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**NUCLEAR REGULATORY COMMISSION**

Title: Public Meeting to Discuss with Stakeholders:  
(1) Backfitting and the Backfitting Process,  
(2) the Roles and Responsibilities of the CRGR  
and (3) Obtain Stakeholder Feedback

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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COMMITTEE TO REVIEW GENERIC REQUIREMENTS

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PUBLIC MEETING TO DISCUSS WITH STAKEHOLDERS: (1)  
BACKFITTING AND THE BACKFITTING PROCESS, (2) THE  
ROLES AND RESPONSIBILITIES OF THE CRGR AND (3)

OBTAIN STAKEHOLDER FEEDBACK

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TUESDAY

SEPTEMBER 13, 2016

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ROCKVILLE, MARYLAND

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The Public Meeting met at the Nuclear  
Regulatory Commission, Two White Flint North, Room  
T-2B01, 11545 Rockville Pike, at 9:00 a.m., Gene  
Carpenter, Facilitator, presiding.

CRGR MEMBERS PRESENT:

EDWIN M. HACKETT, Deputy Director, RES

VICTOR McCREE, Executive Director of  
Operations

BRIAN J. McDERMOTT, Deputy Director, NRR

1 VONNA ORDAZ, Deputy Director, NRO  
2 JOHN TAPPERT, NMSS  
3 LEONARD D. WERT, Deputy Regional  
4 Administrator, Region II  
5 K. STEVEN WEST, NSIR  
6 EDWARD WILLIAMSON, Associate General Counsel,  
7 OGC

8  
9 INDUSTRY, NRC, AND PUBLIC PARTICIPANTS:

10 GENE CARPENTER, Facilitator  
11 JERRY BONANNO, NEI  
12 STEVEN DOLLY, PLATTS\*  
13 GREGORY HALNON, FirstEnergy  
14 KEITH JURY, Exelon\*  
15 TONY LESHINSKIE, State of Vermont Public  
16 Service Department  
17 DAVID LOCHBAUM, Union of Concerned Scientists  
18 GEARY MIZUNO, OGC, NRC  
19 CHRISTOPHER NOLAN, Duke Energy  
20 TONY PIETRANGELO, NEI  
21 DARANI M. REDDICK, Exelon

22  
23 \* Present via telephone  
24  
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P-R-O-C-E-E-D-I-N-G-S

(9:01 a.m.)

1  
2  
3 MR. McCREE: Well, good morning,  
4 everybody. I imagine we have participants in the  
5 meeting that have joined us by phone, so we'll speak  
6 loudly and clearly for those at the table.

7 Many of you have been in this room before.  
8 I guess part of the discipline is to press the mic  
9 that's in front of you. The green light is on is when  
10 you're active, when you're hot. When it's off, the  
11 light is off, you're silent. I think it helps people  
12 on the other end, if you're not speaking, to  
13 extinguish the light to reduce the background noise.

14 But good morning, everybody. It's great  
15 to see all of you.

16 The Committee to Review Generic  
17 Requirements is charged with examining proposed NRC  
18 actions for generic backfitting implications.  
19 Backfitting, as you know, is an integral part of our  
20 regulatory framework since the original promulgation  
21 of the backfit rule, 10 CFR 51.09 in 1970, and with  
22 significant revisions in 1985 and 1988.

23 A former boss of mine, when evaluating  
24 issues, she used to ask the question why do we do this  
25 and why do we do it this way? I've come to appreciate

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1 the value of asking a third question: Is there a  
2 better way to do it?

3 So the ethos for the conversation today is  
4 certainly to affirm why we do it, why we do it the way  
5 we do it, but also to be open and transparent enough,  
6 frank, candid, respectful enough to figure out is  
7 there a better way to do it? And I'm sure my  
8 colleagues will frame the "it" so that the  
9 conversations are constructive and useful.

10 As you know, the intent of the Backfit  
11 Rule is to subject proposed modifications or additions  
12 to systems, structures and components or the design of  
13 a facility resulting from a new or amended position in  
14 the Commission's regulations to attest. In that test  
15 there is a substantial increase in overall protection  
16 of the public health and safety to be derived from the  
17 backfit and at the costs are justified. The Backfit  
18 Rule provides for consideration of both quantitative  
19 and qualitative factors and the demonstration of a  
20 substantial increase in that overall protection of the  
21 public health and safety.

22 The Backfit Rule also provides two  
23 exception to the above-mentioned test for issues  
24 concerning adequate protection and compliance. The  
25 exercise of the compliance exception to backfitting

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1 has been the subject of significant controversy over  
2 the years and I expect it will be a key focus for your  
3 discussions today.

4 Also, although backfitting is most widely  
5 known and debated in the operating reactor arena, it's  
6 also an integral part of our regulatory framework in  
7 the materials and security arenas, and I know that  
8 there are folks here today representing those arenas.

9 As a result of both internal deliberations  
10 and external stakeholder feedback earlier this year I  
11 convened a meeting with NRC senior managers and staff  
12 involved in backfitting to discuss how well we were  
13 continuing to adhere to the formal systematic and  
14 disciplined review of new or changed positions that  
15 was intended for the backfitting process and in a  
16 manner consistent with our principles of good  
17 regulation, independence, clarity, openness,  
18 reliability and efficiency.

19 Following our deliberations and with the  
20 intent of continuous improvement I tasked the CRGR and  
21 NRC staff to conduct a rigorous review of our  
22 guidance, or training and our expertise for assessing  
23 issues of backfit implications and for responding to  
24 questions and concerns raised by our stakeholders.

25 Today's meeting is part of that tasking,

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1 and we look forward to hearing your feedback and will  
2 address the comments we receive at this meeting or as  
3 part of the tasking.

4 A very significant and related NRC action  
5 that has taken place since the initiation of this  
6 backfit tasking is the evaluation of -- our evaluation  
7 rather of a recent appeal from Exelon on the issue of  
8 potential failures of pressurizer safety valves or  
9 PSVs at Byron and Braidwood. The panel that I  
10 empowered to review the appeal has completed its work  
11 and I'm in the final stages of making a decision on  
12 that matter. I plan to make that decision and make  
13 the supporting materials publicly available soon.

14 That said, I hope and expect you to have  
15 a very productive meeting. I wish I could remain for  
16 the entirety of it, but my agenda is packed today. So  
17 I'll remain for a few minutes after the kickoff, and  
18 again I wish you a great meeting.

19 Gene?

20 MR. CARPENTER: Thank you very much. For  
21 those of you on the telephone and on the web cast,  
22 that was Victor McCree. He is our -- executive  
23 director of operations. Pardon me.

24 MR. MCCREE: Yes, I have to think about  
25 that, too.

1 (Laughter.)

2 MR. CARPENTER: You've worn so many hats,  
3 sir. I have to remember which one you're wearing  
4 today. So, yes.

5 I am Gene Carpenter. I am the agency  
6 facilitator for this meeting today. Thank you all for  
7 coming. As we pull up the rest of the folks here from  
8 CRGR -- Ed, you guys can come on up -- we're going to  
9 go ahead and get started.

10 I'm going to be doing a little bit of the  
11 administrativia portion of this as they're getting  
12 seated up here, and then we will go into the actual  
13 meeting itself.

14 For those of you who are listening in via  
15 the web cast or on telephone, must give you a word of  
16 caution: The web cast about a 10-second delay, so if  
17 you've got both the telephone and the web cast going,  
18 you're going to hear a 10-second delay. So please  
19 bear by with that.

20 The agenda for today's meeting, Vic has  
21 just given the opening remarks.

22 Again, thank you for that, Vic.

23 And then we're going to go through the  
24 CRGR background, a little presentation on that and a  
25 discussion of backfitting. That's going to be

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1 provided by the staff that's joined us here at the  
2 table. At that time we will go into a break for a few  
3 minutes, and when we reconvene, then we will go into  
4 general discussion and questions. That will take us  
5 to lunch time.

6 We'll break for lunch. For those of you  
7 in the room, we'll get you downstairs and then we'll  
8 have people to escort you back up again when we're  
9 ready to resume this afternoon.

10 This afternoon we flip the table and the  
11 folks that are on the other side of the table, those  
12 that are in the audience will be sitting up here and  
13 they will be giving industry perspectives of  
14 backfitting as well as the NGO perspectives: Mr.  
15 Lochbaum, et al.

16 We'll also have time here for our  
17 telephone. And when we go to the question and answer  
18 period here, the general discussion, the way that I  
19 generally like to do this is since we have two  
20 definite time periods here that we'll do discussions  
21 is in the morning we'll start with the folks in the  
22 room and then we'll go to the telephone. And then  
23 we'll flip that in the afternoon. We'll start with  
24 the people on the telephone and go to the people in  
25 the room second after that.

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1           This is an operator-controlled line, so  
2 you'll have -- when we go to the operator, she will  
3 tell you at that time -- I believe it's star, zero or  
4 something like that that you'll have to press to  
5 indicate that you'd like to ask a question.

6           So with that, we'll go ahead and start  
7 with Ed.

8           MR. HACKETT: Thanks, Gene. We have a  
9 short presentation planned to kick things off, but I  
10 thought what we would do is we'll go around and have  
11 the CRGR members introduce themselves since I think  
12 those in the audience will probably see some new  
13 faces, starting with me.

14           So I assumed the role when I moved to my  
15 new position as Deputy Director in the Office of  
16 Research in April. So I'm Ed Hackett. I'm the  
17 chairman of the CRGR. And we'll just go around.

18           MR. WERT: I'm Leonard Wert. I'm the  
19 Deputy Regional Administrator for Operations in Region  
20 II in Atlanta, Georgia.

21           MR. WILLIAMSON: I'm Ed Williamson. I'm  
22 with the Office of General Counsel. I'm the Associate  
23 General Counsel for Hearings, Enforcement and  
24 Administration.

25           MR. McCREE: Hey, Ed, can you try that

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1 again for the folks on the phone?

2 MR. WILLIAMSON: Okay. Yes. I'm Ed  
3 Williamson. I'm with the Office of General Counsel.  
4 I'm the Associate General Counsel for Hearings,  
5 Enforcement and Administration.

6 MR. WEST: Good morning. I'm Steve West.  
7 I'm the Deputy Director of NSIR.

8 MS. ORDAZ: I'm Vonna Ordaz. I'm the  
9 Deputy Office Director for New Reactors.

10 MR. McDERMOTT: And Brian McDermott. I'm  
11 the Deputy Director for the Office of Nuclear Reactor  
12 Regulation.

13 MR. HACKETT: Thanks, you guys, for that.  
14 And one of the other things I was going to say in  
15 opening, we're lucky to have a mix of the committee.  
16 So Len, myself, Vonna I think are very new to the  
17 situation. I think we've been associated with CRGR in  
18 the past, but not in these type of roles. Fortunately  
19 we have Ed Williamson and Steve West and Brian  
20 McDermott who have more experience and run time.

21 And particular thanks to Steve. As many  
22 of you know, Steve is the former chairman and chaired  
23 the activity for I think it was three years, right,  
24 Steve? So thank to Steve. Steve was also I think, as  
25 many of you know, at the Utility Working Conference at

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1 Amelia Island talking on this subject recently.

2 And then looking around the room, if I  
3 could find Les Cupidon, I wanted to acknowledge --  
4 Les, if you'd put your hand up.

5 Les is the rock of the CRGR. For those of  
6 you who have been associated with CRGR over the years,  
7 he is our full-time support and does an incredible job  
8 at that. And hat's off to him.

9 And while I'm in the mode of giving some  
10 thanks here, Nick DiFrancesco is in the room  
11 somewhere. Nick is our TA in the Office of Research.  
12 Really appreciate Nick for his assistance.

13 Gene Carpenter, obviously, and thanking  
14 Gene for facilitating.

15 And my good friend and colleague from my  
16 ACRS days, Mr. Theron Brown is in the Wizard of Oz  
17 booth in the back of the room. So thanks to Theron.

18 Let's see what else I have here. I would  
19 say any opening remarks from the members at this  
20 point, if there's anything any of you wanted to say in  
21 opening.

22 (No audible response.)

23 MR. HACKETT: If not, we'll go ahead and  
24 proceed with the slide 2. So, I think we're on the  
25 wrong slide at the moment. So, we'll go to the next

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1 one.

2 So these are the purposes of the meeting.  
3 Pretty simplistic. The primary goal is to discuss  
4 backfitting and its application. In our presentation,  
5 discuss the roles and responsibilities of the CRGR.  
6 They have changed and shifted somewhat over time, but  
7 I think the essential role remains pretty much as  
8 defined from its original charter, but if you're  
9 looking at the charter, the current charter is 2011,  
10 and that's what we're working towards currently. Vic  
11 had just mentioned the 2016 backfit tasking that he  
12 gave to us at the CRGR, and we'll go into -- we have  
13 a slide that has some more detail on that. And we're  
14 working towards a January 31, 2017 goal for completion  
15 of that tasking.

16 And the most important, the final point,  
17 point 4, is really to provide a forum for you all in  
18 the room and all the stakeholders in the room and on  
19 the phone lines or on the web stream so we can hear  
20 your comments, questions, share insights regarding  
21 backfitting and the role of the CRGR. So that's the  
22 primary focus. So once we get done with our short  
23 presentation up front here, that's the mode that we  
24 will shift into.

25 Moving on further; and I think Vic covered

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1 this in his opening remarks, we have the long  
2 explanation on here of what is backfitting. I think  
3 that probably needs not much introduction for the  
4 audience in the room, or maybe even those on the phone  
5 lines or on the web stream.

6 So the second bullet has the long version  
7 of backfitting. I prefer the bottom bullet that came  
8 from some training that we received from our wise  
9 lawyers. And basically the whole idea is don't change  
10 the rules after you've started the game is really what  
11 this is all about. And as Vic mentioned, not only is  
12 the focus 51.09, which is the backfit rule for power  
13 reactors, but also 70.76, 72.62 and 76.76 in the  
14 materials arenas and fuel facilities are also in play  
15 here.

16 And then moving to the next slide, don't  
17 want to leave out Part 52, so for new reactors there's  
18 backfitting-like protection. It is slightly different  
19 than what you would see for 51.09, but it's for new  
20 nuclear power plants covered under 10 CFR Part 52.

21 So moving to the next slide. So going  
22 back and thinking about this more philosophically,  
23 which I think Vic mentioned this meeting that we had  
24 earlier this year, and I think it caused a lot of us  
25 to think hard and scratch our heads about what we're

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1 doing currently, what we've been doing over the years,  
2 the evolution of what we're doing about backfitting at  
3 the agency, and including not only CRGR, but the  
4 facility-specific backfitting, pretty much all things  
5 backfitting.

6 But the bottom line is when we were  
7 talking about that at this meeting, why do we the NRC  
8 care about this and care deeply, and what Vic raised  
9 at that meeting is basically it's our principles of  
10 good regulation. And I think again most of the folks  
11 in the room don't need an introduction to those, but  
12 three of them are captured on here that I just felt  
13 were probably the most important.

14 No. 1 is probably regulatory stability.  
15 That was really the focus of the original Backfit  
16 Rule, which a lot of that came out of the very  
17 frenetic period following Three Mile Island. There  
18 was an awful lot of regulation that was proposed and  
19 engaged during that time and there were a lot of  
20 concerns about regulatory stability. So the 1985 and  
21 then subsequently 1988 versions of the Backfit Rule  
22 were meant to address that.

23 There's also the clarity of our decision-  
24 making, so clarity is one of our principles of good  
25 regulation. And I know Darani is going to cover this

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1 in her presentation this afternoon, and Dick mentioned  
2 it this morning, but compliance exception has been  
3 very much a subject of controversy. And if you look  
4 at our principles of good regulation; I think Vic put  
5 the challenge to us, are we as clear as we could be in  
6 how we navigate that area in particular? Not that  
7 there have been that many decisions that are based on  
8 compliance exception, but I think it's fair to say  
9 they're fairly complex when we engage that particular  
10 option. So that's the example I'd give for clarity.

11 And then there's openness and  
12 transparency. In preparing for this meeting I  
13 reviewed the records from the last two times the CRGR  
14 met with the public, and those were in 2007 and 2009.  
15 And one of the themes that came up from the industry,  
16 from other stakeholders was the notion of enhancing  
17 openness and transparency of NRC decision-making in  
18 this arena. And as most folks know, to this day the  
19 CRGR operates largely as an internal body, so one of  
20 the things on the table is hearing your thoughts and  
21 comments on openness and transparency and how we might  
22 reflect that in any potential changes to CRGR  
23 operations. So that's the main focuses to why we care  
24 about this.

25 Moving onto the exceptions, I think

1 they're also well-known. The top two are simpler. So  
2 if you are looking at a decision where the Commission  
3 needs to make a decision based on adequate protection,  
4 that is relegated as you all know to the Commission.  
5 And the same thing with defining or redefining  
6 adequate protection. Those options are I guess more  
7 readily engaged.

8 And then we just mentioned here the  
9 discussion about compliance, and that is I think fair  
10 to say a more complicated engagement leading all the  
11 way up to the decision that Vic is getting ready to  
12 render now in the Exelon case. We'll go into that on  
13 a subsequent slide, but there's a fair bit more  
14 complexity in that arena.

15 So moving on now to the role and  
16 responsibility of the CRGR. At the highest level here  
17 on this slide, it's fairly simplistic. Our primary  
18 responsibilities are to the EDO for either approval or  
19 disapproval of staff proposals that would involve  
20 backfitting or potential implicit backfitting, and  
21 also to assist the NRC program offices to help them  
22 implement the Backfit Rules and the Commission's  
23 backfit policy is really the highest level role of the  
24 CRGR.

25 Then moving onto areas where now we have

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1 made some changes over the years. So I'll try to go  
2 through this in a little bit more detail.

3 So the number one bullet is important:  
4 Except for requirements which are determined to become  
5 immediately effective. So either the EDO or the  
6 office directors, if they decide there's a major  
7 safety implication that has immediately effective  
8 implications. Then CRGR may be gated out of those  
9 reviews initially, but for others -- so we would look  
10 at new and revised regulatory requirements.

11 And now here's where it gets more  
12 complicated, as I know Steve reminded me in handing  
13 off the chairmanship. We do not look at every new and  
14 revised regulatory requirement. We are more  
15 selective.

16 So how does that work? Normally Les is  
17 going to get contacted by the NRC staff, or I might  
18 get contacted directly as the chairman. And then  
19 there would be discussion over selection of which we  
20 would engage on. From my ACRS background it's  
21 familiar to me because the ACRS also is very selective  
22 in regulatory guidance and other requirements that  
23 they review, and they have to be because they're  
24 resource requirements.

25 And the same thing applies to the CRGR.

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1 So the same thing applies to generic correspondence  
2 and regulatory guidance, Reg Guides, ISGs. Also  
3 selected NRC staff guidance related to licensing,  
4 inspection and enforcement, which could impose a  
5 backfit. And one that has been in the news recently  
6 on that was the open phase condition, which I know  
7 industry had some comments on. That involved an  
8 interim enforcement policy that is before the  
9 Commission for decision now. So those are some  
10 examples of the scope of our engagement.

11 Continuing on to the next slide, these are  
12 some more items. So NUREGs and Standard Review Plans  
13 if they involve articulation of new or modified staff  
14 positions are items that would or could come to the  
15 CRGR. There's also selected nuclear materials items  
16 at the request of the NMSS office director or the EDO.  
17 The security arena is also covered here. Probably  
18 should have had that on the slide.

19 And then another important role that's  
20 relative to our tasking this year is the CRGR is also  
21 tasked with ensuring that we have the appropriate  
22 administrative controls in place looking at the NRC  
23 generic backfit management practices and that the  
24 technical staff training is adequate. And we're in  
25 the process of looking at that now. As you can

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1 imagine, these have been interesting times for the NRC  
2 in terms of staff turnover. We have come down  
3 significantly in our staffing in the last year or two,  
4 and so there are constant challenges related to  
5 knowledge management and knowledge transfer.

6 Importantly, the CRGR does not consider  
7 plant-specific regulatory actions like the Exelon case  
8 that Vic referred to.

9 So one of the items we've also engaged on  
10 this year was the -- for those who filed a CRGR, we  
11 were basically selected out of looking at rulemakings  
12 by Commission direction in 2007, I believe that was.  
13 And the idea there was that the offices would come to  
14 CRGR and question whether or not reviews needed to  
15 happen in rulemaking space if there were potential  
16 backfit issues. What we found over the intervening  
17 years is that didn't seem to be as effectively engaged  
18 as it should have been, so we responded to further  
19 Commission direction in the SRM that's noted there to  
20 develop criteria to help the offices decide when the  
21 CRGR should engage on rulemaking.

22 So those criteria are presented there, the  
23 five criteria that are there. I was reminded by some  
24 staff when we proposed these that doesn't this cover  
25 everything? And it does kind of seem to cover an

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1 awful lot of ground, but the bottom line was to  
2 default to the notion of bringing the information to  
3 CRGR and letting us make a decision on whether or not  
4 we would need to engage. So that's new as of May this  
5 year. And that went to the Commission for information  
6 to satisfy that SRM.

7 So now moving onto the next slide the  
8 OEDO's Backfitting Tasking Memo really has the three  
9 major parts that you see there. So we have this work  
10 underway for a couple of months now. Like I said, at  
11 the bottom of the slide there the goal is to have it  
12 complete and to Victor by the end of January of 2017.

13 So starting off, looking at backfit  
14 requirements, guidance and criteria. So we have the  
15 management directive on facility-specific backfitting.  
16 We have the NUREG-1409, which for those of you who  
17 like to look at our history, that NUREG has not  
18 revised since 1989, I believe. A lot of good  
19 background information in there that remains  
20 pertinent, but it also refers to OEOD, of course which  
21 hasn't been with us for quite some time. Their roles  
22 were transitioned to the Research Office. I think  
23 that was in 1997. So we have some work to do to  
24 update the requirements, guidance and criteria. And  
25 we are -- we, the CRGR, are working with the offices

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1 and OGC to do that.

2 We have been in the midst of assessing  
3 backfit training. This is both within the offices,  
4 but also OGC as the repository of a lot of specific  
5 knowledge in this area, particularly regarding the  
6 exceptions. The CRGR was the beneficiary just last  
7 week of some enhanced training from our friends in  
8 OGC. I think that was -- I'm looking at Geary Mizuno  
9 over across the way. And we had about a 60-slide  
10 presentation that got into tremendous detail and was  
11 very helpful. So we are in the process of assessing  
12 backfit training.

13 And then I had mentioned knowledge  
14 management previously. This is a constant challenge  
15 for us. I think it's even more challenging in the  
16 times that we have now. We have cycled a lot of  
17 junior staff into our processes and we are finding  
18 that you can get some folks that are not very well  
19 informed about this process, partly maybe because they  
20 don't feel they have to be or we just aren't doing the  
21 best job maybe getting this word out.

22 So those are the three main elements. And  
23 this meeting, as Victor mentioned, is part of that to  
24 get your input. So we are in progress and due to  
25 report that out by the end of January.

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1 MR. CARPENTER: Okay. Thank you for that.  
2 And now we'll go, as Ed said, into the discussion  
3 period. As I mentioned earlier, what I'd like to do  
4 is go ahead and start with folks in the room and then  
5 I'll go to people on the telephone.

6 So at this point, does anybody in the room  
7 have any questions/comments? We'll start with Mr.  
8 Lochbaum. Please make sure the mic is on.

9 MR. LOCHBAUM: I had three comments.  
10 First, do any other federal agencies have a rule  
11 comparable to the Backfit Rule? And if so, has the  
12 NRC benchmarked themselves against those other federal  
13 agencies?

14 MR. HACKETT: Yes, great question, Dave,  
15 and I'd look to Ed or one of the --

16 MR. WILLIAMSON: David, I don't think we  
17 have anything in -- I think we have a unique  
18 regulatory provision for backfitting, and it's  
19 expressly created and disciplined by the ongoing  
20 NUREGs and the management directive and discipline  
21 bodies such as the CRGR. I think that's unique to the  
22 NRC.

23 MR. LOCHBAUM: Okay. That's what I  
24 suspected, but I'm glad to hear that confirmation.

25 MR. MIZUNO: This is Geary Mizuno, OGC.

1 While it is true --

2 MR. CARPENTER: Geary, please identify  
3 yourself.

4 MR. MIZUNO: Yes, I did. Geary Mizuno,  
5 OGC.

6 (Laughter.)

7 MR. MIZUNO: Ed Williamson is true that  
8 the Backfit Rule is a unique NRC construct, but there  
9 are statutes throughout the Code of -- I'm sorry, the  
10 U.S. Code applying to other agencies that have  
11 backfitting-like protections in very specific  
12 instances.

13 And so, the concept of backfitting and of  
14 regulatory stability and predictability is something  
15 that is -- I don't want to say imbedded consistently  
16 throughout federal law and statutes, but they do  
17 exist. And certainly we look to those statutes for  
18 some guidance in terms of how we implement backfitting  
19 as a policy.

20 MR. LOCHBAUM: Thank you. My second point  
21 was to address your point about public transparency,  
22 that issue. The Office of Investigations in the  
23 Allegations Branch or Group, or whatever they're  
24 called, issues the annual reports on the results from  
25 their mostly internal processes that are very helpful

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1 to me to see how those activities are being done. I  
2 don't recommend that you do an annual report, because  
3 with Project Aim and the downsizing new work is tough,  
4 but those are very effective in reaching that need  
5 from our perspective. So for consideration you might  
6 take a look at that.

7 And my last comment was -- and it's not  
8 CRGR-focused, but I think it's related to the topic,  
9 was retrospective assessments like the one that was  
10 done in NUREG-1776 for the Station Blackout Rule might  
11 be a good way to see whether the expectations set up  
12 when a new regulation or revised regulation was  
13 adopted had been achieved. And if not, it might  
14 provide some insights on what needs to be done in the  
15 future to avoid good intention, having unintended  
16 consequences. But again, that's not CRGR-focused, but  
17 it's related.

18 MR. HACKETT: Yes. Thanks, Dave. Good  
19 comments. And I guess I'll cycle back to the annual  
20 report. We do of course actually do an annual report.  
21 And Les can correct me if I got this wrong, but that  
22 is publicly available. So in fact, we have the  
23 current one up with the EDO at the moment and hope to  
24 have that approved shortly.

25 The same group, I would mention just as an

1       aside, also does lessons learned for the agency. So  
2       basically the CRGR members, the folks that you see  
3       here before you, with exceptions, depending on the  
4       regional rotation, also do Lessons Learned Oversight  
5       Board stemming initially from the Davis-Besse  
6       experience.

7                   And I certainly appreciate the advice on  
8       the retrospective evaluation. As I was doing my  
9       homework for this meeting it was -- I think for a lot  
10      of folks in the room this will be like déjà vu because  
11      there was a 2007 public meeting, as I mentioned a 2009  
12      public meeting, and then we've had this relatively  
13      long gap.

14                   But as I look back at the record -- and I  
15      met Jerry Bonanno for the first time today, and Jerry  
16      was involved with that, as were others from the  
17      industry. David was involved in those meetings  
18      previously. So a lot of good feedback. We made some  
19      changes in the charter and the operation for that, but  
20      I think we're at kind of a new and interesting  
21      juncture here, and hence the reason for the current  
22      meeting. So appreciate that input, Dave. Thanks.

23                   MR. CARPENTER: Okay. Thank you. We'll  
24      take one more question or comment here in the room and  
25      then go to the telephone.

1 MR. HALNON: We have several more, so I  
2 think Tony has some and I have some.

3 MR. CARPENTER: We'll switch back and  
4 forth. Okay? Who's first.

5 MR. PIETRANGELO: I think Dave had a third  
6 point, but --

7 MR. LOCHBAUM: That was it.

8 MR. PIETRANGELO: That was it? Okay.  
9 Well first, thanks for having this meeting. And I  
10 would have thanked Victor personally, but he had to  
11 go. But the charter you've been given to look at  
12 backfit, its history, its implementation and what it  
13 means to the agency I think is very, very timely given  
14 where you're at and your history. So thank you again  
15 for having this, because I think it's a very, very  
16 important issue.

17 The one comment I had, when you went  
18 through on slide 4, the kind of purpose of -- or I'm  
19 sorry, slide 5, why do you care? And I don't disagree  
20 with any of the bullets you have there, but I would  
21 add one more, and I think it goes to maybe  
22 fundamentally more about what the agency's mission is  
23 and how important this particular rule is and that it  
24 be safety -- it's a safety-focused rule, that we all  
25 have limited resources. We can't do everything and

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1 you need some kind of threshold to determine the  
2 amount of resources you want to allocate to a give  
3 activity.

4 So you can call that risk-informed, you  
5 can call that safety-focused, but I think this rule  
6 implemented as intended -- and I think part of that  
7 history -- I hope in your final report to Vic in  
8 January you go through kind of the history of why this  
9 rule was put in place, because it's very, very  
10 important. And given that you have a lot of turnover  
11 in the agency and new people coming on board,  
12 capturing that in your activity I think will be  
13 fundamental to your knowledge management.

14 But that safety-focused part I think is  
15 what's maybe lacking here. And without that there's  
16 a potential to spend a lot of time on issues that  
17 don't have a lot of relevance to safety. Sometimes  
18 they're compliance issues. Sometimes they're not.  
19 But the Backfit Rule really gives you a tool to judge  
20 do I really need to allocate resources for rulemaking  
21 or generic communications? And there needs to be some  
22 look up front, I think, whether it's through the CRGR  
23 or another body, that determines whether it's worth it  
24 or not to even go down that path.

25 So that could be subject to stakeholder

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1 review, but again I think it's very, very important  
2 going forward given the limited resources everybody  
3 has to deal with these issues.

4 MR. HACKETT: Good point. Thanks, Tim.

5 MR. CARPENTER: Okay. Thank you for that.

6 We will come back to the folks in the room.

7 Operator?

8 OPERATOR: -- then one and record your  
9 name when prompted. Again, if you would like to ask  
10 a question over the phone, please press star then one  
11 at this time.

12 MR. CARPENTER: Anyone, operator?

13 OPERATOR: There are no questions at this  
14 time.

15 MR. CARPENTER: Very good. Back to the  
16 room then. Greg, I believe you were next?

17 MR. HALNON: Yes, I do. And this is the  
18 right slide to park on for a minute.

19 When we went through this, Ed, it struck  
20 me on this word "decision-making," at our target.  
21 What is the level of decision-making you're talking  
22 about? Is it when it gets to Victor or is it lower  
23 levels? How far down are you talking about decision-  
24 making?

25 MR. HACKETT: In my mind; and colleagues

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1 can chime in here, I think it's the whole process. So  
2 as I am getting used to the role in CRGR, I think it's  
3 how CRGR engages at even the lowest levels. And as  
4 many of you know, a lot of times that's informal. We  
5 can do the reviews if it's not overly complex. We  
6 will do some of these reviews separately and then  
7 compare notes by email. You know, more rigor when we  
8 actually meet face-to-face.

9 And so, just like you said, Greg, looking  
10 at that decision-making, are we being -- what would I  
11 want to look for as chairman? Are we being  
12 appropriately challenging in our questioning, you  
13 know, the questioning attitude among the CRGR members?  
14 And I think my initial conclusion; I'm sure Steve  
15 would say the same, is that that's alive and well. So  
16 we do have some very rigorous discussion and debate.

17 So I think it's at that level all the way  
18 up to communicating with Victor and Mike Johnson and  
19 Glenn Tracey at the highest levels in the Commission  
20 to try to make sure we're articulating what we're  
21 doing in decision-making space. So the whole range.

22 MR. HALNON: And that's kind of what I  
23 thought. I think as I get into my presentation later  
24 we'll talk probably more about it, but I think some of  
25 the more critical decision-making is actually below,

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1 on down to the very inspector level sitting at the  
2 document reviewing it on site.

3 So I would ask that maybe we look at --  
4 broaden that out to decision-making from the whole  
5 gambit, from the very eyes on the first piece of  
6 information that thinks about this isn't right all the  
7 way up to the Victor level. And we may -- doing that  
8 right; and I'm not saying it's doing it wrong, but  
9 doing that right can consistently -- will add to the  
10 regulatory stability piece as well.

11 Further on this slide this openness and  
12 transparency also struck me. There's a lot of  
13 processes below the CRGR; I say a lot, and that's not  
14 fair, one or two that we've been asking for some  
15 transparency for a while. And I think we've made some  
16 inroads in that. One is the TIA process, because a  
17 lot of the backfits are actually adjudicated in the  
18 TIA process.

19 And we've got a little bit more where we  
20 at least get notified that there's one going on and we  
21 get a pre-exit meeting when we get it back. But in  
22 the middle of that, other than personal finesse of the  
23 regulatory and executives there's really no input. So  
24 we might want to look at those processes. Again, I'm  
25 going to say below the CRGR, but maybe earlier in the

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1 process aspect.

2 And then the other one is my favorite, FAQ  
3 process. I probably say "process" somewhat liberally.  
4 FAQs are dangerous because they're a real avenue  
5 towards being able to make things up as you go. And  
6 I'm not saying that we have a severe problem in that,  
7 but certainly we'll talk about the fire protection FAQ  
8 just recently that came out that was canceled.

9 So the FAQ process, TIA process, we might  
10 spend some time talking about. We might come up with  
11 a couple more decision-making processes that could  
12 have a little bit more transparency or maybe some more  
13 stakeholder input at certain spots.

14 MR. HACKETT: Thanks, Greg.

15 MR. HALNON: The last question on -- kind  
16 of struck me on regulatory stability when I was  
17 reading MD 8.4. It talks about each of the regions  
18 maintaining their own procedures. I was going to ask  
19 the cross-regional guys, does each region have their  
20 own specific procedures that may deviate a little bit  
21 from each other based on -- in backfitting? Because  
22 it says the responsibility of the regional  
23 administrator is to maintain region-specific  
24 procedures. Is that the case, that they're different  
25 in two or three?

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1 MR. WERT: Well, there is a regional  
2 office instruction that governs decision-making in  
3 this area, at least in Region II, but it's mostly  
4 limited to local aspects of how you would go about  
5 that decision-making. It's not meant to proceed or do  
6 anything against the higher-level documents.

7 MR. HALNON: Okay. Well, and again, as we  
8 have formed fleets in the industry, one of the things  
9 we've tried to do is to have the same procedure  
10 everybody's working to. I understand there could be  
11 you go left instead of right in the hallway, but that  
12 might be a good place to assess cross-regionally to  
13 see if there is anything that makes everyone parade  
14 left in right from a regulatory stability, because  
15 many of us operate in multiple regions and if we're  
16 dealing with different procedural aspects, we've got  
17 one office dealing with two different procedures, it  
18 might be a little bit more difficult from a stability  
19 perspective. So it's just another comment to take a  
20 look at it.

21 MR. McDERMOTT: So if I could; this is  
22 Brian McDermott from NRR, just address one of the  
23 points that Greg raised. The issue of TIAs and how  
24 much visibility the public and licensees have on how  
25 NRC wrangles with questions that have been raised by

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1 inspectors about situations they find at the plant and  
2 whether or not they conform with the licensing basis  
3 as they try to move forward with their inspection  
4 findings.

5           It's been an issue. It's been raised; and  
6 Ed correct -- because I know personally I was at some  
7 of the sessions where that's come up and there have  
8 been some changes made. So we're just now working our  
9 way through the first implementation of a process by  
10 which we will look to licensees to do a fact check.  
11 So we make the document publicly available and give  
12 the licensee an opportunity to look through that to  
13 see if we've made errors of fact before we make our  
14 assessment or complete our assessment. And so, it's  
15 a new process and we're still kind of working through  
16 that. But I did want to just highlight that that's  
17 one thing that we have done to try to open that  
18 process up.

19           Another aspect that often gets raised in  
20 that same context is the idea that we have individual  
21 plant issues that end up being ultimately leveraged by  
22 our inspectors as sort of generic issues. And so, we  
23 are making an effort now to screen those issues out  
24 and put them into processes for dealing with generic  
25 issues.

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1 MR. HALNON: Yes, that's good Brian. And  
2 I acknowledge that having the fact check added to this  
3 would be excellent. I think the transparency -- and  
4 I'm never going to say there's a lack of transparency,  
5 because we can always pick up the phone and call.  
6 It's really knowing what stage of the process you're  
7 at, what information you're dealing with so that we  
8 can understand the decision is being made with facts  
9 instead of opinions and other potential biases. So  
10 that's a really good thing. Thanks.

11 MR. WEST: If I could just add a little  
12 bit to that. Not the TIA process itself, but I think  
13 this could be captured by the thought I'm going to  
14 throw out there. And one of the things I've been  
15 involved in recently, as Vic mentioned, was the review  
16 of the Exelon backfit appeal. And results of that are  
17 not -- Vic is just -- I was wondering myself. He said  
18 this morning it's going to be out soon, his decision.  
19 So we have to wait for that and I can't say anything  
20 about the review that he's looking at.

21 But the review did give the panel, a  
22 number of us, an opportunity to kind of look at how  
23 the staff processes a backfit in real time. And that  
24 was a second appeal, so we saw an appeal also. So we  
25 saw a pretty -- a continuum from an issue being raised

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1 at a plant through a couple of -- through a backfit  
2 review, then through an appeal of a review. And then  
3 we had it for another appeal.

4 And we developed some -- and I haven't  
5 even had a chance to talk to my colleagues on the CRGR  
6 about some of these ideas, but we did have an  
7 opportunity to develop not only some decisions on the  
8 backfit itself, but also the process that was using.  
9 And that was a plant-specific backfit. CRGR would not  
10 normally be involved in that.

11 I was involved in it because when the EDO  
12 sets up an panel to review an appeal like that that  
13 gets to his level, they like to have a CRGR member on  
14 that so that there is some opportunities for CRGR to  
15 learn from that review. And we're going to do that  
16 through the tasking that we have. So, but it brought  
17 a lot of things together.

18 And one of the thought is -- and it's just  
19 a thought. I'm just throwing it out just so everybody  
20 can hear it. And I think I saw maybe some of this in  
21 some of the comments we got before this meeting from  
22 industry. But when you're doing a review, a  
23 significant review like something that comes in as a  
24 TIA; would be one example, should there be more of a  
25 conscious effort or a part of the process that says

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1 that that needs to be looked at for generic  
2 implications?

3 Because we -- typically when you get  
4 something from a region, which is where most of the  
5 TIAs come from, I think; maybe all of them, they're  
6 looking at some issue at their plant in their region  
7 that an inspector found one day and he's pulling a  
8 string on. Now, they occasionally I think will say,  
9 well, we have this problem at Byron, so maybe it  
10 exists at Braidwood. So maybe it gets a little bit  
11 broader attention.

12 But maybe one consideration is does that  
13 need to be looked at at an earlier stage as having  
14 potentially generic implications? Because that could  
15 change the way we do the review and who gets involved  
16 in the review. For example, if we say, yes, this  
17 looks generic, maybe the CRGR gets involved. Maybe it  
18 gets into the GI Program which Research manages. So  
19 there's that kind of consideration, I think, also.

20 I think what Brian just described, too, I  
21 think would be of huge -- sounds to me -- just talking  
22 to Brian, it sounds like a huge improvement to the TIA  
23 process itself.

24 MR. HALNON: Yes, Steve, as part of my --  
25 this is Greg Halnon. As part of my job I've been the

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1 NRUG chair since 2012, and the NRUG process is that we  
2 take issues that the sites have and we talk about them  
3 on a regional basis. And then if the issue looks like  
4 it's going cross-region, we bring them up to the NRUG  
5 process and we work with the OIWT at NEI to try to  
6 resolve those.

7 But the point is is that a lot of the  
8 regional issues that come up start at the plant level,  
9 start at an individual inspection. And I would say  
10 about half and half we say you guys just messed up;  
11 you need to go back and fix it as opposed to it's  
12 generic at least across the region.

13 So there is a process internally on our  
14 side that we kick things back to the site before we  
15 start raising flags. So I just want to let you know  
16 that we don't just raise everything up as this is  
17 generic and throw the flag on everything.

18 MR. WEST: I'm not suggesting that.

19 MR. HALNON: No, and I didn't say that.  
20 So, I just wanted to let you know we do have a process  
21 at least in our house, too, that we really try to  
22 interrogate things to make sure that we don't -- if we  
23 say something looks to be either regional generic or  
24 cross-regional generic, we've at least gone through a  
25 process that looks at that.

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1           One other comment I had on the last slide  
2           and then I'll be quiet for a while; I'll try to, is  
3           the CRGR operations. You mentioned informal versus  
4           formal. And a couple of comments on that.

5           One is I've noticed that there's probably  
6           many more informal than there is formal. I think  
7           there's probably been a handful if not less formal  
8           meetings in the last several years. Just the title  
9           alone, informal versus formal, my issue was dealt with  
10          in an informal way, doesn't sound good. You might  
11          think about changing that from -- I think an informal,  
12          if I'm correct, is a teleconference and a formal is an  
13          actual face-to-face.

14                   MR. WEST: Right.

15                   MR. HALNON: There are probably better  
16                   titles to that that at least give you a better, or  
17                   give us a better feeling that it was talked about,  
18                   rather than just being informal.

19                   MR. HACKETT: Yes, that's a very good  
20                   comment. I'm certainly sensitive to that from my  
21                   previous role with the ACRS. Whenever we tried to use  
22                   them or engage them remotely, as many of you know from  
23                   dealing with them, it's never the same as when they're  
24                   around the table.

25                   And so, yes, I would say when -- and so

1 what you said, Greg, is true. And Steve would have  
2 even more run time and data on that, and Les. But I  
3 think we have done the majority of the review,  
4 quote/unquote, "informally." The formal reviews, the  
5 most recent one we did was on open phase, I believe.  
6 That was I consider a very rigorous discussion. But  
7 also, sensitive to the fact that I can sit up here and  
8 say that or colleagues can say that. You all don't  
9 see that other than hearing about the record of the  
10 meeting.

11 So one of the things to expand on on the  
12 notion of CRGR operations is -- I reviewed the records  
13 from the last two meetings with the public from a ways  
14 back now, like I said. There has been some focus and  
15 recommendation that these meetings be conducted in the  
16 open. And we are, not to sound like it's a pun --  
17 we're open to that feedback. And I know Victor has  
18 talked to me about that, as has Mike Johnson. So  
19 we're going to look at that really hard this time  
20 around in this tasking.

21 And so, what does that mean to folks? I  
22 mean, could you not run the CRGR a lot like you run  
23 the ACRS, for instance? So that would be what would  
24 -- what's been put on the table before, that you have  
25 the staff, you have the industry, you have the

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1 committee, not rendering decisions in the moment, but  
2 taking all the inputs and then deliberating either  
3 separately in private or in public. So all of these  
4 are out there for us to consider.

5 MR. HALNON: Yes, and I wasn't suggesting  
6 the informal was any less rigorous or anything like  
7 that. I think it's just the label in itself speaks of  
8 it. I'm pretty sure that you guys do a pretty  
9 rigorous discussion on it. We do do teleconferences  
10 at our fleet all the time and we understand the travel  
11 and the timing schedules and all that.

12 So, but -- and I don't think you'll ever  
13 hear an argument when you want to take a meeting out  
14 that's not public and make it an open meeting, so  
15 don't -- if you do get an argument for anyone the  
16 industry side, let us know so we can get with them on  
17 that. But that's always a good thing.

18 And of course the potential for  
19 interaction is always a good thing, too. I know  
20 you're looking at your public meeting definitions as  
21 well, so that might be something that you can try to  
22 have synergistic results with. Thank you.

23 MR. CARPENTER: Thank you. We'll do one  
24 more in the room and then go to the telephones.

25 Ms. Reddick?

1 MS. REDDICK: This is Darani Reddick from  
2 Exelon.

3 Ed, you mentioned training that the CRGR  
4 had just received from OGC. I'm wondering if that  
5 training is publicly available.

6 MR. HACKETT: Portions of it might be, but  
7 I'm seeing Geary shaking his head. It was -- the  
8 copies we received were listed as attorney/client  
9 privileged. And so, that -- am I correct in saying  
10 it's not open?

11 (No audible response.)

12 MR. HACKETT: It's not releasable in its  
13 current form. I think there could be a version of it  
14 produced that would be. And we have in fact an online  
15 piece of training, more like a -- I forgot how many  
16 slides it is. It's not very long. It's actually  
17 pretty entertaining. And I believe that one's  
18 probably -- should be, could be publicly available.  
19 But the more detailed one I think gets into a lot of  
20 the legal nuances that I think OGC consider  
21 attorney/client privileged.

22 MR. MIZUNO: I think it would be fair to  
23 say that as part of the EDO Tasking Memo the CRGR and  
24 OGC will discuss whether we need to create separate  
25 tools that are publicly available. We know that

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1 NUREG-1409 has to be updated and the only question is  
2 whether there are additional aids, tools, whatever you  
3 want to call them, that can further help ensure that  
4 we have this understanding on both the external  
5 stakeholder side and the internal NRC side on the many  
6 different backfitting and issue finality provisions  
7 that we have --

8 MS. REDDICK: Yes.

9 MR. MIZUNO: -- and how they get  
10 implemented.

11 MS. REDDICK: I guess I would just ask OGC  
12 to consider how much of that you could publicly  
13 release. I think in terms of openness, transparency,  
14 clarity and also application of the compliance  
15 exception it would be really helpful for stakeholders  
16 to be able to see how OGC is training the rest of the  
17 staff on how the Backfit Rule should be applied.

18 MR. MIZUNO: Well, like I said, the EDO  
19 Tasking Memo, they'll be looking at that. I think  
20 that again we won't be -- a lot of our training is  
21 going to involve -- is intertwined with our advice,  
22 and we wouldn't release that to the public.

23 And so, I think that again as part of the  
24 EDO tasking we will look at developing things that can  
25 be released to the public so that to the extent that

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1 we can the nature of the messages that we're giving  
2 and training the staff to will become clear so that  
3 you understand how NUREG-1409, the positions are being  
4 articulated there and the positions that are being  
5 articulated in various written documents such as a  
6 staff response to a backfitting appeal or a  
7 backfitting claim. All those things that they're --  
8 hopefully you'll see something that will represent  
9 some level of consistency.

10 MS. REDDICK: Thanks.

11 MS. ORDAZ: This is Vonna Ordaz with NRO.  
12 I think the brief answer would be yes, we'll look and  
13 see if there is a version that we can get to you, or  
14 make it publicly available. I think the training was  
15 very good. I was in it. I think we were all in it  
16 just last week, and it was very helpful information.

17 MS. REDDICK: Thank you.

18 MR. HACKETT: I would also add the -- in  
19 particular looking back at the -- I know there is a  
20 summary that I think Tony is going to present later,  
21 but a number of the letters that NEI especially had  
22 sent into the agency this year -- the January 20  
23 letter, for those that are familiar with that in the  
24 room, that Tony sent to Victor, had a list of criteria  
25 that I think it's fair to say the staff has considered

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1 helpful in focusing in the compliance exception,  
2 looking at things like known or established standards,  
3 mistakes or omission of fact, and going through  
4 hopefully a checklist that, as Darani is indicating,  
5 that you want to get more hopefully focused and  
6 disciplined in those reviews. So certainly consider  
7 that helpful information.

8 MR. CARPENTER: Very good. Let's go to  
9 the telephones. We'll come back to the room in a  
10 moment.

11 And for those people who are in the room  
12 that aren't at the table, there is also a microphone  
13 right up here so we can -- if there's anybody who'd  
14 like to ask questions when we come back to the room.

15 Operator?

16 OPERATOR: Thank you. Over the phone  
17 lines if you would like to ask a question, please  
18 press star then one. We do have a question from Keith  
19 Jury.

20 Sir, your line is open.

21 MR. JURY: Thank you. Good morning, Ed.  
22 This is Keith Jury from Exelon.

23 MR. HACKETT: Hey, Keith.

24 MR. JURY: And just a quick question; and  
25 maybe it's an add-on to what Greg was asking about.

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1 And we've heard a couple times this morning about  
2 trying to do a better job of identifying up front  
3 potential generic implications. And I guess the  
4 question I'd like to cue up is in -- or at least some  
5 point today talk about if we can is how do we protect  
6 the industry from potential generic conclusions that  
7 aren't determined to be generic by the staff?

8 And I guess a better way to say it is  
9 there are times when we see decisions get made that  
10 don't get the review for a generic implication or it  
11 gets missed that it's potentially generic. And is  
12 there a role for CRGR in that process to perhaps be  
13 the one that does the spot check or evaluate the  
14 generic implications?

15 MR. HACKETT: That's for the question,  
16 Keith. I think that's a good point. I think as I'm  
17 hearing what Steve was mentioning earlier with -- the  
18 TIA example is just one. I could think of ISGs I  
19 think in the same sense, that kind of earlier  
20 engagement at a different level would probably be  
21 productive for us, because oftentimes we may not see  
22 that at that level. So I think that's a really good  
23 comment.

24 MR. JURY: Yes, and another aspect I think  
25 you're spot on is the one other aspect that was coming

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1 to bear to me is to say there's times when there's  
2 shared correspondence that comes out that -- whether  
3 it's an information notice or different vehicles where  
4 there's a -- by process there's not supposed to be a  
5 new requirement or a change in position. And the  
6 industry has in the past taken the position that in  
7 fact there is a change.

8 And whether we hash through that or how we  
9 hash through that kind usually works its way out, but  
10 I'd say that there's a part in the process right up  
11 front where we can help protect that decision from  
12 being made erroneously. If we could explore that at  
13 some point today I'd appreciate that. Thank you.

14 MR. HACKETT: Thanks, Keith. Good  
15 feedback.

16 MR. CARPENTER: Okay. One more.  
17 Operator, anybody else?

18 OPERATOR: There are no questions on the  
19 phone lines.

20 MR. CARPENTER: Very good. Back to the  
21 room.

22 MR. PIETRANGELO: And another question I  
23 had; this is Tony Pietrangelo from NEI, the charter  
24 you've been given from Victor, do you think it's  
25 sufficiently broad to let you go where you need to go

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1 based on your initial work?

2 MR. HACKETT: Another good question. I  
3 think we were worried about how broad it was when we  
4 first got it. In fact, Steve and I were very involved  
5 in our transition of the chairmanship with talking  
6 with Victor and Mike Johnson and Glenn Tracey about  
7 this, and Gary Holahan significantly. And one of the  
8 struggles we have that we could mention here at this  
9 meeting, don't mind declaring, that this body is of  
10 course a part-time body. And so, one piece of  
11 feedback that's come up already in the room today is  
12 the resources and are we appropriately resourced for  
13 that? We have Les and we have access to some other  
14 resources.

15 But reaction to Tony's question, yes,  
16 absolutely Victor engaged this in a very broad manner.  
17 It was actually -- I would characterize it as a very  
18 philosophical meeting that we had in February where I  
19 think the EDO and the DDOs were really asking hard  
20 questions about what are we doing? And as Vic opened  
21 with his remarks, how are we doing it and can't we do  
22 this better? Because I'm seeing some instances here  
23 where I think he would have said he wasn't entirely  
24 happy with where the state of the situation was.

25 MR. PIETRANGELO: Yes, the area I'm

1 thinking of that wasn't explicit up here is the  
2 regulatory analyses that are conducted to see whether  
3 substantial additional protection has been achieved,  
4 and then subsequently if you have achieved that,  
5 whether it's cost beneficial or not. I think there's  
6 been a lot of debate over the years and questions  
7 about use of qualitative factors in that process, use  
8 of risk insights, etcetera.

9           So I'm hoping that your charter is broad  
10 enough to take a look at that as well, because there  
11 have been a lot of individual issues where it's come  
12 down to something like that. And the proper rules of  
13 application of qualitative factors, for example, I  
14 think would be useful to the overall implementation of  
15 the Backfit Rule.

16           MR. HACKETT: Absolutely. Yes, a really  
17 good point. And it certainly brings back some  
18 memories for me, because I know the ACRS was very  
19 engaged when I was with them on the debate over  
20 qualitative versus quantitative factors. And of  
21 course as many of you know, the Commission was quite  
22 engaged in that area, too. And as part of our charter  
23 it recognizes that there are always going to be  
24 qualitative factors inherent to what this type of  
25 group does, what I would say more broadly inherent to

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1 what the NRC does.

2 And then the focus should be to use  
3 quantitative analyses to the extent that it's sensible  
4 and possible, but it's always going to be -- as you're  
5 describing it, Tony, it's always going to be that sort  
6 of middle ground that's hard to achieve. Yes, good  
7 comment.

8 I guess I was going to make a couple of  
9 other comments while we've got a pause here. Number  
10 one comment is the agenda you will notice was loaded  
11 a little bit differently. Initially we had envisioned  
12 a larger front end presentation, so we did build in  
13 more time here up front than is looking like it's  
14 probably going to be necessary. So we might take an  
15 extended break or figure that as we go here, but we'd  
16 want to keep the rest of the agenda as is in deference  
17 to stakeholders who are joining us remotely. So we'll  
18 keep to that agenda.

19 I should have mentioned also in opening  
20 Scott Moore is one of the members of CRGR and Scott  
21 unfortunately had a personal conflict and couldn't be  
22 with us this week, but we do have representation from  
23 NMSS. John Tappert's with us over at the side table  
24 and we will have rotating representation from NMSS  
25 throughout the day. So just wanted to make sure I

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1 mentioned those items.

2 And then back to Gene to see if there's  
3 any further discussion that we want to engage in now,  
4 or this could be a good time for a break.

5 MR. CARPENTER: Let's go back to the room  
6 one more, and then we'll try again on the telephone.

7 Anyone in the room?

8 (No audible response.)

9 MR. CARPENTER: I think you broke them,  
10 Ed.

11 (Laughter.)

12 MR. CARPENTER: Operator, anybody online?

13 OPERATOR: Thank you.

14 MR. CARPENTER: Nobody online then?

15 MR. HACKETT: There are no questions at  
16 this time.

17 MR. CARPENTER: Very good.

18 MR. HACKETT: Okay. Looks like we're  
19 overachieving. Also forgot to mention my condolences  
20 to Redskins fans --

21 (Laughter.)

22 MR. HACKETT: -- or congratulations to the  
23 Steeler fans in the room. That was pretty brutal last  
24 night. So maybe --

25 MR. CARPENTER: We've got one in the room.

1 MR. BONANNO: Hi, Jerry Bonanno from NEI.  
2 I just thought to kind of dovetail on the conversation  
3 about facility-specific versus generic issues. I just  
4 wanted to bring up one other point, which is I think  
5 looking at the issue a little harder and trying to  
6 figure out whether there's generic implications is one  
7 way to address that, but I think the other thing you  
8 all might want to think about is whether you actually  
9 need two processes in backfitting space for facility-  
10 specific versus generic issues.

11 Because I think historically that made  
12 sense, but I think that when you watched these things  
13 in the recent past, they almost -- the rule's generic.  
14 It applies basically the same whether you're dealing  
15 with one licensee or the entire fleet. So I think  
16 that's just another way to come at it, from the top  
17 down instead of the bottom up.

18 MR. HACKETT: Thanks, Jerry.

19 MR. CARPENTER: Any other comments in the  
20 room? Dave?

21 MR. LOCHBAUM: This is Dave Lochbaum with  
22 UCS again. A question on the CRGR process. When you  
23 review something for potential generic implications,  
24 how do you ensure that -- because reactors have a such  
25 a wide ranging design in the licensing basis, how do

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1 you make sure that you've bound the reactor that has  
2 the most stringent requirements with the reactor that  
3 has the last stringent? How do you ensure that  
4 whatever's being done has captured both ends of that  
5 wide spectrum? Or do you just go for the middle?

6 MR. HACKETT: Yes, I think that's a  
7 particularly good question, Dave. So I think I'll  
8 answer it one way and my colleagues might have some  
9 other comments to add.

10 I think part of the structure of the  
11 committee being deputy office directors historically  
12 I think is to -- hopefully with folks that have been  
13 here as long as some of us, that we have some depth of  
14 experience to cover the range of things that have been  
15 seen in the reactor and materials or security arenas.  
16 So I think we historically have had adequate  
17 representation, as you said, to try to bound that with  
18 the experience of the group, but in thinking about it,  
19 I'm sure that shifts and changes over time, clearly as  
20 the membership just has now. So I think that's one  
21 answer.

22 And then there's the depth of the reviews  
23 that you would go into as those individuals and others  
24 we could consult with -- including former, recently  
25 former members like Gary Holahan, who's now reporting

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1 directly to Victor. So we have access to I think a  
2 wide variety of resources through the constitution of  
3 the committee itself and then reaching out to others  
4 within the agency. But at least that's one potential  
5 answer, because that's a difficult question to be able  
6 to bound those areas.

7 I don't know if you guys have anything to  
8 add to that.

9 MR. WEST: I'll just add -- I don't know  
10 if this gets to your question exactly, David, but  
11 remember the CRGR is looking at generic issues, so by  
12 definition the things that are brought to the CRGR for  
13 our review are things the staff has decided have  
14 generic implications and we need to look at it. So  
15 we're not necessarily -- we're not as a group looking  
16 at a plant-specific issue and saying this -- you  
17 brought us this as a plant-specific issue, but we  
18 think there's generic implications, so you need to  
19 look closer. And that's what I was suggesting maybe  
20 we need to add some kind of step like that.

21 So like Ed was saying, when we do get a  
22 generic issue, we do have a lot of experience on the  
23 CR -- we added up the years of experience I think last  
24 year to answer congressional questions. It's like 150  
25 or 200 years of experience, something like that. So

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1 we do have that experience. And we do ask questions  
2 when we get that.

3 But most of the things, when the staff  
4 brings it to us, we're reviewing the results of their  
5 work, and they do lay out why it's a RIS or something  
6 that needs to be issued that addresses a class or all  
7 plants. So, but I think that piece I mentioned  
8 earlier -- because I think you're kind of looking --  
9 linking up with that is maybe something we need to  
10 look at.

11 MR. CARPENTER: Anyone else in the room?

12 (No audible response.)

13 MR. CARPENTER: One last time to the  
14 phones and then we'll go for a break. Operator?

15 OPERATOR: There are no questions in queue  
16 at this time.

17 MR. CARPENTER: Thank you very much.

18 In that case, since we, as Ed mentioned,  
19 we have over-achieved, let's go ahead and take a  
20 break. According to the clock on the wall it's 10:09  
21 right now.

22 MR. HACKETT: 10:30?

23 MR. CARPENTER: 10:45 or 10:30?

24 MR. HACKETT: 10:30.

25 MR. CARPENTER: 10:30?

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1 MR. HACKETT: Yes.

2 MR. CARPENTER: Very good. For the folks  
3 in the room, if you'd like to us restrooms, it's right  
4 outside the door to the left. Elevator lobby. We  
5 also have the café down on the first floor. There  
6 will be staff available to bring you back up whenever  
7 we're ready for the break to be over.

8 And for the folks on the telephone, we  
9 will resume at 10:30 Eastern Time. Thank you.

10 (Whereupon, the above-entitled matter went  
11 off the record at 10:09 a.m. and resumed at 10:30  
12 a.m.)

13 MR. CARPENTER: Thank you for returning.

14 Operator, we'll be set to take calls from  
15 people on the phone in just a couple of minutes.  
16 We'll go back to the room here.

17 We said that we'd resume the discussion  
18 here at 10:30. The time is nigh, so we'll start here  
19 in the room again. Anyone in the room that would like  
20 to make a comment, discussion?

21 (No audible response.)

22 MR. CARPENTER: Don't everybody jump in at  
23 once.

24 (Laughter.)

25 MR. HALNON: Well, I think the only --

1 this is Greg Halnon. The only hesitation we have is  
2 that we can start giving away our presentation  
3 notes --

4 MR. CARPENTER: Understood.

5 MR. HALNON: -- and make the afternoon  
6 kind of quiet, or we can have a quiet time now. I  
7 mean, it's up to you.

8 (Laughter.)

9 MR. CARPENTER: And as Ed said earlier,  
10 because we have published this agenda and there may be  
11 people on the telephone who are specifically waiting  
12 to hear some of the things that you will be talking  
13 about this afternoon, we didn't want to run through it  
14 before lunch and then they'd miss it because they  
15 expected to call in at 1:00 and have that discussion  
16 at that time. So we're trying to be mindful of the  
17 who are on the telephone.

18 MR. HACKETT: To credit Mr. West, he told  
19 me we could probably get by with half a day, and looks  
20 like that might have been prophetic. So we apologize  
21 for that because we may not have enough to fill the  
22 remainder of the morning as Greg is indicating. So  
23 we'll just go to the lines and see. If not, the  
24 cafeteria is open at 11:00.

25 MR. CARPENTER: So with that, we'll try

1 again on the telephones.

2 Operator, anybody online?

3 OPERATOR: Thank you. We will not begin  
4 the question and answer session. If you'd like to ask  
5 a question, please press star, one, un-mute your phone  
6 and record your name clearly. Your name is required  
7 to introduce your question. If you need to withdraw  
8 your question, press star, two. Again, to ask a  
9 question, please press star, one.

10 It will take a few moments for the  
11 questions to come through. Please stand by.

12 MR. CARPENTER: Standing by. Thank you.  
13 And we'll go back to the room once we see if anybody's  
14 on the telephone.

15 MR. PIETRANGELO: Yes, I'm not going to  
16 wait for this afternoon. There's no such thing as  
17 quiet time here. Okay?

18 (Laughter.)

19 MR. PIETRANGELO: Even part of what we've  
20 discussed thus far this morning --

21 MR. CARPENTER: One second, please.

22 Anyone on the telephone, operator?

23 OPERATOR: We show no questions at this  
24 time.

25 MR. CARPENTER: Okay. Thank you very

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1 much.

2 MR. PIETRANGELO: Okay. CRGR is not a  
3 line function in the NRC, right? You're kind of an  
4 advisory body to different elements, principally to  
5 the EDO, but I think you do inform a lot of the other  
6 offices, the regions, etcetera. And because you all  
7 have day jobs, you can't possibly do that as a line  
8 manager.

9 So I think this activity is less about  
10 CRGR and more about the culture of a regulator and the  
11 culture of the industry when we're looking at safety.  
12 You want everyone to have a questioning attitude in  
13 the agency, I think. And you do, and that's part of  
14 your culture. We expect the same thing in our  
15 industry to self-identify problems and to question why  
16 things are the way they are and to correct things when  
17 we do find stuff. So that's okay. You have to have  
18 the latitude to do that.

19 I think the feedback or the observation  
20 over time is that often folks don't know what process  
21 they need to turn to when they do have a differing  
22 perspective or disagree with maybe the decision on  
23 someone's specific licensing basis from 20 years ago.  
24 I think David's question was an excellent one. All  
25 the licensing bases are slightly different, depending

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1 on when the plant was licensed. That was kind of an  
2 iterative way that that was done. So they are a  
3 little different. So it really I think begs the  
4 question of how generically do you look at that?

5 But I think you can't do it as a CRGR,  
6 because that's all you would do. You'd have a full-  
7 time -- I don't think you would have enough time in a  
8 year to deal with all those. So it's got to be  
9 something that's ingrained in the culture and covered  
10 in the processes for whether it's an inspection and  
11 there's a -- whether it's new information or new  
12 opinion on whether something that particular licensee  
13 is doing meets the requirements or meets the licensing  
14 basis. And if it is a different position, that  
15 there's a process to go to.

16 And I think one of the things maybe to  
17 consider as you go forward are those processes clear  
18 enough so that everybody knows you don't have to just  
19 say, well, that's how they did it 20 years ago and you  
20 have to accept that. That's not the right answer, but  
21 if you do have new information or a different  
22 perspective, that you have the correct process to go  
23 to. That's where the stability comes from I think  
24 that we're all looking for in the process and the  
25 predictability, that everybody has a place in the

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1 process to go and that these issues get properly  
2 vetted. And it really has to be cultural, because you  
3 can't do it as a body. You don't have enough time to  
4 do that. It's got to be kind of infused into the  
5 culture and processes that you have in place.

6 Same thing on the licensee side. I mean,  
7 we're going to talk about this afternoon how licensees  
8 acquiesce in the inspection process because it might  
9 be something that's fairly minor, it's just better off  
10 to go along to get along, and they do it. As an  
11 industry we can't continue to do that either. I mean,  
12 we're trying -- and it's not a regulatory initiative,  
13 but trying to undo some of the things we do to  
14 ourselves that kind of add layers of process and  
15 oversight that really in a lot of cases removed the  
16 accountability from the person doing the job and the  
17 line manager. And that's not a good thing to do  
18 either.

19 So I think this is a very broad thing.  
20 It's not just the CRGR question. It's something to  
21 think about for the agency. And again, that's why I  
22 started with this is really a safety-focused rule. I  
23 really shudder when I hear that this is a rule  
24 designed to protect licensees. Okay? That's not the  
25 purpose of the Backfit Rule. It's not there to

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1 protect licensees. It's in one of your points, David.

2 MR. LOCHBAUM: All of my points.

3 (Laughter.)

4 MR. PIETRANGELO: It's a safety-focused  
5 rule to make sure we focus on the right things. And  
6 if it's not, then we need to correct it and get to  
7 that point, because that serves everybody. It serves  
8 the public, it serves the agency and it serves the  
9 licensee.

10 MR. McDERMOTT: Well, thank you, Tony.  
11 Appreciate that.

12 MR. CARPENTER: Got some reaction.

13 MR. McDERMOTT: No, I do. I think it's on  
14 point. I think it's reflective of the challenges that  
15 we see in a lot of areas.

16 The framework we have for making changes  
17 to the license, the facility, enables licensees a good  
18 deal of flexibility with changes under 50.59, but when  
19 you throw into that mix other changes that are made  
20 with submittals, the specificity of those requests,  
21 the application of certain standards to very specific  
22 changes or pieces of equipment, I think that creates  
23 a very complex picture leads to some of the challenges  
24 we get into when -- whether it's an inspection issue  
25 or a TIA, or whatever the prompt is for us to examine

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1 the licensing basis of the facility.

2 So I appreciate your comment and just want  
3 to say it resonates with me and the challenges that we  
4 are dealing with day to day.

5 MR. CARPENTER: Steve?

6 MR. WEST: This is Steve West. I also  
7 want to agree with a lot of what Tony said. In fact,  
8 Ed and I were talking during the break. I'm not sure  
9 where you were standing, Tony. Was it right behind  
10 us, because we were --

11 MR. PIETRANGELO: No, I was --

12 (Laughter.)

13 MR. WEST: We were basically saying the  
14 same thing, that the CRGR is certainly not a magic  
15 bullet to fixing anything about backfit. And there is  
16 no magic bullet. We were saying the same thing.  
17 Really based on our experience on CRGR and our years  
18 of experience at the NRC there is cultural aspects of  
19 this that need to be dealt with, and it has to really  
20 be at a lower level, really in the divisions with the  
21 staff and through the director level.

22 And if you look -- if you did see all the  
23 interactions we have when the CRGR is doing a review,  
24 there's a lot of activity, and a lot of it that has  
25 nothing to do with backfit. It's questioning the

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1 regulatory process we're in. Does it really make  
2 sense to issue a RIS on this? Should it be something  
3 else?

4 And so, we're adding a lot of value, but  
5 it's in other areas. And we've got to I think drive  
6 that down into lower levels of the organization so  
7 that the stuff that comes up has already got that kind  
8 of layered in into the decision-making that's been  
9 done. So I really think that you've got a great  
10 insight, because it's the same as mine.

11 (Laughter.)

12 MR. WEST: And we've had other -- we've  
13 had discussions like this with the members, but you're  
14 right, it -- CRGR did used to be a part of the line  
15 organization years ago in NRC and it shifted to this  
16 many years ago, this format. And it is an important  
17 role. I think it needs to continue, but I think we  
18 really need to look at it. And I think through this  
19 tasking memo that Ed is talking about we are looking  
20 at it, and probably already some of us have already  
21 identified that there's a need for probably more  
22 guidance, more training and look at procedures and the  
23 guidance documents that are already out there that are  
24 maybe not up to date. So I think there's going to be  
25 a lot coming out of it. But I don't think it's going

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1 to be any major change to the CRGR.

2 MR. HACKETT: Okay. Good discussion. I  
3 was going to go back to the time management aspects of  
4 this meeting and being open to on-lining with those of  
5 us here in attendance. My colleagues were talking to  
6 me about might we not adjust the meeting? And I'm  
7 willing to entertain discussion on that in the  
8 interest of not wanting to waste folks' time that have  
9 come to the meeting and then the -- in part the reason  
10 I would do that, I know sensitive to folks that travel  
11 to the meeting, but also that we are keeping a  
12 transcript and it is being web-streamed.

13 So if we -- I don't know if there's  
14 consensus in the room that we just go ahead and  
15 proceed on with the afternoon agenda early. There's  
16 pluses and minuses to this, but I'm open to any --  
17 Gene, do you have any insights on that?

18 MR. CARPENTER: Again, it's entirely your  
19 meeting. Okay? But the only concern that we had, as  
20 we had discussed when we were setting this up, is do  
21 we have anyone on the telephone who -- members of the  
22 public that we --

23 MR. HACKETT: Right.

24 MR. CARPENTER: -- that are specifically  
25 interested in this? To that end, let me go to the

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1 operator.

2 And for the folks who are on the  
3 telephone, you have heard what Ed suggested about  
4 changing the agenda and perhaps going to some of the  
5 afternoon presentations before lunch time. Is there  
6 anyone on the telephone who has any heartburn with  
7 that?

8 OPERATOR: One moment. We have a call  
9 coming in.

10 MR. CARPENTER: Thank you.

11 OPERATOR: Go ahead, caller. Your line is  
12 open.

13 MR. JURY: Yes, this is Keith Jury. That  
14 works for me.

15 (Laughter.)

16 MR. HACKETT: Thanks, Keith. I think what  
17 we're going to do -- as Gene said, we got the command  
18 decision, so let's go ahead and do that in the  
19 interest of not wasting folks' time. So we will  
20 vacate the front seats here and let our colleagues on  
21 the other side of the table come forward and then  
22 proceed with the agenda that's listed to commence at  
23 1:00.

24 MR. CARPENTER: So for those people who  
25 are on the telephone and watching the web streaming,

1 we are switching desks, as Ed said. And we'll go to  
2 this and we'll try to make sure that anybody who has  
3 concerns online can communicate them to us.

4 So very good. One moment while everybody  
5 plays musical chairs.

6 (Whereupon, the above-entitled matter went  
7 off the record at 10:43 a.m. and resumed at 10:44  
8 a.m.)

9 MR. PIETRANGELO: Okay. Well, I've said  
10 everything pretty much I wanted to say about five  
11 minutes ago.

12 (Laughter.)

13 MR. PIETRANGELO: But I will walk through  
14 the slides and do the due diligence.

15 This isn't the first time we've talked  
16 about backfit. We've referenced several letters we've  
17 sent and that LMS sent to the agency on different  
18 elements of the Backfit Program from the compliance  
19 exception, weighing in on the appeals that Exelon has  
20 made, as well as on things like qualitative factors  
21 used in regulatory analysis, etcetera.

22 So we have a broad interest in this.  
23 Again, I think this is more than just the CRGR thing,  
24 that it's really down to what processes we use when we  
25 do have new information or new opinions that come into

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1 the regulatory process and how we deal with those.

2 So our problem statement, I don't want to  
3 make too much of it, but we think there's a way the  
4 backfit should be implemented to ensure that -- and to  
5 me this is the real intent of the rule is to focus on  
6 the most safety or security-significant, cost-  
7 justified regulatory actions.

8 And when we go to the text of the rule  
9 itself; I think David's presentation has all the text  
10 in it, you have to have substantial -- if it's not a  
11 compliance exception, if it's not adequate protection,  
12 the other way to get the requirement in the books is  
13 through a regulatory analysis that says that this has  
14 substantial additional protection, one, and, two, that  
15 it's cost-justified. And you don't see a lot of those  
16 analyses conducted from start to finish a lot.

17 And CRGR's role in that is limited. I  
18 think on rulemakings it's been deferred to OGC for the  
19 most part. So I think there is maybe a more front-end  
20 role for CRGR to play, particularly on rulemakings;  
21 I mean, that's the most generic thing the NRC does are  
22 rulemakings, to have a center of expertise that has  
23 people who are familiar with the rule, familiar with  
24 the background that could provide perspective to first  
25 the senior management of the agency as well as the

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1 Commission.

2           What are the causes of this? Again, I  
3 think it's more cultural as an industry. The  
4 relationship between the licensee and the regulator is  
5 very important. It is guarded by all licensees out  
6 there. They want to make sure they have good  
7 relationships with the NRC. So my observation over  
8 the years is when the word "backfit" is thrown across  
9 the table, it tends to polarize the sides and you stop  
10 having very good discussion about the particular  
11 issue. So for industry we tend to acquiesce if it's  
12 something that doesn't cost a lot. And if it makes  
13 the inspector happy, they'll do it. Okay? That's not  
14 the real though -- to me gets at the real intent of  
15 the rule, which is to make sure we're focusing on  
16 things that matter.

17           On the agency's part, if you can avoid  
18 having the -- because the regulatory analysis, the  
19 ones I'm familiar with are pretty lengthy and pretty  
20 labor-intensive. So if you can find an easier path to  
21 do that, you take it.

22           And I think the second bullet goes to the  
23 training, the new people coming into the agency.  
24 Without that historical context and -- we talked about  
25 the difference in licensing bases. There's not one

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1 plant to another where the licensing basis is exactly  
2 the same. And how backfit plays into that, I think  
3 that's a useful training topic, or at least historical  
4 context that everyone in the agency should have, not  
5 just the people on CRGR.

6 All right. Next slide. So the end state  
7 we're looking for is again that we're focused on the  
8 right things, that our resources are allocated to  
9 regulatory actions that yield demonstrable --  
10 demonstrable safety and security benefits.

11 And I think this stability piece is the  
12 second one. And the other things that were in the NRC  
13 slide presentation on transparency and such, I totally  
14 agree with, but this is kind of what we're looking for  
15 out of this review of backfitting requirements.

16 We hope that as a result of this activity  
17 you give recommendations to the EDO and subsequently  
18 perhaps to the Commission that provides clear  
19 direction on these issues where there's been a lot of  
20 back and forth throughout the years and any changes to  
21 agency guidance that are necessary. I think it helps  
22 us all when there's a body like yourselves, whether  
23 you call it CRGR or something else, that provides an  
24 independent look, not at everything, but things that  
25 kind of make it through the process and have cleared

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1 several hurdles to get a perspective that's consistent  
2 and that both the staff and the industry look to  
3 provide guidance on these things. And again, I think  
4 training on the foundation of the rule and its  
5 implementation, both for industry folks and NRC folks,  
6 would be useful.

7 Your role. I think Project Aim has  
8 identified some of these centers of expertise with the  
9 agency. CRGR could be one of those centers of  
10 expertise on backfits. Perhaps an expanded role to  
11 get more involved in the rulemaking process. Again,  
12 I mean, if you don't look at rules, then how generic  
13 are your responsibilities? And transparency and maybe  
14 having more public interactions for stakeholders to  
15 weigh in on some of these issues.

16 And as I said before, this is broader than  
17 just the CRGR. This really involves the whole NRC and  
18 the industry, but there could be a larger role for  
19 CRGR in the solution.

20 That completes my remarks. Thank you.

21 MR. CARPENTER: Did you have a question,  
22 Steve?

23 MR. WEST: Yes, I did if you were --

24 MR. CARPENTER: Yes, go ahead.

25 MR. WEST: Tony, I had a question just on

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1 your comment you made; it's on your last slide, about  
2 the open phase issue. Was there no industry  
3 involvement in looking at the issue?

4 MR. PIETRANGELO: Oh, there was a lot if  
5 industry involvement. In fact --

6 MR. WEST: What is your stakeholder could  
7 have been helpful? What's --

8 MR. PIETRANGELO: Which part on you on,  
9 Steve?

10 MR. WEST: The improved transparency. It  
11 says stakeholder input could have been more helpful in  
12 reviewing open phase evaluation. I was just wondering  
13 what specifically you thought could have been done  
14 differently that would have been --

15 MR. PIETRANGELO: I going to need some  
16 help from my able staff.

17 MR. WEST: Okay.

18 MR. BONANNO: Hi, Jerry Bonanno again from  
19 NEI. I think what we're referring to on that slide is  
20 the review of the documented evaluation. There was a  
21 lot of industry involvement in the technical issue,  
22 but I think the review of the documented evaluation by  
23 CRGR, there wasn't a whole lot of involvement. I  
24 think we caught up -- we saw a lot of that stuff after  
25 the fact through when public documents were made, or

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1 documents were made public in ADAMS and things like  
2 that. So that's what that sub-bullet is referring to.

3 MR. PIETRANGELO: Okay.

4 MR. BONANNO: Thank you.

5 MR. PIETRANGELO: Thanks.

6 MR. WEST: Thanks for that clarification.

7 I'm asking the question because one thing that CRGR  
8 does definitely pay attention to when we're reviewing  
9 something is what has been the engagement with  
10 stakeholders? And we take steps to make sure we fully  
11 understand what the engagement has been and what the  
12 outcomes have been from that engagement.

13 MR. PIETRANGELO: Right.

14 MR. WEST: And it's an area where we are  
15 always looking for -- not only the CRGR, but I think  
16 the agency is looking for ways to make sure we take  
17 full advantage of stakeholder input engagement. So  
18 this would be an area I think we're looking at as part  
19 of the tasking also. But appreciate the comment.

20 MR. HACKETT: I think my comment was  
21 similar to Steve's. When I look at what you said,  
22 Tony, on the larger role, I guess that's what I was  
23 envisioning as part of the larger role that we would  
24 be -- in this case, as Steve is indicating, more of an  
25 entrée to what Jerry mentioned, that there would have

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1       been maybe more awareness or information you wanted to  
2       provide, some mechanism for doing that that doesn't  
3       exist now. So that's part of like what you meant as  
4       part of the larger role.

5                   MR. PIETRANGELO: Okay.

6                   MR. HACKETT: Thanks.

7                   MS. REDDICK: Okay. So I'm going to be  
8       going through facility-specific backfits, in  
9       particular the backfit appeal process. As Dave and Ed  
10      have mentioned today, Exelon is going through one of  
11      those right now and we eagerly await Mr. McCree's  
12      decision. And I'll also be speaking the compliance  
13      exception in particular.

14                   Of course the NRC can forego a backfit  
15      analysis when it's necessary to bring a facility into  
16      compliance with NRC requirements or licensee  
17      commitment, but the rule itself doesn't really give  
18      any additional explanation as to how the compliance  
19      exception should be applied.

20                   The statements of consideration for this  
21      exception though do clearly articulate the  
22      Commission's intent, which as we've seen before is to  
23      address situations in which the licensee has failed to  
24      meet known and established standards because of  
25      omission or mistake of fact. And importantly the

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1 Commission went on to say that new or modified  
2 positions or interpretations of what constitutes  
3 compliance does not fall within the compliance  
4 exception. So in those cases of course a backfit  
5 evaluation would have to be prepared.

6 And I'll note that in a recent Senate  
7 Environment and Public Works hearing in response to a  
8 question on the proper application of the Backfit Rule  
9 Chairman Burns did state that when looking at the  
10 decision to be made for the compliance exception these  
11 words and the statements of consideration are the,  
12 quote, "persuasive words," or "persuasive criteria"  
13 that the Commission set at the time.

14 So the first part of this standard is what  
15 is a known and established standard? Of course we  
16 have to know standard the licensee is being held to,  
17 so for that reason it must be specific, it must exist  
18 at the time of the prior NRC approval, but not only  
19 must it exist at the time of the NRC approval, but it  
20 had to have actually applied to that licensee at the  
21 time of the prior approval. And it must be based on  
22 a legally binding requirement or licensee commitment  
23 to meet that requirement. So in other words, it can't  
24 just be based on guidance that the NRC has put forth  
25 as one way of satisfying a requirement.

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1           The second part of the test is whether  
2 there's an omission or a mistake of fact. Again, this  
3 is not defined in NRC Regs or in the guidance, and we  
4 have to look at it in the context of the rule itself.  
5 So it really doesn't make sense to allow the exception  
6 to be applied in a way that would render the rule  
7 meaningless or allow the exception to swallow the  
8 rule.

9           We recently saw for the first time, at  
10 least that I'm aware of, the staff in the open phase  
11 condition backfit evaluation that was just referenced  
12 defined what an omitted fact could be. Omitted fact  
13 -- I actually haven't seen that term before this, so  
14 that was new to me. But the definition is put here on  
15 this slide. But the staff included in this definition  
16 that an omitted fact could include information that  
17 did not exist at the time of the prior NRC approval.

18           I think that's troubling because a plain  
19 language definition of omission is something that was  
20 left out, so how do you leave out something that did  
21 not exist? And that really I think doesn't square  
22 with the purpose of the Backfit Rule. Of course as  
23 Tony mentioned, obviously it's to promote safety, also  
24 provide regulatory stability.

25           So if you allow an omission to be

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1 something that is new information that didn't exist at  
2 the time, it sort of creates this moving target,  
3 right? We can always have new information, new  
4 research, new technology, but then the target on what  
5 satisfies the rule could constantly move. And in  
6 fact, new information can be used to legitimately  
7 support when a staff has a new or modified  
8 interpretation of compliance. But of course then in  
9 those cases it would not fall within the compliance  
10 exception.

11 So some examples, basic examples of what  
12 an omission could be. It could be material  
13 information that existed at the time that should have  
14 been considered in the prior approval but wasn't, and  
15 had it been considered would have changed the staff's  
16 position, would have caused the staff to determine  
17 that a licensee was non-compliant.

18 An example, very basic example of a  
19 mistake of fact could be the licensee prepared a  
20 calculation. It was mathematically erroneous. The  
21 staff relied on that to approve a licensee's position.  
22 Had that calculation been correct, the staff would not  
23 have found the licensee to be compliant.

24 So just to reiterate, obviously a new or  
25 modified interpretation itself cannot be an omission

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1 or mistake of fact based on the words from the  
2 Commission's statements of consideration, as well as  
3 new information that didn't exist. And I think the  
4 bottom line in allowing the compliance exception to be  
5 read this broadly, if you read omission or mistake of  
6 fact that broadly could really be taken to an extreme  
7 in which any NRC prior approval, no matter how  
8 explicit it was or how thorough it was, how documented  
9 it was, the current staff could always say, well, that  
10 prior approval itself was a mistake of fact simply  
11 because it doesn't like the prior staff's analysis or  
12 conclusions. And that really allows you to sort of  
13 drive a truck through the whole compliance exception  
14 and the rule.

15 So I'll switch gears a little bit now to  
16 talk about the backfit appeal process. This is just  
17 a sort of high-level overview of our recent  
18 experience. As Mr. McCree mentioned, we have gone  
19 through the appeal process regarding pressurizer  
20 safety valves, the compliance exception to forego a  
21 backfit analysis for our Byron and Braidwood stations.  
22 We did appeal that to the director of NRR who upheld  
23 the staff's backfit determination. And we've since  
24 appealed that again to the EDO where it is currently  
25 pending, but apparently will be issued soon. So we'll

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1 see.

2 Just some observations on that process and  
3 on the backfit for the compliance exception in  
4 particular. The first two are really about the  
5 compliance exception. I think even though the  
6 compliance exception has existed for over 30 years,  
7 the fact that we're having this discussion still shows  
8 that there is not a meeting of the minds on that. I  
9 think we believe that the Commission's intent was very  
10 clear in what the compliance exception was intended to  
11 cover, but based on our recent experience it seems  
12 like perhaps elements of the staff are not as  
13 convinced that it's as clear as we think it is. So  
14 guidance on this, on the consistent application of it  
15 would be a very useful.

16 Also, we've seen a lot of examples  
17 recently not only with our facility-specific backfit  
18 for Exelon, but the open phase condition as well.  
19 We're citing the general design criteria. That can  
20 present a lot of difficulties, right, because GDCs are  
21 so broadly written that it can raise questions as well  
22 about the applicability of a GDC to an operational  
23 issue versus a design issue. And I think one of the  
24 letters mentioned in Tony's slides, the July 2016 NEI  
25 letter, speaks to this issue quite well.

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1           So regarding the backfit appeal process  
2           itself, we went through two staff management appeal  
3           and there is no automatic role for the CRGR unless the  
4           CRGR is appointed as the appeal panel.

5           So that sort of raises two questions in  
6           our mind. One, do we need to staff management  
7           appeals? And should there be an automatic role for  
8           the CRGR, or should there be some sort of center of  
9           expertise, as Tony has used the term, to look at the  
10          facility-specific issues, especially when they have  
11          generic implications?

12          And last but certainly not least; and  
13          we've talked about this a little bit earlier today,  
14          the independence of the backfit process is really  
15          fundamental to its fairness, right? And of course the  
16          director of NRR and the EDO, as well as the appeal  
17          panel -- they have access to the NRC staff who was  
18          originally involved in the backfit determination and  
19          they can easily call up those members of the staff,  
20          call them to their office, convene a meeting and talk  
21          to them about those issues.

22          So I would suggest that in your review you  
23          look at the perception of fairness that that creates  
24          if those meetings are held, or those discussions are  
25          held behind closed doors. For example, for our appeal

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1 the appeal panel that Bill Dean convened held a public  
2 meeting with Exelon where they gave us an opportunity  
3 to present our and we answered their questions. We  
4 had some dialogue there. Should a similar approach be  
5 taken when dealing with the staff who were involved in  
6 the original backfit evaluation?

7 Or similarly, if you're allowing the staff  
8 involved in the original determination to provide  
9 input to a draft recommendation on an appeal, should  
10 that be made publicly available? Should the licensee  
11 have a similar opportunity? So some of these have  
12 come up, questions have been raised I think in the  
13 context of our appeal just in terms of not suggesting  
14 that it's not a fair process, but what that perception  
15 could lead to and how that perception affects  
16 licensees' willingness to even undergo the appeal  
17 process.

18 And that's all for me. Thank you.

19 MR. HACKETT: Yes, Darani, thanks. Very,  
20 very helpful because I think you got to the heart of  
21 all of our struggles with compliance exception.

22 I guess I have a specific question  
23 regarding your views on the GDC or arguing for or  
24 against or using a GDC in this context.

25 MS. REDDICK: Yes, I think it's very

1 difficult, and we do have some precedent from I think  
2 a prior director's decision. It might be a Pilgrim  
3 case. I'm looking at Jerry to nod if that was correct  
4 or not. And also a Susquehanna Safety Evaluation that  
5 talks about the applicability of the GDCs in  
6 operational space versus design space. I think I have  
7 that quote here.

8 I think it just becomes very difficult  
9 because obviously the GDCs are very broadly written,  
10 and at a certain point more specific requirements or  
11 your tech specs or whatever come into play, which I  
12 think are -- in terms of citing compliance are much  
13 more clear cut. And the statement from the  
14 Susquehanna Safety Evaluation I'm referring to they  
15 concluded that, and I'm quoting, "GDCs are  
16 requirements only to the extent the applicant is  
17 required to describe conformance with them in a  
18 preliminary safety evaluation report." It goes on to  
19 state that verification of GDC compliance is  
20 accomplished, quote, "through the staff plant-specific  
21 design review." So it raises some questions whether  
22 -- the role of that GDC in an operational compliance  
23 issue.

24 MR. HACKETT: Thanks. That's a great  
25 clarification because I was sensitive to your -- I

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1 think your quote was drive a truck through some of  
2 this and --

3 MS. REDDICK: Was that an over-sell?  
4 Sorry.

5 MR. HACKETT: -- I think -- well, I for  
6 one I think, and colleagues on the committee -- we  
7 struggled with that in the open phase condition  
8 because that's -- GDC-17 I believe was in play there.  
9 And you said, very broad. It's a pretty big umbrella.  
10 So obviously I think there's more satisfaction with  
11 arguing against something much more specific in the  
12 licensing basis, back to Tony's comments earlier.

13 MS. REDDICK: And I think it's a lot  
14 easier as well for NRC staff positions to evolve on  
15 GDC when they are that broad, when there's less --  
16 there's a lot of wiggle room, I guess, for -- as new  
17 inspectors come in or new staff come in to sort of  
18 tweak those positions, but those actually do establish  
19 new and modified interpretations of compliance. But  
20 because it's so broadly written, it's perhaps harder  
21 for the licensee to say, well, no that's not what we  
22 originally held to.

23 MR. HACKETT: Thanks.

24 MR. WILLIAMSON: I just wanted to mention,  
25 Darani; this is Ed Williamson, we're probably in

1 violent agreement with many of your observations. The  
2 CRGR is looking at many of those things that you've  
3 spotted. I know you've spotted in the context of  
4 Exelon. We're looking at it more in a broader sense  
5 than the Exelon appeal. You're correct in the two key  
6 standards being known and established standard is one  
7 criteria. And also what does it mean omission and  
8 mistake of fact?

9 Now, as lawyers we see that terminology a  
10 lot in the legal context. I don't think the staff  
11 does. So there's plenty of opportunities to clarify  
12 what that -- what is meant and how do you get there?  
13 Obviously to the degree that interpretations changes  
14 and interpretations are the red flag for backfit, but  
15 it's how that interpretation -- what was the basis for  
16 that interpretation change? Was it based on an  
17 omission or a mistake of fact? So we have to dig  
18 deeper than just accepting that someone has a change  
19 in their interpretation.

20 MS. REDDICK: Right. Absolutely agree.  
21 And I think that part of the rub there is where there  
22 becomes a situation where the current staff is saying,  
23 well, the prior staff's interpretation -- that  
24 interpretation was itself a mistake of fact. They  
25 just interpreted the regulation incorrectly. And

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1 there's your mistake of fact, therefore, the  
2 compliance exception is justified.

3 And I think when you look -- this is what  
4 I mean by looking at the context of the compliance  
5 exception in the overarching rule. It becomes one of  
6 those situations where you really don't even need the  
7 rule if that's how you're going to apply the  
8 exception. Thanks, Ed.

9 MS. ORDAZ: Vonna Ordaz with NRO. I was  
10 just going to say thank you, Darani. I agree with  
11 your points. I think it feeds right into the need for  
12 consistency, transparency and also addressing the  
13 perception. So right on. Thank you.

14 MS. REDDICK: Thanks, Vonna.

15 MR. NOLAN: Good morning. I'm Chris  
16 Nolan. I'm the Director of Regulatory Affairs with  
17 Duke Energy. I appreciate the opportunity to speak in  
18 front of you.

19 When I prepared my presentation, I was  
20 thinking in my mind about backfit as a process more  
21 than a product or an issue, and most of our discussion  
22 this morning were things that were referred to CRGR as  
23 a product. If you think about it as a process, you  
24 may get to different outcomes.

25 Also, I'm speaking to you not only as CRGR

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1 members, but the deputy directors for the offices  
2 across the agency that lead the resources and the  
3 processes where backfit issues come from. And from  
4 Duke's perspective it starts with the inspection, and  
5 the CDBI inspection is the inspection most  
6 demonstrative of the point.

7 So we have six sites in our fleet and the  
8 CDBI is an intensive inspection focused on original  
9 design and licensing basis. And at Catawba, McGuire  
10 and Harris it's a predictable process. So we know how  
11 to prepare for it, we know how to execute it and it's  
12 a very stable platform.

13 At our Oconee, Robinson and Brunswick  
14 sites the preparation is hard, the execution is  
15 harder. It's not always clear how to close the issues  
16 that come out of that. And the difference is the age  
17 of the plants. So the Oconee, Robinson and Brunswick  
18 predate the Standard Review Plan and there's  
19 significant time during the inspection focusing on  
20 those differences between our current licensing basis  
21 and what the Standard Review Plan describes.

22 And so, as Tony talked about it earlier,  
23 it is cultural. We do spend a lot of time describing  
24 our licensing basis. The willingness to listen and  
25 for that discussion to get traction I think has

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1 changed with time making those inspections more  
2 challenging.

3 And so, one of the contrasts we have is  
4 clarity versus detail, and the absence of detail in  
5 the licensing basis for the older plants does not  
6 detract from its clarity. If the FSAR makes a  
7 statement, that is the licensing basis. There's a lot  
8 of discussion about the whys behind it that would show  
9 up in the FSAR for Catawba, McGuire and Harris, but  
10 don't show up in the FSARs for the other plants. So  
11 you have to look for correspondence, and it may not be  
12 documented because it may be based on engineering  
13 judgment.

14 Compliance versus safety. If there's a  
15 safety issue, Duke will address it. Compliance issues  
16 become more challenging because the staff is aware  
17 that if they find us in violation, we're required to  
18 take corrective action. So sometimes there's a rush  
19 to the end to see what the end would look like to get  
20 -- that frames the discussion at the beginning. And  
21 the dynamic is inefficient and the dynamic can be a  
22 distraction on safety.

23 And so, I'll give you two examples that  
24 kind of illustrate the point for your consideration.

25 The first one is the Oconee cable

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1 separation issue. Right now it's the subject of a  
2 TIA. It was first raised in 2013 as part of the PSW  
3 inspections. It was picked up in the 2014 CDBI and  
4 the team exited with a URI on the topic that later  
5 resulted on a TIA. NRC raised safety concerns  
6 associated with Duke's locating control power and  
7 power cables and control cables together in the same  
8 trench, and we understood those issues. The TIA is  
9 much broader than the URI, and as part of the TIA  
10 process we voluntarily submitted documents in May and  
11 August of 2015 to describe what our licensing basis  
12 was in our interpretation.

13 There's no real role in the TIA process to  
14 do that, so we just did it proactively. And we talked  
15 earlier about clarity in comments, so the fact check  
16 process, I think, Duke would highly endorse as a  
17 positive. I think it lent some frustration on the  
18 inability to dialogue. We could dialogue during the  
19 inspection, but once the TIA was in place, it limited  
20 communications. And not knowing where the issue makes  
21 the regulatory process unpredictable.

22 So we did modifications to remove the  
23 control power from the trench to address the staff's  
24 primary concern. The control power we used in that  
25 trench was not the standard cable we used at the

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1 plant. We used a bronze tape that's jacketed because  
2 we wanted to run a mile-long continuous cable rather  
3 than splice it in the middle of the trench. And the  
4 staff raised that issue and we accepted that part of  
5 the issue.

6 For Oconee, McGuire and Catawba we used  
7 the armored cable. We've done cable fault testing.  
8 The testing for the armor was done back in the '70s  
9 and written into the McGuire Safety Evaluation. It  
10 was approved at Oconee under engineering judgment.  
11 For the bronze tape we did fault testing last fall to  
12 show the application. And we submitted an alternative  
13 to accept the as-is configuration with some  
14 enhancements and the testing.

15 And we did it for two reasons: One reason  
16 was it created a vehicle to have communications. It  
17 was a different process. It wasn't the TIA process.  
18 And another reason was we were trying to address the  
19 safety concern. We were trying to implement the  
20 corrective action. Compliance hadn't been determined  
21 yet, but we were trying to be proactive to resolve the  
22 issue. So differences in the interpretation remain.  
23 A lot of focus on compliance. I think the safety  
24 issues have been addressed.

25 Independence and review. We provided the

1 information as a result of the TIA fact check, but  
2 it's not any different than what we've been saying  
3 along the way. So there was very little new in the  
4 TIA. There was very little new in our response to the  
5 TIA. And the reason I'm bringing this up is that TIAs  
6 aren't generally reviewed by CRGR. And in our  
7 response back we identified a number of indications  
8 where we believe there's new and different  
9 interpretations being taken. And so, when you  
10 consider the scope of your review and the role of  
11 CRGR, understand that this dynamic bypasses you by  
12 process.

13 The next issue I'll talk about is our  
14 external flooding issue at Oconee. It was originally  
15 licensed as a dry site. We did a PRA analysis for it  
16 back in the mid-'80s at the direction of FERC. It was  
17 the standard for all dams. And we submitted that to  
18 NRC for awareness. And we got a white finding back in  
19 2006. We did an enhancement to the plant to add a  
20 flood wall. It had a slot in it. We passed cable  
21 through the slot. We left the cable in there for a  
22 long time because it was above the calculated flood  
23 height. We didn't see it as a safety issue. The  
24 inspectors saw that we used the top of the wall in our  
25 PRA and part way up the wall in our design, and so

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1 that became a Maintenance Rule violation.

2 We disputed it because we didn't think  
3 something outside of our licensing basis should be a  
4 greater than green finding and outside of our design  
5 basis. And as a result of that, and other issues  
6 going on in the industry, there was a focus on dams  
7 and upstream dam failures. We got a 50.54(f) letter.  
8 And one could argue that it should have been a DFI.  
9 But that gets back to interpreting the licensing basis  
10 and compliance.

11 And so, we did deterministic analysis to  
12 support the 50.54(f). There was a CAL. There were  
13 comp measures put in place. The NRC issued a Safety  
14 Evaluation, but there was no submittal from us other  
15 than the 50.54(f) letter, so it wasn't in a licensing  
16 process.

17 And so, why do I go through all that time  
18 period? Because for five years we were talking about  
19 compliance. When Fukushima happened, the dynamics  
20 switched to safety. And so Fukushima created a  
21 process where we could get a product in front of the  
22 staff to make it an adequate protection, reasonable  
23 assurance kind of finding. We put mitigating  
24 strategies in place. We added some modifications to  
25 enhance the robustness of the site from flooding. The

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1 NRC accepted our flood hazard reevaluation.  
2 Modifications were completed. The CAL is closed. We  
3 have response strategies in place that's been added to  
4 our licensing basis as beyond-design-basis of that.

5 And so, the point of bringing this example  
6 up is for the first five years we talked about  
7 compliance and what compliance meant. For the last  
8 five years we talked about safety, and that's where  
9 the resolution was found. And so, when we talk about  
10 cultural issues and we talk about backfit, earlier  
11 engagement can result in a more stable regulatory  
12 process and get more timely resolution and more  
13 economical resolution. So this project was over \$100  
14 million. The cable separation is at about 20 million  
15 now.

16 And so, these are the some of the things  
17 that we did. We elevated power lines to get them out  
18 of flood plains. We put in walls to divert the flow.  
19 We put in valves inside the plant to prevent drains  
20 from backing into the plant if there were over-  
21 topping, and we put in reinforcements in our earthen  
22 structures near critical components to make sure that  
23 they weren't susceptible to erosion. So significant  
24 improvements to the plant. The mitigating strategies  
25 are a significant enhancement. I think safety was

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1 served. I think the first five years we were caught  
2 in a compliance paragon.

3 And to be honest with you, the word  
4 "backfit" never really came up during the whole  
5 discussion. And maybe if there was a process that we  
6 got into, we could address the safety issues and got  
7 to an outcome sooner. So I really believe Fukushima  
8 was a turning point in the resolution of this issue.

9 So when I think of the path forward, I  
10 recognize that compliance is important, but the focus  
11 should be on safety and compliance shouldn't be a  
12 distraction from that.

13 Bill Dean has talked about the low-risk  
14 compliance issue, and Duke highly supports that. But  
15 we're treating a symptom. I think inspection  
16 oversight is really an opportunity. We just had our  
17 CDBI at Robinson and we had a number of these types of  
18 issues come up, and they got discussed with the team  
19 and resolved satisfactorily. So I recognize  
20 difference in performance.

21 And so, we appreciate that. And so, there  
22 are opportunities for success. And I think there is  
23 a role for CRGR in driving those changes, both as  
24 members of the committee and also in your normal roles  
25 in the line organization.

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1 I think independence is important because  
2 the inspectors are raising issues that they believe in  
3 personally, and they should. And so, there needs to  
4 be another place to go where differences can be heard  
5 to make the process more efficient.

6 Not all issues involving backfit to CRGR.  
7 That's something that you can look at. And plant-  
8 specific issues have generic implications. The  
9 armoring issue at Oconee effects Catawba and McGuire,  
10 and the issue that Exelon is facing at Byron and  
11 Braidwood we're watching closely to see how it will --  
12 what the outcome will be and how it will affect us.

13 In our opinion a clear and transparent  
14 process is the key to the path forward. And if we get  
15 into the backfit dialogue sooner, we may get more  
16 successful outcomes quicker.

17 Thank you. Happy to answer any questions.

18 MR. WERT: So I'd offer a couple comments,  
19 Chris. This is Len Wert. I'm somewhat familiar with  
20 the Oconee issues, having spent a lot of time there.  
21 I agree with your comments with respect to early and  
22 full engagement by the branch chief and the leader of  
23 the team.

24 In the Robinson case that you specifically  
25 cited there wasn't any magic bullets there. It's just

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1 that we've been hearing discussion points about these  
2 inspections and about some of these processes, and we  
3 kind of revitalized our focus on some aspects of our  
4 inspection.

5           And I think in this case -- and of course  
6 it did take cooperation on the part of the licensee to  
7 dig up some of the answers, because there still is an  
8 aspect there of we're looking for today's type  
9 documentation for older issues. That's still there a  
10 little bit and you guys have to do a lot of work on  
11 your side. So there's no magic solution that worked  
12 in that case except for just more, I think, diligent  
13 inspection oversight was instrumental there.

14           Your comments on getting the issue to  
15 safety, get the issue to what the safety issue -- what  
16 is the safety implications of the issue and step back  
17 from what IEEE standard is part of the licensing  
18 basis. I think that is a key issue here. That's a  
19 key element. And you might be encouraged to know that  
20 from the beginning of the Oconee TIA issue that has  
21 been the discussion on the table often times between  
22 the managers and the NRC and the staff is what's the  
23 safety issue?

24           Because I agree with your statement,  
25 Chris, that if Duke Power understands that there's a

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1 safety issue, they're going to take it on and they're  
2 going to fix it. And those issues that are involved  
3 with that TIA, we have not been successful, I don't  
4 think, on each side in understanding where we stand as  
5 far as the safety implications.

6 I think another element that you kind of  
7 touched on a little bit but has been instrumental to  
8 me; and Ms. Reddick's comments earlier on brought it  
9 back to mind -- I started as an inspector at a site --  
10 back in the '80s at a site that was an older site.  
11 And so, it was drummed into me from the beginning that  
12 you have to have a healthy respect for licensing basis  
13 differences. And for some reason I think we've gotten  
14 away from that, because I can -- I mean, I can today  
15 see my senior resident inspector explaining to me if  
16 you're going to cite a general design criteria and  
17 that's all you've got, you'd better think twice. And  
18 that's always been like a little third rail out there.  
19 Find something else to go about it.

20 So, I guess that's just a long way of  
21 saying that I agree with these aspects today. And  
22 maybe -- I agree that part of the solution is we've  
23 got to have better processes and we got to be able to  
24 steer our staff that you need to have more guidance,  
25 what questions do you ask, what things do you

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1 consider, but I think part of the answer just is truly  
2 back to the basics.

3 MR. NOLAN: Thanks for your comments.

4 MR. WERT: Thanks.

5 MS. ORDAZ: I agree with Len's point;  
6 Vonna Ordaz with NRO, on guidance to staff and I  
7 think, Greg, you mentioned earlier about decision-  
8 making and where is that done? And I think that's  
9 part of the point, which is getting the decision-  
10 making down to the lowest level possible. So I think  
11 that's helpful.

12 The one thing you mentioned, Chris, on  
13 independence, I think that's a really important point  
14 and I think I heard it elsewhere this morning, but the  
15 independent staff review is needed. I mean, that  
16 falls right into our principles of good regulation  
17 that we know Vic is very, very strong speaking about  
18 and doing. And we fully agree with that.

19 And then the focus on safety, I know you  
20 and also Tony mentioned some things on the need to  
21 focus on safety, and couldn't agree more. So  
22 appreciate the comment.

23 MR. NOLAN: Thank you.

24 MR. HALNON: Well, good morning. I am  
25 going to talk a little bit -- probably add on to what

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1 Chris has said and hopefully not be too repetitive.  
2 Different examples, maybe. But there have been some  
3 -- you know, several high-profile backfit cases over  
4 the last five or six years that kind of steal the  
5 headlines.

6 We kind of -- most of these, if not all,  
7 have started with an inspection issue, and we kind of  
8 react to those, usually the result of questions  
9 dealing mainly with the plant design. And typically,  
10 a lot of these result in some physical modification or  
11 procedure change to the plant. Modifications of any  
12 kind in a plant are difficult. Most of them are very  
13 expensive. They are disruptive to operations. They  
14 require special plant configurations. You've got  
15 materials, you've got new stock items in the  
16 warehouse, initial and continuing training, new  
17 systems engineering knowledge and abilities, ongoing  
18 preventative maintenance, initial and operational  
19 procedure changes.

20 You can -- I can just go on forever how  
21 just a small modification in a plant touches a lot of  
22 tentacles, including training and other things, so we  
23 take any and all modifications very seriously, and we  
24 want to make sure that we don't treat them as a small  
25 task, but only be done when they are absolutely

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1 necessary.

2 Compliance issues where the cost of the  
3 modification, at least in our opinion, far outweighs  
4 the safety benefits, must be carefully adjudicated,  
5 especially in today's world that we've been talking  
6 about. I mean, clearly, you all are living the same  
7 type in Project Aim, or living it in Delivering the  
8 Nuclear Promise. We're looking very -- very closely  
9 at cost.

10 So there is a category of what I want to  
11 -- that are backfits that I want to bring to your  
12 attention. They never really come to the attention of  
13 the CRGR because they never get to that label, and --  
14 and Tony has mentioned it about the acquiescence and  
15 whatnot. There are items that are identified by  
16 inspectors during inspections. Usually these are in  
17 design basis inspections, sometimes and most often  
18 reactive inspections, maybe some other deep dive  
19 inspections such as heat sinks, that start as a  
20 question, but sometimes feel like a quest to prove the  
21 original licensing basis wrong.

22 And I know that is probably unfair in some  
23 situations because the questions, you know, are  
24 usually followed up by more questions and whatnot, but  
25 I think Chris mentioned it. Engineering judgment that

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1 is not documented is very difficult to reconstitute  
2 after many many years, and sometimes, the folks that  
3 are being questioned on compliance with a standard are  
4 the very authors of the standard itself. Back in the  
5 '70s, we'll see so-and-so wrote this, did the review,  
6 accepted it, and now in the 20-whatevers, the  
7 inspector is saying, well, that person was wrong.  
8 Well, it is hard to -- hard to understand.

9 So we will talk through a couple of those.  
10 It is a difficult process, and it puts both us and the  
11 inspector in a difficult position when we have to  
12 trust half-century-old statements that are very  
13 conclusionary and don't have a lot of documentation  
14 backing them up.

15 So what I am going to do is talk about  
16 these things, and I don't want to take away from the  
17 compliance backfits that we've been talking about, but  
18 it is not a volume problem. There's not a whole bunch  
19 of these. Some very high-profile ones. I have five  
20 from 2011, from 2011 to 2015. It is not all that  
21 many, so you're talking about 100 reactors, and you  
22 have five compliance-specific facility backfits.

23 But, you know, since -- well, since 2005,  
24 there has been two cost-justified. They were both  
25 generic. Adequate protection was benign. They were

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1 all generic. Admin exemption, whatever that is, there  
2 has been two, Part 52 and aircraft and spent fuel pool  
3 instrumentation. And the compliance exceptions, since  
4 2005, there's only been nine, all plant-specific, all  
5 from inspections, except for the Condition 2, the 3  
6 thing that is going on that I don't understand, so we  
7 won't go into that.

8 But the inspections that we have every  
9 day, they contain numerous backfits in our opinion.  
10 Some get to the TIA space and are ruled as backfits.  
11 In 2005, DC Cook had a degraded voltage design issue  
12 that was asked to be -- through TIA's URI, TIA, the  
13 region wanted to give it a violation. TIA came back,  
14 said it's not a violation, it's a backfit.

15 Palisades 2008, they had a fast transfer  
16 scheme issue. Again, TIA found in the CDBI, came back  
17 as a backfit. Fermi 2008, under-voltage design time  
18 delays, you know, ruled a change in staff position.  
19 Hatch 2011, under-voltage design. It was approved in  
20 1977 and 1995, but it was found in error in accepting  
21 that approach. And then we're undergoing presently an  
22 issue with Perry, again, under-voltage design. And  
23 I'm not going to go into any details on any of these  
24 unless you want to. I don't have all the details, but  
25 they all seem to come out to the right spot.

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1           But most do not, and here lies the  
2 problem. Many inspections contain these types of  
3 discussions, and in some cases, many cases, they turn  
4 into arguments, ranging from trying to understand why  
5 an approval in the past was an error to why it is  
6 right now versus not then when the author of the  
7 document who wrote the standard says it was in -- I  
8 mean, it was approved.

9           In some cases, we actually have almost on  
10 top of each other a branch technical position being  
11 issued in 1972, and two months later, an approval in  
12 an SER, and then now that is wrong, and it befuddles  
13 us how the authors of the original document could be  
14 wrong when they were reviewing the actual issue.

15           This -- this happens in CDBI space; some  
16 other inspections, but CDBI mainly, because that is  
17 the deep dive, it does look at the inspections, so  
18 -- . We find that inspectors don't like the word  
19 "backfit." It is a very legalistic process. It tends  
20 to put everybody on their heels, except for the  
21 attorneys, who just can't wait.

22           (Laughter.)

23           MR. HALNON:     So -- so when you say  
24 backfit, it just feels like you're going to court, and  
25 it's a hard word to come out of your mouth. But it is

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1 a common point of discussion behind the scenes with  
2 senior management at the site. Any time an inspection  
3 issue may result in a modification or a significant  
4 procedure change, especially the high-profile  
5 procedures like EOPs and other things like that, we  
6 talk about backfit, what are we going to do, is it  
7 worth saying that word and going through the process?  
8 Who do we have to get involved? And of course, as  
9 soon as you say attorneys, that's something, you know,  
10 kind of tables kind of turn on you.

11 But -- but we do talk about that often,  
12 and we -- we assess the -- the risk of actually  
13 bringing it up, because attempts at claiming the  
14 backfit before the inspection in exit meetings are  
15 sometimes met with dismissiveness: in other words,  
16 it's not really, or we'll figure it out, or something  
17 like that. And -- and I think we're not sure what  
18 happens behind the scenes at the lower levels, and we  
19 talk -- go back to decision-making, and that's partly  
20 our fault because we don't make the phone calls. We  
21 tend to back up and draw a line rather than to really  
22 get into it.

23 I know that the recent Perry issue,  
24 excellent interaction with us and the region relative  
25 to what decisions are being made, what information is

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1 being needed, and how can we help, and I think that is  
2 going to come out. I am not going to presume, but I  
3 think -- at least I know everything is understood  
4 between both the region and the site, so that -- that  
5 is an issue that I would say we didn't hesitate to  
6 pick up the phone and call, but often, when we hit  
7 this backfit discussion, we -- we tend to draw a line  
8 in the sand, and we back up and say, okay, now it is  
9 a legal process. But sometimes informally, by saying  
10 that, it just feels threatening, so we tend to not say  
11 it.

12 So I think hopefully, as we -- there is  
13 more public dialogue about this, it will get that fear  
14 out of our vocabulary. We won't have to worry about,  
15 you know, does it feel threatening?

16 The other piece of this that -- and I've  
17 changed this bullet a lot of times, alienating the  
18 inspector. We don't want to make them mad. We don't  
19 want to make them feel like we're saying they're  
20 wrong. We don't want to ruin that relationship  
21 because, frankly, that is an important relationship to  
22 ongoing dialogue. And we often get a -- a statement  
23 that informal -- that the NRR concurs. Well, the  
24 formal use of that is TIA, but a lot of times, they're  
25 calling their buddy from the region to the NRR, and

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1 yes, yes, I get that. That is the way it feels like.

2 So it is important that we understand what  
3 goes on behind the scenes, so the transparency aspect  
4 is important. But one of the things that -- that  
5 comes up is this voluntary -- if we voluntarily change  
6 whatever we -- you know, the acquiescence, that I  
7 guess is what I'm trying to get to.

8 So MD 8.4 says voluntary is without force  
9 of -- this is where it gets really legalistic, even in  
10 your own procedures here -- without force of legally  
11 binding requirement or NRC representation of further  
12 licensing enforcement action. Any time that you  
13 disagree that a modification or procedure change needs  
14 to be made, there is an implicit representation of  
15 further enforcement action, so we feel like the  
16 acquiescence or the agreeing to something to change it  
17 is -- is really the -- the better way out at times  
18 when we don't really believe it is. So that open  
19 dialogue is important on that respect.

20 Some other high-profile backfits that  
21 maybe we may or may not have talked about backfits is  
22 the -- the OP DRV, or the operation that could  
23 potentially drain the reactor vessel. TIA at Fermi  
24 provided some guidance on just how much of a drip is  
25 -- is potentially draining the vessel. The BWR

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1 industry took that and wrote that into their  
2 procedures, and because it seemed to make sense, then  
3 an operator at another plant in Region III mentioned  
4 to a branch chief or -- or an inspector, hey, you  
5 know, these control rod drives on the bottom of the  
6 vessel, they leak a lot. I'm not sure why that's not  
7 an OP DRV. And then suddenly, the whole definition  
8 from TIA, from Fermi, went out the window.

9           Everybody was now changing their outages  
10 and changing the way the procedures called OP DRVs,  
11 and it was a tense moment because many plants were  
12 heading into outages that were taking credit for the  
13 way the procedures were written. Now I know that  
14 every TIA decision from one point is not applicable to  
15 every plant, but there is frankly some generic  
16 guidance in TIAs that come out, especially when you  
17 are talking definitions of words that are used. There  
18 was really no definition for this OP DRV.

19           So, you know, literally, you could take  
20 that to the extreme and say one drip that could drain  
21 the vessel in 450 years is an OP DRV, and that's --  
22 you know, we got this plain language reading of the --  
23 of the tech spec. So there was no -- that probably  
24 never was talked about about a backfit, but every BWR  
25 changed their procedures based on that.

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1           The risk plus the EGM, this is an  
2 interesting one because I think we're in a good place  
3 now, but I -- so I don't want to adjudicate the actual  
4 technical aspects of this, but it is how sometimes you  
5 can put some well-meaning actions together that really  
6 forces you to a backfit. So the risks in the tornado  
7 said that if you didn't have it, well -- this is the  
8 original at the very first public meeting -- if you  
9 didn't have -- if you don't have a good explanation in  
10 your licensing basis of why your tornado protection is  
11 okay, then we will assess that to today's guidance.  
12 And when we do that, we will give you three years to  
13 fix anything before we take any enforcement action.

14           So the risks in itself, clarifying your  
15 licensing basis is a good idea, doing today's guidance  
16 backfit, telling you that you better do it in the next  
17 three years, otherwise, if you find something, you  
18 will be shutting down the plant. We won't give you  
19 enforcement guidance -- or enforcement's discretion.  
20 That whole equation turns into a pretty significant  
21 backfit because you're basically, by enforcement  
22 action, forcing us to go off and assess our plants and  
23 change it to today's guidance.

24           Now that, over time, and after that first  
25 public meeting, it moderated. The explanation I got

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1 when I raised that issue in that public meeting was  
2 that we just had not done a good job in the last 30  
3 years of inspecting this. It was not a real  
4 satisfying answer to why now?

5 So again, those types of things, they  
6 occur, and I think you have to look at the totality of  
7 an action rather than just individual documents that  
8 may come out. The flooding 50.54(f), in Phase 1, we  
9 had to go off and reevaluate our flooding hazards to  
10 the present day regulatory guidance. 50.54(f) is  
11 information gathering, so we sent the information in.

12 Phase 2 says if necessary, and based on  
13 results of Phase 1, determine whether additional  
14 regulatory actions are necessary. That is correct.  
15 You would take that information, decide whether or not  
16 a backfit is required at a plant based on the present-  
17 day guidance. But the backfit was for sites where the  
18 reevaluated flood exceeded the design basis, we were  
19 requested to submit an interim action plan, documents  
20 actions planned or taken to address the reevaluated  
21 hazard. That is a backfit.

22 It said interim evaluation, actions taken  
23 or planned to address any higher flooding hazards  
24 relative to the design basis prior to the completion  
25 of the integrated assessment must be described, and

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1 actions, additional actions beyond requested  
2 information taken or planned to address flooding  
3 hazards, if any.

4 One of our plants, we reevaluated it over  
5 the design basis for the present-day guidance. We did  
6 not put any interim actions in place. We got called  
7 on the carpet by the NRC. I explained to them it  
8 would have been backfit. This -- throughout this, it  
9 says there is no backfit from 50.54(f), and we were --  
10 we, you know, eventually came to a quiet time on the  
11 telephone.

12 So the JLD industry-wide guidance  
13 specifically said not to do any backfits, so again,  
14 here we are with, you know -- I used to call it the  
15 north- and south-going Zax. So I don't know if you  
16 were ever Dr. Seuss fans, but it's a story about two  
17 Zax that stand nose-to-nose. One would not go north,  
18 one would not go east, west, the other one would not  
19 go east, west, or south, and they just stood there and  
20 looked at each other, so sometimes that happens.

21 And at the 805 incipient fire detection,  
22 I don't want to, again, adjudicate the technical issue  
23 here, but the FAQ process put in a number for  
24 incipient fire detection credit in your PRA. At least  
25 ten sites got licensed to that. I think there's three

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1 that are pending. Numbers may be a little bit off,  
2 but that is about right.

3 And a draft NUREG came out and had  
4 different credit. The staff canceled the FAQ and  
5 turned in, said you have to follow the draft guidance  
6 in the NUREG, which changed by orders of magnitude  
7 some of the credit we were able to take from incipient  
8 fire protection, or detection. Now, I know that Joe  
9 Giitter is working on that. He has, you know, been  
10 working with the industry, working through that, so I  
11 don't want to say that it's not going in the right  
12 place, but it is the behavior issue that we're talking  
13 about at the decision-making level below some of the  
14 SES levels, and I think that's what I am trying to  
15 exhibit here. A lot of this is being done much lower-  
16 level, the decision-making that is causing this  
17 tremendous amount of work.

18 Several years ago, Perry had a GDC-17 and  
19 an under-voltage -- well, I don't want to talk about  
20 that one. Perry Unit 1 Start Up Transformer was  
21 several years ago. Perry Unit 1 was completed, Unit  
22 2 was canceled. Perry Unit 2, electrical distribution  
23 was completed so that it would give Perry Unit 1 a  
24 robust defense in depth.

25 One of Unit 1's transformers failed. Unit

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1 2 was still there. And suddenly, we're out of  
2 compliance with GDC-17. That was discussed with the  
3 resident, said I don't think you're in compliance, and  
4 the plant immediately took that and shut down for 11  
5 days as we were trying to get in an emergency tech  
6 spec amendment.

7 The bottom line is that, when you look  
8 back at it, GDC-17 was reevaluated or reinterpreted to  
9 say you needed two instant available startup  
10 transformers for your offsite power when that is not  
11 what GDC-17 requires, so it comes back to GDC versus  
12 compliance versus operational aspects of it.

13 So again, these were being done at the  
14 inspector level, resident inspector level, and it was  
15 a fair question, but when someone -- when an  
16 inspector, NRC inspector, had asked you -- or  
17 challenges your compliance with tech specs and GDC,  
18 you take it very seriously and -- and take action.

19 So I -- I illustrate those only because  
20 they were not classic backfits that we talk about.  
21 They were not legalistic. They were operators talking  
22 to operators, very smart people talking to very smart  
23 people, and trying to find the right place. And I  
24 think the idea, if you focused on safety rather than  
25 compliance, I think you come out to a better spot

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1 faster, and I think that is the key thing.

2 I don't think there is a safety issue in  
3 any of these to the point where we would have to shut  
4 down plants or -- or, you know, make significant  
5 modifications. However, there is some issues  
6 obviously that we need to work through.

7 Now -- one more. Okay. Most of our  
8 plants are -- are 40 plus years in operation. There's  
9 been numerous design-related inspections. I say  
10 numerous, I don't even think you could count them. I  
11 mean, through the years, the old out process at  
12 different light, you know, and EDSFI, I can throw out  
13 the alphabet soup if you want, but I am sure you could  
14 probably think of more. And many went through some  
15 type of design basis reconstitution process in the 90s  
16 based on generic letters and whatnot, so -- and many  
17 have gone through the license renewal process.

18 All these things are very intense looks at  
19 licensing basis and design basis. So I ask the  
20 question: do we have, today, reasonable assurance that  
21 our plant designs are adequate? And I think the  
22 answer has got to be yes. But we sometimes enter into  
23 these inspections with I don't think that that is  
24 necessarily true, but we do have words in our SCRs  
25 that says your design is hereby approved. And

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1 sometimes the engineers call me up and say, I just  
2 don't know if that is true or not going into -- as I  
3 am preparing for this inspection, I don't know if I  
4 can take credit for what the reviewers did back then.  
5 Should I be doing calculations to prove those  
6 statements before these -- before these inspections?

7 So the -- the moving target comment I  
8 think is -- is well -- well-based. And the other  
9 thing is this new information actually removed that  
10 reasonable assurance. You know, usually, the more  
11 engineering judgment, the more margin you probably use  
12 because you -- you're looking at it, but -- but to  
13 have an engineer come and ask me if the original SCR  
14 approvals are still valid is -- is a difficult  
15 question.

16 So would it be better to serve -- serve  
17 the focus of -- would it be better to serve plant  
18 safety inspections on the -- rather than the -- in  
19 design basis itself, more in the maintenance of that  
20 design basis, improving the safety going forward? In  
21 other words, take reasonable assurance that you've got  
22 a good design now. It has operated for 40 years. You  
23 have had many inspections, you've had many  
24 reconstitutions and design basis time to see that this  
25 design works well.

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1           Now, there has been some very high-level  
2 events over the years that may ask questions about  
3 that, but those high-level events like TMI-2, Davis-  
4 Besse had an event, we did a good job of going in and  
5 doing extended conditions on the industry and really  
6 fixing those. But would it be better served to now  
7 focus our inspections going forward, looking forward  
8 to improving safety and making sure that that design  
9 is maintained going forward, if not made better.

10           If indications of weakness in design  
11 attributes surface, then it would be a good time to  
12 just do a deep dive, and we do that. We have many  
13 events you can go back to where a deep -- I mean, I  
14 will just go back to the Perry under-voltage degraded  
15 voltage design issue. We had an SIT come in and take  
16 a look because we had an event. We had a fuse fail,  
17 and we lost the division of power, including the  
18 diesel generator, and that didn't feel right to the  
19 folks at the region. It didn't feel right to us.

20           And when we looked at it, we did find an  
21 area that we needed to fix. But it was not a  
22 significant safety issue because we had two divisions  
23 left of power that didn't have any -- didn't have the  
24 effects, so we didn't have a significant design  
25 problem, but we had a compliance issue that we're

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1 going to be fixing. And we also did focus on what  
2 would be safer for the plant.

3 So when we have these indications, a  
4 reactive inspection such as rather than having the  
5 CDBI be a baseline inspection for plants and PEO who  
6 have been operating safely for 40 plus years, make it  
7 a reactive inspection, do a deep dive when you have an  
8 event, go in there and take a look at the design and  
9 make sure that there is no weakness in there. So that  
10 is kind of a going forward thing, and we're continuing  
11 to discuss that with the NRR staff on -- on better  
12 ways of doing the CDBI.

13 So in -- in the path forward, I don't  
14 think the CRGR as it stands right now, which is, like  
15 you mentioned, the part-time committee, should get  
16 involved in every design-rated inspection finding  
17 because that just would be too laborious. So -- so  
18 clearly, we need to get the NRC inspectors and us, I  
19 say, as the industry, trained on what -- what should  
20 we do when we come to a meeting, you know, a line in  
21 the middle that we can't really come to agreement on  
22 what a licensing basis statement means?

23 The NRC inspectors are applying today's  
24 desires for detail and documentation, which is much  
25 greater today than it was back in the 1970s, so it is

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1 almost unfair to the inspectors to say take that  
2 statement and agree with it when there is no backup  
3 documentation or other -- other things to it, so, you  
4 know, the questions are natural. And I would expect  
5 my system engineers to know the answers and be able to  
6 use that same type of judgment because they need to  
7 know and have confidence that the design basis is  
8 adequate as well.

9 And -- and the focus, again, should be on,  
10 you know, future for the safe operation. And so some  
11 -- there should be an easy and a rapid process to  
12 adjudicate these backfit claims from inspections and  
13 not be afraid to say, okay, that is a backfit, but  
14 they are -- they are well below the level of what we  
15 call backfits now, and to -- to not even consider cost  
16 is -- I think is wrong in this time frame.

17 And I will -- there is just slight, one  
18 thing. In Management Directive 8.4, it says because  
19 -- this is for when the backfit analysis is not  
20 required -- because a backfit analysis is not  
21 prepared, staff does not need to make a finding of  
22 substantial safety improvement and does not consider  
23 cost.

24 In today's world, that is just not right.  
25 If it -- you know, we need to consider cost

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1 regardless, and -- and to not make a finding of  
2 substantial safety improvement just kind of relieves  
3 any responsibility to continue to save -- save this  
4 industry from, you know, premature shutdown because of  
5 cost.

6 So a while back, we tried to develop a  
7 process that we call the risk prioritization process  
8 as part of the cumulative impact movement that we had,  
9 and I know we are looking at the low-risk compliance  
10 issues, but I think the movement is still moving. I  
11 think it is just we're looking for the right process,  
12 and I think we need to continue to look for an easy  
13 and rapid place that we could -- whether it be a  
14 Center of Excellence, right now, we have four Centers  
15 of Excellence, essentially we have each region that  
16 adjudicates the backfit claims, and then we have the  
17 CRGR, which is across, so maybe there's five Centers  
18 of Excellence.

19 Having a -- a place that we can go from a  
20 process perspective to get that quickly done so at the  
21 end of the inspection, could be a two-week, three-week  
22 inspection, we are done with that issue rather than  
23 continuing to argue and develop calculations and  
24 analyses and that sort of thing. So I know I was kind  
25 of way, you know, all over the place on this. I tried

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1 to kind of rack in a lot of stuff. But I will be  
2 happy to take your questions, and I'll look for help  
3 from my folks who cued up a lot of these issues.

4 MR. WERT: So Greg, this is Len Wert. I  
5 would ask, on page 6, when you talk about an easy,  
6 rapid process to address backfit claims from  
7 inspections, have you guys thought about how you would  
8 do that, if you were the NRC? I mean, what kind of --

9 MR. HALNON: We have thought --

10 MR. WERT: What do you look at --

11 MR. HALNON: -- of a lot of ways to do  
12 things if we were the NRC.

13 (Laughter.)

14 MR. WERT: No, I mean, we have all these  
15 -- I think what you're trying to say is we need to,  
16 you know, pull or extract certain pieces of certain  
17 processes we already have, like unresolved item  
18 disposition, things like that, and somehow turn it to  
19 something that identifies, hey, this is something we  
20 need to look at in a different light.

21 MR. HALNON: Yes. To answer your  
22 question, Len, no, I haven't sat down and thought,  
23 well, what does that process look like? But I think  
24 we have got things already in place that can do that.  
25 The TIA process could be used, but unfortunately, it

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1 is usually the result of a URI that usually has to be  
2 exited out and stuff like that. If we can have a  
3 formal question to the folks that -- that -- well,  
4 first of all, let's -- we can -- earlier than that,  
5 the decision-making piece.

6 MR. WERT: Yes.

7 MR. HALNON: If we can provide -- not be  
8 afraid to talk about backfits, and afraid is a -- that  
9 is kind of an extreme word, but if we can't be  
10 hesitant to talk about that this is a backfit and why  
11 and here's the checklist that makes -- you know, that  
12 makes it a backfit. Backfits are not a bad thing,  
13 because sometimes, they are necessary, sometimes, they  
14 may prevent having to do an action. But if it -- if  
15 it is a backfit for safety, I don't think there is  
16 anyone who is going to argue that that needs to get  
17 done, and that is why we voluntarily wrote a letter  
18 committing to do the modification at Perry for under-  
19 voltage design because we did see a safety issue that  
20 we wanted to fix.

21 But it is a backfit, and it is -- you  
22 know, even though we have already committed to do it,  
23 that is still an open issue that has not been  
24 resolved, still a URI. So again, we are way -- like  
25 Chris said, we are way in front of it because of the

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1 safety issue.

2 Now, if that comes through that it is a  
3 backfit but you didn't do enough, or, you know, your  
4 modification doesn't address the full compliance issue  
5 -- we're addressing the safety issue. Is it going to  
6 -- we don't know. So there is some uncertainty there  
7 that we're moving forward with.

8 Now -- so I think it is already in place,  
9 but we need to figure out how we can make it a rapid  
10 process rather than such a series process with  
11 inspection, URI, TIA, answer, modification, backfit --  
12 of backfit letter modification, when here we are with  
13 inspection issue, commitment to modify. Now we're  
14 still in a URI, TIA, we haven't gone through the rest  
15 of that process yet. Somehow we should be able to  
16 short-circuit that.

17 MR. WERT: So two quick comments in  
18 response to that: you know, the -- I understand your  
19 point about threshold and the value of this process,  
20 and looking at it from a threshold -- I mean, and I  
21 see a lot of parallels with the 50.59, some aspects of  
22 50.59 in that same -- in that same vein. So I get  
23 that part of it, but I think sometimes we're -- we're  
24 actually getting into some of the messes that we get  
25 into because we take comfort in a process. I called

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1 it an unresolved item, I wrote a TIA, that's it. I  
2 don't have to go and think about anything else.  
3 That's kind of why I was asking that question, because  
4 I think that is a trap --

5 MR. HALNON: I think you are right. I  
6 think we're sometimes more focused on getting the  
7 process --

8 MR. WERT: Yes.

9 MR. HALNON: -- completed than actually  
10 getting the product out of the process.

11 MR. WERT: Yes.

12 MR. NOLAN: So Len, just some thoughts.  
13 I think it is a population, and it is also timing. So  
14 right now, if the NRC issues a violation, I have the  
15 opportunity to dispute it, and that is the entry into  
16 the process where at that point, I could claim a  
17 backfit. But I have to get to that point, and on some  
18 of the issues that are contentious, it could take  
19 years to get there. So if I know I feel that way now,  
20 is there a way I can refer the issue?

21 And then the second is a devil's advocate  
22 within the NRC, because a lot of the people that have  
23 the technical expertise to look at the issue  
24 technically were involved in raising the issue in the  
25 first place, and so how do I go to an independent set

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1 of experts that could look at it without a bias? You  
2 know, as Darani said, have the staff and the industry  
3 have equal access, you know, to -- to make their case  
4 on -- on the issues, similar to the 2.206 process,  
5 where the -- the person -- the petitioner and the  
6 utility, you know, both have an equal forum in terms  
7 of raising their issues?

8 So I don't have it clear in my mind  
9 because if I did, I would be a lot smarter than I am,  
10 but I think it is both the timing -- can we get into  
11 it earlier, and I think your comment about familiarity  
12 is important because I think it is -- I think it is  
13 not familiar to people, and they shy away -- it is  
14 viewed as a barrier for that reason alone -- but it's  
15 also the population of people that would hear it.

16 MR. WERT: Thanks for that. But one  
17 comment I would say is it's interesting to me that you  
18 talk about violations as the entry point of the  
19 process because I think the genesis of many TIAs is  
20 because someone up in the NRC management chain at one  
21 point said I don't get the contrary to the statement  
22 here. Where is it? And that probably resulted in a  
23 generation of at least some, if not many, of the TIAs.

24 So it is -- it is kind of like, in some  
25 respects, we're putting the cart before the horse if

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1 we were to just, okay, let's write a violation. I  
2 mean, an example of that would be when you read Duke's  
3 response to the fact check on the TIA that is  
4 currently open, you know. I read that, you can see a  
5 lot of parallels between what would be a denial to a  
6 notice of violation. So just -- just another aspect  
7 of it, I guess. Thanks.

8 MR. HALNON: And one thing, you know, when  
9 you say that violation is the entry point, the  
10 violation sometimes in itself is the backfit because  
11 we're required to come back into compliance. So if  
12 you find a deviation from the design basis that  
13 happened in 1972, and you say, well, now it is a  
14 violation because we've changed the way we -- we  
15 changed the way we interpret that branch technical  
16 position, well, if we accept that violation, we  
17 basically have accepted the backfit to go back and fix  
18 that deviation.

19 So it is a -- the violation is very much  
20 of a short circuit to the backfit. And sometimes,  
21 that is when Tony was mentioning acquiesce, sometimes,  
22 we just say we know where this is going to end up if  
23 we try to fight it, so we're just going to accept it.  
24 And most of those are in the green, non-significant  
25 area, low-significance area. You will see a little

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1 bit more pushback obviously as it gets into the more  
2 higher levels of colors and violations just because of  
3 the more significant portions of it.

4 MR. WERT: Yes, no, thanks for that, but  
5 I -- I think that goes to the point I made earlier  
6 about, you know, part of this is just basic discipline  
7 and adhering to basic principles because the aspect of  
8 something being a green NCV, so the industry doesn't  
9 push back, I mean, I understand, you know, there is --  
10 you've got to do some analysis of that, and you don't  
11 want to disrupt the relationship, but to some  
12 respects, that sometimes reinforces poor behavior.

13 And a great example of that that we often  
14 see at regional management level is a minor violation.  
15 Something is called a minor violation, but when you  
16 take a step back and you say well what's the contrary  
17 to statement, and that's where the wheels come off  
18 because we didn't look at it that hard, and neither  
19 did you, because it was a minor violation. But the  
20 problem is now you have reinforced, okay, that is a  
21 violation, when maybe it wasn't.

22 MR. HALNON: Right, thanks, or if it is  
23 not characterized the way we would characterize them.

24 MR. McDERMOTT: Greg, if I could take it  
25 back to slide four in the presentation? So I am

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1 familiar with some of the examples on there, and --  
2 and, you know, I -- I don't dispute those examples in  
3 terms of issues where we've got disagreement or a lack  
4 of clarity around, you know, what is the licensing  
5 basis? I think the only one I -- I would challenge  
6 you on is the -- the incipient fire detection. You  
7 know, that is -- that is an issue -- there have been  
8 a lot of briefings lately on that topic, by the way --  
9 you know, that goes back --

10 MR. HALNON: You know more than I do, so  
11 you are already on the --

12 MR. McDERMOTT: It goes back over seven  
13 years, but you know, we're not talking about licensing  
14 basis in exactly the same way. That issue, for those  
15 who have been following it, revolves around EPRI  
16 testing that -- that supported I guess in their view  
17 credit for those systems at -- I would say at a high  
18 level, a factor of -- of 170-something or so. The  
19 manufacturers of those devices would represent that it  
20 was much higher.

21 And at that time frame, NRC said well,  
22 folks are working on their PRAs for NFPA 805. We will  
23 accept a factor of 50 because we don't really agree  
24 with everything that has been said so far, but we see  
25 value in -- in this. After several years of -- of

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1 research and testing that folks had opportunity to  
2 comment on, research comes back and says well, there's  
3 some factors here that make it much lower credit, and  
4 what that has caused us to do is go back to that FAQ,  
5 which said here is an interim value you can use until  
6 we get better data. Well, now the better data comes  
7 back and says, that credit was too high. And so we do  
8 need to address that. We can't just leave that  
9 hanging out there.

10 It is not the world coming to the end.  
11 There's a lot of different things you credit when you  
12 fire a PRA, and a number of factors are changing, and  
13 over time, the expectation with those documents is  
14 that they get updated and there's a periodicity to it,  
15 so we see it kind of in that ballpark.

16 MR. HALNON: I don't disagree with you,  
17 Brian, and I think that is -- I made the earlier  
18 comment today about my favorite process is the FAQ  
19 process because that in itself is -- it is -- there  
20 are some pitfalls in it from the standpoint that  
21 plants were licensed to that number with that credit,  
22 and -- and changing the credit in a draft NUREG and  
23 then having the staff say you have to follow the draft  
24 NUREG is problematic in itself from just the language  
25 that they use.

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1           And I know Joe is working on it, but  
2 nevertheless, this comes to the point of risk-informed  
3 anything where you are using a PRA and new information  
4 comes out and you are updating it, so I told my  
5 executives that when we go to any kind of risk-  
6 informed, you have licensing actions such as 805, you  
7 have to recognize you are accepting an automatic  
8 backfit any time new information comes out that  
9 changes your PRA substantially to the point where you  
10 have to make a modification in the plant, and that  
11 opened their eyes to wonder if risk-informed is worth  
12 it because it changes your design basis from a static,  
13 I know where it is at, to a dynamic. It changes with  
14 new information.

15           So that's -- so I think that is something  
16 we need to put on the table and talk about because I  
17 think it is a danger to regulatory stability going  
18 forward, and I think it is also a hindrance to wanting  
19 -- you know, we all want to do a risk-informed  
20 environment in the future, but I think it is a  
21 hindrance to it because these plants maybe have 20  
22 years left, maybe if you go for another 40, and some  
23 of these licensing actions take four, five, six years,  
24 which is a significant portion of the remaining life.  
25 You have to ask yourself the cost/benefit to doing

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1 that, and I think it is a hindrance to the direction  
2 we all want to go into, which is to risk-informed and  
3 make it from a safety perspective.

4 MR. McDERMOTT: And I don't disagree with  
5 you. I accept the idea that it does have a potential  
6 to change it in one direction, but I think on balance,  
7 you have to look at all of the changes that go the  
8 other direction as well --

9 MR. HALNON: Yes, I agree.

10 MR. McDERMOTT: -- and it is that net --

11 MR. HALNON: That is why we need to open  
12 this up and talk about it and see what the best for  
13 the industry is.

14 MR. NOLAN: If you think about it, you  
15 know, plants made a financial decision to install  
16 those systems based on the credit that -- that was  
17 advertised that was available, and so it is  
18 interesting. NFPA 805 approved the process, but not  
19 the PRA, and so -- so we're making decisions based on  
20 the PRA, so, you know, it really opens up the  
21 question, was it appropriate for NRR to do that,  
22 right? It shifted the workload from NRR to the  
23 region. It shifted it from the license amendment to  
24 the inspection, but it really skirted the backfit rule  
25 as well because you can change the safety of our plan

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1 on paper, and you can change the value of that  
2 investment through an FAQ.

3 MS. ORDAZ: Right. No, go ahead. Just a  
4 couple of things that stood out in your slides.

5 The behind the scenes, whether that is  
6 perception or a possible reality, I think it is  
7 important, came out in a couple of bullets, that we  
8 take a look at that, and any specific feedback you  
9 have in that area would be really helpful, whether now  
10 or later. But I think it is important for us in our  
11 effort to make this as transparent as possible.

12 The other item I heard you mention is the  
13 informality of the process, and I think that there is  
14 a great opportunity for us to -- to look at that as  
15 well and see where we can tighten it up, and  
16 especially if you are adding different processes  
17 together and that equals a, you know, x plus y plus z  
18 equals backfit, we need to understand your logic and  
19 your understanding of that so we can help clarify the  
20 process.

21 MR. HALNON: Yes, and that does not happen  
22 real often, but the Fukushima one probably somewhat  
23 demonstrates that. The original draft RIS for the  
24 tornado plus the EGM in that first public meeting were  
25 where that thought really came to my mind, anyway,

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1 because of the way that it was being put out, and I  
2 mentioned that both -- both of those got to where they  
3 needed to be, but it is not without that consternation  
4 and arguing and all that stuff that is probably an  
5 unnecessary distraction to the real issue up front.  
6 If we can get through that piece of it to where we're  
7 aligned on that aspect of it, or at least go back and  
8 not have to spend a couple years to figure it out, I  
9 think that would be the best thing.

10 The informal use of NRR concurs. You  
11 know, we often ask the inspectors what is NRR's  
12 opinion? Check with NRR. And that is what we usually  
13 get, but we don't know if it is a phone call, we don't  
14 know if it is a letter, we don't know if it is  
15 something we can FOIA, we don't know if there is any  
16 -- what it is, an email or anything like that, so --

17 MS. ORDAZ: I turn to Brian on that one.

18 MR. HALNON: I mean, we don't want to  
19 discourage or make everything a formal, oh, you've got  
20 to write that down type of thing, but when it comes  
21 down to a decision-making that we think that we should  
22 -- at least should be able to see what the process is  
23 behind a decision made, so -- .

24 And again, part of it is us. We've got to  
25 pick up the phone call -- phone and call, or, you

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1 know, that is -- part of the thing that we don't do  
2 well enough is communicate when we need to, and it is  
3 on us a lot of times. I am not going to say it is not  
4 always the, you know, NRC behind the scenes, it is us  
5 not trying to get -- just pick up a phone call and  
6 call somebody.

7 MR. CARPENTER: Okay. Thank you all.  
8 This has been I think a very fruitful conversation.  
9 Obviously, for the people who are calling in from  
10 outside, we -- we changed around the agenda a little  
11 bit. At this time, I would like to go ahead and call  
12 lunch and go ahead and break. We are scheduled to be  
13 back, according to the agenda, at 1 o'clock, but since  
14 we're an hour and a half ahead already, let's go back  
15 at 1:15, 1:30?

16 MR. HACKETT: 1:30.

17 MR. CARPENTER: 1:30, okay. And at that  
18 time, Mr. Lochbaum, we'll go to you to give your  
19 presentation, and then we will spend the rest of  
20 however long the conversation goes with the open  
21 dialogue, okay?

22 MS. ORDAZ: All right.

23 MR. CARPENTER: Very good. Thank you all,  
24 and we will resume at 1:30.

25 (Whereupon, the meeting went off the

1 record at 12:08 p.m. and resumed at 1:30 p.m.)

2 MR. CARPENTER: So we're ready to get  
3 started again. For those -- everybody in the room  
4 obviously knows this, anybody who is joining us for  
5 the first time online, we did go ahead and accelerate  
6 the schedule this morning and the presentations that  
7 were made by the industry perspectives that were  
8 scheduled from 1 to 2:30 were made this morning. That  
9 took us to approximately 12:15 at which time we broke  
10 for lunch. We're now ready to restart again. Mr.  
11 Lochbaum will give the first presentation of the  
12 afternoon. After that, we will go into the open  
13 discussions and continue that until everybody gets too  
14 tired to talk or whatever is necessary from there.

15 I will remind everybody in the room that  
16 we do have public meeting feedback forms in the back  
17 of the room. If you wish to fill those out, tell us  
18 what we're doing good, what we're doing bad, what we  
19 could do better. And then for the rest of this, thank  
20 you very much.

21 Mr. Lochbaum.

22 MR. LOCHBAUM: Good afternoon. I  
23 appreciate the NRC accommodating the schedule to  
24 include UCS's participation. I do have one small  
25 favor to ask is that you don't let news of this

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1 meeting get back to UCS, particularly the Board of  
2 Directors. I have four people on the industry panel  
3 and only one USC. Usually, the board thinks it's like  
4 10 to 1 or 12 to 1. They wouldn't be happy to know  
5 that it's only four to one. So please don't let that  
6 get back to our board.

7 I have a few slides at the beginning that  
8 basically are just background, that provide some of  
9 the regulations. The real reason for that is first of  
10 all, I want to get the most slides award. There is no  
11 cash prize for that, but it helps me pad for that.  
12 And second, is my reviewer gets bored after the first  
13 three or four, so he doesn't really look at the heart  
14 of the slides, so I get a scant review that way.

15 I really wanted to start with our first  
16 point from the regulations. It's been discussed  
17 several times before and I like Tony's point that the  
18 backfit rule is safety focused and that's basically  
19 what this slide says. New regulations are not  
20 supposed to be imposed unless they're determined to be  
21 necessary for safety. And there's a formal process  
22 that leads to that decision or that outcome.

23 Next slide, we went through a number and  
24 a bridge list of the guidance that backs up the  
25 regulation from NUREG 1404 through the regulatory

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1 analysis, NUREG, management directives, and NRR Office  
2 instruction including the CRGR itself, and a fairly  
3 recent backfit audit report. So there's a lot of  
4 guidance available to help individuals implement the  
5 backfit rule.

6 I do agree with some of the comments that  
7 several people made this morning that could probably  
8 be supplemented by additional training so that people  
9 have a better awareness of what the words in these  
10 various documents mean or how they're applied.

11 So the second point was basically that not  
12 only do you have a regulation on the books, there's  
13 quite a bit of guidance and implementation --  
14 implementing documents that are available to help the  
15 NRC staff avoid imposing requirements that aren't  
16 needed for adequate protection for lack of justifiable  
17 cost.

18 I guess where I disagree a little bit with  
19 Tony where the backfit regulation is really there to  
20 protect the owners from the NRC imposing requirements  
21 that are not necessary for safety or not justified for  
22 their cost. So if the process works right, no new  
23 regulatory requirements are issued unless it's  
24 necessary for safety or it's cost beneficial.

25 It's basically restating that the

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1 regulatory requirements are not imposed unless all  
2 those requirements are met. So if it's a safety-  
3 focused rule, then once that process is done, that is  
4 what is needed for safety, no ands, ifs, or buts. XYZ  
5 is what is needed for adequate protection of public  
6 health and safety.

7 To restate it a third time, location,  
8 location, location, the real estate trick, is that  
9 when unnecessary and unjustified requirements are  
10 proposed, the backfit rule protects the plant owners  
11 from that happening. Or that's the way it's supposed  
12 to work.

13 What our concern is is once that process  
14 defines what is necessary for public health and  
15 safety, what process protects the public when those  
16 requirements aren't being met, are being relaxed.  
17 It's a safety-focused rule, safety-focused  
18 regulations, so what protects the public from those  
19 regulations not being met at reactors? We're  
20 concerned that there's not the same rigor, the same  
21 robustness, the same formality on the other side of  
22 the same coin. It's hard to have a one-sided coin.

23 So the question we ask is backfit versus  
24 back off. What regulation and associated guidance is  
25 used by the NRC staff to determine when it's okay not

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1 to enforce or to delay enforcement of a regulation  
2 adopted because it has a safety focus and it's needed  
3 for adequate protection of public health and safety?

4 The concern is that there's really not  
5 much. There is no formal process with few exceptions.  
6 Notices of enforcement, discretion, there's a process  
7 that is followed, but by and large, the NRC and the  
8 industry can wink-wink, nudge-nudge, and decide not to  
9 enforce a regulation that was imposed because it's  
10 necessary to adequately to protect public health and  
11 safety. For example, does a CRGR review NOEDs to make  
12 sure that that process was proper? No. Does the CRGR  
13 review scheduler exemptions to confirm that the extra  
14 time is justified, is warranted? No. Does the CRGR  
15 review decisions to allow reactors to continue  
16 operating despite known violations or noncompliances  
17 with federal safety regulations that that's proper?  
18 No. In NFPA 805 is an example. 805 is apparently how  
19 many years it's going to take to come into compliance  
20 with that regulation.

21 Why not? If it takes ten people to ensure  
22 a process to ensure that the plant owners are  
23 protected from an undue regulation, why isn't a  
24 similar process there to protect the public from the  
25 NRC waiving or ignoring or looking the other way at

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1 non-compliances with that regulation? So basically,  
2 what we think needs to happen is a CRGR, too, the  
3 committee to review generic relaxations.

4 The industry is protected by CRGR. There's  
5 nothing equivalent to that to protect the public from  
6 regulations that are not being enforced, not being  
7 met.

8 A couple of examples, out of many,  
9 unfortunately, was Browns Ferry. Browns Ferry was  
10 shut down for roughly 22 years. When Browns Ferry  
11 Unit 1 restarted in 2007 it sought and obtained  
12 permission from the NRC to start up despite not being  
13 in compliance with fire protection regulations that  
14 its own fire prompted. Is there an analysis of that  
15 showing why that's okay to not meet a regulation  
16 that's necessary for adequate public health and  
17 safety? No.

18 To be fair to the NRC, they did not grant  
19 that exemption until TVA asked for it, so they didn't  
20 impose the relaxation on TVA until they asked for it,  
21 but there was not similar formal process that ensured  
22 that that was the right decision.

23 So for 22 years, they couldn't find time  
24 in that two decades plus period to come into  
25 compliance with fire protection regulations that were

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1 adopted by the NRC in 1980 because of the Browns Ferry  
2 fire. And yet, the NRC allowed that plant to restart  
3 despite knowing it didn't meet those fire protection  
4 regulations. By the way, from a risk perspective, the  
5 Browns Ferry fire was the closest to core melt that  
6 we've come since Three Mile Island. So it wasn't just  
7 a cross your t and dot your i's type of thing. It's  
8 fairly risk significant.

9           Where was the regulatory analysis? Where  
10 was the comparable type of formal rigor applied to the  
11 imposition of regulatory requirements that was applied  
12 to the waiving of those regulatory requirements?  
13 There wasn't anything like that. We think that  
14 whatever protects the owners from undue regulation  
15 should protect the public from undone regulations.

16           Second example is more recent. It was the  
17 fire protection fixes under an NFPA 805 at Oconee. On  
18 May 30th of 2008, Duke applied to the NRC for a  
19 license amendment to transition to the NFPA 805  
20 process. I'm not sure why I included that one, unless  
21 I was going to make sure I won the most slides award.

22           December 29th of 2010, the NRC approved  
23 the license amendment for the transition to NFPA 805  
24 at Oconee. And part of that license amendment that  
25 was granted imposed a deadline that the modifications

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1 of procedure changes and all the other things that  
2 went in the license amendment request had to be fully  
3 implemented by January 1st of 2013 which was four and  
4 a half years after Duke requested the changes, so it  
5 wasn't a rush job imposed on poor Duke.

6 July 31st of 2012, Duke comes in and says  
7 they need more time to meet that now six and a half  
8 year deadline or whatever it was. And they needed two  
9 more years to meet the deadline for the transition in  
10 NFPA 805.

11 January 15th of 2013, the NRC denied the  
12 request for an extension, two-year extension, which  
13 doesn't happen very often, but the NRC did deny the  
14 amendment request. In the body of the denial letter,  
15 the NRC said the reason -- I must have learned a new  
16 trick -- the reason for that was that the risk  
17 increase was four times what the NRC would find  
18 acceptable. So the two-year extension was denied  
19 because the risk implications were too high.

20 So on July 1st of 2013, the NRC issued an  
21 order requiring Duke to implement the fixes within  
22 four years. Two years was too risky, so take four  
23 years. We'll take four years to do it. That would  
24 have made more sense if it had been issued on April  
25 1st, 2013, but instead it was issued on July 1st.

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1           So the new deadline, after two years, and  
2           an extension to 2014 was too risky, was November 15th  
3           of 2016. Again, there was no regulatory analysis, no  
4           rigor, no similar process. The imposition of the  
5           regulation that became NFPA 805 to the NRC waiving it  
6           and giving Oconee more time to come into compliance  
7           was also done outside the Administrative Procedures  
8           Act.

9           The license amendment was a public  
10          process. The public could have intervened and said  
11          that waiting until January 1st of 2013 was too late.  
12          It was issued that way. The public just assumed the  
13          NRC would back up its words. So when Duke came in and  
14          asked for more time, that's not done with any public  
15          participation. It's all done between a closed-door  
16          negotiation between the NRC and the licensees in a  
17          request that was too risky was ordered to be taken in  
18          four years. There's something totally wrong with a  
19          process that allows nonsense like that.

20          So you had this public process that first  
21          developed NFPA 805 regulation. That is necessary for  
22          adequate protection of public health and safety. Then  
23          you had a public license amendment process that  
24          allowed the public to say that was taking too long or  
25          that wasn't sufficient. The NRC issued a license

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1 amendment that said you will do this by this date.  
2 But then without any kind of CRGR or backfit-type  
3 process to ensure that that imposed regulation could  
4 be waived, the NRC waived it. We think that's wrong.  
5 We think something similar to the measures that  
6 protect the public from undue regulations again need  
7 to protect the public from regulations that are not --  
8 that are undone. And right now, the public is not  
9 getting that protection.

10 Other back off examples, you've got the  
11 scheduler exemptions from Fukushima Orders. Fukushima  
12 Orders were taken because the measures were deemed to  
13 be necessary for public health and safety. And the  
14 rulemaking process that would normally impose that  
15 would take too long. So it was necessary to jump the  
16 gun, get these out, get these safety upgrades  
17 implemented for public health and safety reasons.  
18 Then licensees asked for more time. The NRC said  
19 sure. Not until you ask though. We won't grant you  
20 an exemption until you ask for it.

21 Where is the process that shows that those  
22 exemptions, that additional time is warranted, when on  
23 the front end additional time was deemed inappropriate  
24 from a public health and safety standpoint. How can  
25 you have both be right?

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1           If you look at the -- we're coming up on  
2 the 20th anniversary of GSI-191, the PWR containment  
3 sump issue. In September of 1996, the NRC accepted  
4 GSI-191 and said it was a "high priority" safety  
5 matter. There are some plants that are still not  
6 fully compliant with the measures implemented  
7 allegedly to solve GSI-191.

8           We sometimes facetiously say license rules  
9 are necessary to give the time necessary to come into  
10 compliance with these safety measures and it's  
11 unfortunately true, but it should not be a burden  
12 undertaken by the American public.

13           Oconee is still working -- basically, any  
14 issue out there, Oconee has got it. Oconee is still  
15 working towards resolution of tornado protection that  
16 were identified sometime last century. Sometime this  
17 century perhaps they'll be resolved. There's been no  
18 analysis like that done for imposition of new  
19 regulatory requirements that can say taking decades to  
20 solve a safety problem is okay. And yet, it's being  
21 done.

22           And reactors, except Seabrook, are  
23 operating despite not complying with GCG-17 as it's  
24 implemented in the current licensing basis and yet  
25 there's not been an analysis shown why that's okay, an

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1 analysis comparable to that that's done when  
2 regulations -- regulatory requirements are imposed.

3 So the point between backfit and back off  
4 is that they're worlds apart in how this Agency  
5 handles it. On the backfit side, there's a regulation  
6 and accompanying guidance to ensure that poor plant  
7 owners aren't burdened by unnecessary safety upgrades,  
8 unless they're required for safety or cost beneficial.  
9 The regulations et al. protects the owners from that  
10 outcome.

11 Nothing like that protects the public when  
12 the NRC decides that a regulatory requirement does not  
13 have to do that at a licensee or more than one  
14 licensee.

15 It takes X, Y, and Z to protect the owners  
16 from undue regulatory requirements than it should take  
17 a very similar process X, Y, and Z to protect the  
18 public from the NRC relaxing those requirements  
19 unnecessarily. It's only fair. We talked this  
20 morning about fairness. It's unfair to only protect  
21 the owners from a rogue agency and not protect the  
22 public from that same agency.

23 The NRC has got some very fine people, but  
24 the regulations and accompanying guidance ensures that  
25 those very fine people don't burden the licensees

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1 unnecessarily. All we're asking for is something  
2 equal to that to protect the public from those fine  
3 people putting -- transferring the undue burden on the  
4 public for regulations needed for safety that that  
5 aren't being met.

6 I should point out that we don't contend  
7 that if those processes existed that any of the  
8 decisions would have been different. We think at  
9 least some of them would have been different, but  
10 we're not throwing this up saying if you have this  
11 process, all of those decision would have been  
12 prevented. What we're saying is if you had that  
13 process, either way, whether the decision was to allow  
14 more time or allow a regulation not to be met or not,  
15 at least it would be transparent. People could see  
16 what that reason was, what that basis was, what that  
17 justification was, and could understand it. When you  
18 don't provide that process, when you don't provide  
19 that evaluation, you create a vacuum that our  
20 imaginations fill. And trust me, when we fill that  
21 vacuum with motives, it's very seldom charitable to  
22 the NRC. So if you went through the process and you  
23 explained and made public the reasons why a regulation  
24 adopted for safety doesn't have to be met, maybe we'd  
25 agree with it. But you at least owe the public that

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1 information.

2 The bottom line here was that we deserve,  
3 the public deserves, comparable protection against  
4 unnecessary and unjustified back offs that the poor  
5 plant owners get from unnecessary and unjustified  
6 backfits. Again it's the same process leading to the  
7 same answer. If the focus is on safety, it's  
8 ridiculous to focus on safety and then wander away  
9 from it informally or casually and that's what's  
10 happening right now and that needs to stop.

11 I want to finish up with the regulatory  
12 analysis slide. This is a transparency or openness  
13 issue. We look at some backfits or some regulatory  
14 requirements that are imposed and cannot for the life  
15 of us figure out how that happened. On the left is  
16 the backfit rule as it's supposed to work. On the  
17 right is how we see the process working. It's one of  
18 those where because adequate process is like beauty,  
19 it's in the eyes of the beholder. It's not really  
20 defined, it's up to whatever anybody thinks. And  
21 because the cost beneficial analyses you can adjust  
22 the costs or you can adjust the benefits as you want  
23 to get any outcome you want, you've got enough choices  
24 here. You can pretty much come up with any answer you  
25 want to. Claim something as adequate protection,

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1 claim something that's cost justified. And you can  
2 iterate until you get the answer you want, either not  
3 to do it or to go ahead and do it.

4 There's no -- you put ten people in a  
5 room, you are going to -- there's only two answers.  
6 But you're going to get a number of votes -- it should  
7 be repeatable. You should be able -- whatever  
8 decision is reached by the Agency, whether they impose  
9 a backfit or not, it should be that reasonable people  
10 understand why that outcome was reached and that's not  
11 the system we've got right now.

12 Some examples, again, out of many that we  
13 could fit, this is per the elaboration, adequate  
14 protection is so vaguely defined that it can be  
15 invoked or revoked at whim. Same with cost benefit  
16 studies. You could either show that something is  
17 ridiculously cheap and should be imposed or you can  
18 show that it's way too costly and should not be  
19 imposed. So you basically have the answer and you  
20 work backwards through that silly process to come --  
21 to justify either doing it or not. If that's the  
22 case, just eliminate the silly process and tell us  
23 you're going to do it or you're not, since it's all  
24 fun and games, voodoo regulation or whatever. Just  
25 skip the voodoo. Just tell the answer.

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1           The last point there was that the process  
2 is objective, both the industry and the UCS object to  
3 it, but that's not the objective that it needs to be.

4           Some examples of backfits that basically  
5 don't make any sense to us was the spent fuel pool  
6 level instrumentation order that was issued on March  
7 12th of 2012. It was obviously something that was  
8 wanted by the NRC and we were able to navigate the  
9 wickets to impose it on the industry. I'm a big fan  
10 of spent fuel pool safety and security, but spent fuel  
11 pool level instrumentation doesn't make any sense to  
12 me at all.

13           If you go back to the NRC's spent fuel  
14 pool consequence study that concluded the risk of  
15 spent fuel accidents is very small after 60 days, if  
16 that were anywhere close to being true, you should  
17 have ordered calendars instead of level instruments.  
18 The level instruments, even if they were free, it  
19 wouldn't make much sense to install them, but that was  
20 deemed to be necessary for public health and safety.  
21 It makes no sense to us.

22           Unwanted by the NRC and not imposed is the  
23 expedited transfer of irradiated fuel from unsafe and  
24 unsecured spent fuel pools into safer and secured dry  
25 storage. If you look at those two, which one really

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1 protects public health and safety? It's not the level  
2 instrumentation at all. That was done just to show  
3 the Government that you did something after Fukushima.  
4 It had nothing to do with safety. It was all politics  
5 and PR.

6 What would have really protected the  
7 public was transferring the fuel from overcrowded  
8 spent fuel pools into more secure dry storage, but you  
9 manipulated the process and subjected process and were  
10 able to justify two answers that were both wrong.

11 And then the last one which is my classic,  
12 you can justify or not justify the same thing  
13 depending on whether you want it or not. At one  
14 point, the NRC wanted filters, the NRC staff, wanted  
15 filters and containment vents. Then they were told by  
16 the Commission that was the wrong answer. So they  
17 went back and played with the numbers and now it  
18 became unnecessary and it was not imposed. So again,  
19 just skip all those, the nonsense, the foreplay, and  
20 tell us what the answer is. And don't use a gamed,  
21 silly process to justify a pre-ordained answer. Just  
22 go straight to the -- it saves a whole lot of time.  
23 And we try to read this and try to make sense of it  
24 and it just frustrates the crap out of us. So if you  
25 just eliminated that nonsense and came straight out

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1 with the answer, we may not agree or disagree, but  
2 we'd save a lot of time reading that nonsense and  
3 trying to make sense of it. That's our fault, I  
4 guess. We shouldn't read nonsense and try to make  
5 sense of it.

6 There's something fundamentally wrong with  
7 the process when the answers that the NRC reaches  
8 don't make any sense based on the issues. So that  
9 would be great if that could be fixed, but enough on  
10 that.

11 If you do one thing along the way is do  
12 something to protect the public when the NRC sets  
13 asides, waives, relaxes, whatever, regulatory  
14 requirements. That's not being done. The public  
15 deserves that. The public expects that. You need to  
16 start doing that. With that, I think that's all I  
17 had. Thank you.

18 MR. CARPENTER: Thank you very much.  
19 CRGR, any follow up questions or comments of Mr.  
20 Lochbaum?

21 MR. HACKETT: Thanks, Dave. I appreciate  
22 the participation and the viewpoints. I think it  
23 comes back to a lot of the discussion we had earlier  
24 on discipline and rigor. And I think it's fair to say  
25 there's some instances where I think if you went

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1 around the table here you featured some areas where we  
2 weren't at our finest. And particularly, I resonate  
3 with GSI-191 and other issues like that. Thanks for  
4 the feedback.

5 MR. CARPENTER: Other comments? In that  
6 case, thank you very much.

7 We'll now go into the last portion of our  
8 agenda and that is the public comments on the various  
9 discussion items.

10 As promised this morning, we'll go first  
11 to the folks on the telephone. And again, for those  
12 who are just tuning in, if you were expecting to hear  
13 the industry, we went ahead and accelerated the  
14 schedule this morning, so we did those presentations  
15 earlier. If you do have comments for the  
16 presentations that were given by the industry and  
17 would still like to provide them to the staff, please  
18 take a look at the meeting notice. You'll see the two  
19 contacts, Les Cupidon, Nicholas DiFrancesco. And they  
20 have their emails there. So please, go ahead and send  
21 any comments to them that you may have.

22 At this time, operator, do we have anybody  
23 on the line?

24 OPERATOR: Yes, we have one caller. Go  
25 ahead, your line is open.

1 MR. LESHINSKIE: Hello. I just want to  
2 make certain people can hear me. I am Tony  
3 Leshinskie. I am with the State of Vermont. I am  
4 currently Vermont's State Nuclear Engineer.

5 And I have to admit I came into this  
6 meeting really not quite certain what to expect.  
7 However, I felt that it was important to monitor this  
8 meeting mainly because several months ago regarding  
9 the Vermont Yankee decommissioning and the pending  
10 anticipated Notice of Proposed Rulemaking regarding  
11 decommissioning, I felt that it was important to  
12 monitor this meeting simply because the Attorney  
13 General's Office of Vermont did provide some comments  
14 regarding backfit rulings as it would apply to reactor  
15 decommissioning.

16 So to the people working on modifying  
17 backfit rules, I would certainly ask that you review  
18 the comments that State of Vermont, along with several  
19 other states, have provided regarding backfit.

20 As I heard the discussion this morning and  
21 also Director Lochbaum's presentation just a few  
22 moments ago, I realized that there was a lot more  
23 going on in this meeting and I did not necessarily --  
24 I was not necessarily prepared to really fully follow  
25 what was going on.

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1           Part of that, I think, was simply the  
2 explanation of what this meeting was intended to cover  
3 maybe did not get into what was really the point. And  
4 I think that leads to a general concern that I have  
5 and I think Director Lochbaum alluded to this as well.  
6 There's just not -- there are times where what is  
7 actually going on in the discussion between the NRC  
8 and a particular licensee or the industry in general,  
9 it isn't -- it's difficult to follow.

10           You guys are making some good attempts to  
11 be transparent, yet when we get into the technical  
12 information, we get into the concerns. The  
13 discussions tends to fall into jargon of the industry  
14 and jargon of the regulation that isn't apparent even  
15 to someone who has -- such as me, who has experience  
16 in the nuclear power industry, but may not necessarily  
17 have experience in dealing with a particular phase of  
18 reactor regulation.

19           So what I would encourage the NRC to  
20 consider is that when you have meetings, when you have  
21 discussions regarding a particular phase of  
22 regulation, particularly with backfit, make certain  
23 that there is a great opportunity for participation by  
24 other stakeholders. And when I say other  
25 stakeholders, certainly -- well, yes, I am a state

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1 employee, so I would certainly say that yes, the host  
2 states and the host communities really need a greater  
3 opportunity to be involved.

4 We have in addition to the individual  
5 licensees, we do participation by groups such as the  
6 Nuclear Energy Institute. There are times that the  
7 states and the host communities need that degree of  
8 involvement. So if there is a way to encourage that,  
9 if there's a way to make that happen, please pursue  
10 that.

11 I was making notes as I went along to the  
12 meeting and I just want to -- I just have one or two  
13 more quick points. With regards to the process of  
14 assuring that backfitting is addressed appropriately,  
15 I know very early on in the conversation it was raised  
16 that the need for backfit really stems from findings  
17 from NRC resident inspectors or maybe some inspection  
18 by another group of NRC experts. And there was -- as  
19 is done with many things in engineering, there is  
20 certainly an effort to try to develop a consistent  
21 process. And frequently with those processes, we get  
22 into a number of questions that the individual walking  
23 through the process is supposed to ask themselves and  
24 consider. And what I would suggest in this area,  
25 recognize that the way we word a question sometimes

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1 can impact how we think about that question.

2 And if you ask a question one way, maybe  
3 it raises a lot of alarm, a lot of concern from one  
4 individual and depending on that person's background,  
5 the next individual will say oh, that's no big deal  
6 because oh, I know this about the plant and it's not  
7 a problem.

8 I would suggest that with regards to  
9 backfit evaluation that we step back and we look  
10 really at how psychological evaluations are done for  
11 unfettered plant access. Let's focus a little bit on  
12 asking the very simply questions or asking the same  
13 question maybe in a couple different ways to assure  
14 that we have a way of triggering the desired thought  
15 process in people that fundamentally think  
16 differently.

17 We're all trained -- most of us are  
18 trained as engineers, but probably how we reach a  
19 conclusion within our heads is not the same in every  
20 individual. Therefore, let's --- you know, I know  
21 engineers and I admit I'm this way, too. You want to  
22 ask the question once and move on. Let's -- in this  
23 case, we're back to let's ask a single question  
24 several different ways to assure that we trigger that  
25 process. If we do this correctly, yes, we will raise

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1 more issues, but it also -- to someone who is really  
2 good at thinking, this may also bring us the idea that  
3 hey, look at this several ways, maybe the issues can  
4 be eliminated. So I know late in the discussion there  
5 was concern about really unnecessary -- or backfits  
6 that were not cost beneficial. Maybe if this is done  
7 properly, we can address both sides with this repeat  
8 of questions.

9 And I'm just -- if you excuse me for a  
10 moment, I just want to make certain I caught  
11 everything in my notes.

12 Okay, I do have one more and then I will  
13 stop.

14 One thing I think should also be  
15 considered is whether the option to convene the CRGR  
16 to evaluate a specific backfit issue is that in the  
17 process right now. I know early on it was pointed out  
18 that CRGR should not be in every backfit evaluation.  
19 I agree. That's more than a full-time job. But very  
20 much like the NRC has requirements now for licensees  
21 and for nuclear vendors to have correction action  
22 processes, part of the correction access process is to  
23 have an option for what is sometimes called a  
24 technical review committee or a technical review  
25 board, but independent assessment of a particular

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1 issue when the people involved with that issue on the  
2 day-to-day basis really aren't sure where to turn for  
3 a fresh set of eyes.

4 So I would ask that option be included as  
5 well.

6 And other than that, I thank you very much  
7 for your time and I will entertain any questions if  
8 there are questions on what I just said. Thank you.

9 MR. CARPENTER: Thank you, sir. CRGR, any  
10 follow up or clarification questions?

11 MR. HACKETT: Tony, this is Ed Hackett.  
12 I would just say thank you for the feedback. I think  
13 a lot of it goes to the effectiveness of our  
14 communications and some of the points you make are  
15 quite compelling in that regard. We strive for plain  
16 language and to try to do better in those, but we do  
17 have a lot of shorthand that we tend to talk. Anyway,  
18 thank you for all that feedback and that will be on  
19 the record and we'll make sure to address it. Thank  
20 you.

21 MR. LESHINSKIE: Okay.

22 MR. CARPENTER: Any other? No? Very  
23 good. Thank you again, sir.

24 MR. LESHINSKIE: You're most welcome.

25 MR. CARPENTER: Operator.

1 OPERATOR: Again, as a reminder, please  
2 press star 1 on your phone and record your name if you  
3 have a question.

4 Our question comes from Steven Dolly. Go  
5 ahead, your line is open.

6 MR. DOLLY: Yes, good afternoon. This is  
7 Steven Dolly with PLATTS. I edit our newsletter  
8 "Inside NRC."

9 I have to apologize. I've been ducking in  
10 and out of the webcast of this meeting trying to deal  
11 with some other things and also the schedule change  
12 threw me off a little bit. So if this has already  
13 been discussed, I apologize, but I was hoping to get  
14 some sense of what, if any, path forward for actions  
15 is being contemplated by staff on the future role of  
16 the CRGR and that the fact that reforms was this more  
17 general spleen-venting session so industry and other  
18 stakeholders could get their various concerns on the  
19 record.

20 MR. HACKETT: Steve, this is Ed Hackett.  
21 Thank you for the question. I guess there's always a  
22 certain amount of venting that inherently goes on in  
23 these sessions, but the go forward position is we are  
24 looking to drill through the record from this meeting  
25 in addition to the other tasking that you may have

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1 heard, either myself or Victor McCree talk about  
2 earlier today. And then basically, rolling that up  
3 into a set of recommendations as to what we would see  
4 any difference as being in the future role of the CRGR  
5 as recommendations from the CRGR to the EDO.  
6 Hopefully, we'll have that in the December-January  
7 time frame is what we're shooting for right now, with  
8 the deadline to the EDO being January 31, 2017.

9 I don't know if that gets to answer your  
10 question or if there's more.

11 MR. DOLLY: So the CRGR is going to make  
12 a set of recommendations to the EDO in the December-  
13 January time frame with the deadline of January 31st?

14 MR. HACKETT: Correct.

15 MR. DOLLY: And I was in and out of some  
16 of the earlier sessions, but you say you and Victor  
17 discussed in your presentations what the issues are  
18 that will be discussed in those recommendations?

19 MR. HACKETT: What we discussed is some of  
20 the specifics of the tasking. The backfit tasking  
21 memorandum is as Ed Williamson is showing me here is  
22 dated June 9, 2016 and it is publicly available. That  
23 gets sent to details of the tasking from the EDO.

24 MR. DOLLY: Okay, the tasking for the  
25 recommendations that will go forward are in this June

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1 9, 2015 memo?

2 MR. HACKETT: Yes, broadly they are, 2016,  
3 sorry.

4 MR. DOLLY: 2016, June 9, 2016 memo. And  
5 I'm sorry, that's from you, Ed, or who is --

6 MR. HACKETT: That is basically from  
7 Victor McCree to the CRGR, and other Agency folks  
8 involved in backfitting.

9 MR. DOLLY: Well, okay, that should be  
10 enough for me to pull it up then. Thanks very much.  
11 That's all I had.

12 MR. HACKETT: Sure thing.

13 MR. CARPENTER: Okay. Thank you very  
14 much. As we did this morning, I went to people in the  
15 room and then I went to the telephone. Since we've  
16 just done two callers, let me go to the room now. Any  
17 comments, questions?

18 MR. LOCHBAUM: This is Dave Lochbaum. I  
19 wanted to circle back to a question I think Ed raised  
20 this morning about transparency and perhaps having the  
21 CRGR meetings being public. I somewhat disagree with  
22 Greg. I don't mind if some of them are not public if  
23 that will facilitate the discussions. It could be  
24 more frank and candid. The caveat on that is the  
25 outcome. There should be a documentation of what it

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1 was.

2 So the discussions would be okay if they  
3 were not public, if that would facilitate things. As  
4 long as at the end the decisions, there was something  
5 on that end to satisfy the transparency of the  
6 public's needs. That's all I have to say on that  
7 subject. Thanks.

8 MR. HACKETT: Thanks, Dave.

9 MR. CARPENTER: Next in the room.

10 MR. HALNON: One thing I wanted to put  
11 out, this is Greg Halnon, when we talked about being  
12 safety focused, one question is hard to say to when  
13 you're asking for modifications, does this make the  
14 plant more safe? And almost always you say yes, to  
15 some extent, otherwise you wouldn't -- it would be  
16 clear you wouldn't make the modification.

17 When we're talking through this process,  
18 it might be good for these older plants to ask the  
19 question does the present configuration, the approved  
20 configuration, cause the plant to be unsafe? And if  
21 the answer is no, then that might lead to a different  
22 result than asking it the other way. Because that's  
23 what we come across a lot in our inspections is what  
24 is unsafe about this? Okay, it's a compliance issue.  
25 I can understand that, but if it's not unsafe, and I

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1 know that's -- that's somewhat objective, subjective  
2 in some cases, but David is talking about the time  
3 taken to resolve these issues. If it's not unsafe,  
4 let's take the time necessary to resolve these issues.  
5 I have to disagree with Dave on one part because he  
6 disagreed with me.

7           So I ask the question is that an approved  
8 configuration, the approved licensing basis, the  
9 approved design basis. Is that unsafe rather than  
10 the opposite of will this modification make it more  
11 safe because you can't answer that no because you  
12 wouldn't make modifications otherwise. Maybe the two  
13 asked together, it might be something that we've put  
14 in the process.

15           MR. WERT: Thanks for that. This is Len  
16 Wert. I just have to comment a little bit on that.  
17 I'm somewhat adverse to anything that would task the  
18 staff with proving that something is unsafe. That's  
19 just not characteristically the way we would approach  
20 things. In fact, it's one of the discussion points  
21 that I make when I do license certificate  
22 presentations to reactor operators and SROs to try to  
23 avoid that mindset.

24           I think I understand your point though,  
25 but I'm just -- if someone took that out of context --

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1 MR. HALNON: No, I understand that. I'm  
2 not asking you to make a judgment of unsafe or -- you  
3 do that every day or the inspector does that every  
4 time she sees a work order and sees a Commission  
5 report written on a plant. Should be a cognitive  
6 decision whether or not I need to pursue this from a  
7 safety perspective or not.

8 What I'm trying to do to the process is  
9 how much time do we have to fix this. And if the  
10 answer is that it makes it unacceptable to operate or  
11 at least unsafe, then of course we're not going to  
12 take much time to fix it. The problem is that if we  
13 don't focus on -- if we always focus and always should  
14 focus on safety, if we only go by that yes/no, does it  
15 make it more safe, then clearly, we're going to be in  
16 a situation of always saying yes, if we're going to do  
17 a modification or a procedure change.

18 And I think it's not the end all. You  
19 can't just take any one of these questions in  
20 isolation and say that's the question. You have to ask  
21 all of these so you get a full characterization of the  
22 issue.

23 MR. CARPENTER: Okay, very good. Let's go  
24 back to the telephones and operator.

25 OPERATOR: As a reminder, please press

1 star 1 on your phone and record your name if you have  
2 a question. One moment, please.

3 MR. CARPENTER: Thank you.

4 OPERATOR: I show no further questions at  
5 this time.

6 MR. CARPENTER: Thank you, Operator. I  
7 always feel like when we're waiting for people online  
8 to come in and ask questions, we should be playing the  
9 Jeopardy theme song or something.

10 Going around the room, any other questions  
11 or comments? Yes, sir.

12 MR. BONANNO: This is Jerry Bonanno from  
13 NEI. Earlier, there was some discussion on maybe the  
14 need to update NUREG-1409, I think that was finalized  
15 in 1990 or so. But there's also parallel effort  
16 that's going on to revise the staff's cost benefit  
17 guidance. I think that's described in SECY 14-002.  
18 And I think probably by the end of the year we'll see  
19 a draft of the first revision to NUREG-BR-0058. So I  
20 guess the question is is the CRGR going to be wrapped  
21 into that -- those revisions or see the revisions to  
22 BR-0058? I think the original plan was to kind of  
23 roll 1409 in as an attachment to that document.

24 MR. HACKETT: Good question, Jerry. I  
25 guess I don't have that answer for the reg analysis,

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1 we're not plugged into that at the moment. We  
2 probably should be at some level. Like you said, as  
3 the companion to 1409 we may end up recommending 1409.

4 MR. BONANNO: I just have one other  
5 comment or question. I think you've kind of hear a  
6 lot of comments about transparency and you know, our  
7 federal position is more access to the CRGR from our  
8 point of view would be better, but I think wherever  
9 you guys come out on, whether we have access to you  
10 when you're reviewing specific backfits, I think  
11 another layer is more meetings like this where maybe  
12 it's not related to any specific backfit, but just  
13 periodically have a chance to interact with you all,  
14 I think, would be a big net positive from our  
15 standpoint.

16 MR. HACKETT: Thanks for that. In fact,  
17 a lot of the homework I did for this meeting, our  
18 charter actually calls for that on a greater period  
19 than we've been doing recently. So we'll commit to  
20 doing that for sure.

21 MR. CARPENTER: Thank you. Any other  
22 comments in the room?

23 On the telephone?

24 OPERATOR: Yes, we have one question. One  
25 moment, please.

1 MR. CARPENTER: Thank you.

2 OPERATOR: Go ahead, caller. Your line is  
3 open.

4 MR. LESHINSKIE: Can you hear me now?

5 MR. CARPENTER: Thank you, yes.

6 MR. LESHINSKIE: Sorry, I inadvertently  
7 muted you guys. My apologies. This is Tony  
8 Leshinskie again. I promise that this comment will be  
9 much shorter than my last one and this is the last one  
10 I plan to make today.

11 Going back to some of the earlier  
12 discussion we started getting into the context of or  
13 the idea of the omission of fact or a mistake of fact  
14 and as we got to that specific point what I started to  
15 realize was much of that discussion sounded like a  
16 legal concept I've heard some of the attorneys I work  
17 with now as being similar to the concept of benign  
18 neglect.

19 And without really going into this point  
20 or that point, the general comment that that brings up  
21 to me is that when you do start looking at potentially  
22 changing backfit evaluation rules, also you look at  
23 different concepts. You may find that there is  
24 something that is really needed in assessing backfit  
25 in a concept that is called something else. So do

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1 take a look at other concepts and see if there's  
2 anything that could be applied to it.

3 And thank you again, for this opportunity  
4 to provide these comments. If someone could tell me  
5 what the deadline would be for written comments so I  
6 know, it may had been mentioned, but when you do dial  
7 in to say yes, I'd like to speak, you lose the audio  
8 for about 30 seconds.

9 MR. HACKETT: Okay, thanks, Tony. I think  
10 if you have anything written, again as Gene Carpenter  
11 mentioned earlier, you can send that to Les Cupidon or  
12 Nicky DiFrancesco, the two main contacts somewhere in  
13 the next week, let's say. That would be great.

14 MR. LESHINSKIE: Okay, thank you very  
15 much.

16 MR. HACKETT: Thank you.

17 MR. CARPENTER: Thank you. Operator,  
18 anybody else?

19 OPERATOR: We show no further questions at  
20 this time.

21 MR. CARPENTER: Thank you. Back to the  
22 room. We really ought to get that Jeopardy theme song  
23 going here.

24 MR. HACKETT: The first thing I would do  
25 in trying to summarize is turn to my colleagues to see

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1 if any of those CRGR members had any final points or  
2 thoughts they wanted to add. Steve?

3 MR. WEST: I would just like to thank  
4 everybody for participating. I think we had a good  
5 turnout today, especially this morning. A lot of good  
6 discussion and feedback.

7 There's a lot of discussion going on  
8 internally. We didn't get into a lot of that today,  
9 but there's been meetings with all of the offices, a  
10 lot of the staff, and managers that are involved in  
11 backfitting and other activities that the CRGR gets  
12 involved in reviewing.

13 I worked with Ed and Vic McCree on the  
14 tasking memo. He said it himself this morning, but I  
15 can reinforce, he's very serious about getting a good,  
16 thorough, comprehensive review done and  
17 recommendations from Ed and the committee. And I  
18 think we're taking this very seriously.

19 I appreciate the comments and I hope we  
20 came across as being sincere in our ideas that we're  
21 pursuing. There's a lot of other ones, but again,  
22 thanks for turning out and helping us. As Ed just  
23 mentioned to Tony on the phone, if you do want to  
24 submit anything else to us after hearing the meeting,  
25 comes up to you later, please send it in. We've got

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1 a couple more months of review to do, so I'm sure we  
2 can take comments up until basically the very end.

3 MR. HACKETT: Absolutely. Thanks, Steve.  
4 Anybody else? Brian.

5 MR. McDERMOTT: I'd just like to thank all  
6 of our guests, as Steve said. I'm looking back over  
7 my notes. One of the things that clearly stands out  
8 to me is both our industry panelists and David both  
9 provided one common note that I could see. Both  
10 focused on safety, but also both into the repeatable  
11 performance from the regulator. And that's something  
12 that clearly is on our radar. We want to make it  
13 easier for the staff to do these reviews. The idea  
14 that maybe we can do things along the way to ease the  
15 process on the front end so that inspection findings  
16 kind of come into the process we have a more rapid way  
17 of assessing those things against the licensing basis  
18 to find out if there's really a delta there.

19 We always address the safety issues first  
20 and I think if you talk to many of the NRC staff,  
21 there's no question about that. We tackle those  
22 issues, I think, right up front. I think where we get  
23 wrapped around the axle sometimes is on these issues  
24 that are designed basis, long term, low safety  
25 significance compliance issues. And those are the

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1 most challenging for us to dispatch in an efficient  
2 and effective manner. And so that's where I would see  
3 our focus in these efforts going forward.

4 Thank you for all your input today.

5 MS. ORDAZ: And I would echo all the  
6 comments mentioned here. And I would say there's no  
7 better time than now to offer changes, suggestions,  
8 ideas, comments. We're wide open. It is a relatively  
9 new team, right? I think Steve, you're the  
10 continuity. And Brian.

11 So feel free. Bring them in. A week --  
12 you mentioned one week for the turnaround for the  
13 comments for this, but if there's other thoughts or  
14 ideas, I know we would welcome those. The assignment  
15 is due at the end of January, so we'll be working part  
16 time to get this done. And any comments are welcome.  
17 Thank you.

18 MR. WERT: I don't have anything to add.  
19 I agree with the points that were made. Thanks.

20 MR. WILLIAMSON: I'd also like to add my  
21 appreciation of the comments that were made, both from  
22 those that were present to those that are present.

23 Not only are we having this meeting, we  
24 also --- I know members of the CRGR also monitored the  
25 Commission's public stakeholders meeting when the

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1 backfit issue came up. We're going to see how that  
2 rolls out as well.

3 There's a great deal of outreach. I know  
4 Steve West went recently and I participated in a  
5 listening mode in a panel last month. So where we're  
6 going with this is this is your opportunity to  
7 comment. This is your opportunity to raise your  
8 concerns and this is your opportunity to suggest  
9 improvements to the process.

10 MR. HACKETT: Great. And I'd do the same,  
11 I guess we're getting redundant here, but certainly  
12 echo my colleagues in thanking everyone for the  
13 participation. We got a lot of great feedback.

14 I heard some themes for sure. I think  
15 I've heard a cultural theme. I've heard a level of  
16 decision-making theme and how that feeds into the  
17 group. I resonated with Greg saying words are  
18 powerful and in this arena I think they are very  
19 powerful.

20 I think we just heard from Tony Leshinskie  
21 on the line that I think reinforces what we've been  
22 saying, backfit scares people apparently, and  
23 including some of our inspectors possibly or not fully  
24 understanding. So appreciate all that feedback.

25 I'll just conclude with where Vic started.

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1 He referred to a former boss of ours, I don't think  
2 he'd mind me saying that boss was Bill Kane. When we  
3 used to work for Bill and Bill was our deputy  
4 executive director, he would always ask us why are we  
5 doing something and the corollary is why are you doing  
6 it this way? And then Vic has added his own recently  
7 in how can we do this better?

8 And as Steve said in our meetings with Vic  
9 and the senior leadership, that's where they're coming  
10 from. They think we can do better in the interest of  
11 continuous improvement, that's what we're focused on.  
12 So we're focused in that way on executing that  
13 particular mission and hopefully we'll succeed in a  
14 timely manner, given that December isn't always our  
15 most productive month. That's why we're in January,  
16 is the deadline. So we will do our best to achieve  
17 that goal. So thanks to everyone.

18 MR. CARPENTER: Operator, was there  
19 anybody else on the phone before we close the meeting?

20 OPERATOR: We show no questions at this  
21 time.

22 MR. CARPENTER: Very good. Thank you all  
23 who called in. Again, especially for those who are on  
24 the telephone, all the presentations that were made  
25 today are available on our external website after the

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1 meeting notice.

2 If you do have any further comments,  
3 please contact the two meeting contacts, Les Cupidon  
4 or Nick DiFrancesco. Their emails are on there and  
5 again thank you to all of the participants. With that  
6 I believe we're done. Thank you.

7 OPERATOR: That concludes today's  
8 conference. Thank you for participating. You may  
9 disconnect at this time.

10 (Whereupon, the above-entitled matter went  
11 off the record at 2:27 p.m.)

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