P U B L I C H E A R I N G

before

SENATE LEGISLATIVE OVERSIGHT COMMITTEE

on

PUBLIC ADVOCATE'S ROLE IN HOPE CREEK AGREEMENT

Held:
October 12, 1982
Room 114
State House Annex
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Senator Gerald R. Stockman (Chairman)
Senator Wynona M. Lipman (Vice Chairman)

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

* * * * * * * *

I N D E X

S E N A T O R G E R A L D R. S T O C K M A N (Chairman): Good morning, my name is Gerry Stockman. I'm Chairman of the Senate Legislative Oversight Committee, and I will start off with an apology. This hearing was scheduled for ten o'clock -- it's 23 minutes after. There was some possibility that Committee members would be present, but it looks like that may not be true and, rather than wait, in fairness to the people who are here, I think we should begin this hearing.

Hope Creek and its cost implications to the citizens of New Jersey is a very major issue. I think that is going to be part of the hearings that are commencing here this morning.

I think a second issue is an issue that the Public Advocate himself raised in an exchange of letters with my colleague, Senator Dalton, who is seated here with me, and who is Chairman of the Senate Energy and Environmental Committee.

Incidentally, I want to recognize and welcome Senator Dalton. Senator Dalton has had a long and a sincere, and a deep interest in and involvement with the subject of energy conservation, nuclear energy, and allied subjects. I want also to welcome the Public Advocate, an old friend of mine and colleague at the bar, a trial lawyer, a gentleman who has distinguished himself in a variety of ways in public service over the years. I'm happy that the Public Advocate is here. I know he is concerned about these hearings and about Hope Creek. I talked with him very shortly after making up my mind that this hearing and the issues that it intends to take up were important, and he was straightforward with me and indicated an intention to cooperate. He has cooperated. There have been exchanges between our staff and his staff, principally Bill Potter, who I also see here, and I want to thank both of them for their efforts in cooperating with us.

We moved rather rapidly, and that has presented problems in terms of acquiring information and material, in my opinion, necessary to a thorough and intelligent completion of these hearings. I'm not sure that we have all of the materials from the Public Advocate that we need, but I hasten to add that that is not the fault of the Public Advocate. I received a call yesterday, which I have not had a chance to respond to, from Mr. Potter concerning some communications I believe from the Governor, or to the Governor, and I haven't seen those yet. There are other documents that some of the Committee members have not seen and for that reason, among others, it is evident to me that this Committee could not intelligently complete its inquiry today. Therefore, I

want to announce, and make clear at the outset, that there will be at least a second hearing on this subject. The date of that hearing will be announced before the day ends, and it will be soon, because I think it is important that we move rapidly to deal with this question of the Public Advocate's handling of its entry into the Cost Containment Agreement with Public Service and others. But it is equally important, as I indicated earlier I think, that we do it thoroughly and completely.

The second issue, and I interrupted myself, and I apologize if I'm rambling a little bit, but the second issue which I think this hearing presents to us is whether with all of the existing governmental mechanisms, the Board of Public Utilities, the Energy Department, the Governor's Counsel, the Office on Policy and Planning, the Attorney General's Office, and the Public Advocate himself, whether nevertheless the citizens of this State will be denied a full record, an intelligent, informed, open, adversarial debate and then decision on whether to build a plant which many knowledgable people, in and out of government, sincerely believe is to be an economic disaster -- is to be an environmental disaster -- is to be a conservation disaster -- is to be, and hopefully not, possibly even a safety disaster.

I think that is the second and equal issue that is going to have to be dealt with by this Committee.

Now, when the Public Advocate resolved to give up its long, courageous, vocal, unwaivering, resolute, steadfast public opposition to the completion of Hope Creek I, there well could have been a public hearing such as this to explore why it was that that happened. I'd be less than candid if I suggested to you that I intended to call such a hearing, but I was at the BPU hearing some weeks back when this proposed agreement was submitted to the BPU for consideration. Before I left, Al Nardelli, an attorney who I do not know well, but who I have had some dealings with, particularly as a member of the Assembly Energy and Natural Resources Committee, and who is from my information and understanding a long-time and respected member of the Public Advocate's Office, stood up in a public hearing with a number of media present, and a number of other people present, and made the extraordinary request that he be allowed to speak as a private citizen.

He was granted that right by the Board of Public Utilities, and he went on to suggest that, in his opinion, this Cost Containment Agreement, in fact, was not in the public interest. I think that development, coming from a Chief Counsel in the Public Advocate's Office, was indeed extraordinary. I

think that development necessitated this hearing. As a matter of fact, at that hearing I was startled enough, but sensed enough the magnitude of the situation and the seriousness of the situation, that I spoke to Mr. Potter who was present and said that it seemed to me that for the sake of the Public Advocate, as well as for the natural concerns that I think are going to come from the public over this, that we ought to have a hearing, or hearings, on the matter.

At that time, Mr. Potter's reaction was that I was probably right. He'll have an opportunity, frankly, to either continue to subscribe to that theory or perhaps have a different one as we go through this hearing, because as a result of an exchange with Mr. Potter I made clear to him that I felt it important that we hear from him as well on this situation. It is my intention to hear, at least, from Mr. Nardelli, first and foremost in some ways, but from the other staff people who signed a memorandum which has come to our attention. In the course of further looking into this, the memorandum was dated the day before the Public Advocate signed the Cost Containment Agreement -- a memorandum which was subscribed to by the three top people, as I understand it, in Rate Counsel's Office, and a memorandum which strongly urged that the Public Advocate not sign the proposed Cost Containment Agreement.

So with that brief introduction, I would like to call first before this Committee, Mr. Alfred Nardelli. I have spoken to Mr. Nardelli since the hearing in Newark. I indicated to him my intention to convene this Committee to inquire into this question of Hope Creek, its completion, and into the procedures whereby the Public Advocate's position on Hope Creek was dramatically changed. I have asked him to explain to us his position in this matter. I think it is public knowledge that since that event Mr. Nardelli has, in fact, been fired. Nevertheless, I think Mr. Nardelli, as an attorney, as a long-term member of the staff of the Public Advocate, is worthy of hearing by this Committee. Therefore, I am going to ask him to briefly identify himself.

Mr. Nardelli, in that regard for the record, I would like you to tell us your educational experience and your work experience with the Public Advocate before you give us a statement, which you apparently have prepared. Then I do have some questions, and I believe Senator Dalton has some questions for you afterward.

A L F R E D L. N A R D E L L I: Thank you, Senator Stockman. I graduated from Columbia Law School in 1966. I spent two years in the Army as a Captain, including 12 months in Vietnam, where I was awarded the Bronze Star.

I have spent almost my entire career in public service. I spent three years as a Deputy Attorney General under Governor William T. Cahill and Attorney General George F. Kugler, Jr., from 1970 to 1973, and in 1974 I came to the Public Advocate's Office. I was hired by Stanley Van Ness. I am one of the four charter members of the Division of Rate Counsel. There were four of us that started out in June, 1974.

Sometime in the Fall of 1976, I became Deputy Director of the Division of Rate Counsel, the number two person. In January, 1982, it was a little confusing because my predecessor as Director, Bill Gural, was going on leave as a prelude to retirement, but in January Stanley Van Ness made me -- I guess you would call it Acting Director. When Bill Gural finally retired, even though he'd left the office pretty much for good in January he finally retired on April 1, that's when I thought I became Director. I never heard anything to the contrary.

I was Director from April, 1982 to September, 1982. Is that enough background?

SENATOR STOCKMAN: I think so, thank you. Go ahead.

MR. NARDELLI: I shall have some comments on why the Hope Creek Cost Containment Agreement is not in the best interest of New Jersey's rate-payers and should be rejected by the Board of Public Utilities. However, the focus of my testimony will be the decision-making process by which the Public Advocate abandoned its long-established opposition to the Hope Creek nuclear project by agreeing with Public Service Electric and Gas, Atlantic City Electric, and the State Department of Energy for all time, "not to challenge the need for Hope Creek I before any federal or State agencies which may have jurisdiction."

I shall begin by giving a brief history of the Public Advocate's opposition to the Hope Creek nuclear project. In 1975, the Public Advocate appealed the coastal permit granted to Public Service for Hope Creek I and II by the Department of Environmental Protection on the grounds that conservation alternatives had not been considered. The Appellate Division of the Superior Court rejected this argument and suggested that any inquiry into these matters was properly the jurisdiction of the Board of Public Utilities.

In 1976, the Public Advocate filed comprehensive testimony with the BPU in the Public Service rate case which not only challenged the need for the two Hope Creek plants, but also the need for the Atlantic floating nuclear

plants which Public Service was planning to build off the coast of Atlantic City. Primarily as a result of the Advocate's arguments, Public Service cancelled the four floating nuclear units.

In February of 1981, Public Service filed an application with the BPU for the largest rate increase in the history of New Jersey -- $536 million, an annual increase. The driving force behind this request was Public Service's need for funds to build the two Hope Creek units. In that rate proceeding, the Public Advocate filed testimony to demonstrate that an aggressive and innovative program of energy conservation could substitute for new power projects, including the two Hope Creek units.

It is true that during the litigation of the 1981 rate case, the Public Advocate concentrated its attack on Hope Creek II. In December of 1981, Public Service did cancel Hope Creek II. It was inevitable at that point for the Public Advocate to turn its attention to Hope Creek I.

On February 11, 1982, Joe Rodriguez was sworn in as the Public Advocate. There was a hearing before the BPU regarding Hope Creek on February 19, 1982. I was very careful to clear my statement with Assistant Commissioner Bill Potter. Mr. Potter made several suggestions which I incorporated in my statement before the BPU. I assume that Mr. Potter checked with Mr. Rodriguez before authorizing my statement.

I would like to read an excerpt from that statement, and I'm quoting now:

> "There is reason to believe that Hope Creek I is not needed for capacity reasons after all.
>
> "There is also a question whether there may be a less expensive alternative than Hope Creek I to meeting the energy requirements of Public Service's customers.
>
> "Public Service's own recent estimate of the cost of Hope Creek increased $700 million in less than one year, and Theodore Barry & Associates thought that even greater increases were possible. If Hope Creek I is going to cost another $3 or $4 billion to complete, perhaps it would be better to abandon the project now and spend some of that money on conservation and cogeneration projects which would enable Public Service to do without Hope Creek I.

"The Public Advocate suggests that the BPU order Public Service to suspend construction of Hope Creek for the next four months while the parties litigate whether the plant should be completed. At the very least, the BPU should order Public Service to reduce its expenditures on the project to a minimum."

That's the end of the quote. I have quoted at length from this statement to show that by late February of this year, Rodriguez, Potter and Nardelli were in complete agreement on Hope Creek I. The Public Advocate was going to push for a review of the project to determine whether Public Service should be ordered to cancel it.

To this end the Public Advocate vigorously supported Senate Bill 975. As I recall, the three primary sponsors of that bill were Senator Dalton, Senator Stockman, and Senator Zane. Now, Senate Bill 975 not only requires a Certificate of Need for all new power projects, but expressly creates a blue-ribbon commission to review whether Hope Creek I should be constructed.

As an example of the Public Advocate's support for Senate Bill 975 and its efforts to have the need for Hope Creek reviewed, I have attached the April 7, 1982 letter from Mr. Rodriguez to Mr. Cary Edwards, Counsel to the Governor. In this letter, Mr. Rodriguez takes the position that the Certificate of Need process set forth in Senate Bill 975 should also apply to Hope Creek I. I quote from this letter from Rodriguez to Edwards:

"There is still time to do something about Hope Creek besides locking ourselves into needlessly high rate increases to underwrite its completion. And, given the costs of this facility -- between $3.5 and $5.5 billion -- there is no choice but to subject this project to the most intensive and searching inquiry possible. This the State of New Jersey has never done. I further believe that, if we act swiftly and intelligently, the Kean Administration can guarantee a safe and secure flow of energy at least equal to what Hope Creek would provide, but at a fraction of its costs. There are many cost-effective alternatives to completing Hope Creek, if we but look for them.

"Nor can it be said that the time for review of this project has passed. There is simply too much money still at stake.

Indeed, from a practical perspective, now is really the best time for a searching review of Hope Creek and alternatives.

"The question facing the Kean Administration is when will this State conduct its own independent review, before it is handed yet another fait accompli -- in the form of a unilateral cancellation by the utility or in petitions for enormous rate increases. Either way, the issue of Hope Creek simply will not go away. It is far preferable, therefore, to confront it forthrightly and comprehensively, while there is still a practical opportunity to do something more than pass on higher costs to already irate consumers."

In his letter of April 7, 1982, Mr. Rodriguez goes on to give some cost estimates for the Hope Creek project. He then concludes that, and I quote again from the April 7 letter:

"Obviously, cost figures such as these, especially in light of the relatively paltry benefits and the absence of any comprehensive review to date, underscore the importance of applying the full weight of a Certificate of Need process to Hope Creek....that is why we also believe that the best approach would be to call for a temporary halt in construction until this review can be completed."

On April 13, 1982, Gary Stein, Director of Policy and Planning, sent a memo agreeing -- this memo was to Cary Edwards -- with the recommendation made by Rodriguez that the Certificate of Need process in Senate Bill 975 be applied to Hope Creek I. I have attached a copy of that memo to my testimony.

Senator Dalton knows more about this than I do, but it is my understanding that the Public Advocate, and particularly Bill Potter, played a major role in drafting the amendments to Senate Bill 975 that provided for the review of the need for Hope Creek I, and Senator Dalton would also confirm, I believe, that the Public Advocate lobbied strongly for the bill's passage in the Senate. In fact, early this past Summer, Senate Bill 975 passed the State Senate by the

resounding vote of 35 to 2. It appeared then that the Public Advocate was on the verge of obtaining something for which it had long struggled -- a meaningful review of the need for Hope Creek I.

During the month of July, there was no evidence that I had fallen out of step with Rodriguez and Potter concerning the Department's policy toward Hope Creek. I'll cite two examples.

On July 11, 1982, Gordon Bishop began a major series of articles in The Sunday Star-Ledger on nuclear power in New Jersey. Bill Potter is quoted on Page 20 of the Ledger article as thinking that, and I quote, "Hope Creek I is a financial disaster that should be junked before more money is wasted on its completion." Less than one month after that statement, Mr. Potter urged Mr. Rodriguez in my presence to sign the Cost Containment Agreement which ensures that Hope Creek I will be completed no matter what the cost.

Senators, I have an even more dramatic example of the Public Advocate's flip-flop on this issue. On July 6, 1982, Assemblyman Thomas P. Pankok, aware of the Public Advocate's opposition to Hope Creek I and our support of Senate Bill 975, wrote to Joe Rodriguez to express his "strong support for the completion of the Hope Creek nuclear generating unit."

Mr. Rodriguez responded to the Assemblyman on July 29, 1982. I have attached a copy of that letter to my statement, but I am going to quote from it. I am quoting from the July 29 letter from Joseph Rodriguez to Assemblyman Pankok:

> "Frankly, I am not as confident as you are that the construction of Hope Creek I is in the best interest of the citizens of New Jersey. You may be right that the capacity represented by Hope Creek I will be 'needed' in the 1990's, but it does not follow necessarily that Hope Creek is the best (i.e., cheapest, fastest, most reliable and environmentally sound) way to get that capacity. For example, 1000 megawatts of conservation will cost New Jersey a small fraction of the cost of 1000 MW of Hope Creek....
>
> "I support Senate Bill 975 because it seems to me that Hope Creek must be reevaluated in light of many changes in circumstances. These changes include: (a) a continued pattern of cost overruns at Hope Creek; (b) a continued decline or stabilization in oil prices; (c) huge new supplies of natural gas becoming available, and (d) a continued pattern of projections of declining load growth."

That is the end of the quote from Mr. Rodriguez's letter of July 29, 1982.

Less than two weeks later, the same man who wrote this ringing endorsement of Senate Bill 975, signed the Cost Containment Agreement which tries an end run around Senator Dalton, Senator Stockman, and the 33 other State Senators who wanted a review of the need for Hope Creek I.

If the Committee asks Joe Rodriguez one question today, it should be this: What specifically happened between July 29 and August 10, 1982 that caused Mr. Rodriguez to turn his back on Senate Bill 975 and reject seven years of effort by the Public Advocate to have a meaningful review of the need for the Hope Creek nuclear project. This Committee should ask Mr. Rodriguez and Mr. Potter to produce the documents and the studies that convinced them to reverse their position and reject the advice of the entire Rate Counsel staff.

Let us turn now to the Cost Containment Agreement itself. It is true that sometime during the Summer of 1982, Bill Potter gave me a rough draft of the agreement. I told him that I thought it was terrible and should not be signed. As a precaution, I did suggest many changes which would have further protected ratepayers in case it was signed.

During this period I made a mistake. In light of the Public Advocate's long struggle for a review of the Hope Creek project, in light of the many public statements by Mr. Rodriguez and Mr. Potter in support of Senate Bill 975, I did not take seriously enough the possibility that the Advocate would bargain this away. As I have already mentioned, nothing happened during the month of July to give me warning of the events to come.

Another fact that greatly influenced me was that Joe Rodriguez never once spoke to me or anyone else at Rate Counsel about the Cost Containment Agreement, either in person or even on the phone, until August 10, 1982, the day that he signed it. I could not believe that Mr. Rodriguez would seriously consider signing such an important document until he had spoken to me and the other senior members of the Division of Rate Counsel. After all, Mr. Rodriguez had no prior experience in energy and utility matters. Moreover, the Public Advocate always hires an economic consultant when faced with an important decision like this. I knew that the Department had not engaged anyone to help us. I might add, Senators, that in my eight years at Rate Counsel, there were times when we hired consultants when a bus company was asking for a $30,000 increase in rates -- we would go out and get an expert. Here we have a $4

billion, $5 billion plant, and the Public Advocate had not engaged anyone to advise him to make the switch in position.

It was not until around August 1, 1982 that I began to realize that something was wrong. Newspaper articles began to appear indicating that the Advocate was close to signing an agreement. Bill Potter was very evasive and testy when I questioned him about the negotiations. I also learned that Rodriguez and Potter had never sat down with the Public Service representatives to express our concerns, the Advocate's concerns, Rate Counsel's concerns, the public's concerns, for ratepayers. The negotiations with Public Service were being conducted by Commissioners Coleman and Richman of the State Department of Energy, acting as intermediaries. Since none of the four State officials involved had significant experience in trying utility rate cases, I feared that the Public Service operatives would take advantage of them.

I surveyed the top people on my staff at Rate Counsel and confirmed that they all agreed with me. In desperation, we went over Bill Potter's head and on August 9, 1982, had hand delivered to Mr. Rodriguez and Mr. Potter a three-page memo (which I have attached to my testimony). This memo was signed by me, then Director of the Division of Rate Counsel, Roger Camacho, then Deputy Director of the Division of Rate Counsel, and Raymond Makul, Chief of our Electric Utility Section. I'll also represent that I spoke to other people at Rate Counsel. I did not get their signatures on the memo, but everyone was unanimous in our opposition to this agreement.

Although written in haste, and without benefit of the latest draft of the Cost Containment Agreement, which was apparently being negotiated behind Rate Counsel's back, the memo states several good arguments against the signing of the agreement.

Late in the afternoon of August 9, 1982, I received a telephone call from Mr. Potter. Potter had read the memo and was upset by it. He accused Rate Counsel of standing in the way of the Administration's energy policy. Potter said that Rodriguez wanted to see Camacho and me at 10:00 a.m. the next day, August 10.

The meeting on the morning of August 10, 1982, was the first time Rodriguez had ever spoken to me or anyone else at Rate Counsel about the Cost Containment Agreement. It became quickly evident that the chief concern of Mr. Rodriguez and Mr. Potter was that the Governor's Office had drafted a press release whereby the Governor praised the Cost Containment Agreement.

For some reason, which I have never been able to determine, the Governor's Office wanted the press release out that day.

I argued that the Public Advocate should not make important policy decisions based upon the desire of the Governor's Office to gut Senate Bill 975. I argued that even if we did decide to give up our fight against Hope Creek, we could get much more from Public Service in return than we were getting.

Perhaps most important of all, I argued that Mr. Rodriguez should not sign the Cost Containment Agreement based on the representations of Public Service, taken at face value. As in all of its dealings with utilities, the Public Advocate needed an independent evaluation by economic, engineering and accounting consultants. If Rate Counsel litigated its rate cases the way that Rodriguez and Potter negotiated the Cost Containment Agreement, the Public Advocate would wind up agreeing, in almost every rate case, to the full increase requested by the utility, without even a hearing. If you take a utility's representations at face value, they will always "add up" to the amount of rate relief requested. This flew in the face of eight years of effort at Rate Counsel.

The clause in the agreement that I attacked most vigorously is the one that reads, and I quote:

> "In addition, the parties will have the opportunity at the time rates are set to request modification of the target figure for increased or decreased expenditures resulting from extraordinary events."

I told Mr. Rodriguez that he was giving up something for nothing. The "Extraordinary Events" clause allows Public Service to argue in 1987, when Hope Creek I is scheduled to go into service, that any increase in the cost of Hope Creek I above the target figure resulted from an extraordinary event. The agreement contains no definitions, guidelines, or standards by which Public Service's claims can be limited. Therefore, Public Service's and Atlantic City Electric's ratepayers are faced with the prospect of paying a return on the full cost of Hope Creek, whether it costs $4 billion or $5 billion. Even if we learn next year that Hope Creek will cost $9 billion, this agreement prevents the Public Advocate from arguing that at that cost, Public Service should abandon the plant.

One more major point about this agreement is that it does not contain costs. If Hope Creek costs $5 or $6 billion, Public Service and Atlantic City Electric are allowed to collect the entire amount from ratepayers through

depreciation charges. The utilities are only giving up part of their return on a small portion of this investment. They will still collect the entire investment itself from ratepayers, $5 billion, $6 billion, $7 billion. Of course, because of the "Extraordinary Events" loophole I have already discussed, the utilities may not even have to give up their return.

I urged Mr. Rodriguez to delay signing the agreement for a few days so that we could negotiate a better deal. That afternoon, he met with Public Service's representatives for the first time face-to-face. I was not invited to that meeting, and Mr. Rodriguez, to my understanding, signed the agreement at that meeting late in the afternoon of August 10, 1982. The Governor's Office put out its press release that same day, August 10, 1982, as had been scheduled all along. The press release praised the Public Advocate for his cooperation in reaching this agreement. Perhaps this Committee would like to ask Mr. Rodriguez why he felt compelled to sign the agreement that very day.

Senators, if I had shut up about the Cost Containment Agreement after August 10, 1982, I might still be working at Rate Counsel. However, I believed I had an obligation to my clients in this matter, the ratepayers of Public Service and Atlantic City Electric, to push the utilities for further concessions, even though the Public Advocate had already signed the agreement.

Since there was going to be a hearing before the BPU on September 28, 1982 on the agreement, I asked Mr. Rodriguez and Mr. Potter if I could present two witnesses, an expert in utility regulation and a nuclear engineer, to construe the agreement in a manner most favorable to consumer interests. I was particularly interested in putting on the record a long list of causes for cost increases which the Advocate would argue were not the result of extraordinary events, or would argue that Public Service could not argue were the result of extraordinary events. At first, Mr. Rodriguez and Mr. Potter seemed to agree with me, but they changed their minds when Public Service objected. Rodriguez and Potter then agreed that the Advocate would present a joint position with Public Service at the hearing before the BPU. In that joint position, the Public Advocate agrees with the utilities and the State Department of Energy not to define extraordinary events at this time. Senators, how can the Board of Public Utilities, this Legislature, or anyone else for that matter evaluate the agreement without knowing what qualifies as an extraordinary event?

I knew it was vitally important to pin Public Service down on how they arrived at their target figure of $3.79 billion and what events the utility

considered to be extraordinary, or would consider to be extraordinary. I continued to believe that it was negligence on the part of Rodriguez and Potter to have signed the agreement without this information. To this end, on August 30, 1982, I sent out information requests to Public Service. I have attached those requests to my testimony. When Public Service objected to my requests, Rodriguez and Potter agreed that Public Service would not have to respond to the Advocate's information requests until after the Board of Public Utilities had approved the Cost Containment Agreement.

Of course, the purpose of the information requests was to put on the record before the Board of Public Utilities enough evidence to allow the Board to make an intelligent decision on whether to approve the agreement. Why is the Public Advocate afraid of the answers to its own questions?

Senators, I worked for Stanley Van Ness for eight years. During that time he overruled me on several occasions. However, he never once said to me that we were taking a certain position because that is what the Administration wanted.

In the seven months I worked for Joe Rodriguez, he said that to me twice. In addition to the Cost Containment Agreement, Joe Rodriguez insisted on endorsing the Thornburgh plan for the pass-through of Three Mile Island cleanup costs to the ratepayers of Jersey Central because the Governor had also endorsed it. The Board of Public Utilities seized upon these endorsements of the Thornburgh plan when it passed on to Jersey Central's customers last July, $13.8 million a year for cleanup costs of Three Mile Island for a period of five years. It is worth noting that the fact that the ratepayers of GPU and Jersey Central are now contributing to the Three Mile Island cleanup has not resulted in the electric utility industry contributing one dollar of their share under the Thornburgh plan.

To sum up, I gladly acknowledge that it is the Public Advocate who should make the policy decisions for the Department. However, the problem with Mr. Rodriguez's perception of his job is that he sees himself as just another member of the Kean team. I submit that the Governor already has a Commissioner of Energy, already has a President of the Board of Public Utilities, an Attorney General and a Counsel to the Governor to help him effectuate his energy and other policies.

The Public Advocate is supposed to be something different, something better. He or she is supposed to be a "voice for the voiceless." The Governor

has all those other cabinet members to speak for him. The Governor is not voiceless. The utility industry is always well represented by counsel and lobbyists. They are not voiceless.

In this case, the Public Advocate has abdicated his responsibility to represent the public interest. Fortunately, it may not be too late to correct the situation. The Board is still holding hearings on whether it should approve the Cost Containment Agreement.

The statute creating the Department of the Public Advocate provides that if the Public Advocate determines that there are inconsistent public interests involved in a particular matter, the Public Advocate may choose to represent one such interest through the Division of Public Interest Advocacy, and other public interests through other divisions of the Department or through the appointment of outside counsel. The citation is N.J.S.A. 52:27E-31.

I respectfully suggest that this Committee would be performing a service to the citizens of New Jersey if you called upon Joe Rodriguez to appoint a competent attorney to represent the interests of the many ratepayers of New Jersey who believe, for good reason, that Mr. Rodriguez was not representing them when he signed the Cost Containment Agreement. It is also important that the Public Advocate provide this attorney with funds to engage the necessary expert witnesses.

Thank you for your attention.

SENATOR GERALD R. STOCKMAN: Thank you, Mr. Nardelli, for your certainly very interesting and provocative testimony in written form.

You are not here under subpoena and, therefore, you certainly have a right not to testify at all, or to limit your testimony to this transcript. I want to ask you whether you have any objection to our exploring with you some of the implications of this testimony, and/or other questions that may come to our minds.

ALFRED L. NARDELLI: No objections, Senator Stockman.

SENATOR STOCKMAN: Let me start and since, while I don't know you well, I'm inclined to want to refer to you as Al because I have talked to you occasionally that way -- I see no mischief in that, although it may be misunderstood, but with the Public Advocate's permission I am going to be referring to him as Joe, so I hope he won't mind that either.

Al, you have given a rather condemning statement about the circumstances in which we find ourselves now with the Public Advocate. Why do you think this happened?

MR. NARDELLI: Let me preface my remarks by saying that most of what I said would be speculation. I have put most of the facts I know into this statement. If you want, I could perhaps speculate on some of the motives of Joe Rodriguez and Bill Potter, but I don't know if you want that at this time.

SENATOR STOCKMAN: Well, I suppose there is danger in speculating in a public forum like this, and I understand that you have put what you consider all of the hard facts that you have direct, I gather, access to in this statement. Maybe I better not press that question to you in that form.

Let me ask you a few other questions about the history of this project. One of the things that I think strikes the general public is the question of whether or not, when you are dealing with a huge plant of this sort that supposedly is 40% to 50% finished, and in which Public Service has already invested well over a billion dollars, whether it isn't too late to seriously talk about discontinuing that building. I think that is a natural question that the man on the street is going to be asking. Aren't we too far down the road to seriously talk about that? And isn't it sensible to say, "Well, maybe six months, or three, or a year ago all of this would have made sense, but it's too late." Can you tell us how you answer the man on the street that question?

MR. NARDELLI: Yes. First of all, on June 28, Senator Stockman, 35 State Senators said, "It isn't too late; let's take a look at it." I think those 35 Senators who voted for Senate Bill 975 were concerned with that very question, and that's why the bill provides for an accelerated, a streamlined review process. It is my understanding from the day that bill would be signed by the Governor, there would have to be a report within 90 days as to whether to build or not to build.

So, I agree with you that it is getting late on Hope Creek I, but if Senate Bill 975 had been allowed to go through the legislative process, I do think that in 90 days we could have had an answer, or at least the beginnings of an answer.

SENATOR STOCKMAN: What about the suggestion, well look, all of this doesn't amount to disaster by any means -- it doesn't amount to a great deal because we have an entity called the Board of Public Utilities which is charged with the responsibility for protecting the public on matters like this, and isn't it likely if this is a bad deal, as perhaps I believe, perhaps Senator Dalton believes, and perhaps others believe, that the Board of Public Utilities will simply deny Public Service Electric and Gas the right to complete this construction?

MR. NARDELLI: Well, to begin with, the Board of Public Utilities does not have a long record of showing itself interested in examining a utility's construction plans. But, I will say that one of my hopes for this whole process is that now that the public's attention has been brought to the Cost Containment Agreement -- now that some of the maneuverings have been exposed, that the Board of Public Utilities will conduct a meaningful review of the whole question -- will at least conduct a meaningful review of the Cost Containment Agreement. I have hopes that they will reject that agreement.

SENATOR STOCKMAN: Let me perhaps throw a little cold water, or help you, depending on how you answer this next question, but let me suggest to you that the Public Advocate suggested to me in an informal conversation we had, and I have no reason to believe that he will change that position, although he'll have an opportunity to testify on it, that in his opinion there was no way the BPU was going to stop the completion of Hope Creek. Do you agree with him in that opinion?

MR. NARDELLI: I think he's probably right, but let's once again not forget Senate Bill 975. That established a blue-ribbon commission that was beyond the BPU. It is true that the President of the BPU got to sit ex officio on the commission, but there were eight other members. It was the hope of the Public Advocate throughout 1982 that some outside judgment -- some objective outside judgment would be brought to bear. I suspect, Senator Stockman, that if this blue-ribbon commission said, "yes, after reviewing the evidence, we believe that Hope Creek I should be completed," I would have anticipated the Public Advocate would have dropped his objections and would not have pressed any further on this.

What they would have done, I hope, is press for a better Cost Containment Agreement, one that really did put some caps on what the ratepayers would be liable for.

SENATOR STOCKMAN: Al, the Public Advocate, in his letter of April 7 to Cary Edwards, did talk about this need for a most intensive and searching inquiry possible into Hope Creek. Has that ever been done?

MR. NARDELLI: No. Not only wasn't it done prior to Mr. Rodriguez's letter of April 7, but perhaps more important to those of us here today, it wasn't done after April 7, 1982. My argument with Mr. Rodriguez would be much less severe if I thought he made an honest effort to get some consultants, to get some studies done -- if he actually inquired himself, but he did not even speak to Rate Counsel much less go and engage an economist or an accountant, or a nuclear engineer to give him the information he needed to make such a momentous decision.

SENATOR STOCKMAN: Let me take you through the structure of the Public Advocate for my benefit, and perhaps for other Committee members and the public. Rate Counsel, as I understand it, is specifically created by statute, by the Legislature, as a separate department within the Office of the Public Advocate. Is that correct?

MR. NARDELLI: Well, it's a separate division within the Department of the Public Advocate. One of the things that highlights its separateness is the fact that we are funded completely differently. Unlike the rest of the Department of the Public Advocate, taxpaper money does not support the Division of Rate Counsel. We are allowed to assess the utilities as they apply for rate increases. It's one-tenth of one percent of their operating revenues for the prior calendar year, and we use this assessment to fund our office

completely -- our salaries, our extra witnesses, all our overhead. I might add, the utilities are allowed by statute to pass Rate Counsel expenses on to their ratepayers.

SENATOR STOCKMAN: That separate division is specifically charged, and exclusively within the Department of the Public Advocate, with responsibility for matters such as this, for utility regulation and for dealing with utilities, and controlling utility costs, and challenging and placing on the record the public's interest with regard to rates. Correct?

MR. NARDELLI: Yes. Senator Stockman, if I may, let me quickly read N.J.S.A. 52:27E-18 entitled, "Division of Rate Counsel: jurisdiction."

> The Division of Rate Counsel shall represent and protect the public interest as defined in Section 31 of this act in proceedings before and appeals from any State department, commission, authority, council, agency or board charged with the regulation or control of any business, industry or utility regarding a requirement that the business, industry or utility provide a service or regarding the fixing of a rate, toll, fare or charge for a product or service. The Division of Rate Counsel may initiate any such proceedings when the director determines that a discontinuance or change in a required service or a rate, toll, fare or charge for a product or service is in the public interest.

SENATOR STOCKMAN: Is it fair to say that around this time in the critical period, and I think you've honed in on it in your statement -- end of July, early August up through August 10, the actual signing of this agreement -- is it fair to say that at that time you were before the Board of Public Utilities on the issue of Hope Creek and its completion?

MR. NARDELLI: Yes.

SENATOR STOCKMAN: What, in your opinion, if any, constraints, or restrictions, or prohibitions would that put on anyone's communicating with you or attempting to influence you on a position before that Board of Public Utilities in a matter under review? I'm specifically getting at the question, what, if any, right, in your opinion, would the Governor's Office -- or people on the Governor's staff have to intercede in trying to influence you with regard to how you deal with that matter?

MR. NARDELLI: Well, if they were sending me studies or reports that they thought might lead me and my staff to make an honest change of opinion, I would have no objection to receiving substantively based communications from anyone as to what the position of the Public Advocate should be on a public issue.

SENATOR STOCKMAN: Historically, going back prior to July and August of 1982, what, if any, information or contacts, or efforts at either assisting or influencing you as Rate Counsel, or to your knowledge other people in the Rate Counsel Office, would the Governor's Office have been involved in?

MR. NARDELLI: Well, none.

SENATOR STOCKMAN: During this time, to your knowledge, did you receive any information or material from the Governor's Office up through the signing of this agreement with regard to their position, and the Governor's position, on Hope Creek I?

MR. NARDELLI: No. I did receive some copies of material that went from the Public Advocate to the Governor's Office -- but no, I believe the answer to your question is no. The Governor's Office was certainly not sending me any information, any requests for information at that time -- or at any time.

SENATOR STOCKMAN: Do you recall specifically what documents, if any, you received around this time in the way of communications either from the Public Advocate or Mr. Potter, or anyone else in the Public Advocate's Office to Governor's Counsel or to the Office of Policy and Planning?

MR. NARDELLI: Well, if you're honing in, Senator Stockman, on the time between July 29 and August 10, my answer is I received nothing. I was not receiving at that time any copies of what the Public Advocate may have been sending back and forth to the Governor's Office.

It was at a prior time that I did get some copies. One of the most obvious examples is the April 7 letter from Mr. Rodriguez to Mr. Edwards. That I received in the ordinary course of business. It was sent to me by Mr. Rodriguez's office.

SENATOR STOCKMAN: Were you familiar, for instance, with the letter which has been supplied to the Committee voluntarily by the Public Advocate's Office -- the letter dated April 30, 1982 from Mr. Potter, Assistant Commissioner, to Mr. Gary Stein, Esq., Governor's Office on Policy and Planning,

concerning reviewing the Hope Creek Nuclear Facility and the Certificate of Need process? Do you recall seeing that letter?

MR. NARDELLI: Offhand I don't, but that -- when you start talking April, at that point I was still getting a lot of material from the Advocate's office. There is a chance I saw that letter. Frankly, if you showed it to me, I could tell you whether I've ever seen it.

SENATOR STOCKMAN (after handing specified letter to Mr. Nardelli): I'd like to ask you some questions about that letter anyway, so why don't you sit down and take a look at it. First, I would like to know whether you ever saw that letter.

MR. NARDELLI: I'm reasonably sure I never saw this letter. I can't be 100% sure, but I don't think I saw this letter.

SENATOR STOCKMAN: Is there anything in that letter that appears to be in conflict with the policies that you understood prevailed, and the posture of the Public Advocate toward Hope Creek I at that time?

MR. NARDELLI: Before I answer that I'd like to say, Senator Stockman, that one reason why I haven't given you a firm answer as to whether or not I've seen this letter is -- there are facts in here -- there are anti Hope Creek facts in here that are very familiar to me and may very well have been supplied by my office to whoever wrote this letter. I believe it's Mr. Potter. So, even though it looks familiar, I don't think I saw this particular letter.

Now, to answer your question, this still seems to be the position that I thought was the Public Advocate's position. I haven't read it carefully, but it still seems to be saying what the Public Advocate was saying throughout 1982, that there was a desperate need to review Hope Creek I.

SENATOR STOCKMAN: The question -- Mr. Potter's suggestion to you that you were standing in the way of the Administration's energy policy -- what was the date of that exchange?

MR. NARDELLI: That was August 9.

SENATOR STOCKMAN: What, if any, reply did you make to him in response to that?

MR. NARDELLI: As I recall, I was so stunned that I probably did not reply at all. I saved my ammunition for the next day.

SENATOR STOCKMAN: Why did you do that?

MR. NARDELLI: I just couldn't believe what I was hearing -- that the Public Advocate cared about falling into step with some directives coming from above. I did address it the next day on August 10. I don't think I said much on August 9.

SENATOR STOCKMAN: Did Mr. Potter ever talk to you after your August 10 statement before the Board of Public Utilities?

MR. NARDELLI: That's a very general question of course, Senator Stockman.

SENATOR STOCKMAN: You were discharged on what date?

MR. NARDELLI: October 1 -- well, the letter was dated September 30. It was Telexed and I received it on Friday, October 1.

SENATOR STOCKMAN: Did you ever have any further conversations with Mr. Potter that you can recall where you raised the question of his right to talk in terms of the Administration's energy policy and what, if any, impact or affect that should have on your posture as part of the Public Advocate's staff?

MR. NARDELLI: I raised it at -- and I'd like to think that I raised it in a relatively delicate manner, but I raised it at the meeting on August 10 with Joe Rodriguez and Bill Potter.

SENATOR STOCKMAN: Who else was present at that meeting?

MR. NARDELLI: Roger Camacho. He may not have been present for all of it though. I think he had to make some phone calls and I think from time to time he did step out.

SENATOR STOCKMAN: Did you dispute with either Mr. Rodriguez or Mr. Potter the question of whether the Administration's energy policy should affect your behavior?

MR. NARDELLI: Yes, but I can be even more specific. What really bothered me on August 10, after I had the chance to think about it, was that it was clear that their chief concern was that they might be embarrassed with the Administration, that the Administration had a press release ready to go. The Governor had said all these nice things in the press release and they were under pressure to sign it and let the Governor go forth with the Cost Containment Agreement. That's what I concentrated on. Why should we care that the Governor's Office has a press release? Since when do we report to the Governor's Office?

SENATOR STOCKMAN: What, if any, response from either Mr. Rodriguez or Mr. Potter did you get to that?

MR. NARDELLI: One of their responses was, "Well --

SENATOR STOCKMAN: And if you could identify it -- I would prefer your identifying from whom it came, which may not be easy.

MR. NARDELLI: No, it's not easy. Well, let's divide the responses for the time being into substantive and procedural. There were substantive arguments raised by Mr. Rodriguez and Mr. Potter at that August 10 meeting, saying in effect, perhaps the question you raised earlier, "Isn't it time to throw in the towel?" "Where are we going with this?" So they did make a substantive response too, and I don't mean to say otherwise.

But, there was the procedural response, and I do recall Joe Rodriguez saying, "But we've already indicated to the Governor that this is, you know, that we agree with this, that this is a good concept. He likes it. He's already seen it. It's too late." I argued it wasn't too late, that it's never too late to do right.

SENATOR STOCKMAN: Now, the "Extraordinary Events" clause is something that you touched on in your statement that, in your opinion, should have been more clearly defined and delineated. I have to confess that I'm on record as being with you on that because it was for that reason that I was in Newark on the day that the agreement was submitted to the BPU, and I strongly urged them to go slowly on approving the agreement with regard to that portion of it. Mr. Rodriguez wrote a letter to Senator Dalton, in reply to Senator Dalton's plea that he, the Public Advocate, reconsider his posture and, in fact, appoint a special consultant. In that letter, the Public Advocate took up this question of the "Extraordinary Events" clause and, of course, suggested that those of us who were uncomfortable about that clause were perhaps greatly overblowing the issue and -- I can't find the other phrase, but it simply, of course, doesn't concur in our thinking. He makes this argument, and I'd like to hear your response to it.

Speaking to Senator Dalton about this clause, he said, "It has been argued that this clause shows that the containment has a gapping loophole; that, in fact, because of it the cost containment is not really containment at all. These are strong but empty charges." That's obviously a matter of debate. "First, even if we had written an 'Extraordinary Events' clause implicitly, it would have been there anyway." That's underlined, "it would

have been there anyway. Like unwritten warranties inferred as a matter of law in many consumer contracts, the law will infer that any party to a stipulation has the right to petition the court to change certain stipulated provisions due to a claim of substantial change in circumstances. Thus, public controversy over this language is, in my judgment, a product of this fundamental misunderstanding; therefore, greatly overblown." What about that?

MR. NARDELLI: Well, I agree with Mr. Rodriguez to the extent that yes, even if that clause had not been there, Public Service and Atlantic City Electric could have come before the Board of Public Utilities and argued that a change in circumstances -- they should be relieved from their own signing of a stipulation because of a change of circumstances. However, I'm not so sure that's the point. I think that by spelling out in the agreement that Public Service can argue for extraordinary circumstances you're inviting Public Service to argue that any increase in cost is extraordinary circumstances. You're really shifting the burden from the utility where it would have been if we had not had that clause in it, to the Public Advocate, and to consumers to argue that once Public Service says that it is an extraordinary event, that it is not an extraordinary event.

On August 10, one of the suggestions I made to Commissioner Rodriguez was that I thought consumers would be better served if we threw in another hundred, or two hundred million to Public Service -- made it $4 billion -- but made it a true cost containment -- said, "no, no conditions," and put Public Service to the burden of arguing "changed circumstances." Here, with this clause the way it is written, you're inviting Public Service to argue that anything is an extraordinary event.

SENATOR STOCKMAN: What about this question of the Public Advocate appointing outside independent counsel to protect an independent public interest? Without polling the audience, I think I can safely say that there are those who sense and believe that there is a very real public interest in not completing this plant, and that that interest, arguably as a result of these developments, is going unrepresented.

Did the Public Advocate, in your opinion, have the option of signing this agreement, but nevertheless concurrent with doing it appointing such an outside independent counsel with the authority, and with the financial support, to use the Advocate's own words, "to make sure there was a most intensive and searching inquiry possible into the wisdom of completing this plant?"

MR. NARDELLI: Yes, he definitely had that option. Joe Rodriguez could have signed that stipulation as Public Advocate and as representing the Division of Public Interest Advocacy. Not only could he have appointed outside counsel to represent the conflicting public interest, if he had wanted to, he could have appointed the Division of Rate Counsel. The statute I cited to you earlier says that the Public Advocate could have one division representing one aspect of the public interest, and another division representing another aspect of the public interest. Here, the Division of Rate Counsel was on record as opposing what he was doing. It would have been very easy for him to say as Public Advocate, "I'm doing "A", but I will let the Division of Rate Counsel represent the interests of people who believe that "B" is correct."

SENATOR STOCKMAN: Again referring to the Public Advocate's own communications on this matter, you quoted from his letter of April 7, 1982 to Cary Edwards, Governor's Counsel -- I also will quote and ask you, when the Public Advocate said this, "The Public Advocate would appear in its accustomed --"

MR. NARDELLI: What page are you on? Do you have -- it's all right then.

SENATOR STOCKMAN: I don't have the page, but there was a reference to "The Public Advocate would appear in its accustomed role to assure that both the agencies," and obviously here he was referring to the Energy Department and the BPU, "have the benefit of a complete record before deciding." Would you agree that that is the accustomed role of the Advocate to see that such a record is completed?

MR. NARDELLI: Yes.

SENATOR STOCKMAN: And I gather part of your problem is that it appears that there never will be that kind of record created with regard to the wisdom or sensibleness of completing Hope Creek I?

MR. NARDELLI: Well, I was certainly worried about that up until the last few days. But, frankly, I think now that the public will demand that a record be made. But, yes, that was one of my primary concerns. This agreement was being ratified behind closed doors, and without the best advice. And the public was not being given an opportunity to weigh the pros and the cons.

SENATOR STOCKMAN: To your knowledge, who else in the Public Advocate's Office, other than perhaps Mr. Potter, who will testify I am sure,

urged him to in fact alter the position of the Public Advocate with regard to Hope Creek I?

MR. NARDELLI: I am not aware of one other person and, as I made reference to before, in addition to the three people at Rate Counsel that signed the August 9 memo, I did survey other people. I just thought the top three should sign the memo. But the people I asked, and I think I went down to about the top seven people on electric utility matters, unanimously agreed that this Cost Containment Agreement should not be signed.

I don't think we're going to be able to find one person in the Division of Rate Counsel who is going to say that this agreement should have been signed.

SENATOR STOCKMAN: Incidentally, it is a fact, isn't it, that Mr. Potter actually was a well-known, respected opponent to the completion of Hope Creek I?

MR. NARDELLI: Yes.

SENATOR STOCKMAN: -- had written extensively about it, and was credited, as a matter of fact, and rightly is credited with probably playing as major a role as any other individual in the State in bringing into place this "Needs Assessment" concept which, of course, was part of the S-975 bill?

MR. NARDELLI: Yes, I believe Senator Dalton probably knows more about that than I do -- but yes, I agree with you. In fact, one more reference for you is, in 1981, Mr. Potter wrote a 24-page energy paper, and many of those pages are devoted to the terrible thing that was being done by the current Administration and its Energy Commissioner in letting Hope Creeks I and II be built --

SENATOR STOCKMAN: You're not talking about "Up Hope Creek?"

MR. NARDELLI: Yes, I am. I might add that is only a part of a larger paper, but that's exactly what I am referring to, yes.

SENATOR STOCKMAN: Now, let's get to this memorandum which you hand-delivered to the Public Advocate before he actually signed the Cost Containment Agreement. Do you have a copy of that there?

MR. NARDELLI: Yes, I do.

SENATOR STOCKMAN: I think it is important enough in the whole discussion that we are into, for you to read it into the record.

MR. NARDELLI: Okay. It's addressed to Joseph H. Rodriguez, Commissioner. It's from Alfred L. Nardelli, Director, Roger L. Camacho,

Deputy Director, and Raymond E. Makul, Deputy Public Advocate. It is dated August 9, 1982. The reference line is, "Draft Stipulation on Hope Creek I Cost Containment."

> "We do not believe that you should sign any stipulation on Hope Creek I Cost Containment. Your signature will be interpreted as acquiescience 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: Let me stop you. What is the Rate Counsel Advisory Committee?

MR. NARDELLI: Several years ago, Stanley VanNess set up, about a 30-member Rate Counsel Advisory Committee. The idea was to get a cross section of New Jersey and, although there certainly are a number of fairly well-known consumer activists on this Committee, there are also representatives of labor, representatives of business, the League of Women Voters -- it's supposed to be a cross section of the citizens of New Jersey with whom the Division of Rate Counsel meets regularly, with the Public Advocate being present also. And we discuss current issues, how we see certain issues developing, what positions we are contemplating taking, and then, of course, we solicit the views of this 30-member Rate Counsel Advisory Committee to get a feel for what the people of New Jersey think about these issues.

SENATOR STOCKMAN: Was that Committee ever consulted or involved in any way prior to the events that we are talking about here now, on the question of the wisdom of completing Hope Creek I?

MR. NARDELLI: Oh yes.

SENATOR STOCKMAN: How would you describe the attitude and the posture of that Committee with regard to this?

MR. NARDELLI: There's no question about it. They were overwhelmingly in favor of what our position was at that time. Senator Stockman, I'm

trying to remember the specific meeting. I believe it was in June. I can check this later. I believe there was a Rate Counsel Advisory Committee meeting in either May or June, where Mr. Potter spoke on the whole Hope Creek question, and reiterated the Advocate's long opposition to Hope Creek, laid out to the members of the Rate Counsel Advisory Committee all he and the rest of us were going to do to continue to fight Hope Creek, and raised these important issues.

I could get the exact date for you; it's in my calendar book.

SENATOR STOCKMAN: To your knowledge, was the Committee ever consulted by the Public Advocate or anyone on his behalf with regard to the possibility of changing his, the Public Advocate's, position on Hope Creek I?

MR. NARDELLI: To my knowledge, no. The members of the Rate Counsel Advisory Committee were never consulted, and I'm really quite sure they were not because I think I would have heard about it. I think they would have called me up.

SENATOR STOCKMAN: To your knowledge, was there ever any conversation by the Public Advocate or anyone on his behalf about the wisdom, the propriety, the sensibleness of at least exploring or inquiring of and among these Committee members, their attitude toward a drastic change in position of policy of the Public Advocate on this issue?

MR. NARDELLI: I am aware of no such thing.

SENATOR STOCKMAN: All right, I interrupted you. Would you continue?

MR. NARDELLI: Sure. Continuing from the memorandum of August 9, 1982:

"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."

SENATOR STOCKMAN: Let me stop you there. This $3.8 billion --

MR. NARDELLI: That's $3.79, to be exact.

SENATOR STOCKMAN: -- This is how many times more than Public Service's original estimate of construction costs?

MR. NARDELLI: Well, I'll give you the numbers, and then you can do the math. As I recall --

SENATOR STOCKMAN: I'd rather you do the math too.

MR. NARDELLI: Well, I'll at least give you the numbers. Public

Service originally estimated that both Hope Creek Units, I and II, would cost, as I recall, $499,000,000. That was for two nuclear plants. Now, of course, they're talking $3.8 billion for just one plant. (Mr. Nardelli here returns to memo he was quoting.)

"The target completion cost ($3.8 billion) is more than what the plant is worth to consumers."

SENATOR STOCKMAN: I'm going to stop you again, I'm sorry.

MR. NARDELLI: Go right ahead, Senator.

SENATOR STOCKMAN: The real point I wanted to get to was, that number which we are talking about, which has been in the media, whose number is that? That's Public Service's number, isn't it?

MR. NARDELLI: That's a very important point, Senator Stockman. Yes, it is Public Service's number. They have never put on the record how they arrived at that number, what cost estimates went into it, what inflation factors went into it. Mr. Rodriguez accepted that number in good faith.

SENATOR STOCKMAN: Well, that's a key part, a critical part, of this Cost Containment Agreement, right? It's a working point from which further costs will be dealt with differently, as far as inclusion into the rate base -- that sort of thing, correct?

MR. NARDELLI: Correct.

SENATOR STOCKMAN: What study, if any, has ever been done by the Public Advocate on behalf of the citizens of this State to firm up in some reasonably sensible way the accuracy of that figure, either through economists, nuclear physicist engineers, accountants, actuaries, or what?

MR. NARDELLI: Certainly none in 1982, geared to Hope Creek I. The answer is, none. Now, in 1981, we did prepare testimony that did get, in fairly general terms, because we were having trouble getting the Board of Public Utilities to consider the issue, but in fairly general terms we did get into all the variables that went into what the plant would cost and how different assumptions, as to capacity factor and the cost of oil, would affect the economic liability of the plant.

But, the basic answer to your question is, none. The Public Advocate has not done a cost study of Hope Creek I, what it will cost.

SENATOR STOCKMAN: Is there somewhere in existence, a report by an expert or experts actually commissioned by the Public Advocate, and paid for through the Office of the Public Advocate, which in fact concludes that

the completion of Hope Creek I is against the public interest and unwise, and should not be accomplished?

MR. NARDELLI: The closest thing to what you have just described is the testimony of Jim Madden that was prepared in the 1981 Public Service Base Rate Case, filed if I recall about August or September of 1981. Now, this is not a detailed study, but it does go -- once again it goes into Public Service's assumptions as to what the capacity factor of both Hope Creek plants will be. Don't forget, when this testimony was filed, Public Service was saying it was going to build both Hope Creek I and Hope Creek II. So it goes into Public Service's assumptions to some degree about what the capacity factor of those nuclear plants would be, what oil would cost, what the load growth would be, and it questions them. It says -- the witness, Jim Madden of Georgetown Consulting Group, questions many of these assumptions.

SENATOR STOCKMAN: I thought in a separate rate case involving Atlantic City Electric that, in fact, there was expert testimony that was actually commissioned by the Public Advocate that specifically criticized and took a position in opposition to the completion of Hope Creek I.

MR. NARDELLI: Yes, Senator Stockman, where you and I misunderstood each other is, Public Service does own 95% of Hope Creek and I was gearing my answer completely toward Public Service. You're absolutely right. There is a rate case going on right now, although the hearings themselves have concluded, where the Public Advocate had a witness, in fact several witnesses, that said that Atlantic City Electric does not need its 5% share of Hope Creek I and, in fact, should sell or lease that share -- that it is not needed, that they could meet their needs in a more economical way.

SENATOR STOCKMAN: Did that expert testimony go into the broader question that we are more concerned with here though, the question of the wisdom, economic, environmental and otherwise -- the wisdom of completing Hope Creek I?

MR. NARDELLI: It certainly -- my recollection, and I should tell you that --

SENATOR STOCKMAN: If you don't know the answer, tell me. This is something we can look into, but I'm just curious if you know.

MR. NARDELLI: It certainly did not get into any great detail concerning Public Service's need for Hope Creek. It was the Atlantic City Electric rate case, and frankly I was not the individual attorney involved

in the Atlantic City Electric rate case. There are people at Rate Counsel though who could give you very detailed answers to that question.

SENATOR STOCKMAN: All right -- why don't you continue with your memo?

MR. NARDELLI: (picking up the reading of his memo of August 9) "Based on previous rough calculations (which have been confirmed by the Department of Energy'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?

"Moreover, there are no controls over what constitutes "in-service." Salem I went "in-service" with a defective turbo-generator, and was put into rate base. The Nuclear Regulatory Commission 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?

"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.

"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 requiremencs? (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).

"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.

"Finally, we wonder if the whole 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.

"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: As I understand it, that is the first memorandum -- first written statement outlining your strong objection, and Mr. Camacho's strong objection, and Mr. Makul's strong objection to the signing of this agreement. Is that correct?

MR. NARDELLI: Yes, but I assure you that if Mr. Rodriguez had ever spoken to me, or to anyone else at Rate Counsel, he would have gotten something in writing before this.

SENATOR STOCKMAN: I understand that. But Mr. Camacho was involved and aware of this memo, and endorsed it. Is that correct?

MR. NARDELLI: Yes.

SENATOR STOCKMAN: And Mr. Makul did likewise?

MR. NARDELLI: Yes, and as I said, there are other people at Rate Counsel who helped in the preparation of this memo, but who I did not think

it was necessary for them to sign it.

SENATOR STOCKMAN: I am tired, and a little restless. I am going to ask that we take at least a five, perhaps a ten-minute break at this point and decide some questions about how we're proceeding, the time schedule, and that sort of thing.

So I'm going to take at least a ten-minute recess.

(RECESS)

SENATOR STOCKMAN: Please take your seats, and I'd like to get started. Mr. Nardelli, could you come back up please?

There are a few things I would like to announce at this point. One, I have talked to the Public Advocate, Mr. Rodriguez, and he has requested and I have granted him, I believe, the right to make a statement for the record following Mr. Nardelli's testimony. I made clear to the Public Advocate, as I did last week, that because of the fact that we have not received all of the documentation that we necessarily want, and because some of it has been received very recently, and also because of the magnitude, in my opinion, of the issues we are dealing with here, the Committee is not in a position to question Mr. Rodriguez today. He knew that, and understood it -- understands it. Nevertheless, I indicated I had no objection to his making a statement in rebuttal, or in reply, to the testimony of Mr. Nardelli. So that will happen at the completion of Mr. Nardelli's testimony.

Also, Senator Dalton, who is here with me and who is Chairman of the Energy and Environment Committee, and who is deeply involved in these issues, has other commitments today and will have to leave before this hearing completes today. I have indicated to him that I have no objection to turning over the microphone to him for his own questioning of Mr. Nardelli before the lunch break. We will break for lunch immediately following Senator Dalton's questioning of Mr. Nardelli. I will ask Mr. Nardelli to come back after lunch if he can --

MR. NARDELLI: Yes, I can.

SENATOR STOCKMAN: -- fine, and I will complete my questioning, and if any other Committee members arrive and have any questions they can complete their questions to Mr. Nardelli at that time. We will then call on the Public Advocate, who has, as I have indicated, expressed a desire to make a statement.

We may or may not at that time call on other members of the Public Advocate Office. I want to talk to Mr. Rodriguez about that during the lunch break. We will then recess the hearing. We have reviewed with staff the question of our second hearing. We have some problems with transcripts, we have some other practical problems with hearing dates, with other sessions of the Legislature, but we are doing all we can to expedite this matter. We have settled on a second hearing, perhaps the final hearing, and perhaps not, two weeks from today, October 26. I have also directed staff to forward to the Governor, to his Counsel, and to Mr. Stein in the Office of Policy and Planning, a copy of Mr. Nardelli's testimony. I have also directed that a copy of that be sent to the Board of Public Utilities and a copy to the Energy Department, Commissioner Coleman. A copy will be made available to anyone who requests it here today at this hearing.

With those sort of housekeeping chores completed, and with a date of October 26 now on the calendar, I will turn the questioning over to my good friend and distinguished colleague Senator Dalton.

SENATOR DALTON: Thank you very much.

Mr. Nardelli, if I could, I would just like to attempt to clarify some of the statements that you made with regard to the Public Advocate's involvement relative to Senate Bill 975. One of the things that you indicate -- one of the statements that you make is that, I think, and I'm paraphrasing, I would know probably better than anyone the Public Advocate's involvement with regard to the drafting of Senate Bill 975. For the most part, let me just say for the record, that although the Public Advocate was a significant and vigorous supporter of Senate Bill 975 and made suggestions to staff with regard to what form and shape S-975 should take, the decisions with regard to -- bottom-line decisions relative to S-975 were made by myself.

MR. NARDELLI: I'm sure they were, Senator.

SENATOR DALTON: Additionally, I also want to indicate for the record that during at least two of my three meetings in the Governor's Office with regard to the bill in attempting to determine what the Governor's position was going to be relative to the bill, I asked his office to conduct their own hearing relative to a needs assessment of Hope Creek I. Neither I, nor any member of the Committee, I don't think, would have resented the Governor going ahead and conducting his own hearing because of the fact that I thought at the time, and think to this day, that the more expeditious the hearing, the better off we would all be, particularly the public with regard to -- concerning the

question of to build or not to build. These meetings started out in the Spring and during the Summer of this year. I just wanted to let that be known for the record.

MR. NARDELLI: Senator, I agree with you that it was, and is, very important that there be an expeditious review of Hope Creek I.

SENATOR DALTON: Given Senate Bill 975, what are your own thoughts, Mr. Nardelli, as far as the conducting of a review on Hope Creek I, given the fact that now we have a plant, as Senator Stockman pointed out, that is 40% or 50% complete?

MR. NARDELLI: I still support Senate Bill 975.

SENATOR DALTON: As is?

MR. NARDELLI: As is, Senator Dalton. Frankly, I could probably, but I'm not going to do it today, I could probably make some suggestions to tighten up the language and so forth. No reflection upon your draftmanship, but I support the bill. I think it is an excellent bill. I think that Hope Creek I should be reviewed, and quickly.

SENATOR DALTON: To your mind, was the political issue of dealing with S-975 after it passed the Senate on June 28 a factor in coming up with the Cost Containment Agreement so quickly?

MR. NARDELLI: In my opinion, it was.

SENATOR DALTON: One of the things that I want to get into is the agreement itself. Senator Stockman has a great deal of concern with the whole issue of "Extraordinary Events" clause within the agreement. However, there are some other issues that are also of some concern. Would you, Mr. Nardelli, outline some of those other concerns with regard to the Cost Containment Agreement?

MR. NARDELLI: Yes. Every bit as important is that this is not a Cost Containment Agreement. If the agreement had said that Public Service will build this plant for $3.8 billion and they will not get a rate of return, or they will not get their full rate of return on everything above that, and if the agreement had said that the ratepayers would not be responsible for all the depreciation of the excess -- let me give a specific example.

If this plant costs $4.5 billion, which is not a wild number, the ratepayers are going to pay the entire $4.5 billion. The utility is allowed under this agreement to depreciate the entire cost of the plant, whether it be $4.5 billion, $6 billion, or $7 billion. So there is no cost containment

on the building of the plant. All it does is reduce the rate of return on a portion of the excess over, so the ratepayers are responsible for returning the investment, for paying every dollar of debts expended by the investors and the utility on the plant, but they don't have to pay the full return on all of the excess. It's very, very minimal cost containment. I think cost containment is a misnomer.

Another major issue is the agreement focuses attention on the fact that, while maybe this plan is called "needed" or a "good project" at $3.8 billion -- let's concede that for the time being, how about if the plant does cost $5 billion, $6 billion, or $7 billion? The Public Advocate has given away for all time his ability to come in and say, "Listen, all right, maybe considering it is 50% complete and is only going to cost" -- only -- "$3.8 billion, I'll go along with it. I'll say I won't challenge the need." But suppose something happens next year and we then realize that it is going to cost $8 billion or $9 billion. The Public Advocate won't be able to challenge the need then because at $8 billion or $9 billion, even Joe Rodriguez would agree they shouldn't build that plant.

I think there was one more --

SENATOR DALTON: I've been accused by one of the vice presidents of PSE&G of causing them to lose -- or causing their bond rate to decrease because of some of the statements that were made by me publicly in the newspapers. I hate to think of what you are doing to it this morning, Mr. Nardelli. However, isn't the whole bonding situation the key component to the agreement? In other words, if in fact the bond rating of PSE&G decreases, won't that also have a detrimental affect upon the ratepayer ultimately?

MR. NARDELLI: Yes, it could increase the cost of borrowing money and it could drive up the cost of building Hope Creek I. In fact, it would, so that's why --

SENATOR DALTON: So, that's another factor that could -- we can sit here and think of all sorts of scenarios that probably could escalate the cost significantly.

MR. NARDELLI: Specifically, Senator Dalton, I agree with the direction you're going. If Public Service's bonds are downgraded, then we can, under this agreement, look forward to Public Service arguing that the increased cost of its bonds is now an extraordinary event. As you have said, you and I can sit here and think of a lot of ways that that plant is going to go above

$3.8 billion. After all, it went from $499 million for two plants to $3.8 billion for one plant in a number of years. Can you imagine how that $3.8 billion is going to increase from 1982 to 1987, when it goes into service? And the language of this agreement is going to allow Public Service to say every darn thing that happens is an extraordinary event, and I predict that is exactly what they will do.

SENATOR DALTON: The question then is that, if in fact we have a plant now that, I think and you probably know better than I do, we have spent about $2 billion on --

MR. NARDELLI: It's lower than that, Senator.

SENATOR DALTON: Lower than that -- what is it?

MR. NARDELLI: It's about $1.3 billion.

SENATOR DALTON: Okay -- many people would say to you, you know, "What the heck, we spent $1.3 billion on it. If you abandon it right now, then you're not going to get a watt of electricity out of it. In turn, you'll probably end up with the same type of scenario as Hope Creek II, that is passing some of those costs, if not all of those costs, along to the consumer without obtaining the benefits of any electricity out of that plant. Why stop?"

MR. NARDELLI: Well, that is the question that should be addressed in any meaningful review of Hope Creek I. I don't pretend that that question doesn't trouble me too. I will admit that at some point that plant will get to a point of completion where maybe we should finish it, if we have some idea as to what the true cap will be on those costs.

SENATOR DALTON: Let me ask you this. If, in fact, we stop that plant today and we've spent $1.3 billion, is there any way that this State, or PSE&G and Atlantic City Electric, can still provide the power that that plant would have supplied? In other words, what are the alternatives, if in fact we stop this plant today?

MR. NARDELLI: Well, first of all, since you've mentioned the word today, today we don't need alternatives. Public Service has a reserve capacity of over 30%. The Pennsylvania-New Jersey-Maryland Power Interconnection that the New Jersey utilities belong to -- their reserve capacity is over 30%. You have utilities in Pennsylvania begging other people to buy their excess capacity. Any talk about blackouts, or even brownouts, because we stopped building this plant -- that's ridiculous. I can't take it seriously, and I don't think

too many people in this room take it seriously either.

SENATOR DALTON: So, you feel that the reserve capacity is sufficient even up until the year 2000, Mr. Nardelli?

MR. NARDELLI: I think it is close to being sufficient, Senator Dalton. Sure, we would have to expand our conservation programs, we would have to expand our cogeneration programs -- I'm not saying we could just sit here from 1982 until 2000 if we don't build Hope Creek I. What I am saying is that there are other things we can do, and the Public Advocate and all the documents you're going to be receiving have been saying what some of those things are for years, and particularly throughout 1982, before they reversed their position.

SENATOR DALTON: One of the things that I guess concerns me -- I'm a relative newcomer, this being my third year in the Legislature, and you being in State government for many more years than that -- what has been the relationship between yourself and the past Public Advocate relative to making policy decisions for the Department?

MR. NARDELLI: You're referring, of course, to Stanley Van Ness?

SENATOR DALTON: That is correct.

MR. NARDELLI: Stanley Van Ness and I, and other top people at the Division of Rate Counsel, would consult. We would supply briefing papers on what proposed positions we had. He would call us down to Trenton; he would discuss it with us; he would give everyone an opportunity to speak, and at some point he would make a rational decision. As I indicated this morning, there were times during those eight years when Mr. Van Ness said to me, "Al, I don't think your way is the way to go." And I did what any person would do in those circumstances, I graciously acceded to it because I had the feeling it was a rational decision-making process, that he listened to what I had to say, he weighed the pros and the cons, and then he decided against me. I can respect that kind of decision making.

SENATOR DALTON: If you are the Public Advocate, don't you have --

MR. NARDELLI: I'm not the Public Advocate.

SENATOR DALTON: Okay, I realize that -- and you were appointed by a Governor, isn't the Administration of Governor Kean, Governor Bryne, whomever, supposed to speak, ideally speak with one voice?

MR. NARDELLI: Yes.

SENATOR DALTON: And this is a policy decision now, right?

MR. NARDELLI: Yes, but -- I don't know if you're playing "Devil's Advocate," Senator Dalton, but as I did say in my prepared remarks, the Governor has all those other cabinet officials. If the Public Advocate is going to be just another spokesman for the political establishment, why should we have him? Why do we need a Department of the Public Advocate to endorse the policies of any Administration? Believe me, I'm not picking on the Kean Administration. Why do we need a Public Advocate unless he is going to exercise an independent judgment as to what the public interest is -- independent of what he is being told by the Commissioner of Energy and the President of the Board of Public Utilities, and the Counsel's Office?

SENATOR DALTON: On October 6, I wrote the present Public Advocate a letter, asking him to appoint outside counsel to argue that the Cost Containment Agreement is not in the public interest. On Page 2 of that letter -- or excuse me, on Page 2 of the response to my request, Mr. Rodriguez indicates, and let me quote -- excuse me, Page 3. It's under the heading "Yielding the Need Argument." I'm quoting here.

> "Simply put, the Board of Public Utilities has approved this project repeatedly and it is more than 50% complete. At least three times this year, the Board has reaffirmed its support of Hope Creek, in fact calling for its expeditious construction.
>
> "In the last PSE&G rate case in the Board's review of the Hope Creek II's cancellation, and in the Board's denial for a motion of a temporary stay of construction pending a needs assessment -- at that time (February, 1982) we also recommended a cost containment of the project in an argument presented for me by Mr. Nardelli."

MR. NARDELLI: Yes, that's true.

SENATOR DALTON: At that point, in February, 1982, why was the Division of Rate Counsel proposing a Cost Containment Agreement?

MR. NARDELLI: Senator Dalton, a meaningful cost containment would be very helpful to the ratepayers of New Jersey. I'm in a way very happy that you raised this. It's ironic that in February, 1982 I probably was the first public official in New Jersey to call for some kind of cost containment. Yes, I realized we might not win the fight against Hope Creek I, and I was calling for a meaningful cost containment, but believe me, if Rate Counsel had been allowed

to negotiate that Cost Containment Agreement, it would have been a meaningful one, not the worthless piece of paper that is now before you.

SENATOR DALTON: How do you then -- it seems to me that on the one hand you were looking for a review of the plant, and on the other hand you were calling for cost containment. How do you resolve the two in your own mind?

MR. NARDELLI: Easily, because I would never have recommended that as we go forward on a cost containment that we give up the argument about need. The Public Advocate has a duty that if next year the facts change and the costs go up, or if the load demand drops drastically because of a depression -- we have the need to go in there and say, "All right, maybe it was needed in 1982, but it is not needed now in 1983." If there is another nuclear accident and safety questions are raised, we'd have the right to say it should be converted to coal. I see no inconsistency. In February I certainly wasn't saying the Advocate would trade its ability to argue for the need in return for this cost containment. In fact, one of the things I said to Joe Rodriguez on August 10 was, "Why do we have to sign this to get cost containment? Next week," I told him, "I can file a motion with the Board of Public Utilities. Now that this is in the papers and people are hearing cost containment, I can file a motion with the Board of Public Utilities moving for a meaningful cost containment. We don't need the signatures of Public Service and Atlantic City Electric. Let's go to the Board of Public Utilities and say that they should impose a cost containment -- a meaningful cost containment. We don't have to give away half of the store in order to get cost containment. We can fight for it independently."

SENATOR DALTON: In your personal opinion, why do you think the Advocate went in that direction, signing an agreement with PSE&G, if in fact he had the ability to petition the Board to obtain the same type of agreement, if not a better one?

MR. NARDELLI: I think that some people will do a lot for a pat on the head from the Governor. What more can I say? The press release had been prepared. It might have even been in that room as I spoke.

SENATOR DALTON: To your knowledge, has the Public Advocate ever taken a position where -- in other words, almost a dual position -- that is, taking a position in favor of something and at the same time appointing outside counsel in order to insure that "the public interest is represented?"

MR. NARDELLI: Senator Dalton, I do not recall the Public Advocate ever appointing outside counsel to represent an interest different than that that had already been expressed by some other division of the Public Advocate. The Public Advocate has appointed outside counsel to represent the public interest as he saw it. I do, and I would have to look into the details on this, I can definitely recall the Division of Rate Counsel and the Division of Public Interest Advocacy having differences of opinion on various issues. For the most part though, Stanley Van Ness would call in the divisions and reconcile them. There may have been one or two occasions where, at least on an informal conference basis, he'd let the two divisions go to an outside meeting and represent the different points of view. But I'd have to get my details straight on that.

SENATOR DALTON: I have no further questions. I just want to thank you, Senator Stockman, for allowing me to participate in this hearing. Although I have to leave early today, I hope you will allow me to play an active role in future hearings relative to this. Thank you, Mr. Nardelli.

MR. NARDELLI: Thank you, Senator Dalton.

SENATOR STOCKMAN: We will recess Mr. Nardelli's testimony until two o'clock. I'll have some further questioning at that time. I don't anticipate that it will be lengthy. Senator Lipman may or may not have questions. Immediately following Mr. Nardelli's testimony, I have indicated to Mr. Rodriguez his right to appear before the Committee to give a statement in response.

As far as how long we'll proceed, I anticipate that all of this will be completed by, or before, 4:00 p.m. today's session. As I indicated earlier, our next hearing date is October 26.

(RECESS)

SENATOR STOCKMAN: I'd like to get started with the continuation of our hearing. As I indicated this morning, I anticipate asking a few further questions of Mr. Nardelli and then, finishing that phase of the hearing, the Public Advocate has expressed an interest in making a statement for the record. Then we will adjourn, and we will reconvene on October 26.

A few points, Al, that I didn't touch on earlier that have come to mind. One is, this question of abandonment. There has been talk about the implications of abandonment. The fact of the matter is, as I understand it, that there has been a very significant amount of abandonment of nuclear

facilities in the last few years. As a matter of fact, that has been the rule, and not the exception. Isn't that so?

MR. NARDELLI: Particularly here in New Jersey, Senator Stockman. Just very quickly rattling off some plants, Public Service abandoned floating nuclear plants off Atlantic City. That was essentially a four-plant operation. Public Service abandoned Hope Creek II in December, 1981. Jersey Central Power and Light abandoned the Forked River nuclear plant toward the end of 1980. So, yes, we've had many, many abandonments in New Jersey.

SENATOR STOCKMAN: Cogeneration and conservation were talked about as concepts which arguably could develop in combination close to the capacity that is being projected for Hope Creek I. Do you feel that the monies that could be saved from this project could logically move us a lot further in those energy areas and directions?

MR. NARDELLI: Yes.

SENATOR STOCKMAN: Have there been any studies by the Public Advocate's Office in particular on either or both of those subjects?

MR. NARDELLI: Yes, we've put in testimony in various rate cases. We put conservation testimony into the last Public Service base rate case. We've put similar testimony into the record of the current Atlantic City Electric base rate case.

SENATOR STOCKMAN: This completion question -- how far complete Hope Creek I is -- has the Public Advocate, or any representative on his behalf, to this date, actually inspected or examined those facilities to confirm the degree of completion of that plant?

MR. NARDELLI: No, Senator Stockman, and this is a big failing in this whole process. Joe Rodriguez does not know how complete Hope Creek I is. He's taking Public Service's word for it.

SENATOR STOCKMAN: Well, I wouldn't expect Joe Rodriguez personally to have to go down and inspect the plant. Don't misunderstand me there. But, to your knowledge, the Public Advocate's Office has not gotten -- for instance, has the Board of Public Utilities, to your knowledge, through its representatives, checked on this question or, I guess what I'm getting to is -- this suggestion that this plant is roughly 50% finished, I assume, is from Public Service?

MR. NARDELLI: That's their figure. That's their representation, and it stands to reason, Senator Stockman, that the higher percentage completion figure that Public Service can pass out to the public, the better their argument

that the plant should be completed. The Advocate and the Board of Public Utilities certainly should be determining how far along this plant really is.

SENATOR STOCKMAN: Now, there has been at least testimony, perhaps even comment from the Committee, that may sound like a little beating up on the Board of Public Utilities, and I must say that when we get into some discussions with the Public Advocate one of the questions that I expect to ask him is the question of whether or not he, in fact, reached the determination, as I understand he did, and I got this from an informal exchange with him, that the Board of Public Utilities simply would not block the completion of Hope Creek I. You get into the question of the Board of Public Utilities' role and responsibility in all this now. They are not on hearing here, so to speak, but I want to call your attention, Mr. Nardelli, to a memorandum that is dated May 25, 1982, that was made available to us by the Public Advocate. It is a memo from Mr. Potter to yourself and to Mr. Camacho. I think it bears on this question of the BPU's role in all this, or posture, and perhaps argues your role or the Public Advocate's role. Are you familiar with that memo? Do you have a copy of it there?

MR. NARDELLI: I'm looking for the copy, but I know I have seen that. I certainly have it some place.

SENATOR STOCKMAN: I'd like to go through it with you because it raises in my mind some questions about your testimony and about the Public Advocate's role in this Hope Creek situation. And I must tell you --

MR. NARDELLI: Do you have an extra copy?

SENATOR STOCKMAN: No, unfortunately I don't. Staff has provided me with the only copy we have now. Perhaps we can accomplish it. Let me read it to you. There are three or four components to it that I think need some explanation. Unfortunately, I don't have the letter -- I've asked staff to try to find it for me, and again it's a reflection of the fact that we are moving rather rapidly in what obviously is not a simple matter. But, the memo says the following, and it's addressed to you from Mr. Potter. It says:

> "Attached is a copy of a letter sent by Barbara Curran (who of course is now the head of the BPU) to Gary Stein (he, of course, is with the Governor's Office on Policy and Planning) in which she describes her reasons for concluding that the BPU has already determined that Hope Creek I will be needed 'for capacity purposes.' Critical to her finding is

the evidence in the last PSE&G case. Specifically, she claims that the Public Advocate, like the Department of Energy, behaved as if Hope Creek I was needed. For example, in relying on PSE&G's submissions, she claims that 'these proofs were never seriously challenged by any active participant to the proceeding.'

"She also quotes from your statement that the BPU should accept the Hope Creek II cancellation in order to finish Hope Creek I."

Now, Mr. Nardelli, did you take that position in that hearing that he is referring to?

MR. NARDELLI: Okay. Whether you realize it or not, you have asked me many questions.

SENATOR STOCKMAN: I'm sorry.

MR. NARDELLI: I'm going to try to answer some of them, and if I miss one, please feel free to come back to it.

First of all, the expert on what the Public Advocate did during the 1981 Public Service base rate case is Roger Camacho. He was the lead attorney on the Public Service base rate case in 1981, so he probably is aware of more nuances than I am, but at the time I was Deputy Director and I'm certainly aware of the big picture.

I'll now move on to that. During the trial, the litigation of the 1981 Public Service base rate case, there was some -- what's the word I want -- the Public Advocate had difficulty in deciding exactly what we wanted to accomplish in that rate case. At times we wanted to get rid of both Hope Creek I and Hope Creek II, but there were other times when we got very discouraged as far as how the Board of Public Utilities was treating our testimony. For example, we put in testimony in August, 1981 on conservation and Hope Creek, which they took out. We put testimony in before the administrative law judge who was conducting the trial of the case. The Board of Public Utilities lifted that Hope Creek-conservation-related testimony away from the administrative law judge and brought it back to itself, which was a sign right there that we were in trouble. But at some point, there is no doubt, during the 1981 base rate case we decided to focus our attention and our fire on Hope Creek II. Let's take one bite of the apple at a time. If we go in before the Board and ask for both plants to be abandoned, then we're more likely to wind up with

nothing. So, let's concentrate on Hope Creek II. In the latter part of 1981, while the Public Service base rate case was still before the Board of Public Utilities, that is exactly what we did.

We focused our fire and our attack on Hope Creek II and, yes it is true, Senator Stockman, that there were periods throughout the trial of that case when we ignored Hope Creek I.

SENATOR STOCKMAN: Okay. He goes on to say:

"In short, she believes that the Advocate concurred, at least implicitly, with PSE&G's position. I'm now inclined to agree with her, even though the finding of need was irrational in light of the Board's failure to consider alternatives such as conservation in Hope Creek."

Mr. Nardelli, do you agree with Mr. Potter that it was a rather irrational finding for the BPU to make at that time?

MR. NARDELLI: Oh yes, all there was on the record was some information supplied by Public Service as to why both plants were needed. The Advocate never got the opportunity to make his case as to why the plants were not needed.

SENATOR STOCKMAN: Now, he goes on to suggest:

"In my view (and I'm referring to Mr. Potter now) this was a tragic error. It was also totally inconsistent with our position in other cases. For example, the construction docket."

Mr. Nardelli, do you agree that that was that serious an error at that time, or not?

MR. NARDELLI: Senator Stockman, you're putting me in a position of second-guessing the trial of the Public Service base rate case by Roger Camacho. I think Mr. Potter overstates it. I'm aware of the policy decisions that went into the decision to focus fire on Hope Creek II, as opposed to Hope Creek I. I'm not so sure that Roger Camacho and Stanley Van Ness made the wrong decision. I'm inclined to think that perhaps they made the right decision, as is borne out by the fact that in December, 1982 we did get Public Service to abandon Hope Creek II --

SENATOR STOCKMAN: 1981--

MR. NARDELLI: Excuse me, 1981, and that freed the Public Advocate to then turn his whole attention upon Hope Creek I, so things did not work out so badly.

SENATOR STOCKMAN: All right. He goes on to say:

"Its continuing effect may undermine our credibility today, and may help to explain the $390 million rate increase. It is, therefore, pertinent to ask how, in light of such Advocate-sponsored testimony as Dubin-Bloome's alternative loan forecast which said no more power plants of any kind were needed until 1990; Komonoff's study which showed that nuclear has no cost advantage over coal; and, Kahn's report which showed that the 20% reserve margin was artificial, did we come to such a policy decision, in effect repudiating, or at least ignoring, some of the best analytical work to come out of this Department."

Mr. Nardelli, do you agree that those studies were some of the best analytical work to come out of the Department of the Public Advocate?

MR. NARDELLI: Yes, I do.

SENATOR STOCKMAN: As a matter of fact, those studies would point away from a conclusion to complete Hope Creek I?

MR. NARDELLI: Yes, that's true. Once again, Senator Stockman, all we're talking about is a tactical decision in 1981 to focus our attack on Hope Creek II, get rid of that, and then turn our attention to Hope Creek I.

SENATOR STOCKMAN: There is a recommendation, among others that followed after that general observation by Mr. Potter, that perhaps you would consider retaining an energy policy expert on the staff to advise us on policy direction, or to act as an expert witness. What that ever followed through on? Are you familiar with that? Do you recall that recommendation?

MR. NARDELLI: Yes, I do, but as I recall it was more of a recommendation that Trenton hire someone to assist them in these issues. But I would have to see the whole paragraph before I could comment more. I do recall that recommendation. When I said Trenton, I meant of course the Commissioner's office -- that the Commissioner should hire someone to work on his staff to help coordinate energy issues.

SENATOR STOCKMAN: Now, Mr. Potter went on with this suggestion:

"At a minimum, no major electric rate case should begin until after we have settled all of the major policy decisions. Doing so during the heat of litigation is a poor substitute that shows lack of preparation. Joe and I (I assume he is referring to the Public Advocate) would

like to be involved from the beginning in these strategy sessions."

Were there any strategy sessions on the decision to sign this contract?

MR. NARDELLI: No. To repeat my testimony of this morning, Joe Rodriguez did not talk to me in person or on the phone about the Cost Containment Agreement until the morning of August 10, the day that he signed the agreement.

SENATOR STOCKMAN: He goes on to say:

"These sessions could begin with the lead attorney preparing a preliminary analysis of the company's case."

Who was the lead attorney in the case involving Hope Creek I?

MR. NARDELLI: Well, I think we're going to have to do a little history here.

SENATOR STOCKMAN: I'm talking about around May, June, July and August, 1982.

MR. NARDELLI: I would say that Al Nardelli and Roger Camacho were co-counsel on the matter at that time, with a lot of help from Ray Makul and Menasha Tausner. Those are the four people.

SENATOR STOCKMAN: Was there any preliminary analysis of Public Service's position on this ever prepared by those individuals before a decision that we're dealing with here today?

MR. NARDELLI: Well, anything that was done out of Rate Counsel during this period -- you mentioned May and June, and if you're still talking about May and June, yes. Bill Potter did ask Rate Counsel to buttress the case against Hope Creek, and we did. There are various memos going from Rate Counsel to Bill Potter supporting the argument against Hope Creek, and supporting the argument that it probably is not needed, how there could be cheaper alternatives to supplying the power. However, we were never asked to talk about signing away -- in other words, we were on the same side then. There would be nothing from Rate Counsel to the Public Advocate saying that we should reverse ourselves. We were trying to support the argument that Bill Potter, and I presume Joe Rodriguez, wanted to make, that we needed a meaningful review of Hope Creek I and there is information going from Rate Counsel all throughout 1982, going from Rate Counsel to the Commissioner's office, supporting these arguments.

SENATOR STOCKMAN: On the subject of memorandums, are there any memorandums of any meetings that capture the opinions of the participants, whether they be experts or non-experts, which would shed further light on the sequence of events leading up to the Public Advocate's signing this agreement -- that you have seen, and that we have not been given here?

MR. NARDELLI: Offhand, I am not aware of any. I would imagine that there might be some interesting memoranda flowing from the Advocate's Office to the Governor's Office that I am not aware of, but I think I've told you just about the most interesting memoranda going from -- well, Ray Makul, for example, wrote a memo to Bill Potter during the period we're talking about. He makes a rough calculation on the question of whether or not -- on the cost of Hope Creek I in terms of how much it is going to cost ratepayers and how much it is going to cost Public Service. He goes through various assumptions as to how much rates will increase if capacity factors such and such -- so, there are some internal memoranda, but until I know exactly what you have, I don't know what you don't have.

SENATOR STOCKMAN: Do you have any idea based on the figures that have been projected so far as to what the probable impact on the cost to customers of Public Service will be, assuming this plant is completed, and assuming that it is done for the limited estimate of $3.8 billion -- and assuming that it is completed essentially on projections that now have been made by Public Service? Approximately what impact would that have?

MR. NARDELLI: There is a memo from Ray Makul on this question, but a rough answer is $1 billion a year. In 1987, Public Service's rates would go up $1 billion a year.

Now, there are several underlying assumptions there, but it is a dramatic increase.

SENATOR STOCKMAN: What is the total current figure for Public Service's

MR. NARDELLI: Revenues?

SENATOR STOCKMAN: Revenues, yearly. Are we talking about a 10% increase, a 20%, a 30%?

MR. NARDELLI: No, we're talking much more than that. Public Service's revenues for 1981 were less than $1 billion a year.

SENATOR STOCKMAN: You're talking then, arguably, about doubling the actual cost figure?

MR. NARDELLI: Yes, but, Senator Stockman, I would have to look at an operating report to refresh my memory on that.

SENATOR STOCKMAN: There seem to be some shaking heads in the audience. I think maybe you are on weak ground.

MR. NARDELLI: I may be.

SENATOR STOCKMAN: We can get that information.

MR. NARDELLI: I'm quite sure that their operating revenues are less than $2 billion a year, so we're still talking a very, very significant increase.

SENATOR STOCKMAN: Now you made, as I understand it from your testimony, some efforts even after this agreement was signed to press for some detail. As I understand it, there was a joint statement at some point after the signing of this agreement entered into. Did Rate Counsel, or anybody in Rate Counsel's Office, to your knowledge, have any participation in the preparation of that joint statement?

MR. NARDELLI: Oh yes.

SENATOR STOCKMAN: Who did?

MR. NARDELLI: At least in the beginning phases, I did, and Roger Camacho worked very hard on it. Ray Makul may have been involved on the periphery. Ray Makul was involved; I forget to what degree.

SENATOR STOCKMAN: And, in your opinion, did that joint statement that ultimately was published tighten up and correct the problems, in terms of the original agreement?

MR. NARDELLI: Oh, it definitely improved the Advocate's and the consumers' position under the agreement. There is no question about it. I would like to think that Rate Counsel's insistence had something to do with that. Yes, that joint statement, Senator Stockman, is an improvement on the agreement, but it still doesn't close all of the loopholes and, perhaps more importantly, the issue I was raising in my testimony is, that it was my suggestion that we not have a joint statement, that we put on witnesses, Advocate witnesses, people speaking for the public interest, that would try to mold this agreement even more favorably to consumers. But Mr. Rodriguez and Mr. Potter rejected this approach in favor of the approach of working things out with Public Service.

SENATOR STOCKMAN: Let me ask you this final question, because I want Mr. Rodriguez to have an opportunity to make his statement, and the hour is growing late.

What about at this point the thorny question, and I think the Public Advocate again raised it in a reply letter to Senator Dalton -- the question of whether he could, at this point, in view of the totality of circumstances that now exists -- those circumstances include, well everything that has transpired to this point, we don't have to elaborate -- but in order to arguably clear the air, take the extraordinary step of appointing an independent outside counsel. You are someone who has worked closely in the Office of Public Advocate for many years, and no doubt have a great deal of interest in the office. You have made very clear some sharp and serious differences with the present office holder, but I am assuming for the purpose of this question what I would hope and expect the large majority of the public would assume, and that is you have no desire to see the abolition of the Office of the Public Advocate or a severe weakening of that office.

What about, Mr. Nardelli, the question of whether that could be done by the Public Advocate now, without sharply or seriously undermining his credibility? Do you think that could be done, and why?

MR. NARDELLI: Before answering that question, let me confirm your belief that I have no interest in seeing the Public Advocate abolished or seeing it weakened. One does not spend eight years in an office without becoming deeply committed to the ideals of that office.

Now, as far as appointing an outside counsel, I would disagree with the response of Joe Rodriguez to the request to appoint an outside counsel. I think it shows strength to say, "All right, listen, I thought I did the best," and I'm speaking for Joe Rodriguez now. "I, Joe Rodriguez, thought I did the best thing at the time. I still think I did the best thing at the time. I'm willing to defend what I did, but there have been serious questions raised, both about the way I made this decision, and about the agreement itself that I signed. Now, I will appoint outside counsel to represent conflicting public interests."

Why, if the statute provides for representing conflicting public interests -- I don't think that it weakens the Public Advocate to say, "Yes, there is an honest and reasonable difference of opinion on this question."

SENATOR STOCKMAN: Perhaps the uncomfortableness of the Public Advocate, assuming he might be persuaded, and this is all hypothetical --

MR. NARDELLI: Right.

SENATOR STOCKMAN: -- assuming that he might be persuaded by the totality of circumstances, perhaps his discomfort would be, "Well, look, I

cosigned an agreement with three other people, and they thought, at least when they struck this bargain with me, that they had lain that problem to rest. And here now I'm end-running them by pointing to sort of an obscure little part of the statute that gives me authority to reach beyond my department for some special counsel."

That's kind of dirty pool, arguably, and that might be discomforting. But, do you think if the other signatures to that agreement, the Energy Department, Public Service, and --

MR. NARDELLI: Atlantic City Electric.

SENATOR STOCKMAN: -- Atlantic City Electric were persuaded by the totality of circumstances right up through today, that that kind of a move would be in the public interest, and were to communicate that willingness to the Public Advocate, thus introducing a new element into the totality of circumstances, that perhaps that would provide the Public Advocate with a mechanism whereby, preserving the integrity of his office, but protecting the interests of the public, that could be done?

MR. NARDELLI: Senator Stockman, with all due respect, you have answered your own question. Yes --

SENATOR STOCKMAN: But it's not important what I think or say obviously, in this context,but I wanted to put the question.

MR. NARDELLI: I certainly agree with you. It would make the appointment of an outside counsel easier and more palatable to Joe Rodriguez if these other signatories to the agreement --

SENATOR STOCKMAN: I have no further questions, but I think Senator Lipman may.

SENATOR LIPMAN: Let me say, I haven't had time to digest all of this paperwork which I got today. However, I was one of the legislators who was very happy to see the Office of the Public Advocate established because the Public Advocate was to be the voice for the public, where there had been none before. The approach was, you were to examine other State agencies to see that they would be run more efficiently. This also represents my interest in being here --constituents, on whom the impact of the cost of public utilities is too much already, and any additional costs might have very serious consequences. As it is, we had more Public Service shut-offs last month than ever before.

Now, I've said all that to say that I've always regarded the Public Advocate as an office which examines several alternatives before coming to

a conclusion. I have two questions here. Was there ever a chance for the Division of Rate Counsel to consider other cost containment methods other than the one that is presently being signed and agreed on?

MR. NARDELLI: Well, I suppose the meeting I had with Joe Rodriguez the morning of August 10 -- I suppose that was my opportunity to express to him the fact that there were better cost containment proposals, and I must have failed because he signed the agreement that was before him that afternoon.

SENATOR LIPMAN: I see, but are you still of the opinion that there are more effective cost containment methods?

MR. NARDELLI: Definitely, Senator Lipman. Cost containment is something that we can all support and, yes, I think there are loopholes in this agreement that has been signed that should be closed in the public interest. There are more effective ways of containing Public Service's costs.

SENATOR LIPMAN: All right. How many members of the senior members of the Division of Rate Counsel agree with you -- do you believe agree with you?

MR. NARDELLI: All of them. The three who signed the memo of August 9, which I have attached to the testimony, but in addition to those three who signed it, the three or four more who are next in seniority who have worked on electric rate cases. I'm not going to name them now, but if it is ever necessary I'm sure they could be called to solicit their views. But, I'm representing to you that the seven or eight people at Rate Counsel who worked on electric rate cases agreed that this was a terrible Cost Containment Agreement and that Joe Rodriguez should not sign.

SENATOR LIPMAN: Okay, thank you.

SENATOR STOCKMAN: Thank you, Mr. Nardelli. That completes your testimony for now.

Before the Public Advocate testifies, I do want to make part of the record a letter written to me by Mr. Potter dated October 7, 1982, and turning over certain communications with the Governor's Office, with the Director of Office Policy and Planning. After discussing the letters apparently with the Governor's Office, they have informed me that they have no objection to releasing these letters. They do, however, wish me to convey their belief that these communications, in fact, are privileged; nevertheless, they did not wish to assert such a privilege in the interest of a full and open discussion on the issues. I want to thank the Governor's Office for that. They have indicated the feeling that some of these communications are privileged, but they nevertheless have turned them over to the Committee.

As far as I know now, and I'm working on this assumption, the Committee has all of the documentation, all of the materials that touch on this issue of the position of the Public Advocate vis-a-vis Hope Creek I and the cost containment. I want to thank Mr. Potter.

As I indicated this morning, the Public Advocate will not be questioned today. We will complete the hearing after his statement. He has expressed an interest in making a public statement in reply to Mr. Nardelli's charges of sorts, and I can understand his desire to do that, and we certainly are happy to accommodate him. We will reconvene and expect to question the Public Advocate on October 26. Joe, it's all yours.

JOSEPH H. RODRIGUEZ: Thank you, Senator. I don't wish to take a lot of time, but I think the testimony of Mr. Nardelli dictates that I try to unbend the pretzel and put before the public of this State actually what did occur, because I think what is at stake now is not only his personal disagreement with me, but in trying to state it in his manner, questioning seriously the credibility, the integrity, and the competency of the Public Advocate's Office.

So what I intend to do is ask myself three questions, because I want the full story to be known today.

The first question will be, did the Governor in any way control, insist, call me, initiate a contact with respect to the Cost Containment Agreement? And the response to that is an emphatic no. The contacts with the Governor's Office, as demonstrated by the letters that you have, were

contacts initiated by us to the Governor because we felt that with the new Administration it was about time that we tried to change position and demonstrate to the State that we would try to take a new, aggressive approach against what we consider to be high utility rates and an oppressive situation that is existing for the ratepayers.

Now, other than that I can't refer to any other facts because they did not occur. At no time did the Governor state to me that he wanted to see this done. It was important that it be done. It was necessary that it be done. He listened to us and agreed that a new approach would be called for. With that in mind, we joined with the Department of Energy and the Governor made an announcement saying that he thought the Cost Containment Agreement was good for the State of New Jersey.

It's interesting that professional review of the Cost Containment Agreement has come up saying that it is a good thing for the citizens of the State. There were editorials to that effect, and there were articles written in the New Jersey Monthly Magazine to that effect.

The second question I want to ask myself is, was the Cost Containment Agreement in the public interest? Now, you have to remember I became the Public Advocate in February 1982, believing as I reviewed some of the issues that we were aggressively fighting Hope Creek I. Was my review at any time considering the fact that I wanted a pat on the head from the Governor? All I can suggest to you when credibility is at stake is that you look at my five years with the SCI and tell me if I ever sought a pat on the head from anyone when I was doing what I thought was right, including the Governor at that time. Certainly the media is filled with what my reactions are when someone tries to send me in a direction that I don't feel is proper. I intend to do the same thing at any time, because that's me speaking to you. And I can say to the Governor's credit, that one thing he has insisted upon as far as I am concerned is that the Office of the Public Advocate remain independent.

I took that review, and let's start with recorded facts so that we don't get ourselves contaminated with credibility arguments. Some time after I was there, thinking we were fighting the battle of Hope Creek I, and let me recall to you the testimony of Mr. Nardelli, seven years, long, resolute, aggressive activity against the Hope Creek project, and he didn't realize he was falling out of step. Well, perhaps one of the things that caused the

concern about whether or not he fell out of step was when I became aware of the stipulation that Mr. Nardelli signed in the Hope Creek case of December 14, 1981, some two months before I became the Public Advocate, this stipulation signed by Mr. Nardelli in the Hope Creek action, and it is also countersigned by Lawrence R. Cody, attorney for Public Service. I will read one paragraph from that stipulation:

> "The undersigned parties agree that raising these capital requirements would be a financial burden on the ratepayer and the company (referring to Hope Creek II). Such an added financial burden could also further jeopardize the timely 1986 commercial date of Hope Creek I. The undersigned parties agree that no controversy exists regarding Hope Creek I's two-unit design and need to construct a facility up to this time (December 1981)."

Attached to it is an amortization schedule, Plan B submitted by the Public Advocate and clearly indicated in this stipulation, where Mr. Nardelli agreed to an amortization rate greater than that requested by Public Service. I became aware of this Cost Containment Agreement, but I was also aware that in the press there were words made with respect to the credibility of the Public Advocate and why it had shifted position in the Hope Creek matter. I have a transcript, February 23, 1982 -- prior to that, let me go to February 19, 1982 -- a transcript where Mr. Nardelli is suggesting a shift in position. At this hearing many people testified, including some legislators, who said that they would be asking for a moratorium on Hope Creek I and in here, as a result of questioning, Mr. Nardelli had to admit that the amortization schedule that he agreed to in December contained the agreement that Hope Creek I would be completed.

When asked specifically by Commissioner Barbour whether or not that was the case, he had to agree that it was. When asked by Commissioner Hynes whether or not he had to admit that Hope Creek I was never brought up during that long, aggressive, hard battle as an advocate for the ratepayers of this State, he had to agree that it was not brought up. He had to admit that the amortization schedule included the completion of Hope Creek I -- transcript, not credibility.

February 23, on a motion to try to get this thing straightened out, Mr. Nardelli again -- transcript by Commissioner Curran, "To what do you

attribute the shift of position now to look at Hope Creek I?" Answer, "Commissioner Rodriguez." This is before I was aware of the stipulation that had been entered into where we yielded the argument.

Next question, this aggressive battle -- Senator, you asked the question yourself -- expert testimony in this aggressive fight, where was it? It wasn't there. That's why the memorandum from Mr. Potter on May 25, questioning the preparation of that case -- and doesn't that memorandum also suggest that we have a seminar on discovery techniques because of the way we viewed the tragic error in not properly preparing that case. It's quite easy now to suggest that it was Roger Camacho who was the lead counsel at the time. All morning I heard that the aggressive advocate on Hope Creek I through the entire process was Mr. Nardelli.

Yes, I met with them. I met with Rate Counsel; I wanted to know one question. Now, in light of all this credibility that is being shattered, can we stop Hope Creek I knowing that every day that passes more money is being poured into that project? Yes, we supported S-975, the Dalton bill, for the Certificate of Need. We also requested the legislators to give us a moratorium, so that the argument that the longer it goes you won't be able to stop it --

Now we're talking about April -- March, April -- I'm only there two weeks and admittedly I'm the least knowledgable person, yet I'm asking the question, "can we stop it?" The answer unanimously was, no we cannot, mainly because of some of the record in time that had passed. Did we consult with Mr. Nardelli? I have a memorandum of August 20 from Mr. Nardelli and Roger Camacho to me, as Commissioner. Let me just quote one part of it to you, questioning about the Hope Creek I situation and the response is, "The Board will not direct the abandonment of more than a half completed generating unit of PSE&G when it perceives that Jersey Central Power and Light is in desperate straits with regard to generating capacity. We simply cannot win this discretionary issue at the Board." Now, that's in August. So it confirms that at no time was I told that we could be successful with respect to Hope Creek I.

More to the point, there was a campaign fueling about that time, and just last week going through the records we found that Mr. Nardelli prepared a speech for Congressman Florio with respect to Hope Creek. And I would assume that putting your best foot forward, you would say those things which are most critical to the public in a time of serious need. Here's the

speech. Not one word addressed to Hope Creek I, simply Hope Creek II. With that in mind and realizing that what was at stake here now was the public interest -- the public interest in seeing a plant steaming toward completion, taking the funds that it was taking, realizing number one, that a moratorium was not acceptable and was not being presented by the Legislature; being convinced that the Board, from Mr. Nardelli's own words, would not stop the project, there was only one alternative, if in fact you wanted to be a courageous leader -- I hear this morning maybe somewhat dumb and foolish -- but thinking in light of the circumstances, try to be a little different; try to show that the new Administration is going to demand greater accountability from the utilities, and we started to negotiate the Containment Agreement.

Yes, we talked. And who was involved in the last several days of the Containment Agreement and the transactions that went into it? Roger Camacho, who certainly is knowledgable about utilities. Bill Potter, who certainly has a reputation of confronting utilities. They were assisting and advising me in light of facts that I knew were real -- that at no time would they stop this plan the way it was going downstream, so we had to contain it. What were we concerned about in the Containment Agreement? Look for that figure of completion, range of completion that was yielded in December and try to reach that as a range of termination, and then say to the utilities for the first time, "Exceed that and your shareholders will pay a penalty." Isn't that an interesting concept? How high do you think they are going to allow those completion costs to go if the utility shareholders are going to have to pay some 30% in penalties? It's easy to say, it's only 30%, but we could be talking about millions of dollars. What does that do for the first time that brings to the table a conversation that was not handled before that time? It's saying to the utilities, into the future, and Commissioner Coleman was also participating in this -- that henceforth when you go to build in New Jersey, you will tell us your target figures and you will pay a penalty if you exceed it.

What would have been the case without the stipulation, without the Containment Agreement, the way the plant was steaming downhill? Nothing. What would have been extraordinary circumstances? No definition. What would have been reasonable cost? No definition. What would have been a cap for penalties? No definition. That's the atmosphere we were working in; therefore, we do now approach it and say, "yes, regulatory reform. You're going

to tell us ahead of time, or you're going to pay a penalty. That's what the rateholders deserve. You're going to pay the penalty if you exceed it; yes, an incentive if you come below it." But we know that realism is to cap them at a figure. That was contained in here. Corporate accountability -- is it one of the problems that concern the ratepayers? The fact that everything going into rate base, the shareholder is never put in the position of questioning management because they get a rate of return from what goes into rate base.

Where do you start putting into the factor accountability to the shareholders, shareholder to management, unless you have the penalty provision, which is what we did. Extraordinary circumstances -- we gave away the store, was the testimony on extraordinary circumstances. What would they have been if we continued to battle a losing war? What are they now? And hear what we did, not August 10 when we agreed in concept. It was inherent within that concept that the final answer had to be in that joint statement, as to what we all understood would be the battleground of this agreement. And we made changes in that right up to the morning that it was presented on September 28. Roger Camacho from Rate Counsel -- we even had one of our consultants in, and met with Public Service. Why? Because it was important that the issue of credibility and going back on stipulations would never be raised as long as I was Advocate, but at least they would know that they would be in a fight when we said there would be a fight.

What are extraordinary circumstances under the law when you have a contract? Doesn't the court many times revise provisions because they were extraordinary and not within the intentions of the parties? So what we say in this agreement is, nothing that is already in existence at the time of this signing could you ever raise. Fine. Look into the future. If at any time you feel something has happened that is an extraordinary circumstance, you tell us immediately so that we can marshal our forces and look at it and fight you on your definition -- more than exists under the general law -- fight you under the determination of what you want to put in to change that cap. Even reasonable costs, we want to fight you to determine what can alter that cap. So there is an avenue of dispute.

What did I do on August 10, this day when because of some press release that we were under some hammer from the Governor's Office? No, I delayed the press release that day. I delayed it because I wanted to go to Newark. I wanted to speak face-to-face with Robert Smith, Chairman of the

Board of Public Service, to tell him that I didn't want any dispute as to what it was that we were doing in preserving to ourselves the right to fight under this Containment Agreement, to be sure that that cap wasn't altered just at the whim or mistake of a utility, because the ratepayers shouldn't pay for blunders. And if they are blunders that would not alter the cap. We reserve those fights. Why didn't you put it into the agreement? What are you going to put in? How can you define everything, because if you put a list and then you leave something out, they can say this is the list and this isn't in it. Therefore, allow the fight when they call for it, and then if they don't raise it in a timely fashion, they waive it -- they eat it. That's what happens. Their shareholders participate in that miscall. But you're going to tell us now, and we're going to explore it and fight it.

You see, these are the things. What if I hear about bonding? We also have in that agreement that they can't use this agreement to say they will risk your company to increase their rates, because we can then rate -- they can't raise that argument, "We are a riskier company." Because that was the loophole in the New York case -- "Catch 22" contained them, but then they went for a higher rate of return because they are riskier. It can't happen here. We closed that loophole.

So I can't see, unless you sit there as God to define everything that is going to happen in the future, how you can have a more dramatic provision of constant litigation any time they want to shift or have something come in to alter that cap. I don't think reason tells you what that can be, because if they are extraordinary, there has to be a battle.

These are the types of things that we were considering and, on balance, next to what we had this was in the public interest. That's why I think it would be, not against my credibility, but in some poor taste to suggest that we can do that analysis and that work with the record we have before us and then say that outside someplace there is a better answer. Incidentally, there is nothing in this Containment Agreement that can stop the Legislature, if it wishes, from asking for a moratorium. There is nothing in this Containment Agreement that says we will never fight them on issues that are outside this agreement. I wanted them to hear that from me, because they said, "What if we agree to this, look how you shifted in the past. Apparently your written word doesn't mean very much." And I said, "You're hearing it from me," and I had that personal meeting with them. So that's what happened on

August 10. I held up the press release because we did want an united front. Not only that, but we have a right to look at anything that might go wrong with that plant up to the first refueling cycle -- and because there are a lot of things you might think were improper, for instance, what about a hurricane -- would that be an extraordinary result? Well, a hurricane, if you feel that the capsule has to be guaranteed against that type of thing, that's not going to be extraordinary either.

So, you're putting on the Board for the first time parameters of activity that I hope is a signal to the future. What if Public Service in two weeks, one month, decides to cancel Hope Creek I? Does it suggest that we acted improperly? And I suggest to you that it does not. Maybe then they will be required to put on that factor what these penalties may be down the line that the shareholders will have to pick up and seriously question them at that time. Maybe that's in there. And I've heard that -- I've heard that from sources, and I wonder why the financial market in New York is not so happy with this containment. I wonder why other utilities are not so happy. Because maybe we took a step that should have been taken a long time ago, and let's hold them accountable for their projections and have their shareholders responsible for management when management tries to push a blunder on the ratepayer.

That's what was going through my mind, and I didn't consider it at any time that it was a flip-flop.

Now, let me ask myself the third question, and I seriously regret having to get into this but I think in terms of what is necessary for the public, for confidence in this agency, I must. Why did I discharge Al Nardelli? One of the things -- and I guess if I did take some lead, not only from the Governor but from myself, my first time in government this way as an administrator of a large agency, is my personal responsibility to the people of the State, accountable for their tax dollars in running the agency. How many millions did we put into fighting Hope Creek for all those seven years and then yield it in December of 1981? How many dollars will I have spent in a losing battle, knowing that I was losing it, simply to cloak myself with the glow of principle and continue to scream "no" so it looks like I'm the only one who is concerned, or do you really move for aggressive action on behalf of the ratepayer?

So I took over the agency, not yet Public Defender, this only happened last week,-- two weeks ago, Public Advocate. There is a combination of people in the Public Advocate's Office because it had been unified under one person for many years. When I came in as Public Advocate, I had the five divisions, but not the Public Defender. I just recently was confirmed by the Senate, the date I'm sure is easily obtainable.

Efficiency in the operation of the agency so that the taxpayer gets his money's worth -- does it mean that it wasn't working efficiently before? I don't know, but I'll look at it. One of the things that is brought to my attention is the report that is being prepared on the Office of the Public Advocate, and it has taken some year to produce, and it was produced internally by many members of our agency and reviews the Office of Rate Counsel.

Findings, and they are brief.

SENATOR STOCKMAN: Excuse me, could we have a copy of this document? I gather you are referring to some sort of a study that was done. Do you have any objection to giving, or making available to the Committee, copies of this?

MR. RODRIGUEZ: None at all.

Findings: Previous attempts to establish and enforce an adequate paper flow system in Rate Counsel have not produced sufficient results. See Exhibit 2. Specifically, the lack of even a minimal structured system creates a loss of files, inaccessibility of information, inadequate reporting to Trenton, and a generally poor office structure. See Exhibit 3. With respect to productivity, these shortfalls are translated into a duplication of work effort each time a utility company is being scrutinized more than once. So, in the name of efficiency, what I thought I would do would be to seriously explore Rate Counsel and determine whether or not I wanted to make a change at the top, whether or not I was going to name or change the director because I had been in the process of analyzing each of the divisions.

In the process of analyzing the divisions, I saw that there was a shifting of line positions because of the availability of lines. Maybe someone was working with Public Interest and he was on a Citizen Complaints line. I have been for several months meeting with division heads and straightening out what their budget requirements were and the people who were working for them. And each time I found a shifted line, I straightened it out. The day that I was going to meet with Rate Counsel to do the same thing was September 28, the day of that hearing before the BPU, where I knew I was going to be in Trenton

where I had been for a couple of days, and that we would meet that afternoon, and the memorandums were there as to the personnel issues that were going to be raised to straighten that thing out.

On September 22, or around Labor Day, we called Roger Camacho and asked him if he would be interested, because I saw a person that had the knowledge of Rate Counsel, had administrative abilities and, incidentally, I heard today was the lead counsel on Public Service, because when the tough questions are asked, it is Roger Camacho. When the tough questions are asked maybe it is Ray Makul. Yet I understood from this morning's testimony that it was a fight of seven years and, until he got out of step, or he got into some trouble because I wanted this pat on the head, Roger Camacho said that he would take over the director's position. We left open who would be the assistant director on September 22, because believe me the issues that were raised by memorandum to the Cost Containment Agreement were being addressed by Roger Camacho and incorporated into the joint statement. We answered the questions that were raised.

On September 22, I called Mr. Nardelli to Trenton, and about ten o'clock in the morning I told him that I was relieving him as Director of Rate Counsel effective October 1, and that I would be naming Roger Camacho. I told him he could stay as a lawyer and do those things which he did best if he wanted to represent his clients, but I was making that change.

Over the next days, I received contacts from Mr. Nardelli stating that he might want to look elsewhere and it would be easier for him to apply for a job as director, than not being a director. I told him that I would give him a letter of recommendation. I told him that as far as his ability as a lawyer was concerned, I certainly wasn't suggesting he wasn't a lawyer, but that I simply wanted to make an administrative change, which incidentally is my prerogative as Public Advocate.

I understand there was a conversation with Roger Camacho, where he pledged he would support him and work. I was asked again, I guess it was on the Friday before the Wednesday of the 28th, whether I would change my mind, and I said I would let him know. The morning of September 28, when we are going into the hearing, I am walking into the hearing room and Mr. Nardelli takes me aside and asks will I change my mind. I said, "No, the decision has already been made, but actually there doesn't have to be any public ---" The reaction of the press was, "What are you going to do?" "I want to speak

to Mr. Nardelli to see what he thinks his status is now that this has occurred."

Well, I did meet with Mr. Nardelli that afternoon, and Mr. Nardelli made several comments, one of which was, "Well, what about my memorandum of September 24, 1982?" I didn't know what that was. You see, the 24th I was in Trenton; there was a weekend, then I was in Trenton Monday and Tuesday for the hearing about the illegality. I said, "Listen, if there's anything illegal around here, they're going to get fired." And his comment to me was, "Then you're going to have to fire yourself."

What's he talking about. So I called for Bill Potter and I said, "Hey, Bill, what did we do that was illegal?" You see, to me that's a pretty heavy word. The memorandum was then produced to me in Newark and its caption, "Illegal Use of Rate Counsel Funds" -- it charges illegal, immoral -- hiding persons on Rate Counsel payroll. Then the comment came to me that he is not without some support in the press and "the next move is up to you, Commissioner."

I never intend to play poker with my ethics. I fired him because I was satisfied that what was occurring on Rate Counsel line was simply a contamination of lines and at no time was there a dollar charged against a utility improperly. And I have that analysis, an analysis that I have been making for several months. That's what happened. And when I hear today's scenario, it doesn't talk about the December stipulation. It doesn't talk about his memorandum to me that Hope Creek I could not be stopped. It doesn't talk about the amortization rate suggesting to Public Service more money than they even requested. That's a filed document. It doesn't take my credibility to prove it. And then I read the memorandum of what is occurring at Rate Counsel with respect to efficiency, and I wanted to make a move. But I could never live with myself if I would ever suggest to anyone that I would try to conduct this job independently on behalf of the public interest with someone who thinks he can raise a shoe over my head on something that I had nothing to do with.

I was willing to withstand that assault in the press, recognizing that the first blast of illegality makes it very difficult for somebody to survive and live through it, if someone doesn't read the follow-up story. But, I was willing to take that risk, and I did because it was an unfair comment. It was an unjust comment, and one that anyone who dares make it in my presence will have no place in the Office of the Public Advocate. So I took the position that I did.

I want to thank you for hearing me out.

SENATOR STOCKMAN: Thank you. That will complete the session for today. Incidentally, I can't resist saying that I'm not here to suggest that the Legislature has played the most noble and courageous of roles in this whole issue of Hope Creek I. But, I look forward to seeing you on October 26, Joe, and I promise to have some questions for you at that time. Thank you.

MR. RODRIGUEZ: Thank you.

(HEARING CONCLUDED)