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UNITED STATES NUCLEAR REGULATORY COMMISSION
BRIEFING ON DRAFT FINAL RULE – PART 52 (EARLY
SITE PERMITS/STANDARD DESIGN CERT/COMBINED LICENSES)

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THURSDAY

November 9, 2006

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The Commission convened at 9:30 a.m., Dale E. Klein, Chairman,
Presiding.

NUCLEAR REGULATORY COMMISSION:

- DALE KLEIN, CHAIRMAN
- EDWARD MCGAFFIGAN, JR., COMMISSIONER
- JEFFREY S. MERRIFIELD, COMMISSIONER
- GREGORY B. JACZKO, COMMISSIONER
- PETER B. LYONS, COMMISSIONER

1 PANEL 1:

2 MARVIN FERTEL, CHIEF NUCLEAR OFFICER, NEI

3 CLAYTON (SCOTTY) HINNANT, CNO, PROGRESS ENERGY &

4 CHAIRMAN NEI NEW PLANT WORKING GROUP

5 MARILYN KRAY, President, NUSTART ENERGY

6

7

8 PANEL 2:

9 LUIS A. REYES, EDO

10 GARY HOLAHAN, DEPUTY DIR., NRO

11 NANETTE GILLES, NRO

12 EILEEN MCKENNA, NRR

13 GEARY MIZUNO, OGC

14 JERRY WILSON, NRO

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

1
2 CHAIRMAN KLEIN: Thank you. We'll now move into our open
3 meeting. But before we start, I'd like to announce since this is our first public
4 meeting since an event yesterday, Commissioner McGaffigan received the highest
5 NRC award yesterday for distinguished service. He is the longest Commissioner
6 serving, crossed that milestone on November the 3rd. And so we had a nice
7 award and a nice ceremony where we totally embarrassed him yesterday. But it is
8 a nice event. And I'd like to just acknowledge the fact that he received the highest
9 NRC award, the first award of this nature ever received by a Commissioner. So
10 thanks for your service.

11 CHAIRMAN MCGAFFIGAN: Thank you, Mr. Chairman.

12 CHAIRMAN KLEIN: Well, today we will hear about Part 52.
13 Obviously, the intent of Part 52 is to clarify what the requirements are and make
14 the licensing process hopefully more simplified and understandable. Hopefully,
15 this will enhance our effectiveness and efficiency. There's been a lot of dialogue I
16 believe between the staff and the industry. And so first we will hear from the
17 industry. And then we will hear from the staff. Any comments before we start?

18 COMMISSIONER MERRIFIELD: Mr. Chairman, I will make a
19 comment. When we had our last meeting on Part 52 at the proposed rule stage,
20 Commissioner McGaffigan made some comments about this being a dump truck
21 rule because of the nature of the size of the document that we were engaged with.
22 And I have kidded him at various points about that. In fact, gave him a dump truck
23 that sits in his office holding business cards.

24 COMMISSIONER MCGAFFIGAN: A small one. I think it's now a
25 freight train.

1 COMMISSIONER MERRIFIELD: I was supportive of moving
2 forward on Part 52 and I still am. I want to credit our staff for the timeliness of
3 moving this process forward. Gary Holahan promised to us that he would get it to
4 us in a certain time frame. And to his credit and the credit of the staff, they did
5 that.

6 The down side, however, is we have I would not say a dump truck
7 rule, it's as much a chainsaw rule as to the forest of trees necessary to come up
8 with this. Now, it maybe ... you know, I'm a lawyer, and I know what billing by the
9 hour goes. Our OGC staff may have helped a little bit in this in terms of making
10 sure we've got every jot and tittle.

11 I don't know what the final count is. A thousand pages on a
12 Statements of Consideration or something of that notion seems to me an awful lot.
13 Maybe it's 700 pages on the Statements of Consideration. Whatever it is, it's a
14 huge document. And I don't think that speaks well to our strategic goals of
15 efficiency and effectiveness. I think we can learn and need to be more succinct.

16 Now, it may well be that the tradeoff of timeliness of getting it here
17 on time was a tradeoff between the amount of data and backup material we had
18 to put in. And also, I think it is a function of the staff wanted to make sure that
19 each and every box was checked so that we put together a program that will make
20 it clear for our licensees what we intend in the COL process. I think the intent was
21 all good. I have to put a footnote, however. I remain concerned about what we've
22 ended up with for a document. It is a massive rule. And I fear what the Federal
23 Register is going to look like the day that we agree to go forward on it.

24 So with that, we'll open up, Mr. Chairman. And I am very interested
25 to hear the details of how our licensees are responding to this effort and certainly

1 want to hear the views of our staff and how they got to where they are. But I did at
2 least want to put a footnote of my concern of the breadth of what we've ultimately
3 come up with.

4 CHAIRMAN KLEIN: It is the largest document.

5 COMMISSIONER MCGAFFIGAN: Mr. Chairman, just for the record,
6 there's 400 plus pages of ruling, which about 418 coupled with about 465 pages of
7 description. So we have about a page of description of what we did in the
8 Statements of Consideration preamble for every page of ruling. So it's quite
9 sparse in terms of the discussion given the length of the rule, but whatever. It is
10 quite large.

11 CHAIRMAN KLEIN: With that background ...

12 COMMISSIONER LYONS: Could I step in with a comment? On the
13 one hand, I wanted to agree with my colleagues that, yes, it's a large rule. But on
14 the other hand, I think the time is also very much here when we need to move
15 ahead on this. And I would be reluctant to say that because it is large, we should
16 be looking towards a massive streamlining which might add X more amount of
17 weeks or months. And at least from my perspective, I'm hoping to get out of this
18 meeting today, we can come out with a very, very clear path forward on exactly
19 what we're going to do with this as it is here, as large as it may be, but a very clear
20 path forward to move very expeditiously.

21 COMMISSIONER MERRIFIELD: Just as a clarification, I'm not by
22 my comments suggesting that we toss it back to the staff.

23 COMMISSIONER LYONS: Oh, okay. I'm sorry.

24 COMMISSIONER MERRIFIELD: And if that was where you came
25 from, yes, we can't do that at this point. I agree with that. I would just say as a

1 general matter, it would have been nice if we had been a bit more succinct and
2 efficient in the approach that we had in doing this.

3 We're handing a big piece of documentation to our licensees that
4 they're going to have to figure out for the COL process. I think the breadth does
5 make it more difficult to make that succeed as a general matter.

6 But I agree with you. I'm not asking for a huge streamlining, nor will I
7 suggest it unless I'm told otherwise or convinced otherwise that we need to throw
8 the thing back for complete rewrite.

9 CHAIRMAN KLEIN: Commissioner Jaczko?

10 COMMISSIONER JACZKO: I don't have perhaps too much to add.
11 But I would just say I think this has been a good effort on the part of the staff. I
12 mean, this is a very large comprehensive rulemaking. And I think the staff has
13 done a good job to do this in a very open and transparent way. And I think that
14 has I think facilitated us moving forward and getting to the point where we are
15 today.

16 Folks who have looked at it are not ... while they may not necessarily
17 be fine with everything in the final rule, I think for the proposed final rule, or the
18 draft final rule I should say, they are at least I think aware of most of what's in
19 there. And I think that's a good sign of how we should do these things in the
20 future.

21 That having been said, I think that there are some things in here that
22 are somewhat new. And I think those are some things that I certainly will like to
23 hear from people today on, some of the areas that have cropped up and were
24 somewhat surprising I think to me and I think we'll certainly go forward from there.
25 So thank you.

1 CHAIRMAN KLEIN: With that background, Marv, we'll like to hear
2 what the stakeholders think of this document.

3 MR. FERTEL: Thank you, Mr. Chairman. And thank you
4 Commissioners. We probably agree with everything we just heard. And we also
5 would like to complement the staff on getting the rule out.

6 I'll comment maybe at the end of this presentation on some
7 observations on just the rulemaking process and not just Part 52, because there's
8 a whole bunch of other rules. And you might be violating NEPA or something with
9 the amount of trees you are cutting down in the full rulemaking process, not just
10 this one.

11 CHAIRMAN MCGAFFIGAN: Probably need to do an environmental
12 impact statement on the amount of trees we're cutting down.

13 MR. FERTEL: Right. But we would like again to complement the
14 staff. The comments we're going to offer today are informed by a lot of
15 engagement with the staff on the rule itself. And a reasonably good meeting with
16 the staff on the Statements of Consideration.

17 But we really have only had a week to review the Statements of
18 Consideration. So we're still sort of plowing our way through on that. But we will
19 try to provide you with good insights today on what we are thinking. And our
20 expectation is by the end of the month or so, we would send in a letter with all the
21 specific comments.

22 So that's where we are. Could I go to the second slide, please? At
23 the table today with me I think you know Scotty Hinnant, the new Chief Nuclear
24 Officer at Progress. And Scotty also is the Chairman of our New Plant Working
25 Group. And it's the group that's interfacing with the staff on a regular basis now to

1 try and make sure we resolve issues effectively.

2 And on my right is Marilyn Kray who's the President of NuStart. And
3 Marilyn has been involved in all the new plant activities from basically the
4 beginning as an Exelon person and then as the leader on NuStart. She's been
5 intimately involved in all the design centered activities related to going forward for
6 both the ESBWR and the AP1000.

7 Go to the next slide, please. As many of you have referenced, this
8 rulemaking has gone on for about eight years. And it's had some bumps. We
9 think we're at a point where the rule needs to get out.

10 So we are where Commissioner Lyons referred that we think the rule
11 should be issued. We think before it's issued, there are a couple of things, a few
12 things, as maybe Commissioner Jaczko referred to, that need to be clarified. And
13 we'll be offering you those clarifications today during this discussion and again as I
14 said, we'll be following up with a detailed letter.

15 And it's not hundreds of pages that we're asking for in clarifications.
16 We tried to narrow it down so we can get this thing out. Because we're planning
17 on filing COLs by this time next year. So we do need to move forward with this
18 rulemaking. And we're committed to doing that. And we're pleased with what the
19 staff has been trying to do to move it forward.

20 Go to the next slide. The specific issues that we're going to talk
21 about today are listed there. And Scotty's going to talk about the first three. And
22 Marilyn will pick up the next three. And then Marilyn will also offer you some
23 comments on the limited work authorization supplemental rulemaking activity
24 which we are quite favorably impressed with and have some comments that we
25 think would actually increase its value and not diminish its intent from the NRC or

1 the industry standpoint.

2 And then we'll complete our comments with some ideas we think
3 could improve the overall process for review going forward. So with that, I'd like to
4 turn it over to Scotty.

5 MR. HINNANT: Could I have the next slide, please? On the
6 environmental finality topic, there are two points I'd like to make.

7 First, finality of an ESP at the time of COL proceeding is critical.
8 Especially in regard to environmental matters. One interpretation of the rule is
9 that there's finality only when all matters are resolved at the ESP stage.

10 In the case when all matters are not resolved or some issues are
11 deferred, the rule appears to allow for reopening of issues when a commenter
12 alleges that there are new and significant information.

13 In discussion with the NRC staff, we don't think that's the intent. But
14 we believe that should be a well structured process for determining whether
15 there's objective basis and evidence for any new and significant information
16 finding before an issue is reopened at the COL stage for those applicants that
17 have gone through the ESP process.

18 We think that the well-defined NEPA scoping process would be a
19 way of bringing more structure and balance to the COL proceeding relating to
20 environmental matters and would, we believe, improve the process.

21 The scoping process provides for public evaluations with meetings
22 with written comments on the COL applicant's environmental report. And on
23 completion, the NRC makes a determination on whether there is new and
24 significant information and defines the scope of a hearing as it relates to
25 environmental matters.

1 The second point on this item is we have an additional concern
2 related to ESPs currently under review. ESP applications shouldn't have to be
3 modified, nor do we believe ESPs be delayed or modified based on wording of the
4 new rule. We think the rule change related to the process improvements ... are
5 related to the process improvements, not really the technical criteria requirements.

6 So we don't see a need really to amend the ESP applications or to
7 extend the review and approval process to meet wording in the new rule for those
8 applicants that have been going through the ESP process up to this point.

9 Next slide, please. The industry and the NRC staff have recognized
10 the need for a more flexible change control process for design certifications based
11 on first of kind engineering, plant construction and operating experience.

12 We agree that the best way to address these needed changes while
13 preserving the standardization is to incorporate these changes directly into the
14 certified design. Current regulations allow change to a design certification only to
15 assure adequate protection of public health and safety or common defense and
16 security. Or to assure compliance with regulations in effect at the time of the
17 original certification.

18 The new rule allows for changes to the certified design to reduce
19 regulatory burden, to incorporate details from the completion of design
20 acceptance criteria to correct errors and to allow for changes that contribute to
21 standardization. We really have three concerns with the new provisions.

22 First, consistent with the current practice, we think the changes
23 proposed by the NRC or the public in general not associated with combined
24 license application referencing and certified design should be required to meet the
25 51.09 backfit requirements.

1 Also consistent with the current practice, changes proposed by the
2 design certification vendor or COL applicant or holder would not be subject to
3 51.09.

4 Second, any petition to change a certified design should not, as
5 indicated in the Statements of Consideration, be a justification for re-reviewing or
6 re-opening other sections of the design certification to institute changes there we
7 believe. Rulemaking on changes in addition to design should focus solely on the
8 proposed changes.

9 And third, standardization is controlled really by applicants, licensees
10 and the designers. And proposing a change to the certified design based on
11 enhancement and standardization, we think the petitioner needs to really justify
12 how these changes would contribute to the standardization. Only applicants,
13 licensees and designers really have the information to justify the basis for this kind
14 of proposal we believe.

15 So we think the rule language and the Statements of Consideration
16 need to be changed to reflect these concerns to avoid really misinterpretation in
17 the future. While it maybe clear on the current staff's part that's been writing this,
18 we think it could be open to different interpretation in the future as other people
19 read the words and try to interpret them.

20 Next slide, please. We consider the 50.99 to be one of the critical
21 elements in the new licensing process. The proposed changes quite honestly
22 were a surprise when they were announced two weeks ago. Yet, we think they're
23 a step forward.

24 We have some concerns over the language and the intent. It's
25 essential that there be public discussion on the new language, we believe, as

1 soon as possible.

2 First of all, the rule appears to ignore the intensive NRC inspection
3 and report process that would be generated throughout the construction period
4 through a sign-as-you-go type of inspection regime.

5 As a result, the documents that make up the ITAAC determination
6 basis would have been reviewed through the normal inspection process and
7 would be identified and available at the site. And the inspector reports
8 documenting the adequacy of those reviews done by the NRC inspection staff.

9 Second, we support making available licensees' schedules for
10 implementing ITAAC at regular intervals. This will keep the staff informed and
11 allow them to factor the schedules into their planning inspections to verify ITAAC
12 completion. And should make the ITAAC completion and notification process
13 more efficient and effective.

14 And third, as proposed, we think the language is impractical. The
15 use of the language such as "sufficient" is very subjective. There have not been
16 discussions on the meanings of these words. And we can't judge really the impact
17 on the new language without having these discussions.

18 One interpretation would be that voluminous set of ITAAC supporting
19 documentation and information for each ITAAC would have to be submitted to the
20 NRC. This we view as challenging. And from a practicality standpoint, we believe
21 that the inspection process ongoing, you will have been reviewing and
22 documenting these.

23 And so we're concerned with the wording now and how much
24 documentation to support the basis to determine the ITAACs were acceptable is
25 really the issue that we're focused on. We think we need to schedule an intensive

1 series of public interactions on this rule language here soon. So we can get that
2 point nailed down as we go forward. Marilyn.

3 MS. KRAY: Thank you, Scotty. If you turn to the next slide. The
4 proposed rule continues to require COL applicants to evaluate international
5 operating experience comparable to what would be found in NRC generic letters
6 and bulletins.

7 Now, while we believe from an operational practice it certainly makes
8 good sense for us to be engaged in ongoing dialogue with global operators, it
9 doesn't seem appropriate to require this as a regulation.

10 The language is also somewhat vague and unfounded. And the
11 implementation of it would be difficult in that COL applicants are not well
12 positioned to monitor and evaluate operating experience generated by regulatory
13 agencies in other countries or to determine which of that international operating
14 experience would be comparable to what would be found in a generic letter or a
15 bulletin.

16 The existing NRC procedures, specifically LIC-400, already requires
17 the NRC staff to factor in international operating experience into its own generic
18 OE program. So it's through this mechanism that the COL applicants would
19 consider comparable international operating experience.

20 So we would suggest that the COL applicant should not be required
21 to duplicate what is already established in a regulator-to-regulator interface. Go to
22 the next slide. Similar to that issue, and actually found in the same provisions, are
23 the references to U.S. generic communications. And the rule would require that
24 applicants provide information that demonstrates how generic letters and bulletins
25 have been incorporated into the plant design.

1 And this provision appears to be elevating generic communications
2 to the status of a regulatory requirement for new plants as opposed to retaining
3 the status of regulatory guidance. The proposed provisions would impose
4 requirements on applicants through the generic communications process as
5 opposed to the rulemaking process.

6 We propose that the provisions be deleted and instead the generic
7 communications be incorporated into the Standard Review Plan. And only when
8 necessary would rulemaking be initiated.

9 We do acknowledge that in the revised language, the staff indicates
10 that they are referring only to those generic letters and bulletins that have been
11 issued since the last update of the SRP. This could still be somewhat of a burden
12 on the applicants depending upon how frequently the SRP is updated.

13 So again, the suggestion to delete the provision and to separately
14 ensure that the implementation and the close out process for generic letters and
15 bulletins does include the requirement to consider updating the SRP, just as part
16 of an administrative housekeeping issue.

17 If we move onto the next slide on severe accidents. In the proposed
18 language, severe accidents could be interpreted as being part of the 50.2 design
19 bases. In fact, a read of Statements of Consideration suggest that in fact the
20 intent is that they are.

21 The real language should be clear that the specific set of severe
22 accidents under consideration is not part of the 50.2 design bases since they are
23 not design bases accidents. Also, the rule needs to be clear that the severe
24 accidents being considered are only those ex-reactor vessel accidents.

25 And this is a case similar to the one that Scotty mentioned where the

1 rule needs to be clear and aligned with the intent. So that, again, the key
2 elements are not left to guidance and subject to potential re-interpretation at some
3 later time.

4 Also at issue with this severe accident is the criteria for determining
5 when a change effecting severe accidents issues require prior NRC approval.
6 The rule uses out of date language with respect to change control and also terms
7 that we think would cause confusion and again result in either protracted
8 regulatory interactions in future years as both the industry and the NRC struggle to
9 understand the difference in intent of some of these different terms.

10 For this issue, we suggested in a follow-up letter we would provide to
11 you some suggested changes to that. As Marv mentioned, we wanted to take the
12 opportunity to address the issue of limited work authorizations.

13 And again, to echo what Marv said, we compliment the staff in the
14 phenomenal effort and results that went into the proposed supplement to Part 52.
15 And we believe that it will in fact make the regulatory process more effective by
16 allowing focus on safety significant issues. And I believe the sentiment was
17 conveyed by the industry at the recent November 1st workshop with the staff.

18 Nevertheless, we would offer two refinements to this to further have
19 impacts, especially with respect to the schedule for licensees going forward.

20 The first one involves excavation. And essentially, where it is that
21 we draw the line between what is considered to be site preparation and what is
22 considered to be construction, recognizing that site preparation activities can in
23 fact be done without an LWA and construction activities do require an LWA.

24 The staff position is that the excavation would be on the construction
25 side of that threshold. We would argue that the excavation should in fact be

1 considered on the site preparation side of that threshold, similar to other soil
2 movement activities to essentially get the site down to the established grade.

3 We do agree that activities such as back filling, soil compression,
4 driving piles, would be on the construction side of that boundary. In some of the
5 discussions with the staff, we understand that part of the concern in wanting
6 excavation to be considered as a construction activity is around the fact that
7 during excavation, it maybe possible that anomalies are identified and that the
8 staff may feel more comfortable if those activities were done under an LWA where
9 their oversight was more assured.

10 We would offer to revisit the existing requirements and make any
11 enhancements that would be necessary to ensure that any discoveries during
12 excavation would require reporting or notification to the NRC.

13 The other refinement as I mentioned to this would also be the
14 definition of construction. That it needs to be adjusted to essentially permit
15 construction of non-safety significant facilities, such as cooling towers or
16 warehouses or admin buildings.

17 The proposed rule requires an LWA for facilities described in the
18 FSAR. And as you know, the FSAR for reasons of completeness and other points
19 of reference do in fact include facilities without safety significance.

20 So again to address the whole issue of LWA, both of these, we
21 would suggest that we provide specific wording for the notification requirements
22 during excavation and also offer an alternative definition as to what type of
23 activities or facility construction can be done without an LWA.

24 COMMISSIONER MERRIFIELD: Just for clarification, you
25 mentioned cooling towers, admin buildings. Which was third?

1 MS. KRAY: Warehouses.

2 COMMISSIONER MERRIFIELD: Warehouses. What about
3 transmission related activities? Would that fall in or outside?

4 MR. FERTEL: I would assume it would fall outside.

5 MS. KRAY: Outside. Yes, that's not intended to be an inclusive list,
6 but rather just by example again of things that are in an FSAR. But we think
7 would clearly be on the non-safety significance.

8 CHAIRMAN KLEIN: We thought with 800 pages, it would have
9 everything listed.

10 MS. KRAY: Thank you. Marv.

11 MR. FERTEL: Thank you, Marilyn. Next slide, please. What we'd
12 like to do now is just offer a couple of observations on process improvements.
13 We'd first like to thank the Commission staff for the policy statement, the October
14 20 draft policy statement.

15 Our read of it is it's going down the road the right way and it's a good
16 statement. And we'd recommend that you get it out for public comment and move
17 towards finalizing it.

18 In our initial review of it, we've identified a few things that we think
19 could be added to it. And on the slide, we've listed them. And what they do is
20 basically say look to establish target milestones for issuance of things like SERs
21 and EIS's. And again, this is the experience on our side if we have targets, we
22 resource load and plan on trying to meet it.

23 And if we can't meet it, we look at what we have to do to do it or
24 ultimately change the target. But at least it's something that's been thought
25 through.

1 We'd like to start the hearings based upon drafts if we could. We
2 think that again with standardized plants and things like that, a draft is a pretty
3 complete document. And we would think that that's something you could do in
4 this round which might have been very difficult to do in the first round of
5 construction, but in a very different situation today. And then we would always like
6 to keep the activities focused on the applications specific issues and guidance in
7 the policy statement to that would certainly be helpful.

8 Again, we're looking down the road saying we're building plants over
9 the next ten, twenty, thirty years. And we'd like the guidance to have some
10 sustainability and not just the memories of the folks that are here.

11 Go to the next slide, please. In addition, and you've heard a lot
12 about this in certainly the trade press and former Commissioner Curtis has talked
13 about it. We think eliminating the uncontested part of the mandatory ESP and
14 COL hearings makes sense.

15 And the industry would clearly support any effort by the NRC to get
16 that done legislatively. We think it does not at all impede public participation. But
17 it just takes something out that's not necessary from the standpoint of the process
18 as it is today.

19 We also think that there'd be real value in the rule itself of specifying
20 the use of an informal legislative type hearing under Section 52.103 for the
21 ITAAC. We know in the policy statement that's referred to as an option that's
22 being looked at. We think that's good. And we think that there may be
23 improvements you can come up with down the road.

24 But we actually think that for certainty purposes, the rule itself should
25 move in this direction as opposed to keeping it as something that's just a policy

1 concept being dealt with as applications are reviewed.

2 So those are some additional enhancements we're looking at. We'll
3 continue to look for more and try and provide those to the Commission as we
4 come up with them.

5 Go to the next slide, please. In summary, I think what you've heard
6 is while if we had our druthers, the rule would be much shorter and more precise.
7 We understand where we are. We think the staff has done an extremely good job
8 of getting it done, given its length, and also making tremendous progress in
9 clarifying things. Because given the size of it, getting clarity was difficult.

10 So we think the rule needs to get out. We think in order for it to do
11 what everybody would like, which is provide the right certainty for not only
12 licensees in the NRC, but for any other stakeholders.

13 There are the issues we've raised today that we think could be
14 clarified and we think would help the rule do its job better and we will send you a
15 letter on that. I'd like to emphasize on the LWA discussion that Marilyn talked to,
16 those are, we called them refinements, but they're very significant from a time line
17 for getting plants built.

18 The excavation portion of the period could be twelve to eighteen
19 months. And if I can start it on twelve to eighteen months further down the road
20 than it would be if I had to get the LWA. And likewise, I think in talking with the
21 staff, I don't think their intent was that warehouses and admin buildings and even
22 cooling towers were intended to be considered as construction. I just think we
23 need to get the language better. But the LWA portion, they've done a really good
24 job and those two refinements would have a big impact on making the scheduling
25 thing much better.

1 The most important thing we think in the immediate term that we
2 need to do is engage in public dialogue with the staff on 52.99. The staff has I
3 think with all the best intentions attempted to provide clarity and certainty on the
4 part of the process when the plant is built.

5 And when the investment is made and you're trying to get a decision
6 to go forward and start operations, it was new to us. It was probably new to
7 anybody else that's taken the time to read it. And I think that what we need to do
8 is immediately get into an open dialogue that seems to have moved the ball down
9 the road on every other issue. And I see no resistance from the staff. I'm just
10 encouraging it to happen soon.

11 Because what we'd like to do is get you a letter by the end of
12 November. So that you can get the rulemaking sewn up and we'd like to have that
13 letter include our recommendations on 52.99, and we'd like our recommendations
14 to be informed by dialogue with the staff in public meetings as opposed to just
15 what we think without that dialogue. So we would really push for that.

16 A couple of points just to end. I was here yesterday just for the
17 digital I&C discussion. And I'll make two comments, not on a digital I&C, but on
18 (1) I think that here there has been excellent communication with the staff. On
19 Part 52, I apologize for maybe the lack of some communication on the digital I&C.
20 And I'll make sure that that doesn't happen again.

21 The other thing that struck me listening to it was part of what the
22 industry asked for yesterday and the Commissioners all acknowledged was with
23 new plants being real, the time line for resolving digital I&C has taken on a lot
24 more priority and a lot more importance. And that was why we were trying to
25 change the process.

1 We have in the 24 hours since yesterday attempted to see if there's
2 anything else that jumps out at us that would fall into that category that we ought
3 to inform you, hey, now that it's real, we ought to ... and nothing has jumped out
4 that we're aware of.

5 But what I will tell you is that we will continue both within the design
6 centered activities we have and that NPOC actually makes sure that we think
7 about this. And if there is something, get back to you. So it's not a surprise and
8 that we get ahead of it.

9 But we did go back in the last 24 hours and nothing ... nobody stood
10 up and said, oh, my God. We ought to be doing this fast. So at least on a quick
11 review and even this morning sitting with Scotty and Marilyn, Chris Crane and my
12 folks, we didn't come up with anything that jumped out. And that was a lesson I
13 took out of yesterday's discussion.

14 A couple of observations on the comments all the Commissioners
15 made at the start of this, starting with Commissioner Merrifield's comment. Part
16 52 is about 1,000 pages with everything. The guidance is 1,100 pages. The
17 SRP's probably 2,000 pages. All of this is probably necessary, but it's a lot.

18 We've got Part 73. We've had a team of experts sitting in our offices
19 basically for three days with the doors locked going through it. And Part 73's
20 1,100 pages. And they're having a terrible time getting through it. They're having
21 a hard time actually understanding what some of the rule language means
22 because we don't have the guidance to look at with what does this rule actually
23 mean in this place?

24 As a result of that, we've identified what we believe are 88 new
25 requirements already. And we're still looking at it. We have Part 26 which has

1 been around longer than even Commissioner McGaffigan.

2 COMMISSIONER MCGAFFIGAN: I think it was started early with
3 Commissioner Rogers' term.

4 MR. FERTEL: And it's now up to 1,600 pages. I can tell you from
5 the industry standpoint, we're more equipped than any of your other stakeholders
6 to review all this stuff. Because we have a lot of people who are very interested
7 and we pull them in and we sit them down and we make them do it. And we pay
8 lawyers to help us.

9 Your other stakeholders can't do it anywhere near as well. And I'm
10 not even sure how your management does it. So my encouragement would be to
11 try and think about how you make that process better. And if I have ideas, we'll
12 share them with you. But it's hard.

13 And particularly now when you have this sort of waterfall activities
14 coming up with major rulemakings next year, that impacts what we're doing on
15 new plants and security and everything else, it's very hard to get very informed
16 responses. And the staff has a terrible time I'm sure dealing with all the
17 comments and all the requests for meetings and everything else.

18 So somehow, some refinement or improvement to that process
19 would benefit everybody that has to work on this, including your own staff I'm sure.
20 So that would be my reaction to what I heard both Commissioners say at the
21 beginning. Again, we compliment the staff on Part 52. It's been a heroic effort.

22 We think they've been very much engaged. They haven't told us
23 everything we want, the way we want it. But they've told us why they want what
24 they want. And I think that that dialogue has been very good. And we need that
25 on 52.99 as soon as possible. With that, I thank you. And we're prepared to

1 answer questions.

2 CHAIRMAN KLEIN: Well, thank you. Having been a fairly
3 newcomer to this process and I asked early on when I realized the volume of Part
4 52 was why was it so big? And part of that was to add clarity and stability. It
5 sounds like there's still some room for improvement. But I think that's the intent of
6 this. But it does seem like a large document. It sounds like there's more large
7 documents coming down the road. So with that, Commissioner McGaffigan.

8 COMMISSIONER MCGAFFIGAN: Thank you, Mr. Chairman. I'll
9 just comment that the reason all this is coming down the road so rapidly right now
10 is the Energy Policy Act of 2005. And I think we would have probably done this,
11 all of these rulemakings at a more deliberate pace if we had the luxury of doing
12 so.

13 But I'm very sympathetic to some of the specific concerns you raised
14 today. But I'm going to start with one where the staff agrees with you and
15 disagrees with me and ACRS. Whichever one of you wants to comment. Why in
16 God's green earth is it difficult for an industry committed to risk informed
17 regulation to not maintain living PRAs that are updated and you tell us through a
18 process about changes?

19 The PRA itself is a secure document. In the post-9/11 world, it ain't
20 going to be out there for Osama Bin Laden to take a look at. I'll ask the staff this
21 afternoon the same question. They know it's coming. Why did you guys make
22 that comment to the staff could so giddily agree with?

23 MR. FERTEL: I think, Commissioner McGaffigan, that we see the
24 value that the PRA has in risk informing what we do at the plant. We also see
25 different sites and different companies using PRAs for different applications. And

1 what we didn't want to do is make one size fits all.

2 COMMISSIONER MCGAFFIGAN: I'm not trying to get one size fits
3 all. I'm trying to have a high quality PRA. Plants to start operating in 2015 may
4 operate to 2075 or later. That those plants, there's a good quality PRA at the
5 outset. We changed that in the proposed rule stage, so that we didn't ask the
6 impossible of you. But then the question was shouldn't we require a high quality
7 PRA over the lifetime of the plant with updates submitted to the staff. Not of the
8 entire PRA, but updates as to critical changes that would meet some threshold.
9 Like the FSAR. All the FSAR stuff is still going to be there. You guys are going to
10 have to do periodic updates in the FSAR. And we all agree that that isn't
11 necessarily a safety focused document. The PRA is safety focused. And you
12 guys, I mean, the staff says is they'll update it as you guys produce license
13 amendment requests. I mean, they won't update it, but they'll look at it. I don't
14 know, as I say, why it's a burden.

15 MR. FERTEL: Again, I think we're looking at it more as an
16 application orientation. As we use it and the way we use it, we need to maintain it
17 updated for those purposes. But as a stand alone, I've got to update everything
18 all the time.

19 COMMISSIONER MCGAFFIGAN: Once you're operating. Once
20 you're operating, it would be nice to update it. One of the issues that you raised is
21 the 52.99. And I hope we can have the public dialogue. Looking at Karen, I don't
22 think there's anything that would preclude that. We're going to have one today.
23 And the staff can follow-up on it.

24 In looking at 52.99 and 52.103, I went back and looked at the
25 statutes. And I guess, Scotty, you're actually going to someday face this problem

1 if you successfully receive a COL. In the end game, the staff is hung up about
2 Section 189 requires that six months before a fuel load, that the Commission
3 notice an opportunity for hearing about how you have met or will meet the
4 acceptance criteria. And so 52.109 now asks you for constant information and
5 vast quantity updated every thirty days as we get close.

6 Section 185 of the Atomic Energy Act doesn't use the term fuel load.
7 It says the Commission has to make certain findings prior to operations.

8 MR. HINNANT: Operations, yes.

9 COMMISSIONER MCGAFFIGAN: And operation I would think
10 means something like mode two before you start ... since you have an operating
11 license. How do you see this all ... I mean, you've got a plant built. Say it's 2015.
12 You've passed some of the acceptance criteria. You've got a way to go. How do
13 you guys see that working? It strikes me that we have to do something six months
14 prior to fuel load. That doesn't necessarily mean that you can't continue under
15 Section 185 and 52.103 to continue to get ready up to through mode three in
16 terms of testing out your plant.

17 MR. HINNANT: As I think about this new process and reflecting on
18 how we went through the start-up testing process for the existing plants and
19 recognizing that the staff at that time had to have information on test results, test
20 criteria in order to make their preparations and determinations whether they would
21 supported an operating license in that day's time.

22 We feel there will be a need for constant communication flow
23 between we the licensee and the staff on where we are on testing. We obviously
24 expect that your staff will witness many of the tests.

25 So we think that will have to have close dialogue and information

1 flow. What makes us nervous about the wording in the rule is for us to tell you for
2 ITAACs that we've not run the test yet how we plan to make sure that the tests
3 results would be acceptable is our reading of the rule.

4 So that becomes a problem of how do we do that? Realistically and
5 officially to be able to notify you for those tests that we've not completed results of
6 what we're doing to ensure that we will pass those results before we go into
7 operation. So it's more of a wording issue and a timing issue and a volume of
8 documentation that we are fearful we might have to be shipping to you to support
9 our contention for both the ITAACs we have completed as well as the ones that
10 are coming up.

11 COMMISSIONER MCGAFFIGAN: How many of the ITAACs do you
12 expect to be completing within six months of fuel load? I mean, presumably
13 before fuel load, you'll have to heat up the plant to full operating pressures and
14 temperatures. And there will be a bunch of integrated tests that you have to do at
15 that point without fuel. And there are probably going to be ITAACs on them.

16 MR. HINNANT: There will be in some of them, yes.

17 COMMISSIONER MCGAFFIGAN: But that's fairly late in the
18 process that you're doing that.

19 MR. HINNANT: That's correct.

20 COMMISSIONER MCGAFFIGAN: So that's probably in that six
21 month window.

22 MR. HINNANT: It is.

23 COMMISSIONER MCGAFFIGAN: So the dialogue you want to have
24 with the staff is to clarify the amount of burden. I mean, you can't prove you're
25 going to pass some integrated test.

1 MR. HINNANT: That we haven't run yet.

2 COMMISSIONER MCGAFFIGAN: You haven't run yet. But the law
3 says, Section 189, that you have complied or will comply. But I guess it's our
4 judgment as ... I think there is a burden. It maybe a statutory artifact the staff is
5 struggling with. But there's sort of a burden there. And I think in 52.99, we have
6 shifted that burden, the whole freight train over to your side of the table and said
7 good luck. And maybe that's not fair.

8 As I read 185 and 189, Mr. Chairman, my fellow Commissioners, it
9 struck me there were still, that was part of the Energy Policy Act of '92, there are
10 still artifacts of the old process sort of built into it. And I think we've now come
11 face-to-face with them in 52.99 and 52.103.

12 CHAIRMAN KLEIN: Commissioner Merrifield.

13 COMMISSIONER MERRIFIELD: Mr. Chairman, I appreciate the
14 comments that Marv made relative to our rule process. And we can always do
15 better. But I nonetheless if you've got some thoughts certainly, we're always
16 happy to consider them.

17 Going to the general overall framework, let me see if I understand
18 this right. You're not really asking us to go back and pull the rule back from the
19 staff. What you're really talking about is you want something that can do a
20 workshop, opting for dialogue within the next couple of weeks? Is that really what
21 you were hoping for? And then to be followed by a letter from you all specifically
22 outlining the concerns, if any, you may continue to have relative to that very same
23 public discussion. Is that what you're looking for?

24 MR. FERTEL: Yes, Commissioner. Well, there's two things. One,
25 we have the six or seven items we talked about that we are prepared to send a

1 letter in on, environmental finality, the LWA comments. What we need to have
2 dialogue in a public forum with the staff as soon as possible is 52.99. So that we'll
3 be informed by what they're thinking when we send in our comments rather than
4 us just thinking we thought we knew what they meant. And that's what we're
5 trying to do. So we could send a letter in two weeks or three weeks with
6 everything but 52.99. What we'd like to do is send one letter which covers
7 everything. And we'd like to have the 52.99 discussion as soon as possible to do
8 that.

9 COMMISSIONER MERRIFIELD: If there were a discussion though,
10 you wouldn't be limiting yourself just to 52.99 I would take it. I mean, it strikes me
11 having looked at this in terms of some of the things that you all are having
12 concerns about, it looks to me like some of this could be dealt with relative to
13 guidance.

14 There needs to be some clarification on the part of the staff of what
15 they meant. My guess is like a lot of other things that the differences between
16 where you are and where our staff is maybe either small or non-existent. But
17 there maybe a misunderstanding of what was intended by the rule language.

18 MR. FERTEL: To be honest, we're still going through the SOC.
19 Because we did get it last week. And it's a lot of pages. So some of this may get
20 cleared up. We changed one slide after we submitted them for this meeting.
21 Because we got through enough of the SOC to see that one of the things we
22 thought we had a big problem with the staff clarified in the SOC. So, you know,
23 we're still going through that.

24 I would envision the public meeting to be focused very heavily on
25 52.99. I think that if there were some of these other issues that we felt we needed

1 more discussion, we would suggest to the staff they be noticed. But I think that
2 our real intent now is 52.99 it is the one that requires the most intention.

3 COMMISSIONER MERRIFIELD: Well, I've been very supportive in
4 the past and have frequently been the one suggesting we do have those kinds of
5 meetings to get through those issues. If we do that, however, I do think a dialogue
6 on ... you raised a variety of issues here. I think to focus on 52.99 would be ...

7 MR. FERTEL: We're willing to talk about all of them.

8 COMMISSIONER MERRIFIELD: At what point, would you be
9 prepared to have such a meeting?

10 MR. FERTEL: We'd be prepared to meet next week.

11 COMMISSIONER MERRIFIELD: On some of the specific issues in
12 here, Marilyn, you mentioned limited work authorization. Former Chairman Diaz
13 and I were the ones who pushed on this one in particular. I'd be very interested to
14 see what you come up with in your letter.

15 I think for me certainly I think excavation seems to fall on the side of
16 limited work authorization. It certainly was the direction I had wanted to go. And
17 you got some other ideas there I think we ought to consider. But I think that's
18 something the Commission can do in the context of its decision going forward on
19 this.

20 In terms of licensing and the hearing process, you've got a bullet
21 here, establish target milestones for the SER and EIS. It struck me in reading
22 this, you know, we have a lot of other areas, Yucca Mountain, other issues that we
23 focus on when we have some very specific milestones that we've set out in terms
24 of expectation for our staff and for the Boards. And I think you've raised an issue
25 here I certainly want to take another look at. Is there more that we can do? If we

1 do that up front, I think it will make it easier for everyone going down the line.

2 If you could talk to me a little bit on slide five, you talked about the
3 use of the NEPA scoping process to provide an opportunity for public comment.
4 Can you flesh out a little bit more for me why you prefer going that direction than
5 the process that we've got in the final rule? And in particular, at what point in the
6 process would this scoping evaluation take place?

7 MR. FERTEL: I think Commissioner, first of all, NEPA scoping
8 process has some discipline and experience to it on how do you decide whether
9 something's significant enough to bring into it. So that was one of the thoughts
10 that we had was go to something that people use, the NRC staff uses. That there
11 are some at least understandings of how do I get into the NEPA thing?

12 Because what you're looking for is finality on the environmental
13 requirements. And the test ought to be does this thing ... it can be new
14 information. We're not questioning that things change. Is it significant enough to
15 question the finality of the determination? And we thought the NEPA experience,
16 though NEPA has a lot of other problems with it at times, is not a bad process to
17 use.

18 So that was the thinking there. Go to something that you know. Go
19 to something that you use to decide whether in the first round it warrants
20 consideration in the EIS. So if I come in with something new and it wouldn't have
21 made it the first time, it shouldn't make it the second time probably.

22 And if it's a delta to something that did make it, there's at least a
23 basis for determining whether or not I want to go the next step and reopen things.
24 Because we're looking for discipline and certainty, not necessarily saying you can't
25 reopen it. But discipline and certainty on how it goes down the road. So that was

1 the thought. And it would be as early as possible.

2 MR. HINNANT: Our concern here was maybe it was just irrational
3 fear of the term new and significant information and how that could get defined.
4 And then what that could open up and what kind of delays and other impacts that
5 could be brought to bare later in the process after we'd already been through
6 environmental reviews with the early type permitting process. And the piece that
7 we said this is the devil we know. But we all kind of know what the rules are now
8 under NEPA. And it'd been used and practiced and so forth. So it at least gave
9 us something to fall back on that we have some idea of what would get through
10 that process. So we were applying the suggestion here that that might be a way
11 of addressing this fear we had of the definition of what is new and significant.

12 MS. KRAY: With the alternative to be developed, a new criteria or
13 threshold and thought that the existing one appears to be working. And it's
14 primarily dealing with the same parties. So why not borrow from that one?

15 COMMISSIONER MERRIFIELD: Thank you, Mr. Chairman.

16 CHAIRMAN KLEIN: Commissioner Jaczko.

17 COMMISSIONER JACZKO: I have a couple of questions. First of
18 all, I do want to associate myself with Commissioner McGaffigan's comments on
19 the PRA. I do believe given the importance of – in the interest of moving towards
20 a more risk informed regulatory process that having a living PRA is something that
21 I think is really fundamental to that. And I think to not require that or not wish to
22 have that updated on a periodic basis I don't think is really the right way to get us
23 more towards a risk informed arena as he indicated.

24 Commissioner Merrifield asked some questions about the idea of
25 continued discussion. One of the things that I have some concern with is exactly

1 how we get to some kind of closure and resolution on this particular behemoth
2 that we're dealing with today.

3 While I certainly welcome and I think it's good to have continued
4 dialogue and continued discussions. I'm wondering to what extent we're
5 rehashing the issues that are ultimately differences of opinion rather than perhaps
6 lack of clarity and communication. Perhaps I could get at that a little bit if you
7 could answer a question.

8 How many of the concerns that you're talking about that you have
9 now with the draft as it stands were concerns that were raised in your initial
10 comments or the comments that we received on the proposed final rule. Or
11 perhaps stated another way, which of these are really new issues? And which are
12 existing issues? Perhaps if you could just generally go through those.

13 MR. FERTEL: I think first of all, let me be clear. We think the rule is
14 basically almost there. I mean, we didn't come in today and say we've got 200
15 issues. We've got six issues and an LWA. And I think that we know what we
16 want to say on the LWA situation, for example. And I think at least some on the
17 staff agree with us. Some may disagree with us. What we need to do is put our
18 arguments before you all. So you can decide what you want.

19 On the other issues, the only one that's brand new is 52.99. There's
20 been no dialogue on it. And again, we don't question the intent, we question the
21 execution. And we think the only way we could comment in an informed way as
22 opposed to just dismiss certain things would be to have a dialogue with the staff in
23 a public meeting.

24 So we understand their thinking. We may decide their thinking is
25 really good. And with some slight clarifications, we could buy into some of it. Or

1 we may explain why there's a better way of getting what they want. So the only
2 one new, Commissioner, is 52.99.

3 I think on the others, it's a case where we think the Commission
4 should be informed by a letter from us which says we may even be in agreement,
5 but it's not clear enough. Because in some cases, the staff if telling us they agree
6 with us.

7 But the staff is telling us they agree with us may not be here when
8 we're trying to get the license. And what we'd like to do is make sure the rule is
9 very clear with what's agreed to and that the words be changed.

10 COMMISSIONER JACZKO: Some of those changes may not ... and
11 I think as Commissioner Merrifield alluded to ... some of those may be guidance.

12 MR. FERTEL: It may be a guidance, or it maybe an SOC.

13 COMMISSIONER JACZKO: So not necessarily changes in the rule
14 language.

15 MR. FERTEL: Right.

16 COMMISSIONER JACZKO: That's helpful.

17 COMMISSIONER MERRIFIELD: I'm sorry, I'd ask a clarifying
18 question. Are you going to provide ... when you send your letter.

19 MR. FERTEL: Yes, sir.

20 COMMISSIONER MERRIFIELD: Would you expect to send specific
21 language?

22 MR. FERTEL: Yes.

23 COMMISSIONER MERRIFIELD: Including guidance language that
24 you think would clarify this issue?

25 MR. FERTEL: Yes.

1 MS. KRAY: And I would echo what Marv said that we do see that
2 we are converging, that we are not looking for a perpetual volley between the
3 industry and the staff, but rather to drive these issues down. And we've tried to
4 distill what we find to be the more impactful ones than this one. And those are the
5 ones we're seeking resolution. But again, it's very positive. And the list is whittling
6 down.

7 MR. FERTEL: Marilyn commented to me when she sat down that
8 she had the rule with her. And she decided she was going to have the hotel ship it
9 back because it's too heavy to carry. So we don't want to continue to have
10 meetings on the rule, because we're beginning to cause back pain for people.

11 MS. KRAY: Just like that, yes.

12 COMMISSIONER JACZKO: And I appreciate that. And as I said, I
13 mean, I think it's important that we have dialogue. Some of the concern I have,
14 there are other provisions in this rule that I think have made some significant
15 changes from what went out in the proposed rules that other stakeholders may
16 also have an interest in. I think one of the areas in particular that I don't think we
17 really did a good enough job highlighting the changes that were forthcoming was
18 in the issue of the environmental finality. I think the staff once told me that we
19 own the Atomic Energy Act, we don't own NEPA. CEQ owns NEPA. And some of
20 the changes that we may be making have ... or the ideas of how we're trying to
21 address the issue really of connected action which is ultimately the comments that
22 I believe you sent us were on connected action. And the staff isn't really taking a
23 position on connected action here. But one could look at the outcome as really
24 giving some resolution to where we are on connected action. And I think that's an
25 issue that a lot of other Federal agencies may have an interest at least in making

1 sure we're not setting precedence here for NEPA that could have implications for
2 other folks. So I do have some hesitation that if we do really start readdressing
3 some of the new issues that I think we may have to look more broadly and look to
4 some other stakeholders as well on some of these areas. Mr. Chairman, will we
5 have a second round of questions?

6 CHAIRMAN KLEIN: A quick one, because we also need to hear from
7 the staff.

8 COMMISSIONER JACZKO: Well, then I will leave my question to
9 the second round. I have one more question. I can ask it now or I can ask it in
10 the second round whichever you prefer.

11 CHAIRMAN KLEIN: Let's go quickly. And then let's do a very short
12 second round. Commissioner Lyons.

13 COMMISSIONER LYONS: I very much commend the staff and
14 certainly the industry in working together. I very much appreciate the comments
15 that all of you folks have made. I appreciate the effort on everyone's part to work
16 towards coming together on this and the effort towards convergence I think is
17 very, very important.

18 I mentioned in my first very short comment that I'm personally very
19 concerned with exactly how we get to the end game which is what Commissioner
20 Jaczko and others were emphasizing as well. If a public meeting is needed, I
21 guess my only hope would be in the very, very near future as soon as possible.

22 You mentioned wanting to put in comments from industry. Again, I
23 think that's fine. But I would also hope that that would follow the public meeting as
24 fast as humanly possible.

25 And from the Commission's perspective, I think we have presumably

1 two documents that are going to come out of this. And one of the more
2 experienced Commissioners may want to correct me. But we're going to have to
3 come up with an SRM on this meeting as well as a final set of votes. At least from
4 my perspective, the sooner we can move towards the final votes, I think that will
5 be very, very positive for everyone.

6 And in general with the relatively small number of issues as Marilyn
7 just mentioned, I think it's important that there either be a process by which staff
8 and industry and other stakeholders if they're involved comes to closure on these
9 or that the issue gets kicked to the Commission and we make the best judgment
10 that we can on the outstanding issues.

11 My hope would just be that the subset of issues that come to the
12 Commission is as small as possible. Because I think staff and industry are in the
13 best position to resolve these issues. So my main plea is that we find a very, very
14 well-defined path through this that closes very, very quickly.

15 A couple of other comments. Commissioner McGaffigan and
16 Commissioner Jaczko have indicated their interest in the periodic PRA updates. I
17 do think those should be required. I think industry should want those. I think we
18 should want them. And it's something I'll probably be mentioning with the staff
19 too.

20 Exactly how it's done, whether or even if it's reported to the
21 Commission strikes me as far less important than the general perspective that the
22 industry should have a living PRA updated on at least some periodic basis as the
23 plant moves ahead.

24 By way perhaps of a specific question, there were concerns raised
25 on the design certification change process. And concern about the language

1 that's in there now about correcting errors. And there seems to be a lot of
2 concern on industry's part as to who defines what an error is. And the
3 unpredictability or potential unpredictability of recognizing what is or isn't an error
4 and how different people could interpret that differently.

5 I mean, to me on the one hand, we do need a process to correct out
6 and out errors. But we also need a process to define what constitutes an error.
7 I'm not a lawyer. But in reading the language that the staff had proposed, it
8 looked to me in terms of defining what is an error. But I'm wondering if industry
9 has considered what would be a stronger or better way of limiting the issues that
10 might qualify as errors.

11 MR. HINNANT: Well, we recognize that staff has the right under the
12 wording now that if there's a safety concern or a significant security threat type
13 concern that they have the right to go in and resolve those kinds of issues. I
14 guess the thing that we're more concerned about would be various interpretations
15 of what could be an error.

16 For example, I'm a reviewer. I did part of the initial review. But I
17 wish I had pushed for something different at the time I reviewed it. Because I later
18 then determined, well, that was really an error on my judgment. I should have
19 pushed harder.

20 So maybe I need to be able to go back and open that and look at
21 that again. So that maybe an extreme example. But we're just concerned that
22 there is a control process for changes to be made in that standard design once it's
23 issued in regulations and requirements.

24 COMMISSIONER LYONS: Well, I very much agree we need a
25 control process and maybe it's a matter of somehow improving the wording there.

1 And it may be that one of our lawyers on the Commission or you folks can come
2 up with that wording. But I do think we need to have a change process. It needs
3 to be well controlled and certainly not abused. But I'll stop there. I'll have one or
4 two questions in the next round.

5 MR. FERTEL: Just on Commissioner Lyon's statement, and for all
6 of you maybe, our intent would be to get a letter to you by the end of this month.

7 And again, we would hope that our letter would allow us to comment
8 on 52.99 which is the only one we have not been able to ... we have not gauged
9 the staff on as a result of a public meeting with them.

10 So we can do that. Is that fast enough? I'm not sure we can do it
11 faster if I committed ... my guys will probably shake back there. But would that be
12 fast enough?

13 CHAIRMAN KLEIN: I think from our perspective, that's okay. I think
14 you're getting the sense from this side of the table that we wanted to bring it to
15 closure. We want to move on. We want to make sure that the unresolved issues
16 are resolved.

17 I think from what I'm hearing is that the workshop's quick and get
18 those scheduled, get those issues out. I noticed in your comments you had
19 misinterpretation. So it sounds like a lot of the concerns are more of clarification,
20 not necessarily conflicts. And then the other one is on the ITAAC, I assume that
21 on that one do you sense that there's conflict or just one in which you need
22 clarification?

23 MR. FERTEL: I think on 52.99, our reading would be we don't see
24 that. I think Commissioner McGaffigan maybe said it correctly from our
25 perspective. It may not be what the staff intended. Our reading is the burden has

1 been tossed over to the industry in a way that we don't think is effective for getting
2 closure.

3 COMMISSIONER MCGAFFIGAN: Gary Holahan, for the record,
4 nodded when I said it and nodded again when you said it. So I think there may be
5 some sympathy in the staff. At least one staffer.

6 MR. FERTEL: So I think that in that one, we really do need to
7 engage. I think there probably the intent we would have and the intent the staff
8 has is to have a transparent effective process that has certain ... I don't think
9 there's any question that we're probably on the same ... it's just what is that?
10 Right now, we would say what we saw doesn't work well. So that's probably the
11 place where on substance we need the most discussion.

12 CHAIRMAN KLEIN: And what I would encourage you to do is for
13 those issues that you already have identified what your concerns are, make sure
14 you get those to the staff so they can start addressing those and getting those
15 clarified and then have those workshops on 52.99 to make sure you get those
16 moved forward. And then we would like to get this out as reasonable as we can.

17 As you probably know, I have commented a few times on milestones
18 and deliverables. And so this is a milestone and deliverable, both on the
19 industry's part and on the staff part. So we'd like to move the process forward.

20 MR. HINNANT: We certainly agree with that. Since we are in the
21 process, many of us, of writing COL applications, the sooner we can get the rules
22 out and official, it's in our best interest also.

23 COMMISSIONER KLEIN: Commissioner McGaffigan.

24 COMMISSIONER MCGAFFIGAN: Mr. Chairman, there's been
25 some comment about how we close and resolve this. This is a very important

1 rule. If we get it out by Christmas, we will have done well. I cannot admit that I've
2 mastered the 885 pages at the moment.

3 I appreciate your pointing us to the six issues you raised. I'm
4 sympathetic as I said in all six. And I think from what I hear ... I mean, and
5 certainly if we have asked you to monitor every regulator on the earth and figure
6 out what their issues are and that's in ruling, that needs to be struck. If we're
7 regulating by generic communication, that's not a good thing either. And we need
8 to deal with that.

9 So I'm sympathetic on all these things. But to Commissioner
10 Jaczko's point, we have done this since the famous 50.59 rulemaking early in my
11 tenure. We have gotten a document before the Commission, staff's best effort.
12 And it turned out to be an imperfect best effort. And we had some public
13 dialogue, usually with industry stakeholders.

14 But there is no reason that any stakeholder ... I'm not opening up a
15 new comment period, Karen. But anybody ... we're the ultimate decision makers.
16 Other bodies have a lot of public meetings at this stage when they have a final
17 rule in front of them. We tend to have one meeting and then have a lot of
18 dialogue among ourselves and our TAs.

19 But we are the final decision makers. If any other stakeholder has a
20 concern with regard to provisions in this final rule, they obviously don't have the
21 resources these folks have. They probably don't care about a lot of the things that
22 these folks care about. They should write in to us. And the five of us should
23 make a decision as to whether their concerns are valid.

24 The other final comment, Mr. Chairman, I would have asked you
25 guys about the security rulemakings. You should have brought them up in

1 passing. I do think it's unfortunate we have 73.55 out there without guidance.
2 We're going to put 73.62 out sometime soon without guidance.

3 And you guys will ... we're having a fairly robust discussion in the
4 New York Times these days a couple of us about 73.62. But if you guys have
5 comments on that, the reason we put it out while we were voting on it is to get
6 comments.

7 The final thing, Mr. Chairman, I'd say is we need to have a lot of
8 meetings. I mean, today's Part 52, we could usefully have a meeting a month. Or
9 maybe taking off December. But January, February, March, all of them on
10 advanced reactors. Because there is such an enormous amount of activity going
11 on in guidance document space and rulemaking, the security rulemakings, Part 26
12 if we have to. But we need to get this stuff right. And the Commission needs to
13 be involved because as Commission Jaczko has often said, we're the people who
14 ultimately make the decisions. And we're the ones who are going to be held
15 responsible. If we pass bad rules, if we allow the staff to issue bad guidance
16 that's going to come to haunt us, they'll be cursing us five years from now.

17 CHAIRMAN KLEIN: Commissioner Merrifield.

18 COMMISSIONER MERRIFIELD: Mr. Chairman, sometimes the
19 case comes from Commissioner McGaffigan because he's ahead of me. I agree
20 with him that regular meetings make a lot of sense. Now, is it monthly? Is it every
21 other month? I don't know what the right thing is. But I agree with him that we
22 need to have periodic meetings to raise these issues as they come forward and
23 not wait until six months down the line or a year down the line. And then we're
24 scrambling to try to make up time.

25 I appreciate the fact that Marv you and your folks went through and

1 you didn't see anything that jumped out at you right now. We are looking at digital
2 I&C and there wasn't anything that immediately comes to mind. But I think Ed is
3 right. We ought to have in place a process so that as they do arise, we can
4 address them in a timely way.

5 Well, overall, I think this has been helpful. Mr. Chairman, I agree. I
6 think we need to ... I am inclined to believe we ought to have a workshop to go
7 through and clarify these issues, including the one that Marv mentioned in
8 particular, 52.99.

9 I would say there is one I didn't comment on previously and
10 Commissioner McGaffigan did. I have a little bit of a different take on that. And
11 that's the evaluation of international operating experience. I agree that I don't
12 think we need to expect you all to watch each and every regulator out there in
13 terms of each and everything they do.

14 That having been said, I think the classic example is the GE ASBWR
15 design which is currently operating in Japan and will someday be operating in
16 Taiwan. I do think that that is an example where information about those
17 experiences should be incorporated into the document. Now, perhaps what we
18 need to do is set an appropriate threshold. Is it an INES-2 event or above?
19 Really just set some kind of a floor so you're not scrambling for each and every
20 little jot and tittle that the Japanese regulators are worrying about. But something
21 that would help inform these based on some level of foreign experience. And I
22 think that would be something that perhaps some additional dialogue about finding
23 that sweet spot would be useful in that dialogue. Thank you, Mr. Chairman.

24 CHAIRMAN KLEIN: As we've indicated earlier, an event in the
25 nuclear field anywhere is an event everywhere. So at least, we have to be aware

1 of the international agenda.

2 COMMISSIONER MCGAFFIGAN: I think what they're saying is the
3 burden should not be on them. There's a process that works for the moment.
4 And for them to look at every Japanese regulator's document, every Taiwanese
5 regulator's document, every French, German, Finland, that is not really their
6 responsibility. They probably will hear about it through the INPO process and all
7 that. I do think that there's a tendency to just dump things onto them that really
8 are our responsibility.

9 COMMISSIONER MERRIFIELD: But I do think, not to belabor this
10 issue, that there's some threshold at which if an event occurs outside of the
11 United States and might have an impact relative to the design before us that the
12 licensee ought to have taken a look at that, utilizing information provided by
13 WANO, INPO, and provide some limited documentary evidence to say, yeah,
14 we've looked at this. We've considered the COL. We've covered it because of
15 the following explanation. But I think you can limit that. I think you can be very
16 targeted.

17 CHAIRMAN KLEIN: And I think their system does that through the
18 WANO, through INPO. Commissioner Jaczko.

19 COMMISSIONER JACZKO: Well, as often goes in these things,
20 Commissioner Lyons by and large addressed the point that I was going to raise in
21 my second round in additional discussion.

22 CHAIRMAN KLEIN: So all you need to do is say "in summary",
23 right?

24 COMMISSIONER JACZKO: On the international operating
25 experience, I mean, I do I think follow one line that our Commissioner McGaffigan

1 said, fundamentally that's the responsibility of the regulator to keep track of what's
2 happening. And we have I think a very good operating experience program. And
3 if it's not doing enough to look at international issues, I think then we need to
4 make sure it's doing that.

5 But I think that there's just too many potential conflicts and
6 challenges with forcing a domestic licensee to keep track of international, the
7 affairs of international utilities and licensees. I think that's too difficult. I think it's
8 an important issue. But I think, as Commissioner McGaffigan alluded to, it's really
9 the responsibility of the regulator to do that.

10 MS. KRAY: And if I could just comment on that, just to perhaps give
11 you a level of comfort, our position is what belongs into the rulemaking and into
12 the regulation. But just to your point, Commissioner Merrifield, learning from the
13 others who have gone forward with some of these designs is clearly our objective.
14 And that is, of course, facilitated by WANO and INPO, but also by the reactor
15 vendors themselves.

16 In your specific example, GE had many visits to ABWR where they
17 have brought along their potential customers. So looking and not certainly
18 wanting to operate these plants in a vacuum, and want to learn from whatever it is,
19 whether it be construction or operation will continue to certainly be an objective of
20 ours.

21 COMMISSIONER JACZKO: The last point that I did want to make,
22 and I certainly agree with Commissioner McGaffigan, that there's a need to do a
23 lot of meetings. I mean, I think quite frankly as I was walking down here and I too
24 was carrying the behemoth I guess of all that and I decided to leave it in my office,
25 it dawned on me that perhaps it would have been better if we had perhaps a

1 series of meetings in Part 52 and dealing with specific sections.

2 So we could have gotten into a little bit more detail and perhaps
3 resolved some of the issues right here. And I think as Commissioner McGaffigan
4 alluded to the fact that I often say in the end the Commission has to make the
5 decision. So I think it's good for you to have meetings with the staff and get clarity
6 there. But if we can achieve clarity here at the Commission level, that, of course,
7 can sometimes simplify things. I just wanted to add that comment.

8 And the final point that I would just make, and I was originally going
9 to ask this as a question. But I think I'll just leave it as a brief comment. I do have
10 some concerns with the language on the design certification. And trying to do too
11 much I think to allow modifications. I think if we're going to do that, we have to do
12 it really in the right way.

13 I'm uncomfortable with some language to say that we would allow
14 changes that would increase standardization. I don't know exactly what that
15 means. The whole idea of having a design certification is to achieve standards.

16 So I'm not sure that those kinds of things create improvements. I
17 think the Commission back in '89 was very adamant about and it was a fairly
18 vigorous debate about a change process for design certification.

19 I think the Commission came down with a fairly high threshold that
20 they have now as a result of that discussion. Because they really wanted to lock
21 in designs other than I think as Scotty mentioned some of, you know, new safety
22 issues or new security issues, things that require resolution. So I think that is
23 certainly an area that I'm going to take a good hard look at and see what the right
24 way to resolve it. Thank you.

25 CHAIRMAN KLEIN: Commissioner Lyons.

1 COMMISSIONER LYONS: Well, perhaps the same as
2 Commissioner Jaczko just noted, he just covered the area that I particularly
3 wanted to emphasize in the second question. So I'll do it briefly. I do feel very
4 strongly that the operational experience needs to be considered. Marilyn, your
5 comments were certainly very supportive of that.

6 Within the NRC, we have an extremely strong program in
7 operational experience, as does INPO and WANO. And I would hope that we
8 would find a way to structure the final regulation in such a way that it's clear what
9 operational experience you need to be taking into account as you move ahead. In
10 general, I think that's consistent with a number of other comments.

11 The only other question I was going to ask, and it again goes back to
12 the design certification change process. It hasn't been clear to me what happens
13 if there's a change after a plant is built. If there's a couple of plants of a particular
14 design that are built and then whether it's through the first-of-a-kind process or
15 whatever, there is a concern that, well, it's important to go in and change the
16 design certification, what does that do to the existing plants

17 Since, on the one hand, we've been talking so much about
18 standardization. This is sort of a backfit question. But I'm not sure what it means
19 where we have focused on standardization and then find a need to go back in and
20 change the design cert. Can one of you comment on that?

21 MR. FERTEL: Well, just parsing it a little bit, obviously if it's a
22 change to the design cert based upon a safety concern that you all have decided
23 should be done or we've decided should be done. We're going to be doing it at
24 the plants because it's a safety concern it's past backfit. If you've decided and
25 we've decided it was an operational experience thing that we would look to

1 implement.

2 If it's a standardization enhancement, assuming we get the definition
3 of that in a place that everybody agrees, I think that then it's going to be a decision
4 that the licensees are going to do. You certainly would go forward with it, whether
5 Scotty at his plant that's operating would immediately put it in, I think it would
6 depend upon its value to the operating plants at that point and do I begin to backfit
7 it in at some point, whatever that standardization enhancement is. But clearly
8 going forward, you would be doing that.

9 MR. HINNANT: The design center working groups are also starting
10 to have discussions on that. We've had a couple of meetings to talk about how do
11 we maintain the standardization once the plants are built and in service as we go
12 forward.

13 And also, if we're going to do the same modification at the plants,
14 how do we more efficiently do it. So we're in discussion with the vendors and
15 among the utilities who are focused on a particular design at this point about how
16 do we set up an ongoing model for doing modifications and backfit designs after a
17 plant's built so that they maintain the standardization. So we don't have all the
18 answers yet. But we are already discussing that very aspect.

19 CHAIRMAN KLEIN: Well, thank you for your comments and
20 presentations. I'd like to thank the industry and the other stakeholders that have
21 made comments on this. As you can tell, the sense of the Commission, we would
22 like to bring this to closure.

23 We would encourage workshops to get scheduled sooner than later.
24 We would encourage you to have the comments that you already have to get
25 those in so they could be factored in. And I think it is clear that we would like to

1 add clarity. I think the objectives are to make it efficient, timely and remove those
2 uncertainties.

3 COMMISSIONER MERRIFIELD: Mr. Chairman, just so we get the
4 clarification, is there anything that ... I'm looking at Karen, is there anything that
5 we've addressed here that you think ...

6 MS. CYR: Well, on the last point, the current rule requires that all
7 plants make the change. And part of the reason why the Commission set the
8 threshold of the original rules as high as it was was because it was a backfit either
9 for adequate protection or for compliance with the rules at the time.

10 And if the change met that standard, all plants who were using that
11 design certification had to do it. The current proposal, I believe, also follows that
12 path. Although there maybe some differences tier 1 and tier 2 information. I've
13 forgotten exactly how they are tiered. But essentially, it's the same process. If the
14 change is made, it applies to all plants who are referencing that design.

15 MR. FERTEL: I think, Karen, we agreed with that, even with what I
16 said and what Scotty said. I think the only question that the design center groups
17 on our side are looking at is if it's a standardization improvement, how do we want
18 to handle that for operating plants versus going forward?

19 COMMISSIONER MERRIFIELD: I thought it was useful to get that
20 on the record. Thank you Mr. Chairman.

21 CHAIRMAN KLEIN: Thank you. Now, we will hear from the staff
22 and continue our dialogue. Before we actually begin, I'd like to thank the staff for
23 all of their hard work. Obviously, it is a large document. It took a lot of effort to
24 get to where we are. And we would like to bring this to closure. So we look
25 forward to the staff's presentation for adding clarity to the process. Louis, would

1 you like to start?

2 MR. REYES: Good morning, Chairman and Commissioners. The
3 staff is ready to continue the briefing on Part 52. I will have some comments at
4 the end, but let me just start since we are going a little bit longer than what we
5 originally planned. Gary?

6 MR. HOLAHAN: Thank you. I will cover the first four view graphs,
7 and then our Part 52 team, led by Eileen McKenna and our senior staff, Jerry
8 Wilson, Nanette Gilles, and Geary Mizuno -- and I would like to emphasize that
9 this has been very much a fully cooperative and collaborative effort between staff
10 and OGC at every step and, I think it showed in the quality of the work.

11 I would like to touch on a few of the topics that the Commission
12 raised in the earlier session that just finished.

13 With respect to the quantity of paper in front of the Commission, I
14 would like to take responsibility for the quantity and allow the staff to take
15 responsibility for the quality and the timeliness.

16 We did not stress to the staff that the paper should be reduced and
17 that trees should be saved. Our emphasize was to get the best product to be
18 most effective and getting us to succeed through the COL and ESP processes
19 and to do that in a timely manner. And I did not ask them to make it fewer pages,
20 so if you don't like it, I will take responsibility for that.

21 I think you heard from the industry that they have a very great desire
22 for a 52.99 public meeting. And I think staff would be agreeable to such thing.
23 We would like to do a normal ten day public notice. Normally, we would not have
24 such a meeting when an issue is in front of the Commission. If the Commission
25 desires to us do so, we certainly would do that, and provide some mechanism,

1 meeting minutes or otherwise, to get that information back to the Commission.

2 COMMISSIONER MCGAFFIGAN: Mr. Chairman, I think what Gary
3 just said is the meeting would occur deep in the week after Thanksgiving, which
4 gets us close to December, because we have a holiday, tomorrow. We have a
5 holiday Thanksgiving week. So just to interpret for my colleagues what Gary said,
6 if we do the normal ten day notice, if we notice it today, we probably would be
7 somewhere in the late 20's of November, is that correct?

8 MR. HOLAHAN: Yes.

9 COMMISSIONER MCGAFFIGAN: Okay.

10 CHAIRMAN KLEIN: Again, we would like to follow the process, but
11 at the same time, we would also like to make progress. And so, I'll defer to the
12 General Counsel if there is any way that we can expedite this, but I think from
13 what you hear from this side of the table, we would like to see communications
14 occur as rapidly as they can, and I tend to get frustrated at bureaucratic delays.
15 And while I don't want to prevent others from attending, I think a reasonable
16 notice, I think, could be --

17 MR. HOLAHAN: There are exigent processes which would require us
18 to take additional steps in noticing.

19 MS. CYR: The ten days of policy decision on the part of the
20 Commission when it notices a meeting, which we can do, is attempt to provide --
21 in order to avoid yourself getting into a renoticing issue or depending on what the
22 Commission decides with respect to renoticing issues, you need to consider how
23 this occurs in the context of that.

24 CHAIRMAN KLEIN: You clearly get the sense from this side of the
25 table that we would like communications to occur as soon as possible.

1 MR. HOLAHAN: We will work that out.

2 Thirdly, I would like to address the living PRA question, especially since it
3 has at least three advocates. It is not in the proposed rule. And it is not in the proposed
4 rule, because, at least, in my view, it is not necessary. The way the rule is currently
5 structured, a description of the PRA is required. It would be part of the FSAR. To the
6 extent that as we expect, it would be done to standards like the ASME standard. It would
7 be described in the FSAR, and that standard does call for an updating process. And so,
8 the living PRA, if you want to call it that, would be a requirement of the license, although,
9 it would not be in the regulation. And to me, that is not an issue worth fighting about.

10 I can assure you that future plants will have PRAs, they will be up-dated.
11 They can't possibly implement the maintenance rule or have performance indicators or
12 plant outages without such a thing. It is only a matter of whether the Commission feels it
13 is important for that to be a part of the rule or licensing basis.

14 COMMISSIONER MCGAFFIGAN: Mr. Chairman, there is a
15 semantic issue here. What was asked about in the comments on the proposed
16 rule was, why can't there be an updating process? ASME -- I voted against it. I
17 was out voted two to one for the Diaz Memorial PRA upgrading process and we
18 have had some public meetings --

19 MR. HOLAHAN: A phased approach.

20 COMMISSIONER MCGAFFIGAN: A phased approach, and I had
21 my doubts as to whether we would ever get to the last phase. We had a public
22 meeting earlier this year. We had the industry suggesting that we focus on fire
23 and other issues rather than getting to all external events.

24 I don't know what's going to be in every standard's committee's
25 document as we finally make this incremental process in having complete PRAs.

1 If it's in our rule, and I don't have to worry about what's going to happen in every
2 standards committee between now and eternity. So Tony Pietrangelo is
3 vigorously nodding his head in support of your position.

4 MR. HOLAHAN: I wish he wouldn't do that.

5 COMMISSIONER MCGAFFIGAN: But I think there is -- we will tie it
6 down on our votes; but if we are a risk informed agency, this should not be too big
7 a burden.

8 MR. HOLAHAN: Lastly, on the issue of operating experience. What
9 Part 52 calls for is in the application addressing -- I think the word is relevant or
10 something -- operating experience. Says nothing about talking to foreign
11 regulators. And I guess I have no sympathy for the position that it's too hard for
12 the industry to get information from foreign regulators. I mean, information comes
13 from foreign plants, and they have owner's groups and they have WANO, and they
14 have plenty of opportunity to do it.

15 CHAIRMAN KLEIN: I think their question was in the rulemaking
16 process, not that they don't do it, I think that was it, if I understood it correctly.

17 COMMISSIONER JACZKO: Perhaps, since I made the comment, I
18 think the issue is more -- if there is an international operating experience issue that
19 an applicant should address in a COL application, that better be in a Standard
20 Review Plan or Reg Guide or some kind of guidance document. The burden
21 should be on us to make sure that we are incorporating that information. We
22 should not be telling licensees or applicants that they need go out and canvas
23 other -- whatever they are called, other plants, to figure out what they are learning
24 from operating experience. If it is a significant safety issue, we should have it
25 somewhere within our Standard Review Plans, in DG-1145, those kind of things.

1 So that the same outcome will be there, they will need to address it; but it is a
2 question of where the burden falls, unless I'm misunderstanding what's in the staff
3 proposal, perhaps, there is no disagreement.

4 COMMISSIONER MERRIFIELD: Unfortunately, I don't agree entirely
5 with that. The fact of the matter is, the Chairman's right. We say around here that
6 things that happen outside of the U.S. can affect what happens inside of the U.S.
7 Three quarters of the nuclear power plants in the world are viewed as progeny.
8 This industry has made a committed effort through INPO and WANO to
9 understand and engage with their international counterparts. I don't think it is
10 unreasonable for them, taking that information, that knowledge and those
11 connections to reflect that on the information that comes to the Commission in the
12 context of COLs.

13 I think the issue where I think there is agreement is the breadth of
14 that. I think it may be that there is not sufficient boundaries on what is expected of
15 licensees on that. And no it should not be a drag at the bottom of the ocean of all
16 that experience. But I think where there is some definition of significant events, I
17 would expect that our licensees would be out there and understanding how did
18 that impact those reactors abroad, and how does that affect what they are bringing
19 to us as applicants? I think it is resolvable.

20 COMMISSIONER MCGAFFIGAN: I think what their concern is -- I
21 don't know whether the word is comparable to NRC generic letters and bulletins
22 appear in the rule or in the Statements of Consideration, but that's pretty -- as
23 Commissioner Merrifield said -- the breath of that is breathe taking. And it sets
24 you up for a gotcha some day with some staffer who says, by God, you should
25 have known that the Fins issued something that I consider the equivalent of a

1 generic letter and bulletin back in '05, and I don't see it here in the COL
2 application.

3 The breadth of those words, if that's reflective of what you guys have
4 in the Statements of Consideration or the rule language is breath taking.

5 CHAIRMAN KLEIN: I think we will have an opportunity to get this
6 clarified. I think you understand the issues, and so we expect the consultation to
7 come forth –

8 MR. REYES: I would like to have the formal presentation and then
9 can we --

10 COMMISSIONER MCGAFFIGAN: Gary, you led us down this path.

11 COMMISSIONER JACZKO: Mr. Chairman, I don't necessarily think
12 that Commissioner Merrifield and I disagree necessarily with the final outcome,
13 which is that this information should be addressed. I think, my concern is whether
14 it is more efficient and effective for us to have it in some kind of regulatory
15 guidance or documentation that we have, and as a result, they are required to
16 provide that information.

17 I think saying that there should be a requirement as part of their COL
18 that they address this information, I don't think is the most efficient way to get us
19 there to get that information. I think the burden should be on us to have it
20 somewhere in a Standard Review Plan in other areas where they would then -- as
21 part of fulfilling the Standard Review Plan, they would be addressing the issue.
22 So, we may not disagree on the final outcome.

23 COMMISSIONER MERRIFIELD: I agree. That may well be. I think
24 the Chairman is right. I think additional dialogue on this issue for the staff and
25 explanation by what they intend would be helpful.

1 MR. HOLAHAN: You want me to proceed with slide three?

2 CHAIR KLEIN: With a succinct summary, right.

3 MR. HOLAHAN: Yes sir.

4 COMMISSIONER MERRIFIELD: Could be a lessons learned
5 coming out of this meeting.

6 MR. HOLAHAN: Slide three provides the background. Basically we
7 have delivered to the Commission a draft final rule on Part 52. It is based on
8 implementation of the Commission's guidance from earlier this year, in a January
9 Staff Requirements Memorandum. And will you will see on this slide the historical
10 information of when it was published. I think that is sufficient for now.

11 Slide four, please. The purposes of the rule as has been expressed
12 numerous times is basically to update Part 52, and all of the relevant portions of
13 the other regulations, which contribute a lot to the volume of the package.

14 What we wish to do is to incorporate lessons learned from the design
15 certifications and the recent early site permit reviews and to incorporate, basically,
16 the ongoing information from stakeholders, not just this last year with all the
17 stakeholder meetings, but information that we received over the years on how the
18 COL and the early site permit process would work in the use of the design
19 certifications.

20 It is important to recognize that this rulemaking is an integral part of
21 our preparation for the 2008 activities. We have this rulemaking activity, guidance
22 document that goes along with it that we have not discussed much today, which is
23 draft guide 1145, which is a guidance document on how to prepare an application.
24 And a lot of what's in Part 52 is about what has to be in an application.

25 CHAIRMAN KLEIN: My guess would be to get that out quickly, since

1 people are writing.

2 MR. HOLAHAN: We, in fact, have a draft. We have had seven
3 workshops on the subject. Our goal is to keep it in parallel with this rulemaking. If
4 the Commission provides a few redirections, our intent would be to, as those are
5 implemented, to make corresponding changes to the guidance document, so that
6 both would be available for publication at the same time.

7 So basically, our intent is to enhance the efficiency and
8 effectiveness, and to provide clarity in the rulemaking process as we go forward.

9 Fifth view graph. What we feel has been accomplished by the
10 package, the draft rule, is a clearer explanation of how and what is called for, for
11 an early site permit and design certification and a combined license. Also, the
12 inspection test analyses, acceptance criteria, which play a central role in the one
13 step licensing process, are clarified, and the Part 52.99, which you heard
14 discussed extensively this morning and the related Part 52.103, which is the
15 Commission's actions at the end of the construction process, we felt needed
16 clarification.

17 We have taken, I think -- made significant progress in clarifying how
18 that process would work. It's obvious that other people want to express views on
19 how that would go. And so we are certainly willing and eager to take that on.

20 What I would like to do is in the remaining time to get down to just
21 two things, and that is, to discuss our stakeholder interactions which have been
22 extensive, and then to let our senior staff go through a couple of the major issues.

23 We have had three important stakeholder meetings as part of this
24 rulemaking. One right after the rule had been published for comment, during the
25 comment period, one after the comment period, which is something that we

1 historically did not do, but to facilitate our resolution of comments by talking to the
2 stakeholders, trying to understand what their comments are. And we published
3 the rule on the NRC website and had another public meeting afterwards, because
4 stakeholders then had a better understanding of how their comments are actually
5 factored into the rule.

6 In parallel with that, the seven workshops that took place on the
7 application guidance document are also very relevant to clarifying what should be
8 in the rule, and how it should work. There were numerous comments on the rule,
9 public agencies, including EPA, Department of Homeland Security, NEI sent us
10 basically four letters, one of which, to my recollection, was 167 pages of
11 comments; four vendors, seven utilities and a few public citizens sent comments.
12 So there was extensive involvement in written comments as well as in the
13 meetings.

14 In addition to that, I can assure you that there have been extensive
15 internal discussions among the staff and OGC about what was the right thing to
16 do. I would say some vigorous discussions. And one item reflected in the
17 Commission paper in which some of the staff members feel that our treatment of
18 environmental impact statements and environmental assessments should be done
19 somewhat differently, or at least should have additional stakeholder input before it
20 goes forward. And Nan Gilles will cover that subject. And if the Commission
21 wishes to hear from those staff members, we have a representative here who
22 could express his views as well.

23 COMMISSIONER MCGAFFIGAN: Could I just ask a clarifying
24 question?

25 MR. HOLAHAN: Yes.

1 COMMISSIONER MCGAFFIGAN: I saw that when I read the paper,
2 you know the short part not the long part. But were their views appended
3 somewhere; I didn't see them?

4 MR. HOLAHAN: My understanding is they felt that the discussion in
5 that paper was sufficient to have gotten their views on the record, and in fact, they,
6 in effect, concurred with the paper as having sufficiently expressed their views.
7 You already heard about the limited work authorization rulemaking in parallel with
8 that.

9 COMMISSIONER JACZKO: Not to belabor this point. I do want to
10 compliment the staff on this. I think this was a good way to resolve this particular
11 issue from the standpoint of getting information to the Commission to ultimately let
12 us resolve this.

13 I hope that the staff will remember this, and perhaps use this in other
14 processes and other papers where the Commission has not given such a strict
15 time line; but I think it, hopefully, was a good path forward to get that information
16 up without having to spend a lot of time and the staff trying to make a decision and
17 come up with a single answer.

18 MR. HOLAHAN: I think we feel likewise, that it was a healthy
19 process and well expressed and the Commission needs to hear these views in
20 making its decisions.

21 What I would like to do is move on to the presentation on the finality
22 of environmental issues, and Nan Gilles will cover that.

23 MS. GILLES: Staff made several changes in the final rule related to
24 the requirements for a combined license application referencing an early site
25 permit, based on both public comments and further consideration of the NRC's

1 obligation under the National Environmental Policy Act or NEPA.

2 The staff agreed with some commenters that the rule language
3 needed to be clarified and the final rule to more clearly reflect the finality of issues
4 resolved at an early site permit stage. The final rule limits contentions that may be
5 litigated at the combined license stage to any significant issue related to the
6 construction and operation of the facility that was not resolved in the early site
7 permit proceedings or any significant issue related to the construction and
8 operation of the facility that was resolved in the early site permit proceeding, for
9 which new and significant information has been identified.

10 Another issue raised by the commenters was the definition of new
11 and significant information as it was expressed in the proposed rule. The staff
12 agreed with some commenters who were opposed to the wording in the proposed
13 rule, and has revised that wording in the final rule to require that combined license
14 applicants need only submit information that is both new and significant as it
15 relates to matters related to construction and operation of the facility.

16 On the other hand, for issues that are related strictly to siting, such
17 as the determination of whether there is an, obviously, superior alternative site,
18 those issues are finally resolved at the early site permit stage, and there is no
19 need to provide new and significant information on those matters at the combined
20 license stage.

21 The staff has defined the term "new" and the phrase "new and
22 significant" as any information that was not considered in preparation of the
23 environmental report or the environmental impact statement at the early site
24 permit stage and was not generally known or publicly available at that time.

25 New information may or may not be significant. For an issue to be

1 significant, it has to be material to the issue being considered. In other words, it
2 has to have the potential to affect the staff's conclusions on that issue. The NRC
3 staff will verify that the applicant's process for identifying new and significant
4 information is effective.

5 In the proposed rule Part 51 would have required preparation of an
6 environmental impact statement for every combined license that references an
7 early site permit. Several commenters expressed the view that they believe that a
8 combined license and an early site permit -- excuse me -- an early site permit and
9 a combined license referencing that early site permit met the Council on
10 Environmental Quality's definition for connected action.

11 The same commenters stated that they believe that the Commission
12 should not be required to prepare an environmental impact statement at the
13 combined license stage if neither the applicant nor others had identified new and
14 significant information.

15 The staff continues to believe that it is not necessary to require that
16 all environmental matters be addressed in a single environmental impact
17 statement at the early site permit stage, and that matters such as need for power
18 and alternative energy source can be addressed in a supplement to the early site
19 permit environmental impact statement at the combined license stage.

20 New and significant information may also prompt the preparation of a
21 supplemental environmental impact statement at the combined license stage. The
22 staff has modified the final rule to limit preparation of a supplemental
23 environmental impact statement to these situations.

24 However, if the detailed planning and all of the environmental
25 information is available at the time of submittal of the early site permit, there is no

1 prohibition to the staff preparing at that early site permit stage single
2 environmental impact statement that addresses all the environmental matters
3 related to construction and operation of the facility, including need for power and
4 alternative energy sources. The staff can then rely on that environmental impact
5 statement at the combined license stage provided no new and significant
6 information has been identified.

7 The staff need not label the early site permit and the combined
8 license referencing that early site permit as connected actions to adopt this
9 procedure. In those cases the staff proposes to prepare a draft environmental
10 assessment that would be published for public comment.

11 Following the close of the public comment period, the staff would
12 recommend a final environmental assessment and finding of no new and
13 significant information to be issued by the Commission. Thus, in this situation, the
14 Commission would act as the presiding officer with respect to NEPA matters.

15 COMMISSIONER MCGAFFIGAN: Mr. Chairman, can I ask a
16 clarifying questions.

17 Emergency preparedness is sort of unique under the statute, and
18 you theoretically could get a very complete emergency plan with the early site
19 permit application. Would it be the staff's intention to also deal with the ITAAC
20 that would be required on the COL application? Or would the EP ITAAC still have
21 to come up maybe without the need for a new environmental review if everything
22 has been done; but how does that work? Theoretically, we have not done it so far
23 in the first three, but theoretically you could in an early site permit finalize the
24 emergency preparedness plan.

25 MS. GILLES: The final rule requires that if you are going to submit a

1 complete and integrated emergency plan at the early site permit stage, that you
2 include ITAAC with that complete plan, because without the ITAAC, the staff
3 cannot make the required findings, the same as it could not at the combined
4 license stage.

5 COMMISSIONER MCGAFFIGAN: So you would do everything,
6 including the ITAAC, at the ESP -- after you got that application?

7 MS. GILLES: Yes.

8 COMMISSIONER MCGAFFIGAN: Okay. Thank you.

9 MS. GILLES: Because the staff's proposed resolution of these
10 issues address many of the stakeholder concerns in this area, both the staff and
11 the Office of General Counsel believed that it was not necessary for the
12 Commission to take a position on the connective actions in the final rule.

13 As has been mentioned, some members of the Office of New
14 Reactor staff believe that the change allowing preparation of an environmental
15 assessment with the finding of no new and significant information for a combined
16 license referencing an early site permit is a significant departure from the
17 approach in the 1989 Part 52 rule.

18 These staff members believe that the new approach may warrant
19 consideration by external stakeholders, such as those that have been -- other
20 Federal agencies that have traditionally been interested in environmental impact
21 statements prepared for the issuance of constructions permits and operating
22 licenses.

23 These staff members believe that the approach proposed in the final
24 rule represents a significant departure from the proposed rule and are concerned
25 that external stakeholders have not had the opportunity to comment on the

1 specifics of this alternative approach. In addition, the same staff members believe
2 that an Agency position on the connected actions issue is a policy matter that the
3 Commission should resolve to preclude ambiguity in light of the fact that some
4 commenters expressed the belief that a combined license referencing an early site
5 permit and that early site permit are, indeed, connected actions.

6 These staff members believe that an agency may take a Federal
7 action, such as issuing a combined license without preparing an environmental
8 impact statement only if that action is connected to a previous action with an
9 environmental impact statement that shares the same purpose and need as the
10 follow-on action. The staff and the Office of General Counsel have considered
11 these matters and continue to support the final rule as presented in SECY-
12 06-0220.

13 The Office of General Counsel believes that these changes may
14 meet the logical outgrowth test inasmuch as the Commission proposed specific
15 questions regarding how the NRC meets its NEPA obligations in a case where a
16 combined license references an early site permit. In addition, the Part 51 changes
17 represent changes to the NRC's rule of procedures and practice, inasmuch as
18 Part 51 describes how the NRC will meet its NEPA obligations. NEPA is a
19 procedural statute and does not impose substantive obligations on the NRC.
20 Therefore, the staff and the Office of General Counsel continue to believe that the
21 changes to Part 51 may be adopted in final form without further opportunity for
22 public comment.

23 This concludes my presentation on environmental finality, and Jerry
24 Wilson will continue with the design certification amendment process.

25 MR. WILSON: Thank you, Nan. Could I have slide eight, please.

1 I'm going to be talking about the design certification amendment
2 process, which is set forth in Section 52.63(a). In the proposed rule, the
3 Commission stated it was considering adopting issue provisions to amend design
4 certifications in order to resolve design acceptance criteria or other design
5 information.

6 Many commenters encourage the NRC to adopt an amendment
7 process. They said we should have a process to take care of so-called beneficial
8 changes. That all plants referencing the design should adopt those changes, and
9 that those amendments should only be made prior to the first combined license
10 application.

11 Some commenters also proposed that the amendment process allow
12 for generic resolution of errors in the certification information, and in addition,
13 some commenters requested the amendment process for a wide variety of other
14 reasons.

15 As a result of these comments, the NRC staff is recommending the
16 addition of three criteria to the amendment process. First one is for generic
17 resolution of design acceptance criteria. This would enable the NRC to resolve
18 this additional design information in a generic manner, and would avoid repetitive
19 considerations in subsequent licensing proceedings.

20 Next criteria is to correct errors in design information. These are
21 errors that are either identify by a petitioner or discovered by the NRC staff. We
22 resolve these errors so that they would not have to be addressed in individual
23 proceedings, and finally a provision that would allow for changes to other design
24 information in order to enhance standardization.

25 A key factor in this last one and is stated in the Statements of

1 Consideration is that the NRC would -- on deciding whether to codify these
2 amendments would give special consideration to the applicants or licensees who
3 are referencing that design on whether they want to backfit their plant. That
4 concludes my presentation. I'll turn it over to Eileen McKenna.

5 MS. MCKENNA: Thank you. Next slide, please.

6 I just briefly wanted to touch on some other process enhancements
7 that were included in the final rule in response to both general and specific
8 stakeholder comments that sought flexibility in processes and streamlining
9 efficiencies in our various mechanisms for submittals and conduct of hearings.

10 I'll just mention two specific examples briefly. First one has do with
11 Appendix "N" to Part 52, which deals with -- I think it is currently called "duplicate
12 design at multiple sites". Proposing to change the title to "identical designs at
13 multiple sites" for consistency with some other sections. But originally, the
14 proposed rule staff had recommended that this be removed, and that provision only
15 remain in Part 50, but in light of the design centered approach that has evolved for
16 combined licenses, we felt it was appropriate to retain provision in Appendix "N"
17 and we made changes to the language to make it more clear how it works with
18 combined licenses.

19 When it was first copied over, it really didn't -- language was not
20 conformed, and so we looked to Appendix "N" and made changes, so that it is
21 clear that COL's can use it. And we also made conforming changes in Subpart D
22 of Part 2, which provides the means for filings and notices of those combined
23 reviews.

24 It's another example of response to comments about allowing
25 phasing of submittals. We did make a change in Part 2 that would allow combined

1 license applicants to submit their application in two parts. One being the
2 environmental report, and the other being the other information that is required.
3 This was a provision that was already allowed for construction permits, and we
4 decided we would also make it available to COL applications.

5 There were several other changes in Part 2 that you see in the paper
6 and in the SOC, but in the interest of time, I will move on to the completion of
7 ITAAC. Next slide, please.

8 COMMISSIONER MCGAFFIGAN: The famous 52.99.

9 MS. MCKENNA: Yes, the famous 52.99. I think it is fair to say at
10 time of the proposed rule, staff had not fully appreciated all of the ramifications of
11 what would happen in this period of time when the ITAAC was being completed
12 and we were reaching the point of having to make a decision on operation. And so
13 at the proposed rule state there were a couple of questions posed asking, for
14 example, whether we should ask the licensees to submit their fuel load schedules,
15 and whether we should ask them to submit milestones for their ITAAC completion.
16 And we also had a question as to whether there needed be a time between
17 completion of the last ITAAC and their scheduled fuel load date to allow for
18 completion of the staff review and Commission determination of whether all the
19 ITAAC has been satisfied, and therefore, intended operation should be allowed.

20 And generally the commenters did not support putting any language
21 in the rule on these points, but as we indicated on the slide, staff is proposing, in
22 conjunction with OGC, that we do include provisions in 52.99 to provide some
23 specificity of how this process would play out. And the reasons are listed on this
24 slide.

25 First -- and we were exactly where you were, Commissioner

1 McGaffigan, of looking at our statutory obligations of providing the notice at no later
2 than 180 days with respect to the ITAAC having been met or will be met; and also,
3 to expeditiously handle any hearing that might be requested or granted during that
4 time frame. So that was one of our major considerations, obviously, and the timing
5 of when that notice would have to be issued.

6 We also felt that these provisions would facilitate our inspection
7 process by knowing when certain activities were going to be conducted.

8 Third point is, this goes to, I think, the issue that was brought up
9 earlier, with respect to the relative roles between the NRC and licensee in making
10 information available about the ITAAC, that we are putting some obligation on the
11 licensee to provide information on the record about ITAAC completion, or in the
12 alternative, at the time of the 225 day period where those ITAAC that are not yet
13 done, how they would propose to go about completing them. So there would be
14 information available to the public on the times that they would need to formulate
15 any contentions in response to the Commission's notice.

16 We also feel that by putting these requirements in the rule, this
17 provides stability and clarity for all parties moving forward so they would know what
18 the rules of engagement at this point and time would be. Next slide, please.

19 So as a result, the final rule includes a number of provisions in this
20 area. First, I'll mention that at one year after issuance of the COL, the licensee
21 would be required to submit its schedule for completion of ITAAC and there are
22 provisions that that be periodically updated over time.

23 Secondly, there is a provision that the licensee should notify us as
24 they complete their ITAAC with sufficient information to demonstrate that the
25 criteria were met. This is clearly an area where there will be need for guidance to

1 explain what is sufficient information, so that there is understanding that it is not
2 every piece of paper that the licensee has generated, but it is not just, it's done.
3 And so there is some room there to decide on what's the right level of information
4 to be on the record.

5 Another provision that the rule would have is that no later than 270
6 days before the scheduled fuel load, that licensee notify the NRC of its scheduled
7 fuel load date, and, as needed, to update that periodically. We have already made
8 mention of the obligation that not less than 180 days before the scheduled fuel load
9 date that the NRC shall published a notice of intended operation.

10 Obviously, we are going to be looking -- the time frame we laid out is
11 that we are going to try to issue our notice not at day 180, but more like, perhaps,
12 day 210 to make sure that we do not miss this requirement. And the notice would
13 provide that any person whose interest may be affected by operation of the plant
14 may, within 60 days, request the Commission hold a hearing on whether the plant
15 facility, as constructed, complies, or on completion will comply, with the acceptance
16 criteria in the combined license.

17 We realize that some ITAAC are going to be completed shortly before
18 the scheduled fuel load date. This is the reason for this new provision that has
19 generated such interest that we are proposing that in order to provide to the public
20 information about those ITAAC that at the time the notice goes out, have not yet
21 been completed that we would require that at 225 days before the scheduled fuel
22 load date, the licensee notify us either that all their ITAAC are complete, or if they
23 are not, how they would plan to conduct the remaining inspection tests and
24 analyses and show that the criteria will be met. The NRC would make sure that
25 that information is publicly available before it publishes its notice of intended

1 operation.

2 COMMISSIONER MERRIFIELD: Mr. Chairman, just an issue of
3 clarification.

4 What level of detail would you expect the licensees to submit relative
5 to that requirement?

6 MS. MCKENNA: We attempted to give some discussion in the
7 Statements of Consideration that it was a level that would give a person a
8 reasonable basis to understand how the inspection test and analysis is conducted,
9 and how a judgment would be reached as to whether the criteria would be met.

10 I realize there is room to improve upon that level of detail, but, as I
11 said, this is an area where we have kind of come to the realization relatively
12 recently that we needed to have these kind of provisions, and we have not laid out
13 in detail what that level of information would be. But it's certainly not every
14 document, every test record, but has to be some level of some information that
15 would be reasonable for a party to be able to understand what the ITAAC
16 resolution is and be able to contribute to the process.

17 COMMISSIONER MERRIFIELD: Mr. Chairman, I appreciate what
18 the staff is struggling with. Maybe it's because I'm an attorney. Reasonable level
19 of detail necessary to make a determination could be this, or it could be this,
20 depending upon who my client I'm arguing for. So I can recognize the angst that
21 the utilities who have about that, and what you intend. I think it underscores why a
22 meeting probably is necessary.

23 MS. MCKENNA: We do intend, as I said, to develop guidance in this
24 area. We could probably have examples of different kinds of situations, but we
25 don't today have that information to present to the Commission.

1 CHAIRMAN KLEIN: I would like to amplify those concerns. Not
2 being a lawyer, I still have concerns about the opportunities for new hearings and
3 what reasonableness is. Because I think if you're not careful, it is going to defeat
4 the whole concept of why we went with the COL.

5 COMMISSIONER JACZKO: If I could perhaps add a few comments
6 on that. I mean, I think the purpose of this is to facilitate the opportunity for a
7 second hearing be as smooth process. I think if too little information is provided, it
8 will make that -- I, actually, think the opposite will happen, it will make it more
9 challenging to the Commission to have justification for why we are not granting a
10 second hearing.

11 I mean, the assumption going in is that if all the ITAACs are
12 completed, you cannot have a second hearing. The threshold is extremely high to
13 get a second hearing. So the more information that is presented, the easier it will
14 be for the Commission to make that determination. If there is very little information.
15 It's much harder for the Commission to do, and then we may find ourselves in the
16 middle of a second hearing, and that's, I think, not what the intent of the statute
17 was originally.

18 So I think, the more information that's provided, will facilitate the
19 process.

20 COMMISSIONER MERRIFIELD: Certainly having sufficient
21 information makes sense. I think, perhaps, what we are looking for is a Goldie
22 Locks moment. I think some more discussion to get there may be worthwhile.

23 COMMISSIONER MCGAFFIGAN: A lot of the problem the staff, as I
24 said earlier, is struggling with is embedded in the statute itself. You actually read it
25 through and you are sitting there, that there is some late ITAACs that have to be

1 done. The integrated tests probably only make sense when you heat the plant up
2 to full pressure and temperature. Those are not going to be done the first week of
3 construction.

4 And the way it works, we have to put out something six months
5 before. And the notice shall provide any person whose interest may be affected by
6 operation of the plant to request a hearing on whether the facility, as constructed,
7 complies, or on completion will comply with the acceptance criteria of the license.
8 And they don't know whether that integrated test has passed yet, but they have to
9 do that six months before fuel load. That is a rule; we have put that out.

10 Then I think, Commissioner Jaczko's concern is somebody saying,
11 well, I don't think it's going to pass that integrated test. I think the way a
12 Commission may at some point have to deal with that is the next part of the law,
13 assuming it remains the same, which is, you have to have a prima facie case that
14 that won't be true, or else you don't get a prior hearing, you get a post hearing.

15 If you have an insider who says that the containment is made out of
16 paper mache rather than steel and concrete, and won't pass the
17 whatchamacallit test, the full pressure test or whatever, there would probably be
18 prime facie case there if it really was made from paper mache; but it's a very high
19 standard that the Commission works through. And I think we are sort hung up not
20 having ever gone through this as to how this is all going to work. We have to put
21 out a notice six months ahead of time. We have to have reasonable information
22 out there so that a person can file that case.

23 Meanwhile, these guys can continue to meet their ITAACs, and as I
24 said earlier, they can get all the way to mode three with fuel loaded before we
25 ultimately have to decide whether -- 185 requires that they met their ITAAC. They

1 met the acceptance criteria, because 185 carefully uses the word before operation,
2 as opposed to before fuel load.

3 So there is a very complex end game that I think we have only now
4 focused on. Congress passed it in 1992 and we are now focused on it, and there
5 may be a legislative proposal somewhere imbedded in here as to whether –

6 MS. CYR: This was driven in part by comments from the industry in
7 response to the questions that the staff asked that they wanted to file their Notice
8 of Completion of ITAAC one day before a fuel load. So in response to that, the
9 staff -- when we went back and looked at --

10 COMMISSIONER MCGAFFIGAN: Well, they wouldn't be compatible
11 with the law.

12 MS. CYR: Of course, it would not be. So we are trying to sort out,
13 how do I accommodate both the interest of the industry and being able to move
14 expeditiously along and also meet my obligations for offering opportunities for
15 hearing, and having an adequate notice to somebody to give them information to
16 be able to come in and make a case.

17 So the issue is, for instance, with respect to integrated tests, they
18 have an ITAAC, and again, I'm not technically savvy enough to tell you exactly
19 what that is, but so that they have a test that they are going to be able to withstand
20 pressure for some period of time. Well, how are they doing to do that? Are they
21 going to have monitoring in certain ways. The issue is, give us a little more
22 information, if they have not done it yet, about how they propose do that. How they
23 propose to measure what that is. Where are the measurements going to be, for
24 instance?

25 So if somebody looks at that who had some knowledge, could say,

1 well, I either know there is a hole in the wall at that place, or I understand how you
2 do integrated tests, and the way that they are going to measure it is not going to
3 give me an accurate answer, and so they would come in and sort of say, the way
4 they propose to do this test is not going to give you a valid answer of whether, in
5 fact, they have met the integrated test. That's what we are asking for in the context
6 of where they have not yet completed the information.

7 COMMISSIONER MCGAFFIGAN: Isn't that latter example, shouldn't
8 that have been decided at the ITAAC stage in the COL hearing?

9 MS. CRY: Not necessarily. I mean, what you are looking for is what
10 the outcome is, that it will meet whatever your criteria is. It could be. And if it is,
11 that's fine. The question is, if it is not there, if it's something that is embedded in
12 procedures, which they are still developing and want to develop as they are moving
13 toward that. And we are talking about -- I mean, integrated test may not be a good
14 example because that may be one where, in fact, everybody has established
15 procedures how they are going to do that.

16 There may be other ITAAC of things that they are still going to have
17 to test along the way in terms of a particular pump or valve or performance. The
18 procedures are the mechanism to test that.

19 Again, what you are looking for is an outcome in the ITAAC. It will be
20 open or closed at an appropriate time. How am I going to test that and know that?
21 That level of detail may not be in the ITAAC initially. But in terms of giving
22 somebody adequate notice for if they have not done it yet and shown how they met
23 it, how do I give that adequate notice? That is the concern we're trying to deal with
24 here in terms of balancing those two means.

25 COMMISSIONER MCGAFFIGAN: The adequate notice will comply is

1 presumable a conscious act on the part of Congress.

2 MS. CYR: No, that is derived from the Commission's original rule,
3 because you recognize that this rule is, in fact, a codification of the Commission's
4 requirements. And the Commission at that time, again, recognizing they were
5 writing this rule where no one had really had a great deal of thought about how this
6 process was going to work with the expectation that virtually all ITAAC would have,
7 in fact, been completed and inspection reports on those would have been written
8 and noticed, so that there would be very little information.

9 COMMISSIONER MCGAFFIGAN: Eight months before -- six months
10 before fuel load, we really thought that?

11 MS. CYR: Yes.

12 COMMISSIONER MCGAFFIGAN: Then they have got this billion
13 dollar asset that sits there for -- multi-billion dollar asset that sits there for six
14 months while we figure out whether we need a second hearing?

15 MR. REYES: I think we understand the issue. That concludes our
16 prepared remarks.

17 CHAIRMAN KLEIN: I think a workshop is needed.

18 COMMISSIONER JACZKO: If I can make a point. The statute does
19 not say you have to wait a 180 days. It says you have to notice a hearing 180 days
20 before you intend to load fuel. You could be in a situation where all the ITAAC are
21 completed, they are ready to load fuel, then the notice -- but they would not be able
22 to say we would do this before 180 days; we could do the notice; we could get no
23 hearings, no request for hearings; fuel could be loaded potentially within a week.
24 So it does not mean that there has to be 180 days. It says, the notice, at a
25 minimum, there has to be 60. So there's got to be of 60 days in between that if

1 anyone raises a question.

2 If all the ITAACs are completed and all the acceptance criteria are done,
3 there will be no second hearing unless somebody has some prima facie evidence that
4 there's been some kind of, I would assume, gross negligence or fraud or contractor got
5 indicted all of a sudden, you know, who knows. But that evidence, it's got to be very, very
6 high threshold. So we are not necessarily saying that there is going to be 180 days where
7 this asset would have to sit and wait. It is the opportunity has to, at least, be there, and
8 then that opportunity may not be exercised.

9 COMMISSIONER MCGAFFIGAN: It sounds a little bit like
10 Commissioner Jaczko is arguing for the industry position a moment ago, because if
11 they are comfortable waiting just before -- when they really have finished the
12 ITAAC and take their chances that 180 days will be 60, then maybe that's not an
13 irrational position on their part.

14 As opposed to all this burden that the staff is putting on them to tell
15 them exactly how they are going to suck eggs for the last year.

16 COMMISSIONER JACZKO: I always appreciate when McGaffigan
17 likes to have me helping out the industry. But I do think that the point here is that I
18 think what the staff -- and I'm not trying to speak for the staff -- but, as I understand
19 this, the deal with this provision is if you want to not have to worry about that time
20 gap, then provide a lot of information up front. The other path forward is to wait
21 until all the ITAACs are completed, and then, the reasonable information is the
22 completion of all the ITAAC.

23 I mean, if the acceptance criteria -- it seems like the confusing issues
24 are the ITAAC that will be completed. Clearly, the ITAAC that have been
25 completed, all of that information has been published in the Federal Register. I

1 think by Part 52, they are required to notice that, all of that information. So it's the
2 ITAAC that are going to be done in that time period.

3 Now, if they wait until all those ITAACs are done, then this is a fairly
4 simple threshold; but the intent of this provision, as I understand it is so that if they
5 think there is going to be some kind of delay in that 180 days, that once that
6 process is resolved, then they will be able go right away. Whether that, you know,
7 is agreeing with the industry position or not, I have not gotten any nods from Marv.

8 CHAIRMAN KLEIN: We look forward to the conclusion of the
9 workshop, so that this issue is resolved. Thanks to the staff for your presentations.
10 And now we will continue our questioning, beginning with Commissioner
11 McGaffigan.

12 COMMISSIONER MCGAFFIGAN: I'm not going to rehash the PRA
13 issue. We will try to work it out in the voting. I didn't find your explanation
14 originally, entirely persuasive. Tony's Pietrangelo's nodding probably didn't help
15 you, but whatever.

16 The issues that the industry has raised, I have been trying to find
17 them as we have been sitting here, and I'm on page 725. And it is where the
18 contents of the COL application are, and it is item 37. One of the things they have
19 to submit is the information necessary to demonstrate how operating experience
20 insights from generic letters and bulletins issued after the most recent revision of
21 the applicable Standard Review Plan.

22 So I mean, you guys double hid it in this one provision. Two of the six
23 things they are raising are in this one provision. And six months before the docket
24 date of the application, or comparable international operating experience. That's all
25 it says about international operating experience; but comparable, I guess, means

1 operating experience insights from generic letters and bulletins that might be
2 issued by foreign regulators is not an unreasonable guess as to what that means.

3 Aren't we in the first part of that requirement, requirement number 37
4 for the content of COL application, why aren't we raising generic letters and
5 bulletins to rule status? The generic letter is not necessarily suppose to provide --
6 you guys are arguing -- we are arguing about one at the moment, the NRR crowd.
7 They're supposedly not really supposed to be new requirements.

8 MR. WILSON: Mr. Commissioner, could I give some clarification on
9 this. The initial comment, I believe, mischaracterized the requirements, only
10 starting in the beginnings. The origins of this requirement goes back to a
11 Commission SRM. SRM on --

12 COMMISSIONER MCGAFFIGAN: Which number.

13 MR. WILSON: SECY 90-377.

14 COMMISSIONER MCGAFFIGAN: SECY 90-377. Only you would
15 remember Jerry.

16 MR. WILSON: I have been around a long time. As a side bar,
17 operating experience is an important pillar in our regulatory framework.

18 So in that SRM, the Commission asked that future applicants address
19 insights from operational experience. So in the mid-90's, when we started
20 implementing this requirement in the design certification application, we believed
21 the best way to do that was to have applicants address generic letters and
22 bulletins.

23 Now time has gone on. Based on that, we have put that in the
24 contents of application requirements. We got comments on that. As a result of
25 those comments, we said, okay, we are updating the SRP. We expect that that

1 operating experience is going to be in the SRP, applicants are going to address the
2 up-dated SRP, and so that's why we have modified that requirement. And so now,
3 applicants would only have to address operating experience insights that came
4 after the latest revision of the SRP. So that greatly reduces the burden on the
5 applicant, but still takes care of what may come up in that gap.

6 Now, back to the international operating experience. The original
7 requirement was written with the vision of new designs that are evolutions of
8 designs that are currently operating in the United States, and that's where that
9 operating experience comes from, and where those insights come from.

10 Well, in the future we may have other types of applications.
11 Applications for advance CANDU reactors, or pebble bed reactors where that
12 operating experience does not apply. And so that last part of the requirement is to
13 deal with those special situations, and we are basically saying, and as we explain in
14 the Statements of Consideration, we expect those applicants to look at relevant
15 international operating experience. So in the case of a gas cooled reactor, there is
16 experience in -- written in Germany, for example. And see if there are operating
17 experiences insights that we want to be sure they have addressed in their designs
18 for those types of applications. So that's the underlying requirement.

19 COMMISSIONER MCGAFFIGAN: Jerry, it may be that the English
20 does not exactly parallel what you just said, because -- and therefore, I think begs
21 for clarification. Adding the words "or comparable international operating
22 experience" in the sentence, it is about what has been done in the last six
23 months -- between last issue updated SRP and six months before application for
24 domestic folks. Doesn't say this is parallel process for reactors that are coming in
25 from an overseas operating experience base, like a CANDU or high temperature

1 gas reactor.

2 I understand what you just said. And I think you and the industry
3 would probably be in violent agreement with what you just said. I'm not sure the
4 words here reflect what you just said.

5 MR. WILSON: And that's why we have the Statements of
6 Consideration that explains that point.

7 COMMISSIONER MCGAFFIGAN: Well, Mr. Chairman, we can go on
8 a long time. And I know we're running over. So I will cut my time off and let other
9 members of the Commission explore other different points.

10 CHAIRMAN KLEIN: Commissioner Merrifield.

11 COMMISSIONER MERRIFIELD: Just picking up on the last
12 comment. I mean, I don't disagree with your notion that the rule language does not
13 give the full flavor of that. Jerry has explained that you think the Statements of
14 Consideration does. There may be some disagreements about whether that is still
15 on the mark. All the more bearing why, I think, having this meeting makes a lot of
16 sense to deal with these issues, so the five of us can move forward.

17 COMMISSIONER MCGAFFIGAN: My view is that the results of that
18 discussion could be 37 and 37-A. 37 aimed at domestic vendors, with the largely
19 American --

20 COMMISSIONER MERRIFIELD: That may be --

21 COMMISSIONER MCGAFFIGAN: 37-A for places where comparable
22 foreign experience is the dominate experience.

23 COMMISSIONER MERRIFIELD: On the issue of new and significant,
24 I have got some issues about implementation in terms of how that's going to work.
25 If there is information that was new, at what point do we expect that that would be

1 submitted? And do we have sufficient criteria in our own mind at this point that
2 would allow us to make a determination on significant whether they have to
3 develop an environmental impact statement at the COL stage rather than
4 environmental assessment?

5 MS. GILLES: It is first the applicant's obligation to look for new
6 information and to have a process in place to determine whether that information is
7 significant. And if the applicant determines that the information is both new and
8 significant, they are required to submit it in their combined license environmental
9 report.

10 Then the staff would both review the information in the environmental
11 report and visit the site to audit the process for identifying new and significant
12 information, and reach its own conclusions on whether that information was, in
13 indeed, new and significant. And for those case where the staff believe there was
14 new and significant information, that information would be discussed in the staff's
15 environmental impact statement.

16 COMMISSIONER MERRIFIELD: What about the circumstance
17 where it is not the applicant who believes that there is new and significant
18 information, but that there is an intervenor who believes that there is new and
19 significant information? How does that play into the staff's process? Is it
20 incorporated -- is it your sense it would be a comment on the environment
21 assessment or is that an issue that gets thrown into the Part 2 process via a vie a
22 intention.

23 MS. GILLES: Well, it depends. It could be if the early site permit and
24 environmental impact statement was not a complete environmental impact
25 statement and the staff was preparing a supplement environmental impact

1 statement at the combined license stage, then it could very well be that information
2 could come in the form of a contention that the staff would review, and with the
3 help of the Office of General Counsel would compare to the contention standard
4 that exist in Part 2 to determine whether that was a viable contention to be litigated
5 in the combined license hearing.

6 COMMISSIONER MCGAFFIGAN: At that point the staff is one party
7 and presumably the Board makes the decision as to whether it is new and
8 significant. The staff may say it is not, and the applicant may say it's not, but the
9 Board may not say the same.

10 COMMISSIONER MERRIFIELD: Okay. Commissioner McGaffigan
11 asked a question about emergency planning and the notion that that could well be
12 an issue that is resolved at the early site permit process. How -- and it sort of
13 triggered a question in my mind -- we have three, actually four, early site permit
14 reviews under review right now.

15 Is there a process whereby prior to applying for a COL that a licensee
16 could ask to supplement an ESP to address that issue?

17 MS. GILLES: In the final rule we have actually wrote in an early site
18 permit amendment process, such that an early site permit applicant could
19 request an amendment -- sorry, an early site permit holder could request an
20 amendment to their early site permit before submitting their combined license
21 application to, for example, update their emergency preparedness information.

22 COMMISSIONER MERRIFIELD: So in theory, at least, a licensee
23 could, indeed -- and there's been concerns about the process of emergency
24 planning, but that could be resolved within the context of the ESP?

25 MS. GILLES: Yes.

1 MR. HOLAHAN: With supplemental hearing process.

2 COMMISSIONER MERRIFIELD: Right. No, obviously, it would come
3 with that as well.

4 Well, given the time, Mr. Chairman, I too will give up my remaining
5 time. I would say we talked a lot about a meeting. It is, obviously, something that I
6 support. I do think if we're going to do something like that, we are going to have to
7 instruct our staff to get together this afternoon, if there is agreement on it, to try to
8 hammer out an SRM today, because given the kind of time lines we are talking
9 about, I think that's going to happen, and I think it presupposes that the SRM for
10 this meeting may be very, very streamlined.

11 CHAIRMAN KLEIN: Thank you. Commissioner Jaczko.

12 COMMISSIONER JACZKO: A couple of quick points, then I have a
13 question. Back on the international operating experience, and I appreciate
14 Commissioner McGaffigan reading the provision. Helped me clarify, I think, where
15 my position is on this.

16 I, certainly, think the first part of that is fine. Where I do, I think, have
17 the concern is with the "or comparable international experience". I would hope if
18 there is comparable international experience, it was somewhere in a generic letter,
19 somewhere in the first part of that sentence. You can get the same intent without
20 the "or comparable international experience". The reason for that is there could
21 potentially be a situation in which there is international operating experience that
22 foreign regulators have decided to do and resolve in a way that is different from the
23 way the NRC has decided to resolve that.

24 And you potentially put applicants in a conflict in then not knowing
25 what they are suppose to do. Are they suppose to be responding to a generic letter

1 that may be is in that provision that says, do "X" or give us an analysis of how you
2 are doing "X," and international experience is resolving it in another way, that there
3 may be a conflict there. So my hope would be that you can get rid of that and the
4 intent is still the same, that if there is international operating experience, it should
5 be in one of those things that is in the beginning of that phrase, and then it gets
6 resolved one way or another.

7 One of the provisions we have not talked about, which is an area that
8 I'm a little bit concerned that is included in here, some of the changes in Part 2;
9 particularly, the provision on 340, which removes the automatic stay provision on
10 some of these licensing actions. I think that that is something that does not need to
11 happen as part of this rule. I think it has much broader scope than what we are
12 trying to do here with Part 52. I will just comment that I certainly will oppose that
13 provision as we go forward.

14 I want to touch briefly then on the environmental finality provision, and
15 this is where I have a question. It seems this came up, originally, this was an issue
16 of connected action. The industry proposed, I believe, these are connected
17 actions, so therefore, we don't need to do an environmental impact statement for
18 the COL, if we have an ESP.

19 The staff carefully seemed to not want to take a position on that, so
20 I'm going to ask them, whoever want to answer, why didn't the staff just determine
21 either answer, yes or no, this is a connected action or this is not a connected
22 action. That would then have resolved the question without us needing to come up
23 with a new process that may or may not really address it.

24 MR. MIZUNO: I guess I would say it would just be opposite that, what
25 the industry and all external stakeholders are looking for is a clear determination of

1 what the NEPA process is going to be as reflected in the rule. We hopefully have
2 identified what that process is by making the appropriate modifications to Part 51.
3 And we did it in a way that we believe meet the requirements of NEPA. Having
4 done that, it is necessary from our standpoint to identify the legal theory, as to
5 whether connected actions is explanation for why these particular changes meet
6 the requirements of NEPA.

7 Furthermore, we believe that there may be some adverse or
8 unanticipated legal consequences of identifying the ESP followed by the COLs as a
9 connected action. Again, if you read the CEQ regulations that deal with that, it
10 would suggest that all matters involving the connected action would have to be
11 dealt with up front. There would be no opportunity or no capability for the agency
12 to defer action -- I am sorry, defer environmental consideration on certain matters,
13 such as need for power and alternative energy sources, which the current Part 52
14 rule permits the applicant to defer.

15 So for those reasons, we felt that since we believed that the way that
16 we resolve the matter addressed all external stakeholders' comments, as we
17 understand them, that it was unnecessary to identify this as a connected action.
18 We just looked at the commenters suggesting that these were connected actions
19 as simply a basis for, or the path forward, in their mind, to justify the Commission
20 taking a position. We just felt that it was not necessary.

21 COMMISSIONER JACZKO: I appreciate that. I guess the concern
22 that I have -- right now we have a -- we have a situation where, I think, you can get
23 an early site permit. You could address a lot of these issues up front. The staff
24 would prepare an environmental impact statement for that. They could bank that
25 site potentially for ten years, referencing a certified design, and they could pick a

1 particular design. Ten years they could come back, initiate a COL proceeding.
2 The agency would go through a COL proceeding, grant the license for that action,
3 and would never have issued an environmental impact statement for issuing the
4 license to construct and operate a nuclear power plant.

5 I think that in light of that, it seems that -- and that is a perfectly
6 plausible scenario, as the staff proposes; that, to me, does not seem to be
7 consistent with NEPA. So you know, my concerns are that we may have created a
8 process here where we effectively are getting the same outcome of saying it is a
9 connected action, and what I hear from Gary is that there is some concern whether
10 we really could call those connected actions.

11 MR. MIZUNO: I think that in this situation where a complete EIS was
12 prepared for the ESP stage, and there was no new and significant information
13 identified at the time that that ESP was referenced by a combined license, the
14 agency's position must be that the NEPA documents to support the COL is, in fact,
15 the complete ESP EIS. And whether it has to be a separate document or simply
16 the agency determining, because there is no new and significant information that
17 that NEPA document need not be changed, it would be in one sense, a legal
18 superfluity to simply go out and reissue it and go through an entire procedural
19 process where through this alternative process of preparing an environmental
20 assessment to support the finding of no new and significant information, we could
21 also achieve that goal.

22 COMMISSIONER JACZKO: I appreciate that. Fundamentally,
23 though, I disagree. I mean, I do think in that case, the agency would need to
24 prepare an environmental impact statement. That that would be the process we
25 would go through. Part of the reason for the EIS is to make that determination

1 about whether or not there is new and significant information. I think that is better
2 done in the context of an EIS, than it is in the context of an environmental
3 assessment. And again, by-in-large from the staff's effort standpoint, if that is the
4 case, the document is by-in-large the same document, it's reissued, and there is an
5 opportunity for public comment.

6 Again, if there is no new and significant information, there is no new
7 contentions that would be admissible in a hearing, but we have gone through and issued
8 an environmental impact statement for the actual authorization.

9 MR. MIZUNO: At this point, the only thing I wanted to add is that
10 even in the situation where we would be issuing the environmental assessment to
11 support the finding of no new and significant information, there is a public process,
12 because the rule provides that that environmental assessment would be issued for
13 public comment, and then, ultimately, provided to the Commission for its ultimate
14 determination as to whether to adopt it or to, instead, direct the staff to prepare a
15 supplemental EIS.

16 COMMISSIONER JACZKO: Again, we can go back and forth, and I
17 don't want to belabor this, but there is a distinction between environmental
18 assessment and environmental impact statement. And one is a much more
19 comprehensive document describing the environmental impact. So there is a
20 fundamental difference in the two documents. And while we can certainly --
21 certainly, it is possible to do an EA, underneath there is a distinction between those
22 two. And I think, again, a major Federal action like issuing the license for a nuclear
23 power plant should involve an environmental impact statement.

24 COMMISSIONER MERRIFIELD: Commissioner, just for the sake of
25 the record. Having looked at this and having looked at the information that the staff

1 came up with, from a legal standpoint, having given it a legal view, I agree with --
2 and I appreciate and respect the views of my fellow Commissioner -- I agree with
3 the legal interpretation of our staff and General Counsel that the process they have
4 come up will effectuate the right outcome from the standpoint of NEPA, without
5 having to go through the machinations of the whole NEPA process that does not
6 have value added to it. I think the staff has come up with a process that will work,
7 and meet the obligations of the law.

8 CHAIRMAN KLEIN: Commissioner Lyons.

9 COMMISSIONER LYONS: I don't think I will need all my time, Mr.
10 Chairman. It was about a year ago when I joined with the majority in agreeing to
11 publish this rule and to proceed. And I did that largely based, Gary, on your
12 statements that you thought it was possible to turn around this massive package on
13 this time scale, and my tremendous compliments to you and your staff for doing
14 that. I will admit that I was worried back when I made that vote.

15 MR. HOLAHAN: So was I.

16 COMMISSIONER LYONS: My compliments. It is a massive
17 undertaking. I think we have all commented on this side of the table about moving
18 ahead with the public meeting. I very much agree with Commissioner Merrifield,
19 that probably it would be most expeditious to get an SRM out sort of immediately,
20 and make that very clear.

21 The only, perhaps, question or comment that I still have is on the
22 PRA issue, Gary. And at least, where I'm coming from in this, as I read the
23 requirements on the FSAR, there is not a requirement for a PRA in the FSAR.
24 There is a statement that there should be one, but there is not a statement that
25 there must be one. And that's where, at least, I will continue to be concerned that

1 we do make very specific that the living PRA is an important component of moving
2 ahead.

3 MR. HOLAHAN: I understand, I'm not oppose to the idea. I just didn't
4 think it was necessary, because of the other features of the regulation that would,
5 in effect, require the same thing.

6 COMMISSIONER LYONS: I understand your point. I was reacting to
7 the "should" in the FSAR as opposed to making it an actual requirement.

8 MR. HOLAHAN: There is a specific provision in the list of things that
9 need to be included in an application that lists a description of a plant specific
10 probabilistic risk assessment and its results; so that would be included in FSAR
11 Chapter 19.

12 MR. REYES: If I could add, because I think we have an English
13 problem and I made this public statement, so I will make it again. No PRA, no
14 COL.

15 COMMISSIONER MCGAFFIGAN: I understand that.

16 MR. REYES: Okay. Now, hold on, let me finish. Then the question
17 comes up on the word "living;" I would like to strike the word "living" and put
18 "update."

19 COMMISSIONER LYONS: Okay. I'm not hung up on living versus
20 update.

21 MR. REYES: If you assume that they have done a PRA to get a
22 COL, then you say the question is how do you update it? Then you are talking
23 about a fleet of standard plants with certain controls on what changes would be
24 made, and you have ANS and ASME standards that requires you to do the update,
25 and then, that's how you get the update of the PRA. So our rationale -- the

1 Commission may disagree with that, but I just want to make sure you understood it,
2 there is a PRA required, and it has to be updated. Now, we got trumped all over
3 the word living, and I will just leave it at that.

4 COMMISSIONER LYONS: Okay. I will scratch the word living and
5 go along with your updated. Thank you.

6 CHAIRMAN KLEIN: Well, I would like to thank the industry and the
7 staff for enlightening the Commissioners as to where we are and how we can come
8 to closure.

9 One clarification, Karen, I would like is -- Commissioner McGaffigan
10 noted, and Gary commented on -- if we don't do something, then we are locked into
11 a ten day process. Is there anything that the Commissioners can take to facilitate a
12 meeting next week between industry and the staff?

13 MS. CYR: You can make an exception to your policy. I'm not familiar
14 with exactly how the current policy describes what the exigent circumstances are,
15 but it seems to me that the Commission, in the context of an SRM of this meeting,
16 can certainly direct the staff. Notwithstanding, otherwise what your policy provides
17 to hold a meeting within seven days or whatever time frame you want.

18 COMMISSIONER MCGAFFIGAN: That's the only issue that needs to
19 be addressed in the SRM for this meeting, because everything else is going to be
20 addressed in the SRM on Part 52. So, maybe not all of us, would at least like to
21 draft from OGC as to what it is that we need to do to facilitate a meeting late next
22 week or possibly -- I would go as late as Monday or Tuesday of Thanksgiving
23 week. That is getting pretty brutal to people who have to travel here, and people
24 who have to -- staff who may have Thanksgiving breaks, right.

25 COMMISSIONER MERRIFIELD: Thursday of next week sounds

1 good to me.

2 COMMISSIONER JACZKO: I would just add, I'm perfectly
3 comfortable with doing a quick meeting on with. We have had some language that
4 we just direct the staff to reach out to interested stakeholders and do everything
5 they can to make sure that people are informed.

6 MR. REYES: We have a web page and we have other mechanisms
7 in today's environment to do that.

8 COMMISSIONER MERRIFIELD: Mr. Borchardt.

9 MR. BORCHARDT: Thank you. Bill Borchardt, NRC staff. We don't
10 need an SRM for this. We have got the direction. If we can use this for a meeting
11 room, because space is limited, we can arrange it over the next two weeks; we will
12 get it done.

13 COMMISSIONER MCGAFFIGAN: The reason the Chairman asked
14 the questions is there is something -- since this is an exception to Commission
15 policy, does the Commission --

16 MR. BORCHARDT: No, if we hold meetings without ten minutes --
17 without ten days -- without ten day notifications on more than one occasion, so
18 there are processes that we can follow to make that happen.

19 CHAIRMAN KLEIN: Let me just summarize, the intent of the
20 Commission is that the industry, other stakeholders and the staff get together next
21 week to resolve the issues that we heard today.

22 MR. BORCHARDT: We will do that.

23 COMMISSIONER JACZKO: It would certainly be my intent, not
24 necessarily the Commission's, that the staff reach out to some of those
25 stakeholders that who may have participated and are not here today and make

1 every effort to let them know of that decision.

2 MS. MCKENNA: We do have a list of people who have been
3 involved in the past, and e-mail addresses that we have in the past sent fairly broad
4 mailings of things like this as a way of reaching out.

5 COMMISSIONER JACZKO: Thank you.

6 CHAIRMAN KLEIN: Although, with my comments on our IT
7 capabilities, we do have e-mail, maybe slow; but I think we do have communication
8 techniques that will alert people that the meeting will be held. Well, thank you very
9 much, and the meeting is adjourned.

10

11

12