

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 27, 1982
Room 346
State House Annex
Trenton, New Jersey

New Jersey State Library

MEMBERS OF COMMITTEE PRESENT:

Senator Gerald R. Stockman, Chairman
Senator Lee B. Laskin
Senator Leonard J. Connors, Jr.

ALSO:

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

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(NOTE: Documents cited in testimony are on file with
the Committee)

SENATOR GERALD R. STOCKMAN (Chairman): We would like to continue with what is the third hearing of the Senate Legislative Oversight Committee into the circumstances surrounding the Agreement, signed August 10, 1982, between the Public Advocate, the Energy Department, Public Service Electric and Gas, and the Atlantic Electric Company.

The issues -- I will reiterate -- which I see involved in this hearing is the question of whether the completion of Hope Creek I is in the public interest; the question of whether the Public Advocate followed reasonable and accepted practices, internally, in arriving at his signing this Agreement; and, the question of whether in light of that Agreement, the Public Advocate can now fully protect the public interest in seeing that only those reasonable and necessary costs associated with Hope Creek I are borne by the ratepayers of the State of New Jersey. Those are the basic issues that I see this Committee quite concerned about and looking into.

Mr. Camacho, I will reiterate this, and I am sure you can appreciate this, we are not here in a debate over Al Nardelli and the circumstances surrounding his firing -- at least as I see it. That is something I am not saying isn't an issue and won't have to be dealt with.

First of all, Mr. Camacho, would you tell us, briefly, your educational background, your experience, your position in the Public Advocate around the time that we have been taking testimony, that is, in early 1982 up to the present time, and, of course, your present position.

ROBERT L. CAMACHO: First of all, Senators, thank you for this opportunity to be heard this morning.

I graduated from Rutgers Law School in 1968. I held the position as a regulatory attorney for the CNJ Railroad during the early 70's, doing their reg work and their work before the Public Utility Commission. From 1971 to 1974, I was associated with the Kirsten Law Firm in Newark, serving as Rate Counsel by appointment of the Attorney General. In 1974, I became one of the charter members who formed the Division of Rate Counsel within the Public Advocate Department. I have been there since that time with a short hiatus at which point I was with the American Electric Power Company. I served as the lead attorney in all of the New Jersey Bell rate cases since 1974. I have been the attorney with regard to PSE&G clauses since 1979 - that's electric and gas. I did the revenue requirements in the 1979 case. I was the lead attorney in the 1981 rate case which began in February. To that time, I held the position of Deputy Public Advocate. In February of 1982, I became Deputy Director of the Division; Al Nardelli became the Director at that point in time. I remained as Deputy Director until the end of September--I believe it was September 30 -- at which point in time I was formally named the Director. It was September 22nd when Commissioner Rodriguez actually informed Mr. Nardelli of the change and informed me of the change, and the formal announcement came in September 30, as I recall, pursuant to a letter.

SENATOR STOCKMAN: You have worked, then, I gather, for a long time with Mr. Nardelli and with Mr. Makul in that office?

MR. CAMACHO: That is correct.

SENATOR STOCKMAN: Prior to the circumstances surrounding this Hope Creek issue that brings us here, how would you describe these gentlemen,

as far as their loyalty, their performance, their competency, and their professionalism within the Office of the Public Advocate?

MR. CAMACHO: I certainly had respect for their work, in terms of, they were and are, colleagues, and we have worked on cases together and had been sort of speaking in the trenches together on many of the cases.

SENATOR STOCKMAN: Can I take it from that remark that you have no quarrel with their competency, with their loyalty to their public office, and that sort of thing, prior to this incident?

MR. CAMACHO: I would not say that, Senator Stockman. I had no problem in that regard. I respect their professional opinions. We may have differed at times, but the opinions were respected.

SENATOR STOCKMAN: But they were professional and they were loyal, dedicated public servants?

MR. CAMACHO: I would consider so.

SENATOR STOCKMAN: I understand that you find yourself in perhaps an awkward position in view of the Nardelli firing, and those circumstances. I don't want to aggravate your situation. I want to be sensitive to it, but I think you can appreciate that the Committee also has to get some facts. So, we are trying to avoid that as much as we can.

The only question I would ask you in that regard is, you heard Mr. Nardelli testify, and I assume you saw a copy of his testimony, and you have heard Ray Makul testify. Staying away from their opinions, certain opinions that they expressed, but honing in on the facts that they testified to, do you have any serious quarrel with the facts that they presented to this Committee?

MR. CAMACHO: Senator Stockman, there was so much in there, frankly, that I hesitate to make a shotgun-type answer like that. Do you have any more specifics in mind that I could perhaps focus in on?

SENATOR STOCKMAN: Well, let me ask you this, and I am really trying to save some time. I would rather not go into detail. I am going to ask you some questions about the August 9th memo and about the stipulation that you entered into in December of 1981, and some other general questions. But, are there any facts which you view as important, that clearly stand out, in which your recollection and your knowledge of the facts clearly differ from those of either Mr. Makul or Mr. Nardelli? Again, I want to emphasize, I know they expressed opinions and I am not going to put you on the spot in terms of whether you agree with their opinions or not at this point, but facts--

MR. CAMACHO: I'm going to have to go from my recollection, and please don't consider any omissions as my consciously agreeing. I'm going to try to remember certain things where I did take certain differences.

One area was the stipulation of December of 1981. In my view, we had entered that stipulation in good faith. We had to fight hard for the abandoning of Hope Creek II. Mr. Makul testified from what he knew, and I respect that, but, I would like to take you back to February of 1981, when the case came in. I don't want to give the impression that PS rolled over on Hope Creek II -- it was a battle. What happened in May of 1981, was that a reduced load forecast was filed in the case. At that point in time, we had a Hope Creek project, two units. About \$1.2 billion had been spent at that point in time on both units. If one had to break it down, about \$800 million on one unit and \$200 million on unit two. With that emendation in the load forecast, what had happened

was, II became suspect in terms of the public interest. PS could no longer justify that in terms of meeting demand.

At that point, it was a pure economic battle. Would the plant turn around in terms of cost savings? We were a little stronger in that area. We retained the Georgetown firm - Mr. Madden filed testimony on it - and we litigated that issue out through the summer. Now, although based on the forecast, PS had conceded no need, in terms of the future demand. They fought us on economics. I reviewed the testimony of Mr. Malard. In the Spring of 1982, PS was still taking the position that it was economically viable from a financial point of view; namely, that the expenditure would be justified in terms of the cost savings. We fought them all summer. We fought them into the fall.

SENATOR STOCKMAN: Of 1981?

MR. CAMACHO: Of 1981? It was at that point in time that they started to recognize the fact, somewhat, and started speaking to us with regard to the abandonment of II. And at that point in time, we still had to fight. It was not easy. It took us from then until February of 1982 to effectuate the abandonment.

SENATOR STOCKMAN: I thought in December of 1981 you signed the stipulation.

MR. CAMACHO: Yes we did, even with the acknowledgment by PSE&G of the abandonment. It was still quite a feat, and I think this is perhaps a great feat that the Division of Rate Counsel was able to accomplish, namely, the abandonment of Unit II.

SENATOR STOCKMAN: Am I to understand from your testimony that until sometime in 1982, that abandonment wasn't a certainty?

MR. CAMACHO: I think in the eyes of the Board, perhaps not. I am not discrediting the Board. It was a situation where we still had to convince the Board that that was in the public interest.

Now, on that 1981 stipulation, going back in time, we had the Hope Creek I issue, which was, I would say, placed on the back burner. Let me give you my reasons for that:

When we started to realize, from a pragmatic point of view, throughout history in New Jersey, no plant had been abandoned beyond a \$400 million level. I am speaking of the four Atlantic plants, Hope Creek II, and the Forked River plant. At that point, PSE&G was justifying Hope Creek I. I am now back in 1981 on both grounds - forecasting and economic need.

Frankly, our chances before the BPU -- again, I am not discrediting the BPU -- were remote at that point in time. I am now speaking of 1981.

SENATOR STOCKMAN: Hope Creek I or Hope Creek II?

MR. CAMACHO: Hope Creek I. Why am I saying that? What is the situation? We have had the construction docket from 1976 through 1979. This is where our office, and others, had gone into the planning practices and the forecasting of all of the electric utilities. That is the docket, as I understand it. I was not directly involved in that. Mr. Nardelli was the lead counsel on that. That was the docket in which I believe the Dubin materials and the other materials have been cited on forecasting and construction reserve requirements. That had ended in February of 1979 with a consent order, in which our office had signed off on the reasonableness of the forecasting methodologies and the planning methodologies of the utilities. That is in 1979. Remember, this case is coming in in 1981.

Having done that at an \$800 million level, our chances were rather slim, as perceived from a pragmatic point of view.

SENATOR STOCKMAN: Do I understand by that, Mr. Camacho, that you were convinced from your knowledge and your expertise and the expertise available to you that the completion of Hope Creek I was not in the public interest, but that you had grave doubts about your ability to make that case to the Board of Public Utilities? Is that a fair statement of the situation?

MR. CAMACHO: Well, I would say at that point, we had no credible evidence to indicate the abandonment was in the public interest. We simply had no testimony by any expert as to what the situation was. The dilemma presented to us was, what was doable? What was doable before the Board from a pragmatic point of view?

SENATOR STOCKMAN: Let me stop you for just a second, because something you just said confuses me a little bit. Was the same true of Hope Creek II? That is, that you had no supportable evidence to establish that it was not in the public interest to complete Hope Creek II?

MR. CAMACHO: The same was true of II, but, look at the situation. Hope Creek II is in its infancy - \$200 million to \$300 million.

SENATOR STOCKMAN: Here is my puzzle. I understand what you are saying, I think, but here is my puzzle: If you didn't have confident, expert opinions to lead you to the conclusion that the completion of either of these plants was not in the public interest, how is it, logically, that you would be going about vigorously opposing the completion of either or both of those plants? There is something fundamental here.

MR. CAMACHO: From a pragmatic point of view, what is doable before the Board. Again, here is the situation I was going into. Hope Creek II was in its infancy, \$200 million to \$300 million.

SENATOR STOCKMAN: You are talking about whether it is doable to stop or not?

MR. CAMACHO: Yes. In other words, remember, never before had a plant been cancelled over \$400 million. So, at that point, is it logical--? What can you do before the Board? What will they logically look at?

SENATOR STOCKMAN: Let me stop you. Here is my dilemma. I may be into too many hearings and too many names, facts, and figures. But, it sounds to me like a situation where I have a case, and I have a judge and a jury to deal with, and it sounds like you are saying, "Well, I don't know what kind of verdict I can get from that judge and jury. I have to decide, well, that judgement is the only verdict I can get for the plaintiff, therefore, I am going to pursue the claim for the plaintiff. Well, the only problem is, suppose I am at that time representing the defendant, and vice versa?"

MR. CAMACHO: Oh, no. It is not pursuing for the defendant, it is deciding whether one goes ahead and expends the money on the experts, expends the effort, and tries to do it; or, as I said, place it on the back burner. Remember, up to that time, we had tried to stay on the number one issue - reasonableness of cost with Theodore Barry - we had tried, before the Board, to convince them on the reasonableness of plant costs, and frankly, with a vigorous effort, we had not been that successful on that particular search. Now, our office had been successful in being instrumental, and we vigorously pursued the Atlantic plants.

But, at that point, we had to look at this from a very pragmatic point of view.

SENATOR STOCKMAN: I can't, Mr. Camacho -- I don't mean to belabor it or beat a dead horse -- understand how you can get to grappling with the doability issue, the issue of how sympathetic the Board is to new construction of major plants, or how hostile it is to any of those sort of things. I can't understand how you would even be concerned about that until you have basically looked at the issue before you, a proposed plant, and intelligently reached some determination that the completion of that plant is in the best interest of the public, or the completion of that plant is not in the best interest of the public. And only after you make that decision as to which side you are going to be on, to then start grappling with the doability issue of the likely response of the Board of Public Utilities. That is why I am in a quandary. I am totally now at sea over how you can suggest that in 1981 you did not have sufficient expert and supportive opinion that would convince you, to your satisfaction -- not necessarily the Board's, but to yours -- that it was not in the public interest to complete this construction of Hope Creek II or Hope Creek I, or any other facility.

MR. CAMACHO: I don't think you can-- With all due respect, Senator. I don't think you can prejudge the issue. I think you have to, in facing this consideration, look at the facts as we found them in 1981 and determine at that point whether, and to what degree, issues would be pursued as back burner issues or front burner issues. As I said, at that point in time, on the total project, about \$1.2 billion was already spent, and through the end of the year, about \$1.5 billion would have been spent pursuant to the projections of the utility. Do you go out in addition to doing the base rate electric case, base rate gas case, levelized energy adjustment clause case, which is filed in April and June, and the levelized raw materials adjustment clause case in the same proceeding? Do you do all of that and fight on all fronts at the same point in time, or, do you pick what is doable and proceed forward? What I am indicating at that point in time is, we picked the Hope Creek II as the doable issue and proceeded on that basis.

SENATOR STOCKMAN: Doable in the sense of defeating its construction, correct?

MR. CAMACHO: Yes, at that point in time. Now, realize what PS was saying, that it didn't need it for demand, and, its figures, with regard to Hope Creek II, were somewhat suspect in our opinion. That became the thrust of our testimony. That is what they were projecting for the cost of the plant and what the cost savings they had used in terms of turning it around were.

SENATOR STOCKMAN: Maybe you are saying this: Are you saying that it is in fact the role of the Public Advocate to challenge any positive request before the Board of Public Utilities by the utility - whether that positive request be for a rate increase, or, for an increase of its rate base by virtue of the construction of a new facility? Maybe that is it. Is that--

MR. CAMACHO: We do perceive that. We do challenge those things and take a look at them, within the realm of doability of the pragmatism.

SENATOR STOCKMAN: All right. Within the realm of doability. I understand that. So, what you are telling me is, if I understand it, and frankly, it shed some new light on the role of the Public Advocate in these rate cases, and I will admit--

MR. CAMACHO: Let me cast one other nuance on it, Senator, that we recommend, the Board decides. As recommenders, we are constantly aware of our credibility and how we would be perceived, and what is doable.

Let me add one further element. I know Senator Connors had mentioned the name Dale Bridenbaugh. That summer, we had retained the MHB firm from San Jose, to look at the coal conversion situation Hope Creek I. They had rendered an oral report -- this was Gregory Minors of that firm -- in terms of the converting at that site. What was orally indicated to us by that particular firm was that it simply was not feasible at that site with regard to I or to II, at which point, again, it was a back burner issue with regard to I, and II, we felt from, from a pragmatic point of view, that we could successfully litigate on a litigated basis before the BPU.

So, what I am indicating is, coming into the fall of 1981, we had Hope Creek I on the back burner. We were attacking Hope Creek II very vigorously. At that posture of the case, the Board had taken the Hope Creek project issue out and placed it in a construction docket. Al Nardelli, prior to that point, talked to me about the case and had concurred, in our view, this pragmatism.

SENATOR STOCKMAN: I want to get to that, but I have to stop you one more time. Now I think I am getting dangerously close to beating a dead horse. But, I want to suggest to you, Mr. Camacho, that unless I am losing my grasp of the English language, and of its ordinary meaning, that the testimony that you have just given to us suggests that the role of the Public Advocate in these proceedings is to resist new construction -- I don't say that critically, because after all, the public may not be as fully appreciative of something that I have come to learn gradually, and that is that the rate base, and therefore the structure whereby rates can be charged to the citizenry, is based on the assets of the utility. Therefore, in one sense, it behooves the utility to grow in terms of its assets in order to charge. So, I can appreciate -- if what I understand you to be saying is what you are saying -- that because of that, the basic responsibility, historically of your office has been to challenge these new plants unless you find out that you can't win before the Board of Public Utilities.

MR. CAMACHO: I don't want to characterize it before the Board in a derogatory sense, but it is a pragmatic viewpoint. We don't look at it plant by plant, either. I think Mr. Nardelli took you through this in terms of what had been done in the past, in terms of the whole program, in terms of what is coming on.

For example: in an earlier timeframe, we had been instrumental in the abandonment of the Atlantic plants. Now, during that time, other plants happened to have been built, but again, we took a pragmatic approach in this, which is, which is the most speculative plant, the farthest out, the one in its infancy, the one with the least dollars spent, the one where perhaps we have a pragmatic chance. On behalf of the Division of Rate Counsel, we took a lot of pride in the fact that we had been instrumental in bringing about these abandonments. So, I am agreeing with the way you are characterizing the role; I'm just saying there is a lot more interpragmatism than just characterizing the Board one way or the other. One has to deal with the facts as they indicate before you. If the Atlantic plants represent new technology and they are out to be floated in the ocean for the first time, if they are in their infancy, then again, the pragmatic point of view, which had been pursued. Let's test them, let's get the consultants, let's look

into this and make the presentation. So, I think you have outlined it correctly. I am just saying that from a pragmatic point of view, look at the facts before us, and the facts even before the Board from prior cases, and a whole historical perspective.

That is what you are indicating, that on challenging the new plants, challenging the growth in rate base, certainly we take a look; certainly we do scrutinize it with regard to minimizing rates in New Jersey, trying to decide what is doable, what can we credibly put before the Board, and what can we succeed at doing.

SENATOR STOCKMAN: Now, I think the problem I am struggling with -- perhaps my colleague, Senator Laskin, might sympathize with me, but he may not -- but as a lawyer, we are used to dealing not with the Board of Public Utilities, but a court representing one side in that. I have to constantly try to be pragmatic, that is sense what is doable before that court and jury. What are the parameters within which I might succeed or I might fail. But, of course, what has confused me about this dialogue in one sense is, I have never gone about that in the sense of making an ultimate decision to back off simply on a sense or a belief that it may not be doable, the ultimate, that we get to a question of a certain risk, and maybe another element, the question of making a complete wrecker on an issue.

Incidentally, had the Public Advocate, prior to this Agreement, ever reached a similar agreement, whereby it gave up such a fight, and gave up the obligation to spread on the record, for the public as well as the BPU, to judge both sides of this issue in full light, in a controverted forum?

MR. CAMACHO: Senator, I am not saying we gave up the issue. I hope I haven't confused you on that.

SENATOR STOCKMAN: On Hope Creek I? By the Agreement?

MR. CAMACHO: Right.

SENATOR STOCKMAN: By the Agreement?

MR. CAMACHO: No, not by the Agreement. I am talking about 1981.

SENATOR STOCKMAN: That is what I am-- I am jumping a little.

MR. CAMACHO: I am calling it a back burner issue. It was there, we concentrated--

SENATOR STOCKMAN: No, but I am bringing you forward. What I am asking you is, has, ever, the Public Advocate reached an agreement to discontinue its role and responsibility of challenger of complete recordmaker on an issue of this sort, in any prior setting - you may have, I don't know - in your experience with the Public Advocate? That is one of the things that troubles me about this Agreement, incidentally. Aside from if we were God and knew whether the completion of Hope Creek I will work out to be the best interest of the public or not -- that is an issue that reasonable men can disagree on. I think you would agree with that. We know that. One gnawing question for me is in the setting we find ourselves, is it consistent with your role, the Public Advocate's role -- as we have discussed it here this morning -- for him to, in effect, sign off on presenting that other side before the BPU?

MR. CAMACHO: There are times when I believe that one, again, has to make a pragmatic judgement with regard to that. What can you accomplish for the ratepayers? Can you minimize rates? What can you do for the people of the

State of New Jersey? So, there is always a downside risk in one sense, and that is a credibility risk, Senator, in terms of one cannot assume that you can proceed with that record at all points in time and not harm the ratepayers in the end. You have to make a value judgement.

SENATOR STOCKMAN: Doesn't the BPU have that role in the play? That is the other thing that confuses me.

MR. CAMACHO: Oh, the BPU, in my view, also has the role of judging these honors.

SENATOR STOCKMAN: But, it seems that what the Public Advocate did here, to me -- at least I am grappling with this. What it seems to be is to basically write off the BPU, because, on that very issue of protecting the public in a fair return and a fair imposition of rates on the public, that is the very charge of the BPU. It seems to me, in a way, that implicit in the Agreement that the Public Advocate struck, is a conclusion that the Board of Public Utilities is incompetent to effectively deal with that issue.

MR. CAMACHO: I wouldn't characterize that in that way, Senator. Again, getting back to pragmatism and what was on the record in terms of what was before the BPU and what they had done in the past. Where I was going with all of this into the December, 1981 stipulation was--

SENATOR STOCKMAN: (interrupting) We'll get back to that.

MR. CAMACHO: (continuing) Al Nardelli defined this as a great feat for our office, the abandonment of II. I was going to say I agreed with it, and it was my view that we had ended that stipulation in good faith, because we had worked so hard for that abandonment.

SENATOR STOCKMAN: But it really wasn't, as you described it, Mr. Camacho, a true intelligent, intentional abandonment of the responsibility of the Public Advocate on behalf of the citizens of New Jersey to vigorously challenge the need for the completion of Hope Creek I, was it?

MR. CAMACHO: No, I would never characterize it as such.

SENATOR STOCKMAN: So, it really wasn't a sign-off in the true sense of the word?

MR. CAMACHO: Well, it was done not in terms of a relinquishment of a responsibility. Al Nardelli was negotiating for us at that point. This was an issue that I have defined as there and on the back burner.

If it took that to abandon II, that is what it took. And the abandonment of II was a very great accomplishment.

SENATOR STOCKMAN: Well, in your opinion, did it take the surrender of the Public Advocate's responsibility to vigorously resist and challenge the facts and figures on the completion of Hope Creek I, in order to effect the abandonment of Hope Creek II? For instance, were there carefully thought out and fully discussed sessions with the Public Advocate -- at that time, VanNess -- and with Rate Counsel, and with perhaps anybody else within the House who brought some expertise to it? Was there an intelligent determination made that, "Look, we must abandon any hope of stopping Hope Creek I in order to assure stopping Hope Creek II?" I don't think that happened; I may be wrong. We have a tremendous amount of documentation so far that does not seem to bear that out. It is true there is this stipulation, but one can interpret the stipulation as a kind of tongue in cheek statement that later leaves a lot of room for the Public Advocate to sort of say, "Hey, we sort of said that, but everything changes, and at any rate,

the whole circumstance is changed, and we have to press this question of whether or not we need Hope Creek I." I have to think that that was even in your mind at the time. It may not have been. That is what I am getting at.

MR. CAMACHO: I don't perceive it that way, the way you have outlined it, Senator. I had perceived that the December stipulation was in earnest, as negotiated by Al, in terms of--

SENATOR STOCKMAN: Well, you must have become very uncomfortable in early 1982, as the Public Advocate vigorously and publicly asserted that it was against the public interest to complete Hope Creek II.

MR. CAMACHO: That was, at a point in time, when we had a change in the administration. It was a point in time when, as a Division, Al had made the motion to go back after that point, and at that point in time, that was the viewpoint of the Department.

SENATOR STOCKMAN: Did you feel that was a repudiation of this stipulation, and that it was an affront to your integrity as Counsel involved in that, to do that? And, did you assert any objection within the Public Advocate's Department that this violated an agreement on good faith, fairly reached, and made a matter of record in that case?

MR. CAMACHO: I had been close to the original stipulation, and as I recall, when Al indicated he was making the motion, he just indicated that at that posture, we had to rescind that particular agreement. I felt uneasy about it, personally, but at that point, I viewed it as the position of our Division and our Department.

SENATOR STOCKMAN: Did you express that uneasiness to him?

MR. CAMACHO: I had mentioned that, at least at one point, to Al, as I recall. But, at that point, again, the decision was to go ahead with that particular motion.

SENATOR STOCKMAN: Did you think at that time, Mr. Camacho -- that is in December of 1981 -- that it was, with all of the information that you had available to you -- in the public interest to complete-- Now we are in December of 1981. We have a lot less hardware in the ground. Did you think in December of 1981 that it was in the public interest to complete Hope Creek I?

MR. CAMACHO: Again, there was just a good deal of uncertainty at that point in time. At that point in time, we would have had probably a billion dollars in the plant. So, again, my perception was, our chances, again, before the BPU with regard to that plant, were very, very remote. I am not saying that in denigration of the Board; I am saying that because of the history -- so, from a personal point of view as opposed to the Division or Department point of view.

SENATOR STOCKMAN: Now, you say on one occasion, you believe you expressed to Mr. Nardelli some uncomfortableness about the vigorous opposition to the completion of Hope Creek I that we know became the public posture of the Public Advocate in early 1982, is that correct? How about with Mr. Makul? Did you ever discuss, or share with him that position?

MR. CAMACHO: No, at that point in time, as I recall, Mr. Nardelli filed the actual motion on behalf of our Division. Again, that was an internal discussion at that point in time, or just prior to filing it.

SENATOR STOCKMAN: Now, in 1982, you were aware that the Public Advocate was regularly expressing opposition to the completion of Hope Creek I, is that correct?

MR. CAMACHO: That is absolutely correct.

SENATOR STOCKMAN: Mr. Makul, for instance, yesterday before us, indicated that the general feeling within Rate Counsel's office, in around that period, March, April of 1982, was that Hope Creek I was a financial disaster. Is that a fair statement as to the general feeling and mood of the people in Rate Counsel's office on that subject?

MR. CAMACHO: I would say that that certainly was Mr. Makul's view and I would certainly say that our Division was pressing against it at that point in time.

SENATOR STOCKMAN: Then some things happened. That is what we are also really trying to get down to the bottom of. When did you first become aware that, let's say, there were serious discussions about a so-called Cost Containment Agreement?

MR. CAMACHO: Again, let me not use the word, "serious discussions." Let's say discussions. In July. I would say in early July of 19-- By serious, I mean that requires me to characterize--

SENATOR STOCKMAN: All right, any discussions. Early July?

MR. CAMACHO: Yes. I had been at two sessions of conferences with Al Nardelli and Bill Potter, at which an early form of this stipulation was reviewed and commented on by both Al and I to Bill.

SENATOR STOCKMAN: Early July?

MR. CAMACHO: Right. By the way, my comment on the seriousness went to the fact that I didn't know what stage it actually was being negotiated or-- That is why I corrected that before.

SENATOR STOCKMAN: But in early July, you had some sort of actual document. Do you recall what it was?

MR. CAMACHO: As I recall, it was an early form of the stipulation which was being discussed and reviewed. I recall two occasions, one of which was at a luncheon-type meeting that we had.

SENATOR STOCKMAN: The luncheon meeting was on other business, but this came up? Was it sort of--?

MR. CAMACHO: (interrupting) No, no. I was summoned to that specifically for this purpose.

SENATOR STOCKMAN: And there was a meeting at which you were summoned, in which Mr. Nardelli participated and Mr. Potter and yourself.

MR. CAMACHO: The three of us, yes.

SENATOR STOCKMAN: And you were shown some sort of a document and asked to comment on it?

MR. CAMACHO: Yes. There was one other occasion in Al's office.

SENATOR STOCKMAN: Did you prepare a memo on that, or do any research on that?

MR. CAMACHO: No, Senator.

SENATOR STOCKMAN: Did you check with any authorities, any expertise, or, was it a matter of just looking at it and giving your reaction?

MR. CAMACHO: I looked at it, and both Al and I commented on what we thought vis-a-vis the Agreement.

SENATOR STOCKMAN: What was the gist of your comments at that time?

MR. CAMACHO: At that time, you will find, with regard to my view, the memorandum of August 9.

SENATOR STOCKMAN: Well, we haven't gotten to that. We are in July now.

MR. CAMACHO: Okay. That was a memorialization of some of the items that we had discussed at that early review session. For example: the issue of--

SENATOR STOCKMAN: Could that meeting have been in early August?

MR. CAMACHO: No. It was earlier than that, Senator, because there was a gap of time during which I simply hadn't heard anything.

SENATOR STOCKMAN: Was it late July?

MR. CAMACHO: I would say the middle of July.

SENATOR STOCKMAN: You don't have anything in writing anywhere in the records of the Public Advocate's Office?

MR. CAMACHO: I do not. It was somewhat of an ad hoc-type meeting and I did not have it in a diary. For example, one of the areas that I know I specifically discussed was risks. Would the Utility be able to obtain a witness, pull out the Agreement, and demand a high return in equity, and thereby post some problems with this Agreement? That was one area that I mentioned. Another area that I mentioned at the meeting was, did we need some type of mechanism so we could pull down the target, the 38, in the event there was a change in the CWIP policy and the AFDC policy. The Board is argued by PSE&G in the next case. What I was trying to do was anticipate what PSE&G would be asking for in the next case and try to work it back in, to try to put some red flags on some areas.

SENATOR STOCKMAN: Now, at this time, the public position of the Advocate was strong and clear in opposition to the completion, wasn't it?

MR. CAMACHO: At that point in time, clearly, as I recall, S-975 was under consideration and we were supporting that and we were supporting a review for the Hope Creek I unit.

SENATOR STOCKMAN: Did you express any concern about the question of the credibility of the Public Advocate in that luncheon session, that sort of ad hoc session, about the Public Advocate doing a turnaround on his position with regard to Hope Creek I?

MR. CAMACHO: There was a discussion on that first point, and perceptions at, I believe, that first meeting at the luncheon meeting.

SENATOR STOCKMAN: Do I understand that the next time you knew anything about a possible cost containment agreement or an agreement to forego-- Incidentally, was it clearly indicated in that session that you were contemplating foregoing any right to question the need for Hope Creek I?

MR. CAMACHO: That was not clearly indicated then.

SENATOR STOCKMAN: Now, after that meeting in July, mid to late July, when was the next time you had any awareness of what was going on?

MR. CAMACHO: The next item was the memorandum of August 9.

SENATOR STOCKMAN: You had no participation, no awareness of anything further in this matter until August 9th?

MR. CAMACHO: That is correct.

SENATOR STOCKMAN: Tell us what happened on August 9th.

MR. CAMACHO: On August 9, as I recall, Al Nardelli had circulated the August 9 memorandum, with regard to the draft stipulation on Hope Creek I

Cost Containment. I reviewed that memorandum, signed off on that memorandum, and to my knowledge, it was a memorialization of the items which we had discussed previously, from my point of view, when I reviewed it.

SENATOR STOCKMAN: Incidentally, up through this period, probably the most, let's say, articulate, vigorous, and strong opponent to the completion of Hope Creek I in the Public Advocate's Office was who?

MR. CAMACHO: I just can't characterize at that point, Senator. I can give you the facts you want.

SENATOR STOCKMAN: In other words, if I were to say to you, "Who, in the whole office, was probably the most knowledgeable, articulate, strong opponent to the completion of Hope Creek I in late July, early August of 1982," you couldn't identify that individual? You think there might be a dispute as to who it was?

MR. CAMACHO: Phrased as such, I knew that our Trenton office had been working on the S-975 and had been articulating that viewpoint. So, overtly, outside, yes, probably our Trenton office at that point in time.

SENATOR STOCKMAN: When you say our Trenton office, give the number of experts and the people in the Trenton office who have sophisticated insight and knowledge of this whole area.

MR. CAMACHO: Well, that would have been Mr. Potter at that point in time.

SENATOR STOCKMAN: Mr. Potter was your Trenton office?

MR. CAMACHO: That is who I referred to. I characterize it as such.

SENATOR STOCKMAN: And Mr. Potter was the most articulate, aggressive proponent of the proposition that Hope Creek I, at that point, should not be completed, wasn't he?

MR. CAMACHO: Let me say, internally, our people at Rate Counsel were also pressing this concept. We were supporting the S-975 at that point in time.

SENATOR STOCKMAN: Now, the famous memorandum of August 9, 1982, you certainly, at the time you reviewed that and concurred in its conclusions, had no idea that the Public Advocate had reached an agreement with Public Service and Atlantic Electric Company to forego any opposition thereafter to the completion of Hope Creek I. Is that a fair statement?

MR. CAMACHO: Again, your characterization, whether an agreement had been reached at that point in time-- Let's say, if an agreement had been reached at that point in time, I was not aware of it.

SENATOR STOCKMAN: Unfortunately, you are an attorney. I know you are not used to having to answer questions. I sympathize with you; I am not either. But, that is not the question I am asking, Mr. Camacho, and I would like to ask it again. The question I am asking you is, when you reviewed this memo and concurred in what it contained, which was a strong request that the Advocate not sign off -- we will get into its details in a minute, and it is a matter of public record -- you had absolutely no idea that in fact at that point, already, the Public Advocate, on behalf of the citizens of New Jersey, had reached an agreement to forego ever challenging the need to complete Hope Creek I. Isn't that a fair statement?

MR. CAMACHO: Again, I had no idea whether they had or they hadn't. My factual perception, at that point in time-- I hadn't any interaction since the two prior meetings. So, factually, what I perceived next was, the August 9 memorandum. What had happened elsewhere, I did not know.

SENATOR STOCKMAN: So, you are telling me that at the time you did not know? It could have been that he had or had not. Would it be fair to say that you would have been shocked, as a long-term member of the Public Advocate's Office, and one of the lead Rate Counsel experts and members of this fine organization, to be told that in fact such an agreement had been reached without any forewarning, or an awareness by you or other people around you?

MR. CAMACHO: Again, I would hesitate to use the word "shocked."

SENATOR STOCKMAN: Why?

MR. CAMACHO: I would leave the strategy of the negotiations to Commissioner Rodriguez and to William Potter, as far as how they perceived it should go. I would perceive that as extraordinary. That is what I would say.

SENATOR STOCKMAN: All right, I'll settle for extraordinary. (laughter) We are making progress.

Let's go through this very briefly. You said, along with Mr. Nardelli and Mr. Makul - and I understand you didn't necessarily prepare this, but certainly, you read it and you were comfortable with it, and you were comfortable with the following. This is August 9, 1982. This is by the Director of the Division of Rate Counsel, Mr. Nardelli, long-time expert in his field, lead counsel in major rate cases, experienced attorney, eight years practice with the Public Advocate, etc. Yourself, you have described your credentials and we have heard Mr. Makul's credentials. You three say the following on August 9, 1982 to Mr. Rodriguez, a relatively new Public Advocate, five to six months in the job:

"We do not believe that you should sign any stipulation on Hope Creek I Cost Containment." That was a firm belief you had at that time, wasn't it?

MR. CAMACHO: Yes, Senator. We had placed -- at least I had placed -- a lot of reliance on the S-975. Our hope, or my hope, let me indicate that-- S-975 afforded an opportunity at an independent commission to review the issue and to clear the issue once and for all. The hope was that S-975 would provide a forum to decide that issue, and frankly, remove a lot of the acrimony and everything that had surrounded it.

SENATOR STOCKMAN: Well, it was more than S-975. Let me get to that. You say, "Your signature will be interpreted as acquiescence in, if not support of, the idea that a review of the need for Hope Creek I is unnecessary if the costs of the plant are contained. Signing this stipulation after our vigorous efforts to have Hope Creek I cancelled, and, in support of S-975, will reduce our Department's credibility as an agency willing to take on anybody when we are right." So, it was both because of the vigorous effort that was a matter of public record, as well as your support for S-975, that you saying, "don't do this," wasn't it?

MR. CAMACHO: Primarily, the 975, in trying to keep that moving on a forward basis, trying to keep our support for 975 clear and focused--

SENATOR STOCKMAN: Let me interrupt you and ask you this, Mr. Camacho: Frankly, in view of the history of the posture of the Public Advocate, at that point where he was, and in view of the position that is expressed in this memo, can

you reconcile the secrecy surrounding the signing on August 10, 1982 by the Public Advocate with the reasonable and proper procedure for the Public Advocate to pursue in arriving at a position involving a near \$4 billion contract?

MR. CAMACHO: Here again, I think you should, with all due respect direct the question to Commissioner Rodriguez or to William Potter on that point.

SENATOR STOCKMAN: All right, I understand. All right, it was a tough question. I understand that.

MR. CAMACHO: Well, it is a situation where it is couched in terms of the secrecy and certain other characterizations.

SENATOR STOCKMAN: Incidentally, it was secret to you and to Rate Counsel, wasn't it?

MR. CAMACHO: Well, we had a meeting of August 10th.

SENATOR STOCKMAN: Oh, all right. It wasn't secret on August 10. Is that what you are telling me?

MR. CAMACHO: Again, you characterize it as a secret. We had been called to a meeting on August 10, with regard to this memorandum.

SENATOR STOCKMAN: But you were in the dark, prior to August 10, weren't you?

MR. CAMACHO: Prior to August 9, I knew that some type of negotiations were going on, how close, or whatever, I was unaware of. This memorialized what we had conveyed at the prior two sessions.

SENATOR STOCKMAN: You essentially were in the dark prior to the 9th, weren't you?

MR. CAMACHO: Again, that is a characterization, with all due respect, Senator.

SENATOR STOCKMAN: "The irony is -- I am quoting now -- that not only is signing the stipulation wrong, it will also be unpopular, particularly with our Rate Counsel Advisory Committee." Is there any doubt in your mind that it would be and in fact is unpopular with your Rate Counsel Advisory Committee?

MR. CAMACHO: No. The thought was, at the time we memorialized this, S-975 could provide an outlet where the issue could be aired. In general, the Advisory Committee and others could be satisfied with regard to the disposition.

SENATOR STOCKMAN: Incidentally, the Governor, himself -- forgetting about S-975 -- could have called for the creation of a blue-ribbon committee or a special committee to vigorously review and recommend whether or not that plant should be completed or not, couldn't he?

MR. CAMACHO: Again, I couldn't characterize what he could or would do in terms of--

SENATOR STOCKMAN: Well, I mean as a citizen, as an attorney who is somewhat experienced in this area-- That arguably was an approach that could have been taken, wasn't it?

MR. CAMACHO: As a possibility, perhaps, but, again, remember the pragmatic viewpoint, we had S-975 right there. We were looking toward it.

SENATOR STOCKMAN: Now, your memo goes on to say, "The fact is, that the proposed stipulation -- this is the point -- the target completion cost, \$3.8 billion, is more than what the plant is worth to consumers." Is that a fact as of August 9, in your opinion?

MR. CAMACHO: That is the statement, and it is what the perception of certainly Mr. Makul was, and the perception of our Division, as far as a possibility.

SENATOR STOCKMAN: And you were comfortable and had confidence in and respect for that opinion, because you initialed this memo yourself, correct?

MR. CAMACHO: I initialed the memo.

SENATOR STOCKMAN: There wasn't coercion on this, was there?

MR. CAMACHO: No. This, in essence, was an argument for relying on S-975, to try to get 975 as our focal point as opposed to taking this--

SENATOR STOCKMAN: You know, I hate to say it, Mr. Camacho, but it really doesn't express itself that way, does it? It doesn't say, assuming S-975 will pass or is likely to pass, or relying on that, you allude to S-975.

MR. CAMACHO: On the 3rd page, clearly. In terms of my interpretation and frankly my reliance at that point in time, I had placed a great deal of reliance on S-975. I saw that as being an area where this issue could be determined once and for all.

SENATOR STOCKMAN: But, nevertheless, you go on to say, "Based on previous rough calculations, which had been confirmed by the Department of Energy's similar analysis, and general judgement, 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?" That was your opinion on August 9th, right?

MR. CAMACHO: That was the statement, and it was one set of analyses with regard to that particular element.

SENATOR STOCKMAN: I'm not going to go through the rest of the memo; it is filed, or will be filed, as part of the record in this case. I think we probably dwelled on it enough to this point. But, I would like to ask you a couple of other questions.

What if any awareness-- When did you first become aware that the Public Advocate had agreed to discontinuing any opposition to the completion of Hope Creek I? The 9th or the 10th?

MR. CAMACHO: I would say late in the day, on the 10th.

SENATOR STOCKMAN: Late in the day on the 10th. Actually after he signed it?

MR. CAMACHO: Yes.

SENATOR STOCKMAN: What was your reaction? I guess you have given it to me - extraordinary?

MR. CAMACHO: Realize that we had a discussion that morning.

SENATOR STOCKMAN: That's right, with the Public Advocate?

MR. CAMACHO: With the Public Advocate.

SENATOR STOCKMAN: Let me ask you about that. You were there for that discussion.

MR. CAMACHO: Yes. We were summoned to Trenton to discuss the memorandum.

SENATOR STOCKMAN: Was it a give/take session? Did you have the clear impression that the Advocate was even then trying to reach a final decision?

MR. CAMACHO: It was a give/take session with regard to our concerns, as expressed in our--

SENATOR STOCKMAN: In other words, Mr. Rodriguez didn't say to you, "wait a minute, fellows, I respect you, I admire you, etc., but, I have made up my mind. I agreed to sign this Agreement, and with all due respect, don't waste your time and my time on details. You can file a memo, but I have made up my mind."

He listened. In other words, he wanted to hear from you, and from Mr. Makul, and he wanted to weigh what his decision, on behalf of the million or more ratepayers of the great State of New Jersey, should be as to whether to abandon Hope Creek I or not. Is that it?

MR. CAMACHO: It was Al Nardelli and myself.

SENATOR STOCKMAN: Right. I said Mr. Makul?

MR. CAMACHO: Yes.

SENATOR STOCKMAN: Nardelli, okay. But, other than that, he gave you the impression, you had the understanding, and it is your opinion, that on the morning of August 10th, even then, 1982, Joe Rodriguez, on behalf of the citizens of New Jersey, was struggling with the question of whether or not to sign an agreement which would forever bar him, on behalf of those ratepayers, from challenging the need to complete Hope Creek I.

MR. CAMACHO: I got the impression that he was going to delve into our particular concerns and hear us out. I got the impression at that meeting that he was not-- With regard to the clarification items and the technical items, specifically on page 2, and many of these items, he did not interpret them as being inconsistent with the Agreement.

SENATOR STOCKMAN: You are now getting into his interpretation. What I was concerned about -- and I think you have answered it -- was, it was a session which you certainly understood and believed, and you believed he did, was still part of that mix of decision-making by the Public Advocate himself. Let me ask you, were you here for Mr. Coleman's testimony yesterday?

MR. CAMACHO: Yes.

SENATOR STOCKMAN: Was there anything that Mr. Coleman testified to that surprised you in that regard?

MR. CAMACHO: I have to admit, I was in and out, and I can't characterize in general.

SENATOR STOCKMAN: Let me bring you to a statement that Mr. Coleman made to this Committee yesterday, Mr. Camacho. It reads as follows:

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

Did you hear the Commissioner of Energy so testify?

MR. CAMACHO: I don't remember that specific statement, Senator.

SENATOR STOCKMAN: I represent to you--

MR. CAMACHO: I will accept your representation.

SENATOR STOCKMAN: He not only gave us a written document that contains that suggestion, but he so testified. Now, let me ask you, as a knowledgeable attorney, working for many years now within the Office of the Public Advocate, can you reconcile -- let me put it in another way. Was the exchange that you had with Mr. Rodriguez consistent with his having recommended to Tom Kean on August 4th, that a Cost Containment Agreement be filed with the Board of Public Utilities?

MR. CAMACHO: I think at that point in time, he certainly discussed the particular matter with us, and we did debate back and forth with regard to our particular points.

SENATOR STOCKMAN: How could he have recommended to Tom Kean on August 4th that a Cost Containment Agreement be filed with the Board of Public Utilities if six days later, he is in this debate with you over signing the Agreement?

MR. CAMACHO: Particularly, we were speaking about certain, I call them interpretations, I call them certain inherent items within an agreement-- The concept of the Cost Containment Agreement, I think, can perhaps be distinguished from the particulars with regard to how that would be worked out.

SENATOR STOCKMAN: I have no further questions, thank you. First I will turn to other Senators, and then I will ask you if there is anything you would like to add, Mr. Camacho, to the record. I would be happy to have you do that. Senator Connors, do you have any question you would like to explore with Mr. Camacho?

SENATOR CONNORS: Mr. Camacho, did you participate at all in this-- It is my understanding that you had no knowledge of this Cost Containment Agreement?

MR. CAMACHO: Remember, I came in, I had the two meetings in July, I had the memorandum of August 9, and then I went to the meeting on August 10, and that agreement was signed late in the afternoon of August 10.

SENATOR CONNORS: So, you had no input into it at all?

MR. CAMACHO: Well, my discussions on August 10, and some of my concerns at the prior meeting actually, I believe, were taken into consideration in that.

SENATOR CONNORS: Do you see any wisdom in this agreement now?

MR. CAMACHO: Yes. One of the items that we had discussed at the meeting of August 10-- Remember, we had been placing reliance on S-975. We needed a forum, and our practical consideration was, could we actually win this before any forum? Having come to three realizations, if we could not successfully win an abandonment of the plant on a litigated basis before the BPU, and based on information that had been provided on the August 10 meeting with regard to 975, which indicated that at earliest, it might be June 1 or eight months thereafter before a resolution could be made. That was \$320 million away. At that point, the Cost Containment Agreement, as clarified -- remember, after the 10th, there was quite a bit of activity with regard to clarifying. Prior to that time, I had not met with all of the principals that had negotiated. After that time, I had the opportunity to codify, or memorialize, some of the inherent items in the contract. I worked very hard on that. I have an entire chronology on that which runs through September 28th. So, these concerns listed on the second page were substantially alleviated in the subsequent joint position of parties, letters from Mr. Codey, negotiations with the parties. So, at that point in time, these concerns had been substantially alleviated.

By that, I mean it was a situation of approaching the participants in saying, "Here is the concern. How do we interpret that basic agreement? Are you at odds with it? If not, can we memorialize or get down what your understanding is?" So, after all of that work and that clarification, I think we do have a positive item relative to what we would otherwise have had at that point in time, facing it from a pragmatic point of view.

What we otherwise would have had was simply a plant upon which a million

dollars a day was being spent.

SENATOR CONNORS: Are you in favor of 975?

MR. CAMACHO: Yes. I have a recommendation on this. As I said, on August 10th, we had gone through a timeframe on 975. Remember, prior to that time, we put a lot of credence in it. I am saying that in terms of just airing the issuant. A lot of emphasis has been placed on the action before the BPU. Assume that -- and again, I speak as an individual at this point and not in the Department. It struck me that if the individuals who executed the Cost Containment Agreement did not sit on the blue-ribbon commission, why not have our cake and eat it too? Get the cap and proceed with a needs assessment. I think we could have both, and perhaps 975 could be moved as quickly as possible.

SENATOR CONNORS: You had mentioned earlier--

MR. CAMACHO: (interrupts) Again, I have to add, I do not speak for either one of the individuals or that situation. I am saying that the situation right now is, we might be able to have both -- the Cost Containment Agreement and the needs assessment.

SENATOR CONNORS: You had mentioned earlier, at Hope Creek I now, they were spending money at the rate of a million dollars a day.

MR. CAMACHO: Yes.

SENATOR CONNORS: And that after reviewing some of the documents that were given to me yesterday, which were quite revealing, it would certainly would appear that somebody lost their marbles with regard to going in one direction and then completely reversing field, unless there was just cause for it. We are spending money at a million dollars a day. Was it your recollection, when 975 was introduced, that this was a good bill and should be signed into law as quickly as possible?

MR. CAMACHO: Yes. That was the basis for the August 9 memorandum. We had put a lot of credence in that. Again, to clear the air--

SENATOR CONNORS: I looked at my Legislative Index here, and 975 was introduced on February 8th, and it still hasn't gone through, to be ready for signature into law. And a million dollars a day-- Could that be one of the reasons why this change in procedure-- I'm not trying to put words in your mouth, but, if this was such a good bill--

MR. CAMACHO: (interrupting) Let me answer that most directly by saying that at the August 10 meeting, if we were looking out toward June of 1983, if people are telling us that is the shortest period of time within which a disposition could be made, at a million dollars a day -- or \$30 million a month, 36 plus 10 for crude interest -- we are talking another \$350 million. Remember, the abandonment cost had been projected in the \$2 billion to \$2.5 billion range at that point in time. Looking at it on that date, we are now staring down the barrels of perhaps something that is up in the \$2.8 billion, or perhaps the slippage of \$3 billion dollar range. So, there is a point in time where one has to say, if you have a positive-- If you have the Cost Containment Agreement-- We were saying to Commissioner Rodriguez, "hold up on the signing, rely on this." At that point in time, in good faith, how could one say, "hold up any longer," at the same point on that? It just reaches a point where one has to move with what one has.

SENATOR CONNORS: Mr. Camacho, you are pretty close, I guess to Mr. Nardelli?

MR. CAMACHO: Yes. Al and I were among the original four who created the Division of Rate Counsel - the charter members - in 1974.

SENATOR CONNORS: Were you shocked to hear that Mr. Nardelli was fired?

MR. CAMACHO: I was at that point in time.

SENATOR CONNORS: Why was Mr. Nardelli fired?

MR. CAMACHO: That was never explained to me in detail. It was listed as administrative reasons.

SENATOR CONNORS: Have you discussed this with Mr. Nardelli at the time, before the time, or after the time?

MR. CAMACHO: I did speak to Al about it, about what our relationship would be after that point in time and realized at that point, understandably, that Mr. Nardelli was very upset. So, I did speak to him on a limited basis. My answer is yes.

SENATOR CONNORS: Why did he think he was fired?

MR. CAMACHO: At various points in time, he had indicated to me a full gamut of reasons, going from political to other reasons.

SENATOR CONNORS: Political?

MR. CAMACHO: Yes.

SENATOR CONNORS: When you say political, what would that connote?

MR. CAMACHO: He had spoken to me on occasion and indicated that he felt that he had been perhaps on the wrong side of the prior election. That was his view expressed to me.

SENATOR CONNORS: He was on the wrong-- That was--

MR. CAMACHO: In other words, he was on the-- He had--

SENATOR CONNORS: That was one of the reasons he felt he was fired?

MR. CAMACHO: Yes, he expressed that to me. He expressed to me the independent situation. He wanted to be more independent than the situation would permit at that point in time. Now, these are words that Al said to me, after that point in time.

SENATOR CONNORS: Had you known that Mr. Nardelli was not of the persuasion of the Public Advocate?

MR. CAMACHO: Yes.

SENATOR CONNORS: You did? But that hadn't influenced his decision or your decisions up until that point in time?

MR. CAMACHO: I can't speak for Commissioner Rodriguez, but certainly I had no decision-making process with regard to that.

SENATOR CONNORS: Did Mr. Nardelli ever talk to you concerning his firing by making any statements that he would now, concerning this, that he was going to embarrass the Governor, or embarrass the Public Advocate, he was going to blow the lid off?

MR. CAMACHO: (short pause) I'm trying to recall. I think it was well into these proceedings that he did make a comment to that degree. But again, I had perceived that his perspective was rather upset at that point in time.

SENATOR CONNORS: Pardon?

MR. CAMACHO: He was rather upset at that time.

SENATOR CONNORS: I don't know if I got an answer.

MR. CAMACHO: Yes, at that point in time.

SENATOR CONNORS: He said he was going to blow the lid off of this thing?

MR. CAMACHO: I don't know if it was "blow the lid off this," but he was going to bring this to the attention of the public, was something that he would say.

SENATOR CONNORS: Bring what to the attention of the public?

MR. CAMACHO: Just referring to the entire situation.

SENATOR CONNORS: Has anyone threatened you with your job?

MR. CAMACHO: No.

SENATOR CONNORS: Has anyone coerced you into making any statements and talked to you about this, from the people who are higher up there in government?

MR. CAMACHO: No.

SENATOR CONNORS: In your opinion, if Mr. Nardelli was still in the employ of the Public Advocate, would he have been with the Public Advocate or against the Public Advocate?

MR. CAMACHO: I really can't answer that. I would have to defer to Al on that. That is a subjective--

SENATOR CONNORS: Well, I realize that might be an improper question and speculation on your part, but I felt compelled to ask it, from the standpoint that apparently there has been some testimony here that has indicated that he was mad at this, and he was going to do something that was going to embarrass the Administration.

Mr. Camacho, not having had the full opportunity to digest all of these documents, your Department works from time to time with the Department of Energy?

MR. CAMACHO: Yes, that is correct - in the rate case.

SENATOR CONNORS: Did you ever see this? (passes report to Mr. Camacho) Did you ever see this report?

MR. CAMACHO: I personally don't recall having seen that.

SENATOR CONNORS: Well, I was just wondering if you did, because on May 6 -- this was handed to me yesterday, and I had the opportunity to review it -- Commissioner Coleman had apparently developed this Hope Creek I: The Need For Review. Going through it, on page two and three, he talks about strategic options: one, abandonment; two, cancellation with a hypothetical 400 megawatts coal as partial replace; three, continued construction for the sale of capacity of ownership; and, five, cost containment. That is why I wondered if you have seen this document.

MR. CAMACHO: No, I have not. I don't recall ever seeing that.

SENATOR CONNORS: That's all the questions I have for the moment.

SENATOR STOCKMAN: Senator Laskin?

SENATOR CONNORS: Oh, I have one more, excuse me. I have one more. In your opinion, could and should this agreement have been negotiated without the Public Advocate's participation?

MR. CAMACHO: By the Public Advocate, you mean Joseph Rodriguez himself?

SENATOR CONNORS: Yes.

MR. CAMACHO: No. In my view, it was the type of an agreement where I believe his participation should have been included.

SENATOR CONNORS: Pardon?

MR. CAMACHO: It is the type of an agreement where his participation should be included.

SENATOR CONNORS: Should be included?

MR. CAMACHO: Yes.

SENATOR CONNORS: Could it have been reached without his participation, in your opinion?

MR. CAMACHO: I don't believe that the utilities would have participated, absent our Department being involved in this.

SENATOR CONNORS: Thank you. That is all I have.

SENATOR STOCKMAN: Senator Laskin?

SENATOR LASKIN: Mr. Camacho, I have some very simple questions, because Mr. Stockman and Mr. Connors understand what you are talking about, with all of this scientific stuff - I don't.

I want to know, did the Public Advocate, prior to January 1, 1982, ever come out in opposition to Hope Creek I?

MR. CAMACHO: By coming out in opposition, we had not filed any direct testimony.

SENATOR LASKIN: Was there any public statement by the Public Advocate, whether his name is Jones, VanNess, Rodriguez? I don't care who occupies the seat. Was there any public statement by the Public Advocate opposing Hope Creek I?

MR. CAMACHO: I would say there were statements saying it was under scrutiny, but, I am just uncertain as to whether or not there was formal opposition.

SENATOR LASKIN: So it was being studied?

MR. CAMACHO: Yes.

SENATOR LASKIN: When did the construction of Hope Creek I begin?

MR. CAMACHO: I guess the project goes all the back to 1969, with the New Bolt Island project. So, it would have been the early 70's.

SENATOR LASKIN: So, since the early 70's, up until right this very moment, or up until a couple months ago, the Hope Creek I project has been studied and scrutinized by the Public Advocate?

MR. CAMACHO: Again, for a good portion of that time, I did not specifically work on the issue. You will recall, in 70'--

SENATOR LASKIN: (interrupting) Whether you did or-- I'm not-- I don't--

MR. CAMACHO: I don't have-- I would assume there was a construction docket, and it was included in there and it was scrutinized in there. Yes.

SENATOR LASKIN: Let me make a point clear. I don't mention the name of the person occupying the seat, whether it be you or any number of people, I am talking about the position. Since 1969 or the early 70's, this construction has been underway, and the Public Advocate has been studying or scrutinizing Hope Creek I?

MR. CAMACHO: Again, before my time, I assumed so. I assumed, at least in 1976, that it was part of the construction docket.

SENATOR LASKIN: You started when?

MR. CAMACHO: Actually, I became involved with the case on the revenue requirements side in 1979, and I was involved with the rate case itself in 1981.

SENATOR LASKIN: All right. I'm just trying to understand some very basic

points. Since 1969, this construction started, and we are now in 1982, and this controversy has now erupted over who did or didn't oppose it. I am having a difficult time understanding that - whether it be Jones, VanNess, Rodriguez, or anybody else, it is a lot of years. That is why I am asking these questions.

Did Mr. Nardelli, for example -- apparently he is the fellow who started most of this -- come out prior to January of 1982 with any kind of a public document, or even an intra-Public Advocate document, opposing Hope Creek I?

MR. CAMACHO: I don't recall that he did during that 1981 timeframe. But, that is my recollection.

SENATOR LASKIN: Anytime before January 1, 1982. Going back to 19--

MR. CAMACHO: What went on in the construction docket, again, Mr. Nardelli would have to speak to that timeframe.

SENATOR LASKIN: Okay. You are not aware of any?

MR. CAMACHO: Right.

SENATOR LASKIN: As of January 1, 1982, or thereabout, when the Administration changed, how much money had already been spent on the Hope Creek I project?

MR. CAMACHO: January 19, 1982 is your timeframe?

SENATOR LASKIN: Yes. This year.

MR. CAMACHO: A little over a billion dollars, I think.

SENATOR LASKIN: There was a memorandum handed to me in this pile of memos that we were given by our Committee, where there is a statement about "vigorous efforts to have Hope Creek I cancelled" - some statement that was made, I presume, by somebody in the Public Advocate this year. I am trying to understand where these vigorous efforts were before the last few months. I don't understand that.

MR. CAMACHO: Again, I speak from the 1981 timeframe. Certainly, after 1982 those vigorous efforts were there, but in the prior time period--

SENATOR LASKIN: (interrupting) Do you understand? In 1982.

MR. CAMACHO: No. I have defined it as kind of a back burner type thing in the base rate case, for very pragmatic and very real reasons.

SENATOR LASKIN: I understand all of that. But, the vigorous opposition that I am now hearing so much about really didn't start until this year.

MR. CAMACHO: It certainly started in 1982. The vigorous opposition started then, yes.

SENATOR LASKIN: By the Public Advocate?

MR. CAMACHO: Yes. Prior back in time, again, I am speaking from 1981 on. Earlier in time, I would have some difficulty with regard to that, in terms of actually knowing what public documents had been issued.

SENATOR LASKIN: There was a stipulation filed -- which was also given to me today -- on December 14, 1981. What stipulation is that?

MR. CAMACHO: That is the stipulation, which eventually was termed a joint position, whereby PS agreed to abandon the Hope Creek II unit. Part of that agreement was that the Public Advocate gave up the argument of contesting need through that point in time.

SENATOR LASKIN: That was December of 1981?

MR. CAMACHO: Yes.

SENATOR LASKIN: Okay. So, that would have been under the prior Administration?

MR. CAMACHO: Yes.

SENATOR LASKIN: Who was the Public Advocate in December of 1981? I am going to over-simplify it.

MR. CAMACHO: Yes, yes. I was trying to think in terms of what had happened.

SENATOR LASKIN: Who was the Public Advocate then?

MR. CAMACHO: That would have been Stanley VanNess.

SENATOR LASKIN: And Mr. Nardelli worked there at that time?

MR. CAMACHO: Yes.

SENATOR LASKIN: Okay. So, at least as of December of 1981, a month prior to the new Administration, that memo came down and presumably, it was seen and checked by those in control of the Public Advocate.

MR. CAMACHO: I can make that assumption, yes.

SENATOR LASKIN: I am only assuming that; I don't know how it works in that office. Now, in that stipulation of December 14, 1981 -- by the way, do you have it? I don't want to mislead you.

MR. CAMACHO: Yes.

SENATOR LASKIN: All right. There is a reference-- I just had a few seconds to jot some notes down, and I am going to try to quote: "No controversy exists regarding Hope Creek I's two-unit design, and the need to construct the facility." Does that appear somewhere like that in the memo?

SENATOR STOCKMAN: Senator Laskin, we have been through that. I don't say this to criticize you; you have a right to go through this further. The witness was questioned at length about the implications and the history of that document at the beginning of his testimony.

SENATOR LASKIN: I'm not going to go into it. I'm not going into implications or interpretations; I just want to know whether it is there or not.

MR. CAMACHO: Yes, Senator.

SENATOR LASKIN: Now, after that memo, there were memos in this year, 1982, I assume, that said just the opposite, that there is a need to stop the construction of Hope Creek I, or abandon the project. I presume you--?

MR. CAMACHO: We filed a motion before the Board in February, indicating, calling for a moratorium, and asking that the need be assessed by the Board.

SENATOR LASKIN: You did that this year, in 1982?

MR. CAMACHO: Yes. In February of 1982, that was filed by Mr. Nardelli.

SENATOR LASKIN: All right. I'm not going to ask any more questions.

SENATOR STOCKMAN: If I could just ask a couple of questions, trying to get back - on this question of history of opposition, I have in front of me a memo from Mr. Potter to Mr. Rodriguez, dated September 23, 1982, which purports to spell out some of the history. As a matter of fact, it is Re: History of Public Advocate Efforts to Question in Need for Hope Creek and Other Nuclear Facilities. That may help refresh your memory, or these may have been things that you simply were not involved in, Mr. Camacho. But, Mr. Potter points out that in 1975, the Public Advocate appealed the coastal permit granted Hope Creek I and II by the Department of Environmental Protection, on the grounds that conservation

alternatives had not been considered. The court rejected the approach and really said the matter was in the jurisdiction of PUC.

MR. CAMACHO: Yes, Senator. Again that was in that timeframe.

SENATOR STOCKMAN: Right. Again, he continues. "In 1976, the Public Advocate filed comprehensive testimony with the PUC in this docket, which challenged the need for Hope Creek as well as the four other nuclear plants which Public Service planned to build. These also included four floating nuclear plants. While this matter was still pending, Public Service cancelled orders for four nuclear units, after steadfastly arguing that they were needed and economical before both Federal and State agencies; thus by 1980, only Hope Creek I and II remained under active utility sponsorship."

I am continuing this, in Mr. Potter's memo: "In 1981, the Public Advocate filed testimony with the Board to show that energy conservation could substitute for new power projects, including the two Hope Creek units. This was part of our response to Public Service's petition for \$536 million, the largest rate petition in New Jersey's history." So, there was history of opposition to Hope Creek I by the Public Advocate, prior to Mr. Rodriguez's coming in. But, as a matter of fact, Mr. Rodriguez authorized and pursued a vigorous public policy of opposition from February on, to the completion of Hope Creek I, didn't he?

MR. CAMACHO: I would say the Public Advocate, as a department in 1982, had done that. Again, your reference to the prior indications and the memorandum was in a timeframe --

SENATOR STOCKMAN: But I don't say that critically. You weren't in on some of this, I understand. But, as far as the record goes, there was opposition?

MR. CAMACHO: Oh, yes. In February, there was a firm motion to that.

SENATOR LASKIN: February of this year.

MR. CAMACHO: February of 1982? Yes.

SENATOR STOCKMAN: I'm sorry, Senator Connors?

SENATOR CONNORS: You work with the Rate Counsel?

MR. CAMACHO: Yes, that is correct.

SENATOR CONNORS: Closely?

MR. CAMACHO: Yes. I am currently the Director of the Division of Rate Counsel.

SENATOR CONNORS: How long have you been working in that capacity?

MR. CAMACHO: As Director, since September 30th.

SENATOR CONNORS: As the Assistant Director?

MR. CAMACHO: Assistant Director went back to February of 1982.

SENATOR CONNORS: And before that?

MR. CAMACHO: Before that, with about a six-month hiatus, I had been there since the inception in 1974.

SENATOR CONNORS: In 1974, all right. Then you are pretty familiar with Mr. Makul, socially?

MR. CAMACHO: Yes. Ray, of course, works at the Division of Rate Counsel, and we have been involved in cases together.

SENATOR CONNORS: Yesterday, in talking with Mr. Makul on this, he stated that it was a policy that they were going to back into, the State was going to

back into -- I'm using his words -- "We were backing into the abandonment of Hope Creek I by increasing the cost per kilowatt by cancelling Hope Creek II." Are you aware of that policy? Were you ever aware of that policy? Was that developed during the time you were with the State?

MR. CAMACHO: No, that was not developed with me.

SENATOR CONNORS: Did you ever hear of that policy?

MR. CAMACHO: You have mentioned it subsequent to that time. I have heard that rationale, but at the time we entered the 1981 stipulation, I had believed we had entered it to obtain the abandonment of Hope Creek II in good faith and sincere effort.

SENATOR CONNORS: Do you understand my question?

MR. CAMACHO: Yes. Going into that stipulation, that had not been discussed with me. That was going to be entered, and then there was going to be a backing into Hope Creek I. But I had no knowledge of that.

SENATOR CONNORS: In other words, all of you fellows sit around the desk and figure, "well, if we cancel Hope Creek II, this will raise the cost per kilowatt and give us a good arguing case for cancelling Hope Creek I down the road."

MR. CAMACHO: That had not been expressed to me.

SENATOR CONNORS: You have heard that policy?

MR. CAMACHO: Especially prior to December of 1981.

SENATOR CONNORS: Pardon?

MR. CAMACHO: Prior to the signing of that stipulation, I had not heard that.

SENATOR CONNORS: When did you hear it in 1982?

MR. CAMACHO: Certainly Mr. Makul testified to that yesterday.

SENATOR CONNORS: In other words, yesterday was the first time you heard it?

MR. CAMACHO: It was testified to yesterday and I had heard it mentioned at the office prior to that time, within a month, something of that nature.

SENATOR CONNORS: Is there any way that kind of a policy could be held from you?

MR. CAMACHO: I would hope not. I don't think it should have. I am just uncertain as to whether it was actually the policy of the Division of Rate Counsel or not.

SENATOR CONNORS: And so yesterday was the first time you ever heard it.

MR. CAMACHO: I had heard it in the context of a discussion about a month ago, but at the time we decided the December--

SENATOR CONNORS: (interrupting) What context of discussion and by whom?

MR. CAMACHO: Speaking to Mr. Makul, in terms of just the plants in general.

SENATOR CONNORS: So it wasn't any kind of a policy, to your knowledge?

MR. CAMACHO: To my knowledge, no. I had participated, coming in the fall of 1981, into the stipulation.

SENATOR CONNORS: Okay.

SENATOR STOCKMAN: Would you like to--

SENATOR LASKIN: I have a follow-up question.

SENATOR STOCKMAN: Oh, I'm sorry.

SENATOR LASKIN: I don't want to insinuate or infer that there may be some political tones in some of the questioning, but I find that there are. Let me just go over, again, basic issues - prior opposition and present opposition. Now, it has been explained by Mr. Nardelli and referred to in the record, that there was opposition prior to this year. A couple of things were pinpointed as the strong opposition by the Public Advocate, which I don't deem to be strong opposition - I will tell you that in advance, because if you really wanted to oppose something, you could do as good a job as you are doing on Hope Creek II. But, you didn't do that with Hope Creek I - you meaning the Public Advocate, not you personally.

There was a mention about an appeal of a costal permit granted to Public Service Electric and Gas for Hope Creek I and II as a means of opposition by the Public Advocate. But, wasn't that appeal by the New Jersey Public Interest Group and not by the Public Advocate? Didn't PIRG really make that appeal to the courts?

MR. CAMACHO: I believe that to be the case, Senator.

SENATOR LASKIN: Yes, they did. It is the case.

MR. CAMACHO: Again, that is during the time period prior to my direct involvement.

SENATOR LASKIN: Okay. But it is the case, because that appeal was by PIRG, not by the Public Advocate. Now, are you also familiar with a transition report from the Division of Rate Counsel-- I want to give you the exact date so there is no question about it. Instead of playing with this, why don't I show it to you. (shows transition report to Mr. Camacho) Have you ever seen this before?

MR. CAMACHO: Senator, I don't recall ever seeing it before.

SENATOR LASKIN: I don't want to mislead anybody. Let me just quote you from this report, which I think is a transition report, that if you look in the records, you will find it. I don't want to indicate that you have seen it.

In this report, I just want to read one statement which sort of pops out in my face: "There is no objection to the need for the Hope Creek I plant, which is due to become operational in late 1986." I assume this is a transition report from one Rate Counsel to another. That is what bothers me. I find everything in the record indicating not approval of Hope Creek I -- I don't want to infer that -- but no real long, standing, vocal opposition by the Public Advocate to Hope Creek I. I am not saying that they shouldn't have opposed it; maybe they should have. Maybe there was no need for any of these nuclear plants. But, what bothers me is, now, a billion dollars later, a billion dollars of money spent in this year, 1982, when the Administration has changed from one party to the other -- and I really think that has a lot to do with it -- there is now this big testimony that there was always opposition to Hope Creek I, and only because there is a new Administration in power, we shelve the opposition. That bothers me.

SENATOR STOCKMAN: Excuse me, is that a question, Senator? I am getting confused now.

SENATOR LASKIN: That's okay. I was confused by some of yours too, but I didn't say anything. (laughter)

SENATOR STOCKMAN: Was that a question?

SENATOR LASKIN: It was sort of a question.

MR. CAMACHO: Senator, in terms of your characterization about what should or should not have been done, I did go through the history from February 1981, and you recall, I termed it a back burner-type issue and gave an analysis of why we did what we did from a pragmatic point of view when dollars were spent. Let me say this, we have taken a pragmatic approach right along, that is the Division of Rate Counsel. Whichever plant is farthest out in time, and most speculative, we try to test. So, I do wish to indicate to you that we vigorously pursued what we perceived. We had an opportunity to litigate and prevail on. I don't want to leave the impression that we ignored that in any one. I have listed that as a back burner issue, and I have gone through the various elements of how we came to that conclusion and why II became so paramount, and why I believed we had gone into that stipulation of 1981, believing that, again, abandoning II was a major accomplishment for the Division of Rate Counsel.

SENATOR STOCKMAN: Whatever the history of the Public Advocate, up to February of 1982, pro, con, lukewarm, lukewarm against, lukewarm for, what have you, there is no question, Mr. Camacho, is there, that in February, March, April, May, June, and July of 1982, the position of the Public Advocate was clear, and it was public, and it was well-known, and it was that Hope Creek I should not be built. Isn't that a fair statement?

MR. CAMACHO: You have an awful lot in there, Senator Stockman. February, we filed our motion, clearly indicating that we should assess the need. We pressed forward on that motion before the BPU. I think the order came out in March.

SENATOR STOCKMAN: You testified on S-975 around that time.

MR. CAMACHO: Yes. And this was the factual basis that we were pressing-- I guess I would phrase it in terms of looking at the need for the plant in that timeframe.

SENATOR CONNORS: When was that?

MR. CAMACHO: That was the spring of 1982. The motion was filed in February of 1982, asking the Board to impose a moratorium and question of need.

SENATOR STOCKMAN: Let me share with you some public statements of the Public Advocate that may or may not refresh your recollection. This is a statement by the Public Advocate on April 12, 1982, comments on the "BPU's Proposed Rules Covering Certification of Need," published March 1, 1982.

"One, the final rules of the Board should apply to the Hope Creek nuclear generating station - Unit I - with full force and effect, so that this costly project can be terminated and alternatives begun."

He goes on to say, "The single, most important economic question facing the Board of Public Utilities, and possibly the State, is whether to permit Public Service to continue with the financing and construction of Hope Creek Power Plant - Unit I. Nothing else, including the bankruptcy of Jersey Central Power and Light, approaches the consequences to the average consumer of letting Public Service finish this multi-billion dollar project. If it is ever completed, it is now scheduled for December, 1986, some 12 years behind the original schedule, and 2,000 percent over budget. Hope Creek will more than double the total rate base of New Jersey's largest utility, merely to increase its capacity to generate power by six to ten percent. Residential rates would catapult from \$.08 or \$.09 per kilowatt hour, already among the highest in the

United States, to \$.26 or \$.27, yet, the company claims --" etc. I won't read it all to you, but I suggest to you, if you recall that statement, or something of that sort, being prepared and made public by the Public Advocate in April of 1982--?

MR. CAMACHO: I recall that being prepared. Could you indicate the date on that, Senator?

SENATOR STOCKMAN: That was supplied to us by Mr. Potter.

MR. CAMACHO: To my knowledge, this had been released. This was released.

SENATOR CONNORS: Released, did you say?

MR. CAMACHO: To the public, filed with the BPU.

SENATOR STOCKMAN: For instance, I show you a Department of the Public Advocate Rate Counsel Advisory Committee agenda, publicly published on Friday, May 28, 1982. Item two, The Future of Hope Creek I: Holding New Jersey Hostage. A, A Brief History of Hope Creek Nuclear Power Plant; B, Why Public Service Says that Hope Creek is Needed; and C, Why Hope Creek is Not Needed. Did you ever see that flier? (Chairman shows Mr. Camacho flier)

MR. CAMACHO: Senator, I believe I have. As part of a packet, yes.

SENATOR STOCKMAN: Are you familiar with that? Have you ever seen it before?

MR. CAMACHO: Yes.

SENATOR STOCKMAN: So, in July, the Public Advocate is appearing before his Advisory group of volunteer citizens who are supposed to help him in shaping public policy in this area, expressing clearly and unequivocally that this plant should not be built, isn't that so?

MR. CAMACHO: Again, I prefer you to ask that question of Mr. Potter, in terms of the actual discussions and presentations.

SENATOR STOCKMAN: You weren't at that gathering, I gather.

MR. CAMACHO: I was at the gathering, but word-for-word, I don't recall what the situation was.

SENATOR STOCKMAN: I have two other questions for you, Mr. Camacho. You repeatedly have said we needed a forum on this question of opposing the completion of Hope Creek I - "We needed a forum."

MR. CAMACHO: We had to consider -- that was phrased poorly -- what forum, if any, was available at that point in time. That is a better way to put that.

SENATOR STOCKMAN: Well, I suppose I am troubled by the inference, the impression, inescapable, it seems to me, that you are saying that you had written the Board of Public Utilities off as a body, quasi-judicial, objective, independent, open-minded, prepared to listen and reach a determination in the public interest.

MR. CAMACHO: Not for those reasons, Senator. Remember, by the time we had been considering that, the BPU, on three separate occasions, had issued orders, finding the need for Hope Creek I. That was March 4th. The reasons for that-- I just don't want to characterize how they got there. They had their reasons for doing that, which I must respect.

SENATOR STOCKMAN: But there had never been, particularly by the Public Advocate, a presentation to the other side. That is what troubles me. Isn't that a fact? I know you are referring to--

MR. CAMACHO: In the 1981 rate case, there was no direct testimony indicating the abandonment was in the public interest.

SENATOR STOCKMAN: So, the public had --

MR. CAMACHO: Let me get back to the original question, as to why, at that point -- I'm talking about the August 10 timeframe now. The BPU, three times on formal occasions, found that they were convinced that Hope Creek I should be completed for demand reasons as well as economic reasons. Again, the reasons on that-- They have their own reasons on that, in terms of state-wide needs and others - some of which I disagree with, but I have to respect. So, I had to realize the practicalities, but I just didn't want to characterize it in terms of having foregone some type of duty or something of that nature.

SENATOR STOCKMAN: But, doesn't hope spring eternal? Isn't it so that a body of that sort is such that you have to work on the assumption that they are always ready, even to see their past mistakes; even to recognize that perhaps there wasn't an inadequate look at this question, because as a matter of fact, history, I think, will pretty clearly indicate that there never was. In fact, some memos within the Public Advocate's Office seem to clearly suggest that there was never presented, that vigorous, full, open presentation on behalf of the citizens of New Jersey on the merits of Hope Creek I; and in fact, if things stay the way they are, that will never happen. Isn't that a fair statement?

MR. CAMACHO: But before the BPU, I don't believe there is the remotest possibility of prevailing on that issue.

SENATOR STOCKMAN: But isn't what I just suggested a fair statement?

MR. CAMACHO: That one should always try is what you are saying. Is that the import of your question?

SENATOR STOCKMAN: You have to assume, unless we are going to get totally out of context-- Let's be frank about it. Maybe the Board of Public Utilities ought to be looked at more closely out of this. We know that the Public Advocate, in a certain sense, is on the spot here today, and I am sure he will take good care of himself. I see him in the back of the room. I welcome him, and I am sure we will hear from him. But, maybe, if one looks real carefully at what happened here, we ought to be turning our spotlight on the Board of Public Utilities, because tucked in all of this seems to be a suggestion by the Public Advocate that, "Hey, let's not beat our head against the wall with a BPU on this issue. Let's find something else. Let's get the Legislature to set up a blue ribbon commission, or I don't know what." That troubles me.

MR. CAMACHO: I don't want to characterize the Board as just in derogation at that point in time. Remember, there was a whole history.

SENATOR STOCKMAN: I didn't say it, I am asking it.

MR. CAMACHO: I am perceiving-- When we are looking out into the future, is it viable? Do we have the remotest chance of prevailing on that issue before the BPU? The answer is no. I cite the three orders. I cite our having rescinded that joint position in 1981. There is an entire history. The BPU has its reasons, and I guess everyone has to read those reasons and come to their own decision. Maybe that is the way it should be left.

SENATOR STOCKMAN: I guess the greatest surprise in the whole history of this business might come if the Board of Public Utilities just decides, one of these days, that Hope Creek should not be built.

SENATOR CONNORS: What was that statement? (laughter)

MR. CAMACHO: At this posture, I have estimated-- It is awfully hypothetical. I would estimate that at this point, they have the authority-- Well, they have the authority to do that as contested by some of the utilities.

SENATOR STOCKMAN: Well, are there some of the utilities contesting? I was lost on that. I lost Senator Connors. Let me repeat it. I am suggesting that even today, with this proposed Cost Containment Agreement, that the Board of Public Utilities might decide that it isn't in the public interest, even now, to complete Hope Creek I, mightn't they?

MR. CAMACHO: Remotest possibility? Perhaps. But, in my view, to litigate that before that forum at this point would not be very effective or viable at this point - given the history.

SENATOR LASKIN: I think he means legally do they have that right, not whether or not they will make that.

MR. CAMACHO: They certainly legally have that possibility, but when you go back to the history, you go back through the recent past, and go through three orders where they specifically found the need for specific reasons is how you weigh your chances.- very remote.

SENATOR STOCKMAN: But Roger, I think I asked you this before and I think you agreed with me. Let me press it just once more and I will move on. In all three of those settings, for a variety of reasons -- and I am not trying to impose fault or non-fault. As a matter of fact, Joe Rodriguez was not the Public Advocate then, so we certainly can't beat up on him for that -- if one looks at the record, it is patently evident and clear that the citizens of this State did not have a Public Advocate in there vigorously pressing the opposite proposition, that is, that it shouldn't be completed. Because, in the last and most significant setting, it was an effort by the Public Advocate, for tactical reasons, or otherwise, to try to knock out Hope Creek II. I don't say that--

MR. CAMACHO: Let me get back into that. When that case started, Hope Creek I was \$800 million spent. In the history of New Jersey, no plant has been abandoned above \$400 million. So, your timeframe must go back well before that time.

SENATOR STOCKMAN: Mr. Camacho, we aren't bound by what has happened to date. If anything has been learned out of the history of nuclear plants, isn't it that we can keep on learning? We can point to abandoned nuclear plant after abandoned nuclear plant for sums in excess of a billion dollars, I believe, which were precedent-setting. There are people who sincerely in their hearts hold up this proposed agreement as precedent-setting history; but, there are other people equally ready to hold up the precedent-setting in other places, in the not too distant past. There has been enough wisdom to say, despite a tremendous investment, "Stop this nuclear plant. We have learned enough about the problems associated with disposal of fuel, skyrocketing costs, cut needs, a new vision of what can be done with conservation, solar energy, etc." So, I mean we don't have to be locked in by the proposition that never has New Jersey done this

before, and it can't do it-- Isn't that the meaning--

MR. CAMACHO: No. I think you have to evaluate--

SENATOR STOCKMAN: (continuing) -- of the members of the Public Utility Commission?

MR. CAMACHO: The particulars for out-of-state jurisdictions are the particulars there. I think one has to evaluate one's chances of litigating and winning before the agency that controls this particular issue. Again, I am not saying that in derogation. They have their reasons.

SENATOR STOCKMAN: Maybe we should have elected members of the Board of Public Utilities. What do you think?

MR. CAMACHO: Well, I think-- Again, that is beyond the scope of this hearing, but--

SENATOR STOCKMAN: Hey, you're there. You are in the high of it.

MR. CAMACHO: One, my own view, my own personal view, that has to be considered not as positive as most people think, but--

SENATOR STOCKMAN: Okay. I was looking for a quick fixing, I guess. All right. One more question. You emphasized that you did, after the 10th, get into this business of this Agreement, and as a result of getting into it and a lot of hard work -- and I don't doubt that after August 10th you put in a tremendous amount of time and a lot of energy, and I am sure talent -- you did quite a bit of clarification. You substantially alleviated in it some doubts and so on. Well, Mr. Camacho -- correct me if I am wrong -- the deal was struck. The Agreement was made on August 10th, that bound the Public Advocate, and as a matter of fact, that Agreement did not even specifically refer to the intent of the parties to clarify it by a later stipulation in the document itself, did it?

MR. CAMACHO: As I recall, when I first saw that on the 10th, there was testimony by Everett Morris next to it. PSE&G at that point was clarifying, or going to clarify, with the testimony of Everett Morris. What I did was parallel that action.

SENATOR STOCKMAN: I'm glad you brought that up. As a matter of fact, there was something in that record that greatly concerned me. In the course of trying to clarify that Agreement, there was a gentleman, Ed Lloyd, head of Public Interest Research Group, here in the audience, a long-time advocate for citizen's interests and I think a respected participant in this whole issue. Mr. Lloyd, now independently, after the Public Advocate had signed this Agreement, had some questions as by law he had a right to do. I want to refer you to what happened as he proceeded in that hearing, because that was the one last question I wanted to ask you.

Mr. Lloyd, of Public Interest Research Group, was questioning this Mr. Morris -- who you referred to, was, of course, Public Service Electric and Gas -- on the definition of "extraordinary events." Mr. Lloyd was obviously nervous and was uncomfortable. As you know, I, among others, later testified to the BPU that I was greatly troubled -- and with all due respect to Commissioner Coleman, who is concerned about the motives of people who question that "extraordinary events" clause, and I will let history judge my motives in it, and with all due respect to the Public Advocate, who seems to be at odds with my view of it. He and I will have an opportunity to discuss that later, as to whether or not it was really foolish for anybody to try to hone in on a better definition or

restriction of that. We have the effort by Mr. Lloyd -- who, of course, was not a signator to that Agreement -- pressing for a definition of "extraordinary events." The attorney for Public Service objected, saying, "The parties did agree that neither Public Service nor the Public Advocate, nor the Department of Energy would define 'extraordinary events,' because it was incapable of definition." That is on page 142 of that hearing. And then you, on behalf of the citizens of New Jersey, said to the Board, "Yes, I would concur in that objection, President Curran." And by that position, you, on behalf of the citizens of New Jersey, blocked Mr. Lloyd in his interest as a citizen -- and I suspect on behalf of many people who have expressed concern to him about this agreement. You joined Public Service in blocking him from exploring the meaning of those "extraordinary events." I find that extremely troubling, and I find that as probably the clearest evidence of why I am uncomfortable about the ability of the Public Advocate, from the signing point on, to effectively, fully protect all of the interests of the citizens of the State of New Jersey in this \$4 billion plus type venture. Can you explain that?

MR. CAMACHO: Senator, at that point in time, it was the duty of the Board to rule on the disposition of Mr. Lloyd's motion - at that point in time. This is the Public Advocate acting in accordance with its prior agreement. In other words, you phrase it in terms of the Public Advocate precluding Mr. Lloyd. These are the motions made out.

SENATOR STOCKMAN: Urging the Board to block him. All right, I see your subtle distinction, Mr. Camacho. I see your--

MR. CAMACHO: At that posture, we had gone through a clarification procedure with regard to the "extraordinary events," the claimer waive provision, which you read in the joint stipulation, the agreement that we would be able to investigate facts as reported-- We had gone through an entire procedure with PSE&G at that posture, which underlied the stipulation which we were presenting to that Board. We hold that out in the public interest. At that posture, that is a legitimate argument before the Board. The Board decides--

SENATOR STOCKMAN: I understand, Mr. Camacho--

MR. CAMACHO: (continues) -- is the procedure set forth in the stipulation with six and six rule, the early fact-finding, and the ability to get to those facts earlier than what otherwise would have been the situation? Is that the situation that should prevail, or should Mr. Lloyd be able to ask the questions? That is the Board's determination.

SENATOR STOCKMAN: Mr. Camacho, I fully understand. I don't mean to cut you off. I fully understand that the final decision on whether he would be allowed to do that or not rested with somebody else. What troubles me, deeply, is that the Public Advocate, through you, would find himself in a position of attempting to preclude a citizen of this State -- and not just any citizen. I don't want to blow smoke on Ed Lloyd, but I think most everybody in this room who is aware of his involvement in this area has to respect and appreciate the contributions he has made in this area. I say that the Public Advocate would find himself sitting on him and attempting to block Mr. Lloyd in his effort on behalf of the people that he felt needed representing at that point to get some clarification.

I must tell you again, with all due respect, I am distressed by it and I wonder-- I thought perhaps you would say to me today, "Senator Stockman, I was

mistaken in that position, and I should not have taken that position." But, I gather, and I respect your right that your feeling was that because of this agreement that the Public Advocate had signed, that is the route you have to go.

MR. CAMACHO: Once the Public Advocate determines the stipulation, is the best we can negotiate, is in the public interest, and which is what was being pressed and agreed to that. It is a situation where we cannot then undermine in terms of the '81 situation all over. How can one take that position? One has to support, or one has to not support.

SENATOR STOCKMAN: Okay. I understand. I fully understand. I have no further questions.

SENATOR CONNORS: I just have a couple. When were you first made aware of S-975?

MR. CAMACHO: Spring of 1982 is about the best timeframe that I could put in, personally. I had attended the conference at which it was voted out of Committee. So, that was around the timeframe.

SENATOR CONNORS: It was introduced on February 8th, and it was recorded with Committee amendments in June. Would that be the timeframe?

MR. CAMACHO: About that timeframe - the late spring.

SENATOR CONNORS: Did you testify favorably or unfavorably with regard to this bill?

MR. CAMACHO: I did not participate directly in that process.

SENATOR CONNORS: Was there any dialogue between you and Senator Dalton == or your Office and Senator Dalton?

MR. CAMACHO: None with me. I can't speak for the Office at this point, in terms of the specifics of what was said or what happened.

SENATOR CONNORS: Would S-975 have eliminated all of this controversy had it been in place back in February?

MR. CAMACHO: I certainly believe that it could have cleared the air on this entire issue, at that point in time. It could have disposed of the issue one way or another at that point, and remove any acrimony involved.

SENATOR CONNORS: So, from the spring of 1982 -- roughly April -- when the statements were being given that Hope Creek should be abandoned, etc., and they were flying by Mr. Potter and the Public Advocate, and your Office that we have spent, to the signing of that agreement, roughly \$5.5 billion--?

MR. CAMACHO: I'm sorry. Could you clarify that question a little bit?

SENATOR CONNORS: Well, the date of the signing was what, August 9?

MR. CAMACHO: August 10.

SENATOR CONNORS: From the time that all of a sudden in 1981 we were progressing towards Hope Creek I, and in 1982, we are now moving against and saying, "Hey, we better study this," etc.--

MR. CAMACHO: It was during that meeting that I had learned it was progressing at a million dollars a day, is what the rate was.

SENATOR CONNORS: I carried it back further. All right. We have spent something like \$8 million in this. Whether or not we are going to stop it, or until that agreement was solved just in months, from January until August--

MR. CAMACHO: Eight hundred million, you are saying?

SENATOR CONNORS: Yes.

MR. CAMACHO: Roughly - say \$700 million, something of that nature.

SENATOR CONNORS: Seven hundred million.

MR. CAMACHO: And that was part of the dilemma as reported on August 10. If the first effective date could be June of 1983, tack on another \$300 million, \$350.

SENATOR CONNORS: That is all I have.

SENATOR STOCKMAN: Is there anything you would like to add? I don't want to preclude you from making any further statement, clarification, or amplification, or anything of that sort, Mr. Camacho. I want to thank you. I think you have been straightforward and honest, obviously in your testimony. But, if there is anything you want to add to this record, you are welcome to do so.

MR. CAMACHO: Fine. I appreciate the opportunity. I think I have clarified what I wanted to say with regard to specifically my efforts after the 10th, in terms of alleviating those awkward August 9 concerns. I thank you very much.

SENATOR STOCKMAN: Thank you. Bill Potter, I see. Bill, you are here. Let me make this suggestion. We have a number of documents that I would like to make sure are made part of the record. The time is 12:30. I think, Bill, you are going to be more than a few minutes, and my own instinct, subject to my Committee colleagues, are probably subject to putting records in and making them part of the record. I think we ought to come back at 1:30 and begin with you, and hopefully before the day ends, complete the hearing with the Public Advocate himself. Does that cause any problems with you?

MR. POTTER: No, 1:30 is fine.

SENATOR STOCKMAN: All right. I am going to make the record a little more complete. Anybody is welcome to stay for that or leave. But, our plan is to commence at 1:30 with Mr. Potter, and as soon as he is finished, to ask Mr. Rodriguez to testify.

(Recess for Lunch)

AFTER RECESS

SENATOR STOCKMAN: Our next witness is Bill Potter, Assistant Public Advocate. Bill has asked permission to give a statement and a supplemental statement as an introductory approach to the hearing. I have indicated no objection to that. I have not studied, frankly, Bill, your initial testimony and certainly not your supplemental. I would just remind you that I think the Committee is of the consensus that this hearing is not really directed to the question of the Al Nardelli firing, but rather to the circumstances surrounding the entry into the agreement of August 10, 1982. Now, I realize that you may want to get into it a bit, but I would urge you to try to remember that. Go ahead.

R. WILLIAM POTTER: Thank you, Senator. I wish to offer a few brief observations that may help set the record straight here.

First, after two full days of hearing -- in which the critics of the Cost Containment Agreement have been accorded the lion's share of the time -- it is now abundantly clear that the critical questions are not being asked. In my judgment, these are as follows:

Irrespective of the benefits or costs of completing Hope Creek I, does anyone believe that the Public Advocate had a reasonable, arguable chance of stopping Hope Creek I in the only forum available by law? That forum is, of course, the Board of Public Utilities. If you do not ask that question -- and I have not heard it asked yet -- then you ignore the only valid route of inquiry into whether it was proper for the Public Advocate to negotiate and sign the Cost Containment Agreement -- namely, what other options were available?

I would submit, Senators, that any kind of dispassionate review of the record will disclose that there were no other options. Nor is there any other realistically available option under law today or six months ago for bringing a timely end to Hope Creek I. Senator Stockman, you said so yourself in testimony that I believe you gave before the BPU on September 29. "Personally, I am satisfied that the construction of Hope Creek I is going to go on. Not reasonably because I want it to and not necessarily because I don't want it to, but I think it is a fact that it's going to go on for a lot of reasons. Accepting that fact, I think there is a tremendous burden on you three commissioners -- over the manner in which the construction will go forward."

So, even the Chairman of this Committee has recognized -- on at least one occasion -- the apparent inevitability of Hope Creek I being completed.

SENATOR STOCKMAN: If I may stop you one minute, Bill, I just want -- and I am sure you would agree with me. The context of that statement was made pre- Al Nardelli comment and pre-convening of this Committee, and pre- the testimony that is a matter of public record in this case to date. You are absolutely right as of the morning of September 28th, based on the knowledge and information I had, I was inclined, pretty much, to be satisfied that it was a fact that we were going to see the completion of Hope Creek I. I want to tell you right now that as a result of Mr. Nardelli's comments, as a result, more particularly, of the circumstances of this hearing, I am not so satisfied.

MR. POTTER: All right. I am quoting you as of September 29 only.

(Mr. Potter continues his statement) Which options do critics say that we ignored or that are available today if the cost containment is rejected?

Mr. Nardelli says that we abruptly turned our backs on S-975 with its "blue-ribbon" advisory commission to look into Hope Creek I. But not even the sponsor of the bill -- S-975 -- believes that S-975 could become law and operate in time to make a difference. I refer you to Senator Dalton's press statement of August 12, 1982:

"Although S-975 was overwhelmingly approved by the Senate, the Governor would not receive any study results for Hope Creek I until the Spring of 1983, due to the amount of time involved with the legislative process. As a result, even though the need for this project has never been established, it would be too late to investigate the need for the Hope Creek I project.

"While I support, in principle, the Cost Containment concept, I see it as a supplemental, not a substitute for a need assessment of Hope Creek. We should, ideally, both establish the capacity needs of our consumers and meet that demand as economically as we can.

"I am, however, a realist -- this is Senator Dalton speaking -- My bill mandating the study and recommendations cannot reasonably move through the Assembly, be signed by the Governor, and be implemented until next spring at the earliest, by which time the investment in the Hope Creek project, now approximately a million dollars per day, would be so great, that the question would be moot.

"In the meantime, I shall continue my efforts to move the major provisions of Senate Bill 975 -- providing for a thorough and continuing need assessment of all future projects -- through the legislative process so that never again are we in the position of having to decide if and when we are throwing good money after bad."

Accordingly, even the sponsor of S-975 was willing by late summer to concede that the time had passed for a "meaningful review" of Hope Creek I. Moreover, the last paragraph, above, even suggests that Senator Dalton will not insist upon inclusion of a study commission in the amended bill, at least as of August 12th.

Let us now turn to another critical question that has not been asked:

Why is it that we find ourselves in late October, 1982 without any reasonable alternatives to a cost containment? Or, in the alternative, why were there no reasonable alternatives three, six, or nine months ago?

The basic reason is that the Legislature has been unwilling to enact the necessary legislation. This was as true during Governor Byrne's eight years and under Governor Kean's ten months. Senator Stockman, you also alluded to this collective failure -- I mean no disrespect by that -- on the part of the Legislature in your September 29 testimony:

"I think it is very difficult for the Legislature, and I speak as an individual legislator when I say this, to fully understand the magnitude of what is going on here today -- referring to the cost containment. I don't say that critically of my colleagues, but with rare exceptions I simply think that the members of the Legislature are occupied with other concerns, then, this peculiar area that has been so costly to the citizens of New Jersey and that there probably has been inadequate legislative attention."

I agree with Senator Stockman that there has been "inadequate legislative attention" in this "peculiar area that has been so costly to ... New Jersey," namely, utility construction decisions. The question, therefore, Senator, is what if anything can be done about it? One, in time to have an impact on Hope Creek I; and, two, to prevent the recurrence of such tragedies in the future. The answer to the second is easy: -- easily said, at least -- approve S-975. The Public Advocate remains as committed to that bill today as we were in February. The answer to the first question is much harder: Enact a moratorium on further construction of Hope Creek I until its future is determined.

The moratorium option, however, has no more chance of adoption now than it did in February, 1982, when Senator Dalton chose not to include such a provision in his bill, S-975. The American public and their elected representatives do not seem to like the idea of enacting "moratoriums." For example, all efforts at achieving a congressional moratorium on nuclear licensing after the Three Mile Island accident were equally unavailing. There is no reason now or several months ago to believe that the New Jersey Legislature will act any differently.

What, then, was the Public Advocate to do? Joseph Rodriguez and I came to the Public Advocate Department in February of 1982. By then, it was evident that Hope Creek costs were hemorrhaging wildly out of control, and had been for some time. We immediately ordered an all-out effort to bring the situation under control. The first step was a motion for a BPU moratorium and a needs assessment orally presented on February 19, by Mr. Nardelli. That effort failed miserably. Three times after that -- March 4, April 20, and July 20 -- the BPU issued orders and decisions which basically reaffirmed its judgment that Hope Creek I is needed and should be built. The Board even directed PSE&G to "expeditiously complete" the unit. In short, it soon became obvious that further efforts to litigate an end to Hope Creek before the BPU would be a waste of time and money.

I repeat. What then was the Public Advocate to do? S-975 had offered a slim hope; the sands of time were eliminating even that remote possibility, as Senator Dalton so eloquently put it on August 12. Essentially, three options remained:

1. Await the next PSE&G rate case and challenge Hope Creek then. But the BPU had ordered the company not even to petition for a rate increase before July 1, 1983. Another \$360 to \$400 million would be spent on Hope Creek by then, and it would surely be 80% or more complete by that time -- and these are estimates. And we were not about to suggest that PSE&G file any earlier for a rate increase, or that we not support the BPU's "stay out" order.

2. Petition the BPU to impose a cost containment. This option also would take a long time, if the Board would hear it. I would note that on February 19, 1982, we had moved the BPU to consider a cost containment in the alternative at the same time that Mr. Nardelli moved for a moratorium. And at the end of the process, were we likely to get any stronger, legally enforceable arrangement than we could get through negotiation? Probably not. The experience in New York showed otherwise.

3. This left the effort to negotiate a cost containment while there was still time to bargain. We first raised the idea on February 19 before the BPU. We began pursuing this in earnest, in June, even as we pressed for early passage of S-975, which was not to be.

That the negotiating process was done "by Trenton" with minimal contact with Mr. Nardelli reflects -- I'm sorry to say -- more on our confidence and trust in him than in any conscious intention to deny Rate Counsel a proper role. Managerially it is simply difficult to call on the subordinates of a director who is himself not in favor, and therefore not consulted.

In any event, once PSE&G and Atlantic Electric agreed that the cost containment could not be used in any way to justify a boost in their rate of return -- unless the finished unit comes in at under the target figure; a slim possibility indeed -- then in my view we had achieved the quid pro quo necessary for us to drop the bare threat of litigating again whether Hope Creek should be cancelled. This argument we knew from bitter experience -- four rejections in five months -- could not work before the BPU. Messrs. Makul and Nardelli agreed repeatedly that it could not. Thus, I recommended to Commissioner Rodriguez that we sign the Cost Containment, subject to working out a myriad of details later. Mr. Camacho spent the rest of August and September doing precisely that, right up to the very moment we walked into the BPU hearing room on September 29.

In summary, I am confident, Senators, that if you had been in our shoes you would have done the same thing. I am also confident that, but for Mr. Nardelli's outburst of September 29 -- followed by his blackmailing of Commissioner Rodriguez and then his necessary dismissal -- this cost containment would now be approved and in effect. I remain hopeful that it will soon be in place.

One last point: Senator Stockman, you have said, I believe, "'the glaring unanswered question' -- this is taken from this morning's Newark Star Ledger -- is why Rodriguez and Potter chose to sign the cost containment without consulting 'the people with real expertise' in the Division of Rate Counsel." Allow me, if I could, to answer that question. But first I must correct what I perceive to be two "glaring" misconceptions that that question contains.

Misconception number 1: There is no "real expertise" in the Commissioner's office. I think I can safely say that I have at least some expertise that was rational and sufficient for Mr. Rodriguez to designate me as the "point man" on all Hope Creek matters.

Misconception number 2: We did not consult with Rate Counsel. We did. On specific issues and even on specific drafts of the Cost Containment, I met with, spoke with, and reviewed cost containment materials with Messrs. Camacho and Nardelli. On at least two occasions the three of us sat down to review the words of, and ideas behind, the Cost Containment drafts.

Why didn't we simply leave the entire matter to Mr. Nardelli as acting director of Rate Counsel? Because, simply put, his credibility with the BPU, with PSE&G, and again, I'm sorry to say, with us, had fallen almost to zero. For example, among other things, on February 19, 1982, when trying to explain his unilateral renunciation of a stipulation he had signed 60 days earlier, he replied, "We were trying to suck the company into abandoning Hope Creek II, and we succeeded in doing so." This is also the same man who told a cheering crowd of ratepayers: "If you can organize enough people not to pay their bills, you can shut this company down." I am referring to JCP&L.

In addition, we recognize that this "peculiar area," as you called it, required the close coordination and policy judgement that could only come out of Trenton -- and not be another part of "rate counsel's game," as Mr. Makul put it.

In retrospect, I wish that I had been able to keep the individual members of Rate Counsel better apprised of progress on all Hope Creek matters. But every time I considered it, I was struck again by the difficulty of going through or around Mr. Nardelli -- and what passed across his desk had an unpleasant habit of going public too soon or in the wrong way. Mr. Nardelli, in my view, is not a representative of Rate Counsel or the rest of the Public Advocate. His actions speak for themselves and he must live with the consequences. In my view, overall, the rest of our staff is as professional and competent as any to be found in State government. I look forward to working with them in the months and years ahead.

I would now like to turn to some testimony that I provided to the Committee yesterday, which contains a list of attachments to it which are the full memoranda and documents referred to.

I apologize if I am belaboring this too much, but I believe that was the underlying intention of your letter of October 4th.

Mr. Nardelli has stated that the Public Advocate agreed to the Hope Creek Cost Containment Stipulation because of pressure from the Governor. Central to this charge is his claim that he has been a staunch, consistent and long-time opponent of the Hope Creek I nuclear project. He also has argued that his resolute opposition was consistent with the longstanding policy of Stanley VanNess, predecessor to Joseph Rodriguez as the Public Advocate. He also has told you that he repudiated the Cost Containment Agreement because it departed radically from this prior policy of opposition to Hope Creek I.

The record, however, reveals otherwise. The first time that Mr. Nardelli questioned Hope Creek I -- and, indeed, at the same time called for a cost containment as the alternative -- was in a motion and testimony which he delivered before the Board of Public Utilities on February 19, 1982. As a reading of the transcript of that proceeding demonstrates, the BPU Commissioners were surprised -- I think that is an understatement -- by the Nardelli presentation, apparently because it departed so dramatically from the policy enunciated by him on earlier occasions. BPU Commissioner Hynes responded as follows:

"Mr. Nardelli, you astound me. For such a major issue, you would not have brought that up anywhere in the PSE&G base rate case and now make a statement here before this Board that this Board has been negligent in making . . . that there is no need for Hope Creek I when in effect at no part during the entire base rate case was Hope Creek I ever contested by the Advocate?"

Mr. Nardelli responds: "I admit Hope Creek I wasn't brought up."

The colloquy continued:

Commissioner Hynes: "I understand that nowhere in any of these sheets did I ever see a statement by the Advocate about the need or no need for Hope Creek I, and yet, one week after that base rate decision, you present the statement. . ."

Mr. Nardelli interrupts: "Let me add that I have told you that the tactical reason for not raising it is that we were having a hard enough time getting rid of Hope Creek II and thought if we went for both of them, we might really be dismissed out of hand."

Mr. Nardelli continues: "Let me admit to another reason. We are subject to some of the same problems that the utility has had--" he then cited the difficulties in projecting load forecasts and energy prices. "We looked at these numbers coming in, yes, and at some point, maybe later than it should have occurred even to us,

we said, 'gee, if Hope Creek II is such a bad deal, why are we assuming Hope Creek I should be built?' and we started to look at it. "

At this point, BPU Commissioner Barbour added:

"If there was to be a consideration of the abandonment of Hope Creek II in the main rate case, then Hope Creek I should have been raised earlier. The issue should have been raised before the initial decision came over here from the Administrative Law Judge. . ."

Mr. Nardelli went further and explained why he and the Public Advocate had not opposed Hope Creek I:

"We feel we have to draw you, the Board of Public Utilities, to the decision to approve the abandonment of Hope Creek II, and we didn't think you could face up to the questions of Hope Creek I while you were being so reluctant to face up to Hope Creek II." That is contained in Attachment I.

Commissioner Barbour then asked a critical question, namely whether in the PSE&G base rate case -- which extended over 9 months of 1981, included 51 hearing dates and cost over \$400,000 in Rate Counsel legal fees and expert witnesses -- Rate Counsel had recommended a level of rate relief which "had to do with Hope Creek I being completed." Mr. Nardelli agreed that "yes, because that's the situation as it existed before the Board."

Four days later, Mr. Nardelli was again called to task for what the BPU perceived to be a change in Public Advocate policy -- from acceptance of Hope Creek I to strong opposition. In response to testimony by the PSE&G witness, Mr. Nardelli made it clear that the reason for his newly found concern for Hope Creek I was the change in administration in Trenton. That is, the newly appointed Public Advocate had ordered a new emphasis on the Hope Creek question, reversing a policy of acquiescence and substituting one of intensive questioning.

For example, on February 23, Mr. Nardelli cross-examined Everett Morris of PSE&G in an attempt to show that it was proper to deviate from a stipulation he had signed with the utility two months earlier. That agreement appeared to yield any potential challenge to the "timely completion of the Hope Creek I unit." That is attachment two.

Mr. Nardelli: Mr. Morris, who signed that Joint Position of December 14, 1981?

A Mr. Codey signed it and Mr. Nardelli signed it, and Mr. Nardelli assured me that he had the concurrence of the Public Advocate.

Q And who was the Public Advocate at the time?

A Mr. VanNess, but I would assume that--

Q You have answered my question, Mr. Morris.
Who is the Public Advocate now?

A Mr. Rodriguez.

Q Let me ask you something else--

Then, Commissioner Curran broke in:

COMMISSIONER CURRAN: "Mr. Nardelli, are you indicating by that question that at Mr. Rodriguez' direction, that there is a change in the Public Advocate's position? "

A Yes I am, Commissioner Curran.

That same day, Mr. Nardelli introduced the testimony of the Public Advocate's financial consultant who confirmed what Mr. Nardelli had said to Commissioner Barbour four days before, namely the Public Advocate indeed had taken "no position" whether Hope Creek I should be completed at any point in the prior Public Service rate case - Transcript 473. In short, when he had the opportunity, feasibly, to raise the Hope Creek I question -- during the preceding rate case -- Mr. Nardelli and the Advocate elected to bypass the matter in favor of concentrating on Hope Creek II. The reason for this "tactical" decision, described above, was that the Advocate's attorneys feared that such an argument would be dismissed out of hand. Why, now that Hope Creek I is over fifty percent complete, does Mr. Nardelli believe that the unit can and should be stopped when it was his professional judgment several months earlier that it was pointless to question it -- and at that time the unit was less than 40 percent complete?

Turning now to many statements and memoranda written by Mr. Nardelli over the past year and a half, we see that he has consistently argued for a hands-off approach to Hope Creek I. The evidence, therefore, contradicts his self-characterization as a dedicated crusader against Hope Creek I who was willing to lose his job to continue to fight.

For example, on May 8, 1981 -- prior to the Gubernatorial Primary Election when I was preparing draft position papers for candidate Kean -- Mr. Nardelli sent me his comments on a draft position paper that I was preparing for him on energy and environment. He stated:

"Turning now to the paragraph concerning nuclear power on page 6 of my draft, I think we should be cautious about suggesting that Hope Creek could perhaps be abandoned. In 1980, PSE&G spent \$211 million on the construction of Hope Creek. This year they will spend about \$272 million. In 1982, PSE&G forecasts that it will spend \$329 million. By the time a new State administration could stop Hope Creek, PSE&G will probably have invested a billion dollars. To date, the largest abandonment in the history of the utility industry has been the JCP&L abandonment of Forked River -- about \$412 million." This is still the Nardelli quote -- "Another point is that it is one thing to say that PSE&G does not need the capacity at Hope Creek. It is another thing to say that the State does not need it--"

SENATOR STOCKMAN: Could I stop you right there for a second? Bill, if this will throw you off-- I think you are very knowledgeable in this, and you have struck a cord that I really meant to explore with previous people, and if I could just ask you. There has been some rumor, some suggestion, that the JCP&L Company really is very much in the mix of Hope Creek I, and that the real reason the BPU is very supportive of the completion of Hope Creek I is not necessarily that they believe that Public Service needs that power -- that is the applicant -- but rather that JCP&L needs it.

MR. POTTER: I have read several statements to that effect, Senator. Yes.

SENATOR STOCKMAN: Have you ever been part of the mix of any suggestion of that sort?

MR. POTTER: Well, I have never made that suggestion. No.

SENATOR STOCKMAN: Has it been suggested to you by others?

MR. POTTER: It was, I believe, the credo of the New Jersey Department of Energy, under Commission Jacobson. I recall that in the Energy Master Plan.

SENATOR STOCKMAN: How about into the new administration? Have you been party to any dialogue where that has been asserted as a reason to go forward with Hope Creek I?

MR. POTTER: I have not heard it in the last eight months. I certainly have-- It is a little confusing now because I have some other quotes where that was said prior to '82.

SENATOR STOCKMAN: I specifically wondered whether, to your knowledge, the new Administration, the Kean Administration, had ever asserted that as a reason for wanting to go forward with Hope Creek I?

MR. POTTER: I have never heard that.

SENATOR STOCKMAN: I am sorry for interrupting you.

MR. POTTER: That's all right. (continues statement)

I am continuing with the Nardelli quote.

"JCP&L probably does need additional base load capacity this decade. Hope Creek I is due in service in December of 1986, and Hope Creek II in 1989. JCP&L cannot finance the capital needed to construct base load plants. Hope Creek may be the answer." That is attachment four, for the complete memorandum.

Some months later, Mr. Nardelli prepared a speech for Congressman Florio on utility construction plans. On October 2, 1981, he sent a memorandum to Stanley VanNess which included a copy of the proposed speech. A cover memorandum states,

"On October 15, 1981, the Board of Public Utilities is holding a hearing on the future of the Hope Creek nuclear project. As of now, Congressman Florio is planning to make a statement in person. He has asked me to do a first draft which I mailed to him today -- copy enclosed. With the possible exception of the discussion at the end of the statement about public power, my draft is in full accord with the Department's position. Since I may be given the opportunity to do a subsequent draft, I welcome any comments or suggestions."

The draft which he prepared and which he describes as being "in full accord" with the Public Advocate's policy, focuses entirely on Hope Creek II. Implicit in the statement, moreover, runs a consistent thread of approval and acceptance of the need to complete Hope Creek I -- in here, we are getting to your point, Senator Stockman. Specifically,

"If the BPU does direct PSE&G to complete Hope Creek II so that it can sell electricity to JCP&L, there is no reason why Hope Creek I has to be the Public Service Unit, and Hope Creek II the Jersey Central unit. It would be better for the customers of both utilities if the agreement for the sale of electricity between Public Service and Jersey Central entitled both companies to a percentage of the output of either unit.

The advantages of my proposal are clear. First, the risk of nuclear accidents or outages would be diversified. If one new unit performed significantly worse than the other, the economic consequences of poor nuclear performance would not fall entirely on the customers of one utility. Second, since Hope Creek I is scheduled for completion in 1986 and Hope Creek II in 1989, JCP&L customers would get the benefit of some base load capacity earlier." That is attachment five.

The same draft, Florio's speech, goes on to state that his Hope Creek sharing proposal should not be interpreted as "prejudging the issue of whether Hope Creek

II should be continued to be built as a nuclear plant."

SENATOR STOCKMAN: Bill, let me stop you and ask you this: Suppose I conceded to you for this hearing -- your document is going to be filed as part of this record -- that there is evidence to suggest that Mr. Nardelli was not as fully committed to opposition to Hope Creek I as perhaps some accounts of this hearing, or even his own opinions in testimony would so suggest. Don't you think that the issues we are focusing on really make that question moot? That is the question of whether or not the Public Advocate acted reasonably and in a proper manner in August of 1982, in reaching the agreement. And, the further question of whether there should be independent counsel appointed, arguably, to pursue the other side of that issue.

In other words, we know that Mr. Nardelli wrote a memo on August 9th, prior to the formalization of this agreement, strongly opposing it. Now, even assuming he had flip-flopped in 1981 and part of the cause for the new Public Advocate, Joe Rodriguez, being in a more difficult position to oppose that, isn't that sort of moot with those events in early 1982? I'm just trying to save a little time, but if you want to go through this-- I don't want to stop you because I don't want the inference that we are kangaroo court on this.

MR. POTTER: Senator, I have two comments on that. One, as I went back and read Mr. Nardelli's prepared testimony of October 12, he lays tremendous importance on what he declares to be this sudden switch -- I think his words are "flip-flop" -- on policy and characterizes, I think, perhaps more implicitly than explicitly, that he has been a die-hard advocate of opposing Hope Creek I.

SENATOR STOCKMAN: Let me say that I am not impressed with that contention by Mr. Nardelli, with all due respect to Mr. Nardelli. My point is -- I don't think that is critical. As a matter of fact, I may be part of the problem, because early on in the hearing, I did talk in terms of a persistent, unwaivering, strong public position. I have read the materials you have made available to us, and I am impressed with some of it, to the extent of suggesting that the record wasn't that clear when Joe Rodriguez came in, that the Advocate was opposed to Hope Creek. But frankly, my point is, it seems that the record became crystal-clear in February, March, April, May, and June of 1982 - crystal-clear - that the Advocate was opposed to the completion. It is from that point that one can at least argue, "wasn't there a flip-flop?"

Now, flip-flop is arguably unfair. There may have been a real reason, deliberate, orderly transition change, but the question of change grows out of Joe Rodriguez's position in those months. I must tell you, frankly, Bill, that I suspect that it was your strong feelings -- I want to get into that. I think you probably had a lot to do with the fact that somewhere during that timespan, the position of that office indeed, clearly was, "Hope Creek isn't needed, Hope Creek shouldn't be built." Frankly, maybe to make it even more blunt, I would like to ask you now, in your own opinion: putting aside the practical problem about whether or not it can be stopped, BPU, etc.-- Isn't it your opinion, that even as late as recently that Hope Creek I should not be built?

MR. POTTER: Well--

SENATOR STOCKMAN: I have been told that of all the people in the State, probably, you have been the most articulate and have a strong feeling in that. I respect the depth of your knowledge and experience. That is why I asked you that question, certainly back in August of 1982. Wasn't that your view?

MR. POTTER: Well, I don't want to say this month it was this position and that month it was something else.

SENATOR STOCKMAN: I'll give you the latitude - July, August, or thereabout.

MR. POTTER: I have always argued that Hope Creek I looks like a very bad bargain for New Jersey. I have argued that with anybody who cared to listen.

SENATOR STOCKMAN: You have it in an article - we have it here, Up Hope Creek, right? (laughter) It was a great article. We want to make that part of the record.

MR. POTTER: I don't take credit for the title, but I do for the article. I have always argued that I thought Hope Creek I and Hope Creek II were inadequately reviewed. I was extremely distraught over the decision to grant the permit for it in 1976, or whatever -- by the way, we were there by way of an amicus curae.

I think that was 191 NJ 152, or something like that, is that right?

SENATOR STOCKMAN: It is a fine distinction. You didn't initiate it, Lloyd did. But you came--

MR. POTTER: Well, I got the tear-stained pages back in my office.

SENATOR STOCKMAN: All right.

MR. POTTER: We argued as hard as we could, that somebody ought to look at alternatives to Hope Creek. We tried to do it through the State Coastal Statute. We tried to do it by way of testimony before the Board of Public Utilities. Unfortunately, in February of 1979, we entered into a stipulation that was codified as an order by the Board, in which we simply said -- and it is in this testimony -- there was no controversy on the utilities' load forecasting plans. Of course, those plans explicitly included Hope Creek I and II, as well as four floating nuclear plants and Forked River, and I don't know what else.

I think you are right, Senator. I have been a strong opponent of Hope Creek I, and if there was a forum today, or if there had been a forum six months ago or three months ago, and if I thought there was a reasonable chance of using that forum to stop Hope Creek I, I would be recommending that we be there.

SENATOR STOCKMAN: When did you give up that hope?

MR. POTTER: Let me explain that just a bit. What we were doing--

SENATOR STOCKMAN: Can you tell me when, first, and then explain it as long as you want?

MR. POTTER: I guess I gave up that hope, officially, in my mind, the day that I saw we had a decent cost containment agreement, and, that it did not appear that we would get S-975. Now let me explain that.

SENATOR STOCKMAN: When was that?

MR. POTTER: Probably August 10th. Let me explain that. We were moving on two tracks at the same time. On the one hand, we were pushing for Hope Creek I to be reviewed by somebody - the Board of Public Utilities, the special "blue ribbon" commission. At the same time, we were negotiating to see if we could reach a reasonable cost containment agreement on Hope Creek I.

To my thinking, the cost containment does not guarantee that Hope Creek I will be built; what it does is, it guarantees that the company, the shareholders, and management now have an extra incentive to behave like entrepreneurs in the free market, with respect to this investment. Let me give you an example:--

SENATOR STOCKMAN: Let me stop you. The agreement specifically gave up the Public Advocate's right to deal with that issue.

MR. POTTER: That's correct. But what it did do is impose a marketplace incentive that was not there before. Every cancellation in New Jersey -- and as far as I can tell in my review of the 50 states -- has occurred because the utility gave up on it; not because three public utility commissioners ordered it to be cancelled, it was because the utility realized that it would not be financially successful or that there was no need for it.

In my judgement, and this, to me, is part of the beauty of the cost containment, it imposes shareholder responsibility which was not there before. It therefore becomes rational for utility management to be much more scrupulous in deciding whether to put in that next hundred million dollars in Hope Creek, whether to blast ahead full speed. Mind you, here is a utility which has a stay-out order. It may not come in for rate increase until July, 1983. As utilities go for rate increases, that is a long time. That, by the way, is an unprecedented consumer protection device - a stay-out order.

The utilities facing the Cost Containment, assuming it gets approved, will have to make very tough judgements about whether to proceed with Hope Creek I, defer it, cancel it, sell capacity to someone else, or whatever.

So, I don't think Hope Creek I is out of the woods by any means, Senator.

SENATOR STOCKMAN: But Bill, as late as, for instance, April 30, 1982, you're writing to Gary Stein, Governor's Office, on policy, talking about imposing the hardest possible scrutiny on this project.

MR. POTTER: Yes, sir.

SENATOR STOCKMAN: Complaining bitterly about the history of Public Service's miscalculation of cost. Incidentally, let me interrupt you and ask you this: all of the cost figures that we are tossing around, which are really the fundamental basis of this agreement, are cost estimates, as I understand it, that you take from Public Service, not that you develop through a rigorous, independent expert paid for by the Public Advocate. How can you, as late as April 30th, be talking about Public Service's history of miscalculation of cost, and the demands should lead any disinterested observer to doubt the company's latest claims of need-- How can you, today, say you have an agreement with a \$3.7 billion venture, 50% complete--? That information, essentially, comes from Public Service, doesn't it?

MR. POTTER: As it always has done. In my view, Senator, whether they have spent \$1.3 billion, \$1.8 billion, whether the cancellation cost will come to \$2.5 billion, \$3 billion, or \$2 billion, it is really not relevant, and I will tell you why it is not relevant. We are faced with a plant which clearly has gone beyond the point of no return with respect to the only forum available under law for challenging it. In May of 1981, Mr. Nardelli said a billion dollars will be spent, and therefore, it will be well past the point of no return for challenge. I didn't think we had to have detailed cost estimates before we made this judgement, Senator.

Secondly, to get back to the April 30th letter -- April 7th, or whatever it was -- as early as February 19th, we were talking about our two-track approach to getting that scrutiny of Hope Creek I. The motion that Mr. Nardelli read on that date, he and I worked out on the phone. That says, first, give us a moratorium of, I think, four to six months -- or four months, I think -- on Hope Creek I, and, impose a Cost Containment. And then Mr. Nardelli cited the experience in

New York. So, as early as February 19th, we were talking about the two-track approach. Now, as the plant advanced in construction -- it was about 40% in February, maybe a little less. I was going on the numbers by the utility, yes. Then it was reaching 50%, or more.

The point was not so much "what could we find down there by an exhausting, intensive \$100,000 study," it is, "what is the public perception of how far along that plant is." That perception, as buttressed by the company's figures that we had been using in the previous case, was that they were well down the road over a billion dollars. Whether it was \$1,300,000 or \$1,700,000, I didn't think it was that important. I hope that wasn't too long an answer.

SENATOR STOCKMAN: No, not at all. But Bill, you were not satisfied that the Public Advocate should give up his right to challenge the need for completing Hope Creek I until August 10, 1982. Is that correct?

MR. POTTER: Yes.

SENATOR STOCKMAN: You certainly, therefore--

MR. POTTER: Maybe August 9th.

SENATOR STOCKMAN: August 9th or 10th. You certainly, up to that time, were not urging the Public Advocate to sign any agreement, whether you call it a cost containment agreement or what, but an agreement that specifically indicated that the Public Advocate would not thereafter challenge the need for the completion of Hope Creek I. Is that a fair statement?

MR. POTTER: Yes, that is a fair statement.

SENATOR STOCKMAN: Now, we know from other witnesses -- although, I invite you to elaborate on this -- that essentially, Rate Counsel's office was kept out of this question, right until the bizzare memorandum of August 9th from not only Mr. Nardelli, but from Mr. Camacho and Mr. Makul, pleading--

MR. POTTER: I agree that it was a bizzare memorandum.

SENATOR STOCKMAN: (continuing) -- pleading with the Public Advocate not to sign a stipulation. As a matter of fact, you were-- Fill me in on that. When did you go on vacation, around that time? Because I get all of these rumors. What dates were you on vacation?

MR. POTTER: I think your spy plant went over on July 29th.

SENATOR STOCKMAN: July 29th to when? And you are the "point man", incidentally, at least as Commissioner Coleman tells us. July 29th to when?

MR. POTTER: I think it was the first Sunday in August.

SENATOR STOCKMAN: Does somebody want to scramble and get a calendar? (laughter)

MR. POTTER: It wasn't the 2nd then, the 8th sounds about right.

SENATOR STOCKMAN: Okay, the 9th was a Monday -- to the 8th.

MR. POTTER: I know this, that moments after I walked in the door, I was just taking off my shirt because of the ride down the Jersey Turnpike -- showing off my suntan to my wife -- the phone rang and there was another conference call from the Department of Energy. "We have talked about it. Let's talk about the latest developments," and I sat down there for the next hour and a half looking at more changes and going back and forth. We were on this continuously, from the time I went on vacation until the time I got back.

SENATOR STOCKMAN: Without luck.

MR. POTTER: Without luck, yes.

SENATOR STOCKMAN: Okay. So we know, at least, that there was no communication, no input by you, from July 29th to August 8th.

MR. POTTER: Yes. But, let me address the question that I think you were getting at.

SENATOR STOCKMAN: Well, you are going to get in trouble if you start anticipating what I am getting at, but go ahead. Give it a try.

MR. POTTER: No, I will take your advice. What is your question?
(laughter)

SENATOR STOCKMAN: Okay. Now, you have given us an index of the documentation that the Public Advocate's Office has on the sequence of events leading up to this "monumental agreement," this "landmark agreement," this "near \$4 billion agreement," on behalf of the citizens and ratepayers of the State of New Jersey, right?

MR. POTTER: Well, it's not near \$4 billion; it is \$3.55 billion to \$3.796 billion.

SENATOR STOCKMAN: As a matter of fact, it is a lot more than \$4 billion, isn't it - in this sense? Isn't it true that a lot more than \$4 billion will, over the course of time, be paid by the ratepayers of the State of New Jersey if Hope Creek I is built?

MR. POTTER: I don't know if that is true, Senator.

SENATOR STOCKMAN: Well, if it is built--

MR. POTTER: (interrupting) I mean you have to pay for the fuel.

SENATOR STOCKMAN: If it is built, the public is going to first have imposed on it, the ratepayers, the obligation of that writeoff, the cost, \$3.7, even by the agreement, right? Isn't that true?

MR. POTTER: Sure.

SENATOR STOCKMAN: Once that is in place, once that is on line in January, it is my understanding of basics of this whole area that that becomes part of the rate base. As a matter of fact, it essentially will double the rate base of Public Service, right?

MR. POTTER: That is correct.

SENATOR STOCKMAN: I think we can concur that the likely cost in your electric bill, my electric bill, and everybody sitting in this room that uses it, at that point is going to have to go up appreciably and stay up appreciably. So, we are really talking more than \$4 billion, aren't we, in this deal?

MR. POTTER: Well, if you are talking about looking down the long-term, will there be cost of repairs, will the plant be down, do you have to buy backup power?

SENATOR STOCKMAN: In round figures, it is at least a \$4 billion deal we are kicking around.

MR. POTTER: We did not negotiate a \$4 billion deal; we negotiated that deal. You are saying, if the plant is completable, there would be other expenses. I am sure there will be.

SENATOR STOCKMAN: But you have given us the documentation from your office that fills in the gaps of who did what to lead to that, right?

MR. POTTER: I certainly tried to.

SENATOR STOCKMAN: Are there memos and documents in there concerning meetings that you had with anybody, or that Mr. Rodriguez had with anybody, concerning

this Cost Containment Agreement - this agreement that would give away the right of the Public Advocate to challenge Hope Creek I. Because, let me tell you, Bill, as you know, there is a letter dated July 28, 1982 to a colleague of mine in the Legislature which clearly suggests that the Advocate is still committed to not seeing to the completion of Hope Creek I. That is July 28th; you went away on the 29th.

MR. POTTER: Can I address that question about the, I think you pronounced it Pankok, the Pankok letter? I think it is in part two of the testimony. I think it is safe to say this was Mr. Nardelli's smoking gun. That starts on page nine of part two. I won't read it, but this sort of freshens my memory of it.

A copy of what we had is on the letter to Assemblyman Pankok as a test. It is really a mischaracterization of that letter. In the first place, we state our support of S-975. I will restate that today, or on August 10th, or any other day, until something is done with it. It was his letter and his notion that that was a smoking gun, was premised on a false premise, namely, that support of the Cost Containment in 975 were in irreconcilable conflict. I think I dealt with that.

There is another interesting point to this: That letter was drafted by Al Nardelli. He drafted that letter on July 13th.

SENATOR STOCKMAN: That is because the Public Advocate had great trust and respect in the expertise of Al Nardelli on Hope Creek I, right? Back in July. So much so that he would rely on Mr. Nardelli to respond to a colleague of mine in the Legislature on that subject.

MR. POTTER: Well, he knew he was an excellent letter-writer. Yes, that is true.

SENATOR STOCKMAN: Only letter-- How about content, Bill?

MR. POTTER: Well, the content--

SENATOR STOCKMAN: I assume the Public Advocate didn't want letters going out that were in excellent appearance, but deceptive in content - especially to the legislators.

MR. POTTER: The content came right out of all of our memos, Senator. We could have--

SENATOR STOCKMAN: Came in with consistency.

MR. POTTER: We could have gotten an 18 year old kid out of school to write the letter.

SENATOR STOCKMAN: Let's forget that smoking gun; let's take another smoking gun.

MR. POTTER: But I want to respond to that. There is more to it, you see. If you want to know what we were saying and thinking at that time, as I appended here, on July 21, I sent a letter to President Robert Patrick of the Greater Salem Chamber of Commerce. This letter reflects our evolving response to Hope Creek. It is attachment to part two. I would like to quote two paragraphs from that letter.

SENATOR STOCKMAN: Right. Go ahead.

MR. POTTER: "In the end, after reciting all of the problems with Hope Creek, in lieu of detail. In the end, the problem of Hope Creek I has been complicated by the companies -- this is an understatement -- huge investment to date, over \$1 billion, which makes cancellation even more difficult. Perhaps the only solution at this stage is to impose a stringent Cost Containment System - one that correctly imposes the burden of cost overruns on shareholders - and then let management

decide whether and if so how to press ahead with construction.

As for the future, we must learn never again to be so naive as to trust in energy sources, too cheap to meter. Laws must be enacted and enforced to subject electric companies to the rigors of the marketplace. All in all, whether Hope Creek I is completed or someday abandoned -- like its twin unit II -- may be of less importance in whether the citizens of New Jersey will learn from these misadventures and take charge of their future. I hope they do, and I am sure that you agree with me."

So, we are going to talk about letters--

SENATOR STOCKMAN: So, on the 21st, you were like this, right? On the 21st, perhaps the answer is cost containment, but perhaps it will be abandoned. So, you are timing it by the 21st, you were in the middle.

MR. POTTER: Well, that is not a perfect characterization. At that point, I guess I was starting to surface it -- here I did it in a letter to Mr. Patrick, whom I never met, and he didn't write back. It was starting to surface a little more.

SENATOR STOCKMAN: Okay.

MR. POTTER: But, in my view, you don't negotiate a stipulation out in public, especially where in the case of Public Service and the Public Advocate we have been like a certain tiger and a certain bear for some time. We are the tigers, they are the bears.

SENATOR STOCKMAN: Incidentally, July 11th, around this time, an article in the Star Ledger appeared. You were quoted as follows -- of course, I have been in the business long enough to know that newspapers can be inaccurate and can misquote. But, at least let me throw it out and see what--

"Potter thinks that Hope Creek I is a 'financial disaster' that should be junked before more money is 'wasted' on its completion."

MR. POTTER: Who was the writer of that article?

SENATOR STOCKMAN: Gordon Bishop, I believe. It doesn't say it right here, but I think it was Gordon Bishop.

MR. POTTER: Gordon is a very dear friend of mine and an excellent environmental writer. That is close to my thinking. It doesn't sound like my choice of words.

SENATOR STOCKMAN: Financial disaster? It didn't say any other people have used it with regard to Hope Creek.

MR. POTTER: But certainly, absent some method of containing cost, it will be a financial disaster. It was a hemorrhaging patient.

SENATOR STOCKMAN: Now, given what you are saying, it seems, going into July, and early July, it was a disaster. You were still not satisfied that the battle was over. S-975 was a possibility-- Incidentally, let me ask you this: what about the question of the Governor having established a blue-ribbon commission? Was that ever talked about prior to the first of August? Prior to your going away on vacation?

MR. POTTER: I think I wrote a letter to Gary Stein where I brought that up.

SENATOR STOCKMAN: But, recommending it?

MR. POTTER: I think I wrote that to Gary Stein; it might have been to Cary Edwards, but--

SENATOR STOCKMAN: But that was one viable possibility back then.

MR. POTTER: And that is part of the record that you have.

SENATOR STOCKMAN: Right.

MR. POTTER: I thought it was an interesting possibility, yes.

SENATOR STOCKMAN: And it would be more expeditious than the legislative process.

MR. POTTER: It could be. The thing about the legislative process -- these gentlemen here know that I was saying this -- with this S-975 blue ribbon commission, you had deadlines, you had to add, you had to appoint someone by this date, someone by that date, you meet for this long, and then by George, you get something. But, Senator, if I may point you back to something, Governor Byrne frequently appointed special commissions to review one thing or another. They would meet twice, they would meet once, or they might not meet at all. I was still hopeful that the legislation would come in debate.

SENATOR STOCKMAN: Now, again, I allude to the question of these memos. Are there memos in which there are descriptions, pros and cons, dialogue between you and others over the merits of entering into an agreement of the sort that was signed August 10, 1982?

MR. POTTER: If you let me look at the index, maybe I can find something.

SENATOR STOCKMAN: Because that silence, or that absence, troubles me as much as anything else. It seems to support the contention of not only Mr. Nardelli, but Mr. Makul, and I think essentially, Mr. Camacho, that for all practical purposes, Rate Counsel's office had no part of the mix of this agreement.

MR. POTTER: Well, I won't accept your characterization, either that the absence of something in this index shows that, or, that in fact we did not deal with Rate Counsel's office. I told you that on these two occasions, I met with Mr. Nardelli.

SENATOR STOCKMAN: What were the dates of those meetings?

MR. POTTER: I don't know, but they were probably in June.

SENATOR STOCKMAN: Aren't they memorialized anywhere in the materials that you supplied to us?

MR. POTTER: No. Not at all. When we sat down to talk about something, I would look at the drafts. I have drafts back in my office. They are covered with notes all over them. Those drafts were in lieu of a memorandum saying, "this draft says this, or this draft says that." I used the drafts themselves.

SENATOR STOCKMAN: You went away on July 29, 1982, correct?

MR. POTTER: I think that is the date.

SENATOR STOCKMAN: And you were out of communication, essentially, and justifiably so until August 8, 1982, correct?

MR. POTTER: I was fishing and canoeing, yes.

SENATOR STOCKMAN: At that time, when you left -- I know the years you have put into this issue, this particular issue -- is it fair for me to assume that you went away not expecting that there was going to be any major development with regard to Hope Creek I. Is that a fair assumption?

MR. POTTER: Well, not really. In my view, it is not a good idea to air here, or anyplace, this offer of this or that counteroffer. But, I am going to air something here.

Just before I left on vacation, we dealt with what I thought was the essential quid pro quo in the whole business.

SENATOR STOCKMAN: When you say we, you mean Mr. Rodriguez and yourself?

MR. POTTER: I guess Commissioner Rodriguez was also part of it. I mean mostly with me and Commissioner Coleman, as far as putting something else on the table with Public Service Electric and Gas.

That was this: That if the company would agree that under no circumstances was the cost containment agreement to be used as a mechanism for boosting the rate of return on the theory that the utility has now become a riskier utility. Once they agreed to that--and they had not done so when I left on vacation. I didn't think they would agree to it, because as you can see from, I think, a memo of June 11th, Robert Smith was saying, "If this is signed, it is going to raise our risk, and we will need a higher rate of return." But, once they agreed to that, I felt I had to yield our last rusted, battered saber, and that was that we would fight more on need for the facility. At that point, I felt that we had gotten as much as we reasonably could get.

SENATOR STOCKMAN: Was there any document-- Is there any document in existence anywhere, that captures that situation as I understand you to be articulating; namely, that as you went away on July 29th, you had a proposed agreement that you felt was in the public interest if you could get this response, and that if that happened, it should be executed on and moved forward with?

MR. POTTER: I don't think so. There might be, with respect. If I look at the drafts that I have, there might be something where that is written in the margin. I didn't supply those to you.

SENATOR STOCKMAN: Incidentally, you were, indeed, the "point man" on this agreement, weren't you?

MR. POTTER: Well, I have been called that.

SENATOR STOCKMAN: I would suspect that everything points to that. I mean you had years of involvement in this and a great interest, you have written and so on. You were the fellow who really possessed the greatest expertise on this subject. And, as a matter of fact, you were the spokesman for the Public Advocate in meetings with Commissioner Coleman, Gary Stein and others, all right? There was no agreement between you and the Public Advocate before you left on July 29th, to bring this to a dramatic conclusion. That is, to have a document signed, which incidentally, not me, but others, including Mr. Rodriguez and Mr. Coleman, talk of in terms of landmark decision, a major development, a historic coming together -- \$4 billion deal, or whatever else it was. There was no understanding between you and the Public Advocate that that would happen when you went away, was there?

MR. POTTER: You mean, did I know, when I left, that we had an agreement, signed and sealed?

SENATOR STOCKMAN: I'm looking for a little more than that.

MR. POTTER: Is that your question?

SENATOR STOCKMAN: I'm looking for a little more than that. I know you didn't know. I think the record is clear.

MR. POTTER: Well, the answer to that question is, I did not know if we would have it.

SENATOR STOCKMAN: I'm looking for more than that, Bill. I'm looking for --

MR. POTTER: Did I think it was going to be a landmark thing? Yes, I did.

SENATOR STOCKMAN: Did you think it was going to happen while you were away on vacation?

MR. POTTER: That it would be signed while I was away? No, I did not. I was certain that Commissioner Rodriguez would want to talk to me after I got back.

SENATOR STOCKMAN: Did you think that he would reach the agreement and become bound by it? You don't think he did?

MR. POTTER: No, not at all.

SENATOR STOCKMAN: Were you at Commissioner Coleman's testimony yesterday?

MR. POTTER: Part of it. I left at some point.

SENATOR STOCKMAN: Let me get to that. He not only testified, but he was nice enough to give us a statement. I want to ask you a couple of questions about it. This is from Commissioner Coleman, cabinet member.

The Commissioner says, "On August 4, 1982 [you were off on vacation] in a meeting with the Governor, the Public Advocate and members of the Governor's staff, the Public Advocate recommended that the Cost Containment Agreement be filed - not prepared - that the Cost Containment Agreement be filed with the Board of Utilities. The Governor concurred. As can be seen from the chronology of events I have just outlined, the agreement was not presented to the Governor until after all parties had accepted it."

Now, I ask you, in the face of that testimony to this Committee by Commissioner Coleman, it is a fact, isn't it, that the Public Advocate not only thought about it-- He didn't wait for you to come back. He made the determination and bound the ratepayers of this State to that agreement.

MR. POTTER: Not at all, Senator. I am sure that Commissioner Rodriguez, when he spoke with the Governor on whatever that date was, that they were talking about a cost containment that would hold shareholders' feet to the fire. That is the expression he used.

SENATOR STOCKMAN: You see, I wasn't there, and Commissioner Coleman refused to share with us what the Governor said. Now, I am going to ask your Commissioner that as well, the Public Advocate. He may feel that he has to keep the Governor from that-- That might lead us to think, maybe the next thing to do is ask Governor Kean to come in to this Committee and tell us. But let's see. I am crossing a bridge that we may not have to.

But, you are telling me that your opinion of -- you weren't at that meeting -- that August 4th meeting with the Governor, the Public Advocate, and the Commissioner of Energy, was that it was more of kicking around, or--

MR. POTTER: My understanding was that it was still fluid with respect to whether we would sign a particular cost containment agreement, but that Commissioner Rodriguez was buoyed by the discussions which led him to believe that a cost containment that would effectively hold shareholders' feet to the fire was a good thing.

SENATOR STOCKMAN: What about the propriety of the Public Advocate asking the Governor to approve a filing of an agreement of that sort with the Board of Public Utilities?

MR. POTTER: Well, whether I think that is proper or not? I think that is very proper. I will tell you why. Sometimes the Public Advocate is other than just a public interest law firm that litigates like crazy with everyone. Sometimes we try to achieve our ends through negotiation and compromise and so forth. We do this-- We have five divisions of the Public Advocate, and we do it all the time. Our Division of Mental Health has recently-- Well, actually I'm not supposed to talk about that. It's not final yet. But, they work to negotiate settlements involving other Departments in government. Sometimes the Governor's support is necessary because it might entail an expenditure of funds in the next fiscal year. Under Governor Byrne, Stanley VanNess and I met with Governor's Counsel and members of the Cabinet to try to work out an agreement on S-1179. That was the ill-fated predecessor to S-975. So, it is not sinister or unusual at all.

SENATOR STOCKMAN: Now, we know that Mr. Stein, by a memo earlier on, had indicated that it certainly would be advantageous if the Public Advocate and the Commissioner of Energy concurred in this and acted together. We know that this meeting was held, and according to Commissioner Coleman, this approval was sought - recommended the Cost Containment be filed with the Board. You are telling me that you think that is not inconsistent with the distance that is supposed to exist between the Public Advocate as the representative of the public on issues like this, as opposed to the Commissioner of Energy.

For instance, you will recall, I suspect, that at some point Mr. Nardelli claimed that in an exchange with either you -- I am fuzzy on this -- or Mr. Rodriguez, that he got the reply, "Look, you are interfering with the Administration's energy policy." Do you recall any such statement being made?

MR. POTTER: I think it is pure nonsense.

SENATOR STOCKMAN: All right. Incidentally, though, if I understand the thrust of your testimony here this afternoon, it wouldn't necessarily be nonsense. That is, if the Advocate is seeking the approval of the Governor to file an agreement of this sort, that, it seems to me, is seeking approval to be consistent with the Administration. What would be wrong with the Public Advocate in that setting, saying to somebody below him on his staff, "Look, don't press this opposition, because you are being inconsistent with the Administration's policy."

MR. POTTER: Senator, what I think is important to recognize is that this is a stipulation involving at least two departments of State government and possibly the Board of Public Utilities, if they approve it. The Department of Energy, until very recently, had, I think it is safe to say, a tenuous hold on life.

SENATOR STOCKMAN: Commissioner Coleman suggests -- I don't want to get into this too far -- this is his landmark agreement.

MR. POTTER: Absolutely. I'm delighted that he is taking as much credit for it as he is, and I hope to take credit for my role in it as well.

But, before the Department of Energy, I think, could feasibly, really, put its future on the line, I think it is entirely proper for the DOE to talk with the man who is in charge of that department. We, on the other hand, and we understood this until the very end, either could sign it or didn't have to sign the Cost Containment. Frankly, I don't think that there would be a bonafied cost containment without us there to sign it.

SENATOR STOCKMAN: What about the question of the Public Advocate commissioning outside, independent counsel to serve an independent public interest on this issue.

MR. POTTER: Well, okay. That question has risen a few times. Let me address that. You mean to hire outside counsel at this point to oppose the Cost Containment?

SENATOR STOCKMAN: Well, let's take it in two steps. Let's take back then, as a viable option that which would have protected the Public Advocate, perhaps, from some of the distress and some of the nagging questions that continue, at least in the minds of many people, over this whole situation. First take then, and I will ask you about now.

MR. POTTER: Senator, I don't think there would be any naive questions, but for what Mr. Nardelli did on September 29. So, frankly that we did not anticipate it, I think we might be forgiven a little bit. But to appoint outside counsel at this point, I think would be another kind of bad faith negotiating by the Public Advocate. I think what happened in December with that stipulation could arguably be considered bad faith. For us to sign the stipulation and then hire outside counsel, I think that is rather bad faith.

SENATOR STOCKMAN: What if the Legislature directed you to do that?

MR. POTTER: Well, let me just finish. The most important thing -- perhaps this answers that question -- is, I believe, that this Cost Containment is in the public interest. I believe that Commissioner Rodriguez believes it is in the public interest.

Now, Senator Dalton sent us a letter on -- I don't remember when, asking us to appoint outside counsel - essentially what Nardelli asked on September 29th. We looked at the issues he was raising. It suggested to me that he did not fully comprehend what we were trying to do with the Cost Containment.

SENATOR STOCKMAN: Bill, by then, you really were in a bind. I can appreciate Mr. Rodriguez' reaction to doing that after he had signed the August 10th agreement. I absolutely agree with him. But, the question is whether that should have been done before, and if it wasn't, whether it wouldn't justify the Legislature in concurrence, hopefully, with the Governor in directing that, pursuant to the powers he has. He certainly could turn to Public Service and say, "Hey, look, this isn't my idea, but I'm following orders."

MR. POTTER: That would certainly be a changed circumstance that might entitle them to say that they want to be relieved of the stipulation. So, I think it would endanger whether they would stay into the stipulation or not.

I should also add that if there is outside counsel appointed by the Legislature, anyone, I think it is likely to prolong any consideration of this agreement for a very long time. Mind you, with each day that we negotiated this, we were aware that more money was going into Hope Creek. With every moment of delay in approving the stipulation, we are getting into the same bind as we were with S-975.

SENATOR STOCKMAN: Bill, let me ask you this. When you got back and heard that this agreement had been struck-- As a matter of fact, there was a press release. Are you aware of that, this business of the Advocate blocking, or at least holding up, the Governor's press release for a period of time while he went up to talk to Public Service's main man?

MR. POTTER: When I got back, I heard that they agreed to my latest counter, counter counter offer, not that an agreement had been struck. At some point on August 10th, when Mr. Nardelli, Mr. Camacho, Commissioner Rodriguez and I were examining that memorandum of the preceding day. I was on the phone with Commissioner Coleman, and we were going back and forth trying to see just whether those August 9th concerns really were legitimate criticisms of the Cost Containment.

SENATOR STOCKMAN: Hadn't he already put himself beyond the point of being able to back you up?

MR. POTTER: I certainly don't think so. If he thought that, he didn't reveal it to anybody. But, I don't think he did because we were still talking there that morning, and then we went up to Newark and met with Public Service to see if they and we really had a meeting of the minds.

SENATOR STOCKMAN: So, you are telling me that this agreement may have fallen through. It was still a real touch-and-go, August 10, 1982.

MR. POTTER: It was-- I believe so. Yes.

SENATOR STOCKMAN: And yet, the Governor's Office had already prepared a press release speaking in terms of this Agreement being landmarked and lauding the Public Advocate and the Energy Commission?

MR. POTTER: Well--

SENATOR STOCKMAN: Department of Energy?

MR. POTTER: I can see why they would be eager to jump the gun.

SENATOR STOCKMAN: Do you think, incidentally, that eagerness might have been part of the nicks of the agreement, or are you guys oblivious to what the Governor wanted and his press release?

MR. POTTER: I don't think so. It was not uppermost in my mind as a concern.

SENATOR STOCKMAN: Well, was it sort of knit in your mind?

MR. POTTER: I don't know. I have thought about it since then. At the time we wanted to find out if in fact what the people had written in that memo really would hold up.

SENATOR STOCKMAN: Is this really the way to do business over a nearly \$4 billion landmark, novel, precedent-setting venture? These are tough questions, and Joe will have a chance to hear them too.

MR. POTTER: I think the best way to do business is in some kind of a controlled atmosphere where you are not hearing the millions of dollars tinkling down stream every moment that you delay. It is always rush rush, when you realize that company is expanding its equities at every moment.

SENATOR STOCKMAN: Incidentally, those millions of dollars are still going to tinkle under this Agreement, right? If you get beyond what is going to happen--

MR. POTTER: Well, Senator, it is a different regulatory environment with this. Now, the tinkle, tinkle will not be quite as loud, because they are going to be trying to cap their cost. Mind you, Senator, no utility in the country, if this is approved, will have such penalties to face. The utilities in New York State have a significantly weaker cost containment to deal with, and that took two years to litigate.

SENATOR STOCKMAN: Incidentally, on the terms of precedent, or that kind of thing, are you familiar with another agreement dealing with the Alaskan Natural Gas Transportation System?

MR. POTTER: No, Senator, I am not.

SENATOR STOCKMAN: It goes back a couple of years. It is a cost containment agreement. After this hearing, I would like you to take a look at it. I am told that it -- again, this is an opinion area -- is a very sophisticated and tight cost containment agreement, far tighter and controlling than the one we are talking about.

MR. POTTER: That may be, but it certainly is not an electric utility.

SENATOR STOCKMAN: Let me ask you this: Were you worried about the impact that this sequence of events, this August 10th signing by the Public Advocate, would have on the Office of the Public Advocate?

MR. POTTER: Was I worried about it?

SENATOR STOCKMAN: Yes. For instance, did you sense that it might cause some real distress among Rate Council?

MR. POTTER: I was aware that there was some, shall we say, resentment over the fact that Trenton did this instead of Newark. There has always been a certain division between Trenton and Newark.

SENATOR STOCKMAN: You wrote a bit of a criticism, and I don't fault you for this. It was sort of a chiding of the Rate Counsel's office as to how--

MR. POTTER: (interrupting) May 25th.

SENATOR STOCKMAN: Yes. And you, as a matter of fact, on that occasion sort of said we have to act more as a team; we have to have strategy sessions and give/take memos to memorialize them and work together and be a little more careful about what we do, right?

MR. POTTER: That was dealing with rate cases, by the way, and this was not a rate case. I totally agree that we have to work closely together. I think with Mr. Camacho, now, as Director, we will do that.

SENATOR STOCKMAN: Incidentally, we have gotten a lot of heavy fire, Nardelli-wise. Mr. Makul was part of this mix. Mr. Makul was testifying, I think, candidly, about his distress. He contends that there is a serious morale problem in Rate Counsel and the Public Advocate now. Do you think that is accurate?

MR. POTTER: I don't know. I haven't talked to the members of Rate Counsel over the last several days.

SENATOR STOCKMAN: So, you are not at a position, at least, to deny that?

MR. POTTER: Nor affirm it.

SENATOR STOCKMAN: All right. Now, this extraordinary circumstances or events question, was that debated prior to your going on vacation on the 29th?

MR. POTTER: Debated with-- Did we deal with that question?

SENATOR STOCKMAN: Yes.

MR. POTTER: Oh, yes. Certainly. It rose very early.

SENATOR STOCKMAN: And was there discussion about trying to, in some way, deal in it, or, circumscribe what could be contended to be an extraordinary event?

MR. POTTER: Well, I don't remember where that came up, but certainly someone -- maybe it was Commissioner Coleman -- I think, was concerned about it. I know Commissioner Rodriguez and I talked about it a good bit.

SENATOR STOCKMAN: And was it your feeling that it was better to leave it undefined?

MR. POTTER: Yes.

SENATOR STOCKMAN: Why was that?

MR. POTTER: Well, because of the old law school rule of "expressio unius est exclusio alterius." If you run a list, that which is out of the list is therefore assumed not to have been included for a reason.

SENATOR STOCKMAN: How about if you say right in it, "but, this is not means to be an exclusionness, but rather, a delimitingness.

MR. POTTER: I think everyone wants to get their thing in the list. When you do that, you open it up to what I call "litigating a hypothetical." Will the 20% interest jump be an extraordinary event? Will a 12%, or a 15% percent, or whatever? I did not feel that it was worth the expenditure time. And furthermore, as I researched the laws and the large caseload on stipulations, it is virtually black letter law, that whenever a party to a stipulation believes that there has been "changed circumstances," and they are entitled to petition the court to seek relief because of that change. As I interpret extraordinary events, it will take even more than this quiet, implicit changed circumstance clause. You have to show that something is extraordinary, and that means at the very least, it has to be outside the control of utility management, it has to be unforeseen and reasonably unforeseeable. I am confident that that will be a difficult burden for that company.

SENATOR STOCKMAN: That is your interpretation.

MR. POTTER: Yes, sir.

SENATOR STOCKMAN: But you are not going to be the fellow who is going to be resolving that issue. It is the BPU that is, isn't it?

MR. POTTER: Absolutely. That is one reason I am delighted, that we have this raise it or waive it aspect to it. But mind you, Senator, this whole thing is pending before the BPU right now, and the Board is going to ask briefs on that question, we are going to get a chance to explain it, and the Board, then, will get a chance to rule on it.

SENATOR STOCKMAN: What about Mr. Camacho's interposing objection to Ed Lloyd's trying to explore and further define that. Do you think that objection was well made?

MR. POTTER: Well, my recollection is that Mr. Lloyd got to ask a lot of hypotheticals, and it was only at some point that they object in saying how much further we are going to go. I think it was a good idea to object to that, and it is for the same reason that we didn't want to go into this hypothetical litigation of extraordinary events in the first place. I didn't want us to do it then and I didn't want us to do it on the witness stand on September 29th. For one reason, if Mr. Morris put in everything, then we would have to come back and fight him on that. I didn't want that. We had an agreement, and I felt there was room for interpretation.

SENATOR STOCKMAN: Incidentally, the agreement that you had, you worked on after that, at some length, and refined, didn't you?

MR. POTTER: Yes. Oh, yes. Before we went into this whole business, I read some things by people on methods of negotiation.

SENATOR STOCKMAN: But you had to do that by concurrence. That is, every modification you effected had to be agreed to by Public Service, didn't it?

MR. POTTER: Not necessarily. One method of negotiating difficult issues, especially between a bear and a tiger, like Public Service and us, is to try to get agreement to the basic framework - the basic points. Once you have that and you go public with that, then each side has a stake in curing out the final detail work.

Now, there was a considerable amount of final detail work that we carried out. But, Senator, not until September 29th did we really know that PSE&G and we would fully agree on the "joint position of the parties." We had a consultant sitting there in the room who was reviewing the joint position work right up until September 29th, and he was prepared to go on the witness stand to say, "Here is our interpretation of it," if we thought Mr. Morris - Edward Morris of Public Service - would misinterpret it. We had that card there. We would have gone forward if we had not been able to agree on things. But, we basically did. If you will look at Mr. Madden's testimony -- I think I gave that to you, Steve -- that testimony is almost word-for-word - the joint position, with a couple of issues left out that Commissioner Rodriguez specifically addressed in his testimony.

I think we dotted as many i's and crossed as many t's as it was reasonably possible to do.

SENATOR STOCKMAN: I appreciate your testimony. I don't want to take any longer. I am anxious to ask some questions of the Public Advocate. I can't resist asking one final question, and I will defer to anybody else, there is a little suggestion that may be a smell of a rat in these hearings. It is laid on-- I have to ask you, do you still smell that?

MR. POTTER: Well, I had a bit of a cold, so I haven't been able to smell much of anything to well lately.

SENATOR STOCKMAN: Okay. I have nothing further.

SENATOR CONNORS: Have you completed your testimony?

MR. POTTER: Senator, I think the rest of it I will just enter into the record.

SENATOR CONNORS: I noticed you stopped on page 8, wasn't it?

MR. POTTER: Yes. I don't really want to keep Commissioner Rodriguez off any longer.

SENATOR STOCKMAN: That was my thing. That is part of the public record, and you certainly can share it with the media or put in-- I just thought maybe we could get to the Advocate before this day is over.

MR. POTTER: I am delighted you asked me the questions.

SENATOR CONNORS: I have several questions? Why was Mr. Nardelli fired?

MR. POTTER: Well, he presented Commissioner Rodriguez with a memo on September 29th, which purported to state that he and I were hiding no-show jobs in the payroll. That wasn't so. Commissioner Rodriguez was extremely offended by that, as you or I would be, and he fired him. He perhaps thought those were no-show jobs because of the quirk in which some names were on this personnel list--

SENATOR CONNORS: Do you have a copy of that?

MR. POTTER: I don't know. I may.

SENATOR CONNORS: He accused you and the Commissioner?

MR. POTTER: That's correct.

SENATOR CONNORS: Of hiding no-show jobs on the payroll?

MR. POTTER: Yes, sir.

SENATOR CONNORS: Last couple of questions--

MR. POTTER: Yes. I have it. Do you want to see it? (hands copy to Senator Connors) September 24th - it is titled, "Illegal use of Rate Counsel Funds." I think the last sentence is really the operative one, if I could quote that. "I consider this -- that is these alleged no-show jobs -- to be illegal and immoral, and I urge you to immediately terminate this practice of hiding persons on Rate Counsel's payroll."

SENATOR CONNORS: Let me ask the next logical question. Are there any illegal persons on the payroll--

MR. POTTER: I certainly don't think so, Senator, and we have looked very closely.

SENATOR CONNORS: Okay. Apparently, Mr. Nardelli had worked on the Florio campaign, and in your attachment 5, you have a memo and speech for Florio and an apparent approval of Hope Creek I.

MR. POTTER: Yes, attachment 5. Yes.

SENATOR CONNORS: In a memo of October 2nd, 1981 with regard to Hope Creek, he sent the then Public Advocate Mr. VanNess a memo from Mr. Nardelli concerning this speech. Were you aware of this?

MR. POTTER: When we found it, yes. Was I aware that he was working on the Florio campaign?

SENATOR CONNOR: Yes.

MR. POTTER: Yes, sir, I was.

SENATOR CONNORS: You were aware of that? Not in 1981, were you?

MR. POTTER: Oh, yes.

SENATOR CONNORS: Is it common place for a public servant to write a memo -- I don't want to put it that way, but for lack of a better way to put it -- is it common place for public servants to work in campaigns on the public's time, here, in the State House?

MR. POTTER: I don't know, but I would certainly hope not.

SENATOR CONNORS: Well then-- I don't think I should ask you whether or not any public funds were spent by Mr. Nardelli on Mr. Florio's campaign. Do you know that?

MR. POTTER: I do not know. I do not know of the substance of what he was doing besides writing speeches for him and the position in the papers.

SENATOR CONNORS: That's all the questions I have.

SENATOR STOCKMAN: Bill, I'm sorry, as long as the Public Advocate is here, can I ask you one more question, Bill. It has just been brought to my attention. An article contained some reference -- this was a newspaper article, I think it was the New York Times, August 15. "According to Mr. Potter, the agreement was signed with the 'ambiguous' language still in place, in spite of a last minute emergency meeting of the principals to work out what constituted an 'extraordinary' circumstance." Did you tell the New York Times representative that the "ambiguous" language was there, inspite of a last minute emergency meeting of the principals to work out what constituted emergency circumstances?

MR. POTTER: Who is the New York Times representative?

SENATOR STOCKMAN: Judy Hoops, I believe.

MR. POTTER: Well, I wouldn't count on the accuracy of any articles she has written.

SENATOR STOCKMAN: All right. So, you are telling me that you doubt you said that.

MR. POTTER: I doubt that I called it an emergency session. I remember her calling-- I don't want to go into it.

SENATOR STOCKMAN: All right. It goes on, and that might help. It says, "there will be a codicil, like on a will, that will be attached explaining the language before the Board holds its public hearing on the measure, Mr. Potter said."

MR. POTTER: She got that right.

SENATOR STOCKMAN: All right. Well, really, incidentally, this isn't anything like a codicil, what we are talking about, is it?

MR. POTTER: I think it is somewhat. Yes. It is a further part of our Agreement that interprets the terms, and we believe should be treated with the same dignity as the Agreement.

SENATOR STOCKMAN: But Bill, a codicil to a will is a refinement unilaterally. A will is written by one person, and a codicil to that will changes that one person. When you have an agreement, you have that totally different situation whereby any changes, if they are going to be written changes, have to be by concurrence, by agreement of both parties. So, really, is it fair to analogize the arguably ambiguous language of this Agreement of August 10th with clearing it up by a later codicil?

MR. POTTER: That wasn't my best course in law school, in estate planning, so perhaps I had an improper analogy.

SENATOR STOCKMAN: Okay. Thank you very much. I appreciate it.

Public Advocate, my good friend. Joe Rodriguez, finally. Let me say, publically, that I have known Joe Rodriguez for many years. I have known him in a different context, generally, than as certainly the Public Advocate, or in deed, in his variety of public roles. I have known him as an attorney, a trial lawyer, whom I have tremendous respect for. I said yesterday, and I want to repeat it again, Joe, that in my opinion, your longing for public service, and your commitment to public service, the sincerity of it, I don't question. This it is to be admired. I think people could learn lessons about public service from you in that regard.

I will tell you at the outset that I strongly suspect you made a mistake in this matter, and I want to get into some questions on that, and you have full time to suggest strongly to me that I am mistaken in that. But, I don't want anyone in this room, and I certainly don't want the public to think, that this hearing, these inquiries, in any way are intended to reflect on your integrity as a public official.

Now, having said that, I would like to get into some questions. Did you have a meeting on August 4, 1982 with Tom Kean?

COMMISSIONER JOSEPH RODRIGUEZ: I don't recall the exact date, but I don't dispute that it might have been August 4th.

SENATOR STOCKMAN: At that time, did you recommend to him that the Cost Containment Agreement be filed with the Board of Public Utilities?

MR. RODRIGUEZ: What I thought we had done then was to agree in concept that a containment agreement, if properly arrived at, should be filed. The concept of moving in that direction was what we agreed upon.

SENATOR STOCKMAN: I'm confused.

MR. RODRIGUEZ: I think there has been a lot of confusion, because-- What I think has been trying to take place here is to try to suggest that I, without consultation, moved to make a decision because the Governor wanted it, or the Governor directed it. All I might suggest is, if his letter to a certain editor is made available to you -- which I have a copy of -- he outlines clearly what his participation in it was. At no time did he know the terms of this Containment Agreement until being briefed on it, shortly before it was made public.

SENATOR STOCKMAN: Joe, are you -- we ought to get this clear -- suggesting what is trying to be attempted here, are you telling me-- Are you quarreling with the hearing and with the way it has been conducted? I would like to know that. Maybe you are.

MR. RODRIGUEZ: What I might be quarreling with is the way it was initially shot out of the box. Because what I think happened is--

SENATOR STOCKMAN: You mean Nardelli's statement at the hearing?

MR. RODRIGUEZ: Yes. I think what happened-- To put it in proper context, and why, I guess, a lot of people keep telling me that at no time are they questioning my credibility, I think the way it was started--

SENATOR STOCKMAN: This hearing.

MR. RODRIGUEZ: The hearing, yes. It was started like, I would suggest -- this comes from a personal friend of mine, it's not my own, a cross-eyed javelin thrower who is not hitting the mark but he gets everybody on the edge of their seats.

SENATOR STOCKMAN: Well, as the javelin thrower, Joe, who set this hearing up, I will take full responsibility for it.

MR. RODRIGUEZ: But I didn't suggest--

SENATOR STOCKMAN: Well, I mean, let's not kid ourselves. I am here as chairman, and Senator Connors certainly is playing an important and active role, but I made clear to you that it was on the day that Mr. Nardelli spoke that I talked with your Mr. Potter. As a matter of fact, for the record, I will make clear that Mr. Potter indicated that he tended to concur with me that under the circumstances, probably it was wise to hold the public hearing to get this matter straightened out. Now, all I want to know is, if you think I am a cross-eyed javelin thrower in proceeding these hearings--

MR. RODRIGUEZ: No, I didn't suggest that you were, but I suggested the first witness was--

SENATOR STOCKMAN: All right, Mr. Nardelli.

MR. RODRIGUEZ: And therefore, we got off for several hours of hearing tangents which bore no relationship to truth or fact. So, we want to get back to what really took place.

SENATOR STOCKMAN: Now, I said to you that I was confused with your last answer. Let me try to undo the confusion. I would like to ask you again, if, on August 4th -- the date isn't too important because you are satisfied that if Commissioner Coleman says it was the 4th, that was the date.

MR. RODRIGUEZ: I have no reason to dispute it.

SENATOR STOCKMAN: On August 4th, in a meeting with the Governor, did you recommend to him that the Cost Containment Agreement be filed with the Board of Public Utilities?

MR. RODRIGUEZ: What I recommended was, that if, in fact, we were able to conclude it the way I saw it preceding, that it should be filed. It was a way to try to bring some semblance of order to what I viewed to be a very disturbing situation of Hope Creek I.

SENATOR STOCKMAN: So, that meeting was-- It was like a preliminary-- There was no agreement at that point.

MR. RODRIGUEZ: At that point, what there was, was a conceptual understanding. Again, let me suggest one thing--

SENATOR STOCKMAN: Conceptual-- Wait a minute, let me write that down. Conceptual understanding.

MR. RODRIGUEZ: Let me suggest something else to you where I heard from Mr. Nardelli, I guess -- this came like a shot out of the blue. I am holding a letter addressed to me, where the consultant from Georgetown Consulting Corporation reviewed the concepts that we were talking about. Understand, we wanted to be sure that everybody understood what we were doing. Credibility was very much an issue at that time. The letter is dated September 8. The letter says, "Dear Mr. Rodriguez: Enclosed, please find my draft testimony in regards to the Hope Creek I Incentive Penalty Review Requirement Agreement as requested by Alfred Nardelli and Roger Camacho."

I would therefore suggest that the pursuit, which we had to be sure was right, was certainly taking place with the Georgetown Consulting Group sometime in August, because this doesn't happen over night, you see.

SENATOR STOCKMAN: That was September 8th?

MR. RODRIGUEZ: Yes. But if he is already mailing it to me on September the 8th, I would assume that it doesn't happen over night, and that it certainly wasn't eight days. It's sometime in August--

SENATOR STOCKMAN: But you signed the Agreement on August 10th.

MR. RODRIGUEZ: We signed the Agreement on August 10th, correct, but, we signed it with other understandings as to what we meant. We then wanted to be sure that we memorialized what we were talking about. We didn't want credibility to be a factor in what it was we understood that Agreement to mean.

SENATOR STOCKMAN: Joe, on August 10, 1982, you signed the Agreement. It was an agreement that you, the Governor, and Lenny Coleman talked in terms of being a landmark agreement.

MR. RODRIGUEZ: Sure.

SENATOR STOCKMAN: A historical agreement, a tremendous saving agreement, etc. We know it is close to a \$4 billion deal. It was a hell of a contract, arguably. So, that was done by the 10th, and this press release was prepared, and so on, right? And by that Agreement, you gave up, on behalf of the citizens, the ratepayers of the State, the right to challenge and question and dispute the completion of Hope Creek I. That Agreement, incidentally, didn't contain any statement, and this is a conceptual understanding and details will be worked out and spread on the record hereafter, or a joint statement will be later negotiated, I don't think, did it?

MR. RODRIGUEZ: Well, if in fact it did, what made it all occur? What made the joint statement occur?

SENATOR STOCKMAN: Well, you know, one of the nagging questions-- Let me answer that. One of the nagging questions that some people have is-- It began to be realized that maybe that Agreement wasn't what it should be. After all, you had people in your house, who the day before -- I want to get that -- came to you and said, "Don't sign this. It's not in the public interest. It is going to damage our credibility. It is based on figures that Public Service has given and they have been shown to be irresponsible in terms of the desire to grow and build, etc." So, the answer to your question could well be that after you signed it, even though you knew what was hitting the fan, there had to be some tightening up at home. I'm not saying that's true. I assume you will dispute that. But, from a third-party outsider's point of view, you have to, I hope, appreciate why, at least, people would suspect that. Do you understand what I am saying?

MR. RODRIGUEZ: Listen, I don't question the credibility of your perception. I am just saying it is absolutely not true. In fact, because the fact that you sit down and discuss parameters of an agreement, knowing that you are still in negotiation--

SENATOR STOCKMAN: That's what I don't get, Joe. Why do you say August 10th you were still in negotiation?

MR. RODRIGUEZ: No, wait a minute. After August 10th. You said August 4th, the meeting with the Governor.

SENATOR STOCKMAN: No. I'm back to the 10th, once you signed it.

MR. RODRIGUEZ: Because between August 4th and August 10th, the key element as I understood the negotiation to be going, was that it could not be used for ratemaking purposes. Now, certainly put the light on, and we were ready by August 10th. We were not that ready by August 4th.

SENATOR STOCKMAN: We weren't ready? I only mean to correct you. Incidentally, we weren't ready; Joe Rodriguez was ready, right? Rate Counsel certainly wasn't in it. The point man was off on vacation.

MR. RODRIGUEZ: But the point man wasn't out of complete contact with the office.

SENATOR STOCKMAN: Oh, I'm sorry. You had communications over that span of time with--

MR. RODRIGUEZ: I didn't, but I think if you talk to Commissioner Coleman, I'm sure that he reached him in a public phone booth someplace while he was fishing, or tried to.

SENATOR STOCKMAN: Well, Joe, let's hold that one for a minute, because incidentally, I'm not necessarily quarreling with your right individually to make this decision. That is something you may feel you have the right and may want to defend. But, I want the facts to be clear, because there was a nagging, gnawing suspicion that you, alone, during that span, made this decision--

MR. RODRIGUEZ: That's not true.

SENATOR STOCKMAN: (continuing) --without the benefit of Rate Counsel and without the benefit of Potter.

MR. RODRIGUEZ: That is totally untrue.

SENATOR STOCKMAN: Well, tell us, around that time, in this critical time, because Mr. Potter tells us that around the 5th of August, things still weren't final. As a matter of fact, he came back on the 10th, and some things were finalized and straightened out, and a dialogue occurred with your own staff,

in which supposedly, you were listening. "Tell me, colleagues, where I should go. I'm close, but I'm not there. What do you think? What do you think? And then a decision will be made." The problem I am having with that, Joe, is Lenny Coleman, in his testimony to us, when he says -- I didn't read it all. He not only says that you asked Kean - recommended that the Cost Containment Agreement be filed. This is in his written testimony. He must have deliberated over preparing this. He goes on to say, "As can be seen from the chronology of events I have just outlined, the Agreement was not presented to the Governor until after all parties had accepted it." The Agreement, he is saying, had been accepted prior to August 5th when apparently you went in, according to him, you may take issue -- incidentally, I want to get to that, because Commissioner Coleman would not share with us what was said by the Governor in that session. That even adds to unanswered questions.

Can you tell us what Tom Kean said on August 4th about this issue?

MR. RODRIGUEZ: I would rather-- If you have any question with what the Governor said, to ask the Governor yourself.

SENATOR STOCKMAN: Joe, let me ask you this. You are the Public Advocate, representing the citizens of the State, and you were in a meeting, going to this very important issue of Hope Creek I. In that meeting, people, including Tom Kean, were expressing -- presumably themselves -- were talking about that Agreement. Is it your position, as Public Advocate, that you are not free to share what was said by that individual, who happens to be the Governor, in terms of what was said and what influence it may have had on you, in terms of a decision that you had not yet made that involved almost \$4 billion in a landmark decision?

MR. RODRIGUEZ: It may surprise you to learn that the Governor listened to us. We went there to try to elicit his support for something that we felt was entirely different to what was happening in ratemaking with utilities, that we thought was good for the State and we thought was in the public interest. He listened and he concurred with us. At no time did the Governor give one fact, one suggestion, one requirement, and, what he said was pretty much an aside which pretty much captured the entire atmosphere of what now is viewed to be the sinister hand of the Governor. And, if I may say what it is, it was simply that this sounds good, and maybe the people will realize that I am not in bed with the utilities, which apparently turned out to be not a rather accurate statement from what is now being perceived. That is why it is so unfortunate that the Governor is drawn into this, and he was the least active member in the entire situation.

You talked about my credibility. Gerry, I'm telling you this, and pardon me for not calling you Senator.

SENATOR STOCKMAN: I have been Joeing you, you ought to be able to Gerry me. (laughter)

MR. RODRIGUEZ: If he gave me one direction, one fact to be incorporated into that Agreement, one suggestion beyond what we were saying was so critical at a time when rates were running away, I would be totally lying to you.

SENATOR STOCKMAN: Joe, on August 4th, at a time when you suggest and you contend the dye was not cast on this historic and landmark proposal, close to \$4 billion deal, you went to see the Governor, and he said to you, "This sounds like a pretty good deal, and maybe I'm not in bed with the utilities," or something, and then you left that meeting, and then you had to decide what to do.

Is it your testimony that having come to know that the man who appointed you to the position of Public Advocate told you straight on, that to him it sounded like a good idea, had no influence, played no part, had no bearing on what you did from that moment on?

MR. RODRIGUEZ: Absolutely true - had no bearing. Let me put it this way--

SENATOR STOCKMAN: Subconsciously? (laughter) You can't answer that? You can't answer that, Joe?

MR. RODRIGUEZ: No. Subconsciously. You see, my subconscious works the other way. When I was chairman of the SCI, where I was supposed to be independent, I was attacked for being too independent. Now that I am a Cabinet officer with certain responsibility of conversation, he hasn't directed me to do one thing, controlled me to do one thing, in fact, insists on our independence, because that is what the public interest is, and it was on that condition that I took this employment. Even to the extent if subconsciously, I think and I suggest to you, Senator, that some of my answers to you before the Appropriations Committee would have been tampered. The agreement that I had with the Governor at no time has suggested that I do anything that I don't agree with.

Now, let me say what is the difficult part of proving a negative. When you are working and you have a point man that is working it out, who you have great confidence in, Bill Potter, who has now been dealing with Roger Camacho, when you have consultants that are telling you it is in the public interest--

SENATOR STOCKMAN: Excuse me. He wasn't dealing with Roger Camacho on August 4th.

MR. RODRIGUEZ: Let me finish for a moment. How do you unprove a negative? I can simply tell you this, and then you weigh it for whatever purpose you want. If it was as fixed and concrete as you are trying to suggest it--

SENATOR STOCKMAN: Joe, I don't know why you say that. I am trying to get to the truth.

MR. RODRIGUEZ: So am I. But I am suggesting this: if I had mentally had it fixed as someone is suggesting so, that something happened to take me off that course, if it were that fixed, would the parties involved in that Agreement also have known it was that fixed? I would suggest to you that they would have, or you could not have suggested that it was fixed. Why then, would Public Service later yield the most critical provision in that Agreement? And that was that it could not be utilized for ratemaking purposes.

SENATOR STOCKMAN: Later? You mean after August 4th?

MR. RODRIGUEZ: At the time they conveyed it that I understood that we were now in the position to proceed. And I can't tell you the exact dates.

SENATOR STOCKMAN: But Joe, I don't want to lose this point. Are you suggesting that on August 4th, in this meeting with the Governor, where Commissioner Coleman suggested -- both of you, he and you recommended-- Incidentally, I think you would agree with me that Leonard Coleman's role in this situation is very distinct and separate from yours. That is, he is a cabinet member. He doesn't have this burden of the independent issue - autonomous, and so on. But, are you telling me that at that time, there was no provision that the Agreement did not contain a provision that you would forego the right to challenge the need?

MR. RODRIGUEZ: No, that's not what I am saying.

SENATOR STOCKMAN: Oh, I misunderstood you.

MR. RODRIGUEZ: I'm saying that Public Service has yielded into the Agreement, the right that it not be used for ratemaking purposes.

SENATOR STOCKMAN: All right, I misunderstood you. August 9th, you got the memo from your staff, is that correct? Rate Counsel?

MR. RODRIGUEZ: Yes.

SENATOR STOCKMAN: And your three most experienced Rate attorneys. As a matter of fact, the only attorneys in your operation who had any actual experience in personally handling rate cases as lead counsel -- this is not to detract from Bill Potter who has tremendous credentials of his own, but, I don't Bill - and correct me if I am wrong - has been an active Rate Counsel lawyer before the Board of Public Utilities on this matter, has he?

MR. RODRIGUEZ: Not in this matter. As I understood it, he was with public interest prior to this, but very heavily involved in energy.

SENATOR STOCKMAN: But at least the only attorneys who have dealt with Public Service who have been before the BPU and so on, and have struggled with this Hope Creek issue, all three of them delivered to you a memorandum urging you not to sign this agreement. As a matter of fact, their testimony is -- this is interesting, come to think of it. At that time, they didn't know, did they, that you were about to sign this Agreement? They testified to that. I am really asking you that now.

MR. RODRIGUEZ: Well that's not consistent then with their memorandum.

SENATOR STOCKMAN: Wait a minute. The memorandum was saying that you shouldn't sign a cost containment agreement-- It doesn't say the agreement that you are about to sign tomorrow. Their testimony, I believe-- Mr. Makul's was. I don't think Mr. Camacho-- In fact, I think Mr. Camacho supported this, and Mr. Nardelli, was that they weren't aware that it was a matter of a day or a couple of days from your actually putting your signature on that agreement. As a matter of fact, the prime architect of that memorandum, Mr. Makul, said he rushed over it on the weekend, not because he thought that within a day or two it would have been signed, but it was important and he wanted to get it done. So, your Rate Counsel didn't know that you were on the verge of that. Isn't that a fair statement?

MR. RODRIGUEZ: That could be their perception. I have no problem with that.

SENATOR STOCKMAN: And they delivered this rather strong plea to you not to sign any agreement. Tell me this, as of the 9th, what, if any, pressure was there on you to sign that document the next day? In other words, I know every day a million dollars, give or take, definitely lots of millions of dollars. I know there was basic pressure. But, was there any peculiar pressure whereby you felt that you had to, on the 10th, sign that Agreement?

MR. RODRIGUEZ: None.

SENATOR STOCKMAN: All right. So, the 9th, you get this drastic draft stipulation on Hope Creek from Nardelli, Camacho, and Makul with a copy delivered to Potter pleading with you and pointing out all of the terrible things about this proposed Agreement. Is that correct?

MR. RODRIGUEZ: Yes.

SENATOR STOCKMAN: Now, you are still-- As I understand your testimony, you are telling us that you still were undecided on whether or not to sign it. Is that a fair statement?

MR. RODRIGUEZ: No. You are characterizing. What I understand is, from the nature of the negotiations that Mr. Potter was conducting, that it kept looking good. It kept looking good, and that we were working to the place where we were going to finally arrive at an agreement. It looked that way. And you know when you are negotiating, you kind of get a sense that something is going to happen. When the memorandum came, Bill Potter contacted Roger Camacho to allay the fears of what was there and to explain to him what had occurred. Now, after Roger Camacho spoke with Bill, because if in fact there was a communication gap where they didn't know the full extent of where we were, that perhaps they should be talked to, then Roger was convinced that those fears were now allayed in that memorandum, because they had to be explained. The perception problem maybe, the timing, was wrong, but not in our minds as to where we were on August the 9th.

SENATOR STOCKMAN: Joe, you had a meeting with him, right? On the 9th?

MR. RODRIGUEZ: Yes.

SENATOR STOCKMAN: And it was described as a meeting where you didn't say to them, "Hey fellows, got your memo. I'm sorry, but a deal has been struck. My credibility is behind it." You listened to them, and you were open-minded about it. You were open-minded on whether to take the extraordinary step of placing your signature, as the Public Advocate, to a landmark, \$3.7 plus billion agreement. Is that a fair statement?

MR. RODRIGUEZ: That's true. But, you see, you have to understand, in what we already had and what was going to be floated into the ratepayer, even if certain very technical provisions may not be polished up as well as we would have liked, we at least had accomplished something that no one wanted to listen to us since February when, incidentally, we reactivated Hope Creek I. You have to understand what is in my mind. What is in my mind is, we have now looked back into the record. We are having some confusion. I went up there to ask a very pointed question, and if you call every, single member of Rate Counsel--

SENATOR STOCKMAN: You mean Steve Smith?

MR. RODRIGUEZ: No, no. Rate Counsel.

SENATOR STOCKMAN: When are you talking-- What date?

MR. RODRIGUEZ: Oh, August 9th, and before that, and before that, when we were talking about cost containment. You see, it leaked out into the papers several times, the fact that we were doing it. I asked, on at least two occasions, to everyone up there, "Can we stop this plan?" The unanimous answer from everyone was, "No."

SENATOR STOCKMAN: That must have puzzled you, didn't it?

MR. RODRIGUEZ: What?

SENATOR STOCKMAN: I mean because those same people tended to say to you, "This is a disaster." I mean, Bill Potter, for instance, very articulate and very deeply committed to the proposition that this is a disaster, and yet, they are telling you there is no way we can stop this with the Board of Public Utilities. Didn't it confuse you? My instincts, when I hear that is, "Wait a minute, the Board of Public Utilities is an independent, quasi-judicial agency charged with the responsibility for weighing these things and making a decision presumably in the public interest." What about that?

MR. RODRIGUEZ: Well, it confused me, as a lawyer, and I will share with you why, and what controlled my thinking in that we should move to a cost containment provision that for the first time took some of the responsibility into the shareholder and management to calculate properly. We kind of lose sight that that is very new.

Why? Because, when we moved against Hope Creek I in February, I was with the perception that the battle was still alive. Now, as a lawyer, I look at it, and I see that in 1979 we couldn't challenge the forecasts. I see that through nine months of hearing and some 51 days of hearing - nine months and 51 days - the expenditure of \$400,000 into that case, not a whisper against Hope Creek I. Then I read the stipulation, the need, then I see the upfront loading of the amortization where Public Service asked for \$83 million, and we give them \$93 million for the purpose of making sure that plant is completed.

Now, as a lawyer, it is one thing to tell us now that my strategy was to sucker in Public Service, but, you don't sucker in the Appellate Division when the record is barren of proof, and you have to now challenge the discretion of the Board. You must start all over. That is a lawyer looking at this.

I am saying, with the sausage that we now have, what do we do? What do we do? S-975. Critical for a moratorium. Critical. No. Undoable.

Even now, this advocacy question that is burning the souls of the people in this State, passed the Senate in June - it is now October and it is not even before the Assembly.

So, I am saying, why do we have the public on the edge of their seats? We have them because someone wants to contaminate a legitimate process that took place. Our nails were knocked down three times before the BPU. What is available to us? A brand new lawsuit? We are going to study this thing to life. Usually you study it to death; this is being studied to life. What do we do? The concept of the cost containment. And now we start moving with provisions. I have someone working on it, it sounds like we are moving -- I'm not sure of the dates -- it sounds like we are proceeding, in comes a memo. Are they aware of what we were doing? Explain it. The explanation, Camacho was satisfied, experts are contacted in late August to make sure that the definitions are clear. You see, this is only a framework.

SENATOR STOCKMAN: You're post-agreement, right?

MR. RODRIGUEZ: Oh, post-agreement, but that is a motion. I will tell you right now, as late as the morning of September 29, if the definitions that were now in clouds didn't come out the way we felt they should be, I would not have participated in that motion. But we were not in that atmosphere. Now, we are trying to suggest that atmosphere existed, and it did not.

SENATOR STOCKMAN: Joe, back in August, the Governor is putting out a press release, which apparently, you not only had, but you controlled, in a sense -- my recollection is, your testimony was, you held that press release up, right? For a period of time?

MR. RODRIGUEZ: Yes. But for what reason?

SENATOR STOCKMAN: Because-- My recollection is, you wanted to go up and meet with Smith of Public Service to somehow refine or straighten something out. You tell me.

MR. RODRIGUEZ: Yes, okay, for this reason. Conceptually, we had an agreement. When I say conceptually, it was all paper. It was all paper, but there were a lot of things that were understandings. We had the understandings. We wanted to be sure that those understandings were committed to writing. When someone raised the question of extraordinary circumstances as being a "gaping loophole," what was involved there? What was involved there now was credibility between us -- I am saying me and the participants in that Agreement. At no time did we waive our right to fight them to our death on definitions of extraordinary circumstances. At no time did we yield the fight to see whether or not the costs beyond the cap were reasonable. That everybody suggested this was a kissy-kissy Agreement? Absolutely not. I wanted to say to them, "We understand that their places were still fighting, and that it is not given away under these things," and they agreed. Why did I have to do it? Because when you back down on stipulations, do you know when a lawyer backs down on stipulations what happens to his credibility? Do I have to suggest that you now explain to a court that you suckered somebody in?

They had to hear it from me, because if those battles have to take place, they are going to happen. Let me ask you this: Without the cost containment, reasonable charges beyond what we call the "cap," would they not go into the ratepayer? Extraordinary circumstances, if we don't say, "And you tell us when you think you have it or you waived it," wouldn't they get into the ratepayer?

So, this hemorrhage is going. What we have done is pulled down parts of that, put tourniquets on it to say, "but the reasonable ones beyond, you pay a penalty." That is not a light provision. Extraordinary circumstances, you tell us and we will fight them out. So, this Cost Containment Agreement was something very good, very exciting, you see.

SENATOR STOCKMAN: Joe, you are telling me that this really sort of came into a -- just what you described -- definitive position after August 10th, well after, because you might have backed out of this. You just said a moment ago if the definitions of sorts weren't clarified, if all that extra work that Mr. Camacho and others did through late August and into September didn't come to a proper conclusion, you were in a position to say, "forget it," right?

MR. RODRIGUEZ: No, because we had understood this is what we meant. We were just committing it to writing. You see-- You are trying to suggest that everything was concrete, and then we changed it. We understood and then we purified it. We purified it with words on paper because we understood now what we all had agreed we understood, with extraordinary circumstances. We now understand what we understood, and we didn't want to leave anything to credibility, so we wrote it all out.

SENATOR STOCKMAN: Let's look at that press release, which you were aware of. The press release issued from the Governor's Office on the 11th of August said, "This Agreement represents a major break-through in efforts to bring utility costs under control," Kean said, "it assures the utility's customers that they will not be required to shoulder all or any financial burden due to construction cost overruns." That is very inaccurate, isn't it? Does this Agreement, or did it assure that the ratepayers wouldn't have to pay for any cost overruns?

MR. RODRIGUEZ: Well, you have to now read what the provision says. Even if the overruns are reasonable, the shareholder or the utility will be penalized - even if they are reasonable. But, there may be that piece before you hit to the

penalty provision that would be a piece of an overrun. Yes, okay. Unreasonable and imprudent - absolutely not. That doesn't go into rate base. Extraordinary - only after we fight it out. I suggest this to you: as it stood in concept, before what we all understood the words to mean we put it in writing so that we didn't have a credibility problem, even at that point, that Agreement was more than this State ever had in utilities, and more than it could hope to benefit for the ratepayer in view of the fact the way Hope Creek I was going with no containment at all.

SENATOR STOCKMAN: Were you concerned at the effect that what you did on August 10th would cause some serious problems internally?

MR. RODRIGUEZ: Are you asking me if I thought it would create the explosion that occurred? Absolutely not.

SENATOR STOCKMAN: Did you think there was going to be a real morale problem in Rate Counsel by virtue of the sequence of events of how this Agreement was signed on August 10th?

MR. RODRIGUEZ: I didn't think it should, once it was properly-- Once Roger Camacho was involved, I certainly didn't think it should.

SENATOR STOCKMAN: Incidentally, Mr. Camacho doesn't really come in to the picture until after the 10th, does he, for all practical purposes?

MR. RODRIGUEZ: I don't see-- Let's get right back to that point. You are the trial lawyer, you leave me with the record of \$400,000 expenditure without asking a single question about Hope Creek I, or questioning it. And now I am containing it. Why should I suggest that when you never raised it as an objection, verbally, that you should be upset? If anything, you should be happy I don't come to you and say, "Listen, in view of these statements you have made to the press, why don't you come back and account \$400,000 worth of preparation and not a peep." Where am I wrong?

The transition report - why should my mind suggest that they are going to be upset when they never publicly attacked it? No. I didn't think they were going to be that upset.

SENATOR STOCKMAN: But Joe, you took over, and you then developed-- I know what you are saying. I understand. I think it is a matter of record.

MR. RODRIGUEZ: Okay. As long as we are clear.

SENATOR STOCKMAN: But you took over in February, and then, through a series of memos and public statements-- And what about this Advisory Counsel? Incidentally, do you recall going before them? We have a flyer with an agenda for them, this group who traditionally, I thought, were to be a sounding board, a group of deeply interested citizens who at least give you some sense of feeling of the public interest, the tough issue that you have to grapple with day to day. We all respect that.

The agenda was May 28, and one of you said, "The Future of Hope Creek I: Holding New Jersey Hostage. A brief history of Hope Creek I power plant, why PS says Hope Creek is needed and see why Hope Creek is not needed."

So, you, whenever the history of your predecessor, you came in February, and from then on, through a series of developments, you seemed to come on strong. I have to suspect that Bill Potter was a major influence in your doing that. I don't say that critically, but you came on real strong, publicly, with your advisory committee and through other public utterances with a posture of "Hope Creek is bad. It is -- others say financial disaster," and then, with Rate Counsel

essentially out of the picture-- Incidentally, now, in those critical days, with Potter away, you reached this agreement on the 10th, when on the 9th, you had this memo pleading with you not to?

What I am trying to bring out is, that would seem to me to have made you uncomfortable about the possible reaction of the public to what you were doing, no?

MR. RODRIGUEZ: Not at all. In fact, I guess one of the miscalculations was, that if the public were to know the facts as they truly existed, and what was going through my mind, they should applaud this. Because, when I first came in, you see, and we started to talk about Hope Creek I, I thought I had a viable horse to ride. It all turned out to be (uses foreign expression). Now that we can't ride that horse, we go the next best way. The next best way was S-975. When the moratorium was killed-- Look, I think it would be adverse to the public interest if I looked like the only guy who cares, continues to fight something and throw good money after bad -- I have a fiscal responsibility also. The issue in court was dead. The moratorium was dead. I suggest now, that rather than studying this thing to life, that those who still-- All of the forms are close to us. We have exhausted them - went into the cost containment. That those who have the power to react in government move to do something more dramatic, but investigating this Agreement, you see?

SENATOR STOCKMAN: I'm going to move. I am pretty convinced now, but I like your reaction to this. I am going to move to try to persuade my colleagues in the Legislature and the Governor, to direct that a special counsel be appointed to vigorously take the independent public interest or another public interest that I perceive to stop the completion of Hope Creek I, to direct that you appoint outside counsel. I know how sensitive you are about the question of whether if you did that, it would go to your credibility. I know Senator Dalton communicated with you on that and you responded. I can understand that. Having reached this Agreement, which I know you genuinely feel is in the public interest, I can appreciate why you would not entertain hereafter that suggestion.

But, I am going to suggest to you that from hearing it all and because of these issues that have come up now, and the questions that are produced as a result of this hearing, I, at least, am going to make that effort. Not to embarrass or cause you problems, not to cause anybody else problems, but the fact, it seems to me, undisputed, is, that there has never been a vigorous presentation of opposition to the completion of Hope Creek I, with expertise before a forum charged to independently evaluate that issue. Because, your suggestion -- and I think I read it loud and clear -- is that somebody else had the opportunity to do that and they dropped the ball.

I don't think the public ought to be prohibited from ever having that kind of a vigorous presentation with expertise. It may well fall short. It may fall far short. But, I don't think the public, in the setting we find ourselves today, ought to be denied that opportunity.

MR. RODRIGUEZ: Let me just comment on that this way: I don't want to suggest to you that in saying what I said -- I suggested capable counsel -- dropped the ball. But, what I am saying is -- I'm glad you reiterated the way you did, sort of like summing it up, because look at the difference now in attitude with what was the past, looking at it today as to what we heard at the first

day hearing. That is why I was a little disturbed.

SENATOR STOCKMAN: We have reached-- We have come together. Can I have your support on that bill?

MR. RODRIGUEZ: No. For this reason: I don't suggest they dropped the ball. What I suggest, from looking at all of the things they did, by looking at the transition report, by seeing what they told me on two occasions, that they couldn't stop Hope Creek I was, that their legitimate fight was on Hope Creek II, and they accomplished it. What they tried to do later was to say it was a vigorous attack on Hope Creek I, which it was not, because that was yielded, I think, in the stipulation.

Why I object to the suggestion of appointing outside counsel, and here, I am taking the counsel of many people that we have talked to - Senator Dalton. If S-975 wasn't going to do the job and it was going to be moved back at the time when it could go through the Legislature, what is a new lawyer going to do now without a moratorium? You see? We are going to study it to life. I think a new attack, a new litigation, a new pursuit with the way the money is being poured into that plant, is futile and holding out, again, a false hope to the ratepayers that are certainly under heavy burden with the rates, that it is not going to accomplish, because time is working against it. If Senator Dalton's projection was right, that by June of 1983 it is moved, how quick are you going to get a process to examine? So, I think the necessary ingredient would be some type of stoppage to look at. But just to send somebody to look, I think it would be exhausting our funds in the tight economy, chasing after something that would be attacking Hope Creek I with a wooden sword. I don't see it as an accomplishment. Please accept the way I am saying it.

It is in that light. If someone else wanted to attack it, listen, we couldn't do it, we didn't set the record to do it. God bless them, because we never once were saying that we condoned everything, and Hope Creek I and everything else.

What I am saying is, you have to be a little cautious when they do talk about capacity and they do talk about a lot of things and you don't have your record for the benefit of the taxpayer and the ratepayer, to try to contain that construction, and that is all we did.

SENATOR STOCKMAN: Joe, what about the question of public confidence in all of the players in this drama -- a little overstated -- the public's perception of the Advocate and his role in this, the Board of Public Utilities, Tom Kean, and everyone else? Where does that fit in at this point, if at all?

MR. RODRIGUEZ: You see, what I think is the most unfortunate thing in what happened is, when you look at the truthful chronology now, and you look at the way this was done, believe me, in entire good faith, someone -- again, I suggest to you that if they were participating with a consultant in late August-- I know you are going to say, "Well you already agreed." The knowledge, the dealing with a consultant so that the expert can give us the words that were the words we wanted to be sure-- He was involved then, because the consultant says it, not because I say it. There was no big hostile, critical problem at that time. Why should I perceive the problem?

What I now see is, because of unfortunate circumstances that occurred between myself and Mr. Nardelli, he was more accurate perhaps than I was on that afternoon, because he knew how easy it would be to penetrate 12 years of public

service by firing one bullet from a character assassin's rifle, and he has accomplished it. How can we reestablish the confidence in the Public Advocate? Certainly not because I will go back and say that I did anything that I thought was wrong. Not because I thought there was anything doable that I didn't do other than contain a hemorrhage. You see, I am boggled by what the record was telling me as opposed to the outburst that is not contained in the record.

The public may want to believe that, because they believe everyone in public life is somewhat shakened. And everyplace I have stood with the SCI, with the State Bar-- Take those old speeches. I say, the only thing I want to do is reestablish confidence in government. We arrive at things in good faith. Disagree with the conclusion, but not the good faith. When you hammer at the good faith, people want to believe that, and that is the posture we are in now. How can we prove a negative? We can't. But if you don't believe that 12 years of service, I can't be of any further help. I am telling you, this was arrived at in good faith, no one forced me, there was no coercion, I didn't receive a word from the Governor--

SENATOR STOCKMAN: Joe, how can you say you didn't receive a word from the Governor when on August 4th you met with him, and your colleague Lenny Coleman tells us, in writing, that you recommended that this Cost Containment Agreement be filed with the Board of Public Utilities? He said something to you at that meeting. You told us he said, "Hey that sounds like a great deal."

MR. RODRIGUEZ: That is us to him. I am suggesting that we had no directions from him to us. Not even by innuendo, not even by suggestion. He was hearing the way we were working out a very serious, complicated problem, and agreed with it. We then felt that in order to bring new life to the ratemaking process, what is that new life? Once Hope Creek I is off the table -- which I suggest to you already was -- there will be a tomorrow. The tomorrow is, that you now start doing something very new, very dramatic, and very different, and then saying right up front, "give us your projections. There will be penalties. We want to know." Why is that important? Because, now that you get the detail of their future projections with penalties written in, can they be more severe in a new application? I would suggest they can because it is a new application. You are in a better bargaining position than when you have lost three times. To have that kind of an agreement and look at it, and then say, "Here is S-975. We can now study it in light of the absolute projected facts." You see, that process may not be existing today. That is the process that we felt was a breakthrough, it was new, it was dramatic, because it hadn't existed.

Let's say that on the morning of September 28th, I tore up all of the papers and went home - reasonable cost, rate base; extraordinary circumstances, rate base; CWIP, rate base; AFDC, rate base--

SENATOR STOCKMAN: The BPU reviews all of these in the public interest and only lets happen what should happen, what is reasonable. Don't wipe away the BPU. They are out there, Joe.

MR. RODRIGUEZ: No, I'm not. What's reasonable.

SENATOR STOCKMAN: All right. If it is reasonable, then it should be?

MR. RODRIGUEZ: No. But see, that is what we did. That is the beauty of this agreement. Even if it is reasonable, you are going to pay a penalty.

SENATOR STOCKMAN: The BPU is there.

MR. RODRIGUEZ: Well, but see-- Let's assume that the policy is. If it is reasonable, let it go through. We said even if it is reasonable, you are going to pay 30% if you exceed 10 - even if it is reasonable. You see, that is the beauty. That has never been done.

SENATOR STOCKMAN: No, but if the public gets what is reasonable, Joe, instead of 70% better than reasonable, there can't be too major a quarrel over it. And, they would get what was reasonable with the Board of Public Utilities,, theoretically.

MR. RODRIGUEZ: No. If it is 70% better than reasonable, they don't get a penny of it. If it is not reasonable and not prudent, they don't get it, if it is reasonable to get a penalty.

SENATOR STOCKMAN: Joe, where does JCP&L come in to all of this?

MR. RODRIGUEZ: I don't know. I heard your comments on that. JCP&L, as I understand it, is having problems. The question is, what might be the future of JCP&L? I know that is being debated around. I have not participated in what the judgement should be. Although, incidentally, I was taken on -- if you remember -- for an early statement on the Thornberg proposal, and again, it was, I guess to curry favor with the Governor. I came out three weeks before the Governor even reiterated anything about Three Mile Island, and I thought I was really endorsing a bill from Senator Bradley, who was actually the sponsor of the bill. Again, that was one of those other flashes that came out in that first hearing.

Other than that, and knowing that Rate Counsel is involved, I have not been called upon for a policy decision. They are not completely autonomous. If in fact judgements have to be made in policy set, I think that is where the dollar stops with me.

SENATOR STOCKMAN: Joe, I am going to take the privilege of the chair. Before I turn the meeting over to Senator Connors, if he has some questions, I am going to say something very delicate. My instincts have taught me through life that the best approach is straight forward. I am going to publicly say to you now, as a person who I expect and anticipate to be dealing with in public life hereafter for a long time to come, that from my review of what we have, without the record to reperuse, I find myself satisfied that you made an error of judgement in the way you handled this Agreement. In saying that, I am extra anxious to avoid your misinterpreting what I say. In saying that, I don't suggest that you were out to curry favor with the Governor. I was uncomfortable and unhappy with a witness who would suggest that, and I think he had lost control of himself and I reject that. But, I do say to you publicly, as a result of these hearings, that to me, it is inescapable that on August 4th and thereabout, if you were not completed and resolved in your determination to move forward with this, that to have such a meeting with the Governor and to proceed without the benefit of Rate Counsel in the mix and with indeed Mr. Potter away, and then the circumstances that followed that, I am not satisfied that you weren't unwittingly influenced by factors that should have played no part in the determination. I know your opinion and your strong feeling is the contrary, but I tell you, I can't get away from this transcript and what I have heard and not feel that. It is because of that, I think, that we ought to get independent counsel. I respect your view that it is wasted taxpayers' money, and history will have to

resolve that, but I think, at least, that finding ourselves without ever having that kind of rigorous presentation, it ought to be done now. After all, we are talking-- Let's suppose we are talking about a half million, or maybe a million dollars of money -- I don't want to sound cavalier. The other side of the coin is many, many billions of dollars. Under the circumstances as they have been testified-- I must tell you, Commissioner Coleman was probably as persuasive on this point and more so than Mr. Nardelli, in terms of the sequence of events in where we found ourselves, or where we find ourselves today.

I know I didn't have to say that. Now I could have done that or said it later, but I have so much respect for you as person, I don't want you reading that in the paper. I want you to know that that is my view at this moment.

MR. RODRIGUEZ: Well, let me say, Senator, that I think you are completely wrong. I can't say that you are not free to arrive at whatever conclusions you want. I never took an action that wasn't completely in consultation and in agreement with where I understood we were, which I still contend is in the public interest.

Let me suggest this, so that we don't continue to rattle the public unnecessarily. I think anyone who thinks we are wrong, anyone who thinks that the ratepayers are going to suffer from it, and anyone who thinks it is not in the best of the State who is in a position to do something about it, should do something more aggressive than simply ask it to be studied back to life, which any new counsel would have to do. We did the best we had with the record we have, and I think, as a lawyer, you look at it, and you tell me what an appellate court would do with that record when you now start saying that it also contained this vigorous, long, many year battle against Hope Creek I. It was just not there. We did the best we could.

SENATOR STOCKMAN: I would happily include in this bill that I intend to introduce, a moratorium, a stopping, if I thought I could get it through the Legislature. I want to say very frankly, and I have said this earlier and will repeat it: I don't give the Legislature terribly high marks on the history of this situation. I know I say that at some risk. The Senate moved on it, on 975, whether that's the answer. But, I think this issue is big enough for issues. There are several of them, I think, in the mix of these hearings to justify that. I know what you are saying, but I don't think I can do any more than that.

MR. RODRIGUEZ: Well then, I don't really appreciate the suggestion that my judgements were wrong--

SENATOR STOCKMAN: I didn't think you would, Joe.

MR. RODRIGUEZ: In view of the record, when you tell me that the only body that is still the court of last resort, may still be unwilling, I am kind of wondering who was supposed to be the future scapegoat in the entire matter. I'm saying, let's recall this statement that I am making here today.

We did our best with the record that was in existence; history tells us that nobody is going to stop it, we tried to contain it in the best way we could, exactly what we worked out, and if anybody could suggest it any better, they should have been there when we were the voice in the wilderness. We didn't have that much support back in February, March, April, and it wouldn't take very much to introduce the bill that passed in the Senate in June to the Assembly--

SENATOR STOCKMAN: I was on that bill, and Senator Connors and I both voted for it.

MR. RODRIGUEZ: But it has been since June and it hasn't even been introduced into the Assembly yet. Look at the millions of dollars that are still going by, and we are looking back and saying, "let's send another lawyer to attack Hope Creek I." I kind of think it is putting the emphasis in the wrong place, very frankly.

SENATOR STOCKMAN: Senator Connors?

SENATOR CONNORS: Okay, thank you. Commissioner, for the first time that we have met, it is a shame that we are meeting under these circumstances. It has been a long afternoon for you. I know you were here yesterday waiting to give testimony, and now today, very late in the afternoon, so I will try to be as brief as possible.

I would say this at the outset. There are several disturbing things that I will get into. But, I believe your testimony today. I think you perhaps have taken the proper course of action in light of the circumstances that existed from the testimony that I have heard so far. One of the questions that I ask you Commissioner is, yesterday, Commissioner Coleman testified that Mr. Nardelli had a conversation with you regarding a show that he was going to put on. That disturbed me a great deal, and I have been throughout these hearings asking various questions from time to time about it.

There was apparently, from the testimony, a threat of a blackmail. Do you recall that conversation?

MR. RODRIGUEZ: Unfortunately, I do.

SENATOR CONNORS: Would you repeat it for the Senate Committee?

MR. RODRIGUEZ: Well, I think, Senator, to put it back in some context, we had done a study on Rate Counsel and found that administratively, certain changes had to be made. I guess it was around September the 24th that I called Mr. Nardelli into my office. I told him at that time that we were going to remove him as Director of Rate Counsel, but we were going to allow him to stay on as an attorney, because we had no question with regard to his ability as a lawyer - questions with his record as a lawyer. He accepted it. I think he even had conversation from that point with Roger Camacho, who we were elevating to Director. He tried to reach me on a couple of occasions to get me to reverse that judgement, and I refused to do it. I think the Monday before the 28th, there was a Jewish holiday, and I was unable to-- We were in Newark and he was trying to contact me in Trenton, but he was not at Rate Counsel.

The 28th came, and what happened was, as I was going in to the hearing, he asked me if I would reconsider, and I said no. But then nothing had to happen here, it was simply an administrative change that we were making. He said, "Don't bet on that," and walked in - something to that extent. I turned to Bill Potter and I said, "Something is going to happen; I don't know what." I turned to Lenny Coleman and I said, "Something is going to happen."

We testified and I left. Then I heard what occurred. I went back to Rate Counsel, and I wanted to speak with him to see what he now thought his status was with me. It was at that time that he made suggestions about the way certain lines were handled for budget purposes at Rate Counsel, and whether I was aware of his memorandum of September 28, I think it was. Of course I wasn't. This was September 29th. And if it was in Trenton, I had been in Newark. And, that he had friends and I hadn't heard the end of this, and he left. I got a

hold of Bill Potter and I said, "Have we done anything illegal recently?", and he came in with the memorandum that I have. Yes, this was received in the Trenton office where I am being charged with illegal, immoral, no-show jobs-- Incidentally, in the Division which he directed, in the timeframe before I was even there, and I took this as a personal insult to me, because my first accountability is to the taxpayers of the State and I would not live with anyone next to me who thinks I would fold to such a threat. I fired him.

SENATOR CONNORS: At that time.

MR. RODRIGUEZ: At that time, which was as a result of that memorandum.

SENATOR CONNORS: You have testified, Commissioner, that because of the tremendous amounts of money spent on this Hope Creek I over a period of several years, it was a course for your action and the Cost Containment Agreement to get the best deal under the circumstances to stop this hemorrhage of escalation of the base rate. If that is true, about what time would you have been reasonably assured that abandonment would have been the best action and prudent action to take and have some chance of success?

MR. RODRIGUEZ: You see, that's the point, Senator. After going back through the entire history of the case, I was convinced that the Advocate's office had never really made that attack, and in the memorandum to me, which I was made aware of, the atmosphere of Hope Creek I, that we were beyond that point, certainly in February, perhaps, definitely in June, and then when you couldn't find the forum that it was a lost cause. I would say anywhere from June on, we knew that there had to be an alternative course that had to be aggressively pursued, even though the concept of containment was mentioned in February by Mr. Nardelli, where what he suggested was to penalize them at one point on rate of return.

But, it is an evolving thing, you see. I now sit here, perhaps, being accused of bad judgement. You have to understand that as the Commissioner, relying on people who are very knowledgeable, and receiving information, at what time is this thought being purified? I can't tell you the exact date. Mentally, did we know that we were moving in the right direction? Yes. And we did that. When S-975 didn't put in the moratorium, even with Senator Dalton suggesting that the question may be moot, it was all lost. We had to really move into the cost containment.

SENATOR CONNORS: Well, I am actually speaking just in generalities. In other words, we reached beyond, and maybe not, the 50% mark. It could have very well been 30% of the cost of the Hope I. But, what I was looking for was a point in time. Would it be safe to say that certainly 1981 would have been a better year to operate and look for abandonment of Hope Creek I?

MR. RODRIGUEZ: Most certainly. 1979.

SENATOR CONNORS: 1979 would have been better?

MR. RODRIGUEZ: 1979-1980.

SENATOR CONNORS: 1979 would have been better and 1969 would have been even better than that.

MR. RODRIGUEZ: Well, 1979, when that load forecast was put in by Public Service. You know, the battle, if you were specifically directing it to one could have been more accurate in 1979, 1980, certainly in 1981. But, the point, again, is, that in 1981, December, when you read the stipulation that puts \$93 million upfront on the amortization -- like I say, \$10 million more than what the utility asks for. You are now putting grease on that sliding board. Now

we know that the clock is going pretty fast. So, from December on, you are losing time. Every day was getting worse. S-975 was a potential answer. When that didn't come out right and it was slowed down, the containment was the only possible way to go, and that is just what we did.

SENATOR CONNORS: Well, being in the construction business, not in the field of constructing nuclear plants, but acknowledging one thing, as the site becomes more developed, more people come on into the assembly of such a facility; therefore, the costs escalate very rapidly, very quickly. I can appreciate that, from the drawing board to the completion.

Senator Stockman has talked about the possibility of submitting a bill, in which case, over lunch, we had talked about that, Senator Stockman and I. He had put you to the test and asked you whether or not you would support such a bill out of your office. I can understand your feeling. For you to appoint another public advocate to stand in opposition of what you feel is the best way to go, would certainly be contrary to your thoughts and you could only come up with one answer -- I'm not trying to put words in your mouth, I can appreciate that. On the other side of the coin, and acknowledging that perhaps it would be a waste of money, but then -- I'm not being critical because I now can consider that, as far as I can see in the 10 months I have been in office, it has not been unknown for the Legislature to waste money. Perhaps you might give us an opinion as to whether you would object or not if, we'll say, the Speaker of the House or the President of the Senate were to pass, the Legislature, were to pass a bill asking that separate counsel be appointed by them through your office. Would you have an objection to that? That you would have nothing to do with, other than to overview this project and see if they could stop it? It's kind of a moot question from the standpoint that if they did do it, you wouldn't have anything to say about it, but I would like to get your opinion on it.

MR. RODRIGUEZ: Senator, again, I am suggesting that with everyone who gave any thought to this project back in June or July that confirmed the fact that it couldn't be stopped, and even the Senator's statements before the BPU-- I understand you say it is before Al Nardelli spoke, but that Nardelli speaking doesn't stop the clock, doesn't stop the money from running, doesn't change the opinions of the BPU, and it doesn't change the efforts we made. I don't see how that battle could be waged in any short period of time, so, the plant will be completed--

SENATOR CONNORS: Without a moratorium?

MR. RODRIGUEZ: Sure. That's what I am saying. I would hate to be put in a position where it looks like by acquiescing that I think I did anything wrong, which I don't, you see, in view of the circumstances that we had.

Now, what would be my opinion, if the Legislature wants to do it? I would have hoped that this might have occurred back in June.

SENATOR CONNORS: Well, I would just like to say, Commissioner, that I appreciate your coming here today to discuss all of this with us. At the beginning of this hearing -- for me, I missed the first session -- I had discussed with the Chairman the thought of having the individual people who are going to testify be placed under oath. At least from the areas of government at much lower levels that I came from, this was a common place thing. I couldn't understand it. The Chairman had said that he really didn't feel it was necessary, however, if I

wish to, he would acquiesce to that. He said that he had no reason to believe that anyone would come here and lie. I can now see, as a freshman legislator, that I believe all of the people who came here for the two days that I heard, testified truthfully and to the best of their knowledge. I just want to put that on record. I am pleased to be part of this Committee. It is a very frustrating thing to my people back home, the district I represent, and to the people all over the State who entrust me as part of this Committee in trying to keep the rate down. It is very frustrating to see that barn door has now been shut, to some degree, but the horses are out running full tilt, and perhaps we may better learn the next time around from the experiences that we have seen here today.

MR. RODRIGUEZ: If the barn door was shut, we couldn't open it. That's right.

SENATOR STOCKMAN: Unless you want to add anything, Joe, to the record, I think we have probably thrown as much light on and opened up to at least anybody's view who wants to review the record of the sequence of events what happened and how it happened. Now I think it is for other people to deal with thereafter.

I may say as an aside, I have also kicked this around with Senator Connors. We both talked about this. Do you have an opinion-- I can't resist, if you don't mind telling me now -- about the wisdom of a fixed term for the Public Advocate by law to be set for a fixed period, independent of the Executive Branch?

MR. RODRIGUEZ: I will tell you this, very frankly, I think the effort being made by the minority speaker, I have no problem with the concept of what he is doing, except the whereas has disturbed me a great deal. If that is the reason for it, then I say there is no reason for it, certainly with this Governor. Senator, I am suggesting to you, and it is the last time I can say it, if you didn't believe me before the Appropriations Committee, you have to believe me that nothing happened here either. But, I can see that if there is a perception problem, again.

SENATOR STOCKMAN: Incidentally, Joe, you and I know -- we deal with it -- often it is a perception that can be a problem, and as lawyers and as public officials, often we have to deal with a perception, which, in our heart, we know is untrue. I think that is a good way, perhaps, of dealing with this dilemma I find myself in with you. Maybe it is a perception that we are really struggling over. But, going in, as Coleman at least talks, at a time with the Governor, in that setting, and then on the 10th, and what happened, at least the perception, I hope you can recognize reasonable men could differ on as to whether or not there wasn't some participation or some influence on that. I don't mean to reopen this and keep going with you, but--

MR. RODRIGUEZ: Of course you don't, but I am sitting here telling you that there wasn't any. But I think for perception purposes, if the Advocate were to have a term, I would have no quarrel with that. I would just hope that any time we reach for a constitutional solution we do it for the right reason. I say that the reason being proposed for this one is the wrong reason, although the concept behind what is attempted, I have no quarrel with.

SENATOR STOCKMAN: Well, thank you very much. I appreciate your cooperation and the Committee's cooperation. We have some documents to put in the record, which we will do.

MS. FAHEY: (member of audience) Senator Stockman?

SENATOR STOCKMAN: Yes.

MS. FAHEY: May I just ask one question? Is there not going to be any consumer input, especially the Advisory Committee, or Rate Counsel? I would think it is very important for all consumer input.

SENATOR STOCKMAN: Well, let me-- I respect that request. I think we all recognize that if we want to get into the merits, further, of Hope Creek, that there is strong feelings and strong views in the audience about the fact that Hope Creek should not be built. That is from a fiscal point of view, from an environmental point of view, from a nuclear point of view, and I know there are many people here who would probably like to be heard on it. My problem is, this Committee-- There are limitations to the amount of time and effort that we could put into it. We were focusing on this question, and are, of the circumstances surrounding the Advocate's decision, in view of comments at the BPU, and whether or not the public interest is being protected hereafter.

I am afraid that to allow public interest groups, the variety of them that come in, there would be a tremendous temptation -- I am speaking very frankly -- to get deeply into collateral issues that really this Committee isn't equipped to deal with.

I think what I would like to do is talk to the other members of the Committee about that before formally closing the record, so to speak. I will talk further with Senator Connors and my colleagues about possibly taking other testimony. I can tell you, for sure, that we have had it for today. (laughter)

MS. FAHEY: Senator Stockman?

SENATOR STOCKMAN: Yes.

MS. FAHEY: Just one more thing. That would, however, on my part, surround-- My statement would only be dealing with the Board of Public Utility's role in this matter; secondly, the Governor's role in this matter -- the State of New Jersey -- and third, why Alfred Nardelli hasn't been reinstated pending the outcome of the legislative Committee. I think the fact that we have lost one of the best Public Advocates that this State has had, has been overlooked by this Committee. Personally, I think the man should be reinstated pending the outcome of any Committee that has a right to overrule Mr. Rodriguez.

I don't know whether that is the Governor or what, but I believe there is too much input into Rate Counsel from the Governor, from the BPU, as the active intervener in Newark, and that Al Nardelli, on many occasions, has been deprived to be acting as an effective public advocate, from director handed down to the BPU, which I can substantiate.

SENATOR STOCKMAN: Well, Ms. Fahey, I appreciate and understand, and Senator Connors has indicated to me -- he introduced me to you -- that you have been a long-time advocate on behalf of the public on issues in this area, and that you are knowledgeable and sincere and deeply interested. I have your statement and I am going to make it part of the record. That is your mail-a-gram strongly suggesting this, and you now are on record with the people at this hearing having that feeling. I am not going to respond to you now, but I do suggest to you in general terms, as I have tried to say, I don't see the focus of this Committee, nor do I see the power of this Committee, to be directed towards resolving that question. If Mr. Nardelli was improperly fired, Mr. Nardelli does have avenues

of redress in terms of civil service appeal, legal action, if he could show that it was based on some conspiratory or discriminatory basis - those things. This Committee couldn't reinstate him if it was decided that he was improperly fired, and I really don't think we want to get into that. Those other points you raised are a little bit different. We will take it under consideration and I will talk with Senator Connors.

SENATOR CONNORS: Mr. Chairman, I would suggest that this Committee's record be held open for 30 days, and that any further testimony at this point in time be given in writing and be incorporated as part of the record.

SENATOR STOCKMAN: That is a good suggestion. I haven't thought of that. I would not want to preclude your submitting information in the form of written material. I haven't thought-- It's a good suggestion. Yes, sir? (speaking to member of audience)

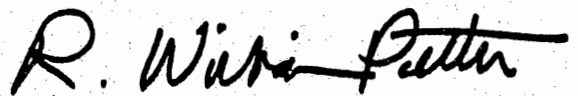
MEMBER OF AUDIENCE: Senator, Senator, I would like to point out a discrepancy in Mr. Rodriguez's testimony. He didn't tell you that all of the people in defense of his--

SENATOR STOCKMAN: With all due respect, sir, I don't think this is the time or place to do that. If you want to submit something in writing to this Committee, along those lines, we will -- based on what we have decided -- accept it. If you want to publicly make that clear through a letter to the editor, through conversations with the media, or others-- I don't want-- Particularly since Joe Rodriguez has left, I think it would unfair for us to start getting into dialogue as to whether his statements were inaccurate. So, I'm sorry I won't entertain. I would like to conclude the hearing at this point. Thank you very much.

(Hearing Concluded)

Testimony of the
Assistant Commissioner of the Department of
the Public Advocate
before the Senate Oversight Committee
October 26, 1982

Assistant Public Advocate

A handwritten signature in black ink, reading "R. William Potter". The signature is written in a cursive style with a horizontal line extending from the end of the name.

R. William Potter

Date: October 26, 1982

PART I

TESTIMONY BEFORE THE SENATE
OVERSIGHT COMMITTEE
REGARDING THE
HOPE CREEK INQUIRY

Mr. Nardelli has stated that the Public Advocate agreed to the Hope Creek Cost Containment Stipulation because of pressure from the Governor. Central to this charge is his claim that he has been a staunch, consistent and long-time opponent of the Hope Creek I nuclear project. He also has argued that his resolute opposition was consistent with the longstanding policy of Stanley Van Ness, predecessor to Joseph Rodriguez as the Public Advocate. He also has told you that he repudiated the Cost Containment Agreement because it departed radically from this prior policy of opposition to completion of Hope Creek I.

The record, however, reveals otherwise. The first time that Mr. Nardelli questioned Hope Creek -- and, indeed, at the same time called for a cost containment as the alternative -- was in a motion and testimony which he delivered before the Board of Public Utilities on February 19, 1982, one week after Joseph Rodriguez became the Public Advocate. As a reading of the transcript of that proceeding demonstrates, the BPU Commissioners were surprised by the Nardelli presentation, apparently because it departed so dramatically from the policy enunciated by him on earlier occasions. BPU Commissioner Hynes responded as follows:

HYNES:

"Mr. Nardelli, you astound me. For such a major issue, you would not have brought that up anywhere in the [PSE&G] base rate case and now make a statement here before this Board that this Board has been negligent in making . . . that there is no need for Hope Creek I when in effect at no part during the entire base rate case was [Hope Creek I] ever contested [by the Advocate]?"

Mr. Nardelli: "I admit Hope Creek I wasn't brought up." (emphasis added)

The colloquy continued:

HYNES: I understand that . . . nowhere in any of these sheets [briefs, etc.] did I ever see a statement [by the Advocate] about the need or no need for Hope Creek I and yet one week after that base rate decision you present the statement . . .

NARDELLI: Let me add that I have told you that the tactical reason [for not raising it] is that we were having a hard enough time [getting] rid of Hope Creek II and thought if we went for both of them, we might really be dismissed out of hand.

NARDELLI: Let me admit to another reason. We are subject to some of the same problems

that the utility has had . . . [He then cited the difficulties in projecting load forecasts and energy prices.] . . . [W]e looked at these numbers coming in, yes, [and[at some point maybe later than it should have occurred even to us, we said, 'gee, if Hope Creek II is such a bad deal, why are we assuming Hope Creek I should then be built?' and we started to look at it.

At this point, BPU Commissioner Barbour added:

"If there was to be a consideration of the abandonment of Hope Creek II in the main rate case, then . . . [Hope Creek I] should have been raised [earlier] . . . The issue should have been raised before the initial decision came over here from the Administrative Law Judge . . . "

Mr. Nardelli went further and explained why he and the Advocate had not opposed Hope Creek I:

"We feel we have to draw you [the Board] to the decision to approve the abandonment of Hope Creek II and we didn't think you could face up to the questions of Hope Creek I while you were being so reluctant [to face up to Hope Creek II]." (See attachment I)

Commissioner Barbour then asked a critical question, namely whether in the PSE&G base rate case -- which extended over 9 months of 1981, included 51 hearing dates and cost over \$400,000

in Rate Counsel legal fees and expert witnesses -- Rate Counsel had recommended a level of rate relief which "had to do with Hope Creek I being completed". Mr. Nardelli agreed that "yes, because that's the situation as it exist[ed] before the Board."

Four days later, Mr. Nardelli was again called to task for what the BPU perceived to be a change in Public Advocate policy -- from acceptance of Hope Creek I to strong opposition. In response to testimony by the PSE&G witness, Mr. Nardelli made it clear that the reason for his newly found concern for Hope Creek I was the change in administration in Trenton. That is, the newly appointed Public Advocate had ordered a new emphasis on the Hope Creek question, reversing a policy of acquiescence and substituting one of intensive questioning.

For example, on February 23 Mr. Nardelli cross-examined Everett Morris of PSE&G in an attempt to show that it was proper to deviate from a stipulation he had signed with the utility two months earlier (December 14, 1981). That agreement appeared to yield any potential challenge to the "timely completion of the Hope Creek I unit." (This stipulation is discussed further at p. 9 , infra). (See Attachment 2)

NARDELLI: Mr. Morris, who signed that Joint Position [of December 14, 1981]?

A Mr. Codey signed it and Mr. Nardelli signed it, and Mr. Nardelli assured me that he had the concurrence of the Public Advocate.

Q And who was the Public Advocate at the time?

A Mr. Van Ness, but I would assume that --

Q You have answered my question, Mr. Morris. Who is the Public Advocate now?

A Mr. Rodriguez.

Q Let me ask you something else --

COMMISSIONER CURRAN: Mr. Nardelli, are you indicating by that question that at Mr. Rodriguez' direction, that there is a change in the Public Advocate's position?

A Yes I am Commissioner Curran . . . (p. Tr. 451-453) (See attachment 3)

That same day Mr. Nardelli introduced the testimony of the Public Advocate's financial consultant who confirmed what Mr. Nardelli had said to Commissioner Barbour four days before, namely the Public Advocate indeed had taken "no position" whether Hope Creek I should be completed at any point in the Public Service rate case. (Tr. 473) In short, when he had the opportunity feasibly to raise the Hope Creek I question -- during the preceding rate case -- Mr. Nardelli and the Advocate elected to bypass the matter in favor of concentrating on Hope Creek II. The reason for this "tactical" decision, described above, was that the Advocate's attorneys feared that such an argument would be dismissed out of hand. Why, now that

Hope Creek I is over fifty per cent complete, does Mr. Nardelli believe that the unit can and should be stopped when it was his professional judgment several months earlier that it was pointless to question it -- and at that time the unit was less than 40 per cent complete?

Turning now to many statements and memoranda written by Mr. Nardelli over the past year and a half, we see that he has consistently argued for a hands-off approach to Hope Creek I. The evidence, therefore, contradicts his self-characterization as a dedicated crusader against Hope Creek I who was willing to lose his job to continue the fight.

For example, On May 8, 1981,^{*} Mr. Nardelli sent me his comments on a draft position paper that I was preparing for Tom Kean on energy and environment. He stated:

"Turning now to the paragraph concerning nuclear power on page 6 [of my draft], I think we should be cautious about suggesting that Hope Creek could perhaps be abandoned. In 1980, PSE&G spent \$211 million on the construction of Hope Creek. This year they will spend about \$272 million. In 1982, PSE&G forecasts that it will spend \$329 million. By the time a new State administration could stop Hope Creek, PSE&G will probably have invested a billion dollars. To date, the largest abandonment in the history of the utility industry has been the JCP&L abandonment of Forked River (about \$412 million). Another point is that it is one thing to say that PSE&G does not need the capacity at Hope Creek. It is another thing to say that the State does not need it. JCP&L probably does need additional base load capacity this decade. Hope Creek I

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^{*}Prior to the Gubernatorial Primary Election when I was preparing position papers for Tom Kean.

is due in service in December, 1986 and Hope Creek II in 1989. JCP&L cannot finance the capital needed to construct base load plants. Hope Creek may be the answer." (See attachment 4).

Some months later, Mr. Nardelli prepared a speech for Congressman Florio on utility construction plans. On October 2, 1981, he sent a memorandum to Stanley Van Ness which included a copy of the proposed speech. A cover memorandum states,

"On October 15, 1981, the Board of Public Utilities is holding a hearing on the future of the Hope Creek nuclear project. As of now, Congressman Florio is planning to make a statement in person. He has asked me to do a first draft which I mailed to him today (copy enclosed). With the possible exception of the discussion at the end of the statement about public power, my draft is in full accord with the Department's position. Since I may be given the opportunity to do a subsequent draft, I welcome any comments or suggestions.

The draft which he prepared and which he describes as being "in full accord" with the Public Advocate's policy, focuses entirely on Hope Creek II. Implicit in the statement, moreover, runs a consistent thread of approval and acceptance of the need to complete Hope Creek I. Specifically,

"If the BPU does direct PSE&G to complete Hope Creek II so that it can sell electricity to JCP&L, there is no reason why Hope Creek I has to be the PSE&G unit and Hope Creek II the JCP&L unit. It would be better for the customers of both utilities if the agreement for the sale of electricity between PSE&G and JCP&L entitled both companies to a percentage of the output of either unit.

"The advantages of my proposal are clear. First, the risk of nuclear accidents or outages would be diversified. If one new

unit performed significantly worse than the other, the economic consequences of poor nuclear performance would not fall entirely on the customers of one utility. Second, since Hope Creek I is scheduled for completion in 1986 and Hope Creek II in 1989, JCP&L customers would get the benefit of some base load capacity earlier."
(see Attachment 5)

The same draft Florio speech goes on to state that his Hope Creek sharing proposal should not be interpreted as "prejudging the issue of whether Hope Creek II should be continued to be built as a nuclear plant." There follows a discussion of former Governor Byrne's request to the BPU that it examine whether Hope Creek II should be converted to a coal plant. Mr. Florio is then urged to discuss whether conservation might also substitute for Hope Creek II. At no point in the nine page speech is any mention made of the possibility that Hope Creek I might be cancelled.

That support for, or at least acceptance of, the inevitability of Hope Creek I was official Public Advocate policy before the arrival of Commissioner Rodriguez is further supported by the transition policy paper presented by Mr. Van Ness to the incoming Kean administration. This report discusses the "need for an early decision on the Hope Creek II nuclear plant." As for Hope Creek I, the codified policy of the Public Advocate in December, 1981 was as follows:

"There is no objection to the need for the Hope Creek I plant which is due to become operational in late 1986."

This statement is buttressed by the perceived connection between completion of Hope Creek I and the capacity deficiencies of JCP&L:

"Tied in with the Hope Creek plans is the vital question of how energy needs of Jersey Central Power and Light customers will be met in the next decade in view of the company's financial plight and status of the Three Mile Island nuclear facilities. An arrangement for the purchase of Hope Creek power might provide some of the solution." (See attachment 6).

These memoranda, speeches and reports provide a back-drop to the decision of the Public Advocate in December, 1981 to sign a stipulation with PSE&G which the BPU clearly interpreted as a statement of support or at least acquiescence in the inevitability of completing Hope Creek I. This is the stipulation of December 14, 1981 signed by Mr. Nardelli on behalf of the Public Advocate and filed with the BPU the next day. This stipulation states in relevant part that the BPU should approve the cancellation of Hope Creek II in part because otherwise it will be too difficult to finance construction of the Hope Creek I.

"The undersigned parties agree that raising these capital requirements [needed for Hope Creek II] would be a financial burden on the ratepayer and the company. 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 the need to construct the facility up to this time." (See attachment 2).

The parties, PSE&G and the Public Advocate, further presented alternative amortization plans to the BPU (i.e., how to spread the costs of abandoning Hope Creek II). In the PSE&G plan, the Company would recoup \$83,765,000 in the first four years. Under the Public Advocate plan, the utility would recoup \$93,073,000 during the same four year period. Thus, it is clear that the Advocate recommended substantial "front-loading" of the costs for the purpose of helping finance Hope Creek Unit I at a lesser level of rate increases. It is, therefore, difficult indeed to avoid the impression that in this December 14 stipulation the Public Advocate conceded Hope Creek I.

The December 14 stipulation is important not because it was improper for the Public Advocate to have made those concession in return for an agreement to cancel Hope Creek II. Clearly, there was a rational basis for the expressed view that it was important to gain a quick cancellation of Hope Creek II before more millions were wasted on that project. Rather, the point is that the Public Advocate then and now must make pragmatic decisions in light of all the facts currently known. Whether those decisions prove to have been the correct ones is always open to debate. Obviously, the Public Advocate in December, 1981 had a policy of at least tacit approval of the need to complete Hope Creek I. Mr. Nardelli's memoranda, speeches and his signing of the December 14 stipulation attest to this fact. What is unfortunate is that he now attacks the Cost Containment Stipulation

in part by arguing that it marks a radical departure in Public Advocate policy. Clearly, this is not the case.

Other instances where Mr. Nardelli counselled that the Public Advocate should not oppose the completion of Hope Creek include the following:

1. On February 28, 1979 the BPU entered an order closing one phase of an investigation of electric utilities. The order codified an agreement between Mr. Nardelli and the four electric utilities. It states that "the parties to the proceeding have agreed that no controversy currently exists regarding the electric utilities current forecasts and forecast methodologies..." At the time, PSE&G was forecasting the need to complete both Hope Creek 1 and Hope Creek 2. The order also states:

"...the Public Advocate agrees that the most recent long term energy consumption and peak demand projections of each individual electric utility appear to be reasonable...[and] that the electric utilities in New Jersey are currently conducting their reliability planning appropriately and at this time there is no criticism of the manner in which this reliability planning is done." (See attachment 7)

The reliability planning referred to expressly provided for construction of Hope Creek 1 and 2. The order concludes that all challenges to specific power plants would be confined to "the rate proceedings of each company." The Public Advocate did not use the opportunity provided by this order to challenge Hope Creek 1 in the next PSE&G rate case, or at any other point during the years 1979 to 1981 when Hope Creek 1 was still at an early stage of construction.

2. On September 24, 1981, the Public Advocate filed comments on the Department of Energy's draft State Energy Master

Plan. Those comments incorporate with apparent approval a quote from Merrill-Lynch that, "Over the long term, we believe the Unit 1 of Hope Creek will be completed with some slippage in schedule. We are not optimistic [about] Hope Creek 2."*

3. An October 15, 1981 Public Advocate statement before the BPU regarding utility construction plans, also prepared and presented by Mr. Nardelli, shows, again, that the Advocate had no serious objection to Hope Creek 1. The statement repeats the same Merrill-Lynch comment, and adds the following observation:

"The decision to abandon a nuclear facility under construction depends upon the specific circumstances and economics of the particular plant under review. Everyone agrees that the percentage of completion of a facility is a major factor. That is why this proceeding is so important. The longer the period of inaction and indecision, the more dominant the factors favoring completion become. Silence, delay and inaction is tantamount to a decision to complete construction . . ."

If Mr. Nardelli's statement is applied to Hope Creek I today, doubtlessly the conclusion would be that the opportunity for challenge has long since passed. (See Attachment 8)

4. On December 14, 1981, Mr. Nardelli agreed to a plan to cancel Hope Creek II and charge the costs of construction to date, about \$300 million, to ratepayers over a 12 to 15 year period. The stipulation provided:

*See Attachment 9

"The undersigned parties agree that raising the capital requirements [necessary to finish Hope Creek II] would be a financial burden on the ratepayer and the Company. Such an added financial burden would also further jeopardize the timely 1986 commercial date of Hope Creek I, which is 40% complete and is required for capacity and energy savings. The undersigned parties agree that no controversy exists regarding Hope Creek I's two-unit design and the need to construct the facility up to this time." (Emphasis added)

5. On February 19, 1982, Mr. Nardelli filed a motion with the Board to reexamine Hope Creek I, hold a needs assessment hearing on whether the facility should be completed, and impose a moratorium on construction until it is completed. As discussed earlier, he attributed this new policy to the new Public Advocate, Joseph Rodriguez. The motion further recommended a cost-containment package for Hope Creek I if the Board were to decline the motion for a stay, as it did.

"If the BPU ultimately decides to let PSE&G complete Hope Creek I, it should develop a system of incentives and penalties that would require the shareholders of PSE&G to share the risk of cost overruns . . . The BPU should set a reasonable

target figure for the total cost of Hope Creek I. If PSE&G completes the plan for less than that figure, it would be allowed an additional 1% on its rate of return on equity. If Hope Creek I costs more than the target set, PSE&G would be penalized 1% on its return on equity. A similar plan is being implemented by the New York State Public Service Commission for the . . . Nine Mile Point 2 [facility]." (Emphasis added)

In short, as early as February, the Public Advocate publicly favored a cost containment, incentive-penalty clause should the Board of Public Utilities continue to issue rulings fostering the completion of Hope Creek I. The record further reveals that the Board has subsequently responded by denying the motion and reaffirming its support of Hope Creek I in at least three actions. (In April, for example, the Board explicitly directed Public Service to "expeditiously complete" Hope Creek I.) Thus, active pursuit by the Public Advocate of the cost-containment strategy appeared prudent and urgent.

6. On April 2, 1982, Mr. Nardelli wrote a memorandum to Commissioner Rodriguez discussing the recent BPU order approving the Hope Creek II cancellation. He states: "Not only does the BPU commit itself to Hope Creek I, but it practically invites PSE&G to seek additional rate relief ...in order to complete the plant by 1986....There is little doubt that in order to complete Hope Creek I by 1986 PSE&G will have to file for a substantial increase in base rates before July 1, 1983." (The Board had ordered the company not to seek higher rates again at least until that date.)

(The same memo also contradicts the testimony he gave before the BPU in February. For example, he quotes from the BPU's statement that the Public Advocate had based its revenue projections on the assumption "that Hope Creek I was needed and should be built." This is not true." But cf. the February 19, 1982 hearing in his response to a question from Commissioner Barbour on this specific point.) (See Attachment 9)

7. On April 22, 1982, Mr. Nardelli in a short note states his support for a cost containment plan for Hope Creek I:

"As you can see from the attached material, on April 16, 1982 the New York Public Service Commission issued an incentive rate of return plan for Nine Mile Point 2. Have someone obtain that PSC order. We probably should be proposing something for New Jersey." (emphasis added) (See Attachment 10)

8. On August 20, 1982, Mr. Nardelli co-authored a lengthy memorandum on whether the Public Advocate should appeal the BPU's decision to grant PSE&G \$390 million in higher revenues. He emphatically counselled against it. Specifically, he argued that it was pointless to seek a reversal of the BPU's decision that Hope Creek I should be completed:

"Irrespective of how much evidence we could place before the Board on alternatives to Hope Creek I, it would come down to a discretionary determination by the Board. The Board will decide to complete the construction because it believes that even if PSE&G has adequate reserve capacity, Hope Creek I can help satisfy the statewide energy needs, given the JCP&L situation. The Board will not direct the abandonment of a more than half completed generating unit for PSE&G when it perceives that JCP&L is in desperate straits with regard to generating capacity. We simply cannot win this discretionary issue at the Board. The fact is that if we wished to pursue the need for Hope Creek I, we should never have signed the stipulation . . .

"[W]e cannot prevail [before the BPU] on the substantive issue of whether Hope Creek I will be completed . . ." (See Attachment 11 at p. 8)

Note that much of the above is almost identical to Mr. Nardelli's memorandum of May 8, 1981 (Attachment 4). This shows that for almost a year-and-a-half -- up until his testimony before this Committee -- he has consistently recommended leaving Hope Creek I alone.

SUMMARY

The purpose of this summary is not to show that Mr. Nardelli was wrong in counselling the Public Advocate to concentrate resources on Hope Creek II -- although it is now clear that it meant foregoing the last real chance effectively to challenge Hope Creek I (i.e., during the 1981 PSE&G rate case.) However, it does strain credulity to suggest, as Mr. Nardelli did on February 19, 1982 under questioning by the BPU, that this decision represented a deliberate policy to challenge the units one at a time, the most distant first. Clearly, the BPU commissioners knew that Hope Creek I was advancing toward completion at the rate of over \$1 million each day. Thus, it is not easy to accept Mr. Nardelli's claim that he or the Advocate ever intended to challenge Hope Creek I -- at least not until Joseph Rodriguez and I took office on February 12, 1982.

The more logical inference is that Mr. Nardelli counseled the Public Advocate to focus on Hope Creek II since a challenge to Hope Creek I had little chance of success. If that logical conclusion was viewed by Mr. Nardelli to be in the public interest when Hope Creek I was in its early stages of construction, it is not credible for Mr. Nardelli to argue now that it is not in the public interest for the Public Advocate to negotiate a cost containment agreement when construction of Hope Creek I is even further advanced.

The reality is that Hope Creek I is 50 to 55 percent complete; S-975's study commission for reviewing Hope Creek I cannot possibly be completed before next summer at the earliest,

at which point the unit could be 70 to 75 percent complete; the BPU has ruled repeatedly that Hope Creek I should be completed "as expeditiously as possible;" and neither the BPU nor the legislature will consider a moratorium on further construction pending a belated reassessment of the facility. It is hard to see what other choices were available to the Public Advocate other than to negotiate a cost containment that would provide incentives and penalties for more efficient utility management.

It should be noted at this point that the cost containment agreement does not guarantee the completion of Hope Creek I. The Public Advocate has merely agreed not to challenge its need further -- an option that, for all practical purposes was eliminated at the conclusion of the 1981 PSE&G rate case. In return, the utility has agreed to face the unprecedented risk of forcing shareholders to absorb 20 to 30 percent penalties on the level of "reasonable" costs in excess of the target figure. Moreover, the utility cannot use the agreement to argue for a higher rate of return -- on the theory that the return should reflect this increased risk -- a Catch-22 that transpired in New York. The utilities must raise any argument of an "extraordinary event" at or near the time it allegedly occurs, or else the opportunity is lost. Nor may the utility construct a "bare bones" unit in hopes of moving the real costs into rate base after meeting the target level. Finally, as few critics have noticed, the stipulation does not bind the BPU, the Association of Counties, Ocean County, New Jersey PIRG, the Port Authority or other frequent intervenors from arguing anything they wish.

Any one or all of them may still raise the question of the need to complete Hope Creek I in subsequent rate cases, even though the entire public of the State will get the full benefits of the cost containment.

In short, the decision to negotiate a cost containment rather than wait hopefully for the passage of S-975 was clearly in the public interest. Whether the specifics of the agreement are suitable is always open to question, a process now being chaired by the BPU. In this regard, while it is always possible to conceive of tougher, better cost containments; it is quite another to convince a utility to agree to it or the BPU to impose it.

PART II

Factual Errors in Mr. Nardelli's Testimony before the Senate Oversight Committee on October 12, 1982

The following analysis represents a point-by-point rebuttal to the many factual misstatements in Mr. Nardelli's testimony. They respond in the same order as his statement.

Page 1. - NARDELLI:

"The Public Advocate abandoned its long established opposition to the Hope Creek Nuclear Project by agreeing with PSE&G, ACE and the State DOE for all time 'not to challenge the need for Hope Creek I before any federal or state agencies which may have jurisdiction.'"

CORRECTION:

This claim of reversing "long established opposition" is fully rebutted in Part I. If the Public Advocate had a "long-established policy" regarding the Hope Creek Nuclear Project it was one of opposition only to Unit II and not Unit I. See, e.g., the Public Advocate's transition report of December, 1981 (attachment 6): "There is no objection to the need for the Hope Creek I plant which is due to become operational in late 1986." (emphasis added)

NARDELLI:

"In 1975 the Public Advocate appealed the coastal permit granted to PSE&G for Hope Creek I and II ...on the grounds that conservation alternatives had not been considered."

CORRECTION:

The New Jersey Public Interest Research Group (PIRG) "appealed" that decision (i.e. took it to court). The Public Advocate entered the case as an amicus curiae ("friend of the court") only after another party had taken the appeal. See, e.g., New Jersey PIRG v. Bardin, 152 N.J.Super. 191 (App.Div. 1977). Edward Lloyd, Esq., attorney for PIRG had requested that the Public Advocate appeal the case, but Mr. Van Ness denied his request. The amicus brief, however, strongly supported PIRG with respect to the argument on the need to consider alternatives.

NARDELLI:

"In 1976 the Public Advocate filed comprehensive testimony with the BPU...which...challenged the need for the two Hope Creek plants..."

CORRECTION:

Such testimony was duly filed, but Mr. Nardelli quietly repudiated it when he agreed with the utilities that their load forecasts and reliability planning were accurate and "not in controversy." As stated, Hope Creek was then in the planning stages. (See Attachment 7, Part I)

Page 2 -- NARDELLI:

"In February of 1981, PSE&G filed an application...for the largest rate increase in the history of New Jersey...The driving force behind this request was...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...the two Hope Creek units."

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CORRECTION:

This statement distorts the record. Throughout the entire case and after spending \$400,000 to defend the public Mr. Nardelli admitted to the BPU on February 19, 1982 that he did not challenge Hope Creek I.

Page 6 -- NARDELLI:

[Between pages 2 and 6, Mr. Nardelli discussed the Public Advocate's support for Senate Bill 975, which provides for a certificate of need for new power plants and establishes a temporary review commission to examine Hope Creek and recommend to the BPU whether it should be cancelled or continued.] "Early this past summer S-975 past (sic) the State Senate by the resounding vote of 35-2. 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."

CORRECTION:

There is no question that the Public Advocate supported S-975 in the form which passed the Senate. This bill was introduced in the Senate on February 8, 1982 and, after a series of public hearings and amendments, was reported out of committee on June 3. The full Senate passed it on June 28, 1982.

If the bill was passed by the Assembly and then promptly signed into law, it was indeed possible that a review of Hope Creek I was in the offing. However, whether at that late date the review would be "meaningful" was highly doubtful

and growing more doubtful each day. (Senator Dalton recognized this weakness in a press statement on August 12 -- see the text, page 5, infra). Regrettably, the bill did not provide for a moratorium on construction during the review by the special commission. If the Assembly had taken only half as long as the Senate and if no amendments (requiring Senate concurrence) were added, Senator Dalton and I calculated that there would be no needs assessment before next May or June, 1983 at the earliest. With construction moving ahead, it is almost certain that Hope Creek I -- then over 40 percent complete and now about 55 percent complete -- would be about 70 percent complete. In recent years no power plant has ever been cancelled which was that far along.

Accordingly, it was incumbent upon the Public Advocate to do more than simply await the action of the Legislature. This is why we entered into negotiations with the DOE and Public Service even as we continued to support S-975. It would have been irresponsible for the Advocate not to take alternative, protective steps given these circumstances which were plain to all. (Indeed, Mr. Nardelli, speaking for the Public Advocate, had recommended the alternative of the cost containment on February 19, 1982 when he called upon the BPU to consider a cost-containment for Hope Creek I similar to the "cap" applied in New York State for the Nine Mile Point Unit 2 reactor. The Cost Containment Agreement negotiated and signed by the Public Advocate borrows heavily from the New York precedent, as Mr. Nardelli had recommended.

But, as any comparison will show, it is far stronger than the New York version. (Please see Commissioner Rodriguez' testimony of September 29, 1982 before the BPU for a full comparison.) (Attachment 3 of Part II)

This brings us to the central point which Mr. Nardelli misses throughout his testimony: the cost containment and the special commission review in S-975 are not in conflict. Senator Dalton, in fact, has publicly stated his view that the two are compatible; he also recognizes that the passage of time has rendered this section of S-975 "moot":

"Although [the Hope Creek study commission clause in S-975] was overwhelmingly approved by the Senate...the Governor would not receive any study results for Hope Creek I until the spring of 1983, due to the amount of time involved with the legislative process. As a result, even though the need for this project has never been established, it would be too late to investigate the need for the Hope Creek I project.

"While I support, in principle, the cost containment concept, I see it as a supplement, not a substitute for a need assessment of Hope Creek. We should, ideally, both establish the capacity needs of our consumers and meet that demand as economically as we can.

"I am, however, a realist. My bill mandating the study and recommendations cannot reasonably move through the Assembly, be signed by the Governor, and be implemented until next spring at the earliest, by which time the investment in the Hope Creek project, now approximately a million dollars per day, would be so great, that the question would be moot. To be credible, to be useful -- that study must begin as soon as possible...

"In the meantime, I shall continue my efforts to move the major provisions of Senate Bill 975 -- providing for a thorough and continuing need assessment of all future projects -- through the legislative process so that never again are we in the position of having to decide if and when we are

throwing good money after bad."* (emphasis added)

Accordingly, it would appear that even the sponsor of S-975 was willing by mid-summer to concede that the time had passed for a "meaningful review" of Hope Creek I. (Senator Dalton did request that the Governor appoint a commission of his own to advise him on Hope Creek's future.) Moreover, the last paragraph, above, even suggests that he will not insist upon inclusion of a study commission in the amended bill.

* Senator Dalton's press release and printed statement of August 12, 1982.

At bottom, what Mr. Nardelli has ignored is the simple fact that last spring and summer, the Public Advocate approached the Hope Creek problem along two tracks at the same time. The first was our unwavering support of S-975. The second was our efforts to negotiate a meaningful cost containment. The latter acts both as a "failsafe" if S-975 fails to become law soon enough, and as a device designed to prod more efficiency from utility management regardless of the fate of S-975. Since Senator Dalton has himself conceded that his review of Hope Creek is now "moot", the Public Advocate's two-track strategy appears to have been appropriate.

NARDELLI:

"[The] cost containment agreement...ensures that Hope Creek I will be completed no matter what the cost."

CORRECTION:

The cost containment ensures only that the Public Advocate will not challenge further the need for Hope Creek I -- an argument that has a zero chance of prevailing before the BPU. In exchange for that single concession the companies have agreed to absorb unprecedented penalties, if "reasonable" costs exceed the target figure. (They will absorb 100 percent of "unreasonable" costs.) Moreover, they cannot argue that the agreement raises the riskiness of their stock -- although it obviously does -- thereby foregoing the chance to seek higher rates of return to make them whole.

The more reasonable interpretation of this cost containment is that it introduces a significant element of doubt as to the future of Hope Creek I. If costs spiral out of control as they have in the recent past -- they jumped \$700 million in 6 months of 1981 -- utility management will be forced to consider cancelling the project, regardless of its advanced stage of construction, rather than see their shareholders flee the penalties found in the containment. PSE&G and Atlantic Electric are now the only utilities in the country where shareholders face the risk of losing 20 to 30 percent of their investment income. The investment community will not stand still. Investors will demand clear evidence that the unit will be completed at or below the target costs, rather than absorb avoidable losses. Investment, it should be noted, is highly mobile; there are hundreds of other securities on the open market which do not carry these unprecedented risks. Accordingly, utility management will have to exercise careful judgment as to whether it is profitable to try to complete the project with these new conditions. The outcome is far from certain for Hope Creek I. Without the cost containment there would be no stopping the project or holding down the costs before they are incurred.

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Pages 6-7 -- NARDELLI:

He cites a "dramatic example of the Advocate's flip flop on this issue" a letter sent by the Public Advocate to Assemblyman Pankok expressing strong support for S-975. This letter was sent on July 29; the cost containment was signed on August 10. Mr. Nardelli then states as follows:

"Less than two weeks later, the same man who wrote this ringing endorsement of S-975, signed the cost containment agreement which tries an end run around Senator Dalton...If the Committee asks Joe Rodriguez one question today it should be this: what specifically happened between July 29th and August 10th, that caused Mr. Rodriguez to turn his back on S-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?"

CORRECTION:

This statement is the crux of Mr. Nardelli's accusation that the Public Advocate crumbled beneath gubernatorial pressure during that two week period. This is the most demagogic part of his testimony, and therefore it must be examined carefully.

The letter to Assemblyman Pankok

A reading of this letter, attached to Mr. Nardelli's testimony, re-states the Advocate's well-known position in support of S-975. As stated previously and as Senator Dalton recognized, support for a needs assessment is perfectly

compatible with a cost-containment. Therefore, there is no basis for Mr. Nardelli's sinister implication.

There is also another aspect of this which may be of some interest to the Committee. Mr. Nardelli wrote the Pankok letter. On July 14, he sent Mr. Rodriguez his prepared response; it was not mailed out for another two weeks.* During that time and throughout the month of July I was in almost constant contact with Commissioner Coleman of the Department of Energy. We met frequently to review offers and counter-offers in our effort to see if we could agree on a suitable cost containment formula. No doubt our efforts were aided by the favorable Senate action of June 28.

What happened between July 29 and August 10?

As stated above the Pankok letter was drafted on July 14. Thus, if there was a "flip flop" it began on that date, and the question should be re-phrased to what happened between July 14 and August 10. In brief, we were negotiating at a brisk and smooth pace. While we did not know until the evening of August 9 whether we would agree to the same language -- and, in fact, continued to tinker with it until the morning of September 29 (when the BPU opened hearings) -- we were growing increasingly optimistic that agreement was possible.

* See attachment 1, Mr. Nardelli's cover memorandum of July 14 and the Pankok letter which bears the same date. Other than a change in dates -- from July 14 to July 29 -- it is identical to the letter Mr. Rodriguez signed.

At the same time, we were becoming increasingly pessimistic that Senator Dalton's bill would pass in time to matter. This lent urgency to the task. Moreover, with each passing day another \$1 million was invested in Hope Creek.

On July 21 I sent a letter to President Robert Patrick of the Greater Salem Chamber of Commerce. This letter reflects our evolving response to Hope Creek. (See attachment 2 to Part II) The letter to Patrick recites in detail the many reasons for challenging Hope Creek I but concludes this way:

In the end the problem [of Hope Creek I] is complicated by the Company's huge investment to date -- over \$1 billion -- which makes cancellation even more difficult. Perhaps the only solution at this stage is to impose a stringent cost-containment system, one that correctly imposes the burden of cost-overruns on shareholders. And then let management decide whether and if so how to press ahead with construction.

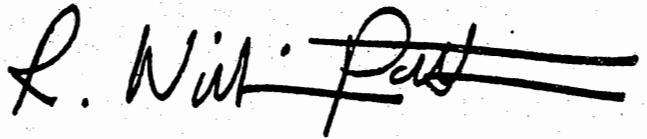
As for the future, we must learn never again to be so naive as to trust in energy sources dubbed 'too cheap to meter'...Laws must be enacted and enforced to subject electric companies to the rigors of the marketplace...All in all, whether Hope Creek I is completed or someday abandoned like its twin, Unit 2, may be of less importance than whether the citizens of New Jersey will learn from these misadventures and take charge of their future. I hope they do and I'm sure that you agree with me. (emphasis added)

The remainder of the Nardelli testimony is a confused and confusing combination of baseless accusations and wild speculation. They do not deserve the dignity of a response. Suffice it to say that at no point in our decision-making process did anyone associated with the governor's office pressure

the Public Advocate to sign or not to sign the agreement that we eventually hammered out.

As to the merits of the cost containment, the Public Advocate's testimony and statement of September 29, 1982 before the BPU should answer any reasonable questions. (A copy is attached at attachment 3 of Part II)

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "R. William Potter", is written over a horizontal line. The signature is stylized with a large "R" and a long, sweeping underline.

R. WILLIAM POTTER
Assistant Commissioner
for the Department of
the Public Advocate

Date: October 22, 1982

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