

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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LWA SUPPLEMENTAL PROPOSED RULE

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PUBLIC MEETING

+ + + + +

WEDNESDAY,

NOVEMBER 1, 2006

+ + + + +

ROCKVILLE, MARYLAND

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The public meeting met at 1:00 p.m. in Room 0-6B4 of the Nuclear Regulatory Commission, One White Flint North, 11545 Rockville Pike, Rockville, Maryland, Geary Mizuno presiding.

NRC STAFF PRESENT:

GEARY MIZUNO	Senior Attorney, Office of General Counsel
JERRY BONANNO	Office of General Counsel
NANETTE GILLES	Senior Project Manager, Office of New Reactors
JOHN HUYCK	NSIR
DAVID MATTHEWS	Director, Division of New Reactor Licensing
EILEEN McKENNA	Branch Chief, NRR
M. C. NOLAN	
MARK NOTICH	
ERIC OESTERLE	
JULIE OLIVIER	NMSS
UNDINE SHOOP	
HARRY TOVMASSIAN	
VINCE WILLIAMS	
MICHAEL WILLINGHAM	
JERRY WILSON	Office of New Reactors

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PARTICIPANTS:

RUSSELL BELL	NEI
MICHELLE BOYD	Public Citizen
EDWARD BURNS	PBMR
PATRICIA CAMPBELL	GE
ANNE COTTINGHAM	NEI
MARK GILES	Entergy
EDDIE GRANT	NuStart
PETER HASTINGS	Duke/NuStart
CHRIS KER	Exelon
CLINT LAMERSON	Bechtel
ALAN LEVIN	AREVA
DAN MAGNARELLI	AREVA
JOHN MATTHEWS	Morgan & Lewis
JOE MIHALCIK	UniStar Nuclear
D. BRYAN MILLER	Progress Energy
AMY M. MONROE	South Carolina Electrical & Gas Company
TOM MOORER	Southern Nuclear
JOHN M. ODDO	Shaw, Stone & Webster
GEOFF QUINN	Bechtel
DEANN RALEIGH	LIS, Scientech
CAL REID	Bechtel
DAVID REPKA	Winston & Strawn
JIM ROBERTSON	Bechtel
MARTHA SHIELDS	U.S. Department of Energy
TYSON SMITH	Winston & Strawn
JENNY WEIL	McGraw-Hill
GEORGE ZINKE	Entergy/NuStart

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AGENDA

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

1:03 p.m.

1
2
3 FACILITATOR MIZUNO: I'd like to open up
4 this public meeting on the supplemental proposed rule
5 on Part 52, in which the Commission is proposing to
6 modify its regulations relating to limited work
7 authorizations. My name is Geary Mizuno. I'm in the
8 Office of General Counsel in the Rulemaking and
9 Appeals Cycle Division.

10 With me on my left is Jerry Bonanno, who
11 had a key role in writing the rulemaking package. We
12 also have members of the NRC staff here who are part
13 of the rulemaking effort for Part 52. And I would
14 like to have them introduce themselves, at this time.

15 MS. GILLES: I'm Nan Gilles. I'm the
16 Senior Project Manager in the Office of New Reactors.

17 MR. WILSON: I'm Jerry Wilson, Office of
18 New Reactors.

19 MS. MCKENNA: Eileen McKenna. I'm a
20 Branch Chief in NRR in Rulemaking at the current time
21 with a responsibility for Part 52 rule on notice.

22 FACILITATOR MIZUNO: Okay. The purpose of
23 this meeting is to allow our public stakeholders to
24 ask the NRC questions involving the supplemental
25 proposed rule. The rule was published on October 17,

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1 2006. The *Federal Register* citation is 71 FR 61330.
2 And the comment period closes on November 16, 2006.

3 As you know, late filed comments will be
4 considered if it is practical to do so. But we can
5 only guarantee consideration of comments which are
6 filed by the close of the comment period, November 16,
7 2006.

8 This supplemental rule is a supplement to
9 a proposed rule on Part 52 which was published on
10 March 13, 2006. For your information, the *Federal*
11 *Register* citation for that is 71 FR 12782. This
12 supplemental proposed rule responds, in part, to
13 comments that were filed by the Nuclear Energy
14 Institute, or NEI on I believe May 25, 2006. Those
15 comments were filed in response to the proposed rule
16 on Part 52 which was published in March of 2006.

17 In addition, the supplemental proposed
18 rule responds to Commission direction that the rules
19 be modified to allow for a limited work authorization
20 applicant who is seeking the LWA at a site -- a CP
21 site in particular, where an EIS had previously been
22 issued, but the CP had been issued but not yet -- but
23 no construction had been commenced by the license
24 holder; that there would be some dispensation in terms
25 of the environmental review given to that licensee.

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1 I'd like to note that, because this is a
2 supplemental proposed rule and because of the timing
3 of the preparation of this supplement, that the words
4 in the rule do not necessarily sync up with the draft
5 final Part 52 rule, which was made available to the
6 public on October 31st.

7 MS. MCKENNA: The end of September.

8 FACILITATOR MIZUNO: The end of September.
9 And which is reflected in SECY 060220, which was made
10 public yesterday, I believe. Right? And it's now
11 available on the website.

12 MS. GILLES: No. It was signed out on
13 October 31st, but I believe SECY is still working to
14 get that publicly available on the website.

15 FACILITATOR MIZUNO: Okay. Okay. So,
16 with that, I would like to now turn over the
17 presentation to Jerry Bonanno who will give you an
18 oversight of the proposed rule. The slides are
19 located on both sides of the Commission hearing room.

20 MR. BONANNO: Thanks Geary. This will be
21 a pretty high level review of the two major changes
22 that the supplement makes. The first change is a
23 redefinition of construction in 50.10. And the second
24 change is the implementation of a phase of application
25 of who will process for limited work authorization.

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1 So, Section 50.10(b) of the supplemental
2 proposed rule redefines construction requiring an LWA
3 CP or COL. The revised definition encompasses only
4 SFC systems and components of a facility that are
5 required to be described in the SSAF, PSAR, or FSAR
6 for the facility. And the definition only applies to
7 excavations, sub-surface preparation, and installation
8 of foundations, in addition to onsite in place
9 fabrication, erection, and integration or testing of
10 those SFCs.

11 The major impact of that redefinition will
12 be first that it's going to narrow the existing
13 definition of construction by excluding some
14 activities that were formerly considered construction
15 under 50.10(c). At the same time, it's going to
16 broaden the current definition of construction
17 somewhat in 50.10(b), by including activities such as
18 excavation and sub-surface preparation, specific the
19 driving in of piles, in the definition of
20 construction. So overall, a narrowing of the
21 definition.

22 Another result of the redefinition is the
23 activities excluded from the definition of
24 construction will no longer require NRC's permission
25 prior to being undertaken. Since no NRC permission is

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1 required, the environmental impacts of those
2 activities will not be considered affects of the major
3 federal action for legal purposes.

4 In addition, the agency's position is that
5 those activities wouldn't be federalized under current
6 NEPA case law. However, the environmental affects of
7 these non-construction activities will be considered
8 to establish a baseline for the site, in order to do
9 the cumulative impacts analysis that will be required.

10 Okay. As far as the second major change
11 that the rule implements, that's the optional phase
12 application and approval for LWA requests. The
13 supplement provides for optional T4 applications with
14 Part 1, including limited information necessary to
15 evaluate a request for an LWA. In order to obtain
16 that approval, the NRC staff has to complete a limited
17 EIS addressing impacts of the LWA. Staff has to make
18 the findings required in 50.10(b)1.3, which include
19 some AEA safety findings. The presiding officer would
20 need to make the environmental findings in 50.10.5(c)
21 or 51.10.7(b), and the presiding officer would also
22 make safety findings required in 50.10(d)1.4.

23 Lastly, the supplemental proposed rule
24 contains multiple provisions that were placed in the
25 rule to address potential segmentation concerns under

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1 NEPA. Four of those segmentation concerns or
2 provisions are included in 50.10(e) of the
3 supplement. They are expressed statements that the
4 LWA has undertaken at the sole risk of the applicant.
5 Issuance of the LWA has no bearing on the issuance of
6 the CP or COL.

7 The EIS will not address sum costs of the
8 LWA activities. That's the EIS on the final CP or COL
9 application. And the presiding officer's prohibited
10 from considering those sum costs when doing the NEPA
11 balancing on the CP or COL application.

12 In addition, in 50.10(c), the applicant's
13 required to, for an LWA, to submit a redressed plan
14 and required to implement that redressed plan under
15 50.10(f).

16 So, at this point, I'd like to take the
17 rest of the time today to address any questions that
18 you might have.

19 FACILITATOR MIZUNO: Russ Bell, since
20 you're representing NEI. I guess you typically start
21 out or represent the industry here. So you can come
22 up to the podium.

23 MR. BELL: Yes. I'm Russell Bell with
24 NEI. I'd be happy to get things started. But thank you
25 for the opportunity.

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1 I have a lot of -- my friends in the
2 industry here will amplify and be more specific about
3 the effects or implications of the new proposals on
4 their projects. But I am happy to get things started.

5 We're pleased with the staff -- the
6 proposal to encompass an LWA required activities, only
7 those that have a reasonable nexus to radiological
8 health and safety or common defense and security. In
9 that regard, we've got two major questions that we'd
10 like to hear more from the staff about.

11 The first is -- concerns excavation being
12 considered as part of the construction activities that
13 require -- that would require an LWA. The broad
14 question is what is it about excavation that has a
15 nexus to safety? And by that I mean, you know, I call
16 it digging a hole. You're much more eloquent when you
17 talk about removal of rocks and soil and other under
18 the surface material. That's the first question.

19 The second question concerns also the
20 definition of construction to include activities
21 related to facilities required to be described in the
22 SSAR. Given that 52.79(a) requires -- let me just see
23 -- the SSAR to contain a description of the facility,
24 including the proposed general location of each
25 facility on the site and two, a description and

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1 analysis of the SSCs of the facility, what exactly
2 does the staff think is excluded from that -- those
3 rather broad requirements that -- such that pre-
4 construction activities could -- could be undertaken
5 on those?

6 So the definition of construction that
7 includes evacuation -- excavation and the phrase
8 chosen to describe the scope of these things as
9 facilities required to be described in the SSAR.
10 Those are our two main questions and there's some
11 secondary ones that I'm sure will come up.

12 I'm going to sit down and enjoy your
13 discussion.

14 FACILITATOR MIZUNO: Jerry, would you like
15 to address the first one -- first question, and then
16 move on to the second? And then I'll add in a few
17 additional comments on the second question.

18 MR. WILSON: Okay. For the benefit of the
19 audience, I'll back up a little bit. In the past,
20 under 50.10(e), we had a process for requesting
21 limited work authorizations. And (e)1 was the process
22 of -- it was divided by non-safety related, and then
23 (e)2 was safety related.

24 Well, as everyone knows, the NRC staff is
25 risk informed now; what's important to us is safety

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1 significance. We tend not to use such a crude divider
2 as safety-related. So, as part of this rulemaking, we
3 went back and reexamined all of those activities that
4 were formerly in the LW1 category.

5 Our concern was safety significance with
6 regard to those activities and does the NRC need to be
7 involved in the control monitoring of those
8 activities. So you'll see in the list that things
9 like cutting down the forest or grading or putting in
10 roads or bringing in temporary structures for housing
11 construction workers, those types of activities I
12 think you can see would not have any nexus -- that's
13 probably not a good word for me -- but relationship to
14 the safety significance. And so, as a generic matter,
15 we can rule those out.

16 Now comes excavation. Well, if you look
17 at our past regulatory history on excavation, you'll
18 see that what's underlying the soil; the types of soil
19 conditions; the excavation concerns with ground water,
20 with a possible faulting, fracturing of the rock;
21 there's a whole range of issues that may have safety
22 significance on the foundation of the resulting
23 structures that are constructed there. And, because
24 of those concerns, we wanted to be sure there was an
25 opportunity for review and, if necessary, control and

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1 monitoring of that excavation activity that needed to
2 be, in our view, done under some degree of regulatory
3 authority. And so, that's why we put excavation in
4 the category of activities that you need to request an
5 LWA for.

6 Anything further on that, Jerry or Geary,
7 you wanted to add before I --

8 FACILITATOR MIZUNO: No. Not at the
9 moment.

10 MR. WILSON: The next item that Mr. Bell
11 asked about was this definition of construction, and
12 the definition we used relative to structures and
13 systems described in the SSAR. And, you know, we're
14 reaching for some appropriate way of -- of
15 characterizing this, as you recognized, that basically
16 the expectation is the facilities described in the
17 SSAR, of course to varying degrees depending on the
18 safety significance of those particular structures and
19 systems.

20 My experience is that structures that have
21 some degree of safety significance also tend to
22 require a certain amount of excavation. So it's
23 whether you're talking about the main power block or
24 intake structure or ultimate heat sink; those are
25 clearly structures that are required to be described

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1 and we would want to be involved in the -- the
2 activities in preparation for construction of those
3 structures and systems. And so, you know, we're
4 trying to find an appropriate way of -- of
5 characterizing that activity. Maybe at a -- Geary,
6 would you comment on that?

7 FACILITATOR MIZUNO: Yes, I guess you
8 would say that it would be fair to say that we were
9 perhaps not struggling, but certainly we spent a lot
10 of time considering different approaches for
11 characterizing the nature of the structure systems and
12 components which should be subject to NRC
13 jurisdiction, either through issuance of an LWA or
14 through issuance of a CP or a combined license.

15 This was our best stab at it. The public
16 -- we recognize that there are other competing
17 considerations and our minds are open. That's what
18 the public comment period is for. And anything that
19 the industry can give us with respect to a rationale
20 for why what the NRC proposed is over-inclusive and
21 why a more constrained definition would be more
22 appropriate, I think we would at that and seriously
23 consider it.

24 I would stress that we would expect any
25 proposals to demonstrate that the industry proposal or

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1 a commenter's proposal -- counter proposal is well-
2 founded in terms of both the concept of technical
3 adequacy and whether that relates to radiological
4 health and safety or common defense and security, as
5 well as considering what the NRC's regulatory
6 oversight interests are with respect to assuring that
7 certain activities are conducted properly.

8 So I would perhaps not necessarily focus
9 on why the NRC's definition is overbroad, but rather
10 focus on what a counter proposal is more appropriate.

11 Ben, did you have anything else to add?
12 Okay. Russ, did you want to follow up, based upon
13 these responses, or did you want to move on to some
14 other subject? Is there anyone else that would like
15 to ask questions in these areas? Can you please come
16 up to the podium?

17 MR. MILLER: Hi. I'm Bryan Miller of
18 Progress Energy. And I want to go back to excavation
19 a little bit, Jerry. I can understand the concerns
20 you brought up about a possible fault being in
21 portions in the earth. Looking back at the history of
22 the rule, the 1960 definition of construction did not
23 include excavation. And it's my understanding, from
24 reading through the rule, that the kind of basis for
25 pulling back was that we overstepped with NEPA in '69

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1 and probably went further than we should have.

2 And it would seem like the 1960 definition
3 of construction would be -- would be the place where
4 we obviously would think we should be at. Is there
5 any comments on why the 1960 definition that did not
6 include excavation wouldn't be appropriate here?

7 FACILITATOR MIZUNO: Well, I -- let me
8 start out with that, okay? I think that, since 1960,
9 the NRC has had substantial experience in implementing
10 or looking at what construction consists of and what
11 would be the impacts of excavation activities, in
12 particular. And I guess, speaking as an attorney
13 here, I know of two situations where excavation
14 activities had some radiological significance.

15 One would be the North Hannah situation
16 where a fault was discovered during the excavation
17 activities. The concept would be that we want to
18 insure that the NRC controlled activities and that
19 there was some kind of clear regulatory path in terms
20 of insuring that there's reportability of those
21 conditions and subsequent licensee characterization
22 and response to that kind of a situation.

23 The other situation that I'm aware of
24 where excavation activities actually had a --
25 activities themselves had an adverse impact upon the

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1 substrate was I believe Comanche Peak, where they
2 began construction activities in advance of obtaining
3 the construction permits. It was a hard rock site.
4 They began drilling and blasting. And, in the course
5 of doing that, they -- they basically ruptured the
6 rock beyond the zone that had to be excavated.

7 Now maybe I'm wrong. Maybe they were
8 actually doing it under the CP or not. But my point
9 is that I would consider those activities to be
10 excavation activities. And the staff considered them
11 to be excavation.

12 We want to have -- want to insure that the
13 excavation activities themselves are conducted in a
14 manner which obviously minimizes the possibility of
15 unexpected damage to the surrounding substrate.

16 And then again, just as in the nature of
17 the fault, that we -- there is a reporting mechanism
18 available; there is a regulatory footprint for
19 insuring that the licensee deals with that -- that
20 unexpected damage to the surrounding rock that is
21 intended to remain in place.

22 The third example that I have, which maybe
23 I shouldn't even talk about this, because I have even
24 less knowledge of this, but my recollection is that
25 there were some plants out in the mid-west where -- or

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1 a plant out in the mid-west where they began
2 excavation, if you want to call it, or certainly
3 activities intended to precede the placement of the
4 foundation. And, in the course of that, they realized
5 that the soil characteristics at that area were not
6 what they intended. And they ended up changing their
7 design.

8 And again, it's the same concept. Soil
9 conditions are not there as you -- as you excavate.
10 Let's assume that this activity of excavation, you're
11 going down through the soil, and you find out that the
12 soil is not as you characterized it. I think we would
13 want to know about that and have a regulatory control
14 over that.

15 I understand that perhaps no regulatory is
16 necessary from the industry standpoint, since you
17 would say well we're going to characterize it and
18 ultimately present it in our site characterization
19 report, whether it be environmental report or in your
20 application itself, because you're required to submit
21 that information. But I think that, from the NRC
22 standpoint, they 'd rather have a real time capability
23 to know what's happening there and also, again, the
24 ability to impose appropriate regulatory requirements
25 to the extent that they felt that the applicant was --

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1 well, the licensee was not doing something correctly
2 or --

3 MR. MILLER: Right. And you touched on
4 something there where I was planning to go. It was
5 that -- that we are required to give you full and
6 complete applications and to let you know of any
7 changes that come up unexpectedly. That regulation
8 still covers us in these cases.

9 MR. WILSON: Well, there's the question.
10 We're talking about performing activities before you
11 even submit an application. We would not necessarily
12 know anything about it.

13 MR. MILLER: As the rule is written, that
14 could be where LWA might be -- well, this would be
15 before even LWA -- 12 months before or even further
16 before that.

17 MR. WILSON: That's right. We would not
18 necessarily have any knowledge of this particular
19 activity.

20 MR. MILLER: Until the application was
21 submitted to you for that purpose.

22 FACILITATOR MIZUNO: Right. That's what
23 I was trying to say. Yes. We understand that you, as
24 an applicant, are under an obligation under one of our
25 regulations -- 50.9 I think, to have full and complete

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1 information. And yes, if you identify information
2 during your excavation which, under the rule would --
3 under the industry's proposal, would occur without NRC
4 licensing, I mean you -- no permission would be
5 granted.

6 Yes. We understand that you would still
7 be under the obligation to submit a complete and
8 accurate application. I think the question from the
9 NRC standpoint is, is that requirement to submit
10 complete and accurate information sufficient to
11 satisfy the NRC's regulatory needs and interests.
12 And, at least from the -- in the development of the
13 proposed rule, the determination was that it was not
14 because the staff would not simply like to know post
15 facto that certain conditions were identified. But
16 rather, when the activities are occurring, the NRC
17 would like to have a real time involvement in that and
18 also the capability to -- well, a clear capability to
19 impose an appropriate regulatory requirement upon a
20 licensee, as opposed to the situation where you are
21 just a potential applicant and there we then have to
22 deal with the regulatory -- or the legal issue of
23 whether we have --

24 MR. MILLER: A delay until the applicant
25 comes in and you look at it.

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1 FACILITATOR MIZUNO: Right.

2 MR. MILLER: I guess the question then
3 would be what would those regulatory requirements that
4 you would then impose on us? It seems to me that --
5 that most of the fixes for those kinds of things that
6 we might discover would be a redesign of the
7 foundation, redoing of the pilings; those types of
8 things which -- which would still be under your
9 control if we just made the line at excavation versus
10 pile driving.

11 MR. WILSON: Well, first of all, I
12 wouldn't want to try and solve the problem a priori.
13 Our point is that, depending on the site, will
14 determine what, if any, controls we need to have
15 involved during that excavation. And our view is that
16 we should be involved early on to review the site and
17 the results of your borings and make determinations
18 like that before those activities proceed.

19 But if I may also back up to your original
20 question and kind of summarize from the examples that
21 FACILITATOR MIZUNO was bringing up, is that in 1960 we
22 had little construction experience or regulatory
23 experience in these activities. And so, as I said, we
24 went back and took a fresh look at it, looking at that
25 past experience and considering risk significance, not

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1 just safety related. And we believe that we should be
2 involved in excavation activities. That that's the
3 appropriate place to draw the line for our regulatory
4 authority.

5 MR. MILLER: Thank you, very much. And I
6 did want to echo Russ's sentiments that -- that we are
7 -- we do appreciate the staff's work on this rule in
8 such short order and make -- and in a way that'll make
9 it available to us next year. We really do appreciate
10 that -- that hard work under these times when there's
11 been a lot going on for all of us. Thank you.

12 MR. HASTINGS: I'm Peter Hastings with
13 Duke and NuStart. And I just want to touch back on
14 the excavation issue for a moment and get some
15 clarification. It seems to me there are a whole
16 spectrum of information about the site that will be
17 fixed and established before formal NRC interaction
18 occurs. The location of the site; the fundamental
19 geology of the site; the nearby hazards; the proximity
20 to water, if that's safety related; all of those
21 things will occur prior to any approval of work, by
22 virtue of the selection of the site.

23 The fact that the NRC's not engaged in
24 oversight as part of that process doesn't obviate our
25 obligation to describe that and get your concurrence

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1 later that it was an appropriate selection or, I
2 think, it also doesn't minimize the extent to which
3 the NRC can influence the extent of which the as found
4 condition influences design or additional controls
5 that are imposed on it as part of the regulatory
6 process.

7 So I think that to make the leap that
8 controlling the one activity of excavation, which has
9 the potential to damage the -- the host rock, if you
10 will, seems to cross that line which you had
11 established before where the applicant owns the risk.
12 And, in a similar vein, if -- if we do have NRC
13 approval of an activity and we overload a blast hole
14 and fracture rock we didn't intend to fracture, first
15 of all, NRC oversight may minimize that but it won't
16 preclude it. And in the event that does occur, we
17 still own that problem. We have to account for it in
18 our -- in our design and in our site characterization
19 report.

20 So I -- I will craft some more eloquent
21 comments, but I'd invite you to consider that in
22 looking at these comments.

23 MR. WILSON: And, in doing that, remember,
24 there's got to be a line -- a place where we draw the
25 line. You could extrapolate your arguments and you

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1 could build the whole plant and then ask us to see if
2 it's acceptable.

3 MR. HASTINGS: Well, that's true. And of
4 course, we would never do that. But at least for my
5 part, my thinking was when you get to the point where
6 you're precluding the ability to inspect the as found
7 condition, that's where I -- I'm used to drawing that
8 line beyond which getting the regulator involved
9 formally makes a lot of sense.

10 I'd also suggest that there's a lot of
11 pre-application inspection work provided for in your
12 inspection manual that seems pretty effective today at
13 insuring that the conditions -- that the controls that
14 are applied under our program in site characterization
15 seem to work well for both the regulator and -- and
16 the application.

17 Nobody's under a formal licensing action
18 today, and yet there have been inspection visits to
19 every one of the sites that are doing site
20 characterization. And that -- that seems to provide
21 a measure of control that I would think would be more
22 appropriate, from my observation.

23 MR. WILSON: Well, you're just doing
24 initial investigations. And also, it's a very small
25 sampling program at that stage. We're talking about

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1 the actual excavation under safety significant
2 structures that --

3 MR. HASTINGS: True. But the -- the --
4 some of those site characterizations are actually
5 safety related; not just safety significant, but over
6 that thick black line of safety related.

7 MR. WILSON: Yes. Yes.

8 MR. HASTINGS: Just an observation. I
9 also want to echo the comments before that -- that I
10 see this as a very positive development. I think it's
11 very useful to put limited work authorization in the
12 context of the applicant's risk and what -- what we're
13 willing to invest, understanding that we may do
14 something that -- that we have to remediate or that we
15 are not able to use because of the choices we made on
16 when to start work on things. I think that's a very
17 positive development.

18 I do have one additional comment. And it
19 -- maybe it's more of a question than a comment. The
20 -- the language talks about use of prior EIS or a
21 prior EIS for work that was approved but never
22 commenced. And it -- it seemed to me that any prior
23 EIS under the notion of tiering, under the notion of
24 work that was done previously or, excuse me, work that
25 was approved previously by the NRC would be

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1 potentially useful as input irrespective of whether
2 the work was commenced, completed, or even scoped for
3 a different design, as it is in the case for Lee and
4 Belefonte, for example.

5 Clearly, there are elements of the EIS
6 that was issued for the former Cherokee site that have
7 no real value to the new design going in on the same
8 footprint. But the EIS was partially executed, if you
9 will, because we began construction on Lee. It seems
10 to me that not -- that foreclosing the opportunity to
11 use any of that input simply because the work
12 commenced is arbitrary.

13 I'm not sure I understand and I was
14 wondering if you could clarify why the line was drawn
15 at commencement of the work, rather than are the
16 conditions anticipated in the prior EIS still valid.
17 Clearly, we would have to address anything that's
18 occurred since then of the old, new, and significant
19 discussion. But it seems to me the fact that the work
20 was commenced doesn't have any real bearing on the --
21 necessarily have any bearing on the relevance of the
22 EIS. I was wondering if you could clarify that.

23 FACILITATOR MIZUNO: I believe that your
24 comments are well taken. We had to establish a line
25 for determining whether the NRC was going to rely upon

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1 the previous EIS or not. And I guess it was the
2 Commission's view, at the time that it was preparing
3 this rule, that the clearest case or the strongest
4 case in terms of being able to make use of the prior
5 EIS that had been prepared would be for the situation
6 where construction had not yet commenced.

7 One could argue that, had construction
8 commenced, the nature of the conditions that would be
9 there post construction but prior to the completion --
10 post initiation of construction, but prior to
11 completion of construction would have changed the site
12 in some way so that the information that is contained
13 in the prior EIS is no longer applicable or relevant.

14 So that was probably the Commission's
15 going in view on that. But if we receive comments
16 that suggest that a line could be drawn elsewhere, we
17 will consider it. But again, if we were to consider
18 drawing the line elsewhere, I think we would have to
19 -- we would expect the comment to address the issue
20 about to what extent are the conditions that are
21 described in the prior EIS still relevant and
22 applicable such that the NRC can rely upon it.

23 Now, having said that, I don't -- I want
24 to make clear that nothing in this rule precludes the
25 NRC staff from relying upon, from an informal

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1 standpoint -- or maybe I shouldn't say informal --
2 relying upon, in terms of referencing information and
3 perhaps even safety conclusions that were determined
4 with respect to the prior EIS. But there would
5 probably need to be some kind of an evaluation in
6 those situations as to whether that information still
7 remains valid.

8 In fact, the proposed rule talks about
9 giving significant -- being an evaluation that the NRC
10 would have to go through to determine whether that
11 information continues to be valid for the site.

12 But there's no reason why we can't rely
13 upon information, even outside of the bounds of this
14 rule, for the situation that you're talking about
15 where construction was actually commenced but never
16 completed and now a different plant is intended to be
17 built there.

18 There's no reason why, under this rule,
19 that the NRC -- well, that the applicant would be
20 precluded from relying upon information developed in
21 the prior ER or referencing that information in its ER
22 that was developed from the EIS or for the NRC staff
23 to itself rely upon the information that was developed
24 in the prior EIS.

25 MR. HASTINGS: Okay. That's helpful.

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1 Thank you, very much.

2 MS. MONROE: Thank you. I'm Amy Monroe
3 with South Carolina Electric and Gas Company. And, as
4 some of my buds have said, we really appreciated all
5 the efforts that have been completed by the staff to
6 date, working on this proposed rule.

7 I was most excited to hear your
8 discussions about the -- the potential for
9 modifications for the facilities as described in the
10 FSAR and the willingness to look at other wording
11 options. And I just wanted to kind of give you an
12 example of how broad the current definition is.

13 For example, putting in potentially
14 cooling tower supply and discharge lines, there's
15 nothing safety related or anything. However, you have
16 to construct roads. And these pipes go under the
17 roads, it's of limited or no value to build the road
18 and then have to tear it back up to install the piping
19 at a later date.

20 So those are the type issue that we are
21 confronted with. But I again appreciate the fact that
22 you all are willing to at least examine the
23 possibility of some alternative wording. Thank you.

24 FACILITATOR MIZUNO: Thank you for your
25 comments.

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1 MS. BOYD: Hi. I'm Michelle Boyd with
2 Public Citizen. And I just have a couple of
3 clarifying questions.

4 First, it's not clear to what activities
5 are currently allowed when there's no EIS -- when
6 there's no -- all these acronyms -- ESP, there's no
7 COL, there's no construction license, and there's no
8 LWA. So what is allowed at that point now, currently?

9 MR. WILSON: It's currently set forward in
10 50.10(b), right? And basically, it's you're allowed
11 to go out and do investigations of the site; so
12 trenching, drilling, borings, those type of
13 investigations to determine ground water levels,
14 characteristics of the soil, those determinations;
15 where's the best location on the site for that power
16 plant; those types of investigations are allowed. You
17 don't need any authorization for that.

18 But, anything that would constitute
19 commencement of construction under the current
20 definition that's in 50.10(c), you would need to get
21 either a construction permit or a combined license or
22 a limited work authorization to do any of those
23 activities.

24 FACILITATOR MIZUNO: Can I just modify
25 that answer a little bit? Actually, the proper

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1 citation would be 50.10(c). And you probably don't
2 have it there. But if you go back to your office and
3 look at 50.10(c), it more clearly defines for purposes
4 of a nuclear power plant what activities would be
5 permitted in the absence of the LWA, CP or a combined
6 license, or an ESP that -- an ESP that contains the
7 LWA authority. Because a plain ESP does not authorize
8 them to do any kind of work in and of itself, other
9 than what would otherwise be authorized as not
10 constituting construction under 50.10.

11 MS. BOYD: Okay. My second question is
12 related to this idea of submitting the two parts. I'd
13 like clarification about that. What I'm particularly
14 concerned about is this idea of being able to submit
15 the COL in multiple parts. How many parts are you
16 talking about, first of all? Does the public have to
17 intervene at every single part?

18 The way -- I know that there is -- from
19 what I've read, it's very clear that you have to
20 intervene in part 1, and then separately intervene in
21 part 2; part 1 being the LWR, part 2 being the COR,
22 for example, if that was the way it was done.

23 But, if you were to submit your COL in
24 multiple parts, would you then have to -- the public
25 have to follow and keep track of all the various

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1 pieces and intervene in the appropriate pieces? That
2 seems like an incredibly -- if that's the case, an
3 incredibly very, very, very, high burden on the
4 public.

5 FACILITATOR MIZUNO: Do you want to go
6 ahead and take that?

7 MR. BONANNO: That's accurate, to the
8 extent that the -- when the LWA is applied for,
9 there's an opportunity for intervention. When the
10 first part, if the COL's submitted in multiple parts,
11 when the first part of the COL is submitted, there
12 would have to be another petition for intervention
13 filed, excluding the standing -- the showing
14 upstanding. But you'd have to get contentions
15 admitted for the second -- the subsequent part of the
16 COL hearing.

17 FACILITATOR MIZUNO: Yes. Let me just
18 kind of expand on that a little bit. Okay? To be
19 clear, if you -- where the COL is, and this is sort of
20 outside the scope of the LWA rule, for the other
21 people here. But for the -- because I believe these
22 provisions are actually contained in the March 2006
23 proposed rule, with respect to the multi-part COL
24 application.

25 But, in that case, if the COL were

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1 submitted in parts, as everyone here recognizes,
2 someone who requests a hearing has to demonstrate both
3 standing and interest and then at least one viable
4 contention.

5 If a COL is filed in parts and a person
6 establishes their standing and interest in the first
7 portion of the noticing and request for hearing, they
8 would not have to readdress that issue in a subsequent
9 notice of hearing, where you would want to submit
10 contentions on the second part of the COL Application.
11 All you would have to demonstrate is that, with
12 respect to that second or third part of the COL
13 application, you have a viable contention with respect
14 to the matters that are covered in that part.

15 MS. BOYD: But my question is about if the
16 COL itself is submitted in multiple parts.

17 FACILITATOR MIZUNO: Yes. If the COL is
18 submitted in multiple parts, the first time that you
19 request a hearing, you would have to demonstrate
20 interest and standing.

21 MS. BOYD: Standing isn't so much my
22 problem as bifurcating the process even further.
23 Bifurcating probably is not the right word. But
24 separating the process even further into all these
25 little pieces, so that you have -- are you talking

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1 about you can submit chapter one and then chapter two
2 and chapter three?

3 FACILITATOR MIZUNO: Well, actually it
4 could be more than two parts. Okay. But let's assume
5 it is a two part. Yes. Where typically -- let us
6 assume the best case or the simplest case where the
7 first part is submitted -- the first part of a COL
8 application is submitted with respect to siting
9 matters, And the second part is submitted with
10 respect to all other matters in a combined license.
11 Okay?

12 We would expect a person who seeks a
13 hearing who gets notice of the first part to
14 demonstrate, of course, interest and standing, and
15 then submit their contentions on everything relating
16 to siting. And nothing more, because after all there
17 is no information with respect to the remainder of the
18 application for which they can submit a contention.

19 However, when the second part of the COL
20 application comes in, presumably at that point in
21 time, the public will have had a chance to review the
22 application, all the back-up information that -- you
23 know, the pre-application work that has been
24 conducted. And, at that point, be able to formulate
25 their contentions, if any, with respect to the second

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1 part.

2 So, from the NRC's perspective, we feel
3 that that would be a positive thing from a potential
4 member of the public, in terms of minimizing their
5 burden. Because we wouldn't expect them to come up
6 with their contentions in advance of the submission of
7 the application for which contentions would be
8 submitted.

9 MS. BOYD: It doesn't --

10 DIRECTOR MATTHEWS: Let's clarify.
11 They're not permitted to bring in individual chapters
12 of a safety analysis now.

13 FACILITATOR MIZUNO: Yes.

14 DIRECTOR MATTHEWS: So I think there's
15 some confusion on that point.

16 FACILITATOR MIZUNO: Okay.

17 DIRECTOR MATTHEWS: I mean, they can't
18 submit a piecemeal application. They can submit it in
19 clearly segmented topical distinct parts like an
20 environmental support. Okay? I think you need to
21 clarify that.

22 FACILITATOR MIZUNO: Well, Dave, you
23 already did. By the way, Dave, for the record, can
24 you just identify yourself?

25 DIRECTOR MATTHEWS: I'm David Matthews.

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1 I'm Director of New Reactor Licensing for the New
2 Reactor Office.

3 FACILITATOR MIZUNO: Okay. And are we
4 answering your question? Or are you --

5 DIRECTOR MATTHEWS: Yes. Does that
6 address some of your concerns?

7 MS. BOYD: Yes. I do. It does. Thank
8 you. It doesn't address my concerns. It addressed my
9 questions.

10 FACILITATOR MIZUNO: Okay. So you
11 understand what the process is?

12 MS. BOYD: I'm still concerned -- I'm
13 still very concerned -- yes, but I'm still very
14 concerned about the burden on the public. It's
15 extremely difficult for people to understand the ESP
16 and COL process in and of itself. And now we're
17 adding in an LWR and the fact that you can put a
18 piecemeal -- I'm sorry.

19 To me, in my perspective -- from my
20 perspective, it's a piecemeal application, because the
21 public doesn't understand and there's no way the
22 public can. I mean, it's just too much for people to
23 be able.

24 I mean, granted, there are individuals who
25 are going to understand this. But my point is, in

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1 general, this is making the process even more
2 complicated and more difficult for people to
3 participate in.

4 And this LWR process, I think, doesn't
5 make any sense. It should be attached only to the ESP
6 or only to a COL. And I think we should stick with
7 this idea that okay, if all of you want to investigate
8 a site, that's fine and you can do your -- you can do
9 your borings. But this idea of actually excavating or
10 doing any other onsite work before the analysis has
11 been brought to the NRC simply does not make sense.

12 FACILITATOR MIZUNO: Yes. As far as
13 trying to provide a better explanation to the general
14 public about the licensing processes, I think that
15 will be something that we can take back and see what
16 we can do to further increase the public
17 understanding. Because we would agree that the
18 licensing processes are complex.

19 MS. BOYD: And getting more complex.

20 FACILITATOR MIZUNO: And getting more
21 complex with these alternatives. But we will
22 certainly go back from this meeting and see what we
23 can do to further, you know, increase our capability
24 to explain these processes to the public.

25 MS. BOYD: It's not only a question of

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1 explaining the processes, but it's also a huge burden
2 on the public. When the public wants to intervene in
3 one of these -- in one of these licensing processes,
4 it's a huge amount of work because they have to
5 understand issues that they've never dealt with
6 before. They have to bring in experts. They have to
7 hire experts. They have to hire lawyers. To require
8 them to be doing several interventions at the same
9 time, which is potentially how it would work if
10 someone were to put together a piecemeal COL, is
11 asking -- is a huge undue burden on the public.

12 And also, I really don't understand the
13 motivation from the NRC's perspective. Because it
14 seems a huge burden on the NRC also to be getting
15 piecemeal applications where you can't look at the
16 whole thing. I thought the whole idea of an early --
17 of a -- of a environmental report was to look at the
18 whole project as a whole. So I'm done. Thank you.

19 FACILITATOR MIZUNO: Okay. Dave, did you
20 want to say anything else?

21 DIRECTOR MATTHEWS: No. That's fine. I
22 have nothing further.

23 FACILITATOR MIZUNO: Okay. Jerry? Are
24 there other members of the public that have questions?

25

1 MR. ZINKE: George Zinke, Entergy NuStart.
2 I have two questions. The first deals with the
3 excavation. The rulemaking divides up -- divides up
4 in the scope of those things that would not be an LWA
5 and would be an LWA. And the excavation has been on
6 the LWA side. And then it further goes on to clarify
7 what would then be in the application for the LWA.

8 And it looks like what would be in the
9 application for the LWA would be the environmental
10 effects of the activities and the safety evaluation
11 for the structure systems components associated with
12 this activity.

13 With regard to excavation, it looks like
14 your real interest is with the process controls of
15 like the excavation. So that it looks like what then
16 would need to go into the application with regard to
17 if you wanted to do excavation activities would be the
18 environmental effects plus the safety evaluation for
19 the structures that would be eventually associated
20 with the excavation plus some description and
21 commitments associated with the process of excavation.
22 Is that correct?

23 MR. WILSON: Let me back up. I recognized
24 this in reviewing the package that we're not as clear
25 as we could have been in this area. But an LWA

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1 request, in the future, is going to have to have
2 basically the same kind of information it had in the
3 past, which is that there's two key parts to it. One,
4 you mentioned, has to do with the environmental
5 report. The other one is what, in the past, we
6 referred to as a site suitability report, but is in
7 effect the safety review of the site. It's basically
8 equivalent to what was submitted for an Early Site
9 Permit.

10 So you need that whole discussion. Let me
11 refer to it as the Chapter 2 discussion, for those
12 knowledgeable members of the audience. But the
13 description of the site; your determination of the
14 characteristics of the site. Your determination that
15 there's successful emergency planning would not be
16 precluded or a successful security plan could not be
17 precluded by the characteristics of the site. That
18 type of review that you do for an Early Site Permit.

19 In addition then, you would have to
20 describe, as you say, the excavation. And I wouldn't
21 make it as narrow as you did. I don't think our
22 concerns are solely with controls. But we want to
23 know the results from your investigations as to what
24 you expect to find when you do do the excavation and
25 what were those foundation conditions and what you

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1 would plan to put in that excavation.

2 So that's the -- and also, of course, the
3 foundation design, if you're also requesting to do
4 foundation work, is part of that LWA. So our review,
5 then, is going to be similar to the review that's done
6 on safety side for an ESP, plus the specifics of that
7 foundation that you -- if that's the request that
8 you're making.

9 Was that helpful?

10 MR. ZINKE: Yes. But, in addition to
11 those things, but you would expect to also see the --
12 some description of like how you're going to control
13 the excavation and not do bad things and how you'll --
14 basically the same kind of words that are in the reg.
15 guides -- the reg. guide for excavation right now?

16 MR. WILSON: Yes. And -- but I think we
17 all understand that that's going to vary. That's very
18 site specific.

19 MR. ZINKE: Yes. Okay. The second
20 question. In drawing the line between what would be
21 LWA and what is not, you had a fair amount of
22 discussion of federalization of the activities. And
23 the discussion was mainly -- at least it seemed to me,
24 was that the kind of activities that were not LWA
25 wouldn't have otherwise been federalized to start

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1 with. And I may be poorly wording that.

2 But if -- if an activity in what now you
3 say might be in this non-LWA does require some federal
4 -- some other federal agency permit, then by the basis
5 of your argument, would you then move it back over
6 into the therefore it needs LWA also because you're
7 involving another federal agency?

8 For example, if you needed to get a permit
9 from the Corps of Engineers to do some dredging work,
10 would that then, just by the -- just by the fact that
11 you're involving a federal agency, move it back into
12 the LWA column?

13 MR. BONANNO: No. I don't think it would
14 move it back into the LWA column. What may be
15 affected by that is how the environmental impact
16 statement is completed. Because there may be, if
17 there's two federal agencies involved, you know, there
18 may be cooperation or consultation between the two
19 federal agencies. So it may effect how the EIS gets
20 done. But it wouldn't make those non-LWA activities
21 -- it wouldn't force them into a category where they
22 required permission from us.

23 MR. ZINKE: Okay.

24 MR. BELL: It's Russell Bell again with
25 NEI. I think it's a follow-up to George -- to

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1 something George was talking about. And that is, the
2 interest in excavation and degree of regulatory
3 oversight of excavation because of some of your past
4 experience. And that NRC would like to be informed or
5 aware of things that are identified there.

6 What -- as I'm listening to the
7 discussion, imagining that rather than a rather broad
8 prohibition on excavation without an LWA, that a
9 requirement for the licensee to, you know, monitor the
10 excavation activity; identify anything unexpected, I
11 think that was the right word, Jerry; perhaps report
12 those things in writing or through pre-application
13 interaction with the NRC; I think there may be a way
14 to define a process and, if necessary, you know, put
15 it into regulation.

16 To provide the NRC the kind of information
17 that Jerry said was of interest without what would
18 otherwise appear to be a fairly heavy handed, you
19 know, you can't excavate here without an -- without an
20 LWA. I guess that's an idea I'm rolling around in my
21 head. I'm wondering if you have any reaction to that.
22 If we give you what you need for another mechanism?

23 MR. WILSON: My only reaction is to just
24 reinforce our point that we believe these activities
25 have some degree of safety significance. So, if

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1 you're going to propose so me other way of dealing
2 with that, please address that concern.

3 MR. BELL: Again, related. The
4 combination of the effect of the view of excavation as
5 safety significant and the scope of activities
6 including all facilities required to be described in
7 the SSAR; the net of that is that I can't excavate,
8 even under a non-safety related -- a facility that
9 contains no safety related or safety significant SSCs.
10 And it -- again, I'm kind of going back to where you
11 were coming from, Jerry. Is that the -- combined
12 excavation and the scope of construction activities,
13 was it the intent to also preclude excavation under
14 facilities that contain no safety related or safety
15 significant SSCs?

16 FACILITATOR MIZUNO: Can I start off
17 first? I think the answer, initially speaking, is no.
18 I mean, we actually identified things that temporary
19 or even permanent shop buildings, you know, sewage
20 treatment plants; there are a lot of physical
21 buildings and things which we saw them as well, I
22 mean, they are necessary in one sense to the operation
23 of the nuclear power plant.

24 They're declaring as some kind of support
25 function. But they have no interest -- we have no

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1 interest from a radiological health and safety common
2 defense and security over their construction. So you
3 could build them completely. And we identify what
4 those are in the proposed rule.

5 So my initial reaction would be no. It
6 clearly -- we are not intending that every building
7 and every structure needed for the power plant
8 requires an LWA in order for you to begin its
9 excavation. It's something smaller than that,
10 clearly.

11 And, what we are struggling with, and
12 again, what we are looking to the industry for as if
13 you have alternative suggestions, is how do you
14 construct a definition that accurately defines what
15 that boundary would be.

16 MR. WILSON: Yes. I want to support that.
17 I think that's a good summary. And also, I'll add on
18 that, you know, there may be other -- I'm not quite
19 sure how to characterize it -- other things that are
20 part of the facility that don't have safety
21 significance and don't even require excavation.
22 Remember, site grading to the grade level is you're
23 able to do that.

24 I mean, it's important to reinforce that
25 there's a lot of things that we've taken out of the

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1 LWA category. And so there's a lot of activity there
2 that's probably going to take up all the time before
3 you would receive the combined license.

4 MR. BELL: That's helpful. I'm thinking
5 of things like cooling towers, intake structures;
6 these are certainly part of the plant facility; the
7 functioning part. Not, I think, the kind of things
8 Geary was talking about; more what you were just
9 referring to. But those -- structures like those that
10 are not safety related or safety significant probably
11 require more than clearing, but would require some
12 foundation.

13 MR. WILSON: And I understand that. And,
14 as I said, our concern is one, safety significance.
15 But also, when do you cross the line? When are you
16 building the plant here? I mean, the whole idea of an
17 LWA is limited work. And so -- and our vision is
18 excavation of foundation. But you're not really
19 building the plant. At some point, you have gotten
20 into the whole construction of the plant. And then
21 the other concerns get drawn in.

22 MR. BELL: True. But excavation and
23 foundation, even under those facilities, as we read
24 the rules -- or the proposed rule, would be precluded
25 without an LWA. That's what I read. It sounds like,

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1 provided we address the safety significance issue, you
2 might be open to some other parsing of the scope of
3 activities that would require the LWA.

4 Yes. The -- I guess the current language,
5 I think, has words like structures needed to prevent
6 or mitigate the consequences of postulated accidents
7 that could cause -- maybe you could -- those words you
8 obviously didn't find served you well going forward.
9 Why wouldn't those words be the proper ones for the
10 revised rule?

11 MR. WILSON: It goes back to what I said
12 in the beginning. We're risk informed now and we look
13 at the safety significance; that the terminology was
14 the safety related/non safety related dividing line.
15 And we don't feel that, in this day and age, that's
16 the appropriate instrument to use to find the dividing
17 line for our regulatory authority.

18 FACILITATOR MIZUNO: I presume everyone in
19 the audience understands what Jerry Wilson is
20 attempting to say here. Okay.

21 MR. MOORER: I'm Tom Moorer with Southern
22 Nuclear. Just to build on what Russ and George
23 started, looking at this from a NEPA perspective, kind
24 of getting away -- we've kind of gotten down to an
25 argument about safety and the significance of safety

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1 related to excavation.

2 But going back to the -- to the NEPA side
3 of the argument and looking at the pile driving
4 example that actually was given as part of the
5 rationale and the decision made to include excavation,
6 basically on that same -- same logic that -- I think
7 the words they used, that you'd crossed into the
8 construction phase of the plant and that, from a NEPA
9 perspective, you've now had entered the major federal
10 action.

11 We haven't really talked about that. I
12 guess, Russ suggested, I think, a good idea is that
13 the concerns about safety, with regard to excavation,
14 I -- I don't know that there are NEPA concerns about
15 excavation. So moving it, you know, moving excavation
16 back into the, you know, non-regulated category, from
17 a NEPA perspective in my mind, does -- unless you're
18 saying that digging that hole has a significant
19 environmental impact to the point where that needs to
20 be considered part of the major federal action, then
21 to me Russ's suggestion has merit.

22 MR. WILSON: Well, I'm not going to
23 address the NEPA. Jerry will handle that. But I just
24 want to point out, you say moving it back in.
25 Excavation always was in. It was an LWA1 activity.

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1 MR. MOORER: I understand.

2 MR. BONANNO: I'm trying to sort out the
3 question. I think that, in determining whether or not
4 to include excavation within the scope of our
5 regulatory authority, I think that the analysis
6 focused on whether or not it, you know, it's closely
7 enough related to radiological health and safety
8 common defense and security.

9 The way we view the NEPA consideration
10 come into play after you've defined that regulatory
11 authority and their action forcing, in the sense that
12 after you've defined that regulatory authority, they,
13 you know, they force agency action in making decisions
14 or exercising that authority.

15 So the NEPA -- the NEPA question, I don't
16 think, influenced bringing excavation back into the
17 definition or including it, you know, in the proposed
18 rule. I think that was more of a AEA determination.

19 MR. MOORER: I understand what you're
20 saying. I guess my point is that -- that, if the
21 agency has determined that, from a NEPA perspective,
22 that excavation is not an environmental impact
23 concern, that's really not where you're coming from.
24 You're coming from where does the major federal action
25 start which, in your mind, as you defined it, is when

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1 construction starts. The --

2 MR. BONANNO: The major federal action
3 starts when we issue permission, either in the form of
4 an LWA, construction permit, COL. That's the major
5 federal -- in our view, that's the major federal
6 action here, is our permission granting.

7 FACILITATOR MIZUNO: And to put it
8 differently, I mean, to come at it from a different
9 perspective, the question is not what is the major
10 federal action, in one sense. It's why are we
11 choosing -- it's as Jerry said, the major federal
12 action is the permission.

13 So the question -- the real question is,
14 why are we establishing the permission requirement at
15 the point of excavation, as opposed to some other
16 time. And first, we want to make clear, it's not
17 driven by NEPA concerns, as Jerry Bonanno indicated.
18 It's driven by AEA radiological health and safety
19 concerns.

20 So, to be clear, if we didn't have --
21 let's just assume that the industry is able to
22 demonstrate to us, which is probably not likely, but
23 I'm hoping, that there is no radiological health and
24 safety common defense and security concern with
25 excavation. Okay? Or that it could be managed in

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1 some fashion.

2 MR. MOORER: Or if they could see where
3 that could be mitigated or monitored or --

4 FACILITATOR MIZUNO: Right. In some
5 fashion. There would be some way of dealing with it,
6 okay, as an alternative. Then, I guess we would say
7 yes. There is no need for the radiological health and
8 safety common defense and security jurisdiction of the
9 NRC to begin at excavation. It could be pulled back.

10 So, we want to be clear that, you know,
11 we're looking at what requires federal permission from
12 the standpoint of radiological health and safety AEA
13 concerns; not NEPA concerns. NEPA follows after we
14 make that determination.

15 MR. MOORER: I understand. And I guess it
16 goes back. I think what Russ has proposed is a viable
17 option. It's up to the industry now to demonstrate
18 that there's a way to do that that would satisfy your
19 concerns.

20 FACILITATOR MIZUNO: Yes. I think that
21 that's accurate.

22 MR. MOORER: Thank you.

23 MR. REPKA: Hi. My name is David Repka.
24 I'm with the law firm of Winston & Strawn. I just
25 wanted to react; make a quick point to the comment

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1 made earlier about the hearing process and bifurcation
2 and the piecemeal process that supposedly the rule
3 would contemplate.

4 I can say from my little bit of experience
5 with the NRC's hearing process that responding --
6 preparing and responding for an applicant to respond
7 to proposed contentions is one of the biggest burdens
8 in the NRC hearing process. But I take a little bit
9 of a different view of the bifurcation of that
10 process.

11 I think that it actually makes the process
12 more accessible to the public because the Commission
13 has already, in its Part 2 rulemaking of a couple of
14 years ago, extended the time frames for proposing
15 contentions. And, in fact, by bifurcating that
16 process further, a member of the public has more
17 opportunity to review the application.

18 It's certainly easier to do that in phases
19 and prepare contentions than it is all in one big
20 period with a 60 day period. So I actually think that
21 the concern is somewhat mitigated by the -- by the
22 process.

23 FACILITATOR MIZUNO: I guess I would agree
24 with that. I was attempting to say that, but I think
25 Mr. Repka said it more eloquently and more clearly.

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1 MS. COTTINGHAM: Anne Cottingham, NEI.
2 While we all take a few minutes and think about where
3 we are in the excavation issue, I thought I'd ask a
4 different question. And that is, can you tell us
5 whether or not the staff has any estimates as to how
6 long the -- how long the LWA process might take under
7 the proposed rule, and whether or not that period of
8 time was linked to your 12-month window?

9 MR. WILSON: I'll start out and turn it
10 over to my colleagues and have them supplement this.
11 I did a little bit of review in preparation.

12 First of all, let me remind everyone, as
13 I said before that, in reviewing for an LWA, both
14 under the current rules and under the new rules,
15 there's basically two parts of the staff's review.
16 There's the environmental review and there's the site
17 safety review.

18 And, as I said, I expect the information
19 needed to be supplied for an LWA under the proposed
20 rule would be similar to or basically equivalent to
21 what's supplied for an ESP, plus that additional
22 information on the foundation. So, if you go back and
23 look at durations on the first three ESP applications,
24 you'll see, I looked at from the time of docketing to
25 issuance of the FSAR on Grand Gulf, it's like 22 and

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1 one half months; Clinton was 27 and a half; North Anne
2 is 33 and a half.

3 The differences there have to do with
4 differences in the application and actions by the
5 applicants. You know, as many of you have heard me
6 say, the applicants really control these durations.

7 Now, the staff is hoping that, in the
8 review of Vogel, we can get that down to 21 months.
9 But it's -- once again, it's going to be dependant
10 upon how the application proceeds. So, from the
11 standpoint of the safety side of the review, you can
12 see the kind of time period we're talking about. It's
13 in that 21, 21 plus, depending on the application time
14 period.

15 Anyone else want to add on?

16 FACILITATOR MIZUNO: Yes. I wanted to
17 address the question, with respect to the one year
18 limitation in the rule. It was not based upon the
19 time period needed to process the LWA application.
20 Rather, it was, I guess, a combination of several
21 factors. One being the Commission's concern that a
22 LWA application submitted substantially in advance,
23 and I'm talking here many years in advance of
24 submission of a CP application or a COL application,
25 would cause the EIS that was prepared for -- and the

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1 underlying site suitability information possibly for
2 the LWA, to become dated to the extent that there may
3 be a substantial need for new and significant
4 information updating.

5 If you limit it to one year, that
6 possibility is, at least from the Commission's initial
7 reaction, would be unlikely. And we wanted to,
8 obviously, come up with a process that would minimize
9 the need for additional staff review resources to be
10 devoted to updating, as well as the possibility for
11 delay in the issuance of the underlying CP or COL due
12 to any contentions that may be raised with respect to
13 the existence of new and significant information in
14 that area.

15 So that was the first concern. I think
16 the second concern, or I should say the second factor
17 was that, under the current regulations, under 2.101,
18 which we sort of looked as a model, we saw that phased
19 submissions of applications currently have a one-year
20 limitation. And we thought well this would be a good
21 extension, using that period as an extension here.

22 And I just wanted to be clear. We're --
23 we understand that it is an extension. It's a
24 different situation. We're extending it by analogy.
25 There may be other periods; longer periods that may be

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1 appropriate. And perhaps Jerry Bonanno can mention
2 the information that we've received with respect to
3 updating the environmental information, I think, from
4 CEQ. What they thought.

5 MR. BONANNO: No. Yes. I think there was
6 an EPA.

7 FACILITATOR MIZUNO: Oh. EPA. Okay.

8 MR. BONANNO: I'm not sure of the context
9 that they gave the opinion. But I think they, in some
10 context, they opined that three years would be, you
11 know, the limit for -- for requiring an update to, you
12 know, the environmental information that had been
13 submitted. So they -- they felt like three years was
14 the -- was the max.

15 FACILITATOR MIZUNO: So that would
16 probably establish sort of the outer -- outer most
17 limits. And I guess I had misunderstood. I thought
18 it was CEQ, but EPA. And just for the sake of people
19 here, why we are looking at EPA is because EPA has an
20 oversight with respect to EISs that the NRC prepares.
21 And if they do not agree with the content and
22 conclusions of our EIS, and there is a process by
23 which they can, I guess, take this -- take their
24 disagreement up through the chain -- through an
25 internal federal agency decision making process, which

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1 I think is handled through CEQ. And I know that Chris
2 Nolan has joined. Maybe you can mention a little bit
3 more about this.

4 MR. NOLAN: Sure. The source of the
5 information was comments that we received from EPA on
6 one of our previous EISs from one of the ESPs. The
7 comment was focused around the 20 year lifetime that
8 an ESP has, in terms of an applicant's decision to
9 build. And EPA's comment was they don't consider an
10 EIS who was written more than three years prior to be
11 applicable to the current situation.

12 So we received that comment a number of
13 times from them. So it seems to be a consistent
14 position. So that was the source.

15 FACILITATOR MIZUNO: Thank you. Are there
16 any other questions? Otherwise, I'm perfectly happy
17 to end the meeting early. Oh, no. Here's one other
18 person here.

19 MR. MILLER: Hi. I'm Bryan Miller. Just
20 one specific question on a subject we touched on
21 earlier today, dealing with the use of environmental
22 information from a construction permit time frame.

23 It's good for a plant for the construction
24 permit was issued but the construction of the plant
25 was not completed. The specific question deals with

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1 a site that was originally licensed or construction
2 permits were issued for multi-units. A single unit
3 was finished. Would this be applicable in that case,
4 since the second unit was not finished?

5 FACILITATOR MIZUNO: The answer is yes.

6 MR. MILLER: Okay. Thank you.

7 FACILITATOR MIZUNO: Because the EIS was
8 for multiple units. Presumably, that EIS enveloped
9 the environmental impacts of construction and
10 operation for all the units. So the fact that one was
11 build and some were not build and now you want to
12 start another unit. Presumably, that EIS would
13 envelope that. Of course, subject to the new and
14 significant information updating requirement.

15 MR. MILLER: Exactly. Right. Thanks.

16 MS. BOYD: I'm sorry. Just one more
17 clarification on the LWA submittal and what it
18 involves. Would the LWA application be considered a
19 portion of COL application. And what I'm coming from
20 is the environmental reporting aspects associated with
21 the LWA. Would that be considered different from the
22 environmental report needed for the COL?

23 MR. BONANNO: Well, there's -- I think the
24 answer is that there's two options under the
25 Supplemental Proposed Rule. One would be to submit

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1 stand alone LWA application. In that case, there
2 would be a separate environmental report for the LWA
3 itself. If the application is submitted together,
4 okay, there is provision, I think, in 51.49 of the
5 Supplement. And that talks about -- it talks about
6 pulling out or designating an environmental report for
7 the Limited Work Authorization within the overall
8 environmental report.

9 So, I think either way, if you want an
10 LWA, you would need to have a separate LWA
11 environmental report, either submitted with the entire
12 ER, or on its own if you're coming in with a phased
13 application.

14 FACILITATOR MIZUNO: And I guess I might
15 point out that even if you come in with a phased
16 application, there's further option. If you submit
17 your LWA application early, your ER could either
18 consist of a full and complete ER for focusing on the
19 entire construction and operation of the plant, or an
20 ER that was limited to the activities that were
21 requested as part of the LWA.

22 MS. BOYD: Thank you.

23 MS. COTTINGHAM: Was that point made in
24 the discussion accompanying the proposed rule, Geary?

25 FACILITATOR MIZUNO: Yes. I believe so.

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1 But if not, we will check the SOC to make that clear
2 certainly in the final rule. But I'm pretty sure we
3 made that clear in the SOC for the proposed rule.

4 MR. GRANT: Good afternoon. Eddie Grant.
5 One question that I would ask representing Exelon and
6 then thereafter representing NuStart. The first
7 question from Exelon would be there are three LWAs --
8 or not LWAs, but ESPs. And two of those ESPs have
9 provided site redress plans and requested the LWA
10 action be included as part of the ESP. Have you given
11 consideration to how those ESPs will be issued and
12 what activities will be allowed under those ESPs and
13 the associated LWAs for those two that have requested
14 same?

15 MS. GILLES: Off the top of my head, I
16 think the answer is we have not considered in detail
17 what would happen with the LWAs issued with those
18 particular ESPs. And that's probably something that
19 we would need to think about carefully.

20 If I recall, for these ESPs, and correct
21 me if I'm wrong, you simply requested authority to
22 undertake the activities allowed by 50.10(e). Is that
23 correct? And without a specific listing.

24 MR. GRANT: That is correct. Although,
25 with my best recollection and I haven't looked at it

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1 in a while, but my best recollection is that the
2 Exelon listing of activities did include excavation.

3 MS. GILLES: Yes. I think that's
4 something I guess we will have to take a look at.

5 MR. WILSON: As a general matter, we have
6 several rules going on in parallel right now. So a
7 definitive answer is this, and it's going to be kind
8 of on timing and when these rules, if they get put
9 together, when they get put together. And when we're
10 ready, assuming we are, to issue an ESP to Clinton,
11 we'll have to make that decision as to how we're going
12 to handle that.

13 But the vision was that the permit itself
14 would have what is authorized. And so -- I'm just
15 kind of talking out loud here with my colleagues, but
16 I envision we're going to have to make some
17 determination. Correct?

18 MS. GILLES: Yes. And I think I would
19 encourage you to make sure that, you know, that your
20 project manager is aware of this concern so that we
21 can all follow it closely as all these activities
22 converge at nearly the same time frame.

23 MR. GRANT: I can appreciate that you
24 haven't given that careful thought. I'm just
25 wondering mostly, I guess, if we need to write some

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1 sort of letter and clarify out request to make sure
2 that it's understood that it's understood that we
3 expect certain things or don't expect certain things.
4 Of course, we really can't do that until the rule
5 language is finalized. But certainly we would expect
6 you to take into consideration the specifics of the
7 request that was in the ESP.

8 MR. WILSON: Well, I'm sure I can speak
9 for Mr. Matthews that good communication from the
10 applicants is always a good idea.

11 MR. GRANT: Always a good idea.
12 Absolutely. On several occasions, and I'll go to the
13 NuStart side now and the more general worry, but the
14 -- I've heard you repeatedly refer to excavation and
15 foundation work. And I would like to separate the
16 two, if we could for a moment, and talk only about
17 excavation work. Because clearly, I think, all of us
18 agree that beginning the foundation work is a safety
19 related activity and would require certain approvals,
20 if not the COL itself, but at least the LWA and what
21 we would not call an LWA2, with a safety related
22 aspects.

23 One thing though that does confuse me
24 quite a bit about the references you've made to
25 providing what is essentially an ESP in order to get

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1 this LWA under the new proposed ruling. Well, there
2 are several things that confused me about that.

3 For instance, that in order to dig the
4 hole for this excavation, that I would have to provide
5 demography information and meteorological information
6 and emergency planning contacts, evacuation time
7 estimates. Those types of things which are things that
8 are typically in the ESP now and required to be in the
9 ESP, don't seem to comport with what I would need to
10 be able to get approval to dig a hole.

11 MR. WILSON: I would ask you not to focus
12 on the issue of excavation, but rather the fact that
13 you're initiating construction. So the key point here
14 is we've changed the definition of construction.

15 Now, from a regulatory perspective, what
16 is it the NRC should decide before we authorize
17 construction? And, in the past, what we have said is
18 you need to answer the question, is this site suitable
19 for a nuclear power plant. Or, more specifically, is
20 that location on your site suitable for constructing
21 a nuclear power plant?

22 And I believe we need to answer that
23 question in the affirmative before we authorize
24 applicants to proceed with construction. And that's
25 how we've done LWAs in the past. And my expectation

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1 is that's how we'll do it in the future.

2 FACILITATOR MIZUNO: And I guess, let me
3 add it, from a legal perspective, again although Jerry
4 Bonanno talked about the provisions that dealt with
5 segmentation or how the NRC has included provisions
6 that are intended to insure that we are not accused of
7 having illegal segmentation,

8 I think that it becomes more difficult for
9 the agency to step back even further and say we are
10 not going to consider suitability of a site, and yet
11 allow them to dig the hole. And then to reasonably
12 say, but our eyes remain blind to that fact and the
13 agency is going to consider in an unbiased fashion the
14 acceptability of this site at the combined license or
15 CP stage.

16 I'm convinced that the agency can do that
17 because certainly I could do that. And I have no
18 reason to believe that the Commission as an agency
19 couldn't do that. The question is whether that
20 capability is one that we can reasonably explain to
21 members of the public or perhaps most cogently to a
22 reviewing court.

23 If we are taken to court and saying that
24 this is illegal segmentation, certainly, we would come
25 back and say that there is no illegal segmentation for

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1 all the reasons that we have described. But the
2 question is whether the reviewing judge is going to
3 say Mr. NRC, you've got to be joking. They dug the
4 hole. You didn't even determine whether this site is
5 a suitable site for a plant, and yet you expect me to
6 believe that the agency is going to act in an unbiased
7 fashion and ultimately reject this site on the basis
8 of unfavorable demography or unsuitable meteorology?

9 Again, the things for the External State
10 Code to consider, I think that the Commission
11 certainly was aware of this when they promulgated the
12 original LWA rule and the balance was struck then.
13 And I do not think that it would be wise for us, at
14 this stage, to change the timing and the balance
15 there.

16 MR. GRANT: I'll leave all those questions
17 of segmentation to the lawyers. They're way past my
18 capabilities. I would ask, however, that it continues
19 to confuse me that I can set a safety related
20 structure on top of a grade level -- well, at grade.
21 Or I am allowed to bring grade into a readiness state,
22 ready for construction, preparation for construction,
23 and that's not construction. But I can't let that
24 same bulldozer go a little deeper and get it 10 feet
25 under grade to get that same type of foundation

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1 prepped for construction. That's not a question to
2 you. It just confuses me. And I'll let it go at
3 that.

4 MR. WILSON: Well, thank you for the
5 comment, though. I need to think about that.

6 FACILITATOR MIZUNO: I mean, yes. I would
7 say that these are certainly valid considerations. I
8 mean, those are things that we have to consider. We
9 will consider whatever the industry has to say with
10 respect to that. But we just wanted to explain here
11 why the NRC, at the proposed rule stage, drew the line
12 where it did.

13 MR. GRANT: Given the opportunity, one
14 more statement. We are allowed to do site
15 characterization work, as I understand it, or site
16 exploration in order to characterize the site. It
17 seems to me again that this last step of digging the
18 hole to identify and doing the mapping that's
19 typically required, and those types of things, is more
20 the last step of site characterization and exploration
21 than it is construction, in that we really aren't
22 placing anything for construction if we're just
23 digging a hole, again.

24 Those two things, again, don't seem to
25 comport. It seems to me to fit much better with site

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1 characterization and the last step thereof, rather
2 than the first step of construction.

3 MR. WILSON: I hear what you're saying.
4 But historically we have not drawn the line at that
5 point. It's just those initial --

6 MR. GRANT: I recognize that. I'm
7 requesting that you reconsider it. Perhaps now's the
8 time to change that line.

9 MR. MATTHEWS: John Matthews from the law
10 firm of Morgan & Lewis. I just wanted to maybe throw
11 out another idea in this issue of excavation. And it
12 seems to me that we're rather allowing the tail to wag
13 the dog, in that the circumstances that might arise
14 where excavating would result in circumstances or
15 conditions that would have an impact on safety is
16 really the exception, rather than the rule.

17 And so that, in the vast majority of
18 cases, that really is not -- not the case. And I
19 think if you look at the experience in the industry,
20 we're able to maybe point to two or three examples out
21 of certainly more than 100 and perhaps as many as 150
22 or more.

23 So that perhaps the way to approach this
24 would be to accept a presumption that excavating does
25 not have an impact on safety. And then impose the

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1 burden on the industry or the excavator if a condition
2 arises that they discover could have an impact on
3 safety, such as the examples that you've mentioned,
4 that then they have an affirmative burden to come into
5 the agency; describe the conditions; and then address
6 them appropriately.

7 MR. WILSON: I think I understand what
8 you're saying. I think it's appropriate to back up,
9 though, once again to where we started from. All of
10 these activities were originally LWA1 activities, as
11 we like to refer to them. And we were looking at what
12 things could be taken away that you could, from a
13 generic perspective, say would not have safety
14 significance. And that was the focus of what we did.

15 And what percentage of past excavations
16 have had concerns -- safety concerns, I don't know the
17 number, but it's more than just a couple. I know
18 that. So that's the way we looked at it. And it's my
19 view that, from a safety significance standpoint, you
20 can't generically say the excavations aren't going to
21 have safety significance.

22 MR. MILLER: Bryan Miller. I don't really
23 have any questions at this point. I just wanted to
24 reiterate something Jerry said. We do appreciate the
25 work the staff's done on this. We do think this is a

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1 significant benefit for all of us involved. And, as
2 Jerry pointed out earlier, we don't want to lose the
3 fact that this does give us quite a bit of latitude to
4 do -- do business that we didn't have -- we wouldn't
5 have prior to this. So we do appreciate that and we
6 do recognize that fact. And I guess there's no doubt,
7 at this point, that you're going to get some comments
8 on excavation. That notwithstanding, I really do
9 appreciate the change that you made and how it's come
10 out, for the large part. Thank you.

11 FACILITATOR MIZUNO: Thank you. If there
12 are no comments, let me just summarize what I thought
13 were some of the take away items or things that we
14 thought are probably going to have to require further
15 work on our part.

16 Clearly excavation; I'm not going to go
17 into that any further. Further public outreach in
18 terms of explaining the process and seeing whether our
19 processes are becoming too fragmented to permit either
20 appropriate NRC staff consideration of the licensing
21 process as well as for the public to be able to
22 understand the process to be able to effectively
23 participate in the hearing process.

24 We will also be looking at the question of
25 whether a one year versus a different period of time

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1 would be appropriate for allowing a LWA to be filed in
2 advance of an underlying CP or COL application. At
3 least that's what I have on my plate. Are there any
4 other people, Jerry or Nan or the other Jerry?

5 MS. GILLES: The one other thing I wrote
6 down was to look into the case of the current ESPs and
7 how their LWA authority might play out, depending on
8 the timing of issuance of the ESPs and the rule.

9 And then, if I can make one other
10 announcement, I did get some late breaking news
11 regarding the Part 52 rulemaking. Apparently, the
12 earliest it will be made publicly available is
13 tomorrow. And this is simply due to its size and the
14 problems with printing it and getting it to the
15 Commission first, before it's publicly released. So
16 I've been told that tomorrow would be the earliest it
17 would be publicly available. So I guess, start
18 looking tomorrow and keep looking thereafter.

19 FACILITATOR MIZUNO: Okay. Well, I
20 believe -- oh, Anne?

21 MS. COTTINGHAM: Hi Geary. You may have
22 covered this in your general listing of take-aways.
23 But we are also still looking at the subject of
24 whether or not, in the definition of safety, the nexus
25 must be to all SSCs.

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1 FACILITATOR MIZUNO: Oh, yes. Sorry.
2 Yes. That was in there.

3 MS. COTTINGHAM: That's partly described
4 in the SSCs.

5 FACILITATOR MIZUNO: But in that area, I
6 think that it would be safe to say that we would be
7 looking at commenters to see whether they have some
8 alternative approach and whether it's one that we
9 believe is defensible from a technical and
10 regulatory/policy standpoint.

11 If that's it, I would like to thank
12 everyone for attending this meeting. I think it's
13 been a very successful one from our standpoint. And
14 this meeting is closed.

15 (Whereupon the meeting was adjourned at
16 approximately 2:40 p.m.)

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