

ORIGINAL

UNITED STATES
NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF:

DOCKET NO:

PUBLIC SERVICE COMPANY OF)
NEW HAMPSHIRE, et al)
(SEABROOK STATION, UNITS 1 AND 2)

50-443-OL
50-444-OL
OFF-SITE
EMERGENCY
PLANNING

EVIDENTIARY HEARING

LOCATION: CONCORD, NEW HAMPSHIRE

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

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

8 EVIDENTIARY HEARING

9
10 Monday,
January 11, 1988
11 Room 310
Legislative Office Building
12 New Hampshire Statehouse
Concord, NH

13
14 The above-entitled matter came on for hearing,
15 pursuant to notice, at 2:45 p.m.

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

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

20 JUDGE GUSTAVE A. LINENBERGER, JR., MEMBER
Atomic Safety and Licensing Board
21 U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
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APPEARANCES: (Continued)

For the Town of Kensington:

(No appearance)

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by Mr. Traficonte

EXHIBITS:IDEN: RECD: REJD:DESCRIPTION:SAPL:

6-A	8393	8393	Letter, December 11, 1987, Herzberg to Backus, two pages
6-B	8393	8393	Letter, October 31, 1983, Varnum to Wallace, two pages
6-C	8393	8393	Letter, October 26, 1985, Varnum to Wallace, two pages

P R O C E E D I N G S

1
2 JUDGE SMITH: Come to order. We are on the record.

3 Before we went on the record -- gentlemen. Before we
4 went on the record, I asked Mr. Turk if he was ready to address
5 Applicants' motion for an order to warrant subpoenas. He's not
6 quite ready, but he will be ready this afternoon yet.

7 In the meantime, Mr. Flynn has information to provide
8 which may affect this matter. Is that correct, Mr. Flynn?

9 MR. FLYNN: Yes, Your Honor.

10 On Thursday and Friday of last week FEMA hosted a
11 meeting of the Regional Assistance Committee, and most of the
12 time -- most of the discussion at that meeting was devoted to
13 consideration of the sheltering issue for the Seabrook beach
14 population.

15 As a result of that meeting, FEMA intends to prepare
16 some supplemental testimony which reflects that discussion and
17 the advice given to FEMA by the Regional Assistance Committee.
18 It will take a little time to prepare that, so I would ask that
19 FEMA not be called upon to testify on that issue this week, but
20 we will be prepared at the next week of hearings, whenever that
21 is.

22 JUDGE SMITH: All right. We'll come back to that
23 also when we address the motion for subpoenas or order for
24 staff witnesses.

25 MR. TURK: Your Honor, one other matter related to

1 the argument on Applicants' paper. As the Board will recall,
2 the staff had made a request of the Massachusetts Attorney
3 General's office for discovery relating to the beach shelter
4 issue. And Mr. Oleskey tells me that he does have some
5 documents which he will provide to me today. I have not seen
6 them yet. I would like an opportunity to review those first
7 before I respond to the motion for subpoena.

8 JUDGE SMITH: All right. Any other preliminary
9 business?

10 MR. DIGNAN: Your Honor, I have -- go ahead, Bob.

11 MR. BACKUS: Couple of things, Your Honor.

12 First of all, at the last session I believe, or maybe
13 the session before the last, the issue of the letter from Dr.
14 Herzberg came up, and having that admitted into the record. I
15 have now discussed that with Attorney Lewald, and I have
16 obtained from Dr. Herzberg the two documents that were referred
17 to in his letter, and attached them.

18 So I think we have a complete list of materials
19 pertaining to the Mary Hitchcock Memorial Hospital and its
20 capability to handle contaminated, injured persons. And I
21 would like to furnish this letter which was previously
22 furnished to the parties, of December 11, with the two
23 attachments so it will be complete.

24 I don't believe there would be any objection to that
25 at this time.

1 JUDGE SMITH: Mr. Dignan?

2 MR. DIGNAN: No objection from the Applicant, Your
3 Honor.

4 JUDGE SMITH: Do these have any identification, Mr.
5 Backus?

6 MR. BACKUS: Pardon me?

7 JUDGE SMITH: Should these be identified?

8 MR. BACKUS: I think these should be identified as
9 supplementing and explaining the letter in I believe it's
10 Volume 2 from the Mary Hitchcock Hospital, which was the
11 subject of comment by Attorney Bisbee the day after Dr.
12 Herzberg's testimony.

13 JUDGE SMITH: How will they be treated in the record?
14 As an exhibit?

15 MR. BACKUS: I'd like to have them marked as a SAPL
16 exhibit.

17 JUDGE SMITH: I don't have that exhibit number. My
18 records are somewhere between here and Dulles Airport.

19 MR. BACKUS: Unfortunately, I don't know what the
20 most recent SAPL exhibit number was, either.

21 THE REPORTER: The next one is 6.

22 MR. BACKUS: All right. So this would be SAPL 6, and
23 it would consist of the December 11, 1987, letter addressed to
24 me from Dr. Donald L. Herzberg. Attached to that is a letter
25 of October 31, 1983, to Dr. William Wallace from James. W.

1 Varnum, President of the Mary Hitchcock Memorial Hospital. And
2 the second attachment also stapled thereto is a one-page letter
3 dated October 28, 1985, from Mr. Varnum to Mr. Wallace.

4 JUDGE SMITH: Okay, may I propose that those letters
5 be numbered SAPL Exhibits 6-A, 6-B and 6-C?

6 MR. BACKUS: That would be fine.

7 (The documents referred to were
8 marked for identification as
9 SAPL Exhibit Nos. 6-A, 6-B
10 and 6-C.)

11 MR. BACKUS: The only other thing, Your Honor --

12 JUDGE SMITH: There are no objections to these
13 exhibits as I understand it?

14 MR. LEWALD: No objection.

15 JUDGE SMITH: All right. SAPL Exhibit 6-A, 6-B and
16 6-C are received into evidence.

17 (The documents referred to,
18 having been previously marked
19 for identification as
20 SAPL Exhibit No. 6-A, 6-B and
21 6-C were received in evidence.)

22 MR. BACKUS: Thank you, Your Honor.

23 The only other matter is that I had had here Dr.
24 Dagoulis as a SAPL witness this afternoon. He had to leave,
25 and I will advise the Board as soon as I can as when his

1 schedule will permit him to reappear, which I anticipate will
2 certainly be this week. It may be Wednesday, however.

3 JUDGE SMITH: All right. Do you have other
4 preliminary matters?

5 MR. BACKUS: No, that's all I have.

6 JUDGE SMITH: Anybody else?

7 MR. DIGNAN: Yes, Your Honor.

8 JUDGE SMITH: Mr. Dignan.

9 MR. DIGNAN: Yes, Your Honor, I have one problem.

10 FEMA has indicated that they are going to file
11 supplemental testimony. I don't know if this is going to
12 represent a change in their view or what. But I have a panel,
13 I guess the next order of business will be the shelter panel of
14 the Applicant, which testimony was prepared, among other
15 things, on the basis of what FEMA's position was in the
16 interrogatories which became the prefiled testimony.

17 I would like articulated, because if FEMA is planning
18 to change the substance of its testimony in any way, I'm not at
19 all sure I want to offer the shelter panel at this time until I
20 know exactly what FEMA's position is. And I'm wondering if we
21 can be enlightened, because this testimony responds directly to
22 a position that FEMA had articulated earlier.

23 JUDGE SMITH: Mr. Flynn?

24 MR. FLYNN: Yes, Your Honor.

25 I hesitate to say with 100 percent confidence what

1 the FEMA testimony will be, but I was at the RAC meeting and I
2 can say with confidence what the advice of the RAC was. I will
3 do that.

4 The majority of the members who were present at the
5 RAC expressed the opinion that the sheltering plan for --
6 excuse me -- that the New Hampshire Radiological Emergency
7 Response Plan with respect to the beach population was
8 adequate, and it's adequate as it stands.

9 All of the people at that RAC meeting, all of the
10 members, felt that the plans would be enhanced by addressing
11 the issue of sheltering for the beach population. That is to
12 say, an explicit treatment of when and whether sheltering would
13 be appropriate, an inventory of existing shelter, and, if
14 sheltering is considered appropriate under any circumstances,
15 some discussion of how people would be gotten to the shelters.

16 There were some members of the RAC who expressed the
17 view that until that discussion was furnished, the plan with
18 respect to the beach population is inadequate.

19 The rationale for the split of opinion among the RAC
20 members had to do with the requirement in NUREG-0654 that there
21 be a range of protective actions. Those who felt that the plan
22 was inadequate felt that way because providing for evacuation
23 but not for shelter relied on a single protective action which
24 did not satisfy the requirement that there be a range.

25 In addition, there was the larger question of whether

1 the protective action, namely, evacuation, provided reasonable
2 assurance that adequate protective measures could be taken in
3 the event of an accident.

4 In that dis -- well, perhaps I should just leave it
5 at that. That was discussed briefly. There was much more
6 detailed discussion of the question of what was required by the
7 Planning Standard J which called for a range of protective
8 actions.

9 So in summary, then, the advice of the RAC was that
10 the plans are adequate, but would be enhanced by developing a
11 rationale for using shelter or not using shelter.

12 MR. DIGNAN: Well, if I have permission of the Board
13 to inquire of Mr. Flynn, this majority that he's talked about,
14 was the majority a substantial majority, or was there one
15 holdout on the position, or what?

16 MR. FLYNN: I'll tell you the names.

17 MR. DIGNAN: You mean the agencies.

18 MR. FLYNN: Okay.

19 Those who held the view that the plan was adequate,
20 or the agencies whose representatives expressed that view, were
21 NRC, Environmental Protection Agency, Department of Energy,
22 Department of Transportation, and Food and Drug Administration,
23 I guess FDA is part of HHS.

24 Those agencies whose members expressed the view that
25 the plans were not adequate were FEMA, Commerce -- represented

1 by the National Oceanographic and Atmospheric Administration --
2 and the Department of Interior.

3 There was one agency not represented, and that was
4 Agriculture.

5 MR. DIGNAN: You said that they thought it was
6 inadequate, but the first time around you said they all thought
7 it should be enhanced.

8 Are these three agencies of the view that it's
9 inadequate?

10 MR. FLYNN: Yes.

11 JUDGE SMITH: Would you clarify that?

12 I'm not sure if those, that majority who thought the
13 plan is adequate believe that it is adequate with enhancement,
14 or if those who believe that it is inadequate believe that it
15 is inadequate unless it is enhanced, or a third alternative,
16 whatever it might be, but I lost the thread there.

17 MR. FLYNN: The first group felt that the plan was
18 adequate regardless of whether anything further was done, but
19 that it would be an enhancement to the plan if those sheltering
20 issues were addressed in greater detail along the lines that I
21 related.

22 The second group felt that until that was done the --
23 FEMA's prior judgment that the plan was inadequate wasn't
24 changed. There wasn't enough evidence to -- enough information
25 to change that earlier judgment.

1 MR. DIGNAN: Well, I'm somewhat confused. You say
2 FEMA is of that position; yet FEMA wants to change its
3 testimony. Why? Why doesn't FEMA simply adhere to its prior
4 testimony then?

5 MR. FLYNN: We haven't formulated the testimony yet,
6 Tom. What we plan to do is reflect what went on at the
7 meeting.

8 MR. TURK: If I can add one comment, if Mr. Flynn
9 would permit me, and I was not present at the meeting. I had a
10 report from the NRC RAC member who was present.

11 I'm informed that the Department of Agriculture had
12 previously voted in July to say that the plans are adequate.
13 Agriculture was not present at this latest meeting.

14 And I'm also informed that I believe Interior,
15 Department of Interior's representative, was not present at
16 this meeting, but Mr. Thomas represented to the RAC members how
17 that individual would have voted.

18 JUDGE SMITH: Any other preliminary business?

19 MR. TRAFICONTE: Yes, Your Honor. John Traficonte
20 from the Mass. AG's office.

21 I had discussed with Mr. Dignan and Mr. Turk the
22 following matter that's come up in the interim since the last
23 session, and we would like, not necessarily to argue this
24 matter now, but certainly to present it to the Board at the
25 earliest possible time. If the Board wants to hear a

1 discussion and argument today, that's fine with us.

2 It concerns in part the schedule for the litigation
3 on the Mass. plan, and as a preliminary to that, it concerns
4 the redacted information, that the plan did not have in it back
5 in September when it was first submitted.

6 It is our understanding that, as of at least December
7 30th or thereabouts, first of the year, a week or so ago, the
8 Applicant has provided FEMA and the NRC staff with the redacted
9 information.

10 We have a letter which I'm sure was sent to the
11 service list from PSNH, New Hampshire Yankee, dated December
12 30, 1987. It's a cover letter that transmitted a series of
13 enclosures to the document room, filling the gap on information
14 in the plan as it was originally filed in September.

15 Importantly, however, there are a couple of
16 enclosures that contain, and I think the key here is the names
17 and addresses of the individuals who have been lined up by the
18 utility to function as emergency workers. Those enclosures
19 have continued to be redacted, and I'm a little puzzled. Mr.
20 Turk, who I spoke with on this matter on Friday, was in part
21 helpful, or partially helpful.

22 I understand that someone at the NRC did receive this
23 information, and it's also my understanding that FEMA now has
24 that information.

25 The enclosures, however, were not sent to the service

1 list, so I don't believe Your Honors have that information, Mr.
2 Turk didn't get the information, nor did any of the other
3 parties get the information.

4 We think that at the very earliest that it's possible
5 to direct our attention to it, we think that the Board should
6 focus on the issue of the continued redaction of those portions
7 of the Mass. plan, because we feel, as a party to the
8 litigation on that plan, that the names and addresses are a
9 crucial component of the full plan. The Commission indicated
10 that itself when it addressed the low power issue on the stay,
11 and it's also clear to us that FEMA and the Staff needs the
12 names and addresses to adequately review the plan, and we feel
13 we are in the same boat. We need the names and addresses to
14 adequately review the plan.

15 It occurs to me that the Applicant may well push on
16 to us the burden of trying to obtain those names through a
17 normal discovery channel and/or a Freedom of Information Act.
18 And it's that that we'd like to cut off if we can right now,
19 because at least the Massachusetts AG's office doesn't believe
20 it's appropriate that critical components of the Mass. plan not
21 be provided to the Commonwealth, and that we'd have to go
22 through the cumbersome and time-consuming process of a Freedom
23 of Information Act or a normal discovery request for what we
24 consider to be essential elements of the plan.

25 So at the earliest possible time we'd like the Board

1 to address that. Obviously we'd like the Board to order that
2 that information that's already been provided to the Staff and
3 FEMA be provided to the other litigants. But if more
4 sophisticated argument is necessary, we would like to schedule
5 that.

6 MR. DIGNAN: Your Honor, the difficulty is very
7 simple. This first came up among myself and the Commonwealth
8 down before the staff, and not Mr. Traficonte, but another
9 Assistant Attorney General was there. I said you want you.
10 You agree to a protective under the auspices of the Board, you
11 can have it. And I was told the Commonwealth would not agree
12 to a protective order. That's what the fight is going to be
13 about, Your Honor.

14 I have no desire to keep it a secret. I just want it
15 under a protective order so that I can protect these people
16 from possible harassment who have agreed to cooperate with us.

17 And if the Commonwealth today represents they will
18 enter into an appropriate protective order, this problem will
19 go away within 48 hours. Mr. Traficonte and I could draft it
20 over a martini tonight.

21 On the other hand, the Commonwealth's position is
22 they won't take it under a protective order. Then the Board is
23 going to have to resolve it as far as I'm concerned.

24 JUDGE SMITH: I infer you were not aware of that.

25 MR. TRAFICONTE: No, I was. I was at the meeting,

1 although the discussion was between Mr. Dignan and another
2 attorney with the Mass. AG's office. I was present.

3 I am aware of that, and I understand that they would
4 want a protective order. But we take the position that it
5 would be theirs to request. We think it's quite clear that the
6 information should be automatically be made available to us at
7 the time in fact when it's made available to the NRC Staff and
8 FEMA.

9 If they don't want the information made available to
10 us, they should come before the Board and make out a case for a
11 protective order. We don't believe there are any grounds for a
12 protective order. I've been trying to bend my mind as to how
13 there can be a privacy claim in these contracts to supply
14 service in the event of an emergency, and I can't see a privacy
15 right there, and certainly not a privacy right that attaches to
16 the utility.

17 If it's anything, the utility is here arguing the
18 privacy right of another party, and there is no evidence that
19 those other parties have requested that the information be
20 held --

21 JUDGE SMITH: How many people are involved?

22 MR. TRAFICONTE: Hundreds, I assume.

23 MR. DIGNAN: A lot, Your Honor. My understanding
24 it's a lot. I don't want to make a representation, because I
25 just don't know. I'd have to check with people, but it's a

1 fair number of people.

2 JUDGE SMITH: Well, I --

3 MR. DIGNAN: I mean, Your Honor may conclude that the
4 Commonwealth is right. I'm saying that I don't want to be left
5 in the a position that we're not being -- I have told them they
6 could have it as soon as I've got a protective order. If they
7 want it without a protective order, they are going to have to
8 convince Your Honor that that's the case. We're going to have
9 to have a legal argument before I'll go along with that.

10 MR. TRAFICONTE: I'd reverse it and say we should
11 have the information. It's part of the plan. If they want a
12 protective order --

13 MR. DIGNAN: Your problem is it's filed under 2.790,
14 Mr. Traficonte, and that's where it's going to stay until
15 somebody makes a move to take it out from under, and I'm not
16 going to do that. So that puts the ball squarely in your
17 court, as we say.

18 MR. TRAFICONTE: Well, I'm not sure there is any
19 precedent -- I'm not sure there is any precedent for filing a
20 plan, essential parts of a plan as protected under 2.790. That
21 would be a question of precedent.

22 MR. DIGNAN: That question has never disturbed me,
23 Mr. Traficonte. I think making law is fun.

24 JUDGE SMITH: Okay. Well, that's enough.

25 MR. TURK: Your Honor, just so the record is clear

1 with regard to what the NRC Staff has.

2 None of the Staff reviewers nor the project manager
3 have copies of this redacted information. It's my
4 understanding that the utility made a submission of numerous
5 copies to the docketing section of NRC, but so far it has not
6 gone out to my reviewers and to my project manager.

7 And Mr. Flynn and I just conversed, and Mr. Flynn
8 informed me he's not aware of whether FEMA has in fact received
9 the information. I guess it's our common understanding that it
10 probably was submitted, but we're not aware that we have it in
11 our agencies in any particular person's hands.

12 MR. TRAFICANTE: Your Honor, I did raise this in the
13 context of scheduling the litigation on the Mass. plan which I
14 know, Your Honor, it's of concern to the Board, it's a concern
15 to all of us. And I understood from the last session that we
16 were going to address that issue early on this week.

17 And I don't know what that schedule is going to look
18 like, but this information, and our capacity to digest it and
19 review it, is for us part and parcel of adequate review of the
20 plan, and therefore it would factor into our view of what an
21 appropriate schedule for litigation of that plan is.

22 If we don't get the information for six weeks or
23 seven weeks, it seems that that is really an -- that
24 unnecessarily delays our initial reviews.

25 JUDGE SMITH: The information again being the names

1 and addresses of those who have agreed to provide services.

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2 MR. TRAFICONTE: Exactly.

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3 MS. WEISS: Mr. Chairman, it's my understanding under
4 2.790 that the Staff has to make a determination whether a
5 request to hold material confidential is made, as to whether it
6 is or is not entitled to be treated with confidentiality.
7 That's how I read 2.790.

8 JUDGE SMITH: I think 2.790 is a government privilege
9 section. It's the exemptions to the Freedom of Information Act
10 codified by the NRC.

11 Nevertheless, if an argument of that nature can be
12 made persuasively by a private party, we would entertain the
13 argument at least, just as a matter of the integrity of the
14 hearing record, and the problems alluded to by Mr. Dignan, if
15 in fact they exist.

16 We have had a little thread, and I don't want to
17 characterize it too sharply, we have had, at least from my
18 distant vantage point, a little thread of people who have
19 contracted for service, or have signed little letters of
20 agreement, being contacted, and suddenly those letters of
21 agreement seem to have the force that they were thought to have
22 to begin with.

23 MS. WEISS: There are a variety of possible --

24 JUDGE SMITH: Yes.

25 MS. WEISS: -- reason for that.

1 JUDGE SMITH: Right, exactly, and that is an area
2 that I think would be appropriate for us to inquire into, but
3 I'm not prepared to do it now.

4 MS. WEISS: Mine was just a procedural question as I
5 read the rule and just glanced through it briefly sitting here.

6 There has been a request made of the Staff to hold
7 that information confidential. The Staff is required by that
8 rule to make a judgment as to whether that material is entitled
9 to be treated as confidential material under those rules.

10 JUDGE SMITH: The Staff doesn't have it. No
11 government agency has it.

12 MS. WEISS: No, the NRC staff has got it.

13 MR. TURK: It's my understanding that --

14 JUDGE SMITH: Oh, I'm sorry.

15 MR. TURK: It's my understanding that the utility
16 submitted copies of it to the docketing section, but my
17 reviewers don't have it in their hands yet.

18 MS. WEISS: We certainly have the cover letter that
19 purports to do that.

20 JUDGE SMITH: All right. I see.

21 So there was a request by the utility to -- it's
22 proprietary information -- to hold it confidential. It's
23 proprietary information.

24 MR. DIGNAN: Yes. I mean, the argument is that 2.790
25 hasn't been used this way and I quite agree. I don't know that

1 it has been.

2 JUDGE SMITH: Well, but proprietary information has
3 been used quite often in --

4 MR. DIGNAN: Oh, yeah, but I mean the argument being
5 that proprietary information would have some economic, and I
6 can make an argument that it's economic.

7 What I basically did here, Your Honor, was get the
8 ball rolling by submitting in under 2.790, and I'm going to try
9 to persuade the Board under its jurisdiction to give me the
10 protection I need.

11 It was my understanding this what has happened down
12 in Shoreham; that the Board has put a protective order on this
13 sort of material when requested.

14 Now, maybe Your Honor won't agree with me or not, but
15 there's a simple solution for the Commonwealth, and it's called
16 when the contentions are set, a motion for discovery, and they
17 can see if they can get it.

18 The other thing they can do is try to persuade the
19 Staff, I suppose, to give it to them without my having a run at
20 it.

21 And the third thing they can do, as I've tried to get
22 across to them, sit down, work a decent protective order out
23 with me, and they can have it tomorrow as far as I'm concerned.
24 I don't understand why anybody isn't willing to go into that
25 kind of a protective order, but that's their business.

1 JUDGE SMITH: I understand you are not willing to --

2

3 MR. TRAFICONTE: No, and just so the record is clear
4 on that, we represent the Attorney General of the Commonwealth
5 of Massachusetts, and we're not about to enter into a
6 protective order on the -- first, on holding this information
7 confidential when the information involves the crucial
8 personnel aspects of the plan submitted by the utility for the
9 areas in Massachusetts. We don't see anything confidential or
10 private that wouldn't be a matter of public record.

11 So philosophically we're not for keeping the
12 information confidential.

13 MS. WEISS: Some of the stuff on its face the claim
14 is without merit. They are claiming that you can keep the name
15 of a corporate entity confidential because of personal privacy.

16

17 You know, and the law is clear that there are no
18 circumstances under which he can do that.

19 JUDGE SMITH: I think that we have a very new
20 situation here. The request for confidentiality is predicated
21 upon a unique situation, or not unique, but very unusual, and
22 probably rare in civil proceedings and unusual in NRC
23 proceedings, and it is the concern, however well founded or not
24 founded, the concern that those who have agreed to cooperate in
25 the plan will somehow for that reason suffer adverse effects.

1 And if that's the case, I don't know. It's
2 something that we might look at. I don't know. We want to
3 consider it. I don't rule it out. We have parallels in other
4 aspects, those who have raised safety concerns.

5 MS. WEISS: I don't think there is any question that
6 that's the claim, but, you know, I would just maybe take
7 another cut at the point that Mr. Traficonte is making.

8 I think there is a burden to do more than claim that.
9 There is a burden to provide some factual support for the
10 argument that either the people want to be protected, or that
11 there is any risk to those people, or any potential harm to
12 those people at all, and that's a burden that, these rules
13 would provide, has to be met in the affirmative by the person
14 seeking to keep the material confidential.

15 JUDGE SMITH: Okay.

16 MR. TRAFICONTE: Just the final point is, of course,
17 it's their plan and it's as good in part as the personnel they
18 have lined up. And at bottom I guess I have the problem of
19 withholding this information until what point? Until an
20 emergency occurs?

21 I mean, at some point this is public information.

22 JUDGE SMITH: That's another argument. It's going to
23 have to be -- as I stated with respect to the discovery dispute
24 that we closed on, it's going to have to be unpeeled, which is
25 -- I really meant to say peel -- one layer at a time until we

1 identify everyone's interest, legitimate interest, the
2 balancings that will have to be done, what if any precedent we
3 have, and all those things, and I don't think that anybody is
4 ready to argue it right now, are you?

5 MR. DIGNAN: I'm not.

6 MR. TRAFICONTE: How can we proceed on it then in
7 terms of expedient resolution of what we think is --

8 JUDGE SMITH: Well, let's see exactly what our
9 differences are.

10 You claim, and you are joined by Ms. Weiss, you claim
11 that it is public information. Ms. Weiss claims and you claim
12 that, in any event, there is a burden upon Mr. Dignan to
13 establish that it is to be protected.

14 And then you make the further claim that, after all,
15 you can't keep it secret forever, because this information will
16 have to be utilized in the public domain sooner or later.
17 That's basically it.

18 MR. TRAFICONTE: And that it's in the public domain
19 now once it was produced to FEMA and the Staff for review,
20 which occurred in the interim between our sessions here. They
21 have disclosed the information. They had withheld it even from
22 the NRC during the argument over low power and the stay on the
23 low power. They had redacted it even to the NRC.

24 On December 30, they submitted the information, they
25 made it public and it's now being --

1 JUDGE SMITH: To whom?

2 MR. TRAFICONTE: To FEMA and to the NRC Staff.

3 JUDGE SMITH: Oh, I see.

4 MR. DIGNAN: Mr. Traficonte, I'm sure you are trying
5 to paint a complete picture, and I suggest you also disclose to
6 the Board the circumstances under which it was submitted, and
7 the statements that were made by the executive director of
8 operations at the meeting that led up to the submission.

9 MR. TRAFICONTE: Are you referring to the affidavit
10 that is attached to the cover letter --

11 MR. DIGNAN: No, I'm talking about what --

12 MR. TRAFICONTE: -- or the statements down in
13 Washington?

14 MR. DIGNAN: -- the executive director of operations
15 said the Staff was willing to accept the documents under, under
16 what rules.

17 MR. TRAFICONTE: Well, go ahead. I'm certainly not
18 trying to give a partial story. Maybe I'm just not aware of
19 what you --

20 MR. DIGNAN: My recollection is the executive
21 director of operations indicated that the NRC Staff was
22 prepared to take this material to get the ball rolling. And if
23 I overstate his case, I'm sure Mr. Turk will say differently.

24 And he also indicated that the staff would have to
25 make a determination, and that if a determination was made that

1 they couldn't keep it, then perhaps the information would have
2 to be taken back by the Applicant.

3 So it wasn't simply a submission out to the Staff
4 with a ho-hum, and let's see what happens. There was a lot
5 more behind it than that.

6 MR. TRAFICONTE: Okay. Actually, I'm not aware of
7 that. Did he indicate that he was going to accept it and hold
8 it confidentially?

9 MR. DIGNAN: That was my reading of what he said,
10 until such time as his lawyers advised him to the contrary. At
11 which time we would be in a position then to see whether we
12 wanted to leave it in a position where it had to be given up,
13 or could take court action to prevent it.

14 MR. TRAFICONTE: All right.

15 MR. DIGNAN: So it was hardly just a throwing it down
16 there and seeing what comes up.

17 MR. TRAFICONTE: All right. Is Mr. Turk aware of any
18 of these developments, because this is something that he and I
19 had a discussion on Friday on this, and I knew nothing of that.

20 Mr. Turk, are you aware of this pledge on the part of
21 counsel for the NRC Staff to hold this confid --

22 MR. DIGNAN: There was no pledge by counsel for the
23 NRC Staff, Mr. Traficonte. There is a transcript of the
24 meeting at which it took place in which the executive director
25 of operations of the agency made certain representations, not

1 counsel for the NRC Staff.

2 MR. TRAFICONTE: I see.

3 MR. TURK: And I assume we're only talking about
4 things stated by the executive director of operations --

5 MR. DIGNAN: That's correct, that's correct, Mr.
6 Turk.

7 MR. TURK: Your Honor, there was a meeting on
8 December 22, in Bethesda, and the meeting was transcribed. I
9 wouldn't say that Mr. Dignan has mischaracterized the EDO's
10 statements, but I think the context was, or at least the intent
11 that I perceived in the words of the EDO were, that the
12 Applicant could submit the information under a claim of
13 privilege, and the NRC Staff would attempt to respect that
14 claim of proprietary privilege. But if it was found that we
15 could not protect it, we wouldn't.

16 JUDGE SMITH: Would not.

17 MR. TURK: Would not.

18 JUDGE SMITH: But by the Commission's own regulation,
19 you are required to consider whether the information was
20 submitted to you with an expectation of confidential treatment.

21 MR. TURK: I'm sorry, I missed --

22 JUDGE SMITH: Well, under 2.790(a)(1) -- no -- under
23 2.790(b)(4)(iii), the Commission is required to consider
24 whether the information was transmitted to and received by the
25 Commission in confidence, and they are also required if the

1 information has been held in confidence by the owner of the
2 information.

3 You know, they just can't disregard it. I mean, they
4 have to give it some consideration.

5 MR. TURK: If I understand you, you are saying the
6 Staff has to consider whether or not the privilege pertains.

7 JUDGE SMITH: That's right.

8 MR. TURK: Yes, and that's something that will be
9 done.

10 But there has been no pledge to date, or no agreement
11 to date where the NRC Staff, through the EDO or any other
12 person, has said, yes, this is privileged information and
13 entitled to protection under 10 CFR 2.790.

14 MR. DIGNAN: If I was thought to be saying that, I
15 wasn't, Mr. Turk.

16 My difficulty is Mr. Traficonte is saying to the
17 Board, well, something is wrong because Dignan's got it down
18 there in the hands of the Staff. And I just wanted the Board
19 to understand I didn't just throw it down in the hands of the
20 staff. I did what I can do to protect it.

21 I quite agree with Mr. Turk; there has been no pledge
22 of confidentiality given to the Applicant to date. But I think
23 a reading of that transcript fairly says the EDO said they
24 would be willing to receive it this way. And then as I
25 understand it, their lawyers are going to look at it, and

1 probably advise the executive director of operations from there
2 as they customarily do.

3 It wasn't just flipped down there with the hope that
4 somebody would keep it confidential.

5 MR. TRAFICONTE: Your Honor, this is the situation.
6 Their inaction is going to solve it.

7 I then understand that this may not have been
8 appropriate to bring to the Board's attention, although Mr.
9 Turk and I discussed that exact procedure on Friday. I'd take
10 it then the NRC Staff is going to make the first cut on whether
11 we're going to get this information; isn't that right, Mr.
12 Turk?

13 MR. TURK: I really don't know what procedure will be
14 followed.

15 Normally, if there is a request for confidentiality
16 made, as has been done in this case by the Applicant, and the
17 documents are held with the understanding that there is a
18 request for confidentiality, they won't be disclosed in the
19 first instance, I imagine, unless somebody asks for those
20 documents to be produced under 10 CFR 2.790.

21 MS. WEISS: That's a misinterpretation.

22 JUDGE SMITH: I think what Mr. Traficonte has done
23 now, he has availed himself of the hearing process in the first
24 instance to informally try to resolve it, and I take it as an
25 informal discovery request, which sort of leap-frogged the

1 staff.

2 MR. TURK: Well, who is the request being made of?

3 JUDGE SMITH: The Board right now.

4 MR. TURK: As I understand it, the request is to the
5 Applicant to produce the information to the other parties. I
6 don't see that there has been a request for disclosure made to
7 the Staff.

8 JUDGE SMITH: Not yet. Mr. Traficonte has predicted
9 that he's going to come to the Board and ask the Board to
10 require that the information be released. All he's asking now
11 is it be scheduled for argument. But I infer that he hopes to
12 have it worked out informally, and if not, he'll make a formal
13 discovery request in this hearing under the discovery rules if
14 it comes to that.

15 MR. TURK: If I can pass back for a moment.

16 I understand the Board's comments. I want to refer
17 back to one statement which perhaps needs some clarification.

18 There is an affidavit submitted with the Applicant's
19 letter of December 30th which transmitted the plans with
20 information. The affidavit is signed by Ted Feigenbaum. On
21 Page 3 it indicates "that the information has been transmitted
22 to and received by the Commission in confidence."

23 And I simply want to put on the record that I am not
24 aware, and I have indicated to Mr. Traficonte that I am not
25 aware, that there has been any pledge of confidentiality issued

1 by the NRC Staff or the Commission with respect to these
2 documents, and no statements have been made, to my knowledge,
3 beyond the statements made in the transcribed meeting of
4 December 22nd.

5 JUDGE SMITH: Right, and that's what I would expect.
6 I don't think you really could give a pledge of
7 confidentiality.

8 Why is this, right now, and we're going to be having,
9 I assume, a request for normal discovery with respect to the
10 Massachusetts plan in due course. Now you are just hoping to
11 cut short a discovery dispute?

12 MR. TRAFICONTE: Well, in two ways it seems relevant
13 now.

14 First, we hoped it was even more basic than a
15 discovery request. We see it as a component part of the plan,
16 and we don't think that under normal circumstances you need
17 make a discovery request to get essential elements of the plan
18 itself. That's the first point.

19 The second point is, as I said at the outset, for us
20 it's connected to the scheduling of the litigation on the Mass.
21 plan, which I know the Board is going to address, I thought, if
22 not today, soon, this week, Mr. Dignan's request. We, I think,
23 all want to know where we're headed on that. And if it's going
24 to take us six, seven or eight weeks to get this information
25 through a discovery request or some Freedom of Information Act

1 request, we view ourselves at a disadvantage.

2 FEMA and the Staff are reviewing critical personnel
3 information. I believe FEMA started that review, and, Joe, you
4 can correct me if I'm wrong, but down in Washington, you
5 indicated, your agency indicated you're going to begin that
6 review last week.

7 So review is beginning on a plan that's going to be
8 litigated soon, and we don't have it.

9 JUDGE SMITH: Okay.

10 MR. TRAFICONTE: And, you know, that is something we
11 just wanted to call the Board's attention to, and ask that it
12 be -- in some sense that the situation be harmonized as between
13 the litigants here.

14 JUDGE SMITH: Would you characterize -- what is the
15 nature of the services that these people have agreed to --

16 MR. DIGNAN: Your Honor, I don't know if you have the
17 submission that was made, but the affidavit describes them this
18 way. Enclosure 3, emergency plan, Appendix A: names,
19 locations and other information that would identify certain
20 persons and organizations who have agreed or contracted to
21 supply services, resources and facilities to support the plan.

22 Enclosure 4, emergency plan, Appendix C: Letters of
23 agreement, names, letterheads and other information that would
24 identify certain persons and organizations who have agreed or
25 contracted to supply services, resources and facilities to

1 support the plan.

2 MR. TRAFICONTE: He is reading from an affidavit,
3 Your Honor, that's an attachment to that cover letter. About
4 three or four pages down, there's an affidavit.

5 MR. DIGNAN: And Enclosure 6, emergency plan,
6 Appendix M: Names, addresses and other information which would
7 identify persons or organizations who have agreed or contracted
8 to provide host facilities and resources and services, road
9 crews, bus and ambulance services.

10 You know, there's no kidding what this is all about,
11 Your Honor. You have, as you always do, delicately put it,
12 there is a thread of indications that agreements that we have
13 with people come apart, and we want to protect those names as
14 long as we can.

15 Now, in terms -- as I said, as far as the
16 Commonwealth's review is concern, I stand right here, I have
17 the authority of my client right now under an appropriate
18 protective order to agree to give them everything. And I
19 frankly don't understand why somebody won't just take it under
20 a protective order. They can fight with me later about whether
21 to get relief from the protective order so they can make it
22 public. But they can have it under a protective order right
23 now.

24 JUDGE SMITH: What would be -- do you have any
25 position as to what the Board might do if we ordered release of

1 this information, and somehow the agreements did start to come
2 apart, what evidentiary inferences, if any, we could make, or
3 is there anything that could be done along that line?

4 I guess in the ideal world this is information that
5 should be public. But at the same time we did recognize a
6 thread, or at least we're conscious of that possibility. But
7 at the same time we would be awfully upset if, in a hearing
8 that we're conducting, if information produced in the hearing
9 was used to improperly attack the parties. That's a difficult
10 thing.

11 MR. DIGNAN: I understand you would be, and this is
12 why I thought the protective order would be the solution,
13 because I have no doubts that my friends who represent the
14 Commonwealth of Massachusetts, if they are under a protective
15 order, will not violate that protective order. That will
16 remain confidential, and I assume that's true of any attorney
17 in this room, and they will obey the protective order, and the
18 problem will not arise of arguing why somebody did something.
19 And I think that that's the way to go here.

20 Now, there can come a point, I quite agree, after
21 contentions are settled and we're in litigation, where some
22 party can honestly feel that the public disclosure of some of
23 these names is necessary to make their point. At which time
24 they can, in the time-honored manner of litigation, come to the
25 judge and say, Your Honor, I would like relief from the

1 protective order in order to make this information public
2 during the course of the hearing.

3 And at that point, assuming that somebody wishes to
4 persist to keep that particular information from public
5 disclosure, there is all kinds of remedies the Board can order
6 such as an in camera session, or maybe the Board will say no,
7 we're satisfied at this point that it just has to be made
8 public.

9 I just don't understand why a protective order is not
10 the way to go on this. They can have it tomorrow. They
11 haven't lost any right to litigate later with me whether or not
12 the order should continue to remain in effect, and everybody is
13 protected.

14 (Continued on next page.)

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1 JUDGE SMITH: Well, I was thinking perhaps of
2 interfering with the Applicants' contractual obligations,
3 rights, which could be a separate cause of action, but I mean
4 within this case, that is of major concern. Otherwise, I agree
5 it should be generally public.

6 MR. TURK: Your Honor, it may help if I --

7 MR. DIGNAN: I was -- I am sorry.

8 MR. TURK: I was going to offer to illuminate what
9 these different types of companies or providers of services
10 are, if it would help the Board, I could do that in a moment.

11 The Staff requested from the utility in December,
12 there was a telephone communication on December 15th, and it
13 was followed up by a letter of December 23rd, in which the
14 Staff requested that the following information be provided: the
15 name of a hospital identified in the plan; the locations of the
16 EDC, CCC, RC and SA; -- those are different emergency response
17 facilities on a particular map in the plan -- names of
18 companies and their authorized representatives, providers, and
19 individuals who have entered into agreement letters; location
20 of agricultural producers in the ingestion emergency planning
21 zone; identification of host facilities; names and inventory of
22 road crew companies under letter of agreement; names of bus,
23 ambulance, snow removal, wheelchair van companies under letter
24 of agreement; and names of congregate care centers, host school
25 facilities and other special facilities.

1 And in addition, I have a bus dispatch priority for
2 the Town of West Newbury.

3 JUDGE SMITH: Okay.

4 MR. BROCK: Your Honor, could I be heard just
5 briefly?

6 I understand your comment about not -- or considering
7 some protective order which would not interfere with the
8 Applicants' contractual rights; and just so that it is clear on
9 the record, we feel, at least with respect to the New Hampshire
10 plans, we have raised questions about the validity of some of
11 those letters of agreement and whether there are actually
12 personnel behind the letters.

13 And certainly we would think that it is wholly
14 appropriate and necessary to, again, whatever companies or
15 individuals letters of agreement had been entered into with
16 respect to Massachusetts, that we would be able to go behind
17 that, consult with these people; and if we feel for whatever
18 reason, the people aren't to be provided in accordance with the
19 letters, we would be able to produce that in evidence, Your
20 Honor.

21 We think that's critical evidence.

22 JUDGE SMITH: Yes, that's -- I don't think it is
23 going to be very practical to have a protective order that
24 would prohibit parties from interfering with contractual
25 relations, and also allow them to point out possible

1 inadequacies of the contractor's plan, and I don't know, it is
2 a very difficult problem.

3 But I think it is a real concern. As we have heard
4 over the weeks here, with the atmosphere that might prevail
5 over there, that releasing these names could adversely affect
6 the Applicants' contractual rights.

7 And we are looking for a balance. We are looking for
8 some kind of a balance.

9 MR. BROCK: As you know, I --

10 JUDGE SMITH: Mr. Backus, if you have comments to
11 make to the Board, make them verbally, okay?

12 MR. BACKUS: Okay, I will. I was just going to say,
13 Your Honor, I think the atmosphere of which you speak, if it
14 exists, is simply a fact that we have to deal with it and we
15 cannot --

16 JUDGE SMITH: That is right, you are right.

17 MR. BACKUS: I think that it is a fact, and I think
18 that whatever that atmosphere may be, and however it may be
19 perceived, I don't think that can be handled by denying the
20 public, including my clients, the right to this information
21 which is part of the plan.

22 JUDGE SMITH: Right.

23 Well, I am not saying you are right. But I am
24 telling you are very persuasive on one-half of the problem.

25 MR. BACKUS: Well, I am just saying that you --

1 JUDGE SMITH: That you are --

2 MR. BACKUS: And you say that a balance has to be
3 struck. And all that I can say is that from my point of view,
4 --

5 JUDGE SMITH: The balance is on your side.

6 MR. BACKUS: It has to be struck on the side of
7 public disclosure of these people that are supposed to perform
8 public responsibilities in the event of an emergency.

9 JUDGE SMITH: That remains to be seen.

10 Certainly there is a strong, strong public interest
11 in making public information public. We recognize that.

12 We are aware of the various problems and nuances of
13 it, and I don't know if we are aware of any solution to it, but
14 we will set it down for further discussion and hope that
15 something can be worked out.

16 Although, in this instance, I am rather pessimistic.

17 Now, any other preliminary business?

18 MR. BACKUS: I have one other thing, Mr. Chairman. I
19 don't know just where we are in terms of our schedule.

20 We do have rebuttal testimony on the evacuation time
21 estimates panel. There are a couple of corrections that will
22 be refiled tomorrow, but I have that testimony available. This
23 is the testimony of Mimi Fallon, Beverly Hollingworth, and
24 Elizabeth Weinhold.

25 And associated with this testimony is a videotape

1 that Mimi Fallon and Elizabeth Weinhold have done on the
2 traffic situation and the evacuation routes at the beach.

3 Now, I am told that these people can be available for
4 testifying in support of this prefiled testimony as early as
5 tomorrow if that is necessary or desirable. I am not saying
6 that is the only day that they can do it, but it is
7 available --

8 JUDGE SMITH: Have you discussed this yet?

9 MR. BACKUS: No, because I thought we were going to
10 be taking up the sheltering testimony, but I just heard Mr.
11 Dignan say that perhaps he was not ready to go with the
12 sheltering testimony, depending on what FEMA has to say.

13 And if so, I was just offering this as testimony that
14 could be offered early.

15 JUDGE SMITH: Well, would you follow our previous
16 request and first raise it with the other parties?

17 MR. BACKUS: Sure.

18 Meanwhile just so everybody will have this as soon as
19 possible, why don't I make available copies of this to the
20 Board and the parties, those that don't already have it.

21 JUDGE SMITH: Thank you.

22 MR. BACKUS: Yes, there are a couple of corrections,
23 but the substantive testimony is as we intend to offer it.

24 JUDGE SMITH: Okay, can you put it in the shape of an
25 airplane?

1 (Laughter.)

2 JUDGE SMITH: Any other preliminary business?

3 MR. OLESKEY: Along those lines, we are working on
4 two ETE rebuttal filings, and Mr. Fierce is back in Boston
5 working on them now, and asked me to make it clear that he
6 hopes to have them in at the end of the week, and if not, next
7 week.

8 JUDGE SMITH: We have no hearing scheduled next week.

9 MR. OLESKEY: I understand that, but we would make
10 them available in any event.

11 MS. WEISS: Along those lines, may I just mention
12 that the Coalition has filed some rebuttal testimony of Mr.
13 Earl.

14 JUDGE SMITH: Yes.

15 MS. WEISS: And at some point I guess we want to
16 discuss when it might be appropriate to schedule that.

17 JUDGE SMITH: Well, what we have tried to do, with
18 almost a 100 percent failure, is to urge the parties to talk
19 among each other as to the scheduling.

20 And I would, we have not given up hope yet, that that
21 might work, but would you give it a shot?

22 Maybe you can bring a new dimension to it and
23 accomplish that.

24 MS. WEISS: Your Honor, I guess we are conceding that
25 we are going to be having another week of hearings after this

1 one.

2 JUDGE SMITH: No, I don't know. The question will
3 probably be more where, because this is it for here. And
4 probably the discussion should center onto what can be heard
5 someplace else, probably Washington, and what must be heard
6 here.

7 That is what I would hope that the parties would take
8 into account when you discuss it.

9 MS. WEISS: Oh, he is in New York, so it is probably
10 just as easy for him to get to D.C.

11 JUDGE SMITH: Yes, well, all right.

12 Is there any further business?

13 MR. DIGNAN: Yes, Your Honor.

14 Just for your information, before the week is out we
15 will be filing with you a stipulation between ourselves and the
16 New England Coalition on Nuclear Pollution.

17 The New England Coalition on Nuclear Pollution and
18 the Applicants have agreed to a stipulation whereby they
19 withdraw their contention NH/P-4, which was the contention that
20 was directed at the hearing-impaired, and as a result two
21 pieces of testimony which they have prefiled will not be
22 offered, and our panel's testimony on notification and
23 communications will be substantially reduced in scope.

24 Our plan is to leave the stipulation with you at the
25 time we have the new version of the testimony ready and this

1 will resolve that. But for scheduling purposes there is going
2 to be a substantial reduction in the time that is necessary to
3 deal with the notification and communications --

4 JUDGE SMITH: All right.

5 MR. DIGNAN: -- because the -- I won't say the major
6 issue, but the most time-consuming of the issues has been
7 resolved between the parties.

8 MS. WEISS: That is correct, Mr. Chairman.

9 And at the time that it is filed, I would ask for the
10 Board to approve the stipulation on the record.

11 JUDGE SMITH: All right.

12 Any other preliminary business?

13 Is this panel ready?

14 MR. DIGNAN: Your Honor, I was going to request this.
15 As I have indicated to you, I would like a chance to think
16 about the question of going with the shelter testimony in light
17 of the fact of what I have heard from FEMA.

18 But this does not mean we stop.

19 You will recall that Dr. Mileti was part of the ETE
20 panel, and at that time my brother Traficonte reserved the
21 right to cross-examine a piece of that testimony in connection
22 with the time when sheltering was taken up. That was the piece
23 entitled Spontaneous Sheltering.

24 Mr. Traficonte had indicated to me before today that
25 when the sheltering panel went back on, the first order of

1 business in cross-examination as far as he was concerned was
2 for him to cross-examine this piece of Dr. Mileti's testimony.

3 I was going to respectfully suggest that we move to
4 that. I don't know if that will take up the balance of the day
5 or not, but it will give me some time to think about and
6 consult with my colleagues on the question of what we want to
7 do with the regular shelter panel in light of what FEMA has
8 said.

9 Of course, in the last analysis the Board will tell
10 us what we are going to do with them, but I would like to think
11 about what our position should be and whether we want to offer
12 the shelter testimony at this time.

13 So, if that is agreeable with the Board and with my
14 brother Traficonte, we could proceed to let him just cross-
15 examine that piece which was going to be the opening order of
16 business in any event, at this point.

17 JUDGE SMITH: Do you understand -- had planned to do
18 that?

19 MR. TRAFICONTE: Yes, we had planned on doing that,
20 as long as I can ask Dr. Mileti questions that involve his
21 assessment of material contained in the sheltering testimony.

22 That's to say, I want to ask him questions concerning
23 behavior that are based in part on his review of your
24 sheltering package.

25 MR. DIGNAN: So you view them as integral?

1 MR. TRAFICONTE: Well, I wouldn't say integral, but
2 I don't want to be prohibited from asking him questions that --

3

4 MR. DIGNAN: I understand.

5 MR. TRAFICONTE: I can't see there is a problem
6 there.

7 Mr. Dignan, are you contemplating withdrawing, are
8 you contemplating withdrawing this testimony in its entirety?

9 Is that --

10 MR. DIGNAN: You guessed it.

11 I have contemplated reserving the right to withdraw
12 it, let's put it that way.

13 I mean, I will put the cards up to everybody.

14 If FEMA is going to come in here and change their
15 testimony to say, quote, in accordance with the -- what I
16 understand to be the majority of the RAC -- that the plan is
17 adequate without further reference to sheltering, that's called
18 a rebuttable presumption.

19 And I'll ride with it.

20 MR. TRAFICONTE: This is rebutted by contrary
21 evidence, as we know.

22 MR. DIGNAN: That is right, go take your shot.

23 MR. TRAFICONTE: Maybe that issue then -- maybe he
24 has to decide first, because I do have a series of questions
25 for Dr. Miletic that --

1 JUDGE SMITH: Well, what portion of the testimony
2 would you examine him on?

3 MR. DIGNAN: This was on --

4 MR. TRAFICONTE: Pages 20 to 23 of the sheltering
5 testimony package.

6 Now, that is one long paragraph on that page, but at
7 the bottom, there are a couple of elements. First, there are
8 attached to this sheltering package some draft messages. And I
9 was going to review with Dr. Mileti those messages.

10 Secondly, there is a reference by incorporation in
11 the sheltering testimony to the behavioral testimony, regarding
12 spontaneous sheltering.

13 And I was going to, obviously, review that with Dr.
14 Mileti.

15 JUDGE SMITH: Then you suspected he is the author of
16 that?

17 MR. TRAFICONTE: I suspect he is.

18 JUDGE SMITH: Yes, and I don't -- it seems to me you
19 could cross-examine him on those statements whether that
20 testimony is in or not.

21 MR. TRAFICONTE: Well, that's fine. I'm prepared to
22 proceed. I just wanted to indicate to Mr. Dignan that the
23 thrust of my cross-examination of Dr. Mileti concerns the
24 sheltering testimony and his views on behavior with regard to
25 it.

1 If we're not going to have sheltering testimony, then
2 I'm not sure that this is anything but just filling in the next
3 hour and a half, which I am glad to do that.

4 MR. DIGNAN: My point is this; when the ETE went in
5 there was a section called spontaneous sheltering.

6 MR. TRAFICONTE: Right.

7 MR. DIGNAN: And we heard from you all day as to
8 whether it has something to do with ETE. I happen to think it
9 does. But that is neither here nor there.

10 At that time, you reserved and said you wanted to
11 cross-examine that at the time Dr. Mileti came back with this
12 panel.

13 Now, I guess what I'm asking you, do you have any
14 questions that come only out of that and you could ask them,
15 and then you can make up your mind about what you want to do
16 about anything else after I tell you whether I'm going to offer
17 the sheltering testimony.

18 Because if what you are telling me is there are no
19 questions that really come out of this, that they all really
20 come out of the sheltering testimony, then maybe we can just go
21 to the sheltering testimony.

22 In which case, I would ask the Board for 10 minutes
23 to think about it.

24 I am at your disposal, Mr. Traficonte, whichever you
25 choose to do.

1 JUDGE SMITH: There is a third alternative which we
2 might consider and that is he proceeds with his testimony, we
3 keep it as a discrete package.

4 It either is abandoned or not abandoned, depending
5 upon what your decision is. In any event, it is preserved for
6 use later on.

7 As I understand it, you don't know if you are going
8 to offer this, and Mr. Traficonte is saying, well, if you don't
9 know if you are going to offer, he doesn't know if he is going
10 to bother to cross-examine.

11 In any event, we're here now. We don't know. Why
12 don't we get the cross-examination in the record, hold it
13 aside, and plug it in as appropriate depending upon what
14 happens?

15 MR. TRAFICONTE: Unless a five minute break -- unless
16 he can resolve it in five minutes --

17 JUDGE SMITH: All right, if you can resolve it in 10
18 minutes, great. I just said as a third alternative, you could
19 consider.

20 MR. TRAFICONTE: Sure.

21 JUDGE SMITH: Yes, we missed our midafternoon break.

22 (Laughter.)

23 JUDGE SMITH: So let's take a 10 minute break and see
24 what you can work out.

25 MR. DIGANAN: Thank you, Your Honor.

1 (Whereupon, a brief recess was taken.)

2 JUDGE SMITH: Mr. Dignan, I understand that you made
3 an arrangement with Mr. Traficonte?

4 MR. DIGNAN: The -- Mr. Traficonte? Oh, there he is.

5 As I understand the arrangement we made, Your Honor,
6 is that Mr. Traficonte will start to cross-examine Dr. Milet
7 with respect to the spontaneous shattering material which
8 appears from Pages 98 to Page 101 in the Applicants' Direct No.
9 7, which has already been admitted.

10 That it's understood by everyone that this cross-
11 examination will, of necessity, range into the yet-to-be-
12 offered Applicants' Direct Testimony No. 6. The Applicant has
13 no objection to that. Dr. Milet is prepared to be crossed on
14 that basis, and the Applicants will advise the Board tomorrow,
15 and the parties, as to whether they are going to, in fact, --
16 well, I hope to advise you tomorrow as to whether or not
17 Applicants' Direct No. 6 will, in fact, be offered into
18 evidence.

19 Mr. Traficonte has assured me that in any event there
20 will be no duplication of cross-examination. To the extent he
21 ranges into No. 6 today, there will be no further ranging into
22 it to repeat the questions.

23 And if that's agreeable to the Board, that's the
24 arrangement we have worked out.

25 JUDGE SMITH: All right, other parties might be

1 affected by that, but Mr. Traficonte in any event would be the
2 main Intervenor on it.

3 MR. TRAFICONTE: Would Your Honor want to swear Dr.
4 Miletì again?

5 JUDGE SMITH: Dr. Miletì, you are still under oath
6 throughout this testimony. You have been sworn before.

7 MR. MILETI: Yes, I understand.

8 Whereupon,

9 DENNIS MILETI

10 having been previously duly sworn, was recalled as a witness,
11 and was examined and testified as follows:

12 CROSS-EXAMINATION

13 BY MR. TRAFICONTE:

14 Q I am not going to introduce myself, Dr. Miletì, to
15 you, again, but I will introduce myself to other members of the
16 panel.

17 My name is John Traficonte and I am an Assistant
18 Attorney General for the Commonwealth of Massachusetts.

19 Now, Dr. Miletì, do you have a copy of a document,
20 entitled Applicants' Direct Testimony No. 6 (Sheltering),
21 before you?

22 A (Miletì) Yes, I do.

23 Q And just so the record's clear, would you turn to
24 Page 23 in that document?

25 A (Miletì) Yes, I'm there.

1 Q Toward the bottom of that page -- strike that.

2 In the middle of that page, if I may, I'd like to
3 read a portion into the record.

4 A little bit above the middle, it begins, "Specific
5 emergency messages have been developed and will be added to the
6 plan for advising the beach population to take shelter in the
7 nearest indoor public location. A pre-recorded message to this
8 effect will be in place at the beach siren activation points
9 for broadcast over the beach public address system.

10 "The EBS sheltering message for the beach population
11 will advise people to go to the nearest indoor public location.
12 The EBS message for this contingency will also request
13 owners/operators of public access facilities to assist people
14 with taking shelter.

15 "A sample of these messages is provided as Attachment
16 3. It is expected that people will comply with Emergency
17 Broadcast System announcements to take shelter and that
18 owners/operators of public access facilities will make their
19 facilities available for this purpose, as discussed in the
20 testimony of the ETE and human behavior panel."

21 Now, I would like to begin on that last point and
22 ask, so the record's clear, this reference to the testimony of
23 the ETE and human behavior panel.

24 Can you, for the record, identify what sections of
25 that testimony, that earlier submitted testimony, are being

1 referenced here?

2 Are there specific portions being referenced?

3 A (Mileti) I would presume at a minimum the section C
4 that begins on Page 98, and runs through Page 101 of the ETE
5 testimony.

6 Q And you say, at a minimum.

7 And do you believe there may be other portions that
8 are referenced?

9 A (Mileti) I can't answer that question with total
10 certainty.

11 And when I think about human behavior I think about
12 the knowledge base we have, as opposed to parts of testimony.
13 So I really can't answer that question; I don't know.

14 Q Now, turning back to Page 23, in the sheltering
15 testimony, are you the author of the, any part or the whole of
16 the section that I have read into the record?

17 A (Mileti) I did not write it, no.

18 Q Is there any portion of the sheltering testimony that
19 you are the author of?

20 A (Mileti) I did not write any of it, however, I had
21 many conversations with different people about sheltering as
22 well as other topics.

23 Q All right, did you have any other conversations, did
24 you have any conversations with individuals who were authoring
25 this sheltering testimony?

1 A (Mileti) I, to be honest with you, don't know who
2 actually did the writing of the testimony.

3 Q Okay.

4 A (Mileti) I can say that I have talked to John Baer,
5 Tony Callendrello, Paul Frechette. Richard Strome, a few years
6 ago. I have talked to those persons about various aspects about
7 human behavior in emergencies.

8 Q But you were not involved, as this document, as this
9 testimony was being prepared, you were not involved in
10 providing advice to its author as to what should be said about
11 behavior in the context of sheltering, is that accurate?

12 A (Mileti) No, I can't say that was accurate.

13 Q Okay.

14 A (Mileti) I was talking to those persons about a
15 variety of aspects of human behavior in emergencies, including
16 sheltering, and I am not sure when it was that they might have
17 begun or ended writing this testimony.

18 Q Well, we are not going to find out now who wrote
19 what, for reasons that are already clear on the record.

20 But we might have to pick that up later.

21 Let me then focus your attention to the last sentence
22 in the paragraph I read you.

23 That sentence reads, "It is expected that people will
24 comply with emergency broadcast system announcements to take
25 shelter. And that owner/ -- let's take that first.

1 Let's take that phrase first. "It is expected that
2 people will comply with emergency broadcast system
3 announcements to take shelter."

4 Is that your testimony?

5 A (Mileti) I would agree with that. I think that is
6 the most prudent hypothesis one could offer.

7 Q And you are prepared to adopt that testimony here,
8 today, as your testimony?

9 A (Mileti) Yes.

10 Q Does the reference to the people who will comply with
11 emergency broadcast system announcements to take shelter
12 include the beach population?

13 A (Mileti) Yes.

14 Q And now, the second half of that sentence, and I am
15 going to paraphrase slightly, it is expected that
16 owner/operators of public access facilities will make their
17 facilities available for this purpose as discussed in the
18 testimony of the ETE and human behavior panel.

19 Is that your testimony?

20 A (Mileti) Yes.

21 Q And you are adopting it, although you did not author
22 it, you are adopting it today as yours?

23 You are prepared to defend that statement?

24 A (Mileti) Yes.

25 Q And again, are these owners and operators of public

1 access facilities, do they include those owners and operators
2 of beach public access facilities?

3 A (Mileti) They would be people who own buildings and
4 that would include wherever they might be.

5 Q Including those who own buildings in the beach strip
6 in the Seabrook EPZ?

7 A (Mileti) Yes.

8 Q Okay.

9 Now, Dr. Mileti, have you ever testified in any
10 previous proceeding specifically on human behavior with regard
11 to sheltering behavior?

12 A (Mileti) Yes, I have.

13 Q And what proceedings were those?

14 A (Mileti) I know for sure I talked about that at
15 Shoreham. And I can't say honestly I remember ever talking
16 about it at other proceedings, but it is possible.

17 Q Okay, when you testified on sheltering at Shoreham,
18 did it involve sheltering in place, as opposed to sheltering
19 for a population that is transient and it is not inside any
20 building?

21 Is the distinction clear?

22 A (Mileti) It certainly is. I just don't remember.
23 Sorry.

24 Q Now, your testimony is it, with regard to human
25 response and sheltering, is this testimony based on a review by

1 you of, for example, this document entitled, Direct Testimony
2 Number 6, the sheltering testimony?

3 And/or any other documents that comprise the ad hoc
4 sheltering plan that had -- I am searching for what the status
5 of that plan is, as we speak -- but that has been proposed by
6 the Applicant?

7 Is your testimony based on a review of that ad hoc
8 sheltering plan?

9 A (Mileti) I am not sure I know what you mean by an ad
10 hoc sheltering plan. It is based on my review of different
11 studies about how people behave in emergencies, as well as,
12 information about the kind of public emergency warnings that
13 will be issued.

14 (Sirens sound outside.)

15 MR. DIGNAN: They like it, John.

16 MR. TRAFICONTE: I was thinking about how nice it was
17 to have Dr. Mileti here as this is happening.

18 BY MR. TRAFICONTE:

19 Q Let me make my question a little bit more precise.

20 I understand that you have knowledge with regard to
21 behavior during emergencies.

22 And I understand that your testimony on sheltering,
23 in part, is based on that knowledge. But I am asking more
24 precisely, is the testimony here on sheltering based on a
25 review by you of anything specifically, anything specific about

1 sheltering at Seabrook, that you have done?

2 Any review you have conducted on which you are basing
3 your testimony here?

4 A (Mileti) Review of the Seabrook Emergency Broadcast
5 System Messages and supplemental aspects of the public warning
6 system that would occur in an emergency, including the beach at
7 Seabrook.

8 I have also been to several of the beaches as we have
9 talked about before.

10 Q Yes.

11 A (Mileti) And I have also talked to planners about
12 other aspects of the plans, but I don't know if what we might
13 have talked about regarded what you have called the ad hoc
14 plan, or if it was in the plan, or what have you.

15 But in general, basically a review of the emergency
16 warnings that would be issued as well as how that emergency
17 would be handled, in reference to public information.

18 Q Okay, we are going to turn to the messages in a few
19 minutes, but let's take your visits to the beach areas, first.

20 At any time, when you visited the beach areas, did
21 you personally review the existent shelters to make any
22 determination at all as to how those shelters might function in
23 the event of an emergency as shelters?

24 A (Mileti) No.

25 And that would be outside my area of expertise. Had

1 I done that, I probably wouldn't be able to offer any kind of
2 sound judgment about it.

3 Q Have you reviewed Stone & Webster's two reports on
4 exactly what shelters do exist available to the public in the
5 beach strip?

6 A (Mileti) It is possible I may have encountered
7 some written words and I am not sure whose they might be,
8 regarding shelters.

9 I have certainly seen many pictures of what could be
10 shelters, but I don't recollect reviewing a technical report in
11 any way.

12 Q These pictures that you reviewed, are they pictures
13 of shelters on the, in the Seabrook beach strip?

14 A (Mileti) Pictures of buildings there, yes.

15 Q Is your testimony about human behavior with regard to
16 sheltering, is it based on anything specific about the beach
17 strip; the buildings in the beach strip, for example?

18 A (Mileti) No. It is based on human beings, and I
19 would presume those are the people who would be sheltering.

20 So I focused on people and how they behaved, rather
21 than the shelters that they would go in to.

22 Q So if we can go back to the sentence at the end of
23 the paragraph on Page 23, it is expected that people will
24 comply with emergency broadcast system announcements to take
25 shelter, you see that?

1 A (Mileti) Yes, I do.

2 Q As far as you are concerned, you don't mean to
3 represent that they will be successful in doing that?

4 That is to say, as far as you are concerned, people
5 will attempt to comply with emergency broadcast announcements
6 to take shelter, is more technically accurate from your
7 perspective?

8 A (Mileti) If what you are talking about is the
9 response of those in search of shelter, yes.

10 However, I was also talking about the response of
11 those who had access to shelter that they could provide to the
12 public.

13 Q No, you are right the first time.

14 My question is aimed at what it is you know and what
15 it is you have reviewed.

16 If, for example, you assume with me that there are
17 not enough shelters in the beach strip to house the population,
18 as far as you are concerned that doesn't affect your statement
19 here as to what people might be expected to do.

20 They are going to attempt to comply with the EPS
21 message?

22 A (Mileti) If there aren't enough buildings for the
23 people at the beach to fit in, then they all can't fit in them.

24 I would have to agree with that.

25 Q But your testimony has nothing to do with that. You

1 don't know if there is or there isn't adequate sheltering for
2 the relevant population?

3 A (Mileti) No, I don't.

4 Q Okay.

5 A (Mileti) That certainly would be outside my area of
6 expertise.

7 Q And similarly, your statement as to what owners and
8 operators of public access facilities will do is a general
9 statement, isn't it?

10 You don't have any information about what specific
11 owners and operators of public access facilities on the beach
12 strip will do?

13 You have not interviewed them or conducted any
14 empirical research with regard to these individuals?

15 A (Mileti) Absolutely not, because it would be
16 inappropriate to take their behavioral intentions as indicators
17 of their actual behavior in an emergency.

18 It is much more prudent to base that on the behavior
19 of other human beings in other emergencies.

20 Q Well, let's take that point. That is an interesting
21 point. What about, isn't it your testimony in the ETE portion
22 of this case, that there could well be upwards of 50 percent
23 spontaneous evacuation in the beach area, in the event of an
24 emergency.

25 A (Mileti) I would have to answer that I spoke about a

1 range of potential shadow evacuation in reference to what I was
2 calling "keyhole shadow evacuation", and that range was from
3 25-to-50 percent.

4 And it was in reference to what could be expected in
5 an evacuation. It wasn't speaking about sheltering.

6 Q Right, but as I understand, you have consulted with
7 Mr. Lieberman, and Mr. Lieberman has plugged into the I-DYNEV
8 model of 50 percent keyhole evacuation, spontaneous evacuation
9 assumption, isn't that right?

10 A (Mileti) I have no idea what Mr. Lieberman did with
11 his model.

12 Q Well, assume with me, that there is, at present, a 50
13 percent spontaneous evacuation assumption in the plan. It is
14 reasonable to assume, isn't it, that a portion of these
15 individuals who will evacuate reside and own public buildings
16 in the beach strip, do they not?

17 A (Mileti) I suppose in some kind of scenario, where
18 you were having an evacuation, and the beach was not being
19 asked to evacuate and not being asked to shelter, that it is
20 possible that some shadow evacuees could come from that
21 population, if they were in a like geographical distance to
22 the plant, as those who were advised to evacuate.

23 Q Well, let's imagine that the beach strip is advised
24 to shelter. In that context, what is your testimony as to what
25 percentage of the population advised to shelter, may instead,

1 evacuate?

2 A (Mileti) I can't answer that question without
3 specifying what the total public emergency response
4 recommendations are.

5 Because there are different recommendations that
6 might lead me to different answers. In general, which is the
7 only way I can answer that question, I would have to say that
8 good emergency information could, for different geographical
9 areas, have people engage in different protective actions.

10 Q No, I understand that is your testimony with regard
11 to different geographical areas.

12 But let's focus on the beach strip as a whole, and,
13 as a hypothetical, assume there is one protective measure being
14 broadcast to the beach population; and that is, to shelter.

15 Do you have a view as to what percentage of the
16 population would spontaneously evacuate instead of shelter?

17 A (Mileti) I would need to know if other persons are
18 being asked to evacuate or not. And if those other persons who
19 are being asked to evacuate are in a different geographical
20 area or not.

21 Q Well, we have already stipulated that everyone in the
22 beach area is being told to shelter. So, yes, there other
23 areas outside the beach area are being told to evacuate.

24 So it would model the keyhole example. Other areas
25 are being told to evacuate; the beach areas are being told to

1 shelter in place.

2 Do you have a view as to whether a percentage of the
3 people in the beach area would, in fact, evacuate?

4 A (Mileti) It is possible that some might think of
5 that. It is possible that some might engage in it. I wouldn't
6 expect if that is the protective action being recommended for
7 that specific area and it is being recommended for everyone in
8 that specific area, and if information were as good and as
9 repetitive as the Seabrook plan envisions, that many would
10 evacuate.

11 But of course it is possible that some could.
12 Anything is possible in reference to human behavior. But I
13 would estimate it, that it would be low.

14 (Continued on the next page.)

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1 Q Let's go back, because I may be confused. I

2 It's my understanding that the plan now assumes a 50
3 percent spontaneous evacuation figure. So that if an area is
4 told to evacuate, and an adjoining area is told not to
5 evacuate, then plan assumes that 50 percent of the adjoining
6 area, whose recommendation it is to sit tight and don't
7 evacuate, the plan now assumes that 50 percent of those people
8 will spontaneously evacuate, and that's called the key hole
9 model of evacuation.

10 That's accurate, isn't it?

11 A (Mileti) I don't know what the plan assumes. You'd
12 have to ask someone who does.

13 Q Dr. Mileti, you were here when we cross-examined, or
14 we had a discussion with Mr. Lieberman on this precise point,
15 weren't you?

16 A (Mileti) I was here for a long time when Ed
17 Lieberman was being cross-examined, and heard him speak a great
18 deal about his model.

19 I can't say I understood everything he was saying, or
20 that I remember everything that I understood.

21 Q Okay, but we had a, and I can find it if we need to,
22 I can find it in the record.

23 You recall a discussion with Mr. Lieberman about a 50
24 percent figure that he is using for spontaneous evacuation,
25 don't you? That that is in fact the planning basis right now.

1 A (Mileti) I have a vague recollection that I
2 remember Mr. Lieberman answering a question, referencing
3 something he looked up, and he said 50 percent was the answer.

4
5 I remember more explicitly saying that in reference
6 to key hole shadow evacuations, --

7 Q Yes, and --

8 A (Mileti) -- I would recommend 25 to 50 percent --

9 Q Yes.

10 A (Mileti) -- would be a likely range that a plan
11 consider.

12 Q That is what we're talking about right now. You're
13 on to it. That's my memory as well, that here is a 50 percent
14 figure. You recommended a range from 25 percent to 50 percent,
15 and he has plugged in a 50 percent figure.

16 Now I'm trying to get you to analyze what would
17 happen if the beach areas were advised to shelter in place, and
18 the same assumption that is at work in the plan of a 50 percent
19 spontaneous evacuation, that's to say, 50 percent of the people
20 who were not advised to evacuate do evacuate. That's what the
21 plan is now -- that's the premise of the plan.

22 What will happen when those 50 percent of the people
23 in the beach area evacuate?

24 What will happen to those shelters, the buildings
25 that they own or operate?

1 MR. DIGNAN: I object. The question is without
2 foundation. It's true there is testimony in the case if a key
3 hole evacuation is ordered, and everybody else was told not to
4 evacuate, there would be a shadow evacuation in effect between
5 25 and 50 percent outside the keyhole.

6 I understand the hypothetical put to the witness now
7 is in the key hole, we're ordering shelter, and I don't know
8 that anybody has put the question to date, other than perhaps
9 earlier today Dr. Mileti, assuming you order a key hole
10 shelter, will people still evacuate.

11 MR. TRAFICONTE: Let me put that question --

12 MR. DIGNAN: That's not what was discussed at the
13 ETE. I'm not saying my brother shouldn't be allowed to explore
14 it, but I think he's got to ask the foundation questions of
15 this witness as to whether if you assume there is an order to
16 shelter, as I understand it now in the key hole, or that
17 something will happen outside or inside that keyhole in the
18 nature of evacuation, but that's not what was discussed with
19 Mr. Lieberman.

20 MR. TRAFICONTE: Well, what we're getting here is my
21 public education on the meaning of spontaneous evacuation, and
22 I had to have that happen in public, but let me put that
23 question to Dr. Mileti.

24 BY MR. TRAFICONTE:

25 Q If the beach area is advised to shelter, what

1 percentage of the beach population advised to shelter will
2 spontaneously evacuate?

3 A (Mileti) With good emergency information, --

4 Q Yes.

5 A (Mileti) -- a very small percentage.

6 Q Well, what range?

7 A (Mileti) I can't give you a range. I would just say
8 that it's just simply a very small number. In any protective
9 action for any kind of an emergency, there is always a person
10 or two who simply doesn't want to engage in that protective
11 action.

12 There were people who refused to leave Mt. St. Helens
13 even though they knew they were going to blow up with it.

14 But usually effective rates of 99 percent for
15 evacuation can be achieved with good emergency information.

16 Q Okay.

17 A (Mileti) And I would presume the same is true in
18 reference to sheltering, but I can't say it's true for
19 everybody. But it would be a small number with good emergency
20 information.

21 Q Dr. Mileti, please explain what the figure 25 to 50
22 percent spontaneous evacuation in the key hole context means.

23 A (Mileti) I have that presented in my testimony on
24 the ETE, and I can simply refer you to -- let me find the
25 attachment.

1 It would be Page 190, were it numbered, right after
2 Page 189. And on that diagram in the ETE testimony on the page
3 after Page 189, if the first full circle out from the plant
4 site were the 10-mile boundary, and the second and last full
5 circle were the 20-mile boundary.

6 Q Yes.

7 A (Mileti) And if the little circle that isn't
8 complete that's closest to the plant site were the two-mile
9 boundary.

10 Q Yes.

11 A (Mileti) Were evacuation ordered for all the people
12 :within two miles of the plant, as well as everyone out to the
13 10-mile boundary in, let's say, a downwind direction.

14 Q Yes.

15 A (Mileti) And I didn't draw this very well -- it
16 could be 25 percent of the two to 10-mile range -- that I would
17 expect 25 to 50 percent shadow evacuation in the area of the
18 EPZ not advised to engage in protective actions, not advised to
19 evacuate.

20 Q Yes, but at --

21 A (Mileti) And that presumed that there were no
22 shelter recommendations being made.

23 Q Right. Let me ask you the more general question.

24 Is the notion of spontaneous evacuation applicable at
25 all, in your view, to a situation where a population instead of

1 being advised to evacuate is being advised to shelter?

2 A (Mileti) If what you mean by that is people are
3 advised to shelter and they instead engage in the evacuation
4 protective action --

5 Q Yes, that's what I mean.

6 A (Mileti) -- it would be evacuation. I wouldn't call
7 it spontaneous. I would call it an evacuation decision rather
8 than a shelter decision, and I certainly wouldn't impose the
9 sorts of range that I talked about in reference to Page 190
10 here regarding shadow evacuation at all.

11 Q Can you explain why you would assume that the people
12 who are within the five-mile zone, if we can refer to your
13 chart on what would be Page 190, can you explain why you assume
14 people who are not advised to evacuate would evacuate, upwards
15 of 25 to 50 percent of them would evacuate, but people who are
16 advised to shelter, some percentage, parallel percentage would
17 not necessarily evacuate?

18 A (Mileti) To answer that question fully, I'd have to
19 talk for half an hour, so I'll give you a thumbnail sketch of
20 the reasons I think why there is a difference.

21 In general, persons being asked to not engage in
22 protective action, and rather, to continue to in essence do
23 nothing in reference to the sort of evacuation described on
24 this page, many of those persons might feel, for the wrong
25 reason, that they are in the zone of risk and decide to

1 evacuate.

2 Some persons may feel that why not err on the side of
3 safety, and go ahead and evacuate. Some persons simply have no
4 constraints to evacuation, so they may go ahead and evacuate,
5 et cetera.

6 However, in an area where people have been advised
7 that they would in fact be safer if they sheltered rather than
8 evacuated, they are not being asked to do nothing. They are
9 being asked to make protective action recommendation based on
10 information from, most people would presume, persons who know
11 what's going on, and therefore they have something to key their
12 behavior off of in that a specific behavior is being
13 recommended.

14 And I think with good information systems to present
15 that information to the public, that much fewer people would
16 end up making different decisions than what they have been
17 advised, which is categorically different from telling people
18 there is no need for you to engage in protective action.

19 Q I see. So the difference is between a population
20 that is advised to do nothing, because they are not at risk, at
21 least as the broadcast message advises them, they are
22 classified in the not-at-risk sector of the population, the
23 prediction you make about what they're liable to do is not
24 parallel to a prediction about what people told to shelter will
25 do in terms of the percentage of those told to shelter who will

1 spontaneously evacuate. That is apples and oranges, in your
2 opinion.

3 A (Mileti) Yes, I'd agree with what you just said.

4 Q Generally, your testimony on sheltering, is it based
5 on some empirical record or research on human sheltering?

6 A (Mileti) I was -- in general, no. It's based on an
7 empirical record about how people behave in emergencies. I was
8 unable to locate, and we reviewed 400 evacuations involving
9 chemical accidents, or technological emergencies, and were
10 unable to find a case where people were advised to shelter.

11 And so it's not based on perfectly analogous
12 emergencies in which large members of -- numbers of the
13 population have been asked to shelter simply because I haven't
14 been able to find one. There may be one. If anyone knows, I
15 would like to know about it.

16 Q So there is an element of extrapolation here, is
17 there not?

18 You're extrapolating from what human beings have been
19 told to do in other contexts, and you're making the assumption
20 that if they are told to shelter, they will.

21 A (Mileti) Absolutely. There has to be extrapolation
22 in this case since we haven't experienced any emergencies at
23 nuclear power plants analogous to the kind that we're planning
24 for here.

25 So any basis for planning would have to be an

1 extrapolation since these kinds of emergencies haven't happened
2 yet. That is, a nuclear power plant in which people had to
3 shelter or evacuate, and there was a good plan in place.

4 Q No, I understand that, but we have -- we have an
5 historical record, an empirical record of evacuation in
6 response to an emergency, don't we?

7 A (Mileti) We have an historical record of a range of
8 actions that people engage in in emergencies. Evacuation is
9 just one. There are dozens upon dozens other behaviors people
10 have engaged in in reference to different emergencies. And
11 some people have studied various different aspects.

12 It is true that evacuation has received the most
13 research attention. It's certainly the most focused in
14 settings like this in terms of that. But people who study what
15 the public does in response to emergencies tend to look at what
16 people did in response to the warnings that they got, which may
17 or may not include evacuation.

18 Q Right, and when you've reviewed, or after your review
19 of that research, you found no case of human response to a
20 recommendation to shelter?

21 A (Mileti) We found no case in which a large segment
22 of a community was given the protective action recommendation
23 to shelter.

24 Q So it is fair to say that your testimony in the form
25 of a prediction as to what people will do when advised to

1 shelter is based on your core notion that emergency broadcast
2 systems generally can guide and shape human response if they're
3 adequate, if those systems are adequate?

4 A (Mileti) In general, yes but I'd like to rephrase
5 it by saying I think my predictions here and everywhere else
6 are based on looking at the causes of human behavior rather
7 than looking at descriptive accounts of how people behave.

8 Q I understand, and we've had lengthy discussions on
9 what causes human behavior in emergencies, and it's your view
10 that, in major part, it's shaped, determined, caused by the
11 information available to the actor at the time of the
12 emergency?

13 A (Mileti) In general, yes.

14 Q Now, it's a fact, isn't it, Dr. Mileti, that in the
15 event of an emergency at Seabrook an individual hearing or
16 subject to the emergency broadcast system would have two
17 alternatives open to him or her. That's a fact -- two
18 fundamental alternatives open to him or her. That's a fact,
19 isn't it?

20 A (Mileti) It depends on what you mean by fundamental
21 alternatives.

22 Q Well, that individual can shelter, or that individual
23 can evacuate.

24 A (Mileti) In terms of protective actions, that's
25 probably true. There are, in terms of human response, other

1 actions they could engage in.

2 Q Well, other relevant actions?

3 A (Mileti) If they did nothing, that would be quite
4 relevant I think in the final analysis.

5 Q Fair enough.

6 Setting aside doing nothing, are there other relevant
7 actions that an individual could take to protect himself or
8 herself?

9 A (Mileti) I would imagine not, because I haven't
10 heard about them, but I'm not an expert in the field of how one
11 protects yourself from radiation, so I can't really say for
12 sure.

13 Q Now, in that context, an individual is going to have
14 to make a decision as to which of these fundamental protective
15 measures he or she engages in.

16 That's accurate, isn't it?

17 A (Mileti) From an analytical point of view, I would
18 say yes. However, I'm sure there would be some persons, if
19 asked to engage in a particular protective action, that may not
20 think of the other one.

21 For example, if evacuation were advised, persons may
22 not even have it as part of their consciousness that sheltering
23 exists and vice-versa.

24 Q Well, let's take the vice-versa.

25 If someone was advised to shelter, is it your view

1 from a behavioral scientist's point of view that they wouldn't
2 think of evacuating?

3 A (Mileti) I'm sure some persons would think of
4 evacuating, yes.

5 Q No. But the question is would anybody not think of
6 it.

7 A (Mileti) It's always possible in reference to human
8 behavior --

9 Q Okay.

10 A (Mileti) -- that you can find someone that would do
11 it. If you can think it up, it's possible that it could
12 happen.

13 Q No, I understand.

14 But a prudent and rational planner would assume,
15 would he not, that presented with an emergency an individual is
16 going to be placed in a situation where he could shelter if he
17 is advised or knows what sheltering means, or he could
18 evacuate.

19 He's going to be presented with that alternative, is
20 he not?

21 A (Mileti) At the abstract level, yes. Those two
22 alternatives exist.

23 Q Okay. And it's your testimony that you can make
24 predictions about what people will do in response to a
25 sheltering directive based on the capacity of the emergency

1 broadcasting system to shape -- and other information made
2 available to that individual -- to shape his choice.

3 That's right, isn't it?

4 A (Mileti) I would rather say help them make the best
5 decision about what to do rather than shape their choice.

6 Q However, I don't want to get tied up in the jargon.
7 But the point is that it's your view that that person's choice,
8 based on your testimony and your knowledge, that person's
9 choice is going to be a function of the information made
10 available to him.

11 A (Mileti) In general, yes.

12 Q Okay. Now, do you have any empirical evidence, or
13 are there any cases that you have examined where an individual
14 placed in an emergency has a choice, fundamental choice of
15 protective measures, and there is empirical evidence that the
16 emergency broadcasting system has been able to help that
17 individual shape, or appropriately shape his choice?

18 Are there any cases of that?

19 A (Mileti) There have been cases where there have been
20 hazards occurring in communities. For example, chemical
21 explosions and then toxic plumes, where certainly persons could
22 have sheltered or evacuated, and evacuation was recommended,
23 and emergency information went out, and the evacuation was
24 successful, and I would presume not much sheltering, if any,
25 went on.

1 I don't know, as I've already said, of any cases
2 where that circumstance occurred where sheltering was advised.

3 Q Right. So that was going to be my next question.

4 So there are examples of situations where in
5 emergencies people had a choice: they could have sheltered or
6 they could have evacuated. The emergency broadcast system
7 advised evacuation, and they evacuated. So there is empirical
8 evidence for that proposition.

9 But if I understand your testimony, there is no
10 empirical evidence for the proposition that a person placed in
11 the same situation with a choice, they can evacuate or they can
12 shelter, advised by the broadcast system to shelter; we have no
13 cases where they in fact did shelter.

14 A (Mileti) As I've already said, I don't know of any
15 cases where a large, community-wide emergency recommended
16 shelter as a protective action.

17 Believe me if I did, I would have entered the
18 findings in my testimony.

19 Q I understand. Now, let's go back to your basis for
20 your testimony that in just that situation you're confident in
21 predicting that if the emergency broadcast system is adequate
22 they will shelter if advised to shelter.

23 Now, what is the basis for that?

24 A (Mileti) It's the only prudent conclusion that a
25 reasonable scholar in my field could reach after reviewing the

1 empirical data that does exist.

2 Q It is.

3 How about the conclusion that we don't know, would
4 that be a prudent conclusion based on the research data that a
5 scholar in your field has reviewed?

6 A (Mileti) We don't know empirically because that sort
7 of event has occurred as a --

8 Q Right, so we're not able to predict.

9 A (Mileti) No, I didn't say that.

10 Q No, I know, I know.

11 And I'm asking, wouldn't a prudent scholar in your
12 field, having reviewed just that empirical research, come to
13 the conclusion that we don't know what would happen in that
14 scenario?

15 An individual having two options, sheltering or
16 evacuation, being advised to shelter, in the absence of any
17 empirical evidence that the emergency broadcast system would
18 produce that response, a prudent scholar would conclude we
19 don't know what an individual would do in that circumstance.

20 A (Mileti) No, I disagree, and I don't think if a
21 scholar, and there have been some who have in fact said we
22 don't know.

23 Q Who were they?

24 A (Mileti) Ron Perry, I think, although even though I
25 still don't read German.

1 Q He said it in some other language though.

2 A (Mileti) English.

3 It is the case that we have an empirical record about
4 what it is that are the key reasons why publics do what they do
5 in an emergency. And sometimes we ask publics, in reference to
6 all kinds of hazards, to stuff towels under the door. Sometimes
7 we ask them to evacuate. Sometimes we ask them to just listen
8 for more emergency information. There is a whole range of
9 things that people can engage in doing, and the empirical
10 record suggests that we know that emergency information has the
11 major effect on determining that response.

12 Now, to ignore that record and that finding, and to
13 throw up our hands and say the knowledge we've accumulated over
14 30 years looking at several hundred emergencies where publics
15 have engaged in protective action recommendations is not
16 applicable to one because that protective action recommendation
17 hasn't been made, is irresponsible.

18 So I wouldn't call that scholar prudent. I would
19 call them irresponsible. That's not what the empirical record
20 suggests.

21 Q So you would call a scholar that concludes from the
22 empirical research with regard to human response to sheltering,
23 you would call that scholar imprudent if that scholar decided
24 that the record is so slight that they just can't know, they
25 can't predict what human beings would do in that situation;

1 that would be imprudent.

2 A (Mileti) On the basis of the record we have about
3 what shapes human response in different communities, at
4 different times with different human beings in reference to
5 different hazards out the window, yes, I'd call that
6 imprudence.

7 Q Although we have no empirical case where emergency
8 broadcast systems have kept people in their homes sheltering.

9 A (Mileti) I don't know of any community-wide
10 emergency where people have been asked to shelter, and I've
11 said that several times. I'm willing to keep saying it as many
12 times as you would like, but that is true.

13 Q Have been asked to shelter and shelter.

14 A (Mileti) That's right.

15 Q Or for that matter, we have no cases where people
16 have been asked to shelter.

17 A (Mileti) It is possible that there have been cases
18 where people have been asked to shelter, but I didn't search in
19 that arena because they weren't community-wide emergencies that
20 would be analogous to this event.

21 For example, there may have been a minor leak of
22 something or other in some obscure city somewhere where
23 just --

24 Q No city is obscure, Dr. Mileti, for the people who
25 live there.

1 A (Mileti) That is true.

2 A small advisement to sheiter in a particular
3 building, but I didn't review that category of emergencies
4 because I didn't think that was a community-wide emergency and
5 therefore analogous to the sort we're talking about here.

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6 (Continued on next page.)

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1 JUDGE SMITH: How about tornadoes?

2 Isn't that a pretty routine sheltering advisory that
3 people get?

4 THE WITNESS (Mileti): Yes, now that you mention it,
5 that is true.

6 In fact, FEMA technical planning guidance talks about
7 how one goes about selecting a good shelter; how to find an
8 interior wall or a room without windows; and how to make
9 choices about engaging in shelter activities.

10 I had in mind technological events when I did this
11 review. I'm almost embarrassed to say there are studies of
12 public response to tornadoes.

13 Most of them are somewhat dated in that public
14 response to tornadoes is pretty sound and therefore it seems as
15 if the planning problems are solved and there isn't much money
16 available to research them from a behavioral point of view.

17 And there are cases where public response was, in
18 general, prudent to warnings of tornadoes, including
19 sheltering.

20 JUDGE SMITH: How about imprudent?

21 THE WITNESS (Mileti): There, certainly because many
22 of them were old, old studies cases, where people made wrong
23 decisions about what to do in emergencies. There is, indeed,
24 variation.

25 BY MR. TRAFICONTE:

1 Q Now, in the case of a tornado, Dr. Mileti, an
2 individual -- is an individual placed in a situation where he
3 or she could evacuate and/or shelter?

4 A (Mileti) Yes, in general, but there have been cases
5 where people were given no choice.

6 Q They had to do one or the other, I take it?

7 A (Mileti) In a few cases, but in general you were
8 correct.

9 Q Well, in those situations where individuals who were
10 free to do one of two things, they could evacuate or they could
11 shelter with regard to a tornado, have you done any
12 investigation as to how the emergency broadcast system impacted
13 on that decision, if at all?

14 A (Mileti) I'd have to say in the course of my life I
15 have read probably every human response study that's ever been
16 done.

17 So, yes, I've encountered them.

18 I also have to admit that I didn't do a review of
19 tornado response studies for this testimony. I, as I've
20 already said, was thinking of technological emergencies.

21 In general, as I recall, however, I think the prudent
22 course of action in reference to tornadoes is not necessarily
23 one or the other. And you're supposed to shelter if the
24 general guidance is you hear a tornado is very close and
25 evacuation isn't an option.

1 Otherwise, it's easy to step out of the path of a
2 tornado by just going a mile or two.

3 Q Is that piece of information something that somebody
4 who lives in a tornado band, or tornado -- strike that --
5 tornado area is likely to know?

6 A (Mileti) I suppose it depends on what you mean by a
7 tornado area. It is true that --

8 Q An area that is hit by tornadoes.

9 A (Mileti) Every state in the country is hit by
10 tornadoes. However, there are some states that don't think
11 they are hit by tornadoes, in which case people are very
12 unlikely to know things.

13 And there are many states in the country called
14 tornado area -- obviously Kansas is part of it -- where people
15 have referred to disaster subcultures where what people do in
16 reference to warning response or in regard to hazards is part
17 of the local culture. I mean, it's just part of living there.

18 And so there's a variation.

19 Q So that when there is a disaster subculture existent,
20 wouldn't it be your view that elements of that subculture, the
21 knowledge and folklore in that subculture may well be a
22 determinant of human response in the event of an emergency?

23 A (Mileti) Well, disaster subculture is the
24 consequence of having experienced a particular hazard's impact
25 so many times that people learn from experience, and they

1 recognize the risk. And in those situations, that experience,
2 and the built-in mechanisms that society has adopted to deal
3 with that risk, do hold.

4 But that is not --

5 Q Well, let me put the question again. I think that
6 was a partial answer.

7 But in those areas where there's a disaster
8 subculture, would it be your testimony that that subculture
9 would be a key determinant of human response, in addition to or
10 other than the emergency information system that's used in that
11 area?

12 A (Mileti) Aspects of culture would have an effect in
13 any emergency. Certainly in a place where there is a disaster
14 subculture, it would have a much more important effect, but I
15 wouldn't hypothesize that that would eliminate the effect of
16 emergency information. It might help people better understand
17 how to hear that information and respond to that information.

18 Q Do you know whether there's a disaster subculture in
19 the Seabrook EPZ?

20 A (Mileti) I have no idea, but I would guess not.

21 Q And on what basis would you make that guess?

22 A (Mileti) I don't have the sense that the area is
23 impacted by a particular hazard frequent enough for a disaster
24 subculture to exist.

25 However, I could be wrong.

1 Q Could subcultures develop outside the context of
2 actual events?

3 Could subcultures develop outside the context of
4 actual events, actual emergencies, could they develop -- and
5 here I'm asking your view as a sociologist -- in response to a
6 collectively perceived, possible event, i.e., the beginning of
7 operation of a nuclear plant?

8 A (Mileti) If what you're asking me is could there be
9 a community that was dramatically opposed to a nuclear power
10 plant, or --

11 Q We know the answer to that.

12 A (Mileti) -- or let's say fearful of nuclear power,
13 or that sort of thing, and could that turn into a social
14 movement that then adopted the characteristics of a culture?

15 Q A subculture. A disaster subculture.

16 A (Mileti) It would have to be, yes, of course, it
17 would have to be a subculture, only American society has a
18 general culture.

19 Then the answer is, yes. I mean, one would expect
20 that. In fact, one would expect that that's the case in
21 reference to the definition of a social movement. However,
22 that's different than a disaster subculture, in which norms
23 about processing risk and dealing with risk exist.

24 That comes from experiencing floods in the same
25 communities year after year, along the Mississippi, for

1 example.

2 Q I understand. I understand.

3 But it is your view then, as a sociologist, that a
4 subculture could develop around a perceived risk. For example,
5 in the Seabrook EPZ there could be such a subculture, that's
6 your view, isn't it?

7 A (Mileti) It's quite possible, yes.

8 In fact, sociologists have done studies of social
9 movements associated with the anti-nuclear movement.

10 Q And couldn't that subculture develop its own
11 knowledge base, accurate or inaccurate though it may be, as to
12 the appropriate response in the event of an emergency?

13 A (Mileti) It's certainly the case that it could
14 develop perceptions about what it perceives prior to an
15 emergency about what is an appropriate response in an actual
16 emergency.

17 Q Okay.

18 And again, we're going back to, and I don't want to
19 go over the same ground, but it is your testimony in that
20 context, though, that in the event of an emergency, the
21 emergency broadcast system and the information supplied to
22 those individuals would control for that subculture, or the
23 shared knowledge or perceptions among the population in the
24 area?

25 A (Mileti) Yes. It's always been -- well, I wouldn't

1 use the word "control", I would use the word, help people make
2 good decisions.

3 Q Okay.

4 A (Mileti) But that people respond in emergencies
5 based on what they perceive the risk to be during the emergency
6 and what they perceive is an appropriate response in an
7 emergency.

8 And the key factor determining that is not what
9 people bring to the emergency with them, their subculture, with
10 their preferences, their belief, their religion, but rather the
11 emergency information.

12 Q Yes, now, I understand that, and today for the first
13 time I heard you speak of disaster subcultures where people can
14 bring their experience and their knowledge to an emergency, and
15 their behavior can, in part, be a function of their behavior
16 and knowledge.

17 Now, that's how you described disaster subcultures,
18 if I am not mistaken?

19 A (Mileti) Absolutely. People go through emergencies
20 so much, they know what those kinds of emergencies are like;
21 for example, floods along the Mississippi.

22 Q But rehearsals, public rehearsals, or public
23 discussion or private discussion of such an emergency wouldn't
24 constitute that same kind of disaster subculture?

25 A (Mileti) Well, I think I may have left you with a

1 wrong impression.

2 You're presuming that where a subculture exists,
3 people have kneejerk, immediate response to the hint that an
4 emergency is about to occur.

5 That's not the case. What is the case, and I could
6 describe an analogy were there one in the Seabrook EPZ for a
7 disaster subculture, because of frequent broken nuclear power
8 plant accidents here. However, I suspect they'd shut the plant
9 down if that happened.

10 People would know how to pack their bags if they were
11 going to evacuate. They would know what sheltering meant,
12 about shutting off this and closing that and what to do.

13 And, therefore, it would be an easier job of having
14 persons perform their response to the emergency in an effective
15 way, as opposed to an emergency that's never been experienced
16 before.

17 Q How about if the people in the Seabrook EPZ, Dr.
18 Miletì, understood that, generally, the shelters in the beach
19 strip provide only 10 percent reduction in dose as compared to
20 no physical shelter at all?

21 What if that piece of information was generally --
22 strike that. What if the population was generally conversant
23 with that piece of information? Would that impact on how they
24 would interpret a sheltering directive, do you think?

25 A (Miletì) I think if persons during the emergency did

1 not believe there was any value to the protective action that
2 was being recommended to them, they probably wouldn't engage in
3 it.

4 But I believe that that decision would be greatly
5 influenced by the kind of emergency information that was going
6 on during the emergency.

7 Q Okay, are you aware that sheltering in this case
8 would be the recommendation, although many if not most of the
9 shelters utilized would only provide a 10 percent reduction
10 factor for certain forms of radiation?

11 A (Mileti) I'm not an expert in that area.

12 Q Are you aware of that fact?

13 A (Mileti) The number 10 percent is a bit familiar. I
14 don't know where I came up with it.

15 Q Have you reviewed this sheltering testimony, Dr.
16 Mileti?

17 A (Mileti) Yes, I have. I've read it several times.
18 The last time was on the plane out last night.

19 And if an emergency information broadcast says to
20 people, you'll be safer if you are sheltered, that's not
21 pulling words out of thin air. I would hope it's based on the
22 decision that there would be less exposure to radiation by
23 sheltering than by engaging in evacuation.

24 And I think that kind of information which is a sound
25 decision about how people would be safest, if presented to the

1 public in a reasonable way, would elicit most people to engage
2 in the behavior from which they would be the safest.

3 Q Do you believe a person would assess a situation
4 whereby sheltering would protect them from 10 percent of the
5 dose that no shelter would, do you think a person would
6 perceive that as a protective measure, as a rational protective
7 measure to take?

8 A (Mileti) I'm sorry, could you please repeat the
9 question?

10 Q Yes, that was not clear. Let me restructure the
11 question.

12 If an individual knew that the shelter that he was
13 advised to take was going to protect him from 10 percent of the
14 radiation dose, would that person be likely to interpret that
15 recommendation as something that he or she would follow?

16 A (Mileti) I imagine that the answer could be yes or
17 no, depending upon other factors. If one is comparing a 10
18 percent savings in dose to a 300 percent exposure -- for
19 example, making the wrong decision to evacuate and increasing
20 exposure by staying in the plume a longer time or what have you
21 -- if they understood that, I think it would be most likely
22 that they would, in fact, shelter, because that's the less
23 exposure.

24 If you're asking me would somebody go into a shelter
25 that they didn't think was very useful in sheltering versus not

1 being in radiation at all, then I think they'd opt for not
2 being in radiation at all.

3 Q No, that's quite clear.

4 What if the alternative was you are being advised to
5 shelter; you know that the shelter that you are being advised
6 to enter is going to provide you with 10 percent reduction in
7 dosage, as compared to no shelter, you have, obviously, another
8 alternative; that is, to evacuate.

9 What is your prediction as to rational response in
10 that situation?

11 A (Mileti) I believe that persons would, indeed,
12 engage in what they believe is the most prudent course of
13 action, and indeed are rational decision makers in responding
14 to emergency information, and they would opt for doing what
15 they think would be the safest for them.

16 And I think in reference to a sheltering advisory
17 that that, indeed, would be the safest alternative. I don't
18 have the knowledge that sheltering would be advised when
19 evacuation would make people safer.

20 If that's the case, it's probably an ill-conceived
21 plan. I mean, if the wrong protective action is being
22 recommended.

23 But I think emergency information is likely to be
24 able to help people come to understand what is their best
25 protective action and help them decide to engage in that

1 protective action.

2 Q I see.

3 So, if I understood the answer, an individual hearing
4 the recommendation that he or she shelter would understand that
5 even though he might know that the shelter is only going to
6 provide a 10 percent reduction in dose, he is going to
7 understand that, as compared to what will happen if he
8 evacuates, he's better served to shelter.

9 That's your testimony, isn't it?

10 That's how emergency broadcast system should work?

11 A (Mileti) As I recollect, and perhaps I should look
12 to make sure the emergency broadcast system tells people that
13 they would be safer if they sheltered than if they did
14 something else, and I think that is significant information,
15 because that's indeed the case.

16 Q Okay, why don't we take a look at that and see if it
17 says that?

18 Why don't we turn to one of the attachments,
19 Attachment No. 3 to the sheltering testimony, and you will see
20 there Attachment No. 3, at the top, (1 of 4), you see that?

21 The document is headed "Beach Public Address Shelter
22 Message".

23 Do you see that -- I am sorry, take your time.

24 A (Mileti) Okay, I'm there.

25 Q Okay, and then that's a one-page document. And then

1 the next document is a three-page document also headed
2 Attachment 3, but this time Pages 2, 3, and 4, that is
3 entitled, "Message F, General Emergency, (Sheltering Towns and
4 Beaches)".

5 Do you see that document; and that's a three-page
6 document?

7 A (Mileti) Yes, I do.

8 Q Now, you've reviewed these two messages, have you
9 not?

10 A (Mileti) Yes, I have.

11 Q Okay.

12 And can you point out for us where in either of these
13 messages it is indicated to the listener that he or she is
14 going to be safer if they shelter as compared to evacuate?

15 (Continued on the next page.)

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1 A (Mileti) A quick reading of this now, and I don't
2 find it.

3 JUDGE SMITH: Are you talking about Attachment 2 or
4 4, too?

5 MR. TRAFICONTE: Yes, both. I was asking him to
6 review both of them and see if there are references anywhere in
7 there that would indicate that shelter is going to provide more
8 protection.

9 JUDGE SMITH: Well, --

10 MR. TRAFICONTE: Yes, the top of the second -- in the
11 second document, Message F. As you return to the second
12 page -- strike that.

13 Yes, the second page. So everyone has the same spot,
14 it's Attachment 3 (3 of 4). At the beginning of that page you
15 will see the sentence, "In order to get the greatest protection
16 from possible exposure to radiation, you should take the
17 following actions:" -- and then a series of numbers.

18 BY MR. TRAFICONTE:

19 Q Is that the kind of indication that you're
20 referencing by indicating that one course is safer than
21 another?

22 A (Mileti) Yes, thank you for pointing it out to me.
23 I honestly did miss it when I read this.

24 Q Well, I'm not sure you did.

25 Do you think that sentence refers to -- do you think

1 that sentence actually references shelter as compared to
2 radiation, or does it in fact advise the listener how best to
3 maximize the protection once he shelters?

4 Because if then read what follows after the colon,
5 what do you find?

6 A (Mileti) I think this is in reference to sheltering.
7 I mean, it's in the context of the sheltering paragraph that
8 comes prior to it. And it's just describing to people what's
9 meant by sheltering.

10 Q Right. And it's clear, isn't it, that this sentence
11 and the seven points that follow it indicate to a listener that
12 once he shelters, this is how best to maximize the reduction,
13 the radiation dose to be achieved by sheltering.

14 That's a fair reading of this sentence, isn't it?

15 A (Mileti) I think what this says is in order to get
16 the greatest protection from possible exposure to radiation,
17 this is what people should do.

18 Q Well, I guess my point is you're the expert in
19 emergency messages.

20 Is this clear, does this indicate to the listener
21 that he's being -- does this inform the listener that it's
22 safer to shelter than to evacuate, or does this inform the
23 listener that if he wants to get the greatest protection while
24 sheltering, he should do one of the following seven things?

25 A (Mileti) No, I think what it does is suggest that

1 they do all of the following seven things, and that these are
2 the things people -- those persons should do; that is, the
3 persons referenced in the preceding paragraph on the preceding
4 page, in order to get the greatest protection from radiation
5 exposure.

6 It says, if you live in these towns, and in order to
7 get the greatest protection from possible exposure to
8 radiation, this is what you should do, and then they describe,
9 in essence, what shelter is.

10 Q Right, but nowhere is it made clear, is it, that
11 their net saving will be greater if they do this as compared to
12 evacuate, or do you understand that's what these sentences
13 mean?

14 A (Mileti) I would hope that's what these sentences
15 mean and that --

16 Q Well, you're the expert in emergency response.
17 Is this how a listener will understand these
18 sentences?

19 A (Mileti) I think it would lead people to think that
20 if they live in these towns --

21 Q Yes.

22 A (Mileti) -- this is what they should do.

23 Q Well, I understand they're going to grasp that this
24 is what they should do, at least what they're told they should
25 do.

1 My point is, will they understand, in light of our
2 previous discussion, will they understand that doing this is
3 going to be safer for them than evacuating?

4 Is the message going to make that clear?

5 A (Mileti) I think the words, "in order to get the
6 greatest protective action", this is what you should do.

7 Q Well, it doesn't say that, does it?

8 It doesn't say, "in order to get the greatest
9 protective action".

10 A (Mileti) I'm sorry, the greatest protection from
11 possible exposure to radiation, this is what you should do.
12 And since this describes sheltering rather than evacuation, I
13 think --

14 Q Right. But then it follows to say, for example, make
15 sure all your windows and doors are closed tightly. So to me,
16 I mean, to a rational person, couldn't that mean once you've
17 sheltered, make sure your windows are closed.

18 That doesn't tell me anything relative to the
19 benefits I might gain from an evacuation.

20 A (Mileti) I do believe that this does not have words
21 in it that compare dose projections to what one would
22 experience in evacuation. But the first advisement says
23 shelter indoors at your current location.

24 If you're asking me could we put more words in here
25 that talk about other things, the answer is yes. There's a

1 limit. I mean, these things get repeated every 15 minutes and
2 they can't be more than 15 minutes long.

3 Q All right. Just to throw the final monkey wrench in,
4 if you want to direct your attention to Item 3.

5 Item 3 says that if you're in your car, close all
6 windows and vents while you continue to travel to your
7 destination.

8 Now are you still fairly clear that the thrust of
9 this message is to inform the listener that he or she is safer
10 in sheltering than he would be if he evacuated?

11 A (No response.)

12 Q Dr. Miletì, did you write this message?

13 A (Miletì) I can't say I wrote any of the messages. I
14 certainly have communicated at least two dozen times with
15 several people, one of whom I know wrote many parts of this
16 message, of these messages.

17 Q That was very close to your testimony when we earlier
18 addressed ETes.

19 I'm talking specifically about this Message F. Was
20 it part of the messages that you reviewed in the time frames
21 that you've indicated earlier that you have reviewed the
22 messages for the plan?

23 A (Miletì) I've certainly seen this message several
24 times, yes. Many times, in fact.

25 Q This Message F?

1 A (Mileti) Yes.

2 Q And this Message F is part of the messages that
3 you've reviewed, and you find adequate; is that correct?

4 In light of your knowledge of emergency broadcast
5 systems, this message is one of the ones that you've reviewed
6 and you consider adequate, or above average, I think your
7 testimony is?

8 A (Mileti) Oh, absolutely. I mean, these messages go
9 so far beyond the emergency warnings.

10 I mean this honestly.

11 Q I know you do, and --

12 A (Mileti) That's at other places.

13 Q -- that wasn't the thrust of my -- not that I don't
14 mind the iteration of that. That's fine. But I just wanted to
15 make sure that Message F is included in that group that you are
16 about to pay great homage to.

17 It's one of the messages that you find exemplary?

18 A (Mileti) Yes.

19 Q Let me turn back, because I may have cut you off and
20 I didn't give you an opportunity to answer my question about
21 Item No. 3 in that message on Attachment 3 (3 of 4).

22 How does Item 3 fit into that message as a whole?

23 A (Mileti) What do you mean by fit in? In terms of?

24 Q Well, I'm trying to understand how the message is
25 going to function when it's addressed to these people in the

1 identified towns.

2 How would a listener who is not in his car understand
3 Item 3 when he hears it? He will hear that if you're in your
4 car, close your windows and vents while you continue to travel
5 to your destination.

6 Now what happens to a listener who hears that
7 directive who is not in his car? He disregards that?

8 A (Mileti) It's a good question. It is possible that
9 some confusion could result from this, I'm embarrassed to say,
10 as many times as I've got over these messages, because we're
11 asking people in the same geographical area, some are in the
12 house and some are in the car, to engage in different
13 protective actions.

14 And in order to be able to do that well with it, and
15 eliminate the potential for confusion, more explanation needs
16 to be added.

17 Q I'm not sure I understand your point about we're
18 asking these people to do a range of protective actions.

19 Isn't this whole message aimed at -- isn't this
20 message exclusively a sheltering message?

21 A (Mileti) Yes, it is. However --

22 Q So wouldn't we want to instruct the people who are in
23 their cars to get out of their cars and head for physical
24 shelter?

25 JUDGE SMITH: This cross-examination has been going

1 on for some time. I think you ought to ask and answer the
2 questions in the context that there are two pieces of advice
3 here. One is advising people to go to a shelter, and the other
4 is to shelter in place. I mean, so long as you're aware of
5 that.

6 MR. TRAFICONTE: Yes.

7 JUDGE SMITH: I just can't -- I don't get the sense
8 that the dialogue has taken that into account.

9 MR. TRAFICONTE: I'm sorry. There are two sheltering
10 directions. One is if you're in a building, shelter in place.
11 And if you're not, go to a shelter.

12 JUDGE SMITH: Depends upon where you live; you know,
13 what the situation --

14 MR. TRAFICONTE: Where you are.

15 JUDGE SMITH: Yeah, where you are.

16 MR. TRAFICONTE: Well, then, maybe I ought to put
17 that question to the witness. Maybe I misunderstood this
18 message.

19 BY MR. TRAFICONTE:

20 Q What does Item 3 tell you to do if you're in your
21 car?

22 A (Mileti) I would presume that what Item No. 3 tells
23 you to do is exactly what it says. Continue traveling to
24 wherever it is you happen to be going. That's what I --

25 Q And that means, if I understand the point of the

1 Board here, that means --

2 JUDGE SMITH: It's a subset of the advice of those
3 who are in a situation where it is deemed necessary to shelter
4 in place right now, zip, nothing else, as compared to the other
5 instruction which says, apparently, find shelter.

6 MR. TRAFICONTE: That's -- I think we may have a
7 mutual confusion here.

8 BY MR. TRAFICONTE:

9 Q Does No. 3 tell you to find shelter?

10 Does Item No. 3 direct you to find shelter?

11 JUDGE SMITH: Well, no. I just get the sense that
12 none of you are talking about, or that we're not hearing the
13 same message.

14 As I read this, there are two sets of people who are
15 involved. In season, those who are at Hampton Beach, Seabrook
16 Beach, or the beach, they are told to find shelter, go find
17 shelter.

18 The second set are people who are not at the beach,
19 other towns for example, in a situation, apparently, of, well,
20 there is such that don't go anyplace, shelter right now, and if
21 you're in a car, get out, get out of town. I mean, this is an
22 extreme situation here as I read it.

23 And, yes, indeed, it does not tell people to seek
24 shelter. The earlier one tells people to seek shelter; is that
25 right?

1 MR. TRAFICONTE: I think -- I don't know.

2 JUDGE SMITH: But I mean if it is right, address it
3 in the context of your questions and answers.

4 MR. TRAFICONTE: All right.

5 BY MR. TRAFICONTE:

6 Q Let me go back to an earlier question that I posed,
7 Dr. Mileti.

8 MR. TRAFICONTE: And my watch says a little after
9 5:00. That may not be right. But we --

10 JUDGE SMITH: That's about right. We'll have to
11 conclude soon, but let's clear up -- why don't you clear up
12 this point and --

13 MR. TRAFICONTE: Yeah, I was just going to say, let
14 me just finish this point and then we'll break, if that's all
15 right with the Board.

16 BY MR. TRAFICONTE:

17 Q We started this line by -- I was inquiring of you how
18 a listener would respond to the message, this sheltering
19 message. Let's take the case of the listener who is not in a
20 physical structure, who is on the beach, and he is being
21 directed in this message to find shelter.

22 That's right, isn't it?

23 A (Mileti) Yes, I believe so.

24 Q Okay. Now, how is that listener going to under --

25 MR. DIGNAN: Wait a minute, Mr. Traficonte. You got

1 him to accept that, but take a look at the bottom paragraph on
2 the first page of the message, apropos to what His Honor
3 already has brought up.

4 MR. TRAFICONTE: Yes, yes, that's right.

5 JUDGE SMITH: Maybe it would be a good idea if
6 everybody went home now and read the message.

7 MR. TRAFICONTE: Again.

8 Well, I think we can clear it up.

9 JUDGE SMITH: All right, go ahead.

10 MR. TRAFICONTE: If Mr. Dignan is referring to the
11 sentence that says, "These people will be advised to shelter in
12 place," this means you should remain indoors at your current
13 location, is that --

14 MR. DIGNAN: Then it rolls along saying, "Staying
15 indoors will provide you with protection from radiation caused
16 by radioactive material released from Seabrook Station. In
17 order to get the greatest protection from possible exposure,
18 you should take the following actions:" One, two, three, four,
19 five, six, seven, and No. 7 says, "Remain indoors until told by
20 local or state officials that it is safe to go outside or until
21 further protective actions are recommended."

22 Now, I assume No. 3, Mr. Traficonte, and I'll
23 stipulate with you, was to catch the case of the guy who's
24 driving in a car and hears it on the car radio.

25 MR. TRAFICONTE: Right.

1 MR. DIGNAN: And he's being told to stay in his car
2 and keep going.

3 MR. TRAFICONTE: Right.

4 MR. DIGNAN: Shelter in place, which is one of the
5 definitions of shelter in place that's in the plan; in the car,
6 keep going.

7 MR. TRAFICONTE: I see. So --

8 MR. DIGNAN: Windows closed, air conditioning off.

9 MR. TRAFICONTE: Okay, so --

10 MR. DIGNAN: Radio on.

11 MR. TRAFICONTE: Okay, can I now put the question to
12 Dr. Mileti after I've been enlightened by --

13 JUDGE SMITH: Goes better this way.

14 (Laughter.)

15 MR. TRAFICONTE: That depends on your point of view.

16 MR. DIGNAN: I guess my problem is, the message
17 speaks for itself. If my brother wants to argue to the Board
18 in a finding that it's a crummy message and ought to be
19 changed --

20 MR. TRAFICONTE: Well, I want your witness to
21 indicate it's a crummy message.

22 JUDGE SMITH: See, we digressed. He started off by
23 trying to have him state that people receiving this message
24 would not derive the sense that it is to their best advantage,
25 and they would therefore evacuate.

1 Is that still what your purpose is? But hasn't there
2 been a digression?

3 You're attacking the message as a whole now, as it
4 not being a very good message for whatever weaknesses it might
5 have. Isn't that what has happened?

6 MR. TRAFICONTE: Well, we started by trying to
7 investigate human response in light of a sheltering order when
8 there's always the possibility to evacuate. That's the
9 context.

10 It's his testimony that even though you could
11 evacuate if you're told to shelter, you're going to shelter.
12 So this is the message that's going to work that effect. And I
13 was going over it with him, and I was identifying Item No. 3
14 which is addressed, not to the person on the beach, but a
15 person in a car who has been told to continue to his
16 destination.

17 JUDGE SMITH: This is a subset of people --

18 MR. TRAFICONTE: Yes, it is.

19 JUDGE SMITH: -- who were told to shelter in place.

20 MR. TRAFICONTE: Yes, it is.

21 JUDGE SMITH: Right.

22 MR. TRAFICONTE: And what I'm investigating is the
23 impact of that part of the message on a person who's not in
24 their car. If I'm not in my car, I'm on the beach, and I hear
25 this message, and a person who is in their car is being told to

1 shut their windows and continue to their destination, how am I
2 going to understand that and I'm on the beach and being told to
3 shelter, find adequate shelter.

4 MR. DIGNAN: All right. Object, unless -- is this
5 question in the context of the whole message? That is to say,
6 that the person has heard this along with all the paragraphs in
7 front of it that precede it.

8 MR. TRAFICONTE: Goes without saying, yes.

9 MR. DIGNAN: And is the existence of Item 3 going to
10 tell him to no click, click, I'll ignore everything I heard
11 beforehand?

12 MR. TRAFICONTE: Or one -- well --

13 MR. DIGNAN: Is that the question?

14 MR. TRAFICONTE: I didn't put it in those terms.

15 BY MR. TRAFICONTE:

16 Q But the question is, what is the impact of Item 3 on
17 the coherency of the message?

18 That one finally is to you, Dr. Mileti.

19 A (Mileti) Sorry.

20 Q And don't tell me to repeat it, please.

21 A (Mileti) Did you just ask me if the coherency of the
22 message --

23 Q Is affected by Item 3 here?

24 A (Mileti) I wish you'd asked me what it would mean
25 for how people might respond to it rather than the coherency of

1 the message.

2 Q Fine.

3 How will people respond, a person on the beach
4 hearing this message, hearing Item 3 as to what you do when
5 you're in your car, you keep going, how will that impact on
6 that person's choice as between evacuation or sheltering?

7 A (Mileti) I suppose I should say some general things
8 to try to clear --

9 Q Well, you could say particular things.

10 A (Mileti) And particular things.

11 JUDGE SMITH: Which person?

12 MR. TRAFICONTE: The person on the beach who is being
13 advised to seek shelter by the message.

14 JUDGE SMITH: Beach group, it's not a beach group.
15 This is a non-beach group.

16 MR. TRAFICONTE: But he hears it.

17 JUDGE SMITH: Oh, I see.

18 MR. TRAFICONTE: He hears it, he hears it. Sure,
19 sure, I agree, he's not in his car, but he hears the message
20 about people --

21 JUDGE SMITH: I shouldn't have interfered. I'm sorry.

22 BY MR. TRAFICONTE:

23 Q Am I right about that? He does hear that portion,
24 doesn't he? You don't delete that section when we send the
25 message out to the beach?

1 A (Mileti) I sure don't know of any plans to delete
2 any parts when it's sent to the beach.

3 Q Right.

4 A (Mileti) In general, it's not a good idea to ask
5 people occupying the same geographical area to engage in
6 different protective actions, because of coincidence or
7 demographic factors, like whether you're pregnant or not,
8 because what that does is define an area at risk and has the
9 potential to create confusion.

10 We have here a message dramatically devoted to
11 getting people to shelter. There is some potential for some
12 people to potentially be confused by hearing that some people
13 are being asked to travel to their final destination. It
14 doesn't specify whether that's a shelter destination or outside
15 the EPZ.

16 There is a potential here that, if you'll forgive me,
17 we might have some shadow shelterers, that persons might stop
18 their car and seek shelter because the message is designed to
19 get people to indeed seek shelter, and it is possible that some
20 persons upon hearing this one sentence will, because of that
21 sentence being there, will consider evacuation when they might
22 not have otherwise considered evacuation.

 But the message is so clearly designed and so many
24 times talks about that sheltering is the best protective
25 action, I can't imagine that it would be the reason for why

1 people would choose to evacuate instead.

2 Q Well, should the message be changed, Dr. Mileti, in
3 that regard?

4 JUDGE SMITH: Number 3, you mean?

5 MR. TRAFICONTE: Yes.

6 THE WITNESS: (Mileti) There's no -- I don't see
7 any reason to.

8 If you ask me could I recommend a way to state
9 Sentence No. 3 better, the answer is yes, but my answer would
10 be yes in reference to every other sentence in an EBS message,
11 or anything else I've ever seen or participated, even directly
12 in writing.

13 I think that this would make it clear to the
14 population at risk what is the protective action that is
15 recommended, and that is sheltering.

16 MR. TRAFICONTE: Okay, I'm prepared to break now.
17 I'm almost done. I'm not quite done, and I assume we can pick
18 this up tomorrow morning and finish Dr. Mileti very, very
19 quickly, but I -- obviously this kicks the question back to Mr.
20 Dignan as to what's going to happen tomorrow morning. I tried
21 to finish it, but I just didn't do it.

22 He'll be back?

23 MR. DIGNAN: Oh, yeah.

24 MR. TRAFICONTE: They'll all be back?

25 MR. DIGNAN: I don't know.

1 (Laughter.)

2 MR. BISBEE: Your Honor, could I -- it may be apt at
3 this point, more apt than it would have appeared 15 minutes
4 ago, to raise the question of the hearing location.

5 JUDGE SMITH: All right, can we go off the record and
6 allow the reporter to go about his business?

7 MR. BACKUS: One other thing on the record.

8 Associated with the rebuttal testimony that I handed
9 out at the beginning this afternoon is a videotape, and I do
10 have copies of that videotape to hand out to the parties.

11 JUDGE SMITH: As an exhibit?

12 MR. BACKUS: Mm-hmm.

13 JUDGE SMITH: All right, may we go off the record
14 then? Anything else on the record?

15 We're off the record, and we will meet tomorrow at
16 9:00.

17 (Whereupon, at 5:13 p.m., the hearing was recessed,
18 to resume at 9:00 a.m., Tuesday, January 12, 1988.)

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CERTIFICATE

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This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission in the matter of:
Name: PUBLIC SERVICE COMPANY OF
NEW HAMPSHIRE, et al.
Docket Number: 5-443-OL, 5-444-OL
Place: CONCORD, NEW HAMPSHIRE
Date: January 11, 1988

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission taken electronically by me and, thereafter reduced to typewriting by me or under the direction of the court reporting company, and that the recording is a true and accurate record of the foregoing proceedings.

/s/ Kent Andrews

(Signature typed): KENT ANDREWS

Official Reporter
Heritage Reporting Corporation