

1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION
3 ***
4 PUBLIC MEETING CONCERNING
5 PROPOSED CHANGES TO THE ALLEGATIONS PROGRAM
6 NECESSITATED BY THE REVISED REACTOR INSPECTION PROGRAM
7

8 USNRC
9 Two White Flint North
10 11545 Rockville Pike
11 Rockville, MD
12 Thursday, June 1, 2000

13 The above-entitled meeting commenced, pursuant to
14 notice, at 10:05 a.m.

15 PARTICIPANTS:

16 ED BAKER, NRC
17 ELLEN GINSBERG, NEI
18 MARK BURZYNSKI, TVA
19 DAVID LOCHBAUM, UCS
20 PAUL GUNTER, NIRS
21 BILLIE PIRNER GARDE, Clifford, Lyons & Garde
22 JACK CAREY, PSE&G
23 MIKE JOHNSON, NRC
24 CARL MOHRWINKEL, NRC

25

P R O C E E D I N G S

[10:05 a.m.]

1
2
3 MR. BAKER: Good morning. Can everybody hear me?
4 I want to welcome you to the public meeting to discuss the
5 options for implementing NRC's allegation program under the
6 Revised Reactor Oversight Process, and the public comments
7 that we received on that paper.

8 The meeting is being transcribed, and a copy of
9 the transcript will be available or placed in ADAMS. I
10 won't get into availability; that's an individual fire wall
11 issue, but if you're having problems, you can contact either
12 Carl or myself to get a copy.

13 The meeting is going to be conducted as a panel
14 discussion, and the attendees not at the table will be
15 afforded an opportunity to ask questions and make comments
16 as we go through the presentation, as it's discussed, or
17 following discussion by the panel members.

18 If you have a comment -- and I ask this of the
19 panel members as well -- please move to the microphone.
20 Fiona's going to have a microphone available. Please
21 provide your name and your affiliation so that we can
22 capture that, as well as your comment for the transcript.
23 And panel members, please do the same.

24 I'm going to have the participants at the table
25 introduce themselves, and then I'm going to have a few more

1 remarks, some background, and then we're going to move into
2 a discussion of the pros and cons of the options.

3 My name is Ed Baker. I'm the Agency Allegation
4 Advisor. I'm the author of the paper and responsible for
5 NRC's Allegation Program.

6 Dave?

7 MR. LOCHBAUM: David Lochbaum, Nuclear Safety
8 Engineer for the Union of Concerned Scientists.

9 MS. GARDE: Billie Garde, private attorney.

10 MR. CAREY: Jack Carey, Employee Concerns Manager
11 for PSE&G.

12 MR. MOHRWINKEL: Carl Mohrwinkel, Assistant Agency
13 Allegations Advisor to Ed here at the NRC.

14 MR. GUNTER: Paul Gunter, Nuclear Information and
15 Resource Service.

16 MR. JOHNSON: Michael Johnson, Chief of the
17 Performance Assessment Section, and the Inspection Program
18 Branch, and here to talk about the oversight process as it
19 relates.

20 MR. BURZYNSKI: Art Burzynski, Licensing Manager,
21 TVA.

22 MS. GINSBERG: Ellen Ginsberg, Deputy General
23 Counsel, Nuclear Energy Institute.

24 MR. BAKER: Just checking to make sure all the
25 microphones are picking up. The purpose of today's meeting

1 is to make sure the Staff understands the views of the
2 various commenters on the options, and to open the
3 discussion of those comments and options for the panel
4 members, to make sure that we consider everything that we
5 should in going back to the Commission.

6 The biggest point that the Staff is trying to gain
7 is to make sure we understand the reasons behind the
8 comments and those options.

9 In particular, we also have two options that were
10 not proposed by the Staff, one proposed by TVA and one
11 proposed by Ms. Garde, that we're going to add to the list
12 for discussion.

13 And those -- that will be a new discussion,
14 because it was not available in the paper. I apologize for
15 not getting the specific options out more in advance.

16 I want to make a few comments on the comments
17 themselves. It's interesting in reading the comments that
18 all of the parties perceive that the reason the Commission
19 wrote the paper and the reason the Staff went forward to the
20 paper with the Commission, was that we intended to
21 risk-assess the allegation program.

22 And that really wasn't the intent of the paper.
23 What happened was, as we were going forward with the Revised
24 Reactor Oversight Process, we realized that it was going to
25 impact the Allegation Program.

1 There are really two areas where that happens:
2 One is in identity protection, because there will be areas
3 where we don't normally conduct inspections now, where we
4 did in the past, because we have performance indicators and
5 that's what we're using.

6 For example, oversight of maintenance or
7 observation of maintenance is one of those areas.

8 So there was an issue of identity protection. The
9 other issue that is that the Staff raises issues, sees
10 things during inspections, and if they're covered by
11 performance indicators, we probably would not pursue those
12 because that's not part of the baseline inspection. We'd
13 wait to see what turns up in the performance indicator.

14 On the other hand, in the current allegation
15 program, if someone brings us the exact same issue as an
16 allegation, we would pursue it as a matter of public
17 responsiveness and responsiveness to the individual.

18 And so there was or could be an inconsistent
19 treatment, depending on the source of the issue. And we
20 felt we needed to bring this to the Commission's attention.

21 In looking at the options, we felt that the
22 current program had some pros and cons. The risk assessment
23 process had some pros and cons, and to be quite honest, we
24 wanted additional input in trying to establish the balance
25 point between public responsiveness or responsiveness to

1 allegers, and the efficiency and effectiveness of pursuing
2 those.

3 If you saw the Commission's comments on the paper,
4 they're on the web page. I'd like you to understand that
5 the Commission was equally concerned about that balance
6 point, and in my mind, was not leaning one way or the other
7 in terms of where to go with this.

8 That's basically the comments I wanted to make in
9 terms of the paper.

10 There are also a couple of comments on the current
11 allegation process. And just so everybody starts from the
12 same point, I wanted to make a couple observations about
13 that.

14 The first is on an issue of communication. Under
15 the current process, when we receive an allegation, we
16 provide a letter back to the individual within 30 days, that
17 reiterates our understanding of each concern, whether it's
18 one concern or 25 concerns.

19 We then give them an opportunity to come back and
20 tell us whether we've correctly interpreted those concerns.

21 At the end of the process, we send them a letter
22 which addresses the issues that we identified, unless they
23 corrected them, in which case we would address the issue as
24 they corrected it, and specifically tell them what we did
25 and what we found.

1 So, from a communications standpoint, in
2 addressing the issues, I think we do a pretty good job in
3 that area. There can always be improvement.

4 The other comment that was made was on timeliness.
5 Karen, if you could put up the colored graph for me?

6 What this shows is that in 1997, we weren't doing
7 very well. There were a lot of issues that lagged, although
8 -- or took a long time to resolve, although the average was
9 still within about 180 days.

10 The average in 1999 was about 117 days for all
11 technical issues. And this is from the point that we
12 receive it until we issue the closure letter, so that the
13 individual gets the answer, or, I should say, it's put in
14 the mail.

15 And what that shows is a significant improvement
16 in dealing with the complex issues, trying to address those
17 sooner. So I just wanted to make those two points, because
18 a couple of the commenters raised that, and I wanted to
19 clear up any perception that was out there in terms of those
20 two issues, communication and timeliness.

21 With that, let's move to the overview of the
22 comments, and then we'll move into the discussion.

23 Now, this is just a very simple overview of the
24 comments from the standpoint of who was endorsing which of
25 the options, and a brief discussion of the option.

1 Just to give you an idea of what we did receive,
2 there were a total of 19 comments submitted, just to give
3 you an idea.

4 Option 1, which was to continue the current
5 allegation program, following up each allegation as it was
6 received, was endorsed by UCS, Union of Concerned Scientists
7 and Public Citizen.

8 There were no supporting comments for Option 2,
9 and basically I don't intend to discuss that Option to day.

10 Option 3, which was to use the risk-significance
11 determination process to classify the risk-significance of
12 the technical allegations, and then NRC would do independent
13 evaluation of those that were classified as white, yellow,
14 or red, consistent with the inspection findings, how the
15 inspection findings are handled, how licensees -- Mike help
16 me out if I don't say this right -- how the NRC would pursue
17 issues within the performance matrix. How's that.

18 Green issues would be referred to the licensee,
19 and it lists all of the organizations that endorsed that,
20 mainly endorsing NEI comments, although several of the --
21 two of the law firms submitted more lengthy comments, but
22 basically supported those positions.

23 Option 4 is similar to Option 3, except that the
24 alleged would be able to request and NRC would conduct an
25 independent evaluation, even of green issues. And that was

1 endorsed by Entergy and two private citizens, one set of
2 comments from two private citizens.

3 TVA suggested an additional option, and that was
4 to consider the risk-significance of the issue, NRC's
5 confidence in the utility's corrective action system, as
6 assessed by the baseline inspection program, and whether the
7 alleged attempted to use the utility's program to resolve
8 the issue in deciding whether NRC should pursue it
9 independently or refer it to the licensee.

10 And by the statement below where I said if
11 conditions are met, what I interpreted that to mean was that
12 if the alleged had used the utility's program and was
13 dissatisfied, then that would tend to cause NRC to do an
14 independent evaluation.

15 Mark, is that what was intended?

16 MR. BURZYNSKI: Yes.

17 MR. BAKER: Thank you. Mark was the submitter of
18 those comments for TVA.

19 And then the last one is a more unique approach
20 submitted by Billie Garde, in which the NRC would have a
21 requirement, basically, that the licensee would assess the
22 safety conscious work environment and the criteria would be
23 a high quality alternative employee concerns program, zero
24 tolerance for retaliation based on training and appropriate
25 action, and a strong corrective action program. I'm

1 assuming that that would again be assessed through the
2 inspection process.

3 And if the licensee achieved a green rating in
4 each of these areas, NRC would refer technical issues to the
5 licensee. Basically, the presumption is that if those
6 things occurred, the licensee would have a strong program
7 for addressing issues and an atmosphere in which employees
8 were comfortable in bringing issues forward.

9 Is that a fair characterization?

10 MS. GINSBERG: That's a fair characterization. I
11 think that it should include an additional caveat that if
12 the employee came to the NRC with an allegation and said, I
13 can't -- even though there were all of these things in
14 place, that he or she offered demonstrable reasons about why
15 that is not an acceptable option, that the NRC would, of
16 course, take that.

17 For example, you could have all of those things in
18 place one day, and the next day, the licensee could hire a
19 manager with a different set of values and behaviors, and
20 that -- even though the rating was still green, that would
21 change the circumstances that would lead that employee to
22 have come to the NRC.

23 So, of course, that caveat would have to be there.

24 MR. BAKER: Okay, the next slide? When I looked
25 at these four areas of agreement and areas of disagreement,

1 basically I found that everyone was in agreement that NRC
2 should ensure communications with allegeders that are timely
3 and comprehensive.

4 Also, the NRC should continue to independently
5 review issues that are risk-significant, and inform the
6 allegeder of the results, and NRC should continue to
7 independently evaluate wrongdoing issues, including
8 discrimination and work environment issues.

9 Any comments on that?

10 [No response.]

11 MR. BAKER: No? And let me say very specifically
12 that this process would be limited to technical issues. We
13 are not intending to change the process for wrongdoing type
14 issues.

15 Also, we're only talking about at this point, the
16 reactor program, because the background work has been done
17 in that area to have the use of the significance
18 determination process.

19 Obviously, if the Commission went in this
20 direction, we would consider it for other types of
21 licensees, as that process was implemented, if the
22 Commission chooses to go in that direction.

23 The areas of disagreement were whether it was
24 appropriate to establish a risk threshold, and principally,
25 we're really talking about the areas of low risk

1 significance, because in the other areas, we would be doing
2 an independent review.

3 Another is the impact of NRC not conducting
4 independent evaluations of issues, with little or not risk
5 significance on the willingness of individuals to raise
6 issues in the future.

7 And then also the public's perception of not
8 conducting independent evaluations. So those were what I
9 perceived as the areas of disagreement.

10 Any comments from any of the panel members?

11 [No response.]

12 MR. BAKER: Okay. Before going actually to the
13 pros and cons, I did want to pose a couple of questions for
14 thought as we go through these:

15 And one is that licensee corrective action
16 programs and employee concern programs don't have risk
17 thresholds. Basically, if it's covered by company
18 procedures and processes, it can go in the corrective action
19 program, or the ECP program.

20 I personally, being the person responsible for the
21 Allegation Program, don't see a lot of difference between
22 what they deal with and what we deal with in terms of
23 issues.

24 And so I'm not quite sure why NRC's process should
25 have a threshold when licensees are trying to encourage free

1 and open communication through their programs by not having
2 thresholds, so that's an avenue I'd like to explore.

3 I think that them is kind of reiterated in the
4 next three bullets, so I won't go through each of those.
5 What I'd like to do before we go to pros and cons is just
6 explore this issue a little bit, and I'd like to start with
7 Jack Carey, since, Jack, you run an ECP program, to see what
8 your thoughts are.

9 MR. CAREY: I do have some thoughts about this,
10 that the threshold, as I reviewed my data prior to this
11 meeting, I went back for five years, that we've had a
12 program that -- we've dealt with 700 items in the five
13 years, and in our first year, as we got ourselves
14 established, everything went in the program as an employee
15 concern, call them quality safety concerns.

16 And we started to look back and see that a lot of
17 the things we were doing could be resolved at a lower level
18 without tagging it as a, quote, concern.

19 And we saw that folks, individuals, had -- in some
20 cases did not want to be associated with a concern or an
21 allegation. They had an issue to be resolved, so we began
22 to deal with issues with what we called interventions, which
23 is the lowest level to get an individual's issue resolved
24 that makes them satisfied, and then we follow up with these
25 interventions.

1 And we have evolved to the point now that in the
2 last 12 months, 75 percent of what we handle are
3 interventions. And that typically includes just discussing
4 something with an individual, hearing their emotions,
5 letting them have a vent path to relieve their situation,
6 and helping them work something out through their management
7 chain, typically.

8 And we maintain the zero -- basically not
9 threshold. We'll talk to anyone that comes in that has a
10 problem. And it gets back to the communications when we
11 take the opportunity to explain the corrective action
12 program or the other normal management alternatives that an
13 individual has or possibly and frequently just coaching an
14 individual on how to deal with the boss and remove emotion
15 from a technical issue, let's say.

16 So, our results of having, you know, zero
17 threshold, is that 75 percent of what we deal with now is
18 just the time it takes to spend maybe a couple hours, maybe
19 an entire afternoon of communicating to the individual, and
20 they want to go back to resolve their own issue, and with
21 some coaching, they typically do.

22 MR. BAKER: Let me go more specifically to the
23 point of do you see a difference between the issues that you
24 deal with and even those that we refer to you, and do you
25 see where there should -- there's a rationale for developing

1 a different approach for handling it between what the
2 utility does and what the NRC should be doing?

3 MR. CAREY: I think that whatever process or
4 changes to the process that you come up with, the important
5 part, as I said, is the communication.

6 Is the communication -- and I think the issues
7 ultimately need to be addressed, but the -- again, dealing
8 with the concerned individual, they'll generally take the
9 option to go back and resolve the issue themselves.

10 So, I think that some of these suggestions that
11 the utility be given the option to deal with them in the
12 corrective action program is preferable.

13 And they're preferable to us, and, in fact, we
14 make sure that issues that are technical issues are
15 addressed through our corrective action program for Appendix
16 B, and your response needs to do the same, obviously.

17 But ultimately the issues need to be addressed to
18 the individual's satisfaction to some extent.

19 So I'm not sure if I'm talking around and
20 answering your question or not. Maybe I am, but I think the
21 issues that an individual brings forward have to be
22 addressed.

23 MR. BAKER: Okay.

24 MS. GINSBERG: Ed, you indicated in your setup of
25 the question that you had some concern about whether or not

1 a threshold would have an impact on the communications.

2

3 I think we need to separate the issues, because
4 having a threshold with respect to how you deal with an
5 issue should not have an impact on encouraging people to
6 bring these issues forward.

7 I don't necessarily think the two are inextricably
8 intertwined.

9 The other thing is that you indicated that
10 licensee corrective action programs don't seem to have
11 thresholds, and I think the fact of the matter is that the
12 response, the priority assigned to a given item in the
13 corrective action program is based on its relative risk.

14 So, I think you have to be careful about assuming
15 that there is no risk relationship in the CAP.

16 MR. CAREY: Well, the corrective action program
17 does have a screening process. And they differ from utility
18 to utility.

19 But I think most corrective action programs at
20 this point take all issues and then go through the screening
21 process.

22 So, for example, at our utility, when an
23 individual enters a notification, it's in the system, never
24 to be erased. It has a number and it lives forever.

25 The initial screening may say that's not a problem

1 and we understand what that issue is about, and here's a
2 simple solution or no solution required, but the individual
3 knows that there is a record of that. It's on the books,
4 and it's been screened for operability and so forth.

5 MR. BURZYNSKI: I agree. We don't have a
6 threshold. We accept everything into the program, and then
7 determine what we're going to do with it, based on the
8 issues.

9 Communications is always an important part,
10 independent of any kind of threshold in terms of
11 significance.

12 I don't think that -- you know, I maybe
13 misunderstood your setup for this question, based on your
14 opening remarks, in that I didn't think any of us were
15 talking about having a threshold where you cut things off
16 and didn't deal with them, or using the threshold to
17 determine how you deal with them, collectively.

18 And so I think I misunderstood your point.

19 MR. BAKER: Maybe I didn't express it well enough.
20 The concern is that, particularly if we're using the
21 significance determination process, and you're basically
22 telling someone, we've gone through the process, and your
23 issue has little or no significance, and, therefore, the NRC
24 is not going to do any independent followup.

25 It -- my gut reaction to that is that will have an

1 impact on people's willingness to bring issues forward. And
2 so what I was differentiating with the licensees' process
3 is, there is always some independent followup, some followup
4 by the licensee.

5 MR. BURZYNSKI: Oh, okay.

6 MR. BAKER: That's the difference I was trying to
7 express, not very well, apparently, between the two.

8 Dave?

9 MR. LOCHBAUM: I think that if we're only talking
10 about the resolution of technical issues, then the NRC could
11 have the same process or could have a different process; it
12 really wouldn't matter.

13 But we're also talking about -- most allegations
14 or many allegations come from plant workers who, for
15 whatever reason, didn't feel comfortable going to the plant
16 owners' management chain, or did and was dissatisfied with
17 it.

18 I think that puts an obligation that the NRC
19 cannot ignore on looking into the issue, not necessarily
20 resolving a technical issue. That could be turned back to
21 the utility.

22 But figuring out why people were dissatisfied or
23 disenchanted with the licensee's corrective action process,
24 and NRC simply cannot ignore those allegations, because they
25 are separate from the technical concerns.

1 MR. GUNTER: I would concur with Dave, and just
2 add that I think that you have to look at the context of
3 economics and risk, and that raising risks also raises
4 economic consequences for the licensee.

5 And so within the context of raising issues of
6 economic consequence within the in-plant management process,
7 there definitely is a chilling effect there that we've seen,
8 that we've confronted.

9 And so I think it's important that the NRC
10 maintain that open door, so that it provides a
11 safety-conscious worker with the ability to raise issues
12 that are potentially of significant safety significance
13 without the concern that they're going to be sat upon
14 because of the economic consequence.

15 MR. MOHRWINKEL: Conversely, again, we've kind of
16 been talking around the issue, is that I think the concern
17 that Ed and I are trying to express is, if a person comes to
18 us with a concern and is told it doesn't rise to a certain
19 level based upon the significance determination process,
20 will that turn them off for coming in with their next
21 concern?

22 I think that's what we're saying, and I go back to
23 one of the employee concerns forms, and one of the managers
24 there had a good analogy, I thought, and said, I'll take any
25 concern that comes through the door of the ECP program.

1 And he had a good example. He said, somebody
2 comes in and says there's no enough rope in the rescue boat
3 in the pond that's on the property. And he said that has
4 nothing to do with nuclear safety, but he said I always
5 address that because if I don't address it and I tell him
6 it's below my concern level, then the next time they come in
7 with a concern that may be significant, they'll say, well,
8 these people aren't interested in hearing my concern, and
9 they won't come forward.

10 And I think that's what we're trying to say in
11 terms of our concern about establishing some sort of
12 threshold.

13 MR. BURZYNSKI: I agree, but our experience at TVA
14 is that there are opportunities there beyond just the person
15 that's fearing retaliation, or the person that tried and was
16 turned away.

17 We find people that never tried and once they get
18 in the system, they're very satisfied. We also find that
19 there are some people that have their own limitations or
20 preconceived ideas, and with a little bit of coaching or
21 facilitation, they begin to understand how to use the system
22 and become comfortable with it.

23 So I think, you know, our proposals tried to
24 separate out that spectrum, and said, there's an opportunity
25 there to reinforce the right behaviors of using an effective

1 program and learning to use it, as opposed to people that
2 try it and had trouble with it.

3 I agree with you, Dave, there are lessons to be
4 learned there for the NRC on those cases where people tried
5 and weren't successful or were left very dissatisfied.

6 MS. GARDE: You know, one of the premises that I
7 have found that is always true is that employees expect a
8 timely and effective response to their allegation.

9 And you can respond to any allegation, no matter
10 how minor it may appear to you, it may be dominating that
11 employee's and have all kinds of consequences, not just if
12 you don't respond to it appropriately, not just the example
13 that Carl gave, but for every employee that walks away
14 dissatisfied, they're going to have their circle of friends
15 and colleagues that they say the same thing to. Don't go
16 there, it's a waste of your time.

17 And so these dissatisfied customers expand
18 exponentially, depending on how it's resolved.

19 That said, there is absolutely nothing wrong with
20 sitting down with an employee and saying, I want to find the
21 most timely and effective way to handle what your concern
22 is. Now, if your concern is a technical safety issue, which
23 is, for example, a technical solution based on an inadequate
24 analysis which the company is sticking to, he may believe
25 that the only place and the most timely place to bring that

1 issue is the NRC, because if it isn't acted on immediately,
2 then it will be a problem in the context of the design and
3 construction.

4 And, you know, the NRC is already doing that.
5 There are frequently employees who say, look, let me just
6 give you a tip here. Why don't you go pull those drawings?
7 Why don't you go -- when the Resident Inspectors are
8 wandering around, why don't you go look at that?

9 And that process is working without statistics,
10 and has, for as long as I have been involved in this. But I
11 think that the point of contact that the employee has, has
12 to have an obligation to find a timely and effective
13 response.

14 That may be sitting and talking with the employee,
15 saying, okay, have you tried the ECP program? Are you
16 willing to do so?

17 It may be the NRC saying, listen, their ECP
18 program is really good; it's in the top three in the
19 industry; give it a chance. If they say, no, I don't want
20 to go there, then you have to deal with it the other way.

21 It may be that the only thing that that employee
22 considers as timely and effective is you taking the concern.
23 But if you don't have an agreement with that employee by the
24 time they kind of leave your initial consultation, you know,
25 they're just going to be watching for you to fail.

1 And whatever threshold those issues are, they need
2 answers. All these employee concerns that ultimately end up
3 taking all of our time, started as questions that didn't get
4 answers.

5 MS. GINSBERG: It seems as though we're blowing by
6 perhaps too quickly, this question of whether or not the
7 lack of followup, which is what prompted all of this
8 discussion, is not the -- the SDP is not sufficient to
9 qualify as a reasonable basis upon which to at least start,
10 perhaps, a discussion with the employee or the worker who
11 brought the concern.

12 It seems to me that the NRC's evaluation of an
13 issue through the SDP process is a good way of making sure
14 there is consistency. I know you're shaking your head, but
15 let me finish -- consistency through the regulatory process,
16 and it at least gives you a place to start.

17 And if the NRC explains how that SDP process
18 works, that is a way to both risk-inform the process, and
19 make sure that you're not unnecessarily absorbing resources,
20 and also answer the individual's question.

21 It seems to me that the Agency has applied that in
22 other contexts and it would be perfectly appropriate here.

23 MR. LOCHBAUM: Well, the SDP has faults. First of
24 all, it doesn't -- things that can hurt people aren't
25 covered by the scope of the SDP. It primarily looks at core

1 damage frequency, and there are a lot of things that can
2 lead to problems that don't contribute at all to core damage
3 frequency, and they can't be blown off simply on the SDP
4 premise.

5 The SDP was never intended to be the cure-all for
6 everything that occurs at a plant. So to use it for
7 everything that comes up under the sun is inappropriate and
8 it just won't work.

9 For example, if somebody found that there was no
10 bore awl in the spent fuel pool racks, you can do the SDP
11 from here to sundown, and it will come out a big green, but
12 that could definitely lead to a criticality accident at a
13 plant, if the allegation is substantiated.

14 So, the NRC could not blow off such an allegation,
15 simply because the SDP said it was green. That would be
16 totally inexcusable.

17 I think it's also important to note that if, as
18 Billie was talking about, if the employee or the worker
19 comes to the NRC and the NRC say, well you didn't pass the
20 audition, and we're not going to look into your issue,
21 they're going to come to Paul or me, and we're not going to
22 follow any of these rules.

23 We have our own process for getting issues out
24 there, and I don't think the industry or the NRC likes the
25 process we use. So it's best that if the worker isn't

1 comfortable coming to the plant owner, and doesn't get
2 satisfaction with NRC, they don't come to Paul or me, the --
3 so it needs to get caught either at the plant owner's level
4 or at the NRC level.

5 It shouldn't go to the media, the Congress, or to
6 groups like public interest groups.

7 MR. BAKER: Do we have any comments from the
8 participants not at the table? Any thoughts?

9 [No response.]

10 MR. BAKER: Okay, Jack?

11 MR. CAREY: One more thought I had is that David
12 touched on earlier, the additional element of any concern is
13 why the individual is coming to the NRC. And if it's
14 strictly a technical question, and the individual may for
15 whatever reason to be new to the industry and thinks that
16 you ask technical questions to the NRC, some level of
17 significance determination and an explanation for the
18 individual will probably suffice to explain to him that the
19 utility has a corrective action program that's part of
20 Appendix B; this is how they do business; they have an
21 obligation to resolve this in operability, and the timeframe
22 and so forth.

23 And it's an education process. But as David
24 alluded to earlier, the issue may be that I've tried the
25 program, the individuals don't like me, there's a

1 confrontational situation, and not, let's say, to the level
2 of making it an H and I issue.

3 So there is middle ground in between, and that's
4 the one that becomes uglier along the way if he's not
5 satisfied with going back, and the determination process is
6 only looking at the strict technical aspects of the issue.

7 And that's where there needs to be a judgment
8 call. And maybe communications helps work through that;
9 maybe it doesn't if there is substantial personal barriers
10 there.

11 And, again, not escalating to the 50.7 type of
12 issue, which kicks us out of this question altogether, but
13 it's that middle ground that then can become very emotional
14 and erupt into more difficult situations.

15 MR. BAKER: Okay.

16 MS. GARDE: One final comment on that: I think
17 it's very important, and I don't suggest that anyone is, but
18 I think it's very important to not sell the employees short.

19 When they pick up the phone and call the NRC, that
20 is a significant act for that employee. You know, they're
21 not doing it every day, they're not doing it all the time.

22 You know, you don't have a phone bank with
23 hundreds of people manning the phone banks, because those
24 calls are made very sparingly and judiciously by employees
25 across the country.

1 But when they are made, they're made for a reason,
2 and you need to assume that for the most part, by the time
3 they've called the NRC, there is a reason they are calling
4 you instead of working the system internally, and you must
5 understand why.

6 Now, I think some of your folks do a good job
7 finding out why, and some of them do a less good job. And I
8 would be concerned that any change in the process provided
9 any opportunity for, you know, your inspectors who are
10 already going to get an increased workload over the next
11 year or so, to not find out why, not spend the time and just
12 not be able to look at a chart and say this doesn't follow
13 this threshold, so, therefore, you're out of here.

14 That kind of good screening is critical to keeping
15 that employee within a path to fast resolution. Dave's
16 right, once they get into the hands of the public interest
17 community, the way to get timely and effective response is
18 not going to be very resource-effective for the Agency.

19 MR. BAKER: That kind of moves me into the next
20 slide and subject of discussion. It talks about the risk
21 associated with that aspect.

22 So, let me move on to what are the issues of the
23 allegation program?

24 MS. GARDE: Ed, you didn't ask the rest of the
25 questions on the page, and there was one comment I wanted to

1 make. We didn't really talk about the difference between,
2 you know, the allegations that come through the Allegation
3 Program versus other issues that come up through the
4 inspection program.

5 And I think that we do have to acknowledge that
6 public confidence is at issue here, and there is a
7 difference between allegations that could appear on the
8 front page of the paper tomorrow, and issues that are just
9 being worked through the inspection management program as a
10 matter of course, which does --

11 You know, we're going to deal with it at the front
12 end, or we're going to deal with it at the back end, but
13 when you have a series of allegations which are almost
14 universally described with catastrophic consequences on the
15 front page of the paper, because that's the only way to get
16 them on the front page of the paper, then you are going to
17 have a loss of public confidence in the Agency to deal with
18 the allegations.

19 And your Agency doesn't look very good if you're
20 in the position of saying, well, we heard the allegation and
21 we didn't think it was significant, when the employee is
22 describing it as the next Three Mile Island.

23 So you do have to look at those things
24 differently, because you're going to end up looking at them
25 differently anyway.

1 MR. BAKER: And I agree, and we've had that happen
2 in the past. We will get to a more thorough discussion of
3 that, I think, in the next slide.

4 But let me go back, because I had said these were
5 all basically reiterations of the same thought. Let me go
6 back to the panel and say, in particular on the last one,
7 whether they see a difference between risk-informing the
8 program, the inspection program, and risk-informing the
9 allegation program, and what they see that difference to be?

10 Mike? You look like you're ready to jump in.

11 MR. JOHNSON: I've been wanting to jump in.
12 Actually, Dave made me think about the significance
13 determination process. A thought I want to make sure that
14 we got out with respect to that is, you know, we've always,
15 the NRC has always had to try to decide the significance of
16 an allegation.

17 And that won't change. What the significance
18 determination process tries to do is establish a methodology
19 that is more objective than some of the ways that we did in
20 the past.

21 And so I think it would be unfortunate if we
22 overly focus on the SDP as the tool for determining
23 significance, rather than thinking about the broader
24 question, which is should we try to establish some
25 significance before we decide how to treat the allegation

1 and treat the allegation accordingly.

2 Because, again, as Dave points out and others have
3 pointed out, you know, the SDP is pretty good for looking at
4 technical issues if you're looking at technical issues that
5 could have some impact on core damage.

6 It's not so good at looking at issues -- in fact,
7 it's not good at looking at issues beyond that, although we
8 are making some enhancements to pick some of that up. In
9 fact, if it goes to issues that are in some of the soft
10 issues, allegations can sometimes deal with, you know, the
11 cross-cutting issues, and you're not going to get any help
12 at all through the SDP.

13 Again, the NRC would have to try to look at the
14 allegation and to decide the significance.

15 But I wanted to say that earlier, but let me try
16 to give you my perspective on the question that you really
17 want insight on, which is, is there a difference between
18 risk-informing the inspection program and risk-informing the
19 allegation program?

20 And I guess my personal gut reaction to that would
21 be, if it makes sense to risk-inform the inspection program,
22 conceivably, it make sense to risk-inform the allegation
23 program, again, because we always had to, in the final
24 analysis, at the end of the day, the NRC has always got to
25 make a decision with respect to the significance of the

1 allegation.

2 And it makes sense to do that in a risk-informed
3 way, than it does -- the more risk-informed you can do, it
4 can be in terms of making that decision, I think the better
5 off we're going to be.

6 Again, not -- and that is not necessarily counted
7 to the points that I have heard from Billie and Dave and
8 others, about the importance of being able to address to
9 some extent, all allegers' comments, so that people feel
10 comfortable with the fact that we have a safety-conscious
11 work environment.

12 One of the underlying tenets of the oversight
13 process is that we've got these cross-cutting issues, and
14 these cross-cutting issues are important because they can
15 impact the various performance -- performance of the plant
16 across the various areas, and so they are, in fact, very
17 important.

18 MS. GINSBERG: Billie, I just wanted to make one
19 comment, and that is it creates some disconnect, if you
20 will, by looking at the source of the issue, as the way that
21 the Agency treats it.

22 You know, when we sorted through this issue, one
23 of the things we were trying to do is figure out how you
24 deal with these issues without elevating the fact that it
25 came from an allegger, and yet it's a green style issue, call

1 it what you want, a non-safety-significant issue, or less
2 safety-significant issue, versus if you find that exact same
3 issue through the inspection process or some other
4 regulatory process.

5 I think, again, it goes back to not linking how
6 you treat the followup with the communications and the
7 respectful, comprehensive treatment you provide to the
8 alleger.

9 I think that those two are not inconsistent, and
10 need to be considered perhaps independently. What Mike
11 says, I think, is very true, about kind of using these
12 Agency processes throughout or these Agency approaches
13 throughout their processes.

14 MS. GARDE: Well, if the employees received
15 comprehensive, complete followup as you refer to, they
16 probably wouldn't be escalating the issue anyway. I mean,
17 so your premise is that that employees who have these issues
18 will get the communications, will know what's going on, will
19 be advised about what action is being taken, will agree with
20 those assessments, and therefore will have no reason to
21 elevate it outside of the industry or the NRC channel.

22 I think the reality is that those premises don't
23 usually happen, and it does get elevated, and when it does
24 get elevated, everybody, including the industry, is in a
25 reactive mode with not a real good, you know, position in

1 response to an elevated, more fearful characterization of
2 the issues.

3 MS. GINSBERG: Well, taking something that David
4 said in the 2.206 improvements meeting that we just recently
5 had, I was struck by the fact that if the individual who
6 submits an allegation gets a full response -- and I'm
7 assuming maybe there's room for improvement here in the
8 NRC's ability to or willingness to respond fully to an
9 alleged, that that alleged is typically more satisfied or
10 more comfortable, even if he or she disagrees with the
11 underlying technical response.

12 So my point is that if the NRC gives that
13 response, it may be that for these following reasons, this
14 is a non-issue or a low safety-significance issue and that,
15 in and of itself, may be sufficient.

16 But there, we're talking about communications;
17 we're not talking about a lot of resource, simply because
18 the allegation was -- or the issue was raised by an alleged.

19 MS. GARDE: I don't disagree with you that
20 increased explanations, information, and communications will
21 lower the number of issues that head out the door.

22 MR. BAKER: Paul?

23 MR. GUNTER: Just to speak to this point, well,
24 first of all, I have to preface this by saying that there is
25 still concern within the public interest community with

1 regard to the lack of confidence in risk-informing
2 inspections.

3 And it speaks to the issue of further complicating
4 plant safety by risk-informing the allegation program.

5 One of the concerns clearly is that in both cases,
6 the industry and the Agency are making a number of
7 assumptions with regard to risk significance, and it's our
8 concern as well as the broad community, that you can bury
9 the significance of an issue in assumptions that don't
10 necessarily apply to actual plant conditions, or the
11 significance of the safety of it.

12 But to speak to this point, one of the key
13 differences here is that your installers, your maintenance
14 workers, these are your most reliable sources, potentially,
15 for nondestructive analysis and testing, since these are the
16 people who have had hands-on experience with the components,
17 systems, and structures.

18 So, I think that it speaks clearly to the fact
19 that you want to tread very carefully about establishing
20 thresholds that rely on assumptions that may not necessarily
21 apply to hands-on experience.

22 MR. BAKER: Let me ask you a question based on
23 your comment: I think everybody here will acknowledge that
24 we don't have a lot of experience with using the SDP and
25 using the current assessment, the Revised Reactor Oversight

1 Process.

2 Do you think that the public, including public
3 interest groups, would be more comfortable if we were
4 talking about risk-informing the allegation program two
5 years down the road where there's much more history on how
6 that program is working?

7 MR. GUNTER: Well, Dave looks pretty amused with
8 that one, but I'll respond, just quickly, that again, it's
9 -- you're relying on -- you're replacing hands-on experience
10 with a series of assumptions, and I don't believe that -- to
11 be -- case in point:

12 Let's say you've got somebody that's been
13 installing penetration seals in an plant, and they have gone
14 through this process several thousand times. They know that
15 the material is not adhering, that there are voids and gaps,
16 yet when the reliability factor of these seals comes before
17 the Nuclear Regulatory Commission, there's 100 percent
18 assumed reliability of these seals, when, in fact, in the
19 field, the experience is completely different.

20 I don't think that you can replace that experience
21 in the field with the assumptions that go into
22 risk-informing some of these regulations.

23 MS. GARDE: I think the problem with using that
24 example is that let's say that that allegation comes
25 forward, and the NRC looks at it. As I understand the risk

1 assessment, you're going to assume the allegation is
2 correct, then you're going to look at the redundant systems
3 in place and assume if all those failed, would a redundant
4 system back it up?

5 And the problem comes in the fact that the alleged
6 who has been told he has this very serious
7 safety-significant job, is not also informed at the
8 beginning of the job briefing, that, oh, by the way, even if
9 they all fail, this redundant backup system is going to
10 support it, so it's not believable to the employee.

11 And when the NRC finally then does say that, which
12 in the past has been at the end of the road, not at the
13 beginning of the road, the employee rejects that solution as
14 a coverup, because they don't accept -- I'm not saying
15 whether they should or they shouldn't, but they don't accept
16 the fact that essentially their job they've spent three
17 years on, really doesn't matter if it fails.

18 And this goes back to communications. It goes
19 back to communication, all the way back to the industry in
20 terms of doing a good job briefing employees.

21 But that employee, if he seriously believes that
22 all of those penetrations are going to fail, will likely be
23 so upset about what's happening, that he will then call you.
24 And based on his information that 100 percent are going to
25 fail, you will then take that information forward, and the

1 NRC is not in a very good position to say, oh, well, they
2 don't really matter. Then why do it in the first place?

3 So, you've got to build more communications in, if
4 you're going to risk-assess at the beginning. You're
5 already risk-assessing at the end.

6 MS. GINSBERG: Billie, I see the problem. What I
7 don't see is clear solution to someone who doesn't want to
8 accept -- and let's assume we all around the table agree
9 that, let's say, the penetrations are perhaps do not have
10 the integrity that they were intended to have, et cetera, et
11 cetera, but that these redundant systems would back them up.

12 Let's assume that there is a credible technical
13 background basis for saying that this is not a significant
14 issue, but the person does not want to accept that.

15 The licensee can go a long way to trying to
16 explain that. The NRC can confirm what the licensee has
17 said, independently, et cetera. But at some point, you're
18 stuck with an employee who does not want to accept that
19 because he or she thoroughly believes that they are on the
20 side of right.

21 That's a very difficult problem, and I haven't
22 heard anything that solves that part of the problem.

23 MS. GARDE: Well, along the way, what I have found
24 is that lesser and lesser numbers of employees will not, if
25 given all the information, the detail, access to engineers,

1 access to explanations, a very small number will emerge from
2 that process still absolutely holding on to their belief.

3

4 And then it really comes down to being able to
5 essentially have all their ducks in a row, have fully
6 briefed the issue, have fully explained it to the employee,
7 and the employee will have to accept it or continue to raise
8 it, and he has a right to do that, and there's nothing you
9 can do about that.

10 MS. GINSBERG: Nobody is arguing about the right.
11 I was just trying to work through the problem.

12 MS. GARDE: But along the way, I think you will --
13 I'm guessing here, but I think a good 50-75 percent of the
14 employees, given adequate amounts of information, even if
15 they're still a little nervous about it, will have raised
16 the issue, felt it got a sufficient attention by people who
17 were experienced to know about it, has been reviewed by the
18 NRC, and if they're getting honest information and not
19 getting, you know, blown off, or not getting fed a bill of
20 goods, will accept that to the extent that they are not
21 going to then continue to push it.

22 But that's another reason that a differing
23 professional opinion process within a company is very good.
24 I've seen utilities spend a lot of time. You know, Comanche
25 Peak spent a lot of time with individual employees who felt

1 strongly about issues, explaining things.

2 You know, whether that was worth it, I'm not sure,
3 but I think most of them ultimately ended up accepting those
4 resolutions.

5 MR. LOCHBAUM: I don't have the answer to the
6 question that you posed about the person that just doesn't
7 accept it, but I do observe that communications is important
8 to involve that person early in the process, not just come
9 down from the mount and say, hers's the answer, you better
10 like it.

11 Last Thursday when I addressed the Commission
12 about the allegation process, I pointed out that Region III
13 contacted me early about allegations, said here's the
14 information we're going to gather to try to address the
15 concern.

16 And they asked, is there anything else we should
17 -- you know, would that information seem to answer the issue
18 one way or the other? And if I had something else, they
19 would listen to it, and consider it or not consider it,
20 depending on whether it was reasonable.

21 That made it easier for me to understand the
22 answer, even though, like I said, every one of them has been
23 unsubstantiated. They did a thorough investigation and gave
24 me answers.

25 If the process only tells the allegor at the end,

1 here's the answer, chances are that the allegor is less
2 likely to accept that.

3 MS. GINSBERG: But interestingly, I don't think
4 that's inconsistent with risk-informing the process. I
5 think you can do both.

6 MR. LOCHBAUM: I think it is quite a bit
7 different.

8 MS. GINSBERG: But not inconsistent. You can do
9 both; you can get their information early, you can ask
10 questions about it to make sure that you understand what
11 their allegation is and why they are bringing it. And then
12 you can address the allegation from a technical -- assuming
13 it's a technical allegation -- from a technical perspective,
14 and then respond.

15 So you have the risk-informed component as well as
16 a respectful, comprehensive communication process.

17 MR. CAREY: What we're talking to or around is the
18 Option 4 on the final decision. Is it acceptable to the
19 allegor that it's going to remain a significance
20 determination issue and go back to the utility, or give him
21 the option to say, on, I just don't buy that; I want you to
22 look at it.

23 And this is back to the question that started this
24 discussion about whether or not the inspection program
25 should be conducted differently or the allegations oversight

1 should be conducted differently.

2 And I think that Billie -- I completely agree with
3 her that the fact that they picked up the phone to talk to
4 the NRC, puts this a step away from the morning news
5 headlines, okay?

6 I do think they should be viewed differently
7 because of that, because of the impact on all of the
8 stakeholders. We, as the utility, may not even have an
9 opportunity to know about this, and the NRC, and everyone
10 involved. So, the communications piece that we've all
11 talked to, will go to great lengths to reduce the number
12 that go back to the veto power, if you will. And I don't
13 like that phrase at all, and don't want to imply that
14 whatever the program evolves into, to say that there is a
15 line that says veto power. I certainly don't like that, but
16 the communications, again, that we keep talking about, and
17 the input that Dave referred to and the understanding that
18 he had up front, goes to just reduce the number that get to
19 that point, to a very, very small number.

20 And also to Billie's other point about the number
21 of folks who ultimately accept, even, an answer that they
22 didn't want, I'm talking to roughly 700 issues that we've
23 looked at in the last five years, and there have only been
24 three of four that ended up in the DPO process that folks
25 did not agree with.

1 And just through an exhaustive effort, to look at
2 all of their issues, their side of the story, we've had some
3 issues that we just respectfully disagree with folks and
4 say, that's it, we're not taking it any further.

5 MS. HELFER: Larisa Helfer, Hopkins and Sutter.
6 Just a question: Does the SDP process preclude the
7 opportunity to speak with the alleger early on? Are the two
8 not compatible?

9 It sounds, from an audience standpoint, like we're
10 saying we advocate the SDP, the Option 3, using the SDP
11 process.

12 But my question is, listening to someone like
13 David Lochbaum, I begin to wonder, is there any reason why
14 that process can't have a feedback mechanism to let the
15 person know early on, what's going on?

16 MR. BAKER: Well, the answer to your question is
17 that as I see it, there would be the communication on the
18 front end, and there would be the feedback loop in terms of
19 what was the outcome?

20 I think the only other question that really
21 remains is how much followup should the NRC do?

22 MR. JOHNSON: In support of Ed's answer also, let
23 me just say that I was thinking -- in fact, I brought the
24 SDP along and while we were talking, I was looking at it.

25 If you look at the SDP -- and I'm talking about

1 the SDP in the areas where we're talking about
2 risk-informing, really, the initiating events and the
3 mitigating systems, really, and the barriers to some extent.

4 The inspector goes through an exercise when they
5 find an issue where they have to do some additional work,
6 and go through an initial screening, Phase I of the SDP
7 process.

8 And theoretically, even if you use the SDP for the
9 allegation program, you would still have to do that kind of
10 work. You would still need to, for example, understand
11 whether that allegation represented a technical issue that
12 impacted simply a component, a single component in a system
13 where there were redundant components and perhaps redundant
14 trains.

15 You know, so there is some up front work that has
16 to be done by the inspector to even understand how to run an
17 issue through the SDP.

18 And so application of the SDP in the allegation
19 program, you know, the two are not inconsistent. You could,
20 in fact, get additional information.

21 There may be opportunity there, there may be a
22 need for additional information up front, simply to be able
23 to use the SDP, the Phase I screening of the SDP. So
24 they're not inconsistent concepts.

25 If I could, while I have the mike, to go to Paul's

1 point on the talked-about assumptions, that's very
2 important. I often hear people raise assumptions or the
3 need to be clear about the assumptions if we're going to be
4 able to risk-inform.

5 And, again, you know, one of the things that we
6 hope to extract as a benefit from the SDP is that it raises
7 the assumptions up so that people are aware of the
8 assumptions.

9 You can't even begin to use this process unless
10 we're clear on the assumptions, the licensee, everyone is
11 clear on what the assumptions are that go into our
12 determination of what the significance is.

13 So, hopefully, a process or an SDP-like process
14 improves our ability to be able to communicate about the
15 assumptions that are important, and, in fact, that notion is
16 consistent with risk-informing.

17 MR. BAKER: One thing I would add to what Mike
18 said -- and it goes back to what was in the paper -- because
19 the paper had an analysis of a quarter's worth of
20 allegations that we had received.

21 Clearly, we found that there was a fair percentage
22 where there was not sufficient information to use the SDP.

23 And, therefore, we would have to follow up was we
24 do today. So, it's not applicable to all issues, even all
25 technical issues.

1 For example, if you get an issue from an anonymous
2 source, and you don't have enough information to comfortably
3 go through the SDP, you wouldn't use it.

4 Obviously, if we had -- if we knew who the person
5 was who raised the issue, and we could get some more
6 information from them, get a better explanation, we would
7 pursue that, and that, in fact, is what the paper said.

8 So, to go back to your point, the answer is, there
9 is an avenue to get more information, either through
10 discussion or perhaps through some initial inspection.

11 Mark, were you trying to make a point earlier?

12 MR. BURZYNSKI: Somebody else did it.

13 MR. BAKER: Okay. Any other comments?

14 MR. LOCHBAUM: I'll go back and address the
15 question that was posed about the two-year delay where the
16 public had more confidence in the SDP from a risk-informed
17 inspection process, and then apply it to allegations two
18 years down the road.

19 I think what the public will learn are the
20 shortcomings of the significance determination process. I
21 think that's what the two years will clearly demonstrate.

22 I think we've already seen it. You know, if on
23 February 10th, the Indian Point 2 licensee had learned that
24 the 1997 steam generator tube inspection data was suspect
25 and had taken a look at it, that would have been very easily

1 to come out as a green under the SDP.

2 One week later after the tube breaks -- also
3 that's a red -- so the SDP as a precursor of problems, is
4 not very good. It's very good at telling you what the color
5 of something that happened yesterday is.

6 So, from an allegations standpoint, I think two
7 years of data would show the public, convincingly, that the
8 SDP is the wrong tool to be using, not only for allegations,
9 but probably in the inspection space, too.

10 MR. GUNTER: Could I just add that the issue of
11 separating out the allegation program from a risk-informed
12 process, I think provides an opportunity for you to build in
13 a check and balance on a lot of the assumptions in modeling
14 that are currently going into the inspection process.

15 And you leave yourself open to receive
16 information, perhaps contrary to the models that you've
17 used. Since this is such a fledgling concept, anyway --

18 For example, just to carry on with the issue of
19 fire, you leave yourself the opportunity to continue to
20 bring in new information from those that are out there in
21 the field doing the work.

22 MR. BAKER: But I don't think anything we've
23 talked about today would prevent that from still happening
24 in terms of receiving issues and being able to use that
25 information.

1 It really goes to the point of what do you do
2 after you receive it? So I think we still have the benefit
3 of receiving the information and factoring that into the
4 thought process.

5 MR. GUNTER: I don't know that that's true. I
6 think that from our perspective, the whole risk-informing
7 process is an ebbing of regulatory responsibility as you
8 leave the licensee with more self-determinations.

9 I think that this whole allegation process is one
10 of the black rocks that's now beginning to appear as the
11 regulatory responsibility ebbs out.

12 MR. BAKER: I need you to explain what you mean by
13 one of the black rocks.

14 MR. GUNTER: Well, you're saying that -- I think
15 that you have already identified that as -- if we leave --
16 if we maintain the current allegation program intact,
17 without monkeying around with it, that, in fact, we risk
18 exposing the alleged to be easily fingerprinted to the
19 licensee.

20 As you baseline inspect, those allegations made
21 outside the baseline basically expose the worker.

22 MR. BAKER: There is that potential.

23 MR. GUNTER: There is that potential. Well, all
24 I'm saying is that this appears to us as one of the black
25 rocks that's appearing, as you regulatory responsibility is

1 ebbing out of the process.

2 MR. BAKER: Again, I'm not quite sure --

3 MR. GUNTER: I'm sorry I'm not being clear.

4 MR. BAKER: I just don't understand what you're
5 trying to imply by the term, black rocks.

6 MR. GUNTER: That it's a hazard. It's clearly a
7 hazard that you can wreck the ship on.

8 MR. BAKER: Okay.

9 MR. GUNTER: Sorry for the bad analogy.

10 MR. BAKER: Any other comments before we go to the
11 next slide? I want to ask the panel -- I had built in a
12 break if we felt that we needed it, because it's a rather
13 lengthy discussion.

14 And it is that time, and we are moving to a new
15 slide. I just want to poll the panel members if they feel
16 comfortable with just going forward.

17 Okay, then let's go on to the next slide.

18 That goes to a more complete discussion, and, in
19 my mind, balancing -- trying to find that balance point on
20 public responsiveness and efficiency and effectiveness,
21 which is really what the risk-informed process would be
22 aimed at.

23 And basically the basic goal is to make a
24 contribution of maintaining safety through addressing safety
25 issues. That's one of the premises of the allegation

1 program.

2 The challenges -- and I'd like to go through each
3 of these, go through them all and then come back to them,
4 that we see in moving forward, are the issues of identity
5 protection, timeliness of response, and quality of response,
6 which go to responsiveness and public confidence.

7 On the other side of that, you've got the
8 efficiency and effectiveness and realism issues, the impact
9 of allegation followup activities on the inspection
10 scheduled and resources where you've planned out how you're
11 going to conduct your inspection program, and all of a
12 sudden, you need a specialist to look at an issue, and you
13 pull them off of what's planned to go do that and it does
14 have a perturbation on the effectiveness of the Agency.

15 There is also an impact, as Billie pointed out
16 very succinctly, where if we're perceived as not handling
17 issues appropriately by the individual, there is the ability
18 to go external to both the licensee and the NRC, and I can
19 tell you firsthand from having to testify before Congress,
20 that those are very resource-intensive when those occur.
21 And so there's that aspect.

22 And lastly, in consideration of the second bullet,
23 how does that factor into the efficiency of the risk
24 threshold?

25 The other one is reducing unnecessary regulatory

1 burden, and in my personal opinion, that's not a large
2 player in this equation, because if the Commission
3 determines that the program is necessary, it's not an
4 unnecessary burden; it's a necessary burden. And I think
5 that is a decision that the Commission has to make.

6 And it really goes, in my mind, to the balance
7 point between how do you balance public confidence and
8 efficiency and effectiveness.

9 And I'd really like to open up on any of these
10 issues, any additional discussion.

11 MR. LOCHBAUM: Yes, I don't know if we put them in
12 our comments -- and if I didn't, I should have, because it's
13 a good point.

14 The chart that you showed us at the beginning of
15 the meeting, I can't add up 3D numbers really good, but it
16 looks like the trend is a decrease in the allegations
17 received by the NRC over the last three years, going on four
18 years.

19 And in talking with Jack and other members of the
20 industry, the ECP program are also seeing a less dramatic
21 reduction, but they are seeing fewer issues come up.

22 And I think you could look at that in a bad light
23 and say that people are just giving up altogether and not
24 raising safety issues, or that with the downsizing there are
25 fewer people to raise issues.

1 But I think it's really a reflection of the
2 increase awareness on this problem is leading to more
3 effective employee concerns programs at the plants and there
4 is less need or less motivation for people to go to the NRC
5 with these issues.

6 I think that's what's driving the numbers down.
7 And if that trend continues, then there is not going to be a
8 huge workload on the NRC staff, and it should be able to
9 handle the fewer allegations that come in, timely and also
10 the way that it's been done in the past.

11 I don't think that will unduly burden the
12 licensees, because as a result of the good licensee
13 programs, that the numbers are coming down.

14 So, I think that's been discounted. We seem to be
15 talking about it as if we're going to continue to handle
16 this huge number of allegations, and I don't think that's
17 the case.

18 MR. BAKER: Just for everybody else's information,
19 Dave is correct; the number of allegations has consistently
20 come down over the last three years. I would agree with him
21 and I would say it's a combination of enhancements to
22 corrective action programs, and the ECP programs, and a lot
23 of what licensees have done in terms of training on how to
24 manage issues and how to deal effectively with employees
25 when they raise issues.

1 So, you are correct that the workload is coming
2 down. But that's something else that's in the graph that I
3 didn't specifically mention.

4 Other comments?

5 MR. BURZYNSKI: Well, I think that in terms of
6 your balance point, you've got to consider that there are
7 some other issues related to public confidence that are
8 important for us to address consistently.

9 I think you have to have the same technical answer
10 on the importance of something, regardless of the source. I
11 think you have to deal with allegations with the other
12 problem that they raise, which is why is it in that avenue
13 and not in another one? I think we've heard enough
14 evidence and examples to say that some population there can
15 be taught or convinced or coached into using the effective
16 inhouse programs, and that's a desirable outcome, consistent
17 with the goals of the Agency and the goals of the utility.

18

19 And our programs should help facilitate that or
20 encourage that correct behavior. So that's part of our
21 suggested proposal, was to address that point.

22 I think you also have to deal with the group that
23 has trouble dealing with the issue for whatever reasons,
24 whether they have trouble accepting the technical conclusion
25 or whether they have trouble dealing with the utility

1 process in a legitimate way.

2 And those are the ones that I think you want to
3 focus more time on in your allegation process, and that
4 would go to increase public confidence of all the different
5 stakeholders.

6 MR. CAREY: A number of your first bullets up
7 there reflect the same bullets I wrote down last night as I
8 thought about coming down here today.

9 And that's identify protection or confidentiality,
10 timeliness, and quality of response. And we really haven't
11 talked a whole lot about the identity issue and the
12 confidentiality.

13 One thing that has come through very clearly to us
14 over our five-year experience is that I haven't found many
15 surprises in the general response of the folks that have
16 come to us.

17 People don't want to be high profile; they just
18 want an issue resolved. To the extent that we've been able
19 to maintain their confidentiality, it has really bolstered
20 our program and the confidence, and we've gotten a lot of
21 feedback from grass roots and feedback from those
22 individuals, or in areas around those individuals that came
23 to see us.

24 And those things are going to help just bolster
25 the overall confidence and reduce the number of times that

1 folks actually need to come and use the program, because of
2 the fact that they have confidence that it's there.

3 MR. BAKER: I'm going to ask specifically for some
4 comments from Paul and Dave on that point. There is an
5 increased probability, even if we stick with the current
6 program, that people or licensees will be aware that an
7 issue is being driven because of an allegation.

8 And so I'd like some perspective on the perception
9 of the impact of that. So, either Dave or Paul?

10 MR. LOCHBAUM: I think the allegation program
11 right now -- and all the NRC processes -- I don't want to
12 single out the allegations -- is much better than it was
13 five years ago at alerting people that come to the Agency,
14 whether certain actions that the NRC takes will increase the
15 potential for their identity being revealed.

16 I think as long as the NRC continues that process,
17 and in whatever -- however the allegation process, whatever
18 form it takes, as long as they continue to tell allegeders or
19 anybody that comes to you that if we take these actions,
20 there's going to be an opportunity for the licensee to
21 figure out who you are or for your name to become known to
22 the public or FOIA documents being requested, all of the
23 various things that the NRC warns about.

24 And that leaves the decision on the person as to
25 whether they want to pursue it or withdraw it or seek

1 another avenue.

2 So I think that is probably the best way to deal
3 with the identity protection issue.

4 MR. BAKER: What I gather from that then is that
5 you don't see that as a major issue going forward, as long
6 as they're made aware of what we can and can't do in terms
7 of protection their identity.

8 MS. GARDE: I think you have to add to that, that
9 as you do any programmatic changes that have the potential
10 of increasing someone being fingerprinted, that you also
11 provide a higher scrutiny or an increased scrutiny in terms
12 of any retaliation, so that you act swiftly and promptly and
13 not let this thing go into an OI black hole that doesn't
14 come out for five years on any signs of retaliation.

15 The timeliness of responding to retaliation
16 issues, you know, is the direct cause of a chilling effect
17 problem. And we haven't crossed that bridge when we're
18 talking about technical issues today, and I don't want to go
19 off on that tangent or we'll be here another three hours.

20 But if you're going to increase that likelihood,
21 you must provide the vigilance that if that happens, you are
22 in a position to act on that, and that you have dealt with
23 your internal processes in a way that you are able to act on
24 that.

25 Right now, it's pretty much handed across the wall

1 and just wait and see what happens, and that would not be
2 acceptable if you increase the likelihood of fingerprinting
3 them.

4 MR. BAKER: I don't want to drag the conversation
5 to that, because we're mainly talking about technical
6 issues, but I did want to say that the one avenue that we
7 currently have to deal with that is if the individual is
8 willing to let us discuss their particular situation with
9 management, and we feel that there is credible fear of
10 retaliation, we have in one or two cases gone to management
11 and said, here's what we know. And it appears credible.
12 And we've done that at a very senior level, effectively.

13 But the individual has to be willing to have us do
14 that; we can't do that without their permission.

15 MS. GARDE: Right, and you have to talk about all
16 of those things with the employee up front, so that as
17 they're telling you their fears, all of this kind of before
18 something starts to happen, that you're able to respond that
19 you've already got your ducks in a row, that you already
20 have a plan, because --

21 Let's say the person gets laid off the day after
22 an NRC allegation gets referred, that is not the time to
23 start talking about figuring out what you can do, because
24 that employee is by that time, just emotionally distraught,
25 fearful of you, not willing to necessarily cooperate with

1 you, and struggling to keep the paycheck coming in.

2 So, you know, if you're going to put people at a
3 higher risk, you have to be prepared to have a higher plan
4 in place to deal with that.

5 MR. BAKER: Unfortunately, once it hits that
6 point, I mean, once a termination occurs, our authority is
7 very limited in terms of what we can do for the employee.
8 And so I'd be interested -- outside of this discussion,
9 that's really a separate discussion of what could be done.

10 MS. GARDE: It is a separate discussion, but do
11 not ever underestimate the power that the NRC has to
12 convince the utility to do the right thing today.

13 MR. BAKER: Convince is one thing; require is
14 another discussion.

15 MR. GUNTER: Could I add that I think these are
16 precisely the issues that public confidence hangs on, from
17 our point of view.

18 MR. BAKER: Absolutely, because those are the
19 issues that become public.

20 MR. GUNTER: Yes.

21 MR. BAKER: And you're absolutely right that those
22 are the ones that create a lack of confidence.

23 MR. GUNTER: Right, they make great headlines.

24 MR. BAKER: They make great headlines, absolutely.

25 MR. GUNTER: And so I think that as far as coming

1 away from this process, that is a followup issue that you
2 have to deal with.

3 MR. BAKER: Right. Okay, what I'd like to get
4 into, and I'd like for, in this case, the perceptions or
5 thoughts from the industry representatives and the others,
6 if they choose, but the relative risks that they see from
7 external sources.

8 There have been a number of instances recently
9 where that's been an issue, and so I would like a reaction
10 on what they see as the risks and impacts on the industry, if
11 and when these things are perceived to be handled
12 improperly.

13 MS. GINSBERG: I guess I'm up to bat. I think
14 it's pretty obvious. I think we've talked about it to some
15 degree this morning.

16 Obviously, the industry is very sensitive about
17 and concerned about the kind of external impact that you
18 have described here, Congress, media, and special interest
19 groups coming down.

20 I think we see this in the enforcement -- we had
21 seen this in the enforcement realm fairly frequently when
22 you had press release after press release about a particular
23 issue.

24 Licensees do not want to be tried in the press,
25 and licensees have gone to some great effort and made

1 considerable strides, I think, in trying to resolve these
2 and other issues so that that doesn't happen.

3 I think getting to that end is extremely
4 important. The NRC has to play a role of being a strong and
5 credible regulator so that that doesn't happen.

6 It doesn't sound to me that we have complete
7 agreement on what that role is or how that process would
8 necessarily shake out, but it seems to me that there is no
9 benefit -- I would say, to anyone, but I don't want to speak
10 that broadly -- at least to the licensee and from our
11 perspective, to the NRC, to having the media be the forum
12 for addressing these kinds of issues.

13 So we are very interested in working out a process
14 that satisfies the public interest, that satisfies the
15 licensees' interests, and that satisfies the NRC's interests
16 to avoid that kind of issue. That's why we're here.

17 MS. GARDE: I'd like to respond. I do a lot of
18 teaching on the subject across the country. And the example
19 that I give, and an example that I think I need to point out
20 in response to you is that the press serves a very important
21 role in bringing some issues to the forefront and getting
22 them addressed.

23 If the morning that the Challenger was going to
24 launch, the New York Times headline had read, Morton Thiokol
25 engineers predict disaster if launched below 32 degrees, I

1 doubt the agency would have had the fortitude to launch the
2 Challenger, and we would have a much, much different story.

3 That said, I think it's also very important for
4 the industry and the agency to recognize that when Congress
5 put those employee protections in place, they turned
6 employee/employer relationship and laws upside down in this
7 industry and empowered every employee to be the eyes and
8 ears of the public, and gave them an absolute right to go to
9 the press with an issue.

10 Now, that said, it is the most ineffective,
11 inefficient, costly way to get an issue addressed, is to
12 pick it off the front page of the paper, and then start
13 resolving it.

14 But I can't think of a single time in this
15 industry from my experience, that an issue has ended up on
16 the front page of the paper before that utility had months
17 or years to have addressed the problems before it ended up
18 in the paper.

19 Industry is doing a much better job, but that is
20 kind of licensee-by-licensee-specific; it's not yet across
21 the board in terms of those changes.

22 So I don't disagree with you that the press is
23 inefficient, but I do disagree with you that we have to be
24 very careful to not disturb the Congressional balance that
25 wa set up by these employee protections. That's what

1 they're there for.

2 MS. GINSBERG: Well, I think there are two things:
3 One is, there's no discussion about the right of an employee
4 to go. We don't have any position on that. Obviously
5 anyone has a right to go to any media as an outlet for his
6 or her concern.

7 My point was different than that. My point is
8 that we're looking to craft solutions here, and if we're
9 looking to try and resolve these issues, one way to resolve
10 them is to put a process in place that solves a lot of
11 these, what I would describe as competing concerns.

12 I think some of these are hard to wrestle with,
13 hard to get your arms around. But that's why we're all
14 sitting around this roundtable, trying to deal with it.

15

16 So my only point is that the impact is big, it's
17 one that's undesirable, from our perspective, and if we
18 craft a solution here that works, that will not be an outlet
19 that people will feel the need to go to.

20 MS. GARDE: I would agree with that.

21 MS. GINSBERG: I would just comment on the NASA
22 issue, that if NASA had had a process perhaps by which
23 people could have brought this forward --

24 MS. GARDE: Correct.

25 MS. GINSBERG: -- the New York Times article may

1 not have been necessary and the lives may not have been
2 lost.

3 MS. GARDE: Correct.

4 MS. GINSBERG: So, I'm not sure that that makes
5 your point as well as, as convincingly as it sounded when
6 you made it.

7 MS. GARDE: Lawyers won't behave.

8 MR. BAKER: Everybody can agree, I think, on the
9 points that were made. I guess what I'm trying to draw a
10 discussion out on is the impact of establishing a threshold
11 and not pursuing an issue of low risk based on NRC's
12 perception and the licensee's perception or the licensee's
13 perception but not the individual's perception.

14 And what I'm looking for is, does the industry
15 feel comfortable with that risk of getting that answer and
16 the employee not accepting that answer? I think it's more
17 likely to occur in that situation than today.

18 MR. CAREY: There may well be an increased net
19 likelihood and that is the question that we may not be able
20 to predict. We may need to look in the rearview mirror but
21 several years ago we had a significant number of allegations
22 that went to the NRC, and we were unaware of most of what
23 those allegations were. Some of those were resolved by us,
24 but many of them were not, and I am sure that a number of
25 those were not resolved to the individual's favor and how

1 many of those went to the press and how many of those were
2 resolved in a manner that he understood the investigation
3 took place and realized that it was not an issue or he was
4 incorrect or maybe he was just satisfied with the
5 investigation, so there's some piece there that we were
6 never aware of -- the issue came up, went to the NRC, was
7 resolved, and not to the individual's satisfaction, and we
8 still did not hear about it in the morning news.

9 I don't know how to predict what percentage
10 increase we are going to see if he gets the same or if he
11 does not receive a favorable response through the new
12 process, now the difference being through the first process
13 he assumedly had some level of satisfaction that it was
14 looked at and then he just simply disagreed, possibly.

15 I don't know how we predict that in advance but
16 the changes to the program obviously need to focus on
17 managing that perception on his part. I mean that is what
18 the whole issue is.

19 MR. BURZYNSKI: I think that there is not a lot of
20 downside risk for items that screen out low on the technical
21 SDP evaluation. I think there's a lot to be gained in
22 getting common ground, common understanding with those
23 employees on those subjects -- a better technical
24 perspective.

25 I think we made the point earlier that issues that

1 are small issues are readily handled and resolved within
2 employees' programs because they don't involve a lot of
3 money, they don't involve a lot of the difficult decisions,
4 and I think there is an upside gain here for us that
5 employees that went outside the system can see the system
6 work and see it resolve their issue, and then I think they
7 become the advocates for that within the work group,
8 building off of what Billie said earlier.

9 For items that are low risk and a utility has an
10 effective program, we see that as a real gain, and very
11 little opportunity for those issues ever to mushroom into
12 the headlines so I think that is something that is worth
13 going after in a solution.

14 MR. BAKER: Other comments?

15 MR. CAREY: But that goes back to David's earlier
16 comment, that it is not specifically the green technical
17 issue. The reason the individual most likely went to the
18 NRC was the management interaction, the emotional component,
19 those types of things that again may not elevate to a 50.7
20 but it is in that gray area in between. That is the tough
21 part.

22 If it is cleanly one way or the other, it's easy.
23 It's that management stuff in the middle which is
24 three-quarters of what we deal with that we need to work
25 through.

1 MS. GARDE: This goes back again to
2 communications, because there should be no reason that an
3 employee finds themselves on the verge of calling the press
4 without having someone along the process, whether it is line
5 management, the Employee Concerns Program, or the NRC,
6 having asked the question is this a nuclear safety
7 significant issue and gotten the answer "yes" and gotten to
8 the bottom of it.

9 I am not sure all the programs ask that question.
10 I am not sure all the programs tie down the employee to give
11 that opinion, but if the opinion of the employee is that,
12 yes, this is a nuclear safety significant issue which has
13 potential health and safety consequences, that has to be
14 really scrubbed because, and this is really the diversity
15 and the strength that employees and whistleblowers bring to
16 the process, is that they look at the world a different way,
17 so they can read all the same procedures that all the rest
18 of us read and see something we don't see.

19 Unless that question is asked and you get an
20 answer and you have a thorough understanding of it, you
21 shouldn't be handing it back or putting it on a list anyway.

22 I find that most employees, the greatest majority
23 of employees, that raise issues when asked that question say
24 no, this is not an immediate health and safety risk, nuclear
25 safety significant issue, but when they say yes, you need to

1 listen.

2 In that way we are kind of already all risk
3 assessing issues as they come in the door based on the
4 expertise of the employee, who is doing the job and making a
5 determination on how serious it is, but I can't see you
6 being in a position -- I can't see the Agency ever being in
7 a position where they have an alleger who is saying nuclear
8 safety significant, potential health and safety impact, and
9 you are saying back to that employee it doesn't even pass
10 the initial threshold.

11 There is some major disconnect in those
12 communications that needs to be worked out.

13 MR. BURZYNSKI: Jack, just as a followup to your
14 point, I think we agree with you in terms of our proposal.
15 We segregated out cases where the employee tried to use the
16 program and failed. It doesn't make sense to send them back
17 to the grindstone and try it again.

18 I would expand that to say that maybe we should
19 exclude people that have a legitimate fear of reprisal or
20 something else based on prior history or some other facts
21 that again you wouldn't put them in harm's way, but I think
22 there's a group that we have all run into in our internal
23 programs and in some of the referrals in the allegations
24 where they are either unaware of the avenues or maybe
25 insecure, uncomfortable in using them and just need some

1 encouragement and coaching, and those are the ones I think
2 are out there to be gained as a win for us in changing the
3 program.

4 MR. LOCHBAUM: I just want to make a couple of
5 points.

6 One is that if the NRC were to establish a
7 threshold and if allegations don't reach that threshold they
8 just don't investigate them, it is very easy for groups like
9 ours to take that letter and go to the press, go to
10 Congress, and show the NRC not to be doing its job.

11 That is the impression that the public and the
12 Congress is going to have. It is very easy to do.

13 If, instead, we get a letter back saying it is 10
14 to the minus 6th and we say it is 10 to the minus 4th, we
15 are not going to convince anybody. We are not even getting
16 in the door with that debate.

17 If we get a letter from the NRC that says we are
18 not going to look at your concern and the employee has
19 already gone to his utility and they are not concerned about
20 it, that is almost automatic front page news and it makes my
21 job much easier, so I appreciate that.

22 [Laughter.]

23 MR. LOCHBAUM: The second point is related to
24 that.

25 If somebody comes to the NRC they are disenchanting

1 with the plant owner, for whatever reason, either past
2 history or just some irrational concern. Whatever the
3 reason is, they don't feel comfortable going to the plant
4 owner so they came to the NRC. If the NRC lets them down,
5 the chances of that employee or any employee that that
6 person knows, that circle of friends that Billie talked
7 about earlier, of going to the plant owner or the NRC is
8 virtually shot, and I know that from personal experience,
9 because we keep talking about how I have confidence in
10 Region III handling allegations. I will not raise an
11 allegation to Region II of the NRC -- have no confidence in
12 Region II.

13 There are people we can get allegations to who
14 seem to care about safety and that is the media and Congress
15 and what-not, but we have full confidence in Region III --
16 but have zero confidence and I will not take an issue to the
17 NRC Region II no matter what it is. Whether that is
18 rational or not I am not even going to debate but I know
19 from personal experience that there are people that don't
20 feel comfortable going to various bodies and they are going
21 to seek avenues, so I think it is better that the NRC be
22 that body rather than media, Congress or us.

23 MR. BURZYNSKI: I don't disagree with you on that.
24 If that is a real issue with a person, you have to address
25 that issue along with the technical issue because that is

1 where the source of the rub is, but I don't want to leave on
2 the table I guess the thought that if an item is considered
3 low risk that NRC is not doing anything and walking away
4 from it, like you suggest, and that they are not doing their
5 job.

6 I think all the proposals have in it that it would
7 be put in the utility's Corrective Action Program in the
8 expectation -- and there would be routine followup that
9 would get checked.

10 That is no different than what is done with
11 noncited violations today and we are not suggesting NRC is
12 failing their responsibility by handling those issues in
13 that manner.

14 MR. LOCHBAUM: I think there is a big difference.
15 I don't disagree at all that the technical issue could be
16 turned back over to the utility to handle, because it is the
17 same as a technical issue or found by a plant worker or by
18 an inspector, so that is not the issue.

19 The issue is the employee did not have trust and
20 confidence in the utility's Corrective Action Program. They
21 came to the NRC. The NRC can't say, well, it's not
22 important enough for us to investigate. In that case they
23 are not doing their job. It is not the resolution of the
24 technical issue. It is the lack of confidence by the worker
25 in the licensee's Corrective Action Program. That, if the

1 NRC doesn't investigate, they are not doing their job.

2 MR. BURZYNSKI: I think we would agree. Jack and
3 I, our experience is that that is a subset of the things
4 that end up in the NRC, the ones that have a real lack of
5 trust as opposed as to a lack of knowledge or a lack of
6 confidence in themselves using the program.

7 MR. LOCHBAUM: I would caution parsing out the
8 defining of somebody's motives, what is a real lack of
9 trust, what is a, you know, virtual lack of trust.

10 If you start doing that, you can't apply an SDP to
11 people's motives.

12 MR. BURZYNSKI: No, you can't but you also have to
13 deal with the experience that we all have in that people
14 tend to have those different kinds of responses. We have
15 had success in dealing with some of those. I know a number
16 of the referrals that we get we end up through the NRC
17 talking back to the employee and we come to a good
18 resolution.

19 Their issue for ending up in that avenue was not
20 that they thought our program was broke. It was other
21 things. They didn't know how to use the program. They had
22 left the site and then thought of something later and this
23 was the most convenient way to put it back in the system, so
24 I think there's enough evidence that tells you that you can
25 come to that through some communication and some

1 understanding and act on it responsibly.

2 MR. JOHNSON: If I could, I just wanted to remind
3 us that enhanced public confidence -- we have all sort of
4 been thinking about public confidence from the eyes of the
5 alleged or treatment of the alleged and what the impact of
6 whatever options we would choose would have on the alleged's
7 confidence in the NRC as a credible regulator.

8 I would remind us that Ed's question started off
9 with sort of the broader question was the impact on other
10 external stakeholders, which in fact includes the larger
11 public and I just would remind us that we need to be mindful
12 of the fact that a credible regulator if firm and fair --
13 firm and fair recognizes credible safety concerns no matter
14 who they are raised by, including our internal inspectors,
15 including alleged, but also recognizes concerns that may be
16 perceived to be significant but perhaps are not significant
17 given a fuller looking at the issue including all of the
18 assumptions, including all of the things that have been
19 built into the plant, including our risk insight, so on and
20 so forth.

21 Again, I just want to throw that out. I have
22 listened to the conversation as we have gone around, and we
23 have talked public confidence from one perspective. We need
24 to keep in mind that where we want to come out on this and
25 the options I think is sort of the bigger picture look at

1 public confidence, which in fact does include the allegor
2 but also includes fair and firm, credible for all of our
3 stakeholders.

4 MR. BAKER: Any other comments?

5 [No response.]

6 MR. BAKER: Any comments from anyone not at the
7 table? No?

8 Okay. What I would like, if everybody is willing
9 to move forward, what I would like to do is actually take
10 down the screen and the projector and put up the flip charts
11 and go to pros and cons of each of the options and
12 particularly in light of the conversation and some comments
13 by both Dave and Paul on approaches that we could use,
14 technical issues, and also deal with the other issues having
15 to do with effectiveness of the Corrective Action Program
16 or the perception of the Corrective Action Program and the
17 Employee Concerns Program, and go from there.

18 I would also like to make sure that we have time
19 to discuss both the options presented by TVA and Billie
20 Garde since prior to this no one has really had an
21 opportunity to -- unless they have been in ADAMS and pulled
22 them out -- had an opportunity to really comment on those.

23 We want to take a short break, maybe five minutes
24 or ten minutes, as we reconfigure here.

25 [Recess.]

1 MR. BAKER: If we could reconvene, what I would
2 like to do is in sort of quick fashion in the first three
3 options, Options 1, 3 and 4, kind of go through the pros and
4 cons and basically solicit input from all the panel members
5 and the members not at the panel, if you want to step up to
6 the mike, on what the pros can cons are.

7 Because we have had the ability to see these, I
8 think we can do that fairly quickly and then go to the two
9 options that we have not had the availability of before the
10 meeting.

11 Fiona is going to serve as scribe for us, and what
12 I would like to do is start with Option 1 and get your
13 thoughts on pros and cons and then we will put those down
14 and then we will use those in generating the paper.

15 Basically I am going to open up the floor and let
16 anyone start. Dave?

17 MR. LOCHBAUM: I'll start. We liked Option 1
18 because it continued to treat -- investigate all allegations
19 regardless of color or other factors.

20 I think the other intangible benefit of Option 1
21 is that it allows you to continue to somewhat assess the
22 success or the efficiency of the NRC's allegation program.
23 If you change something every two years it is hard to draw
24 trends, so if you go to anything else you are starting over
25 on your benchmarking.

1 MR. BAKER: So to reiterate for Fiona, basically
2 the pro is that it continues to look at all issues received.

3 MR. LOCHBAUM: That's correct.

4 MR. BAKER: And it allows to review for a
5 continuation of trends or I guess a consistent population
6 for trends I guess is the way to put it.

7 MR. LOCHBAUM: That's correct.

8 I think the biggest con of Option 1 is the
9 increased potential for revealing the identity or
10 compromising the identity of the allegor. We think that can
11 be dealt with but we review that as the largest con.

12 MR. GUNTER: How to put this into a sound bite,
13 but let me just get it out there.

14 First, it appears to us that the trend to move
15 away from Option 1 has to do with cost beneficial licensing
16 on risk. In terms of keeping and building public confidence
17 I think Option 1 doesn't put a pricetag on safety in that
18 you are maintaining an open and free flow without a
19 threshold.

20 Obviously that does entail some costs and from our
21 perspective it appears that a lot of the trending to risk is
22 to reduce cost, so we see at least in terms of maintaining
23 public confidence in the process that it doesn't place a
24 pricetag on safety.

25 MR. LOCHBAUM: Are we going back to the pros?

1 MR. GUNTER: That is a pro. We are putting that
2 as a pro.

3 MR. BAKER: And with that same thought is maintain
4 current level of public confidence.

5 MR. GUNTER: Well, I think it is building public
6 confidence.

7 MR. BAKER: Okay. Building public confidence.
8 Want to make sure I capture your thought.

9 MR. GUNTER: In the same breath, I believe that
10 does represent an identified con as well, because it doesn't
11 change the regulatory licensee burden and the costs
12 associated with that.

13 MR. JOHNSON: In fact, it is probably the most
14 costly of all the options, I would think.

15 MR. GUNTER: I think there is a price to building
16 public confidence.

17 MR. BAKER: Why don't you capture back on? I am
18 not sure whether that is a pro or con, somehow capture the
19 thought -- it is the price of public confidence. I don't
20 know if that is a con or a pro.

21 MR. GUNTER: It depends on which side of the fence
22 you are on.

23 [Laughter.]

24 MR. GUNTER: From our side, that is a cost worth
25 spending.

1 MR. JOHNSON: It's a con. It is the most costly
2 of all the options. I believe that to be the case.

3 MR. BAKER: I mean that's true. It is more costly
4 because any time you -- well, that is the other issue --
5 short-term versus long-term costs.

6 MR. MOHRWINKEL: Before we get too far, could I
7 just ask, David, why did you pick this one as ID protection
8 being a problem?

9 We have done pretty well in the last let's say two
10 years with the option of not releasing or identifying
11 fingerprinting of allegeders. Why do you point this one out
12 as a con? I am just curious.

13 MR. LOCHBAUM: Well, in the past the inspections
14 were done in areas that aren't going to be inspected in the
15 future because of the risk-informing of the inspection
16 program, so if the allegeder raises an issue that is not going
17 to be covered under an NRC inspection program and also an
18 NRC inspectors --

19 MR. MOHRWINKEL: So you are not focusing so much
20 on the existing program but how the existing program would
21 function under the new system? Okay.

22 MR. LOCHBAUM: That's right.

23 MR. MOHRWINKEL: I thought you were criticizing --
24 okay, I got you.

25 MS. GINSBERG: I just wanted to make the

1 observation, and this is not either a pro or a con, that
2 this risk-informing does have an efficiency component and
3 that does involve cost, but this direct relationship between
4 doing something and all of a sudden catastrophic effects, I
5 think we need to be very careful here, at least from my
6 perspective, not to leave that premise on the table.

7 We would not agree with this sort of pricetag
8 notion about safety. Licensees believe very strongly in
9 safety first, and I am compelled to make that observation --
10 a DPO, I might add.

11 [Laughter.]

12 MS. GARDE: In terms of pros, I think that Option
13 1 works. I think that that is a pro. It's demonstrated
14 that it has worked. Now the kind of flip side of that is it
15 doesn't work good enough yet, but I think you go to the
16 premise that if it is not broken, don't try to tinker with
17 it.

18 MS. GINSBERG: However, I guess a con would be
19 that it is inconsistent with other regulatory processes
20 being instituted.

21 MS. GARDE: Well, it is inconsistently applied.
22 It is inconsistent with other processes. It is kind of
23 stand-alone but it has managed over the last couple of years
24 to work pretty well.

25 MR. BAKER: I just wanted to thank you for your

1 comments and your letter. I forwarded that to all the
2 Commissioners.

3 MS. GARDE: You mean that I said you are ahead of
4 the rest of the industries? Yes, you are.

5 MR. BURZYNSKI: I think one of its cons is that it
6 is extremely inefficient for a lot of issues.

7 That increases the cost for a number of items but
8 more importantly it really slows down and impedes the
9 communication that is really at the heart of some of the
10 issues and a real thing to be resolved.

11 MS. GARDE: I agree with that.

12 MR. BAKER: Help me out with either examples or
13 things we could improve, not necessarily to go on the pro/
14 con chart but for my own information.

15 MR. BURZYNSKI: Well, you have got a process where
16 you have to bucket it into an inspection. You do this
17 investigation, all of these formalities coming before the
18 dialogue, and I think that is --

19 MR. BAKER: Dialogue with whom?

20 MR. BURZYNSKI: With both the utility on getting
21 information that they have that is helpful, and with the
22 allegers.

23 MR. BAKER: Why do you say with the allegers?

24 MR. BURZYNSKI: Well, you have some discussion
25 with them upfront, but then you have a long pause while you

1 go and have to conduct the inspection and get it scheduled,
2 so there is this time lag before there's any followup in
3 additional fact-finding, in additional assessment.

4 MR. BAKER: Okay. I just wondered if there was
5 something else other than just the inertia in the system is
6 what I was trying to --

7 MS. GARDE: What you mean is it is untimely?
8 Should that be a con, that the program is presently
9 untimely? Is that what you mean?

10 MR. BURZYNSKI: I think that is one of the
11 elements of inefficient, that it is untimely. Yes.

12 MR. BAKER: Okay.

13 MR. BURZYNSKI: And it is designed for the worst
14 case allegations so it is in overkill for other ones.

15 MS. GINSBERG: It also sounds like there isn't
16 enough interaction, assuming confidentiality isn't
17 compromised, but there's isn't enough interaction with the
18 utility, the licensee early enough? You just immediately
19 run to an inspection where maybe the licensee has
20 information that would be helpful to resolving it with or
21 without an inspection.

22 MS. GARDE: But that is what got the Agency in
23 trouble is that there were too many inspectors who were
24 being too open with the amount of information and I am sure
25 their intentions were good in the sense that they wanted to

1 go and say, hey, what's -- you know, here's this issue we
2 are working on, what's going on?

3 But in doing that they identified allegeders and so
4 now the pendulum has swung back the other way, and the price
5 is that the Agency at times I'm sure is holding things very
6 close to their chest, and it is inefficient, but they are
7 erring on the side of protection, so they haven't struck a
8 good balance I don't think.

9 MS. GINSBERG: I was suggesting in cases where
10 confidentiality wasn't an issue.

11 MR. LOCHBAUM: I am having a little trouble
12 figuring out how it could be the most expensive program and
13 also the most untimely.

14 It has got to be, of these four, not counting the
15 TVA or the Billie Garde's new one, it is the most timely of
16 these four. If it is untimely, then that also has to apply
17 to the other four as well, because in the other ones -- in
18 this one the NRC investigates and looks at it and
19 investigations and in the other ones the NRC doesn't do
20 anything. It says we'll get to it later. That's got to be
21 less timely than this I would think.

22 MS. GARDE: You mean compared to the other ones we
23 haven't yet talked about, this will still be the most
24 timely? That's probably true but my point is that 160 days
25 is still unacceptable for --

1 MR. BURZYNSKI: I am looking at it, and maybe we
2 are looking at different examples, but for the simpler ones
3 I think it is untimely and referring them to the utility and
4 having utilities resolve them in the Corrective Action
5 Program and that information be made available to the
6 alleged will be more timely than the NRC conducting an
7 investigation or doing their inspection and then generating
8 an inspection report and all those approvals.

9 If they go to, in our case, quarterly inspection
10 reports in the region, you have a lot of inertia in the
11 system to get that feedback.

12 MR. BAKER: Let me respond to two points.

13 One is at this point in time every alleged is
14 asked do you have any objection if we refer this issue to
15 the licensee? In every case where they say yes, we refer
16 it, so it really goes to Dave's point -- if they are not
17 willing to have it referred, there is another issue there.

18 On the other point of inspection reports,
19 responsiveness to the allegation or to the alleged is not
20 restricted to the issuance of the inspection report. The
21 Staff can generate a closure memo to the allegation
22 coordinator which provides a lot more detail in terms of
23 what we did and what we found than we can put in the
24 inspection report and so when you see the inspection report
25 does not necessarily indicate when the alleged got an

1 answer.

2 MR. GUNTER: Could I add that one of the pros I
3 see is that it provides a check and balance, a hands-on
4 check and balance to risk-informed models and assumptions.

5 MS. GARDE: I really think that is a real valid
6 point, Paul. I hadn't thought of that before but it
7 certainly does do that, and I think that is an important
8 check and balance to not lose an opportunity for.

9 MR. BURZYNSKI: Does that check and balance come
10 from the traffic, the issues that are raised, or the
11 findings from the inspections?

12 MR. GUNTER: Well, I would see it as a check and
13 balance on the risk-based assumptions, so I mean there's a
14 lot of assumptions and modeling going into the
15 risk-informing and this is still a very young process and I
16 would hardly call it a science.

17 There's a very thin line between risk-based and
18 gambling, particularly when economics is a driver and I
19 think that this does provide a check and balance on that
20 whole issue.

21 MR. BAKER: Anything from -- I'm sorry, Jack. Go
22 ahead.

23 MR. CAREY: Two pros is that I think this option
24 provides the most, the greatest service response, if you
25 will, and I want to capture this, to the allegor.

1 It is the most responsive to him as an individual
2 to resolving his issue. That goes back to the item that is
3 identified further up on building public confidence.

4 The second point is that I don't think this option
5 precludes an approach that leans more towards the risk
6 significance determination process without implementing it
7 in a rigid fashion, and I think, as we discussed earlier, it
8 already happens to an extent where issues are referred back
9 to the utility and those conversations take place with the
10 allegeders or CIs.

11 I think that changes could be made to the approach
12 to the existing plan or the existing program that more
13 closely align to the significance determination process
14 without doing an overhaul of the program and saying, as
15 Option 3 let's say, says we are going to go strictly by this
16 "kick it through the SDP process and this is how it kicks
17 out" -- green, white, yellow, so forth.

18 I don't see that this option, the existing
19 program, precludes the approach that is more in that manner.

20 MR. BAKER: It is more towards the approach that
21 TVA described in their option, and we can discuss that when
22 we get there. I think that that is probably closer to what
23 you are thinking than this particular option, but I don't --
24 I think you are right. I think there are some things that
25 could be melded together that would be more acceptable to a

1 greater number of people here at the table.

2 Okay. Anything else on Option 1? Anything from
3 the participants not at the table? Please pick up the
4 microphone by Karen so we can capture your thoughts.

5 MR. VOMASTEK: Just a couple of quick thoughts.

6 MR. BAKER: Could you introduce yourself?

7 MR. VOMASTEK: Sure. Andy Vomastek, Millstone
8 Station. Pros on Option 1, zero threshold, and it makes you
9 work all the issues. That is important. It is important in
10 the program that I work.

11 Cons, you know, setting -- you know, with respect
12 to confidentiality, I would really like to know more about
13 the types of issues that were alleged. It would -- you
14 know, just as we track and trend information that we get in
15 our own program and use that to help management get better,
16 you know, with the number of allegations that we are still
17 working with, some information would certainly help us to
18 get better.

19 MR. BAKER: Okay. Move on to Option 2. Oh,
20 excuse me, we are going to skip 2, we are going to go to 3.

21 MR. JOHNSON: Let me just ask, Ed.

22 MR. BAKER: Yeah.

23 MR. JOHNSON: That question, that comment raised a
24 question in my mind. There is nothing associated with
25 Option 1 that would say that we would not track -- well, I

1 mean, I am sorry, with Option 2, there was no thought about
2 us not tracking allegations simply because they were of
3 lower significance, correct? You would still --

4 MR. BAKER: Right. We would still track them.

5 MR. JOHNSON: With all the options, you will still
6 track all of them?

7 MR. BAKER: Right.

8 MR. JOHNSON: Okay.

9 MR. BAKER: Another thought that occurred to me
10 would be, and it is a resource question, regardless of the
11 option where we end up, we could also go through the risk
12 assessment from our own -- if nothing else, for our own
13 internal use and use in the annual report in terms of what
14 are we seeing. So, there is also that possibility. Again,
15 that is a resource issue, and who is trained to use the SDP
16 and what does it take to do that.

17 Option 2 -- 3, excuse me, is the use of the risk
18 significance determination process to classify risk
19 significant technical allegations, thus, the risk
20 significance of technical allegations. And once again, I am
21 going to open the floor, let the panel members discuss the
22 pros and cons. Anyone in particular want to start?

23 MS. GINSBERG: I will start. We endorsed it. It
24 is a more efficient process because it allocates resources
25 to issues of greater risk significance and does not allocate

1 them to lesser -- does not allocate them to issues of lesser
2 risk significance. It is consistent with other regulatory
3 processes the NRC is implementing. We think it could
4 continue to have good communications associated with it and
5 this is part of the hybrid approach. It is not designated
6 in Option 3 as currently established or proposed.

7 And we think if it produced strong responses, even
8 if the answer was no follow-up, in terms of how the NRC got
9 to that conclusion, that it could be a public confidence
10 builder.

11 MR. BAKER: So, your last comment, last bullet
12 would be if it --

13 MS. GINSBERG: Assuming appropriate
14 communications, appropriate level of communications, builds
15 public confidence.

16 MR. BAKER: Okay.

17 MS. GINSBERG: Let me explain that for a second.
18 You look perplexed.

19 MR. BAKER: No, no, no. I am trying -- I am just
20 trying to put that -- basically, you are saying if the NRC
21 did a good job of explaining the risk significance and how
22 we got there, --

23 MS. GINSBERG: Yes.

24 MR. BAKER: -- that could be a confidence builder.

25 MS. GINSBERG: Well, it goes to all the things we

1 talked about earlier, about the person being satisfied that
2 they were respectfully treated and had a comprehensive
3 response, that the agency didn't just say, oh, no big deal,
4 but rather made that -- reached that conclusion based on a
5 reasonable evaluative method, whether that is SDP or some
6 other method.

7 MR. BAKER: And do you see any cons to this
8 process?

9 MR. BURZYNSKI: We saw a couple of them and that
10 would be, one, it would be inconsistent with other parts --
11 other programs if there was a determination that the
12 corrective action program was not effective. It wouldn't
13 make sense to refer something to something you conclude was
14 not effective. But that was where we carved out an
15 exception.

16 The other one that I think is -- well, I will pass
17 on that one for right now because it slipped my mind. I
18 will have to remember it.

19 MR. BAKER: Anyone else? Okay.

20 MR. LOCHBAUM: Gary Holahan was kind enough to
21 send me a copy of the handout that was provided at the three
22 day training program on SDP for broader -- on risk-informed
23 regulation. And it is a very lengthy document, I haven't
24 gotten through but the first 10 or 15 pages. It must be
25 several hundred pages long, it was a three day training

1 program for NRC managers.

2 I would suspect that most of the people who would
3 send allegations to the NRC have not benefitted from a three
4 minute course, let alone a three day course on SDP. So
5 without our handy tool on SDP, they are probably not going
6 to understand it, no matter how much -- how many words the
7 staff uses to explain the process. And even if the process
8 were sound, which I am not going to stipulate, I don't think
9 that the receiver, the average alleger is going to
10 understand that. So I don't think communicating an SDP
11 response to an alleger is going to ever satisfy that
12 individual.

13 MS. GINSBERG: But, Dave, don't you think that
14 whether it is STP -- SDP or PRA or some other, you know,
15 very sophisticated technical tool for evaluation, that that
16 all has -- and we discussed this at the 2206 process, that
17 all has to be put in plain language as best as possible to
18 reach the audience for whom that is intended. I don't think
19 that is limited to the SDP process necessarily. If you look
20 at, you know, HP issues, or any other kind of technical
21 issue, for somebody who is unschooled in that area, you need
22 to break it down.

23 MR. LOCHBAUM: Well, I think it goes -- Paul
24 mentioned earlier that the SDP process, or broader
25 risk-informed regulation or risk-based regulation can be

1 considered science. We consider it science fiction. And if
2 we were to get a response on an allegation we took to the
3 NRC on the basis of somebody coming to us, to protect their
4 identity, and the NRC responded to us on some SDP
5 mumbo-jumbo, it isn't going to work. We are not going to be
6 happy, because the SDP is a flawed process. So, no matter
7 -- that isn't going to work.

8 So we are going to go straight up to the Hill, and
9 with this little tool, and going to have all kind of fun.

10 MS. GINSBERG: But then we are back to results
11 again, as opposed to process.

12 MR. LOCHBAUM: No, it is the process. Even if
13 they came back and said, you are absolutely right, this is
14 the worst thing we ever did, we are going to shut down every
15 plant in the country, based on the SDP process, it is a
16 flawed process, we are not going to accept that answer
17 either.

18 MS. GARDE: I think you had better add to the
19 cons, loss of public confidence.

20 MR. BAKER: Can you add your rationale for that?

21 MS. GARDE: Well, I think that you have a very
22 high risk of both the public interest community mounting a
23 pretty significant campaign against that, including
24 informing allegers that if Option 3 was adopted, that they
25 couldn't really recommend that the people go to the NRC with

1 issues or some version of that, and that when you write
2 letters to allegeders saying you didn't pass the threshold, so
3 we are sending this issue back to the company, that there is
4 going to be a firestorm.

5 MR. LOCHBAUM: Plus, the related issues, it gives
6 the allegeder the benefit of hindsight.

7 MS. GARDE: Right.

8 MR. LOCHBAUM: In that if the NRC comes back and
9 says we are turning this back over to the company because it
10 turned out to be green and, going back to the Indian Point 2
11 event, a steam generator tube rupture occurs, months later,
12 the allegeder wins from hindsight, even though it may not have
13 any relationship to it. But in the public's eyes, the
14 person had a concern, the NRC took no action, or not much
15 action, and an event occurred. Hindsight proves the allegeder
16 right automatically in that case. And you had better
17 believe Paul and I are going to take full advantage of that.

18 So, you know, if you want to put -- if the
19 industry wants to give us another leg-up and make our job
20 easier, that would be great. We do appreciate that, we
21 really do.

22 MR. JOHNSON: Mark asked me I had a comment. You
23 know, we are always -- Dave, we are always going to be
24 subject to situations where we have done the wrong thing, or
25 maybe not foreseen a situation that maybe we couldn't even

1 have foreseen, like IP2. But that doesn't necessarily need
2 to be a bad thing as long as the process that had us
3 consider it had us look at the -- consider the data as it
4 arrived, had us make the appropriate decisions based on that
5 data, and take the actions that we should have been taking.
6 And that is where we have sort of fallen down in the past
7 with respect to, you know, some of the criticisms that we
8 have had in the past.

9 While I was doing that rambling, I just forgot the
10 pro I wanted to put up on the board, so I will to do -- it
11 is sitting next to Mark that does it to you.

12 MR. BAKER: Mark, did you remember yours?

13 MR. BURZYNSKI: Yes, I did. There is hope for
14 you, too, Mike.

15 Now I have forgotten it again -- no. Yeah. The
16 second con that we saw was that that process doesn't --
17 wouldn't address the underlying lack of trust issue that
18 would be present in some of the allegations, and we think
19 that would be an important omission.

20 MS. GARDE: You mean lack of trust in the licensee
21 process?

22 MR. BURZYNSKI: Yeah, the motivation to go into
23 the allegation process.

24 MR. BAKER: Any other comments? Jack, do you have
25 any particular comments on this one?

1 MR. CAREY: My comment on the pros is similar to
2 the first option. Again, it doesn't preclude the approach
3 that, as was mentioned, has good communications with the
4 alleged, explains the options, explains the rationale, and
5 solves most of your problem with the communications. I
6 think no matter what option you end up with, 95 percent of
7 the success is going to be in the implementation and the
8 approach. So I don't see issues here that preclude it from
9 being successful so long as there aren't rigid rules that
10 say this can't be addressed in this manner, that is a
11 satisfactory manner.

12 MR. BAKER: Okay. Anything else, Mike?

13 MR. JOHNSON: Yeah, just an observation, I guess,
14 it came back to me. And I pointed this out earlier. There
15 would need to be, for some allegations, there would need to
16 be some follow-up, even in advance of using the SDP, because
17 the SDP requires that you end up with certain information.
18 So I am not sure whether that is a con.

19 I guess I would say that, as stated, use of the
20 SDP process to classify the risk significance of technical
21 allegations, and then there would be no independent NRC
22 follow-up of the allegation if it was green, that sort of
23 presupposes we have enough information as the allegation
24 hits the door that we can use that classification, and that
25 is not always going to be the case. So, I don't know what

1 you do with that.

2 MR. BAKER: Let me make a suggestion that -- treat
3 that as a con in that it is not applicable, or would not be
4 applicable to all technical allegations based on the
5 information available on receipt.

6 Mike, what --

7 MR. JOHNSON: No, that is not exactly it.

8 MR. BAKER: Let me try again.

9 MR. JOHNSON: Try again, Ed.

10 MR. BAKER: Okay. What I would do is scratch that
11 one, because that is really not one that -- basically, the
12 comment was that it is not applicable to all allegations,
13 all technical allegations based on the information in hand
14 at the time that it is received. Actually, it is probably
15 more appropriate to say not appropriate to all allegations,
16 but it is close enough.

17 MS. GINSBERG: Based on what?

18 MR. BAKER: Based on the information on hand at
19 the time it is received.

20 MR. JOHNSON: And, in fact, you know, Dave made a
21 point earlier about limitations of the SDP. There are
22 limitations also. You can use the SDP for allegations that
23 fall neatly into technical issues. If it is not one of
24 those type of allegations or if, in fact, it falls into an
25 area where there are SDP limitations, then it is going to be

1 outside of your ability to use the SDP as a tool, and this
2 option specifically refers to the SDP.

3 MR. LOCHBAUM: Also, this option represents a
4 larger barrier for people working at the plant. If a
5 co-worker sees a previous worker having gone to the NRC and
6 been greened, then that worker may be -- not knowing the SDP
7 process very well, may just preclude, you know, not even
8 come in to the NRC. So I think you raise the barrier for
9 people bringing issues to the NRC.

10 MS. GINSBERG: Dave, that is not, probably not
11 unique, however, to just this option, because any time
12 someone says your allegation is not meritorious, I think you
13 run that same risk. So I am not sure that that one is
14 unique to this one. It would have to be put on each of the
15 options, frankly.

16 MR. LOCHBAUM: Well, a zero threshold has a lower,
17 is a lower barrier. It is not a zero -- it is not a zero
18 barrier, but a non-zero threshold means you have a greater
19 barrier.

20 MS. GINSBERG: This is a comment, not a pro or a
21 con, but I would argue that this is not a threshold going
22 into this. This is not a threshold as to what the process
23 looks at, it is simply a threshold with respect to what the
24 agency does in response. It is different, it doesn't say
25 this isn't a valid allegation before they have looked at it.

1 First, they look at it through whatever evaluative tool and
2 then they say, this is of low safety significance, and I
3 think that is an important difference.

4 MR. LOCHBAUM: Except that it is a bogus process,
5 so if you get a response from a bogus process, good or bad,
6 then, to me, that represents a barrier. I don't like bad
7 processes, it is just a fault of mine.

8 MR. GUNTER: I would just add that it removes the
9 check and balance from a potential "voodoo regulation."

10 MR. BAKER: Now, you are going to have to help me
11 with -- you are going to have to be a little bit more
12 specific.

13 MR. GUNTER: Well, I am saying there is still a
14 question with regard to the science of risk modeling. And I
15 think that it is without question that there are areas,
16 particularly like fire protection, where it is more gambling
17 than it is anything else. And if, in fact, you have workers
18 out there who are involved in the field experience and can
19 challenge false assumptions that were used to establish
20 thresholds, then you want that input to challenge your
21 assumptions and modeling.

22 MR. BAKER: Okay. Anything else on this
23 particular option?

24 Let's move on to Option 4.

25 MS. GINSBERG: Someone in the audience.

1 MR. BAKER: Oh, I am sorry. Please use the mike.

2 MS. HELFER: One of the comments we made was --
3 Laura Helfer, Hopkins & Sutter. One of the comments we made
4 was that the SDP process offered a greater level of
5 consistency, which has not been brought out.

6 MR. BAKER: Okay. So that would be a pro.

7 MS. HELFER: Yes.

8 MR. BAKER: Greater level of consistency.

9 Now, Option 4 is similar to Option 3 in the use of
10 the SDP, but then we would go back to the allegor and ask
11 them their opinion on, you know, whether they found that an
12 acceptable process or whether they felt the NRC should still
13 do independent follow-up. I know the words are stronger, in
14 the paper itself, we said veto. At this point in time, what
15 I would say is, if the person asked us, we would probably do
16 it, because that is the essence of this option, as
17 differentiated from the other option. So I would view it as
18 a request and we would, most likely we would follow through
19 with that request.

20 So let me just open this particular option for
21 comment, pros and cons.

22 MR. JOHNSON: Well, as a pro, I think Option 4
23 potentially eliminates at least one or two of the cons of
24 the previous option, Option 3, that talked about, at least
25 in my mind, the adverse impact on public confidence. I

1 would think that if an allegor would raise an issue of
2 having the NRC, through the SDP or whatever process would be
3 used to screen the significance, be told that that issue is
4 of very low risk significance, but still have the ability to
5 say, well, I know you think it is very low risk
6 significance, but it is really important from my perspective
7 that you pursue it, I mean I think that would go a long ways
8 towards stressing that potential concern.

9 MR. LOCHBAUM: I guess I have the opposing view,
10 not surprisingly, in that I see it as a con, because this
11 has all the evils of Option 3, with the added evil of
12 rubbing the allegor's nose in it. Because you have already
13 told -- the NRC has already told the allegor that we
14 consider this beyond our attention span, or our interest
15 level, but if you absolutely insist, we will go out there
16 and look at it.

17 Putting yourself in the allegor's position, do you
18 really think that that investigation is going to come back
19 and say, geez, you are right, it was a green -- it was a red
20 all along?

21 MR. JOHNSON: Well, I mean I don't know. You
22 know, if I were dealing with the IRS and I had a concern
23 about some ruling that they made, and they gave me an option
24 to go back on appeal, I mean that is really what we are
25 talking about is an actual opportunity to have the NRC go

1 back and readdress the issue, independently readdress the
2 issue, right, is that right?

3 MR. GUNTER: Well, I guess I have a question with
4 regard to how does the NRC propose to go back and
5 independently evaluate an evaluation they have already made.
6 I mean what is the added feature here that makes it
7 independent?

8 MR. BURZYNSKI: I see the same flaw that Dave sees
9 in it, and I think it will speak to your point, Paul, in
10 that in the upfront process, they are going to make the
11 assumption that the allegation is true, evaluate it, and
12 then, let's say in this example, it gets the color green.
13 So then they conduct an inspection, they confirm it is true.
14 They evaluate it as a finding, run it through the SDP,
15 determine it is green, issue it as a non-cited violation
16 that is referred to the utility in the corrective action
17 program. So all it does is delay that inevitable decision
18 and complicates the process, adds more inertia to it.

19 So I don't see how this one helps with our
20 timeliness or our effectiveness of communication with the
21 alleged.

22 MR. JOHNSON: You know, we are assuming -- it is
23 funny, the way that we are concerned about this issue, and
24 my comment, is almost as though all of the -- in all of the
25 instances, the NRC would have made the right decision based

1 on the SDP.

2 That is the allegor would have brought forth an
3 issue, we would have looked at the SDP, done some cursory
4 screening and say -- and said, for example, it doesn't
5 matter if you have a problem with this component, because
6 when you look at this component, and along with the fact
7 that you have all these other components, and all these
8 other trains, and all these other redundant features, oh, by
9 the way, the likelihood of this initiating event is
10 extremely low, so this is a very low risk significance item.
11 When you look at that, based on our upfront screening, we
12 say, there is a very low likelihood that this allegation
13 would take us in an area that is risk significance -- has
14 risk significance, therefore, we are not going to do
15 anything with it. Okay. That is what this screening would
16 do.

17 And, so, then the allegor could come back and say,
18 well, I know that you believe this, but -- and it goes to
19 your check and balance, Paul. You know, but maybe -- you
20 know, maybe the SDP is not right. Or maybe the assumptions
21 that you use in the SDP are flawed. I mean, you know, there
22 is sort of a pre-gone conclusion that I am going to come
23 back through my independent review with the same result that
24 I gave you in the SDP. And I am sort of allowing for the
25 fact that maybe there are these things out there that -- and

1 maybe the SDP doesn't get it exactly right. So it allows
2 that avenue, and so I saw that as a benefit over Option 3.

3 MR. LOCHBAUM: Would there be a box on the form
4 that the alleged could check and just short circuit the SDP
5 and say I want the independent review and we will just save
6 that resources?

7 MS. GINSBERG: That would be my point, is that is
8 where you end up, and that all you are doing is going around
9 that maypole twice. It would seem to me, if what you are
10 doing is allowing the alleged to expend NRC resources, we
11 ought to do that upfront.

12 MR. GUNTER: Well, again, I am wondering, though,
13 what is the significant difference between that original
14 evaluation and the independent evaluation? What is the
15 event?

16 MR. JOHNSON: Oh, that is a good question, and I
17 don't know that anyone has thought through what that is.
18 But you could have -- to use the SDP, you have to have
19 certain information to go into it. But I was assuming, I am
20 assuming that by independent evaluation, what we were
21 talking about is, let's set aside that initial information,
22 let's go out and let's do an inspection, right. We are
23 talking about not turning this issue over to the licensee
24 for resolution, but let's go dig into the issue, see if
25 there is anything there. See if there is any extent of

1 condition. You know, the kinds of things that you would
2 rely on a licensee to do for an issue that is of very low
3 risk significance, we would take that on as the NRC. That
4 is what I thought when I read it.

5 MR. BAKER: Yeah, the independence issue, to have
6 someone doing the inspection that is not the person who ran
7 it through the SDP. And so they would be following up on
8 the issue, doing what we normally do in inspections, versus
9 just running the information we have through the SDP
10 process. That is really the difference between the two.

11 MR. GUNTER: So it is like bringing somebody in,
12 an inspector from another region?

13 MR. BAKER: Well, it may be the same region, it is
14 just he was not involved, he or she was not involved in
15 doing the SDP evaluation.

16 MR. JOHNSON: But having had the opportunity of
17 listening to folks' comments on my original comment, I
18 really do -- I mean I am sort of rethinking my position. I
19 think, in fact, the question about, if you just had a box on
20 the form and allow people to check it, I really do think
21 they would check it almost in every instance, and so you
22 really would be redoing it, and so maybe it is better to
23 have them do it upfront, so.

24 MR. BAKER: Well, to be quite honest, the
25 perception of this option was not one that came to mind.

1 And it is interesting that Mark and Dave and Paul share the
2 same perception. So, the benefit of this conversation is we
3 get the benefit of that perception, because it is not one --
4 we thought we were adding something that was an enhancement,
5 when, in fact, it is not perceived that way at all.

6 Comments from over here?

7 MR. CAREY: Yeah. And I do perceive it as an
8 enhancement to 3. The process is a screening process, not
9 an assessment of the technical issue, so it does go back to
10 the individual to use this option when he challenges the
11 utility's credibility to pursue it through their corrective
12 action program. So it is not that he is challenging the
13 significance determination process review of a technical
14 issue, that is a screening process to decide where the issue
15 is going to go. So, again, we are back into that gray area
16 piece again that his veto power, or whatever we want to call
17 it, is because he doesn't trust the utility to address it
18 appropriately, possibly.

19 MS. GINSBERG: I could argue a slightly different
20 version of that same issue and question the balance that is
21 struck between the allocation or the determination about
22 where resources should be allocated, whether the NRC should
23 determine how their resources are allocated or an allegor
24 should determine it. And my -- I guess I obviously come
25 down on the side that the NRC should make the determination

1 about allocation of their own resources, not an alleger.
2 Going to the veto issue.

3 MR. BAKER: Right. And I appreciate the point on
4 the specific issue. But I guess what I am going to, if the
5 Commission were to select this option, the Commission would
6 have decided that this was an appropriate use of resources
7 without having to make that decision on each and every
8 issue.

9 MS. GINSBERG: I would agree that that is a policy
10 decision that the Commission is free to make.

11 MS. GARDE: And I think, Ellen, you are assuming
12 that the alleger shouldn't or doesn't have that authority.
13 And the fact of the matter is, they already are going to
14 determine resources, because if they are not happy with the
15 result, they are going to go to the press, public interest
16 groups or Congress, and they are going to get the resources
17 expended anyway.

18 MR. JOHNSON: In every case.

19 MS. GARDE: Right. So if you deny it at an
20 earlier level, you are still going to face this issue until
21 that employee gets an effective response.

22 MS. GINSBERG: But there may be an effective
23 response.

24 MS. GARDE: Then there won't be a resource issue.
25 Then they are not going -- if there is an effective

1 response, they are going to be part of that response.

2 MS. GINSBERG: Okay. But we have got to go back
3 to this point that Paul made, which is you get the initial
4 evaluation done. The individual says I am not satisfied
5 with that, I want the NRC to do another evaluation,
6 independent, whatever you want to call it. They do that and
7 the result comes out exactly the same. In that case, you
8 have now been around the maypole twice, and the individual
9 may go to the press because they are not happy with it, or
10 they may not, but the fact of the matter is, I am not sure
11 that that is going to be determinative, whether there is
12 that option or not, as to whether a result that the
13 individual is not comfortable with, that is probably what is
14 going to drive them to go elsewhere, rather than having had
15 this second opportunity for the NRC to evaluate it.

16 MR. BURZYNSKI: That is the same flaw that I see,
17 and it is that if you go through, do the inspection, I am
18 assuming that you will handle the finding in accordance with
19 the program, which means it turns into a finding, it gets
20 color and it will end up in the corrective action program,
21 and it never addresses the allegator's issue with trusting
22 that program. I think that is one bad outcome of this. All
23 the right things for the wrong reasons.

24 MR. CAREY: I don't see this as sending it through
25 the SDP process a second time. It went through the process

1 and it came out whatever color it came out. The override
2 power is to say that, well, that is fine, it came out green,
3 but I still want you to look at it, I don't want this to go
4 back to my utility. So, round two around the pole isn't
5 back to the SDP process, it is to have the NRC investigator
6 go look at the technical merits of the issue, and is that
7 transmitter really out of calibration or whatever.

8 MR. BURZYNSKI: Jack, at that point I am assuming
9 that if they substantiate the allegation, they find a
10 violation or a non-conformance or something, it is not an
11 inspection finding, and the program tells you what to with
12 inspection findings, which is evaluate them with the SDP, if
13 it is green, turn it over to the utility. It doesn't tell
14 you to do something different. And I didn't see in this
15 proposal anything that suggested a different process for
16 substantiated allegations that are an outcome of Option 4.
17 So maybe --

18 MR. BAKER: The difference, as I see it, though, I
19 think I will go to Jack's point, is that in one case you
20 have got the NRC going through the SDP and saying, even if
21 this is true, this is where it turns out on significance
22 base.

23 I think what Jack's point is, what the allegor
24 gets back if we go do the follow-up inspection is, yes, in
25 fact, you are correct, however, even though you are correct,

1 it still comes out in this space. And, so, whether -- you
2 know, perhaps the licensee was saying it is not valid, that
3 would make a difference in the outcome. It is a very
4 different message as I see it between the two.

5 MR. BURZYNSKI: Okay.

6 MR. CAREY: I think we are looking at this from
7 two different perspectives. The one perspective is the
8 process takes a look at the issue and says, you know what,
9 even if it is valid, because of the low probability of core
10 damage frequency and all these other reasons, this ends up
11 as a non-cited violation, or whatever the correct term is
12 for that now, so that is just not a huge deal, it is a small
13 risk.

14 Whereas, the allegor looks at this like, I don't
15 care. I don't care if you fine them, I don't care if you
16 shut them down. The thing is broken, I want it fixed. That
17 is his concern, not the level of cited violation that the
18 utility gets. So I think that there is a different
19 perspective.

20 MR. BAKER: You are nodding, do you have a
21 comment?

22 Okay. Do we have anything else on this particular
23 option? Anything from the audience, persons not at the
24 table?

25 [No response.]

1 MR. BAKER: Are we missing anything from our pros
2 and cons, just quickly, that people are looking at this,
3 that we should have captured? I was not as -- I can't say
4 that word -- vigilant.

5 MR. GUNTER: You know, I would just add that,
6 again, our concern is that it places an economic driver on a
7 threshold for potentially safety significant issues. That
8 is our perception, that a lot of this is cost beneficial
9 licensing action that is now moving into the allegation
10 field, and those are economically driven.

11 And it is our concern that that may be the heavy
12 driver rather than the safety significance driver. And it
13 is hard for us to sort that out.

14 SPEAKER: Is that a con?

15 MR. GUNTER: Yes, a con. I think it has to do
16 with public confidence that -- or lack of public confidence
17 that safety significance remains the dominant issue here and
18 not money.

19 MR. BAKER: Given that all we are talking -- and
20 crediting Dave with his comment on whether the process is
21 flawed or not, what we are really talking about are not
22 safety significant issues, at least as determined through
23 the process. So --

24 MR. GUNTER: That is where I am hanging up.

25 MR. BAKER: Okay. You are hanging up in the

1 fact --

2 MR. GUNTER: On the safety, on the drivers that
3 are determining the safety significance of an issue, can be
4 dominated by economics, I think. That is a concern.

5 MR. BAKER: I mean I could see it if you are
6 taking issue with the modeling that goes into the risk
7 assessment itself. But I mean there really aren't any
8 economic factors in the risk assessment, only in how --

9 MR. GUNTER: I disagree.

10 MR. JOHNSON: Yeah, I am not understanding the
11 economics, the tie-in to economics.

12 MR. GUNTER: Let me -- Dave, if you have a
13 comment.

14 MR. LOCHBAUM: Yeah. The SDP is predicated in
15 large part on PRAs that were done on very uncertain quality
16 standards, and those are directly tied to money. The
17 industry chose not to establish any quality standards and
18 the NRC acquiesced. As a result, the people who had money,
19 a little more, better intents or more long-sighted
20 management did better PRAs, and their SDPs and risk
21 assessments are much more meaningful than the ones that took
22 shortcuts and did the absolute minimum to meet 88-20.

23 And, you know, your own staff is pointing out case
24 and case of these disparate studies. TVA is an example.
25 You compare Watts Bar and Sequoyah, two virtually identical

1 plants, the numbers are very different. So cost did have a
2 factor in the numbers that can out of the Ouija board. You
3 know, some people bought very good Ouija boards and some
4 people didn't. So to say that economics is not an issue is
5 somewhat shortsighted.

6 MR. JOHNSON: No, I am not saying economics is not
7 an issue. I am trying to understand, are we saying -- I am
8 trying to understand how it is an issue as it relates to
9 Option 4. What is the economics? Is it because --

10 MR. GUNTER: That you are establishing thresholds
11 on safety significant issues that may have false premise in
12 the PRAs.

13 MR. JOHNSON: But let me just -- maybe this is
14 worth discussing. If the words SDP didn't -- were not
15 included in Option 3, and were not included in Option 4, I
16 would suggest that Option 3 and Option 4 are not
17 substantially different than what they are.

18 All Option 3 and Option 4 are is -- all they say
19 is that we would consider using a significance screen
20 upfront rather than today as we -- doing it as we do today
21 where we follow up on every allegation, we would, upfront,
22 do some significance tests, SDP or STP or PRD or, you know,
23 whatever it is, you would do some upfront significance
24 screen, and if issues don't reach that screen, then we
25 wouldn't pursue them. We wouldn't do independent NRC

1 follow-up with that issue. That is really what is at the
2 heart of Option 3 and Option 4.

3 And, you know, there is an economic -- and the
4 reason I asked about economics is because I see, I think the
5 NRC sees an economic cost associated with this, and it is,
6 let's face it, the NRC has a fixed pot of resources. We
7 have four, you know, four inspectors per plant. As the
8 number of inspections go up to follow up on allegations, the
9 number of inspections go down, associated with the other
10 things that we do in terms of following up on events,
11 following up on baseline inspections. Not really, we will
12 work people overtime, you know what I mean.

13 But there is a fixed level of NRC resources, and,
14 so, as you increase resources associated with allegations,
15 particularly allegations that really are very low risk
16 significance or less, then you decrease the ability of the
17 agency to focus those other resources, NRC regulatory
18 resources on areas that we think have a safety payoff. And
19 that, to me, is what I mean when I say there is an economic
20 cost associated with, you know, doing everything, as opposed
21 to establishing, trying to establish some realistic
22 threshold upfront in terms of what are the things that you
23 don't need to do that total extensive follow-up on as a
24 regulator.

25 MS. GARDE: And I think that you have to be very

1 careful when you do that that you are not interfering with
2 the whole scheme that your inspection, you know, is premised
3 on, which is you are only looking at a small percent, and
4 now you are going to look at less percent, and so you are
5 reliant upon employees who are there to tell you what they
6 see and what is going on. And those employees are not all
7 qualified to even understand what they all see, or qualified
8 to understand the significance of the issue that they have
9 observed. And anything that you do to change that system
10 that is now in place and is working has the potential of
11 stopping that free flow of information to the Commission by
12 creating an impression you don't want to hear it or you are
13 not going to do anything about it. And disturbing that
14 balance at the same time you have shrinking resources has
15 risks associated with it.

16 MR. JOHNSON: That is certainly true, and I don't
17 mean to suggest that that it should be a driver. I was just
18 trying to clarify what I mean in terms of, you know, the
19 economic consequences associated with the decision, whether
20 you follow up on everything, or whether you follow up on
21 only those things that rise above a threshold.

22 MR. LOCHBAUM: I just wanted to reiterate a point
23 I made earlier, before the break, was that I realize there
24 is a resource issue, you know, because we have a smaller pot
25 than you do, and ours are pretty much fixed. So we have to

1 be very careful on what issues we follow and what issues we
2 don't, so I understand that fairly well.

3 I also think -- I would like to -- the allegation
4 trend is coming down. So I think, as industry's programs
5 get better and more attention is placed on this, there will
6 be fewer reasons, or whatever the motives are, for people to
7 go to the NRC. So I think it is, -- if that trend
8 continues, then it will probably, even though it is the
9 least cost effective way of dealing with it, it is probably
10 the most prudent way to deal with it, is give it your best
11 shot and make the people that are disenchanting with the
12 owners programs, satisfy them and make them happy. If they
13 return to the owners programs, that would be great, that
14 would be the best. But if not, NRC needs to be the cavalry
15 that workers can turn to. And not just the cavalry that
16 shows up on occasion.

17 MR. BAKER: Or, as you said earlier, in only one
18 region. Let me move on then to the option, TVA's option.
19 And, Mark, since you submitted it, why don't you lead off
20 with the pros and cons.

21 MR. BURZYNSKI: I think the pros that we saw was
22 that it was --

23 MR. BAKER: Microphone.

24 MR. BURZYNSKI: Oh, sorry. I think some of the
25 pros that we saw was that it was consistent with the other

1 elements of the program in terms of the tools that are used,
2 the thresholds, the criteria, the language, and the
3 decisions, in terms of the technical aspects, and so we saw
4 that as a plus. We think it had as a pro, a reinforcement
5 of the right behaviors in terms of getting people to use the
6 utility's programs when they are judged to be effective.
7 And we think it also had the built-in safety checks that,
8 when the programs were not effective, or when the individual
9 has tried and wasn't satisfied, that there is still another
10 avenue available to them, and so those were the pluses that
11 we saw to it. Of course, we didn't see any cons to it.

12 [Laughter.]

13 MR. BURZYNSKI: Consistent with the other elements
14 of the oversight program, the tools, the thresholds, the
15 language.

16 MR. BAKER: And I guess also that it does use risk
17 in assigning significance, because you would still do that.

18 MR. BURZYNSKI: Right. Yes.

19 MR. BAKER: Okay. Other comments?

20 [No response.]

21 MR. BAKER: I can't believe everybody is short of
22 an opinion all of a sudden.

23 MR. LOCHBAUM: I have got one. I think this
24 option does have some commendable attributes, but I think it
25 increases the potential for identifying the person back to

1 the utility. I think that is actually part of it. And
2 there is -- the reason somebody came to the NRC is they are
3 not confident or satisfied or enchanted with the plant
4 owners' process, whether it is valid, invalid, right or
5 wrong, that happened. And for the NRC to turn it -- turn a
6 name over or back to the utility is -- basically, it would
7 provide the NRC with the largest refrigerator in the United
8 States in terms of chilling effect, and I don't know if that
9 is a pro or con. We view that as a con.

10 In addition, it also is predicated, both this, in
11 some respects, Billie Garde's option, I don't think you can
12 have a day-to-day monitor on a utility's corrective action
13 program effectiveness or their safety culture. You can get
14 insights, but one of the reasons we don't have a PI in those
15 areas is because there isn't something you can look at.

16 So it is very difficult to gauge whether a
17 corrective action program is robust or adequate or not. And
18 I think, we think that is the reason why allegations need to
19 be -- all allegations need to be pursued, because they
20 provide at least some hint that the corrective action
21 program may not be as sound as it should be.

22 MR. JOHNSON: And related to that, and this time I
23 do agree with Dave, related to that, I think -- in fact, as
24 he says, it is very difficult to get a handle on what the
25 utility's problem identification and resolution capability

1 is. And, typically, when we do, it is focused on how well
2 they correct things that they know about.

3 It is more difficult to get our hands on how well
4 do they identify problems at a low level and raise issues
5 and treat them appropriately. And one thing allegations do
6 is they give you a good window into whether or not licensees
7 are finding and fixing -- how well they are treating
8 problems that are identified. So it gives you a good window
9 into the problem identification.

10 And so I would -- it is a little bit troubling, I
11 think, to try to latch on to what we have determined in
12 terms of the corrective action program, what is there, and
13 what they are doing to fix it, and use that then to sort of
14 -- to hand off allegations. That aspect of it troubles me a
15 little bit.

16 MR. LOCHBAUM: I think the best part of the
17 option, and it was one I never thought of before, and the
18 gentleman from Millstone also had the same comment, and the
19 utilities need feedback in order to improve their programs,
20 and Option 1 provides the least feedback to the utility, so
21 it is least amenable to the licensee fixing, itself fixing
22 their own program.

23 The TVA option provides more feedback and,
24 therefore, allows the plant owner to fix their own program,
25 so that is good. I just think that perhaps some

1 modification to Option 1 -- I guess I would like to capture
2 that part of TVA's option, whether it is in a stand-alone
3 option or rolled into one of the other ones. I think that
4 needs to happen, because I think that is a positive thing.

5 MR. BAKER: Do you have any suggestions on how we
6 could do that?

7 MR. LOCHBAUM: No.

8 MR. BAKER: Okay.

9 MR. MOHRWINKEL: You might want to add just to
10 improve their programs, that was at the end there. The
11 purpose of the feedback is for the licensee to improve their
12 programs.

13 MS. GINSBERG: I would just make a comment, it is
14 maybe in the nature of a con, but let me say it before we
15 describe it as such. Whenever we talk about NRC's
16 confidence, it is not a regulatory requirement, and when we
17 use terms that are that subjective, I get concerned about
18 how we are going to implement the process. This seems to me
19 a factor that you are using a set of criteria that you are
20 using, and the first part of the criteria is NRC's
21 confidence in, whether it is a corrective action program or
22 some other aspect of licensee performance. I don't think
23 that is a great way to create a process, based on that sort
24 of thing.

25 MR. BURZYNSKI: Well, the reason we picked it, we

1 just didn't want to pick something that was too subjective.
2 We looked at the oversight process and one of the things
3 they are required to do is annually to make this judgment
4 and report it. And so we were only building on something
5 that the program has built into it, that they have to make
6 that judgment and report it as part of their annual, an
7 annual statement on corrective action program effectiveness.

8 MR. BAKER: And so you see that as coming out of
9 the assessment process.

10 MR. BURZYNSKI: That is already in the assessment
11 process. We just built on that and said, if you are already
12 making that judgment with the right hand, you can use it
13 here, we think, to help you with the left hand.

14 MR. BAKER: So, in fact, it is not really
15 subjective. It is not really NRC's confidence then, it is
16 more what is the indicator or what is the inspection result.

17 MR. BURZYNSKI: Right.

18 MS. GINSBERG: Okay.

19 MR. BURZYNSKI: And it is built on more inspection
20 hours now in the new program than they had in the old
21 program. They have not only the team inspection that looks
22 specifically at the program that covers the corrective
23 action program, any employee concerns program, and well as
24 making probes into whether the safety conscious work
25 environment is there, as well as in all of the different

1 functional areas as parts of all the other inspections, they
2 do sampling of particular problem reports and they test to
3 see whether problems are being identified and captured. So
4 I think it does the things that are necessary to make the
5 judgment, and we were just building on that, not inventing
6 something new.

7 MR. JOHNSON: But it is true, there is no PI for
8 corrective actions, and there is no SDP to allow you to --
9 so it is a judgment. So I think that still does go to your
10 comment.

11 MR. BAKER: Okay. Any other comments on this
12 particular one, option?

13 MR. CAREY: Let me, Mark. The third element that
14 says you are considering whether the allegor has attempted
15 to use the utility's programs to resolve the issue. Does
16 that mean if they haven't tried that path, you would suggest
17 they go back and try that?

18 MR. BURZYNSKI: That's right. And, you know,
19 after listening to the comments, I would modify that today.
20 But we were envisioning a group of people that either
21 weren't aware, or for a matter of convenience, or their own,
22 maybe, lack of confidence in how to exercise the program,
23 chose to use the allegation route. I would modify it today
24 to exclude people that have real issues of trust or things
25 like that, that comes out of the dialogue. I wouldn't

1 recommend today to send those people in, but --

2 MR. CAREY: That was my question.

3 MR. BAKER: Okay. Anything else?

4 [No response.]

5 MR. BAKER: Okay. If we could go to Option 5. I
6 know we are running long. We haven't been kicked out, so we
7 will continue. I appreciate everybody's patience.

8 Billie, since it is your option, do you want to
9 start off?

10 MS. GARDE: Well, yes, I will be glad to start
11 off. I mean, essentially, my option incorporates a premise
12 that doesn't exist right now, which is that the licensees
13 don't have any criteria to establish whether or not they
14 really have a safety conscious work environment and an
15 effective corrective action program.

16 So, in order to get to this option, you really
17 would have to do something that the Commission has pretty
18 much already rejected, but I haven't given up on, which is
19 establishing a criteria -- or a utility does have to
20 establish a criteria that they have demonstrated a safety
21 conscious work environment, and effective employee concerns
22 program, with sufficient independence that it could be
23 relied upon, and a very strong corrective action program.

24 If those criteria were met and the utility was
25 able to demonstrate those criteria, and assuming that that

1 happened, I think that gets you the fastest and the most
2 efficiently back to where employee concerns can be handled
3 within line management, within the company, in the quickest
4 way, the cheapest way, the best way to both preserve
5 employees' jobs and be able to get to the issue before it
6 gets all wrapped up in all kinds of other things.

7 But my proposal is premised on the NRC doing
8 something that so far they have not been willing to do,
9 which is impose criteria and performance indicators to
10 indicate safety conscious work environment, employee
11 concerns program, and strong corrective actions.

12 MR. BAKER: Or jointly develop.

13 MS. GARDE: Or jointly develop. Right. That
14 would work.

15 MR. BAKER: Okay. Let me try to put some pros and
16 cons up there. In terms of cons, I would say the criteria
17 don't currently exist.

18 MS. GARDE: Right.

19 MR. BAKER: In terms of pros, go back to the point
20 that you made, that it would be the fastest, most efficient
21 way of resolving concerns.

22 MS. GARDE: Yes.

23 MR. GUNTER: Does it establish a performance
24 indicator?

25 MS. GARDE: There isn't one right now.

1 MR. GUNTER: No, but I mean it would establish a
2 performance indicator.

3 MR. BAKER: Well, it would establish the criteria
4 which you could measure it. I don't know if you are
5 speaking performance measure in terms of the revised reactor
6 oversight process, you know, green, yellow, red, I don't
7 know if we could do that. But in order --

8 MR. GUNTER: I think you can do with a corrective
9 action program.

10 MR. BAKER: I mean I don't know the answer to your
11 question, Paul, because every time we have thought about
12 doing it, it has come out to be a very difficult task.

13 MS. GARDE: Ellen's fought read hard.

14 [Laughter.]

15 MR. BAKER: But I guess the premise, though, Paul,
16 is that would have to be done in order to use this option.

17 MS. GARDE: In order to do the option, they would
18 have to be able to demonstrate the type of thing that
19 essentially Millstone had to demonstrate, which the industry
20 is very opposed to imposing on it. It adopts the same
21 goals, I mean the industry has said they want every plant to
22 have a safety conscious work environment, but that has very
23 different meanings across the country. You know, people --
24 companies say they have one, but, you know, they get in a
25 lot of trouble and they don't have one.

1 But if it did exist, I think what you would see is
2 cheaper, very cheaper, faster resolution of employee issues
3 in a very -- a safer and a better industry. So it is kind
4 of pie in the sky, but I think you should talk about it.
5 Because I think in terms of -- as NRC resources diminish,
6 you need to keep your options open about imposing those
7 requirements as a way to get the job done.

8 MS. GINSBERG: Unsurprisingly, I guess there are
9 two -- one question and then I have a comment. The question
10 that I have is, it does not appear to me that your process
11 can be distinguished in terms of fastest approach for
12 resolving the issues if, as opposed to any of the other
13 proposals, because if the idea is to turn the issue back to
14 the licensee, the only thing that is different is you are
15 saying it is a perfect world and there is a safety conscious
16 work environment here, and you are assuming that there isn't
17 in the other -- in the course of the other proposals.

18 But I think giving it back to the licensee, we
19 would all agree, would, hopefully, be the fastest way,
20 assuming confidentiality isn't the issue, the fastest and
21 the most efficient way to get a resolution.

22 MS. GARDE: Right. I think most programs have
23 timeframes in the area of 45 to 60 day turnaround time as a
24 goal for resolving issues. That is pretty reasonable.

25 MS. GINSBERG: Right. I am only questioning in

1 terms of speed, this option versus all the others.

2 MS. GARDE: Right.

3 MS. GINSBERG: Because if the same approach were
4 applied to all the other options where the licensee is
5 provided with the information.

6 MS. GARDE: Yes.

7 MS. GINSBERG: Okay. And the second thing is, I
8 just want to confirm that, while the industry supports a
9 free flow of information, the industry is not likely to
10 support, I would obviously have to go back to my members,
11 but not likely to support establishment of firm criteria
12 upon which a safety conscious work environment would be
13 evaluated.

14 MR. GUNTER: On that note I would further say then
15 it would go as a pro to establish public confidence in a
16 stronger regulatory oversight.

17 MR. BAKER: Okay. Enhance public confidence due
18 to a stronger regulatory oversight.

19 MR. JOHNSON: As a con, to sort of state the
20 obvious, this is the option that would take the longest to
21 put in place, I think, given that there aren't any criteria.

22 MS. GARDE: You're right. Years.

23 MR. MOHRWINKEL: You have to capture NEI's con,
24 which is that the members may not support some of those.

25 MS. GARDE: Right. Industry would oppose it.

1 MR. MOHRWINKEL: Oppose this.

2 MS. GINSBERG: Well, that wasn't a process. No, I
3 think that is not what my con is, I think my con is, and
4 Billie identified it initially, which is that the criteria
5 don't currently exist.

6 MS. GARDE: Right.

7 MS. GINSBERG: That would be the con that we are
8 suggesting here. The safety conscious work environment.

9 MR. MOHRWINKEL: But I thought you said your
10 members probably would not support the establishment of such
11 criteria.

12 MS. GINSBERG: Right, but that's --

13 MS. GARDE: Or the imposition of such criteria.

14 MS. GINSBERG: Right. But that is not what our
15 underlying public policy argument is. Our public policy
16 argument is that the criteria don't exist and we think that
17 they are too subjective to develop such that a regulation
18 can be formed from them.

19 MR. LOCHBAUM: Since we support Option 1, we would
20 view the timeliness to implement this as a con -- as a pro.
21 If we would maintain --

22 [Laughter.]

23 MR. LOCHBAUM: Just an observation.

24 MS. GARDE: We have come full circle.

25 MR. BURZYNSKI: One other con that I see is that

1 there is -- this will not satisfy a small minority of
2 allegeders that disagree with the green color for these
3 attributes of the program. If they do not trust the
4 program, for whatever reason, telling them with a different
5 set of indicators that it is a good program still leaves
6 that issue unresolved.

7 MS. GARDE: You're right.

8 MS. GINSBERG: Billie, I have a question. I am
9 just noticing on page 5, you have --

10 MS. GARDE: Page 5.

11 MS. GINSBERG: Of your letter.

12 MS. GARDE: Oh, okay.

13 MS. GINSBERG: And I am just looking at it for the
14 first time, but I just wanted to ask a question about a
15 comment that you make here. You say that fear of
16 retaliation without demonstrable basis would not be a reason
17 for independent inspection, but would be a basis for
18 heightened oversight by the agency.

19 MS. GARDE: I just mean if someone comes in there
20 and says, look, I don't -- I am afraid to go to the utility.
21 I am a contractor, I have never been here before. I don't
22 know anything about them. No, I don't have any reason to
23 believe that they are going to retaliate against me, but I
24 am really nervous about all this, right. They don't have
25 any examples of why that they are fearful. And you say,

1 look, the program has passed all the criteria, it is one of
2 the best programs in the country. Give it a try. But here
3 is my card, if anything bad starts to happen, given me a
4 call.

5 I think that you can't just send them back and not
6 kind of, you know, keep an open line of communication with
7 them. I don't think you can ever do that.

8 MS. GINSBERG: Okay. I think that is different
9 than heightened oversight. That sounds like something
10 affirmative that the agency would do.

11 MS. GARDE: Yeah, that may not have been the right
12 choice of words.

13 MS. GINSBERG: Okay. Thanks.

14 MS. GARDE: I didn't mean heightened oversight in
15 the term regulatory oversight.

16 MS. GINSBERG: Thanks.

17 MR. BAKER: She means our antennae are up.

18 MS. GARDE: Right. Antennae are up, that would be
19 better.

20 MR. BAKER: Any other comments? Any comments from
21 the participants not at the table?

22 [No response.]

23 MR. BAKER: No.

24 MS. GARDE: One comment.

25 MR. BAKER: Yes. Go ahead, Billie.

1 MS. GARDE: One of the reasons, and let me just
2 say this, one of the reasons why I felt it was important to
3 get this other option on the table is because in all of the
4 materials that you proposed, although you are certainly
5 looking at improving the program, I think it was kind of
6 lost about what the objective is.

7 And I think we all are of the same mind, and I
8 think we need to speak to that and articulate it or we lose
9 track of it, that the best objective here is for each and
10 every utility or licensee to have a strong program in which
11 they can deal with employee concerns as soon as they come
12 up, without retaliation, and that the objective is really to
13 turn both your program and all the ECP programs into the,
14 you know, Maytag repairmen, so there are no calls and things
15 are being dealt with.

16 Okay. That said, both the NRC and every utility,
17 in my opinion, does have to have that Maytag repairman. But
18 I think it is important to keep in front of us what the
19 objective is.

20 MR. BAKER: I think everybody here would agree
21 with that. That is the best of all worlds, if that were the
22 situation.

23 I had some case studies, and I am not really going
24 to go through those. Those are really to stimulate
25 discussion, with I don't think we needed. In this

1 particular group, I think we had plenty of discussion.

2 The last thing I wanted to cover, I had other --
3 let me find my agenda page, other discussion topics, and
4 that was really in case we finished early, which didn't
5 happen. So let me just kind of move to subsequent actions,
6 just so everybody is aware of where we are going from today.

7 The next step in this process is for the staff to
8 take the public comments, the results of today's meeting,
9 and develop options for the Commission to move forward. And
10 based on today's discussion, I think the options may look
11 very different from the ones that we proposed. I think we
12 will have some hybrids. Definitely the ones that came in in
13 comment, for example, TVA and Billie's comments will be
14 addressed, because we have to address them as public
15 comments, and so those options will be discussed in the
16 paper as options, along with today's comments.

17 In addition to that, the Commission charged the
18 staff with taking a look at allegations that in the past had
19 been identified as safety significant in the end result.
20 Going back and using the significance determination process
21 to assess how that would have turned out, given the
22 information we had at the time that we received it, and how
23 would it turn out, given the end result. And to look at
24 that difference as kind of a validation or invalidation of
25 the significance determination process as applied to

1 allegations. They did not feel what we had done in the
2 initial paper really addressed all the questions of trying
3 to use that process, and so we will be doing that.

4 Obviously, since in the past we did not have a
5 significance determination process, it is really a process
6 of exercising, call it engineering judgment, and in
7 hindsight as to which ones are those. No, no, I mean -- I
8 am talking about examples where everybody agrees they were
9 significant in the end result. And then finally, you know,
10 how does that come out of the SDP?

11 The goal for doing that paper is the end of July.
12 I would suspect that shortly after that, the paper will be
13 available. Whether the Commission does that before or after
14 they make a decision is their choice. As part of that, they
15 may come back to the staff and ask us to consider
16 additional, longer term actions, I don't know. We will have
17 to wait and see how that comes out. But that basically is
18 the schedule.

19 I want to thank everyone for their comments, their
20 time, their participation today. And with that, we are
21 adjourned. Thank you.

22 [Whereupon, at 1:18 p.m., the meeting was
23 concluded.]

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25