

In The Matter Of:

IN RE:

PREDECISIONAL ENFORCEMENT CONFERENCE

PROCEEDINGS BEFORE LUIS REYES, CHAIRMAN

March 28, 1996

BROWN REPORTING, INC.

ATLANTA, ATHENS, AUGUSTA, CARROLLTON, ROME

1740 PEACHTREE STREET

ATLANTA, GA USA 30309

(404) 876-8979 or (800) 637-0293

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[1] UNITED STATES NUCLEAR REGULATORY COMMISSION
[2] REGION II

[3]
[4]
[5] IN RE: PREDECISIONAL)
ENFORCEMENT CONFERENCE.)
[6] CRYSTAL RIVER.)

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[8]
[9]
[10] PROCEEDINGS BEFORE
[11] LUIS REYES, CHAIRMAN

[12] March 28, 1996

[13] 1:00 p.m.

[14]
[15] 29th Floor
101 Marietta Street
[16] Atlanta, Georgia

[17]
[18]
[19]
[20]
[21] Keith A. Wilkerson, CCR-B-1381, RPR

[22]
[23] BROWN REPORTING, INC.
[24] 1100 SPRING STREET, SUITE 750
ATLANTA, GEORGIA 30309
[25] (404) 876-8979

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[1] APPEARANCES

[2] On behalf of the Nuclear Regulatory Commission:

[3] C. Rapp
C. Evans, Esq.
[4] L. Clark
K. Landis
[5] B. Uryc
S. Richards
[6] J. Lieberman
L. Reyes, Chairman
[7] A. Gibson

[8] On behalf of Mr. Weiss:

[9]
R. Hendrix, Esq.
[10] D. Dickey, Esq.

[11] Also Present:

[12]
R. Weiss
[13] D. Fields

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[1] MR. REYES: Good afternoon. My name is
[2] Luis Reyes, and I'm the Deputy Regional
[3] Administrator for the Nuclear Regulatory Commission
[4] in the Region II office here in Atlanta.

[5] This afternoon we will conduct a
[6] predecisional enforcement conference between the NRC
[7] and Robert Weiss, which is closed to public
[8] observation. This conference is being transcribed.

[9] Following my brief opening remarks, Mr.
[10] Bruno Uryc, the Director of the Region II
[11] Enforcement Staff, will discuss the Agency's
[12] enforcement policy. I will then provide some
[13] introductory remarks concerning my perspective on
[14] the events to be addressed today. Mr. Al Gibson,
[15] the Director of the Division of Reactor Safety, will
[16] then discuss the apparent violations. You will then
[17] be given an opportunity to respond to the apparent
[18] violations.

[19] In this regard, I wish to reiterate that
[20] the decision to hold this conference does not mean
[21] the NRC has determined violations have occurred or
[22] that enforcement action will be taken. The
[23] conference is an important step in arriving at that
[24] decision. At this point, I would like to have the
[25] NRC staff introduce themselves and then I will ask

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(1) you to introduce your participants.
(2) **MR. GIBSON:** As Luis said, my name is Al
(3) Gibson. I'm Director of the Division of Reactor
(4) Safety, the division responsible for operating
(5) licenses in this region.
(6) **MR. REYES:** I'm Luis Reyes, and I'm the
(7) Deputy Regional Administer for the NRC in the Region
(8) II office.
(9) **MR. LIEBERMAN:** My name is Jim Lieberman,
(10) and I'm the director of the NRC Office of
(11) Enforcement.
(12) **MR. RICHARDS:** I'm Stuart Richards.
(13) **MR. URYC:** I'm Bruno Uryc. I'm the
(14) director of the Region II enforcement staff.
(15) **MR. LANDIS:** Kerry Landis, Chief of
(16) Reactor Projects.
(17) **MS. CLARK:** Lisa Clark, Office of the
(18) General Counsel.
(19) **MS. EVANS:** Carolyn Evans, regional
(20) counsel.
(21) **MR. RAPP:** Curt Rapp, Region II
(22) inspector.
(23) **MR. HENDRIX:** My name is Richard Hendrix,
(24) and I'm an attorney and counsel for Dave Fields and
(25) Rob Weiss referenced in the enforcement conference.

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(1) **MR. WEISS:** My name is Rob Weiss.
(2) **MR. DICKEY:** My name is David Dickey.
(3) I'm an attorney and counsel for Rob Weiss and David
(4) Fields.
(5) **MR. FIELDS:** I'm David Fields.
(6) [REDACTED]
(7) **MR. REYES:** Mr. Uryc will now summarize
(8) for us --
(9) **MR. URYC:** I assume that you invited Mr.
(10) Fields here. He's an observer on your behalf?
(11) **MR. WEISS:** Yes.
(12) **MR. URYC:** After an apparent violation is
(13) identified, it's assessed in accordance with the
(14) commission's enforcement policy, which is published
(15) as NUREG 1600. I have copies here available if you
(16) would like to have them, and I'll be happy to
(17) provide them to you.
(18) The assessment of an apparent violation
(19) involves categorizing the apparent violation into
(20) one of four severity levels based on safety and
(21) regulatory significance. For cases where there is a
(22) potential for escalated enforcement action, that is,
(23) where the severity level of an apparent violation is
(24) categorized at severity level one, two or three, a
(25) predecisional enforcement conference is held, and

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(1) that's the process that we're in now.
(2) There are three primary enforcement
(3) sanctions available to the NRC, and they are notices
(4) of violation, civil penalties, and orders. Notices
(5) of violation and civil penalties are issued based on
(6) identified violations. Orders may be issued for
(7) violations or, in the absence of a violation,
(8) because of a significant public health or safety
(9) issue. NRC enforcement sanctions against a licensed
(10) individual could include a letter of reprimand, a
(11) notice of violation, a civil penalty, or an order to
(12) prohibit NRC licensed activity. Sanctions, if
(13) applied, are carefully determined on a case-by-case
(14) basis.
(15) Now, this predecisional enforcement
(16) conference is essentially the last step of the
(17) inspection and investigation process before the
(18) staff makes its final enforcement decision. The
(19) purpose of this conference is not to negotiate a
(20) sanction. Our purpose here today is to obtain
(21) information that will assist us in determining the
(22) appropriate enforcement action, such as a common
(23) understanding of the facts, root causes, and missed
(24) opportunities associated with the apparent
(25) violations, a common understanding of the corrective

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(1) actions taken or planned, and a common understanding
(2) of the significance of issues and the need for
(3) lasting comprehensive corrective action.
(4) The apparent violations discussed at this
(5) conference are subject to further review, and they
(6) may be subject to change prior to any resulting
(7) enforcement action. As Mr. Reyes mentioned in his
(8) remarks, it is very important to note that the
(9) decision to conduct this conference does not mean
(10) that the NRC has determined that a violation has
(11) occurred or that enforcement action will be taken.
(12) We would also appreciate your views as to
(13) whether there is any information that may be
(14) relevant to mitigation or escalation of any
(15) potential enforcement sanction as well as your
(16) position on the inspection report findings and
(17) investigation, and I understand you do have copies
(18) of the inspection reports and the synopsis.
(19) I should also note at this time that
(20) statements of views or expression of opinion made by
(21) the NRC staff at this conference or the lack thereof
(22) are not intended to represent final determinations
(23) or beliefs by the agency. Following the conference,
(24) the regional administrator, in conjunction with the
(25) NRC Office of Enforcement and other NRC headquarters

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(1) offices, will reach an enforcement decision, and we
(2) expect this process to take about 60 to 90 days.
(3) That concludes my remarks. If you have
(4) any questions, we'll be happy to address them at
(5) this point. Again, as I said, I do have copies of
(6) the enforcement policy for you. Mr. Reyes?

(7) **MR. REYES:** What I'd like to do is
(8) proceed with some introductory remarks and then,
(9) after that, Mr. Gibson will go through the apparent
(10) violations that we have previously sent to you, and
(11) then we'll let you answer those, and we'll probably
(12) have a set of questions for clarification.

(13) We're here today because, as a licensed
(14) operator, you were accountable not only to Florida
(15) Power Corporation but also to the NRC for assuring
(16) that requirements are followed and the reactor
(17) license for, in this case, Crystal River operates
(18) safely. The public expects that the NRC takes
(19) action, and we intend to take action as necessary,
(20) to assure you're thoroughly licensed to operate
(21) nuclear power plants and that individually licensed
(22) operators properly operate the reactors and comply
(23) with all NRC requirements.

(24) Based on our review of the investigation
(25) and our inspection findings, it appears that you may

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(1) have not followed NRC requirements. At the outset,
(2) we recognize that your motives were to pursue a
(3) safety issue, and you're to be commended for
(4) pursuing the issue up to a point. However, we
(5) cannot condone operation of the plant outside
(6) established limits, especially where you recognize
(7) that the operating limit was probably not
(8) conservative and it was likely that your evolution
(9) would place the plant outside the acceptable
(10) region. You even took measures on September 5th to
(11) have a person dressed out and available while
(12) conducting the test, which was not part of the
(13) actions taken on September the 4th.

(14) There are many ways to raise safety
(15) concerns. We want safety concerns raised, but using
(16) the machine to demonstrate a concern is not an
(17) acceptable way to raise a concern. You may have
(18) been right and taken the proper precautions.
(19) However, you might have been wrong, others following
(20) your example may be wrong, and the end cannot
(21) justify the means. There were other mechanisms
(22) available to raise concerns that you should have
(23) used.

(24) The purpose of this predecisional
(25) enforcement conference is to address the apparent

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(1) violations that Mr. Gibson will describe. It is
(2) also to provide you an opportunity to address what
(3) happened on September 4th and 5th and to receive
(4) your views on, first, whether you believed at the
(5) time that your actions were appropriate; two,
(6) whether now, after having substantial time to
(7) consider those actions, whether your views have
(8) changed; three, the broader implications of those
(9) actions; and fourth, the corrective actions that you
(10) personally have taken or plan to take to prevent
(11) recurrence in licensed activities in the future.

(12) We will be interested in what actions you
(13) took to express your concern with the make-up tank
(14) pressure limit curve and what actions led up to the
(15) September 4th and 5th evolution and why you didn't
(16) raise your concern to higher levels of management.

(17) I want to emphasize that we have not yet
(18) decided violations were committed, if they were
(19) deliberate, or whether enforcement action is
(20) warranted against you. During this conference we
(21) will have questions for you to help us reach
(22) decisions in this matter. Should you need a
(23) question clarified or if you have questions yourself
(24) during this proceeding, please feel free to ask. We
(25) emphasize that we expect from you complete and

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(1) accurate responses to our questions, and if we fail
(2) to ask the right question you feel needs to be
(3) answered that may be relevant to the issues in this
(4) conference, we expect you to come forward and give
(5) us that information.

(6) I would also note that the statements,
(7) views or expression of positions made by the NRC
(8) during this conference do not constitute our final
(9) position, and please do not take our questions,
(10) response or silence as prejudging the matter. We
(11) appreciate this is a significant matter. The
(12) decision on this matter will be taken only after
(13) careful consideration, not only by Region II but by
(14) the Office of Enforcement, which is represented here
(15) today, and the Office of Nuclear Reactor Regulation,
(16) which is also represented here today. The Office of
(17) the Executive Director for Operations will also
(18) review the matter, and we intend to consult the
(19) commission prior to taking any action.

(20) Let me assure you that we're not taking
(21) this matter lightly, and the decision will be given
(22) careful consideration after receiving your views
(23) today and other information that we have developed.
(24) As part of the consideration, we will be considering
(25) the actions of FPC that may have contributed to this

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[1] matter as well as actions FPC has taken in response
[2] to this matter. We will hope to reach a decision
[3] within 90 days, and that's our goal.

[4] As you can see, this meeting is being
[5] formally transcribed. A copy of it may be available
[6] to you after the NRC has reached its decision as to
[7] whether or not enforcement action should be taken.
[8] If we make it available to you, it will also be in
[9] the public document room at that time.

[10] Do you have any questions before I turn
[11] over the meeting to Mr. Gibson?

[12] **MR. WEISS:** No.

[13] **MR. GIBSON:** Good afternoon, Mr. Weiss.

[14] This is a very formal introduction with all of these
[15] people in blue suits reading prepared statements,
[16] and it is a serious matter to you, I'm sure, and to
[17] us as well, and I hope that we can all relax enough
[18] to have a free dialogue and discuss what took place
[19] on September 4th and 5th. It's truly our objective
[20] to reach the right conclusion and to be fair in this
[21] matter. What I'm about to present is what appears
[22] to us to be violations of regulatory requirements.

[23] As others before me have said, this is
[24] not our final determination. We've exchanged
[25] correspondence on this on numerous occasions, and we

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[1] do indeed want to hear face-to-face your view of
[2] what took place on September 4th and 5th to help us
[3] reach the right conclusion.

[4] The first apparent violation is a
[5] violation of 10 CFR 50.59. I should first say that
[6] your license requires that you follow the rules and
[7] regulations of the Nuclear Regulatory Commission,
[8] and 10 CFR 50.59 is such a regulation. That
[9] regulation requires that a written safety evaluation
[10] be prepared prior to conducting a test or experiment

[11] not described in the FSAR. We consider the
[12] evolutions that took place on your shift on
[13] September 4th and 5th of 1994 to have been a test.

[14] We understand that you did not prepare a
[15] written safety evaluation and, in the process of
[16] conducting that test, it appears to us that certain
[17] station procedures were violated. Procedure AI-500,
[18] conduct of operations, Revision 82, Step 4.31.1
[19] stated that it is the duty of every member of the
[20] Crystal River work force to comply with procedures.

[21] Now, I understand you were the assistant
[22] shift supervisor on these dates.

[23] **MR. WEISS:** That is correct.

[24] **MR. GIBSON:** And as such, you were
[25] responsible for directing the activities of members

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[1] of your crew.

[2] **MR. WEISS:** That's correct.

[3] **MR. GIBSON:** Procedure AI-500 in Step 6
[4] of Enclosure 27 stated that it is the responsibility
[5] of the chief nuclear operator who reported to you on
[6] those dates to ensure that plant evolutions do not
[7] violate administrative controls. Procedure OP-402,
[8] the make-up and purification system, Revision 75,
[9] Step 4.19.9 requires that operators ensure that the
[10] make-up tank pressure limits of OP-103B, Curve 8 are
[11] not exceeded when adding hydrogen to the make-up
[12] tank.

[13] Procedure 103B Curve 8, maximum make-up
[14] tank overpressure, Revision 12 defined the
[15] acceptable make-up tank pressure versus level for
[16] control of make-up tank evolutions. Procedure
[17] AR-403, annunciator response, make-up tank pressure
[18] high/low, Revision 21, Item H-0406 required
[19] operators to take action to reduce make-up tank
[20] pressure to within the limits of OP-103B, Curve 8
[21] when a valid alarm was received.

[22] Now, on September 4th and 5th, 1994 you
[23] and members of your crew failed to observe the
[24] operating procedures and other conditions specified
[25] in your three Crystal River 3 operating license when

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[1] you failed to observe NRC Regulation 10 CFR 50.59,
[2] conducted tests not described in the FSAR without a
[3] written safety evaluation, and specifically you
[4] conducted tests in that you conducted evolutions
[5] involving make-up tank pressure and level not
[6] required by plant conditions to collect data.

[7] During these tests you failed to meet the
[8] requirements of AI-500 to comply with the following
[9] Crystal River procedures. OP-402 was not followed
[10] on September 4th or 5th in that when you added
[11] hydrogen to the make-up tank you exceeded the limits
[12] of OP-103B. The limits of OP-103B were exceeded on
[13] September 4th for approximately 43 minutes
[14] continuously from 4:24 a.m. to 5:06 a.m. and on
[15] September 5th, 1994 for approximately 37 minutes
[16] continuously from approximately 4:45 a.m. to 5:21
[17] a.m.

[18] Alarm response procedure AR-403, Item
[19] H-0406 was not met on September 4th or September 5th
[20] in that timely action was not taken to reduce
[21] make-up tank pressure to within the limits of
[22] OP-103B, Curve 8 when a valid alarm was received.
[23] Instead, the make-up tank level was lowered, which
[24] caused make-up tank pressure to exceed Curve 8 by an
[25] increasing amount.

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[1] In summary, that's what appears to us to
[2] have been the violations that occurred on those
[3] dates, and at this point I would like to turn the
[4] meeting over to you. We'd like for you to share
[5] with us any response that you may have to those
[6] apparent violations.
[7] **MR. WEISS:** Well, let's start out right
[8] at the start. In my interview I was asked a
[9] question and was told I probably should bring it up
[10] here. Is it the NRC's position that we had rather
[11] not have done this and Crystal River 3 was still
[12] operating outside the design basis?
[13] **MR. GIBSON:** It's the NRC's position that
[14] you should follow station procedures. We believe
[15] that there were other options available to you to
[16] raise this concern. If you'd like, we can discuss
[17] that at this point.
[18] **MR. WEISS:** Why don't we go through a few
[19] of those options?
[20] **MR. GIBSON:** You were given a memorandum
[21] dated September the 2nd, 1994 which stated that,
[22] based upon engineering review, the curve was
[23] considered to be correct, but it also noted that
[24] additional evaluations were planned and would be
[25] conducted.

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[1] Based upon that memorandum, did you
[2] understand that additional evaluations would be
[3] conducted?
[4] **MR. WEISS:** No. Based upon that
[5] memorandum I understood the issue was being closed.
[6] It clearly says that in the first paragraph.
[7] **MR. GIBSON:** I don't believe it does. Do
[8] you have a copy of the memorandum?
[9] **MR. WEISS:** I believe the quote is
[10] engineering believes that this curve is accurate and
[11] reasonably conservative. If it's accurate and
[12] reasonably conservative, why would any more effort
[13] have to be put into it?
[14] **MR. GIBSON:** The memorandum stated that
[15] further evaluation would be done.
[16] **MR. WEISS:** It talks about doing an
[17] evaluation on the BWST swapover point, which is one
[18] of the reasons the curve was invalid in the first
[19] place. Now, my question is this. If they knew that
[20] that calculation stated the curve was not valid past
[21] refuel eight because of the change in the BWST
[22] swapover point, how could they write a memo saying
[23] it was accurate and reasonably conservative?
[24] **MR. GIBSON:** It appears to us that that
[25] memorandum clearly stated that the matter was to

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[1] receive additional evaluation, so it wasn't really
[2] apparent to us why you felt compelled to take the
[3] action you did without awaiting further evaluation.
[4] **MR. WEISS:** Could you please read the
[5] first paragraph of that letter?
[6] **MR. GIBSON:** Do we have a copy at the
[7] table? Why don't you read it?
[8] **MR. WEISS:** Basically what I'm trying to
[9] point out is that it should be noted that none of
[10] these options recommended changes to 103B, Curve 8.
[11] We believe this curve is accurate and reasonably
[12] conservative to protect the high pressure injection
[13] pumps from hydrogen gas intrusion in the worst case
[14] large break LOCA. Right there they're saying the
[15] curve is right. Then they say: In addition,
[16] corrective action number eight of PR 94-149 is
[17] currently in progress to provide technical bases for
[18] the BWST swapover point.
[19] **MR. GIBSON:** That's correct.
[20] **MR. LIEBERMAN:** And the next sentence
[21] reads -
[22] **MR. DICKEY:** The sentence states: During
[23] this analysis make-up tank overpressure per Curve
[24] No. 8 will be reevaluated. This action is scheduled
[25] to be completed by September 30th, 1994.

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[1] **MR. GIBSON:** Mr. Weiss, I think I should
[2] say that you and members of your crew did quite a
[3] lot to raise this issue to management's attention
[4] and to the NRC's attention, and I don't mean to
[5] imply that you did not. But there were other
[6] options available to you, it seems to me.
[7] Let me summarize the options that we
[8] believe might have been pursued by you, and I don't
[9] want to diminish the fact that you did exercise a
[10] number of options to raise this issue. We
[11] understand that you did, and we think that those
[12] were appropriate and proper.
[13] One piece of information is the September
[14] 2nd memorandum, which, although it did say the
[15] current engineering position did say the curve was
[16] correct, it did in fact go on to say there would be
[17] some additional evaluation in the future. Another
[18] option that was available to you was to escalate the
[19] matter to higher station management. I understand
[20] that it had been discussed with Greg Halnon. You
[21] could have escalated it further. I understand that
[22] a member of your crew had discussed it on several
[23] occasions with a resident inspector.
[24] **MR. WEISS:** That's correct.
[25] **MR. GIBSON:** And the NRC could have and

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[1] arguably should have intervened at that point, but
[2] you could also have talked to the senior resident
[3] inspector or his management. Mr. Halnon solicited
[4] written comments on this matter in his memorandum of
[5] August the 9th, 1994 and none were provided. The
[6] employee concerns program at the station was not
[7] used. Your shift manager was not consulted
[8] regarding the test that was conducted. I don't mean
[9] to diminish the steps you took. I think they were
[10] good, I think they were proper, but I also think
[11] that other options were available. I guess I'd just
[12] like your response to that.

[13] MR. WEISS: Well, I guess I'm questioning
[14] that I have to prove that I used every possible
[15] method to try and get this thing resolved. I think
[16] that the burden of proof should be on you guys, who
[17] are charged with the safe operation of this
[18] industry, to say that this would have been fixed if
[19] we hadn't done what we did. We were faced with a
[20] pretty bad situation. No one here seems to
[21] understand that all the pressure was coming down
[22] from the vice presidential level to achieve these
[23] high make-up tank pressures, that engineering was
[24] not listening to technical concerns, that they were
[25] reacting to political pressure.

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[1] MR. GIBSON: What was the direction you
[2] were getting from higher management?

[3] MR. WEISS: The direction was to operate
[4] on the curve, maximize the pressure, stay at the top
[5] of the allowable band. That's the curve. Do you
[6] understand that? At what point do you say, you
[7] know, nothing's going to get done? I mean, they go
[8] to engineering and ask engineering, these guys have
[9] doubts about the curves, is it right, and they go
[10] uh-huh, uh-huh, and that's it. That's all the
[11] analysis that ever went into it. We took action,
[12] you know.

[13] I wasn't trying to make any money off
[14] this and I wasn't trying to get a raise. This was
[15] not in my best interest. I knew I was probably
[16] going to take some heat for it, but I thought it
[17] would come from FPC management, not from the NRC.

[18] MR. GIBSON: Did you think you would take
[19] some heat from FPC management from this?

[20] MR. WEISS: Right, because they didn't
[21] want to hear any more about this issue. They wanted
[22] to hit the 25 cc's per kg and shut up and watch the
[23] board, and a number of people did. I didn't.

[24] First of all, you're saying I violated
[25] 50.59 when what I did was a series of procedure

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[1] sections from an approved procedure that had a 50.59
[2] review. Are you saying that the OP-402 50.59 review
[3] was faulty?

[4] MR. GIBSON: I'm saying that you violated
[5] OP-402, and OP 402 did not provide provisions for
[6] exceeding Curve 8 in draining down the tank and
[7] leaving the plant conditions in the unacceptable
[8] region for that curve for an extended period of
[9] time.

[10] MR. WEISS: Which was not an unusual
[11] event, correct? I think your inspection report
[12] showed that a hundred percent of the operators have
[13] operated on the wrong side of that curve because
[14] that curve was not perceived as a design basis
[15] limit. It was not even perceived as a serious
[16] limit. If the alarm came in, you took action. I
[17] don't understand.

[18] MR. GIBSON: Our investigation did show
[19] that many operators operated for at least some
[20] period of time in the unacceptable region of that
[21] curve.

[22] [REDACTED]
[23] [REDACTED]
[24] [REDACTED]
[25] [REDACTED]

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[1] [REDACTED]
[2] [REDACTED]
[3] [REDACTED]
[4] [REDACTED]
[5] [REDACTED]

[6] MR. WEISS: Right. I think that's
[7] significant. At no point along the line has the
[8] company been bringing forward any of the issues
[9] involved here. All they've been doing is saying
[10] that we were really bad and that you should punish
[11] us.

[12] MR. GIBSON: Actually, as you probably
[13] know, the company has reported this matter in
[14] licensee event reports. Did you participate in the
[15] development of those reports?

[16] MR. WEISS: No. I saw some of the early
[17] drafts of them. It's kind of interesting, the
[18] history of the development of the LER. The first
[19] one was pretty close to the truth. From there on
[20] they just started veering away. I think there's
[21] been an obvious attempt to manipulate your actions
[22] by the reports that they gave you.

[23] MR. GIBSON: So you reviewed the earlier
[24] draft, the first one?

[25] MR. WEISS: I reviewed Draft 0 and I saw

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[1] several of the other drafts along the way. I didn't
[2] see the final draft before it went out.

[3] **MR. GIBSON:** As I'm sure you know, we met
[4] with the company yesterday, and the question we
[5] asked them is, Why did you not tell us about the
[6] September 4th event sooner. I would ask you the
[7] same question.

[8] If you participated in the review of the
[9] LER and the LER did not mention September 4th, did
[10] you suggest that it be added?

[11] **MR. WEISS:** No, I didn't. I was present
[12] at the design basis determination meeting where
[13] engineering was there and senior plant management
[14] was there and Pat Beard was there. They discussed
[15] the issue, and they came to the realization that we
[16] weren't just outside design basis when we went over
[17] the curve, we were outside design basis any time
[18] we'd operated anywhere near the curve.

[19] They made the decision that it wasn't
[20] worthwhile to go back and try to identify every time
[21] that the plant had been operated outside the design
[22] basis. Rather, they would report from time to time
[23] that the plant had been operated outside design
[24] basis, which was still not quite frank.

[25] I mean, frankly we'd been outside the

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[1] design basis for a year. Now, if the senior vice
[2] president of nuclear operations doesn't think it's
[3] very important to identify each individual instance
[4] of being outside design basis, why am I being held
[5] to a different standard? I had no intent to cover
[6] up the -- personally, I don't think I did anything
[7] wrong on the 4th and I don't think I did anything
[8] wrong on the 5th.

[9] **MR. GIBSON:** Did you think on the 4th and
[10] the 5th that OP-103, Curve 8 was an important
[11] curve?

[12] **MR. WEISS:** Yes.

[13] **MR. GIBSON:** What was your understanding
[14] of the basis of that curve?

[15] **MR. WEISS:** Well, I had a better
[16] understanding on the 5th because I'd looked at the
[17] calculation on the 5th. That doesn't constitute the
[18] design basis. It just says it affects critical ECCS
[19] equipment. We knew basically the basis for that
[20] curve was to protect our HPI pumps. That's why we
[21] were so concerned that the thing was so obviously
[22] wrong and nobody was doing anything about it.

[23] **MR. LIEBERMAN:** Had you discussed the
[24] calculations, the errors you perceived in the
[25] calculations, with anyone prior to the 5th?

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[1] **MR. WEISS:** No. We actually pulled the
[2] calculation on the night of the 5th, and that's when
[3] we saw first of all, on the first page I think it
[4] was, where it says this calculation is only valid
[5] through refuel eight. Now, right there that tells
[6] me how serious they are about reviewing our safety
[7] concern because all they had to do was pull the
[8] calculation and they'd have seen it. Either they
[9] didn't pull it or they pulled it and deliberately
[10] disregarded it. It was impossible to miss.

[11] Now, bear in mind that everybody's been
[12] treating us as if we did this big, bad sneaky thing
[13] on my night shift. Well, I was on midnight shift.
[14] I wasn't going to come in on my time off to do
[15] this. It was a normal workday for me, and if you've
[16] ever worked shift work, you'd understand that. We
[17] were doing something that I considered legal. We
[18] had approved procedures for everything we did. We
[19] weren't trying to hide anything. We wrote a problem
[20] report on it. I mean, I guess I don't quite
[21] understand where everybody's coming from that this
[22] was such a bad thing.

[23] **MR. GIBSON:** We don't think you tried to
[24] hide September 5th. We're interested in hearing
[25] more from you about September 4th, but it's pretty

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[1] clear to us that you wrote a problem report, you
[2] discussed it with engineering and your management,
[3] and that there was no attempt to hide September 5th.

[4] **MR. WEISS:** There was no attempt to hide
[5] September 4th.

[6] **MR. LIEBERMAN:** Why didn't the problem
[7] report discuss September 4th?

[8] **MR. WEISS:** I did not consider the 4th
[9] valid data. Like I said, I thought I was going to
[10] take some heat from this because they just didn't
[11] want to hear it anymore. They were tired of having
[12] operators questioning this curve, they just wanted
[13] us to comply with it, so I was going to make damn
[14] sure I was right before I went in there and picked
[15] the scab off again.

[16] We had a couple problems. I don't know
[17] if you guys do any graphing on Excel, but basically
[18] I could get real good computer point values, but
[19] then I would have to try and right-side the graph to
[20] put the curve values on or vice versa, you know. I
[21] couldn't get two good sets of data that night. And
[22] I got to thinking, Well, okay, it looks like it went
[23] above it and I can't think of any reason except the
[24] curve being bad. And I thought, Well, we just added
[25] gas and the gas was cold and maybe that's the gas

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[1] heating up. So in my opinion that just invalidated
[2] the data. It had not absolutely proved anything
[3] because we had not allowed the temperatures to
[4] stabilize.

[5] Why would I put that in the problem
[6] report, data that I thought was flawed? The stuff
[7] we took on the 5th, we gave it time to stabilize, we
[8] were able to get good results, and that's why we
[9] reported the problem on the 5th.

[10] MR. GIBSON: Would you not normally log
[11] this type of evolution?

[12] MR. WEISS: We logged like the removals
[13] and additions to the make-up tank, and I believe
[14] those were logged. We didn't do a special write-up
[15] for this one.

[16] MR. DICKEY: Did the logs reveal anything
[17] different on September 5th and September 4th?

[18] MR. GIBSON: I don't know. Perhaps
[19] someone at the table knows.

[20] MR. RAPP: No.

[21] MR. DICKEY: So the logs were pretty much
[22] the same for both days?

[23] MR. RAPP: Yes.

[24] MR. LIEBERMAN: Were their different
[25] precautions taken on the 4th versus the 5th?

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[1] MR. WEISS: In both cases we communicated
[2] with the ops operator and told him to be available
[3] in case we needed to vent the tank. My recollection
[4] is not that good about the 4th because it never
[5] seemed important and it was a long time ago. I
[6] think, based on going back over it and talking to
[7] the other guys, that on the 4th we did not have the
[8] man dressed out and on the 5th we did. But to put
[9] that in perspective, remember that all the shifts
[10] had been operating outside the design basis with
[11] nobody standing by. We were safer during that
[12] period of time than we were before that.

[13] MR. GIBSON: You thought the curve was
[14] wrong?

[15] MR. WEISS: Yes, I did.

[16] MR. GIBSON: You understood, I presume,
[17] that the consequences of the curve being wrong would
[18] be potential damage to the make-up pumps.

[19] MR. WEISS: Yes.

[20] MR. GIBSON: If the curve were correct
[21] and you operated to the left of the curve and a LOCA
[22] had occurred when you were to the left of the curve,
[23] I presume you understood that damage to the make-up
[24] pumps could occur.

[25] MR. WEISS: See, you guys don't

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[1] understand. I did not drive that curve to the
[2] left. If the curve had been correct the trace would
[3] have followed the curve down and we would have never
[4] been to the left of the curve. Do you understand
[5] that?

[6] MR. GIBSON: Yes, I do.

[7] MR. WEISS: And any time, any time that
[8] you put pressure on the curve you're right where we
[9] were, because if you'd had a LOCA and the level
[10] dropped it would pull it up over the curve.

[11] MR. DICKEY: Sir, I just wanted to ask
[12] you. Are you saying during the evolutions of
[13] September 4th and the 5th if a LOCA would have
[14] occurred during that procedure would they have
[15] caused a significant safety concern?

[16] MR. GIBSON: Yes.

[17] MR. DICKEY: Rob, how did you plan for
[18] that eventuality, and did you consider that and plan
[19] for that?

[20] MR. WEISS: That's why we had the
[21] operator ready to man the make-up tank.

[22] MR. LANDIS: So you did basically
[23] recognize that there's a potential for moving
[24] further in the non-conservative direction?

[25] MR. WEISS: We felt if the curve was

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[1] incorrect, that yes, the pressure response was going
[2] to pull it up. The pressure was not going to fall
[3] as fast as had been calculated and that was going to
[4] cause it - but no, that's not more
[5] non-conservative. If you put it right on the curve
[6] and you have a LOCA, what's going to happen? Your
[7] tank level's going to drop rapidly just like we
[8] simulated.

[9] MR. LANDIS: Let me make sure I
[10] understand. You're saying that moving further
[11] outside into what's called the unacceptable region
[12] of that curve would not necessarily have been more
[13] non-conservative.

[14] MR. WEISS: I'm saying that if you go to
[15] 86 inches and you put make-up tank pressure on the
[16] curve, you were in the exact same place I was if you
[17] had a LOCA, that it would follow the same trace I
[18] drew.

[19] MR. LANDIS: Was Curve 8 intended to be a
[20] curve that replicated the pressure temperature
[21] relationships in the make-up tank?

[22] MR. WEISS: Yes. That's the whole basis
[23] of the calculation. Did they come up here saying
[24] that locus of points crap at you? I'm sorry.

[25] MR. LANDIS: What's your opinion of

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- [1] that?
- [2] **MR. WEISS:** If you look at the way the
- [3] curve is calculated, basically they said, Okay,
- [4] let's start where we want to end, and they were
- [5] going to squeeze this bubble up and find out what
- [6] our allowable levels are. Now, when you're using
- [7] the ideal gas law to do that, you're saying that's
- [8] the pressure response of the tank you're modeling.
- [9] It's not like some we use to say whether it's
- [10] acceptable or not. This is not one of those types
- [11] of calculations. This is clearly a modeling of
- [12] system behavior.
- [13] **MR. LANDIS:** Have you gone through that
- [14] calculation, the calculation for Curve 8, and shown
- [15] the licensee the errors?
- [16] **MR. WEISS:** Well, it was addressed in the
- [17] problem report, 94-267.
- [18] **MR. LANDIS:** The problem report raised
- [19] the question. Have you actually gone through the
- [20] calculation and identified to the licensee the
- [21] weaknesses?
- [22] **MR. WEISS:** The weaknesses are identified
- [23] in Problem Report 94-267.
- [24] **MR. DICKEY:** Before that?
- [25] **MR. WEISS:** That's the official method of

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- [1] notifying a licensee of a weakness in their
- [2] procedures for something.
- [3] **MR. LANDIS:** Let me make it clearer. You
- [4] raised concerns in that problem report. Did you
- [5] actually go through the calculation? You seem to be
- [6] real familiar with the calculation itself.
- [7] **MR. WEISS:** The night of the 5th we
- [8] pulled a copy of the calculation and reviewed it.
- [9] **MR. LANDIS:** Did you identify the errors
- [10] and the weaknesses in that calculation to the
- [11] licensee?
- [12] **MR. WEISS:** Yes. We wrote a problem
- [13] report.
- [14] **MR. LANDIS:** That addressed the
- [15] calculation itself?
- [16] **MR. WEISS:** Right.
- [17] **MR. DICKEY:** When you realized that there
- [18] were obvious errors in the calculation did you say
- [19] anything to engineering or management?
- [20] **MR. WEISS:** I did. That's what this
- [21] problem report does. The title is the curve
- [22] technical basis is inadequate, and the wrong
- [23] assumption about the RV sump swapover level. Then
- [24] my opinion as that the ideal gas law was a
- [25] non-conservative way to do it and detailing what we

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- [1] observed in our run. I don't know how more
- [2] officially I could have notified them.
- [3] **MR. LIEBERMAN:** Prior to September 5th
- [4] were you aware of other instances of operators
- [5] collecting data to show the curves were in error,
- [6] prior to September 5th?
- [7] **MR. WEISS:** I don't remember ever
- [8] actually looking at a collection of data or
- [9] something. We've come up with this stuff that was
- [10] taken in July, but we weren't aware of that at the
- [11] time.
- [12] **MR. LIEBERMAN:** So it was somewhat
- [13] unusual to collect data to show a curve was wrong;
- [14] is that fair.
- [15] **MR. WEISS:** Don't you understand the
- [16] position you're taking here? You're saying that if
- [17] I had not collected data, if I'd shut up about it
- [18] and not written a problem report, I wouldn't be
- [19] here.
- [20] **MR. LIEBERMAN:** No. What we don't
- [21] understand, in all honesty, and let me say, just to
- [22] digress, that we're not happy with the performance
- [23] of Florida Power Corporation, and whether or not we
- [24] take action against you, we have a matter to deal
- [25] with concerning Florida Power Corporation, because

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- [1] obviously they have some performance weaknesses in
- [2] this matter, too.
- [3] But on September 5th, after you've gone
- [4] through the calculations and satisfied yourself that
- [5] the calculations were clearly in error, it seemed
- [6] that was another opportunity to bring that to the
- [7] attention of operations management, Mr. Hickie,
- [8] higher levels than him, and the employee concern
- [9] program.
- [10] **MR. WEISS:** Do you understand at this
- [11] point that I had lost faith in my management and
- [12] engineering? I did not think they were going to do
- [13] the right thing anymore.
- [14] **MR. LIEBERMAN:** Are you familiar with
- [15] Form 3? Have you ever seen Form 3?
- [16] **MR. WEISS:** Yes. You try and work things
- [17] out within the company. I was a loyal company
- [18] employee. I was trying to do the right thing. I
- [19] didn't expect the kind of reaction that I got. I
- [20] was really shocked at what happened after that. You
- [21] know, if after I'd written this problem report they
- [22] still blew it off, I probably would have been filing
- [23] allegations. It would have been appropriate at that
- [24] time.
- [25] **MR. DICKEY:** I'm sorry to interrupt, but

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(1) I just wanted to go back. When you were talking
(2) about Curve 8, and the question was whether or not
(3) he realized the significance of Curve 8 was
(4) important. Yes, Rob recognized that significance
(5) because obviously it reflected a difference from the
(6) hydrogen bubble getting into the pump. But whether
(7) or not Curve 8 was a design basis curve and
(8) represented something that significant, I think the
(9) record is clear and Mr. Weiss is clear that they had
(10) no idea and no knowledge that by going over that
(11) curve they had gone over the design basis curve.
(12) Yes, the curve was significant, but they did not
(13) know that violating the curve was a design basis
(14) error.

(15) MR. LIEBERMAN: We accept that.

(16) MR. HENDRIX: It's interesting to note as
(17) well that Florida Power Corporation apparently did
(18) not report to the NRC for two months that the design
(19) basis had been exceeded even though it was known
(20) almost immediately. We have some serious concerns
(21) about the strategic decisions that have been made by
(22) the company to massage the facts in a way that does
(23) not openly deal with these issues.

(24) I think what Mr. Weiss is trying to
(25) communicate is that he had already experienced

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(1) that. He had already experienced their method of
(2) management, and he had lost faith in the fact that
(3) they wouldn't listen to him. They would not listen
(4) to him.

(5) MR. WEISS: Let me point out something.
(6) We had given them problem report 94-149. I think
(7) data under the curve that I thought clearly showed
(8) there was an approach and cross-curve, it looks
(9) pretty obvious to me. We wrote that up in an
(10) official problem report and went through the whole
(11) official review cycle of a problem report. It was
(12) assigned to engineering, and engineering in their
(13) close-out basically just blew it off with a "Well,
(14) it looks to me like it's approaching zero." No
(15) serious analysis went into that at all. You want to
(16) talk about missed opportunities? There's a missed
(17) opportunity.

(18) My perception at that point was anything
(19) under the curve was going to be dispositioned the
(20) same way. They'll say, Well, we already looked at
(21) this, but they're both approaching zero, case
(22) closed.

(23) MR. LIEBERMAN: Why didn't you call NRC
(24) up? We're a telephone call away. You can give your
(25) name as you choose.

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(1) MR. WEISS: That all sounds good, but
(2) when you talk to the resident inspectors three or
(3) four times and they just don't care, I didn't think
(4) that the NRC was being much help, honestly. Who's
(5) in charge of the resident inspectors?

(6) MR. LANDIS: I have authority over the
(7) resident inspectors.

(8) MR. WEISS: Are you happy with their
(9) performance there?

(10) MR. LANDIS: Their performance is not
(11) being discussed here, yours is.

(12) MR. WEISS: I feel that it's relevant
(13) when you start criticizing me for not calling the
(14) NRC.

(15) MR. LIEBERMAN: But we're aware of that
(16) issue. There's a lot of issues we're aware of in
(17) this case and there's a number of different facets.
(18) Today we're here to talk with you about your
(19) performance. That's not to say we're not looking
(20) elsewhere. We want to understand your views, and I
(21) appreciate that this is a very significant issue to
(22) you. But the goal today is to get information.
(23) Hopefully we'll make the appropriate decision in
(24) this case.

(25) [REDACTED]

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(1) [REDACTED]
(2) [REDACTED]
(3) [REDACTED]
(4) [REDACTED]
(5) [REDACTED]
(6) [REDACTED] We feel, though, that while it
(7) may be valid that maybe after the fact one could
(8) say, Well, you should have done this, you should
(9) have done this, you should have done this, but what
(10) we would like for you to do is to go back to the
(11) moment at the time and to place yourself in the
(12) context in which they were operating with the
(13) problems they had already experienced internally
(14) with management and judge them on that basis, not
(15) today, after there's been plenty of time to reflect
(16) and consider and that sort of thing, but back at the
(17) moment when they felt like they were dealing with a
(18) serious safety issue that no one would listen to,
(19) that the company would not listen to. They were
(20) being ignored.

(21) MR. LIEBERMAN: In that regard, close to
(22) the time on September 18th Mr. Halnon wrote an
(23) e-mail.

(24) MR. LANDIS: I believe that was August
(25) 18th.

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[1] MR. LIEBERMAN: No, September 18th to Mr.
[2] Fields. I presume you're familiar with that
[3] document. Do you have a copy of it?
[4] MR. WEISS: Is that the five excellence
[5] document?
[6] MR. LIEBERMAN: Yes. I'd be interested
[7] in your observation of that document. Do you think
[8] it was fair, is it accurate, or what are your views
[9] on that document?
[10] MR. WEISS: I thought it was a pretty
[11] good write-up of what happened. This was after the
[12] management review board, I believe.
[13] MR. LIEBERMAN: It was.
[14] MR. WEISS: He says that without a shadow
[15] of a doubt crossed over the curve. That was after
[16] the management review board. That was after Florida
[17] Power had decided what they were going to do with
[18] us. We had an approved procedure.
[19] Let me put it this way. If I could take
[20] any section of OP-402, which I'm allowed to use at
[21] any time for anything, it's an approved operating
[22] procedure and I have the authority to do that, and
[23] if I can spring together any combination of those
[24] sections and create an unreviewed safety question,
[25] then there's a question with 50.59 on OP-402.

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[1] MR. GIBSON: Is there a device for
[2] draining the system?
[3] MR. GIBSON: The procedure doesn't
[4] require the reactor to be shut down. Do you feel
[5] you can vent and drain the reactor coolant system at
[6] power?
[7] MR. WEISS: That's why you don't have
[8] chimpanzees operating the thing. We do have common
[9] sense. Every procedure we use was an at power
[10] procedure. I didn't do the draining the pump
[11] section, either, you know, because it was clearly
[12] inappropriate. We felt that the sections we used
[13] were appropriate for the operating conditions we
[14] were in. They were used routinely. They were
[15] approved. We had the authority to use them.
[16] MR. RICHARDS: How did you view Curve 8
[17] in relation to the procedure you were using?
[18] MR. WEISS: Curve 8 was referenced in the
[19] section in which we added hydrogen. When you add
[20] hydrogen it says refer to Curve 8, don't go over.
[21] It was not in the limits of precautions and
[22] procedure, and I believe that the reason that is is
[23] because they assumed that the curve was right, and
[24] if you did not put initial gas pressure over it,
[25] since the curve was supposed to be a system response

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[1] curve, you would never exceed the curve after that.
[2] MR. RICHARDS: You don't view Curve 8 as
[3] applying to draining down the system? You said you
[4] were putting together and using an approved
[5] procedure to conduct the evolution. Now you're at
[6] the step where you're draining down the system. How
[7] did Curve 8 apply to that part of the evolution in
[8] your mind?
[9] MR. WEISS: It didn't.
[10] MR. DICKEY: Can he refer to the
[11] operating procedure itself?
[12] MR. RICHARDS: I'm just asking him. He's
[13] telling me he's using various sections of the
[14] procedure which you stated you're allowed to do, so
[15] now you're at the step where you start draining down
[16] the make-up tank.
[17] MR. WEISS: If there had been a limit of
[18] precaution in OP-402 that said maintain make-up tank
[19] pressure within the limits of OP-103, Curve 8, then
[20] it would not have been acceptable to have that
[21] pressure to drift above the curve during
[22] drain-down. There was no limit of precaution during
[23] that event. The requirements of one section of a
[24] procedure just don't bleed over. You either have a
[25] procedure applicable to all the system or you don't.

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[1] MR. RICHARDS: Does it make sense for
[2] that curve to apply to hydrogen addition but not to
[3] drain-down?
[4] MR. WEISS: It would make sense if the
[5] curve was correct. If the curve was correct we
[6] would have never gone over the curve.
[7] MR. RICHARDS: Then I come back to the
[8] original question. Does it make sense when you're
[9] operating the system to have a curve that says this
[10] is acceptable region and for it to only apply when
[11] you're operating in a procedure for adding hydrogen
[12] and for it not to apply when you're operating a
[13] different procedure with the same system that
[14] happens to be a different part of an evolution?
[15] MR. WEISS: Does it make sense?
[16] Personally, I would have put it in the limit of
[17] precautions.
[18] MR. RICHARDS: Personally, your opinion
[19] would be that it would apply, then? Is that what
[20] you're saying?
[21] MR. WEISS: It should have.
[22] MR. RICHARDS: I agree.
[23] MR. WEISS: If it was correct it would
[24] not have been violated.
[25] MR. RICHARDS: That's a different issue.

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[1] MR. WEISS: I challenged the curve. Do
[2] you understand that? I did not violate the curve.
[3] I put it in a challenge position and it failed.
[4] MR. LIEBERMAN: You were testing the
[5] curve, you were challenging it.
[6] MR. WEISS: That's correct. I was
[7] challenging the curve.
[8] MR. LANDIS: Let me make sure I
[9] understand. When you challenge the curve, does that
[10] mean you have authority to go into the unacceptable
[11] region of the curve?
[12] MR. WEISS: No.
[13] MR. LANDIS: Did you go into the
[14] unacceptable region of that curve?
[15] MR. WEISS: The system response of the
[16] make-up tank pulled it into the unacceptable region
[17] of the curve, proving that the curve was wrong.
[18] MR. GIBSON: And when you realized it was
[19] in the unacceptable region, what was your response?
[20] MR. WEISS: I let pressure come down 55
[21] inches. You want to know why? Because engineering
[22] was not going to do anything unless we gave them
[23] undeniable proof that their curve was wrong. They'd
[24] already shown that. Plant management was backing
[25] them to the hilt.

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[1] MR. GIBSON: I'd like to hear your view
[2] of the distinction between a design basis limit and
[3] an administrative limit. You viewed 103B as an
[4] administrative limiting curve; is that correct?
[5] MR. WEISS: Right. The design basis of
[6] the plant is that point at which damage can occur if
[7] you're actually at the limit, the design limit of
[8] the plant. An administrative limit is designed to
[9] give you a margin between the design basis limit and
[10] your normal operation.
[11] MR. GIBSON: As a senior reactor
[12] operator, was it your understanding that you had the
[13] latitude to violate or to exceed administrative
[14] limits?
[15] MR. WEISS: No, sir. As a senior reactor
[16] operator my understanding was that it was my duty to
[17] protect the health and safety of the public.
[18] MR. GIBSON: I understand that, but that
[19] wasn't my question.
[20] MR. WEISS: I understand that that wasn't
[21] your question, but that's my answer. I took the
[22] actions I thought were necessary to protect the
[23] health and safety of the public, and that's supposed
[24] to be your job, too.
[25] MR. LANDIS: You were not in -

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[1] MR. WEISS: I was doing an approved
[2] procedure that had a 10 CFR 50.59 already done.
[3] MR. LANDIS: I'm trying to understand
[4] your position on the curve. The curves are normally
[5] supposed to be established limitations, and they go
[6] through a lot of rigorous review -
[7] MR. WEISS: Yeah, right.
[8] MR. LANDIS: In this case the curve was
[9] absolutely in error, as we find out, and evidently
[10] you reviewed it on September 5th and found out also
[11] that there were some weaknesses. But curves are
[12] supposed to be established limits. As a
[13] consequence, when can you challenge and in that
[14] challenge go to the unacceptable side of a curve, an
[15] administrative limit, or any other kind?
[16] MR. WEISS: Well, first of all, let me
[17] point out that this idea that the curves are these
[18] sacrosanct limits was not what was going on at
[19] Florida Power and probably still isn't. If you take
[20] a look at their plant curve book, you'll find a
[21] whole bunch at the old power limit, curves they're
[22] operating now. Those curves are not looked at as
[23] ironclad limits, and if they don't tell you that
[24] they're lying to you.
[25] The curves we saw as operating guidance.

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[1] There are certain curves that you knew you would not
[2] violate, like your rod index curves were obviously
[3] limits that you do not want to violate. In training
[4] it's, Here's the limit, here's conservatism, here's
[5] the actual design basis limit. This thing was just
[6] given to us as, Here's your make-up tank pressure
[7] limit, operate to it.
[8] Now, as far as a challenge, you know, I
[9] guess I have to say this, that I thought that the
[10] only way to go this situation resolved from my
[11] perception at the time, and you weren't there on
[12] midnight shift, you weren't there working with my
[13] management and my engineering, but my perception was
[14] that the only way I was going to get this
[15] straightened out was to prove that curve was bad,
[16] and I thought it was my duty to do that other than
[17] to sit down, shut up and watch the board.
[18] MR. LANDIS: Were there other methods to
[19] do just what you described?
[20] MR. WEISS: My perception at the time was
[21] that no, this was the last resort I had.
[22] MR. LANDIS: Were there any other
[23] methods?
[24] MR. WEISS: Looking back on it,
[25] obviously. I could have filed an allegation

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[1] [REDACTED]
[2] [REDACTED] It's not perceived around the plant
[3] as something that would be a routine thing to do.

[4] **MR. HENDRIX:** May I have just a moment?
[5] What I'd like to do with your permission, and Rob
[6] said it would be all right, is to ask him to step
[7] outside the room for two or three minutes.

[8] **MR. GIBSON:** Would you prefer us to step
[9] out?

[10] **MR. HENDRIX:** No. I would like to share
[11] something with y'all, and then I'll have him come
[12] right back in. He said he's willing to waive his
[13] presence for just a few minutes.

[14] (A recess was taken.)

[15] **MR. HENDRIX:** [REDACTED]
[16] [REDACTED]
[17] [REDACTED]
[18] [REDACTED]
[19] [REDACTED]
[20] [REDACTED]
[21] [REDACTED]
[22] [REDACTED]
[23] [REDACTED]
[24] [REDACTED]
[25] [REDACTED]

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[1] [REDACTED]
[2] [REDACTED]
[3] [REDACTED]
[4] [REDACTED]
[5] [REDACTED]
[6] [REDACTED]
[7] [REDACTED]
[8] [REDACTED]
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[16] [REDACTED]
[17] [REDACTED]
[18] [REDACTED]
[19] [REDACTED]
[20] [REDACTED]
[21] [REDACTED]
[22] [REDACTED]
[23] [REDACTED]
[24] [REDACTED]
[25] [REDACTED]

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[1] [REDACTED]
[2] [REDACTED]
[3] [REDACTED]

[4] (A recess was taken.)

[5] **MR. GIBSON:** Mr. Weiss, is there anything
[6] that you wanted to tell us that we haven't hit on so
[7] far? You maybe haven't had the time to reflect on
[8] it and think about that, but I want to make sure
[9] that, if there was some point you wanted to make
[10] sure you made and you haven't had an opportunity to
[11] make it yet, that you had the time to do it before
[12] we run out of time.

[13] **MR. WEISS:** Well, you know, let me just
[14] summarize it this way, okay? I was faced with what
[15] I thought was a bad situation, and I had a nuclear
[16] safety concern. Licensed operators had tried to
[17] pursue it and management kept shutting them down,
[18] engineering was stonewalling them. I did what I
[19] perceived was my duty to protect the health and
[20] safety of the public. I didn't think I was doing
[21] anything dangerous or unapproved. And in fact, I
[22] was not.

[23] **MR. GIBSON:** Were you surprised by your
[24] management's reaction?

[25] **MR. WEISS:** Yes.

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[1] **MR. GIBSON:** Based on your prior
[2] experience at Crystal River, you would have expected
[3] some different response from your management?

[4] **MR. WEISS:** Yes, I would have.

[5] **MR. GIBSON:** So you would have thought
[6] that what you did was within their range of
[7] expectations for what you would have expected of an
[8] operator?

[9] **MR. WEISS:** Right. And in fact, I was
[10] congratulated by the plant manager the next
[11] morning. He wrote his five excellence letter. This
[12] is obviously the kind of behavior they were looking
[13] for and should be looking for in a senior licensed
[14] operator. You don't turn your back on a safety
[15] concern and walk away from it because no one's
[16] listening to you.

[17] **MS. EVANS:** Can you isolate a point in
[18] time when their attitude changed, i.e. they were no
[19] longer congratulatory but something else?

[20] **MR. WEISS:** It was sometime between when
[21] I wrote the problem report and when we had that
[22] management review board. And I've heard stories
[23] about what happened to change that opinion, but it's
[24] all hearsay.

[25] **MR. LANDIS:** Is there criticism from the

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[1] licensee? They congratulated you for raising the
[2] safety concern. Was there also some criticism?
[3] **MR. WEISS:** Well, at the management
[4] review board all of a sudden this testing issue
[5] raised its head. Now, this definition you have now
[6] of a test, if that's what you want to live to,
[7] that's fine, but I didn't have that definition
[8] available then. There's nothing in the CFR defining
[9] a test that I've ever seen.
[10] **MS. CLARK:** Could you just clarify a
[11] little bit what your understanding was, what your
[12] authority was in terms of conducting a test, when
[13] you needed to get approval or -
[14] **MR. WEISS:** I can tell you what we did to
[15] say we need to write a test procedure. The rule of
[16] thumb that I used was do I have a procedure to do
[17] what I'm doing. Everything in a nuclear plant has
[18] to be done with an approved procedure. If I have an
[19] approved procedure I'm okay. If I'm going to go
[20] outside the bounds of an approved procedure, then I
[21] probably need to write a test procedure to get a
[22] 50.59 review on.
[23] **MR. LANDIS:** What do you mean, go outside
[24] the bounds?
[25] **MR. WEISS:** If I decided I wanted to take

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[1] the make-up tank level to 20 inches, which is below
[2] the normal level band of 55 to 86, then I would have
[3] felt I needed to write a procedure, so I would have
[4] written a new procedure to allow myself to do that.
[5] **MR. LANDIS:** Let me make sure I get it
[6] clear. So you recognize the lower bound of 55
[7] inches as a boundary for which going on the left
[8] side of that or on the lower side of that you would
[9] have had to get an approved procedure?
[10] **MR. WEISS:** Yes.
[11] **MR. LANDIS:** Yet the upper Curve 8, upper
[12] bound going on the other side of that, to the
[13] unacceptable region, you did or did not need
[14] approved procedure for?
[15] **MR. WEISS:** I did not drive that pressure
[16] to the unacceptable side of Curve 8. Do you
[17] understand that?
[18] **MR. DICKEY:** Did they recognize the upper
[19] limits of the curve were just the same that they
[20] needed to go for a procedure? Mr. Weiss will
[21] clarify that, but I think he said that's right, he
[22] never intended that. Are you referring to on
[23] September 4th when the pressure was raised and went
[24] above the point of the curve? If that's what you're
[25] specifically going to, I think we to address that

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[1] and focus on that question.
[2] **MR. LANDIS:** You've got it close. What
[3] I'm saying is when you ran the evolution on the 4th
[4] and 5th, but the 5th especially, did you expect the
[5] curve, the pressure and level to go on the
[6] non-conservative side or the unacceptable side of
[7] Curve 8?
[8] **MR. WEISS:** I suspected it would because
[9] I felt that the curve was inaccurate.
[10] **MR. LANDIS:** You said that you recognized
[11] 55 inches as a limit, that going on the left side of
[12] that you were going to need an approved procedure.
[13] Why wouldn't you recognize Curve 8 as the same
[14] situation that you needed an approved procedure to
[15] go on the other side?
[16] **MR. WEISS:** If I had planned to add
[17] hydrogen and drive the pressure above Curve 8 I
[18] would have said that's the same thing as going below
[19] 55 inches. What I planned to do was raise pressure
[20] to Curve 8 and then drop level.
[21] **MR. LANDIS:** So Curve 8 only applied when
[22] adding hydrogen?
[23] **MR. WEISS:** Right, which is kind of a
[24] technical issue as far as usage of procedures goes.
[25] But the fact is that I did not make that pressure go

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[1] over Curve 8. Inaccuracies in Curve 8 caused
[2] pressure to exceed Curve 8. Now, you know, I think
[3] you guys make a point that in one of the nights that
[4] we overshot the curve when we were adding hydrogen.
[5] If we did, that was inadvertent. We don't have a
[6] Curve 8 scope that we watch. Basically you add
[7] hydrogen to a point that you calculate off of a
[8] preview curve, and if you overshoot a little bit the
[9] alarm comes in. There was no intent to do that.
[10] **MR. LANDIS:** Did the alarms come in?
[11] **MR. WEISS:** I believe on the 4th they
[12] probably did, and maybe on the 5th. I don't know.
[13] It's been so long. Looking at the graphs, when you
[14] first bring the hydrogen up, it was just a little
[15] bit above and then comes back to the curve.
[16] **MR. URYC:** Could we go back to Ms.
[17] Clark's question about the testing?
[18] **MS. CLARK:** Bear with me here because I'm
[19] not in engineering and you may have to explain a
[20] little bit. You were talking about following
[21] written procedures. Now, it's my understanding that
[22] the written procedures that you were talking about
[23] were not for the purpose of obtaining information
[24] but for other purposes, in other words, adjusting
[25] the levels as necessary, but you were performing an

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- (1) evolution in order to obtain test data.
(2) Was it your understanding that that was
(3) okay, that that was part of your authority, those
(4) procedures?
(5) MR. WEISS: Of course.
(6) MS. CLARK: You wouldn't require a test
(7) procedure?
(8) MR. WEISS: Have any of you guys ever
(9) operated a nuclear reactor? If you just have a set
(10) of procedures to tell you everything you've got to
(11) do, then it would be pretty easy to do it. You put
(12) us through all this intensive training and stringent
(13) requirements to have judgment and inquiring minds
(14) and look into things like this. If I stroke a valve
(15) and I go, Gee, that seemed kind of slow, well, make
(16) I'll restroke it, pull the SP and say okay, what
(17) should the stroke time be, restroke it and say okay,
(18) it is outside of what it should be. Do you not want
(19) me to do that? Because I guarantee you, you stick
(20) to this definition of a test and you're going to
(21) have a lot of allegations based on that.
(22) MR. GIBSON: What has the practice at
(23) Crystal River been with regard to conducting tests
(24) of this nature?
(25) MR. WEISS: Of this nature? It's kind of

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- (1) a unique thing that we did, I think. We'd never
(2) been faced with a situation of having a bad curve,
(3) and no one would listen to us before. We used our
(4) best judgment, and we said, Well, what can we
(5) legally do to try and get this resolved. Now we
(6) have a lot of people looking back on our judgment
(7) saying everything that we should have done.
(8) MR. GIBSON: As you look back on your
(9) judgment, and I realize that's probably difficult to
(10) do, considering all that you've been through, would
(11) you do it differently?
(12) MR. WEISS: Well, obviously knowing what
(13) I know now I'd write an allegation. That was not
(14) obvious to me then. I will say this. I don't think
(15) I did anything wrong on the 4th or the 5th, and I'm
(16) proud of the fact that I took action to resolve the
(17) safety concern.
(18) MR. REYES: Are there any more
(19) questions? Let's make sure that we've gotten Mr.
(20) Weiss's views and any questions we have.
(21) MR. LANDIS: Let me ask one further one.
(22) You reviewed the calculation for Curve 8 on
(23) September 5th prior to doing the evolution that
(24) night.
(25) MR. WEISS: Correct.

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- (1) MR. LANDIS: Did you recognize when you
(2) reviewed that calculation that it was a design basis
(3) curve?
(4) MR. WEISS: No.
(5) MR. LANDIS: So there was nothing in it
(6) that said it was design basis?
(7) MR. WEISS: There is a potential there,
(8) but the design basis is a pretty technical thing.
(9) We have a licensing department that took two months
(10) to figure that one out. Was I supposed to do it
(11) that night?
(12) MR. LANDIS: So you were comfortable that
(13) your evaluation that day of that curve was
(14) sufficient to allow any operation in the
(15) unacceptable region at least for a certain distance
(16) to be okay?
(17) MR. WEISS: Once again, if you put
(18) make-up tank pressure to 86 inches or anywhere at
(19) any level on the curve, and we were being told to do
(20) that by management, they were insisting on it. In
(21) fact, they were threatening to fire people if they
(22) didn't. If you did that, you were exactly where we
(23) were that night. All you had to do was have the
(24) LOCA. You'd already set up all the preconditions to
(25) draw the same curve we drew. The only difference

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- (1) was you weren't ready for it and you didn't know
(2) it. The curve was bad.
(3) MR. GIBSON: Mr. Weiss, do you understand
(4) that the computer data showed that when you added
(5) hydrogen you exceeded the curve, you met the
(6) condition for the alarm to come in, and remained
(7) above the curve for the duration of the test?
(8) MR. WEISS: Which night are we talking
(9) about?
(10) MR. GIBSON: Both nights.
(11) MR. WEISS: No. I thought that the
(12) computer data showed we got back to the curve before
(13) we did the level drop.
(14) MR. GIBSON: You're correct. On the 5th,
(15) I believe, you got back to the curve for a period of
(16) one minute before you lowered the level.
(17) MR. WEISS: And we're driving by the
(18) control board instruments, right?
(19) MR. GIBSON: I presume that you were.
(20) But I also presume that you were aware that the
(21) alarm would sound based upon the computer indication
(22) that you were above the curve.
(23) MR. WEISS: Yes.
(24) MR. GIBSON: And you're correct that on
(25) September the 5th you added hydrogen to a point

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[1] above the curve when the alarm conditions existed
[2] but that the alarm cleared before you began to
[3] reduce level.
[4] **MR. WEISS:** Right.
[5] **MR. GIBSON:** On September the 5th. On
[6] September the 4th the alarm did not go up.
[7] **MR. WEISS:** And you're basing that on
[8] what?
[9] **MR. GIBSON:** On the data from the plant
[10] computer.
[11] **MR. WEISS:** How far away from the curve
[12] were we before we started to reduce level?
[13] **MR. GIBSON:** 45 minutes, about 25 minutes
[14] or so into the event. All I have is data. The
[15] alarm pressure was 32.33 and the actual pressure was
[16] 32.38.
[17] **MR. WEISS:** So you're saying that you
[18] know the alarm was in because the computer point
[19] indicates .05 pounds above the limit?
[20] **MR. GIBSON:** Right.
[21] **MR. WEISS:** You're that confident in the
[22] calibration of their equipment?
[23] **MR. GIBSON:** I can only presume that when
[24] the alarm conditions are met that the alarm sounds.
[25] **MR. WEISS:** I think that when you get

[1] serious implications.
[2] **MR. RICHARDS:** But you recognize you were
[3] exiting the envelope that was defined, that you made
[4] a conscious decision to continue.
[5] **MR. WEISS:** That's correct, because
[6] otherwise I didn't think we would get this curve
[7] fixed and we would continue to operate with a bad
[8] curve, and in the interest of nuclear safety I
[9] thought it was the thing to do.
[10] **MR. LANDIS:** Let me make it clear. So
[11] you fully suspected that that curve was wrong and
[12] that operating on or near that curve was dangerous?
[13] **MR. WEISS:** Let's bear in mind that I had
[14] been forcefully reassured by my management and by
[15] engineering that the curve was right. My management
[16] and my engineering department had told me that if I
[17] put it on the curve and drop level it's going to
[18] follow it down. Not in those words, but they said
[19] that curve was right, accurate and reasonably
[20] conservative. If I had been wrong it would have
[21] never crossed the curve. I was not wrong.
[22] Therefore, we had a serious nuclear safety problem
[23] that was not being addressed and I didn't think
[24] would be addressed without a complete set of data.
[25] **MR. DICKEY:** I'd like to point out also

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[1] down to .05 you're definitely in an area where
[2] calibration accuracy can affect you. My
[3] recollection is we had the alarm cleared before we
[4] started the level decrease each time, but that is a
[5] recollection from quite a while ago.
[6] **MR. RICHARDS:** You talked about training
[7] and how you operate the plant. I think one of the
[8] questions we have is that a basic principle of
[9] operating the plant is that the plant establishes an
[10] envelope to operate within. We've been kind of
[11] talking around this, but it appears that the level
[12] was the upper and lower limit of the tank level and
[13] then Curve 8. You mentioned that the system drew
[14] the curve when you drew the tank down. I guess it
[15] would be my view that as you were drawing the tank
[16] down you recognized that you were going to go
[17] outside the envelope that was defined that night.
[18] **MR. WEISS:** We recognized that it had
[19] gone above the curve when the alarm came in on the
[20] way down.
[21] **MR. RICHARDS:** So why didn't you
[22] terminate the event?
[23] **MR. WEISS:** Because, in my opinion, the
[24] larger nuclear safety issue was to get the curve
[25] repaired. If the curve was wrong, then that had

[1] that during their normal operation, and you can ask
[2] them where they maintained the plant, and they never
[3] maintained it anywhere close to Curve 8 because they
[4] were afraid to. They didn't think it was necessary
[5] to do so and they didn't think it was proper
[6] procedure to do so. Outside of these two events
[7] they never ran that plant near those limits because
[8] of their concerns.
[9] **MR. LANDIS:** That's the issue. You
[10] didn't operate near the curve because --
[11] **MR. WEISS:** We had doubts about the
[12] curve.
[13] **MR. LANDIS:** And yet in these conditions
[14] on the 4th and the 5th you went up to the curve and
[15] then performed an evolution.
[16] **MR. WEISS:** We previously complied with
[17] the commands of senior management and put make-up
[18] pressure at the curve, and then we challenged the
[19] curve by dropping level.
[20] **MR. LIEBERMAN:** I had one question about
[21] the shift manager and whether you recall whether you
[22] discussed this with the shift manager and, if you
[23] did, what he said, and if you didn't discuss it with
[24] the shift manager, why you did not discuss it with
[25] the shift manager.

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[1] MR. WEISS: We didn't think that it was
[2] that big a deal, to be quite honest. We were using
[3] approved procedures to do some routine stuff with
[4] the make-up tank that we do all the time. I think,
[5] looking back on it, I wish we had talked to the
[6] shift manager about it, not that I think that would
[7] have made any real difference. Everyone's talking
[8] like the shift manager would have saved the day
[9] here. Probably the best you're looking at could
[10] happen is he'd have stopped us doing it, you'd still
[11] be outside the design basis, and you'd still be as
[12] happy as anything.
[13] Again, I've got to ask. Is it the NRC's
[14] position that this rather had not have happened?
[15] Would you have rather I just shut up and watched the
[16] board?
[17] MR. LIEBERMAN: We would have rather you
[18] raised the issue either further in the company or to
[19] the NRC.
[20] MR. WEISS: Well, you weren't there where
[21] I was. You didn't see things the way I saw them
[22] that night, and my perception was, This is it guys,
[23] if we don't show this curve is wrong, it's closed
[24] and we're going to be forced to operate to it
[25] against our better judgment.

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[1] MR. RAPP: Mr. Weiss, what gave you that
[2] perception?
[3] MR. WEISS: Two things, basically. First
[4] of all, a lot of operators had noticed that the
[5] response in the level decrease was pressure getting
[6] nearer the curve. That was common knowledge out
[7] there. We ran SP-630, and this is like during an
[8] actual - it's a lot closer on ECCS actuation.
[9] You're sucking down the tank the same speed. We
[10] were under the curve, and I thought the data clearly
[11] showed that it was approaching and was going to
[12] cross the curve. And that was not taken seriously.
[13] It was blown off without analysis by the engineering
[14] department.
[15] Now, we had lots of good indications that
[16] that curve was wrong, and no one was taking it
[17] seriously. Nobody was looking seriously into it
[18] because, as Pat says, the vice president wanted his
[19] 25 cc's per kg. That was his direction. He was
[20] pounding the table and he wanted it. If you look at
[21] it, they're getting the 25 cc's per kg now because
[22] you have to violate the design basis. If you look
[23] at the new curve and what we've been running, I
[24] don't think you can do it anymore. I think you can
[25] hit about 20.

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[1] MR. GIBSON: Did you suggest to anyone at
[2] the station that a test be run? Did you suggest to
[3] engineering or to your management that a test be
[4] conducted?
[5] MR. WEISS: Well, SP-630, let's be frank,
[6] was really ugly because we had what appeared to be
[7] cavitation in the HPI pumps. We were running a DK
[8] heat pump and recert per a different surveillance
[9] procedure at the same time. It was later attributed
[10] to air in the lines, but we never went back to make
[11] sure of that. The concern is with the additional
[12] recert flow. Maybe there's a problem with the MPSH
[13] when you it a full flow in all pumps, and I thought
[14] we should have gone back, rerun it and made sure
[15] that was not it.
[16] My understanding is they're trying to
[17] weasel out on it this outage. I suggested that they
[18] run that test, and I was shut down because it was
[19] slowdown and outage at the time. This specific
[20] test, no, I didn't bring it up. We were totally
[21] within the area we were authorized to do, normal
[22] operating procedures.
[23] MR. URYC: How long did your crew operate
[24] in the acceptable region? I thought I heard you say
[25] that you stayed well within that curve except on

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[1] these two occasions.
[2] MR. WEISS: In the acceptable region?
[3] MR. URYC: Yes.
[4] MR. WEISS: Well, normally we would come
[5] in and the last shift would have it right up there
[6] nestling by the curve. And Mark, who was kind of a
[7] lead with the safety concern, would come to either
[8] me or Dave and say, Hey, they've got it up by the
[9] curve, do you mind if we blow it down, and we'd say,
[10] No, blow it down, and we'd vent the make-up tank,
[11] which is a pain in the butt, going through that much
[12] trouble just to get it back down.
[13] MR. URYC: How long did you do that? Six
[14] months, eight months, a year?
[15] MR. WEISS: I don't know. Six months
[16] maybe. I don't know.
[17] MR. URYC: So what kind of heat were you
[18] getting from management during that six month period
[19] when you guys would keep that curve -
[20] MR. WEISS: Well, it wasn't too bad at
[21] first, but then they started - you know, more and
[22] more pressure was coming down from the Pat Beard
[23] level. Chemistry would report to him we aren't
[24] getting our 25 cc's per kg and he started having
[25] chemistry track it hourly so we could identify which

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[1] shifts were not complying with his directive. And
[2] we heard stories about his pounding the table and
[3] threatening to fire Mark if it wasn't operating the
[4] way it was supposed to. It was getting to be a real
[5] uncomfortable situation.

[6] MR. URYC: Who was making it
[7] uncomfortable for you and your crew? Was it Halnon,
[8] or did Pat Beard come and talk to you?

[9] MR. WEISS: Dave Jones was the acting
[10] Halnon. He would put e-mail out saying maximize
[11] pressure, operate to the curve. We had heard once
[12] Pat Beard told Halnon to go up there and get those
[13] operators straightened out, and he once threatened
[14] to fire Mark if he wouldn't put it to the curve.
[15] Personally, I had a man on my crew, he wasn't on the
[16] crew at the time of the test, but earlier he was.
[17] His name is [REDACTED] and he was the one who
[18] probably had the concerns first. He had other
[19] concerns like Appendix R concerns and stuff.

[20] But basically they just hammered him.
[21] They kept forcing him, once he got on a different
[22] crew, to put it to the curve, and once he did it he
[23] finally gave up and said, I give up, I'll give it a
[24] thousand pounds a tank if you want to. I know he
[25] was a good, dedicated operator, and they had just

[1] MR. LIEBERMAN: Had it gone up to the
[2] plant manager, Mr. Hickie?

[3] MR. WEISS: I don't know.

[4] MR. RICHARDS: I understood there were
[5] some discussions that came out in May. Do you know
[6] the highest level of engineering management that was
[7] involved?

[8] MR. WEISS: Well, the manager of systems
[9] engineering signed the September 2nd letter.

[10] MR. DICKEY: Which is directed to Mr.
[11] Hickie.

[12] MR. WEISS: It's not like it wasn't
[13] common knowledge everywhere in the management chain
[14] that there were operators that had concerns about
[15] this curve. This is no secret. *

[16] MR. RICHARDS: Did you participate in any
[17] of the meetings with engineering to discuss it?

[18] MR. WEISS: Mostly after September 5th.
[19] That's kind of where I really got involved in the
[20] issue, in the interpretation of the data and dealing
[21] with it afterwards, writing the problem report, that
[22] sort of thing.

[23] MR. URYC: Was Mr. van Sicklen part of
[24] your crew?

[25] MR. WEISS: He was my chief operator. I

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[1] ruined him. You know, they forced him to do
[2] something that he thought was unsafe to the point
[3] where he thought, Oh, well, if you don't care, I
[4] don't.

[5] And I felt ashamed of my management. I'm
[6] a part of management and I think as an SRO it's my
[7] duty to listen to the concerns of licensed operators
[8] and to make sure something gets done if they look
[9] like valid concerns. I've been just trying to do my
[10] job and duty as I perceive it as I've been told by
[11] the NRC a number of times about nuclear safety.
[12] Well, I'm here.

[13] MR. LIEBERMAN: Did your training teach
[14] you or suggest to you that when you had an issue you
[15] should be escalating issues?

[16] MR. WEISS: Well, I thought we had been
[17] pretty much doing that. It wasn't like we just
[18] ignored it. We pursued it upward through management
[19] and we pursued it through the NRC residents.

[20] MR. LIEBERMAN: How high through company
[21] management did you pursue it?

[22] MR. WEISS: I did not go up the company
[23] management chain. Mark was taking the lead. He'd
[24] talked to engineering. I believe Mark had talked to
[25] Halnon.

[1] was his assistant nuclear shift supervisor.

[2] MR. URYC: But you were his manager?

[3] MR. WEISS: Yes.

[4] MR. URYC: And you knew he was pursuing
[5] this concern?

[6] MR. WEISS: Yes.

[7] MR. URYC: And he was having a difficult
[8] time getting it through?

[9] MR. WEISS: Right.

[10] MR. URYC: Did you pick up on that as his
[11] manager and pursue that?

[12] MR. WEISS: Yes. That's why I'm here,
[13] guys.

[14] MR. URYC: But you're telling us your
[15] pickup was to challenge the curve.

[16] MR. DICKEY: His pickup was to do the
[17] homework first, and that's what they did, and those
[18] evolutions were to gather the homework first and go
[19] through it and say in order to do so we need our
[20] homework, we need to show them I'm not sure this
[21] curve is wrong, but I need my homework to show you
[22] guys that yes, it is wrong, so we followed approved
[23] procedures and just wrote down how does the system
[24] react.

[25] MR. URYC: What is the homework?

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[1] Challenging the curve, is that the homework?
[2] **MR. WEISS:** The homework is trying to
[3] figure out - we were hitting this brick wall called
[4] "you ain't an engineer." The engineers were all
[5] nodding saying yes, sir, yes, sir, three bags full,
[6] the curve is right, the curve is right. Any time
[7] we'd raise an issue, all they had to do was use
[8] engineering judgment and it was gone. We had to
[9] give them something objective or we were not going
[10] to be listened to, and that's a fact.

[11] **MR. LIEBERMAN:** But you were not hitting
[12] the brick wall, Mr. van Sickle was hitting the brick
[13] wall. You were a member of management. I gather
[14] you did not attempt to run interference with other
[15] managers to get this issue raised to the right level
[16] to get it addressed properly. Is that a fair
[17] statement?

[18] **MR. WEISS:** Looking back on it, I wish I
[19] had taken a much more active role in this thing.
[20] Some of it would have been duplication. Basically,
[21] van Sicklen was taking the lead and going to the
[22] meetings and I was supporting him when he needed
[23] support. I wish I had just stomped into the plant
[24] manager's office and made a scene, but, you know,
[25] that was then and this is now. It's real easy to

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[1] look back and say what I should have done. I had to
[2] deal with what I was perceiving in the environment I
[3] was working in.

[4] **MS. EVANS:** And I think you said you knew
[5] Mr. Beard was insisting on this, so would it have
[6] been practical that Mr. Hickie or someone else would
[7] have taken up this challenge?

[8] **MR. WEISS:** These guys were just doing
[9] what Beard said. If we'd had a decent management I
[10] wouldn't have been put in this situation.

[11] **MR. RICHARDS:** What was Greg Halnon or
[12] the acting individual?

[13] **MR. WEISS:** Greg Halnon was the director
[14] of nuclear plant operations, and he was supporting
[15] our goals but not as actively as I would have
[16] liked. He knew that we had the concerns, but when
[17] engineering would come back and say, No, you don't
[18] have a concern, it seemed like it just kind of
[19] died. It was like he didn't believe in our concerns
[20] as much as we did, I guess is what I'm trying to
[21] say. He didn't sit there day after day on that
[22] control board and watch the behavior of the system
[23] and have it staring him in the face that we're
[24] operating to the curve. And I think probably most
[25] of the crews out there knew that curve was bogus

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[1] because they saw the same response we did day after
[2] day.
[3] **MR. REYES:** Let me suggest something.
[4] We've been here for an hour and a half. I think
[5] it's appropriate to take a five or ten minute break
[6] and make sure if we have any questions left and make
[7] sure that within the time allotted we inquire from
[8] you any other information we need. Let's close the
[9] record.

[10] (A recess was taken.)

[11] **MR. REYES:** We're opening back the
[12] proceedings. We have one more question, Kerry's
[13] going to ask that question, and then we'll give you
[14] the opportunity for closing remarks.

[15] **MR. LANDIS:** Rob, you were discussing
[16] with us that you were pressured to operate on the
[17] curve. Do you have any objective evidence to
[18] indicate that people were pressing you to operate on
[19] that curve.

[20] **MR. WEISS:** Well, we have the e-mail
[21] messages that were sent out.

[22] **MR. LANDIS:** What did they say?

[23] **MR. HENDRIX:** We had filed a Department
[24] of Labor complaint, and we attached all the
[25] exhibits. If you have those exhibits, then the

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[1] e-mail messages -

[2] **MR. LANDIS:** I don't have them here with
[3] me. If you could just refer to them, that would be
[4] fine.

[5] **MR. HENDRIX:** Of course that's just hard
[6] copy evidence. As he's stated, all the operators
[7] were discussing it. Everybody knew what the
[8] expectations were, 25 cc's per kg, that's what you
[9] will do, and it was sort of common knowledge, which
[10] is why they were so concerned, the fact that they
[11] had their concerns based on that pressure. If there
[12] was no such pressure, they would have not had the
[13] pressure to try to do something about it.

[14] **MR. LANDIS:** There's no cc per kg meter
[15] up there obviously that's a chemistry sample. How
[16] did that get translated into how you were to operate
[17] that make-up tank?

[18] **MR. WEISS:** When they start taking that
[19] sample on an hourly basis they can tell which shift
[20] is not keeping the pressure up, which they could
[21] have also got from the readouts looking at the
[22] pressures, but that's how they chose to do it was
[23] just to do hourly samples. There's no reason to do
[24] that other than trying to narrow down who's doing it
[25] and who's not.

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[1] **MR. LANDIS:** Did people specifically tell
[2] you to operate on the curve?
[3] **MR. WEISS:** Let me go over these
[4] e-mails. I've got one e-mail from Dave Jones, who
[5] at the time was the acting manager of nuclear ops.
[6] The subject is hot topics. Following are some of
[7] today's, Monday, 6-27.
[8] **MR. URYC:** We're going to have difficulty
[9] transcribing -
[10] **MR. DICKEY:** We'll be happy to attach a
[11] copy of this.
[12] **MR. WEISS:** The first one is Exhibit No.
[13] 4, and it's the Hot Topics e-mail dated 6-27-94.
[14] **MR. LANDIS:** Let me help just for a
[15] moment here. I'm familiar with that, and I think
[16] there's one or two others that refer to the top of
[17] the operating band. What did you interpret the band
[18] to be and what did that mean to you?
[19] **MR. WEISS:** Well, the operating band is
[20] the allowable operating region under Curve 8, and
[21] right in the top of that is Curve 8 if everything
[22] under Curve 8 is an acceptable operating region.
[23] **MR. LANDIS:** That's all I wanted to
[24] know. The real question I was asking was did
[25] anybody tell you to go up to the curve and stay on

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[1] the curve.
[2] **MR. WEISS:** I think these e-mails are
[3] doing that. Plus, beyond these e-mails these guys
[4] would come to the control room, the operations
[5] manager, the plant manager, Pat Beard would come to
[6] the control room and they'd all ask where is the
[7] make-up tank pressure, right up at the top of the
[8] curve. I don't have documentation of that. All
[9] I've got is e-mails that were sent out in writing,
[10] but there was consistent pressure to maintain
[11] make-up tank pressure as high as possible.
[12] Kerry, you seem to be real concerned, I
[13] think, with the fact that we went over the curve
[14] during the course of this evolution. I'd just like
[15] to stress to you that all we did was exactly what we
[16] were being told to do by our management. We put
[17] make-up tank pressure to the curve. We were being
[18] told to do that by our management.
[19] We used an approved procedure to lower
[20] make-up tank level. We're allowed to do that by the
[21] approval of the operating procedure. That's what
[22] caused pressure to go over Curve 8. If the curve
[23] had been correct it would not have gone over Curve
[24] 8. There was no intentional "I just think I'll
[25] drive it over the curve today." We weren't

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[1] intending to violate the curve. That wasn't our
[2] goal. Our goal was to challenge the curve and see
[3] if it was correct.
[4] **MR. LIEBERMAN:** One last question. Were
[5] you ever personally criticized by your management
[6] for where you operated near the curve prior to
[7] September 4th? You stated that -
[8] **MR. WEISS:** Not directly. I think
[9] probably my supervisor, Dave Fields, dealt directly
[10] with the pressures from higher supervision. I'm
[11] kind of one level down from Dave and I kind of hear
[12] it from Dave. Sometimes they come directly to the
[13] board operator and talk to them.
[14] **MR. LIEBERMAN:** But as to you personally,
[15] no one spoke to you directly other than Mr. Fields?
[16] **MR. WEISS:** Well, I received these
[17] e-mails that said operate to the curve. This one
[18] e-mail says parameters are being tracked closely and
[19] plotted, hourly data points from data by chemistry.
[20] There's only one reason to do that. They're putting
[21] us on notice that they're looking at it. They're
[22] looking to see who's doing it and who's not.
[23] **MR. REYES:** Any closing remarks? Is
[24] there any information you feel we need to know that
[25] we have not discussed in the last couple of hours?

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[1] **MR. HENDRIX:** I would just like to make a
[2] few comments. I've thought about this issue quite a
[3] bit in terms of the information that I put in my
[4] letter to you which you've seen, and I quoted from
[5] some reports. I'm not going to repeat what I wrote
[6] to you and what you have to study, but I thought of
[7] an analogy that may help. It may not, but it sort
[8] of simplifies it in my mind.
[9] If I have a lady that I hired to take
[10] care of my five year old son during the day and I
[11] don't want her to smoke around my son and I told her
[12] that I don't want her to smoke around my son, if I
[13] came home today and my son was taking a nap and
[14] she's in the back yard smoking, I could fire her for
[15] smoking on my property. But would she understand
[16] that she would be subject to being fired? Well,
[17] what you may think is a reasonable interpretation to
[18] believe is that as long as she went outside to smoke
[19] that it would be all right as long as she didn't
[20] smoke right around my son, and I think we've got
[21] sort of a similar situation here.
[22] These people, the guidance they got in
[23] the procedures, and now we've sort of dissected them
[24] and looked at them, but they were bound by
[25] procedures and they followed these procedures. We

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(1) now know that these procedures were very
(2) inadequate. Many of them apparently have been
(3) rewritten. That's what they had to deal with, and
(4) it's sort of like they were operating here but now
(5) after the fact they should have been operating here
(6) based on the definition of this test.

(7) As you've seen in my letter to you and as
(8) you review it again, there's a lot of criticism of
(9) the procedures not delineating when an existing
(10) evolution would become a test or might constitute a
(11) test and that sort of thing. If the procedures had
(12) been more precise these gentlemen would have
(13) followed them. If the procedures had said, Before
(14) you do something, an infrequent evolution or
(15) whatever, you must talk to NRC, a shift manager, an
(16) STA, they would have done that. They followed the
(17) book. In fact, they even discussed among
(18) themselves, Are we within procedure. They discussed
(19) that. That shows that they were doing what's
(20) expected of them to see if they're within
(21) procedure. Had they not been within procedure they
(22) would not have attempted to do what they did. At
(23) least that's what they felt.

(24) We now know that there were so many
(25) loopholes in these procedures that perhaps the

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(1) procedures should not have had the flexibility to do
(2) what was done, and that's apparently the message
(3) we're getting loud and clear today, that maybe you
(4) shouldn't have that flexibility. The procedures
(5) gave them the authorization to do everything that
(6) they did, and you've heard the rationale that they
(7) had to do what they did for valid safety reasons
(8) since no one would listen to them. In fact, not
(9) only would they not listen to them, they were
(10) demanding that they do the exact opposite. The
(11) e-mails are proof no one was listening to them, no
(12) one. They were telling them the opposite.

(13) So I'd just say on hindsight it's one
(14) thing to judge them, but we hope you'll put
(15) yourselves in their shoes at the time. Maybe they
(16) should have done some things differently. We could
(17) all say that, but they believe they were acting in
(18) good faith. And I think my analogy about the lady
(19) who works for me, if I fired her, I don't think it
(20) would be right because she would not have valid
(21) notice of the interpretation today of what I'd
(22) previously told her. Her interpretation of what I
(23) told her permitted her to do what she wanted to do,
(24) and yet she gets fired. Is that fair? I say it's
(25) not fair. And you've got my letter to read. I just

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(1) don't think it's fair what's happened to these men.

(2) If I might, I'll just share one thing
(3) with you that you don't know about. No one knows
(4) about it except me and my clients and Gerald
(5) Williams, who's now deceased. When I was first
(6) hired by these men to represent them in July 1995, I
(7) was retained for that purpose, to represent them at
(8) the predecisional enforcement conference. And when
(9) I flew down to Tampa my clients were told in my
(10) presence, Here's a joint defense agreement; if you
(11) don't agree to sign a joint defense agreement with
(12) the company, we're going to put Mr. Hendrix back on
(13) the plane to Atlanta.

(14) What does that tell you about this
(15) company? And they didn't do that. And then the
(16) company said, Well, okay, we've talked about it,
(17) we'll give you the lawyer anyway. Now, at the very
(18) beginning they were on notice. You're expected to
(19) play team ball and, if you don't, we're going to put
(20) the lawyer back on the plane and not give you a
(21) lawyer. Do you understand? They didn't do it. I
(22) was there. They told Mr. Williams, I'm not going to
(23) sign that piece of paper, we want our lawyer to be
(24) independent of the company because we don't have a
(25) lot of trust in the company at this point.

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(1) Why did they not have the trust? Is it
(2) their fault? Why did management have that kind of
(3) relationship with these men who are supposed to be
(4) part of management? Of course my services have been
(5) terminated by the company today. We're still at the
(6) predecisional enforcement conference that I was
(7) originally retained for, but as soon as we began
(8) making any kind of allegation that was not favorable
(9) to the company I was terminated. I'm not being
(10) paid. These people are unemployed. They can't pay
(11) me. The company has seen to it that they can't pay
(12) me, nor is the company paying me. And that's what I
(13) was hired to do, represent them here today.

(14) What does that tell you gentlemen about
(15) this company? I think you can see this whole
(16) mentality of management from beginning to end where
(17) they've never really sat down and listened to these
(18) men and talked to these men, and that is why they
(19) were in the position they were in way back when.

(20) And unfortunately I see no change in
(21) management. If anything, it seems to have gotten
(22) worse the way they've treated these men. And you
(23) can criticize these men, I suppose, in hindsight,
(24) but I think if you do so you're changing the
(25) boundaries a little bit on them, and I guess that's

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[1] the way I'd sum it up. I don't know if you want to
[2] add anything, Dave or Rob.
[3] **MR. LIEBERMAN:** Could I follow up on one
[4] thing you said, Mr. Hendrix? You brought up the
[5] issue of the joint defense agreement. Can you share
[6] with us the terms of this joint defense agreement?
[7] **MR. HENDRIX:** Well, a joint defense
[8] agreement is a common device. There's nothing
[9] nefarious about it. It's used all the time by
[10] lawyers to share information in a case. And one
[11] reason you enter into it is you don't want to
[12] inadvertently violate a privilege. If you're
[13] working together on a common case and an attorney
[14] shares with you something that he's received from
[15] his or her client, you want to be able to have free
[16] and open discussion without someone violating a
[17] valid attorney-client privilege. Courts have
[18] recognized all over this country that these are
[19] valid joint defense agreements designed to make sure
[20] that there is not an inadvertent attorney-client
[21] privilege disclosure.
[22] I have no problem entering into joint
[23] defense agreements, but I do when there's a gun to
[24] my head that you must sign it. It's not an option.
[25] You must sign it or your services will not be

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[1] retained. It is a voluntary mechanism. In other
[2] words, even if you're a member of such a joint
[3] defense agreement you're under no obligation to
[4] share privileged information, nor is the other side
[5] under any obligation to share it with you. The
[6] agreement merely says that if we do share
[7] confidential attorney-client privileged information
[8] you agree, by virtue of this joint agreement, that
[9] we will jointly protect one another's privileges.
[10] But you're under no obligation.
[11] The message I received was, You're going
[12] to be under an obligation, and if you don't agree to
[13] abide by it we're not going to pay for you.
[14] **MR. LIEBERMAN:** But there's nothing in
[15] that particular agreement that would restrict your
[16] ability to make arguments, to take positions that
[17] may be inconsistent with -
[18] **MR. HENDRIX:** That was the implicit
[19] suggestion when they linked my even being paid to
[20] whether I'm going to be retained or not as to
[21] whether I will sign it. They said, You must sign
[22] this agreement. Now, any lawyer in any case has a
[23] right to sign it or not sign it as he deems
[24] appropriate, and we deemed it appropriate not to
[25] sign it. As soon as we said that, Well, we're not

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[1] going to pay, and of course they're not paying, and
[2] one reason I suspect is because these men are
[3] speaking out against management and we're not
[4] serving ourselves up as the company wanted us to
[5] do. It was all our fault, we were wrong, management
[6] was not, everything that happened here was as a
[7] result of our errors. That's what initially the
[8] company was communicating they wanted these
[9] gentlemen to do, and when they didn't do it the
[10] relationship soured.
[11] **MR. WEISS:** Could I make a quick comment
[12] here? Dave and I had a copy of this the day before
[13] we read over it, and I'm not a lawyer but I thought
[14] some of the language in there could have hindered my
[15] ability to use information that I had to file
[16] allegations or to file a whistle-blower complaint if
[17] this thing went the way it sure looked like it was
[18] headed. I thought, by signing that, that anything
[19] the company shared with me I would be unable to
[20] share any further, and that's why I refused to sign
[21] it.
[22] **MR. HENDRIX:** I had the company dump on
[23] me a pile of privileged documents and then saying,
[24] You can't use them now. I would have been muzzled,
[25] you see, because that's what the joint defense

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[1] agreement says. If someone shares with you
[2] privileged information you agree not to use it. We
[3] were not in a position to sign that because we did
[4] not want to be muzzled by having stuff dumped on us
[5] to shut us up, so when we didn't sign it the first
[6] statement made was, Well, we're just not going to be
[7] able to pay your fees. And that was a bluff
[8] initially, trying to force them to sign. We didn't
[9] go with it because I advised them not to sign, and
[10] they didn't want to sign anyway. Then later on, as
[11] you've seen, my services were terminated.
[12] **MR. LIEBERMAN:** But they did pay you
[13] initially?
[14] **MR. HENDRIX:** Yes.
[15] **MS. CLARK:** There was one other thing I
[16] just wanted to clarify. You referred to procedures
[17] regarding infrequently performed tests, and I don't
[18] think we had covered that before. I'm looking at a
[19] checklist. Were you aware of this checklist?
[20] **MR. DICKEY:** For the record, can you
[21] identify the checklist?
[22] **MS. CLARK:** AI-400B, and it's entitled
[23] Infrequently Performed Test for Evolution Checklist.
[24] **MR. DICKEY:** Would you like to see it
[25] before you answer?

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[1] MR. WEISS: I'm familiar with it. First
[2] of all, you only do that checklist if you're writing
[3] a new procedure. This isn't something that would be
[4] done when you're going to use an approved procedure
[5] to do something. Also, the procedure sections that
[6] we were using are not infrequently performed.
[7] They're very routinely performed sections of
[8] OP-402.

[9] MS. CLARK: Were you aware that this
[10] calls for supervisory approval under this form, that
[11] it provides for supervisory approval for
[12] infrequently performed tests or evolutions?

[13] MR. WEISS: Yes, but we didn't meet the
[14] criteria that form requires. First of all, we
[15] weren't in a situation that required the form, and
[16] second of all, we didn't meet the criteria for it.

[17] MR. HENDRIX: It's not applicable to
[18] these facts. Had management felt that such criteria
[19] should be applicable to this situation they should
[20] have so stated. In the NRC itself no guidance was
[21] present to assist in determining if an evolution
[22] being conducted was a test or infrequent evolution.
[23] Furthermore, the licensee did not define what
[24] activities constituted a test or experiment.

[25] MR. URYC: What are you reading from?

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[1] MR. HENDRIX: I'm reading from my letter
[2] to you which is quoting from an NRC inspection
[3] report. That is the NRC's language, not mine.

[4] MR. WEISS: There's this definition now
[5] that all of a sudden seems to be an accepted
[6] definition of a test. May I ask where and when that
[7] definition came into being?

[8] MR. GIBSON: That definition is not part
[9] of an agency policy. It is basically our judgment
[10] regarding this matter and others that we have
[11] reviewed that, to perform an evolution for the
[12] purpose of gathering data, that constitutes a test
[13] when the evolution is not required by plant
[14] conditions.

[15] MR. WEISS: But just to challenge that
[16] definition a little bit, how does taking data make
[17] an evolution unsafe? I'd like to just address
[18] Chernobyl real quick if I could, because I'm so sick
[19] of hearing about Chernobyl. Everybody knows vaguely
[20] that Chernobyl, that they did a test and the reactor
[21] blew up, and therefore tests are big, bad dangerous
[22] things. Has anyone hear read Chernobyl Notebook
[23] cover to cover?

[24] MR. LIEBERMAN: I have. I've been to
[25] Chernobyl.

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[1] MR. WEISS: One, the shift supervisor was
[2] afraid of getting fired, and that's one of the
[3] reasons he continued with the test. Two, that test
[4] was fully approved by plant management and was being
[5] pushed by plant management, and three, the test had
[6] been reported to the regulatory agency and they
[7] dropped the ball on it. We've learned all the wrong
[8] lessons from Chernobyl. We learned this vague, Oh,
[9] tests blow up reactor things, which is just
[10] sophomoric. It's stupid.

[11] What we should have learned is that
[12] oppressive management is unsafe. We should have
[13] learned that you don't do business the way you do it
[14] in the Soviet Union. That's why you guys are here.
[15] I shouldn't have to worry about being fired because
[16] in my judgment it's unsafe to operate to a curve.
[17] I'm charged with the safety of that nuclear reactor,
[18] and it's not just, You're going to follow this
[19] little menu. You didn't just license me from the
[20] neck down, you know. I'm a pretty smart guy and I
[21] look into things and I look into them deep, and
[22] that's what I did that night. I did what I thought
[23] I was supposed to do, and I lived up to what I
[24] thought my ethical standards required. I did what I
[25] thought you guys wanted me to do, and I don't see

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[1] how now that you're sitting in judgment on me you
[2] can look back and say that I did a bad thing. All
[3] my motivations were to correct a bad curve that had
[4] nuclear safety implications.

[5] MR. REYES: Do you have any closing
[6] comments?

[7] MR. DICKEY: I'll reserve them after Mr.
[8] Fields is through.

[9] MR. REYES: Before I close the
[10] proceeding, I want to thank you for your staying
[11] here for two hours and answering all our questions,
[12] but we needed to hear it from you directly to make
[13] sure that before we make a final decision we had all
[14] the information we needed.

[15] Before I close I want to give you an
[16] opportunity separate from this proceeding. If you
[17] have any matter that you feel you need to meet in
[18] private with the NRC about on any subject, we're
[19] available at any time if you're physically here and
[20] you want to take advantage of that. You're welcome
[21] to do that.

[22] With that, I'm going to close this is
[23] enforcement conference. Thank you.

[24] (Proceedings concluded at 3:10 p.m.)

[25]

CERTIFICATE

STATE OF GEORGIA:
COUNTY OF FULTON:

I hereby certify that the foregoing
proceedings were taken down, as stated in
the caption, and reduced to typewriting under
my direction, and that the foregoing pages 1
through 91 represent a true, complete,
and correct transcript of said proceedings.
This, the 8th day of April 1996.

Keith A. Wilkerson, CCR-B-1381
My commission expires on the
30th day of May, 1999.