

February 23, 2000

MEMORANDUM TO: File

FROM: Andrew J. Kugler, Project Manager, Section 1 */RA/*  
Project Directorate III  
Division of Licensing Project Management  
Office of Nuclear Reactor Regulation

SUBJECT: TRANSCRIPT FROM THE DECEMBER 15, 1999, PUBLIC MEETING  
TO DISCUSS POTENTIAL IMPROVEMENTS TO NRC MANAGEMENT  
DIRECTIVE 8.11, "REVIEW PROCESS FOR 10 CFR 2.206 PETITIONS"

The NRC staff met with members of the public on December 15, 1999, to discuss potential improvements to Management Directive 8.11, "Review Process for 10 CFR 2.206 Petitions." A copy of the transcript from the meeting is attached.

Attachment: As stated

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1 UNITED STATES OF AMERICA  
2 NUCLEAR REGULATORY COMMISSION

3 \*\*\*

4 PUBLIC MEETING TO DISCUSS  
5 IMPROVEMENTS TO THE 2.206 PROCESS

6  
7 Nuclear Regulatory Commission  
8 Room O8B4  
9 One White Flint North  
10 11555 Rockville Pike  
11 Rockville, Maryland  
12 Wednesday, December 15, 1999

13 The meeting commenced, pursuant to notice, at 1:10  
14 p.m.

15 PARTICIPANTS:

16 SUZANNE BLACK, NRC/NRR/DCPM  
17 JACK GOLDBERG, NRC/OGC  
18 HERB BERKOW, NRC/NRR  
19 EDWARD BAKER, NRC/AAA  
20 ELLEN GINSBERG, NEI  
21 JIM RICCIO, Public Citizen  
22 DAVID LOCHBAUM, Union of Concerned Scientists  
23 ANDY KUGLER, NRC/NRR  
24 RAM SUBBARATNAM, NRC/NRR  
25 NICK HILTON, NRC/OG

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PARTICIPANTS: [Continued]

VICTOR DRICKS, NRC/OPA

PAUL GOLDBERG, NRC/NMSS

## P R O C E E D I N G S

[1:10 p.m.]

1  
2  
3 MR. KUGLER: All right, let me introduce myself  
4 real quickly, and everybody. My name is Andy Kugler, and  
5 I'm the Project Manager for Fermi II, and I've recently  
6 become involved in the NRC efforts to improve the 2.206  
7 process.

8 This meeting is to provide an opportunity to Mr.  
9 Lochbaum and others to express your concerns about the 2.206  
10 process, and provide recommendations for improvements. This  
11 is in relation to a letter you had sent to the Chairman and  
12 her response.

13 We will be transcribing the meeting in order to  
14 make sure we capture everything that's said, that we don't  
15 lose anything. Since we don't have anybody here by phone,  
16 it will be a little easier in terms of speaking.

17 We don't have to worry about making sure that they  
18 can hear us which can be difficult at times.

19 We have given names, but I'm not sure everybody  
20 knows what everybody's role is, so I'd like to just go  
21 around quickly again to let people know who is who in terms  
22 of their roles here.

23 MS. BLACK: I'm Suzie Black, Deputy Director,  
24 Division of Licensing Project Management. I've also been  
25 recently made the PRB Chairman.

1 MR. JACK GOLDBERG: Jack Goldberg from the General  
2 Counsel's Office.

3 MR. BERKOW: Herb Berkow. I'm the Project  
4 Director for Region II.

5 MR. BAKER: Ed Baker, the Agency Allocation  
6 Advisor.

7 MR. RICCIO: Jim Riccio, Staff Attorney for Public  
8 Citizen's Critical Mass Energy Project.

9 MR. LOCHBAUM: Dave Lochbaum, Nuclear Safety  
10 Engineer for the Union of Concerned Scientists.

11 MR. SUBBARATNAM: My name is Ram Subbaratnam. I'm  
12 an Agency Coordinator for 2.206 questions. I'm also Project  
13 Manager for H.B. Robinson nuclear power plant.

14 MR. HILTON: Nick Hilton, Office of Enforcement.

15 MR. DRICKS: Victor Dricks, NRC Public Affairs.

16 MR. PAUL GOLDBERG: Paul Goldberg, NRC Office of  
17 Nuclear Material Safety and Safeguards. I'm the Coordinator  
18 for the Office.

19 MS. GINSBERG: Ellen Ginsberg, NEI.

20 MR. KUGLER: Okay. As I indicated, this meeting  
21 is primarily for you all to provide information to us. I  
22 don't know, but, Suzie, did you have anything else you  
23 wanted to say before we started?

24 MS. BLACK: No, I think that's basically it.

25 We're here to listen to your comments and take note of them,

1 not to resolve everything today.

2 MR. KUGLER: Okay, in that case, I'd like to turn  
3 it over to you, Dave.

4 MR. LOCHBAUM: I appreciate that. I appreciate  
5 the opportunity to talk about some of the issues before us.  
6 We feel that the 2.206 process is an important avenue for  
7 the public to bring issues to the NRC, and we think it's  
8 very important that it work adequately.

9 Because we feel it's not working adequately is why  
10 we're here today. We've had concerns in the past.

11 Rather than just come in here and whine about what  
12 we don't like about it, what we tried to do was to throw out  
13 some of that, just for background and context, but to try to  
14 limit that to some extent, and mainly talk about what the  
15 key issues are, and what we think could be done to address  
16 some of those key areas.

17 Again, we recognize that the resolution isn't  
18 today; we really just want to provide a good understanding  
19 of what our concerns are. If we achieve that, then we'll be  
20 happy with the meeting.

21 Resolution down the road would be great, too, but  
22 today we'll just settle with understanding the issues.

23 Basically, just as background, on November 4th,  
24 1977, UCS submitted our first petition, 2.206 petition. It  
25 may have been the first petition ever submitted under 2.206;

1 I have researched that to be sure, but it was one of the  
2 early ones, at any rate.

3 In my prepared remarks, there's a typo. I said we  
4 submitted our most recent petition on November 24, 1997, and  
5 that actually is 1999, so we've been at this for 22 years.  
6 I don't know how many we've submitted over that time, but  
7 it's more than two.

8 Our views on the 2.206 process were documented  
9 fairly clearly or as clearly as we could in a report we  
10 issued in April of 1992, called The Public As Enemy: NRC  
11 Assaults on Public Participation in the Regulation of  
12 Operating Nuclear Plants.

13 It was authored by Diane Curran, who at the time  
14 was serving as our counsel on a number of issues, including  
15 2.206 petitions, and some Atomic Safety and Licensing Board  
16 intervention requests and others.

17 That report concluded -- it's a fairly lengthy  
18 report, but some of its key conclusions were, quote, "The  
19 Commission's denial of virtually all such requests in recent  
20 years demonstrates arbitrary and capricious behavior and  
21 hostility to public participation."

22 There was another conclusion that said, quote,  
23 "Recent actions of the Commission have seriously eroded the  
24 opportunities for meaningful public participation in the NRC  
25 licensing process," end quote.

1           And the third key conclusion was, quote, "It is  
2 very damaging to the credibility of both the nuclear  
3 industry and the NRC that the public lacks meaningful  
4 opportunities for participation in the regulation of  
5 operating plants," end quote.

6           Since this report came out in April of 1992, the  
7 NRC has conducted a number of workshops, some of which Jim  
8 participated, but most of those were before my time with  
9 UCS.

10           And more recently, it has revised its management  
11 directive for handling petitions. We feel that those  
12 efforts were, at best, cosmetic. We could reissue this  
13 report today, merely by changing the date and adding a few  
14 more examples of where we think the process broke down.

15           We're not going to do that, but we could.

16           MS. BLACK: Do we have a copy of that report?

17           MR. RICCIO: Yes.

18           MR. LOCHBAUM: I believe so, because at the public  
19 workshop last December, I gave a copy to Mr. Zwolinski.

20           I think background begs the question of if we  
21 think the process is fundamentally flawed, why have we  
22 continued to issue so many petitions over the years?

23           It was a question I asked myself when I read the  
24 report and saw the petitions we kept doing.

25           The sad fact remains that there really is no other

1 process, so even though it's a very bumpy road that leads to  
2 a dead end, there's no other avenue, so we -- it's not our  
3 favorite trip, but it's the one we must take if we want to  
4 bring forward a safety issue.

5 So, the point I wanted to make was that the fact  
6 that we continue submitting 2.206 petitions is not an  
7 endorsement of the process; it's just that it's a frustrated  
8 attempt to bring safety issues to the Agency.

9 We would much rather see the process fixed to  
10 everybody's benefit. So like I said earlier, our purpose in  
11 here today is really not to whine, at least whole lot, but  
12 the past.

13 Instead, we'd rather make a case about what we  
14 feel is wrong and what can be done to address some of these  
15 problems.

16 What does 2.206 say? Basically, I'm sure  
17 everybody here has read that any person -- Part A says any  
18 person may file a request to institute a proceeding pursuant  
19 to Section 2.202 to modify, suspend, or revoke a license, or  
20 for any other action as may be proper.

21 I've added the emphasis, because I think the key  
22 part that I want to talk about today is that the petition or  
23 request is to initiate a proceeding. And what I'd like to  
24 show today is that we don't think that that's happening.

25 I'm not saying that every time a petition comes

1 in, that that automatically means that a proceeding should  
2 occur, but I think there are times when that threshold was  
3 met and a proceeding was not initiated as the law says or  
4 the regulation says.

5 MS. BLACK: If I could clarify a little bit, that  
6 proceeding is what used to be called a proceeding. And the  
7 management directive says now a public meeting, correct?

8 MR. JACK GOLDBERG: No, no.

9 MS. BLACK: You can see how new I am to this.

10 MR. JACK GOLDBERG: It's an enforcement  
11 proceeding.

12 MS. BLACK: So it's the actual proceeding.

13 MR. JACK GOLDBERG: Right, right.

14 MS. BLACK: Where a licensee --

15 MR. JACK GOLDBERG: This is the proceeding that  
16 would result from the issuance of an order pursuant to 2.202  
17 where the licensee has rights to a hearing, and anyone with  
18 standing could intervene in the proceeding.

19 MS. BLACK: But it has to be --

20 MR. PAUL GOLDBERG: I just wanted to mention that  
21 the regulations says any person may file a request to  
22 institute a proceeding. It does not say that a proceeding  
23 will be institute every time a request is filed.

24 MR. LOCHBAUM: Right. I'll get to that a little  
25 bit later, but I understand that, that not every petition

1 that comes in meets the threshold for doing that, and I  
2 won't even hazard a guess to say whether it's half of three  
3 quarters or anything like that.

4 But that's what the law says, that the petition is  
5 to a proceeding, not so much to revoke, suspend license.

6 MS. BLACK: But you wouldn't get a proceeding  
7 unless there is an order issued. That's my understanding.

8 MR. JACK GOLDBERG: That's the way the process  
9 works. If we issued an order in response to a 2.206  
10 petition or otherwise, that would give certain rights to  
11 request a hearing by the licensee and perhaps others.

12 MR. RICCIO: Has the NRC ever issued an order in  
13 response to a 2.206 or .202?

14 MR. JACK GOLDBERG: Well, all our orders are now  
15 issued under 2.202. I don't believe that we have issued an  
16 order directly in response to a 2.206 petition.

17 MR. PAUL GOLDBERG: It's just a demand for  
18 information.

19 MR. JACK GOLDBERG: Well, we've done that very  
20 recently.

21 MR. LOCHBAUM: The 2.206 has some words in it  
22 about other actions, but the other actions aren't explicitly  
23 defined anywhere. I think as close to consensus on this  
24 issue that's ever been reached is that these are defined as  
25 the NRC's enforcement actions.

1 MS. BLACK: Do you think there's still a  
2 miscommunication on that or misunderstanding? Or do you  
3 agree that that means better enforcement actions?

4 MR. LOCHBAUM: I agree. I think that in the past  
5 we've had some OGC rulings that unless you were asking for  
6 revoked, suspended, modified, you didn't meet the threshold.

7 MR. RICCIO: That's been years ago.

8 MR. LOCHBAUM: Some of my -- at least one of mine  
9 was denied because I didn't ask for one of those three magic  
10 words. I asked for something else under the other actions.

11 MR. JACK GOLDBERG: Well, it has to be an  
12 enforcement type action that's requested.

13 MS. BLACK: Right.

14 MR. JACK GOLDBERG: That's the only disagreement  
15 that there has been over the years, is whether the request  
16 for other appropriate action is limited to enforcement  
17 action, and that was consistently the position of the Agency  
18 from the very beginning of 2.206, that it had to be an  
19 enforcement-type action.

20 And that was, I think, made clear a few years ago  
21 in response to one of the petitions that you filed that the  
22 IG commented on, and the Commission, in turn, responded to  
23 the IG and sent you a letter at the conclusion of that,  
24 which explained that it is limited to requests for  
25 enforcement type actions.

1           So, modify, suspend or revoke, those are three  
2 types of enforcement actions, but there are others as your  
3 slides show.

4           MR. RICCIO: Right.

5           MR. JACK GOLDBERG: I'd like to go back on whether  
6 we've issued an order in response to a 2.206 petition. I  
7 said I didn't think so, as a direct result of a 2.206  
8 petition.

9           There I believe there have been cases where there  
10 have been issues pending, concurrently with 2.206 petitions  
11 that raised the same or similar issues where orders were  
12 issued.

13           I wouldn't say that it was in direct response to  
14 2.206. I mean, you could debate that.

15           The 2.206 petition was pending at the time the  
16 order was issued, but the issue raised by the 2.206 petition  
17 also was under consideration by the Commission.

18           So it's not clear whether it was a direct result  
19 of the 2.206 petition or not.

20           MR. LOCHBAUM: As far as enforcement actions that  
21 we think fall within the umbrella of other actions, we went  
22 to the Enforcement Policy and it listed Notices of  
23 Violations, Civil Penalties, Orders, and Notices of  
24 Non-conformance, Notices of Deviation, Confirmatory Action  
25 Letters, Letters of Reprimand, and Demands for Information.

1           We think that would basically cover most of the  
2 things that the members of the public would want and would  
3 seek. And there are other things that have been asked for  
4 in the past, but at least the last three years with UCS,  
5 that would generally cover just about everything I've seen  
6 attempted from the public side.

7           As far as the scope of the rule, I think we have a  
8 good understanding or at least a common agreement on what it  
9 is, what it covers and what it doesn't cover.

10           Going on to what else 2.206 says, Paragraph B says  
11 that within a reasonable time -- I'm not going to read the  
12 whole thing -- basically it says the Director of the  
13 appropriate office for the petition will either institute  
14 the request to proceeding, or shall advise the person that  
15 no proceeding will be instituted.

16           And I added the emphasis on those actions. Those  
17 were what the regulation says about how a petition will be  
18 processed or what the outcomes are.

19           So as we read those regulations, 2.206(b) gives  
20 the NRC two choices: Institute a proceeding, or deny the  
21 petition.

22           MS. BLACK: I think this is where I was confused,  
23 too, because as I understand it, the former directive used  
24 to talk about proceeding. And now it's an informal hearing,  
25 I think it is.

1 MR. JACK GOLDBERG: An informal hearing, yes.

2 MS. BLACK: And that wasn't the proceeding?

3 MR. JACK GOLDBERG: No. That was basically a  
4 meeting, and they're now calling it a meeting.

5 MS. BLACK: Okay.

6 MR. KUGLER: Going back to A, what's not entirely  
7 clear to me -- and, again, I'm relatively new in this area  
8 as well -- but when it says institute a proceeding pursuant  
9 to 2.202, are all of those enforcement actions listed under  
10 2.202?

11 MR. RICCIO: No.

12 MR. KUGLER: Or is it just orders?

13 MR. RICCIO: Just orders.

14 MR. KUGLER: So for the other enforcement  
15 activities, would those be proceedings or not? Do you know  
16 what I'm saying?

17 MR. LOCHBAUM: Even the Big 3 before the other  
18 actions, revoke, suspend, or modify, those aren't  
19 specifically called out under 2.202.

20 MR. KUGLER: But those would be done by order.

21 MR. LOCHBAUM: But the order could issue a demand  
22 for information, or conceivably could do any of the other  
23 things as well.

24 The order, as I read 2.202, is really to get  
25 information from the licensee or the applicant to either

1 agree with the contentions that have been raised or the  
2 allegations that have been raised, or to provide some  
3 disagreement with it.

4 So the order is just a way for the Agency to get  
5 information from the licensee or applicant to determine the  
6 merit of the issues.

7 MR. KUGLER: Okay, but what I'm trying to  
8 understand is that when you say that it only gives us two  
9 choices of proceeding or denial, when you get into the  
10 "other" category, I'm not sure those are proceedings, and,  
11 therefore, there may be a third option.

12 MR. JACK GOLDBERG: That's right.

13 MR. KUGLER: But the words seem to say one or the  
14 other, so it's not entirely clear and we may need to take a  
15 look at that.

16 MR. BERKOW: But in reality, though, there are  
17 actions in between. For example, we can cause a licensee  
18 not to restart until they've satisfied certain requirements,  
19 and we can issue a confirmatory action letter.

20 I think there are things in between these two  
21 extremes that we can do.

22 MR. KUGLER: But I think what he's saying is that  
23 -- well, it depends on how you want to read it, I guess, but  
24 I think what you're saying, Dave, is what these words say is  
25 that you really only have two choices.

1           What you're saying is this is how we've been  
2 operating it, and I think your point is that that may not be  
3 what the regulation --

4           MR. BERKOW: The words are that you either grant  
5 it or you deny it; but actually you can partially grant it.

6           MR. LOCHBAUM: it's being done. I just don't see  
7 how it's being done under the regulations. I think that's  
8 our point. The NRC has created this new thing outside of  
9 the rulemaking space and outside of the procedure space, and  
10 it's just winging it.

11           And if the NRC wants to do that, that's fine, but  
12 there's a rulemaking process that would allow them to bring  
13 practice into match with regulations.

14           MR. KUGLER: I think I understand your point.

15           MR. LOCHBAUM: Since 2.206 is to initiate a 2.202  
16 proceeding, or that's what the request is to do under 2.206,  
17 we thought it was relevant to look at the wording under  
18 Section 2.202.

19           It says that a proceeding is initiated by the  
20 issuance of an order outlining the issues. As I interpret  
21 those words -- and I'm not a lawyer, so I put that  
22 disclaimer up front, and Jim is. He plays one on t.v. -- is  
23 that the issuance of a proceeding, or initiating a  
24 proceeding doesn't necessarily mean that the allegations or  
25 the issues have been shown to have merit; it's just to

1 initiate a proceeding into the relevance or the merit of the  
2 issue.

3 MR. JACK GOLDBERG: That's really not correct,  
4 David. Before we would issue an order under 2.202, we have  
5 to believe that there is a basis for the action that we're  
6 requesting, because the staff has the burden of proof in  
7 such a proceeding.

8 So, it would be irresponsible for a regulatory  
9 agency to issue an order compelling action or prohibiting  
10 what's otherwise permitted under a license, unless it  
11 believed that it could prove by a preponderance of the  
12 evidence, the basis for the issuance of the order.

13 So, we have to believe that the merits of the  
14 concern or the issue or the violations or whatever they may  
15 be, warrant the action requested.

16 It's not simply a discovery technique to find out  
17 is there really a basis to require what the order provides?

18 What the 2.206 process provides the public is an  
19 opportunity to request that we institute such a proceeding,  
20 or issue such an order or request other enforcement type  
21 action by providing information to us that we might not  
22 otherwise be aware of.

23 And we evaluate that and decide whether there is a  
24 basis to institute a proceeding, or take other action.

25 Sometimes, even independent of a 2.206 petition,

1 when there arguably is a basis to issue an order, we don't  
2 do that; we're not required to. And that's not the only way  
3 and not necessarily the best way to regulate.

4 If a licensee is already taking corrective action  
5 to address a safety issue or a violation, then there really  
6 is little point in issuing an order to require that which is  
7 already being done.

8 So, many times in response to 2.206 petitions,  
9 very frequently we already know a lot of information about  
10 the issues that are raised in the 2.206 petition.

11 And we've already considered, do we need to issue  
12 an order to accomplish what needs to be accomplished to  
13 address this issue, independent of a 2.206 petition.

14 That has occurred or is occurring when a 2.206  
15 petition comes in raising the same issues, and maybe it  
16 contributes some additional information or additional  
17 insights or additional perspective.

18 But the process, typically is already underway,  
19 including considering whether an order is warranted.

20 Sometimes orders are warranted, and they're  
21 issued. Many times they're not warranted because the  
22 purpose that we would seek to accomplish is already being  
23 accomplished by other means.

24 So, it's just --

25 MR. RICCIO: Should we like hold off on getting

1 into specifics and let you get through this?

2 MR. LOCHBAUM: No.

3 MR. RICCIO: I just think about Cook. You were  
4 going to allow that reactor to restart, a petition had been  
5 filed. You didn't issue an order, didn't issue anything  
6 until you got on the telephone and started making press  
7 calls.

8 Then all of a sudden, you know, 24 hours prior to  
9 restart, NRC withdraws their ability to restart the reactor.  
10 I didn't see any orders issued. I didn't see really --  
11 under the scenario you just painted, you should have set up  
12 a proceeding pursuant to his 2.206 petition, because you  
13 obviously ended up taking the action, but his petition had  
14 already been filed.

15 So it seems like NRC picks and chooses which they  
16 want to do, rather than follows any sort of logical  
17 procedure in order to do it.

18 Honestly, but for media attention would have been  
19 started. But it's been shut down for two years now. I  
20 don't think NRC wants to try to argue that the two-year  
21 shutdown wasn't because something wasn't safe there.

22 But just -- I didn't want to lose the point in the  
23 middle of the transcript.

24 MS. BLACK: Okay.

25 MR. LOCHBAUM: The other point I'd like to raise

1 is that one of the enforcement actions is a demand for  
2 information, and that doesn't necessarily mean the NRC's  
3 staff has reached a determination that there is or is not a  
4 problem.

5 A demand for information is a -- I realize that  
6 you just can't do that frivolously. I don't mean to imply  
7 that, but there is a lower standard for the NRC to issue a  
8 demand for information than there is a civil penalty.

9 So there is a range there, and the NRC doesn't  
10 have to have conclusive proof before it initiates a 2.202  
11 proceeding.

12 MR. JACK GOLDBERG: And we just did that recently  
13 in the Envirocare case. We had a petition in connection  
14 with Mr. Semnani. I actually requested that we issue a show  
15 cause order, which was a provision we used to have in our  
16 regulations.

17 But because we were primarily just seeking  
18 information, it wasn't necessary to have a whole proceeding  
19 about whether we were entitled to get information, which we  
20 can compel, if there's resistance in obtaining it, and so we  
21 issued a demand for information in response to that  
22 petition.

23 Again, that was an issue that was already under  
24 consideration. It's not like we learned about the  
25 allegations concerning Mr. Semnani, through that petition.

1           But while we were evaluating the matter, a  
2 petition came in requesting that we issue a show cause  
3 order. What we concluded was appropriate to do in that case  
4 was issue a demand for information which we deemed to be the  
5 equivalent of a show cause order.

6           And so that's an example where we did do something  
7 which was equivalent to what was requested, not a 2.202  
8 proceeding, but a 2.204 demand for information.

9           MS. BLACK: So that doesn't have any proceeding?

10          MR. JACK GOLDBERG: No hearing rights associated  
11 with a demand for information; that's right.

12          MR. LOCHBAUM: Continuing on to what 2.202 says,  
13 is that the recipient of the order, normally a licensee,  
14 would have to be compelled to file a formal, written  
15 response to the order under oath or affirmation within 20  
16 days or whatever other timeframe is specified by the order.

17          In addition, 2.202 says that whoever receives the  
18 order, again, normally the licensee, has the opportunity to  
19 demand a hearing into the order, into the issues covered  
20 under the order.

21          But getting back to your comments about proceeding  
22 versus hearing relations, the hearing -- whether it is  
23 formal, informal or not -- is really requested by whoever  
24 received the order, not by the party or the petitioner who  
25 submitted the request that might have triggered the sequence

1 of events that led to that.

2 MS. BLACK: Well, my thinking was more like a  
3 licence amendment or other things like a license issuance  
4 where the licensee could request a hearing or an interested  
5 party with standing. That is what I was thinking.

6 MR. LOCHBAUM: But anyway, the conclusion was in  
7 reading the regulations that the 2.206 process appears  
8 reasonable on paper. Anybody, any member of the public, can  
9 petition the NRC to institute a formal proceeding to take  
10 any kind of enforcement action.

11 MS. BLACK: Can I interrupt you?

12 MR. LOCHBAUM: Sure.

13 MS. BLACK: Because I'd like to get back to that  
14 thought of who has the right to ask for a hearing.

15 Let's say there was a 2.206. We issue an order,  
16 order the Licensee to do something, but the petitioner or  
17 another member of the public wasn't happy with that. Even  
18 if the Licensee didn't request a hearing on that, could a  
19 member of the public?

20 MR. LOCHBAUM: No.

21 MR. RICCIO: No.

22 MR. JACK GOLDBERG: The petitioner, even if we  
23 issued an order directly in response to a 2.206 petition,  
24 something we weren't aware of, a safety issue we weren't  
25 aware of, we said, boy, this requires an order modifying the

1 license or suspending or revoking. We issue an order. The  
2 Licensee has a right to request a hearing. The petitioner  
3 does not have a right necessarily to participate in that  
4 proceeding as a matter of law because the petitioner may not  
5 have standing in connection with that. There are no  
6 standing requirements under 2.206. That is one of the nice  
7 things about it. You can request action on a plant that you  
8 don't live near, that you never deal with that licensee. You  
9 just have a concern. You are a member of the public. You  
10 have a right to bring that to our attention and request  
11 action.

12 We evaluate that. If we decide to take action,  
13 the Licensee against whom we issue an order has a right to a  
14 hearing and members of the public can petition to intervene  
15 but there are standing requirements before they would have a  
16 right to participate in the proceeding. As a matter of  
17 discretion we could allow others to participate even if they  
18 didn't have standing.

19 MR. LOCHBAUM: No proceeding to everybody's  
20 knowledge has never been initiated. It's never been  
21 challenged before, one way or the other, whether standing is  
22 or is not an issue.

23 MR. JACK GOLDBERG: Well, the law on standing is  
24 very broad and it governs actions -- whether it was  
25 responsive to a 2.206 petition or not is irrelevant to the

1 issue of whether -- of who has standing. I mean it wouldn't  
2 matter whether we issued an order in response to a 2.206  
3 petition or not.

4 MR. LOCHBAUM: I was talking about the exercise of  
5 discretion, since no 2.206 has led to a proceeding.

6 MR. JACK GOLDBERG: We have not had a situation  
7 where we have issued an order in response to a 2.206  
8 petition. The petitioner -- the 2.206 petitioner did not  
9 have standing but wished to intervene as a matter of  
10 discretion. We have not had that.

11 MR. LOCHBAUM: It has never come up?

12 MR. JACK GOLDBERG: No. That's right.

13 MS. BLACK: Okay, sorry.

14 MR. LOCHBAUM: So as we see the four major  
15 problems today with 2.206 and how it is implemented, the  
16 first -- and these aren't in any particular order of  
17 significance -- the fourth one was added at the bottom  
18 because I didn't want to reorder all the slides -- the first  
19 is that we feel that the NRC is not even following 2.206(b)  
20 because it is not instituting 2.206 proceedings when they  
21 are called for and I don't mean to imply that every 2.206  
22 should invoke a 2.202 proceeding.

23 The second problem we feel is the NRC has no real  
24 means to either revoke or suspend a license of an operating  
25 power plant. Thus, 2.206 really collapses to only request

1 to modify a license or take other appropriate or proper  
2 action.

3 The third problem is that the petitioners in a  
4 2.206 do not have the same rights as Licensees when  
5 appealing NRC decisions on licensing actions.

6 The fourth is that the NRC unfairly treats  
7 petitioners in slow motion throughout the process, compared  
8 to other comparable actions.

9 MR. BERKOW: It is not clear to me why you say  
10 that NRC has no means to revoke or suspend a license.

11 MR. LOCHBAUM: A later slide will address that,  
12 but we point to the example of decommissioning plants, where  
13 it is known in advance that a plant is being shut down, and  
14 every decommissioning is being handled under case-by-case  
15 exemptions because they don't even have, the NRC doesn't  
16 even have decommissioning rules to cover these things, so in  
17 addition, say you did revoke or suspend a license tomorrow  
18 for Plant XYZ. There's still safety threats that have to be  
19 properly managed there, spent fuel and others.

20 Who would be responsible for managing or  
21 monitoring those activities? The Licensee is out of the  
22 picture because they are revoked or suspended, so who  
23 would --

24 MS. BLACK: It would be suspending their right to  
25 operate, not to possess or whatever.

1           MR. BERKOW: But we do have the means to revoke or  
2 suspend the licence.

3           MR. PAUL GOLDBERG: That doesn't end their  
4 responsibility for --

5           MR. LOCHBAUM: If they are no longer the license  
6 holder -- if they have revoked the operating license -- if I  
7 am driving and I get my driver's license revoked --

8           MR. KUGLER: That's a little different though.  
9 They can still possess. They can't operate the plant  
10 because --

11          MR. JACK GOLDBERG: You can still maintain the  
12 plant.

13          MR. LOCHBAUM: You just can't drive if you --

14          MR. BERKOW: You are not required to anymore  
15 though under the law --

16          MR. JACK GOLDBERG: That is a gross  
17 oversimplification and that is why we would never just in  
18 totality revoke a license when the entity has a continuing  
19 public health and safety responsibility.

20          MR. RICCIO: Well, then take the language out of  
21 the 2.206.

22          MR. JACK GOLDBERG: No, because that is not -- a  
23 decommissioned plant is not the only time when you might  
24 want to revoke a license, and in fact we have revoked many  
25 licenses, not reactor licenses that are decommissioning,

1 but --

2 MR. RICCIO: Materials.

3 MR. JACK GOLDBERG: -- but revocation is a very  
4 important thing. It's provided directly in the Atomic  
5 Energy Act. It is in our regulations, and we have used that  
6 authority when warranted, but it is not warranted when the  
7 entity continues to have public health and safety  
8 responsibilities.

9 We would suspend certain authority under the  
10 license, like to operate, but not revoke the license in its  
11 entirety because it is to the public's advantage that they  
12 remain a licensee and subject directly to NRC regulations or  
13 other applicable license conditions or authority, and  
14 inspection authority and so forth.

15 MR. LOCHBAUM: But the point I was trying to  
16 make -- I didn't make it very clear -- was not that the NRC  
17 should be out running around and revoking and suspending  
18 licenses for operating plants but in reality the only action  
19 you really can take is modifying the licensing, imposing a  
20 license condition or some kind of condition to address the  
21 safety issue.

22 It is not going to revoke or suspend a license for  
23 any operating plant in the country. That is a given.

24 MR. KUGLER: But I think the point he is making is  
25 that 2.206 does not apply only to reactors so it --

1 MR. LOCHBAUM: Right.

2 MR. RICCIO: We are biased in that direction.

3 MR. KUGLER: I understand. I am too.

4 MR. LOCHBAUM: The reason I laid this foundation,  
5 which seems now a weak one, but the reason I laid the  
6 foundation was later I wanted to point out that when a  
7 Licensee comes in for a license amendment, which is a  
8 licensing action to modify a license, they are afforded  
9 plenty of rights and privileges that a petitioner who is  
10 seeking to modify a license does not have.

11 MR. JACK GOLDBERG: As we said, we are not going  
12 to debate the issues and resolve them today, but it follows  
13 from the Atomic Energy Act -- I mean Section 189 talks about  
14 license amendment. It doesn't talk about 2.206 petitioners,  
15 and there are certain hearing rights that we must provide by  
16 law in connection with the Section 189 actions.

17 MR. RICCIO: I hope you keep that in mind as we  
18 move towards Yucca and a few other things.

19 MR. LOCHBAUM: Plus I am going to share that this  
20 agency has gone far beyond what the Atomic Energy Act does  
21 in giving Licensees plenty of rights and privileges that are  
22 far beyond the Atomic Energy Act, but they are not doing  
23 that to the public -- for the public.

24 MR. DRICKS: Dave, may I ask you a question by way  
25 of clarification?

1 MR. LOCHBAUM: Sure.

2 MR. DRICKS: Are you trying to make the point that  
3 because as a matter of fact the agency has never revoked a  
4 license, it is really a rather hollow provision in the  
5 2.206? It doesn't really have any reality behind it, is  
6 that what you are saying?

7 MR. LOCHBAUM: No. I'm not saying that, because  
8 by that token because there's never been a severe meltdown,  
9 I'd say, well, we don't need those regulations either, and I  
10 wouldn't -- you wouldn't catch me saying that.

11 I think the point I was trying to make was that  
12 again the 2.206 -- you can petition to modify, revoke or  
13 suspend -- for operating power plants, really the only thing  
14 a petitioner can do sensically in the real world is to  
15 modify a license or some other enforcement action. They  
16 can't really revoke or suspend one.

17 That is not a practical thing for a petitioner to  
18 ask for, so really for an operating power plant only, and I  
19 recognize there are other licensees that you might revoke or  
20 suspend, but for a power plant really you are only going to  
21 ask to modify a license or take some other enforcement  
22 action, and then later I am going to come back and say, well  
23 it's similar to, not exactly the same, but it is similar to  
24 a license amendment process, and look at all the rights and  
25 privileges that the Licensees have that the public --

1 MR. DRICKS: But people do frequently ask that the  
2 NRC revoke a license. We get petitions like that all the  
3 time.

4 MR. LOCHBAUM: That's true. In fact, some of our  
5 earlier ones, my earlier ones, said that, because I didn't  
6 understand what the rule was, so I just hit -- I used all  
7 the words.

8 MR. RICCIO: You used the magic words.

9 MR. LOCHBAUM: I used all three of them -- revoke,  
10 modify or suspend -- whatever one is the right one.

11 MR. RICCIO: I think pretty much everyone just  
12 throws the language into the petition.

13 MR. LOCHBAUM: I have outlined what I think are  
14 four problems, and I would like to step through now each one  
15 of those problems and find out our basis for saying that.  
16 Again, it is not -- this won't be resolution here today, but  
17 this is at least what we think are these four areas of  
18 problems.

19 The first was the contention -- the position that  
20 the NRC is not following 2.206(b), and we cite as evidence  
21 We the People's petition on Millstone, which was filed in  
22 August of 1995 and amended thereafter and our own petition  
23 on D.C. Cook that was filed in October of 1997.

24 The NRC did everything We the People and UCS  
25 requested with the exception -- We the People asked for a

1 60-day suspension of the license as kind of a punitive  
2 measure, but with the exception of that issue the NRC  
3 basically did everything that both of those two petitions  
4 asked for, but in both cases failed to institute or invoke  
5 the 2.202 proceeding.

6 As Jim alluded to earlier, in the D.C. Cook case  
7 we had asked for some actions to be taken before the plant  
8 restarted. The NRC staff petition manager called me and  
9 said that the plant was about to restart and the 2.206 would  
10 be -- the Director's decision would be given after the plant  
11 restarted because there were so many things to be done, but  
12 since the actions were only for things that could be done  
13 before restart we didn't see how a decision could be  
14 rendered after restart.

15 So that's when we hit the phone. As far as more,  
16 what we think is more evidence, we would go the Office of  
17 the Inspector General's Report from 1995. It was conducted  
18 during '94, so it has a '94 number but it was issued in '95.  
19 They actually looked at 98 cases between January, 1990 and  
20 June of 1994; 49 of those cases there was a Director's  
21 decision that had been reached or at least a partial  
22 Director's decision. The other 49 cases I believe were still  
23 pending at the time of the report.

24 In half of the cases where a Director's decision  
25 had been made, the OIG indicated that in approximately 20

1 percent of those 49 petitions some of the actions requested  
2 by the petition had been taken.

3 In none of those cases was a 2.202 proceeding  
4 initiated.

5 What we feel is the most compelling argument or  
6 evidence that the NRC is not following or is not prepared to  
7 follow 2.206(b) is the NRC's procedure for processing 2.206  
8 petitions. Management Directive 8.11, which was revised  
9 most recently on July 1st, 1999, to the best of my  
10 understanding, does not mention Section 2.202 once, even as  
11 a reference in the procedure. It does not discuss  
12 initiating a proceeding even in the section that talks about  
13 a petition being fully granted. It seems pretty compelling  
14 evidence to us that it is really not an option.

15 Our second problem that we pointed out was that  
16 the NRC has no real means to revoke or suspend an operating  
17 license, and I think I have kind of hit this slide  
18 already -- the decommissioning, the NRC doesn't even have  
19 procedures at this point for decommission plants and is  
20 attempting to develop some.

21 That is a planned activity. Plants have been  
22 shutting down -- when they started up it was kind of known  
23 that they would have to shut down some day and there's no  
24 procedures yet for doing that or regulations for doing that,  
25 let alone procedures, so revoking or suspending a license

1 adds to that existing problem.

2 Again, the point is not that we think that it  
3 should be revoking or suspending a license but that that is  
4 not a viable option.

5 MR. BERKOW: But we do modify licenses to make  
6 them for possession only.

7 MR. LOCHBAUM: Right. I have seen that, yes.

8 MS. BLACK: Actually, I don't know that we need to  
9 do that, because Part 50 -- once they make that filing  
10 automatically they no longer are authorized to operate. I  
11 don't think we actually need to issue anything.

12 MR. RICCIO: But aren't directives being torn  
13 apart now under Part 50 rather than Part 72, so if you  
14 remove their license, how are you going to do that?

15 MS. BLACK: -- not going to take away their Part  
16 50 license. I think he was just saying modify the license  
17 to take the word "operation" out of it.

18 MR. BERKOW: It's a license for possession only.

19 MS. BLACK: Right, but it automatically becomes  
20 that with their filing. We don't have to do anything to --  
21 I don't think --

22 MR. RICCIO: I am not sure.

23 MR. LOCHBAUM: So for operating plants only it is  
24 not practical to really seek to revoke or suspend a license,  
25 so really that part of the 2.206 collapses to essentially

1 requesting a license modification which under 50.90 or 50.91  
2 is a license amendment or some other enforcement action.

3 MS. BLACK: If we modify a license, is that a  
4 license amendment?

5 MR. JACK GOLDBERG: If we are the moving party, if  
6 a licensee doesn't submit an application for an amendment  
7 requesting that we amend their license, that is an amendment  
8 proceeding. If we believe the license needs to be amended  
9 for whatever reason, the licensee doesn't request it through  
10 a license amendment, then we would issue an order modifying  
11 the license.

12 MS. BLACK: Right.

13 MR. JACK GOLDBERG: That is where the Licensee has  
14 a right to a hearing, because if there is a disagreement  
15 between the Licensee and the Staff they have a right to  
16 challenge us formally by requesting a hearing.

17 MS. BLACK: Under 2.202?

18 MR. JACK GOLDBERG: Right.

19 MR. RICCIO: And has that ever happened?

20 MR. JACK GOLDBERG: We have issued many orders --

21 MR. RICCIO: No, have they ever -- has the  
22 Licensee ever initiated a proceeding under 2.202?

23 MR. JACK GOLDBERG: Sure.

24 MR. LOCHBAUM: And also we are not at any point  
25 challenging the Licensee. The Licensee deserves that right.

1 We are not challenging that part of it at all.

2 MS. BLACK: But I think the clarification was your  
3 modification. You are really asking us to modify the  
4 license and you are saying that that would be like a license  
5 amendment and have hearing rights?

6 MR. LOCHBAUM: Well -- it's similar.

7 MR. JACK GOLDBERG: It's similar.

8 MR. LOCHBAUM: Whether it's hearing or not --  
9 hearing would be great but I'm not going to go that far  
10 today.

11 MS. BLACK: Okay.

12 MR. LOCHBAUM: So to conclude, since both the  
13 members of the public can request a modification for a  
14 license for an operating power plant, as the Licensee can  
15 and often does -- both parties do that quite frequently.

16 The difference is that the petitioner cannot  
17 appeal an NRC decision to deny petition; 2.206, paragraph  
18 (c)(2) says, quote, "No petition or other request for  
19 Commission review of the Director's decision under this  
20 section will be entertained by the Commission." The law  
21 says that very clear.

22 Therefore, the NRC has no place within the NRC to  
23 appeal. If you read Management Directive 8.11, there is no  
24 appeal process to the Commission or any other entity.

25 MR. RICCIO: Just a little bit of information,

1 that there was some discussion years ago when we  
2 challenged -- NRC had removed our rights to a second hearing  
3 post-licensing. There was discussion either in some of  
4 NRC's documents. I think it was Steve Crockett who was  
5 making the point that there is a potential that under the  
6 new process that 2.206 petitions could be reviewable if you  
7 were going through the new one-step licensing process,  
8 although obviously that hasn't ever been tested, and so  
9 there is some language out there that at some point those  
10 may be judicially reviewable.

11 MR. LOCHBAUM: On the public side, if you don't  
12 like the Director's decision, that's it. You have no  
13 appeal. You have to live with it.

14 When the Licensee seeks to amend the license, we  
15 took a look there just to see what -- how comparable that  
16 process is, and there seems to be at least five levels,  
17 formal levels of appeal that are available to a Licensee who  
18 is seeking an amendment to the license.

19 The first is the NRC Branch Chief level, the  
20 second is to the Division level, the Office level, the  
21 Executive Director for Operations level, and finally to the  
22 Commission directly. Here is, taken from an NRC document,  
23 that flow chart -- it is not in the handout but the  
24 reference is given in the Slide 16, so basically if you  
25 don't get here, you go on down and ultimately you can end up

1 at the Commission.

2 As far as the public petitioner, hearing five noes  
3 versus one no, what is the advantage in that? Probably  
4 none, but we would use our petitions in the failed fuel  
5 case. We had two petitions, one on River Bend and one on  
6 Perry, where we disagreed completely with the decision  
7 reached by the NRC Staff and the Director's decision. We  
8 think it was flawed on technical grounds but we have  
9 absolutely no appeal. We don't get a chance to go in there  
10 and contest the decision.

11 It's not that we're saying that the NRC Staff is  
12 incompetent or anything like that. We just disagree. We  
13 think it is similar to the Licensee, you know, the Licensee  
14 getting these five levels of appeal. It's not that the  
15 lowest or the Staff level, that first box, is the Licensees  
16 don't agree that the Staff at that level is competent.  
17 There's a legitimate disagreement and the NRC process has  
18 built in an appeal process to resolve, hopefully resolve  
19 that disagreement and the petitioners do not have --

20 MR. JACK GOLDBERG: That -- before you read that  
21 slide, that says "Stakeholder" -- it does not say Licensee.

22 MR. LOCHBAUM: But it is in the license renewal  
23 process. We are not stakeholders in that.

24 MR. JACK GOLDBERG: Well, it is not clear that  
25 that is limited to Licensees. I think you are reading it

1 too narrowly.

2 MR. LOCHBAUM: Well, I asked Chris Grimes that  
3 question at the license renewal workshop and this is -- it's  
4 the Licensee. I got a clarification, because Chris Grimes  
5 put this together. It's Licensee.

6 MR. JACK GOLDBERG: If you notice from this chart  
7 of the five steps you are starting out at a much lower level  
8 than essentially the starting process in the 2.206 process  
9 where you might have a disagreement, and that is at the  
10 third level, where we had a Director's decision.

11 If 2.206 petitions were responded to initially by  
12 a member of the Staff and, you know, there might be a basis  
13 for an analogy that if you didn't agree with that you could  
14 go to his Branch Chief, and then if you didn't agree with  
15 that, you'd go to the Division Director, and then if you  
16 didn't go that, go to the Office Director, which is where  
17 the Director's decision in the 2.206 process comes from in  
18 the first place, and then subsequently reviewed by the  
19 Commission.

20 MS. BLACK: You are missing two levels.

21 MR. LOCHBAUM: I appreciate that point, and I am  
22 not advocating that we need five because they have five.  
23 They have an appeal process. We do not have. This is the  
24 Licensee's appeal process. That is our appeal process. So

25 [Laughter.]

1 MS. BLACK: Would you include that slide in there?

2 [Laughter.]

3 MR. RICCIO: It's the back of every slide there.

4 MR. LOCHBAUM: I don't need five, but there needs  
5 to be some appeal process, whether it is to the Executive  
6 Director, which is above the Director's decision, or not.  
7 You know, all we are pointing out today is that there is not  
8 an appeal process. The Licensees have one.

9 MS. BLACK: And what would be your -- I guess it  
10 really wouldn't matter to you, because it would take longer  
11 obviously if somebody appealed it, but it wouldn't -- you  
12 would still have your Director's decision in the same amount  
13 of time. It's just the end of the --

14 MR. LOCHBAUM: I will actually get to that and I  
15 will actually describe where I think, where I am  
16 recommending that the appeals should be provided.

17 MS. BLACK: Okay.

18 MR. LOCHBAUM: Again, not for resolution, just for  
19 putting something on the table or on the slide projector.

20 The last problem, or the fourth problem we  
21 identified or raised today was we feel that the NRC treats  
22 petitions in -- unfairly treats them in a slow motion mode.  
23 The Management Directive 8.11 says that the timeframe for  
24 reaching a Director's decision is 120 days. It actually  
25 says that it's 120 days from the date of the acknowledgement

1 letter, and Management Directive 8.11 does not specify any  
2 time at all for the acknowledgement letter, so that could be  
3 decades, I guess.

4 MR. BERKOW: It is five weeks.

5 MR. LOCHBAUM: In the Management Directive?

6 MR. BERKOW: It should be in the Management  
7 Directive.

8 MR. KUGLER: I think it is in there somewhere.

9 MR. BERKOW: It used to be four weeks, but now  
10 that we have a provision to allow petitioners to come in and  
11 meet with the PRB.

12 MR. JACK GOLDBERG: Your request, David, it  
13 lengthened the process to provide the additional opportunity  
14 to address the PRB.

15 MR. LOCHBAUM: I just want to note that I did not  
16 review 8.11 before it was revised. I specifically declined  
17 that.

18 MR. BERKOW: You are reviewing it now because it  
19 is out for public comment.

20 MR. LOCHBAUM: Actually not reviewing it, but it  
21 is out for public comment. I am not reviewing it, so it is  
22 120 days from the five weeks then.

23 MR. BERKOW: But I might point out though that we  
24 do make a much quicker decision on requests for immediate  
25 action, you know, based upon the safety significance. By

1 the time we get to this point there is no great sense of  
2 urgency. We have already at least determined in our own  
3 minds that there is no great safety issue here that needs to  
4 be acted on immediately.

5 MR. RICCIO: Let's go back to Cook. If there was  
6 no great safety issue, you are going to have a real hard  
7 time explaining to AEP why they have been shut down for two  
8 years.

9 MR. BERKOW: Well, in principle that is why 120  
10 days is deemed to be enough. I can't speak to the Cook  
11 issue.

12 MR. JACK GOLDBERG: The 120 days governs the  
13 issuance of a document, not a decision on the merits of the  
14 issues that are raised in the petition. Those issues, even  
15 if they didn't come in through a 2.206 petition, even if  
16 there were a letter submitted where there is no formal  
17 process regulations or Management Directive that governs how  
18 long we have to respond, if someone raises a safety concern  
19 it is evaluated promptly and expeditiously.

20 The fact that it might take 120 days or longer to  
21 write up a decision doesn't reflect the amount of attention  
22 that that issue is given by the Staff.

23 MS. BLACK: It reflects the concurrence chain.

24 MR. KUGLER: I would also make the point that  
25 there are other processes that we deal with, say with the

1 Licensees, that are much longer.

2 An example would be license amendment, simply.  
3 Our own processes have no upper limit on time, but we strive  
4 to do most within a year. The year is quite a bit longer  
5 than the Director's decision, so I mean, you know, when you  
6 say that we are going in slow motion I think you have got to  
7 consider one of the reasons probably for that timeframe in  
8 here is a lot of times these are tough issues that take time  
9 to resolve.

10 MR. LOCHBAUM: That is a fair point, and I very  
11 carefully didn't say "slowest motion" because I wasn't  
12 contending for any moment that ours was the absolute slow --

13 MR. BERKOW: In fact, 2.206 petitions get a very  
14 high priority in the agency.

15 MR. LOCHBAUM: I don't question that. It's just  
16 that when you compare the amount of time that is on the  
17 table for addressing 2.206, just to reach a Director's  
18 decision, compare that to how much time the Licensees have  
19 to make a decision on a Part 21 issue, or compare that to  
20 the amount of time that this agency gives members of the  
21 public to review let's say like a license renewal  
22 application.

23 You have 30 to 60 days to review an application  
24 and decide whether you are going to initiate an  
25 intervention, which is half of the time or a quarter of the

1 time that the NRC Staff is going to take to reach a  
2 Director's decision on initiating a proceeding.

3 The inspectors themselves have 30 days after  
4 completion of an inspection period to issue a report on  
5 that.

6 And the 2.206 order language, there's 20 days for  
7 licensees to respond, although that can be waived under the  
8 terms of the order itself.

9 As far as the Petition Review Board under  
10 Management Directive 8.11, the petitioner is given 30  
11 minutes or .0208 days to present his case on why something  
12 should be accepted or rejected at that point.

13 MR. BERKOW: That's been changed, by the way. The  
14 procedures that we have, that would be the next revision to  
15 8.11. We're allowing a reasonable time. It's not limited  
16 to 3 minutes.

17 And it was never really intended to be, you know,  
18 cut off at the end of 30 minutes; it was the timeframe that  
19 we were trying to portray.

20 MR. LOCHBAUM: I was just pointing to them for  
21 comparison. So the conclusions are basically the same as  
22 the problem statements, except I put Conclusions up there.

23 Our conclusion were that those things are  
24 problems.

25 MR. BERKOW: Can I ask a question?

1 MR. LOCHBAUM: Yes.

2 MR. BERKOW: If the important thing is that the  
3 NRC consider and/or grant what the petitioner is asking for,  
4 why is it some important -- and I'm asking the question  
5 because I don't understand -- why is it so important that we  
6 institute a 2.202 proceeding?

7 MR. LOCHBAUM: Because that's what the regulation  
8 says. We generally give credit for following the  
9 regulations.

10 MR. BERKOW: But if we grant most or some or all  
11 of what the petitioner asks for, isn't that really what  
12 petitioners are looking for?

13 MR. RICCIO: Can we turn the question on you.

14 MR. LOCHBAUM: Let me --

15 MR. RICCIO: Go ahead.

16 MR. LOCHBAUM: I worked in the industry for 17  
17 years, and when the NRC came in and did an audit and found  
18 out that I had a plant that wasn't meeting regulations,  
19 well, I'm doing the same thing, I'm just not doing exactly  
20 what the tech-spec says, but I'm covering the same issue, so  
21 go away. That didn't work. That flat out didn't work.

22 The NRC wants the regulations followed. So now to  
23 turn around and say, well, we're not doing what the  
24 regulation says, but we're covering all the bases, that  
25 doesn't --

1 MR. JACK GOLDBERG: We don't agree with you, but

2 --

3 MR. LOCHBAUM: That you have to follow  
4 regulations? Which part of that?

5 [Laughter.]

6 MR. LOCHBAUM: I would be very interested in the  
7 first part of that, that you don't.

8 MR. JACK GOLDBERG: We don't agree with your  
9 reading of 2.206.

10 MR. LOCHBAUM: That's obvious.

11 MR. KUGLER: But I think what Herb is trying to  
12 task is, is there something that would be gained if we were  
13 doing 202, as opposed to not doing 202, if we're

14 MR. RICCIO: Public confidence. We ask for a  
15 proceeding to be initiated. You never initiate a  
16 proceeding.

17 We follow the regulations, attempt to follow the  
18 regulations; you don't.

19 MS. BLACK: One of the things we're thinking about  
20 doing to fix 2.206 is to change the regulation. When we  
21 change the regulation, if we took out proceeding, would that  
22 make you happy? Then we'd be following the regulation.

23 MR. RICCIO: We would like the proceeding.

24 MS. BLACK: Okay. Why do you want a proceeding?

25 MR. RICCIO: Basically the only reason we see

1 we're doing 2.206 petitions at this point in time is to  
2 embarrass this Agency into doing its job. And the way we do  
3 that is working through Victor when he was in the media.

4 MS. BLACK: And so the petition isn't as  
5 embarrassing as a proceeding? Is that what you're saying?

6 MR. RICCIO: No, that's not what I'm saying at  
7 all. The reason we participate in the proceeding is why  
8 even file petitions any longer? It's not because we expect  
9 you guys to do what we're asking, because we know you're not  
10 going to give us a proceeding.

11 MR. BAKER: No, wait a minute. There are two  
12 different things there. One is Dave just said, in D.C.  
13 Cook, we did what they asked.

14 MR. RICCIO: Right, yes.

15 MR. BAKER: We took care of the action.

16 MR. RICCIO: Eventually, Ed.

17 MR. BAKER: I'm just going by what Dave said.  
18 Okay, you may argue the issue.

19 MR. RICCIO: Granted.

20 MR. BAKER: So if we're doing what you ask from a  
21 safety perspective, which is what he said, what's the  
22 benefit of the 2.202?

23 MR. RICCIO: You are showing that you are actually  
24 responding to the public's concerns, rather than doing this  
25 behind a closed door where the public has no input, doesn't

1 have an appeal process, can't even raise an issue. They  
2 don't even have standing.

3 MR. BAKER: They raise the issue in --

4 MR. RICCIO: If you guys are going to go behind  
5 your closed doors, and you pull something out of the hat,  
6 and say, well, look, we know what you've asked.

7 MR. BAKER: Inspection reports are public.

8 MR. BERKOW: I wouldn't say we do it behind closed  
9 doors.

10 MR. BAKER: Enforcement actions are public.

11 MR. RICCIO: If we --

12 MR. BERKOW: The response to the decision is  
13 public. That's not behind closed doors.

14 MR. PAUL GOLDBERG: Any action we take is  
15 certainly public. You may not follow our reasoning if we  
16 deny something. I can understand that.

17 MR. LOCHBAUM: We always understand there's going  
18 to be a denial. That's not a question.

19 MR. PAUL GOLDBERG: I'm saying that we do take  
20 action, even if the formal response to the petition --

21 MR. RICCIO: My question -- I was going to turn  
22 the table on Herb. I'll turn it on you.

23 What are you afraid of? Why won't you institute a  
24 proceeding? Are you afraid of -- you know, what is it? Is  
25 it hubris within the Agency? Is it that you just can't

1 admit that someone outside this Agency might actually have  
2 something that would be a legitimate concern?

3 MR. JACK GOLDBERG: I answered that before. It's  
4 not necessary to institute a proceeding to accomplish a  
5 resolution of a safety issue in many instances.

6 And if it's no necessary, then there is a lot to  
7 be lost in expense and burden and diversion from real safety  
8 issues to participate in a proceeding when the licensee is  
9 willing to address the issue anyway without a proceeding.

10 MR. RICCIO: Where there real safety issues at  
11 Cook I'm not going to get an answer; that's fine.

12 MR. JACK GOLDBERG: I'm not going to answer to a  
13 particular --

14 MS. BLACK: I guess my problem, my question is, if  
15 you have a public meeting, would that be the same and  
16 satisfy you, or does it have to be a legal type of  
17 proceeding?

18 MR. BERKOW: I think they're looking for the legal  
19 proceeding.

20 MS. BLACK: And why?

21 MR. RICCIO: I'm not even sure we're looking for a  
22 legal proceeding, necessarily.

23 MS. BLACK: You just want a more open, public --

24 MR. RICCIO: At the same time, what I'm seeing, at  
25 the same time you're talking about we're splitting hairs

1 over hearings and proceedings, and I see that basically  
2 we're moving off from formal to informal, and I have a  
3 little bit of concern about what you're really going to give  
4 us.

5 MS. BLACK: Well, the reason that I was confused  
6 about the hearing versus the proceeding is because our  
7 directive used to call the public meetings informal  
8 hearings.

9 MR. BERKOW: But that was a misnomer.

10 MS. BLACK: Yes.

11 MR. BERKOW: We never should have referred to it  
12 as an informal public hearing.

13 MR. RICCIO: Because it carried a lot of baggage  
14 that wasn't ever intended, and inferred things to the public  
15 that they never were going to get.

16 MR. BERKOW: That's right.

17 MR. RICCIO: And we agreed with that change. I  
18 mean, it's much straight up and straightforward, you know.

19 MS. BLACK: I guess a proceeding, to me, when it's  
20 held like some of the old licensing hearings used to be, is  
21 so structured and so I don't think you get as much of the  
22 free, open exchange as you do at a meeting.

23 MR. RICCIO: Yes, but you get a couple things. If  
24 by proceeding you also mean it -- or whether proceeding  
25 actually means like informal hearing or hearing, but right

1 now, we've been debating back and forth with the Agency,  
2 your attempts to remove our rights to cross examination and  
3 discovery by shifting us out of formal hearings into  
4 informal hearings.

5 There is a lot to be lost in that regard. Now,  
6 because we have never had a proceeding, we're not really  
7 sure what we're actually going to get.

8 So I don't want to say, yes, you can remove that,  
9 because I'd like -- my hope is that we'd actually get some  
10 substantive rights that we could at least do a little  
11 discovery.

12 We find that if we do get discovery, oftentimes  
13 the licensee will either remove their license amendment or  
14 something like that, because it's not worth going through  
15 the public rigor.

16 MS. BLACK: Now, you've told me something that a  
17 proceeding gives you that a meeting doesn't, which is  
18 discovery.

19 MR. RICCIO: No, I'm not sure a proceeding does.  
20 We've never gotten a proceeding, and I don't know. If by  
21 proceeding, you mean a formal hearing, then that means we  
22 get discovery rights and cross examination rights which you  
23 all are now trying to remove from the public's rights.

24 MR. BERKOW: Is there some proceeding that will  
25 lead to all of that?

1 MR. JACK GOLDBERG: No. I mean, that's what we  
2 were talking about before. I mean, people are talking about  
3 proceedings, and it depends on what kind of proceeding and  
4 who is a party to the proceeding.

5 MR. RICCIO: Right.

6 MR. JACK GOLDBERG: Again, you might be a  
7 petitioner that is responsible for us issuing an order, and  
8 not be a party to the proceeding, so you wouldn't have any  
9 discovery. The parties to the proceeding would have  
10 discovery.

11 If it's a proceeding under Subpart B, yes, and we  
12 are considering changing the structure of our proceedings,  
13 but that's something that's an open issue, and considering  
14 the advantages and disadvantages.

15 MR. RICCIO: If you want to give away something,  
16 since we don't know what we're going to get --

17 MS. BLACK: If it were close to Christmas, and you  
18 wanted to write your Christmas list of what you'd like, see,  
19 if we rewrote 2.206 and gave you --

20 MR. LOCHBAUM: I have my list later on.

21 MS. BLACK: Okay, let's get to your list, and if  
22 he doesn't have everything that's on your list, you can add  
23 to it.

24 MR. LOCHBAUM: I wanted to get back to one point  
25 Ed asked about, the Millstone and D.C. Cook cases. It's

1 true that there were petitions in both those cases, and true  
2 that basically all the actions, with the exception of that  
3 60-day thing, were granted in both, are done, granted.

4 But I think the key part that was missing that  
5 linked back to what Jim was saying, is that in both those  
6 cases, it wasn't the petition directly, and the NRC's  
7 response that led to that.

8 The petition led to the Time Magazine cover story.  
9 That's what triggered Eric Pooley into doing that story.

10 The D.C. Cook petition, it wasn't the petition, it  
11 was calling up every radio station, weekly newspaper,  
12 editorial page writer in Michigan that we had in the book,  
13 and getting them -- and also the Congressman, saying, look,  
14 this is an outrage. And then all of a sudden we got a  
15 meeting and the NRC sent a team out there.

16 So it wasn't the petition process that was  
17 successful.

18 MR. BERKOW: Okay.

19 MR. LOCHBAUM: That's our view.

20 The recommendations we have, even though we have  
21 four problems, we have a mismatch here, but I think that's  
22 okay, at least according to our rules.

23 We feel that the NRC must conform to the wording  
24 of 2.206, Paragraph B, again, not on every occasion to  
25 institute a proceeding, but we feel there are some that have

1 crossed that threshold and a 2.202 should have been  
2 initiated.

3 Our second recommendation is that the NRC must  
4 give the petitioners the same rights as licensees when  
5 appealing NRC decisions.

6 Third, we feel that the NRC must treat petitions  
7 with the same dispatch -- and I put that in quotes because  
8 there are things that take longer than others -- as afforded  
9 other comparable items.

10 I'll go through each of those --

11 MR. BERKOW: You do understand that if an appeal  
12 process were built into this, it would delay it even beyond  
13 what it is, delay the issuance of a Director's decision by  
14 necessity?

15 MR. LOCHBAUM: I recognize that.

16 MR. BERKOW: Okay.

17 MR. LOCHBAUM: But waiting 120 days to get no or  
18 getting into it right away would be a worthy tradeoff.

19 MR. PAUL GOLDBERG: That's the response to the  
20 formal petition. There may be actions take with respect to  
21 the petition at some appropriate time within that 120 days.  
22 That's not to say we don't take any action.

23 MR. LOCHBAUM: I don't mean that we're going to  
24 appeal, at least UCS. I'm speaking for UCS as the moment  
25 and not the whole task force.

1 But it's not our intention to appeal every denial.  
2 We've got an awful lot. We're kind of getting used to it.

3 There's only one time we've ever appealed a  
4 decision because we thought there was a technical error in  
5 the staff's analysis or a deficiency. Others, we've  
6 disagreed with, but we didn't have a grounds to even appeal  
7 it.

8 So it's not like every petition we've ever  
9 submitted and got a no on, we thought should be appealed,  
10 just for pro forma or whatever. There has only been one in  
11 all the ones that I have submitted that I wanted to do that.

12 MR. RICCIO: You are talking about River Bend and  
13 Perry?

14 MR. LOCHBAUM: We count that as one, because it  
15 was the same issue at two different plants. That was the  
16 only one where I did try to appeal it, and it was  
17 unsuccessful.

18 MS. BLACK: How did you try to appeal it?

19 MR. LOCHBAUM: I wrote a letter to the Commission,  
20 asking them to review it.

21 MS. BLACK: Right.

22 MR. JACK GOLDBERG: And we followed our  
23 regulations.

24 MS. BLACK: But you didn't send a second petition  
25 on the same issue with the new information? Was it

1 different or with the new information?

2 MR. LOCHBAUM: The staff took so long to decide  
3 that one, that the broken fuel had been removed from both  
4 plants. It was a moot issue. I was not going to waste the  
5 postage on that one.

6 If the fuel was still there, it might have been  
7 different.

8 We thought the 2.206(b) process should be that the  
9 NRC should -- this is how we would recommend, this is part  
10 of our Christmas list.

11 MS. BLACK: Okay, good.

12 MR. LOCHBAUM: We thought the NRC should screen a  
13 petition that comes in. We think the existing criteria in  
14 Management Directive 8.11 seems appropriate for when a 2.206  
15 meets the criteria or not. I forget the page number, but it  
16 seemed to be the appropriate criteria.

17 If the screening criteria are not met, we felt  
18 that the NRC staff should inform the petitioner and offer an  
19 opportunity to appeal. I'm not going to say that should be  
20 five layers, but there should be an appeal process.

21 MR. BERKOW: You don't call it an appeal, but  
22 don't you consider the opportunity to come in and meet with  
23 the PRB, that that at least meets the intent of that to some  
24 degree?

25 MR. LOCHBAUM: Not at all.

1 MR. BERKOW: That opportunity is offered before we  
2 go through the screening criteria, and it offers an  
3 opportunity to further expand, to explain, to answer  
4 questions.

5 So it's not really an appeal, but I think -- I'm  
6 asking, don't you think it goes to at least partially meet  
7 the intent of this particular appeal at this stage?

8 MR. LOCHBAUM: Not at all.

9 MR. BERKOW: You don't?

10 MR. LOCHBAUM: I don't think you should even allow  
11 the petitioner or the affected party into the Petition  
12 Review Board process. What we think is what we ask for  
13 here: If we don't like the outcome of the Petition Review  
14 Board, and the screening says that it's not a petition and  
15 we disagree with that, we think there should be an  
16 opportunity to appeal.

17 To come in on the front end, doesn't do us  
18 anything, because if we disagree with the answer, we're not  
19 anywhere. I mean, we're back to this appeal process.

20 MR. KUGLER: I think the one way to look at it is  
21 -- and I think maybe where we're coming from, is assuming  
22 that the reason that we might screen something and say it  
23 doesn't meet it, is because maybe we don't understand what  
24 it is you're really getting at.

25 And coming into the PRB meeting and being given

1 the opportunity to explain exactly where your concerns are,  
2 and what the problem are, would avoid that problem, at  
3 least.

4 MR. RICCIO: But there are instances where you  
5 have a disagreement with the technical position being taken  
6 by the staff, which ends up getting your petition denied.

7 And there are times where that position is  
8 indefensible. I've got things percolating now where I've  
9 got testimony from NRC's own staff saying the position is  
10 indefensible.

11 So where are you left at that point?

12 MR. LOCHBAUM: Plus, there is a classic case that  
13 happened before my time, but in Jim's time, where a number  
14 of people petitioned the Agency -- and I forget what the  
15 issue was -- but under this consolidation plan, a comment  
16 that had been submitted by postcard --

17 MR. RICCIO: It was the containment on the GE Mark  
18 Reactors, and they used a postcard filing.

19 MR. LOCHBAUM: That didn't even mention 2.206.

20 MR. RICCIO: It didn't mention 2.206. It had been  
21 ginned up out of someone trying to get the Agency's  
22 attention.

23 And instead of dealing with a legitimate petition,  
24 they addressed the postcard.

25 MR. LOCHBAUM: And they dismissed all the others,

1 saying that we're addressing this under this one. You know,  
2 this is rolled into that one.

3 MR. RICCIO: So it was denied.

4 MR. LOCHBAUM: So that kind of foolishness  
5 happened, and we would say, look, that's not -- our issues  
6 are not covered under the scope of that sham.

7 MR. RICCIO: That postcard.

8 MR. LOCHBAUM: That's why we think an appeal is  
9 more important.

10 MR. RICCIO: That was before my time.

11 MS. BLACK: If we deny or we say that your  
12 petition did not meet the requirements, the Division  
13 Director signs that out. Now, if you got that letter and  
14 you said that you disagreed with that decision and you want  
15 and appeal to that, that it's not even being treated under  
16 2.206?

17 MR. LOCHBAUM: Right, that seems reasonable. If  
18 we disagree with that decision, there should be an appeal  
19 process. I'm not even going to specify to whom or how many  
20 levels.

21 MS. BLACK: Okay.

22 MR. LOCHBAUM: And I don't think that's a  
23 proceeding, necessarily. To me, that since the licensees  
24 have an appeal, the public should as well.

25 If, on the other hand, the screening criteria is

1 met, and sometimes 2.206 actually do exceed that threshold,  
2 as we see it, there ought to be a 2.202 proceeding initiated  
3 or instituted.

4 MR. BERKOW: But wouldn't that be premature,  
5 though? All this means is that it meets the criteria to be  
6 considered as a 2.206.

7 The staff then has to do its review before  
8 determining whether or not it has merit, you know.

9 MR. LOCHBAUM: As I read the regulation, you have  
10 two choices: You deny it if it doesn't meet it and it's not  
11 an issue.

12 MR. KUGLER: This goes back to the disagreement  
13 over what, exactly, that regulation means. His read on it  
14 is that if you believe that the 2.206 meets the screening  
15 criteria, our only options are either deny it or institute a  
16 2.202 proceeding. That's how they read it.

17 MS. BLACK: And if we deny it without --

18 MR. BERKOW: You mean prior to even doing the work  
19 that's required to prepare a Director's decision?

20 It's not clear to me how we can -- how we can  
21 institute a 2.202 proceeding, just on the basis of the PRB  
22 saying this meets our screening criteria for accepting this  
23 as to review as a 2.206 petition.

24 MR. RICCIO: Considering that none has ever been  
25 issued, it's pretty clear.

1 MS. BLACK: I think what they're saying is that  
2 once you accept it as a 2.206, you should use the 2.202  
3 proceeding to actually publicly have the petitioner come in  
4 and give their case, the staff would give their -- no?

5 MR. LOCHBAUM: No. The petitioner may not have  
6 standing, so when a proceeding, if one's initiated, the  
7 petitioner may or may not have standing, and, therefore, can  
8 observe the proceeding, but may not be able to participate  
9 in it.

10 I'm not challenging that standing thing at all.

11 MS. BLACK: So that a 2.202 proceeding, there  
12 would be actually the review process of a petition that  
13 would be a public discussion between the staff and --

14 MR. LOCHBAUM: There is also the response under  
15 oath or affirmation. We kind of think that those oath or  
16 affirmation statements are a little bit important, and that  
17 --so we would like to see an answer under that, rather than  
18 the NRC staff working informally or with less rigor with the  
19 petitioner or with the licensee on some of these issues.

20 On Slide 20, I do need to modify something because  
21 Mr. Goldberg is right, and this was prepared before that  
22 input. That involved the petitioner in the proceeding, that  
23 doesn't mean separately from the standing. I mean, the  
24 standing would still apply.

25 And whether standing was met or not would be an

1 issue of what that involvement was, whether just as an  
2 observer, or an actual party.

3           Once that proceeding reached an end, you should  
4 inform the petitioner or proceeding results, and extend the  
5 opportunity to appeal.

6           The one thing, based on the discussion today, that  
7 I would probably modify is that the screening criteria that  
8 I said could be taken right out of Management Directive  
9 8.11, that might have to be revised.

10           I agree with Mr. Goldberg's point that you don't  
11 just -- meeting that threshold isn't necessarily enough to  
12 initiate a proceeding. But whatever that threshold is, that  
13 should be the criteria for 2.206, because you either meet  
14 the threshold for a proceeding or you don't.

15           There shouldn't be layers with us never, ever  
16 getting the brass ring.

17           MR. PAUL GOLDBERG: Well, I think the idea is that  
18 there is one threshold of safety significance to the  
19 contention, to the information that's provided.

20           That's the first judgment, and the second  
21 judgement is whether it's correct and whether it has merit.  
22 And at that point, we have to decide -- I mean, if it's  
23 significant and it has merit, then we would presumably  
24 institute a 2.202, which, by the way, as we've generally  
25 treated it somewhat separate proceeding to take enforcement

1 action, we generally treat it as somewhat separate from the  
2 2.206.

3 The 2.206 kind of reports the results of that.

4 MR. LOCHBAUM: I understand the procedure. I  
5 assume that's why it doesn't even mention 2.202 at all, or  
6 doesn't even reference it. That seems a little odd since  
7 that's the procedure for handling them.

8 MR. BERKOW: It was not deliberate.

9 [Laughter.]

10 MR. RICCIO: Well, that gives us some confidence.

11 [Laughter.]

12 MR. KUGLER: As I understand what you just said,  
13 you said we might have to revise the criteria so that they  
14 appropriately measure things that would lead to a 2.202 type  
15 proceeding.

16 And what comes to mind immediately is, well, if we  
17 did that, then all the things that fell below it, would just  
18 -- where would they go? I guess that's what I'm wondering.

19 There are a lot of things that we believe don't  
20 meet that level today. But we treat them under 2.206, and  
21 we still do the Director's Decision.

22 And so what's not clear to me is what happens to  
23 those if we were to modify the process in that way?

24 MR. LOCHBAUM: Well, I think if in the course of  
25 processing a 2.206, there were things that the NRC felt

1 needed to be done, but not through 2.202, then it doesn't  
2 preclude the NRC staff from doing that. I mean, we don't  
3 suggest that at all.

4 As I read the regulation, your petition is to the  
5 proceeding. The NRC will either decide to do that, or  
6 decide not to do that.

7 And to me, that's what the petitioner should get  
8 back, a decision that that's going to be done or a decision  
9 that it's not going to be done, not this we're not going to  
10 do this, but here is this whole other thing that we did  
11 anyway or in spite of it, or because of it or whatever.

12 MR. BERKOW: Would that obviate the need for a  
13 Director's Decision?

14 MR. LOCHBAUM: Well, somebody has to reach a  
15 decision on whether it meets the -- where a proceeding is  
16 initiated. I don't know if that's the Director's or --

17 MR. BERKOW: Really, if we did that, I think the  
18 format of the Director's Decision would become moot.

19 MR. RICCIO: Or there would be fewer.

20 MR. BERKOW: It would be like a decision by  
21 hearing board, as opposed to the Director's Decision as we  
22 know it today.

23 MS. BLACK: And it wouldn't be issued by an  
24 office.

25 MR. BERKOW: That's right.

1 MR. LOCHBAUM: To return to the point, it was a  
2 good point, and I want to make sure I'm clear where we are  
3 on that. It's that in the existing criteria in 8.11, we  
4 don't think everything that meets that threshold should  
5 start a 2.202 hearing, proceeding, whatever. There is a  
6 range between those, so there needs to be a higher standard  
7 or a different criteria or whatever, a different screening.

8 But there should only be one. I don't think we  
9 should do this salmon run where the petitioner has to jump  
10 through all these fish screens to get there.

11 Do one screening and either do the proceeding or  
12 not.

13 MR. PAUL GOLDBERG: What we would do would be at  
14 least a two-part test, and that could be done all at one  
15 time. Does it have potential safety significance and does  
16 it have merit?

17 MR. LOCHBAUM: As far as -- I don't pretend to  
18 judge all the previous proceedings or 2.206, whether they  
19 had been or not, but I can -- but I find it very difficult  
20 to believe that all the 300-plus 2.206's that have been ever  
21 filed over time, there's not a single one of them ever that  
22 raised -- crossed that threshold of safety merit that a  
23 2.202 should have been done.

24 If the staff can go through and prove or  
25 demonstrate -- not prove -- demonstrate that that's the

1 case, I would be willing to change my mind.

2 MR. RICCIO: There was one, Pollard's intervention  
3 on Yankee Rowe, I believe started with a 2.206 petition, and  
4 I believe that got a hearing, although that may have been a  
5 political hearing and not necessarily a -- there was a  
6 hearing.

7 MR. SUBBARATNAM: The July first revision of 8.11  
8 is now open to the comment period, and to January 31st.  
9 That's an opportunity for you to comment on that.

10 MR. BERKOW: The management directive was  
11 published in the Federal Register seeking public comment on  
12 it.

13 MS. BLACK: I guess the problem I'm thinking of  
14 is, what do we do in cases like Indian Point, for example,  
15 where the licensee -- the inspection staff -- where the  
16 licensee has come up with all the issues that need to be  
17 addressed, and then we get a 2.206 which has the same  
18 information in it? Would that mean that any time there was  
19 a problem at a plant, there would be hearing rights? Is  
20 that what you're looking for?

21 MR. LOCHBAUM: Are you talking about my --

22 MR. RICCIO: There are a couple out there.

23 MR. LOCHBAUM: I would disagree a little bit. If  
24 we had an appeal -- I thought I was raising new issues. I  
25 didn't -- I understand both the management directive and the

1 2.206, I can't just jump onboard in an existing activity and  
2 say, you know, this is a 2.202 proceeding.

3 What I was doing was something that the staff had  
4 not asked for, and that was the expansion of scope, just  
5 like D.C. Cook.

6 We thought we had a better case in Indian Point II  
7 than we did at D.C. Cook, but we didn't do the same media  
8 coverage thing.

9 But the answer to your question is, no, just  
10 because the NRC staff is already doing something, any member  
11 of the public should be able to take that as an automatic  
12 entry into the game.

13 MR. RICCIO: You notice that I haven't filed a  
14 2.206 petition in a very long time.

15 MR. LOCHBAUM: You didn't sign onto mine, either.  
16 [Laughter.]

17 MR. RICCIO: I wanted to try something different.  
18 But we're not just sitting here trying to tie up NRC's time  
19 by having you have meaningless hearings.

20 When the public is filing something, you know,  
21 they legitimately believe that there's a safety issue there  
22 that's not being addressed.

23 And even if you just use the Petition Review Board  
24 meeting to drag them in and explain to them that this is  
25 what we're doing in response to -- although, you know, it

1 may not be in response to your petition, but this is what  
2 we're already doing. Again, it would at least --

3 MS. BLACK: So an open PRB meeting would be  
4 satisfactory?

5 MR. RICCIO: It might help.

6 MR. KUGLER: Well, the only downside to the PRB  
7 meeting aspect is that there may be a lot of petitioners for  
8 whom it would be difficult to come in to attend one. I  
9 mean, for you guys, it wouldn't be that bad, but if you're  
10 talking about somebody on the West Coast who is just a  
11 private individual --

12 MR. BERKOW: They can attend by telephone.

13 MR. KUGLER: Yes, it can be done by phone.

14 MR. LOCHBAUM: To further answer that question,  
15 I'm sure you and I talked about Diablo Canyon, the first  
16 Diablo Canyon petition we submitted a year ago, November of  
17 '98 where we asked for a safety culture survey, because we  
18 thought there was some signs of trends.

19 The response was, the Company was already doing  
20 one or had one underway and it was released shortly  
21 thereafter. I didn't know that when submitting the  
22 petition.

23 You know, we weren't jumping onboard, because I  
24 didn't know about it. When the answer came back that  
25 they're already doing it, that was fine.

1           MR. JACK GOLDBERG:   Suppose they weren't doing it?  
2   And you submitted a petition saying they should do a safety  
3   culture study, and we said, you know, that's a great idea.  
4   They've had some problems out there, and we think they ought  
5   to be doing it.

6           And we call up the licensee and say, are you doing  
7   it?  And they say, no.  And we say we think it would be a  
8   good idea if you did it, and they say, sorry, we don't think  
9   it's a good idea.

10           We believe that petition has merit.  We could  
11   issue an order.  Assuming that we agree there's a basis,  
12   there is a problem out there that warrants some kind of  
13   action, the licensee is not doing it, and we want to compel  
14   it.

15           The way we can do that is to issue an order  
16   pursuant to 2.202.

17           So we could issue an order then requiring a safety  
18   culture study, and I would take it that you would say that  
19   is exactly how the 2.202 process ought to work in that a  
20   petition was submitted.  It raised an issue.  We agreed it  
21   had merit.  The Licensee wasn't already doing it and wasn't  
22   going to do it voluntarily, so we used the tools that we  
23   have in our regulations under the Atomic Energy Act and we  
24   compelled the Licensee to do it, and we can say petition  
25   granted in its entirety.

1           We institute a proceeding pursuant to 2.202 to  
2 require them to do a safety culture.

3           So that is Example 1. You say fine, 2.206 process  
4 serviced a useful purpose. I ask you now, what is the  
5 difference between that and the second example I'll give  
6 you. You submit a petition saying Diablo Canyon should do a  
7 safety culture study. We say we think that is a good idea.  
8 Not only is a good idea. There are problem out there which  
9 provide the requisite legal basis for us to require them to  
10 do it and we call up the Licensee and say we think you  
11 should do a safety culture study and we are about to issue  
12 and order requiring you to do it, and they say we are going  
13 to do it without an order. We don't need a proceeding. We  
14 are not going to challenge you. We recognize the merits --  
15 or maybe we don't even agree but we are not going to devote  
16 the resources to fight it and we'll do it.

17           MR. LOCHBAUM: They agree to do it.

18           MR. JACK GOLDBERG: So in both cases the safety  
19 issue or the underlying issue that was of concern to the  
20 petitioner is being addressed in the identical way. The  
21 only difference is there is a proceeding in one case and not  
22 a proceeding in another case.

23           MS. BLACK: Well, I have a question about that.  
24 Is there a proceeding if you issue the order and the  
25 Licensee says okay. Aren't they the only ones who can ask

1 for the proceeding?

2 MR. LOCHBAUM: The hearing --

3 MR. JACK GOLDBERG: Yes.

4 MS. BLACK: In that case, so there would be no  
5 proceeding --

6 MR. JACK GOLDBERG: No, I am assuming that they  
7 didn't agree with this --

8 MR. RICCIO: Not that I care about your public  
9 image, I really don't -- now you guys having an awful image  
10 makes my job a hell of a lot easier.

11 MS. BLACK: What?

12 MR. RICCIO: That being said, public confidence  
13 would be enhanced by having a proceeding, even if you get  
14 the same thing --

15 MS. BLACK: You mean by the order, not the  
16 proceeding, because the proceeding is at the option of the  
17 Licensee.

18 MR. RICCIO: Right, sorry, but the hearing --

19 MR. BERKOW: No, the proceeding is the order.

20 MR. RICCIO: Right.

21 MS. BLACK: The proceeding is the order?

22 MR. BERKOW: The Licensee contests the order --

23 MR. LOCHBAUM: And then they ask for a hearing.

24 MR. RICCIO: And I could care less. I really  
25 don't care, because if you don't do it I could beat you up

1 about it, and if you do do it, well --

2 MR. BAKER: Well, let me ask you a question  
3 though. You just said you don't want to waste taxpayer  
4 dollars.

5 MR. RICCIO: This isn't taxpayer dollars, first of  
6 all --

7 MR. BAKER: Yes, it is, ratepayer dollars.

8 MR. RICCIO: You are being funded by the industry.

9 MR. BAKER: Ratepayer dollars. So we are  
10 accomplishing the action. The Licensee has agreed to do it.  
11 They are going to take the action, so you would say rather  
12 than just say go to do and we'll share the results when it  
13 is done, you would rather have a proceeding, tie up NRC  
14 resources that could be spent on other safety issues --

15 MR. RICCIO: Oh, yes -- I'm keeping you guys from  
16 making these reactors safe. Thank you.

17 My logic is basically you guys are one step above  
18 Attila the Hun at this point in the public's perception.

19 [Laughter.]

20 MR. LOCHBAUM: Two steps.

21 MR. RICCIO: And the only way you'll get out of  
22 that image is to have an open forum where you can actually  
23 come out and show that -- you don't have forums. You know,  
24 I work with you guys. I understand --

25 MS. BLACK: But the only thing you are saying is

1 we need to have an adversarial relationship.

2 MR. RICCIO: No, I don't. I am not saying that  
3 you need an adversarial relationship. I think you need a  
4 public forum so that you can explain to the public what it  
5 is you are doing.

6 MS. BLACK: Okay. Now you are saying a public  
7 forum, and the proceeding and the order are what we were  
8 talking about.

9 MR. KUGLER: Right.

10 MS. BLACK: The hearing is something different, so  
11 we are making the conversation.

12 MR. KUGLER: Because particularly in the case of  
13 the second case, let's say that the Licensee is going to do  
14 it, all right? But what you are saying is we should have  
15 the proceeding anyway, as I understand it. Is that correct?

16 MR. RICCIO: I think it would enhance your image.

17 MR. KUGLER: Well, now hang up. Let me finish how  
18 this goes. As I understand it, what the proceeding would be  
19 would be us preparing and issuing an order. There is no  
20 public involvement in that. There is no Licensee  
21 involvement in that. Nobody is involved in that but us.

22 So we issue the order. Licensee says fine, I am  
23 going to do it anyway.

24 MR. RICCIO: But you can write up a real nice  
25 press release saying, hey, look, we are doing this on the

1 basis of the petitions, you know, the 2.206 petition.

2 MR. BAKER: But we can do that anyway.

3 MR. KUGLER: But in terms of the public view of  
4 us, I mean --

5 MR. BAKER: Jim, the end result with the public is  
6 what is the outcome. Does the environment at the plant  
7 improve or not? That is the outcome. That is the public  
8 confidence issue.

9 MR. RICCIO: No. There are issues that it  
10 basically looks like, okay, you're a monolith --

11 MS. BLACK: This is being recorded.

12 THE REPORTER: We have two or three conversations  
13 going on.

14 MR. RICCIO: I'm sorry.

15 MR. KUGLER: I was going to say though that the  
16 petition -- or the Director's decision goes in the Federal  
17 Register. So would the order. There is not more or less  
18 notice of that, so I guess I don't see that there would be a  
19 great difference in terms of what the public would know  
20 about what is going on.

21 MR. BERKOW: Actually, the Director's decision  
22 does not go into the Federal Register. It is just a notice  
23 in the Federal Register.

24 MS. BLACK: -- the summary --

25 MR. BERKOW: It is just the notice of the

1 Director's decision that goes in the Federal Register.

2 MR. LOCHBAUM: I kind of fell behind there --

3 [Laughter.]

4 MR. LOCHBAUM: To Mr. Baker's comment about there  
5 is no difference, those issues are the same, it makes a big  
6 difference to a public petitioner when they are constantly  
7 denied. It is kind of a chilling effect, so --

8 MR. BAKER: I grant you that, but what we are  
9 talking about though is granting the action but not having  
10 the proceeding.

11 MR. LOCHBAUM: The two options or the two examples  
12 you gave, as I read the enforcement actions a confirmatory  
13 action letter is an enforcement action, so it doesn't only  
14 apply when a Licensee disagrees with whatever is proposed,  
15 whether it is safety culture survey or whatever. Even if  
16 they agree, you could issue an order saying do this -- the  
17 Licensee says they agree -- so therefore they waive I assume  
18 their opportunity for a hearing.

19 The difference, to get back to Mr. Kugler's  
20 comments, was the Licensee has to respond under oath or  
21 affirmation. If they don't -- if you don't go through the  
22 proceeding part and you don't do the order they can do a  
23 culture survey. They don't even have to issue that  
24 publicly.

25 Diablo Canyon did. You know, we are talking a

1 hypothetical example, but --

2 MR. BAKER: But my point being in each of those  
3 cases we had public meetings at the sites to discuss the  
4 results. To me, that accomplishes more than what you were  
5 suggesting.

6 MR. LOCHBAUM: If I am an astute licensee I would  
7 agree to do it, try to not do public as much as possible. I  
8 don't want to air my dirty laundry in public, and whereas  
9 the other one, it is not the airing the dirty laundry in  
10 public is the endgame here, but it provides greater  
11 confidence that a safety issue was brought, raised and put  
12 to bed.

13 MR. KUGLER: So it would depend, I think, on what  
14 the order said. Let's say we took the order route. If it  
15 said go ye and do this survey and didn't specifically ask  
16 for them to send it back, they still wouldn't have to send  
17 it back, so either way we could tell them we want to see the  
18 results and if they send us the results it is going to be  
19 publicly docketed information.

20 MR. LOCHBAUM: That's true.

21 MR. KUGLER: But admittedly if we take the route  
22 of them just agreeing to do it we can't demand the  
23 information, but if they agree to send it, then, you know,  
24 it would still be public.

25 If we wanted it and they didn't agree to send it,

1 then we would have to take some route other than a simple  
2 agreement and that would probably be along the lines of one  
3 of the enforcement actions.

4 MR. LOCHBAUM: As far as the waste of resources,  
5 and we have supported reducing for the Licensees' sake, not  
6 actively -- we don't go overboard on that, but we do support  
7 it on occasion.

8 MR. BAKER: I was just using those two examples --  
9 I was trying to understand the difference.

10 MR. LOCHBAUM: No, I understand, but I think the  
11 five-layered appeal process does take up NRC resources.  
12 Apparently the NRC is willing to proffer those resources, so  
13 for this sake I don't know. I haven't done a "benefit" so I  
14 can't say if it is more or less resources. I can't imagine  
15 it is more to write an order than do five layers of hearings  
16 or appeals.

17 But again it goes to public confidence. All the  
18 effort that this agency is spending on increasing public  
19 confidence could be gained by doing some of these --  
20 following the rules. It all goes back to that is what the  
21 regulation says -- if you follow the regulation. People  
22 don't really don't understand crack growth rates and some of  
23 these try technical issues again, but you see what the thing  
24 says and you see the agency not doing it. That is automatic  
25 "gimme" that they lose credibility in this agency.

1 MS. BLACK: You know, I am still totally confused,  
2 because if we institute the proceeding and the proceeding is  
3 the order, that means we have to already decided the merits  
4 of the case before we even do anything.

5 MR. BERKOW: That's what I said.

6 MS. BLACK: I know.

7 MR. BERKOW: That's what I said.

8 MR. RICCIO: That's why there are problems with  
9 the whole procedure.

10 MS. BLACK: Right. So do you want a hearing or do  
11 you want a proceeding?

12 MR. LOCHBAUM: No, I -- at this point, an appeal.  
13 We asked for an appeal.

14 MS. BLACK: Okay.

15 MR. LOCHBAUM: The appeal could be actually a  
16 meeting and it doesn't have to be a hearing, doesn't have to  
17 be anything else. The appeal could be a meeting where the  
18 petitioner comes in and says here is why we disagree with  
19 the decision.

20 MS. BLACK: Now one thing we could possible do  
21 that would resolve this, we would have to stretch out the  
22 schedule a little bit, but instead of issuing a final  
23 Director's decision --

24 MR. LOCHBAUM: -- again the members of the public  
25 only have 30 or 60 days to review a license amendment. Why

1 is it --

2 MS. BLACK: I am not going to defend a license  
3 renewal decision.

4 MR. LOCHBAUM: No, I just question why it is  
5 assumed that 120 days is sacrosanct and there can't be  
6 efficiency and productivity, because one of the NRC's four  
7 goals -- public confidence is one -- improving efficiency is  
8 one of the other ones.

9 MS. BLACK: Why it takes us so long probably is  
10 because it goes to such a high level. If a Branch Chief  
11 signed one of these things out, it probably could get out in  
12 60 days. I am not saying that it takes our management 60  
13 days to concur on things but --

14 [Laughter.]

15 MS. BLACK: But one of the resolutions of this,  
16 which I said we wouldn't express resolutions, but to get  
17 your thought on saying we were ready to issue a decision and  
18 instead of issuing a final decision we issued "this is what  
19 we are considering" and issued it to the petitioner and  
20 said -- it is almost like our TIA process -- if you don't  
21 agree with it, you know, let's talk about it first. Let's  
22 have a public meeting.

23 Now would that satisfy the --

24 MR. LOCHBAUM: It would also have to be in the  
25 context of some of these other things. That alone will not

1 satisfy me.

2 MR. BERKOW: They would still want us to institute  
3 a proceeding.

4 MS. BLACK: Yes. Now -- but the proceeding is the  
5 order and if there is no merit to it -- we would issue a  
6 proceeding if we were going to deny it, you convinced us  
7 that it was indeed something that we should grant. See, the  
8 thing is the way you have defined -- the way "proceeding" is  
9 defined, granting a 2.206 and accepting something as a 2.206  
10 are the same thing. The beginning and the end are the same.

11 Granting a proceeding --

12 MR. LOCHBAUM: Yes, it basically is.

13 MS. BLACK: Is granting the petition.

14 MR. RICCIO: Because all we are allowed to ask for  
15 is for you to initiate a proceeding. If we were allowed to  
16 ask you --

17 MR. LOCHBAUM: Anything else --

18 MR. BERKOW: What Dave was suggesting, it is the  
19 same.

20 MS. BLACK: Yes.

21 MR. BERKOW: In other words, as soon as you accept  
22 it, it passes the screening criteria for review as a  
23 petition you immediate start a 2.206.

24 MR. LOCHBAUM: That is what the regulation says.

25 MR. JACK GOLDBERG: That is not the only thing you

1 can request. If you look at 2.206(a), you know, as we said  
2 before, although we have been doing it on occasion we are  
3 not going to debate the merits here, but 2.206(a) says any  
4 person may file a request, one -- I am putting the numbers  
5 in now, so you can see how many things you can do.

6 Institute a proceeding pursuant to 2.202 to  
7 modify, suspend, or revoke a license, okay? -- so if you  
8 take that first phrase there, one of the things you can do  
9 under 2.206 is request that we institute a proceeding by  
10 issuing an order under 2.202 and that order could require a  
11 modification, suspension or revocation of the license.

12 The other thing you can request is any other  
13 action as may be proper and in the context of 2.206 and  
14 where it is in the regulations and the history of the  
15 regulations, as has been addressed by the Commission in  
16 response to the IG's report, in response to one of the  
17 petitions that you submitted requesting licensing action  
18 where we said that was not within 2.206 because it wasn't a  
19 request for enforcement action, the other action that may be  
20 proper is another enforcement type action, and Management  
21 Directive 8.11 now makes that clear and it includes all the  
22 things that you have listed in your slides.

23 So you can request something other than a  
24 proceeding, and then you have to read 2.206(b) in  
25 conjunction with 2.206(a), not in isolation.

1           What 2.206 says when you read it as a whole is  
2 that in response to a petition you will -- the petition will  
3 either be granted or it will be denied. If it is granted,  
4 it means that we are taking the action that was requested or  
5 it may be granted -- and now this has developed through the  
6 practice over the years -- all these words and details are  
7 not in there -- but could be granted in part and denied in  
8 part, because you may ask for a revocation but we may issue  
9 an order modifying instead of a revocation. We may issue a  
10 demand for information or confirmatory action letter but --  
11 on the issue that was raised, because there is merit to the  
12 issues raised, and so we would call it granted in part.

13           If we don't grant it in its entirety where  
14 arguably there really isn't a need for a Director's decision  
15 because we would be issuing an order or taking other action  
16 exactly as you requested and we could send you a copy of it  
17 and say in response to your petition we have taken the  
18 action that you have requested, and there would be nothing  
19 to explain in a Director's decision really.

20           But if we are not going to grant it in its  
21 entirety, then a Director's decision is required by the  
22 regulations and that provides the explanation as to the  
23 basis for the denial, so when you focus on 2.206(b), what I  
24 am suggesting is that you can criticize the language in  
25 there in saying that if you read 2.206(b) in isolation it

1 suggests that all the NRC can do is institute a proceeding  
2 or deny the petition in its entirety, you know what I am  
3 saying? That is oversimplification and incorrect reading of  
4 2.206(b) because you have to read it in the context of what  
5 the petitioner is allowed to request under 2.206(a).

6 MR. RICCIO: But what you have to realize that our  
7 understanding of this has evolved over the years as to how  
8 you all have handled these petitions, and actually I will  
9 drag out -- the very first meeting I was in NRC stated we  
10 have a hierarchy of regulations.

11 When you ask for something that is way down the  
12 regulatory fence you are not going to get what you asked for  
13 in your petition, and we have this threshold that we go  
14 through, and I'm sure that what it has turned into now is  
15 determining the potential safety significance or whether it  
16 has merit, but the reality is too I think the reason our  
17 interpretation of 2.206 has been generated out of ten years  
18 of doing these and getting thoroughly denied, and each time  
19 the reason for the denial changes.

20 It was very different under Mr. Stello and as each  
21 of the different Director's have come on through here we  
22 have gotten very different explanations as to why our  
23 petitions are being denied.

24 I think that is why the interpretation has been --

25 MR. JACK GOLDBERG: The formal agency reasons why

1 the petitions are denied are contained in the Director's  
2 decisions, not what anybody says at any meeting or anything.  
3 The Director's decisions are all published. They are a  
4 matter of record and the Commission, pursuant to the  
5 regulations, reviews those, so that is the Commission's  
6 decision that explains the basis for the denial.

7 MR. RICCIO: It does come around to -- even until  
8 this meeting it was my understanding that we are still  
9 asking for a proceeding to take a different action -- you  
10 know, one of the enforcement actions?

11 I still was thinking we were asking for a  
12 proceeding, because that is what this -- that is what it  
13 says.

14 MR. JACK GOLDBERG: That is not what it says.  
15 That is not what 2.206(a) says. That is the first clause in  
16 2.206(a), it is not the second clause. The second clause is  
17 not tied to proceeding --

18 MR. RICCIO: It was our understanding that we were  
19 asking for a proceeding to take in, you know, any of the  
20 range of different options within 2.206.

21 MS. BLACK: But you think proceeding, you are  
22 using proceeding as hearing as opposed to order, right?

23 MR. JACK GOLDBERG: If you submitted a 2.206  
24 petition and said we don't want a proceeding, but we want  
25 you to issue a confirmatory answering letter or demand for

1 information or notice of violation, which is not in the  
2 first clause either, we would say -- and you had a basis for  
3 it -- we would say that is a legitimate 2.206 because it  
4 does the two fundamental things that 2.206 provides.

5 It is a request for enforcement type action and it  
6 is supported by a basis. We say that is within the scope of  
7 2.206.

8 Now in Management Directive 8.11, there are other  
9 criteria as to whether you go further in the process. If it  
10 is an issue that we have already considered and resolved, if  
11 you really are requesting a reopening and enforcement  
12 decision -- I mean there are other reasons why we might not  
13 take it further in the process, but those are the only two  
14 requirements for something to start out within the scope of  
15 2.206. That has always been the case.

16 MR. LOCHBAUM: I guess I am having trouble  
17 understanding how those 20 percent of the OIG cases, the 49  
18 OIG that I looked at where there was some actions taken, why  
19 those petitions weren't granted if there were other action  
20 categories.

21 MR. JACK GOLDBERG: Historically the Staff did not  
22 give credit in the written Director's decision to valid  
23 issues that were being raised by petitioners that did  
24 warrant some action and characterizing, as it should have  
25 been done, that the petition was granted in part.

1           The Staff's mode for many years was to deny the  
2 petition because we weren't doing everything the petitioner  
3 requested or because it was already something that was being  
4 considered by the Staff and it wasn't a new issue, and it  
5 really was a mischaracterization of the action that was  
6 taken, measured against what was requested by the  
7 petitioner.

8           In recent years, there's been a lot more attention  
9 paid to properly characterizing the conclusion of the  
10 Director's decision in terms of whether it grants in whole  
11 or in part or denies, you know, so you're right, if you look  
12 back in earlier years they were traditionally written in  
13 terms of denying the petition even though we may have done  
14 some or many of the things that the petition requested.

15           MR. BERKOW: The current Management Directives  
16 specifically addresses that point and directs the Staff to  
17 take credit for what was granted.

18           MR. LOCHBAUM: It was said at the onset that the  
19 purpose of this meeting was to gain a better understanding,  
20 so I think I have achieved that, because it didn't say  
21 "complete" understanding.

22           I agree with Jim. Up until this morning or today  
23 I thought the proceeding was to do all four of those things.  
24 I didn't realize they were separate, so I appreciate that  
25 distinction now.

1           MR. RICCIO: And I have to say it's the first time  
2 we have heard that. Even with the meetings we have had -- I  
3 have been doing this for ten years almost --

4           MR. JACK GOLDBERG: Well, if you look at 2.202 it  
5 doesn't encompass confirmatory action letters, demands for  
6 information.

7           Notices of violation is in another part of the  
8 regulations. It is not in 2.202 -- 2.206 is now our only  
9 ordering clause other than civil penalty, which you do  
10 through 2.205, but we used to have two ordering provisions,  
11 2.202 and 2.204 -- 2.204 used to be called "order modifying  
12 a license".

13           What we said when we re-examined subpart (b) a  
14 number of years ago in connection with the wrongdoer rule is  
15 that our authority to issue orders under the Atomic Energy  
16 Act derives from the same provisions as Section 161 and they  
17 don't distinguish between modifying, suspending, revoking.  
18 It is all the same phrase.

19           We don't need to have two separate ordering  
20 provisions implementing that Atomic Energy Act authority --  
21 I'm sorry. I misspoke.

22           The other ordering provision we had was called  
23 "order to show cause" -- that was an explicit provision in  
24 the regulations 2.204. What we said is since the purpose of  
25 that is to obtain information as to whether we ought to

1 require or prohibit something and we have abundant Atomic  
2 Energy Act authority to require information without hearing  
3 rights, without having a whole hearing as to whether we are  
4 entitled to information to determine whether there is merit  
5 to some safety issue that we want to study, we will codify  
6 the practice of issuing demands information, which is really  
7 an implementation of our Section 182 authority to require  
8 information from Licensees in connection with applications  
9 or after the application has been submitted in connection  
10 with your license and so we codify the demand for  
11 information in 2.204 instead of having a provision or a show  
12 cause.

13 Now we have one ordering provision in 2.202 and it  
14 talks about modifying, suspending or revoking, but we have  
15 never had a separate ordering provision to deal with  
16 confirmatory action letters, letters or reprimand, things  
17 like that, because we don't need it and we don't need to  
18 institute a proceeding to exercise those authorities and so  
19 what I am suggesting is that this reading of 2.206, and  
20 2.206 hasn't changed in many, many years in terms of the  
21 actual language in the regulation, is consistent with the  
22 rest of the regulatory scheme, and you don't need a  
23 proceeding for those other enforcement type actions.

24 MR. RICCIO: And maybe Ellen can answer, isn't NEI  
25 sort of -- no offense, but aren't you, after Chairman

1 Jackson issued a 50.54(f) letter, hasn't there been some  
2 effort by the industry to kind of put parameters on what you  
3 can actually do under 50.54(f) these days?

4 MR. JACK GOLDBERG: Well, 50.54(f) is another  
5 regulation which implements our Section 182 authority. It  
6 is a regulation which enables us to require Licensees to  
7 submit information to us --

8 MR. RICCIO: Right.

9 MR. JACK GOLDBERG: Within 50.54(f) is a provision  
10 that requires that we justify the burden of supplying the  
11 information based upon the safety issue and the regulatory  
12 need.

13 It is sort of like a mini cost benefit analysis  
14 and similar in certain respects to what you have to do under  
15 the backfill rule when you want to make a substantive  
16 requirement applicable to Part 50 licensees.

17 So there has been recently more attention on  
18 making sure that 50.54(f) letters are justified in terms of  
19 the burden of compiling and submitting the information and  
20 that it addresses a regulatory need that satisfies the  
21 standards in 50.54(f).

22 The industry has also proposed that the  
23 circumstances under which 50.54(f) be more limited than they  
24 have been in the past and, Alan, you can correct me if I am  
25 wrong if you have anything to add, but I would say that that

1 is a position that the industry has that we should limit the  
2 use 50.54(f) letters and there may or may not be merit to  
3 that but it is not a legal prohibition in issuing 50.54(f)  
4 letters in circumstances broader than the industry would  
5 like as long as we satisfy our own regulation and make sure  
6 that the request for information is justified.

7 MS. BLACK: I think the issue was that that is our  
8 authority but we don't need to put that in letters when we  
9 have no reason to think that the Licensee is not going to  
10 give you the information.

11 MR. RICCIO: Well, you need to get them to sign an  
12 oath or affirmation.

13 MS. BLACK: I see.

14 MR. RICCIO: And not that we will be able to hold  
15 the industry accountable with that signature -- if you look  
16 at what happened at Indian Point, I would suggest that the  
17 Indian Point problem was design basis related and that  
18 letter said, you know, you have -- under oath or affirmation  
19 you have a program in place that has basically taken care of  
20 your design basis problems, so I am not saying it  
21 necessarily worked but I like the ability of this agency to  
22 get the industry under oath or affirmation, and I don't  
23 think you should give that away too readily.

24 MS. BLACK: Now is that the only time -- do we  
25 ever ask for information under oath and affirmation now?

1 MR. JACK GOLDBERG: Sure. We can always ask for  
2 it and get it.

3 MS. BLACK: In license amendments, for example --

4 MR. RICCIO: Right.

5 MR. JACK GOLDBERG: And I agree with you. It  
6 plays a very important role and it impresses on anybody  
7 submitting the information that this is significant  
8 information. We intend to rely on this information. It is  
9 very important that it be complete and accurate in all  
10 material respects.

11 Having said that, however, you shouldn't think  
12 that if something is not required to be submitted under oath  
13 or affirmation or if it is just submitted even voluntarily,  
14 whatever, and it is not under oath or affirmation that it is  
15 not a very serious matter if it is not complete and  
16 accurate, especially if it is deliberately incomplete or  
17 inaccurate in some material respect, because if it is  
18 deliberately inaccurate and incomplete in a material respect  
19 it would be a criminal violation of 18 USC 1001.

20 MR. RICCIO: And I have to actually apologize  
21 because a lot of my experience comes up dealing with TVA and  
22 I saw incidence after incidence after incidence where false  
23 and misleading information was submitted time and time  
24 again.

25 I saw some of your regional administrators go

1 across the table at TVA when they swore that things had been  
2 fixed since '86 and they hadn't been touched, so, you know,  
3 my perspective is a little bit jaded and cynical when it  
4 comes to whether or not industry is going to forward over  
5 accurate information, so I will apologize for my pointed --

6 MR. JACK GOLDBERG: But what I am saying is we  
7 take very seriously the licensee's obligation to be complete  
8 and accurate in all material respects, whether it is under  
9 oath or affirmation or not, and 50.9, for example, which  
10 requires that the information be complete and accurate in  
11 all material respects does not have within it a requirement  
12 that the information be under oath or affirmation so that  
13 regulation applies whether it is under oath or affirmation,  
14 as does 18 USC 1001, so that is a significant matter.

15 But I would agree that the oath and affirmation  
16 does nevertheless play an important role in impressing upon  
17 anybody submitting it how significant the information is.

18 MR. RICCIO: And again when you guys issued that  
19 50.54(f), that actually enhanced public confidence.

20 MR. BERKOW: Okay, go ahead.

21 MR. LOCHBAUM: With that new understanding of what  
22 2.206 -- whatever it was -- 2.206 does, some of these  
23 recommendations are going to have to change because there is  
24 a time where a proceeding would be initiated.

25 Most of the time when the public asks for

1 something it is not for one of those three things --  
2 actually one thing, according to our contention. It is the  
3 second category, some kind of other enforcement action.

4 MR. JACK GOLDBERG: Right.

5 MR. LOCHBAUM: I think, just shortcutting, I think  
6 that some of the recommendations would still apply. There  
7 needs to be an appeal process if the decision is not what  
8 the petitioner asked for. I assume the petitioner is not  
9 going to come in and appeal when it is granted. It is only  
10 when it is denied. With that, I will turn back to what we  
11 think is the appeal process.

12 Right now the current regulation is silent on the  
13 petitioner appealing a screening decision or whether the  
14 petitioner can or cannot appeal the screening decision.

15 I think -- I don't know for a fact -- I assume it  
16 is because the regulations also is silent on even having a  
17 screening decision. That is something new.

18 That's outside the procedure. So it could not be  
19 done by changing the regulation, because the screening  
20 itself is done, not explicitly covered by the regulation.

21 Thus we feel that the NRC procedures could be  
22 revised to provide some formal appeal, as they currently  
23 provide for the license renewal applicants.

24 MS. BLACK: So that would be at the decision, or  
25 you wanted it both?

1 MR. BERKOW: That would be at the front end?

2 MS. BLACK: But you'd also like a appeal process  
3 at the back end. Did he ever get into my idea of sending  
4 you a draft, and then holding -- letting you comment on it  
5 or appeal it through that?

6 I think if we did it that way, we wouldn't need a  
7 rule change, if we hadn't issued the final decision.

8 MR. BERKOW: Right.

9 MS. BLACK: So if we could call it a draft  
10 decision, issue it to you, and then have any appeal or  
11 hearing -- well, the appeal rights the licensees have are a  
12 meeting.

13 MR. BERKOW: That wouldn't really be an appeal.  
14 It's not an appeal because an appeal is that you're  
15 appealing to somebody above the level of the person who made  
16 the decision.

17 MS. BLACK: So that's the other.

18 MR. BERKOW: And this would even still be the  
19 Director's Decision yet. It's just a draft.

20 MS. BLACK: We could issue the draft from the  
21 Branch Chief level, and then from the Division Director  
22 level.

23 MR. BERKOW: It might well serve the purpose, but  
24 it really, strictly, speaking, is not an appeal.

25 MS. GINSBERG: Susie, would that include being

1 sent to the licensee, also prior to the time it's final?

2 MS. BLACK: That's optional.

3 MR. KUGLER: It would have to be published.

4 MS. GINSBERG: But that's a different question.

5 If you're allowing the individuals who submitted the  
6 petition or the group to comment on it or to provide input,  
7 just out of curiosity, I was wondering whether you would  
8 provide for --

9 MR. JACK GOLDBERG: We are considering a number of  
10 options, and that's explicitly something that's under  
11 consideration, is the extent to which other than the  
12 petitioner would have the opportunity to comment on or  
13 appeal decisions.

14 MR. LOCHBAUM: I think it's only fair that the --  
15 if that were to pass, that the licensees be given the same  
16 privileges and opportunities as the public has to be  
17 involved in the applicant's appeals through these five  
18 steps.

19 I think that's only fair that they should be given  
20 the exact same privileges and rights.

21 MS. GINSBERG: In all seriousness, you're  
22 affecting the licensee's rights there, which is different  
23 than the situation you've got in front of you. And I think  
24 that's a very important difference.

25 You are potentially affecting the rights -- you

1 are potentially affecting their rights.

2 You know, we've said before, don't get into the  
3 merits, but I would just like that to be noted, because I  
4 think that is an important issue that needs to be considered  
5 by the Agency in this context.

6 So goes my I'll be quiet and sit back --

7 MR. LOCHBAUM: That's fine. I welcome that, I  
8 really do.

9 MR. BERKOW: If we went that way, licensees would  
10 have an opportunity to -- at least that would be a proposal  
11 for the licensee to have an opportunity to comment on it  
12 also.

13 MS. BLACK: Well, it could be held like -- it  
14 could be that the format and meeting could be the same where  
15 the meeting is between us and the petitioner and the  
16 licensee as an observer and may make comments at the end,  
17 just like any meeting between the licensee and the staff  
18 where the public can comment.

19 MR. BERKOW: Well, this wouldn't really be a  
20 meeting, though. We would just send the draft. We'd put it  
21 in the Public Document Room, and we would solicit comments,  
22 both from the petitioner and the -- and, of course, being in  
23 the public's right, anybody else can make comments on it,  
24 too.

25 MR. SUBBARATNAM: It would take 120 days through

1 all of the proceedings.

2 MR. KUGLER: Yes. To get it out as a draft, it  
3 would basically have to be at the same point it would be to  
4 be issued, so that would -- I think what Ram is saying is  
5 that we say it takes 120 days to get there, and it would  
6 take us basically about that same time to get to the draft  
7 getting out.

8 And I think that's what somebody else earlier was  
9 saying, that it would extend it.

10 MR. RICCIO: You must have some way of expediting  
11 the process. Or you should have some way to expedite the  
12 process.

13 When a petitioner requests that you either take  
14 action or decide whether or not even if the petition is  
15 legitimate, prior to a restart, you know, if you do another  
16 Cook, it's unacceptable -- unacceptable.

17 MR. BERKOW: Yes, we have a means of expediting  
18 those kinds of decisions, but on the other hand, we don't  
19 have to document it as fully as we do in a Director's  
20 Decision, either at that point in time.

21 It's the documentation and the approvals and the  
22 concurrences that takes the time.

23 MS. BLACK: Yes. I don't want you think we'd take  
24 120 days to make decisions on the action.

25 MR. RICCIO: No.

1 MS. BLACK: It's just like the other examples you  
2 had of 60 days for a Part 21 or 30 days for an inspection  
3 report. If there is something that was identified during  
4 the inspection, you wouldn't wait till after the report was  
5 issued to do something about the safety situation that you  
6 found.

7 MR. BERKOW: Just for a point of reference, would  
8 the process that we just described, would that go some way  
9 towards satisfying your need for an appeal process?

10 MR. LOCHBAUM: That is some part of an appeal  
11 process, because if the petitioner doesn't agree with the  
12 information or the decision or the basis for the proposed  
13 resolution, there's an opportunity to engage the staff in  
14 providing additional information on the conflicting merits  
15 of the issue.

16 As far as whether it's a meeting or some other  
17 mechanism, Jim and I, meetings were great for us, but as you  
18 pointed out earlier, there are quite a few petitioners where  
19 that isn't the right format.

20 MR. KUGLER: It could be done by letter, or if you  
21 would like a meeting, we could meet.

22 MR. RICCIO: It could be a teleconference.

23 MR. BERKOW: We would request written comments,  
24 and then if a meeting were appropriate to discuss those  
25 comments, that could be done, either in person or by

1 telephone.

2 In some cases, a meeting might not even be  
3 necessary.

4 MR. LOCHBAUM: If there are alternative ways like  
5 meetings -- Paul Gunter and I were involved in one of the  
6 first PRB meetings or kind of involved.

7 We decided not to participate because it was only  
8 going to be limited. It wasn't going to be a public  
9 meeting. We thought that wasn't fair to the licensee, just  
10 like it would be unfair for the staff to meet with the  
11 licensee without the public, if they wanted to attend. So  
12 we did not --

13 MR. BERKOW: Well, that's changed now, too.

14 MR. LOCHBAUM: Right, but I mean, those aspects of  
15 it are very important. We don't want to be given an unfair  
16 advantage, any more than we want the industry or anybody  
17 else to be given an unfair advantage.

18 So as those go through the process, they need to  
19 be fair and public. I agree with Ellen's comment.

20 That's not fair to anybody, for different reasons.

21 [Laughter.]

22 MS. GINSBERG: Have you considered criteria for --  
23 and I'm not buying into the appeal idea yet, but I just  
24 wondered about criteria, new and significant information,  
25 new -- it sounds like you're looking at something as of

1 right, and I wondered if there ought not be at least  
2 consideration given to criteria, because otherwise we're  
3 just going around it.

4 Well, put that aside for a minute. Isn't it a  
5 fact that you're just going around the tree twice or three  
6 times with, I made this argument, you didn't agree with me,  
7 let me come back and make this argument?

8 MR. RICCIO: No. Part of the problem, though,  
9 Ellen, is that what happens when you do get a second shot,  
10 is often you're actually having to go to the person who  
11 denied it in the first place, or the person who made the  
12 original decision is the person making the decision on  
13 whether or not your petition is granted.

14 MS. GINSBERG: Well, put that aside and let's  
15 assume that's not the case.

16 MR. RICCIO: Oh, it's very often the case.

17 MS. GINSBERG: I think that's fair complaint, and  
18 licensees had a similar complaint in the enforcement arena,  
19 saying, you know, we would disagree with an enforcement case  
20 and then we went back to precisely the same person who made  
21 the decision in the first instance.

22 So, put aside for a moment, that, and assume that  
23 it is someone else. What about the criteria question?

24 MR. LOCHBAUM: Well, I don't the exact wording of  
25 the criteria, but in the past, when we've not felt

1 comfortable with an answer, we didn't think that the staff's  
2 justification was complete.

3 The facts that were in the justification, we're  
4 not disputing. We were disputing that it didn't fully  
5 address the issues of the petition, so it was, you know --  
6 Juneau may be the capital of Alaska, but that wasn't the  
7 question that was asked.

8 So, they didn't answer the question, they didn't  
9 resolve the issue, so, therefore, we contend that the issue,  
10 we'd appeal and we'd re-ask the question, because they  
11 didn't answer it.

12 MR. JACK GOLDBERG: If we were going to consider  
13 building in an appeal process to the Director's Decision,  
14 not to an initial step in the screening process or something  
15 like that, there would have to be an amendment to 2.206, and  
16 so we would have to go through a rulemaking proceeding, and  
17 everyone would have an opportunity to comment about whether  
18 we should have an appeal process, and if so, whether there  
19 should be criteria for appeal and things like that.

20 MS. GINSBERG: Don't misunderstand. I wasn't  
21 necessarily endorsing that idea.

22 MR. JACK GOLDBERG: I understand.

23 MS. GINSBERG: I was simply asking some questions.

24 MR. BERKOW: I'm not sure we have to have a rule  
25 to send a draft out.

1 MS. GINSBERG: And have it appealed to the  
2 Division Director, or Office Director.

3 MR. BERKOW: There's no prohibition in the rule  
4 right now, to our issuing a Director's Decision in draft  
5 form.

6 MS. BLACK: My only question is, again, on that --  
7 not only, but one of my questions is, do you send it out in  
8 draft? As Andy said, you're putting the same QA into it at  
9 that point, that you would have for verification or  
10 management oversight, that you would have if it were a final  
11 decision. You're just not calling it a final decision.

12 You give, let's assume, opportunities for both the  
13 petitioner and the licensee to comment on it, and you take  
14 it back. I'm kind of wondering if that isn't, in and of  
15 itself, a form of review. I think appeal is really the  
16 wrong word.

17 MR. BERKOW: It's the wrong word.

18 MS. GINSBERG: That's right, review and comment.

19 MR. JACK GOLDBERG: It's another opportunity for  
20 input by the petitioner, although we've also considered what  
21 would be better termed a reconsideration.

22 The Director issues a decision, the petitioner is  
23 not happy with it for whatever reason, it's not complete, it  
24 missed an issue or something like that.

25 And they then submit a petition for

1 reconsideration of the Director's Decision, so it goes back  
2 to the Director again, because it's not a superior tribunal  
3 that can reverse them.

4 MS. GINSBERG: Which would be more accurate.

5 MR. JACK GOLDBERG: In response to a comment that  
6 UCS has made about the 2.206 process, we have been  
7 discussing various ways to address the comments.

8 And just like in the 2.206 petition, it could be a  
9 situation where it's granted, in part, but --

10 [Laughter.]

11 MR. LOCHBAUM: Yes.

12 MR. JACK GOLDBERG: Are there opportunities for  
13 interaction with the petitioner that would address the  
14 merits of the concern, though not necessarily exactly what  
15 you're asking.

16 So, yes, there are other opportunities for input,  
17 maybe expanded opportunities for petitioner and licensee and  
18 public comment, maybe perhaps reconsideration, maybe an  
19 actual appeal process.

20 I mean, these are things that just informally we  
21 have said are possibilities. That doesn't suggest that we  
22 will necessarily do any of them, but they're open issues.

23 MR. RICCIO: That would be a good idea, and you  
24 even raised it today. But generally when we talk about  
25 this, Dave talks about how when a licensee submits a license

1 amendment, and they don't get it quite right, staff goes  
2 back and works with them to get it right so they can  
3 actually get their license amendment the way they want it  
4 and get through the process.

5 MR. BERKOW: Also, the staff could at least make  
6 an informed decision on it.

7 MR. RICCIO: Right, and that is obviously not  
8 afforded to the public when they petition. But it goes more  
9 to your informal communications between petitioner and --  
10 it's an attempt to get some level playing field here.

11 MR. LOCHBAUM: I would disagree. I don't think  
12 it's a question of a level playing field. I don't even  
13 think we're in the stadium at this point.

14 MS. BLACK: Are you finished?

15 MR. LOCHBAUM: No. I still have a couple of  
16 slides, not too many.

17 We kind of talked earlier about speeding up the  
18 process, where we think it should be made shorter.

19 I guess I don't see that 120 days is not by the  
20 statute. The staff is saying that's the best they can do,  
21 and there's no concession at all.

22 That might be able to be improved upon. When  
23 license renewal was first set up, not the public side of it,  
24 but the applicant's side, it was going to take a long, long  
25 time to do the staff's review.

1           Senator Domenici managed to get that down to 18  
2 months now, something really short. So somehow the staff  
3 was able to make some efficiency gains.

4           MS. BLACK: Back when I was in projects before  
5 this time, I think 2.206 used to take years. Didn't it take  
6 years?

7           MR. BERKOW: Our timing in performance is much  
8 improved.

9           MS. BLACK: Right.

10          MR. LOCHBAUM: Paul Gunter couldn't be here today.  
11 We find out that his petition on Head of Necks was filed in  
12 1996 is still open.

13          MR. BERKOW: Yes, there are some that are going to  
14 be outliers. And it has to be referred elsewhere outside of  
15 the NRC. That goes beyond our control, and that's why  
16 you'll notice in the management -- we're only applying the  
17 120 days to what's under the staff's control.

18                 Otherwise, we really have -- there's nothing we  
19 can do about it.

20          MR. RICCIO: Again, that's moot.

21          MR. LOCHBAUM: I don't know why we have to assume  
22 or anybody should assume the 120 days can't be improved  
23 upon. I'm not going to state that 70 days is the right  
24 number. We suggested that it seems that it could be done  
25 within 30 to 60 days.

1 But 120 days is just --

2 MS. BLACK: From what time? When would you start?

3 MR. BERKOW: That's what the 120 days refers to.

4 MR. LOCHBAUM: We'd be willing to stay with that.

5 MS. BLACK: It's just that there is the Federal  
6 Register Notice and other things that take -- because it's  
7 such a more formal process than just answering the letter,  
8 that's why you have to build in more time.

9 MR. LOCHBAUM: So 120 days is about the best you  
10 can do?

11 MS. BLACK: Well, I don't know. What about if we  
12 say we'll try to make it shorter?

13 MR. LOCHBAUM: We just need the recommendation.  
14 There's no resolution today. The better understandings, we  
15 felt less time would be better. But less time in the appeal  
16 process would really not be better.

17 MS. BLACK: Okay, you really need it.

18 MR. LOCHBAUM: And the final -- I kind of hit this  
19 once before, and I didn't realize that I had made slides  
20 that already said this.

21 So this is a repeat observation: We had contended  
22 today and many times in the past that the 2.206 process is  
23 fundamentally flawed, which begs the question, why do you  
24 keep using it if it's fundamentally flawed?

25 It wasn't that we could one day win the lottery

1 and get one to be granted, in whole, but it was mainly  
2 because there is really no other avenue.

3 You know, it's a very bumpy road that leads to a  
4 dead end. But it's the only road you've got, so we have to  
5 use it whether we like it or not.

6 Again, as Jim said earlier, the main advantage --  
7 and it shouldn't be used this way, but it turns out that way  
8 -- is that it gets -- it's great for public relations or  
9 media, it gets media attention. Somebody somewhere is  
10 petitioning the government on a safety issue.

11 MS. BLACK: Right.

12 MR. LOCHBAUM: That's a little bit more of a media  
13 trigger than Jim or I just sending a letter to the NRC, that  
14 we've corresponded with an Agency on a safety issue. It's  
15 much better to petition it.

16 So that has led to improvements, but we don't  
17 think it's because of the process, it's in spite of it. We  
18 think it would be better to amend the process so that wasn't  
19 the way things were resolved. That's not right for anybody,  
20 but that's the way it is today.

21 And we'll continue doing it, because, again, it's  
22 the only game in town, but not that we endorse it.

23 MR. RICCIO: If you come up with some other  
24 process where we can actually, you know, address -- it goes  
25 back to the problem where, you know, there are times where

1 we're not necessarily asking for you to amend, suspend, or  
2 even revoke a license.

3 There are times where we have issues with what's  
4 going on in the Agency and the Agency not dealing with its  
5 own procedures.

6 And that may be an entirely different discussion  
7 at some other point. But there should be an avenue there  
8 for the public to basically weigh in.

9 The only place we have right to go right now is  
10 IG. And if it's a remotely technical issue, the IG is  
11 basically knocked out of the box, because they're inspectors  
12 and they don't get that type of respect from the Agency.

13 No, seriously.

14 MR. BERKOW: I thought you were going someplace  
15 else; that's why I made the face.

16 MR. RICCIO: Okay.

17 MR. BERKOW: I thought you were going someplace  
18 else with your presentation.

19 MS. BLACK: I have a plain sheet of paper now, so  
20 if we were going to --

21 MR. RICCIO: Is that our appeal process?

22 MS. BLACK: Yes. If we were going to make you  
23 guys happy today, and you've got everything that you want,  
24 now that you understand what a proceeding is and what a  
25 proceeding isn't, and how it applies to orders to modify,

1 revoke, or suspend --

2 MR. RICCIO: A different understanding that we  
3 have now.

4 MS. BLACK: Right, versus the other things.

5 MR. BERKOW: This is the correct understanding.

6 MR. RICCIO: Today it is.

7 MS. BLACK: You know, at least on our side of the  
8 house, OGC is the only one that can interpret the  
9 regulations. We aren't allowed to. That's actually in the  
10 law book.

11 So, I know you want appeals. You want an appeal  
12 of the PRB decision of whether it is or isn't -- doesn't  
13 meet the threshold.

14 MR. LOCHBAUM: But anytime you have a decision  
15 point.

16 MS. BLACK: Right.

17 MR. LOCHBAUM: If the petitioner gets informed  
18 that it doesn't meet the threshold, that should be appealed.

19 MS. GINSBERG: I was grimacing at the number that  
20 I was seeing of who -- was going back to my other point, if  
21 every decision point having an opportunity -- sorry, it was  
22 a too noticeable grimace.

23 MS. BLACK: Okay, there are two decisions, the  
24 decision to either treat it as a 2.206 or not, which you'd  
25 like an appeal to, and the decision, the Director's Decision

1 to either grant or deny. You'd like an appeal of the  
2 Director's Decision.

3 You'd like it to be a shorter or quicker process.

4 And what else, anything?

5 MR. BERKOW: On the first part, rather than  
6 appeal, it would be correct to say that you would like  
7 input?

8 An appeal is a very formal kind of thing.

9 MR. RICCIO: Yes, it has legal baggage.

10 MR. LOCHBAUM: If it has connotations then we  
11 don't.

12 MS. BLACK: If you'd like to meet with us to  
13 explain your side of it.

14 MR. LOCHBAUM: If we feel either the screening  
15 decision or the final Director's Decision was based on  
16 incomplete or what we feel is the wrong information, we'd  
17 like the opportunity to discuss that.

18 MR. JACK GOLDBERG: If we took the meeting  
19 opportunity that we now provide at the front end of the  
20 process to elaborate on your petition or answer questions  
21 that we might have, suppose instead of doing that -- because  
22 if we didn't understand something, we could always call you  
23 up or whatever.

24 I think you suggested before that that was of  
25 limited value, and I know from the couple that you've

1 submitted since we started this, one of them you had nothing  
2 to add on Diablo Canyon because it was a plain and simple  
3 and straightforward on its face; and on the other one, it  
4 was just a few minutes of discussion.

5 But if instead of doing that, we moved it to after  
6 the PRB meeting, essentially, rather than before the PRB  
7 meeting, where not only could we find out if we  
8 misunderstood something in the petition, but we could inform  
9 you of the decision that the PRB has made at this point,  
10 either that it doesn't qualify as a 2.206 petition, or  
11 although it's within the scope of 2.206, it's not going to  
12 receive further formal 2.206 treatment because we've already  
13 resolved this issue or its reopening an enforcement,  
14 whatever is provided in Management 8.11, so that you were  
15 informed of that and then had the opportunity either right  
16 at that time or subsequently to react to it and comment on  
17 it, and basically ask us to either reconsider or escalate it  
18 to a higher level in the organization.

19 Would that address your first concern?

20 MR. RICCIO: Again, it leads more to how you guys  
21 deal with the industry when they submit it, an inaccurate  
22 license amendment, but like one that doesn't meet all the  
23 rigor that NRC requires.

24 You don't just kick it out and say you're denied.

25 MR. JACK GOLDBERG: That's a relatively minor

1 adjustment of the process we have now, and so it seems to me  
2 that's something that probably can be done pretty easily,  
3 and it would address one of your concerns, and I don't see  
4 it as really much more burdensome on the part of the staff.

5 MS. BLACK: I guess the other question would be,  
6 would you want to appeal it to the level that made that  
7 decision, or would you want to escalate it?

8 That decision is signed out by the Division  
9 Director at that point, if it's decided not to be treated as  
10 a 2.206. So would you like to have an opportunity to appeal  
11 at that level, or would you want to bump it up to the Office  
12 Director immediately?

13 MR. LOCHBAUM: To tell you the truth, I don't  
14 really understand all your different levels. So that  
15 doesn't mean much to me at all.

16 MR. RICCIO: Yes.

17 MR. LOCHBAUM: The difference between a Branch  
18 Chief and EDO, I know there are different people, but I  
19 don't know what the difference is.

20 MR. RICCIO: It goes back to some of the things we  
21 were talking about with enforcement. You know, depending on  
22 who you send to the meeting, the public doesn't know who  
23 heck you're sending to a meeting.

24 Oh, this one has to go to this sort of meeting,  
25 and someone a little lower can go to a less important

1 meeting. That's lost.

2 MS. BLACK: So we should wear like crowns or  
3 something.

4 [Laughter.]

5 MR. BERKOW: Sure.

6 MR. SUBBARATNAM: We should let the personnel  
7 know, the initial meeting screening decision, let the  
8 licensee or also listening to what we have to say, along  
9 with the --

10 MR. BERKOW: Sure, right now we do also. The  
11 licensee would have to be part of any such discussion.

12 MS. BLACK: I think that should just be a meeting  
13 with the PRB then. And then if -- but at that point, if we  
14 say we're not going to consider it as a 2.206, we should  
15 build in some other process where you could.

16 MR. RICCIO: And is there some way you could do  
17 all of this without having to do it through a new  
18 rulemaking?

19 MR. BERKOW: This proceeding can be made to the  
20 PRB just as a procedure. So what do you say, Suzie?

21 MS. BLACK: We keep it at the PRB level, they  
22 could actually call in like the call we have now, but it  
23 would be afterwards, and then we'd have more of an open  
24 discussion of what our opinion was, and then the petitioner  
25 could give us more information.

1           And then at that point, if we still deny it  
2 through the Division Director level, we could build in some  
3 other appeal rights where they could come in and then the  
4 Office Director could say, well, we disagree with the  
5 Division Director, and we think this should be a 2.206.  
6 Okay?

7           MR. LOCHBAUM: The one forum I'd like to avoid,  
8 and I don't care if you call it a meeting or a hearing or  
9 whatever, is what used to be the old informal public  
10 hearings.

11           I went to a number of those, and I think I hold  
12 the record for attending those.

13           MR. BERKOW: That's something that's held during  
14 our consideration process, while we're preparing the  
15 Director's Decision. It's not an up-front kind of thing.

16           MR. LOCHBAUM: I so no value in those at all from  
17 my standpoint. I didn't -- we even stopped attending those.

18           MR. BERKOW: Do you see any value of what we've  
19 substituted for it?

20           MR. LOCHBAUM: No, not at all.

21           MR. JACK GOLDBERG: But there would be value in  
22 just moving the timing of it a little bit, so that you were  
23 informed.

24           MR. LOCHBAUM: The meeting we just discussed, I  
25 thought it was to determine what the screening outcome was.

1 The Director's Decision is different.

2 The forum I'd like to avoid is where the  
3 petitioner comes in, presents his views, and it might as  
4 well be an empty room, because there is no discussion back  
5 from the staff as to whether there are areas that seem to be  
6 weak, or it's complete.

7 It's just like talking to an empty room. I don't  
8 mean any offense, but there is no gauge whatsoever as to  
9 what the NRC feels towards the petition. So it's not an  
10 appeal, it's not a reconsideration, it's --

11 MR. KUGLER: I think there are reasons for that.  
12 We get -- we're in this funny spot where, you know, we're  
13 not supposed to give out predecisional information. If we  
14 start telling you, well, we really think this, that really  
15 treads towards giving you predecisional information, and  
16 that may be why you've experienced that kind of response in  
17 those meetings.

18 I mean, it's a difficult spot sometimes, that  
19 we're in.

20 MR. BERKOW: But the format that we have in mind  
21 now, and we haven't done any of these yet, would be a format  
22 very similar to a licensee/staff meeting. There would be  
23 interchange.

24 I mean, I don't think the fact that it's  
25 predecisional because we haven't issued the Director's

1 Decision yet, would really hamper us.

2 MR. KUGLER: No, I'm speaking more to the type of  
3 situation --

4 MR. BERKOW: That's why we dumped that format. It  
5 was a terrible format.

6 MR. LOCHBAUM: I don't think anybody benefitted.

7 MR. BERKOW: We don't like it either.

8 MS. BLACK: Okay, so we'll use the same type of  
9 either meeting or telephone call for the second -- if the  
10 Division -- if this Director's Decision is going to deny in  
11 any part, your petition, we'd issue it in draft and then  
12 give an opportunity for a further public meeting or  
13 telephone conversation.

14 MR. LOCHBAUM: The part that may not be covered by  
15 that is the petitions that ask for immediate actions before  
16 restart or something like that.

17 If the petitioner doesn't agree with the decision  
18 that we know is going to be there, that there are no  
19 immediate actions needed to be taken, the petitioner ought  
20 to be able to present differing views or provide input.

21 MS. BLACK: That would be probably the first PRB  
22 decision.

23 MR. KUGLER: Isn't that usually done at the first  
24 PRB also?

25 MS. BLACK: Right.

1 MR. BERKOW: It is, but very often there is very  
2 little time. The licensee is scheduling to restart three  
3 days from now, and the petition comes in, you know, a day or  
4 two or three days before that scheduled date, and we have to  
5 satisfy ourselves that there is a good reason to deny that  
6 licensee the ability to restart.

7 There isn't a lot of time for meetings and  
8 discussions.

9 MR. BAKER: Certainly not notice.

10 MR. BERKOW: Not notice, that's right.

11 MR. LOCHBAUM: But the Management Directive allows  
12 you to set that, so that's not a problem.

13 MS. BLACK: And so I think we can build into it,  
14 when possible, we have a telephone conference before the  
15 immediate action.

16 MR. BERKOW: And we do; that's required. They  
17 must notify the petitioner they're denying the request for  
18 immediate action.

19 MS. BLACK: But that's a notification, versus  
20 giving them an opportunity to plead their case, which we  
21 could also build into here without a rule change.

22 MR. LOCHBAUM: The case I cite is an example,  
23 though it may not be the best example. But I'll cite it,  
24 and it's the River Bend and Perry petitions. We contended  
25 that continued operation with failed fuel was a safety

1 issue.

2 The staff determined that there was no immediate  
3 action and didn't require shutdown, didn't require anything.

4 If along the way throughout the discussion,  
5 reconsideration or whatever the right word is, they  
6 determined that that was, indeed, a safety issue, that's too  
7 late. I mean, the remedy is too late.

8 So there seems to be -- and I don't think that  
9 hopefully there will be that many where that immediacy is an  
10 issue. I think that's the exception and not the rule, but I  
11 think it needs to be covered.

12 I don't know that I have the best answer for it,  
13 but whatever process comes up would need to address that.

14 MS. BLACK: Well, we will work on that one too,  
15 okay? Now we have the appeal things resolved or proposals  
16 that don't require rulemaking that we are considering for  
17 those two and the timeliness we are going to try to do our  
18 best to shorten the process.

19 What else? Is there anything else on your  
20 Christmas list?

21 MR. LOCHBAUM: Accepting a petition, just one.

22 MR. BERKOW: Well, just so you understand our  
23 process -- the public comment period ends at the end of  
24 January.

25 We are proposing to hold a public meeting February

1 10th, which will be noticed in the Federal Register. It  
2 will be here.

3 So far we have not received any comments on the --

4 MR. LOCHBAUM: We are not planning on commenting.

5 MR. BERKOW: Nothing from anyone else either.

6 You are not planning on commenting? Well, the  
7 purpose of the meeting was to discuss the comments received  
8 and how we were proposing to handle them or consider them,  
9 but in any event right now we are planning on holding such a  
10 meeting.

11 If there is no reason to, then -- if we don't  
12 receive any comments, we might want to reconsider whether or  
13 not we want to hold a meeting.

14 MR. KUGLER: Or we at minimum may want to  
15 reconsider where. The auditorium is rather large.

16 [Laughter.]

17 MR. BERKOW: Right -- because we wanted to get,  
18 you know, in addition to the comments you have given us  
19 today we wanted to get all the comments together and  
20 consider them.

21 MR. RICCIO: Quite honestly I am so busy trying to  
22 track how these guys are deregulating I cannot touch and  
23 there aren't that many of us who can cover this stuff.  
24 That's all there is to it.

25 MR. BERKOW: Right.

1 MR. JACK GOLDBERG: Well, this meeting though  
2 serves the purpose of receiving and understanding your  
3 comments on the 2.206 process.

4 MR. BERKOW: Right, and there may not be any  
5 others, but we are planning on waiting until that comment  
6 period is over and then considering the totality of what we  
7 have received. We may get comments from the industry too.

8 MS. GINSBERG: Yes.

9 MR. RICCIO: I wouldn't expect otherwise.

10 MR. BERKOW: Which may not agree in all cases with  
11 no recommendations -- and then we would consider all of the  
12 comments received and those that we did not adopt we would  
13 address and we probably would -- we will have another  
14 modification to the Management Directive sometime in the  
15 Year 2000.

16 MR. RICCIO: I will try to do something but  
17 honestly I can't promise you anything. I can't promise you  
18 any of the other organizations that cover this stuff are  
19 going to be able to do it either.

20 MR. KUGLER: Well, I mean beyond what we discussed  
21 today, we are obviously going to include what we have gotten  
22 today in this, so really it would only make any significant  
23 difference if it was beyond what we have talked about.

24 MR. LOCHBAUM: One of the reasons there hasn't  
25 been a huge turnout from the task force for this meeting is

1 we have gone through -- this started like 1992 or 1993 --  
2 work on this process. A lot of people are just -- they  
3 think it's like the old hamster on an exercise wheel. It  
4 doesn't matter how fast or which direction you go, you are  
5 not making any progress, so there is not a great interest in  
6 this because there is a general perception that it is not  
7 going to do anything.

8 MR. RICCIO: I'll apologize in advance for my  
9 comments tomorrow -- because this meeting was much more  
10 productive than I had any belief it was going to be.

11 MS. BLACK: So you can't modify them?

12 MR. LOCHBAUM: Manicure it.

13 MR. RICCIO: I have already written them. They  
14 are already printed. I am not going back to my office.

15 MR. JACK GOLDBERG: You are not going to say  
16 something inaccurate to the Commission, are you?

17 [Laughter.]

18 MR. BAKER: Dave, the second part of the topics  
19 you wanted have something to do with the appeals for the  
20 allegation process. I noticed there wasn't anything  
21 prepared. I wondered if there was anything you wanted to  
22 mention. That is the whole reason I was here.

23 MR. LOCHBAUM: Oh -- really there's only two  
24 processes for the NRC -- for members of the public to bring  
25 an issue. One is the 2.206 and the other is the

1 allegations, which is, you know, obviously different.

2 On that one there is not any formal allegation or  
3 formal appeal process. We have on certain occasions kind of  
4 developed one, and we have a de facto one working. It is  
5 not the same and it is not consistent. In some regions it  
6 works very well. In some regions it doesn't work at all.

7 MR. BAKER: Just quickly, in those that it is  
8 working, is it because you are getting review at a different  
9 level or is it just that they seriously reconsider the  
10 issue?

11 MR. LOCHBAUM: It's hard to tell because usually  
12 some of them are on Telecon and they say so-and-so from DRS  
13 or -- I don't know what all those acronyms mean. I thought  
14 they were "doctors" at first. So I don't know what the  
15 levels are. Frankly, I don't even -- usually I write down  
16 the name. I don't even care, because I don't understand it.

17 MR. BAKER: Do you think there would be a benefit  
18 then in describing an appeal process in the Management  
19 Directive, formalizing what we have developed informally?

20 MR. LOCHBAUM: What -- since I don't know why it  
21 works, sometimes it doesn't, you know, if you formalize it  
22 to the one that isn't working if it's something wrong  
23 then -- so I don't know the right way to answer that  
24 question because I don't know why it works sometimes. It  
25 may be that it's the same process and the personnel are

1 different is one place.

2 Unless I really know why there is a difference I  
3 can't tell you what the best answer is to address it. I  
4 wish I could. I just don't know.

5 MR. BAKER: Okay.

6 MS. BLACK: Can you tell us which regions work an  
7 which ones don't?

8 MR. LOCHBAUM: Region III works really well and IV  
9 does not.

10 MR. RICCIO: How about II?

11 MR. LOCHBAUM: Region I works mixed; III I have  
12 never had a problem. In Region I, I have had some problems,  
13 but more successes than problems. Regions II and IV just  
14 never worked.

15 MR. BAKER: Okay.

16 MR. BERKOW: If you want to modify any of your  
17 recommendations as a result of your --

18 MR. LOCHBAUM: I'll do that.

19 MR. BERKOW: -- improved understanding of the  
20 rule, please --

21 MR. LOCHBAUM: I think I tried to as we went  
22 through this. I mean I tried to address --

23 MS. BLACK: We have gotten down to the appeal  
24 process and the time, because I think the whole proceeding  
25 thing we ended up agreeing that that was just a

1 misunderstanding, and if we have the two appeal processes --  
2 because I think the benefit to trying to fix them this way  
3 and not trying to go to the different levels is that you  
4 don't need a rulemaking and that you can do it much faster,  
5 and then if it doesn't work you can still come back and we  
6 can do it the other way.

7 MR. LOCHBAUM: Exactly.

8 MS. BLACK: And the time, we'll try to make it  
9 quicker.

10 MR. LOCHBAUM: Look at it. We thought it could be  
11 done quicker.

12 MS. BLACK: Right. We are doing more with less  
13 everyday here, so --

14 MR. KUGLER: You know, one of the things we run  
15 into, we run into this in other processes where we try and  
16 set up a specific time, this much time, well, that may not  
17 make sense. There may be some that are going to take a lot  
18 longer. There's some that should be a lot shorter.

19 MS. BLACK: Right.

20 MR. KUGLER: So it may be an approach more on the  
21 lines of getting an agreed-upon schedule that is discussed  
22 with the petitioners so they understand what the schedule is  
23 and why, rather than trying to set a time that everybody is  
24 like --

25 MR. RICCIO: That actually makes a lot of sense

1 because it would address things like petitions that are  
2 filed prior to a restart. It makes it, you know -- and just  
3 dealing with people rather than at arm's length, legal type  
4 approach, this is a little bit more human.

5 MR. KUGLER: Yes. Because of the sensitivity of  
6 it, we still might want to say if it is going to be more  
7 than this much, we need this level in our management to say  
8 okay, because I think that is sort of where we are right  
9 now --

10 MS. BLACK: Right.

11 MR. KUGLER: -- but if we are going to go beyond a  
12 certain point --

13 MS. BLACK: But the problem is when you say 120  
14 days, everybody goes oh, good, I don't have to do this for  
15 120 days, right? -- for the easy ones.

16 MR. BERKOW: But the problem is we don't always  
17 know upfront what the complications are going to be. You  
18 get into something and you get more involved in --

19 MS. BLACK: So then the PRB can revise the  
20 schedule, talk with petitioner about it.

21 MR. KUGLER: Which we would do. I mean we are  
22 basically doing that now.

23 MR. BERKOW: The objective is and should be as  
24 soon, as quickly as possible.

25 MR. KUGLER: I think that needs to be emphasized.

1 MR. LOCHBAUM: One thing I just want to make sure  
2 I understand, because when you say "agreed upon" you are  
3 talking about NRC internally agreed upon? Not with the --

4 MS. BLACK: The technical staff.

5 MR. BERKOW: Well, he probably meant agreed with  
6 the petitioner.

7 MR. LOCHBAUM: The petitioner really doesn't know  
8 the NRC's resources so we are not -- obviously we would want  
9 it resolved --

10 MR. BERKOW: No, I understand but --

11 MR. RICCIO: It's more informational.

12 MR. BERKOW: I understand.

13 MR. RICCIO: Like when you submitted your petition  
14 on Cook, you would get in touch and say, yes, we will try to  
15 address this part, allowing them to restart. That way you  
16 could at least know that they were, you know --

17 MR. KUGLER: I would rather just -- you tell me a  
18 schedule --

19 MR. BERKOW: Well, I understand but I think what I  
20 am thinking along those lines is if I tell you the schedule  
21 and you know of some reason that that is a problem, maybe  
22 there is something that is going to happen in between now  
23 and then, that this petition needs to be decided before  
24 then, and I may not be aware of it and you are. In that  
25 sort of a case you can tell me that and we may need to

1 revise it.

2 I guess I am not saying necessarily that we'd  
3 consult with you to set the schedule, but when we figure it  
4 out how much time it is going to take that we let you know  
5 that, and then you have some opportunity to tell us whether  
6 that is going to cause some problem.

7 MR. LOCHBAUM: I just didn't -- I should have  
8 gotten started earlier with the five appeals. I don't want  
9 to -- it wasn't a tradeoff.

10 MR. BERKOW: We do tell you in the acknowledgement  
11 letter, we say "and the petition manager is required to be  
12 in contact with the petitioner at least every 60 days and to  
13 notify the petitioner of any slip in the schedule or to  
14 discuss the reasons to the extent that we can, so there's  
15 enough interaction that I think certainly the petitioner  
16 should know where things stand.

17 MR. LOCHBAUM: I agree. I think that would be  
18 better than just having a flat rate, because that allows you  
19 to plan your resources better, depending on what the issues  
20 are, so that seems reasonable.

21 We appreciate the meeting.

22 MR. KUGLER: We certainly appreciate you guys  
23 coming in.

24 [Whereupon, at 3:39 p.m., the meeting was  
25 concluded.]