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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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PUBLIC WORKSHOP ON DESIGN CERTIFICATION

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THURSDAY

MAY 2, 1996

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ROCKVILLE, MARYLAND

The Workshop was held in the Auditorium of the Nuclear Regulatory Commission, Two White Flint North, 11545 Rockville Pike, at 1:00 p.m., Jerry Wilson, Section Chief, Standardization Project Directorate, presiding.

NRC STAFF PRESENT:

- Jerry Wilson
- Martin Malsch
- Geary Mizuno
- Robert Weisman
- Thomas Boyce
- James Lyons
- John Monninger
- Dino Scaletti

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1 ALSO PRESENT:
2 Robert Bishop
3 Marc Rowden
4 Steve Frantz
5 Joseph Egan
6 Charles Brinkman
7 Ron Simard
8 Russell Bell
9 Melvin Gmyrek
10 Bill Dean
11 Ted Quay
12 Roger Huston
13 Morton Fleishman
14 Jack Sorensen
15 Myron Karman
16 Mike Schoppman
17 Brian McIntire
18 Bill Hopkins
19 Alan Beard
20 Toshiyuki Zama
21 Med El-Zaftawy

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

1:07 P.M.

1
2
3 MR. WILSON: Good afternoon. On behalf
4 of the Nuclear Regulatory Commission I welcome each
5 of you to another public meeting on design
6 certification rule making for the ABWR and the
7 System 80+ designs.

8 If you have not already registered for
9 this meeting, please do so at the desk in the back
10 of the room. Notice for this meeting was published
11 in the Federal Register on April 24th. I also have
12 copies of the Federal Register notice in the back.

13 I am Jerry Wilson. I am the NRC lead
14 for design certification rulemaking. Also
15 representing the NRC with me is Mr. Malsch. He is
16 the Deputy General Counsel.

17 Proceedings of this meeting will be
18 recorded. The transcript will be available in the
19 NRC's public document room. If you make a statement
20 during the meeting, please use a microphone and
21 identify yourselves for the court reporter.

22 Previously the NRC held public meetings
23 on these design certification rulemakings in July of
24 1992, November of 1993, May of 1995 and December of
25 1995. Also there have been numerous public meetings

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1 on the GE and CE applications since 1987.

2 The purpose of this meeting is to
3 provide an opportunity for clarification of the
4 final design certification rules and the NRC staff's
5 resolution of comments on the proposed rules.

6 This is not an opportunity to negotiate
7 or seek new resolutions of comments. If you do have
8 new comments on the final design certification rules
9 in SECY 96-077, you should submit those comments to
10 the Secretary of the Commission on or before May
11 24th.

12 I'll now open the meeting to questions.

13 MR. SIMARD: Jerry, before we get into
14 the questions, I'd just like to make a brief
15 statement on behalf of the nuclear energy industry.
16 I am Ron Simard from the Nuclear Energy Institute.
17 We just wanted to get on the record our appreciation
18 of the opportunity to have this workshop and to be
19 able to clarify some of the questions that we have
20 in looking at this SECY, the proposed rule language.

21 We also want to acknowledge the
22 tremendous progress that has been made to date
23 between the industry and the NRC staff. I think the
24 NRC staff have done obviously a tremendous job and
25 tackled a large number of issues that were raised in

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1 the comments by the industry, the vendors, and the
2 Department of Energy when the Notice of Proposed
3 Rulemaking came out.

4 However, we do still have some questions
5 about the proposed resolution of the issues that
6 were raised in that Notice of Proposed Rulemaking,
7 and also we have some questions about some new
8 aspects that we find in the latest SECY and in those
9 questions that were submitted to you beforehand, we
10 have tried to give you a sense of some of the issues
11 that this has raised in our minds. That list is by
12 no means complete, but I think it will give you a
13 sense of where we are looking to get some
14 clarification today.

15 What we are hopeful is that with this
16 meeting today and perhaps some subsequent
17 opportunity to clarify some of these issues that
18 were raised, that we can move toward a final design
19 certification rule that we've both been working so
20 hard for all these many years and that reflects the
21 basic goals of Part 52.

22 That was just the opening statement that
23 I wanted to get. I understand at this point you are
24 ready to go through the questions that we submitted
25 in advance? Were you going to read them or did you

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1 want us to re-ask them?

2 MR. WILSON: I can read them if you'd
3 like. Do you have a particular order?

4 MR. SIMARD: Why don't you take them at
5 your convenience. For example, if you have the
6 availability of certain NRC staff that you'd like to
7 take into account, please feel free to take them on
8 in whatever order you like.

9 MR. WILSON: Yes. He's just walking in
10 the room.

11 Why don't we start with the questions on
12 applicable regulations and the wording on applicable
13 regulations and have some staff available to discuss
14 that. Then we can finish up with them and proceed
15 to the procedural requirement.

16 On the list of questions I received from
17 NEI at the bottom of the first page there's a
18 heading applicable regulations. The first question
19 states, "Contrary to the proposal discussed with the
20 Commission on March 8 and in the March 25th public
21 meeting with the industry, why does section 8(c)
22 allow imposition of backfits via plant specific
23 order as well as via rulemaking?"

24 In my introduction, let me state that
25 those discussions that were held on both March 8 and

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1 March 25 were an attempt to change the resolution
2 that's at issue with industry. Since that industry
3 did not either accept that resolution, those
4 proposals are no longer binding on the NRC. So what
5 we have in there is what we believe is the
6 appropriate resolution.

7 Specifically, we see a situation whereby
8 there may be a need for a plant specific backfit, so
9 a plant specific order would be appropriate in those
10 situations. That's why 8(c) is written as it is.

11 Do you have any further amplification on
12 that, Marty?

13 MR. MALSCH: No.

14 MR. WILSON: Any questions? Follow-up?

15 MR. SIMARD: Just one question in
16 follow-up, Jerry. I think we understand now that
17 the type of change that you are worried about with
18 this particular feature would be a generic question
19 regarding the adequacy of the design as it was
20 certified at this point of time. So wouldn't the
21 mechanism to correct that be a generic fix, namely
22 rulemaking through the provisions of 52.63?

23 MR. WILSON: Well, it depends on what it
24 is, I should say.

25 MR. MALSCH: Well, I'd just say I expect

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1 that would be normally the case. But we drafted it
2 to cover the situation in which we had the
3 flexibility to maybe not proceed that way or there
4 would be some peculiar plant-specific or site-
5 specific problem we'd be addressing. So we just
6 left ourselves open to flexibility basically.

7 MR. SIMARD: So you envision a
8 possibility where a specific plant that references
9 this design certification would be out of compliance
10 or rather would not exhibit the level of safety that
11 was assumed at the time the certification that's
12 referenced was issued. Rather than taking the
13 generic route, you would go upon a plant -- you
14 would look for a plant-specific fix, you think
15 there's a possibility that might occur?

16 MR. WILSON: Yes.

17 MR. MALSCH: That is a possibility.
18 Incidentally, we're talking about out of compliance.
19 We're not necessarily talking about just some new
20 thought on some subject. Right? We are talking
21 about basically this is addressing compliance
22 backfits with the new suite of applicable
23 regulations. We're not talking about anybody's new
24 thoughts on the subject. We're talking about a non-
25 compliance.

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1 MR. SIMARD: I guess I understood the
2 intent of the section 8(c) to be not compliance
3 backfitting, but rather to lay out the criteria
4 under which you do an assessment of how substantial
5 was the degradation and safety margin. Then you
6 would do this cost benefit.

7 MR. MALSCH: Right. But the trigger for
8 doing the evaluation would be a question about the
9 applicable regulations being complied with. Then
10 this is basically limiting the Commission's
11 flexibility to do what would otherwise be called a
12 straight-out compliance backfit.

13 MR. SIMARD: But even on a plant-
14 specific basis, would those same criteria apply with
15 respect to what you would require of a plant fix?
16 In other words, you do these sort of backfit
17 considerations?

18 MR. MALSCH: That was the idea.

19 MR. SIMARD: Thank you.

20 MR. WILSON: Anything further on that
21 question?

22 Continuing on in applicable regulations,
23 question two. The remaining Commission policy
24 issues aside, we recognize that the NRC staff has
25 made a number of modifications in the language of

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1 the proposed applicable regulations. However, we
2 have the following additional questions.

3 The first one, section 5(c)(2)(iii) is
4 different from its previous wording. It is
5 currently worded, this section could be interpreted
6 as requiring that motor operated valves be tested at
7 the design basis differential pressure, even if such
8 pressures can not be achieved. We assume that such
9 a result is not intended by the staff, but would
10 staff please clarify its intent with respect to this
11 provision.

12 I'll ask Tom Boyce to respond to that.

13 MR. BOYCE: This is Tom Boyce, the
14 Office of Nuclear Reactor Regulation. As was noted,
15 the language was different than the original
16 proposed rule. In an attempt to clarify some of the
17 applicable regulations, the language was changed.
18 It used to say something to the extent that MOB's
19 needed to be tested to the maximum achievable
20 differential pressure. In order to try and clarify
21 that, the language was changed to up to design basis
22 differential pressure. NEI has commented that
23 that's unclear. They would like to understand the
24 staff's intent.

25 The rest of the applicable regulation

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1 refers to section 3.9 of the DCD. Section 3.9
2 contains two and a half pages of description of
3 design qualification, pre-operational testing, and
4 in-service testing of motor operated valves. Really
5 the intent of the applicable regulation was to say
6 test motor operated valves in accordance with the
7 program description in section 3.9.

8 We provided a very short summarization
9 of that by saying test these MOVs up to design basis
10 differential pressure. The intent was clarification
11 rather than establishment of any new or different
12 requirements.

13 If NEI has a concern beyond that, please
14 address it.

15 MR. FRANTZ: This is Steve Frantz. I
16 assume from your answer, you are saying that there
17 is no requirement intended by this applicable
18 regulation to test MOVs at full design pressure if
19 full design pressure can not be achieved?

20 MR. BOYCE: That is correct. The phrase
21 you used, if it can't be achieved, is correct. The
22 discussion in the DCD recognizes that. It says
23 design and qualifications should consider all the
24 design aspects for the MOVs as they are to be
25 intended to be used in the plant. They are to be

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1 designed, qualified, procured to that manner as the
2 COL applicant proposes, but there is no explicit
3 requirement to test them at design-basis DP, because
4 there's many other factors that go into that.

5 You have got flow conditions,
6 temperature conditions, voltage conditions, all of
7 which play a part in whether or not an MOV can
8 perform its intended function in a design basis
9 situation. All those need to be factored into that
10 process as described in the DCD.

11 MR. WILSON: Any other follow-up on that
12 item?

13 Okay, the next one is section 5(c)(6),
14 which pertains to fire protection, creates an
15 exception for the main steam tunnels to the ABWR.
16 In contrast, the Commission's SRM dated June 26,
17 1990 on SECY 90-16, approved language for fire
18 protection which creates an exception for "unique
19 design layout." Why didn't the staff use the
20 language that was approved by the Commission?

21 First of all, let me say that what we
22 were doing at this stage is creating the rulemaking
23 language. Second of all, we're doing design
24 specific rules. So in certain of these applicable
25 regulations, the wording is specific to a particular

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1 design.

2 Let me ask Jim Lyons if he'd like to
3 amplify on that particular question.

4 MR. LYONS: Hi. I am Jim Lyons. I with
5 the Plant Systems Branch. In the case of this, if
6 you look back at SECY 90-16, they don't really --
7 what we really said in SECY 90-16 was that there
8 were two exceptions that we would automatically
9 consider. One of them was the control room. One of
10 them was containment.

11 Then we also said that every plant has
12 its own plant specific details and that we'll look
13 at the plant-specific details for each plant to
14 determine whether or not any exceptions are
15 acceptable. In this case, we found that the main
16 steam tunnel that General Electric had provided
17 adequate justification for not meeting the three
18 hour barriers in the main steam tunnel.

19 So the design is not unique in the sense
20 that most steam tunnels are pretty much designed
21 this way. It's just there was a plant specific
22 design feature. That is why we addressed it this
23 way.

24 MR. FRANTZ: In the past, the staff has
25 said applicable regulations should be basically

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1 generic in the nature of provide something
2 equivalent to general design criteria. Staff seems
3 to have changed now to be amenable to using more
4 design specific provisions in the applicable
5 regulations. Has staff explained under what
6 conditions it is willing to consider design-specific
7 provisions for the applicable regulations?

8 MR. WILSON: First of all, I don't
9 believe we've changed. We have always been working
10 towards design-specific regulations. However, in
11 the instances where the regulation can be the same
12 for either CE or GE, we tried to make them the same
13 and only changed them where it was necessary to deal
14 with design specific features.

15 Any other follow-up on this item?

16 MR. MALSCH: It just strikes me, there's
17 obviously a continuum between a general design
18 criteria like regulation and what is already in tier
19 one and tier two. These fit, I guess, somewhere in
20 between.

21 MR. FRANTZ: Exactly. As the staff
22 pointed out, here I'd want to have something very
23 design specific for this applicable regulation.
24 There may be others here too where it's maybe more
25 appropriate to use design specific features rather

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1 than in more general term.

2 MR. WILSON: Okay. Next item, section
3 5(c)(9) requires the containment to be sufficient to
4 mitigate severe accidents in view of their
5 probability of occurrence and the uncertainties in
6 severe accident progression and phenomenology. This
7 quoted phrase is vague and subjective. What is this
8 phrase intended to mean? Would the staff consider
9 deleting the entire introductory paragraph for
10 section (c)(9), and retaining only the three
11 numbered subsections?

12 I'll ask John Monninger to respond.

13 MR. MONNINGER: This is John Monninger
14 of the Containment Systems and Severe Accident
15 Branch of NRR. That phrase was put in the proposed
16 rulemaking in response to comments received from
17 previous versions. In previous versions, there was
18 some concern regarding the 24 hour time period. It
19 was pointed out that the staff within their SCR had
20 approved certain accident sequences where the time
21 to containment failure was less than 24 hours.

22 Our basis for accepting that is due to
23 the combined low probability of their occurrence,
24 along with the uncertainty in the severe accident
25 progression. So therefore, as opposed to having the

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1 rule identify the 24 hour, we thought it was more
2 appropriate to put a time period based on the
3 uncertainty involved in severe accident progression
4 along with the likelihood of the individual severe
5 accident sequences.

6 MR. FRANTZ: Is there anything more
7 objective that you can provide so that a licensee,
8 for example, will know how this will be applied in
9 the future?

10 MR. MONNINGER: I would revert back to
11 the 24 hours, if that would be any more acceptable.

12 MR. WILSON: Now remember, how it is
13 implemented is in the DCD. If it's approved, it's
14 in the SER.

15 Any other follow-up on this item? Okay,
16 next item, section 5(c)(12) requires conditional
17 containment failure probability of 0.1. This
18 provision does not account for the alternative
19 provision allowed by the Commission in its SRM dated
20 June 26, 1990, which accepted SECY 90-16.

21 Why is section 5(c)(12) different from
22 the provision accepted by the Commission? For the
23 ABWR, would the staff consider changing this
24 provision to require the use of a containment over
25 pressure protection system? John.

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1 MR. MONNINGER: Once again, John
2 Monninger. Within SECY 90-16, the Commission
3 approved the use of the 0.1 CCFP alternative
4 containment performance criteria if it would be
5 proposed and identified by a licensee. Going back
6 to I believe 1987, 1988, GE came in with the CCFP
7 proposal of 0.1. So we took that approach. That is
8 the approach that GE pursued as opposed to an
9 alternative deterministically established criteria.
10 So that's the reason why the GE design specific rule
11 has 0.1.

12 If alternatively they want to pursue
13 some other criteria, a 24 hour criteria, we would
14 have done that. I believe that covers the first
15 two.

16 The third question with respect to
17 requiring the use of a containment overprotection
18 system, it is my understanding, when you read
19 through SECY 90-016, that was not imposed as a staff
20 position, more as it went to the Commission and it
21 was more of an allowance for the inclusion of a
22 containment overprotection system as opposed to
23 requirement similar to the other severe accident
24 phenomenology such as a requirement for the
25 depressurization system, a requirement for floor

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1 spreading area.

2 So that the decision that came back from
3 the Commission was they accept the installation of
4 the containment over pressure protection system.
5 That's why there is not a rule for that.

6 MR. FRANTZ: If I understand it though,
7 you choose the .1 CCFP because that's what GE used.
8 GE actually used to be more specific, the
9 containment over pressure protection system. Why
10 not use that instead in the applicable regulation?

11 MR. MONNINGER: Because I don't believe
12 the containment over pressure protection system is
13 the same as the containment performance goal. The
14 containment over protection system is one of the
15 design features that assists them in meeting that
16 goal. However, there are a multitude of containment
17 design features that in a summation allows them to
18 meet the 0.1 guideline.

19 MR. FRANTZ: If I can go back to the
20 previous question for a second. I don't think we
21 ever got an answer to the question whether the staff
22 would consider deleting the introductory paragraph
23 for section 5(c)(9), and instead, retaining only the
24 three numbered paragraphs.

25 MR. MONNINGER: I personally would not

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1 consider it.

2 MR. FRANTZ: You would not?

3 MR. MONNINGER: I would not, no.

4 MR. WILSON: We believe that is
5 necessary for the requirement. As we said we're not
6 negotiating these things at this point.

7 Any further on those two questions?

8 MR. SIMARD: May I ask a clarification?

9 John, I understood your answer to this fourth
10 question about why specify the containment failure
11 probability of 0.1 when the second offered an
12 alternative. I understood your answer for the ABWR
13 to be specific to a GE proposal.

14 If I understood that correctly, could
15 you please tell us what your reasoning was then in
16 the System 80+ rule, where the wording is identical.
17 I guess I would ask this same question now, but
18 apply it to the 80+. What was the rationale there
19 of specifying 0.1 and not allowing an alternative?

20 MR. MONNINGER: I did not do the
21 particulars of the review for the System 80+. I
22 wouldn't be able to talk for it, but I would imagine
23 that the position pursued also ABB/CE was the 0.1.
24 But I would not be able to speak definitively on
25 that.

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1 MR. WILSON: Unfortunately, my ABB/CE
2 man is on jury duty today. In both cases I believe
3 we evaluated to that criteria and addressed in the
4 SER that that criteria was met.

5 MR. SIMARD: Thank you.

6 MR. WILSON: Next item. I have just
7 received another question on the wording of
8 applicable regulations. Section 5(c)(13)(iii)
9 requires both features that mitigate vulnerabilities
10 resulting from other design features. This
11 statement is rather open-ended. What does the staff
12 mean by this statement?

13 Unfortunately, I would not get my
14 technical expert in this area to be here at this
15 point. So I'll commit to providing a response to
16 this question to NEI after the meeting. John?

17 While John is still here, if there's no
18 further questions on the wording of applicable
19 regulations, I'd like to go to the item entitled
20 Change Process with Severe Accidents.

21 This question has three parts. One, why
22 has the staff not changed section 8 of the rules to
23 reflect the view of NRC senior management that the
24 substantial increase criterion should be applied to
25 the whole of chapter 19 of the design control

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1 documents, not selected sub-sections as expressed in
2 the fall of 1984 and in the workshop in December,
3 1995.

4 Two, why does the staff propose to treat
5 the evaluations of beyond design basis evaluations
6 in the body of chapter 19 differently from the
7 evaluations of severe accidents in section 19E for
8 the ABWR and 19.11 for system 80+?

9 The third part, why shouldn't the
10 substantial increase criterion be applied to all
11 beyond design basis information in chapter 19?

12 Now the premise of this question is
13 incorrect. We stated several times that the special
14 change provision which contains the substantial
15 increase criterion, was to be applied to the
16 resolution of severe accident issues. We have
17 identified those in both the proposed rule and the
18 final rule of those sections 19E for ABWR and 19.11
19 for System 80+.

20 While there are other issue resolutions
21 in chapter 19, it was never intended that the
22 special change process applied to them. Chapter 19
23 contains a lot of other types of resolutions. For
24 example, generic safety issues, some of which result
25 in chapter 19. Some of which result in other

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1 chapters of the design control document. That's all
2 tier 2 information and is to be changed under the
3 tier 2 change process. So that's why we did not
4 make any changes in the scope of that special change
5 provision in 8(b)(5) regarding the severe accident
6 issue resolution.

7 MR. FRANTZ: I guess I would just merely
8 point out that if you look at the chapter 19
9 sections for the ABWR, there are clearly other
10 sections in chapter 19 besides 19E that deal with
11 severe accidents. Section 19R, for example,
12 contains probabilistic risk assessments for
13 flooding. 19M contains probabilistic risk
14 assessments for fire protection. 19L and 19Q
15 contain shutdown risk evaluations and assessments.
16 I can mention a few more if you like.

17 Doesn't the staff view those as being
18 severe accident evaluations and beyond design basis
19 accident evaluations?

20 MR. WILSON: No.

21 MR. FRANTZ: They certainly are not
22 design basis accident evaluations. The base part 50
23 plants are not required to have those.

24 MR. WILSON: But that is not the
25 definition for tier 2 information. That information

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1 is all safety issue resolutions that are within tier
2 2. We've got them under the tier 2 change process.

3 As I said, we provided that special
4 change standard for the resolution of these severe
5 accident issues that were resolved in this
6 rulemaking.

7 MR. FRANTZ: I guess I am totally
8 confused, because 19E is also tier 2 and was
9 resolved by the staff.

10 MR. WILSON: That's right, because those
11 are severe accident issues that were determined
12 needed to be addressed in these designs. Those were
13 the items that we believed should receive that
14 special change process.

15 MR. FRANTZ: How did you decide that 19E
16 deserved this and not the other sections?

17 MR. WILSON: Let me ask John, if you'd
18 want to amplify on that?

19 MR. MONNINGER: I can tell you how we
20 determined that 19E should be subjected to that
21 criteria and that for the resolution of severe
22 accident phenomena, in particular containment
23 phenomenology, that the staff believed that there
24 was sufficient uncertainty involved with that
25 phenomena that sufficient information had been

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1 provided by the applicant to close those areas
2 unless significant substantial increases in the
3 consequences of in particular, containment phenomena
4 had changed, or if there was a new severe accident
5 phenomena that was identified that could challenge
6 the containment.

7 That is from a 19E perspective for
8 severe accident phenomenology.

9 MR. FRANTZ: Let me give you some
10 examples. In 19R, which contains the probabilistic
11 risk assessment for flooding, there are some
12 accident scenarios in there that have probabilities
13 of approximately 10 to the minus ninth and minus
14 tenth.

15 Are you saying that any increase in that
16 probability therefore requires prior staff approval
17 and an opportunity for a hearing?

18 MR. MONNINGER: I guess what I would
19 say, if there is severe accident phenomena in that
20 that could challenge the containment that is
21 different than the phenomenology identified within
22 19E, I can not think of any new severe accident
23 phenomenology that would come out of there that is
24 not addressed within --

25 MR. FRANTZ: You seem to be separating

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1 or I'm sorry, combining two separate aspects of the
2 unreviewed safety question determination. You seem
3 to be focusing on the consequences aspect of looking
4 at the containment. I am looking at the
5 probabilistic aspects. The definition of
6 unresolved, unreviewed safety questions says that
7 any increase in probability of an accident
8 constitutes an unreviewed safety question.

9 MR. WILSON: I think you need to focus
10 on the design provision. What is the design
11 provision that's in there that someone may be
12 changing? So taking your example, what is the
13 design provision for flooding that someone may be
14 changing that is going to get into these sorts of
15 probabilities?

16 MR. FRANTZ: I'm saying if they change
17 the design feature and it increases the probability
18 of an accident from 10 to the minus 10 to 10 to the
19 minus ninth, that's evaluated in section 19R, that
20 is going to require prior NRC approval.

21 MR. WILSON: What is the design feature
22 that you think is beyond --

23 MR. FRANTZ: The particular, for
24 example?

25 MR. WILSON: The typical design feature

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1 for protection that wouldn't have the same situation
2 under 50.59.

3 MR. FRANTZ: There was an example, for
4 example in 19R dealing with flooding in the turbine
5 building. The flooding analysis in section 19.R
6 accounts for leakage through the truck door in the
7 turbine building. The truck door is not safety
8 related. It has no safety function. It's not
9 considered at all in chapter 6 or 15 or the other
10 design basis accident evaluation sections in the SAR
11 or the DCD.

12 The way this is considered here in the
13 probabilistic section 19R, if we produce a design
14 which has a better door and less leakage, that would
15 increase the probability of a flooding accident
16 slightly. I'm talking about perhaps 3 times 10 to
17 the minus ninth to two times -- or four times 10 to
18 the minus ninth.

19 Under the staff's provision here in the
20 final proposed rule, that would require prior staff
21 approval and an opportunity for a hearing. I can't
22 believe the staff would really desire to have a
23 hearing in that case when you are dealing with an
24 issue which is trivial from a safety standpoint.

25 MR. WILSON: I don't see that treated

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1 any differently than how it would come under 50.59.
2 Those sorts of areas between the turbine building
3 and other buildings are already existing in
4 evaluating other plants prior to design
5 certification. But see, this is something you would
6 call severe accident and you require a special
7 treatment.

8 MR. FRANTZ: I don't believe you'll find
9 a --

10 MR. WILSON: We got into this because of
11 the concern that severe accident resolution, there
12 was still some uncertainty on research on that.
13 That certainly doesn't apply to flooding and truck
14 doors.

15 MR. FRANTZ: Jerry, I don't believe you
16 are going to find a SAR in the country that part
17 50.59 -- it mentions the truck door versus flooding.

18 MR. WILSON: When I was in the auxiliary
19 systems branch, I know we had some of those doors
20 related to the turbine building and flooding into
21 other buildings.

22 MR. FRANTZ: I would like to see the
23 reference.

24 MR. WILSON: Any further questions
25 regarding the scope of issues that get the special

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1 change process?

2 MR. SIMARD: Jerry, I do have a question
3 with respect to the three questions that you read.
4 The first one refers to a meeting that was held in
5 the fall of 1994 between the NRC staff and the
6 design certification applicants. I was present at
7 the meeting but not a participant. I think when I
8 read this question, what it does is it reinforces my
9 memory of that meeting where Bill Russell was
10 present.

11 I thought I remember an agreement at
12 that meeting that in fact the substantial increase
13 criteria would be applied to the whole of chapter
14 19.

15 So I guess another way of asking
16 question number one is, was that not a decision made
17 at that meeting? If there's been a departure from
18 that decision, could you explain why?

19 MR. WILSON: That was not the decision.
20 I personally discussed this with Mr. Russell. It
21 was, as I've said, the agreement was for those
22 severe accident issues that were resolved. Once
23 again, that deals with this issue of the potential
24 impact of future research.

25 It was not his intent to encompass all

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1 of chapter 19 which informally stating is a bunch of
2 cats and dogs, all sorts of issues. That wasn't the
3 intent. He has signed off on this several times.

4 My response is the interpretation the
5 industry is making of that meeting in 1994 is
6 incorrect.

7 MR. FRANTZ: It's not just 1994. I
8 think he also repeated this at a workshop in 1995.
9 If you'd like, I'd be happy to quote from the
10 transcript where he agreed with us.

11 MR. WILSON: That's not necessary. Mr.
12 Russell has signed off on the proposed rule and
13 final rule. This is what he agrees with.

14 Anything further on this item?

15 Seeing nothing, let's move to the
16 beginning of the list. Technical specifications.

17 Why is the NRC now recommending that
18 there be no finality for chapter 16, the design
19 control document? Would the NRC be open to an
20 alternative approach that would preserve the
21 intended finality of this information and provide a
22 single process for control of plant technical
23 specifications.

24 Let me say that the change from proposed
25 rule to the final rule for the treatment of

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1 technical specifications was made for two reasons.
2 One, we didn't make it a requirement in order to
3 facilitate the NEI request for a single change
4 process. Two, we want to be able to apply future
5 operational requirements or operational experience
6 to the final technical specifications.

7 So to accomplish both of those goals,
8 could not apply finality to technical
9 specifications.

10 MR. FRANTZ: Isn't that inconsistent
11 with the entire purpose of part 52, which is to
12 achieve early resolution of licensing issues and to
13 achieve standardization?

14 MR. WILSON: I don't know if it is
15 inconsistent, but it's one of those cases where
16 there are conflicting goals.

17 In this particular case, we are talking
18 about operational requirements, whereas the goal
19 here is to deal primarily with resulting design
20 issues. The design issues are resolved. It's just
21 a matter of finalizing the manner in which that
22 design will be operated.

23 We got into this, being able to provide
24 a single change process that would be the change
25 process for all of that information developed at the

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1 COL stage. Also, as I say, be able to apply future
2 operational requirements to a final tech spec.

3 MR. FRANTZ: The design certification
4 applicants spent substantial effort at the staff's
5 request to develop technical specifications during
6 the certification process. The staff spent
7 considerable resources in reviewing those proposed
8 tech specs. The staff reviewed and approved the
9 tech specs in the final safety evaluation reports
10 for these two plants.

11 What you are basically saying is now
12 that the staff has reviewed it, the staff says that
13 that review and approval process is no longer
14 operative. Is that correct?

15 MR. WILSON: No. There are benefits
16 from the process. First of all, that review of the
17 tech specs facilitated the staff's review of the
18 design. Second of all, that information is where we
19 would expect the future applicant to start with in
20 the preparation of that tech spec.

21 So that information is available, and
22 would be beneficial at that time.

23 MR. FRANTZ: Am I correct then at the
24 COL stage, something that had been reviewed and
25 approved at this stage is going to be subject to re-

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1 review by the staff and relitigation by the public?

2 MR. WILSON: Not in terms of design
3 features, no.

4 MR. FRANTZ: In terms of the tech specs?

5 MR. MALSCH: Yes. We went back through
6 part 32. The whole focus from the beginning has
7 always been on finality and design, not necessarily
8 finality and operations.

9 It does leave an area open for
10 litigation. That poses the major question which we
11 mentioned in the Commission paper, which is is it
12 merely feasible to provide at this point in time
13 absolute finality on all operating conditions for
14 decades into the future. I think the staff's
15 concern was that we can't be that -- we can't
16 forecast into the future in that manner. We're
17 reluctant to do that.

18 We explored the possibility of making
19 the tech specs necessary but not sufficient. But we
20 thought that was too onerous.

21 MR. FRANTZ: Would you at least consider
22 an option whereby the tech specs would have finality
23 and if anything that's new or different that's
24 proposed by a COL applicant would then be subject to
25 a re-review and relitigation or actually denovo

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1 review and litigation?

2 MR. MALSCH: I think we actually want to
3 preserve our -- I think the staff wanted to preserve
4 its own flexibility to add additional operational
5 requirements.

6 MR. BISHOP: This is Bob Bishop from
7 NEI. Have you given consideration to whether there
8 could be some criteria in which those changes might
9 have to be met to be imposed so that there was at
10 least some degree of certainty associated with the
11 tech specs? Or perhaps not the same that's
12 associated with other parts of 52.63, for example,
13 but a different criteria?

14 MR. MALSCH: We could think about that
15 if you have a proposal.

16 MR. BISHOP: I think we would like to
17 have the opportunity to provide something.

18 MR. MALSCH: This has been a difficult
19 issue for us, because if you look at the nature of
20 the review, it just was never configured from the
21 beginning to resolve all possible future operational
22 questions that might arise.

23 MR. FRANTZ: I guess have difficulty
24 accepting that because these are standard tech
25 specs, like the standard tech specs we had for part

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1 50 plants. There appeared to the design itself.

2 MR. MALSCH: I know. For example,
3 future rulemakings on steam generated tube plugging
4 criteria, shutdown risk, modified tech spec
5 requirements, it just -- the scope of possibilities
6 got to be too great for us to be willing, the staff
7 to be willing to simply say this is it.

8 MR. ROWDEN: Well, I think you
9 understand our sense of disquiet, quite apart from
10 what we believe to be the value of these tech specs
11 to arrive at this insight at this point in the
12 process after having expended the technical
13 resources and incur the costs considerable to
14 develop the tech specs, that we are left with this.

15 I think there ought to be a search for
16 an accommodation which preserves some of the value
17 at least of what we have invested in this.

18 MR. WILSON: As I say, I believe the
19 value has been achieved because that assisted in the
20 review. It's just like conceptual design
21 information. It was there to facilitate the review
22 to ensure all the design features are there so that
23 we could implement those tech specs in the future.

24 Any further follow-up on this item?

25 MR. MIZUNO: I just have one thing to

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1 add. It was my recollection they were going through
2 the tech specs, that many of them were incomplete,
3 that values had to be added by the combined license
4 applicant. So that presented a further conceptual
5 difficulty with arguing that the tech specs were
6 largely complete and perhaps we could have some
7 additional criteria to say if the staff were to meet
8 them then some additional tech specs would be added
9 on.

10 We couldn't even make the argument that
11 the tech specs, just looking at them as they were,
12 constituted something that someone could immediately
13 take without further action and use them.

14 MR. FRANTZ: I think that's correct.
15 For example, there are blanks for set points. NEI's
16 comments last summer took account of that by saying
17 that if there are any changes or additions to the
18 tech specs, such as inserting numbers for setpoints,
19 that would then be subject to NRC staff review and
20 litigation approval. So that would not have any
21 finality. It's additions or changes.

22 MR. WILSON: By the way, that was Gary
23 Mizuno.

24 MR. MIZUNO: I'm sorry.

25 MR. WILSON: Anything further on this

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1 item?

2 Okay. Next item deals with section
3 8(b)(4) of the design certification rule. If
4 section 8(b)(4) is read literally, it would appear
5 to require a mandatory hearing on exemption requests
6 by a licensee. We assume that such a request was
7 not intended by the NRC, and that the NRC intended
8 that exemptions requested by a licensee be treated
9 similar to a request for amendments by licensees
10 under part 50. Namely that a hearing be held only
11 upon receipt of an acceptable request for a hearing.
12 Can staff please clarify its position on this issue.

13 MR. MALSCH: Okay. It's 8(b)(4), and
14 I'll have to find it. I think the language was the
15 granting of such an exemption must be subject to
16 litigation in the same manner as other issues in the
17 combined license hearing.

18 MR. FRANTZ: That's correct.

19 MR. MALSCH: I think that is lifted
20 directly from part 52.

21 MR. FRANTZ: Actually, we checked that.
22 The language has been changed somewhat. If you had
23 used the language directly from part 52, we would
24 have had no concern. But there was a paraphrase
25 here, and I think it was unintentional. The

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1 paraphrase might be misinterpreted or misconstrued
2 as requiring hearings for all exemption requests by
3 a licensee.

4 We think your intent was simply to
5 require a hearing in a COL proceeding. Post COL
6 exemptions would only be subject to hearing if there
7 was a request for a hearing. In other words, there
8 would be an opportunity for a hearing situation.

9 MR. MALSCH: That's the intent. Did we
10 transpose a phrase or something?

11 MR. FRANTZ: I believe so, yes.

12 MR. MALSCH: It says the granting of an
13 exemption on request of an applicant must be subject
14 to litigation in the same manner as other issues in
15 the oping license or combined license proceeding.

16 MR. FRANTZ: I don't have that language
17 in front of me, but I believe the context may be a
18 little bit different.

19 MR. WILSON: Well, we can take a look at
20 it.

21 MR. FRANTZ: It deals with applicants in
22 COL proceedings and that's accurate.

23 MR. ROWDEN: I think if you read this
24 and place specific emphasis on the wording of the
25 last sentence. The granting of such an exemption

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1 must be subject to litigation in the same manner as
2 other issues in the combined license hearing, I
3 think that you intend to talk about only those
4 exemptions which have been requested by an
5 applicant.

6 MR. MALSCH: Right.

7 MR. ROWDEN: As contrasted with
8 licensee. The problem is at the beginning of this
9 paragraph, it talks about applicants and licensees.
10 So I think it's a clarification.

11 MR. WILSON: Anything further on that
12 item? Okay. I believe next on the list is finality
13 issues. A, finality/litigation status of changes
14 made under the 50.59-like process.

15 Explain more fully the
16 finality/litigation status in 50.59-like changes
17 made by a combined license applicant, i.e. the
18 status of such changes in an ensuing combined
19 license proceeding. Specifically, what are the
20 contention process specified in section 8(a)(5)(vi),
21 what issues are considered to be litigable as
22 "compliance" issues, and what issues are excluded
23 from litigation?

24 Let me add, I think the cite is 8(b)(5).
25 Is that correct? It's not 8(a)(5).

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1 MR. BISHOP: It should be (b) I believe,
2 yes.

3 MR. WILSON: Do you want to cover that?

4 MR. MALSCH: Well I can start. The
5 concept here was to litigate the change, one would
6 have to raise a litigable issue as to compliance
7 with the change process. Other than giving some
8 examples, the one that occurred to me, and maybe
9 this is off the wall, but let's suppose there was a
10 change made to a feature added to the plant
11 specifically to deal with severe accidents, and then
12 subject to the special severe accident change
13 process, and a change was made to that feature which
14 let's say concededly increased the probability of
15 the severe accident.

16 In order to litigate the issue, they
17 would have to show that the increase was
18 sufficiently great so as to render the accident
19 credible. That would then be a violation of the
20 change process. Otherwise it would not be
21 litigable. That's an example. There are probably
22 other examples we could imagine.

23 MR. ROWDEN: Let me turn the coin over.
24 What is not litigable?

25 MR. MALSCH: A non-compliance question,

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1 a question not phrased or supported in terms of a
2 compliance with the change.

3 MR. ROWDEN: I think we see what you are
4 trying to do. I am not sure that there is any
5 elegant answer to this dilemma. But to draw the
6 distinction between a compliance and a non-
7 compliance question in a 50.59 criteria situation is
8 very very murky.

9 MR. MALSCH: That is true, because the
10 criteria themselves are subject to lots of
11 application. But that's I think inherent in the
12 change process.

13 It gains some narrowing of the issues.
14 Exactly how much is probably impossible to
15 summarize.

16 MR. ROWDEN: Well you did attempt to
17 provide a special procedure to deal with this and to
18 make sort of a combination 2.206 and 2.758. I
19 believe that was the objective. Maybe that is as
20 close as you can come. But I don't think anybody
21 should be misled that this is a neat solution to
22 the problem, because we have great deal of
23 difficulty in defining the distinction between
24 litigable and non-litigable issues here.

25 I have a follow-up question here. It's

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1 not on the paper that you have, Mr. Wilson. When
2 did these changes, these 50.59 changes become
3 eligible for coverage under 52.639(a)? In other
4 words, when did they get the benefit of that backfit
5 provision? What determines when they get that?

6 It is clear from reading the
7 supplementary notice that they do achieve that
8 protection at some point in time. When is that?

9 MR. WILSON: Sorry. What supplementary
10 notice?

11 MR. ROWDEN: The supplementary notice
12 that we are discussing today at which the questions
13 are directed. It's called the Supplementary Notice
14 of Proposed Rulemaking. I assume that's what you
15 intend.

16 MR. WILSON: In other words, you are
17 talking about resolution SECY 96-077?

18 MR. ROWDEN: That's right.

19 MR. WILSON: Thank you.

20 MR. MALSCH: You better do the question
21 over again, because I wasn't following you.

22 MR. ROWDEN: The question is, as we read
23 the SECY paper, the analysis states that 50.59
24 changes that are made by a COL applicant or COL
25 holder are changes made within the ambit of the

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1 rule. Therefore, they are eligible for backfit
2 coverage under 52.63, if I read it correctly.

3 At what point in time do they achieve
4 that status? After the opportunity for a hearing
5 has elapsed? Let's deal with the COL applicant.

6 MR. MALSCH: Is the question when the
7 change process litigation takes hold?

8 MR. ROWDEN: No. The question is at
9 what point in time is it eligible for 52.63 backfit
10 protection?

11 MR. MALSCH: The expanded protection?

12 MR. ROWDEN: The expanded protection.

13 MR. MALSCH: Oh, I see. I would off
14 hand say generally never. That the only things that
15 warrant special 52.63 backfit protection are
16 provisions approved in the rulemaking. The whole
17 idea was that special backfit protection was
18 warranted because of increased standardization
19 associated with the rulemaking agreement.

20 MR. ROWDEN: I may have misread the SECY
21 paper, but I thought I read a fairly scholarly
22 explanation as to why these 50.59 changes by
23 definition, since they did not involve unreviewed
24 safety questions, fell within the ambit of the
25 generic protection of the rule. I thought that the

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1 counterpart of that was that they would be subject
2 to backfit protection under 52.63.

3 MR. MALSCH: I don't think we intended
4 to go that far. I understand your question. I
5 don't think we intended to go that far.

6 MR. ROWDEN: I think I would like to re-
7 read, and I suggest you re-read this provision so at
8 least we get clarification.

9 MR. SIMARD: I have it in front of me.
10 It is on page six of the SECY. It's under the
11 section that is titled "Changes Made in Accordance
12 with the Change Process." The sentence goes like
13 this. To put it another way, any change properly
14 implemented pursuant to 50.59 should continue to be
15 regarded as within the envelope, the original safety
16 finding by the NRC.

17 MR. MALSCH: Right. That is to justify
18 the proposition that you can limit litigation
19 changes in accordance with the phrase we have here.

20 MR. BISHOP: And then it goes on to say
21 section 6 has been amended to provide backfit
22 protection for changes made in accordance with the
23 processes of section 8 of this appendix.

24 MR. ROWDEN: I don't think it was a
25 misreading. So I repeat the question.

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1 MR. MALSCH: Okay. I guess that's the
2 issue. I'm not sure we intended to -- I'll have to
3 think about the issue of backfit protection
4 associated with -- at least special, you know,
5 standardization derived backfit protection, the
6 changes made that bring the thing outside.

7 MR. ROWDEN: Okay. In thinking about
8 it, I just would urge you to re-read the logic
9 behind the position, as well as the expressed words.

10 MR. MALSCH: Let me ask you a question.
11 If we don't use that logic to limit the scope of
12 litigation, what other logic would you use?

13 MR. ROWDEN: I think it is acceptable.
14 In other words that the rationale that you proposed
15 I thought was perfectly justifiable in terms of the
16 conclusion that you reach.

17 MR. MALSCH: Okay. You just don't think
18 we carried it through to its logical conclusion.

19 MR. ROWDEN: Well, the logical
20 conclusion is finality and backfit protection. But
21 the question is, at what point in time does that
22 backfit protection kick in.

23 MR. MALSCH: I understand, okay.

24 MR. WILSON: Are we ready to move on?

25 MR. MIZUNO: Can I just ask for

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1 clarification? This is Mr. Mizuno.

2 Are you just asking simply at what point
3 does the applicant or the licensee is free to
4 consider the matter no longer potentially subject to
5 litigation? If the answer is for an applicant, with
6 these 5059 changes, would be after the combined
7 license is issued.

8 MR. ROWDEN: No. The question I am
9 asking is when can it be backfitted? When does it
10 achieve the backfit protection of 52.63? It's more
11 than simply being subject to litigation. It is
12 being subject to modification.

13 MR. MIZUNO: Oh. You are instead asking
14 that assuming that there is no challenge to --
15 assuming that there is no challenge --

16 MR. ROWDEN: Assuming that there is a
17 challenge and it has been satisfactorily resolved or
18 there is no challenge. Is it then eligible for
19 coverage under 52.63.

20 My assumption would be at a minimum it
21 would be at that point in time.

22 MR. MIZUNO: I guess there are two
23 things. I guess there's either there is going to be
24 a rejection of the contention that the 50.59-like
25 process was properly followed, and then the

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1 applicant or the licensee at which stage you are in
2 would have to do something additional to address the
3 fact that the matter was resolved against it.

4 Or the opposite conclusion, that the
5 matter was found to be properly implemented. I mean
6 the change was properly implemented. I presume at
7 that point, it was always subject to a backfit
8 provision.

9 I mean the backfit provision of 52.63
10 are I think independent of whether --

11 MR. ROWDEN: We'll get into this
12 question later. You deal with exemptions in 50.59
13 changes quite differently in terms of coverage under
14 52.63. We can deal with the exemption question
15 later on. But clearly, as you read from the
16 statement of considerations in the rule, you do
17 provide for 52.63 coverage for 50.59 changes at some
18 point in time.

19 I don't want to over-complicate the
20 issue or waste a lot of time on discussion here. It
21 is very simple. At what point in time does that
22 protection kick in. Why don't we just leave it at
23 that. I think it is something that deserves
24 clarification.

25 MR. MALSCH: Let me ask a related

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1 question. Let's suppose we could adhere to the
2 position that -- let's say adopt a position that
3 there is never any special standardization derived,
4 backfit protection to changes. Does that erode the
5 whole basis for developing this special litigation
6 provision?

7 MR. ROWDEN: No. I think they are
8 separable issues. One is the ability to contest the
9 change and the basis for that. The other is once
10 the change has been made and passes muster so to
11 speak, to what extent does it have this special
12 enhanced backfit protection. I think they are
13 related in a sense, but they are separable.

14 MR. MALSCH: Okay. I'll have to think
15 about how separable they really are. That is worth
16 thinking about.

17 MR. WILSON: Anything else? Next
18 question. A combined license holder prior to
19 commencement of operation, i.e. the status of such
20 changes in an ensuing section 103(a) proceeding,
21 specifically, what is the reason for departing from
22 the pre-combined license/post-combined license
23 differentiation regarding potential hearings on tier
24 2 changes as clarified in a public meeting last
25 summer and in the staff's July 13 meeting summary.

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1 What is the basis for not limiting
2 section 103(a) litigation of such changes to matters
3 directly affecting the determination of acceptance
4 criteria compliance. Is not the absence of such a
5 limitation in conflict with section 103(a)?

6 MR. MALSCH: Okay. We are going to have
7 to work on the language there. The concept was that
8 change would be litigable only if otherwise within
9 the scope of an opportunity to litigate or
10 opportunity for hearing on an issue. We did not
11 intend to expand the scope of for example pre-
12 operational hearing. We'll have to look at the
13 language again to make sure that is the case.

14 MR. WILSON: Any follow up?

15 MR. MALSCH: Similarly, on the second
16 bullet, we did not intend to prejudice COL holders
17 as distinguished from CP holders in terms of
18 opportunities for hearings on changes. We intended
19 that kind of --

20 MR. ROWDEN: So we're dealing with
21 clarifications.

22 MR. MALSCH: Right.

23 MR. WILSON: For the record, Mr. Malsch
24 just answered this question. A COL holder during
25 construction or operation, specifically, why should

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1 a 50.59-like change be subject to challenge in
2 hearings on license amendments for part 52 plants
3 when they are not subject to challenge in hearings
4 on license amendments for part 50 plants.

5 Any further follow-up on that question?

6 Scope of issue finality. Question one.
7 Why doesn't the supplemental notice of proposed
8 rulemaking provide for issue finality in design
9 certification renewal proceedings with the
10 exceptions specified in 10 CFR 52.59?

11 MR. MALSCH: Okay. The concept here was
12 that we couldn't simply say that there was issue
13 finality for renewal, because that is inconsistent
14 with the scope of license renewal, which revisits
15 the question of whether the design complies with the
16 act and regulations in effect at the time of
17 certification. But there wasn't any intent to
18 expand the scope of renewal review beyond the
19 conditions.

20 MR. WILSON: The 50.59 which is license
21 renewal, is that what that says?

22 MR. MALSCH: Yes. It says you must
23 leave 50.50 in place. But we obviously couldn't
24 accord finality for purposes of making the findings
25 under 52.59, because that would render this second

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1 essentially nugatory.

2 MR. ROWDEN: I guess I don't understand
3 why. As I read 50.59, they do have finality, unless
4 the special provision for adding additional
5 requirements is met. Isn't that the premise of
6 50.59?

7 MR. MALSCH: No. For purposes of
8 renewal, there was I believe an intention to revisit
9 the issue of compliance.

10 MR. WILSON: Clarification.

11 MR. ROWDEN: Compliance with what? The
12 regulations in effect at the time of certification.
13 That can be done at any time. You don't have to
14 wait for renewal to do that.

15 MR. MALSCH: Right. That's correct.
16 There's also a backfit provision in 52.59.

17 MR. ROWDEN: I mean finality has always
18 been subject to compliance with applicable
19 regulations.

20 MR. MALSCH: Right. But 52.59 goes
21 beyond that.

22 MR. ROWDEN: Right. It has a special
23 backfit, well, additional requirement provision.

24 MR. MALSCH: Right. The concept was to
25 leave that in place. Then for purposes of making

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1 those findings, there was no finality.

2 MR. BISHOP: I think that makes sense.
3 But Marty, go back to the first part of that
4 sentence. This seems to say that the first part of
5 that sentence now doesn't mean anything, the 52.59.

6 MR. MALSCH: What's the first part?

7 MR. BISHOP: That the Commission shall
8 issue a rule granting the renewal if the design
9 either is originally certified or is modified during
10 the rulemaking, applies the Atomic Energy Act --

11 MR. ROWDEN: Inherent in that seems to
12 be a finality determination.

13 MR. BISHOP: That you would not do a
14 denovo review at the time of license renewal or
15 application for a determination whether the design
16 met the applicable regulations 40 years ago.

17 MR. ROWDEN: I am not sure we have a
18 substantive difference. But I am troubled by the
19 statement that you made that you specifically did
20 not want to attach finality to it. Whereas we read
21 50.59 as giving it finality. Obviously if the
22 compliance issues are open and the special backfit
23 provision is applicable, but absent that, everything
24 else has finality.

25 MR. MALSCH: What else would there be?

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1 MR. ROWDEN: Everything. My assumption
2 is that there would be very few things open. As a
3 matter of fact, nothing open unless you met the
4 special backfit requirements or the renewal
5 applicant came in and asked for something different.
6 The finality would not attach to that obviously.

7 MR. MALSCH: Right.

8 MR. ROWDEN: That is why I said with
9 those exceptions, we would submit that finality
10 attaches to everything else.

11 MR. MALSCH: I was reading 50.59 to call
12 for a if necessary, denovo review of the design as
13 against the act and regulations in effect at the
14 time of the original certification.

15 MR. BISHOP: But how could you come to a
16 different conclusion? That the Commission 40 years
17 ago made a mistake?

18 MR. MALSCH: Possibly. I'm not sure
19 what operational effect this has. But the concern
20 was that if I extended finality to the renewal, it
21 would sound like the finding called for by 52.59
22 wouldn't be any kind of a finding.

23 Having once found to comply with the
24 original regulations and extending finality to that
25 will be this sense of making another finding.

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1 MR. BISHOP: But that is exactly what I
2 read in that first sentence to require, was the
3 finding of compliance, not a denovo review.

4 MR. ROWDEN: That compliance finding
5 could be made at any point in time during the life
6 of the original certification.

7 MR. BISHOP: Including at the moment of
8 license renewal requested.

9 MR. MALSCH: Right. This is an
10 affirmative obligation on the agency to make the
11 finding.

12 MR. BISHOP: Right.

13 MR. MALSCH: As opposed to a
14 discretionary power to make the finding for purposes
15 of issuing a backfit.

16 MR. BISHOP: Right.

17 MR. MALSCH: So I read the renewal
18 provisions as requiring a re-review of the design as
19 against the act and applicable regulations. Not
20 withstanding, the finality which otherwise attached
21 during the period of the original design
22 certification.

23 MR. BISHOP: As they existed at the time
24 of the original design certification?

25 MR. ROWDEN: But that means a denovo

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1 review, because if you are reviewing it against the
2 act and the applicable reg -- that's where you
3 started out seven years ago.

4 MR. MALSCH: That is correct. I assumed
5 that was the intention --

6 MR. ROWDEN: That's totally -- I will
7 tell you that is totally inconsistent with our
8 understanding of the renewal process. I hadn't
9 thought that that was an issue beyond clarification,
10 but I think we have a major substantive --

11 MR. MALSCH: We can go back and look at
12 part 52 then if you want.

13 MR. EGAN: This is Joe Egan. I always
14 thought, I guess, that renewal was the time that the
15 vendor had the opportunity to propose changes,
16 particularly if there's not a post-certification
17 vendor change process, which is the way the staff is
18 proposing.

19 So I thought the denovo review was on
20 the vendor's modifications. That's the way it seems
21 to --

22 MR. MALSCH: I had not read this
23 recently and put this together. I had not read the
24 regulations its so providing. I can go back and
25 look at it again.

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1 MR. SIMARD: This is Ron Simard. I am
2 not a lawyer, but listening to this conversation do
3 I understand the phrase denovo review to imply for
4 example, if we go back to the December workshop
5 where we discussed the determination that the
6 Commission has made regarding the sufficiency of
7 this design, someone used the example of a fifth
8 reactor cooling pump. That question of whether or
9 not a fifth reactor cooling pump was necessary could
10 not be raised. That was an example of operative
11 issue preclusion.

12 Do I understand this discussion to be
13 leading us toward the possibility that this question
14 could be re-raised?

15 MR. MALSCH: I thought that was the
16 clear intention of part 52 at renewal stage

17 MR. BISHOP: That is exactly the issue.

18 MR. SIMARD: I share the amazement of
19 the lawyers in the crowd then. Thank you.

20 MR. WILSON: Anything further on this
21 item?

22 Next question. Why is finality for
23 environmental issues in section 8(b)(4) limited to
24 cases where the site parameters are met since the
25 site parameters are safety issues, not environmental

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1 issues.

2 MR. MIZUNO: This is Gary Mizuno. It is
3 our understanding that the SAMDA analyses were based
4 upon site parameters from the safety side. When we
5 were talking about site parameters in the context of
6 determining whether there is finality or not, we
7 were talking about this, the site parameters that
8 were used for the SAMDA analysis as modified from
9 the safety analysis.

10 But with that clarification, it makes
11 sense that if you are outside of the safety
12 parameters, whether they are modified or not from
13 the original safety analysis, the environmental
14 analysis that would be done would no longer
15 necessarily be valid absent some further analysis or
16 re-review.

17 MR. ROWDEN: I guess even a more basic
18 question, could you reference a certified design in
19 circumstances other than those which fall within the
20 approved site parameters.

21 MR. WILSON: That's a special case.
22 That would apply not just to SAMDAs.

23 Following that whispered example --

24 MR. ROWDEN: -- if you are talking about
25 the exemption situation, which is --

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1 MR. WILSON: In that situation where
2 they reference the design outside one of the site
3 parameters and they seek an exemption or some other
4 change, then you would also look at is that
5 environmental assessment still applicable.

6 MR. FRANTZ: I think what you will find
7 though if you look at the site parameters, is that
8 most of them really have essentially no relationship
9 at all to the SAMDA issue.

10 I think the best way to deal with that
11 is in the exemption context, not generically as you
12 have tried to do.

13 MR. ROWDEN: Yes. We did go one step
14 further to identify the exemption route. But that
15 seems to be something you could deal with in the
16 exemption granting process, approval process.

17 MR. MIZUNO: Well we're not talking
18 about outside of the safety site. We're only
19 talking about SAMDA site parameters.

20 MR. ROWDEN: They are the same
21 parameters, aren't they?

22 MR. FRANTZ: There are no SAMDA site
23 parameters per se, as far as I know.

24 MR. MIZUNO: Well in that case --

25 MR. WILSON: Dino, do you want to

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1 amplify?

2 MR. SCALETTI: Dino Scaletti from the
3 staff. We did the -- implicit in the staff review
4 was the site parameters. Now the overall review for
5 the consequences for both ABWR and System 80+ came
6 about as a result of PRA analysis.

7 The PRA analysis is based upon the
8 design. So you can't just sit here and say that
9 there are no safety issues involved in the SAMDA
10 review, because we do not separate it that way.

11 MR. FRANTZ: I don't think we're saying
12 that there are no or never could be. I think what
13 we are saying is that in most of these cases, there
14 would not be any as a matter of fact.

15 Take an example, one of the site
16 parameters is an earthquake level .35 g. Let's
17 assume that the actual site is one-hundredth of a g
18 higher than the actual site parameter. There is no
19 doubt in my mind that design could be shown to be
20 adequate for that site and wouldn't have any effect
21 at all on any of the SAMDA analysis.

22 I think that is probably true of all the
23 other site parameters too. It would take a very
24 extreme case that you would have any potential for
25 even impacting the SAMDA analysis. Just because you

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1 get an exemption for one site parameter.

2 MR. MIZUNO: I don't think anyone has
3 disagreed that you could -- the only question is
4 whether you have to -- this is Mr. Mizuno.

5 I don't think there is any question
6 about whether the applicant could possibly show that
7 there was absolutely no change to the bottom line of
8 a SAMDA analysis as a result of exceeding a site
9 parameter.

10 The point is is whether that
11 demonstration has to be made by the applicant at the
12 time that he comes in with his application with a
13 site having parameters that exceeds that or whether
14 it can rely upon the issue resolution associated
15 with the environmental assessment and the SAMDA
16 analysis that was done.

17 MR. FRANTZ: I guess our concern here is
18 that the way this is currently worded, any time an
19 exemption is submitted for one of the site
20 parameters, it throws it open to the public. The
21 public can then re-litigate it. Anything regarding
22 those SAMDAs, even if a licensee shows that there is
23 no impact.

24 MR. EGAN: This is Joe Egan. I think a
25 secondary concern too is whether or not the issue is

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1 litigable in NEPA space or in design certification
2 space. That's a very big procedural distinction.

3 MR. MIZUNO: Well, it's obviously going
4 to be, since we're talking about a specific combined
5 licensed applicant, presumably we're talking about a
6 proceeding involving a application for a combined
7 license. So it is not going to be a generic matter
8 unless someone chooses to convert it into that,
9 which I don't think that the combined license
10 applicant will want to convert his proceeding into,
11 or have it hang upon a generic change.

12 I guess going back to the other point
13 that Steve Frantz was making. I understand what you
14 are suggesting, but I don't think that that kind of
15 expansion of the realm of possibilities would be --
16 well, would be permitted absent -- I mean I'm sorry.
17 A potential intervenor would simply have to show
18 that an expansion of the site parameter in fact had
19 some -- there was some valid basis for believing
20 that the SAMDA analysis was no longer acceptable,
21 and it would have to meet a contention standard.

22 I mean yes, theoretically speaking,
23 potentially every part of the SAMDA analysis could
24 be rendered invalid. But presumably that would not
25 normally be the case. The intervenor would have to

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1 in fact come forward with some evidence that shows
2 that the analysis was substantially changed in some
3 fashion.

4 MR. FRANTZ: Geary, I like the formation
5 you have there. If something like that were in the
6 rule, I think that would resolve our concerns. Our
7 only concern I think is the way it's worded now. It
8 automatically throws open the entire SAMDA issue
9 without any requirement for an intervenor to show a
10 nexus between the exemption for the site parameter
11 and a SAMDA. As long as there is a requirement to
12 show that nexus or connection, I think that might
13 cure our problem.

14 MR. MIZUNO: I think that just follows.
15 We'll consider it. But I think -- my personal
16 belief is that that just follows from our normal
17 rules of procedure. I mean it's just a manner of --

18 MR. ROWDEN: Well again, let me get back
19 to the point that we made a considerable investment
20 with mutual agreement in the SAMDA analysis for what
21 I believed to be a worthwhile purpose from a public
22 policy standpoint and from a procedural standpoint.

23 We understand the problem you have with
24 the exemption, the site parameter exemption. But I
25 think it would be useful to pin that point down in

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1 terms of narrowing the targets of opportunity that
2 would be available to undo the investment that
3 whether we both have made in the SAMDA process.

4 MR. WILSON: Anything more on
5 environmental assessment?

6 Question three on scope of issue
7 finality. What is the finality in backfit
8 limitation status of facility specific DCD
9 exemptions and tier 2 changes after approval by the
10 NRC? Why are such approved changes not accorded
11 protection under 52.63 against backfits? Such an
12 approach would discourage applicants and licensees
13 from making design improvements to their plants
14 because the improvements would be subject to
15 backfits under section 50.109. Would the NRC be
16 open to an alternative approach that does not
17 discourage applicants and licensees from making
18 improvements?

19 MR. MALSCH: I think we touched on this
20 issue earlier. The original intent in part 52 was
21 to discourage design changes so as to promote
22 standardization. So it was only the special anti-
23 backfit provisions -- that the special anti-backfit
24 provisions in part 52 were designed to shield the
25 standardized design that had been approved by

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1 rulemaking from changes.

2 Once you depart from the standardized
3 design, the whole rationale for having special
4 backfit protection kind of is much less. At least
5 that was the rationale.

6 MR. ROWDEN: Well the counterpart is
7 stated here. Also there's one other aspect that is
8 not stated here. In this already enormously
9 complicated process, the multiple change process has
10 become I would say confusing and potentially
11 counterproductive. No one knows how they are going
12 to work out in actual practice, but just adding
13 another twist to this is I think disquieting.

14 MR. MALSCH: Although you know, you all
15 sort of starting us down this track. We began with
16 a --

17 MR. ROWDEN: Well, you know what they
18 way about consistency, Marty.

19 MR. MALSCH: We started out with a
20 moderately simple change process in part 52, and it
21 got vastly complicated with the introduction of tier
22 2. I agree it's gotten very complicated. If we
23 could uncomplicate it, I would certainly be happy.

24 MR. WILSON: Any further issue finality
25 questions?

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1 Seeing none, the next subject, ITAAC
2 verification. The statement of consideration says
3 that, "Quality assurance and deficiencies for these
4 systems would be assessed for their impact on the
5 performance of the ITAAC based on their safety
6 significance to the system."

7 What does the staff mean by the phrase
8 "based on their safety significance to the system".
9 In particular, we assume that the staff does not
10 intend that a safety significant QA deficiency can
11 be considered during the ITAAC process, even if the
12 deficiency is not relevant and material to the
13 ITAAC. Would the staff please clarify its intent?

14 Now the quote comes from page 34 of the
15 statements of consideration. If you look at page 33
16 at the bottom of the page, it says that NRC is
17 determined that the QA/QC deficiency may be
18 considered in determining whether ITAAC has been
19 successfully completed and has two parts here.

20 One is the deficiency is directly and
21 materially related to one or more aspects of the
22 ITAAC. The other part is deficiency leads NRC to
23 question whether there is reasonable insurance for
24 concluding that the relevant ITAAC has been
25 successfully completed. So that's our standard.

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1 Now proceeding on to where this quote
2 was taken, that discussion on the following page was
3 dealing with a discussion of tier one information in
4 ITAAC. So that discussion relates to the situation
5 where we're talking about a particular ITAAC.

6 The question about deficiency not
7 relevant doesn't really apply within that paragraph.
8 Having said that, we agree as we've said many times,
9 that the deficiency would have to be relevant with
10 particular ITAAC and significant.

11 Any follow-up on that?

12 MR. BISHOP: This is Bob Bishop. Jerry,
13 if I may, that sentence that this phrase comes from,
14 you are not intending that there be yet an
15 additional criteria? Re-thinking that that's just
16 another way of kind of saying that if it's relevant
17 and material, then it's a subject of concern.

18 MR. WILSON: Yes. An attempt to further
19 clarify this issue.

20 MR. BISHOP: But that is not yet another
21 criteria?

22 MR. WILSON: No.

23 MR. BISHOP: Somehow queued to safety
24 significance. Thank you.

25 MR. WILSON: Any more on ITAAC

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1 verification?

2 Dino, find out who has got his hand on
3 that drill and stifle him.

4 Next question. On page 68 of attachment
5 five, section 3(a) of the proposed rule states that,
6 "Copies of the generic DCD may be obtained from" and
7 then there's a parenthetical phrase, "(insert name
8 and address of applicant or organization designated
9 by the applicant.) Both applicants have had
10 difficulty getting resolution from NTIS on whether
11 they can handle this on behalf of commercial
12 companies. Mr. Mizuno, have you obtained an
13 agreement from the NTIS. If so, what are the terms
14 of the agreement. If not, what is the plan and
15 schedule for closing this open item so it does not
16 become a delay in publishing the rules?"

17 Mr. Boyce of my staff has been working
18 on this. I'll ask him to give a status of his
19 interactions with National Technical Information
20 Service.

21 MR. BOYCE: This is Tom Boyce. Just as
22 the applicants have had difficulty getting a hold of
23 NTIS, so has the NRC. Nonetheless, on April 1, I
24 contacted Bill Palesh of NTIS. He was going to
25 forward me some sample memorandums of agreement that

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1 we could use to establish relationship with NTIS.

2 We had some preliminary discussions on
3 the type of format that the DCDs would be provided
4 to NTIS. We talked about providing a paper copy.
5 We talked about providing an electronic version on
6 either disk or CD Rom. But that discussion was
7 preliminary. We're going to try and establish a
8 relationship first.

9 As nothing occurred from his end, and so
10 yesterday I initiated another phone conversation.
11 Right now we're working through our Office of
12 Administration to try and see if we can put this
13 relationship under existing memorandums of agreement
14 that we have with NTIS, and thereby not have to
15 establish a new one.

16 If we do have to establish a new one,
17 then we would do it just for this particular case.
18 But we are trying not to have to do that.

19 Once we establish the relationship,
20 which we hope to in the next couple of weeks, we
21 would then ask the vendors to participate in a phone
22 call to establish some of the details of
23 implementation. Those details include how a paper
24 copy would be provided to NTIS and who would do it.

25 Some of the cost issues associated with

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1 providing copies of the DCD to members of the
2 public, whether or not the vendors would provide
3 multiple CD Roms or whether they would provide the
4 technology for NTIS to produce CD Rom versions of
5 the DCD for distribution and that sort of thing.

6 Obviously we recognize that this could
7 be a pacing item. We are working on it. We will
8 get back to the vendors as soon as possible. The
9 vendors -- I have kept the vendors informed of where
10 I am with NTIS over the past month and will continue
11 to do so.

12 Is there any other questions that I can
13 answer at this point?

14 MR. WILSON: Thank you, Tom. Let me
15 amplify a bit. At this point, there's no guarantee
16 that NTIS is going to be the source of making these
17 documents available to meet the requirements in the
18 Office of Federal Register. So I think the two
19 applicants should be considering some back-up
20 approach.

21 MR. ROWDEN: Is NTIS the only option
22 that NRC has considered in this regard other than
23 the vendors themselves, the distributor? In other
24 words, could NRC undertake that function?

25 MR. WILSON: No. I don't think that

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1 would meet the requirements. We have already --

2 MR. ROWDEN: You are talking the
3 requirements for what, the Office of Federal
4 Register?

5 MR. WILSON: I right. I mean it's the
6 issue of meeting the requirements of the Office of
7 Federal Register. We are going to have it available
8 in the public document room as satisfying that
9 requirement. But there has to be other sources of
10 availability.

11 MR. BRINKMAN: This is Charlie Brinkman
12 from Combustion Engineering. Could you just
13 elaborate on that a little bit more? Because your
14 proposed rule right now does call for the NRC to
15 archive the generic DCD.

16 MR. ROWDEN: And to make copies
17 available on request too.

18 MR. BRINKMAN: That is correct. So I
19 question why it is that the applicants should still
20 be in the process.

21 I certainly could see why they would be
22 in the process if the post DC change process
23 proposed by NEI had accepted, but since it has not
24 and since the NRC has taken responsibility for
25 archiving it, why should that not continue?

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1 MR. ROWDEN: Let me add to Charlie's
2 remark. Geary, you may be more directly familiar
3 with the OFR governing regulations. At this point I
4 don't have them before me.

5 My recollection is that there was a
6 provision in there for an exemption from that
7 requirement in special circumstances. I just
8 wondered to what extent. Particularly if we run
9 into problems with NTIS, that exemption couldn't be
10 sought.

11 MR. MIZUNO: I guess it's open and you
12 haven't explored it. We were hoping that the NTIS
13 or route of distribution would be available. I am
14 still hopeful that it is going to happen. I think
15 it's just a matter of everyone trying to get done
16 and work together on that.

17 I don't know if you know this, but I got
18 a preliminary approval for incorporation by
19 reference of DCD into the rule, and it included the
20 provision. I mean they knew that we were proposing
21 to have distribution through NTIS. It seemed to
22 satisfy --

23 MR. ROWDEN: That's part of the approval
24 that they granted?

25 MR. MIZUNO: Right. So I would hate to

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1 have to go back and revisit that, especially since
2 we did get that letter. So I really would like to.

3 I have not been involved in working with
4 NTIS since I made the first contact, but I think
5 given that there's been this delay, I think I'll try
6 and get back to the loop there and interface
7 directly with them along with Tom Boyce.

8 MR. ROWDEN: Well, if we do run into an
9 impasse with NTIS, we may have to revisit the issue.

10 MR. WILSON: To follow up Mr. Brinkman's
11 question, the need for the NRC to maintain copies is
12 unrelated to this meeting the requirements of the
13 Office of Federal Register for incorporation by
14 reference.

15 MR. BRINKMAN: I understand that, but it
16 does seem to play into a solution directly in the
17 future, NRC and the Office of Federal Register.

18 MR. WILSON: There's more than one
19 requirement in the Office of Federal Register. You
20 need to be cognizant of that.

21 MR. BOYCE: In our understanding of the
22 requirements of the Office of Federal Register, is
23 that any agency-produced documents have to be
24 maintained by a third party, the first party being
25 the Office of Federal Register, second party being

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1 the NRC. So there has to be a third party.

2 We also understand the Office of Federal
3 Register would like it to be someone other than the
4 vendors. That is what is driving us into NTIS.

5 MR. ROWDEN: As I say, there is an
6 exemption provision dealing with special
7 circumstances. I would submit these are really
8 peculiar circumstances, this design control
9 document.

10 I think the point that Mr. Brinkman was
11 making is that apart from the differing
12 requirements, the Office of Federal Register which
13 you mentioned, Geary, functionally you will have the
14 document. It will be in the public document room.
15 You are making it available for copying in the
16 public document room. I mean that is a reality that
17 is something that could be capitalized on.

18 MR. WILSON: You don't have to convince
19 me.

20 Any further on this item? Next
21 question. Page 70, section (4)(d) of the rules
22 states that, "The Commission reserves the right to
23 determine whether and in what manner this appendix
24 made the reference by an applicant for a
25 construction permitted or operating license under

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1 part 50. Parts 52.55(b) and 52.63(c) clearly
2 provide for construction permit and operating
3 license applicants to reference the design
4 certification."

5 Why has the staff brought into question
6 where the appendix may be referenced by an applicant
7 for a construction permit or operating license under
8 part 50. Should not section 4(d) read simply, "The
9 Commission reserves a right to determine in what
10 manner this appendix may be referenced by an
11 applicant for a construction permit or operating
12 license under 10 CFR part 50.

13 Now as we've discussed before and even
14 touched on earlier here, we have to remember that at
15 the time that part 52 was written, we had certain
16 ideas on how design certification can be
17 implemented. That during the implementation for
18 these two designs, there have been a lot of changes
19 from what was originally envisioned. A lot of that
20 creative implementation was done with the idea of
21 these designs being referenced in a combined license
22 process.

23 But there was no discussion during that
24 time on using it for a construction permit. It was
25 only after we have finished implementing these

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1 designs that this question has come up. So at this
2 point in time, I don't know whether -- as we say,
3 whether or in what manner you could do that.
4 reference.

5 We don't want to take the time now to
6 try and figure that out. That's why the provision
7 is put in the rule as it's stated. That could be
8 determined at some later date.

9 Do you want to amplify on that?

10 MR. MALSCH: Well, just that Jerry and I
11 were discussing whether -- I don't think we've
12 resolved this ourselves, whether we intend to leave
13 open the manner of referencing as opposed to the
14 issue of whether it could be referenced in theory at
15 all. I don't think we've resolved that among
16 ourselves.

17 Clearly the manner in which it might be
18 referenced leaves unresolved as intended a whole
19 host of issues, not the least of which is the use
20 and applicability of the ITAAC. Once you get to
21 that level of basic question about the manner of
22 reference ability by a CP applicant, you begin to
23 raise to yourself the question of whether it really
24 is referenceable at all. But maybe this is just a
25 query.

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1 MR. BISHOP: This is Bob Bishop, Marty.
2 I could certainly understand the latter, I guess the
3 first of those two points. But your intent here in
4 the term of whether was not to attempt to in some
5 way change by indirection the provisions of part 52
6 appendix O.

7 MR. MALSCH: No.

8 MR. BISHOP: Or the other provisions of
9 part 52, which really talk to me anyway, in terms of
10 the manner has yet been undecided.

11 MR. MALSCH: It was really derived from
12 the nature of the review that took place for these
13 particular certifications. Everyone had in mind
14 during the entire course of the review referencing
15 in a combined license application.

16 So the whole idea of referencing by a
17 peer or old fashioned CP applicant was just not
18 thoroughly considered. So a lot of issues need to
19 be resolved.

20 MR. BISHOP: That is why we suggest the
21 fundamental question is in the manner rather than
22 whether.

23 MR. MALSCH: Well, we'll explore further
24 whether we lose anything by adopting your language.
25 We didn't intend to change the basic structure of

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1 part 52.

2 MR. EGAN: This is Joe Egan. I think
3 retaining the word whether would really cause the
4 industry to want to comment in some real significant
5 detail on part 50, because it really would be a rule
6 change from part 52 as we read it now.

7 The idea that we would leave open the
8 manner in which it was implemented I think was the
9 basis for the industry not submitting extensive
10 comments on part 50 and deferring the issue as we
11 discussed the last workshop. So it would be helpful
12 I think for us in preparing our comments to know if
13 this is something we should treat as something that
14 it's amending part 52 or not.

15 MR. WILSON: Well, this appendix is an
16 amendment to part 52. It deals directly with these
17 rules. As I say, we were dealing with how we
18 implemented part 52 for these two specific rules.

19 MR. EGAN: Okay. I misspoke. Not
20 amending it, but removing something that is now
21 there, I mean changing it as opposed to just adding
22 something.

23 MR. MALSCH: Well I guess the question
24 we haven't entirely resolved ourselves is whether we
25 really intend to reserve the option of simply saying

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1 no, no discussions, as opposed to well maybe, let's
2 discuss what the conditions would be.

3 If we reach accommodation on what the
4 conditions manner would be, well then sure. I'm not
5 sure what the practical distinction is.

6 MR. EGAN: As a policy matter, I would
7 really hope that that's not the outcome, because
8 there are no many uncertainties in part 52, that to
9 foreclose the ability to use part 50 as a fallback
10 in the event that part 52 proves to be more
11 difficult than we envisioned to actually implement
12 and practice, I think would be real premature to do
13 that.

14 MR. WILSON: But on the otherhand, it's
15 really a problem to come in after the fact after all
16 these issues were resolved and now bring up some
17 other way of using the rule that wasn't envisioned
18 when we were doing that.

19 MR. MALSCH: It really does cause a
20 problem from the staff.

21 MR. WILSON: If that was the intention
22 in industry at the time we were doing, resolving
23 issues like scope of design, level of detail, high
24 tech, that should have been brought up that that
25 tension was there so we could have focused on it.

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1 Now we don't know what it means.

2 MR. EGAN: But I guess that can all be
3 resolved later. If it's linked up and if you have
4 the word whether, I think there's a real question as
5 to whether you close the door forever.

6 MR. MALSCH: Well, the real question is
7 whether you open the door forever, not close it. We
8 don't say no.

9 MR. BISHOP: But that certainly adds
10 great uncertainty that does not exist now when it's
11 a question again in terms of interpretation of
12 appendix O as to in what manner.

13 MR. WILSON: I do not understand why you
14 are referring to appendix O. How is that relevant?

15 MR. BISHOP: It talks about the ability
16 to use for example, a final design that has been
17 proved.

18 MR. WILSON: I thought we were talking
19 about design certification.

20 MR. BISHOP: Yes. It seems to me that
21 is a logical extension of the basic principle in
22 appendix O.

23 MR. WILSON: Our answers and in the
24 rule, we're talking about design certification, not
25 appendix O.

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1 MR. BISHOP: I understand that.

2 MR. MIZUNO: FDA is still there for part
3 52 reference.

4 MR. WILSON: That's a different matter.

5 MR. BISHOP: I am only trying to
6 understand what the intent is.

7 MR. MALSCH: Well, just to clarify, we
8 are not saying no, but clearly the word whether
9 reserved on the question of the basic yes or no. I
10 think that was because of the way the review was
11 conducted.

12 Now sort of changing signals, very late
13 in review as to what the industry contentions might
14 be and how can we accommodate that. It's not been
15 so easy.

16 MR. FRANTZ: I would like to add one
17 clarification for the record. I'm not sure this is
18 a recent issue. We raised this several years ago as
19 part of our DCD introduction. We proposed that the
20 ITAAC would not be applicable to part 50 licensees.

21 MR. MALSCH: Even then, the staff review
22 was really low.

23 MR. WILSON: That was after all of those
24 issues had been implemented. That's all after the
25 fact, and that's where the problem arose.

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1 MR. FRANTZ: This was during development
2 of the ITAAC process, which was the only issue that
3 I think was really --

4 MR. WILSON: You said the introduction,
5 was after all that was resolved.

6 MR. FRANTZ: The record will speak for
7 itself in that regard.

8 MR. WILSON: Anything further on this
9 item? Mr. Brinkman?

10 MR. BRINKMAN: I guess as a non-lawyer,
11 I'd just like to submit that it seems to me if you
12 deal with the question of whether you are dealing
13 with a change to part 52, we just leave the other
14 part of it there, then as a practical matter, how
15 you work it out could have the same effect.

16 MR. MALSCH: Well, that is why Jerry and
17 I were discussing whether this is --

18 MR. BRINKMAN: But it is disquieting to
19 us that --

20 MR. MALSCH: A big theoretical
21 discussion of no practical effect or whether it
22 really does.

23 MR. BRINKMAN: I understand. But that
24 is a bit disquieting for you to just eliminate it or
25 allow that you could eliminate it on the basis that

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1 you didn't read it on the applications.

2 MR. WILSON: I understand. As Mr.
3 Bishop observed, this leaves uncertainty. I think
4 that's the correct way to look at it. There is a
5 lot of uncertainty with regard to this.

6 MR. BRINKMAN: But I like to think there
7 are people, reasonable people, that can work out
8 these problems if it's necessary to do so.

9 MR. WILSON: This doesn't change that
10 assumption.

11 MR. BRINKMAN: I'm sorry. It certainly
12 does seem to me to raise the issue that it could be
13 foreclosed on us.

14 MR. MALSCH: Well, as I look at it
15 personally, it seems to me that the issue we have to
16 think about is whether there is a reasonable
17 likelihood that working out the details would do
18 such violence to the whole safety review process as
19 it in fact has been conducted, that it just wouldn't
20 be the same certification that would be referenced.
21 It would be something entirely different, different
22 conditions, different parameters. It just would not
23 be the same. I am not sure I know the answer to
24 that question.

25 MR. WILSON: Anything further on the

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1 referencing under part 50?

2 At this point I have two similar
3 questions. In the NEI submittal I have a paragraph
4 on incorporation of DCD introductory provisions. I
5 have also received questions from Egan and
6 Associates on the same subject this morning.

7 If it is all right with NEI, I will use
8 the questions from Egan and Associates. They are
9 more detailed. We are grateful that staff has
10 agreed with the industry that the substantive
11 provisions contained in the DCD introduction should
12 be included in the design certification rules.
13 However, while most of the substantive provisions
14 were indeed incorporated, it appears that certain of
15 the important substantive provisions in the DCD
16 introductions were either not incorporated or were
17 incorporated in modified form.

18 A. In general, why did the staff amend
19 or modify certain of the previously approved DCD
20 introduction provisions when constructing the rule
21 language?

22 At the time we were developing the DCD
23 introduction, we did not review that from the
24 standpoint of it either being rule language or SOC
25 language.

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1 When the request came in the NEI
2 comments to look at incorporating that either in the
3 rule or the SOC, we re-reviewed that. We made some
4 determinations, we made determinations as to what
5 portions should be in the rule, which portions
6 should be in the statements of consideration. We
7 changed some language to make it appropriate for
8 either of those locations. So that's the general
9 answer to that question.

10 B. In particular, the definition of
11 tier one material excludes the provision stating
12 that "the design descriptions, interface
13 requirements, and site parameters are derived from
14 tier two information."

15 That was not in there in the rule, I
16 believe it is in the SOC, but we felt that wasn't
17 necessary for the rule. That goes without saying.

18 Would you like me to stop at each of
19 these sub-parts?

20 MR. BISHOP: Yes.

21 MR. WILSON: Any follow-up on that first
22 item?

23 MR. EGAN: I guess the follow-up on that
24 would be is there a reason why it couldn't go in the
25 rule? I understand why it could go in the

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1 considerations, but why couldn't it go in the rule?

2 MR. WILSON: As I said, we just felt it
3 wasn't necessary.

4 MR. MALSCH: It doesn't make any
5 difference to me.

6 MR. WILSON: Item B. Definitions of
7 tier one material and tier two material exclude
8 introduction statements that "compliance with the
9 more detailed tier two material provides a
10 sufficient method, but not the only acceptable
11 method for complying with the more general
12 provisions in tier one."

13 It also excluded the statement that
14 compliance with tier two is sufficient but not
15 necessarily the only method for complying with the
16 ITAAC.

17 Those statements were not included also
18 in the rule because we felt it was not necessary.
19 It's clear that tier two is approved and that
20 there's a change process with tier two. I believe
21 those statements are in the statements of
22 consideration though.

23 MR. MALSCH: One thing we have to
24 careful. If you say just on a first order of
25 analysis, if you say that tier two is sufficient but

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1 not necessary, then there is an implication it's
2 inconsistent with another part of the rule which
3 says if you reference tier one, you have to
4 reference tier two.

5 The reason why it's sufficient -- the
6 reason why that it is sufficient but not necessary
7 is by virtue of the change provision. Just in the
8 abstract, if we said sufficient but not necessary,
9 someone could reference tier one and not even
10 reference tier two. So we didn't want to render the
11 whole change process inapplicable by that language
12 standing by itself.

13 I'm not sure it makes any difference in
14 terms of view of all structure of the rule.

15 MR. EGAN: I guess I would come at it
16 from a slightly different angle. I think the intent
17 as I recall it by the industry in proposing this
18 language in the DCD introduction was to address a
19 situation that might come up where you were in a
20 litigable situation and somebody was drawing road
21 maps between tier two and tier one, and you had
22 changed tier two. That was used as a basis for
23 arguing non-compliance with an ITAAC, for example.

24 So I think the intent was more to say
25 that tier two, if you follow it in total, it

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1 provides a sufficient means of showing that you have
2 met an ITAAC or in a design description in tier one.
3 But it is not necessarily the only means. I don't
4 think the intent was to say it's not necessary, that
5 it's not necessarily the only means for showing
6 this.

7 Maybe there is a more artful way of
8 wording it, but I think that intent was an important
9 feature of the DCD introduction that I think is
10 worth preserving as a substantive provision.

11 MR. MALSCH: We can look at whether
12 there's a more precise way of putting it together.
13 But as I say, at least my concern was when I looked
14 at it was it seemed to be inconsistent with the
15 concept that you had to reference both tiers.

16 MR. FRANTZ: To follow up on Mr. Egan's
17 comment, our concern I think was exacerbated by the
18 fact that the rule now says that the tier two trail
19 supports tier one. We don't want that to be
20 misconstrued as somehow incorporating by reference
21 tier two material into the ITAAC. That's not our
22 intent.

23 I think that maybe an easy way to cure
24 your concern, Marty, and that stated very clear that
25 an applicant has to reference both tiers. I don't

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1 think anybody disagrees with that.

2 MR. MALSCH: And the rule says that.

3 MR. FRANTZ: Yes.

4 MR. MALSCH: We can look at this again
5 and see whether with some different twists on the
6 language we can improve it.

7 MR. WILSON: Any further on that item?

8 Item C, the definition of tier two
9 material excludes a statement from the DCD
10 introductions that "after issuance of a construction
11 permit or license, the COL license information items
12 have no further effect to that licensee. Instead,
13 the corresponding provisions in the plant-specific
14 SAR are applicable. Why?"

15 I think that we changed the write-up on
16 COL license information, pointing out that this is
17 information requirement. Those requirements you'd
18 have to address in achieving your combined license.
19 That in effect takes care of it. That additional
20 statement wasn't necessary.

21 Any follow-up on that?

22 MR. FRANTZ: I guess I'm not quite clear
23 what you mean. If you look back at our DCD
24 introduction, it says something to the effect that
25 the COL applicant may demonstrate that there's no

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1 need to provide information corresponding to the COL
2 action item, provided that he justify not doing so.

3 That language has been deleted now from
4 the rule itself. That deletion could then be
5 construed as requiring the COL applicant to submit
6 all the information despite the agreement reached to
7 the contrary last year.

8 MR. WILSON: These, as we stated, are
9 information requirements just like other information
10 requirements in either part 52 or part 50. In
11 either of those situations you can do just what you
12 say. In addressing that information requirement you
13 could say that I provided this or I don't need to
14 provide this because. It does not change that
15 situation. That has always been the case.

16 MR. FRANTZ: If that is the case, do you
17 have any objection then to adding this language that
18 we agreed on previously back into the rule?

19 MR. WILSON: As I said, we didn't feel
20 that was necessary to have that as rule language.

21 MR. MIZUNO: This is Mr. Mizuno. I
22 would say that the second part of the phrase,
23 instead the corresponding provisions in the plant-
24 specifics are applicable. I have a problem with
25 that because it didn't necessarily follow in

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1 parallel the first part of the phrase.

2 The construction, the COL license
3 information items represent the staff's I guess want
4 to call it reminders as to what kinds of subject
5 matters need to be addressed in some fashion or
6 another.

7 But you would not necessarily find
8 things in the plant-specific SAR that would address
9 those things. For example, if the licensee provided
10 a basis for saying that item does not need to be
11 addressed, you would not see anything in this SAR
12 presumably, because it simply does not have to be
13 included in the SAR.

14 I mean that was the whole -- so the
15 parallels between the first part of that phrase and
16 the second part of the phrase doesn't exist. That's
17 why the second part of the phrase was not felt to be
18 useable. The first part of the phrase we felt
19 wasn't necessary given that we put a clarifying
20 statement in the SOC which was consistent with the
21 intent of the industry.

22 MR. BISHOP: This is Bob Bishop. My
23 concern is that you've got a license and the way
24 this would seem to work is even if it's not
25 applicable, your license may cause you to violate

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1 this rule provision.

2 The rule is the rule. The rule still
3 exists. Even if it is not pertinent to your design
4 and the staff has no concern about that, you have
5 still got a rule provision here that there's no way
6 to escape compliance with, or being in non-
7 compliance even though the NRC has approved non-
8 compliance.

9 MR. WILSON: I didn't follow that.
10 These are requirements for an applicant to submit
11 information to combined license stage.

12 MR. BISHOP: Right. Or to justify that
13 it's not pertinent. So they justify it's non-
14 pertinent. You have still got on the books a design
15 certification rule that they are required to comply
16 with, that the staff and the applicant both agree
17 it's not pertinent.

18 MR. MIZUNO: No, but by submitting the
19 information, they have complied with the rule. The
20 rule, that provision on COL license information is
21 that they submit information that adequately
22 addresses the subject matter. It's not a positive
23 or substantive requirement. We all agree on that.

24 So if we agree that they are not
25 substantive requirements, i.e. you must have

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1 hardware, you must have procedures, you must have a
2 personnel, whatever the case may be, a substantive
3 requirement there, but rather simply tell us about a
4 particular subject and why it is either not
5 applicable or if it is, how does it fit in with the
6 requirements of the rule or of our existing
7 regulations.

8 Presumably, that provision, that
9 specific provision, combined license information
10 item provision, has been satisfied by the licensee
11 submitting acceptable information.

12 MR. WILSON: Right. And the definition
13 for combined license action item points out what Mr.
14 Mizuno just said about not being a substantive
15 requirement, in the context in which I think Mr.
16 Bishop was asking the question.

17 MR. BISHOP: I mean I like the result.
18 I am only troubled by the metaphysics of whether we
19 can get there through this approach.

20 MR. WILSON: Metaphysics is beyond my
21 degree. Anything further on this item?

22 Item D. The definition of tier two
23 material excludes a statement that references to the
24 SSAR. I'm sorry, it's the Standard Safety Analysis
25 Report. "Shall not be construed as incorporating

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1 these sections or the information therein in tier
2 two."

3 I believe that was resolved with
4 appropriate discussion in the design control
5 document regarding those cross references. That's
6 why we felt that wasn't needed in the rule.

7 MR. FRANTZ: I'm somewhat concerned.
8 The language is in the DCD introduction in which you
9 have said previously has no effects. We need to
10 have language in the rule to give it effect.

11 MR. EGAN: I think in general on these
12 DCD intro provisions the request we would make is
13 that if there's no legal reason why they can't be in
14 the rule and they are either stated in the DCD intro
15 or in the statement of considerations, these
16 provisions listed here are ones that industry feels
17 would be helpful to have in the rule unless there's
18 a reason why they shouldn't be.

19 MR. MIZUNO: Well, I guess there are two
20 problems. One is that we take the position that
21 there are some sections that are incorporating and
22 others that aren't, which is in fact the case.
23 Putting in this statement sort of raises a red flag
24 in one sense of saying do we have sufficient clarity
25 as to what the requirements are or are not.

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1 I thought that we had language elsewhere
2 in section 9(b)(3) which talked about requirements
3 being in context treated as part of the DCD, which
4 was I thought more carefully constrained to raise
5 that point.

6 MR. EGAN: That is a separate point
7 though. I think the only point this is making is
8 that just a simple reference to the SSAR doesn't
9 suck that section up into the DCD. This is not
10 dealing with is it a requirement or not. This is
11 simply the question of is it bringing it up into --

12 MR. MIZUNO: But the DCD is a
13 requirement. So if it's in the DCD, it's a
14 requirement. If it's not in the DCD or it's not
15 part of otherwise secondary reference, I mean it's
16 incorporated by reference or it's not. That's the
17 point.

18 MR. MALSCH: I think my problem with
19 this language was that on its face, it was seemingly
20 inconsistent with the agreed on concept that there
21 were some references which the context indicated
22 were both requirements and had finality. Standing
23 on its face, it seemed to be inconsistent with that.
24 So rather than re-word it, we just dropped it.

25 MR. FRANTZ: We put references to the

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1 SSAR in our DCD only on the condition that those
2 references would not be construed as incorporating
3 that material by reference, not making that material
4 in the SSAR a requirement.

5 If the staff won't accept this, we would
6 like to go back and amend the DCD to delete those
7 references so they won't be construed as
8 requirements.

9 MR. MALSCH: Well, the option would be
10 to indicate more consistently with the language of
11 the rule that references shall not be construed as
12 incorporating the sections unless the context
13 indicates otherwise. That these are intended as
14 requirements.

15 MR. FRANTZ: The problem is you can't
16 tell from the DCD right now by itself without this
17 kind of provision whether the reference to the SSAR
18 is intended to be a requirement or not.

19 MR. EGAN: Yes. The SSAR references are
20 really a special case of secondary references,
21 because they arose really from a formatting problem
22 in the desire of the staff to have a DCD that would
23 very closely parallel the format of the SSAR.

24 MR. MALSCH: Oh I see. All right.

25 MR. WILSON: Right, and getting back to

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1 what I was saying. I recall we put words in those
2 sections, so there are cross references to the SSAR
3 to clarify that point.

4 MR. FRANTZ: Excuse me. Those
5 references though do not say that they are not
6 requirements. The only time that I believe it
7 appears is in the DCD introduction, which now
8 apparently has no effect.

9 MR. BOYCE: Tom Boyce again of the
10 staff. Steve, I am trying to understand the
11 question. I am coming in a little bit late, but the
12 specific wording in the DCD as I recall says any
13 time you had a reference to the SSAR it says not
14 part of DCD. Then in parenthesis, refer to SSAR.
15 So it clearly states in the DCD that it is not part
16 of the DCD unless it was intentionally referred to,
17 and then it was go see SSAR section umpty-switch.

18 So we were very careful in the
19 development of the DCD to avoid this problem. That
20 is my understanding. Is there a concern with that
21 approach now?

22 MR. FRANTZ: It is my understanding that
23 none of the references in the DCD back to the SSAR
24 were intended to incorporate that material by
25 reference.

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1 MR. BOYCE: Well, I won't say none,
2 because it's an absolute. But we were very careful
3 as we went along to say not part of DCD, refer to
4 SSAR for those areas where we intentionally did not
5 incorporate it.

6 There may have been an intentional
7 incorporation. At least in proprietary, I know
8 there was an intentional reference to that area.

9 MR. WILSON: I remember like Tom does.
10 But regardless, I think the way to resolve this is
11 both of the applicants are going to have to go back
12 and re-look at their DCD to be sure it conforms to
13 the final rule anyway. In the process of doing
14 that, we can look at those references back to the
15 SSAR and be sure that they are clear.

16 MR. FRANTZ: Or delete them?

17 MR. WILSON: Whatever is the appropriate
18 thing to do. We will have to look at them on a case
19 by case basis.

20 Any further on that item? Item E,
21 staff's rule language has different substantive
22 wordings for the treatment of proprietary and
23 safeguards information than that contained in the
24 DCD introductions. Why?

25 We, as a result of a number of comments

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1 on proprietary and safeguards, had changed the
2 discussion on finality of those provisions. So
3 there are a lot of differences. I don't know if
4 Marty or Geary, did you want to amplify on that?

5 MR. MALSCH: Not really. Unless you
6 have some specific question.

7 MR. ROWDEN: I think we have to re-
8 examine this. There is reason for changing the
9 earlier language, because in the earlier version,
10 proprietary and safeguards information did not have
11 finality. They were simply operating a COL
12 applicant requirements.

13 Now they have finality and you don't
14 have or equivalent. I mean you have got to
15 incorporate the proprietary and safeguards. I think
16 that's the reason for the change unless they -- and
17 I think that change follows from the substantive
18 determination.

19 MR. MALSCH: If some suggested
20 improvements in the language, that's fine. That was
21 what was driving the basic change. We had to go
22 back and revisit all the sections on that.

23 MR. WILSON: Anything further?

24 Item F, the definition of tier one
25 material excludes a provision that design activities

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1 outside the scope of the standard design may be
2 performed using site-specific design parameters.
3 Why?

4 I am going to ask for help here. I
5 don't recall this one.

6 Do you remember, Geary?

7 MR. MIZUNO: My recollection was simply
8 that it was not necessary. That we didn't want to
9 over-extend the apparent reach of the design
10 certification to things which were beyond its scope.

11 If it's an outside of design scope
12 matter, I mean truly outside the scope. I mean if
13 we don't have a basis, some technical basis for
14 linking the requirement back to the nature of the
15 design, then we don't need to address it, and we
16 shouldn't be addressing it in the design
17 certification.

18 MR. WILSON: Any follow-up on that?

19 Item G, the staff's rule language on
20 ITAAC excludes a provision from DCD introductions
21 that "after NRC has issued its finding in accordance
22 with 10 CFR 52.103(g), that ITAAC do not by virtue
23 of their inclusion in the DCD constitute
24 requirements for the COL holder or for renewals of
25 the COL. Why?"

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1 MR. MIZUNO: In answer to that -- this
2 is Mr. Mizuno. The answer to that is that that
3 language is in fact included with some change in
4 section 9(b)(3). In fact the change that was made
5 was that we dropped the phrase by virtue of their
6 inclusion in the DCD. So it just simply says the
7 ITAAC do not constitute requirements for the COL
8 holder or for renewals of the COL.

9 MR. EGAN: Does it say renewals?

10 MR. MIZUNO: I have to check again, but
11 I -- it's in 93.

12 MR. MALSCH: Yes. It does.

13 MR. WILSON: While we're talking about
14 it, let's just point out that we created a new
15 section in the final rule to deal with ITAAC.

16 Any further questions?

17 MR. SIMARD: I'm sorry, just a point of
18 clarification. I thought that the original words
19 said that these, the ITAAC do not constitute
20 requirements for the COL holder. The words that I
21 now see in 9(b)(3) are that they do not constitute
22 regulatory requirements either for subsequent plant
23 modifications to an operation.

24 So there is a difference in wording
25 between 93 and the way they were characterized in

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1 the DCD intro.

2 MR. MIZUNO: I'm sorry. The first
3 sentence of 93 says after the Commission has made
4 the finding required by 10 CFR 52.103(g), the ITAAC
5 do not constitute regulatory requirements either for
6 subsequent plant modifications during operation or
7 for renewal of the combined license.

8 The subsequent sentence I think was
9 consistent with what both the industry and the staff
10 and OGC discussed in terms of what was the effect or
11 lack of effect of the ITAAC. We indicated that it
12 was clear however that any subsequent modification
13 must comply with tier one or tier two design
14 descriptions in the plant-specific DCD unless the
15 licensee has complied with the change requirements.
16 I thought that was a self-evident phrase, but we
17 thought we would put it in.

18 It certainly doesn't effect -- that
19 second phrase doesn't effect or limit the fact that
20 we've said ITAAC as a general matter do not
21 constitute requirements on the COL holder.

22 MR. SIMARD: Okay. Thank you.

23 MR. BELL: Geary, this is Russell Bell.
24 I think the concern was that the additional phrase
25 relating to requirements of the COL holder on

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1 subsequent plant modifications is more limiting than
2 the original words agreed on.

3 It seems to imply there may be other
4 things like enforcement or license amendments where
5 the ITAAC may be considered requirements. Whereas
6 you are only saying that they wouldn't be
7 requirements relative to subsequent plant
8 modifications.

9 MR. MIZUNO: I guess I don't see that.
10 I mean the first sentence is a statement with
11 respect to the applicability of ITAAC. The second
12 sentence really doesn't address the ITAAC directly.
13 I mean at all. It really deals with the subsequent
14 point though that the staff wanted to make clear,
15 which was that however subsequent modifications have
16 to comply with tier one and tier two design
17 descriptions.

18 The ITAAC are not design descriptions,
19 as I understand them. Now if somehow you think that
20 that may be the case and so we have a concern there,
21 then we would be open to some other, you know, some
22 language modifications. But it was worded so that
23 we would -- we were intending to address a
24 completely different matter in the second sentence.

25 MR. BELL: We'll go off and talk about

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1 it.

2 MR. BRINKMAN: I'm just following up on
3 Mr. Bell's point. I think the concern that we have
4 that your language doesn't seem to address as a
5 compliance issue where after the ITAAC have been
6 satisfied it is found perhaps that subsequent
7 operation that the plant no longer meets that
8 specific requirement regardless of the fact that it
9 didn't have a design modification, that the ITAAC
10 could be used as an enforcement lever there, and
11 clearly that was never intended.

12 MR. MIZUNO: I guess I'll just say that
13 in the context of our previous discussion where we
14 came up with this language, I don't think we
15 actually addressed that matter of ITAAC, have
16 subsequently be found not to have been met.

17 MR. BRINKMAN: That is our concern
18 because it was discussed on many many occasions
19 during technical reviews. That is why some of the
20 language that is in the ITAAC, acceptance criteria
21 was placed there, because it would only apply prior
22 to fuel load and not subsequently.

23 MR. MIZUNO: I think that would be a
24 fertile area for comment in writing.

25 MR. EGAN: And one of the specific ones

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1 following up on Mr. Brinkman's point, are the
2 numerous instances where age-related variation in
3 the ITAAC was expressly considered in formulating
4 the ITAAC. It was assumed that in some cases, when
5 you turned the plant on on day one, you have a value
6 that is appropriate and that would satisfy the
7 ITAAC at that point in time. But that two years
8 later or five years later, it would be equally
9 appropriate for that value not to satisfy the ITAAC.
10 Those specific instances are where in technical
11 dialogue with the staff, we were under the
12 understanding that the ITAAC would not have any
13 validity after that.

14 MR. MIZUNO: I guess, I mean those are
15 all fine points. I would just come back and say
16 your comment was why didn't we use the DCD language
17 that was agreed to earlier. I would just simply say
18 that the issues that you are raising are certainly
19 not resolved by your own language. So had we
20 adopted your language in total, it wouldn't have
21 addressed these points.

22 So I mean we like to hear these
23 comments, but it wasn't raised in -- it would not
24 have been addressed by your language. I don't think
25 it was picked up in the attachment B to NEI's

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1 comments. I mean I'm almost sure we would have
2 addressed it had it been there. I can't believe we
3 would have missed a major topic like that.

4 MR. BRINKMAN: I think I am missing your
5 point, because it seems to me that if we state that
6 the ITAAC following the finding in 52.103(g) do not
7 constitute requirements for the COL holder, that
8 pretty much covers all the ground we are talking
9 about here.

10 In other words, ITAAC are just archival
11 in nature and influence after this finding is made
12 by the NRC.

13 MR. WILSON: Any further?

14 Before we move off the subject of DCD
15 introduction, I'd like to bring up a point. As we
16 stated, the Commission and SECY 96-077, the
17 applicants are going to have to revise the
18 introduction to conform with the final rule. I
19 think this would be a good opportunity while we're
20 waiting for the Commission to issue their SRM to
21 start working on that. Staff is willing to review a
22 draft leading up to that process.

23 Perhaps we should even consider the
24 whole format of the introduction. When this
25 originally came up, as I recall, the applicants said

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1 that they wanted to have discussion of how the rule
2 works in the DCD so that some prospective utility
3 person wouldn't have to search out the rule and the
4 statements of consideration. That has lead us down
5 to this road.

6 The NRC's concern was that introduction
7 shouldn't either conflict with the rule or give
8 someone an interpretation that goes beyond what was
9 intended in the rule.

10 Maybe we should consider changing
11 formats somewhat, where instead of restating things
12 in the introduction, we just have a much shorter
13 introduction that has with it a printing of the rule
14 and the statements of consideration. So then it
15 would achieve that goal of being handy, but then
16 also we wouldn't run into these concerns about mis-
17 stating or conflicting with what is in the rule.

18 In summary, staff is ready at this time
19 to work with the applicants to review a draft
20 revision to the DCD introduction. So that once we
21 have the SRM, we're ready to finish the DCDs. We
22 can proceed in an expeditious manner.

23 MR. ROWDEN: The DCD introduction would
24 be part of the rule?

25 MR. WILSON: No. But it is my

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1 understanding that the applicants still ought to
2 have such a thing. So we need to be sure that it's
3 revised so it doesn't conflict with the rule. More
4 specifically, it conforms with the final rule.

5 MR. ROWDEN: It would just be a guidance
6 document or it would be a document which would be
7 part of the rule containing material which are
8 substantive requirements?

9 MR. WILSON: No. We have clearly stated
10 in the final rules that the introduction is not part
11 of the rule.

12 MR. ROWDEN: That's what I'm saying.
13 You are maintaining that position?

14 MR. WILSON: Right. There is no change
15 to that. I'm just saying that in addition to that
16 fact, we still need to revise the existing
17 introduction so that it doesn't conflict with the
18 final rule. In the process of doing that, we should
19 start working on that now.

20 MR. ROWDEN: You also suggested
21 expanding it.

22 MR. WILSON: Actually I am suggesting
23 condensing it. It's much less than what was
24 previously there with just -- and include the actual
25 rule in statements of consideration itself.

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1 MR. ROWDEN: What would you consider to
2 be the statement of consideration?

3 MR. WILSON: Everything with the
4 exception of the rule.

5 MR. ROWDEN: Ex-commented, our answers
6 are responses why? I mean that's part of this
7 statements of consideration. I am not quite sure
8 what the parameters --

9 MR. WILSON: If portions of it weren't
10 useful for the guidance of utility person using the
11 DCD, those things could be taken out. I think it
12 would be better to use actual SOC or rule language
13 than trying to re-state something to achieve that
14 objective.

15 MR. FRANTZ: Mr. Wilson, we I guess went
16 through an 11 month process where we went word by
17 word and agreed on everything in the DCD
18 introduction. Staff now seems to be saying we
19 should throw that out entirely.

20 I guess I am wondering why we went
21 through that process if the DCD introduction now is
22 just going to be discarded?

23 MR. WILSON: A, I did not say discarded.
24 B, as I said in the beginning, at the time we did
25 that, we didn't do it with the idea that it would

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1 either be rule language or SOC language. So in
2 response to the comments that we do that, we went
3 back and re-looked at it. Changes were made. So
4 now that DCD introduction is going to have to be
5 revised at a minimum to conform.

6 Now as I'm saying, in doing that, maybe
7 there is a better way to do it. All I am doing is
8 offering up another alternative.

9 MR. BISHOP: This is Bob Bishop.
10 Perhaps it's not worthy of further discussion. But
11 I guess I am confused about how the DCD, which has
12 no regulatory status, should now be revised to
13 reflect the regulations to which it doesn't apply?

14 MR. WILSON: If I answer that, do you
15 intend to retain the DCD introduction in the DCD?

16 MR. BISHOP: I don't' think that is our
17 choice. I understood that the NRC made the decision
18 that the DCD introduction has no validity, has no
19 regulatory status. The DCD does have regulatory
20 status.

21 MR. WILSON: Right. But that doesn't
22 mean the introduction couldn't exist, provided it
23 was revised to conform to the final rule.

24 As I say, the goal was to have something
25 as part of the DCD to help that person who was going

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1 to use it, have a handy place of getting guidance.

2 MR. BISHOP: That is what Steve just
3 described.

4 MR. WILSON: If the applicants still
5 want to do that, then we need to get that corrected.

6 MR. BISHOP: I think that is what Steve
7 just described, the process, we thought we had done
8 that. To be told now that no, what we had agreed
9 with staff earlier should be in the DCD introduction
10 is no longer acceptable. Now there has to be a
11 different approach in the DCD introduction which is
12 going to incorporate the rule, of which it is a
13 part.

14 MR. WILSON: I did not say it has to be
15 that way. I am saying that that is another
16 alternative you can consider.

17 The only thing that has to be done is if
18 you can retain the DCD introduction, it needs to be
19 revised to conform with the words in the final rule.

20 MR. BISHOP: I think we need time to
21 think about what --

22 MR. ROWDEN: I think we want to
23 understand what is being proposed.

24 MR. BISHOP: Yes.

25 MR. ROWDEN: I still don't understand

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1 it. The DCD introduction would not stay substantive
2 requirements, it would be an explanatory.

3 MR. WILSON: Right. That is what was in
4 the proposal and the final rule.

5 MR. ROWDEN: It would be explanatory.
6 But the explanation would be consistent with the
7 language of the rule. I understand that. It would
8 also be expanded to afford the sort of additional
9 guidance that would otherwise be contained in the
10 statement of consideration. Is my understanding
11 correct?

12 MR. WILSON: That doesn't have to be.
13 I'm just pointing out that rather than going through
14 the existing introduction and revise the words to be
15 sure it conforms with the rule, maybe a better way
16 or easier way to do it would be to just shorten it
17 greatly and just refer to the rule in the SOC and
18 just reprint them as part of that introduction.
19 Then you don't have these worries about conflicts.

20 MR. EGAN: I guess another way to look
21 at it is if all the substantive provisions of the
22 DCD introduction were incorporated into the rule,
23 you wouldn't need the DCD introduction. It doesn't
24 really add anything, and it does confuse people.

25 MR. WILSON: Well, now that was not the

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1 original intent as the applicants proposed it. They
2 wanted to have that information attached to the DCD.
3 If all we were going to do is rely on the rule on
4 the SOC, we wouldn't have started down that road in
5 the first place.

6 The statement was made to the NRC that
7 the utilities didn't want to have to look up the
8 rule in the SOC.

9 MR. FRANTZ: Maybe a little bit of
10 history is helpful, but the very concept of the DCD
11 introduction was raised by the staff itself,
12 guidance given to the vendors in August of 1993. At
13 that point, the staff said there shall be DCD
14 introduction, it shall include the following types
15 of information. It's part of the DCD.

16 The industry was certainly under the
17 impression that that would be part of the DCD as
18 incorporated by reference in the rule.

19 MR. WILSON: No. That is not correct.
20 We stated numerous times, and it's in the proposed
21 rule and the final rule, it was never written for
22 that purpose.

23 MR. FRANTZ: That was an after the fact
24 explanation, yes. I agree with that.

25 MR. WILSON: Okay. Any further on that?

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1 So, in summary we need to make a change
2 to that. We are ready to review a draft revision of
3 that at this time. I don't think we should wait
4 until after the SRM to start this particular task.
5 We know how to handle this.

6 If there's nothing more on the DCD
7 introduction, we turn to questions from NEI. Why
8 has paragraph 8(b)(3)(i) been modified? That
9 paragraph states the conditions under which the
10 Commission can impose new requirements on tier two.
11 In referring to the regulations applicable and in
12 effect at the time the certification was issued, it
13 now adds "as set forth in section 5 of this
14 appendix."

15 Is this phrase meant to include the
16 additional applicable regulations from section 5?
17 The answer is yes. 8(b)(3)(i) was modified just to
18 reword it for clarification, but in substance it is
19 the same as the wording in 52.63. In both
20 instances, the regulations applicable in effect
21 include the additional applicable regulations as
22 stated in both the proposed rule and the final rule.

23 Any follow-up? Next item. Please
24 explain how the NRC staff used rulemaking as an
25 option for implementing generic changes other than

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1 those permitted by 52.63(a)(1) e.g. generic changes
2 to tier two necessary for completing the detailed
3 design and constructing a plant.

4 Is the staff still open to modifying
5 part 52 to provide for a post design certification
6 change process as discussed at the December 5,
7 public meeting?

8 Our position on the post DC change
9 process is in the final rule. We have discussed the
10 problems with the concept as proposed by NEI. I
11 think we remember that the whole concept here in
12 design certification was to achieve resolution of
13 issues between the applicant and the staff. The
14 applicant has had its opportunity to specify the
15 design as it felt was necessary.

16 We are to resolve this in design
17 certification, then the concept would be as Marty
18 pointed out earlier about the special backfit
19 provisions, that those parties that were involved in
20 that resolution would have the standards to meet for
21 meeting generic changes.

22 So the rule sets that out. Either the
23 staff or a member of the public or the applicant
24 seeking to change the DCD in a generic manner would
25 have to go through the same process. So a simple

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1 answer to the question is no.

2 Further follow-on discussion on that
3 item? What does paragraph II.B.3 of the statements
4 of consideration mean when it states that the change
5 process for the plant-specific portions of the
6 combined license application will be similar to
7 those in section 8(b)(5) of the rule? Why won't the
8 change process be governed by section 50.59 and
9 50.90 for site specific information?

10 The answer is that that information, the
11 plant-specific portion of the combined license
12 application, the change process will also have to
13 consider the impact on the design control documents,
14 specifically tier one. So under no circumstances
15 could the change process be 50.59 because it wasn't
16 written to deal with the design certification rule.

17 MR. FRANTZ: I think we agree with that.
18 Just a clarification though. With respect to
19 changes in the site specific information that do not
20 affect tier one or tier two, we assume that would be
21 governed by 50.59 and 50.90. Is that correct?

22 MR. WILSON: Well, you are making it
23 sound like there's multiple. There is going to be a
24 special change process covering all that
25 information. It may be once again similar to 50.59,

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1 but it's going to have to reflect these things like
2 impact on the DCD. It won't be just a straight
3 forward reference to 50.59.

4 As for 59, I presume it would be the
5 same. That's the process for seeking a license
6 amendment. Anything further on that?

7 Section 6(b) limits finality in
8 enforcement proceedings to those enforcement
9 proceedings that "references appendix". Why
10 shouldn't finality extend to all enforcement
11 proceedings which deal with the DCD, whether or not
12 they reference the design certification?

13 MR. MALSCH: I'm not sure we have a
14 disagreement here. The concern was we wanted to
15 make sure that finality only applied to plants which
16 began their lifetime by referencing a certified
17 design, and not some other plans that just happened
18 to have a design similarity.

19 MR. FRANTZ: Maybe a slight
20 clarification language which would cure that.

21 MR. MALSCH: Okay.

22 MR. BELL: Russell Bell again. On
23 6(B)(1). When we read that, I have a little trouble
24 understanding exactly what was meant. It may be a
25 typographical error or even a syntax error. Can you

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1 just maybe put that in other words for us for now,
2 and consider whether it's clear or not.

3 MR. MIZUNO: There was an error in
4 grammar. It should say "and in context are intended
5 as requirements." It should be "all proprietary
6 documents referenced in and in context are intended
7 as requirements."

8 MR. MALSCH: I thought the "is" should
9 have been deleted. But it is a grammar blip.

10 MR. MIZUNO: Yes. But the point is, it
11 has to be both reference as well as in context, read
12 in context the intended as a requirement. This is
13 to get around the issue that we were struggling over
14 as to whether we were going to revise the words to
15 be clearer.

16 MR. ROWDEN: If you set off "in context"
17 with commas, it would be a little clearer. And in
18 context either are intended or intended as
19 requirements.

20 MR. MALSCH: Jerry tells me some tech
21 editor put that in there.

22 MR. WILSON: Anything further on that
23 item? New section 4. Question one.

24 Section 4 has been added to the rule.
25 This section proposes additional requirements and

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1 restrictions for applicants and licensees
2 referencing this role. Why are these combined
3 license requirements being proposed in a rule that
4 implements subpart B design certification.

5 Given that, at which point section 4
6 provision are in effect operational related
7 regulations, which would be contrary to proposal
8 outlined by the staff to the Commission on March 8,
9 and discussed with the industry in a public meeting
10 on March 25, in which the staff proposed to delay
11 the operation of related applicable regulations.

12 As I stated earlier, those proposals are
13 not binding at this point in time because no
14 agreements were reached. What we have done, and
15 I'll ask Geary to amplify, is we've put in those
16 requirements that would apply to an applicant or a
17 licensee in that section as opposed to in the
18 discussion where we have the applicable regulations
19 that apply to the design.

20 Do you want to amplify on that, Bob or
21 Geary?

22 MR. MIZUNO: No.

23 MR. WILSON: Any follow-up on that?

24 MR. ROWDEN: Question. Previously you
25 drew a rather sharp line between requirements

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1 applicable to design or requirements applicable to
2 operation. Why is that line at least blurred here,
3 if not eliminated?

4 MR. MIZUNO: It is somewhat blurred, but
5 I think I handled this in my earlier statement
6 because I knew that this lurked in the background.
7 I think the staff had represented to us that these
8 operational related applicable regulations were
9 things which were extricably bound up in the staff's
10 approval of the design. It could not approve the
11 specifics of the design certification absent some
12 knowledge as to how certain operational constraints
13 were going to be imposed upon a combined license
14 applicant I referenced at the time.

15 So this represents a case where there is
16 a technical connection between the operational
17 requirement and the design certification and its
18 approval.

19 MR. BISHOP: This is Bob Bishop. For
20 example, outage planning and control.

21 MR. MIZUNO: You'd have to talk to the
22 specific staff person about that.

23 MR. WILSON: That related to that other
24 question of applicable regulation, wording to the
25 same personnel wasn't able to get there this

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1 afternoon. But once again, it's a requirement.
2 Remember that some of these requirements deal with
3 both operational issues and design issues. It is
4 not easy to partition them.

5 But it's part of our approval of the
6 design was how these matters were going to be
7 handled. Now some of them deal with the future
8 applicant. That's why we put it in that section.

9 MR. SIMARD: May I ask a question about
10 the -- I understand the explanation and the
11 rationale that existed at the time that these were
12 proposed and it's additional applicable regulations.

13 But since then, there have been
14 developments such that all three of these areas are
15 addressed in other rulemakings. For example, the
16 ISI/IST requirements are addressed in 50.55(a). The
17 consideration of shutdown risk are being covered in
18 I guess is 50.67 the proposed number for the
19 shutdown rule.

20 Then finally, the concerns about ongoing
21 reliability assurance will be addressed in what the
22 Commission called a operational rulemaking that they
23 directed the staff to draft in their resolution of
24 the DRAP/ORAP issue.

25 So my question is, has the staff

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1 considered whether it is still necessary in the
2 design certification to impose these requirements,
3 given that there will already exist a regulatory
4 basis for the NRC staff to assure that these issues
5 are addressed?

6 MR. WILSON: Yes. We have considered
7 it. We need to be sure we don't know what the
8 outcome of those future actions is going to be, and
9 whether they are going to address these applications
10 or not. But we needed to have these requirements in
11 there. As we stated earlier, this is the basis of
12 our approval. So this is covering that. That
13 future requirement may or may not deal with this
14 particular design.

15 MR. MIZUNO: I guess I can speak to both
16 the IST area and the shutdown risk area. Especially
17 with respect to shutdown risk area, I believe that
18 you are well aware that there is an ongoing
19 controversy between the staff and the -- well at
20 least that part of the staff responsible for that
21 proposed rule and the industry.

22 In that context, it was felt that it
23 would not given that the staff responsible for
24 review of the design certifications had some
25 specific concept as to how a shutdown risk/low power

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1 risk would be handled in the context of approving
2 the design, that it was felt that it would be -- the
3 prudent thing to do would be to include the
4 requirements here, because no one could predict what
5 was going to happen in the shutdown risk rulemaking.

6 Now I will say that there is a
7 possibility that as that shutdown risk rule evolves,
8 there could possibly be a -- I mean as part of that
9 rule, we could make a conforming amendment possibly
10 to this design certification, assuming that it meets
11 the backfitting requirements that have been laid
12 upon this rule.

13 But clearly, I mean everyone understands
14 that there is relationship there. But the bottom
15 line was that the staff was not willing to -- was
16 not sure of the pace and content of a proposed rule.

17 MR. WILSON: We certainly didn't want to
18 wait for that to finish.

19 MR. MIZUNO: With respect to ISI/IST, I
20 can also say that there are -- we are moving to this
21 concept of risk-based ISI/IST. As you know, there
22 are these pilot programs that are occurring. But
23 once again, it is not all that clear where we're
24 going to go with that.

25 Both in the context of risk-based

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1 ISI/IST and more generally, the way that we are
2 doing 50.55(a) right now, it's sort of up in the
3 air. The staff is really looking at the whole basic
4 concept of 50.55 as currently implemented.

5 I do not know which way different parts
6 of the staff are ultimately going to resolve the
7 matter. So again, this is another area where
8 there's just -- there's enough uncertainties such
9 that the staff, the design certification staff felt
10 that you needed to have it tied down in this rule.

11 MR. SIMARD: Could I ask about that? If
12 it were not tied down in this rule, Geary, if this
13 section for example, did not contain these three
14 requirements, do I understand the reference in this
15 particular section to the Commission being able to
16 impose? The Commission reserves the right to impose
17 requirements for facility operation by rule
18 regulation order or license condition.

19 If these three requirements were not in
20 this appendix, do these words here not give the
21 Commission the right to ensure that these three
22 areas were covered by other means?

23 MR. MIZUNO: I think that that's a fair
24 statement, that you could rely upon the general
25 words that reserve the right for the Commission. I

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1 think that that's a -- that was something that was
2 discussed. We discussed it internally.

3 MR. WILSON: But you need to deal with
4 this intermediate period between now and whenever
5 that happens, if it happens or how it happens. As
6 we've said, in terms of resolving these issues and
7 the basis for approval, these are the requirements
8 we agreed upon with the applicants. That is why
9 they are there.

10

11 MR. MIZUNO: To some extent, putting
12 them in the certification rule in this manner as
13 opposed to leaving them open in one sense gives you
14 more certainty as to where the Commission is, what
15 the Commission thought it intended for this design
16 certification.

17 If you were to take them out, I think
18 that there would be less certainty with respect to
19 combined license as to what the Commission intended
20 with respect to shutdown risk and ISI/IST, et
21 cetera, et cetera. I mean to put those provisions
22 in there now, at least that actually ties up the
23 hands of the staff, the Commission.

24 MR. MALSCH: I would not say it ties the
25 hands of the staff, but it provides a basis for an

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1 argument that you all should be grandfathered.

2 MR. MIZUNO: Right. Yes.

3 MR. BISHOP: This is Bob Bishop.

4 Looking at the ISI/IST, doesn't it also provide a
5 difficulty in that the Commission at some future
6 point may determine that instead of a 10-year cycle,
7 it should be five years or it should be 20 years.
8 Yet if you are licensed under part 52, by god it
9 will be 10 years.

10 MR. SIMARD: Or let me expand on that.
11 There is a conflict that exists already in that
12 50.55(a) sites a certain addition of the ASME code.
13 In particular, we are talking about the ASME
14 operations and maintenance code. Currently the
15 techniques, the non-intrusive techniques available
16 to detect degradation and monitor performance,
17 characteristics of check valves, are defined in that
18 rule and in that citation of the code.

19 What this does now is it specifies a
20 different set of non-intrusive techniques. Namely,
21 those available 12 months prior to the date as
22 opposed to those specified in the code in effect on
23 the date.

24 So I only offer that as an amplification
25 of the point that Bob Bishop was raising. I

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1 wondered if the staff had considered the
2 ramifications of that.

3 MR. BOYCE: Tom Boyce of the staff. In
4 the case of 50.55(a), the approach we took, we
5 recognized the problem early. In tier one there's a
6 reference to ASME codes that are applicable with no
7 specific code or addition specified.

8 The applicable code and addition is
9 specified in tier two. It was recognized that the
10 standards would continue to evolve. The applicant
11 could choose to use the old standards. He could use
12 the 50.59 like process to arrive at the new
13 standards. That was documented in our FSER. I
14 think it's in chapter 5, section 5.4.

15 MR. WILSON: Anything further?

16 MR. BELL: This is Russell Bell again.
17 So it's the staff recommendation to the Commission
18 that in the face of uncertainties related to the
19 rulemakings you are talking about, you are looking
20 specifically at some of these issues, that the
21 recommendation is then in the face of those
22 uncertainties, move forward with applicable
23 regulations in these areas at this time.

24 MR. WILSON: Well, I would not say it
25 that way. I'd say that these are the requirements

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1 that we've agreed on. This is how we have resolved
2 these issues. As Geary said, that this is how you
3 would determine a predictable, stable regulatory
4 process.

5 I want to say that we're going to rely
6 on something that has happened and not in the
7 future.

8 MR. BELL: Is it a concern that a
9 license application may appear before these
10 rulemaking issues are sorted out?

11 MR. WILSON: No. As I said, it's to
12 resolve the issue now based on the agreements we
13 have.

14 MR. FRANTZ: The DCD though already has
15 provisions which address this, so the issue is
16 resolved through the DCD. But there's no reason to
17 have additional provisions in section 4 to achieve
18 finality or of issue resolution.

19 MR. WILSON: We have gone through that
20 before.

21 MR. MIZUNO: Wait a moment. These
22 things -- just to be clear though, vehicles for this
23 rule.

24 We were careful that the things that are
25 applicable to design certification, I think we have

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1 this ongoing question as to whether we need an
2 applicable regulation as it applied to the design
3 certification. But the things that we are talking
4 about now in section 4 are things which we say are
5 not applicable to the design certification
6 applicant, the vendor. They are things that ought
7 to be -- that an applicant for combined license
8 references this design certification.

9 So the reason for that is because like I
10 said, there's a technical link between the two. So
11 it's not that we --

12 MR. BELL: Finally, on March 8 and on
13 March 25, in particular, the staff presented a
14 coherent three-part proposal to resolve the
15 regulations issue, which included the deletion of
16 operationally related applicable regulations from
17 the rules. That part and the other two parts of
18 that proposal seem to be a useful step in reducing
19 licensing risk associated with our broader concerns
20 due to applicable regulations that we have expressed
21 often.

22 Since March 25, is there new information
23 or insights that have caused you to reconsider?
24 What new information or insights has caused you to
25 reconsider?

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1 MR. WILSON: You force me to repeat
2 myself for the third or fourth time. As I said, at
3 those meetings we set out to try and achieve a
4 resolution. As we stated in the SECY, the industry
5 was unwilling or unable to seek a resolution. We
6 are not bound by those proposals at that stage.
7 What we put in the rule is the way we feel is the
8 proper way to resolve these issue.

9 What took place in those meetings is not
10 relevant any more. In fact, I would say those
11 meetings were a waste of time.

12 Are you ready for question two?
13 Paragraph 4C of the proposed final rules also
14 states, the Commission reserves the right to impose
15 requirements for facility operation in the future,
16 and the statements of consideration applies that
17 such requirements may entail backfits to the DCD.
18 For example, in paragraph 3(d) of the SOC states the
19 Commission can impose new requirements on start-up
20 and power ascension testing, even though such
21 testing is addressed in the DCD. Aren't such
22 backfits inconsistent with the purpose of part 52
23 and expressed provisions of 52.63?

24 I don't think the characterization of
25 the backfit is appropriate. We were just pointing

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1 out in the paragraph 4C, let me read it. Facility
2 operation is not within the scope of this appendix,
3 and the Commission reserves the right to impose
4 requirements for facility operation on the holders
5 or licensees referenced in this appendix by rule,
6 regulation order or license condition.

7 As we stated in the SOC, that there may
8 be license conditions that we would apply that deal
9 with power ascension testing, but we are not in a
10 position now to state those, because we don't have
11 those details available at this time. That does not
12 mean that a change or a backfit to what is already
13 in tier one. It is more the details of how that
14 would be implemented and then staff developing the
15 appropriate license conditions at that time. So
16 it's kind of reserving making the point that those
17 are going to happen at that point in the future.

18 MR. FRANTZ: If I can just clarify that.
19 You are saying that 4C of the rule then can not be
20 used to impose backfits on the DCD?

21 MR. WILSON: I don't know if you want to
22 make that final of a statement.

23 MR. MALSCH: What was your statement
24 again?

25 MR. FRANTZ: That section 4C of the rule

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1 can not be used to impose backfits on the DCD.

2 MR. MALSCH: That is technically
3 correct, since the DCD doesn't include operations.
4 The dividing point between operation and design is
5 going to get murky in this particular case, but
6 conceptually there's a difference.

7 MR. FRANTZ: The reason we had a concern
8 is because 3D of the statement of consideration does
9 refer to start-up testing, power ascension testing,
10 which is I think fully dealt with within DCD itself.

11 MR. WILSON: That was the point I am
12 making, that to the extent it's dealt with, that
13 there is not enough in there to be able to write up
14 the license condition. It was understood that
15 there's going to be more provided at a later date.
16 That is what we are talking about. Not changing
17 what has already been approved.

18 MR. FRANTZ: Okay. I understand.

19 MR. WILSON: Tom, do you want to amplify
20 that point or have we covered that?

21 Any further questions on the new section
22 4 in the rule?

23 MR. SIMARD: May I ask a clarification?
24 In answering this question, you just quoted from a
25 section of this, section 4C that says facility

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1 operation is not within the scope of this appendix.
2 I don't know that we had completed the question
3 before that, because one of the reasons why we asked
4 why this section that imposes requirements on COL
5 holders and licensees was being added to the design
6 cert rule, one of the reasons for that question was
7 the language that you just cited. Namely, it says
8 facility operation is not within the scope of this
9 appendix.

10 I was curious if you -- how you
11 justified, if I could use that word, how you
12 justified having these operational requirements that
13 we were just discussing in this appendix, rather
14 than in say sub-part C of part 52 which deals with
15 the COL.

16 MR. WILSON: Well we're giving a rule
17 that tries to resolve the issues for this particular
18 design certification, not some generic change either
19 by a generic rule or a change to subpart C. As you
20 said, we're dealing with these requirements that we
21 feel are part of our basis for accepting this
22 design, with the understanding those requirements
23 would be met by someone referencing this design.

24 MR. BRINKMAN: This is Brinkman. I
25 would like to comment that that was exactly our

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1 understanding when we were going through the
2 technical specification as well. I will forewarn
3 you that you may see some of these arguments in our
4 comments during the specification.

5 MR. WILSON: Any further on that item?
6 Any other questions? I have covered the questions
7 that I have been provided. Are there any other
8 questions on the final rules in SECY 96-077?

9 Seeing none, we'll adjourn the meeting
10 and go off the record.

11 (Whereupon, at 3:50 p.m. the meeting was
12 adjourned.)

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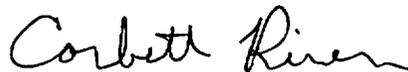
This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission in the matter of:

Name of Proceeding: PUB. WKSHP. ON DESIGN CERTIVICATION

Docket Number: N/A

Place of Proceeding: ROCKVILLE, MARYLAND

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



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^ QUESTIONS FOR MAY 2, 1996, WORKSHOP
ON DESIGN CERTIFICATION

Applicable Regulations

1. Contrary to the proposal discussed with the Commission on March 8 and in a March 25 public meeting with the industry, why does Section 8(c) allow imposition of backfits via plant specific order as well as via rulemaking?

2. The remaining Commission policy issues aside, we recognize that the NRC staff has made a number of modifications in the language of the proposed "applicable regulations." However, we have the following additional questions:

- Section 5(c)(2)(iii) is different from its previous wording. As currently worded, this section could be interpreted as requiring that motor operated valves be tested at the design basis differential pressure, even if such pressures cannot be achieved. We assume that such a result is not intended by the staff. Would the staff please clarify its intent with respect to this provision?
- Section 5(c)(6), which pertains to fire protection, creates an exception for the main steam tunnel for the ABWR. In contrast, the Commission's SRM dated June 26, 1990, on SECY 90-16 approved language for fire protection, which creates an exception for "unique design layout." Why didn't the staff use the language that was approved by the Commission?
- Section 5(c)(9) requires the containment to be sufficient to mitigate severe accidents "in view of their probability of occurrence and the uncertainties in severe accident progression and phenomenology." This quoted phrase is vague and subjective. What is this phrase intended to mean? Would the staff consider deleting the entire introductory paragraph for Section (c)(9), and retaining only the three numbered subsections?
- Section 5(c)(12) requires a conditional containment failure probability of 0.1. This provision does not account for the alternative provision allowed by the Commission in the SRM dated June 26, 1990 which accepted SECY 90-16. Why is Section 5(c)(12) different from the provision accepted by the Commission? For the ABWR, would the staff consider changing this provision to require the use of a Containment Overpressure Protection System?
- Section 5(c)(13)(iii) requires "Features that mitigate vulnerabilities resulting from other design features." This statement is rather open-ended. What does the staff mean by this statement?

Look at new vulnerabilities introduced by new design features

Technical Specifications

Why is the NRC now recommending that there be no finality for Chapter 16 of the DCD? Would the NRC be open to an alternative approach that would preserve the intended finality of this information and provide a single process for control of plant technical specifications?

Section 8 (b) (4)

If Section 8(b)(4) is read literally, it would appear to require a mandatory hearing on exemption requests by a licensee. We assume that such a result was not intended by the NRC, and that the NRC intended that exemptions requested by a licensee be treated similarly to requests for amendments by licensees under Part 50 – namely, that a hearing is held only upon receipt of an acceptable request for a hearing. Would the staff please clarify its position on this issue?

Change Process for Severe Accidents

(1) Why has the staff not changed Section 8 of the rules to reflect the view of NRC senior management that the substantial increase criterion should be applied to the whole of Chapter 19 of the DCDs, not selected subsections, as expressed in the Fall of 1994, and in the workshop in December 1995? (2) Why does the staff propose to treat the evaluations of beyond design basis evaluations in the body of Chapter 19 differently from the evaluations of severe accidents in Section 19E (ABWR) and 19.11 (System 80+)? (3) Why shouldn't the "substantial increase" criterion be applied to all beyond design basis information in Chapter 19?

On Finality Issues

(a) Finality / litigation status of changes made under the 50.59-like process

Explain more fully the finality/litigation status of 50.59-like changes made by:

- A COL applicant (i.e., the status of such changes in an ensuing COL proceeding). Specifically, under the contention process specified in Section 8(a)(5)(vi) what issues are considered to be litigable as "compliance" issues and what issues are excluded from litigation?
- A COL holder prior to commencement of operation (i.e., the status of such changes in an ensuing Section 103(a) proceeding). Specifically, what is the reason for departing from the pre-COL/post-COL differentiation regarding potential hearings on Tier 2 changes as clarified in a public meeting last summer and in the staff's July 13 meeting summary? What is the basis for not limiting Section 103(a) litigation of such changes to matters directly affecting the determination of acceptance criteria compliance? Is not the absence of such a limitation in conflict with Section 103(a)?

- A COL holder during construction or operation. Specifically, why should 50.59-like changes be subject to challenge in hearings on license amendments for Part 52 plants when they are not subject to challenge in hearings on license amendments for Part 50 plants?

(b) On Scope of Issue Finality

- 1: Why doesn't the Supplemental NOPR provide for issue finality in design certification renewal proceedings – with the exceptions specified in 10 CFR 52.59?
- 2: Why is finality for environmental issues in Section 8(b)(4) limited to cases where the site parameters are met, since the site parameters are safety issues not environmental issues?
- 3: What is the finality and backfit limitation status of facility-specific DCD exemptions and Tier 2 changes after approval by the NRC. Why are such approved changes not accorded protection under Section 52.63 against backfits? Such an approach would discourage applicants and licensees from making design improvements to their plants because the improvements would be subject to backfits under § 50.109. Would the NRC be open to an alternative approach that does not discourage applicants and licensees from making improvements?

ON ITAAC VERIFICATION

The Statement of Considerations says that "Quality assurance deficiencies for these systems would be assessed for their impact on the performance of the ITAAC, based on their safety significance to the system." What does the Staff mean by the phrase "based on their significance to the system"? In particular, we assume that the Staff does not intend that a safety-significant QA deficiency can be considered during the ITAAC process, even if the deficiency is not relevant and material to the ITAAC. Would the Staff please clarify its intent?

NTIS - Question for Geary Mizuno

On page 68 of Attachment 5, Section 3(a) of the proposed rule states that , "Copies of the generic DCD may be obtained from [Insert name and address of applicant or organization designated by the applicant]."

Both applicants have had difficulty getting resolution from NTIS on whether they can handle this on behalf of commercial companies. Mr. Mizuno, have you obtained an agreement from the NTIS? If so, what are the terms of the agreement? If not, what is the plan and schedule for closing this open item so that it does not become a delay in publishing the rules?

ON PART 50 USE OF THIS APPENDIX

Page 70, Section 4(d) of the rule states that "The Commission reserves the right to determine whether, and in what manner, this appendix may be referenced by an applicant for a construction permit or operating license under 10 CFR Part 50."

Parts 52.55(b) and 52.63(c) clearly provide for construction permit and operating license applicants to reference the design certification. Why has the staff brought into question whether the appendix may be referenced by an applicant for a construction permit or operating license under Part 50? Should not section 4(d) read simply, "The Commission reserves the right to determine in what manner this appendix may be referenced by an applicant for a construction permit or operating license under 10 CFR Part 50"?

On Incorporation of DCD Introductory Provisions

*Use J. Egan
alternative*

Why did the staff omit or modify these previously approved DCD Introduction provisions when formulating the final rules? For example, the staff did not incorporate the provisions dealing with references to the SSAR, with the fact that Tier 2 is a sufficient but not a necessary means for complying with Tier 1, and the status of site parameters for plant-specific designs. Also, the proposed final rule states that the COL action items are "informational requirements." In contrast, the DCD Introduction states that a COL applicant can justify why it is not necessary to supply the information in the COL action items.

On 8(b)(3)(i)

Why has paragraph 8(b)(3)(i) been modified? That paragraph states the conditions under which the Commission can impose new requirements on Tier 2. In referring to the regulations applicable and in effect at the time the certification was issued, it now adds "as set forth in Section 5 of this Appendix."

Is this phrase meant to include the additional "applicable regulations" from Section 5?

On the Post-DC change process

Please explain how the NRC staff views rulemaking as an option for implementing generic changes other than those permitted by Section 52.63 (a)(1), e.g., generic changes to Tier 2 necessary for completing the detailed design and constructing the plant. Is the staff still open to consideration later of a mechanism to provide for a post-design certification Tier 2 change process, as discussed at the December 5th public meeting?

On paragraph II.B.3 of the SOC

What does paragraph II.B.3 of the SOC mean when it states that the change process for the plant-specific portions of the COL application will be similar to those in Section 8(b)(5) of the rule? Why won't the change process be governed by Sections 50.59 and 50.90 for site-specific information?

On Section 6(b) of the rules

1. Section 6(b) limits finality in enforcement proceedings to those enforcement proceedings that "reference this appendix"? Why shouldn't finality extend to all enforcement proceedings which deal with the DCD, whether or not they reference the design certification.
2. We are puzzled by the language of rule provision 6(b)(2). Is there a typo or syntax error there? Please clarify the meaning of this provision.

On New Section 4

1. Section 4 has been added to the rule. This section proposes "additional requirements and restrictions" for applications and licenses referencing this rule. Why are these COL requirements being proposed in a rule that implements Subpart B (design certification), given that
 - The Section 4 provisions are, in effect, operational-related "applicable regulations," which would be contrary to the proposal outlined by the staff to the Commission on March 8 and discussed with the industry in a public meeting on March 25, in which the staff proposed to delete the operational-related "applicable regulations."
 - Operational-related requirements such as these fall under Subpart C of Part 52, which deals with combined licenses, and
 - Paragraph 4(c) of the proposed final rules state that, "Facility operation is not within the scope of this appendix..."
2. Paragraph 4(c) of the proposed final rules also states, "the Commission reserves the right to impose requirements for facility operation ... (in the future)," and the Statement of Considerations implies that such requirements may entail backfits to the DCD. For example, paragraph III.D of the SOC states that the Commission could impose new requirements on start-up and power ascension testing, even though such testing is addressed in the DCD. Aren't such backfits inconsistent with the purpose of Part 52 and the express provisions in § 52.63?