

**In The Matter Of:**

**IN RE: PREDECISIONAL ENFORCEMENT CONFERENCE  
CRYSTAL RIVER**

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**PROCEEDINGS BEFORE STEWART  
EBNETER, CHAIRMAN; April 4, 1996**

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[1] UNITED STATES NUCLEAR REGULATORY COMMISSION  
[2] REGION II  
[3]  
[4]  
[5] IN RE: PREDECISIONAL )  
[6] ENFORCEMENT CONFERENCE, )  
[7] CRYSTAL RIVER. )  
[8]  
[9]  
[10] PROCEEDINGS BEFORE  
[11] STEWART EBNETER, CHAIRMAN  
[12]  
[13] April 4, 1996  
[14] 8:00 a.m.  
[15]  
[16] 29th Floor  
[17] 101 Marietta Street  
[18] Atlanta, Georgia  
[19]  
[20]  
[21] Deborah P. Longoria, CCR-B-1557, RPR  
[22]  
[23] BROWN REPORTING, INC.  
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[1] APPEARANCES  
[2]  
[3] On behalf of the NRC:  
[4] J. Beall  
[5] S. Ebnetter, Chairman  
[6] C. Evans, Esq.  
[7] A. Gibson  
[8] K. Landis  
[9] J. Lieberman (by phone)  
[10] C. Rapp  
[11] S. Richards  
[12] B. Uryc  
[13] On behalf of the Operators:  
[14] Mr. Morris, Esq.  
[15] Also Present:  
[16] Ms. Halligan, Esq., Florida Power Company  
[17] Mr. Ennis  
[18]  
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[1] MR. EBNETER: I'm Stew Ebnetter, regional  
[2] administrator for Region II of the Nuclear  
[3] Regulatory Commission.  
[4] MR. URYC: I'm Bruno Uryc. I'm the  
[5] director of Region II enforcement staff.  
[6] MR. RICHARDS: I'm Stuart Richards. I'm  
[7] the chief of operator licensing branch from our  
[8] office in Washington.  
[9] MR. GIBSON: I'm Al Gibson. I'm the  
[10] director of division of reactor safety here in  
[11] Atlanta. And that's the division of the  
[12] responsibility of operator licensing.  
[13] MR. BEALL: I'm Jim Beall. I'm from the  
[14] headquarters office of enforcement.  
[15] MR. LANDIS: Kerry Landis, chief of  
[16] branch 3 reactor projects.  
[17] MR. RAPP: I'm Curt Rapp. I'm the  
[18] regional inspector.  
[19] MR. ENNIS: Jerry Ennis, radiation  
[20] specialist assigned to the Mr. Uryc's staff.  
[21] MR. EBNETER: Mr. Morris, are we going to  
[22] proceed with all the gentlemen in the same meeting  
[23] or --  
[24] MR. MORRIS: Mr. Ebnetter, I will leave  
[25] that to you. That since there is no conference room

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[1] on this floor for them to sit -  
[2] MR. EBNETER: Oh, we can find a place for  
[3] them to sit.  
[4] MR. MORRIS: Whatever your preference.  
[5] (Discussion ensued off the record.)  
[6] (Mr. Atkinson, Mr. Stewart, Mr. [REDACTED])  
[7] Van Sickle exit the hearing room.)  
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(Resumed at 9:15 a.m.)

(Operators present.)

[13] MR. EBNETER: Let's go back on the  
[16] record. What we want to do, gentlemen, is to take  
[17] some time for the opening - took 20 minutes or so.  
[18] We'll just go through the opening ceremony part  
[19] first. We'll go all through it, and then we'll talk  
[20] to each of you individually as we go through. But I  
[21] think it will save us all some time and make the  
[22] proceeding go a little more efficiently.  
[23] So I'll just go over some general  
[24] remarks. And Mr. Uryc will discuss the agency  
[25] policy. And following that, Mr. Gibson will discuss

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[1] for all of you the statement of apparent  
[2] violations. And then we'll take you in turn.  
[3] We have already talked with Christine.  
[4] So let me do that for the benefit of all of you.  
[5] I should remind you, Carolyn Evans, the  
[6] regional counsel for Region II, has joined us now.  
[7] So I'm Stew Ebnetter, regional  
[8] administrator of Nuclear Regulatory Commission,  
[9] Region II. And Region II has jurisdiction over the  
[10] Florida Power Corporation, Crystal River Plant. And  
[11] today we're conducting with the individual operators  
[12] - who are Ms. Christine Smith, Mr. Jim Atkinson,  
[13] Mr. Jack Stewart, Mr. Mark Van Sicklen - we're  
[14] conducting a predecisional enforcement conference  
[15] with each of you individuals with regard to some  
[16] activities at Crystal River Plant.  
[17] The meeting is closed to public  
[18] observation, and the conference is being transcribed  
[19] for the record.  
[20] The basic agenda I've already talked  
[21] about. Bruno will discuss enforcement. And Mr.  
[22] Gibson will discuss apparent violations.  
[23] Mr. Lieberman, who is the director of our  
[24] office of enforcement in Washington, D.C., is on the  
[25] telephone and is listening and will interject



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[1] whenever he feels the need to do so or has a  
[2] question. And so you can expect that you may get a  
[3] question from Mr. Lieberman.

[4] Once we've gone through the openings and  
[5] turn it over to Mr. Morris and the individuals,  
[6] you'll be given an opportunity to make statements or  
[7] discuss anything of your relationships to the  
[8] apparent violations.

[9] I want to make clear to you at this point  
[10] that the decision to hold the conference doesn't  
[11] mean we've decided to take any particular actions at  
[12] this point. It is predecisional. And the process  
[13] is designed for you to give us your information, any  
[14] information you may have that we don't have that  
[15] would help us reach a decision.

[16] And you should also point out to us if  
[17] there are any errors in the documents that we've  
[18] provided to you, such as inspection reports or  
[19] investigation data. So feel free if you think we're  
[20] in error or have other information, just make sure  
[21] you put it on the record.

[22] I'll let Bruno Uryc discuss quickly the  
[23] enforcement policy. If any individual of you want a  
[24] copy of the policy, we can give you a copy for your  
[25] own use also.

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[1] **MR. URYC:** Thank you, Mr. Ebnetter. After  
[2] an apparent violation is identified, it's assessed  
[3] in accordance with the commission's enforcement  
[4] policy which is published as NUREG-1600. And I have  
[5] copies that I can make available for you.

[6] The assessment of an apparent violation  
[7] involves categorizing the violation into one of four  
[8] severity levels based on safety and regulatory  
[9] significance.

[10] For cases where there is a potential for  
[11] escalated enforcement action, that is, where the  
[12] severity level of an apparent violation could be  
[13] categorized at a severity level one, two, or three,  
[14] a predecisional enforcement conference is  
[15] conducted. And that's the process that we're in  
[16] now.

[17] There are three primary enforcement  
[18] sanctions available to the NRC. And they are  
[19] notices of violation, civil penalties, and orders.

[20] Notices of violation and civil penalties  
[21] are based on identified violations. And orders may  
[22] be issued for violations or in the absence of a  
[23] violation because of a significant public health or  
[24] safety concern.

[25] NRC sanctions against licensed

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[1] individuals could include a letter of reprimand, a  
[2] notice of violation, a civil penalty, or an order to  
[3] prohibit activity in NRC licensed activity.

[4] Any of these sanctions if applied are  
[5] carefully determined on a case-by-case basis. Now,  
[6] this predecisional enforcement conference is  
[7] essentially the last step of the investigation and  
[8] inspection process before the NRC staff makes its  
[9] final enforcement decision in these matters.

[10] The purpose of this conference today is  
[11] not to negotiate a sanction. Our purpose here today  
[12] is to obtain information that will assist us in  
[13] determining the appropriate enforcement action, such  
[14] as a common understanding of the facts, root causes,  
[15] and missed opportunities associated with the  
[16] apparent violations; a common understanding of  
[17] corrective action taken or planned; and a common  
[18] understanding of the significance of issues and the  
[19] need for lasting comprehensive corrective action.

[20] As Mr. Ebnetter said, the apparent  
[21] violations discussed at these conferences are  
[22] subject to further review and they may be subject to  
[23] change prior to any resulting enforcement action.

[24] Again, it's important for you to note  
[25] that the decision to conduct this conference does

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[1] nor mean that the NRC has determined that a  
[2] violation has occurred or that enforcement action  
[3] will be taken.

[4] I'd like to note at this time that any  
[5] statements of you or the expressions of opinion made  
[6] by the NRC staff at this conference or the lack  
[7] thereof are not intended to represent final agency  
[8] determinations or beliefs in these cases.

[9] Following the conference, the regional  
[10] administrator in conjunction with the NRC office of  
[11] enforcement and other NRC headquarters offices will  
[12] reach an enforcement decision. And we expect this  
[13] process to take about 60 to 90 days to accomplish.

[14] That concludes my remarks. If anyone has  
[15] any questions, we'd be happy to discuss it.

[16] **MR. MORRIS:** Thank you.

[17] **MR. EBNETER:** Just quickly, summary of  
[18] the issues: The issue before us is apparent and  
[19] deliberate violations of 10 CFR 50.59, conducting  
[20] unauthorized tests of the make-up tank over pressure  
[21] on two different occasions.

[22] The two occasions identified are  
[23] September 4th and 5th, 1994, in which licensed  
[24] operators at the Crystal River Plant apparently  
[25] deliberately conducted evolutions not required by



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(1) plant conditions to gather data regarding the  
(2) accuracy of the make-up tank over pressure Curve 8  
(3) and they did so without a required safety review.

(4) During the evolutions the operators  
(5) apparently adjusted make-up tank pressure and level  
(6) to enter a prohibited area of the make-up tank over  
(7) pressure curve.

(8) Further, the operators apparently  
(9) deliberately delayed taking action to alleviate the  
(10) over-pressure condition while continuing to operate  
(11) the tank and move further into the prohibited area  
(12) of the over-pressure curve.

(13) The consequence is that it could have  
(14) affected the operability of the emergency core  
(15) cooling system, or ECCS, as a result of those  
(16) actions.

(17) So the intent of the conference today is  
(18) to discuss those issues. You're here as individuals  
(19) because you are accountable not only to the Florida  
(20) Power Corporation, who is the licensed owner of the  
(21) Crystal River, but also to the NRC as individual  
(22) licensees of ours.

(23) And we do expect both the corporation and  
(24) the individuals to follow the regulations. And you  
(25) as individuals swore to that when we gave you a

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(1) license.

(2) The public expects that the NRC - and we  
(3) are the steward of public safety - the public  
(4) expects that we would take action. And we will take  
(5) any action as necessary and appropriate to assure  
(6) that both utilities, the corporation, and  
(7) individuals who are licensed comply with the Nuclear  
(8) Regulatory Commission's regulations.

(9) Based on our review of the investigations  
(10) and inspection findings and data that you have  
(11) submitted on the record as exhibits, it appears that  
(12) you may not have followed NRC requirements. And if  
(13) this is true, then you have not complied with the  
(14) regulations.

(15) Mr. Gibson will go into each of those  
(16) noncompliances in detail. I want to state that we  
(17) do recognize that, apparently anyway from the  
(18) record, that your motives were in the right place.  
(19) Your motives were to pursue a safety issue. And  
(20) apparently there was some concern on your part about  
(21) the curve. It was also pretty clear that you  
(22) anticipated that the evolution would drive you into  
(23) a prohibited region.

(24) But in essence, we can't condone your  
(25) actions to do that. There were other alternatives

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(1) available to you, and you should have attempted to  
(2) explore those.

(3) We do want individuals at the plant to  
(4) raise safety concerns. And there are various  
(5) options. We would fully expect you to use those.

(6) I understand in hearing some of the  
(7) testimony and looking at the evidence that there was  
(8) a certain environment that existed at that time.  
(9) And we would expect you to comment on that as you  
(10) go.

(11) Perhaps you were right in this instance  
(12) of going into the prohibited region on September 4th  
(13) and 5th. But you could just as easily have been  
(14) wrong. And you need to recognize that the  
(15) individuals do not make safety decisions that are  
(16) outside the scope of the design of the plant. So  
(17) the end cannot justify the means in these cases.

(18) And that's about all I want to comment at  
(19) this point. Before I ask Mr. Gibson to discuss the  
(20) apparent noncompliances, Mr. Lieberman, would you  
(21) like to comment at all?

(22) **MR. LIEBERMAN:** Yes, I would, Stew. I  
(23) want to emphasize that we consider these issues that  
(24) we're going to discuss today and the potential  
(25) enforcement action that could be taken against each

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(1) of you as licensed operators are significant  
(2) decisions and these are matters we don't take  
(3) lightly.

(4) This decision will be given capital  
(5) consideration after receiving your views today,  
(6) considering the information our office investigation  
(7) has gathered, as well as information we've attained  
(8) from the company Florida Power Corporation and our  
(9) views as to their actions which contributed to this  
(10) matter as well as the actions they've taken in  
(11) response to this matter.

(12) So I look forward to each of your candid  
(13) views. I want to emphasize that if you have any  
(14) information you can tell us that we haven't asked  
(15) you the precise question, please feel free to  
(16) provide that information. Because our goal is to  
(17) get relevant information to assist us in making the  
(18) right decision in this matter. Thank you.

(19) **MR. EBNETER:** Let me stop one minute.  
(20) It's getting pretty warm in here. Don't hesitate to  
(21) take your jacket off if you feel uncomfortable. I'm  
(22) going to take mine off.

(23) (Discussion ensued off the record.)

(24) **MR. GIBSON:** Good morning, again. I'd  
(25) like to take care of a couple of procedural things

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[1] first.

[2] This is a closed enforcement conference,  
[3] meaning it's not open to the public. You are, of  
[4] course, entitled to whatever representation you  
[5] choose to have here. And you're also entitled to  
[6] exclude representation you do not want.

[7] And I'd like you to note that Ms. Theresa  
[8] Halligan is here representing FPC today, based upon  
[9] a prior arrangement, I understand. And it's her  
[10] intent to remain for each of the individual  
[11] enforcement conferences.

[12] Is there anyone who objects to having Ms.  
[13] Halligan present at the conference?

[14] (No responses.)

[15] **MR. EBNETER:** You'll have another  
[16] opportunity as we come to each individual, so if you  
[17] object at that point.

[18] **MR. GIBSON:** I would also like to restate  
[19] something that was stated earlier. Please don't  
[20] hesitate to let us know if you believe there are  
[21] errors in the material that we sent you previously,  
[22] which includes inspection reports and summaries of  
[23] investigative reports.

[24] And one final point I guess. We would  
[25] welcome an opportunity to meet with any of you

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[1] individually following this conference if there is  
[2] any matter that you would like to discuss with us  
[3] further.

[4] Okay. Having said that, I would like to  
[5] discuss the apparent violations that are under  
[6] consideration today. You are required by the  
[7] licenses that we issued to you to follow the NRC  
[8] regulations and to follow Crystal River procedures.

[9] The requirement to follow Crystal River  
[10] procedures is stated again in Crystal River  
[11] administrative procedure AI-500, which requires all  
[12] Crystal River employees to follow procedures.

[13] As a member of an operating crew at  
[14] Crystal River 3 on September 4th and 5th, 1994, you  
[15] failed to observe the operating procedures and other  
[16] conditions in the Crystal River 3 facility operating  
[17] license. In particular, you failed to observe the  
[18] regulation 10 CFR 50.59 when you conducted tests not  
[19] described in the FSAR without a written safety  
[20] evaluation.

[21] Specifically, you conducted tests when  
[22] you conducted evolutions involving make-up tank  
[23] pressure and level, evolutions not required by plant  
[24] conditions, for the purpose of collecting data.

[25] During these tests you did not meet the

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[1] requirements of AI-500 to comply with the following  
[2] Crystal River 3 procedures. OP-402, Step 4.19.9 was  
[3] not complied with on September 4th or September 5th,  
[4] 1994, in that the make-up tank pressure exceeded the  
[5] limits of OP-103B Curve 8 while adding hydrogen to  
[6] the make-up tank by manually bypassing the hydrogen  
[7] pressure regulator.

[8] In addition, the limits of OP-103B Curve  
[9] 8 were exceeded on September 4th, 1994, for  
[10] approximately 43 minutes continuously and on  
[11] September 5th, 1994, for approximately 37 minutes  
[12] continuously.

[13] In addition, alarm response procedure  
[14] AR-403, Item H-04-06, was not met on September 4th  
[15] or September 5th, 1994, in that, timely action was  
[16] not taken to reduce make-up tank pressure within the  
[17] limits of OP-103B Curve 8 when a valid alarm was  
[18] received. Instead make-up tank level was lowered  
[19] which caused the make-up tank pressure to exceed  
[20] Curve 8 by an increasing amount.

[21] Those are the violations under  
[22] consideration today - apparent violations under  
[23] consideration today. And we'll give each of you an  
[24] opportunity to address those in turn.

[25] That, Stew, I believe concludes our

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[1] opening comments.

[2] **MR. LANDIS:** Would possibly Mr. Morris  
[3] like to make his opening remarks? Were you going to  
[4] use the same opening remarks for all three?

[5] **MR. MORRIS:** Essentially yes. Would you  
[6] like them repeated? I guess for the benefit of the  
[7] other three operators who were not present when I  
[8] made my opening remark with regard to Ms. Smith.

[9] As Ms. Smith, Mr. Van Sicklen, Mr. Stewart,  
[10] and Mr. Atkinson, the operators of A shift on  
[11] September 4th and 5th, 1994, thank you for the  
[12] opportunity of being here to answer any questions  
[13] that you might have and to present additional  
[14] evidence to the record in assisting you in making  
[15] your decision.

[16] As I stated before, for the record we  
[17] hand-delivered a written submission with attachments  
[18] on or about March 25th, 1996. And we ask that be  
[19] considered and made a part of this record.

[20] None of the operators deny responsibility  
[21] for the actions of September 4th and 5th, 1994.  
[22] They accepted the responsibility for it.

[23] They ask that you in making your decision  
[24] consider the period of August and September 1994 as  
[25] August and September of 1994, not March '96 looking

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(1) in hindsight to what could have been done and what  
(2) alternatives were theoretically available.

(3) At the time of these evolutions, these  
(4) operators had raised what they believed to be  
(5) significant safety concerns through every chain and  
(6) level of Florida Power Company. Discussions were  
(7) had with an NRC representative. They did not ignore  
(8) alternatives to performing an evolution.

(9) They came up with an idea. They  
(10) submitted it to their shift supervisor, as they had  
(11) done for years and years. Contrary to some belief  
(12) that you may have been given, the shift supervisor  
(13) was well respected. To the knowledge of these  
(14) operators had never be disciplined. Management had  
(15) never questioned his decision-making. And they had  
(16) every right and reason to believe in his judgment.

(17) They came to him and said: What about  
(18) this procedure to resolve this safety issue? And he  
(19) said: Let's look at it and consider it.

(20) Procedures were pulled. They were  
(21) reviewed. And the shift supervisor said: We can do  
(22) it. And the shift supervisor authorized it, and  
(23) they did it as per the procedures set forth in front  
(24) of them.

(25) Now as you know, because your reports

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(1) have pointed out, those procedures were not  
(2) sufficient. They did not give sufficient guidance  
(3) and in some respects gave absolutely no guidance.

(4) These people had been trained by Florida  
(5) Power management, not by their shift supervisor, by  
(6) Florida Power management to ask their shift  
(7) supervisor for an interpretation of the guidelines  
(8) when one was necessary. They did that. The shift  
(9) supervisor gave his interpretation, which was the  
(10) evolutions contemplated are within the existing  
(11) procedures, no additional procedures are necessary.

(12) You may judge that that shift supervisor  
(13) was wrong in that interpretation. I'm not here to  
(14) debate that. I'm simply here to present on behalf  
(15) of these operators what position they were in on  
(16) September 4th and September 5th and how it was  
(17) reasonable for them to believe that what they were  
(18) doing was within procedure and not in violation of  
(19) any aspect, either written or implicit, in their  
(20) nuclear operators' licenses.

(21) They went by the book, according to their  
(22) shift supervisor. They did the evolutions. They  
(23) reported it. They reported their findings. They  
(24) did a problem report. They were congratulated for  
(25) taking the action on this significant safety concern

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(1) and were, in my terms, heroes for a period of  
(2) approximately ten days until someone in licensing or  
(3) engineering said: Wait a minute; this could  
(4) possibly be an unauthorized test.

(5) It took them additional weeks to  
(6) determine at management level if it was a test.  
(7) Why? Because as you heard from Ms. Smith already,  
(8) there is no definition of a test in these  
(9) procedures. Their training is: If a procedure  
(10) covers it, it's an evolution, it's not a test. If a  
(11) procedure doesn't cover it, it's a test.

(12) They were told by their shift supervisor  
(13) it was covered by the procedures, therefore, it was  
(14) not a test. And all of a sudden a decision was  
(15) made: This could be an unauthorized test; we should  
(16) report this to the NRC. And the NRC came back and  
(17) said: How could you let these rogue operators do  
(18) this?

(19) And Florida Power Corporation  
(20) determined: Somebody is going to be in trouble;  
(21) it's not going to be management, it's going to be  
(22) the operators. And these four operators were  
(23) disciplined.

(24) And we are here today to explain to you  
(25) why you should not feel that you have to condone

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(1) what was done. It's not a question of condoning  
(2) it. It's a question of understanding on September  
(3) 4th and September 5th what position these operators  
(4) were in and why they felt that what they did was  
(5) absolutely proper.

(6) In hindsight you may well determine it  
(7) was not proper. We don't debate that. They take  
(8) responsibility for it. They will each tell you they  
(9) would never do it the same way they did it before  
(10) because they understand more now.

(11) But their feelings on September 4th and  
(12) September 5th were a result of the culture that  
(13) existed, the training that they had received, and  
(14) the lack of guidance outside of their shift  
(15) supervisor.

(16) And we ask you to conclude, when all is  
(17) said and done, they may have done wrong but they  
(18) didn't intend to, they didn't mean to, they didn't  
(19) realize they were, and now they know better and they  
(20) are worthy of continued employment by Florida Power  
(21) and to hold onto a license.

(22) And we ask that you take no further  
(23) action against them other than what has been taken  
(24) by Florida Power Company.

(25) MR. EBNETER: You have no question?

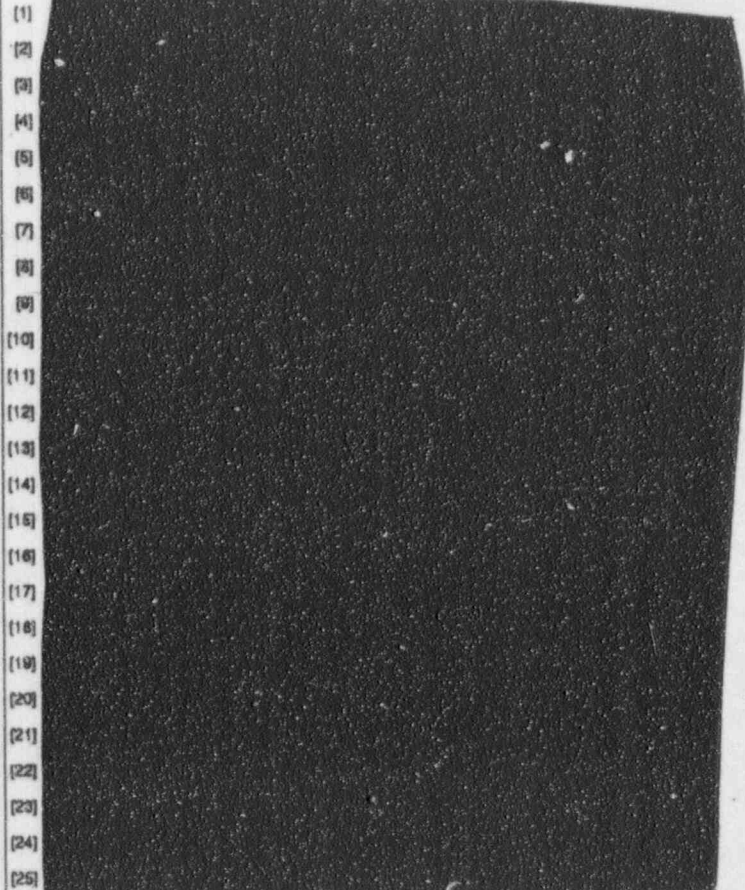


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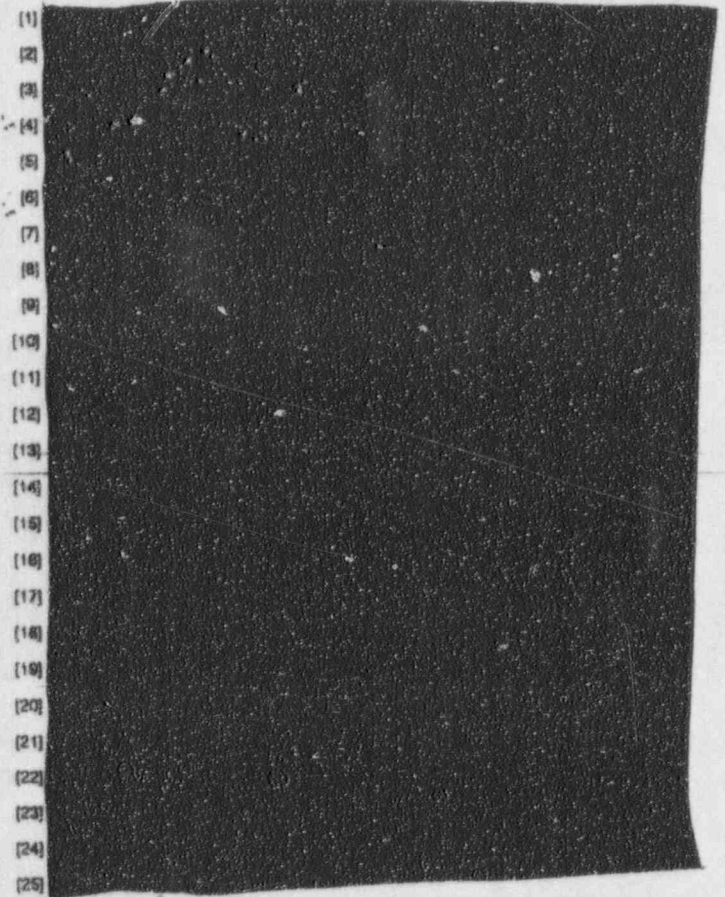
- (1) MR. GIBSON: Not at this time, no.  
(2) MR. RICHARDS: Is this the point in which  
(3) we talk to the individual operators?  
(4) MR. EBNETER: We would like to talk with  
(5) Mr. Atkinson first.  
(6) MR. MORRIS: That's fine. We'll excuse  
(7) everybody else except for Mr. Atkinson at the  
(8) moment.  
(9) MR. EBNETER: Thank you, gentlemen. *Ex. 6*  
(10) (Exit operators.)



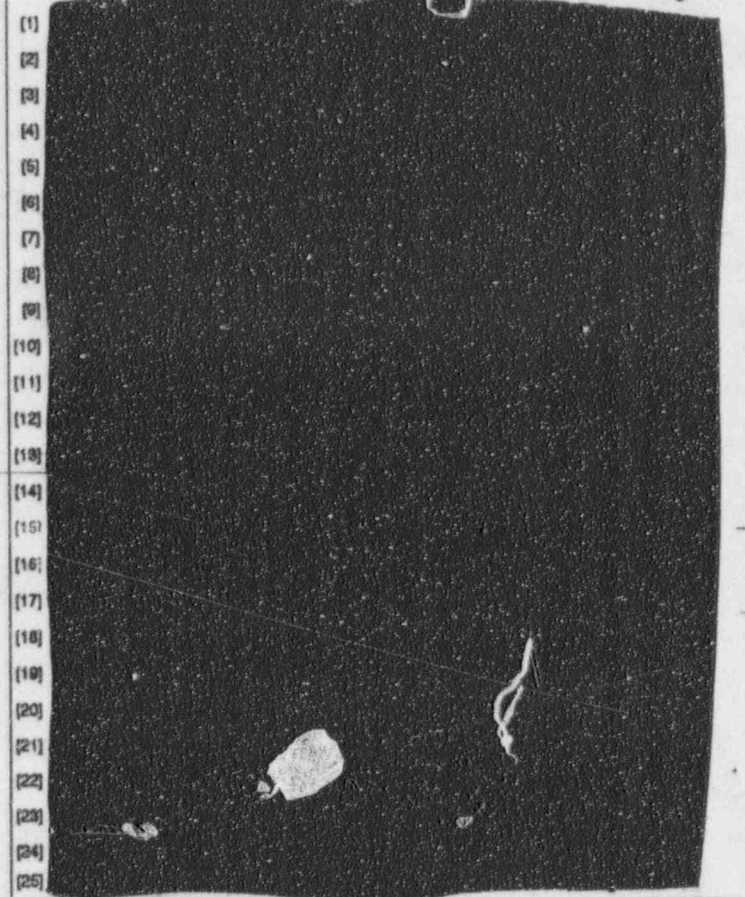
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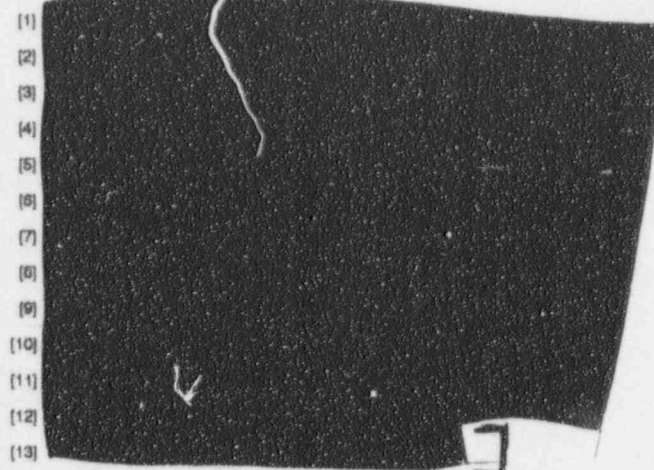
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[1] **MR. EBNETER:** Mr. Stewart, we want to  
[2] welcome you to the conference.  
[3] **MR. STEWART:** Thank you.  
[4] **MR. EBNETER:** And Mr. Gibson is in  
[5] charge. Mr. Lieberman, are you there? He said he  
[6] would call back.  
[7] (Discussion ensued off the record.)  
[8] **MR. EBNETER:** Let's restart. Mr. Gibson.  
[9] **MR. GIBSON:** Okay. Mr. Stewart, I think  
[10] perhaps - first let me say our objective here is  
[11] just to understand the facts and to see the  
[12] evolutions on September 4th and 5th of 1994 from

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[1] your perspective a little better.  
[2] And maybe a good place to begin would be  
[3] for you to tell us what your involvement was. I  
[4] understand you were a member of what we have  
[5] referred to as A shift?  
[6] **MR. STEWART:** That's correct, sir.  
[7] (Mr. Lieberman comes on line.)  
[8] **MR. LIEBERMAN:** Jim Lieberman here.  
[9] **MR. GIBSON:** Jim, this is Al. We just  
[10] began. And Mr. Stewart was about to tell us what  
[11] his duties were on September 4th and 5th as a member  
[12] of the A shift.  
[13] **MR. LIEBERMAN:** Okay. Very good.  
[14] **MR. STEWART:** Okay, gentlemen, I was  
[15] chief nuclear operator on the shift. I was the  
[16] senior of the reactor operators on the control board  
[17] of the nuclear plant at Crystal River on the evening  
[18] of September 4th and 5th in 1994.  
[19] **MR. GIBSON:** And what were your duties in  
[20] that regard?  
[21] **MR. STEWART:** To operate the Crystal  
[22] River Nuclear Plant within the guidelines of Florida  
[23] Power procedures per the license agreement I have  
[24] with the NRC.  
[25] **MR. EBNETER:** You say September 5th. Do

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[1] you mean September 4th and 5th?  
[2] **MR. STEWART:** Yes, sir, both nights.  
[3] **MR. GIBSON:** Okay. On September 4th and  
[4] 5th, for the evolutions in question, did you believe  
[5] that the activities of your shift met requirements  
[6] of Crystal River procedures?  
[7] **MR. STEWART:** Yes, I did, sir.  
[8] **MR. GIBSON:** Did you have an  
[9] understanding - what was your understanding at that  
[10] time regarding the authority of the shift supervisor  
[11] to depart from procedures?  
[12] **MR. STEWART:** AI-500 has a section in it  
[13] that delineates the authority of the shift  
[14] supervisor on duty. And within that framework there  
[15] is verbiage that gives him the authority to - no,  
[16] correct wording - he's allowed to manipulate  
[17] operating procedures per AI-500.  
[18] **MR. GIBSON:** And what do you think that  
[19] means? What did you think that means?  
[20] **MR. STEWART:** He was allowed to basically  
[21] change the procedure. He could eliminate steps,  
[22] take steps out of order.  
[23] **MR. LIEBERMAN:** Did he have any  
[24] limitations whatsoever? Could he do anything he  
[25] wants?

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[1] **MR. STEWART:** No. There was within  
[2] reason. Right off the top of my head, I can't  
[3] recall all of the verbiage within AI-500. I know  
[4] you gentlemen have a copy of that AI-500 as that rev  
[5] was active in 1994.  
[6] And basically in general terms he could  
[7] change the order of steps. He could omit steps if  
[8] he didn't feel that they were necessary.  
[9] **MR. GIBSON:** And how long have you been  
[10] an operator?  
[11] **MR. STEWART:** I hired on with Florida  
[12] Power in June of 1983. I have been in the  
[13] operations department up until August of 1995. I  
[14] obtained my nuclear operator's license in October of  
[15] 1986 and held it continuously until Florida Power  
[16] returned it to the NRC in August of 1995.  
[17] **MR. GIBSON:** Okay. So during the period  
[18] that you served as a licensed operator, was your  
[19] experience such that shift supervisors from time to  
[20] time departed from operating procedures?  
[21] **MR. STEWART:** I wouldn't say that they,  
[22] quote, unquote, departed from operating procedures.  
[23] But they changed operating procedures on a routine  
[24] basis.  
[25] **MR. GIBSON:** For example, what might they



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[1] do?  
[2] **MR. STEWART:** If I opened up a procedure,  
[3] if I wanted to do some sort of an evolution that  
[4] involved a valve lineup, and we took a look at the  
[5] prints and said, Well, the system is aligned this  
[6] way; we don't want to open or deviate these valves.  
[7] And the shift supervisor will sit there and say, All  
[8] right, we'll put NA on those specific valves.  
[9] That's just one example of many different  
[10] types of -  
[11] **MR. GIBSON:** If a procedure did not exist  
[12] for a desired evolution, might the shift supervisor  
[13] direct that it be tried in order to determine  
[14] whether or not a procedure should be developed?  
[15] **MR. STEWART:** If there was no procedure  
[16] guidance to do an evolution on the plant, then it  
[17] was required that we develop a procedure first.  
[18] **MR. GIBSON:** I see.  
[19] **MR. URYC:** Before you actually did it?  
[20] **MR. STEWART:** That is correct. That was  
[21] our definition at that time, the only definition we  
[22] knew of of a test. If you couldn't find procedural  
[23] guidance in existing approved procedures, then it  
[24] was deemed a test; you had to create a new  
[25] procedure, go through a 50.59 review and take it

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[1] from there.  
[2] **MR. GIBSON:** I see.  
[3] **MR. STEWART:** That was the criteria back  
[4] then.  
[5] **MR. RICHARDS:** The limitations that were  
[6] involved in the section of the procedure - I'm not  
[7] sure what the title is, but did the shift supervisor  
[8] have a prerogative to deviate outside the  
[9] precautions stated in the front of that?  
[10] **MR. STEWART:** I don't believe shift  
[11] supervisors had the authority to change limits and  
[12] precautions on the OPs.  
[13] **MR. LANDIS:** Could the shift supervisor  
[14] - you mentioned NA'ing a step, as not required for  
[15] what you were doing.  
[16] **MR. STEWART:** Yes, sir.  
[17] **MR. LANDIS:** Could the shift supervisor  
[18] change a valve or a switch position called out in a  
[19] procedure?  
[20] **MR. STEWART:** At that time, yes, sir.  
[21] **MR. LANDIS:** So you could make a line-out  
[22] and change the valve or switch number or position?  
[23] **MR. STEWART:** Yes, sir.  
[24] **MR. LANDIS:** And what would be the  
[25] process that would do that?

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[1] **MR. STEWART:** If I was in the field and I  
[2] was doing an evolution, following this procedure  
[3] step by step, I'd get to a point where this isn't  
[4] going to work with the plant in this specific  
[5] lineup. I need to go talk to my shift supervisor.  
[6] I go up and talk to him, tell him this is  
[7] what I think we ought to do. He would have to  
[8] evaluate that; say, Yes, I agree. He then makes the  
[9] line-out. I can initial it. He has to initial it  
[10] and date it also. So the shift supervisor shows his  
[11] concurrence at that time before I can go any  
[12] farther.  
[13] **MR. GIBSON:** That's regarded as a  
[14] procedure change?  
[15] **MR. STEWART:** I would imagine so, yes.  
[16] **MR. EBNETER:** But it didn't go through a  
[17] 50.59 review?  
[18] **MR. STEWART:** No, sir. But I believe the  
[19] criteria that they were using was that if you didn't  
[20] change the limits and precautions or set points,  
[21] then you weren't changing anything the 50.59 was  
[22] looking at.  
[23] **MR. EBNETER:** That's interesting to me.  
[24] Do you not think Curve 8 at the curve itself is a  
[25] limit?

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[1] **MR. STEWART:** No, sir. There is - if  
[2] you look in OP-103, you'll find operating curves,  
[3] limiting curves. They're all labeled differently.  
[4] So if I have an operating curve and then there are  
[5] other curves that are called limit curves, there  
[6] must be some difference between them.  
[7] Now, Florida Power never came out and  
[8] gave us a definition of an operating curve versus a  
[9] limiting curve, admin curve. That was left up to  
[10] the shift supervisor basically to determine.  
[11] **MR. GIBSON:** And Curve 8 has -  
[12] **MR. EBNETER:** Let me go a little further  
[13] with that. How many supervisors have you worked  
[14] for, Mr. Stewart?  
[15] **MR. STEWART:** It's hard for me to say  
[16] that.  
[17] **MR. EBNETER:** Bunch?  
[18] **MR. STEWART:** I've probably worked with  
[19] almost every licensed SRO at the plant over my ten  
[20] years.  
[21] **MR. EBNETER:** So it was left up to each  
[22] individual supervisor to decide what that curve  
[23] meant; is that right?  
[24] **MR. STEWART:** To my understanding, yes,  
[25] sir.



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[1] MR. EBNETER: How did you view these  
[2] different supervisors' interpretation of this curve?  
[3] MR. STEWART: I don't think - well, the  
[4] only one I ever talked to about that curve was Dave  
[5] Fields. And his view point of it was that it's an  
[6] operating curve, and he can deviate with operating  
[7] curves.  
[8] MR. EBNETER: How many supervisors did  
[9] you work with who manipulated the make-up tank?  
[10] Almost every one of them?  
[11] MR. STEWART: Almost every - well,  
[12] during the time frame that all of these, quote,  
[13] evolutions occurred, if we're looking at time frame  
[14] from May of 1994 through September, actually through  
[15] December of 1994, I worked strictly for Dave  
[16] Fields. I was on David Fields' shifts for about  
[17] three years I think it was. Prior to that I was on  
[18] [REDACTED] shift for somewhere around four, four  
[19] or five.  
[20] MR. EBNETER: Well, that's interesting.  
[21] Could you describe the difference in operation  
[22] between [REDACTED] and Mr. Fields?  
[23] MR. STEWART: There was quite a few  
[24] differences between [REDACTED] and Mr. Fields. [REDACTED]  
[25] [REDACTED] was considered a very aggressive, leading-edge

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[1] type of a shift supervisor. Mr. Fields was  
[2] considered extremely conservative compared to  
[3] [REDACTED]  
[4] MR. LIEBERMAN: What do you mean by  
[5] leading edge?  
[6] MR. STEWART: [REDACTED] was willing to push  
[7] administrative procedures. He was willing to use  
[8] his quote, unquote, SRO powers to their fullest.  
[9] And [REDACTED] is probably credited with more, quote,  
[10] unquote, evolutions or tests with the plant than any  
[11] other shift supervisor that I know of. And I think  
[12] some of the OI investigations have probably shown  
[13] that.  
[14] MR. LIEBERMAN: Could I ask: During  
[15] simulator work on a simulator, did you exceed  
[16] operating curves or does your shift exceed operating  
[17] curves the way they were exceeded during normal  
[18] operations?  
[19] MR. STEWART: I'm not sure I understood  
[20] the question, sir.  
[21] MR. LIEBERMAN: Well, when you did  
[22] exercises on the simulator -  
[23] MR. STEWART: Yes, sir.  
[24] MR. LIEBERMAN: - were operating curves  
[25] exceeded - you indicated operating curves could be

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[1] exceeded by the shift supervisor, with a shift  
[2] supervisor's approval?  
[3] MR. STEWART: That's correct. But it was  
[4] not a routine evolution to happen.  
[5] MR. LIEBERMAN: So from that, I assume  
[6] during simulator work, you didn't have an  
[7] opportunity to have an evolution that required  
[8] exceeding the operating limits?  
[9] MR. STEWART: To the best of my  
[10] recollection, almost all of my simulator time really  
[11] involved, what I recall, crash and burn scenarios.  
[12] We were really doing accident litigation type  
[13] routines. And we spent very little time doing  
[14] routine operation as we would be at the plant. We  
[15] spent very little time in a steady-state condition  
[16] on the stimulator.  
[17] MR. LIEBERMAN: Okay. You mentioned [REDACTED]  
[18] [REDACTED] may have done more tests than others, and we  
[19] would find that out through the OI interviews. My  
[20] question is: What is a test in your judgment?  
[21] MR. STEWART: My understanding of a test  
[22] in 1994 was any evolution that was not covered by a  
[23] plant procedure, an approved plant procedure.  
[24] MR. LIEBERMAN: And it would be  
[25] acceptable - there were no tests - there was no

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[1] procedure covering the whole evolution that had been  
[2] approved for September 4th and 5th, was there?  
[3] MR. STEWART: Yes, sir. There certainly  
[4] was.  
[5] MR. LIEBERMAN: That covered it from  
[6] beginning to end?  
[7] MR. STEWART: Yes, sir.  
[8] MR. LIEBERMAN: Okay. What's your  
[9] understanding of a test today? Is it the same or  
[10] it's different?  
[11] MR. STEWART: No. It's changed. I'm not  
[12] exactly sure what it is. You have to understand  
[13] that at this time I'm working and have been working  
[14] since August as a scheduling coordinator. I am  
[15] completely out of the operations department, at  
[16] Florida Power's demands. And I have not been  
[17] involved with the operation of a nuclear power plant  
[18] since August. In fact, I haven't been on the  
[19] control board since July.  
[20] MR. LIEBERMAN: Okay. That's been some  
[21] time.  
[22] MR. STEWART: Yes, sir. And there's been  
[23] some sweeping changes made since that time.  
[24] MR. LIEBERMAN: I apologize for coming  
[25] late into this. So if this has been asked already,

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[1] please let me know. My question is: Why was this  
[2] evolution being conducted on September 4th and 5th?

[3] **MR. STEWART:** There was no specific  
[4] reason why it was done those days. It was  
[5] basically, we had a letter that we got from  
[6] engineering on the 2nd. It was brought to my shift  
[7] supervisor's attention by Carl Bergstrom.  
[8] And the understanding was that the  
[9] concerns that we had over the Curve 8 issue were  
[10] going to be closed. And my particular understanding  
[11] of it was that they were going to be closed on  
[12] September 9th.

[13] Now since I've been looking around and  
[14] stuff, I can't find anything to back that date up.  
[15] But that sticks in my mind. I think I was told that  
[16] by Dave Fields, but I'm not sure.

[17] **MR. LIEBERMAN:** You stated what you just  
[18] stated based on firsthand observation, or is this  
[19] what someone told you about this September 2nd  
[20] letter?

[21] **MR. STEWART:** Dave Fields told me  
[22] personally that Carl had come to him with this  
[23] letter stating that the engineering department was  
[24] going to close out the problem report on our  
[25] concerns on the Curve 8 of OP-103B unless we could

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[1] come up with more information that would cause them  
[2] to keep it open. And -

[3] **MR. LIEBERMAN:** Okay. Thank you.

[4] **MR. LANDIS:** And?

[5] **MR. STEWART:** And like I said, for some  
[6] reason I've got stuck in my mind that that closure  
[7] was going to occur on the 9th of September. Now, I  
[8] have absolutely no documentation. I think Dave  
[9] Fields may have said something like that to me. But  
[10] I don't know.

[11] So we were on mid shift at the time. And  
[12] once we got off mid shift, we went to re-qual week.  
[13] And since the 2nd was on a Friday and the 9th was  
[14] the following Friday and that whole week we were on  
[15] mid shift, it was going to be done on mid shift if  
[16] we were going to do it.

[17] So that was why it ended up being 4th and  
[18] 5th. We just - those were the two days that we did  
[19] it.

[20] **MR. GIBSON:** On September 4th and 5th our  
[21] review of computer data at the plant shows that the  
[22] alarm must have been in for several minutes during  
[23] the evolution of the make-up tank.

[24] **MR. STEWART:** Yes, sir.

[25] **MR. GIBSON:** Do you recall the alarm?

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[1] **MR. STEWART:** Yes, sir.

[2] **MR. GIBSON:** And when that audible alarm  
[3] comes in, is it your understanding that you - that  
[4] the plant no longer meets the limits of Curve 8?

[5] **MR. STEWART:** Yes, sir. It's either on  
[6] the curve or exceeding the curve.

[7] **MR. GIBSON:** Okay. So you understood on  
[8] those days that the plant conditions were either on  
[9] or above what was described on Curve 8 as the  
[10] acceptable region?

[11] **MR. STEWART:** Let me clarify my last  
[12] statement a little bit. The alarm comes off of a  
[13] computer point. I'm driving off of the chart  
[14] recorder that comes off a completely different  
[15] instrument.

[16] And it was known that the computer point  
[17] was a little bit high compared to the recorder. And  
[18] my training has indicated to me that my legal  
[19] operating instrument is the recorder.

[20] So we were basically using the computer  
[21] point as a warning to pay attention to the  
[22] recorder: You're getting close.

[23] **MR. GIBSON:** Were you aware of an E-mail  
[24] instruction that directed operators to use the  
[25] computer point instead of the chart recorder; it was

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[1] more conservative?

[2] **MR. STEWART:** I understood there was an  
[3] E-mail that had been generated. But that E-mail was  
[4] never put out to the operators. There was some  
[5] controversy brought up about that I believe by  
[6] [REDACTED]

[7] **MR. GIBSON:** Was it your understanding  
[8] that you were supposed to operate on or near the  
[9] curve?

[10] **MR. STEWART:** Yes, sir.

[11] **MR. GIBSON:** How did you get that  
[12] understanding?

[13] **MR. STEWART:** There was numerous E-mails  
[14] sent to the shift supervisors saying that we needed  
[15] to get up into the upper limits of the operating  
[16] bands. And if you look at that Curve 8 that you've  
[17] got right there, there is no specific section of  
[18] ideal operating band other than the curve itself.  
[19] So -

[20] **MR. GIBSON:** Did any member of management  
[21] other than Mr. Fields ever discuss this matter with  
[22] you, or did you ever hear - get that message from  
[23] anyone other than Mr. Fields?

[24] **MR. STEWART:** Just talking with other  
[25] operators on shift turnovers and such, it was

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(1) relayed to me quite explicitly that we were to run  
(2) that at the top of the band, as close to the curve  
(3) as we could possibly put it basically.

(4) And that was why we were forced to run  
(5) high levels. I can't remember the actual pressure.  
(6) But you had to be above a certain pressure just to  
(7) be able to reach the 25 cc's per kg without having  
(8) to sit there and manipulate the make-up tank on a  
(9) continuous basis. So we did use some sort of a dead  
(10) band where you could park it, let the system  
(11) stabilize and run for a while without having to make  
(12) another hydrogen add.

(13) MR. GIBSON: The manipulation of the  
(14) make-up tank is what you refer to as the  
(15) press-and-squeeze method?

(16) MR. STEWART: Well, there's two methods  
(17) that you could do it by. One was in OP-402, which  
(18) was you could bypass the regulator, send it up.  
(19) Another one was created by I think it was through  
(20) Dave Jones. It was actually validated by [REDACTED]  
(21) [REDACTED] shift I think on the week of 21st through the  
(22) 23rd, where they did numerous alternate methods of  
(23) adding hydrogen. And that was the press-and-squeeze  
(24) method that you're referring to.

(25) MR. GIBSON: So [REDACTED] crew July 21

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(1) through 23 tried numerous alternate methods of  
(2) controlling pressure?

(3) MR. STEWART: At least they validated the  
(4) press and squeeze. I don't know if they did any  
(5) other type of methodology of raising pressure in the  
(6) make-up tank or not.

(7) MR. GIBSON: And were these methods  
(8) described in plant procedures?

(9) MR. STEWART: At that time I don't know.  
(10) I was never involved with that particular running.  
(11) Obviously OP-402 doesn't mention anything about the  
(12) press and squeeze.

(13) Out of their validations, quote, unquote,  
(14) validations, there came what I believe is now a  
(15) CC-mail to the shift supervisors telling us that  
(16) this was a viable alternative, that we were  
(17) authorized to use it by Florida Power management.  
(18) That was our understanding of it.

(19) MR. GIBSON: So it would appear that this  
(20) was a procedure that was developed by an operating  
(21) crew and then later validated by management?

(22) MR. STEWART: That is correct; under  
(23) management's full authority to do so. They were  
(24) being instructed by Dave Jones to do these  
(25) evolutions.

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(1) MR. EBNETER: [REDACTED] was the director?

(2) MR. STEWART: That's my understanding.

(3) MR. EBNETER: [REDACTED] being directed by Dave  
(4) Jones to do these evolutions?

(5) MR. STEWART: That was my understanding.

(6) MR. EBNETER: Did you ever talk to the  
(7) engineers, Jack?

(8) MR. STEWART: I talked to Pat Hinman a  
(9) couple of times. Mark did, I would say, in excess  
(10) of 95 percent of the communications with them. I  
(11) kind of took a back seat because Mark was so vocal  
(12) about it. And he was keeping me up to speed with  
(13) it. And he was talking enough that I didn't need to  
(14) do any talking.

(15) So but I did talk to Pat Hinman a couple  
(16) of times. And Pat - most of those couple of times,  
(17) it was about Curve 8, whether it was accurate or  
(18) not. And I was basically saying the same thing that  
(19) Mark had told him, that we had indications from May  
(20) of 1994 on the SP-630 that showed that the curve and  
(21) the plant response don't coincide.

(22) And it was my understanding that Curve 8  
(23) is actually a calculation derived from a  
(24) computer-generated plant response. In other words,  
(25) that curve is a plant response curve.

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(1) MR. EBNETER: That was your opinion?

(2) MR. STEWART: That was my understanding  
(3) of the developing of that curve.

(4) MR. EBNETER: Let me ask you: What was  
(5) your general relationship with the engineering  
(6) department?

(7) MR. STEWART: I had a good rapport with  
(8) them.

(9) MR. EBNETER: Good rapport?

(10) MR. STEWART: I didn't have any problems  
(11) with them. I can - I'm an easygoing type of  
(12) person. If someone disagrees with me, I can work  
(13) with that and not get upset or take it personal.

(14) [REDACTED]  
(15) [REDACTED]  
(16) [REDACTED]

(17) MR. EBNETER: But you would describe  
(18) generally your relationship with engineering was  
(19) pretty good, at least yours?

(20) MR. STEWART: Yes, sir. And as an  
(21) observation, having seen Mark with around all types  
(22) of people including engineers and including the  
(23) specific two engineers that were involved in this,  
(24) Mark was very, very professional. There was never  
(25) any indication that Mark had any kind of a personal



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[1] beef or a personal vendetta to take against  
[2] engineering. That wasn't the case at all. We were  
[3] strictly looking at a pure and simple nuclear safety  
[4] concern.

[5] You know, something that I'd like to say  
[6] that I think a lot of the American public and  
[7] possibly, with all due respect, the NRC may forget  
[8] is that, at least at the Crystal River Plant, I  
[9] would say 90 percent of the operators live within a  
[10] 10-mile band of the plant. And it is definitely not  
[11] within our best interest to be doing anything that  
[12] could jeopardize our family. And that's why I've  
[13] got my wife here.

[14] So we were looking, pure and simple, if  
[15] here's a case where we're right with that curve, we  
[16] could be in a position where we could be blowing up  
[17] some make-up pumps.

[18] Crystal River was in the unique position  
[19] back in the late eighties of sheering two reactor  
[20] cooling pump shafts, which is a prime time - two  
[21] have needed HPI. By the grace of God, we didn't  
[22] break the seals when that happened.

[23] MS. EVANS: Why do you think it was that  
[24] engineering wasn't responsive to your concerns, if  
[25] you have any opinion?

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[1] MR. STEWART: I don't know. I've often  
[2] wondered why they were so stubborn about it, you  
[3] know. If an operator sits there and says, I can't  
[4] buy into this; just on a logical standpoint, I don't  
[5] know why they were so hesitant to go back and really  
[6] do a good review of our concerns and take a look at  
[7] it. I really don't know. I don't know an answer  
[8] for that.

[9] MR. LANDIS: On September 4th did you  
[10] pull out the calculations or did anybody in the crew  
[11] pull out the calculations and take a look at it?

[12] MR. STEWART: After we ran the first  
[13] evolution on the 4th, I believe that Rob Weiss asked  
[14] Mark to go down to the admin building and dig the  
[15] calculations up and let's take a look at it.

[16] I think he was specifically doing that so  
[17] that we could get the algorithm to load it into the  
[18] computer and computer generate the curve and compare  
[19] it to the actual data. Because we - the 4th didn't  
[20] have any good data that we could use. We couldn't  
[21] make sense of it.

[22] MR. LANDIS: When the evolution was done  
[23] on the 4th and 5th, there was some concern evidently  
[24] that this curve was wrong and that, I assume,  
[25] there's a chance that it might be nonconservative.

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[1] Did that raise any anxiety in you about  
[2] approaching that curve and going on the other side  
[3] of it with it being non conservative?

[4] MR. STEWART: Well, we felt that the  
[5] curve was in question when we dug up the calculation  
[6] on it and just on the surface found the calculation  
[7] was only valid through Refuel 8 and we had already  
[8] finished Refuel 9.

[9] It meant to me that the curve was  
[10] invalid. It meant that it wasn't right. But it  
[11] didn't necessarily mean that it was wrong either.

[12] MR. LANDIS: So what were your  
[13] limitations then?

[14] MR. STEWART: Well, that's - I'm not  
[15] sure what -

[16] MR. LANDIS: Well, if the curve was not  
[17] valid, then what were your limits? So what was the  
[18] purpose of the curve? Let me ask you that first.  
[19] Let me back up. What was the purpose of the curve?

[20] MR. STEWART: My understanding of the  
[21] curve was to give us a tools to drive by to place  
[22] hydrogen pressure in such a position that if we were  
[23] to have a high-pressure injection need, that the  
[24] hydrogen pressure would not be such that if we  
[25] drained the make-up tank to the swap-over point we

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[1] would entrain hydrogen into the pumps and -  
[2] MR. LANDIS: Which would destroy the  
[3] pumps.

[4] MR. STEWART: - and destroy the pumps,  
[5] correct.

[6] MR. LANDIS: Okay. If the curve was  
[7] invalid by review on the 4th, then on the 5th what  
[8] were your limits to protect that pump?

[9] MR. STEWART: When we did the evolutions,  
[10] I personally, being the senior RO, reactor operator,  
[11] licensed personnel on the board, had decided that if  
[12] we exceeded that curve by more than 2 pounds, I was  
[13] going to stop the evolution and bleed the pressure  
[14] off. I wasn't going to let us go any farther than  
[15] that if that's where the plant was taking the  
[16] pressure to.

[17] MR. LANDIS: Did you discuss that with  
[18] Mr. Fields?

[19] MR. STEWART: No.

[20] MR. LANDIS: So -

[21] MR. STEWART: But we kept Dave Fields  
[22] intimately up to speed with where the plant was at  
[23] all times. From the moment the alarm came in, I  
[24] immediately called the alarm out. And he definitely  
[25] repeated back to me that he understood that that

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[1] alarm was in. And Mark was plotting the data.  
[2] **MR. LANDIS:** How did you decide that 2  
[3] pounds was too much above the curve?  
[4] **MR. STEWART:** I just used what seemed to  
[5] me was a good reasonable number.  
[6] **MR. LANDIS:** Is what you're describing a  
[7] good example for what a 50.59 is designed for?  
[8] **MR. STEWART:** Would you -  
[9] **MR. LANDIS:** Is not knowing where the  
[10] curve really exists to protect that pump and not  
[11] having any limit other than what you've personally  
[12] decided, is that a good example of what a 50.59  
[13] evaluation is design: or to determine what the  
[14] real limits are?  
[15] **MR. STEWART:** I would believe so, yes.  
[16] **MR. LANDIS:** Okay. At that time did that  
[17] not occur to you?  
[18] **MR. STEWART:** No, sir. Like I said, our  
[19] understanding of that curve was it was an operating  
[20] curve and had according to engineering built-in  
[21] conservatism.  
[22] Now, looking at all of the other Florida  
[23] Power curves, when you look at operating curves  
[24] versus tech spec curves versus design basis curves,  
[25] the margin is tremendous and -

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[1] **MR. LANDIS:** Did you get briefed on how  
[2] much margin you had in this curve?  
[3] **MR. STEWART:** No, sir. But I was also  
[4] relying on Dave Fields' expertise as an SRO and his  
[5] experience as a mechanical engineer to let me know  
[6] if he thought we were getting too far. And I had  
[7] just put my own personal limit at, Hey, Dave, we're  
[8] at 2 pounds; I think we ought to stop this, if we'd  
[9] gotten that far.  
[10] **MR. LANDIS:** Had Dave Fields discussed  
[11] with you any limits?  
[12] **MR. STEWART:** No, sir.  
[13] **MR. LANDIS:** That's all.  
[14] **MR. BEALL:** I have a couple questions.  
[15] Staying with your firsthand knowledge, can you go  
[16] over again for me what information you had between  
[17] September 2nd and September 4th with regards to the  
[18] problem report, the possible resolution and things  
[19] along those lines?  
[20] **MR. STEWART:** The September 2nd letter  
[21] covered quite a few different aspects that had come  
[22] out of the problem report generated in May. And  
[23] they broke them up into specific sections. One  
[24] section they talked about the Curve 8 issue.  
[25] **MR. LANDIS:** May I ask, in part of this,

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[1] Jack, had you read that letter prior to September  
[2] 4th?  
[3] **MR. STEWART:** I don't remember now if I  
[4] read it before or right after or during. I just  
[5] don't remember. I'm sorry.  
[6] **MR. LANDIS:** That's all right.  
[7] **MR. STEWART:** But to get back to your  
[8] question, the letter broke out quite a few different  
[9] things, if I can recall correctly. I wish I had a  
[10] copy of it here. I could go down through it.  
[11] **MR. BEALL:** Seriously, I'm not really as  
[12] interested in the technical merits or decisions that  
[13] are laid out in writing in the letter -  
[14] **MR. STEWART:** Okay.  
[15] **MR. BEALL:** - so much as what you recall  
[16] of your involvement either in hearing people discuss  
[17] that memo or in what you may have discussed with  
[18] somebody concerning that memo between the time the  
[19] memo came out, I guess on September 2nd, till the  
[20] time -  
[21] **MR. STEWART:** - we did it on the 4th.  
[22] **MR. BEALL:** - of that evolution on the  
[23] 4th.  
[24] **MR. STEWART:** Well, Dave got the letter  
[25] from Carl Bergstrom.

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[1] **MR. BEALL:** Now, how do you know that?  
[2] **MR. STEWART:** Dave told me.  
[3] **MR. BEALL:** Dave told you that he got the  
[4] letter from that - the individual you're mentioning  
[5] handed it to him?  
[6] **MR. STEWART:** Yes, sir. They had a  
[7] face-to-face discussion over it. And that's how  
[8] Dave got the understanding from his management, Carl  
[9] Bergstrom, that they wanted us to pursue this.  
[10] **MR. BEALL:** Now, you didn't see this  
[11] meeting take place?  
[12] **MR. STEWART:** No, sir. I wasn't there  
[13] for that.  
[14] **MR. BEALL:** Do you know when it would  
[15] have occurred?  
[16] **MR. STEWART:** I think it occurred that  
[17] night. Is September the 2nd a Friday night or a  
[18] Friday - of 1994? I don't - I think it was,  
[19] because the 9th was the following Friday. So that  
[20] would have made that Friday the 2nd. We came in at  
[21] 11:30 Friday night.  
[22] Dave may have worked a 12-hour shift. I  
[23] don't know. But he talked to Carl sometime on the  
[24] 2nd I'm pretty sure.  
[25] **MR. BEALL:** So Dave - excuse me for

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[1] staying with this part.  
[2] MR. STEWART: That's okay.  
[3] MR. BEALL: But it's your recollection  
[4] that Dave Fields told you that he had had a  
[5] discussion, a verbal discussion, with Carl -  
[6] MR. STEWART: Yes, sir.  
[7] - MR. BEALL: - on the 4th preceding this  
[8] shift?  
[9] MR. MORRIS: The Thursday.  
[10] MR. STEWART: No. It would have been the  
[11] 3rd or the 2nd, preceding the 4th. Yes, sir. There  
[12] was a day in there. Because we kicked around: What  
[13] can we do?  
[14] And we still had to operate the plant.  
[15] Normal routine stuff was going on. Mid shift is  
[16] generally kind of a busy shift for us doing routine  
[17] stuff. So it took us awhile by the time we got  
[18] through with all the routines and figuring stuff out  
[19] to figure out what we could do.  
[20] MR. BEALL: Let me change the subject for  
[21] a moment. When the evolution was done on the 5th,  
[22] whatever name we're going to give this, test, or  
[23] whatever, had the alarm cleared by the time you had  
[24] began to drain the -  
[25] MR. STEWART: The alarm was not in when I

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[1] started draining down.  
[2] MR. BEALL: And the alarm response  
[3] procedure, would you have considered it in that  
[4] context to be an expected alarm?  
[5] MR. STEWART: Yes, sir.  
[6] MR. BEALL: And why would you have  
[7] considered it to be an expected alarm?  
[8] MR. STEWART: Because we were  
[9] anticipating, we were expecting - we were expecting  
[10] the curve - the plant to follow the curve. We were  
[11] anticipating the plant to challenge the curve.  
[12] So I was controlling the evolution as far  
[13] as I was controlling the drain-down. And when we  
[14] talked about the alarm in the prejob briefing, Dave  
[15] specifically said: I anticipate this alarm coming  
[16] in because we are not sure about this curve.  
[17] So that allowed me to go back to AI-500  
[18] which controls the use of the ARs. And it said, If  
[19] I'm doing a specific evolution, a controlled  
[20] evolution on the plant, I do not have to rely or go  
[21] to the AR for that alarm.  
[22] MR. LIEBERMAN: And how long can you  
[23] operate with the alarm on? Do you have an  
[24] indefinite time?  
[25] MR. STEWART: That, sir, would have to be

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[1] determined in my mind by the shift supervisor on  
[2] duty. When the alarm came in, he was notified by me  
[3] promptly that the alarm was in. And he was kept  
[4] apprised of the situation.  
[5] MR. MORRIS: If you're asking if there's  
[6] any guidance in the procedure, there is none.  
[7] MR. LIEBERMAN: I recognize that. But  
[8] I'm wondering, based on training and experience, can  
[9] you leave that alarm on for six, seven hours?  
[10] MR. STEWART: We never did, not that  
[11] long.  
[12] MR. LIEBERMAN: Could you?  
[13] MR. STEWART: The longest we left it in I  
[14] believe was documented as 40-some-odd minutes. I  
[15] don't remember right offhand. But other shifts have  
[16] left an alarm in for hours on end.  
[17] MR. LIEBERMAN: I appreciate that. But  
[18] I'm trying to understand. The alarm tells you  
[19] you're exceeding the curve.  
[20] MR. MORRIS: Or on the curve.  
[21] MR. LIEBERMAN: On or exceeding the  
[22] curve.  
[23] MR. STEWART: But keep in mind, if the  
[24] alarm is in, if I go to the chart recorder, the  
[25] chart recorder in those days was very much at the

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[1] beginning of it, was inside the bounds of Curve 8.  
[2] So I didn't have to do anything.  
[3] MR. LIEBERMAN: But were you aware of the  
[4] digital readout too?  
[5] MR. STEWART: Yes, sir.  
[6] MR. LIEBERMAN: And that you just  
[7] disregarded?  
[8] MR. STEWART: At that time our  
[9] understanding was our legal instrument of operation  
[10] was the chart recorder.  
[11] MS. EVANS: And I think you said earlier  
[12] that you used the thing -  
[13] MR. STEWART: Yeah. I had said earlier  
[14] that we used the chart recorders. And this was the  
[15] big issue that [REDACTED] brought up when  
[16] engineering tried to force us to run on the computer  
[17] point [REDACTED] said, We don't run on the computer; the  
[18] computer is not safety related; it is not a  
[19] real-time computer; it's running a couple of minutes  
[20] behind at best.  
[21] So when engineering tried to force us to  
[22] run on the computer point, operations engineering  
[23] said, No, we won't do that; we run off the chart  
[24] recorders.  
[25] MR. LIEBERMAN: Who said that?



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(1) MR. STEWART: [REDACTED]  
(2) MR. EBNETER: But aren't you required to  
(3) acknowledge any alarm that comes in?  
(4) MR. STEWART: We acknowledged the alarm.  
(5) When the alarm came in, it -  
(6) MR. EBNETER: What do you say, Hi, alarm;  
(7) how are you today? Or what?  
(8) MR. STEWART: No. I called the alarm in.  
(9) I told Dave, I said, Dave, make-up tank  
(10) high-pressure alarm is in. We are draining down.  
(11) David said: I understand the tank  
(12) high-pressure alarm is in; please continue.  
(13) MR. RICHARDS: Did you view Curve 8 a  
(14) applying - as a limit during evolution?  
(15) MR. STEWART: No, sir. It was more as a  
(16) guide just to where to put hydrogen pressure when  
(17) you added hydrogen to make-up tank. OP-402, in the  
(18) drain-down section, in the bleed section, doesn't  
(19) refer at all to Curve 8 of 103B. It specifically  
(20) apply - refers to Curve 8 for the hydrogen adds and  
(21) the nitrogen adds.  
(22) MR. RICHARDS: Does it make since that  
(23) the curve would apply to the hydrogen add portion  
(24) but not to an evolution that would drain down the  
(25) tank?

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(1) MR. STEWART: Yes, sir. It does when you  
(2) have the understanding that that curve was a plant  
(3) response curve. And by that definition, if  
(4) theoretically the curve is correct, if I use the  
(5) hydrogen add or nitrogen add section and I  
(6) successfully put hydrogen up close to the curve at  
(7) the upper end of the level band and then bleed down,  
(8) the laws of physics if the curve is correct dictates  
(9) what that pressure is going to do. And it cannot  
(10) cross over.  
(11) MR. RICHARDS: Well, did you receive  
(12) training on this curve when it was implemented?  
(13) MR. STEWART: I don't remember if we did  
(14) or not. I don't think there was a whole - if there  
(15) was, there wasn't much to it. It was basically:  
(16) This is an engineering derived curve to give you  
(17) guys some guidance to run us up to the 25 cc's per  
(18) kg. Because the flat 12-pound preceding this wasn't  
(19) cutting it.  
(20) MR. RICHARDS: Was there required reading  
(21) or some system descriptions that had occurred, that  
(22) you had available?  
(23) MR. STEWART: I don't remember.  
(24) MR. RICHARDS: So how did you reach the  
(25) conclusion that this was a system response curve,

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(1) That if you put the plant on the curve, the plant  
(2) should follow?  
(3) MR. STEWART: Because that's apparently  
(4) what we were taught. That's what I remember.  
(5) MR. RICHARDS: You were taught that in  
(6) your re-qual training?  
(7) MR. STEWART: I don't remember when I was  
(8) - when I gleaned that information. But that's  
(9) what I remember from the curve.  
(10) MR. RICHARDS: But it sounded like you  
(11) didn't really get much training, if any training, on  
(12) this curve -  
(13) MR. STEWART: No, sir, we didn't.  
(14) MR. RICHARDS: It didn't sound like you  
(15) were trained on this curve. But I think you just  
(16) said you're understanding was the curve was a system  
(17) response curve. And I'm trying to understand how  
(18) you reached that conclusion?  
(19) MR. STEWART: I think I got that when I  
(20) was digging through - I don't remember if I was  
(21) digging through some information that the plant must  
(22) have put out on it or when Greg talked about the  
(23) curve to us back in the outage or prior to the  
(24) outage of '94, that he said it's just a plant  
(25) response curve derived by engineering to help us get

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(1) to 25 cc's per kg.  
(2) MR. URYC: That was Greg Halnon?  
(3) MR. STEWART: Yes, sir.  
(4) MR. RICHARDS: Getting back to the curve  
(5) again, you know, what I'm having trouble with is  
(6) this idea that because it's considered a system  
(7) response curve it's acceptable to allow the plant to  
(8) cross that limit. Can you elaborate on why that's  
(9) acceptable?  
(10) My understanding of an operator's duty is  
(11) when the plant is exiting the defined envelope that  
(12) you take action to stop the plant from doing that.  
(13) MR. STEWART: Being an OP, the shift  
(14) supervisor at that time had the authority per AI-500  
(15) to deviate with the OPs.  
(16) MR. RICHARDS: So you're telling me that  
(17) the crew recognized you were exiting the defined  
(18) operating envelope, but you understood that the  
(19) shift supervisor had the authority to do that?  
(20) MR. STEWART: I don't think that the crew  
(21) understood that that was an operating envelope. It  
(22) was my understanding that this was a tool to help me  
(23) get hydrogen pressure up.  
(24) It was never - like I said earlier,  
(25) you've got - that's called an operating curve.

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[1] There's admin curves. There's limits curves. You  
[2] know, there is such a hodgepodge of stuff in there  
[3] that you could very easily be - reach the  
[4] conclusion that, because of these different names,  
[5] an operating curve must be a guideline and is not  
[6] necessarily sacred.

[7] Unlike a design basis curve which is very  
[8] blatantly laid out as: You don't challenge a design  
[9] basis curve. And that's why we have tech spec  
[10] curves. And that's why Florida Tower has, quote,  
[11] unquote, admin curves to keep you from challenging  
[12] the tech spec curves. It's even more conservative.  
[13] And we believed that this was one more than that,  
[14] just an operating curve.

[15] **MR. MORRIS:** The answer to your question  
[16] I think, if he knew that this was a curve that  
[17] should never be challenged, would he have challenged  
[18] it; the answer is no. But that was not his  
[19] understanding of what that curve represented. Is  
[20] that fair?

[21] **MR. RICHARDS:** That's not really the  
[22] question. You know, the principle of operating a  
[23] plant is you operate it within the defined  
[24] envelope. The engineer's design of the plant, the  
[25] operators don't need to understand everything about

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[1] the design of the plant. They need to be provided  
[2] with an envelope in which to operate.  
[3] What we keep driving at is it looks like  
[4] you had an envelope that was defined. There were no  
[5] other curves defined. You had a level, minimum and  
[6] maximum level, in the tank defined?

[7] **MR. STEWART:** Yes sir.

[8] **MR. RICHARDS:** And you had this curve  
[9] that defined pressure. So with regard to this  
[10] system, at least that tank, it would seem that that  
[11] defined the envelope in which you were to operate.

[12] We're trying to understand how you  
[13] departed from that envelope without any other limits  
[14] beyond that to find that you would recognize you  
[15] couldn't go any further.

[16] **MR. STEWART:** I don't know how to answer  
[17] it in any other way than I've already stated.

[18] **MR. RICHARDS:** That's why I wasn't  
[19] pressing the point. I think we understand what  
[20] you've told us.

[21] **MR. STEWART:** Okay.

[22] **MR. EBNETER:** Are there any other  
[23] questions?

[24] **MR. LANDIS:** Couple additional. One is,  
[25] Jack, would to go below 55 inches, one side of the

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[1] operating level, would you have done a 50.59 for  
[2] that? Would it have been required?

[3] **MR. STEWART:** I would have had to,  
[4] because the operating levels were part of the limits  
[5] and precautions. And I can't change - shift  
[6] supervisor can't change limits and precautions. So  
[7] if he wanted to go below that, we would have to do a  
[8] 50.59, come up with a complete, quote, unquote, test  
[9] procedure, and run it through that whole process.

[10] **MR. LAND:** And likewise going to 86?

[11] **MR. STEWART:** And likewise going above  
[12] 86.

[13] **MR. LANDIS:** Okay. Little different  
[14] topic. On the 4th -

[15] **MR. EBNETER:** Before you go to a  
[16] different topic, how often do you use 50.59, the new  
[17] procedures, as chief nuclear operator?

[18] **MR. STEWART:** Well, any time we changed  
[19] the procedure -

[20] **MR. EBNETER:** Once a shift? Once a  
[21] week? Once a month? Never?

[22] **MR. STEWART:** I was one of the operators  
[23] that, well, depending upon your point of view,  
[24] luckily or unfortunately, never made a whole lot of  
[25] procedure changes, you know, personally. So my own

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[1] experience with 50.59 is I may have done maybe 15 or  
[2] 20 of them over my entire operating career at  
[3] Florida Power.

[4] **MR. EBNETER:** Okay.

[5] **MR. LANDIS:** On the 4th - we're trying  
[6] to understand also why was the evolution done on the  
[7] 5th. Was there a discussion on the 4th as to the  
[8] fact that there was a problem with the evolution?

[9] **MR. STEWART:** When we got the data on the  
[10] 4th, it was getting towards the end of the shift.  
[11] There was some stuff we started to have to get  
[12] done. So we kind of took a quick look at it and  
[13] decided that it didn't make any sense.

[14] No. 1, we used the computer to gather  
[15] data and we used one-second time span. And it  
[16] turned out to give us about probably a 3- or a  
[17] 4-pound just scribble. Very close - you really  
[18] couldn't tell what the nature of the plant response  
[19] was as far as the curve went.

[20] So and we did the evolution, quote,  
[21] unquote, relatively quickly. I added hydrogen. We  
[22] end up to 86 inches. And I bled down to 55. And  
[23] then we terminated.

[24] So Rob was kind of wondering, you know,  
[25] what all caused us to get this inconsistent or

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(1) inconclusive data. And Friday or - well, the 5th  
(2) then we came back in, and that's all we had done.  
(3) We had decided that, you know, we need to look at  
(4) this data more and analyze it more.  
(5) And on the 5th, we completed the  
(6) analysis. At which point we decided that, well, one  
(7) of the things that could have impacted this whole  
(8) thing was that we added basically 90-degree hydrogen  
(9) into a tank that's 125 degrees.  
(10) So as that gas heated up, it would have  
(11) expanded, held the pressure up or possibly have  
(12) caused this erratic indication.  
(13) So we decided that, well, what if we were  
(14) to do it again but we'll change the two things that  
(15) we suspect. No. 1, we'll go to one-minute intervals  
(16) on the computer. No. 2, we'll add the hydrogen.  
(17) We'll stabilize the plant; let it sit for a period  
(18) of time to let the hydrogen thermally equalize; do  
(19) the evolution set at 55 inches and let the plant  
(20) thermally equalize there so that there's no question  
(21) as to the quality of the data.  
(22) And at the same time, by this time, like  
(23) I'd said earlier, we had the algorithm so that Rob  
(24) could load that into the computer and then we could  
(25) sit there and compare the computer-generated data

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(1) with the computer-generated curve.  
(2) And it took two days to get that  
(3) information back because Rob had to take it home and  
(4) do some stuff with it.  
(5) MR. LANDIS: You just described a pretty  
(6) detailed thought process. Who came up with that?  
(7) MR. STEWART: Well, it was a combination  
(8) of Rob and me and Mark and Dave and Christine. We  
(9) were all kind of kicking the whole thing around. It  
(10) was a brainstorm. You know, why didn't this data  
(11) make sense? Was there something we were missing?  
(12) Was there something we hadn't done? Was it really  
(13) the way the plant worked? We didn't necessarily  
(14) believe that, but we couldn't rule it out.  
(15) MR. LANDIS: Why was the shift management  
(16) not consulted?  
(17) MR. STEWART: I really don't know.  
(18) MR. LANDIS: That's all I have.  
(19) MR. STEWART: It was a - in a lot of  
(20) ways this was like troubleshooting. If I have many,  
(21) many, many occasions where we've had some sort of a  
(22) problem with the plant, we know something is not  
(23) working right and it's - a good example would be  
(24) ICS, integrated control system for the plant.  
(25) Something would be acting up on it. And it would be

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(1) - the shift supervisor would say, Well, let's take  
(2) that station into hand and see what that does for  
(3) us. Troubleshoot it.  
(4) And we may do that. And if it was  
(5) something with the plant moving around a little bit,  
(6) maybe he'd say, Well, let's drop power about 2  
(7) percent, make the system move, and let's see how the  
(8) plant responds.  
(9) And that was basically the way we were  
(10) looking at this from my personal point of view.  
(11) This was a troubleshooting.  
(12) MR. LANDIS: In both of those examples  
(13) you just described, there was no limiting - no  
(14) curves violated that - well, the power limit, of  
(15) course there is a -  
(16) MR. STEWART: Right. There is power  
(17) limits.  
(18) MR. LANDIS: You would not have gone on  
(19) any curve or on any limits?  
(20) MR. STEWART: No, sir, not on any  
(21) limits. But had there been some sort of a reason  
(22) for just an operating curve and the shift supervisor  
(23) deemed it that he wanted to challenge that curve,  
(24) then there was not any reason why he couldn't.  
(25) And yes, I'm going to do a reality check

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(1) on him. I'm not going to blatantly follow anybody's  
(2) directions. I'm going to, you know: Does this make  
(3) sense to me? Does this seem safe to me? Does my  
(4) gut instincts say this, on top of my knowledge of  
(5) procedures and everything else? And then I will  
(6) holler if I don't feel that that's right. Or if I  
(7) do feel that he's right, I'll help him do it.  
(8) MR. LANDIS: Did you have any caution  
(9) back on September 4th?  
(10) MR. STEWART: No, sir. I believed and I  
(11) believe that the rest of the shift also believed  
(12) that we were within the full capability of our  
(13) procedures at that time as they existed at that  
(14) time.  
(15) MR. EBNETER: Mr. Stewart, was there an  
(16) alarm on the recorder or was it just a real time -  
(17) MR. STEWART: The annunciator alarm was  
(18) tied to the computer.  
(19) MR. EBNETER: To the computer?  
(20) MR. STEWART: Right.  
(21) MR. EBNETER: So once that alarm came in  
(22) and you said fine. But the way you describe it, you  
(23) always drove by the recorder?  
(24) MR. STEWART: Yes, sir.  
(25) MR. EBNETER: So once the alarm - but



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(1) there was no alarm on the recorder; you had to  
(2) actually watch the recorder -  
(3) MR. STEWART: Yes, sir.  
(4) MR. EBNETER: - to determine where this  
(5) evolution was proceeding; is that right?  
(6) MR. STEWART: Yes, sir.  
(7) - MR. EBNETER: That's all.  
(8) MR. GIBSON: I just have one brief  
(9) follow-up question. You worked for different shift  
(10) supervisors?  
(11) MR. STEWART: Yes, sir.  
(12) MR. GIBSON: And would you describe Mr.  
(13) Fields as being relatively conservative to the  
(14) others?  
(15) MR. STEWART: Yes, sir. Like I said, I  
(16) was in the unique position of going from [REDACTED]  
(17) [REDACTED] shift directly to Dave Fields's shift. And  
(18) to me Dave Fields was very conservative compared to  
(19) my experiences with [REDACTED]  
(20) MR. LANDIS: One follow-up question to  
(21) put light on that. Was [REDACTED] removed from  
(22) shift duty?  
(23) MR. STEWART: Yes, sir, he was.  
(24) MR. LANDIS: When did that occur?  
(25) MR. STEWART: I don't remember exactly

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(1) when it occurred but -  
(2) MR. EBNETER: Was it after this  
(3) evolution?  
(4) MR. STEWART: Yes, sir.  
(5) MR. EBNETER: That's fine.  
(6) MR. STEWART: A long time after that,  
(7) sir.  
(8) MR. EBNETER: We can get it. You  
(9) apparently were taken off shift; is that right?  
(10) MR. STEWART: Yes, sir. I was banned  
(11) from the operations department.  
(12) MR. EBNETER: What was the reason for  
(13) that?  
(14) MR. STEWART: They told me - my letter  
(15) of reprimand states that I operated the Crystal  
(16) River Nuclear Plant in a nonconservative manner.  
(17) MR. EBNETER: And that's all?  
(18) MR. STEWART: That's what it said.  
(19) MR. EBNETER: All right. Anybody have  
(20) any -  
(21) MR. LIEBERMAN: I have one question. My  
(22) question is: If you are allowed - well, first  
(23) question: Do you desire to be a licensed operator  
(24) in the future? Would you like to be a licensed  
(25) operator in the future?

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(1) MR. STEWART: Yes, sir.  
(2) MR. LIEBERMAN: If you are made to become  
(3) a licensed operator in the future, what can you tell  
(4) us concerning how you would act differently than you  
(5) acted on September 4th and 5th?  
(6) MR. STEWART: Well, the first thing that  
(7) I will do is that I will not be as reluctant as we  
(8) were in '94 to submit a safety concern to the I-RC  
(9) directly. I won't try to work within Florida  
(10) Power's frameworks as much as we tried to this  
(11) time.  
(12) The second thing that I will do, and from  
(13) my understanding everybody up in operations is doing  
(14) now, is questioning everything that goes on. And  
(15) it's also blatantly understood that the shift  
(16) supervisors have no power at this time as compared  
(17) to what they had in 1994.  
(18) MR. LIEBERMAN: When you say "have no  
(19) power," does that mean they have no command and  
(20) control in that control room?  
(21) MR. STEWART: No, sir, that is not what I  
(22) am trying to imply in any case at all,  
(23) MR. LIEBERMAN: Okay.  
(24) MR. STEWART: They still have their  
(25) SRO-type capabilities. But their, quote, unquote,

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(1) capabilities of changing OPs or manipulating OPs as  
(2) we understood it in 1984 does not exist.  
(3) MR. EBNETER: Did you ever attempt to use  
(4) the employee concern program?  
(5) MR. STEWART: No, sir, I didn't. Mark  
(6) Van Sicklen was really the point man with this  
(7) concern. I was just keeping up with it through  
(8) Mark.  
(9) [REDACTED]  
(10) [REDACTED]  
(11) [REDACTED]  
(12) [REDACTED]  
(13) [REDACTED]  
(14) [REDACTED]  
(15) [REDACTED]  
(16) [REDACTED]  
(17) MR. EBNETER: So is it safe to say that  
(18) your opinion was that you -  
(19) MR. STEWART: We were -  
(20) MR. EBNETER: - wouldn't rely on that  
(21) system?  
(22) MR. STEWART: We were skeptical at best  
(23) of any successful results coming out of that  
(24) endeavor.  
(25) MR. EBNETER: That's fine. Anybody else?

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- [1] **MR. RAPP:** I have a couple of questions.  
[2] **MR. STEWART:** Yes, sir.  
[3] **MR. RAPP:** As a part of your licensed  
[4] duties in the control room, you perform routine  
[5] evolutions -  
[6] **MR. STEWART:** Yes, sir.  
[7] **MR. RAPP:** - on various plant systems.  
[8] Do you activate alarms when performing those routine  
[9] evolutions -  
[10] **MR. STEWART:** Oh, yes.  
[11] **MR. RAPP:** And following the OP, then you  
[12] would activate alarms during that evolution?  
[13] **MR. STEWART:** Yes, sir.  
[14] **MR. RAPP:** Is that indicative that you  
[15] violated some sort of regulatory limit or plant  
[16] administrative limit?  
[17] **MR. STEWART:** Not necessarily, no, sir.  
[18] **MR. RAPP:** Are all the alarms in the  
[19] control room of equal significance or importance?  
[20] **MR. STEWART:** No, sir, they are not.  
[21] There are definite - there is a definite hierarchy  
[22] on the annunciator system at Crystal River, a  
[23] definite hierarchy.  
[24] **MR. RAPP:** Okay. So where would this  
[25] make-up tank pressure alarm fall into?

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- [1] **MR. STEWART:** That would depend upon  
[2] plant conditions at any given time. For instance,  
[3] if I've had some sort of a LOCA and I'm getting a  
[4] full high-pressure injection actuation and reactors  
[5] trip and I'm trying to gain control from the plant  
[6] - from that situation, that make-up tank alarm is  
[7] a very low priority compared to my ensuring that the  
[8] engineered safeguard system is actuated and is  
[9] responding properly, that the reactor is shut down  
[10] in a safe configuration, the turbine is tripped and  
[11] not overcooling me. So it's a variable with that  
[12] particular alarm.  
[13] **MR. RAPP:** What about during the 4th and  
[14] 5th? Where would that alarm fall into within the  
[15] routine plant operations?  
[16] **MR. STEWART:** Well, the shift supervisor  
[17] made the determination at that time that for those  
[18] evolutions that we would allow that alarm to stay in  
[19] while we were watching the plant.  
[20] But in my estimation, it was his  
[21] determinations - this is my own personal  
[22] estimation. Dave Fields made the determination as  
[23] to how long he wanted to leave the alarm in and what  
[24] the bounds of that evolution were going to be. And  
[25] at that time we believed he had the authority to do

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- [1] that.  
[2] **MR. RAPP:** Discounting the two  
[3] evolutions, the routine normal plant operation, how  
[4] would that alarm be viewed?  
[5] **MR. STEWART:** If it came in while I was  
[6] on just on a routine evolution, I would get ahold of  
[7] the aux building operator and tell him that, at your  
[8] first convenience, we need to either vent it or at  
[9] that time, using that CC-mail, which I recognize now  
[10] is an unapproved - not a good idea by Florida  
[11] Power, to go ahead and do the press on it and get  
[12] the pressure back up to the high end of the band or  
[13] onto the other side of the curve.  
[14] **MR. RAPP:** Okay. There was some question  
[15] asked about the shift manager not being consulted.  
[16] Was it routine for the shift supervisor to consult  
[17] with the shift manager on plant evolutions?  
[18] **MR. STEWART:** Not at that time, I don't  
[19] think so. The shift manager position was relatively  
[20] new at that time, and I'm not so sure that everybody  
[21] really understood the shift manager's role with  
[22] respect to the shift supervisor's role at the  
[23] plant. I think there may have been a little bit of  
[24] controversy as to what they really needed to know or  
[25] not know or should be included in or not included in

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- [1] at the time.  
[2] **MR. LANDIS:** One follow-up question is:  
[3] Mr. Atkinson, why was he placed to be ready to vent  
[4] off the make-up tank during the September 5th  
[5] evolution?  
[6] **MR. STEWART:** Well, by the time we did  
[7] the 5th, we had the additional information from the  
[8] calculation that said that, you know, it's just more  
[9] evidence that this curve is not totally right. And  
[10] so Dave - I suggested to Dave that we go ahead and  
[11] put somebody down in the valve valley and be ready  
[12] to go with that.  
[13] **MR. LANDIS:** Why?  
[14] **MR. STEWART:** Just as an extra precaution  
[15] obviously.  
[16] **MR. LANDIS:** To do what?  
[17] **MR. STEWART:** To protect the make-up  
[18] pumps in case we had the very unlikely event of a  
[19] LOCA during this time frame.  
[20] You know, and we basically did the same  
[21] thing the day before. I talked to the aux building  
[22] operator and said: While - don't have anything  
[23] else going on while we're doing this; keep yourself  
[24] available to vent the make-up tank.  
[25] **MR. LANDIS:** Because you knew if you did

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(1) have a LOCA you needed to vent that tank -  
(2) **MR. STEWART:** I wanted to make sure that  
(3) I had the control over the hydrogen pressure on that  
(4) tank throughout the evolution.  
(5) **MR. LIEBERMAN:** Is it fair to say that  
(6) you thought that curve was wrong?  
(7) **MR. STEWART:** I suspected it was wrong.  
(8) I didn't know that it was wrong. And trying to be  
(9) conservative and invoking my responsibilities as a  
(10) reactor operator with a reactor operator's license,  
(11) I was trying to ensure the protection of the public.  
(12) **MR. LIEBERMAN:** Isn't there also a  
(13) procedure that says that if you think a procedure is  
(14) wrong, you shouldn't do it?  
(15) **MR. STEWART:** We didn't think that the  
(16) evolution we were doing was wrong. We had  
(17) procedural guidance to do it. We were trying to  
(18) specifically show engineering that that curve was  
(19) wrong and that we shouldn't be -  
(20) **MS. EVANS:** - be following that?  
(21) **MR. STEWART:** - using that curve.  
(22) **MR. LIEBERMAN:** Because that curve may be  
(23) unsafe?  
(24) **MR. STEWART:** Correct.  
(25) **MR. LIEBERMAN:** So you proceeded to do an

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(1) evolution you thought may be unsafe?  
(2) **MR. STEWART:** No, sir. We never at any  
(3) time thought that that evolution was unsafe, because  
(4) we had approved Florida Power OPs to guide us.  
(5) **MR. LIEBERMAN:** Yeah, but you thought the  
(6) approved guidance was in fact probably unsafe?  
(7) **MR. STEWART:** No, sir.  
(8) **MR. MORRIS:** Wait a minute, Mr.  
(9) Lieberman. With the greatest of respect, I want to  
(10) object to your use of the word "unsafe."  
(11) He's also said a number of times it was a  
(12) plant response curve. It didn't mean that it was  
(13) unsafe if the plant did not actually follow the  
(14) anticipated response and they were taking  
(15) precautions in case it didn't. That doesn't equate  
(16) to unsafeness necessarily.  
(17) (Mr. Ebnetter exits the hearing room.)  
(18) **MR. LIEBERMAN:** Okay. You've answered my  
(19) question.  
(20) **MR. GIBSON:** Any further questions?  
(21) **MR. RAPP:** I'd just like to finish up on  
(22) my earlier question which related back to shift  
(23) manager again. You said at that time it wasn't  
(24) clear what the role of the shift manager was. Was  
(25) the shift manager -

(1) **MR. STEWART:** Not to me. Now, I can't  
(2) sit here and tell you what Dave Fields knew about  
(3) that or what his interpretation of the shift  
(4) manager's role was. I don't know that.  
(5) But to me at that time I didn't get the  
(6) impression that the shift manager was really  
(7) involved in the actual operation of the plant per  
(8) se. To me he was coordinating the shops to the  
(9) needs of the plant.  
(10) **MR. RAPP:** That answers my question.  
(11) Thank you.  
(12) **MR. GIBSON:** Any further NRC questions?  
(13) Is there anything, Mr. Stewart, you or Mr. Morris  
(14) would like to say before we close this meeting?  
(15) **MR. STEWART:** Can I have a moment to talk  
(16) with my attorney for a second?  
(17) **MR. GIBSON:** Sure.  
(18) (Mr. Ebnetter enters hearing room.)  
(19) **MR. STEWART:** There is one point that I  
(20) would like to cover with the NRC here today. One of  
(21) the allegations apparently that - the main  
(22) allegation against me is that we didn't perform a  
(23) 50.59 review.  
(24) I think that if you were sitting next to  
(25) me at the time of the 4th and the 5th when we went

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(1) through the procedure reviews, you would be able to  
(2) see that I had procedural guidance in OP-402 to put  
(3) hydrogen pressure up. We had the CC-mail, quote,  
(4) unquote, guidance that management was telling us to  
(5) use for adding hydrogen to the make-up tank.  
(6) OP-402 specifically gave me guidance on  
(7) bleeding water out of the make-up tank. And AI-500  
(8) covered all of the issues as far as what the shift  
(9) supervisor could or couldn't do at that time as well  
(10) as what I had to do with respect to AR-403.  
(11) So based on the fact that I could use and  
(12) did use all preapproved operating procedures of  
(13) Florida Power that already had 50.59 reviews done,  
(14) we didn't have to do a 50.59.  
(15) **MR. EBNETER:** I understand that. You  
(16) can't have it both ways though. You constantly  
(17) refer there was no guidance for all of you and then  
(18) at the end you tell me, yeah, we have plenty of  
(19) guidance. And I recall that. Just a comment.  
(20) Anything else?  
(21) **MR. MORRIS:** A responsive comment to that  
(22) would be -  
(23) **MR. EBNETER:** Sure.  
(24) **MR. MORRIS:** - by training - and if you  
(25) disagree with this, please feel free to re-comment.



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(1) By training, they are told to refer to the OPs and  
(2) the ARs and the existing procedures and the existing  
(3) guidance; and when it is not explicitly set forth,  
(4) to go to their shift supervisor.

(5) That's what they were told to do. That's  
(6) what they were trained to do. And that's what they  
(7) did for as long as ten years.

(8) And on September 4th and September 5th,  
(9) 1994, that's exactly what they did. And for you to  
(10) suggest that you can't have it both ways, we didn't  
(11) have it any way but the way it was.

(12) And the way it was is you look at the  
(13) guidance you've got. And if it seems to authorize  
(14) it, check with your shift supervisor to make sure.  
(15) Which is what they did. And the shift supervisor  
(16) said, it's authorized. The 10 CFR 50.59, which they  
(17) were well aware of, was unnecessary according to  
(18) their belief and the shift supervisor's directive.

(19) So I don't think they wanted it one way  
(20) or the other. I think they believed that's the way  
(21) it existed.

(22) MR. EBNETER: I appreciate your response.

(23) MR. MORRIS: Thank you.

(24) MR. EBNETER: I don't think we have any  
(25) more questions. I appreciate your time.

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(1) MR. STEWART: Gentlemen, I appreciate the  
(2) opportunity to come up and meet with you  
(3) personally. And I think you'll see that I'm trying  
(4) my very best to be up front, honest, candid, and  
(5) give you a unique insight from a reactor operator's  
(6) point of view at the time -- during that time almost  
(7) two years ago. So thank you very much.

(8) MR. GIBSON: Thank you very much.

(9) MR. EBNETER: Thank you, Mr. Stewart.

(10) MR. STEWART: And ma'am, yes, thank you  
(11) very much. I'm sorry.

(12) MR. EBNETER: Anyone want to take a quick  
(13) break.

(14) (Recess was taken at 11:40 a.m.)

(15) (Hearing resumed at 11:50 a.m.)

(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]  
(9) [REDACTED]  
(10) [REDACTED]  
(11) [REDACTED]  
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(14) [REDACTED]  
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(16) [REDACTED]  
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(24) [REDACTED]  
(25) [REDACTED]

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(1) [REDACTED]  
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(17) [REDACTED]  
(18) [REDACTED]  
(19) [REDACTED]  
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(21) [REDACTED]  
(22) [REDACTED]  
(23) [REDACTED]  
(24) [REDACTED]  
(25) [REDACTED]

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(1) MR. EBNETER: Before we begin, does the  
(2) staff feel the need for a caucus or anything?  
(3) So what we'll do is we'll bring your  
(4) clients in. You can do your closing. We'll just  
(5) make some overview comments to close it out and that  
(6) will do it.

(7) MR. MORRIS: Thank you, sir.

(8) (A recess was taken at 1:00 p.m.) \*

(9) (Hearing resumed at 1:05 p.m.)

(10) (Ms. Smith, Mr. Atkinson, Mr. [REDACTED])

(11) Stewart, Mr. Van Sicklen present.)

(12) MR. EBNETER: Mr. Morris, do you want to  
(13) make a closing statement?

(14) MR. MORRIS: If I may, again, let me  
(15) thank you for the opportunity of being here and  
(16) allowing these operators to speak with you and  
(17) answer the questions that you had and respond to the  
(18) apparent violations.

(19) I will tell you that it has been a  
(20) privilege and a pleasure working with Mr. Van  
(21) Sicklen, Mr. Stewart, Mr. Atkinson, and Ms. Smith.  
(22) I don't think that Florida Power Company has any  
(23) better nuclear operators than those individuals. I  
(24) don't think they could possibly have any operators  
(25) who were more concerned about safety than these

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(1) individuals.

(2) The decision that you make affects their  
(3) life significantly, as you know and as they know.  
(4) When we started out this morning, I asked you to put  
(5) yourself in their position in September of 1994  
(6) before you judge what they did or failed to do.

(7) If you were in this chair next to me, as  
(8) they have been this morning, on September 4th and  
(9) September 5th and during the period of July and  
(10) August leading up to September 4th and September  
(11) 5th, you would know that there was not sufficient  
(12) guidance to tell these operators that what they were  
(13) doing was wrong.

(14) And many of you - not many of you. Some  
(15) of you have made very clear from the outset of this  
(16) proceeding that you have a predisposition and might  
(17) have already decided that what they did was wrong.  
(18) And that's fine in 1996. You are allowed that  
(19) latitude and that privilege of looking back and  
(20) making a reasoned decision after having pored  
(21) through pages and volumes of transcripts and  
(22) documents.

(23) But on September 4th if you were sitting  
(24) next to them in the control room, talking about what  
(25) they were thinking about doing, you would have

(24) MR. MORRIS: I'd like to make some  
(25) closing remarks.



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[1] suffered under the following:

[2] "Vague guidance provided to these  
[3] operators in the existing procedures for procedures  
[4] for evolutions to be performed, for alarm response  
[5] times, and for determining when an evolution  
[6] constituted a test or experiment."

[7] Now that can't be argued. That is what  
[8] you would be laboring under because that is exactly  
[9] what you, the NRC, found in Inspection Report 50-  
[10] 302/95-22 in your synopsis at Page 2. Those were  
[11] the conditions existing for these four operators and  
[12] for you if you'd been in the chair next to them in  
[13] July and August and September of 1994.

[14] AI-500 Section 4.3.2.3.2A, you, the NRC,  
[15] found that: When the adequacy of the existing  
[16] procedures is questioned, the shift supervisor shall  
[17] make the determination as to which procedural  
[18] requirements are applicable.

[19] There is no evidence anywhere in the  
[20] record that any one of these four people could not  
[21] or should not have relied upon Mr. Dave Fields when  
[22] he determined that the evolution they intended to do  
[23] was properly authorized under the existing  
[24] procedures.

[25] Now, you may now determine that that

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[1] decision was wrong, ameliorated by the fact that the  
[2] procedures you found were deficient. But don't  
[3] blame these people for following a shift supervisor  
[4] who they believed was conservative, who had an  
[5] excellent record with the company, and who they were  
[6] directed by the applicable procedures to follow.

[7] As you pointed out in your same  
[8] inspection report, AR-403 gave no guidance for  
[9] timeliness to initiate an operator's actions in  
[10] response to an alarm. These people told you and in  
[11] fact, in Florida Power Company's own predecisional  
[12] enforcement conference, they admitted to you that  
[13] they had a pattern of existing alarms for extended  
[14] period of times that was known, tolerated, and  
[15] accepted. So it was no surprise to these people  
[16] that the alarm might come in.

[17] Did they maneuver the plant so as to  
[18] bring it in? No. They put the plant on the curve  
[19] as directed, bled down to follow what would happen,  
[20] and charted. Did they drive it into the  
[21] unacceptable area? No. The plant went into the  
[22] unacceptable area according to Curve 103B. And  
[23] that's all they were doing.

[24] Is the plant going to go there or is it  
[25] not? We don't know. We've been told it's going to

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[1] be closed out. Let's find out. Present them the  
[2] information that we come up with.

[3] Is there a flaw in that theory? Not  
[4] according to their shift supervisor; not according  
[5] to the then existing procedural guidance.

[6] AI-402B, you found has no guidance on  
[7] plant curves. Therefore, they cannot be faulted for  
[8] not following the guidance that existed because  
[9] you've already found there was no such guidance.

[10] CF-103B Curve 8, you found that this  
[11] procedure does not provide guidance on normal plant  
[12] operations or on the applicability of administrative  
[13] operating limits.

[14] You cannot reasonably find that they  
[15] violated OP-103B when you yourself have already  
[16] found that this procedure did not provide adequate  
[17] guidance. It is unfair for the NRC to hold these  
[18] operators to a standard that did not exist on  
[19] September 4th and 5th, 1994.

[20] You've already found that there was  
[21] insufficient guidance and insufficient supervision  
[22] for them to know that what they were doing was  
[23] incorrect or had a flaw in it.

[24] Management, in its hearing before you,  
[25] admitted that the procedural guidance was lacking,

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[1] deficient, or nonexistent. They admitted that your  
[2] apparent violations citing management's failures to  
[3] provide adequate guidance were true and correct.

[4] Well, if management failed to provide the  
[5] proper guidance, you can't hold these operators  
[6] responsible for failing to follow proper procedure  
[7] and guidance when the company has already admitted  
[8] the guidance wasn't there to begin with.

[9] If you are going to discipline these four  
[10] operators for violating Curve 103B, then you must  
[11] discipline 100 percent of the operators at the  
[12] Crystal River Plant who in 1994 operated at the top  
[13] of the band of 103B Curve 8 with the alarm in,  
[14] because, as you found, 100 percent of the operators  
[15] did that, every one of them.

[16] These people have been singled out  
[17] because of the evolutions. You've already found the  
[18] procedural guidance was deficient. No one has  
[19] suggested - not you, not Florida Power - no one  
[20] has suggested that it was unreasonable for these  
[21] people to follow the direction, supervision, and  
[22] approval of their shift supervisor.

[23] Now, you might say, in fact you have  
[24] said: "Well, why didn't you try some other  
[25] alternative? You didn't have to be an evolution



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(1) man. All you had to do was try any number of  
(2) alternatives to this."

(3) These people have testified and there's  
(4) no evidence to the contrary that the employee  
(5) concern procedure didn't work. It had been tried.  
(6) It had not worked.

(7) Mr. Van Sicklen went as high as he could  
(8) go other than barging in on Pat Beard to raise his  
(9) concern about the efficacy of OP-103B Curve 8. Time  
(10) and time and time again, he asked for somebody to  
(11) check on his concern.

(12) Now he didn't challenge engineering and  
(13) say, You're wrong, I'm right, I'm going to beat  
(14) you. He went to a meeting and said: Look, here's  
(15) what we got from SP-630; we think there's a problem  
(16) here. Will you please check on it and get back to  
(17) me.

(18) Nobody got back to him in June. Nobody  
(19) got back to him in July. Nobody got back to him in  
(20) August. Did he say, Well, if you don't get back to  
(21) me, I'm just going to go prove it myself? No. He  
(22) waited and he brought it up through management,  
(23) above the head of his shift supervisor [REDACTED]  
(24) [REDACTED] and said: I've still got these concerns;  
(25) what should I do? And he followed what he believed

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(1) was a reasonable course to work within the system at  
(2) Florida Power to wait for her response.

(3) The response he got was on September 3rd  
(4) he was shown the September 2nd letter. And to him  
(5) it said, This issue is being closed out. And it  
(6) says in print explicitly: OP-103B Curve 8 is  
(7) conservative.

(8) Well, he still wasn't sure of that. And  
(9) he was told, either mistakenly or otherwise, that if  
(10) you've got something to tell us, you better give it  
(11) to us now because it's being closed out.

(12) Now, we can pick bones about whether Mr.  
(13) Beard told Mr. Bergstrom or Mr. Bergstrom told Mr.  
(14) Fields; all of that is irrelevant. You are there on  
(15) September 4th sitting next to Mark Van Sicklen when  
(16) he is told: Put up or shut up; give them the  
(17) information or let it go.

(18) What did he say? He said, Well, I guess  
(19) what we'll do is exactly what they've told us to  
(20) do. We'll put it on the curve, bleed it down. If  
(21) it even comes close to following the curve, I'll  
(22) say, Thank you, I'm satisfied. If it doesn't, we'll  
(23) report to them our data of what happened.

(24) Gee. Can we do that? And he went to  
(25) shift supervisor and the assistant shift

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(1) supervisor. They took out the books. They read  
(2) them. And they said, There's a procedure for this;  
(3) we have procedural guidance; it's appropriate; you  
(4) can do it.

(5) You may decide today that that decision  
(6) was wrong. But if you'd been there on September 4th  
(7) and September 5th, there was nothing in existence at  
(8) that time that would lead anybody to a contrary  
(9) conclusion.

(10) The fact that they operated under the  
(11) supervision of their management is the most  
(12) important thing that you have to focus on if you're  
(13) sitting there on September 4th.

(14) We're here for enforcement action. Under  
(15) your enforcement procedures NRC Enforcement Policy  
(16) 10 CFR 2 Appendix C, Section XVIII, Enforcement  
(17) actions against individuals, as I know you know:

(18) "Enforcement actions involving  
(19) individuals will be closely controlled and  
(20) judiciously applied. An enforcement action  
(21) involving an individual will normally be taken only  
(22) when the NRC is satisfied that the individual fully  
(23) understood or should have understood his or her  
(24) responsibility, knew or should have known the  
(25) required actions, and knowingly or with careless

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(1) disregard, i.e., more than mere negligence, failed  
(2) to take required actions which have actual or  
(3) potential safety significance."

(4) Now I think you must conclude from the  
(5) record in front of you that none of these people  
(6) knowingly took any action they believed to be in  
(7) violation of any regulation, nor did they act with  
(8) careless disregard.

(9) This was a planned evolution they  
(10) believed was authorized, and it came after every  
(11) attempt by the representative of this shift to bring  
(12) the matter to the attention of management and get it  
(13) resolved, with no satisfaction whatsoever.

(14) That same enforcement procedure says:  
(15) "Action against the individual will not be taken if  
(16) the improper action by the individual was caused by  
(17) management failures."

(18) In this case I submit to you that these  
(19) people should not be disciplined in any way, shape  
(20) or form because their action was in fact caused by  
(21) management failures, the management of their  
(22) particular shift. If you find them to be at fault,  
(23) they were following that direction and approval,  
(24) could do that with reasonable reliance. And under  
(25) the enforcement procedure here, that they should not

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(1) be punished for that.  
(2) Similarly you've already found in your  
(3) inspection reports and in your apparent violations  
(4) for the company that the company failed in providing  
(5) adequate guidance. So the company failed and the  
(6) management failed, not these individuals.

(7) These go on to say: "Inadvertent  
(8) individual mistakes resulting from inadequate  
(9) training or guidance provided by the facility  
(10) licensee shall not authorize action against them."

(11) A number of you asked each one: Did you  
(12) ever receive any training on OP-103B Curve 8?

(13) **Answer:** No. Had anyone ever told you that this was  
(14) a design basis curve that could not be violated?  
(15) No.

(16) So you can't find that they knowingly  
(17) violated it or did it with careless disregard. And  
(18) so you should not punish them for that.

(19) It also says that they shall not be  
(20) punished in an enforcement proceeding for compliance  
(21) with an expressed direction of management such as  
(22) the, quote, "shift supervisor," end quote.

(23) I don't think any of you dispute the fact  
(24) that these people acted under the imprimatur of  
(25) their shift supervisor, with the concurrence of

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(1) their shift supervisor, with the authority of their  
(2) shift supervisor and believed that what they were  
(3) doing was at his direction, his suggestion and with  
(4) his approval. So for that reason you should take no  
(5) action against them.

(6) It also says no action should be taken  
(7) against them "if the violation results from  
(8) inadequate procedures." As I've already said, you  
(9) have faulted Florida Power Company for having  
(10) inadequate procedures.

(11) In the mitigating, whatever punishment  
(12) you feel would be appropriate if you made that  
(13) decision, there are nine factors that you're to  
(14) consider, and I want to hit those very briefly.

(15) No. 1, the level of the individual within  
(16) the organization. These folks were not the  
(17) decision-makers. They relied on others to make  
(18) those decisions.

(19) No. 2, the individual's training and  
(20) experience as well as the knowledge of the potential  
(21) consequences of the wrongdoing. As Florida Power  
(22) said to you and as these people said to you, they  
(23) believed that what they were doing would not result  
(24) in a significant danger to the public or to the  
(25) plant. And their training and experience told

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(1) them: You follow the shift supervisor's direction  
(2) and interpretation. And that's what they did.

(3) No. 3, the safety consequences of the  
(4) misconduct. Thankfully, the only safety  
(5) consequences of the evolutions were that the plant  
(6) after September of 1994 changed the curve and was  
(7) operating safely. If the evolutions had not been  
(8) done, that plant might still be operating on old  
(9) Curve 103B Curve 8, which as we know from the  
(10) evolutions performed was outside the design basis  
(11) limits, had a very dangerous situation, and had  
(12) existed that way for a period of 18 months until  
(13) these people took the initiative to find out if it  
(14) was accurate or not.

(15) No. 4, benefit to the wrongdoer. It's  
(16) obvious that not only did these people not seek any  
(17) benefit, they've suffered dire consequences.

(18) No. 5, the degree of supervision of the  
(19) individual. They were highly supervised at the  
(20) time. They did everything under the watchful eye of  
(21) the assistant shift supervisor and the shift  
(22) supervisor.

(23) No. 6, the employer's response, for  
(24) example, disciplinary action taken. As you already  
(25) know, Mr. Van Sicklen and Mr. Stewart have been

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(1) stripped of their licenses. They're no longer in  
(2) operations. They're not allowed in operations.

(3) Ms. Smith has a written reprimand. Mr.  
(4) Atkinson had a reprimand. Both of their otherwise  
(5) previously spotless records now have a permanent  
(6) stain.

(7) No. 7, the attitude of the wrongdoer,  
(8) acceptance of responsibility. Each of these people  
(9) came in here and told you they fully accepted  
(10) responsibility for the actions that they took and  
(11) today knowing what they know now with added guidance  
(12) would never have done it back in 1994.

(13) No. 8, the degree of management  
(14) responsibility or culpability. I think I've already  
(15) said enough about that.

(16) And No. 9, who identified the  
(17) misconduct. These people conducted their evolutions  
(18) on September 4th and September 5th. They documented  
(19) it in the log books. They didn't have to do any  
(20) more than that. But they did.

(21) They went straight to their management  
(22) with their data, with their report, generated a  
(23) problem report, and followed exactly the procedure  
(24) that was expected of them by Florida Power and the  
(25) NRC. They are the ones who identified this, quote,

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(1) "misconduct," end quote.

(2) In summation: These operators acted  
(3) responsibly as the environment existed in 1994 in  
(4) September. They acted with an absolutely pure  
(5) motive. They had a safety concern that they wanted  
(6) to help get resolved.

(7) They had absolutely no malicious intent.  
(8) There was nothing for them to personally gain from  
(9) doing these evolutions. They never sought personal  
(10) gain. They never thought they were going to get  
(11) personal gain.

(12) As they have each told you, and as I  
(13) believe the shift supervisor and the assistant shift  
(14) supervisor has told you in their predecisional  
(15) enforcement conference, no one ignored or  
(16) disregarded procedures. At all times they thought  
(17) they were working within procedures.

(18) You also know they did not know at the  
(19) time of these evolutions that that was a design  
(20) basis curve. If they had, they never would have  
(21) done it.

(22) You know that they consulted the  
(23) appropriate procedures then in existence. They  
(24) relied upon their shift supervisor for his  
(25) interpretation of the decision. And they made a

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(1) reasoned judgment that they were following  
(2) appropriate procedure as approved by the shift  
(3) supervisor.

(4) I think the most important point you  
(5) made, Mr. Ebnetter, you particularly, is: What  
(6) alternatives they should have considered before they  
(7) did the evolution? And presumably by that you mean  
(8) there are two significant alternatives: One, go to  
(9) the NRC; two, go to your management outside your  
(10) shift.

(11) [REDACTED]  
(12) [REDACTED] And he explained to you  
(13) the steps he took in going through management  
(14) outside his shift for a number of months that  
(15) predated this evolution.

(16) But I think the most important thing you  
(17) should consider about why neither of those factors,  
(18) neither of those alternatives would have been  
(19) sufficient at that time had you been there on  
(20) September 4th, 1994, is the evidence of the fact of  
what atmosphere existed in September 1994.

How can we go back and prove to you what  
was like and why those were not viable  
alternatives? I'll tell you one reason why: From  
(25) September 5th through a five-month period, no one at

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(1) Florida Power Company ever asked any of these  
(2) operators what they did or why they did it. No one  
(3) from management, no one from the NRC, no one from  
(4) the St. Petersburg, no one from Crystal River ever  
(5) came to Mark Van Sicklen, Jack Stewart, Christine  
(6) Smith, or Jim Atkinson and said, Gee, tell me  
(7) exactly what you did and why you did it. Not a  
(8) single solitary human being.

(9) Now, you would expect if there were  
(10) viable alternatives of going to management or going  
(11) to the NRC, somebody would have come to them and  
(12) said: Gee, tell us about this. What prompted it?  
(13) What did you do? How did you do it and why? Not a  
(14) single solitary person asked them.

(15) Florida Power Company told you they  
(16) handled this on a management review committee  
(17) basis. And they apologize; in hindsight it would  
(18) have been wiser to interview the four operators.  
(19) But they didn't.

(20) You met with Florida Power Corporation in  
(21) Atlanta, Georgia, to discuss these evolutions.  
(22) Nobody ever talked to these four people. Nobody  
(23) sought their opinion, their advice, or their  
(24) explanation.

(25) And that's why it was reasonable for

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(1) these people to believe that there was no reason to  
(2) go above where they had gone before because nobody  
(3) was going to care about their thought process. That  
(4) had been proven. You tell us what your concerns  
(5) are. We'll take it from there and we'll get back to  
(6) you.

(7) Well, by whatever you conclude over the  
(8) next 60 or 90 days, not only are you going to decide  
(9) the fate of these folks and send them a message, but  
(10) you're going to send a message to every operator in  
(11) this country. It's one of two messages. The  
(12) message is either: Question things when you think  
(13) there's a legitimate safety concern and do what you  
(14) think following your management supervision is the  
(15) right thing to do. And if you're concerned, you  
(16) ignore what people tell you to do if you're really  
(17) concerned about it. You take the bull by the horns  
(18) and you look at that safety concern and you follow  
(19) it through until you are satisfied because that's  
(20) what we the Nuclear Regulatory Commission expect of  
(21) you.

(22) Or you're going to send a message to  
(23) these four people and everybody else: Shut up and  
(24) watch the board. We know what we're doing. We're  
(25) management, we're engineering; you don't need to



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(1) understand it. Just shut up and watch the board.  
(2) If that's what you want, then take  
(3) discipline against these people and send a memo to  
(4) every operator in the country. If you have a safety  
(5) concern, write it down, it will be dealt with, don't  
(6) you be doing anything on your own, just shut up and  
(7) watch the board.

(8) Now you're thinking, or may be thinking,  
(9) Well, I don't want to tell every other operator in  
(10) the country, any time you want to run an evolution,  
(11) go right ahead. We're not asking you to do that  
(12) either.

(13) But we are asking you to consider what  
(14) the situation was when you sat in this chair as the  
(15) fifth operator on September 4th and 5th, 1994, in  
(16) the situation that existed then with the guidance  
(17) that you had and the supervision sitting next to you  
(18) and say to yourself, You know, if I had that safety  
(19) concern and if I read those same guidances and if I  
(20) asked my shift supervisor and if I went through the  
(21) steps that I went through and if I was told I'd  
(22) better bring them more information right now or else  
(23) my safety concern is going to be closed out, you  
(24) would have done the exact same thing. And I don't  
(25) think that you would be subjecting yourself to the

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(1) discipline that you state in your apparent  
(2) violations to these people.  
(3) And we ask you to consider that.  
(4) Consider the punishment they've already received,  
(5) and if not vindicate them, at least determine  
(6) there's a sufficient level of mitigation in this  
(7) case that you understand why they did what they did  
(8) and you accept it; maybe not approve it, but at  
(9) least accept it.

(10) Thank you for the opportunity of  
(11) addressing you. If you have any questions of me or  
(12) any one of the four, please feel free.

(13) MR. EBNETER: Are there any other  
(14) questions? Well, thank you, Mr. Morris. Good  
(15) summation. And appreciate the comments in the  
(16) openness of all the operators. We certainly  
(17) appreciate you coming in.

(18) And having said all of that, the  
(19) summation was very good, was to the point.  
(20) Fundamentally though, two wrongs don't make a  
(21) right. And looking at all the circumstances, and we  
(22) can talk about options, there were other perceptions  
(23) created here and some of them on our own side.

(24) It is not acceptable for the NRC staff to  
(25) tell any of you that you will have to go off the

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(1) record or you should go somewhere else to file  
(2) allegations. And I want you all to understand that  
(3) right now.

(4) And I want you to tell your peers at  
(5) Crystal River, the NRC expects you to come to us.  
(6) And if you find that any of our staff is not  
(7) receptive to your comments, you have a duty then to  
(8) go to me or to anybody in this region. And the  
(9) telephone number is 404-331-5500.

(10) So that was, apparently at least, it  
(11) appears from what we know, that we closed off one of  
(12) those options to you. And I can understand the  
(13) frustration that that probably generated, that in  
(14) conjunction with the closure of management past.

(15) But having said all that, you know, the  
(16) operators need to understand that you can't put the  
(17) plant in an unsafe condition to try to prove a  
(18) point. I recognize it's tough, but that's generally  
(19) - that's just not acceptable.

(20) I don't have any other comments. I  
(21) appreciate [REDACTED]

(22) [REDACTED] And Ms.  
(23) Halligan, again representing Florida Power  
(24) Corporation. And, Mr. Lieberman, we appreciate your  
(25) participation.

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(1) MR. LIEBERMAN: Thank you.

(2) MR. EBNETER: And so I'm going to close  
(3) the conference out. I'm not sure of the time frame  
(4) of this proceeding, Mr. Morris. We'll try to get  
(5) through it as quickly as we can. But things  
(6) generally go slow. But we will try to move it along  
(7) very fast.

(8) MR. MORRIS: I have one question, sir,  
(9) that one or more of my clients has asked me, and I  
(10) don't know the answer.

(11) Who makes the final decision, if you  
(12) will? Is it one person's decision -

(13) MR. EBNETER: No.

(14) MR. MORRIS: - a group decision or -

(15) MR. EBNETER: No. The process will go -  
(16) in fact, my closing comments will address a little  
(17) bit of that.

(18) MR. MORRIS: Thank you.

(19) MR. EBNETER: But fundamentally, all the  
(20) facts we receive, the facts from our staff, from the  
(21) OI staff, you gentlemen, Florida Power Company, all  
(22) those facts will go to a panel which will be chaired  
(23) by Mr. Gibson. That panel will consist of most of  
(24) the people in this room. And Mr. Lieberman will  
(25) participate in it.

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[1] By the way, Mr. Beall here is Mr.  
[2] Lieberman's representative from headquarters. So  
[3] there's a variety of people. And once they have  
[4] looked at the record, they'll make a recommendation  
[5] to me and to Mr. Lieberman.

[6] And then it gets further review. In  
[7] cases like this, they will probably go to the  
[8] commission. So it's not a simple process. And it  
[9] gets multi later review to make sure you get fair  
[10] treatment across the board.

[11] **MR. LIEBERMAN:** This will be an agency  
[12] decision.

[13] **MR. EBNETER:** Yes.

[14] **MR. LIEBERMAN:** And it's - not probably;  
[15] this will go to the commission to get their advice  
[16] before we make a final decision.

[17] **MR. MORRIS:** And the final decision is  
[18] really made by whom, Mr. Lieberman?

[19] **MR. LIEBERMAN:** Mr. Ebneter will sign the  
[20] documentation. But the approval will be Mr.  
[21] Ebneter; myself, Mr. Taylor, he's the executive exec  
[22] for operations; and after, consultation with a  
[23] commissioner.

[24] **MR. MORRIS:** I don't mean this  
[25] disrespectfully, but do each of you four get an

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[1] equal vote?

[2] **MR. EBNETER:** Now, you know better than  
[3] that.

[4] **MR. LIEBERMAN:** I work for Mr. Taylor.  
[5] And Mr. Ebneter works for Mr. Taylor too. So I  
[6] guess it's fair to say that Mr. Taylor gets 51  
[7] percent of the vote.

[8] But normally Mr. Ebneter and myself, we  
[9] work it out. And occasionally others will cause us  
[10] to change our views.

[11] **MR. MORRIS:** Yes, sir.

[12] **MR. EBNETER:** I'd like the operators to  
[13] see my name will be on the thing, so I have to  
[14] accept responsibility. As Mr. Lieberman says, it's  
[15] a consensus type decision in the agency and it will  
[16] get multi levels of review.

[17] **MR. LIEBERMAN:** And I think the final  
[18] comment is as I said earlier, this is not treated  
[19] lightly. We appreciate the reasons why the  
[20] operators have stated they did what they did. We  
[21] appreciate the messages that can be given to  
[22] operators at Crystal River as well as other  
[23] facilities. And we want to make sure we do the  
[24] right thing.

[25] **MR. MORRIS:** If I can give you any help

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[1] in that, please let me know.

[2] **MR. EBNETER:** Having said all of that,  
[3] we'll close the conference and, right along this  
[4] line, a discussion that these are apparent  
[5] violations that we've discussed today. They are  
[6] subject to further review and subject to change  
[7] prior to any final enforcement action. And any  
[8] the statements or views or expressions of the staff,  
[9] NRC staff, that were made here today at this  
[10] conference or even the lack thereof are not intended  
[11] to represent final agency determinations or  
[12] beliefs.

[13] That's a good legal statement to end this  
[14] conference on. So let's close the conference.  
[15] Thank you, sir.

[16] **MR. MORRIS:** Thank you.

[17] (Hearing concluded at 1:40 p.m.)

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[1] CERTIFICATE

[2]  
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[5] STATE OF GEORGIA,  
[6] COUNTY OF COBB:

[7]  
[8] I hereby certify that the foregoing  
[9] proceedings were taken down, as stated in the  
[10] caption, and reduced to typewriting under my  
[11] direction, and that the foregoing pages 1  
[12] through 239 represent a true, complete, and  
[13] correct transcript of said proceedings.

[14] This, the 11th day of April, 1996.

[15]  
[16]  
[17]

[18] DEBORAH P. LONGORIA, CCR-B-1557, RPR  
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