

December 05, 2002

MEMORANDUM TO: File

FROM: Robert M. Pulsifer, Project Manager, Section 2 */RA/*
Project Directorate I
Division of Licensing Project Management
Office of Nuclear Reactor Regulation

SUBJECT: VERMONT YANKEE NUCLEAR POWER STATION PETITION
PURSUANT TO TITLE 10 OF THE *CODE OF FEDERAL
REGULATIONS*, SECTION 2.206 (10 CFR 2.206) FROM
MR. RAYMOND SHADIS

Attached is the transcript of a conference call held on Monday, November 18, 2002, regarding a Vermont Yankee Nuclear Power Station 2.206 petition dated October 15, 2002, submitted by Mr. Raymond Shadis on behalf of the New England Coalition on Nuclear Pollution. This call was requested to discuss the Petition Review Board's recommendation to reject this petition under 10 CFR 2.206.

Docket No. 50-271

Attachment: As stated

cc w/att: See next page

Vermont Yankee Nuclear Power Station

cc:

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Office of Nuclear Reactor Regulation

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MR. RAYMOND SHADIS

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NAME	RPulsifer	LCox for MO'Brien	JAndersen
DATE	12/4/02	12/3/02	12/4/02

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Official Transcript of Proceedings

NUCLEAR REGULATORY COMMISSION

Title: Conference Call on the 2.206 Petition
on Nuclear Plant Safety

Docket Number: 50-271

Location: (Telephone Conference)

Date: Monday, November 18, 2002

Work Order No.: NRC-666

Pages 1-25

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Attachment

1 PRESENT: (CONT.)

2 CLIFF ANDERSON Region I

3 FRANK ARNER Region I

4 JACK GOLDBERG OGC

5 HERB BERKOW NRR

6 JIM ANDERSEN NRR

7 STU RICHARDS NRR

8

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

10:30 a.m.

1
2
3 Operations Officer: This is the
4 Headquarters Operations Officer. Do you want us to
5 wait a little more, or do you want to do a roll call
6 right now?

7 MR. SHADIS: It depends on who you're
8 asking, I guess

9 Operations Officer: Okay. I'm going to
10 do a roll call right now, and if you could just
11 listen for, and repeat, your names. And whoever
12 else comes in, you may not hear their names, okay?

13 MR. SHADIS: Okay

14 MR. PULSIFER: Anyone else on

15 MR. SHADIS: There's a batch of us.
16 We're waiting for the roll call.

17 MR. PULSIFER: Hello, this is Bob
18 Pulsifer. Who else do we have on the line here?

19 MR. SHADIS: You have Ray Shadis; Gary
20 Sachs from Vermont; David Lochbaum; Region I; and
21 Vermont Yankee.

22 MR. PELTON: You have the Vermont Yankee
23 Resident's Office, as well.

24 MR. PULSIFER: And from the licensee,
25 who do we have?

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1 (No response.)

2 Operations Officer: Okay. This
3 completes the roll call. If you want to start your
4 conference, go right ahead.

5 MR. DEVINCENTIS: From Vermont Yankee,
6 Jim DeVincentis and Bob Wanczyk.

7 MR. PULSIFER: Okay. Region?

8 CLIFF ANDERSEN: Region I, Cliff
9 Andersen and Frank Harnor.

10 MR. PULSIFER: Okay. Headquarters --
11 this is Bob Pulsifer, PRB. I'm going to be the
12 project manager for this petition.

13 MR. GOLDBERG: Jack Goldberg

14 MR. BERKOW: Herb Berkow

15 MR. ANDERSEN: Jim Andersen and Stu
16 Richards

17 (Telephone interference.)

18 MR. PULSIFER: (in progress) -- 2.206 --

19 (Telephone interference.)

20 MR. PULSIFER: (in progress) -- this
21 year. A telephone conference was held on October
22 29th to discuss with you, Mr. Shadis, the merits of
23 your petition.

24 Last week, I informed you that the PRB
25 had recommended that your petition not be processed

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1 under the 2.206 process. They have said that the
2 PRB had decided that there were insufficient facts
3 to substantiate a complete review by the NRC of
4 Vermont Yankee's training program for operators and
5 maintenance personnel. Also, there wasn't sufficient
6 facts for a -- in the evaluation of the FSAR.

7 I had asked whether you wanted to
8 address the PRB on this recommendation, and you said
9 yes. And this teleconference is being recorded and
10 will be transcribed.

11 Mr. Shadis, do you have any comments or
12 questions?

13 MR. SHADIS: Well, yeah. Just to start
14 off, on our last call, in my understanding it was
15 not to discuss the merits of the petition. In fact,
16 we were advised that we could not discuss the
17 content of the petition. And I don't know how one
18 can discuss the merits without discussing the
19 content.

20 MR. PULSIFER: Mr. Shadis. You seem to
21 be going in and out.

22 MR. SHADIS: Okay. We'll try it just a
23 little bit louder. On our last call, my
24 understanding is that we did not discuss the merits
25 of the petition. In fact, we were advised that that

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1 call -- that the Board would not entertain any
2 discussion of the content of the petition. And it's
3 beyond me to understand how one can discuss the
4 merits of a petition without discussing the content.

5 MR. PULSIFER: I understand, Mr. Shadis.
6 You're right. It was for you to provide additional
7 information to help support the petition.

8 MR. SHADIS: But without discussing the
9 content?

10 MR. PULSIFER: That's correct.

11 MR. SHADIS: Okay. I just want to get
12 it clear what -- you know, what the rules are.

13 Now, I would like to ask for some
14 clarification on your statement that there is
15 insufficient information or evidence presented in
16 the petition to support NRC action.

17 MR. PULSIFER: Under 2.206?

18 MR. SHADIS: That's correct.

19 MR. PULSIFER: Right. 2.206, first of
20 all, asks for an enforcement action to be described.
21 In your petition, I did not see an enforcement
22 action actually prescribed. You did indicate that
23 you wanted the staff to review their program in the
24 FSAR, but there was no specific action required.

25 Also, there wasn't sufficient evidence

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1 that I could see that supported a detailed review of
2 the program. Does the staff want to expound upon
3 that?

4 MR. LOCHBAUM: Ray, could I address that
5 for you?

6 MR. SHADIS: Certainly.

7 MR. LOCHBAUM: This is David Lochbaum
8 with the Union of Concerned Scientists.

9 MR. PULSIFER: Good morning.

10 MR. LOCHBAUM: I think the enforcement
11 action that was at least implicitly implied in Ray's
12 petition essentially was a demand for information,
13 where you order the licensee to provide responses to
14 queries, and provide that information under oath or
15 affirmation.

16 It's not unlike -- you know, I saw the
17 letter, or I saw actually the response to the letter
18 that Vermont Yankee provided to questions from the
19 resident inspectors about the accuracy of the FSAR
20 and the information contained in the (inaudible)
21 documents relative to the RCIC system that was the
22 basis for Ray's petition. So, I think that was the
23 enforcement action that was fairly clearly implied
24 in Mr. Shadis' petition.

25 As far as to whether that constituted

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1 enough information for the NRC to -- you know, was
2 that enough of a smoking gun to require that kind of
3 response, their information and subsequent
4 retraction of a report to the NRC expended resources
5 on both the licensee's part and the NRC's part.
6 Several of your goals are to maintain safety;
7 improve public confidence; reduce unnecessary
8 burden; and improve Agency's efficiency and
9 effectiveness. And if you're getting false reports
10 from the licensee, I don't know that you meet all of
11 those goals. I think perhaps many of those goals
12 are being challenged.

13 From what I saw of the plant owner's
14 response to the resident inspector's questions, they
15 stated that the FSAR and the design basis documents
16 were verified to be accurate, which begs the
17 question, you know, why did the operations personnel
18 or the people making safety calls at the plant not
19 using these documents that are now verified to be
20 accurate and complete. If they had bothered to use
21 them, that initial report probably would not have
22 been made and, therefore, the NRC resources would
23 not have been cycled in responding to it.

24 But, I think that's the basis for the
25 petition request and justification for why it might

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1 be needed.

2 MR. PULSIFER: I understand. The
3 licensee did say that they've placed this into their
4 corrective action program. And we will follow up on
5 that to ensure that that particular corrective
6 action has been addressed.

7 MR. SHADIS: I can tell you that, in
8 addition, we are deeply concerned that there is no
9 evocation of the facts of the incident by NRC. The
10 licensee, in public statements and in responding to
11 the resident inspector's questions, said they took a
12 conservative action by sending out their
13 notification. From the public point of view, it can
14 hardly be considered a conservative action, if it's
15 based on the assumption that they have equipment
16 that they do not have.

17 I think that one thing that would go a
18 long way to securing public confidence is if NRC can
19 either validate or repudiate that kind of assertion,
20 that this is a conservative action. I'd like to
21 know, as a member of the public, how this is a
22 conservative action.

23 I think, additionally, NRC advertised
24 the 2.206 petition process -- I've got a copy of
25 NUREG 0215, Public Involvement, and it does say that

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1 unsupported assertions would not be considered
2 sufficient grounds for action. But it does not
3 spell out that there is some sort of threshold for
4 information. Obviously, the information that we
5 based our request on is part of the public documents
6 and that it is substantiated information. So, some
7 NRC action, if you read NUREG 0215, it should be
8 forthcoming.

9 MR. PULSIFER: Okay. One second.

10 (Telephone interference.)

11 MR. BERKOW: This is Herb Berkow. Do
12 you have a copy of Management Directive 8.11?

13 MR. SHADIS: Well, I do, but I don't
14 understand how it applies to me.

15 MR. BERKOW: Okay, well --

16 It is an internal document, and it's
17 meant to --. But it provides the basis and the
18 guidelines upon which we make decisions, and it's
19 informative. You know, it's not -- obviously, it
20 doesn't give you any direction, but it does explain
21 how we do things. And also the fact that the -- not
22 to consider this under 2.206 doesn't mean that we're
23 not going to address your concerns. It just means
24 that it will be addressed under a different
25 mechanism.

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1 Anything that comes in as a petition is
2 --

3 (Telephone interference.)

4 MR. BERKOW: -- or we determine that it
5 doesn't meet the criteria for review as a petition,
6 it still gets a response. It just doesn't go into
7 the 2.206 process.

8 MR. SHADIS: I think I understand what
9 you're saying. I need to reiterate -- I tried to
10 say this in our very first call -- that you and the
11 Agency has published their regulations, included
12 them in the Code of Federal Regulations. There is
13 nothing in the Code of Federal Regulations about
14 thresholds for action other than the fact that the
15 request needs to be something that NRC can do; and
16 number two, it needs to be based on real
17 information, not unsupported assertions or, as they
18 say, general opposition to nuclear power.

19 And so, if you are going to pull in
20 additional restrictions on the acceptability of
21 2.206 petitions, I believe you have the burden to
22 publish that up front, along with your invitation to
23 participate. I mean, essentially, NUREG 0215 is an
24 explanation of how the public may participate; it's
25 an invitation. And it does not include any notice

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1 that there are additional hurdles other than the
2 fact that this stuff -- the information needs to be
3 substantiated and that the request needs to be
4 something within the purview of the NRC. So, again,
5 I want to make that clear to you, maybe there's
6 something wrong with the process, as NRC implements
7 it, if we don't provide that notice up front.

8 The other issue, how NRC is going to
9 respond to our concerns as expressed in the 2.206,
10 I'm very interested in. I would like you -- if you
11 now know how you're going to respond to each of
12 these concerns, I'd like to get your take on it.

13 MR. GOLDBERG: This is Jack Goldberg.
14 Management Directive 8.11 describes the process that
15 this Agency uses to evaluate and process 2.206
16 petitions or submissions by members of the public
17 that are submitted in the context of a 2.206
18 request.

19 There is a lot of information in that
20 management directive, which is routinely provided to
21 petitioners. That brochure that you are referencing
22 can't possibly include all of the detail that's in
23 the management directive. The management directive
24 has a lot more in it than is contained in those
25 brochures, which are intended to be just very brief

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1 summaries of (inaudible) that are available. So --

2 MR. SHADIS: Well, excuse me, but the
3 Code of Federal Regulations is not intended to be a
4 brief summary. And you do not have anything in --

5 MR. GOLDBERG: The Code of Federal
6 Regulations is what it is. That's the Commission's
7 rules.

8 MR. SHADIS: Well, yeah, but that's
9 what's available to the public to engage in this
10 process.

11 MR. GOLDBERG: I didn't interrupt you
12 when you were talking.

13 MR. SHADIS: I'm sorry; excuse me, I did
14 not mean to be rude. Excuse me.

15 MR. GOLDBERG: If you're going to
16 interrupt me, I'm not going to say anything more and
17 you'll get a letter that explains the basis for our
18 response. If you want to proceed without
19 interrupting me and give me the same courtesy that I
20 gave you when you were speaking, then I will
21 continue.

22 The regulations are what they say.
23 There are lots of (inaudible) that we have and
24 policies and procedures that we have that are not
25 and need not rise to the level of a regulation.

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1 There are many things in Management Directive 8.11 -
2 - in fact, most of the things in there were placed
3 in there in response to concerns that have been
4 expressed by members of the public over the years to
5 provide members of the public additional
6 opportunities to interact with the staff.

7 Many things that are not provided in the
8 regulations -- public meetings, telephone conference
9 calls such as this one, opportunities to comment on
10 proposed directors decisions before they become
11 final -- none of these things are provided in the
12 regulations. None of these things does this
13 Commission have to do in accordance with our
14 regulations, but are done pursuant to the management
15 directive, which was compiled to a large extent to
16 respond to concerns that petitioners and other
17 members of the public have.

18 Mr. Lochbaum knows very well because
19 he's participated in many of the discussions that
20 have led to many of the changes that are in
21 Management Directive 8.11, and many of them are in
22 there in direct response to his concerns and his
23 request. Now, as he knows, we have not done all the
24 things that have been requested, but we have done
25 many things. But for whatever reason and with that

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1 historical background, the Management Directive
2 currently describes the Commission-approved process
3 for evaluating submissions submitted as 2.206
4 petitions.

5 As Herb Berkow explained, the issue that
6 you raised will be addressed in a written response,
7 even if it's concluded that the submission doesn't
8 meet the criteria for treatment under 2.206. So,
9 it's not a matter of whether your issue will be
10 addressed or not; it's only a matter of in what
11 process will the issue be addressed.

12 MR. WILLIAMS: Mr. Pulsifer.

13 MR. PULSIFER: Yes.

14 MR. WILLIAMS: I'm a member of the
15 media, a daily newspaper, the *Brattleboro Reformer*.
16 Can I ask a question about this?

17 MR. PULSIFER: What is your name?

18 MR. WILLIAMS: Eesha Williams.

19 MR. PULSIFER: Williams, did you say?

20 MR. WILLIAMS: I can't follow a lot of
21 the jargon that's been said so far, but my question
22 is, in response to Mr. Shadis' complaint that
23 Vermont Yankee said it had a piece of safety
24 equipment that it did not have, is the NRC concerned
25 about this issue, will it respond, and if so, when?

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1 MR. PULSIFER: I don't know for sure.
2 I'm sure we will be reviewing it. As I had said, we
3 will be following up with the corrective action item
4 that's in Vermont Yankee's program. How it will fit
5 into our inspection program, which report, I don't
6 know that.

7 MR. BERKOW: All of this will be
8 determined and we will document it and respond to
9 the petitioner.

10 MR. WILLIAMS: My question is when will
11 there be a response from the NRC?

12 MR. BERKOW: Well, in a reasonable
13 period of time. I guess --

14 (Telephone interference.)

15 MR. BERKOW: -- probably a matter of
16 several weeks.

17 MR. WILLIAMS: Who was that speaking?
18 Is that Mr. Pulsifer?

19 MR. BERKOW: No. Mr. Berkow.

20 MR. WILLIAMS: So, you would say by the
21 end of the year, certainly there will be a response
22 to Mr. Shadis' complaint.

23 MR. BERKOW: Yes. I would think so.

24 MR. WILLIAMS: Okay. I'll call back then
25 and get that. Thank you.

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1 MR. BERKOW: Certainly.

2 MR. PULSIFER: Mr. Shadis, any other
3 comments? Questions?

4 MR. SHADIS: Yeah -- well, yes. Thank
5 you. The question is what processes do you propose
6 to use to address the specific concerns laid out in
7 the 2.206?

8 MR. PULSIFER: Again, Mr. Shadis, you're
9 going in and out.

10 MR. SHADIS: Okay, let me try it again.
11 What specific processes do you propose to use to
12 address the specific concerns laid out in the 2.206?

13 MR. BERKOW: It would be treated as
14 controlled correspondence.

15 MR. SHADIS: And that means what?

16 MR. BERKOW: You would get a letter
17 responding back, as opposed to a directors decision.

18 MR. SHADIS: So, if the licensee is
19 careless in the manner in which they report, in
20 which the content of -- their notifications to the
21 NRC, the NRC's response to that is to write me a
22 letter? Is that what I understand?

23 MR. BERKOW: If the NRC finds that the
24 licensee has acted incorrectly, we have other
25 processes to take that up with the licensee. You

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1 will get a response to your concerns.

2 MR. SHADIS: Well, what I'm asking for,
3 based on the fact that the licensee sent you a bogus
4 notification -- by their own admission, a
5 notification that their shift supervisor did not
6 read before signing, and that is one issue -- only
7 one of about four that we're raising. My question,
8 then, is how do you respond to that, other than to
9 give me information? What do you do to the
10 licensee? What is your enforcement action? What's
11 the process?

12 (Brief pause.)

13 MR. BERKOW: You're familiar with our
14 reactor oversight process.

15 MR. SHADIS: I certainly am.

16 MR. BERKOW: Okay. And this would be
17 fed into that process, and appropriate action would
18 be taken, if warranted. That would happen
19 regardless of whether you sent in this letter or
20 not. But you will get a response and you will be
21 advised as to what action will be taken.

22 MR. LOCHBAUM: This is Dave Lochbaum
23 again. From what I gather so far, it sounds like
24 the NRC is going to be complacent with the plant
25 owner putting this matter into its corrective action

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1 program, and then the NRC inspectors will evaluate
2 the corrective action program to see how the issue's
3 resolved. But there's the 50.9. They did not
4 provide the NRC with complete and accurate
5 information. That can't be handled under the
6 licensee's own corrective action program; that's an
7 NRC issue.

8 You know, it's very clearly that they
9 challenged, if not violated, 50.9. I can't see how
10 them kicking it back into a corrective action
11 program that the owner controls is an appropriate
12 way to evaluate whether 50.9 was met or not.

13 MR. BERKOW: Well, to the extent that
14 there may be a 50.9 violation, that would be part of
15 the evaluation process that the staff goes through
16 in evaluating this incident -- and again, that's
17 independent of whether there's a letter from a
18 member of the public raising the issue. They're
19 normally evaluated in accordance with the reactor
20 oversight process and the Commission's enforcement
21 policy.

22 Not all violations warrant formal
23 enforcement action. There are different severity
24 levels, ranging from very minor to -- which result
25 in non-cited violations to very significant severity

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1 level 1 violations. So, that's all part of the
2 evaluative process that the staff would routinely
3 undertake in connection with an incident like this.

4 MR. LOCHBAUM: With respect to the
5 Vermont Yankee's personnel being familiar with the
6 contents of the FSAR or the RCIC design basis
7 documents, how do you propose to determine whether
8 or not they understand what's in there?

9 (Telephone interference.)

10 MR. PULSIFER: That's really getting
11 right back to the inspection program. That's
12 something that we'll be evaluating to determine what
13 we need to look at. I know the -- does the Region
14 have any particular comment on that?

15 CLIFF ANDERSON: Yeah, this is Cliff
16 Anderson. As a part of the inspection program, we
17 have the license program, but it's what we've done
18 and what we continually do. And that's the area
19 where we would look at the knowledge and adequacy of
20 the knowledge of the licensee. The corrective
21 action program -- we have a place to look at
22 licensee's response to -- how they deal with the
23 issues, such as (inaudible) issues.

24 And also, we look at -- as Mr. Goldberg
25 said, we look for issues that -- such as a 50.9

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1 issue. We look at them with regard to what their
2 significance are [sic].

3 MR. LOCHBAUM: This is Dave Lochbaum. I
4 have one process question. If, instead of
5 submitting a 2.206, Mr. Shadis were to submit an
6 allegation that personnel at Vermont Yankee didn't
7 have knowledge and awareness and so on, as he
8 mentioned earlier, would the staff be able to paper
9 away his allegation the same way you're papering
10 away his 2.206, or would that be a little bit
11 harder?

12 MR. BERKOW: That would be put into the
13 allegation process and it'll be treated under that
14 process, and the allegor would get a response in the
15 same manner that the petitioner or proposed
16 petitioner would get a response to this. I don't
17 think that would make any difference, whether it was
18 submitted as an allegation or the way it was
19 submitted.

20 MR. LOCHBAUM: I don't either, and I
21 think that's sad.

22 MR. BERKOW: The staff actions will be
23 the same and the response to you will be the same.

24 MR. SHADIS: This is Ray Shadis again.
25 I just want to suggest to you that NRC is now going

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1 to, according to you gentlemen, undertake a review
2 of the licensee's responsibility in terms of
3 providing accurate information, the licensee's
4 responsibilities in terms of making certain that
5 their design basis documents reflect the real world
6 and that the employees are familiar with them. You
7 know, these are things that you're committing to
8 under the ROP. And I want to suggest to you that
9 there should be no hesitation to commit to those
10 actions as a part of the response to the 2.206
11 petition that was filed.

12 MR. BERKOW: I think what the staff is
13 committing to is to follow the ROP, whatever the ROP
14 requires, not necessary the commitments that you're
15 interpreting. The ROP is prescriptive, and it
16 defines what shall be done. And that is what we're
17 committing to, to follow that process.

18 MR. SHADIS: Well, I want to tell you
19 that on the onset, the ROP is not prescriptive. The
20 ROP at the onset is discretionary in terms of the
21 inspector or NRC personnel determining whether or
22 not any issues rise to significance to be included
23 in the ROP.

24 MR. BERKOW: That's right. There are
25 various thresholds that are defined in the process.

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1 MR. SHADIS: That's right. So, at this
2 spin -- and many of those really have to do with
3 professional discretion on the part of the agency.
4 So, I am suggesting to you now, since we raised this
5 issue with you folks, that indeed your application
6 should be a response to the 2.206 as well as saying,
7 well, this is what we would ordinarily do anyway.
8 I'm offering that.

9 I think -- finally, I am going to
10 suggest if you have any feedback to your executive
11 levels or to the commission level, that if your
12 internal management directive is going to be used as
13 a document to vet 2.206s coming in and there are
14 some thresholds established there for the amount of
15 information that's required, that that document
16 needs to be referenced in the regulation. The
17 regulation, as you know, is there for the public as
18 well as for the NRC. So, you know, I'd like to see
19 that up front so we don't waste ink and postage.

20 MR. BERKOW: Well, we don't reference
21 management directives in the regulation. The
22 management directive is a public document that has
23 public input. And it's been out there for a while.

24 I think we understand your concerns, and
25 we will, you know, respond accordingly. Do you have

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1 anything else to add?

2 MR. SHADIS: I want to ask now, there's
3 an opportunity -- I presume this is going to come
4 out of NRR, the Director's decision?

5 MR. BERKOW: Well, the response will
6 come out of NRR.

7 MR. SHADIS: Will there be a director's
8 decision?

9 MR. BERKOW: No, no -- it will only be a
10 director decision if it's accepted for review under
11 the 2.206.

12 MR. SHADIS: I see.

13 MR. PULSIFER: If not, it will come out
14 as a letter.

15 MR. SHADIS: I see.

16 MR. BERKOW: And it will be NRR.

17 MR. SHADIS: I see. Well, I don't know
18 that we can -- there's anything further that we can
19 do here, productively do. I will ask you please to
20 address the issues that I've raised in the 2.206
21 when you write to me, point by point, and provide
22 some kind of information as to how they are going to
23 be handled.

24 MR. BERKOW: Okay. Region, any
25 comments?

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1 REGION REPRESENTATIVE: No. I don't
2 think we have anything to add.

3 MR. PULSIFER: Licensee.

4 LICENSEE REPRESENTATIVE: We have no
5 comments.

6 MR. PULSIFER: Resident?

7 RESIDENT INSPECTOR: We have nothing to
8 add.

9 MR. PULSIFER: Okay. Thank you very
10 much.

11 MR. SHADIS: Thank you. Good afternoon.
12 (Off the record.)

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