



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

April 11, 2014

OFFICE OF THE
SECRETARY

MEMORANDUM TO: Board and parties
Entergy Nuclear Operations, Inc. (Indian Point, Units 2 & 3)
Docket Nos. 50-247-LR & 50-286-LR

SUBJECT: SERVICE OF COMMISSION MEETING TRANSCRIPT

On Friday, March 21, 2014, the Commission was briefed on the waste confidence rulemaking. The briefing included an external panel with the following participants: Ronald Johnson, Tribal Council President, Prairie Island Indian Community; John J. Sipos, Assistant Attorney General, State of New York; Ellen C. Ginsberg, Vice President, General Counsel, and Secretary, Nuclear Energy Institute; Michael S. Callahan, President, CCMSC Corporation, on behalf of Governmental Strategies Inc., and the Decommissioning Plant Coalition; and Geoffrey H. Fettus, Senior Attorney, Natural Resources Defense Council. Out of abundance of caution, the transcript of that meeting¹ will be served on the Board, all parties, and the electronic hearing docket to ensure compliance with the provisions of 10 C.F.R. § 2.347(c) regarding *ex parte* communications.

/RA/

Emile L. Julian
Assistant for Rulemakings
and Adjudications

¹ Transcript, "Briefing on Waste Confidence Rulemaking" (March 21, 2014) (ADAMS Accession No. ML14084A142).

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BRIEFING ON WASTE CONFIDENCE RULEMAKING

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FRIDAY

MARCH 21, 2014

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ROCKVILLE, MARYLAND

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The Commission met at its Headquarters, One White
Flint North, Commissioners' Conference Room, 11555 Rockville Pike,
at 1:00 p.m., Allison M. Macfarlane, Chairman, presiding.

COMMISSIONERS:

- ALLISON M. MACFARLANE, Chairman
- KRISTINE L. SVINICKI, Commissioner
- GEORGE APOSTOLAKIS, Commissioner
- WILLIAM D. MAGWOOD, IV, Commissioner
- WILLIAM C. OSTENDORFF, Commissioner

1 EXTERNAL PANEL:

2 Ronald Johnson, Tribal Council President

3 Prairie Island Indian Community⁸

4 John J. Sipos, Assistant Attorney General,

5 State of New York

6 Ellen C. Ginsberg, Vice President, General

7 Counsel, and Secretary, Nuclear Energy

8 Institute

9 Michael S. Callahan, President, CCMSC Corp. on

10 behalf of Governmental Strategies and

11 the Decommissioning Plant Coalition

12 Geoffrey H. Fettus, Senior Attorney, Natural

13 Resources Defense Counsel

14

15 NRC STAFF PANEL:

16 Mike Weber, Deputy Executive Director for

17 Materials, Waste, Research, State,

18 Tribal, and Compliance Programs

19 Cathy Haney, Director, Office of Nuclear

20 Material Safety and Safeguards

21 Keith McConnell, Director, Waste Confidence

22 Directorate, NMSS

23 Andy Imboden, Chief, Communications, Planning,

24 and Rulemaking Branch

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PROCEEDINGS

1:02 p.m.

CHAIRMAN MACFARLANE: Okay, everybody settle in. Great, good afternoon. So, the Commission meets today to hear from an External Panel and the NRC Staff on the topic of Waste Confidence.

I want to thank all the External Panelists for traveling far to join us this afternoon to provide your perspectives. I also want to thank the Staff for their work, and for their preparation for today's meeting.

I'd like to take a moment to put today's meeting in context for the record. I'm going to start by noting where we are in the process of dealing with Waste Confidence. And I'm sure the second panel will discuss some of this in more detail, but I want to sort of lay a foundation here.

So, in response to a remand by the U.S. Courts of Appeals for the D.C. Circuit, the Commission in the summer of 2012 instructed the Staff to update the Waste Confidence decision rule and develop an Environmental Impact Statement. The Staff subsequently initiated a scoping process, and developed the proposed rule and Draft Generic Environmental Impact Statement.

The Commission directed some changes and approved the release of the proposed rule and Draft Impact Statement for comment. The public comment period was open from September of 2013, last fall, until December 20th of 2013. The Staff received more

1 than 30,000 comments through correspondence and it transcribed over
2 1,600 pages of notes from multiple meetings held around the country.

3 One of our goals for this meeting is to be certain that
4 we understand the comments that we received. We recognize that this
5 is a complex policy issue, and many groups have different views on this
6 matter. On behalf of the Commission, we appreciate the significant
7 amount of time that all of these groups have taken in thoughtfully
8 analyzing the Staff's proposed rule and providing detailed feedback to
9 the NRC.

10 Today we have a good cross section of external
11 panelists to provide a range of perspectives on some key issues that
12 underpin the proposed rule and Environmental Impact Statement.

13 I'd like to note that given where we are in the process
14 so far, and as we noted in our Letters of Invitation to our panelists, we're
15 not seeking new comments from the external panel. We're here today
16 to discuss the comments that you've already submitted during the
17 public comment period. So, this meeting is an opportunity for you all to
18 highlight and amplify issues you previously raised to help insure that we
19 understand your comments.

20 The external panel will be followed by a Staff briefing.
21 The Staff is in the process of evaluating all those public comments that
22 they received, and is still considering this feedback in their development
23 of the final Rule and Environmental Impact Statement. Ultimately, any
24 final rule will have to be approved by the Commission.

25 Because the NRC has not reached final conclusions
26 on the key issues, we won't ask the Staff to respond on the merits of

1 what is said today by the external panel, or to explain how they plan to
2 respond to comments that they have received.

3 I'd also like to remind everyone that because Waste
4 Confidence or continued storage contentions are currently being held in
5 abeyance on 21 adjudicatory dockets we will not address site-specific
6 continued storage issues or questions because of our role as judges
7 there.

8 So, we're going to begin the meeting with
9 presentations from the external panel. We have 50 minutes, so I ask
10 each of you to be mindful of the time, otherwise I'll help you. I also ask
11 presenters to both external panelists and Staff to try to avoid using
12 acronyms so we all know what we're talking about.

13 Let me see if any of my fellow Commissioners have
14 any comments? No? Okay. Then to get us started we're going to start
15 with Mr. Ronald Johnson who is President of the Prairie Island Indian
16 Tribal Community. Mr. Johnson.

17 MR. JOHNSON: Thank you. Good afternoon,
18 Chairman Macfarlane, Honorable Commissioners. My name is Ron
19 Johnson, and I am the President of the Prairie Island Indian Community
20 Tribal Council. I appreciate this invitation to be here today to speak with
21 you about our views on Waste Confidence.

22 Before I begin, I'd like to thank the members of the
23 Waste Confidence Directorate who met with us after the public meeting
24 in Minnesota to answer our questions about the Draft Generic
25 Environmental Impact Statement. Next slide, please.

26 Our tribal members are descendants of the

1 Mdewakanton Band of Eastern Dakota or those who are born of the
2 waters. Our people have lived on Prairie Island, Tinta Wita, for
3 countless generations. Our tribe land base has grown through various
4 federal acts beginning in 1891 and direct purchases by the Tribal
5 Council, and now totals over 3,000 acres. The Prairie Island Indian
6 Community is located between the Vermillion and Mississippi Rivers in
7 Southeastern Minnesota, about 30 miles southeast of the Twin Cities,
8 of Minneapolis and St. Paul. I skipped a slide. There was supposed to
9 be a slide there, I apologize.

10 On Slide 4, this slide focuses in on a portion of our
11 reservation that we call the Lower Island. As you can see, the Prairie
12 Island Nuclear Generating Plant and its independent spent fuel storage
13 installation are right next door to our reservation, and it shows in the
14 photo there. Next slide, please.

15 There's no community closer to a nuclear power plant
16 than our's. The independent spent fuel storage installation is about 600
17 yards from our nearest tribal member's home, and less than a half a
18 mile from our clinic, community center, elder center, education center,
19 and our gaming enterprise. Next slide, please.

20 Our Tribal Council chambers overlook the nuclear
21 power plant. I'm always looking out the window and it's not just so I can
22 look at the sun, or the birds, or the Mississippi River bluffs, it's so I can
23 keep a constant eye on the plant. And that's kind of changed this day
24 because my position changed so I don't get to look out the window. It
25 does draw my attention, as it does anybody's. And this past summer, I
26 think it was in September or August, I participated in a radiation

1 exposure conference in Japan. That included an onsite tour of the
2 Fukushima Daiichi facility. I've seen firsthand what happens when two
3 unlikely to worry about accidents happen and the design basis isn't
4 enough. I've seen the devastation and driven to the abandoned
5 villages.

6 My worst fear, and the worst fear of our people is that
7 we'd be forced to abandon our homeland because of an incident at the
8 plant or at the independent spent fuel storage installation. My biggest
9 concern isn't with the plant operations, it's the nuclear waste packed in
10 the spent fuel pool stored above ground in dry casks a half a mile away
11 from our homes. That's why our tribe has been actively involved in
12 Waste Confidence activity. Slide 7, please.

13 What does Waste Confidence really mean? It's just a
14 fancy term. Do we really believe that the best way to deal with spent
15 nuclear fuel is indefinite long-term storage at places like Prairie Island
16 along the flood plain of the Mississippi River? Can the Nuclear
17 Regulatory Commission be absolutely certain that spent fuel will be
18 safe if stored at the site in dry casks for decades or even centuries?

19 I don't want to be too proactive with the third definition
20 on this slide, but sometimes it seems that our Nation's nuclear waste
21 policy is nothing more than a confidence game. While I have great
22 respect for the Commission and the Nuclear Regulatory Commission
23 Staff with whom we've worked with over the years, I don't envy the work
24 you have been asked to do on Waste Confidence. And I worry that the
25 Waste Confidence Rule will be used to continue the false promises of
26 our Nation's failed nuclear waste policy.

1 The defects in the Nuclear Waste Policy Act were first
2 exposed in 1998 when the deadline for removing nuclear waste to a
3 permanent repository came and went. More than 15 years later that's
4 still the law of the land, but now it's simply being ignored. Next slide,
5 please.

6 We cannot accept a Waste Confidence Rule that will
7 leave nuclear waste stranded on Prairie Island for decades to come, not
8 for our next generation, and certainly not for the next seven generations
9 of our people, indeed, of all Americans. As Mdewakanton Dakotas we
10 use the term "seven generations" to refer to a length of time, and the
11 successive generations of our people who can be affected by our
12 actions today. But nuclear waste is more than a seven generation
13 problem. Some of the most dangerous toxic substances known to
14 mankind, spent nuclear fuel, must be isolated from the environment for
15 tens of thousands of years.

16 The Dakota people know how the world can change in
17 100 or 200 years. The Dakotas seceded the first tract of land is now
18 what is the State of Minnesota in 1805. At that time, Dakota lands
19 extended from what is now Wisconsin through Minnesota, and into the
20 Dakotas. Fifty-seven years later our people were forcibly removed and
21 exiled from our ancestral lands after the Dakota Conflict of 1862.

22 Our people returned to Prairie Island and a reservation
23 was established in 1936. Today, just 209 years after the first land
24 secession our land base is reduced to 3,000 acres, and along the flood
25 plain of the Mississippi River. That's a 200-year snapshot of Dakota
26 history, and the federal government thinks it can make a 10,000-year

1 promise to deal with nuclear waste.

2 With respect to the Waste Confidence Environmental
3 Impact Statement or study, we have a number of concerns that we've
4 included in our comment letters. While we do recognize that the Waste
5 Confidence Rule does not explicitly authorize individual licensing
6 actions, it allows for indefinite onsite storage of spent nuclear fuel by
7 stating that onsite storage is safe for 60 to 160 years, or longer. It's
8 because of the Waste Confidence Rule that the Administration can
9 state that all sense of urgency to solve our nuclear waste problems
10 we're further from a national repository than we were in the 1990s. Next
11 slide, please.

12 The NRC's assumption in the Environmental Impact
13 Statement sidestep the D.C. Court mandate to analyze potential
14 impacts associated with long-term onsite storage. On what basis can
15 the NRC or Nuclear Regulatory Commission assume that casks will be
16 reloaded every 100 years? What if they are not? On what basis can the
17 Nuclear Regulatory Commission assume that institutional controls will
18 exist in 100 years, or 200 years, and what if they are not?

19 With regards to the safety of extended onsite storage,
20 the Department of Energy and the Nuclear Regulatory Commission are
21 both working on technical studies involving the long-term storage and
22 eventual transportation of high burn-up fuel. Since high burn-up fuel
23 has been used for almost 25 years, we are alarmed that there are still
24 so many concerns, uncertainties associated with the extended storage
25 and transportation of this fuel.

26 The Department of Energy and the NRC are still

1 researching technical issues as cladding, degradation, and fuel
2 assembly embrittlement. The Final Environmental Impact Statement
3 must be revised to include a discussion of public health and
4 environmental impacts from indefinite onsite storage of higher burn-up
5 fuel.

6 The NRC, Nuclear Regulatory Commission and the
7 Department of Energy studies will be used to support indefinite storage
8 including the full-scale cask storage demonstration of high burn-up fuel,
9 should be completed before the Nuclear Regulatory Commission
10 moves forward with the Waste Confidence Rule.

11 We're afraid that the Waste Confidence decision
12 simply kicks the can down the road another 60 to 100 years. By that
13 time, the waste will be too unstable to transport. The end result, the
14 waste will still be stranded on site. Next slide, please.

15 We're also very concerned about the potential cost of
16 developing a dry transfer system and replacing dry casks every 100
17 years. The Draft Environmental Impact Statement contains no
18 discussion regarding the significant cost to fabricate new casks, or to
19 construct a new independent spent fuel, ISFSI, or dry transfer system.
20 What if the state regulatory agencies refuse to allow the utilities to pass
21 these to rate payers or will pay for this?

22 In recent filing with the Minnesota Public Utilities
23 Commission, Northern States Power Company testified that its installed
24 per cask cost at Prairie Island is \$5.6 million. That's a 734 percent
25 increase over the \$812,500 per cask cost in 1990s. That's \$584 million
26 in today's dollars to be reloaded to 98 casks that will be needed if the

1 plant is only licensed to operate for another 20 years. What will the
2 figure reloading costs be if the casks were increased at the same rate
3 they have over the past 25 years? This cost scenario will be repeated
4 across the country. Has the NRC actually calculated or considered
5 costs associated with assumptions? Next slide.

6 The casks at Prairie Island Independent Spent Fuel
7 Storage Installation like every storage facility around the country were
8 meant to be temporary solutions for 20, 25 years. We remain skeptical
9 that these casks could be used for the time period envisioned in the
10 Waste Confidence Environmental Impact Study. It seems like the
11 capabilities of these casks keep increasing while the prospect for a
12 repository decreases. Next slide, please.

13 The Draft Environmental Impact Statement seeks to
14 analyze severe consequences and potential environmental health
15 impacts generically for all facilities. This makes no sense. We are not
16 aware of another Tribal nation whose entire reservation homeland
17 could be rendered uninhabitable by a spent fuel accident. The Nuclear
18 Regulatory Commission must conduct at site-specific analysis of
19 environmental impacts.

20 We can't have any confidence in Waste Confidence
21 Rules that support a failed nuclear waste policy, and that will result
22 indefinite storage of spent nuclear fuel on Prairie Island. The dry cask
23 storage installation will be a threat to our homeland, our livelihood, our
24 way of life until the waste is finally removed.

25 I thank you for your time today. I'll be happy to answer
26 any questions you may have.

1 CHAIRMAN MACFARLANE: Thank you. We're now
2 going to hear from John Sipos, who is the Assistant Attorney General of
3 the State of New York.

4 MR. SIPOS: Good afternoon, Chairman Macfarlane,
5 Commissioners Svinicki, Ostendorff, Magwood, and Apostolakis. My
6 name is John Sipos, and on behalf of Attorney General Eric
7 Schneiderman and the State of New York, thank you for inviting the
8 State to participate in today's meeting on the Waste Confidence Draft
9 Generic Environmental Impact Statement, which I will refer to as the
10 Draft EIS for simplicity sake, as well as the related rulemaking.

11 The State truly welcomes this opportunity to meet with
12 you directly and discuss the State's concerns, and hopes that today's
13 dialogue will lead to improvements in the Draft EIS and proposed rule.
14 Slide 2, please.

15 As you no doubt have gathered from the comments
16 that have been submitted by the States and by last May's petition
17 regarding scope, New York and other states believe that the Draft EIS
18 and the proposed rule are significantly flawed. And I wish to highlight a
19 few of those concerns in my opening statement.

20 First off, the Draft EIS miscasts the federal action. This
21 is a fundamental flaw in the rulemaking. Building off that mistake, the
22 Draft EIS in its analysis of alternatives and severe accidents are also
23 fundamentally wrong. The Draft EIS is critically flawed because it
24 attempts to analyze the consequences of a spent fuel pool accident
25 generically for all facilities based on the modeled consequences of
26 severe accidents at two nuclear power plants located in rural or less

1 populated areas with markedly less building density. Slide 3, please.

2 Accident consequence factors specific to the Indian
3 Point facility, such as the surrounding population, building density,
4 critical and unique infrastructure, and proximity to significant surface
5 drinking water supplies have not been taken into account in the Draft
6 EIS. If we can move to Slide 4, please.

7 There are two reservoirs which are part of the larger
8 New York City watershed and reservoir system, and they are close by
9 to Indian Point. Specifically, the New Croton Reservoir is six miles
10 away, and the Kensico Reservoir is 16 miles away. They were there
11 before the plant was constructed. Several other reservoirs are also
12 nearby, as are Connecticut and New Jersey drinking water resources. I
13 don't want to delay my presentation but I brought a larger version of this
14 map which I'd be happy to share with the General Counsel, Secretary,
15 and the Commissioners. It sets out these water resources in more
16 detail.

17 But generic review of accident risk at Indian Point is
18 inappropriate because the consequences of a spent fuel pool accident
19 in the densely developed and highly populated areas surrounding
20 Indian Point are significantly greater than in the rural or less populated
21 areas in which the reference plants are located.

22 The State of New York respectfully submits that either
23 NRC must conduct a site-specific analysis of the environmental impacts
24 of a severe accident at the Indian Point spent fuel pools, or use the
25 Indian Point site, not a rural or less populated site, as the baseline for
26 this Environmental Impact Statement. Slide 6, please. Thank you.

1 So, the State of New York seeks a transparent,
2 objective, and thorough review of site-specific impacts, alternatives,
3 and measures to mitigate such impacts. There are, the State believes,
4 potential alternatives. Slide 7, please.

5 And as part of that analysis, the State has several
6 considerations or several issues that it would like to take -- it would like
7 the Commission to take into consideration. The proposed rule and the
8 Draft EIS, however, seek to prevent the State from pursuing the
9 site-specific concerns and consequences. Hopefully in our system of
10 federalism and under NEPA a host state, and that is what New York is,
11 if a host state wishes it should be able to review, test, and challenge the
12 assumptions and seek review of alternatives to the proposed federal
13 action concerning the storage of spent fuel within that state. And at the
14 multi-unit Indian Point facilities, the inquiry should examine the impacts
15 posed by the entire site. This, as we understand it, is the concept of site
16 risk. I know that has been a discussion at Commission meetings over
17 the past two or three years. If site risk is not taken into account the
18 exercise will inappropriately segment the review.

19 Now, the Draft EIS makes reference to various
20 considerations that, as the EIS states, help control risk, and it cites to
21 the Part 100 Site Selection Criteria, the General Design Criteria,
22 Emergency Preparation Plans. But ConEd selected this site in 1955,
23 and the federal government authorized it in 1956, well before many of
24 these programs were put in place.

25 I was preparing a list of things that were not on the
26 books, so to speak, in 1955 and 1956. That was before there was siting

1 criteria, before seismic criteria, before population criteria, before FEMA,
2 before emergency planning requirements, before security
3 requirements, before 9/11, before recognition of sabotage concerns in
4 the Energy Reorganization Act, it was before the general design criteria
5 became effective for Indian Point. And the Draft EIS even notes that for
6 a class of plants, there are plant-specific criteria, not generic criteria.

7 To finish out the list of what hadn't taken place in the
8 mid-50s, it was before the accidents at TMI, Chernobyl, and the
9 multi-unit Fukushima accidents. It was before the reprocessing
10 program ended in 1975 or 1976, and before concerns about the
11 accumulation of spent nuclear fuel in dense storage configurations
12 began to arise. And it was before the National Environmental Policy Act
13 of 1969 that required federal agencies to take a hard look at the impacts
14 of their actions, and the alternatives to mitigate those actions. It was
15 before the 3rd Circuit 1989 Limerick Ecology decision required NRC to
16 examine severe accidents on a site-specific basis.

17 The State of New York submits that there is not
18 another site in this nation or on this continent that poses the challenges
19 and risks that Indian Point does given its site-specific profile. Could we
20 go to Slide 8, please.

21 In light of these concerns, and if we could also then go
22 on to Slide 9, as well, in light of these concerns, the State also has
23 concerns given its understanding of the coverage of the Price Anderson
24 Act. And I'd just like to quote from the slide, and I hope I may do so,
25 Commissioner Magwood, but as the slide states, "There is no
26 regulatory framework for environmental restoration following a major

1 radiological release.”

2 Given these issues, the State respectfully suggests
3 that NEPA is not a problem. It shouldn't be viewed as a problem, it
4 shouldn't be viewed as a hindrance. And applied correctly, it can
5 contribute to better decisions and address the State's concerns, and
6 help identify alternatives in mitigation, mitigation alternatives that can
7 protect the environment. Slide 10, please.

8 The State of New York led a 2011 and 2012 challenge
9 to the Temporary Storage Rule because it believed that communities
10 that serve as de facto long-term nuclear waste repositories deserve a
11 full and detailed accounting of the environmental public health and
12 safety risks. And it believes that a full range of alternatives should be
13 identified, evaluated, and truly factored into NRC decision making. The
14 State respectfully submits that the Waste Confidence DGEIS as
15 presented fails to provide such a full and detailed accounting and,
16 therefore, fails our communities.

17 The State hopes that you, the Commissioners, will
18 review the comments by the State of New York and other states and
19 address what we believe are the draft's deficiencies before the
20 rulemaking process continues on. Again, the Attorney General
21 appreciates the opportunity to present the State's views to you, and as
22 a fellow government in our system of federalism, and as a host state,
23 the State seeks to present objective information to you, the directors of
24 this agency. Host states do have a critical interest in this Commission's
25 decisions.

26 Thank you for your attention, invitation, and time.

1 CHAIRMAN MACFARLANE: Thank you. Next speaker
2 is Ellen Ginsberg, who is Vice President and General Counsel, and
3 Secretary of the Nuclear Energy Institute.

4 MS. GINSBERG: Good afternoon, Chairman
5 Macfarlane and Commissioners Magwood, Svinicki, Apostolakis, and
6 Ostendorff. Thank you very much for the opportunity to participate in
7 today's meeting to discuss the commercial nuclear energy industry's
8 and NEI's perspectives on the Waste Confidence proposed rule and
9 Draft Generic Environmental Impact Statement. As did John, I will refer
10 to this as the GEIS. Next slide.

11 NEI submitted detailed comments on the proposed
12 rule and Draft GEIS in December of last year. As requested, I will not
13 reiterate those comments, but instead I would like to provide how those
14 comments respond to some of the issues raised by others. Next slide.

15 Questions have been raised regarding the NRC's
16 framing of the proposed federal action as a rule to codify the Agency's
17 generic determination regarding the impacts of spent fuel storage
18 pending disposal. We believe that the NRC has correctly defined the
19 proposed action. The Court of Appeals in its decision stated that the
20 rulemaking in question constituted a major federal action. In fact, I
21 would call attention to the fact that the court itself said, and I quote, "We
22 agree with petitioners that the Waste Confidence rulemaking is a major
23 federal action." This characterization is consistent with the nature of the
24 Waste Confidence Rule, and the rule itself is not a specific licensing
25 action. Therefore, the alternatives to the proposed action are not
26 alternatives to licensing, but alternatives to a rulemaking, such as was

1 described in the GEIS and a policy statement.

2 Some have advocated that the NRC should consider
3 the alternatives of a licensing moratorium in its Waste Confidence
4 rulemaking. Again, I would note that this type of alternative is
5 considered by the NRC, but it's not considered, and is considered in
6 individual licensing actions as a no-action alternative, but it's not
7 considered as an appropriate alternative to this rulemaking.

8 Notwithstanding the differing opinions and positions on
9 defining the proposed action, I would emphasize that the NRC has
10 fulfilled its NEPA obligations and satisfied the court's remand by taking
11 a hard look at the impacts of spent fuel storage pending disposal. Next
12 slide, please.

13 Regarding the adequacy of the NRC's assessment of
14 the unlikely scenario whereby a repository does not become available,
15 NEI agrees with the Commission that the 60-year time frame is the
16 most likely scenario for repository availability. It's wholly unreasonable,
17 which is to say remote and speculative for NEPA purposes to assume a
18 complete failure of the federal government to meet its legal obligations
19 to dispose of spent fuel.

20 With respect to the short-term and long-term time
21 frames assessed in the Draft GEIS, the NRC's assumptions are quite
22 conservative. For example, the NRC assumes that spent fuel will be
23 repackaged every year. The industry's operating experience with spent
24 fuel storage systems demonstrates that repackaging at this frequency
25 is not likely to be necessary.

26 Using those types of very conservative assumptions

1 has resulted in a Draft GEIS, and again we would stress one that
2 satisfies NEPA's hard look mandate. Storage in the short and long-term
3 time frames relies on proven technology and procedures that can be
4 accomplished safely. Next slide, please.

5 For all of the time frames assessed, the NRC
6 reasonably assumed that institutional controls will continue to exist.
7 During the short and long-term time frames, spent fuel storage systems
8 will remain under NRC oversight. I would note that this assumption is
9 consistent with current NRC regulations, such as 10 CFR Part 61. It
10 was reasonable for the NRC to assume the existence of institutional
11 controls, and the failure to establish a permanent repository is already a
12 highly unlikely event which neither NEPA, nor the court requires a
13 piling-on effect of additional conservatism by assuming the loss of
14 institutional controls. Indeed, that would be a worst case and remote
15 and speculative scenario beyond the reach of NEPA.

16 We have noted in our comments, however, that the
17 Department of Energy's EIS for the no-action alternative for Yucca
18 Mountain does assume that institutional controls would fail after 100
19 years. Although we continue to believe that that is a worst case
20 scenario, we do suggest that the NRC in its GEIS refer to the analysis
21 already done.

22 The Commission has directed the Staff to adopt or
23 incorporate by reference other agency analyses, and this is exactly
24 what we're suggesting. It's consistent with COMSECY-12-0016. Next
25 slide.

26 The Draft GEIS also satisfies the court's direction and

1 meets the Agency's NEPA obligations to assess the spent fuel pool
2 leaks, and it does so by using a bounding analysis. The GEIS does not
3 simply recite the data from past leaks, or rely solely on the Agency's
4 regulatory oversight. Rather, it appropriately describes the regulatory
5 regime for spent fuel pool leaks and also explains the industry initiatives
6 for groundwater monitoring and remediation. This analysis of spent fuel
7 pool leaks doesn't merely hinge on the NRC being "on duty." Rather, it
8 requires and recognizes the responsibility and actions of licensees to
9 detect and mitigate leaks. The GEIS also uses information from past
10 leaks to inform its assessment. Information from past leaks is one data
11 point in the Agency's overall assessment. Next slide, please.

12 The NRC's approach to spent fuel pool fires is
13 consistent with the federal precedent in the Carolina Environmental
14 Study Group case. The NRC's recent consequence study of the effect
15 of beyond design basis earthquakes on spent fuel pools further
16 supports the Draft GEIS' conclusion. In that study, I -- or that study
17 found, and I quote, "Spent fuel is only susceptible to a radiological
18 release within a few months after the fuel is moved from the reactor to
19 the spent fuel pool." Next slide.

20 On the issue of whether the GEIS should incorporate
21 the environmental impacts into site-specific cost-benefit analyses, there
22 is simply no evidence that either the costs or impacts of spent fuel pool
23 storage will tip the balance of a NEPA cost-benefit analysis for an
24 individual project. As set forth in the GEIS, the environmental impacts of
25 continued spent fuel storage in the short and long-term time frames are
26 small. Moreover, the cost- benefits of specific projects are considered in

1 individual licensing reviews. Whether the small impacts of continued
2 spent fuel storage tip the NEPA balance could be considered an
3 individual case, of course, without the opportunity to litigate in individual
4 proceedings such as the generic issues already addressed in the
5 rulemaking. Next slide.

6 There is ample support in the existing record including
7 from the previous Waste Confidence decisions to make a reasonable
8 assurance finding regarding the availability of a repository, and the
9 safety and small impacts of storage until a repository is available.
10 Consistent with the prior Waste Confidence decisions, the traditional
11 findings should be retained. The court's remand did not require that the
12 NRC remove or change the findings, only that the Agency remedy
13 certain aspects of its environmental assessment. Next slide.

14 This slide contains NEI's suggested language for the
15 Waste Confidence Rule. For the reasons I've just discussed, we urge
16 the Commission to retain the reasonable assurance findings regarding
17 the availability of a repository, and for the continued safety of spent fuel
18 storage. There is certainly more than ample support in the record to do
19 so.

20 And with that, I'd like to thank the Commission for the
21 opportunity to present the industry's views.

22 CHAIRMAN MACFARLANE: Great, thank you for
23 saving us a little time. Next we have Michael Callahan who is here from
24 CCMSC Corporation on behalf of Governmental Strategies and the
25 Decommissioning Plant Coalition.

26 MR. CALLAHAN: Well, thank you. The

1 Decommissioning Plant Coalition appreciates the opportunity to appear
2 before you today on the Waste Confidence draft rule and the
3 accompanying Generic Environmental Impact Statement. Slide 2,
4 please.

5 We first want to emphasize our great respect for Keith
6 McConnell and his team for the outstanding work they are performing
7 on this matter. Their efforts bring great credit to themselves and to the
8 Commission as a whole. Slide 3, please.

9 The Decommissioning Plant Coalition or DPC is
10 comprised of a number of standalone former reactor sites where
11 reactor operations have permanently ceased and decommissioning
12 activities have been accomplished, are being accomplished, or lie
13 ahead in the site's future. This slide shows our current members we
14 originally formed in 2001. Slide 4, please.

15 Our main purpose has been and remains to do
16 everything we can to insure that issues that have unique impact on the
17 permanently shut down facilities are properly addressed, and we have
18 often stated, and I want to convey this again today that our members
19 have kept and will continue to keep the stored spent fuel and greater
20 than Class C waste safe and secure as long as we are the owners and
21 licensees.

22 We're trying to hasten the day when the federal
23 government will fulfill its contractual obligation to remove the spent fuel
24 and greater than Class C waste from our sites. As the government's
25 action has stretched on longer than our companies, our states, and our
26 communities ever envisioned, our companies are increasingly

1 interested in insuring that the NRC recognizes that its proposals and
2 actions often, and perhaps usually have a unique impact on our current
3 and soon to be independent spent fuel storage installations.

4 I'm going to summarize our complete statement in the
5 interest of time, and with that let's go to Slide 5.

6 With respect to the draft rule itself, we believe that the
7 scope of the rule is appropriately limited to the deficiencies identified by
8 the court. We believe that the rule firmly and fairly addresses these
9 deficiencies, and that its analysis of short, intermediate, and long-term
10 storage time frames are more than adequate to support the long-held
11 tenet that the U.S. can and will successfully store and dispose of used
12 fuel and reactor-generated high-level waste. That, in summary, are our
13 comments on the draft rule itself. Slide 6, please.

14 Before adding comments on the Draft Generic
15 Environmental Impact Statement and providing information on the four
16 questions that you asked commenters to address, we return again to
17 our primary recommendation in our December 31st, 2012 letter on the
18 Waste Confidence scoping process that the Commission must as its
19 first principle continue to hold to and articulate its long-established tenet
20 that it does not support indefinite onsite storage of spent fuel or greater
21 than Class C waste. Continued default by the federal government in
22 fulfilling its contractual obligations under the standard contract and the
23 resultant indefinite storage at our shutdown reactor sites simply should
24 not be endorsed as acceptable public policy. Please be aware that after
25 the publication of the rule and the GEIS, the Commission and Staff will
26 remain responsible for insuring that NRC regulatory programs and

1 policies do not foster indefinite onsite storage presumably
2 unintentionally.

3 We continue to encourage the Commission to
4 undertake an analysis of best practices regarding storing and securing
5 spent fuel and greater than Class C waste at our sites, and then to
6 articulate those in communications with the Executive Branch and the
7 Congress, and in addressing the public. Slide 7, please.

8 You asked commenters to address the four questions
9 in the FRN that accompany the draft rule and the Staff believes it would
10 be helpful if we did so today. Let us say first that we remain confident
11 that the federal government will meet its constitutional and statutory
12 obligations to protect citizens from safety and security threats. This
13 slide summarizes we don't believe a specific time line is necessary.
14 Please retain ample explanations in the elements of the rule, support
15 the Statement of Considerations, and we do endorse a name change of
16 the rule. Slide 8, please.

17 The draft Federal Register Notice for the proposed final
18 rule states that the analysis in the GEIS provides a regulatory basis for
19 the final rule. It also states that the analyses in the GEIS are based on
20 current technology and regulation. We believe that these two
21 statements require some additional amplification.

22 The storage stick canisters used at our site can support
23 safe storage of spent nuclear fuel and high-level waste for decades to
24 come. Additional research is either underway or will be needed has
25 been identified to specify exactly how much longer these systems can
26 fulfill their safety and security functions with appropriate margins.

1 The results of that research will need to be considered
2 with the results of intervening and ongoing policy, legislative, and legal
3 activities. These will determine exactly how long we should proceed to
4 the future in serial acquisition and operation, and decommissioning of
5 prospective dry transfer systems and ISFSI systems and sites.
6 Therefore, the above language both here and where applicable in the
7 GEIS ought to be clarified and amplified to better explain that the
8 100-year building requirements are being used in recognition that such
9 rebuilding is probably and surely necessary at some point, that 100
10 years is chosen for the purposes of the GEIS as a reasonable surrogate
11 until those future research needs, information needs are complete and
12 that dry transfer systems may well be needed should the period of that
13 reactor storage extend to or beyond 100 years, and is similarly being
14 used as a reasonable surrogate. Refining the language will also lessen
15 any confusion over what the NRC regulations are now or will be after
16 the collection of the analysis and necessary information.

17 We have some additional comments on the GEIS in
18 our full statement, and with that, Slide 9, please.

19 As a final matter, we wish to return to the task you have
20 before you as additional plants shut down and face decommissioning
21 after this rulemaking. The newly shutdown plants in the Agency seem at
22 times to be straining to reach decisions that address matters that were
23 settled when a number of our plants shut down many years ago. We
24 hope the Agency can draw on these precedents and allow the process
25 of modifying and deleting requirements at the newly shutdown sites,
26 where warranted, by the sharply reduced hazards of having the fuel

1 permanently removed from the reactor, and having pledged to cease
2 operating.

3 We are working to inform that process within the
4 shutdown community, and hope the NRC can take advantage of
5 personnel, resources, recorded decision documents, and other
6 measures to facilitate current decision making and provide increased
7 clarity with which the NRC and licensees can address community's
8 questions. Slide 10, please.

9 In summary, we believe the draft rule addresses the
10 deficiencies found by the court, that the Commission should expand
11 and clarify its written material ancillary to the rule, as well as the GEIS,
12 and that the Commission must seek ways to exercise its safety and
13 security policy role in spent fuel management to insure it does not
14 passively endorse onsite storage.

15 Thanks again for the opportunity to appear today, and
16 be glad to answer any questions.

17 CHAIRMAN MACFARLANE: Thank you. And the final
18 presentation for this panel is from Geoff Fettus who is the Senior
19 Project Attorney at the Natural Resources Defense Council.

20 MR. FETTUS: Thank you very much, Chairman
21 Macfarlane and fellow Commissioners. Thank you very much for having
22 us this afternoon.

23 Rather than read a statement to you and go into our
24 extraordinarily detailed comments, I thought I'd go into more of a
25 30,000-foot range and hopefully be very concise so we can get right to
26 the questions, because I think I have some very different perspectives

1 from my excellent colleague, Ellen, and let's just get right to it. First
2 slide, please.

3 The three primary points, and I'm not going to read the
4 slides to you either. And, by the way, fortunately you won't have to read
5 the slides here, a lot of them, because some of them I hope you take
6 back and you pour yourself a coffee or a tea, whatever it is you drink,
7 and you actually do read a few things at some point as you start to
8 deliberate. And the first thing you need to read is the court decision from
9 June of 2012. And the next thing you need to start reading are the range
10 of comments that you got, but always go back to the court decision and
11 look at what they said.

12 And I tried to, in thinking about what I was going to take
13 a very short period of time to talk to you about today in that 30,000-foot
14 level, I thought I'd start with and end with we have a fundamentally
15 different conception of NEPA. And I think that's evident in our
16 comments and all the particulars, but let's talk more broadly what we
17 think that is. We also tried to provide you a path forward in our
18 comments, and I'll get to that. Next slide, please.

19 And then a fourth point just to make sure, there's
20 nothing new here today that I'm going to bring up, and there's nothing
21 that adds to the record. We're going to talk about what we wrote. Next
22 slide, please.

23 Here's what I think the fundamental disagreement is.
24 And it's not an EIS that's focused on a rule per se, it's that the NRC
25 thinks the proposed action is whether or not it writes a rule. We think the
26 proposed action is the continued licensing of nuclear power plants that

1 allows for the production of nuclear waste then will have attendant
2 environmental impacts as it has to be stored perhaps indefinitely. And,
3 again, this is where I encourage you to go back and read the June 2012
4 decision from the D.C. Circuit. Next slide, please.

5 Here's your proposed action, there's the site. Next
6 slide, please. Again, you don't need to read it. Here's your purpose and
7 need. I just wanted to make sure that I was quoting directly and in the
8 slide as you guys do go back and take time to reflect. Next slide, please.
9 And here are your alternatives, and they're very concise, and they're
10 focused on the rule, and they're focused on ways of carrying out the
11 rule, or not even doing a rule is one of your alternatives. So, next slide,
12 please.

13 What actually happened? As I said, I'm going to be
14 concise so we can get to the questions. So, by statute a major federal
15 action is one that significantly affects the quality of the human
16 environment. Performing what we called in our comments the minor
17 bureaucratic act of selecting among four alternative ways to complete
18 the NEPA response is not a major federal action that affects the
19 environment. Such an act in and of itself doesn't rise and trigger
20 NEPA. Next slide, please.

21 We looked broad and far to find any comparable
22 federal agencies that had done such an EIS triggered by a rule and we
23 found nothing even close to comparable in terms of prior federal
24 analyses, in terms of what the alternatives were. There were EISs that
25 were focused on rulemaking, but then they burrowed into actual
26 environmental cost-benefit which this doesn't do in the alternatives,

1 which is the heart of NEPA. Next slide, please.

2 So, here I simply quoted a bit from our comments just
3 to make sure that there's no departure today, nothing new that you
4 haven't heard before. And the focus is on first a major federal action,
5 but we didn't just criticize what you did, we decided to try and be
6 constructive, as we always try and be constructive, and have a long
7 history with this Agency and others of trying to offer solutions and a path
8 forward, so next slide, please.

9 We actually frame for you a legally compliant definition
10 of a proposed action that actually focuses on a rule. And I'll read part of
11 it to you. "The NRC proposes to reinstate as a predetermined stage of
12 its individual licensing actions," and by the way, I'll stop right there. I
13 wanted to parse this for you.

14 Read the 2012 decision and look at how the D.C.
15 Circuit understood the Waste Confidence rulemaking as a predicate for
16 licensing actions. It's not -- go back to our scoping comments, as well,
17 and the exchange of letters that Ms. Curran and I had with the
18 Chairman in the process prior to the scoping even coming out. So, I
19 guess that was post-scoping/pre-draft to be precise.

20 So, first the NRC proposes to reinstate as a
21 predetermined stage of individual licensing action for nuclear reactors
22 and independent spent fuel storage installations a binding rule that
23 generically considers and determines for the purposes of future
24 licensing reasonably foreseeable, and you can read the rest
25 yourselves. But that would actually frame a federal action that I think
26 would lead necessarily to site-specific EISs at some point down the

1 road, but that would frame a defensible federal action under the law.

2 Next slide, please.

3 And once you actually frame such a federal action you
4 would actually create -- what would flow from it would be a range of
5 alternatives, so we also put that in our comments. And I decided, it was
6 actually an office discussion whether or not I would bring page 32 of our
7 comments with it and hand it across the table again. 32 is if you actually
8 printed the PDF of the comments that we submitted to the Agency, it's
9 not an 8.5 by 11 piece of paper, it's 8.5 by 14 because it wouldn't fit.
10 And, thankfully, computer systems or the word processing systems now
11 allow us to do that. It's pretty fantastic, so I think it's page 32. And we
12 actually drew up a matrix of what a proposed action would look like, and
13 then what the actual alternatives would look like. So, next slide, please.

14 And you would actually look and be able to contrast the
15 issues of real alternatives with real environmental costs and benefits.
16 And the alternatives that we selected for you, again we tried to think in
17 terms of what the Agency needs to actually do before it to comply with
18 NEPA, contrasted with the current approach of what we think is a focus
19 on the minor bureaucratic task of selecting whether or not you're
20 going to do a rule. Next slide, please.

21 On the matrix on page 32 that we hope you reflect on
22 with your coffee or your tea, are relevant time scales, alternative
23 storage modes, safety-relevant classes of spent fuel, the high burn-up
24 question raised by my colleagues, storage cask technology options,
25 and then most important, reliance on erosion of institutional controls as
26 a function of time which -- and, again, there's a long discussion in our

1 comments on the issue of institutional controls, and DOE's Scenario 2
2 where they look at the loss of institutional controls at independent spent
3 fuel storage facilities. Next slide, please.

4 When you actually look at the factors we said okay,
5 now what would the NRC actually have to look at? What would a real
6 EIS that burrowed into this look at? Well, we actually came up with a
7 no-action that we think you're facing which is continued storage. I
8 mean, as far as I know spent nuclear fuel exists and it's not going away,
9 so its baked in under the existing licenses. Reasonable Alternative 1,
10 license extension only based on current licenses. Reasonable
11 Alternative 2, proposed reactors with COLs -- I'm sorry, I violated the
12 no acronyms, the Construction and Operating License applications
13 received by 2030. Reasonable Alternative 3, current market share
14 scenario of spent fuel production which would be substantial growth for
15 the industry as far as we see going out to 2030, or even Reasonable
16 Alternative 4, a major growth scenario. So, we think all of those would
17 be reasonable alternatives to examine. And none of it would be
18 reinventing the wheel for you. Next slide, please.

19 So, what should happen now in my brief time? This is
20 what we think the court directed you to do, is to identify the major
21 federal action. We think that was done for you in that decision, and you
22 disregarded what the court has said here in the draft thus far. But,
23 number two, you have to evaluate the environmental effects of failing to
24 secure permanent storage, and that's directly from the decision.
25 Number three, to properly examine the future dangers and key
26 consequences with respect to spent fuel pool fires and leaks, and that's

1 from the decision. And we think thus far you failed to perform these
2 actions. Next slide, please, final slide.

3 We don't think -- yes, will this take longer? Yes. But we
4 don't think a lot of this is reinventing the wheel. There are places to start
5 and work that's ongoing and analyses that can be incorporated and
6 expanded upon. And we think the Draft GEIS needs to be withdrawn,
7 we think it needs to be rescoped and then reissued along the lines of
8 what I've described, and on page 32 we've tried to give you a roadmap.
9 And we thank you very much for allowing us this time to speak with you
10 today, and I look forward to your questions.

11 CHAIRMAN MACFARLANE: Thank you. Okay, thank
12 you all for your presentations. We move to the question part and we're
13 going to start off with Commissioner Svinicki.

14 COMMISSIONER SVINICKI: I want to add my thanks
15 to those of Chairman Macfarlane for certainly your presence here
16 today, and for the aspects of the comments submitted by each of your
17 organizations that you've highlighted here today. And I wanted -- I was
18 thinking about Mr. Fettus' comments about the full complement of
19 comments, so I think from just the organizations represented here at
20 the table when we printed those out, and I don't know if any of my
21 colleagues brought their binders down here today, but it's a stack of
22 papers, so just from your organizations, not the full comment record. I
23 think it's three or four inches worth of paper, so I know that we gave you
24 a period of time that is inadequate for you to cover the full range of
25 topics that your organizations developed on Waste Confidence. And I
26 also want to acknowledge, as the Chairman did, that we had a lot of

1 commenters who are not represented here today. We did our best to
2 get a diversity of viewpoints but, of course, you are representative of a
3 much larger comment record, and organizations that -- and individuals,
4 as well, who presented comments both perhaps consistent with those
5 we've heard here today, and other perspectives that in the interest of
6 time in this meeting were not able to present. But, certainly, the
7 comment record itself is available for each of you to examine.

8 As Chairman Macfarlane noted, the structure of this
9 meeting is also a little bit confining today because we do both have all of
10 the Waste Confidence proposed contentions that are held in abeyance
11 upon order of the Commission in various proceedings. And then we
12 also are at a phase in this -- in the procedural process that we're going
13 through that we are in receipt of the body of public comment but the
14 Staff will struggle when they come up here with the fact that they have
15 not yet fully evaluated and gone through that comment record.

16 So with the awkwardness that that presents, I think a
17 question that occurred to me certainly when I've been in your position, I
18 have taken a body, a much larger body of information and then I have
19 been confined to present and highlight only various aspects of it, it may
20 be that some of you, if you're like me, as you listen to other presenters
21 you thought, you know, I considered emphasizing that in my
22 presentation, and I didn't. So, I wanted to first provide an opportunity if
23 any of you upon hearing your fellow presenters and what they had to
24 say, if there was anything within the four corners of the comments that
25 you submitted from your organizations that you now say I should have
26 emphasized that, and I would like to take a moment to make that point

1 in response to any other commenter. Is there anyone who's thought
2 about that and wanted to add to anything that they presented already
3 today? Mr. Fettus, if you would like, because you kind of even teed up
4 that thought a little bit, so you mentioned Ms. Ginsberg and some points
5 of departure you take.

6 MR. FETTUS: Well, thank you so much for the
7 opportunity, again. A couple of things I'd like to echo. First, I'd like to
8 echo Mr. Sipos' point that we really believe that this shouldn't be a
9 hindrance, rather an opportunity to do the analysis right, because this is
10 an analysis the public interest community has waited for -- and I
11 speak for just NRDC, but I can say the public interest community has
12 waited for this analysis for nearly four decades since this process first
13 came out of an NRDC petition for rulemaking in the late 1970s. And I
14 think a strong generic review then triggers initial -- then triggers strong
15 site supplemental reviews is a crucial process for the Agency to
16 undertake, especially to engender public trust in what's been a long and
17 winding road for the search for repositories.

18 And you're familiar with my work on Capitol Hill as well
19 from our respective paths and there's a long public record that both I
20 have and NRDC has on support for a strong science-based repository
21 program. So, we are deeply in favor of a repository program. I actually
22 think it's going to end up being repositories but, again, you can look at
23 my public testimony before Senators Wyden and Murkowski on these
24 issues. But just the actual act of support for finding a repository and
25 having statements -- and this is responding to Mr. Callahan, having
26 statements of Agency support for finding a repository and against

1 indefinite storage. Well, I think we're all against indefinite storage. I
2 mean, nobody thinks this is the right way to go. We have different
3 visions on what would constitute a proper repository program, but doing
4 this analysis can help inform that path forward for Congress and
5 everybody else in a way that's very important.

6 And as a last thing, in doing that analysis there's a long
7 discussion in our comments which I hope you read on institutional
8 controls and DOE's Scenario 2 which was its section of its EIS where it
9 looked at the loss of institutional controls at spent fuel pools and
10 independent storage facilities at sites around the country. And we think
11 we raised a number of criticisms of DOE's Scenario 2, but I'd like to
12 stress something we stressed in our comments.

13 DOE's Scenario 2 they conducted I think in '99 or
14 2000, so it's dated but it's not that dated, it's a starting point. You don't
15 have to reinvent the wheel. Just referencing it is inadequate under
16 NEPA. I mean, that's a meaning that doesn't remotely constitute a hard
17 look. However, using that as a starting point for the analysis and
18 addressing the issues of high burn-up fuel and a whole bunch of things
19 that will need to be done to improve upon that analysis, that's NEPA,
20 that's a start, so thank you for the opportunity, Commissioner.

21 COMMISSIONER SVINICKI: Thank you very much.
22 Did anyone else have any points that they would like to raise? Yes, Mr.
23 Callahan.

24 MR. CALLAHAN: Just very briefly, I shared Ron's
25 frustration, if you will, about the indefinite storage. Hopefully, that
26 statement, just the very statement itself can survive in whatever product

1 of your work is, that is, you're not endorsing it. And we continue to try to
2 suggest ways, and suggest that you look for ways limited as you are to
3 exercise some analysis to articulate and advance those thoughts. But
4 that's what struck me in Ron's statement.

5 COMMISSIONER SVINICKI: Okay, thank you. Would
6 anyone else like to amplify? Mr. Johnson?

7 MR. JOHNSON: Just from my perspective from
8 outside looking in, as just a general citizen here but I'm an elected
9 official from the Prairie Island Indian Community, my role is to govern
10 and I haven't the capacity to go beyond that as far as in the nuclear
11 industry here. And I think I've kind of encroached on that line, which I'm
12 doing it for the safety of our community. But I'd much rather concentrate
13 some of my duties and responsibilities to governing than having to
14 address an issue that hopefully the NRC, the Nuclear Regulatory
15 Commission, and the Department of Energy who are part of this federal
16 government can help in coming to a corrective solution on our nuclear
17 waste in America here today. So, that's the way I look at it. Thank you.

18 COMMISSIONER SVINICKI: Thank you. And, again,
19 we really appreciate your traveling to be present to communicate that in
20 person.

21 MR. JOHNSON: Thank you.

22 COMMISSIONER SVINICKI: Thank you. Did either of
23 the -- any of the rest of the panel want to say anything?

24 MS. GINSBERG: I'll go next. Thank you.

25 COMMISSIONER SVINICKI: Okay.

26 MS. GINSBERG: And I would endorse what Mr. Fettus

1 said which is there is stark contrast between his view and mine. I think
2 it's important, though, and this is really the tip of the iceberg, but I think
3 it's very important to recognize what this rulemaking is and what this
4 rulemaking is not. And this rulemaking is a review of onsite and offsite
5 storage for the period following license termination, license expiration
6 until disposal. It is not a fundamental review of the federal government's
7 consideration of repositories. It's not a fundamental view of a variety of
8 other things that were mentioned today, so I just think it's important in
9 the context of this conversation to remember what the rulemaking
10 focuses on, what the court addressed, and what the court said. Thanks.

11 COMMISSIONER SVINICKI: Okay, thank you. And,
12 Mr. Sipos, I have one and a half minutes but I'll give it to you if you
13 would like. I have a feeling you might have some contrasting points.

14 MR. SIPOS: Yes. Thank you, Commissioner. One item
15 that Ms. Ginsberg referenced was that there might be a possibility for
16 the states to pursue issues in individual licensing proceedings, and we
17 just don't see that. We see the rule as an attempt to terminate that or cut
18 that off. And we do think as a government, as a participant in the federal
19 system that the state with, you know, competent attorneys, hopefully,
20 and experienced experts can bring concepts to the Commission's
21 consideration that can be the basis of alternatives, and possibly
22 cost-effective alternatives, and that that would -- that that is a societal
23 benefit. And we feel very strongly that there must be that opportunity
24 either here or -- we think it should be here, but it has to be someplace.
25 Thank you.

26 COMMISSIONER SVINICKI: Thank you. I thank you

1 all. Thank you, Chairman.

2 CHAIRMAN MACFARLANE: Thank you very much.
3 Commissioner Apostolakis.

4 COMMISSIONER APOSTOLAKIS: Thank you. There
5 are two issues that are not very clear in my mind. One is this generic
6 versus site-specific analysis, and the other has to do with the remote
7 and speculative scenario, so let's start with the generic.

8 Mr. Sipos, you said -- I think you said that if the NRC is
9 to do a generic EIS picking Indian Point as a case study rather than
10 some other study, of course, that would create problems for other sites
11 that would feel that that's not representative. And then I believe Mr.
12 Fettus said that you're for site-specific analysis, or something to that
13 effect?

14 MR. FETTUS: Yes.

15 COMMISSIONER APOSTOLAKIS: Okay. So, I'd like
16 some elaboration on this. What should the Agency do? I mean, there
17 are site-specific features. Can a generic statement cover those, or do
18 you want a generic statement to be supplemented by site-specific
19 analyses? What -- can you clarify that for me?

20 MR. SIPOS: Yes, Commissioner, I will try to do -- I will
21 try to clarify it for you. Each site poses -- has a different profile, and it's
22 not just is it a BWR or a PWR. It is what is -- what are the
23 characteristics of the human environment within 50 miles of that plant.
24 And a severe pool accident at Wolf Creek would likely lead to different
25 consequences than a severe pool accident at Indian Point. And I
26 viewed many of your meetings, and you've had discussions about risk,

1 likelihood of events, times to consequences. I believe you returned to
2 that in the last meeting in January on the spent fuel pool consequence
3 study. And given the unique profiles of each site, 60, 65 sites, there are
4 likely going to be different environmental consequences, so as the
5 Commission has done elsewhere in other contexts for severe
6 accidents, we in New York State believe it would be appropriate in the
7 context of spent nuclear fuel, which has sort of been off the table for a
8 while going back to NUREG-1150, going back to other examinations
9 have been focused on reactor, what is the reactor risk? And we could
10 also talk about what is the site risk? And I know that's been another
11 topic of conversation, but we believe that through NEPA, through a
12 cost-benefit analysis, through some of the tools that the federal
13 government has developed, that there would be a path to identify
14 cost-beneficial alternatives. And it may not be for every facility, and it
15 may not be that every state wishes to -- there may be many states who
16 don't wish to -- who don't have concerns, but if a state does have a
17 concern we think an adequately resourced, competently staffed state
18 effort, that there should be an opportunity for that. I don't know if I've
19 addressed your question.

20 COMMISSIONER APOSTOLAKIS: We're getting
21 close. You probably have something to say.

22 MS. GINSBERG: Yes. I was just going to add, you
23 know, reasonable scenarios are part of the NEPA analysis. And it's
24 important that we look at the probability times consequences as the
25 Agency did. The recent consequence study just said that for -- it's
26 only for several months, and several is defined -- is a relatively short

1 period of time, that there's any risk of a spent fuel pool fire. I needn't tell
2 you, Commissioner, you're the PRA expert, but the risk goes down to
3 virtually zero after just a few months when the spent fuel cools in the
4 pool. And then, moreover, it's moved to casks thereafter.

5 COMMISSIONER APOSTOLAKIS: But how does that
6 address the issue of site-specific versus generic?

7 MS. GINSBERG: There's nothing unique about the risk
8 of the actual incident or release, if you will, for Indian Point as opposed
9 to anywhere else.

10 COMMISSIONER APOSTOLAKIS: Yes, it's a
11 statement you have on your Slide 5 that the site-specific cost-benefit
12 analysis will not tip the scale, something like that.

13 MR. SIPOS: And, Commissioner, we think it would.

14 COMMISSIONER APOSTOLAKIS: Now, this other
15 thing, no repository forever. Am I to take it from your comments, Ms.
16 Ginsberg, that you believe this is a remote and speculative scenario?

17 MS. GINSBERG: We believe it's highly unlikely, and
18 that the Agency has appropriately taken a much more rational and
19 reasonable approach considering various time frames, the 60-year time
20 frame, and then the 100-year time frame. It's not that the Agency didn't
21 look at this, which is what NEPA requires. NEPA requires that there be
22 consideration given the court's decision, with which I might add we
23 take issue, but the D.C. Circuit decided what the D.C. Circuit decided.
24 So, we think that, basically, the Agency has done what needs to be
25 done under NEPA. There's a hard look that's been taken at the two
26 earlier periods. If you look at international -- the international

1 experience, there's reason to believe that within 35 years one could
2 establish a repository, so 60 years, 100-year time frame are very
3 reasonable.

4 The Agency looked at the no repository time frame, or
5 pardon me, scenario, and decided that that wasn't the likely scenario.

6 COMMISSIONER APOSTOLAKIS: But in your answer
7 you used the word "unlikely," but in your slides you use the word
8 "remote." Am I to take those to the --

9 MS. GINSBERG: Pardon me?

10 COMMISSIONER APOSTOLAKIS: Remote and
11 speculative?

12 MS. GINSBERG: I would argue it's remote and
13 speculative. The D.C. Circuit had a slightly different view of it, so I think
14 highly unlikely and remote and speculative here can be considered as
15 representing the same concept.

16 COMMISSIONER APOSTOLAKIS: How does one
17 prove that? Do you have to prove it that it's remote -- or is it a matter of
18 judgment? I don't know how I would do that.

19 MR. FETTUS: Oh, I'm happy to talk to this,
20 Commissioner.

21 COMMISSIONER APOSTOLAKIS: Oh, you --

22 MS. GINSBERG: And I'd probably be happy to
23 respond.

24 MR. FETTUS: First, I'd like to -- this Commission is
25 well aware of its obligations, and I've known all of you for a long time.
26 You're well aware of your obligations, and you work very hard to carry

1 them out. And what the D.C. Circuit wrote in its June opinion of 2012 is
2 law. And the D.C. Circuit invalidated the Commission's conclusions as
3 a whole, and it didn't just remand the Waste Confidence Rule, it
4 vacated it. It's gone, gone in its entirety. And when they vacated it, they
5 vacated everything in it.

6 And I just need to stress so clearly that go back and
7 read -- as I started today with my 30,000-foot proposal, go back to the
8 decision and read that first. And one of the things they talk about was
9 there is no basis for confidence that we will have a repository. And the
10 Agency needs to analyze what that means.

11 It is not wholly unreasonable, remote or speculative to
12 consider that the federal government or -- which we don't need to go
13 re-litigate the many decades ago decision for the federal government to
14 assume the industry's burden of the waste. That is as -- but there's no
15 reason to believe right now, despite the extraordinary efforts of a lot of
16 brilliant people to presume that we will arrive at a repository, or
17 repositories in any near-term future. The Blue Ribbon Commission that
18 Chairman Macfarlane sat on worked very hard on this and tried to chart
19 out a roadmap with the assistance of NEI, with the assistance of NRDC,
20 and many others.

21 COMMISSIONER APOSTOLAKIS: But you are using
22 the word --

23 MR. FETTUS: And it's not remote --

24 COMMISSIONER APOSTOLAKIS: -- "believe," it's a
25 matter of belief then. It's not a matter of proof.

26 MR. FETTUS: What? What is a matter of belief?

1 COMMISSIONER APOSTOLAKIS: That there will
2 never be a repository or that --

3 MR. FETTUS: I'm not saying I believe one way or the
4 other. I'm talking about what NEPA requires the Agency to look at and
5 analyze. And what NEPA requires the Agency to look at very clearly is
6 the potential for not arriving at a final disposal solution. And what does
7 that mean?

8 And we respectfully suggest to you, you don't have to
9 reinvent the wheel in starting to look at that. You have DOE started that
10 process. You have a lot more to do, and a lot of things to fix, and we
11 tried to give you a roadmap there on the inadequacies we saw with that.
12 But, again, this is not starting from whole cloth. NEPA requires this
13 analysis.

14 COMMISSIONER APOSTOLAKIS: I must say I'm still
15 perplexed by that. Mr. Johnson here criticized the NRC Staff's assertion
16 that every 100 years indefinitely we will be doing that. What do you
17 expect the Staff to say? Well, maybe -- I ran out of my time.

18 CHAIRMAN MACFARLANE: Okay. Commissioner
19 Magwood.

20 COMMISSIONER MAGWOOD: Thank you, Chairman.
21 Well, first, let me thank all of you for not just being here today, but for
22 participating in this process. We received so many thousands of
23 comments from across the country, and it's gratifying to know that
24 people are paying attention to these issues. You know, whatever point
25 of view they bring to it, whatever opinion they have about it, a lot of
26 people took a lot of time and effort to contribute to our analysis, so we

1 really appreciate that, and it's very important.

2 And I also wanted to particularly thank Mr. Johnson for
3 appearing today. It's always important, I think, for us to get the
4 perspective from Tribal governments. We did that all too infrequently in
5 these issues, so I appreciate you making the effort to come here today
6 and sharing your views.

7 And since you're sitting here, let me do an ad for our
8 new Tribal policy initiative that we've been working on, and we've been
9 receiving comments on. So, I hope you participate in that and give us
10 your views on that.

11 Of course, I also reflect that this is the first Friday of
12 spring. I didn't think this is how I'd be spending my Friday afternoon on
13 the first Friday of spring, but it's good to be here with people who care
14 about an important issue.

15 I also wanted to highlight Mr. Fettus. As he pointed out,
16 NRDC provided not just negative comments, but what -- positive
17 comments in terms of not just no, but here's what we think you should
18 do. And I think that's very important in all these kinds of debates
19 because all too often NRC receives these just negative comments that
20 we're doing the wrong thing, we're bad people, we have bad
21 motivations, and never find that at all constructive. And NRDC, to its
22 credit, often tries to provide its views in a way that can be acted upon,
23 so I appreciate that, and appreciate the extra effort that went into that.

24 So, I have a couple of substantive questions, but I want
25 to ask a process question first of all of you. This process has been going
26 on for several -- for many months now, and I just wanted to see if

1 anyone felt there was anything in our process that either truncated the
2 public dialogue on this, or prevented people from providing their views?
3 Is there something we could have done better? I just ask that blanket
4 question just to start off, and see if anybody has any comment. It was
5 perfect? No. Mr. Callahan.

6 MR. CALLAHAN: Well, I've already noted our respect
7 for Keith and his team. I just can't imagine an effort that's gone on more
8 -- with more attention to detail and attention to those in the public that
9 wanted to make a comment, and wanted to participate. So, I think it's
10 been outstanding.

11 COMMISSIONER MAGWOOD: Thank you.

12 MS. GINSBERG: I would add that I've been doing this
13 a long time, and I don't recall a rulemaking where there were roughly 13
14 public meetings throughout the country, multiple Commission briefings,
15 opportunity-- extensive opportunity to submit comments, and
16 availability of Staff the way this Staff has been available, so I really
17 commend -- I echo what Mr. Callahan has said. I commend the Staff
18 because I think they've been extremely open, willing to take comments,
19 and very willing to consider each and every one of them as best I can
20 tell.

21 COMMISSIONER MAGWOOD: Great, thanks.

22 MR. SIPOS: Yes, I would echo the comments of
23 Michael and Ellen, and the State has great respect also for the Staff
24 who was involved and has worked on this rulemaking. There have been
25 a number of meetings around the country. I think that is for the good. I
26 would caution that quantity, however, is not always the be all and end

1 all. And the State of New York has tried to present its concerns early
2 and often, if you will, regarding scope, and regarding alternatives, so we
3 are -- we wish -- we very much appreciate being involved in the
4 process. We think it's very important, and we do think, again, that NEPA
5 can provide a pathway. You talked about providing suggestions and not
6 just negative comments. I think NEPA can provide the solutions, can
7 provide the hard look, and can provide a way forward. Thank you.

8 COMMISSIONER MAGWOOD: Thank you.

9 MR. JOHNSON: Commissioner, I look forward to
10 working with the NRC on the outreach to the Tribal nations. I think that's
11 really opened the doors, and it also brings in a different perspective of
12 looking into this issue, and the future. And even though other tribes may
13 not be as in the predicament we're in right now, the proximity of the
14 plant, it opens that avenue for other things that may come down the
15 road for the future of nuclear in the industry, whether it be
16 transportation, storage, or whatever it may be. It does, it opens that
17 door of opportunity for the Tribes to sit down face-to-face,
18 government-to-government.

19 COMMISSIONER MAGWOOD: Excellent. Thank you
20 very much.

21 MR. FETTUS: I'd like to echo my colleagues, that the
22 regional meetings were all to the good in the effort to solicit public
23 comment both at those meetings and by the December 20th deadline
24 was, again, all to the good. And I also echo John's comments, though,
25 that caution should be taken that I wrote in very early after -- almost
26 immediately after the first scoping document came out with our

1 concerns, so we've documented our concerns early and often with this
2 process. But the actual process of attempting we think was certainly
3 good and admirable on the Staff's part.

4 We think also, though, again with a caution, there were
5 a whole host of ongoing studies that probably should have allowed for a
6 much longer period for Staff to do much more work than it otherwise
7 would have done in the one year it was given to provide a draft.

8 COMMISSIONER MAGWOOD: Okay. Thank you very
9 much. A couple of questions, first for Mr. Sipos. Can you give me the
10 State of New York's views on institutional control?

11 MR. SIPOS: Yes. And we did attempt to set this out in
12 our December 20 filing, but it is quite difficult to assume that the
13 institutional controls will be around, and that they will be effective. I think
14 it is almost in a way -- it is a way of -- and I don't mean this to be flip, but
15 it is almost a way of assuming away the problem, because I think in our
16 lives, in our own life span we have all seen dramatic changes. I think
17 back to, you know, when my grandmother was born in, you know, the
18 1880s, you know, the changes that she had seen.

19 I think it's very difficult, and that one is getting out on
20 thin ice when one says what we think we know today is going to take
21 place is going to occur for the next 60, 100, 1,000 years. And I do think
22 that's where NEPA's hard look can come into play. And I don't think
23 we're getting into remote and speculative in that way. In fact, in some
24 ways we're assuming things will take place when they haven't even
25 been sort of gone to retail, or they haven't even come to the market yet.

26 COMMISSIONER MAGWOOD: So, in the State's

1 internal process, there's lots of regulatory organizations in the state that
2 do various environmental activities. They assume that institutional
3 control cannot be relied on long-term, they make that general
4 assumption?

5 MR. SIPOS: I don't know that the State has a program
6 quite like this that involves the time lines such as that we are talking
7 about with waste. I do know -- this is more anecdotal, we recently
8 finished up a program or a proceeding concerning an application for a
9 rate change for a utility, and part of that involved looking out into the
10 future, and taking into account for important long-lived assets, taking
11 into account a horizon of 60 years or more. And taking into account
12 climate change, which I think is another -- which is another issue here.
13 So, again, we may not be looking at an issue that has a 10,000 or
14 longer year life span, but in siting a power plant or similar facility looking
15 out into the future and what will be, for example, the sea level rise, the
16 storm surge, what will be the impacts, what does FEMA tell us about
17 these potentials, what are the different scenarios? So, we do look at
18 -- and it's not exactly institutional control, but it's projecting out, and
19 projecting out and taking a hard look at what could happen.

20 COMMISSIONER MAGWOOD: Okay, very well.
21 Thank you very much. I have 32 seconds left so I'll hold my last
22 question, maybe we'll have another opportunity to talk. But, again,
23 appreciate everyone's participation today. Thank you, Chairman.

24 CHAIRMAN MACFARLANE: Commissioner
25 Ostendorff.

26 COMMISSIONER OSTENDORFF: Thank you,

1 Chairman. I want to add my thanks to those of others for your being
2 here today. I also note, as the Chairman indicated in her opening
3 remarks, that we are at a somewhat, I think the word was used by
4 another colleague as confining or limiting as to what areas we can
5 probe here given our adjudicatory responsibilities on the various
6 licensing actions, and where this rule stands.

7 Having said that, I think we have all greatly benefitted
8 today from hearing your perspectives. I think everyone has presented
9 their perspectives very clearly, and we also acknowledge there may be
10 significant, and in some cases are differences between where you are,
11 and where we may end up. We don't know. But I think everybody has
12 been very articulate and clear in saying where they are coming from.
13 And, Geoff, I really appreciate because we worked before together
14 years ago on the Hill, and I think having -- I'm not saying whether I
15 agree or disagree with your alternative construction going forward, but
16 the fact that you had a proposed solution, irrespective of what my
17 opinion might be of that, I admire and respect the efforts taken to think
18 about it in a constructive, problem-solving way. So, thank you for doing
19 that.

20 I also think we benefit from hearing the phrase, "the
21 stark contrast" between different panel members here. That helps us be
22 able to hear the give and take, the challenge in your positions, and the
23 rebuttal of it I think is helpful for our decision making process. So, I do
24 have a few questions. Let me start off with Mr. Johnson.

25 Ron, it's good to you see again. I enjoyed my visit to
26 Prairie Island in November 2012. I sat in your office there on the

1 perimeter and saw out the window that you were talking about, so never
2 having been there until then, it was hard to appreciate the proximity
3 issue. So, thank you for that visit. I think the relationship the NRC has
4 with you and your community is very strong, and very positive, and
5 you've been a very strong leader in trying to take a pragmatic safety
6 approach that benefits everybody.

7 I did want to ask a question of you. I know
8 Commissioner Magwood, I think, asked this question, as well, in New
9 York. Let me ask you in the context of your Slide 9, concern with
10 institutional controls, you know, 100 years in the future, and so forth. I
11 want just to kind of bore down a little bit. Are there particular aspects of
12 institutional controls given your particular community that you think
13 ought to be highlighted? I know you provided comments in this area, but
14 I don't know if there's any particular examples that you wanted to
15 mention.

16 MR. JOHNSON: No, I can go back to when the Nuclear
17 Waste Policy Act was passed, and moving forward. It was, I believe by
18 1995 that casks were supposed to be removed, and the Yucca
19 licensing, in regards to what -- we're just wanting the waste to be
20 removed. But as those time lines have gone and passed, and we're
21 looking at other new avenues with the Blue Ribbon Commission's
22 recommendation, here we're going down that same avenue again. And
23 what we're trying to do is just make -- just try to move what could be a
24 potential, or may be an issue there down the road.

25 And our -- we fall back on this. The Tribe spends
26 millions of dollars on this issue that could be spent elsewhere to

1 enhance the community as economic growth and everything that we
2 need. But, you know, as we go along I think we're looking for some light
3 at the end of the tunnel that we can at least look at that perspective and
4 give some hope to our next seven generations coming up that this is
5 something they won't have to deal with. And we're kind of leaving
6 something for them to deal with when it's not their responsibility.

7 COMMISSIONER OSTENDORFF: So, it's really your
8 concerns with how the federal government has implemented the
9 Nuclear Waste Policy Act obligations?

10 MR. JOHNSON: It is. It is.

11 COMMISSIONER OSTENDORFF: Okay.

12 MR. JOHNSON: I think that in fairness, that's -- and I
13 think it -- I just think it's the law of the land, and hopefully we can follow
14 that law of the land, unless something else changes that law of the land.

15 COMMISSIONER OSTENDORFF: Okay, thank you.
16 Appreciate that.

17 Mr. Sipos, I appreciated your presentation very much.
18 I've got two adult kids who live in New York City so I've been up there a
19 number of times the last few years and understand the geography,
20 proximity issues you're raising. I was at Indian Point for two days last
21 summer with staffers from the two U.S. Senator's offices, and one of the
22 -- actually, two different Representatives that had equities in the
23 emergency planning zone, and the evacuation area.

24 I do want ask you one question. On your slide, I think
25 it's your Slide 2, I think this was kind of a clarification. The bottom bullet
26 you said the treatment of severe accidents is flawed. I want to make

1 sure I understand that. In your presentation today I know that there's a
2 time limit. I think you mentioned specifically concerns on a spent fuel
3 pool accident as being -- that was the example you used. Are there
4 other types of accidents, or is that the one that you're really referring to
5 there?

6 MR. SIPOS: Given this rulemaking, I was confining the
7 State's comments to the dense storage of spent nuclear fuel at the
8 pools at Indian Point. Conceivably, there could also be an issue
9 regarding dry casks, but really today we were focusing on the dense
10 storage in the spent fuel pools, and the consequences that could flow
11 from that.

12 COMMISSIONER OSTENDORFF: Okay, thank you.
13 Appreciate that.

14 Let me ask Ms. Ginsberg a question here. On your
15 Slide 10, and you had some proposed revised wording for 10 CFR
16 51.23. I want to make sure I understood one aspect here.

17 Your slide has a proposal, you used the phrase
18 "reasonable assurance," whereas, I believe the current wording has
19 been as feasible. I'm curious, is there a significant distinction between
20 those two? Is there -- I want to make sure I understand where you're
21 coming from.

22 MS. GINSBERG: Sure. Yes, we think it's valuable to
23 maintain the findings of -- that were previously in the Waste Confidence
24 decision. The other thing is that this demonstrates the substantial
25 record that the Agency has amassed to support this decision, and we
26 think there's ample basis for a reasonable assurance decision.

1 And, finally, to the extent that there's any reference
2 whatsoever to the Atomic Energy Act in the earlier decisions prior to the
3 Minnesota v. NRC, we think that this addresses any potential
4 questions that might be asked as a result.

5 COMMISSIONER OSTENDORFF: Okay, thank you.
6 Thank you all. Thank you, Chairman.

7 CHAIRMAN MACFARLANE: Okay, my turn. I'm going
8 to start with Ms. Ginsberg. And on your Slide 4 you're talking about your
9 assessment of the no repository scenario. And you say -- you said, I
10 think, that it was wholly unreasonable that the federal government
11 would fail to meet its obligations within 60 years or so. That was your
12 view.

13 So, one question I have in trying to understand that is
14 in 1983 would you have thought it wholly unreasonable that the federal
15 government would have failed to meet its obligations under the Nuclear
16 Waste Policy Act as written in 1983 by 2014?

17 MS. GINSBERG: Well, let me answer by saying no, but
18 also follow that with, I think it's a false construct to assume simply
19 because it's taken 32 years for us to get to the point where this is really
20 at the forefront of policy maker discussion, to assume that thousands
21 and thousands of years from now it still won't occur. I just -- I don't think
22 that's reasonable. I think NEPA clearly suggests that what you need to
23 assess is -- are reasonable scenarios. And the Agency has gone
24 beyond, in my view, what the court required. It looked at the no
25 repository scenario, but determined that that scenario wasn't likely, and
26 then went to the other more likely scenarios, which are supported,

1 basically, by international experience, as well as the fact that there is
2 still a requirement, a federal statute that requires the federal
3 government to act.

4 CHAIRMAN MACFARLANE: So, you just said, I think I
5 got this right, that right now the discussion of waste policy is at the
6 forefront of policy discussions.

7 MS. GINSBERG: My opinion.

8 CHAIRMAN MACFARLANE: That's your view, or
9 NEI's view?

10 MS. GINSBERG: My opinion.

11 CHAIRMAN MACFARLANE: Your opinion. Okay. You
12 also say that the Commission, your recommendation is that the
13 Commission has a finding that a repository will be available when
14 necessary. What do you mean by "when necessary?"

15 MS. GINSBERG: Well, you're looking at a very long
16 horizon here, and we think that the Agency will have ample time to
17 -- actually, there is ample time for the Department of Energy, if that's
18 the entity that ends up building the repository, to have one available by
19 the time you're talking about.

20 CHAIRMAN MACFARLANE: I mean metrics for
21 figuring out --

22 MS. GINSBERG: Okay.

23 CHAIRMAN MACFARLANE: -- what "when
24 necessary" is.

25 MS. GINSBERG: Okay. You're talking about a time
26 period following expiration of the current license, plus in some cases 60

1 years, or if you take the long time frame, 100 years. So, we believe that
2 when necessary will be within one of those time frames.

3 CHAIRMAN MACFARLANE: So, the industry's view is
4 that when necessary is when everything, the clock for everything runs
5 out.

6 MS. GINSBERG: At least for the first two time frames.

7 CHAIRMAN MACFARLANE: Okay. Okay. So, let me
8 ask -- Geoff, let me ask you a couple of questions. On your Slide 14, I
9 think it was, you -- I know you were being timely, and I appreciate that.
10 And you went through a couple of topics here which I would like to hear
11 a little more expansion on.

12 MR. FETTUS: Okay.

13 CHAIRMAN MACFARLANE: So, if you wouldn't mind
14 elaborating on your position relative to one of the things was alternative
15 cask storage technology, storage cask technologies. What do you
16 mean by that?

17 MR. FETTUS: Alternative configurations. I mean, one
18 of the things that -- in bullets 2 and 3, alternative storage modes and
19 configurations, safety-relevant classes. If you look at the matrix on page
20 32 that we provided sort of setting out what needs to be considered and
21 what potential reasonable alternatives the Agency could consider, we
22 tried to lay out, and it'll make much more sense. We actually don't just
23 have a matrix for you, we have explanatory text for each of the boxes
24 that make sense. So, it's hopefully relatively readable. But by that we
25 meant what if pools are still surviving long into the future, because
26 things fell apart and people stopped caring about the pools, so they

1 were cool enough that they didn't drain and have a fire, but they still
2 drained, and what does that mean?

3 Are we going to need different long-term configurations
4 for different kinds of fuel, which I think the cladding questions we have
5 from high burn-up, certainly lead themselves to questions of
6 configuration. Questions of dual kinds of dry storage configuration,
7 meaning do you have something put into a transportation-ready cask at
8 some point in the future that doesn't currently exist now, but may. So,
9 these are all things that are reasonable considerations that may come
10 to pass. So, it's that kind of thinking that we were talking about.

11 CHAIRMAN MACFARLANE: Okay. So, let me ask you
12 more about the last bullet there, which is reliance versus erosional
13 institutional controls as a function of time. So, can you elaborate a little
14 more on that, what you guys mean by that?

15 MR. FETTUS: Sure. Well, we think -- first, we start with
16 the premise that we share in the court's decision that the Agency has to
17 conduct NEPA and do this environmental analysis, and do an analysis
18 of what would happen if you don't get a final disposal site, because
19 that's what you have to go look at. I mean, Commissioner Apostolakis is
20 shaking his head, but just read the decision.

21 COMMISSIONER APOSTOLAKIS: That's not on the
22 record.

23 MR. FETTUS: That's not -- okay, right, that's true. It's
24 not on the record. I strike that, and I amend my previous sentence at the
25 request of Commissioner Apostolakis.

26 First, the Agency needs to look at what the courts

1 required you to look at. And we think the question you posed at the very
2 beginning of your time, which is would one have thought when Mo Udall
3 engineered the passage of the Nuclear Waste Policy Act in the 1982
4 time frame that we would be sitting here in 2014 debating this issue.
5 And this issue has ebbed and flowed in terms of public debate, it's
6 ebbed and flowed in terms of Congressional attention, and it's going to
7 continue to ebb and flow depending on the life cycle of politics, and
8 science, and everything else. So, we found as we wrote in our
9 comments back in -- when did I write them, 2009? We found no basis
10 for confidence.

11 And I'd like to respond to one thing Ms. Ginsberg said
12 in directly addressing your question of why to not rely on institutional
13 controls, and why we think you need to do the NEPA analysis, is -- and
14 why we work so hard in our Congressional work, in the work I do in
15 terms of testifying before Congress. I've laid out what I think, and when
16 I last spoke to the Energy and Natural Resources Committee, and
17 before the EPW, sorry, Environment and Public Works, the
18 fundamental problem facing our nuclear waste program in this country.
19 And it's -- and with John Sipos here, it's interesting to hear him hear
20 this, but it's a lack of state authority. It's a lack of being normalized with
21 environmental laws. It's the Atomic Energy Act exemption from
22 environmental laws, but that federalism is going --

23 CHAIRMAN MACFARLANE: I know, we've talked
24 about this before --

25 MR. FETTUS: We have talked about this directly,
26 Chairman. But that federalism problem that's inherent in the way the

1 law is currently structured in my opinion is likely going to stymie the
2 progress of nuclear waste for a long time until that's changed.

3 CHAIRMAN MACFARLANE: I have question for you,
4 Mr. Sipos. I'm sorry, I mispronounced your name before. And maybe
5 you would also like to jump in, but I was wondering if there is a legal
6 view of institutional controls, whether New York State has a legal view,
7 if you've added -- if you've discussed this in your comments?

8 MR. SIPOS: I think we did discuss it in our comments. I
9 believe some of the other states may have also discussed it. I'm
10 thinking of possibly the Vermont and Connecticut comments that were
11 also submitted.

12 CHAIRMAN MACFARLANE: Okay, I can look at those.

13 MR. SIPOS: But I think the State does have a concern
14 that in this context, these institutional controls, or assuming these
15 institutional controls, one, will exist. And, two, that they will be
16 speculative, excuse me, that they will be effective is, in fact, speculation
17 that there is no basis to assume that they will continue, and they will be
18 effective. In a way, as I said before, it's almost like assuming the
19 problem away. Oh, we see there's an issue, but we assume that they
20 will be taken care of; and, therefore, we don't really have to address the
21 consequences. The State believes that that is speculation, and that it
22 really does not get at the heart of what NEPA is trying to do. And, again,
23 NEPA is a tool here, and it could identify alternatives.

24 And I think what -- none of the five of you
25 Commissioners were around I think when this issue started. Certainly,
26 you have a substantial task on your plates for this. The State

1 recognizes this, but the -- I think what NEPA is -- one of NEPA's
2 objectives is not to just push a problem down the road. And I think it
3 does, again, provide a pathway to a solution.

4 CHAIRMAN MACFARLANE: Okay. Just very briefly.

5 MR. JOHNSON: I'll echo what Mr. Sipos said here. I
6 concur with what he's explaining to you today, and commenting on that,
7 so we're right along with that comment.

8 CHAIRMAN MACFARLANE: Okay, great. Thank you.
9 Thank you all. Let me see if -- are there additional questions?

10 COMMISSIONER MAGWOOD: I almost hate to do it,
11 but I do have to ask a question. Mr. Fettus, you sort of asked that we go
12 back and look at the court decision. I wanted to give you a chance to
13 really respond to something Ms. Ginsberg said, because I read the
14 court decision. There is clear language that says to petitioners the
15 Waste Confidence decision is a major federal action because it is a
16 predicate to every decision to license or relicense a nuclear plant. And
17 the findings made in the Waste Confidence decision are not
18 challengeable at the time a plant seeks licensure. We agree with
19 petitioners that the Waste Confidence decision rulemaking is a major
20 federal action requiring either a FONSI or an EIS, and how is that
21 consistent with your comment that we've miscast the major federal
22 action?

23 MR. FETTUS: It's a fundamental predicate to
24 licensing. This is -- it does not license a particular plant, it allows the
25 licensing of every plant. You cannot separate it from the licensing
26 action. You cannot separate this and treat it as -- there's an enormous

1 effort made in the draft GEIS to treat this as not a licensing action.

2 COMMISSIONER MAGWOOD: So, this is analysis
3 that you've put in beyond the actual court language.

4 MR. FETTUS: Yes. We -- no, it's not an analysis
5 beyond the actual court language. We hew precisely to the court
6 language. I encourage you to read our detailed comments on just this
7 issue. I don't - we actually don't use words beyond what the court said,
8 but it's a fundamental predicate, and the court agreed with petitioners,
9 which was NRDC, et al.

10 COMMISSIONER MAGWOOD: Okay, thank you. I
11 guess I should give Ms. Ginsberg a chance to react. She's at the button
12 there.

13 MS. GINSBERG: Yes. For the record, I just want to
14 make clear that we are -- we have a distinct difference of opinion with
15 respect to what Mr. Fettus just said. That's obvious from everything
16 that's been said today, but I want to reinforce it because his emphasis
17 on the court's decisions is important, and we agree with that, but we
18 think hewing to the court's words are equally important.

19 COMMISSIONER MAGWOOD: Okay, thank you.

20 CHAIRMAN MACFARLANE: Anybody else? No?
21 Okay, we're going to now take a five-minute break, and then we will
22 hear from the Staff.

23 (Whereupon, the proceedings went off the record at
24 2:47 p.m., and went back on the record at 2:55 p.m.)

25 CHAIRMAN MACFARLANE: Okay. Now we are going
26 to hear from the NRC Staff, so Mike Weber, who is the Deputy

1 Executive Director for Materials, Waste, Research, State, Tribal, and
2 Compliance Programs, one of the longest titles in the Agency, will
3 begin.

4 MR. WEBER: Thank you, Chairman. Good afternoon,
5 and good afternoon, Commissioners. I think this is the first public
6 meeting since Commissioner Magwood's announcement came out, so
7 we wanted to congratulate you on your new position. We look forward
8 to continuing to serve with you in your current capacity until such time
9 as you assume a new position, and then we'll work with you again. So,
10 congratulations.

11 The Agency established a clear priority on the Waste
12 Confidence matter at the direction of the Commission. I would want to
13 just make a few brief comments and then turn it over to Cathy Haney,
14 the Director of the Office of Nuclear Material Safety and Safeguards.

15 It was clear from the direction from the Commission
16 that this needs urgent attention, so we have taken some of our most
17 experienced and most talented environmental specialists from across
18 the Agency to work diligently and in a high-quality way on the Draft
19 Generic Environmental Impact Statement, and now on the Final
20 Generic Environmental Impact Statement, as well as the proposed rule,
21 and preparing for the final rule. So, all the offices, the Nuclear Reactor
22 Regulation, Office of Nuclear Regulatory Research, et cetera, have
23 made a significant contribution.

24 While the Waste Confidence Directorate resides within
25 the Office of Nuclear Material Safety and Safeguards, it really reflects a
26 concerted effort by multiple offices, including the Office of General

1 Counsel. And I think Cathy will touch on those aspects in her remarks.

2 You heard in our first panel, and you are quite aware
3 from the SECY paper that we transmitted to the Commission that we
4 received a large number of divergent and complex comments on the
5 proposed rule and the Draft Generic Environmental Impact Statement,
6 and we heard that in the first panel. So, the Staff really has its work cut
7 out for us as we go about diligently, thoroughly reviewing those
8 comments and then deciding what changes to propose in the final
9 statement and the draft final rule for the Commission's consideration.

10 And I would end my remarks by just emphasizing it's
11 really your decision. The Staff is trying to do our best in providing to you
12 quality documents that reflect a thorough and thoughtful consideration
13 of the comments that we've received, and this is a matter that I started
14 working on when I first came to the Agency, so I, too, have a fair bit of
15 experience with it, and recognize its significance to our mission. So with
16 that, let me turn it over to Cathy Haney.

17 MS. HANEY: Thanks, Mike. I'll pick up on a couple of
18 the points that Mike made this afternoon. We were tasked to develop a
19 Waste Confidence Rule with associated Environmental Impact
20 Statement within two years. To do that we stood up a Waste
21 Confidence Directorate within my office of the Office of Nuclear Material
22 Safety and Safeguards. There are a couple of specialties that we
23 brought to bear in addition to the environmental policy professionals
24 that we had. We also used individuals with expertise in rulemaking,
25 health physics, and various skill sets under the engineering category.
26 And then one that often doesn't get recognized, we also brought into

1 the group highly skilled communication professionals. And I think that's
2 one of the reasons why we were successful with some of the outreach
3 efforts that we did, because we brought those individuals skilled with
4 those aspects into the group, and did a lot of brainstorming on how we
5 could enhance the communication on this effort.

6 The Waste Confidence Directorate is staffed by many
7 full-time individuals, but we also have several individuals across the
8 Agency that are helping us on a part-time basis, temporary basis as we
9 need that skill set. We reach out to other offices and ask them to come
10 and help us for maybe a day, for a week, for a month, but we're using
11 definitely a matrixed approach as we approach this project.

12 Mike referenced some of the offices that we're using,
13 but there are a few that I'd like to highlight that have supported us with
14 several resources, and then some again just on that part-time basis, but
15 sometimes go unnoticed. The ones that in the full-time staff we have
16 invited individuals to work with us from Federal, State, Materials, and
17 Environmental Management Programs, the Office of Nuclear Reactor
18 Regulation, Office of New Reactors, Office of Congressional Affairs,
19 Office of General Counsel, Office of Nuclear Security and Incident
20 Response, and also the Office of Nuclear Regulatory Research.

21 As I noted earlier, we did have some spots where we
22 just needed to reach out to people for that week or maybe a couple of
23 week effort, and in those cases we had individuals from the regions that
24 helped us. Also, during a lot of the public outreach meetings, as you'll
25 hear from Andy, we had regional staff that attended those meetings,
26 and some coming from the localized plants to support us.

1 Then also, as I said, there were a few that are the
2 behind the scenes, it's the Office of Administration, and also the Office
3 of Information Services. And that's where we had Guard Service
4 working with local law enforcement that helped us, and then also with
5 the Office of the Chief Human Capital Officer. With all that movement of
6 individuals they quickly responded to our needs and helped that.

7 Lastly, we have support from two laboratories, the
8 Pacific Northwest National Laboratories, and the Center for Nuclear
9 Waste and Regulatory Analysis. And that's support that has been to
10 help us with the public comments, as well as getting ready and getting
11 into the scoping period, and preparing the draft and the final
12 Environmental Impact Statement. So, from this I think you can see it
13 truly has been an Agency-wide effort. I'm very thankful to all the other
14 offices, my peers across the Agency that have helped support me in
15 this effort, and support Keith's team as he moved forward.

16 We're 18 months into the project. We're roughly 75
17 percent through that schedule that we started with. The Staff is working
18 extremely hard, and I think it's very much a credit to Keith and his staff
19 for how far they've been able to move the project along with the time
20 that we've had so far. We've made substantial progress, and we're
21 working towards meeting the prescribed schedule. And with that, I'd like
22 to turn it over to Keith.

23 MR. McCONNELL: Thank you, Cathy, and good
24 afternoon, everyone.

25 I'm going to start off with a summary of the progress
26 today to develop the Generic Environmental Impact Statement and rule

1 for continued storage. And then I'll turn it over to Andy Imboden to talk
2 about some specifics regarding the five policy issues that the
3 Commission identified, and that we then put in the proposed rule for
4 comment. Andy will also provide a look forward in terms of what we're
5 looking at as we move into this final stage of the process.

6 This diagram depicts in general terms the status of our
7 efforts to develop an updated Waste Confidence Rule supported by a
8 Generic Environmental Impact Statement. We have completed three of
9 the four phases, as Cathy just mentioned. And as you know, the Waste
10 Confidence Directorate began scoping this Generic Environmental
11 Impact Statement to support the updated Waste Confidence Rule on
12 October 25th of 2012. The scoping process included four public
13 meetings which included two webinars, and a public comment period
14 that ran for 70 days, or until January 2nd of 2013. The NRC Staff's
15 analysis of those public comments was provided in the Scoping
16 Summary Report that was issued in March of 2013.

17 Subsequent to that and following Commission review
18 and approval, we published the Draft Generic Environmental Impact
19 Statement and proposed rule for public comment on September 13th of
20 2013 for what turned out to be a 98-day public comment period.
21 Although the public comment period was to have lasted for 75 days, or
22 until November 26th, due to the government shutdown and the need for
23 us to postpone and then reschedule five of our public meetings, it was
24 extended until December 20th of 2013. We are currently involved in the
25 process of considering and responding to the comments that we
26 received in the public comment period.

1 That concludes my summary of the efforts to date, and
2 the rest of my presentation is going to focus on our efforts to allow for
3 ample opportunity for the public to participate in our efforts to update
4 the Waste Confidence Rule. Next slide.

5 Throughout our efforts to develop the Generic
6 Environmental Impact Statement to support an updated Waste
7 Confidence Rule, we've attempted to implement to a high degree
8 NRC's philosophy on open government. In that regard we approached
9 the Waste Confidence effort with a view that an updated Waste
10 Confidence Rule was, to quote the NRC's open government plan, "the
11 public's business." Both prior to and during the public comment period
12 we undertook an aggressive effort to invite and solicit comment. We
13 aligned our efforts with the three pillars of NRC's open government
14 plan, transparency, participation, and collaboration.

15 In that regard, we attempted to be transparent in our
16 efforts by having the monthly facilitated conference calls to insure that
17 interested parties were prepared to respond to the issuance of the draft
18 documents. We informed interested parties of important events through
19 our WCO outreach email LISTSERV, and we actively updated our public
20 website. And, finally, we attempted to take full advantage of the
21 Agency's social media options to get the word out.

22 In terms of participation, we encouraged involvement
23 in the rulemaking process by providing multiple venues for parties to
24 participate in a meaningful way, including conducting the 13 public
25 meetings that you've heard about, and meeting informally with any and
26 all parties that were interested in the activities we had underway.

1 In terms of collaboration, we collaborated with
2 interested parties including working with other federal agencies,
3 including the Environmental Protection Agency, and as you heard
4 earlier from the External Panel, we did hold government-to-government
5 meetings with the Prairie Island Indian Community. And I would like to
6 thank Ron Johnson for his hospitality. He saved us from having to drive
7 through a driving snowstorm to get to one of our
8 government-to-government meetings.

9 Given the opportunity and the resources that the
10 Agency has provided us, our goal is to make the Waste Confidence
11 effort a positive example of NRC's commitment to open government.
12 Next slide.

13 In the course of the Waste Confidence public outreach
14 effort we learned a great deal, and we implemented a variety of
15 approaches that proved to be successful. Some of these may be useful
16 in future significant Agency actions, and that's why we raise them here
17 for your attention.

18 In particular, the Waste Confidence Directorate was
19 able to emphasize public interaction to a great extent. That resulted in a
20 robust public participation in our activities. We had a dedicated,
21 topic-focused communication team that along with support from our
22 Office of Public Affairs allowed us to maximize public participation.

23 We had a goal, an overall goal of being open and
24 transparent, and we tried in everything we did to meet that goal. In
25 addition, the staff was open, accessible, and flexible at the public
26 meetings. This included having the authors of the documents available

1 at pre-meeting open houses. This provided an opportunity for
2 interested parties to actively engage the NRC Staff members with direct
3 and specific knowledge of the draft documents. We allowed all
4 interested parties who wanted to present comments at the meetings to
5 do so. And we insured that there were opportunities for those that
6 couldn't physically attend one of our meetings in the region to
7 participate via three facilitated telephone conference calls that we had
8 during the public comment period.

9 Finally, our staff hosted the monthly status
10 teleconferences that provided regular updates to members of the
11 public, and allowed them to ask questions about our efforts.

12 It's also worth noting that along with our Office of
13 Public Affairs we did experiment with some of our social media options.
14 And one approach that we tried was not highly successful, and that was
15 our Waste Confidence online chat that we conducted with the Office of
16 Public Affairs as part of their pilot project.

17 We found that a complex subject like Waste
18 Confidence was challenging to address in the context of a realtime
19 typed exchange with a moderator format. The Directorate Staff who
20 participated would have liked to have provided more complete
21 responses but we were just constrained by the chat format. Next slide.

22 We're currently in the process of reaping the benefits
23 of our outreach activities. We're reviewing and responding to the nearly
24 9,000 unique comments that we delineated from the approximately 500
25 transcribed statements collected at the public meetings, and the
26 approximately 1,500 unique written submissions.

1 It is worth noting, as others have mentioned, that we
2 received a total of approximately 33,000 written submittals; however,
3 the vast majority of those were form letters.

4 I do think it's important to state or restate what we said
5 at the beginning of each of our public meetings. Our work on the Waste
6 Confidence Rule benefits from public input and participation. We thank
7 all the parties for their participation in the meetings, including the
8 members of the External Panel that you met with earlier today, all of
9 whom participated in one or the other of our public meetings. We thank
10 them for providing either oral or written comments on the Draft Generic
11 Environmental Impact Statement and proposed rule.

12 I'd also be remiss if I didn't mention the cooperation the
13 Directorate has received from some of the less recognized contributors
14 to our effort. In particular, NRC's Office of Administration, the Office of
15 Information Services, and the Office of the Secretary to the
16 Commission who took on the consuming effort of uploading all the
17 comments. In addition, as Cathy mentioned, we received strong
18 support from the staff of the Pacific Northwest National Laboratories,
19 and the Center for Nuclear Waste Regulatory Analyses who helped us
20 with further processing the documents and the comments into our
21 comment response database.

22 I'll now close my part of the presentation by identifying
23 some of the comments, concerns, and themes in the verbal statements
24 and written comments. And you've already gotten some insight from
25 that from the External Panel, so next slide.

26 This slide depicts the most common topics, or in other

1 words those we heard most frequently at the public meetings, or we've
2 read in the written comments. As you saw from the External Panel,
3 there was a great range and diversity to the comments. We heard
4 comments supporting the Generic Environmental Impact Statement
5 and proposed rule, and comments that passionately opposed what was
6 in those two documents. The greatest number of comments we
7 received expressed either a concern with or an opposition to nuclear
8 power.

9 Second to that was the feasibility of safe storage of
10 spent fuel particularly storage for long time frames, and the indefinite
11 storage period that was analyzed in the Generic Environmental Impact
12 Statement.

13 After that were comments or concerns about the range
14 of alternatives. Again, you heard that at the External Panel regarding
15 what was presented in the Generic Environmental Impact Statement.
16 And then following up were comments that either supported or
17 challenged the notion of the availability of a geologic repository when in
18 a specific time frame. Next slide.

19 Other examples of topics we heard that may be of
20 interest to the Commission and the frequency with which we heard
21 them or read them in the written comments are noted on this slide. They
22 included spent fuel pool fires. Many of the issues raised with respect to
23 the recent spent fuel pool consequence study were also raised in the
24 context of Waste Confidence.

25 Certainly, as the External Panel noted, our approach to
26 treating the durability of institutional controls was of particular interest to

1 a number of groups in the context of the indefinite storage scenario.
2 Also, the likelihood and impacts from spent fuel pool leaks was a
3 popular topic as was the storage of high burn-up fuel, particularly for
4 longer periods of time.

5 It is worth noting that the U.S. Environmental
6 Protection Agency in its statutory role as a reviewer of Agency
7 Environmental Impact Statements also identified both institutional
8 controls and high burn-up fuel as issues that the NRC should address in
9 more detail in the Final Generic Environmental Impact Statement.

10 We note here that there is a significant body of
11 information on these topics currently available to the Staff from sources
12 both internal and external to the NRC. It is our intent in moving forward
13 to rely on this large body of existing work. We're considering several
14 options for responding to comments on these topics in the Final
15 Generic Environmental Impact Statement. To the extent warranted, this
16 could include adding additional appendices that focus more
17 expansively on the topics much like what was done for spent fuel pool
18 fires and spent fuel pool leaks in the Draft Generic Environmental
19 Impact Statement.

20 Other possible outcomes could include reconsidering
21 the approach taken, providing additional supporting, or depending on
22 the circumstances, making no changes at all. So, with that, that ends
23 my part of the presentation, and I'll turn it over to Andy Imboden.

24 MR. IMBODEN: Thank you, Keith. It's my pleasure to
25 recap the four policy issues and the public comments we received on
26 these issues, and then I will conclude my presentation with the Staff's

1 plan for the path forward. We should be on Slide 8.

2 These four policy issues began as questions the
3 Commission directed the Staff to include in the Statements of
4 Consideration for the proposed rule. We made a special effort to raise
5 attention on these issues.

6 In response to the Commission direction, the Staff
7 published these issues in Section 4 of the Federal Register Notice. We
8 specifically mentioned it in our presentation that began each of our
9 public meetings, and we developed a one-pager to highlight these
10 issues to the public. We made all these materials available on our
11 website, and in hard copy at our public meetings.

12 On February 28th, the Staff provided the Commission a
13 synopsis of the public comments on these four issues in the information
14 paper entitled, "Waste Confidence Continued Storage of Spent Nuclear
15 Fuel Proposed Rule Public Feedback on Specific Issues." In the
16 following slides I will identify each issue in turn, summarize the public
17 comments, and then provide the Staff's insight into potential responses
18 to these comments.

19 Ultimately, it will be the Commission's decision as
20 which way to go on resolving these policy issues when we provide you
21 with recommendations to the Draft Final Generic Environmental Impact
22 Statement and draft final rule for review. Next slide.

23 For issue number one, the Staff heard a fairly clear
24 message from those commenters that the NRC should remove a
25 statement regarding the repository availability time line from the rule.
26 Reasons cited for this support varied, but commonly included a lack of

1 NRC control over repository time lines and previous failures in
2 accurately predicting when a repository would become available.
3 Commenters also noted that a time line should not be included
4 because, as they assert, that it is unnecessary to provide a repository
5 time line in an Environmental Impact Statement, or that it is more
6 appropriate to go back to the language that was used in the 2010 Waste
7 Confidence Rule, which stated the repository capacity would be
8 available when necessary.

9 Other commenters wanted the NRC to remove the
10 statement about repository availability because they assert that siting a
11 repository is impossible, and that including a statement about
12 repository availability ties the United States to repository disposal of
13 spent fuel, to the exclusion of other options, such as reprocessing.

14 The commenters who expressed support for retaining
15 a statement regarding the time line for repository availability did not
16 always provide a supporting rationale, but when one was given
17 commenters stated that the time line is an important element of a
18 contract that that commenter asserted the public has with the nuclear
19 industry, or that having a time line for repository availability in the rule
20 affirms the importance of repository disposal.

21 At this time in the current state of the Directorate's
22 review, we believe that removing a specific policy statement regarding
23 the time line for repository availability from the rule text may be
24 warranted. This is mainly because it is not within the NRC's
25 responsibility or control to define when a repository might become
26 available. Next slide.

1 On issue number two, the Staff heard a general
2 message of support from commenters for retaining a policy statement
3 regarding safety of continued storage of spent fuel in the rule text.
4 Supporters gave diverse rationales. Some commenters noted that
5 including a statement about safety would enhance openness and
6 transparency, or would indicate that storage is, in fact, safe. Others
7 indicated that a safety statement should be included because such a
8 statement, one commenter claimed, and I quote, "It would give people
9 that are opposed to industry bases to make opposition," or that the
10 safety statement appropriately addresses the issues raised in
11 Minnesota v. NRC, or New York v. NRC, or commenters asserted that
12 safety determinations are more important to NRC decisions and to
13 members of the public in spent fuel matters rather than environmental
14 issues are.

15 One commenter who expressed support for the policy
16 statement indicated that the statement could alternatively be moved to
17 the Statements of Consideration rather than in the rule text.

18 Commenters who expressed opposition to making a
19 policy statement regarding safety of continued storage in the rule text
20 provided several reasons, including that providing such a statement is
21 unnecessary in the rule, that the Generic Environmental Impact
22 Statement is unable to support such a statement, and assertions that it
23 is not possible to project the future safety of spent fuel storage.

24 One commenter neither supported nor opposed this
25 issue, but asserted that technical issues identified as part of the NRC's
26 long-term Waste Confidence update must be resolved before the NRC

1 issues its Final Environmental Impact Statement. And although we are
2 not making a safety determination as part of this rulemaking, a specific
3 policy statement regarding the safety of continued spent fuel storage
4 has been a consideration in the past Waste Confidence rulemakings,
5 and given the number and breadth of concerns expressed about spent
6 fuel storage safety, the Directorate Staff is at this time in the current
7 state of our review inclined to retain a specific policy statement
8 regarding the safety of continued spent fuel storage in the rule text.
9 Next slide.

10 For issue number three, in contrast to the prior two
11 issues where there was a clear public preference, commenters who
12 responded to issue number three were split on the issue. Some
13 commenters expressed support for streamlining the discussion portion
14 of the Statements of Consideration, while others opposed such a
15 streamlining.

16 Commenters who supported streamlining did so most
17 commonly because it would improve clarity or reduce redundancy. Other
18 commenters suggested that lengthy Federal Register Notices are
19 burdensome to search, and that streamlining could remove
20 anachronisms. Most commenters who opposed streamlining indicated
21 either that either the information in the discussion portion supports the
22 rule, or it provides a plain language explanation of the matters in the rule
23 text.

24 Other commenters who opposed streamlining stated
25 that it would introduce changes upon which the comment did not have an
26 opportunity to comment. Additionally, some commenters indicated that

1 the Statements of Consideration should address findings that the NRC
2 has historically included as part of the Waste Confidence decision. And,
3 finally, one commenter stated the Federal Register is more readily
4 available and easier to search than the Generic Environmental Impact
5 Statement.

6 At the current state of our review, the Staff believes that
7 some streamlining of the discussion portion of the Statement of
8 Consideration is warranted where it repeats information that is in the
9 Draft Generic Environmental Impact Statement. The extent of that
10 streamlining is yet to be determined, but the Staff notes that the
11 Statement of Considerations must retain enough content to adequately
12 support the rule and the changes that have been made. Next slide.

13 Commenters who responded to issue number four
14 expressly near unanimous support for changing the title of the rule.
15 Commenters provided an array of reasons to support changing the rule
16 name, and specifically these reasons included that the name is an
17 anachronism, the name provides no useful description of the rule's
18 purpose or its intent, historical findings of confidence in the availability of
19 a disposal site have proven incorrect, and confidence in the ability to
20 manage or dispose of waste does not now exist, or that the 2012 ruling
21 from the U.S. Court of Appeals for the District of Columbia Circuit
22 invalidated confidence as a basis for the rule, or that the term "Waste
23 Confidence" is not meaningful enough without an explanation of how the
24 term originated, and confidence can only be obtained if all fuel is
25 transferred to dry casks.

26 One commenter who responded to this issue expressed

1 opposition to revising the title, and that commenter asserted that
2 removing the term “Waste Confidence” would be shortsighted because
3 the term ties the rule to the need to establish basic confidence in ultimate
4 waste disposal.

5 Many other commenters who did not specifically
6 comment on issue number four, but that we heard at our public meetings
7 expressed views related to the term “Waste Confidence.” Those
8 commenters indicated that waste confidence is an oxymoron, the term
9 does not describe the rule’s purpose, or it refers to confidence in a
10 repository that they indicated was misplaced based on experiences with
11 Yucca Mountain, or with other attempts to dispose of nuclear materials.

12 So, at this point in our review the Staff believes that the
13 title of the rule warrants changing. The Staff does not make a specific
14 recommendation for the new title right now, but as we move forward we
15 would be recommending a title change that accurately reflects what the
16 rule does, noting the fact that in contrast to previous rulemakings which
17 were accompanied by a Waste Confidence decision and policy
18 statement and five findings, the rule we’re developing now is
19 fundamentally different because the regulatory basis for the rule is now
20 an Environmental Impact Statement, whose purpose is to put forth the
21 environmental impacts of spent fuel storage. Next slide.

22 Finally, I wrap up the Staff’s presentation with a
23 discussion of the path forward. The Staff is currently processing and
24 developing responses to the public comments. Our next steps are to
25 complete that effort, make changes to the Generic Environmental Impact
26 Statement and the final rule, and to provide a high-quality set of

1 documents to the Commission in the summer of this year. And as Cathy
2 said in the outset, we intend to make every effort to produce a
3 high-quality product and finalize it within the prescribed schedule. Thank
4 you. Mike.

5 MR. WEBER: That concludes the Staff's presentation.
6 As we prepare to address your comments and questions, I would
7 emphasize that as I said in the beginning, the Commission is the ultimate
8 decision maker here, so while you've heard some previews of the
9 directions that the Staff is currently thinking about, there are no final
10 decisions on the Staff's part. And, clearly, it would be up to the
11 Commission to make the final call with respect to the rule and the Final
12 Generic Environmental Impact Statement.

13 And I would be remiss if I didn't call out that we have in
14 our audience several members of the Waste Confidence Staff, but you
15 will not see them all here because many of them are toiling on analyzing
16 the public comments and figuring out what changes, if any, are
17 appropriate for the analysis. So, with that, that concludes our
18 presentation, and we'll be happy to hear your comments and respond to
19 your questions.

20 CHAIRMAN MACFARLANE: Okay, thank you guys very
21 much for the presentations. We will turn to questions immediately
22 starting with Commissioner Svinicki.

23 COMMISSIONER SVINICKI: Well, thank you all for your
24 presentations. And I was wondering a little bit as I looked around the
25 room if everybody was here today. I know there's a scene in -- the
26 famous scene in the Christmas Carol, not the film adaptations but the

1 actual literary work itself which I'm a fan of, where, of course, the ghost
2 of Jacob Marley visits Scrooge early in it, and he's explaining that after
3 your death you will wander the world, so Scrooge remarks that his
4 -- because Jacob Marley was his partner in business, he says you've
5 been dead these seven years. Have you traveled much in that time? And
6 the ghost of Jacob Marley says something to the effect of I have, and
7 many weary journeys lay before me. So, I feel like when I think about the
8 Waste Confidence Directorate Staff, although they have journeyed far,
9 many weary journeys lie before them. So, I want to thank you for all the
10 work that you've done to those of you who are here in the room. Keith, to
11 you and your team. And, you know, I think any time you work in a large
12 organization people say the good news is you get to work on a
13 high-priority project, and then the bad news is that you get to work on a
14 high-priority project, so I think you and your folks have done a
15 tremendous job.

16 And I might ask, I know there have been a couple of
17 statements made in the Staff panel to the effect that you have every
18 intention of being able to conclude your work on the time line that you
19 have publically discussed, the summer time frame. Is your confidence
20 now since you have had some time with the public comment record, you
21 know some sense of the journeys that lie before you? Is that schedule
22 still achievable? And if there were a question about it, what would occur
23 to make that something that you would have some lower probability of
24 achieving? Keith, maybe you want to take a cut at that.

25 MR. McCONNELL: I would characterize it as we're
26 cautiously optimistic of meeting the established schedule. We're

1 cautious because we're respectful of the volume of comments that we've
2 got, and the need to address them comprehensively. But we're optimistic
3 because as Mike and Cathy have indicated, this is an Agency-wide
4 effort. All the offices have put their shoulder to this. And, also, I'd note
5 that it's basically within our control. It's a matter of the NRC Staff
6 performing in this particular instance, but there is a great challenge in the
7 sense that we -- I think all of us want to produce a high-quality
8 document. And that takes time, and it takes working smart, so we're
9 attempting to do that. So, I don't know if I responded completely to your
10 question.

11 COMMISSIONER SVINICKI: No, I think that is
12 responsive, and you're still pulling in that direction. But, of course, you
13 control much, but you don't control everything, and doing the job right is
14 going to be balanced against the schedule that's been laid out for you.
15 So, that's what I take from your answer, and I appreciate that. And I think
16 that that's appropriate.

17 And, again, as Chairman Macfarlane indicated in her
18 opening, we do have these constraints around this meeting where since
19 you're still in the process of analyzing the public comment record we're
20 not going to ask you specifically to respond. I appreciate that you leaned
21 forward a bit and gave us at least where preliminary indications might
22 take you on some issues. Mike Weber was clear again at the open and
23 close of the Staff's presentation, appropriately so, that that is and needs
24 to be caveated as a preliminary view. But I do think that that's helpful.

25 So, in light of that, and the fact that you will continue
26 your work, and the Commission will see whatever product you provide to

1 us, I think the only question, other question that I'm going to ask you is
2 that the NRC's Inspector General had a report, an audit of NRC's
3 compliance with 10 CFR Part 51 that's relative to the preparation of
4 Environmental Impact Statements. Have those recommendations been
5 factored into your approach to the work you did here on the EIS? And, if
6 so, could you talk a little bit about how that was done?

7 MR. McCONNELL: Yes. We're aware of the OIG's
8 report. In fact, some of us were interviewed by the OIG Staff. They made
9 six recommendations, and they basically boil down to three because one
10 is develop guidance, and the other is to implement. And they related to
11 doing a ROD according to 51.102 and 103. Sorry, Record of Decision, I
12 apologize. And we intend to do that, but that would occur at the end of
13 the process when the rule is published. So, we haven't done that step.

14 The other two related to scoping of the Generic
15 Environmental Impact Statement, which we did do in accordance with
16 what the OIG recommended. It wasn't required but we did it because we
17 thought it was the right thing to do. And the other dealt with the format of
18 the Generic Environmental Impact Statement in relation to Appendix A to
19 Part 51. And our Draft Generic Environmental Impact Statement is
20 consistent with that appendix, and the IG's recommendation.

21 COMMISSIONER SVINICKI: Okay, thank you. And I
22 guess I'll just close by once again saying take heart in how far you've
23 come. You keep pulling in that direction. And, again, in any number of
24 fora in Q&A, you know, I've been asked how I feel about the NRC Staff's
25 efforts in this area and, you know, I just respond that I think it's a really
26 proud effort on the Agency's part, so I want to thank all of you for your

1 commitment to this, your devotion. And you're closer to the end of this
2 miserable endeavor than you think, so don't worry about it. You'll get
3 there. Thanks.

4 CHAIRMAN MACFARLANE: Okay. Commissioner
5 Apostolakis.

6 COMMISSIONER APOSTOLAKIS: Well, in a previous
7 life I used to submit papers to technical journals and then I would get
8 comments from peer reviewers, and I didn't know where they were. And
9 I remember that as the number of comments approached ten or more, I
10 would get very annoyed.

11 (Laughter.)

12 COMMISSIONER APOSTOLAKIS: So, I must say that
13 you guys have a herculean task ahead of you, and I have complete
14 confidence that you will do your best to respond to these comments,
15 more than 1,000 comments I understand. And given the constraints of
16 today, back to you, Madam Chairman.

17 CHAIRMAN MACFARLANE: Okay. Commissioner
18 Magwood.

19 COMMISSIONER MAGWOOD: Thank you, Chairman. I
20 should note that Commissioner Apostolakis' previous lives sound very
21 boring to me. I was expecting him to have been an Egyptian pharaoh, or
22 perhaps a Bolivian midwife, or something interesting.

23 (Laughter.)

24 COMMISSIONER MAGWOOD: The target is so rich.
25 Well, first, let me thank you. We've been through this little journey from
26 the very beginning. I've talked with all of you at one point in time or other,

1 and Cathy rather frequently about this effort. And it always impresses
2 with me the NRC Staff how when given some massive challenge, which
3 when you sort of think about conception, you think how is all this going to
4 get done in this time frame? Somehow they always seem to manage to
5 pull it together, so I'm always quite impressed with that. And particularly
6 since unlike a lot of agencies, most of this work was done in-house, all
7 the comment resolutions were all done by NRC Staff, not with the use of
8 a lot of contracts. Well, they had the labs helping us, so that's more to be
9 lauded.

10 From the previous panel, one item I wanted to give you
11 a chance to react to was the comment that we heard from all the
12 panelists about how successful the public outreach was. And you
13 highlight that in your presentation. And as I hear that, and I hear how
14 Keith pointed out that there were some lessons learned from this. How
15 do we incorporate that going forward? I mean, we're going to have
16 opportunities to do these sorts of things, and Keith won't be running all of
17 them, or maybe he will. I don't know. What are we doing to make sure
18 that the rest of the Staff benefits from what we've learned here?

19 MR. IMBODEN: Okay. Well, both Cathy and Keith have
20 asked the Staff to produce a document at the end, a lessons learned, so
21 that way we could see what other -- what wasn't highly successful and
22 what was, what we'd like to do more, better, and different the next time
23 an opportunity like this presents itself that has the high degree of public
24 interest on it. And we're not -- we haven't set a deadline for that. We are
25 planning on accomplishing that in the summer, as well. The first priority
26 right now is getting the documents to the Commission.

1 MR. WEBER: Yes, I would only add, of course, one of
2 the benefits of the Directorate approach that we took to prepare this set
3 of analyses is that the Staff have come from across the Agency, so now
4 that this team when it's completed will disband and people will go back
5 across the Agency, they will take with them the good insights that they've
6 gained through this public process.

7 And on the feedback we heard from the first panel on
8 the process, you know, what I took away was kudos on the process, but
9 a qualification of well, we'll determine how good it is based on what the
10 product is from this process. And I think that's fair, you know. And I think,
11 you know, at a certain point process and product intersect, and I'm sure
12 what we come up with, what you come up with will not please everyone.
13 And then those who took the time, and energy, and committed to
14 participate in the process will have an opportunity to reflect upon well,
15 how did what we did contribute to or detract from that final outcome?
16 And, hopefully, they'll be equally forthcoming in sharing those views with
17 us so that we can look at this kind of in its totality, and not in a segmented
18 way.

19 COMMISSIONER MAGWOOD: I appreciate that. Mike,
20 do we -- I think there's so many training courses, and I don't have a list
21 of all of them, but I imagine there's a training course that speaks to this
22 kind of process. If there is, are we going to be able to fold your lessons
23 learned document into that training? Is that something the Staff would --

24 MR. IMBODEN: Yes, prior to the public meetings we
25 had everyone who was going to go on those meetings take specific
26 training to be able to respond. That's definitely a lesson that I'd like to

1 share with my colleagues so we could --

2 COMMISSIONER MAGWOOD: Fold that back in.

3 MR. IMBODEN: Yes.

4 COMMISSIONER MAGWOOD: Fantastic.

5 MR. WEBER: And, of course, we're also responding to
6 the Chairman's tasking memorandum on public involvement. And one of
7 the tasks in that is to look at the comprehensiveness of our training, and
8 is it focused on the right aspects? So, we'll have that opportunity to
9 reflect on that, as well, including other Agency initiatives, not just what
10 we're doing on Waste Confidence, but other licensing actions, the
11 Reactor Oversight Process. So, we'll use any and all insights.

12 MS. HANEY: I would just add one more thing as a best
13 practice I think that came up was encouraging Staff to think outside the
14 box with regards to public outreach. Sometimes we tend to limit
15 ourselves to what's been done before, and what's been successful
16 before. And when given this task several months ago to take on, really
17 bringing together the team and allowing our Staff to brainstorm on ideas,
18 and how to do things differently was, I think, one of the biggest benefits,
19 and what really got us to going with as extensive an outreach as we did.
20 So, again, it's one of those intangible lessons learned, but I think it's just
21 continuing to send the message to all of our Staff and managers that it's
22 okay to think outside the box.

23 COMMISSIONER MAGWOOD: Thank you. One last
24 question for Jacob Marley, otherwise known as Keith McConnell for the
25 record. After going through this rulemaking effort in this compressed
26 time frame, you must have learned some lessons about how to manage

1 an activity like this. And you had to take a disparate workforce and
2 quickly bring them together and harmonize that. Anything you want to
3 share about your experience that you think is a unique lesson that you've
4 taken from this exercise?

5 MR. McCONNELL: Just two things. I think one thing is I
6 actually believe that firm deadlines are your friends. And I think in this
7 particular instance the Commission's prescription of a deadline is
8 actually, in my view, a very positive thing.

9 In terms of bringing Staff together, you know, I heard my
10 name mentioned a couple of times but that's really misdirected. It's the
11 people behind me who are doing all the work, and in the audience, and it
12 just what -- it probably goes away from your question, but it just
13 demonstrates, I think, the quality of not only the technical staff, but the
14 rulemaking staff, and the communication staff in this particular instance.
15 And the legal staff, I'm sorry. Sorry, I include them with the technical
16 folks.

17 COMMISSIONER MAGWOOD: Right. And SECY, as
18 well. Right. Well, again, appreciate all the work on this. Obviously,
19 there's still some critical steps to go. As this goes forward, if anything
20 comes up that could interfere with your completion on schedule, you'll
21 please highlight it to the Commission as soon as possible. All right.
22 Thank you very much. Thank you, Chairman.

23 CHAIRMAN MACFARLANE: Okay. Commissioner
24 Ostendorff.

25 COMMISSIONER OSTENDORFF: Thank you,
26 Chairman. My good friend and colleague, Commissioner Svinicki, being

1 the student of film that she is, I thought that rather using the Christmas
2 Carol, she might pick a couple of other movies to select from,
3 Groundhog Day could be one.

4 (Laughter.)

5 COMMISSIONER OSTENDORFF: Die Hard II, Death
6 Wish IV. So, I appreciate Kristine's keeping this light a little bit this
7 afternoon with her movie choice, and I think the comment was very
8 appropriate.

9 You know, I'm not sure I have any questions. I know that
10 we are limited to what we can say today, and I know that you're still
11 working on forming opinions, so I would -- I think Commissioner
12 Magwood's line of questioning on lessons learned, and how to capture
13 that, I completely agree with those points that he has made, and I think
14 that's important to capture.

15 I would comment, I've also -- I've been pleased to see
16 the willingness with which various office directors have supported
17 people. I ran a Combined Federal Campaign in the Baltimore-Annapolis
18 area back in 1999 through 2002, for three years I did that for the Navy,
19 and the giving and organizing that, this, and so forth and so on, look to
20 my friend -- well, where did Glenn go, because Glenn Tracy's been back
21 here. He was here a few minutes ago. I know the NRO has been, in
22 particular, with the -- assisting their workload has been a big contributor
23 to help attainment, as well as all the other offices. And I appreciate your
24 mentioning those, both Cathy and Keith, across the board for the NRC,
25 and the people behind you. So, I'll add my thanks and encouragement
26 for the rest of the marathon here for the group, and I have no further

1 questions. Thank you all.

2 CHAIRMAN MACFARLANE: Okay, thank you guys. I
3 have questions, so I'm going to ask a bunch of questions. And I will say
4 thank you, and I will say, Andy, I guess it was okay that you left my staff
5 to do this. Good job.

6 I was glad to hear, Keith, you say that there's a large
7 body of work to draw on as you start to address these comments, not
8 only work internal, but external work which echoes some of the stuff I
9 was saying at the RIC. I do encourage you very strongly to look at the
10 large body of work that exists on a number of the areas in which you
11 received comments that's not produced from within the Agency, but
12 that's produced outside the Agency. And the degree to which we don't
13 reinvent the wheel, but we use what's out there is very helpful, I think.
14 So, more encouragement in that area.

15 There have been a lot of discussion about the public
16 comment process, and I appreciate that you guys traveled around.
17 When Andy was thinking about leaving me, we talked about the
18 importance of getting around the country and talking to folks personally
19 about this issue, and I'm glad you guys were able to accomplish that. I'm
20 wondering if there were comments, if you received comments about the
21 public comment process that you're going to address?

22 MR. IMBODEN: Yes, in the scoping period we
23 requested from the public input on where should we have these
24 meetings. Waste Confidence is a nationwide issue, there's no one place
25 you go to talk about Waste Confidence. It affects everybody. And we got
26 all kinds of input on that. We couldn't make everyone happy, we couldn't

1 be everywhere, but we --

2 CHAIRMAN MACFARLANE: Sure, obviously.

3 MR. IMBODEN: -- did our best to --

4 CHAIRMAN MACFARLANE: But did people comment
5 on the process itself, what they thought would be helpful, or what they
6 thought wasn't helpful?

7 MR. IMBODEN: We got good public comments, notes of
8 appreciation and that kind of thing from our meetings, how they were
9 conducted with the actual authors of the documents there, people
10 appreciated that access to the NRC Staff, and the NRC scientists and
11 engineers that went to those meetings did a wonderful job embracing
12 that role, and the meetings themselves because the purpose was to get
13 public comment. The NRC's presentation was very brief, people said
14 they appreciated that because that allowed us to, even though some of
15 the meetings did go long, to hear everyone who wanted to make a
16 comment, had the opportunity to do so. And even though nobody likes a
17 time limit, you know, our facilitator helped. It was fair to everybody and
18 that allowed us to do that, and we did get good feedback on that.

19 CHAIRMAN MACFARLANE: So, other questions about
20 the comments that you got. So, in regards to comments that you
21 received on institutional controls, what were the types of comments that
22 you received related to long-term financial capacity?

23 MR. IMBODEN: And the institutional controls, that's one
24 of the assumptions in the Generic Environmental Impact Statement that
25 seemed to attract a lot of comments, as did costs. The cost analysis that
26 the Staff did in the draft was an analysis of the proposed action, the

1 rulemaking, or its alternatives. And we did get a lot of comments. We
2 heard some of this from the first panel. Well, what about the cost of the
3 storage itself, or which fund is going to be used to pay for this and that?
4 So, we're still deciding what the best approach is on those things.

5 CHAIRMAN MACFARLANE: Yes, I'm not interested in
6 where you're going with it. I'm interested in understanding the detail of
7 the comments.

8 MR. IMBODEN: Yes, institutional control was -- going
9 into it, it was something that was very -- kind of a narrow -- it was one
10 assumption in a large Generic Environmental Impact Statement.

11 CHAIRMAN MACFARLANE: Can you remind me what
12 the Draft GEIS, Environmental Impact Statement and the proposed rule
13 assumed regarding financial assurance of long-term storage? Do you
14 guys --

15 MR. McCONNELL: Well, we assumed institutional
16 controls were in place. We also assumed that the industry would be
17 there, and so the finances would be there, as required by regulation.

18 CHAIRMAN MACFARLANE: Okay. And our finance
19 -- our regulations go beyond the 60-year safe store period for financial
20 assurance? Am I missing something here?

21 MR. McCONNELL: There would still be a possession
22 license. They would still need to decommission any independent spent
23 fuel storage installation. And, therefore, there still would be a need for
24 financial assurance for those activities. They still need to fund the safety
25 and security aspects of the operations of those facilities.

26 CHAIRMAN MACFARLANE: Okay.

1 MR. WEBER: That's what exists today.

2 CHAIRMAN MACFARLANE: Right.

3 MR. WEBER: Right. So, they're not done until we say
4 they're done and the license is terminated.

5 CHAIRMAN MACFARLANE: Right. I'm just trying to -- I
6 don't remember what was in the Draft GEIS, and the rule, so I'm just
7 trying to understand where -- you know, what our benchmark was.

8 MR. IMBODEN: Yes, it was a continuation of our
9 existing regulations.

10 CHAIRMAN MACFARLANE: Okay. According to your
11 Slide 7, you received more than 150 comments on high burn-up fuel?
12 And you noted that the -- well, in your writeup you noted that the EPA in
13 their statutory role as a reviewer of NRC Environmental Impact
14 Statements said that this topic should be addressed in greater detail.
15 Right? In the Final Generic Environmental Impact Statement, so what
16 were some of the major technical comments about high burn-up fuel?

17 MR. IMBODEN: Oh, high burn-up fuel was included in
18 the Draft Generic Environmental Impact Statement. It's part of our
19 analysis.

20 CHAIRMAN MACFARLANE: Right. The clear -- they
21 wanted more detail, but that was their comment. I'm interested in other
22 comments that you received.

23 MR. IMBODEN: Yes, that was -- there was a lot of
24 comments on that issue, so we heard different things in different parts of
25 the country.

26 CHAIRMAN MACFARLANE: Okay, interesting.

1 MR. IMBODEN: It was a little bit different in the meeting
2 we had in the Boston area than the one we did in Southern California.

3 CHAIRMAN MACFARLANE: So, what were the
4 concerns raised?

5 MR. IMBODEN: The concerns -- one of the lines that
6 was surprising to me was the feeling that high burn-up fuel would be
7 licensed in a way that somehow wasn't forthcoming, you know, by the
8 Agency when we would approve it. It kind of surprised some folks that,
9 you know, does my plant near me that I'm concerned about, does that
10 have high burn-up fuel? And that kind of concern, so that was a little
11 surprising to me because, you know -- and in our documents we
12 absolutely consider high burn-up fuel.

13 CHAIRMAN MACFARLANE: Were there other technical
14 comments on high burn-up fuel?

15 MR. IMBODEN: And then how -- during the period that
16 Waste Confidence is concerned with after the license life for operation,
17 how aging mechanisms might occur on high burn-up fuel. That was one
18 comment. Another line of comment was kind of like there's a lack of
19 research here. You guys need to do more before you could come to a
20 conclusion.

21 MR. McCONNELL: I might add, I think the focus of most
22 the comments, and from a technical perspective were on aging
23 management activities and also the uncertainty that exists with how
24 degradation might occur in dry storage with high burn-up fuel. And that
25 there might be greater uncertainty in that particular instance than there is
26 with storage of the other fuel, so it's mostly on -- I think, focused on the

1 uncertainty that exists with high-burn-up fuel for long periods of time, or
2 periods of time beyond 20 years.

3 CHAIRMAN MACFARLANE: Okay, thanks. I'm
4 interested in your use of the term feasible. On Slide 6 you talk about, you
5 know --

6 (Off microphone comment.)

7 CHAIRMAN MACFARLANE: Yes, so to me feasible
8 means -- you know, this is a complete connotation but it means
9 technically feasible, not necessarily politically or societally feasible, so
10 I'm wondering if you share that -- if you would just explain what feasible
11 means.

12 MR. McCONNELL: I think from the perspective of the
13 Draft Generic Environmental Impact Statement we saw it to be both
14 technically feasible based on the Department of Energy's work, and also
15 our own Staff's work on the Yucca Mountain review. But also looking
16 internationally, we also thought that feasibility could be expanded to
17 include the societal and political will to get the job done. So, I think from
18 the Draft Generic Environmental Impact Statement feasibility covered
19 both.

20 CHAIRMAN MACFARLANE: Okay. Okay, thanks for
21 that clarification. I appreciate that. What kind of comments did you guys
22 receive on dry transfer capabilities, safety and feasibility, there's the
23 feasibility word again, of dry transfer of spent fuel?

24 MR. IMBODEN: Yes, that was our assumption that
25 came into play in the long-term and the indefinite scenarios in the
26 Environmental Impact Statement. And we heard comments about the

1 -- in particular, the Staff assumed that that would have to be done every
2 100 years for the purposes of the Environmental Impact Statement. We
3 got some comments that that was a very, very conservative number, that
4 task would be longer. We heard other comments that because of things
5 you don't know about, you should assume more frequent replace, so
6 that's with how often it had to be done, the frequency. We also got
7 comments on people's opinions on what the environmental impacts of
8 the construction of a dry transfer facility would impose on, such as it
9 would cause -- it was a ground disturbing activity, so it may have
10 impacts to cultural and historic resources, or terrestrial life, that kind
11 thing, and worker exposure, those kind of concerns. It got a lot of
12 attention.

13 CHAIRMAN MACFARLANE: Okay. Do you want to add
14 something on that?

15 MR. McCONNELL: Well, we also got comments on the
16 fact that there hasn't been a dry transfer facility even proposed for nearly
17 20 years which was -- it was in the mid-1990s, I think, that DOE and
18 Transnuclear came in with a topical report, or something similar to that.
19 So, there is a great deal of concern that while it might be feasible,
20 nothing exists on paper at this point.

21 CHAIRMAN MACFARLANE: Okay. Okay, thanks,
22 thanks for expanding on all of that. And I'm way over my time now, so I'm
23 going to ask if anybody has additional questions or comments? No?
24 Then I will thank you all. I know you are working very hard but there is
25 light at the end of the tunnel. There is, Andy, there's light at the end of the
26 tunnel.

1 So, I know this is an issue of great interest to many
2 people, as clearly demonstrated by the number of comments that we've
3 received, and the amount of input that we've gotten. And, of course, we
4 are paying a lot of attention to it here at the Agency, and will continue to
5 do so and follow its resolution.

6 We appreciate all the comments and the hard work,
7 again, that folks outside have provided to us. And, clearly, based on our
8 discussion right now, they were very precise and technical, so we really
9 appreciate that, and we will go forward with this. Thank you all very much
10 for your attention. We're adjourned.

11 (Whereupon, the proceedings went off the record at
12 3:53 p.m.)

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
ENTERGY NUCLEAR OPERATIONS, INC.) Docket Nos. 50-247-LR
) and 50-286-LR
(Indian Point Nuclear Generating,)
Units 2 and 3))

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[Original signed by Brian Newell]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
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