

ORIGINAL

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

Title: MEETING WITH DOE ON EXTERNAL
REGULATION OF DOE FACILITIES - PUBLIC
MEETING

Location: Rockville, Maryland

Date: Monday, March 31, 1997

Pages: 1 - 54

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1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION

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4 MEETING WITH DOE ON EXTERNAL
5 REGULATION OF DOE FACILITIES

6 - - -
7 PUBLIC MEETING

8
9 Nuclear Regulatory Commission
10 One White Flint North
11 Rockville, Maryland

12
13 Monday, March 31, 1997

14
15 The Commission met in open session, pursuant to
16 notice, at 2:30 p.m., Shirley A. Jackson, Chairman,
17 presiding.

18
19 COMMISSIONERS PRESENT:

20 SHIRLEY A. JACKSON, Chairman of the Commission
21 KENNETH C. ROGERS, Commissioner
22 GRETA J. DICUS, Commissioner
23 NILS J. DIAZ, Commissioner
24 EDWARD McGAFFIGAN, JR., Commissioner

25

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1 STAFF AND PRESENTERS SEATED AT THE COMMISSION TABLE:
2 JOHN C. HOYLE, Secretary of the Commission
3 KAREN D. CYR, General Counsel
4 THOMAS GRUMBLY, Under Secretary, DOE
5 RAY BERUBE, Deputy Assistant Secretary for Environment
6 RAY PELLETIER, Director, Office of Environmental Policy
7 and Assistance
8 MARY ANNE SULLIVAN, Deputy General Counsel for
9 Environment and Civilian and Defense Nuclear Programs
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1 P R O C E E D I N G S

2 [2:30 p.m.]

3 CHAIRMAN JACKSON: Good afternoon, ladies and
4 gentlemen.

5 Today, the Commission will be briefed by officials
6 of the U.S. Department of Energy on its proposal to have its
7 nuclear activities to be regulated externally by the Nuclear
8 Regulatory Commission. The Department made an announcement
9 on December 20 of 1996 that it intended to submit
10 legislation to the Congress to transfer oversight of nuclear
11 safety to the NRC. The DOE announcement was made after the
12 completion of a study by an independent advisory committee
13 and a follow-up study by a DOE working group on external
14 regulation.

15 The Commission considered the matter of NRC's
16 oversight of DOE nuclear safety as part of its strategic
17 assessment and rebaselining initiative. Public comment was
18 solicited on the issue and the public strongly encouraged
19 the Commission to pursue the external regulation of DOE
20 nuclear safety.

21 The DOE's working group recommendation that NRC be
22 given regulatory oversight of DOE nuclear facilities, along
23 with the strong public support that NRC should have that
24 oversight responsibility, influenced the Commission's final
25 decision, which was issued just this last Friday on this

1 matter and should be available here.

2 Following the release of the Commission's final
3 decision on Friday, March 28, I did have the opportunity to
4 speak with Secretary Pena. At that time, he had not been
5 briefed on the subject but felt that there was a lot of
6 forward momentum for this proposal as well as Administration
7 support. Both the Secretary and I agreed that we will be in
8 contact very shortly. In fact, we will meet to discuss the
9 next steps in this initiative.

10 The Commission endorses NRC's taking
11 responsibility for the regulatory oversight of certain DOE
12 nuclear facilities. The Commission has directed the NRC
13 staff to establish a task force to identify the policy and
14 regulatory and legislative issues that need to be resolved
15 for this initiative to be successful. The Commission has
16 also instructed the staff to develop a joint memorandum of
17 understanding with the Department of Energy to establish the
18 framework for the legislative and follow-on phases of the
19 project and I, myself, will be writing a letter to the
20 Secretary, which I indicated to him in our discussion,
21 laying out the Commission's endorsement and basic position
22 in these matters, as well as some specifics as to how we
23 might go forward.

24 Many administrative, technical and legal issues
25 will have to be resolved if NRC is to carry out the

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1 Department's proposal. Today's briefing will be a first
2 step in gaining a better understanding of the issues as DOE
3 sees them that need to be resolved between the two agencies
4 if the proposal moves forward. We are looking forward to
5 hearing more details about the DOE proposal.

6 If none of my fellow commissioners have any
7 comments, Mr. Grumbly, would you please proceed? And it's
8 good to see you.

9 MR. GRUMBLY: Nice to see you, Madam Chairman.
10 And I would like to express appreciation to you and to the
11 rest of the Commission for the opportunity to meet this
12 afternoon to talk about this particular proposal.

13 I am pleased to be able to announce that
14 subsequent to the phone call that you had with Secretary
15 Pena that we were able to brief him last Friday and that we
16 came away from the briefing with his general support for the
17 concept of NRC regulation of DOE. He encouraged additional
18 efforts between DOE and NRC to further define the scope,
19 time frame and other elements required for a smooth
20 transition to NRC regulation but I wanted to emphasize his
21 continued support of the Administration's position in this
22 area.

23 We acknowledge receipt of the Commission's March
24 28, 1997, memorandum on this matter. We welcome, obviously,
25 the Commission's endorsement. We understand and agree with

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1 the conditions that were set forth by the Commission in that
2 memorandum and we look forward to working with the NRC task
3 force being created by the Commission to resolve many of the
4 policy, legal and technical issues in this very ambitious
5 but, I think, right proposal to improve the credibility and
6 safety of our activities.

7 I believe each of you has a briefing in front of
8 you with some briefing charts that I am going to use. That
9 and hopefully this will not take too long and we will have
10 plenty of opportunity to respond to questions. Let me just
11 say it is quite odd to look up and see my own picture.

12 [Laughter.]

13 CHAIRMAN JACKSON: That's the way we do things
14 around here.

15 MR. GRUMBLY: What we are going to cover here
16 today is a little bit about the current regulatory
17 framework, the historical context, some of the key
18 considerations that went into our views as we put this
19 proposal together. The specific NRC phased regulation
20 proposal, how we see this happening in a context of
21 regulated facilities in the DOE becoming many fewer over the
22 next five to ten years, talk a little bit about our
23 perspective of the annual cost to NRC, summarize the
24 benefits of external regulations as we see them, lay out a
25 future schedule and then talk about the legislation that we

1 see happening.

2 I think you and probably most of the people in
3 this room understand that DOE has changed dramatically in
4 the last 10 years, that operating from what was just about
5 10 years ago or the end of 1986, from an environment in
6 which we were totally self-regulated, we have changed rather
7 dramatically over the last decade.

8 In the environmental area, we are almost entirely
9 externally regulated at the moment by a combination of the
10 United States Environmental Protection Agency, state and
11 state regulatory agencies. In the worker protection area,
12 we are still currently self-regulated although we have a
13 proposal that has just come from the National Academy of
14 Public Administration that reinforces a decision that
15 Secretary O'Leary made early in her administration and that
16 is that we ought to work together with the Occupational
17 Safety and Health Administration there.

18 And in the nuclear safety arena, we are still
19 self-regulated with some exceptions. For example, as you
20 know, the geologic repository is currently regulated by NRC,
21 lucky you.

22 COMMISSIONER DICUS: Noted.

23 MR. GRUMBLY: But I think, you know, the main
24 thing to understand is that we have been slowly but surely
25 emerging from the cocoon of self-regulation over the last

1 several years. What we did not mention here, obviously, is
2 that in 1989 the Defense Nuclear Facilities Safety Board was
3 established to actually oversee but not regulate many of
4 DOE's defense nuclear facilities. That establishment
5 happened at a time when the Cold War was still under way and
6 we believe that the world has continued to change over the
7 last seven or eight years and that it's appropriate now to
8 begin moving in a different direction.

9 The historical context for this, you summarized a
10 little bit, Madam Chairman, in your opening remarks, but
11 just so that we get it all on the record, beginning in March
12 of '94, there were some initial congressional proposals
13 initially put forward by Congressman George Miller from the
14 state of California, who was then chair of the House Natural
15 Resources Committee, that would have resulted in external
16 regulation of DOE nuclear facilities.

17 At that time, the Administration and the Secretary
18 responded with a counterproposal saying that we would like
19 to put together an advisory committee in the department to
20 take perhaps a less fevered look at this issue than
21 sometimes can be given by the Congress. So we put together
22 an advisory committee that was headed by former NRC Acting
23 Chairman John Ahearn. And people, with people from around
24 really the nuclear complex including Joe DiNunno, one of the
25 members of the Defense Nuclear Facilities Safety Board.

1 That advisory committee reported in December 1995,
2 crossed the Rubicon with respect to the decision that in
3 fact we ought to be regulated by an external entity in this
4 area but like, I suppose, many advisory committees, they
5 didn't come up with the recommendation that we asked them
6 for, which was what should be the agency that should do
7 this.

8 So in January of '96, the then-Secretary O'Leary
9 asked Ray Berube, on my right, the Deputy Assistant
10 Secretary for Environment, Safety and Health, specializing
11 in the environment, to work with me and a group of my
12 colleagues in the department to come up with a
13 recommendation to her on, all right, which entity, which
14 combination of entities should actually get into this
15 external regulation area.

16 In December we reported and the former Secretary
17 selected the phased NRC option that we are going to discuss
18 today and, as I indicated, just this past Friday we had the
19 opportunity to brief Secretary Pena and he supports the
20 direction in which we are going.

21 The key considerations, and these are really your
22 key considerations that you sent to us I believe in early
23 1996 or late in 1995, I can't remember, about some of the
24 considerations that you thought we ought to consider and we
25 took these very seriously as we went through the process of

1 coming up with our own proposal.

2 First, that there be a single nuclear facility
3 regulator, once we got to the end of this process. We think
4 that that is the right place to be. I think the issues of
5 how quickly one can get there are things that we had to
6 consider very much in the forefront of our deliberations.
7 That there be a flexible regulatory approach. And I must
8 say one of the things that we emphasized with the new
9 Secretary on Friday and that he was very clear about in
10 discussions with us is that it would be necessary for this
11 proposal to be successful that both the NRC and the DOE
12 probably had to change some together, if this were going to
13 work. That the sort of facilities that the Commission is
14 used to regulating most thoroughly, the sort of commercial
15 nuclear facilities, are somewhat different than some of our
16 more exotic facilities, such as Rocky Flats and a few other
17 places that we have --

18 CHAIRMAN JACKSON: Having been to Hanford.

19 MR. GRUMBLY: Right.

20 Nonetheless, I think the notion that there
21 probably is room for us both to improve our approach is
22 something that we need to keep in mind. Clear legislative
23 authorities, who can argue with that? Obviously, we need to
24 do that. I think one of the issues that is on the table now
25 is whether even to get started whether we need some

1 additional legislation to get started in this.

2 Adequate transition planning, I have to say that
3 Ray and I and the rest of the task force, having lived for
4 some time with the transition from DOE self-regulation on
5 the environment to the kind of regulatory situation that we
6 have now, felt very strongly that we did not want to get
7 into the same type of situation that we encountered early on
8 in the environmental area, which is to say on day zero you
9 are self-regulated, on day one you are externally regulated,
10 on day two you are so out of compliance that you have to
11 sign up to all of these onerous agreements that then tie up
12 your budget for the next 37 years.

13 So we were very clear in thinking about this that
14 we needed to achieve adequate transition planning and have a
15 realistic time frame and scope so that we could bite this
16 apple in a way that we could all digest.

17 You obviously also talked about the need for
18 adequate resources and, of course, that's on both sides of
19 the fence. That is both in terms of the Commission's
20 ability to have the resources to do the kind of regulation
21 that is necessary so that you can be the kind of credible
22 regulators that you need to be and, also, the resources for
23 us to actually make whatever improvements to come into
24 compliance with what would need to be done.

25 Then, finally, opportunities for public

1 involvement. This is one of those opportunities for public
2 involvement but I really took this as a much -- we really
3 took this as a much wider piece than that. That is that we
4 believe, and I certainly believe very strongly in this, that
5 the time is past when the federal government can operate
6 under the covers of secrecy, that everything that gets done
7 has got to be done out in the bright light of day. It makes
8 it harder sometimes but that's just the way it is. So
9 having this sort of accountable public environment in which
10 we are all responsible for what we do is absolutely a sine
11 qua non to moving forward.

12 We came up with a phased regulatory plan in which
13 we have tried and, of course, there were a lot of different
14 options that we considered in putting this together, ranging
15 from do it now, don't do it at all, do it with the Defense
16 Board, do it with the NRC. You know, a variety of options
17 that expanded and contracted and we finally came up with
18 this, around which we got substantial consensus in the DOE.

19 I mean, when I say substantial consensus, I really
20 don't think there was maybe but one person on the Committee
21 who had a different view ultimately when we came out, that
22 this was the right option to propose at that time and place.
23 And just to not be too long-winded about it, the options are
24 that this would be a 10-year -- the selection was that this
25 would be a 10-year phase in. We can talk about whether 10

1 makes sense or not but you will see that there is some
2 analytic basis for it when we get to the next slide.

3 In the first five years, the Commission would pick
4 up selected defense programs, environmental management and
5 all energy research and nuclear energy, nuclear facilities
6 for regulation. That in the six- to ten-year time frame,
7 there would be regulation of selected defense program
8 nuclear facilities and all environmental management, energy
9 research and nuclear energy, nuclear facilities by the NRC.
10 After 10 years, the total package would be here.

11 With respect to the Defense Board recognizing the
12 really substantial expertise that the Defense Board and the
13 staff had, we felt that it would be appropriate that over
14 the next five years that we retain current oversight by the
15 Defense Board of the current DP and EM facilities while we
16 got them into shape to actually transfer them to NRC.

17 We don't want to have a situation where we have a
18 huge cliff on the day when most of these facilities are
19 taken over. We want to try to work over the next five
20 years, just to pick the number, five years plus whatever
21 amount of time it takes to get legislation in this area so
22 that really by the time most of these facilities, however
23 many there are, switch to the NRC, there really will be a
24 relatively smooth transition and not a huge gradient in
25 terms of what's needed to make things happen.

1 In the 6 to 10-year period of time the Defense
2 Board would oversee only the defense programs at nuclear
3 facilities. Nuclear explosive safety, by the way, would
4 stay under all of these options with the Department of
5 Energy. We're not asking you to regulate the actual
6 development and testing, whatever form that testing would
7 take, of DOE's nuclear weapons facilities, and I suspect
8 that one of the areas that our working groups will have to
9 explore is exactly which facilities fall into that category
10 and which would fall into other defense programs facilities,
11 but I think that's something that's not totally clear yet
12 and something that we need to get straight.

13 And finally, after the 10-year period of time, the
14 very talented members of the Defense Board staff would in
15 fact merge with your colleagues at the NRC and the Defense
16 Board itself would dissolve, having I think in that period
17 of time been in existence for about 18 years, gone through
18 several different transformations, really helped improve
19 dramatically the safety in the DOE complex, and I think
20 really unlike many organizations in the world, can be said
21 to have done the job that it was set up to do.

22 If you look at the next slide, one of the reasons
23 why we decided that it was important to pick a 10-year
24 period was we took a look for cost purposes and for, you
25 know, how big is this elephant. We took a look at how many

1 facilities were we actually talking about here, and one of
2 the things that we discovered as we went through this -- and
3 this is based on data from the DOE field, so this is not
4 data that's been, you know, invented by some staff person
5 back here at headquarters, but rather came in from the field
6 complexes -- well, how many nuclear facilities would there
7 be over x period of time?

8 Of course what you see is that right at about that
9 10-year point you get a relatively -- you go from nearly 600
10 facilities to roughly a little over 200. The vast majority
11 of those are facilities that will be going through the so-
12 called EM process, the environmental management process, so
13 when you look at the chart, and I don't think we've brought
14 that chart with us, but if you take a look at how this big
15 blue line breaks up to the different programs, the reason
16 why it drops off so dramatically primarily is because of the
17 reduction in environmental management facilities that will
18 have to be regulated.

19 This assumes that the decontamination and
20 decommissioning of facilities will occur under the aegis of
21 the Environmental Protection Agency, not under the NRC, so
22 the actual, you know, knocking the buildings down would not
23 be proposed to be part of the NRC responsibility as opposed
24 to the actual operation of DOE facilities that are there.
25 That's again another subject for conversation, but our

1 conception and the reason why the line goes down so
2 dramatically is once you're in the D&D area, you're outside
3 of the nuclear safety regulatory environment. That's
4 consistent with where we've been with the Environmental
5 Protection Agency for the last several years. So what we
6 wanted to do was bring on the number of regulated facilities
7 in such a way over time so that essentially the lines met at
8 an appropriate place.

9 In terms of annual costs to the NRC this is
10 something that I may let my colleague, Mr. Berube, talk to
11 more, if you're interested in it, but we had a low estimate
12 and a high estimate. We believe that there's pretty good
13 consensus between the two agencies about what it would cost
14 you, although this is obviously something that's much more
15 in your bailiwick than ours, people are obviously concerned
16 about the costs of this enterprise, but if you take a look
17 at this costing, once you get out to the 10-year period of
18 time, an increment of no more than \$75 to \$80 million a
19 year, and you take a look at the declining number of
20 facilities that the DOE has to regulate, fundamentally what
21 we're going to do is -- as a government, now -- is, and we
22 can, you know, there's all kinds of ways to decide how to do
23 this, but as a government what we're going to do is fund
24 your regulatory activities over the money saved from the
25 closure in part of the DOE facilities as well as funding the

1 incremental costs of improving the DOE facilities by virtue
2 of the fact that we're getting out of so many.

3 So the way in which we're able to deal with the
4 budget baselines that we're presented with over the next 5
5 to 10 years is driven very greatly by our ability to get out
6 of the number of facilities that we're talking about here.
7 So this, the chart that has the blue and the red lines, the
8 number of regulated facilities, has a tendency to drive the
9 overall capability of the system to absorb the costs in a
10 tough Federal budget situation, although I would have to say
11 that, you know, to me, I'd be willing to make the case
12 straight up to the Congress and to the OMB that an
13 incremental 75 million a year, if that was all we were
14 talking about, would be worth doing anyway. As we went
15 through the process, because -- why is that? -- because of
16 the tremendous benefits I think that the society will derive
17 in an area that we all know to be quite divisive and
18 problematic.

19 And the first is obvious, and that is that this
20 proposal eliminates the inherent conflict of interest from
21 the current self-regulation that we have. I think all we
22 have to do is look at the situation that we've encountered
23 in the last several months at the Brookhaven National
24 Laboratory on Long Island to see how people's perceptions
25 are problematic in an environment where you have the same

1 entity regulating itself that's supposed to be operating
2 essentially the facility, and I think that it's just really
3 a continuation of where we've been over the last 25 years of
4 regulation to try to separate the regulated from the
5 operator -- or the regulator from the operator at the same
6 time. So I think that this is a very powerful argument that
7 the public can understand and can fundamentally agree with.
8 We actually believe that this proposal, taken together with
9 our own efforts to improve DOE's internal safety and health
10 program, will in fact enhance the safety and health of the
11 complex.

12 And one thing I want to be quite clear about. We
13 are not talking here in this proposal about deeding over the
14 responsibility for making DOE safe to you. That's our
15 responsibility. The responsibility of the men and women who
16 work for the Department of Energy is to ensure that our
17 organization, our facilities, are safe, in the same way that
18 it's the responsibility of the Du Pont Corporation, any of
19 the other corporations in America, to be safe, it's our
20 responsibility to do that, and in fact being able to
21 emphasize the line safety responsibility of our managers to
22 be able to ensure that they understand that it is their
23 responsibility and not to look over the shoulders at the
24 environment, safety, and health organization inside DOE that
25 in fact can make our place better, our managers need to know

1 that they have the responsibility on the line for having
2 these facilities be safe.

3 Your job is to essentially set the rules of the
4 road so that consistently over time without regard to
5 changes in administration, without regard to changes in the
6 flavors of the month, safety policies that any particular
7 administration might come up with, is to ensure the kind of
8 consistency, predictable and stable environment within which
9 our men and women can do their job. I'm absolutely
10 convinced that the combination of our improving our own
11 safety capabilities inside plus you setting fair, flexible,
12 reasonable rules of the road, will in fact make the DOE
13 complex safer than it is today.

14 I think also this particular proposal will
15 increase the public trust and confidence because it will
16 lead to much greater stakeholder involvement through open
17 regulatory processes. We spend enormous sums of money
18 complying with recommendations that are essentially
19 developed by extraordinarily fine technical people but are
20 developed outside of the light of day. To me that's just
21 not where the public wants us to be these days. People need
22 to know the whys, the wherefores, and in a budget
23 environment that's increasingly constrained, we need to
24 identify why we need to make certain kinds of safety
25 investments, and those safety investments need to be open to

1 public comment and review.

2 I also think actually that enhanced safety will
3 provide for real savings. We've seen that in a number of
4 places that the ability to solve a problem once rather than
5 to Band-Aid it over time really makes our places safer
6 rather than less safe.

7 In terms of the future schedule, the first -- we
8 were pessimists when we put this together. Our Secretary
9 asked me on Friday, well, why do you think it'll take two
10 years to get through the process, and I said well, hey, put
11 our shoulders to the wheel, we'll probably be done a lot
12 quicker than that. But we made an assumption that the
13 entire process of developing, submitting, and passing
14 legislation would take an entire Congress, and obviously
15 we've just lived through a transition, so we've -- I won't
16 say lost, but we've been essentially in neutral for a couple
17 of months while we went through the process of getting a new
18 Secretary, thereby, I think, reinforcing the fact that it
19 could take two years to actually come up, get, and pass
20 legislation, assuming we can rally the kind of public and
21 congressional support for this idea that we need. And then
22 you can see the time line for implementation of the two
23 phases.

24 In briefing people on the Hill about this, what
25 we've really gotten I suppose is -- and I don't mean this as

1 a term from psychiatry -- we've gotten bipolar responses to
2 this proposal. Actually we've gotten a lot more support on
3 the Hill for advancing the pace of this exercise than I
4 certainly would have expected going in, and obviously there
5 are some people who believe that the DOE is somehow giving
6 up its responsibility by going in this direction. I think
7 that there's a path that can be charted through the Congress
8 that will in fact result in legislation here, but I'm not
9 going to sit here and tell you that I think that it's a slam
10 dunk. It's going to be something that if we're serious
11 about it is going to have to be worked at.

12 What I can assure you of is that Secretary Pena's
13 support will be quite meaningful in the administration, that
14 there is very solid support for this inside all of the
15 councils of the executive branch, at the moment, and that
16 there's really a good opportunity to make progress on this
17 at this point.

18 What we'd like to do is -- and have been involved,
19 and now we will get much more deeply involved in it again --
20 is develop the legislative proposal, and that may be
21 proposals, that could be plural, because there may be some
22 things that need to be done in the near term as well as in
23 the long term about this. We'll obviously need to work
24 together to identify the very specific facilities -- and by
25 facilities I mean building by building, in some cases in

1 some of our complex -- that will have to be regulated.
2 We'll want to move as quickly as we can on the energy
3 research side of the equation, because we think there are
4 real near-term opportunities there. We'd also like to work
5 as quickly as we can to bring any new facilities that we're
6 building under this arena as quickly as possible. We don't
7 see any advantage to building new facilities and having them
8 operate under an old regulatory or oversight framework if
9 we're going to move to a new one.

10 Obviously we'd have to work together to develop
11 the standards to be applied to each facility, with you all
12 ultimately having the last call on this, develop the
13 schedules for regulation, do some pilots, develop whatever
14 draft rules are needed to regulate, and then train up the
15 people who are necessary to do this job.

16 In sum, this is not an easy task to undertake.
17 None of these things ever are, but it seems to me that
18 whether you pick a five-year period of time or a ten-year
19 period of time, the time is today to start working on this.
20 So we appreciate the opportunity to chat with you.

21 CHAIRMAN JACKSON: Thank you, Mr. Under Secretary.

22 Let me begin by asking you a few questions and
23 then I'll defer to my Commission colleagues.

24 This ten-year schedule, is this related to a
25 specific plan that DOE has relative to decommissioning or

1 closing?

2 MR. GRUMBLY: No. No, this is not for example
3 related to the Environmental Management Ten Year Plan that's
4 been out on the street.

5 I mean it happens to coincide but it wasn't
6 developed that way. It was simply the Task Force's best
7 estimate at the time of what it would take to get from here
8 to there in a way that was orderly and that could meet the
9 demands that we have, but it is not written in stone. There
10 are certainly ways to accelerate it, if we should want to do
11 that, and we think that that would be feasible too.

12 Frankly, if we get the sense mutually that there's
13 sufficient political support for this, we could advance the
14 time period quite considerably.

15 CHAIRMAN JACKSON: I am looking at this number.
16 This is on page 7 of the regulated facilities, and you
17 reference a decreasing number of facilities.

18 MR. GRUMBLY: Right.

19 CHAIRMAN JACKSON: And I guess I am interested
20 does this relate to a known plan for the closure of --

21 MR. GRUMBLY: This represents, as I understand it,
22 and Ray Pelletier is here -- why don't you jump in, since
23 you put the number together? -- this relates to a roll-up of
24 an information call that we made from our field offices
25 based upon the best currently available targets estimates

1 that we have from the Office of Management and Budget, but
2 fundamentally the views of our people is that a lot of this
3 is not related to -- within certain bounds it's not related
4 to whether the department has 5.4 or 5.7 or 5.9 billion
5 that, you know, while there's -- I wouldn't want anybody to
6 hold me to a point estimate in any given year that roughly
7 how this is how things are going to be, right?

8 MR. PELLETIER: That's accurate, Tom.

9 We simply ask the sites in five years which
10 facilities will be expected to be shut down, which
11 facilities you expect to continue operating for some time,
12 and they gave us back numbers and we just plugged them into
13 the graph.

14 CHAIRMAN JACKSON: Okay. Could you give me -- you
15 mentioned D&D facilities -- facilities under Decommissioning
16 and Decontamination would be under EPA and not NRC with the
17 knocking down of buildings, so I would take it that the
18 Hanford Tank Waste Remediation project is not a knocking
19 down of buildings?

20 MR. GRUMBLY: No, we would envision that being one
21 of the early entrants into this program.

22 CHAIRMAN JACKSON: Okay. Then if I am looking at
23 page 8. I am going to try to go fast here. These costs are
24 on an ongoing basis and therefore do not include what the
25 transition costs would be?

1 I mean --

2 MR. GRUMBLY: Well, these are costs to you, now.

3 These are not costs to the DOE system, right?

4 MR. BERUBE: That's right. When the Advisory
5 Committee that Mr. Grumbly mentioned earlier was conducting
6 its study, it requested from NRC Staff an estimate of the
7 costs and what we did was adjust that cost estimate to
8 reflect the decreased universe of facilities, down from 600
9 to roughly just a little over 200, and then we ran that very
10 rough estimate by NRC Staff, and so there is general
11 agreement that that is order of magnitude correct.

12 CHAIRMAN JACKSON: No, I understand. I guess what
13 I am really trying to get at though is the following.

14 You mentioned not having cliff regulations.

15 MR. GRUMBLY: Yes.

16 CHAIRMAN JACKSON: And therefore, you know, one
17 would have some transition period, and so you imagine during
18 that transition period all of the costs would be borne by
19 DOE, is that correct?

20 MR. GRUMBLY: Right.

21 MR. BERUBE: Right. This chart is merely NRC
22 costs, not DOE costs associated with the transition.

23 CHAIRMAN JACKSON: Right, but -- okay. With the
24 transition itself --

25 MR. BERUBE: Getting the facilities --

1 MR. GRUMBLY: In shape.

2 MR. BERUBE: -- upgraded --

3 CHAIRMAN JACKSON: In good shape.

4 MR. BERUBE: -- so that we can transfer them over
5 to external regulation by NRC.

6 CHAIRMAN JACKSON: Okay.

7 MR. BERUBE: There is a separate estimate of costs
8 associated with those upgrades, and it is a rough estimate
9 that we have used. It's 10 percent of the amount that we
10 spend on safety and health within the DOE complex.

11 MR. GRUMBLY: Just to give you a sense of this,
12 we -- our current, if you look at the President's budget for
13 fiscal year 1998, you'll see for example an environmental
14 program estimate that goes out through -02 of about \$5.5
15 billion.

16 CHAIRMAN JACKSON: Yes.

17 MR. GRUMBLY: Steady, right? We expect that
18 sum -- but then you can look at the facility aspect and see
19 the number of facilities going down in that period of time.

20 CHAIRMAN JACKSON: Right.

21 MR. GRUMBLY: So conceptually what we are going to
22 be doing is funding whatever improvements that we have on
23 the difference between, as we bring facilities out of
24 service, how we have to shift funding to improve those
25 facilities that still exist.

1 We don't want to be in the business of making
2 major upgrades on facilities that are not going to be
3 operational by the time you get around to them.

4 CHAIRMAN JACKSON: Yes. I guess all I am really
5 trying to understand is what we mean by annual costs to NRC.
6 Let me explain to you what I mean.

7 Today if we in our regulation of a reactor site --
8 I don't know -- you know, we are 100 percent fee-based. I
9 think this is all in the public domain. We're talking
10 roughly \$3 million per reactor site.

11 So if I look at this viewgraph that says 200
12 facilities and realizing that they are different, okay, you
13 know, out at some 10 year window after the legislative
14 phase, then you are talking 200 facilities for \$75 million,
15 and so my mathematics -- that is what I am trying to talk
16 about when you talk about the apportionment of costs, you
17 know, what do we mean?

18 Do you mean some kind of infrastructural cost to
19 NRC on which other costs would be added? See, that is all I
20 am really trying to find out.

21 MR. BERUBE: Okay, and let me answer by indicating
22 that again when the Advisory Committee was doing its study
23 it came to NRC Staff, which applied these cost factors by
24 the different types of facilities.

25 CHAIRMAN JACKSON: Okay.

1 MR. BERUBE: Now we have lumped all of the
2 facilities together but -- and then just simply pro-rated
3 down, but we think it's still a representative estimate of
4 the cost that includes all of the things that you did
5 mention.

6 CHAIRMAN JACKSON: Okay, so let's round this up to
7 \$100 million -- so we are saying \$100 million for 200
8 facilities, so you are basically talking about some kind of
9 averaged, amortized -- you know, annualized cost of on the
10 order of a half million, where some could be more and some
11 could be less. Is that the point?

12 MR. BERUBE: Yes, although I feel fairly
13 comfortable with the \$75 million.

14 [Laughter.]

15 CHAIRMAN JACKSON: I know your point. Okay. Let
16 me just ask you a couple quick questions about the
17 legislative phase, and then I'll defer to --

18 MR. GRUMBLY: Because if it gets to the \$600
19 million phase we can forget about this.

20 CHAIRMAN JACKSON: What assistance or working
21 relationship would DOE expect from NRC during the next two
22 years while we're in the legislative phase.

23 MR. BERUBE: I think that the task force that the
24 Commission is proposing to create and deal with all of these
25 issues, the policy, legal, technical issues, is exactly the

1 thing that we need at DOE to interact then with NRC.

2 I think we need to work on identifying likely
3 pilots, the additional MOUs that will allow NRC to work with
4 DOE in all of this over the time that it takes to get the
5 legislation enacted.

6 CHAIRMAN JACKSON: Have you yourself created a
7 task force that would be -- have you identified a group and
8 a point person that would work with our task group to move
9 things along in this phase?

10 MR. GRUMBLY: Well, you can bet that Dr. Berube
11 here is going to be central to that as well as Ms. Sullivan
12 in the General Counsel's office, but really we were -- you
13 know, we have had a Secretary for 17 days now and actually I
14 think that the fact that this was on his agenda as early as
15 it was is interesting, but we'll be identifying a task force
16 now that we have his direction to move forward so that we
17 can do the kind of interaction that you are talking about.

18 CHAIRMAN JACKSON: Okay. Let me ask you this.

19 Has DOE developed any preliminary legislation that
20 would in any sense transfer a regulatory responsibility or
21 be enabling in any way at this point, and if so, can you
22 describe it?

23 MR. GRUMBLY: We have a draft but it is very much
24 a preliminary draft at this point and I think we would
25 probably prefer --

1 CHAIRMAN JACKSON: Not to have to --

2 MR. GRUMBLY: -- not to embarrass ourselves by
3 describing it in detail at the moment.

4 Mary Anne?

5 MS. SULLIVAN: I have not actually even seen the
6 draft. It's in a very preliminary stage.

7 CHAIRMAN JACKSON: So you have not had an
8 interaction with NRC attorneys on this --

9 MS. SULLIVAN: Not yet.

10 CHAIRMAN JACKSON: -- this draft.

11 MR. GRUMBLY: No. We have really been waiting for
12 this little watershed to make that happen.

13 CHAIRMAN JACKSON: Then one last thing. I want to
14 revisit the question of the sense of Congressional support
15 for this proposal.

16 You mentioned this was, as you say, in non-
17 psychiatric terms a bipolar response.

18 But there was support for in some sense advancing
19 things. Is this response bipartisan where it is positive?

20 MR. GRUMBLY: Yes, I think I can say that.

21 It's actually been quite surprising to me to go up
22 on the Hill to committees like -- and this was just at the
23 staff level -- I want to emphasize that. I haven't talked
24 about this with any of the principals so far, but at the
25 staff level of several of the committees there's been a fair

1 amount of interest in accelerating the proposal.

2 I think, you know, the interest really stems from
3 trying to get as clear as possible a sense for who is really
4 regulating DOE.

5 One of the problems that we have, Madam Chairman,
6 is a lack of clarity sometimes about roles and
7 responsibilities, and if you have too many people engaged in
8 giving too much direction to the same people, what we end up
9 having is multiplying costs rather than eliminating them.

10 Actually, a lot of the interest is driven by a
11 desire to drive down the costs of health and safety
12 regulation in the Department, so, you know, we certainly
13 still have all the support that we had from Congressman
14 Miller and other people who initially suggested this who
15 came from the Democratic side of the equation, and what I
16 have been surprised at is how much support has been building
17 for this from the Majority side of the equation at the
18 moment.

19 CHAIRMAN JACKSON: You mentioned having not so
20 many different regulators but you do reference EPA, OSHA and
21 then there is the issue of the states.

22 MR. GRUMBLY: Just like any other corporation.

23 CHAIRMAN JACKSON: Okay, so you are thinking of
24 delineation of responsibility in a way not unlike there
25 would be delineation today for private entities between --

1 MR. GRUMBLY: Yes.

2 CHAIRMAN JACKSON: -- between OSHA, EPA --

3 MR. GRUMBLY: Yes. The basis for this support,
4 frankly, inside the Administration rests on a simple
5 premise: the Department of Energy should be treated as much
6 like corporate America as possible.

7 Recognizing the difference that we get our money
8 the old-fashioned way -- it's appropriated -- but
9 nonetheless the intellectual model is behave and be seen as
10 much like the private sector as possible.

11 CHAIRMAN JACKSON: Okay. Commissioner Rogers.

12 COMMISSIONER ROGERS: Well, just coming back to
13 the cost question, I know you've got a lot of things rolled
14 together here in the facilities definition, but what is a
15 facility?

16 MR. BERUBE: It's everything from a reprocessing
17 canyon to a hot cell. And we actually do have a detailed
18 list of facilities that we would envision as our next step,
19 sitting down with NRC staff and working through this in a
20 very detailed manner.

21 COMMISSIONER ROGERS: Well, I was just trying to
22 make a little sense out of, you know, trying to correlate
23 the schedule on page 6 of what happens in the first five,
24 the next five, and after that years, and the types of
25 facilities that NRC would be taking over regulation of and

1 how that might relate to the cost question. In the first
2 five years what do you see as the mix of hot cells to larger
3 facilities? What is that, and how does that compare with
4 the next five years?

5 MR. BERUBE: Okay. In fact the phasing program
6 that we came up with reflected the different types of
7 facilities as well as the numbers. And Ray, help me on
8 this, but as I recall, given that total universe, the ER --
9 energy research -- and nuclear energy facilities account for
10 about 20 percent of the total universe currently of nuclear
11 facilities. Now in addition that population includes things
12 for which NRC currently regulates in the private sector,
13 some research reactors, for example, and other things like
14 that. So it seemed to us to make sense that that's where we
15 should start this transition.

16 Now in addition, though, given that the end point
17 here, this anticipated, this NRC regulation of everything,
18 anything new, any new nuclear facility, would just seem to
19 make good, common sense to start NRC involvement in that on
20 day 1 as opposed to doing it some other way and then running
21 into a major obstacle. So that's the terminology on
22 selected DP and EM facilities. What we have in mind there
23 are the new nuclear facilities.

24 Now, that second phase then, what's happening
25 there, as Mr. Grumbly indicated, is the second phase really

1 picks up all of the environmental management facilities, but
2 what's happening over time with those, a lot of them are
3 being shut down, and more important with respect to nuclear
4 safety, the nuclear hazard, hopefully will be redressed at
5 that point in time.

6 Now that's the concept generally. I think again
7 we need to work out site by site and facility by facility
8 with NRC staff whether that in fact is the case, and to the
9 extent it's not, then we're going to have to make some
10 contingency plans for those.

11 MR. GRUMBLY: It's probably worth noting that part
12 of the proposal, at least in the report that Secretary
13 O'Leary accepted, is that if you were to follow this model
14 at the end of the five-year process you would have to lay a
15 proposal on the table really with the Congress to flip to
16 the next round, which is to say the President would get
17 another bite at this apple. So either on a facility-by-
18 facility or groups of facilities, the -- you know, we don't
19 envision just tossing these over the transom at somebody
20 before they're ready to be regulated by somebody else.
21 There has to be some fail-safe systems built into this.

22 MR. BERUBE: And then the third phase picks up
23 what's left of the defense weapons complex at that point in
24 time, which may not -- definitely will not include the sort
25 of nuclear facility production facilities we had in the

1 past. So that's the general concept behind this phasing.
2 And as Mr. Grumbly is pointing out and what we tried to
3 depict in this chart on page 7 is that what's envisioned
4 here is a ramping up and not a sudden step function. And
5 during the first phase where we're moving toward external
6 regulation of the energy research and nuclear energy
7 facilities, we'd be planning for all of the environmental
8 management facilities, laying out detailed schedules for
9 getting those facilities that will come under external
10 regulation upgraded. So it's all a phasing approach to this
11 transition.

12 COMMISSIONER ROGERS: Well, what I was looking at
13 is the annual cost to NRC, and I noticed that, you know,
14 there's a slope change between the first five years and the
15 second five years, and there's also a slope change in the
16 cost and also in the number of facilities. Are they
17 disproportional. In other words, is it the same cost per
18 facility in the first and the next five, and the only change
19 in the slope of the cost is because the number of regulated
20 facilities is going up more rapidly?

21 MR. BERUBE: Yes.

22 COMMISSIONER ROGERS: So that doesn't take into
23 account anything about the nature of what might be different
24 in the next five from the first five?

25 MR. BERUBE: That's right. It does not. And we

1 envision, again, this cost estimate --

2 COMMISSIONER ROGERS: It's a very rough cut.

3 MR. BERUBE: That's right. It was prepared just
4 to answer the general question how much is this going to
5 cost, how much will it cost NRC, how much will it cost DOE?
6 And we acknowledged the need to get down to a finer level of
7 precision with respect to budget requests.

8 MR. GRUMBLY: Am I right, Ray, to emphasize again
9 that this cost estimate was one that was developed with the
10 NRC staff?

11 MR. BERUBE: We took the original NRC staff
12 estimate that was done for the advisory committee and then
13 made a pro-rated adjustment to it and explained to NRC staff
14 that that's what we had done. There was general agreement
15 that this was ballpark okay.

16 COMMISSIONER ROGERS: I think that the ballpark
17 characterization should be emphasized.

18 MR. GRUMBLY: Having said that, I think it's
19 important to emphasize that I was not being facetious
20 before. If the cost of this starts to get up in the quarter
21 of a billion dollars a year category, we can forget about
22 getting that money from the Congress. So I don't know where
23 the notch point is in this, but speaking as a short-timer,
24 it's something that people better take into account and not
25 let the cost of this grow dramatically or, you know --

1 CHAIRMAN JACKSON: Let me make a comment,
2 actually, which may relate to the notch point. You know,
3 you talked about facilities, your new facilities, or
4 facilities that look like or are like facilities the NRC
5 currently regulates. You also talk about the legislative
6 phase activities in terms of initiating pilots. So the
7 question I was going to ask is kind of a follow-on in terms
8 of this, it falls into the financial part, is do you
9 consider the initiatives to first of all include the pilots,
10 rather to include initiatives already under way, such as the
11 Hanford.

12 MR. BERUBE: Yes.

13 CHAIRMAN JACKSON: Secondly, would you intend for
14 the pilots to be risk-informed, that that would be a
15 selection mechanism out of a possible universe, because in
16 principle that could be a model and would define a notch
17 point, so to speak.

18 MR. GRUMBLY: I certainly think that would be one
19 of the major considerations, yes, perhaps not the only one.

20 COMMISSIONER ROGERS: Yeah, well I think that, I
21 don't know, I don't know exactly what the NRC staff took up
22 with you in detail, although we did see preliminary
23 estimates of this over a year ago or so, and they were very
24 rough, I mean, they were very rough. So my only point is
25 without being unkind I would be cautious about how

1 comfortable you feel with that \$75 million.

2 MR. GRUMBLY: I just want to --

3 COMMISSIONER ROGERS: You know, there's a lot of
4 review has to go in as to what kinds of facilities, and even
5 so, I don't think probably our staff would be willing to say
6 that, you know, that's a final number that they support at
7 this point. I think you have to see how the analysis comes
8 out.

9 MR. GRUMBLY: I want to be clear, Mr. Rogers, that
10 the first draft, as I understand it, numbers that you saw
11 had an assumption in it that you were going to regulate 630
12 facilities. So one of the major drivers in the initial
13 staff estimate was the numbers of facilities, and that's
14 been changed quite a bit.

15 COMMISSIONER ROGERS: Well, you take the 600 and
16 divide it by some total -- to take some total number and
17 divide it by 600 and then take that number and start using
18 it when you get down to the smaller number of facilities,
19 you're going to be in real trouble.

20 CHAIRMAN JACKSON: I think though that it's clear
21 that we're not going to work out a number here at this
22 table, and therefore the actual wiggle room is somewhere
23 between perhaps this initial slice and what the Under
24 Secretary refers to as the notch point, and so we work at
25 it.

1 MR. GRUMBLY: I would just urge you to consider
2 the fact that for whatever its problems, the defense nuclear
3 facilities safety Board oversees the entire DOE complex for
4 \$16 million.

5 CHAIRMAN JACKSON: Well, as I say, we'll stay
6 where we were.

7 COMMISSIONER ROGERS: It's irrelevant.

8 MR. GRUMBLY: Not irrelevant to them.

9 COMMISSIONER ROGERS: Well, it is to me.

10 At any rate, let's turn to slide 10, and what
11 happens at the end of five years in the little vertical
12 dotted line between partial external regulation and complete
13 external regulation? What do you see happening at that
14 point, and who do you see involved in deciding whether
15 that's ready to happen to go from phase 1 to phase 2?

16 MR. BERUBE: Okay, what we had envisioned is
17 basically a status report reporting back on how phase 1 went
18 in terms of the transition, the associated cost, problems
19 that were encountered, and then it provides for the
20 Secretary to make a recommendation to the President as to
21 whether or not to continue into phase 2, and the President
22 turn to Congress and, as I recall, we have a few different
23 options on how that legislation could work. It could be a
24 lie-before-Congress mechanism where the -- unless the two
25 Houses of Congress -- and Mary Anne, maybe you can help me

1 with this one -- objected, the implementation program would
2 go forward if that were the President's decision.

3 MR. GRUMBLY: Right.

4 MR. BERUBE: There's an element of that that's
5 related to the cost, because there was concern -- and again
6 I think this has to do with the total universe of facilities
7 that we originally were talking about, the 630-plus --
8 concern that if you tried to have all those facilities
9 operate under NRC regulation, there wasn't enough money in
10 the Treasury to do that, and of course that isn't what the
11 plan is, and it wouldn't make a whole lot of sense to
12 develop a regulatory structure for facilities that are out
13 of operation and going to be D&D'd. So to address that
14 concern we provided this relief provision that would allow a
15 revisit of cost in other aspects of this before going to the
16 next phase and then finally the same thing for the final
17 phase.

18 CHAIRMAN JACKSON: Commissioner Dicus.

19 COMMISSIONER DICUS: Yes, let's go to slide 5 on
20 the key considerations, and it's a question that the
21 chairman has already addressed with you, but I want to take
22 it a step further or get it clarified. This is on the
23 single entity regulating nuclear safety, and together with
24 what the role of the States may be. As we all know, you
25 have activities at the facilities, such as accelerators, X-

1 rays, which we do not regulate. So is it clearly understood
2 that that would not necessarily change, but you would work
3 with the States for that regulatory --

4 MR. BERUBE: Yes. Yes, it is.

5 COMMISSIONER DICUS: That would be coordinated in
6 some way with this 10-year plan?

7 MR. BERUBE: Yes, ma'am.

8 COMMISSIONER DICUS: Then go to -- and not to beat
9 a dead horse -- but go to slides 7 and 8. Just a couple of
10 points that I want to make.

11 It seems as though these cost considerations, and
12 we all know we can't come up with a figure, and we're not
13 interested in doing that, but we're interested in looking at
14 trends, and some concepts here. I'm very much keyed on this
15 number of facilities going down. Now what is this doesn't
16 happen, this schedule is not made? That changes obviously
17 the slope and everything else here, and I simply want to
18 make that point.

19 The second point, I think you said you're
20 considering in the neighborhood of 10-percent increase in
21 cost over what the facilities are costing now to bring them
22 up to a standard, did I hear that right, for roughly
23 that's --

24 MR. BERUBE: Ten percent.

25 COMMISSIONER DICUS: Is that across the board?

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1 MR. BERUBE: Yes.

2 COMMISSIONER DICUS: For all of the facilities, or
3 some will be more and some will be less?

4 MR. BERUBE: We used a rough approximation of 10
5 percent, and we based that on a limited benchmarking study,
6 we went to some NRC-regulated entities to get an indication
7 of what sort of cost increases they believe are related to
8 NRC regulation. Interestingly, some of them pointed out, by
9 the way, that they think actually they have cost reductions
10 associated with NRC regulation. But it ranged from 4
11 percent to 24 percent, but a strong grouping around 5 to 10
12 percent. Then we used the 10 percent to be conservative in
13 trying to develop our estimates, and we applied that against
14 what the Department is currently spending for health and
15 safety. The Department of Energy does not budget separately
16 for health and safety, so all you can do is come up with
17 estimates.

18 COMMISSIONER DICUS: Okay. I was a little
19 concerned about the 10 percent and how you arrive at the
20 figure. Having had experience in dealing with the gaseous
21 diffusion plants, you know, there were some -- a lot of
22 money had to be spent to bring those in.

23 MR. BERUBE: We also looked at the experience with
24 the gaseous diffusion plants to try to validate the
25 estimates, and I don't think it would have been correct to

1 use the uranium enrichment plants, the gaseous diffusion
2 plants, as representative for everything in the Department.

3 COMMISSIONER DICUS: And I would agree.

4 MR. BERUBE: We ran a rough validation.

5 COMMISSIONER DICUS: What about also, one final
6 point, and then we can give up the mike, as it is, but what
7 about unknowns, for example, the Brookhaven Laboratory
8 problem. Those considerations are out there. Is that built
9 in -- that has to be built in.

10 CHAIRMAN JACKSON: Do you have a contingency --

11 COMMISSIONER DICUS: A contingency plan.

12 CHAIRMAN JACKSON: For emergent issues.

13 MR. GRUMBLY: No, we don't have a contingency for
14 emergent issues. What we have is -- for example, what we
15 have to do at the moment is take a look at all of our
16 programs across the Department and see where we could put
17 the money together for the appropriate reprogrammings to
18 deal with this situation at Brookhaven. But I actually
19 think that that situation actually argues this case, in that
20 my very strong belief is that if you all had been regulating
21 Brookhaven over the last 10 years that at the very least the
22 pool -- the fuel pool leak is something that (a) would have
23 been identified sooner and, two, would have been remediated
24 sooner. So I'm hopeful that -- actually we use Brookhaven
25 as an example of what we can avoid rather than what we have

1 to budget for.

2 COMMISSIONER DICUS: Well, I tend to agree with
3 you, but, you know, the point is if we --

4 COMMISSIONER ROGERS: I understand.

5 COMMISSIONER DICUS: Already taken Brookhaven over
6 and then discovered this problem.

7 MR. GRUMBLY: Well, but let me emphasize the
8 necessity to, I think, get into the ramp up so that we
9 really are planning beforehand with some degree of certainty
10 so that we encounter whatever additional problems are going
11 to be before we make it subject to your regulatory
12 authority. Now I can't guarantee that if you were to take
13 over energy research reactors tomorrow the rest that you
14 wouldn't have found this problem. Obviously you would have,
15 and that would have been some difficulty.

16 CHAIRMAN JACKSON: That's why it's a ramp up.

17 MR. GRUMBLY: Yes, yes.

18 CHAIRMAN JACKSON: Anything else?

19 Commissioner Diaz.

20 COMMISSIONER DIAZ: Yes. You talked earlier about
21 work protection and OSHA and I guess the report from the
22 National Academy of Public Administration recommends that
23 radiation protection be given to OSHA. Has DOE revised that
24 position to consider that actually we do radiation
25 protection?

1 MR. GRUMBLY: I think that we recognize that we
2 have to reconcile that position. We haven't done so yet.

3 CHAIRMAN JACKSON: Anything else?

4 Commissioner McGaffigan?

5 COMMISSIONER McGAFFIGAN: I'm going to beat on the
6 dead horse, the cost horse. That slide number eight, one
7 thing that I think is clear is the slope that the intercept
8 at year zero isn't zero. We're already looking forward to
9 Hanford tanks, we're budgeting \$2 million this year to just
10 do something that we don't really have authority to do yet
11 until we get some legislative -- that we wouldn't be able to
12 do if you returned to us in 1999 or 2000.

13 So there is some number, and it may well be close
14 to \$10 million, as you start to think about a bunch of sites
15 that you have to -- we have to get our regulatory framework
16 in place and work with you and we will have very complex
17 sites like the Hanford tank vitrification and then we will
18 have some much less complex sites. So I think there is an
19 intercept there above zero and maybe the staff can work out
20 what it is.

21 I also am impressed. Commissioner Dicus referred
22 to the USEC case and we all have to hope that that isn't
23 going to be typical but that -- your report refers to an
24 enlightened compliance regime and we did something with the
25 gaseous diffusion plant short of full licensing

1 certification and it was intensive on our part. The staff
2 could give you the dollars. And it was terribly -- the
3 number, I think, that has been cited to me is it took \$200
4 million to get those plants -- DOE cost, not NRC cost -- to
5 get those plants up -- or USEC costs -- to get those plants
6 up to where they needed to be; 170 of that was what they had
7 to spend to get them up to the place where they should have
8 been and 30 of it was whatever additional costs we imposed
9 through the licensing process. At least that's what I have
10 heard.

11 So my sense is, looking at your complex and having
12 some experience with it, there may well be a few others like
13 that out there that are going to be outliers where this 10
14 percent is going to prove to be just way, way off. Ten
15 percent may well be accurate for many of the less complex
16 facilities but for these, you know, I can think of several
17 other cases which are likely to be ongoing which may
18 surprise us sharply on the upside and I just make that
19 point.

20 MR. GRUMBLY: I take that point as the same one
21 that Commissioner Rogers was making, that there is going to
22 be quite a bit of variability in terms of what it costs to
23 get in compliance. We do have some numbers and maybe I can
24 submit these for the record but just to put the gaseous
25 diffusion plant costs into some kind of perspective, the

1 operating costs over four years for the gaseous diffusion
2 plants is about \$2.4 billion. Our best estimate on the
3 corrective action costs were 105 million on top of that.

4 The NRC certification costs were 3 million and the
5 DOE certification costs were 35. So if you actually look at
6 the corrective action costs, as a percent of the total
7 operating costs of the facility, it actually is inside that
8 10 percent range that we were talking about.

9 Now, you're right, we can't afford at every
10 facility, I mean, gosh, if each facility were to cost that
11 amount of money, we would be cooked. So that is not
12 certainly what we envision.

13 I do think that the gaseous diffusion experience
14 points out the necessity for another point that was made
15 here. We talked about flexible regulatory approach. It
16 does seem to me that there are a lot of lessons that can be
17 learned on both sides from the gaseous diffusion experience
18 and we ought to spend some time making sure that we have
19 learned all those lessons so that we don't have an unduly
20 expensive process as we go forward.

21 COMMISSIONER McGAFFIGAN: Your report refers to a
22 workable, enlightened compliance regulatory framework. I
23 don't expect that is again something the staff may flesh out
24 a bit. But what do you have in mind?

25 Do you believe that any of your sites, take the

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1 ones that you are proposing the first few years, the NE and
2 ER sites, do you think that they can come in and apply for
3 broad scope license and really be licensed or even the less
4 complex, familiar sites do you think will have to make
5 adjustments?

6 MR. BERUBE: I think there is potential there but
7 we have to work a lot more details out with NRC staff. The
8 concept of the enlightened compliance was not ours; we stole
9 that. We borrowed it from NRC. It is basically doing
10 things better and smarter and, yeah, there is always
11 opportunity for that. Performance based.

12 CHAIRMAN JACKSON: They got it from the
13 certification process.

14 COMMISSIONER MCGAFFIGAN: Nick Timbers may have
15 some views on that.

16 The enforcement aspect, once we have this
17 regulatory framework in place, and this is really following
18 up again on one of Commissioner Dicus's questions, and we
19 have a problem arise and it is not the current contractor's
20 fault perhaps or, I don't -- you know, it will depend on
21 some fairly complex contract clause as to whether you guys
22 try to blame the contractor or they try to blame you. How
23 do we enforce at a site or facility, it's facility by
24 facility, as I understand it, not site by site, where we, as
25 the regulator, find you and your contractor going like this.

1 MR. GRUMBLY: Mary Anne, why don't you talk about
2 how we are enforced against in the environmental arena at
3 the moment.

4 MS. SULLIVAN: There is some variability. At many
5 of our facilities, both DOE as owner and the contractor as
6 operator are on a permit, on a license and the state
7 regulators are free to enforce against either or both.
8 Whatever contract disputes may exist between DOE and its M&O
9 contractor should not have the NRC entangled.

10 Whoever you hold liable will be liable and then we
11 fight out with our M&O contractor whether they are
12 responsible for a fine or penalty or corrective action or we
13 are. But you will have clear regulatory authority to
14 enforce against whoever is on the license or the
15 certification.

16 CHAIRMAN JACKSON: You realize that part of what
17 happens in enforcement space is not just civil penalties but
18 the ability to shut a facility down for cause.

19 MR. GRUMBLY: We have that now.

20 COMMISSIONER McGAFFIGAN: In the area of pilots --

21 MR. GRUMBLY: From the public's perspective, that
22 has to be the case. If you don't have that capability with
23 respect to us, this is a paper tiger.

24 COMMISSIONER McGAFFIGAN: In the area of pilots,
25 again looking at these early phase projects, the NE and ER,

1 you currently regulate them through contract clauses
2 largely, is that -- I mean, contract clauses and various
3 orders that come out through the DOE system. How -- if you
4 try to do one, earlier, Tom, you talked about doing
5 something as quickly as possible at some of the ER sites.
6 How quickly could you -- are you going to have to
7 renegotiate contracts and take some of those contract
8 clauses out or how complex is the interaction between this
9 regulatory change that you are proposing and your
10 contracting system?

11 MS. SULLIVAN: We will have to renegotiate
12 contracts because we do currently regulate through our
13 contracts. But there will be a period required to draft and
14 implement legislation and any contract amendments could be
15 accomplished during that time frame.

16 I will tell you that particularly at the NE and
17 the ER facilities, our contractors are champing at the bit
18 to be regulated by NRC. So we would expect to be able to
19 move through the contract negotiations expeditiously.
20 Certainly I would not expect that to be the lagging item.

21 COMMISSIONER McGAFFIGAN: So that might
22 take -- that would have to wait for the legislation to be
23 completed and then very quickly negotiated after that? Or
24 could you do them ahead of time?

25 MS. SULLIVAN: My assumption is we could be

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1 working in parallel, recognizing that final action on a
2 contract would have to await the shape of the final
3 legislation.

4 MR. BERUBE: Related to that, we have already
5 initiated within DOE, but we need to work this with NRC
6 staff a comparability study, looking at the DOE orders and
7 seeing how they compare with NRC requirements. To the
8 extent there is close comparability, that is going to make
9 that transition a whole lot easier.

10 MS. SULLIVAN: In fact, in our recent rulemakings,
11 as we have developed our rules, we have looked to the NRC
12 rules as a major source of learning.

13 CHAIRMAN JACKSON: Being the lawyer, do you have
14 any particular caveats or thoughts about the legislative
15 phase that we need to hear about? I mean, I know you said
16 you are not comfortable, that the draft is so much a draft,
17 nor have you seen it, that you would not like to comment.
18 But we --

19 MS. SULLIVAN: I have been involved in discussions
20 toward the development of the draft. I just think our own
21 thinking has been evolving about what's needed. As the
22 lawyer, I would only say we need the legislation to be clear
23 so that everybody knows what the rules of the road are. But
24 I have been working with this working group for over a year
25 now and I think that this can only improve nuclear safety in

1 DOE facilities so I strongly support it.

2 CHAIRMAN JACKSON: Any response from our lawyer?

3 MS. CYR: I think she's right. It would certainly
4 add clarity to the situation.

5 CHAIRMAN JACKSON: Commissioner McGaffigan?

6 COMMISSIONER McGAFFIGAN: That is all I had.

7 Although speaking as a former congressional aide, if you
8 expect clear legislation --

9 [Laughter.]

10 MS. SULLIVAN: We can always hope.

11 CHAIRMAN JACKSON: That's right. Hope springs
12 eternal.

13 Well, thank you very much, Mr. Grumbly, and your
14 colleagues for a most informative briefing.

15 As I had indicated in my opening remarks, the
16 Commission does endorse the department's proposal for
17 external regulation of nuclear facilities and believes that
18 external regulation by the NRC would serve the best
19 interests of the public and contribute to protecting
20 facility workers, the public and the environment. Today's
21 briefing was a good start for the many interactions that
22 will be needed between our agencies if this initiative is to
23 succeed.

24 In the staff requirements memorandum that the
25 Commission issued last Friday, the Commission directed the

1 staff to complete several of its directives by June 30 of
2 this year. Perhaps the Department of Energy as well as the
3 NRC task force can brief the Commission in that same time
4 frame on the status and progress that has been made on the
5 initiative at that point.

6 The Commission encourages the staffs of both
7 agencies to work together openly and cooperatively on a
8 project that the Commission believes will be challenging to
9 both agencies. But even though the Commission recognizes
10 the complexity of the tasks that lie ahead, we have
11 confidence that the external regulation of DOE's nuclear
12 facilities by the NRC can succeed in a manner that serves
13 the public well. To that end, I would say that both DOE and
14 NRC need to develop on an expedited basis an MOU, a
15 memorandum of understanding, to establish the framework for
16 the legislative and follow-on phases to identify key
17 regulatory and technical issues, to identify candidate
18 facilities.

19 Also, both agencies need to work with the OMB to
20 get relief from personnel ceilings, particularly for us.
21 But have you work with us for both the legislative and the
22 follow-on phases.

23 In the interim, I would ask DOE if you would study
24 the staff requirements memorandum from the Commission to the
25 staff because it is fairly detailed and prescriptive with

1 respect to the issues we feel need to be addressed as well
2 as the approach that NRC would propose to take. I would
3 also urge you to form a corresponding working group with a
4 designated point of contact. The designated point of
5 contact for us will be Dr. Carl Paperiello, who heads our
6 Office of Nuclear Materials Safety and Safeguards.

7 I would thank the Secretary and urge Secretary
8 Pena's continued support of this initiative.

9 So, unless my fellow commissioners have further
10 comments, we are adjourned.

11 [Whereupon, at 3:42 p.m., the meeting was
12 concluded.]

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CERTIFICATE

This is to certify that the attached description of a meeting of the U.S. Nuclear Regulatory Commission entitled:

TITLE OF MEETING: MEETING WITH DOE ON EXTERNAL
REGULATION OF DOE FACILITIES - PUBLIC
MEETING

PLACE OF MEETING: Rockville, Maryland

DATE OF MEETING: Monday, March 31, 1997

was held as herein appears, is a true and accurate record of the meeting, and that this is the original transcript thereof taken stenographically by me, thereafter reduced to typewriting by me or under the direction of the court reporting company

Transcriber: Christopher Gitchell

Reporter: _____ Michael Paulus



**External Regulation
of
Department of Energy Nuclear Facilities**

**Under Secretary Thomas P. Grumbly
March 31, 1997**

Briefing Roadmap

- Current Regulatory Framework
- Historical Context
- Key Considerations
- Phased NRC Regulation
- Regulated Facilities
- Annual Costs to NRC
- Benefits of External Regulation
- Overview of the Future Schedule
- Legislative Phase Activities

Current Regulatory Framework

- **Environmental - DOE is generally externally regulated**
- **Worker Protection - DOE is currently self-regulated**
- **Nuclear Safety - DOE is generally self-regulated with some exceptions, e.g., geologic repository is regulated by NRC**

Historical Context

- **March 1994 – Congressional proposals for external regulation of DOE nuclear facilities**
- **January 1995 – Secretary responded by establishing an Advisory Committee**
- **December 1995 – Advisory Committee Report issued with no recommendation on which entity should be the external regulator**
- **January 1996 – Secretary created DOE Working Group on External Regulation**
- **December 1996 - Working Group Report issued and former Secretary selected phased NRC option**

Key Considerations

- Single entity regulating nuclear safety
- Flexible regulatory approach
- Clear legislative authorities
- Adequate transition planning
- Realistic timeframe and scope
- Adequate resources
- Opportunities for public involvement

Phased NRC Regulation

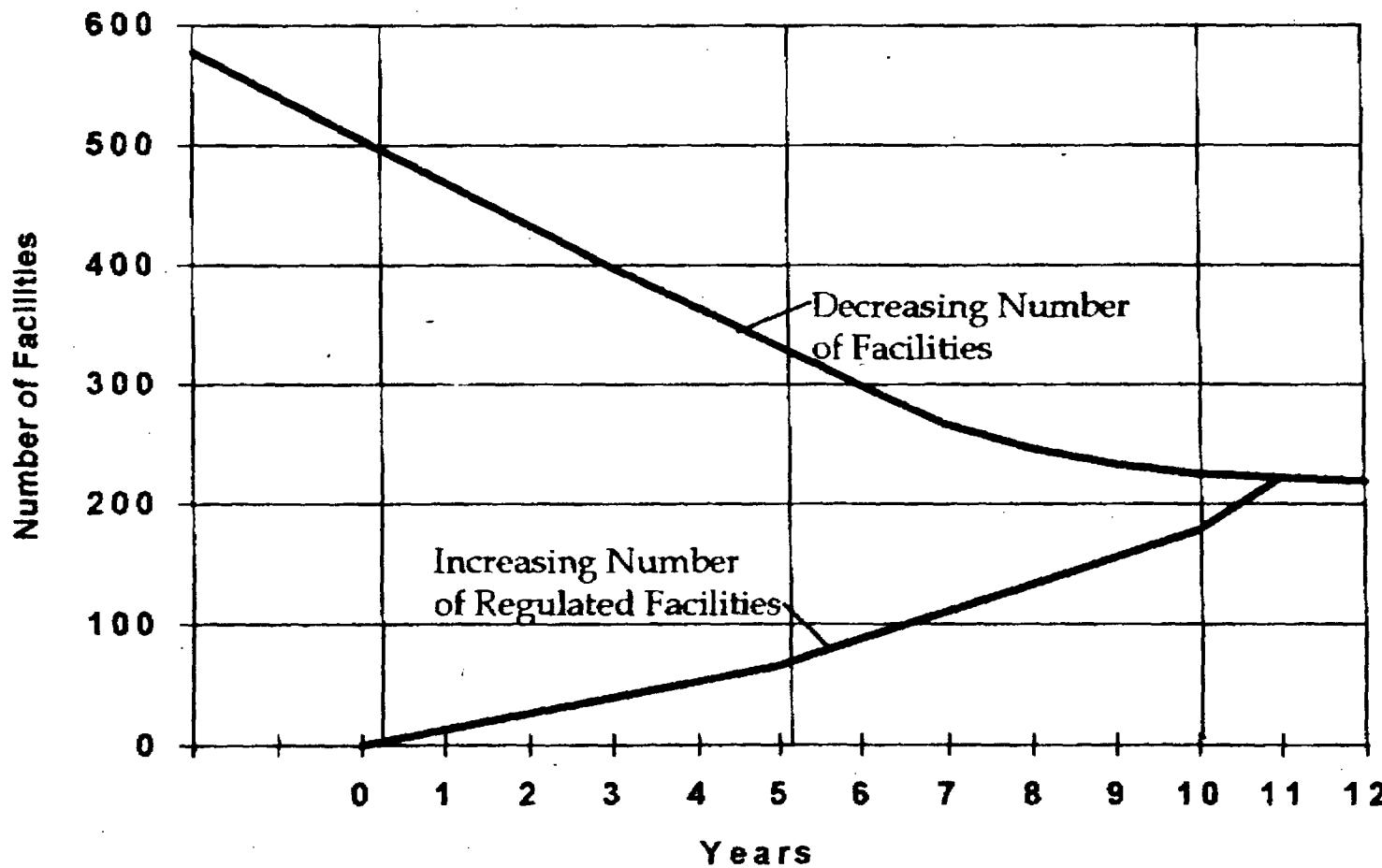
NRC

- 0 - 5 years -- Regulation of selected DP & EM and all ER & NE nuclear facilities
- 6 - 10 years -- Regulation of selected DP nuclear facilities and all EM, ER & NE nuclear facilities
- After 10 years -- Regulation of all DOE nuclear facilities

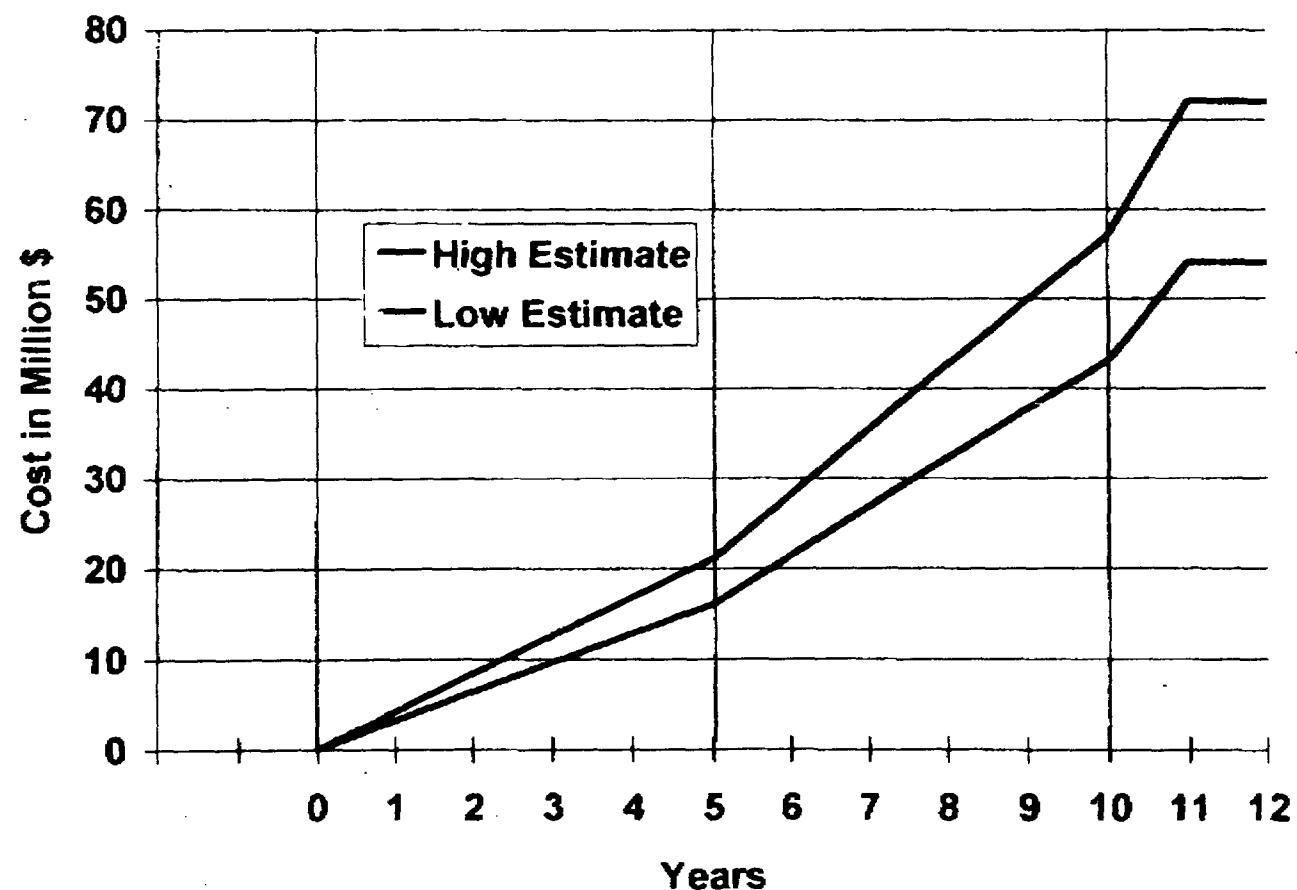
DNFSB

- 0 - 5 years -- Current oversight of DP & EM nuclear facilities
- 6 - 10 years -- Oversight of only DP nuclear facilities
- After 10 years -- DNFSB staff merges with NRC

Number of Regulated Facilities



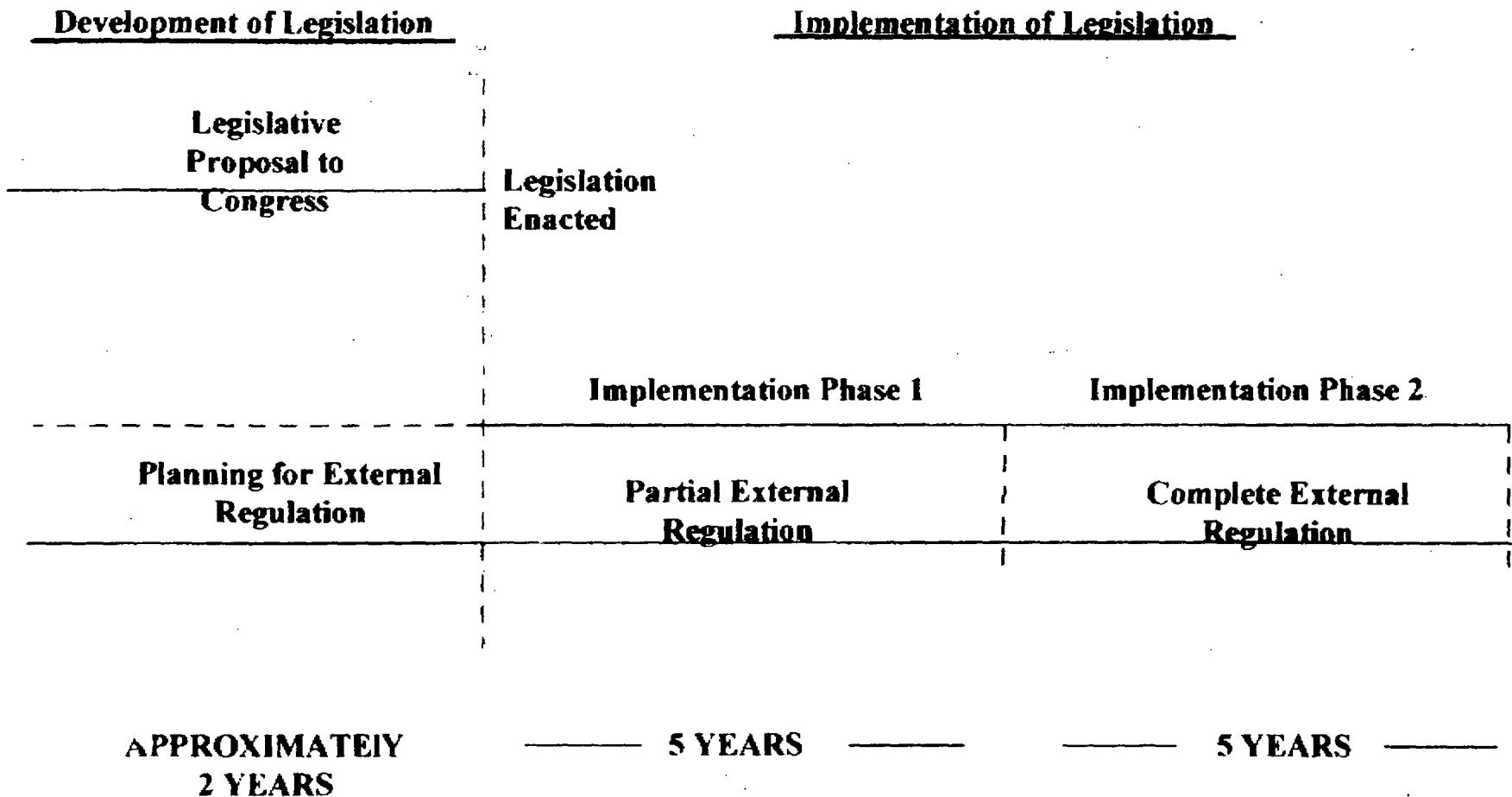
Annual Costs to NRC



Benefits of External Regulation

- Eliminates inherent conflict of interest from current self-regulation
- Enhances safety and health
- Provides stable, efficient and predictable safety environment
- Contributes to stakeholder involvement through open regulatory process; Increases public trust and confidence
- Enhanced safety provides for real cost savings

Overview of the Future Schedule



Legislative Phase Activities

- Develop legislative proposal
- Identify nuclear facilities to be regulated
- Identify/develop standards to be applied to each facility
- Develop facility schedules for regulation
- Initiate pilot(s)
- Develop draft rule needed to regulate
- Training

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