

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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PUBLIC COMMENT MEETING

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PROPOSED GENERIC COMMUNICATION: IMPLEMENTATION OF
CERTIFICATE OF COMPLIANCE AMENDMENTS TO PREVIOUSLY
LOADED SPENT FUEL STORAGE CASKS

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FRIDAY

FEBRUARY 29, 2008

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ROCKVILLE, MARYLAND

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The Public Meeting was convened at the
Nuclear Regulatory Commission, Executive Boulevard
Building, Room 1B13, 6003 Executive Boulevard, at 9:30
a.m., Stewart Brown, moderator, presiding.

NRC STAFF PRESENT:

STEWART BROWN, Moderator

ROBERT NELSON

WILLIAM BRACH

NADER MAMISH

EDWIN HACKETT

ANDREW PESSIN

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INDUSTRY COMMENTERS PRESENT:

EVERETT REDMOND

MICHAEL BAUSER

BRIAN GUTHERMAN

STEPHANIE PYLE

KEITH WALDROP

DAVID LARKIN

GERRY VAN NOORDENNEN

OLEY NELSON

RANDY ROBBINS

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

9:31 A.M.

MR. BROWN: Good morning. Good Morning.

My name is Stu Brown, I'm a project manager in the division of Spent Fuel Storage and Transportation. I want to thank you, or welcome you to this morning's meeting. This a meeting with the public. A category 3 type meeting.

On January 14,2008 the NRC published in the Federal Register a regulatory issue summary 2007-26. Copies are available, I guess, at the table right now, if you'd like.

The text -- the purpose of the -- that regulatory information summary was to provide the public NRC's position with respect to implementing part 72 Certificate of Compliance Amendments to Previously Loaded Spent Fuel Cask. The purpose of publishing it in the Federal Register was to solicit comments from the public before we issued the regulatory information summary final. The comment period for that is March 31, 2008.

The purpose of today's meeting is to receive comments from the members of public and answer questions if we can. If we can't answer the questions

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1 we will include it in our responses or how we respond
2 to comments later. We're going to take all comments
3 today and questions and couple them or compile them
4 with formal comments that we received. We will
5 address them before -- or consider them before we
6 issue this regulatory information summary final.

7 Today's meeting is being transcribed, so
8 that we can ensure ourselves the ability of capturing
9 all comments. I'm just not that good of a writer.
10 So, therefore if you have any comments please identify
11 yourself. Speak clearly and if there are any handouts
12 or if you have a presentation, please make sure that
13 copies are made available to the transcriber.

14 With that, at the table this morning, to
15 receive your comments and to answer your questions, if
16 we can, will be myself, my Branch Chief Robert Nelson,
17 Andrew Pessin from our Office of the General Counsel.

18 Also, with us this morning, are members of our
19 management team William Brach our Division Director,
20 Edwin Hackett, Nader Mamish both are division --
21 Deputy Division Directors.

22 Before I turn the meeting over to Nelson
23 to give a presentation on the Regulatory Information
24 Summary, I wanted to ask either Bill, Ed, or Nader if
25 they wanted to make any introductory statements?

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1 MR. BRACH: I'll just make one comment.
2 One I clearly want to welcome you all. I'm glad to
3 see the large turn out of stakeholders. As Stu has
4 mentioned, we have issued the Draft RIS for stake
5 holder, public review and comment. The purpose of
6 this meeting is to hear comments, observations,
7 suggestions you have with regard to the draft RIS.
8 Look forward to input from you.

9 Also, hopefully the discussions can help
10 facilitate and improve the understanding on all of our
11 parts on the understanding about the regulatory issues
12 involved and the proposed regulatory path forward. So
13 welcome you and look forward to hearing your comments
14 and discussion. Thank you.

15 MR. BROWN: Okay, again as I mentioned,
16 before the meeting it is being transcribed. Because
17 it's a public meeting we weren't planning on taking
18 attendance, however we would like to have the correct
19 spelling of your names in case you make a presentation
20 or provide comments for the transcriber. So, there is
21 a sheet going around, please sign it so that we'll
22 have the correct spelling of your names.

23 With that I would like to turn the
24 presentation over to Robert Nelson.

25 MR. NELSON: Good morning. My name is

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1 Bob Nelson, I'm Chief of the Licensing Branch in our
2 NRC's division of Spent Fuel Storage and
3 Transportation. This morning I'll talk very briefly
4 about the topic that we first discussed at the NEI Dry
5 Storage Forum last May. That being the implementation
6 of part 72 Certificate of Compliance Amendments to
7 previously load casks.

8 Those of you who were at the Institute of
9 Nuclear -- INMM conference in January, this is a
10 repeat. I will keep my presentation brief because we
11 want to focus on comments rather than going line by
12 line through the RIS.

13 I briefly discussed these four areas in my
14 presentation. In July 2006, we issued an amendment to
15 a Certificate of Compliance. This amendment was
16 allowed for the initial inspection of casks instead of
17 standard temperature monitoring. After the amendment
18 was issued, questions were received concerning how the
19 amendment could be implemented for casks that had
20 already been loaded.

21 Based on informal discussions with the
22 industry, the staff learned some licensees had
23 concluded that the 10 CFR 72.48 process allows them
24 to apply some or all of the changes to a CoC to a
25 previously loaded cask with a NRC approval. This

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1 process would essentially allow an upgrade of a CoC.

2 After examining it's regulations, the
3 staff concluded that such an upgrade, if it involves
4 the change to a term, condition, or specification of
5 the CoC will be tantamount amount to a amending the
6 design basis of the previously loaded cask. As such,
7 express NRC approval would be required. Consequently,
8 during the May 2007 Nuclear Energy Institute Dry
9 Storage Information Forum, represented our agency's
10 position on this matter.

11 On July 14, as Stu said, we issued a
12 Regulatory Information Summary in draft form. This
13 RIS can be found on the table here. That's the
14 Federal Register Notice version. The ADAMS version is
15 available also under accession number ML072910263,
16 that's 072910263. If you haven't picked up a copy of
17 the Federal Register Notice first, I encourage you to
18 do so, because that version includes the instructions
19 for submitting formal comments.

20 The staff's position that's stated in the
21 RIS is briefly summarized here. I'll pause for a few
22 moments to allow you to read those portions of the
23 slide. This slide summarizes our complete and planned
24 actions in this area. It is noted several times
25 before the RIS was published on January 14, the

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1 comment period ends on March 31. We are holding the
2 public meeting as we had planned.

3 After consideration of public comments we
4 will publish a final RIS. Exemptions to allow the use
5 of later CoC Amendments to previously loaded casks
6 will be processed as received, in accordance to our
7 standard scheduling system. We are developing an
8 Enforcement Guidance Memorandum that we will finalize
9 with the final RIS and we will verify compliance
10 through our normal inspection process.

11 We also plan to revise our regulations to
12 address this topic. Our plans for that rule making
13 will be discussed at a separate meeting this
14 afternoon. We do not intend to entertain comments or
15 questions on that rule making in this meeting. If you
16 wish to provide input on that we have a meeting
17 scheduled this afternoon in this same room, beginning
18 at 1:00.

19 That's my contact information if you'd
20 like to talk to me directly. That concludes my
21 presentation. Stu.

22 MR. BROWN: Hi. A member --
23 representative from the Nuclear Energy Institute
24 requested the -- to be able to make a presentation at
25 this morning's meeting. However, before we do that,

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1 I'd like to ask is there any member of the public that
2 would like to make a -- make comments or ask questions
3 of the staff at this time? Just because, we will be
4 available after NEI makes their presentation, also.
5 With that we'll open the floor to all comments.

6 (Whereupon the meeting went off the record
7 at 9:42 and resumed at 9:43)

8 MR. REDMOND: My name is Everett Redmond,
9 I'm from the Nuclear Energy Institute, responsible for
10 used fuels, storage, and transportation. I'm going to
11 provide some comments today on the Draft RIS. Before
12 we begin, we'll touch on the Nuclear Waste Policy Act.

13 At this point, I'll actually turn it over to Mike
14 Bauser, counsel at NEI, to provide a couple of
15 background comments.

16 MR. BAUSER: Sure. My name is Mike
17 Bauser, I'm a Deputy General Council at NEI. I'd just
18 like to pick up where Everett left off for a second.
19 This is nothing new, but sometimes I think it's useful
20 to recall the context within which the topic first
21 emerged.

22 Back in 1982, Congress enacted the Nuclear
23 Waste Policy Act. The Act contained a number of
24 important provisions. One was a provision for the
25 Yucca Mountain Repository. Another provision however,

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1 addressed temporary storage, which the Act found to be
2 one of the responsibility of the generators of the
3 material.

4 Two, could be stored temporarily on site,
5 until the Department of Energy met it's obligation
6 under the Act to accept the fuel and dispose of it.
7 It was within that context that the Act provided for a
8 DOE demonstration program directed at developing and
9 refining methods for temporary spent fuel storage.

10 It also provided impetus to the Commission
11 to adopt procedures that would allow generators that
12 spent fuel to provide for onsite licensing -- excuse
13 me to provide for onsite storage with a minimum of
14 licensing activity by the commission.

15 That of course is what led to the
16 development of the regulations we're discussing here
17 today in part 72. In particular for the adoption of
18 those regulations in the -- now embodied in the Code
19 of Federal Regulation. Those regulations were
20 subjected to extensive judicial review in the Kelley
21 v. Selin case. That's K-E-L-L-E-Y which was decided
22 in the mid 1990's. The report there -- in the face of
23 a challenge by the Attorney General of the state of
24 Michigan upheld the Regulations in all respects.

25 Since that time, the Regulations have been

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1 implemented utilized by utilities. I think the
2 consensus has been that that has been a effective
3 mechanism for providing for providing for temporary
4 onsite storage.

5 MR. REDMOND: Thank you. As a quick
6 introduction, I would point out that all amendments
7 that have been adopted have received NRC approval.
8 Applying newer amendments to casks under load -- under
9 -- applying newer amendments to casks loaded under
10 older amendments is not explicitly prohibited in 10
11 CFR 72. Therefor, we believe that what we have --
12 what has been done in the past has had prior NRC
13 approval.

14 To give you a little bit more background
15 on terms of motivation for adopting a newer amendment
16 for operation, the General Licensee, for example, may
17 want to change surveillance requirements to maintain
18 adequate levels of safety. Also, eliminate
19 unnecessary operational burden dose, ALARA
20 consideration as was pointed out. That's what
21 prompted this kind of discussion and prompted the RIS.

22 Another issue that's out there is that, if
23 all casks were operated under the same kind of
24 requirements, the potential for configuration control
25 errors or human performance errors is considerably

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1 reduced. I'll give you an example, a real world
2 example of that one.

3 Once General Licensee currently operates
4 all the casks under Amendment 4. However, the casks
5 were loaded under Amendments 2,3 and 4. Now,
6 according to the RIS, that General Licensee would have
7 to operate casks 1 through 16 to Amendment 2, 17
8 through 34 to Amendment 3, and 35 to 53 to Amendment
9 4. Now, each amendment may have different
10 surveillance requirements and/or unloading
11 requirements.

12 In this example I know that there are
13 different surveillance requirements for a couple of
14 the amendments. Now the casks on a pad are not easily
15 identified 1 through 17, 1 through 16. You look out
16 on a pad they may -- the first 16 may not even be in
17 the same location. They may be spread out over the pad
18 for different reasons. So, for an operator to know
19 which cask corresponds to which amendment and which
20 operating requirements can be a little bit difficult.

21 So, to help reduce human performance issues,
22 operating all casks under amendment 4 is a good idea.

23 Back up to a little bit history regulatory
24 precedent. Palisade loaded 17 VSC-24 casks with non-
25 fuel components, which were not authorized. The

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1 inspection report listed there documented that the
2 General Licensee would request an amendment to the
3 certificate to include the previous unauthorized
4 material. So, in other words, the solution path to
5 fixing the issue was an amendment, which the RIS now
6 says is not the appropriate action.

7 The inspection report also states because
8 another plan has the same condition, the VSC-24
9 owners' group has decided to submit one amendment for
10 the plants. In other words, a single amendment rather
11 than multiple exemptions, was used to resolve this
12 issue. Which, is the efficient way of resolving the
13 issue. Consistent with what Mike just talked about in
14 terms of the Nuclear Waste Policy Act and the idea
15 behind this.

16 Current status -- At least six General
17 Licensees are operating casks in accordance with newer
18 amendments than the amendments under which they were
19 loaded. I say at least six because that's what I have
20 verified. There may be more. This effects
21 approximately 160 casks out there. So, again that 160
22 relates to the six General Licensees that I'm aware
23 of.

24 Now, reverting back, if they were to
25 revert back to the original amendment is -- it is

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1 possible for most General Licensees to do that, with
2 the exception of Palisades, with the mis-loaded
3 components. The time and cost however, will be
4 significant with no safety benefit. I think we all
5 agree, there's no safety issue here, in terms of these
6 casks.

7 I will note though, that in some instances
8 it will result in less conservative requirements. VSC
9 for example, VSC-24 allowable lift height, went from I
10 think 80 inches to 60 inches in a later amendment.
11 When they adopted the later amendment, they adopted
12 the 60 inches lift height. Now they back up, they'll
13 have the 80 inch lift height, both of which are safe,
14 but one is less conservative than the other.

15 Our position -- we do not think the RIS
16 2007 -26 should be issue. We believe that part 72
17 Regulation, as written, are internally consistent and
18 permit current industry practice. We also think that
19 if the RIS is issued as currently worded, it will
20 create significant inconsistencies in interpreting
21 part 72 Regulations. I'll identify those that we have
22 found so far as I go through the presentation. There
23 may be others, we haven't done an exhaustive review.

24 I'm going to walk through the RIS a little
25 bit in parts, highlight what I think are the key

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1 phrases. Something that Bob mentioned before in terms
2 of the separate and distinct certificates. We'll
3 start with the NRC's position that the phrase, "prior
4 to use" means before the cask is loaded with spent
5 nuclear fuel. The phrase "prior to use" does not mean
6 changes cannot be made at a later time, in our view.
7 We view prior to use as meaning prior to initial ISFSI
8 operation or implementing a change thereafter, for
9 example modifying a procedure, adopting a later
10 amendment, as we're talking about today.

11 10 CFR 72.212, provides for changes to the
12 212 evaluation report, by the 72.48 process. I'll
13 note that may occur after loading. There are reasons
14 you need to make changes to your 212 after loading.
15 Unloading procedures for example you haven't
16 implemented yet, may need to be changed by the 72.48
17 which would affect the 212 evaluation. There may be
18 changes to off site DOS evaluation related to the
19 plant, which would affect the 212 evaluation. So
20 there are reasons that the 212 would need to be
21 modified after loading.

22 The RIS says NRC's practices should
23 consider each new CoC Amendment as a new design basis.

24 Quite frankly, that one confuses us. We don't really
25 understand what's meant by new design basis. I would

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1 point out that NRC's current practice though does not
2 included reviewing each amendment as if it were a new
3 application. The Draft RIS also states, each CoC
4 amendment is considered a separate and distinct CoC
5 accompanied by it's own certificate and Safety
6 Evaluation Report. This what Bob mentioned earlier.

7 However, the Safety Evaluation Report for
8 an amendment discusses only the proposed changes. The
9 SER for an amendment does not cover the entire CoC or
10 design. The 212 evaluation requires a General
11 Licensee to review the FSAR and the Safety Evaluation
12 Report.

13 As a result, because the SER for each
14 amendment only addresses the changes, the General
15 Licensee when they go to load a cask for the first
16 time, or any time for that matter, must review the
17 Safety Evaluation Report. As dictated by 212 for the
18 original certificate and all amendments up to
19 including the one they wish to use.

20 Well, if they were actually separate and
21 distinct, we would think, the SER issued for an
22 amendment should apply to the entire CoC and not just
23 the amended portions. I mention inconsistencies.
24 72.214 shows a single expiration date for each
25 certificate. If each amendment was truly a separate

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1 certificate, one would expect different expiration
2 dates. 72.246 refers to issuance of an initial CoC.
3 To us, this phrase implies that subsequent amendments
4 are really part of the same CoC and not separate and
5 distinct.

6 Talking about 72.48 for a second. The
7 Draft RIS says section 72.48(c) does not expressly
8 refer to previously loaded casks. However, I'll note
9 that, 72.48 actually doesn't refer to the condition of
10 the casks at all, whether they are loaded or unloaded.

11 A General Licensee or certificate holder may do a
12 72.48 evaluation for a loaded cask. For example cask
13 repair. This is not expressly prohibited. So as I
14 said before there are reasons the 72.48 evaluations
15 would be done on loaded casks, and the 212 evaluations
16 would be modified.

17 Another inconsistency, 72.48(c)(2) states
18 a General Licensee shall request that the certificate
19 holder obtain a CoC Amendment prior or pursuant to
20 72.244 prior to and then it gives a list of
21 conditions. 72.48(c)(2) does not state that this is
22 only applicable to casks that have not been loaded.
23 General Licensees have followed this requirement for
24 loaded casks.

25 So, if we take an example of the

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1 monitoring requirements, utility a General Licensee
2 determined by a 72.48 that they cannot implement that
3 because they need a license amendment.
4 72.48(c)(2) tells them to ask their CoC holder -- ask
5 the CoC holder to process an amendment request. They
6 do that. The RIS says, can't do anything with it now,
7 you can't implement it. There's an inconsistency
8 within the regulation.

9 If you were to follow that path, well
10 that's what got us here. So, I'll just move on. Some
11 other potential compliance problems that we see if NRC
12 considers each amendment to be a separate and distinct
13 CoC. Does 72.232(d), which requires notification to
14 NRC prior to fabrication of the first spent fuel
15 storage cask, does that apply to each amendment? Is
16 there actually a separate and distinct CoC?

17 That's not been the practice in the past.
18 90 day notifications, in terms of prior to loading.
19 Does that apply to each amendment? Again, that hasn't
20 been the interpretation in the past. Dry runs, do
21 those also apply to each amendment?

22 We don't have the answer to this because
23 as we read the regulation with the RIS in mind, we get
24 confused which is why we're asking the questions.
25 These are things that we think need to be looked at.

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1 As far as the future goes, if the RIS is issued rule
2 making should be performed, which is, as I understand,
3 is in process and will be discussed in the afternoon
4 meeting. So, we look forward to that. In the
5 interim, however, we think effective General Licensees
6 should be permitted to continue to operate as they
7 have been without incurring enforcement action.

8 A little bit more information. At least
9 four General Licensees that are not affected by the
10 RIS, which in other words means that they are in
11 compliance. As the RIS, as it says right now, they
12 have not adopted newer amendments to casks loaded
13 under older amendments. At least four General
14 Licensees plan to submit exemption requests to operate
15 casks using technical specifications that have already
16 been approved by their vendors.

17 These are licensees that were -- felt they
18 could do this, but they were in the process of doing
19 it when the notification or when the NRC made the
20 announcement in May of last year. They stopped until
21 they found out what the appropriate path forward was.

22 Now that the appropriate path forward has been
23 outlined in the RIS as an exemption request, they plan
24 to do it. I say at least four because those are the
25 four that have told me they will be sending an

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1 exemption request. There may be considerably more.

2 I don't know.

3 That concludes the comments that I have
4 for now. I welcome anybody else to please offer some
5 additional background information, or offer any
6 additional comments.

7 MR. BROWN: Does that conclude your
8 presentation?

9 MR. REDMOND: It does.

10 MR. BROWN: Okay. We're going to move
11 on.

12 (Whereupon the hearing went off the record
13 at 10:00 and resumed at 10:01)

14 MR. BROWN: Well, thank you. Are there
15 any other comments, questions of the staff? It's
16 going to be a short meeting.

17 MR. GUTHERMAN: Stu, I had one question.

18 MR. BROWN: Yes. Please identify
19 yourself.

20 MR. GUTHERMAN: In Broward's presentation
21 there was a presumption made that amending the cask
22 design basis necessarily required NRC approval. That
23 was confusing to me. Insofar as 72.48 provides the
24 regulatory requirements for when NRC approval is
25 required or not required. So, a general statement

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1 that amending the design basis requires it doesn't
2 seem to fit. Can you add an explanation to that?

3 MR BROWN: The changes the -- it changes
4 the condition or the tech spec that would require.
5 So, if you look at 72.48 and there's a -- it does not
6 require a change to the tech specs or the CoC. Then
7 you don't need NRC.

8 MR. GUTHERMAN: Okay, so amending the
9 design basis really construed to mean amending the
10 tech specs?

11 MR. BROWN: Yes, sir.

12 MR. GUTHERMAN: Thank you.

13 MR. BROWN: Andrew Pessin. Yes?

14 MS. PYLE: My name is Stephanie Pyle, and
15 I'm from -

16 MR. BROWN: Please, please -- I'm sorry
17 if you're in the audience please step closer to the
18 table when you make a comment because the microphones
19 are here. Okay?

20 MS. PYLE: Okay.. Stephanie Pyle, and
21 I'm from Entergy ANO. We loaded our first cask in
22 1996 and we have 53 casks that have been loaded.
23 Since that time we've implemented 10. We have two
24 cask vendors and we've implemented 10 different
25 amendments, CoC Amendments. So, we're really effected

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1 by this RIS.

2 I've gone back and looked at the 10
3 amendments we've implemented. We found it kind of
4 mind boggling going through those. Maybe in -- I've
5 found about seven cases that if we had to go back and
6 go back to original amendment for the cask, maybe.
7 Seven cases where we may have non conservative -- if
8 we had to go back an amendment to the previous
9 amendment maybe that we could go back to something
10 that's non conservative.

11 It may not be a safety issue, but it would
12 be non conservative. Also, it would be a hardship on
13 us too. Like for the 72.48 reviewer, when you're
14 reviewing -- doing a 72.48 review for the cask to
15 figure out which amendment out of the 53 casks that
16 the CoC applied to, you know. You would have to
17 figure out which of the 10 CoC Amendments that you had
18 to figure out which casks it went to the 53. So, it
19 would be a very confusing factor for a 72.48 reviewer,
20 also. So, that's just some of the hardships we've
21 found when we were going through this.

22 MR. BROWN: Thank you.

23 MS. PYLE: Okay.

24 MR. WALDROP: Yes, Keith Waldrop with
25 Duke Energy. I think Everett has done a good job

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1 walking through some of this process. I think where
2 we are is we don't see a safety issue here. It's
3 just how we go about solving the problem. As Everett
4 laid out, why do we want to control to the latest
5 amendment? If and not all systems are able to do
6 that.

7 If we're able to do that we would like to
8 operate to only one set of limits. Well for one, our
9 control room operators, work control center require
10 paper copies of this stuff. All the plant procedures,
11 plant tech specs for them to be able to be able to
12 pull up if an issue comes up. To have to have nine
13 sets of documentation in that area and know which one
14 to go to, yes we can control it. It's adding an error
15 trap there that's not really necessary.

16 So, that's why we're looking into it,
17 trying to control to the latest amendment. I think we
18 all agree with that. I guess the issue is the
19 interpretation of how we look at this. As the RIS
20 implies that there's really -- that each CoC is
21 distinct each amendment is a distinct CoC as it were.

22 I think that interpretation alone then creates all
23 these ambiguities and inconsistencies within the
24 regulation, that Everett had pointed out.

25 I think one example would be as you get --

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1 as you get ready to load a cask, perhaps a new
2 amendment came out or perhaps you want to think about
3 using an older amendment. Before that cask is loaded
4 you can then evaluate to see which set of -- which
5 amendment am I going to load this one under. You
6 could decide that and load it. Then once it's loaded,
7 and out on the pad there should be no reason to do it
8 any differently.

9 If you wanted to adopt a new amendment you
10 would need to review all of the tech specs, all of the
11 SER's, all the licensing basis behind that. To see
12 whether or not that was that cask could be controlled
13 under the newer amendment via the 72.48 process.

14 MR. BROWN: I appreciate you comment. I
15 think we understand it's not the -- it's not a safety
16 issue, but a compliance issue. Recognizing that,
17 that's why we're having the meeting this afternoon to
18 try to look how we will correct this in the future.
19 We do understand that compliance may be an issue for
20 you now.

21 The RIS was what our understanding of the
22 or interpretation of the regulation or understanding
23 of the regulations as they appear today. That's the
24 RIS. The rule-making this afternoon how to correct
25 it. I guess really most of your issues relate to what

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1 happens between now and the actual rule being revised.

2 That's something that we'll have to consider.

3 MR. WALDROP: Well, I think before we get
4 to that, I think there's disagreement in the
5 interpretation.

6 MR. BROWN: Right, and that's one of the
7 reasons why we're having the meeting today, to receive
8 comments. We want to receive comments formally by the
9 31st of March. We will consider these comments before
10 we issue our final RIS. We appreciate you coming and
11 providing this sort of insight to us.

12 MR. WALDROP: One other thing just to
13 throw out. That would be there is already a process
14 started -- some work started to look at revising the
15 72.48 guidance. I think this would be a perfect item
16 that we could agree that 72.48, properly done would be
17 the way to implement newer CoC's on previously loaded
18 casks. That example could be included in the 72.48
19 guidance that is being revised right now. Then
20 submitted to NRC for review and concurrence.

21 MR. MAMISH: Appreciate your comment.
22 That's something we can certainly consider as we move
23 forward.

24 MS. PYLE: I had one other comment.
25 Dealing with a regulatory presence. -- I'm sorry,

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1 Stephanie Pyle. -- In the past when we've had our NRC
2 inspections by our resident, I mean our regional
3 inspectors, they have always inspected the latest
4 amendment of the CoC and made sure that our procedures
5 and everything have been -- that we have implemented
6 the latest revisions to the amendments. That's how
7 we've always been inspected in the past, by the
8 regional inspectors.

9 MR. BROWN: Thank you. Yes?

10 MR. LARKIN: Dave Larkin, Energy
11 Northwest. It appears to me in looking at the RIS
12 that the current basis for where you've gotten is the
13 position that you're taking the phrase "prior to use"
14 means the cask. Prior to use of the cask. I think
15 most of us have taken that term "prior to use" to mean
16 to be prior to use of the amendment or prior to the
17 use of the CoC. Not the cask. If you look at that,
18 it would do away with most of these problems.

19 MR. BROWN: Thank you. We'll look at it.

20 MR. REDMOND: If you go -- if you take it
21 as prior to use of the cask then it -- one can easily
22 see how this spirals into a very large mess. As I
23 pointed out. If you're talking about each cask then
24 you have to repeat a lot of things each time you load
25 a cask. You may be doing six casks in a campaign this

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1 isn't a one -- this isn't a one shot deal here. It's
2 not one cask we're talking multiple casks.

3 So, are we looking at having to repeat dry
4 runs or whatever? I strongly encourage NRC when
5 looking at the RIS and looking at things will, you
6 know, consider the comments that have been made here.

7 In terms of the Regions and their interpretations
8 there's a much broader view that needs to be looked at
9 here. How things have been done in the past. How
10 have your regional inspectors interpreted the
11 regulations.

12 Not to say that they're necessarily right,
13 I mean, it's -- you have a position now that's
14 different than what many people including your own
15 staff have thought in the past was acceptable.

16 MR. MAMISH: We appreciate the dialogue.

17 I think that's certainly something that to the
18 extent, we the NRC caused some of the confusion out
19 there. That ought to be part of the consideration in
20 terms of how we move forward, on the issues. So -

21 MR. REDMOND: Some of the inconsistencies
22 are what we view as inconsistencies. We pointed out
23 for example, the 72.232 we think need to be addressed
24 at least in the RIS. It's not -- we don't want to be
25 in this same situation again, where we think we're in

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1 compliance and we're not.

2 MR. LARKIN: Just to follow up on that.
3 "Prior to use" means the CoC. Then all these,
4 inconsistencies go away.

5 MR. PESSIN: Part of the thing you have
6 to keep in mind is as of the Statement of
7 Consideration from 72.48 and 72.212, excues me, as well
8 NRC decisions suggest that you -- that the analysis
9 under 72.48 is conservative. That is because this a
10 generic process. We don't have hearing every time you
11 want to have a cask amendment.

12 Part of the rational behind that is it's a
13 generic process, but it has to be -- it's
14 conservative. So, that's built into the Statement of
15 Considerations. Unfortunately, regulations don't
16 expressly provide for the -- for what apparently has
17 been the industry practice.

18 As a safety agency, yes, I understand the
19 language from the NWSA said to the maximum extent
20 practical. Okay, that's a good point. We're also a
21 safety agency so there's a balancing issue there. So
22 that's where we had some of the regulatory problems.

23 MR. BAUSER: Yes, if I could just chime
24 in on that, Mike Bauser again. It would seem to me
25 that insofar as the NRC staff's position, it's

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1 expressed in the RIS and has been discussed here.
2 Read most favorably the regulations are ambiguous.
3 Read most favorably to the NRC's staff's position.

4 It's certainly not clear to us that the
5 current industry practice is in violation of the
6 regulations. As I said, read most favorably to the
7 staff's position as I understand it. Maybe they're
8 ambiguous. So, I'd like to make that point.

9 Secondly, I read the Statement of
10 Considerations and consistent with what I've just
11 said, I'd say the ambiguity extends to those, too.

12 MR. BROWN: Thank you. Yes?

13 MR. Van Noordennen: Well I'm Gerry van
14 Noordennen representing Connecticut Yankee and Yankee
15 Atomic. If we submit the exemption request to
16 implement a later amendment. Since the staff has said
17 that, you know, this Draft RIS. Some of the confusion
18 has been the cause for the industry to slow down and
19 not implement some of these amendments.

20 Would the staff consider expedited
21 treatment for these exemption requests? So we can go
22 ahead and implement some of these later amendments.
23 You know, while we're been sitting here waiting for
24 this Draft RIS to be finalized and regulations to be
25 clarified.

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1 MR. MAMISH: Exemptions are very high on
2 the commissions radar screen. We have a process for
3 following -- for processing exemption requests. We
4 would have to look at our process to the extent we can
5 move it -- expedite it's processing. We'll try to do
6 that. We do have a process that we'll have to follow.

7 MR. BROWN: Bill, anything else?

8 MR. BRACH: Nothing to add.

9 MR. BROWN: Any other comments? Yes,
10 please step forward and identify yourself.

11 MR. NELSON: Oly Nelson, Nuclear
12 Management Company. My question is, is there a
13 potential that the RIS will either create a precedence
14 and or confusion to inspectors with guards to
15 implementing amendments to a site specific license?

16 The RIS is being interpreted that
17 amendments to a CoC only apply to casks yet to be
18 loaded. If a site-specific license makes an
19 amendment, is that amendment applicable to all casks
20 that are loaded? Or casks yet to be loaded? Will
21 that position be clear to inspectors one way or the
22 other?

23 MR. BROWN: Good point. I think this RIS
24 really is looking at General Licensees. If you have a
25 specific license and you receive an amendment wouldn't

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1 that be, and I guess it would be, case by case --
2 excuse me -- specific licensees such -- well -- such
3 as utility A. I don't want to speak too generally
4 because depending on what the amendment is. If an
5 amendment comes is and it's approved it would
6 definitely be applicable to that licensee. They do
7 have a specific license.

8 Now I don't want, again, amendments can be
9 quite broad, or quite specific. The point here is
10 that this RIS -- excuse me -- Regulatory Information
11 Summary is really focusing in on General Licensees.
12 Specific Licensees, different story.

13 MR. NELSON: I understand that. My
14 concern is that an inspector, out in the field, picks
15 this RIS up and says, "you have to have a site
16 specific license." Is this a president that is
17 applied to that without their guidance the inspectors
18 could be confused as to what does it mean for a site
19 specific license?

20 MR. BRACH: Let me jump in. Stu Brown
21 was just -- Bill Brach speaking. What Stu Brown was
22 just summarizing, clearly the RIS that we had drafted
23 and is out for public review and comment, as Stu
24 mentioned, is primarily directed to generally licensed
25 ISFSI's. Use of certificates for subsequently loaded.--

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1 current or new certificate amendments for a
2 subsequently loaded cask.

3 If your question, is in regard to NRC
4 inspection and NRC inspector activity, as the lady
5 from Arkansas noted -- Let me just say -- experience
6 from her past. As this RIS moves forward and NRC
7 reaches a final issuance, the actions that we take
8 both within our division with regard to our reviews,
9 discussions with industry, or public, as well as our
10 instructions and interactions with Regional Inspection
11 Team needs to be consistent with the position the
12 agency is taking.

13 So that to the extent there have been
14 noted past -- I'll say -- perhaps inconsistencies or
15 differences we -- the responsibility that we have
16 within our shop and within our four regional offices
17 to be sure that we all have the regulatory
18 perspective. A common understanding of implementation
19 at RIS and how that would translate into inspection
20 activities by resident-based, region based, or
21 headquarter based inspections.

22 MR. REDMOND: This is Everett Redmond.
23 Question along those lines. I appreciate that moving
24 forward there'll be a common understanding within the
25 agency. Has there been a review to see if there's a

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1 common understanding, currently within the agency?

2 Stephanie points out that inspectors in at
3 least her region, have felt that the process they've
4 been doing is appropriate. Industry's felt it's
5 appropriate.. Has there been a backwards review
6 within NRC?

7 MR. BRACH: Let me -- I think if we step
8 back and look at the background behind the RIS, Bob
9 Nelson mentioned in his presentation at the Dry Cask
10 Storage Forum last Spring. Another presentation at
11 the Institute of Nuclear Materials Management Seminar
12 in January. Also, the history with regard to one of
13 the cask certificates, amendments and further staff
14 discussion. One of the Licensee representatives
15 looking at implementation of that amendment in our
16 interactions our general counsel.

17 There has been a history of on, I'll say,
18 both sides of the table by the NRC and our
19 development. A clear regulatory position and that's
20 reflected in the draft -- Regulatory Information
21 Summary. As well as, history over the past few years
22 as far as all of our evolving understanding and
23 growing. It's been pointed out that on inspection
24 side there may have been some different perspectives,
25 as well.

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1 I think what we're looking for and
2 hopefully what will crystalize out of our receding
3 industry and stakeholder comments on the Draft RIS.
4 As we move forward it will be a clearer statement for
5 both us on the regulatory side, industry and public
6 stakeholder on the other with regard to a clear
7 understanding of the path forward on Part 72. Whether
8 it be in our new implementation -- your industry's
9 implementation our regulation or our inspection are
10 the requirements.

11 So it's been a -- I think there's, I
12 thinks -- the discussion we're having is there's been
13 a history of views that have brought us to where we
14 are today. Hopefully the RIS is clearer in describing
15 the NRC regulatory position on this measure. I
16 recognized in your presentation some of the
17 considerations that need to be looked at as we
18 finalize our regulatory position, in that regard.

19 MR. REDMON: This is Everett Redmon
20 again. One of the -- one of the proposals that's been
21 put out by General Licensee, is that, would it be
22 acceptable in an amendment to -- that a certificate
23 holder does, to specifically identify whether or not -
24 - specifically identify, if that amendment is
25 applicable to casks previously loaded?

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1 MR. MAMISH: That is something we can
2 consider, moving forward.

3 MR. REDMON: I point that out because the
4 , you know, the amendment that kind of started this
5 process was very clearly for previously loaded casks.
6 It was for a system that was not being built any
7 more.

8 MR. MAMISH: I think, you know, that's
9 something we can consider. Obviously, there could be
10 cases where we could do that. I can also imagine
11 other cases where depending on heat load or other
12 parameters. There might be some challenges for us to
13 get there.

14 MR. BROWN: Yes.

15 MR. GUTHERMAN: Brian Gutherman. One
16 thing I do want to mention as you go forward with your
17 rule making, is that there are a variety of opinions
18 among the General Licensees out there whether or not
19 they would like to take advantage of later amendments
20 or not. So, we just ask that that flexibility be
21 retained and leave it optional with the Licensees.
22 Some do some don't.

23 MR. BROWN: Right, because every
24 amendment is not really applicable to every cask. It
25 really has to be looked at each time. Are there any

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1 other comments, questions? Yes.

2 MR. ROBINS: Randy Robins from Dominion.

3 There's another document that goes along with this
4 that to me seems to get lost at the final safety
5 update and the final safety analysis reports. To go
6 along with CoC's that were described in your design
7 basis. The CoC may have more than one revision of
8 this document associate with it. Where does that fall
9 into this situation that we're in?

10 It's describing your design basis and it
11 may be updated and changed without the amendment being
12 changed or an amendment being changed. An amendment
13 may -- will also create a new revision to it. So how
14 do you get in and start deciding which revision to
15 this to apply what do you do?

16 MR. BROWN: I think -- I am going to
17 apologize, I think I'm going to pair it back what I
18 think your question is and then try to address it. I
19 think your concern is how we would look at it. Let me
20 try it from this perspective. We're looking at it
21 that 72.48 does not allow changing the terms,
22 conditions, or the specifications of a CoC. Certain
23 things in your Safety Analysis, yes.

24 Backing away from that, that's saying that
25 the CoC Amendment that you're loaded under provides

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1 certain terms, conditions and specifications that you
2 have -- or are obligated to follow. To change those,
3 72 -- I'm sorry -- 72.48 is not the process to do
4 that. It doesn't give you that latitude.

5 MR. MAMISH: I'm not quite clear on the
6 question. Can you -- Everett, can you or some body
7 else -

8 MS. PYLE: This is Stephanie Pyle. I
9 believe what he's saying is that usually, the SAR is
10 changed the same time the CoC is changed. They're
11 both updated at the same time. So, you also -- the
12 changes are reflected in the SAR. You also can't
13 update to these new SAR revisions either, because the
14 same changes are from the CoC change. It also causes
15 problems with your SAR revision also. You can't
16 update to a new SAR amendment, either for your loaded
17 cask. It's another conflict in your licensing basis
18 for your loaded cask.

19 MR. PESSIN. Right. One issue that we've
20 come up with is that you have a whole population of
21 differently loaded casks loaded onto different
22 amendments. The FSAR has to account for each one of
23 them. So, if you have situation where you have a
24 utility that's loaded five under amendment 2, with
25 another five under amendment 3, and some were under

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1 amendment 4, the FSAR has got to be able to account
2 for all of those. You're going to have to have
3 different ports that FSAR -

4 MS. PYLE: You end up with a matrix of -

5 MR. PESSIN: Absolutely.

6 MS. PYLE: You know, 50 casks with
7 numerous COC and SAR and 212 report amendments which
8 even further complicates your licensing basis for your
9 ISFSI.

10 MR. BROWN: Right. So it's the
11 expectation that that casks SAR is always cumulative
12 and never deleting information from prior amendments
13 is that --

14 MR. BRACH: Let me -- can I offer that
15 the purpose of this meeting is to understand the
16 comments. I believe the comment you raised, if I
17 recall from a few years back, when 72.48 was moving
18 through initially review and implement -- early
19 implementation. A question came up with regard to the
20 SAR that is tied to each individual cask as that cask
21 may be loaded. Taking into account, that
22 there may be subsequent amendments or other changes
23 made by the licensee under 72.48. I understand the
24 question as far as how if in moving forward we, I
25 think what I'd like to take away is the question we

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1 had to us is how -- what are NRC's expectations of a
2 Licensee with regard to the SAR that guided the
3 initial loading of that individual cask or canister.
4 Then subsequently if there's a process moving forward
5 where subsequent new amendments or new technical
6 specifications for subsequent amendments may be retro
7 or re -- applied to previously loaded casks. The
8 question is what are the expectations with regard to
9 updates or control of the SAR as your moving forward
10 when there be changes. I think we had a lot of
11 discussion back in 72.48 early on, but I don't think -
12 - you raised, I think a good question that was --
13 that I don't recollect was addressed at that point. I
14 understand what you're asking me.

15 MR. REDMON: This is Everett Redmon. A
16 couple points I'd make in terms of the SAR's I would
17 note that the certificate only lists the SAR title.
18 It doesn't list revisions. Again, consistent with our
19 philosophy that it's one certificate encompassing all
20 amendments as opposed to separate and distinct
21 certificates.

22 I'd also like to point out that we are not
23 using 72.48 to make changes to the certificate. We
24 use 72.48 to make changes to the 212 evaluation. That
25 change may be to adopt a new amendment. We are not

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1 making changes via 72.48 to the certificate. A change
2 to the 212 evaluation again the 72.48 process is what
3 is written in the regulation as the appropriate path
4 forward.

5 MR. NELSON: Appreciate that
6 clarification, thanks.

7 MR. BROWN: Other comments? We have this
8 room reserved for another hour.

9 AUDIENCE: (laughing)

10 (No audible response)

11 MR. GUTHERMAN: Stu, is the sign in sheet
12 still going around?

13 MR. BROWN: Yes. I was going to ask
14 about that. Again, this morning I noted that we had
15 to send a sheet around just so that we can pass -- or
16 provide it to the transcriber. Please, make sure that
17 you've signed your name to it.

18 MS. PYLE: This is Stephanie. I do have
19 one question. If the RIS does stand and in your
20 presentation earlier you stated that you would allow
21 time for exemptions for the plants that are not in
22 compliance or that have loaded -- or who have upgraded
23 to previous amendments. You know, do you -- is there
24 going to be something in the RIS or something that
25 allows -- that provides guidance on -- I know there

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1 is guidance on exemptions because we've had to do
2 those.

3 You know in our case where we have 10
4 amendments that we've done that. Is there a guidance,
5 can we do one exemption for all of them? One for each
6 amendment? Is there going to be any guidance on that?

7 MR. MAMISH: That's something that we
8 will have to internally consider. We are well aware
9 of the potential for not only scope but numbers of
10 amendments. Amendments are time consuming and as I
11 said earlier, they are quite visible to the
12 commission. So, we will consider your comment in our
13 final RIS. If we end up issuing the RIS. It's a --
14 thank you, that's a good comment.

15 MR. BROWN: Any other comments? Yes.

16 MR. WALDROP: Keith Waldrop again. Going
17 along with what that last comment that Everett made.
18 In the RIS it talks about how once the cask is loaded
19 that it's basically fixed in time. It's licensing
20 basis is now frozen in time. I don't think there's a
21 regulatory basis for saying that. That's an
22 interpretation. There are ways. It's not fixed in
23 time.

24 72.48 allows us to change some of the
25 licensing basis for that particular loaded cask, after

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1 it's loaded, as well as, by trying to adopt a newer
2 amendment that amendment has received NRC approval.
3 So, we're not doing something that has not received
4 prior NRC approval. We're just beginning, now
5 adopting that.

6 Again the example that he walked through
7 of 72.48 exactly sends you down that path. If you
8 tried to do a 72.48 and you failed, it says to request
9 for the CoC Amendment, to go through that process.
10 Once it -- once the amendment is approved, it's
11 implicit that within 72.48 that that would then be
12 able to be adopted.

13 MR. PESSIN: Unfortunately, the way we
14 read the language, we just couldn't go that far.
15 Again, there is a conservative basis behind 72.48 and
16 part of the problem, from a practical point of view
17 is, a lot of these amendments -- later amendments
18 don't necessarily encompass earlier amendments. From
19 what I was told, they're sometimes are even
20 inconsistent. So, that's -- and we lose control as a
21 safety agency over what's out there. That's again,
22 our concern. The regulation needs to be fixed.

23 MR. WALDROP: I would agree that again
24 it's not a cherry picking activity here. If you're
25 going to adopt it you have to adopt it in whole. Can

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1 you? Is there something what oops we already loaded it
2 this way. It now says to do this, we can't do that.
3 So we can't operate to the latest amendment. That --
4 that's fully understood as a possibility.

5 MR. REDMON: This is Everett Redmon. I
6 would throw out one thing in that regard. If the
7 concern is losing control, is there a different
8 mechanism by which to deal with this? In other words,
9 guidance or something in terms of how to adopt a newer
10 amendment. That level of review that's necessary to
11 do that because we certainly feel we can.

12 I mean, you do point out that an amendment
13 may not encompass -- one amendment may have something
14 in it that the next amendment doesn't and vice versa.
15 That's certainly true.

16 MR. PESSIN: They'd be consistent with
17 each other.

18 MR. REDMON: But, that doesn't mean that
19 you can do an amendment. The general license
20 certificate holders may do an amendment that is fairly
21 specific to one of their customers. They may do
22 another amendment afterwards that it covers all of
23 their customers. There's no reason that one cannot
24 move from say Amendment 3 to Amendment 5 with an
25 appropriate review.

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1 Maybe, if that's the concern is in terms
2 of the control or accounting the regulations. We
3 don't read the regulations as prohibiting it. Maybe,
4 the appropriate approach is in terms of guidance how
5 to handle that situation. Take it out of the
6 regulatory side. As I said with the first use or
7 "prior to use" and things, the questions that begin to
8 come out of that are enormous. The RIS will have to
9 address them or we may end up in this situation again
10 with something else.

11 MR. LARKIN: Dave Larkin, Energy
12 Northwest. Just as a specific example, you know, we
13 use the Holtech system, and in Amendment 0, it was
14 required to have a aluminum heat conductors. Starting
15 with Amendment 1, it was prohibited. Now we clearly
16 recognize that we could not apply to Amendment 0
17 casks, Amendment 1 and beyond. Will they adopt a
18 certificate at our site that 72.212 requires us to do
19 all these evaluations to see if we can use it at out
20 site?

21 So, it's not a loss of control we've got
22 everything that's built into the regulations on what
23 we have to do to see if we can apply or adopt a new
24 amendment. I guess I see that you've already got
25 things built into the regulation to control that.

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1 MR. BROWN: Any other comments?
2 Questions? Again, we have another 55 minutes.

3 Audience: (Laughing)

4 Mr. Brown: Okay, with that, if there are
5 no other comments or questions, I want to thank
6 everyone for coming today. I want to thank you very
7 much for your comments. They will help us focus in
8 how our RIS will look, and we'll factor them in.
9 Also, I want to mention or remind you that formal
10 comments can be provided up until March 31, 2008.
11 Please, take advantage of that. With that I -- with
12 no other comments or statements, I'm going to thank
13 you for your time and I guess, adjourn.

14 (Whereupon the meeting was adjourned at
15 10:37)

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