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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
OFFICE OF THE SECRETARY

BRIEFING ON RISK-INFORMING
SPECIAL TREATMENT REQUIREMENTS

PUBLIC MEETING

Nuclear Regulatory Commission
One White Flint North
Commissioner's Conference Room
11555 Rockville Pike
Rockville, Maryland
Friday, September 29, 2000

The Commission met in open session, pursuant to notice, at 9:30 a.m., the Honorable RICHARD A. MESERVE, Chairman of the Commission, presiding.

COMMISSIONERS PRESENT:

RICHARD A. MESERVE, Chairman of the Commission
GRETA J. DICUS, Member of the Commission
NILS J. DIAZ, Member of the Commission
EDWARD MCGAFFIGAN, JR., Member of the Commission
JEFFREY S. MERRIFIELD, Member of the Commission

1 STAFF AND PRESENTERS SEATED AT THE COMMISSION TABLE:

2 KAREN D. CYR, General Counsel

3 ANNETTE L. VIETTI-COOK, Assistant Secretary

4 THOMAS KING, Director, Division of Risk Analysis &
5 Applications, RES

6 SAMUEL COLLINS, Director, NRR

7 WILLIAM TRAVERS, EDO

8 RICHARD BARRETT, Chief, Probabilistic Safety
9 Assessment Branch, NRR

10 STEVEN WEST, Section Chief, PSA Branch, NRR

11 RALPH BEEDLE, Senior VP & CNO, Nuclear Generation,
12 NEI

13 DAVID LOCHBAUM, Nuclear Safety Engineer Union of
14 Concerned Scientists

15 JOE SHEPPARD, VP, Engineering & Technical Services
16 South Texas Project

17 THOMAS POINDEXTER, Partner, Winston & Strawn
18 NUclear Utility Backfitting & Reform Group

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P R O C E E D I N G S

[9:30 a.m.]

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3 CHAIRMAN MESERVE: Good morning, ladies and
4 gentlemen. On behalf of the Commission, I'd like to welcome
5 you to today's briefing on risk-informing special treatment
6 requirements.

7 For the last several years, the NRC has been
8 moving steadily ahead in incorporating the consideration of
9 risk into its regulatory processes.

10 One of these has resulted in the Commission
11 approving a rulemaking plan and issuing an advanced notice
12 of proposed rulemaking for risk-informing special treatment
13 requirements, otherwise known to most of those in the room,
14 I think, as Option 2.

15 As many of you know, I'm sure everyone in the room
16 and perhaps a few who are watching us through the benefit of
17 media streaming may not be aware that special treatment
18 refers to those additional requirements imposed on
19 commercial grade equipment in order to assure that that
20 equipment can serve the special safety function in a nuclear
21 power plant.

22 It is this advanced notice of proposed rulemaking
23 and the comments received on it from the public that are the
24 subject of our meeting today.

25 This morning we will hear from several presenters

1 and our first panel is from the staff, who will present
2 their preliminary views on the comments received on the
3 ANPR.

4 I would like to stress to everyone in the room
5 that these are the preliminary views, that this is very much
6 a work in progress and that I'm sure that the staff will
7 benefit from the interactions today, as well as it shapes
8 its views as to how we should proceed.

9 We'll then have a second panel that I will
10 introduce when the time arises for them to come to the
11 table.

12 Let me turn to my colleagues and see if they have
13 opening comments. If not, Dr. Travers, you may proceed.

14 DR. TRAVERS: Good morning, Mr. Chairman and
15 Commissioners. As you've indicated, we are here today to
16 discuss one element of our continuing efforts to enhance the
17 use of quantitative risk insights into our regulation
18 program.

19 SECY-00-194 recently provided the Commission with
20 our preliminary assessment, as you have indicated, of
21 comments we received on the March advanced notice of
22 proposed rulemaking related to risk-informing special
23 treatment requirements.

24 Our presentation today largely tracks the
25 information provided in that paper and includes our current

1 thinking on moving forward to implement the rulemaking plan
2 for the so-called Option 2 of our risk-informing efforts.

3 The issues we face in proceeding with Option 2 are
4 significant and challenging. We are expending substantial
5 resources to develop an approach that appropriately
6 considers risk, one that will ensure design basis
7 functionality is maintained, while reducing unnecessary
8 special treatment requirements.

9 At the same time, our efforts are focused on
10 developing a regulatory structure that is not overly complex
11 and one which is legally sound.

12 The approach we are taking is significantly
13 different than the existing deterministic requirements and
14 I'm sure it will continue to require a significant effort,
15 particularly in the development of the appropriate
16 supporting technical basis.

17 Despite the challenges, we believe it is important
18 to continue to work towards development of the Option 2
19 rulemaking and we recognize that our stakeholders have a
20 variety of concerns with respect to Option 2 and
21 risk-informed regulation in general.

22 However, the potential benefits of a risk-informed
23 regulatory framework, we believe, warrant continued effort
24 from the staff and all of our stakeholders.

25 Although this effort is being led by NRR, other

1 offices, principally the Office of Research, are supporting
2 NRR and with me today from the Office of Research is Tom
3 King, who is the Director of the Division of Risk Analysis
4 and Applications, and from the Office of Nuclear Reactor
5 Regulations is Sam Collins, the Office Director; Rich
6 Barrett, who is the Chief of the Probabilistic Safety
7 Assessment Branch; and, Steve West, who is the Chief of the
8 Regulatory Improvement Section in Rich Barrett's branch.

9 With that, let me turn the presentation over to
10 Sam.

11 MR. COLLINS: Good morning. I'd like to make a
12 few remarks before I turn the presentation to Steve West.

13 The NRC has been engaged in an interactive process
14 with our stakeholders to develop the rule change for
15 risk-informing special treatment requirements.

16 Within the NRC, NRR management, with our partners
17 in Research, are actively engaged at all levels to bring
18 this initiative to a successful outcome. The PRA Steering
19 Committee provides for policy direction. The Risk-Informed
20 Licensing Panel at a division level provides direction on
21 implementation of the overall policy.

22 The branch and section chiefs are currently
23 actively engaged in shaping the minimal requirements for
24 treatment of the RISC-3 structures, systems and components.
25 That's at the operating and the leadership level within the

1 Office of NRR.

2 These initiatives provide linkage to our strategic
3 plan in the area of maintaining safety, the protection of
4 the environment, and the common defense of the security.
5 The strategy is to ensure that the operating licenses and
6 the exemptions maintain safety and meet requirements.
7 That's one of the standards for our review.

8 Additionally, the performance goal of NRC
9 activities and decisions should be more efficient and
10 effective and realistic. The strategy in the strategic plan
11 indicates that we will use risk information and measure the
12 risk-informed regulatory information.

13 In the performance goal of reduction of
14 unnecessary burden on stakeholders, the strategy is to
15 utilize risk and performance-based approaches in our work.

16 Additionally, we have a management challenge
17 that's specified in volume two of the strategic plan as a
18 result of previous GAO overview, which is challenge number
19 four. That is to develop and implement a risk-informed
20 performance-based approach to regulatory oversight.

21 Again, the action for the agency is the NRC will
22 continue to develop and incrementally use risk-informed and,
23 where appropriate, less prescriptive performance-based
24 regulatory approaches to maintain safety. It all links back
25 to the maintain safety goal.

1 At this point in time, I would like to introduce
2 Steve West. Steve will be performing the majority of the
3 presentation. We will try to be responsive to those issues
4 that have come before the Commission, those that have been
5 expressed by our stakeholders.

6 This area cuts across many lines and many of our
7 product lines, including Part 54, the inspection program,
8 for example, and we're sensitive to those impacts.
9 Hopefully, we'll be able to respond to your questions.

10 Steve?

11 MR. WEST: Thank you, Sam. Good morning. We
12 could go to slide two, quickly.

13 I think a lot of the background has been covered,
14 but just a couple of points I will mention.

15 The Commission, in an SRM of June of 1999,
16 approved proceeding with Option 2 and we subsequently
17 developed a rulemaking plan, which we provided to the
18 Commission in SECY-99-256, and that was about a year ago, in
19 October of 1999.

20 Subsequently, we received an SRM in January of
21 2000, which approved the rulemaking plan and directed the
22 staff to go ahead with the issuance of the advanced
23 notification for proposed rulemaking, the ANPR.

24 We published the ANPR in the Federal Register in
25 March of this year and the comment period closed in May of

1 this year.

2 Consistent with the January 2000 SRM, we are here
3 today to discuss our preliminary views on the comments we
4 received during response to the ANPR and we also want to
5 provide some status information on the Option 2 activities
6 and we want to touch on some of the issues, as Sam
7 mentioned, that have come up through the ANPR and through
8 other forums with stakeholders.

9 To support this briefing today, we provided
10 SECY-00-194 on September 7 of 2000.

11 Going to slide three. In SECY-00-194, we provided
12 our preliminary views on the more significant comments and
13 issues arising from the ANPR. The attachment to the SECY
14 provided our preliminary views on all the ANPR comments that
15 we gleaned framework the comment letters that we got.

16 As noted in SECY-00-194, overall, the ANPR
17 comments were supportive of our efforts to risk-inform the
18 special treatment requirements.

19 We also noted that our preliminary views could
20 change as we work through the rulemaking process and
21 continue to interact with the interested stakeholders and
22 that we would provide our final responses to ANPR comments
23 with the proposed rulemaking package.

24 Our current plan and schedule call for us to
25 provide the proposed rule in August of 2001.

1 In the SECY, we also discussed our current
2 thinking on the conceptual approach for the Option 2 rule
3 and, as you know, the requirements for the risk-informed
4 categorization process will be in a new Appendix T and the
5 requirements for treatment will be in a new section, a new
6 rule, 50.69. So you'll hear us talking today about Appendix
7 D 50.69 for Option 2.

8 This morning we will discuss the ANPR comments
9 first and our views on those comments and our conceptual
10 approach to the rulemaking, second, and then, finally, we
11 will briefly discuss the next steps in the rulemaking
12 process.

13 Slide four. In response to the ANPR, we received
14 about 200 comments from 11 commenters. Before we get into
15 the specifics of the comments themselves, I want to
16 emphasize that we have been actively engaging the interested
17 stakeholders throughout this process.

18 Since we issued SECY-99-256 with the rulemaking
19 plan in October of 1999, we've held or participated in more
20 than 20 public meetings of various forums. During these
21 meetings, we heard many of the comments that were submitted
22 in response to the ANPR and discussed a number of Option 2
23 issues with the stakeholders.

24 Overall, as I mentioned, while the feedback we
25 received in these meetings and the comments we received in

1 response to the ANPR were supportive of the Option 2
2 rulemaking, some stakeholders have expressed concerns about
3 certain aspects of our plans and about how we are dealing
4 with some of the Option 2 issues.

5 We continue to welcome these comments. They
6 actually help us through this rulemaking process. We plan
7 to continue, obviously, to engage with the stakeholders, as
8 appropriate, throughout the process, and we will touch on
9 some of the more significant outstanding issues this
10 morning.

11 The first issue, getting back to the slide, the
12 first issue discussed in the SECY paper is selective
13 implementation of both rules and of structures, systems and
14 components, and this is a significant issue for both the
15 staff and for the reactor industry stakeholders.

16 A number of comments suggested that 50.69 should
17 allow the licensees to selectively implement both rules and
18 structures, systems and components.

19 Our preliminary view is that we should allow
20 selective implementation of rules, provided that exemptions
21 would not be required. This may involve implementation of
22 what we're calling minimum bundles of rules. For example,
23 kind of a real world example, real life example, South Texas
24 Project was not able to fully take advantage of its graded
25 quality assurance program because SSCs within Appendix B

1 were also within the scope of other rules.

2 This interrelationship forced the licensee to keep
3 more treatment on low safety-significant SSCs than it had
4 thought that it would under its graded quality assurance
5 program.

6 So in this case, the minimum bundle of rules would
7 include those additional rules that prevented the licensee
8 from fully implementing its graded quality assurance
9 program.

10 With respect to the selection of structures,
11 systems and components, we believe that selective
12 implementation of SSCs should be accommodated provided that
13 the process for categorizing and treating systems is
14 balanced and gives appropriate priority to the risk to SSCs.
15 I'll talk a little bit about that more in a second.

16 In addition, we believe that the process for each
17 SSC should be completed within a reasonable timeframe.

18 For example, by definition, RISC-2 SSCs are not
19 currently subject to special treatment requirements other
20 than the maintenance rule, but the risk-informed
21 categorization process determines that they are
22 safety-significant.

23 Under 50.69, these SSCs could require additional
24 treatment for beyond design basis events; for example,
25 validating risk assessment results and enhanced maintenance

1 rule type monitoring.

2 Conversely, RISC-3 SSCs -- that is, those SSCs
3 that are currently subject to special treatment
4 requirements, but are of low safety significance, would have
5 the current special treatment requirements replaced with the
6 minimal set of requirements and only those requirements
7 needed to maintain the design functions, as described in the
8 FSAR.

9 Without appropriate requirements both in the
10 50.69, undue emphasis could be placed on achieving the
11 greatest burden reduction, that is, by removing special
12 treatment from RISC-3 SSCs, at the expense of the RISC-2
13 SSCs.

14 We want to emphasize that we're not suggesting
15 that licensees need to categorize all SSCs before they can
16 implement any changes in treatment. Instead, licensees
17 should and probably would plan to categorize and treat SSCs
18 on an ongoing basis.

19 Some stakeholders, after we issued the SECY paper,
20 have expressed concern that the three-year timeframe that we
21 proposed in the attachment to the SECY for implementing
22 50.69 may not allow enough time for full implementation.

23 While we agree that scheduling flexibility should
24 be allowed, we expected, when we proposed the three-year
25 timeframe, that the licensees would implement systematic

1 plans to categorize the SSCs and to implement any changes to
2 treatment requirements within some reasonable end point,
3 rather than an open-ended process.

4 We plan to continue to use our experience with the
5 South Texas Project exemption request and with the pilot
6 plants, which, again, we'll talk about later, to formulate
7 our final position on scheduling requirements for
8 implementing 50.69.

9 The second of the eight major issues that we
10 discussed in the SECY paper is impact on other regulations.
11 Overall, the commenters agreed that we had identified the
12 various regulations that could be impacted as a result of
13 risk-informing the special treatment requirements.

14 For Part 54, which is the license renewal rule,
15 some commenters suggested that license renewal could become
16 more efficient if it is risk-informed, because the impact on
17 aging of SSCs of low safety significance -- that is, the
18 RISC-3 SSCs -- would not need to be evaluated.

19 We believe, for purposes of Option 2, we should
20 strive to ensure that there is a smooth transition to
21 license renewal for any license or plant that chooses to
22 implement Option 2.

23 The current Part 54 would allow such a transition,
24 recognizing that the current licensing basis has been
25 revised by 50.69. Accordingly, these plants would need to

1 show that the 50.69 treatment would provide adequate aging
2 management for the low safety significant SSCs.

3 We're not prepared at this time to agree that
4 because an SSC is of low safety significance, that there is
5 no need to demonstrate that there is an adequate aging
6 management program to ensure that those SSCs remain
7 functional, because one of the premises of Option 2 is that
8 those components would remain functional and we would expect
9 that to continue through the extended license period.

10 However, we do note that clearly we would not
11 expect an Option 2 licensee to have to revert to a
12 pre-Option 2 treatment to satisfy the requirements of Part
13 54, and this is, obviously, an issue that's ripe for
14 continued interaction with stakeholders, interested
15 stakeholders, to make sure that our views are understood and
16 for us to consider more fully comments we're getting kind of
17 through anecdotally at this point.

18 The third topic is the need for prior NRC review.
19 As discussed in both SECY-98-300, which originally proposed
20 Option 2, and SECY-99-256, which provided the rulemaking
21 plan, our objective is to avoid the need for prior staff
22 review and approval of either the licensee's PRA and SSC
23 categorization process or the results of the process.

24 In other words, any staff verification would be
25 done through verification either during or after the

1 licensee implements 50.69.

2 We specified detailed categorization requirements
3 in the proposed Appendix T to achieve this objective. We
4 thought if we had a detailed recipe that everybody followed,
5 we would have confidence that it would be done properly and
6 consistent with our expectations and we would not need to do
7 a prior review.

8 The comments we received on this issue were mixed.
9 Some commenters suggested that some level of prior staff
10 review should be required, while others thought no staff
11 review should be required.

12 Most significantly, commenters suggested that to
13 achieve our goal, we made Appendix T too detailed and that
14 the detail should be relocated to implementing guidance
15 documents. Otherwise, we could stifle innovative approaches
16 and create the need for exemptions to implement other
17 categorization approaches.

18 Our objective continues to be an approach that
19 either involves no prior staff review or minimizes the level
20 of staff review that would be required. We believe that
21 this would still be the most effective and efficient use of
22 both staff and industry resources for implementing Option 2.

23 Our view could change, however, if, for example,
24 we find that no prior staff review could consume resources
25 with potential exemptions or could stifle innovative

1 approaches; in other words, by having a detailed Appendix T,
2 so detailed we could remove the opportunity to better focus
3 on plant risk, or if this no prior staff review may not be
4 achievable because of questions about PRA quality of the
5 integrated decision-making panel process.

6 In addition, we will continue to consider the
7 appropriate level of detail for Appendix T, with the intent
8 of developing a regulatory framework that is most effective
9 and efficient and imposes the least burden on everyone
10 involved.

11 The final topic on this slide is PRA quality.
12 With respect to the ANPR, commenters requested that we not
13 specify that the ASME or ANS PRA standards would be the only
14 acceptable standards for addressing PRA issues under Option
15 2. We agree with the comment and, actually, before we
16 received these comments, we accepted from NEI a peer review
17 process, NEI Document 0002, as a possible alternative for
18 PRA issues under Option 2, and we are reviewing that
19 document in the context of its application to Option 2.

20 Slide five. The next topic is rulemaking
21 approach. A number of commenters suggested that we consider
22 a phased approach to risk-informing the special treatment
23 requirements. The specific suggestion was that the first
24 phase would address all the special treatment requirements
25 except for those of an administrative nature, for example,

1 Part 21, and the tech specs.

2 The second phase would cover the administrative
3 special treatment requirements and technical specifications.

4 With the exception of Section 50.36, which is the
5 tech spec rule, as discussed in our rulemaking plan, we
6 still intend to do all the special treatment requirements at
7 one time. We don't propose to shift to a phased approach.

8 However, in view of its complexity and other
9 ongoing activities to risk-informed tech specs, we agree
10 that it makes sense to risk-inform the tech spec rule
11 separately.

12 We also received comments on the Option 2 pilot
13 program. The comments concerned whether we would attempt to
14 backfit 50.69 onto the Option 2 pilot plants, and the scope
15 of the pilot programs regarding the variety of plant systems
16 that need to be piloted.

17 We do not intend to backfit 50.69 onto the pilot
18 plants. The only way that, in fact, we would consider
19 backfitting for the pilots would be through the normal
20 process, if a safety issue came up during the rulemaking
21 process that indicated that a backfit may be warranted, we
22 would look at that. We don't believe that this scenario is
23 likely.

24 With respect to the variety of systems that should
25 be included in the pilot program, commenters suggested that

1 South Texas Project has demonstrated the viability of the
2 process and, therefore, there is no need for a large number
3 of systems to be piloted.

4 In general, we agree that the pilot plants do not
5 need to pilot the same scope of systems as STP. Instead,
6 the pilot activities need to exercise the guidance that NEI
7 is developing for categorization and treatment for a
8 sufficiently broad range of plant equipment -- for example,
9 electrical and mechanical instrumentation and control and
10 passive SSCs in both safety-related and non-safety-related
11 applications, basically to test the categorization and
12 treatment for various possible scenarios; for example, an
13 SSC that is going out of the scope of special treatment and
14 for an SSC that was coming into the scope of 50.69.

15 I'm going to talk a little bit more about pilots
16 when we get to our future activities.

17 With respect to Part 21, which was another area
18 where we received significant comments, the commenters
19 suggested that defects and deviations and failures and
20 RISC-3 SSCs should not involve substantial safety hazards
21 because, by definition, they are of low safety significance
22 and, therefore, the Part 21 requirements should not apply to
23 the RISC-3 SSCs.

24 Also, commenters suggested that the Part 21
25 requirements should not be extended to RISC-2 SSCs, and,

1 again, these are the SSCs that are non-safety-related, but
2 are shown to be of safety significance.

3 We agree that it is unlikely that defects and
4 deviations in RISC-3 SSCs would trip the notification
5 requirements in Part 21. However, to ensure consistency in
6 interpretation and application of Part 21, we believe that
7 the best approach is to explicitly remove RISC-3 SSCs from
8 the scope of Part 21.

9 With respect to the RISC-2 SSCs, we agree that
10 Part 21 should not be applied to these commercially designed
11 and manufactured SSCs.

12 However, we believe that some reporting of RISC-2
13 functional failures may be appropriate. We're continuing to
14 look at this and if we determine that a reporting
15 requirement is appropriate or necessary, first, we will look
16 at the newly revised Sections 50.72 and 73 to see if this
17 would capture and satisfy our needs.

18 If not, we would consider adding a specific
19 reporting requirement for the RISC-2 SSCs into 50.69.

20 Slide six, please. That covers the significant
21 comments that we addressed in the SECY paper and a couple of
22 the issues that have come up after we issued the SECY paper
23 and our preliminary views.

24 Now we'd like to cover our rulemaking approach.
25 This is kind of a conceptual approach at this point. In our

1 view, our approach is consistent with the concepts that
2 we've presented in SECY-99-256 that were approved by the
3 Commission. Our approach relies on a robust categorization
4 process, which is intended to build high certainty into the
5 process such that SSCs are categorized correctly and,
6 therefore, supports a more substantial reduction in the
7 associated special treatment requirements.

8 In other words, things are going to be binned in
9 the correct risk box and, therefore, we have high confidence
10 that by reducing special treatment requirements and
11 replacing them with this new set of minimum requirements
12 will not introduce any safety concern.

13 I'm sure you noted in the paper that we made an
14 adjustment to the four box conceptual diagram. We did this
15 because we decided that the terminology of safety-related
16 was not the best discriminator for separating SSCs that are
17 subject to special treatment requirements from those that
18 are not.

19 Some SSCs that are not considered safety-related
20 in the regulations, but are considered important to safety
21 are also subject to special treatment requirements.
22 Basically, this was something we learned through our
23 continuing work on this project and this adjustment
24 basically corrects an oversight that we made when we
25 developed the rulemaking plan.

1 So consequently, the original box chart would have
2 allowed some SSCs formerly subject to special treatment
3 requirements to remove from regulatory control of treatment;
4 in other words, inappropriately relocated into box four or
5 RISC-4, creating the possibility that design basis
6 functionality could be lost for that SSC.

7 We believe that the adjustment that we made to the
8 four-box diagram is actually consistent with the objectives
9 and concept of Option 2.

10 We understand that this adjustment may be of
11 concern to the industry stakeholders because it could
12 potentially change the risk categorization of some SSCs and
13 may affect the amount of reduction in regulatory burden
14 associated with this rulemaking.

15 As I previously mentioned, we will continue to
16 interact with the stakeholders to ensure a common
17 understanding of our position on this and to consider their
18 views on alternative approaches.

19 We envision that 50.69 would maintain assurance of
20 functionality for all RISC-1, RISC-2 and RISC-3 SSCs using
21 existing plant programs or possibly new or revised plant
22 programs.

23 We expect to include requirements to control the
24 reliability and capability of RISC-2 SSCs to maintain the
25 validity of the categorization assumptions.

1 So this is something, the double-edged sword, this
2 is something new that we're adding.

3 For RISC-3 SSCs, as we mentioned, they must be
4 maintained such that they would be expected to perform their
5 design basis function.

6 Therefore, we expect to include the minimal
7 requirements needed to maintain RISC-3 design functions.
8 And just as a reminder, for Option 2, the design basis is
9 not changing. The design basis, the technical requirements
10 say, rather, it is the associated assurance level that is
11 being risk-informed for low safety-significant SSCs by
12 reducing the special treatment reqs for those SSCs.

13 We indicated that under our conceptual approach
14 that we would propose a new monitoring requirement in 50.69
15 to either take the place of or supplement the monitoring
16 requirements in the maintenance rule and some stakeholders
17 have expressed concern with this after we issued the SECY
18 paper.

19 They believe the maintenance rule and existing
20 plant programs are an adequate monitoring tool for
21 safety-significant SSCs.

22 We believe that the maintenance rule as written
23 for monitoring alone is insufficient for use in Option 2
24 because it only requires performance monitoring for
25 maintenance activities.

1 We believe that we should monitor for all
2 functional failures, and this, again, gets into providing
3 information that can be fed back into the risk assessment
4 process for verification and validity of the results of the
5 risk assessments.

6 However, licensees, in actuality, may be
7 implementing the maintenance rule broader than the rule
8 actually requires and we believe a number of licensees would
9 already have programs in place that would be sufficient to
10 meet the new requirement that we're proposing for 50.69 to
11 capture all functional failures.

12 Finally, we expect to include a requirement to
13 document the 50.69 program into the updated FSAR and this is
14 a feature of the rule that was not explicitly addressed or
15 identified in SECY-99-256. This is something, again, that
16 came from our experience with the South Texas Project.

17 But we believe this requirement appears to be
18 appropriate given the substantial change to the licensing
19 basis that would result from implementation of 50.69 and
20 Appendix T and would provide some regulatory assurance of
21 the licensees' implementation and maintenance of their 50.69
22 programs.

23 Slide seven, the last slide, addresses our next
24 steps for the Option 2 rulemaking, some of the bigger steps.
25 Of course, there's a lot of details working, but these are

1 some highlights we wanted to bring to your attention.

2 We are currently reviewing the proposed NEI Option
3 2 implementing guidance and these include both a draft of an
4 industry document that provides guidance for categorizing
5 and treating SSCs under the 50.69 and Appendix T framework
6 and we are also reviewing the NEI peer review process.

7 This would address PRA issues for Option 2. Our
8 expectation, I think, at this point is that we would endorse
9 these documents as acceptable means of meeting the
10 requirements of the new rule through a reg guide and that
11 reg guide would be provided with the rulemaking package.

12 We have been providing feedback to NEI in a number
13 of meetings on the guidance documents and on other issues
14 and we recently, I think last week, sent NEI our written
15 comments and questions on these guidance documents.

16 This feedback would help support the industry
17 owner's group separates to plan and perform pilot activities
18 to support Option 2.

19 Speaking of pilot activities, obviously, as we
20 mentioned in SECY-99-256 and in the latest SECY paper, the
21 pilot activities are key to the rulemaking. The information
22 that we and industry gather from the pilot activities is
23 important for refining the regulatory framework, the NEI
24 implementing guidance, as well as for supporting development
25 of the regulatory analysis and the statement of

1 considerations for their proposed rule.

2 To date, with the exception of South Texas
3 Project, which we're considering a pilot, in a way, as a
4 proof of concept, industry has not proposed any specific
5 pilot activities or pilot plants.

6 Through our interactions with industry, we
7 understand that they're anxiously watching our interactions
8 with South Texas, where we're going with the South Texas
9 exemption and what issues are coming up and how we're going
10 to come out in the end on the exemption request.

11 We encourage licensees at this point to continue
12 to watch those activities. There's a lot going on. I'll
13 talk about it in a second, but we're getting close to
14 issuing some information on South Texas, and we would hope
15 that industry, at some point, would step up and propose some
16 pilots when they see how we're going with the South Texas
17 Project.

18 South Texas is also a key aspect of the Option 2
19 rulemaking and has significant implications for the success
20 of Option 2. We are currently reviewing the multi-part
21 exemption request from the special treatment requirements
22 and expect to issue a draft safety evaluation that would
23 document the results of our review in early November.

24 Our review is ongoing at this point. We expect
25 that our draft safety evaluation will have some unresolved

1 items and some issues. We have resolved a lot of issues
2 with the licensee, but there will probably be some
3 unresolved items, which we will work with the licensee to
4 resolve and then issue a final safety evaluation and
5 exemption in April 2001.

6 I believe we also are planning to brief the
7 Commission on the South Texas exemption in the March
8 timeframe, and there's other meetings with ACRS and others
9 on that exemption request.

10 I guess the most major item that we chose to
11 identify on the slide would be our proposed rulemaking
12 package to the Commission. As I mentioned earlier, we are
13 currently scheduled to provide the proposed rule to you in
14 August of 2001.

15 Finally, I just want to emphasize again that we
16 have been and we will continue to interact with all
17 interested stakeholders. We have regulator meetings,
18 workshops. We participate in meetings that are organized
19 and run by industry stakeholders and we'll continue that
20 interaction, as appropriate, throughout the rulemaking
21 process.

22 DR. TRAVERS: Mr. Chairman, except for one
23 clarifying comment, I think that completes our presentation,
24 and Sam is going to make that comment.

25 MR. COLLINS: Thank you, Steve. If you'll keep me

1 honest here, Steve, I just want to provide a clarifying
2 comment. On the NEI implementation guidance, we have
3 provided comments on the peer review and the categorization
4 process. We are withholding comments on the treatment until
5 a later time to be sure that it is in alignment with the
6 South Texas treatment of the RISC-3 equipment.

7 We want those approaches to be aligned, so we'll
8 be dispositioning those at the same time.

9 Thank you.

10 CHAIRMAN MESERVE: This is obviously a work in
11 progress and we understand that a lot of the things you've
12 talked about today are things that are still under
13 consideration.

14 I'd like to pursue, for my own edification, a few
15 of the matters you've raised. Really the first issue that
16 you flagged that you've received significant comments had to
17 do with selective implementation of the rules.

18 And if I understood your comment, your present
19 thought is that you would allow some selective
20 implementation as to the SSCs, that you wanted to have some
21 confidence that it was balanced and you expressed that as a
22 concern that a licensee might come forward and want to have
23 the RISC-3 SSCs handled and, gee, there might not be any
24 RISC-2s that are brought forward.

25 I recognize it sounds like it's a trade that you

1 envision and I wonder if there is a more principal basis
2 that you intend to follow as to what categories of SSCs have
3 to be included or not included or how you bundle them.

4 I'm sort of puzzled how you can go at this in a
5 more principal way.

6 MR. WEST: That's an outstanding question.
7 Actually, it's an issue that we're dealing with now
8 ourselves and there's both technical -- in this area,
9 there's both technical considerations and legal
10 considerations, and we're working with OGC and the technical
11 staff to develop specific rule language that would be, to
12 use your words, more principled and specific on exactly how
13 this could be accomplished in a way that we believe
14 satisfies the underlying principles of an Option 2
15 framework.

16 CHAIRMAN MESERVE: Thank you. One of the items
17 that I don't think you mentioned in your briefing, but is in
18 the SECY paper, is that you have a study that's being
19 conducted by the Idaho National Engineering and
20 Environmental Laboratory to compare the processes that
21 industry is using for the safety-related and
22 non-safety-related SSCs.

23 As I understood it, the preliminary result is that
24 there is a wide variation in industry and how their
25 practices for non-safety-related SSCs.

1 The implication I think that might be drawn from
2 that categorization is that there might be a problem on
3 relying on commercial practices as being satisfactory for
4 dealing with the functional requirements that you intend to
5 have maintained for that equipment.

6 How are you going to approach this problem? Am I
7 misreading what the staff has said to us or where are we?

8 MR. WEST: Depending on who you talk to, there may
9 not be a problem. What we are trying to do is if we are
10 going to remove special treatment requirements, but still
11 require that these SSCs remain functional, we need to have
12 some assurance that the program the licensee has in place is
13 adequate to provide that assurance of functionality.

14 Of course, this assurance would be less than the
15 assurance that's provided by special treatment requirements.
16 We're taking a look at what -- as we said in our conceptual
17 approach, we're looking to come up with a minimal set of
18 requirements that would achieve that objective and it's
19 unlikely that our requirements would -- our thinking at this
20 point is that our requirements would even mention commercial
21 or industrial grade programs.

22 We would be coming up with a minimum set of
23 attributes that a licensee would need to maintain and put
24 into place to provide this assurance of functionality.

25 To the extent that they could rely on a commercial

1 program to satisfy that attribute and they have that program
2 in place, then they're home free.

3 Another licensee that may have a less robust
4 commercial program, as we said, may have to enhance its
5 program, revise its program, or maybe even create a new
6 program.

7 But what we're trying to do through the study at
8 Idaho is to achieve an understanding of what a typical
9 commercial program does by you in terms of the competence of
10 assuring functionality and what may be lacking.

11 For example, a commercial QA program is much
12 different from an Appendix B QA program. So we're trying to
13 understand a little bit what that delta is between
14 commercial and the nuclear program.

15 MR. COLLINS: Chairman, I believe it's not unfair
16 to say that our requirements, in some cases, drive vendor
17 products and what the vendor provides as far as a pedigree
18 or a program. It's perhaps reasonable to think that once we
19 come up with an established set of requirements, that there
20 might have to be some alignment on the vendor side in order
21 to accommodate somewhere between the two extremes which now
22 exist, which would be commercial grade or safety-related.

23 So there might be an adjustment period.

24 CHAIRMAN MESERVE: But I had understood, reading
25 between the lines here, that the INEL report is suggesting

1 more variability in the commercial grade side of the ledger
2 than you had anticipated. Am I wrong? And that it may be
3 creating some problems here.

4 MR. COLLINS: I think perhaps we didn't know and
5 what we're doing now is using this information to inform our
6 process as far as what actually exists for records and types
7 and differences between the categories of equipment, and,
8 therefore, we'll know the range of information that's
9 available to licensees.

10 Whether it's a challenge or not to the vendors or
11 to licensees depends on how we describe the attributes of
12 the program, but clearly there's a lot of room in the middle
13 between the way the programs are currently conducted. We
14 will most likely end up somewhere in that range.

15 The licensees have a choice of how to provide the
16 documentation.

17 CHAIRMAN MESERVE: My final question has to do
18 with your comment on inadequacies of the maintenance rule,
19 in which you indicated that the maintenance rule might not
20 be sufficient to detect the prospect for functional
21 failures.

22 I must admit I'm puzzled at how it is that
23 something that's not captured by the maintenance rule that
24 relates to whether the equipment is going to perform or not.
25 Maybe the time didn't allow you to elaborate that.

1 But I'm a little puzzled at what is missing.

2 MR. WEST: The maintenance rule specifically
3 requires that the licensees monitor for maintenance
4 preventable failures, but it doesn't necessarily cover all
5 functional failures. Some failure that may be caused, but
6 not preventable through maintenance.

7 And to ensure that the results of the risk
8 assessments are validated and kept up-to-date, updated
9 periodically in terms of the availability and reliability of
10 SSCs, we believe that we may need to enhance that
11 requirement to ensure that those functional failures are
12 picked up.

13 MR. BARRETT: If I could add another part of that
14 answer. There are attributes of treatment that simply
15 cannot be monitored because they're never challenged. For
16 instance, the question of whether or not a piece of
17 equipment can survive the environment to which it would be
18 subjected in an accident or whether it would be able to
19 survive the challenges of an earthquake.

20 So there are aspects of this that are not amenable
21 to monitoring.

22 CHAIRMAN MESERVE: Okay. Commissioner Dicus.

23 COMMISSIONER DICUS: Thank you. I want to go to
24 the issue of PRAs. Of course, one of the things that's
25 clearly a fundamental of the whole success of this is PRA

1 quality together with PRA standards, and I noticed on slide
2 four you did mention about the ANSI standard, the ANS
3 standard.

4 I'm also aware that NEI, who is active in this
5 area, has a peer review, I think, process they're suggesting
6 and there's been a recent meeting on the whole issue of PRA
7 standards.

8 Could you elaborate a little bit more on that for
9 me?

10 MR. BARRETT: yes, I'd like to address that
11 question. I think that this is a very, very crucial
12 question and I think I would start by recommending
13 SECY-00-162, which I think basically takes the emphasis away
14 from the quality of PRA and puts it on the quality of
15 document.

16 And in SECY-00-162, we talk about the tradeoffs
17 between the quality of the PRA, that's inherent in the PRA,
18 the value that's added by peer review processes and
19 standards that are underlay those processes, other
20 information, the weight of other type of information, such
21 as deterministic information that's important to the
22 process, operational experience, and the way all of that is
23 tied together in the integrated decision-making process and
24 what's the quality of the integrated decision-making
25 process.

1 So we feel that the quality of PRAs have been
2 enhanced a great deal since we did the IPEs. The IPEs were
3 of sufficient quality to meet the challenge of Generic
4 Letter 88-20, which was to identify vulnerabilities.

5 We know that in recent years, through actions of
6 the owners' groups and through actions of the peer review
7 process, that the tide has been steadily rising in terms of
8 PRA quality.

9 But in 00-162, I think we present a balanced
10 approach to decision-making and I think that's where the
11 real answer is.

12 DR. TRAVERS: I think there have been some recent
13 activities associated with our interactions on the ASME
14 standard. Maybe Tom King can comment.

15 MR. KING: Yes, I'll comment. You're right.
16 There was a recent meeting in mid-September to talk about a
17 path as to where we go on the ASME standard, given all the
18 comments that came out on the most recent draft.

19 This was organized by ASME, where a group of
20 selected experts got together and looked at the comments,
21 looked at the issues that were on the table, used an example
22 to work through the standard, and came up with an approach
23 that we think is a good approach to resolve the issues and
24 lead to success for the ASME standard.

25 ASME is putting together a schedule as to where do

1 we go from here to get to a standard, but I think we have
2 resolved our differences. I think we do have a path to move
3 forward and get a good standard from ASME, and I would
4 expect the ANS standards would follow suit and take the same
5 approach.

6 COMMISSIONER DICUS: What about where NEI is
7 coming down on this? And I'm going to ask NEI the same
8 question, so you can be prepared to answer.

9 MR. KING: I think NEI is in agreement with the
10 approach worked out. They had members on the writing group.
11 They were in attendance at the meeting where ASME presented
12 the approach and the path forward, and I think they would
13 agree that we're now on a success path.

14 COMMISSIONER DICUS: Okay. One other question has
15 to do with resources. We have a lot of pilot activities
16 that are ongoing and the SECY paper that we have before us
17 discusses both FTEs, as well as the money required to do
18 these pilot activities.

19 Have there been any changes? I mean, are we on
20 track with that or are resources more intensive or less
21 intensive? I think one of the slides suggested perhaps
22 they're less intensive.

23 MR. WEST: Well, we expected the pilot activities
24 to be actively in place at this time or this year and that
25 didn't happen. So we're not spending the resources on

1 pilots now that we thought we would be.

2 We expect that once we get involved in the pilot
3 activities, that about the same level of resources would be
4 required, but there has been a shift in when they're
5 actually going to be used.

6 So other than the pilots, the resources for
7 pilots, I would say that the resources are probably tracking
8 pretty close to what we had planned when we originally put
9 the plan together.

10 COMMISSIONER DICUS: So in the future, we've got
11 this in our budgeting and planning for the future, but then
12 since those resources were not used, where were they
13 redirected? Because there were quite a few resources
14 involved.

15

16 MR. COLLINS: We go through a quarterly review. I
17 can provide that to you, I don't have it in front of me
18 right now.

19 COMMISSIONER DICUS: Okay.

20 MR. COLLINS: We go through a quarterly review in
21 the Office of NRR to determine expenditures versus budgeted
22 items, the leadership level, then make adjustments based on
23 how out of standard we are with the use of those resources
24 themselves, and I will provide you that information.

25 In addition to that, we also have an initiative

1 funded, which is to promote the risk-informed processes
2 within the office for fiscal year 2001. That's a separate
3 funded, but related initiative.

4 COMMISSIONER DICUS: Thank you.

5 MR. WEST: As an imprecise interim answer, I think
6 we actually ended up spending more resources on South Texas
7 because of some of the complexities that we didn't plan on
8 and some of the resources were transferred from RIP-50
9 Option 2 to South Texas.

10 COMMISSIONER DICUS: Thank you.

11 CHAIRMAN MESERVE: Commissioner Diaz.

12 COMMISSIONER DIAZ: Thank you, Mr. Chairman. I
13 just realized that I don't understand all I know about this
14 and since I know little, it tells you about my understanding
15 of it, which means that I would try to engage the staff very
16 soon, because there are some things in here that have
17 evolved and I'm a very curious person. There are some
18 issues that I really have no understanding of.

19 But I'm going to pounce on what the Chairman
20 started with his question about the principal, and I think
21 it's a very good word.

22 I thought that when we started with this process
23 of risk-informed regulation that once we set up in a path,
24 that the ultimate resolution will be based on the principle,
25 that if we have undergone a categorization of risk, that

1 that will be the fundamental principle that will be followed
2 and that will set the tone for how we deal in regulatory
3 space.

4 The last few days, and, of course, it was stated
5 today that when we got to RISC-3, we have now used a
6 different criteria that the Commission approved. In other
7 words, we have now come in and using the criteria or use the
8 principle, if the structure, system and component have
9 previous special requirements on it, that will be more
10 important than the risk categorization in itself.

11 That's a deviation from where we were. But rather
12 than deal with that, and I will ask in a moment how you feel
13 about it, I'm concerned that we might end up with more
14 horrors or boxes than what we intended and that will not
15 really serve the public, our definition of the processes,
16 because I think if we're going to do risk-informed
17 regulation, we're going to have to accept that the process
18 is based on the determination of risk.

19 And if we don't do that, then there are always
20 going to be something, some part of the regulations, some
21 part that somebody wrote a phrase some time ago that will
22 create a new fork, will create a new way of doing it, and
23 then people will have to have exemptions.

24 So why do we believe that the fact that some
25 structure, system and component had special treatment

1 requirements, it has a higher priority than what the risk
2 categorization is for RISC-3?

3 MR. BARRETT: I'd like to say a few words about
4 that. I think that, first of all, I believe that every
5 level of management and the staff agrees with your principle
6 that if you can have a robust categorization process using
7 risk and other factors to show that SSCs, systems,
8 structures and components are of low risk significance or of
9 no risk significance, that that can be done in a robust way,
10 that we should be able to go to a minimal level of NRC
11 involvement in the question of whether or not that is a
12 functional piece of equipment.

13 What I think the struggle is is that that piece of
14 equipment is still a safety-related piece of equipment. It
15 still has to be functional in order to meet the design
16 basis.

17 The question is how do we get to truly a minimal
18 level of assurance and still meet that requirement that it
19 be functional. So that's really been the struggle so far.

20 MR. COLLINS: Commissioner, I believe to the
21 point, what we're discussing in response to your question is
22 the difference between Option 2 and Option 3 in that --

23 COMMISSIONER DIAZ: No. I'm focusing on RISC-3
24 and when we -- the Commission said go this way, we said once
25 you categorize them, then special treatment requirements

1 will be according to the box.

2 And now we're hearing that if they have a pedigree
3 as having a special treatment requirement, we're going to
4 keep those special treatment requirements and some
5 adjustment. I always get concerned with the words robust,
6 significant, minimal, although I like minimal, and so those
7 grades.

8 And I guess what we are really saying is some
9 principles we're going to be using some grade for PRA
10 quality, according to what the risk significance of the
11 decision is that's coming out. We're going to use some
12 grade of quality assurance according to the safety
13 significance.

14 So we're grading these things, but in essence,
15 it's always important for us to realize that when we get a
16 final product, it has to be clear to all stakeholders and it
17 has to be justifiable to the public; that is, decisions are
18 being made on the public health and safety, and definition
19 is so important in that case.

20 So a little bit of ambiguity that comes in here
21 might look technically supportable, but might not be
22 defensible in other matters.

23 I'm sorry. Continue, please, sir.

24 MR. COLLINS: I still believe we're talking about
25 Option 2 to Option 3.

1 COMMISSIONER DIAZ: Okay.

2 MR. COLLINS: And the difference being that if
3 there is linkage back to the design of the plant in a
4 licensing realm, then the staff is constrained under Option
5 2 to ensure that we provide for some measure for those
6 pieces of structures, systems and components that are
7 categorized under RISC-3 in that area and the staff is able
8 to describe what functional really means in a way that's
9 legally defensible should the agency be challenged in order
10 to ensure that we have a definition of functional, we can
11 describe the attributes of that, and there is linkage to a
12 licensing document.

13 Option 3 would remove that constraint and I think
14 that's where we're trying to provide for that balance, as
15 you described, in a minimalistic way, but still provide for
16 that legal framework for the staff to operate under the
17 current regulations, Part 50.

18 COMMISSIONER DIAZ: Would our counsel like to
19 comment on that?

20 MS. CYR: I agree with what Sam just said. If I
21 understand what you're reacting to, it was a comment earlier
22 where he said that there was some stuff that was not
23 safety-related, but was important to safety, which we said
24 earlier was safety-significant.

25 COMMISSIONER DIAZ: No, no, no. No, no. Not

1 safety-related, not important to safety, but has a pedigree
2 that it had special treatment requirements on it, and,
3 therefore, special treatment requirements are going to be
4 carried by them, even if they're put in RISC-3.

5 That's the issue, right?

6 MR. BARRETT: That's not what we're saying,
7 Commissioner.

8 COMMISSIONER DIAZ: No?

9 MR. BARRETT: What we're saying simply is that
10 when we consider the equipment that currently has special
11 treatment, we can't just consider safety-related equipment,
12 because many of the, for instance, general design criteria,
13 they don't say equipment that is safety-related has to meet
14 these requirements.

15 They say that equipment that is important to
16 safety. So it's a term of art. So we have to include that
17 in the categorization process, but that in no way means that
18 we're backing off on the commitment to reduce the special
19 treatment requirements.

20 It's just simply redefining the universe of
21 equipment that's being subjected to the categorization
22 treatment.

23 COMMISSIONER DIAZ: Right. Terminology, I'm as
24 confused as everybody else on important to safety,
25 safety-related, safety-significant and risk-significant.

1 But anyhow, the issue was that you are going to
2 keep those systems that have special requirements into a
3 category that will maintain those, even if they are not --

4 MR. WEST: No. They can be -- they would be
5 binned in one of the risk boxes and whatever box it gets
6 binned in will establish what treatment is required.

7 So if something -- if this new equipment we're
8 talking about ends up binned in RISC-3 box, the special
9 treatment would be replaced with just the minimal
10 requirement to ensure functionality.

11 So the special treatment does not stay with that
12 equipment once it's binned into box three.

13 COMMISSIONER DIAZ: I thought that what I read is that it
14 does stay, although before it was going to cut to RISC-4,
15 now it could stay in RISC-3.

16 DR. TRAVERS: It's not zero, but it's not what
17 exists today to be special treatment.

18 COMMISSIONER DIAZ: It's the minimal and we have
19 to define minimal.

20 MR. WEST: And that's our challenge now.

21 COMMISSIONER DIAZ: Let me go one thing. I have
22 so many questions, I don't know where to start. But let me
23 go back to the issue of selectivity that the Chairman
24 raised. As I understand it, you are saying no selectivity
25 by SSCs, selectivity by rule. Is that correct?

1 MR. WEST: No.

2 COMMISSIONER DIAZ: Is that your combination? No?

3 MR. WEST: We're saying selectivity in both cases,
4 with conditions. With rules, that if you select one rule,
5 if there is an interrelationship with another rule that
6 would require an exemption, you have to take both rules.

7 You can't take one and exemption for the other.

8 COMMISSIONER DIAZ: And that's called rule
9 propagation. In other words, you take one, you have to take
10 all of the other rules.

11 MR. WEST: Well, it may not be all, but you may
12 have to take the minimum bundle where there is an
13 interrelationship between rules.

14 COMMISSIONER DIAZ: But I thought that your paper
15 said clearly that you were not going to really -- that you
16 would prefer to have selectivity by rule, not by SSC.

17 MR. COLLINS: That's correct, and the reason is
18 for each rule, the staff's approach, Commissioner, would be
19 that there is an integrated thinking across the balance in
20 the application of risk-informed information in that some
21 aspects of that rule may require an enhancement of treatment
22 due to risk-informed information, others may require a
23 relaxation.

24 And to allow only the implementation of the
25 relaxation without any type of analysis would not provide

1 for that balance that the Commission has challenged the
2 staff to provide in the application of risk.

3 So we would be reluctant to do that without any
4 type of analysis, so there are portions themselves to ensure
5 that that balance is maintained.

6 MR. WEST: When we wrote the paper, we had in mind
7 a specific concept which I think we believe now did not come
8 across clearly, because we've got your comment now and we've
9 gotten comments from industry.

10 We would propose that you could have -- we should
11 accommodate selectivity by system.

12 As I mentioned earlier, the concern that we had
13 was we wanted to make sure that if you decide to implement
14 50.69 and Appendix T for a system, that you do the whole
15 thing. You don't just do RISC-3. You do RISC-1, 2, 3 and 4,
16 and that was -- I'm afraid that didn't come across clearly
17 in our paper.

18 We're not saying, for example, that you would have
19 to identify in your plant all the RISC-1 and RISC-2 SSCs and
20 apply the appropriate treatment and then you could select
21 systems and look at RISC-3. We're talking on a system
22 basis.

23 I agree that's not clear.

24 COMMISSIONER DIAZ: It's not clear. Also, if you
25 look at the issue of taking them by rule, it brings out the

1 fact that, again, we're trying to provide definition to a
2 process, as much as is possible, and I notice that the staff
3 would prefer, in the issue of PRA quality or anything that
4 is saying just by the PRA not to have minimal or no review.

5 But in the case of when you get into the rules,
6 then you're going to have to have review.

7 Again, the issue is how much are we going to
8 define this so the stakeholders, the industry and us will
9 really have a very good pattern or matrix that we know where
10 we are rather than having to be looking at finding where we
11 are, and that's really a major question.

12 MR. BARRETT: Is that rhetorical or an actual
13 question?

14 COMMISSIONER DIAZ: No, no.

15 MR. COLLINS: Well, I think we want to confirm
16 your thoughts that the process is meant to stand alone.
17 That's the intent of 50.69 and the appendix, as Steve
18 provided.

19 We clearly have to inform that process with
20 pilots. We'll have guidance that will have to be provided.
21 We have the South Texas exemption.

22 I would like to caution, though, that this is a
23 foray into providing a product based on the Commission
24 direction and there will be a close monitoring of this
25 process.

1 We're trying to maintain the original intent,
2 which is to provide the proper amount of information for
3 licensees to implement this process and then we monitor that
4 process.

5 There is some question of whether that will be
6 able to be achieved, at least in the first instances, based
7 on that uncertainty about are we doing the right thing and
8 is it received correctly and is it being implemented as
9 originally intended.

10 So there is that implementation period, but
11 overall our goals remain the same.

12 MR. WEST: If I could just add, I think the
13 process itself should be clear, consistent and
14 understandable to anyone that's involved or interested in
15 applying it.

16 I think what we're struggling with a bit now is
17 within that process, what goes in -- what becomes a
18 requirement and goes in the regulation and what can be left
19 for guidance, and that's where we're trying to establish the
20 -- draw that line and establish that correct balance.

21 MR. COLLINS: And the pilots will be every helpful
22 in that regard.

23 CHAIRMAN MESERVE: Commissioner McGaffigan.

24 COMMISSIONER McGAFFIGAN: I'm going to follow-up
25 on a few questions and then I have a few of my own. Mr.

1 Collins, in response to the Chairman, you talked about
2 alignment on the vendor site as part of the response to this
3 INEL report.

4 My sense is that we're going to have an amazingly
5 complex regulatory regime that results with some plants in,
6 some plants out, maybe some plants partially in.

7 And if I'm a vendor making equipment, I've got
8 some places where it's in some box and some places where
9 it's in another box and some places where it's in the old
10 deterministic regime, and I think that alignment may be a
11 little difficult.

12 Not that I'm saying we shouldn't have some minimal
13 requirements for RISC-3 systems, but we're headed toward --
14 you know, we have an old system, we all understood it, and
15 now we're headed toward a system where of 103 plants, X
16 number are going to be in some category, 103 minus X will be
17 in another category, maybe more than that.

18 So it's just going to be difficult, I think. This
19 whole enterprise strikes me as complex.

20 The accommodating selectivity by system, are we
21 really going to do that? Is that really something that you
22 all are striving to get here, so you'd have a plant where a
23 system would be risk-informed and the rest of the plant
24 wouldn't be, it would be deterministic?

25 MR. WEST: That's our preliminary view.

1 COMMISSIONER McGAFFIGAN: How do you -- this
2 sounds like Appendix R or something. We're going to have --

3 MR. COLLINS: I don't think we need to get too far
4 ahead on this one. Let's recognize that the product that we
5 have in front of the Commission now is a preliminary product
6 that captures the status.

7 In being responsive to the stakeholders' concerns,
8 we've considered a number of options. This is one of the
9 options that we are considering to try to be responsive. It
10 would have to be developed and it would have to be piloted
11 and we would have to measure that against our performance
12 goals in the direction of the Commission before it was ever
13 implemented.

14 COMMISSIONER McGAFFIGAN: It's going to be those
15 are risk-informed, those are risk-informed on a few systems,
16 and those that are deterministic, so divide 103 into three
17 parts, at least.

18 MR. COLLINS: I understand.

19 COMMISSIONER McGAFFIGAN: I'm just concerned. On
20 PRA quality, I would like to just go back to Mr. King's
21 remarks. You sent the letter on August 14, which was not
22 well received by some in the industry. ACRS had sent
23 similar letters previously saying this wasn't a standard
24 that was going to help the staff much, you're going to have
25 to review everything. This was not a quality standard.

1 Now, there's a peace treaty as of last week and
2 everything is hunky dory. How is this going to be
3 documented and how do I -- this is news to me, so how does a
4 member of the public keep track of this peace treaty?

5 I'd like to acknowledge that the peace treaty may
6 be an appropriate word, but it developed as a result of a
7 meeting and being responsive to the industry's concerns,
8 particularly Mr. Helwig, who has invested a lot of time in
9 this, working with the staff and through the committee.

10 The letter that Research sent provided the staff's
11 comments, sponsored by the Office of Research, and the staff
12 developed a strategy to be responsive to the concerns of the
13 stakeholders.

14 That strategy is being played out as having a technical
15 writing group, the meeting for the standard, and portions of
16 that resulted in the so-called peace treaty, if you will,
17 but it is not ad hoc and it's not anecdotal. It's a
18 specific strategy that's implemented by the staff in order
19 to move us forward in this very critical area.

20 COMMISSIONER McGAFFIGAN: Mr. King, why don't you
21 --

22 MR. KING: One, let me say that this --

23 COMMISSIONER McGAFFIGAN: This is going to result
24 in Rev. 13 of the ASME code, right?

25 MR. KING: Right.

1 COMMISSIONER MCGAFFIGAN: And that will go out for
2 public comment again.

3 MR. KING: Right now, my understanding is that
4 ASME is not thinking of another public comment process.

5 COMMISSIONER MCGAFFIGAN: This is going to be a
6 radically different document from Rev. 12 or Rev. 10 or any
7 of the previous, right?

8 MR. KING: I don't think it's going to be
9 radically different. I think it's going to focus more on
10 PRA quality. It's still going to have the three categories
11 that Rev. 12 has, but I think what you will see in each of
12 those categories is a beefing up of the words that deal with
13 PRA quality, and that was the big issue we had.

14 Rev. 12 we felt focused too much on what is the
15 application of the PRA and not enough on quality, and I
16 think what we've agreed now, I wouldn't call it a peace
17 treaty, but I think we've reached a meeting of the minds
18 that the standard needs to focus more on quality.

19 We've worked out a way to do that. We used an
20 example to illustrate how that would work. This was all
21 orchestrated by ASME in terms of organizing the meeting.

22 They are going to issue a meeting report to
23 document what was done and where we're going from here.

24 So I think the Rev. 13 will focus more on quality.
25 I think we put together some principles and objectives that

1 we agreed to beforehand to sort of lay out the approach and
2 the groundwork for doing that, going to Rev. 13, and I think
3 it's a success path.

4 COMMISSIONER McGAFFIGAN: I don't know if it runs
5 its own process, but if it's a significantly different
6 document, I would think it probably should be out for public
7 comment.

8 On the issue of peer review, the paper here says
9 that we're going to try to accommodate the NEI peer review
10 process, this NEI 0002. Have we ever participated in an NEI
11 peer review, has any staffer?

12 MR. COLLINS: Yes. We've observed two early in
13 the process. We know the process has evolved since then and
14 we have on our plans to observe the more recent process.

15 COMMISSIONER McGAFFIGAN: When we did the
16 maintenance rule, what sort of activity did we need to do in
17 order to get confidence in the processes that were used to
18 classify systems? Didn't we have fairly intensive
19 inspections?

20 MR. BARRETT: We did. We did inspections of, I
21 think, every plant in the country when we first implemented
22 the maintenance rule. We did some selective inspections for
23 implementation of A-4 and mostly looking at the process as
24 opposed to looking at the quality of the PRA.

25 COMMISSIONER McGAFFIGAN: It just strikes me -- I

1 mean, Mr. Lochbaum is going to talk later about concerns
2 about PRA quality and he's also going to talk about the need
3 for staff review of PRAs, whatever the process.

4 But there is a legitimate issue about how do we
5 document that somebody said anecdotally they think that the
6 PRAs have improved since the submission of 88-20, Generic
7 letter 88-20. But how do we know that? How does a member
8 of the public? How does Mr. Lochbaum say no to that and
9 have confidence that when you all are later allowing a plant
10 to move to the new Part 59, that that PRA on which this is
11 based is up to it?

12 If it's an industry-driven -- I mean, it sounds --
13 if industry says it's good enough, an industry peer group
14 looked at it and we're taking their word for it is, I guess,
15 the answer, if we end up adopting the NEI --

16 MR. BARRETT: Well, one of the big questions about
17 the peer review process is the documentation, the
18 documentation of the weaknesses and strengths of the PRA as
19 found by the peer review group and how that documentation
20 allows the independent -- the integrated decision-making
21 panel within the licensee's own panel to take those findings
22 into account; also, how it allows the NRC to take those.

23 COMMISSIONER McGAFFIGAN: Will these all be
24 docketed documents, with the strengths and weaknesses of the
25 PRA as seen by the peer review group? Will that be in the

1 docketed file of the licensee?

2 MR. BARRETT: I don't know if that will be
3 docketed or not.

4 MR. COLLINS: I would suspect not, as we currently
5 approach it, although we're still developing the options.

6 COMMISSIONER MCGAFFIGAN: How does a member of --
7 I mean, the staffer knows it because he's told it. How does
8 a member of the public know? If it's part of our integrated
9 decision-making process, it's in our synapses somehow, but
10 it's not a docketed document that allows it.

11 MR. COLLINS: Again, this is a work in progress.
12 The Commission has tasked us to take credit for industry
13 initiatives and we have specific strategic goals in that
14 area. This is one of those areas where we're looking to
15 take credit for industry initiatives.

16 So the question become show do you do that at a
17 level that provides you to be able to pass through four
18 performance goals, including public confidence, and we'll
19 develop that and your points are well taken.

20 We're not going to do our reviews based on the
21 licensee's PRA without the option to either directly or on a
22 selective basis review the bases for those changes and we
23 can do that before is one methodology and have it all on the
24 docket. We can do it in process is another option and
25 accept a standard and accept the industry initiative to rise

1 to that standard.

2 As far as the status of PRAs, the Office of
3 Research also has initiatives to review the quality of PRAs.

4 MR. KING: I'd add one other thing. Sam mentioned
5 in his opening remarks the PRA steering committee. Our
6 steering committee has met with the industry counterpart
7 committee. That's one of the issues we've discussed between
8 the two steering committees and the industry has taken an
9 action to come back with a proposal as to how to provide us
10 with updated PRA information.

11 This is an issue for Option 3, as well as for
12 Option 2. We would like to get up-to-date information, the
13 issues of is it publicly available and how do we go through
14 that process is something that they're working on right now
15 and it's an issue on our plate, as well.

16 COMMISSIONER MCGAFFIGAN: I hope this is brief.
17 If I'm a member of -- what does a -- RISC-2, that's the --
18 say risk-informed regulation is a double-edged sword.
19 RISC-2 categorization of stuff that was previously not
20 safety important, not important to safety, not all those
21 safety words, but now we've discovered is risk significant.

22 What exactly do I have to do that I'm not doing
23 now if I'm a licensee with regard to the RISC-2 equipment?
24 We're not going to subject it to Part 21.

25 We're not -- what is it that they have to do?

1 MR. BARRETT: I think the key answer to that
2 question is you have to look at what is it that made that
3 piece of equipment risk-significant. Is it just its
4 reliability and availability or is it its ability to
5 withstand a particular type of environment in an accident
6 that it is a key contributor to, or is it because it's part
7 of a seismic sequence that was important to the risk
8 analysis, which was important to the categorization, and,
9 therefore, you need to take a -- ask the question about how
10 do I make that assumption come true.

11 So it's --

12 COMMISSIONER McGAFFIGAN: So it's going to be
13 component by component, they'll make an analysis and then
14 they'll, component by component, figure out what it is they
15 have to do that they're not doing now.

16 MR. BARRETT: I think that for the most part, it
17 would be system by system, but because systems and functions
18 go together, to a great extent.

19 And a similar question is going to have to be
20 asked about equipment that is currently given treatment
21 because of its design basis function. We may find out that
22 it has PRA or risk-related functions that have to be looked
23 at, as well.

24 CHAIRMAN MESERVE: Commissioner Merrifield.

25 COMMISSIONER MERRIFIELD: Thank you, Mr. Chairman.

1 I've got a few issues I want to try to cover and I'll try to
2 do it quickly, knowing the Chairman's obvious desire to get
3 to the next panel. So if the staff can go through the
4 answers relatively quickly, too.

5 The first one, in the September 11 Inside NRC,
6 there is an article indicating that there may be significant
7 differences of opinion within our own staff regarding Option
8 2, serious enough that somebody or some person has leaked
9 internal memos to the Inside NRC, which I think is
10 unfortunate.

11 Today we are also going to hear concerns from both
12 NEI and South Texas, or at least their slides indicate we
13 will hear concerns regarding cultural impediments within the
14 NRC to progress.

15 Now, it's not my intention to put the staff on the
16 spot, but instead to give the staff an opportunity to
17 address these issues from your own perspective.

18 MR. COLLINS: I'm going to defer to Rich Barrett,
19 in the way that we have approached this. It is a challenge
20 for the agency. It's a specific challenge for the Office of
21 NRR with regard to the South Texas exemption, which is the
22 instant case. The Option 2 is more theoretical, if you
23 will.

24 This challenge is not unlike any change management
25 issue that's come before us. This has the additional aspect

1 of moving us from a long history of deterministic
2 defense-in-depth approach, which has served us well in the
3 past.

4 Currently, we are, as I mentioned in response to
5 Commissioner Discus' question, we have been aware of this
6 for a period of time. We have actually been through the
7 budget process and have budgeted people and money in fiscal
8 year 2001 and 2002 to work with the staff in a methodical
9 way to move us down that road for risk-informed thinking.

10 We're aware of the strategic plan, it's very
11 clear. I outlined those in my opening statements, that the
12 Commission has provided us direction.

13 We have met internally. The executive team has
14 met with the leadership team, which is composed of the
15 division directors. The division directors have aligned
16 themselves around the Commission guidance.

17 Cindy Carpenter and her staff have gone through
18 and pulled out of the various documents that the Commission
19 has provided to us the context of the direction in the
20 risk-informed areas, including the minimalist approach to
21 treatment that Commissioner Diaz cautioned us on.

22 We have provided that to the leadership level.
23 They are working right now with what we would call our
24 operating team, which is the branch chiefs and the staff.

25 They have been aligning the processes for a period

1 of approximately two weeks, meeting with the staff. We have
2 some branch chiefs who have stepped up as leaders and
3 champions in this area. We received a status of this effort
4 yesterday in an off-site retreat.

5 I have confidence that although it will not be
6 easy, we will be able to achieve those goals and we're
7 monitoring it with the various levels.

8 Again, what I want to acknowledge is that the GAO
9 has cautioned us in this area about the ability to move
10 ourselves forward. We are taking the time, in conjunction
11 with the South Texas exemption, to provide the skill, will
12 and access of the staff to actually move to a definition
13 place.

14 It's a little more difficult that way and it
15 creates barriers that we have to work through, but those
16 have to be achieved. If we don't do it now, we'll do it the
17 next time or we'll do it in the implementation of either the
18 exemption or of Option 2.

19 So I have great confidence in our staff's
20 technical ability. We need to provide them the tools to
21 achieve those goals you've outlined and I'm optimistic.

22 Do you want to add to that, Rich?

23 MR. BARRETT: I'm not sure there's much I can add
24 to that, except that the question -- there is a difficult
25 technical issue here and it has to do with the nature of

1 Option 2.

2 In Option 2, as Commissioner Diaz pointed out, we
3 use a risk categorization to categorize equipment as being
4 very low risk or not risk-significant at all and yet by the
5 nature of this initiative, we still have to find that it's
6 functional.

7 And the question is, in the past, of course,
8 functional means reliable, available and capable, and
9 capable includes qualified for various environments and
10 other challenges.

11 So the question for the technical staff is what is
12 an appropriate minimal level of assurance and that has been
13 the difficult issue. That's the principal reason why we've
14 been working on this so long.

15 What we're trying to do with the structure that
16 Sam just outlined through this operating team is to see if
17 we can define, if we can stick with a level of assurance
18 that satisfies our technical staff and maintains the sense
19 that we're doing the right thing technically, while, at the
20 same time, placing more of a burden on the licensee as
21 opposed to having them be accountable to the staff for all
22 of the details of how that's accomplished and perhaps come
23 up with a -- one option being a more performance-based
24 oversight of this functionality.

25 But we're looking at options right now. We're trying to see

1 if we can come up with a process or a management solution
2 that can satisfy this technical issue.

3 MR. COLLINS: Commissioner, just to be clear, that
4 document was actually inadvertently placed in the record as
5 a result of an error in the profiling document for support
6 of ADAMS. It's had actually positive unintended
7 consequences of arising that issue and making it visible and
8 we're talking about it now, not only internally, but
9 externally.

10 However, it was not due to it being leaked. It
11 was due to an error by the staff.

12 DR. TRAVERS: I think it gave good insight into
13 what I think is a healthy dialogue in the staff. These are
14 tough issues and although we didn't mean to release it, I
15 think it gave a glimpse at the sort of turmoil and
16 discussion that rightfully goes on in connection with some
17 of this conflicts issues.

18 COMMISSIONER MERRIFIELD: I appreciate being
19 corrected about that document being not leaked, but having
20 been inadvertently released, which raises a separate issue
21 on ADAMS, which we need not get into today.

22 MR. COLLINS: It was a staff error, not an ADAMS
23 problem.

24 COMMISSIONER MERRIFIELD: Well, it was out and
25 there was a problem. A lot of this seems to have brought to

1 light the issues dealing with the South Texas Project
2 exemption. I take it from your answer you feel confident
3 that you've got the management oversight and communications
4 process in way so that we can effectively and efficiently
5 manage this.

6 MR. COLLINS: I'm confident we do now. There's
7 always a startup with these types of activities. I would
8 commend the operating and leadership levels and NRR for
9 putting us to where we are. I have been sensitized over the
10 past few months by Mr. Sheppar from South Texas that we need
11 to be talking more frequently at the higher levels in
12 concert with the development process to ensure that the
13 philosophy between all of our stakeholders is aligned.

14 And as a result of that, we have instilled that
15 process, where there is feedback loops and benchmarking and
16 discussions amongst the licensee and myself with Joe. I
17 think we probably talk every week now on the status to be
18 sure that we're aligned. So the answer is yes today.

19 COMMISSIONER MERRIFIELD: We talked a little bit
20 earlier, on slide four, relative to the implications
21 associated between the relationship between Option 2 and
22 license renewal under Part 54.

23 What is your reaction to the proposal by NEI
24 regarding a risk-informed option for Part 54 and does that
25 raise with it some degree of regulatory instability in a

1 license renewal process that we are obviously very eager to
2 make sure it continues to work on an appropriate manner?

3 MR. WEST: Stability in the license renewal
4 process is a prime consideration. It is something we
5 considered when we evaluated the comments we received with
6 respect to Part 54.

7 At this time, we wouldn't feel comfortable moving
8 forward with risk-informing Part 54 because it could
9 introduce some instability into the license renewal process,
10 which, right now, is just working pretty smoothly.

11 It may be something we'd look at in the future in
12 terms of risk-informing Part 54. We really don't think it's
13 necessary to risk-inform Part 54 at this time to alleviate
14 the industry and stakeholder concerns about how the Option 2
15 plan would transition into license renewal in the future.

16 We do recognize that this is an issue that is ripe
17 for additional discussion with industry, because I'm not
18 sure we're on the same page of music with respect to license
19 renewal, but at this point, we feel comfortable with our
20 preliminary view that it's not needed to be risk-informed.

21 COMMISSIONER MERRIFIELD: My last question. You
22 indicated earlier that we have been participating, I guess,
23 in two of the NEI peer review process efforts associated
24 with their PRAs.

25 Do we have any initial impressions or insights

1 into that NEI peer review process that the Commission could
2 benefit from?

3 MR. BARRETT: I think the impression we got from
4 it was fairly positive. At the time we went, we were not
5 going with specific criteria to look at and I think a lot of
6 what we learned in those visits is being factored into our
7 review of the overall process.

8 So one of the important insights that we gained
9 from those visits, and that is being that we're hitting on
10 very hard in our review of the peer review process is the
11 need for objective -- what we call sub-tier criteria.

12 That is to say, in the process, in the peer review
13 process, there are a number of questions that are asked
14 about the PRA, but we feel that there is a need for a deeper
15 level of detail, a deeper level of criteria as to what the
16 acceptable answers are, so that it becomes less
17 acceptability of the PRA in a particular area becomes less
18 the judgment of the PRA peer reviewer and more of an
19 objective standard that can be met and can be documented and
20 can give the NRC and the public a sense of confidence.

21 MR. KING: Let me just add. We were observers,
22 not participants, and the most recent one we observed was
23 probably two years ago. So it's been a while. I know we've
24 now been invited to come and observe again and I think that
25 probably would be a good idea.

1 COMMISSIONER MERRIFIELD: Thank you, Mr. Chairman.

2 CHAIRMAN MESERVE: I'd like to thank the staff for
3 a very helpful briefing. You clearly are grappling with
4 some very difficult issues and you have the misfortune of
5 having to come and tell us about them before your own views
6 have completely gelled.

7 Let me say that this activity in which you're
8 engaged is one that is very important to the Commission and
9 that as issues arise in which you need further Commission
10 guidance, that we are available and very willing to provide
11 it.

12 So thank you very much.

13 Let me turn now -- we have a second panel, but why
14 don't we take a -- I know we've gone a little long. Why
15 don't we take a two minute break and then we'll resume.

16 [Recess.]

17 CHAIRMAN MESERVE: Our second panel consists of a
18 number of individuals who have been actively involved in
19 this process. They include Mr. Ralph Beedle, who is the
20 Senior Vice President and Chief Nuclear Officer of Nuclear
21 Generation for the Nuclear Energy Institute; Mr. David
22 Lochbaum, who is a Nuclear Safety Engineer for the Union of
23 Concerned Scientists; Mr. Joe Sheppar, who is the Vice
24 President of Engineering and Technical Services for the
25 South Texas Project; and, Mr. Thomas Poindexter, who is a

1 partner with Winston & Strawn and he is here representing
2 the Nuclear Utility Backfitting and Reform Group.

3 Thank you for joining us this morning. We have
4 had the benefit of your slides and we'd ask each of you to
5 try to keep your remarks to ten minutes or less, so that we
6 can provide ample time for questioning by the Commissioners.

7 Commissioner Merrifield has reminded me of the
8 importance, particularly for those who are watching this
9 over the video streaming, no doubt thousands of people, that
10 the Olympics may not be on now, so people are looking for
11 alternatives.

12 COMMISSIONER MERRIFIELD: And this would certainly
13 be a first choice.

14 CHAIRMAN MESERVE: Or maybe the comedy channel is
15 not functioning today. He has reminded me that sometimes
16 all of us lapse into acronyms and that this may be
17 particularly difficult for those who are outsiders. So I
18 would urge the panel members to do your best to not refer to
19 acronyms.

20 COMMISSIONER MERRIFIELD: Or define them up front,
21 so Commissioners, in reviewing the slides, know what the
22 acronyms mean. The Olympic announcers use acronyms, too,
23 though.

24 CHAIRMAN MESERVE: Mr. Beedle, why don't you
25 proceed?

1 MR. BEEDLE: Thank you very much, Chairman. Let
2 me start out by apologizing for my failure to get the slide
3 presentation into the SECY's office in the required time
4 period, but I would like to plead the argument that
5 Commissioner Diaz makes that I didn't understand everything
6 I know about this and I'm not sure I do now.

7 In fact, were I to rewrite these slides, I would
8 change them significantly based on what I've heard this
9 morning. So I think this briefing does serve a very useful
10 purpose in helping us focus on issues that are very
11 important to each one of us.

12 COMMISSIONER MERRIFIELD: I hope that moves you in
13 the right direction.

14 MR. BEEDLE: In terms of changing my behavior,
15 yes.

16 Well, I thought surely that the Chairman was going
17 to come up with one of these "who wants to risk inform
18 regulation" in competition with Regis Philbin.

19 Chairman, the risk-informing regulation is very
20 important to the industry, as it is to the NRC, and as a
21 result of that, the working group that NEI put together has
22 had more than moderate interest, I would say major interest.
23 We've got 26 members. It's probably the largest working
24 group that we have in the NEI organizational structure.

25 We have had a number of cases where risk insights

1 and risk information is being used in changes in our
2 programs and regulations. The oversight process I think is
3 an excellent example of where the NRC has moved in a
4 significant way to risk-inform processes.

5 The maintenance rule is clearly one that hinges on
6 our risk insights and understanding of the risk at the plant
7 system level. Our configuration control at the plants is
8 principally a risk-informed process.

9 In-service inspections, we have 60 plants with
10 risk-informed ISC/ISI kinds of processes at this point, and
11 the AOTs and tech specs that are risk-informed, many plants
12 have got some version of that at this stage of the game.

13 So the risk-informing regulation is something
14 that's very important to us and I would suggest that all of
15 these activities represent a commitment on the part of the
16 industry to this process.

17 And I say all this because there has been some
18 question about whether or not we have a series of plants
19 lined up to be participants in a pilot program, sort of a
20 follow-on to the South Texas, the answer is no, we don't,
21 but we've got a lot of activities that support it.

22 And I think the reason that we don't have plants standing in
23 line to embark on a program like the South Texas Project
24 process is that we're still waiting to find out what the
25 ground rules are and as long as we continue to restructure

1 those, and I think you'll have to admit, based on the
2 conversation this morning, there are a number of questions
3 that need to be resolved before we can expect a licensee to
4 really embark on that process of developing their programs
5 to that pilot.

6 So if I could have the second slide -- third
7 slide, please. The SECY-00-194, I mean, it's been discussed
8 as preliminary this morning and I appreciate the fact that
9 there is a significant amount of thought that has gone into
10 that process, but it represents only a step in the road to
11 developing an adequate rulemaking process to support this
12 risk-informing of the regulations.

13 But I think that if we look at SECY-194, I've
14 listed a number of things here that I think really represent
15 problems of major concern to us. Notwithstanding the
16 discussion that took place this morning, they still are
17 concerns.

18 One is the continued imbalance in our focus
19 between high risk/low risk systems and components. That's
20 really what we're trying to get at and we're not sure that
21 we've achieved the right balance in the activities that are
22 necessary to support those systems and components.

23 And it's unlikely that until we resolve that
24 problem that we will really have a group of plants that are
25 interested in devoting the resources necessary to come to

1 grips with some of the analytical processes that are
2 necessary to support that.

3 And then the concerns that we have are the
4 treatment of the PSA quality, the selective implementation
5 treatment and Part 54, and I'll talk about those just in a
6 moment.

7 Next slide, please. PSA quality for Option 2.
8 The industry recognizes that there is a need to ensure that
9 you have an adequate PRA/PSA and from the early days of
10 developing the IPEs, many plants looked at the IPE and said
11 our option is to go IPE or a PRA, and they put the extra
12 effort into developing a PRA because they clearly saw some
13 benefit for themselves, as well as the NRC.

14 So by and large, we saw things move in the
15 direction of PRA as opposed to the relatively static IPE.

16 The process that industry had developed,
17 principally through our owners' groups, was to use a peer
18 review process, where we drew on the expertise of the
19 practitioners in the review of the PRAs and trying to
20 provide the lessons learned from one plant into the next
21 plant.

22 And as you know, the variations in these plants
23 means that it's very difficult to write a comprehensive
24 cookie-cutter rule that says that you have to deal with a
25 system in this specific fashion.

1 So we thought and we're still convinced that the
2 peer review process provides the best opportunity to deal
3 with that.

4 We have a good example of peer review processes in
5 other areas, where it serves the industry and the NRC well.
6 It provides good quality in the programs and in many cases,
7 those peer review processes are focused on outcome and when
8 you look at the outcome, it's sort of the test of whether or
9 not that system is really going to function well and we find
10 that we get good results in the doing of that.

11 The development of the Option 2, we have in mind
12 that a template that would assist the licensees in
13 submitting their application for a license or for Option 2
14 system review would include, as part of that submittal, a
15 discussion of the peer review process that was used to
16 support the quality of the PRA that, in turn, was used in
17 the gradation process and that report would also include the
18 strengths and weaknesses of that peer review process.

19 So that was one of the questions that came up
20 earlier. So we think that that would address that.

21 The industry recognizes that some PRAs need to be
22 improved and we think that through our peer review process,
23 we will be able to affect an overall increase in the
24 standard and quality of those PRAs throughout the industry.

25 Then last, the industry is considering some

1 alternative to address some of the questions that have come
2 up about PRAs in the last several months about operating
3 with information from the old IPEs and we've got new PRAs,
4 major changes in the quality over the course of the years
5 and does the NRC have the benefit of that information in
6 their files and their records and are they, in fact, being
7 able to use that.

8 We frequently think of the plant being open to the
9 NRC inspection process and the assumption is that the PRA
10 that's at the plant is something that's subject to review by
11 the NRC inspectors, but that doesn't necessarily mean that
12 it's something that the agency, in fact, uses as a broad
13 base for making decisions.

14 So we're looking at ways of trying to provide that
15 information to the agency in some sort of an update fashion
16 and our working group is examining that over the course of
17 the next several weeks.

18 The next slide, please. Selective implementation,
19 a lot of discussion on that this morning and the
20 categorization process. We really think that you've got to
21 examine whether or not there's a requirement that you just
22 implement totally, look at every system and component in the
23 plant and then do that in the fixed timeframe of three
24 years, which we think is much too short, if that's the
25 objective, but we think there's a better way to do it and

1 that's to deal with it on a system basis, perhaps use some
2 mechanism to screen the systems, because clearly there are
3 some systems that we are not going to spend any money on
4 examining.

5 Some non-safety related, the potable water system,
6 we probably aren't going to look for any opportunities to
7 determine that that's not safety related and we doubt very
8 seriously if it's going to show up as something that's
9 risk-significant. It certainly doesn't show up in
10 risk-significant space as a result of our maintenance rule
11 activities, so why would we spend any money to review that.

12 Similarly, there's another system, probably the
13 reactor protection system, that there is no point in
14 spending money looking at the reactor protective system
15 because we know those things are going to probably show up
16 as safety-significant, so we'll just treat them as
17 safety-significant and leave them in risk category one and
18 not spend the money trying to recategorize them.

19 So I think in that screening process, you can
20 eliminate a large number of systems and get it down to a
21 workable number that would address the issue of whether or
22 not we are selecting, somebody described it as
23 cherry-picking, and I think we've got to go back to this
24 principle that the Chairman talked about, and the principle
25 is that you're reviewing systems for whether or not they are

1 safety-significant in the plant.

2 So we think there is a lot of opportunity to deal
3 with that. And as I indicated, I think we are premature in
4 trying to provide some timeframe for that at this point.

5 Next slide, please. Treatment in the RISC-2
6 category, we're looking at the 50.65 and we can't help but
7 draw on the experience in the maintenance rule activity,
8 where we've used the risk insights.

9 We have to be able to capitalize on that
10 information as we go forward in looking at how we treat
11 these RISC-2 category pieces of equipment.

12 Now, Commissioner McGaffigan asked a question
13 about non-safety-related, safety significant, and where we
14 have some examples of the safety-significant pieces of
15 equipment, and I think in the maintenance rule, our
16 configuration control of risk-significant equipment is a
17 good example of where the industry has recognized the need
18 to impose some additional restrictions and controls over
19 equipment, even though there was no regulatory
20 safety-related requirements associated with it.

21 Next slide, please. Treatment in RISC-3 category.
22 The "how to" and the details of how you execute a commercial
23 program for many of these pieces of equipment, I think,
24 would lead us to create yet another son of Appendix B or
25 another procurement program and compound the problem that

1 the plant has in trying to deal with the various quality
2 programs that are built into these systems.

3 I think we are almost back into creating several
4 more categories of procurement programs, as well as
5 categorization from the safety-related and
6 safety-significant point of view.

7 So we really need to think about how much detail
8 gets embedded in these.

9 The other thing I would point out is that we have,
10 over the course of the last 15 years, seen a significant
11 increase in the capability of these plants and just recently
12 the results of the first six months of operation of the
13 nuclear fleet indicates a seven percent increase in
14 generation.

15 You don't achieve a seven percent increase in your
16 generation capability in a six-month period if you don't
17 have an excellent procurement program, maintenance program
18 and operational program that supports all that.

19 So we've got to take a look at the outcome instead of some
20 of the details associated with how you go about the
21 administration of a procurement program.

22 Then if we could have the next slide, please. The
23 Part 54 and the connection there, the issue that we have
24 here is that the way the SECY was prepared would indicate
25 that there would be the opportunity to look at Option 2 and

1 then have to revert to a non-Option 2 status to deal with
2 Part 54 if you subsequently decided to apply for a license
3 renewal.

4 Exactly how that was to be done was not clear.
5 We're reacting to the words in the SECY. So based on the
6 conversation I heard this morning, it sounds like there is
7 some -- that there was a thought process, it was
8 preliminary, so we need to have continued dialogue and
9 discuss how that gets played out.

10 Then in conclusion, I would say that the industry
11 is clearly committed to this process. I don't think there
12 is any doubt about that.

13 We are also committed to working with the NRC to
14 try to provide leadership within the industry to ensure that
15 we don't get off track. We are not asking that we do
16 something that puts the plants at risk. We're looking for
17 safety, assurance of safety, as well as assurance of our
18 production capability.

19 After all, we are a business and we have an
20 obligation to the stockholders and those stakeholders to
21 ensure that the business is run effectively and run well,
22 and part of that, I would argue a major part, is the
23 assurance of safety in the process of doing that.

24 So with that, I would conclude my remarks, saying
25 that I appreciate the opportunity to come before you and

1 express our concerns over this.

2 CHAIRMAN MESERVE: Thank you very much. Mr.
3 Lochbaum.

4 MR. LOCHBAUM: Good morning. I'd like to start by
5 thanking Ms. Vietti-Cook for arranging to mail me hard
6 copies of the staff paper. Otherwise, I'd probably still be
7 in my office trying to find it in ADAMS or printing it out,
8 if I was lucky enough to have found it.

9 I also need to apologize to Commissioner
10 McGaffigan. I notice in my slides, I do have some acronyms
11 that weren't explained. It was an unintended consequence --

12 COMMISSIONER MERRIFIELD: That was me. I was the
13 one complaining.

14 COMMISSIONER MCGAFFIGAN: I like acronyms.

15 COMMISSIONER MERRIFIELD: I like them, too. I
16 just want them defined.

17 MR. LOCHBAUM: I didn't mean to put you in the
18 shoes of a member of the public to attend an NRC meeting.
19 That was not my intent.

20 Slide two, please. Oh, by the way, KPCGB is the
21 acronym for kissing public confidence goodbye. I figured
22 that one out.

23 The staff paper addressed eight topics. We're
24 going to talk about three of them today. Those three are
25 selective implementation, the need for prior NRC approval,

1 and PRA quality.

2 Slide three, please. We've used selective
3 implementation in the broader context and that's the issue
4 that Commissioner McGaffigan -- I think I got that right --
5 about plants that may select to do this, plants that may
6 select to do this on some systems and some plants that may
7 not want to do it at all. That's our selectivity that we're
8 talking about.

9 And we've used selective implementation and
10 representing a lose-lose situation for the NRC. If an
11 incident occurs at a risk-informed plant involving a
12 component that would have been examined more often under
13 current regulations, the NRC would be criticized for cutting
14 safety.

15 Consequently, on the other hand, if an incident
16 occurs at a risk-uninformed plant involving a component
17 getting more attention under the new regulations, the NRC
18 will be criticized for not requiring all plants to address
19 the safety issue in the same way.

20 Slide four. So our recommendation would be to
21 kind of put term limits on the regulatory potpourri period
22 and require that in the license renewal term for all plants,
23 that they must abide by all new risk-informed regulations,
24 whether they be special treatment or anything else,
25 everything else.

1 That would eventually lead you to a converging
2 path to one set of books for all plants.

3 Slide five. The second issue we want to talk
4 about today is the need for prior NRC review. We question
5 whether the staff's objective of no prior review and
6 approval is consistent with the agency's pillars of
7 maintaining safety and improving public confidence.

8 Slide six shows the four boxes that have been
9 talked about quite a bit today. Slide seven then -- I did
10 that to make sure that I use them right, because I'm always
11 using them wrong and I still got it wrong.

12 On slide seven, the first paragraph, there's a
13 typo. It talks about RISC-1 and RISC-3 being looked at more
14 with higher priority than RISC-2 and 4. RISC-1 and 2 looked
15 at more than 3 and 4.

16 But the point is that for prioritized oversight to
17 be effective, items must be placed into the right boxes.
18 That's stating the obvious.

19 And I guess I was lured to Washington by talk of
20 big money, but I didn't look at the fine print. Slide eight
21 shows the four boxes again and a licensee conceivably could
22 determine which box an item goes into by flipping a coin
23 twice and if it was two heads, you'd put it into RISC-1, and
24 if it was heads followed by a tail, you could put it into
25 RISC-2, and so on.

1 We're not suggesting any licensee is going to do
2 that, not with computerized random number generators. You
3 wouldn't need to flip coins.

4 But the point is that without prior NRC review and
5 approval, any other goofy system that might be used wouldn't
6 be detected by the NRC and stopped before it was
7 implemented.

8 More importantly, the public doesn't have a chance
9 at all to independently verify whether it's good, bad or
10 indifferent. We'd love to get our hands on the component
11 classifications for similarly designed plants and point out
12 why some are -- the identical components are in different
13 risk boxes. We know that would happen.

14 But if the information is not on the docket, then
15 we're not going to get a chance to go through that exercise.

16 So I appreciate you saving me some work, but I
17 guess I don't appreciate being shut out of the process.

18 Also, I'm somewhat disappointed. AS Mr. West
19 pointed out, in the first panel, this activity would involve
20 a substantial change in the licensing basis. That's why the
21 staff paper has been changed to require FSAR updates or
22 UFSAR updates, after the fact.

23 Most substantial licensing actions require some
24 kind of public opportunity for hearing and intervention or
25 whatever, if the public is not happy. This one doesn't at

1 all. The public is, again, shut out on the sideline, and
2 that generally is not a good thing for public confidence.

3 Slide ten. Our recommendations in this area are
4 basically the real estate theme of location, location,
5 location. We think that the top three factors in this
6 process is prior public review -- NRC prior review and
7 approval, three times.

8 Because, basically, the reason we think that's
9 important is if the things aren't in the right boxes at the
10 start, everything else is a sham.

11 Slide 11. In speaking of shams, while there's a
12 move afoot to develop PRA quality standards, the fact
13 remains that PRA quality today is an oxymoron. The
14 questionable results from bogus risk assessments cannot be
15 used to draw lines between significant and non-significant
16 components, as this effort would like to do.

17 So slide 12, our recommendation was the NRC staff
18 should not allow plant owners to risk-inform special
19 treatment requirements, particularly without prior NRC
20 review and approval, until PRA quality stops being an
21 oxymoron.

22 Like in murder-suicide, this is a case where order
23 matters. PRA quality standards must be in place before
24 these regulations are risk-informed.

25 Thank you.

1 CHAIRMAN MESERVE: Mr. Sheppar.

2 MR. SHEPPAR: Good morning, Mr. Chairman,
3 Commissioners. We appreciate this opportunity to discuss
4 our views on the advanced notice of public rulemaking and
5 Option 2 in general.

6 At South Texas, throughout our history, we have
7 endeavored to utilize risk insights along with good
8 operating principles to enhance both safety and reliability.
9 We made design changes based on risk insights prior to our
10 initial licensing and have continued to utilize risk
11 insights to improve our overall operations and management
12 practices.

13 We have invested considerable resources to produce
14 the tools and the knowledge necessary to use risk insights.
15 We are now ready to utilize those insights to further
16 improve safety by implementing the Option 2 process.
17 We firmly believe that implementing risk insights to
18 determine which structures, systems and components should be
19 subject to special treatment regulations is not only
20 appropriate, but will result in a higher level of safety by
21 focusing resources on those elements of the facility that
22 are most important to safety.

23 At the same time, we also believe that to enhance safety, we
24 must learn to trust normal commercial controls and practices
25 for those structures, systems and components that do not

1 affect safety, regardless of what their past classification
2 has been under deterministic methods.

3 To do so misses the whole opportunity of the
4 proposed rule and Option 2; namely, the safety benefits this
5 approach can achieve.

6 Next slide. Moving on to the proposed rulemaking.
7 As we detailed in our written comments on the rule, we
8 believe in general that the proposed rule is too
9 prescriptive. We believe that the rule should be less
10 detailed and more of an outline to define the structure of
11 Option 2.

12 We're exploring new territory here and we need to
13 be able to take advantage of the insights of pilot and
14 prototype efforts.

15 The present detail of the propose rule makes this
16 difficult and will inhibit positive change in the future.
17 This is especially true with respect to Appendix T. We
18 believe it should only define major elements instead of the
19 prescriptive details that are in the present proposed
20 wording.

21 Additionally, we believe that the use of an
22 industry guide would be very useful. The concept should be
23 that once the NRC and the industry have agreed on the guide,
24 the licensee should be able to commit to the guide and
25 receive little additional review prior to approval.

1 Let's go to the next slide. The staff very
2 recently published their responses to comments received on
3 the proposed rulemaking. I was glad to hear this morning
4 that these comments were labeled as preliminary.

5 Due to the timing of the SECY, we've only had a
6 limited amount of time to have feedback with the staff,
7 although we have had feedback. While SECY-194 cleared up
8 some items, as previously discussed by Ralph, we believe
9 that it deviates from the principles laid out in SECY-98-300
10 in several ways.

11 First, the staff proposed that the four-box
12 approach be redefined. We think there's some unintended
13 consequences here and we'll work with the staff on this.
14 But under the staff's proposal, as we see it, RISC-2 would
15 be essentially voided; RISC-4 significantly reduced and new
16 controls would be required for RISC-3 items. We think this
17 focuses resources in the wrong areas.

18 Second, all RISC-1 and 2 components would have to
19 be identified within three years. Again, as discussed by
20 NEI, we do not see the logic nor the safety benefit
21 associated with this proposal and based on the comments this
22 morning, we may have missed what was actually intended there
23 and we'll continue to work with the staff on that.

24 Third, the staff asserts that the maintenance rule
25 is not acceptable monitoring for RISC-2 and 3 components.

1 We firmly believe that the maintenance rule, with its
2 intended risk management process and feedback, is an
3 acceptable method for monitoring RISC-2 and 3 components.

4 We have discussed all these concerns with the
5 staff and look forward to continued dialogue on these
6 subjects.

7 There are other unresolved items, but we believe
8 the basic approach in the SECY does not allow for an
9 increased focus on safety, but instead will dilute resources
10 by imposing new requirements on systems, structures and
11 components that essentially do not affect safety.

12 By doing so, we believe that this misses the
13 objectives and principles laid out for Option 2 in
14 SECY-98-300.

15 We believe that through the requirements implicit
16 in the maintenance rule, the requirements associated with
17 the licensee's corrective action program, in-place
18 configuration control processes, and through a graded
19 quality assurance approach, treatments and controls for
20 RISC-2 components can be adequately defined without the need
21 for new monitoring programs or requirements.

22 And just as an aside to some of the comments here
23 this morning, there are very few surprises in RISC-2. We
24 have been treating these components as important for a long,
25 long time.

1 Moving on, as discussed in SECY-98-300, we believe that
2 current commercial practices adequately assure the
3 functionality of the least important safety-related items;
4 namely, RISC-3 components, and any monitoring requirement
5 will be more than adequately handled by the maintenance rule
6 and the licensee's corrective action program.

7 Finally, although change of this magnitude is
8 never easy, we must not lose sight of the objectives we're
9 trying to achieve and make this too hard. If we do, the
10 incentive for other plants to volunteer for pilot efforts
11 may be lost, along with the safety benefits and the
12 opportunities of Option 2.

13 Let's go to the next slide, please. Needless to
14 say, we believe that Option 2 is vital to achieving the
15 additional safety opportunities that are available by
16 risk-informing Part 50 and that it will pave the way for
17 Option 3.

18 We, as you know, are pursuing an Option 2 approach
19 through an exemption request. WE believe our success or
20 lack thereof will largely determine whether other plants
21 choose to seek Option 2 opportunities.

22 Next slide, please. Let's go to the next slide,
23 please.

24 With regard to our exemption request, we've been
25 pursuing it for the last year as a follow-on to our graded

1 quality assurance efforts.

2 Now, we believe our exemption request provides the
3 basis for a scrutable, repeatable and enforceable process
4 that will enhance safety.

5 Although we are on schedule to receive a draft
6 safety evaluation report with one items in about a month, we
7 still believe the significant policy and cultural issues
8 remain unresolved. The slide highlights some of these
9 issues, most of which have already been discussed by NEI.

10 We are continuing to work with all levels of the
11 staff to resolve these issues and are confident that they
12 will be resolved, as long as we focus on the key safety
13 objectives of SECY-98-300.

14 We believe to meet these objectives, we must have
15 a categorization process we trust and then focus our
16 resources on the risk-significant components, systems and
17 structures. At the same time, we all, including the NRC
18 staff, must move away from low value, unnecessary
19 requirements for components that do not affect safety,
20 regardless of their deterministic classification.

21 In particular, while RISC-3 items remain important
22 to us, they do not need stringent controls and oversight to
23 assure they function and support safety. We must learn to
24 accept this concept. If we don't, we'll lose the
25 opportunity of Option 2.

1 Let's go to the last slide, please. So in
2 conclusion, we believe the proposed rule needs to be less
3 prescriptive. More importantly, we believe that the present
4 staff direction as defined in 0194 is counter to the
5 insights that risk initiatives provide and the spirit of
6 SECY-98-300.

7 We need less requirements, not more, on components
8 that do not affect safety and we need to utilize regulatory
9 methods, such as the maintenance rule, corrective action
10 program, et cetera, already available to define the controls
11 and treatments for RISC-2 and 3 components.

12 We do not advocate the abandonment of RISC-3
13 components. Only that that they be treated commensurate
14 with their impact on safety.

15 Only then we'll be able to reap the safety
16 benefits that are risk insights make possible by focusing on
17 risk-significant components.

18 To achieve this will require visionary leadership
19 by this Commission, by the NRC management, and by us in the
20 industry.

21 Thank you.

22 CHAIRMAN MESERVE: Thank you. Mr. Poindexter.

23 MR. POINDEXTER: Thank you. As mentioned earlier,
24 I'm with the law firm of Winston & Strawn. We represent a
25 significant number of Part 50 licensees, in addition to the

1 members of the Nuclear Utility Backfitting and Reform Group.

2 It's in that context that we offer comments to the
3 Commission on May 17th and I guess I would like to point out
4 that the two components of NUBARG, it's not only
5 backfitting, but it's also reform, and that's really the
6 focus of our comments today.

7 In summary, I'd like to preface our comments that
8 NUBARG fully supports any NRC initiative that better ensures
9 that the regulatory focus is on maintaining public health
10 and safety.

11 Specifically, with respect to special treatment
12 requirements, we applaud the NRC's regulatory reform
13 efforts, but we do have some concerns.

14 We are concerned that the staff may impose
15 unnecessary levels of additional burdens and that that will
16 be a common theme throughout my brief discussion, those
17 additional burdens and how those are justified and whether
18 they are appropriate.

19 NUBARG maintains that in this justification, one
20 must avoid prescriptive rules and allow licensees,
21 consistent with some of the statements made earlier, greater
22 flexibility in implementing these reductions in special
23 treatment requirement options.

24 Next slide, please. Actually, keep that slide. As
25 you may be aware, NUBARG has existed issuance the mid 1980s,

1 consistent with the existence of the backfitting rule.

2 We provided comments in what we hope is a
3 constructive critique fashion to the Commission, but we
4 typically only comment when we have a sense that the
5 backfitting process could be eroded, has been eroded, or the
6 stage is being set for future erosion through some specific
7 process.

8 What we are concerned with is the inappropriate
9 circumvention of the rule. When we see that this is a
10 realistic possibility, we submit comments. We certainly do
11 not comment on everything and we hope that our comments are
12 not perceived as sort of nuisances, but they can be pointed
13 and we try to be direct so that the Commission understands
14 our focus.

15 Our goal is to promote regulatory predictability
16 and consistency. We believe that that correlates to a
17 consistent safety standard and a better anticipated cost of
18 doing business in the industry.

19 For NUBARG, at least, the backfit rule is fairly
20 straightforward. We have provided some of the words from
21 the rule on the slide. I believe, we believe that there is
22 somewhat of a misnomer. Labeling something as a backfit is
23 not necessarily a bad thing.

24 It's very interesting that the term is often
25 avoided just as many years ago, industry avoided the label

1 of an unreviewed safety question.

2 Again, all it means is that there is a rigorous
3 process that's being applied to assess the viability of the
4 activity and consistent with the rule, that has worked in
5 the past.

6 Next slide, please. One point that I'm not sure
7 of the level of controversy in making the point, is that
8 rulemaking certainly can represent a change in regulatory
9 position and that is from the backfitting perspective.

10 In addition, we would suggest that when a licensee
11 elects to implement an optional rule, that there is an other
12 opportunity at that point for backfitting, and what we are
13 addressing are the various barriers, the various stages and
14 opportunities from a NUBARG perspective.

15 The first impression may be that, by definition, a
16 voluntary initiative or a regulatory alternative cannot
17 constitute a backfit. We would suggest an alternate
18 approach to that premise.

19 Clearly, there are certain scenarios where a
20 voluntary initiative can result in a backfit. That is, we
21 are fully aware of ratcheting, for example, where you're
22 ratcheted into using a voluntary initiative. There is an
23 inherent backfit in that approach.

24 Another example might be where a licensee had no
25 real choice but to adopt the voluntary rulemaking. From

1 that perspective, it's not as voluntary as one might
2 believe.

3 Third is really what we're talking about today.
4 That is where there is a change in regulatory position which
5 the publication of a regulation certainly -- that is a
6 different position -- is an imposition of that position,
7 that the change may not be justified, the additional burdens
8 associated with the change may not be justified from a cost
9 versus benefit perspective.

10 That's really our focus of the comments that we
11 submitted. Whether these additional burdens should be
12 justified pursuant to the backfit rule, where they come into
13 play.

14 Next slide, please. The advanced notice of
15 proposed rulemaking contains several NRC position changes,
16 those being, in summary, there is a new emphasis on the
17 quality of plant PRAs. There are prescriptive requirements
18 for the decision-making panel.

19 Also, there is the establishment of monitoring
20 programs for SSCs. Those bring to play, from a NUBARG
21 perspective, several concerns. We believe, from the PRA
22 perspective, there is a realistic risk and this goes back to
23 the ability to change culture, that the interpretation of
24 what is an adequate PRA will carry over to those licensees
25 who may not have adopted this voluntary initiative.

1 We suggest that the staff be very careful in
2 guarding against that spillover.

3 Secondly, as I mentioned earlier, it is not clear
4 that the prescriptive nature of some of the decision-making
5 options are necessary to preserve public health and safety.

6

7 The question for us is, is it a nice to do or is
8 it a must do from a health and safety perspective, and we
9 would suggest that applying the backfit rule to this
10 additional burden would be appropriate and it would add
11 rigor to that decision-making process.

12 We would suggest that many licensees may be able
13 to achieve those desired goals with much less rigorous and
14 burdensome efforts.

15 Next slide. Another vulnerability and perhaps an
16 area of debate is the voluntary approach. We have a sense
17 from speaking with our members that once a licensee adopts
18 an initiative as being purely voluntary, there is a general
19 belief, at least at this point, until the culture changes,
20 that the on-site regulators, for example, may backfit or add
21 to that voluntary initiative at will based on their
22 preferences.

23 We would suggest that the staff guard against this
24 and monitor that activity and prevent that from occurring
25 for those who adopt the voluntary initiative.

1 Again, from a regulatory and business perspective,
2 there must be some level of predictability regarding the
3 regulatory position. Absent that level of discipline, it
4 flies in the face of the benefits, the clear benefits of
5 this new initiative.

6 Next slide, please. Another potentially, I guess,
7 debatable issues is what is truly a voluntary initiative.
8 We would acknowledge that this effort has been agreed upon
9 by industry through great efforts of NEI working with the
10 staff.

11 The bottom line, though, as I had mentioned
12 earlier, is that the licensees really only have two options.
13 One must exist. So, therefore, whether it's truly voluntary
14 or not is debatable and we believe that that allows the
15 staff to then apply the backfitting provisions of these
16 additional burdens.

17 What we're describing for you as an available
18 process to add rigor to the second part of this effort.
19 If you look at the backfitting rule on its face, we are
20 certainly unaware of any exemption from the rule for
21 additional burdens when options are provided, if, again, the
22 licensees have no choice but to choose one of those two
23 options.

24 Voluntary will be viewed truly as a guideline.
25 Once it enters the rulemaking regime, it's voluntary,

1 generally speaking, but you must choose one or the other.

2 Again, we're just providing an avenue for choosing
3 the more rigorous approach provided by the backfitting rule.

4 Next slide. Again, I guess, in somewhat closing,
5 we want to reiterate that we are not suggesting that this
6 proposed rulemaking is negative. We are supporting it, we
7 applaud it. All we are suggesting is that it be approached,
8 especially from the perspective of additional burden, it's a
9 very carefully -- that it be justified and that it not
10 create inadequacies and inconsistencies in the regulatory
11 process.

12 We believe that the staff must justify the
13 additional burdens and we believe that the backfitting rule
14 provides that avenue to do so and we believe that the main
15 goal for everyone for implementing that process to ensure
16 that there is a disciplined approach to the regulatory
17 reform, this reform and future reforms, and that that
18 discipline is documented and provided to all those who may
19 want to choose between options A or options B.

20 In closing, our suggestions are fairly simple;
21 that ensure that the backfitting rule is applied, where
22 appropriate, and that would be, in our view, in the
23 additional burden area, and to ensure that once the rule is
24 adopted by a licensee, that the backfitting protections
25 attach and that they remain, that there not be abuse of the

1 voluntary aspect of adopting a certain pathway.

2 I appreciate your attention.

3 CHAIRMAN MESERVE: I'd like to thank all of the
4 panel for their comments. Let me turn to Commissioner Dicus
5 to see if she has any questions.

6 COMMISSIONER DICUS: Maybe just a couple of quick
7 ones, given the timeframe we seem to be dealing with here,
8 and this would go to both, I think, Mr. Sheppar, as well as
9 Mr. Beedle, particularly Mr. Beedle's slide six.

10 You suggest that the maintenance rule would
11 provide sufficient monitoring and Mr. Sheppar has also
12 suggested that it provides sufficient monitoring, but the
13 maintenance rule, as I understand it, and I could be
14 corrected on this, only requires licensees to track
15 maintenance preventable failures and not all functional
16 failures.

17 So how do we deal with that? If I'm correct in my
18 assumption.

19 MR. SHEPPAR: I think Ralph alluded to that most
20 licensees, and certainly at South Texas, we track all
21 functional failures. WE don't want to end up in the point
22 that we've got a maintenance preventable functional failure.

23 I think the other -- the other thing is I think
24 you have to look at the full suite of things that are
25 available. One of the most inspected items at any

1 licensee's facility is their corrective action program and
2 that program has to be very robust and needs to meet the
3 requirements both of Appendix B and the other cross-cutting
4 issues that are necessary in today's oversight regime.
5 So I think the concept that failures are going to somehow
6 drop through the cracks is probably unfounded and probably
7 we just need to have more dialogue with the staff to provide
8 the level of assurance that these programs are not silos.
9 They integrate, they work together, and that risk management
10 processes, maintenance rule monitoring and corrective action
11 programs all collectively provide that kind of assurance.

12 MR. BEEDLE: I think the concern here is the
13 differentiation between functional failures and the
14 maintenance preventable functional failures. And while I
15 agree there are probably some facilities where we perhaps
16 need to get a better alignment, but rather than create
17 another system to monitor functionality of equipment, I
18 mean, we've got a perfectly good one in the maintenance
19 rule.

20 If it's a matter of redefining what category of
21 functional failures that you're monitoring, then I think
22 that's the way we ought to be dealing with it, rather than
23 inventing a new system.

24 COMMISSIONER DICUS: I would ask if Mr. Lochbaum
25 or Mr. Poindexter wants to address this comment.

1 MR. LOCHBAUM: I don't. Thank you.

2 COMMISSIONER DICUS: Okay. Fine. One quick final
3 question, I'll go to Mr. Lochbaum. You're going to get off
4 the hook, Mr. Poindexter.

5 Have you had a chance to review the industry's PRA
6 certification peer review program? I know you're quite --
7 have read the paper, part of it at least, on your concerns
8 with PRA quality, et cetera.

9 I wonder if you've had a chance to review it and
10 if you want to make a comment on it.

11 MR. LOCHBAUM: I have not yet, but I'm going to
12 have to, because I'm appearing before the ACRS next week and
13 they've already asked me questions about that. So I want to
14 have looked at it before I go before the ACRS, but I haven't
15 yet looked at it.

16 COMMISSIONER DICUS: Okay. Thank you. Thank you,
17 Mr. Chairman.

18 CHAIRMAN MESERVE: Commissioner Diaz.

19 COMMISSIONER DIAZ: Thank you, Mr. Chairman. Mr.
20 Beedle, on the issue of selectivity, it could be by rule and
21 all rules that are attached to it or by SSCs.

22 Let's focus on the first proposal. What is the
23 industry position on allowing selectivity by rule that then
24 attaches that rule to every other rule that is in the book
25 that could impact on the categorization process and in the

1 treatment?

2 MR. BEEDLE: The issue is if, in order to get one
3 system, for example, a safety-related system that you want
4 to examine to determine whether or not all the components in
5 there really ought to be considered safety-significant, in
6 order to do that, we're kind of in this, I call it the tit
7 for tat.

8 If I want to do this, you want me to do something
9 else here. So if I want to redo something, somebody else
10 has got to increase something. It's the argument of the
11 double-edged sword.

12 The best thing I've heard today is the Chairman
13 saying what is the principle, is the principle tit for tat,
14 is the principle double-edged sword is the principle focused
15 on safety significance?

16 And that's really what I think we need to focus
17 on, safety significance. We need to evaluate the plant on
18 the basis of safety significance of the components and are
19 we giving them the right kind of treatment relative to that
20 safety significance.

21 I think we need to start out by looking at how do
22 you deal with these things in the aggregate; on a system
23 basis, which is fundamentally how we were categorizing these
24 things from a safety-related point of view, to determine
25 whether or not there is any merit to spending the time and

1 effort and resources on recategorizing those components in
2 that system and once you do that, I think you get down to a
3 reasonable number that gives you a basis for going forward
4 with the review of the safety significance.

5 I don't know whether that answers your question,
6 but it kind of gives us a road map on how to proceed with
7 that.

8 COMMISSIONER DIAZ: Thank you. Mr. Lochbaum, I'm
9 not trying to read you, but if I interpret your comments, in
10 reality, you kind of agree, and I put kind in there, with
11 the principle that we can have a better, more focus on
12 safety regulatory system if we proceed with risk-informing
13 our regulations.

14 Your concern is with implementation of the
15 process, is that correct?

16 MR. LOCHBAUM: That's correct. I think what
17 stymies us in our comments is that there are some plant
18 owners, like South Texas, that have been very involved in
19 this and they have a very good understanding with the staff
20 of what the issues are and how much resources to put into
21 PRA quality and other issues.

22 But there's some that haven't been involved and
23 the rules applies to everybody, not those who have been
24 leading the process, and we're concerned that the ones that
25 have just been sitting on the sidelines wanting to pick off

1 advantages that South Texas and others are leading may not
2 have that same awareness, may not have put the same
3 resources into it.

4 And we're concerned that the NRC, by not establishing
5 quality standards and what not, aren't going to adequately
6 protect the low end, and that's what we believe the NRC's
7 role is, to police the low end, not to ensure that the high
8 end is really nice and fine.

9 COMMISSIONER DIAZ: I understand, and Mr. Beedle
10 and Mr. Sheppar, you can correct me, that the industry
11 actually favors some type of NRC review during the process.
12 Is that correct?

13 MR. BEEDLE: I don't think we're adverse to having
14 some quality in the PRA. The question is how do you achieve
15 that quality, and I think that's really the question that
16 Tom King and his group is wrestling with.

17 He mentioned the fact that we had had a meeting
18 and that he thinks we've got a path to success. I think I
19 would describe it more that we've agreed on some principles.
20 The question now is the details that underlie those
21 principles and how you put those details in place.

22 COMMISSIONER DIAZ: Whether you do it before or
23 you do it by inspection or you do it -- but going to the
24 overall premise of no prior review or minimal review, my
25 understanding was that the industry, and you can correct me,

1 actually favors some type of review, is that correct?

2 MR. SHEPPAR: I think we would invite inclusion in
3 the process and I think, again, as Sam and I talk a lot
4 about, the devil is in the details; is the interaction in
5 developing the detailed guidance between the industry and
6 the NRC and then if a licensee says I'm going to do
7 everything in this guideline, how do you verify that, do you
8 verify it prior to implementation or through inspection, et
9 cetera.

10 But certainly the NRC has to be involved. I
11 think, again, it's a devil in the detail, down in the
12 implementation standpoint. But we think that from an
13 efficiency standpoint, that we ought to be able to agree up
14 front on a way to do this and then if a licensee says I'm
15 going to meet all these points, that NRC should have a
16 method of verifying that, but that it doesn't have to be
17 particularly intrusive.

18 MR. BEEDLE: Excuse me, sir. In an effort to try
19 to address that particular issue, that was one of the
20 elements of this template that we were proposing that would
21 carry with it the description of that peer review process,
22 the results of the peer review in terms of the strengths and
23 weaknesses that were identified.

24 So it provided some measure of the quality with
25 which your products were based.

1 COMMISSIONER DIAZ: Mr. Lochbaum, a final question
2 for you on the same issue. If this process of peer review,
3 industry certification, some review by the staff was an open
4 process and you could follow, would that satisfy some of
5 your concerns? I'm sure it won't satisfy them all.

6 MR. LOCHBAUM: The problem we're having to date is
7 much of this information is not available. We hear that
8 this person told that person it's good and it's the old
9 circle game. I'm at the end of the chain on that.

10 I would like to see more information on the
11 details. It's been said that the devil's in the details.
12 We'd like to look the devil in the face on issues like this
13 before we make a decision like that.

14 COMMISSIONER DIAZ: I understand that the industry
15 is looking at ways of providing some deep look at where you
16 are in this area.

17 MR. BEEDLE: That's correct, Commissioner. We're
18 examining how can we communicate the nature and quality of
19 the current PRAs to the staff.

20 COMMISSIONER DIAZ: Mr. Sheppar, on the issue of
21 the how do we deal with the thing, it always comes back to
22 our forefathers and their wisdom. I think I look back at
23 Appendix B and some of the words in there commensurate with
24 safety.

25 Do you believe or could you make a comment on the

1 importance of having Appendix B tied in to the treatment of
2 special treatment requirements? Is that something that you
3 think goes hand in hand, could be done separately?

4 MR. SHEPPAR: I think Appendix B already is tied
5 in. I think that Appendix B already -- I can't quote the
6 words, but has words in it.

7 COMMISSIONER DIAZ: Commensurate with safety.

8 MR. SHEPPAR: The commensurate with safety.

9 COMMISSIONER DIAZ: I was two years old when they
10 --

11 MR. SHEPPAR: We think -- and I think you've got
12 to look at some of the genesis of our exemption request. We
13 looked at Appendix B and said if we can classify these
14 things according to their safety significance, then we ought
15 to be able to apply quality requirements as necessary.

16 But then we figured out later that the web was a
17 little tighter and a little more intricate, and that was the
18 genesis of our exemption request.

19 I think Appendix B is already there. I think
20 licensees already do that. I think that it's a piece that
21 will continue to be there and I think I indicated with
22 respect to RISC-2 items, that we think that a graded quality
23 approach is part of that mix between your maintenance rule
24 and corrective action program, configuration management, et
25 cetera, that's there to help you define how you're going to

1 take care of those components.

2 COMMISSIONER DIAZ: And you think that should be
3 clearly defined. If you're RISC-2, you should clearly
4 specify what your graded quality assurance requirements are.

5 MR. SHEPPAR: I think that's a normal way of doing
6 business. I will leave it up to Sam and his people to
7 decide whether or not we have -- whether there is adequate
8 wording there already.

9 COMMISSIONER DIAZ: And I hate to leave you alone
10 in there feeling that you're not wanted. You're okay with
11 that, right?

12 MR. POINDEXTER: I'm okay with that.

13 COMMISSIONER DIAZ: Well, maybe I will leave it to
14 Commissioner Merrifield to --

15 CHAIRMAN MESERVE: I think it's Commissioner
16 McGaffigan's turn.

17 COMMISSIONER DIAZ: Okay.

18 MR. BEEDLE: I just wanted to reiterate. Having
19 clear definition of the requirements is a necessary element
20 in regulation. That's one of your stated objectives for
21 good regulation. So knowing what those requirements are is
22 really important.

23 Again, the question is what are those requirements
24 and that's really what the issues are.

25 CHAIRMAN MESERVE: Commissioner McGaffigan.

1 COMMISSIONER McGAFFIGAN: I wish I had one of
2 those fog dispensers that they have on tanks and whatever at
3 this point.

4 I believe in clear regulation, too. But, Mr.
5 Lochbaum, you've heard about the ASME process. Have you
6 been involved or do you tend to be involved in watching Rev.
7 10 become Rev. 12 become 13 and do you want us to have a
8 good quality -- a good standard for PRA quality, but is that
9 something you realistically can -- or other members of the
10 public can invest time in?

11 MR. LOCHBAUM: If I had the time, I would like to
12 be more involved in that, but I just haven't had the time to
13 date. To be quite honest, I haven't even read any of those
14 ASME drafts. I didn't even know they were up to draft
15 whatever.

16 COMMISSIONER McGAFFIGAN: You said in response to
17 Commissioner Dicus you're going to be looking at NEI 0002
18 before you go in next week.

19 MR. LOCHBAUM: Assuming I can find it in ADAMS,
20 yes.

21 COMMISSIONER McGAFFIGAN: You might be able to
22 find it in NEI. They might give you a copy.

23 Mr. Beedle, we talked earlier about -- and you
24 just, in response to Commissioner Diaz, talked about getting
25 the staff some better information and earlier there was talk

1 about getting the staff involved and being involved and
2 observing some of these peer reviews as they take place.

3 I'll ask a radical question. Would Mr. Lochbaum
4 be welcome to watch one of these peer reviews taking place
5 or another member of the public at one of these plants and
6 would that provide some public confidence benefit?

7 MR. BEEDLE: I think we could probably talk
8 somebody into letting Mr. Lochbaum in the front gate.

9 MR. LOCHBAUM: And back out?

10 MR. BEEDLE: We'd have to make sure you're cleared
11 first.

12 COMMISSIONER McGAFFIGAN: Don't ask too much.
13 Well, that's interesting. I leave it to you two to make a
14 deal.

15 The selective implementation, Mr. Sheppar. I
16 haven't looked at your exemption request, but did selective
17 implementation arise there? Did you try -- did you look at
18 the whole plant and classify it in four boxes or did you do,
19 as Mr. Beedle suggested, for the reactor protection system,
20 say that's obviously RISC-1 and we're not going to apply a
21 process and the potable water system, say that's obviously
22 RISC-4, we're not going to apply a process, or did you do
23 the whole thing?

24 MR. SHEPPAR: We're still in process and I think
25 that goes to the point that Mr. Beedle brought up. We

1 looked at the systems that we thought were most important
2 and have worked through those and my staff can correct me,
3 but I think we've classified some 40,000 components to date.

4 I think that the selectivity, from an industry
5 standpoint, is an important concept. We've got to define,
6 again, clearly, the requirements. But I think that we've
7 got to really make a shift in paradigm here. If something
8 is not important from a safety standpoint, why would we get
9 all hung up on the selectivity?

10 COMMISSIONER McGAFFIGAN: I'm just trying to
11 figure out, was selectivity a problem for you? I mean, it
12 sounds like you guys intend to categorize everything into
13 one of the four boxes just to have it over with.

14 MR. SHEPPAR: Yes, and that was our intent as we
15 started through the graded quality assurance process.

16 But we see some merit for other licensees that
17 there might be some merit.

18 COMMISSIONER McGAFFIGAN: I just was trying to
19 clarify it wasn't a problem. I'm not going to leave Mr.
20 Poindexter off the hook, because I'm trying to understand
21 conceptually what you said and I'm having a little trouble
22 with it.

23 You're saying if I have a voluntary rule and if
24 anybody is going to adopt it, it has to be better than the
25 existing rule. Otherwise, you know, Mr. Beedle has told us

1 several times that there will be a null set of people
2 implementing this new rule.

3 And it has some set of requirements in it, but
4 it's clearly less restrictive, unnecessary burden has been
5 reduced, although there have been some other things added.

6 You're saying that if somebody in industry has an
7 opinion, that the staff could have gone even lower, then we
8 have to look at the delta between the industry position as
9 if it was a backfit. Is that what you're saying?

10 MR. POINDEXTER: No, I'm not.

11 COMMISSIONER McGAFFIGAN: That's what I understood
12 you to say.

13 MR. POINDEXTER: What we're saying is that -- and
14 it's only focused on additional burdens. If you have a --

15 COMMISSIONER McGAFFIGAN: But there's clearly a
16 burden reduction. There are, in the view of somebody,
17 there's additional burden for some RISC-2 or God knows what
18 here.

19 And you're saying we have to - where the staff is
20 vis-à-vis where somebody in industry thinks they should be,
21 we have to analyze that as a backfit.

22 MR. POINDEXTER: I believe the additional burden
23 delta needs to be looked at in a methodical form and then
24 the backfit process provides that mechanism, again, for
25 additional burdens only.

1 For reductions, the backfit rule isn't made to
2 really address reductions.

3 COMMISSIONER McGAFFIGAN: I have trouble with that
4 concept, but I'll leave it there.

5 CHAIRMAN MESERVE: I think you meant additional
6 burden from where we are today rather than where somebody
7 imagines we could be.

8 MR. POINDEXTER: Yes. Yes.

9 COMMISSIONER McGAFFIGAN: Yes, but it's -- if
10 something has gone from being special treatment to being
11 RISC-2 or RISC-3, say RISC-3, and we have some requirements
12 for RISC-3, then somebody's opinion that we could have even
13 less requirement for RISC-3, should that be treated as a
14 backfit? I don't know think so, but that's something -- I'm
15 unsympathetic to the whole backfit stuff.

16 MR. POINDEXTER: I understand.

17 COMMISSIONER McGAFFIGAN: I think you just keep
18 pushing, pushing, pushing this backfit concept to new and
19 maybe well explored areas, but it always loses me.

20 CHAIRMAN MESERVE: Commissioner Merrifield.

21 COMMISSIONER MERRIFIELD: I'll follow right up on
22 that one, since it's timely. I guess, Mr. Poindexter,
23 following up, the thing which is curious for me is it's one
24 thing to say the totality of the rule in its whole, does
25 that pass the backfit test or not, even as it relates to a

1 voluntary initiative, but what it seems to me that you're
2 arguing for is we have to look at each individual component
3 of that rule, even if it is voluntary, to make individual
4 assessments on individual components as it relates to
5 backfit and taking that to its most logical extreme.

6 Where do you eventually draw the line of a large
7 enough component for the staff to do an analysis as to
8 whether it meets this backfit test or not?

9 MR. POINDEXTER: What we're trying to say is that
10 if you have a very prescriptive rule with significant
11 additional burdens, then we would suggest that, yes, that
12 whole rule falls under the backfit.

13 The way to not have the whole rule fall within the
14 backfit is to eliminate those prescriptive aspects of it and
15 have a general statement of policy that the staff will
16 accept A or B.

17 Those prescriptive activities, captured, in this
18 case, in Appendix T, could be removed to a guidance sort of
19 document and then it really minimizes the backfit
20 application and aspects of this proposed rulemaking.

21 COMMISSIONER MERRIFIELD: It seems to me what you're arguing
22 is -- we have to tell our staff, except to the extent that
23 we clearly know that something ensures to the benefit of
24 industry, we have to put it through the backfit test,
25 because it might have more burden, even a small component of

1 a rule. That's what you're saying, isn't it?

2 MR. POINDEXTER: That is very close and that's the
3 way the rule is written. Perhaps a modification of the rule
4 -- first of all, it wasn't written with this activity in
5 mind. It was written 15 years ago with a lot of other focus
6 areas in mind, and perhaps that rule could use some updating
7 to accommodate these voluntary initiatives.

8 Otherwise, you're stuck with the rule the way it's
9 written and some of these things do not -- are not opted out
10 of the rule. The rule presently only has three exemptions
11 from the rule; that is, compliance-based, adequate
12 protection and then there is a redefinition of adequate
13 protection, and those are the only things stated in the rule
14 and we certainly would support and we do support this
15 initiative.

16 We do support working between the stakeholders
17 from the staff's perspective, but we still have the rule,
18 and either we work through that rule or we modify that rule
19 as NUBARG is suggesting.

20 COMMISSIONER MERRIFIELD: I'm just wondering if I
21 could ask our general counsel to opine on this question, as
22 well as the notion that this applies to all voluntary
23 initiative, as was raised in the slides.

24 MS. CYR: It's been our position that when we're
25 adopting, in a sense, for this, for a category of treatment,

1 they offer the alternative. They have the existing regime
2 that they can continue to follow or they can move to a new
3 regime, a way of looking at the components and equipment
4 they're evaluating from a risk perspective.

5 But it's an new -- it's a set of alternatives here
6 and if you stay with your original one, you have that
7 option. You continue to have that option.

8 If they want to move to the new one, it's
9 voluntary, and if they choose to do that, in the course of
10 adopting that, it's not necessary to follow the backfit
11 rule.

12 The issue -- there are some backfit issues
13 potentially involved in here. If, in the context,
14 theoretically, I don't know that they are in actuality, but
15 if they were to adopt, in the context of -- he said a new
16 interpretation.

17 There's something that I'm dealing with in this
18 context, which is also dealt with in this context, and I
19 come up with a new interpretation of that, and I wanted to
20 then apply that new interpretation to somebody who is
21 following the older regime would have to be sure that I was
22 not -- that I followed whatever my backfit analysis to apply
23 that new interpretation to whoever was continuing to follow
24 the old regime.

25 Also, the staff, in the context of adopting this

1 new rule, even though it doesn't have to go through the
2 backfit analysis, as we've laid out, it does go through a
3 regulatory analysis process, which we follow for all rules
4 which we adopt, which is a cost-benefit analysis which looks
5 at the various aspects of the rule to determine whether, in
6 fact, the various provisions that we're choosing to adopt
7 for, say, whatever monitoring requirements we require for
8 the RISC level three requirements meet appropriate
9 cost-benefit analysis.

10 So we would go through an analysis process in
11 there, but it would not -- it does not, in our view, fall
12 within the application of the backfit rule in this -- where
13 we're adopting an alternative regime that is voluntary and
14 the licensee choosing to follow it or not.

15 COMMISSIONER MERRIFIELD: Let me move on. Mr.
16 Beedle, we talked a lot about the voluntary initiative of
17 NEI and its members to go back and look at the existing PRAs
18 at the plants.

19 What is the philosophy of -- first off, how many
20 plants are involved in this, number one? Number two, how
21 are you going about prioritizing which ones go first? I
22 mean, there's obviously a variety of ways in which you could
23 do that, but I would just like to get some sense of how
24 you're going about timing this and what you see as the
25 amount of time it's going to take for this peer review

1 process to come to an end?

2 MR. BEEDLE: We expect that peer review process to
3 be completed in about another year and it's being done by
4 the owners' groups, on an owner group basis. I don't know
5 what the schedule is, but that has been set up by the
6 owners' groups to make sure that they cover all of those
7 plants.

8 It's not a matter of trying to integrate that
9 process. And they're very much NSSS focused kind of
10 efforts. The Westinghouse looks different than the CE and
11 so forth. So the process seems to be working pretty good.

12 Could I just offer an observation on general
13 counsel's comment?

14 COMMISSIONER MERRIFIELD: I have a lot of things I
15 want to talk about.

16 MR. BEEDLE: Well, in this case, we're talking --
17 in this Option 2, I think what we're kind of waltzing around
18 here is I want to see RISC-3 requirements reduced and I
19 recognize that there are RISC-2 things that are
20 safety-significant for which we need to up the ante, that
21 that's that two-edged sword thing we were talking about.

22 Now, do I plead backfit for the RISC-2 because you
23 want to impose new requirements on me? I don't think so. I
24 mean, I find it unreasonable to come and say I want to
25 reduce these, but I don't want to increase that, because

1 I've got to go back to the principle and the principle is
2 focus on the safety-significance of these things.

3 Now, I don't -- I agree with Mr. Poindexter that
4 the backfit rule is a necessary element in our regulatory
5 control processes, but I'm not sure that the regulatory
6 control process in this instance, where we're trying to
7 balance the safety-significance, is one where we go in and
8 we plead backfit.

9 NEI is not talking about backfit.

10 COMMISSIONER MERRIFIELD: I'm glad you had the
11 opportunity to clarify that.

12 Mr. Sheppar, and, to a certain extent, Mr. Beedle,
13 as well, both of your slides, although only one of your
14 verbal testimony talked about the issue of cultural issues,
15 and those are hard things for us to overcome and certainly
16 one which heightens my anxiety.

17 Can you go into a little bit of what you perceive
18 are the cultural issues that have surfaced during STP's
19 exemption review process or generically on any other
20 cultural issues that been involved with Option 2?

21 MR. SHEPPAR: Naturally, I think that most of the
22 issues get highlighted when we start talking about things in
23 the RISC-3 box. These are things that, from a deterministic
24 standpoint, have been classified for a long, long time as
25 safety-related and now, through risk insights, are

1 classified as either very low safety-significance or
2 non-safety-significant.

3 We've got a structure, a culture in place since
4 the late '60s in how we have designed and constructed and
5 operated plants based upon those deterministic
6 classifications.

7 Now, we're saying to people who have a whole
8 design regime in mind, that, well, you know, some of that
9 isn't right.

10 And I want to emphasize, this is not just the NRC
11 staff. WE work with the same issue within my staff, within
12 my design engineers who have dealt in that same arena for
13 15-20 years, as well. It's a shift of paradigm. It's a
14 shift of thinking.

15 And I think Sam was quite right when he said it's
16 a changed management issue. You have to think about these
17 things in a different way and the devil is in the details.
18 It gets down to things like, okay, I understand that this
19 particular component doesn't have to be environmentally
20 qualified anymore, but it's in an IEEE circuit and I've got
21 to connect it to some other things.

22 Now, I know how to do that in a deterministic
23 world, tell me how to do it in in this new world, and those
24 are the cultural type of things where we're changing
25 people's mind sets, we're changing the way they think about

1 things that are difficult, and it requires, I think, a very
2 facilitative, but also very visionary leadership to be able
3 to get those issues out on the table to clearly articulate
4 that the objective has not changed.

5 The objective is to enhance safety and we're going
6 to enhance safety because we now know more about these
7 components.

8 It is a torturous path in some cases to get your
9 way through there and I think that's the essence of the
10 cultural type issues that we're talking about.

11 Going from, in many cases, a concept that, yeah,
12 if it doesn't affect safety, it doesn't need to have all
13 these special treatments, down to, all right, I'm the design
14 engineer, you tell me what to do with this, and therein I
15 think is part of the difficulty that we've got to deal with.

16 MR. BEEDLE: When we look at the maintenance rule,
17 we see the general philosophy is that if we can monitor the
18 performance of the equipment and the performance is at our
19 established goals, then we continue doing what we're doing,
20 and if the performance decreases, we change what we're
21 doing.

22 It's an outcome-focused kind of a program. I was
23 struck by the observation and awareness that we have
24 probably hundreds of little programs on how to procure
25 non-safety-related equipment out there and all of a sudden

1 we say a whole bunch of programs, we must regulate this and
2 get everybody to use the same program, and I say why.

3 Are we looking at the outcome of those
4 non-safety-significant, non-safety-related components that
5 are out there, and sometimes we forget that, and I think
6 that's a cultural change that we're going through in the
7 industry and in the NRC.

8 We're going from safety-significant of pieces of
9 equipment and components and looking at those to determine
10 what sort of programs we need to make them function right.

11 And I agree with Mr. Sheppar and with Sam Collins
12 that it is a cultural change and it's a cultural change for
13 the agency, as well as for the industry. In fact, it's
14 probably a bigger cultural change for the industry than it
15 is for the agency.

16 MR. LOCHBAUM: Can I make a very brief response to
17 that? I don't think it's a cultural change. It's a culture
18 split, because you're going to have to still keep the staff
19 trained on the old way, because it's a voluntary initiative
20 and not everybody is going to go that way. So the staff is
21 going to have to be bilingual to be able to understand
22 risk-informed language and the old prescriptive language.

23 So it increases the burden on the staff. Plant X
24 only has to understand one language, plant Y has to
25 understand the other language. The staff has to do both.

1 So I think there's a cultural split, not a change.

2 COMMISSIONER MERRIFIELD: I appreciate your
3 comment about staff burden. That brings me to the question
4 I have for you.

5 You talked a little bit about the need for us to have a
6 vigorous look at the PRAs of the licensees and for us to
7 also look at the risk classifications and whether we agree
8 with those or disagree with those.

9 And I guess I'd like to sort of -- as my last
10 question, sort of delve a little deeper into that. To what
11 extent do you feel we need to be involved in that? I mea,
12 obviously, there's a point, we can go and tittle through
13 each and every piece of the PRA or we can go through each
14 and every risk classification or we can do sampling or there
15 are other methodologies we can use to demonstrate that we
16 have sufficient confidence that those have been put together
17 in the right way.

18 What are you proposing that we do in that respect?

19 MR. LOCHBAUM: I think if the staff came up with a
20 PRA quality standard and ensured that plants met or exceeded
21 that standard, then a lot of the overhead that goes into the
22 collateral stuff that must be done in lieu of that would be
23 reduced, because you've already had a standard, verified
24 that plant X is at or above that, and a lot of the
25 interaction that goes on now wouldn't necessarily have to be

1 done.

2 Then the staff would only have to verify is plant
3 X then uses that pre-review and approved PRA to do the next
4 increment of risk-informed regulation, just has to ensure
5 that it's implemented properly.

6 So I think there would be a lot of staff burden at
7 the beginning to develop the standard and ensure that people
8 are at that, but that would be -- the dividend would be
9 reduced staff burden over the years as you wouldn't have to
10 do all these interactions in lieu of that quality standard.

11 COMMISSIONER MERRIFIELD: Thank you, Mr. Chairman.

12 CHAIRMAN MESERVE: Thank you. In lieu of the
13 lateness of the hour, I'm going to just ask one question,
14 make one observation.

15 It's clear to me that the foundation for this
16 activity and many other things that we're doing or
17 contemplating at the agency are ones that are really built
18 on the foundation of the quality of the PRAs, and you have
19 indicated, Mr. Beedle, that NEI is thinking about ways in
20 which you could provide updated risk information to the NRC.

21 That's obviously going to be essential for all of
22 these activities.

23 But to pick up on a point that Commissioner
24 McGaffigan has made, that as we rely on, over time, more and
25 more on these PRAs, it is going to be essential that the

1 public have confidence that not only the NRC staff, but
2 sufficient quality to justify the reliance on which we place
3 them.

4 So I think that part of this process has got to
5 involve not only how the NRC staff processes gets this
6 understanding, but how we provide a mechanism by which the
7 public has the insights that they need to have confidence
8 that the reliance we're placing on these things is
9 appropriate.

10 You don't need to respond now, but if you choose
11 to, you're welcome to, but it does seem to me that this is
12 an ingredient of this that we can't lose sight of.

13 MR. BEEDLE: I agree.

14 CHAIRMAN MESERVE: With that, I would like to
15 thank the panel for their participation today. This is
16 obviously something that we're working on an issue, it's a
17 very difficult cluster of issues and I'm sure that this has
18 been a helpful exercise for all of us.

19 So thank you very much. With that, we're
20 adjourned.

21 [Whereupon, at 12:28 p.m., the meeting was
22 concluded.]

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