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3 NUCLEAR REGULATORY COMMISSION

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5 STRATEGIC ASSESSMENT REBASELINING INITIATIVE

6 AND

7 STAKEHOLDERS PUBLIC MEETING

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9 BUILDING PUBLIC TRUST AND CONFIDENCE

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11 THURSDAY

12 NOVEMBER 8, 1996

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14 ROSEMONT, ILLINOIS

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16 The Building Public Trust and Confidence

17 Session met at The Ramada Hotel-O'Hare, 6600 North
18 Mannheim Road, at 8:00 a.m., Doug Brookman, presiding.

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A-G-E-N-D-A

2 Agenda Item Page

3 Direction Setting Issue No. 21

4 Fees

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

2 (1:20 p.m.)

3 MR. BROOKMAN: Good afternoon everybody, my
4 name is Doug Brookman. This session is Direction Setting
5 Issue No. 21 on Fees. Our presenter this afternoon is
6 Jesse Funches and he will lead off the presentation
7 followed by questions and answers and comments and other
8 expansive remarks, we hope, from the audience.

9 MR. FUNCHES: If it's okay with everyone, I'm
10 going to sit here if you can hear me.

11 I'd like to acknowledge Jim Holloway who was
12 the writer of this issue paper who is not here today.

13 As most of you in the room know, NRC has been
14 requested to recover approximately 100 percent of its
15 budgets from fees for the last six years, that is since
16 fiscal year 1991. What we are required to do is recover
17 100 percent of our budget, less the appropriation from the
18 waste fund. We do not keep the fund and during the past
19 six years we have collected between 97 to 101 percent of
20 the budget.

21 For this DSI, we are looking at two separate
22 issues. The first issue focused on how fees should be
23 used or how fees should be considered when one makes a
24 decision about what activity NRC should be performing.
25 That is, in making decisions about what activity NRC

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1 should perform in support of its mission, to what extent
2 should fees be considered.

The second issue relates to how NRC should address fairness and equity concerns that have arisen in the implementation of the 100 percent fee recovery.

6 There are two, there is one basic issue with
7 one subsume issue. The issue is what funding mechanisms
8 should NRC pursue in addition to annual appropriation with
9 associated fee recovery to foreign activities that are not
10 required to be funded through appropriation.

11 There are certain activities that NRC performs
12 that are not required to be included as part of their
13 appropriation and we'll be talking more about what those
14 activities are later.

15 For those activities that we can perform above
16 and beyond our appropriated fund, there's a question of
17 how do we get the FTE's for those activities. Currently,
18 our FTE's are linked to our appropriation and we are
19 controlled by the number of FTE's that we can have. So we
20 are constrained in the number of people we can have at the
21 NRC, even though we may be able to receive funds in
22 addition to the appropriation and we could afford to pay
23 for more FTE's.

24 So the issue there is in performing
25 reimbursable work which is similar to contract work, how

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1 should the NRC address the four time equivalent
2 consideration that limit the number of the NRC staff.

3 The key factors that we considered are listed
4 on this chart. The first key factor is that we have two
5 methods of receiving funds. The first method is through
6 appropriation that are approved by Congress and signed by
7 the President and the second method is through
8 reimbursement and for reimbursement we can perform work
9 for other federal agencies and other organizations where
10 we have been explicitly given the authority to do so.
11 Funds from reimbursements are additive to the NRC's
12 appropriation.

13 The second major factor that we considered is
14 the Omnibus Budget Reconciliation Act of 1990 which
15 requires the NRC to recover 100 percent of its budget
16 authority by assessing fees. Currently that act expires
17 in fiscal year 1998. There is, however, consideration
18 being given to extending the act beyond fiscal year 1998.

19 Last year there was one proposal that was
20 being considered by Congress that would extend it through
21 fiscal year 2002. So as part of the fiscal year 1998
22 appropriation process as it's coming up, the extension
23 will be addressed during that time.

24 The next, I guess, major consideration in
25 developing this option for this issue and in looking at

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1 the pros and cons of this issue is that fees have been
2 highly controversial. We have received over 2,000
3 comments on the various fees rules that we have issue. We
4 annually issue fee rule and we get comments that vary from
5 500 and I guess last year we received light eight
6 comments. We've had hundreds of letters from Congress,
7 from the licensees and from applicants that pay fees.

8 The cost fees were so controversial in the
9 earlier days, and probably to some extent are maybe lesser
10 now. Congress asked us in the Energy Policy Act to
11 evaluate our fee program and to identify ways to improve
12 the fairness and equity of the fees that were being
13 assessed. We were requested to go out and seek public
14 comment on that evaluation, and we did.

15 In summary, that report identified two major
16 concerns. The first concern was that fees, 100 percent
17 fees were new and people did not see that they were value
18 added. That is, the service that they were receiving was
19 the same with 100 percent that they had been receiving
20 when it was less than 100 percent.

21 The other concern that was raised was that not
22 all beneficiaries of NRC's activity pay fees and they
23 don't pay fees because of law or because of Commission
24 policy. For example, the existing law would prevent us
25 from assessing fee for service or license or inspection

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1 fee to another federal agency. We can, however, assess an
2 annual fee to those agencies.

3 The law requires us to consider the impact of
4 fees on small entities and if there is a significant
5 impact on a significant number of small businesses, we are
6 to look at ways to mitigate that and what we did was we
7 set a maximum fee. So if you don't get, you know, we set
8 a maximum fee that a small business would have to pay.
9 Different between that maximum fee and what they would
10 otherwise pay must be paid by other licensees.

11 The Commission, as a matter of policy, for
12 example, granted an exemption to non-profit educational
13 institutions from all NRC fees. So the concern that we
14 identified was that not all beneficiaries of NRC's
15 activity pay fees and that was viewed by some licensees as
16 being unfair and inequitable.

17 As a result of this study, we recommended to
18 Congress that they take approximately ten percent off the
19 fee base, that is NRC be required to recover approximately
20 90 percent of its budget instead of 100 percent. We
21 submitted that report to Congress along with that
22 recommendation. There was Congressional hearing where we
23 testified and there were representatives from industry
24 that also testified, both the reactor industry and the
25 mine industry testified and supported that recommendation.

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1 No action was taken by Congress. We have had
2 subsequent discussions with O&B and so far no action has
3 been taken by O&B.

4 Given that there was no Congressional action,
5 what we did with the roughly 50 million or so was treat it
6 similar to overhead and pro-rated it to all licensees
7 based on the amount of fees they would otherwise pay. We
8 have been doing that for the last couple years and we're
9 continuing to do that until something changes.

10 There's one last factor, I think, that plays a
11 role in the evaluation of this issue paper and that has to
12 do with the balancing the federal budget. The indications
13 are that Congress and the administration will continue
14 their efforts to balance the budget. The implication of
15 this factor is that one, is that the amount of budgets
16 that will be available to the NRC and other federal
17 agencies will be reduced and I think you've heard during
18 yesterday and this morning discussion of the limitation on
19 the amount of funds that the NRC may have in the future.

20 The second implication, and I think
21 implication more for this particular DSI, is that the
22 other way to balance the budget is not to reduce revenues.
23 So I think there will continue to be pressure to maintain
24 revenues that are being generated and the fees that we
25 collect is a source of revenue for the treasury.

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1 What I will do now is talk about the options
2 for the two separate issues. The first set of options and
3 there are four options, deal with the question of how do
4 we consider fees in making a decision about what
5 activities we perform. To develop these options, we
6 divided NRC's activities into two categories.

7 The first category is what we call mandated
8 activities. These activities are performed in response to
9 statutes, executive orders and treaties.

10 The second set of activities are non-mandated
11 activities and these are activities that we perform in
12 response to a request mostly from other federal agencies
13 and we perform those activities as a service to that
14 particular agency.

15 The first option that we developed is for most
16 mandated activities, that is those activities that are
17 performed in response to treaties, statutes, et cetera, we
18 would not consider fees in making decisions. For non-
19 mandated activities, we would consider fees in making a
20 decision.

21 This option represents what we are doing
22 today. The difference between this option and the second
23 option is that in this option, in the first option we do
24 in selected cases consider fees as it relates to mandated
25 activities. In the second option, we would not consider

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1 fees for mandated activities under any circumstances and
2 we will continue for non-mandated activities to consider
3 fees and request the NRC be reimbursed for the cost of
4 performing such activities.

5 The third option would be based on where we
6 were before we went to 100 percent fees. This option,
7 under this option, the NRC would not consider fees at all
8 in making any decision about what activities it would
9 perform. That is, mandated and non-mandated activity
10 would be treated the same as it relates to fees.

11 Option four is what we would call, we have
12 labeled it fee for service option. Under this option, we
13 would consider the payment of fees in making decisions
14 about all activities performed by the agency. To
15 implement this option would require legislation.

16 There are two features that are common among
17 each of the four options that I've discussed. The first
18 feature is that under either one of these options, we
19 would request Congress and the administration to consider
20 fees when adding new authority. For example, when
21 Congress gave us the authority to oversee the uranium
22 enrichment activities of the U.S. Enrichment Corporation,
23 which is a federal agency, they also gave us the authority
24 to assess a fee for service to that organization.

25 Likewise, recently when we were asked to

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1 perform some reviews for the -- facilities, we went to
2 Congress and identified that we were performing those
3 reviews and ask that they remove the cost of those
4 activities from the fee base and in the fiscal year 1997
5 appropriation, they did remove the cost for those
6 activities from the NRC fee base. That is, we are not
7 required to collect fees, even though the funds are
8 appropriated.

9 The second feature that is common among each
10 of the four options is that we will evaluate NRC
11 activities for effectiveness and efficiency. That is, we
12 will continue to seek the budget that will allow us to
13 carry out the mission that we have in the most efficient
14 and effective way.

15 I'd like to turn now to the other issue and
16 talk about the funding mechanisms. As you recall, what we
17 are dealing with here is ways to make the assessment of
18 fees as fair and as equitable as we can.

19 Again, we have four funding mechanisms. The
20 first funding mechanism would permit us to recover the
21 cost of providing requested service from the requester,
22 either using fees or through reimbursable agreements. The
23 cost of those activities that serve the collective
24 interest of the general public would be recovered from
25 general revenues raised by taxes.

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1 This option is similar to what we recommended
2 to Congress as part of the Fee Policy Study in response to
3 the Energy Policy Act. What we recommended there, what we
4 were in essence saying there was there are activities that
5 we are performing that are not necessarily required for a
6 specific licensee, but are being performed in the
7 collective interest of the public and therefore we
8 recommended the cost of those activities be removed from
9 the fee base.

10 The next option, option two is what's
11 happening today. Currently NRC licensees and applicants
12 pay approximately 100 percent of the appropriated budget
13 authority that we are required to recover under the
14 Omnibus Budget Reconciliation Act of 1990 and we are using
15 reimbursement agreement to fund non-mandated activities.
16 Under this option we will continue to assess fees this
17 way.

18 Under option three, we would request that
19 Congress modify the fee related act to give us more
20 flexibility in assessing fees. For example, we could ask
21 that the Atomic Energy Act be modified to eliminate the
22 restriction of not charging fees to government agencies.
23 We could ask that we be given authority to charge an
24 annual fee to other than people who hold a license from
25 the NRC.

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1 This option would give us a broader flexibility to assess
2 fees to all beneficiaries of NRC services.

3 Under option four, would be basically go to
4 Congress and say rescind the requirement for NRC to assess
5 fees and obviously if we would be granted this option or
6 granted that relief, the issues that we are talking about
7 here would no longer exist.

8 I would like to note that in the past, NRC has
9 taken the position that it would not take a position on
10 how the U.S. Government raises revenues. That is whether
11 they raise revenues through fees assessed to beneficiaries
12 of services or through taxes. This would require the NRC
13 to take a position on such issues.

14 After looking at these options and the
15 consequence of adopting these options, the Commission, in
16 its preliminary view on the first issue of how should NRC
17 consider fees and make a decision on activities chose,
18 made the decision shown on this chart. What they said was
19 programmatic decisions in response to NRC mandates should
20 not be driven by fees and should be based on their
21 contribution to public health and safety.

22 The Commission provided a basis for this
23 position and I would like to read some excerpts from the
24 Commission Preliminary Views. What the Commission said is
25 the Commission believes that the NRC's public health and

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1 safety mission must be the foundation in making the
2 decision about what activities the agency should perform.
3 In making decisions on the work that the NRC will perform,
4 the Commission does and will continue to consider the cost
5 of its activities and consistently examine ways to
6 accomplish its mission within a responsible budget.

7 Whether the NRC's budget is funded by the
8 public through taxes paid to the treasury or by licensees
9 through fees paid to the treasury, the NRC's decision
10 about its programs should be the same. The Commission
11 believes the fees should not be a primary factor in
12 determining the work to be performed in response to the
13 NRC's health and safety mission.

14 It is the Commission's position the
15 programmatic decision should not be fee driven and should
16 be based on their contribution to public health and
17 safety.

18 That was the basis for the Commission's
19 preliminary view on the first part of the issue.

20 With regard to how we should receive our
21 funds, that is, how we should look at the fairness and
22 equity issue, the Commission adopted option two and in
23 adopting option two, what the Commission's preliminary
24 review is that the agency will continue the current
25 approach whereby applicants and licensees continue to pay

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1 for approximately 100 percent of their appropriated budget
2 authority. The Commission went on to say that
3 reimbursable agreements will be used to fund non-mandated
4 activities.

5 With respect to the FTE constraint, the
6 Commission's preliminary view is that they would support
7 the staff pursuing removal of the FTE constraint
8 associated with reimbursable work. That is, for the staff
9 to work with O&B to pursue options that will allow the
10 Commission to have FTE's above those that are normally
11 associated with the appropriation.

12 This represents a summary of the Commission,
13 of the options and the Commission's preliminary views on
14 DS1 21 as it relates to fees. At this point, I'll turn it
15 back to Doug.

16 MR. BROOKMAN: Thank you, Jesse.

17 So the preliminary view of the Commission,
18 which is option number two, really breaks down into
19 considering the two big blocks, our mandated activities
20 and how to recover in a fair and equitable way based on
21 the preliminary view.

22 So maybe we should deal with the mandated
23 activities first. Questions or comments surrounding the
24 Commission's view that there should be no consideration of
25 fees for those mandated activities? How do you feel about

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1 that? Is that a reasonable way for the Commission to
2 proceed? Are there other options they should explore?

3 This, of course, endorses the current practice
4 and --

5 MR. FUNCHES: It -- the current practice and
6 from time to time, under the current practice, we do feed
7 the question of who should, if we perform this activity,
8 should we perform this activity if the, if maybe one of
9 the beneficiaries maybe cannot pay fees under current law.
10 I think what this does is solidifies the way the
11 Commission has acted in the past.

12 MR. BROOKMAN: This position, of course, this
13 preliminary view endorses that for those issues that are
14 mandated by law, those activities that are mandated by
15 law, that the Commission needs to do those to the extent
16 it feels as though it should do those and fees should not
17 enter into the equation.

18 MR. FUNCHES: That is correct, and I think it
19 goes beyond just the activities mandated by law because it
20 also picks up things that we always respond to in an
21 international arena as it relates to treaties, for
22 example, or as it relates to executive orders, et cetera.

23 MR. BROOKMAN: Now that I've heard you give
24 this presentation a couple of times, it's even more
25 apparent to me that this is not a crystal clear, this

1 subject of fees. There are kind of several layers of it
2 to kind of peel back, but I'm hoping to understand what
3 those of you that are sitting in the audience, what your
4 silence means in this case.

5 Does it mean that you think that this is a
6 sensible approach or does it mean that you're confused?
7 Or give me a sense of where this is for you.

8 Yes.

9 MR. ANGUS: Mike Angus, Pacific Gas and
10 Electric, Gable Canyon Power Plant.

11 From my perspective, I'd like to get a
12 clarifying question answered and a little bit more
13 description of what constitute mandates activities and
14 non-mandated activities. What I would like to find out
15 over the course of this discussion is where do the
16 oversight activities from NRR and the region fall? Are
17 they in the mandated activities or non-mandated activities
18 and what are some of the thoughts on ways to alternatively
19 address the fee issue?

20 MR. FUNCHES: In response to your question,
21 the activities that the regions perform, the activities
22 that NRR performs by and large as it relates to licensees
23 or applicants in commercial power or for material license,
24 those are activities that we are performing in response to
25 the Atomic Energy Act mission that we have for public

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1 health and safety. So they would be clearly mandated.

2 Most of the activity we perform are mandated
3 activities. Currently we perform approximately \$10
4 million of activities on a reimbursable agreement, that is
5 where we are performing a service for somebody else. We
6 are performing some reimbursable agreement work with the
7 U.S.A.'s office where we are helping them with some
8 overseas activity because we have the expertise. They
9 give us the money. In many cases, we contract out for the
10 support.

11 We perform some work for the Department of
12 Defense, I guess nuclear navy and that work is performed
13 under reimbursable agreement. We did some for NASA
14 because we had the expertise on a space launch. So in
15 those cases, we have a choice of performing the work or
16 not performing it. It's like they come to us under the
17 economy act for basically as a contract and say you have
18 some expertise, can you help us.

19 Most of the activity we perform are in
20 response to the Atomic Energy Act. That is, if we expect
21 we're performing our responsibilities to protect public
22 health and safety given to us under the Atomic Energy Act.
23 If we license a commercial power plant, we are doing that
24 under the same authority.

25 So we do, however, perform certain, like we

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1 perform certain activity with the International Atomic
2 Energy Agency under the Nuclear Proliferation Treaty. We
3 support their activities. So we do perform activities in
4 response to treaties also. We also respond, perform
5 certain activities in response to executive orders. So
6 all of those activities we are saying are mandated and
7 what we are trying to say there is that given those
8 activities, you know, we've got to perform those because
9 we're required to do them.

10 What we actually do, whether we inspect and
11 how much inspection is a decision that we have to make and
12 we try to do that to be as effective and as efficient as
13 we can.

14 MR. BROOKMAN: Did that answer your question?
15 Would you like another specific example or did that answer
16 it?

17 MR. ANGUS: Yeah, that answers the question,
18 thank you.

19 MR. BROOKMAN: So then do I interpret that
20 your lack of comment on this subject means that you --
21 yes, I knew I could provoke you eventually.

22 MR. SWANK: You're right, I'm easily provoked.
23 Earlier in your discussion you mentioned a 40 to \$50
24 million non-mandated basis of activities that are non-
25 mandated, is that correct?

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1 MR. FUNCHES: No, the 40 to \$50 million would
2 include a combination of things. One, it would include
3 some activities that are non-mandated. It would also
4 include some activities where we're constrained from
5 assessing fees to the beneficiary of the activity. For
6 example, it includes the costs of performing license
7 reviews and inspections for federal agencies.

8 For example, this is a back example, when DOE
9 submitted application for advanced reactors on LMFBR, for
10 advanced reactor concepts, we performed those reviews and
11 we could not assess a fee to them.

12 So those types of activities would be included
13 in the \$50 million, so it's not just all non-mandated
14 activities.

15 MR. SWANK: But you did mention that for
16 federal agencies where you're not able to assess fees, you
17 can assess yearly charges?

18 MR. FUNCHES: Annual fees.

19 We can assess two types of fees. The first if
20 what is normally called a fee for service under 10CFR.17
21 and what those are basically inspection and licensing
22 application review, either amendment or a new license.

23 Funds that are not recovered that way are
24 recovered through an annual fee that we're given the
25 authority to assess to reach 100 percent.

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1 MR. BROOKMAN: Just as a point of
2 clarification, when you say those things for which you're
3 not able to actually recover your costs, whether it's
4 through the annual fee or some other fee?

5 MR. FUNCHES: For a review of a DOE or other
6 federal facility, license review and inspection, we cannot
7 charge them a fee for service for that inspection or
8 application review. We can charge them an annual fee.

9 MR. SWANK: Okay, let's take an average,
10 because I realize from year to year it's going to vary and
11 how much you charge them in the annual fee is going to
12 vary, based on what your expectations are, the work you're
13 going to do, I would assume, and for each of the agencies.

14 For non-mandated work, how much of the total
15 let's say 40 to 50 million average, I'm taking that as an
16 average over say the last three years, how much of that
17 would you say is recovered outside of the fee structure to
18 licensees?

19 What I'm trying to get to is to get an
20 understanding of what the scope of the monies being
21 charged to licensees in the form of fees that we're
22 paying.

23 MR. BROOKMAN: For which you do not receive a
24 direct benefit.

25 MR. SWANK: That's correct.

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1 MR. FUNCHES: Okay, let me try and answer that
2 question two ways.

3 For non-mandated activities, starting about a
4 year ago, we basically went to we're going to pursue
5 reimbursable agreements for those activities and, again,
6 that runs about \$12 million. We're doing that through
7 reimbursable, not to fees now assessed to NRC licensees.
8 So that \$12 million is being paid by AID, by DOE, by
9 whomever, NASA, whoever we're doing the service for and so
10 starting in fiscal year 1997, the amount of money that we
11 will be assessing to NRC licensees for non-mandated
12 activities is going to be fairly low.

13 The other activities where there are
14 beneficiaries of that activity but the beneficiaries does
15 not pay a fee still represent roughly about \$50 million.

16 MR. SWANK: Could you give me an idea -- I
17 understand colleges and universities, non-profit, you
18 don't charge them and we pick up the fee for that.

19 MR. FUNCHES: Yeah, federal agencies, them
20 being exempt from fee for service, they have roughly a
21 million and a half dollars there. Non-profit education
22 about \$6 million. International activities about \$10
23 million. Small entity reduction about \$6 million.
24 Oversight of the Agreement States about \$6 million.

25 MR. BROOKMAN: I saw a flinch on small entity

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1 reductions. What is that?

2 MR. SWANK: I'm not at all familiar with that,
3 I'm sorry.

4 MR. FUNCHES: Okay, what happened was we're
5 required to look at small businesses and we're to look and
6 see if an NRC regulation would have a substantial impact
7 on a significant number of small businesses. We make the
8 finding of yes to that question for the fee rule. As a
9 result of that, we are now supposed to look at
10 alternatives for mitigating the impact and the agency has
11 a choice not to mitigate the impact and take the
12 consequences or to mitigate the impact. The agency chose
13 to mitigate the impact and the way they mitigated the
14 impact, they would say if you are a small business making
15 less than X million dollars in gross receipts a year, and
16 if your fee would be \$3600 annual fee, you will pay no
17 more than \$1800. So the other \$1800 has to be recovered
18 somewhere else and we've had that in place since we
19 started because the finding was made in response to
20 another federal requirement called the Regulatory
21 Flexibility Act.

22 We do a lot of generic decommission and
23 reclamation activities for licensees that have gone out of
24 the business and there's no licensee to assess. So
25 there's a cost associated there.

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1 When you add up the total, you get about ten
2 percent of the NRC's budget.

3 MR. SWANK: Okay.

4 MR. CROCKETT: Continuing in the same vein, is
5 it possible for you to say how much of that, let's say ten
6 percent of the budget, is paid for by reactor licensees
7 under Part 171 and how much is paid for by materials
8 licensees?

9 MR. FUNCHESS: The reactor licensees pay
10 approximately 90 percent of it and the other ten percent
11 is paid by the materials licensees.

12 MR. SWANK: Okay, I guess given that
13 clarification, I would disagree with the Commission's view
14 that the licensees should continue to pay 100 percent of
15 the fees. I walked away yesterday with a number in my
16 mind that was significantly smaller than the number you
17 threw out today and at that point felt it wasn't perhaps
18 even worth pursuing.

19 40 to 50 million even spread over 110
20 licensees is certainly something that's worth your going
21 after and us, as licensees, going back to our
22 Congressional Representatives and going after.

23 MR. FUNCHESS: So you're saying you would
24 support us in one of the funding mechanisms --

25 MR. BROOKMAN: Yes, could you put the option

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1 list back up, John?

2 So this is the transparency labeled
3 alternative funding mechanisms and is this the one that
4 you think --

5 MR. SWANK: That is the one I would recommend,
6 yes.

7 MR. BROOKMAN: Which reads, recover the cost
8 of providing requested services from the requester using
9 fees and reimbursable agreements cost of activities that
10 serve to reflect the collective interest of the general
11 public would be recovered for general revenues raised,
12 from general revenues raised by taxes, just for the
13 record.

14 MR. SWANK: That's correct.

15 MR. FUNCHEZ: Could I just make one comment?

16 I think the number that was being discussed
17 yesterday were in relationship to DSI 4 and that has to do
18 with Agreement States and the issue there was a very small
19 piece of this and that were related to the training,
20 travel and tech. assistance to Agreement States and it was
21 about a million dollars.

22 MR. SWANK: Actually, I was in the
23 international meeting and I don't think a number was
24 actually thrown out. I just created a number in my mind,
25 which was quite a bit smaller.

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1 MR. BROOKMAN: I'm wondering if any of the
2 rest of you, maybe we should back up one step and consider
3 the other options and if any of the rest of you consider
4 that the Commission should view these options differently,
5 aside from the comment that we've already heard.

6 Okay, then let's move then, and thank you for
7 the detailed explanation on those fees. It's a lot, it's
8 quite a spread of different activities.

9 Maybe we should move then to talk a little bit
10 about how to recover in a fair and equitable way. I see a
11 few heads nodding in the back. Would you like to start
12 off by making a few opening comments or broad comments at
13 the outset?

14 MS. JOHNSON: Just a general comment. Irene
15 Johnson, Commonwealth Edison.

16 As the largest nuclear utility, most licensed
17 reactors in the country, sitting through this explanation
18 I think I'm much more sensitive to the alternate funding
19 mechanism issue and would concur in Dave Swank's
20 assessment in terms of a need to seek an alternate method
21 of recovering costs because I think that this is a fairly
22 substantial number and as we get ready to deal in a more
23 competitive environment, this is going to clearly put us
24 all at a disadvantage.

25 MR. BROOKMAN: Can you say a little more about

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1 the under pinnings of that competitive environment that
2 would cause you to take action in this case?

3 MS. JOHNSON: Again, when we're looking at
4 reimbursements for things that we don't clearly receive a
5 benefit from, us or our customers, I think there's a need
6 to be more aggressive in our interactions on this issue.

7 MR. BROOKMAN: And Jesse, I recall you saying
8 that either in this presentation or the last presentation,
9 and it's in your issue paper, that you had previously gone
10 to Congress and sought relief for this.

11 MR. FUNCHEZ: Yeah, as I mentioned, we had
12 completed a study in 1974, sent the study to Congress in
13 '74, testified, I believe the, I can't remember, there was
14 a utility that represented the industry and the Wyoming
15 Mining Congress also testified and we had recommended that
16 approximately ten percent of the NRC's budget be excluded
17 from fees.

18 And the issue really, and the discussion at
19 the hearing, and I guess the questions at the hearing
20 really boiled down to well, if we take off \$50 million in
21 revenues, how do we make up the difference? And I think
22 that's the issue that Congress was dealing with. No
23 action was taken, however, on that particular
24 recommendation.

25 MR. BROOKMAN: And I note that --

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1 MR. FUNCHESS: From time to time the question
2 still comes up, though, on whether or not something should
3 occur and when I say from time to time, it comes up in
4 Congress. We still get questions on the particular issue.

5 MR. BROOKMAN: John has put up the two slides
6 that feature the four options under alternative funding
7 mechanisms and I'm wondering if others would like to make
8 comments based on this range of alternative funding
9 recommendations.

10 MR. ANGUS: Yes, I'd like to do that second.

11 MR. BROOKMAN: By all means.

12 MR. ANGUS: First, Mike Angus, Pacific Gas and
13 Electric, -- Power Plant.

14 I'd like to maybe add a little bit of
15 additional detail to what the competitive market looks
16 like.

17 MR. BROOKMAN: That's helpful.

18 MR. ANGUS: In California, we are right on the
19 cusp of going to a competitive rate making situation for -
20 - Canyon. Our projections out in the year 2000, 2001 are
21 indicating that our total profit from the plant may be on
22 the order of \$50 million to \$100 million annually. When
23 you take the \$15 million that this gentleman's speaking of
24 and then that constitutes nominally a half a percent of
25 the entire revenue over the course of the year.

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1 As you get out into the year 2000, 2001, that
2 half a million dollars takes on a very significant part of
3 the revenue base for the power plants and actually is at
4 the point where it contributes to the decision whether or
5 not you operate or continue to operate the power plants.
6 So those are the kinds of numbers we are dealing with and
7 they're not unsubstantial, by any respect.

8 I would also agree that since these numbers
9 are so large, especially in a competitive environment,
10 that we would also say that the fees that need to be
11 recovered from licensees be recovered from licensees, but
12 the fees that are being generated but that are being paid
13 for by licensees currently to cover the cost of
14 inspections at colleges and universities and some of the
15 other non-mandated requirements, should be recovered
16 through general tax structures.

17 MR. FUNCHESS: That's definitely --

18 MR. BROOKMAN: Jesse again.

19 MR. FUNCHESS: The competitive environment is
20 definitely another factor I think we should add in terms
21 of external environment. I think that was one of the
22 focus questions that we had or the facts that we had
23 mentioned and I think that's definitely a very good
24 comment and is a factor that should be included in with
25 the external environment factors that we have today.

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1 MR. BROOKMAN: Jesse, I don't recall if you
2 said in your paper, number three, the reason the
3 Commission did not choose to amend OBRA-90 and AEA Act of
4 1954 to give the NRC maximum flexibility to assess fees.

5 MR. FUNCHEZ: No, it wasn't in the paper and I
6 can't speak specifically to the Commission why they would
7 or would not have picked that option. They did not, in
8 the preliminary view, give a rationale for that. I think
9 some of the things I'm for sure the Commission did
10 consider, because it was one of the external factors that
11 was specified in the paper is this issue of Congress
12 looking at a -- of money and if they either give up
13 revenues they you've got to find offset and cut somewhere
14 else and I'm for sure that's a factor that has been
15 considered.

16 I think the other factor, you know, no doubt
17 was available to the Commission and how they -- is the
18 fact that they had going before and looked at the options.

19 But I can't specifically say why the
20 Commission didn't pick option one, three, or four; they
21 did pick option two.

22 MR. BROOKMAN: Let me ask, yes, by all means,
23 yes.

24 MR. AINGER: Ken Ainger, Commonwealth Edison.

25 Given what you've heard about how these

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1 unrecoverable fees can impact the plants in a competitive
2 environment, how do you plan on taking that into account
3 in how this direction setting issue is resolved?

4 MR. FUNCHES: There will be a stakeholder
5 report, interaction report that will go to the Commission.
6 We will write up a summary of the comments that we have
7 heard here, a summary of the comments we have heard in the
8 other two stakeholder meetings plus the written comments
9 and this will be pointed out as an external factor that
10 was raised and that will be presented to the Commission
11 for their consideration in making their final decision.

12 As we mentioned earlier, what the Commission
13 has issued so far is what they call their preliminary
14 views and prior to making final decisions, they will take
15 the input from the Stakeholder Interaction Meetings and
16 from written comments and then make a final decision. But
17 it will be pointed out as another factor that should be
18 considered.

19 MR. CRAIG: John Craig.

20 I just want to reinforce what Jesse said and
21 you have opportunity to provide some written comments, but
22 what I think I heard you say was that the fees that you're
23 paying for, I'll use the term overhead, not directly
24 related to the benefits to the power reactor, that that
25 amount of money is so large and it's so significant it's

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1 going to determine much bigger decision sometime shortly
2 after the turn of the century in the --, and if that's the
3 case, then I'd encourage you to provide that kind of
4 comment to us when you submit some written comments to us.
5 It will be reflected on the transcript, but I think with a
6 little more information and some general figures it would
7 be very helpful as we then identify this particular issue
8 to the Commission as it makes a final deliberation on this
9 particular DSI.

10 MR. ANGUS: Mike Angus, Pacific Gas and
11 Electric.

12 This \$50 million that we're talking about for
13 colleges and universities, that represents a very small
14 portion of the overall fees that we pay. The last time I
15 looked, our annual bill from the NRC is roughly \$10
16 million. I'm sure the one from Commonwealth Edison is
17 substantially higher than that.

18 MR. FUNCHES: How many plants you got? You
19 got what, two?

20 MR. ANGUS: Excuse me?

21 MR. FUNCHES: How many plants?

22 MR. ANGUS: We have two.

23 MR. FUNCHES: Okay.

24 MR. ANGUS: And our bill is annually \$10
25 million and when you look at the \$9 million or that

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1 \$500,000 that represents -- of the \$50 million, that is a
2 substantial impact on the overall revenues that are being
3 charged to the plant.

4 The other side of this equation from fees and
5 how the fees are administered and how the fees are
6 actually paid is I'd like to find out what's being
7 considered within the NRC to actually identify some costs
8 that can be reduced that could help mitigate some of the
9 fees. Some examples, two examples that I'll provide are
10 the Code of Federal Regulations currently requires that
11 hard copies of FSAR's be submitted to the Nuclear
12 Regulatory Commission on an update schedule. I could save
13 substantial costs by sending 20 diskettes rather than 20
14 hard copies of the FSAR.

15 Another example is that there are currently
16 inspections that are performed at power plants under
17 Inspection Module 40501, which are self assessments that
18 are performed by the licensees and then the NRC, if the
19 self assessments are adequate, can take credit for those
20 in their overall inspection requirements.

21 Are there ways to offset some of those fees
22 since the NRC's inspection hours are reduced because the
23 licensee has done the self assessment and it's acceptable,
24 could the NRC reduce the amount of fees that are proposed
25 to the licensees and are those kinds of things being

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1 considered in addition to just how the fees are being
2 collected?

3 MR. FUNCHESS: Let me just, and maybe Frank or
4 somebody can address the specific.

5 Obviously one of the things that we've been
6 looking at as part of this outcome of this strategic
7 session or baseline is to look at the activities we're
8 performing once we develop a Strategic Plan and I think
9 we've all talked about trying to balance the, you know,
10 what needs to be done and trying to do that in the most
11 effective way, trying to look at risk and a whole lot of
12 other things to make sure that we're focused on the right
13 things and that we have a issue paper here on the role of
14 industry and how we might be able to take credit for some
15 things that industry does.

16 I think in the broader concept, we are always
17 looking for ways to be as efficient as we can to get the
18 most bang out of the limited bucks that we do have, but I
19 think Frank Miraglia might have some comments specifically
20 on the two points that you made.

21 MR. MIRAGLIA: With respect to the inspection
22 resources and self assessments, we have provided within
23 the context of the inspection program credit for those
24 self assessments. If the licensee performs a self
25 assessment consistent with our program and objectives,

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1 you're getting reduced inspection in that the oversight
2 and the audit of that is at a lesser manpower rating and
3 so the specific inspection costs are down considerably and
4 those costs are being passed on or those reductions in
5 cost are being realized by the utility right now.

6 In addition, within the context of the reactor
7 program, we have tried to align inspection resources based
8 upon performance and such that good performing plants,
9 multiple unit sites, we have reduced the number of
10 resident inspectors assigned to good performing sites
11 rather than the mandatory with the prescribed policy of N
12 plus one where there's indicative of good performance we
13 say we don't require that and we could reduce the number
14 of resident inspectors. So those costs and cost savings
15 are being realized now are in the fee base and being
16 reflected in the fee base.

17 With respect to your comment on the technology
18 and FSAR copies and electronics, we've touched upon that
19 issue in a whole range of DSI's that have been discussed
20 in the last two days. It was part of the public response
21 initiative yesterday in talking about how can we get
22 better use of the technology out there. Simple thing like
23 electronic, how do you transfer data electronically raised
24 a whole array of issues in terms of what constitutes a
25 signed original in electronic sense and it raises a whole

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1 range of issues that we're trying to deal with and come to
2 some common understanding. Those things are going to take
3 time.

4 We have had pilots with some utilities in
5 transferring FSAR information applications in an FSAR
6 electronic kind of way to pilot those kinds of activities.
7 But those are on the horizon and we're going to try and
8 maximize those kinds of uses as well. Internally we're
9 looking at ways of how can we simplify the inspection
10 report writing by providing electronic formats so the
11 input data can go in and cut down inspector time for
12 writing reports and things like that. So those things are
13 being looked at an in an active kind of way. That's the
14 thread of many of the issue papers you heard here in terms
15 of the efficiency and the effectiveness and the use of
16 technology.

17 I think they'll come and they'll be realized
18 in small increments over time.

19 MR. BROOKMAN: They will come especially, let
20 me say, based on the detailed comments that you provide
21 and that's very, very helpful and so thanks to John for
22 making that comment earlier about the level of detail
23 about how it affects, for example, Diablo Canyon, these
24 fees and your future to have that more detail comment in
25 the record.

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1 And your name, sir, would you say your name,
2 again?

3 MR. ANGUS: Mike Angus.

4 MR. BROOKMAN: Mike, thank you, and --

5 MR. FUNCHESES: Doug?

6 MR. BROOKMAN: Yes, Jesse?

7 MR. FUNCHESES: Let me just give you a couple of
8 numbers. We have, I think, at the NRC the focus on trying
9 to get the budget down and that doesn't mean we can't
10 continue.

11 Let me just give you some total numbers of the
12 amount of fees that we're required to collect in the past
13 years. In fiscal year 1993, we were required to
14 collection approximately \$519 million. That dropped to
15 513 million in fiscal year 1994. 504 million in fiscal
16 year 1995 and it dropped to \$462 million last year. So I
17 think the trend of the amount that we've been collecting
18 kind of reflect some of the efforts that we have been
19 undergoing to try to make sure that what we have are the
20 resources we need to perform the mission in the most cost
21 effective way that we know how and I think one of the
22 goals of this Strategic Assessment Baseline is to
23 continually reinforce that concept.

24 MR. ANGUS: Mike Angus, Pacific Gas and
25 Electric.

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1 Just to help with the understanding of the
2 numbers that we're looking at, this last year we were able
3 to charge 10.65 cents per kilowatt hour. Our expected
4 charges at the end of the year 2001 are about three cents
5 to three and a half cents a kilowatt hour. So when you
6 look at the revenue extremes, it is pretty dramatic.

7 MR. FUNCHESS: I agree, it fits right into the
8 type of question that the Commission is seeking or there
9 are facts that we missed in presenting the issue and I
10 think that's a very important factor and will definitely
11 show up in December.

12 MR. BROOKMAN: And those detailed comments,
13 not only about the specifics of fees, but about specific
14 ideas on the cost side of the equation, those are very
15 helpful. So thank you for those.

16 Additional comments on fair and equitable, the
17 issue of fair and equitable and this issue of how fees,
18 how actual expenses get recovered?

19 Jesse, do you have any additional questions
20 that you'd like to put to the audience at this point?

21 MR. FUNCHESS: No, I think we've had very good
22 feedback on the options and some very good feedback on
23 whether we're missing some things in our consideration and
24 I think the comments you've made will be very useful to
25 the Commission in making its final decision on both of the

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1 issues here.

2 MR. BROOKMAN: Let me then close by not only
3 thanking you, but by reinforcing the comment that John
4 made earlier about some of the specifics being in the
5 written record to buttress these oral comments and that
6 would be very helpful to the Commission as it goes
7 forward.

8 So this has been a very -- would you like to
9 make a closing comment, John?

10 MR. CRAIG: I'd like to make one comment. In
11 case one of the participants wasn't here earlier when Jim
12 Milhoan announced that the public comment period had been,
13 the closing date had been extended to the 2nd of December.

14 MR. BROOKMAN: So thank you very much to all
15 of you and this has been very, very helpful. Thanks
16 again.

17 (Whereupon, the proceedings went off the
18 record.)

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