

Official Transcript of Proceedings
NUCLEAR REGULATORY COMMISSION

Title: 2.206 Petition by Wallace Taylor
 and Lynn Moorer regarding Fort
 Calhoun Power Station

Docket Number: n/a

Location: by teleconference

Date: November 19, 2012

Work Order No.: NRC-2015

Pages 1-49

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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10 CFR 2.206 PETITION REVIEW BOARD (PRB)

CONFERENCE CALL

RE:

FORT CALHOUN STATION

+ + + + +

MONDAY

NOVEMBER 19, 2012

+ + + + +

The conference call was held, Tim McGinty,
Chairman of the Petition Review Board, presiding.

PETITIONERS: WALLACE TAYLOR and LYNN MOORER

PETITION REVIEW BOARD MEMBERS:

TIM MCGINTY, Chairman, NRR/DPR

MICHAEL BALAZIK, NRR/DIRS

CHRISTOPHER CAUFFMAN, NRR/DIRS

JOHN KIRKLAND, R-IV/DRP, Fort Calhoun Senior

Resident Inspector

ANDREA RUSSELL, Petition Coordinator, NRR/DPR

LYNNEA WILKINS, Petition Manager, NRR/DORL

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NRC HEADQUARTERS STAFF:

PATRICIA JEHLER, OGC

NRC REGIONAL STAFF:

JEFF CLARK, R-IV

LICENSEE REPRESENTATIVES PRESENT:

BILL HANSHER, Fort Calhoun Station

ALSO PRESENT:

DICK BOYD, Chair, Nebraska Sierra Club

BRIAN KEAN

MIKE RYAN, Clean Nebraska

LaVERNE THRAEN

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

(1:07 p.m.)

MS. WILKINS: I would like to thank everyone for attending this meeting. My name is Lynnea Wilkins, and I am the Project Manager for Fort Calhoun Station, Unit 1.

We are here today to allow the Petitioner, Mr. Wallace Taylor, a second opportunity to address the Petition Review Board, PRB, regarding a 2.206 petition dated June 21, 2012. I am the Petition Manager for the petition. The PRB Chairman is Tim McGinty.

As part of the PRB's review of the petition, Mr. Wallace Taylor has requested this opportunity to address the PRB. This meeting is scheduled from 1:00 to 2:00 p.m. Eastern.

The meeting is being recorded by the NRC Operations Center and will be transcribed by a Court Reporter. The transcript will become a supplement to the petition. The transcript will also be made publicly available.

I would like to open this meeting with introductions. As we go around the room, please make sure to clearly state your name, your position, and the office that you work for within the NRC for the record. I will start off. As I said, I am Lynnea Wilkins, the

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1 Project Manager for Fort Calhoun, and I am in NRR.

2 CHAIRMAN MCGINTY: I am Tim McGinty. I'm
3 the Director of the Division of Policy and Rulemaking in
4 NRR, and I'm the PRB Chair.

5 MR. BALAZIK: Hi. My name is Mike Balazik.
6 I am an Operations Engineer in the Office of Nuclear
7 Reactor Regulation, the Assessment Branch.

8 MR. CAUFFMAN: Hi. I'm Chris Cauffman.
9 I'm an Operations Engineer as well, NRR.

10 MS. JEHLE: Good afternoon. I am Patricia
11 Jehle with the Office of the General Counsel at NRC.

12 MS. RUSSELL: Andrea Russell, 2.206
13 Coordinator.

14 MS. WILKINS: We have completed the
15 introductions here in headquarters. At this time, are
16 there any NRC participants from headquarters on the
17 phone?

18 (No response.)

19 Are there any NRC participants from the
20 regional office on the phone?

21 MR. CLARK: Yes, Lynnea. This is Jeff
22 Clark. I'm the Acting Deputy Director, Division of
23 Reactor Safety in Region IV.

24 MR. KIRKLAND: Lynnea, this is John
25 Kirkland, Senior Resident Inspector at Fort Calhoun

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1 Station.

2 MS. WILKINS: Thank you. Are there any
3 representatives for the licensee on the phone?

4 MR. HANSHER: Yes. This is Bill Hansher,
5 Supervisor, Nuclear Licensing.

6 MS. WILKINS: Thanks, Bill.

7 Mr. Taylor, would you please introduce
8 yourself and any other presenters for the record?

9 MR. TAYLOR: Yes. I'm Wally Taylor,
10 appearing on behalf of the Sierra Club. And on the phone
11 with me should also be Lynn Moorer. I haven't heard her
12 yet, but --

13 MS. MOORER: Hello.

14 MR. TAYLOR: Lynn, are you there?

15 MS. MOORER: Yes, I'm here.

16 MR. TAYLOR: Okay. Thanks. That
17 concludes our personnel.

18 MS. WILKINS: Ms. Moorer, could you state
19 your position and affiliation?

20 MS. MOORER: I am an attorney from Lincoln,
21 Nebraska, who is assisting Mr. Taylor in this particular
22 project.

23 MS. WILKINS: Thank you.

24 It is not required for members of the public
25 to introduce themselves for this call. However, if

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1 there are any members of the public on the phone that wish
2 to do so at this time, please state your name for the
3 record.

4 MR. RYAN: Mike Ryan with Clean Nebraska in
5 Omaha.

6 MR. BOYD: Dick Boyd, Nebraska Sierra Club
7 Chair.

8 MR. THRAEN: LaVerne Thraen, just a public
9 citizen.

10 MS. WILKINS: All right. Thank you. I
11 would like to emphasize that we each need to speak clearly
12 and loudly to make sure that the Court Reporter can
13 accurately transcribe this meeting. If you do have
14 something that you would like to say, please first state
15 your name for the record.

16 For those dialing into the meeting, please
17 remember to mute your phones to minimize any background
18 noise or distractions. If you do not have a mute button,
19 this can be done by pressing the keys star six. To
20 unmute, press the star six keys again.

21 Thank you.

22 At this time, I will turn it over to the PRB
23 Chairman, Tim McGinty.

24 CHAIRMAN MCGINTY: Good afternoon. Thank
25 you, Lynnea.

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1 Welcome to this meeting regarding the 2.206
2 petition submitted by Mr. Taylor.

3 I would like to first share some background
4 on our process. Section 2.206 of Title 10 of the Code
5 of Federal Regulations describes the petition
6 process -- the primary mechanism for the public to
7 request enforcement action by the NRC in a public
8 process.

9 This process permits anyone to petition NRC
10 to take enforcement-type action related to NRC licensees
11 or licensed activities. Depending on the results of its
12 evaluation, NRC could modify, suspend, or revoke an
13 NRC-issued license or take any other appropriate
14 enforcement action to resolve a problem.

15 The NRC staff's guidance for the
16 disposition of 2.206 petition requests is in Management
17 Directive 8.11, and that's a publicly available
18 document.

19 The purpose of today's meeting is to give
20 the Petitioner a second opportunity to provide any
21 relevant additional explanation and support for the
22 request in light of the PRB's recommendation.

23 This meeting is not a hearing, nor is it an
24 opportunity for the Petitioner to question or examine the
25 PRB on the merits or the issues presented in the petition

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1 requests. No decisions regarding the merits of these
2 petitions will be made at this meeting.

3 Following the meeting, the Petition Review
4 Board will conduct its internal deliberation. The
5 outcome of this internal meeting will be discussed with
6 the Petitioner.

7 The Petition Review Board typically
8 consists of a Chairman, usually a manager at the senior
9 executive service level, at the NRC. It has a Petition
10 Manager and a PRB Coordination. Other members of the
11 Board are determined by the NRC staff based on the content
12 of the information in the petition request.

13 At this time, I would like to introduce the
14 Board. I'm Tim McGinty, the Petition Review Board
15 Chairman. Lynnea Wilkins is the Petition Manager for
16 the petition under discussion today. Andrea Russell is
17 the office's PRB coordinator.

18 Our technical staff includes Christopher
19 Cauffman from NRR, the Inspection Branch; Michael
20 Balazik from NRR's Performance Assessment Branch; John
21 Kirkland, the senior resident inspector at Fort Calhoun,
22 from the NRC Region IV Division of Reactor Projects. And
23 we obtain advice from the Office of the General Counsel,
24 represented by Patty Jehle today.

25 As described in our process, the NRC staff

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1 may ask clarifying questions in order to better
2 understand the Petitioner's presentation and to reach a
3 reasoned decision whether to accept or reject the
4 Petitioner's request for review under the 2.206 process.

5 I would like to summarize the scope of the
6 petition under consideration and the NRC activities to
7 date.

8 On June 21, 2012, Mr. Taylor submitted to
9 the NRC a petition under 2.206 regarding his concerns
10 with the adequacy of the management and operation of Fort
11 Calhoun Station. In this petition request, Mr. Taylor
12 identified the following areas of concern. Mr. Taylor
13 requests that the NRC revoke Omaha Public Power
14 District's -- OPPD -- license to operate Fort Calhoun
15 Station.

16 As the basis for this request, Mr. Taylor
17 states, in short, that since at least 1992 OPPD has been
18 unable and unwilling to operate Fort Calhoun properly and
19 safely. He states that OPPD has failed to correct
20 problems that were identified years ago and has resisted
21 directives from the NRC regarding safety violations.
22 The Petitioner is concerned that there is no likelihood
23 that OPPD will ever be able or willing to operate Fort
24 Calhoun properly and safely.

25 Allow me to discuss the NRC activities to

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1 date. On July 12, 2012, the Petition Manager contacted
2 the Petitioner to discuss the 10 CFR 2.206 process and
3 to offer the Petitioner an opportunity to address the PRB
4 by phone or in person. The Petitioner requested to
5 address the PRB by phone, which is the purpose of today's
6 call, prior to the PRB internal meeting to make the
7 initial recommendations to accept or reject the
8 petitions for review.

9 On August 27, 2012, Mr. Taylor and Ms.
10 Moorer addressed the PRB via teleconference.

11 On September 19, 2012, the PRB met
12 internally to make the initial recommendation. And on
13 October 5, 2012, the Petition Manager informed Mr. Taylor
14 of the PRB's initial recommendation.

15 The initial recommendation is that the
16 petition meets the criteria for rejection, because in
17 accordance with Management Directive 8.11, the
18 issues/concerns that the Petitioner raised have already
19 been the subject of NRC staff review and evaluation
20 either on that facility, other similar facilities, or on
21 a generic basis, for which a resolution has been
22 achieved. The issues have been resolved, and the
23 resolution is applicable to the facility in question.

24 In addition, the PRB notes that the issues
25 referenced in the petition, as supplemented, do not lead

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1 the NRC to believe that the licensee willfully operated
2 Fort Calhoun in an improper and unsafe manner.

3 Reactor Oversight
4 Process -- ROP -- collectively assesses the ongoing
5 capability to operate safely, and individual enforcement
6 actions are addressed for willfulness, and the ROP
7 considers that aspect collectively.

8 As a reminder for the phone participants,
9 please identify yourself if you make any remarks, as this
10 will help us in the preparation of the meeting transcript
11 that will be made publicly available.

12 With that said, Mr. Taylor, I will turn it
13 over to you, so you can provide information you believe
14 the PRB should consider as part of these petitions. Ms.
15 Moorer can present her information after you have
16 completed your presentation. Okay?

17 MR. TAYLOR: Thank you.

18 CHAIRMAN MCGINTY: You're welcome.

19 MR. TAYLOR: This is Wally Taylor. And we
20 did receive the PRB's initial recommendation on
21 October 5th by email. We believe that the
22 recommendation is factually and legally incorrect.

23 The initial recommendation first cites the
24 criteria for rejection in Management Directive 8.11 that
25 Mr. McGinty just recited. Those criteria are that the

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1 issues raised in the petition have already been the
2 subject of NRC staff review and evaluation for which
3 resolution has been achieved.

4 But these criteria are the criteria for
5 determining whether to treat a petition as a 2.206
6 petition in the first place, not the criteria for
7 determining whether a formally accepted petition should
8 be denied. In this case, the petition has been formally
9 accepted as a valid 2.206 petition. Therefore, the PRB
10 was legally incorrect in using those criteria as a basis
11 for denying the petition.

12 The only criteria for revoking a license,
13 as requested in the Petitioner's petition, are found in
14 10 CFR Section 50.100. The criteria applicable to this
15 petition would be, number one, conditions that would
16 warrant the Commission to refuse to grant a license, in
17 the original application; number two, failure to operate
18 a facility in accordance with the terms of the license;
19 and, three, violation of or failure to observe any of the
20 terms and provisions of the Act -- that's the Atomic
21 Energy Act -- the regulations, license, or order of the
22 Commission.

23 The PRB's initial recommendation did not
24 discuss any of these criteria. The evidence presented
25 to the PRB, though, shows that the 50.100 criteria have

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1 been met.

2 At the meeting on August 27th, the
3 Petitioner presented evidence, including a summary of
4 safety violations and management problems at Fort
5 Calhoun dating back almost 40 years, showing that Omaha
6 Public Power District is not able or willing to operate
7 Fort Calhoun safely and properly. This evidence
8 satisfied all three of the applicable criteria for
9 revocation of the reactor license.

10 Unwillingness and inability to operate a
11 nuclear plant safely and properly is a basis for not
12 issuing a license. 10 CFR Section 50.40 states in
13 pertinent part that "In determining that a construction
14 permit or operating license will be issued to an
15 applicant, the Commission will be guided by the following
16 considerations: (a) the processes to be performed, the
17 operating procedures, the facility and equipment, the
18 use of the facility, and other technical specifications,
19 or the proposals in regard to any of the foregoing
20 collectively, provide reasonable assurance that the
21 applicant will comply with the regulations in this
22 chapter, and that the health and safety of the public will
23 not be in danger."

24 And in subsection (c), "The issuance of a
25 construction permit, operating license, and so on, will

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1 not, in the opinion of the Commission, be inimical to the
2 common defense and security or to the public health and
3 safety of the public."

4 Also, 10 CFR 50.57(a)(3) says, "The
5 Commission cannot issue a license unless there is
6 reasonable assurance that the activities authorized by
7 the operating license can be conducted without
8 endangering the health and safety of the public."

9 The second -- thus, the first of the 2.206
10 criteria have been met. And yet because of the numerous
11 safety problems and violations at Fort Calhoun,
12 conditions exist that would preclude the issuance of a
13 license pursuant to those sections that I just read of
14 the regulations.

15 The second 2.206 criterion has also been
16 met. The Fort Calhoun license requires the plant to be
17 operated so as to protect the health and safety of the
18 public. The license includes technical specifications
19 related to the condition and operation of the plant, many
20 of which have been violated as shown by the list of
21 violations submitted to the Board after the last meeting.

22 The third 2.206 criterion is also met based
23 on the long list of violations incurred at Fort Calhoun.
24 Those are all violations of the Atomic Energy Act, NRC
25 regulations, and provisions of the Fort Calhoun license.

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1 The PRB's initial recommendation next
2 asserts that the evidence presented did not show that the
3 OPPD willfully operated Fort Calhoun in an improper or
4 unsafe manner. Willfulness is not a factor in the 50.100
5 criteria.

6 In any event, the evidence showed that OPPD
7 ignored warnings throughout the years as to flooding
8 hazards at Fort Calhoun. In fact, OPPD went beyond just
9 ignoring the warnings. It denied the problems and
10 resisted making any changes in response to the warnings.

11 In addition, statements by OPPD admit that
12 over the years there has been a culture of ignoring
13 problems. As David Bannister, OPPD Vice President in
14 charge of nuclear operations put it in a May 24, 2012
15 letter to the NRC, "Flawed mental models, misguided
16 beliefs, and misplaced values have driven, influenced,
17 and permitted the misalignment of the individual,
18 leader, and organizational behaviors needed for
19 effective and timely detection, evaluation, and
20 correction of performance deficiencies."

21 The Fort Calhoun Station organizational
22 values regarding problem identification and resolution
23 preclude a self-improvement culture and learning
24 environment. It is hard to imagine a more damning
25 indictment of the intent that has caused the almost

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1 30-year history of problems at Fort Calhoun, in fact over
2 30 years.

3 Finally, the PRB's initial recommendation
4 refers to the reactor oversight process as assessing the
5 ongoing safety and operation of a reactor. The
6 recommendation then incorrectly implies that this 2.206
7 petition is an enforcement action and is not appropriate
8 to address the ongoing problems at Fort Calhoun.

9 The reactor oversight process is focused on
10 detecting problems at reactors and remediating those
11 problems. Unlike the 2.206 process, the reactor
12 oversight process does not consider revoking a license.
13 Therefore, if, as implied by the PRB's initial
14 recommendation, the reactor oversight process were a
15 substitute for or precluded a 2.206 petition, that would
16 render the 2.206 process irrelevant and superfluous.
17 There is obviously no basis for such an absurd result,
18 and the PRB has no basis for taking that position.

19 This petition is not an enforcement action.
20 License revocations, pursuant to 10 CFR Section 50.100,
21 refer to licenses issued under Parts 50 or 52 of the NRC
22 regulations.

23 Revocation of a license is, therefore, a
24 licensing proceeding. This fact was made clear by the
25 court in Nuclear Information Resource Service v. NRC.

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1 For the lawyers on the call, the cite is 969 F.2d 1169.
2 It's a Circuit Court case from D.C. in 1992.

3 And the court there said there are two types
4 of 2.206 petitions -- those that seek enforcement, like
5 for a penalty or forcing something to be done to correct
6 a problem, and there are also the 2.206 petitions to
7 suspend, modify, or revoke a license, and that's a
8 licensing proceeding.

9 Therefore, based on the evidence presented
10 at the meeting on August 27th, the PRB's initial
11 recommendation is in error and not based on substantial
12 evidence. In addition, more evidence has come to light
13 since August 27th.

14 At the public meeting in Blair, Nebraska,
15 on September 11, 2012, it was revealed for the first time
16 that there are design and construction problems in the
17 original construction of the plant. It was not made
18 clear how these design and construction defects can be
19 corrected. This is a structural problem that would
20 seemingly require significant reconstruction of the
21 facility.

22 It also seems obvious that if these defects
23 had been known at the time the reactor was originally
24 licensed, this was a condition that would have warranted
25 refusal to grant a license. Exactly one of the criteria

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1 for revoking a license.

2 It was also clear at that meeting that Fort
3 Calhoun has many, many issues to attempt to resolve
4 before it can be considered for restart. It is not at
5 all clear that these issues can be resolved. At a recent
6 meeting last week in Blair, Nebraska, these problems were
7 again cited, and it wasn't at all clear that very much
8 progress has been made.

9 Particularly with regard to the
10 construction and design problems, OPPD still doesn't
11 have any idea what they are or how to correct them. They
12 claim they are going to hire a structural engineering
13 firm to look into that. But that still seems to be a
14 problem that would preclude relicensing and would be a
15 basis for our petition.

16 Aside from the additional evidence
17 regarding Fort Calhoun specifically, the PRB at the last
18 hearing left open our opportunity to provide evidence at
19 a subsequent hearing -- today -- about Exelon and its
20 ability to operate the plant safely and properly.

21 This is relevant because OPPD has entered
22 into an agreement with Exelon Nuclear Partners to operate
23 the Fort Calhoun Station. The agreement between Exelon
24 and OPPD states, "OPPD shall remain the owner, operator,
25 and licensee for the facility, and shall retain authority

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1 and control for licensed activities and final
2 decision-making authority for the operation of the
3 facility."

4 The agreement also states that "The
5 Management team, including the initial key management
6 personnel positions, shall be subject to prior approval
7 by the CEO of OPPD and shall serve at the discretion of
8 the CEO as set forth in the agreement. Thus, OPPD, whose
9 culture, attitudes, and actions, you will remember,
10 precluded improvement, would still be making the
11 important decisions."

12 Although OPPD refused to provide the NRC
13 with a copy of the agreement with Exelon, the NRC, thanks
14 to John Kirkland, did receive -- did provide to me a copy
15 of a letter they received and what appears to be selective
16 sections of the agreement, all of which are -- will be
17 supplied to the Board after this hearing.

18 In addition, a review of Exelon's history
19 with the plants in which it has an ownership interest
20 already reveals many problems with those plants, and Ms.
21 Moorer will now go over those problems with you.

22 MS. MOORER: This is Lynn Moorer. Thank
23 you for this opportunity to present evidence. While
24 some might think that Exelon's day-to-day management of
25 the Fort Calhoun Nuclear Plant, still owned and operated

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1 by Omaha Public Power District, will go a long way toward
2 solving Fort Calhoun's deep-seated and pervasive
3 problems, in reality management by Exelon is not a
4 solution.

5 Indeed, given Exelon's history of
6 deliberate violations, Exelon management day to day and
7 implementation of Exelon's nuclear management models at
8 Fort Calhoun as planned is more likely to diminish Fort
9 Calhoun's performance even further rather than improve
10 it. Willful violations generally signal at least two
11 things -- a rotten safety culture and a scofflaw attitude
12 at the plant where these violations take place.

13 There are enough willful or deliberate
14 violations at Exelon's various nuclear plants to
15 demonstrate a pattern and practice which, in turn,
16 demonstrates an unwillingness to comply. There are far
17 too many deliberate violations at Exelon nuclear plants
18 to reasonably conclude that they are all isolated
19 incidents.

20 It is clear that many of the nuclear plants
21 Exelon operates have been repeatedly operated
22 improperly, unsafely, and in violation of regulatory
23 requirements. To protect public safety adequately, the
24 NRC must take a clear-eyed look at the pattern of poor
25 practice at Exelon's nuclear plants as a whole.

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1 It seems apparent that the NRC has not
2 examined carefully or addressed Exelon's practice of
3 willful violation of NRC requirements across its various
4 nuclear reactors in the United States.

5 There is abundant evidence that the NRC's
6 enforcement actions regarding Exelon's deliberate
7 violations at one nuclear plant do not translate into
8 lessons learned at other Exelon nuclear plants. Rather,
9 Exelon's deliberate violations continue to occur.

10 For example, after it received a Notice of
11 Violation for failure to provide complete and accurate
12 information to the NRC regarding reactor operator
13 licensing at its Clinton plant, Exelon committed a very
14 similar violation at its Dresden plant. Thus, the
15 continuance of Exelon's deliberate violations through
16 the years demonstrates that the NRC has not already dealt
17 adequately with the problems. If it had, these
18 deliberate violations wouldn't keep occurring.

19 Therefore, Exelon's pattern and practice
20 of deliberately violating regulatory requirements is
21 directly relevant to consideration regarding Exelon's
22 likely impact upon Fort Calhoun's poor performance.
23 Some of the violations that I will cite in a few moments
24 occurred at nuclear plants whose ownership at the time
25 was listed under a name different from Exelon.

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1 However, these are nevertheless relevant
2 because they are all currently owned by Exelon and
3 represent the workforce and safety culture that Exelon
4 draws upon for its current operations. Indeed,
5 deliberate violations have continued under Exelon's
6 ownership at virtually all of these plants.

7 I will now summarize a sampling of the
8 violations at Exelon nuclear plants involving willful
9 violations, violations involving compromised integrity,
10 and violations involving withholding information.
11 These all embrace, to some degree, knowing violations.

12 With respect to the Braidwood Nuclear
13 Plant -- that's spelled B-R-A-I-D-W-O-O-D -- on May 18,
14 2000, a Notice of Violation was issued for a severity
15 level 3 violation based on a radiation protection
16 technician's deliberate failure to follow required
17 procedures when he activated the alarm on the portal
18 monitors a total of 14 times, and failed to contact the
19 Radiation Protection Department before leaving the
20 station.

21 Perhaps the most notorious and widespread
22 of Exelon's deliberate violations is its failure to
23 disclose and its apparent attempt to cover up massive
24 leaks of radioactive water from uninspected and
25 unmaintained buried pipes and valves at its Braidwood,

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1 Byron, and Dresden nuclear plants in Illinois.

2 Exelon's reactors at Braidwood, in two
3 massive leaks of three million gallons each, spilled
4 radioactive water into roadside ditches, private yards,
5 private drinking water wells, cornfields, and horse
6 ponds for more than a decade. While Exelon stayed
7 silent, there were approximately two dozen spills over
8 a decade at Braidwood alone.

9 On March 16, 2006, the Illinois Attorney
10 General and the Will County State's Attorney filed suit
11 against Exelon and its subsidiaries for the Braidwood
12 facility for multiple releases of waste water containing
13 tritium into the groundwater beneath the facility and the
14 groundwater outside the plant's boundary. The lawsuit
15 alleged the first leak occurred a decade prior.

16 Exelon released tritiated water at eight
17 separate locations on Exelon's Braidwood property
18 according to this lawsuit. Three distinct releases
19 occurred in 1996, 1998, and 2000, according to the
20 lawsuit, and three other releases occurred at unknown
21 times from the facility's blowdown line -- an underground
22 pipe that carries wastewater -- including tritiated
23 water approximately four and one-half miles from the
24 powerplant directly to the Kankakee River. That's
25 spelled K-A-N-K-A-K-E-E.

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1 The suit alleged that an additional release
2 occurred at an unknown time in the area near and to the
3 west of the station, and an eighth release occurred March
4 13, 2006, near the tritiated water temporary storage area
5 at the plant.

6 The lawsuit alleged that the eight leaks
7 contributed to water pollution, and that six of the
8 releases were the result of inadequate maintenance and
9 operation of vacuum breakers along the blowdown lines.

10 According to the Will County State's
11 Attorney, "The method of operation put in place at the
12 Braidwood Nuclear Plant since 1996 by Commonwealth
13 Edison, and their parent company as of 2000, Exelon
14 clearly placed their profit margin first, with a callous
15 disregard for the health, safety, and welfare of the
16 local residents. Exelon was well aware that tritium
17 increases the risk of cancer, miscarriages, and birth
18 defects, and yet they made a conscious decision not to
19 notify the public of their risk of exposure."

20 According to the Illinois Attorney General,
21 samples taken by Exelon in December 2005 indicated
22 elevated levels of tritium in the groundwater at various
23 locations outside the Braidwood Nuclear Plant property.
24 This includes a private well allegedly contaminated by
25 the 1998 release.

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1 In 2010, the Illinois Attorney General and
2 the State Attorneys of Will, Ogle, spelled O-G-L-E, and
3 Grundy, spelled G-R-U-N-D-Y, Counties reached
4 settlement with Exelon regarding its radioactive tritium
5 leaks into the groundwater beneath its Braidwood, Byron,
6 and Dresden nuclear powerplants.

7 Exelon agreed to pay more than \$1 million
8 to settle the lawsuit filed by the Illinois Attorney
9 General and the Will County State's Attorney, as well as
10 lawsuits filed concurrently by the Ogle and Grundy County
11 State Attorneys.

12 In response to this long-term massive
13 leakage of radioactive water both on and offsite at
14 Braidwood, the NRC, on June 29, 2006, issued a Notice of
15 Violation associated with a white significance
16 determination process finding involving multiple
17 failures by the licensee to adequately evaluate the
18 radiological hazards associated with the leaks from the
19 circulating water blowdown line vacuum breakers and to
20 assess environmental impact of the resultant onsite and
21 offsite tritium contamination.

22 With respect to Exelon's Byron Nuclear
23 Plant, on October 10, 2005, a Notice of Violation was
24 issued for a severity level 3 problem involving
25 violations of the Byron station technical

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1 specifications.

2 Specifically, an engineer engaged in
3 deliberate misconduct when he failed to perform assigned
4 surveillances of ventilation systems and falsified the
5 records to show the surveillances as completed -- a
6 violation of 10 CFR 50.9, "Completeness and Accuracy of
7 Information."

8 Regarding Exelon's Clinton Nuclear Plant,
9 on September 30, 1999, a Notice of Violation was issued
10 based on a severity level 3 willful violation involving
11 discrimination against a quality verification inspector
12 for bringing safety concerns to the NRC.

13 Also pertaining to Clinton, on May 6, 2003,
14 a Notice of Violation was issued for a severity level 3
15 violation involving the failure to provide complete and
16 accurate information to the NRC regarding preexisting
17 medical conditions of two initial reactor operator
18 license candidates. The medical information that
19 Exelon withheld from the NRC potentially disqualified
20 the two individuals applying for a reactor operator's
21 license.

22 With respect to Exelon's Dresden nuclear
23 facility, on September 18, 1998, a Notice of Violation
24 for a severity level 3 violation was issued. This action
25 was based on the willful activities of two individuals

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1 that caused the licensee to begin violation of 10 CFR
2 55.49, which prohibits licensed applicants and facility
3 licensees from engaging in any activity that compromises
4 the integrity of an NRC operator licensing examination.

5 Also pertaining to the Dresden plant,
6 Exelon, as it had with its Clinton plant, again, failed
7 to provide complete and accurate information. On June
8 23, 2003, a Notice of Violation and Proposed Imposition
9 of Civil Penalty in the amount of \$60,000 was issued for
10 the willful failure to provide complete and accurate
11 information to the NRC Region III staff concerning the
12 high-pressure coolant injection system during a
13 telephone conference call on September 27, 2001.

14 Exelon also received a Notice of Violation
15 regarding Dresden on August 29, 2003, for a violation
16 involving the failure by Exelon to provide complete and
17 accurate information to the NRC regarding a request to
18 renew a reactor operator license. This is the same basic
19 violation related to withholding information regarding
20 reactor operator candidates that Exelon had been cited
21 for with respect to its Clinton plant.

22 With respect to the Ginna Nuclear
23 Plant -- that is spelled G-I-N-N-A -- on March 30, 2004,
24 a Notice of Violation was issued for a severity level 3
25 violation involving the willful failure to follow

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1 procedures by a manager when he manipulated two valves
2 during a plant cooldown without authorization as
3 required by procedures.

4 Related to its LaSalle nuclear
5 facility -- that's spelled L-A capital S-A-L-L-E -- on
6 May 2, 2005, a Notice of Violation and Proposed
7 Imposition of a Civil Penalty in the amount of \$60,000
8 was issued to Exelon for a willful severity level 3
9 violation involving four contract employees who violated
10 radiation protection procedures associated with entry
11 into high radiation areas.

12 Exelon appealed this enforcement action
13 using the alternative dispute resolution process. As a
14 part of the ADR settlement agreement, Exelon agreed that
15 a willful violation occurred, as documented in the NRC's
16 May 2, 2005, Notice of Violation and Proposed Imposition
17 of a Civil Penalty.

18 Based on the expectation that Exelon would
19 satisfactorily implement numerous comprehensive
20 short-term and long-term corrective actions, the NRC
21 agreed to reclassify the violations at severity level 4,
22 to reduce the civil penalty to \$10,000 and to not consider
23 the violation as part of the civil penalty assessment
24 process should the NRC consider future enforcement
25 actions against LaSalle.

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1 With respect to Exelon's Limerick Nuclear
2 Plant, on August 5, 1997, a Notice of Violation and
3 Proposed Imposition of Civil Penalty in the amount of
4 \$80,000 was issued. This was based on a severity level
5 2 problem that included two violations involving
6 instances of record falsification.

7 In the first violation, a chemistry
8 technician and a chemist, at the direction of the
9 chemistry manager, deliberately falsified a record of
10 the time a grab sample was taken from the reactor
11 enclosure cooling water system. The chemistry manager
12 also pressured the technician and chemist to lie about
13 their actions to licensee security personnel
14 investigating the matter.

15 In the second violation, a fire protection
16 technical assistant deliberately failed to perform a
17 fire hose station visual inspection surveillance test,
18 yet falsified the surveillance test document to indicate
19 the test was performed.

20 Also, regarding the Limerick plant, on
21 October 23, 2001, a Notice of Violation was issued for
22 a severity level 3 problem involving the willful creation
23 of inaccurate and incomplete siren testing maintenance
24 records by two maintenance technicians and deficiencies
25 with the ability to provide early notification to the

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1 populace surrounding the facility in the event of an
2 emergency.

3 With respect to the Nine Mile Point nuclear
4 plant, on May 2, 2001, a Notice of Violation was issued
5 for a severity level 3 violation involving the deliberate
6 failure of an NRC licensed chief shift operator to
7 provide complete and accurate information on health
8 history forms that were required for the fitness for duty
9 regulation.

10 Also, related to Nine Mile Point, on
11 March 13, 2007, a Notice of Violation was issued for a
12 violation associated with a white significance
13 determination process finding involving an activity that
14 compromised the integrity of the annual licensed
15 operator requalification simulator exam at Unit 1 for
16 calendar years 2005 and 2006.

17 Specifically, the process used by the
18 licensee to select and validate the simulator exam
19 scenarios resulted in the licensed operators being
20 knowledgeable of a significant portion of the exam prior
21 to its administration. The violation was cited against
22 10 CFR 55.49, "Integrity of Examinations and Tests."

23 On October 23, 2001, just as at the Limerick
24 Nuclear Plant, a Notice of Violation was issued for a
25 severity level 3 problem at the Peach Bottom nuclear

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1 plant involving the willful creation of inaccurate and
2 incomplete siren testing maintenance records by two
3 maintenance technicians and deficiencies with the
4 ability to provide early notification to the populace
5 surrounding the facility in the event of an emergency.

6 Also, related to Peach Bottom, on
7 January 6, 2009, a Notice of Violation and Proposed
8 Imposition of Civil Penalty in the amount of \$65,000 was
9 issued for a severity level 3 problem involving
10 inattentive security officers at the Peach Bottom Atomic
11 Power Station.

12 An investigation conducted by the NRC
13 Office of Investigations determined that multiple
14 security officers at Peach Bottom were deliberately
15 inattentive on multiple occasions. In addition,
16 multiple security officers deliberately failed to report
17 observations of inattentiveness to their supervision.

18 This put Exelon in violation of 10 CFR
19 73.55, which requires armed responders to maintain
20 continuous communication with each alarm station and be
21 available to immediately respond to threats; and Peach
22 Bottom license condition 2.C(3), which requires, in
23 part, reporting of aberrant behavior.

24 Again, pertaining to Peach Bottom, on
25 December 1, 2009, an immediately effective confirmatory

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1 order was issued to Exelon Generating Company, LLC, to
2 confirm commitments made as a result of an alternative
3 dispute resolution mediation session.

4 This enforcement action is based on two
5 violations of NRC requirements at Exelon's Peach Bottom
6 Atomic Power Station, including the deliberate failure
7 of a reactor operator to report an arrest in a timely
8 manner, and the deliberate failure of a maintenance
9 supervisor to provide complete and accurate information
10 on a personal history questionnaire.

11 In consideration of the commitments and
12 other actions already completed by Exelon, the NRC agreed
13 to refrain from issuing a civil penalty or Notice of
14 Violation for these violations.

15 In conclusion, Exelon's pattern of
16 deliberate violation is likely to continue at Fort
17 Calhoun. The Petition Review Board must consider the
18 larger reality that the continuing deliberate violations
19 at Exelon nuclear plants bespeak a deeply flawed safety
20 culture and willingness to flout regulatory requirements
21 which may infect Fort Calhoun, thus bringing its
22 performance even lower and jeopardizing public safety
23 even further.

24 In any event, one cannot reasonably expect
25 that Exelon's management of Fort Calhoun will adequately

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1 resolve any of the claims made in this 2.206 petition.

2 This concludes my prepared remarks. I will
3 now turn the presentation back to Mr. Taylor.

4 MR. TAYLOR: Thank you. Just a quick sum
5 up. I believe we have shown clearly that the PRB was
6 incorrect, both factually and legally, in their initial
7 recommendation, and that if the proper criteria and
8 evaluation were conducted that the evidence we have
9 presented is more than sufficient to justify the
10 revocation of the Fort Calhoun license, and the Board
11 should in fact do that.

12 A couple of housekeeping matters. The
13 transcript of the last hearing from August 27th, Ms.
14 Moorer and I noted some corrections that need to be made,
15 and we will send those proposed corrections in writing
16 to the Board after this hearing.

17 Also, we will send to the Board
18 documentation to support the comments we have made today,
19 and we would request that the record be left open for 30
20 days, so that we can do that, particularly with the items
21 that we learned from the hearing in Blair last Thursday.

22 So with that, that concludes our
23 presentation. Thank you.

24 CHAIRMAN MCGINTY: Okay. Mr. Taylor, Ms.
25 Moorer, thank you very much for your presentation. This

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1 is Tim McGinty again, the PRB Chair.

2 At this time, I would like to ask the staff
3 here at headquarters whether we have any questions for
4 Mr. Taylor or Ms. Moorer.

5 MS. RUSSELL: Mr. Taylor, this is Andrea
6 Russell, the 2.206 Coordinator.

7 MR. TAYLOR: Yes.

8 MS. RUSSELL: I have a question for you.
9 Early on in your presentation you said that the PRB had
10 formally accepted this petition and that now we were
11 proposing to reject it.

12 MR. TAYLOR: Yes.

13 MS. RUSSELL: I just want to make sure I'm
14 understanding your concern. Could you clarify that for
15 me?

16 MR. TAYLOR: Sure. Sure. I'd be glad to.
17 The criteria in Directive 8.111 that the initial
18 recommendation referred to -- well, on the page -- I think
19 it's page 11 of the Directive, and those are the criteria
20 for determining that face value, whether or not the
21 petition meets the requirements or the criteria as a
22 2.206 petition in the first place.

23 If those criteria are not met, then the
24 petition is rejected outright at that point, because it
25 doesn't satisfy the criteria for being a 2.206 petition

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1 in the first place.

2 Those are not the criteria -- once the
3 petition has been formally accepted and the process is
4 ongoing like it is here, those are not the criteria for
5 denying the petition on its merits. Those criteria
6 would be the ones I mentioned found in 10 CFR Section
7 50.100, the grounds for revoking a permit.

8 MS. RUSSELL: Okay. Mr. Taylor, this is
9 Andrea Russell again. I just want to clarify that the
10 Management Directive for 2.206 is -- currently it's a
11 two-step process. Basically, a petitioner has to come
12 in and has to meet all three criteria for review. Once
13 it meets those three criteria for review, then we enter
14 into the other set of criteria, which we either reject
15 or accept the petition.

16 If it doesn't meet the original three
17 criteria for review, basically we would issue a closeout
18 letter saying, "Your petition did not meet the criteria
19 for review." If it meets those criteria and we go into
20 accepting and rejecting, that's when we provide we either
21 are accepting the petition based on, you know, X, Y, Z,
22 or we reject this petition because of X, Y, Z.

23 Does that make sense to you? I know the
24 Management Directive is a little hard to read. And as
25 most petitioners are aware, because they provided

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1 comments on it, we are currently revising the Management
2 Directive to make it clear, and it will be, you know, back
3 out for additional comment.

4 MR. TAYLOR: Well, I looked at it very
5 carefully, and I did not see any criteria for ruling on
6 the merits of the petition in Directive 8.111. The
7 criteria that I saw were for deciding whether it was a
8 valid 2.206 petition in the first place. It had nothing
9 to do with determining the merits of the petition, which
10 is the stage we're at now, it seems to me.

11 MS. RUSSELL: You are correct. We do not
12 make any determination on the merits of the petition,
13 unless we have accepted the petition. We are not there
14 yet. We have made an initial recommendation that we are
15 going to reject the petition for those reasons that we
16 provided.

17 And then, after this meeting, if we decided
18 to accept the petition, we would enter on the merits and
19 continue reviewing it and issue you an acknowledgement
20 letter and then a proposed Director's decision, where we
21 would disposition what we have reviewed and the merits
22 of the petition. But we are not there.

23 We are still making the -- we will be making
24 a final recommendation whether or not to accept or reject
25 the petition for review after this meeting.

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1 MR. TAYLOR: That wasn't how I understood
2 it.

3 CHAIRMAN MCGINTY: This is Tim McGinty
4 again. And so actually this experience, and the
5 research that you've done, is part of what has led us to
6 take the initiative to clarify the Management Directive.
7 And so hopefully that will be clear for all parties in
8 the future. But at this stage, do we have any other
9 questions associated with the staff in headquarters?
10 I'm looking around the room here. We don't have any.

11 How about folks out in the region, do you
12 have any questions?

13 MR. KIRKLAND: Wally, this is John
14 Kirkland. Can you just give me one simple example of the
15 issues that you mentioned you noted in the first
16 transcript? So we know kind of what we're looking at.

17 MR. TAYLOR: Oh. The corrections to be
18 made in the first transcript?

19 MR. KIRKLAND: Yes.

20 MR. TAYLOR: Oh. I'm sorry, John. I
21 don't have those in front of me right now.

22 MR. KIRKLAND: Oh, that's fine. Are they
23 technical inaccuracies or --

24 MR. TAYLOR: There were a couple of pages
25 that were misnumbered or missing. I think we did make

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1 note of those. But I don't believe it's anything really
2 substantive, but it -- there are things that could be
3 misleading if we don't correct them.

4 MR. KIRKLAND: Okay. That's fine . And
5 that's what I was looking for. Thank you.

6 MS. WILKINS: John and Mr. Taylor, this is
7 Lynnea. We received your comments. We have reviewed
8 the original transcript again, and we reissued the
9 transcript with the corrections. I think it was page 30
10 or 31, and there were some typos in there. But I believe
11 we addressed them.

12 MS. MOORER: This is Lynn Moorer.

13 MS. WILKINS: But we'll check to be sure.

14 MS. MOORER: This is Lynn Moorer. May I
15 clarify briefly on this?

16 MS. WILKINS: Yes.

17 MS. MOORER: The nature of the corrections
18 that still need to be made are matters that I would call
19 normal mishearing of technical words which were not
20 readily recognized by any Court Reporter. Like, for
21 example, several cases where I was referring to 480 BAC
22 buses as in B-A-C buses, it ended up in the transcript
23 looking like 480 back, B-A-C-K, buses. You see?
24 Examples of things like that where it was a simple matter
25 of probably mishearing what was actually said.

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1 THE COURT REPORTER: This is the Court
2 Reporter. I apologize for that.

3 CHAIRMAN MCGINTY: This is Tim McGinty
4 again. So thank you. You have let us know, and we will
5 take that into consideration in terms of having an
6 accurate record. So thanks.

7 If I may, could I ask if there are any
8 members -- or any questions that the licensee might have?

9 MR. HANSHER: No questions or comments from
10 Bill Hansher.

11 CHAIRMAN MCGINTY: Okay. Thank you, Bill.
12 I believe you are the only licensee rep.

13 MR. HANSHER: That is correct.

14 CHAIRMAN MCGINTY: All right. Thanks.

15 Before I conclude the meeting, members of
16 the public may provide comments -- and we have I think
17 a couple members of the public, two or three,
18 yes -- regarding these petitions and ask questions about
19 the 2.206 process.

20 Remember, as I stated at the opening, the
21 purpose of this meeting is not to provide an opportunity
22 for the Petitioner or the public to question or examine
23 the Petition Review Board regarding the merits of these
24 petition requests. However, does any member of the
25 public have any comment? Any questions?

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1 MR. KEAN: Yes. This is Brian Kean, and
2 I'm a citizen that lives just a short distance away from
3 the plant. So when do the determinations on whether this
4 will be allowed to proceed -- is that going to be made
5 after the holidays, or when would we expect a result?

6 MS. RUSSELL: Hi. This is Andrea Russell,
7 the 2.206 Coordinator. Basically, after this meeting,
8 we need to wait on the transcript and review it for
9 inaccuracies, make it publicly available, and allow the
10 PRB some time to look over that and the information that
11 has been provided today, and meet again.

12 So my answer to you is probably
13 mid-December, hopefully before Christmas, but, you know,
14 with the holidays it is hard to get everybody in the same
15 room. That's an anticipated goal.

16 MR. KEAN: And does the outcome of that
17 decision-making process affect when the plant will
18 restart? Or is that on a separate track? So assuming
19 that you do entertain further discovery or further
20 consideration on the petition, would that affect the
21 restart of the plant?

22 CHAIRMAN MCGINTY: Lynnea, I'll take that.
23 No, it wouldn't. That is -- kind of the way you asked
24 that question, that is a different track than this one,
25 Mr. Kean.

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1 MR. KEAN: Okay.

2 CHAIRMAN MCGINTY: Thank you. Any other
3 questions or comments from members of the public?

4 MR. THRAEN: Yes, I have something.

5 CHAIRMAN MCGINTY: Please identify
6 yourself for the Reporter. Thanks.

7 MR. THRAEN: My name is LaVerne Thraen. And
8 the reason I think you should accept this or the reason
9 why I would agree why they can't run the plant properly,
10 just recently, without even going into much history,
11 multiple board members, vice president of nuclear, all
12 at multiple board meetings over the half a year have
13 answered if there was water in the building, and they have
14 all said no. And then, when I had a conversation with
15 the NRC, they gave me a full description of where, when,
16 and how water was in the building.

17 And what I'm -- the reason I'm bringing this
18 up is because we -- they are not willing to tell us the
19 truth, OPPD, about what is actually going on. The last
20 NRC meeting -- or the second-to-the-last one I went to,
21 they are supposed to be updating us about the condition
22 of the plant and failed to include an uploader breaking
23 and a weld breaking, which stalled the movement of the
24 nuclear fuel from the core to the pools for a week.

25 And no report on that at all, and that was

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1 discovered, you know, via people telling me in the
2 bathroom. And so it doesn't seem like we can get an
3 honest, truthful, accurate thing about what is going on
4 at the nuclear power plant.

5 So just from an honesty point of view and
6 having trust and faith in them as an organization, it's
7 just not there, and we just don't have the evidence of
8 it being there, or I don't. So that's why I think they
9 should lose their license is just for bold-out lying at
10 board meetings about it.

11 I mean, my God, it seems awful. I don't
12 know what the legal ramifications are, but to me it seems
13 like that would be reason enough.

14 CHAIRMAN MCGINTY: All right. Thanks,
15 LaVerne. Thank you for giving us your comment.

16 How about -- did I cut anybody off, other
17 members of the public? Or, LaVerne, do you have more?

18 MR. THRAEN: No, I'm okay. That's it.

19 CHAIRMAN MCGINTY: All right. Thanks.
20 Anybody else?

21 (No response.)

22 Mr. Taylor?

23 MR. TAYLOR: Yes.

24 CHAIRMAN MCGINTY: Thank you, sir, for
25 providing the -- taking the time to provide the NRC staff

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1 with clarifying information on the petitions you have
2 submitted. Ms. Moorner, the same goes to you.

3 MS. MOORER: Thank you, Mr. McGinty. May
4 I seek one quick clarification from you --

5 CHAIRMAN MCGINTY: Of course.

6 MS. MOORER: -- with respect to procedure?

7 CHAIRMAN MCGINTY: Yes.

8 MS. MOORER: I would appreciate that. Did
9 you all grant us 30 days keeping the record open to submit
10 written information to you?

11 CHAIRMAN MCGINTY: As I said earlier, there
12 are no decisions going to be made at this meeting, and
13 so we did not make a decision as to whether or not to
14 accept or grant that. So we heard your request. We are
15 going to go through the process that Andrea mentioned
16 earlier, which is to make sure that we understand
17 completely the proceedings that occurred and have them
18 in writing and make them publicly available. So I don't
19 have an answer for you right now.

20 MS. MOORER: This is Lynn Moorner again.
21 I'm sorry. I just want to make sure I'm clear, if this
22 relates to our request that the record be left open 30
23 days. All right? So the obvious question that follows
24 is, will you wait to make a decision regarding what you
25 want to do with this petition until after you have

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1 received the supplemental materials from us within 30
2 days, or not?

3 CHAIRMAN MCGINTY: Could you hold on one
4 second while we talk about it here?

5 MS. MOORER: Okay. Thank you.

6 (Pause.)

7 MR. TAYLOR: Pretty tough decision,
8 apparently.

9 (Pause.)

10 CHAIRMAN MCGINTY: This is Tim McGinty
11 again. So we've talked about, as a practical matter,
12 giving the timing of the process as it plays out. And
13 in general, the NRC is always interested, remains
14 interested, when we are provided new and different
15 information, supplementing information that is relevant
16 prior to actually making a decision -- any of our
17 decisions -- and closing something out.

18 From the perspective of a 30-day
19 standpoint, I think it's fairly safe to essentially
20 presume that the process will take something along that
21 period of time. And so although I don't want to make any
22 kind of -- you know, I like to stick to our process, which
23 is we are not making a decision here, but I don't have
24 any reason to argue with the basic premise of what you've
25 asked for.

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1 MR. TAYLOR: Okay.

2 CHAIRMAN MCGINTY: Okay? Is that fair?
3 All right. Great.

4 So with that said, before we close, does the
5 Court Reporter need any additional information for the
6 meeting transcript?

7 THE COURT REPORTER: Yes. This is the
8 Court Reporter. I wasn't sure how to spell the last
9 names of Mr. Kean and Mr. Thraen.

10 MR. THRAEN: T-H-R-A-E-N. And LaVerne is
11 a capital L and a capital V with the E at the end.

12 THE COURT REPORTER: Thank you.

13 CHAIRMAN MCGINTY: Any other questions?

14 THE COURT REPORTER: Is Mr. Kean still
15 there?

16 MS. WILKINS: Mr. Kean, are you still on the
17 line?

18 (No response.)

19 CHAIRMAN MCGINTY: Does anybody know how to
20 spell his name?

21 MR. RYAN: Mike Ryan in Omaha. It's
22 K-E-A-N.

23 CHAIRMAN MCGINTY: Ah. That was very
24 helpful. Thank you.

25 THE COURT REPORTER: Thank you, Mr. Ryan.

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1 Those are all the questions I had.

2 CHAIRMAN MCGINTY: Okay. Thank you very
3 much. Appreciate everybody's time today. Well, this
4 meeting is concluded, and we're going to be ending our
5 phone connection at this point in time. Again, thank you
6 very much.

7 (Whereupon, at 2:11 p.m., the proceedings in the
8 foregoing matter were concluded.)

9

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