his NRC-FEMA Steering Committee meetings, NRC
13 staff had expressed that opinion?

14 A (Peterson) Relative to the guidance or the --

15 Q Relative to the fact that NRC regulations don't
16 require sheltering to have plan adequacy?

17 MR. TURK: I may have missed something. I thought
18 that the meeting with Mr. Krimm were on a different subject,
19 and that was the technical.

20 MR. BACKUS: You did miss something.

21 THE WITNESS: (Peterson) I guess I did, too.

22 BY MR. BACKUS:

23 Q Okay. Let me just confirm that with Mr. Krimm. You
24 have testified here earlier today, have you not, Mr. Krimm,
25 that at NRC-FEMA Steering Committee meetings NRC staffers had

1 indicated generally that any interpretation of their
2 regulations, NRC, required sheltering was not correct?

3 A (Krimm) That sheltering was not a requirement of
4 their regulations.

5 Q That had been conveyed to you?

6 A (Krimm) At some point.

7 Q And had you conveyed that information to Mr.
8 McLoughlin?

9 A (Krimm) At some point, yes.

10 Q Prior to January 19th?

11 A (Krimm) Yes.

12 Q And, Mr. McLoughlin, had you conveyed that to Mr.
13 Peterson?

14 A (McLoughlin) The fact that the NRC had told us that?

15 Q That staffers at the NRC had told you that?

16 A (McLoughlin) Mr. Backus, I -- you know, if -- I
17 don't -- there's no doubt in my mind that Mr. Peterson knew
18 that. That we had discussed it and discussed it openly. If
19 you ask me the specific question of whether or not I told him
20 that, I don't know. I just don't know.

21 Q Well, let me ask Mr. Peterson. Did you know that
22 prior to January 19th that NRC staffers had expressed to your
23 staff the opinion that sheltering was not a NRC regulatory
24 requirement?

25 A (Peterson) If my memory serves me, Mr. Backus, that

1 the issue focused around the proposed rebuttal filing that NRC
2 was dealing with, that flipped it up more -- and I only want to
3 say more so, because I cannot specifically remember anyone
4 saying, NRC staff somebody, Mr. Somebody said, that this
5 guidance, that it's not required.

6 I remember it being flipped up. There was not a
7 definitive position. We should have a definitive position.
8 And there was a proposed rebuttal finding from NRC that had
9 some language in it, and we needed to get it resolved.

10 Q So -- all right. I've got a few questions on the
11 exhibit that Mr. Dignan marked this morning, the letter of May
12 13th to Senator Glenn.

13 Mr. Krimm, you said you wrote this letter; is that
14 right?

15 A (Krimm) I drafted the letter and I received input
16 from others in the agency, and then I went back and put in a
17 final.

18 Q Did you have participation in the review or drafting
19 of this letter in any way, Mr. Peterson?

20 A (Peterson) The letter came up through the channels,
21 and the way I normally get something is, it would come up and
22 it would have a sign off sheet on it, Mr. Krimm had signed off
23 on it, and Mr. McLoughlin had signed off on it by that time. I
24 read it and felt that I was comfortable with the letter,
25 because I had to sign off on it to send it to the director.

1 Q Okay. So all of you on the panel signed off on this
2 letter; is that right?

3 A (Krimm) That's correct, sir.

4 Q Okay. Now, this letter describes and I was going
5 back again to the bottom of page one, the FEMA-NRC Steering
6 Committee, and that's the committee on which you're the ranking
7 person for FEMA, as I understand it, Mr. Krimm, is that right?

8 A (Krimm) That's correct.

9 Q And it says, "Likewise it was discussed by FEMA-NRC
10 Steering Committee at its regular meetings over a period of a
11 year or more, the NRC-FEMA," going to page two, "the NRC-FEMA
12 Steering Committee is established by an addendum to the
13 memorandum of understanding, MOU, a copy of which is enclosed,
14 between FEMA and the NRC to discuss and resolve matters on
15 offsite preparedness.

16 At the meeting on January 19th, 1988 there were
17 several topics discussed."

18 Were you indicating there, Mr. Krimm, that the
19 January 19th meeting was a FEMA-NRC Steering Committee meeting?

20 A (Krimm) No.

21 Q It certainly was not, was it?

22 A (Krimm) No.

23 Q It was a meeting at much higher levels for both
24 agencies that ordinarily occurs?

25 A (Krimm) Yes.

1 Q So anybody that read this to interpret this to mean
2 that you were describing the January 19th, 1988 meeting as a
3 FEMA-NRC Steering Committee meeting would be making an
4 erroneous interpretation; is that right?

5 A (Krimm) Yes. I -- if it's interpreted that way, I
6 miswrote it or maybe being too familiar with the subject I
7 didn't think that you -- are you interpreting it that way, as a
8 Steering Committee meeting?

9 Q I'm just asking questions about it?

10 A (Krimm) Oh, okay, I'm sorry. It was not a Steering
11 Committee meeting.

12 Q Okay. And that's certainly your understanding, too,
13 isn't it, Mr. Peterson?

14 A (Peterson) In my opinion, Mr. Backus, that was a
15 high level headquarters meeting, and was not a Steering
16 Committee meeting.

17 Q Okay. Now, there was an issue raised also in that
18 paragraph on this exhibit about why Mr. Thomas was not at this
19 January 19th meeting?

20 A (Peterson) Yes, sir.

21 Q And the statement is, "The topic dealt with a variety
22 of issues unrelated to Seabrook. Therefore we did not consider
23 it necessary or the best use of this time to include Mr. Thomas
24 in the meeting, although he was in Washington at that time
25 working with the FEMA Office of General Counsel." Correct?

1 MR. DIGNAN: Wait a minute. Mr. Backus, that was
2 read out of context. The whole sentence is, "This was a
3 meeting of headquarters representatives from two agencies,"
4 preceded the words, "topics also dealt with Seabrook."

5 MR. BACKUS: Okay.

6 MR. DIGNAN: And I object to that question, that's
7 out of context.

8 MR. BACKUS: All right. Let's read some more of it.

9 MR. DIGNAN: Are you withdrawing it?

10 MR. BACKUS: Yes, I'm withdrawing it.

11 JUDGE SMITH: Restate it.

12 BY MR. BACKUS:

13 Q Okay. "It was at that meeting," I'm reading now
14 starting with the third sentence here --

15 A (Peterson) I'm sorry, sir, are we on the front page?

16 Q No, we're on page two the first paragraph.

17 A (Peterson) Page two, okay. And you're starting with
18 what?

19 Q Well, I'm -- well, let's start with the second
20 sentence: "At the meeting on January 19th, 1988 there were
21 several topics discussed including the question of the
22 sheltering of the beach population. It was at that meeting
23 that the NRC reiterated its position that sheltering is not a
24 requirement under the NRC regulations. This was a meeting of
25 headquarters representatives from two agencies and the

1 discussion topics also dealt with a variety of issues unrelated
2 to Seabrook.

3 Therefore, we did not consider it necessary or the
4 best use of this time to include Mr. Thomas in the meeting,
5 although he was in Washington at that time working with the
6 FEMA Office of General Counsel." Correct?

7 A (Peterson) That's what it says.

8 Q Okay. "And he was working with the Office of General
9 Counsel in regard to testimony that might be developed
10 concerning Seabrook." Is that right?

11 A (Peterson) I believe I said that earlier.

12 Q Okay. Was he in fact excluded from this meeting?

13 A (Peterson) He was never invited.

14 Q Okay.

15 A (Peterson) This was a high level meeting of
16 headquarters people, initially the parameters were established,
17 not below Mr. Krimm, as I understood it, you know, plus
18 attorneys. But, and I think this is pertinent, when Mr. Stello
19 arrived he had a larger entourage than we anticipated. And I
20 understood there were some technical people there from his
21 headquarters.

22 And so, I asked a couple -- I don't know how that
23 happened, but I asked at least that we have a technical person
24 there from headquarters.

25 Q So as you said, Mr. Stello arrived with more people

1 than you thought he would and lower level people than you
2 thought he would?

3 A (Peterson) Well, they're all headquarters people.

4 Q All headquarters people?

5 A (Peterson) Yes, sir.

6 Q But it was not -- it was somewhat different than what
7 you anticipated?

8 A (Peterson) Well, it was still a headquarters
9 personnel meeting, there's no question about that, but he
10 brought more people than I anticipated.

11 Q And as a result you asked some more FEMA people to
12 come in than you'd originally anticipated; is that right?

13 MR. FLYNN: Your Honor, I object to this entire line
14 of questioning, I really don't see the relevance of why Mr.
15 Thomas was or was not at that meeting.

16 MR. BACKUS: I'm not asking about that now; I moved
17 on.

18 JUDGE SMITH: That's what I thought was irrelevant.
19 Okay. So you don't object?

20 BY MR. BACKUS:

21 Q And as a result of Mr. Stello --

22 MR. EACKUS: I'm sorry, go ahead.

23 MR. FLYNN: I'm sorry. Then I've lost the pending
24 question.

25 MR. BACKUS: All right, I'll ask it again.

1 BY MR. BACKUS:

2 Q As a result of Mr. Stello arriving with more
3 individuals from NRC than you anticipated, I thought you said
4 you at that point requested some additional people from FEMA to
5 come in, that you had not originally intended to be there?

6 MR. FLYNN: Well, that sounds to me like the same
7 line of questioning?

8 MR. BACKUS: No, it isn't.

9 MR. FLYNN: Well --

10 MR. BACKUS: I didn't say a thing about Mr. Thomas.

11 MR. TURK: Asked and answered.

12 THE WITNESS: (Peterson) I beg your pardon?

13 MR. TURK: The question has been asked and answered
14 already.

15 MR. BACKUS: No, it hasn't.

16 JUDGE SMITH: When?

17 MR. TURK: Mr. Peterson has already given his
18 statement.

19 THE WITNESS: (Peterson) I thought my answer
20 addressed the issue, but --

21 JUDGE SMITH: Well, it is a fact that we're all
22 familiar with, you know, that that's what happened. I don't
23 know.

24 MR. TURK: It just gets into the harassing aspect of
25 it.

1 JUDGE SMITH: No it's not. It's not -- nobody has
2 been harassed.

3 THE WITNESS: (Peterson) What we did is balance the
4 odds, sir.

5 BY MR. BACKUS:

6 Q Okay.

7 A (Peterson) They had seven and we had seven.

8 (Laughter)

9 THE WITNESS: (Peterson) They were all high level
10 headquarters people.

11 BY MR. BACKUS:

12 Q Okay. You wanted the teams to be of equal number of
13 players; right?

14 A (Peterson) That's it.

15 Q Okay.

16 JUDGE SMITH: So you said, go out in the hall and get
17 some more.

18 (Laughter)

19 BY MR. BACKUS:

20 Q And just so I want to hear another objection I'll ask
21 you, and Mr. Thomas was not one of the additional ones you
22 decided to bring in when you decided to even up the teams;
23 right?

24 A (Peterson) No.

25 MR. FLYNN: Sure, I'll object to that.

1 MR. BACKUS: And he answered it.

2 BY MR. BACKUS:

3 Q Now, back to your statements that you've made and Mr.
4 McLoughlin has made that you felt no pressure to change FEMA's
5 position. And I think I'd already explored --

6 A (Peterson) This NRC meeting, sir?

7 Q January 19th?

8 A (Peterson) Right.

9 Q We already explored that, at least, Mr. Krimm and Mr.
10 McLoughlin were both there on the January 19th, already knew
11 the NRC staff position about what the regulations didn't
12 require?

13 A (Peterson) I did not say that.

14 Q No, but Mr. McLoughlin and Mr. Krimm have already
15 acknowledged that they had indications from NRC staff prior to
16 this meeting that those people, whoever they were on NRC staff,
17 didn't think NRC regulations required sheltering; correct? You
18 can say, yes, just so we can get it on the record.

19 A (McLoughlin) Yes.

20 Q Mr. Krimm?

21 A (Krimm) Yes.

22 Q Okay. And, Mr. Peterson, you, of course, and you've
23 referred to what you already had before you or some time you
24 had before you the rebuttal plan filed by Mr. Turk on the date
25 of October 5th; is that right?

1 A (Peterson) I was aware of the basic statement in
2 Mr. Turk's letter that I put on the record, sir.

3 Q Did you know, Mr. Peterson, that Mr. Stello was the
4 head of a staff which was a party in this proceeding advocating
5 the issuance of a license for Seabrook when you went to the
6 meeting?

7 MR. TURK: I object to that characterization.

8 MR. BACKUS: Oh, you do.

9 MR. TURK: No one sitting where I am here is
10 advocating a license. We're advocating compliance with
11 regulations, Mr. Backus.

12 MR. BACKUS: Well, then I guess --

13 MR. TURK: When the regulations are complied with, the
14 license can issue.

15 MR. BACKUS: I see. Well, then maybe that's -- go
16 ahead and answer.

17 THE WITNESS: (Peterson) Would you state --

18 JUDGE SMITH: No, there's an objection --

19 MR. BACKUS: I'm sorry, that was an objection.

20 MR. DIGNAN: Before he does could I have the
21 relevance of the question as to whether or not he knew that Mr.
22 Stello was head of a staff that was engaged in --

23 JUDGE SMITH: What's the relevance of a question that
24 is -- as to which the objection has been sustained.

25 MR. DIGNAN: Oh, I'm sorry. Was it sustained? I

1 apologize, Your Honor, things are flying around too fast.

2 (Laughter)

3 BY MR. BACKUS:

4 Q Did you have any indication of what Mr. Stello's
5 position was on the issuance of whether there should be an
6 operating license issued for Seabrook on the basis of the
7 current emergency plans?

8 A (Peterson) Mr. Stello never indicated to me in any
9 way a position of that nature. And I took it that, in
10 relationship to our MOU, that's what NRC does.

11 MR. FLYNN: Excuse me, what is what NRC does?

12 THE WITNESS: (Peterson) You read the MOU and
13 specifically the first page in the first column, about two-
14 thirds of the way down it defines NRC's role. And I assume
15 that's where NRC is. I -- you're saying, did they advocate a
16 position to me? Absolutely not.

17 BY MR. BACKUS:

18 Q Okay. And you had no idea what their position was at
19 the time of the January 19th meeting; is that the case?

20 A (Peterson) On what?

21 Q On the issue of whether the emergency planning
22 problems at Seabrook would prevent the issuance of a license?
23 You didn't know what their position was on that?

24 A (Peterson) I think you got to rephrase the question.

25 Q Okay. I'm just asking, from anything that was said

1 by the NRC people at that meeting or prior thereto, did you
2 have any indication of what the NRC staff position was on the
3 adequacy of the New Hampshire plans to support licensing of
4 Seabrook?

5 A (Peterson) I don't think there was a position that
6 NRC took in that meeting along those lines. We talked about
7 the sheltering issue, and scheduling, and things like that.
8 And there was never, in my recollection, Mr. Backus, any kind
9 of a definitive statement about how NRC feels one way or the
10 other about the licensing of that facility.

11 Q Okay.

12 A (Peterson) It would have been inappropriate.

13 Q And you didn't get any sense of a position on that
14 question from the January 15th phone call you had with Mr.
15 Stello?

16 A (Peterson) No. His concern was, he didn't feel he
17 was properly aware of FEMA's concern.

18 Q Okay. Now, moving ahead from the meeting of January
19 19th.

20 A (Peterson) Yes, sir.

21 Q The next thing that I understand happened is what
22 you, Mr. McLoughlin, has described as the "could-would meeting"
23 of January 22?

24 A (McLoughlin) That's correct.

25 Q Now, that's just --

1 A (Peterson) I think that we left something important
2 out of the January 19th meeting.

3 Q All right. Well, I'm sure your counsel will bring it
4 up on redirect.

5 A (Peterson) Okay. I'm sure he will, too.

6 Q Okay.

7 The next thing that happened, Mr. McLoughlin, as I
8 understand the chronology here was the January 22 "would-could
9 meeting?"

10 A (McLoughlin) That's correct.

11 Q And that was, if the January 19th meeting was on
12 Tuesday, this would be on the Friday of that week; is that
13 right?

14 A (McLoughlin) My recollection is, that's correct.

15 Q Okay. Did the "would-could meeting" arise out of the
16 January 19th meeting?

17 A (McLoughlin) No, no. No, it -- it was not a logical
18 conclusion in any way. We were already moving towards the
19 preparation of drafting a testimony that was on a schedule that
20 would have driven us to approximately a January 22 date. In
21 fact, it was independent of the 19th meeting in terms of its
22 actual scheduling.

23 Q Had the drafting of that testimony begun before
24 January 13th?

25 A (McLoughlin) Before January 13th? I can't tell

1 you --

2 JUDGE SMITH: January 13th?

3 MR. BACKUS: Yes.

4 MR. FLYNN: Or 19th?

5 MR. BACKUS: 13th.

6 MR. FLYNN: The witness clearly doesn't understand
7 the reference.

8 BY MR. BACKUS:

9 Q Had the drafting of the testimony you've just
10 reference commenced before January 13th?

11 A (McLoughlin) Commenced before January 13th? Mr.
12 Backus, I can't give you a direct answer to that, I do not
13 know. I know that we -- that there were discussions that we
14 had that we need to prepare the testimony. And our technical
15 staff in Dick Krimm's shop and our legal staff in our general
16 counsel shop would have done that. That's what their
17 assignment is. Therefore, that preparation would have started
18 there.

19 I did -- and Ed Thomas was there to help with that.
20 What I don't know is precisely when that started.

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21 (Continued on next page.)

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1 Q If Mr. Thomas was in Washington on the week of the
2 18th for that purpose, would that have been when the drafting
3 of the testimony was started?

4 A (McLoughlin) Well, that's the whole point of it.
5 You're asking me for my recollection of when it started. I was
6 not a member of the original drafting team. Therefore, I don't
7 know when the drafting actually started.

8 Q Okay.

9 A (McLoughlin) I have acknowledged the fact that it
10 would start in that period.

11 Q Okay. If you don't know, that's fine. Let me turn
12 to Mr. Krimm. He was on the team that was working on this.

13 Do you have a recollection of whether the drafting of
14 new FEMA testimony began before the week of January 18th?

15 MR. DIGNAN: Mr. Backus, is that the reference to the
16 January 25th testimony?

17 MR. BACKUS: It's a reference to the testimony that
18 Mr. McLoughlin is turning out. I don't know whether it turned
19 out to be the January 25th testimony or not. There is
20 testimony --

21 MR. DIGNAN: Well, wait, wait, wait.

22 If you don't -- I object, okay?

23 JUDGE SMITH: Somebody --

24 MR. DIGNAN: Somebody ought to tell me whether we're
25 talking about the January 25th testimony or the March 14th

1 testimony, Your Honor, in this context. They are two different
2 pieces of testimony, and this record right now is running
3 around, and two years from now nobody is going to know what
4 testimony you were talking about.

5 MR. BACKUS: Your Honor, Mr. McLoughlin has
6 referenced that there was drafting of testimony going on.

7 JUDGE SMITH: Yes.

8 THE WITNESS: (McLoughlin) If it helps any --

9 JUDGE SMITH: That's why Mr. Thomas was down there.

10 MR. BACKUS: That's why Mr. Thomas was down there.

11 And that --

12 THE WITNESS: (McLoughlin) To help it.

13 MR. BACKUS: To help it.

14 THE WITNESS: (McLoughlin) That's right.

15 MR. BACKUS: And that --

16 JUDGE SMITH: Is it the testimony that was eventually
17 submitted dated January 25th that you were alluding to?

18 THE WITNESS: (McLoughlin) That I am alluding to,
19 yes. The drafting of the testimony which ultimately we
20 submitted on January 25th, which went through a series of
21 drafts, that the drafting of that occurred -- Ed Thomas was
22 down there to do it. Mr. Krimm's staff participated in that,
23 general counsel's staff participated in that.

24 The only thing I don't know, Your Honor, is precisely
25 when that started because I was not a member of that drafting

1 team.

2 MR. BACKUS: All right.

3 THE WITNESS: (McLoughlin) I know in that time frame
4 the drafting did start.

5 JUDGE SMITH: Okay, he's accepted your answer on
6 that.

7 Now he wants to --

8 MR. BACKUS: Now I want to go to Mr. Krimm, because
9 you say he was involved in it.

10 BY MR. BACKUS:

11 Q Mr. Krimm, I believe the testimony we've had from Mr.
12 Thomas is that he was in Washington the week of the 18th for
13 the purpose of working on the testimony.

14 Is that consistent with your recollection?

15 A (Krimm) Yes.

16 Q Does that fix for us that the work of drafting on
17 this testimony commenced on or about that time?

18 A (Krimm) I've got to believe it did. I don't know
19 the exact date it actually began. What I mean by that I don't
20 know the exact date pen was taken to hand, or the start, but it
21 was during that time frame, yes.

22 Q During that week?

23 A (Krimm) I believe it was, yes.

24 MR. BACKUS: Okay. Your Honor, I've reached a point
25 where the next thing that's up for me, I believe, is going into

1 March. And I would just as soon break it here, and let other
2 counsel take that up with this panel tomorrow.

3 As you know because of the way this evolved, we
4 didn't have time to coordinate as fully as we would normally
5 like to do, and we asked, as you know, to be relieved of the
6 lead Intervenor concept to some degree.

7 And if I could just have a moment to check with
8 Attorney Oleskey and maybe Attorney Weiss to make sure that's
9 all right with them --

10 JUDGE SMITH: Okay, take --

11 MR. BACKUS: -- it would be probably very nice for
12 everybody to break.

13 JUDGE SMITH: Take a few minutes.

14 MR. TURK: Your Honor, before we break I'd like to
15 point something out.

16 I am going to have some questioning, and I don't know
17 about Mr. Flynn, but I imagine he's going to have some
18 redirect.

19 The Intervenors have known since at least April that
20 they wanted these witnesses to appear. They subpoenaed them a
21 long time ago. They had Mr. Thomas's deposition. They knew
22 what they wanted to go after. And I want them on notice that
23 tomorrow, roughly lunchtime, I want the rest of the time of
24 tomorrow left for other persons' questioning.

25 JUDGE SMITH: Oh, no. Well, we'll have to

1 accommodate it, but I don't know about those exact numbers.

2 MR. TURK: If Mr. Backus wants to break now, it's hat
3 is peril, I suggest. And I want you to know I'm not urging
4 that the witnesses be kept here. It's been a long day and they
5 must be tired and the Board and parties are.

6 MR. BACKUS: Let me just confer with my colleagues
7 here for just a minute.

8 (Counsel confer.)

9 MR. BACKUS: I guess we'll break it here.

10 JUDGE SMITH: Okay, there will have to be some time
11 provided for redirect of this panel. I don't want to say how
12 much, but having listened to them yesterday afternoon and all
13 day today, we still believe that all of the substantive
14 requirements could be met by the schedule we set, by 3:30. And
15 it may be that people have to pick some priorities as to the
16 level of importance, but we expect you to meet it.

17 All right, we'll adjourn now until --

18 MR. WATSON: Your Honor.

19 JUDGE SMITH: Mr. Watson.

20 MR. WATSON: Just a point of information. Pursuant
21 to your request, my office did get a hold of Mr. Thomas, and
22 advised him that he did not have to appear tomorrow.

23 JUDGE SMITH: Thank you.

24 MR. BACKUS: I did have one other thing on the
25 meeting of January 19th I wanted to deal with if I could have

1 another five minutes or so. And that is since I'm giving up my
2 time according to Mr. Turk at my peril here.

3 JUDGE SMITH: Well, Mr. Turk is not the presiding
4 officer.

5 MR. BACKUS: I'm aware of that.

6 MR. TURK: Nor did I ever intend to supplant the
7 Board, Your Honor.

8 JUDGE SMITH: Go ahead.

9 MR. BACKUS: All right.

10 BY MR. BACKUS:

11 Q Gentlemen, we were furnished some few days ago by Mr.
12 Turk with a document dated 1-19-88, which was represented to be
13 notes of the meeting we've been discussing, taken by a Mr.
14 Thomas Murley.

15 Mr. Peterson, do you recall if Mr. Murley was present
16 at the meeting on January 19th?

17 A (Peterson) I had a considerable lack of familiarity
18 with the people who walked in that door for obvious reasons. I
19 hadn't been in meeting.

20 Q Okay.

21 A (Peterson) And so I asked who was in that meeting.
22 You know, I thought that was clear. I knew Mr. Stello and the
23 attorney, and hold on just a minute. And I understand that Mr.
24 Murley was there, and I'm just not sure if all these people
25 walked in outside of Mr. Stello and Mr. Olmstead and a few

1 others that I'd be able to point them all out, because I
2 haven't met with them very much.

3 Q Mr. McLoughlin, can you confirm that Mr. Murley was
4 an attendee?

5 A (McLoughlin) Yes, I can.

6 Q All right. Now, there is a note in a -- on the note,
7 Page 3 of the notes from Mr. Murley is the following, and I'm
8 going to share it with you --

9 A (Peterson) Thank you.

10 Q -- because we haven't got copies.

11 A (Peterson) Sure.

12 Q Resolution, and then there is a bullet down at the
13 bottom which I read as follows: "Stello satisfied if FEMA says
14 the sheltering issue is not the sole reason for lack of finding
15 of reasonable assurance."

16 Do you see that?

17 A (Peterson) It says the sheltering issues is not the
18 sole reason for not -- lack of finding, is the finding,
19 finding? Okay, that's finding probably.

20 Q That's the way I read it.

21 A (Peterson) Yes.

22 Q Okay. My question to you, Mr. Peterson, is do you
23 recall Mr. Stello making any statements to that effect?

24 A (Peterson) I don't remember Mr. Stello making a
25 specific statement like that. He may have made it to this

1 gentleman directly. I don't remember hearing Stello satisfied
2 if FEMA says the sheltering issue is not the sole reason for
3 lack of finding of reasonable assurance.

4 Q Okay. Is that consistent with what Mr. Stello was
5 telling you that you recall from the meeting; that he would be
6 satisfied if the sheltering was not the only problem?

7 A (Peterson) No, I don't remember him saying that. He
8 knew by the time I got through that sheltering sure wasn't the
9 only issue. There was 30 planning problems and 50 exercise
10 problems.

11 Q Do you remember Mr. Stello saying that?

12 A (McLoughlin) No, I do not, and I would have no
13 problem with that statement. You know, that's an entirely
14 appropriate statement, it seems to me, given what happened at
15 the meeting.

16 Q Well, that wasn't the question.

17 You don't remember whether that was said, right?

18 A (McLoughlin) No, I do not recall that having been
19 said specifically as it's stated there.

20 MR. BACKUS: Okay, that's all.

21 JUDGE SMITH: We're adjourned until 9:00 a.m.

22 (Whereupon, at 5:30 o'clock p.m., the hearing was
23 recessed, to reconvene at 9:00 o'clock a.m., Friday, May 27,
24 1988.)

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(Applicant's Exhibit 38 and
Massachusetts's Attorney
General's Exhibits 35, 37, 39
and 40 follow:)



Federal Emergency Management Agency

Washington, D.C. 20472

MAY 13 1988

The Honorable John Glenn, Chairman
Committee on Governmental Affairs
United States Senate
Washington, D. C. 20510-6250

Dear Senator Glenn:

This is in response to your letter of May 2, concerning the role of the Federal Emergency Management Agency (FEMA) in the offsite emergency planning for the Seabrook Nuclear Power Plant in New Hampshire. You were concerned specifically with our recent decision on the sheltering of the beach population.

In your letter, you request the answers to several questions and copies of a number of documents. We shall try to respond to some of your questions in this letter and will indicate when we can respond to your other questions and send you the documents that you requested.

Specifically, you inquired about the role of Mr. Edward Thomas, Chief of the Natural and Technological Hazards Division (NTH), FEMA Region I, as a witness before the Atomic Safety and Licensing Board (ASLB) Hearing on the beach population issue. Mr. Thomas, who has been intimately involved in the numerous and extensive deliberations related to the Seabrook beach population issue, is also Chairman of the FEMA Region I Regional Assistance Committee (RAC). The RAC is composed of specialists from eight other Federal Agencies who provide technical advice to FEMA on State and local radiological emergency planning and preparedness activities. As to the beach population issue, the majority of the RAC consistently disagreed with Mr. Thomas' position as filed in the June and September 1987 FEMA statements. After much deliberation and extensive discussion by technical, policy and legal experts in a meeting which Mr. Thomas attended and participated in, a final decision was made concerning the position that FEMA would take in the March 14 testimony. All of the participants in that meeting were asked if they would support it as an Agency position and if they could support it from a personal and professional viewpoint. Mr. Thomas said that he could support it as an Agency position, but that he differed with it from a personal and professional viewpoint. In view of those reservations, the FEMA Office of General Counsel then recommended that it would not be appropriate for Mr. Thomas to be a witness for the Agency on that issue and that it would be unfair to ask him to shoulder this burden. The decision was made March 4, 1988, to use Headquarters witnesses and a technical expert from Idaho National Engineering Laboratory which is under contract to FEMA.

You mentioned that the decision not to present Mr. Thomas as a FEMA witness followed a series of contacts between the Nuclear Regulatory Commission and FEMA concerning the sheltering of the beach population, including a high-level meeting on January 19, 1988, from which Mr. Thomas stated that he was excluded. Actually, the beach sheltering issue had been discussed extensively at meetings of the FEMA-chaired Region I RAC, of which the NRC is a member, over a long period of time. Likewise, it was discussed by the FEMA/NRC Steering Committee at its regular meetings over a period of a year or more.

The FEMA/NRC Steering Committee is established by an addendum to the Memorandum of Understanding (MOU), a copy of which is enclosed, between FEMA and the NRC to discuss and resolve matters on offsite preparedness. At the meeting on January 19, 1988, there were several topics discussed, including the question of the sheltering of the beach population. It was at that meeting that the NRC reiterated its position that sheltering is not a requirement under the NRC regulations. This was a meeting of Headquarters representatives from two agencies, and the discussion topics also dealt with a variety of issues unrelated to Seabrook. Therefore, we did not consider it necessary or the best use of his time to include Mr. Thomas in the meeting, although he was in Washington at that time working with the FEMA Office of General Counsel.

On the issue of pressure from the White House on offsite emergency planning, there has been no pressure from the White House in this area, to the best of our knowledge. You mention that Mr. Thomas stated that when he urged FEMA to assert its lead in emergency planning, that he was warned by FEMA Headquarters staff that "every time we take that kind of a stand there were calls from the White House." We are not aware of anyone in the Headquarters staff making such a statement. There has been no causal relationship between FEMA's position and any White House communication.

Indeed we know of only two contacts with the White House on Seabrook. The first occurred in 1986, when the exercise for the State of New Hampshire was planned. The Assistant Associate Director for the Office of Natural and Technological Hazards Programs did mention to Mr. Thomas that Dr. Speck, the then Associate Director for State and Local Programs and Support, who is no longer a FEMA employee, had received an inquiry from the White House on FEMA's willingness to evaluate the exercise. A copy of Dr. Speck's affidavit is enclosed. The second instance is incorporated into our response to the second question in your letter.

You also state that FEMA reversed its position on the sheltering of the beach population after the February 16th New Hampshire Presidential Primary. The change in our position on the beach sheltering issue actually evolved from September 1987, and was so reflected in our testimony filed on January 25, 1988, a copy of which is enclosed. This was prior to the New Hampshire Presidential Primary.

In your letter, you have requested copies of several documents. We shall search our files for these documents and send you what is available. In the interim, I am sending you a copy of the deposition of William R. Cumming before the Nuclear Regulatory Commission's Atomic Safety and Licensing Board Hearings on the matter of the Public Service Company of New Hampshire, et al, Seabrook Station Units 1 and 2. In Mr. Cumming's deposition, there is a description of the process that FEMA used in arriving at our decision on the beach population issue.

In your letter you have listed five questions which I wish to address, where possible, or indicate to you when you will receive an answer.

Your first question relates to documents and information about communications between FEMA and the White House on the subject of emergency response planning for the Seabrook Nuclear Power Plant from 1981 through the present. Other than the instances mentioned above, there have been no communications or written exchanges of information on guidance between FEMA and the White House specifically regarding the Seabrook Nuclear Power Plant. Thus, there are no documents relevant to your request.

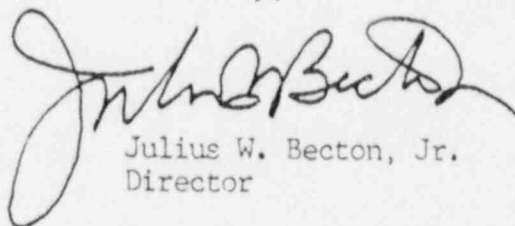
Your second question requests information on the mechanism and process for communications between FEMA and the White House on matters relating to emergency planning offsite for commercial nuclear power plants. There are no established contact mechanisms or process for this purpose. FEMA does not consult with the White House on offsite emergency planning for nuclear power plants. However, the White House has on occasion contacted FEMA to inquire for general information purposes about nuclear power plant matters. An example of this was when the Norfolk County Legislature ran a full-page advertisement in the *Norfolk Star* opposing the Shoreham Nuclear Power Plant exercise. The Director of Intergovernmental Affairs and Press Office called FEMA for information and clarification about the issue. In addition, the Legislature has, on occasion, sought information from FEMA relative to nuclear power energy issues. In 1987, the Office of Management and Budget (OMB) held a meeting with representatives both from Department of Energy (DOE) and FEMA to discuss Agency comments on a proposed rule change by the NRC. Furthermore, in January 1988, DOE expressed an interest for another meeting with OMB and FEMA about streamlining nuclear power licensing procedures. No such meeting materialized; however, a copy of FEMA's 1988 testimony for the Seabrook ASLB Hearing was sent to OMB and the White House Intergovernmental Affairs Office for the purpose of explaining FEMA's role in offsite emergency planning. The testimony provided to them discussed FEMA's process for reaching conclusions on reasonable assurance. This delivery was done after the document became available to the public. No other contact or communication has taken place since that time. I would add that it is not unusual for FEMA to receive information phone calls from the White House in connection with its programs, for example, our Federal Disaster Assistance Programs. As a result, we do not view such a contact as pressure. Again, we have not received any pressure from the White House relative to our decision-making process on Seabrook.

The available information requested in your third, fourth and fifth questions, will be forwarded to you at a later date. We shall try to respond fully to all your questions and to send you all available documents requested by June 2nd.

In conclusion, I do want to assure you that the position taken in the March 14 testimony resulted from a very thorough review of the technical and regulatory bases for evacuating and sheltering the beach population in the vicinity of the Seabrook Nuclear Power Plant. This position also relies heavily on the advice of the FEMA-chaired Regional Assistance Committee. They devoted considerable time to the problems related to the evacuation and sheltering of the beach population at Seabrook. Our position is consistent with the majority view of the RAC.

Grant Peterson, the Associate Director for State and Local Programs and Support, where the Radiological Emergency Preparedness Program is administered, and members of his staff are looking forward to a meeting with your committee staff in order to explain the FEMA process as advisors to the NRC in the evaluation of offsite emergency planning and exercises around nuclear power plants. Please let me know if you have any comments or questions. I can be reached at 646-3923 and Mr. Peterson can be reached at 646-3692. In addition, my Office of Congressional Affairs at 646-4500 is available to assist you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Julius W. Becton, Jr.", written in black ink.

Julius W. Becton, Jr.
Director

Enclosure



Federal Emergency Management Agency

MassAttyGen
Exh 35

Region I J.W. McCormack Post Office and Court House
Boston, Massachusetts 02109

JUN 11 1987

Mr. Richard H. Strome
Director, New Hampshire Civil
Defense Agency
State Office Park South
Concord, New Hampshire 03301

RECEIVED REGION I
Thomas
5/11/87
3/24/88
MM

Dear Mr. Strome:

This is written as a follow-up to our conversation on June 5, 1987, concerning the document "CURRENT FEMA POSITION ON ADMITTED CONTENTIONS ON NEW HAMPSHIRE PLANS FOR SEABROOK." (Hereinafter called Current FEMA Position.) This document was developed as a part of FEMA's responses to interrogatories in the Seabrook Atomic Safety and Licensing Board (ASLB) proceedings. Our discussion primarily related to that portion of the Current FEMA Position dealing with the beach population which is found at pp. 38-39 and enclosed with this letter.

Before further discussing that particular section, it might be worthwhile to quickly review the history of this filing. The Current FEMA Position was developed as the result of several actions including the decision of the Atomic Safety and Licensing Appeal Board (ASLB) made May 1, 1987, and the subsequent Memorandum and Order issued by the ASLB on May 4, 1987. These actions included a specific request that FEMA develop and file a position on the contentions admitted for litigation in the Seabrook proceedings by June 5, 1987. The Current FEMA position is, therefore, provided pursuant to the FEMA/Nuclear Regulatory Commission Memorandum of Understanding cited in 44 CFR 350, Section 350.3(e). However, the Current FEMA Position should not be viewed as a formal "finding" by FEMA under 44 CFR 350.

The Current FEMA Position is largely based upon the FEMA and Regional Assistance Committee (RAC) reviews which were previously provided to you. The portion of the Current FEMA Position dealing with the beach population is based on a thorough analysis by FEMA and the RAC. The issue of protecting the beach population has been an item of discussion between FEMA, the State of New Hampshire, and the applicant for several years. Our position is based on the guidance provided by NUREG-0654, FEMA-REP-1 applied to the Seabrook site.

We believe that our concern about the protection of the beach population revolves around some rather unusual circumstances which may be unique to Seabrook. Demographically, a substantial portion of the peak summer population in the area travel to the beach each day. Unlike other sites we have reviewed, these daily visitors are not identified with a temporary residence or public facility.

In addition, many of the summer residences in the area are unwinterized and therefore afford less shelter in the event of an accident than that found in insulated buildings. These circumstances dramatically impact the acceptability of the two primary protective measures, evacuation and shelter. More specifically, the information provided to FEMA indicates that evacuation from the beaches would require approximately 3.5 hours. Evacuation time estimates are not required to meet some specific standard. The availability of shelter as an option in the more fast-breaking scenarios is considered to mitigate the need for some hard time objective for evacuation. However, in this case the sheltering option is also clouded by the absence of sheltering for what is even in the more favorable estimates amounts to several thousand individuals and the absence of apparently effective shelter for many others. Thus, the information provided on evacuation and sheltering compounded one another in a manner of individuals that might be involved. I might add that these numbers apparently hold not simply for the worst-case accident, but for a number of lesser scenarios.

A number of options have been mentioned over the past years which may alter the case as we understand it. In addition to our own discussions on the subject, a wide variety of sources have proposed alternatives which include sheltering, seasonal operation of the plant, and alternative evacuation routes. Although sheltering is an alternative, we doubt if the use of existing public or private facilities would be acceptable.

The solution to the problem may be a variety of alternatives due to the complexity of the issue. However, if the facts set forth in the paragraphs numbered 1-3 of page 39 of the current FEMA position are shown to be incorrect or are modified, then our position will be subject to review and modification as necessary. FEMA will, therefore, be willing to arrange for the review of any modifications to the New Hampshire emergency plans for Seabrook which might impact evacuation time estimates or the sheltering of the beach population. Any modifications of the standard assumptions made about accident release times, duration and probability, as well as the impact due to any altered operational schedule for the plant come under the purview of the NRC.

FEMA will soon be developing its testimony for the September ASLB hearing for Seabrook. Given the expected sequence of events, it is this hearing board that will make the first licensing related evaluation of the New Hampshire plan. It would be very useful to all parties to the Seabrook proceeding if you could tell us prior to our filing testimony: (a) if the facts we have discussed and set forth in the Current FEMA Position are incorrect; (b) if the State of New Hampshire is considering steps which might change these facts, and (c) if you are aware of intentions of anyone else to exercise options that would change the facts.

We would, of course, be happy to meet with you as New Hampshire continues to explore its options. I hope that all of us can continue work together to resolve this issue and achieve our mutual commitment to public safety.

Sincerely,

[Signed]

Edward A. Thomas
Chief
Natural and Technological Hazards
Division

NECNP CONTENTION RERP-8

The New Hampshire RERP does not provide a "reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency," as required by 10 C.F.R. 50.47(a)(1), in that the plan does not provide reasonable assurance that sheltering is an "adequate protective measure" for Seabrook. Nor does the plan provide adequate criteria for the choice between protective measures, as required by § 50.47(b)(10) and NUREG-0654, § II.J.10.m.

FEMA RESPONSE to Revised Town of Hampton Contention VIII to Revision 2 (of the New Hampshire RERP for Seabrook), SAPL Contention 16, and NECNP Contention RERP-8

These three contentions all deal with what is fundamentally the same issue: protection from a radiological release for beach-going population at Seabrook who do not have ready access to any effective form of sheltering. This group includes both "day-trippers to the beach and those persons who only have access to unwinterized or other types of construction which will offer a lesser degree of protection than that offered by standard residential or commercial buildings.

Background - This issue has been of great concern to FEMA from our earliest detailed involvement with the preparation of plans and the achievement of a level of emergency preparedness which would achieve our regulatory standard set for that 44 CFR 350.5 of adequately protecting the public health and safety by providing reasonable assurance that appropriate protective measures can be taken offsite in the event of a radiological emergency at the Seabrook Nuclear Power Plant.

In December 1985 the State of New Hampshire submitted plans for protecting the public in the event of an accident at Seabrook to FEMA for review pursuant to 44 CFR 350. Those plans were forwarded for review by the Regional Assistance Committee (RAC), an interagency group established pursuant to 44 CFR 350 to both assist state and local government in the development of radiological emergency response plans and to evaluate the adequacy of such plans. On December 31, 1985, FEMA, as chair of the RAC, requested that the members of the RAC (as well as the other FEMA staff who were reviewing the New Hampshire Plans) immediately focus on the issue of the protection of beach population and the occupants of unwinterized accommodations. This memorandum is attached as Appendix C to this response to interrogatories.

FEMA Position - Since the time of our December 31, 1985, memorandum on the subject of the protection of the public on and near the beaches around Seabrook, the State of New Hampshire has refined and improved its emergency plans and submitted a detailed Evacuation Time Estimate which sheds a considerable amount of light on this issue. The facts relevant to understanding this issue are that:

NEERP CONVENTION RERP-6 (Cont.)

- (1) The primary guidance document used by FEMA and the RAC in reviewing off-site emergency plans is NUREG-0654, FEMA REP-1, Rev. 1, a document jointly developed by FEMA and the NRC. That guidance document indicates on p. 13 that "(t)he range of times between the onset of accident conditions and the start of a major release is of the order of one-half hour to several hours". This statement is further clarified on p. 17, Table 2 to indicate that (a) the major portion of a release may occur in a time period ranging from as little as one-half hour to one day after the release begins and (b) that the travel time of the release to exposure point can range from one-half hour to two hours at five miles, and one hour to four hours at ten miles.
- (2) On peak summer days there are thousands of beachgoers in the Seabrook EPZ in areas beginning approximately 1.7 miles from the plant. The current New Hampshire plans contemplate evacuating the many thousands of beachgoers who have access to no adequate shelter as a protective action in the event of an accident at Seabrook. We understand that the plans contain no consideration of sheltering the "day trippers" because on summer days when there are a large number of these people, it is not possible to find reasonably accessible shelter for them. There are an additional number of persons who would be in or have access only to shelter in unwinterized cottages and motel rooms. The protection afforded by sheltering in these structures will definitely be less than that afforded by a normal wood frame house.
- (3) The Evacuation Time Estimate for the Seabrook EPZ submitted by the State of New Hampshire indicates at pp. 10-1 et seq. that in good weather when the beaches are at 60 to 100 percent of capacity it will take three and one-half hours to clear the beaches, and a total of from four hours and fifty minutes to five hours and fifty minutes to evacuate all the population on the beaches from the EPZ. In some situations such as sudden bad weather following a peak summer day, the total evacuation time for portions of the EPZ range up to seven hours and fifty minutes.

Therefore, using the standard guidance for the initiation and duration of radiological releases, and the current New Hampshire RERP including ETE, it appears that thousands of people could be unable to leave during an accident at Seabrook involving a major release of radioactivity without adequate shelter for as much as the entire duration of that release. Therefore, until these issues are resolved even if all the other inadequacies and deficiencies cited in the RAC Reviews of the New Hampshire Plans, and the Review of the Exercise of these plans were to be corrected, FEMA would not be able to conclude that the New Hampshire State and local plans to protect the public in the event of an accident at the Seabrook Nuclear Power Plant are adequate to meet our regulatory standard that such plans "adequately protect the public health and safety by providing reasonable assurance that appropriate protective measures can be taken offsite in the event of a radiological emergency." (See, 44 CFR 350.5(b)).

Mass Atty Gen
Exh 37



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

October 5, 1987

Ivan Smith, Esq., Chairman
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Gustave A. Linsenberger, Jr.
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

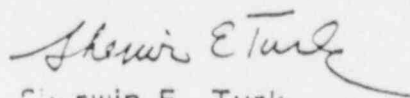
Dr. Jerry Harbour
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

In the Matter of
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, ET AL.
(Seabrook Station, Units 1 and 2)
Docket Nos. 50-443, 50-444 Off-Site Emergency Planning

Dear Administrative Judges:

in a filing dated September 4, 1987, the NRC Staff advised the Board and parties that it may wish to submit rebuttal testimony with respect to the beach shelter issue. In accordance with the Licensing Board's "Memorandum and Order (Clarifying Presentation of Rebuttal Testimony)", dated September 9, 1987, the Staff hereby submits a draft outline of the areas it may wish to address in its rebuttal testimony, in the event the Staff determines following cross-examination that such rebuttal testimony is appropriate.

Sincerely,


Sherwin E. Turk
Counsel for NRC Staff

cc: Service List

Proposed Rebuttal Testimony of NRC Staff
Concerning NHRERP Protective Actions For
Seabrook Area Seasonal Beach Populations

- I. Introduction: The Function and Objectives of Emergency Planning.
 - A. The Goal of Emergency Planning Is To Mitigate the Radiological Impacts of An Accident If A Release of Radiation Should Occur.
 - B. The Overall Objective of Emergency Planning Is To Provide Dose Savings (and in Some Cases, Immediate Life Saving) for A Spectrum of Accidents That Could Produce Doses in Excess of the Protective Action Guides.
 - C. The Planning Basis Requires Applicants and Governmental Organizations to Demonstrate A Capability for Prompt Notification of the Public.
 - D. Planning Is Not Required for Any Particular Accident, Nor Is Planning Required to Assure the Avoidance of Any Particular Dose Or to Demonstrate That Any or All of the EPZ Can Be Evacuated Within Any Particular Time Frame.
 - E. The Provision of 10 C.F.R. § 50.47(b)(10) That There Be "A Range of Protective Actions" Does Not Require That There Be A Range of Protective Actions For All Accidents at All Times and at All Locations Within the EPZ.

- II. The Provisions Contained in NHRERP Revision 2 for Protection of Seabrook Area Seasonal Beach Populations Comply With the Guidance Contained in NUREG-0654, Except to the Extent that Deficiencies Otherwise Exist In the NHRERP.
 - A. The NHRERP Provides A Range of Protective Actions for Beach Areas During Most of the Year.
 - B. During the Beach Season, the NHRERP Provides for Early Consideration, At the "Alert" Level, As to Whether to Restrict Public Access to the Beaches or Close the Beaches and Commence Early Evacuation of Beach Areas Before a General Evacuation Would Commence.
 - C. The Beach Areas Are Equipped With Sirens Capable of Providing Both Tone Alerts and Public Address (Voice) Messages, in Order to Afford Seasonal Beach Populations With Prompt Notification and Instructions to Follow in An Emergency.

- D. The NHRERP Provides for Traffic Control and Other Emergency Response Personnel to Assist the Public in Evacuating Beach Areas.
- E. Evacuation Is the Preferred Protective Response for Seabrook Area Seasonal Beach Populations.
- F. The Absence of Sheltering As An Alternative Protective Response for Seabrook Area Seasonal Beach Populations Does Not Contravene NRC Regulations and Guidance, and Is Consistent With the Level of Planning In Place at Other Nuclear Plant Sites.

III. Conclusion: The NHRERP Provides Dose Savings for A Spectrum of Accidents That Could Produce Doses In Excess of the PAGs. Consistent With 10 C.F.R. § 50.47(a), the NHRERP Provides Reasonable Assurance That Adequate Protective Measures Can and Will Be Taken, With Respect to Seabrook Area Seasonal Beach Populations, In the Event of A Radiological Emergency.



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

Mass Atty Gen
Exh 39

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H. Joseph Flynn, Esquire
Assistant General Counsel
Federal Emergency Management Agency
500 C Street, S.W.
Washington, D.C. 20472

Thomas
EX 17
4/4/88
MM

In the Matter of
Public Service Company of New Hampshire, et al.
(Seabrook Station, Units 1 and 2)
Docket Nos. 50-443, 50-444 (Offsite Emergency Planning)

Dear Mr. Flynn:

This is to confirm the NRC Staff's understanding of the "Supplemental Testimony of Dave McLoughlin, Edward A. Thomas, and William R. Cumming on Behalf of the Federal Emergency Management Agency on Sheltering/Beach Population Issues," filed on January 25, 1988. As I indicated in the Licensing Board's telephone conference call held on January 27, 1988, the Staff views the testimony as indicating, in essence, that FEMA takes the following position:

FEMA cannot conclude that the NHRERP is adequate with respect to [the] beach population until it is clear that the State of New Hampshire has considered the use of sheltering for the transient beach population and explains what use, if any, it intends to make of sheltering. This latter point should not be interpreted to mean that FEMA has imposed a requirement that sheltering be available. If the State of New Hampshire intends not to employ sheltering for the transient beach population (which is not presently clear from the NHRERP), then FEMA expects the State to develop the rationale for such a choice and provide it to FEMA for review.

(Tr. 9054-55, quoting from page 2 of the Supplemental Testimony). As I further stated, "in essence, the Staff reads FEMA's testimony as being an interim position in which they are anticipating that further work could be done by the State along the lines suggested in this testimony, and after that work is done, that it would be submitted to FEMA for review and a determination" (Tr. 9055). I note that you have agreed with my characterization of FEMA's testimony (Tr. 9057).

As you know, the NRC Staff has not yet taken a formal position in the hearings with respect to the adequacy of measures in the NHRERP for protection of the seasonal beach populations. The Staff is in the process

of determining whether to take a position on this matter independent of FEMA. Any decision made by the Staff in this regard will be based upon our reading of FEMA's position, as set forth above, which we understand governs any other statements in the Supplemental Testimony (such as in Sections III and IV thereof), which may be susceptible to a different interpretation.

I wish to note certain additional matters in connection with the Supplemental Testimony. First, the testimony, at page 4, states that FEMA is persuaded "that the NRC interprets its own regulations not to require sheltering for all segments of the EPZ." As you know, authoritative interpretations of NRC regulations may be rendered only by the Commission or its General Counsel. However, I wish to confirm that the NRC Staff interprets the regulations in the manner you have stated -- i.e., that the NRC's emergency planning regulations do not require that sheltering be provided for all accidents, at all times and at all locations within the plume exposure pathway emergency planning zone (EPZ). Stated differently, the Staff views the regulations as not requiring that there be a range of protective actions that includes both sheltering and evacuation options, for all accidents at all times and at all locations within the EPZ. This interpretation is consistent with established Federal practice in approving emergency plans for other commercial nuclear power plants, and may be relied upon by FEMA in its evaluation of the NHRERP.

Second, the Supplemental Testimony appears to describe somewhat inaccurately the position expressed by Dr. Bores at the January 1988 RAC meeting. The testimony, at page 5, indicates that Dr. Bores expressed the view that the guidance of NUREG-0654 "applies to the entire spectrum of accidents, to the entire population of the EPZ, all of the time," and that the NRC believed "FEMA's position on the summer beach population was too narrowly focused." I have been informed by Dr. Bores that he expressed his position somewhat differently, as follows: that the guidance of NUREG-0654 applies generally to the entire spectrum of accidents and the entire population all of the time, but that emergency plans need not include a range of protective measures that includes both sheltering and evacuation for every postulated accident scenario and every segment of the population, all of the time.

Very truly yours,

Sherwin E. Turk

Sherwin E. Turk
Senior Supervisory
Trial Attorney

cc: Service List

Mass Atty Gen
Exh 40

Talking Points for Stello Meeting

I. Seabrook - New Hampshire

A. Currently many reasons for the overall negative bottom line on the New Hampshire preparedness for the Seabrook site.

1. Beach Population Issues.

- FEMA's view- In order to reach a positive evaluation of the beach population aspects of the New Hampshire plan, FEMA believes that the sheltering issues/options must be fully considered in the plans. Currently, they are not. As we currently see things today, the sheltering survey is not sufficient to fulfill this requirement because it is not a shelter plan.

-RAC majority view. We understand that the majority of the RAC members believe that the beach aspects of the plan are adequate without any sheltering information. We consider the RAC advisory to us; we do not consider ourselves bound to adopt a majority view.

2. Issues other than Beach.

- 55 deficiencies in the February 1986 exercise. ~~many~~ areas must be redemonstrated.

- Other plan issues must be resolved, e.g., transportation resources issues- numbers of bus drivers, etc. - This is what is being litigated, 36 other Massachusetts. About 15 more contacted

3. Shelter survey - See chronology of events to date.

- Only 2 RAC agencies have responded in writing. After these comments have been received (and FEMA ~~will~~ contact them ~~individually~~), we will expedite the Argonne analysis & consolidation of comments and issue a technical assistance report.

- IF RAC comments - ~~submitted later~~ you're kind of the first step, EPA, DOE, HHS, NOAA, USDA, DOT, JAN 29th

II. Seabrook - Massachusetts (Utility Plan)

A. Redacted Material - (eg. names of bus companies, etc.)

-FEMA needs material ~~to yield~~ a positive finding on a plan review. The absence of the material would also affect the conduct of an exercise. We are willing to abide by any protective order issued by the Board.

-We understand that NRC has received the material. What is its disposition? Why haven't we received it?

pursuant to your request at the public meeting:

In other words, we want the full range of protective actions to be viewed as current plan does not address shelter during the summer

has not been in contact with us for a while

+ does not represent formal plan survey.

It does not cover a range of options. It is not a plan, it is a survey.

pg 19, 20

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CERTIFICATE

This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission in the matter of:

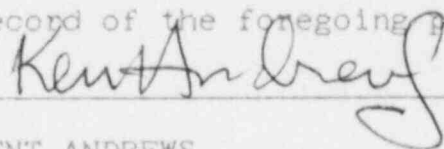
Name: PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, et al.

Docket Number: 50-443-OL, 50-444-OL

Place: CONCORD, NEW HAMPSHIRE

Date: May 26, 1988

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission taken electronically by me and, thereafter reduced to typewriting by me or under the direction of the court reporting company, and that the recording is a true and accurate record of the foregoing proceedings.

/s/ 

(Signature typed): KENT ANDREWS

Official Reporter
Heritage Reporting Corporation