UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

OFFICE OF THE SECRETARY

***

BRIEFING ON RISK-INFORMING

SPECIAL TREATMENT REQUIREMENTS

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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

STAFF AND PRESENTERS SEATED AT THE COMMISSION TABLE:

KAREN D. CYR, General Counsel

ANNETTE L. VIETTI-COOK, Assistant Secretary

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

SAMUEL COLLINS, Director, NRR

WILLIAM TRAVERS, EDO

RICHARD BARRETT, Chief, Probabilistic Safety Assessment Branch, NRR

STEVEN WEST, Section Chief, PSA Branch, NRR

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

DAVID LOCHBAUM, Nuclear Safety Engineer Union of Concerned Scientists

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

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

P R O C E E D I N G S

[9:30 a.m.]

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

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

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

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

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

This morning we will hear from several presenters

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

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

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

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

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

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

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

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

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

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

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

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

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

Although this effort is being led by NRR, other

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

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

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

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

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

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

Office of NRR.

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

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

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

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

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

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

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

Steve?

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

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

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

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

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

this year.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

were also within the scope of other rules.

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

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

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

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

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

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

rule type monitoring.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

licensee implements 50.69.

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

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

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

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

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

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

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

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

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

Part 21, and the tech specs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

some highlights we wanted to bring to your attention.

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

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

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

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

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

considerations for their proposed rule.

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

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

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

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

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

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

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

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

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

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

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

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

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

Thank you.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

To the extent that they could rely on a commercial

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

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

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

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

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

So there might be an adjustment period.

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

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

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

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

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

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

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

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

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

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

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

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

CHAIRMAN MESERVE: Okay. Commissioner Dicus.

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

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

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

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

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

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

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

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

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

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

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

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

ASME is putting together a schedule as to where do

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

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

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

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

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

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

pilots now that we thought we would be.

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

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

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

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

COMMISSIONER DICUS: Okay.

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

In addition to that, we also have an initiative

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

COMMISSIONER DICUS: Thank you.

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

COMMISSIONER DICUS: Thank you.

CHAIRMAN MESERVE: Commissioner Diaz.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

will be according to the box.

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

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

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

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

I'm sorry. Continue, please, sir.

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

COMMISSIONER DIAZ: Okay.

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

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

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

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

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

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

That's the issue, right?

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

COMMISSIONER DIAZ: No?

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. WEST: No.

COMMISSIONER DIAZ: Is that your combination? No?

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

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

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

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

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

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

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

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

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

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

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

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

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

I agree that's not clear.

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

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

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

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

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

COMMISSIONER DIAZ: No, no.

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

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

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

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

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

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

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

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

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

CHAIRMAN MESERVE: Commissioner McGaffigan.

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

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

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

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

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

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

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

MR. WEST: That's our preliminary view.

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

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

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

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

MR. COLLINS: I understand.

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

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

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

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

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

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

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

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

MR. KING: Right.

COMMISSIONER McGAFFIGAN: And that will go out for public comment again.

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

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

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

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

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

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

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

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

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

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

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

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

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

COMMISSIONER McGAFFIGAN: It just strikes me -- I

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

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

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

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

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

docketed file of the licensee?

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

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

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

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

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

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

to that standard.

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

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

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

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

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

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

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

So it's --

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

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

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

CHAIRMAN MESERVE: Commissioner Merrifield.

COMMISSIONER MERRIFIELD: Thank you, Mr. Chairman.

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

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

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

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

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

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

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

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

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

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

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

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

They have been aligning the processes for a period

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

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

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

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

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

Do you want to add to that, Rich?

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

Option 2.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Do we have any initial impressions or insights

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

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

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

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

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

COMMISSIONER MERRIFIELD: Thank you, Mr. Chairman.

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

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

So thank you very much.

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

[Recess.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

We have had a number of cases where risk insights

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

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

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

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

And I say all this because there has been some question about whether or not we have a series of plants lined up to be participants in a pilot program, sort of a follow-on to the South Texas, the answer is no, we don't, but we've got a lot of activities that support it. And I think the reason that we don't have plants standing in line to embark on a program like the South Texas Project process is that we're still waiting to find out what the ground rules are and as long as we continue to restructure

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Then last, the industry is considering some

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

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

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

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

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

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

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

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

safety-significant in the plant.

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

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

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

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

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

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

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

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

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

You don't achieve a seven percent increase in your generation capability in a six-month period if you don't have an excellent procurement program, maintenance program and operational program that supports all that. So we've got to take a look at the outcome instead of some of the details associated with how you go about the administration of a procurement program.

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

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

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

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

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

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

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

express our concerns over this.

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

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

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

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

COMMISSIONER McGAFFIGAN: I like acronyms.

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

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

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

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

and PRA quality.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Thank you.

CHAIRMAN MESERVE: Mr. Sheppar.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

quality assurance efforts.

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

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

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

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

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

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

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

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

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

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

Thank you.

CHAIRMAN MESERVE: Thank you. Mr. Poindexter.

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

members of the Nuclear Utility Backfitting and Reform Group.

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

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

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

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

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

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

consistent with the existence of the backfitting rule.

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

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

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

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

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

of an unreviewed safety question.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

voluntary aspect of adopting a certain pathway.

I appreciate your attention.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAIRMAN MESERVE: Commissioner Diaz.

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

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

treatment?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

actually favors some type of review, is that correct?

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

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

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

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

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

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

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

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

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

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

Do you believe or could you make a comment on the

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

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

COMMISSIONER DIAZ: Commensurate with safety.

MR. SHEPPAR: The commensurate with safety.

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

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

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

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

take care of those components.

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

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

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

MR. POINDEXTER: I'm okay with that.

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

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

COMMISSIONER DIAZ: Okay.

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

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

CHAIRMAN MESERVE: Commissioner McGaffigan.

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

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

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

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

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

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

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

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

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

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

MR. LOCHBAUM: And back out?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. POINDEXTER: No, I'm not.

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

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

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

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

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

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

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

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

MR. POINDEXTER: Yes. Yes.

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

MR. POINDEXTER: I understand.

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

CHAIRMAN MESERVE: Commissioner Merrifield.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Also, the staff, in the context of adopting this

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

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

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

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

process to come to an end?

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

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

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

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

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

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

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

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

NEI is not talking about backfit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

What are you proposing that we do in that respect?

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

done.

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

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

COMMISSIONER MERRIFIELD: Thank you, Mr. Chairman.

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

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

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

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

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

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

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

MR. BEEDLE: I agree.

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

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

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