

Official Transcript of Proceedings

NUCLEAR REGULATORY COMMISSION

Title: Criteria for Review of Alternative Sites
Public Meeting

Docket Number: (not applicable)

Location: Rockville, Maryland

Date: Tuesday, January 28, 2003

NOTES:

1. This transcript has been minimally edited. No words have been deleted. Words in brackets have been added primarily to spell out acronyms, clarify a term of art, or aid reading. All efforts have been taken to not alter the meanings of comments.]

2. Attached to this transcript is one comment submitted by a member of the public who could not attend the meeting.

Work Order No.: NRC-747

Pages 1-134

NEAL R. GROSS AND CO., INC.
Court Reporters and Transcribers
1323 Rhode Island Avenue, N.W.
Washington, D.C. 20005
(202) 234-4433

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

* * * * *

PUBLIC MEETING ON CRITERIA FOR REVIEW OF
ALTERNATIVE SITES

* * * * *

TUESDAY,
JANUARY 28, 2003

* * * * *

ROCKVILLE, MARYLAND

* * * * *

The public meeting was held at 9:00 a.m. in the Auditorium of the Nuclear Regulatory Commission, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, Francis (Chip) Cameron facilitating.

PRESENT:

- | | |
|------------------------|------------------|
| FRANCIS (CHIP) CAMERON | Facilitator, NRC |
| DENNIS ALLISON | NRC |
| LEE BANIC | NRC |
| FRANK GILLESPIE | NRC |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I-N-D-E-X

<u>Agenda</u>	<u>Page</u>
Opening Remarks - Chip Cameron	3
Meeting Agenda - Frank Gillespie	7
Overview of Issues - Lee Banic	19
Issues	
Process Approaches for Rulemaking	45
Region of Interest	57
Number of Sites to be Considered	62
Who Can Introduce Candidate Sites	80
Obviously Superior Sites	82
Emergency Planning	91
Other Issues	108

9:12 a.m.

MR. CAMERON: Good morning, everyone. My name is Chip Cameron. I'm the Special Counsel for Public Liaison here at the Nuclear Regulatory Commission. And I want to welcome you to today's meeting. The topic of today's meeting are issues related to a possible NRC rulemaking on the consideration of alternative sites in the NRC evaluation of various types of license applications. And the NRC staff is going to be telling you more about that in a few minutes. I just wanted to say a few introductory words about the meeting process before we get started today.

I'm going to be serving as your facilitator for the meeting, and in that role I'm going to try to assist you in having a product [productive] meeting and also assist you in trying to achieve the meeting objectives. Frank Gillespie from the NRC staff will be telling you a little bit more about those objectives in a minute, but, broadly speaking, there are two objectives for the meeting today. One is to clearly explain to all of you the scope and nature of the issues that the NRC is considering on the evaluation of alternative sites.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 And the second objective is to listen to your views on
2 the issues.

3 The format today is what I like to call a
4 town hall meeting format, and we want to try to be as
5 informal as possible today so that we can promote a
6 discussion, a possible dialogue among all of you on
7 the issues, not only your individual perspectives on
8 the issues but how you might react, how you might view
9 other people's perspectives on those issues.

10 The ultimate goal of the meeting is to
11 assist the staff with some insights, with some
12 information that they can use in deciding whether to
13 proceed with a rulemaking on alternative sites, and if
14 they do, how to proceed with that rulemaking.

15 In terms of ground rules, they're fairly
16 simple. If you have a question or a comment, just
17 signal me and I'll bring you this cordless microphone
18 or you can use the mics that are here in the audience.
19 And if you could give us your name and affiliation, if
20 appropriate, that will allow us to get that on the
21 transcript. Rebecca Davis is our stenographer for the
22 meeting today. And I would also ask that only one
23 person speak at a time so that we can get a clean
24 transcript and also so that we can give our full
25 attention to whoever has the floor at the moment.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 We have a good bit of time built in for
2 discussion of today's issues. I would still ask you
3 to try to be concise in your comments and discussion.
4 We are scheduled from nine till the end of the day.
5 I don't know if we're going to need all that time.
6 Certainly, we're going to take that time if we need
7 to, but I would just warn you in advance, and I know
8 some of you will be disappointed by this, that we may
9 not take all the time that we have allotted for this
10 meeting today.

11 In terms of agenda, we're going to turn to
12 Frank Gillespie in a moment. Frank is one of our
13 senior managers. He is going to talk about meeting
14 objectives, and then we're going to go to give you
15 some context on this issue, and we have Lee Banic up
16 here who I'll introduce a little bit more fully in a
17 moment, who's the project manager on this. She's
18 going to start us off with an overview of the issues.
19 Then we want to come back out to you for any
20 clarifying questions that you might have.

21 We'll probably -- it's also an appropriate
22 time after Lee is done to perhaps discuss issues about
23 whether a rulemaking be done. It isn't formally --
24 that topic isn't formally on the agenda, but after you
25 listen to Lee's presentation and the options that the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 NRC is considering, you'll see that there are other
2 ways to proceed in addition to rulemaking. So I think
3 we'll take that time to talk about that threshold
4 issue about do we need to do a rulemaking.

5 Then we're going to get into a number of
6 specific issues on rulemaking. Potential rulemaking
7 issues, for example, would [be the] approach [to] the
8 rulemaking[,] take region of interests, number of
9 alternative sites, emergency planning and any other
10 issues that you want to tell us about. And I'll keep
11 track of those -- as those issues come up during the
12 day and they don't squarely fit into the agenda topic
13 that we're on, I'll keep track of those so that we can
14 come back and get to that.

15 And let me just do some introductions for
16 you now, and then we'll get on with the meeting
17 itself. As I mentioned, we're going to start with
18 Frank Gillespie who's one of our senior managers.
19 Frank is right down here in the front row, and he's
20 the Deputy Director of the Division of Regulatory
21 Improvements. That's in our Office of Nuclear Reactor
22 Regulation. And Frank's Division is responsible for
23 conducting the evaluations of the proposed rulemaking
24 and doing the rulemaking.

25 (Informed mic is fritzzy.)

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. CAMERON: Okay. Is it better to just
2 stay [here] -- is it happening here? Okay. Because
3 we're going to need to use this probably, but let me
4 go on and let's see if it still is a problem. But
5 maybe I'll just stand still and that might help.

6 Lee Banic is the project manager for the
7 rulemaking, and Lee has been with the Nuclear
8 Regulatory Commission for 12 years working on various
9 materials, engineering issues. She's also been the
10 project manager on a number of international projects,
11 such as the Convention on Nuclear Safety, and she has
12 degrees in metallurgical engineering, University of
13 Michigan and University of Alberta in Canada.

14 And Dennis Allison, who's also up here, is
15 going to be involved in the rulemaking, and he is the
16 Acting Section Chief that Lee is in who's responsible
17 for this particular rulemaking. He's been with the
18 NRC for 29 years in varied responsibilities. He has
19 a degree from the University of California - Berkeley
20 in engineering science and a Master's in nuclear
21 engineering from the University of Missouri. He also
22 was in the Naval Nuclear Program and worked for
23 Baltimore Gas and Electric. And I've asked Lee and
24 Dennis to sort of tee up the issues as we get to the
25 specific issues to give you an idea of what's under

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 discussion at the time.

2 Other people with the NRC who are going to
3 be instrumental in this effort, Brian Thomas, who is
4 in the back, is the Acting Program Director for Policy
5 and Rulemaking. John Tappert, who many of you might
6 know, is the Environmental Section Chief for License
7 Renewal and Environmental Impact Program. And we have
8 consultants from Argonne National Lab, experts that
9 are helping us who are over here that we may turn to
10 today for their input, and various other people on the
11 NRC staff, including some representatives from our --
12 so we'll turn to these people as necessary as we go on
13 today.

14 And with that, Frank? Frank Gillespie.
15 And is this [mic] working? All right.

16 MR. GILLESPIE: Well, actually, Chip was
17 actually speaking up [from here and the mic was not
18 always working]. So if that's going in and out, I'll
19 just do it from the podium, which is in violation of
20 those meeting rules when you go to [learn] how to do
21 a meeting things. They always tell you, you know, be
22 out there, don't be on a stage that's raised. Chip's
23 good at that. I went to the same class, I just didn't
24 learn the lessons, I guess.

25 The staff gave me a script that I'm

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 supposed to stick to, but then they also knew that I
2 probably wouldn't stick to it. And I see Jim Riccio
3 in the back laughing, because he knows I never stick
4 to the script anyway. And it was as the senior most
5 manager I was in charge of telling you that the men's
6 room is right outside in the hall. We will take a
7 break at mid-morning to be announced by someone else
8 because they didn't tell me when the break was, and
9 they expect I'll walk out earlier than that anyway.

10 MR. CAMERON: And the ladies' room is out
11 there also.

12 MR. GILLESPIE: The ladies' room is right
13 out there beside the men's room.

14 (Laughter.)

15 So having gotten my senior management
16 duties out of the way, now I'll give you my opinions.
17 I was actually -- I walked down with Geary Mizuno, and
18 I made a comment to Geary. I said, "This is kind of
19 an interesting meeting." And he said, "How can you
20 make this interesting," or something pretty close to
21 that, right, Geary? And I said, "Well, you know what?
22 They only let me give the opening comments to meetings
23 that are on imponderables." What is the definition of
24 superior, and whose perspective and whose lens are we
25 looking at it through? Do we really need a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 rulemaking? When was the last time we did? I had to
2 correct my notes. I asked Barry [Zalcman], I said,
3 "When was -- my notes said we haven't done this in 20
4 years." He said, "Well, I've been around for 30 years,
5 and I don't remember the last one." And Barry said,
6 "Yes, the last one -- the last site we did was Shearon
7 Harris and that was 25 years ago, and we probably did
8 the siting work on it about five years before that."
9 So I've got to correct my notes. It's been longer
10 than my career since we've done this, and since I've
11 got one of the longer careers in the Agency, I don't
12 think very many other people remember actually
13 participating in the last time either.

14 We want to do something rational, and this
15 is the first -- I'm going to say this is the first
16 pre-rulemaking [activity]. This is a technical basis
17 meeting, not a rulemaking meeting. And just a
18 snapshot, we've really attempted to change our process
19 here, and I see the notetaker from Bechtel who always
20 manages to give me some good press internally. And
21 she says, "Say something good. You need a line I can
22 write down." This is the first time we're actually
23 trying to establish some internal rules on what are
24 the steps to get to a rulemaking?

25 And the problem we're trying to solve, and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 you are participating in helping us solve that, is,
2 and particularly on rules like this which are a bit
3 imponderable, defining things like superior, it's
4 going to take a while, it's not going to be an easy
5 task, is to first develop a technical basis. And what
6 do I mean by a technical basis? I mean a technical
7 basis, in my mind, would be a published NUREG with all
8 the various points of view on if something needs to be
9 done what are the various options that need to be
10 done, and why is any one option better than any other
11 option? Now you have -- and you publish that.

12 And this is the first step, and I'll
13 suggest is, litigating the technical basis before you
14 decide to write a rule so that the rulemaking process
15 should not be arguing then or trying to litigate
16 things that should have been established earlier. It
17 shouldn't be dealing with changing facts in midstream
18 in the rulemaking, and I think that's kind of, as an
19 Agency, gotten us in trouble by raising our hand and
20 saying, "By God, we're going to have a rule on
21 something," and then we realize we don't know exactly
22 what we want to have a rule on or why we want to have
23 the rule.

24 So we're actually developing a technical
25 basis upon which to make a decision whether any change

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 to the rules are needed or is it a change to guidance?
2 And, Lee, I guess you're going to kind of go through
3 what the various options might be. Independent of
4 which option we take, we still need a technical basis
5 on why we would take that option, why we would choose
6 it, why we would establish what criteria.

7 So this is the first time we've tried
8 this, and the idea is not to get us all, industry,
9 public and the NRC, too prematurely in a bind but keep
10 the dialogue open and basically a brainstorming kind
11 of environment on these topics. So there's no
12 prejudice right now, at least on the part of the
13 staff, other than doing nothing I guess is still an
14 option and doing them [license applications] one at a
15 time. But even when you do them one at a time, the
16 staff still needs criteria. So not having criteria is
17 probably not an option but how we promulgate it I
18 think is open to the best way.

19 So this is an experiment, or actually it's
20 not an experiment because we decided to do it. And
21 that way when we do commit to a rule and send a
22 rulemaking plan to the Commission, it would be, "Dear
23 Commission, we feel we've explored the technical
24 alternatives sufficient that it makes sense to take
25 this path for these reasons, and here is our schedule

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 to generate a rule, and hopefully the rulemaking
2 process will focus more on how we articulate it in the
3 rule, and we won't be arguing over the technical facts
4 and the reasons." So we're trying to bifurcate what
5 traditionally we had allowed to get kind of squashed
6 together, and the rules would take five or six years
7 from the time you decided you wanted a rule, because
8 you decided a rule might -- it's a different decision.

9 So does that make sense to everyone, the
10 kind of process we're in? It's a little different.
11 I hope it's a little more open, and I hope it will
12 contribute to the dialogue today.

13 The other piece that they told me I need
14 to cover, and I guess this means I take the heat and
15 they don't, is the Commission told us emergency
16 planning is in the mix. And I would suspect that any
17 utility who's deciding where to put a plant would have
18 already in their own selection criteria put emergency
19 planning in the mix versus a traditional NEPA
20 [National Environmental Policy Act] considerations on
21 damage to the environment, heat effluents,
22 construction traffic, all those other things I think
23 you need to consider.

24 I think it's important to note that that's
25 basically what we're considering is non-negotiable.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 And whatever the staff does, emergency planning is
2 going to be in, which means future population growth
3 has to be considered and bounded, it's one of the
4 parameters to be discussed, and looking at a clearly
5 superior site.

6 I think a utility in selecting a site
7 would consider that anyway. In fact, if I was a
8 utility, I would consider many things beyond that.
9 Whatever we do should be, I believe, a subset of
10 whatever you're already doing, which means this should
11 be a very low-cost rule. I would think you would not
12 want to put a site in a location where in ten years
13 the population would grow where you think you're going
14 to be in basically [what] I'll call political trouble,
15 where you'll be getting articles written as Indian
16 Point's now getting written from actions on the
17 county's part. I have to believe you consider that
18 when you put a site someplace. So considering
19 emergency planning, to me, does make sense, and I have
20 to believe you'd be considering it anyway. So that's
21 now in the mix, so it's not totally an environmental
22 question, and it's a people question also.

23 One other thing I'd ask you to consider is
24 the idea of, and this is kind of way to limit maybe
25 regulatory burden, is there two set of criteria

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 needed? And the reason I say two sets of criteria is
2 -- and I'm going to throw this open just to try to
3 give you something to think about so when Chip comes
4 on, you can say, "That was a dumb idea he said," and
5 I will have already left the room so it won't hurt my
6 feelings. There's some talk when you talk about
7 alternative sites that, gee, if I already have a site,
8 and I don't mean already have a nuclear site, I mean
9 already have a site with a power station on it, with
10 a railroad infrastructure, with a road infrastructure,
11 with a heat sink, or as EPA [(U.S. Environmental
12 Protection Agency)] said, one [once] pass-through
13 cooling is not going to probably be allowed in the
14 future anymore so you're going to have cooling towers
15 anyway, you're going to have transmission lines
16 already to the site. So take my comment as not
17 necessarily putting a nuclear site on a nuclear site,
18 that is one alternative and the three early site
19 permits that are in are doing that, but it's, as Barry
20 calls it, I guess it's a -- we're calling it a
21 brownfield site, a site that's already been developed,
22 already has a transmission line, already has a heat
23 sink, already has a transportation infrastructure
24 versus a green site.

25 That may be one set of criteria where the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 baseline is the existing site and does the existing
2 site have a fatal flaw for a cumulative impact, and
3 now let's compare that to a green site, because, quite
4 honestly, I think putting a new trunk transmission
5 line in is probably going to be harder than siting a
6 site. So there's going to be certain things like that
7 [that] are actually going to drive what a superior
8 site is. So that could be one set of criteria.

9 The other criteria is how do you compare
10 two virgin sites, and [as] Chip said [define] region
11 [of interest]. Well, let me take Entergy wanting to
12 build a new site. Well, I'm just going to take the
13 Entergy area. Well, they've got Vermont Yankee in
14 Vermont, and they've got some plants in Louisiana.
15 Does that mean that we should evaluate various sites
16 between Vermont and Louisiana for Entergy? Well, I
17 don't know what the answer to that is, but it seems
18 like a hell of a lot of area of sites potentially in
19 it. I think answering the question, what's the region
20 [of interest], is going to be very, very difficult
21 one, and, therefore, you have a heck of a challenge
22 ahead of you to answer that question, because we don't
23 have the traditional utility boundaries anymore. We
24 could take Duke, right? Duke owns facilities, not
25 nuclear, but they do own facilities, as I understand

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 it, in southern California and the Carolinas. So,
2 okay, if Duke comes in, well, we'll evaluate
3 everything from the Atlantic to the Pacific.

4 That's why I think, as Geary said, how can
5 this be interesting? I think any question that
6 doesn't have an answer is immensely interesting, and
7 I don't know that these questions have answers, and
8 one of the answers might be key to, and I think people
9 have talked about this, if a current site doesn't have
10 a fatal flaw, like wetlands next to it or something
11 that actually we wouldn't let you put what you put
12 there today anyway -- or not we but NEPA or something
13 wouldn't. That way I can blame NEPA instead of the
14 NRC.

15 What is the comparison process? Is it
16 baselined on your primary site and you compare various
17 classes of alternatives to it, sites that would both
18 be available and already have a heat sink with
19 capability, already be on a trunk line? And I think
20 if you can envelope it that way -- which is why I'm
21 suggesting to think about two kinds of criteria. I
22 don't know that anyone can deal with the Atlantic to
23 the Pacific and Vermont to Louisiana. I think we need
24 to narrow it potentially less than that. Or if we do
25 keep it open to that, then what's your baseline? It's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 not every site in that vast geographic area. So if
2 your baseline is an existing site, you actually may be
3 able to leave it open to the Atlantic to the Pacific,
4 quite honestly, because your base site is a site with
5 a transmission line, a site with a heat sink, a site
6 with minimal cumulative impact of environmental
7 damage will be done. And you can show that because
8 you have an immense amount of knowledge to that, and
9 you can compare sites as classes versus specific
10 sites, potentially, because you could compare the
11 availability or geographic regions if you had goodness
12 criteria that would line up with comparison of
13 existing sites to greenfield. So think about that.

14 I just -- for what it's worth, I've
15 totally expended my knowledge that Barry's given me
16 and Lee has given me on the subject, but I wanted to
17 kind of get you thinking. Please don't sit there
18 today, participate. What's superior? You're going to
19 have an opportunity to define superior. How do you
20 evaluate sites within a geographic region of Atlantic
21 to Pacific and Vermont to Louisiana and existing site
22 to greenfield and greenfield to greenfield?

23 I think you're doing this already. I
24 think you're doing it when you pick a site, because
25 let's face it, you have a reason why you pick a site.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 How do you summarize that and make it available to the
2 public? You're going to have to put it up for public
3 scrutiny when it comes into the NRC, but if you're
4 confident in your own decisions, then it shouldn't be
5 -- there should be no fear in having that submitted to
6 us and allowing that to be part of the process.

7 With that, did I do okay, Danny? I didn't
8 depart too much from the script. I've got to have
9 some fun. Any questions of me before I leave of the
10 process, the idea of developing a technical basis
11 before you even decide to do a rule? Does that make
12 sense to people to actually know what you're doing
13 before you embark on it? Okay.

14 MR. CAMERON: And I just want to thank
15 you, Frank, and just to emphasize not only the
16 regulatory philosophy that Frank laid out, in other
17 words, the staff is trying to establish a foundation
18 now before initiating a rulemaking and also some of
19 the specific thoughts on the issues that he put before
20 us and we'll be going back to examine those throughout
21 the day, including this concept of region [of
22 interest] because we're not dealing with traditional
23 boundaries. Again, thank you, that was a great
24 introduction to get people thinking about this, and
25 Frank will be here perhaps for a little bit.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 And what we're going to do now, and I
2 think this has working better, they put a new
3 battery in for us, thank you for that. And let's go
4 right to Lee Banic to get an overview.

5 MS. BANIC: Thank you, Chip, and good
6 morning. It's a pleasure to see you all here to help
7 us decide how to review alternative sites. Before we
8 start today's discussion, however, I'd like to make
9 sure we all have a common understanding of the issue.
10 So I'd like to start by explaining three aspects of
11 it. First, I'll define the regulatory issue itself,
12 next I'll explain how our current rules, guidance and
13 process address the issue, and, finally, I'll suggest
14 some options on how to resolve it. After that we'll
15 ask for your views and ideas.

16 As shown in this next slide, the
17 regulatory issue is how we, the NRC, can fulfill our
18 obligations under the National Environmental Policy
19 Act, or NEPA, to review alternatives to an applicant's
20 proposed site for a commercial nuclear power plant.
21 We look at alternative sites because under NEPA
22 government agencies must examine reasonable
23 alternatives to a proposed major federal action that
24 affects the environment in [and] authorizing the
25 construction of a nuclear plant and deciding to grant

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 an early site permit or [are] major federal actions.

2 So why is this an issue? We have
3 regulations, guidance and a process to review
4 alternatives that meet our obligations under NEPA.
5 It's an issue because we now have the chance to
6 improve our process. NEPA requires us to take a hard
7 look at alternatives, but what exactly is a hard look?
8 NEPA does not spell out the review process, and our
9 current regulations do not tell us much about how to
10 select and compare candidate sites. And by candidate
11 sites, I mean the site proposed for a nuclear plant
12 and the alternatives to that site. We want to better
13 define the answers to these questions and others,
14 including the question of how to review a request to
15 build on an existing site, that is a site with a
16 nuclear plant already on it.

17 To give you some background, as shown on
18 this next slide, we found we needed to better define
19 process regarding alternative sites during the
20 Seabrook licensing proceedings back in the 1970s. In
21 the late '70s, we formulated some policies, and then
22 we were involved in some rulemaking in the 1980s. Of
23 relevance here I'll mention two rules, the 1980
24 proposed rule and the 1981 final rule, and explain the
25 relationship between them. And by the way, we have

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 handouts at the door containing these two rules if you
2 want to read the details.

3 We issued a proposed rule in 1980 to
4 establish a better review process for alternative
5 sites. In 1981, we published a final rule that said
6 that applicants need not consider alternative sites
7 when obtaining an operating license after having
8 obtained a construction permit, because the
9 alternative of siting the nuclear plant elsewhere
10 would not likely no longer be a reasonable under
11 NEPA.

12 The final rule also said that we would
13 continue to work on other issues raised in the
14 proposed rule, but we stopped work on them because of
15 the reduced interest in building new nuclear plants.
16 Now, however, the climate has changed. The industry
17 is interested in planning for future electrical
18 demand, and we considered our responsibility to
19 provide a regulatory process that's able [stable],
20 predictable and timely one that's fair and objective,
21 one that properly evaluates the issues but doesn't
22 create unnecessary regulatory burden and, most
23 important, one that meets the objectives of NEPA.

24 To bring you up to date, we're working on
25 several matters dealing with alternative site reviews.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 As shown on this next slide, we have petitions for
2 rulemaking from NEI [Nuclear Energy Institute]
3 recommending eliminating alternative site reviews all
4 together. We also have a letter from NEI recommending
5 a slightly different approach to one of their
6 petitions, and in that letter NEI recommends
7 restricting the scope of alternative site reviews. We
8 have to decide how to answer these items. And we have
9 yet another letter from NEI proposing a resolution to
10 their Generic Topic ESP-18A which addresses the nature
11 of alternative site reviews for early site permit
12 applications, and we plan to respond this spring.
13 And, finally, we expect three applications for early
14 site permits later this year. And so you see the
15 issue is quite relevant today.

16 Now, before we can discuss how to better
17 resolve this regulatory issue of meeting our
18 obligations under NEPA to review alternatives, I want
19 to make sure you know how our current regulatory
20 structure deals with alternative sites. This next
21 slide summarizes the regulatory structure that
22 applies. We have rules, regulatory guides and an
23 Environmental Standard Review Plan. To give you the
24 bottom line, our regulations cover environmental
25 reviews but do not specify in any detail how to do

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 alternative site reviews. We review alternative sites
2 as part of our environmental review. We use the
3 Environmental Standard Review Plan, which gives
4 detailed guidance, to review environmental reports and
5 prepare environmental impact statements.

6 Now let's look more closely at the
7 regulations. We have 10 CFR Parts 51 and 52. First
8 and foremost, 10 CFR 52 Subpart A on early site
9 permits, standard design certifications and combined
10 licenses is of interest to us because we expect
11 applications to come in under these regulations. Part
12 52.17, Paragraph (a)(2) states that the environmental
13 report and our environmental impact statement must
14 include an evaluation of alternative sites to, and I
15 quote, "determine whether there is any obviously
16 superior alternative to the site proposed," unquote.
17 I want you to know that the concept of "obviously
18 superior alternative" needs discussing, and for that
19 reason we placed it on the agenda for later today.
20 Also I'll mention it again when I talk about the
21 Standard Review Plan later.

22 So today we'll take your comments and
23 consider whether we should be more specific in this
24 regulation, because it doesn't say what constitutes
25 the process to identify and screen alternative sites,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 nor does it give details for evaluating candidate
2 sites. It also doesn't give any weighting criteria or
3 address the importance of one criterion versus another
4 in comparing and ranking sites. Ten CFR Part 51
5 provides the regulations for carrying out NEPA. Part
6 51 covers environmental reviews and describes the
7 licensing actions that require an environmental impact
8 statement. Part 51.7 requires applicants to discuss
9 alternatives in submittals.

10 Well, now let's talk about the guidance.
11 We have two regulatory guides on siting, and here I'll
12 explain to you in the audience who don't know that
13 regulatory guides are not regulations or requirements.
14 They're written to guide licensees and applicants on
15 suitable ways to conform to NRC regulations. In
16 contrast, Standard Review Plans, which I'll discuss
17 later, guide the staff in reviewing applications.
18 Regulatory Guide 4.2, published in 1976, is on how to
19 prepare environmental reports. Although it was
20 specifically written to apply to construction permits
21 and operating licenses, we believe that it can apply
22 to early site permits and combined operating licenses.

23 Regulatory Guide 4.7, Revision 2, is
24 guidance on general site suitability. More recent,
25 revised in 1998, this guidance applies only to the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 initial stage of selecting potential sites, because it
2 doesn't give details on how to rank the relative
3 suitability of possible sites. What it does do is
4 explain the major features of a site important to
5 public health and safety and the environmental issues
6 important in determining if sites are suitable, such
7 as critical habitat for endangered species. It says
8 if the sites appear to meet the general criteria, one
9 must look at them in greater detail before considering
10 them as candidate sites.

11 As for guidance for the NRC when reviewing
12 applications, we use the Environmental Standard Review
13 Plan for environmental reviews. And by the way, we
14 have CD-Roms of this plan at the door if you want to
15 read it. This is the most recent guidance we've
16 issued, issued in March 2000, and we based it on
17 precedence involving NEPA and the NRC and early
18 rulemaking activities, among other things.

19 The Environmental Standard Review Plan
20 tells us how to evaluate the region of interest,
21 candidate sites and a reasonable number of
22 alternatives and methodology. It also tells us how to
23 review the comparison of alternative sites with the
24 proposed site, and we do it in this way. First, we
25 determine if any alternative sites are environmentally

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 preferable to the proposed site. And by an
2 environmentally preferable site, I mean a site for
3 which the environmental impacts are sufficiently fewer
4 than for the proposed site, such impacts, for example,
5 as affect quality and endangered species. If we find
6 any alternative sites that are environmentally
7 preferable, we then determine if any of them would be
8 obviously superior to the proposed site, and, again,
9 we'll discuss "obviously superior" later.

10 Well, this is the bottom line of what will
11 guide us on reviewing alternative sites. If we decide
12 to change a rule or guidance, based partly on what we
13 hear today, we will probably not have the change made
14 in time for those first three early site permit
15 applications. That's it for the regulatory structure.

16 To summarize so far, we've seen that the
17 NRC staff needs to take a hard look at alternatives
18 under NEPA. We have flexibility because NEPA does not
19 spell out in detail how to review alternatives. We
20 have a regulatory structure, but the rules and the
21 regulatory guides are not very detailed. We do have
22 detailed guidance in the Environmental Standard Review
23 Plan that we can use, but today we want to take a
24 fresh look and get your views on whether we should
25 change anything.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Now, what are our options? We have two
2 major considerations here. First, we need to think
3 about concept and then implementation. As shown on
4 this next slide, first we need to look at the issue
5 conceptually; that is, how should we fulfill our
6 obligations under NEPA? Do we keep the status quo and
7 take no action, which means applicants identify a
8 number of alternative sites in a certain geographic
9 area, characterize them and then evaluate them using
10 existing guidance, or do we modify the regulations and
11 the guidance? If we modify regulations and/or the
12 guidance, should we follow one of NEI's approaches,
13 which would be to eliminate considering alternative
14 sites entirely or to limit the evaluation of
15 alternatives, or do you have other options to suggest?
16 Once we answer that question, we can consider best how
17 to implement the answer.

18 As you can see from this next slide, the
19 implementation options range from no action to
20 rulemaking. Other options lying between these choices
21 include issuing generic communications and revising
22 the guidance. We could also use a combination of
23 options, and perhaps you'll recommend others.

24 Now I'll explain briefly what each option
25 entails. In selecting the option, we should think

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 about how binding should the option be, who should it
2 apply to, and what procedures and time is required to
3 put it into place? Option one, taking no action, the
4 baseline case, would maintain the status quo. Under
5 this option, we would review the suitability of the
6 proposed site and whether an obviously superior exists
7 on a case-by-case basis using the Environmental
8 Standard Review Plan as guidance.

9 Consider that if we take no action, as we
10 said earlier, the current regulations as opposed to
11 guidance lacks specifics regarding alternative sites.
12 Without clear specific regulations and accompanying
13 guidance, we could all expend more resources than
14 necessary on the environmental impact review because
15 of the uncertainty about information and processes
16 required. On the other hand, the status quo would be
17 maintained if you're satisfied with things the way
18 they are.

19 Option two would be to issue a generic
20 communication. Remember that generic communications
21 are also not requirements. They are an informational
22 tool about a particular matter about which we want to
23 communicate. Depending on what kind they are, they
24 may or may not involve public participation. Through
25 them we request that licensees take certain actions or

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 make commitments or we use them to state a staff
2 position. In the past, we've issued generic
3 communications on safety issues, for example,
4 involving inspections. Choosing this option we could
5 issue generic communications regarding staff position
6 papers available to the public that describe how we
7 consider alternative sites under NEPA and how we
8 review an environmental report using our Environmental
9 Standard Review Plan. Not as formally as rulemaking,
10 issuing generic communications would give us
11 flexibility. This option would clarify staff
12 positions, and it's faster than issuing a rule, but
13 note that it would not necessarily involve public
14 participation.

15 Option three would be to revise the
16 regulatory guides. Remember that regulatory guides
17 are guidance to licensees and applicants typically on
18 what they should do to satisfy or implement a rule.
19 They give us acceptable ways to demonstrate conformity
20 with NRC regulations, and they are issued for public
21 comment. On one hand, revising the guidance may not
22 take as much time to implement as a rule. The
23 approach could also improve the stability of the
24 review process, and in addition it would definitely
25 involve public participation. But revising the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 guidance is not completely prescriptive because one
2 could choose not to follow it and establish an
3 alternative licensing basis.

4 Option four would be to revise the
5 Environmental Standard Review Plan. Remember that
6 standard review plans are guidance to the NRC staff.
7 Just as for regulatory guides, we do issue standard
8 review plans for public comment. The Plan is already
9 up to date, but we could revise it, for example, with
10 respect to how many alternative sites to consider and
11 how many to consider when a proposed site is on an
12 existing site. Note, however, that the Environmental
13 Standard Review Plan, being regulatory guidance,
14 affords technical discretion to the judgement of the
15 NRC staff. Just as revising regulatory guides[,] so
16 too revising this Environmental Standard Review Plan
17 could improve the stability of the review process
18 without changing regulatory requirements.

19 Now, option five is rulemaking.
20 Rulemaking presents the most extreme contrast to the
21 no action item -- option, rather. Unlike the options
22 we've covered so far, rules are formal requirements.
23 Unlike changing the guidance, which clarifies current
24 practice to match current requirements, rulemaking can
25 change the requirements. What's involved in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 rulemaking is this: When we find a need to change the
2 regulations, we publish the proposed rule for public
3 comment, address the comments and then issue a final
4 rule. We also develop or modify guidance to go along
5 with the rule; that is, the regulatory guides and the
6 standard review plan. The process typically takes at
7 least 18 months from start to finish, and so it would
8 take longer to develop and fully implement a rule and
9 to only revise the regulatory guides or the standard
10 review plan, as in options three and four.

11 Rulemaking could specify the criteria for
12 alternative site reviews. The key features of
13 rulemaking are these. In developing a rule, we may
14 consider many views, because rulemaking requires
15 opportunity for public input and Commission approval.
16 The process is more formal than for the other options,
17 and the criteria are carefully considered at all
18 stages. The extent of changes under rulemaking can be
19 greater than just revising the guidance, and if we
20 decide to go down this path, we need to think about
21 what the rule should say, how detailed and
22 prescriptive it should be.

23 Now that's it for options. And now let's
24 turn to the question about how to decide which of
25 these options would best solve the issues. As shown

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 on this next slide, we propose to use as evaluation
2 criteria that the option meets, one, our NEPA
3 obligations to review alternatives, and, two, the
4 Commission's four performance goals, which are to
5 maintain safety and protect the environment, enhance
6 public confidence, enhance our efficiency and
7 effectiveness and reduce unnecessary regulatory
8 burden.

9 All of these options appear to meet these
10 criteria, but we still need to determine on the
11 balance which one would be the best. We could also
12 use a combination, such as revising the guidance to
13 review an early site permit while working on a rule
14 which would take more time. But at any rate, revising
15 the regulatory guides, that is the guidance to the
16 applicants, without revising the Environmental
17 Standard Review Plan, that is the guidance to the
18 staff, could lead to confusion and inconsistencies.

19 Now, to summarize, as shown on this next
20 slide, we've laid out the issue explaining why there
21 is one and some of its history and relevance, how are
22 [our] regulatory structure addresses it, the options
23 for resolving it and suggested criteria for deciding
24 which option would be the best. I'll now turn the
25 meeting over to Chip who will take your questions,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 check the agenda and identify issues for further
2 discussion.

3 MR. CAMERON: Okay. Excellent, Lee.
4 Thank you for that overview. I think you can all see
5 that there is a lot of moving parts involved here in
6 terms of the regulatory framework of rules, guidance,
7 standard review plan, some suggestions from NEI for a
8 petition for rulemaking. I think it's important to
9 make sure that you all understand that, and I would
10 suggest that we go to you for questions about that
11 regulatory framework as an introduction to talking
12 about some of the issues about whether how to proceed
13 with rulemaking before we get into all the discussion
14 of the specific rulemaking issue.

15 So let me see if there are any questions
16 about the regulatory framework at this point that
17 anybody has. Well, you did a great job, Lee, because
18 everybody understands that. How about the issue of
19 the options and do we need to proceed with a
20 rulemaking? Does anybody have any perspectives on
21 that particular subject at this point? Bob, you look
22 like you want to say something, so why don't we -- and
23 please introduce yourself.

24 MR. BISHOP: Given the opportunity, of
25 course. My name is Bob Bishop, I'm with NEI. I guess

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 my sense, in going back to earlier comments that Lee
2 made, is that from my perspective there's great need
3 for stability. And the way to bring about stability
4 is -- environments [compliance] associated with the
5 Administrative Procedure Act. And I think that --

6 (Informed mic is fritzzy.)

7 MR. BISHOP: Now if I only knew which two
8 things [were not recorded]. I think regulatory
9 stability is a key goal of the entire NRC regulatory
10 process, and that serves everyone well -- the license
11 applicants, affected members of the public, those who
12 are concerned in the political context. But as Lee
13 also pointed out, these things are not mutually
14 exclusive. Regulatory processes have a variety of
15 characters, and one could modify the guidance
16 consistent with the current regulation while one seeks
17 to revise that regulation, and I would suggest that
18 because this is a vital need for the industry, there
19 are applications that will be filed soon.

20 The regulatory horizon need not be 18
21 months away. I know that the NRC has fairly well
22 adopted the wisdom that because it seems to take 18
23 months, on average, then that's how long it should
24 take. I would argue that there is no legal
25 requirement why it has to take that long, it's just a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 question of putting the resources behind it, and I
2 would argue that this deserves a priority so it need
3 not take that long. I think the only requirement that
4 courts have upheld is reasonable notice, which in some
5 context has been held to be as little as 15 days for
6 comment on a proposed rule. I do not suggest that
7 this because of its importance should be constricted
8 in that way, but I think there are ways in which this
9 process could be far more efficiently managed so it
10 need not take that long to get to the necessary
11 stability that we all seek.

12 MR. CAMERON: Right. Okay. Bob gave us
13 some suggestions in terms of the approach here, and I
14 guess I would like to go to others in the audience to
15 see if they have any either [other] comments on the
16 approach that Bob suggested or any other ideas on how
17 the NRC should proceed in this case. Anybody else?
18 All right. Jim, can you come up here because I guess
19 that's --

20 MR. RICCIO: I'm Jim Riccio with
21 Greenpeace. Just to address a few of the issues here,
22 before we even get into this entire process, the issue
23 of uncertainty in the licensing of these new designs
24 basically is being fostered by the nuclear industry.
25 We wouldn't have a problem with uncertainty if the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 industry actually knew what type of design it wished
2 to construct. Yet we're spending time trying to skirt
3 NEPA here, there and everywhere in order to basically
4 ease the inability of the industry to put forward a
5 reactor plan. I don't believe that this is imminent.

6 The NRC actually dropped this issue back
7 in 2000 because there were no designs on the horizon.
8 There still aren't any designs on the horizon that the
9 industry wishes to build, and if we're going to be
10 addressing this issue -- I just want to read you
11 something that I pulled off of ADAMS [NRC's Agencywide
12 Documents Access and Management Systems]. It comes
13 from 1957 back when the Agency was actually licensing
14 reactors to build. It was written by a guy named
15 Clifford K. Beck, and he's talking about site
16 selection. Quote, "It is impossible to evaluate the
17 safety adequacy of a given site independently of a
18 consideration to the type of reactor to be located
19 there, it's characteristics and its type of facilities
20 to be associated there with."

21 I think we can clear up a lot of the
22 uncertainty in this process if the Agency and the
23 industry would merely put forward an actual reactor
24 design they wish to construct. If you look at the
25 North Anna site, for instance, where they want to site

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 a new reactor, we're dealing with -- this past year we
2 dealt with the fact that there was a drought there,
3 and you had basically reactors that were having
4 problems -- basically operating out of tech specs
5 because of lack of water on the site. Now, if the
6 industry were going to site another reactor that was
7 going to pull water from that site, would that be
8 taken into consideration? Now, absent knowing what
9 type of design they're going to construct, that may
10 not even be an issue.

11 I think we do have to back this up. I
12 realize this is kind of throwing a kink into your
13 work, so you want to go down and see if we need to
14 rewrite the rules again for the industry, but the
15 uncertainty in the process is really coming out of
16 their inability to choose a design, and absent that I
17 don't see how you can actually get there and have a
18 reasonable process.

19 MR. CAMERON: Okay. Thanks, Jim. Jim
20 brought up the issue of design which is obviously can
21 be substantive issue to be considered, but Jim was
22 also raising it in sort of a process mode in that
23 that's the key to eliminating uncertainty with the
24 process. It's his suggestion. Does anybody want to
25 comment on the design issue from a process point of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 view? I think it's going to come up later in terms of
2 substantive criteria, but, Bob, do you want to say a
3 few words on that? This is Bob Bishop from NEI again.

4 MR. BISHOP: And I promise only a few.
5 Rather than just respond to each of the points that
6 Mr. Riccio has made, let me just observe that the
7 Commission back in 1980 adopted a regulatory process
8 which provided for early site permits to allow the
9 environmental evaluations to be done so a site could
10 be deemed suitable for possible use for a nuclear
11 power plant as well as potentially for other uses.
12 That has at its heart the fact that a design would not
13 have been chosen at the time that an early site permit
14 was sought, that in fact the permit is good for 20
15 years and potentially renewable for another 20 years,
16 thereby keeping that site open for possible use. And
17 Mr. Riccio, I guess, would have the NRC reconsider its
18 whole process for the three-step process of siting new
19 power plants, which is at the heart of Part 52, and I
20 think that that's really beyond the scope of this
21 discussion today.

22 MR. CAMERON: Okay. So at least for early
23 site permits, you're clarifying or putting on before
24 us the fact that ESP [early site permit] is not
25 dependent on having a design. Any other comments on

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the design issue before we move on? Yes. This is
2 Frank Gillespie. Go ahead.

3 MR. GILLESPIE: Yes. I'm hesitant to kind
4 of leave it, that it's independent of design. In
5 fact, in the discussions back then, there was some
6 dependency on the design, and I hate to say it, but
7 I've got two people from two different points of view,
8 and they're both a little bit, I think, right in that
9 what was talked about at those times was that in
10 evaluating a site you would have some type of design
11 envelope which would address environmental impact
12 issues, and, Barry, you can jump in here, such as
13 thermal output. It would have to address emergency
14 planning, it would deal with effluence [effluents].
15 And you create a design envelope. And the downside is
16 if the design envelope that went as part of the site
17 evaluation didn't match the design you wanted to put
18 on it, then you couldn't put the design on it. So it
19 is incumbent upon the applicant to create a design
20 envelope. Now, he may do that by referencing an
21 existing plant or another design, but he does -- we do
22 have to have a certain amount of parameters that do
23 impact and interface with the environment defined.
24 And I think the Commission's position was they thought
25 we were capable of defining that design envelope.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Now, there's a risk there for the
2 industry. They could get approval for a site and 20
3 years from now have the plant they want to put on it
4 and that plant isn't going to fit and they've got to
5 start over again. But that's a business risk that
6 they have to choose to take, and it's not the NRC
7 business to dictate that business risk. I think
8 that's closer to what the Commission kind of said. It
9 wasn't an all or nothing kind of issue. It does deal
10 with some aspects of design.

11 MR. CAMERON: Okay. Thank you, Frank.
12 And I see Bob Bishop nodding his head affirmatively in
13 agreement with that. Anybody else on that particular
14 issue? Any comments on, again, on whether to proceed
15 with rulemaking or solely rely on existing guidance or
16 revise the guidance? Bob Bishop talked about the key
17 criterion being stability. Any comments on that?
18 Okay. Frank? I'm glad you asked him to be here.

19 MR. GILLESPIE: I feel like -- no. I was
20 going to wear my sweater that had the American flag on
21 the front of it and wrap myself in the flag. I just
22 get nervous when we deal in absolute statements, like
23 the stability is the only reason [for rulemaking]. I
24 will suggest that in the national interest that NEPA
25 -- public disclosure of the basis for the various

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 alternatives is also an important part of the whole
2 process and is part of the NRC's piece of it. And it
3 relates to a comment I made. If you are firm and
4 believe in your decision process, you have within a
5 utility [a process] that gets you to the business
6 decision to select a site, then some subset of that
7 information undergoing public scrutiny on why that's
8 a good site, we shouldn't be afraid of that, which is
9 -- and this process shouldn't have to do a whole lot
10 more, I don't think, than the logic you would go
11 through in actually making your commercial decision
12 for a site.

13 So I think there is two things. One is,
14 as Bob said, stability, and we all want stability, and
15 the other one is the idea that public scrutiny has to
16 be allowed, I guess mandated.

17 MR. CAMERON: Okay. Frank, let me -- and
18 I want to ask you a question and everybody in the
19 audience on this too, and I'm not trying to -- I know
20 this is without prejudice to --

21 MR. GILLESPIE: Oh, this is actually fun,
22 so it's --

23 MR. CAMERON: -- without prejudice to
24 whatever the staff, whatever the Commission ultimately
25 decides to do. But in terms of the public disclosure

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 or transparency of the decisionmaking process, is one
2 of the options, in other words, any better than the
3 other for accomplishing that? In other words, do you
4 need to do a rulemaking to provide that -- best
5 provide that transparency or can that transparency be
6 providing by enhancing the guidance or the standard
7 review plan?

8 MR. GILLESPIE: I think the transparency
9 could be provided, actually, without changing the
10 rule, but without changing the rule you probably can't
11 provide the assured stability that the industry wants.
12 So I can't take both objectives out of context, not
13 with each other, because clearly anything the staff
14 reviews goes on the docket, and if the staff doesn't
15 have enough information, they're going to request
16 additional information. So I think to achieve what we
17 need to achieve, we do need to keep all the options
18 open. I wouldn't want to foreclose any option,
19 because we want stability but we want public
20 disclosure and scrutiny also. So I think you have to
21 answer both at the same time and they're not mutually
22 exclusive.

23 MR. CAMERON: All right. Thank you. Let
24 me get some other views on the point that Frank
25 brought up. Bob?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. BISHOP: Lest the record suggest that
2 I thought that stability was the only goal, that's
3 clearly what I intended. That was in the context of
4 what regulatory process to use. But while we're
5 talking about the fundamental concepts, I would add to
6 stability and public participation the fact that --
7 let me state it just to make the record clear, the NRC
8 has got to do what the law requires. The next logical
9 aspect of that is that the NRC should also make sound
10 policy decisions about what's the best way to
11 accomplish what the law requires, and I think there
12 are a number of options that we will hopefully get to
13 today, but they all, at heart, have within them the
14 context that you've got to make sure you satisfy the
15 law.

16 Then it's a question of what's the right
17 policy decision on how to meet those legal
18 requirements, as well as the need for and the
19 desirability of public participation, and I would
20 suggest therefore then the stable regulatory process,
21 a predictable result so that licensees and members of
22 the public can understand what the rules are and
23 ensure that they comply with them so that you get
24 decisions, plus or minus, up or down, in a very timely
25 fashion without the needless waste of resources on

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 things that, in the larger scheme of things, really
2 shouldn't matter.

3 MR. CAMERON: Okay. Thanks, Bob. And,
4 Jim, I don't want to just pick on you or focus on you
5 as any other comments, but I just wanted to see do
6 you have any comments on the transparency of the
7 decisionmaking process issue at this point? All
8 right. Anybody else want to say anything on these
9 particular issues of moving forward? And I think that
10 Bob's point about, quote, "satisfy the law," unquote,
11 there will be some specific issues that we discuss
12 today that will bring that criterion in.

13 Okay. Well, Lee, thank you. Thank you
14 very much. That was an excellent presentation. Good
15 overview. And I think that we're going to be ready to
16 talk about specific issues. The first one is the --
17 what type of approach we use. It is 10:15. Do we
18 want to take a short break to get coffee, other things
19 at this point? Our agenda calls for us to be where --
20 10:20. So I guess we're amazingly on schedule here,
21 so why don't we take a break for, say, 20 minutes,
22 give you time to get up and get coffee. I'm going to
23 ask someone who knows the answer to this question, did
24 the visitor badges -- can you just go upstairs to the
25 coffee shop? Okay. Good. Well, let's reconvene at

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 25 to 11, and we'll get started with specific issues.

2 (Whereupon, the foregoing matter went off
3 the record at 10:15 a.m. and went back on
4 the record at 10:40 a.m.)

5 MR. CAMERON: Okay, everyone. Let's get
6 started with the rest of the discussion. And I just
7 want to sort of review the bidding, so to speak, from
8 our previous discussion. A couple people during the
9 break said, "Well, why are we here? What are we
10 trying to accomplish?" And I think you heard people
11 express a number of goals: ensure that there's
12 effective public participation in the process,
13 stability, predictability, transparency of the
14 decisionmaking process, certainly efficiency could be
15 an objective, in other words, don't unnecessarily
16 waste money, although people might frame that
17 differently, we heard make sure the law is satisfied.
18 So keep those in mind as we proceed through our
19 discussions.

20 One issue that we're going to come back to
21 that's in the parking lot is we heard Bob Bishop
22 mention the fact that, well, you can do a rulemaking
23 faster than the standard time that we do rules now if
24 indeed we did a rulemaking, and I think we'd like to
25 put a finer point on that before we go home today to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 maybe get some input from Bob and others as well. How
2 would you suggest that we do that? So think about
3 that and we'll have a discussion on that.

4 And with that -- and I was wrong, I
5 thought we were ahead of schedule or on schedule, and
6 I felt better when I found out that we were behind,
7 because that's usually where we are. So we're going
8 to go to Lee Banic now to just tell us a little bit
9 about the next discussion issue, which is if there
10 were a rulemaking, there's two possible approaches to
11 use for a process for the selection of candidate
12 sites. Lee?

13 MS. BANIC: Okay. The purpose of having
14 an approach to select sites is to end up with a set of
15 alternative sites that are among the best to be
16 reasonable [reasonably] found and to bound the search.
17 To select sites there are at least two possible
18 approaches. One would focus on the process to select
19 sites, and another would focus on the sites
20 themselves. Or we could use an approach that has two
21 steps: first consider the process and then the sites
22 themselves. In fact, our Environmental Standard
23 Review Plan looks at both the process and whether the
24 sites meet certain criteria.

25 An approach that focuses on the process

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 would ensure that the process considers the aspects of
2 a site that could affect its acceptability as a
3 possible site. One would ask such questions as does
4 the process consider state and federal water and air
5 requirements? Does it consider endangered species,
6 critical habitat, wetlands? Does it violate or ignore
7 any state planning regulations? Using an approach
8 that focuses on the sites themselves or is a second
9 step of the approach I just described, one would ask
10 would a plant meet state and federal water and air
11 requirements if built on the site? What would be the
12 effect of building and operating a plant there beyond
13 wetlands, critical habitat, migratory pathways? And
14 do the sites meet state planning regulations? What do
15 you think?

16 MR. CAMERON: Okay. First of all, let me
17 ask whether there's any -- is it clear what the
18 difference is between these two approaches? Okay.
19 Any comment on whether one approach is better than
20 another? And I know that you sort of have to suspend
21 disbelief in a sense here because there's questions
22 that could be answered on other issues that would
23 eliminate the need to focus on either of these
24 approaches. But assume that we were going forward --
25 if we were going forward with a rulemaking, is one of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 these approaches any better than the others or should
2 it be a combination approach? Is this question worth
3 considering? Let me go to Geary Mizuno from our
4 Office of General Counsel to just get a clarification
5 on something. I take it that's what you want to do.
6 All right.

7 MR. MIZUNO: This approach or these
8 possibilities do not depend upon whether there is a
9 rulemaking, [they] also [are an] approach that [could
10 apply to] guidance.

11 MR. CAMERON: Thank you, Geary. An
12 important clarification: It doesn't necessarily
13 depend on a rulemaking. Comments on this? Jim, do
14 you have any preliminary thoughts on this?

15 MR. RICCIO: Just that I would prefer to
16 see you guys go to rulemaking rather than reg guides.
17 Reg guides aren't enforceable and at least the public
18 would have an opportunity to participate in any
19 potential rulemakings.

20 MR. CAMERON: Okay. And we're going to
21 apply that comment generally across the board, not
22 just on this particular issue. But you heard Jim's
23 recommendation on go to rulemaking for the reasons he
24 offered. Anything on approach at this point? Bob?
25 Lee, is there any particular question that you want to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 ask people on this selecting alternative sites or any
2 of the NRC staff? Is there any burning point that we
3 need to get input on this particular issue? Okay. So
4 I guess that -- and I guess that what people are
5 saying or not saying here is either it's not going to
6 make a difference whichever approach you take or
7 there's not enough information now to be able to say
8 one way or the other. Patricia, do you have anything
9 on this?

10 MS. CAMPBELL: My name is Patricia
11 Campbell from Winston and Strawn. I guess I would
12 like to know if you have a concept, if you're going to
13 focus on the process, does that mean at the end you
14 actually -- or you just repeat the process?

15 (Informed mic is fritzzy.)

16 MS. CAMPBELL: Okay. My name is Patricia
17 Campbell from Winston and Strawn. I just would like
18 to know when you talk about focusing on the process,
19 is your concept that you would just review the process
20 that the applicant applied or would you actually end
21 up looking at the sites that they selected as a result
22 of the process? What is the real distinction between
23 these two, if you could just go into that a little
24 bit.

25 MR. CAMERON: Who would like to address

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that from the NRC staff?

2 MR. ZALCMAN: Barry Zalzman, staff. I
3 think part of the challenge is how to go about looking
4 at the problem. You can either have the top-down
5 approach or bottom-up approach, and this is what was
6 intended by the two different ways of slicing the
7 challenge. From the process perspective, we're asking
8 a certain set of questions. If you go back through
9 the articulations of what those questions would be,
10 they're not unlike what we would ask also at the site
11 level. Our process right now laid out within our
12 review plan is in fact to do a combination of the two,
13 looking at it from a holistic perspective first,
14 asking us has the applicant established a fair and
15 objective approach for selection of alternative sites?
16 What are the steps that they're going through to make
17 the judgments? And that's even before they actually
18 look at sites.

19 The alternative is you have sites
20 available to you either through ownership as an
21 applicant or through other siting processes where
22 you've looked for aerial extent, proximity to
23 transmission lines, a variety of other technical
24 factors, technology factors, considering endangered
25 species or wetlands and then offering them up and then

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 judging through the filtering process whether or not
2 they would be among the best that are possible
3 candidates for consideration. So all we're saying is
4 that right now our view is to look at both of those
5 issues. We're putting it out on the floor is there a
6 preferred methodology, is there an alternate
7 methodology, is there a concern on the part of an
8 industry representative or an applicant that has a
9 certain approach in mind that is more effective? This
10 is a question that we're raising as opposed to, if
11 you've had the opportunity to look at staff guidance
12 in this area, is it robust, is it fair, is it
13 objective?

14 Lee, you may want to use those questions
15 again, and I think the challenge to the audience may
16 have been that it was very abrupt when you asked the
17 question what do you think? But if you can step
18 through those same questions again from a process
19 perspective and then the site perspective, perhaps
20 that's a better opportunity for clarity.

21 MR. CAMERON: Okay.

22 MS. BANIC: If you're focusing on the
23 process, you could ask does this process consider
24 state and federal water and air requirements? Does
25 the process consider endangered species, critical

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 habitat, wetlands? Does it violate or ignore any
2 state planning regulations? If you focused on the
3 sites themselves or as a second step of the process
4 approach, you could ask would a plant meet state and
5 federal water and air requirements if built on the
6 site? What would be the effect of building and
7 operating a nuclear plant on wetlands, critical
8 habitat, migratory pathways? Do the sites meet state
9 planning regulations?

10 MR. ZALCMAN: Okay. So there the
11 questions are either, on the latter case, a focus on
12 sites. It's site-centric, looking for the site
13 outward, would it comply, as opposed to the process
14 where you're asking what are the fundamental filters
15 that you must go through.

16 MR. CAMERON: So let me see if I can
17 clarify this. If you focused on a process looking at
18 the types of questions that Lee put forth, then a
19 company, an applicant would be in compliance if they
20 could demonstrate that their process considered all of
21 those things, and the NRC would not look beyond that
22 as to what the actual answers were? I just want to
23 make sure that people understand what the implications
24 are of one approach versus another.

25 MR. ZALCMAN: Yes. In the end, you would

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 be looking at the individual sites, but it's process-
2 driven as opposed to the alternative where you're
3 looking at the attributes of a specific site complying
4 with each of the filters. And it's a very subtle
5 difference between the two, but it's an important
6 distinction. Our approach right now is to look at the
7 combination of the two, make sure that we haven't
8 overlooked one for the other.

9 MR. CAMERON: Okay. Let me ask if --
10 where we started on this discussion it seemed that the
11 conclusion was is that there wasn't any strong --
12 there wasn't a strong feeling one way or the other on
13 this particular issue. Having heard Lee and Barry,
14 does anybody want to offer anything more on this
15 particular issue? Okay. Russ? And please introduce
16 yourself.

17 MR. BELL: I'm Russell Bell with NEI. I
18 guess my part of my difficulty is that this issue is
19 linked to some of the larger questions before us, so
20 it's hard to speak to this particular choice. As I
21 understood Lee, a focus on the process would be
22 followed by a look at the sites in particular under
23 Option A there, if there is an A and a B option. I
24 think that from the industry's perspective and the
25 approach we put forward in our petition, as modified

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 in a letter last month that Lee identified, I think we
2 might put it this way, and I know I'll be corrected if
3 I have this wrong: To the extent the company, the
4 applicant looks at alternative sites, I think the
5 focus of the NRC review under NEPA ought to focus on
6 those alternative sites themselves. So I think I'm
7 focusing on the middle bullet there as preferable as
8 opposed to one that perhaps gets people into the
9 process for how those sites were selected. I think
10 that's consistent with the approach the industry's
11 recommending.

12 MR. ZALCMAN: This is Barry Zalcman again
13 from staff. One of the challenges we have is we have
14 a number of different venues that we're operating [on
15 under] the common theme [of site selection]. Lee
16 tried to point that out a little earlier. As a matter
17 of fact, tomorrow we have another meeting, the Early
18 Site Permit Task Force that's headed up by NEI. And
19 then we have three specific applicants that are likely
20 to be forthcoming later in the year.

21 The situation that we have with the three
22 applicants, which is considering expanded use of the
23 sites that already have nuclear facilities on them, is
24 different than a theme where we're trying to deal with
25 a regulatory framework that deals with all options, in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 fact, all the way through the greenfield. And I think
2 that's what Chip was trying to lay out at the outset,
3 and Frank had comments on that earlier, that if you
4 look at it from a greenfield perspective, certainly
5 that is a different bias than if you're using the
6 brownfield or a fully developed site with a potential
7 expanded use. So we don't want to confuse the
8 different venues. The material that NEI had provided,
9 both in a petition for rulemaking, the second venue,
10 which is the Early Site Permit Task Force and this is
11 a third venue, has use. But our objective, I think,
12 under this initiative is to focus on alternative sites
13 independent of specific applications or the
14 perspective applications that we see just before us.
15 So I think that's an important distinction, and we
16 should keep that in mind that we're looking at
17 alternative sites for the whole gamut of applications
18 that we are ever likely to see.

19 MR. CAMERON: And in regard to that,
20 Barry, is it -- are you suggesting that one of these
21 approaches versus the other might be preferable for
22 the type of activity that we're involved in at the
23 time?

24 MR. ZALCMAN: Well, I think when -- and
25 Lee will go through a little more detail on how we go

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 about looking at the criteria for judgments, how the
2 staff conducts its evaluation. And in the end when
3 you look at expanded use of an existing site that
4 perhaps has few if no defects, how is that comparable
5 to sites that do have defects, and what is the extent
6 of the search, and you may have to go forward. What
7 is a reasonable set of alternatives where perhaps an
8 existing site that has no foreseeable impacts, even
9 from a cumulative perspective, in other words, there's
10 plenty of water, we don't have, as Jim pointed out,
11 Mr. Riccio, there were challenges in water space
12 perhaps at some site. If there's abundance of water,
13 if there's abundance of land, there's no major
14 population center, we're not dealing with critical
15 habitats, in all respects using our filtering criteria
16 if everything appears to be environmentally
17 acceptable, and I'll put that in quotes or italics, to
18 what extent should we be looking, we meaning the
19 collective, not just the applicants or the Agency but
20 also the general public, to what degree should we be
21 looking at an alternative? What constitutes a
22 reasonable search for alternative sites compared to a
23 site perhaps that may have a number of challenges
24 already? Would we have to look further? So these are
25 questions to stimulate discussion, but how we go about

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 looking at expanded use of an existed [existing] site
2 may be far different than how we look at the
3 greenfield, and I think that was a point that Frank
4 was making earlier.

5 MR. CAMERON: Okay. Well, I think that
6 distinction is going to apply to a number of the
7 issues that we talk about, and it's not just focused
8 on this particular issue. Perhaps we should move into
9 the -- as Russell suggested, that it may depend --
10 which approach you take may depend on how you answer
11 some of the other issues. So maybe we should move
12 into the first specific issue, which is region of
13 interest, at this point. And can you tell us a little
14 bit about that, and then we'll discuss it?

15 MS. BANIC: What is a region of interest?
16 It's the geographic area considered in searching for
17 candidate sites. Why have a region of interest? To
18 bound the search and to establish a slate of the best
19 sites that can reasonably be found. In the past,
20 likely areas for regions of interest were the state in
21 which the applicant would locate the proposed site, or
22 the applicant service area. Applicants could expand
23 or contract these areas depending on various factors,
24 such as environmental diversity, costs, state laws.
25 Now, deregulation of the electric utility industry

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 might affect the region of interest, because in a
2 partially deregulated industry, which we have today,
3 the agreements to buy power from a merchant plant
4 could involve customers in many states because
5 merchant plants have no established service area.

6 Remember that a merchant plant is an
7 unregulated plant operating as a merchant in an open
8 market, whereas an electric utility is a regulated
9 entity with rates established by itself or by the
10 government. Merchant plants are constrained mainly by
11 the economics of securing a site and access to
12 transmission lines. It may not be reasonable,
13 however, to expand the region of interest to include
14 areas at great distances from the proposed site.

15 Given deregulation, one must consider
16 various, sometimes competing factors, such as
17 population, that is, we want to site away from highly
18 populated areas but near the customers; the projected
19 power pool supply and demand, meaning where the
20 customers are likely to be, how much power the
21 customers have, whether it's a shortage or an excess,
22 and the region of interest should be where there's a
23 shortage; multiplicity of environmental settings,
24 meaning many settings would not be good to site a
25 power plant, such as in wetlands or critical habitat;

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 resource areas, this concerns how applicants would get
2 supplies in, such as fuel, by boat, and is there a
3 sufficient labor force.

4 Now, what if we didn't have a region of
5 interest? What if it was up to the applicant to come
6 up with alternative sites that meet their needs,
7 efficient power production and our site suitability
8 requirements using process or site approaches? We
9 could say to applicants, "You tell us what sites you
10 selected and how you selected them" and then evaluate
11 the reasonableness of the selections.

12 So now we'd like to hear what you think
13 about this. I'll turn the meeting over to Chip to get
14 your views.

15 MR. CAMERON: Lee, to make sure that we
16 all understand, one possible option here would be to
17 not worry about specifying a region of interest at all
18 --

19 MS. BANIC: That's right.

20 MR. CAMERON: -- but just to look at the
21 reasonableness of how the --

22 MS. BANIC: Right.

23 MR. CAMERON: -- applicants looked at
24 this. Okay. Comments on region of interest? We're
25 going to go to Bob Bishop, NEI

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. BISHOP: This is Bob Bishop again. I
2 guess in the interest of time let me just suggest my
3 answer is B, as, Lee, as you laid them out. Region of
4 interest is a creation of the NRC's analytical
5 process. There is no legal bound for that. I would
6 suggest, as Barry Zalzman suggested, we need to keep
7 in mind not only the early site permits, which are
8 those most topically before the Agency, but how this
9 is going to apply to everyone in every context.

10 And I guess I would just underscore and
11 state as briefly as I can our position, as we've
12 documented to the NRC, is that the NRC need not, and
13 in fact the law does not require, I would suggest the
14 NRC has not the ability to evaluate for itself what
15 are possible sites that somebody someplace might use,
16 might want to use, might be alternatives to that which
17 has been suggested. I mean, Chip, as you said
18 earlier, a lot of these things roll back on one
19 another, but I think at bottom our view is that the
20 NRC should be guided by what the applicant has
21 evaluated, the business decisions that the applicant
22 has made, the process by which the applicant conducted
23 that evaluation, and that should be the limit to the
24 Agency's need for, the Agency's consideration of
25 alternatives.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 The Agency need not try to evaluate
2 whether geographically or philosophically or
3 economically there is some other site, some other
4 place that might be suitable. I think the law
5 provides a clear basis for the NRC to conclude that it
6 is the applicant and the applicant's analysis and the
7 applicant's alternatives which are before it, which it
8 should evaluate, and it can limit itself to that
9 thoughtful analytical process.

10 MR. CAMERON: Okay. Bob, let me ask you
11 just a clarifying question on that. Does that premise
12 apply to more than just the region of interest issue?
13 Would it also, for example, apply to specifying number
14 of sites?

15 MR. BISHOP: Yes.

16 MR. CAMERON: Okay. Do we have --

17 MR. BISHOP: I'm sorry, would you like a
18 longer answer?

19 MR. CAMERON: No.

20 MR. BISHOP: Oh, good.

21 MR. CAMERON: I mean I feel -- I'm glad
22 that I got that one-word answer from you. Okay. So
23 everybody, I think, understands what Bob is saying
24 there. Are there other views on requirements for
25 region of interest? And I think, you know, we could

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 go to -- yes, sir, and please introduce yourself to
2 us.

3 MR. POLONSKY: Alex Polonsky with Morgan
4 Lewis. I just want to echo what Bob said. The
5 introduction earlier this morning stated that NEPA, as
6 a statute, states only that an agency need to look at
7 a reasonable range of alternatives. It doesn't
8 identify the number of sites, it doesn't provide
9 criteria. But that in itself is something that can
10 easily be met as long as for most applications some
11 alternatives are provided and that those alternatives
12 are deemed to be reasonable. And I'll just leave it
13 at that.

14 MR. CAMERON: Okay. Thank you, Alex. And
15 I guess that gets to the big question that's posed by
16 one of the positions in the first NEI petition, which
17 is even though you rely on looking at what the
18 applicant looked at, are there any minimum
19 requirements that could be set beforehand for what the
20 applicant should look at? Bob Bishop has suggested
21 that, well, let's not specify region of interest,
22 let's not specify a required number of sites. But is
23 there anything that could be specified as a minimum in
24 terms of what the applicant should do in these cases?
25 And does anybody else have a comment on these issues?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 George, do you want to chime in on this at this point?

2 All right. Anybody have anything to offer on this?

3 Okay. And this may be a short discussion
4 also in terms of number of sites, and Dennis Allison
5 was going to talk to us a little bit about that.
6 Dennis?

7 MR. ALLISON: Okay. The question here is
8 simply should the NRC specify some minimum number of
9 sites that need to be considered? And if you think
10 that it should, two approaches that come to mind
11 rather quickly are the approach taken in the 1980
12 proposed rule and the approach that's being taken by
13 at least one of the prospective ESP applicants.

14 In the 1980 proposed rule -- we have
15 another slide now -- in the 1980 proposed rule, there
16 were a set of rules laid out that said at least four
17 sites, one proposed and three alternatives, this is
18 tied with the region of interest, by the way, at least
19 one site for each type of water source, physiographic
20 unit in the region of interest, and at least one of
21 the alternative sites ought to have the same water
22 source as the proposed site. So those are the rules
23 laid out in 1980 in the proposed rule.

24 The other approach, which is on the next
25 slide, is one taken by -- and I just happened to be at

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 a meeting and hear what Virginia Power -- or Dominion
2 was saying about the North Anna application that
3 they're planning to submit. They're planning to --
4 that applicant is planning to submit an application
5 for an early site permit at an existing power plant,
6 the North Anna Power Plant, and it sees the universe
7 described as this way: Another nuclear power plant
8 site, Surry, in this case, an industrial site
9 controlled by the applicant, probably a coal-fired
10 plant, I'm not sure, but on a generic basis and a
11 generic greenfield site.

12 And the idea there -- there's some
13 limitation built into that. The idea is, for
14 instance, I can describe a greenfield site on a
15 generic basis because unless the site that has already
16 been cleared and has transmission lines built to it
17 and so on has something pretty wrong with it, I can
18 just look at a generic greenfield site and say that's
19 not going to be obviously superior. So that's the
20 general idea with that approach.

21 So I guess I would ask, and I think, Bob,
22 you may have already answered the question, I'm not
23 sure, but if we write a rule or guidance, whichever,
24 should we specify the number of sites?

25 MR. CAMERON: Let's start off there to ask

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Bob a specific question on this. Bob, what have you
2 -- although you indicated that there shouldn't be a
3 specific number of sites required, what do you think
4 about this particular approach that's being taken in
5 the North Anna case, so that we can get an idea of
6 where you might be on these issues?

7 MR. BISHOP: I just wonder if, Geary, you
8 want to go first?

9 MR. MIZUNO: I'd just like to ask Dennis
10 Allison --

11 MR. CAMERON: This is Geary Mizuno.

12 MR. MIZUNO: Geary Mizuno, I'm sorry, of
13 the Office of General Counsel for NRC. Dennis, I
14 wonder whether you could first explicate for the 1981
15 rule why the alternatives focused primarily on water
16 sources and whether that indicated some understanding
17 or viewpoint taken by the NRC with respect to the most
18 significant -- potentially significant environmental
19 impact that was associated with the ultimate heat sink
20 or whether that was just something that we just
21 decided to use without any real thought? And I guess
22 whether you answer that or whether you let Bob Bishop
23 go first, I guess I'd leave that up to you.

24 MR. ALLISON: Well, let me address that,
25 Geary. If I understand the thing correctly, and I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 wasn't involved in drafting the 1980 rule, the
2 proposed rule, but, you know, I think one of the most
3 significant environmental impacts you're going to have
4 is on the water source and particularly with once-
5 through cooling. If you're on a river site, you're
6 liable to heat that river pretty significantly. It
7 might have an effect on the aquatic life and so on.

8 Frank said earlier that probably in the
9 future we're probably talking about using cooling
10 towers in any new plant, and that dramatically reduces
11 the impact on the water source. But the water source
12 is very important. Does that sound right? Is that
13 what you were looking for?

14 MR. CAMERON: Geary, I guess you should
15 use -- why don't we get you up there and just finish
16 this off. And, Geary, if you have an answer --

17 MR. MIZUNO: No, I don't. I need to know
18 technically whether it represented our views as to
19 whether that was the most significant environmental
20 impact or at least near the top, because I certainly
21 can see that there may be a -- if we felt water
22 sources was the most important environmental impact,
23 then the concept of having an obviously superior site
24 -- not having an obviously superior site, if it's
25 already sited on an existing site, may not necessarily

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 prove true, because there's presumably already a water
2 use being there, and if you take more water, then you
3 could have a significant impact. I mean having
4 another -- it isn't obviously clear. Whereas if water
5 was just one of several things, then I think it leaves
6 a little bit more flexibility open to us.

7 MR. ALLISON: Okay. Yes. I think -- yes.
8 That's a good point. If you're going to put another
9 plant at North Anna, which is on a river, you're
10 probably going to use a cooling tower. And even if
11 you put another plant at Calvert Cliffs, which is on
12 a very large bay, you're probably going to put a
13 cooling tower there. That would be my guess. You're
14 not going to take any more water than you're already
15 taking.

16 MR. CAMERON: Okay. Let's go to Bob,
17 using this as sort of a template for discussion and
18 then see if other members in the audience want to talk
19 on this point.

20 MR. SMITH: This is Marvin Smith with
21 Dominion. I just wanted to point out that in
22 reference to this discussion on water, water is only
23 one of many issues that you'd look at in a given
24 siting. It may have been perceived at the time that
25 that 1980 rule was promulgated that that would be the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 major thing that you might look at, but, however, I
2 think, as Barry has pointed out, there are quite a
3 variety of issues that you look at in terms of
4 assessing any particular site, and certainly water is
5 only one of a large number of issues that are
6 evaluated. It's not in most cases a key determining
7 factor.

8 MR. CAMERON: So, Marvin, what you're
9 saying is that don't rate water above any of the other
10 important issues.

11 MR. SMITH: I don't see any basis for
12 doing that, so I don't think that that 1980 guidance
13 is really particularly useful in terms of either how
14 many sites you might want to look at or singling out
15 one particular factor. As was pointed out in the
16 introduction here, emergency planning, which is not
17 traditionally an environmental factor but is certainly
18 one you would highly consider in siting any nuclear
19 facility, is perhaps -- again, that's an important
20 factor to look at. I won't say it's the most
21 important either, but there are a variety of factors
22 that you would look at in any siting evaluation, and
23 singling out any single factor is not really, I think,
24 an appropriate approach.

25 MR. CAMERON: Okay. Thank you very much,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Marvin. Bob?

2 MR. BISHOP: If I -- this dialogue, I
3 think, was very helpful -- just step back for a
4 moment, to me it underscores that we need to keep in
5 mind that NEPA requires an evaluation of the
6 environmental impact. Among other things, it does not
7 require that a site be picked on the basis of any one
8 factor being greater than any other factor. I think
9 it would take you to the bottom line that if there is
10 an environmental impact that is so large as its impact
11 would not be acceptable, then it would lead the
12 Commission to a decision consistent with its authority
13 under the Atomic Energy Act not to license that site.
14 But NEPA doesn't force you to a conclusion, it only
15 establishes a process to ensure that the Agency and,
16 in turn, the public are informed of the basis upon
17 which the environmental impacts were evaluated.

18 That leads me full score to say that I
19 think this is a very sound, logical, thoughtful
20 approach. I think in the context of this discussion
21 water, unless it is going to have a critical,
22 environmental impact, should be weighted no higher or
23 lower than any other factor that has to be considered
24 by the Agency in its determination of the
25 environmental impacts. But none of them are

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 determinative, and I think we need to keep that in
2 mind as we go through this whole discussion, that NEPA
3 is to require an informed decision, it is not to
4 mandate a specific result.

5 MR. CAMERON: Okay. Thank you on that
6 particular issue, Bob, but I still wanted to get your
7 views using this particular approach as a context for
8 what your feelings might be on criteria that would
9 guide the applicant in terms of what they should do.

10 MR. BISHOP: I think it is legally sound.
11 I think it represents a wise exercise of the
12 applicant's responsibilities under the law. I think
13 that the regulation should allow exactly this kind of
14 approach. And I think as we just -- I mean that is
15 what we're trying to get to is a sound, logical,
16 thoughtful, reasonable process of which this is, I
17 think, an approach. I wouldn't say that this is what
18 everyone has to do, but I think that this demonstrates
19 a thoughtful way to satisfy NEPA's requirements.

20 MR. CAMERON: Okay. So that what you're
21 suggesting is that this is a sound approach, but it
22 wouldn't necessary be something that you would want to
23 put forth in the regulation every applicant has to
24 look at these. But it might be offered as an example
25 of some sort of a performance-based approach, to use

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that terminology. Okay. Jim, do you have anything on
2 this, and, again, I apologize for focusing on you.
3 Anything?

4 MR. RICCIO: No.

5 MR. CAMERON: Okay. Barry?

6 MR. ZALCMAN: One of the points that you
7 made earlier, Bob, on the stability and predictability
8 of the process, while the 1980 vintage [proposed rule]
9 we were looking at, and I think this is the
10 physiographic differences [element of the proposed
11 rule], you look at the water setting, the presumption
12 is that we've already resolved the issues like
13 metropolitan siting. But we're looking at different
14 regimes for where these sites may be selected. Is it
15 important to look at physiographic differences, a site
16 on a large water body versus a site on a river versus
17 using groundwater versus using waster water. I mean
18 those are all different options for getting sufficient
19 water into the mix.

20 And the other, which is the issue from an
21 earlier slide, while we're not hardening the number
22 for a slight slate of alternative sites, is there
23 rational approach for what could constitute an
24 acceptable, reasonable search? Are we looking at
25 single units of sites, tens of sites, hundreds of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 sites? If we look at Frank's comment from the
2 Atlantic to the Pacific, there's a lot of sites across
3 the country, but what constitutes a reasonable search
4 for alternatives? And I just wanted to stimulate that
5 discussion since it's part of this element within the
6 dialogue.

7 MR. BISHOP: If I can go back just for a
8 moment to one of my earlier comments, I think that the
9 NRC's approach, obviously, just to rephrase a few of
10 the specifics, the principles that we have to
11 establish is that, again, it has to be lawful, it has
12 to be thoughtful, it has to be reasonable. I think
13 that the laws are very clear that the NRC need not
14 embark upon its own evaluation of sites to try to
15 identify a site anywhere within a geographic region,
16 within an economic marketplace region, within the
17 borders of the country. Any of those, I think, would
18 be a misuse of Agency resources.

19 If time were not limited, if resources
20 were not limited, it might be an interesting exercise,
21 but I think that those first two premises are true.
22 I think what the NRC has to do under the law, what as
23 a matter of policy it should do, is evaluate the
24 process that the applicant used to determine, perhaps
25 not whether they would choose to do it differently, as

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the courts are not allowed to decide for an agency
2 whether they would have done it different given the
3 same facts, but rather was this is a process that was
4 not unreasonable? Not could it be done differently,
5 not because somebody else did it differently is that
6 a better way to do it, but is this process a
7 reasonable one that the applicant went through? And
8 whether they looked at four sites or three sites,
9 their region of interest, their economic region of
10 interest may be far different than a geographic
11 nature.

12 And, again, I think the bottom line has to
13 be what is it the law requires, what is it that
14 satisfies the applicant's need? And the applicant's
15 need is to determine whether this site fundamentally
16 will be able to be licensed for potential use for a
17 nuclear power plant. It's not is there some other
18 site that somebody could dream up. I think that is
19 the height of remote and speculative action on the
20 part of the Agency which it need not and should not
21 pursue.

22 MR. CAMERON: Okay. Thank you, Bob.
23 Geary Mizuno?

24 MR. MIZUNO: Sorry. I have a question for
25 Bob.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. CAMERON: Go ahead.

2 MR. MIZUNO: So going back to the previous
3 discussion, you're really accepting a -- you're
4 advocating a process approach which really, as I
5 understand it, focuses on the acceptability of the
6 site that is being proposed by the applicant. That's
7 the way I understand the industry, or at least NEI's
8 proposal.

9 MR. BISHOP: Well, I think --

10 MR. MIZUNO: You were saying that our
11 review should focus on the process, not on the --

12 MR. BISHOP: Yes and no. I find it
13 somewhat of a false dichotomy to say it's either got
14 to be the site or the process. I think, obviously,
15 the process has to be a reasonable one, but that
16 bottom it's the site that's important and it's
17 evaluating other alternatives that the applicant has
18 proposed is the best way to evaluate the acceptability
19 of the alternative, and that's what we're after here.

20 MR. MIZUNO: So we're focusing on the
21 process for choosing candidate sites, including
22 alternative sites, or are we --

23 MR. BISHOP: Yes. Yes.

24 MR. MIZUNO: Because it really is a very
25 different perspective. Is the NRC's review going to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 be focused on did the applicant have an appropriate
2 process for identifying the candidate site or the
3 proposed site and a slate of alternative sites or
4 ignoring whether that process had A, B, C elements or
5 whether it's reasonable or unreasonable, just looking
6 at the bottom line, are these sites, this site and a
7 set of alternative sites, okay? I mean first of all,
8 is the existing site acceptable, and then are the
9 sites that are being proposed obviously superior and
10 do they constitute a reasonable slate of sites without
11 regard to the process itself? You could have fatal
12 flaws in the process but through happenstance you end
13 up with an acceptable set of alternative sites, and
14 under NEPA, that constitutes a reasonable class of
15 alternative sites to look at, regardless of the
16 acceptability of the process.

17 MR. CAMERON: Bob, then, please, I think
18 it's important to clarify this, but what I heard is
19 that you're not just saying look at whether the
20 applicant's process for selecting the sites that they
21 evaluated was reasonable but do that plus also take a
22 look at the substantive environmental impacts that
23 were evaluated and see if that was reasonable. Could
24 you clarify what you're saying?

25 MR. BISHOP: I'll try.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. CAMERON: Okay.

MR. BISHOP: I think what you have to do is what I would recommend the Agency do to satisfy NEPA, and, again, we are suspending belief on the current regulatory system and thinking about what the regulatory system should be to meet all the criteria that we've already identified. I think the NRC has to understand the process by which these alternative sites were identified. I don't think that means that they have to approve that this was the right process, that each of these factors were the right factors, that they would have chosen different factors and therefore that process is invalid. So I guess a way of trying to bring it to closure is to say that the process taken to identify these alternatives proposed was a reasonable one. It may not be the same one the staff would choose, I don't think that ought to be the criteria. It ought to be does this make sense? And therefore this suite of sites, however many or few they are, are they an appropriate way to satisfy the Agency's NEPA responsibilities without the Agency feeling an obligation, which I do not believe it has, to go out and do its own identification of potential sites somewhere on some basis.

MR. CAMERON: Anybody else from the NRC

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 staff have, including Geary, have a question about the
2 NEI-recommended approach? Did that answer your
3 question, Geary? I just want to make sure that it's
4 clear.

5 MR. MIZUNO: Personally, I'm still
6 unclear, but I think -- I don't want to belabor the
7 point. I guess my point -- the one thing that I still
8 have a lingering legal concern is that Mr. Bishop
9 keeps focusing in on the applicant, and really,
10 ultimately, the NEPA responsibility falls upon the
11 Agency. So we need to -- the Agency needs to
12 articulate how it satisfied the NEPA obligations and
13 whether the NEPA obligation is going to be satisfied
14 because it reviewed the process or reviewed the
15 candidate of sites and determined that they were
16 acceptable. That's what I'm trying to focus on.

17 MR. BISHOP: To put a finer point on it,
18 I think the Agency has to satisfy itself as to both,
19 but the Agency need not, absent some fatal flaw, and
20 let's presume for a moment that any applicant does
21 what they think is the right thing to do rather than
22 get into scenarios about not. But I think at bottom
23 the Agency has no ability -- the Chairman acknowledged
24 in Senate testimony now almost two years ago that this
25 is not an area where the Agency has expertise, and I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 don't think it should develop expertise to go out and
2 look at zoning criteria and other facets. At heart,
3 it needs to, and I think the laws are very clear on
4 this, evaluate what the applicant proposed and does
5 that satisfy the responsibilities under the Atomic
6 Energy Act as well as under NEPA?

7 MR. CAMERON: Okay. Thanks, Bob. Let's
8 see if anybody else in the audience -- Dave?

9 MR. LEWIS: Dave Lewis with Shaw Pittman.
10 One of the reasons why these questions are so hard to
11 answer when you're looking at the issue globally,
12 you're looking at how do I come up with criteria for
13 any circumstance? First, in building a plant at a
14 greenfield site as opposed to somebody proposing to
15 build a plant at an existing site is that -- I think
16 it's impossible to come up with one set of criteria
17 that fits all circumstances. What is reasonable, and
18 that's what you're trying to determine, how do you
19 satisfy NEPA's rule of reason, depends on what is the
20 proposal and what are the circumstances of the
21 applicant?

22 You do in fact need to look at the
23 applicant for two reasons. One is the applicant's
24 circumstances will determine what is reasonable. If
25 you're a public utility with a defined service

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 territory and powers of eminent domain and you don't
2 have nuclear plants and you're going to build at a
3 greenfield site, you might have a very different
4 process than if you're a merchant plant with one or
5 two nuclear sites that are already developed and
6 already fully evaluated and your business need is to
7 determine can I put another reactor at that existing
8 site. So the applicant's circumstances will in fact
9 define what is the scope of reasonable alternatives
10 that should be considered.

11 Also, under NEPA, it's the applicant's
12 needs and purpose that helps define the scope of
13 alternatives to be considered. So for both those
14 reasons, in fact, you may say why am I looking at
15 process, why am I looking at the applicant's process,
16 should I be coming up with alternative criteria, but
17 I think the analysis is always going to end up looking
18 at what is the applicant's circumstances and what are
19 the applicant's needs in defining what is reasonable
20 to -- what does the rule of reason require in this
21 particular application?

22 MR. CAMERON: Okay. Thanks, Dave. Any
23 questions on what we're hearing here or any other --
24 any suggested approaches that might be different from
25 what we're hearing? Okay. Thank you, Dennis.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 And, you know, we're on the emergency
2 planning issue at this point. Let me check in with a
3 process question for all of you. Oh, no?

4 MR. ALLISON: Not yet. There's one more.

5 MR. CAMERON: Oh, God, that's an important
6 one too. Good. Let me make this suggestion anyway.
7 Sorry about that. Do we want to try to run through
8 these and get done by -- I think we might be done by
9 12:30 or one at the latest rather than taking a break
10 and coming back? Does anybody have any opinions on
11 that? I see some people shaking their head let's run
12 through and get this done, but is there anybody else
13 who has a different view? All right. Well, let's
14 just keep going. And, sorry, Dennis, are you going to
15 do the obviously superior?

16 MR. ALLISON: Okay.

17 MR. CAMERON: All right.

18 MR. ALLISON: Well, the first one is an
19 extension of what we've been talking about, region of
20 interest, number of sites, and this one is should the
21 NRC -- the question, should the NRC specify when
22 someone other than the applicant can introduce another
23 candidate site to be evaluated against the proposed
24 site? And first thing I would say is that a
25 requirement like that might not be appropriate. And

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the way it would not be appropriate is if you can
2 imagine that we could write a rule that's reasonably
3 clear and would lead you to a selection of -- an
4 appropriate selection of sites. Then you wouldn't
5 need to have any rules that say, well, the staff can
6 introduce another site or another three sites within
7 30 days of a certain date. The staff would call for
8 more sites if you didn't meet the rule. If you met
9 the rule, then that's [that] -- the same thing with an
10 intervenor. And [an] intervenor would not be allowed
11 to say, "I want to look at more sites." They would be
12 allowed to challenge the fact that you've met the rule
13 and say, "I don't think you've met the rule." So that
14 would be the question. So it [the introduction of
15 alternative sites by non-applicants] may not be
16 appropriate.

17 But, nevertheless, the 1980 proposed rule
18 did have some conditions, and it said people can
19 introduce additional sites to be reviewed if there's
20 a reasonable showing that the proposed additional site
21 is at least another acceptable site. And the staff or
22 an intervening party could propose an additional site
23 within 30 days after the first special pre-hearing
24 conference. The Atomic Safety and Licensing Board
25 could propose additional sites within 30 days after

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the issuance of the draft environmental statement. So
2 that proposed rule would put that kind of a structure
3 in place. Like I said, it may or may not be
4 appropriate to try to do that.

5 MR. CAMERON: Okay. Comments on whether
6 it's appropriate in any circumstances or a
7 circumstance for someone other than the applicant to
8 suggest a candidate site? Anybody out there on that?
9 I think Bob Bishop is going to give us his perspective
10 on it.

11 MR. BISHOP: Although I can't pretend that
12 I wasn't around at the time when that rule was
13 proposed, I can also speculate that there was a reason
14 why that proposal was not adopted. I think it just
15 doesn't make any sense. And if it ever did, it's
16 reasonable to think if it might have made sense when
17 a utility was in a cost-of-service environment, when
18 the sites were known and knowable, where there were
19 other alternatives that somebody might have offered.
20 But I think certainly for a number of reasons in the
21 current environment that makes no sense, and I can't
22 think that any site that would be proposed -- assume
23 for a moment that the people who are proposing -- who
24 are applying for a site are thoughtful business people
25 who've made this decision on sound business grounds.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 They'd be remiss to their shareholders, to their
2 investors, to their customers if they're publicly held
3 to have not identified an obviously superior site for
4 whatever reason. And you can run all kinds of
5 scenarios out but, simply stated, I think the bottom
6 line is no.

7 MR. CAMERON: Okay. Thank you, Bob.
8 Anybody else on this particular issue? And, Dennis,
9 do you want to go on to --

10 MR. ALLISON: Sure. The next one is
11 comparing the proposed site to alternative sites, and
12 the NRC has, I guess, in the past, and still does, use
13 the general principle that we want to look at
14 alternative sites that are reasonable and among the
15 best that can be found, and the NRC would not reject
16 a proposed site unless one of those alternative sites
17 is obviously superior, which by the language it could
18 -- we don't know everything about obviously superior,
19 but we at least know it doesn't mean just a little bit
20 better. We're not talking about trying to find the
21 very best site in the world by a little bit. We're
22 talking about whether you've looked a reasonable set
23 of alternatives and whether or not one of those is
24 just obviously superior. And this is still the same
25 standard we would use today under our standard review

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 plan.

2 The 1980 proposed rule used a two-step
3 process. It said look at the environmental factors
4 first, and then once that's done, if you've identified
5 what seems to be a superior site, go on and consider
6 project costs and other factors, institutional
7 factors, like maybe it's not really available or
8 something and to see if it really is an obviously
9 superior site. Logically, it doesn't matter if you
10 have to meet both aspects, you can do either one first
11 or second. In the end, if you come up with an
12 obviously superior site, then you can reject the
13 proposed site -- or you might. So that's the
14 standard, and we probably have some questions or some
15 comments about how to implement that standard.

16 MR. MIZUNO: I just had a comment on the
17 last bullet, which is I'm not sure that that bullet is
18 entirely accurate. I think the case law, the NRC case
19 law only says that the NRC's NEPA obligation is to
20 find whether there is an alternative site that is
21 obviously superior, but I don't think that there's any
22 specific case law that actually said that if we found
23 that there was an alternative site that was obviously
24 superior, that we would be obliged to reject the
25 application.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. ALLISON: Oh, I agree.

2 MR. MIZUNO: And I think that also that --
3 I mean that's from the 1980 standpoint. Then,
4 certainly, under the current NEPA law, as I understand
5 it, is that we would -- if we were to find an
6 alternative site that was obviously superior, we
7 wouldn't be obliged under NEPA or the AEA [Atomic
8 Energy Act] to reject the proposed application. But
9 if we were to go forward and approve the application,
10 despite the fact that there was an obviously superior
11 site, we would have to -- the Agency would have to
12 articulate the reasons why in its overall
13 decisionmaking it went forward to grant the
14 application despite the fact that from an
15 environmental standpoint the alternative site was
16 obviously superior. And I'd just like to add that --
17 I just want to focus that we're talking about
18 obviously superior from an environmental standpoint.

19 MR. CAMERON: Okay. Thank you, Geary.
20 Let's go to Jim Riccio.

21 MR. RICCIO: So is it my understanding
22 that emergency planning would not be considered in
23 terms of determining what is obviously superior?

24 MR. ALLISON: That's the next question.

25 MR. RICCIO: Oh, okay. Sorry. Then I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 guess, I'll just raise one question. Under this
2 obviously superior standard, would it ever be
3 appropriate to consider the vulnerability of terrorist
4 attack of the site? I mean like you're saying what's
5 --

6 MR. ALLISON: Yes. I would consider that
7 to be kind of a subset of the next thing too. But go
8 ahead, Geary.

9 MR. MIZUNO: I guess I would say this, is
10 that how terrorism may be addressed in a determination
11 whether to accept an ESP [early site permit] or a
12 combined license has not yet been determined by the
13 Agency. I mean they're currently considering it,
14 okay, and it's really sort of outside the scope of
15 this. In other words, I'm not telling you necessarily
16 whether or not an issue involving terrorism, an issue
17 involving EP [emergency planning] is going to result
18 in an Agency consideration and possible rejection of
19 an alternative site, but as I understand it, okay,
20 what we wanted to do here was to focus on the
21 environmental aspect with the one exception of EP,
22 because EP has traditionally been considered to be a
23 part of a safety issue. But with that very special
24 exception --

25 MR. RICCIO: Will there be another -- you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 know, is there another arena in which to address the
2 --

3 MR. MIZUNO: Yes. I --

4 MR. RICCIO: -- issue in terms of siting?
5 Siting plays into it. I mean, obviously, a terrorist
6 who'd want to attack a reactor that would be -- give
7 them the bigger bang for their buck.

8 MR. MIZUNO: I think that the issue of how
9 terrorism fits into either a siting determination,
10 either for an ESP or for a combined license or for a
11 normal construction permit, my understanding is that
12 that's being addressed separately, and there may be an
13 opportunity for the public to comment on that if the
14 Commission proposes something that it does differently
15 from what it's doing now. But the Commission is going
16 to continue to accept its current regulatory approach
17 with respect to that, and I am not sure whether the
18 public would be allowed [in on] that. But if the --
19 unfortunately, Jim, I'm not the attorney that does
20 these things, so I really cannot tell you -- I'm just
21 trying to say that we're really trying to focus in on
22 the environmental aspect with the one exception of
23 this EP thing, because the Commission told us use EP
24 as a way of siting, okay? But we were trying to focus
25 in mostly on just the alternative site aspect in the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 context of complying with NEPA, not necessarily
2 saying, "Hey, we're going to reject a site on the
3 basis of some other equal -- potentially equally valid
4 concern."

5 MR. CAMERON: And I think that just to
6 clarify this so that people don't get too confused,
7 and it hasn't been explicitly stated, that issues of
8 -- security issues, terrorism issues will certainly be
9 considered in evaluating license applications, but
10 they may not be considered as part of the NEPA
11 process. And someone might want to clarify for us
12 now, I thought there was a recent Commission decision
13 that said that security -- terrorism considerations
14 will not be considered in the NEPA part of the NRC
15 evaluation. And I think it's important to understand
16 that NEPA is only one part of the evaluation, that
17 then there's the Atomic Energy Act part. And let's go
18 to Antonio from our Office of General Counsel.

19 MR. FERNANDEZ: Antonio Fernandez, OGC.
20 I believe what you're referring to, Chip, is the
21 recent decision in the PFS [Private Fuel Storage]
22 case, Catawba-McGuire case, and the mox fuel
23 fabrication facility licensing actions. In those
24 decisions, the Commission decided that terrorism and
25 the impacts of a terrorist attack on a facility are

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 not to be considered within the NEPA space of a
2 licensing action. And that was the final Agency
3 position on that issue.

4 Regarding early site permits and how
5 terrorism may impact a licensing or a permitting
6 action regarding siting of a facility, the staff has
7 not taken a current position on how those issues would
8 be addressed. I would think that the next step for an
9 interested member of the public to participate in
10 something like that would be to participate in a
11 hearing for an early site permit. But right now as
12 far as I see it in the near future, in the near term,
13 there is no opportunities for public participation
14 with regards to that particular issue.

15 I would say this, I mean the Commission
16 stated very strongly, particularly in the decision
17 concerning the PFS licensing, that the Commission is
18 undergoing its top-to-bottom review with regards to
19 how it addresses its security concerns post-September
20 11. And the ultimate resolution of how the NRC will
21 be addressing those issues has not been arrived at
22 yet. I'm sure given the pendency of ESP applications,
23 that will be addressed, and I know myself working on
24 ESP I have interacted with the people that would be
25 actually evaluating security risks with regards to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 siting facilities.

2 MR. RICCIO: My question then would be is
3 the public going to have access to the process? The
4 public has basically been closed out of the
5 discussions --

6 MR. FERNANDEZ: Right.

7 MR. RICCIO: -- regarding terrorist
8 attacks recently. Basically, since 9/11, we've been
9 basically shut out. And so I'm wondering if the
10 public is going to have an ability to address this
11 absent intervening in the ESP.

12 MR. FERNANDEZ: And I understand your
13 question. I guess I can't give you a specific answer.
14 I think that will be explored once the applications
15 are in for the early site permits.

16 MR. CAMERON: And, Jim, before you sit
17 down, I think Antonio raised an issue here that maybe
18 we should get your input on. I was going to ask
19 originally is your concern that terrorism be addressed
20 somewhere in the licensing process and that you
21 wouldn't really be concerned whether it was addressed
22 as part of the NEPA evaluation of the part of the AEA
23 evaluation, but since the opportunity for public
24 participation can differ depending on where you are,
25 what are your views on that?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. RICCIO: I would just like to see it
2 addressed.

3 MR. CAMERON: Okay.

4 MR. RICCIO: You know, basically, we've
5 been kept in the dark about what the Agency and the
6 industry have actually done to increase their
7 susceptibility to terrorism -- or decrease it, sorry.
8 So I don't really care where you necessarily address
9 it, although in order to ensure certainty in the
10 process that the industry so loves, it would seem
11 appropriate to address it as early as possible. You
12 know, if you're going to come -- if Entergy is going
13 to come in and tell me that they want to build a new
14 reactor at the Indian Point site, you damn well better
15 address terrorist issues. I guess the concern is not
16 as great back in Mineral, Virginia. So at least
17 somewhere I think the Agency and the industry need to
18 address this and at least give the public some level
19 of comfort that terrorist considerations have been
20 taken into -- or terrorist concerns have been taken
21 into consideration.

22 MR. CAMERON: Okay. Thank you, Jim. Any
23 other comment on -- any comments on following up on
24 the discussion on terrorism or generally on this
25 obviously superior standard that the Agency is using,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 as Dennis put forth for us? Anything on obviously
2 superior? Is that what we should be using, and is
3 there anything useful in our regulatory documents that
4 tells the NRC when something is obviously superior or
5 is not obviously superior? I mean any disagreement
6 with using an "obviously superior" standard? Okay.
7 Thank you very much, Dennis. And we have emergency
8 planning up next, and it's going to be a little bit
9 trickier, because -- well, I'll let Dennis explain it.

10 MR. ALLISON: Well, I guess that the main
11 thing about emergency preparedness is that -- well,
12 the question is that we're asking for input on is
13 should the NRC consider EP in its review of
14 alternative sites. Traditionally, emergency
15 preparedness has been part of the safety review but
16 not part of the environmental review, and it's here on
17 the agenda, though, and we're asking for input on it
18 because the Commission did direct the staff many years
19 ago now, in 1981 I think, to figure out how to include
20 EP in that consideration.

21 So if we are to do it -- well, of course,
22 certainly an option that could be recommended back to
23 the Commission is say, "No, leave it as part of the
24 safety review." On the other hand, if you want to
25 recommend using it somehow, three obvious things come

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 to mind. One is simply to require in the rule or the
2 guidance require the applicant to describe whether or
3 not there are any significant impediments that are
4 peculiar or associated with each alternative site.
5 That's easy to say, but then you have to review what
6 the applicant gives you if there is an impediment
7 anywhere.

8 And so one could establish an exclusionary
9 standard, and I'm not saying I know how to write that
10 standard but it could be a go/no-go test. Or one
11 could weigh the degree of the impediment along with
12 other environmental factors -- or along with other
13 factors in trying to draw that environmental balance.
14 So with that, that kind of describes the issue, and
15 I'd be interested to see what people have to say about
16 it.

17 MR. CAMERON: Okay. The broad issue, how
18 or whether to consider EP in the alternative site
19 review. Russell?

20 MR. BELL: It's Russell Bell again with
21 NEI. Dennis and Frank, I think I'm the only one in
22 the room who doesn't know about the Commission's
23 directive in, what, early '80s you say? I could use
24 a specific reference for that. Doesn't have to be
25 this second but --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. CAMERON: Yes, and anything else you
2 can tell us about that, Barry.

3 MR. ZALCMAN: Okay. This was actually in
4 1991, and it was the Staff Requirements Memorandum to
5 SECY 91-041, which at the time was a Staff Readiness
6 Review to prepare for early site permits. The staff
7 was framing the issue whether or not as we consider a
8 review of alternatives the emergency planning issue
9 should be raised. We had raised it to the Commission,
10 and they directed the staff to consider that as well.
11 The real question is whether or not, as Geary had
12 pointed out, this unique nature of emergency planning
13 is an AEA issue, it's a safety issue as opposed to an
14 environmental issue. Staff is very concerned about
15 bridging between the emergency planning and the
16 environmental protection, that type issues that we
17 have to consider. So it traditionally had not been
18 within the environmental review framework.

19 But if we just look at the slate of sites
20 that may be identified, are there factors? And if you
21 go back to Part 52, which is what the SECY was about,
22 could we identify attributes for screening purposes to
23 identify whether or not there would be significant
24 impediments, and what are the kinds of criteria that
25 we may use? The staff had been working on a guidance

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 document. You're familiar with the supplement to
2 NUREG-0654, criteria for developing emergency plans,
3 which is to unique to early site permits, and one of
4 the criteria that we may identify would be
5 consideration of something like evacuation time
6 estimates to reveal whether or not there are
7 impediments for moving the population out of an area
8 safely.

9 With the years prior to use of the site,
10 you could deal with those significant impediments and
11 whether it's improving the highway system or building
12 a bridge or manning intersections that have
13 difficulty, revealing that early in the process I
14 think is the focus of where the Commission was coming
15 from so that as we consider not just the proposed site
16 but also the site of alternatives, are there
17 significant impediments in the alternatives? And the
18 Commission thought it was worth airing at the time.

19 So that is where the burden had come onto
20 the staff, and as we frame this issue, we recognize
21 it's a tag-a-long issue, it's been on the books for a
22 dozen or so years. Is now the time right to consider
23 it, and if we consider it, how should we consider it?
24 We have direction from the Commission that the staff
25 should consider it, so we're seeking input. Is there

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 guidance or insights or recommendations that others
2 would have in addition to what the staff current view
3 is?

4 MR. CAMERON: Okay. Thank you, Barry. Go
5 ahead, Russell.

6 MR. BELL: That was helpful. I guess it
7 says the second bullet up there is the status quo. We
8 haven't had a long discussion about this that I know
9 of based on the Commission SRM, but I think we would
10 find the current practice to be quite sufficient as
11 regards to the kinds of things Barry was talking
12 about. In fact, there's a separate and very deep vein
13 of requirements apart from the environmental side on
14 emergency planning that the early site permit
15 applicants need to meet, combined license applicants
16 will need to meet and that that is complementary to
17 the environmental review that would be going on at the
18 same time, the kinds of egress concerns, time frames
19 and so forth. So I think the issue of EP is of course
20 a very important one with respect to siting, and I
21 think it's well covered. One option may be to give
22 that some -- continue to give that some thought and at
23 this time when we're all so much smarter than we were
24 even ten years ago to take another hard look at
25 whether a change in this area is necessary.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 I might just add I think the applicant
2 site selection process, which is much broader in scope
3 than anything I think the regulator or the Agency
4 would get involved in, would consider a number of
5 other factors, including egress or physical impediment
6 issues associated with other sites in the general area
7 that the applicant is looking to -- potentially
8 looking to add capacity.

9 So I guess that's just an observation that
10 while I imagine -- that while it wouldn't be required
11 to be part of the NEPA -- prescribed NEPA review, it
12 is something that the applicants consider along with
13 a broad scope of matters in their site selection
14 process. And once you enter the regulatory or the
15 licensing process, as I say, there is a separate and
16 very deep vein of EP requirements.

17 MR. CAMERON: Can you -- maybe there's an
18 important clarification in terms of the implications
19 of this, and I'm thinking about Geary Mizuno's comment
20 about, well, even if there was an obviously superior
21 site, it wouldn't necessarily mean that when the
22 Commission did its balancing under NEPA that that
23 would mean rejection of the proposed site. And I
24 guess the clarification I'm looking to Barry for is
25 that even though emergency planning could be factored

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 in as part of the alternative site review, would the
2 decision on emergency planning still be made under
3 Atomic Energy Act safety standards as opposed to
4 National Environmental Policy Act procedural
5 cost/benefit balancing standards?

6 MR. ZALCMAN: Chip, I think that's the
7 exact point, that in fact the environmental issues
8 under NEPA are informative to outline what the
9 deliberative process within the Agency. And in
10 Geary's point, mitigation is always available. So if
11 you had what you thought were unacceptable
12 environmental impacts, there are still opportunities
13 for mitigation and resolving those. Just as from the
14 safety perspective, if you have emergency planning and
15 you identify significant impediments they are in
16 today's light, but what actions could be taken to
17 resolve them? And the advance ventilation of these
18 issues is to bring them to the forefront so you can
19 consider what can you do between now and the ultimate
20 use of the site to remove those impediments?

21 They may be physical today. A facility
22 that's midway up a peninsula that has no bridge at the
23 bottom into the peninsula, well, you have plenty of
24 time to build a bridge and deal with a public that may
25 have to traverse the site area to have a successful

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 evaluation [evacuation]. That may be if the site were
2 there and in use today, but with the advanced planning
3 at least could we identify the issues, discuss them,
4 identify what the impediments are and reveal to the
5 public that these significant impediments may exist
6 and there are opportunities to resolve them through
7 changes in highway planning or building bridges and
8 the like. But to disassociate the environmental
9 review from the safety review, the environmental
10 review informs the safety review, but we have to make
11 different safety decisions than we do from our
12 environmental review. And that's, I think, the
13 important factor.

14 MR. CAMERON: Okay. Thank you, Barry.

15 MR. ZALCMAN: It's a valuable de-coupling
16 of two items.

17 MR. CAMERON: All right. Thanks. And I
18 think that prompted a comment from Jim Riccio,
19 perhaps.

20 MR. RICCIO: Well, just again, it would
21 seem appropriate given the history of this industry to
22 kick the emergency planning review up as far in
23 advance as possible. Seemingly, if you leave it to
24 the second bullet, you could end up with an early site
25 permit being granted and again the site not really

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 being amenable due to emergency planning
2 considerations. If you look at the experience of
3 Shoreham, I really doubt that building a bridge from
4 the eastern end of Long Island over to Connecticut
5 would have ameliorated the problem.

6 The reality is there are certain sites,
7 even where there are existing reactors, where no
8 additional reactor should ever be constructed. And I
9 think the industry's experience at Indian Point would
10 hopefully clue them into that fact. I think the fact
11 that the industry has chosen sites that are in
12 extremely remote populations or remote sites is an
13 indication that they're aware of that. I see no
14 reason not to kick it up into an earlier process so
15 that we can obviate sites from consideration that are
16 obviously unamenable due to emergency planning. I see
17 no reason to leave it to the point where again you
18 could have the industry having spent a lot of money
19 and again the site being found to be unacceptable.

20 MR. CAMERON: Jim, just to clarify, your
21 point is that because the alternative site review is
22 one of the earliest reviews that are done, that it
23 would be good to do the EP review as part of that,
24 because that would give us the early decision on a
25 critical factor.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. SMITH: Marvin Smith just to point out
2 that EP is part of the early site permit process and
3 is reviewed at that stage. I think what you're
4 talking about here is whether you expand that to
5 include something under NEPA looking at early
6 emergency planning relative to alternative sites. I
7 don't see really the benefit of doing that because
8 emergency planning is considered and is part of an
9 early site permit application.

10 MR. MIZUNO: Yes. Just to expand upon
11 that point, Mr. Riccio, at least for the early site
12 permits, okay, I'm just focusing here on the early
13 site permits, that there is a regulatory requirement
14 that the applicant identify significant impediments to
15 emergency preparedness. So, presumably, if the
16 applicant identifies those, at minimum, the Commission
17 has to consider that information in determining
18 whether to grant that early site permit or not.

19 The applicant also has the alternative or
20 the option, I should say, of presenting partial or
21 full emergency preparedness plans, and so in fact can
22 have a full consideration of EP, but, of course,
23 that's at their option. But I think for purposes of
24 at least trying to get to your concern that here is a
25 site that has some significant emergency preparedness

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 defect, that at least for early site permits I think
2 that Part 52 addresses that.

3 The question that we're focusing here is
4 not so much on whether the particular site that the
5 applicant is proposing has an emergency planning
6 defect, but whether in the context of looking at
7 candidate alternatives in the context of NEPA, would
8 the Commission want to have an additional screening
9 factor or perhaps not a screening factor but simply
10 another piece of information that says either for
11 these candidate sites I want to make sure that none of
12 them have significant impediments because otherwise I
13 just don't want to waste Agency resources. Because if
14 it has a significant impediment, it's not -- even
15 though it may be obviously superior from an
16 environmental standpoint, if the candidate site or the
17 proposed site does not have an emergency preparedness
18 significant impediment, you would never, from a NEPA
19 standpoint, choose to decide to not grant the ESP on
20 the basis of the fact that there's an obviously
21 superior site from an environmental standpoint.

22 MR. RICCIO: So if I understand you
23 correctly, if Entergy were to apply for an early site
24 permit at Indian Point, NRC would grant it.

25 MR. MIZUNO: I'm not saying that. All I'm

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 saying is that what we're looking at is trying to come
2 up with some -- what the Commission was looking for
3 was whether we should have a process that says, first
4 of all, does the site that we're proposing an ESP for
5 have a significant impediment, and, second of all,
6 apart from that, should we have additional criteria
7 that requires the applicant to identify, and for the
8 NRC to consider either as a screening mechanism or as
9 ultimately a decision criteria in determining whether
10 to grant the ESP, whether the alternative sites that
11 the applicant has proposed do or do not have
12 significant impediments. If it was a screening, I
13 presume it would be because we want -- it's because we
14 want to save resources. If it's not a screening item
15 but simply a decision item in the overall decision,
16 it's just simply saying, okay, now we know here is
17 three alternative sites that may be obviously superior
18 or not, but we also know that in terms of our overall
19 decision as to whether we'll grant it there or whether
20 there's some other thing such that we don't want to
21 grant it here whether they have significant
22 impediments. And so, therefore, the Commission would
23 have all that data [data] before it.

24 MR. RICCIO: And that would be a good
25 thing for the Commission to have all that information

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 in front of it.

2 MR. CAMERON: Okay. Thank you. Thank you
3 both. Barry, do you have something to add?

4 MR. ZALCMAN: One last point, just to
5 expand on the dialogue, and I'll try and do it very
6 quickly. For general understanding, there are three
7 components to an early site permit: the environmental
8 protection, the emergency planning and site safety.
9 And each one of those requires an evaluation on the
10 part of the staff. The question, if I can make it
11 succinct, is under the environmental protection
12 activities that are reviewed by the staff, there will
13 be a consideration of alternative sites, so you'll
14 have a slate of sites. Should that slate also be
15 looked at from the emergency planning perspective,
16 given, let's say it was three sites that you were
17 looking at, given those three sites, would you also
18 look in the emergency planning review at those sites
19 to determine whether or not any of those have
20 significant impediments? That's the thrust of the
21 question. It is not to expand the scope of the
22 environmental review to consider emergency planning.
23 It is to focus on the safety review with emergency
24 planning. Should we at that time, early in the
25 process, look at emergency planning significant

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 impediments?

2 MR. CAMERON: And just one clarification
3 on that, though, is that from what Geary was saying,
4 at least in terms of early site permits, you look at
5 emergency planning for the proposed site anyway but
6 not necessarily significant impediments to other sites
7 that are looked at; is that correct?

8 MR. ZALCMAN: Right. And the Commission
9 and the SRM suggested that that was something to
10 pursue.

11 MR. CAMERON: All right. Any further
12 comments now that you've heard this discussion? Dave?
13 Oh, okay, George. Please introduce yourself, too,
14 George.

15 MR. ZINKE: George Zinke, Entergy. Yes.
16 Relative to Jim's comments, I mean all of the -- and
17 I think it's already been said -- all of the issues on
18 the emergency plan, as far as the significant
19 impediments, are already required by regulation to be
20 part of the ESP and get reviewed. So the question for
21 the proposal that we're talking about would be in
22 addition to environmental emergency preparedness
23 requirements on the site that's being proposed, would
24 you also evaluate that on the sites, the alternative
25 sites that aren't being proposed?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 And, certainly, if the regulations were
2 such that in addition to a site being environmentally
3 superior, we found that an emergency plan -- the
4 possibility of an emergency plan, either would have
5 impediments or not, would factor into a decision of
6 whether or not to put something on the alternative
7 site. But the applicant's already decided that -- you
8 know, he's already selected a site. So it seems to be
9 the question would be adding some review that doesn't
10 have any outcome or make any sense.

11 MR. RICCIO: (Off mic)

12 MR. ZINKE: Well, if you're not -- Jim's
13 question, if you're granted the site you proposed.
14 Well, if you're not granted the site you proposed and
15 you still wanted to -- an applicant wanted to build a
16 nuclear plant on the alternative site, then you'd have
17 to have a whole new application anyway, and then
18 you're required by law in that application to address
19 all of the emergency preparedness requirements. So
20 it's -- so you're still required to do it.

21 I mean you can't -- if in the process of
22 my early site permit and this alternative site, if
23 they're going to decline my [proposed site]-- the
24 process doesn't allow the NRC to say, "No, go build it
25 over on this alternative site," because there's not

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 been enough information submitted to allow them that
2 decision. The worst they could do, which we've
3 already been discussed they can't do, is decline the
4 -- or wouldn't necessarily do, is decline the
5 application. So you can't in mid-stream just pick
6 something else. So the emergency preparedness
7 requirements get addressed.

8 MR. CAMERON: Okay. Thanks, George.
9 Let's go to Dave Lewis.

10 MR. LEWIS: Two points. First that's
11 already been said, the emergency planning for the
12 proposed site has to be evaluated as part of the ESP
13 application on the safety side. That's clearly
14 already addressed, and there's no need to do anything
15 further on that score or to blur the distinction
16 between NEPA and the safety review. With respect to
17 the alternative sites, if the evaluation of
18 alternative sites identifies none that are obviously
19 superior, I think it would be a -- from an
20 environmental perspective, I think it would be a
21 monumental waste of time to be then looking at
22 emergency planning impediments at inferior sites.

23 If they're already inferior
24 environmentally, it doesn't make any difference if
25 there's an impediment. So you clearly would not want

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 to have this as an automatic requirement in the
2 alternative site review. I mean this is only a
3 possible issue if an applicant is coming in and
4 proposing an inferior site and there's an obviously
5 superior site and NRC has to come up with a rational
6 basis for accepting the inferior site. But that's --
7 I doubt that would ever happen.

8 MR. CAMERON: Okay. Thank you. Thank you
9 very much, Dave. Let's go to this gentleman here.

10 MR. BOURGEOIS: Mike Bourgeois, Entergy.
11 I'd just like to point out this is a rational
12 discussion. However, the impact is locked in the
13 concept of LWR [light water reactor] mindset that
14 we're in today. We're looking for ESPs that go out 20
15 years. There's technology emerging on the horizon,
16 which may change entirely the concept of impact and
17 emergency planning. So I'm not objecting, I'm just
18 putting that out there that as you focus on impact
19 that it's still based on a presumption of existing
20 technology.

21 MR. CAMERON: Thank you, Mike. Jim.

22 MR. RICCIO: Just to address that.
23 Considering the fact that the ACRS [Advisory Committee
24 on Reactor Safety] has already said that many of the
25 designs that the industry is looking at constitute

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 major safety tradeoffs due to the lack of containment,
2 I don't really think placing all your eggs in the
3 basket of this new wonderful technology is really
4 going to obviate the need for emergency planning or
5 site selection. So the new designs you're looking at,
6 quite honestly, may be worse than the ones that exist.

7 MR. CAMERON: All right. Anything more on
8 emergency planning? Okay. Thank you, and thank you,
9 Dennis and Lee for keying up those issues for us. The
10 next thing on the agenda is the famous "Other Issues"
11 category, and we did have one other issue so far. And
12 I'm going to ask you if there's any others, but,
13 first, let's go to the suggestion that Bob Bishop made
14 earlier this morning that rulemakings can be done in
15 an expedited manner. And I think that the staff and
16 our expert consultants would like to get some views on
17 if there's anything specific other than, well, put
18 more resources on it and put a tighter schedule on it
19 and get it done that Bob or others might be able to
20 tell us on that. Bob, do you want to put a finer
21 point on that if you can?

22 MR. BISHOP: This is Bob Bishop again. I
23 think you pretty well summarized it. I think it is a
24 question of priorities and management. There's no
25 magic here that says that the average rulemaking at

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the NRC has to take 2.4 years. All it takes is a
2 desire to do it faster. There are very few legal
3 constraints. All it takes is resources and
4 commitment. But the legal constraint, obviously, is
5 to allow an appropriate notice and comment period, and
6 that can be as long -- almost as short as the
7 Commission might like. Obviously, in cases of
8 emergency, it can be zero, but I'm not advocating that
9 here. But I think a thoughtful process can obviously
10 be concluded in months rather than years.

11 MR. CAMERON: Okay. Thank you, Bob. And
12 as you pointed out, the one constraint under the
13 Administrative Procedure Act is a notice and comment
14 period, and I don't want to state that in the
15 negative, but I guess there are -- are there other,
16 for example, NAFTA [North American Free Trade
17 Agreement], in some cases, requires that proposed
18 rules go out for a 75-day comment period. But even in
19 those cases your point is is that commitment,
20 priority, resource can get a rule done faster than two
21 years.

22 MR. BISHOP: Absolutely. And I think
23 experience suggests that the NRC has chosen to be very
24 conservative in its reading of NAFTA in concluding
25 that, well, because somebody might question it, we've

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 got to provide the 75-day notice period. That only
2 applies to things that NAFTA applies to, and this is
3 clearly not one.

4 MR. CAMERON: Okay. Thank you. Any other
5 comments or questions from the NRC staff about the
6 issue of expedited rulemaking? Russell, were you
7 going to comment on this?

8 MR. BELL: No, but I was going to come at
9 it from the other direction and wonder if as part of
10 the summary or other remarks was the staff going to
11 speak to the schedule that this technical basis phase
12 is on to be followed by rulemaking plan? Perhaps they
13 could give us some idea.

14 MR. CAMERON: Yes. And that's an
15 excellent question. Can we have Lee or someone tell
16 us what the -- even though it might not be set in
17 concrete, can you tell us what the schedule is that
18 we're looking at here?

19 MS. BANIC: We're going to take your
20 comments today and bin them and give responses. We'll
21 review the -- this is from our contractor, and we'll
22 review those responses. I think somewhere by April we
23 should have that done. We're going to write a NUREG
24 as a technical basis and have that out by November.

25 MR. CAMERON: Okay. So perhaps another

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 question might be one of the points in summary is from
2 a couple of different perspectives. Today, we heard
3 suggestions that it would be better to do a rulemaking
4 for various reasons. When will that threshold
5 decision be made. In doing the NUREG, is that the
6 vehicle for the November -- is the November NUREG the
7 vehicle for deciding whether a rulemaking should be
8 initiated?

9 MR. ALLISON: The November NUREG will
10 discuss the pros and cons of the options. It will be
11 up to the staff at that time to then decide if it
12 wants to go ahead with rulemaking and send a
13 rulemaking plan to the Commission and get their
14 approval of it.

15 MR. CAMERON: So I guess the answer is,
16 yes, is that the NUREG is the decisionmaking vehicle
17 on whether to proceed.

18 MR. ALLISON: No. No.

19 MR. CAMERON: No. Okay.

20 MR. ALLISON: The decision vehicle will be
21 a rulemaking plan. If the staff proposes a rulemaking
22 plan to the Commission after writing the NUREG and the
23 Commission approves it, then we'll go ahead with the
24 rulemaking.

25 MR. CAMERON: Okay. So November NUREG,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 if that November NUREG prompts the staff to recommend
2 proceeding with a rulemaking, then there is another
3 decision point for the Commission which would be in
4 the form of a rulemaking plan that would be submitted
5 to the Commission in early 2004 in broad terms.

6 MR. ALLISON: Yes, in broad terms. We
7 might possibly decide to be working on that product if
8 we can see our way through while the NUREG is still
9 being finalized, so we might get it a little sooner
10 than that. But the average time for a rulemaking plan
11 is four months.

12 MR. CAMERON: When you say the average,
13 just so people understand --

14 MR. ALLISON: The average time to write a
15 rulemaking plan --

16 MR. CAMERON: To write it.

17 MR. ALLISON: -- send it to the
18 Commission, get their approval.

19 MR. CAMERON: And get approval --

20 MR. ALLISON: Four months.

21 MR. CAMERON: -- is four months. All
22 right. Bob?

23 MR. BISHOP: I don't want to belittle the
24 necessary work and thought process that has to go on,
25 but I'm force to observe that November will be two and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 a half years after we asked the Commission, through
2 the petition for rulemaking process, to consider
3 changes. I would only suggest that this does not
4 stand as a paragon or [of] virtue yet for how this can
5 be done quickly, and I would suggest that perhaps more
6 resources, more attention -- I'm not sure it's
7 resources as much as attention, as much as priorities
8 can and should be devoted to this. We've got
9 applications that will be coming in in this time frame
10 in the summer, in the fall. There are other
11 applications other than early site permits where
12 alternate site reviews are going to come into play.
13 I think it obviously behooves the Agency to try to
14 move forward on this as rapidly, as promptly as it
15 can.

16 MR. CAMERON: Okay. And you brought up
17 another part of the procedural framework that could
18 have an impact, which is, obviously, the Commission is
19 going to be making a decision on the NEI petition, and
20 I guess conceivably whatever way that decision was
21 made, the Commission could specify a time frame for
22 completing certain of these actions. Jim?

23 MR. RICCIO: A couple of things. The few
24 months that the NEI has had to wait seems eminently
25 reasonable considering it took the Agency 21 years to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 get back to the p[Public] c[C]itizen on its request to
2 have TMI [Three-Mile Island] considered an
3 extraordinary nuclear occurrence. So four months
4 doesn't seem like it's totally onerous.

5 I would also oppose an expedited
6 rulemaking considering the fact that if you really
7 want broad public participation that it's going to
8 take some time. Expediting the process can only give
9 the illusion that you're trying to further exclude the
10 public from the process. And I just want to make it
11 clear that I'm not in favor of going to rulemaking.
12 I think the rules as they exist seemingly are
13 sufficient. However, if you are going to go ahead and
14 try to change the regulations, I would suggest you do
15 it through rulemaking rather than through reg guides
16 which are unenforceable.

17 MR. CAMERON: Jim, and forgive me if I
18 screw this up, but you don't think that we need to do
19 anything --

20 MR. RICCIO: I'm still not clear why we're
21 wasting time on this.

22 MR. CAMERON: Okay. But if we decide to
23 change the criteria, whether in the reg guides, review
24 plans, that if we're going to change things, do that
25 through a rulemaking. And even though you can still

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 do an expedited rulemaking, that should be no excuse
2 for not having lots of public involvement in that
3 rulemaking process is what I heard.

4 MR. RICCIO: I really do think you need an
5 expedited process.

6 MR. CAMERON: Anybody else on the
7 rulemaking issue? Okay. I'm glad Jim clarified that
8 about the need for rulemaking, because I did
9 misunderstand that, that the various perspectives were
10 saying do a rulemaking. On some of the other issues,
11 what I heard is that let's look at the analysis that
12 the licensee has done and look to see whether that is
13 reasonable rather than specifying number of sites,
14 region of interest. We didn't hear anybody say that
15 other people should be able to suggest, other than an
16 applicant, to be able to suggest alternative sites.
17 No one really disputed the obviously superior
18 criterion, and I'm not trying to say that this is
19 written in stone or that this is a consensus, I'm just
20 trying to sort of summarize what we heard today.

21 And on emergency planning, we heard that,
22 well, keep the current process, especially since the
23 current process of ESP does consider emergency
24 planning. I think Jim Riccio's point was is that at
25 some point early on in the process you should look to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 see if there's significant impediments from an
2 emergency planning point of view at a suggested site
3 so that you don't waste a lot of time on that. The
4 remaining question is is do you need to look at the
5 significant impediments of all the alternative sites
6 that were looked at, as George Zinke made a point on?

7 Expedite the rulemaking, and let's go to
8 Frank, Frank Gillespie.

9 MR. GILLESPIE: Yes. I think on that one
10 what I heard in combining all the comments was that if
11 you find an obviously superior site, before you go
12 saying it's obviously superior, it may be worth taking
13 the extra step to say, but does it have any P-flaw,
14 and that would kick it out. It sounded from the
15 summation of the comments it was more of a screening
16 step at the last rather than an evaluate at every
17 site, so just in summation from what I heard. It may
18 actually have a value as an end if you think of a
19 process where if all the answers up here are yes, then
20 you should ask this also, and if any answer above is
21 no, then the site got kicked out as not being superior
22 anyhow.

23 MR. CAMERON: Okay. I see people agreeing
24 with that.

25 MR. GILLESPIE: It's a little different

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 than what you said --

2 MR. CAMERON: Yes. And I thank you for
3 that clarification, Frank. Does anybody -- I want to
4 give people an opportunity -- go ahead, Dennis.

5 MR. ALLISON: I just have a couple of
6 things to say.

7 MR. CAMERON: Sure.

8 MR. ALLISON: We received one e-mail from
9 a gentleman in Virginia, which we will attach to the
10 transcript of this meeting, and if you have any
11 further communications you want to give us within the
12 next month or so, that will be good. That will come
13 before we've summarized the comments and move forward
14 to write the NUREG. So within say by the end of
15 February it would be a good due date for those kind of
16 things.

17 MR. CAMERON: Okay. Thank you, Dennis.
18 I want to see if anybody else has any final words for
19 us today. Geary Mizuno, then we'll go to Bob. Geary?

20 MR. MIZUNO: Just with respect to the
21 issues, well, generally, I mean I heard the comments,
22 and the one thing that I wanted to, I guess, raise for
23 people to consider is the issue with respect to having
24 third parties or entities propose alternative sites
25 for consideration. Some of the reasons why you might

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 want to have, from my perspective, a rulemaking
2 process for doing that is that, one, it allows the
3 Agency to obtain information from all sources and have
4 it done in a regularized way. And the second thing is
5 that depending upon how you construct a rule, it would
6 certainly be a way of avoiding specific litigation on
7 the matter, in terms of at least having someone know
8 that or have some information with respect to an
9 alternative site that they believe is obviously
10 superior and not participating in the NEPA process.
11 From my standpoint, it would be useful to have
12 something that would allow people to raise the
13 possibility that there is a -- what they believe is an
14 obviously superior site so that the Agency can go
15 forward and consider in fact whether it does appear to
16 be something that needs to work a further inquiry on
17 the part of the Agency.

18 MR. CAMERON: Okay. Thank you, Geary.
19 Bob?

20 MR. BISHOP: If I can just address that
21 for a moment. It seems to me to do so is to raise the
22 specter of a never-ending process. If I happen to be
23 a developer with 40 acres over here somewhere, if you
24 give me the regulatory ability to say, "No, no, no,
25 that nuclear power plant that ought to be on my parcel

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 of land, and I'd be willing to sell it at a very
2 reasonable price," you enter into just non-ending
3 speculation about where another place might be that
4 this plant could be sited, which the applicant has not
5 identified as one that they are willing to use.

6 MR. MIZUNO: But, Bob, I mean to be fair,
7 I mean you didn't think when I said a regularized
8 process that someone was not -- we're not going to
9 establish some sort of standard or some kind of
10 criterion for someone to say you cannot come in and
11 expect the Agency to consider and start off the
12 process for considering what you consider to be an
13 obviously superior site unless you meet some kind of
14 threshold for showing that your contention or you
15 claim that there is something that's obviously
16 superior is in fact worthy of consideration.

17 I mean my concept is that the -- whether
18 it be guidance or by rule there would be some
19 threshold, okay, by which if someone wanted the Agency
20 to rev up its process and consider a site that this
21 entity claims is an obviously superior site, that they
22 would have to meet some threshold for showing that,
23 yes, there is sufficient information there that it
24 would lead the Agency -- a reasonable Agency
25 decisionmaker to believe that, yes, this site is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 worthy of inquiry.

2 MR. BISHOP: I guess it's theoretically
3 possible. I would suggest that we ought not to spend
4 a whole lot of time on it, one, because I think it's
5 not likely and, two, because once again I think you
6 could get into litigation about whether that applicant
7 met those criteria, and you have now changed what was
8 supposed to be an orderly process into a much more
9 disorderly one. But Jim has some comments to offer
10 too.

11 MR. CAMERON: And let's go to Jim on this,
12 and then we'll come back to Bob. Jim?

13 MR. RICCIO: I see Geary's point, and I
14 think it is appropriate to open this up for questions.
15 But to think that a member of the public is going to
16 come and say they want a nuclear power plant placed in
17 their backyard is delusory at best. I don't really
18 think -- you know, unless there's someone with a
19 vested business interest you might feel they're going
20 to benefit, although generally the members of the
21 public that participate in this are environmentalists,
22 not people seeking to maximize their profit. To think
23 that someone's going to show up and say, "We want the
24 nuclear plant is in our backyard," is -- it's not even
25 worth discussion.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. CAMERON: Do you have any other things
2 on the -- Jim, do you have any other things on the --
3 besides that particular example, is there any benefit,
4 for example, as presented by Geary as to having
5 someone else suggest it?

6 MR. RICCIO: From our perspective, Chip,
7 yes, the reality is that the public isn't going to
8 want nuclear power plants built, period. Despite the
9 seemingly rosy view that NEI has on future
10 construction, even DOE is saying there are going to be
11 no reactors built by 2020. Again, why are we here?
12 But I understand they're trying to make a process that
13 will be amenable and won't be an impediment if anyone
14 ever would want to build a new nuke. But quite
15 honestly, to be going through this now just doesn't
16 seem to be a good use of Agency or industry time.

17 MR. CAMERON: All right. Thanks, Jim.
18 Bob, did you have some other things to offer? And we
19 do have a representative of the Department of Energy
20 here who we'll go to as soon as Bob's done. Bob, do
21 you have some comment?

22 MR. BISHOP: Just if we're ready to talk
23 about other issues, I have one, but perhaps better to
24 --

25 MR. CAMERON: Well, let's go to DOE now.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. SINGH: I'm BP Singh with the
2 Department of Energy. I just want to set the record
3 -- correct the record. Jim mentioned that DOE is
4 saying that there won't be a reactor built in 2020.
5 I'm a program manager working on the Nuclear Power
6 2010 Program, and the goal of the Program is to have
7 a new reactor deployed in the United States in the
8 2010 time frame. It's not a prediction whether we
9 would achieve that or not, but that's the goal of the
10 Program.

11 MR. RICCIO: Sorry. I'm corrected. It's
12 the DOE's EIA [Energy Information Agency]. If you
13 look at their 2003 energy review, they're claiming no
14 reactors by 2020, which, again, I don't know why we're
15 wasting our tax money on the 2010 Program.

16 MR. SINGH: Well, I don't think this is
17 the right forum to discuss that issue, so I would not
18 belabor the point here, but I just wanted to correct
19 the record.

20 MR. CAMERON: Okay. Thank you very much.
21 Other issues or discussion? Let's go to Alex.

22 MR. POLONSKY: Alex Polonsky. Just
23 wondering, Geary, if you wouldn't mind commenting how
24 alternative sites, whether they're obviously superior
25 or not, wouldn't come out in the EIS scoping process,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 which the NRC holds, and it's a very open public
2 process, and I'm curious why --

3 MR. MIZUNO: I would think that as part of
4 scoping in fact --

5 MR. POLONSKY: Right.

6 MR. MIZUNO: -- when I talk about
7 regularizing the process, I'm talking about using
8 scoping and having part of scoping focus on that. So,
9 yes, I would consider this process of someone offering
10 up an alternative as part of the scoping process. And
11 that would be the way that you would -- that would be
12 the timing in terms of the timing and the process how
13 any interested entity who feels that there is an
14 obviously superior site to the one that's being
15 proposed by the applicant would be able to raise that.

16 And my point was that to avoid people just
17 throwing things out there, I mean whether it be a
18 group who's opposed to the plant being built there
19 without any regard for where it may else [be built]
20 and simply saying, "Well, there's obviously superior
21 sites." Well, where is it? They just point to
22 someplace out there on the map. No, the Agency should
23 not waste its time on something like that unless
24 someone can come in and say, "Look, here is what we
25 believe is an obviously superior site worthy of Agency

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 consideration, and here are the reasons why." Here
2 are whatever it may be, whatever information that they
3 propose to use they would bring it forward as part of
4 the scoping process, and the Agency would then use
5 that information in the scoping process to determine
6 how it goes about deciding whether there is an -- what
7 is an appropriate slate of candidate sites.

8 MR. POLONSKY: Do you foresee that a
9 change is needed in the regulations itself to redefine
10 what scoping means in order to have something like
11 this occur, or why wouldn't some group now under the
12 current scoping process bring forward such a
13 proposition?

14 MR. MIZUNO: My concept was that any
15 regulation that would be written, if a regulation were
16 to be written, would not change the scoping process
17 per se but add in additional criteria and perhaps some
18 additional procedural requirements that say, okay, at
19 this particular time if you have an obviously superior
20 site, you need to submit that information, you need to
21 provide this level of information with respect to
22 that, and this is -- and then have further procedural
23 provisions that indicate how the NRC is going to deal
24 with that information and dispose of that and how it
25 would ultimately, assuming that the Agency agreed that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the information reach that level that it was worthy of
2 further consideration how the Agency was going to deal
3 with that in terms of its preparation of the EIS and
4 possibly what information the applicant would have to
5 address.

6 I mean right now let's assume that the
7 applicant identified alternative sites A, B and C, and
8 in the scoping process this other entity identified
9 site D, and the Commission said, "Okay. After
10 reviewing the information you meet our criteria. We
11 believe that D is an appropriate alternative." We
12 could, I'm not saying we would, but I'm saying you
13 could conceive of a process where we would tell -- the
14 applicant would then be required following an Agency
15 finding that they also would be required to submit
16 information on D. I mean you could. I mean you could
17 also say, no, the applicant did its work, the Agency's
18 going to develop the information on its own.

19 MR. POLONSKY: My understanding of why you
20 raised this issue initially was to decrease the amount
21 of litigation or narrow the scope of litigation.

22 MR. MIZUNO: Right.

23 MR. POLONSKY: My initial -- my gut
24 reaction is that a group is going to intervene at the
25 time that the notice is published in the Federal

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Register which is typically before the scoping
2 meetings occur, and so the litigation will only be
3 additive and that that group, if they have standing,
4 will participate in a proceeding and seek to delay the
5 proceeding further by suggesting some sort of
6 obviously superior test later on within the scoping
7 process. And the intent to decrease the amount of
8 litigation may actually create an additional
9 opportunity.

10 MR. MIZUNO: Well, I guess I can see that,
11 but my concept was that someone's further
12 participation in the proceeding, in a hearing, okay,
13 as opposed to the NEPA, and also the scope of issues
14 would be constrained by whether they participated in
15 the process of -- the scoping process and the ultimate
16 process of considering that. If you did not
17 participate in that or if you raise that issue and
18 then didn't pursue that, okay, there may be a legal
19 basis for limiting the scope of issues or that
20 entity's participation in the hearing.

21 MR. POLONSKY: Okay. Thank you.

22 MR. CAMERON: Just a final note on that is
23 that we haven't had a scoping meeting yet on an early
24 site permit, and although obviously what people want
25 to raise during scoping can be very broad and the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 staff evaluates whether that is in scope, I guess the
2 question that Alex is putting before us and Geary is
3 should the NRC specify in the notice of scoping that
4 one issue they want -- we want comment on is obviously
5 superior sites. But that's for the future. Barry?

6 MR. ZALCMAN: I have the advantage of not
7 being of counsel when I raise an issue in this
8 context. The various venues that are available to
9 process an early site permit include, certainly, the
10 scoping process. It is part of the environmental
11 review but it is not necessarily the hearing process.
12 And then the timing of these issues gives program
13 managers great concerns, and we try and establish a
14 framework where applicants have a very clear
15 understanding of what the expectations are, the public
16 has a very clear understanding, the transparency issue
17 that Chip had alluded to before, and the staff can
18 actually execute its review. And one of the timing
19 challenges that we will have is the hearing would not
20 occur until late in the process after the staff
21 completes its review, produces its environmental
22 impact statement.

23 But when we refer to that other party,
24 that other party could also be your licensing board,
25 our licensing board, who at a very late stage in the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 process could raise the issue that there is perhaps
2 yet another site that might be considered, whether
3 it's a potential intervenor that gained standing or
4 the developer that thinks he has a piece of property
5 that can be better utilized. Should we bound or
6 should we establish very clear criteria for the
7 introduction of another site into the process that had
8 not been proposed by the applicant or considered by
9 the staff in its review? I think that's very clear,
10 should we consider that, and that would also not only
11 bound interested parties but even licensing boards if
12 it were within the regulation. That's a question.

13 MR. CAMERON: Thank you, Barry. Bob,
14 other issues, final comments? Then I want to see if
15 anybody else has anything to say out there. Bob?

16 MR. BISHOP: On the topic of other issues,
17 in our petition, now round numbers 18 months ago, we
18 also asked the Commission to clarify its regulations
19 and to eliminate the current requirement for the NRC
20 -- for the applicant and, in turn, the NRC to do a
21 need for power and alternate source of energy
22 evaluation. We believe whatever other decision is
23 made as a result of this and further discussions,
24 action should be taken on those proposals as well.
25 Simply stated, as the Chairman admitted in Senate

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 testimony now a couple years ago, the NRC need not, I
2 would argue the NRC has no legal obligation to, but it
3 consumes the resources that I think could much better
4 be spent on other things and it is not likely to lead
5 to a better, more informed decision. So our
6 recommendation is that those creations of the NRC's
7 imagination back 30 years ago no longer make sense, if
8 ever they did.

9 MR. CAMERON: Thank you, Bob. Other
10 people in the audience who want to, especially people
11 we haven't heard from, want to offer anything? Do any
12 of our experts who are helping us on this project, do
13 you have any questions that we should put before
14 people before we adjourn? Yes and please introduce
15 yourself, Liz.

16 MS. HOCKING: Liz Hocking, Argonne
17 National Laboratory. I'm wondering about the whole --
18 and I'd like to get some NRC staff opinions on this --
19 whole notion of among the best that can be reasonably
20 found, if that is an artifact of like '70s thinking
21 and what that means for like the region of interest
22 and the diversity of sites that was required back then
23 and if that -- this whole notion of among the best
24 that can be reasonably found, how that affects the
25 process versus product approach to site selection.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. CAMERON: Okay. Bob or anybody have
2 an answer on that? I didn't really -- did everybody
3 catch that?

4 MR. ZALCMAN: I think the characterization
5 -- this is Barry Zalcman again -- the characterization
6 of the physiographic settings, diversity of a few, a
7 lot of that goes back to vintage 1970s, 1980
8 perspective, and I would argue that there's been an
9 evolution of case law and precedence that have come
10 out since that time that begin to narrow the focus of
11 what it is the Agency should be looking at. And,
12 certainly, we have the offering from NEI and the
13 petitions and, certainly, the Chairman's
14 representation is to what we can do, should do under
15 our regulatory framework versus a statutory framework.
16 So those are challenges along the way.

17 I think what we've tried to do is create
18 a synopsis of what the thinking was back in that
19 vintage as a platform to begin the dialogue, not
20 necessarily that we are wedded to any of those
21 approaches in today's environment, but we're seeking
22 public engagement on these issues, and it's most
23 important if you have views on these issues to help
24 stimulate the staff thinking as we formulate what
25 plans would go forward. Right now the rules are the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 rules, the statute is the statute, and the guidance
2 has been promulgated, and that's how it's going to be
3 executed.

4 I've always had this view that our rules
5 are only temporary rules until they become temporary
6 again after being changed, but they are the rules, and
7 that's very important that everybody, all the
8 stakeholders have a clear understanding that that is
9 the way the Agency plans to operate. When we're
10 talking about the potential changes or refining the
11 focus of how we look at issues, that will be through
12 a stakeholder engagement process like this as a
13 starting point, but if we're talking about changes to
14 guidance that the staff may embrace those views, that
15 would be put out for public comment and participation
16 in the process as well.

17 So I think part of the concern is we
18 started with a 1980s platform as a starting point in
19 the discussion. That's not to say that we are wedded
20 to those approaches, but it has to be that way.
21 That's where the staff was coming from back in the
22 late '80s -- the early '80s, the last time we
23 addressed this issue. And as we look towards this
24 current millennium, is there a better way to look at
25 the issue?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. CAMERON: Okay. Thanks, Barry. That
2 was an important point to make, that the staff is not
3 necessarily wedded to that but it was useful, at the
4 very least, as an historical point. We heard from
5 Dennis that if you want to send anything in, try to do
6 that by the end of February. Lee is the project --

7 MR. ALLISON: We also are going to create
8 a web site where we'll put those up, any comments we
9 get, as well as this transcript.

10 MR. CAMERON: Okay. A web site will be
11 there. Lee, did you have anything else that you
12 wanted to add, as the project manager? All right.
13 Well, I guess she does.

14 MS. BANIC: We'll be creating a web site
15 for alternative sites with the transcript of the
16 meeting and other background materials and anything
17 that comes along.

18 MR. CAMERON: Okay. Anybody else in the
19 audience have anything to say before we adjourn? All
20 right. Thank you and remember what Frank Gillespie
21 said at the beginning of the meeting, the
22 inspirational words, and the staff will be back with
23 you on this issue. Thank you.

24 (Whereupon, at 12:54 p.m., the NRC Public
25 Meeting was concluded.)

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

**Comments Submitted in Response to
Criteria for Review of Alternative Sites Public Meeting
and Meeting Transcript (Edited)**

Comment 1:

>>> "rosenthals" <ziips@firstva.com> 01/24/03 09:55AM >>>

Chip, Thanks for your phone call and the e-mail to let me know about the Jan 28 meeting on rule changes to gut the original NEPA requirements for siting nuclear power plants.

The following is my statement, and I'd appreciate your forwarding it to the meeting:

I strongly feel the NRC should keep the current NEPA rules in evaluating any new license applications, including evaluating alternative sites.

The utilities and their lobbyists are continuously looking to weaken any perceived obstacle to nuclear power production. These long standing rules make sense -- they force the NRC and the utilities to look at alternatives and the environmental impact it may have. The strange thing about this case is that the utilities are not even specifying what reactor they will use, so it seems very wierd that they would be able to define the parameters of what they would be doing.

General environmental concerns have increased, not decreased, over the past thirty years. Specific concerns need to be assessed including the effects

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 in the cases of terrorism, earthquakes, the storage of high and low level
2 wastes. The population in the immediate area of North Anna has exploded --
3 up five times in the five miles range and doubled in the ten mile range,
4 just since the plant has been built. Therefore, alternatives in less
5 populated areas should be considered.
6 Again, it is inappropriate for the NRC to grant license approval without
7 considering the type of plant. How could one examine the environmental
8 risks without knowing what will be produced?
9 I urge the staff to keep the NEPA standards that have served the community
10 for the past three decades, and to study all aspects of nuclear power
11 production -- environmental and otherwise -- including looking at
12 alternative sites. Thank you.

13
14
15
16
17
18
19
20
21
22
23
24
25

Jerry S. Rosenthal

877 Holland Creek Road

Louisa, VA 23093

540 967 2715

----- Original Message -----

From: Francis Cameron <FXC@nrc.gov>

To: <zip@firstva.com>

Sent: Monday, January 13, 2003 11:15 AM

Subject: Fwd: Meeting on alternative sites Jan 28.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

(202) 234-4433

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19

Jerry:

I thought you might be interested in an upcoming meeting scheduled for January 28th at NRC Headquarters in Rockville, MD. The topic is the NRC's consideration of doing a rulemaking to lay out the criteria for how alternative sites should be considered if and when we receive applications from the industry for new reactor sites. I know it would be difficult for you to attend but I have asked the staff to take written comments on the issues in the attached Federal Register Notice (if you can't use the web links, let me know and I will fax you a copy). I should have a name and address (hard copy and email) for written comments soon and will get it to you.

Chip [Cameron, NRC]

301-415-1642