

ORIGINAL

# UNITED STATES NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD

In the Matter of: )

EVIDENTIARY HEARING )

PUBLIC SERVICE COMPANY OF )

NEW HAMPSHIRE, et al )

(SEABROOK STATION, UNITS 1 AND 2) )

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

Pages: 13055 through 13316

Place: Concord, New Hampshire

Date: May 27, 1988

TR-01  
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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.  
NEW HAMPSHIRE, et al., ) 50-443-OL  
) 50-444-OL  
6 (SEABROOK STATION, UNITS 1 AND 2) ) OFF-SITE EMERGENCY  
) PLANNING  
7 )  
8 EVIDENTIARY HEARING

9  
10 Friday,  
May 27, 1988

11 Room 302  
12 Legislative Office Building  
Concord, New Hampshire

13 The above-entitled matter came on for hearing,  
14 pursuant to notice, at 9:03 a.m.

15 BEFORE: JUDGE IVAN W. SMITH, CHAIRMAN  
Atomic Safety and Licensing Board  
16 U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

17 JUDGE GUSTAVE A. LINENBERGER, JR., MEMBER  
18 Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
19 Washington, D.C. 20555

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

For the Applicant:

THOMAS G. DIGNAN, JR. ESQ.  
KATHRYN A. SELLECK, ESQ.  
GEORGE LEWALD, ESQ.  
Ropes & Gray  
225 Franklin Street  
Boston, Massachusetts 02110

For the NRC Staff:

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

For the Federal Emergency Management Agency:

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

For the State of New Hampshire:

GEOFFREY M. HUNTINGTON, ESQ.  
State of New Hampshire  
25 Capitol Street  
Concord, New Hampshire 03301

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)

21  
22  
23  
24  
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## I N D E X

1  
2 WITNESSES DIRECT CROSS REDIRECT RECROSS EXAM

3 Panel:

4 DAVID MCLOUGHLIN

GRANT PEDERSON

5 RICHARD KRIMM

by Mr. Oleskey 13061

6 by Ms. Weiss 13162

by Mr. Brock 13232

7 by Mr. Huntington 13252

by Mr. Turk 13254

8 by Mr. Dignan 13268

by Mr. Flynn 13272

9 by Mr. Turk 13289

by Ms. Weiss 13290

10 by Mr. Dignan 13293

by Mr. Backus 13296

11 by Mr. Turk 13298

12 EXHIBITS: IDENT REC'D REJ DESCRIPTION

13

Massachusetts Attorney General's:

14

15 No. 41 13073 13076 4 pages, letter  
4 Sept '87, Flynn  
to Thomas

16

17 No. 42 13079 13091 7 pages, FEMA's  
supplemental  
18 testimony on  
sheltering issues,  
19 25 Jan '88

20 No. 43 13106 13106 6 pages, memo,  
21 Thomas to Krimm,  
16 Oct '83, re:  
22 reasonable  
assurance

23 No. 44 13106 13106 1 page, memo,  
24 no date, Thomas  
to Krimm, re:  
25 reasonable  
assurance

I N D E X (Continued)

1				
2				
3	<u>EXHIBITS:</u>	<u>IDENT</u>	<u>REC'D</u>	<u>REJ</u>
4	No. 45	13106	13106	DESCRIPTION
5				1 page, memo,
6				28 Jul '87,
7	No. 46	13106	13106	McLoughlin to
8				Perry, re:
9				reasonable
10				assurance
11	No. 47	13172	13210	2 pages, memo,
12				30 Jul '87, Watson
13				to McLoughlin,
14				re: reasonable
15				assurance
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14	<u>INSERTS:</u>		<u>PAGE</u>
15	SAPL Cross-Examination plan on Peterson,		13060
16	et al.		
17	Mass. AG Exhibit Nos. 41 and 42		13092
18	Mass. AG Exhibit Nos. 43, 44, 45, and 46		13106
19	Mass. AG Cross-Examination plan on		13161
20	Peterson, et al.		
21	Mass. AG Exhibit No. 47		13210

P R O C E E D I N G S

(9:03 a.m.)

JUDGE SMITH: Good morning.

We're ready to proceed.

MR. OLESKEY: Good morning.

JUDGE SMITH: Is there any preliminary business?

(No response)

JUDGE SMITH: All right, Mr. Oleskey, you may  
proceed.

MR. OLESKEY: Thank you, Your Honor. I guess I'm  
batting second, Ms. Weiss third, and Mr. Brock will be in the  
clean up to the ninth spot in the order.

(SAPL Cross-examination plan  
for Peterson, McLoughlin and  
Krimm follows:)

SAPL  
CROSS EXAMINATION PLAN  
FOR  
PETERSON, MCLOUGHLIN AND KRIMM

Objective will be to explore the background of panel, especially for Peterson, then to explore the development of the FEMA position up to the January 1988 time frame. We will then explore the January 19th meeting in more detail, and whether the stated bases for FEMA's change of position are proper or real, and the treatment of risk. We will conclude by discussing the March 4, 1988 meeting.

- I. Background of Mr. Peterson
- II. The June 4th position, and the June 11th letter to Mr. Strome.
- III. Was there any "cause or reason" to change FEMA position up to time of hearing.
- IV. Was the "cause or reason" anything factual.
- V. Was Mr. Thomas role reduced in December, if so why?
- VI. Does the timing of events in January suggest an NRC role in changing FEMA's position. (Reference to ASLB record of January 11 and 13)
- VII. The January 19th meeting: was there any quid pro quo? Did FEMA get any significant thing from NRC.
- VIII. Does March meeting result in Peterson decision? What is decision? What is proper consideration of risk?



1 Whereupon,

2 RICHARD KRIMM

3 GRANT PETERSON

4 DAVID MCLOUGHLIN

5 having been previously duly sworn, resumed the witness stand  
6 here'n, and was examined and further testified as follows:

7 CROSS-EXAMINATION

8 BY MR. OLESKEY:

9 Q Gentlemen, I think that you've all met me, I'm  
10 Stephen Oleskey, Massachusetts Deputy Attorney General.

11 I want to ask questions of different people and I'll  
12 try to be clear as to whom I'm addressing my question. But I'd  
13 like to start with you, Mr. McLoughlin, and clarify a few  
14 aspects of your earlier testimony.

15 You indicated, I believe, that you're familiar with  
16 the memo that was sent by Ed Thomas on behalf of FEMA and in  
17 his capacity as the RAC Chairman to other RAC members in Region  
18 1, dated December 31, 1985?

19 A (McLoughlin) Yes.

20 Q All right. Was -- to what extent was that memorandum  
21 reviewed and cleared through national headquarters before it  
22 was sent out by Mr. Thomas?

23 A (McLoughlin) I never saw the memo before it went  
24 out. If it was cleared at all in the headquarters, and I'm  
25 uncertain of that, it would have been in Mr. Krimm's shop and

1 there may have been some discussions with him, but I am not  
2 aware of those.

3 Q Over to you, Mr. Krimm, do you -- I know you've had  
4 some trouble recalling things in times past, but can you help  
5 me on this one, do you need to see the memo to --

6 A (Krimm) I would really need to see the memo, right.

7 Q Sure. It's an exhibit, it's in Exhibit 2-A for the  
8 Staff at global pages 6 and 7.

9 A (Krimm) I really -- personally I don't remember if  
10 it was cleared by me. It could have been cleared by Bob  
11 Wilkerson as the chief of the division or someone else at that  
12 time.

13 Q All right. It's fair to say, then, you just don't  
14 have recollection --

15 A (Krimm) That's right.

16 Q -- one way or the other as to what extent there was  
17 clearance?

18 A (Krimm) Right.

19 Q Okay. Now, Mr. McLoughlin, you testified that you  
20 learned from Dick Krimm shortly after May 19, 1987 that the  
21 memo that we've referred to here as Bores 1 was being withdrawn  
22 by the NRC; was that the substance of your testimony?

23 A (McLoughlin) That's correct.

24 Q And that was because of a meeting that Mr. Krimm had  
25 about which he briefed you with the NRC on May 19 of last year;

1 is that right?

2 A (McLoughlin) It -- you need to find out from -- I  
3 know that Craig Wingo was there. He was the one, as I recall,  
4 that gave me the most technical part of the discussion.

5 Q All right.

6 A (McLoughlin) And the implications of that, but Mr.  
7 Krimm may have been at that meeting, I'm just not certain.

8 Q Now, I'll get to him in a moment, but just let me ask  
9 a followup question. You were also told in this briefing that  
10 the NRC would replace what we've called Bores 1, the February  
11 '87 memo, with a new memo, in your words, the significant and  
12 salient feature of which was the withdrawal of the containment  
13 as an item in the memo?

14 A (McLoughlin) That's correct.

15 Q Do you recall that?

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

17 Q Mr. Krimm, do you recall that meeting of the 19th of  
18 May of 1987?

19 A (Krimm) Yes.

20 Q All right. Who were the folks from each agency who  
21 met at that time?

22 A (Krimm) From FEMA, as I recall, it was myself, Craig  
23 Wingo, Margaret Lawless, and I believe Marshall Sanders.

24 From the NRC -- I'm not definite but I'm going to  
25 give you the names that may have been there, Ed Jordan --

1 MR. TURK: Excuse me, if this is speculation, I  
2 don't see that it's going to be probative.

3 MR. OLESKEY: Now, they're my questions and I'm  
4 entitled to your best memory and that's what you're giving me  
5 and I appreciate that, and would you continue.

6 THE WITNESS: (Krimm) Yes.

7 MR. DIGNAN: Wait a minu'e. His best memory is one  
8 thing, Your Honor, but he started out like it was speculation.  
9 Can we find out from the witness whether we're getting best  
10 memory or speculation?

11 MR. TURK: It's one thing to assume who may have been  
12 there; it's another thing to have recall of it, Your Honor.

13 JUDGE SMITH: Well, that's -- I recognize the  
14 difference. However, Mr. Oleskey is entitled to develop  
15 whatever it is.

16 THE WITNESS: (Krimm) To the best of my  
17 recollection --

18 MR. OLESKEY: That's fine.

19 THE WITNESS: (Krimm) -- it was Ed Jordan, Frank  
20 Congel, Dave Matthews. There may have been other people there  
21 from the NRC, just as there may have been other people there  
22 from FEMA.

23 BY MR. OLESKEY:

24 Q All right. Was that a meeting of the Steering  
25 Committee of the agencies?

1           A     (Krimm) I would really have to go back to my  
2 calendar to check, I can't tell you. As I mentioned yesterday,  
3 sometimes, you know, we would have formal Steering Committee  
4 meetings --

5           Q     Yes.

6           A     (Krimm) -- and other times we would just meet  
7 informal.

8           Q     Well, however the meeting came to happen, what was  
9 the subject matter of the meeting, insofar as it relates to the  
10 proceedings we've been discussing here, the issues we've been  
11 discussing here?

12          A     (Krimm) Well, the one that, you know, I recall from  
13 the meeting was the discussion of the Bores 1 memo, the  
14 containment issue. And that I think NRC's intention, at that  
15 time, was to withdraw the memo.

16          Q     Okay. Did they tell you why?

17          A     (Krimm) I don't remember their reasons. I would  
18 have to make an assumption.

19          Q     All right. Mr. McLoughlin, you seem to have a  
20 possibly better memory from something Mr. Wingo told you about  
21 why the memo was being withdrawn; could you help us on that?

22          A     (McLoughlin) Mr. Oleskey, I -- there was some  
23 speculation given to me at that time which clearly labeled it.  
24 I testified yesterday that in the December time frame when we  
25 got a copy of the Bores 3 memo, I guess, I never knew it until

1 I came there that there's a Bores 3 memo, but the  
2 October 15th.

3 Q The October memo?

4 A (McLoughlin) That's right, the October 15th memo. I  
5 believe there is a statement in there to the effect of why  
6 that, they were removing the containment feature.

7 Q So reading it back from October you'd have that  
8 understanding, but do you have any understanding that you got  
9 in May of '87 from Wingo or Krimm or anybody else?

10 A (McLoughlin) Yes. Put at that time it was  
11 speculation, and I -- if you want that I will give it to you.

12 Q I want to know what they told you?

13 A (McLoughlin) Well, what I understood was happening  
14 at that point was that the NRC, and believe me I'm not a lawyer  
15 and I want to acknowledge that up front, it's my understanding  
16 that the NRC did not want to litigate the containment feature,  
17 essentially, because they did not want to litigate specific  
18 site -- site-specific issues, rather their litigation -- the  
19 premise of -- the foundation of the litigation needs to be on a  
20 generic basis. That's what I understood to be the principal  
21 thrust of it.

22 Q As a result of the briefings you had from people who  
23 went to the meeting?

24 A (McLoughlin) That's correct.

25 Q Okay. Now, you also mentioned briefly yesterday,

1 during Mr. Backus's examination, that there was another meeting  
2 of headquarters people from FEMA and the NRC on June 2 of 1987?

3 A (McLoughlin) Correction. That meeting was -- the  
4 meeting that I was in --

5 Q Yes.

6 A (McLoughlin) -- on June 2 was only FEMA people. I  
7 believe there was another meeting on June 2, but it was with  
8 Mr. Krimm and his people.

9 Q All right. Mr. Krimm, I think you've indicated  
10 briefly, you do recall such a meeting --

11 A (Krimm) Yes.

12 Q -- in the context of other meetings at FEMA that were  
13 happening on June 2 of last year; is that right?

14 A (Krimm) That's correct; yes.

15 Q Who was at this June 2 meeting of the NRC  
16 headquarters staff and the FEMA headquarters staff?

17 A (Krimm) From FEMA I, including myself, Craig Wingo,  
18 Marshall Sanders, Margaret Lawless, Ed Thomas, and -- okay.  
19 I'm sorry, I don't remember the other people that were there.

20 Q All right.

21 A (Krimm) From the Nuclear Regulatory Commission,  
22 again, I do recall Frank Congel was there, and Dave Matthews,  
23 and I'm not sure, there were other people there from the NRC  
24 and I'm sorry I don't recall who the other people were.

25 Q And insofar as it relates to the issues here, what

1 was the purpose of this meeting?

2 A (Krimm) Well, there were many -- I think many issues  
3 discussed on Seabrook, but again, I think at that meeting, to  
4 the best of my recollection, the NRC informed us that they  
5 would be formally withdrawing the Bores 1 memo.

6 Q That is, you understood they were confirming that  
7 which they told you was likely to happen back on May 19th?

8 A (Krimm) Yes.

9 Q Okay. And did they --

10 JUDGE LINENEERGER: Excuse me, but, Mr. Krimm, I  
11 should like, to the extent you can, an understanding of the  
12 difference in weight or perspective or whatever with respect to  
13 how an action recommendation that comes out of a Steering  
14 Committee meeting versus an action recommendation that comes  
15 out of a, just an inter-agency meeting, how those are handled  
16 differently by your management or is there a difference?

17 THE WITNESS: (Krimm) There really isn't a  
18 difference. We, as I explained yesterday, Judge, we have  
19 periodic meetings with the Nuclear Regulatory Commission. One  
20 is where we do have a set agenda and notes are taken, usually  
21 notes are taken, between the Federal Emergency Management  
22 Agency and the Nuclear Regulatory Commission.

23 Then we have other meetings which are called, because  
24 a particular issue comes up and we think we should meet on that  
25 issue.



1           And as I recall the June 2nd meeting was of the  
2 latter nature where we felt we should just maybe meet on the  
3 issue.

4           JUDGE LINENBERGER: Excuse me, go ahead.

5           BY MR. OLESKEY:

6           Q     What did the FEMA participants respond to the  
7 statement by the NRC that they were in fact formally  
8 withdrawing the Bores February memo, Bores 1?

9           A     (Krimm) Well, our main concern at that time was this  
10 would change our filing that we, you know, it would really make  
11 a very drastic change in our position. And I think that was  
12 primarily our concern which we, you know, told the NRC.

13          Q     You told them -- did you tell them in substance --

14          A     (Krimm) I believe that we --

15          Q     -- the difference that there would be in your filing  
16 as a result of the action of withdrawal?

17          A     (Krimm) To the best of my recollection we did; yes.

18          Q     Okay. Was there discussion about the fact that the  
19 memo, the Bores 1 memo had been an important aspect of the RAC  
20 deliberations of April 15th, six weeks earlier?

21          A     (Krimm) As I recall, I think that Mr. Thomas did  
22 explain that to the NRC.

23          Q     And what did they say when your people said, the memo  
24 was important to the RAC, you're withdrawing some aspects of it  
25 that we think are important, our filing will be different as a

1 result on June 4th with this Licensing Board?

2 A (Krimm) I don't remember, I'm very sorry. I don't  
3 recall exactly what the NRC said at that time.

4 Q But was it clear in your mind that FEMA had told the  
5 NRC people who were present that the FEMA filing in response to  
6 the contentions that was due in a couple of days would  
7 definitely be different as a result of the withdrawal of the  
8 Bores memo of February, Bores 1?

9 A (Krimm) To the best of my knowledge.

10 Q Did they show you or preview you Bores 2, the new  
11 memo that was coming?

12 A (Krimm) I don't recall seeing that before -- well,  
13 actually, I didn't even see it on June 4th, it was after that  
14 time, but it was delivered to us on June 4th.

15 Q Well, was it delivered in Washington on June 4th?

16 A (Krimm) It was delivered to FEMA and I don't recall  
17 whether it was delivered in Washington or Boston. I know it  
18 was after our filing when I read it, which you have to  
19 understand that I manage five programs and it's -- there's a  
20 lot of reading that goes on and I just don't recall the exact  
21 date I saw it.

22 Q Someone has done a lot of reading this week,  
23 especially of your material, I'm very sympathetic to that  
24 perspective this morning.

25 A (Krimm) Well, thank you.

1 Q Did you tell the NRC staff people who were there that  
2 if the document came on the 4th it was unlikely to effect what  
3 FEMA filed because you had made a decision based on what they  
4 told you that morning about what you have to file?

5 A (Krimm) I don't recall that detail, I'm sorry.

6 Q Okay. Mr. Peterson, I don't want to leave you out of  
7 this on the possibility that you had some knowledge of what was  
8 going on either on the 19th of May or the 2nd of June, let me  
9 ask you if you can add anything?

10 A (Peterson) No, I can add nothing.

11 Q Okay.

12 A (Peterson) I had no specific knowledge at that time.

13 Q Now, Mr. McLoughlin, you've also testified that the  
14 issues of the containment and summer closing possibilities were  
15 things that FEMA pushed or inquired of at the NRC right up to  
16 the fall of 1987; do you recall that testimony?

17 A (McLoughlin) Yes, I do.

18 Q And as I understand it, what FEMA was saying in  
19 substance was, these are areas where NRC technical  
20 clarification, if there's going to be any, would be helpful to  
21 FEMA in making its own decisions about plan adequacy?

22 A (McLoughlin) That's correct. In fact, I should also  
23 say, not only the NRC, but if the NRC had any knowledge at all  
24 from anybody else that would have helped us in that  
25 deliberation would have been -- we would have considered that.

1 Q Okay. And when the FEMA personnel met on the 1st of  
2 September in Washington to plan for the filing of your  
3 testimony which happened on the 11th, this was one of the  
4 topics of discussion, as I understand it?

5 A (McLoughlin) The testimony?

6 Q One of the topics of discussion was, it would still  
7 be nice if the NRC would help us --

8 A (McLoughlin) Yes.

9 Q -- and clarify these areas?

10 A (McLoughlin) That's right. That was the meeting  
11 that we finalized the memorandum that Mr. Krimm sent to Mr.  
12 Congel on the 2nd of September.

13 Q Yes. And you said that the only response, as I  
14 understand it, that the agency ever received was an indirect  
15 response, and that was in reading Dr. Bores's memo of October  
16 15, '87 which you saw some time in December?

17 A (McLoughlin) That's correct.

18 Q All right. And you knew from the fact of that memo  
19 that it wasn't drafted expressly or specifically to be  
20 responsive to FEMA questions directed to Congel or anybody else  
21 in 1987 about these technical issues of containment and summer  
22 closing; isn't that right?

23 A (McLoughlin) That's correct.

24 Q And you understood that Dr. Bores, himself, was a  
25 technical assistant in NRC, Region 1 who was acting as a RAC

1 member; isn't that right?

2 A (McLoughlin) That's correct.

3 Q Okay. And that's the only written response, as I  
4 understand it, you ever saw in connection with these requests  
5 of the NRC that you've described, to the extent it is a  
6 response, it's the only written one you ever saw?

7 A (McLoughlin) That's correct.

8 Q Okay. I want to ask you, Mr. McLoughlin, about one  
9 other issue in September of 1987, this period we were just  
10 discussing where the testimony was being prepared to be filed  
11 for this Board.

12 Let me show you a letter of September 4, 1987 to Ed  
13 Thomas from Mr. Flynn.

14 MR. OLESKEY: Do you want to distribute it.

15 (Pause)

16 MR. OLESKEY: Let me mark this, Your Honor, as Mass.  
17 AG -- Judge Harbour, you're very good at this, is it 41, do you  
18 recall?

19 JUDGE SMITH: 41.

20 JUDGE HARBOUR: Yes.

21 MR. OLESKEY: Thank you. Mass. AG 41 for ID.

22 (The document referred to was  
23 marked for identification as  
24 Mass. AG Exhibit 41.)  
25

1 BY MR. OLESKEY:

2 Q Mr. McLoughlin, your copied on this letter, as I  
3 note, as is Mr. Krimm?

4 A (McLoughlin) Yes.

5 Q Do you recall getting a copy of this letter some time  
6 after September 4 of last year?

7 A (McLoughlin) I don't recall getting a copy of it.  
8 Certainly, it did, and I certainly expect that our office did  
9 get a copy of it. I do recall the fact that this was the  
10 discussion item and certainly approved that. Typically, it's  
11 not a memo that I would have signed off on because it was  
12 confirming simply something we'd already agreed to.

13 Q And what was being confirmed that had been previously  
14 agreed to by yourself and Spence Perry, the general counsel,  
15 was that the panel of witnesses for FEMA here in the hearings  
16 would be Ed Thomas, Bruce Swiren of FEMA, and Ed Tanzman of  
17 Argonne; is that right?

18 A (McLoughlin) That's correct.

19 MR. OLESKEY: I'd like to offer this solely for the  
20 historical record purposes for which other similar documents  
21 have been offered, Your Honor.

22 MR. FLYNN: Excuse me, is the relevance that it  
23 confirms that the witnesses were going to be Ed Tanzman, Ed  
24 Thomas, and Bruce Swiren?

25 MR. OLESKEY: Relevance is that, the scope of the

1 testimony, the thrust of the letter, they would be witnesses,  
2 they'd give testimony that had been approved all the way up to  
3 Mr. McLoughlin.

4 MR. FLYNN: I don't see where the letter establishes  
5 that the testimony was approved --

6 MR. OLESKEY: I didn't say that, counsel. The letter  
7 says what it says. You asked me, as I understood it, for a  
8 general summary of the salient points in the letter. I can't  
9 add to or subtract from the letter and I'm not trying to.

10 MR. FLYNN: Your Honor, I suggest that this letter  
11 adds nothing to the record, that we already know who the  
12 witnesses are.

13 JUDGE SMITH: You're trying to establish through this  
14 letter that Mr. Thomas's testimony was agency testimony with  
15 the understanding and concurrence of Mr. McLoughlin --

16 MR. OLESKEY: Yes.

17 JUDGE SMITH: -- and general counsel.

18 MR. OLESKEY: Yes. I don't think it's very  
19 controversial.

20 JUDGE SMITH: I think it's relevant to that. It may  
21 be received.

22 MR. OLESKEY: Thank you, Your Honor.

23 JUDGE SMITH: It is received.  
24  
25

1 (The document referred to having  
2 been previously marked for  
3 identification as Mass. AG  
4 Exhibit 41 was received in  
5 evidence.)

6 BY MR. OLESKEY:

7 Q Mr. Peterson, I didn't make you stay overnight in  
8 vain, I do have some questions that I think you can answer, let  
9 me try now.

10 As I understand your testimony there was a meeting on  
11 the 22nd of January of this year, which there was discussion  
12 about testimony that your agency would file in these  
13 proceedings on the date of the 25th of January?

14 A (Peterson) There was a meeting on the 22nd that Mr.  
15 McLoughlin chaired --

16 Q Yes.

17 A (Peterson) -- and my instructions to him was to  
18 bring his people together and see if he can come to consensus  
19 on the issue.

20 Q Yes. Was that the meeting that you were called into  
21 for --

22 A (Peterson) About --

23 Q -- a short time after Mr. McLoughlin briefed you  
24 outside?

25 A (Peterson) That's correct, sir.



1 Q Okay. Mr. McLoughlin, you ultimately approved the  
2 testimony that was filed on the date of February 25 on behalf  
3 of your agency here; is that right?

4 A (McLoughlin) No. I was -- I certainly concurred in  
5 that testimony, but Mr. Peterson was the associate director at  
6 that period of time.

7 Q Okay. Fine, I appreciate that. Ms. Weiss wants --

8 JUDGE SMITH: Do you want to correct the date?

9 MR. OLESKEY: Yes, I do. I said January 25 -- I said  
10 February 25 and it was January 25.

11 THE WITNESS: (McLoughlin) Oh, I'm sorry.

12 BY MR. OLESKEY:

13 Q And with that correction, are we in agreement?

14 A (McLoughlin) Yes, we're in agreement.

15 Q Mr. Peterson, after the meeting, at some point, did  
16 you approve the filing of that testimony either orally or in  
17 writing?

18 A (Peterson) I believe that I had reviewed the  
19 testimony. I had asked Mr. McLoughlin, Mr. Krimm, there was  
20 concurrence, there was, and based upon that I concurred.

21 Q And by concur, when you use that term do you  
22 sometimes mean, just saying I agree, go do it; and do you  
23 sometimes mean that you sign a piece of paper or check off an  
24 approval, does it have both those meanings?

25 A (Peterson) I think there is a distinction. I not

1 ever remember signing off officially on the testimony, rather I  
2 asked, you know, if this was the genesis of the meeting and the  
3 concurrence everyone came to and they said it was. And I said,  
4 well, fine then.

et/140

5 (Continued on next page.)

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T1 1 MR. OLESKEY: This is also attached to the March 4th  
2 testimony -- March 14th testimony of FEMA.

3 JUDGE SMITH: Right, so we have at least one copy  
4 here.

5 BY MR. OLESKEY:

6 Q Let me ask you a few questions --

7 MR. OLESKEY: Well, first, let me ask, Your Honor, if  
8 I may have the January 25 FEMA testimony marked as Mass. AG  
9 Exhibit 42 for identification.

10 (The document referred to was  
11 marked for identification as  
12 Massachusetts Attorney General's  
13 Exhibit No. 42.)

14 BY MR. OLESKEY:

15 Q Mr. Peterson, do you have your copy there?

16 A (Peterson) I have a copy, yes, sir.

17 Q Okay, let me ask you a few questions about this.

18 Was part of the purpose of this testimony to lay out  
19 some of the agency's consideration historically of the beach  
20 population issue, especially starting at Page 2?

21 A (Peterson) There's a reference in Page 2 to the  
22 history of FEMA's consideration of the beach population issue.

23 Q All right, then you understood it -- strike that.

24 Did you understand when you approved the filing that  
25 part of what was going to be said is, here's what the agency's

1 done in some respect to date on this issue?

2 A (Peterson) I think in a general context, yes.

3 Q Okay. And then starting on Page 5 of the testimony,  
4 did you understand that there was going to be a discussion of  
5 three issues that related to the kinds of determinations or  
6 standards that FEMA applied in reviewing emergency response  
7 plans?

8 A (Peterson) Would you like to identify the three?

9 Q Yes. Range of protective actions, which is discussed  
10 at Page 5.

11 A (Peterson) I understood that, yes.

12 Q The reasonable assurance issue which is discussed at  
13 Pages 6 and 7, and what's called the dose savings issue which  
14 begins and concludes at the bottom of Page 7.

15 A (Peterson) Those are highlighted items, yes.

16 Q Yes. All right, and you knew that they were going to  
17 be discussed in the testimony because whoever prepared the  
18 testimony considered it important that those things be  
19 highlighted to this board.

20 A (Peterson) Yes, and among other things --

21 Q Okay.

22 A (Peterson) -- were of consideration at that time.

23 Q All right. And just jumping ahead now for this  
24 limited purpose only to the March 4th meeting that you chaired,  
25 and then the discussions that followed that about the testimony

1 that was going to be filed and was filed on March 14th?

2 A (Peterson) Jumping ahead with your question?

3 Q Yes, yes.

4 A (Peterson) What is your question?

5 Q I'm taking you ahead --

6 A (Peterson) Okay.

7 Q -- six weeks or so.

8 A (Peterson) Okay.

9 Q Do you recall that that testimony of March 14th said  
10 that it was -- that it intended to adopt and incorporate this  
11 testimony that you have in front of you to the extent it was  
12 pertinent or relevant?

13 Do you recall that?

14 A (Peterson) I'm sorry, i don't.

15 Q Mr. McLoughlin, do you recall that?

16 A (McLoughlin) Yes, I knew that it was going to be  
17 part of that testimony.

18 Q Okay. And you knew, Mr. Peterson, I take it, on or  
19 about the 25th of January that the testimony here was going to  
20 be presented by a panel of Dave McLoughlin, Ed Thomas and Bill  
21 Cumming?

22 A (Peterson) That's -- yes, that's on the first page.

23 MR. DIGNAN: Mr. Oleskey, I'm sure it wasn't  
24 intentional, but in fact the testimony was not adopted "to the  
25 extent pertinent and relevant". It was adopted "to the extent

1 that it is consistent".

2 MR. OLESKEY: Thank you, Mr. Dignan. I appreciate  
3 that. I didn't have the 14th in front of me, and that's a very  
4 helpful correction.

5 BY MR. OLESKEY:

6 Q Does that change anything about your answer, Mr.  
7 McLoughlin.

8 A (McLoughlin) No. I'm sorry that I didn't pick that  
9 up, but it wouldn't change my answer.

10 Q All right. Mr. Peterson, when you subsequently  
11 approved the filing of the testimony dated March 14, did you  
12 look back at the January 25th testimony to see for yourself the  
13 extent to which you thought it was consistent with that later  
14 March 14th testimony?

15 A (Peterson) I didn't do a paragraph-by-paragraph  
16 analysis, no. But I think there were elements that were  
17 addressed in the January filing that were addressed in the  
18 March 14th filing.

19 Q All right, let me ---

20 A (Peterson) A couple of issues especially.

21 Q I'm sorry, what?

22 A (Peterson) A couple of issues especially.

23 Q All right. Well, let me focus it specifically for  
24 you and see if we're talking about the same things.

25 Did you -

1 MR. TURK: Your Honor, I just want to note I'm going  
2 to object to this line of questioning. We have a piece of  
3 paper of January. We have another one of March. Mr. Flynn has  
4 indicated that they are not going to be relying upon the  
5 January testimony anymore.

6 If the intent is simply to see what is consistent in  
7 January with March, I don't see that that's part of the March  
8 testimony, nor that it needs to be explored.

9 MR. OLESKEY: It's 9:35. I was beginning to think I  
10 was doing something wrong because I hadn't heard from my  
11 brother Mr. Turk.

12 Let me only say that I do want to clarify the extent  
13 to which -- with the policy people here. They considered this  
14 testimony was surviving. I also want to establish historically  
15 that at the time they gave it, they thought it was accurate,  
16 particularly with respect to discussion of these issues on  
17 Pages 5 to 7, and whether it's accurate today.

18 JUDGE SMITH: Overruled.

19 MR. OLESKEY: What was the question?

20 JUDGE SMITH: You were -- you hadn't completed --

21 MR. OLESKEY: Ah, yes, thank you both.

22 We have some more copies now. Does anyone need  
23 copies, anyone on the panel, the bench, Judge Linenberger?

24 JUDGE LINENBERGER: I need one because I'm missing  
25 Page 7.

1 MR. OLESKEY: All right, I hope we've got it.

2 Thank you, Jane.

3

4 BY MR. OLESKEY:

5 Q While that's being done, Mr. Peterson, would you look  
6 at Pages 5, 6 and 7, which are those discussion of the three  
7 issues? I know you've said --

8 MR. DIGNAN: Mr. Oleskey, I'm sorry. Pages 5, 6 and  
9 7 of the January 25?

10 MR. OLESKEY: Yes, it is.

11 THE WITNESS: (Peterson) You want me to take time to  
12 read this again.

13 MR. OLESKEY: Sure.

14 THE WITNESS: (Peterson) It's been awhile.

15 (Pause.)

16 MR. OLESKEY: You tell me when you're ready on those  
17 three pages, and then I'll --

18 THE WITNESS: (Peterson) Certainly will, thank you.

19 (Pause.)

20 THE WITNESS: (Peterson) Okay.

21 BY MR. OLESKEY:

22 Q You've already said, as I understand it, that you  
23 were comfortable with the statement of these issues on Pages 5  
24 to 7 when the testimony was filed on January 25th, correct?

25 A (Peterson) I was comfortable that the agency, Mr.



1 McLoughlin, and my staff had worked these issues through and  
2 felt this was the appropriate testimony at this time in  
3 history, yes.

4 Q With respect to Pages 5 to 7, you all understand that  
5 New Hampshire did make some filings in February that responded  
6 to some things you said on those two pages. But with respect  
7 to the discussion of the planning standard, J-9 and J-10-M  
8 there on Page 5, it's fair to say that's still an accurate  
9 statement of how the agency would understand the application of  
10 those standards, isn't it?

11 MR. FLYNN: Excuse me. That's quite a broad  
12 statement. I think in fairness we need to know which  
13 statements you're asking them to agree to.

14 MR. OLESKEY: I'm asking him if these two -- the  
15 references to the planning standard J-9 and J-10, and FEMA  
16 interpreting these provisions as requiring consideration of  
17 more than a single protective measure on Page 5 is still an  
18 accurate statement of the agency's view.

19 MR. FLYNN: The statement on the bottom of Page 5?

20 MR. OLESKEY: Yes, Mr. Flynn, beginning with the  
21 recitation of the standard; ending with the language I read at  
22 the bottom of the page.

23 THE WITNESS: (Peterson) The J-9 requires  
24 consideration of more than one protective action.

25 MR. OLESKEY: Sure.

1 BY MR. OLESKEY:

2 Q And then you went on to say on Page 2 that the plan  
3 didn't have an adequate description of how the sheltering  
4 option might be used or rationale, and therefore you couldn't  
5 find J-9 and J-10-M; isn't that right?

6 MR. FLYNN: Excuse me. The reference is to Page 6, I  
7 believe.

8 THE WITNESS: (Peterson) No, I think he went back to  
9 2.

10 MR. OLESKEY: Thank you.

11 MR. TURK: Well, is it right that it says it in the  
12 document, or that the current FEMA position you're looking for?

13 MR. OLESKEY: Mr. Turk, you know it's not the current  
14 FEMA position. You know I couldn't have meant that. Please  
15 don't delay us unnecessarily with your statements this morning.

16 MR. TURK: Your Honor, I'm seeking simply a clear  
17 record. If Mr. Oleskey has a problem with that, I don't  
18 understand why.

19 MR. OLESKEY: Well, then you haven't -- that's  
20 because you haven't been sitting where I've been sitting for a  
21 week.

22 JUDGE HARBOUR: Let's knock off the wisecracks and  
23 stick to business.

24 MR. OLESKEY: I'm sorry, Judge.

25 BY MR. OLESKEY:

1 Q Mr. Peterson, you went on -- the agency went on to  
2 say on Page 6 --

3 A (Peterson) You were on the Page 2 comment. I don't  
4 believe I understood your -- if the State of New Hampshire  
5 intends not to employ sheltering for the transient beach  
6 population, I thought was your last reference.

7 Q If I said Page 2, I misspoke. I'm sorry.

8 A (Peterson) You did say Page 2.

9 Q Forget Page 2.

10 A (Peterson) Okay. I'll not forget it but I'll --

11 Q For purposes of my question.

12 A (Peterson) Yes, sir.

13 Q The agency went on to say on Page 6, as the plan  
14 presently stood, the New Hampshire plan, since it didn't have  
15 an adequate description --

16 A (Peterson) Can I follow where you are on Page 6?

17 Q Sure. As it presently stands -- this is about  
18 eight - 10 lines down -- the NH RERP provides neither an  
19 adequate description of how a sheltering option might be used  
20 nor a rationale for not having the option available for the  
21 transient beach population, right?

22 A (Peterson) Yes, and that was -- yes.

23 Q And that was the case then, and therefore the agency  
24 said those two standards hadn't been met at that time, right?

25 A (Peterson) That's correct.

1 Q Okay. Then you go on and what's headed roman IV on  
2 Page 6 to discuss what the agency termed the reasonable  
3 assurance issue, right?

4 A (Peterson) Yes.

5 Q And that's essentially just a discussion, as I view  
6 it, of at least a portion of the agency's definition or own  
7 notion of what reasonable assurance means when you try to apply  
8 it to these emergency response plans; is that fair to say?

9 A (Peterson) I think that's fair to say that that  
10 is --

11 Q All right. And that discussion is as accurate today  
12 as it was on January 25th; isn't that right?

13 MR. TURK: I'm going to ask for clarification.  
14 Which discussion?

15 MR. OLESKEY: The discussion beginning at Page 6,  
16 roman IV, "The reasonable assurance issue," concluding on Page  
17 7 with the words "of the possibility of sheltering for the  
18 transient beach population".

19 THE WITNESS: (Peterson) I think, you know, in the  
20 discussion you have here of adequate or inadequate and  
21 inadequacies and deficiencies, I think that stands.

22 MR. OLESKEY: Sure.

23 BY MR. OLESKEY:

24 Q Mr. McLoughlin, you are in agreement with that, I  
25 take it?

1 A (McLoughlin) I agree with that.

2 Q Okay. Now finally, on Page 7 there's a discussion  
3 entitled roman V, the dose savings issue. Let me just ask you  
4 if the sentence, the second sentence beginning, "The discussion  
5 of the planning basis in NUREG-0654, FEMA REP 1, Rev. 1," and  
6 the following sentence which begins, "It seems to be generally  
7 accepted that the plan, however judged, ought to take advantage  
8 of every readily available opportunity to reduce dose."

9 Those are again general statements of how the agency  
10 views a part of its regulations; isn't that right?

11 A (Peterson) I think that's true, but I think the  
12 previous sentence also has to be included in that thought  
13 process.

14 Q And the previous sentence related to what you were  
15 then considering with respect to the plan and the survey; isn't  
16 that right?

17 MR. FLYNN: I wish to clarify a point.

18 Mr. Oleskey referred in the previous question to  
19 NUREG-0654 as a regulation.

20 MR. OLESKEY: Yes. Thank you, Mr. Flynn.

21 MR. FLYNN: And I think we all agree that it's not  
22 regulation.

23 MR. OLESKEY: That's a very important distinction.  
24 I'm glad that you corrected me. I think I did refer to a  
25 regulation, or I might have inferred that it was.

1 BY MR. OLESKEY:

2 Q It is joint guidance of the two agencies; isn't that  
3 right, Mr. Peterson?

4 A (Peterson) Yes, I believe that's correct.

5 Q Mr. McLoughlin?

6 A (McLoughlin) That's correct.

7 Q Okay. So those two sentence, as I understand it,  
8 are, or the agency's discussion at that time of this joint  
9 guidance and something that the plan, all plans generally  
10 speaking ought to take advantage of in connection with dose  
11 reduction; isn't that right?

12 A (Peterson) I'd like you to rephrase that.

13 Q Yes. The two sentences that I read out of the middle  
14 of Paragraph 5 deal with --

15 A (Peterson) Starting with "it seems"?

16 Q Starting with "the discussion of the planning basis  
17 in NUREG-0654".

18 A (Peterson) Okay, yes.

19 Q And then the second sentence, "it seems".

20 A (Peterson) Yes.

21 Q Represent a short description of the agency's view of  
22 what the joint guidance says about dose savings.

23 A (Peterson) I believe that's correct.

24 Q And what that plan, and I guess by inference all  
25 plans, ought to be judged by with respect to dose savings;

1 isn't that right?

2 A (Peterson) I believe that's a part, yes.

3 Q All right. And those two sentences are as accurate  
4 today in the agency's perspective as they were on January 25  
5 when the testimony was filed; isn't that right?

6 A (Peterson) I believe that's correct.

7 Q Mr. McLoughlin?

8 A (McLoughlin) I would agree.

9 Q All right.

10 MR. OLESKEY: I want to offer this exhibit, Your  
11 Honor, for historical reasons, and also because it, as has been  
12 clarified, represents the agency's understanding of these  
13 relevant policy and guidance issues then and now.

14 MR. TURK: With respect to the particular sentences  
15 examined on.

16 MR. OLESKEY: Well, historically it covers the  
17 waterfront with respect to the agency's perspective on its  
18 policy, Mr. Turk is correct.

19 JUDGE SMITH: Clearly it follows the same pattern,  
20 and it's accepted.

21 (The document referred to,  
22 having been previously marked  
23 for identification as  
24 Massachusetts Attorney General's  
25 Exhibit No. 42 was received in

1 evidence.)

2 MR. OLESKEY: Thank you, Your Honor.

3 Could the two exhibits already offered be bound into  
4 the record, this one and the previous exhibit?

5 JUDGE SMITH: Yes, certainly.

6 MR. OLESKEY: Okay.

7 JUDGE SMITH: I suspect 42 will be bound in the  
8 record several times before we get done.

9 MR. OLESKEY: I think you're right.

10 (Massachusetts Attorney General's  
11 Exhibits Nos. 41 and 42 follow:)

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NUCLEAR REGULATORY COMMISSION

File No. 50443/4001-06 Official Exh. No. 41

Subject of Seabrook

IDENTIFIED ✓  
✓

September 4, 1987

Mass Atty Gen  
KA

5/21/88  
Peterson et al

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

Re: Witnesses for Seabrook Hearing

Dear Ed:

This will confirm our recent conversations about the identification and preparation of witnesses for the licensing hearing on Seabrook Station to be held in Concord, New Hampshire, beginning September 28, 1987.

It has been decided, with the concurrence of Spence Perry and Dave McLoughlin, that the witnesses for the Federal Emergency Management Agency (FEMA) will be you, Bruce Swiren, and Ed Tanzman of Argonne National Laboratories. You are expected to testify on the beach population issue; you and Ed Tanzman to testify on Letter-of-Agreement issues; and the three of you to testify on the remaining issues. Prepared testimony must be filed and mailed to the service list by Thursday, September 10, and I will provide your office all possible help in the preparation of that testimony. Yesterday I sent by telefax a suggested outline the principal elements of which were introduction of the witnesses, identification of the focus and purpose of their testimony and the incorporation by reference of the Statement of Position of June 4, 1987, and my letter to Thomas Dignan of August 7, 1987.

I plan to meet with the three of you here in Washington throughout the week of September 21 to prepare for cross-examination by the applicant, intervenors and interested governments, and the Nuclear Regulatory Commission. I will need you to be present at the beginning of the hearing for as much as the first two weeks to provide me with guidance on the program implications of the matters brought up during the hearing. I expect that the direction of the hearing will be clear by the end of the second week, if not sooner. If I am satisfied at an earlier time that I do not require your continual presence, we will make arrangements for you to be on call.

For the sake of prudence, I have also reserved the week of October 13 through 19 for additional witness preparation, in Washington. I will make a

decision on whether that will be necessary after I have had a chance to observe the other parties at the hearing and get a sense of their lines of attack. My intention is to use the additional time for preparation only to the extent that it is necessary to address lines of inquiry which we did not anticipate or develop an adequate response to before the hearing began.

I thank you in advance for the professional care that I know you will take in preparing and presenting FEMA's testimony. The rigorous attention to detail which is the hallmark of your work makes me confident that you will do an excellent job.

Sincerely,

H. Joseph Flynn,  
Assistant General Counsel

cc: William Tidball  
Henry Vickers  
Dave McLoughlin  
Richard Krimm  
Craig Wingo  
Ed Tanzman  
Bruce Swiren

!cc: CF 2, GC/Perry, FLYNN, Watson  
! GC: FLYNN:hjf: 9/4/87  
! Document # 0166R

NUCLEAR REGULATORY COMMISSION

Docket No. 50-443/444-OL Official Ex. No. 42

In the matter of Seabrook

Staff \_\_\_\_\_ IDENTIFIED   
Applicant \_\_\_\_\_ RECEIVED   
Intervenor \_\_\_\_\_ REJECTED \_\_\_\_\_

January 25, 1988

Cont'g Off'r \_\_\_\_\_  
Contractor \_\_\_\_\_ DATE 5/27/88 UNITED STATES OF AMERICA  
Other MASSATIY G&L Witness Peterson et al NUCLEAR REGULATORY COMMISSION

Reporter KA BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

_____ )	
In the Matter of )	
Public Service Co. of New Hampshire, )	Docket No. 50-443-OL
et al. )	50-444-OL
(Seabrook Station, Units 1 & 2) )	Offsite Emergency
_____ )	Planning Issues

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

I. Introduction.

The Federal Emergency Management Agency (FEMA) offers this testimony to supplement its earlier proposed testimony on Revised Town of Hampton Contention VIII to Revision 2, SAPL Contention 16, and NECNP Contention RERP-8 in order to reflect the use which FEMA has made of the advice given by the Regional Assistance Committee (RAC) and to clarify its reasons for adopting its position on the "Sheltering" or "Beach Population" issues. The Witnesses are Dave McLoughlin, Deputy Associate Director, State and Local Programs and Support Directorate, FEMA; Edward A. Thomas, Director, Natural and Technological Hazards Division, FEMA Region I; and William R. Cumming, Assistant General Counsel, Program Law Division, Office of General Counsel, FEMA. Statements of the professional qualifications of Dave McLoughlin and William R. Cumming are attached to this Supplemental Testimony.

Briefly put, FEMA's position is (a) that it is appropriate to consider further the adequacy of the emergency response plan for the transient population of the beaches within the Seabrook Emergency Planning Zone (EPZ) during the summer, that is, from May 15 to September 15, as indicated in the New Hampshire Radiological Emergency Response Plan (NHRERP); (b) that the requirement of NUREG 0654/FEMA REP 1, Rev. 1, for a "range of protective actions" may or may not be satisfied by evacuation alone; (c) that FEMA cannot conclude that the NHRERP is adequate with respect to that 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.

## II. History of FEMA's Consideration of the Beach Population Issue.

FEMA's concern about the issue of protective measures for the summer beach population has a rather long history. On December 9, 1985, the State of New Hampshire submitted the New Hampshire Radiological Emergency Response Plan (NHRERP) which later became known as "Revision 0". On December 31, 1985, Edward A. Thomas, Chairman of the Region 1 Regional Assistance Committee, sent a memo to all of the members of the RAC asking for their comments on the beach population issue.

A full field exercise of Rev. 0 was conducted on February 26, 1986. A FEMA Exercise Report was issued in June, 1986. The State of New Hampshire submitted Revision 1 of the NHRERP on June 3, 1986, and a FEMA/RAC review of the plan was completed on June 24, 1986. Revision 2 of the NHRERP was submitted September 8, 1986; the FEMA/RAC Review was provided to the State of New Hampshire on December 12, 1986.

On February 18, 1987, Dr. Robert Bores, Technical Assistant, Division of Radiation Safety and Safeguards, NRC, King of Prussia, Pennsylvania, sent a letter to Edward A. Thomas, which expressed the views of the NRC as to the adequacy of the NHRERP with respect to the summer beach population. The issue of the beach population was discussed at length at the RAC meeting of April 15, 1987. At that meeting, the RAC reached a consensus that the issues identified in FEMA's memorandum of December 31, 1985, were resolved.

At the direction of the Atomic Safety Licensing Appeal Board, FEMA prepared a statement of its position on the contentions pending in this hearing to be filed by June 4, 1987. While that statement of position was in preparation, FEMA was advised that NRC was withdrawing Dr. Bores's letter and would substitute a different letter which omitted any reference to the containment structure at Seabrook Station. This second letter was delivered to FEMA on June 4, 1987. On that basis, FEMA took a position that it could not conclude that the plan was adequate with respect to the beach population. This change was the subject of extended discussion at the RAC meeting on July 30, 1987. FEMA continued to hold this position and incorporated it into its prefiled testimony of September, 1987.

In September, 1987, the proposed testimony of the Applicant included a number of documents, including a Shelter Survey which was offered as the basis

for potential changes in the NHRERP. The State of New Hampshire submitted these documents to FEMA for review by the RAC, and on September 30, 1987, advised FEMA that the Shelter Survey was not considered part of the NHRERP, but was submitted for the purpose of receiving technical assistance, as provided in 44 C.F.R. § 350.6. FEMA has requested comments from the RAC members, but only two agencies have responded to date, the NRC and the Department of Transportation.

At the meeting of January 7 and 8, 1988, a majority of the RAC members endorsed views contained in the June 4, 1987, letter from Dr. Bores. At the same time, those RAC members agreed that the NHRERP was currently adequate but would be enhanced by a development of a sheltering option for the transient beachgoers.

Since September, 1987, FEMA has been evaluating its prefiled testimony and the positions of the NRC and other RAC members. Dr. Bores's letter of June 4, 1987, expressed the view that the NHRERP is adequate with respect to the transient beach population and supports a finding of reasonable assurance that adequate protective measures can be taken to protect the public in the event of an accident at Seabrook Station. It also advances the position that the NHRERP does achieve significant dose savings for the transient beach population and that there are a number of special circumstances which work together to lessen the risk of injury. The June 4, 1987, letter from Dr. Bores, in combination with the June 18, 1986, letter from the Chief Hearing Counsel of the NRC Staff to the General Counsel of FEMA, the preamble to NRC's final rule on evaluation of utility sponsored emergency response plans (52 Fed. Reg. 42,078 (November 3, 1987)), and the rebuttal plan filed by the NRC in this hearing, persuades FEMA that the NRC interprets its own regulations not to require sheltering for all segments of the EPZ.

### III. The Range of Protective Actions Issue.

At the RAC meeting of January 7 and 8, 1988, Dr. Bores, the NRC representative, expressed the view that the emergency planning guidance of NUREG 0654/FEMA REP 1, Rev. 1, applies to the entire spectrum of accidents, to the entire population of the EPZ, all of the time. It was the NRC's view that FEMA's position on the summer beach population was too narrowly focused. FEMA has considered that position, but has decided that it is appropriate to consider further the provisions in the NHRERP for the transient beachgoers.

In FEMA's view, as the Federal agency with specialized knowledge of emergency response planning, the NHRERP is not adequate with respect to the transient beach population because Planning Standards J.9. and J.10.m. of NUREG 0654/FEMA REP-1, REV. 1, (November 1980) have not been met.

Planning Standard J.9. states:

Each State and local organization shall establish a capability for implementing protective measures based upon protective action guides and other criteria. This shall be consistent with the recommendations of EPA regarding exposure from passage of radioactive airborne plumes, (EPA 520/1-75-001) and with those of DHEW (DHHS)/FDA regarding radioactive contamination of human food and animal feeds as published in Federal Register of December 15, 1978 (43 FR 58790).

Planning Standard J.10. states:

The organization's plans to implement protective measures for the plume exposure pathway shall include:

....

m. The bases for the choice of recommended protective actions from the plume exposure pathway during emergency conditions. This shall include expected local protection afforded in residential units or other shelter for direct and inhalation exposure as well as evacuation time estimates.

FEMA interprets these provisions as requiring consideration of more than a single protective measure.

FEMA notes that the NHRERP includes no explicit consideration of sheltering for the transient beach population. The Shelter Survey which the State of New Hampshire has submitted to FEMA for technical assistance may be interpreted as a preliminary step in the development of a plan for sheltering beachgoers, but the current plan considers only one protective measure for the transient beach population, namely evacuation. The guidance of NUREG 0654/FEMA REP 1, Rev. 1, contemplates that emergency responders will ordinarily be called upon to make an informed and reasoned choice among available protective measures. As it presently stands, the NHRERP provides neither an adequate description of how a sheltering option might be used nor a rationale for not having the option available for the transient beach population. For these reasons, FEMA concludes that Planning Standards J.9. and J.10.m. have not been met with respect to the transient beach population.

#### IV. The Reasonable Assurance Issue.

The overall question of whether FEMA is prepared to make a finding that there is reasonable assurance that adequate protective measures can be taken to protect the public in the event of an accident presents an entirely separate issue. FEMA employs the terms "Adequate" or "Inadequate" in the context of RAC reviews of emergency response plans to indicate whether specific planning elements of NUREG 0654/FEMA REP 1, Rev. 1, have been satisfied. FEMA does not make findings of reasonable assurance as to specific parts of a plan but rather for the plan as a whole. A single plan "Inadequacy" will not, by itself, automatically prompt a negative finding (that is, that the plan does not provide reasonable assurance). In contrast, FEMA's guidance defines exercise "Deficiencies" so that a single deficiency



precludes a finding of reasonable assurance. This distinction between exercise "Deficiencies" and plan "Inadequacies" is consistent with the Memorandum of Understanding between FEMA and the NRC.

FEMA interprets its regulations to mean that it must determine first whether radiological emergency response plans comply with NUREG 0654/FEMA REP 1, Rev. 1 (44 C.F.R. § 350.5(a)) and secondly whether 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" (44 C.F.R. § 350.5(b)). In FEMA's view, a finding or determination that State and local plans provide reasonable assurance is a matter of professional judgment. In this case, FEMA's decision not to make an overall finding of reasonable assurance stems from the many "Inadequacies" identified in the RAC Review of the plan and "Deficiencies" identified in the Exercise Report and not just the lack of explicit consideration in the NHRERP of the possibility of sheltering for the transient beach population.

V. The Dose Savings Issue.

While FEMA and the RAC have not completed the technical assistance review of the Shelter Survey requested by the State of New Hampshire, the Survey does not provide the details FEMA would expect to find in a plan. The discussion of the planning basis in NUREG 0654/FEMA REP 1, Rev. 1, establishes that the objective of emergency response planning is dose savings although it does not call for specific quantitative levels of protection to be achieved. It seems to be generally accepted that the plan, however judged, ought to take advantage of every readily available opportunity to reduce dose. Therefore, the State of New Hampshire should fully consider whether there might be opportunities for additional dose savings through sheltering of the transient

1 MR. OLESKEY: All right, may I continue, Judge?

2 JUDGE SMITH: Yes.

3 BY MR. OLESKEY:

4 Q Mr. Peterson, I have some questions for you. This is  
5 a different line of questions, and this is intended by me to be  
6 my concluding line of questions. I think I may have to have  
7 some help from Mr. McLoughlin for you, but let's start with  
8 you.

9 I want to direct you, Mr. Peterson, to the March 4th  
10 '88 meeting.

11 A (Peterson) Yes, sir.

12 Q You chaired that meeting you've testified.

13 A (Peterson) That's correct.

14 Q The meeting followed the two filings the State of New  
15 Hampshire had made on February 11th and 19th, I think,  
16 responsive to the material that's just been marked that FEMA  
17 filed dated January 25.

18 A (Peterson) New Hampshire had filed a response to our  
19 January 25th filing by the March 4th meeting; that's correct.

20 Q All right.

21 A (Peterson) If that was your question.

22 Q Yes.

23 You wanted all your key staff people there, and you  
24 got them.

25 A (Peterson) Yes, I did.

1 Q All right. And you told the Board that you wanted  
2 them all there because they were more knowledgeable than you  
3 being the new guy on the team as it were, and you would have to  
4 rely heavily on their advice in deciding what testimony to  
5 file, right?

6 A (Peterson) They're more knowledgeable than I not  
7 just because I was the new person on the position, but because  
8 they have specific expertise.

9 Q All right.

10 A (Peterson) And historical knowledge that was  
11 necessary in my mind to be there for discussion and advice to  
12 me on the decision.

13 Q Right. The lawyers and technical people and program  
14 people, they're all there.

15 A (Peterson) And policy people.

16 Q Right. And you made it clear that the meeting was  
17 going to go on as long as it took to thrash out the efforts --  
18 the issues, and at the end of it you were going to make the  
19 final decision on what to file; is that --

20 A (Peterson) I made it clear that -- I'd like to  
21 change the context a little.

22 Q Okay.

23 A (Peterson) I made it clear that we would -- that  
24 everyone should understand that we would take whatever time was  
25 necessary for them to discuss their positions. And at the

1 conclusion of that, I don't believe I said that I would make  
2 the call right then at the beginning of that meeting, because I  
3 didn't know exactly where that meeting was going until we got  
4 into it.

5 Q I appreciate that clarification.

6 Let me just ask you then, at least in your own mind  
7 did you consider at the end of the meeting you had made a  
8 decision?

9 A (Peterson) I believe at the end of the meeting that  
10 I was comfortable at that point that there was a consensus in  
11 support of the conclusion on March 14th.

12 Q All right. The draft -- strike that.

13 Was there draft testimony that was furnished to the  
14 participants at the time of the meeting?

15 A (Peterson) I have previously testified to the fact  
16 that I wanted a work piece to work from, and that I asked that,  
17 I believe in February, late February, and I think I directed it  
18 through Mr. McLoughlin, to put together or have certain  
19 expertise come together which general counsel certainly was a  
20 primary part; technical people were of a primary request; and  
21 guidance people were of a primary request, to work up a draft  
22 document that we could work from in the March 4th meeting so  
23 that we had a basis to sit down and discuss from. And I think  
24 I received that on March the 3rd.

25 Q And that was distributed to the people at the

1 meeting?

2 A (Peterson) Yes, it was. I believe everyone had a  
3 copy.

4 Q Did that furnish in part a basis for the discussion?

5 A (Peterson) It did, and I requested that the focus on  
6 the conclusion, the conclusion statement on March 4th.

7 Q And subsequently were there extensive revisions made  
8 to that testimony before it was filed?

9 A (Peterson) There was not extensive -- there were not  
10 extensive revisions made to the conclusion as I understand, and  
11 there was minor revisions to the support documentation for the  
12 conclusion. And I don't believe I could speak to what those  
13 specifically were at this point in time without doing  
14 considerable review.

E141 15 (Continued on next page.)

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T1 1 Q Mr. McLoughlin, did you want to add something there?

2 A (McLoughlin) No. My recollection is exactly the  
3 same.

4 Q Fine.

5 A (McLoughlin) They were relatively minor editing  
6 kinds of changes to make sure they were consistent with what  
7 the output of the meeting had been.

8 Q All right. So pretty much what got filed on the 14th  
9 was what was taken to the meeting on the 4th; is that right?

10 A (Peterson) I think generally that's a fair  
11 statement.

12 Q All right.

13 A (Peterson) Specifically in the conclusion aspect, I  
14 think it's very correct.

15 Q Okay. Now as I understand it, you've testified here  
16 on your direct from Joe Flynn that first afternoon that at the  
17 end of the March 4th it got down to a discussion of the issue  
18 of the determination of risk and of this notion of reasonable  
19 assurance; is that accurate?

20 MR. FLYNN: Excuse me. Can I have a clarification to  
21 the reference to me. Did you say that I provided direct  
22 testimony?

23 MR. OLESKEY: Well, I consider what you did here with  
24 them to be direct testimony, yes.

25 MR. FLYNN: Oh, I'm sorry.

1 MR. OLESKEY: Not that you made -- you examined them.

2 MR. FLYNN: The direct examination that I conducted.

3 MR. OLESKEY: Yes, counsel.

4 MR. FLYNN: Thank you.

5 THE WITNESS: (Peterson) I think you've taken it a  
6 point further than I testified to. I testified that there was  
7 primarily three issues that the major discussion revolved  
8 around. Two of the positions were recanted and the final  
9 position that was left was to the call of too much risk.

10 I don't believe the reasonable assurance aspect was a  
11 "extended discussion". It was primarily focusing upon if  
12 there's nothing else definitive left, you still have the option  
13 to say, well, I think there's too much risk.

14 BY MR. OLESKEY:

15 Q Okay, let me try to clarify this.

16 A (Peterson) Okay.

17 Q I guess what you testified to was that there was a  
18 consensus with everybody including Ed Thomas, except that this  
19 issue or the definition of risk was left at the end as an issue  
20 for discussion; is that right?

21 A (Peterson) Well, it certainly was an issue of  
22 discussion at the end.

23 Q Okay. And then you went on in your testimony here to  
24 say, as I understood it, this issue had to be understood, this  
25 risk issue, in terms of how we conceptualize or understand the

1 reasonable assurance issue; is that right?

2 A (Peterson) I'd like for you to furnish me saying  
3 that.

4 Q Sure.

5 A (Peterson) Because I'd like to know how I said it  
6 before I respond.

7 Q Sure. It's at 12770 and 12771 of the transcript.

8 A (Peterson) Yes, I've got a copy here, and it's --  
9 could you give it to -- the number again, please?

10 Q 12770 and 12771.

11 A (Peterson) 12770.

12 Q I'm going to be completely candid. I wasn't entirely  
13 sure I understood the way you were putting the discussion of  
14 those issues, and that's one of the reasons I'm seeking  
15 clarification now.

16 (Pause.)

17 THE WITNESS: (Peterson) I went into the logic of  
18 350.5 and -- 350.5(b) in relationship --

19 MR. OLESKEY: Right.

20 THE WITNESS: (Peterson) -- to the process under  
21 reasonable assurance.

22 MR. OLESKEY: Right.

23 BY MR. OLESKEY:

24 Q And you went to that, I take it, because at the  
25 meeting there was discussion of how the 350.5(b) reasonable



1 assurance standard related, if it did, to this discussion of  
2 risk; is that right?

3 A (Peterson) I think that's fair.

4 Q Okay, thank you.

5 Now, Mr. McLoughlin, turning to you for some  
6 historical perspective on this discussion in March.

7 You've testified that Ed Thomas had sent headquarters  
8 a memo in October of '86, raising some fundamental issues on or  
9 about reasonable assurance; is that right?

10 A (McLoughlin) That's correct.

11 Q And what Mr. Thomas did was to say, just to try to  
12 summarize the memo, that he thought there was some basic  
13 conceptual issues about how the agencies should define this  
14 notion of reasonable assurance that's found in the wording of  
15 your regulation 350.5(b).

16 A (McLoughlin) That's correct.

17 Q And it would be a very good thing, at least for the  
18 region if not for the agency, if the agency thought it through  
19 and had a uniform position on what reasonable assurance meant  
20 in the context of emergency plan review.

21 A (McLoughlin) That's correct.

22 Q Okay. And you went on to testify here earlier this  
23 week that by the summer of 1987, you recognized as the then  
24 acting deputy director that you owed Ed Thomas an answer about  
25 that issue.

1 A (McLoughlin) That's correct. Ed Thomas and our  
2 regions which is what Ed was also suggesting.

3 Q All right.

4 A (McLoughlin) But that's correct.

5 Q And your regions?

6 A (McLoughlin) That's right. All --

7 Q Not just Region 1.

8 A (McLoughlin) That's correct.

9 Q That is, you realized that some unfinished business  
10 for the agency in the summer of '87 was a uniform workin'  
11 definition of reasonable assurance that could be applied  
12 consistently across the country by FEMA.

13 A (McLoughlin) That's correct.

14 Q Okay. And one of the things, I take it, that jogged  
15 you on this being -- as to the fact that this was an unresolved  
16 issue was that Mr. Thomas sent in the memo to headquarters  
17 about the 20th of July saying in substance, hey, there's an  
18 important RAC meeting coming up here in Region 1 that's going  
19 to have some difficult issues. I'd really love to have this  
20 reasonable assurance notion pinned down before I have to go  
21 into that RAC meeting.

22 A (McLoughlin) That's correct.

23 A (Peterson) Which RAC meeting are you talking about?

24 Q July 30, '87, Mr. Peterson.

25 A (Peterson) Oh, okay.

1 Q Okay?

2 A (Peterson) I wasn't tracking that.

3 Q Right.

4 A (Peterson) Okay.

5 Q And you, Mr. McLoughlin, then sent a memo on to Mr.  
6 Watson, the deputy general counsel, saying, George, it's time  
7 to really get a handle on reasonable assurance --

8 A (McLoughlin) That's correct.

9 Q -- in the vernacular.

10 A (McLoughlin) Right.

11 Q And two days later, on the 30th, he turned around  
12 very quickly with a memo to you and said in substance, you're  
13 absolutely right, but it's a very complicated issue that in  
14 turn has a lot of other legal and policy questions. We really  
15 ought to sit down and talk it through.

16 MR. DIGNAN: Objection. What does "you're absolutely  
17 right" refer to?

18 MR. OLESKEY: You're absolutely right it's an issue  
19 we should get our hands on.

20 MR. DIGNAN: All right.

21 MR. FLYNN: Mr. Oleskey, do you have the document?

22 MR. DIGNAN: Withdraw the objection with that  
23 clarification.

24 MR. OLESKEY: I do. I was trying to save time, but  
25 if you want it, I can pass it out. I didn't think it as

1 critical enough because I think Mr. Peterson -- Mr. McLoughlin  
2 can agree with my quick summary. If he can't, I'll be happy to  
3 go through it.

4 MR. FLYNN: Let's see if the witness is comfortable  
5 with that characterization.

6 THE WITNESS: (McLoughlin) Mr. Oleskey, just to be  
7 sure that I'm catching the right question --

8 MR. OLESKEY: Sure.

9 THE WITNESS: (McLoughlin) -- would you repeat it  
10 for me, please?

11 MR. OLESKEY: Yes.

12 BY MR. OLESKEY:

13 Q Mr. Watson came back to you two days later and said  
14 in substance, you're right, it's a tough question. We need to  
15 grapple with it. There's some other legal questions that can  
16 be raised around it, and he specified them. There are also  
17 policy questions that are involved. We really ought to sit  
18 down and talk about this.

19 A (McLoughlin) That's what I understand, yes.

20 Q Okay.

21 MR. FLYNN: May we stipulate that document into the  
22 record?

23 MR. OLESKEY: Sure.

24 MR. FLYNN: I think the questions that were raised  
25 are important.

1 MR. OLESKEY: Sure, I'd be happy to, and I have the  
2 copies this time.

3 MR. FLYNN: The general counsel response to the memo  
4 asking for legal review of the --

5 MR. DIGNAN: Mr. Oleskey, could we have all three  
6 memos for the record? Is that agreeable to you?

7 MR. OLESKEY: Sure, I have them.

8 MR. DIGNAN: As I understand it, there was a memo  
9 from Mr. Thomas; a second -- maybe even four memos -- a second  
10 memo from Mr. Thomas asking action be taken on the first; a  
11 forwarding memo you referred to from Mr. McLoughlin; and a  
12 reply from Mr. Watson. Is that right, four?

13 If it wouldn't break up your line too much if we  
14 could just put all four of them in together and have the  
15 context, I would appreciate it.

16 MR. OLESKEY: Be happy to, counsel.

17 MR. DIGNAN: Thank you.

18 (Pause.)

19 JUDGE SMITH: So we have four documents altogether.

20 MR. OLESKEY: I've passed out two. Ellen has passed  
21 out four also.

22 I would suggest, Judge Smith, that we mark them in  
23 chronological order as exhibits starting with the October '86  
24 memo.

25 JUDGE SMITH: Forty-three.

1 MR. OLESKEY: Then July 20.

2 JUDGE SMITH: Wait a minute. July 20 is the --

3 MR. OLESKEY: That should be Mr. Thomas's memo to Mr.  
4 McLoughlin.

5 JUDGE SMITH: Undated at the top.

6 MR. OLESKEY: I think there's a stamp up there.

7 MR. TURK: Telefax --

8 JUDGE SMITH: Thomas to Krimm.

9 MR. OLESKEY: Thomas to Krimm, which I make to be  
10 July 20, '87.

11 JUDGE SMITH: Okay.

12 MR. OLESKEY: I think, Judge Linenberger, that it's  
13 the 20th, and I'll explore that in a moment, and I think that  
14 has to be logically.

15 JUDGE SMITH: For chronological purposes, that's a  
16 good marker date anyway because it's between October 16th and  
17 preceded, not much, of July 28th.

18 MR. OLESKEY: Yes, that was my thought.

19 MR. DIGNAN: That's becoming 44, Mr. Oleskey?

20 JUDGE SMITH: That's 44.

21 MR. OLESKEY: Yes.

22 MR. DIGNAN: And 45 will be July 28th?

23 MR. OLESKEY: Yes.

24 JUDGE SMITH: And you are not marking at this time  
25 Mr. Watson's July 30th.

1 MR. OLESKEY: The July 30th should be 46. I'm sorry.

2 JUDGE SMITH: These are stipalated into evidence by  
3 all parties?

4 MR. DIGNAN: For historical purposes only, I guess.

5 JUDGE SMITH: All right. And do you wish to have  
6 these bound into the transcript?

7 MR. OLESKEY: Yes, Your Honor.

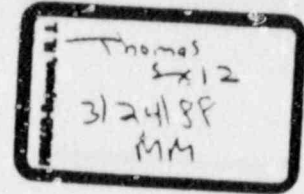
8 JUDGE SMITH: All right. Massachusetts Attorney  
9 General Exhibits 43 through 46 are received for the purposes  
10 stated, historical purposes.

11 (The documents referred to were  
12 marked for identification as  
13 Massachusetts Attorney General's  
14 Exhibits Nos. 43, 44, 45, and 46  
15 and were received in evidence.)

16  
17 (Massachusetts Attorney General's  
18 Exhibits Nos. 43, 44, 45, and 46  
19 follow:)

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21  
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24  
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Mass Atty Gen  
Exh 43



October 16, 1986

MEMORANDUM FOR: Richard W. Kriem  
Assistant Associate Director

FROM: Edward A. Thomas  
Chief  
Natural and Technological Hazards Division

SUBJECT: Reasonable Assurance"

This is written as a follow-up to our meeting concerning the Seabrook hearing. During the meeting the question of whether any considerations beyond those in NUREG 0654, FEMA REP. 1, Rev. 1 could be included in determining whether FEMA could find pursuant to 44 CFR 350.12(b) that: "a State plan was adequate to protect health and safety of the public living in the vicinity of a nuclear power plant...." At the meeting it was suggested that if FEMA finds that emergency plans comply with the standards of the FEMA and NRC guidance document NUREG-0654, FEMA REP-1, Rev. 1, FEMA cannot consider other factors, but must make a finding that there is a reasonable assurance that public health and safety would be protected in the event of an accident at a nuclear power plant (hereafter called a "reasonable assurance" finding).

We believe that the correct answer to this question is that FEMA will include a review of all factors reasonably relating to emergency planning in determining whether it can make a "reasonable assurance" finding in a given situation.

I. Summary

We have reached the conclusion that a FEMA "reasonable assurance" finding should include a review of all factors reasonably relating to emergency planning for several reasons. First and most important we believe that FEMA regulations at 44 CFR 350.5 requires the Regional Office include all factors reasonably relating to public safety in our review of emergency plans for the area around a nuclear power plant. To the extent that it can be said that we are not required by our regulations to consider factors beyond those in NUREG-0654, we believe that nothing in the regulations precludes either the region or headquarters including factors which affect public safety from consideration in our findings. Furthermore, we believe that a fair reading of the purpose and intent of FEMA and NRC regulations and guidance documents indicates that it is rational for us to include in our reviews all factors which reasonably impact public safety. Therefore, we believe that our finding should include a review of all factors we consider relevant to achieving the intent and purpose of our regulations and guidance documents.



- 2 -

In addition, we do not believe that there is anything in our regulations which equates compliance with NUREG-0654 with "a reasonable assurance of public safety". In the absence of clear regulatory language, we cannot understand how FEMA can somehow be forced to equate a mechanical application of a guidance document to the fulfillment of its regulatory responsibility of determining whether a reasonable assurance of public safety is provided by the development and exercise of a particular set of plans. Finally, we believe that both precedent and normal procedure indicate that we should wait until all the facts in the situation at hand are fully established before we indicate that any particular fact will always be excluded from our determination as to whether or not there is a reasonable assurance that the public will be protected in the event of an accident at a particular nuclear power plant.

Our reasoning is more fully explained below.

Reason 1 - We believe that the FEMA Region must consider all factors which would impact on the public safety in reviewing plans to protect the public in the event of an accident at a nuclear power plant.

Discussion - FEMA Regulations at 44 CFR 350.11(b) specifies the standards of how the Regional office shall evaluate the adequacy of State and local plans and preparedness as being the factors "set forth in (44 CFR) §350.5". Section 350.5 contains two subsections which list the relevant standards. Subsection (a) basically requires a review using the NRC emergency planning rules as well as the planning guidance contained in NUREG 0664, FEMA REP-1, Revision 1. Subsection (b) states "(i)n order for State or (sic) local plans and preparedness to be approved such plans and preparedness must be determined to 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." This office has, therefore, concluded that in reviewing REP plans, we must not only look to the §350.5(a) quantitative criteria set forth in NUREG-0664 and the NRC emergency planning rules, but we must also look to qualitative criteria reasonably affecting public safety as required by §350.5(b).

Reason 2 - We believe that even if the Regional office may only consider NUREG-0654 in considering whether the public safety would be protected in the event of an accident at a nuclear power plant, the Associate Director of SLPS is not so constrained. Indeed, language in both the FEMA and NRC regulations supports the concept that all relevant factors must be included in a finding of reasonable assurance of public safety.

Discussion - The portion of our regulation which deals with the review of State plans by the FEMA Regional Director (44 CFR 350.11(b)) specifies the basis on which the region shall review the plans (44 CFR 350.5 (a) and (b)). However, that portion of the regulations which specifies how the Associate Director shall reach a finding about the adequacy of the plans to protect the public does not specify any particularized and narrow basis for review. Therefore, we believe that regardless of whether the FEMA Regional Director may or should consider factors beyond those in NUREG-0654, the Associate Director's review is bounded only by an administrative law standard of reasonableness. In reviewing whether FEMA exercised reasonable judgment in including relevant emergency planning considerations, it is likely that a court would review our regulatory basis for

including a review of factors beyond those in NUREG-0654, and would give great deference to our judgement about which factors were relevant to our findings of fact.

The regulations of both FEMA and the NRC seem to indicate that all factors reasonably relevant to emergency planning will be included. NRC's emergency planning regulations state that: "...no operating license for a nuclear power reactor will be issued unless a finding is made by NRC that there is a reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency." (10 CFR 50.47(1) (emphasis added)). The NRC regulations go on to state that NRC will base its findings on a review of FEMA findings, which will be primarily based on plan review and any other information available to FEMA with respect to the implementation of the plans (10 CFR 50.47 (2)). While the regulations then go on to list sixteen regulatory standards which key into NUREG-0654, it nevertheless appears that the regulation contemplates workable plans which will provide reasonably adequate protective measures in the event of an accident. In addition, the regulation indicates that FEMA's findings are primarily (not exclusively) based on the plans and any other relevant information on the implementation of these plans.

Additional support for the concept that all relevant factors must be included in our review of emergency plans is found in NRC rules and FEMA guidance concerning Alert and Notification Systems. NRC's rules (10 CFR 50, App. E (D)(1), and (3)) and our guidance document (FEMA REP-10) set forth detailed requirements for prompt alerting and notification of the public. It seems strange that such an elaborate warning system be set up if we cannot notify the public to take some generally effective protective action.

Our reasoning for believing that FEMA regulations require the inclusion of all relevant factors in our findings of fact concerning reasonable assurance of public safety is set forth in Reason 1. Supra.

The conclusion that FEMA findings are not restricted to a mere mechanical and ministerial review of NUREG-0654 seems inescapable from a review of the specific language as well as the intent of the pertinent FEMA and NRC regulations. It is, in fact, easier to argue from the regulations that FEMA must include all relevant factors in its findings than to argue that FEMA must not include such factors in its findings.

Reason 3 - Even if there were no specific basis in our regulations for considering factors beyond those in NUREG-0654 and the NRC emergency planning rules when we review the adequacy of State plans to protect the public, there is no basis in our regulations for the concept that compliance with NUREG 0654 and the NRC emergency planning rules necessarily required a FEMA finding of reasonable assurance that the public would be protected in the event of accident at a nuclear power plant.

Discussion - In order for FEMA to be under a compulsion to make a "reasonable" finding anytime that State plans complied with the NUREG-0654 standards and the NRC emergency planning rules, it would seem that our regulations must specify that there was an irrebuttable presumption that compliance with NUREG 0654 and the NRC emergency planning rules must equal reasonable assurance that the public would be protected in the event of an accident at a nuclear power plant. The FEMA regulations say nothing of the kind. Quite to the contrary, the regulations very carefully indicate that NUREG-0654 and the NRC rules are but one of two factors to be considered in the region's review of emergency

plans. (Cf. 44 CFR 350.5 (a) and (c).) The regulations concerning the review of the Associate Director of SLP5 do not even specify any particular yardstick for the final determination as to whether we can make a finding of "reasonable assurance". In the absence of clear language in our regulations, requiring us to reach certain conclusions if the State and local government complies with certain specified factors, we do not believe that we can be compelled to issue a "reasonable assurance of public safety" finding if there are factors not specifically covered in NUREG-0654 which would lead us to conclude that a reasonable assurance of public safety did not in fact exist.

Reason 4 - There exists at least one clear precedent for our consideration of an evacuation time estimate prior to issuance of a "reasonable assurance" finding.

Discussion - On April 18, 1983, a group called Sensible Maine Power filed a petition with the NRC to close the Maine Yankee Nuclear Power Plant because adequate evacuation routes did not exist. FEMA responded by indicating that the evacuation time estimate (ETE) for Maine Yankee was not yet clearly established because of population count uncertainties. In a July 23, 1984 memorandum to Edward Jordan of NRC, FEMA Headquarters indicated "...that it is premature to comment on the impact the ETE may have on public safety until we have finalized the time estimates...." We later completed a review of the revised Maine Yankee ETE and concluded that public safety would not be adversely impacted by the time required to evacuate the EPZ, since the particular factual situation at Maine Yankee enabled the State and local governments to achieve a "reasonable assurance of public safety."

The consideration of the impact on public safety has been a standard part of the review leading to a FEIA finding of "reasonable assurance" in this Region because of the requirements of 44 CFR 350.5 (b). We understand that this factor is also considered in at least some of the other regions as well. We very clearly considered the impact of ETE times on public safety as part of National FEMA policy during the review of the Sensible Maine Power petition. We, therefore, believe that even if our regulations did not clearly require consideration of factors beyond those in NUREG-0654 and the NRC rules when we make a "reasonable assurance" finding, our agency's established precedents require us to include such consideration in our decisionmaking.

Reason 5 - As a matter of normal procedure and tactics, we should not reach a premature conclusion that in making findings of fact on public safety we would never consider factors which might reasonably affect public safety just because those factors are not specifically included in some guidance document or the rules of another agency.

Discussion - A time may well arise when this agency would want to include some fact in our decisionmaking process which was not specifically covered by a guidance document. We believe that we should reach decisions based on the facts in front of us at the time and not pre-judge how we will make a decision beyond saying that we will follow our regulations.

Conclusion - Therefore, we believe that the correct answer to the question of whether factors such as sheltering, evacuation times, road network, etc. will

included in our review of the State emergency plans to protect the public in event of an accident at Seabrook is: Yes, this review is now in progress and all such factors will be included in our findings of fact on whether a reasonable assurance of public safety is being provided.

We have also prepared a somewhat longer answer to the question:

Answer (mit Schlag) Dave McLoughlin: 1. FEMA has promulgated rules relative to the evaluation of plans to protect the public in the event of an accident at a Nuclear Power Plant. We will, of course, follow those rules in reviewing the plans to protect the public in the event of an accident at Seabrook.

2. The FEMA rules indicate that once a State submits plans to FEMA for review and approval the FEMA Regional Office will conduct a review of those plans in conjunction with the federal interagency Regional Assistance Committee (RAC). The review of the plans to protect the public in the event of an accident at Seabrook is now underway under the supervision of the RAC Chairman, Edward A. Thomas, who is here with me today.

The FEMA Regional Office and the RAC will use as a basis of the review a two-part test set forth in 44 CFR 350.5. In a nutshell the basis of reviewing and evaluating the State Plan is:

a. Whether the plans submitted meet the standards of NUREG 0654, FEMA REP-1, Revision 1, as well as Section b0.47 of NRC's Emergency Planning Rule (10 CFR Parts 50 Appendix E and 70 as amended).

b. Whether the plans submitted are determined to "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."

The FEMA Regional Office has already received extensive input from the public through meetings and correspondence which will assist us in evaluating the workability of the State plans to protect the public the event of an accident at Seabrook.

4. After the FEMA Regional Office has concluded its review, it will forward that review and related documents and correspondence to the FEMA Headquarters Office of Natural and Technological Hazards which will solicit comments from various offices within FEMA as well as the Federal Agencies which comprise the Federal Radiological Preparedness Coordinating Committee (FRPCC) for review and comment. Robert Wilkerson who is also here today will supervise that review. After the Headquarters staff has reviewed all of this material, it will be my responsibility to determine if the State plans:

(a)re adequate to protect the health and safety of the public living in the vicinity of the nuclear power facility by providing reasonable assurance that appropriate protective measures can be taken offsite in the event of a radiological emergency. (44 CFR 350.12 (b)1)

If the finding made by FEMA includes the results of an exercise of the plans, my review would also include a determination as to whether the plans:

(a)re capable of being implemented.... (44 CFR 350.12 (b) (2)).

- 6 -

Therefore, the FEMA review now in progress will encompass all factors reasonably relevant to the protection of the public in the event of an accident at Seabrook.

Please feel free to call if you have questions.

cc: M. Joseph Flynn, Esq., OGC  
Robert J. Wilkerson, Technological Hazards  
Margaret Lawless, Technological Hazards

Henry G. Vickers, Regional Director  
Daniel W. Warren, III, Deputy Regional Director  
Ken Horek, Public Affairs Officer  
Kevin Meril, Program Manager  
Jack Dolan, Sr. Emergency Management Specialist  
Larry Robertson, Emergency Management Specialist

EAThomas/R1-NT/cfr/10-16-86

cc: FEMA R.F., Subject, Chron

Mass Atty Gen  
Exh 44



# Federal Emergency Management Agency

McCormack Post Office and Court House  
Boston, Massachusetts 02109

MEMORANDUM FOR: Richard W. Krimm, Assistant Associate Director  
Office of Natural and Technological Hazards

FROM: Edward W. Thomas, Chief *Edward W. Thomas*  
Natural and Technological Hazards Division

SUBJECT: "Reasonable Assurance"

On October 16, 1986, I sent the attached memorandum to you concerning the concept of "reasonable assurance". I have little doubt that the concept will come up at the July 30, 1987, meeting of the Region I RAC when we discuss the Seabrook Beach Issue.

Do you have any objection to my using the contents of the memo in briefing the RAC?



Mass Atty Gen  
Exh 45  
July 12

Federal Emergency Management Agency

Washington, D.C. 20472

JUL 28 1987

MEMORANDUM FOR: Spence W. Perry  
General Counsel

FROM: *KAM*  
Dave McLoughlin  
Deputy Associate Director  
State and Local Programs and Support Directorate

SUBJECT: The Concept of Reasonable Assurance

Attached are two memoranda from Edward A. Thomas, Chief of the Natural and Technological Hazards Division, FEMA Region I, concerning the concept of reasonable assurance in connection with FEMA's radiological emergency preparedness (REP) program. As you know, this important concept is basic to FEMA's responsibilities in that program. Will your office review the concepts in the October 16, 1986 memorandum from Mr. Thomas? Please indicate 1) whether they are correct interpretations of the reasonable assurance concept as it is to be applied in the REP program and 2) whether they should be used in the operation of the program.

We would appreciate a written response as soon as possible, due to the importance of the concept to the Seabrook litigation and other ongoing situations at operating sites. If we can be of assistance, please feel free to contact us.

Attachments  
As Stated

Mass Atty Gen  
exh 46

July 30, 1987

MEMORANDUM FOR: Dave McLaughlin  
Assistant Associate Director  
State and Local Programs and Support

FROM: George W. Watson  
Associate General Counsel

SUBJECT: Concept of Reasonable Assurance

Your memorandum of July 28, 1987 asked the General Counsel to provide a legal analysis of Ed Thomas's October 16, 1986 memorandum on the meaning of a reasonable assurance finding under 44 C.F.R., Part 350. Specifically, you have asked whether the interpretations of the reasonable assurance concept advanced by Mr. Thomas are correct and whether they should be used in the Radiological Emergency Preparedness program. There are several areas where legal questions are closely allied with policy questions and I think it would be prudent for me and members of my staff to meet with you and your staff to discuss some important policy questions before we respond to the questions you have posed.

If you assume, simply for the purposes of such a discussion, that Mr. Thomas's interpretations of "reasonable assurance" are supportable and that they should be used in the REP program, then you are presented with a number of other issues, for example:

- Was NUREG 0654/FEMA REP 1, Rev. 1 intended to cover every possible health and safety issue related to offsite emergency response planning?
- If "reasonable assurance" is not synonymous with compliance with NUREG 0654, what does it mean?
- Does "reasonable assurance" require that there be absolutely no risk to the public?
- If not, what level of risk is acceptable?



- If the Federal Emergency Management Agency (FEMA) takes into account factors not enumerated in NUREG 0654, is there an objective standard which FEMA applies?
- How is the proponent of an emergency response plan to know what standards the plan will be evaluated by?
- Since actions or findings of a government agency which are arbitrary will not be considered valid, how does FEMA substantiate concerns which go beyond NUREG 0654 or guidance documents generally?
- Since emergency planning is not a long-established discipline nor an exact science, are there clear and definite procedures for consideration of factors not included in guidance documents?
- What procedures, such as peer review, does or should FEMA use to ensure that its findings are defensible?
- In evaluating emergency plans, what is the extent of FEMA's investigation and analysis?
- Does FEMA accept without question the representations of State and local governments or utility companies or intervenors?
- If not, then are there written procedures in place for independent verification of those representations?

Another area to be considered is the range of options available to you. They include:

- Deferring action indefinitely;
- Deferring action until the Atomic Safety and Licensing Board in the Shoreham matter has ruled on the meaning of "fundamental flaw" which is likely to reflect the Board's interpretation of "reasonable assurance;"
- Endorsing Ed Thomas's memorandum;
- Endorsing Ed Thomas's memorandum with qualifications;
- Developing guidelines for the consideration of factors not included in NUREG 0654.

I will appreciate it if you will call me to arrange a meeting.

!cc: CF 2, GC/Perry, FLYNN, Watson  
 ! GC: FLYNN:hjf: 7/29/87  
 ! Document # 0163R

1 BY MR. OLESKEY:

2 Q Mr. Peterson, did this series of memos ever make its  
3 way to your desk or your attention?

4 A (Peterson) I guess I'd better take a look here. I  
5 didn't think you were going to --

6 MR. FLYNN: Mr. Peterson, some of your remarks may  
7 not have been picked up by the microphone or the recording  
8 system. So if you intend for your remarks to be part of the  
9 record, you have to speak into the microphone.

10 THE WITNESS: (Peterson) I need to take a look at  
11 all of -- there are three letters that I have here.

12 MR. OLESKEY: You should have four documents, sir.

13 THE WITNESS: (Peterson) Am I missing something?

14 MR. OLESKEY: October 16, '86; July 20, '87; July 28,  
15 '87; July 30, '87.

16 THE WITNESS: (Peterson) It would not be fair to  
17 represent that I have read these in detail in any way. I have  
18 had some discussions on the reasonable assurance issue with  
19 staff, but to say that I've read all those, no. And in that  
20 time frame, certainly not.

21 BY MR. OLESKEY:

22 Q Mr. McLoughlin, the last thing chronologically that  
23 comes out of this that I want to ask you about is this  
24 statement by Mr. Watson back to you in the July 30 memo to the  
25 46.

1 "I will appreciate it if you will call me to arrange  
2 a meeting", which appears in the context of being able to  
3 discuss this issue.

4 Did that meeting ever take place?

5 A (McLoughlin) Mr. Oleskey, we must have had 20  
6 meetings on this issue, and I use that number graphically  
7 rather than specifically. We have met on this issue many, many  
8 times, so certainly there was the meeting called in response to  
9 this.

10 May I also make one other comment on this since you  
11 have issued it, and I recognize that I need to follow your line  
12 of questioning, but there is one concern that I have with  
13 respect to the documents you passed out.

14 My memory serves me and I just checked with Mr. Krimm  
15 to see if he remembered the same, that it appears here that Ed  
16 Thomas sent us a memo on October 16th that we simply didn't do  
17 anything with it until July. And I want to be sure that that  
18 is not left on the record.

19 My believe is, Mr. Oleskey, that there is a fifth  
20 memo. I can't say for sure, but I believe there is another  
21 memo from Mr. Krimm to the general counsel some time after the  
22 October 16th date, in which we asked for that -- their views on  
23 this, and my memorandum to Mr. Watson was a jogging memorandum,  
24 if I can use that, in order to urge a response to our earlier  
25 memo.

1           And the other thing that was happening at this point  
2 we were working on revisions to 350 on the whole question of  
3 reasonable assurance. So the issue of reasonable assurance was  
4 certainly in the forefront of our concerns during this whole  
5 period.

6           Q     Okay. I can only tell you that as far as I can  
7 recall, and I've just checked with Ms. Keough, our paralegal.  
8 We haven't had produced to us any memo from Mr. Krimm.

9           A     (McLoughlin) Well, it could be that I am in error on  
10 that, but I do believe that we ought to check that specifically  
11 and see whether or not there was one.

12          Q     Mr. Krimm, is there a so-called fifth memo that deals  
13 with this issue that you offered?

14          A     (Krimm) I believe there is, yes.

15               MR. OLESKEY: Joe, do you have that?

16               MR. FLYNN: Certainly not with me. I'll be glad to  
17 check later and supply it if we find that there is one.

18               BY MR. OLESKEY:

19          Q     Now, so what you're saying, Mr. McLoughlin, to  
20 summarize quickly is it's a thorny issue which the agency  
21 wrestled with for a long time, and this paper is part of that  
22 wrestling match.

23          A     (McLoughlin) That's correct.

24          Q     Okay. Let me ask you some other questions now to see  
25 how much we can sharpen the understanding of the agency's view.

1 Directing you now to these regulations, 44 CFR  
2 350.5(a) and -5(b) which both you and Mr. Peterson have  
3 discussed in your testimony. And, again, you can see my style  
4 is to try to summarize quickly to move things along in view of  
5 time. If you have problems, I'll slow it down.

6 In making a determination of emergency plans at FEMA,  
7 you had these two regulations to work from 350.5(b) and -5(b),  
8 and I'll just refer to them as 5(a) and 5(b) if that's  
9 comfortable, all right?

10 A (McLoughlin) That's fine. It's a single regulation  
11 that has both parts in it.

12 Q Yes.

13 A (McLoughlin) Correct.

14 Q Fine. And as I understand your testimony distilling  
15 it, the easy part of the analysis is the 5(a) analysis, or the  
16 easier part of the analysis is the 5(a) analysis. When you  
17 match up going to the joint guidance, that's the NUREG-0654  
18 FEMA REP 1, Rev. 1, 212 elements, with the relevant elements of  
19 the plan?

20 A (McLoughlin) Mr. Oleskey, conceptually it is the  
21 easier one. It certainly takes a tremendous amount of energy  
22 on the part of the RAC and others, and it's an important part  
23 of the review. But conceptually, I would agree with your  
24 characterization.

25 Q And the RAC sits there and have these enormous spread

1 sheets that list every element and every aspect of the state  
2 plans and the local plans, and they mix and match, and query  
3 the state and the utility. And if it works, then the plan  
4 begins to get more and more "A"s for adequate in those columns;  
5 is that --

6 A (McLoughlin) That's correct.

7 Q That's what happens, okay.

8 Conceptually 350.5(b) is the part that's been more  
9 difficult for the agency over the years; isn't that right?

10 A (McLoughlin) That's correct.

11 Q All right. As I understand it, the process is that  
12 the 5(a), NUREG-0654 mix and match, to use my shorthand, comes  
13 up from the RAC through the regional director to the national  
14 office.

15 A (McLoughlin) The report --

16 Q Yes.

17 A (McLoughlin) -- on the plan review does indeed do  
18 that.

19 Q All right. And then under a regulation, it's  
20 ultimately up to the associate director for state and local  
21 support programs to make the call, reviewing what the RAC has  
22 done under both 5(a) and 5(b); is that right?

23 A (McLoughlin) That's cor --

24 MR. FLYNN: Excuse me, which call?

25 MR. OLESKEY: Call as to whether the 5(a) is met, the

1 plan's adequate, and whether 5(b) is met, whether there's  
2 reasonable assurance.

3 MR. FLYNN: Are you referring to the approval of the  
4 plan review?

5 MR. OLESKEY: Yes.

6 THE WITNESS: (McLoughlin) Let me state what I think  
7 happens, and I hope that -- because in that interchange I may  
8 have lost something.

9 MR. OLESKEY: All right.

10 THE WITNESS: (McLoughlin) The RAC chairman makes  
11 the recommendation on the agency's position. And the regional  
12 director can override it with cause. We can override in the  
13 headquarter with cause. The final decision then is signed of  
14 on by the associate director for state and local.

15 MR. OLESKEY: Okay.

16 BY MR. OLESKEY:

17 Q Now that happens on the 5(a) track.

18 A (McLoughlin) No, it happens on the combination of  
19 the two of them.

20 Q All right, but the 5(a) track may get there before  
21 the 5(b) track in some cases; isn't that right?

22 A (McLoughlin) No. No, no.

23 Q You wouldn't look at -- you wouldn't look at a 5(a)  
24 determination in isolation?

25 A (McLoughlin) No. No, they come in total together as

1 part of the recommendation.

2 Q All right. And to get reasonable assurance, as I  
3 understand it, under 5(b), there has to be an exercise.

4 A (McLoughlin) It depends on where you are in the  
5 process. Certainly the initial activity for a plant that is  
6 not open, that's true that it does require a qualifying  
7 exercise.

8 Q All right. So that for the associate director,  
9 formerly, you acting now, Mr. Peterson, de jure, legally, no  
10 reasonable assurance finding gets made by the agency until  
11 after the RAC has finished its 5(a) review, the exercise has  
12 been done, and all the material comes up to Washington from the  
13 regions for a final review and evaluation.

14 A (McLoughlin) The only reason I have any -- generally  
15 speaking, I'm wanting to answer, yes. the only thing that  
16 makes me hesitate is that you know that we got into the REP  
17 program in the middle of the stream. That is, there were an  
18 awful lot of operating plans.

19 Q Yes.

20 A (McLoughlin) So there was a lot of anomalies up  
21 front in this process. But you're describing the process as it  
22 should exist.

23 Q Let me help you by saying I'm only addressing in  
24 these questions the situation like a Shoreham or Seabrook where  
25 the plant has never operated and they're seeking to be



1 qualified for an operating license.

2 A (McLoughlin) Okay.

3 Q And this process is going on.

4 A (McLoughlin) And then you're talking also only about  
5 the New Hampshire side.

6 Q New Hampshire what?

7 A (McLoughlin) You're talking about only the New  
8 Hampshire plans --

9 Q Yes.

10 A (McLoughlin) -- portions, because the Massachusetts  
11 plans are under a different regulation.

12 Q Yes.

13 A (McLoughlin) Or guidance document.

14 Q All right. And the deputy director ultimately makes  
15 the reasonable assurance finding on the plan as a whole as  
16 you've said, not on individual parts of the plan.

17 A (McLoughlin) The associate director makes that  
18 decision.

19 Q Yes.

20 A (McLoughlin) Yes. I was -- before Mr. Peterson was  
21 there in an acting capacity, I was doing that. The deputy is  
22 not in that chain normally.

23 A (Peterson) You said deputy. I think you meant to  
24 say associate.

25 Q I'm sorry. Yes, I do tend to blur those in my mind.

1 A (Peterson) I can understand.

2 Q And you also said, Mr. McLoughlin, that a single  
3 inadequacy on the 5(a), 0654 track at the RAC doesn't  
4 automatically prevent a reasonable assurance finding; is that  
5 right?

6 A (McLoughlin) A single -- yes, that's correct.

7 Q But you said a single plan exercise deficiency would  
8 preclude a reasonable assurance finding.

9 A (McLoughlin) That's correct. That's by definition.  
10 Part of those are definitional terms.

11 Q In the 350 regulation?

12 A (McLoughlin) I believe the definitional terms for  
13 deficiencies and so forth is in our memorandum of understanding  
14 rather than in the regulation. I could be in error on that, but  
15 I believe that's correct.

16 Q All right. And by the memorandum of understanding  
17 you're referring to two documents, are you not, a 198<sup>0</sup> MOU  
18 between FEMA and the NRC that was executed I believe in  
19 January, and a 1985 counterpart?

20 A (McLoughlin) Yes, I forget the exact date of the  
21 revision, but there is a later version of it, and I'm  
22 essentially referring to the later version.

23 (Continued on next page.)

24

25

E142

T/103  
1 Q And the intent of the memoranda of understanding, to  
2 the extent you understand it, is to be consistent with 350.5(a)  
3 and 5(b)?

4 A (McLoughlin) That's correct.

5 Q So, to recapitulate quickly, the RAC, in whatever  
6 time it takes, does the evaluation under part 5(a) using the o  
7 0654 212 criteria, reviewing the plan documents -- reviewing  
8 each of the plan elements against those elements?

9 A (McLoughlin) That's correct.

10 Q In this joint guidance from the NRC and FEMA?

11 A (McLoughlin) Right.

12 Q "Then once the exercise has been done the associate  
13 director makes a determination if the plans adequately protect  
14 the public health and safety by protecting -- by providing  
15 reasonable assurance that adequate protective measures can be  
16 taken offsite in the event of a radiological emergency," and  
17 that's, I think, a pretty good quote of that part of 5(b)?

18 A (McLoughlin) That's where the ultimate decision is  
19 made, yes.

20 Q And that ultimate decision by FEMA on the plan as a  
21 whole, you described, as a matter of professional judgment;  
22 isn't that right?

23 A (McLoughlin) You're talking about 3. -- 350.5(b)?

24 Q Yes.

25 A (McLoughlin) It is a matter of professional -- I

1 need to explain this just to be --

2 Q Sure.

3 Q -- the (a) part of this which you described  
4 accurately, if it is -- it would be very unusual for a plan to  
5 have all adequacies. So there are series of inadequacies.  
6 What the judgment is, is making a decision relative to those  
7 inadequacies in terms of whether or not in their totality or  
8 individually there are any that would preclude us from making a  
9 decision on positive -- a positive finding of reasonable  
10 assurance.

11 Q All right. Mr. Peterson, now that you've been in the  
12 hot seat for a few months, does that accord with your  
13 understanding of the agency's view on that matter?

14 A (Peterson) I believe that I have no problem with how  
15 Mr. McLoughlin has responded to your questions at this time.

16 Q And why don't I just suggest that if we get to a  
17 point where you do, you speak up and make it clear what it is.

18 A (Peterson) I beg your pardon?

19 Q Why don't I just say, if we get to a point where you  
20 do have some problem with what he says, would you speak up and  
21 tell me?

22 A (Peterson) I'll do my best to do that.

23 Q Okay. Mr. McLoughlin, are you saying that if the RAC  
24 process ultimately finds with respect to the 212 elements in  
25 NUREG-0654 everything is adequate, that there's no professional

1 judgment to be exercised by the associate director in making  
2 the reasonable assurance determination?

3 A (McLoughlin) That the professional judgment, in  
4 effect, was applied two places. First of all, in the  
5 development of 0654, NUREG-0654, in its certainly development;  
6 and in the professional application of the review of the plan  
7 against those elements. So I don't want to agree to the fact  
8 that there was no professional judgment. But given the fact  
9 that all of the elements, 212 elements are professionally  
10 judged to be adequate, then clearly our response under (b)  
11 would be that -- a reasonable assurance finding.

12 Q That is, it would be automatic in that situation?

13 A (McLoughlin) That's correct.

14 Q And the professional judgment component would have  
15 been, in a sense, delegated down to the RAC because there would  
16 be nothing left to operate at the national level?

17 A (McLoughlin) No.

18 MR. FLYNN: That is not a fair characterization of  
19 the witness's testimony.

20 MR. OLESKEY: Well, he will tell me that it isn't.  
21 He's a very good witness, in my judgment.

22 THE WITNESS: (McLoughlin) The -- both of those  
23 judgments are made in the RAC -- by the RAC chairman with the  
24 advice and counsel of the RAC members.

25

1 BY MR. OLESKEY:

2 Q When you say, both --

3 A (McLoughlin) Both the (a) judgment, which is their  
4 start, and the (b) judgment. The totality of that judgment  
5 combined is made by the RAC chairman as the first sequence in  
6 our event.

7 Q Well, as you understand it, is the RAC asked to make  
8 a 5(b) judgment or is that something that's left to the RAC  
9 chair looking at the 5(a) judgments the RAC has just made?

10 A (McLoughlin) Mr. Oleskey, my view is that, if we  
11 really got down to brass tacks and made a technical judgment on  
12 this, that it is the RAC chair that makes the judgment on all  
13 of the (a) and the (b) that he does -- and he has the authority  
14 to do that. FEMA is required to make that judgment.  
15 He uses, in the process of making that judgment, the advice and  
16 counsel of the other RAC members.

17 Q Because the reasonable assurance finding is  
18 ultimately committed by regulation to FEMA and not to RAC;  
19 correct?

20 A (McLoughlin) That's correct.

21 Q And that's why you say, the overall assessment is  
22 with the RAC chairman, not with the RAC?

23 A (McLoughlin) That's correct.

24 Q Okay.

25 A (Peterson) Are you saying, sir, though that that's

1 where the oversight stops?

2 Q I was -- the previous question was, where everything  
3 has been found adequate at the RAC --

4 A (Peterson) Yes.

5 Q -- and the RAC chair concurs. As I understand your  
6 testimony, Mr. McLoughlin, nothing much happens in Washington  
7 that would be likely to reverse that?

8 A (McLoughlin) It is reviewed in Washington. And our  
9 review in Washington is to try to assure there's consistency  
10 from region to region in our review process, because we have  
11 people doing this, obviously, and the judgments can vary. So  
12 there is an oversight review in the headquarters; and it is at  
13 that point that if we differ with cause, we would override the  
14 decisions.

15 Q And that is where I take it this notion of a clearly  
16 understood definition of reasonable assurance consistently  
17 applied becomes very important to you?

18 A (McLoughlin) That's correct.

19 JUDGE SMITH: Does the RAC give 5(b) advice?

20 THE WITNESS: (McLoughlin) Your Honor, my belief is  
21 that our people in the region, the RAC chair will -- I don't  
22 know that they all solicit the advice specifically with respect  
23 to 5(b), but they do expect the RAC members to tell them  
24 whether or not the plan is adequate in their areas of  
25 expertise.

1           And my belief is that embodied in that process is an  
2 expectation that they would be responding to that.

3           BY MR. OLESKEY:

4           Q     That belief is formed on your experience dealing with  
5 the RAC chairs from what, the 10 regions?

6           A     (McLoughlin) That's correct.

7           Q     Okay. You don't go to RAC meetings typically  
8 yourself, I take it?

9           A     (McLoughlin) No, I do not.

10          Q     Has it happened from time to time that the RAC chair  
11 disagreed with the RAC's overall assessment?

12          A     (McLoughlin) In order to answer, yes, to that  
13 question I should have in my mind, I would think, two or three  
14 examples of that because that probably would be your next  
15 question.

16                 I cannot think of a specific time at which the RAC  
17 chair differed necessarily with the panel. But it would be,  
18 and I'm speculating -- clearly speculating, I just cannot  
19 imagine as many plans as we've reviewed that we have not had  
20 significant differences between the RAC chair and individual  
21 agency representation.

22          Q     And in that case, in terms of your review in  
23 Washington, you look for guidance in exercising professional  
24 judgment at the associate director level, heavily to what the  
25 RAC chair and the regional administrator have said in reviewing



1 the RAC's advice; isn't that right?

2 A (McLoughlin) That's correct.

3 Q That's why those people are there working for FEMA?

4 MR. FLYNN: Excuse me, Mr. Oleskey, you invited Mr.  
5 Peterson to add anything and he started to about two questions  
6 ago and you were intent on Mr. McLoughlin, and I don't think  
7 you noticed that he wanted --

8 MR. OLESKEY: I did -- my intensity carried away.

9 BY MR. OLESKEY:

10 Q Mr. Peterson, would you --

11 A (Peterson) I was just -- and if this is not  
12 appropriate, please let me know, I know you will. But in the  
13 March 4th discussion the question as to whether the RAC chair  
14 had ever been overruled -- not overruled, but had had a  
15 preponderance of individuals on the RAC who did not agree with  
16 the conclusion of the RAC chair was brought up, and the  
17 question of whether headquarters had overruled a RAC chair  
18 before was brought up. And I believe it was Mr. Wingo that  
19 responded to both -- to that and said, that there had been  
20 cases where that had happened previously, specifically related  
21 to headquarters overruling; and he gave a couple of examples,  
22 and I can't give you those examples off the top of my head.  
23 But I remember there was that kind of a conversation.

24 Q The examples where -- were in instances where the RAC  
25 chair's and regional administrator's recommendation had been

1 overruled by headquarters?

2 A (Peterson) Where headquarters certainly had  
3 overruled the RAC chair, that had happened in the past and he  
4 cited a couple of examples, I'm sure, and I can't give you  
5 plant-specific, I'm sorry.

6 Q Either of you other gentlemen have anything to add on  
7 that? Mr. Krimm?

8 A (Krimm) Yes. There's two things I'd like to make.  
9 Yes, I am familiar, if you want examples I can give them.

10 Q Sure.

11 A (Krimm) Secondly, I think it's very important to add  
12 in there that in the 350 approval process that before it's  
13 signed off by the associate director it also goes to the  
14 members of the Federal Radiological Preparedness Coordinating  
15 Committee, again, for their consistency to check and make sure  
16 that, you know, give an example, that EPA's interest are viewed  
17 and if they have any concerns, you know, with the finding.

18 And then it comes back to FEMA and then it's sent to  
19 the associate director.

20 Q That committee you're referring to consists of: FEMA;  
21 the NRC; and eight other federal agencies; is that right?

22 A (Krimm) That's correct. Well, with the NRC it would  
23 be seven other agencies.

24 Q Oh, there are something like 10 agencies in all?

25 A (Krimm) Yes. Well, Department of Defense is only

1 occasionally involved. For example, at San Onofre, Camp  
2 Pendleton would be Department of Defense facility, and there  
3 are a few others; and so they do comment from time to time.

4 Q Ali right. Mr. McLoughlin, do you have something to  
5 add?

6 A (McLoughlin) Mr. Oleskey, I understood your first  
7 question to be whether or not I was aware of instances in which  
8 the RAC chair had differed, within the region, with the  
9 agencies.

10 Q Yes.

11 A (McLoughlin) If you had gone the next step about  
12 whether or not the headquarters had differed with the RAC  
13 chair, then I am aware of some instances of that. But -- so  
14 there's a distinction in my mind about the specific issue that  
15 you had raised.

16 Q That's why I asked Mr. Peterson.

17 Mr. Krimm, were you saying that the examples you're  
18 familiar with are where the RAC chair differed with one or more  
19 agencies in the RAC?

20 A (Krimm) No, my examples were where the -- I thought  
21 you were asking about, is where headquarters had overruled  
22 either the RAC chair or the regional director.

23 Q And are there instances where the headquarters  
24 overruled either one of those subordinate personnel where they  
25 had determined that they did not believe the plant provided

1 reasonable assurance or was adequate?

2 A (Krimm) The one example I'm going to give you is a  
3 case where the RAC chair thought there were deficiencies in the  
4 plan; the regional director overruled them. And when we  
5 reviewed it in Washington, and this was an interim finding, so  
6 I was the one that was involved with it, I sided with the RAC  
7 chair and went back to the regional director and I had the  
8 associate director at that time, Lee Thomas, overrule the  
9 regional director.

10 MR. FLYNN: Excuse me. Mr. Oleskey.

11 MR. OLESKEY: Yes.

12 MR. FLYNN: I wish to make a suggestion. Mr. Krimm  
13 has just referred to an interim finding and that is a term of  
14 art, and I would invite you to develop that. I'm not insisting  
15 on it.

16 BY MR. OLESKEY:

17 Q Do you want to quickly parse for us the distinction  
18 between interim finding, with which you're involved and a more  
19 final ultimate finding with which I understand the associate  
20 director, Mr. Peterson, now is involved?

21 A (Krimm) Under the memorandum of understanding from  
22 the Nuclear Regulatory Commission they will ask us to give them  
23 an interim finding on the adequacy of plans, either the plans  
24 that are currently being exercised or the exercise of those plans. This is not a  
25 term of art. In other words, the government or the

1 state has not made a request to FEMA at this point for a 350  
2 finding; this is an interim process.

3 Q And the value or objective of such interim finding is  
4 what?

5 A (Krimm) Is to make sure that the operating -- that  
6 there is offsite preparedness at operating plants that have not  
7 -- where the state does not request a 350 finding.

8 Q Okay.

9 JUDGE HARBOUR: Before we leave this, are there  
10 plants operating today that have received only interim  
11 findings, but have not received final FEMA review?

12 THE WITNESS: (Krimm) Yes.

13 JUDGE HARBOUR: Thank you.

14 MR. OLESKEY: Is --

15 MR. TURK: May I just ask one clarification. Mr.  
16 Krimm indicated this was with respect to operating plants.  
17 It's my understanding it also applies to plants which are  
18 seeking a license.

19 THE WITNESS: (Krimm) Yes.

20 BY MR. OLESKEY:

21 Q Has the NRC or New Hampshire asked you -- strike  
22 what. Is the New Hampshire plan now on the formal 350.5(a) and  
23 (b) track?

24 A (Krimm) Yes.

25 Q It's not on the interim track?

1 A (Krimm) No, it's on their formal 350.

2 Q And has been on the formal track for several years;  
3 isn't that right, Mr. Krimm?

4 A (Krimm) Yes.

5 Q From time to time, is it fair to say, the NRC has  
6 asked FEMA during this time, can you now make a positive  
7 finding with respect to the plan aspects?

8 A (Krimm) They have written to us to request exercise  
9 of the plans. NRC doesn't ask -- they ask us to make a  
10 finding, they don't ask us to make a positive finding.

11 Q I understand that.

12 A (Krimm) And I'm trying to think of when they have  
13 written us. I think on one or two occasions to review -- well,  
14 actually to exercise the plan, but they do not ask us to make a  
15 positive finding; they ask us to make a finding.

16 Q Well, the only way that the NRC gets to make its own  
17 finding of reasonable assurance is after FEMA has done it under  
18 the regulations of both agencies and the MOU; isn't that right?

19 MR. TURK: Well, I'm going to object if you're asking  
20 for an interpretation of NRC regulations.

21 MR. OLESKEY: I'm asking for the man's understanding.

22 BY MR. OLESKEY:

23 Q Mr. McLoughlin, you're shaking your head, so I must  
24 have misstated something; would you clarify it?

25 A (McLoughlin) Well, my understanding is that clearly

1 the NRC today has the authority to license the plant with or  
2 without a finding from FEMA. They do not need FEMA in the  
3 process in order to license the facility. That's -- we -- they  
4 have asked us to participate in that; we are doing that. But  
5 our part of it is not required.

6 Q Okay. But the NRC, when it asks you for a finding  
7 doesn't want a negative finding, that doesn't get the plant  
8 licensing process anywhere; isn't that right?

9 A (McLoughlin) Well, my understanding is that the NRC,  
10 the NRC -- I'm wanting to say in answer to that, that the NRC's  
11 job is to, as I understand it, is not to license plants, it is  
12 to assure that there is safety involved in this, and if all of  
13 those things are met, then to grant a license. I'm just  
14 reluctant to agree too quickly to that statement.

15 Q I'm just saying that as between licensing and  
16 unlicensing, the NRC is not in the business of putting  
17 everybody through all this, so that all the criteria in that,  
18 there's no license?

19 MR. TURK: I'm --

20 MR. FLYNN: I don't understand that question.

21 JUDGE SMITH: We're running short on time. And the  
22 value of their view of what the NRC does is slight.

23 MR. TURK: Your Honor, if that's going to stand as  
24 testimony I'm going to have problems with that. That's a crack  
25 that we don't need from the questioner.

1 JUDGE SMITH: Go ahead.

2 MR. OLESKEY: Thank you.

3 BY MR. OLESKEY:

4 Q Mr. Krimm, just to pin down the last question I asked  
5 you, isn't it fair to say that over the last several years from  
6 time to time that NRC has asked your staff or you with respect  
7 to the New Hampshire plan, are you ready to make a finding with  
8 respect to the plan adequacy, understanding --

9 A (Krimm) It's correct to say that they have from time  
10 to time asked us when we will be ready to make a finding.

11 Q Right. And you've said in each instance, I take it,  
12 the RAC process isn't complete and we haven't had an exercise?

13 A (Krimm) That would be correct. Or there were  
14 questions on the plan review, things like that.

15 (Continued on next page.)

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T14  
1 Q Mr. McLoughlin, going back to the RAC process and  
2 this 350.5(a) and -(b) analysis, you've said a couple of times  
3 now that generally all plans have some inadequacies, right?

4 A (McLoughlin) Yes.

5 Q So it's then an issue in the first instance for the  
6 regional RAC chair and the regional administrator to decide how  
7 many inadequacies are tolerable to the agency in making the  
8 reasonable assurance finding; isn't that right?

9 A (McLoughlin) It's not so much collectively. It may  
10 be collectively, but more appropriately it is individually and  
11 what they are.

12 For example, it would be one thing not to have an  
13 alert notification system. It's an entirely different thing  
14 not to have -- let me not give another example. I'm reluctant  
15 to give an example when I don't have to.

16 Q But what you are saying, then, is that you look to  
17 the RAC chair and the regional administrator following the RAC  
18 process completion in the first instance to exercise their  
19 professional judgment about the nature and quality of the  
20 inadequacies that remain in the plan.

21 A (McLoughlin) That's correct.

22 JUDGE SMITH: You know, your line here is really, and  
23 I'm not being sarcastic, is really quite destructive, but you  
24 don't have much time, and its relevance to one purpose of this  
25 panel being here is becoming more and more remote.

1 MR. OLESKEY: I'm not going to have people, as I  
2 understand it, Your Honor, who can explain the workings of the  
3 agency as they reflect the application of these regulations and  
4 guidance after this.

5 JUDGE SMITH: I know. It's unfortunate that there is  
6 no more time, but they were here for a different purpose, and  
7 Ms. Weiss has her requirements, and Mr. Brock has his  
8 requirements, and there are other parties who --

9 MR. OLESKEY: I'm going to be through by 11:00 no  
10 matter what, so if you'll bear with me.

11 JUDGE SMITH: Okay.

12 MR. OLESKEY: Ms. Weiss understand my timing --

13 JUDGE SMITH: But you understand what we're dealing  
14 with.

15 MR. OLESKEY: -- and Mr. Brock understands my timing  
16 and -

17 JUDGE SMITH: It's your choice of priorities. And  
18 actually I wish we had more time because I would -- I'd like to  
19 hear it, but we don't.

20 Let's take a mid-morning break. Seven minutes.

21 It's not your time.

22 MR. OLESKEY: All right, thank you.

23 (Whereupon, a recess was taken.)

24 JUDGE SMITH: Proceed, Mr. Oleskey.

25

1 BY MR. OLESKEY:

2 Q Mr. McLoughlin, I'll try to summarize an aspect of  
3 this discussion so I can move to my last -- my last point.

4 As I understand it, you have said that there is  
5 professional judgment involved all the way along the line in  
6 this process, this professional judgment of each individual  
7 constituent agency in the RAC forming the opinion of that  
8 person whether or not these 212 elements are met by each aspect  
9 of the plan, right?

10 A (McLoughlin) Yes.

11 Q Then the RAC chair and the regional administrator  
12 have to apply their professional judgment, reviewing and  
13 assessing what the RAC has done in making those determinations?

14 A (McLoughlin) Yes.

15 Q And then in Washington various steps you've described  
16 go on involving the exercise of professional judgment.

17 A (McLoughlin) That's correct.

18 Q And other than in the guidance of 0654 and in  
19 regulations, your Regulation 350.5(a) and (b), there are no  
20 other fixed standards for all those people to use in applying  
21 their professional judgment?

22 A (McLoughlin) Well, let me add to that, because I'm  
23 not willing to quite agree with that statement.

24 Q All right.

25 A (McLoughlin) We have a series of, kind of a

1 hierarchy of documents that we use to try to provide guidance.  
2 There certainly is the regulation, the 350 regulation. There  
3 is the NUREG-0654, which is jointly published by the NRC and  
4 FEMA. Then we have a series of guidance memorandums that are a  
5 way that satisfies essentially our criteria.

6 It is not the only way that it can, but people ask  
7 us, you know, from the technical assistance standpoint  
8 frequently, what it is that would satisfy, and our guidance  
9 memorandum are a way to say this is a way to do it. It is not  
10 to suggest that it is the only way.

11 Q All right. With respect to the matching of any  
12 element in NUREG-0654 with any aspect of a plan, there is  
13 nothing out there that says to you in Washington, if this  
14 element standing alone is inadequate, then the plan shouldn't  
15 be approved by FEMA; isn't that right?

16 A (McLoughlin) That's correct. There is no -- it is a  
17 matter of professional judgment in Part (b).

18 Q There is neither a qualitative nor a quantitative  
19 standard to be used there.

20 A (McLoughlin) That's correct.

21 A (Peterson) Would you rephrase that -- would you give  
22 that question to me again because I wasn't sure --

23 Q There's neither a qualitative nor quantitative  
24 standard in Part 5(b) to be applied in determining whether  
25 reasonable assurance has been found by FEMA.

1 A (Peterson) Are you saying by that that you can  
2 exclude the elements in 0654 and 350.5(a)?

3 Q No, I'm simply saying --

4 A (Peterson) That you --

5 Q -- there's no magic number that gets a plan through  
6 in terms of adequacies, and no magic number that disqualifies  
7 it from approval in terms of inadequacies.

8 A (Peterson) Even if you had a 100 percent magic  
9 number?

10 Q Well, there isn't any such number as I understand it.

11 A (Peterson) Well, I think that you're saying there is  
12 no magic number. If there is concurrence, there's 100 percent  
13 concurrence that all the elements have been met, are you saying  
14 then that there's nothing --

15 Q Well, even if all of the elements were met, I take it  
16 from what's been said this morning it's possible that the  
17 regional administrator, the RAC chairman, or you in Washington  
18 might decide that the plan was not adequate.

19 A (McLoughlin) No, no. No, I'm sorry if I gave that  
20 impression.

21 A (Peterson) I'm sorry.

22 Q Excuse me.

23 A (Peterson) No, I was going to say in place, I do not  
24 want it to be left on the record to assume that all -- if all  
25 of 0654, 350.5(a) were met, I believe at that point in time we

1 have met the reasonable assurance aspect of appropriate  
2 protective measures being taken.

3 Q As you think that not only is the plan adequate, but  
4 there's reasonable assurance, Mr. Peterson, once the match-up  
5 is made if it's 100 percent.

6 A (Peterson) One hundred percent.

7 Q But if it's not 100 percent, there is no guidance as  
8 to any percentage or number that would allow a reasonable  
9 assurance finding: isn't that right?

10 A (Peterson) I would concur with that.

11 Q All right.

12 A (Peterson) I didn't mean to interrupt you, Mr.  
13 McLoughlin.

14 A No.

15 Q And what FEMA said here with respect to the --

16 MR. FLYNN: Mr. Oleskey, this is important.

17 Mr. McLoughlin just said in response to a comment  
18 from Mr. Peterson "no". And I don't want the record to be  
19 interpreted to mean that he was responding "no" to your  
20 question, because I don't think that was his intention.

21 MR. OLESKEY: I thought he said he concurred Mr.  
22 Peterson.

23 THE WITNESS: (McLoughlin) Mr. Oleskey, maybe I  
24 didn't articulate it carefully enough before, but I thought  
25 that I was saying exactly what Mr. Peterson had said, and that

1 is, if (a) is okay, then (b) has to be okay, all of them are  
2 okay.

3 MR. DIGNAN: That's what he said.

4 BY MR. OLESKEY:

5 Q And what's happened here with respect to the beach  
6 population is that the agency has now said that these two  
7 elements, J-9 and J-10-M, are met, right?

8 A (McLoughlin) That's correct.

9 Q It hasn't made a determination of reasonable  
10 assurance.

11 A (McLoughlin) Because there are outstanding exercise  
12 deficiencies and outstanding plan deficiencies.

13 Q Right.

14 A (McLoughlin) Yes.

15 Q And at some point the professional judgment of the  
16 agency up through the line will be exercised with respect to  
17 those matters.

18 A (McLoughlin) Yes.

19 Q Now concluding line, I hope, briefly.

20 Mr. McLoughlin and Mr. Peterson, you're aware that  
21 FEMA got into the business of assessing offsite emergency plans  
22 because of a Presidential Executive Order of December 1979,  
23 correct?

24 A (McLoughlin) You're saying specifically that it's an  
25 executive order?

1 Q That began your involvement as an agency in assessing  
2 the adequacy of offsite radiological emergency plans.

3 A (McLoughlin) The date that you make reference is  
4 right. I'm reluctant to agree to that as an executive order.  
5 And to be honest about it, I should know that and I don't deny  
6 that, but I'm reluctant to do it because I don't specifically  
7 recall that.

8 MR. FLYNN: Do you have a document?

9 MR. OLESKEY: Yes.

10 BY MR. OLESKEY:

11 Q Let me show you a document entitled Administration of  
12 Jimmy Carter, 1979, President's Commission on the Accident at  
13 Three Mile Island, Remarks Announcing Actions in Response to  
14 the Commission's Report, December 1979.

15 A (McLoughlin) If that's the one that you showed me  
16 this morning.

17 Q Yes, it is.

18 A (McLoughlin) Yes, it's -- yes. I'm aware of this  
19 document but, Mr. Oleskey, this is not an executive order was  
20 my only concern in terms of --

21 Q It's a statement of what the President was doing,  
22 apparently contemporaneously with this December 7 announcement;  
23 is that right?

24 A (McLoughlin) That's correct. It's essentially when  
25 we received our mission.



1           A     (Peterson) I haven't seen this before. You used my  
2 name in the question.

3           Q     Yes, I did, Mr. Peterson.

4                     And from that time on FEMA's been in this business,  
5 had this responsibility of assessing these offsite emergency  
6 radiological preparedness plans, response plans.

7           A     (McLoughlin) That's correct.

8           Q     And to carry out the commission that the President  
9 gave you in late '79, there are these two memoranda of  
10 understanding that you described earlier; early in 1980 and  
11 then in 1985, correct?

12          A     (McLoughlin) That's correct.

13          Q     And, Mr. Peterson, you're aware of those?

14                     You have to say yes or no. It doesn't register.

15          A     (Peterson) Okay. Could you rephrase the question?  
16 I'm sorry, I was looking at my notes.

17          Q     And you're aware of those two memoranda of  
18 understanding between your agency and the NRC dated 1980 and  
19 1985.

20          A     (Peterson) The 1985 one, I am familiar with. I have  
21 not read the previous one.

22          Q     All right. Mr. McLoughlin, just to move us along, is  
23 it fair to say that those two memoranda lay out the agency's  
24 understanding of their relationship in evaluating onsite and  
25 offsite plans at nuclear facilities?

1 A (McLoughlin) That's correct.

2 Q And some mechanisms for coordination.

3 A (McLoughlin) That's correct.

4 Q And both make clear that the lead in assessing  
5 offsite plans goes to FEMA and the lead for coordinating  
6 onsite plans goes to the NRC?

7 A (McLoughlin) I believe those are the words that are  
8 included in there, Mr. Oleskey.

9 Given the -- my previous concept -- comments that we  
10 certainly know that the NRC has the authority to issue  
11 licenses even without us.

12 Q Yes. And, Mr. Peterson, you're comfortable with the  
13 general summary that has just been given?

14 A (Peterson) I would be comfortable with the general  
15 summary that has been given. I think there have been some  
16 rulings by the Commission that may give some specific --  
17 specifics to how we might address that lead role since -- you  
18 now, since '85.

19 Q Are you saying that the Commission has made rulings  
20 that have altered the memorandum of understanding?

21 A (Peterson) I don't think they've altered the  
22 memorandum of understanding, but I think we have an obligation  
23 to take into account the Commission's rulings on how we might  
24 approach our lead role.

25 Q That would be the Commission's view of -- from it's

1 side --

2 A (Peterson) Well, CLI-86-13 is obviously something  
3 that we would look at in our mission.

4 Q That's the Shoreham decision?

5 A (Peterson) That's the emergency planning  
6 requirements do not require an adequate plan achieve a preset  
7 minimum dose, et cetera.

8 Q That's the Shoreham decision from the summer of 1986?

9 A (Peterson) Yes.

10 Q Okay. But with the qualification that you think that  
11 the Commission may have said something from time to time that  
12 bears --

13 A (Peterson) Yes.

14 Q -- these memoranda, your general understanding would  
15 be what Mr. Peterson's is, Mr. McLoughlin?

16 A (McLoughlin) Yes.

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

18 Q Okay.

19 A (McLoughlin) That's correct.

20 Q Now, Mr. Peterson, you have testified, I believe,  
21 there's nothing in the NRC regulations that preclude sheltering  
22 as part of a range of protective actions to protect the beach  
23 population; is that right?

24 MR. TURK: May I hear that question again?

25 MR. OLESKEY: Certainly.

1 BY MR. OLESKEY:

2 Q Mr. Peterson, you have testified there's nothing in  
3 your understanding in the NRC regulations that precludes  
4 sheltering as a part of a range of protective actions to  
5 protect the beach population; isn't that right?

6 A (Peterson) I would concur with that.

7 Q All right. And it's certainly clear there's nothing  
8 in FEMA regulations which preclude it either.

9 A (Peterson) I concur with that.

10 Q And the MOUs, as you've both just clarified, these  
11 memoranda clearly give FEMA the lead in assessing the adequacy  
12 of offsite emergency preparedness, correct?

13 A (Peterson) That's correct.

14 Q So if FEMA believes in reaching its ultimate  
15 determination of reasonable assurance in connection with the  
16 New Hampshire plan or any plan that sheltering was required, in  
17 its professional judgment to protect the transient beach  
18 population, there's nothing in the regulations of either agency  
19 that would preclude that kind of determination; isn't that  
20 right?

21 MR. TURK: Well, excuse me. That's a different  
22 question, Mr. Oleskey.

23 MR. FLYNN: I also submit that this is legal --

24 MR. DIGNAN: I also object on the ground that it  
25 calls for a flat legal conclusion which is -- and the legal

1 conclusion is ultimately a question for this Board if, as and  
2 when the facts lead to its being decided.

3 MR. FLYNN: That was --

4 MR. DIGNAN: That's a flat legal question.

5 MR. OLESKEY: I'm only asking for their understanding  
6 of the agency's view of this issue about which much has been  
7 made in the testimony before I examined this morning.

8 MR. FLYNN: I join in Mr. Dignan's objection.

9 MR. DIGNAN: If he wants to ask him is it his  
10 understanding of his own agency's regulations and does he  
11 operate on that, that may be one thing. But the question  
12 that's before him now is to ask him for a flat legal opinion on  
13 two agencies regulations, one of which he doesn't work for, and  
14 that is a no-no, in my judgment.

15 MR. OLESKEY: Well, he's -- the witnesses have  
16 testified that because of a letter from Sherwin Turk they've  
17 taken a position in this case that they otherwise wouldn't  
18 have. That letter --

19 JUDGE SMITH: The ruling that we made consistently  
20 throughout on this issue, and I might need the question read  
21 back, is that where -- you can inquire into how agencies  
22 implement or use or react to regulations, what their practice  
23 is with respect to regulations even though you may not be able  
24 to ask a legal advice of these people, and that's what I  
25 understood the question to be. But it wasn't cast that way.

1 It was cast almost purely as a legal question; not what their  
2 program understanding of the regulation was.

3 MR. OLESKEY: All right, let me recast it, Your  
4 Honor.

5 MR. TURK: I'd like to note also, Your Honor, that  
6 the testimony of these witnesses has never been that but for my  
7 letter they would have gone a different way. They have  
8 indicated that they already had come to a conclusion that  
9 sheltering was not the right way to go at the beaches, and they  
10 simply wanted a letter confirming that sheltering is not  
11 required under NRC regulations.

12 MR. FLYNN: I don't accept --

13 MR. OLESKEY: All right, the record -- that record  
14 will speak --

15 MR. TURK: That was already their understanding.

16 MR. FLYNN: I do not accept Mr. Turk's  
17 characterization of their testimony. However, I agree with the  
18 objections that have been made, and I support them.

19 MR. OLESKEY: Let me recast it in light of this  
20 colloquy.

21 BY MR. OLESKEY:

22 Q Mr. Peterson, if FEMA concludes in carrying out its  
23 own responsibilities in overseeing emergency plans that to make  
24 an ultimate determination of reasonable assurance with respect  
25 to the New Hampshire plan or any plan that sheltering is

1 required in FEMA's professional judgment to protect the beach  
2 population, there's nothing in your regulations which preclude  
3 or bar such a requirement or finding, is there?

4 MR. FLYNN: This is a hypothetical question. This is  
5 not based on their testimony, right?

6 MR. OLESKEY: Well, they haven't reached the  
7 reasonable assurance stage, so it couldn't be based on their  
8 testimony.

9 MR. FLYNN: Nor have they ever said sheltering was  
10 required.

11 MR. DIGNAN: I'm still --

12 MR. OLESKEY: Well, my question is still clear  
13 enough.

14 MR. DIGNAN: Yeah, I'm still going to object to it in  
15 that form, Your Honor. If he wants to put the words in "is it  
16 your understanding of your regulations", I will recede. But he  
17 refuses to do that. He keeps asking him for the flat legal  
18 opinion, and he can't even do that with FEMA's regulations,  
19 never mind NRC's.

20 If he wants to ask of them as they sit there what's  
21 their understanding today of the regulations, I'm not sure it's  
22 relevant to anything, but I'm not going to squawk on that. But  
23 they're asking a flat legal opinion.

24 JUDGE SMITH: These guys implement that regulation.

25 MR. DIGNAN: So what?

1 JUDGE SMITH: Well, they're entitled -- we have this  
2 argument many times. They are entitled to testify as to their  
3 program -- their program use of that regulation and their  
4 program implementation of it, and it's just a quibble as to  
5 whether they have an interpretation of it or not.

6 MR. DIGNAN: It's not a quibble, Your Honor, because  
7 of the form of the question. The question is -- the form of  
8 this question that's sitting before that witness is there's  
9 nothing in your regulations that say that. Now that asks for a  
10 flat legal opinion.

11 It's not a question, do you interpret them as such.  
12 It is not a question, do you implement them as such which I  
13 haven't objected to. It's the form of this question which  
14 calls for a flat legal opinion.

15 JUDGE SMITH: We have understood from the very  
16 beginning that these gentlemen are not lawyers; that they are  
17 managers. Their use of their own regulation and their comments  
18 on it has always been understood by the Board to be in that  
19 sense.

20 MR. DIGNAN: Your Honor, I know that's the way you  
21 understand it, but the judge in the Court of Appeals may not,  
22 and that's my problem. It's a record objection, and I think  
23 it --

24 JUDGE SMITH: Look, if the judge in the Court of  
25 Appeals does not understand that these guys are not lawyers and



1 what is happening, then our system of justice is going to  
2 be -- that's a big problem.

3 MR. DIGNAN: No.

4 JUDGE SMITH: I mean, that's worse than the problem  
5 that you have today.

6 MR. DIGNAN: No, they may say to me, you've got a  
7 record statement in there, Mr. Dignan, and a request for a  
8 finding that was turned down when the agency gave its legal  
9 opinion on the record as to what its regulations meant, and  
10 I've got to deal with that.

11 MR. TURK: Your Honor.

12 MR. FLYNN: I have a different objection, Your Honor.

13 MR. OLESKEY: Let me try to cut through this because  
14 it's my time again. I'm only asking for your --

15 MR. FLYNN: Is the question withdrawn? Is the  
16 question withdrawn?

17 MR. OLESKEY: No.

18 MR. FLYNN: Then I have a different objection.

19 MR. OLESKEY: Let me just clarify it, Mr. Flynn, and  
20 maybe we can get through this, because Judge Smith and I, I  
21 think, have a common understanding.

22 BY MR. OLESKEY:

23 Q Gentlemen, I'm asking for your understanding of your  
24 regs when I ask this question, okay?

25 MR. FLYNN: There's an objection pending.

1 JUDGE SMITH: Wait, he's just modified the question.

2 Now --

3 BY MR. OLESKEY:

4 Q I know you're not lawyers. I know you're not judges.  
5 I'm asking for your understanding as people who carry out a  
6 program in your agency. That's the context of the question.

7 Mr. Peterson, are you with me?

8 A (Peterson) I have --

9 MR. FLYNN: I have an objection.

10 JUDGE SMITH: Now wait a minute. He has an  
11 objection.

12 MR. FLYNN: The objection is there's a premise in the  
13 question which hasn't been established on the record. And the  
14 premise is that FEMA finds in its professional judgment that  
15 sheltering is required, and it is not the testimony of the  
16 witnesses and they're being asked to accept the premise. And I  
17 want it clear it's really two questions.

18 One is, do they accept the premise; and then, two, if  
19 they do, do they agree to the conclusion that Mr. Oleskey has  
20 put to them.

21 MR. OLESKEY: Every time the question's had an "if"  
22 in it. That suggests a conditional. If some day you  
23 determine, then why. It's a common form of question to suggest  
24 a future event. I agree they haven't reached that. That's why  
25 I phrased the question that way so I wouldn't have this

1 objection.

2 May I put the question again?

3 MR. TURK: Your Honor, I have a problem with the way  
4 the question is being posed, and I think it goes to the form.  
5 It's a double negative that Mr. Oleskey is asking. He's asking  
6 isn't true that there's nothing in the regulations that  
7 precludes a finding if you are to say that shelter is required.

8 Well, actually it's irrelevant whether there's  
9 nothing in the regulations that precludes it. The question is,  
10 do the regulations contemplate that you should use that kind of  
11 a concept in reaching your determination. Mr. Oleskey's  
12 question is not going to prove anything. It's only going to  
13 come back to us with an attempt to state the positive of these  
14 two negatives.

15 I don't know if I'm making myself clear, but the  
16 point of the question seems to be that because -- assume he's  
17 right that there's nothing in the regulations that specifically  
18 precludes consideration of sheltering.

19 Well, does that mean that sheltering should be  
20 considered? Or is that something that's beyond the scope of  
21 the regulations?

22 There is nothing in the regulations that says you  
23 can't drink milk on Tuesday. Does that mean that therefore  
24 FEMA should require plants to offer milk to their employees on  
25 Tuesday?

1 MR. OLESKEY: That's argument and possibly redirect.  
2 I'd like to ask my question and conclude my examination.

3 MR. TURK: For purposes of a clear record, Your  
4 Honor, I object to the question on that basis.

5 (Board confer.)

6 (Continued on next page.)

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t/105  
1 JUDGE SMITH: Would you restate the question and  
2 make sure we understand it.

3 MR. OLESKEY: Yes. Understanding the context that  
4 we've established.

5 JUDGE SMITH: Yes.

6 BY MR. OLESKEY:

7 Q The question was, Mr. Peterson, if FEMA essentially  
8 -- ultimately yourself -- concluded in carrying out your  
9 responsibilities --

10 JUDGE SMITH: If FEMA were to conclude?

11 MR. OLESKEY: Yes.

12 BY MR. OLESKEY:

13 Q -- that to make a determination of reasonable  
14 assurance in connection with the New Hampshire plan,  
15 specifically, that sheltering was required, then there's  
16 nothing in your agency's regulations that would preclude such a  
17 finding and determination; is there?

18 MR. TURK: Your Honor --

19 MR. DIGNAN: Objection, for the same reason I gave  
20 before, he refuses to rephrase it correctly.

21 MR. FLYNN: It's the same question.

22 MR. OLESKEY: I have to differ with the notion,  
23 because I don't phrase it the way somebody insists, it's not  
24 phrased correctly.

25 MR. DIGNAN: No, Mr. Oleskey, it's because you've

1 been saying I'm chewing up your time, and I'm going to continue  
2 to chew it up as long as you hold to that form.

3 MR. TURK: Your Honor, what Mr. Oleskey --

4 JUDGE SMITH: Would you read Mr. Oleskey's question  
5 back again.

6 (Whereupon, the court reporter read back the Mr.  
7 Oleskey's question.)

t/146 8 MR. OLESKEY: The part that was left out was, I had  
9 reiterated the context is, you're not lawyers, I'm asking you  
10 to give me your understanding of your agency's regulation and  
11 rule.

12 JUDGE SMITH: It's -- the question -- do you  
13 understand the question? I don't understand the question.

14 THE WITNESS: (Peterson) I guess I don't understand  
15 the nuances here and I'm, you know, I'm here to try to respond,  
16 but I'd like to know what I'm suppose to respond to  
17 specifically.

18 JUDGE SMITH: I don't understand the essential logic  
19 of the question. There seems to be -- it's either a truism or  
20 a non sequitur.

21 MR. OLESKEY: Well, I hope it's a truism. And the  
22 conclusion of my line which I began about 12 minutes ago, this  
23 question, and once I get the answer that I think --

24 JUDGE SMITH: How could FEMA make a finding -- how  
25 could FEMA ever make a finding that sheltering is required?

1 MR. OLESKEY: The premise is that, if there's to be  
2 reasonable assurance found or determined there has to be  
3 sheltering.

4 JUDGE SMITH: How could FEMA ever find that to make a  
5 finding of reasonable assurance sheltering is required when  
6 their regulation would preclude such a finding.?

7 MR. OLESKEY: It's the last part that I've confused  
8 you on, Judge Smith. The last part is, if you made -- if you  
9 wanted to make a finding that sheltering was required in order  
10 to determine that there was reasonable assurance --

11 JUDGE SMITH: That's under (b).

12 MR. OLESKEY: There's nothing in your regulations.

13 JUDGE SMITH: Under (a).

14 MR. OLESKEY: Or (b).

15 JUDGE SMITH: Or (b).

16 MR. OLESKEY: Or anywhere else that would preclude  
17 you from such a determination under your own rules.

18 JUDGE SMITH: Do you understand that question?

19 MR. TURK: Your Honor, may I express my objection on  
20 it? The problem is, I think, a misconception on Mr. Oleskey's  
21 part as to how regulatory bodies work. If a regulation  
22 requires something, it requires it. If there's no regulation  
23 with respect to a certain matter, then our agency cannot  
24 arbitrarily and capriciously go out and start requiring things  
25 that aren't already contemplated in the regulation.

1           The question from Mr. Oleskey should be, to be fair,  
2 do your regulations contemplate or require that sheltering, for  
3 some situations, should be required such as the beach  
4 situations. That's a question he doesn't want to ask because  
5 he wants to expand the scope of the regulations to include  
6 something more than is there already.

7           JUDGE SMITH: I think your basic problem is that the  
8 witnesses are having difficulty with your question, not to  
9 mention me.

10          MR. OLESKEY: Well, let me -- I'm not sure that's so  
11 with this explanation. I thought 10 minutes ago --

12          JUDGE SMITH: Well, let's find out.

13          MR. OLESKEY: -- I was going to get an answer very  
14 easily.

15          MR. FLYNN: I'm willing to put the question to the  
16 witnesses as to whether they understand it. But I also wish it  
17 to be noted that I still have the same objections which I  
18 articulated earlier.

19          MR. OLESKEY: Fine.

20          JUDGE SMITH: What is that objection again?

21          MR. FLYNN: There were two objections: one is that  
22 it calls for legal conclusions.

23          JUDGE SMITH: Forget that one; we're over that one.

24          MR. FLYNN: The other objection is that the witnesses  
25 are being asked to accept a premise, namely, that they might



1 require sheltering.

2 JUDGE SMITH: Yes, well --

3 MR. FLYNN: That hasn't been established in their  
4 testimony.

5 JUDGE SMITH: That's right. Everybody understands  
6 that.

7 THE WITNESS: (Peterson) Are you asking me, does our  
8 regulations prohibit the consideration of sheltering or use of  
9 sheltering?

10 BY MR. OLESKEY:

11 Q In situations where it might be appropriate in  
12 reaching your reasonable assurance determination?

13 MR. FLYNN: I'd like to suggest that the witness's  
14 paraphrase of the question is not what the question asked for.  
15 What Mr. Peterson said is, do the regulations preclude  
16 consideration of shelter. And what Mr. Oleskey asked him was,  
17 if he were to find that sheltering was required before he could  
18 make a reasonable assurance finding; and those are two  
19 different things.

20 MR. OLESKEY: Well, consideration is a way station to  
21 requirement, Mr. Flynn.

22 THE WITNESS: (Peterson) Would you run it by me  
23 again.

24 MR. OLESKEY: Sure.

25 BY MR. OLESKEY:

1 Q Can we agree there's nothing in your regulations in  
2 arriving at a reasonable assurance finding that precludes you  
3 from considering whether sheltering would be appropriate or --  
4 would be appropriate to provide adequate protection to a beach  
5 population such as that at Seabrook?

6 MR. DIGNAN: Objection.

7 MR. TURK: Same objection, Your Honor.

8 JUDGE SMITH: Overruled. They understand the  
9 question.

10 THE WITNESS: (Peterson) I don't believe there's  
11 anything that would prohibit us from doing that.

12 BY MR. OLESKEY:

13 Q Is there anything in your regulations that would  
14 preclude you from requiring it as part of a determination of  
15 what kind of reasonable assurance had to be provided with the  
16 beach population in a situation like Seabrook?

17 MR. DIGNAN: Objection.

18 JUDGE SMITH: Why?

19 MR. DIGNAN: Same one, legal conclusion. I assume it  
20 will be overruled again, Your Honor, but I'm going to make it  
21 for the record.

22 JUDGE SMITH: Overruled.

23 MR. TURK: Further objection, Your Honor. If the  
24 question now is there anything in 350.5(b) as opposed to  
25 350.5(a), I think it's confusing. The witnesses have already

1 testified that the consideration of whether they reasonable  
2 assurance is based upon consideration of the 16 planning  
3 standards in 350.5(a). So I think they really have to turn to  
4 (a) and see what that requires before they can answer (b).

5 JUDGE SMITH: I understand the question to be, as  
6 they implement their regulation do they see a categorical  
7 exclusion in their regulations.

8 MR. DIGNAN: No objection to that question. And I  
9 want the witnesses to understand, that's the one they're  
10 answering, not Mr. Oleskey's.

11 JUDGE SMITH: Is that what you intended?

12 MR. OLESKEY: Well --

13 MR. DIGNAN: No, he didn't.

14 MR. OLESKEY: Mr. Dignan, I really --

15 JUDGE SMITH: Well, let's see if we can't arrive  
16 at a --

17 MR. OLESKEY: I asked him in substance, was there  
18 anything in the regulations that would preclude a consideration  
19 of sheltering in arriving at a determination of reasonable  
20 assurance and he said, no.

21 THE WITNESS: (Peterson) No.

22 BY MR. OLESKEY:

23 Q Now I'm asking the question that I originally asked,  
24 having laid the further premise that Mr. Flynn wanted, namely,  
25 is there anything in your regulations that would preclude you

1 from requiring sheltering to protect a beach population at a  
2 place like Seabrook in reaching the determination of reasonable  
3 assurance?

4 MR. DIGNAN: I object.

5 JUDGE SMITH: Can you leave a place like Seabrook  
6 out?

7 MR. OLESKEY: Sure.

8 JUDGE SMITH: Does that help you any?

9 MR. OLESKEY: As long as --

10 MR. DIGNAN: No. Your Honor phrased a question that  
11 I had no problem with. Your Honor --

12 JUDGE SMITH: What's the matter with my question?

13 MR. OLESKEY: I want to move it out of the area of  
14 consideration or categorical exclusion to a slightly different  
15 plane which is, is there anything there which prevents you from  
16 requiring it, which I see as a different order of agency  
17 action.

18 MR. DIGNAN: Mr. Oleskey, the intent of my -- the  
19 intent of why I accepted His Honor's question is because he  
20 started it with a parenthetical, as you implement the  
21 regulations.

22 JUDGE SMITH: Is there anything in the FEMA  
23 regulations which prevent you from, in all cases, requiring  
24 sheltering?

25 THE WITNESS: (McLoughlin) That's a different

1 question.

2 JUDGE SMITH: That's a different question.

3 THE WITNESS: (Peterson) Is there anything in our  
4 regulations --

5 JUDGE SMITH: Which --

6 THE WITNESS: (Peterson) -- that in all cases  
7 require us --

8 JUDGE SMITH: Prevent you from requiring sheltering?

9 I suggest that there's nothing. That if there's a  
10 lot of real great sheltering around and it's not being used in  
11 a plan, then you could say that plan is inadequate until you  
12 take into account all this great sheltering. And there's  
13 nothing that prevents you, your regulations, from making that  
14 requirement.

15 I think I'm going to come back to --

16 BY MR. OLESKEY:

17 Q Mr. Peterson -- Mr. Peterson and Mr. McLoughlin, do  
18 we have an answer on that?

19 A (Peterson) I don't think there's a problem with the  
20 way the Judge has phrased it.

21 A (McLoughlin) I would agree.

22 Q Was there a problem the way I phrased it?

23 A (Peterson) Obviously, there was a lot of problems.  
24 (Laughter)

25 Q I know the lawyers had problems. I'm always more

1 interested in the witnesses' problems than the lawyers. Any  
2 problem with the question the way I phrased it, Mr. McLoughlin?

3 (Simultaneous conversation)

4 MR. TURK: The instructions --

5 JUDGE SMITH: I don't even know what the question was  
6 that you put to him. But obviously you are -- you're not  
7 presenting questions here which has given the witnesses a clear  
8 understanding of your intent, and the Board has troubles with  
9 it.

10 So, maybe we all share the problem, but nevertheless,  
11 the problem is there.

12 MR. OLESKEY: Respectfully, I know that that's a  
13 sincere comment and I know you mean it.

14 JUDGE SMITH: Yes.

15 MR. OLESKEY: I think the only problem is that these  
16 guys for 20 minutes haven't wanted me to get the question  
17 answered.

18 JUDGE SMITH: Well, that may be. Without regard  
19 to --

20 MR. OLESKEY: That's their job, I can't quibble with  
21 it.

22 JUDGE SMITH: Without regard to fault, without regard  
23 to fault, and let's assume that your logic is obviously the  
24 best one, when we read the transcript we'll recognize it. As  
25 we sit here right now there is confusion, there was.

1 MR. FLYNN: I submit the question has been answered.  
2 The Judge's question has been answered.

3 BY MR. OLESKEY:

4 Q So we've agreed -- so I put -- put it this way, from  
5 my understanding, there's nothing in your regulations that  
6 preclude you from requiring sheltering in assessing emergency  
7 plans as you reach a determination of reasonable assurance?

8 MR. TURK: Your Honor, is that the same question or  
9 is it different?

10 MR. OLESKEY: I think it's substantially the same  
11 question. I want to make sure, in my own words, that I'm right  
12 and I get an answer. Can I just have that one, Judge?

13 MR. TURK: It's the same one, Your Honor.

14 I mean --

15 JUDGE SMITH: It's the same question.

16 MR. OLESKEY: Then you shouldn't object, Mr. Turk.

17 MR. TURK: It's the same one that's given people in  
18 this room problems.

19 JUDGE SMITH: I'm concerned that the argument among  
20 the lawyers here who perceive big differences in the way this  
21 question is put is alarming the witnesses and they're afraid  
22 they're going to bumble into some type of trap, and I don't  
23 blame them for feeling that way, because as I'm talking right  
24 now I don't have a heck of a lot of confidence in that I'm not  
25 doing the same thing when I paraphrase it.

1           But I think you've answered the question. There's  
2 nothing in your regulations that prevent you, when appropriate,  
3 from requiring sheltering.

4           THE WITNESS: (Peterson) Or considering it.

5           JUDGE SMITH: Or considering it.

6           THE WITNESS: (Peterson) Yes. I don't see anything  
7 there that precludes us specifically from doing that.

8           BY MR. OLESKEY:

9           Q     From considering it or requiring it?

10          A     (Peterson) Yes.

11          MR. OLESKEY: Okay. That's all.

12                 For the record I would have been through when I said  
13 I was if we hadn't had this discourse.

14                 Next examiner. And thank you for bearing with me.

15                                 (Mass. AG cross-examination plan  
16                                 of Mr. Krimm, Mr. Peterson  
17                                 and Mr. McLoughlin follows:)

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MASS. ATTY. GEN.

C-X PLAW

FEMA OFFICIALS PANEL

MAY 27 1988

Objective: To establish and clarify aspects of FEMA's beach population position, including:

- (1) Efforts to have NRC state the significance of site specific slabwork features to the FEMA determinations of NAREP adequacy and ultimately of reasonable assume;
- (2) FEMA understanding and use of term "reasonable assume" and
- (3) FEMA-NRC relationship, including FEMA's lead role in assessing offsite emergency plans adequacy and making findings/determinations as to same.

1 MS. WEISS: In order to save time do you want me to  
2 read the record and forget the examination.

3 JUDGE SMITH: Well, you didn't put the answers in.

4 MS. WEISS: Yes, I did.

5 (Laughter)

6 MR. FLYNN: What is this, you have a prefiled cross-  
7 examination.

8 JUDGE SMITH: Would you, Ms. Weiss, consider taking a  
9 bold move that only a confident litigator would consider taking  
10 and that giving a copy of this cross-examination plan to the  
11 panel? You won't? All right. It's a strong request, and I  
12 won't push it. I think that you can move along quite promptly,  
13 if you would.

14 MS. WEISS: There are probably some of these --

15 JUDGE SMITH: I haven't read it well enough to  
16 know --

17 MS. WEISS: -- there's some of these that I'd rather  
18 not.

19 JUDGE SMITH: I haven't read it well enough to know  
20 that that's an appropriate request.

21 CROSS-EXAMINATION

22 BY MS. WEISS:

23 Q My name is Ellyn Weiss and I represent the New  
24 England Coalition on Nuclear Pollution, and I've met all of  
25 you.

1           Let me just confirm first that or ask you, is it true  
2 that you have decided that Dr. Hock will not be a witness in  
3 this proceeding?

4           A     (Peterson) I would respond to that by asking --  
5 telling you that I would ask general counsel to specifically  
6 make a recommendation to me on that issue. But it -- with that  
7 caveat, it's my understanding that the strong consideration  
8 that she would not be requested to be a witness. But I'm  
9 leaving a little caveat there, Ms. Weiss.

10          Q     The reason I asked is simply to confirm that it's at  
11 least very likely that insofar as it concerns the issues of how  
12 FEMA got to its March 14th testimony, at least from a policy  
13 standpoint, that you people on the panel are the authoritative  
14 witnesses and possibly the only witnesses that will be  
15 presented by FEMA; is that true?

16          A     (Peterson) I think that there's a strong possibility  
17 of that. But I have not had full counsel on this issue, and I  
18 think that needs to be, certainly, recorded.

19               MR. FLYNN: Ms. Weiss, I will accept that suggestion.

20               MS. WEISS: Well, I didn't know that I suggested  
21 anything.

22               MR. FLYNN: You're asking whether there's a strong  
23 likelihood that these will be the only witnesses on the policy  
24 questions, and they've deferred to the Office of General  
25 Counsel and --

1 MS. WEISS: And you say it's true.

2 MR. FLYNN: -- I'm telling you that I'm not disputing  
3 that.

4 MS. WEISS: Okay.

5 BY MS. WEISS:

6 Q I handed a document to you out of order, actually,  
7 and that was my fault and not Ms. Keough's fault. Would you  
8 take a look at the document that was marked Mass. AG 42 earlier  
9 this morning, that's the January 25th testimony, supplemental  
10 testimony. And I direct you in particular to the statement on  
11 page two about seven lines down that begins after the (c), and  
12 I'll read it: "FEMA cannot conclude that the NH RERP is  
13 adequate with respect to that beach population until it is  
14 clear that the State of New Hampshire has considered the use of  
15 sheltering for the transient beach population and explains what  
16 use, if any, it intends to make of sheltering."

17 And just to complete it, the last sentence in that  
18 paragraph, I'll read the middle one, too "This latter point  
19 should not be interpreted to mean that FEMA has imposed a  
20 requirement that sheltering be available if the State of New  
21 Hampshire intends not to employ sheltering for the transient  
22 beach population (which is not presently clear from the NH  
23 RERP) then FEMA expects the state to develop the rationale for  
24 such a choice, and provide it to FEMA for review."

25 Would it be correct that you decided prior to filing

1 your March 14th testimony that the State of New Hampshire has  
2 now met these conditions set out for finding adequacy with  
3 respect to elements J-9 and J-10-M?

4 A (Peterson) I -- are you asking -- I know what you're  
5 asking.

6 Q Well, I'll ask you first, if you know the answer to  
7 that?

8 A (Peterson) Well, I think that New Hampshire  
9 responded to our request that they show a rationale as to why  
10 they were not using or going to use sheltering for the 98  
11 percent, if we can use that figure, and that they responded to  
12 that rationale. But the whole March 4th meeting, the major  
13 portion of the March 4th meeting centered around the J-9 and  
14 J-10 to see if that had been adequately met.

15 So I think that was an issue that was brought up in  
16 March 4th. I hope I've answered your question specifically.

17 Q Well, did you want to add, Mr. McLoughlin?

18 A (McLoughlin) I agree with everything that Mr.  
19 Peterson has said to this point. The only point of  
20 clarification that we wanted to make was that when -- what  
21 we've gotten from New Hampshire so far is a rationale  
22 statement. It has not been incorporated in the plan yet. And  
23 until it gets incorporated in the plan along with some other  
24 implementing steps, we could not reach that conclusion.

25 Q You haven't reached the conclusion that J-9 and

1 J-10-M are now adequate?

2 A (McLoughlin) We can make -- what our statement says  
3 in March 14th, and I would look at that, if I need to, but I  
4 believe what it says is that, when J-9 -- the J-9 and J-10-M  
5 will be met when the rationale and some implementing actions, I  
6 forget exactly the procedures, are incorporated into the New  
7 Hampshire plan. When that action is done, then J-9 and J-10  
8 will have been met.

9 But the rationale that was submitted did not do that.  
10 I don't want to be technical with you, but I want to be  
11 precise.

12 Q I think it's an important point.

13 A (McLoughlin) Okay. See, if you want us to I will  
14 check the language in there to be sure, but I do believe that's  
15 accurate.

16 Q All right.

17 MR. FLYNN: For the sake of the completeness of the  
18 record I suggest that the witness be allowed to do that.

19 MS. WEISS: Yes, of course.

20 (Pause)

21 THE WITNESS: (McLoughlin) It says, "At the same  
22 time whenever this choice is incorporated into the plan,  
23 implementing detail will be necessary." Now, let me see.

24 Mr. Peterson was correct, our statement does say,  
25 "Has been met."

1 BY MS. WEISS:

2 Q Well, sitting there today, can you tell me whether it  
3 has been met or it has not been met?

4 A (McLoughlin) My only reluctance to agreeing to the  
5 fact that it has been met, our expectation is that the State of  
6 New Hampshire will do exactly what it has said it will do. But  
7 for us to be sure that it is technically met, we have to have  
8 it in the plan.

9 Now, given the fact that -- see, what we got was a  
10 piece of paper, and it was separate from this. And when that  
11 gets encoded in the plan along with the implementing detail,  
12 then in fact, we will have an acceptable J-9 and J-10-M.

et/146 13 (Continued on next page.)

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T147 1 Q Talking about -- is that your understanding too?

2 A (Peterson) Well, as I'm understanding it, Mr.

3 McLoughlin is concerned about a technical procedure in the plan  
4 review process, and that we have received a document from New  
5 Hampshire in response to our January 25th filing that addressed  
6 our concerns that you have read are relative to the beach  
7 population, the beach population and sheltering, okay. And we  
8 have taken that into account.

9 Then we had a meeting on March 4th to discuss many  
10 things. And in the conclusion of that, we said that in  
11 relationship to the summer beach population that J-9 and J-10  
12 have been met. But that documentation must be incorporated  
13 into the plan in the final review process before the plan would  
14 be approved that J-9 and J-10 had been met in relationship to  
15 the beach population.

16 It's a technical thing. I believe that he is saying  
17 because you receive a document of explanation, and lest that is  
18 included physically in the plan for review, then you still have  
19 a problem. So it has to be there.

20 Q Mr. McLoughlin mentioned two different things. He  
21 mentioned the rationale and mentioned the implementing  
22 procedures.

23 A (Peterson) Okay, but let me separate that out,  
24 though.

25 Q Can I -- well, all right. Let me ask my question.



1 A (Peterson) Okay.

2 Q Is it your position with respect to the rationale  
3 that you have been provided with a sufficient rationale, an  
4 explanation regarding the use of shelter in the New Hampshire  
5 plan?

6 A (Peterson) No, from the standpoint of if you read  
7 the last line of our conclusion, the last two lines --

8 Q What are you looking at.

9 A (Peterson) -- of March 4th, it says, there exists a  
10 technically appropriate basis for the choice made by the State  
11 of New Hampshire not to shelter the summer beach population  
12 except in a very limited circumstances. And in relationship to  
13 that very limited circumstances, we are saying at the same time  
14 whenever this choice is incorporated into the NH RERP,  
15 implementing detail will be necessary for that very limited  
16 circumstance.

17 MR. FLYNN: I suggest the witness didn't understand  
18 the question. The question asked if there was a technical --  
19 technically appropriate basis for the choice not to shelter.  
20 And the witness was talking about implementing detail.

21 THE WITNESS: (Peterson) Well, I understood the  
22 question to be -- that there was a confusion about the  
23 statement of incorporating implementing detail.

24 MS. WEISS: No.

25 THE WITNESS: (Peterson) No.

1 MS. WEISS: No.

2 THE WITNESS: (Peterson) I'm sorry.

3 MS. WEISS: No.

4 BY MS. WEISS:

5 Q Mr. McLoughlin talked about two things. First, both  
6 of which you said to New Hampshire as of January 25th were  
7 necessary in order to close this issue out as far as FEMA was  
8 concerned. One was provide us with a rationale, an explanation  
9 as to how you're going to use shelter and how you reach that  
10 decision. And two, were implementing procedures; correct?

11 And the witness is indicating yes.

12 A (McLoughlin) Yes, yes.

13 Q All right. With respect to the rationale, have you  
14 been provided with what you requested New Hampshire to provide  
15 you? Are you now satisfied with what you have?

16 A (McLoughlin) To whom?

17 Q To you.

18 A (McLoughlin) The answer to that is yes.

19 Q Yes, fine.

20 A (McLoughlin) The rationale, yes.

21 Q And is it your understanding that it's the intention  
22 of the State of New Hampshire not to employ sheltering for the  
23 98 percent of the beach population during the summer?

24 Directed to you.

25 A (McLoughlin) Okay. That's correct. They plan not

1 to use it.

2 MS. WEISS: I'm going to pass around New Hampshire's  
3 response of February 11th to your January 25th testimony.

4 JUDGE SMITH: Ms. Weiss, it's clear that you have a  
5 cross-examination plan that will not fit into the time limits  
6 that we have set for concluding this phase.

7 MS. WEISS: I'm going to take out No. 4.

8 JUDGE SMITH: I still doubt it.

9 You realize we have to have some opportunity for  
10 redirect.

11 MS. WEISS: Well, No. 5 should be essentially two  
12 questions, Your Honor.

13 JUDGE SMITH: Well, I'm just -- proceed, I don't  
14 want to waste any more of your time by --

15 MS. WEISS: Well, stuff's getting passed around.

16 Does everybody have it? Do I have it?

17 I'd like to have that marked Massachusetts Attorney  
18 General, I think we're 47, for identification.

19 MR. DIGNAN: It's already in the record.

20 MS. WEISS: Right. It's an attachment to your Direct  
21 Testimony No. 6.

22 MR. DIGNAN: That's correct.

23 Are you still going to mark it, use the number?

24 MS. WEISS: Yes, I think so.

25 MR. DIGNAN: Mass. AG?

1 MS. WEISS: Forty-seven.

2 (The document referred to was  
3 marked for identification as  
4 Massachusetts Attorney General's  
5 Exhibit No. 47.)

6 BY MS. WEISS:

7 Q And let me direct your attention to Page 3 of the  
8 document, and this is the submission that you received from the  
9 State of New Hampshire?

10 A (Peterson) This is the receipt that we received that  
11 went to our technical people, yes.

12 Q Let me direct your attention to Page 3, to the first  
13 full paragraph in the middle, and read it to you. "This  
14 position does not preclude the state from considering and  
15 selecting sheltering as a protective action for the beach  
16 population."

17 Does that change your response to my prior question?

18 MR. TURK: You're on Page 3 of the enclosure?

19 MS. WEISS: Page 3 of the document I just marked as  
20 Massachusetts Attorney General No. 47.

21 MR. FLYNN: Page 5 of the document. It's Page 3 of  
22 the enclosure.

23 MS. WEISS: Stand correct.

24 JUDGE SMITH: Just anticipate the problem and  
25 complete the paragraph.

1 MS. WEISS: I'll read the whole paragraph.

2 THE WITNESS: (Peterson) Yes, thank you.

3 MS. WEISS: "This position does not preclude the  
4 state from considering and selecting sheltering as a protective  
5 action for the beach population. Nevertheless, evacuation is a  
6 much more likely protective action decision during the summer  
7 months when some beach transients cannot shelter in place but  
8 must leave or move to public shelters."

9 BY MS. WEISS:

10 Q Is it still your position that it's the intention of  
11 the State of New Hampshire not to employ sheltering for the  
12 transient beach population, the 98 percent?

13 A (Peterson) That is my understanding, and it's my  
14 understanding based upon a recommendation from my staff that  
15 that was their interpretation.

16 Q Is that your understanding, Mr. McLoughlin?

17 A (McLoughlin) That's correct.

18 Q Would you take a look at Page 5 of the enclosure?  
19 The third full paragraph on that page: "The state is currently  
20 prepared to recommend implementation of its shelter-in-place  
21 concept if either of the two plume exposure EPZs in New  
22 Hampshire. The shelter-in-place advisory will normally be  
23 issued for either EPZ only under scenarios that are  
24 characterized by one or more of the following three  
25 conditions." And it goes out to lay -- it goes on to layout

1 three conditions; the first of which is labeled dose savings.  
2 "Sheltering could be recommended when it would be the more  
3 effective option in achieving maximum dose reduction." I've  
4 read the first sentence there.

5 Is it still your understanding that the state does  
6 not have the intention to employ sheltering 98 percent of the  
7 beach population?

8 A (Peterson) I would respond the same way as I did  
9 before, that was the advice that I received, and I think the  
10 previous paragraph is pertinent here. "For the aforementioned  
11 reason, it's the state's position that evacuation is the  
12 protective response that would be used in response to the  
13 majority of emergency scenarios at Seabrook, and that  
14 protective action sheltering may be preferred to evacuation in  
15 only a very limited number of accident scenarios."

16 Q Well, but under some limited variety of accident  
17 scenarios, isn't it true that sheltering would be used by New  
18 Hampshire, or at least the plan indicates that it might be used  
19 for 98 percent of the beach population?

20 MR. FLYNN: I object. I don't believe the plan  
21 indicates that in most --

22 MS. WEISS: Well, this piece of paper.

23 JUDGE SMITH: This is just much more complicated than  
24 it has to be. I think you agree, Ms. Weiss, your point is  
25 quite simple, and just tell them what you're trying to

1 establish.

2 BY MS. WEISS:

3 Q Well, if the evidence in this case were to show,  
4 gentlemen --

5 A (McLoughlin) I'm sorry, I didn't --

6 Q If the evidence in this case were to show that you've  
7 been misadvised by your staff, and that in fact --

8 JUDGE SMITH: No, no, that's not what I intended.

9 BY MS. WEISS:

10 Q If the evidence in this case were to show that New  
11 Hampshire does still maintain the option of calling for  
12 sheltering for the 98 percent of the beach population on a  
13 summer day, would that change your conclusions about whether  
14 the conditions for approval for J-9 and J-10-M have been met?

15 JUDGE SMITH: If you understand it, fine.

16 I pushed her to a conclusion.

17 I think that you are confusing the panel by the  
18 difference between their characterization of what the staff  
19 interpreted then, and what -- you know, the variance that you  
20 pointed out in New Hampshire's response. And I'm taking more  
21 time doing --

22 MS. WEISS: Well, I eliminated --

23 JUDGE SMITH: -- getting involved in it than it would  
24 be to just let you go.

25 MS. WEISS: Well, I eliminated the reference to the

1 advice they may have gotten from their staff.

2 BY MS. WEISS:

3 Q And I'm just asking them if the evidence in this case  
4 shows that there are circumstances under which New Hampshire  
5 will use sheltering in the summer for the 98 percent of the  
6 beach population, would that change your opinion as to whether  
7 the conditions you laid out on January 25th for a finding of  
8 adequacy at these plans regarding the beach population if in  
9 fact they're met.

10 A (McLoughlin) To whom are you addressing --

11 Q Well, let me ask you, Mr. McLoughlin.

12 A (McLoughlin) My belief is that what this says -- let  
13 me say what it is and see whether or not that answers your  
14 question, because there is some --

15 Q I don't want to interrupt you, but understand that  
16 I've established a hypothetical that that's what the evidence  
17 shows, and answer the question with that. You don't have to  
18 agree with that premise. You have no way of knowing what the  
19 evidence shows. That's simply the premise of the question.  
20 And if you can answer that --

21 MR. TURK The witness indicated he --

22 MS. WEISS: I just want to -- I don't mean to  
23 interrupt him. I just want to make sure that we get an answer  
24 to the question.

25 MR. TURK: He's indicated he's not sure what the



1 question is, and he was going to restate it so he could see if  
2 he could answer it.

3 MR. FLYNN: And I have an objection to the question.  
4 It's circular. The earlier testimony was, and the reference  
5 was explicitly to the supplemental testimony of January 25th  
6 wherein we said we were waiting a rationale from the state as  
7 to the use, if any, that it will use of sheltering.

8 They've submitted the rationale, and Ms. Weiss has  
9 put the document in front of them, and they -- and in it there  
10 is a rationale for the use, if any, that the state is going to  
11 be used for shelter. And she's asking if the condition has  
12 been met.

13 JUDGE SMITH: That's right. The witnesses, as I  
14 sense the mood of the witnesses right now, they have taken your  
15 last question as carrying with it the suggestion that somehow  
16 they should find that their January 25th requirements were not  
17 met, and they're free to reject or agree --

18 MS. WEISS: Agree or disagree with it.

19 JUDGE SMITH: They're free to totally unaccept any  
20 meaning behind your question, any suggestion that they should  
21 be finding that at all, because I don't see the logic of it  
22 myself, but you're free to ask the question.

23 MR. DIGNAN: I guess my problem is the context, Your  
24 Honor. Could we go back to the Page 5 where Ms. Weiss started,  
25 and I would just underline for the Board's edification what the

1 state is saying.

2 The state is currently prepared to recommend  
3 implementation of its shelter-in-place concept at either of the  
4 two plume exposure EPZs in New Hampshire. There are two: One  
5 for Seabrook, one for Vermont Yankee. This is a general  
6 dissertation on what they may do in a plume EPZ.

7 Now this is the problem of the context. As I  
8 understand it, we're talking about the beach sheltering  
9 population and their conclusion that when you get all through  
10 the state thing they aren't going to recommend it for the beach  
11 in the summer. And I fail to see how this can be used to  
12 undercut that state.

13 MS. WEISS: Well, we have -- we spent a lot of time  
14 going over what's in the New Hampshire plan with your panel,  
15 and I believe -- and I will have findings to make on what I  
16 think that evidence shows, and I think they're well founded.  
17 And I think that one of the well-founded findings is that New  
18 Hampshire has not precluded the use of sheltering for the beach  
19 population at Seabrook and they've laid out a set of conditions  
20 under which they might order it. And we went through that at  
21 great length.

22 Now, you're remember that about five questions ago I  
23 asked this panel what was their understanding of the response  
24 they got from New Hampshire in February with regard to the  
25 state's use of sheltering, and they said it was their

1 understanding that the state would not use sheltering except  
2 for the 2 percent of the beach population.

3 Now, I think there is a variance between what the  
4 evidence shows the plan does in fact contain, and the  
5 witnesses' understanding. And the obvious question is, does  
6 that variance mean that the conditions you set out for  
7 approving the plan with regard to the beach population have in  
8 fact not been met.

9 JUDGE SMITH: Right, and the problem -- the thing  
10 that confounded the witnesses is why you asked that question.

11 MS. WEISS: I think I'm entitled to know if I  
12 correct -- if the information they have was corrected or  
13 changed -- let's leave out the word "corrected" -- would have  
14 changed the conclusion they've reached. I mean that's a  
15 perfectly fair question on cross-examination.

16 JUDGE SMITH: Well, that's a different question.

17 MS. WEISS: Well, that's the question I asked.

18 MR. FLYNN: The real issue here is whether there has  
19 been a satisfying rationale for the use, if any. Now we're  
20 quibbling over what exactly is the use that the state is  
21 planning to make and --

22 MS. WEISS: I asked your witnesses what their  
23 understanding was of the response they got from New Hampshire,  
24 and I specifically asked them because there's not going to be  
25 another witness I'm going to be able to ask that of.

1 JUDGE SMITH: Just a moment.

2 MR. FLYNN: You're trying to quiz them on whether  
3 they've memorized the state's response?

4 JUDGE SMITH: No, never mind.

5 MS. WEISS: It seems to me that's --

6 JUDGE SMITH: Quiet, or go ahead, talk all you want,  
7 but off the record.

8 (Board confer.)

E147 9 (Continued on next page.)

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t/Y 8  
1 JUDGE SMITH: Ms. Weiss, is it your position, we're  
2 somewhat confused here, is it your position that the New  
3 Hampshire response anticipates, in some instance, sheltering of  
4 the so-called 98 percent?

5 MS. WEISS: Absolutely.

6 JUDGE SMITH: In some instances?

7 MS. WEISS: Absolutely.

8 JUDGE SMITH: Okay.

9 MS. WEISS: I think that's what the evidence in this  
10 case clearly shows. We went down the decision tree and  
11 established it.

12 JUDGE SMITH: Okay. Now, we have some confusion  
13 about that.

14 MS. WEISS: That's why I stated it, if the evidence  
15 in this case shows.

16 JUDGE SMITH: Right.

17 MS. WEISS: I know that's a matter of argument. It  
18 happens to be my view that it's a good argument.

19 JUDGE SMITH: Okay. But just assume for Mrs. Weiss's  
20 purposes, and only for her purposes, this is a hypothetical,  
21 that the New Hampshire response does provide in some instances  
22 for the 98 -- so-called 98 percent of the beach population  
23 sheltering, assume that that's the case. And then I guess a  
24 part of it is the fact that your staff's interpretation or  
25 report to you was that it did not. Is that a part of your

1 premise to them, too? Just take off the assumptions that they  
2 should make in your hypothetical, you know, just --

3 MS. WEISS: Really, you stated the first. And the  
4 second was not an assumption, it was just reprising their  
5 earlier testimony that it was their belief from the New  
6 Hampshire response that they would not use -- the state would  
7 not use sheltering for the 98 percent.

8 JUDGE SMITH: Right. And then the bottom line  
9 question then is, going back to your January 25th requirements,  
10 and point those out -- point that out, that very language.

11 MS. WEISS: We began with -- just a second. On page  
12 two --

13 MR. TURK: It might help if --

14 MS. WEISS: -- the rationale.

15 JUDGE SMITH: Now, wait a minute. Just stop  
16 interrupting. This is difficult enough without having our line  
17 of logic, train of thought -- I can't find the 25th.

18 MS. WEISS: It's item "C" on page two.

19 JUDGE SMITH: Got it.

20 MS. WEISS: All of item "C" on page two.

21 JUDGE SMITH: All right. Go ahead.

22 THE WITNESS: (Peterson) You're now referring to  
23 January 25th filing, page two.

24 MS. WEISS: What we began this line of questioning  
25 with.

1 THE WITNESS: (Peterson) Yes.

2 MS. WEISS: Which you described as the conditions  
3 that New Hampshire had to meet with respect to providing the  
4 rationale.

5 JUDGE SMITH: Okay. And what sentence are you  
6 talking about?

7 MS. WEISS: Well, I was referring in general to the  
8 item "C."

9 JUDGE SMITH: Now, you've got item "C?"

10 THE WITNESS: (Peterson) Yes, sir.

11 MS. WEISS: But they considered -- okay.

12 JUDGE SMITH: All right. Now, you've got the  
13 hypothesis pretty straight. Now the bottom line question is,  
14 has item "C" been met -- would it have been met if the evidence  
15 should establish that in some instances New Hampshire has plans  
16 for sheltering of those so-called 98 percent. Now, you should  
17 not carry with that question any implication that it should or  
18 should not have been met based upon that.

19 Now, Mr. Turk, I interrupted you, what is your  
20 problem?

21 MR. TURK: I'd like to see if the witnesses agree  
22 that their staffs never told them there might be limited  
23 circumstances when shelter is going --

24 JUDGE SMITH: We took that out. We took that out of  
25 the hypothesis.

1 MS. WEISS: I'm entitled to the answer that I already  
2 have on the record, as far as that's concerned.

3 JUDGE SMITH: But that's not in the hypothesis; we  
4 took that out.

5 MS. WEISS: No reference to the staff.

6 JUDGE SMITH: Is everybody happy with the hypothesis?

7 THE WITNESS: (Peterson) I'm not happy with it

8 JUDGE SMITH: You're not happy with it. Okay. You  
9 don't have to accept it as true.

10 THE WITNESS: (McLoughlin) Your Honor, when Ms.  
11 Weiss was conferring with you in there I thought I heard her  
12 say that we did not require -- that we would not use shelter  
13 for the 98 percent. If that was a misinterpretation on my  
14 part, I apologize for that, but that's what's concerning us  
15 right now. Because we believe that New Hampshire, and this  
16 does not preclude in any way New Hampshire from using  
17 sheltering in some instances in which it is appropriate --

18 JUDGE SMITH: For the 98 percent.

19 THE WITNESS: (McLoughlin) -- to use it for the 98  
20 percent.

21 JUDGE SMITH: Okay. But put that aside for a moment.  
22 Hold that aside for a moment, that thought.

23 THE WITNESS: (McLoughlin) All right.

24 JUDGE SMITH: In fact, don't put it aside because it  
25 helps her hypothesis, doesn't it?



1 THE WITNESS: (McLoughlin) Because -- I'm sorry,  
2 excuse me.

3 JUDGE SMITH: Work that into your hypothesis; is that  
4 right?

5 MS. WEISS: Well, I think that they've -- now -- I  
6 think you've now given me a contradictory answer to a question  
7 I asked you about a half an hour ago.

8 JUDGE SMITH: Do you withdraw your question?

9 MS. WEISS: Yes. I'm going to have to start it all  
10 over again.

11 JUDGE SMITH: Okay.

12 BY MS. WEISS:

13 Q I thought you had told me that it was your  
14 understanding that New Hampshire would not use sheltering for  
15 the 98 percent, but only for the two percent; didn't you tell  
16 me that about 15 minutes ago?

17 A (McLoughlin) Okay. If I did, and I'm not arguing  
18 that I didn't, I was in error in doing that. And that's what  
19 was beginning to concern me, in particular as I listen to your  
20 comment. I either misunderstood the question or answered it  
21 wrong. Because it is my understanding, a couple of things,  
22 to clear up two issues that I've had concern about. One is, if  
23 you read this letter, the letter does not say this is a plan;  
24 the letter says it's in response to FEMA's testimony. That's  
25 different than being in a plan. That's why my concerns were

1 expressed earlier on that issue.

2           Secondly, what we are concerned about here is that,  
3 we went through a technical analysis on Wednesday and indicated  
4 that Mr. Keller's testimony and advice and counsel to us was  
5 important. And Mr. Keller never told us that you should not  
6 use shelter in some instances for the 98 percent. And that's  
7 what I'm concerned about our being clear on.

8           There is -- it is entirely possible that it is  
9 appropriate and as I read New Hampshire's comments on page, the  
10 one that you referred to that's on page five, five one on dose  
11 savings, it says under three, "Number one does not preclude in  
12 any way the use of shelter in the 98 percent."

13           And, Your Honor, I don't know if this discussion has  
14 been helpful or not, but those are my concerns about getting  
15 certain things on the record that are inappropriate.

16           Q     Well, we know have a common understanding, you and I,  
17 of what this New Hampshire response means, okay. Now, with  
18 that understanding, the lack of implementing procedures for  
19 sheltering 98 percent of the beach population is hardly a  
20 technical -- a small technical deficiency, is it?

21           A     (McLoughlin) Wait a minute. You've gone -- you've  
22 moved a major hump that I'm not prepared to deal with at the  
23 moment. Make your point again and let me think about that for  
24 a minute.

25           Q     We now agree that it's not just the two percent, and

1 I'm going to get right to the point. When there's only two  
2 percent involved it's a few hundred people, I think we can all  
3 agree, at least for purposes of this question, that  
4 implementing procedures are not going to be a serious problem.

5 If we're talking about a situation where sheltering  
6 may be ordered for 98 percent of the beach population, then  
7 implementing procedures is not a small technical matter; the  
8 lack of implementing procedures is a serious matter, wouldn't  
9 you agree with me?

10 A (McLoughlin) Well, that's an issue that I need some  
11 time to think about for the moment. That's an issue that I  
12 don't want to give a really quick answer to. And to be honest  
13 about it, you raise an issue, and I don't want to deny that.  
14 But it is -- but it's also clear that in my mind, if I were  
15 asked -- had to deal with that question I would certainly want  
16 some advice from our technical people before I give a good  
17 strong answer to that issue.

18 The concern that -- I'm concerned on both sides.  
19 What I don't want to do is leave it open in an unreasonable  
20 way. But I also don't want to give too quick an answer to that  
21 response.

22 Q Well, couldn't --

23 A (McLoughlin) The thing that's a problem for us is  
24 that, and it's what my concern was earlier, about being correct  
25 to the answer of your earlier question because our testimony

1 says, we have to incorporate implementing instructions. And  
2 that has not been done, and that is not -- we have not seen  
3 that.

4 So I don't interpret anything that I'm saying to be  
5 inconsistent with our March 14th filing. And I don't know for  
6 sure what that -- how that helps, but I do have some concerns  
7 about going much further and I have some concerns about giving  
8 you too quick an answer to the question of whether or not that  
9 is a major issue for the 98 percent and how much that would  
10 vary from the procedures that they would use for the two  
11 percent.

12 Q Well, let me see if I can help you.

13 MR. TURK: Your Honor --

14 BY MS. WEISS:

15 Q Let me see if I can help you.

16 JUDGE SMITH: What?

17 MR. TURK: We're going into the merits, and the  
18 witnesses are --

19 JUDGE SMITH: I know we are.

20 MR. TURK: The witnesses were here to explain the  
21 historical evolution of the position. There will be witnesses  
22 for FEMA on the merits.

23 MS. WEISS: No, there's not going to be anybody who  
24 has reviewed the New Hampshire plan.

25 JUDGE SMITH: Well, that -- whatever it is, that's

1 what it is. But that's --

2 MR. TURK: Whatever may be the flaw in FEMA's  
3 substantive testimony, that may be something that can be  
4 addressed when it's presented or possibly can correct that  
5 problem, if there is one. But the purpose for these witnesses  
6 being sponsored was the evolution of FEMA's position. And I  
7 think we're way beyond that into the merits of what -- whether  
8 their current position is a good --

9 JUDGE SMITH: She's taken this time, but I can't help  
10 but observe that Mr. McLoughlin was not called here for the  
11 purpose of defending the testimony that he has -- that has been  
12 put to him.

13 MS. WEISS: Well --

14 JUDGE SMITH: And what inferences you draw from his  
15 reluctance and his deferral of commenting on it --

16 MS. WEISS: Yes.

17 JUDGE SMITH: -- will not be worth much.

18 MS. WEISS: But there's some questions -- the  
19 ultimate question -- I mean, the historical evolution goes all  
20 the way up to March 14th, and I was trying to see -- what I'm  
21 trying to see now is, is there a clear and logical connection,  
22 what's the flow between January 25th and March 14th. And, you  
23 know, I don't think I've got to it.

24 JUDGE SMITH: Well --

25 MS. WEISS: And let me just ask you --

1 MR. TURK: Your Honor --

2 MS. WEISS: -- can I please pose a question.

3 MR. FLYNN: Let her ask the question.

4 MR. TURK: I was only going to note that in light of  
5 Mr. McLoughlin already expressed reservations, but getting into  
6 substantive discussions without talking to his technical staff.  
7 I think to compel the witness to answer further questions along  
8 this line would be improper.

9 JUDGE SMITH: Well, we haven't compelled any witness  
10 to answer questions. And he's taken care of himself.

11 Now, even though your interjections have merit, they  
12 also have the disadvantage of interrupting the thought process,  
13 and keeping Ms. Weiss off balance.

14 MR. TURK: I don't mean to do that, Your Honor.

15 JUDGE SMITH: I know you don't. And I don't think  
16 you appreciate it, but it does do that.

17 MS. WEISS: Thank you, Your Honor.

18 BY MS. WEISS:

19 Q Doesn't this issue that we've been discussing  
20 together, that is, the fact that sheltering may be ordered for  
21 the 98 percent of the beach population, and the lack of  
22 procedures to implement that option, doesn't that revive,  
23 generally, the concerns that FEMA has expressed on more than  
24 one occasion about the fact that we don't know where people  
25 would be sheltered; we don't have procedures that would

1 indicate how we're going to get the people from the beach to  
2 the shelters, et cetera, the kind of concerns you have  
3 expressed before?

4 MR. FLYNN: Your Honor, I want to suggest that this  
5 calls -- this is legal argumentation in this sense, the  
6 document before the witnesses, the New Hampshire response to  
7 the FEMA supplemental testimony identifies limited  
8 circumstances under which sheltering would be required, and  
9 that's consistent with the testimony that the witnesses for the  
10 Applicant gave a couple of weeks ago.

11 So we're arguing now over the weight to be given to  
12 the lack of implementing detail for the plan to shelter people  
13 under those limited circumstances.

14 JUDGE SMITH: I don't understand the relations- --  
15 I'm lost here. I just go back to my main concern here is that,  
16 the panel was told that they would not have to come here and  
17 defend FEMA's position on the merits. I don't even know if  
18 they're the best people to do it, if -- these are headquarter  
19 people, they came here for an entirely different purpose, and  
20 you're asking questions of a level of detail that means nothing  
21 to the Board that they are able or unable to give authoritative  
22 answers.

23 MS. WEISS: Let me just observe that these witnesses,  
24 and certainly Mr. McLoughlin and Mr. Krimm, are intimately  
25 familiar with the history. And they're clearly the best

1 witnesses on the history.

2           And this question goes back -- references back to  
3 prior history of Seabrook. There was a history of stating  
4 objections with respect to how the state had dealt with  
5 sheltering.

6           And my question to them is, if we are talking about a  
7 situation where we may have sheltering in the 98 percent,  
8 doesn't that revive the concerns which you historically  
9 expressed about the plan and its consideration of sheltering.

10           And that's, you know, as far as I'm going to go down  
11 that road. Let me also observe, though, that these are the  
12 best witnesses that are scheduled to appear before this Board  
13 on any of this.

14           JUDGE SMITH: May very well be, but they were not  
15 required to prepare for this.

16           MS. WEISS: Well, they had -- I mean, we've talked  
17 about --

18           JUDGE SMITH: For this type of examination.

19           MS. WEISS: Well, I think they've prepared -- they've  
20 certainly prepared sufficiently to answer the question that's  
21 before them now, and we've had testimony about the March 4th  
22 meeting, and how they are the people who approved the final  
23 March 14th testimony.

24           JUDGE SMITH: Can you answer the question that's  
25 before you now?



1 MR. FLYNN: The question being that, doesn't the lack  
2 of implementing detail about the plan for sheltering the 98  
3 percent of the people in limited circumstances revive the  
4 concerns which had been expressed earlier.

5 JUDGE SMITH: Right. That's it.

6 MR. DIGNAN: I'll just note an objection that I know  
7 will be overruled that it departs from the state of the  
8 evidence, the lack of implementing detail.

9 JUDGE SMITH: It departs from what?

10 MR. DIGNAN: State of the evidence.

11 JUDGE SMITH: Well, you hadn't made that before.

12 It's --

13 MR. DIGNAN: I know, but I had a feeling that almost  
14 goes to -- I just want the objection on the record.

15 MR. TURK: Your Honor, I'm going to object again  
16 because it goes to merits. And I think it's -- whatever Ms.  
17 Weiss may believe about the meeting of the current New  
18 Hampshire plan provisions, the origin of the comments about  
19 lack of implementing procedure may not be known to these  
20 witnesses.

21 MS. WEISS: He testified about that.

22 JUDGE SMITH: She's trying -- if he does not have a  
23 background on implementing procedure, all he has to do is say,  
24 I don't have it. The factual predicate will come back with the  
25 answer, I guess.

1 MS. WEISS: There was significant testimony about  
2 that yesterday.

3 MR. TURK: The witnesses are attempting to be  
4 cooperative and helpful and responsive.

5 MS. WEISS: They are. That's right. I don't have a  
6 problem with them, my problem is with --

7 MR. TURK: I happen to know, as the parties in this  
8 room should know, that the genesis for those comments did not  
9 even originate in FEMA, they originated in NRC in November of  
10 1987.

11 MR. DIGNAN: Your Honor --

12 MS. WEISS: Could you save it for your redirect.

13 MR. TURK: Well, Your Honor --

14 MS. WEISS: The witness testified about these  
15 matters.

16 MR. TURK: -- the problem is, it's purely going to  
17 merits. It goes to questions about what was considered at the  
18 RAC with respect to the adequacy of the plans. And I think  
19 it's argumentative with the witnesses on whether --

20 JUDGE SMITH: Is this your last question on this?

21 MS. WEISS: Yes. Well, there's one more, but it's  
22 not fact-based.

23 JUDGE SMITH: Can you answer the question?

24 THE WITNESS. (Peterson) I sure have to have the  
25 question restated.

1 JUDGE SMITH: Well, I don't think it was put to Mr.  
2 Peterson, it can't be put to him because --

3 MS. WEISS: It was put to Mr. McLoughlin, he really  
4 has been testifying on historical matters over the last couple  
5 of days.

6 JUDGE SMITH: Do you understand the question?

7 THE WITNESS: (McLoughlin) Let me state it and see  
8 if I do. She's asking whether or not the lack of implementing  
9 procedures for the 98 percent, in the event shelter is to be  
10 used, is -- revives the issue in our mind of whether or not J-9  
11 and J-10-M have been met. That's what I understand the  
12 question.

13 JUDGE SMITH: And do you agree that historically  
14 there has been an issue?

15 THE WITNESS: (McLoughlin) I agree that historically  
16 there has been an issue on J-9 and J-10-M, yes.

17 JUDGE SMITH: With respect to the implementing  
18 procedures?

19 THE WITNESS: (McLoughlin) With respect to the  
20 protective measures that are being considered by the State of  
21 New Hampshire to meet the beach population issue.

22 Your Honor, I'm not trying to be argumentative.

23 JUDGE SMITH: No, I --

24 THE WITNESS: (McLoughlin) I'm trying to be precise.  
25 There's a difference in my mind between the rationale and

1 whether or not we accept -- see, J-9 says, you've got to  
2 consider a range of incidence. J-10-M says, you have to have a  
3 rationale and that ought to be included in the plan for that.

4 Now, the implementing procedures included in the plan  
5 are even beyond that. That says, who does what, when, where,  
6 why, et cetera. And her question, as I understand it, goes to  
7 the implementing procedures issue and --

8 JUDGE SMITH: And has that been -- is the  
9 implementability of sheltering of the major beach population  
10 been an historical issue?

11 THE WITNESS: (McLoughlin) I'm sorry, sir, say that  
12 again?

13 JUDGE SMITH: Has the implementability of sheltering  
14 for the 98 percent of the beach population been an historical  
15 issue?

16 THE WITNESS: (McLoughlin) Yes.

17 JUDGE SMITH: Now, is it revived?

18 MR. TURK: Well, Your Honor, implementing procedures  
19 are different from implementability.

20 MS. WEISS: I don't see that distinction.

21 MR. DIGNAN: Your Honor, --

22 MR. TURK: We're going right into merits.

23 MR. DIGNAN: -- can I have a shot at my  
24 objection --

25 MR. TURK: Well, can I state mine since I opened

1 this. The question of implementing procedures was raised by  
2 Dr. Bores in a memo he wrote November 1987 to Mr. Thomas. And  
3 there he stated that there needed to be more development of  
4 implementing procedures, but he reiterated that the plans were  
5 adequate with respect to J-9 and J-10-M. The RAC agreed with  
6 that view. That's different than the question of can a  
7 sheltering plan be implemented in an abstract sense, which is  
8 implementability.

9 JUDGE SMITH: What's your answer? Dr. McLoughlin,  
10 what is your answer to my question?

11 THE WITNESS: (McLoughlin) Excuse me, sir, I --

12 JUDGE SMITH: You forgot the question.

13 THE WITNESS: (McLoughlin) Your question dealt with  
14 the historical issue of whether or not --

15 MS. WEISS: I wrote the question down.

16 JUDGE SMITH: All right.

17 THE WITNESS: (McLoughlin) I'm sorry.

18 BY MS. WEISS:

19 Q And the question that you asked was, has the  
20 implementability of sheltering of the 98 percent, the beach  
21 population as an issue, been revived?

22 MR. FLYNN: No, the question the Board put was, has  
23 it been an historical concern.

24 MS. WEISS: He answered that, yes, and he --

25 JUDGE SMITH: Yes. Now has it been revived, that's

1 the correct question.

2 MR. FLYNN: Okay. I agree.

3 THE WITNESS: (McLoughlin) That is an issue that  
4 from my perspective in offering counsel to Mr. Peterson on  
5 deciding that question, I would want to ask a series of  
6 questions of our technical staff. And the reason for that,  
7 Your Honor, is this, the --

8 JUDGE SMITH: Well, no, wait a minute. I think you  
9 maybe you might satisfy, just simply, you don't know yet; is  
10 that correct?

11 THE WITNESS: (McLoughlin) That's exactly where I  
12 am, yes. I don't want to do anymore. But what I don't want  
13 that to be interpreted is, in any way, shape, or form, that  
14 that's a negative in any way. I'm concerned about leaving the  
15 wrong impression here.

16 JUDGE SMITH: Okay. We're all right.

17 THE WITNESS: (McLoughlin) Your Honor --

18 JUDGE SMITH: Wait, wait.

19 THE WITNESS: (McLoughlin) Okay.

20 JUDGE SMITH: Let Ms. Weiss -- I would allow you to  
21 go ahead, but we're running out of time.

22 THE WITNESS: (McLoughlin) Yes.

23 JUDGE SMITH: I mean, I don't think you want to come  
24 back, do you?

25 THE WITNESS: (McLoughlin) No.

1 (Laughter)

2 BY MS. WEISS:

3 Q Can we just agree with the proposition that it's a  
4 serious issue and it hasn't yet been resolved?

5 MR. TURK: I object. I don't know what -- I don't  
6 know what it is.

7 JUDGE SMITH: It's a historical issue and it hasn't  
8 been resolved.

9 MR. TURK: What?

10 JUDGE SMITH: Is that all right?

11 MS. WEISS: Yes.

12 JUDGE SMITH: Implementability of sheltering --

13 MR. TURK: Your Honor --

14 JUDGE SMITH: -- of 98 percent of the population. I  
15 don't care what you think, that's the question that was put to  
16 him and that's the answer.

17 MS. WEISS: Do we need to confer on that?

18 MR. DIGNAN: Is there a question pending?

19 MS. WEISS: There's a question pending and I think  
20 the witness may have said, yes, but I'm not sure.

21 MR. DIGNAN: What's the question pending?

22 MR. TURK: The witness has not said yet.

23 MR. DIGNAN: Can I confess, Ms. Weiss, I didn't  
24 realize there was one pending. Precisely what question is  
25 pending?

1 JUDGE SMITH: What happened was, she says, will you  
2 agree that it's an important issue that remains unresolved.  
3 Everybody objected, remember. And then, it was changed to be,  
4 would you agree it's a historical issue that has yet to be  
5 resolved. And then Mr. Turk objected and then I restated it,  
6 and he doesn't like the way I restated it, and we're just sort  
7 of wandering around here.

8 MR. TURK: Your Honor --

9 JUDGE SMITH: And then maybe by chance we'll strike  
10 upon a record that's complete, I don't know.

11 (Continued on next page.)

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T14 1 MR. TURK: I have a fundamental problem with asking  
2 these witnesses to get into a matter which could have such a  
3 potential impact on the record. It is to the merits. They  
4 have indicated a reluctance to touch the issues and I think if  
5 Ms. Weiss wants FEMA to put forward a witness on the issue, we  
6 could ask FEMA to do that.

7 JUDGE SMITH: Just a moment now. I do have sympathy  
8 with your complaint that no merits litigation was intended or  
9 expected.

10 On the other hand, the witnesses have been competent  
11 to decide what they feel capable of answering and what they  
12 don't feel capable of answering, and I don't think really that  
13 you have standing on this to raise that -- to make that  
14 complaint recognizing, however, that the record that is being  
15 developed affects you, too.

16 Gentlemen, is there any question about it? You  
17 should feel very, very free to simply state, if that is the  
18 truth, that you are not prepared to give a reliable answer to a  
19 question. The Board realizes that you were brought here for a  
20 purpose of touching historical milestones on your evolution.

21 Are you objecting, Mr. Flynn?

22 MR. FLYNN: I am not objecting to the question as  
23 formulated by the Board going to whether the implementability  
24 of sheltering for the 98 percent under limited circumstances  
25 has been an historical concern, or whether it revives the

1 concern -- whether it revives those concerns.

2 JUDGE SMITH: Okay.

3 MR. FLYNN: I'm not objecting to that question, no.

4 BY MS. WEISS:

5 Q Are you still aware of what the question is because  
6 your counsel restated it, and he didn't state it correctly?

7 The question as modified by the Board was whether we  
8 could agree, panel and I, that this issue of implementability  
9 of shelter of the 98 percent of the beach population is a  
10 historical issue which has not yet been resolved by FEMA?

11 A (McLoughlin) We have not seen any implementing plan  
12 yet. That's where my uncomfortableness comes from. What we  
13 have from the State of New Hampshire is a rationale. It does  
14 not say that this is the plan even, Your Honor, and I am  
15 reluctant to, until we see it incorporated it in the plan  
16 itself and what additional procedures are specified,  
17 to implement this rationale in the plan, and that goes to Ms.  
18 Weiss's question, as I understand it.

19 JUDGE SMITH: Okay. Let's see if we can cut this  
20 short because, as I understand the parties, there is not even  
21 agreement that the New Hampshire response covers the so-called  
22 98 percent. This is all hypothetical.

23 MS. WEISS: Well, I don't think it's --

24 JUDGE SMITH: So that further, you know, go to the  
25 implementation -- implementability of a hypothetical situation

1 as --

2 MS. WEISS: I thought that we finally agreed that  
3 there was an option.

4 JUDGE SMITH: If that happened, I didn't see it. I  
5 mean, of course, he thinks there is and that's --

6 MS. WEISS: That's important.

7 JUDGE SMITH: Yes.

8 MS. WEISS: And, you know, I'm content to leave this  
9 at this point.

10 JUDGE SMITH: Good.

11 BY MS. WEISS:

12 Q Gentlemen, can you --

13 JUDGE SMITH: What do you want to do? Do you want to  
14 go to lunch now?

15 MS. WEISS: I guess so.

16 JUDGE SMITH: All right, 40 minutes?

17 MR. OLESKEY: Which would make it a quarter to one,  
18 or 20 of one?

19 JUDGE SMITH: Make it 20 of one. Is that enough  
20 time, gentlemen?

21 THE WITNESS: (Peterson) Did you say 40 minutes,  
22 sir?

23 JUDGE SMITH: Oh, that's what I said. That would  
24 bring you back here at --

25 MR. OLESKEY: I was wrong.

1 THE WITNESS: (Peterson) Five of one.

2 JUDGE SMITH: Yes.

3 MR. OLESKEY: Too long of one for me. I'll concede  
4 that.

5 JUDGE SMITH: Come back at five to one.

6 MR. OLESKEY: Okay.

7 (Whereupon, at 12:14 p.m., the hearing was recessed,  
8 to resume at 12:55 o'clock p.m., this same day, Friday, May 27,  
9 1988.)

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

12:58 p.m.

JUDGE SMITH: Proceed, please.

Whereupon,

RICHARD KRIMM

GRANT PETERSON

DAVID MCLOUGHLIN

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

CROSS-EXAMINATION (Continued)

BY MS. WEISS:

Q All right, gentlemen, could we turn to your January 25th testimony, Page 5. please, in that document that's been marked Massachusetts AG 42?

A (Peterson) January 25th?

Q Right.

A (Peterson) Page 5?

Q Right. I just want to go right down to the bottom line on that page, and read it, and I'll add a little parenthetical and see if you agree with me.

"FEMA interprets these provisions, meaning planning standard J-9 and planning standard J-10, as requiring consideration of more than a single protective measure."

And my question to you is, is that still your position today?

1 A (Peterson) If you're asking me, the answer is yes.

2 Q And there is nobody on the panel that disagrees with  
3 that?

4 (No response.)

5 BY MS. WEISS:

6 Q All right, the record will indicate that I got no  
7 disagreement.

8 Let's turn to the next page, Page 6. The fifth line  
9 down, just want to read the last clause of that sentence, "but  
10 the current plan considers only one protective measure for the  
11 transient beach population, namely, evacuation."

12 And my question to you is, was that accurate as of  
13 the version of the plan which you had on January 25th?

14 A (Peterson) I'm sorry, I didn't catch up with you.  
15 You're on Page 6?

16 Q I'm on Page 6.

17 A (Peterson) Somebody's delivering mail here to me.

18 Q Sorry. The fifth line down, the last clause of that  
19 sentence, "but the current plan considers only one protective  
20 measure for the transient beach population, namely,  
21 evacuation."

22 And my question to you is, was that true as of the  
23 time you drafted this testimony, January 25, 1988?

24 A (McLoughlin) In hindsight, and I'll clearly  
25 acknowledge it because it -- you are exactly right in writing

1 it. It says only one protective measure, namely, evacuation.

2 Subsequent to that in our discussions we have talked  
3 about other protective actions that the plan requires such as  
4 access control, monitoring and decontamination, and potential  
5 dealing with food in the ingestion pathway for examples.

6 Now given that, when this says there is only one  
7 protective measure here, evacuation, it technically, I believe  
8 is not as accurate as it could have been and as we would write  
9 it today.

10 Q As of January 25th did you define access control  
11 monitoring and decontamination as protective actions?

12 A (McLoughlin) We had discussions in those meetings  
13 about the use of the word protective measures and protective  
14 actions and their equivalency, et cetera. And we did talk  
15 about access control and monitoring in the January 22nd  
16 meeting, as I recall.

17 As I sit here and say that, I recognize there is an  
18 inconsistency in what I am saying relative to what is here when  
19 we say the only protective measure is evacuation, and I'm not  
20 denying that in any way. As I sit here, I wish we had said  
21 simply -- added the other protective measures in there.

22 Q Well, my question to you is, as of January 25th --

23 A (McLoughlin) Yes.

24 Q -- did you define access control monitoring and  
25 decontamination as protective measures --

1 A (McLoughlin) Yes.

2 Q -- per se?

3 A (McLoughlin) Yes.

4 Q You did, and this was an error?

5 A (McLoughlin) Yes, that's the way in which I would  
6 interpret that situation. We've clearly determined those as  
7 being protective measures, yes.

8 Q You've determined those now?

9 A (McLoughlin) No, no, as of January -- the January  
10 22nd meeting and as of the filing of this January 25th  
11 statement, we would have considered access control and the  
12 others that I mentioned as protective measures.

13 Q So somebody made a mistake when they wrote this.

14 A (McLoughlin) Yes, and I have already acknowledged  
15 the fact that I concurred in this and it's -- in that sense my  
16 guess is we made a technical error in that case.

17 Q Gentlemen, at the beginning of this session I handed  
18 you a document known as the Christenbury letter.

19 MS. WEISS: Wait, Mr. Chairman, before we go any  
20 further since I'm moving on to another line of questioning, I'd  
21 like to have Mass. AG 47 moved in and bound into the record.  
22 It's already in evidence. I'd just like to have it bound into  
23 the record for clarity of the record since we did so much  
24 questioning on it, and I've provided the reporter with the  
25 copies.



1 JUDGE SMITH: Are there objections?

2 MR. TURK: Just for clarification, was that admitted  
3 already for historical purposes?

4 JUDGE SMITH: Yes.

5 MR. DIGNAN: No, it was admitted for more than  
6 historical purposes.

7 JUDGE SMITH: It was in part --

8 MR. TURK: Historical purposes and for the statements  
9 that were expressly examined on by Mr. Oleskey.

10 MS. WEISS: No, it was admitted as part of --

11 MR. DIGNAN: Part of our case.

12 MS. WEISS: -- their direct evidence No. 6.

13 MR. DIGNAN: It's in for the truth of the matters  
14 contained is how it's in.

15 JUDGE SMITH: Now it's here, it's here actually for  
16 convenience because it's going to be in the transcript where  
17 the examination is.

18 MS. WEISS: Exactly.

19 MR. TURK: My mistake, Your Honor.

20 MR. DIGNAN: So what are we doing?

21 JUDGE SMITH: We're admitting it into -- bound into  
22 the transcript. I guess we're admitting it into evidence  
23 again. I don't know. You can cite whichever one you want to.

24 MS. WEISS: It's of no consequence.

25 JUDGE SMITH: It is of no consequence. Probably the

1 better course of action would have been not to have given it an  
2 exhibit number, but just to have bound it in. But this gives  
3 it a convenient place to identify it. So let's say that it's  
4 being admitted for identification convenience. That's about  
5 the least probative way that you can get anything into the  
6 record here that I can think of.

7 MS. WEISS: That's fine. It's already in evidence.

8 JUDGE SMITH: I know, but Mr. Dignan keeps looking at  
9 me like I'm making a historical evidentiary blunder here.

10 (Laughter.)

11 MR. DIGNAN: I've got all --

12 JUDGE SMITH: He's got --

13 MR. DIGNAN: -- like me with all these fast-talking  
14 Washington lawyers, Your Honor. I get nervous.

15 (Laughter.)

16 (The document referred to,  
17 having been previously marked  
18 for identification as  
19 Massachusetts Attorney General's  
20 Exhibit No. 47 was received in  
21 evidence.)

22  
23 (Massachusetts Attorney General's  
24 Exhibit No. 47 follows:)

25

STATE OF NEW HAMPSHIRE  
EXECUTIVE DEPARTMENT

Office of Emergency Management  
State Office Park South  
107 Pleasant Street  
Concord, New Hampshire 03301  
603/271-2231  
1-800-852-3792



JOHN H. SUNUNU  
Governor



RICHARD H. STROME  
Director  
JAMES A. SAGGIOTES  
Deputy Director

NUCLEAR REGULATORY COMMISSION  
Official Exh. No. 47  
Serial of Seabrook  
IDENTIFIED ✓  
SEARCHED ✓

February 11, 1988

*Miss Atty Gen*  
*5/27/88 Peterson et al*  
Mr. Henry G. Vickers  
Regional Administrator  
Federal Emergency Management Agency  
422 McCormack Post Office  
Boston, MA 02109

Dear Mr. Vickers:

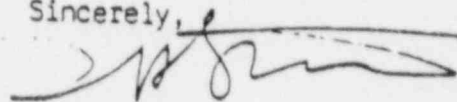
In the Supplemental Testimony of Dave McLoughlin, Edward A. Thomas and William R. Cumming on Behalf of the Federal Emergency Management Agency on Sheltering/Beach Population Issues, filed on January 25, 1988, the Federal Emergency Management Agency (FEMA) stated its current position with respect to its review of selected portions of the New Hampshire Radiological Emergency Response Plan (NHRERP). FEMA summarized its position as follows:

Briefly put, FEMA's position is (a) that it is appropriate to consider further the adequacy of the emergency response plan for the transient population of the beaches within the Seabrook Emergency Planning Zone (EPZ) during the summer, that is, from May 15 to September 15, as indicated in the New Hampshire Radiological Emergency Response Plan (NHRERP); (b) that the requirement of NUREG 0654/FEMA REP 1, Rev. 1, for a "range of protective actions" may or may not be satisfied by evacuation alone; (c) that FEMA cannot conclude that the NHRERP is adequate with respect to that 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.

During the January 28, 1988 conference call among the parties in the Seabrook Operating License Proceeding, the State of New Hampshire indicated that it would respond, within two weeks, to the concerns raised by FEMA in its supplemental testimony. The State's response to FEMA's questions about protective actions for the Seabrook EPZ beach population is set forth in the accompanying enclosure.

New Hampshire appreciates the comments and assistance provided by FEMA relative to the New Hampshire Sheltering policy. We believe the enclosed material addresses the concerns raised and we welcome the continued opportunity to work in concert with FEMA in developing quality emergency plans for the people of New Hampshire.

Sincerely,



Richard H. Strome  
Director

RHS/MMN/cjf

cc: Seabrook Operating License Proceedings Service List

78648

Enclosure 1

New Hampshire Response to FEMA Supplemental Testimony

At Volume 1, Section 2.6, the plan addresses "protective response." The plan explains that the objective of protective responses by the State is "... to control the radiological exposures to which the public may be subjected in the event of a significant release of radiological materials from a fixed nuclear facility." The section explains that there are various radiation exposure pathways, and outlines the federal protective action guides (PAGs) for both plume exposure EPZs and ingestion pathway EPZs. At Section 2.6.5, the plan outlines the specific protective actions adopted by the State for reducing direct exposure of the public within the plume exposure EPZ.

New Hampshire will rely on two protective actions for limiting the direct exposure of the general public within the Plume Exposure EPZ. These are sheltering and evacuation. Either of these protective actions will be coupled with access control to prevent unauthorized entry into the area in which the protective action is being implemented. (NHRERP Vol 1. p. 2.6-4)

This general statement of policy was drafted to be the basis of state policy for either of the two nuclear power plants with plume exposure EPZs within the State. It should not be inferred from this statement of policy, however, that sheltering is afforded the same weight as evacuation as a means to effect dose savings. Subsequent portions of the plan describe the relative merits of the two protective actions and describes the rationale and procedures for choosing protective actions. Sheltering is a protective action of limited usefulness in realizing dose savings for the population, regardless of the season. For a limited range of conditions, however, the protective action of sheltering is not without benefits.

Sheltering is a valuable protective response for several reasons. It can be implemented quickly, usually in a matter of minutes. In addition, it is less expensive and less disruptive of normal activities than evacuation. Implementation and management of sheltering is also less demanding on the resources of the emergency response organization since no vehicles, traffic control and dispatching of equipped emergency workers is required. (NHRERP, Rev. 2, Vol. 1 at p. 2.6-5)

To make sure sheltering is fast and easily managed, as this statement intends, the State has adopted a specific sheltering concept.

"New Hampshire employs the 'Shelter-in-Place' concept. This provides for sheltering at the location in which the sheltering instruction is received. Those at home are to shelter at home; those at work or school are to be sheltered in the workplace or school building. Transients located indoors or in private homes will be asked to shelter at the locations they are visiting if this is feasible. Transients without access to an indoor location will be advised to evacuate as quickly as possible in their own vehicles (i.e., the vehicles in which they arrived). Departing transients will be advised to close the windows of their vehicles and use recirculating air until they have cleared the area subject to radiation. If necessary, transients without transportation may seek directions to a nearby public building from local emergency workers. (NHRERP Vol 1. p. 2.6-6)

Implicit in adopting this position are three key factors. First, the State wanted a sheltering concept that was uncomplicated and manageable. The shelter-in-place concept meets this criterion. Second, the State wanted a sheltering concept that it could rely upon to be implemented quickly. The shelter-in-place concept meets this criterion; a sheltering concept that requires the movement of people to a remote shelter location may not. Third, the State feels that if a release of radiation warranted movement of the public, they are much more likely to be afforded meaningful dose reductions by moving out of the EPZ than by moving to a shelter within the EPZ. This is the case since the members of the public would be, in effect, "evacuating" to a shelter. This action would require forming family groups or social units prior to moving, deciding whether to seek shelter or evacuate spontaneously, choosing a mode of transportation (i.e., walk or ride), seeking a destination (i.e., home or shelter), and undertaking the physical movement.

Furthermore, since sheltering is a temporary protective action, those that sought public shelter would be faced with the prospect of assuming some dose while seeking shelter, more while sheltering, and even more during a subsequent evacuation. Such considerations dissuade the state from considering the movement of large numbers of people to public shelters as a primary protective action for beach transients, given that evacuation is seen as providing dose savings in nearly all accident scenarios.

This position does not preclude the State from considering and selecting sheltering as a protective action for the beach population. Nevertheless, evacuation is a much more likely protective action decision during the summer months when some beach transients cannot shelter in place, but must leave or move to public shelters.

Through the RAC review process, FEMA made it known to the State that it was concerned about a shelter-in-place concept that could, in fact, result in a hasty evacuation of the transient beach population shortly before, or during, a release. For example, the FEMA technical review comments on the December 1984 draft of the NHRERP contained the following comment regarding the beach population:

Early access control and beach instructions may have to be implemented, and this must be considered in advance both in terms of protective action decision making and public notification of such.

At FEMA's suggestion, the State, in Revision 0 to the NHRERP, adopted additional means for addressing this concern. Those means consist of closing or evacuating the beaches and establishing access control as early "precautionary actions." The precautionary action process is a detailed

procedure used by decision makers from May 15 through September 15, the months in which there is potential for a significant beach population. The procedure advises decision makers to close the beaches during Alert or close or evacuate the beaches during Site Area Emergency conditions before protective action considerations are warranted. This would mean that the beach population would be gone before an evacuation/shelter decision became necessary. The availability of the precautionary action procedure is cited in Section 2.6.5 of the plan:

"The conditions under which such an action may be taken are described in NHRERP Vol. 4 NHCDA Procedures, Appendix F."

A copy of the precautionary action procedure is attached. (See: Attachment I).

The addition of these precautionary measures alleviates most concerns about sheltering the beach population. The State's position is based, in part, upon the RAC evaluation of the State Response to the RAC review of NHRERP Rev. 2. At page 64/134, the RAC evaluation stated:

According to the State response and the plan revisions, the use of public shelters is not proposed during a Seabrook Station emergency. The only exception is the possible use of public buildings for shelters for transients without transportation. Transients with transportation and 'without access to an indoor location' will be advised to evacuate in their own vehicles. The use of public buildings or sheltering of transients without transportation is acceptable since the transients without transportation are expected to be a very small number.

These precautionary actions and the State emphasis on getting the population out early are consistent with actions planned at other nuclear power plant sites with transient populations.



Once a General Emergency is declared, State of New Hampshire decision makers begin a detailed evaluation of the protective actions to be recommended. Since the General Emergency as defined by NUREG-0654, FEMA-REP-1 is a condition where "releases can be reasonably expected to exceed EPA Protective Action Guideline exposure levels for more than the immediate site area," it is at this point that relative dose savings between evacuation and sheltering are evaluated in accordance with the protective action decision criteria of NHRERP Volume 4 Appendix F and Volume 4A Appendix U for the general population including the beach population.

For the aforementioned reasons, it is the State's position that evacuation is the protective response that would be used in response to the majority of emergency scenarios at Seabrook, and that the protective action of sheltering may be preferable to evacuation in only a very limited number of accident scenarios.

The State is currently prepared to recommend implementation of its shelter-in-place concept at either of the two plume exposure EPZ's in New Hampshire. The shelter-in-place advisory will normally be issued, for either EPZ, only under scenarios that are characterized by one or more of the following three conditions:

1. Dose Savings

Sheltering could be recommended when it would be the more effective option in achieving maximum dose reduction. New Hampshire has chosen to base its protective action decisions on the lowest values cited by EPA guidance, that is 1 rem whole body dose and 5 rem thyroid dose. The protective action guidelines contained in EPA 520/1-75-001, Manual of Protective Action Guides for Nuclear Incidents, Revised 1980, have been adopted in the protective action procedures of Appendix F and Appendix U.

2. Consideration of Local Conditions

The protective action recommendation procedure of the NHRERP (Appendix F, Vol. 4 and Appendix U, Vol. 4A) considers impediments to evacuation when evacuation is the result of the detailed evaluation utilized in the decision making process.

3. Transients Without Transportation

When evacuation is the recommended protective action for the beach population, certain transients may be without their own means of transportation. Shelter will be provided for this category of transients to ensure they have recourse to some protection while awaiting transportation assistance.

A major reason for the State's reliance on evacuation is the recognition that, during the summer months, the large transient beach population potentially present constrains the use of the shelter-in-place option as a means of achieving dose savings for that segment of the entire population. Many of the beach transients are day trippers without ready access to a residence for sheltering as envisioned in the shelter-in-place concept. The adoption of early beach closings and the precautionary action of beach evacuations (and their attendant access control to stop the influx of beach goers) is intended by the State to minimize the population that could be subject to possible protective actions at a later time.

The State plans to continue its use of the shelter-in-place concept. It continues to assume that the shelter-in-place concept can be augmented. It can be augmented by the precautionary beach closures, and it can be augmented by retaining the ability to use some public shelters if a need to shelter transients without transportation occurs.

The utility has sponsored a beach area Shelter Study undertaken by Stone and Webster Engineering Corporation. This study was provided to the State as a resource document. In its review, the State found the document to be of some value. It identified a large number of shelters that may serve as a pool from which public shelter choices will be made. Based upon its review of the Shelter Study, the State is confident that unforeseen demand for shelter can be met provided that the limits of usefulness inherent in any shelter (e.g., sheltering factors, weatherization, capacity, etc.) are considered in the decision-making process.

When evacuation is the recommended protective action for the beach population, certain transients may be without their own means of transportation. An estimate of the number of beach transients who may not have their own transportation is 2% of the peak beach population, as set forth in NHRERP, Volume 6, page 2-1 n. The State agrees with the RAC's advice to consider ride sharing as a significant factor in estimating transportation resource requirements, and believes that sufficient ride sharing capacity exists for transients without their own transportation. In addition, bus routes have been planned and bus resources identified to provide transportation for persons in the beach areas who may lack their own. However, there is a concern that some mechanism be provided for this category of transients to ensure they have some protection while awaiting transportation assistance.

Using the 2% estimate and the 1987 peak population figures derived by KLD for the beach areas of concern, the number of transients without transportation might be as high as 480 in Hampton Beach and 150 in Seabrook

Beach. On the basis of the Shelter Study, there is capacity in existing buildings at Hampton Beach and Seabrook Beach to shelter those transportation-dependent transients at the beach until transportation assistance is made available.

We propose to amend the plan to identify potential shelter locations for the transient beach population without transportation. The appropriate E&S message will be modified to provide for instructions to persons on the beach who have no means of transportation to go to public shelters to await assistance in the event evacuation of the beach is recommended.

In its introduction, NUREG 0654 FEMA-REP-1, Rev. 1 criterion J. Protective Response suggests that emergency planning should ensure that:

A range of protective actions have been developed for the plume exposure pathway EPZ for emergency workers and the public. Guidelines for the choice of protective actions during an emergency, consistent with federal guidance, are developed and in place . . .

As previously explained, the State has developed both evacuation and sheltering options for protecting the public. Either of these options may be coupled with access control. The NHRERP states that either of these protective actions ". . . will be implemented on a municipality-by-municipality basis." (NHRERP Vol 1.p. 2.6-11) Furthermore, the range of protective actions available to the State is expanded by three special considerations. One is specific consideration given to special facilities:

For institutionalized populations (including those in hospitals, nursing homes and jails), a more detailed evaluation of protective action recommendations is undertaken based upon facility-specific sheltering protection factors. Sheltering in place will normally be the preferred

protective action for institutional facilities, the nature of which require that the implementation of protective actions, particularly evacuation, be considered very carefully with respect to associated risks and derived benefits. The actual dose criteria (PAGs) utilized in choosing between sheltering and evacuation will be the same for the general population and institutionalized individuals. (NHRERP Vol. 1, p. 2.6-7)

A second special consideration is the potential precautionary action of closing or early evacuation of beaches before protective actions are necessary. A third special consideration is the State's ability to undertake additional protective responses, including using public shelters for the transient population without transportation. Together, these various options provide New Hampshire with a broad range of protective actions from which to choose.

The State also believes that its basis for selecting protective actions is sound. The basis is described in NHRERP Rev. 2 Vol. 1 Section 2.6.7 Criteria for Selecting Protective Actions for Direct Exposure Within the Plume Exposure EPZ (p. 2.6-24). Since FEMA has found these criteria to fall short of being clear, however, the State has attempted some draft clarifications to key elements of the protective action decision criteria. The draft revisions are attached. (See: Attachment 2). Should FEMA find these draft improvements remove its doubts about the process for selecting protective actions, the State is prepared to adopt them as plan changes.

In using the procedure as modified, decision makers are directed to Figure 1A of the procedure to consider factors related to the actual or potential radiological release. These variables are derived from the guidance of EPA 520/1-78-0018. Considered specifically are: the time to release, time of plume arrival at a specified location, time of exposure at the reference location, projected dose, EPA PAGs, evacuation times, and shelter dose

reduction factors. At the General Emergency classification, the evaluation is first performed for the area of most immediate concern, that is within about two (2) miles of the plant. After the radiological consequences are evaluated, a recommendation will be reached.

It is at this point that the local conditions that may affect the recommendation are considered. These conditions are described in Attachment C to Appendix F, Vol. 4, NHRERP, and includes local meteorological conditions, conditions of the local road network, and any natural or manmade impediments to evacuation.

Once the evaluation process is completed, a recommendation to the public will be made by decision makers. It must be noted that the procedures will caution decision makers that if precautionary closure or evacuation of the beaches has been recommended, then such measures must continue to be the recommended protective action.

1 MS. WEISS: I think it's probably not even  
2 objectionable.

3 All right, let's move to the letter which has been  
4 referred to as the Christenbury letter. I'd like to mark it  
5 Mass. AG, I think it's 48?

6 JUDGE SMITH: Wait a minute. That's been in again,  
7 too, isn't it?

8 MS. WEISS: Well, I thought that the first and the  
9 last pages.

10 JUDGE SMITH: No, it --

11 MS. WEISS: Is that --

12 MR. DIGNAN: No.

13 MR. TURK: No.

14 MS. WEISS: Was the whole thing offered?

15 MR. TURK: It's in twice already as part of --

16 MS. WEISS: All right.

17 MR. TURK: -- 5 and 6.

18 MS. WEISS: Do you have the number?

19 MR. TURK: Staff 5 and 6. It was attached to the  
20 Bores memos of --

21 MS. WEISS: Fine.

22 MR. TURK: -- February and June.

23 MS. WEISS: Let's just -- we won't remark it.

24 BY MS. WEISS:

25 Q It's a letter from Mr. Christenbury, chief hearing

1 counsel of the NRC, to your acting general counsel at the time,  
2 Spence Perry, dated June 18, 1986.

3 And am I correct that that is an official  
4 communication between NRC Office of General Counsel and FEMA  
5 general counsel?

6 A (McLoughlin) Yes.

7 A (Peterson) That's my understanding.

8 Q And is it the only such official communication on the  
9 subject of interpretation of emergency planning, legal  
10 interpretation that you've received --

11 MR. FLYNN: Excuse me.

12 MR. DIGNAN: Before we go rolling down this path, Ms.  
13 Weiss, I'm sure it's inadvertent on your part, but you put the  
14 question as being between general counsels.

15 Now at the time this letter was written by Mr.  
16 Christenbury, the NRC was divided into the Office of Executive  
17 Legal Director and the Office of General Counsel. Mr.  
18 Christenbury is out of ELD.

19 Now if anything turns on that, let's get that clear.

20 MR. TURK: And also note that he was not the  
21 executive legal director. He was chief hearing counsel at the  
22 time.

23 MR. FLYNN: I have an entirely different problem.  
24 There was some background noise and I did not hear the  
25 question.



1 MS. WEISS: Oh.

2 MR. [REDACTED] should have objected. I thought the  
3 question was, was it from the Office of General Counsel.

4 MS. WEISS: Can I withdraw the question? I can't  
5 bear another objection.

6 (Laughter.)

7 MR. TURK: Can we just strike the question and answer  
8 and start it again?

9 JUDGE SMITH: Yes, she said she would do it.

10 MS. WEISS: I'm trying to.

11 BY MS. WEISS:

12 Q Did you consider that an authoritative interpretation  
13 when you received it with regard to the legal requirements of  
14 emergency planning rules?

15 A (McLoughlin) You'll notice on the bottom of the  
16 first page there is a quote that talks about the limitations.  
17 Given those limitations that are noted down there, then I would  
18 say that my interpretation was that it was an authoritative  
19 comment; certainly something that we would expect to take  
20 action on.

21 Q And in fact --

22 MR. DIGNAN: Ms. Weiss, I've got another problem with  
23 the context.

24 As I understand, all that's before them is the letter  
25 to Perry. And my understanding is that Perry -- this was

1 covered by another letter in which Perry as general counsel of  
2 FEMA specifically concurred in the document.

3 MS. WEISS: Yes.

4 MR. DIGNAN: Isn't that correct?

5 MS. WEISS: Yes.

6 MR. DIGNAN: Well, shouldn't the witnesses be  
7 reminded of that if they're being asked --

8 MS. WEISS: Well, that was the next -- the next  
9 question --

10 MR. DIGNAN: -- whether it was an official  
11 interpretation since their own general counsel concurred in it?

12 BY MS. WEISS:

13 Q The next question was, was it a cooperative effort  
14 between your general counsel and the NRC legal staff?

15 A (McLoughlin) Was this document a cooperative effort?

16 Q Part of a cooperative process, let's put it that way.

17 A (McLoughlin) I can't -- I don't have any idea at all  
18 whether or not Spence Perry was involved in the production of  
19 this, or even in discussions with respect to the Christenbury  
20 on that issue.

21 What I can say is that I do recall a memorandum that  
22 Spence Perry agreed with the issues in the Christenbury memo.

23 Q Okay, fine. And I believe you testified, Mr.  
24 McLoughlin, that this was one of the high points in your  
25 reconsideration of the beach population issues. I think you

1 also testified that it impacted you the most.

2 Is that accurate?

3 A (McLoughlin) No, I don't believe so, Ms. Weiss.

4 What I did in the beginning of my testimony on  
5 Wednesday was to cite this document along with a couple of  
6 other points as background information that was information  
7 that was in my head that I went into meetings, particularly the  
8 June 2 meeting, with an understanding of.

9 And the point that I made out of this was that in  
10 addition to the four conclusions that are here, a significant  
11 factor for me is the point that is on Page 2 of this, which is  
12 that the overall objective of emergency response planning as  
13 maximum dose savings.

14 Now I accept the fact that you have to combine a  
15 couple of things in here to get that interpretation, but that's  
16 what it was saying to me.

17 Q Okay. And you've skipped over my next question and  
18 gotten me to precisely the point I wanted to be.

19 You regarded that definition of the objective of  
20 emergency planning as the achievement of maximum dose savings  
21 as an authoritative interpretation, correct?

22 MR. TURK: Well, for clarity, may we point out this  
23 is an Appeal Board decision that's being quoted verbatim?

24 You know, we're straying into legal conclusions here.

25 MS. WEISS: Well, we had a lot of testimony about how

1 this current position was reached through consideration of  
2 legal matters. I'm just trying to clarify how it happened.

3 MR. TURK: If any further interpretation of this  
4 letter is required, I suggest it should be done by legal  
5 counsel.

6 MS. WEISS: All my question is did they accept it as  
7 authoritative, this definition of the -- the basic goal of  
8 emergency planning as the achievement of maximum dose savings.  
9 The witness has already indicated that he considered that an  
10 authoritative interpretation.

11 MR. TURK: Well --

12 MS. WEISS: Is that accurate?

13 MR. TURK: Your Honor, my problem is if she's going  
14 to do it, let's put it in context, because the sentence clearly  
15 says that the Appeal Board had similarly stated --

16 JUDGE SMITH: It doesn't matter what context she puts  
17 it in or you put it in. It's the context that he had it in his  
18 mind when it was one of the things in the back of his mind as  
19 the things involved.

20 Did you make a distinction between Mr. Christenbury  
21 and the Appeal Board? I mean did your -- is the back of your  
22 mind that refined in its memory?

23 THE WITNESS: (McLoughlin) No, it didn't, Your  
24 Honor.

25 JUDGE SMITH: Okay.

1 THE WITNESS: (McLoughlin) In fact, I did state that  
2 that -- that it was the combination of those. I don't think I  
3 stated in my original testimony it was a combination of those.  
4 But when I was questioned afterwards in a private conversation,  
5 I certainly knew that these two statements were separate, and I  
6 had combined them in my mind. Rightly or wrongly, I did.

7 MS. WEISS: I don't believe there is a distinction  
8 either, Mr. McLoughlin, for what it's worth.

9 MR. FLYNN: Excuse me. I think the editorializing by  
10 counsel is inappropriate.

11 BY MS. WEISS:

12 Q All right, let's go to Page 3 of the Christenbury  
13 memo, at the bottom. And it's, of course, discussing in that  
14 context what's known as the three misconceptions memorandum by  
15 Mr. Dignan, the attorney for the Applicant in this case, and  
16 that's the context in which -- against which this sentence  
17 should be read, the last paragraph on the page.

18 "Secondly, his, "meaning Mr. Dignan's, memorandum  
19 states that emergency planning is intended to limit any adverse  
20 health affect to as low a level as reasonably possible 'given  
21 the facilities at hand', possibly implying that additional  
22 facilities would never be required to be built or installed to  
23 satisfy NRC emergency planning regulations."

24 In support of this statement, Mr. Dignan cites the  
25 San Onofre decision, supra.

1           "However, that decision provides only limited support  
2 for this conclusion. There the Commission addressed only the  
3 issue of whether additional hospital construction should be  
4 undertaken and concluded that such extraordinary measures are  
5 not required."

6           Didn't you interpret that to mean that, in order to  
7 achieve maximum dose savings, additional facilities might be  
8 required in certain cases to provide reasonable assurance that  
9 adequate protective measures can be taken to protect the  
10 public?

E150       11           A     (McLoughlin) Ms. Weiss, I never addressed that in my  
T151       12 mind. The only way in which I would have addressed this -- the  
13 logical thing that came to my mind in reading that statement  
14 was something like alert notification systems which were  
15 important to us in the whole warning aspect, and if they're not  
16 there, this would suggest that they would need to be there.

17           I never to be -- in my recollection, I never -- it's  
18 not that I wouldn't have. It's simply that I didn't in my  
19 consciousness in the way in which you described it.

20           Q     Well, that's fair.

21           You testified yesterday, I believe, that at the June  
22 2nd meeting the view of virtually all of your staff was that  
23 all options must be explored for achieving maximum dose  
24 savings, and I believe you mentioned including possibly  
25 building shelters, or improve roads.

1           Wasn't that your testimony?

2           A     (McLoughlin) I certainly indicated that the primary  
3 thrust in my mind in the June 2 meeting was indeed the issue  
4 that shelter option had not been fully explored. That was the  
5 advice was getting from the staff at that point.

6           I mentioned that several other options I knew of were  
7 "being considered". I tried not to define what being  
8 considered was, because that was -- it's not up to us to  
9 propose those. It is up to the State of New Hampshire to  
10 propose those at this point. So I was simply trying to point  
11 out the fact that I was aware of those. I did not say anything  
12 about requiring that as I recall.

13          Q     Well, would it be fair to say that at least as of the  
14 time that you were -- June position was being drafted, you did  
15 not interpret the Christenbury memo as precluding you in a  
16 particular appropriate case from requiring that shelters be  
17 built or other additional facilities?

18          A     (McLoughlin) That's correct. I did not interpret  
19 the Christenbury memo to preclude that.

20          Q     Is that still your view?

21          MR. TURK: Your Honor, I have a problem because we  
22 really are going into legal conclusions. And if you want to --  
23 I mean the Christenbury letter, I am familiar with; I had a  
24 hand in drafting it. Someone from FEMA did as well. If you  
25 want an additional cite, I suggest you look at 0396, Page 14,

1 which says, "The following examples are given to further  
2 clarify the task force guidance on EPZs." And it goes on to  
3 say, "No construction of specially equipped fallout shelters.

4 MS. WEISS: Your Honor, that's redirect, that's  
5 redirect. That's not an objection.

6 MR. TURK: Well, we're getting at interpreting a  
7 legal letter, Your Honor, and you're asking the witnesses to  
8 give --

9 MS. WEISS: This whole case stands --

10 MR. TURK: -- interpretation, and it's not going to  
11 have any authoritative bearing on the legal issues in this  
12 case.

13 MS. WEISS: Oh, I beg to differ. But this whole case  
14 stands on these witnesses' interpretation of what they have  
15 been told by NRC constitute the legal requirements of the  
16 emergency planning rules. And it's important to know whether  
17 that understanding is a correct understanding.

18 MR. DICNAN: Your Honor, my problem is this. Ms.  
19 Weiss got all the legitimate relevance out when the witness  
20 admitted that he did not, or admitted -- admitted is probably  
21 the wrong word -- happily concurred that he did not read  
22 Christenbury as having told him he could not consider  
23 constructing shelters period.

24 That probably was legitimate for the purpose of  
25 how -- what was influencing them as they made their decisions.



1 But now as I see it, we're down and asking him to interpret,  
2 well, just what does this mean in nuances: Could you have  
3 required shelters at Seabrook. Now the problem --

4 MS. WEISS: The only question is --

5 MR. DIGNAN: Excuse me. The problem is this. If we  
6 really want to have this out, I've never -- I've never bought  
7 that paragraph in Christenbury's letter, and he was writing it  
8 about my letter. And I'm looking forward to the day when I  
9 argue I argue it before an Appeal Board with a NRC lawyer,  
10 because I'm going to win it. I think that case does preclude  
11 it.

12 But whether it does or not, as Mr. Turk said, there's  
13 a planning document over there that says you don't have to  
14 build shelters. And why we are asking, as the Board pointed  
15 out many times, non-lawyer witnesses for their views of what a  
16 Christenbury response to my legal memorandum meant, which is  
17 something that if it be an issue, you're going to determine in  
18 the first instance as a matter of law, is beyond me.

19 MR. FLYNN: I'd like to be heard on this too, Your  
20 Honor.

21 JUDGE SMITH: All right.

22 MS. WEISS: May we just remind the Board that the  
23 only question pending now is whether their view is the same or  
24 has it changed.

25 MR. FLYNN: And that's what I want to address.

1           We've passed over a threshold into the evolution of  
2 FEMA's position and we are now getting into a debate on the  
3 correctness of FEMA's position. And I submit that that is the  
4 ultimate question for the Board to decide, and it is  
5 inappropriate as in the nature of legal argumentation to be  
6 putting these witnesses through the paces about what FEMA's  
7 policy is or ought to be.

8           JUDGE SMITH: I think we should limit these  
9 questions, the last question should have been limited and this  
10 question should be limited, and similar questions in the future  
11 should be limited not to what his mental interpretation was,  
12 but in addition to that, what action he took as a consequence  
13 or will take in the future as a consequence, because we do not  
14 want either to bootstrap Mr. Christenbury's legal opinion  
15 through his interpretation, yesterday or today, into our  
16 record.

17           So I think that will be a limitation that the Board  
18 will impose.

19           MS. WEISS: Okay. With all due respect, I'd just  
20 like to press the last question which is whether their view has  
21 changed. I mean, you can sustain the objections, but I'd like  
22 to press that question.

23           JUDGE SMITH: Sustained.

24           BY MS. WEISS:

25           Q    Okay, gentlemen. And would it be accurate that the

1 only legal opinion which you have had since the Christenbury  
2 memo on the issues we've been discussing is the paper which you  
3 received from Mr. Turk in February of 1988?

4 MR. FLYNN: We've been discussing a lot of issues.  
5 That's a very broad question. I'd like you to be more  
6 specific.

7 MR. DIGNAN: Ms. Weiss, could I suggest that you  
8 confine that to legal advice from NRC lawyers?

9 MS. WEISS: Yes, yes.

10 MR. DIGNAN: And it might not --

11 MS. WEISS: Yes, yes, with that limitation.

12 JUDGE SMITH: You heard Mr. Flynn's complaint, too,  
13 didn't you?

14 What issue are you talking about?

15 MS. WEISS: The issues related to --

16 MR. FLYNN: The so-called three misconceptions memo?

17 MS. WEISS: -- the use of sheltering as an option.

18 THE WITNESS: (McLoughlin) Ms. Weiss, I have  
19 participated in meetings in which there have been NRC lawyers  
20 and have listed to the NRC discussions.

21 To be honest about it, I would not move on any of  
22 that discussion until I had checked with our legal staff with  
23 respect to whether or not we had ought to be doing anything  
24 with that.

25 So anything -- I have always tried to be sure that

1 anything that I use gets funneled through our own agency's  
2 legal staff before taking any action on my part at all.

3 BY MS. WEISS:

4 Q Okay. Well, this question is really just a narrow  
5 one. As a factual matter, have you received any written legal  
6 advice from the NRC with respect to the interpretation of the  
7 emergency planning rules in regard to sheltering since the  
8 Christenbury memo other than the one which you received from  
9 Mr. Turk in February of 1988?

10 MR. TURK: In October.

11 THE WITNESS: (McLoughlin) I don't want to be  
12 evasive, but I want to be accurate with you.

13 Normally we would not get that. Those kinds of  
14 correspondence would go to our general counsel's office.

15 Now, maybe I ought to let you ask a follow-on  
16 question after I've said that. I think I might know what the  
17 next question would be, but let me let you ask it.

18 BY MS. WEISS:

19 Q Well, you're aware -- has any such document come to  
20 your attention?

21 A (McLoughlin) That's what I figured you were going to  
22 ask me.

23 Q Well?

24 A (McLoughlin) And the -- I'm -- let's see.

25 Well, I can't think of any. Right here I can't think

1 of any.

2 Q And we discussed the status of that letter yesterday  
3 so I won't go into it again.

4 MS. WEISS: For the Board's ease in following this  
5 thing, I've decided to reserve 3 and 4 until the panel arrives  
6 on the FEMA testimony, and go on to No. 5 on my cross-  
7 examination plan.

8 BY MS. WEISS:

9 Q Gentlemen, you testified, and in particular, Mr.  
10 McLoughlin yesterday, that an analysis which Mr. Keller of  
11 Idaho National Engineering Laboratories did for FEMA in the  
12 October 1987 framework.

13 Do you recall that testimony?

14 A (McLoughlin) That's correct.

15 Q And I believe you said that that was the technical  
16 analysis that had substantial inputs on your decision to  
17 withdraw the previous FEMA testimony and replace it with the  
18 new FEMA testimony; is that accurate?

19 A (McLoughlin) That's accurate only in this  
20 correction. I did not make the decision on the January 25th  
21 one. Mr. Peterson did because he was in place at that time.  
22 But it certainly impacted me in the counsel I was giving him,  
23 yes.

24 Q And I believe you testified that it demonstrated that  
25 evacuation achieved significant dose savings for fast-breaking

1 accidents; was that correct?

2 A (McLoughlin) That's correct. That was one of the  
3 conclusions that I understood came out of that discussion. The  
4 work that he did plus the discussion -- the NUREG-1210.

5 Q Well, I thought that the NUREG-1210 discussion was  
6 later on in the January, February, March time frame.

7 A (McLoughlin) Between -- no, the testimony that I  
8 gave was that in September, because of the troubling influences  
9 that were occurring to me in my mind, that our technical staff  
10 asked Dr. Keller to run the technical analysis.

11 He then came to FEMA in the October time frame and  
12 sat down with our technical staff, and in the course of that  
13 discussion two things, as I understand it, were included in  
14 that discussion. One was the Keller study, and the other was  
15 NUREG-1210 and its implications.

16 Q Can you describe to me as precisely as you can what  
17 the Keller study of October consisted of?

18 A (Peterson) What does she mean by that?

19 A (McLoughlin) She's asking me, as I understand,  
20 specifically about the Keller study.

21 And I testified that the results of that discussion  
22 came to me through our technical staff. And the reason I did  
23 that is because I did not go back to the original documents for  
24 checking on this.

25 Now, subsequent to those meetings in October, and I

1 clearly acknowledge it was subsequent, I have looked at a few  
2 things in 1210, but that's -- that's a different issue.

3 At that time I did not look at the Keller document  
4 itself or 1210 itself. I dealt -- the discussion dealt with  
5 the results of their discussions on that.

6 Q Have you read the deposition that Mr. Keller gave in  
7 this proceeding or any parts thereof?

8 A (McLoughlin) Yes, I have.

9 Q Isn't it true that in the October time frame that the  
10 analysis done by Mr. Keller was a generic analysis of the  
11 probability of a fast-breaking accident which he defined as an  
12 accident where PAGs would be exceeded within 30 minutes of  
13 accident initiation?

14 MR. FLYNN: May the witness refer to the Keller  
15 depositions if he's being asking to remember what is in them?

16 JUDGE SMITH: If he has to. I mean, you know, if he  
17 needs it.

18 As a matter of fact, if you don't remember it, that's  
19 fine. Then answer it that way.

20 THE WITNESS: (McLoughlin) I don't remember the  
21 specific title of it, and I do know that, and the reason I  
22 included the discussion, both the Keller study and 1210, is  
23 because I am aware of the fact that the Keller study that we  
24 asked him to do needs to be combined with that other study for  
25 the full set of conclusions. That's the point that is in my

1 mind about the combination of those two. That's why I have  
2 been very careful both times to combine those two, and not to  
3 rely on either one of them separately.

4 JUDGE SMITH: Combining what two?

5 THE WITNESS: (McLoughlin) Combining the work that  
6 we asked Dr. Keller to do --

7 JUDGE SMITH: Yes.

8 THE WITNESS: (McLoughlin) -- and NUREG-1210.

9 JUDGE SMITH: 1210.

10 THE WITNESS: (McLoughlin) Yes.

11 BY MS. WEISS:

12 Q Mr. Krimm, have I correctly described the analysis  
13 that Mr. Keller did in October?

14 A (Krimm) I did not read the Keller deposition. And I  
15 can only tell you --

16 Q Were you in on the discussions in October?

17 A (Krimm) I was --

18 MR. FLYNN: I object to this line of questioning. I  
19 suggest that it is irrelevant for the reason that the  
20 probabilistic analysis that Mr. Keller did not find its way  
21 into the testimony.

22 MS. WEISS: These witnesses testified that that was  
23 an important influence on them in changing the FEMA position.  
24 And I think I am fully entitled to explore it.

25 JUDGE SMITH: They say it was an influence. However,



1 Mr. Keller's deposition of April 1988 is not what they --

2 MS. WEISS: No, I'm asking them --

3 JUDGE SMITH: -- what influenced them.

4 MS. WEISS: No, I'm not asking this witness with  
5 regard to the deposition. I'm asking him doesn't he know that  
6 to be true.

7 JUDGE SMITH: All right. Just independently.

8 MS. WEISS: That's right.

9 THE WITNESS: (Krimm) What are you asking to be  
10 true?

11 BY MS. WEISS:

12 Q Don't you know it to be true that the analysis that  
13 Mr. Keller did in the October time frame was a generic analysis  
14 of the probability of a fast-breaking accident at which he  
15 defined as an accident where PAGs, P-A-G-S, would be exceeded  
16 in 30 minutes of accident initiation?

17 A (Krimm) I don't know. I was not in on the  
18 discussions. I was briefed by my staff.

19 Q Is that what your staff told you?

20 A (Krimm) I can tell you what they told me. And  
21 basically -- which was the result of the Keller study -- that  
22 evacuation provides significant dose savings; that in a core  
23 melt, evacuation is the best; that the major dose in an  
24 accident, a major dose contributor in an accident that would be  
25 harmful to people is really from the ground, ground shine; and

1 that if you sheltered people, when they leave those shelters  
2 they would be exposed and probably get a greater dose from the  
3 ground shine.

4 And the other point that came up in the way accidents  
5 happen, it's very difficult and it's very -- there is somewhat  
6 an unreliability of what may occur. And, therefore, rather  
7 than sheltering people and maybe exposing them to a greater  
8 harm, you're better to evacuate because -- if I can explain  
9 this properly -- you might think only a certain type of  
10 accident is going to occur, and it could end up being worse,  
11 and you'd have a greater release than what was anticipated, and  
12 therefore you're better off to evacuate rather than put people  
13 in shelter.

14 Q And it's your testimony under oath today that that's  
15 what you were told about the October Keller analysis?

16 A (Krimm) I believe that's the way it was explained to  
17 me.

18 Q Did your staff ever discuss with you what the  
19 analysis was that led Mr. Keller to those conclusions?

20 A (Krimm) I do not recall that they did. They may  
21 have, but I was more interested in the results, or it was  
22 brought to my attention actually, rather than going into a lot  
23 of the technical details, what came out of the study, what some  
24 of the conclusions were.

25 Q And if the evidence in this case were to show that

1 what Keller did in October was a generic analysis of the  
2 probability of fast-breaking accidents, that would come as a  
3 surprise to you sitting there today?

4 A (Krimm) Not necessarily?

5 Q No. You mean you may have heard that?

6 A (Krimm) I may have. I just don't recall. I can  
7 only --

8 Q You don't recall.

9 A (Krimm) -- remember what -- you know, what impressed  
10 me at the time, and that was --

11 Q The conclusions.

12 A (Krimm) -- the conclusions, yes.

13 Q That may have been how it was described to you, as an  
14 analysis of accident probabilities generically.

15 A (Krimm) It may have been.

16 Q It may have been.

17 A (Krimm) I don't --

18 JUDGE SMITH: It may have been -- his answer was --  
19 it may have been. I don't --

20 THE WITNESS: (Krimm) I don't recall really. I just  
21 remember the conclusions, because they had the bigger effect on  
22 me.

23 BY MS. WEISS:

24 Q And was it put together with some work done by a Mr.  
25 Baldwin of Argonne Laboratories?

1           A       (Krimm) Well, as I recall, Dr. Baldwin provided  
2 some contribution to Mr. -- to Mr. Keller.

3           Q       And is what Mr. Baldwin did a piece of work that  
4 calculated the number of people who would be left on the beach  
5 defined as two feet on the sand at various intervals after the  
6 initiation of the beach closing order? Does that strike a  
7 bell?

8           A       (Krimm) It does not.

9           Q       Would you be surprised if that was what it was?

10          A       (Krimm) I don't know. I mean, I just did not -- I  
11 do not recall getting into a lot of technical discussions.

12          Q       You just were interested --

13          A       (Krimm) You have to understand, Ms. Weiss, I manage  
14 five programs. At that time there was a lot going on in my  
15 office, and I was working on a lot of problems --

16                JUDGE SMITH: You don't have to explain.

17                THE WITNESS: (Krimm) -- with other nuclear power  
18 plants.

19                JUDGE SMITH: You don't have to explain.

20                THE WITNESS: (Krimm) Okay.

21                MS. WEISS: No further questions.

22                JUDGE SMITH: Mr. Brock.

23                MR. BROCK: Thank you, Your Honor.

24                                CROSS-EXAMINATION

25                                BY MR. BROCK:

1 Q Gentleman, I'm Matt Brock for the Town of Hampton,  
2 and I will try to be brief.

3 Mr. Krimm, is it accurate that you're familiar  
4 generally with the emergency exercise process by which FEMA  
5 evaluates emergency plans?

6 A (Krimm) Yes.

7 Q And it is correct that the emergency exercise is a  
8 primary means by which FEMA evaluates whether or not plans are  
9 adequate?

10 A (Krimm) It's the primary process whereby FEMA  
11 evaluates whether a plan can be implemented.

12 Q Okay, and that's important in making an overall  
13 determination of whether or not the plan is adequate.

14 A (Krimm) That's correct.

15 MR. FLYNN: I object to the relevance of this line.  
16 We're not litigating the exercise; we're litigating the plan.

17 MR. BROCK: Thank you, Mr. Flynn.

18 If I could just have that as -- I'm just trying to  
19 lay a foundation, Your Honor, for a few question.

20 JUDGE SMITH: All right. Go ahead.

21 BY MR. BROCK:

22 Q Now as far as scheduling emergency exercises, am I  
23 correct that generally that scheduling -- strike that.

24 That the scheduling of emergency exercises is done  
25 through the regional office rather than headquarters.

1           A       (Krimm) Where state and local plans are involved,  
2 that's correct.

3           Q       All right. So the practice would be that the  
4 regional office evaluates when it's appropriate to conduct the  
5 exercise, makes that decision on its own, and headquarters --

6           A       (Krimm) Well, let me correct.

7                    It makes the decision in conjunction with the Nuclear  
8 Regulatory Commission, with the utility and with the state and  
9 local governments.

10          Q       And also with the RAC input.

11          A       (Krimm) Yes.

12          Q       But not with FEMA headquarters.

13          A       (Krimm) Well, they do advise FEMA headquarters from  
14 the standpoint that we very often have to supply resources to  
15 these exercises.

16          Q       I see. So the regional office may contact you and  
17 say we've set up a date and we need certain resources in order  
18 to proceed.

19                    Is that a fair summary?

20          A       (Krimm) For state and local exercises, that's  
21 primarily true.

22          Q       All right. Now with reference to the emergency  
23 exercise for Seabrook that was conducted in February of 1986,  
24 isn't it correct that headquarters did get involved in the  
25 scheduling of that exercise?

1 MR. FLYNN: Are we still laying the foundation here?

2 MR. BROCK: No.

3 MR. FLYNN: Then I object to the relevance of this.

4 JUDGE SMITH: I don't understand the relevance.

5 MR. BROCK: Your Honor, I believe that the issue here  
6 is the process by which FEMA has reached its conclusion. I  
7 believe -- that this process by which the exercise was carried  
8 out and the influences brought to bear in making that  
9 determination, we believe has relevance to how subsequently the  
10 FEMA position ultimately may have been altered. And  
11 specifically, that there were contacts from the state, from the  
12 White House and other influences being brought to bear to push  
13 Seabrook along.

14 And I'm trying to establish that that indeed was the  
15 case with respect to the exercise, and it will be our argument  
16 that that carried forth into an ultimate change of the FEMA  
17 position.

18 MR. FLYNN: Well, even if we accept for the sake of  
19 discussion that the '86 exercise was scheduled when it was as a  
20 result of political pressure, I don't see that that has  
21 anything to do with the appropriateness of the process of  
22 arriving at the conclusion in this litigation.

23 JUDGE SMITH: I don't see the logical link timewise.

24 MR. BROCK: Well, Your Honor, I guess, first of all,  
25 to establish that these contacts, or these influences were

1 being brought to bear on FEMA from at least early 1986, and to  
2 establish that as a pattern which ultimately led to the --

3 JUDGE SMITH: Well, you just don't have -- no. It's  
4 just arbitrary. You're going to have to start you off at some  
5 other time place. It's time, time; not subject matter, time.

6 MR. BROCK: Well, do I understand the Board's ruling  
7 that I cannot inquire into what influences were brought to bear  
8 in terms of how the exercise was scheduled?

9 JUDGE SMITH: Not if your sole purpose is to  
10 establish pattern.

11 MR. BROCK: Establish a pattern and particular  
12 influences; specifically, the Governor's office of New  
13 Hampshire and the White House that were lobbying FEMA to  
14 proceed in a manner which was perhaps contrary to FEMA and RAC  
15 view on the issue.

16 JUDGE SMITH: What you're suggesting is that the  
17 message they took, if any, from the scheduling the exercise  
18 early carried over, had a momentum and carried over into their  
19 evolution of their position.

20 MR. BROCK: That's correct, Your Honor. Not only for  
21 the exercise, but subsequently when deficiencies were  
22 identified, that those same influences were again brought to  
23 bear --

24 JUDGE SMITH: New ones? Different ones?

25 MR. BROCK: I'm sorry, I don't understand the



1 question.

2 JUDGE SMITH: The different influences? Additional  
3 influences --

4 MR. BROCK: No, that the Governor's Office of New  
5 Hampshire continued both before the exercise to push it, to  
6 have it conducted. Subsequently, when a record number of  
7 deficiencies were identified, that the Governor's office called  
8 to complain about that.

9 We've already had testimony, I believe from Mr.  
10 McLoughlin yesterday, that within days of FEMA filing a  
11 position on June 4, '87, again Governor Sununu personally  
12 called to complain about the FEMA position. And we believe a  
13 pattern is being established.

14 JUDGE SMITH: All right. Well, go directly to it.  
15 Ask them if contacts from the Governor, or whomever, prior to  
16 say June, ask him about it. Go directly to it, but don't take  
17 so long to do it, and don't lay so much of a foundation. Go  
18 directly to it.

19 MR. BROCK: All right.

20 BY MR. BROCK:

21 Q Mr. Krimm, is it correct that Governor Sununu  
22 contacted FEMA headquarters and was adamant that the emergency  
23 exercise go forward as scheduled in February of '86?

24 MR. FLYNN: Objection, I -- Your Honor, this goes  
25 directly counter to the instructions you just gave counsel.

1 MR. BROCK: I believe it goes directly to the  
2 influence, Your Honor. That's what I'm trying to establish.

3 JUDGE SMITH: My main concern is --

4 MR. DIGNAN: Your Honor, can I --

5 JUDGE SMITH: -- time here. We understand what he's  
6 doing, and he can either do it or not, but it's the time that  
7 it's taking.

8 MR. DIGNAN: Your Honor, I'm going to argue for him.  
9 It's his time he's using up as far as I'm concerned. Let him  
10 use it. He's made his speech for the press. Let these men  
11 answer it under oath, and let's put it away.

12 MR. FLYNN: Fine. I'll withdraw the objection.

13 MR. DIGNAN: And he let him use his time to go  
14 through the foolishness.

15 JUDGE SMITH: Mr. Dignan, withhold your comments.

16 Proceed, Mr. Brock, but just go directly to the heart  
17 of what you're trying to get to.

18 MR. BROCK: I believe the question I just asked Mr.  
19 Krimm, I'd like an answer to that question.

20 THE WITNESS: (Krimm) Would you restate the question  
21 for me?

22 MR. BROCK: Yes.

23 BY MR. BROCK:

24 Q To your knowledge, did Governor Sununu call FEMA  
25 headquarters and was he adamant that the emergency exercise

1 scheduled for February '86 go forward as scheduled?

2 A (Krimm) I heard that he had called FEMA  
3 headquarters. I do not have direct knowledge of it.

4 Q Okay, but that was your understanding; is that  
5 correct?

6 A (Krimm) It's hearsay.

7 Q I'm not asking whether it's hearsay. That was your  
8 understanding that that occurred; is that correct?

9 MR. TURK: That the Governor called.

10 THE WITNESS: (Krimm) I heard that the Governor  
11 called, yes.

12 BY MR. BROCK:

13 Q And that he wanted the exercise to go forward as  
14 scheduled?

15 A (Krimm) Yes.

16 Q Okay. And you communicated that to Mr. Thomas, did  
17 you not?

18 A (Krimm) I'm not sure that I communicated that  
19 particular thing to Mr. Thomas.

20 Q You don't know whether you did or not?

21 A (Krimm) That one, no.

22 Q You could have, but you're not sure.

23 A (Krimm) Right.

24 Q Okay. Is it fair to say that on or about the same  
25 time that Governor Sununu called and said that the exercise

1 should go forward as scheduled, that a call came from the White  
2 House to FEMA headquarters with again the same suggestion that  
3 the exercise go forward as schedule?

4 A (Krimm) Okay, I think that it -- there was an  
5 inquiry as to why -- and I did not receive the call. I should  
6 make that very clear. It was told to me that there was an  
7 inquiry as to why the exercise couldn't go forward.

8 Q Okay. And it came from the White House?

9 A (Krimm) Someone -- that was my understanding, yes.

10 Q Okay. And did you communicate that to Mr. Thomas?

11 A (Krimm) Yes, I did.

12 Q Is it fair to say that at the time the issue was  
13 pending about whether or not to proceed with the exercise that  
14 FEMA in the region at least, Mr. Thomas's region, and the RAC  
15 had concerns about whether the plans were sufficiently  
16 developed to hold an exercise, and whether the budget would  
17 support an exercise at that time? Those were concerns  
18 expressed?

19 A (Krimm) Yes.

20 Q And as a result of the communications from Governor  
21 Sununu's office an the White House to which you referred, is it  
22 fair to say you contacted Mr. Thomas and told him to proceed  
23 with the exercise as scheduled in February of '86?

24 A (Krimm) I told him that we would like to proceed  
25 with the exercise. I explained that the State of New Hampshire

1 seems to want to do it, and we might as well go ahead with it.

2 Q Okay. And you also told him that additional money  
3 would be made available for any budgetary problems along that  
4 line; isn't that correct?

5 A (Krimm) I believe I did, yes.

6 Q The exercise was conducted as requested?

7 A (Krimm) Yes.

8 Q Okay. And following that --

9 JUDGE SMITH: You're spending so much time on this  
10 exercise. I think you ought to take Mr. Dignan's comment.  
11 It's your call. It's your call.

12 MR. BROCK: Thank you, Your Honor.

13 JUDGE SMITH: We're going to cut you off pretty soon,  
14 and just move; move, man.

15 MR. BROCK: Doing the best I can, Your Honor.

16 BY MR. BROCK:

17 Q Following the exercise FEMA identified over 50  
18 deficiencies; isn't that correct?

19 A (Krimm) That's correct.

20 Q And isn't that correct that was a record number for  
21 FEMA, in FEMA's experience?

22 A (Krimm) Mr. Brock, I can't honestly say that it was  
23 a record number. I will say this, it's a high number.

24 Q And is it fair to say that following FEMA identifying  
25 those deficiencies that Governor Sununu again personally called

1 FEMA headquarters to complain about the deficiencies, to your  
2 knowledge?

3 A (Krimm) Not to my knowledge, no.

4 Q Are you aware of Governor Sununu calling the  
5 headquarters to complain about Mr. Thomas personally?

6 A (Krimm) Yes.

7 JUDGE SMITH: When, when?

8 MR. BROCK: Following the exercise, and after the  
9 deficiencies had been identified.

10 BY MR. BROCK:

11 Q You are aware of that?

12 A (Krimm) Yes. Not personally; only through hearsay.

13 Q Okay, but it was your understanding that Governor  
14 Sununu had problems with Mr. Thomas specifically?

15 A (Krimm) I had heard this, yes.

16 Q Would you agree that during the course of the spring  
17 from the time of the exercise up into June at least that  
18 Governor Sununu either personally was making phone calls or  
19 attending meetings or members of his immediate staff were  
20 involved in Seabrook in an effort to expedite the process?

21 That was an ongoing and regular event that you were  
22 aware of.

23 A (Krimm) I'm going to answer your question, but I  
24 want to say beforehand that I was never involved in any  
25 meetings with Governor Sununu. I never met him, so I can

1 only -- I'll answer your question yes with a caveat that I only  
2 heard this. I did not personally -- I was not personally  
3 involved.

4 Q Again, but that was your understanding.

5 A (Krimm) That's right.

6 Q Following the FEMA filing of its position for the  
7 first time June 4 of '87, I believe, Mr. McLoughlin, you  
8 testified yesterday Governor Sununu called FEMA headquarters to  
9 express concern about that position; isn't that correct?

10 A (McLoughlin) On June 5th, yes.

11 Q On June 5th, the day after.

12 A (McLoughlin) That's correct.

13 Q And subsequent to that, as I understand it, a letter  
14 was sent to explain to the Governor -- articulate more the  
15 basis for FEMA's position; is that correct?

16 A (McLoughlin) Mr. Brock, it did that. It also  
17 included a request for a clarification and/or information in  
18 there, but it certainly did what you said.

19 Q Okay. What additional communications did you receive  
20 from the Governor's office from the June 5th phone call that  
21 you've described up until March 14 of '88?

22 A (McLoughlin) Absolutely none.

23 Q Is the panel --

24 A (McLoughlin) You're talking about the Governor's  
25 office specifically and to me.

1 Q I'm talking about the Governor, or the Governor's  
2 staff to FEMA headquarters, to your knowledge.

3 A (McLoughlin) To my knowledge, in the interval after  
4 June 5th, I know of no conversation and not contact to FEMA  
5 headquarters from Governor Sununu or his immediate staff.

6 All the -- basically all the communication was  
7 through Mr. Strome and through our regional office, and the  
8 contacts between our regional office and Mr. Strome.

9 Q Were you aware that Mr. Strome had particular  
10 problems with Mr. Ed Thomas personally?

11 A (McLoughlin) Had problems?

12 MR. FLYNN: Object to relevance.

13 THE WITNESS: (McLoughlin) You know, the --

14 MR. FLYNN: Mr. McLoughlin, there's an objection  
15 pending.

16 THE WITNESS: (McLoughlin) Okay.

17 JUDGE SMITH: Oh, there is?

18 MR. FLYNN: Yes, I said object to the relevance.

19 JUDGE SMITH: Well, I --

20 MR. BROCK: Well, Your Honor.

21 JUDGE SMITH: Professional problems, or you say  
22 personal problems. Are you talking about professional  
23 problems?

24 MR. BROCK: Well, that's correct, Your Honor, with  
25 Mr. Thomas's role in the evaluation of Seabrook.



1 JUDGE SMITH: All right, the problem is with Mr.  
2 Thomas himself professionally.

3 MR. BROCK: That's correct, Your Honor.

4 MR. FLYNN: But that wasn't the question.

5 MR. BROCK: All right.

6 BY MR. BROCK:

7 Q As corrected, can you answer that question?

8 A (McLoughlin) Please restate it, Mr. Brock. I don't  
9 want to take your time, but please do.

10 Q That's fine.

11 Were you aware that Mr. Strome and his office at the  
12 time that we're speaking of, which is following FEMA's filing  
13 of its position, had problems with Mr. Thomas as to Mr.  
14 Thomas's position with respect to the Seabrook plans?

15 A (McLoughlin) No, I -- first of all, I never talked  
16 to Mr. Strome about that at all.

17 And secondly, whether or not I was aware of any  
18 issue, I was aware that the State of New Hampshire, and  
19 probably in the person of Mr. Strome since he was the principal  
20 person we're dealing with, was differing with FEMA on some of  
21 the positions it was being taken.

22 Now I consider that not at all unreasonable. We have  
23 that kind of difference in many instances with states. So I  
24 didn't attach anything -- what I don't want to do is attach  
25 anything to that that I think was unusual.

1 Q Did you attach a name or person to it in the form of  
2 Ed Thomas?

3 A (McLoughlin) The answer --

4 Q Did you -- what I want to know is if Mr. Strome or  
5 his office had a particular problem with Ed Thomas as  
6 distinguished from FEMA about the position with respect to New  
7 Hampshire emergency plans, to your knowledge.

8 If you don't know, so state.

9 A (McLoughlin) Yes. I -- I cannot attest to anything  
10 in the way in which you describe it, no.

11 Q Is anyone else on the panel aware of any  
12 communications from the Governor's office following the June  
13 5th phone call to which Mr. McLoughlin has testified?

14 A (Krimm) Yes, I am.

15 Q Okay. Can you elaborate, please?

16 A (Krimm) Yes. There were two telephone calls. One  
17 occurred, to the best of my knowledge, Mr. Brock, it was after  
18 the June 11th letter. Mr. McLoughlin was out of town, and  
19 somehow or other the telephone call from Governor Sununu came  
20 to me. And he just wanted to assure that we would provide  
21 technical assistance as we stated in our letter, you know, to  
22 the State of New Hampshire, and provide any guidance or  
23 assistance.

24 And I said that, you know, we would do it, and that  
25 Ed Thomas would be in contact with Mr. Strome. And, you know,

1 he said that was fine, and he had to go get an airplane.

2 Q What was the date of that call?

3 A (Krimm) I'm very sorry, I don't -- it was after the  
4 June 11th letter, but I don't remember the date.

5 Q Just with respect to that, though, it was your  
6 testimony the call -- in that call the Governor did not express  
7 any opinion about the FEMA position or Ed Thomas?

8 A (Krimm) No, he was mainly anxious that we would work  
9 with Mr. Strome, and I told him it would be Ed Thomas who would  
10 be working with him in providing technical assistance and  
11 helping them with the plan.

12 Q You understood he wanted to move the process along;  
13 that was clear?

14 A (Krimm) Yes. That's not unusual for --

15 Q I understand.

16 A (Krimm) -- someone to call in that regard.

17 Q Understand.

18 Now, you referred to a second communication? What  
19 was that?

20 A (Krimm) Yes. There was a second communication that  
21 came into General Becton, and General Becton asked me to come  
22 up to his office. And as I recall, again Governor Sununu was  
23 at an airport, and we talked to him just for a few minutes.  
24 And again General Becton assured him that we would provide  
25 technical assistance and help to the state, as we do to all

1 states and local governments.

2 Q Okay. And that was the full summary of the  
3 conversation as you understood?

4 A (Krimm) That was pretty much, to the best of my  
5 recollection, yes.

6 Q Mr. Peterson, do you have anything to add to what's  
7 been testified here with regard to this?

8 A (Peterson) I have nothing to add whatsoever. That's  
9 a broad statement.

10 Are you in reference to calls with Mr. Sununu?  
11 Please clarify your question.

12 Q The question was whether you were aware of any  
13 further communications from the Governor's office or his staff  
14 during the time frame since the --

15 A (Peterson) No.

16 Q -- June 4 filing.

E151 17 A (Peterson) None whatsoever.

T152 18 Q Were there any communications from the White House  
19 during this time frame from June 4 to the filing of the FEMA  
20 testimony on March 4, 1988?

21 A (Peterson) In reference to what?

22 Q In reference to the FEMA position and the beach  
23 population issue we've been discussing for the last two days?

24 A (Peterson) Specifically in reference to the beach  
25 population or the position, no.

1 I had one conversation with -- you have to understand  
2 I deal with all the budget items with OMB, and I'm considering  
3 that you think OMB is the White House; is that correct?

4 Q That's correct.

5 A (Peterson) Okay. Because I meet with OMB on the  
6 determination of a \$600-plus million budget. So you say have I  
7 ever talked to OMB or the White House, I want to make very  
8 clear to you what I've done.

9 In relationship to anything that had to do with  
10 utilities, okay, had one call that it would take a moment for  
11 me to generate if you want me to do that.

12 JUDGE SMITH: Just a moment. Was it covered in your  
13 letter to Senator Glenn?

14 THE WITNESS: (Peterson) Yes.

15 JUDGE SMITH: Or General Becton's letter.

16 THE WITNESS: (Peterson) Yes.

17 JUDGE SMITH: Do you want to --

18 MR. BROCK: No, Your Honor. I know the reference to  
19 which the witness is referring.

20 MR. FLYNN: Just for the clarity of the record, I  
21 would note that OMB stands for Office of Management and Budget.

22 BY MR. BROCK:

23 Q Mr. Krimm, may I ask you, do you recall a  
24 conversation with Ed Thomas where in substance he suggested to  
25 you that FEMA inform NRC that it was FEMA's role to be the lead

1 agency on offsite emergency plans, and that NRC's views  
2 essentially would not bind FEMA, and to which you responded  
3 that, no, every time we take that kind of stand we get calls  
4 from the White House?

5 Do you recall that conversation?

6 A (Krimm) I do not recall that conversation.

7 Q Could that conversation have occurred or not?

8 MR. TURK: Objection. Is this speculation we're  
9 looking for?

10 MR. BROCK: I'm asking whether the witness is saying  
11 he doesn't recall, but it could have happened; or whether he's  
12 sure it did not happen.

13 MR. TURK: He says he doesn't recall. I don't know  
14 how you can probe beyond that. Objection.

15 MR. BROCK: Your Honor, I think it's a reasonable  
16 distinction.

17 JUDGE SMITH: Well, what are you going to try to  
18 refresh his memory?

19 MR. BROCK: I'm simply trying to -- you know, if such  
20 a conversation occurred. But whether or not it occurred, the  
21 follow up would be, is he aware of the kinds of these contacts  
22 from the White House to which I've alluded in my question.

23 JUDGE SMITH: Well, the problem is he says he doesn't  
24 recall. Now where are you going to go on from there?

25 These questions, I don't recall; well, could it have

1 happened; they're not very probative.

2 MR. BROCK: All right.

3 BY MR. BROCK:

4 Q Let me just ask you this, Mr. Krimm.

5 Other than the conversations from the White House  
6 during the time frame we've referred to with reference to the  
7 FEMA position, the beach population issues, were there any  
8 other communications from the White House of which you're aware  
9 on that point?

10 A (Krimm) No.

11 MR. FLYNN: The question is confusing. You said  
12 other than conversations with the White House, were there any  
13 conversations with the White House.

14 MR. BROCK: Other than the ones already referred to,  
15 Mr. Flynn, and the witness has answered the question.

16 I have nothing further, Your Honor.

17 MR. FLYNN: Is the question withdrawn?

18 MR. BROCK: No. The witness answered.

19 MR. FLYNN: I see.

20 JUDGE SMITH: Mr. Turk.

21 What will your needs be, Mr. Dignan?

22 MR. DIGNAN: At the very, very most, five minutes, if  
23 that.

24 MR. TURK: I wouldn't mind a five-minute break  
25 myself.

1 JUDGE SMITH: Okay. It's out of your time.

2 (Whereupon, a recess was taken.)

3 MR. TURK: Your Honor, Mr. Huntington has asked that  
4 he be allowed to ask a few questions before me, and I've  
5 readily agreed to that.

6 JUDGE SMITH: Also, Mr. Huntington, I wanted to state  
7 that in your motion for -- I forget how you styled it, but your  
8 request that privilege, the executive privilege should be  
9 granted to five documents, you've correctly described the  
10 documents. We believe the privilege should be granted because  
11 there is very slight probative value to them, and do not  
12 sufficiently outweigh the privilege. Although some of them are  
13 simple recitations of events, the selection of those to list  
14 tends to be within the area of executive privilege.

15 MR. HUNTINGTON: Thank you, Your Honor.

16 JUDGE SMITH: So I'm returning -- I'm returning them  
17 to you, and we have no copy of them.

18 MR. HUNTINGTON: Okay.

19 JUDGE SMITH: Mr. Huntington.

20 MR. HUNTINGTON: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. HUNTINGTON:

23 Q This is to the panel in general, but I'd like an  
24 answer from each of you if I can have it. I just have one  
25 question and I want to clarify one point that left me during



1 Mr. Brock's examination.

2 And that is whether you thought that it was at all  
3 improper from the governor of a state to make the calls such as  
4 you've described, to make the contacts such as you've described  
5 to headquarters FEMA.

6 Mr. McLoughlin?

7 A (McLoughlin) I find -- there is nothing that I am  
8 aware of in any -- certainly in none of the phone calls that I  
9 have, any discussions I've had with anybody else that had  
10 discussions with the Governor in any way, shape, or form would  
11 suggest that there was any impropriety with those phone calls,  
12 nor any unreasonable pressure.

13 Part of my job is also to recognize where people come  
14 from with respect to issues. And by that I mean so that I can  
15 recognize -- I want to use the word "biases", but that's a  
16 terrible word to use, I'm afraid, at this point, but to  
17 recognize that where the potentials for pressure could come  
18 from. And my belief is that I was alert in any of the  
19 instances for potential pressures from that instance. And I  
20 can say to the Board unequivocally that I did not believe that  
21 any issues with respect to Governor Sununu were improper.

22 Q Mr. Peterson?

23 A (Peterson) As I've testified, I have not talked to  
24 Governor Sununu in any way, letter, phone nor in person.

25 However, I would recognize, just as we receive

1 informational requests from Congress, that if a governor would  
2 call on an informational request, that they certainly have the  
3 right to call and ask what's going on, especially if they have  
4 something going on in their congressional districts, senatorial  
5 state or in a particular state of a governor.

6 Q Thank you.

7 Mr. Krimm?

8 A (Krimm) It is not at all unusual for the governor of  
9 the state or someone from his office or her office to call FEMA  
10 headquarters, or FEMA regional office to inquire about the  
11 scheduling of an exercise or the conducting of an exercise.  
12 And we felt that because of his interest, that was one of the  
13 reasons we would go ahead and exercise the New Hampshire plan.  
14 He certainly had a right to request it.

15 MR. HUNTINGTON: Thank you very much. I thank Mr.  
16 Turk for some of his time. That's all I have.

17 MR. TURK: I feel like I'm watching cable television.  
18 We've got people ceding time to each other.

19 I'll try to be fairly quick, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. TURK:

22 Q Gentlemen, I'd like to focus, first of all, on a  
23 statement made at various points in the testimony where you  
24 indicated you had communications with staff, and it's my  
25 understanding when you referred to staff, you're talking about

1 FEMA staff; is that correct, as a general matter?

2 A (Peterson) If you're -- I think you have eye contact  
3 with me, so I would say that's absolutely correct. I talk with  
4 my staff and rely upon my staff for counsel.

5 Q And, Mr. McLoughlin, is that your understanding too,  
6 when you use the word staff here, you're talking about FEMA  
7 staff?

8 A (McLoughlin) That's correct.

9 Q Same for you, Mr. Krimm?

10 A (Krimm) Yes, unless I so identified it such as NRC  
11 staff.

12 Q All right. I'd like to focus for a minute on the  
13 January 19th meeting with NRC. And you've already testified  
14 about this allegation of Mr. Stello's remarks concerning war.

15 Can you describe for me the general tenor of the  
16 meeting on January 19th with the NRC, Mr. Peterson?

17 A (Peterson) I thought the tenor was not confrontative  
18 whatsoever. It was sincere people trying to have  
19 understandings and asking questions, and I thought it was not  
20 out of line with what I've expected in a business meeting  
21 amongst headquarter people.

22 Q Would you describe it as a fairly amicable meeting?

23 A (Peterson) I would. You're talking about a five-  
24 hour meeting, and I think overall it was amicable. It would  
25 not be an improper description.

1 Q And would you agree it was not a rancorous or a  
2 contentious meeting by any means?

3 MR. OLESKEY: Is this cross or redirect?

4 JUDGE SMITH: Whatever. These are not witnesses in  
5 the context of their appearance that are adverse to him.

6 MR. OLESKEY: True. Clearly true.

7 THE WITNESS: (Peterson) Would you like to rephrase  
8 your question?

9 MR. TURK: Yes.

10 BY MR. TURK:

11 Q Would you agree that it was in any way a rancorous or  
12 contentious meeting?

13 A (Peterson) I think I've answered the question. The  
14 statement has been beat to death, in my opinion, and it -- you  
15 know, it was a business-like meeting. I had told you before I  
16 felt absolutely no duress in that meeting to do anything.

17 Q And, gentlemen, I'd like to ask each of you, to your  
18 knowledge has anyone from the NRC ever advocated that FEMA  
19 reach a positive finding with respect to the beach population  
20 issues for Seabrook?

21 A (Peterson) Not to my knowledge.

22 Q Mr. McLoughlin?

23 A (McLoughlin) Not to my knowledge. I did read  
24 testimony in which that was alluded to. I mean, a deposition.  
25 But it's never occurred with me and I'm not aware of any

1 instance.

2 Q Mr. Krimm?

3 A (Krimm) No.

4 Q And also, Mr. Peterson, when you indicated that  
5 following Mr. Stello's remarks about war, you said that you  
6 took it to mean that the NRC would legally address it, as I  
7 recall your words.

8 Could you tell me what you meant when you said that?

9 A (Peterson) It was an assumption on my part, and I  
10 would clearly state that upfront. That if we did take the  
11 liberty to interpret NRC's regs, interpret them incorrectly,  
12 and then implement a decision based upon incorrect  
13 interpretation of their regulations, that they would move to  
14 address that and correct it through legal channels. That was  
15 an assumption on my part.

16 Q And when you say legal channels, were you referring  
17 to any particular forum?

18 A (Peterson) No, I'm not.

19 Q Did you have in mind this Licensing Board proceeding?

20 A (Peterson) I didn't have any specific proceeding in  
21 mind.

22 Q Gentlemen, I'd like to show you a document which I  
23 represent to you to be the notes taken by Dr. Murley of the NRC  
24 at the January 19, 1988 meeting. These notes have been  
25 distributed to the parties and the Board already.

1           And on the second page of those notes, there is a  
2 statement in quotations which reads as follows: This is about  
3 one-third of the way down, "FEMA has already approved sites  
4 without sheltering."

5           Do you recall a statement to that effect being made  
6 at the meeting of January 19th?

7           A     (Peterson) I don't -- I do not remember the  
8 statement being made, but it is correct in its -- it is  
9 correct.

10          Q     It is correct that FEMA has approved sites without  
11 sheltering?

12          A     (Peterson) That's my understanding, and that was  
13 reported to me by a staff member. I believe -- well, I'm not  
14 going to go any farther.

15          MR. FLYNN: I don't want to let the suggestion stand  
16 that FEMA has approved plans with no sheltering at all  
17 throughout the EPZ. I think the sense of the question was --

18          JUDGE SMITH: Wait a minute. Why are we going that  
19 way anyway? Those notes aren't in evidence, are they?

20          MR. TURK: No, I'm asking for agreement whether these  
21 statements were made at the meeting, Your Honor.

22          MR. OLESKEY: Well, first of all, if you are going to  
23 use notes, somebody else's notes, you have to ask the guy if  
24 he's got a recollection of X or Y being said. And if he says  
25 he doesn't have any recollection, you could use the notes to

1 refresh him through his own notes, not somebody else's.

2 MR. TURK: I thank counsel for the instruction.

3 BY MR. TURK:

4 Q Gentlemen, do you recall whether at the meeting --  
5 let me turn to Mr. McLoughlin, Dr. McLoughlin on this.

6 Did anyone from FEMA indicate at that meeting that  
7 FEMA has approved plans at other sites where sheltering had not  
8 been required?

9 MR. OLESKEY: If he's going to go down this line, I'm  
10 going to --

11 JUDGE SMITH: You're exactly right. You're exactly  
12 right.

13 You can't take Dr. Murley's notes as a basis for  
14 making an inquiry like that at this late date in this hearing  
15 or any time. Or if you do, away we go, cancel the plane.

16 MR. DIGNAN: That's a hint.

17 (Laughter.)

18 MS. WEISS: I think Murley's going to be here.

19 JUDGE SMITH: No, he's not going to be here.

20 MR. TURK: Is the problem with the question or the  
21 use of the notes, Your Honor?

22 JUDGE SMITH: The problem is apparently -- in the  
23 first place, throw the notes away. You know, they have nothing  
24 to do with this hearing.

25 MR. TURK: All right, fair.

1 JUDGE SMITH: And then ask the question without the  
2 notes and you'll get the same hassle from me anyway, because  
3 you just have no basis to enter that into the litigation at  
4 this time, and you're just causing difficulty in doing that.

5 MR. TURK: I certainly don't mean to, Your Honor.

6 MR. FLYNN: Let the record show that I have removed  
7 the copy of Dr. Murley's notes from the witness table.

8 THE WITNESS: (Peterson) Can I recant my statement?

9 (Laughter)

10 MS. WEISS: You have my permission.

11 THE WITNESS: (Peterson) Thank you.

12 BY MR. TURK:

13 Q Mr. McLoughlin, following the June 2nd meeting with  
14 NRC, did anyone within FEMA indicated that perhaps the RAC  
15 should be consulted before a position paper was filed?

16 A (McLoughlin) Mr. Turk, do I understand you to say --  
17 deal with that from challenging us that we should have  
18 contacted the NRC before the June 4th one?

19 Q No, the RAC.

20 A (McLoughlin) I'm sorry, the RAC. Before the June  
21 4th one filing?

22 Q The question is not meant to be a challenge. It's  
23 simply an inquiry.

24 Did FEMA consider whether or not it should go to the  
25 RAC after June 2nd but before its filing of June 4, 1987?



1 MR. OLESKEY: That's a different question. He asked  
2 him whether anyone from the NRC told him he should have gone to  
3 the RAC.

4 JUDGE SMITH: Let's take the question the way he has  
5 it now.

6 MR. TURK: No, that was not my question, Mr. Oleskey.  
7 If I said that, I misspoke.

8 MR. DIGNAN: Hopefully it was a different question.

9 BY MR. TURK:

10 Q Do you need it again?

11 A (McLoughlin) Please.

12 Q After the June 2nd meeting with the NRC --

13 A (McLoughlin) Yes.

14 Q -- and before the June 4th filing of FEMA, did anyone  
15 within FEMA consider that perhaps you should go to the RAC one  
16 more time before filing that position?

17 A (McLoughlin) Mr. Turk, I was not in the NRC meeting  
18 at that time, but the meeting that I was in was after the NRC  
19 meeting that occurred on June 2. And the answer to your  
20 question is, no, I do not recall our discussing in any  
21 detail -- at all, to be honest about it, the return of the  
22 issue to the RAC.

23 I don't think we had time was -- one of the reasons  
24 it didn't come up, I would -- well, they had to do it by the  
25 4th of June.

1           Q     There was a perception, in other words, that the  
2 filing date was mandatory and you simply had to go with what  
3 you had at that point?

4           A     (McLoughlin) Yes.

5                     (Continued on next page.)

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1 Q I'd like to ask you, Mr. McLoughlin, also about the  
2 use of the term "deficiency" --

3 A (McLoughlin) Yes.

4 Q -- what it's used with respect to exercises?

5 A (McLoughlin) Yes.

6 Q Am I correct that that's a term of art? In other  
7 words --

8 A (McLoughlin) If you mean, by term of art, that we  
9 collectively, the NRC and FEMA in the MOU define that, the  
10 answer to that is, yes.

11 Q All right. And the reason I ask is, you noted that  
12 any single deficiency from an exercise would cause a negative  
13 reasonable assurance finding?

14 A (McLoughlin) That's my definition, yes.

15 Q And when you used that phrase I understood you to  
16 leave out from your use of the term "deficiency" problems in  
17 the exercise that did not rise to as high a level as this term  
18 of art, quote, "deficiency," close quote?

19 A (McLoughlin) That's correct. We have two other  
20 levels for those other kind of events.

21 Q And what are the other levels of nonadequacy of an  
22 exercise?

23 A (McLoughlin) There are areas requiring corrective  
24 action, which in effect have to be corrected within the next  
25 two biennial year or biennial cycle in the exercise

1 requirement. And we have areas recommended for improvement  
2 which are just that; they are things that we hope they'll take  
3 our advice for but are not mandatory.

4 Q So, it's fair then to say that, there may be flaws in  
5 an exercise which indicate a need for improvements or areas for  
6 corrective action, but those would not elevate up to a  
7 deficiency level that would require a negative reasonable  
8 assurance finding?

9 A (McLoughlin) That's correct; they're all defined  
10 separately.

11 Q I'd like to focus for a moment also on the  
12 designation of witnesses for FEMA's substantive testimony. Is  
13 it clear that Doctor -- well, I don't want to tread over old  
14 ground. Do you have an understanding as to whether a decision  
15 has been made yet whether to replace Dr. Hock from the panel of  
16 FEMA's testimony?

17 A (Peterson) I had spoken to that earlier and said, I  
18 believe, that I wanted to get recommendation from -- a formal  
19 recommendation from general counsel. What I expected -- what I  
20 would expect out of that, if I may go at it this way, is that  
21 Dr. Hock will not be required to testify. That is not speaking  
22 to the issue of replacement.

23 MR. TURK: I think I'm just about done, Your Honor.

24 JUDGE SMITH: Will you be ready, Mr. Dignan, Mr. Turk  
25 says he's about done.

1 MR. DIGNAN: In the box, Your Honor.

2 BY MR. TURK:

3 Q Mr. Krimm, do you have any knowledge of the  
4 capabilities and contributions of RAC members within FEMA,  
5 Region 1?

6 A (Krimm) Yes.

7 Q I'd like to ask you your opinion of the contributions  
8 and capabilities of the NRC staff's representative on the RAC  
9 with respect to Seabrook?

10 MS. WEISS: I'm going to object to that unless  
11 there's a foundation that Mr. Krimm has been to the RAC  
12 meetings, evaluated all the RAC input. It's obviously an  
13 invitation to give a lot of -- well, I'd like to hear the  
14 qualifications before we hear --

15 JUDGE SMITH: You want to hear the answer before  
16 you --

17 MS. WEISS: No, no, I want to hear the qualifications  
18 of the witness to give the opinion before we hear the opinion.

19 JUDGE SMITH: Well, assuming he has the  
20 qualifications to give an opinion, does that mean you have no  
21 objection?

22 MS. WEISS: No -- well, you know, if he's observed  
23 Mr. Bores on the RAC and if he's read his work, and he's  
24 qualified to give an opinion, otherwise I would submit that  
25 he's not.

1 MR. TURK: I've already laid a predicate. I've asked  
2 the witness if he's familiar with the capabilities and  
3 contributions of the RAC members and he said, yes. I'm asking  
4 for his opinion now of Dr. Bores.

5 MS. WEISS: That's too general a question.

6 MR. TURK: You can cross it, if you want.

7 MS. WEISS: No, he's asking for an opinion, we're  
8 entitled to --

9 JUDGE SMITH: Well, what opportunity have you had to  
10 make an assessment of the competence in the contribution of the  
11 NRC RAC member?

12 THE WITNESS: (Krimm) I've participated in meetings  
13 for the scheduling event, exercises, and the development of  
14 exercise objectives with some members of the region -- the  
15 NRC's Region 1 which is different from our Region 1. So this  
16 includes both Seabrook and Shoreham.

17 And while I'm not familiar with the capabilities of  
18 all the members of the RAC, I am with two or three agencies'  
19 representatives.

20 The second area is -- where my staff has gone out to  
21 participate in RAC meetings, they have reported back to me the  
22 capabilities of some of the staff.

23 And the third is, I did read the transcript of the  
24 RAC meeting of February -- I'm sorry, correction, it was the  
25 January 6th and 7th, I believe.

1 I also should mention that several years ago -- well,  
2 I won't, that's maybe too long ago.

3 Oh, and I've been on -- I was on an exercise at Peach  
4 Bottom where the NRC, Region 1 RAC people participated.

5 MS. WEISS: Are you referring to Mr. Bores?

6 THE WITNESS: (Krimm) I believe it was Mr. Bores.

7 MS. WEISS: At the Peach Bottom exercise?

8 THE WITNESS: (Krimm) I'm not sure it was Mr. Bores,  
9 but there were others there who participated.

10 JUDGE SMITH: Mr. Turk, I'm going to intercede here,  
11 I just don't think that there's sufficient value to his  
12 opinion. Furthermore, I don't want to see any litigation  
13 counter to -- I mean, any rebuttal to his opinion. It just is  
14 unnecessary to the resolution of this subissue that we're  
15 dealing here with this week.

16 MR. TURK: I would like to note, Your Honor, that Dr.  
17 Bores has been a major contributor to findings of problems with  
18 the New Hampshire plans with respect to Seabrook. There have  
19 been suggestions by Intervenors here that the NRC is -- the NRC  
20 staff is intent on licensing Seabrook.

21 In my mind, and I was going to ask the witnesses for  
22 confirmation, if any one member of the RAC has found  
23 inadequacies in the New Hampshire plans, more than other  
24 members, it's been Dr. Bores. In my mind, that's not  
25 moving --

1 JUDGE SMITH: That wasn't your question, though. You  
2 know, that -- I just really don't believe we have to go into  
3 that. I don't believe we should go into that.

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

5 JUDGE SMITH: Mr. Dignan.

6 MR. DIGNAN: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. DIGNAN:

9 Q Dr. McLoughlin, do you have a copy of Mass. AG  
10 Exhibit 46 which is a memorandum to you from George W. Watson,  
11 Associate General Counsel on the date of July 30, '87, sir?

12 A (McLoughlin) Yes, I do.

13 Q Could you come with me over at page two, at the very  
14 bottom in the -- down by the carbon copies, there's a -- on the  
15 second line there it says, "GC: Flynn: HJF: 7/29/87." I've  
16 been advised that what that indicates is the memo was dictated  
17 by the writer back on that date and that the -- but receipt  
18 date for you will be the July 30th date; is that in accord with  
19 usual FEMA practice?

20 A (McLoughlin) No. The July 30th date would have been  
21 put on in the general counsel's office. It is my understanding  
22 that the memo would have been prepared on 7/29, that's in  
23 accordance with our procedures. But the receipt office does  
24 not put the date on there; the sending office does, OGC would  
25 put that on there.



1 Q Having had both dates, when would you have received  
2 this, on July 30th?

3 A (McLoughlin) Well, sometime after -- Mr. Dignan, I  
4 don't want to evade that, but I don't know what date -- is July  
5 30th on a Friday, for example? Well, then we probably would  
6 have got it on Monday. They're one floor apart so we'll get  
7 it quickly.

8 Q I didn't -- only one thing, would it have been before  
9 July 30th that you could have received it?

10 A (McLoughlin) No.

11 Q All right. When you received it, what if anything  
12 did you do in response to it?

13 A (McLoughlin) The one thing I believe we did in  
14 response to this was have lots of meetings. And we had lots of  
15 them. And they were in the time period, you know, in August and  
16 September, and they were on reasonable assurance, and I tried  
17 to allude to that in my testimony of Wednesday, in particular.

18 Q Anticipating -- if anybody thinks it's leading let me  
19 have it, but you recall that this memo was generated, we had a  
20 series of five or four or five memos that we talked about --

21 A (McLoughlin) That's correct.

22 Q -- the request by Mr. Thomas for advice concerning a  
23 position he was taking. And I think it was on July 28th that  
24 it had been sent over to Mr. Wat- -- or to the General  
25 Counsel's Office for response because he -- Mr. Thomas had

1 indicated in the second memo, if I recall the series correctly,  
2 that he wanted to get an answer, if he could, by July 30th when  
3 he was going to have the RAC meeting.

4 A (McLoughlin) That's correct.

5 Q Do you recall that. So, in particular I want to know  
6 is, after you received this did you communicate with Mr. Thomas  
7 at all concerning its contents?

8 A (McLoughlin) No, I did not. I did not.

9 Q To your knowledge, did anyone?

10 A (McLoughlin) The direct answer to your question is,  
11 no. I do not know of anyone contacting him. It surprised me a  
12 little bit, because this was a request basically for a meeting  
13 to do some things, and my expectation would be that we would  
14 sit down and meet and then the results of that would go to Ed  
15 Thomas, if indeed, there was a need to do that.

16 MR. DIGNAN: That's all.

17 THE WITNESS: (McLoughlin) For he to participate.

18 MR. DIGNAN: That's all I had, Your Honor.

19 JUDGE SMITH: Mr. Flynn?

20 MR. FLYNN: Thank you, Your Honor.

21 My first --

22 JUDGE SMITH: Wait, please.

23 JUDGE LINENBERGER: Gentlemen, be assured this Board  
24 is extremely sensitive to the problems that you might encounter  
25 trying to get your job done when you have to spend so much time

1 talking about how you get your job done. But narrow area of  
2 questioning here.

3           On a number of occasions you have mentioned, and  
4 forgive me but I at the moment don't peg a time frame to when  
5 this was talked about, but you talked about options that were,  
6 let's say had been suggested, I'll put it that way, I'm not  
7 sure what your words were, with respect to protective action  
8 considerations, and I believe one of those options was the  
9 building of additional shelters or skating rinks or whatever  
10 and one of those options was a seasonal, let's say,  
11 constraining of plant operation for certain periods of the  
12 year.

13           With respect to that particular one, and any or all  
14 of you may comment, are you aware that that was an option that  
15 was being given serious consideration by anyone including  
16 yourselves?

17           THE WITNESS: (McLoughlin) Your Honor, we would not  
18 normally give consideration to that. The way that -- that  
19 would have to be proposed to us in the plan by New Hampshire.  
20 We would take no action independently on our own. If New  
21 Hampshire -- but it was my understanding that there -- that was  
22 an active consideration at one time. It certainly was an  
23 option that I at least thought was considered. But I would  
24 hasten to add, too, that it would have been proposed to us and  
25 it never was proposed to us.

1 JUDGE LINENBERGER: I see. Don't speculate, but do  
2 you have any direct knowledge as to why it was not proposed to  
3 you?

4 THE WITNESS: (McLoughlin) No, sir, I do not.

5 JUDGE LINENBERGER: Any of you gentlemen?

6 THE WITNESS: (Peterson) No, sir.

7 THE WITNESS: (Krimm) No, I don't.

8 JUDGE LINENBERGER: Thank you. That's all.

9 JUDGE SMITH: Mr. Flynn.

10 MR. FLYNN: Thank you, Your Honor.

11 REDIRECT EXAMINATION

12 BY MR. FLYNN:

13 Q My first question is to Mr. Krimm. In response to a  
14 question from Mr. Brock you indicated that you did not recall  
15 ever having a conversation with Mr. Thomas in which you  
16 reported to him that every time you went to the White House you  
17 lost. I want -- my question to you is, what basis do you have  
18 for believing that there was no such conversation?

19 A (Krimm) Well, I don't believe the statement -- in  
20 other words I don't believe that if there was an initial of  
21 offsite preparedness and it was arbitrated by someone from the  
22 White House that we would necessarily lose it. I just don't --  
23 I know I wouldn't have said it because I don't believe it.

24 MR. OLESKEY: I'm going to move to strike the answer  
25 because the question didn't reflect the question the witness

1 was originally asked by Mr. Brock which was, did you ever tell  
2 Thomas in substance that if there was a dispute between the NRC  
3 and FEMA and went to the White House FEMA would lose. Nothing  
4 about offsite preparedness, it was simply a very general  
5 question.

6 MR. DIGNAN: Well, it sure wasn't the question you  
7 just added either.

8 MR. OLESKEY: The one thing -- my question --

9 MR. DIGNAN: Are we going to pick one.

10 JUDGE SMITH: Do you recall the question?

11 THE WITNESS: (Krimm) The question that Mr. Brock  
12 asked?

13 JUDGE SMITH: Yes. Can you help us, Mr. Brock?

14 MR. BROCK: Your Honor, what I was -- the question  
15 was framed based on a statement in the deposition of Mr. Thomas  
16 that I believe I was substantially quoting. If you'll give me  
17 a second I can try and find that. It's -- let's see here.

18 This is the -- from page -- it's 2-28 of the Thomas  
19 deposition, and Thomas is recounting. He says: "I recall, the  
20 only reference that I recall," and this is Thomas speaking,  
21 "other than this which is in my notes is a comment that may  
22 relate which was made to me by Richard Krimm in the context of  
23 a conversation about a disagreement that we were having with  
24 the NRC at that time, and I suggested to him that FEMA had to,"  
25 it says, "leave offsite emergency preparedness plan," but I

1 think it was, "had the lead on offsite emergency planning. And  
2 that we should tell them that we did and that would be the end  
3 of the conversation. He said, that, no, every time we took  
4 that kind of a stand there were calls from the White House."

5 MR. DIGNAN: I think Mr. Flynn did very good.

6 MR. OLESKEY: Yes, I think he did.

7 MR. DIGNAN: Are you withdrawing the objection?

8 MR. OLESKEY: I appreciate the clarification.

9 JUDGE SMITH: With that background, I think he has  
10 all he needs to answer the question.

11 THE WITNESS: (Krimm) My comment is, that I did not  
12 make the statement.

13 BY MR. FLYNN:

14 Q And my question was, on -- what is your basis for  
15 believing that you did not make the statement?

16 A (Krimm) Because I do not believe -- personally do  
17 not believe the quote. By that I mean, I do not think that  
18 every time we would have a dispute with the NRC on an issue  
19 that we would get a call from the White House.

20 Q I want you to address the specific part of the  
21 original question which was, when you get calls from the White  
22 House FEMA loses?

23 A (Krimm) Okay. That just -- we don't get calls from  
24 the White House on that issue.

25 Q Mr. Peterson.

1 A (Peterson) Yes.

2 Q There was a long series of questions put to the panel  
3 about calls from Governor Sununu and other government officials  
4 including the White House, and my question to you is, to what  
5 extent, if any, has there been any attempt to influence your  
6 decisions or judgment on this -- on the New Hampshire plan?

7 A (Peterson) There has been none.

8 MR. OLESKEY: By whom, counsel?

9 MR. FLYNN: By the White House.

10 THE WITNESS: (Peterson) There has been no influence  
11 on the White House on me to have -- on any of these issues.

12 BY MR. FLYNN:

13 Q Have there been any contacts from the White House,  
14 specifically, on Seabrook or the New Hampshire plan?

15 A (Peterson) There was only one contact that I've  
16 alluded to relevant to utilities -- utility process, and it has  
17 been covered in the Glenn letter which was pretty well brought  
18 out. But if anyone is saying that the White House has put  
19 influence on me to make a decision one way or another, that is  
20 absolutely wrong and they are wrong.

21 Q The next question is to the panel. In cross-  
22 examination you were asked some questions about Mr. Vickers  
23 being directed to sign a letter asking for additional help on  
24 the review of the utility sponsored plan for Massachusetts  
25 communities. My question to the panel is, what occurred in

1 your conversations with Mr. Vickers on that subject?

2 A (Peterson) I have some -- was privy to some of the  
3 discussion relative to Mr. Vickers's substantial concern that  
4 he was falling behind in his work load. And I had heard from  
5 Mr. Krimm almost -- and Mr. Wingo that there was considerable  
6 complaints, I guess, from Region 1 that they, you know, that  
7 they had a tremendous work load and that they needed some help,  
8 is the way it was referred to me.

9 And in fact, I had been in a meeting that Mr.  
10 McLoughlin had called for Mr. Vickers where there was one --  
11 there was about a page and a half of work load items defined  
12 that said, this is, you know, this is what we're up against and  
13 it's a pretty difficult situation work load wise.

14 Q Who had prepared that list?

15 A (Peterson) I believe Mr. Vickers had. It certainly  
16 came out -- or his staff had; it came out of Region 1. And  
17 probably should have let Mr. McLoughlin start off on this  
18 because he initiated the phone calls and why don't I let you  
19 take that. And I also was in the meeting for a portion of the  
20 time that Mr. Vickers was in Washington, D.C.

21 A (McLoughlin) The only thing I would differ with  
22 respect to what you said up to this point is, I think it was a  
23 two and a half page memo that we have that is -- that was  
24 listing.

25 A (Peterson) It was two and a half, did I say



1 something other?

2 A (McLoughlin) One and a half.

3 A (Peterson) No, it definitely was two and a half  
4 pages.

5 A (McLoughlin) Two and a half page memo that we had or  
6 a listing of work load efforts from the region. And I had  
7 called Henry, Mr. Vickers, to come down to Washington to sit  
8 down with us and talk about this. The principal reason being  
9 that we were considering the exercise at, you know, there were  
10 exercise activities that were involved with this. There were  
11 whole series of things that from my perspective were important  
12 issues that the agency was expected to deal with and were time  
13 sensitive.

14 And we asked him to come down. He did. We talked  
15 about this in a meeting. We felt it was important since he had  
16 asked us to do this and part of this had been his verbal  
17 discussion with us before he gave us the list.

18 It seemed important to me that we put this in writing  
19 so that we can indeed have a paper trail of that issue.

20 Q You said, Mr. Vickers had asked you to do this, but  
21 I'm not sure it's clear what this is?

22 A (McLoughlin) Okay. He had asked us to deal with the  
23 issue of the help that they would need or the scheduling of  
24 events to meet within their resources in the region, if indeed,  
25 they did not get additional help.

1           We had asked him at that point to put them down on a  
2 piece of paper. He sent those in to us. We then asked him to  
3 come down to talk about this.

4           In the course of the meeting we agreed that we would  
5 like to have a memorandum from Mr. Vickers to do that, to come  
6 from Mr. Vickers to the headquarters asking for assistance in  
7 these. And that the issue, that seems to be some mystique  
8 associated with, is the fact that the memo was indeed prepared  
9 in headquarters. We prepared it and drafted it. And after  
10 discussions in the meeting with Mr. Vickers, and drafted it  
11 consistent with our whole discussions of which he was a part.

12           And someone on Mr. Krimm's staff did indeed prepare  
13 that memorandum. And Mr. Vickers ultimately signed that  
14 memorandum to us. We did not demand that he sign that memo or  
15 anything of that nature. He agreed to sign it.

16           And I wrote a memo back to him, prepared again by Mr.  
17 Krimm's staff, that acknowledged that we would indeed provide  
18 the help that he was seeking.

t/154 19           But that was the way the deal was provided with  
20 additional resources, because the missions had to be done,  
21 rather than reducing the mission to meet his staff capability.

22           Q     How much of an opportunity did Mr. Vickers have to  
23 review the memo before he signed it?

24           A     (McLoughlin) He saw the draft of it. To my  
25 knowledge -- I was there when he read the memo, and I don't

1 think there was any hurrying of him. I think he had plenty of  
2 time to deal with that. And certainly, he had the opportunity  
3 to have the memo changed, if it was not consistent at all with  
4 his viewpoint, at that point in time.

5 Q I would --

6 A (Krimm) Dave, excuse me if I could. Actually, Henry  
7 and I drafted it somewhat together.

8 A (McLoughlin) Dick, that's fine. That's an  
9 additional clarification.

10 A (Krimm) I mean, Mr. Vickers and I drafted it  
11 together, and then I had it typed.

12 Q Well, then I'll put the question to you, how much of  
13 an opportunity did he have to change anything in the memo that  
14 didn't suit him?

15 A (Krimm) He had every opportunity because he worked  
16 -- more or less he told me what he wanted and we worked on it  
17 together.

18 Q Thank you.

19 The next subject I want to go into is the  
20 relationship between interim findings and the 350 review  
21 process. At my suggestion Mr. Oleskey put a question to you,  
22 Mr. Krimm, about the difference between the two of you and  
23 rather than to consume his time on cross-examination with a  
24 further elaboration, I agreed privately with him that I would  
25 use my time.

1           The suggestion -- you made the suggestion, I believe,  
2   that the processes were mutually exclusive, but there could be  
3   a three -- the request for a 350 finding or there could be a  
4   request for an interim finding, but not both at the same time.  
5   Would you care to add anything to that?

6           A     (Krimm) Yes. I apologize that I may have misled  
7   everyone on that. There can be a 350 in process at the same  
8   time that an interim finding is requested by the NRC, and one  
9   of the reasons for that is that the 350 is a very long process,  
10   and the NRC may ask us for an interim finding on the existing  
11   plans at a particular nuclear powerplant site.

12          Q     Who would initiate a request for a 350 finding?

13          A     (Krimm) The governor of the state issues or makes a  
14   request for a 350 finding.

15          Q     At the time the plan is submitted?

16          A     (Krimm) That's correct. In other words, there has  
17   to be plans for all of the jurisdictions plus the state plan  
18   when they make the request for the 350, that is, for all the  
19   jurisdictions within the 10-mile emergency planning zone.

20          Q     And who would initiate a request during interim  
21   finding?

22          A     (Krimm) The Nuclear Regulatory Commission initiates  
23   a request under the memorandum of understanding.

24          Q     And for what purpose?

25          A     (Krimm) To determine the status of offsite

1 preparedness around a particular nuclear powerplant site, and  
2 requesting that we make a finding on the existing plans.

3 Q Mr. McLoughlin, you gave some testimony on cross-  
4 examination about how your perception of whether the NRC  
5 regulations required or did not require sheltering influenced  
6 your judgments on the New Hampshire plan. Did you care to add  
7 anything to what you've said already on that?

8 A (McLoughlin) Yes, I would, Mr. Flynn. Mr. Backus  
9 yesterday developed a line of questioning that related to, did  
10 we interpret the NRC regulations to require shelter, and  
11 those -- and I'm not complaining by any means -- but those  
12 questions were not directed to me, and the thing that I wanted  
13 to be sure was clear for the Board was that, I had never viewed  
14 the -- I did not come at the issue from that end, that is, are  
15 they required.

16 In fact, I came at it from the opposite end in this  
17 sense, that I was driven in my understanding of the situation  
18 by technical arguments that dealt with whether or not shelter  
19 would or would not be required. And ultimately came to a point  
20 where shelter is not likely to be a preferred action.

21 When that sort of issue begins to arise the next step  
22 for me would be to be sure that there is not an NRC requirement  
23 for shelter. That is what drove me to consider the legal issue  
24 of whether or not NRC regulations did. And to try to make it  
25 clear let's suppose for the moment that they do, they don't,

1 but if they did and I had arrived at a conclusion that they --  
2 because of technical arguments shelter was not required and the  
3 NRC regulations said they were required, which clearly they  
4 don't, but if that situation had existed there would have been  
5 a conflict for me.

6 I only want to clarify that that was my rationale and  
7 reasoning why the -- the fact that the lack of shelter did not  
8 contravene the NRC regulations was important to me in whatever  
9 participation I had in these deliberations.

10 Q Mr. Peterson, Mr. Oleskey asked you some questions  
11 this morning about the exercise of professional judgment in  
12 determining whether the planning standards of NUREG-0654 had  
13 been met in determining whether there was reasonable assurance  
14 and so on.

15 My question is, does FEMA apply that professional  
16 judgment to determinations of risk?

17 A (Peterson) I believe I've given testimony that we do  
18 not consider -- I do not consider that the determination of  
19 risk is in our ball park. I believe that that determination of  
20 risk is in NRC's ball park.

21 Q Does FEMA exercise that professional judgment in  
22 determining whether, whatever risk there is at a particular  
23 site, is an acceptable risk?

24 A (Peterson) I don't believe so.

25 Q Now, again to Mr. Peterson, in Ms. Weiss's

1 examination she asked you some questions about the response or  
2 she asked the panel some questions about the response of the  
3 State of New Hampshire to FEMA's supplemental testimony, and  
4 she focused a number of her questions on the list of  
5 circumstances under which the state might consider sheltering  
6 to be the suitable protective action.

7 Now, the question was put, I think, to Mr. McLoughlin  
8 whether that would make a difference in his judgment on whether  
9 reasonable assurance -- whether elements J-9 and J-10-M were  
10 met, I'm going to put that question to you.

11 Does the information that the State of New Hampshire  
12 is considering sheltering under the limited circumstances  
13 enumerated in that document change the judgment expressed in  
14 the supplemental -- in the testimony of March 14th that  
15 elements J-9 and J-10-M have been met?

16 MS. WEISS: My recollection is I wasn't allowed to  
17 ask that question. There was a fire storm of objection and  
18 about four different formulations, and the question was never  
19 asked. That's my recollection.

20 JUDGE HARBOUR: I don't believe that was her  
21 question.

22 MR. FLYNN: Well, if that's the recollection of the  
23 body assembled, I will reformulate the question.

24 (Board conferring)

25 JUDGE SMITH: Our discussion -- the Board's

1 discussion went this way. Dr. Harbour pointed out that you're  
2 asking somewhat of a different question, but even though it's a  
3 different question if it's in redirect to a question we didn't  
4 allow asked, it shouldn't be asked now.

5 MR. FLYNN: That's where I'm faltering. I'm having  
6 trouble with whether the question was allowed or not.

7 MR. DIGNAN: If the ruling's going to be, he can't  
8 ask on that ground, could we have a stipulation that if  
9 memories have failed and in fact the question was asked and  
10 answered it is stricken.

11 JUDGE SMITH: What's your memory of this?

12 MR. DIGNAN: My memory is that she asked it and got  
13 an answer to it. Maybe not the answer she wanted, but she got  
14 the answer to it or she got something very close to it and it  
15 was answered.

16 MR. FLYNN: I'll make this easy. I will take the  
17 risk that the question was not allowed, I will withdraw the  
18 question.

19 (Board conferring.)

20 MS. WEISS: Mr. Chairman, I want -- before, because I  
21 don't want to be accused of misleading anybody, it's Ms.  
22 Keough's recollection and she's probably -- I would trust it,  
23 that something like that was asked.

24 MR. DIGNAN: Well, you wouldn't trust me.

25 MS. WEISS: Something about -- I think it was the one



1 about reviving your concerns. The question about reviving your  
2 concerns was asked, that's my recollection. So with that --

3 MR. DIGNAN: I don't think the entire line was  
4 excluded, Your Honor.

5 MR. FLYNN: Well, certainly not the entire line.  
6 Well, in any case --

7 JUDGE SMITH: All right.

8 MR. FLYNN: -- that provides me with the necessary  
9 guidance and I will proceed with the line, but I will rephrase  
10 the question.

11 BY MR. FLYNN:

12 Q Mr. Peterson, do you recall a discussion in the  
13 meeting of March 4th about the advisability of sheltering for  
14 the 98 percent of the transient beach population?

15 A (Peterson) The advisability of using sheltering for  
16 the 98 percent?

17 Q Yes?

18 A (Peterson) Yes.

19 Q Can you just summarize briefly for us what the  
20 conclusion was on that point?

21 A (Peterson) That it was not advisable to use  
22 sheltering for the 98 percent, was the general conclusion, that  
23 that had the potential for a higher risk factor and the higher  
24 accumulation of dose than if you were to use evacuation as a  
25 primary response.

1 Q Now, you said that was a general conclusion, did that  
2 conclusion apply in every single case?

3 A (Peterson) I -- my recollection, there was not a  
4 discontinuity there amongst the 11 people who were giving --

5 Q No --

6 A (Peterson) I don't understand your question. Are  
7 you saying, did all the people in the meeting agree with that  
8 or what?

9 Q No.

10 A (Peterson) I'm sorry.

11 Q That really wasn't my question. I wasn't asking you  
12 whether everybody agreed with that. I was asking whether the  
13 consensus was that under all circumstances the preferred  
14 protective action would be evacuation and not sheltering?

15 A (Peterson) I think it was in almost all cases, but  
16 in some cases sheltering might be required.

17 Q Now, referring your attention to the response of the  
18 State of New Hampshire to the FEMA supplemental testimony, and  
19 I don't have the exhibit number offhand, but the --

20 JUDGE SMITH: 47.

21 MR. FLYNN: Mass. AG -- thank you, Your Honor.

22 MS. WEISS: For convenience, identification.

23 BY MR. FLYNN:

24 Q Massachusetts Attorney General Exhibit 47, and the  
25 enumeration in that document of the circumstances under which

1   sheltering might be the preferred protective action, do you  
2   have that before you?

3           A   (Peterson) I've got a pretty good size document in  
4   front of me right now. Yes. Do you want me to go to a place  
5   in there where it says, the aforementioned reasons?

6           Q   I have referred you to the page which has the number  
7   five at the bottom, it begins, "The state is currently  
8   considering." Do you have that?

9           A   (Peterson) What does it start with, "The state?"

10          Q   Yes.

11          A   (Peterson) Yes, okay.

12          Q   And I refer you particularly to the indented  
13   paragraphs which enumerate the circumstances under which  
14   sheltering might be considered the preferred protective action?

15          A   (Peterson) Okay.

16          Q   Is that information consistent with the discussion or  
17   the assumption in the meeting of March 4th that there are some  
18   circumstances under which evacuation might not be the preferred  
19   protective action?

20          A   (Peterson) I believe it is.

21          Q   It was established on cross-examination that there is  
22   no provision in the plan, there is no implementing detail in  
23   the New Hampshire Radiological Emergency Response plan for  
24   dealing with those circumstances; is that your understanding?

25          A   (Peterson) Yes.

1 Q Now, my question is, since there is no planned  
2 response to those situations, there is by definition an ad hoc  
3 response; does that information change your judgment about  
4 whether J-9 and J-10 have been met?

5 A (Peterson) No.

6 Q And can you tell us why?

7 A (Peterson) It's preferred action has been stated as  
8 evacuation for the reasons stated.

9 And secondly, these cases were considered to be very,  
10 very remote in possibility. And that, in light of that, the ad  
11 hoc response factor would be acceptable.

12 Q And given that, were you satisfied and are you  
13 satisfied today that the state has provided a satisfactory  
14 rationale for the extent to which it intends to use sheltering?

15 A (Peterson) Yes, I'm comfortable with that.

16 Q The final line of redirect examination that I have  
17 for you is the question to Mr. Peterson and that is, in  
18 yesterday's examination Mr. Backus asked you a question at the  
19 end and you started to say, well, you've left something  
20 important out of the meeting of January the 19th, and Mr.  
21 Backus said at that time, well, I will leave that for your  
22 counsel on redirect examination.

23 I will now give you the opportunity to add what it  
24 was that you were going to add yesterday.

25 Q (Peterson) Well, because of the tone of the

1 discussion I want to make it very clear that we had not in any  
2 way changed our position or alluded that we were going to change  
3 our position because of anything that happened in that NRC  
4 meeting of January 19th.

5 I think it's important to restate what I stated --  
6 what we put on the record in direct and that was, we explained  
7 before we left that January 19th meeting that we still wanted  
8 to and expected that the sheltering option had to receive full  
9 consideration by New Hampshire. And that we intended to file  
10 such a position.

11 And so I think that's a clear statement that there  
12 was nothing in the January 19 meeting that moved us off of any  
13 given position that we had.

14 MR. FLYNN: I have no other questions at this time.

15 MR. TURK: Your Honor, I do have one question that  
16 came to mind I'd like to ask, I forgot to ask it before.

17 RECROSS-EXAMINATION

18 BY MR. TURK:

19 Q Gentlemen, particularly Mr. Krimm, it's been  
20 indicated there have been something like 30 inadequacies  
21 identified with the New Hampshire plan, and something like 55  
22 deficiencies in the exercise; is that correct?

23 A (Krimm) That's correct.

24 Q Has anyone from the NRC staff ever suggested to you  
25 that you should dispel or dispense with any of those

1 inadequacies or deficiencies?

2 A (Krimm) No.

3 MR. TURK: That's it for me.

4 JUDGE SMITH: All right, Ms. Weiss, you say you have  
5 two.

6 MS. WEISS: Two.

7 JUDGE SMITH: I know you well enough that I know  
8 you're not --

9 MS. WEISS: Maybe three.

10 JUDGE SMITH: Maybe two days, just two questions.

11 MS. WEISS: No. I went pretty fast this morning I  
12 think.

13 RECROSS-EXAMINATION

14 BY MS. WEISS:

15 Q With respect to the questions your counsel just asked  
16 you at the end there, Mr. McLoughlin, I believe you testified  
17 in response to my questions that you would have to consult your  
18 technical experts in order to answer about the significance of  
19 the lack of implementing procedures; is that correct?

20 A (McLoughlin) That's exactly what I testified to this  
21 morning. Can I go on or do you want me to quit there?

22 Q Well, I wanted to know if you did that over lunch?

23 A (McLoughlin) No, I did not. But I certainly did  
24 over lunch, and I would want the Board to know this, we  
25 certainly did have discussions, the three of us, and our two

1 attorneys that are here; and we talked about it in detail.

2 I was concerned, if you read the record, that at the  
3 tail end of that, what I didn't want to do was to jump in too  
4 quickly and agree to something, particularly like we had with  
5 the plan discussion. And we went through a series of  
6 discussions about what the issues were that were associated  
7 with that, clearly did not talk to any technical staff except  
8 Dick Krimm did participate.

9 Now, do you want me to go any further than that?

10 Q Going to go back to Washington and check it with your  
11 technical staff?

12 A (McLoughlin) Well, there are some questions that I  
13 will raise when I go back, but there's -- but I am also  
14 prepared to make an additional statement, if you would ask me  
15 to.

16 Q I don't think I want to.

17 (Laughter)

18 MR. DIGNAN: Well, I'm going to ask if you don't.

19 (Laughter)

20 MS. WEISS: You also -- just one more.

21 MR. DIGNAN: This is the third question now.

22 MS. WEISS: Well, I have to deal with the answers.

23 We're not at 3:30, hold your water.

24 BY MS. WEISS:

25 Q You also testified, Mr. Peterson, that the chances of

1 the conditions which are listed on pages five and six of the  
2 New Hampshire response, Mass. AG 47, the chances of those  
3 conditions occurring which would make sheltering the preferable  
4 option are very remote; did you just testify to that effect?

5 A (Peterson) I believe I did.

6 Q Are you relying for that judgment regarding the  
7 remote probability of those conditions occurring on the  
8 technical analysis done by Mr. Keller in October?

9 A (Peterson) I'm going to put it in a broader  
10 statement than that, and you can come back on me, if you wish,  
11 but in -- I was trying to give a sense of the discussion that  
12 happened in March 4th; and Dr. Keller certainly was an active  
13 participant in that -- in those discussions as were some of our  
14 technical people in headquarters such as Mr. Wingo.

15 Q So it's fair to say that it's generally the Keller  
16 analysis and Mr. Wingo's gloss on it which formed the basis for  
17 your claim that such events were highly remote in probability?

18 A (Peterson) And the fact that I didn't -- I did not  
19 feel in all of that round robin that we went through that there  
20 was any of the other technical people or policy people who were  
21 pushing back on that.

22 Q Okay. It's a judgment with regard to probability;  
23 correct?

24 A (Peterson) Well, I don't know if I'll give it a  
25 probability, but I don't know if I'll concede to that.



1 Q Likelihood? You can't answer, yes or no?

2 A (Peterson) The fact is that in most accidents the  
3 preponderance, and if you want to put probability on that or  
4 not, the recommendation is, from the technicals, is to -- and  
5 plume exposure, is to get the people out of there and that's  
6 the best and highest and most responsive action you can take to  
7 maximum dose savings.

8 And in the other events, that they are much less  
9 likely to be the case.

10 MS. WEISS: No further questions. Thank you.

11 JUDGE SMITH: Did you mean that you wanted to ask  
12 that question?

13 MR. DIGNAN: Sure.

14 JUDGE SMITH: Go ahead.

15 RECROSS-EXAMINATION

16 BY MR. DIGNAN:

17 Q Mr. McLoughlin -- Dr. McLoughlin, you want to tell us  
18 something more about, what we lawyers call the wood shedding  
19 session you had at noon?

20 A (McLoughlin) I would, if it's wood shed the same way  
21 that David Stockman had wood shed discussions, that's not the  
22 kind of discussion I had.

23 Q That's a time honored lawyer's term.

24 Could you please add what you wanted to add?

25 A (McLoughlin) Well, I wasn't sure I really wanted to

1 add it, to be honest about it. But the bottom line is that,  
2 I -- Ms. Weiss developed a line of questioning that was  
3 beginning to give me some concern, and to be honest about it,  
4 it's not -- it was my error or my inability to think quickly  
5 enough about the implications of all she was asking that I felt  
6 uncomfortable in giving a quick answer to that.

7 And I certainly acknowledge, as I already have, that  
8 I've had discussions with our colleagues and I value their  
9 input to this.

10 And the bottom line to it is this, that the plan as  
11 it stands, the New Hampshire addition to the plan we have  
12 acknowledged on March 14th filing, does indeed meet J-9 and  
13 J-10-M. And it does so on the basis of the fact that the  
14 probable incidence of the requirement of shelter for other than  
15 the transportation-dependent population is not very  
16 significant.

17 And based on the RAC's advice, which essentially goes  
18 back to about July 30th, that the acceptability of that  
19 planning on an ad hoc basis was -- the planning for that small  
20 incident on an ad hoc basis was acceptable.

21 And that's -- if I had it all to do over again, I  
22 would not have raised so much of a commotion, I don't think, as  
23 I did at that point in being uncertain about that issue.

24 You recall that that came on the heels of a  
25 discussion of the plan issue in which I was concerned about the

1 plan issue to being as precise as it could be because as I  
2 referred to the plan, New Hampshire memo did not refer to a  
3 plan but rather it referred to a response to our question.

4 And, Mr. Dignan, I think I've done the best job I  
5 can, if I go any longer I'm going to confuse it even more.

6 Q You used the term "probability," and Mr. Peterson  
7 did, too, do I understand the probability you're referring to  
8 is the probability of the coalescence of not only the  
9 occurrence of a fast-breaking accident but the other events  
10 that are necessary to bring into play the factors that make  
11 sheltering the desired option?

12 A (McLoughlin) That's correct in my case.

13 Q In short, what you're saying is the sheltering  
14 options for what I have sometimes referred to as the snowstorm  
15 in July case, that is to say, the incredibly unlikely event  
16 that you get the accident and you also get the roads blocked or  
17 something of that nature; is that right?

18 MR. OLESKEY: How about having this last redirect be  
19 redirect and not so grossly leading.

20 MR. DIGNAN: It's not leading, it's driving, I admit  
21 it, but I want to get out of here.

22 JUDGE SMITH: We don't need that --

23 MR. DIGNAN: I'm sorry.

24 JUDGE SMITH: That's your view, not the witness's  
25 view. We want to save some time for scheduling.

1 MR. DIGNAN: I'm sorry, Your Honor?

2 JUDGE SMITH: See, you pointed -- you put a view to  
3 him that it is unlikely that he would have, on his own, come up  
4 with that metaphor.

5 MR. DIGNAN: I'll withdraw it.

6 JUDGE SMITH: All right. Anything further?

7 MR. BACKUS: Yes, I'd like to ask one question.

8 JUDGE SMITH: Okay.

9 MR. BACKUS: Based on what Mr. Dignan just said.

10 RE CROSS-EXAMINATION

11 BY MR. BACKUS:

12 Q Am I correct then, Mr. McLoughlin, that to the extent  
13 that you're considering the low probability of the  
14 circumstances, congruence of circumstances that would require  
15 sheltering, your agency is dealing with risk factors?

16 A (McLoughlin) Please state that one again, because  
17 this is very -- I want -- this is a very sensitive issue with  
18 us, so please state it again.

19 Q All right. I understood you to say that  
20 understanding that sheltering is not the preferred option for  
21 the vast majority of accidents you anticipate, and  
22 understanding that the sheltering option does not now have  
23 implementing procedures, you were still satisfied that J-9 and  
24 J-10-M had been met because of your assessment of the low  
25 probability of an accident where the sheltering would be the

1 preferred option; correct?

2 MR. FLYNN: Objection. Your Honor, again, I submit  
3 that this is one of those ultimate questions that only the  
4 Board can decide. We've been very meticulous about not  
5 introducing probabilities and so on, but it gets -- it's come  
6 to the point here where we're not doing probabilistic risk  
7 assessment, we're just using common sense. And if that's not  
8 acceptable, then I don't know where we go.

9 JUDGE SMITH: Do you agree with the premise of this  
10 question that you're getting into a risk assessment when you  
11 answered the way you did that the congruence of events, which  
12 would make sheltering a preferred option?

13 THE WITNESS: (McLoughlin) The direct answer to that  
14 question is, yes. I understand that that relates to a risk  
15 assessment. And I have previously, I think, under testimony  
16 acknowledged the fact that the risk is indeed an NRC decision  
17 and not a FEMA decision. And I don't know exactly how to deal  
18 with it any better right now, Your Honor, I just go don't,  
19 other than to acknowledge that.

20 MR. BACKUS: I'm not going to pursue it any further,  
21 Your Honor.

22 JUDGE SMITH: All right. Anything further?

23 All right, gentlemen.

24 MR. TURK: May I ask one question about that last --

25 JUDGE SMITH: No.

1 (Laughter)

2 JUDGE SMITH: We don't -- and we're not capable of  
3 litigating that. All right, you're the one that asked for time  
4 for scheduling. And if you want to get into this issue, if you  
5 need the question you can have it, because there was an answer.

6 FURTHER RECROSS-EXAMINATION

7 BY MR. TURK:

8 Q Dr. McLoughlin, is it fair to say that FEMA's  
9 position is based upon its understanding of evacuation being  
10 the preferred response for the beach areas within two to three  
11 miles of Seabrook?

12 A (McLoughlin) That's correct.

13 JUDGE SMITH: You're excused, gentlemen, and we  
14 appreciate your coming up here.

15 THE WITNESS: (Peterson) Thank you very much. We  
16 appreciate you getting us out at this time, it means a lot to  
17 us.

18 (The witnesses were excused.)

19 MR. DIGNAN: Your Honor, can we ask one more question  
20 of this witness, I asked him off the record, doesn't he really  
21 wish his talents had fitted Indian Affairs.

22 JUDGE SMITH: Off the record.

23 (Discussion off the record.)

24 MR. TURK: Your Honor, I have a request about a  
25 scheduling matter, if we're ready to turn to it.

1 JUDGE SMITH: All right.

2 MR. TURK: Initially, Your Honor had request that the  
3 staff designate some witnesses to talk about this January 19th  
4 meeting, and in light of the testimony that we've heard and the  
5 full cross-examination that's taken place of the FEMA's  
6 witnesses, I frankly don't see a need for the NRC staff to put  
7 on witnesses about that January 19th meeting.

8 JUDGE SMITH: I was going to raise that same thing,  
9 but I haven't had a chance to discuss it with my colleagues  
10 yet.

11 MR. TURK: I would ask for reconsideration of that  
12 Board directive.

13 JUDGE SMITH: Well, we'll --

14 MR. DIGNAN: Your Honor, could we take a four minute  
15 or five minute break while the Board discusses and counsel  
16 discussed, and then I would like to come back and address where  
17 we're going a week from Monday, when I understand where we're  
18 going to be.

19 JUDGE SMITH: Well, we don't have much time. Go  
20 ahead, take a very short break.

21 MR. DIGNAN: Well, I was just thinking if everybody  
22 could caucus and talk among themselves it might go faster.

23 JUDGE SMITH: All right. Do that.

24 (Whereupon, a brief recess was taken.)

25 JUDGE SMITH: The suggestion was that Congel and

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1 Matthews be excused, and we recall that they were here for two  
2 reasons: one, is that the Board requested the staff to present  
3 their view of how they saw the evolution of FEMA's change  
4 unfold.

5 Further, we directed the staff to present somebody  
6 who could explain the July 19th (sic) meeting in context.

7 MR. OLESKEY: January 19th.

8 MR. TURK: January.

9 JUDGE SMITH: January 19th in context. We also were  
10 aware that there was a subpoena out for -- I mean a request for  
11 a subpoena for Mr. Congel that the Intervenors wanted. We  
12 believe that it was important to have the staff be prepared to  
13 come forward with the July 19th (sic) consideration.

14 MR. FLYNN: January.

15 JUDGE SMITH: January 19th consideration, because we  
16 didn't know what would unfold this week, and we thought there'd  
17 have to be a thorough inquiry into it.

18 But when we hear from the people who were to have  
19 been intimidated in that meeting that they perceive no  
20 intimidation, the need for Congel and Matthews to come for that  
21 purpose is diminished and evaporates as far as we're concerned.

22 They certainly are not going to come in and say,  
23 well, you know, they didn't understand, we were in fact  
24 intimidating them, and they just didn't get the message. We  
25 see now we're telling them --



1 (Laughter)

2 JUDGE SMITH: -- that is so unlikely and that is why  
3 we thought that they could be excused. And that's the way we  
4 feel about it.

5 Now, I understand that the Intervenors are also --  
6 are felt that they are taken by surprise on this, and they  
7 don't necessarily oppose it, but they still want to consider  
8 where they're going with Thomas and with Congel and Matthews.

9 MR. BACKUS: Well, let me just say, if I can. Mr.  
10 Congel and Mr. Matthews came up in this testimony at other  
11 times and on January 19th as part of the NRC, FEMA Steering  
12 Committee meeting; and I think we need to consider that  
13 testimony to see whether or not this testimony we've had, as to  
14 whether we want them, we'd like a little time to make that  
15 decision.

16 And the other thing I'd say is --

17 JUDGE SMITH: Well, they were never scheduled as  
18 witnesses for anything except the context of the January 19th  
19 meeting and their combined purpose, and the staff's own  
20 discretion at explaining the evolution.

21 MR. BACKUS: Well, there was testimony about -- I  
22 thought it was Mr. Matthews and Mr. Congel as telling Mr. Krimm  
23 at an NRC, FEMA Steering Committee meeting about what NRC  
24 regulations or didn't require.

25 JUDGE SMITH: Doesn't matter. Doesn't matter.

1 MR. BACKUS: And I think that that's something we'd  
2 like to consider whether we're going to have a right to do.

3 The other thing, Your Honor, I have to candidly say,  
4 none of us I ever thought -- thought Mr. Peterson was going to  
5 come up here and say, under oath, I was intimidated. We're not  
6 surprised that he denied that.

7 And we still think there may be an issue there, that  
8 could be elucidated. I think there's some things in Mr. -- in  
9 some of the notes of that meeting that we might want to  
10 explore.

11 Now, we have, as I understand it, not made a decision  
12 and all we're asking for is a chance to confer and advise the  
13 Board of our preference on it before the Board makes a ruling.

14 JUDGE SMITH: When the Board decided that we would  
15 require the staff to come forward with what happened in that  
16 meeting, we took a threshold small piece of information and we  
17 gave it the worse possible connotation to determine whether it  
18 is something that had to be cleaned up.

19 Since we've now heard, a long time, I don't know, two  
20 and a half days, that threshold has evaporated.

21 MS. WEISS: Mr. Chairman, we also had a subpoena out  
22 for Congel.

23 JUDGE SMITH: I know.

24 MS. WEISS: And what I --

25 JUDGE SMITH: For what purpose?

1 MS. WEISS: Well, that's -- what I'd like to do is go  
2 back to my office and see what's on -- see if I can recall  
3 what's already on the record.

4 JUDGE SMITH: That's another matter. That's another  
5 entirely separate matter.

6 MS. WEISS: Right.

7 JUDGE SMITH: Okay.

8 MS. WEISS: It's a separate matter.

9 MR. TURK: Your Honor, if I may comment. When the  
10 Board directed the staff to produce witnesses who could comment  
11 on the January 19th meeting, and to produce witnesses who could  
12 talk about the evolution of FEMA's position, the Board's  
13 directive expressly subsumed all of the subpoenas and expressly  
14 decided which persons would have to appear and for what  
15 purpose.

16 JUDGE SMITH: Well, I thought we were, but I don't  
17 remember the Congel subpoena anymore.

18 MR. TURK: Well, it was part of the May 10th  
19 telephone conference call.

20 JUDGE SMITH: I might say, you know, I said that this  
21 resolves all pending discovery matters, everything, and he'll  
22 have to be renewed.

23 But you see --

24 MR. TURK: But --

25 JUDGE SMITH: Just listen to me. We said, now, we

1 think we're giving the relief now that all the parties have a  
2 right to. So we didn't have to take apart each individual  
3 subpoena matter. We said, if that does not -- I mean, all  
4 discovery motions are now denied and it will have to be renewed  
5 because we think were taken care of.

6 Now, I think that Ms. Weiss's -- we are now going to  
7 relieve Mr. Congel and Mr. Matthews from appearing. It's up to  
8 Ms. Weiss now to make a case for bringing Mr. Congel. I don't  
9 remember what it is.

10 MS. WEISS: Well, my recollection, you know, we've  
11 been thinking about this for the past few days, as this  
12 testimony comes in, and we do get testimony on some of the  
13 events that we were concerned about. You know, we've been  
14 thinking about this. And my recollection, personally off the  
15 top of my head now of one of the major reasons why I wanted Mr.  
16 Congel was for him to talk to the substance of meetings with  
17 NRC in June and I think later.

18 And what -- between NRC and FEMA, what the problems  
19 with Seabrook beach population were perceived to be as they  
20 were discussed between the two agencies and what possible  
21 solutions were discussed between the two agencies.

22 And we have notes that I think Mr. -- well, we have  
23 notes of at least one of those meetings that reflects a very  
24 active role on the part of Mr. Congel in proposing various ways  
25 we might deal with this beach population issue. That's what I

1 was concerned with.

2 JUDGE SMITH: But how did it get traced through to  
3 evidence in this case that you have to face to FEMA?

4 MS. WEISS: Pardon me?

5 JUDGE SMITH: How is, whatever Mr. Congel has done or  
6 said, how does that get before the Board?

7 MS. WEISS: Well, it casts a certain light on this  
8 evolution of a position question, and, you know, why is it that  
9 we now are talking about not having a requirement of sheltering  
10 and that was not brought up in these early meetings. Why does  
11 it come out -- you know, there were different things being  
12 discussed.

13 I mean, I'm doing a lot of argument here.

14 JUDGE SMITH: Yes. And you wanted an opportunity.

15 MS. WEISS: Yes. And my view of it is, there's a  
16 case to be made, possibly, through Mr. Congel that there were a  
17 variety of ways being discussed of dealing with Seabrook over  
18 the summer between NRC and FEMA, none of which had to do with  
19 interpreting the NRC rules as not requiring sheltering. And,  
20 well, let me just leave it at that; there were a variety of  
21 ways which I think reflect on the evidence that we've had in  
22 the past three days.

23 MR. TURK: I haven't seen the notes, Your Honor, I  
24 assume they're talking about notes produced by Mr. Thomas to  
25 them, which I have not seen yet. And I assume also that they

1 will be producing them to us because we've asked for any  
2 conversations involving Mr. Thomas.

3 MS. WEISS: We don't have anything that wasn't  
4 produced in his deposition.

5 MR. TURK: I think whatever may be the value of Dr.  
6 Congel's testimony, it's cumulative. We've had a full  
7 explanation from FEMA, anything else is just chasing the last  
8 detail down. Given a chance, I'm sure that Ms. Weiss would  
9 like to have many --

10 JUDGE SMITH: As I understand the way it stands now,  
11 Mr. Backus's has drawn -- thrown some doubt on it, but the  
12 intervenors were going to consider whether they in fact want  
13 Congel and Mr. Thomas.

14 Let's -- all right, let's resolve one thing. First,  
15 beginning next Tuesday at -- you want 10 o'clock, right? I  
16 mean, not next Tuesday, but a Tuesday on the 7th, you want  
17 that.

18 MR. OLESKEY: Yes, that would be helpful again.  
19 Thank you.

20 JUDGE SMITH: We will begin not with Congel, but we  
21 will begin with, as I overheard you say, FEMA's merits panel.

22 MR. FLYNN: Yes.

23 JUDGE SMITH: Okay. We will then -- it's up to you  
24 about whether you want to pursue Thomas or not; that's entirely  
25 you.

1           We will try to have a -- let's see if you want Congel  
2 initiate a telephone conference call toward the end of the  
3 week; and let's keep it as small as we can. That's very  
4 stressful when we keep dropping people and we can't hear them.

5           So, have -- if you can designate an intervenor to  
6 argue the point, that would be very helpful because, you know,  
7 that can be done faster and easier. So, keep your  
8 participation as narrow as possible, if you decide you're going  
9 to renew it.

10           Is that all right, Mr. Dignan?

11           MR. DIGNAN: On the question, could we also possibly  
12 have a conference call on the question of whether the  
13 Commonwealth continues to want Mr. Thomas because the Thomas  
14 situation, as the Board knows, you've got a motion now which  
15 you've allowed, at least in part, for time for his attorney to  
16 come and deal with you. That has all the earmarks of something  
17 that can keep the record open for a while, and I'd like to know  
18 if the Commonwealth is going to insist on pursuing it, let's  
19 nail that down next week and go from there, because otherwise  
20 that's going to become the --

21           JUDGE SMITH: Well, we want Mr. Thomas -- we want the  
22 intervenors to move in the direction of getting Mr. Thomas  
23 here, also, the week of the 7th, if they're going to push it.  
24 Now, I don't know how they can enforce a subpoena that fast.  
25 But I also --

1 MR. DIGNAN: Well, in fairness to the Intervenors the  
2 problem as it now stands is this, Your Honor. You are in  
3 receipt of, and have allowed at least to the extent of  
4 relieving of the 27th of a motion to alter that subpoena.

5 JUDGE SMITH: He's going to come back when the Board  
6 says.

7 MR. DIGNAN: Well, that's not what the motion says,  
8 Your Honor. I don't know what you're going to do with the  
9 motion, but the motion seeks more relief than that, as I  
10 recall.

11 JUDGE SMITH: He wants to brief; we haven't worked on  
12 that.

13 MR. DIGNAN: Yes.

14 JUDGE SMITH: See, he has that right. He has that  
15 right to move to quash. And he's --

16 MR. DIGNAN: No one is concerned about arguing just  
17 his rights. What we want is to be sure we keep the thing on  
18 track and moving so that that doesn't become a critical path  
19 that means that if we finish the FEMA merits panel and let's  
20 say nobody wants Congel, we're now going to sit around for two  
21 weeks for Thomas.

22 JUDGE SMITH: We're concerned about that, too. Well,  
23 let's ask, number one, if a determination is made that you want  
24 neither Congel or -- I mean, you want -- that you do not want  
25 both of them, as soon as that determination is made inform



1 everybody.

2 MR. OLESKEY: Sure.

3 JUDGE SMITH: Then I think that the Intervenors  
4 should be, if they want Thomas, they should be pushing to get  
5 him.

6 MR. OLESKEY: I wasn't coupling that comment with  
7 your comment -

8 JUDGE SMITH: I agree with Mr. Dignan, we don't want  
9 to continue that last element of this issue for weeks while we  
10 fool around with Thomas's subpoena.

11 MR. OLESKEY: I don't understand what you mean by our  
12 pushing or our enforcement.

13 JUDGE SMITH: If you want Thomas, take an aggressive  
14 position in getting him here promptly.

15 MR. OLESKEY: But this Board issued a subpoena at our  
16 request.

17 JUDGE SMITH: Right.

18 MR. OLESKEY: What is it that we would do beyond  
19 that?

20 JUDGE SMITH: Say, we want our witness, you know.  
21 And work with him. Work with him.

22 Mr. --

23 MR. DIGNAN: Your honor, if you recall the motions  
24 before you by Mr. Thomas is a motion that the date for his  
25 appearance be changed to read that he appear on a date to be

1 determined by the NRC Licensing Board, NRC Safety and Licensing  
2 Board after a telephonic conference with counsel for the  
3 witness.

4 And two, the witness is to have leave to file further  
5 appropriate motions with respect to his proposed appearance  
6 prior to the date so determined by the Board.

7 JUDGE SMITH: He wants us to communicate with Mr.  
8 Flynn. Let's say -- what?

9 MR. DIGNAN: No, my point

10 JUDGE SMITH: He wants us to communicate our action  
11 on that motion through Mr. Flynn.

12 MR. FLYNN: That's not my understanding.

13 MR. DIGNAN: That's not what I understand at all.

14 JUDGE SMITH: That's what it says there.

15 MR. DIGNAN: No, Your Honor. All he wanted -- as I  
16 understood it was that, he has tentatively retained a  
17 Massachusetts lawyer to represent -- would Your Honor like a  
18 copy of this, if you don't have one.

19 JUDGE SMITH: Some place in there it talks about Mr.  
20 Flynn, that Mr. Flynn will communicate the Board's ruling.

21 MS. WEISS: Just on that motion, I think.

22 JUDGE SMITH: Yes, that's right, on that motion. So,  
23 we can communicate to him. That what he's doing is asking for  
24 a specified amount of time to file his motion to quash; and the  
25 rule is vague on it. And he had -- did I see something -- I

1 didn't -- let me see.

2 MR. DIGNAN: I think what Your Honor may remember is  
3 that you allowed it to sufficiently relieve him of attendance  
4 today and ask -- I believe --

5 JUDGE SMITH: I remember I asked Watson --

6 MR. DIGNAN: -- and asked Watson to communicate that  
7 to him. But I don't think he's asked that Mr. Flynn do  
8 anything. And I think -- what I am saying is, I think Mr.  
9 Oleskey's point is well taken that whether the Board desires it  
10 or not the ball is sort of in the Board's court in the sense  
11 that the subpoena is out and there's a motion before you as to  
12 whether you're going to allow more time before its enforcement  
13 is required. And then at that point, I guess the agency  
14 enforces if Mr. Oleskey insists on it unless the Board quashes  
15 it.

16 JUDGE SMITH: I can't find it now, but I read it when  
17 this came in asking that a ruling on this be communicated  
18 through Mr. Flynn. I just can't support that memory.

19 MR. DIGNAN: You may have got a letter -- covering  
20 letter that didn't come with our copy, Your Honor, I don't  
21 know. I just -- but all I know is, I agreed to, with my  
22 brother Oleskey, like it or not it's kind of in the Board's  
23 court at this point because he's asked for the subpoena.  
24 There's a motion out there to delay things and eventually, it  
25 seems to me, Mr. Thomas has either got to come here, move to

1 quash it, or the Board has to enforce the subpoena.

2 JUDGE SMITH: That's right. He's asked for date by  
3 which he has to -- can file his motion to quash. And I was  
4 going to give him a date, and I was going to try to communicate  
5 it through Mr. Flynn or Mr. Watson to him, which I thought he  
6 had invited, authorized.

7 MR. OLESKEY: Well, any one of us in Boston can call  
8 his attorney --

9 MS. WEISS: We can give him a call.

10 MR. OLESKEY: -- and his attorney designate Mr.  
11 Barshak and tell him.

12 MS. WEISS: It's not that big a deal.

13 JUDGE SMITH: Well, normally a motion to quash,  
14 there's some kind of rule of thumb somewhere around the  
15 neighborhood of 10 days, and it will have been 10 days next  
16 Thursday.

17 MR. OLESKEY: The only --

18 JUDGE SMITH: Why don't you consider the possibility  
19 of stipulating what he would say.

20 MS. WEISS: Okay.

21 MR. OLESKEY: Sure.

22 MS. WEISS: I think I suggested that.

23 MR. DIGNAN: Your Honor, before -- I say my one  
24 interest is not turning this into a long critical path item,  
25 that the Board should be reminded of the following facts: the

1 motion recites, as I understand it, that he has tentatively  
2 retained counsel.

3           That in addition, who presumably any communication  
4 has to be with, if in fact counsel is retained, but there's  
5 another problem built into that which I understand is not  
6 resolved and that is, he states in there that FEMA and he had  
7 not come to conclusion on whether or not FEMA was going to  
8 authorized the retention of this particular counsel and pay for  
9 it. And it's my understanding, and the FEMA lawyers can speak  
10 to it, that there has yet to be a resolution of this.

11           So my only concern is the -- I made it clear, I don't  
12 -- as far as I'm concerned Mr. Thomas need never attend this  
13 hearing again. But what I'm concerned about is that we keep  
14 things moving, that is to say, FEMA, if they're going to tell  
15 him whether he's got a lawyer, that that lawyer be communicated  
16 with and a date be set by which they fish or cut bait or  
17 whatever, because otherwise this has all the makings of  
18 something that's going to keep rolling along.

t/157           19           JUDGE SMITH: I know.

20           MR. OLESKEY: I agree with Mr. Dignan, I think the  
21 motion makes it clear there had been a problem between the  
22 agency and Thomas about the terms of the engagement.

23           JUDGE SMITH: Well, one thing is clear that Mr.  
24 Thomas is free to come here on government time and government  
25 expense; and I thought that he had worked out, in principle,

1 that they were going to pay for legal counsel, if he chooses to  
2 bring it.

3 I think his -- I think you should not bring him, and  
4 I think if you insist upon having his viewpoint it should be  
5 stipulated; and I don't think we ought to -- I hope that we  
6 don't get into a subpoena battle. I don't think it's  
7 necessary.

8 Would you -- what is your specific request? See, he  
9 tells us that he hasn't been able to work out a financial  
10 thing. The problem is, we told him now that he should file his  
11 motion to quash, if he's going to, by Thursday.

12 MR. WATSON: Your Honor, I did not communicate that  
13 to him.

14 JUDGE SMITH: I know, the only thing you were to tell  
15 him is that he didn't have to come this morning.

16 MR. WATSON: That's correct.

17 JUDGE SMITH: But I want to give him the maximum  
18 amount of time to tell him that he should have his motion to  
19 quash in by Thursday.

20 MR. WATSON: Thursday next?

21 JUDGE SMITH: This coming week, yes.

22 MR. WATSON: Very well.

23 JUDGE SMITH: Anything further?

24 MR. TURK: One thing, Your Honor, scheduling of  
25 staff's filing of proposed findings, because I've been sitting

1 in the hearing these many weeks I'm not ready to file on the  
2 31st of May as I'm scheduled to do.

3 It's my understanding that the Board is going to be  
4 turning --

5 MR. BACKUS: For Heaven's sake.

6 MR. TURK: It's my understanding that the Board is  
7 going to be turning to contentions at this point?

8 JUDGE SMITH: Well, we had hoped to, but a lot of  
9 intervening problems are coming up

10 MR. TURK: Well, what I'm going to request --

11 JUDGE SMITH: Go ahead.

12 MR. TURK: If the grumbling on the other side of the  
13 room dies down, I'm going to request that the staff be granted  
14 an extension of time on the filing of proposed findings.

15 JUDGE SMITH: Didn't we just grant one before we came  
16 here?

17 MR. TURK: On contentions.

18 JUDGE SMITH: On contentions.

19 MR. TURK: Those are response to contentions are  
20 being filed today.

21 JUDGE SMITH: And when do you want to file them?

22 MR. TURK: The findings?

23 JUDGE SMITH: Yes. When are they due now from you?

24 MR. TURK: They're due the 31st of May.

25 JUDGE SMITH: You can't make that.

1                   What time do you want?

2                   MR. BACKUS: He objected. Yes. You wouldn't agree  
3 to my extension for a week.

4                   JUDGE SMITH: We're adjourned until 10:00 a.m. June  
5 7th.

6                   (Whereupon, at 3:42 p.m. the hearing was adjourned to  
7 reconvene 10:00 a.m., Tuesday, June 7, 1988 at the same place,  
8 Concord, New Hampshire.)

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This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission in the matter of:

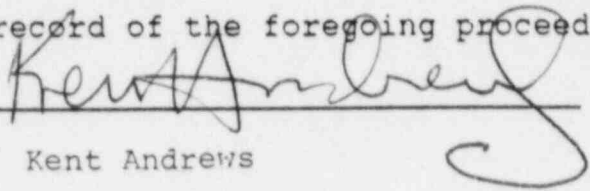
Name: PUBLIC SERVICE COMPANY OF  
NEW HAMPSHIRE, et al.

Docket Number: 50-443-OL, 50-444-OL

Place: Concord, New Hampshire

Date: May 27, 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 stenographically by me and, thereafter reduced to typewriting by me or under the direction of the court reporting company, and that the transcript is a true and accurate record of the foregoing proceedings.

/s/ 

(Signature typed): Kent Andrews

Official Reporter

Heritage Reporting Corporation