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1 UNITED STATES OF AMERICA

2 NUCLEAR REGULATORY COMMISSION

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4 PUBLIC MEETING TO DISCUSS THE HEARING

5 PROCESS FOR JUDGING THE SAFETY OF A

6 POTENTIAL HIGH-LEVEL WASTE REPOSITORY

7 + + + + +

8 TUESDAY

9 MAY 22, 2001

10 + + + + +

11 PAHRUMP, NEVADA

12 + + + + +

13 The Public Meeting was convened at the Mountain
14 View Casino and Bowl Convention Center, 1750 Pahrump
15 Valley Boulevard, Pahrump, Nevada, at 6:30 p.m., F.X.
16 "Chip" Cameron, Facilitator, presiding.

17 PRESENT:

18 F.X. "CHIP" CAMERON

19 C. WILLIAM REAMER

20 LAWRENCE J. CHANDLER

21 DENNIS C. DAMBLY

22

23

24

25

I-N-D-E-X

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Chip Cameron

1 P-R-O-C-E-E-D-I-N-G-S

2 6:47 p.m.

3 MR. CAMERON: Good evening, everybody. My
4 name is Chip Cameron. I'm the Special Counsel for
5 Public Liaison in the Nuclear Regulatory Commission,
6 and I'd like to welcome you to the NRC's public
7 meeting on the NRC hearing process on a potential
8 Department of Energy license application for a high
9 level waste repository at Yucca Mountain. I'm pleased
10 to serve as your facilitator for tonight's meeting and
11 basically what I'd like to do is cover three process
12 items before we get into the substance of tonight's
13 discussion.

14 I'd like to tell you a little bit about
15 the objectives of the meeting tonight. Secondly, I'd
16 like to go over the ground rules and format for the
17 meeting tonight. And third, I'll give you an agenda
18 overview so you know what to expect tonight.

19 The green sheet agenda is over on the
20 table for those of you who haven't picked one up yet.

21 In terms of the objectives for the
22 meeting, the NRC is here tonight to give you
23 information and answer your questions on the process
24 that the NRC would use to evaluate and make a decision
25 on a license application that the Department of Energy

1 may submit for a repository at Yucca Mountain. This
2 process is called the hearing process. It's also
3 known as a licensing proceeding, and my colleagues
4 from the NRC are going to be providing you with
5 information on that tonight.
6 As you know, this is another in a series
7 of meetings that the NRC has been holding with the
8 public to provide information about NRC
9 responsibilities. This particular subject, the NRC
10 hearing process, we get requests from the public to
11 come out and do a meeting on this subject, and that's
12 why we're here tonight, to give you information on
13 this.
14 You're going to be hearing about many of
15 the NRC responsibilities in regard to the repository
16 tonight in terms of an overview of what our
17 responsibilities are. One singularly important aspect
18 of our responsibilities is the licensing proceeding,
19 the hearing process, because that's where the initial
20 NRC decision on whether to grant or deny a Department
21 of Energy license application is going to be made.
22 Our format for tonight is we're going to
23 have some brief NRC presentations on various issues,
24 and then we're going to go out to you after each of
25 the presentations for questions. If you have a

1 question, just signal me and I'll bring you this
2 talking stick over. We are keeping a transcript
3 tonight and our stenographer is going to be taping
4 everything that is said tonight for a transcript. I
5 believe that transcript will be available from the
6 NRC. I would ask you, if you do talk, to just state
7 your name and affiliation, if appropriate, so that we
8 get that on record.
9 In terms of other ground rules, I would
10 just ask that we just have one person speaking at a
11 time because that will allow us to get a clean
12 transcript and also, more importantly, it will allow
13 us to give our full attention to whoever has the floor
14 at the time.
15 I would ask you to also try to be as
16 concise as possible because I think we're going to
17 have a lot of interest, a lot of questions tonight,
18 and I want to make sure that we get to everybody who
19 has a question. So it may be that I have to ask you
20 to just wrap up a question so that we can go on to
21 someone else, but we will try to get back to you
22 tonight.
23 There are two issues on relevance that I'd
24 like to bring up. Not all of the questions that you
25 might have may fit squarely under the topic that we're

1 discussing. If that happens, what I'm going to do is
2 put that up here in the parking lot and, when we do
3 get to that topic, we'll answer your question at that
4 time.
5 We know there's a lot of concern, a lot of
6 interest in this particular issue, and the NRC is
7 always willing to listen to public concerns and to try
8 to answer your questions, but we are here tonight to
9 focus on the hearing process. Even though there might
10 be questions on technical issues, we will try to get
11 back to you with answers on those issues, either at
12 the break or after the meeting. You can talk to NRC
13 technical staff or we'll get back to you after the
14 meeting on those questions because we really are going
15 to focus on the hearing process tonight.
16 I would just thank all of you for coming
17 out tonight to be with us and to talk with us about
18 this particular subject. The agenda that we're going
19 to follow is first of all, we're going to have Mr.
20 Bill Reamer who is up here at this end of the table.
21 Bill is going to give you an overview of the NRC
22 responsibilities in regard to the repository so that
23 you understand how the hearing process fits in to our
24 overall responsibilities.
25 As you'll note from your agenda, Bill is

1 the Chief of High-Level Waste Branch at the NRC.
2 That's within the Office of Nuclear Materials Safety
3 and Safeguards. Bill has been involved in the high-
4 level waste program for about three years now from the
5 technical staff. Bill's staff, many of whom are here
6 tonight, are the ones who are responsible for doing
7 the evaluation of the DOE work on the repository.
8 Next we're going to go to Mr. Larry
9 Chandler who's in the middle. Larry is the Associate
10 General Counsel for Hearings, Enforcement and
11 Administration within the Office of General Counsel at
12 the Nuclear Regulatory Commission. Larry has been,
13 first with the old Atomic Energy Commission, and then
14 with the Nuclear Regulatory Commission which was
15 established in 1975. He's been with the NRC for a
16 while and has had many responsibilities in reactor
17 licensing and enforcement litigation. He's going to
18 give you an overview of the hearing process.
19 We're going to get into more specifics
20 then with Mr. Dennis Dambly who is at this end of the
21 table. Dennis is the Assistant General Counsel for
22 Materials Litigation and Enforcement, again in our
23 Office of General Counsel. Dennis is the supervisor
24 of the attorneys who will represent the NRC staff in
25 the hearing process, and Dennis basically works for

1 Larry as the Associate General Counsel so that we get
2 the pecking order straight here, I guess.
3 We are going to take a break after the
4 question and answer sessions on Larry's topic.
5 That'll give you a chance to talk to the NRC staff.
6 I should note at this point that Larry's presentation
7 is going to be an overview of the hearing process and
8 then Dennis is going to go into specific aspects of
9 the hearing process. So what we'll try to do is to
10 keep the questions for Larry on the overall process
11 type of basis and, if you do have specific questions,
12 that may be a time when we'll be putting things in the
13 parking lot to come back and revisit with Dennis when
14 he gets to the specifics.
15 Again, thank you. As the facilitator, I'm
16 here to try to make sure you all have a good meeting,
17 specifically to make sure that you understand what the
18 NRC is saying, particularly acronyms and there may be
19 some intriguing ideas about what to do about that that
20 we'll hear, but we want to make sure that we stay
21 organized, that everybody has a chance to talk
22 tonight. I will keep track of any follow-up issues
23 that the NRC needs to take care of after the meeting
24 so that we do get back to you and we don't lose those.
25

1 Right now I'd like to ask Bill Reamer to
2 come up and talk to us about the hearing as part of
3 NRC's licensing process. Bill.
4 MR. REAMER: Thank you. Welcome,
5 everyone. I think I've introduced myself to most of
6 you. If I haven't, I'll catch you after the meeting.
7 I'm glad that you were able to come tonight.
8 AUDIENCE MEMBER: Louder.
9 MR. REAMER: I'm glad that you were able
10 to come tonight. Is that better?
11 AUDIENCE MEMBER: Get closer to the
12 microphone.
13 MR. REAMER: Is that better? Good.
14 I'm glad -- for those of you who've come
15 to meetings before -- glad to see you again tonight.
16 For those of you this is your first meeting, thanks
17 for coming and I hope you'll keep coming to our
18 meetings. This is not going to be our last meeting.
19 As we've talked about in the past, what we're looking
20 to do is to have a dialogue or establish a dialogue
21 with potentially affected citizens to hear your
22 concerns, to respond to those. Tonight's meeting is
23 a direct response to a comment we got in meetings a
24 couple of years ago we held that we'd like to know
25 more about the NRC's licensing process.

1 We held a meeting about a year ago in May,
2 kind of Part I, to talk about the licensing process in
3 general, and the meeting today will be specific on an
4 element of that, an important element of that, the
5 hearing process. Of course, it's a hearing process
6 and a licensing process that will apply only if there
7 is a license application from the Department of
8 Energy. I'll talk about that more a little bit later
9 because there are a number of steps that need to be
10 taken or cleared by the Department of Energy before
11 there will ever be a license application, including
12 the possibility there will not be one.
13 We do want to hear your response to what
14 we say tonight. I know many of you will not have a
15 problem in letting us have that. There's a
16 questionnaire that we have left on the front table.
17 You'd be doing me a great favor if you would take the
18 time to fill that out and put it in the mail. Even if
19 you did not have a specific comment that you wanted to
20 make on the meeting, we would appreciate your
21 feedback.
22 The NRC is an independent regulatory
23 commission. They're not a sponsor or promoter or
24 developer of a nuclear facility. They're not a
25 potential developer of a possible repository at Yucca

1 Mountain. Our role is solely to protect public health
2 and safety and to do that in a way that is open and
3 visible to those people who would be potentially
4 affected by the proposal. We regulate in a number of
5 areas. We regulate nuclear power plants. There are
6 100 plus nuclear power plants in the United States.
7 There are a number of medical uses of radioactive
8 materials that we regulate as well. We have
9 experience. We know how to regulate nuclear projects.
10 In this instance, the law says that we are
11 to regulate any Department of Energy repository for
12 spent fuel, so that's why we're involved here.
13 Typically, we don't regulate the Department of Energy,
14 but the law in this instance has said there will be
15 oversight, there will be independent regulatory
16 oversight from the NRC.
17 The head of the NRC. There are basically
18 five commissioners. They are appointed by the
19 President for fixed terms of five years. The law
20 requires that there be a balance. There can not be
21 more than three on the commission from any one
22 political party. I think all commissioners that are
23 on the commission at present were appointed by former
24 President Clinton and I think the political division
25 right now is there are three Democrats on the

1 commission and two Republicans. The chairman of the
2 commission, Chairman Meserve, has been designated to
3 hold that position. Generally, the commissioners are
4 accomplished members from their professional areas,
5 whether they be nuclear engineering in the case of
6 Commissioner Diaz, the Chairman Meserve that I
7 mentioned. He's an attorney and also a nuclear
8 physicist. They come from a number of professions and
9 walks of life.
10 The role of the technical staff -- as Chip
11 said, the technical staff includes myself and a number
12 of the other people who are here tonight -- are to
13 carry out the policies and the decisions that the
14 Commission makes. We also have the responsibility to
15 recommend health and safety regulations that the
16 commissioners would decide whether or not to impose.
17 In the case of licensing, it's our responsibility, the
18 technical staff, to review license applications for
19 nuclear facilities and to write an evaluation and
20 reach a decision about whether the license should or
21 should not be granted.
22 We also advise the Commission generally on
23 safety issues, safety matters, and we have the
24 additional responsibility to interact with potentially
25 affected members of the public which we're doing

1 tonight and we'll continue to do.

2 The technical staff is made up of really
3 several hundreds -- actually 2,000 -- technical
4 members of the Nuclear Regulatory Commission who have
5 a wide variety of technical disciplines as well as
6 lawyers and attorneys and support staff as well. In
7 the case of the repository, the specific resources
8 that we would bring to bear if there were a license
9 application. We have a technical staff within the NRC
10 of approximately 35 technical people.

11 In addition, we're supported by an
12 independent contractor in San Antonio, and a
13 representative of that group is here tonight, Mike
14 Smith. He's in the back. They directly support us.
15 Their primary responsibility is to support our
16 technical staff in reviewing any technical reports
17 from the Department of Energy. In any event, I'm sure
18 Mike would be happy to tell you more about the center.

19 The types of expertise that we'll bring to
20 bear on this project if this project goes forward are
21 really laid out on this slide. I think it generally
22 covers the waterfront. The technical issues that
23 could be raised by an application, a license
24 application, run the gamut from potential corrosion of
25 the waste package to movement of the ground water to

1 the possibility of earthquakes and potential
2 consequences of them. We have the technical expertise
3 to review those issues and review them rigorously.
4 We also have the facilities and the
5 capability to do our own independent investigations.
6 I think this will be important if this project goes
7 forward because we do bring to this project
8 independence and we have the technical capability to
9 really go behind what's being presented by the
10 Department of Energy and independently review that and
11 either confirm or disconfirm it. We also have the
12 expertise to inspect the activities of the Department
13 of Energy and we have a 24 hour, 365 day a year
14 presence at the site through our on-site
15 representative's office. Bob Latta is here tonight.
16 Some of you may have been at the open house in Las
17 Vegas in March, but I would encourage you to introduce
18 yourself to Bob during the break and, if you have
19 questions after this meeting, Bob and the on-site
20 representatives is a good potential resource for you
21 to follow up with. They can help you get the answer.
22 The NRC's role, if there is a repository,
23 is to accept regulations that are protective. Those
24 regulations must be, by law, consistent with the
25 standards of the Environmental Protection Agency. If

1 this project does go forward, if there is a license
2 application, our responsibility is to decide whether
3 to permit construction of the facility and, if the
4 facility is constructed, then to decide at some
5 subsequent point whether to permit waste to be brought
6 to the site.
7 Also, we have the important
8 responsibility, if the project goes forward, to not
9 only set the regulations but to inspect and ensure
10 that the Department of Energy complies with those
11 regulations and to issue penalties against them and
12 requirements for corrective action if they don't.
13 How do we carry out our role? We will
14 independently and objectively review all of the
15 information, make decisions on the basis of the facts,
16 and those facts will be available for the public and
17 everyone to see. To make decisions a step at a time.
18 If there's a license application, has DOE demonstrated
19 that it's safe to construct the facility and that a
20 facility of this design holds the prospect that it can
21 safely contain waste. That's the first decision. And
22 then only later after construction is substantially
23 complete and even more data has been gathered would we
24 then consider separately, again in a new
25 consideration, whether to permit the Department of

1 Energy to bring waste to the site. So it's a step-
2 wise process. Each step will include the idea that
3 it's reversible so that if a decision is made later
4 that does not permit the project to go forward, steps
5 taken prior to that can be undone. Of course, as I
6 mentioned, we want to maintain and continue to
7 maintain an open public process as we do that.
8 The law says that we are to make a
9 decision within three years on any license application
10 that the Department would submit. The law also
11 provides that we are to conduct a full and fair public
12 hearing, and we'll be spending much of the time
13 tonight describing for you how we would do that. But
14 as I said, first, there are a number of steps that
15 this project will need to go through. DOE will need
16 to complete the environmental impact statement that
17 they've started. They'll need to complete the site
18 characterization work and reach a decision on whether
19 to recommend the site.
20 The President will then be called upon to
21 decide whether he would approve that site
22 recommendation. The state then has the opportunity to
23 file a notice of disapproval, which I fully expect
24 that the state will do. At that point, the Congress
25 will decide whether to permit the repository to go

1 forward. Only then after those steps are clear would
2 the Department be authorized to file a license
3 application with the NRC and the NRC would then be
4 faced with the question of whether to permit this
5 facility to go forward.
6 The steps that we will take, kind of the
7 context for the hearing process that we're talking
8 about tonight. The first step we take, if there's a
9 license application in this project is to reach a
10 conclusion on whether the application is complete.
11 Does it contain all of the information that our
12 regulations require it to contain? Once that
13 acceptance review is complete, then we would either
14 accept the application for more thorough technical
15 review or we would return the application to the
16 Department of Energy if the application is not
17 complete.
18 Once the application is accepted, if it is
19 accepted, and the detailed review commences, we will
20 conduct an environmental review. The law says we are
21 to adopt the Department of Energy's final
22 environmental impact statement if it is practical to
23 do so and the context, therefore, of our review of the
24 EIS would be is it practical for us to adopt the final
25 environmental impact statement.

1 We'll also commence a detailed technical
2 review of the license application. We have the
3 authority, the power, to require the Department to
4 provide more information to us if we need that to make
5 a decision. We also have the ability, as I mentioned,
6 because of the technical capability we have, to do our
7 own independent analyses to either confirm or
8 disconfirm what the Department has argued in the
9 license application and, as we complete our review, we
10 will document the results of our review in a public
11 safety evaluation report.
12 There are three possible outcomes of that
13 review. One is that the Department of Energy has not
14 carried the burden, has not demonstrated safety, in
15 which case the only outcome is to deny the
16 application. The other two potential outcomes of the
17 safety review would either be to permit the
18 application with conditions or permit the application
19 or grant the license without conditions.
20 That's the context for the discussion
21 tonight of the hearing process. As I've said, any
22 decision that we make on the license application needs
23 to include and be based on a full and fair public
24 hearing. That's an important component, an important
25 element of our process if this project goes forward.

1 As we will describe tonight, the rules that will be
2 used and implemented in that hearing process are well
3 established and we appreciate the opportunity to come
4 tonight and describe those to you.
5 So at this point, do we want to break for
6 questions now, Chip?
7 MR. CAMERON: Yes. I think that there may
8 be some questions on the overall process before we go
9 into the specifics of the hearing process. Let's go
10 to Sally Devlin. Okay.
11 MS. DEVLIN: Thank you, Chip and Bill.
12 It's so nice to see you, and welcome to Nevada. It's
13 nice to see so many familiar faces and so many new
14 faces.
15 I have a question that started this whole
16 meeting and why you're here. I want to know who those
17 five people are that are going to make the decision
18 and did you bring their bibliography? -- Clinton and
19 other political things. We want to know who they are,
20 their background and their technical expertise. Did
21 you bring that for us? I didn't see it in the back.
22 MR. REAMER: We did not bring it, and we
23 will provide it to you. In general, I can give you an
24 overview of who they are. The chairman is, as I said,
25 an attorney and a nuclear physicist. Two of the

1 members of the commission are former congressional
2 staff members. A fourth member is a professor from
3 the University of Florida in nuclear engineering and
4 the fifth member is an experienced state regulator
5 from the state of Arkansas. But that's my description
6 and I will make sure that you have the more detailed
7 description of them. Information is also available on
8 our website as well, so I'll make sure that that gets
9 to you.
10 MR. CAMERON: Okay. Thanks. That a good
11 example of something that we want to make sure that we
12 follow up on.
13 MR. FRISHMAN: Steve Frishman of the state
14 of Nevada. I understand the acceptance review
15 process. Where does the environmental review actually
16 fit into the process? The reason I'm asking is will
17 you do some type of an acceptance review to assure
18 that the content of DOE's final EIS is consistent with
19 the content of the license application?
20 MR. REAMER: The acceptance review I
21 talked about is an acceptance review of the safety
22 portion of the environmental application. If that's
23 not acceptable, then there won't be any further review
24 at that point, safety or environmental.
25 The environmental review that you're

1 talking about will occur only if the license
2 application is docketed and there are regulations that
3 describe the scope of the review and the scope of the
4 review includes is the proposal that was evaluated in
5 the environmental impact statement the same proposal
6 that's being made in the license application? So that
7 clearly is one way that we'll get at the point that
8 you're making.
9 The second is is there new information
10 that wasn't available at the time of the final
11 environmental impact statement and if there's
12 information in the safety portion of the license
13 application that is new and not included in the
14 environmental, strikes me that that's the basis to say
15 there is new information.
16 MR. FRISHMAN: Okay. Let me just follow
17 up. Specifically, if the repository design that is
18 set in the final environmental impact statement is not
19 consistent with the design that is in the application,
20 what action does the NRC take?
21 MR. REAMER: The action we take is to
22 reach a determination based on all the facts whether
23 that amounts to a different proposal that's being
24 proposed to us that's different from what was
25 evaluated in the EIS. If it is, then we're back in to

1 leave a space for that additional information, that
2 difference in the proposal that needs to be evaluated
3 environmentally.
4 MR. FRISHMAN: But this does not affect
5 the license review?
6 MR. REAMER: I hate to speculate on that
7 on this point without the specifics, but it seems to
8 me there is the potential that the difference is so
9 substantial and the time is so significant that it
10 wouldn't make sense for us to commence this three year
11 clock when there's the important environmental aspect
12 to be reviewed.
13 MR. CAMERON: Let's ask Larry to add
14 something on that.
15 MR. CHANDLER: It's not uncommon during
16 the review, the status review of license applications,
17 be it for a repository or for other types of licenses,
18 for some type of deficiencies to be noted and some
19 shortcomings to be noted, some kind of inconsistencies
20 to be noted between the documents. Typically, the
21 staff would communicate with the license applicant to
22 assure that those differences are reconciled so that
23 the application is complete in all respects and that
24 there would be a match.
25 Bill's answer I think is right. We would

1 have to assess the significance of any deficiency or
2 discrepancy at that point and see how best to
3 reconcile it if it can be reconciled.
4 MR. CAMERON: Scott, did you have a
5 question on processing for us?
6 SCOTT: Yes. I'm a chemical engineer. I
7 build chemical plants since 1952. I notice the
8 improvements in Bill's demeanor. He's not making as
9 many loud claims as he first started out with safety
10 and technical expertise, but I do want to point out
11 that under the Results Management Act, you're required
12 to ask for opinions and then you're required to act on
13 those, run a test to see that those can be done.
14 That's the process. I'm probably the only one in the
15 room that knows how that works. That's why I bring it
16 up. It's my expertise to be here where people can
17 understand that that's how it works.
18 I know Bill is a lawyer and for him to
19 assure us, the public, that the NRC has technical
20 expertise is something he has no way of knowing at
21 all. He has no understanding of the technology needed
22 to handle this project and neither does anybody at the
23 DOE and neither does anybody in the NRC or their
24 staff. This is a world class project. This takes an
25 industrial turn around expert to handle the technology

1 end of it.

2 In industry, if you don't have somebody

3 like that at the head of the company, I'm not talking

4 about the head of engineering or the head of some

5 project, the head of the company, that company will

6 fail. I'll guarantee it, and within months. So we

7 have a situation here that we have new technology, we

8 have incompetent people making wild guesses and then

9 assuring the public it's going to be okay. I need an

10 answer to that. I need somebody from the NRC to

11 realize that I've been talking to the DOE about this

12 for seven - eight years, to the NRC about this for

13 however long Bill has been here, and we need an

14 answer. We need somebody that's competent to get

15 involved in this project and get it straightened out.

16 MR. CAMERON: I guess I would only ask

17 Bill to reiterate what he said before about the

18 resources that we bring to bear.

19 MR. REAMER: But in addition, it is a

20 humbling task. It's a challenging task. I think at

21 the bottom, at the root, that's what you're saying.

22 I recognize that and we do. In addition, I don't know

23 whether you're aware but we hold a number of technical

24 meetings with the Department of Energy where specific

25 issues are discussed and you definitely need to be

1 aware of the issues that are in your area, if you
2 haven't already been aware of them, and I think that
3 gives you the technical risks that you can respond to
4 and participate in and provide specific input. So I
5 appreciate your comments and urge you to continue to
6 stay involved in the technical meetings that we have
7 with the Department of Energy. We've had over the
8 last year on the order of a dozen of them and we'll
9 continue to hold them over the next two years until
10 the site recommendation decision is made.
11 MR. CAMERON: Let's take one more question
12 on overall context and then go to Larry and we'll come
13 back to other types of questions.
14 AUDIENCE MEMBER: I wanted to ask you on
15 the repository. Does it have a designated amount that
16 will be taken in there and changed at a later date for
17 the capacity of the fuel?
18 MR. REAMER: The law sets a maximum 70,000
19 metric tons. That's right in the statute. Can it be
20 changed? I think any law can be changed. But right
21 now, the law says 70,000 metric tons. To change the
22 law requires Congress to pass a new law and it
23 requires the President to approve that law. So that's
24 a substantial burden that would have to be taken on if
25 the current maximum were changed.

1 AUDIENCE MEMBER: You know there are two
2 repositories --
3 MR. CAMERON: Sally, we need to try to get
4 all this on the record. What we need to do is try to
5 keep a little organized, but we'll get back to you on
6 that.
7 You got the answer to your question, sir,
8 didn't you? Okay. Can you give us your name.
9 AUDIENCE MEMBER: My name is --
10 MR. CAMERON: Thank you, Mr. --
11 Kalynda, can we go to you for a question
12 now and then get started on the next subject and then
13 hear from Susi later.
14 MS. TILGES: On the first page talking
15 about who makes the decisions, you said accomplished
16 scientists, engineers and attorneys. It's recently
17 come to my attention that the engineers at the
18 Department of Energy are not required to be licensed.
19 I'm curious as to whether the Nuclear Regulatory
20 Commission's engineers are required to be licensed as
21 in most other industries in the country.
22 MR. REAMER: I'm going to have to get back
23 to you on that. I can't give you an answer that I'm
24 sure is correct. Okay. No, there is no requirement.
25 MR. CAMERON: All right. No requirement.

1 That's clarified. Let's go to Mr. Larry Chandler now
2 to give us an overview of the hearing process. We'll
3 then go on to you for questions on his presentation.
4 Then we'll take a little break and come back with
5 Dennis Dambly.
6 MR. CHANDLER: -- the hearts of many
7 people. I'm sort of glad that we were asked to come
8 out here and take this opportunity and hopefully de-
9 mystify the process for you. It's really not that
10 formidable, not that an imposing a process. It's the
11 process by which a record is created upon which a
12 decision will be based with respect to licensing. In
13 this case, the licensing of a potential repository.
14 The Commission usually invokes one of two
15 different kinds of hearing processes. This, for
16 example, would not be a hearing. This would be a
17 meeting, as Chip has described earlier. But the
18 Commission has, as a general rule, two different kinds
19 of hearings. It has a formal type of hearing, a trial
20 type of hearing. It has an informal type of hearing
21 as well, which is largely a paper hearing.
22 But the hearing process also takes on
23 other types of characteristics. There are zoning
24 board hearing, there are school board hearings.
25 Those, too, are hearings. Those tend to be more

1 legislative in nature, less formal in certain
2 respects. The Commissions typically with respect to
3 reactor facilities and other complex facilities has
4 been the formal sub-part G type of process which is a
5 term that you may hear used from time to time.
6 I'll provide a general overview of the
7 process and in a few minutes Dennis Dambly will follow
8 up with some more specific details. What I will try
9 and address are the rules of practice, the way in
10 which a hearing is conducted, if you will, under the
11 current rules of practice. Those are the current
12 rules that can be found in the Commission's
13 regulations and the Code of Federal Regulations in
14 Title 10, Part 2. I'll give you a little slide
15 shortly with some websites where you might be able to
16 locate those or you should be able to locate those.
17 I will not address the proposed changes to
18 the hearing process that the Commission has just
19 recently published for comment. Those were published
20 in April and, for those of you who may be interested
21 in looking at them and submitting comments, the
22 comment period has been extended now and will expire
23 in September of this year, and I'll be happy to
24 provide you the citation to *The Federal Register* site
25 so that you can look those up.

1 We use a hearing process, in part in
2 response to some of the comments I heard just a moment
3 ago, to deal with very complex technical issues. It's
4 formal. The people who provide and create the record
5 are largely experts and they're subject to examination
6 by other participants who will probe the expertise of
7 the individuals to assure that, if the information
8 they are to give is accepted, that it's credible and
9 material to the issues that have to be decided.
10 The Commission in its recent rule making
11 reaffirmed that it is going to use the formal hearing
12 process for high level waste repository. I know there
13 have been some questions of late as to what process
14 would be used, and that decision has now been made.
15 There may be some changes in the proposed rules, but
16 those are largely intended to streamline the process.
17 They affect some time frames but, from a substantive
18 standpoint, at least in my view, don't have a
19 significant effect on the way in which the process
20 would unfold in connection with this repository.
21 The Office of the General Counsel, which
22 I represent and Dennis represents, serves two rules
23 just so you understand how we fit into the picture.
24 Bill described the technical review. Our role in
25 connection with the repository is twofold. During the

1 course of the status review, we'll provide legal
2 advice and support to the staff as they go through
3 their technical review. We try to help them assure
4 that their reviews fully track the Commission's
5 regulations and other statutory requirements that
6 apply, in this case, in connection with the repository
7 licensing.
8 We also will be responsible for
9 representing the staff in any hearing. We will be
10 advocates for the staff. And the staff, as Bill
11 explained, also has two very, very significant roles.
12 Wholly independent of the hearing process, the staff
13 is charged with independently reviewing and assessing
14 the acceptability of the application that may be
15 submitted and assuring its compliance with the
16 Commission's regulations to ultimately determine
17 whether there is reasonable assurance that the public
18 health and safety will be protected.
19 The hearing process, as Bill explained
20 before also or at least mentioned before, will be
21 conducted by an Atomic Safety and Licensing Board.
22 The Atomic Safety and Licensing Board are sort of
23 unusual creatures of the Atomic Energy Act has
24 specifically provided for. There are three member
25 boards. The chairman of the board typically is a

1 lawyer, experienced in conducting an administrative
2 proceeding.
3 The other two members usually are
4 technical members, engineers in some field including
5 perhaps environmental fields. They will preside over
6 the hearing process and they will be the ones
7 responsible for issuing an initial decision. They
8 will deal in that hearing process with the issues that
9 are raised by participants in the process, the
10 contested issues or contentions. That's a term that
11 you'll also hear very commonly used.
12 The parties appearing or the participants
13 appearing in this process include the staff. They
14 will include the applicant, the Department of Energy.
15 They will include intervenors. Intervenors could be
16 members of the public, the host state, affected units
17 of local government, affected Indian tribes. There
18 are particular aspects that are truly unique in
19 connection with the repository proceeding as a result
20 of the waste policy act that don't typically apply in
21 other contexts, and they will be full parties in this
22 proceeding with a right to fully present testimony,
23 file matters before the Atomic Safety and Licensing
24 Board and to present evidence and cross examine the
25 parties and the witnesses of other parties.

1 The members of this board, to go back to
2 that for a moment, are either full-time or part-time
3 members and also, as a general matter, the hearings
4 are conducted somewhere in the vicinity of the
5 proposed activity. That doesn't mean necessarily
6 they're right next door, but it's in the general
7 vicinity so members of the public will always have an
8 opportunity to observe the proceedings.
9 One of the things that also should be
10 recognized is that it is also possible that more than
11 one board could be established. Given the very tight
12 time constraints that we are going to be working under
13 in connection with the repository, given the very
14 large number of parties that are likely to be involved
15 and the very large number of issues that are likely to
16 be involved, it wouldn't be all that surprising to
17 have more than one board set up to conduct hearings.
18 The public does have several
19 opportunities, several different ways in which it can
20 participate in the hearing process. They certainly
21 are always free, as I mentioned before, to observe
22 pre-hearing conferences and the hearing process
23 itself. The hearing room is typically going to be a
24 large facility which will accommodate not only the
25 parties and witnesses and the board, but also should

1 provide substantial seating capacity so members of the
2 public and the media will be able to attend and
3 observe.
4 Members of the public can also make oral
5 and written limited appearance statements. Limited
6 appearances are simply statements of the views of any
7 individual which may be submitted and included, but
8 they are not really part of the evidentiary record.
9 That is, they will not form a part of the basis upon
10 which the decision will be made. As I said before,
11 that record, the evidence, if you will, will be that
12 which is submitted by the parties through their
13 witnesses, either oral testimony -- and oral, by the
14 way, may be testimony submitted in written form as
15 well -- or documentary.
16 The public also on an individual basis has
17 an opportunity to file petitions for leave to
18 intervene. If their petition is granted -- and Dennis
19 will talk in a minute more about some of the specifics
20 of that -- if the petition is granted, that person
21 becomes a party to the proceeding and is entitled to
22 fully participate as any other party throughout the
23 process.
24 Finally, an individual can authorize an
25 organization to represent his or her views. There are

1 many organizations out there which, as an
2 organization, may not have the standing that is
3 required to participate as an organization, but the
4 Commission's regulations historically have recognized
5 the opportunity for organizations to represent the
6 views of members whose interest may be affected and
7 who, on their own, would have what we call standing.
8 As I said before, limited appearance
9 statements are statements by non-parties. Time is
10 usually set aside by the board for receiving these
11 statements and, as I mentioned earlier, they're not
12 evidence. But the staff typically will review those
13 statements and technical issues that may be raised or
14 identified by members of the public will be dealt
15 with, will be considered by the staff in its review.
16 I mentioned before that there is an NRC
17 website. Bill in the past may have mentioned it to
18 you as well. But our homepage is www.nrc.gov. You
19 can get to us, by the way, at firstgov.gov. Our rules
20 of practice can be found at that website. And
21 finally, the legislation which includes the Atomic
22 Energy Act and other relevant pieces of legislation,
23 this is this document referred to as New Reg 0980, is
24 also at that website.
25 Bill mentioned before that the hearing

1 will be conducted over a very compressed period of
2 time and, although maybe a three year period sounds
3 long, it's really a remarkably short period to
4 consider a project of this complexity and magnitude.
5 The statute specifies and limits the Commission to a
6 three year period, subject to requesting up to a one
7 year extension from Congress.
8 On top of that, the Commission's
9 regulations, again 10 CFR Part 2 in a section called
10 Appendix D, lays out a more detailed schedule which
11 has ben identified as the anticipated hearing
12 schedule. And again, Dennis is going to speak about
13 that in a little more detail as well.
14 Overall, there are four steps in the
15 hearing process. The pre-application phase, and that
16 is rather unique in connection with the repository.
17 It's a much more elaborate, much more established and
18 much more structured process than it typically is in
19 Commission proceedings.
20 Then there's the pre-hearing phase. The
21 evidentiary hearing is the third phase and finally,
22 there's the phase which we, for want of a better term,
23 label as the appeal phase. It's the review phase
24 after the decision is issued by the board.
25 At this point, I'd be happy to take some

1 questions on the general overview I've provided, and
2 then turn it over to Dennis.
3 MR. CAMERON: I think we will take a break
4 after this question period. Larry, I'm going to let
5 you be the judge about whether we should defer
6 answering some of the questions until we get to Dennis
7 or whether it fits into your overview. Susi.
8 MS. SNYDER: My name is Susi Snyder. I
9 work with the Shunda High Network here in Pahrump and
10 I have a couple of questions. My first question would
11 be you talked about the Atomic Safety and Licensing
12 Board and said it was possible to establish more than
13 one. How is this board established? Are these
14 members elected, appointed? If they're appointed, who
15 appoints them?
16 MR. CHANDLER: There is a -- Atomic Safety
17 and Licensing Board panel. The members of that panel
18 are employees of the Nuclear Regulatory Commission,
19 but it's an independent office within the Commission.
20 Unfortunately, I had hoped to try and find out what
21 the total number of members are on that panel at this
22 point. I don't know. If it's a number that's
23 meaningful, I'd be happy to ask my friend Chip to put
24 it on his parking lot and we could provide that. But
25 the number varies from time to time.

1 MS. SNYDER: My next question is the
2 schedule of the proceeding, referring to slide 26, and
3 my question is really, three years is a very short
4 time to review a project that's currently been studied
5 for over 20 years that we just had a supplemental EIS
6 that kind of changes the whole thing around. What
7 happens if new information comes out or there's a
8 major earthquake out there again, all the buildings
9 get leveled again, that you're unable to complete to
10 meet that deadline. You know that you're not going to
11 meet it within another year. So the year long
12 extension is kind of not applicable. So what happens
13 then if you get the year extension and you fail to
14 meet the deadline on that?
15 MR. CHANDLER: All I can tell you is at
16 this point in time, we have a statutory deadline which
17 we're going to do what we can as best we can to try
18 and meet. It may not be possible. I can not stand in
19 front of you and say with absolute certainty that
20 we're going to get there in that period of time. Our
21 objective is to structure a licensing review process
22 and the ancillary hearing process to best position
23 ourselves to complete that in that period of time.
24 There are a lot of people. There will be a lot of
25 reviewers involved to review the various technical

1 disciplines and we will have hopefully a sufficient
2 staff of attorneys to be able to do that in the time
3 required.
4 MS. SNYDER: But right now you don't know
5 what would happen if you fail that deadline?
6 MR. CHANDLER: No.
7 MR. CAMERON: I suspect, as Bill suggested
8 though, that we'd have to advise Congress that we're
9 having some difficulty.
10 MS. SNYDER: Okay. And then my last
11 question -- thank you, I appreciate it, Chip, very
12 much -- is that you talked about the limited
13 appearance statements and initially when you're
14 looking at the slide 22 that talked about public
15 opportunities, you said the statements or views of an
16 individual could be submitted but they will not form
17 part of the evidentiary record. And what I understood
18 that means is they're not really taken into
19 consideration in the decision and yet you said later
20 on on slide 25 that they will be considered in the
21 decision making. So I was kind of confused by that.
22 MR. CHANDLER: Let me try and clarify that
23 point. I'm sorry if I left you confused on that.
24 They're not part of the record upon which a decision
25 will be based. What I tried to suggest in the second

1 slide is that -- well, let me back up. Let me explain
2 a little bit more in a little more detail what people
3 often will express in limited appearance statements.
4 Anybody can make a limited appearance
5 statement. People will stand up and say, I don't like
6 this proposed action. I think it's unsafe. I think
7 it should be built elsewhere. And they've told us
8 where to get off. All sorts of comments are made in
9 those, and people will also get up in limited
10 appearance statements and say, Oh, by the way, I
11 understand that there's a new fault that was just
12 identified three miles down the road and I don't think
13 anybody's really aware of that. There are different
14 kinds of comments.
15 If someone were to make a comment that
16 suggested that there's some piece of technical
17 information that the staff ought to consider, staff
18 will take a look at it. I can speak from personal
19 experience where at a limited appearance statement at
20 some nice facility in southern California, an
21 individual got up during a limited appearance
22 statement and says, Oh, by the way, there's a new
23 fault, and I spent the week end trying to figure out
24 how we were going to fund our -- we happened to have
25 a geologist with us out there -- how we were going to

1 fund getting him a pair -- because he wasn't prepared
2 -- getting him a pair of boots and jeans so he could
3 take a trek Saturday morning to go visit the fault.
4 I mean these things happen.
5 So it is not part of the record of
6 decision but comments that have technical merit will
7 be looked at, and the staff will look to decide
8 whether there are technical issues that need to be
9 considered.
10 MR. CAMERON: Thank you, Susi --
11 MS. TREICHEL: I went up to the Scull
12 Valley once and I watched --
13 MR. CHANDLER: PFS?
14 MS. TREICHEL: Yes.
15 MR. CHANDLER: I would suggest that we've
16 looked at the transcripts of those hearings because I
17 do have some responsibility for those proceedings as
18 well. I would certainly hope that the attorneys on my
19 staff, either those working for Dennis or one of the
20 other divisions, are actively assuring that the record
21 that is completed is a complete record, is a fair
22 record, and reflects all reliable, credible, and
23 material evidence. I don't recall anything in that
24 transcript which suggested otherwise.
25 MS. TREICHEL: I just was horrified.

1 MR. CHANDLER: I understand that.

2 MS. TREICHEL: When an intervenor files a

3 matter, as you said, or there's a petition to

4 intervene, who makes the decision about whether or not

5 those are accepted?

6 MR. CHANDLER: The Atomic Safety and

7 Licensing. What typically will happen is that the

8 board -- once -- well, let me back up. Notices will

9 be provided when an application is received and the

10 process is started. People will have an opportunity

11 in response to that notice to submit petitions for

12 leave to intervene. Once one of those is received, it

13 just takes one, you'll notice it specifies send it to

14 so and so. It usually says the Secretary of the

15 Commission. Once one or more is received, they are

16 referred by the Secretary to the Chairman of the

17 Atomic Safety and Licensing Board panel to establish

18 a board.

19 That board's first responsibilities will

20 be to start the pre-hearing procedures going to decide

21 that petition. Now, in response to that petition,

22 other parties will have an opportunity. Dennis is

23 going to talk about this in some more detail. I don't

24 want to step on him.

25 MS. TREICHEL: That's fine. Maybe --

1 MR. CHANDLER: But the board will decide
2 that.
3 MR. CAMERON: Thanks, Judy. Kalynda.
4 MS. TILGES: I have two questions.
5 Actually, I have tons of questions but I'll stick to
6 two on this particular point. Sorry about that. I
7 didn't want to give you a stroke there.
8 On the hearing process, talking about
9 intervenors and interested groups. I'm interested in
10 which Indian tribes are you considering as intervenors
11 or interested? Are they any other than the 17
12 federally recognized tribes? I'm kind of curious as
13 to what tribes you dealt with. Should I wait for the
14 answer to that or ask both questions at once?
15 MR. CHANDLER: Why don't you ask them both
16 and then we'll make sure we answer them.
17 MS. TILGES: And my second question is is
18 how does someone go about getting standing to
19 participate officially in this process so that our
20 comments and concerns are officially considered part
21 of the record?
22 MR. CHANDLER: With respect to the Indian
23 tribes, I'm just going to leave it in a very simple
24 way. The Commission's regulations specifically
25 recognize, without naming tribes, certain categories

1 of those who are identified in the statute.

2 MS. TREICHEL: Can you clarify that?

3 MR. CAMERON: I think that we need to be

4 really explicit on this because just because a tribe

5 is not a quote, "affected tribe," unquote does not

6 mean that it can not be a party to the proceedings.

7 We need to explain all that. Do you or Dennis want to

8 go into that? Do you want to reserve it for Dennis or

9 do you want to get it cleared up now because it's an

10 extremely important point and I think -- and others

11 of us may have information on it. Larry.

12 MR. CHANDLER: As a general proposition,

13 the Waste Policy Act specifies and gives certain

14 stature to certain affected Indian tribes. The

15 Commission's regulations do likewise. That's one

16 category. Beyond those designated in that way, any

17 tribe much as any individual can file a petition for

18 leave to intervene, wholly independent of the fact

19 that they're a recognized tribe. Does that answer the

20 question?

21 MS. TREICHEL: Can you repeat that? Any

22 tribe or persons --

23 MR. CHANDLER: Any tribe. I'm not trying

24 to answer your second question as part of it but it

25 will. Any individual, any person is free to file a

1 petition for leave to intervene. Dennis will describe
2 in more detail what the characteristics are that need
3 to be established, what the various aspects are that
4 need to be addressed in a petition for leave to
5 intervene.
6 MR. CAMERON: I'm going to go to Steve and
7 perhaps now anybody who wants to add something. As I
8 understand it, Larry, if you're in this special
9 category of affected tribe, you're automatically --
10 MR. CHANDLER: What they've done -- almost
11 automatic. What they've done is eliminated the need
12 to establish standing. They still require that you
13 come in and provide a list of contentions. And if we
14 keep this up, poor Dennis is not going to have
15 anything to say.
16 MS. TREICHEL: Is this written somewhere?
17 COURT REPORTER: Please use the mic.
18 MR. CAMERON: Let me clear up something
19 up. We will provide you with what is written on this
20 issue so that you understand it. Steve, do you want
21 to add something?
22 MR. FRISHMAN: On the subject of zoning
23 before. Yes. Recently the State of Nevada has
24 requested that the Commission at least consider a
25 hearing process where the staff would not be a party.

1 We had a number of reasons for that, and our thinking
2 simply was influenced by what we observed in the Scull
3 Valley hearing where the NRC staff represented by
4 attorneys was -- cross examination -- to intervenors
5 and our request was certainly reinforced by observing
6 that and I guess my question is could you go through
7 a little bit of the rationale that I know came out of
8 your office that resulted in the decision to not
9 change the hearing process and to maintain staff as --
10 MR. CAMERON: That sounds like one for
11 you, Larry.
12 MR. CHANDLER: The rationale is really
13 quite simple, at least in my view, and as I tried to
14 explain before, I respect your views on how the
15 proceeding was conducted in connection with the
16 private fuel storage application. I certainly would
17 expect our attorneys, as any other attorney, to be
18 very active, if you will, aggressive within
19 appropriate bounds of professional deportment.
20 I would expect as part of that process
21 that the attorneys would actively pro the credentials,
22 qualifications of any individual who would testify,
23 those for the applicant as well as those for the
24 intervenor, and that they would assure that the
25 evidence that's being offered is credible, is

1 material, is relevant. We could probably
2 unquestionably differ on how aggressive what we may
3 consider to be appropriate but I think every attorney
4 has a responsibility to his or her client to assure
5 that an appropriate record is being created. That
6 should in no way suggest bias, it should in no way
7 suggest pre-judgement, it should in no way suggest
8 that we are taking sides.
9 The only side that the attorneys in the
10 Office of General Counsel should take is the side of
11 the staff. We should most actively and vigorously
12 assert and defend the position of the staff. They
13 are, if you will, in the most direct sense, I suppose,
14 analogous to our client. We share an overall
15 responsibility in the review of the application
16 ultimately to assure -- the Commission's ultimate
17 responsibility is to assure that there's reasonable
18 assurance that public health and safety will be
19 adequately protected.
20 MR. CAMERON: Thank you, Larry.
21 JIM: I wanted to follow up a bit on your
22 comment that there could be more than one board. This
23 lady asked a question about it and I'm not sure I
24 understood your answer. Would a second board be
25 formed because of the time pressures here and, if it

1 were formed, would then the two or three boards
2 somehow divvy up the licensing procedure parallel--
3 MR. CHANDLER: Let me try and explain that
4 for you. I'm sorry. Did you finish your whole
5 question?
6 JIM: I think you got it.
7 MR. CHANDLER: Okay. What has happened in
8 the past, and this would not be unique to this
9 proceeding, but there have been proceedings where
10 there are a significant number of parties and a very
11 significant number of issues involved, contentions.
12 And simply as a matter of good, sound administration
13 and assuring that the process moves forward on an
14 expeditious a process as possible and consistent with
15 the interests of the parties and the rights of the
16 parties to a fair hearing, multiple boards can be set
17 up.
18 What they do is, just as you suggest, they
19 divvy up issues. And one board may be responsible for
20 considering issues one through three, the next four
21 through six and so on. What each board possibly would
22 end up doing -- not possibly -- would end up doing is
23 issuing what's referred to as a partial initial
24 decision, the sum total of which become eventually the
25 total decision upon which the ultimate licensing will

1 be based.

2 MR. CAMERON: Thank you. Let's take one

3 more here and then go back over there and then we'll

4 take a break. Grant.

5 GRANT: Thank you. I'm Grant. You're

6 saying some things that I think will help but all of

7 us understand the flaws in the system you're using.

8 As an attorney, you have to rely and trust somebody to

9 pick the technical people for you. Personnel clerk.

10 The personnel clerk goes through the résumé and maybe

11 even calls to see if they've really got a degree or

12 not. The personnel clerk has no clue as to the

13 technical competence of this person. Then they go

14 around and they talk to other engineers and whatnot.

15 They may or may not know anything about this little

16 narrow area.

17 As a chemical engineer, I can assure you

18 that I can see things on the Internet every day that

19 are in my field that I have absolutely no

20 understanding of and it takes me two weeks to get the

21 books, the research papers, go talk to a professor

22 before I'm up to speed with that, and then I can go on

23 and complete my project if that's part of it.

24 MR. CHANDLER: Absolutely.

25 GRANT: An attorney can not comprehend how

1 entwined this project is with these details of
2 technology. I ran into one government official that
3 had industrial turnaround experience. That was Al
4 Alms. He was on the environmental clean-up as
5 Assistant Secretary. He was a brilliant man. But I
6 said to him, why aren't you passing your expertise on
7 to the managers and technical people in your
8 department? He said, I don't have time. I have to
9 get -- from Congress. The people in his department
10 did not have a clue what his expertise was, the power
11 of it, how to use it or anything else, and he's the
12 only one in the government that I've run into.
13 This is a serious flaw that will cause the
14 biggest disaster you guys can't even imagine. Seventy
15 seven thousand tons of waste. Every one of those fuel
16 rods has the fall-out -- of several Hiroshima bombs.
17 This stuff makes a terrible mess.
18 MR. CAMERON: Grant, can we --
19 GRANT: Let me just --
20 MR. CAMERON: Let's go to Larry for any
21 comment you want to provide.
22 MR. CHANDLER: Your comment to me is much
23 like the comment you made to Bill. I would like to
24 give you some assurance that over the years I've been
25 involved in licensing reasonably complex industrial

1 facilities, reactors, I've seen an actually remarkable
2 level of expertise brought to bear by our agency as
3 well as others who have been involved.
4 I invite you to please observe the
5 hearings if you're not otherwise participating in them
6 and I think the record -- I'm fairly comfortable that
7 the record will establish the credentials of the
8 individuals who will be offering testimony,
9 individuals on behalf of the staff and I think Bill
10 described for you the various expertise that we will
11 be using in the staff's review and, to the extent
12 there are issues in the hearing process, also as
13 witnesses in the hearing process.
14 Part of the concern that was expressed a
15 minute ago -- Steve? -- was that our attorneys
16 actively challenge the credentials, I believe, of some
17 of the individuals who are testifying in this
18 particular proceeding. In fact, it's essential -- and
19 I couldn't agree with you more -- that the testimony
20 that's being offered that will form the basis of the
21 decision be testimony offered only by individuals who
22 are truly qualified to give those views.
23 So I agree with you. I have a little more
24 confidence that we in fact have either on our staff
25 through the center or otherwise available to us

1 expertise that we need.

2 MR. CAMERON: Okay. Thanks, Larry. I'm

3 going to go to this gentleman here, but I just wanted

4 to note that Kalynda had a second question about

5 standing that falls in, I think, Dennis's area. We

6 have to leave him something to do.

7 MR. CHANDLER: Leave him something, and

8 I'll chime in anyway.

9 MR. CAMERON: Yes, sir.

10 DAVE: My name is Dave -- and I was --

11 industry for 10 years -- development engineer. What

12 I come down to is NCR looked at many possibilities

13 over and above the one that was done in the South

14 Pacific neutralizing these radiation rods by killing

15 the process that was stopped and turned on by the --

16 after a desired amount of money spent. I believe by

17 the time that they had completed the -- storage area

18 that they would have probably made about the same

19 amount of investment by having a process that

20 eliminated all the dangers and used the byproducts

21 that would be available to us on the market.

22 MR. CAMERON: Can we have someone talk to

23 this gentleman about reprocessing at the break? Okay.

24 Because I think that's outside. We'll have someone

25 talk to you.

1 Do we have any more overall questions?
2 We're going to get into real specifics here after the
3 break. Okay. Steve and then we'll go to Sally and
4 then we're going to take a break.
5 MR. FRISHMAN: Steve Frishman again, state
6 of Nevada. A few years ago I and the Director of the
7 agency that I'm representing tonight spoke to the
8 panel of the NRC Licensing Board about the Yucca
9 Mountain project and they were doing -- complexity
10 among other things, and to the extent that someone on
11 the board retired -- they did talk among themselves at
12 that meeting, not about multiple boards, but about the
13 possibility of there having to be appointed a special
14 panel with expertise in a broad range of subjects that
15 would be involved here and also a highly expert staff.
16 Has that ever gone anywhere? Rather than this notion
17 of multiple panels because multiple panels may be just
18 wonderful for the NRC, it may be pretty good for the
19 DOE because they can afford the millions of dollars to
20 be able to handle it and it's terrible for the
21 intervenor.
22 MR. CHANDLER: I understand that point as
23 well, and that's one of the comments I made earlier is
24 that when multiple boards are set up, we need to take
25 account of the -- to obtain expert individuals, not

1 necessarily to sit as a member of the board itself,
2 but if the need arises, they can retain expertise to
3 augment the talent they do have.
4 MR. FRISHMAN: Larry, there is a
5 commission paper that was sent by a previous general
6 counsel that examined several ideas. The blue ribbon
7 panel, so to speak. But Larry, you might just -- can
8 special boards be appointed? In other words, you can
9 go outside of the licensing board panel?
10 MR. CHANDLER: They can obtain special
11 expertise, special assistance, as needed. They are
12 not members of the board per se, but they can provide
13 additional expertise to the board.
14 Steve, we need to get this on the record.
15 MR. FRISHMAN: You've got the stick.
16 MR. CHANDLER: We'll go to you and then
17 we'll go to Sally and then we'll take a break. Go
18 ahead, Steve.
19 MR. FRISHMAN: Down to the actual
20 question. Is there anything that would not permit
21 what some of the members of that board were talking
22 about when we spoke to them about some different board
23 that has all of the authorities of the existing board
24 but is selected for its specialized knowledge and
25 capability in dealing with this. It's quite clear

1 that many of the members of the ASLB were very
2 uncomfortable with having to go through or even
3 contemplating a process like this licensing process.
4 Is there anything that will keep the Commission from
5 going ahead with that other than their own will?
6 MR. CHANDLER: Well, there is a provision
7 -- you've got the answer, Mel?
8 MR. MURPHY: If I could just supplement
9 because I remember the same issue and the issue is not
10 the expertise of the ASLB, the general competence of
11 the ASLB. The issue was we do not have as members of
12 the ASLB earth scientists and this will be an earth
13 science process. This will not be a proceeding to
14 determine whether another reactor is designed to do a
15 bunch of -- this will be a proceeding that's based
16 almost exclusively on earth science and we are earth
17 scientists.
18 MR. CHANDLER: I understand. You're
19 looking for specialized expertise and, as a general
20 proposition, specialized expertise can be retained,
21 even to serve as members of the board. I mean they
22 could solicit additional members with that background.
23 I honestly can't tell you whether they have done so.
24 I can't answer that.
25 I will also tell you that earth sciences,

1 for better or worse, have played a great role, been a
2 great part of my life in my earlier incarnations.
3 Many of the reactor facilities I've been involved with
4 involved extremely complex issues. I'm not suggesting
5 they're necessarily the same as but I will assure you
6 were very complex earth science related issues as
7 well, and they were handled very effectively by the
8 boards. They have a great deal of capability and you
9 can get more if necessary.
10 MR. CAMERON: Thanks, Larry. Let's take
11 one final question before the break. Sally.
12 MS. DEVLIN: This will be a quick one,
13 Larry. On page two of the material you gave us, what
14 is the NRC role for the repository and set rules that
15 protect public and worker work safety. We would
16 comment on that at this time. But we must go to the
17 next one, -- consistent with -- Environmental
18 Protection Agency standards. We have not, as far as
19 I know, --
20 AUDIENCE MEMBER: Can't hear you.
21 MS. DEVLIN: I'm sorry. You can't hear
22 me?
23 AUDIENCE MEMBER: Tilt it a little.
24 MS. DEVLIN: Now can you hear? I said are
25 consistent with finding of the U.S. Environmental

1 Protection Agency, EPA, standards -- and yet the NRC
2 and the EPA have been fighting for years. I had heard
3 at the last conference which was three weeks ago
4 nothing from Ray Clark from EPA -- so what is the
5 status of -- and so forth that we're all very
6 concerned about? This is public health and we'll get
7 into that a lot more --
8 MR. CAMERON: I'm thinking Bill would be
9 most appropriate on this one. Bill.
10 MR. REAMER: The status is the
11 Environmental Protection Agency submitted a draft
12 final regulation to the Office of Management and
13 Budget in January. That initiated a process called an
14 inter-agency review process. We are participating in
15 that. The Department of Energy is participating in
16 that. The Environmental Protection Agency. We
17 presented a position that's consistent with comments
18 that we have discussed with folks in this room before.
19 But ultimately, the authority to set the standard is
20 in the hands of the Environmental Protection Agency
21 and the law requires that we be consistent with that
22 final EPA standard when the EPA issues it.
23 MS. SNYDER: --
24 COURT REPORTER: You need a mic.
25 MR. CAMERON: Let's make sure we talk to

1 Susi during the break about that and if we need to
2 bring it back up, we'll do that but let's take a break
3 until around 8:15 and we'll start with Dennis Dambly
4 who will go into specifics on the hearing process.
5 (Off the record at 8:07 for a 16 minute
6 break.)
7 MR. CAMERON: If we'd all get back to our
8 seats, we'll get it started with the second part of
9 the evening's discussion. I just wanted to remind
10 you, if you haven't signed in, please do so. There's
11 a sign-in sheet over there.
12 We're going to get into some more detail
13 now about the hearing process. Dennis Dambly,
14 Assistant General Counsel at the NRC. Dennis's
15 people, as I said earlier, his attorneys are the ones
16 who are going to be representing the staff, NRC staff,
17 in this particular process.
18 We do have a couple of questions from
19 before. One is the question that Kalynda raised about
20 how do you get standing? How do you participate? And
21 Dennis will be going into detail on that. Dennis.
22 MR. DAMBLY: Thank you. Can you all hear
23 me? You don't know yet.
24 My name is Dennis Dambly and, as Larry and
25 Chip have indicated, it would be the responsibility of

1 my staff to represent the agency should there be a
2 hearing on Yucca Mountain. You can't hear me?
3 The first thing, if you're following the
4 slides that we have here, is a time line. I'll just
5 go through it briefly and talk more specifically about
6 the points, but I want to give you a lay-out, an
7 overview of the actual timing that would take place if
8 there was a hearing.
9 The first thing we have on the time line
10 is that at least six months before DOE submits a
11 licensed application, it is required to certify that
12 all the documents on the licensing support network.
13 I believe there was a meeting held out here last year
14 about what the licensing support network is and how it
15 works, and I'll talk a little bit about it, but that's
16 not really the subject. DOE has to do that at least
17 six months before they file an application.
18 One month after they do that, the NRC
19 would have to certify that all of our documents are
20 also on the licensing support network. Three months
21 after DOE certifies, any potential parties, states,
22 anybody that wants to be a party to this proceeding,
23 will also have to have all their material on the
24 licensing support network. These dates have changed
25 recently. The final rule, I think, is going to be

1 published -- where's Chip?

2 MR. CAMERON: Right here.

3 MR. DAMBLY: Next week is the final rule

4 going in *The Register*?

5 MR. CAMERON: Yes. It should be in *The*

6 *Register* the end of next week. Pardon me? Dennis,

7 there's a final rule that's going to be issued by the

8 Commission on the licensing support and that final

9 rule will be in *The Federal Register* by the end of

10 next week and then there's 30 days after that a rule

11 will be in effect.

12 MR. DAMBLY: Long before there will ever

13 be an application and it will come into play.

14 Once the NRC dockets an application, it

15 has, as Bill told you -- I don't want to not talk to

16 you all over here but with this mic, it's difficult.

17 The NRC has 90 days to review the application when it

18 comes in and then docket it. The purpose of that

19 review, as Bill told you, is to make sure the DOE has

20 submitted a sufficient application for the staff

21 actually to consider the technical merits.

22 Once there is a docket, within 30 days of

23 that, and when it's docketed, there'll be a notice,

24 and I'll talk about that, that goes out and make sure

25 everybody knows how they can get a copy. You've got

1 30 days in which to submit your petition to intervene
2 along with contentions. That's a short period, but
3 I'll explain how you should be attacking that if
4 that's what you want to do in a little bit.
5 The rest of the time line. If you look in
6 Appendix B that Larry talked about, it has a whole
7 bunch of dates in there. Actually, they're numbers.
8 So many days from the date of the docket, the
9 application being docketed. We tried to put it into
10 more understandable times, but they're not exact. So
11 that's why you will see things like about 18 months
12 and about 24 months and about 32 months, if Janet
13 moves forward. Go to the next slide.
14 The actual numbers, numbers like 632 days
15 are some of them, and if I put those up there, it
16 would be as meaningful to you as it is to me. So we
17 tried to make this so you would have an idea of the
18 general time frames. These are not absolutes. The
19 real numbers are a certain date as in 1125 is when I
20 think the Commission is supposed to make its decision,
21 although I did the math on that and that's more than
22 three years, so I'm not real sure how that worked out
23 that way. It's like 20 extra days or something like
24 that. I forget.
25 If we can go now to the pre-application

1 phase. Thank you. Basically, the important part of
2 this section -- and this is unusual for an NRC
3 proceeding. It starts, it's defined as starting 30
4 days after DOE submits its recommendation to the
5 President. At that point, the thing that becomes
6 important is the licensing support network. There are
7 a whole lot of things that one has do. We talked
8 about the dates in which DOE has to certify and the
9 staff has to certify and anybody who wants to be a
10 party has to certify. We have those dates again on
11 the next slide.
12 On the prior slide, there is a pre-
13 licensing application presiding officer as appointed.
14 It will probably be a member of the Atomic Safety and
15 Licensing Board. The function of that individual is
16 to clear up or make rulings on any disputes about
17 whether people did what they were supposed to with the
18 licensing support network. Just as an example, if DOE
19 certified that they put all their documents about
20 Yucca Mountain on the web on the licensing support
21 network and you went there and there were 30
22 documents, you might have a question about whether
23 that was a true statement or the staff put 10 or 15
24 documents on and said that's all, you might raise a
25 question. You could go to the judge and say, I don't

1 think they put everything on there because that's just
2 ridiculous.
3 Mostly, I would imagine, what he or she
4 will be dealing with will be questions about privilege
5 because when you have to deal with the licensing
6 support network, not only do you have to make
7 available all your documents that are not privileged,
8 but documents that are privileged, things like
9 attorney/client privilege, proprietary information
10 trade secrets. Those you have to provide
11 bibliographic material to say we have a document and
12 the name of the document is whatever. It's about this
13 but it's privileged so we're not putting the document
14 itself on there but we'll tell you that there is such
15 a document. You could go to this judge and say, We
16 don't think it's privileged. It should be produced
17 and put on the support network with all the rest of
18 the documents and he or she would make a decision and,
19 if he says yes, put it on, then it goes on.
20 If we could go to the next slide. This
21 slide is basically just a quick overview of what the
22 duties anybody who wants to be involved in the
23 proceeding would have with respect to the licensing
24 support network. The important thing that I want to
25 leave you with on this is the next slide.

1 Under the regulations, if you want to be
2 granted party status when an application comes in and
3 you're given the right to intervene, you have to show
4 substantial and timely compliance with putting your
5 staff on the licensing support network. If you don't
6 do that, that could be a reason that you are not
7 allowed to intervene in the proceeding. Now, you
8 could correct it for the late certification, but the
9 rules say then you take the record as you find it at
10 that point which may leave out some of the preliminary
11 stuff.
12 So the important thing. If you're
13 interested in being involved in any licensing hearing
14 here, make sure that you comply with your requirements
15 under the licensing support network, that you get your
16 documents online within 90 days of DOE putting theirs
17 online.
18 MS. DEVLIN: (Off mic)
19 MR. CAMERON: We'll be coming back to you
20 to answer questions.
21 Dennis, when have reach a logical point to
22 break for questions, just tell us.
23 MR. DAMBLY: Since the next slide is
24 called pre-hearing activities, this would be as good
25 a point as any to talk about the last --

1 MR. CAMERON: Okay. There are many
2 questions about the material that Dennis just
3 presented. We have Judy and then Susi. Judy.
4 MS. TREICHEL: Judy Treichel, Nuclear
5 Waste Task Force.
6 So what you have said is 90 days before
7 even the license has been submitted, a person or group
8 wanting to get in has to get everything that they
9 consider to be their documents on this monster and
10 done in that way before there's anything even there
11 and before you have been given status, you have to
12 have made that effort and done that, regardless of
13 your resources or whatever.
14 MR. DAMBLY: Well, you only have to put on
15 the documents you're aware of. I mean if you come up
16 with documents after that, you could put those on.
17 MS. TREICHEL: Yes. It's pretty hard to
18 put stuff on you're not aware of, but this is a
19 terrible burden on an interested or affected tribe
20 that has very limited resources, certainly on a
21 nonprofit organization where you have no idea if it's
22 going to pay off. This is a gamble. You haven't even
23 sought to be an intervenor but yet you had to comply
24 with something that is a big feat that's really not
25 been done in other licensing. I've been to the LSN

1 meetings. They're talking about something that's
2 science fiction.
3 MR. CAMERON: Dennis, do you want to maybe
4 just clarify the fact that, as you mentioned, that you
5 can certify later.
6 MR. DAMBLY: Yes. As I said, if you -- I
7 understand when we looked at those time lines that 90
8 days after DOE is probably 90 days before the
9 application comes in and after that, you'd have, I
10 guess, 120 days really in which to get contentions
11 ready. So at that point, things are fairly tight to
12 start with but if you don't comply with this before
13 hand and you comply -- at the time you submit your
14 intervention petition, if you say we've not put all of
15 our stuff on the web or on the licensing support
16 network, that would probably be sufficient to get you
17 by at that point anyway because you haven't lost
18 anywhere in the proceeding. You're not later than--
19 MR. MURPHY: Just another clarification,
20 Dennis. The obligation is to put on the licensing
21 support network the documents that you have in your
22 possession that you intend to rely on in support of
23 your case. That's all. In -- for example, we have
24 God knows how many thousands of documents that will
25 turn out to be essentially irrelevant to the

1 contentions to be filed and we will be posting only
2 documents that relate to contentions that -- will be
3 filing in the licensing case. So the points you make
4 are well taken, Judy, but that reduces somewhat or
5 makes a little bit more manageable the burden other
6 potential parties have to face. Only the documents
7 that will be in support of the case need to go on the
8 web.
9 MR. DAMBLY: And it's also possible that
10 all the documents you'll be wanting to use are already
11 on the licensing -- you can use DOE documents to
12 support your position. So you may not even have any
13 documents. As Mel said, and it's a good point, it's
14 only the contentions you're going to file. You don't
15 have to put everything you ever heard of. DOE has got
16 to put it all on. NRC is going to put all of our
17 documents on Yucca Mountain on. You have to put on
18 the ones you're going to use when you know you're
19 going to use them.
20 MR. CAMERON: Let's go to Kalynda or Susi,
21 did you have a question?
22 MS. SNYDER: I'll wait until the next
23 question.
24 MR. CAMERON: We want to make sure these
25 questions are on what Dennis presented and then we

1 want to go into some of the things that you're
2 interested in. Kalynda.
3 MS. TILGES: Two questions. I'm still a
4 little unclear on the licensing support network, how
5 we submit that. Are we supposed to upload them? Are
6 we supposed to send them to you and to the NRC and
7 trust that they'll get them up on time? What if they
8 don't? I mean how exactly do we ensure that some of
9 the documents get to the licensing support network.
10 And my second question is, which leads to
11 actually a whole other can of worms, whatever you want
12 to call it. You had mentioned at the beginning that
13 this unusual for NRC proceedings. I wanted to get
14 clarification on how you thought this was all -- what
15 exactly was unusual, how it was unusual, what was
16 wrong with the old licensing regulations to begin
17 with, but you might not want to go there.
18 MR. DAMBLY: I'll be happy to address that
19 because it's unusual. In normal NRC licensing
20 proceedings, there is no licensing support network.
21 There's no requirement you put all this stuff online
22 for everybody to see beforehand. It's actually,
23 although it may not sound like that, this is intended
24 to help the process and to help the public. DOE has
25 to make full disclosure before they ever come in with

1 their application. It's out there for your benefit.
2 It's not out there to hurt you. It's out there to
3 help you. The hope is that when we get to discovery,
4 which I'll be talking about, normally a good portion
5 of what a party would do in discovery is to try and
6 find out what documents the other side has that they
7 want to see. We're trying to eliminate that. All the
8 documents should be out there up front ready to look
9 at. Okay?
10 MR. CAMERON: And it's good that I see
11 nodding of heads. That's good.
12 MR. DAMBLY: The other question about the
13 support network. I'll let Chip answer that because he
14 had a lot to do with the licensing support network in
15 a former life.
16 AUDIENCE MEMBER: How do you get the
17 documents on there if you don't have access or how do
18 you get the documents there?
19 MR. CAMERON: The licensing support
20 network now is a series of individual websites. In
21 other words, you set up a website according to the
22 standards that are in the rule and you put the
23 documents on your website. Then everybody else has
24 access to your website. That's how it happens. It's
25 not this big central system any more. It's individual

1 websites.

2 MR. CHANDLER: Actually, the rule I think

3 that will hit the streets shortly is going to specify

4 in more detail some of the formats that can be used

5 for doing it. Understand, this proceeding may be

6 somewhat more than others, but in any NRC proceeding

7 participation has burdens. There are expenses that go

8 with it. There are obligations that go with

9 participating in any hearing, NRC or others. This one

10 has its own complexities, has some additional

11 complexities. Certainly, if people are interested in

12 participating, there's nothing that will prevent

13 people who believe they can satisfy the Commission's

14 requirements to become a party for working together,

15 collaborating and putting things together so that

16 costs are shared and burdens are reduced to the extent

17 possible. The simple fact is there are burdens, there

18 are obligations to participate in any process like

19 this.

20 MS. TILGES: I understand all that. What

21 I want is a simple procedure outline of how we

22 actually do this.

23 MR. CHANDLER: The regulation does have a

24 series, and if you want I can give you the section of

25 it. I'm frankly not that proficient in terms of this

1 technology to tell you about PDFs and Tips and all the
2 different kinds of formats and files that can be used
3 to do the various things. But there are regulations.
4 It's in Sub-part J of 10 CFR Part 2. I'll be happy to
5 give you the section number offline.
6 MR. CAMERON: We'll send you a copy of the
7 rule and also consult with you about what you need to
8 do about that.
9 MS. TILGES: Would you translate it for
10 me?
11 MR. CAMERON: Yes, because I think you
12 might need a translator.
13 Quick question from Judy and then we're
14 going to go to the next part of the presentation.
15 MS. TREICHEL: I've been to some of the
16 LSN meetings. Is it not a fact that there's going to
17 have to be another licensing exercise carried on at
18 some point using this system to see if it in fact
19 works? At this point, it's a whole big series of
20 *Federal Register* notices, a couple of bookcases worth
21 of paper, but aren't they going to have to do a maiden
22 voyage using this thing to see if it'll float? That's
23 what I understood at the last LSN meeting, that you
24 can't just do this as a first time shot.
25 MR. DAMBLY: I'm sure that the board is

1 planning on having -- in fact, I think up and working
2 in the not too distant future. I think about the time
3 that DOE, if they do, makes a recommendation to the
4 President. I think they plan to get the system up so
5 they can work the bugs out of it. I don't know of it
6 being used specifically for another proceeding.
7 MR. CAMERON: They do have a plan for
8 working the bugs, as Dennis puts it, before it has to
9 be operational but I think there'll be another LSN
10 advisory review panel meeting to discuss that and also
11 I think it might be a good idea to discuss exactly
12 what the new rule means and how you go about meeting
13 your obligations under the rule. We'll put that up as
14 a follow-up.
15 Let's take Sally and Grant and let's go
16 back to your presentation so we make sure we get it
17 all.
18 MS. DEVLIN: Dennis, let's get back to the
19 discrepancy between you and EPA. NRC will allow one
20 death in a million. EPA will allow one death in
21 10,000. That's a huge difference. I don't know how
22 you are going to get together on that. The most
23 important thing to me is -- and I brought it up to all
24 the meetings to you all and -- and that is Price
25 Anderson. I don't hear in any of this whatsoever the

1 thought of if there is an accident and it doesn't take
2 a very major accident with nuclear waste to kill
3 hundreds of thousands and maim and have cancers.
4 Price Anderson is up to $9.7 billion. Chernobel cost
5 $300 billion. We would need at least $200 billion
6 just for one accident. I don't hear any of this
7 protection for the public, and that's what we try and
8 do, and worker safety.
9 This whole thing to me is terrifying and
10 we would be the last recipient because this would be
11 going to 43 states. I don't see anything but the most
12 -- what can I say? -- same old thing that I've heard
13 for the last eight and a half years. I don't see any
14 depth to these reports and I really don't see any care
15 for the public or the workers. What I do see is the
16 continuous well, we're going to do it and put in it.
17 Bill knows how I feel. I want to know who these
18 people are. I want to know this. I want to know
19 that. But most of all, I want to know how you're
20 going to protect the public from this deadly incident
21 that might well happen anywhere in this nation.
22 MR. CAMERON: Thanks, Sally. Those are
23 obviously important points but we need to concentrate
24 on this process so people understand how to
25 participate. I would ask that Larry and/or Bill after

1 the meeting perhaps talk to Sally about Price Anderson
2 and Bill obviously is noting the point that Sally is
3 Making here. Let's go to Grant.
4 GRANT: Grant Audlow. What I'm hearing
5 and the questions, too, is attempts to open up the
6 process and allow people, by removing the -- this kind
7 of thing, but at the same time I've been involved with
8 putting in paper work for a variety of government
9 projects. If I do it myself, they look at it and say
10 this is not appropriate and throw it in the trash can.
11 In fact, a time or two they've written on it "loco" as
12 their review comments.
13 So am I incorrect in saying that we're
14 probably looking, if you really want to seriously test
15 this, we're looking at million dollar legal bill to
16 start with?
17 MR. DAMBLY: I know I'm not getting that
18 much. Larry will verify that. No, I don't think
19 you're necessarily looking at $1 million legal bill.
20 One of the things I'll mention in regard to that. If
21 you have specific contentions that you bring in, that
22 may be the scope of how you're allowed to proceed. If
23 you got one contention, you may only be allowed to
24 participate on that one contention. If you want to
25 contest everything in the world and you file a lot of

1 contentions, it may cost you a significant amount of
2 money. I don't know that for an individual with a
3 single attorney that you're talking about $1 million
4 but it could be substantial legal costs if you want to
5 hire an attorney to do that. I can't help that.
6 There's no requirement that you have an attorney
7 MR. CHANDLER: Yes, I was just going to
8 say just that point. There have been any number of
9 cases in which individuals have participated, and I
10 would say very effectively participated, without
11 having attorneys. There have been other cases where
12 they've had attorneys. I don't know how you judge
13 their effect. But the decision to retain an attorney
14 is the individual's.
15 MR. CAMERON: Let's move on. I think
16 there may be more to bear on that question after you
17 see what this is all about. Dennis.
18 MR. DAMBLY: Pre-hearing activities. This
19 is when you get to actually the formal part of the
20 proceeding. Once the application has been received
21 and docketed. When the notice goes out. There will
22 be a notice. It will be published in *The Federal*
23 *Register*. It'll be put on our website. There'll be
24 a press release. I'm sure the local media will make
25 it well known and I believe Bill will provide it to

1 local governments and interested officials and anybody
2 that we're aware of that wants a copy for that matter.
3 There's no secret about what it is. It will tell you
4 at that point that you have 30 days in which, if you
5 want to be a part of the hearing, to file an
6 intervention petition and it will tell you how to do
7 it and what you have to do.
8 Larry has already talked about the
9 appointment of a licensing board, so we'll move on.
10 This is a list of the activities that go on in the
11 pre-hearing phase. I'll talk about them in a little
12 more detail individually. You go from the appointment
13 of a board who, as Larry indicated earlier, will make
14 the decisions on who gets to intervene and who doesn't
15 based on their submissions. From there, we would have
16 a pre-hearing conference. Actually, there'll be a
17 pre-hearing conference probably before there's a
18 decision made because a lot of times at that pre-
19 hearing conference there is discussion about whether
20 you met the standing and contention requirements. And
21 then there's a decision granting or not intervenor
22 status to the various people who have applied.
23 Following that, you get into discovery.
24 At the end of the discovery, you get on into the
25 formal evidentiary hearing part, and we'll talk about

1 that. But the receipt, when it goes out, as I said,
2 everybody that wants it will get it. There's no
3 attempt by the agency nor do I think there's any
4 chance in the world that we could somehow slide this
5 into *The Federal Register* and people out here would
6 never hear about it. I just don't think that's going
7 to happen. But that's not our intent anyway. We will
8 make it available. There'll be press releases. It'll
9 be on the web. I'm sure it'll be a major event when
10 it comes out, if it comes out, if we get an
11 application. It'll tell you exactly what you have to
12 do.
13 The important thing. I said you got 30
14 days to file this after the notice comes out. Don't
15 wait, if you want to participate in this proceeding,
16 until the notice comes out to start looking at it. Do
17 I want to file contentions and whatever? Because at
18 that point you only got 30 days. You got this whole
19 licensing support network. It'll be a very large,
20 voluminous application that you have to go through.
21 You should start as soon as DOE puts its stuff on the
22 web or before that if you want. Don't wait until
23 those 30 days because it's a short period of time.
24 But if you look at it, if you didn't even start to do
25 anything until DOE certified that all its documents

1 are on the licensing support network, that's at least
2 six months before they can submit an application, and
3 there's another 90 days for us to review to docket
4 that application and 30 more days. So that's at least
5 10 months before you'd have to file a petition that
6 you will have full access to DOE's database along with
7 the NRC's.
8 If you'd go to the next. Anyone whose
9 interest may be affected and who wants to be a party
10 has to file an intervention petition. You got to do
11 two things. You got to explain how your interest will
12 be affected by the outcome of the proceeding. This is
13 the standing. And then you got to file one more
14 contention. A contention is basically an issue that
15 you want the board to resolve about the DOE
16 application. It's also important. A lot of people
17 think mistakenly that you can wait until the NRC
18 issues its safety evaluation report which, from the
19 time line that we put on earlier, comes 18 months, I
20 think, approximately after the notice to decide
21 whether they want to intervene and file contentions.
22 The contentions that you file are to be
23 based on DOE's application, not NRC's review.
24 Frequently people file additional contentions after
25 the NRC's review but then you have to meet some

1 different standards for late file contentions.
2 Basically, you need to put in contentions why you
3 think DOE's application does not meet the rules, the
4 regulations, the laws. You don't put in, we think the
5 staff is doing a lousy job. That's not a contention.
6 God knows it's filed before but it's never been
7 accepted as a contention yet.
8 Going on to what standing is. You have to
9 be able to demonstrate that somehow, in essence, if
10 there is an application and if a construction
11 authorization is issued, that you will be personally
12 adversely affected. That's standard. For states and
13 affected Indian tribes and certain affected units of
14 local government, that is already a given. They have
15 standing. For others and, as was discussed earlier,
16 for Indian tribes that are not considered affected
17 Indian tribes but nonetheless wish to participate,
18 they have to meet the standing requirement but they
19 can participate like anybody else who wants to
20 participate by showing they have standing and filing
21 a contention.
22 It's also important to know that in order
23 to have standing it's got to be an injury that is
24 distinct and concrete, not some remote speculative.
25 You can't say, I live in Maine and I'm worried about

1 our friends out in Nevada. That's an injury to you.
2 You have to show you yourself, if there's a repository
3 built out here, will somehow be harmed. That's
4 standing.
5 Organization. You get standing in one of
6 two ways. If the organization can somehow show that
7 it has its own organizational interests will be
8 adversely affected. And that doesn't mean, you know,
9 we're the citizens against a nuclear waste repository
10 and we live in Idaho or some place, pick a state, that
11 you automatically have standing because your
12 organizational interest says you're against it. It's
13 going to have to be the organization owns a property,
14 something that personally affects the organization.
15 The other way organizations generally get
16 involved in NRC proceedings is to have members of the
17 organization as their main petitioners. For example,
18 if the Sierra Club was interested in getting involved
19 in any high level waste repository proceeding here and
20 you wanted to be involved and you could establish the
21 standing part because of where you live or whatever,
22 Sierra Club could use you, if you joined the Sierra
23 Club, as a member and filed a petition on your behalf
24 and thereby represent you. So that's one way. That's
25 the way organizations normally are involved in NRC

1 proceedings. And we do have this general concern
2 about safety or not sufficient.
3 Contentions. We've talked about this
4 already but basically it's a legal or factual issue
5 that you want the board to resolve. You have to be
6 specific. You got to point to something in the DOE
7 application that does not meet either our regulations
8 or statutes and you've got to support your contention
9 with either documents or experts' opinions. It also
10 has to be a dispute with DOE that's on an important
11 factual matter or legal issue, something that if you
12 were to prevail on the contention would require us to
13 either change any permit we would issue to DOE or
14 cause their application to build a repository be
15 turned down. It can't be something like they said
16 they were going to paint the trucks red and we don't
17 think that's a good color because even if you won,
18 that wouldn't change a thing on the -- you know, the
19 application would still be upheld but it's not a yes
20 or no kind of thing. There's got to be something
21 that's specific that they're not meeting a specific
22 requirement in the regulations or in the statutes.
23 Next slide, please. An intervenor is
24 somebody who has standing, can demonstrate standing
25 and files a contention that the board accepts. If you

1 can do that, you become a full party, can participate
2 just like everybody else. It's the licensing board
3 that will make those decisions, not the NRC staff, not
4 DOE. It's an independent licensing board that makes
5 the rulings on who has standing and who doesn't.
6 Discovery. To get party status to
7 participate, then you get discovery. In essence,
8 anybody in the world can get discovery before this
9 point by looking at the licensing support network
10 because that really is the document discovery in this
11 proceeding. That will be available to anybody. It's
12 not limited to just parties. In fact, you can't
13 become a party as an intervenor until there's an
14 application and an opportunity and you make the
15 requisite showings of standings. In terms of document
16 discovery, it's all going to be out there. As I said
17 before, in a lot of cases, a lot of the issues in
18 discovery are about documents. In this case, that
19 shouldn't be the case. All the documents should be
20 available to everybody.
21 You will have though the opportunity to
22 issue interrogatories. Interrogatories are written
23 questions. You prepare a set of questions that you
24 send to other parties and say, please answer the
25 following questions. They write back the answers.

1 Then there's also depositions. Deposition
2 are basically where you have the opportunity -- and I
3 would expect in any Yucca Mountain proceeding, most
4 depositions would be of expert witnesses where you
5 would put an opposing party's expert on the record in
6 front of a court reporter. They raise their right
7 hand and, under pain of perjury, say they will tell
8 the truth and then you get to ask them questions just
9 like you would potentially at a hearing. They're all
10 transcribed. All the answers are there so you can
11 find out what they know that you don't know and how
12 that affects what case you may want to put on.
13 Now we can go to the hearing. A formal
14 evidentiary hearing for an NRC proceeding is just like
15 all the trials you've seen on TV. Witnesses come
16 forward, they testify. Other parties cross examine
17 them and ask questions. Documents are put in. It
18 goes just like that. You can challenge an expert's
19 qualifications, as Larry talked about. DOE has the
20 burden of proof. Throughout the proceeding, DOE must
21 prove by a preponderance of the evidence that a
22 construction authorization for a repository meets all
23 the rules, regulations, requirements. That's their
24 burden.
25 If you're an intervenor, your burden is to

1 go forward and try and make a case on your
2 contentions. But DOE still ultimately has to prove
3 they meet all the regulations and there's no problem
4 with their application.
5 The staff -- and I'll address the question
6 that came up before. The staff attorney's role, if
7 you will. The staff's role is to present testimony,
8 documentary evidence to support its independent review
9 of the DOE application and the staff attorneys are
10 there to put on NRC's case. The reason that it may
11 look a lot of times like we're on the same side as--
12 in this case it would be DOE. In the case up in Skull
13 Valley, I don't remember who the applicant is.
14 Private Field Storage.
15 As Bill explained, the way in which our
16 process works for reviewing an application, it comes
17 in and the technical staff makes an independent review
18 of the entire application. If they have problems with
19 the application, they send questions to DOE on the
20 record and DOE responds. Put more information on the
21 record. If the NRC's technical staff is still not
22 satisfied, they send more questions and get more
23 answers.
24 Eventually we get to a point where either
25 the staff thinks DOE has met everything and it would

1 be safe or the staff says no, you haven't and we can
2 not support this. If we issue a safety evaluation
3 report that says we don't think DOE meets the
4 standards and we recommend against issuing this, DOE
5 could still go to a hearing. It would be extremely
6 unlikely because, in that case, the NRC staff would be
7 there opposing the application. Things like that have
8 happened before. Members of my staff in the last
9 year, we had someone come in, not DOE, not on a major
10 thing, but on a materials licensing case, and the
11 staff said no, you don't meet the regulations. And
12 they said yes, we do and they went to a hearing and we
13 opposed them and they didn't get a license.
14 So the point I'm making is it may look to
15 you like we're on the same side but, because of the
16 process, in all likelihood, there would not be a
17 hearing on a DOE application unless the staff had
18 concluded that DOE met all the requirements. So I
19 don't think DOE would go and say we want to go forward
20 trying to prove the NRC is wrong. So in all
21 likelihood, if there's a hearing, the staff's
22 position, ultimate position, and DOE's ultimate
23 position would be the same. But that doesn't mean
24 we're carrying DOE's -- we're putting on how we got to
25 where we got and DOE has the burden of convincing the

1 board and ultimately the Commission that their
2 application meets all the requirements.
3 You can oppose expert witnesses, you can
4 oppose documents, say they're not relevant, they're
5 not valid. You can say these aren't genuine
6 documents. Any number of ways you can go on some of
7 this stuff but, if it doesn't get in the record, if
8 somebody's testimony is rejected, then it's not part
9 of the record on which a decision would be made. If
10 you offer a document and it's rejected by the board,
11 it's not part of the record on which the decision can
12 be based. The decision that the board issues is based
13 only on the admitted evidence which is testimony
14 before the board, documentary material entered into
15 the record by the parties.
16 Which gets us to the initial decision.
17 Yes, it does. The licensing boards will issue an
18 initial decision on all the matters that have been
19 admitted, all the contentions. They will address each
20 and every one in their decision and ultimately make
21 findings of fact and conclusions on whether or not DOE
22 has met its requirements, its burden of proof, to show
23 that an application to construct a repository at Yucca
24 Mountain meets all the rules, regulations and
25 requirements. The board will say yes or no or, as

1 Bill said, they could say yes but you need to do these
2 other things as well.
3 At that point, it goes to Larry to talk
4 about what happens after that but I guess we'll take
5 questions.
6 MR. CAMERON: I think that before we go to
7 appeals, I'm sure that there's a lot of questions here
8 on what Dennis has covered. Why don't we spend some
9 time talking about that and then we'll finish up with
10 the appeal process. So Dennis, you still have the
11 microphone.
12 MS. SNYDER: I want to clarify something.
13 This is a clarifier because you presented a whole lot
14 of information here that answered a lot of my
15 questions that I had earlier. I appreciate that. But
16 just a clarifier. The intervening parties are
17 certified by the Atomic Safety Licensing Board.
18 MR. DAMBLY: Right.
19 MS. SNYDER: And what assurances do we
20 have that the Atomic Safety Licensing Board are not
21 old gray men in old gray suits with old gray brains?
22 That's a quote from Helen Calcut.
23 MR. DAMBLY: I can assure you some of them
24 are not old and gray. I don't know what assurance I
25 could give you that's going to make happy in response

1 to that, but some of them are not men. This is true
2 also. We have women on the licensing board, and I not
3 surprised if they would be involved in this
4 proceeding, both as chairman and as technical members.
5 MR. CAMERON: Apart from that, the
6 decision of the licensing board is guided by and
7 constrained by NRC regulations. In other words, it's
8 not just what they arbitrarily think.
9 MR. DAMBLY: Again, all contentions are
10 going to be based on DOE did not meet something it's
11 specifically required to meet and the board is going
12 to have to make a finding. Either they met the
13 requirement that's in the regulation or they didn't.
14 They don't just make a finding, but we liked it
15 anyway. They have to deal with a specific problem and
16 whether or not DOE has carried its burden on that
17 issue.
18 MR. CAMERON: Larry.
19 MR. CHANDLER: Bear in mind that that
20 decision, however it comes out, is going to be based
21 on the record. I had mentioned it earlier and Dennis
22 amplified in his comments that the board is not going
23 -- his words are exactly right. It's not just an
24 arbitrary decision on points the board wants to make
25 a decision on. They're charged with resolving the

1 issues that have been put into controversy, the
2 contentions by the parties and only those, and they
3 will decide those based on the evidence that the
4 parties have placed in the record. Those parties
5 will include DOE. They will include the NRC staff.
6 They will include the party who proposed the
7 contention and the expert witnesses that that party
8 may have.
9 So you should have a representation of the
10 views, the evidence if you will, offered by sort of
11 all sides, all points of view, on a given issue and
12 the board then will decide, based on the
13 qualifications and the credentials of the individuals,
14 what it believes to be the evidence that it should
15 rely on.
16 MR. CAMERON: Kalynda, did you have
17 something? Then I'll go to Steve.
18 MS. TREICHEL: Reference was made to the
19 fact that just because a facility applies for a
20 license that it would be granted. I was wondering if
21 you could give me any specific instances where a
22 license for a nuclear facility has not been granted in
23 the history of the Nuclear Regulatory Commission.
24 MR. CHANDLER: The Malibu facility in
25 California was supposed to be sited south of Los

1 Angeles. An application was submitted. Hearings were
2 under way. This was in the early '60s. The facility
3 was never licensed. The application was, I believe,
4 ultimately withdrawn. That was a facility that was
5 proposed by the Los Angeles Department of Water and
6 Power.
7 MS. TREICHEL: -- docketed.
8 MR. CHANDLER: It was docketed. Hearings
9 were under way. Another facility was going to be
10 Newbold Island. It was proposed by Public Service
11 Electric and Gas Company of New Jersey. The facility
12 as proposed was never constructed. The facility was
13 re-sited. The application was substantially amended
14 and, as I said, the facility was re-sited. A license
15 was ultimately issued for a facility at a completely
16 different location. The initial application would not
17 have been granted.
18 There are a number of others that were
19 much earlier stages of licensing that were never
20 licensed at the end.
21 MS. TREICHEL: When was the last one?
22 MR. CHANDLER: The question was when the
23 last one?
24 MS. TREICHEL: What was the latest one
25 that was not licensed and not built?

1 MR. CHANDLER: Reactor facilities?

2 MS. TREICHEL: Any nuclear facility.

3 MR. CHANDLER: Well, there was a materials
4 facility that Dennis just referred to before. Gray
5 Star. That was a materials licensing action. It was
6 a much different type of application. I got to
7 confess I don't keep track and it's been so many years
8 since we've had new reactor facilities licensed. It's
9 hard to separate those facilities for which the
10 applications were withdrawn and I don't know. I can
11 tell you Newbold Island was in roughly 1973-74 time
12 frame. I mentioned before that the Malibu facility
13 was, I believe, in the late '60s.

14 There were licensing board decisions which
15 initially rejected applications in the mid-'80s.
16 Eventually those facilities were licensed because the
17 deficiencies that were noted were resolved through
18 very substantial effort on the part of the license
19 applicant. One of the more recent examples of that
20 type of a situation. There was actually a number in
21 the '80s.

22 One of the most notable was Diablo Canyon
23 which had received an operating license and the
24 operating license was suspended by order of the
25 Commission because of what became known as the mirror

1 image problem. There was some faulty construction
2 activity. The license was suspended for a number of
3 years before the situation was rectified. There were
4 a number of other instances in the '80s where, because
5 of construction quality assurance problems, facilities
6 were required to go through very, very substantial
7 rework and requalification before licenses were
8 issued. Zimmer is a notable one that eventually was
9 withdrawn.
10 MR. CAMERON: We have an answer to the
11 question over here.
12 AUDIENCE MEMBER: Comanche Peak.
13 MR. CAMERON: Comanche Peak, Waterford.
14 I think we can move on.
15 Steve Frishman.
16 MR. FRISHMAN: The standard for making a
17 decision is this seemingly simple language of
18 reasonable assurance of the safety requirements, the
19 performance requirements will be met. We, throughout
20 the history of the program, have seen a lot of
21 discomfort with the threshold for reasonable assurance
22 for a repository decision versus other types of
23 decisions that have been made.
24 Do you have any insights on where that
25 threshold might be for a repository or for a long

1 regulatory period versus reactor? Let me just sort of
2 give you a specific and that's the uncertainty of the
3 performance assessment here is going to be large and
4 large in the sense of a few orders of magnitude. The
5 department has made it pretty clear that they want to
6 provide on the meat of performance meaning the
7 expected dose or something around a mean dose. Normal
8 scientific view of uncertainty says that you look more
9 toward like the 95th percentile. Is this type of
10 thing relevant and reasonable assurance for reactors
11 versus reasonable assurance for something like a
12 repository because we've seen the evidence for years
13 to lower the expectation of reasonable assurance.
14 Just give me some insight on how you think this might
15 play.
16 MR. CHANDLER: I would suggest that maybe
17 Bill would have better insights. I would suggest
18 reasonable assurance --
19 MR. CAMERON: You're the guys who are in
20 front of the ASLB all the time.
21 MR. FRISHMAN: That's why I asked for your
22 insight.
23 MR. CHANDLER: Staff may have better
24 insights. They're the ones in fact who testify and
25 are the ones who will actually make a finding as to

1 whether the application in fact establishes reasonable
2 assurance.
3 If someone believes that the approach
4 being used, use of mean versus some other standard, is
5 insufficient to establish reasonable assurance, that
6 may -- and I'm going to use the word may and
7 emphasize the word may -- that may constitute a
8 sufficient type of contention. That is to say the
9 application does not establish reasonable assurance in
10 that it relies on the mean whereas it should result on
11 whatever you think the appropriate standard is and, if
12 there's some basis for accepting your view, at least
13 for purposes of going forward with the contention,
14 then by all means you may well have an acceptable
15 contention and you'll have an opportunity to present
16 evidence to substantiate that before the board. You
17 may carry the day on that.
18 MR. CAMERON: Bill, did you have anything
19 you want to add?
20 MR. REAMER: No.
21 MR. CAMERON: Let's go to Judy.
22 MS. TREICHEL: You've got to understand
23 that we're not coming in here and just looking at
24 those viewgraphs and beginning to cook up the comments
25 we're talking about. We've spent years and we are

1 already in, as one of your viewgraphs said, pre-
2 licensed application phase. We're playing with that
3 every day in that there are technical exchanges
4 between the Department of Energy, the Nuclear
5 Regulatory Commission, and we've been almost in a
6 shooting war over the way the Commission has let them
7 slide, the staff, by going to closed pending with all
8 sorts of issues which in a license hearing could be
9 contentions.
10 And so we see that happening on a regular
11 basis. We've been back and forth with the Commission
12 about the way this is happening and with the wording
13 in there where you have to show without a doubt that
14 you're going to be severely injured, something like
15 this doesn't fit. We're practically in a position of
16 a person where the government is coming down on them
17 and should be read their Miranda rights and an
18 attorney should be appointed for them, should they
19 want one or not be able to afford one. This is a
20 rolling over of things.
21 When I mentioned the Skull Valley
22 situation, we sat there and we watched that happen and
23 we saw how those staffs were working together, the PSF
24 and the NRC were very close together, and they were
25 working on the basis of a draft environmental impact

1 statement that the NRC had prepared that substantiated
2 this application for a 20 year renewable license and
3 at the end of that time, the waste went from PFS to
4 Yucca Mountain. It's right in there and it shows
5 exactly the route that it takes. There is no ifs,
6 ands, buts about it. It's not a proposed repository.
7 It's the place that waste goes. So you get a little
8 jaded when you read this sort of language, you watched
9 what's gone on in pre-application phase with the Yucca
10 Mountain project, AEC, an actual hearing that's going
11 on that depends upon Yucca Mountain and it's rolling
12 along.
13 MR. CHANDLER: As I said earlier in
14 response to a number of questions, it's sort of hard
15 for me to characterize in a way that we would
16 necessarily agree, each of us would agree with. My
17 reaction and your reactions to the way the PFS
18 proceeding is going on. We're trying this evening to
19 try and leave you with a view on how we believe that
20 a proceeding in connection with the repository would
21 be conducted.
22 As was explained before, during the
23 staff's review of an application -- and this is no
24 exception, PFS is no exception -- is a lengthy and an
25 iterative process. If there are questions the staff

1 has, if it notes deficiencies, if there are matters
2 that arise in any way during the course that require
3 resolution, the staff communicates with the applicant
4 and the applicant will respond. These communications
5 are certainly, unless they involve some type of
6 protected information, they're open. Meetings are
7 open to the public. Correspondence is publicly
8 available and the record of the progression of the
9 application from its initial submittal through its
10 ultimate review is one that is open and available for
11 scrutiny.
12 Other than that, I really don't see that
13 I'm going to have an answer for you that will satisfy
14 you.
15 MS. TREICHEL: You don't.
16 MR. CHANDLER: I understand that, and so
17 we'll just agree to disagree on that point.
18 MR. DAMBLY: Let me add one thing since
19 it's been mentioned a few times here that it would be
20 the responsibility of my staff to represent the NRC
21 staff in any proceeding and while you may have
22 different views of what went on in PFS, I would have
23 serious problems with any member of my staff who is
24 involved in the Yucca Mountain proceeding who tried to
25 keep out relevant material evidence that would have a

1 bearing on that proceeding. That's not our role,
2 that's not our function, and that would be
3 inappropriate for any member of my staff to do that.
4 We want to make sure the record is complete and all
5 relevant material, evidence, is on the record for a
6 decision.
7 Understand, the record is being prepared
8 for my boss's boss, the Commission. We'd be in a
9 silly position to keep the Commission from having
10 relevant evidence on which to base its decision.
11 That's not what our function is and that's not what my
12 attorneys would be doing.
13 MR. CAMERON: Thanks, Dennis.
14 We're going to Grant for a question and
15 then let's go to Larry for the appeal. We'll see what
16 questions we have remaining. Grant.
17 GRANT: Grant Audlow. Can you hear me all
18 right? You used the term arbitrary, to try to avoid
19 arbitrary decisions. What I'm hearing from the public
20 here is that they don't accept your definition of
21 arbitrary. You're saying that you and Judy agree to
22 disagree on what I heard was the same thing. Can we
23 define arbitrary as decisions being made by people who
24 can not even possibly understand the issues involved,
25 can not understand the technical details, don't have

1 the educational background, you can't even explain it
2 to them? Wouldn't that fall under the definition of
3 arbitrary?
4 MR. DAMBLY: I guess my response to that
5 is probably one you've heard from Larry and Bill and
6 others, but I don't think the Commission and the
7 Commission staff is without the expertise.
8 GRANT: They can't understand it.
9 MR. CAMERON: Let's go to you, Larry, to
10 talk about appeals and then we'll come back for
11 questions on that and previous presentations. Larry.
12 MR. CHANDLER: The Commission itself gets
13 involved in the process really at two points. During
14 the course of the proceeding, parties are given a
15 right to ask the Commission to review decisions by the
16 licensing board. There are specific procedures in
17 connection with rulings on intervention. That would
18 be in connection with the pre-hearing conference order
19 which ruled on whether someone had standing or an
20 admissible contention.
21 There are certain rulings on summary
22 disposition orders. Summary disposition is a process
23 by which certain issues can be resolved only on paper
24 filings without the need to get into a full
25 evidentiary hearing. Those can be appealed directly

1 to the Commission.

2 In addition to that, if there are

3 extremely unusual, novel, especially complex issues on

4 which the board may wish the Commission's views, the

5 board can refer a ruling to the Commission directly

6 for its consideration and, likewise, there's a process

7 available by which parties can argue that there's a

8 special issue that warrants the Commission's

9 intervention at an earlier stage in the process.

10 There's a very high threshold for

11 interlocutory reviews though. Interlocutory reviews

12 are other reviews which a party may ask the Commission

13 to undertake at times that are not specifically

14 provided for. If someone wants to get the

15 Commission's ear on those, it is really an exceptional

16 instance in which the Commission will involve itself

17 on an issue before it's really ripe, that is before a

18 board has had an opportunity to finally resolve the

19 matters before it.

20 Appeals from an initial decision are

21 another matter that's explicitly provided for. Those

22 must be filed within 40 days of the decision and, like

23 all other matters that are filed before boards or

24 before the Commission, all parties to the proceeding

25 have an opportunity to be heard. So if a party files

1 an appeal requesting the Commission to take review of
2 a decision, other parties to the proceeding have the
3 right to respond and present their views on whether
4 the Commission should involve itself and, if so, on
5 the position the Commission ought to take.
6 In addition to those aspects, if you will,
7 the adjudicatory aspects of the Commission's role, the
8 Commission has an oversight responsibility. Before
9 the NRC would issue a construction authorization or
10 eventually perhaps a license to receive and possess
11 waste, the Commission needs to examine the issues that
12 were contested in the proceeding to determine whether
13 there's a basis to doubt the repository will be
14 constructed or operated safely and they must determine
15 whether the Commission should take action to otherwise
16 suspend or condition the license that it might issue.
17 It's important to note -- and Dennis
18 mentioned this several times in his presentation, it's
19 been touched on before -- the board will decide only
20 matters in controversy. Again, we go back to what we
21 were talking about at the very outset, Bill mentioned,
22 I mentioned in my presentation. Matters that are not
23 in controversy need to be reviewed, must be and will
24 be reviewed by the staff. That's part of its
25 independent role in this case. So even if a matter is

1 not contested before the board, the staff will make
2 findings. Eventually the director of the Office of
3 Nuclear Materials Safety and Safeguards, the
4 organization that Bill works in, will have to resolve
5 all matters that are not in controversy.
6 Those findings, the resolutions, staff's
7 resolution of matters that are not in controversy, are
8 also subject to the Commission's oversight and review.
9 The Commission, as Bill said at the outset, the
10 Commission may affirm the decision, allow it to become
11 the agency's action which then is reviewable in court.
12 They can modify the decision. They can send the
13 decision back to the board for further action. It's
14 known as remand. Or it can reverse the decision,
15 assuming the decision were favorable, and deny the
16 license.
17 That basically covers the Commission
18 review and appeal process and I think brings to close
19 what I had planned to say. It occurred to me as we
20 were talking and there was some discussion about the
21 LSN -- and no, Janet, I don't have slides on this. In
22 the interest of full disclosure, we talked LSN --
23 that's the electronic system, the repository of
24 documents that largely will take care of discovery
25 needs. There are going to be at least one and perhaps

1 two other things to be aware of.

2 The Commission's regulations set up what
3 they refer to as electronic docket. The vernacular
4 seems to have evolved to the electronic hearing
5 docket. The official agency record that gets created
6 here will be an electronic record, and that will be
7 created and it'll be known as the electronic hearing
8 docket.

9 In addition, some of you may have been
10 involved in some discussions with the Atomic Safety
11 and Licensing Board which has perceived the need to
12 establish some type of electronic document management
13 system which is intended to serve as a bridge, if you
14 will, between documents that are taken out of LSN, put
15 into the electronic docket, and then are going to be
16 actually used during the course of the hearing.
17 They're in the process of trying to develop and the
18 views of many participants have been sought as to what
19 aspects, what features, this type of a system ought to
20 have.

21 That system is more in the planning stage.
22 LSN is required. The electronic docket is required.
23 This other system that I've just very briefly touched
24 on is not a required system, but it's viewed as a
25 desirable system in that it should facilitate

1 everyone's use of what we expect will be a very
2 voluminous record in a very, very short period of
3 time. That completes it. Thank you, Chip.
4 MR. CAMERON: Thank you for adding that.
5 Let's see if there's any questions, first of all on
6 the appeal process. Let's go to Judy.
7 MS. TREICHEL: In the spirit of openness,
8 why don't you let us know what Part 63 says?
9 MR. CHANDLER: I actually don't know what
10 Part 63 says.
11 MS. TREICHEL: Of course not because
12 that's what I'm talking about. We're seeing in these
13 pre-application meetings, DOE is telling the NRC staff
14 that they are complying with Part 63. The NRC staff
15 says that sounds good. That's great. That's what we
16 wanted. And no one can see what Part 63 is. Now that
17 does not --
18 MR. CHANDLER: Part 63 was published in
19 draft and that's the --
20 MS. TREICHEL: And there was strong
21 opposition to that draft and many of the people here
22 testified. Many other people in Nevada testified and
23 there was written comment as well. If they are using
24 that draft that was put out, it means that every
25 comment that came in from the public, which mostly

1 opposed it and there were very well thought out
2 comments, was totally ignored.
3 MR. CHANDLER: Don't jump to a conclusion
4 that things have been totally ignored. As part of the
5 rule making process, the Commission will address the
6 comments that were received. Part 63 --
7 MS. TREICHEL: But --
8 MR. CHANDLER: Excuse me. Let me finish.
9 Part 63 is not out in final form yet. It's still a
10 draft regulation and I wouldn't presume to say the
11 Commission is ignoring comments.
12 MS. TREICHEL: No, but DOE says we are in
13 compliance with Part 63 and the NRC staff says, cool,
14 I'll check off that box. That's all. That's what I'm
15 saying.
16 MR. CHANDLER: I don't think the staff has
17 yet signed off that DOE is in compliance with Part 63.
18 MR. CAMERON: Just to clarify, Larry. You
19 said it was a draft rule, and I believe it's a
20 proposed rule.
21 MR. CHANDLER: Excuse me. Proposed rule.
22 MR. CAMERON: Questions on the appeal?
23 Susi.
24 MS. SNYDER: It's getting really late as
25 you can tell by about 10 people just walked out.

1 MR. CHANDLER: We're on east coast time.
2 We'll stay until midnight.
3 MS. SNYDER: Can you, first off, spell and
4 then explain again the --
5 MR. CHANDLER: Interlocutory?
6 MS. SNYDER: Yes, that's the one. I can't
7 even say it.
8 MR. CHANDLER: I knew that was coming.
9 MS. SNYDER: Thanks.
10 MR. CHANDLER: I-N-T-E-R-L-O-C-U-T-O-R-Y.
11 Interlocutory.
12 MS. SNYDER: Can you write that?
13 MR. CAMERON: Yes, I can.
14 MR. CHANDLER: We'll see if Chip paid
15 attention.
16 MS. SNYDER: You should see what I wrote
17 down. It wasn't anything like that.
18 MR. CAMERON: Questions again on the--
19 MR. CHANDLER: Let me just answer the
20 second part of her question.
21 MR. CAMERON: I was trying to let you off
22 easy.
23 MR. CHANDLER: Interlocutory reviews. Let
24 me try to put this on terms even I'll understand.
25 It's a review sort of at intermediate points in the

1 ongoing process before the process has come to
2 completion. That's a simple but, I guess, pretty easy
3 way of thinking.
4 MR. CAMERON: I think we have one more
5 question here from Sally.
6 MS. DEVLIN: Yes, I do have a question and
7 that is on the electronic hearing documents. Again,
8 I want to thank you for coming because you have again
9 proved how arbitrary your organization is. We're
10 dealing with Part 63 which we thought we're dealing
11 with assumed uncertainty -- my favorite -- But the
12 most important thing is you're in a town, a rural town
13 in a rural area that is in a state that's 20 years
14 behind the rest of the nation and shortly the
15 politicians may, with redistricting, take away all of
16 our legislative representation. We're aware of this.
17 So we'll have nothing to say. When I give the history
18 of Nevada and why we're in the mess we are, this is
19 the reason.
20 It really destroys me to find that your
21 procedures are for the most modern of equipment and
22 modern in concepts and modern in everything. Of
23 course, we have none of this.
24 My question is with these electronic
25 hearing documents which is new terminology for me, how

1 do we get them? What are they? Are we
2 videoconferencing? How are we going to hear these
3 hearings and how do we get into the act when we have
4 actually no equipment?
5 MR. CHANDLER: I can provide maybe I hope
6 a little more satisfying answer to you on the
7 electronic docket. The obligation to maintain the
8 electronic docket or electronic hearing docket is the
9 Commission's obligation. The Commission will maintain
10 it.
11 Typically, a docket of a proceeding is
12 maintained in paper form and it is a complete
13 compilation of all documents that are put into the
14 record. Correspondence and pleadings, motions and
15 briefs and things like that, the transcripts of the
16 record, evidence that's received, evidence that's
17 offered and rejected, decisions, memoranda and rulings
18 by the boards, decisions by the board, all that, and
19 eventual decisions by the Commission comprise the
20 record of the proceeding, the official record of the
21 proceeding.
22 That becomes especially significant if a
23 matter is ever appealed to a court. Much as I'd like
24 to think that everybody is always completely satisfied
25 with the decision of the Commission, things do go to

1 court and the Commission's obligation is then to
2 provide the court a certified record.
3 In this instance, the record that we will
4 maintain, at least for our purposes, the official
5 record, will be an electronic record and the
6 Commission will be obliged to maintain that record and
7 to make it available. The Commission will make it
8 available to the parties during the course of the
9 proceeding. So if you're involved in the hearing
10 process, you will in the hearing room have access to
11 the electronic docket. That's not going to be a
12 separate obligation on the parties.
13 MS. DEVLIN: But where is this going to
14 happen?
15 MR. CHANDLER: In the hearing room?
16 MS. DEVLIN: What hearing room?
17 MR. CHANDLER: My assumption is that a
18 hearing will be somewhere in the vicinity of the
19 proposed facility.
20 MR. CAMERON: Some possibilities might
21 be--
22 MR. CHANDLER: Could be Las Vegas. If
23 eventually an application is filed for Yucca Mountain,
24 it will be here. Las Vegas. I personally don't know
25 all the logistics that are involved. It will have to

1 be some fairly substantial facility with the ability
2 to accommodate lots of different needs and interests.
3 So I don't know where it will actually be located.
4 It does not exist yet.
5 MR. CAMERON: Let me take one more
6 question from Kalynda and then ask if anybody who
7 hasn't spoken tonight has a question and then I think
8 we're going to wrap up and we'll review what we have
9 in the parking lot, too. Kalynda.
10 MS. TREICHEL: In light of Sally's
11 questions and what you answered her, I think I want to
12 make this more in the form of an official comment
13 instead of a question.
14 I would really like to see a hard copy of
15 this instead of the official form being electronic
16 because, well, as we've seen with the lost emails and
17 information with the Department of Energy's Inspector
18 General's report, electronic information isn't always
19 that safe and reliable.
20 MR. CHANDLER: I'm sorry. What are you
21 looking for in hard copy?
22 MS. TREICHEL: The official record,
23 electronic hearing docket. You said the official
24 record would be in electronic form.
25 MR. CHANDLER: I'm telling you what the

1 regulations currently provide.

2 MS. TREICHEL: Well, I'm making a comment

3 as to that. I'm not trying to have a debate with you.

4 I'm just making a comment for the record.

5 MR. CHANDLER: Okay.

6 MR. CAMERON: Just to clarify that. Apart

7 from what is the official record, if people want to

8 have access to copies of what the official record is

9 in hard copy or to be able to convert them to hard

10 copy, that is possible. In other words, I don't think

11 that Kalynda is worried about changing the regulations

12 to say that the official record is going to be hard

13 copy. She just wants to make sure that there is an

14 access to hard copy rather than just solely

15 electronic.

16 MS. TREICHEL: For people who don't have

17 access to computers.

18 MR. CAMERON: Exactly.

19 MS. TREICHEL: And in case the information

20 somehow -- God forbid --

21 MR. CHANDLER: There is some possibility

22 of using certain types of paper documents but I

23 honestly couldn't tell you how to access all of the

24 record. I don't know that it would be provided that

25 way.

1 MR. CAMERON: Let me ask if there's
2 anybody that we haven't heard from tonight that has a
3 question and then I think we're going to adjourn for
4 the evening.
5 Okay. Well, I thank all of you and I know
6 this is complicated and I hope it's at least a start
7 to trying to understand this and I think my colleagues
8 from the NRC did a great job tonight trying to explain
9 a complicated issue and putting that in perspective.
10 So thank you.
11 (Applause)
12 MR. CAMERON: We have bios on
13 commissioners. Professional engineers came up. There
14 is no requirement but, as was pointed out to me by
15 several of the NRC staff, many of our engineers do
16 have professional engineers' licenses from individual
17 states.
18 MR. CHANDLER: And very substantial
19 experience. Many, many years of experience.
20 MR. CAMERON: And substantial experience.
21 We did talk about the standing issues. There was a
22 question about number of judges on the licensing board
23 panel that I think we were going to get back to people
24 on. Written materials that explains the affected
25 tribe and the interested -- my term -- the interested

1 tribe. In other words, a tribe that's not an affected
2 tribe under the Nuclear Waste Policy Act or the
3 Commission's regulations. I think we did go into that
4 but we're going to provide some written material, the
5 written material that now exists on that.
6 I think the point was made that we need to
7 provide some more detailed explanation on how the
8 licensing support network is going to work, what those
9 rules are, what has to go on, and possibly we can do
10 that in the context of the licensing support network
11 advisory review panel meeting on here.
12 We spelled interlocutory.
13 MR. CHANDLER: Correctly.
14 MR. CAMERON: Correctly.
15 Thank all of you and we'll follow up on
16 these items. Thank you.
17 (Off the record at 9:50 p.m.)
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CERTIFICATE

This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission in the matter of:

Name of Proceeding: Public Meeting

Docket Number: (Not Applicable)

Location: Pahrump, Nevada

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission taken by me and, thereafter reduced to typewriting by me or under the direction of the court reporting company, and that the transcript is a true and accurate record of the foregoing proceedings.

Dollie Feigel

Dollie Feigel
Official Reporter
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