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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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MEETING WITH UNION OF CONCERNED SCIENTISTS
(PETITIONER) REQUESTING ACTION UNDER 10 CFR2.206
REGARDING PROTECTION AGAINST CONTROL ROD DRIVE
MECHANISM NOZZLE LEAKAGE FAST CORROSION SCENARIO

+ + + + +

MONDAY

JUNE 18, 2007

+ + + + +

The meeting was convened at 10:30 a.m. in Room
0-5B4, U.S. Nuclear Regulatory Commission, One White
Flint North, 11555 Rockville Pike, Rockville,
Maryland.

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I-N-D-E-X

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3 Remarks from Petitioner

4 By David Lochbaum 16

5 Questions from the Petition Review Board and

6 NRC Staff 29

7 Conclusions and Questions from

8 Members of the Public 39

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

2 (10:26 a.m.)

3 MR. WENGERT: Tom Wengert, the Project
4 Manager for Davis-Besse, the Petition Manager for this
5 2.206 petition here at the NRC headquarters.

6 CHAIR NIEH: Ho Nieh from NRR Division of
7 Policy and Rulemaking. I'm the Petition Review Board
8 Chairman.

9 MS. LONGO: Giovanna Longo, Office of the
10 General Counsel, Senior Attorney.

11 MR. BURGESS: Bruce Burgess, Region III.
12 I'm the Branch Chief of Oversight of Davis-Besse and
13 Perry.

14 MS. MENSAH: Tanya Mensah, NRR. I'm the
15 2.206 Petition Coordinator.

16 MR. LOCHBAUM: Dave Lochbaum, Union of
17 Concerned Scientists, the Petitioner.

18 MR. COLLINS: Jay Collins, Technical Lead on
19 the Petition Review Board. I work in the Division of
20 Component Integrity.

21 MS. EVANS: Michele Evans, NRR. I'm the
22 Division Director, Division of Component Integrity.

23 MR. GIBBS: I'm Russell Gibbs, Branch Chief
24 in the Division of Operating Reactor Licensing, which
25 covers Davis-Besse.

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1 MS. HACKWORTH: Sandra Hackworth, Operations
2 Officer, Office of Investigations.

3 MR. MATTHEWS: Tim Matthews, Morgan Lewis.

4 L [MS. DIECKER]: Jane (inaudible)
5 [Diecker], Morgan Lewis, summer assistant.

6 MR. HAEMER: Robert Haemer, Pillsbury
7 Winthrop Shaw Pittman.

8 MR. HALNON: Greg Halnon, Director of
9 Regulatory Affairs for First Energy.

10 MR. JENKINS: I'm David Jenkins, First
11 Energy counsel.

12 MR. SCHMUTZ: Tom Schmutz, Morgan Lewis.

13 MS. SHEPHERD: Sandy Shepherd, Clifford &
14 Garde.

15 MR. SPALDING: Jeff Spalding, Clifford &
16 Garde.

17 MR. GUNTER: Paul Gunter, Nuclear
18 Information Resource Service.

19 MS. ROSENBERG: Stacey Rosenberg, Branch
20 Chief, the Special Projects Branch in the Division of
21 Policy and Rulemaking.

22 MS. CHUNG: Yeon Ki Chung (inaudible).

23 MS. CRUZ: Holly Cruz, Division of Policy
24 and Rulemaking Project Manager.

25 MS. JONES: Heather Jones in NRR in the

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1 Operating Experience Branch.

2 MS. CASEY: Lauren Casey, Operating
3 Experience Branch.

4 MS. SHOOP: Undine Shoop, Office of
5 Executive, Director for Operations.

6 MR. WENGERT: This is Tom Wengert. We've
7 completed introductions at the NRC headquarters.
8 Would the Region III please continue with
9 introductions?

10 MR. GAVULA: NRC Region III. This is Jim
11 Gavula, Reactor Inspector now at the DRN.

12 MR. YULI [ULIE]: Joe Yuli [ULIE], OI Region
13 III.

14 MR. ZURAWSKI: Paul Zurawski, Region III,
15 Branch 6, Reactor Engineer.

16 MR. WENGERT: Is the Resident Inspector from
17 Davis-Besse on the line?

18 MR. SMITH: Yes, the Resident Inspector
19 Richard Smith from Davis-Besse online.

20 MR. WENGERT: Are there any other parties on
21 the line to introduce themselves?

22 PHONE PARTICIPANT: I don't see any other
23 parties on the line.

24 MR. WENGERT: Okay. Then I think we can
25 begin with the meeting. All right, thanks. First,

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1 I'd like to thank everyone for attending this meeting.
2 My name is Tom Wengert, and I am the Davis-Besse
3 Project Manager. I'm also the Petition Manager for
4 this 2.206 petition under consideration. The Petition
5 Review Board Chairman is Ho Nieh.

6 As part of the Petition Review Board's or
7 PRB's review of the 2.206 petition, Mr. Lochbaum of
8 the Union of Concerned Scientists has requested this
9 opportunity to address the PRB and provide additional
10 information on items number two and number three of
11 the petition. This meeting is scheduled to last from
12 10:30 a.m. until 12:15 p.m.

13 The meeting is being recorded by the NRC
14 Operations Center and will be transcribed by a court
15 reporter. The supplement, the transcript, excuse me,
16 the transcript will become a supplement to the
17 petition that was submitted on April 30th, 2007 and
18 supplemented on May 10th, 2007 by the Union of
19 Concerned Scientists. The transcript will also be
20 made available publically.

21 Today's meeting is a Category 3 public
22 meeting. The public is invited to observe the
23 proceedings. Prior to concluding this meeting,
24 members of the public may provide comments regarding
25 the petition and ask questions about the 2.206

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1 petition process.

2 I've prepared an attendance slip that I am
3 now circulating. I ask that everyone sign it before
4 the conclusion of this meeting. The meeting summary
5 that the staff will be issuing will include a listing
6 of all those in attendance and on the phone today.

7 I've also distributed a meeting feedback
8 form. I encourage you to take the time to fill it out
9 so we can learn if there's anything we need to do to
10 improve the effectiveness of these meetings. You can
11 leave the form on your chair, hand it to me, or mail
12 them back to me in the next week or two, and we will
13 get it into our system.

14 We already had the introductions. At this
15 time, again, Mr. Lochbaum, could you please introduce
16 yourself for the record?

17 MR. LOCHBAUM: David Lochbaum, Director of
18 the Nuclear Safety Project for the Union of Concerned
19 Scientists and the Petitioner.

20 MR. WENGERT: Thank you. I'd like to
21 emphasize once again that we need to speak clearly and
22 loudly to make sure that the court reporter can
23 accurately transcribe this meeting. If you do have
24 something that you'd like to say, please first state
25 your name for the record. At this time, I'll turn it

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1 over to PRB Chairman Ho Nieh.

2 CHAIR NIEH: Thank you, Tom. Good morning,
3 David. Good morning, guests. Welcome to the public
4 meeting today on the 2.206 petition submitting
5 regarding a report prepared by consultants to the
6 First Energy Nuclear Operating Company, or FENOC,
7 related to the 2002 reactor pressure vessel head
8 corrosion event at the Davis-Besse Nuclear Power
9 Station. This report is also referred to as the
10 exponent [Exponent] report.

11 I want to just provide some background on
12 the 2.206 process that the NRC has for those members
13 of the public here that may not be familiar with it.
14 2.206 of Title 10 of the Code of Federal Regulations
15 describes the process that permits anyone to petition
16 the NRC to take an enforcement-related action to
17 modify, suspend, or revoke an NRC-issued license or
18 take any other appropriate enforcement action to
19 resolve a problem. Details of the NRC's 2.206 process
20 can be found in NRC's Management Directive 8.11, which
21 is a publically-available document.

22 The purpose of today's meeting is to provide
23 the Petitioner with an opportunity to give the NRC
24 additional information and explanation in support of
25 this petition request. The purpose of this meeting is

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1 not to provide an opportunity for the Petitioner or
2 the public to debate the merits of the petition
3 request. This meeting is not a hearing and no
4 decision regarding the merits of the request are going
5 to be made today during this meeting.

6 I want to provide some background on the
7 petition before we get into Mr. Lochbaum's
8 presentation. On April 30th, 2007, David Lochbaum of
9 the Union of Concerned Scientists, the Petitioner,
10 submitted to the NRC a petition requesting the NRC to
11 take actions against the Davis-Besse licensee as a
12 result of the conclusions reached in a report prepared
13 on the licensee's behalf, that is the exponent
14 [Exponent] report. In the April 30 petition request,
15 the Union of Concerned Scientists requested the
16 following three actions. I'll summarize those
17 briefly.

18 The first action was to immediately order
19 the Davis-Besse reactor shut down and remain shut down
20 until the NRC completes an independent review of the
21 exponent [Exponent] report. In the second action, if
22 the NRC's independent review determines that the small
23 leak and fast corrosion rate scenario described in the
24 exponent [Exponent] report is valid, immediately order
25 all pressurized water reactors in the United States to

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1 be shut down and remain shut down until the NRC
2 approved either an enhanced inspection scope and
3 frequency or an enhanced leak detection capability
4 that would alert control room operators to small
5 leakage from one or more control rod drive mechanism
6 nozzles so that operators could identify the problem
7 prior to any damage progressing to the depths that
8 were found at the Davis-Besse head. And the third
9 action, if the NRC's independent reviews at FENOC had
10 submitted an inaccurate report to the NRC, it was
11 requested that the NRC revoke the operating license
12 for FENOC.

13 Mr. Lochbaum, did I characterize those
14 requested actions --

15 MR. LOCHBAUM: In my presentation, I'll have
16 a slight emphasis. It's slightly different, but I'll
17 get that in my presentation. It's close enough for
18 the background.

19 CHAIR NIEH: Okay, thank you. The NRC has
20 conducted certain petition review activities since the
21 receipt of this petition, and I just want to go over
22 those briefly again to bring everybody up to speed on
23 how we got to where we are here today. The Petition
24 Review Board, or PRB, met on May 2nd, 2007 to discuss
25 the request for immediate action, which was to

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1 immediately order the shut down of the Davis-Besse
2 facility. On May 3rd, 2007, the Petitioner was
3 notified by telephone that the Petition Review Board
4 denied this request for immediate shut down of Davis-
5 Besse because the NRC staff had already performed an
6 assessment of the exponent [Exponent] report and had
7 concluded that the current reactor pressure vessel
8 head inspection requirements are adequate to detect
9 reactor pressure vessel head degradation issues before
10 they result in significant corrosion. The NRC
11 provided an acknowledgment letter stating such to the
12 Petitioner on May 18, 2007.

13 By letter dated May 10, 2007, the Petitioner
14 submitted a supplement to the petition. This
15 supplement questioned whether other failure mechanisms
16 could have contributed to the head corrosion or
17 whether current inspection programs are inadequate
18 because the probability of flawed detection is not 100
19 percent.

20 The Petition Review Board again met on May
21 16th, 2007 to discuss the second and third items in
22 the original petition request and the supplemental
23 information supplied on May 10th. The Petition Review
24 Board's initial recommendation was to reject the
25 second item because the previously-mentioned NRC

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1 assessment had determined that it had met one of the
2 criterion for rejection described in Management
3 Director [Directive] 8.11 because, basically, the NRC
4 had already been or this issue had already been
5 subject to NRC staff review and evaluation. In
6 addition, the NRC staff evaluation of the May 10th
7 supplement to the petition request concluded that it
8 did not raise any new issues that would cause the NRC
9 to change its assessment of the exponent [Exponent]
10 report.

11 The Petition Review Board's initial
12 recommendation was to reject the third item for review
13 because the petition did not meet all the criteria
14 necessary for reviewing petitions under 2.206.
15 Specifically, in the request, the Petitioner did not
16 present facts sufficient to constitute a basis for the
17 requested action, which was to revoke the Davis-Besse
18 operating license because of providing inaccurate
19 information. The Petitioner was informed of these
20 recommended actions by telephone on May 29, 2007. In
21 accordance with the NRC's 2.206 process, the
22 Petitioner requested to address the PRB concerning its
23 initial recommendations for items two and three in the
24 original petition.

25 I want to state again that the purpose of

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1 this meeting is to provide the Petitioner with an
2 opportunity to give the NRC additional information in
3 support of the petition request. It's not to provide
4 an opportunity for the Petitioner or members of the
5 public to question or examine the PRB regarding the
6 merits of the petition request. This meeting, again,
7 is not a hearing and no decision will be made
8 regarding the merits of the petition request.

9 Following this meeting, however, the Petition Review
10 Board will conduct an internal meeting to make a
11 decision on the actions requested by the petitioner.

12 As described in our process, the NRC staff
13 may ask clarifying questions in order to understand
14 better the Petitioner's presentation and to reach a
15 reasoned decision on whether to accept or reject the
16 Petitioner's request in the internal meeting that will
17 follow. The NRC staff and the licensee, who have also
18 been invited to this meeting, will have the
19 opportunity to ask clarifying questions of the
20 Petitioner. For clarification purposes, the licensee,
21 that is First Energy Nuclear Operating Company, is not
22 a part of the decision-making process in the NRC's
23 2.206 petition review process. We invite the licensee
24 here so they are aware of an ongoing request for
25 action against their facility, and we also offer them

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1 the opportunity to ask any questions of the
2 Petitioner.

3 MR. LOCHBAUM: I do have one question about
4 that.

5 CHAIR NIEH: Yes, sir.

6 MR. LOCHBAUM: That's not exactly what the
7 agenda indicates.

8 CHAIR NIEH: Okay. Can we clarify that,
9 Tom, on the agenda?

10 MR. WENGERT: What are you specifically
11 referring to, Dave?

12 MR. LOCHBAUM: The agenda has five items,
13 the first one being the introduction and opening
14 remarks, which I assume this is. The second is
15 remarks from the Petitioner, which would be me. The
16 third one is questions from the Petition Review Board
17 and NRC staff, which is you guys and not them. And
18 the fifth is conclusions and questions from members of
19 the public, which I guess they may be lumped into, but
20 it's a little bit different than the way you've
21 characterized it.

22 CHAIR NIEH: Okay. Sorry for any confusion
23 in the agenda, but in our process we do invite the
24 licensee here, and they will be provided that
25 opportunity to ask any clarifying questions of the

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1 presentation. Oversight on our part regarding the
2 meeting agenda.

3 Okay. I do want to take just a brief
4 opportunity to introduce the Petition Review Board
5 before I turn the floor over to you, David.
6 Typically, the Petition Review Board consists of the
7 Chairman, which is usually a senior executive manager
8 at the NRC. There's a Petition Manager, and there are
9 also other members of the Board that are chosen based
10 on the technical area that's under review.

11 Again, my name is Ho Nieh. I'm the Petition
12 Review Board Chairman. I'm also the Deputy Division
13 Director for the Division of Policy and Rulemaking in
14 NRR. Tom Wengert is the Petition Manager. Tanya
15 Mensah is the 2.206 Coordinator in NRR. And we also
16 have technical staff from NRR headquarters and also
17 Region III on the Petition Review Board. The Division
18 of Component Integrity is represented on the Board by
19 Jay Collins, and Region III is represented by Mr.
20 Bruce Burgess. The Petition Review Board also obtains
21 advice from our Office of General Counsel represented
22 by Jenny Longo, and the Office of Enforcement, which
23 we are represented by Maria Schwartz, but I didn't see
24 Maria here today.

25 Okay. Are there any questions from anyone

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1 in the room regarding these introductory remarks or
2 information before we get into the main discussion of
3 the meeting? Okay. If not, Dave, I'd like to turn it
4 over to you for your presentation. Just one quick
5 reminder, just for purposes of our transcriber here.
6 Before you speak, please identify yourself and your
7 organization. Thank you.

8 MR. LOCHBAUM: Good morning. This is David
9 Lochbaum with the Union of Concerned Scientists. I
10 appreciate this meeting, this opportunity this morning
11 to present some of our thoughts on the petition
12 process of the petition and why we think it should
13 come out slightly different than the PRB is
14 recommending.

15 The title of this presentation this morning
16 is Nuclear Pinocchio. The second slide explains a
17 little bit why. A lot of people associate Pinocchio
18 with his penchant for lying, but it's also a fact, at
19 least initially, Pinocchio was a marionette whose
20 actions were controlled by whoever held the puppet
21 strings. This petition is all about who's lying and
22 who's controlling those puppet strings.

23 Slide three restates the summary of what we
24 ask for in the petition. The only slight difference
25 between the way I stated it here and in the petition

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1 and how Mr. Nieh characterized it was in items two and
2 three we wanted the NRC to determine whether that
3 report was valid, the exponent [Exponent] report was
4 valid or not. And depending on what the NRC's
5 determination was on the validity of that report, take
6 two actions. So we did not, in the petition, vote on
7 whether we thought the exponent [Exponent] report was
8 valid or not. We thought that was the NRC's role, and
9 that's why we characterized the petition the way it
10 was structured.

11 Slide four summarizes what the PRB's
12 responses were. No across the board. Slide five was
13 our take on that. We disagreed with all of the PRB
14 responses, including the initial one, which is not the
15 subject of today's meeting. We think the NRC has the
16 wrong nos on all three of those decisions.

17 Slide six addresses a point that I wish I
18 hadn't used in the petition. It was the words
19 "independent review." I used that in all three of the
20 asks in the petition, and I think it caused some
21 confusion that was unintended. What I meant by
22 independent review was, basically, the NRC to
23 determine whether the licensee was complying with the
24 requirements of 10 CFR 50.9: completeness and accuracy
25 of information. As I stated earlier, we did not vote.

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1 For one thing, it didn't matter what our vote on the
2 exponent [Exponent] report was. That was the NRC's
3 lone call was to whether that was valid or not valid,
4 accurate or not.

5 So, basically, what the petition was seeking
6 to do was to get the NRC to determine if First Energy
7 complied with the requirements of 50.9. So that
8 independent review was basically just to see the NRC's
9 call whether that was, conformance was met or not.

10 Slide seven, we extracted a portion from the
11 NRC's May 14th, 2007 demand for information to the CEO
12 of First Energy. That was approximately two weeks
13 after our petition was submitted, and the NRC demanded
14 some additional information from the company, from the
15 licensee, regarding the exponent [Exponent] report.
16 We find it incredible or we don't believe that it's
17 possible for the NRC to have taken this step without
18 either having already determined whether it was
19 complete or accurate or at least have that be a step
20 in the process to making that determination. In other
21 words, the information obtained in response to the
22 demand for information will be viewed by the Agency in
23 making a determination whether 50.9 was met or not,
24 which is basically what we were seeking initially in
25 the petition was items two and three.

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1 Slide eight provided why we thought the
2 words "independent review" wouldn't be confusing,
3 although we do admit that it did introduce some
4 confusion unknowingly. This is an extract from the
5 report the NRC submitted to the United States Congress
6 on March 14th, 2005. Then NRC Chairman Diaz was
7 responding, on behalf of the Agency, was responding to
8 the report done by the National Academy of Sciences,
9 which, among other things, recommended an independent
10 review of spent fuel storage capabilities at all
11 plants in the country. In the NRC's response to
12 Congress, the NRC reminded the Congress that the NRC
13 is an independent body, can do an independent
14 assessment because that's the NRC's job. So we felt,
15 since the NRC uses independent reviews quite
16 liberally, that it was okay for us to do that, and
17 then we were a little bit surprised when that caused
18 some confusion. So I apologize for that. That wasn't
19 our intent to confuse the matter, but it did so.

20 On slide nine, I reiterate what we were
21 trying to do or seeking to do with the whole
22 independent review language. We sought to have the
23 NRC, which is an independent agency, according to then
24 Chairman Diaz, determine if one of its regulations,
25 specifically 10 CFR 50.9, had been violated by one of

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1 its licensees, in this case First Energy, with the
2 submittal of that exponent [Exponent] report. In
3 other words, was First Energy lying then, or are they
4 lying now?

5 We recognize and we anticipate that at some
6 point in this discussion it will be brought up that
7 the exponent [Exponent] report was not a First Energy
8 product. It was a consultant's report submitted to
9 the Agency by First Energy, but it was not a First
10 Energy product. I call your attention to a letter
11 dated May 9th, 2005 from Theodore Quay to myself.
12 It's in Adams [ADAMS] under ML051470029. I couldn't
13 get you a copy of that today because it's not a
14 publically-available document, and how I was able to
15 obtain the ML number of a not publically-available
16 document --

17 CHAIR NIEH: What was the year of that
18 document again, David?

19 MR. LOCHBAUM: 2005. May 9th. The reason
20 it's not publically-available, it's a response to an
21 allegation that we had made earlier that year. We had
22 alleged, we had cited the document submitted by the
23 Southern California Edison Company (inaudible) where
24 they submitted a Westinghouse topical report. The
25 second page of the Westinghouse topical report that

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1 was enclosed in that letter had a disclaimer saying
2 that Westinghouse says this may not be complete, this
3 may not be accurate; we make no warranty whatsoever.
4 It was the standard disclaimer you see in those kind
5 of reports. So the allegation we made was that
6 Southern California Edison could not have met its 50.9
7 obligations to submit complete and accurate
8 information if the second page says we don't stand
9 behind this report as being complete or accurate. And
10 in the letter I cited, the May 9th, 2005 response, Ted
11 Quay, on behalf of the Agency, said the licensee is
12 responsible for all materials submitted, even those
13 prepared by its contractors and agents and whatsoever.

14 So in that case, Southern California was
15 responsible for that Westinghouse topical report being
16 complete and accurate. In this case, First Energy is
17 responsible for the exponent [Exponent] report being
18 complete and accurate because they're the ones that
19 submitted it to you guys. I wish I could have
20 brought, had a copy of that, but it's not public. I
21 couldn't print it out this morning downstairs.

22 So it goes back to what First Energy told
23 the NRC a number of times. In this case, it's from
24 the October 3rd, 2003 meeting. First Energy in those
25 days, when it was trying to get permission to restart

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1 Davis-Besse, listed all the things they had done wrong
2 to allow this condition at Davis-Besse to exist,
3 breakdown at the individual management level, which
4 allowed the event to occur. And many times, they said
5 it was their fault. It was a breakdown of management
6 oversight, it was a breakdown of QA, it was a
7 breakdown of corrective actions, it was a breakdown in
8 -- since we only have two hours, I can't list all the
9 places they said there were breakdowns, but it was
10 quite a long list of areas they said they had broken
11 down.

12 Slide 11, now they're saying, or at least in
13 that exponent [Exponent] report, it says on the bottom
14 half of that slide, "This event was not only
15 unexpected but was not foreseen or predicted by any of
16 the extensive prior experience with boric acid
17 corrosion or from any of the inspection and analysis
18 of CRDM cracking in nuclear plants worldwide from 1994
19 to 2002."

20 The second document I provided today is an
21 issue brief that I prepared and issued on August 13th,
22 2001, shortly after the NRC issued the information
23 bulletin on CRDM cracking. August 13th, 2001. I call
24 your attention to the second page. "What happens when
25 CRDM nozzles crack? CRDM nozzle cracking can lead to

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1 rupture of the nozzle followed by ejection of the CRDM
2 control rod or leakage of reactor water under the
3 unprotected outer surface of the reactor vessel
4 causing its failure." And paragraph two below that
5 goes into more detail about why that can occur.

6 I'm a boiling water reactor person. That's
7 most of my experience. When this CRDM nozzle cracking
8 thing was first identified at county [Oconee], I spent
9 a day in the NRC's public document room, and the
10 documents referenced in this provided the basis for
11 that. It's a 1994 new reg [NUREG], new reg [NUREG] CR
12 6245 from October of 1994, which provides very clearly
13 that it was foreseen, it was predicted, it was not
14 unusual.

15 But that's the exponent [Exponent] report.
16 Again, you guys, Mr. Collins and others, can go back
17 and show that that shouldn't have been a surprise to
18 anybody. That was the reason the inspections were
19 being done, but that's neither here nor there.

20 Slide 12 is a copy, at least on the color
21 version, is a copy of the red photo. It looks more
22 dramatic. This was handed by First Energy employees
23 to an NRC inspector in April of 2000, who merely filed
24 it away. That and six others just like it were filed
25 away. No action was taken by the NRC regarding that

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1 red photo. The plant was allowed to run for
2 approximately two more years.

3 Slide 13, this also looks better in color.
4 You've caught First Energy red-handed here with this
5 exponent [Exponent] report. They basically, the
6 response they made to your demand for information,
7 they backpedal off that report faster than the
8 Indianapolis 500 winner. And, again, that's your call
9 as to whether the exponent [Exponent] report is valid
10 or not, but First Energy has backed off from it, so I
11 think it gives you a clue. It's very clear that that
12 exponent [Exponent] report contradicts quite, maybe
13 not 180 degrees but about as close to 180 degrees as
14 you'll ever see.

15 From what they provided you earlier in the
16 root cause report, in the response to the notice of
17 violation, the civil penalty, all that stuff, the
18 exponent [Exponent] report totally contradicts that.
19 You've caught them red-handed by asking them to put it
20 on the docket.

21 Slide 14. If we look at fall of 2001, the
22 First Energy came in many times and told the NRC it
23 could keep Davis-Besse running without the mandated
24 inspections, the requested inspections, even though
25 the licensee for North Anna and Surry, faced with the

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1 same information and the same challenge, voluntarily
2 shut down their reactors for the requested
3 inspections. If I recall correctly, North Anna and
4 Surry weren't even scheduled for refueling outages, so
5 they did a mid-cycle outage to comply with the NRC's
6 bulletin and conduct the inspections that the NRC felt
7 were warranted. First Energy could have done that,
8 very easily could have done that in fall of 2001, shut
9 down their reactor. And even if the exponent
10 [Exponent] report is 100-percent right, they would
11 have found that damage in fall of 2001 instead of
12 February the next year or March of the next year. And
13 the response would have been more like South Texas'
14 for the bottom-mounted instrumentation damage instead
15 of the two-plus year outages they worked out a number
16 of collateral damage caused by their management or
17 lack of management.

18 Approximately three and a half years later,
19 the NRC fined First Energy a record \$5.45 million for
20 numerous violations, including failing to meet 50.9.
21 So this company's used up it's get out of jail free
22 cards in terms of providing false information. Just
23 a few years ago, they came in and said we've learned
24 our lesson, they got things in place to prevent this
25 from happening again. And two years later, it happens

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1 again. They provide a report to the NRC saying
2 they're basically entirely blameless and there was
3 nothing they could have done to keep Davis-Besse from
4 running into the damage it did.

5 So today the NRC is on which end of the
6 puppet strings? Are you going to dance again as you
7 did in fall of 2001 in buying the lies that First
8 Energy was telling you? Or is the Agency going to
9 protect the public and hold this licensee accountable?

10 Slide 15. All we're asking is something
11 we've been asking for like 10 years or 30 years, even
12 before I came to UCS, is stop doing rearview mirror
13 regulating. Stop waiting for events, headlines to
14 tell you whether it's a good or bad situation before
15 you take action. You were definitely concerned at
16 Davis-Besse in fall of 2001 to the point of drafting
17 an order, but you lacked absolute proof. So you
18 waited until everybody on the planet recognized that
19 was a problem before you took action. Now you're
20 faced with a similar situation where this licensee is
21 clearly not meeting its obligations under the law,
22 under the regulation 50.9. Take action now. Don't
23 wait for conditions to get so bad that nobody on the
24 planet can dispute it except for perhaps a couple of
25 paid consultants.

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1 The last slide. You know, it's often said
2 that the truth will set you free. If that's true,
3 then repeatedly failing to tell the truth should have
4 the opposite effect and must cost you that freedom.
5 The NRC must not allow First Energy to repeatedly tell
6 lie after lie, repeatedly fail to comply with 50.9
7 again and again without any sanctions that mean
8 anything because it's obviously not having an effect.
9 It's not being a deterrent. It's not slowing down or
10 stopping this behavior on the part of this licensee.

11 Therefore, what we think needs to be done is
12 that, if the NRC determines that the exponent
13 [Exponent] report is non-valid, which it appears like
14 they're on that path to do so, the NRC should revoke
15 the license. This licensee has a pattern of failing
16 to meet its obligations under the regulation. You
17 shouldn't be an accomplice or a facilitator or an
18 enabler of that bad performance, that bad behavior.

19 I call your attention to the case of Gail C.
20 VanCleave, which is my favorite NRC enforcement
21 action. Gail C. VanCleave was a clerk at the
22 warehouse at DC Cook. She used her dead mother's
23 Social Security number to apply for the job as a clerk
24 in the warehouse at DC Cook, got caught, and when the
25 NRC Office of Investigations asked her about it, she

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1 said she'd do it again if she was a single mother,
2 working mother, needed to put money on the table.
3 Because she said she'd do it again and she showed no
4 contrition and no I've learned my lesson, it will
5 never happen again, the NRC banned her from the
6 industry for five years, which is essentially a
7 lifetime ban because it would be hard to come back in.

8 She did it once, she said she'd do it again.
9 This company did it more than once, keep saying
10 they'll never do it again, so not only the fact they
11 repeatedly do it, they're lying to you when they say
12 they're not going to do it again. Again and again and
13 again this company has a problem meeting its
14 obligations under the regulations. The NRC needs to
15 make that stop. They've been given many
16 opportunities. It doesn't look like another slap on
17 the wrist is going to bring about the change in
18 behavior that's needed, so maybe you need to revoke
19 the license and give that plant to somebody else who
20 isn't veracity challenged or truthful challenged.
21 There are licensees that can meet their obligation,
22 who can learn from their mistakes and take steps to
23 prevent it from happening again. This licensee
24 doesn't apparently be one of those, but there are some
25 out there who do, are able to do that.

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1 So revoke the license. And if you want to
2 then issue it to somebody else who is not veracity
3 challenged, and that's another case, but this licensee
4 is used up. If you determine that exponent [Exponent]
5 report is false, this licensee has used up its get out
6 of jail free cards and should lose its rights and
7 obligations, privileges to run that reactor.

8 That's basically all I wanted to add or
9 explain what we thought on the petition. I hope I
10 didn't stray across that line in debating the merits
11 of the petition but --

12 CHAIR NIEH: No, I don't think you did.

13 MR. LOCHBAUM: I appreciate that. I'd be
14 glad to answer any questions from anybody.

15 CHAIR NIEH: Okay. Thank you for your
16 presentation. At this time, we'll get into that, NRC
17 staff questions for the Petitioner. I do have a few,
18 but I'd like to ask the staff that are here on the
19 Petition Review Board to see if they have any
20 questions at this time. Jay?

21 MR. COLLINS: Jay Collins. I don't believe
22 I have any further questions.

23 MR. WENGERT: Tom Wengert. No, no further
24 questions.

25 CHAIR NIEH: Okay. Jenny Longo?

1 MS. LONGO: Hi, Mr. Lochbaum. My name is
2 Jenny Longo from OGC. My question to you is I just
3 want to make sure that I understand your assertions
4 about inaccurate statements, which specifically. And
5 as I understand it, you've identified what I believe
6 are two. The first is FENOC's statement that the
7 event was unexpected, not foreseen or predicted by any
8 of the extensive prior experience that boric acid
9 corrosion or from any of the inspection analysis of
10 CRDM cracking in nuclear plants. Am I correct that
11 you're saying that that was an inaccurate statement?

12 MR. LOCHBAUM: What I'm saying is that
13 contradicts what they said in three or four slides
14 later, which they said it was management breakdowns,
15 they had opportunities that were missed, and so on.
16 What they're saying in that report, the exponent
17 [Exponent] report and the quote that you cited is
18 different from what they said in 2003 in the NOV
19 response and a number of other cases. I'm not saying
20 which ones right; that's the NRC's determination. I'm
21 just pointing out that the issue is were they lying
22 then or are they lying now? Because those two things,
23 both cannot be true.

24 MS. LONGO: And as I understand it, the
25 other possibly inaccurate statement, in the spring of

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1 2007 FENOC told NRC that FENOC was entirely blameless
2 in keeping Davis-Besse running without inspection.

3 MR. LOCHBAUM: Yes. That one you've already
4 taken action for with the \$5.45 million fine that was
5 issued in April of 2005. The NRC has already reached
6 that determination that that was a 50.9 violation.

7 MS. LONGO: Okay, thank you.

8 CHAIR NIEH: Anything else, Jenny? Bruce?

9 MR. BURGESS: Just one question, David.
10 Bruce Burgess from Region III. With regard to the
11 difference between what they said in 2002 with regard
12 to the root cause report and the information contained
13 in the exponent [Exponent] report, is it possible that
14 one could be oriented towards management control
15 systems while the other is a more detailed technical
16 understanding of what actually caused the crack?

17 MR. LOCHBAUM: Exactly.

18 MR. BURGESS: Two separate, if you will --

19 MR. LOCHBAUM: When I read the exponent
20 [Exponent] report initially, it looked to me -- and,
21 again, my vote on the exponent [Exponent] report,
22 whether it's thumbs up or thumbs down, doesn't matter.
23 That's the NRC's call. But to answer your question,
24 when I reviewed the exponent [Exponent] report, it
25 looked like it was attempting to serve a different

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1 purpose. The original root cause was to identify all
2 the problems that the company faced that could have
3 prevented that outcome, so it was basically trying to
4 look for as long a period of possible because that
5 would have provided more and more missed opportunities
6 that, had things been different, would have prevented
7 that outcome.

8 The exponent [Exponent] report was looking
9 in the opposite way. What was the worst case? What
10 was the fastest way for this scenario to develop? So
11 you're not looking at the number of opportunities,
12 missed or not. You're looking at the shortest
13 distance. And, basically, that's what it came up with
14 was the fastest growth rate, the fastest corrosion
15 rate, and so on.

16 Having done that, the company then received
17 that. It had an obligation to determine whether that
18 changed its earlier view of what happened, when, and
19 why. By submitting that to the NRC with no report
20 saying we have this under consideration, basically
21 that was viewed as what the company's current position
22 is. That kind of forced the NRC to issue the demand
23 for information saying what's the context behind this
24 report? At the end of the day, if you look at how
25 fast they backed off of the exponent [Exponent]

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1 report, they had plenty of time to do that from
2 December of 2006 when they received that report and
3 March of 2007 when they provided that report to the
4 Nuclear Regulatory Commission.

5 So, yes, there might have been different
6 reasons for that, but the company had enough time to
7 go through the steps necessary to determine what the
8 context was and to provide a complete and accurate
9 assessment for the report and what it means to the
10 NRC. They didn't do that.

11 MR. BURGESS: Thank you. One final comment.
12 Have you read the DFI response yet?

13 MR. LOCHBAUM: Yes, I did.

14 MR. BURGESS: Okay, thank you.

15 MR. LOCHBAUM: For a couple of hours last
16 Thursday.

17 MR. BURGESS: Thank you.

18 CHAIR NIEH: Okay. Thank you, Bruce.
19 Tanya, do you have any questions for the Petitioner?

20 MS. MENSAH: No.

21 CHAIR NIEH: Does any of the regional
22 participants -- this is Ho Nieh again, PRB Chair. Do
23 any of the Region III participants have any questions
24 for Mr. Lochbaum that are on the phone?

25 PHONE PARTICIPANT: None from Region III.

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1 CHAIR NIEH: Okay, thank you. I have a few,
2 and these are, again, for clarification purposes.
3 This is Ho Nieh again, the Petition Review Board
4 Chair. I do want to state that I was not the PRB
5 Chair when the petition was first received by the NRC.
6 There was another management representative that
7 served that function, but I'm back in my normal job
8 right now, so I'm coming back up to speed on this
9 particular issue and what you've submitted.

10 You mentioned that there was some confusion
11 with the independent review. Can you just explain
12 that to me again, what the specific confusion was?

13 MR. LOCHBAUM: Yes. This is Dave Lochbaum
14 with UCS. In one of the calls, and I forget the date,
15 when the PRB representatives called me to inform me
16 what the PRB's initial decision, preliminary decisions
17 were, the statement was, "The NRC has decided not to
18 do an independent review. However," and I forget the
19 rest of the words, "we've decided that item two
20 doesn't meet the criteria for the petition," or so on.
21 But in each of the responses, it was the NRC has
22 decided not to do an independent review. That
23 response had followed a call about a week earlier
24 where the NRC staff called me and asked me what did I
25 mean by independent review. And during the course of

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1 that discussion, it was if the NRC hired consultants
2 to go out there and check the math and do all the
3 other things necessary to determine if the exponent
4 [Exponent] report is valid, would you consider that an
5 independent review? And I said that's among the
6 things that would satisfy me in terms of what an
7 independent review is, but we weren't asking for that
8 level of effort on the part of the NRC.

9 So it looked to me when I got that call that
10 that whole, the fact that the NRC wasn't doing an
11 independent review, which I'm not sure I agree with,
12 but was a factor in the PRB's decisions. And I felt,
13 first of all, and, in fact, I think I told the PRB
14 that it was clear that I had been suckered, I think
15 was the language I used. It looked to me that the PRB
16 had relied too heavily on what an independent review
17 was and, having decided not to do an independent
18 review, that that weighed heavily in the decision not
19 to grant the actions requested in the petition. So
20 that was the background, my perception of the
21 background of the independent review confusion.

22 CHAIR NIEH: Okay. I just want to make sure
23 I understand that because part of this clarification
24 process here, I want to ensure that the Petition
25 Review Board, when we conclude from this meeting and

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1 we have our internal meeting, that we thoroughly
2 review what you've given us. And I'm sort of a new
3 player in this, so I just want to make sure I
4 understand precisely what the nature of your petition
5 is. So thank you for that. Jenny?

6 MS. LONGO: If I could make a clarification.
7 When you were told that the PRB decided not to or the
8 Agency decided not to do an independent review in
9 using the word and the understanding we had based on
10 conversations with you and then explained why the
11 initial recommendations were to not accept number two
12 and number three, the decision about not doing an
13 independent review and the decisions about the initial
14 recommendations didn't have anything to do with each
15 other. We just were trying to answer the request you
16 made, which was if you do an independent review.

17 MR. LOCHBAUM: I appreciate that
18 clarification, but since the first sentence out of
19 both the staff's response for the PRB denials was the
20 staff has decided not do an independent review, it
21 certainly didn't look like it was separate but equal.

22 MS. LONGO: Again, we were trying to answer
23 your complete request.

24 MR. LOCHBAUM: I understand.

25 MS. LONGO: And what we were trying to say

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1 was we're not going to do the independent review as we
2 understood you meant that phrase to mean, but, in any
3 case, on the merits of acceptance or rejection, here
4 is why we, here's our initial recommendation and here
5 is why. So, you know, we apologize for any confusion,
6 but we were trying to be complete in our answer to
7 your request.

8 MR. LOCHBAUM: I take full responsibility,
9 all the blame for the confusion, and I'll continue to
10 do so and not change it a couple of years down the
11 road, like others might.

12 CHAIR NIEH: Okay. I think I got it. You
13 blurted a little bit for me. Okay. So the issue is
14 not so much what an independent review would entail
15 but rather what it would result in. Is that kind of
16 where you were headed at?

17 MS. LONGO: No, no. I'm just saying that,
18 in saying that, in attempting to respond to Mr.
19 Lochbaum's requests in explaining the reasons for the
20 initial recommendations, we were trying to give a
21 complete answer to his request, which was do a review
22 and, if you do a review, you know, then you should do
23 certain other things. And we needed to answer both
24 parts of the request. That's all we were doing.

25 CHAIR NIEH: Okay. I understand. Thank

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1 you. You made another statement regarding the
2 licensee FENOC backing off on the exponent [Exponent]
3 report. Can you clarify that for me?

4 MR. LOCHBAUM: Yes. I think the date is
5 June 13th, 2007. The licensee responded to the May
6 14th, 2007 NRC demand for information with a fairly
7 lengthy response. It came in from Mr. Joseph Hagan to
8 somebody at the NRC. I reviewed that response, and
9 they pretty much distanced themselves from the First
10 Energy report. In fact, at one point, I forget the
11 page number --

12 CHAIR NIEH: Distanced themselves, just to
13 clarify, from the exponent [Exponent] report?

14 MR. LOCHBAUM: From the exponent [Exponent]
15 report.

16 CHAIR NIEH: Okay.

17 Mr. LOCHBAUM: At one point, First Energy
18 says that, "While we respect," I don't have this
19 exactly right because I'm not reading, "While we
20 respect the technical sophistication employed by
21 exponent [Exponent], we think the better approach
22 would have been to rely on the physical data that
23 would better match the conditions." That's basically
24 a eulogy for the exponent [Exponent] reports. You
25 couldn't have buried a report more eloquently than in

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1 that sentence. And the rest of the response is also
2 pretty much backing off of what the exponent
3 [Exponent] report says. That's their opinion; that's
4 not ours. It also did that, although this petition
5 didn't deal with the Mattson report, but they also,
6 they distanced themselves even further from the
7 Mattson report, but that's not part of this petition.

8 CHAIR NIEH: Okay. What was that? The
9 Manson report?

10 MR. LOCHBAUM: Mattson report.

11 CHAIR NIEH: Mattson report. Okay.

12 MR. LOCHBAUM: Yes. Even though it's not
13 part of this petition, it does speak to the behavior
14 of this licensee. When the NRC heard about the
15 reports and asked for a copy, the only thing they were
16 provided was the exponent [Exponent] report. Then the
17 resident inspector at Davis-Besse queried the company
18 as to why the insurance company keeps referring to a
19 751-page report and you only provided us a 661-page
20 report. At that time, sometime in May, First Energy
21 said, "Well, there is a second report dealing with
22 that subject that we provided." So this licensee
23 doesn't, isn't forthcoming. It's like going to a
24 dentist and extracting teeth to get information from
25 them. Although that Mattson report is not part of

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1 this petition and I'm not attempting to add it to this
2 petition, I think what they've done with the exponent
3 [Exponent] report is enough, more than enough.

4 CHAIR NIEH: Okay. Those are all the
5 questions I had. Tom, where are we at in the agenda?

6 MR. WENGERT: Well, I think if there are any
7 other questions or comments from the members of the
8 public, I think that we can --

9 CHAIR NIEH: Yes, I think we're at the point
10 in the agenda right now where we would invite members
11 of the public to ask any questions they have of the
12 NRC regarding the process. And I think we had also
13 stated that there was an opportunity for the licensee
14 to query Mr. Lochbaum on the issues presented in the
15 petition. So at this time, I'm looking over to our
16 participants from First Energy. Do you have any
17 questions for Mr. Lochbaum?

18 MR. HALNON: No, we don't have any
19 questions.

20 CHAIR NIEH: Okay, thank you. Now I'm going
21 to just open it up to the rest of the room. Are there
22 any questions from any of our other guests here today
23 for the NRC about our petition process and what we're
24 doing here today?

25 MR. SPALDING: I have a question. Jeff

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1 Spalding from Clifford & Garde. I'm curious. Is the
2 NRC, as part of a petition review, doing any sort of
3 evaluation of the exponent [Exponent] report, or is an
4 independent review denial of whatever the independent
5 review status is mean that there is no evaluation
6 being done by the NRC? So my question, is there any
7 evaluation being undertaken by the Agency as to the
8 validity of the exponent [Exponent] report?

9 CHAIR NIEH: As I understand it, and I'm
10 going to look at our representatives from the Division
11 of Component Integrity to supplement this response,
12 but as I understand it the NRC has looked at the
13 exponent [Exponent] report and evaluated the content
14 of the report. It looks like they did have some
15 questions that they had passed along to First Energy
16 and the demand for information, and they had
17 responded. I haven't read their response in that June
18 13th letter that Mr. Lochbaum had mentioned, but the
19 answer is, as I understand it, is he asked that the
20 NRC is looking at, has looked at the report.

21 MR. COLLINS: This is Jay Collins, Division
22 of Component Integrity. The exponent [Exponent]
23 report provides a couple of items. One is the
24 calculation model, which shows that accelerated
25 corrosion/erosion rates can happen and talks about

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1 certain conditions which are necessary for those to
2 occur. And then it takes and applies those to the
3 specifics of some previous items from the Davis-Besse
4 experience and tries to show that these events could
5 have occurred at Davis-Besse, providing a cracking and
6 leakage time line going up to that process. The
7 overall report, as far as doing a complete independent
8 review, in our classification of an independent
9 review, we tried to look at whether or not we would
10 fully endorse the report or we would fully reject the
11 report. There was a significant use of resources.

12 What we did on initially obtaining the
13 report was we performed an assessment. We looked at
14 the necessary conditions. So we accepted the exponent
15 [Exponent] report's ideals [ideas] without question at
16 that point and just looked at the conditions necessary
17 to cause that accelerated corrosion and erosion rates.
18 We found that that took a process of about five years
19 of cracking to develop through these nozzles to cover
20 the extent necessary for the conditions. We looked at
21 our inspection program and verified that our
22 inspection program would be able to identify this
23 cracking going forward, and we have an assessment,
24 which is publically available. I'm sorry I don't have
25 the Adams [ADAMS] number for that, but it was May 4th

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1 when it was published. And we could get you
2 additional information on it.

3 That's the type of assessment that we've
4 done on the report. So we've identified that the
5 exponent [Exponent] report itself is not a safety
6 issue that needs to be addressed immediately.
7 However, the calculation aspect is something that
8 we're still looking into, and we're still doing
9 research in this area as far as upper heads, and
10 that's still being looked into. Did that kind of give
11 you an assessment for what we're looking at as far as
12 this area? Why we had maybe the confusion on what we
13 wanted to say as far as an independent report.

14 MR. SPALDING: In assessing the
15 calculations, I realized it's a broad question, but is
16 there any sort of time frame that you have on that,
17 how long that process takes?

18 MR. COLLINS: As far as -- it depends upon
19 who we would necessarily need to get involved. What
20 we were looking at was, since it was not an immediate
21 safety concern, since we were addressing it through
22 our current regulatory requirements for inspections,
23 it would not have as high a priority. And, therefore,
24 it was looking to take at least a couple of years.
25 This is, once again, initial assessments and just

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1 looking at various impacts of the items.

2 MS. EVANS: To clarify, though, we're not
3 specifically doing any additional review of the
4 exponent [Exponent] report. We've got our own recent
5 program ongoing that does include this kind of
6 information data. So what he's referring to is not a
7 direct response to the exponent [Exponent] report.
8 Oh, I'm Michele Evans, Director of Division of
9 Component Integrity.

10 CHAIR NIEH: Thank you. Did that help,
11 Jeff?

12 MR. SPALDING: I think so.

13 CHAIR NIEH: Are there any other questions
14 from any other members of the public that are here for
15 the NRC? Going once, going twice. Okay. With that,
16 I would like to conclude this meeting, and we'll
17 secure the telephone connection. Headquarters
18 operations officers, if you're able to do that with
19 us. Thank you, our Region III participants. Mr.
20 Lochbaum, thank you for taking the time out of your
21 schedule to come and provide us with the information.
22 That will help us do a thorough and complete review of
23 your petition. And thank you to all the other guests
24 that have joined us here today at the NRC. Meeting
25 over. Thank you.

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(Whereupon, the foregoing matter was
concluded at 11:19 a.m.)