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Vol. II

PUBLIC HEARING  
before  
SENATE LEGISLATIVE OVERSIGHT COMMITTEE  
on  
PUBLIC ADVOCATE'S ROLE IN HOPE CREEK AGREEMENT

Held:  
October 26, 1982  
Room 114  
State House Annex  
Trenton, New Jersey

New Jersey State Library

MEMBERS OF COMMITTEE PRESENT:

Senator Gerald R. Stockman (Chairman)  
Senator Leonard J. Connors, Jr.

ALSO:

Senator Daniel J. Dalton (Chairman)  
Senate Energy and Environment Committee

Steven B. Frakt, Research Associate  
Office of Legislative Services  
Aide, Senate Legislative Oversight Committee

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SENATOR GERALD R. STOCKMAN (Chairman): I want to welcome everyone here to the second hearing of the Senate Legislative Oversight Committee. Seated with me is Senator Connors, a member of this Committee, and also seated by invitation is Senator Dalton, Chairman of the Energy and Environment Committee of the Senate. Senator Dalton has had an ongoing interest in the subject of Hope Creek and energy generally.

This hearing, of course, deals with the Public Advocate's signing of an Agreement with Public Service and Atlantic City Electric Company, and the Department of Energy. The Agreement was dated August 10, 1982 and it deals with the completion of Hope Creek I.

During this hearing I am going to refer to that document as "The Agreement." The Public Advocate chooses to describe it as a Cost Containment Agreement. History will decide that issue. I certainly will not concede it at this point. It has also been described as a major victory for the consumer by the Public Advocate, and I believe by the Department of Energy as a national model and as a standard for some time to come, although interestingly enough, the New York Times carried a story over the weekend that suggested in the alternative, it may be a great victory for Public Service.

The purpose of this hearing is to shed some light on the circumstances surrounding this extraordinary, multi-billion dollar deal, whether the Public Advocate acted reasonably in signing it, what role, if any, the Governor's Office played in the signing, whether hereafter the consumers of this State will be adequately protected in further proceedings dealing with just how much of the cost of Hope Creek will be borne by the ratepayers and, of course, the possibility of any legislative initiatives that may come out of the hearings.

I think it is important to try to state at the outset what in my opinion these hearings are not intended to deal with. They are not intended to deal with Al Nardelli's firing. They are not intended to question Joe Rodriguez's integrity or loyalty as a dedicated public servant. I personally consider Joe Rodriguez as a personal friend and, as a matter of fact, someone whose desire to serve the public interest is probably a model for other people in State government to be aware of. That, however, does not free him from the possibility of error.

Now, before I begin the questioning, and my colleagues join in any questioning they like of Ray Makul, the first witness, I would like to at least refer to some material that was in the initial hearing to set a little bit of the stage, although I know there are some differences of interpretation. But I would recall for you, Mr. Makul, a letter of April 7, 1982, just over six months ago, in which the Public Advocate, in answering an apparent inquiry of Governor's Counsel, sharply criticized Hope Creek and favored a temporary halt in its construction, and urged that it be submitted to a Certificate of Need Review and, perhaps ironically, said, "...there is no choice," and I am quoting the Public Advocate, "but to subject this project to the most intensive and searching inquiry possible."

Several days later, commenting on the BPU's proposed rules governing Certificate of Need, he described the issue of whether to go forward with Hope Creek as perhaps the most important economic question facing this State. Again, in a letter of April 30, 1982 to Gary Stein, Director of the Governor's Office of Policy and Planning, Mr. Potter, Assistant Commissioner, reiterated those views and strongly recommended that the Hope Creek I project be subjected to, and I quote,

"the hardest possible scrutiny." He reminded Stein how he had listened during the gubernatorial campaign, and I quote, "Tom repeated his view that no more nuclear facilities should be constructed until we have a demonstrated safe way of disposing of nuclear waste."

Now, I would like to ask you as a member of Rate Counsel, some questions concerning your role, if any, in this Agreement, and the Public Advocate's role. First, I would like to ask you a few questions about the basic issue of Hope Creek and how important it is, or isn't, to the people of New Jersey. Have you had some experience in terms of studying the history of Hope Creek and the impact it may have on rates for citizens in New Jersey?

R A Y M O N D E. M A K U L: Yes, I have.

SENATOR STOCKMAN: Can you very briefly, Ray -- I am familiar with it, but I think for the record share with us a little bit your educational background and your experience generally for a couple of minutes, in the Public Advocate's Office.

MR. MAKUL: In addition to being an attorney, I am an electrical engineer. I graduated with a Bachelor of Science degree in electrical engineering from the Newark College of Engineering, now the New Jersey Institute of Technology. That was in 1968. From 1968 to 1973, I worked for Exxon Corporation U.S.A. at the Bayway Refinery, where I was an engineer and I also did some economic forecasting for in-plant energy use. I also managed energy conservation programs. I also, for two and a half years, was responsible for the field operation of all the plant's energy systems -- the steam, the electricity, cooling water, and so on and so forth.

SENATOR STOCKMAN: Let me stop you here for a minute. It is a minor thing, but I just noticed we have three potential witnesses. We are not going to get to Mr. Potter or Mr. Camacho. Would you be more comfortable if you had more room and were here yourself testifying?

MR. MAKUL: Well, I don't have a lot of papers, so either way is fine with me.

SENATOR STOCKMAN: Okay, I want you to feel free and open in this discussion, in this free give-and-take dialogue. Go ahead.

MR. MAKUL: While I was at Exxon, in the evenings I went to the Rutgers' Graduate School of Business -- I think they now call it the Graduate School of Management. I earned a Masters degree in Business Administration. I left Exxon in 1973 and went to Rutgers University in Newark Law School and got my JD degree. Upon graduating Rutgers Law School, I went to work full-time for the Public Advocate's Office in 1976, and have been there since, all the time at the Division of Rate Counsel.

SENATOR STOCKMAN: And all of your work has been involved in rate hearings and dealing with the issues of energy and Public Service facilities -- things of that sort?

MR. MAKUL: I have been working on Public Service cases since late 1977. My first year there I was working on cable television and a few other non-energy related issues.

SENATOR STOCKMAN: Briefly, could you describe for us what is at stake in terms of possible costs from this Hope Creek project?

MR. MAKUL: Well, I went over some of the figures. The Public Service rate base, which is the property upon which they earn a return, is presently in

the low \$3 billion range. If Hope Creek is completed for \$3.55 billion, that will essentially double the investment of Public Service Electric and Gas, which will double the -- since they earn a return on the investment that is serving the public, it will essentially double the return component of their costs. At the same time, a nuclear plant such as Hope Creek will have a lower operating cost than some of the oil-fired plants and coal-fired plants, so there is some offsetting benefit. But, unfortunately, I do not think it is a totally offsetting benefit. I did some calculations back in March for the Department as to what we refer to as "back of the envelope calculations." We came up with the estimate --

SENATOR STOCKMAN: (interrupting) Well, before you get into that, let me ask you another question. Would you agree with the Public Advocate, as recently as let's say April or May, that this issue is probably one of, if not the most important economic issue facing the State around now -- the impact it will have on the citizens and on business? Is that an overstatement?

MR. MAKUL: At least in the area of utilities, yes.

SENATOR STOCKMAN: Okay. Do you, at this point, based on your experience and knowledge of this issue, feel that it is in the public interest that Hope Creek I be completed?

MR. MAKUL: Personally?

SENATOR STOCKMAN: Yes.

MR. MAKUL: No.

SENATOR STOCKMAN: Incidentally, to clear the record a little bit -- I know this is an unusual setting you find yourself in, and I think it is clear from, it should be from every direction, that we are not dealing with any Watergate or anything of that sort. We are not dealing with any alleged criminal conduct. We are dealing simply with questions of judgment. I can appreciate that you are in a position of loyalty to the Public Advocate, who has signed an Agreement in this area. I want to try to get away from putting you on too much of a spot, and yet I think you recognize, and we all recognize, it is important that we get as many facts as we can on this issue. So, I am going to be exploring questions with you. I am not sure how important it is; you may want to define your opinions as personal as opposed to through the Public Advocate. But, at least let me be clear on one thing -- whether they are your personal opinions, or they are arguably concurred in by the Advocate's office, I assume when you give them to me you are doing it sincerely and you are doing it with the wealth of experience and knowledge and training and involvement in these matters that you have had. Can I assume that?

MR. MAKUL: Yes.

SENATOR STOCKMAN: All right. Why is it then that in your opinion Hope Creek should not be built?

MR. MAKUL: Well, Hope Creek was initially conceived as a project which would, first of all, cost a heck of a lot less to build. Most of the economic studies that I have seen for nuclear plants that justify these things essentially assume that once you have built them, the investment was made, and no significant capital improvements or repairs would ever have to be made throughout its life. In the meantime, the assumption was made that oil would be escalating out of sight, to the point where by the end of the century it would be literally \$300.00 or \$400.00 a barrel. Essentially, the whole economic analysis was really based, not so much on the need to meet peak demands, but to displace other more costly fuels that were subject to cartel pricing.

I think experience has shown that those assumptions have gone wrong in several ways. One is that the plants could not be completed as cheaply as was thought they could be completed. Second, once they are built, they don't stay built. They have to be continuously overhauled and repaired, and the repairs tend to cause the investment associated with that plant to go up over the life, whereas the economic analysis indicated that it would go down. The third thing is that, even though oil may be subject to cartel pricing, at some point, even if you only have one supplier, the market will not bear any more of a higher price. I think that if we are not at that point, we will soon be.

So, I think we are talking about an investment of three and a half billion dollars. I don't know whether or not it will ever pay for itself, particularly in today's high cost of capital.

SENATOR STOCKMAN: Let me ask you some questions about the role of Rate Counsel traditionally in matters of this sort. I guess this isn't the first nuclear plant that was proposed and either built or abandoned.

MR. MAKUL: No, there have been --

SENATOR STOCKMAN: What is the relationship? Let's go back prior to the new Public Advocate, Mr. Rodriguez, coming aboard in about February of this year. What was the relationship between Rate Counsel's Office, the head of that office and its key membership, and the Public Advocate, as far as communications and participation in reaching positions that the Public Advocate took in matters of this sort? Can you describe that for us?

MR. MAKUL: Sure. When I first was involved with Public Service cases, and other utility cases, Stanley VanNess had a -- I wouldn't call it a frequent communication with us, but we would go down about every three or four months and tell him what was going on. He would offer some suggestions, but basically it was Rate Counsel's game. As time went on, as the people at Rate Counsel stabilized, he got to know us better. While we did, before making any major decisions, always check with him, by and large the office was pretty autonomous.

SENATOR STOCKMAN: And in that office would be, of course, people who were experienced, I gather, in rate cases and presenting rate cases before the BPU, and in dealing with experts, economists, nuclear safety experts, environmental experts, that sort of thing?

MR. MAKUL: Yes.

SENATOR STOCKMAN: Would you have occasion to bring people like that in to do studies and to consult with?

MR. MAKUL: Yes.

SENATOR STOCKMAN: What expertise, what strength of knowledge existed outside of Rate Counsel's Office in the Public Advocate's Department other than in Rate Counsel? Do you understand my question?

MR. MAKUL: On these issues?

SENATOR STOCKMAN: Yes.

MR. MAKUL: Well, on terms of safety issues, issues such as that, Public Interest Advocacy had some level of experience. Bill Potter, our Assistant Commissioner, was with Public Interest Advocacy. He would get involved with rate cases on certain issues, ones involving nuclear fuel disposal, issues often dealing with the by-products and problems that nuclear power caused.

SENATOR STOCKMAN: Incidentally, Mr. Potter was very active in that regard in his earlier stay at the Public Advocate's Office, wasn't he?

MR. MAKUL: Yes, he represented our office at the Nuclear Regulatory Commission on almost all of our representation there.

SENATOR STOCKMAN: And I gather on these matters that the Public Advocate would turn, not only then to Rate Counsel, but possibly to someone like Mr. Potter in the Public Interest aspect of the Public Advocate's Office for help.

MR. MAKUL: On energy issues?

SENATOR STOCKMAN: On energy.

MR. MAKUL: Yes. To cite one example, when the Department of Energy was formed and the Department under statute was charged with developing the first energy master plan, Mr. Potter, myself and Mr. Camacho were the three people in our office who were largely responsible for putting together the Public Advocate's comments on that master plan.

SENATOR STOCKMAN: Can you recall any instances during the time that Mr. VanNess was Public Advocate that any major decisions on issues involving energy or environment, or these rate kinds of cases, were made without some concurrence, some consultation or give-and-take with Rate Counsel's Office and/or perhaps in addition to expertise out of the Public Interest Advocacy Division?

MR. MAKUL: Well, my personal experience -- I wouldn't necessarily be involved in energy areas not involving utilities, but at least involving utilities, I cannot recall that happening.

SENATOR STOCKMAN: All right. Now, I want to ask you a few questions about the events leading up to a memo dated August 9, 1982 -- a memo which apparently you initialed or participated in, as I understand, and we'll get to this -- a memo from Mr. Nardelli, yourself and Mr. Camacho. Are you familiar with that memo?

MR. MAKUL: Very much so.

SENATOR STOCKMAN: And you know that there was some testimony already, both from the Public Advocate and from Mr. Nardelli about that memo?

MR. MAKUL: Yes.

SENATOR STOCKMAN: I want to ask you a few questions about the events leading up to that memo, which, of course, was critical of the proposed Agreement and which urged the Public Advocate not to sign it. Can you briefly describe for us what you understood the position of the Office of the Public Advocate and Rate Counsel's Office, if there was any difference in this regard, was vis-a-vis Hope Creek I in 1982, up to the date of that memo?

MR. MAKUL: Okay. Well, in March and April, by and large it was our Headquarters that was carrying the ball at the Legislature with regard to S-975. To the extent that there was interaction with the Division of Rate Counsel, most of it, my understanding is, was with either Mr. Nardelli or Mr. Camacho, or both. Occasionally I would have passed on to me a request to assist in digging up some particular fact or doing some ancillary function to assist, but by and large I was not involved with that a heck of a lot.

SENATOR STOCKMAN: All right now, Ray, let me ask you this. This is a relatively small office you're in, I gather, is it?

MR. MAKUL: Yes.

SENATOR STOCKMAN: And you are an attorney, these other people are attorneys -- am I fair in assuming that, despite the fact that you may not have been a direct line of responsibility, providing memos, let's say yourself, or testifying, or whatever -- can I assume that there was a give-and-take discussion

from time to time over Hope Creek I and its future in those months of, let's say, February, March and April?

MR. MAKUL: Oh yes.

SENATOR STOCKMAN: All right. From those exchanges, from that give-and-take, if I were to have asked you in March or April of 1982, and, of course, as you know, once in a while I would reach out to call you, or bump into you to talk about energy issues -- and I had asked you, "What is the attitude, what is the posture of the Public Advocate on Hope Creek and where we go with it?", what would you have told me?

MR. MAKUL: To have a review of the need for Hope Creek included as part of S-975.

SENATOR STOCKMAN: All right, what else?

MR. MAKUL: That our position was that the plant was basically going to be an economic disaster for New Jersey ratepayers.

SENATOR STOCKMAN: And that was an opinion that probably was held strongest -- correct me if I am wrong -- by Bill Potter, wasn't it?

MR. MAKUL: I think you better ask him that.

SENATOR STOCKMAN: All right. That may be unfair, and Bill will have a chance to talk to us about that. But, at any rate, your impression was that within the Public Advocate's Office there was a view that Hope Creek I was an economic disaster, and a continuing one, I gather. Correct?

MR. MAKUL: Yes.

SENATOR STOCKMAN: And, as a matter of fact, there were some public utterances that from time to time would appear in the media, sort of confirming that position, weren't there?

MR. MAKUL: Yes.

SENATOR STOCKMAN: Now, what about this suggestion, or at least current argument that has been asserted that somehow the Public Advocate, and in particular Rate Counsel's Office, had really blown its opportunity to challenge the completion of Hope Creek I by some sort of a stipulation in December -- December 12, 1981. Do you have any familiarity with that stipulation or with the facts and circumstances?

MR. MAKUL: I was involved in some parts of the negotiation process of that stipulation. I did attend the hearings for the Board of Public Utilities where that stipulation was submitted, so I have some familiarity with that.

SENATOR STOCKMAN: Would you say that that stipulation, in effect, precluded the Public Advocate from attempting to stop the completion of Hope Creek I before the BPU?

MR. MAKUL: It precluded it for the purpose of that particular docket, but it did not preclude it for all time to come.

SENATOR STOCKMAN: Well, what was that docket? What was the focus of that docket?

MR. MAKUL: I forget what it was specifically titled, but I believe it was something to do with the attractiveness of conversion of nuclear plants to coal. I guess to put things in context, the rate case had just been winding down. Public Service had wanted a substantial rate increase. Much of it was based on the need to raise funds so that they could borrow money and develop funds through internal cash generation for the completion of both units of the Hope Creek Complex. At the same time, this other docket, which I believe was an initiative of the Bryne

Administration to look at the attractiveness of possibly changing these plans -- that was going on as well, and the stipulation was viewed as a -- well, I'm not sure exactly what the role was of the stipulation with these dockets, but at that particular point in time it was my understanding that Public Service started having cold feet on completing Unit II, but they wanted to get out of the unit with a reasonable, to them, amortization package. In other words, normally when a utility abandons a project, the principal amount they have invested in that -- they look at what the after-tax loss will be and then that is passed on to rate-payers as an operating expense over a period of years.

The problem there seemed to be that the company wanted to abandon Unit II, but they wanted to be reasonably assured that they would have a financial package associated with that that they could live with. I guess that docket wound up being the vehicle by which such an abandonment was accomplished.

SENATOR STOCKMAN: Did you view that stipulation in December of 1981 as, in effect, putting the Public Advocate on record as supportive of the completion of Hope Creek I?

MR. MAKUL: Well, there was some language in the stipulation that indicated that if these funds -- the particular schedule by which funds would be recouped, that these funds could be used to help assist the company in its financial burden in completing Unit I. I think the company asked to have, and had language inserted talking about how these funds would assist in the completion of this needed Hope Creek I.

I did not view that as binding our Department to not being able to challenge Hope Creek I at some point in the future.

SENATOR STOCKMAN: And do you feel it is fair to say that Mr. Nardelli who signed it shared your view in that regard, as you have just expressed it?

MR. MAKUL: Well, some of the internal strategy that was involved with that was that Public Service had a \$5.1 billion project to build approximately 2,000 megawatts of capacity. That comes to about \$2,500 per kilowatt of capacity. Now, because Unit I and Unit II were essentially duplicate units, there were a lot of joint engineering expenses, or costs, which were going to be usable for both units. When one unit became cancelled, that meant that the remaining unit -- by one unit I mean when Unit II got cancelled, it meant that the remaining unit, Unit I, had to now bear the entire engineering expense, so that what happened was the capacity that Hope Creek represented went from costing \$2,500 per kilowatt to costing about \$3,500 per kilowatt. Some of the internal strategy that was used -- that we developed, was that, "we'll get Unit II cancelled, and concurrent with that, Unit I is going to go up in cost by 50% and we'll be able to go back in again and make a stronger case that Unit I could be cancelled because it now has -- the cost per kilowatt of capacity has become stratospheric."

SENATOR STOCKMAN: I take it it was, at least internally within Rate Counsel, it was a tactical position to take, as you have just described it?

MR. MAKUL: Yes.

SENATOR STOCKMAN: Was there, incidentally, any discussion with the Public Advocate himself, or anyone else in higher authority, about abandoning objection to Hope Creek I, or agreeing that Hope Creek I should be built? In other words, the other side of the coin, at that time.

MR. MAKUL: I do not recall, I really don't.

SENATOR STOCKMAN: All right. Now, we're back into April and May of 1982 and, as I understand it, your understanding of the Public Advocate's position and Rate Counsel's position as well, was that Hope Creek I was an economic disaster. Was there any dissent on that point within Rate Counsel -- Mr. Camacho, Mr. Nardelli, yourself, Mr. Potter, anyone in the Department -- do you recall arguing that, in fact, the reality was to the contrary?

MR. MAKUL: No.

SENATOR STOCKMAN: What happened -- let's take it by month. Let's take May. Do you have any recollection of any events occurring internally that changed your mind, or to your knowledge, changed the minds of any of the other people at Rate Counsel or in the Public Advocate's Office?

MR. MAKUL: In May, Public Service had, I believe, in a communication to Barbara Curran dealing with these Board regulations and Certificate of Need, come in with a rather blistering response to one of the Public Advocate's letters, and part of their criticism was they took off after our "back of the envelope cost calculation." Since I was the one that came up with the "back of the envelope cost calculation" to begin with, I was asked to critique the critique. I did so; I recall that I was scheduled to go on a professional educational trip out to Iowa which ran from the 19th to the 21st. Just before then, I was asked to complete this response. I did so on the morning that I was supposed to be catching the plane -- a handwritten response. I left it with Mr. Camacho and another attorney in our office, Dianna Johnston.

SENATOR STOCKMAN: What was the date of that?

MR. MAKUL: That would have been about the 18th -- the 17th, right around that range -- May.

SENATOR STOCKMAN: This was a memo by you, replying to the criticism of Public Service?

MR. MAKUL: Right. What happened was they criticized our assumptions on prices of oil, cost of interest, things such as that, and I essentially, not only defended our estimates, but took them to task for, if our numbers are wrong, what happens if you supply what you think are the right numbers -- the end result is almost as bad.

SENATOR STOCKMAN: What was your understanding of the purpose of that memo, how was it going to be used?

MR. MAKUL: It was going to be sent out to the same people who got the Public Service memo to counteract it, or to, you know, defend ourselves from this criticism.

SENATOR STOCKMAN: And again, that memo, and I have a copy of it here, dated May 20, 1982 -- apparently it was addressed to Mr. Potter. Had Mr. Potter actually asked you for that memo?

MR. MAKUL: I don't think he personally asked for it, but I think Mr. Nardelli indicated that he wanted it, and that it was a very high priority thing.

SENATOR STOCKMAN: And that memo was highly critical still of the proposed completion of Hope Creek I, correct?

MR. MAKUL: Yes.

SENATOR STOCKMAN: All right. Now, do you know what happened with regard to that response?

MR. MAKUL: It was never mailed, as far as I know.

SENATOR STOCKMAN: Do you know why?

MR. MAKUL: Well, I asked -- all right, moving on -- when I got back from the trip, I asked Mr. Nardelli if he got a copy of the letter that went out that my memo would be a part of, or be incorporated as a part of, and, throughout the month of June, he indicated that he had not and that he did not know where it stood. Then, in late June, around June 23, on June 23 in fact, I was in Trenton on other business not related to Hope Creek, and there was a meeting of what we call the "Rate Counsel Team Leaders" with Commissioner Rodriguez and Mr. Potter. I think as that was breaking up I asked Mr. Potter about what happened to my memo, and did the letter ever go out. He indicated that it had not, and that the parties who were interested in Hope Creek were at that point starting to explore cost containment or other strategies toward solving the whole Hope Creek problem.

SENATOR STOCKMAN: What was the date of this exchange?

MR. MAKUL: June 23.

SENATOR STOCKMAN: What was your reaction to that comment?

MR. MAKUL: Literally, the comment was -- what I have told you is about all that happened. I was somewhat disappointed because I really thought we were in a good posture to continue fighting the completion of the plant. My assumption was that we would explore it for a while and that no deal would probably be struck, and we would just continue on the old course, continuing to fight the plant.

SENATOR STOCKMAN: Now this was June 23. What happened next, to your knowledge, as far as Hope Creek I?

MR. MAKUL: Well, I went on vacation for a couple of weeks and that would be July, so if something happened then I might not have known about it. The next time I heard anything about Hope Creek was on about August 5. Along with the rest of my mail, I got a copy of a draft stipulation concerning Hope Creek, and Mr. Nardelli was asking for my comments. He did not indicate that there was any particular high priority on it, so I didn't give him a comment immediately, and then by the 8th --

SENATOR STOCKMAN: Let me back up. August 5 is when you saw this draft document?

MR. MAKUL: Yes.

SENATOR STOCKMAN: Tell us about it, and tell us what your reaction to it was at that time. What was it?

MR. MAKUL: I think the August 9 memoranda sums it up. Most of the August 9 memoranda was my work product.

SENATOR STOCKMAN: This draft stipulation that was first presented to you, apparently on August 5, how similar, or how different from the August 10 Agreement was it?

MR. MAKUL: Well, just in terms of verbiage it is shorter, but I think you want more than that. I looked over these over the weekend. The main difference appears to be -- they both have an "Extraordinary Events Clause," but the main difference that I saw was that the August 5 one says nothing with regard to the Public Advocate's position with regard to the need for the plant.

SENATOR STOCKMAN: The August 5 proposal?

MR. MAKUL: Right, the first one, the one that the August 9 memo was in response to. The one that is signed indicates that the Public Advocate agrees not to challenge the need for Hope Creek I before any State or Federal agency which may have jurisdiction. The other change that I saw is that some of the numbers changed very slightly -- I consider them to be slightly. The rate of return incentive that

the plant can be built for less than estimated cost, the triggering mechanism for the company getting a bonus, under the August 5 one was at \$3.5 billion; the one that was actually signed said \$3.55 billion, a difference of \$50 million.

SENATOR STOCKMAN: Not much to worry about, I guess, at this point.

MR. MAKUL: If you think that there is going to be a cost underrun, I guess it is significant, but I don't know whether or not, for example, the first one -- it just says \$3.5.

SENATOR STOCKMAN: I'm trying to add a little levity to this exchange, but I can see we're all too serious here today. What's \$50 million among friends?

MR. MAKUL: Well, I don't know. It was presented as a draft stipulation. It says \$3.5, and I really don't know whether or not when that was put in the draft whether that was really meant as being a finalized figure, or it was just inserted for the purposes of the language.

SENATOR STOCKMAN: Let me ask you this, because this question is something that has come to my attention today that, perhaps, alters my thinking a little bit. I was of the impression that you and Mr. Camacho and Mr. Nardelli, out of concern and unhappiness over this proposed signing, had rushed a memo to the Public Advocate on August 9, knowing that on August 10 the Public Advocate was going to sign this Agreement. I have now gotten some information that suggests that, as a matter of fact, you were not aware of the shortness of time and of the August 10 probable signing date when you took what I think was an extraordinary step -- and I'll get to that in a minute -- of preparing and delivering the August 9 memo. Is that correct?

MR. MAKUL: Well, as of August 5, this just came in in the mail. I'm sure if it was about to be signed, Mr. Nardelli would have brought it down personally or brought it to my attention. I think it was even on the 8th or the 9th that Mr. Nardelli came down and said that this was very urgent.

SENATOR STOCKMAN: Well, that is what I am getting at. This proposal -- would you agree with me -- constituted, if it were implemented and, of course, when you got the document, I understand fully, you had no way of knowing whether this was sort of a, "well, what is your reaction to this," or "this silly little proposal, you might as well at least look it over," or whether it was on the verge of a document. But, when you got it, you had no way of knowing that, is that correct?

MR. MAKUL: That is correct.

SENATOR STOCKMAN: And, it wasn't stamped "Urgent," Mr. Potter didn't personally suggest to you that they were on the verge of some sort of agreement, or Mr. Rodriguez, or anything. So, I gather -- I do not want to put words in your mouth, but to make the record clear, it is my understanding that you had no awareness that within a handful of days that document might be signed by the Public Advocate -- or a document very close to that. Is that a fair statement?

MR. MAKUL: That is correct. I thought --

SENATOR STOCKMAN: And would you agree with me that that document and what it contained and the proposal constituted a major, major shift in position for the Public Advocate?

MR. MAKUL: From the position in April and May?

SENATOR STOCKMAN: From the disaster position.

MR. MAKUL: Yes.

SENATOR STOCKMAN: Would you agree with me that the implications of that document, the financial implications of it, good or bad -- I want to try to stay

away from the merit or non-merit of it, but the financial implications of that document, that proposed Agreement, to the citizens of New Jersey really involved billions of dollars. Is that a fair statement? Bill Potter wants to be on the record as saying, "Of course, it didn't," and I will happily accept --

MR. MAKUL: As soon as you read it, you see the numbers are in the billions.

SENATOR STOCKMAN: Okay.

MR. MAKUL: It says, "3.5 to 3.8."

SENATOR STOCKMAN: What I want to know is, did this multi-billion dollar dramatic change in position of the Public Advocate -- am I to understand from you that this was presented to you as an incidental memo which someone wanted your thoughts on, and which, but for your rushing the memo of August 9, 1982 to the Public Advocate, you would have never gotten on record as to what your position, or your colleagues' position on that document was. Is that a fair statement?

MR. MAKUL: Well, if Mr. Nardelli hadn't come down, you know, on the 8th, or a day or two before it was to be signed, yes, it probably would have sat in the "In" basket for maybe another week or so.

SENATOR STOCKMAN: So that but for Mr. Nardelli and you rushing that August 9 memo, which we will get to, to the Public Advocate, it might well have happened that on August 10 the Public Advocate would have signed this Agreement which constituted a dramatic change in their position and involved billions of dollars. Is that a fair statement?

MR. MAKUL: Well, I don't know exactly how much Mr. Nardelli was aware of with regard to the negotiation. As far as I am concerned, it could have been signed on the 10th without my knowledge that it was going to be signed.

SENATOR STOCKMAN: All right. Now, let's come to your memo. I would like to know how did that memo come about? What were the internal exchanges between Mr. Camacho, yourself and Mr. Nardelli that led into the preparation of that now celebrated August 9 memo?

MR. MAKUL: The draft stipulation I received on August 5 was directed to me and to another attorney in the office whose name is Menasha Tausner, who, in addition to being an attorney, has a Ph.D. in Physics. Initially, Al was soliciting comments from the two of us. Mr. Tausner did prepare a one-page response, I think the next day, the 6th.

SENATOR STOCKMAN: That was a memo prepared in response to the proposed Agreement?

MR. MAKUL: Yes.

SENATOR STOCKMAN: It's a one-page memo?

MR. MAKUL: Yes.

SENATOR STOCKMAN: From Mr. Tausner?

MR. MAKUL: Right.

SENATOR STOCKMAN: All right, I'm sorry. Go ahead.

MR. MAKUL: Basically it was critical of the Agreement. I prepared mine after the weekend, when Mr. Nardelli came down and said it was urgent, that an agreement such as this may be signed very soon and we have to have a memo going down to try to change their minds, if you feel you are against it. In other words, I was not urged to, "Hey, here is this joint Agreement. Come up with a position against it," but, rather it said, "Here is a possible stipulation, let me get your comments on it." I wrote a memo to Al which I actually drafted on the 8th, and it was typed on the morning of the 9th. That memo was by and large incorporated, almost in its entirety, in the August 9 memo.

SENATOR STOCKMAN: What, if any, exchanges did you have with Roger Camacho on this?

MR. MAKUL: I didn't have any.

SENATOR STOCKMAN: What, if any, understanding did you have as to his position on this issue?

MR. MAKUL: I didn't know. I did not know what his position was.

SENATOR STOCKMAN: Did you see the memo itself before it went out -- the memo addressed to the Public Advocate?

MR. MAKUL: No, I didn't. In fact, if you look at the memo, other people have initialed it and mine isn't there. The reason why is that I had a meeting at the Board of Public Utilities on a different matter and I just wasn't physically handy to put my initials on, but the memo incorporates to such a great extent what I wrote, that it is reasonable to assume that I signed it. If I had had a physical opportunity to do so, I would have initialed it.

SENATOR STOCKMAN: Do you have a copy of that memo in front of you?

MR. MAKUL: The August 9 one?

SENATOR STOCKMAN: Yes.

MR. MAKUL: Yes, just a second; let me get it. Okay.

SENATOR STOCKMAN: It's not terribly lengthy, and rather than my quoting from it, I would like you to read it and explain it as you go along with the points that are made in that memo. Can you do that?

MR. MAKUL: Okay. "We do not believe that you should sign any stipulation on Hope Creek I Cost Containment. Your signature will be interpreted as acquiescence in (if not support of) the idea that a review of the need for Hope Creek I is unnecessary if the costs of the plant are contained. Signing this stipulation after our vigorous efforts to have Hope Creek I cancelled and in support of S-975 will reduce our Department's credibility as an agency willing to take on anybody when we are right. The irony is that not only is signing the stipulation wrong, it will also be unpopular, particularly with our Rate Counsel Advisory Committee."

SENATOR STOCKMAN: All right. Do you stand by that opinion to this day?

MR. MAKUL: Yes. Next paragraph?

SENATOR STOCKMAN: Yes.

MR. MAKUL: "The fact is that the proposed stipulation misses the point. The target completion cost (\$3.8 billion) is more than what the plant is worth to consumers. Based on previous rough calculations (which have been confirmed by DOE's similar analysis) and general judgment, we doubt that this plant could pay for itself even if it could be completed for \$3 billion. Why should we agree to a full return on \$3.8 billion?"

SENATOR STOCKMAN: Do you agree with that proposition still?

MR. MAKUL: Yes.

SENATOR STOCKMAN: Go ahead.

MR. MAKUL: "Moreover, there are no controls over what constitutes 'in-service.' Salem I went 'in-service' with a defective turbogenerator, and was put into rate base. The NRC didn't care, as the turbine problem was not a nuclear problem. A few months later PSE&G took the plant out of service for an extended period of time to modify the turbine. PSE&G then capitalized the cost of the modifications and added it to rate base at the next rate case. Under this stipulation, how would such costs be handled?"

SENATOR STOCKMAN: Does this Agreement handle that issue -- that problem?

MR. MAKUL: Well, the August 10 Agreement did not, but subsequently a joint position was negotiated with Public Service which addresses the problem of known defects at the time the unit goes into service.

SENATOR STOCKMAN: I'll get to that supplemental, but the basic Agreement did not deal with that problem, did it?

MR. MAKUL: No.

SENATOR STOCKMAN: All right, go ahead.

MR. MAKUL: "We think that the rate of return incentive, without an opportunity to take into account capitalized costs which may be incurred soon after the plant goes 'in-service' creates a danger of corner cutting. Since the plant will cost at least \$4 billion, it would be 'penny-wise, pound-foolish' to set up a situation where PSE&G would have a strong incentive to build the most bare-bones plant that would comply with NRC regulations."

SENATOR STOCKMAN: Do you still stand by that opinion?

MR. MAKUL: Well, that paragraph really connects the prior paragraph. Yes, based on the August 10, I would.

SENATOR STOCKMAN: All right, go ahead.

MR. MAKUL: "Another objection is that it does not appear to apply to long term capital costs associated with this plant. What happens if after a few years this plant has to undergo a major rebuild due to defects or changing NRC requirements? (For that matter, what happens if before 1986 the NRC changes its requirements, as they continuously do? The next to the last paragraph of the stipulation seems to give PSE&G a full opportunity to add those costs to the \$3.8 billion target, yet PSE&G today says that a major proportion of the cost escalation which has already occurred is due to changing NRC requirements)."

Yes, I would stick with that one too because even under the joint position negotiated, the cutoff period is -- I think ends with the first refueling of the plant.

SENATOR STOCKMAN: All right.

MR. MAKUL: (continuing to quote) "The New Jersey nuclear experience shows that nuclear plant capital additions are exceeding depreciation. If Hope Creek continues this trend, it will be reflected in rate base at over \$3.8 billion even if it can be put in service for \$3.8 billion."

Well, it's true. Virtually all the nuclear plants in New Jersey are now reflected on the books at a higher level of investment than what they originally were when they went into service.

"Finally, we wonder if the whole cost concept of incentive will turn out to be a sham. Undoubtedly PSE&G will argue that such an agreement raises regulatory risk, and therefore drives up the cost of equity. In the end, PSE&G may merely recapture any Hope Creek disallowance with a higher rate of return on other assets."

SENATOR STOCKMAN: Do you still stand by that?

MR. MAKUL: Well, with respect to the August 10 stipulation, yes. Something was negotiated subsequent to that which somewhat addresses that problem.

MR. POTTER: That's not true. That is just not true. Read the August 10 stipulation --

SENATOR STOCKMAN: Excuse me, Bill. Bill, I can understand your anxiousness --

MR. POTTER: Well, --

SENATOR STOCKMAN: Just a moment, just a moment. I'm conducting this hearing, and I think maybe, Bill, if you can't contain yourself at the counsel table, I would suggest that you step back from it. You will have an opportunity to be heard at length on your position on it, and I don't think it is fair or appropriate for you to make that kind of comment to someone who is your employee at this point. I'm sure you are not trying to intimidate him in his testimony, but someone might get that impression. I repeat, Bill, you are going to have all day, if you want it, to testify on your position as to these facts. I ask you to please refrain from those kinds of comments.

MR. POTTER: May I assume that I will be asked the same questions? Will I get a chance to --

SENATOR STOCKMAN: You can volunteer it. Write it down and you can happily -- I'll ask it to you.

I'm sorry, Mr. Makul. Go ahead.

MR. MAKUL: Well, I don't know. I just looked at the August 10 Agreement and if it is in there I can't pick it up.

SENATOR STOCKMAN: Don't worry about it. You're not infallible, and, Mr. Potter, I am sure if you make any mistakes, will be heard from on that regard. Go ahead.

MR. MAKUL: "We think this Department should refuse to sign any cost containment stipulation and reaffirm our support for all of Dalton's S-975. This bill will give us a good shot (before an agency other than the BPU) to get rid of Hope Creek I once and for all. The only stipulation we should be interested in is one where in return for the abandonment of Hope Creek I, the Public Advocate agreed to an amortization package favorable to PSE&G."

SENATOR STOCKMAN: You sent a copy of that to Mr. Potter, didn't you?

MR. MAKUL: Well, yes, he got a carbon copy.

SENATOR STOCKMAN: Incidentally, what would your comment in that memo have been had the proposed Agreement that was sent to you August 5 contained a waiver of the Public Advocate's right to challenge the completion of Hope Creek I? It is my understanding that that wasn't in the proposed document you were asked to comment on, was it?

MR. MAKUL: Well, I'm sure a comment would have been made on that as well.

SENATOR STOCKMAN: What do you think the comment would have been?

MR. MAKUL: That, notwithstanding the Cost Containment Agreement, at some point the unit may just become so expensive that we should be able to preserve some rights to challenge the plant.

SENATOR STOCKMAN: As I understand it, you rushed getting that document, but you were not aware of the impending Agreement that was signed the next day, August 10, by the Public Advocate. Is that correct?

MR. MAKUL: That is correct.

SENATOR STOCKMAN: When and how did you become aware that the Public Advocate signed an Agreement which gave up any right to challenge the completion of Hope Creek I?

MR. MAKUL: Well, the first time I heard it was going to happen was when a reporter called me up and indicated that one was going to be signed.

SENATOR STOCKMAN: When was that, the 9th or 10th?

MR. MAKUL: On the morning of the 10th.

SENATOR STOCKMAN: All right. What was your reaction in response?

MR. MAKUL: I was surprised, but given that Mr. Nardelli had told me a couple of days before that the signing, if it was to occur, would be imminent, you know, it didn't knock me off my feet. Then I had to go -- then on the 10th -- it was actually signed on the afternoon of the 10th, and I was at a meeting at the Board of Public Utilities on another matter. That concluded about 6:00 p.m. and, on my way back to the office, I stuck my head in at the local watering hole and there was Commissioner Rodriguez, Mr. Potter, and several members of the Rate Counsel staff. I learned there that the Agreement had been signed.

SENATOR STOCKMAN: What events occurred after that, as far as any effort by you, or request of you, to have input into the implementation of the Agreement and/or its modification or supplementation? Let me back up, because I think we should get this clear. I think you have largely commented on it, but you have had a chance to look at the Agreement. You have been testifying from a memo you prepared in advance of it. What was your reaction to the content of this Agreement after you knew it was an accomplished fact? And, again, I know this is a sensitive issue because it has been signed.

MR. MAKUL: Well, I was personally disappointed, but I felt I had done everything that was asked of me and at that point there was really -- at least with respect to the signing of the Agreement -- there was nothing more that I could do.

SENATOR STOCKMAN: What would you describe as the most disappointing aspect of this Agreement, from your point of view, in terms of the ratepayers of the State of New Jersey?

MR. MAKUL: From the view of the ratepayers?

SENATOR STOCKMAN: Yes -- well, I guess the completion of Hope Creek I itself, but after that --

MR. MAKUL: I think that there was -- my disappointment, I think, was that there was no last opportunity to reinspect the economics of the plant, in light of all the latest up-to-date facts, with respect to whether or not the plant was needed and could economically pay for itself.

SENATOR STOCKMAN: Is it accurate to say that, contrary to phrases like, "no choice but to subject this project to the most intensive and searching inquiry possible," and phrases like, "the hardest possible scrutiny of this project," -- is it fair to say that, to this day, there has not been, by any objective forum, independent forum, judicial forum, quasi-judicial forum, any vigorous, adversarial presentation of the merits and lack of merits of the completion of this \$3.6 or \$3.8 billion nuclear plant?

MR. MAKUL: I don't know of any formal presentation or investigation at the \$3.55 billion cost estimate level. In other words, the economics of Public Service's and all the other utilities' construction projects were investigated in the late 1970's as part of a generic docket at the Board of Public Utilities looking at the construction practices of the New Jersey public utilities -- electric utilities. But, at that point in time, the cost estimate was significantly lower. People had less of an idea as to where the cost of alternate fuels were going because we weren't yet at the point where the Arabs were charging all that the market could bear. So, I think, at least in terms of the economics as we now know them, I know of no forum where that has been explored -- the economics of the plant.

SENATOR STOCKMAN: Incidentally, in an earlier memo, Mr. Potter was somewhat critical of Rate Counsel and made some suggestions and, perhaps, his criticism was well taken. In that memo he alludes to several studies of the Public Advocate which seem to auger against the completion of Hope Creek I, which I do not believe were put into evidence at any time, to my knowledge, although I may be confused on this. He refers to -- I'm having a hard time finding it for a moment. Are you familiar with the studies that I am trying to come to grips with?

MR. MAKUL: No, I am not. I don't even know what memo you are looking at, or even if I ever got a copy of it.

SENATOR STOCKMAN: All right. "...It is, therefore, pertinent to ask how, in light of such Advocate-sponsored testimony as Dubin-Bloome's alternative load forecast which said no more power plants of any kind were needed until at least 1990." Are you familiar with that report?

MR. MAKUL: The Dubin-Bloome was submitted in a Public Service case that was being litigated in 1976. That case had just wrapped up just prior to my coming on board with the Advocate's Office.

SENATOR STOCKMAN: So, that was placed into a record, although not any record specifically dealing with the question of completion of Hope Creek I?

MR. MAKUL: Well, it was a rate case, and a part of it that was at issue there was the company's construction program, but it was some five or six years prior to today's discussion.

SENATOR STOCKMAN: How about Komonoff's study, which showed that nuclear had no cost advantages over coal?

MR. MAKUL: I am familiar with those studies.

SENATOR STOCKMAN: Was that put in in opposition to the completion of Hope Creek I ever by the Public Advocate?

MR. MAKUL: Well, as part of an overall presentation, in terms of former rate cases, the generic construction docket, yes. Mr. Komonoff has been a witness for our office and testified on that subject several times.

SENATOR STOCKMAN: And Kahn's report, which showed that the 20% reserve margin was artificial -- was that ever put in?

MR. MAKUL: Yes -- also a few years ago.

SENATOR STOCKMAN: So those were in, but they were in other proceedings?

MR. MAKUL: That's right.

SENATOR STOCKMAN: All right. Now, coming back to the events subsequent to the signing of this August 10 memo, did you have any conversations with Mr. Potter about it, after its signing on August 10?

MR. MAKUL: No.

SENATOR STOCKMAN: Did you have any conversations with Mr. Rodriguez about it after its signing?

MR. MAKUL: Well, just, I think, on September 13, if you want to call these conversations. They were just very brief exchanges that, you know, we did the best we felt we could do, we didn't think we would be able to get this plant cancelled before the Board of Public Utilities -- I did not pursue it.

SENATOR STOCKMAN: This is Rodriguez speaking?

MR. MAKUL: Yes.

SENATOR STOCKMAN: Incidentally, the Governor put out a press release and it was the subject of some conversation, and testimony actually, by Mr.

Rodriguez in a statement he made to us. He indicated, I believe, that he held that press release up -- it was a Governor's press release that I think was scheduled to go out on the 10th. I may stand corrected, but I think I'm right on the date of that. The press release actually went out August 11, and it said, "This Agreement represents a major breakthrough in efforts to bring utility costs under control." Do you view, even now, that this Agreement as it was signed is a major breakthrough in bringing utility costs under control?

MR. MAKUL: As opposed to the plant being constructed and all of the costs automatically being included in rate base and passed on to ratepayers, it is better than that -- yes.

SENATOR STOCKMAN: Well, Mr. Makul, would that have ever happened? I mean, that is, you are not suggesting that if this Agreement hadn't been signed, there would be no opportunity or no forum in which the Public Advocate could challenge that question, are you?

MR. MAKUL: We would still be able to challenge the need at various points. We would still be able to make arguments as to appropriate rate making. We would still be able to make arguments with respect to disallowance of imprudent expenditures. But, there would be no actual cost formula set up. I don't know if we would be able to get that through on a fully-litigated basis where the utility was not agreeing to it.

SENATOR STOCKMAN: The release also said that, "This Agreement assures the utility's customers that they will not be required to shoulder all, or any, (and I am emphasizing "or any") financial burden due to construction cost overruns." Is that an accurate statement?

MR. MAKUL: No.

SENATOR STOCKMAN: As a matter of fact, there is a clause in this Agreement, this Extraordinary Events Clause, which is not defined, isn't there?

MR. MAKUL: That's right.

SENATOR STOCKMAN: What is your -- as Rate Counsel, as an experienced litigator in this area, as an attorney -- what is your reaction as to the meaning and the wisdom of including such a clause in this Agreement, this Extraordinary Events, or Circumstances Clause, without definition?

MR. MAKUL: Well, by not tying down what is or is not an Extraordinary Event, you have left to people in the future the task of ascertaining what is or is not an Extraordinary Event.

SENATOR STOCKMAN: It is a rather dangerous approach to contract law.

MR. MAKUL: It could be dangerous for the utility as well. If you had an ultra pro-consumer Board of Public Utilities, they might decide that nothing --

SENATOR STOCKMAN: That's a good question; I'm glad you brought that up. Can you repeat that for me?

MR. MAKUL: I said, if you had an ultra pro-consumer Board of Public Utilities, you know, a radically pro-consumer Board of Public Utilities, they might decide that nothing is an Extraordinary Event, and it might be the utility will be running risks of that occurring. By the time the plant is completed, even if it is completed by 1987, we may see a complete change of members.

SENATOR STOCKMAN: Let's deal in reality, Mr. Makul. Let's deal in reality, and let me ask you first your impression, your experience with regard to the Board of Public Utilities. We're here to shed light. To the extent that it may

be a little unfavorable light on the Board of Public Utilities, so be it. But, I say this; I want to explore, with Mr. Potter, some specific comments in memos about the attitude of the Public Advocate toward the Board of Public Utilities. However, taking your personal experience, repeatedly appearing before that Board up through about this time, would you describe that Board as ultra pro-consumer oriented?

MR. MAKUL: I would describe the Board as viewing themselves -- or, in my opinion, they are --

SENATOR STOCKMAN: That is an unfair question; don't answer it.

MR. MAKUL: Yes, because I have to continue practicing before them, you know.

SENATOR STOCKMAN: I just realized; don't answer that question. I apologize for asking it. In my zeal to get at the truth, I overlooked the very real fact that you have to represent --

MR. MAKUL: Maybe I would rephrase the answer. I view them as fair.

SENATOR STOCKMAN: All right. Let me ask you this. Would you say that there is nothing in your experience with the Board that would suggest that the Public Advocate should enter into an Extraordinary Events Clause undefined, out of a sense of feeling that this Board clearly has shown its hand to be of the sort that is going to interpret that clause clearly in its, the public's, favor? That's a fair statement without getting into too much hot water, isn't it?

MR. MAKUL: I think the Extraordinary Events Clause creates an element of uncertainty that I would be uncomfortable with.

SENATOR STOCKMAN: And, incidentally, there are other instances where, in agreements of this general sort, there has been a honing in on, and an effort at interpreting and delimiting a clause of that sort, aren't there? I mean, you could do that, couldn't you?

MR. MAKUL: Well, you could provide some definitions as to what kinds of things might or might not constitute extraordinary events.

SENATOR STOCKMAN: All right, I won't bore you now. We have some documentation of at least one other agreement, I think, that got into that question, but I don't think it is too important here at this time.

After August 10, what, if any -- you told me you had no exchanges other than a rather superficial one with the Public Advocate, or with Mr. Potter. What involvements did you have in terms of trying to further shape, or protect the public interest with regard to costs on Hope Creek I? Any?

MR. MAKUL: After the Agreement was signed and we got a copy of the signed Agreement and saw what it actually said, I'm not sure who initiated it, whether it was myself or Mr. Nardelli, but we had a discussion with regard to extraordinary events and what does or does not constitute an extraordinary event. Mr. Nardelli asked me to draft some -- he said we were going to be getting a witness for the hearing where the stipulation would be presented to the Board of Public Utilities, and that I should get the process started. One of the things that would probably be addressed, in one way, shape or form, or might be addressed, would be what constitutes an extraordinary event. He said that I should draft some information requests to get the ball rolling in terms of extraordinary events. I did so.

SENATOR STOCKMAN: To you, did that make good sense, to try to tighten up, to try to put in evidence at the very hearing at which this document was to be submitted, on the question of extraordinary events?

MR. MAKUL: Well, it would tighten up the Agreement. I indicated that I was personally uncomfortable with an open-ended Extraordinary Events Clause, so yes, it did make sense.

SENATOR STOCKMAN: Were you able to do that?

MR. MAKUL: I came up with a series of questions which Mr. Nardelli signed and sent out to Public Service. I believe that is an attachment to Mr. Nardelli's testimony dated August 30.

SENATOR STOCKMAN: Do you know whether they responded to that request?

MR. MAKUL: They did not respond.

SENATOR STOCKMAN: Do you know why?

MR. MAKUL: They didn't want to. They felt it was not in the spirit of the stipulation.

SENATOR STOCKMAN: Do you know specifically why they did not feel compelled to respond to a request of the Office of the Public Advocate?

MR. MAKUL: All I know is that they did not respond. Mr. Nardelli told me that they did not feel it was in the spirit of the stipulation, that they would respond to these questions, but after the stipulation had been accepted by the Board of Public Utilities.

Mr. Nardelli presented that problem to Mr. Potter, and I think Mr. Rodriguez, and I think a decision was made not to press it.

SENATOR STOCKMAN: Mr. Nardelli testified, I believe, that it was Mr. Potter or Mr. Rodriguez who overruled him, in effect, and directed that that information not be supplied. But, we'll hear from Mr. Potter on that I am sure.

Did you have any further involvement with this Agreement thereafter?

MR. MAKUL: Well, a joint agreement which would further clarify this stipulation was being negotiated at that point in time, but I was not a part of those negotiations. I believe Mr. Camacho was, from our office -- in fact, I know he was. About September 23 or 24, I saw a draft of the joint position paper, and I prepared, very hastily, a couple of memos indicating my views to Commissioner Rodriguez. This was done very late in the day on Friday, and there was really no opportunity to get it in the mail. I gave those memos, or copies of them, to the Commissioner's aide on the following Monday, which was the 27th, and my understanding is that he got them to the Commissioner either very late that day or the following morning, the 28th.

SENATOR STOCKMAN: Other than that, did you have any further involvement in this Hope Creek venture?

MR. MAKUL: No.

SENATOR STOCKMAN: From your experience as a member of the staff of the Public Advocate's Office for a number of years, was there anything unusual or out of the ordinary in the matter in which this Agreement was consummated? Was it done in a routine and in the ordinary course of events of relationships internally in the Office of the Public Advocate?

MR. MAKUL: Well, I guess, you know, we have a different Public Advocate now than we used to have. He has only been there for six or seven months -- or eight months. He may do things differently than what Stanley VanNess did, but under the VanNess regime, for example, I cannot recall something of this nature being carried by our Trenton Office. Usually, responsibility for negotiating a stipulation would be in the Rate Counsel Office.

SENATOR STOCKMAN: Or at least jointly.

MR. MAKUL: Well, no, usually -- of course, we never had anything quite as big as this to negotiate. Generally, the Rate Counsel's Office would take care of negotiations. It might report to Commissioner VanNess as things were going along.

SENATOR STOCKMAN: Incidentally, did the Trenton Office, so to speak, to your knowledge, retain any experts in the course of these weeks or months, or days, leading to this Agreement -- any economists, any nuclear experts, any environmental experts, you know, people of that sort, to either strengthen or weaken their conclusion that this Agreement should be signed?

MR. MAKUL: The August 10 Agreement?

SENATOR STOCKMAN: Yes.

MR. MAKUL: I don't know of any.

SENATOR STOCKMAN: What, Mr. Makul, if any, impact has this series of events, this sequence of events that we have been talking about, had on the morale within Rate Counsel's Office?

MR. MAKUL: Morale is fairly low. Some of the concern is that something which our office has a fair amount of expertise in, utility economics, was negotiated by Trenton with some input by our office, but by and large -- and I don't know whether this is a problem with the leadership in our office or Trenton, or even if it should be considered to be a problem, but a lot of the troops, so to speak, didn't know what was going on.

SENATOR STOCKMAN: Why do you think that was so? Why do you think there was this secrecy surrounding what happened on August 10, 1982?

MR. MAKUL: Well, I don't know if it was intentional secrecy. It may have just been that for one reason or another there was a lack of communication. I don't see any evil intent, or even intent of any kind. It's just that they were negotiating the Agreement --

SENATOR STOCKMAN: Incidentally, were you aware of what the position of the Governor's Office was around that time with regard to Hope Creek I?

MR. MAKUL: No.

SENATOR STOCKMAN: Personally, I have no further questions. Senator Connors?

SENATOR CONNORS: I have, not really questions, but some things I would like to say, Mr. Chairman. First of all, I would like to apologize for being absent from the first hearing, and I find myself caught short here today on some of this testimony and trying to play catch-up ball. It really was rather short notice that I received. I appreciate the fact that you gave me a telephone call, or your office gave me a telephone call, about this hearing because this memorandum I received yesterday when I returned from the Senate session, for today's, but I did receive your telephone call several days ago. I will be here tomorrow, and for as long as it takes. I cancelled my calendar for today and tomorrow.

The questions I have, not necessarily of the witness at this moment, but of the Committee -- we seem to be a little shorthanded today, as was apparent at our first hearing. What I would like to know, Mr. Chairman, -- a question of you, is what actions, if any, are available to this Committee as a result of this hearing?

SENATOR STOCKMAN: That is a good question. That has been asked of me, and I think it is a fair one, Senator, and I would be happy to suggest to you that I see a number of things out of this Committee. First of all, I see out of this Committee hearing a renewed interest in the circumstances surrounding Hope Creek I, which I think has only got to be to the good. I think that more people are becoming

aware of the magnitude of Hope Creek I, where it is, what it is about, and what impact it may have on the citizens of the State of New Jersey in time. I think that is healthy, if we do nothing more or less, if we recess this hearing today at this moment, I personally happen to think that we have served a good public purpose. But beyond that, I see, based on further questioning of witnesses because we are far from complete in that, some possibility of reaching conclusions, such as that perhaps in this particular circumstance the Governor's Office may have had some involvement, and that certainly isn't clear at this point, and it may not be clear, and it may not be fact. But, if that were so, it would raise questions as to whether or not the Public Advocate's Office needs redesigning or strengthening. I can tell you that, as a result of this hearing, I personally am more inclined than ever to think that perhaps the Office of the Public Advocate ought to be an office that is held for a fixed term.

Beyond that, and perhaps most troublesome and a real possibility to me, is that if we are convinced, or if I am convinced and can't get my colleagues on this Committee to support this conclusion -- but if I were convinced that because of the peculiar circumstances surrounding events until now and the posture that the Public Advocate finds himself in as a result of this Agreement of August 10, 1982, that he, in fact, is unable to protect and pursue a very real public interest to keep the costs of this multi-billion dollar project under control -- and I will get into some questions, as a matter of fact, with the next witness, Mr. Camacho, on that question, I am prepared to introduce legislation to attempt to direct the Public Advocate, pursuant to powers that he has by statute, to appoint independent outside counsel to pursue the question of whether Hope Creek I should be built and, if indeed it should be built, nevertheless, to pursue an aggressive effort at seeing that the Agreement of August 10, 1982 becomes almost unrecognizable in the direction of a much tougher, stronger, and more protective Agreement in the public interest.

Those are possibilities that I see coming out of these hearings, even now before we are finished them; however, I hasten to add that they are not finished and that obviously those possibilities, along with others, may in fact develop in the course of today and tomorrow.

SENATOR CONNORS: Thank you. The next question that I would have, again along the same line -- just for the benefit of the people who are here today, I am a freshman Senator. This is the third hearing I have had on this Committee. The first hearing was Senator Stockman and myself, and nobody else.

SENATOR STOCKMAN: We're getting to be voices crying in the wilderness.

SENATOR CONNORS: The second meeting, or hearing, I use the term very loosely, had to do with the Lottery Director with regard to slot machine lottery tickets. There were some questions that cropped up at that time, and I figured I would just keep my mouth shut and listen for a little while. But, the question again crops up, and I am going to ask it today. Why are the people here today that are giving testimony not sworn to tell the truth, as would be done at any public hearing?

SENATOR STOCKMAN: That is a good question, Senator, and I debated that. You know as well as I, that I am not experienced at these public hearings. This is only the second, I guess, that I have directly controlled. I felt that the people we are dealing with are people whose integrity and loyalty and honesty I have no question about. As a matter of fact, I repeat that I consider Joe Rodriguez

a personal friend. I know Ray Makul; I've had dealings with him off and on over the years. I consider him, probably, one of the finest public servants in the State of New Jersey. I don't know Mr. Potter as well, but my understanding, and my limited experience with him is such that I have no question about his integrity and his honesty, and so for the other witnesses. They are attorneys. I am hesitant to make that observation because, frankly, that often breeds, it seems to me, suspicion in these buildings and, as one of them, I say that sort of affectionately. But, I just don't see in this particular setting the need for that kind of added safeguard. However, I must say, Senator Connors, that if you would be more comfortable and feel that it would be appropriate, I would have no objection to swearing the witnesses in, unless one or more of them balked at such a proposal. Would you prefer that they be sworn?

SENATOR CONNORS: Well, I think that if the purpose of the hearing is to get to the bottom of this affair, then I would like to see that all of the witnesses are sworn in and I would respectfully request that a continuation of this hearing in the future -- for future dates -- to bring the witnesses back that were testifying before, and I urge you, Mr. Chairman, to have the full complement of Senators on this Committee.

SENATOR STOCKMAN: Well, let me be frank about the full complement of Senators. Each Senator has to speak for himself. You commented, and I apologize for the fact that there was a little shortness in terms of this hearing. My recollection is that we set this hearing date even as we adjourned the last hearing. My recollection is, also, that I asked staff to send you a notice of the hearing long ago, and I don't want to put anybody on the spot. I believe the media has been aware of this hearing. As a matter of fact, it has been commented upon in the New York Times, the Star Ledger, and other papers. So, I apologize to you if you were caught short on this hearing.

I cannot speak for the rest of my colleagues. They may feel that the issues we are debating and discussing here today are not of very great importance to the citizens of New Jersey. I happen to think that they are of extreme importance, and I have no quarrel with the Public Advocate's observation that probably the issues we are talking about are among, or one of the most dramatic and important economic issues facing the State of New Jersey. When you begin to consider what is at stake here, and the long-term impact what we are dealing with has, one could argue that the room ought to be more crowded, not only with Senators, but with other people. I certainly don't complain about the people who are here, because as I look out I am impressed with the people who are here, where people have shown a lot of interest in this area.

All I can say to you is that those Senators were invited. Whether it was supreme confidence in my ability to handle the hearing without them, whether it was a total lack of interest in the subject, or anything in between, I think you ought to pursue that with your colleagues, Senators Laskin, Lipman and Zane.

As far as swearing, I must say I am a little -- I will take it under advisement. I think maybe what we will have to do is try to gather the Committee on this question of whether we should recall any witnesses to put their testimony under oath. It is an interesting request. I will ask the witnesses hereafter if they have any objection to being sworn and, if they do not, I will try to make arrangements to have them sworn in order that you may feel more firmly that we are getting at the bottom of this. I think we could get to the bottom of it without that procedure, but I have no quarrel or objection with that procedure.

SENATOR CONNORS: I will defer to your judgment, Mr. Chairman, at this particular point in time. The testimony I received today, and that is not by way of complaint, but it is hard for me, and perhaps I am making excuses for myself -- it's hard for me to play catch-up ball because this was handed over to me about an hour ago, and here I am faced with a situation where Rate Counsel here is talking about some things that I am totally unaware of. I haven't seen any of the evidence that has been put forth, but I will try my best. I don't want to belabor the point, but I thought that it was a little unusual from the standpoint that this is, as I said, my second time really when we have had a hearing. With the Lottery thing, it was just left up in the air and everybody walked away. There were no decisions, or --

SENATOR STOCKMAN: Let me comment on that too; I think it is a good point. But, first, on this question of the speed with which we are functioning, I made that clear at the last hearing. I will say, frankly, that there was some real distress by some people involved in this matter -- real distress that the matter was not concluded a week ago -- two weeks ago. I can understand why perhaps some people would have preferred that this matter be ended quickly then. But, I also said that I recognize the sensitivity of the issues and the ongoing dilemma caused by continued construction work on Hope Creek I and, therefore, I scheduled this hearing rather quickly because, again, I felt in the public interest to put this issue off for months could defeat the very purpose of it. So, I apologize if that has put an added strain on your ability to keep up with these proceedings.

On the Lottery Commission hearing, and I am happy you brought that up, I have a session scheduled with Hazel Gluck of the Lottery Commission, to explore with her just what, if any, change in plans they have with regard to those lottery games, and also to explore with her just what action the Lottery Commission is going to take with regard to limiting its venture into the area of providing the revenue necessary for the State of New Jersey to function as a government, and what parameters they intend to put on it. I had a discussion with the Treasurer over this subject, and he indicated a probable indication that there would be a commission of some sort created to look into this and that I would be welcome, and perhaps other members of the Committee if they are interested, to join in that. I do not view that hearing of the Lottery Commission, again, to be at all over. I, again, would suggest to you that the publicity and the airing of what was involved in that was a healthy thing. As a matter of fact, Mrs. Gluck complimented me that it gave the Lottery Commission an opportunity to try to dispel some of the misunderstanding about that venture. I do not want to belabor the point, but I think the hearings you refer to, including this one, do have a purpose, at least I like to think so. I guess history will ultimately, again, judge whether that is so.

I gather then that you are satisfied that we do not swear in witnesses today?

SENATOR CONNORS: I said I would defer to your judgment since you have the senior position. Now I do have some questions for Mr. Makul.

Are you the Rate Counsel?

MR. MAKUL: I am a Deputy Public Advocate within the Division of Rate Counsel. We are organized into sort of an ad hoc organization. We have organized into Section Leaders, and I am the Leader of the Electric Section.

SENATOR CONNORS: How much money has been spent on this plant to date?

MR. MAKUL: I don't know for sure.

SENATOR CONNORS: Pardon?

MR. MAKUL: I don't know for sure. It is in excess of a billion -- I've heard figures of around \$1.6 billion, \$1.7 billion -- in that range.

SENATOR CONNORS: Well, I have not taken a position on this, I want you to know. What I am saying is, if you don't know for sure, then could it be \$2 billion?

MR. MAKUL: We never hired anyone to find out, as far as I know. I wasn't running this.

SENATOR CONNORS: Who was?

MR. MAKUL: It was my understanding that it was our Trenton Office, Mr. Potter --

SENATOR CONNORS: Is there anyone who does know?

MR. MAKUL: Well, given that I wasn't involved in the negotiation directly, it wouldn't be me. The people who were involved in the negotiation were Mr. Rodriguez and Mr. Potter.

SENATOR CONNORS: It might be Mr. Rodriguez or Mr. Potter?

MR. MAKUL: Yes.

SENATOR CONNORS: What is the total cost of this plant, estimated?

MR. MAKUL: The present estimate is between \$3.55 billion and \$3.79 billion.

SENATOR CONNORS: Was that the original estimate when they first started?

MR. MAKUL: The original estimate was \$499 million for two plants; this is \$3.55 billion to \$3.79 billion for one plant. That estimate is, I think, a year and a half old. It is being revised right now.

SENATOR CONNORS: So it has increased dramatically. What was the first figure?

MR. MAKUL: Four-hundred and ninety-nine million, or in other words, a half a billion for two plants.

SENATOR CONNORS: For the two?

MR. MAKUL: Right.

SENATOR CONNORS: What was it for the one?

MR. MAKUL: Well, it was conceived as a project to build two plants, so there was no itemization done for one plant. It was two plants for half a billion dollars.

SENATOR CONNORS: And you're estimating, just guesstimating now, that it is in excess of a billion and a half?

MR. MAKUL: Money already into the project?

SENATOR CONNORS: Yes.

MR. MAKUL: Yes.

SENATOR CONNORS: But you don't know?

MR. MAKUL: No.

SENATOR CONNORS: And only Mr. Rodriguez and Mr. Potter would know that?

MR. MAKUL: Well, if anyone in our Department -- they were the closest to the negotiation and they would be in the best position to know.

SENATOR CONNORS: Well, it seems to me and, again, this is cold turkey for me other than what I have read in the newspaper -- it would seem to me that what this argument is all about is whether we should permit Public Service to continue on with its Hope Creek I and abandon Hope Creek II -- Hope Creek I against Hope Creek II, and if they have reached the point of no return on this, wouldn't the dollar figures then have some bearing on whether or not to continue or not to continue?

MR. MAKUL: I don't think there is such a thing as a point of no return on a construction project such as this. When I worked for Exxon, projects were abandoned

at times when the economics had changed where the project had been 70% and 80% complete, if it didn't make sense to continue constructing. So, I don't think that the fact that \$1.6 billion or \$1.7 billion, or even \$2 billion may have been committed irrevocably affects whether or not the decision should be made to go on or not go on. The real question is, what will the cost to customers be of going on vs. what will the cost to customers be of not going on.

SENATOR CONNORS: When you worked for Exxon, was there any such affair such as this, with government intervening from the standpoint that they were urging to stop or to go ahead?

MR. MAKUL: We had a deal with a corporate headquarters which I think was just as demanding as government.

SENATOR CONNORS: But that wasn't government?

MR. MAKUL: No.

SENATOR CONNORS: In other words, the point that I am getting to, is that Exxon made this decision fully and freely --

MR. MAKUL: Sure.

SENATOR CONNORS: -- without any outside help from government?

MR. MAKUL: Based on the economics as they best perceived them.

SENATOR CONNORS: How much would a new oil plant cost, or a new coal plant cost?

MR. MAKUL: Comparable size?

SENATOR CONNORS: Yes.

MR. MAKUL: You are probably talking about a coal plant meeting the current omission standards -- \$1.5 billion to \$1.7 billion -- about as many dollars as have already been invested in Hope Creek I.

SENATOR CONNORS: And if we were to abandon Hope Creek I, and mind you this is just for the record, I have made no decision on this. But, if we were to abandon Hope Creek I, would Public Service be able to use any portion of those plants that were there to convert them to coal or to oil?

MR. MAKUL: You might be able to use the real estate, but in terms of improvements --

SENATOR CONNORS: Well, the land I imagine would always have some value.

MR. MAKUL: -- in terms of the improvements, most likely not.

SENATOR CONNORS: So, it would be a complete scrapping then of what is there in Hope Creek I and Hope Creek II?

MR. MAKUL: Yes, but the scrapping wouldn't be the full \$1.7 billion -- let's assume it is \$1.7 billion. There would be a tax write-off, and the remaining amount that would actually be written off and absorbed, or shared by ratepayers in the company, would be 54% of that.

SENATOR CONNORS: Why?

MR. MAKUL: Because, under normal regulatory practice involving abandonments, where you have an abandonment of a construction project, that is considered to be a tax write-off or a tax loss. The present corporate tax rate is 46%, which means that whatever has been invested, the company will get a tax deduction for 46% of that amount. So, that is taken into account in terms of making an economic decision to abandon, so that the actual cost of abandonment at a, say a \$1.7 billion level, would probably be around \$900 million. Of course, Uncle Sam would be picking up some of the --

SENATOR CONNORS: Isn't there a loser in this?

MR. MAKUL: Is there a loser?

SENATOR CONNORS: Yes, as a tax write-off, wouldn't there be a loser in that? Wouldn't the government then be losing money, Uncle Sam -- it's all public money?

MR. MAKUL: I guess any time you avoid taxes, someone doesn't collect them.

SENATOR CONNORS: You have used the term "Rate Counsel's game." Had you ever suggested to Mr. VanNess that Hope Creek I be abandoned?

MR. MAKUL: Hope Creek I, no. At the time we were dealing with Commissioner VanNess, just before he left, we had two nuclear units, Hope Creek I and Hope Creek II. Hope Creek II was being abandoned. Generally, what has happened is, a company such as Public Service, until Hope Creek II was abandoned they had several nuclear plants under construction. At one time they had as many as six. The usual approach was to abandon -- if any were to be abandoned, the ones that were farthest from completion. In other words, the ones that had the smallest amount of investment associated with them. So, you might say that Hope Creek I's turn had not come up yet.

SENATOR CONNORS: What did you mean by the "Rate Counsel's game?"

MR. MAKUL: I am not sure what context I meant that in, but essentially to the extent that the Department has a position, or is prosecuting a position on a particular issue where they involve public utilities, the primary responsibility for doing it was within the Division of Rate Counsel.

SENATOR CONNORS: Had you ever objected to Mr. VanNess because of environmental reasons or environmental concerns -- Hope Creek I or Hope Creek II?

MR. MAKUL: I had not.

SENATOR CONNORS: Had anyone? I mean within the governmental structure.

MR. MAKUL: I think, perhaps possibly, within the Division of Public Interest Advocacy, yes. Generally, in terms of the division of responsibilities in the Department, the Division of Public Interest Advocacy is the Division that deals primarily with environmental matters. The Division of Rate Counsel deals with economic matters involving ratepayers and utilities. For a period of time, we had set up an organization called the Energy and Environment Committee, which included both members of Public Interest Advocacy and the Division of Rate Counsel. I don't think there has been a meeting of that group in a year. At that point we would try to understand what each other was doing and try to come up with unified positions.

We did get involved with other environmental issues that involved economic impacts, but I cannot recall any involving Hope Creek.

SENATOR CONNORS: So, to your knowledge, in over a year, or for a year, there has been no meeting of this inmate advocacy to --

MR. MAKUL: On the environmental issues?

SENATOR CONNORS: On the environment.

MR. MAKUL: Not on the environmental issues, no.

SENATOR CONNORS: This is of deep concern to me only because of the nuclear plant, and when I say only, because as a Freeholder in Ocean County and as a Freeholder Director, we had the first plant in the United States, through intervention of the Freeholder Board through the Congressman, to have President Carter declare that the NRC would put a full-time inspector at the site. We fought very hard for that, and the fact of the matter is, we spent considerable money, from the standpoint

that we felt it was unsafe, the refueling process, the ten-year cycle, and it was much more than that. The fact of the matter is that we were going to fly testimony in from Dale Bridenbaugh, I believe it was, from California, who had worked on the design of that plant. I was wondering if there was anything that the governmental agency here at the State level had done along those lines to say go or stop, under Mr. VanNess?

MR. MAKUL: With respect to Hope Creek I, I do recall that one of the general issues that was involved in the consideration of that plant which was being looked at by the Division of Public Interest Advocacy, was the issue of a cooling tower and whether or not the vapor that comes out of that cooling tower would be putting salt into the environment, and problems of that sort.

With respect to the waste disposal problem, refueling problems, those kinds of problems, I'm not saying that the Public Advocate looked the other way, but rather the problems that Hope Creek presented were inherent problems of nuclear technology, so there were no specific problems of Hope Creek that the Division of Rate Counsel was bringing to the Commissioner's attention -- no.

SENATOR CONNORS: In another area, would abandonment of the plant now, Hope Creek I, cost the ratepayers more since the utility spent considerable funds to get it to this point?

MR. MAKUL: I think it would not.

SENATOR CONNORS: You don't think it would?

MR. MAKUL: I think it would have no impact on rates at this point in time.

SENATOR CONNORS: Their investors would just sit down and say, "We'll absorb it?"

MR. MAKUL: Well, let me explain that to you, okay?

SENATOR CONNORS: Yes, please.

MR. MAKUL: Public Service now has in its rate base, an allowance for what is called "Construction Work in Progress." What that means is that ratepayers are paying a return on a portion of the investment in the Hope Creek plant, even though that plant isn't producing any electricity. The amount of construction work in progress in rate base is presently \$375 million. This yields Public Service a cash return, or has an impact on ratepayers somewhere around \$70 million or \$75 million a year. It's in that general ball park.

If you have a \$1.7 billion investment, and you knock off the 46% which is the tax loss, you are left with about \$900 million, in that general ball park. If you take that \$900 million, if you were able to amortize it over a 12-year period, which is about what nuclear plants where there are abandonments -- that's the period of time that the payback is stretched over, that would come to about \$75 million a year. So, essentially, the annual allowance that would be granted for a write-off would be just about equal to the present annual allowance for construction work in progress.

Once Public Service, if it were to cancel Hope Creek I, they really have no other major construction projects going on. There is really no longer an economic need to have this construction work in progress in their rates. So, I think it is very possible that if the plant were to be amortized, or the abandonment loss were to be amortized over, say a 12 to 15-year period, and concurrent with that construction work in progress removed from PSE&G's rate base, there would be no increase in rates to PSE&G's customers as a result of the abandonment.

SENATOR CONNORS: So what you are saying then is, that the money they set aside for this construction in progress would bear interest over a period of time which they would recoup back their loss?

MR. MAKUL: Well, what I am saying essentially is that ratepayers are paying about \$75 million a year now to help the company build the plant, and if the construction of the plant were to cease, we might still have to give them \$75 million a year but it would be for a write-off of what they have built to date.

SENATOR CONNORS: So it would cost more?

MR. MAKUL: No, it would cost them the same -- \$75 million is \$75 million.

SENATOR CONNORS: I guess it is the way you look at it.

MR. MAKUL: We're now paying them \$75 million to help them build the plant --

SENATOR CONNORS: It would be \$75 million less.

MR. MAKUL: If they took the construction work in progress out of rate base, the rates could go down by \$75 million, but then if you were to replace that with an amortization of the abandonment, the \$75 million goes back in again. So, based on my practice before the Board of Public Utilities, I don't think there we would be very successful at having that construction work in progress account taken out of their rate base and still have the plant being constructed.

SENATOR CONNORS: Then we get right back down to the nitty-gritty, which is Senator Dalton's Bill 975 -- Certificate of Need. In your opinion, is there -- in other words, we could abandon both of these, Hope Creek I and Hope Creek II, and not have to build anymore electrical plants. There is no anticipated need for the State of New Jersey for electricity.

MR. MAKUL: Public Service demand growth is now pretty flat. In other words, it is not growing. I think you might need some sorts of -- let's put it this way, I don't think there is any need to construct anymore nuclear plants, or even major base load plants. I think we may need some light-duty plants to meet reliability criteria, maybe during summer peaks or certain peak periods, but I don't think there is, in the foreseeable future, a need to construct any of these heavy-duty plants that are designed to run 24 hours a day, seven days a week. We might need some plants for the summer peaks when it is 99 degrees out and everybody has their air conditioners on. Those plants tend to be much cheaper to build, per unit of capacity. Hope Creek I at the current estimate will cost \$3,500 per kilowatt. You can build now what they call a "peaking turbine," which is the kind of plant you would build in order to just meet the summer peak, for about \$300 a kilowatt, or about 10% of the cost.

So, what I am saying is, we might have to build certain kinds of plants for reliability considerations during the peak periods, but I think the load situation as it now exists, I think we could get by without building any base load plants, which Hope Creek is, for the foreseeable future.

SENATOR CONNORS: You used the figure \$1.7 billion on the abandonment. How did you arrive at that? Before when I asked you -- I'm not trying to trip you up -- you estimated about a billion or a billion and a half. Now, you are using \$1.7 billion.

MR. MAKUL: Well, I'm using \$1.7 -- I think \$1.7 billion probably represents close to an upper limit as to what has already been spent on the plant. If less has been spent, the attractiveness of abandoning is improved.

SENATOR CONNORS: So then we are talking about \$1.3 billion, \$1.4 billion?

MR. MAKUL: I think it might be more than that, but you know, I don't know exactly how much it is. It is probably somewhere between \$1.4 billion and \$1.7 billion. That is one of the things that auditors --

SENATOR CONNORS: Well, if an oil-fired plant or a coal-fired plant comes out to a billion or a billion and a half, then haven't we come somewhere along the point of no return. That is what I am talking about.

MR. MAKUL: You are assuming that you have to build a plant.

SENATOR CONNORS: I think we have already established that. You said we would need some ancillary plants.

MR. MAKUL: Not a base load plant, I said we might need a peaking plant.

SENATOR CONNORS: You're right.

MR. MAKUL: And a peaking plant at \$300 per kilowatt for the equivalent capacity of Hope Creek, that would cost \$300 million.

SENATOR CONNORS: That could maintain the status quo, or planning for the future?

MR. MAKUL: I think that would be, accompanied with a reasonable conservation plan on the part of PSE&G, I think that would see us through, perhaps, to the end of the century.

SENATOR CONNORS: Wouldn't backing into the abandonment of Hope Creek I by increasing the cost per kilowatt, by cancelling Hope Creek II, wouldn't that increase the cost of construction and ultimately cost the ratepayers more? Isn't that kind of strategy, at the very minimum, a subterfuge? In other words, if I remember your testimony correctly, you said that, well, we really had this in the back of our minds, but we were stringing Public Service along because we could then take Hope Creek II and abandon that, and then increase the cost per kilowatt and prove, point positive, or proof positive, that this was a terrible price to pay per kilowatt, and yet let them go on constructing. That strikes me as some kind of a --

MR. MAKUL: Well, Public Service felt that building one plant would be \$3.55 billion, and the cost of adding the second plant is about another -- I don't have the figures in front of me exactly -- about another \$1.4 billion, \$1.3 billion, somewhere around there. Public Service, based on their own economic analysis, came to the conclusion that the incremental additional investment of \$1.3 billion -- it wasn't worth it for what you got, and one thing I have learned is if a utility thinks that something shouldn't be built, you are pretty much sure it shouldn't be built, particularly if they have it partially built already.

So, it is not really subterfuge, in that the remaining plant became a \$3.5 billion plant. The engineering costs had to be paid for. The only thing is now, instead of those costs being spread over two plants, they will be spread over one plant. So, the costs associated with that one plant, instead of just having to carry the burden of a share, a 50% share of the engineering expense, now had to carry 100% share of the engineering expense and the real cost of that plant went up to \$3.5 billion.

SENATOR CONNORS: You don't understand my question, or maybe I don't understand your answer. What I am saying is, and I may have misinterpreted -- I want to give you the benefit of the doubt on it. I'm certainly not trying to cross-examine you, that is not my field. I was led to believe by your testimony that you really had it in the back of your mind to get rid of Hope Creek I, but by utilizing Hope

Creek II and abandoning that, it would increase the cost per kilowatt, and that way it would give you a better argument at such time as it came to then spell these cards out -- to lay these cards on the table and say, "Here are our reasons for wanting now to abandon Hope Creek I."

MR. MAKUL: I think it was very clear in our minds that Hope Creek II was an unnecessary plant and, due to the fact that Public Service voluntarily agreed to abandon it, apparently they felt the same.

We also had very good reason to believe that Hope Creek I would not be necessary either, but in terms of a strategy of getting these plants abandoned, we usually go for the plant where the case is the clearest, and particularly if that affects the economics of the first plant, it will, essentially, affect the economics of the remaining plant. I think, by going after the plants one at a time, rather than both simultaneously, that we were assured that one plant that wasn't needed wasn't built, and we had a pretty good shot that a second plant that wasn't needed wouldn't be built. If we had gone for both plants simultaneously, I think we would have run the risk of having no plants cancelled.

SENATOR CONNORS: I won't pursue that. I'll let you off the hook on that. I have one or two more questions, Mr. Chairman. Why did we get into this mess in the first place? The construction of two plants -- who made that decision?

MR. MAKUL: Public Service did.

SENATOR CONNORS: They made that decision. Who approved it?

MR. MAKUL: Certainly, the Public Advocate didn't do it. The Board of Public Utilities' position has been the overall reasonableness of construction projects. There are a lot of things that are looked at in rate cases. There was a generic docket which looked at the overall construction and forecasting practices of all the State's utilities. At a point in time in the past, decisions of this nature were -- people looked at these plants and came to some kind of a conclusion based on their perceptions of how the world would be in the future, that they would allow these plants to go forward.

I think one of the problems of that type of procedure is that the economic environment in which these plants are being built is continuously changing. To say in 1978 that we came to the conclusion that this plant is needed and, therefore, come hell or high water it is going to get built, is a very unrealistic position because between 1978, or 1977 and the present, you might have differences in load growth, differences in the cost of alternate fuels, new technologies springing up that perhaps were not available before, but will be available now. You have escalations in interest rates -- essentially all the economic decisions -- what may have been a good or reasonable decision several years in the past, is not the kind of decision that you can just put away and forget about because the remaining cost of completing that plant represents an avoidable cost and, in terms of economic decision making, that is what you look at. What are your costs from here on out and what will the impacts be?

SENATOR CONNORS: I am inclined to agree with you that time played a factor in this. At one point in time -- I'll just tell you a very small story -- my youngest son stood on a bridge, along with his first or second grade class and they watched a nuclear reactor being floated up the bay to Oyster Creek. Everybody applauded, and the headlines in all of the papers read, "Here Comes the Nuclear Reactor," the containment vessel that was going to be put into this unleashed world of energy that was going to solve our energy needs. Then, many, many years later,

we find that it was not as cheap as we thought it was going to be, in my opinion, and that time has changed that. So, I can understand your point of view; as a matter of fact, I share that point of view.

What does PSE&G say about this Hope Creek I? Do they want to abandon it?

MR. MAKUL: No, they don't, at least not officially.

SENATOR CONNORS: Did they want to abandon Hope Creek II?

MR. MAKUL: They wanted to abandon Hope Creek II, yes.

SENATOR CONNORS: Why?

MR. MAKUL: Well, their perception was that if they had to finance an overall construction project for both Hope Creek I and Hope Creek II, their estimated cost was in excess of \$5 billion -- if they had to do that, it would put such an economic strain on them that they might not be able to get anything built. The second thing was, due to changing economics, changing forecasts, they came to the conclusion that Hope Creek II would never pay for itself, or, if it was to pay for itself, it might be at a point so distant in the future and so speculative that it would pay for itself, that all things considered, they were losing confidence in the reasonableness of going on with Hope Creek II.

SENATOR CONNORS: But they do want to complete Hope Creek I?

MR. MAKUL: As far as I know, yes.

SENATOR CONNORS: Have you discussed that with them at all?

MR. MAKUL: No.

SENATOR CONNORS: Even off the record?

MR. MAKUL: Oh, off the record, yes, they want to finish Hope Creek I.

SENATOR CONNORS: How vehement are they in completing Hope Creek I?

Are they in earnest, in your opinion? Are they sincere, or are they just backing into a situation where if this government makes a decision to abandon it, that we would perhaps be in the courts for approximately the amount of money that was spent?

MR. MAKUL: You are asking me to speculate, since I am not part of the Public Service organization and I don't know what goes on behind their closed doors. But, if I were to speculate as to why they want to complete Hope Creek I, I don't think it is necessarily because they think that it is going to be wonderful for the New Jersey consumers. Rather I think they are concerned that if they have a \$1.7 billion abandonment, their shareholders will have a fit, because notwithstanding the fact that they may recoup these monies, the after-tax loss from ratepayers, it is done over a long number of years and the New Jersey practice has been to not provide any return on the unamortized investment. It is the same as if you were to loan me a \$100 and I paid you back \$10 a year. You get all your money back, but, compared to what your alternatives would have been, you have suffered a loss.

SENATOR CONNORS: Then it is going to cost some money.

MR. MAKUL: Oh, if that gets abandoned, it will cost not only consumers in the form of a write-off, but it will cost ratepayers as well, and no one disputes that an abandonment cost is passed on to ratepayers. The issue is whether or not completion of the plant will cost ratepayers more.

SENATOR CONNORS: That goes back to my question, I think the fourth or fifth, would abandonment of the plant now cost the ratepayers more since the utilities spent considerable funds to get it to this point? You answered a little bit differently than what you are answering now.

MR. MAKUL: Well, I guess the answer is that either way you go, it is going to have a ratepayer dollar impact, but the real issue is which way minimizes the ratepayer dollar impact.

SENATOR CONNORS: Have you made any study on that?

MR. MAKUL: Other than the studies that I was asked to perform for ball park estimate purposes back last spring, I have done no further or more detailed studies. That is generally the type of thing you get expert witnesses to do. They are more in tune with all the up-to-date regulations and what is going on.

SENATOR CONNORS: Well, I can appreciate your answer, but if you don't know how much they have invested in a project, then how could you start off from that point to find out how much the losses would be?

MR. MAKUL: Well, I think what I am saying is what I would do is, I would make sure before I made a decision on these points that I got out and got the answer.

SENATOR CONNORS: You misunderstood my question. I asked you if you had done any evaluation on this, just either on a scratch piece of paper or any kind of a study --

MR. MAKUL: I did an evaluation.

SENATOR CONNORS: You did?

MR. MAKUL: Yes.

SENATOR CONNORS: Well, how did you arrive -- what was your conclusion?

MR. MAKUL: The conclusion I reached was that the completion of Hope Creek I would cost ratepayers between \$800 million and \$1.4 billion a year.

SENATOR CONNORS: The completion of it?

MR. MAKUL: Yes. The completion of that plant, putting it into rate base, having the ratepayers pay a return on that plant --

SENATOR CONNORS: Divided over how many ratepayers?

MR. MAKUL: I think there are about 1.3 million -- about 1,300,000 ratepayers on the PSE&G electric system. In terms of compared to the 1981 level of revenues, the 1981 level of PSE&G electric revenues was about \$2.3 billion.

SENATOR CONNORS: But then we go right back, Mr. Makul -- we go right back to what we were talking about before. If you made that determination, then you certainly would have had to know what the amount of money was to finish the plant.

MR. MAKUL: The estimates included two assumptions. One was that the cost of completing the plant would be \$4 billion; the other one was that the cost of completing the plant would be \$5.5 billion.

SENATOR CONNORS: Well, that differs substantially from what you have given us before.

MR. MAKUL: The official estimate is \$3.55, but the company acknowledges that it could go as high -- based on contingencies added to their \$3.55 billion estimate -- that it could go as high as \$3.79. In fact, the Cost Containment Agreement is designed so that that range is considered to be the target cost. Those estimates are a year and a half old. Based on what has happened to estimates in the past, I think that assuming that the plant will be completed for \$4 billion represents a reasonable lower limit.

SENATOR CONNORS: Assuming that I accept those figures because I don't know any other figures, all right, wouldn't it be logical then to deduct the amount of money that has been utilized at the construction site for the construction now, since it is going to be abandoned, and by your own words --

MR. MAKUL: I don't know if it is going to be abandoned.

SENATOR CONNORS: Well, if it were, wouldn't it be logical then to deduct that amount of money from the low figure, or from the high figure, or from the medium figure, to determine how much it is going to cost? In other words, abandonment, by your own words, you said -- again, I am not trying to trip you up -- but in your own words you said that it was going to cost the ratepayer more.

MR. MAKUL: If we add that to the considerations, what I told you about before that, if it was amortized over a 12 or 13-year period it would cost rate-payers about \$75 million a year -- \$800 million less \$75 million is still \$725 million.

SENATOR CONNORS: Then did you add the cost of new construction to meet the demands that -- in other words, we're status quo and we're marking time now. Have you added those costs?

MR. MAKUL: Senator, in terms of the calculations that were made, they were not for the purpose of coming up with an optimal plan as to how to meet PSE&G's customers' requirements for the future. Rather, the purpose of the calculations was to find out what the cost impact would be of the present course of action and, once that was determined and we found that it was a significant impact, it would then allow people to take all this very seriously and say, "Well, maybe we can look for some other options that are cheaper."

I'm not saying that if we don't build Hope Creek we might not have to build anything else. But, what I am saying is, that here is the -- what I calculated was, here is the financial impact of staying the course. Now that you know what that impact will be, maybe you would like to think about doing something else.

SENATOR CONNORS: I like that phrase -- just for a little levity. I still don't understand, and I promise you that I won't prolong this much longer, but it would seem to me that we have no other plants under construction at this time in the State of New Jersey, do we?

MR. MAKUL: Physically, within the State of New Jersey, no. Atlantic Electric has some plant construction on paper.

SENATOR CONNORS: I am not talking about what is on the drawing board. I'm talking about under construction right now.

MR. MAKUL: That's right.

SENATOR CONNORS: We don't have any?

MR. MAKUL: Just Hope Creek.

SENATOR CONNORS: All right. It would seem to me that, you know, I'm sure we could cope with the situation if we asked everybody in the State of New Jersey to turn off four or five light bulbs, maybe cut down their thermostats to 58 degrees, etc.

MR. MAKUL: Phase out electric resistance heat?

SENATOR CONNORS: What?

MR. MAKUL: Phase out electric resistance heat. That is one thing we could do.

SENATOR CONNORS: There would be a lot of measures. On the other side of the coin, here we are in a posture in the State trying to induce business to come in, and we're marking time. I neither support this -- I have made no decision with regard to this plant. What I am saying is, that for the last four or five years anyway, we have been hanging our electrical needs, in part, on these two plants -- future demands. And, outside of what the electric companies themselves have on the board, we're not moving ahead in that direction. Does that make any kind of sense?

SENATOR STOCKMAN: May I add into that question, Mr. Makul? Do you induce new plants to come into New Jersey by building three or four billion dollar facilities of this sort if you don't need them?

MR. MAKUL: I don't think you do. When a new industry comes in, and I have some experience with this because in my practice of rate cases we do have industrial interveners, or they're looking out for their own interests. Their concern is having economical energy. If you build a \$4 billion plant that isn't needed, you may have all the electricity you need when you put the plug in the wall, but if it is so expensive that nobody wants to use it, they are not going to come to the State to begin with.

SENATOR STOCKMAN: What about solar energy? What about wind energy? What about cogeneration? I mean, there are some other things that can be talked about in this mess, aren't there?

MR. MAKUL: Oh, yes. Well, the idea of cogeneration has been around for quite a while. At the Board of Public Utilities, the approach has always been to use a "carrot," something called the "Avoided Cost Formula," to try to give as much of a benefit as possible to people who would come in and cogenerate and essentially, either meet a portion of their electrical needs, or possibly meet all of their own electrical needs, and actually export some to the grid. I think that when we are talking about alternatives of \$4 billion plants vs. cogeneration, we could probably afford to sweeten the pot quite a bit on cogeneration.

There are the solar technologies -- just keeping my eye open to the newspaper, I see that there are breakthroughs. They come in bits and pieces, but there are breakthroughs on silicon cell technologies. Presumably, that could, at some point in the future, come to the point where you could meet, during the daylight hours, a great amount of your need, or some of your need at least, out of solar, and even take some of that energy and use it to make hydrogen and burn that in plants to meet your nighttime requirements.

There are a lot of things happening on the energy front because the economics are starting to develop. Four billion dollar plants allow consideration of a lot of other alternatives that otherwise would not be thought of as being economically feasible.

SENATOR CONNORS: I have just one more question for you, Mr. Chairman. Will the people from PSE&G be asked to testify with regard to this?

SENATOR STOCKMAN: I had not thought too much of it. I had not planned it, Senator. If it is your wish that we hear from Public Service at these hearings, I certainly would very seriously take that under consideration and talk to the rest of the Committee about it after today. I have no --

SENATOR CONNORS: The rest of the Committee is you and I, Mr. Chairman.

SENATOR STOCKMAN: Well, I haven't given up hope that our colleagues may want to be heard from after all of this, so why don't we talk about that at the end of the day?

SENATOR CONNORS: Okay, fine.

SENATOR STOCKMAN: I'm certainly not precluding that. I think Senator Dalton just had a couple of questions.

SENATOR DALTON: First of all, I don't mind saying that in the last 20 minutes I get a sense of deja vu, debating the issue, Senator, of the alternative energy sources available to us. I think those are the types of discussions we are

having in our Committee all the time, particularly with SR-6, Senate Resolution 6, which was passed, that provides our Committee with the opportunity and the jurisdiction to take an overview, or participate in an overview, of the regulatory taxing structure with regard to electricity in the State of New Jersey. I want to thank you for voting for that resolution.

One question I have is -- first, there is a distinction that I would like you to clarify, Mr. Makul, between Exxon making a decision to abandon a plant, and a regulated public utility making a decision to abandon a plant. I mean, we're talking about two different worlds in effect, wouldn't you agree? In one case, there is an enterprise such as Exxon -- their financial decisions really aren't regulated to the extent that a public utility's financial decisions are regulated.

MR. MAKUL: They can move very quickly, yes. As soon as they see the economics becoming unfavorable, they can overnight, if the person responsible to do it decides he wants to cancel out that project, the wheels can start going very quickly.

SENATOR DALTON: Yes, and then that project -- that cancellation will have minimal, if any, financial impact upon the consumer.

MR. MAKUL: Well, you are dealing there with what is ostensibly a free market enterprise, and if Exxon's gas goes up by a quarter of a cent, you can go across the street to Gulf.

SENATOR DALTON: Yes, but we can't do that in New Jersey, as far as our electric utilities?

MR. MAKUL: Unless you want to move.

SENATOR DALTON: Let me ask you a question -- if, in fact, you abandon Hope Creek I, how do you supply the energy to meet, say for instance, their year 1990 or year 2000 projection?

MR. MAKUL: Well, there are a lot of things becoming available right now. I guess if there is a silver lining to the economic woes that we are in, it is that Midwestern Utilities has a lot of construction projects that are being completed at this point in time. There is a company in Pennsylvania -- Pennsylvania Power and Light, which is building a couple of nuclear plants. A lot of facilities are coming into service, and the sales have diminished. Now, the argument is, you know, the sales have diminished. All we need is a revival of the economy and the sales will come back. Those utilities haven't reached that conclusion. When a car plant closes, I guess they have the hope that the thing will come back as a customer again. But, then when the wrecking ball comes and knocks it down, I guess, you know, they start really worrying what is going to happen.

One of the interesting things that has happened as a result of the Three Mile Island accident, is we have had a utility which is now incapable of constructing because they just do not have the finances to do it, having to plan to meet their electrical needs. They have found a heck of a lot of power available in other systems. The question seems to be, how do we get it here? Transmission lines -- and these transmission lines in many cases are -- well, in all cases, have to go through states other than New Jersey. Of course, there is concern about environmental impacts of transmission lines. What is that line going to do for the benefit of Joe Blow in Pennsylvania? But, there is a lot of power available. In Quebec there is a lot of power coming on the line as a result of the James Bay projects.

That is somewhat interesting because that is a winter peaking system up there. They have a lot of electric heat up there. We are summer peaking. I think that a lot could be done through purchases, assuming that the demands are there.

The second question is, will the demands actually be there, or are there cheaper ways? What we are trying to do, or what a utility is trying to do -- or should be trying to do, is to get its supply to match its demand. In some cases it is much cheaper to control the demand than to increase the supply.

SENATOR DALTON: Let me ask you, getting into supply to match the demand, what is the projected demand for PSE&G? I mean, they say that they need this plant by 1990; they have made statements to that effect. What is the projected demand, as you understand it, for PSE&G?

MR. MAKUL: I think it is growing at under 2% a year.

SENATOR DALTON: Okay. So this is 1982, so it may increase roughly by 10% by 1990?

MR. MAKUL: Yes. I would like to make a comment though about that concept of need, as I understand it. Essentially, I have seen these kinds of arguments before, and what the arguments are, essentially, is that we have to have a certain reserve margin to meet our load.

SENATOR DALTON: That is a Federal government requirement?

MR. MAKUL: Yes, that is a Federal guideline. The companies are affiliated in a pool and they set reserve margins for each utility. Essentially, what it says is -- what the reserve margin is, you see how high your peak loads are, then you have to find out how much more you need for spares. It is a function of a number of things. Generally, about 17% to 20% has historically been the figure quoted.

Now, that might tell you how many generators you have to have, in terms of how much nameplate capacity, or how much physical capacity you have to have. It doesn't say anything about what kind of generator it has to be. It could be a peaking generator that operates on natural gas. It could be some sort of an oil-fired unit. It could be something else.

SENATOR DALTON: All these questions that you raised, and I think they are questions because I don't assume you know the answers right now as to what you put on, but haven't those questions traditionally been answered by the utilities themselves, and government has played very little part in answering those questions?

MR. MAKUL: I think government -- to the extent that government is involved, I personally feel it has been less vigorous than it should have been.

SENATOR DALTON: If I throw out -- let's presume that PSE&G is going to need 10% more capacity by 1990 and PSE&G insists that the way to do that is via Hope Creek I, aren't we, in fact, doubling the rate base of the ratepayers, that is, passing along to the ratepayers for a 10% increase?

MR. MAKUL: Well, if Hope Creek gets completed, it would be doubling the rate base from present levels.

SENATOR DALTON: Focusing in on the Cost Containment Agreement, Senator Stockman pointed out his concerns with regard to the Extraordinary Events Clause within that Agreement, and feels that, in fact, those costs may not be a bargain to the consumer. Do you feel that, moving on to another section of the Agreement, the cost overruns, the provisions made for cost overruns, whether it be an 80/20 split, 80% assumed by the consumer, 20% by the company, or a 70/30 split as those overruns grow, are a bargain for consumers?

MR. MAKUL: Well, if I didn't think that the plant was going to pay for itself at \$3.55 billion or \$3.79 billion, any provision that adds to the consumers' burden on overruns is going to make the deal worse for consumers.

SENATOR DALTON: Additionally, it would seem to me, and this isn't a question because I don't want to ask you to comment, but it would seem to me that the Governor's and his Office's glee with which they greeted and signed this Agreement, was based upon the fact that it is the first time we have ever signed any cost containment agreement in the State of New Jersey.

MR. MAKUL: I know nothing about the attitudes or positions of the Governor's Office, other than what I read in the newspaper.

SENATOR DALTON: Okay. No more questions.

SENATOR CONNORS: Mr. Chairman, I have just a couple of questions, if I may. You mentioned something that triggered something in my mind -- power availability in other systems. You are suggesting that we try to utilize that to offset the energy needs or demands?

MR. MAKUL: Well, I'm saying that that is one available alternative; whether it is actually needed or not, I am not prepared to say at this point in time. But, I am saying that that is one available alternative that seems to be a source of power at a cost lower than that of Hope Creek.

SENATOR CONNORS: And, given your expertise, because I have none in this matter admittedly, one of the constant complaints that I hear with regard to Jersey Central Power and Light, and I think it is very valid, is that a good many of our electric companies, or at least that one -- and whether it is valid or not I am going to ask you -- are brokers of electricity, and not manufacturers of electricity, that they have failed their responsibility to keep up with the demand and, therefore, purchase electricity from outside this State or outside of their immediate area and then tack a profit on top of that, which causes the rate base to increase. Is that true or not?

MR. MAKUL: Well, when Jersey Central purchases energy from other systems, they earn no profit on those purchases. They are passed through at cost. An allowance is made for line losses, but there is actually no profit component that is passed through, dollar for dollar but without any profit.

SENATOR CONNORS: Who determines what the price will be when it is purchased, we'll say, from Philadelphia Electric?

MR. MAKUL: That is done under negotiation.

SENATOR CONNORS: By whom?

MR. MAKUL: By the buyer and seller.

SENATOR CONNORS: Where does the BPU or the Rate Counsel stand on that issue?

MR. MAKUL: At present, to have these costs recouped, the company has to go through what they call a "Levelized Energy Adjustment Clause" proceeding, where the Public Advocate gets completely involved with consultants and explores the merits of the deal, as to whether or not it is a good deal or a bad deal compared to the alternatives.

SENATOR CONNORS: Does the BPU enter into it?

MR. MAKUL: Yes, the BPU is the agency which ultimately has to -- they are the finders of fact, and for any cost to be passed on there has to be a BPU order allowing those costs to be passed on.

SENATOR CONNORS: Well, it would seem to me that not too long ago, the former Governor of this State had toured -- I was told or read in the newspaper -- had toured, or gone to Canada to talk about electricity and supplying needs to 1990 through Canadian Hydro. Are you aware of that?

MR. MAKUL: Ontario Hydro, yes.

SENATOR CONNORS: You are?

MR. MAKUL: Yes.

SENATOR CONNORS: And that Canada, or Ontario Hydro was supposed to sell us electricity to meet the demands and the needs to the year 1990, in which case then, according to what I read, and my memory could be very vague on this, they might have to pull out and we would have to meet our own demand?

MR. MAKUL: It was through 1992, then after 1992 power would still be available, but not in the full amount, and it might be more on a, what's called an "as available" basis.

SENATOR CONNORS: In other words, substantially my thoughts on the matter of what I read are --

MR. MAKUL: Right.

SENATOR CONNORS: And that JCP&L, in this instance, spent something in the neighborhood of \$100 million?

MR. MAKUL: No, it was about \$6 million.

SENATOR CONNORS: How many?

MR. MAKUL: Six.

SENATOR CONNORS: Six -- oh, it wasn't \$100 million.

MR. MAKUL: No.

SENATOR CONNORS: And then abandoned it?

MR. MAKUL: Yes. What they found was, when they initially negotiated the deal, these Midwestern Utilities were not interested in long-term power contracts because they still thought the recession was a temporary phenomenon and would be over in a short period of time. What Jersey Central was looking for was a longer term purchase. As the project went on, they really only had a preliminary estimate. As they got involved with a more detailed estimate putting the project out for bids, they found that some of their initial assumptions with regard to the cost of laying a cable across Lake Erie were too low. At the same time, they found out that these other systems which before had said "no" to discussions of long-term power availability, were now starting to become interested in entering into long-term power contracts. So, two things had changed. One, the people who before were not willing to sell the power now were starting to become willing to sell the power -- the companies in the Midwest. The second thing was the cost of laying the cable, which was originally estimated to be about \$375 million for Jersey Central -- that estimate now grew to over \$500 million. Jersey Central, in rereviewing that project, came to the conclusion that it was no longer needed. In that particular case, I think from the Office's point of view we were rather happy about that abandonment because it was accomplished when less than 2% of the cost of the project had been committed, and it represented, in our minds, a very rational decision on the part of the utility.

SENATOR CONNORS: Sure, it makes sense.

MR. MAKUL: Yes.

SENATOR CONNORS: Let me ask you this, the money that was spent, even though it was a small amount, how was that money recouped?

MR. MAKUL: The Board of Public Utilities ordered that that money not be recouped, that that cost be completely absorbed by the investors of JCP&L.

SENATOR CONNORS: How long would it take to construct a new facility? Before I get into that question -- apparently there had been, or the need was there, or at least a good portion of the high public officials acknowledged a need for increased electricity, either from purchase or from construction. I asked a question before and I started to reflect upon it when Senator Dalton was speaking, and I don't think we developed that enough. Who made the decision and when was that decision made, other than PSE&G? Did the State of New Jersey have any involvement in that decision to permit PSE&G to build Hope Creek I or Hope Creek II?

MR. MAKUL: You're talking about well before I came on the scene, but as far as I know there was really no involvement other than the normal issuance of construction permits.

SENATOR CONNORS: Which points to Senator Dalton's bill very positively that there should be a Certificate of Need, much like the hospitals need today. But, in the absence of that, was there acquiescence on the part of the State of New Jersey to permit these two plants to be built? Certainly I cannot conceive that the utility company would say, "Hey, we have a good idea. Let's build two utility plants." At that time I think you had said it was \$499 million.

MR. MAKUL: Right.

SENATOR CONNORS: And the costs had escalated. Was there no participation by the State of New Jersey in that decision?

MR. MAKUL: You're asking me about a period of time that was well prior to my involvement in utility regulation, and my only knowledge on that is based on what other people --

SENATOR CONNORS: How far back did it go?

MR. MAKUL: 1976.

SENATOR CONNORS: 1976?

MR. MAKUL: Yes.

SENATOR CONNORS: I see.

SENATOR DALTON: It was during the Cahill Administration.

SENATOR CONNORS: It just goes to show you how perceptive the man was, acknowledging that we were going to need more electricity. I just want to know who participated in that. Did the State participate?

SENATOR STOCKMAN: Senator, I think the witness indicates that was before his time.

SENATOR CONNORS: You don't know?

MR. MAKUL: I don't really know.

SENATOR STOCKMAN: Let me interrupt you for just a moment. For the benefit of the audience, it is my intent to adjourn before or by 1:00 p.m., wherever we are, and return at 2:00 p.m. I think we are close to -- Len, are we, to completing this witness?

SENATOR CONNORS: Sure.

SENATOR STOCKMAN: I think we hopefully can complete him before lunch, and then we will recess until 2:00 p.m.

SENATOR CONNORS: My other question was, how long would it take to construct a new facility in gas or oil or coal?

MR. MAKUL: Not nuclear, but coal -- we're talking about many years. A coal plant, we're probably talking about a seven or eight-year lead time. Some of

the -- a gas turbine, we could be talking about a one and a half to two-year lead time. An oil plant, that depends on the design and size -- somewhere in between -- what they call an "oil-fired steam plant."

SENATOR CONNORS: Couldn't that be a factor in going ahead to meet the demand? A judgment call?

MR. MAKUL: Well, that is what Public Service has argued.

SENATOR CONNORS: Pardon?

MR. MAKUL: That is what Public Service has argued, that rather than being caught short, we should cover ourselves and complete the plant. It is a policy decision as to whether or not you should be completing a plant that I have estimated will cost -- the output of that plant will cost over \$.20 a kilowatt hour -- whether or not you should be completing that plant just because you have a fear that you might be caught short. I know prior to -- back in March and April, it was the view of our Department, a view that I shared, that the completion of this plant might well indeed, in effect, cause blackouts by making the electricity so expensive that people could not afford to use it or would shut the doors of their industrial facilities and move away to places where electricity was cheaper. We might have a very peculiar phenomenon with the completion of this plant, where a plant comes on the line with 1,000 megawatts of new capacity and if we have a substantial cost impact associated with that, of having a very large number of customers, maybe not 1,000 megawatts, but a lot of customers reducing their demand because they no longer can afford electricity at that price -- cannot afford either to use it all or as much, and I think that would be rather ironic, if we were building a plant to meet a need, only to have the cost of that plant be so high that the need at that price wasn't there.

SENATOR CONNORS: Well, again, I really do not understand how you are computing. If we use the \$1.7 billion that you talked about earlier when I asked the question, "Would abandonment of the plant now cost the ratepayers more since the utility spent considerable funds to get it to this point?" You had come up with the figure \$1.7 billion if abandoned. Then we tack on \$1.5 billion for the construction of a complete new plant. We're up at \$3.4 billion -- \$2 billion.

MR. MAKUL: I think you are assuming that you have to build a complete new coal-fired plant of the equivalent capacity, and I think the point I was trying to get across --

SENATOR CONNORS: I am not assuming anything. All I am assuming is --

MR. MAKUL: Well, you said \$1.7 billion to abandon this plant, and \$1.5 billion for a new plant.

SENATOR CONNORS: I make this assumption -- I make this assumption, all right, that from everything that I have read in the newspaper and from television, New Jersey has a shortage of electricity, that we are importing electricity from outside the area, that the former Governor of this State was deeply concerned with, as he should be, and as this Governor should be, and that there is a crisis coming with regard to supplying the demands and the needs for the people to have available electricity. Now, assuming arguendo for a moment, you don't accept that, all right, what I am saying is then it is a calculated decision as to whether we meet the demand or some day have a problem with regard to supplying the people who are living in this State, let alone inviting more people or more industry to come in.

MR. MAKUL: Well, it's true that if you are strictly going to say that we are going to saw off New Jersey from the rest of the Union and flow it out to

sea, that we might not have enough generation within our geographical confines to meet our entire demand, or we might not have it in the future, but that is not the way systems such as this are planned. I mean, Public Service owns substantial capacity in nuclear plants and coal-fired plants in Pennsylvania -- that is electricity which, I guess you could say, is imported into this State.

SENATOR CONNORS: It would cost us no more to bring it into this State?

MR. MAKUL: No, cost transmission lines are not -- well, it involves millions of dollars, but compared to the billions for building a base load plant, it is a relatively small sum. I think that with regard to those positions about, you know, not wanting to be reliant on electricity from other states or whatever, I think probably the uranium to fire a nuclear plant, most of that comes from outside New Jersey as well. So, we would be reliant on out-of-state uranium sources. I think that the mechanisms are such that it is not, in my opinion, a legitimate concern, that some of this electricity is being generated out-of-state. If you have utilities elsewhere which have more capacity than they know what to do with --

SENATOR CONNORS: Carrying it one step further then along those lines, maybe we should not build any electric plants and buy all of our electricity and pay a premium, to some degree, because of the cost of construction.

MR. MAKUL: It is possible that that might be the cheapest alternative -- to enter into long-term contracts with other systems.

SENATOR CONNORS: Have you ever done a study on this?

MR. MAKUL: I know from my experience with Jersey Central that they are buying electricity from other systems at prices ranging from around \$.04 to \$.07 per kilowatt hour, depending on whether it is what they call a "base load contract" or an "on peak contract." None of the purchases are occurring at \$.20 or \$.22 per kilowatt hour, which is what I think Hope Creek is going to cost.

So, just based on my experience from dealing with these cases on a day-to-day basis, it looks cheaper to buy than to build.

SENATOR CONNORS: That's all, Mr. Chairman.

SENATOR STOCKMAN: Thank you, Senator Connors, for those interesting questions. I want to comment and to thank the witness. Mr. Makul, I don't think there is any question that you have answered straightforwardly, truthfully, honestly and openly, and I thank you for that. I don't think there is any doubt that some people may disagree, and disagree sharply, with some of your opinions or statements, maybe even your boss, but I hope and believe that he will recognize that it was a spirit of cooperation and openness and truthfulness that brought you to this hearing and that carried you through. I want to thank you; I think your testimony has been extremely informative and valuable, important, and to the public interest. Thank you very much.

(RECESS)

AFTER RECESS

SENATOR STOCKMAN: We would like to get started with the hearing if we can. Commissioner Coleman, welcome. You have asked for an opportunity to testify to the Committee, and we happily accede to that request. I invite you to make your statement, and perhaps some of us will have a few questions for you, and perhaps not.

L E O N A R D S. C O L E M A N, J R.: Okay. It's good to be with you, Senator, and thank you for giving me the opportunity to present the views of my Department in the matter of the Public Advocate's role in the Hope Creek Cost Containment Agreement.

Regarding background, in May 1982, the Department of Energy prepared a report for Governor Thomas H. Kean entitled Hope Creek I: The Need For a Review. The report was triggered by the December 1981 cancellation of Hope Creek II by Public Service Electric and Gas Company (PSE&G). The report examined the various strategic options available under both completion and cancellation scenarios. Briefly, the five options were: cancellation; cancellation with the construction of a 400 megawatt coal plant; completion with no cost restraints; completion by or with another utility; and, completion with cost containment.

After an internal review of the options, I approached officials of PSE&G to present them with the concept for a cost containment plan.

After several discussions with Robert I. Smith, PSE&G's Chairman of the Board, the company was compelled to accept -- in principle -- the concept of cost containment.

This was done by letter, from Mr. Smith to me, on June 11, 1982. On June 17, Gary Stein, Director of the Governor's Office of Policy and Planning, instructed me to negotiate on behalf of the Administration. The ultimate purpose of these negotiations was to formulate a Cost Containment Agreement. Mr. Stein also asked me to confer with the Public Advocate, but allowed that...

I'll just stop here to say that I think this is very important with regard to the role of the Public Advocate in this, and certainly I am here as a Department of the Administration. I think we can see the difference in the tenor or the tone that is taken between the Advocate and the Department of Energy. I quote from Mr. Stein's memo:

"Initially, this is a determination which should be made concurrently by you and the Department of the Public Advocate. We also have to allow for the possibility that you and the Public Advocate may disagree... It would be preferable if you and the Public Advocate were together on this issue, but I believe that your determination should control the Administration's position."

I have attached for the Committee members, to my testimony, a copy of that memo from Mr. Stein. I would, once again, emphasize that last sentence -- "It would be preferable if you and the Public Advocate were together on this issue, but I believe that your determination should control the Administration's position."

The Hope Creek I Report and Mr. Stein's memo clearly show that: (1) the cost containment option was developed within the Department of Energy and not in the Governor's Office; and, (2) the Governor's Office anticipated the possibility of a disagreement by the Public Advocate. The decision by the Public Advocate to support the cost containment concept was based on the Advocate's own analysis of the Hope Creek I public policy dilemma.

Turning to the negotiations, the Agreement was the subject of lengthy and intense negotiations conducted on a daily basis during the past summer. Despite several impasses and even some moments when it appeared the discussion might collapse completely, the Department of Energy and the Public Advocate persisted in keeping the parties aware of the importance of reaching a solution that would be in the best interest of the public. For the Public Advocate, Assistant Commissioner Potter was the point man and hardly a day passed when we did not engage in lengthy discussions on the development of the Agreement. In August, after seven weeks of negotiation, we were in a position to discuss the details of the Agreement with the Governor.

On August 4, 1982, in a meeting with the Governor, the Public Advocate and members of the Governor's staff -- the Public Advocate and I recommended that the Cost Containment Agreement be filed with the Board of Public Utilities. The Governor concurred.

As can be seen from the chronology of events I have just outlined, the Agreement was not presented to the Governor until after all parties had accepted it themselves.

#### THE AGREEMENT

In arguing over who said what to whom, I think we risk losing sight of the enormous significance of this Agreement. Never before in the history of regulation has a utility been placed in a position of absorbing reasonable costs above a targeted completion cost of a major construction project.

It appears persons criticizing the Agreement either fail to understand the procedure involved or have chosen to deliberately misconstrue the clear intent of the Agreement. The Agreement in no way limits the ability of the Public Advocate, the Department of Energy or any other individual or party from challenging costs thought to be unreasonable. So, I must emphasize that it does not take away the right to argue against any costs which are deemed unreasonable.

The Agreement applies only after a finding by the Board of Public Utilities that costs related to the construction of Hope Creek I are reasonable and prudent. The Board's decision will come only after fully litigated hearings, at which time expert testimony is given and company officials are cross-examined. The Agreement does not give the company an absolute right to spend any sum to complete the plant without an examination of expenditures. Only after a finding by the Board of reasonable costs -- a point at which a utility would normally receive a return on its full investment -- does the Agreement apply to costs over the target.

The target date of December 1986 and the target cost of \$3.795 billion are not, as some have alleged, numbers which have been simply pulled out of the air. Rather, they are based on data furnished by PSE&G, Bechtel Corporation (the prime contractor for the project) and Theodore Barry Associates (an independent consultant hired by PSE&G to evaluate the project). In response to a request by the Public Advocate in July 1981, PSE&G estimated the cost of building one of the two Hope Creek units at \$2.5 billion for construction and approximately \$1 billion for allowance of funds used during construction. These figures were reinforced in testimony by PSE&G's Vice President Steven Mallard in December 1981, by PSE&G's filing with the Securities and Exchange Commission (SEC) in March 1982, and the Board of Public Utilities' orders in the following dockets authorizing the issuance of the securities: Docket Nos. 821-70 (March 12, 1982); 823-184 (April 22, 1982); and, 823-185 (April 22, 1982). The difference between the \$3.55 billion base figure

and the \$3.795 billion targeted construction cost is the result of adjustments made to the base for cost overruns identified in the Theodore Barry study. By comparison a draft agreement in New York State involving a similarly-sized nuclear plant permits an allowance of \$900 million over the base cost before penalties are assessed -- that's \$900 million, ours does not allow for that. In fact, the New York agreement calls for only a flat rate penalty against the utility rather than the escalating rate set forth in our Agreement.

The Agreement is further significant in that it creates a greater degree of management accountability to both stockholders and ratepayers. By setting financial penalties for construction cost overruns, the Agreement in effect tightens the shareholders' reins on the company's management, and places the responsibility of assuring maximum profitability for the Hope Creek I project squarely upon management's shoulders. The financial incentives set forth in the Agreement for completion of the project below the targeted cost also work toward strengthening management accountability. This accountability is shared by ratepayers as well as shareholders, who for the first time will not have to bear the full burden of cost overruns, and who will share in the benefits of a project brought in under the targeted amount.

This Agreement also provides for incentives if the plant is completed at a cost below \$3.55 billion. We believe an incentive increases the probability that the plant will be completed in the shortest amount of time and at the least possible cost. Much has been said of the provision allowing for the inclusion of costs relating to the inclusion of extraordinary events. Again, persons have failed to understand this provision or have deliberately misconstrued its meaning.

It is a basic principle of law that a fundamental change in circumstance may serve as a basis for the reevaluation of a provision of a contract or agreement. The definition of the term "Extraordinary Events" has been twisted by those who would deceptively portray it as a loophole through which the utility could pass virtually any cost overruns. On the contrary, any claims of costs related to extraordinary events would first have to be approved by the BPU following the full litigation of those claims. Nothing in this Agreement preempts or circumvents any currently existing legal safeguards for the ratepayer. I would just say here, Mr. Chairman, as an aside, I recognize that you are a lawyer and I may be treading on soft turf, but in having negotiated this Agreement, we passed this through lawyer, after lawyer, after lawyer, in attempting to get an interpretation and round up what we thought -- could make conclusions on -- were in the best interests of the public. The prevailing feeling was one that this clause about extraordinary events -- that it was one that was understood that did not even have to be put into the Agreement. But we made the judgment of putting it in there with the thought that we could point out, and state in the Agreement, that we would litigate on anything that was considered to be an extraordinary event. So, we considered it to be a statement that we were prepared to litigate on any questions which would come up with regard to this question of what was an extraordinary event.

I'm not sure, just a little, if one more barb at lawyers -- I'm not sure that perhaps the British aren't quite smart in working out agreements first and then turning them over to the lawyers and just saying, "How do we do it?", rather than involving them in the process, because I can assure you, it dragged it on a bit.

When we examine the Hope Creek alternatives, we can reduce our choices to three basic options: The first option is to abandon a plant already fifty percent

complete. This alternative would cost New Jersey ratepayers approximately \$2.5 billion in construction and cancellation costs, without providing them with a single additional kilowatt of electricity. The second option, completion of the plant with no cost controls (as has been the traditional utility practice), is an approach that runs contrary to the public interest and in direct opposition to the cost-conscious policies of this Administration. This then leaves us with the third, and best, option: Completion of the plant with a cost containment mechanism. We feel this is the best public policy solution. This option provides adequate safeguards for the ratepayer, while simultaneously assuring the completion of a plant which will reduce our State's dependence on imported oil, increase the State's energy self-sufficiency and assist in meeting future energy demand.

I'll just add a couple of extra comments. In my own judgment, I think if the hearings here are called with regard to the autonomy of the Public Advocate from the Administration, I think the evidence and my knowledge of these proceedings clearly give weight, and in fact prove, that the Public Advocate has been acting from an independent position, with no form of coercion being put on it. If we are here to discuss this Hope Creek Agreement, I'm proud to say that Commissioner Rodriguez and myself take responsibility for it. I pushed it; I urged it, and I think that history will bear out that this Agreement was in the best interest of the people of New Jersey. I am happy to have my name associated with it.

Finally, one thing I find disturbing about this, are perhaps some of the motives of those who would raise questions about this Agreement. I'm not sure if it has been related here publicly or not, but I can say that in going before the Board of Public Utilities for the hearing on this, I was walking into the room with Commissioner Rodriguez, when he went off to the side and had a conversation with Mr. Nardelli. When he came back, he said to me that Mr. Nardelli had asked him if he would reinstate him into his position. Mr. Rodriguez had told him that he would not, and Mr. Nardelli's response was, "Well, if that is the case, you wait and see the show that I am going to put on in there this afternoon."

Now, with things such as that going on, I don't think people are perhaps acting with totally pure motives. I know Mr. Rodriguez has said that he is not going to allow anyone to play poker with his ethics. I certainly don't think anyone should be allowed to blackmail the public interest for their own personal motives. That is just an aside from me, and my own personal opinion on the matter.

I have with me Dr. Patel, who is the Department's witness before the Board. I understand that there are questions regarding the finance and what this plant will do for the ratepayers in terms of that financing, and I would like to turn to Dr. Patel and have him give some testimony. I am happy to take your questions first --

SENATOR STOCKMAN: I think, Commissioner, that it would make more sense, perhaps, if we ask you some questions about your statement and then either Dr. Patel can fill in, or can add if he wishes to. Taking your aside first, this question of Mr. Nardelli's behavior -- I said this morning, and you were not here so let me repeat it -- in my view, this hearing is not about the merits or lack of merits of firing Al Nardelli, and I think the worst thing we can do is get bogged down in that issue. I said, also, that in my opinion, there is no question about the integrity, the honesty, and the loyalty of the Public Advocate, Joe Rodriguez. He happens to be a personal friend of mine, someone I have

known and admired in public office for many years. So, lest we get sidetracked on that, I have no reason to doubt what you have represented occurred on the day of the hearing, and even Mr. Nardelli himself, in his carefully, I am sure, prepared formal testimony, did not strictly say, or simply say that he was fired because of those events. But those events, nevertheless, happened, and they raised questions. I must tell you at the outset that I am one of those people who raise serious questions about this Agreement and, to the extent that that may raise questions about my motivation in doing it, I, as you, am prepared to have the public, and to have history judge my behavior and that of any other members of the Committee, for that matter, who may be exploring what I consider to be a major problem and issue that has to be looked at by the Legislature, regardless of what the outcome is, because when Chief Rate Counsel for the Public Advocate indicates on the record his feeling, and since then now backed up by another, in my opinion, distinguished, long-time public servant in the Rate Counsel's Office, Mr. Makul, who confirmed that there was consternation and great distress, and now that there are real morale questions in the Office of Rate Counsel over this whole sequence of events, I at least think we ought to explore a little bit, and explore we are doing.

In that regard, I would like to ask you a few questions about your testimony. I am interested particularly, Commissioner, in the time sequence. At some point early in 1982, my recollection from reviewing records and material is, you and the Department of Energy were on record publicly as being opposed to the completion of Hope Creek I. Am I correct?

COMMISSIONER COLEMAN: I think that you can see the report that has been filed with the Board of Public Utilities. I know that there were certain stories that indicated that, but I can tell you that in that report which is on file, as I read to you today, one of the major options was that we included alternatives in there, and one which was explored was cost containment.

SENATOR STOCKMAN: No, Len, I don't think my question was sharp enough. Is it your position to us that at no time in 1982 were you ever publicly expressing the view and the opinion on behalf of the Department of Energy that Hope Creek I should not be built?

COMMISSIONER COLEMAN: That Hope Creek I should not be built?

SENATOR STOCKMAN: Yes.

COMMISSIONER COLEMAN: We did not publicly say that. I think we were on record -- the change that occurred, let's say during Administrations, from the Administration of Commissioner Jacobson to myself, was one in that I put it up for review in an internal memo. We had an internal review, and it remained under continuous review within the Department. The review document, the document, as I said, which I think some have taken to say that we called for an outside review, is a public document, and one of the major alternatives we proposed in that document was cost containment.

SENATOR STOCKMAN: I don't want to get bogged down on that document alone. I just want to know for the record, as I understand it, it is your position that you never publicly to anyone expressed the opinion, as the Commissioner of Energy, that Hope Creek I, in fact, should not be completed.

COMMISSIONER COLEMAN: No, I did not.

SENATOR STOCKMAN: Then, we are not dealing in terms of the Department of Energy with any change in that position, I gather. You are saying that there was

an intent to support the completion of Hope Creek I from the beginning of your taking --

COMMISSIONER COLEMAN: No, well let me say, and this is what I want to point out -- when I talk about a review and supporting the completion tied to cost -- I mean, obviously, if the plant was going to cost \$5 billion or \$6 billion as some have said, then that may not have been my position. I have tied my position from the beginning on this issue to cost.

SENATOR STOCKMAN: Incidentally, your strong endorsement and support of this Agreement indicates that in your opinion there is no likelihood of appreciable alteration or change in the language of this document. Is that correct?

COMMISSIONER COLEMAN: You mean the present Agreement?

SENATOR STOCKMAN: Yes.

COMMISSIONER COLEMAN: Well, I would have to be able to consider any type of change that would --

SENATOR STOCKMAN: My point is, you have described it as a landmark document, a document that probably historically would be used as a precedent-setting kind of a standard for use, and as a document that is of tremendous value and of positive significance for the citizens of New Jersey. In saying that I assume you feel confident that there will not be any significant alteration or modification of this Agreement, since it is so outstanding a document, so strongly in favor of the citizens of the State of New Jersey --

COMMISSIONER COLEMAN: Well, let me say that I stand in full support of the document. I signed it, and I think it is in the best interest of the people of the State of New Jersey.

SENATOR STOCKMAN: I understand that --

COMMISSIONER COLEMAN: The outstanding, I guess, you know, how far do you hit a home run? Do you just put it in the first or second row, or do you hit a Reggie Jackson type blast? Senator, I don't want to say that -- to get into measuring between a 550-foot blast and a 375-foot blast. I think it is a home run however it goes into the stands.

SENATOR STOCKMAN: And, you can't do much better than a home run, in baseball at least. Now, coming back to these dates, you indicate that in May of 1982, you prepared this report for Governor Kean and it was triggered by this cancellation of Hope Creek II, and it laid out these five options. Did the document itself express a preference for one of those options?

COMMISSIONER COLEMAN: It laid out that they would have to be explored. The pros and cons were listed in terms of each option.

SENATOR STOCKMAN: Now, let me ask you this because I am not as familiar with your Department as I have become with the internal operation of the Public Advocate's Office. Who in the Department of Energy, through this period that we are going to be talking about, March or April of 1982 up through the signing of the Agreement, who on your staff are the people that participated in the development of this position paper, and then, of course, the decision to go for what ultimately became the Agreement?

COMMISSIONER COLEMAN: Well, I have any number of staff who participated in that Agreement. I have Dr. Patel here with me, who is our witness in the case, and I am certain he is prepared to answer any of your questions on any of the technical aspects of it.

SENATOR STOCKMAN: No, I want to get some history and some internal understanding of how you went about this decision, what expertise you had to rely on, and so on. There is Dr. Patel. Who else in the Department of Energy, during this period, did you turn to, or receive input from, in reaching what, I think we all agree, is a tremendously significant --

COMMISSIONER COLEMAN: (interrupting) Assistant Commissioner Richman.

SENATOR STOCKMAN: Richman, right.

COMMISSIONER COLEMAN: And their staffs.

SENATOR STOCKMAN: Well, would you describe your staff?

COMMISSIONER COLEMAN: Well, let me see, in my Department, I believe Dr. Patel has 25 or so people under him, many of whom have worked on this in their particular fields. Assistant Commissioner Richman has several people under him who worked on it, so it was a staff effort. Let me say that there were not two people, or one person, there were several.

SENATOR STOCKMAN: Well, how many other individuals besides Dr. Patel and Chuck Richman were you involved with in the course of arriving at the conclusions you did as Energy Commissioner, and in signing the document that ultimately was the Agreement?

COMMISSIONER COLEMAN: Within the Department, I personally was involved with several more.

SENATOR STOCKMAN: Who were they?

COMMISSIONER COLEMAN: Mr. Gurnani, Victor Bozzo, and --

SENATOR STOCKMAN: Are these lawyers, or are these technical experts?

COMMISSIONER COLEMAN: Well, I have access to a Deputy Attorney General, and that Deputy Attorney General was used.

SENATOR STOCKMAN: Who was that?

COMMISSIONER COLEMAN: Claude Solomon.

SENATOR STOCKMAN: Are there any other individuals that you were involved with?

COMMISSIONER COLEMAN: Yes, I certainly was involved and, as I said, I think it was an internal Department thing. I used many people within the Department, and I think I will leave it at that.

SENATOR STOCKMAN: What I am trying to get at, Commissioner, is in contrasting, or at least looking at the question of the contrast between the process whereby you came to this judgment that this Agreement was the right Agreement, who you relied on -- unless you have memos. You may have memos.

COMMISSIONER COLEMAN: I think you recognize who I relied on. You know, I relied on myself, my judgment. It is a judgment that, as you know, an Administrator at some point has to make. It doesn't mean that I haven't consulted people from the outside, internally, or what have you. It was a judgment that rested with me. I made it the best way I knew how to make it, drawing on the resources I felt as though I needed to draw upon. So, it is a judgment I have made to the best of my ability.

SENATOR STOCKMAN: All right. And you made, apparently, this statement indicates sometime in May a determination to approach Public Service and present them with a concept of a cost containment plan. Is that correct?

COMMISSIONER COLEMAN: It was a feeling out as to whether or not they would be amenable to it -- that is correct.

SENATOR STOCKMAN: Who did you feel out, or who did you work with or meet with in Public Service Electric and Gas, you personally, in the course of bringing to a conclusion this Agreement?

COMMISSIONER COLEMAN: In the course of bringing it to a conclusion, or in the course of the feeling out period?

SENATOR STOCKMAN: Both. Let's start with the feeling out wherein, I gather, in May or June with this feeling out, as I understand your statement. Who were you dealing with?

COMMISSIONER COLEMAN: Yes, that is correct. I was dealing most generally with Chairman Smith.

SENATOR STOCKMAN: And how many meetings would you estimate that you had with Chairman Smith of Public Service Electric and Gas from that point through the signing of this Agreement -- approximately?

COMMISSIONER COLEMAN: Are we counting telephone conversations, direct meetings, what --

SENATOR STOCKMAN: Let's take direct meetings.

COMMISSIONER COLEMAN: Direct meetings -- several. I wouldn't want to put a definite number on it, but certainly several.

SENATOR STOCKMAN: And how about phone exchanges?

COMMISSIONER COLEMAN: Once again, many times.

SENATOR STOCKMAN: And this was from May on through August 10?

COMMISSIONER COLEMAN: That is correct.

SENATOR STOCKMAN: And this was between yourself and Mr. Smith?

COMMISSIONER COLEMAN: That is correct. Also, I have had telephone conversations and meetings with others involved, but it was dealt with on a Commissioner/Chairman level.

SENATOR STOCKMAN: Now, you indicated in your statement, that after several discussions with Mr. Smith of Public Service, the company was compelled in principle to accept the concept of cost containment. When did Chairman Smith reveal to you, or indicate to you that Public Service was prepared to accept a cost containment concept?

COMMISSIONER COLEMAN: In a letter to me on, I believe I cited in here, June 11.

SENATOR STOCKMAN: Would you say that was the point at which you and Public Service reached a basic --?

COMMISSIONER COLEMAN: Absolutely not. I think that that was the first recognition that the possibilities were there for an Agreement.

SENATOR STOCKMAN: All right. You indicated that on the 17th, that would be just short of a week after that, Gary Stein, Director of the Governor's Office of Policy and Planning, instructed you to negotiate, on behalf of the Administration.

COMMISSIONER COLEMAN: A copy of that memo is there for you.

SENATOR STOCKMAN: Up until that point, do I understand it to be a situation where there had been really no formalization of what your role or anyone else's role in this Hope Creek issue was?

COMMISSIONER COLEMAN: No. There had been a meeting and the various options had been discussed truthfully on it. I think the Public Advocate, Mr. Potter and I were involved, and had discussed it also. We were of the opinion that

we would reverse -- in other words, we're in a situation, let's see what Public Service's response is going to be. Let's approach them with regard to seeing what their opinion would be with regard to cost containment prospects and as to what dollar figure they would recommend. We were not, at that time, of the opinion that -- or, we did not know whether or not they would be acceptable, or find acceptable any form of cost containment.

So, it was purely within what I would call a feeling out stage.

SENATOR STOCKMAN: Well now, you mentioned Mr. Potter. What was Mr. Potter's attitude toward an Agreement which would acknowledge Public Service's right to complete Hope Creek I? What was that back in May of 1982?

COMMISSIONER COLEMAN: I don't think -- Mr. Potter can speak for himself about his attitudes. I don't think, you know in terms of his attitude, that he had expressed a definite opinion one way or another. At this point, we were at the point of exploring all possible options. I mean, if Mr. Potter has got a particular attitude, or a particular bias, it isn't necessarily my bias.

SENATOR STOCKMAN: Commissioner, I understand that, but we are trying to get at a very important question and, as a matter of fact, it is one that you have volunteered that, in your opinion from the knowledge and information you have, you feel apparently strongly that the Public Advocate functioned and made a determination -- a major determination with regard to this Agreement in an ordinary way, and in a perfectly justifiable way. Now, in that context, of you volunteering that, I am trying to find out from you the role that Mr. Rodriguez's righthand man played. I thought you just testified that around that time you and Mr. Potter were talking and together attempted to feel out the Public --

COMMISSIONER COLEMAN: (interrupting) That is correct. Mr. Potter had a copy of the report we had prepared, the May 6 memorandum, and we had discussed the options under that, and truthfully, as I said, in discussing it we were not of the opinion that we could gain any ground at that time with regard to Public Service and cost containment. So, Mr. Potter was aware of my moves in terms of feeling them out and seeing as to whether or not that was a possibility. As to being committed to any form of approach at that point, that is not the case.

SENATOR STOCKMAN: Commissioner, isn't it a fact that Bill Potter, historically, was one of the most articulate and strong and outspoken opponents to the completion of Hope Creek I, from way back?

COMMISSIONER COLEMAN: I think, once again, that Mr. Potter can speak for himself, Senator.

SENATOR STOCKMAN: But you were with him; you were working together.

COMMISSIONER COLEMAN: I was with him, but once again, it is a question of also Mr. Potter was extremely concerned about costs. I think he has been on the record and has stated that from the beginning that he was concerned about the cost of Hope Creek I. So, he was fully aware of my feeling out processes with Public Service as to whether or not they would find acceptable to them any form of cost containment.

SENATOR STOCKMAN: That was your feeling though, not his I assume.

COMMISSIONER COLEMAN: I made the initial contacts, that is correct.

SENATOR STOCKMAN: Now, Mr. Stein instructed you to negotiate on behalf of the Administration, and you indicated the purpose was to formulate a Cost Containment Agreement. Mr. Stein asked you to confer with the Public Advocate, but

allowed, and you have quoted his comment -- up to that point, and this was June 17, 1982, just so I understand it, had there been any meetings with Mr. Stein in which the Public Advocate was a participant?

COMMISSIONER COLEMAN: Yes, there were.

SENATOR STOCKMAN: When did those take place?

COMMISSIONER COLEMAN: There was a meeting -- and I would have to refer back to my diary, but it was prior, certainly, to the June 11 letter -- some-time in late May or early June.

SENATOR STOCKMAN: And was it at one of these meetings -- let me put it this way. You recall I discussed your coming here to testify about this. Do you recall that I indicated to you that in a conversation that I had with Mr. Stein, he indicated to me that, in fact, at some point in a meeting with you, the Public Advocate, Public Service Electric and Gas, Atlantic Electric, that he threw out the idea of a cost containment arrangement or agreement, and that at the time there seemed to be some sort of -- I don't want to use the word surprise, but that people just kind of looked and departed, and shortly after that the Cost Containment Agreement started to take form. Do you recall that meeting, or don't you recall any such meeting?

COMMISSIONER COLEMAN: Let me say, I don't recall any such meeting with Public Service and Atlantic Electric being present. There was a meeting with the other principals that you mentioned, and in that meeting I had come in -- and once again, the report of the Department of Energy had already been filed and cost containment was already outlined, and I argued in that meeting that Public Service should be approached formally as to whether or not they would consider cost contain-ment.

SENATOR STOCKMAN: What was the date of that meeting?

COMMISSIONER COLEMAN: I, once again, would have to check back -- but it was in late May or early June.

SENATOR STOCKMAN: And what position in that situation where you argued rather strongly that Public Service ought to be approached on this score -- what position did the Public Advocate take.

COMMISSIONER COLEMAN: Let me say that it wasn't a meeting where people were around stating this is the way we want to go; this is the way -- It was one where people's opinions -- it was more a brainstorming session where people's opinions and feelings were being felt out with regard to what their positions could possibly be. The Public Advocate, once again, can speak for himself.

SENATOR STOCKMAN: Commissioner, excuse me for just a minute. I don't want to belabor this. If you don't want to answer the question, tell me and I will move on. But, I am asking you now, if you know what your recollection of what his position was? I understand you may say your recollection is he was fiercely opposed to it, and he may testify later otherwise. I understand that possibility. But, in the context of what I am trying to find out, the sequence of events, I think it would be helpful if you could recall. Now, if you tell me you cannot recall what the Public Advocate's position in that meeting with Mr. Stein was, I have to accept that and I will move on. Can you recall what the Public Advocate's position --

COMMISSIONER COLEMAN: Surely, okay. What I can recall is that a number of things were discussed, a number of options were discussed. I do not recall the Public Advocate being firmly tied to one position or another.

SENATOR STOCKMAN: This is Mr. Rodriguez or Mr. Potter?

COMMISSIONER COLEMAN: If I recall correctly, both were present.

SENATOR STOCKMAN: And this was in late May or early June?

COMMISSIONER COLEMAN: That is correct.

SENATOR STOCKMAN: And to this point the Cost Containment Agreement was, figuratively speaking, a glimmer in your eye, that is, it had not been put on paper yet, it really had not been negotiated yet. Is that correct?

COMMISSIONER COLEMAN: It had not been negotiated. Once again, in discussions with Chairman Smith, I had thrown it out as a possibility, and what developed in that meeting I pushed very strongly for cost containment. I had also -- I think there was a consensus, "Well, let's look at it." Mr. Stein was certainly part of that consensus. I believe Mr. Potter and Mr. Rodriguez agreed also that if I wanted to approach Public Service about the possibilities of cost containment -- "let's put the burden on them; let's see what their response is going to be." That particular approach would help to more clearly crystallize our options on this matter.

SENATOR STOCKMAN: Mr. Stein says this, and you quote him. "It would be preferable if you and the Public Advocate were together on this issue, but I believe that your determination should control the Administration's position." Now, I know you cannot answer for Mr. Stein on what he meant by that, but, as a matter of fact, one very clear interpretation of that is, that you should make the decision and, thereafter, the Administration, which includes both the Energy Department and the Public Advocate, should go forward on that basis.

COMMISSIONER COLEMAN: In reading that, Senator, I think the language is very clear, and I think the conclusions to be drawn from it are exactly the opposite. I think that what Mr. Stein was doing, was to separate an Administrative Department of the Administration, being the Department of Energy, from the independent role of the Public Advocate. I don't think that he could be any clearer or any more direct in that language.

SENATOR STOCKMAN: Okay.

COMMISSIONER COLEMAN: I think, also, that in light of the fact that he was not writing it with the knowledge that subsequent events would have it brought to light here, I think that language is very clear.

SENATOR STOCKMAN: As a matter of fact, I have to ask you this question. Someone indicated to me that Mr. Stein made the observation that he "had a nose for trouble-free solutions to problems, and this was one of them." Did you ever hear him say that?

COMMISSIONER COLEMAN: Well, if he has that type of nose, I can assure you I will consult him more frequently in the future.

SENATOR STOCKMAN: If we take a look at the issue we are talking about, I am not sure we're all going to agree that his nose was necessarily, if he said it, sensitive on that point. But at any rate, he does say that it would be preferable if you and the Public Advocate were together at this point. Do you have any understanding as to why he felt that?

COMMISSIONER COLEMAN: Well, as I say, I think in writing, I mean hopefully we can find a great public policy solution upon which we can agree. But I think the total letter is clearly here to separate the Public Advocate from the Department of Energy. In other words -- he says right in there -- there need not be any concerted action on the part -- and you, the Department of Energy, will frame

the Administration's position.

SENATOR STOCKMAN: As a matter of fact, one way that this matter could have gone would have been for you and Public Service and Atlantic Electric to reach the Agreement, the Public Advocate not to be persuaded, you submit the proposal to the BPU, the Public Advocate vigorously present the other side of it, and let the BPU resolve it. That was a real option, wasn't it?

COMMISSIONER COLEMAN: Well, let me say this. I know that Assistant Public Advocate Potter is going to testify, and I think he can testify as to the position of the Public Advocate. I can only say to you that I think the decisions that the Public Advocate made, in my judgment, he made based on what he thought was in the best interest of the public and the Public Advocate.

SENATOR STOCKMAN: I understand that, Mr. Coleman, but what I am getting at is, at the time of this exchange, really one could have argued that it would have been a healthier situation for you and the Administration to go forward with this proposal, but allowing the Public Advocate to represent another interest because after all the BPU was there as a quasi-independent -- quasi-judicial agency to grapple with this question and have it resolved in the best interest of the public. That was certainly an option, and what I am curious about is why Mr. Stein, on behalf of the Governor, as early as that point, was making the suggestion that it would be sort of preferable if the Public Advocate and you got together on this matter.

COMMISSIONER COLEMAN: Senator, I recognize that this is your hearing and I am a guest here. However, in my opinion, I think that from what is here, obviously the Public Advocate had an interest in it, and I think that Mr. Stein, in writing this, and I think the language is very clear, separated an Administrative Department from the role of the Public Advocate, and clearly stated -- it clearly indicates that no coercion or undue pressure, or any pressure, was put on the Public Advocate to conform to the position of the Department of Energy or the Administration.

SENATOR STOCKMAN: Senator Dalton has a question on that meeting that he would like to ask you.

SENATOR DALTON: Commissioner, I suppose, and I am making an assumption here, that S-975 was discussed at that meeting.

COMMISSIONER COLEMAN: I think you see that in the rest of Mr. Stein's memo.

SENATOR DALTON: Now, given that, why didn't the people who were in the meeting -- Mr. Stein, yourself, the Advocate -- suggest that we get behind 975 and have a complete and total review of the Hope Creek I?

COMMISSIONER COLEMAN: Well, I think that at that point we were feeling -- once again, we were still in the feeling out stage and I think that you knew that, let's say that there wasn't unanimous consensus with regard to S-975. I don't think that that --

SENATOR DALTON: Consensus from the Administration, you mean?

COMMISSIONER COLEMAN: Yes, and I don't think that that is a secret. So, I think you can see some of the problems involved in that.

SENATOR DALTON: Well, I guess what I am trying to get at is, what were some of the concerns by the Administration relative to S-975? It was never clearly articulated to me as to what would be the inadvisability, or unadvisability, of going forward with a review.

COMMISSIONER COLEMAN: Once again, I think it was a question, Senator, of exploring options, and at this time we were exploring and it wasn't to preclude

S-975 at that point. But, we were exploring options. We hit upon an option that we thought could conceivably provide a very good public policy solution in cost containment, and we were going ahead and exploring. So, I don't think it was a question of firm decisions at that point having been made.

SENATOR DALTON: Okay. Just one further question. You were exploring options, but one of those options was S-975?

COMMISSIONER COLEMAN: Certainly, S-975 was one, and I think you know about my sentiments about it. As I said, I feel strongly, and did feel strongly, that cost containment was in the best interest of the public and in terms of reaching a solution to this. Hence, my support of the Cost Containment Agreement.

SENATOR DALTON: Was it ever discussed that a Cost Containment Agreement should be implemented only after a clear need had been determined?

COMMISSIONER COLEMAN: Well, Senator, I think, once again, the difficulty was, you know, on time, as I think you recognized yourself in some of your later statements. There was a question, we're spending a great deal of money there every day and by the time the process were to -- where would we be, and how much more money would we have spent. So, I won't say that it was an easy decision, but at some point a decision had to be made, and that decision, in my judgment, was best made toward cost containment.

SENATOR DALTON: But the concern with regard to time was a concern that was tied into the legislative process. A blue-ribbon committee could have been implemented with a stroke of the Governor's pen -- implemented at any time, and done the same thing that my bill would have done. Was that ever discussed?

COMMISSIONER COLEMAN: Well, let me say it was discussed in terms of your bill, but, once again, you really get into questions of how long blue-ribbon committees -- there were a number of options discussed.

SENATOR DALTON: Was that ever discussed, Commissioner, determining the need via a committee that would be established, via an Executive Order of the Governor, prior to getting involved in any cost containment issue?

COMMISSIONER COLEMAN: It may have been discussed. I wasn't privy to it.

SENATOR DALTON: Well, that is really what I am asking you. Were you privy to any of that?

COMMISSIONER COLEMAN: It was discussed with regard to S-975.

SENATOR DALTON: But it was never discussed in the context of an Executive Order or something that we, the Administration, could do to positively determine whether there is a need or not?

COMMISSIONER COLEMAN: Let me say, the provision in S-975 was discussed. Okay? It was discussed around that. Once again, the options -- the way things were firming up on it -- one of our options, and they were continually evolving as, you know, this chronology would indicate. We seized upon it, and up until the very last moment, we were not aware as to whether or not we could reach a Cost Containment Agreement. But, given that particular option -- we chose as the best.

SENATOR DALTON: I guess to get back to my question, there was never an option discussed of first determining need, then going forward with cost containment?

COMMISSIONER COLEMAN: In terms of determining need, that was one that we would say was continually discussed within the Department of Energy, and

it was ongoing in that analysis, so that if you are saying was the question phrased as you put it, it may have been but we did not focus on that. I think that that option was available and was discussed around with regard to S-975 because S-975 is what was on the table. I think, once again, in Mr. Stein's memo you can clearly see that that was discussed.

SENATOR DALTON: Your answer, and I don't want to misrepresent you and put words in your mouth, but your answer is that nothing was discussed relative to a blue-ribbon panel created by an Executive Order that would allow us to determine need first?

COMMISSIONER COLEMAN: Once again, I don't want to go so strongly because S-975 was discussed. Now, everything that --

SENATOR DALTON: See, Commissioner, you are talking about S-975. I'm not talking about S-975.

COMMISSIONER COLEMAN: But, revolving that blue-ribbon panel, which was part of S-975, that was discussed.

SENATOR DALTON: Did it have to be part of S-975?

COMMISSIONER COLEMAN: Okay, but it was discussed, in my recall, in the meeting which Senator Stockman spoke about. We discussed it with regard to S-975.

SENATOR STOCKMAN: Do you mean an Executively-created blue-ribbon commission?

COMMISSIONER COLEMAN: No.

SENATOR DALTON: Just 975, which is a legislative commission.

SENATOR STOCKMAN: Incidentally, if I may ask you, Commissioner, you talk about this need being continually being discussed. Did the Energy Department commission any independent expertise to do a study of this need at any time?

COMMISSIONER COLEMAN: We did not under my tenure. There was one before --

SENATOR STOCKMAN: Whose information was it that you worked with through this constant discussion and evaluation of need -- Public Service's?

COMMISSIONER COLEMAN: I have the top man from a top staff right here.

SENATOR STOCKMAN: Okay. Let me ask your top man. Top man, can you tell us that?

D R. B H A R A T C. P A T E L: Yes, definitely. The Department has been involved in the assessment of the utilities' forecasts, both for energy problems and the peak-load problems. We have done an independent assessment of not only the utilities' forecasts, but also our own forecasts, with respect to the peak requirements of the utilities and the energy requirements.

SENATOR STOCKMAN: Do you have any of those studies? Were they put together in some kind of memo form?

DR. PATEL: Yes. The Commissioner has indicated that, in his report to the Governor of May 6, that report has a detailed assessment of the New Jersey utilities and also PSE&G's capacity expansion requirements. That report does address all the issues.

SENATOR STOCKMAN: Correct me if I am wrong, but the end of that report reads as follows: "These findings demonstrate the necessity of a complete examination of all issues relating to Hope Creek I before anymore ratepayer dollars are spent. While this review must be of necessity thorough, it must also be conducted as expeditiously as possible in order to avoid any additional or unnecessary costs to PSE&G ratepayers and in fairness to the utility and to the stockholders." That report that

you are referring to says it is essential that we do a complete examination of all issues.

COMMISSIONER COLEMAN: That is correct, Senator. But, once again, I think in that report it does not call for an outside blue-ribbon commission. That examination was conducted internally.

SENATOR STOCKMAN: I know that, but I want to know what outside experts, if any, did the Energy Department retain -- and I am not talking about any studies done by Public Service -- outside independent experts.

COMMISSIONER COLEMAN: Senator, I have complete confidence in my staff and the technical capabilities of Dr. Patel and his unit. I think that in terms of outside consultants and what was needed, as I said, I have complete confidence in my staff and I think the taxpayers' mighty good dollars are going to a mighty good person and a mighty good unit.

SENATOR STOCKMAN: All right, I understand your answer. Thank you. -- and I have respect for what you are saying. Turning to the negotiations, you referred to them as being lengthy and intense on a daily basis during the Summer. Now, are you telling me -- these didn't begin until early June, did they?

COMMISSIONER COLEMAN: That's right.

SENATOR STOCKMAN: So you are telling me from early June to August 10, I guess was the day of the actual signing, there were daily discussions and negotiations going on?

COMMISSIONER COLEMAN: Well, let me say once again, in terms of daily -- yes. There wasn't a day that this Agreement wasn't under discussion internally, externally, between ourselves and the Advocate, with Public Service -- yes, there were daily discussions. It was not something that, you know, was kind of dreamt up overnight or just put into place. It was a process which I know you can appreciate, having been in negotiations yourself as a lawyer, that was one in which it was quite intense and one in which there was a lot of back and forth, different positions --

SENATOR STOCKMAN: A lot of draft Agreements?

COMMISSIONER COLEMAN: Yes, there were drafts.

SENATOR STOCKMAN: And you have copies of those drafts?

COMMISSIONER COLEMAN: Yes, we can show you, certainly, an early draft, and we can talk about how it evolved. One of the evolving aspects of it was, for instance, the question of the escalating clause with regard to cost overruns -- that evolved out of it. As I said, there was any amount of discussion and any amount of lawyers who gave their comments with regard to the clauses, and opinions with regard to extraordinary events.

SENATOR STOCKMAN: These lawyers I am fascinated with. Can you give me the names of these lawyers who passed judgment on this document and who got into it?

COMMISSIONER COLEMAN: Once again, I think you will find, when he gives his testimony, I think that Mr. Potter conducted a great deal of his own casework. We certainly relied on the resources of the Attorney General's Office, even in bringing back Mr. Stein himself, who is a lawyer. Any number of people with legal background who have looked at that --

SENATOR STOCKMAN: Did Stein actually review this Agreement, both as a lawyer and in his office?

COMMISSIONER COLEMAN: No, I wouldn't say he reviewed it as a lawyer, but, obviously, he was kept aware of developments from my end as to where we were going and the process.

SENATOR STOCKMAN: What about Rate Counsel in the Public Advocate's Office?

COMMISSIONER COLEMAN: Well, the Public Advocate can speak for himself on that. I don't, you know, run the Rate Counsel's Office. I can only say this, I know once again as a Commissioner, that there is a management prerogative that one has. You put faith, and you have people negotiate or do things for you that you feel can get things done and who you have faith and trust in. I'm sure Commissioner Rodriguez made his own judgments as to who he wanted negotiating, and I respect that judgment.

SENATOR STOCKMAN: Well, were you ever a little bewildered or surprised as to why there was no evidence of participation in this major Agreement by Rate Counsel? You are familiar with Rate Counsel, aren't you?

COMMISSIONER COLEMAN: Yes, Senator.

SENATOR STOCKMAN: What was your opinion -- what is your opinion, for instance, of Mr. Makul as a --

COMMISSIONER COLEMAN: (interrupting) Let me say, on an organizational chart, I think that Mr. Potter outranked Rate Counsel. So, there was a higher official within the Department of the Public Advocate who was doing the negotiating. Given his experience and his legal background, and the faith that the Commissioner had in him, I think that was a judgment that the Commissioner made. It was a management judgment, and is one that I may have made, or you may have made.

SENATOR STOCKMAN: Were you aware of that during this period up through August 10?

COMMISSIONER COLEMAN: Was I aware of what?

SENATOR STOCKMAN: Apparently that the Public Advocate had turned to and relied on Mr. Potter for these negotiations and for this higher expertise than Rate Counsel.

COMMISSIONER COLEMAN: Let me say that right in my testimony today, I have made it clear that Mr. Potter was the point man for the Public Advocate.

SENATOR STOCKMAN: That is what I want to refine -- his point man.

COMMISSIONER COLEMAN: I know that within my Department, even at my house on several occasions, we held meetings to discuss this Agreement and I discussed it with Mr. Potter. He was the point man for the Public Advocate. There is no question about that.

SENATOR STOCKMAN: And, as far as you knew, no one else in the Public Advocate's Office participated up through the completion of this on August 10?

COMMISSIONER COLEMAN: No. Certainly, Mr. Rodriguez was up to date on what was going on and just as internally I don't think, Senator, that it is fair for me to comment on the internal workings of another.

SENATOR STOCKMAN: No, you misunderstand my question, Commissioner. I want to know from your observation or participation, whether you saw any evidence of involvement of Rate Counsel's Office leading up to the execution of this Agreement of August 10. I mean, either you did or you didn't.

COMMISSIONER COLEMAN: My contacts with the Public Advocate were with Commissioners Potter and Rodriguez.

SENATOR STOCKMAN: All right, I understand. Incidentally, Mr. Potter was away on vacation for a two-week period right around the end of July and into early August, wasn't he?

COMMISSIONER COLEMAN: I don't believe he was away for a two-week period. I believe he was in Minnesota from sometime around the end of July through the first

week in August -- and that is correct.

SENATOR STOCKMAN: And during that period there weren't any activities on a day-to-day basis that he was involved in?

COMMISSIONER COLEMAN: Let me say that the contacts were made with Commissioner Rodriguez.

SENATOR STOCKMAN: During his absence?

COMMISSIONER COLEMAN: That is correct.

SENATOR STOCKMAN: And this is in early August?

COMMISSIONER COLEMAN: Yes.

SENATOR STOCKMAN: Incidentally, you refer to several impasses during the course of these negotiations. Do you recall what those were?

COMMISSIONER COLEMAN: Once again, Senator, I think you know that when you are negotiating something that is this complex, difficulties arise and you do not get consensus. One impasse I can certainly tell you was that there was a period where it did not seem as if, -- or there was difficulty with Atlantic Electric as to whether or not they would accept this. It was something that we were forcing, and they were not of a mind at that point -- they were anti-cost containment. I think from the discussion I had with the Chairman a few weeks ago, he is still not pro-cost containment. So, that certainly was one of the flies in the milk and, you know, all along the line problems arose that could have imperiled our chances of gaining an Agreement.

SENATOR STOCKMAN: Now, in August it was, as you described it, that you were in a position to discuss the details of the Agreement with the Governor. Is that correct?

COMMISSIONER COLEMAN: That is correct.

SENATOR STOCKMAN: Had the details been worked out by the beginning of August, or not?

COMMISSIONER COLEMAN: Pretty much -- it was pretty much in shape. There were a few hanging things that needed to perhaps be clarified, but the Agreement was pretty much --

SENATOR STOCKMAN: Didn't the first draft omit any indication of an abandonment of the right of the Public Advocate to contest the need for Hope Creek I?

COMMISSIONER COLEMAN: Contest the need?

SENATOR STOCKMAN: Yes.

COMMISSIONER COLEMAN: I would have to go back and check on the draft, Senator.

SENATOR STOCKMAN: Now, on August 4 at a meeting with the Governor, was that the first time that you actually had a direct meeting with the Governor on this proposed Agreement?

COMMISSIONER COLEMAN: That is correct.

SENATOR STOCKMAN: Who else was present at that meeting besides yourself, the Public Advocate, and the Governor? Mr. Stein, I assume.

COMMISSIONER COLEMAN: That is correct. I believe Larry Weitzner from Mr. Stein's office was present. There were a couple more at that meeting. I believe Mr. Richman was present, although I would have to check. I am not entirely sure; however, those were the principals.

SENATOR STOCKMAN: And the fact of the matter is, that on August 4, 1982, the Public Advocate was fully aboard and fully committed to signing this

Agreement, which waived any right of the Public Advocate to challenge the need for Hope Creek I. Is that a fair statement?

COMMISSIONER COLEMAN: Well, let me say that, obviously, the Advocate provided that the Agreement could be completed at that point. He had stated that he was in accord with cost containment. There were still some details to be finalized.

SENATOR STOCKMAN: What details?

COMMISSIONER COLEMAN: Once again, I would have to check back on the records, but there were a couple of, let's say, niggling little things that had to be defined. At that point, even when we say "on board," I do not believe, and you can check, that even the Directors at Public Service had passed on it. So, obviously, there was going to be a time lag before an Agreement could be finalized. But we were at the stage where we felt that it should be taken and the Agreement and the consent of the Governor should be won before things progressed any further.

SENATOR STOCKMAN: Was the purpose of this meeting to present it to the Governor and see whether he approved?

COMMISSIONER COLEMAN: That is correct. In other words, if there was going to be an Agreement, if we were going to go any further from the Department of Energy's standpoint, then we needed the Governor's approval.

SENATOR STOCKMAN: Was there any deadline, incidentally, fixed by anyone around this time, you know, in terms of getting this thing either done or not done?

COMMISSIONER COLEMAN: No, there was no deadline fixed in terms of getting it done.

SENATOR STOCKMAN: Who handled this meeting, that is, who ran it? The Governor himself -- did he pretty much call for comments?

COMMISSIONER COLEMAN: I don't want to go into the details. I think it would be inappropriate for me to discuss the inner workings. I have no objections to discussing what came out of that meeting, or the purpose of that meeting, but I really don't think it's fair for me to comment on the inner workings at a meeting with the Governor.

SENATOR STOCKMAN: Well, is it fair to say that the Governor was very enthused about this proposal?

COMMISSIONER COLEMAN: Well, once again, I certainly am not going to comment on that. I don't think it is fair for me. Enthused -- if I have a toothache and my tooth is hurting, I am enthused to get it pulled. I'm not necessarily enthused about going to the dentist at any other time.

SENATOR STOCKMAN: Did he express any doubts or uncertainty about this proposal?

COMMISSIONER COLEMAN: Once again, the Governor accepted the proposal, that in coming up from his Department, the recommendations of his staff, that this was the best public policy solution. The Governor stated that support in his announcement in a press release in support of the Hope Creek I Agreement.

SENATOR STOCKMAN: That was on the 11th?

COMMISSIONER COLEMAN: Yes. I think you know, Senator, that I know him, I guess, very well, but in terms of what went on in his mind and so forth --

SENATOR STOCKMAN: I wouldn't want you to speculate on his mind, but I mean, if he said specifically, "Hey, this is great." I don't see any reason why you couldn't share that with us. But if your view is otherwise, Commissioner, I will respect that inclination. There is no question though, I gather, that once you left that room that day, that it was clear to you, it was clear to the Governor,

and it was clear to the Public Advocate that he, the Public Advocate, agreed to sign this Agreement, ending any dispute and any opportunity to challenge the need for Hope Creek I. Is that a fair statement?

COMMISSIONER COLEMAN: No. Let's say it was stated that that was the intent, if things concluded as they were going. The Agreement was pretty much intact, but as I said, there were a couple of niggling little matters that needed to be worked out and, indeed, no one was committed at that point -- we're definitely going to put our signatures on the dotted line. There were a couple of little matters that had to be worked out, and they subsequently were worked out.

SENATOR STOCKMAN: Commissioner, you keep referring to a couple of little matters. This was an almost \$4 billion Agreement.

COMMISSIONER COLEMAN: I think if you ask that question to Mr. Potter, I think he can speak to you with regard to the Public Advocate's concerns. The concerns that needed to be worked out were primarily the concerns of the Public Advocate with regard to at least one clause in the contract, and that was worked out.

SENATOR STOCKMAN: Do you recall what clause that was?

COMMISSIONER COLEMAN: It was a discussion as to -- we wanted to be clear once again on what was meant, and the full meaning and intent with regard to the clause on extraordinary events.

SENATOR STOCKMAN: As a matter of fact, wasn't there some sort of an emergency meeting that Mr. Rodriguez attended and held up a Governor's press release to talk --

COMMISSIONER COLEMAN: I don't think he held up any Governor's press release at all.

SENATOR STOCKMAN: You don't?

COMMISSIONER COLEMAN: No, I don't.

SENATOR STOCKMAN: Well, I represent to you that he so testified in this room a week ago.

COMMISSIONER COLEMAN: I don't think, in my recollection, that it was a matter of holding up the Governor's press release on it. I think we had set a time we felt as though the Agreement was finished. There were a couple of concerns, and there was a meeting. But, as to whether or not the Governor's press release was going to go out that day, or the following day, or the following day, I don't think that that in any way, shape or form, in my opinion -- Mr. Rodriguez may have a different opinion--

SENATOR STOCKMAN: He does.

COMMISSIONER COLEMAN: -- that that was an overriding factor. As a matter of fact, I remember very clearly the day itself, and there was a question as to whether or not it was going to go out that day or the following day because it was so late in the day, and due to the fact that a couple of reporters were on the story, it was decided, in a conversation that I was in myself with Mr. Golden, the Press Secretary, that he was going to put it out that day. So, I don't think that the overriding concern by any of the parties was that the press release had to go out that day. That is the point I am trying to make.

SENATOR STOCKMAN: What day did you set? You said you set a timetable on this meeting, I believe, on the 5th of August with the Governor. Did I understand your testimony to be that you set a date when --

COMMISSIONER COLEMAN: No. I think that the day before it was going to be signed, in terms of coordination, we had pretty much agreed that we had reached

an Agreement and that we would sign it, I believe, on August 11. A problem cropped up that warranted a meeting, and the problem was straightened out.

SENATOR STOCKMAN: I don't want to belabor it, but your statement says, "As can be seen from the chronology of events I have just outlined, the Agreement was not presented to the Governor until after all parties had accepted it themselves." So, as of that meeting with the Governor, the Public Advocate had accepted the Agreement and he reflected that to the Governor?

COMMISSIONER COLEMAN: Yes, in principle. Yes.

SENATOR STOCKMAN: Now, there was an enormous significance to this Agreement, I take it?

COMMISSIONER COLEMAN: As a matter of fact, I don't even mind telling you a little off-color joke. We even joked about it --

SENATOR STOCKMAN: We need a little levity in this hearing.

COMMISSIONER COLEMAN: Yes, we need a little levity about it. I remember Commissioner Rodriguez's comment that with he being the first Hispanic Cabinet Officer in the State of New Jersey, and myself being a Black, with the two of us announcing a \$3.79 billion Agreement, that would be some sort of new phenomenon in American history.

SENATOR STOCKMAN: Now, incidentally, you refer to somewhat of a landmark significance to this. Someone has called my attention to a Cost Containment Agreement involving transit Alaskan pipeline, and it has been suggested that it is a much stronger and more effective cost containment agreement. Are you familiar with that agreement?

COMMISSIONER COLEMAN: No, I am not familiar with it.

SENATOR STOCKMAN: You, of course, point out that the Agreement in no way limited the ability of the Public Advocate, the Department of Energy, or any other individual from challenging costs thought to be unreasonable. There was some discussion of trying to pin down this "Extraordinary Events Clause."

COMMISSIONER COLEMAN: There were several.

SENATOR STOCKMAN: There were many of those I am sure. But, in particular, in the hearing before the Board of Public Utilities on September 28, I believe, the day you also appeared before the Public Utility Commission, this exchange occurred. I want to ask you whether in your mind it raises some question about the ability of the Public Advocate, in view of the posture he is in, to vigorously pursue the public interest in this question of containing costs through the mechanism of delimiting the "Extraordinary Events Clause." Ed Lloyd of PIRG was questioning Mr. Morris of Public Service Electric and Gas on a definition of extraordinary events. The attorney for Public Service objected to this line of questioning, saying that, "The parties did agree that neither Public Service nor the Public Advocate nor the Department of Energy would define extraordinary events because it was incapable of definition." That's on Page 142 of the transcript. Then Mr. Camacho, on behalf of the Public Advocate, placed this statement on the record. "Yes, I would concur in that objection, President Kern. So, we have Mr. Camacho, the Public Advocate, joining with Public Service in objecting to Ed Lloyd of the Public Interest Research Group at that hearing, trying to develop a clearer understanding and delimitation of the clause, extraordinary events.

Now, in light of that approach, which apparently able counsel for the Public Advocate felt he was placed into by virtue of this Agreement, do you

still contend that the Agreement, in no way, limits the ability of the Public Advocate from challenging costs thought to be --

COMMISSIONER COLEMAN: Let me say on that, it was something once again that was discussed many times before the Agreement was signed, Senator, and the feeling on it was and, once again, getting back to your good profession, that in order to define it and to list what might be and what might not be, would weaken any case that the Public Advocate or anybody might have with regard to attacking what might be considered an extraordinary event before the Board. So, it was a decision based, once again, in good faith, that it was best in terms of protection of the public interest not to define it. And it was a conscious decision that was made based on legal advice.

SENATOR STOCKMAN: And you are absolutely right in suggesting that I might take issue with that because, of course, I would argue and I don't hold myself out to be the world's greatest contract lawyer by any means. My area of legal practice primarily is in another direction. But I would argue that you can specify and thereby delimit the scope of such an extraordinary events or occurrence clause, and protect yourself from the very concern you have by pointing out that these limitations are not meant to be exclusive and complete, but by identifying them clearly lay to rest any possibility of their being asserted as extraordinary expenses. I think it is a not uncommon practice, but again I think you and I would agree, probably, that for us to argue over that would not get us very far.

But I do want to ask you about your reference on Page 4 to the costs question with regard to this project because you make an interesting statement. You say, "The target date of December 1986 and the target cost of \$3.795 billion are not, as some have alleged, numbers which have been simply pulled out of the air. Rather they are based on data furnished by Public Service Electric and Gas, Bechtel Corporation (the prime contractor, who I think you would agree has a real interest in the completion of this project) and Theodore Barry Associates," and here I want to get into a little discussion with you "an independent consultant hired by PSE&G..."

Now, Commissioner, that group of people upon whom you apparently rely and upon whom others rely for this \$3.795 figure -- that's Public Service, isn't it?

COMMISSIONER COLEMAN: Well, let me say that the figures that -- once again, Dr. Patel will and can speak to this. The system in New Jersey is that the Board, once these filings are made -- as we have indicated, a number of filings have been made, their staff is responsible in terms of analyzing that. Now, if they are way off, or there are problems with them, and so forth, right now the way the system works we would hopefully get that feedback back from them. The filings, as we have listed here -- difficulties have arisen -- Dr. Patel would be happy to testify to that.

SENATOR STOCKMAN: All right, fine.

DR. PATEL: The Commissioner has testified that there were three or four dockets in which the detail numbers on the plant completion have been filed with the Board of Public Utilities which, through the normal process of evidentiary hearings, have passed upon those numbers the issuance of securities in the three dockets: 821-70, 823-184 and 823-185, issued way back in March and April. The basic numbers that deal with the plant construction were included. We have reviewed the case files and assessments of the Board staff and the positions of different parties have been included in our review. Actually, the numbers have not

changed through the entire process of the negotiations. So, it is still basically the same numbers. These are the numbers that have been discussed in the securities issued dockets, as well as the dockets that deal with the cancellation of Hope Creek II, wherein the witnesses of PSE&G were extensively cross-examined by the Public Advocate and the Department of Energy, and also by the Board staff.

SENATOR STOCKMAN: But there was no outside independent expert brought to this question by either the Department of Energy or the Public Advocate, was there?

COMMISSIONER COLEMAN: Let me say as I have said before, we did not -- As I say, in this regard I have confidence here in Dr. Patel, but also it was a matter that, as you can see, has been brought up several times and as Dr. Patel has just stated, has been considered through the Board of Public Utilities. The numbers have remained the same. We did not bring in an outside consultant, no.

SENATOR STOCKMAN: Well, the numbers did not remain the same from the beginning, did they -- the same as Public Service projected when it began this project? I think we can agree on that.

COMMISSIONER COLEMAN: Yes, we certainly can; hence the need for cost containment.

SENATOR STOCKMAN: Right, or perhaps for non-construction. Dr. Patel, it wouldn't be any reflection on you if it were suggested that you be authorized to retain an outside economist or economic consultants to project these figures and make these estimates, would it? I mean, do you have, completely within your staff, the expertise in the areas of construction, economics and finance, etc. to independently do these studies?

DR. PATEL: It all depends upon the scope of the project, obviously.

SENATOR STOCKMAN: How about a \$3.7 billion project?

DR. PATEL: If we are looking at the overall construction project without going into the details of the unusual components of the plants -- if we look at the framework of overall costs, we have the expertise on staff to evaluate the economic impact of the decision making whether one has to go ahead with the cancellation of the project, or go ahead and use some other alternatives.

SENATOR STOCKMAN: Well, you are injecting another component. Let me ask you this, Doctor. Are you confident from your expertise, and staff expertise that you have, that the figure we are dealing with, the \$3.795 billion is a solid, firm figure which will not change?

DR. PATEL: The \$3.79, obviously you have to remember, is a target number. It does not in any way reflect that that is what the construction costs are going to be. It is the basis for which the penalties and incentives are to be calculated. We think that is a very reasonable basis for the target.

SENATOR STOCKMAN: So, you are comfortable that it should hold?

DR. PATEL: As a target?

SENATOR STOCKMAN: Well, as a target. How big is the target?

DR. PATEL: The target is simple, a point target.

SENATOR STOCKMAN: How far off -- I mean, if you miss, are you talking like thousands or millions or hundred millions or billions?

COMMISSIONER COLEMAN: Senator, I think we are confident with the \$3.79 figure; hence, you know, the reason we put the Agreement there. Of course, the utility still claims, and has argued, that they can come in under it. What we have done is add the Theodore Barry Associates, and we have taken \$3.79. I think

when Dr. Patel speaks about a target, that is the figure that we have pegged. If there are overruns beyond that, the utility will be penalized. That is what he is referring to with regard to target.

SENATOR STOCKMAN: I'm almost finished. Incidentally, you refer in your statement to a plant already 50% complete. What is your basis for being aware that that, in fact, is so? Is it material and information supplied to you by Public Service?

DR. PATEL: The material and information supplied by PSE&G applied in a number of dockets, yes.

SENATOR STOCKMAN: Do you make any independent assessment or evaluation of whether in fact that is accurate?

DR. PATEL: Those numbers have not been independently assessed by outside parties, other than by the Department of Energy.

SENATOR STOCKMAN: But I mean, have you independently confirmed the accuracy?

DR. PATEL: Well, what we have done is, we have looked at the progress of the construction on a monthly basis as to what amounts of monies have been expended. The companies are required to file quarterly reports, so that does give you some indication of the extent of construction going on.

SENATOR STOCKMAN: But how can you, if you don't know the full cost because it is a target cost -- how can you -- what is it you rely on or how do you determine that, in fact, the figure is a fair one when someone says it is 50% complete?

DR. PATEL: The target is something else. We have been dealing with the actual construction cost. We are comparing two separate things. When we are dealing with the actual construction cost, we are looking at those monies that have been expended and have been filed in different forums at the SEC, have been filed at the Board of Public Utilities. That is what you are talking about.

SENATOR STOCKMAN: And what are those numbers, what are those numbers around --

DR. PATEL: Those numbers have been spelled out in the Commissioner's report to the Governor and have also been included in an updated version of the Department's analysis of June 21, 1981.

SENATOR STOCKMAN: And that number would be approximately 50% of the target figure, or not? Am I confused in that?

DR. PATEL: Okay. The target figure -- we have to look at two different components. One, we are looking at the actual cost of construction, which is roughly \$2.8 billion. To that you add the (inaudible) component, which brings you to the level of \$3.79. So, when I am talking about the construction, I am talking about the basic construction cost, not including the allowance for funds used for construction.

SENATOR STOCKMAN: All right. I'm not sure I understand that, but it's OK. That is my problem. Commissioner Coleman, there is one other observation you make in your written statement that I am interested in. You outlined some options that you had, and you say, "The second option, completion of the plant with no cost controls (as has been the traditional utility practice)..." Is it fair to say, I mean, there is a Board of Public Utilities still operating in New Jersey, isn't there?

COMMISSIONER COLEMAN: With regard to that, perhaps I will have to be a little bit more careful.

SENATOR STOCKMAN: I didn't know whether that was some reflection on the BPU.

COMMISSIONER COLEMAN: No, it was not meant to be any slap in the face whatsoever, Senator.

SENATOR STOCKMAN: Why would you say that that was an option in writing?

COMMISSIONER COLEMAN: Well, when I say about the cost constraints with it, let's say that we have it without cost containment. What we are speaking of there is that the construction will continue without cost containment. So, perhaps I should have phrased it better, or stated it more properly -- completion without cost containment.

SENATOR STOCKMAN: Did you have any involvement in preparing -- you or your staff, to your knowledge, did you have any participation in preparing the Governor's press release on this Agreement?

COMMISSIONER COLEMAN: Well, certainly we helped to provide, as is the general case, some of the background material. We did not write the press release.

SENATOR STOCKMAN: You read that press release in the media, I assume, didn't you?

COMMISSIONER COLEMAN: If you would like to refresh my memory.

SENATOR STOCKMAN: All right. The release, and I will quote it in part now, says, "This Agreement represents a major breakthrough in efforts to bring utility costs under control." And you apparently share that view with Governor Kean.

COMMISSIONER COLEMAN: That is correct.

SENATOR STOCKMAN: "It assures the utility's customers that they will not be required to shoulder any, or all, or any financial burden due to construction cost overruns." Is that an accurate statement?

COMMISSIONER COLEMAN: I think that what is meant there is that there will be penalties beyond the target figure, and it is clearly indicated in the Agreement.

SENATOR STOCKMAN: I'm talking about the release now. Is it fair in the release to suggest that this Agreement would not require any financial burden due to construction cost overruns?

COMMISSIONER COLEMAN: Once again, Senator, I am not in charge of writing the press releases. I think the Agreement that I signed speaks for itself -- that the company will be penalized.

SENATOR STOCKMAN: You'll buy out of the press release, all right. Just a couple of questions for Dr. Patel, as long as he is here, and I can complete. Then perhaps, Senator Connors or others have some questions. At the BPU hearings, Doctor, you testified on September 28, 1982. You indicated that the Department of Energy had conducted numerous studies dating back to March of 1982 showing that the Cost Containment Agreement was sensible and "in the best interest of the ratepayers." Numerous studies -- again, have those studies been submitted to the BPU?

DR. PATEL: Yes, they have been sent recently -- I can give you the precise date -- The responses to the staff's request for information were replied to, with the BPU and the parties to that docket, on October 22.

SENATOR STOCKMAN: Could we have copies of those agreements, Commissioner, at your convenience. I would appreciate that.

DR. PATEL: Yes.

SENATOR STOCKMAN: Did any of these studies take up the question of the "Extraordinary Events Clause?" Was that part of the subject of any of the documents that you sent on apparently to the BPU in October?

DR. PATEL: Not specifically, no.

SENATOR STOCKMAN: You were asked, "Was the cost containment proposal before the Board today specifically addressed in those Department of Energy studies as a possible option?", and you indicated, "Yes." Do you recall that?

DR. PATEL: Yes.

SENATOR STOCKMAN: If the Agreement was put in final form in August, including the "Extraordinary Events Clause," how could the Department of Energy studies have specifically addressed this Agreement, since they were completed at an earlier time? Do you understand my question?

DR. PATEL: Before we can include any specific proposal for extraordinary events, we have to define the scope of the extraordinary event and, as the Commissioner indicated, the parties did not have a consensus on the issues that were being included as part of the extraordinary events. Since we could not have a firm agreement on those issues, one could not come up with an economic analysis including those issues. If the Senator can provide some specific proposals, the studies can be done.

SENATOR STOCKMAN: Incidentally, Doctor, did you participate in any discussions prior to August 10, 1982 about this question of the "Extraordinary Events Clause?"

DR. PATEL: With whom?

SENATOR STOCKMAN: With anyone.

DR. PATEL: Do you mean entirely within the Department, or outside?

SENATOR STOCKMAN: Let me ask it again -- with anyone?

DR. PATEL: Yes.

SENATOR STOCKMAN: Who?

DR. PATEL: Within my own staff.

SENATOR STOCKMAN: Who?

DR. PATEL: Mr. Gurnani and Victor Bozzo.

SENATOR STOCKMAN: Were there any memos concerning those discussions?

DR. PATEL: No.

SENATOR STOCKMAN: Why did you consult with them concerning that clause?

DR. PATEL: We were not consulting. When a whole issue of this nature comes up before us for analysis, one always looks at different options that one has to consider. I guess in our deliberation to review the options, the issue of extraordinary events did come up and we have discussed those issues.

SENATOR STOCKMAN: Were these other people attorneys or were they other type experts?

DR. PATEL: The member of my staff who is an engineer is also an attorney. Mr. Gurnani, who is an engineer, has a background in economics. So, I have dealt with attorneys and engineers, and financial experts.

SENATOR STOCKMAN: Did you have any concern about what might be interpreted thereafter as an extraordinary event justifying further expense to the ratepayers?

DR. PATEL: In my view, the whole issue of extraordinary events was very simple. I did not feel at that time that that issue had to be included.

SENATOR STOCKMAN: You mean that such a clause should not be in the Agreement?

DR. PATEL: No, the issue of extraordinary events to be defined.

SENATOR STOCKMAN: Your position was that the phrase "Extraordinary Events" should be in the Agreement, but it should not be defined?

DR. PATEL: I'm not saying that. All I am saying is that the definition of extraordinary events, in my view, was such that appropriate mechanisms could be designed and implemented so that one can define those issues as time went by with proper checks and balances on those issues.

SENATOR STOCKMAN: Tell me about those appropriate mechanisms that could be developed in time after you signed this \$3.7 plus billion Agreement.

DR. PATEL: Okay. Very simply, the Department and the Public Advocate and all the parties have issued a subsequent memorandum which discusses this issue. There is an existing procedure right now through the translation docket of the Board, wherein PSE&G is required to file quarterly reports, and that is an appropriate mechanism which we felt was to handle the whole issue of extraordinary events.

COMMISSIONER COLEMAN: Senator, may I interject?

SENATOR STOCKMAN: Sure.

COMMISSIONER COLEMAN: I think with it -- certainly I know that Dr. Patel is attempting to answer your questions to the best of his ability. I would say, however, that he does work for me, so that with regard to any decision on the clause for extraordinary events, that was my judgment ultimately. He may certainly give me his advice, as other members of his staff do; however, that final judgement rests with me as to whether or not we were happy, or whether or not we felt it was in the best interest of the public to go into that Agreement with extraordinary events defined as they are.

SENATOR STOCKMAN: Incidentally, on that score, the BPU will be reviewing this Agreement. Is it going to be the position of the Department of Energy hereafter that the BPU should not attempt to refine and define that phrase "Extraordinary Events?"

COMMISSIONER COLEMAN: That's, once again, I think that is up to the BPU. I don't know; maybe we can get John Houseman or somebody in here from the "Paper Chase" to --

SENATOR STOCKMAN: No, I guess I was confusing. Commissioner Coleman, I didn't ask you what the BPU would do. I am asking you for what your position is going to be, as the Commissioner of Energy, in hearing hereafter --

COMMISSIONER COLEMAN: As Commissioner of Energy, if somebody can demonstrate to me that it is in the best public interest to do something else, or to define that we are not giving up anything in that -- then I'm flexible. I certainly may change. I am not inextricably tied to the wording as it is, but I think that until somebody presents me with a solution that their way of doing it is better and there can be a better substitute at something or other, I am sticking to the clause.

SENATOR STOCKMAN: Senator Connors, do you have some questions you would like to explore with the Commissioner?

SENATOR CONNORS: Yes. First, Senator Stockman, apparently you have a number of documents that I do not have. The one right to your left there with a circle around it. Then the next one to the left.

SENATOR STOCKMAN: Senator, this is the Hope Creek I -- The Need for a Review. This is the document that the Commissioner has, I think, been referring to,

and I think that is part of the record that we have had, and you are welcome to it. I think part of the problem, Senator, is the question of getting these documents. We didn't reproduce all of the documents we have. This one, I am not sure. Have we had this for some time, or did we get this currently?

MR. FRAKT: Very recently.

SENATOR STOCKMAN: -- it is to get them reproduced and circulated.

SENATOR CONNORS: To pass a puny pun, I'm in the dark with regard to this energy. I walked in here this morning and I got the testimony from the other day. I got my mail late, and I am kind of messed up along the way.

SENATOR STOCKMAN: Well, Senator, so we can sort of try --

SENATOR CONNORS: Rather than have it be known as the Stockman Hearings, as a participant in this Committee, I would like to have all of the documents that are pertinent to this matter. I'll probably go blind reading them all in the next day or so --

SENATOR STOCKMAN: Senator, just to complete the record, I reiterate we had a previous hearing. Some of these documents were already available then here at the hearing, and you could have looked at them. Beyond that, this hearing date was set at that time. Also, the staff person, Steve Frakt, seated to my left, who has done a great deal of work preparing for this hearing, certainly was available and had -- I guess we have to get to a bottom line on this. If you had any special interest in what was going to go on further today, this being a second hearing and not an initial hearing, it seems to me that you could have communicated with Mr. Frakt or with me on it.

Now, I am not anxious to get into a public harangue with you over that, but that is as much fact as your observation that you did not have this document.

SENATOR CONNORS: I don't have another one either.

SENATOR STOCKMAN: You're welcome to this. This is a series of questions on the Hope Creek Containment Agreement prepared by staff.

SENATOR CONNORS: Well, suppose we do this. Why don't we have the staff run these through a copy machine for me? Are there any other things that I have not seen?

SENATOR STOCKMAN: No problem. Yes, there is another document. As a matter of fact, we just got it.

SENATOR CONNORS: If I could look over and sneak a peek every once in a while and see what you have, in order to brief myself.

SENATOR STOCKMAN: All right.

SENATOR CONNORS: I did not mean that as a criticism. I know this hearing was hastily called. This is not a criticism, but really --

SENATOR STOCKMAN: I will ask staff to get you a copy of everything that I have here, and a copy of everything that has been provided.

SENATOR CONNORS: I can't guarantee you that I am going to read it by tomorrow, all right? But I would like to have these so I can at least follow along.

Commissioner Coleman, the study that you, with your staff and other people, conducted with regard to this matter -- you made a determination with regard to completion?

COMMISSIONER COLEMAN: Yes, we did, that is correct -- with cost containment.

SENATOR CONNORS: That percentage is how much?

COMMISSIONER COLEMAN: Right now, a little bit more than 50%.

SENATOR CONNORS: A little bit more than 50%. A lady in the audience had asked me to ask that question, and I wanted to make sure that I got it out on the record. Who does the Agreement bind?

COMMISSIONER COLEMAN: It binds -- the Agreement is signed by the Department of Energy, by the Public Advocate, by Atlantic City Electric, and by Public Service Electric and Gas. It would be binding, of course, if it were adopted by the Board of Public Utilities.

SENATOR CONNORS: Do you expect that to be signed by the Board of Public Utilities?

COMMISSIONER COLEMAN: I really couldn't make any comment on that as to what the Board's decision will be based on the evidence. I am hopeful, and certainly in support that it would be signed.

SENATOR CONNORS: Would you just go over for my benefit the basics of the Cost Containment Agreement, what it does, and how it would benefit, as you said, the shareholders and the ratepayers?

COMMISSIONER COLEMAN: Let's say that the target were exceeded on it. Traditionally, if a target were exceeded, the company paid no penalties to the -- let's say they paid no penalties. What we would be doing would be diminishing the amount that they would be allowed to charge off to the consumer, and the company would have to eat a share of any overruns, once again, based on this question still of reasonable cost. For instance, I think that if you were to -- if the company was to decide they wanted to publicize this, the opening of the plant, say by bringing giraffes from Africa or something, or having them parade around with signs, I think we would argue, quite naturally, that that was not a reasonable cost to be passed on. What we are attempting, and I think this is lost and needs more bringing out -- what we were attempting, among other things, with the cost containment, was to say that the traditional way of doing things, the traditional way of not providing the ratepayer with any type of security or leaving open the question of what the final cost was going to be, and having the utility come in and apply for more funds, was not in the best interest of the public. What we were attempting was to inject into it management accountability.

Now, if you can say that you can come in at \$3.79 billion, then darn well come in at \$3.79. If you don't, we are going to penalize you. I think with that that we provide there is management accountability, there is shareholder accountability -- obviously, if there are overruns, the shareholders are not going to be very pleased with that at all. So, what we were looking to do, among other things, was to provide an accountability to the public which has, to our mind, if not missing, certainly has not been strong enough with this type of Cost Containment Agreement, and we were looking at it, once again, with regard to this plant, but hopefully also as a model for future construction, hopefully not only in New Jersey, but in other states. As I said, we had a very serious, a very complex public policy dilemma on our hands and it was our feeling then, and it is our feeling today, that the best public policy solution with regard to Hope Creek I was cost containment.

SENATOR CONNORS: In other words, if they came in underneath the contract, it would be an incentive to the customer --

COMMISSIONER COLEMAN: That is correct, and truthfully with it we needed to provide -- we thought, once again, it would be in the interest even to provide that incentive with it, and in our Agreement we have created a neutral zone between the \$3.55 billion and \$3.79 billion where neither penalties nor incentives would accrue.

SENATOR CONNORS: That is quite a provocative type.

COMMISSIONER COLEMAN: We thought so.

SENATOR CONNORS: And they agreed to it. How binding is it?

COMMISSIONER COLEMAN: If it is approved, it would be binding.

SENATOR CONNORS: Who does it have to be approved by?

COMMISSIONER COLEMAN: The Board of Public Utilities.

SENATOR CONNORS: One of the things that was kind of glossed over there just in your discussion, was the statement that Mr. Nardelli had made about a show.

COMMISSIONER COLEMAN: That's right.

SENATOR CONNORS: Probably out of this whole hearing that I sat through this morning, that is probably the most disturbing to me of all of it. When you start talking about blackmail, threats, that is quite a serious charge. Were you present when that incident took place?

COMMISSIONER COLEMAN: I was walking into the hearing room with Commissioner Rodriguez. He left me to go over to the side for a conversation with Mr. Nardelli. When he returned, and I was still standing waiting for him, he told me about the conversation, and essentially said what I stated earlier this afternoon, that Mr. Nardelli had asked him if he was going to be reinstated in his position, if the Commissioner had reconsidered. Commissioner Rodriguez said he had not, and Mr. Nardelli said, "Wait until you see the show then that I plan on putting on inside," with the implication that if he were to have received his job back, he would not have raised the points that he did. Once again, I understand, and I have had the article read to me, I didn't read it myself -- but I understand he was quoted in the Bergen Record as saying something to the effect that, if he had received his job back, he would have kept quiet on the contents of the Agreement for a couple of months, but I would have that brought before the Committee because I certainly do not have it with me at this point.

But, as I said, to me it was a question of blackmail of the public interest. Now, if you are for something and you feel committed and you have certain principles about something, you stand up for it. And it is not your job which becomes of paramount importance to you, but those principles. In my mind, Mr. Nardelli's motives were, perhaps, less than pure.

SENATOR CONNORS: You had mentioned that Dr. Patel, Mr. Richman, Mr. Gurnani, Mr. Bozzo and Mr. Solomon -- I probably mispronounced the names, and I apologize -- were involved in the decision-making process of evaluating the circumstances that surrounded this switch in policy, or going in the direction that we are presently in, or the posture that we are presently in.

COMMISSIONER COLEMAN: Yes, that is correct. I would say that my own style, once again, my personal style of management is I don't believe in an open room. When I say that, I believe in free-floating discussion. I want people to speak out. I believe in a sort of competitive tension -- a bit of conflict in a room, and I think that those are some of the components that go into good decision making. So, there were those that you have mentioned, and many others involved,

whose opinions and expertise I drew upon in making the decision that I had to make.

SENATOR CONNORS: The reason why I asked that, Commissioner, is because it has been suggested that there has been no concentration on this at all -- that nobody asked anything from anybody, and all of a sudden we came up with the policy of this cost containment that was manufactured either by Mr. Rodriguez, by the Governor, or by you -- everybody got together in a clandestine meeting and put this thing together, and said, "Hey, here is our new policy, and we are not going to examine the facts."

To your mind and your satisfaction as far as the examination of it, was it a routine matter that was gone into in-depth?

COMMISSIONER COLEMAN: That is correct, Senator.

SENATOR CONNORS: Are you telling us, Commissioner, that there is a need regarding Hope Creek I in terms of filling the energy needs of New Jersey?

COMMISSIONER COLEMAN: That is correct. We are on record as stating so. We feel as though it is needed; its capacity is needed for the State. As I said, we pegged -- When I talk about the need, the need is there. I do believe firmly that we need it but, of course, I did not want to extricate the cost from it. It is needed, but certainly it is needed at a certain figure and we made the evaluation that the figure -- if we targeted a cost of \$3.79 billion and we could implement the cost containment plan at that figure, that we indeed were best serving the public interest.

SENATOR CONNORS: You and I, Commissioner, have something in common -- we're the new kids on the block, and even at this time, ten months after we have both taken our office, it might be difficult for you to answer this, but I am going to ask you anyway. You made a determination with regard to need, and I would assume that certain papers in the files, etc. were made available to you from the past Commissioner. Is there anything indicative in those files, or plans, or studies, that had gone back in the past, that there was a need for Hope Creek I, and in fact Hope Creek II?

COMMISSIONER COLEMAN: Yes, the Department was on record in support of those. As I said, I would state that my change in policy was one in which I wanted to see exactly what the cost was going to be before, you know, I would give consent to going ahead. I think the capacity is needed. The question became, at what cost, and cost containment came up. That Agreement, as I say once again, we felt --

SENATOR CONNORS: (interrupting) Are these presently in your files, Commissioner, some studies that were made in the past?

COMMISSIONER COLEMAN: That is correct and, of course, this has been a fully litigated matter before the Board of Public Utilities.

SENATOR CONNORS: Are they readily accessible?

COMMISSIONER COLEMAN: Pardon me?

SENATOR CONNORS: Are they readily accessible?

COMMISSIONER COLEMAN: The Board's records are.

SENATOR CONNORS: I would appreciate a copy of those -- maybe not all of them -- but if there is some kind of a planning study or something that had been determined in the past, the substantial comments. A copy for all of the members of the Committee.

COMMISSIONER COLEMAN: Surely, I would be happy to.

SENATOR CONNORS: And that your decision was made independently, and examined so.

COMMISSIONER COLEMAN: That is correct.

SENATOR CONNORS: The forecast of capacity, Dr. Patel, on energy requirements -- this I presume then would not only bring us up to date with the present Commissioner's forecast or overview of the energy needs of New Jersey in terms of electricity in these plants, but also the energy needs, as I have stated before, that were forecast by the past Administration. You are aware of these documents, you have read them?

DR. PATEL: Yes, absolutely.

SENATOR CONNORS: Do you find them substantially correct in evaluating the needs of the State with regard to increased electrical energy output?

DR. PATEL: Yes. I have been involved with the past Administration in making the evaluations of the utility requirements for capacity to meet the energy and peakload requirements, and, as you very well know, the whole issue of peakload and energy is a dynamic situation. The price is the impact on the conservation and has a market effect on how people consume energy. To the extent that those factors can be quantified, we have addressed and developed our own forecast dealing with sophisticated modeling techniques within the Department to come up with independent forecasts for the utilities. This has been used in the Department's analysis for the need for the plant.

SENATOR CONNORS: Somehow or another, we have lost a billion dollars here from testimony earlier. I'd like to just -- it is not a small amount of money to lose. If it were a couple of bucks, nobody would mind, but a billion dollars. In questioning Mr. Makul of Rate Counsel, he estimates that we are about \$1.5 billion down the road in Hope Creek I. In your testimony here, you say we are \$2.5 billion down the road. Who's right?

DR. PATEL: Okay, I can shed some light on what the Commissioner was indicating in his testimony. I think what you have to look at is there are two basic options. One is to build a plant, go ahead with the plant, and second is to cancel the plant. When you do a comparative analysis, one has to look at the basic assumptions before projections can be made. In the analysis that we had to go through for those two comparative scenarios, some assumptions with respect to the status of the plant had to be made. When we compare, one, the status quo versus cancellation, one has to then look at the implication of the cancellation of the plant and how the costs have amortized. Once the company builds the plant or completes a certain portion of the construction, it doesn't stop there. There are some closing out costs that have to be dealt with, so even though the monies that have been expended so far may be \$1.6 billion, there is a significant amount of closing out costs that have to go in. What the Commissioner was referring to was that by the time the plant is cancelled and you know the total cost, by the end of the year 1982 we are talking about \$2.5 billion. When you look at the analysis to use those numbers in comparing the full tariffs, you have to look at the after-tax effect. In our analysis, we have used roughly \$1.4 billion, which is, I guess, slightly less than what Mr. Makul has been talking.

The Committee will be provided with the updated analysis of June 21, which discusses these issues. I can briefly mention what the conclusion of the analysis shows. We have shown in this analysis roughly the total expenses to be capitalized at \$3.6 billion for PSE&G, with a straight line depreciation over 30 years of

\$122 million. In our analysis, we have also taken the rated average cost of the capital for PSE&G as 19.05%, which means that we have used about 12% cost of debt and 16% return on equity which was allowed by the Board, but which may not have been the actual earnings of the company. With the capitalization of 60% debt and 40% equity, and the corporate tax level at 46%, and the basic assumption, which is a little bit different than what has been made by some other individuals, we have shown that all the expected Hope Creek generation will replace the purchases and interchange and oil-fired generation at 60/40 capacity. In other words, what you look at is the marginal energy purchases done by PSE&G. Once we have the Hope Creek plant, the marginal capacity energy requirements will be reduced and the level is 60/40 purchases for PGM and oil displacement. When you look at those assumptions on the escalation of oil, and you also look at the costs of purchases, the property exscalations, the present purchases are roughly \$46 per mega- (inaudible) or 46 mills. We made some assumptions with respect to that and they were 5%. We also looked at the nuclear fuel costs and, not only that, but we had to make a basic assumption that if the plant had to be cancelled, we'd have a lower capacity which is existing in the old units. Some of the plants have been running for 40 or 50 years, and to keep these plants running beyond the 1986 date we may have to expend significant sums of monies, so we took that into account.

We made a projection of the capital expansion which was needed for refurbishing some of these plants and we envision over \$120 million will be needed. We also took the abandonment cancellation costs at \$1.4 billion. When you look at all those things and compare that with two scenarios, one, have the plant, and two, cancel the plant, and look at the savings associated with the two scenarios, we come up with some startling results. We see that the net cost of the plant will be some \$74 million in the first year. This goes down, and in the third and the fourth year there is a positive benefit of over \$35 million to the ratepayers. It starts on increasing beyond that. If you look at the year 2000, you are talking about over half a billion dollars. So there is in our own minds a positive effect from building a plant.

SENATOR CONNORS: I'm not sure I got all that anyway. (laughter)

SENATOR DALTON: May I ask a question real quick?

SENATOR CONNORS: Senator Dalton would like to ask a quick question.

SENATOR DALTON: Does that assume that the plant is in service for the entire time?

DR. PATEL: Yes, it assumes a fixed service date of 1986 and the assumption with respect to the cost of \$3.6 billion.

SENATOR DALTON: And it assumes that the plant is staying in operation?

DR. PATEL: Yes, we assume a 65% capacity factor through the life of the plant.

SENATOR DALTON: Despite the fact that in many cases the plants in this State rarely stay in operation for an entire year or an entire two or three years in a row?

DR. PATEL: Well, the Salem II has had a significantly good experience.

SENATOR DALTON: The Salem I in 1980 was down seven out of the 12 months. Right?

DR. PATEL: When someone makes a projection -- when we look at the trend of what is happening in industry, one has to choose those numbers that we are comfortable with.

SENATOR DALTON: Why were you comfortable with the plant staying on line constantly? Why were you comfortable with that assumption?

DR. PATEL: Somebody has to make an assumption with respect to the quantities of energy that will be coming out of those plants. Irrespective of what assumptions you make with respect to the capacity factor, if the consensus on the total kilowatt hours that are going to be produced by the plant or the life of the plant, it is sufficient for analysis purposes.

SENATOR DALTON: I was going to ask the same question again, but I am not going to do it.

SENATOR CONNORS: You've made me feel good, Daniel.

Different question, Commissioner. How much would a new oil or coal plant cost? Do you have any idea of that?

COMMISSIONER COLEMAN: What size?

SENATOR CONNORS: You tell me. Maybe we could back into it a little bit.

COMMISSIONER COLEMAN: We'll try a 400 megawatt.

DR. PATEL: The Commissioner's report of May 6 looks into one of the options of Hope Creek I as a plant -- a 400 megawatt oil-fired plant, and we have all kinds of basic assumptions with respect to an oil-fired plant. We're talking about \$2600 per kilowatt.

SENATOR CONNORS: I probably should have advanced this question first. In terms of meeting our energy needs within the State, it has been stated by a previous witness that we could really buy our power from out of the State, and that might be the cheapest way to go. Do you have any comments with regard to that, Commissioner, or Dr. Patel?

DR. PATEL: Okay, well, I guess one has to look at the overall availability of the State's supply sources. One does not want to put all of one's eggs in one basket, obviously. You want to make sure that you have a diversified approach to your energy requirements. If you start relying on one source of supply, obviously an disruption in that supply can significantly impact on us. We have seen that in the past with the oil situation. What we are saying is that the best thing is to diversify our supply sources, which means a little of the purchases, a little coal, a little oil, a little nuclear. If we look at the numbers for the State over the next 20 years, having a plant would at least bring us to that level of security.

SENATOR CONNORS: Then the next step down the line -- It has been suggested here this morning in testimony that really our energy needs are not growing. They are, in fact, probably diminishing or remaining status quo, and that we should look to solar and to other areas such as thermal energy for those energy demands. Have you gotten into that?

COMMISSIONER COLEMAN: Yes, Senator, we are on record. The Department very strongly supports conservation, resource recovery and a number of other energy producing and saving policies. However, we also believe that -- much of what Dr. Patel was saying before in his analysis -- this plant is needed and it is in the best interest of the State.

SENATOR CONNORS: Then, in order to meet the growth, if we were to cancel Hope Creek and go the other route just for a moment, a hypothetical case --

COMMISSIONER COLEMAN: (interrupting) Once again, we feel as though the State would have a serious capacity problem in the 1990's.

SENATOR CONNORS: A capacity problem -- then, what would it take in terms of real dollars to construct a plant of comparable size, because apparently this didn't start last year. This started several years back when a determination of need, right or wrong, was made by other individuals other than yourself? Now the torch has been passed and you are in that seat now. We're talking about a how many megawatt plant, 1,000 megawatt?

COMMISSIONER COLEMAN: Let me say, 1,067 in this case. In terms of the cost if we were to abandon here and attempt the same thing several years from now, the cost would be astronomical.

SENATOR CONNORS: Has that been studied?

DR. PATEL: This issue has been studied.

SENATOR CONNORS: Not several years from now. Supposing, a hypothetical case -- I know it can't be done, it's not going to be done -- but supposing -- when I say it is not going to be done, I mean it is not going to be done today. But supposing Hope Creek no longer exists, and we have already made that determination several years ago that a 1,067 megawatt plant is necessary to meet the energy needs of the State of New Jersey, what would the cost be right now? In other words, we're breaking ground right now to build a plant under today's costs to make up that difference in coal or oil.

DR. PATEL: That is a loaded question. I think one has to look at the implications of the technologies that one wants to choose to meet the requirements. Even in the coal area, we are talking about different technologies. Are we talking about large-scale units? Are we talking about medium-size units? Are we talking about cogeneration? Those are the things that one has to look at. The overwhelming question that one has to remember here is that with all this analysis, we have to keep ourselves aware of the fact that Hope Creek I is being built right now. Monies have been expended and somebody has to pay for the expense. So, if you cancel the plant -- it's nice to cancel the plant. But, there is some investment.

SENATOR CONNORS: Doctor, I am not suggesting -- I don't mean to interrupt. I'm looking for just a hypothetical situation. Let's not take a 1,067 megawatt plant. Let's take something perhaps that you would be more familiar with, a 400 megawatt plant, coal or gas, and multiply that times two and a half. Right? What would the cost be?

DR. PATEL: As I just stated, if you are looking at the same time frame -- see, the thing is, the cost would all depend on what dollars we are talking about. Are we talking about today's dollars? Are we talking about --

SENATOR CONNORS: I'm talking about today's dollars. If we started today, if we broke ground today --

DR. PATEL: If we broke ground today and if we are making an estimate of the plant costs somewhere in 1986 for a 400 megawatt coal-fired plant in New Jersey meeting the existing environmental requirements, I would say \$2600 per kilowatt. So, you just multiply that by 400,000 times that. That will give you the number.

SENATOR CONNORS: Which is how much?

DR. PATEL: I can tell you.

SENATOR CONNORS: He is getting a paper and pencil out.

DR. PATEL: I would say about \$1 billion.

SENATOR CONNORS: Okay. Conceivably, as was suggested earlier, smaller plants might be the way to go. So we would take two small plants at 400 megawatts, and one 200 megawatts -- we're talking really then in terms of probably \$2.5 billion to \$3 billion.

COMMISSIONER COLEMAN: Except that he said "today's dollars," and you have to --

SENATOR CONNORS: Today's dollars, right. I'm not trying to nail anybody down. What I am saying is, and the point I am trying to bring to a conclusion -- my question was, "How much would it cost to build an oil plant today?" It would seem to me that under the cost containment process at \$3.79 billion and a loss of \$2.5 when you subtract the \$2.5 from the \$3.79, and then throw the \$2.5 billion on top of that, it would be a reasonable conclusion, and I am siding with you at this point in time, Commissioner, but it would seem a reasonable conclusion that to abandon it completely when it is 55% complete --

DR. PATEL: I think one of the important things which you forget in making a comparative analysis is the variable costs that you are dealing with, coal-fired plants versus the nuclear plants. There is a significant difference in the income and cost in the operation of the coal-fired plant versus nuclear. When you take all those into account and you look at the order of plant life, then you can make a judgment as to what --

SENATOR CONNORS: Are you trying to convince me, Dr. Patel, that nuclear is cheaper than other forms?

DR. PATEL: No, I am not trying to convince you. All I am saying is that you have to look at those numbers.

COMMISSIONER COLEMAN: I think he is supporting your statement.

SENATOR CONNORS: Oh, okay. I'll quit on that note then.

SENATOR STOCKMAN: Senator Dalton has several questions, and I have several more. Then I think we can finish up.

SENATOR DALTON: Dr. Patel, I don't agree with your first assumption with regard to a plant staying in service for 20 years. Okay? So let me just make that statement. I don't think it has ever happened, and this would be a first. Additionally, if in fact Hope Creek I was cancelled today, what would be the impact upon consumers? What would the consumer pay? What would they have to bear? What is the burden?

DR. PATEL: Based on the analysis which we have done on June 21, the net additional cost would be some \$74 million in 1987.

SENATOR DALTON: So \$74 million would have to be born by the consumer?

DR. PATEL: Yes.

SENATOR DALTON: Now, if Hope Creek I is completed?

DR. PATEL: The \$74 million compares -- having the plant versus not having the plant. So, it is not strictly just the cost of cancellation.

SENATOR DALTON: I realize that. You are talking about everything.

DR. PATEL: Yes.

SENATOR DALTON: If Hope Creek I is completed, what would be the impact upon the consumers in dollars?

DR. PATEL: Are you referring only to the plant itself, or the associated savings that would be accrued to the --

SENATOR DALTON: I am referring to how much would the consumers pay.

DR. PATEL: Okay, that is what the number is, \$74 million, in

comparative analysis, completion versus non-completion.

SENATOR DALTON: Okay. So, if it was completed, the consumer would pay \$74 million.

DR. PATEL: No. The \$74 million really deals with having completed the plant or cancelling the plant.

SENATOR DALTON: What I am talking about is that if Hope Creek I came in line using today's dollars, how much would the consumer have to pay?

DR. PATEL: Very simply, we just look at the Hope Creek fixed costs for PSE&G. If you look at the investment of \$3.6 billion and the ratepayers, with an assumption of 19% return, all of it getting charged, depreciation of 4%, and also including the gross receipts, we are talking about a fixed cost of \$913 million in the first year.

SENATOR DALTON: \$913 million in the first year?

DR. PATEL: Right.

SENATOR DALTON: That would have to be borne by the consumers in the service area of PSE&G, and I would assume of Atlantic City Electric too. They have a piece of this plant.

DR. PATEL: That is a 95% share, so you would have to take 5%.

SENATOR DALTON: Okay.

SENATOR CONNORS: You better explain that.

DR. PATEL: Okay. I think it should be very clear that we are talking about the fixed costs of Hope Creek. When you add to that to find out what would happen if the plant is cancelled, you would then have to incur additional costs of the purchases. When you take into account the fuel savings of Hope Creek -- I'm talking about \$450 million in the first year -- so if we have the plant in 1987, you will be saving some \$450 million in fuel costs. Also, I guess, you are saving the costs associated with refurbishing the plants and, also, you would not then have to amortize the cancellation, which is about \$389 million.

SENATOR DALTON: Well, you are also assuming that the NRC is not going to change its requirements, and all that stuff too. Right?

DR. PATEL: Right.

SENATOR DALTON: The next question then becomes, -- what we are talking about then is we're talking about what is effectively doubling the rate base that the consumers would have to bear for -- I want you to correct me if I am wrong here -- a 10% improvement, as far as 10% increase in energy. Is that a correct statement?

DR. PATEL: To some extent, right.

SENATOR DALTON: To some extent I am correct?

DR. PATEL: Yes, because we are dealing with the existing rate base of about \$4.6 billion and the cost of the plant -- we're talking about \$3.6, so we have \$1 billion in between. That is a big extent, I think, \$1 billion.

SENATOR DALTON: I think the concern that has been expressed by myself, Doctor, and by other people, is that if in fact you go into a significant energy conservation program in those areas, you don't have the problems of capital construction, whether it be building a new plant or refurbishing old plants. You don't have the problems of energy conservation going off line. Okay? And you are also meeting the future energy demand of the consumer because, in fact, you are saving energy.

COMMISSIONER COLEMAN: Senator, let me answer that by saying "bravo." We agree with you. The dilemma here is not one -- I think we would agree that energy conservation is going to play a very strong role in this State. The difficulty is, we are not talking about a plant that isn't started. We're talking about a plant that is a little bit more than 50% complete, and the financial analysis that Dr. Patel is giving you is one keeping in mind that there is already extensive expenditure with regard to the Hope Creek plant. There is no getting around the fact that that expense would have to be passed on.

SENATOR DALTON: Commissioner, we have been through this before. I realize that. If, in fact, you take \$1.7 billion, okay, that has yet to be spent in the plant -- future expenditures, and you put that into energy conservation improvements, doesn't that make more sense than continuing to build a plant that -- you know, I read the Wall Street Journal at times. We do that every once in a while down in South Jersey. I hear all about the escalating costs of nuclear. Doesn't that make more sense than continuing to build this plant? And why isn't that included in one of the options that you were supposed to review?

DR. PATEL: The whole issue of the trend, of the projection of the energy requirements includes the assumptions of conservation. So, when you look at the capacity expansion requirement, the key is to look at the company's load and capacity requirements.

SENATOR DALTON: What assumptions do you make relative to energy conservation? What assumptions have you made?

DR. PATEL: What we have done, we have taken a look at, I guess, the entire forecasting issue of the utilities' projections. The energy requirements have been projected on the basis of the sectorial use. We have taken each sector and for each sector both end use modeling and ecological modeling have been done, so while you may have an answer in terms of the plant's efficiencies and the trend in a better mix of new equipment that comes in line may be addressed, in the end analysis, the impact of the price change signals and the switching of fuels one from the other will be taken care of by the ecological modeling. What we have done is, we have taken this entire multi-model approach to come up with some consensus on reasonable projection --

SENATOR DALTON: What role did energy conservation play in that modeling approach?

DR. PATEL: A significant role.

SENATOR DALTON: Well, tell me exactly what role -- how significant it was.

DR. PATEL: When the numbers were developed, PES&G was forecasting its energy requirement at 3.4%. The Department of Energy, when it made its projection, we cut that projection down to 1.8%. The difference is conservation.

SENATOR DALTON: Okay, so 1.8% -- is that given PSE&G's present day policy toward conservation?

DR. PATEL: PSE&G's present, plus a review of the state of art in the end use of different components that make up the old energy use.

SENATOR DALTON: PSE&G's present policy toward energy conservation, Doctor, and excuse my language, is diddley, nothing. Okay? So, if you make that assumption, then what you are assuming is that this company is going to maintain the same complaisancy toward energy conservation that it has exhibited in the past in the future, and I hope that is not the case. What I am suggesting is that if, in fact,

you get into an aggressive, and a very aggressive energy conservation program, and I'll make this hypothesis, you can abandon the plant and you can still meet future energy demand. Nobody has looked at that, and that is what I am saying, and that is what Senate Bill 975 would look at. I'm finished.

SENATOR STOCKMAN: Just a couple of questions, Commissioner, on this Agreement again. When did you decide that a supplemental joint statement was necessary to this Agreement?

COMMISSIONER COLEMAN: Well, there was a discussion that some of the feeling was that some of the terms, or some of the things in the Agreement should be crystallized after discussions and that the presentation before the Board could be strengthened with a, let's say, stronger -- not stronger, but in terms of further clarifying what was meant in some of the terms of the Agreement. It was done really as a clarifying document, Senator.

SENATOR STOCKMAN: Commissioner, let me ask you again. When did you decide that a supplemental joint statement was necessary to this Agreement?

COMMISSIONER COLEMAN: Well, I can't give you a specific --

SENATOR STOCKMAN: Was it before the Agreement was signed, or after?

COMMISSIONER COLEMAN: It was after the Agreement was signed.

SENATOR STOCKMAN: As a matter of fact, the Agreement does not suggest that there would be some sort of supplemental joint statement, does it?

COMMISSIONER COLEMAN: No, that is correct. We were perfectly willing, I think at the time with the Agreement, to let it stand as it was. I mean, the statement is there to clarify. It is not meant in anyway to change the form of the Agreement or to change any of the provisions in the Agreement, but merely as a clarifying document. I don't think that that is something that would be considered uncommon.

SENATOR STOCKMAN: You don't put much importance in this extraordinary circumstances or events clause?

COMMISSIONER COLEMAN: I do, and, Senator, I have tried to state for you this afternoon what the position on it was. We felt, once again, that a judgment had to be made that the interests were best served by inserting it, and without further defining it. It was a decision which was made.

SENATOR STOCKMAN: Commissioner, I thought the gist of your testimony was that really it was essentially almost unneeded because if different events occurred, by tradition lawyers all know, you can come in and modify an agreement.

COMMISSIONER COLEMAN: I don't think that was the gist of my testimony at all. I did not mean to indicate that you could come in and modify agreements. I am saying that in the terms of the analysis of it, legal opinion suggested that it was implied anyway, that we weren't giving away anything. Let's say that if some extraordinary event were to crop up -- let's take for example -- God forbid that it happen, but let's say if a war popped up, obviously that might have an impact on it that was unforeseen. That might, and I am not saying would, that might be considered by some -- it could come into the category of an extraordinary event. What was attempted with this was to leave it open so that it could be litigated on a case-by-case basis and a judgment was made that that was in the best interest.

SENATOR STOCKMAN: But the illustration, for instance among others that you give, is something that had there been no phrase "Extraordinary Events"

in the Agreement could again have been dealt with on the basis of going back in. Isn't that true? What I am struggling with is, if this phrase had no meaning, no defined meaning to either side, why put it into the Agreement?

COMMISSIONER COLEMAN: Because we, once again, felt as though -- we could probably sit here until late this evening disagreeing on it. But a judgment was made in good faith that it was in the public interest -- in terms of best serving that interest -- that it was to be put in and not further defined.

SENATOR STOCKMAN: As a matter of fact, Public Service's posture on this clause was that it would be a disaster not to have it part of the contract, wasn't it?

COMMISSIONER COLEMAN: Certainly no one used those terms to me.

SENATOR STOCKMAN: Wasn't that the impression that they left you with in the course of all these lengthy negotiations leading up to and including it?

COMMISSIONER COLEMAN: I wouldn't say -- no. Once again, going back either to the language you used -- disaster -- I think that obviously when you get into an Agreement, into a negotiation session, different sides have different ways of looking at things. I think from our side in looking at it, we felt as though the best protection we could offer was in stating, as we did, extraordinary event, but leaving the case open so that it would be litigated point by point.

SENATOR STOCKMAN: Frankly, that phrase wasn't mine, and I was a little unfair in the sense that I have it in front of me. Let me read to you whose statement it was. It was a Mr. Morris. Are you familiar with Mr. Morris of Public Service? He is a top man. Let me read to you what Mr. Morris said about this clause, when asked before the Board of Public Utilities on September 28, "If the Board were to remove the clause, that extraordinary clause, from the Agreement, and issue an order adopting the Agreement as stated without that clause, what impact do you think that would have on the bond rating of the company." Mr. Morris, a Vice President of the company, said this: "Well, first of all, that would be a provision that we would find extremely difficult to live with, and I think the implication of that would be a disaster, from the standpoint of the company's credit. Not that we don't have faith in the estimates, but it is exposing us to such financial risk that our bonds probably would be downgraded in a double jump."

So, at least Mr. Morris on September 28, the day that this was being talked about, felt very strongly that Public Service --

COMMISSIONER COLEMAN: Well, let me say, Senator, certainly with regard to his financial markets, evidently that was what was on his mind, Mr. Morris has stated something which he feels would have injured his case with those particular markets. That is his position. From our position, and I think often times people do things viewed from what their prospective is in going into it, I once again would hammer at the fact that we felt as though we were best protecting the interest by leaving it and not defining it further because we could have had our hands bound in terms of what we could have litigated against, or that it wasn't in the best interest legally to do so.

SENATOR STOCKMAN: I have just one more question. Do we now have a demonstrated safe way of disposing of nuclear waste?

COMMISSIONER COLEMAN: Do we have a demonstrated safe way? I think, Senator, you are quite aware that that is a major national issue at this point, and we certainly do not deny it.

SENATOR STOCKMAN: Is your answer "we don't?"

COMMISSIONER COLEMAN: Let me say that it is a national issue in terms of how the wastes are going to be disposed of. We do not feel, obviously, in signing an Agreement or going ahead, that it is a difficulty in regard to Hope Creek.

SENATOR STOCKMAN: I have nothing further. Thank you.

Thank you very much for your indulgence. We are going to meet in Room 346, upstairs, tomorrow morning with Mr. Camacho.

COMMISSIONER COLEMAN: Senator, I didn't realize I was going to be here so long. If I had, I would have infringed upon you to order me a bottle of coke.

SENATOR STOCKMAN: I'm sorry. We will commence at ten o'clock tomorrow morning.

(HEARING CONCLUDED)