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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

PUBLIC MEETING

Concerning  
Appendix C to 10 CFR 2  
A Proposed General Statement of  
Policy and Procedure for Enforcement Actions  
(Published in 45 FR 66754)

7th Floor Banquet Room  
Holiday Inn-Midtown  
1311 Walnut Street  
Philadelphia, Pennsylvania

Thursday, December 4, 1980

The meeting was convened at 1:00 p.m., pursuant to  
notice, Mr. Boyce Grier presiding.

Present for NRC:

Boyce Grier, Director, Region I (Philadelphia)  
Office of Inspection & Enforcement

James G. Keppler, Director, Region III (Chicago)  
Office of Inspection & Enforcement

Dudley Thompson, Director  
Enforcement and Investigation Staff  
Office of Inspection & Enforcement

James Lieberman, Deputy Chief Counsel  
for Rulemaking & Enforcement  
Office of the Executive Legal Director

Charles E. Norelius, Assistant to the Director  
and Enforcement Coordinator  
Region III (Chicago)  
Office of Inspection & Enforcement

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P R O C E E D I N G S

1  
2 MR. GRIER: All right, if you'll take your places,  
3 I think it's time to begin our session.

4 Good afternoon. I am Boyce Grier, Director of the  
5 Nuclear Regulatory Commission Region I Office. We are located  
6 in King of Prussia which, as most of you know, is a suburb of  
7 Philadelphia.

8 I'd like to welcome you to this meeting. This is  
9 the third of five regional conferences that are being held to  
10 explain the proposed revisions to the NRC enforcement policy.

11 Before we begin the briefing, I would like to make a  
12 few announcements regarding administrative matters:

13 First, there are two secretaries from my office who  
14 are here in the back of the room. They will be available to  
15 receive incoming telephone calls or messages, or to help you  
16 with placing outgoing calls, if you need any assistance.

17 This meeting is scheduled to run this afternoon  
18 until about 5:00 o'clock. We will break for the evening meal  
19 and reconvene about 7:00, and continue until 10:00 p.m., if  
20 there is reason to go that long.

21 I understand that the meetings in the other regions  
22 that were in Atlanta on Monday and Chicago on Tuesday were  
23 able to conclude the evening session somewhere between 8:00 and  
24 9:00.

25 We have a prepared presentation which will be

1 given by members of the panel. We would like to ask that you  
2 hold your questions until all of the presentations have been  
3 completed, and at that time we will give opportunity for those  
4 who have requested time to ask questions or make comments,  
5 and that will be given after the presentation.

6 There are copies of the prepared remarks available,  
7 and these will be distributed at the break. I would expect that  
8 we will take a break about 2:30, the middle of the afternoon.

9 I might point out that the restrooms are on the  
10 sixth floor. You have to go down one floor. There is a stair-  
11 way back in the corner to the sixth floor so you don't have  
12 to use the elevator.

13 We have received requests from about six individuals  
14 to make comments this afternoon. If there are others who  
15 desire to speak, you can still sign up with the registration  
16 desk in the rear of the room.

17 We will take those who have requested opportunity to  
18 speak in order, and after that has all been completed, we will  
19 take questions from the floor.

20 The meeting is being transcribed. A copy of the  
21 transcript will be placed in the Public Document Room in  
22 Washington, D.C. It will also be on file in the regional  
23 office in King of Prussia. So to help make the record of the  
24 meeting clear, we ask that those who ask questions or make  
25 comments, please identify yourself and the organization which

1 you represent.

2 Also I believe there is an inquiry card -- I  
3 don't have a copy of one -- which you should have been given  
4 when you registered. If you didn't get a copy of that card,  
5 I would ask that you pick one up as you leave.

6 The NRC has tried a broad outreach program to  
7 inform citizens' organizations and licensees of this series  
8 of meetings on enforcement policy and we are interested in  
9 learning how you were informed about the meeting. So we would  
10 appreciate your filling out this card and tell us whether your  
11 interest in the meeting was because of a letter that was mailed  
12 to you, or an ad in the newspaper, or by some other means.  
13 You don't have to sign the card, but please leave it with the  
14 registration desk when you leave.

15 I believe those are all of the administrative  
16 announcements.

17 For the past year, an effort has been underway to  
18 revise NRC's enforcement policy to reflect the mandate of  
19 the Congress and the Commission to be firmer regulators of the  
20 nuclear industry, and to incorporate legislation which was  
21 passed by Congress and signed by the President last summer  
22 which provided the NRC with increased civil penalty authority.

23 An important milestone in this effort was reached  
24 on September 4th, 1980, when the Commission approved issuance  
25 of the revised policy for public comment, and interim use of

1 the policy by the Staff during the comment period.

2 This policy was published in the Federal Register  
3 on October 7th, 1980 and is presently being used by the NRC  
4 Staff.

5 This conference is one in a series of regional  
6 conferences being held with licensees and the general public  
7 to explain how we are implementing the policy so that you will  
8 be in a better position to comment.

9 Comments can be provided orally in the meeting today,  
10 or can be submitted in writing to the Secretary of the Commis-  
11 sion. It should be directed to the attention of the Docketing  
12 & Service Branch, U.S. Nuclear Regulatory Commission,  
13 Washington, D.C. 20555.

14 The deadline for comments is December 31st, 1980.  
15 It is the intent of the Commission that the disposition of all  
16 public comments be made a matter of record.

17 It is also the intent that this policy as finally  
18 adopted by the Commission be made a part of the Code of  
19 Federal Regulations.

20 With me today are representatives from the Task  
21 Force that was appointed by the Director, Office of  
22 Inspection & Enforcement, Mr. Victor Stello, to develop the  
23 revised enforcement policy, and they will explain this policy  
24 to you.

25 Heading the task force was Mr. James G. Keppler,

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who is Director of NRC Region III Office in Chicago.

Also on the Task Force, Mr. Dudley Thompson, who is Director of the Enforcement & Investigation Staff of the NRC Office of Inspection & Enforcement, the headquarters office in Bethesda.

Next is Mr. James Lieberman who is Deputy Chief Counsel for Enforcement and Rulemaking from the NRC's legal staff.

And last, Mr. Charles Norelius, who is Assistant to the Director and Enforcement Coordinator, Region III, Chicago.

In discussing the revised enforcement policy, we thought it would be helpful to briefly summarize the background relative to NRC's enforcement program. Prior to 1969, what was then AEC enforcement -- the enforcement program for licensees, did not include provision for civil penalties.

Enforcement action in that era was primarily notices of violation, supplemented by occasional use of orders for the more serious safety and chronic noncompliance cases.

In 1969, Congress granted AEC authority to level civil penalties for items of noncompliance. Civil penalties of up to \$5000 per item of noncompliance, with a maximum civil penalty of \$25,000, for all violations occurring within a one-month period were permitted.

In August 1971, a rule was published to implement the

1 legislation, and in October 1972, the Commission first  
2 published its enforcement policy in the Federal Register.

3 The next important milestone was December 31, 1974,  
4 when the Staff provided all licensees an update in further  
5 clarification of the enforcement criteria.

6 Another key milestone occurred in early 1978, when  
7 the Commission, recognizing that \$5000 civil penalties did not  
8 represent a significant financial incentive to larger licensees,  
9 submitted a request to Congress to increase the maximum civil  
10 penalty from \$5000 per item of noncompliance to \$100,000.

11 Congress enacted this legislation, and it was signed  
12 into law on June the 30th, 1980.

13 While civil penalties and other escalated enforce-  
14 ment actions were used cautiously during the early and middle  
15 '70s, there has been increasing emphasis on enforcement actions  
16 over the past few years, with a significant increase in the  
17 number and severity of enforcement actions since Three Mile  
18 Island.

19 As I stated earlier, this increase is a clear  
20 reflection of the mandate given to the NRC to be strong regula-  
21 tors.

22 In December 1979, NRC further visibly displayed this  
23 posture when it published tough enforcement criteria for non-  
24 compliances associated with transportation of nuclear materials.

25 During the past year the Staff has been working to



1 revise its enforcement policy to implement the new civil  
2 penalty authority.

3 In this regard the goals of the NRC's revised  
4 enforcement program can be stated as follows:

5 (Slide.)

6 One, to ensure compliance with NRC regulations and  
7 license conditions.

8 To obtain prompt correction of licensee weaknesses.

9 To deter future noncompliance through strong enforce-  
10 ment measures.

11 And to encourage improvements in licensee performance,  
12 thus enhancing the degree of protection of public health and  
13 safety, common defense and security, and the environment.

14 Mr. Keppler will be providing a description of  
15 the revised inspection program. Before he does that, I would  
16 like to briefly repeat what the NRC hopes to get from these  
17 meetings.

18 We would urge you to focus on these matters in  
19 providing your comments:

20 Specifically --

21 (Slide.)

22 -- as we see on this slide, we are seeking comments  
23 on the following:

24 Is the policy fair and equitable?

25 Is the policy understandable?

1 Are the severity levels appropriate?

2 Are the different types of activities well enough  
3 defined, or should there be others?

4 Are the distinctions among various types of licensees  
5 shown in Table 1 -- which you will see later -- appropriate?

6 Are the factors for determining the level of  
7 enforcement actions appropriate? Should there be others?

8 Is the degree of discretion allowed to office  
9 directors appropriate?

10 Should there be more flexibility permitted, or less?

11 Are the levels of civil penalties that require  
12 Commission involvement appropriate? Should they be higher or  
13 lower?

14 Are the provisions for escalated action set forth  
15 in Table 2 appropriate?

16 We would, of course, welcome questions and comments  
17 on any other aspects of the enforcement program, but these are  
18 of particular interest.

19 I would like now to turn the meeting over to Mr.  
20 Keppler, who will describe the basic elements of the revised  
21 enforcement policy.

22 Jim.

23 MR. KEPPLER: Thank you, Boyce.

24 Can you hear me okay?

25 AUDIENCE: No.

1 MR. KEPPLER: Is that better?

2 AUDIFNCE: Yes.

3 (Slide.)

4 MR. KEPPLER: In revising the NRC's enforcement  
5 policy, we established six specific objectives:

6 First, we wanted to establish criteria for utilizing  
7 the increased civil penalty authority.

8 Second, we wanted to make the enforcement program  
9 tough, yet fair.

10 Third, we wanted to achieve greater uniformity in  
11 the treatment of licensees by taking equivalent actions against  
12 similar licensees having similar problems.

13 Fourth, we wanted to better define our enforcement  
14 capabilities with respect to NRC license activities other than  
15 operating reactors.

16 In particular, we wanted to give more definitive  
17 guidance concerning enforcement in the areas of construction  
18 and safeguards, and for taking action against licensed  
19 operators.

20 Fifth, we wanted to focus escalated enforcement  
21 actions on the specific event or problem which led to the  
22 decision to take escalated enforcement, rather than focus on  
23 the specific numbers of items of noncompliance.

24 Lastly, we wanted to articulate clearly our enforce-  
25 ment policy and define more clearly the criteria for taking

1 various enforcement actions.

2 To further explain how these objectives were  
3 incorporated into the revised enforcement policy, I intend to  
4 discuss the new severity categories, including their applica-  
5 tion to the different functional areas regulated by NRC, and  
6 discuss notices of violation, enforcement action against  
7 licensed operators, civil penalties, orders, and a combination  
8 of enforcement sanctions for recurring significant noncompliances.

9 Let me begin with the severity categories.

10 For the past several years now, we have had three  
11 categories of noncompliance: violations, infractions, and  
12 deficiencies.

13 While we have found that having different severity  
14 categories is beneficial in judging the significance of non-  
15 compliances, our experience has shown that more categories  
16 were needed to capture the different thresholds of noncompliance.

17 In defining severity categories, we wanted to relate  
18 them to the fundamental problem or event involved, rather  
19 than solely to the items of noncompliance themselves.

20 We decided on six severity categories. I would like  
21 to now explain these categories in the context of reactor  
22 operations.

23 We considered the worst type of situation as one  
24 where safety systems are called upon to work and are not  
25 operable. An example would be Three Mile Island. We classified

1 this as a Severity Level I.

2 The next worst situation which we call Severity Level  
3 II was perceived to be one where a safety system is not  
4 capable of performing its intended safety function, but  
5 fortuitously it is not called upon to work. An example might  
6 be a loss of containment integrity without a concurring acci-  
7 dent.

8 Severity Level III violations were established to  
9 cover situations where a safety system is not capable of  
10 performing its intended safety function under certain conditions.  
11 An example might be one where the high pressure emergency  
12 core cooling system was operable with offsite power, but was  
13 inoperative under loss-of-power conditions.

14 The next lower level, Severity Level IV, involves a  
15 condition where a safety system is operational but degraded.  
16 An example might be a situation where the sodium hydroxide  
17 was valved out of the containment spray system, but the  
18 containment spray system itself was otherwise fully operable.

19 Severity Level V violations involve other  
20 procedural items which have other than minor safety  
21 significance. An example might be the failure to perform a  
22 required test on a timely basis, or to have one redundant  
23 component valved out of the system.

24 Lastly, Severity Level VI violations involve  
25 items of minor safety significance, such as documentation

1 inadequacies.

2           These same general principles were applied to the  
3 other license activities.

4           (Slide.)

5           Now the next slide shows the relative ranking of  
6 the new severity levels as compared with the ones that we were  
7 using. The violations, infractions and deficiencies.

8           You will see that the old violations now may be  
9 categorized as Severity Levels I, II, or III. The old  
10 infractions may now be categorized as Severity Level III, in  
11 some instances, but mostly in Severity Level IV and V.

12           The old deficiencies will be equivalent to the new  
13 Severity Level VI violations.

14           In general, we believe the Severity Levels I, II and  
15 and III are serious violations that should occur infrequently,  
16 if appropriate attention is being given to NRC requirements.

17           We believe a Severity Level IV violation also  
18 should not occur often, and we view the Severity Level V  
19 violations to be equivalent to most of the infractions that  
20 have occurred in the past.

21           The different severity levels are defined separately  
22 for each of seven different program areas which we regulate.  
23 These program areas are shown on the next slide.

24           (Slide.)

25           Reactor operations. facility construction,

1 safeguards activities, health physics activities, transporta-  
2 tion, fuel cycle operations, and byproduct materials operations.

3 While the severity levels show the relative importance  
4 of violations within the same program area, it is important to  
5 recognize that the severity levels are not equatable in terms  
6 of safety importance from one program area to another.

7 Saying it another way, Severity Level I is the most  
8 significant violation in each of these seven different program  
9 areas shown, but a Severity Level I violation in the area of  
10 reactor construction, for example, obviously does not have  
11 the same safety significance as a Severity Level I violation  
12 in reactor operations.

13 As I mentioned earlier, the determination of  
14 severity categories is event-oriented. By that, I mean that  
15 any particular violation may in one instance be a Severity  
16 Level II violation, for example; while in another instance,  
17 the same violation may be a lower severity level.

18 Let me give you two examples to explain this:

19 At a reactor construction site, if numerous  
20 violations of the quality assurance criteria contained in  
21 Appendix B to 10 CFR Part 50 are found, and there are multiple  
22 examples of these violations in several different construction  
23 areas, the items collectively would demonstrate that there  
24 has been a breakdown in quality assurance.

25 Based on such a determination, all the violations

1 related to the particular situation would be categorized as  
2 Severity Level II violations.

3 On the other hand, any one of these violations  
4 identified separately in a more isolated sense would probably  
5 be of the lower severity level violation.

6 Another example would be in the way of radiation  
7 safety. If an overexposure occurred which exceeded 5 rems,  
8 and there are other violations such as the failure to conduct  
9 surveys, the failure to follow procedures, and the failure to  
10 properly control access to an area, all of which contributed  
11 to the overexposure, all of these violations would be  
12 categorized as Severity Level II violations.

13 Yet an isolated instance of failure to follow a  
14 procedure or failure to conduct a survey or failure to  
15 adequately control access would likely be categorized at a  
16 lower severity level.

17 The revised policy also stresses the importance  
18 that the Commission attaches to the accurate and timely report-  
19 ing of events.

20 In this regard, material false statements made to  
21 the Commission will be categorized as Severity Level I, II or  
22 III violations, depending on the relative significance.

23 Also the failure to make a required report unless  
24 otherwise specified in one of the supplements would normally be  
25 classified at the severity level of the event which has not



1 been reported, and the failure to make a required report will  
2 be classified as a separate event in addition to the event not  
3 reported.

4 At this point it is probably appropriate to address  
5 a comment that has come up on numerous occasions that this  
6 policy may result in required information not being provided  
7 to the NRC.

8 We hope such a concern is not real, but at any rate,  
9 let me confront it by saying that NRC will consider the conscious  
10 failure to provide required information to the agency a willful  
11 act that may result in not only civil penalties, but also  
12 referral to the Department of Justice for consideration of  
13 criminal prosecution.

14 One last point concerning the severity categories:

15 Due to the general nature of the policy guidance,  
16 we recognize it may be difficult to apply the policy to  
17 certain specific situations which arise, and judgment will  
18 have to be exercised in selecting the proper severity category.

19 We would especially welcome any comments you may  
20 have on clarifying the guidance provided in this area.

21 Just a couple of comments concerning notices of  
22 violation:

23 It is expected that notices of violation will  
24 continue to be sufficient enforcement action for greater than  
25 90 percent of the violations which are identified during NRC

1 inspections.

2 Two changes to the notice of violation should be  
3 noted:

4 First, the notices now reflect the new severity  
5 categories.

6 Secondly, they will now normally require that  
7 responses be submitted under oath or affirmation, as provided  
8 for in Section 182 of the Atomic Energy Act.

9 This latter step was instituted by the Commission  
10 as an additional assurance of the accuracy of information  
11 provided in responses to written notices of violation.

12 With respect to licensed operators, as you may be  
13 aware, the previous enforcement policy was silent on enforce-  
14 ment actions against operators. The present policy provides  
15 that notices of violation will normally be issued to operators  
16 licensed under the provisions of 10 CFR Part 55 for Severity  
17 Levels I, II or III violations.

18 For serious violations which are recurrent, the  
19 probable course of escalated action against licensed operators  
20 will be license suspension or revocation.

21 It is also possible that civil penalties may be  
22 issued to licensed operators and we wish to emphasize that  
23 the policy as written does not preclude such action.

24 It should also be noted that enforcement action  
25 against a licensed operator will likely also result in

1 enforcement action against the utility at which the particular  
2 violations occurred.

3 Let me now turn to a discussion of civil penalties.

4 (Slide.)

5 As shown in the next slide, there are four general  
6 areas that are likely to lead to assessment of a civil penalty.  
7 The first is for Severity Level I, II or III violations which  
8 have occurred.

9 Secondly, it is possible to assess civil penalties  
10 for recurring Severity Level IV and V violations.

11 Thirdly, the knowing and conscious failure to  
12 report a defect by a responsible official of a licensee or  
13 vendor organization may result in the assessment of a civil  
14 penalty against that particular individual as provided for in  
15 Section 206 of the Energy Reorganization Act.

16 And fourthly, willful violations may result in  
17 civil penalties.

18 I want to go back now and make some additional  
19 comments on the first two items shown on the slide.

20 As I mentioned earlier, we recognize that some  
21 technical judgment will enter into the categorization of  
22 Severity Level I, II or III violations, and whether they  
23 warrant a civil penalty. Normally, however, if it has been  
24 determined that a Severity Level I, II or III violation existed,  
25 it is the Commission's intent to issue a civil penalty.

1 Civil penalties will generally be assessed for  
2 recurring Severity Level IV or V violations which are similar  
3 in nature to those which were the subject of an NRC enforcement  
4 conference, and which occurred within two years following that  
5 enforcement conference.

6 An enforcement conference is a meeting specifically  
7 designated as such between NRC and licensing management for  
8 the purpose of discussing specific violations, the planned  
9 corrective action, and the enforcement action available to the  
10 NRC.

11 If similar violations occur after such an enforce-  
12 ment conference, and it is concluded that their occurrence  
13 resulted from ineffective licensee action, a civil penalty  
14 will generally be assessed.

15 (Slide.)

16 The next slide shows a table of base civil penalties  
17 for different types of licensed programs and for different  
18 severity levels of noncompliance.

19 In determining the civil penalty values, the  
20 primary consideration was given to the severity level of the  
21 violation and potential hazard involved with the licensed  
22 operation; and to a lesser degree, general ability to pay.

23 In general, those programs which present a greater  
24 potential hazard and those where licensees have a greater  
25 ability to pay are toward the top of the table.

1           Let me stress that this is generally the case, and  
2 we recognize that isolated instances do not fit the general  
3 pattern. If a large disparity occurs, adjustments may be made  
4 on a case-by-case basis.

5           Again we would welcome your comments on the  
6 equitable distribution of civil penalties.

7           You will note from the table that the base severity  
8 levels for I and II are the same. This is because the same  
9 basic noncompliance act occurred.

10           However, as you will see later in our discussion,  
11 if a Severity Level I violation occurs the licensee will  
12 normally be subject to an order, in addition to a civil penalty,  
13 such that the total enforcement sanction will generally be  
14 more severe for a Severity I violation than for a Severity Level  
15 II violation.

16           It is also noteworthy that while the law provides  
17 that a civil penalty of \$100,000 may be assessed for each  
18 violation, the policy as written provides that for a Severity  
19 Level I, II or III violation, the civil penalty will be  
20 assessed for each event, irrespective of the number of viola-  
21 tions associated with the event.

22           Whether more than one event arises out of a series  
23 of violations will be determined on a case-by-case basis.  
24 Let me elaborate.

25           Referring back to the example I gave earlier, if

1 several violations were identified at a construction site which  
2 led to the conclusion that a breakdown in quality assurance  
3 occurred in multiple phases of construction, each of the  
4 violations would be categorized as Severity Level II.

5 However, the civil penalty would be assessed for the  
6 event, that is, a cumulative base civil penalty of \$80,000  
7 would be assessed for all the violations which constituted  
8 that event, regardless of the number of specific violations.

9 We believe that such an approach will help to focus  
10 licensee and public attention on the significance of events  
11 as opposed to the individual violations which have been  
12 identified.

13 The mechanics for assessing the civil penalty will  
14 remain the same. That is, the proposed notice of imposition of  
15 civil penalties and notices of violation must clearly state  
16 which violation occurred and which violation civil penalties  
17 are being assessed for.

18 For example, if eight violations constitute a  
19 Severity Level II event, the \$80,000 base civil penalty may be  
20 equally assessed for all eight items which make up the event  
21 or the entire civil penalty may be assessed against only  
22 one violation.

23 The actual distribution will be determined on a  
24 case-by-case basis. There are several factors which enter into  
25 the determination of the civil penalties, some of which I have

1 already touched on. These factors are shown on the next slide.

2 (Slide.)

3 The first factor is the gravity or severity of the  
4 violation. This factor is taken into consideration in the  
5 structure of the table itself, in that more serious violations  
6 get higher civil penalties.

7 Also those licensees whose programs present a  
8 greater potential health and safety risk are toward the top of  
9 the table and will be assessed the higher civil penalties.

10 The next factor is financial impact. This also is  
11 taken into consideration in the structure of the table, and  
12 that generally those licensees who have a greater ability to pay  
13 are in the groups near the top of the table, and smaller  
14 licensees with lesser ability to pay are generally near the  
15 bottom of the table.

16 As I mentioned earlier, however, there are  
17 recognized inconsistencies in this area.

18 Next, the duration of the violation will also impact  
19 upon the civil penalty which is assessed. Each day that a  
20 violation continues may be considered as a separate violation,  
21 and therefore subject to a separate civil penalty.

22 We expect to utilize that provision as a general  
23 practice. It is not possible to define beforehand how this  
24 will be applied, because the requirements and situations differ  
25 greatly.

1           As an example, if a required safety system is valved  
2 out so that it cannot perform its intended safety function,  
3 the Commission will likely issue a penalty for each day such  
4 condition occurs.

5           On the other hand, if an overexposure has occurred,  
6 that will be considered a single event where the duration of  
7 the violation does not come directly into play.

8           The policy provides that civil penalties may be  
9 reduced up to 50 percent of the base value if the noncompliance  
10 which led to the civil penalty was identified by the licensee,  
11 reported if required, and corrective action promptly initiated.

12           The self-identification does not apply to non-  
13 compliances disclosed by incidents such as overexposures or  
14 accidents.

15           The policy also provides that if the licensee has  
16 acted in good faith, an additional 25 percent reduction in  
17 addition to that already provided for self-identification may  
18 be applied.

19           Good faith is not precisely defined in the policy,  
20 but a reduction for good faith will be considered in those  
21 cases where the licensee has taken extraordinarily prompt and  
22 comprehensive action.

23           On the other hand, the policy provides that if the  
24 licensee could reasonably have been expected to have taken  
25 preventive action or if the violations are particularly



1 serious, including cases involving willfulness, the civil penalty  
2 may be increased up to 25 percent over the base value in the  
3 table.

4 We plan to review some specific cases in a little  
5 while to better demonstrate how these factors would influence  
6 the determination of actual civil penalty values.

7 Could I have the next slide, please.

8 (Slide.)

9 The next slide shows the types of orders which may  
10 be issued by the Commission. There are orders to modify, suspend  
11 or revoke a license, and orders to cease and desist any  
12 particular operation. These orders may affect all or part of  
13 a licensed activity.

14 Normally, orders for modification, suspension or  
15 revocation will be issued with a show-cause provision. That is,  
16 they will require a licensee to show cause why such action  
17 as proposed should not be taken.

18 Such orders always provide a licensee opportunity  
19 for hearing on the issues. However, if a determination is  
20 made by the Director of the Office of Inspection & Enforcement  
21 that the public health and safety, common defense and security,  
22 or public interest so demands, the order may be made effective  
23 immediately.

24 It is possible for orders to be issued which combine  
25 these provisions. That is, an order may require the immediate

1 suspension of a particular operation and may at the same time  
2 include a show-cause provision as to why the license should not  
3 be suspended or revoked.

4 (Slide.)

5 The last slide in this segment of the discussion  
6 shows a progression of escalated enforcement action which may  
7 be taken for repetitive serious violations. This table is not  
8 intended to prohibit the NRC from taking a different action if  
9 the case warrants.

10 However, the degree to which this progression should  
11 be followed in practice is a subject on which the Commission  
12 has explicitly sought comment. Let me run through an example of  
13 how this table might be applied.

14 If a Severity Level II violation occurred, its first  
15 occurrence would likely result in a civil penalty. A second  
16 similar violation within a two-year period would result in a  
17 civil penalty and an order to either suspend the operations  
18 until the office director is satisfied that there is reasonable  
19 assurance that the licensee can operate in compliance, or an  
20 order to modify the license to impose additional requirements  
21 to provide equivalent assurance.

22 If a third similar violation occurred within the  
23 two-year period, then in addition to the actions taken the  
24 previous time, additional action to show cause for further  
25 license modification or license revocation would likely be the

1 next step.

2 You will note that the table applies to violations  
3 of the same activity area. This means that if a Severity Level  
4 I, II or III event occurred in the area of safeguards, a  
5 subsequent significant event in the area of radiation safety  
6 would not be considered the same activity area, and this table  
7 would not be followed.

8 On the other hand, a personnel error leading to the  
9 misvalving of a safety-related system at a reactor on one occa-  
10 sion, followed by another personnel error which misvalved out  
11 another safety system, would be considered at the same activity  
12 area, and this table would normally be followed.

13 While we have been discussing the enforcement  
14 sanctions and actions normally taken by the NRC, it should also  
15 be noted that the policy also provides for criminal sanctions.

16 I don't plan to spend any real time in this area,  
17 but I think it's only fair to say that Chapter 18 of the  
18 Atomic Energy Act provides that certain violations of regulatory  
19 requirements may be criminal offenses. All alleged or suspected  
20 criminal violations are required to be referred to the  
21 Department of Justice for possible investigation and prosecu-  
22 tion.

23 I would like to turn the meeting over now to Mr.  
24 Dudley Thompson, who will run through a few specific cases  
25 demonstrating how the policy will be applied.

1 MR. THOMPSON: Thank you, Jim.

2 To illustrate application of the revised enforcement  
3 criteria, we have prepared a few hypothetical enforcement  
4 cases, based somewhat on actual experience.

5 The examples are intended to demonstrate how the  
6 criteria might be applied so some of the factual material has  
7 been altered from actual cases.

8 (Slide.)

9 The first example case involves a situation in which  
10 a power reactor licensee legitimately removed an emergency core  
11 cooling system from service to perform maintenance. When the  
12 maintenance was completed, a procedural error, coupled with a  
13 personnel error, led to the system remaining inoperable by  
14 virtue of certain valves remaining in the closed position.

15 Four days later, routine surveillance on the system  
16 disclosed the inoperable condition which was immediately  
17 corrected by the licensee and reported to NRC as required. The  
18 enforcement action as calculated, as shown on the slide, this  
19 is a Severity Level II violation from Supplement I in that a  
20 system safety was incapable of performing its intended safety  
21 function. A base civil penalty of \$80,000, as shown in Table I,  
22 is reduced by 50 percent because the licensee identified the  
23 condition, promptly corrected it, and reported it in a timely  
24 fashion.

25 However, since the violation continued for four days,

1 the resulting adjusted \$40,000 civil penalty was multiplied by  
2 four, resulting in a cumulative civil penalty of \$160,000.

3 The secone case as shown on this slide also involves  
4 a power reactor licensee who shifted radioactive waste to a  
5 burial ground. On arrival at the burial site, a state inspector  
6 found that the truck had radiation levels at the surface  
7 substantially exceeding the Department of Transportation  
8 limits. NRC inspectors confirmed the finding of the state  
9 inspector. The appropriate supplement is Supplement V. The  
10 severity level is II, because the radiation level exceeded  
11 three times the DOT limits without a breach in containment.

12 Since this involved a power reactor, the base civil  
13 penalty of \$80,000 is adjusted neither upward nor downward.

14 (Slide.)

15 The third case as shown on this slide is an example  
16 of a situation for which a civil penalty is of limited value,  
17 because of the nature of the problem. Instead, more severe  
18 sanctions are called for.

19 Over a two-year period technicians at a hospital  
20 routinely administered double the prescribed doses of radio-  
21 isotopes to patients undergoing diagnostic procedures. Their  
22 motivation was apparently based on a desire to reduce the  
23 amount of time required for scanning, thus reducing the discom-  
24 fort and inconvenience of the patients, most of whom were  
25 elderly and very ill.

1                   When it was proposed to follow the same improper  
2 dosage procedure for a teenaged patient, one of the  
3 technicians involved became sufficiently concerned that he blew  
4 the whistle to NRC.

5                   Our investigation confirmed the facts of the case,  
6 and the actions shown on the slide ensued. We immediately  
7 suspended the license and issued a show-cause revocation order.

8                   In addition, the willfulness aspects of the case  
9 dictated that the matter be referred to the Department of  
10 Justice for a determination of the desirability of criminal  
11 prosecution.

12                   (Slide.)

13                   The final case as shown on this slide is one that  
14 occurs not infrequently among radiography licensees, a classic  
15 radiography overexposure. Following a routine field shot, a  
16 radiographer failed to retract the source before entering the  
17 area to set up film for the next shot. No surveys were made,  
18 personnel dosimetry was not carried, and the area of the shot  
19 had not been properly posted. The radiographer and his helper  
20 both received overexposures. The radiographer's whole body  
21 exposure, based on reenactments, was estimated to have been 12  
22 rem. The helpers' were 7 rem. This is a Severity Level II  
23 event under Supplement IV, because of the amount of the  
24 exposures. This calls for a base civil penalty under Table I  
25 of \$8000, with the class of licensee involved.

1           There have been numerous notifications to radio-  
2 graphers concerning similar previous events like this one.  
3 Thus, there is a basis for concluding that the licensee could  
4 reasonably have been expected to have had prior knowledge and  
5 to have instituted preventive measures. This means that the  
6 base civil penalty for this Severity Level II violation has  
7 increased by 25 percent, leading to a cumulative civil penalty  
8 of \$10,000.

9           Considerable flexibility is required and provided  
10 in implementation of this revised proposed policy. Responsibility  
11 for this exercise of technical judgment is vested in office  
12 directors who are senior managers in NRC.

13           For most cases, the principal enforcement officer  
14 of the NRC is the Director of the Office of Inspection &  
15 Enforcement, although other office directors may, and in some  
16 cases do, issue enforcement actions in their own spheres of  
17 responsibility.

18           For example, the Directors of the Offices of  
19 Nuclear Reactor Regulation or Nuclear Materials Safety &  
20 Safeguards issue license modification orders which restrict  
21 operation relatively often.

22           Similarly, the Director of the Office of  
23 Administration is authorized and does issue license revocation  
24 orders for nonpayment of required fees. Fundamentally, how-  
25 ever, we find that public interest of licensee concern focuses

1 most strongly on those retrospective enforcement actions  
2 associated with noncompliance of regulatory requirements.  
3 Such enforcement actions associated with past noncompliance  
4 are taken almost exclusively by the Director of Inspection &  
5 Enforcement, and the discussion which follows is based on those  
6 cases.

7           The Director's discretion is exercised both in his  
8 decision regarding which type of enforcement action to take,  
9 that is, notice of violation, civil penalty, or an order, and  
10 in the case of a civil penalty, the determination of an  
11 appropriate amount to be assessed.

12           Furthermore, as noted in the previous presentation,  
13 combinations of enforcement sanctions may be used for higher  
14 severity level matters, or for repetitive noncompliance.  
15 The choice of enforcement sanctions in such cases is the  
16 responsibility of the Director of Inspection & Enforcement,  
17 based, of course, on Staff recommendations and consistent with  
18 the general principles in the revised enforcement policy and  
19 the technical merits of each case.

20           The factors considered in reaching these decisions  
21 are those discussed earlier and repeated here, associated with  
22 determining the amount of civil penalty to be applied. That  
23 is, the gravity of the violation, the duration of noncompliance,  
24 the method of identification, the financial impact on the  
25 licensee, good faith of the licensee, prior enforcement



1 history and willfulness.

2 The Director notifies the collegial body of the  
3 Commission in writing of each application of elevated enforce-  
4 ment sanctions, such as civil penalties or orders.

5 In addition, for certain especially significant  
6 actions, the Commission is consulted prior to taking the action,  
7 unless the urgency of the situation requires immediate action to  
8 prevent or mitigate an imminent threat to public health or  
9 safety.

10 Prior consultation with the Commission is required  
11 for four types of situations:

12 First, when the action requires a balancing of the  
13 implications of not taking the action against the hazards to be  
14 eliminated by taking the action.

15 Second, all proposed impositions of civil penalties  
16 exceeding either three times the value of a Severity Level I  
17 violation, or exceeding the maximum civil penalty for the next  
18 higher Severity Level for the type of licensee involved.

19 Third, actions for which the Commission has requested  
20 prior consultation.

21 And finally, any action for which the Director  
22 believes Commission attention is warranted. An example of  
23 the first type of situation, that is the balancing requirement,  
24 balancing the effects of not taking the action against taking  
25 it, is a situation that might involve a contemplated license

1 suspension order for a facility providing products or services  
2 crucial to national defense or security.

3 If the Staff determines that shutdown of the facility  
4 might deny the needed product or service, and thus adversely  
5 affect the nation's interest, prior consultation with the  
6 Commission is required.

7 A second example, which did occur recently, when  
8 serious noncompliance involving patient care at a hospital  
9 dictated issuance of a license suspension order, this was  
10 basically the third example I discussed earlier -- before  
11 taking that suspension action, however, the Staff made an  
12 explicit determination that needed health services to the  
13 community would not be denied by the suspension order, since  
14 a neighboring hospital was also licensed to perform the same  
15 procedure.

16 Had such a loss been a possibility, prior Commission  
17 approval would have been required for the suspension. The  
18 dollar limits on civil penalties requiring prior consultation  
19 with the Commission can be reached by either a continuing  
20 violation or by a combination of events.

21 For example, the inability of a reactor safety system  
22 to perform its intended safety function, a Severity Level II  
23 event, that continues over a period of a week might lead to a  
24 civil penalty of \$210,000 to \$700,000, depending on the extent  
25 to which adjustments were applied to the base values of Table I.

1           If the adjusted figure exceeds \$300,000 in such a  
2 case, prior Commission consultation is required.

3           In the case of a continuing Severity Level III  
4 violation, for example, unavailability of a reactor safety  
5 system if offsite power were lost, the civil penalty for a  
6 week-long violation might vary from \$105,000 to \$350,000; again,  
7 depending on how adjustments were made to the base values of  
8 Table I.

9           Any such civil penalty proposal would require prior  
10 Commission consultation since the maximum civil penalty for the  
11 next higher violation at a power reactor is only \$100,000.

12           The Commission has already identified one aspect of  
13 implementation of the revised enforcement policy on which it  
14 wishes to be consulted under the third criteria. That is, the  
15 Commission has specifically asked to have prior consultation  
16 for the first few cases for which the Staff proposes to apply  
17 good faith as a basis for reduction of a civil penalty.

18           Finally, the fourth criteria for prior Commission  
19 consultation provides the mechanism by which the Director  
20 must solicit Commission guidance on new or unique applications  
21 of the policy, particularly for cases the Director believes to  
22 be watershed decisions establishing precedent.

23           This concludes the prepared portion of our presenta-  
24 tion. As mentioned earlier, copies of these prepared remarks  
25 will be available at the back of the room at the break, which

1 will be occurring in about 35 minutes.

2 MR. GRIER: We will turn now to the public participa-  
3 tion and public comments.

4 First, those who have requested opportunity to  
5 speak in advance. I would remind you that in accordance with  
6 the notice of this meeting, the time provided is to be limited  
7 to 15 minutes.

8 The first speaker, Mr. Nicholas Reynolds. Mr.  
9 Reynolds?

10 MR. REYNOLDS: Yes. Now?

11 MR. GRIER: Yes.

12 MR. REYNOLDS: My name is Nicholas Reynolds. I am a  
13 member of the Washington, D.C. law firm of Deveboise & Liberman,  
14 and I am here today representing the Nuclear Utility Group  
15 on Enforcement. That group is a group of 37 power reactor  
16 licensees and the Edison Electric Institute.

17 My principal comment today raises what we perceive  
18 to be a fundamental legal issue which will encompass the out-  
19 come of the rulemaking and determine how the enforcement policy  
20 will be applied.

21 That issue is whether the policy will be promulgated  
22 as a general statement of policy as contemplated by the  
23 Administrative Procedure Act, or as a binding regulation.

24 Following my brief comments, my associate, Sanford  
25 Harman, will comment on certain aspects of the proposed policy

1 which we believe should be modified before the policy is issued  
2 in final form.

3 Incidentally, I might note that we will be submitting  
4 written comments on each of the nine questions raised in the  
5 Federal Register notice announcing this meeting, and in addition,  
6 we will be submitting comprehensive written comments on the  
7 details of the proposed policy in response to the NRC's October  
8 7 notice in the Federal Register.

9 Turning then to the legal issue. When this policy  
10 was initially proposed by the Staff in its March 19, 1980  
11 document, it was unclear whether the policy was under  
12 consideration as a rule or as a policy statement. Although  
13 the Office of Inspection & Enforcement recommended that it be  
14 codified as Appendix C to Part 2 of 10 CFR, I&E did not take a  
15 position on the appropriate legal effect which the policy should  
16 have.

17 Rather, I&E suggested that the policy be adopted  
18 either through a rulemaking or through publication as a general  
19 statement of policy.

20 Apparently during the time between submittal of  
21 that March 19 policy statement and draft, and the Commission's  
22 September 4 meeting and discussion on the policy, some Staff  
23 members determined that the policy should be a binding rule.

24 For example, Mr. Howard Shapar, the NRC Executive  
25 Legal Director, stated at the September 4 meeting that in his

1 view, the policy should be issued with all formalities of the  
2 rule, so that for all practical purposes it has the legal effect  
3 of a rule.

4 Although the Commission did not explicitly consent  
5 to this characterization of the action, it certainly has not  
6 disclaimed that approach.

7 Other Staff officers, including I&E, are, to my  
8 knowledge, silent on the issue. They have not taken a position  
9 as yet.

10 Of course, we recognize that the NRC may select  
11 either rule or policy statement as the administrative vehicle  
12 it will use to implement its enforcement goals.

13 However, our point today is that we believe it is  
14 critical that the differences between the two approaches be  
15 recognized and that the necessary legal prerequisites be  
16 fulfilled. By promulgating the policy as a rule, the Commission  
17 will establish a finding norm with the force of law.

18 Neither the Staff nor the Commission will be able  
19 to depart from that policy, since for all practical purposes  
20 the mandate to abide by it will be no less stringent than the  
21 mandate to comply with the statute pursuant to which it was  
22 promulgated.

23 This is in sharp distinction to a policy statement  
24 which is issued for guidance and which will not have future  
25 binding effect.

1 In order for the NRC to promulgate the enforcement  
2 policy lawfully as a binding rule, it should develop a factual  
3 basis to support each of the decisions reflected in that rule.

4 For example, if Table II in the proposed policy is made  
5 binding with respect to the prescribed escalation of enforcement  
6 actions, the Commission must articulate the factual basis for  
7 the approach with reference to the record developed over the  
8 course of the rulemaking.

9 In like fashion, the basis for including a given  
10 violation in a designated severity level should also be  
11 articulated.

12 We find that the record to date in this rulemaking  
13 is lacking in these regards.

14 Should the Commission fail to provide such a factual  
15 basis, but nonetheless promulgate the policy as a binding  
16 regulation, we believe that such action would be arbitrary and  
17 capricious and therefore unlawful.

18 As to the level of detail required in the record  
19 to support the rule, the United States Court of Appeals for  
20 the District of Columbia Circuit has provided firm guidance  
21 in Natural Resources Defense Council vs. NRC, 547 Fed. 2d, at  
22 page 58, footnote 3, where in Judge Tams' concurring opinion, he  
23 noted that the record must be sufficiently complete and detailed  
24 to enable the Court to accomplish its reviewing function,  
25 assuring itself that the agency has engaged in reasoned

1 decision-making, and has provided reasoned explanations for  
2 controversial normative and imperical determinations.

3 In short, the reviewing court must satisfy itself  
4 that the requisite dialogue occurred and that it was not a  
5 sham.

6 Our view is that the present record in this rule-  
7 making fails to meet these requirements in sufficient detail  
8 to support issuance of a binding rule. In view of the  
9 regulatory purpose and intended use of the enforcement policy,  
10 and in view of the current lack of an adequate factual basis  
11 for all aspects of the policy, we believe the Commission  
12 should approach with caution the decision as to whether it  
13 should be issued as a binding rule.

14 We submit that the preferred approach from a  
15 regulatory standpoint is for the Commission to develop general  
16 enforcement criteria to incorporating present NRC regulations  
17 and set forth the details concerning their use in a nonbinding,  
18 general statement of policy.

19 This approach would incorporate into current  
20 enforcement regulations in Part 2 the four general factors  
21 specified in the policy to be taken into account when assessing  
22 civil penalties.

23 Those are the gravity of the violation, financial  
24 impact, and so forth.

25 The procedures and precise formula used to apply the



1 factors could then be set forth in a supplementing, nonbinding  
2 policy statement.

3 We believe this approach would provide the advantages  
4 of uniform criteria without sacrificing the flexibility needed  
5 to tailor each enforcement mechanism to the specific facts of a  
6 given case.

7 In addition, we believe that this approach could be  
8 taken lawfully on the basis of the present record. We will  
9 expand on this fundamental legal issue when we file our detailed  
10 comments on the proposed policy shortly.

11 We trust that the Staff and the Commission will take  
12 this matter on the legal question under advisement, and conclude  
13 that the appropriate approach is to issue enforcement policy  
14 as a policy statement and not as a rule.

15 Finally, we also trust that the Commission will  
16 grant the request which we filed with it last week for an exten-  
17 sion of time in which to file comments on the proposed enforce-  
18 ment policy.

19 We believe the extension of time is necessary to  
20 permit interested persons to obtain transcripts of these  
21 regional meetings and to benefit from the results of the  
22 meetings.

23 Since the NRC already is utilizing this proposed  
24 policy is guidance, pending final outcome of the rulemaking,  
25 we see no reason why our request should not be granted. We

1 have requested that the deadline be extended from December 31,  
2 1980 to February 21, 1981.

3 Thank you.

4 Now my associate, Mr. Harman.

5 MR. HARMAN: Thank you. My name is Sanford Harman.  
6 I, too, am from the law firm of Deveboise & Liberman.

7 My comments concern specific aspects of the enforce-  
8 ment policies. The most importance of these comments concerns  
9 the proposed use of civil penalties.

10 We firmly believe that the the policy should state  
11 clearly that in determining whether and in what amount to  
12 assess civil penalties. the Staff, Boards and Commission have  
13 the discretion to tailor the amount of a civil penalty to the  
14 precise facts of the case.

15 Specifically, the enforcement policy presently seems  
16 to require a two-step analysis in arriving at the amount of  
17 such a penalty.

18 First, a base figure will be assessed, using a  
19 matrix. Apparently the only acceptable reason for deviating  
20 from the appropriate base figure is when such figures do not  
21 adequately reflect the ability of a licensee to pay a given  
22 penalty.

23 Second, after a base figure is identified,  
24 certain mitigating factors in addition to good faith can result  
25 in an increase or decrease in the base figure.

1           However, the maximum impact of each of these factors  
2 is already quantified. For example, the prompt identification,  
3 correction and reporting of a violation may result in a reduc-  
4 tion of the base penalty, but such a reduction is now limited  
5 to 50 percent by the policy.

6           Thus, even though the policy states discretion  
7 can be exercised in setting the amount of penalty, it prescribes  
8 unnecessarily certain confines within which certain discretion  
9 must be exercised.

10           We suggest that it is in keeping with the legislative  
11 history of Section 234 as amended which authorizes the  
12 Commission to impose civil penalties to apply these factors set  
13 forth in the policy on a case-by-case basis, rather than using a  
14 predetermined formula.

15           We consequently recommend that the enforcement  
16 policy make clear that so long as certain factors are considered,  
17 including the severity of the violation, financial impact of  
18 the penalty on the licensee, and the good faith in complying  
19 with NRC requirements, the Staff, Boards and Commission can  
20 exercise discretion in determining the amount of the civil  
21 penalty on a case-by-case basis.

22           We trust the Commission will take this comment into  
23 consideration.

24           Thank you.

25           MR. GRIER: Thank you very much.

1           The next speaker will be Helen M. Fraser. Would  
2 you use the microphone, please, Ms. Fraser.

3           MS. FRASER: My name is Helen Fraser. I heard this  
4 meeting announced on the radio yesterday, and because I am very  
5 much concerned about the nuclear power plants and their  
6 endangering of our cities, I asked to speak.

7           I quote from an article which appeared in the  
8 Women's International League of Peace and Freedom, the November  
9 issue, and it's called "Our Endangered Cities." It's by Jane  
10 Thorson.

11           Short of an all-out nuclear war, the greatest danger  
12 to our cities is from large nuclear power plants. Perhaps  
13 the most unreasonable of all of the power plants -- and she  
14 lists Detroit and Chicago and New York, the Indian Point plant,  
15 just 35 miles from New York City -- perhaps the most unreasonable  
16 of all is the Limerick plant, 21 miles from Philadelphia, which  
17 would have 67,000 people in a five-mile radius, nearly 4  
18 million in a 50-mile radius, and 7 million within 50 miles.

19           Limerick is half built and construction is being  
20 speeded up so that it can be opened in 1983, before new safety  
21 standards go into effect in 1985. At a hearing of the  
22 Interior Subcommittee on Energy and the Environment, chaired  
23 by Pennsylvania Representative Peter Kastenmeier, Nuclear  
24 Regulatory Commission head Harold Denton testified that the site  
25 would probably not be chosen if it were being considered today.

1           This plant does not make sense financially,  
2 environmentally, or in any other way. The cost has soared from  
3 \$800 million to \$3-4/10ths billion. It is not needed.

4           Philadelphia Electric Company can provide 40 to  
5 50 percent more electricity than its users demand, and the  
6 utility has tried to sell the power in advance to utilities  
7 in other areas. The Pennsylvania Public Utility Commission  
8 study states that Limerick could be replaced by two small  
9 coal-fired plants with effective anti-pollution scrubbers,  
10 and would save Philadelphia Electric Customers \$140 million a  
11 year.

12           The Schuylkill River does not have the 55 million to  
13 62 million gallons of water needed for the plant six months out  
14 of the year, and plans are to divert water from the Delaware  
15 River across two counties to the Limerick Plant, but a water  
16 crisis is forecast for the Delaware Valley area by the  
17 Delaware River Basin Commission, and Philadelphia has already  
18 had water shortages in the summer.

19           These new plants under construction must be stopped  
20 and the operating plants shut down as soon as possible, and  
21 when the Commissioner was making his statement, he said we  
22 must review the cases, we must modify, suspend, revoke, cease  
23 and desist, and I beg of you, cease and desist of any more  
24 nuclear plants. Those that have already been licensed and  
25 are not completed, I say cease and desist. Stop them.

1 Limerick is a disaster, and anyone that lives in  
2 the Philadelphia area, and they are now saying we have such a  
3 water shortage, this is before Limerick even starts. Do you  
4 want us to have our very environment so endangered?

5 I beg of you, stop it.

6 Now this same person, Jane Thorson, who is the  
7 chair of the Nuclear Information Committee in the Women's  
8 International League for Peace and Freedom -- and it may  
9 interest you to know that two women of that organization have  
10 attained the Nobel Peace Prize for their work. I know that you  
11 all know that the arms race is a total disaster, that all  
12 armaments should be stopped, and that especially nuclear  
13 weapons should be stopped, that the United States is responsible  
14 for the first bomb being dropped and the starting of the arms  
15 race, and that another argument, I say, against the nuclear  
16 power is that we cannot any longer carry in one hand nuclear  
17 weapons of destruction and use them to terrorize the whole  
18 world, and in our other hand, use the power of the atom for  
19 anything until we have eliminated the power of the atom to be  
20 used for destruction.

21 I thank you.

22 MR. GRIER: The next speaker, Mr. Marvin Lewis.

23 MR. LEWIS: Thank you for allowing me to speak  
24 here today.

25 I don't have a copy of this typewritten yet, but I'll

1 have it in before the day.

2 I want to preface my comments today by saying I, too,  
3 believe this is a sham, as the Washington lawyer from whatever  
4 Washington firm he is, stated earlier. This is a sham, and I  
5 hope my comments will show you why this is such a sham.

6 I wish to explore the reason for an enforcement  
7 policy. The reason for an enforcement policy seems obvious:  
8 Without an enforcement policy, the NRC could not force licensees  
9 to operate within NRC regulations.

10 Now here is the rub, and here is the reason that  
11 enforcement policy right now is useless: Enforcement policy  
12 can only make licensees operate in accordance with NRC regula-  
13 tions. Enforcement policy cannot make licensees operate in a  
14 manner which assures the health and safety of the public,  
15 unless the NRC regulations are rewritten to provide that  
16 assurance.

17 This has not been the case. NRC regulations are  
18 not written to assure the health and safety of the public,  
19 although they act as if they did, or if the regulation is so  
20 written, the regulation is interpreted by the Staff in a relaxed  
21 and dangerous manner.

22 The Staff interpretation of regulations is best  
23 exemplified by the accident at TMI No. 2. A power-operated  
24 relief valve stuck. This stuck valve was just like a small  
25 pipe break. This PORV, power-operated relief valve, was not

1 safety-grade. Neither was the block valve on the same line.

2 Both the PORV and the block valve were on the pressure  
3 vessel -- reactor pressure vessel boundary -- reactor pressure  
4 boundary. The general design criteria, GDC, of the Appendix  
5 in 10 CFR 50 requires safety-grade equipment on the reactor  
6 pressure boundary.

7 The Staff had interpreted the GDC so that both the  
8 block valve and the PORV are not safety-grade. This is just one  
9 example of the Staff's interpreting NRC regulations dangerously.  
10 The Staff's interpretations of what should be safety-related  
11 and what does not need to be safety-related does not reconcile  
12 with reality.

13 The recent leak at Indian Point 2<sup>1</sup> demonstrates the  
14 Staff schism with reality. A leak developed in fan cooler  
15 units. These units are not usually safety grade. At least I  
16 haven't been really able to find out if Indian Point 2 fan  
17 cooling units are not safety grade. But generally they are not  
18 safety grade. I don't have any reason to believe Indian Point  
19 2 fan cooling units are safety grade.

20 River water leaked through these units. The river  
21 water wet the reactor vessel to a height of nine feet. The  
22 river water wetting the reactor caused stress on the hot  
23 reactor vessel. The NRC is analyzing whether unacceptable  
24 thermal stresses were experienced in the reactor vessel.

25 Obviously some item here was not safety grade, when



1 it should have been. This is another example of the Staff's  
2 interpreting regulations dangerously.

3 The Staff's loose interpretation of regulations is  
4 only one block to adequate enforcement. Even where regulations  
5 are clearly, deliberately and obviously broken, Chairman  
6 Ahearne -- I hope you remember him -- points out there has  
7 been lack of enforcement.

8 Chairman Ahearne pointed out before a Congressional  
9 subcommittee on September 23, 1980 that, "shoddy craftsmanship"  
10 can be expected in more nuclear power plants.

11 He also admitted that NRC inspectors were intimidated.  
12 Intimidation of NRC inspectors is a roadblock to an effective  
13 enforcement.

14 Despite this dearth of enforcement, the man in  
15 charge of enforcement -- the man in charge of enforcement,  
16 Victor Stello, got an award. The message was clear: One,  
17 don't enforce. Allow "shoddy craftsmanship".

18 Two, the Director of the Division of Enforcement  
19 & Inspection will get an award.

20 With clear messages like this not to enforce, the  
21 NRC can never enforce its regulations.

22 In addition to dangerous interpretation and loose  
23 enforcement, the NRC Staff's enforcement efforts are hampered  
24 by loopholes in the regulations themselves, which I pointed out  
25 previously in my comments on Part 21.

1 Part 21 is reporting of defects and noncompliance.  
2 It concerns reporting of defects and problems which can affect  
3 the health and safety of the public. This regulation lays out  
4 steps that must be taken when defects or noncompliances are  
5 found which may affect the health and safety of the public.

6 The problem is that there are few requirements as to  
7 when and if the next step must be taken within the reporting  
8 steps. These steps require that a responsible officer, when he  
9 obtains information, notify the NRC. There is no time limit  
10 or requirement for an employee who discovers the defect and  
11 noncompliance to inform the responsible corporate officer, who  
12 then must report to the NRC within a required amount of time.

13 The discovering employee need not inform the  
14 responsible officer and knowledge of the defect will not get  
15 to the NRC and there won't be any violation, either.

16 The problems of enforcement are not only inside  
17 NRC. Many problems of enforcement concern the lack of response  
18 to outside information, and the obstacles to outside information  
19 getting into the process.

20 The most publicized example of information being  
21 blocked, from getting into the system, again concerns the power-  
22 operated relief valve that stuck open at TMI No. 2. Problems  
23 with this type of valve date back to its use with the Nuclear  
24 Navy. A handwritten report from a TVA engineer about this  
25 valve was circulated and "fell through the cracks" at the NRC

1 a year before the TMI 2 accident.

2 This report predicted a TMI 2 type accident. The  
3 Staff obstructs intervention from the public. Mr. Sakowitz, a  
4 lawyer for TMI Alert, pointed out how the Staff's actions are  
5 at odds with the NRC charter and federal law.

6 The Staff makes intervention difficult and finds  
7 fault with the intervenors. As regulators, the Staff should not  
8 put roadblocks in the path of intervenors, and should perfect  
9 the argument of intervenors, rather than magnifying minor faults  
10 that destroy the thrust of intervenor contentions, and thus  
11 protect the licensee.

12 Instead, the Staff acts as promoters rather than  
13 regulators of the nuclear power, and that is not a good enforce-  
14 ment.

15 Another example of the NRC's reluctance to consider  
16 outside information concerns me directly. I pointed out that  
17 blasting in a nearby quarry can affect uncured concrete adversely.  
18 The NRC did have a meeting to consider the effects of blasting  
19 on the quarry near Limerick.

20 Mr. Tibbits -- I believe that's his name -- with the  
21 NRC did not consider the effects of blasting on uncured concrete.  
22 He kept his consideration within the confines of whether the  
23 blasting would exceed the safe shutdown earthquake, SSE, the  
24 limits of 10 CFR 100.

25 Now the SSE deals with only cured concrete in an

1 operating reactor. It doesn't deal with uncured concrete in a  
2 reactor being built. If the uncured concrete is shaken by  
3 nearby blasting, the strength of the cured concrete can be  
4 reduced.

5 The American Concrete Institute has guidelines to  
6 determine the amount of shaking uncured concrete can withstand  
7 without weakening. Apparently ACI specifications were not  
8 enforced at Limerick. Limerick has had many concrete problems,  
9 such as large voids and lack of adhesion.

10 Further, the strength of the concrete containment  
11 is very important. The strength of the containment must now  
12 mitigate a possible hydrogen spike, such as occurred during the  
13 accident at TMI No. 2.

14 The containment must be adequate to meet the stresses  
15 of a hydrogen spike in a repeat of the TMI 2 accident at  
16 Limerick.

17 Since the blasting near uncured concrete at Limerick  
18 may have reduced the cured strength, the Limerick containment  
19 may fail during a hydrogen spike. A failure of the Limerick  
20 can grow directly from inadequate enforcement.

21 Page 69077 of the Federal Register notice on NRC  
22 enforcement programs states:

23 "NRC intends to use these enforcement authorities  
24 in matters involving public health and safety, the  
25 common defense and security, and the environment."

1 Will the available enforcement actions, notices of  
2 violations, orders, notifying licensees to suspend operations,  
3 revoking licenses, or requiring cease-and-desist actions and  
4 imposition of civil penalties (fines) really protect "the public  
5 health and safety, the common defense and security, and the  
6 environment"?

7 The available enforcement action cannot ensure the  
8 desired results. The reason is simple and straightforward:

9 Fines and other penalties can easily be hidden  
10 from investors and stockholders, unless enforcement actions  
11 are well publicized in the investment community. Enforcement  
12 actions cannot assure any changes in the licensee's behavior.

13 Most fines are miniscule compared to the daily profits  
14 produced by a 1000 megawatt nuclear reactor. Further, these  
15 fines can easily be hidden from investors and stockholders, and  
16 they actually will not come out of stockholders' equity, but be  
17 placed on operating charges which are paid directly by the  
18 rateholders.

19 I have never seen any work-up by the NRC to make  
20 sure that these fines come out of stockholders' equities. The  
21 rate payers may be paying these fines as a part of operating  
22 cost. Fines must come out of the stockholders' equities and  
23 not be passed on to ratepayers.

24 The fines and enforcement actions must be known to  
25 stockholders who are the true owners of the plant. I suggest

1 clearly written, easily understood synopsis of regulatory  
2 actions be included in the annual report which the licensee  
3 sends to every stockholders, and this could easily go into the  
4 regulations. It would not be expensive, and would do a lot  
5 better than these miniscule fines that probably don't come out  
6 of stockholders' equity, anyway.

7 Further, the newspapers shall get a copy of all NRC  
8 enforcement actions. I'm sure the newsmen over there would love  
9 to see that. Including involving nuclear power plants.  
10 Hopefully, the licensees will get the message when their stock-  
11 holders find out what is going on.

12 Okay. Even here in Region I, the hope of TMI No. 2  
13 debacle, regulators continue to be -- have I gone over my time?

14 MR. GRIER: Yes. Your time is up.

15 MR. LEWIS: And I'm sure you'll be happy to see me  
16 sit down. I have about five minutes' more. It's not prepared.  
17 I'll mail it in, if you want.

18 MR. GRIER: Continue until you are finished, then.

19 MR. LEWIS: Thank you.

20 MS. FRASER: I didn't take all my time.

21 (Laughter.)

22 MR. LEWIS: Regulators continue to be insensitive  
23 to the concerns of the public. Several of my acquaintances  
24 called Region I to find out how to participate in the TMI 1  
25 restart hearing. Although the NRC answered these inquiries,

1 the answer stressed the difficulty of participation. This  
2 NRC emphasis on the difficulty of participation reduces and  
3 eliminates much good constructive public participation.

4 Also the NRC Region I has shown even greater  
5 insensitivity to informants. When Dominick Trombetta -- and  
6 he's in the phone book, you can find him. Not Philadelphia.  
7 He's out in Pottstown -- came to Region I with information --  
8 I'd better spell that. T-r-o-m-b-e-t-t-a. Got it? -- with  
9 information of dangerous conditions at Calvert Cliffs, he was  
10 discouraged to pursue the matter further.

11 This was reported in a local paper, and I'm trying  
12 to get ahold of the reporter to get the actual date before I  
13 send this in but I haven't been able to get ahold of him.

14 The above examples are not definitive or complete.  
15 This example shows a pattern of avoidance of the truth that  
16 makes good enforcement impossible. Not that you really want  
17 it, but that's beside the point.

18 The reason for this pattern is very strong:

19 One, the NRC is a regulatory agency which descended  
20 from a promotional agency. The major, although unwritten,  
21 policy of the NRC is no promotion.

22 Two, the administration, both present and past, is  
23 clearly in favor of safe nuclear power. The problem is that  
24 the degree of safe has led the NRC, DOE, EPA and occasionally  
25 the State Department, through the employees of the NRC, to play

1 musical chairs. By musical chairs, I mean that the NRC  
2 professionals often go back and forth between jobs in government  
3 and the nuclear industry. You're not going to bite the hand  
4 that feeds you.

5 Those that go into academia often get contracts and  
6 grants from government and nuclear industry. Those that go into  
7 private firms again get contracts from government and the  
8 nuclear industry. For government professionals who have raised  
9 the distress flag usually find themselves out of a job, because  
10 the accountant who told the Congressional committee about a  
11 \$1 billion overrun on the C-5-8 found himself at a desk without  
12 any duties.

13 The ostracism caused him to fight, not to leave,  
14 luckily.

15 Ronald J. Cleary, formerly of the NRC, found himself  
16 laid off when he insisted that an accidental criticality must  
17 be predicted against in the transport of certain radioactive  
18 materials. Any enforcement policy has little chance of success  
19 due to the pattern which I have shown in these comments.  
20 Still, a properly drafted, perfectly legal policy is necessary  
21 for any chance of worthwhile enforcement to survive.

22 This brings me to my comments on the actual wording  
23 of proposed Appendix C. The proposed enforcement policy is not  
24 drafted in a way which would enforce the required changes on  
25 the licensee. The worst example of this invitation to



1 nonenforcement is Table II. The title of Table II suggests  
2 how a licensee can avoid the progression of enforcement actions.  
3 The title is "Examples of Progression of Escalated Enforcement  
4 Actions for Violations in the Same Activity Area Under the Same  
5 License."

6 The title of Table 2 declares that, "escalated  
7 enforcement actions" will only progress for "violations in the  
8 same," and that's my personal emphasis -- "same category."  
9 If the licensee commits two violations in the same enforcement  
10 category, he is liable to escalate enforcement actions.

11 Conversely, if a licensee has hundreds or even  
12 thousands of violations in unrelated activities, that licensee  
13 is not liable to "escalate an enforcement action."

14 Therefore, all a licensee need prove to avoid  
15 "escalated enforcement actions" is that the latest violation  
16 is not in the same activity as previous violations, or at least  
17 he gets a good lawyer to prove it, which is -- well, forget  
18 that.

19 (Laughter.)

20 Further, the licensee is protected against "escalated  
21 enforcement actions" as long as no two violations occur in the  
22 same activity. This new Appendix C must include an escalated  
23 enforcement action for a licensee who has many violations and  
24 many different activities. Otherwise, it's just an invitation  
25 to give more violations in many different activities. If

1 you can't see that-- well, I'm sure you see that. You just  
2 don't want it.

3 As it stands, this proposed policy reads like an  
4 invitation to violations of many activities. The NRC should  
5 understand that there is only one license per facility. If  
6 there are many violations at that one facility, that facility's  
7 licensee is the responsible party. That licensee must not be  
8 relieved because of its responsibilities because the violations  
9 are many different activities.

10 Table 2 must be changed so that the licensee does  
11 have responsibility for multitudinous violations when they  
12 are not in the same activity. These "categories" must coincide  
13 with the impact violations may have on the health and safety  
14 of the public.

15 For instance, page 6759, D, Severity IV. No. 4.  
16 Inadequate review or failure to make a review in accordance  
17 with 10 CFR 21. 10 CFR 21 requires an engineering review  
18 of defective parts or design which may adversely affect the  
19 health and safety of the public.

20 Therefore, a violation of 10 CFR 21 can adversely  
21 affect the health and safety of the public, but this health  
22 and safety violation is downgraded to a severity category in  
23 which a licensee is allowed to repeat Part 21 violations without  
24 fear of "escalating enforcement actions" all the way down there.  
25 We don't have to worry about A, B, C, and D. All violations

1 which can involve the health and safety of the public must  
2 subject the licensee to "escalating enforcement actions."  
3 Categories I, II or III.

4 Thank you for the extra time. I really appreciate it.

5 MR. GRIER: We will take a break at this time.

6 I would ask that you reconvene at 3:00 o'clock.

7 (Recess.)

8 MR. GRIER: Will you take your places, and we will  
9 resume the meeting.

10 Mr. Thompson would like to make a clarifying remarks  
11 before we proceed.

12 MR. THOMPSON: I do not intend to provide a point-by-  
13 point response to Mr. Lewis' earlier statement.

14 AUDIENCE: Can't hear you.

15 MR. THOMPSON: I do not intend to provide a point-by-  
16 point response to Mr. Lewis' earlier statement. However, one  
17 point he raised at the end of his comments I believe deserves  
18 some clarification.

19 There is apparently some confusion in his mind and, I  
20 suspect, in some others concerning the character of Table 2  
21 and its presentation in the Federal Register notice.

22 To begin with, the Commission has explicitly sought  
23 comment on how Table 2 might be applied. Those of you who  
24 have had a chance to read the proposed statement of general  
25 policy in the Federal Register notice will note that the

1 sentence for Table 2 out of the text uses alternative wording.

2 That is, it appears as could, in parentheses, followed  
3 by will normally be, end parentheses. That was done intentionally  
4 because it is not clear whether the best approach for the  
5 possible escalation of enforcement actions on repetitive viola-  
6 tions should be followed in each case, should normally be  
7 followed, or might be followed, and we are explicitly soliciting  
8 responses from those who intend to comment on the policy on that  
9 particular question.

10 Secondly, Mr. Lewis' statement apparently reflected  
11 his belief that serious enforcement action, that is actions  
12 involving either civil penalties or orders, could be taken only  
13 under the conditions specified in Table 2.

14 I believe it is appropriate to note that's a little  
15 bit out of context. Table 2 applies for the step-wise increase  
16 in the serious sanctions to be exercised, for those cases  
17 requiring elevated enforcement actions.

18 It is not the case that a licensee is subject to  
19 either civil penalties or orders only under the conditions  
20 spelled out in Table 2.

21 With that clarifying note, I propose that we  
22 continue to receive comments.

23 MR. GRIER: Our next speaker is Mr. B. L. Shriver.

24 MR. SHRIVER: My name is Bryce Shriver. I'm here  
25 today to represent the approximately 27 active members of

1 the Test, Research and Training Reactor Managers Association,  
2 and would like to comment on the proposed general statement of  
3 policy and procedures for enforcement actions published as  
4 Appendix C to 10 CFR 2.

5 We strongly support the stated objectives of Appendix  
6 C of ensuring that research reactors are operated safely.

7 We also appreciate that the NRC has included some  
8 distinction on the severity of enforcement actions based on  
9 the type of reactor and possible consequences of noncompliance  
10 with NRC regulations.

11 However, there are some aspects of this proposed  
12 statement which may have a major adverse effect on the research  
13 reactors, but will not contribute to the health and safety of  
14 the public or environment.

15 I will point out two major concerns with the  
16 proposed statement and make recommendations for changes which  
17 will contribute to a high degree of compliance with the NRC  
18 regulations while allowing research reactors to achieve their  
19 objectives of service to the public.

20 Unlike power reactors, the objectives of research  
21 reactors are very diverse. Partially because of these diverse  
22 objectives, most members of the public do not have a clear  
23 understanding of how they contribute to the welfare of the  
24 public.

25 While it is not my purpose to expound on the role

1 of research reactors, it is worthwhile to point out some of the  
2 major objectives which would be adversely affected if the  
3 proposed statement is implemented.

4 These objectives include the following:

5 First, a production of radioisotopes for medical  
6 applications.

7 Secondly, neutron activation analysis of materials  
8 for environmental or medical applications.

9 And third, the training of engineers necessary to  
10 ensure the continued safe use of nuclear energy.

11 It is worthwhile to read the annual report issued  
12 by the University of Missouri, the University of Virginia and  
13 other reactor facilities to gain a better understanding of  
14 the services provided by research reactors.

15 There are two major concerns of the proposed statement  
16 and enforcement actions as applied to research and test reactors.  
17 These are, first:

18 The proposed statement indicates an incorrect  
19 philosophy of enforcement when applied to research reactors.

20 Secondly, the imposition of mandatory fines is not  
21 justified for research reactors. Let's look at each of these in  
22 turn.

23 First, the incorrect philosophy of enforcement.

24 The general goals of the proposed enforcement  
25 actions are stated in Section I of the proposed Appendix C.

1 In summary, this goal is to enhance the protection of public  
2 health and safety, common defense and the environment, by  
3 ensuring compliance with the NRC regulations and by ensuring  
4 prompt corrective actions if violations of regulations do occur.

5 The question is: "Are the proposed set of automatic  
6 enforcement actions the most effective method for reaching this  
7 goal?" We believe that it is not, at least for research reactors.

8 The major concern with the philosophy of specifying a  
9 set of automatic enforcement actions is that it may eliminate  
10 the careful evaluation of the alleged violation and  
11 corrective actions by the NRC. There may be more reliance on the  
12 fine, or other action, to ensure that corrective actions have  
13 been taken than understanding or working with the licensee to  
14 understand the cause and solution for the problem.

15 In this sense, the proposed enforcement actions are more likely  
16 to be used as a punishment than as a valid correctional tool.

17 Secondly, one of the purposes stated in Section I  
18 of Appendix C is that implementation will assure "that non-  
19 compliance is more expensive than compliance".

20 This again indicates a wrong philosophy when applied  
21 to research reactors. The primary objectives of these  
22 facilities is not to produce an income. Instead, most are  
23 funded by state or federal governments. Thus, the expense  
24 of any fine does not come from reactor income, but from taxpayers.

25 As discussed below, we do not believe fines are the

1 most effective enforcement action for research reactors.

2 Secondly, we do not believe that the automatic  
3 mandatory fines are justified for research reactors. While  
4 fines may be used on a case basis, we believe that they need  
5 to be reviewed on a case-by-case basis to confirm that they are  
6 warranted and are truly the most effective method for ensuring  
7 safe operation of research reactors. The reasons for this  
8 conclusion include the following four points:

9 First of all, the fines are not the most effective  
10 enforcement action. As noted above, the objective of any  
11 enforcement action is to ensure that the reactors are operated  
12 safely. The imposition and payment of a fine does not in  
13 itself ensure that any problems have been corrected.

14 Other enforcement actions, such as notices of  
15 violations or suspension orders have been effective in ensuring  
16 that the alleged problems are resolved. We believe these  
17 actions will continue to be effective, since they provide a  
18 high degree of motivation for compliance.

19 It should be noted that 10 CFR Part 50.36 requires  
20 that reactor operation be suspended if a safety limit is violated.  
21 NRC authorization is required prior to resuming operation.

22 In other cases, which would likely fall into Severity  
23 Levels I, II or III, the licensee is required to take prompt  
24 corrective action and notify the NRC of the incident and  
25 corrective actions.



1           The adequacy of these actions should be reviewed to  
2 determine whether punishment in the form of a fine is warranted.

3           Secondly, the need for fines at research reactors  
4 has not been evaluated. If the NRC considers that mandatory  
5 fines are warranted, the Managers Association and the public  
6 should be informed of the basis for this conclusion. This basis  
7 should include a summary of noncompliance items at research  
8 reactors which could not be adequately resolved by other  
9 enforcement actions. A detailed and specific analysis of why  
10 fines would be effective should also be included.

11           We believe the research reactor community has worked  
12 well with the NRC in ensuring that the health and safety of the  
13 public is protected. In most cases the reactor facilities have  
14 either defined corrective actions on their own, or in  
15 response to a notice of violation. The reason for changing  
16 this degree of cooperation must be based on a technically  
17 justifiable need, not the desire to make compliance financially  
18 attractive to the licensee.

19           Third, the proposed actions and fines are not consis-  
20 tent between facilities or difference offenses at a given  
21 facility. While the proposed statement attempts to base the  
22 severity of enforcement action on the severity of the  
23 incident, it is not successful because the great diversity  
24 of research reactors and the conservative approach used to  
25 establish safety limits and limiting conditions of operation

1 at research reactors.

2 In most cases, violation of the license requirements  
3 would not result in any adverse impact on the public or  
4 environment.

5 However, if the NRC automatically defines any viola-  
6 tion as high severity and therefore imposes a fine, reactor  
7 operators should revise their technical specifications to  
8 minimize the degree of conservatism. Any move to reduce  
9 the margin of safety is undesirable, but would be justified  
10 if continued use of a facility depended upon it.

11 The last item on this list is the imposition of  
12 fines may result in some facilities being shut down. Section  
13 IV B of Appendix C states:

14 "It is not the Commission's intention that  
15 the economic impact of a civil penalty be such  
16 that it puts a licensee out of business. . ."

17 However, there may be many cases when the imposition  
18 of a fine may directly or indirectly result in a research  
19 reactor being shut down. I am aware of two cases where  
20 universities are presently considering shutting down research  
21 reactors because of the cost of operating them. In these  
22 cases, a fine would likely be a major factor in this decision.

23 The proposed statement notes that if Table 1 does  
24 not accurately reflect the licensee's ability to pay, the NRC  
25 will consider necessary increases or decreases on a case-by-case

1 basis. Instead, we believe the need for any fine at a research  
2 reactor should be evaluated on a case-by-case basis.

3 As discussed before, we believe that the proposed  
4 enforcement actions when applied to research reactors do  
5 not protect the public, and instead adversely affect the  
6 public by directly or indirectly being responsible for these  
7 facilities being shut down. We recommend that the present  
8 system of cooperation between NRC and reactor operators be  
9 retained instead of using the inflexible guidelines proposed.

10 Specific recommendations include the following:

11 First, Appendix C to 10 CFR Part 2 should be  
12 revised to exclude research and test reactors. This would  
13 involve removing their applicability from Tables 1 and 2, and  
14 also it would be desirable to add a specific statement that the  
15 enforcement actions taken at research reactors will be evaluated  
16 on a case-by-case basis.

17 Secondly, if the NRC considers that more formalized  
18 actions are necessary for test reactors, the following  
19 changes should be made:

20 First, the need for fines should be evaluated on a  
21 case-by-case basis. Mandatory fines should be eliminated.

22 Secondly, the required actions should recognize  
23 existing requirements for corrective action. For example,  
24 violation of a safety limit already requires the reactor be  
25 shut down. Thus, the need for a suspension order is

1 questionable. Most major violations require immediate corrective  
2 actions and prompt notification to the NRC which should minimize  
3 the need for additional defined actions.

4 Third, the severity levels of violations for reactor  
5 operation and safeguards need to be redefined in terms of  
6 consistent consequences on the public or environment.

7 As noted above, there is a large inconsistency in  
8 the present definition of severity level in these activities at  
9 research reactors.

10 Thank you.

11 MR. GRIER: Thank you.

12 The next speaker, Mr. William Olsen.

13 MR. OLSEN: My name is William Olsen. I am here  
14 for Commonwealth. I have a question concerning Section 203,  
15 Public Law 95-296, which states any individual director, officer  
16 or employee of the firm constructing or supplying components,  
17 et cetera to this plant.

18 What I'd like to know is, does this law apply to  
19 architect-engineering firms? And if so, how far down in the  
20 organization does it extend?

21 And secondly, are the posting requirements of this  
22 section applicable to architect-engineering firms?

23 MR. LIEBERMAN: Sir, did you say Section 203? You  
24 meant 206.

25 MR. OLSEN: Section 203, Public Law 95-296.

1 MR. LIEBERMAN: I'm not familiar with that particular  
2 section. We will have to respond after we get back.

3 MR. GRIER: Are you referring to what is contained  
4 in Part 21?

5 MR. OLSEN: No. This is also stated in 10 CFR,  
6 Appendix A, proposed.

7 MR. GRIER: All right.

8 MR. THOMPSON: If you would quickly review the  
9 policy statement and give us the citation, we believe that you  
10 may have meant another section, and we would like to have it  
11 clear for the record.

12 MR. REYNOLDS: I believe he means Section 203 of  
13 the 1980 NRC authorization.

14 MR. LIEBERMAN: The amendment involving Section 223?  
15 We will have to answer this particular question after  
16 we have reviewed the transcript and I get back to Washington.

17 MR. GRIER: The next speaker, Mr. William S. Stowe.

18 MR. STOWE: Thank you. My name is William S. Stowe.  
19 I am an attorney for Boston Edison Company.

20 I appreciate the opportunity to address this regional  
21 public meeting on the subject of the NRC's proposed enforcement  
22 policy.

23 Boston Edison is a member of the Nuclear Utility  
24 Group on Enforcement, and we endorse the comments presented  
25 by that organization here today.

1           In addition, detailed written comments will be  
2 prepared and presented by NUGOE and Boston Edison prior to the  
3 expiration period for public comments.

4           Because of this more detailed written effort, I will  
5 comment exhaustively at this time on each aspect of the proposed  
6 policy. However, I would like to raise several points that  
7 are of particular concern to Boston Edison.

8           At the outset, we do wish to indicate that we support  
9 the NRC enforcement policy. For the most part, the goals  
10 of the proposed enforcement policy appear fair and appropriate.  
11 Only time will tell, however, how the policy is implemented  
12 and whether the goals are achieved; in particular, the one  
13 which would "encourage improvement of licensee performance,  
14 thus enhancing the degree of protection of public health and  
15 safety, common defense and security, and the environment."

16           Boston Edison believes one way the policy might be  
17 improved in this respect would be to give greater emphasis  
18 on discretion in applying the policy. This could be done both  
19 in the statement of introduction and purpose and accompanying  
20 the various tables.

21           We believe the fundamental drawback to achieving  
22 the goal of the improved licensee safety performance is a  
23 disproportionate emphasis upon a mechanistic application of  
24 tables and formulae.

25           We believe the policy should emphasize that the

1 Staff, as well as the Administrative Law Judges, Appeal  
2 Boards and the Commission, will review the actions of the Staff,  
3 and are expected to exercise, when appropriate, discretion  
4 to vary from the suggested guidelines.

5 Boston Edison believes this would be particularly  
6 true with respect to the use of Table 2 and the severity levels.

7 Also we urge the Commission, in its effort to  
8 "prove" to the Congress and the public how tough it is as a  
9 regulator, does not take enforcement to an extreme. Enforce-  
10 ment taken to an extreme is demoralizing and counterproductive.

11 Indeed, enforcement with a narrow focus on literal  
12 compliance with thousands of complex rules and procedures  
13 could divert attention from matters far more important to safety.

14 As was stated in the Kemeny Commission report, and I  
15 quote:

16 "It is an absorbing concern with safety that  
17 will bring about safety -- not just the meeting of  
18 narrowly prescribed and complex regulations."

19 Addressing myself briefly to the nine questions  
20 presented in the notice of public meeting, we have the following  
21 specific responses:

22 First, is the policy as written fair and equitable?

23 We believe is fair and equitable. The principal  
24 test will be how it's applied.

25 Second, is the policy understandable?

1 For the most part, we believe it is understandable.  
2 We believe, however, there are several areas which require  
3 clarification. Included are the role of discretion, the  
4 severity levels and the application of Table 2.

5 Third, are the severity levels appropriate?

6 I believe there are a number of problems with  
7 severity levels, and I will discuss those in a few moments.

8 Four, are the different types of activities well  
9 enough defined? Should there be others?

10 For the most part, the description of activities is  
11 adequate. There is some overlap, however, between categories,  
12 and we also recognize there could be other categories included,  
13 such as environmental regulations. The major problem to bear  
14 in mind is that all categories appear to be of equal importance  
15 from an enforcement standpoint, since the inherent safety risk  
16 from a potential violation is much lower in certain categories.  
17 Perhaps, for example, not all categories should have severity  
18 level I violations associated with them or should have the same  
19 level of penalties associated with them.

20 Fifth, are the distinctions among various types of  
21 licensees shown in Table 1 appropriate?

22 As a public utility, we would note that we are not  
23 necessarily, just because we operate a power reactor, not  
24 necessarily possessed of a greater ability to pay than many  
25 entities which fall in other categories.



1           In many cases, for power reactor licenses, the  
2 facility is owned contractually by a number of entities, large  
3 and small, both public and private. Because utilities are  
4 regulated as well, we often cannot pass through any financial  
5 impact, whether it be from civil penalties or cost of replacement  
6 power to our customers.

7           In other words, in our jurisdiction, our shareholders  
8 bear the burden of such penalties.

9           Corresponding, we would note any benefit, assuming that  
10 there could be a benefit -- I would like to remark here there  
11 was a comment at the start of the Federal Register notice it  
12 talks about removing the benefit from noncompliances. And,  
13 quite frankly, I am unable to ascertain what the source of this  
14 comment is. We don't see where there is a benefit in violating  
15 NRC regulations, and we think part of the problem is that maybe  
16 the NRC or members of the public somehow think there is some  
17 benefit to violating them. We don't think there is any benefit,  
18 and we don't see how the enforcement policies take away the  
19 benefit when it's not there.

20           With the increased size of civil penalties, not to men-  
21 tion the cost of replacement power, the overly stringent  
22 NRC enforcement could have a devastating financial impact upon  
23 a utility, particularly when you look at the possibility of  
24 per diem violations, per diem penalties being added on.

25           We believe in some cases that the civil penalty

1 is punitive, since the remedial effects could be achieved with  
2 penalties not nearly as stringent.

3 Six, are the factors for determining the level of  
4 enforcement action appropriate, or should there be others?

5 We believe they should be more clearly delineated,  
6 particularly with respect to notice of violation alone.

7 We believe there should be far greater prospects  
8 for mitigation based upon taking corrective action.

9 We believe the threshold of necessity, particularly for  
10 orders that would temporarily shut down a facility, should be set  
11 far higher and should be based only upon some finding of real  
12 risk to the public from continued operation.

13 The fact that a severity level I violation has  
14 occurred in the past is not sufficient basis unless a corrective  
15 action has not or will not be taken, or there is a reasonable  
16 likelihood of repetition.

17 We believe that for most violations, a notice of  
18 violation should be sufficient, particularly where a licensee  
19 takes its response seriously and a corrective action is promptly  
20 undertaken.

21 Seven, is the degree of discretion allowed to  
22 office directors appropriate?

23 We believe the level of discretion should be higher  
24 even than is stated within the policy. We think the policy is  
25 too mechanistic.

1           Eight, are the levels of civil penalties that require  
2 Commission involvement appropriate? Should they be higher or  
3 lower?

4           I think they are appropriate.

5           Ninth, are the provisions for escalated action set  
6 forth in Table 2 appropriate?

7           Our response to that is we believe Table 2 should be  
8 deleted. We believe progression of action appears overly  
9 mechanistic and contrary to the discretion that should be  
10 involved in such determinations.

11           In addition to the answers to the specific nine  
12 questions posed in the notice, we have the following comments:

13           First, one comment made earlier, we are not  
14 completely sure of the implications of having this enforcement  
15 program denominated on the one hand as a "policy statement,"  
16 while on the other hand published as a "proposed rule."

17           We believe the publication as a proposed rule might  
18 tend to result in removing some of the measure of discretion  
19 which the Staff or the reviewing actions of the Staff might  
20 otherwise find appropriate to exercise.

21           We believe this should be clarified, or perhaps the  
22 policy should not be promulgated as a rule, but merely a  
23 policy statement.

24           Second, we are particularly concerned about the  
25 tendency of the NRC to find multiple violations in a single

1 incident. Give the number, complexity and interrelationship  
2 between regulations, technical specifications, station  
3 procedures and so forth, it has often not been too difficult  
4 to find such multiple violations.

5 We also note with apprehension the growing number  
6 of technical specifications on matters of decreasingly less and  
7 less safety significance. We believe the inevitable result of  
8 this proliferation of technical specifications often will be  
9 more and more minor violations as operators attempt to cope  
10 with this proliferation of requirements.

11 Third, in a similar vein, we are concerned with the  
12 determinations that may be made that a particular class of  
13 events is repetitive or cumulative. In particular, we believe  
14 a determination of repetitiveness should be based upon real  
15 similarities between violations, rather than the fact that  
16 each falls in the same broad category. Some of these categories  
17 are so broad that violations occur in the same area that have  
18 no similarity, but nevertheless they fall in the same category  
19 or similarly fall in cumulative violations, in a situation where  
20 the violation was a failure to follow procedures or a failure  
21 to have adequate procedures.

22 We think it is quite possible that probably all  
23 violations will have something to do with station procedures,  
24 and seizing upon one common element as that and saying the  
25 violations are cumulative, we believe is unfair.

1                   Similarly, we believe there may also be a problem  
2 in applying the criteria whereby civil penalties may be  
3 increased by up to 25 percent, "if the licensee could  
4 reasonably have been expected to have taken effective preventive  
5 measures." We believe the criteria is illusory. In some  
6 cases something could always have been done, and we are not sure  
7 how this criterion would be applied.

8                   Next, we have a number of problems with the various  
9 severity levels. To begin with, Severity Levels V and VI lack  
10 concrete examples to illustrate what is intended.

11                   In a number of cases, the broad level of Severity V  
12 or VI would seem to apply to some of the specific examples given  
13 under III and IV.

14                   Also, some of the descriptions are confusingly  
15 similar.

16                   Furthermore, we believe there is considerable uneven-  
17 ness in the levels of seriousness that might be ascribed to  
18 various events which are given the same severity level.

19                   For example, we doubt whether certain of the  
20 safeguards and transportation severity levels, while representing  
21 matters of undoubted concern, are truly as serious as the  
22 corresponding severity levels under "reactor operations" or  
23 "health physics."

24                   Nevertheless, the same base level civil penalty  
25 is established for Severity Level I violations, even though the

1 given area may not be as serious.

2 We also believe that in general inadequate attention  
3 is given in the designation of severity levels to back-up  
4 systems or redundancies as they are designed to prevent harm  
5 from a particular event.

6 We believe the determination that there is a  
7 potential for an event is bound to be troublesome in those  
8 cases where the event could not have occurred unless there  
9 had been other violations or breakdowns.

10 In some sense, almost every violation has some  
11 potential, when coupled with other violations, to result in a  
12 serious event.

13 We note also the growing use of a number of terms  
14 in this proposed policy and elsewhere relating to the state of  
15 mind of a licensee. Such terms as "willful," "knowing and  
16 conscious" and "good faith." Aside from the difficulty of  
17 ascribing any state of mind to a large corporation, with a  
18 number of different employees, we believe many of these terms  
19 are likely to be difficult in application.

20 Some of this difficulty arises through the fact that  
21 terms like "willful" are given special meaning, and I refer  
22 specifically to footnote 15, where the term "willful"  
23 is defined to include "careless regard," and we believe this  
24 goes beyond any common usage or understanding of the term  
25 "willful."

1           Similarly, "good faith" as defined here is not merely  
2 good faith, as that term is used in ordinary parlance, but  
3 it is defined to require "extraordinarily prompt and  
4 comprehensive corrective action."

5           We believe the concepts of stiffer penalties for  
6 willful violations and reduced penalties will be applied in  
7 cases where there is good faith are good; however, we believe  
8 the definitions of those terms as used in the policy undercuts  
9 the statement -- the concept.

10           Finally, and in conclusion, we believe the  
11 responsibility for the safe operation of a nuclear power  
12 reactor rests in the first instance with the licensee. Clearly,  
13 the industry is under a public microscope to an extent which  
14 is probably unprecedented in history.

15           In addition, each licensee has a tremendous financial  
16 investment in their plants which they seek to protect, not to  
17 mention other plants which they may have under construction or  
18 licensing consideration.

19           In addition, there is no lack of incentive for  
20 safe licensee performance, even were there no civil penalties.

21           NRC enforcement actions, in addition, are front-page  
22 news in most localities. Such enforcement actions are a large  
23 contributor to public mistrust and fear.

24           We believe the presence of these incentives by licensee  
25 has been inadequately recognized, with its focus upon the

1 mechanistic imposition of orders and penalties.

2           Nevertheless, we accept the political fact that  
3 there will be an enforcement program and we, of course, will  
4 comply with it.

5           We believe the most important factor by far, however,  
6 is that the NRC enforcement policy should remain remedial  
7 rather than punitive in focus, and with this perspective, the  
8 NRC program can be a positive contributor to assuring safe  
9 operation of reactors.

10           Thank you.

11           MR. GRIER: Mr. Tom E. Tipton.

12           MR. KEPPLER: Boyce, I'd like to make a couple of  
13 comments.

14           Thank you very much for your comments, Mr. Stowe.  
15 They will be very well considered.

16           Two areas I would like to address:

17           One is concerning the flexibility aspect of the  
18 policy. We put great care into trying to make the policy  
19 very flexible, using words normally, generally, and other  
20 appropriate words in the policy. We spent a lot of time doing  
21 this, and I guess I would ask you, in making your written  
22 comments to us, that if you've got some suggestions as to how  
23 this can be better written, we'd like specific suggestions  
24 this way.

25           Also, with respect to the severity level categories,



1 I would like to say that -- I guess I'd like to make two  
2 comments:

3 One is the Commission intentionally -- and I noted  
4 this in my comments -- recognized that there would be a difference  
5 between Severity Level I violations and the various functional  
6 areas. I think I used as an example construction versus opera-  
7 tion. And you also brought out safeguards in transportation.

8 This was intentionally done on the part of the  
9 Commission to attempt to achieve a greater level of compliance  
10 in some of these areas.

11 Construction problems have been an eyesore in the  
12 public record these days, and we want to try to achieve a  
13 higher level of compliance in the construction area.

14 Transportation has been set deliberately low because  
15 of the problems with the waste burial sites in the three states  
16 receiving waste.

17 I think I make the point that this was intentionally  
18 done, and if you feel it's the wrong way to go, I would try to,  
19 on your behalf, make the comments very specific as to why it  
20 should be in this direction.

21 Thank you.

22 MR. TIPTON: My name is Tom Tipton from General  
23 Public Utilities Nuclear Group. I don't have a formal statement,  
24 but I do have a few questions of the panel itself as you went  
25 through your presentation this morning.

1 I noted one item in terms of your objectives, being  
2 the greater uniformity of application of the enforcement policy.  
3 If you may, you can add to that how you plan to do this, but I  
4 hope to point out words like "extraordinarily prompt," "accepted  
5 industry practices," "complete," et cetera, I am not really sure  
6 those terms lend to the goal of uniformity in terms of the  
7 application of this, unless it's going to filter through one  
8 group within I&E to go through all of these and make decisions.

9 The other point I make is in terms of the areas  
10 considered in determining the civil penalty. I note that you  
11 have gravity of violation, et cetera. Are these going to be  
12 given equal weight in the consideration? And this is a list of  
13 gravity of violation, financial impact, duration of violation,  
14 problem identification, good faith, and prior enforcement  
15 history.

16 MR. THOMPSON: I thought we addressed that in our  
17 comments. Those are factors, the most important of which is  
18 the gravity of violation. By that common, we intended to  
19 convey that they do not carry equal weight.

20 MR. TIPTON: Let me add to that, then, in terms of  
21 prior enforcement history, what weight did you see given to  
22 a utility that invests considerably in its quality assurance  
23 program, its health physics program, et cetera, and a mistake  
24 is made and it's clearly a mistake, and reported to the NRC.  
25 How would that be handled versus another situation where in fact

1 the QA program is not as well handled, et cetera? Is there any  
2 credit given to management's attention to the issues?

3 MR. THOMPSON: There are various severity levels  
4 associated with this. I'm not quite sure I understand the  
5 thrust of the question.

6 MR. TIPTON: I'm saying the motivation to put forth  
7 a lot of money in QA and HP is with us always and we try our  
8 best to do what we think is best for each of the utilities.  
9 That's a degree that I think should be considered in developing  
10 the penalty associated with the reporting issue.

11 What I'm saying is if you did a bang-up job over  
12 the last two years and you have a fantastic program, but you made  
13 a program, how does that get factored into the overall penalty?  
14 I don't see that it's being factored in.

15 MR. THOMPSON: I think Mr. Keppler's remarks  
16 included the observation that we don't expect to see frequent  
17 Severity Level I, II or III violations.

18 These are serious considerations that we don't  
19 expect are going to result from an error in implementation of  
20 a QA program.

21 So I think you are talking about IVs and Vs, and you  
22 do pose the question that reflects the dilemma we will face  
23 in making the distinctions between IV and V, but I have  
24 difficulty writing a scenario that puts a licensee in a position  
25 of a single flaw of a QA program or an HP program that gets

1 him into a Severity Level I, II or III.

2 MR. TIPTON: But even with IV and V, when you went  
3 up the number of days, et cetera, you are talking about  
4 significant dollars.

5 MR. KEPPLER: I think where we factor into account  
6 how well a licensee has done in our decision as to whether  
7 to have an enforcement conference, and we won't issue fines  
8 for IV or V severity level noncompliances until we put the  
9 company on notice that we intend to do so. So when we have  
10 that meeting, it will be based upon, to some degree, your  
11 past enforcement record.

12 MR. TIPTON: Give me a little history with a new  
13 program in terms of the severity levels, et cetera. These  
14 decisions in determining severity levels, are they still with  
15 the regions, or will they be factored in, first of all, from  
16 the region and then go to Washington for final review before  
17 the severity level is decided? Or is that up to the individual  
18 regions?

19 MR. KEPPLER: The regions will determine the  
20 severity levels initially, and if the case is handled by a  
21 notice of violation, as it is now, the decision will be made  
22 at the region level. If the case is to involve escalated  
23 enforcement action, it would be referred to Washington, with a  
24 recommendation from the region.

25 MR. TIPTON: Well, let me give you a couple of

1 other points. I've also heard today, and I'm very puzzled, what  
2 these regulations give you that you have not had before.  
3 Could you give me some feel for what has happened within the  
4 industry to give you the need to come out with such a document  
5 that you haven't had before?

6 What I'm talking about is you have always had the  
7 power to order a plant down within an hour or two hours, et  
8 cetera, based on a finding which is very significant in terms  
9 of dollars, et cetera. And I guess where I'm puzzled is what  
10 has happened to cause this added layer on top of that, and I  
11 recognize the Congressional mandate.

12 MR. KEPPLER: Well, that's a very important one.

13 MR. TIPTON: I understand that.

14 MR. KEPPLER: I think, quite frankly, the Congress  
15 and our own Commission have told us we have been letting the  
16 industry get away with too much.

17 MR. TIPTON: I see.

18 MR. KEPPLER: And we are too --

19 MR. TIPTON: Did they give you the basis for that in  
20 terms of their findings versus what you missed?

21 MR. KEPPLER: I think there's a couple of elements  
22 here that precipitated some of this. I think there were many  
23 utilities that experienced several fines, and the question came  
24 up as to how many times are you going to fine a utility before  
25 you do something else? When, if ever, are you going to take

1 away its license? When, if ever, are you going to suspend  
2 operations? And the intent of revising the policy was to  
3 articulate or outline the criteria for taking these various  
4 enforcement actions.

5 MR. TIPTON: One other point, and then I'll --

6 MR. THOMPSON: Let me expand on that a little bit  
7 before you go on.

8 We are caught in a dilemma, and your earlier comment  
9 sort of pointed it out. In the two previous meetings we have had,  
10 we have had recommendations, strong recommendations, and they  
11 are not confined to pro-industry or opposed-to-industry comments.  
12 On the one hand, put much more flexibility into this, so you  
13 can have a lot of flexibility and do whatever is appropriate  
14 for the particular case, and at the same time be much more  
15 specific on the rules by which you are going to apply it.

16 Now this dilemma is very difficult for us to deal  
17 with, when you are trying to identify to the public and to the  
18 affected industry the general rules under which you intend to  
19 operate. You try to make it as clear as you can and still  
20 provide flexibility, and the recommendation that you have  
21 conveyed by your first comment and have expanded on is much  
22 along the same lines of, "Well, go ahead and provide more  
23 flexibility so you can downgrade it, so you can upgrade it,"  
24 whatever the interest is of the particular group, but be more  
25 specific, and under these conditions do it, and under those

1 conditions don't. That's the real dilemma that we face.

2 MR. TIPTON: I understand what you are saying, but  
3 I guess I am making a couple of points, and one is a plea, I  
4 guess. I would encourage you to try and reduce the amount of  
5 information you put in a regulation and increase the amount of  
6 information you have in your policy statement or your I&E  
7 inspector uses as guidance and ourselves.

8 But the other point I have to make is, gentlemen,  
9 we are in an industry that is fishbowl, and by the same token,  
10 we have very conscientious people that are trying their best to  
11 do a job, but you have to factor in the factor of human beings,  
12 and so people are going to make mistakes. We have redundancy  
13 of reviews; we have redundancy of valve checks, et cetera, but  
14 by the same token it's going to happen, and I guess what I'm  
15 asking is, is any credit going to be given to trying to do the  
16 best job you possibly can.

17 MR. KEPPLER: I guess I would say this: In putting  
18 together this policy, it is the view of the panel that we really  
19 don't see a large increase in the number of fines or a large  
20 increase in the use of orders over what has been past history.

21 There obviously has been an increase in the number  
22 of fines and escalated enforcement actions since Three Mile  
23 Island, but this policy is not going to result in any significant  
24 change, in our view.

25 What we have attempted to do, and the question has

1 come up very clearly today as to the fairness of the policy  
2 will be judged on its implementation -- but what we intend to do  
3 with this policy is to try to come down very hard on the  
4 significant problems.

5 We are going to issue fines if you have safety  
6 systems valved out. We are going to issue fines if you have  
7 serious overexposure incidents. We are going to issue fines  
8 if you have significant releases of radioactivity.

9 We are not going to be issuing fines for first  
10 offenses, for the typical types of noncompliance that one  
11 expects to occur throughout the operational life of the plant.  
12 There's a lot of requirements you have to adhere to, we know  
13 that, but I'm not talking about issuing a fine when one valve  
14 is closed, if the system can still perform its intended safety  
15 function. But if you wipe out your ECCS system, you are going  
16 to get fined, and that's the intent of the policy.

17 MR. TIPTON: Let me make a point before you get too  
18 hot under the collar there.

19 (Laughter.)

20 First of all, General Public Utilities does not  
21 take issue with the enforcement policy as policy. General  
22 Public Utilities takes the position that if someone is  
23 deliberately violating or just turning their back on requirements  
24 of regulations, letting their plant remain unsafe, they should  
25 feel the effects, the full effects of the enforcement, which is



1 your prerogative. There is no question of that. Okay?

2 The question is, like you pointed out this morning,  
3 this afternoon, in one of your first statements, which may have  
4 certain connotations, although we have not explicitly stated  
5 that an operator will receive a civil penalty directly to him,  
6 this does not preclude it, and it should not. Okay? But it  
7 could have the connotation and we plan to use it, and when we  
8 go back and talk to our operators, our operator is going to  
9 ask, "Well, gee, you know, I'm doing my damndest and I have  
10 very good grades on my test," et cetera. "I don't understand  
11 why I am being put in this. What have we done to cause such  
12 enforcement coming down on our head?" We have to answer those  
13 questions. That's why I'm asking. But don't get me wrong, I  
14 have no qualms with an enforcement policy, a very strong  
15 enforcement policy, because of the business we are in, and I  
16 recognize that.

17 Thank you.

18 MR. GRIER: Mr. John Sullivan.

19 MR. SULLIVAN: My name is John Sullivan. I am  
20 with Jersery Central Power & Light Company. I don't have a  
21 prepared statement. I just wanted to make a general comment,  
22 as an individual who is involved in the management of a facility  
23 on a daily basis, as an operator licensed by the NRC, I have  
24 serious concerns about the implementation of this policy and  
25 the effect it will have on our ability to effectively manage,

1 operate and maintain, and also I cannot see where it's going to  
2 enhance our performance in any way.

3 We have been dealing with the NRC routinely through  
4 the resident program, through the project inspectors. As Tom  
5 Tipton has stated, it is our policy to follow all regulations,  
6 all tech specs, all license conditions. We don't feel we ever  
7 willfully violate any of those requirements.

8 We question at what point this industry has come to  
9 such that a policy like this has to be implemented. We feel  
10 you already have options to come down on us in a harsh manner.  
11 You can level penalties against us. We accepted that, and we  
12 decided we wanted to operate these plants.

13 We support your goals. We don't want to have non-  
14 compliances. It's a black mark against us as operators. It's  
15 a black mark against our utility. We are in a fishbowl. The  
16 papers continually write us up as poor managers. We live our  
17 lives always never getting a compliment, always the opposite.  
18 When you are working at a plant, it's almost impossible to get  
19 a good mark.

20 We always have gone through an inspection, which is  
21 an experience to anybody who's not subjected to one. They look  
22 at you in every detail. We have reached the point where the  
23 procedures just to operate and maintain a plant take up two  
24 shelves of a filing cabinet.

25 We have people who are being asked to do everything

1 according to procedure. If an operator fails to sign his  
2 initials that he completed a review, that he completed a log,<sup>ed</sup>  
3 by definition that is Severity IV. That's a \$5000 fine. We can't  
4 see how levying these fines will improve our performance.

5 You're shaking your head. It's not a fine? Okay,  
6 I'm sorry. That's the way I interpreted this policy. I think  
7 there are parts of it that are pretty subjective.

8 MR. KEPPLER: I beg your pardon.

9 VOICE: Wouldn't it be a fine if it happened two or  
10 three times over a period of 12 months?

11 MR. KEPPLER: If we had an enforcement conference,  
12 that would have been prompted by repeated chronic problems of a  
13 lower severity level, that would be the basis for it. Then if  
14 the licensee did not take any corrective action to the problem  
15 to prevent it from recurring, yes, we probably would fine him.  
16 By failing to document a check list or something, that's more  
17 of a Category V or VI severity; not a Severity Level IV.

18 MR. SULLIVAN: Just let me conclude. I would like  
19 people to know that we at the plant don't see any advantage in  
20 violating any requirements. There's nobody I know of or have  
21 dealt with in this industry that willfully violates any require-  
22 ment. The industry is a very strongly regulated industry. I  
23 have not seen a weakness in the NRC. The NRC has come down  
24 hard on us on items that we really didn't feel were major  
25 concerns.

1 But of any of us who have read inspection reports,  
2 it's rare to go through inspection by a specialist in health  
3 physics and operations and nuclear material, any of them, and  
4 come out without one noncompliance. Noncompliance is normally a  
5 deficiency. Deficiency could carry a fine.

6 Now over a period of a year, I would say most  
7 utilities averaged anywhere from 35 to 40 infractions of  
8 deficiencies. I ask you, what would that amount to in fines?  
9 And these aren't really what I would say are serious, but just  
10 maybe of those type, 10 of them relate to procedures, a couple  
11 to some omissions of some sort or other.

12 MR. KEPPLER: I don't know. You have to get down  
13 to specifics, but my reaction is that generally if you don't  
14 have any what I'll call serious items of noncompliance that  
15 fit the Category I, II or III, and the rest of the items of  
16 noncompliance are generally spread out in various items,  
17 probably nothing will happen.

18 If, on the other hand, you have -- you mentioned  
19 30 infractions. That sounds like a high number to me,  
20 personally, but --

21 MR. SULLIVAN: I believe that's average.

22 MR. KEPPLER: I've got 30 infractions, too, and my  
23 reaction is some of them I've done nothing about, because I  
24 don't consider it to be that serious a problem. In another  
25 area there may be 15 of those problems, in the area of security,

1 for example, I might decide to have an enforcement conference  
2 with them, with respect to their security program, because I  
3 don't think they are doing a good enough job. We'll have  
4 the meeting, I'll put them on notice, and tell them if they don't  
5 improve in the area of security and these same problems occur  
6 again, they are likely to get a fine.

7 Generally the problem goes away, but I have given  
8 them fair warning to the thing. What I'm saying is that you  
9 are not going to be subjected to a fine without this fair  
10 warning unless you have very serious problems.

11 MR. SULLIVAN: Let me conclude. I don't really see  
12 this as contributing anything to the health and safety of the  
13 public. I think you already have that as it exists today.

14 Thank you.

15 MS. FRASER: The best way to contribute to the health  
16 and safety of the public is to just stop them. That's right.

17 VOICE: Let them freeze to death.

18 MR. GRIER: Mr. Nick Kazanas?

19 MR. KAZANAS: I'd like to pass at the moment.

20 MR. GRIER: Mr. Shelley Kowkabany?

21 MS. KOWKABANY: No statement, please.

22 MR. GRIER: Gregg A. Johnston?

23 MR. JOHNSTON: I'd like to first introduce myself  
24 as representing Combustion Engineering in Windsor, Connecticut.  
25 I haven't really prepared a talk today, or a statement, but I

1 just do have some areas I would like to comment on.

2 . The first and, I think, most important of my  
3 comments has to do with the severity level in relation to  
4 safeguards. You mentioned that you didn't expect to have  
5 Severity I or II or III violations, but yet safeguards, the way  
6 it is written in the October 7th Federal Register, doesn't  
7 allow for differentiation between the high enriched and low  
8 enriched facilities.

9 We are dealing with a facility that has less than  
10 4.1 U-235, but yet if someone authorized walks into our  
11 building, we could be fined \$40,000. To me, this makes no  
12 sense at all.

13 Also, similarly, if somebody walked out of the  
14 building and had a fuel pellet in his pocket, which is a low  
15 enriched UO<sub>2</sub> fuel pellet, he has actually confiscated material,  
16 and again it would be \$40,000.

17 Now I think there should be something written  
18 which differentiates the actual strategic applicability to  
19 control your SNM material.

20 I'd also like to comment on the section in the  
21 Federal Register which talks about the revocation orders,  
22 where it says that it may be used when a licensee doesn't pay  
23 a fee received by 10 CFR 170. Now this is unduly harsh. We  
24 can be fined or we can have our license revoked because we  
25 didn't put a check in the mail, and have an administrative

1 license amendment. I don't think in any way that sending in  
2 these fees has to be in consistency with the revocation order.

3 MR. THOMPSON: Let me interrupt at this stage. That's  
4 not a new provision of this enforcement policy. That's been  
5 in effect since Part 170 was published. You have been  
6 vulnerable to that on every license fee payment you have made  
7 in the past, in terms of vulnerability.

8 MR. LIEBERMAN: With respect to fees, we normally  
9 send a notice of violation and a show-cause order. It's not  
10 the case the first time the check isn't received one day late,  
11 we revoke a license.

12 MR. JOHNSTON: Did you also make comments on the  
13 low enriched SNM?

14 MR. THOMPSON: Would you like a response to those  
15 now?

16 MR. JOHNSTON: No, I'll go through this first.

17 MS. FRASER: Could he say what SNM stands for? I  
18 don't understand that.

19 MR. JOHNSTON: Special nuclear material.

20 MS. FRASER: Thank you.

21 MR. THOMPSON: Special nuclear material, SNM.

22 MR. JOHNSTON: 10 CFR 71.5 was revised to add that  
23 we must follow all standards and requirements of the DOT  
24 regulations. In this one-paragraph revision, we have doubled  
25 the amount of regulations that NRC inspectors are responsible

1 for inspecting for. In actuality, these inspectors, do they  
2 have any qualifications? Have they reviewed all these?

3 I think in my experience in health physics and  
4 safety at that facility, the inspectors are asked to be --  
5 inspect for now the whole 49 CFR DOT regulations, which they  
6 have no idea what it says.

7 MR. THOMPSON: I want to interrupt you again just  
8 for one general statement, because this is a characteristic  
9 we have seen in some of the other meetings, too.

10 The statement on enforcement policy does not  
11 establish requirements. We cannot establish requirements through  
12 an enforcement policy. What it does is to provide the enforce-  
13 ment actions to be taken in the event there is noncompliance  
14 with regulatory requirements.

15 I had a little comment about that in my prepared  
16 text. So this is retrospective in character, looking back at  
17 instances in which licensees have been in noncompliance with  
18 either statute, rule or license condition, or an order.

19 Now with particular comment on your concern about  
20 the DOT, we did not incorporate that by this policy. That was  
21 incorporated by action several months ago, and the statement  
22 on enforcement policy simply says what we will do about it in  
23 the event of DOT -- a violation of DOT requirements which have  
24 explicitly been incorporated by reference in NRC requirements.  
25 And that's a matter that was taken up several months ago --a



1 year ago, I guess.

2 MR. JOHNSTON: What may be the problem is that here  
3 we have these DOT regulations that, you know, even though you  
4 don't have anything to do with, we are going to start being  
5 fined for, that a lot of times don't even make any sense.

6 I could go into a lot of specific examples of the  
7 inconsistency listed in DOT regulations, and I do have a couple  
8 cited here, but I don't feel it's appropriate right now. But  
9 there are certain areas, you know, in that one paragraph you  
10 have incorporated these DOT regs, and now I agree with you,  
11 this enforcement policy being proposed has nothing to do with  
12 changing existing regulations. But that's probably the  
13 problem right now, is that we should look at changing some of  
14 the existing regulations to make them more concise, clear and  
15 logical, so people can deal with them.

16 It's hard as heck to sit in an office and go through  
17 49 CFR, when I ask for advice from inspectors who don't even  
18 know what it means. How can you guys stand there and write  
19 down and fine me for noncompliance with things that don't even  
20 make any sense?

21 I mean things like 17(h), drilling holes -- I mean  
22 I'm not going to shoot my waste barrels in the side, but that's  
23 what it says to do in the regulations. Now I'm in noncompliance  
24 with a DOT regulation. I can be fined for that. But if I  
25 drill the holes and the contamination gets out, I can be fined

1 because I'm in noncompliance with DOT regulation of spreading  
2 contamination.

3 You know, these are actual, real-world situations,  
4 not just sitting up making everybody happy and say, oh, we're  
5 going to fine everybody for doing it, bad things. That's not  
6 how it is.

7 Another example, just recently I was notified by  
8 telephone from NRC, people in Washington, that they were about  
9 to consider a modification of my license to not allow people  
10 out of contaminated areas with any significant levels above  
11 background. Now that is one broad heck of a hard statement for  
12 me as a health physicist to comply with, but yet they are  
13 sitting in an office in Washington, they are going to just  
14 write this whole thing down, send it to me in the mail, it's  
15 my order to modify my license. You're going to have to comply  
16 with this, and I can't do it.

17 But yet they are down there in the office, and  
18 they are saying they are going to do this to me. Now I'm not  
19 sure if this is a situation that may be typical of what might  
20 come in the future with a fine system. Later on I might be able  
21 to get -- can also get fined several penalties without notices  
22 of violation. In this conference I was not in violation --

23 MR. THOMPSON: The answer to that question is no.

24 MR. JOHNSTON: Okay. Thank you.

25 We have maintained a long history of compliance,

1 especially in regards to the spread of contamination. We are  
2 well below federal levels and CE limits and everything else,  
3 yet they are down there and they decide that they want to make  
4 everybody happy and put some vague statement in my license that  
5 some NRC inspector is going to come and say, "Hey, man, that  
6 guy come out and he had 1 D per rem on his face, you know."  
7 Hey, that's the way it can be interpreted. That's above back-  
8 ground, but you have the wording they want to put in, and they  
9 come back and regulate me to, to be in compliance with that.

10 I think we know our need to look at -- in conclusion,  
11 I'd just like to say that in reference to the proposed violations  
12 of civil penalties and the statement of -- by the NRC in this  
13 area is that we do not really have to sit down and look at the  
14 violation of areas, but the actual writing and clarity of the  
15 regulations and how we are going to implement them. It was  
16 never addressed anywhere, how all these inspectors and everything  
17 are ever going to be trained to show that they can indeed  
18 inspect for areas which, like I said in one paragraph they have  
19 included a whole book of several hundred pages.

20 So basically I would just like to say that I think  
21 to do a little rewriting and put the cart before the horse  
22 here and go out and fine everybody for stuff that a lot of  
23 times doesn't make any sense.

24 Thank you.

25 MR. THOMPSON: I think I detect in your comments, and

1 others' as well, and it has occurred in some previous meetings  
2 as well, a concern on the part of industry representatives  
3 that is associated with what I believe to be a misinterpretation  
4 of the statements in the policy.

5 That is, there appears to be a concern that all items  
6 of noncompliance are automatic civil penalties. The phrase  
7 has been used in a number of places. I believe that reflects a  
8 lack of clarity, perhaps, in the way the policy is stated, or  
9 perhaps a lack of time to review the policy, or maybe a little  
10 more homework will help.

11 I believe our prepared statement indicated the  
12 conditions under which we anticipate the exercise of elevated  
13 enforcement action such as civil penalties or orders, and it  
14 does not include every item of noncompliance.

15 Contrary to the implications provided by the last  
16 speaker and several that preceded him, what it has tried to do  
17 is to provide the context in which elevated enforcement actions  
18 would normally be followed, and attach those actions to serious  
19 conditions that require escalated action.

20 I anticipate the panel anticipates that the present  
21 division of well over 90 percent of items of noncompliance  
22 being most appropriately handled by notices of violation issued  
23 by the regions will probably continue to be the case.

24 At the present time the 2 percent of elevated  
25 enforcement actions taken by NRC consume about 98 percent of the

1 concern of the industry, and the attention of the media. That  
2 may be appropriate; I don't know. But for those in the industry  
3 who foresee every infraction in the general sense, every item  
4 of noncompliance leading immediately to very large civil  
5 penalties, I think that's a distortion of what the policy is  
6 intended to say, and it in my opinion does not correctly  
7 interpret what the policy does say.

8 It does say that we are going to be very tough on  
9 serious conditions, and we are going to get the necessary  
10 corrective action for the less serious conditions, utilizing  
11 the enforcement tools that we have had all along. And don't  
12 make a mistake; a notice of violation is an enforcement tool.  
13 It's a legally binding document.

14 MR. GRIER: Mr. George Bakevich.

15 MR. BAKEVICH: My name is George Bakevich. I  
16 represent Interstate Nuclear Services in Springfield,  
17 Massachusetts.

18 Many of my concerns in the context of implementation  
19 of the proposed general statement of policy and procedure  
20 for enforcement have already been addressed by others at this  
21 meeting.

22 My comments will be directed towards several  
23 specific inequities in the proposed policy.

24 First, is the policy fair and equitable? The  
25 Commission proposes to introduce flexibility of application as a

1 means to assure fairness and equity, but this flexibility is  
2 directed more towards the licensee's ability to pay, rather  
3 than the potential impact on the public health and safety,  
4 and I'll give a specific example in a minute.

5 This approach could be compared to enforcement by  
6 local police of speeding violations. If you drive a Volkswagen,  
7 you pay \$50. If you drive a Cadillac, you pay 500. The  
8 potential impact on the public health and safety is the same.  
9 Why should the enforcement action be different? Why should one  
10 licensee be penalized more than another licensee because his  
11 operation is more profitable?

12 My second comment --

13 MS. FRASER: You can do more damage with a Cadillac  
14 than you can with a Volkswagen. You can do a lot more damage  
15 with a Cadillac.

16 MR. BAKEVICH: That's my whole theory.

17 (Laughter.)

18 If prior to NRC discovery, a licensee identifies,  
19 corrects and will report a violation in a timely fashion, the  
20 civil penalty may be reduced by 50 percent. If the licensee  
21 doesn't report the problem to the NRC, it may not be discovered  
22 by the NRC. It may be corrected prior to the inspection, and  
23 the licensee could save 100 percent of the fine rather than  
24 being guaranteed to pay at least 50 percent of it.

25 There is both a financial incentive to hide hazardous

1 conditions, and there may be a reluctance on the part of  
2 licensees to produce thorough internal audits.

3 In the transportation category, here is a specific  
4 example of Severity III violation. You do impose civil penalties  
5 for a Severity III violation; correct? It could result from  
6 improper labeling of the contents of a package or improper  
7 placarding.

8 Let's consider two different shipments of radioactive  
9 materials which could result in this violation. One is a ship-  
10 ment of drums of low level contaminated laundry in which the  
11 vehicle is not placarded.

12 The second is a spent fuel shipment from a reactor  
13 site which is mistakenly labeled "empty" or "contents less."  
14 The severity category of enforcement would be the same, though  
15 the civil penalty is different, I'll agree. Since the impact  
16 on the public health and safety is vastly different, I believe  
17 the severity category should also be very different.

18 My last comment concerns the inspection mechanism.  
19 I guess a lot of people have the same concern. At the present  
20 time one way an inspector can be judged by his superiors is  
21 by his ability to find items of noncompliance. By the proposed  
22 penalties he may be further evaluated by how many fines he is  
23 making. Too much discretion is given to regional inspectors  
24 in determining what is adequate, appropriate, prompt, comprehen-  
25 sive, willful, et cetera.

1           The relationship of licensee representatives may  
2 deteriorate significantly as the result of their new power to  
3 make the above determinations in leveling fines.

4           Thank you very much.

5           MR. THOMPSON: I think we have commented on some  
6 comments along this vein in the past, at this meeting as well as  
7 others. We really would very much welcome constructive sugges-  
8 tions on how we can address the question of being more specific  
9 and retaining more flexibility at the same time. It's a  
10 dilemma that we have not solved.

11           MR. KEPPLER: One comment on the incentives issue.  
12 At this meeting, your comment today and at the two previous  
13 meetings, the licensees have left us with a message that if  
14 licensees identified and corrected noncompliances even of a  
15 very serious nature, the NRC should not take any escalated  
16 enforcement action concerning them. Otherwise, it may lead to  
17 cover-up of the problem.

18           We are sensitive to this, but at the same time,  
19 looking at it from our perspective, the question is what do we  
20 do, or why did that problem occur in the first place, not  
21 getting that corrected so much -- we want that also, but why did  
22 it occur in the first place, and we look at the civil penalty  
23 aspect from that point.

24           So everybody has brought this message to us loud  
25 and clear, and if you've got some suggestions in this area, we



1 would welcome them.

2 MR. GRIER: We have one more speaker on the list,  
3 and then I will take questions.

4 Do you have something?

5 VOICE: I was just going to comment on that one  
6 point. As far as suggestions in that area, I certainly would  
7 not offer financial incentives against getting problems fixed  
8 and making them visible. I think your little example on that  
9 card does exactly that.

10 Your example of the people finding the valves having  
11 been blocked out, taking the action and correcting it, reducing  
12 the \$80,000 fine in half for good patriotism, and then finally  
13 hitting them four times that for four days, is creating an  
14 incentive to the people to not make that information visible.  
15 And I submit you do harm to the program of quality assurance  
16 in doing that, and I am a QA man, and you have just made that  
17 job impossible.

18 MR. GRIER: Joseph Dueton?

19 MR. DUETON: I will pass this time.

20 MR. GRIER: Well, that completes my list of those  
21 who have signed up to make comments, so we will now open it for  
22 questions from the floor. If you will come to the microphone  
23 and identify yourself one by one, why, we will take questions.

24 MR. THOMPSON: Just before we move on, would the  
25 gentleman who made the last comment identify himself for the

1 reporter.

2 MR. SUCH: Stanley Such from the SNUPPS facilities,  
3 QA manager.

4 MR. GRIER: Are there questions from the floor or  
5 further comment?

6 MS. FRASER: May I ask a question?

7 MR. GRIER: Yes, ma'am.

8 MS. FRASER: When I heard you make a statement that  
9 you would require the licensee to modify, to suspend, to revoke,  
10 to cease and desist, I was told by several people that I was  
11 speaking out of order, that this cease and desist meeting was  
12 not concerned with the fact of nuclear power plants, and their  
13 danger to the water supply, and to the endangered cities, and I  
14 would like to know why that wouldn't come under the regulation  
15 when, as I read you, the Nuclear Regulatory man said --  
16 Nuclear Regulatory head testified that the site would probably  
17 not be chosen if it were being considered today.

18 Now I know that you are discussing this policy of  
19 regulation, but I say that the sooner we implement the stopping  
20 of these plants, that we cease and desist, and isn't it common  
21 sense for a person to be concerned? And when you hear -- when I  
22 hear of a Nuclear Regulatory Commission agency which before was  
23 only a bunch of people, a bunch of faces, and I was given a  
24 telephone number to call -- why does someone say that I was  
25 out of order? Some other woman from Women's International

1 League for Peace and Freedom said to me, "Well, I heard them  
2 laughing. You're talking out of order." I don't think I'm  
3 talking out of order at all. When I'm talking about the welfare  
4 and safety of the world. Please answer me. Cease and desist.

5 MR. GRIER: The subject of this meeting is NRC  
6 enforcement policy. One option open to the Commission in  
7 terms of carrying out enforcement policy is to issue orders to  
8 cease and desist. When we are talking enforcement, we are  
9 talking about violations of requirements, items of noncompliance.  
10 If there is a basis for an order to cease and desist because  
11 there is a violation of requirements, that option is open to us.

12 MS. FRASER: Well, isn't there a requirement for  
13 licensing of a plant where the water supply should be adequate?  
14 If a nuclear plant has been licensed and the water supply is  
15 known to be inadequate, why don't you revoke the license and  
16 stop construction on the plant?

17 MR. GRIER: Certainly an evaluation of the water  
18 supply is a part of approving and issuing a license. If that  
19 is found to meet requirements, the license would be issued. So  
20 I think what you are questioning, and perhaps what some of the  
21 other questions have been directed towards is the requirement,  
22 not the enforcement once the requirement is established. We  
23 are dealing with enforcing the requirement, not the adequacy of  
24 requirements today.

25 MS. FRASER: No, but the -- enforcing of the

1 requirement, if the license was granted, and just like the man  
2 with the Volkswagen and the Cadillac, the license was granted  
3 with the idea that there was adequate water supply, whoever  
4 granted that license with the adequate water supply was in  
5 error. So now can't your regulatory commission say, "No, you  
6 don't have adequate water supply?" And we are asking you to  
7 cease and desist as of now.

8 How can I be heard?

9 MR. GRIER: Well, certainly that could be done if  
10 indeed the water supply were found to be inadequate.

11 Are there other questions? Yes.

12 MR. HARMAN: Sanford Harman. We have a question  
13 concerning the severity levels. If Severity Level I violations  
14 vary in overall danger to the public health and safety from  
15 one area of activity to another, why are they all assessed the  
16 same with respect to the base civil penalty for the given  
17 class of licensees identified?

18 MR. THOMPSON: If you look at the seven active areas  
19 involved for which there are severity levels assigned, the first  
20 two and the last two apply to types of licensees. That is  
21 operating licenseholders, construction permit holders, fuel  
22 facility licensees, and materials licensees. The three in the  
23 center, safeguards, health physics and transportation, are  
24 activity areas that may apply to any of those licensees. The  
25 reason I make that comment is that for Supplements I, II, VI

1 and VII, the classes of licensees are -- the question and  
2 differences of classes of licensees are addressed in Table 1  
3 by the different positions they fit in. The seriousness of  
4 events that occur, violations that occur involving safeguards,  
5 transportation and health physics, we recognize are not the  
6 same necessarily from one licensee to another. This is an  
7 area where we would appreciate comments and guidance on how  
8 we could implement a policy without becoming so complex that  
9 we couldn't make it work.

10 MR. NORELIUS: Let me just add, to clarify the ques-  
11 tion, the policy establishes really different thresholds of  
12 compliance in these different areas.

13 In other words, the threshold for compliance in the  
14 area of transportation, for example, is lower, if you're speaking  
15 from an absolute health and safety standpoint than it may be  
16 for some other area, and the same might be true in reactor  
17 construction, where it is difficult to say particular non-  
18 compliance item has an immediate health and safety effect.

19 So in those areas the policy really establishes a  
20 lower threshold of compliance that is not equatable in terms of  
21 absolute health and safety to other areas.

22 MR. HARMAN: I think the thrust of the question,  
23 though, was directed to the same class of licensee, as well as  
24 the same severity level in different activities. For example,  
25 there might be different danger to the public health and

1 safety in one of the supplements, as opposed to a second  
2 supplement which concerned the same licensee. That is not  
3 reflected in the civil penalty which would be assessed.

4 MR. THOMPSON: That is correct. We recognize that  
5 distinction. For the reasons that Chuck Norelius has just  
6 mentioned, we are very conscious that the threshold for elevated  
7 enforcement actions in some of the activity areas, transporta-  
8 tion, health physics and safeguards, is considerably lower  
9 than it is for those that may constitute more serious hazards.

10 It is deliberately done that way because these are  
11 areas that the Commission has determined require some added  
12 emphasis and enforcement at this time in history.

13 MR. HARMAN: But once again, the civil penalty being  
14 assessed is not related to the gravity of the events. It's  
15 related apparently, if we understand you, to a decision the  
16 Commission made that one particular item should be subjected to  
17 a greater, more severe civil penalty than another, in terms of  
18 focusing attention on it. Is that the position you are taking?

19 MR. THOMPSON: To some extent that's true. However,  
20 I think I have to modify it to say that we regard these  
21 activity areas for which we have lowered the threshold as  
22 creating a grave enough problem that they add greater emphasis  
23 than the absolute grading of that gravity would indicate by  
24 itself.

25 MR. HARMAN: Thank you.

1 I'd like to add one thing. We trust that you will  
2 put the basis of this decision in your justification of your  
3 policy.

4 MR. THOMPSON: We believe we have it in the  
5 consideration of the various items that are involved. Gravity  
6 is one and it is certainly the primary one, but it's not the  
7 only one, and I think we listed some six or seven different  
8 bases for assessing the size of the civil penalty, and for the  
9 exercise of the Director's discretion on his selection of the  
10 type of enforcement action to take.

11 MR. HARMAN: We will re-focus this again in our  
12 comments so you can deal with it.

13 Thank you.

14 MR. GRIER: Are there other questions? Yes.

15 MR. JOHNSTON: Gregg Johnston from Combustion  
16 Engineering.

17 The low enriched, high enriched severity levels --

18 MR. THOMPSON: You're looking for a response to your  
19 question. As you noted, Table 1 does distinguish between the  
20 two.

21 Let me be sure I understand your question. I under-  
22 stood your question to be some sort of lack of discrimination  
23 between HEU and LEU operations. Table 1 reflects that  
24 distinction, I believe, or was intended to, down the left  
25 side.

1 MR. JOHNSTON: If somebody walks into my facility,  
2 I've got a \$40,000 fine.

3 MR. THOMPSON: That is not the case, for the reason  
4 I outlined to you earlier.

5 MR. GRIER: Mr. Tipton.

6 MR. TIPTON: Tipton, GPU.

7 I don't want to get into many specifics, but I do  
8 want some clarification on one of them. Reactor operations,  
9 Severity III says violation of 10 CFR 50.59, such that an  
10 amendment was not sought. Does that mean that a review was  
11 not done, or a review was done and determination was made that  
12 it didn't require NRC prior review, and then you look at that  
13 as a bad call?

14 MR. THOMPSON: Let me emphasize one I made before.  
15 There has to be -- if you look at each of those supplements,  
16 the beginning of each of the severity levels states violation  
17 involving. So if you include that phrase before each of these  
18 examples, if you say a violation of 50.59 such that an amendment  
19 was not sought, first you have to have a violation of 50.59.

20 MR. TIPTON: I see. Okay. Thank you.

21 MR. LIEBERMAN: But I think to answer your question  
22 a little bit more specifically, Severity III, I believe, would  
23 be the situation where you did your review, you determined that  
24 an amendment was necessary, and an amendment was not sought.  
25 Severity IV was a review that determined an amendment was not



1 necessary, and we considered an amendment would be necessary,  
2 and therefore the review would be inadequate.

3 MR. TIPTON: So, for Severity III, you made the  
4 determination it was needed, but you decided not to do it?

5 MR. LIEBERMAN: Correct.

6 MR. TIPTON: Thank you.

7 MR. GRIER: Yes, Mr. Sullivan.

8 MR. SULLIVAN: John Sullivan, Jersey Central.

9 I'd like clarification on one item, for reactor  
10 operation, Severity II. As I understand, this is for internal  
11 use right now? In other words, your inspectors are --

12 MR. THOMPSON: It is, that's correct.

13 MR. SULLIVAN: A system designed to prevent and  
14 mitigate serious safety events not being able to perform its  
15 intended safety function. We had a case that happened in the  
16 past, where a secondary containment door, we found the  
17 contractor had blocked them open, such that that would negate  
18 the secondary containment. Once it was discovered, we closed  
19 the doors immediately, and it was reported last year.

20 Would that event, if it happened now, constitute  
21 a fine?

22 MR. THOMPSON: I think you raised a good question.  
23 We haven't looked at that. You talk about secondary contain-  
24 ment?

25 MR. SULLIVAN: It's a subtle one. Most people

1 look at it and say, well, systems defeated mechanical equipment  
2 or power supplies, but --

3 MR THOMPSON: We do not mean this alone.

4 MR. SULLIVAN: But this is double door access on  
5 your secondary containment. We found some contractors had  
6 blocked them open to bring a piece of scaffolding in. Once  
7 the guard found it, we closed the doors immediately and reported  
8 it as an RO. But if that should happen again, and we report  
9 it as an RO, does that constitute a fine also, then?

10 MR. THOMPSON: I don't want to try to conjecture  
11 on limited information simply because there are a lot of other  
12 factors that would bear on it. The operating condition of the  
13 plant -- I think you have outlined some conditions that would  
14 apparently be mitigation for the condition and I am not  
15 sure, I would have to know more about the degree to which you  
16 place reliance on complete secondary containment.

17 MR. SULLIVAN: Thank you.

18 MR. GRIER: Yes, Mr. Reynolds.

19 MR. REYNOLDS: There is a point here which I would  
20 like clarification on, and perhaps the best way to bring it to  
21 light is to just read from the proposed policy statement.  
22 I'm on page 66756 of the last column on the right, at the  
23 bottom of the page.

24 In the case of violations at Severity Levels I, II  
25 or III, the amounts shown in Table 1 may be imposed for each

1 violation.

2           However, to emphasize the focus on the specific  
3 event or problem of concern, the cumulative total for all  
4 violations related to a specific event or problem will generally  
5 be the amount shown in Table 1.

6           I am having trouble reconciling my interpretation of  
7 that paragraph with your slide No. 11, the example of the  
8 power reactor licensee, which inadvertently leaves valves open.

9           It seems to me that on the one hand here in the  
10 policy statement, you are talking about all violations relating  
11 to an event; the event which I would define in your example  
12 as the inadvertent opening of valves. Yet you are accumulating  
13 the four days in the example.

14           MR. LIEBERMAN: The answer to that is when we defined  
15 the event, the event for purposes of this paragraph is the  
16 occurrence of all the items on a single day. The duration of  
17 the event lasted for more than one day. Each day would be  
18 considered a separate event, for purposes of policy.

19           MR. REYNOLDS: That certainly can't be gleaned from  
20 what is said here. There is no indication here that the  
21 phrase "specific event or problem" indicates a duration of time,  
22 a cut-off, a day.

23           MS. FRASER: A greater civil penalty is imposed if a  
24 violation continues for more than one day.

25           MR. LIEBERMAN: We may be able to clarify that in

1 our wording. We have missed in the one paragraph violations  
2 with various paragraphs' events, but the thought here was that  
3 if you have five violations associated with a given event, each  
4 violation under the statute could receive up to \$100,000. We  
5 are going to take a look at the five items not in compliance,  
6 look at what is the highest level of that violation, characterize  
7 the event at that level, and then factor in the duration.

8 MR. REYNOLDS: On a daily basis?

9 MR. LIEBERMAN: On a daily basis.

10 MR. REYNOLDS: Then would you clarify footnote 17  
11 on page 6657 and state for us the regulatory purpose for the  
12 paragraph?

13 MR. LIEBERMAN: The purpose here is to, in the case  
14 we just discussed with five violations, once we have initially  
15 categorized the severity levels of each violation -- I see  
16 the highest one is Severity Level II -- we want to focus on  
17 the event, the Severity Level II event, and the thought here  
18 was to, for the purpose of preparing the notice of violation  
19 and the notice of proposed imposition of civil penalty, calling  
20 them all out as a Severity II, each one a Severity II violation;  
21 but imposing again the civil penalty for only one Severity II  
22 event for a given day.

23 MR. REYNOLDS: That was my understanding of the  
24 footnote, but what I'm asking is, what's the purpose of doing  
25 that? In effect, you are imposing on a licensee's history an

1 indication that there were five Severity II violations  
2 associated with this event, rather than four Severity IVs and  
3 one Severity II.

4 MR. THOMPSON: The basis on which this footnote was  
5 prepared was that although these lower -- normally lower  
6 Severity Level events by themselves might not be too serious,  
7 the cumulative effect of these lower severity events was to  
8 produce a bad result that was more serious than some of the  
9 individual parts.

10 MR. REYNOLDS: You are assuming that they all relate  
11 to and cause this?

12 MR. THOMPSON: Yes. All those associated with that  
13 particular event or problem. I think the most classic --

14 MR. REYNOLDS: Contributing to, not associated with?

15 MR. THOMPSON: That doesn't mean there might not be  
16 more than one event. I think the wording is, in retrospect --  
17 I think we could have made that footnote wording clearer.

18 MR. REYNOLDS: And the purpose is to reflect in  
19 the licensee's enforcement history that these lesser significant  
20 violations contributed to the greater violation?

21 MR. THOMPSON: Yes. Now, in some thoughts we have  
22 had collectively since the publication, we would welcome  
23 suggestions and alternative ways of handling this. At the  
24 time it was prepared, it appeared to us the most effective  
25 way was to categorize the contributing violations of this same

1 level as the event or problem level.

2 Now if there are alternative ways that might be  
3 provided, I think we would be interested in entertaining those  
4 for consideration.

5 MR. REYNOLDS: Thank you.

6 MR. GRIER: Yes?

7 MR. STOWE: One of the aspects of the policy that  
8 troubles me is the opportunity to have multiple violations  
9 for a single violation that continues over a period of a number  
10 of days, especially in a situation which I think in most people's  
11 minds there would have only been one actual state or violation  
12 that occurred. And because perhaps the period of time for  
13 inspections was only once every four days or once every 10 days  
14 or something, it was not discovered until the next inspection,  
15 and it seemed somewhat arbitrary and punitive to apply the  
16 multiplier.

17 I have in mind some violation that I don't know  
18 the details of, some time ago, involving a valve left open  
19 over a period of a year or so when it was discovered. You  
20 could get some fantastic multiplications done in these cases,  
21 even though it may have only been one error that may have itself,  
22 when it occurred, been fairly minor, and there would have been  
23 no opportunity for a licensee -- you know, he was exercising  
24 reasonable surveillance that was called for under his technical  
25 specifications, and he discovers it at the first opportunity,

1 and there is a tremendous penalty that could be assigned.

2 I wonder how this policy or how this advances the  
3 stated purpose of the policy of deterrence and to encourage  
4 licensee compliance, when in reality the licensee would not  
5 have reasonably been alerted to do anything differently under  
6 the circumstances. He jast made one mistake, and you have  
7 many days of violations.

8 I wonder if you could comment on this. It would  
9 seem to be a classic case where, you know, fairness would  
10 dictate not multiplying out the number of days of violation.

11 MR. KEPPLER: The view of the task force in dealing  
12 with this was that the longer a noncompliance of a higher  
13 severity category exists, the more threat there is to the public  
14 health and safety. So we felt there was an input need to modify  
15 the fine in the upward direction.

16 I don't want to discuss the Palisades case specifically  
17 because that is under litigation right now, but I would say  
18 that the concern for things going to astronomical sized figures,  
19 that's the very reason why we put in the point that high fines  
20 that continue over a period of time would be reviewed with the  
21 Commission, so that collective judgment could be made as to  
22 what would be the appropriate type fine, recognizing that you  
23 probably would not multiply on a daily rate of whatever the  
24 number is for every day up to a year.

25 MR. STOWE: Wouldn't the answer in a situation like

1 that really be one requiring a technical specification, if it's  
2 so serious to require a technical specification change to say  
3 you have inspected it every day, if it's that serious? If  
4 the matter, in the Commission's wisdom, was such that this  
5 particular item didn't need to be inspected but once every 10  
6 days or once every whatever? It seems to me they should follow  
7 this up in their enforcement policy and assign it just as one  
8 violation.

9 MR. THOMPSON: For a case such as you hypothesized, I  
10 would agree with you, and for the same reason that Jim Keppler  
11 that doesn't want to discuss, I want to refrain from discussing  
12 an actual case under litigation which des not appear to parallel  
13 what you have identified.

14 MR. GRIER: Yes?

15 MR. DYCK: My name is Norman Dyck. My employer is  
16 Public Service Electric & Gas Company.

17 In Supplement II, dealing with severity categories  
18 for facility construction, there are listed in a couple of  
19 different places failure to implement quality assurance  
20 program.

21 In Supplement I, on the same subject, for reactor  
22 operations, it is not addressed. Why?

23 MR. THOMPSON: Let me comment on that in two days:

24 Number one, I agree with the observation which, for  
25 the record, we'll note you provided to us ahead of time, that



1 it would be much clearer to include operational QA in Supplement  
2 I.

3 I feel relatively confident that the subject will be  
4 addressed in our rewrite. But, No. 2, you will note that in  
5 the various severity levels in a number of these elements, we  
6 talk about failure of a system, and our view is that manage-  
7 ment systems and procedural controls of administrative systems  
8 are as real systems as mechanical ones. But I do agree with  
9 your observation that operational quality assurance is  
10 appropriate for coverage in Supplement I.

11 MR. DYCK: Thank you.

12 Another question related to the question of the  
13 previous gentleman, on a new civil penalty or a new violation  
14 for each day, where one exists, how do you deal with the situa-  
15 tion where it takes quite a number of days to effect a  
16 necessary rework or repair associated to correct the situation  
17 which is the violation?

18 MR. THOMPSON: I think we have to have a little  
19 more specific. I recognize your concern. Our general  
20 reaction is that when the problem is identified and corrective  
21 action or compensatory action is taken, it doesn't mean that  
22 if it's mechanical, the entire repair process must be completed  
23 before the violation ends.

24 When you find situations that involve extensive  
25 modification, the general practice, I believe, is to institute

1 compensatory measures until those corrective actions are  
2 completed, but the violation would end when the compensatory  
3 measures are established, not necessarily waiting until the  
4 end of complete repair.

5 MR. DYCK: Compensatory measure the same thing as a  
6 corrective action?

7 MR. THOMPSON: Not necessarily. There may be some  
8 things for which you would suspend certain types of operation.  
9 We won't ship any more waste until we get new barrels; or we  
10 won't do this action until we get something else. And in  
11 the extreme it might be we will shut down and stay at cold  
12 shutdown until these repairs are made. That's compensatory  
13 action. It doesn't complete the repair.

14 MR. DYCK: That's for operation. How about during  
15 construction, where something is found to be a violation and  
16 it does take some time to effect the repair and rework?

17 MR. THOMPSON: I expect the same thing would apply  
18 if, for example, in construction, you found a particular  
19 contractor giving you some problems because he had inadequate  
20 QA procedures. For example, you might refrain from activities  
21 involving that contractor until he had cleaned his act up, but  
22 the violation, if there were a violation associated with it,  
23 would end when you got him out of the line until he got his  
24 act together.

25 MR. DYCK: One last question. Why does the NRC feel

1 it is necessary to invoke civil penalties for violations which  
2 may have been found and corrected by the licensee?

3 MR. THOMPSON: The problem is twofold:

4 Number one, how did it happen in the first place?  
5 Yes I agree, that licensee monitoring surveillance programs  
6 are important and we want to encourage them.

7 MR. DYCK: How about QA programs?

8 MR. THOMPSON: I consider the QA or surveillance  
9 and monitoring as a subpart of QA, QA being full operational  
10 and construction. But how did the program occur to begin with?

11 If you say we've got a good QA program in this  
12 licensee's organization that's conscientious, it's effective,  
13 it's finding problems and correcting them; finding problems  
14 and correcting them is not the same as having violations of  
15 NRC requirements self-identified. And if you have problems  
16 coming up that indicate that you can't meet Appendix B, that's  
17 a lot different than having that QA program that functions  
18 and finds problems in construction.

19 In each of these cases, for about the third time  
20 today, I want to say in each of the supplements, you must read  
21 violations involving the following; not the following by  
22 themselves. You have to have violation of requirements first.

23 MR. DYCK: If QA surveillance reveals the fact there  
24 is a closed valve, and it's being closed for four days when it  
25 should have been open, and corrective action is taken, your

1 policy still says you are going to invoke the civil penalty.

2 MR. THOMPSON: Now I don't know where we are. In  
3 construction or operation?

4 MR.DYCK: Let's say it's operation.

5 MR. THOMPSON: How did the valve get closed, to begin  
6 with? Personnel error? Procedural error? So what I am --  
7 I'm not belittling your concern. I recognize your concern.  
8 It's been raised before. We understand the concern about the  
9 need for providing adequate credit for licensee-identified  
10 and corrected problems, and we are looking for your comments  
11 to help us in this area.

12 The steps that we took in this draft policy was to  
13 recognize that there are two things involved here:

14 One is the problem that occurred to begin with,  
15 and to some extent in the opposite direction is recognition  
16 of the fact that a strong effective QA program on the part of  
17 the licensee might identify that, and then why does he end up  
18 being punished?

19 Well, the argument is he is not punished as much as  
20 if he had not found it.

21 MR. DYCK: I think you should provide a little  
22 more incentive for the QA program to find the problems and  
23 get them corrected, and you can do that by not invoking  
24 civil penalties, but by invoking civil penalties if the  
25

1 corrective action is ineffective or not timely.

2 MR. THOMPSON: Yes, I recognize the nature of that  
3 concern and we would like to consider comments along those  
4 lines in our rewrite in a fashion that would be effective  
5 and still provide effective quality assurance to begin with.

6 MR. DYCK: Thank you.

7 MR. LIEBERMAN: I'd just like to expand on that a  
8 little bit. If we took the position that if the licensee  
9 identified a problem and corrected it, and were required to  
10 report it to us and we gave no civil penalty; then the same  
11 problem occurs a month later, again the licensee identifies  
12 it, corrects the problem and reports it as required; and again  
13 if we took the position that no civil penalty would result, at  
14 what point would it be appropriate to say we need something more  
15 than the licensee identifying a problem after it occurs and  
16 correcting it?

17 MR. DYCK: I would say that the second time it occurred,  
18 that by itself or in itself is evidence that the corrective  
19 action was not effective.

20 MR. LIEBERMAN: Would you take that same position  
21 no matter how severe the first noncompliance is?

22 MR. DYCK: Well, I'm going to have to be flexible  
23 just as the NRC is, and when they do their evaluating of the  
24 situation, I'll have to have more specifics than that.

25 (Laughter.)

1 MR. KEPPLER: Let me ask you one specific here:

2 Supposing you completely lost your ECCS system for a  
3 week and then you found it, you realigned it. Do you still  
4 think that the Commission should take no action?

5 MR. DYCK: I think it depends on what the corrective  
6 action is, how the corrective action is defined by the licensee.  
7 For that situation, it would have to be a very strong, a very  
8 effective corrective action.

9 MR. GRIER: Yes, back on the right?

10 MR. SABOL: Andrew Sabol, Pennsylvania Power &  
11 Light.

12 There is a point of question here regarding suppliers  
13 and the implementation of supplier programs, particularly as  
14 far as severity IV is concerned.

15 It's conceivable to me that deficiencies found in  
16 supplier programs through the Region IV could conceivably  
17 touch on several utilities who have worked in such suppliers  
18 and such violations would be a reflection on either the  
19 architect-engineer or the utility, or the utility itself, in  
20 terms of how it exercised its surveillance program in those  
21 suppliers' facilities.

22 These are remote situations and not nearly so  
23 accessible as an operating facility or a construction plant.

24 MR. THOMPSON: I'm not quite sure whether that was  
25 a question or comment, but I think I recognize your concern

1 with regard to the reach to licensee contractors and vendors.  
2 This is separable from the enforcement program and the ability  
3 of the NRC to take effective enforcement action for those  
4 firms now covered only under Part 21 as a separate subject  
5 from the enforcement policy if I understand your comment.

6 MR. SABOL: The comment really is directed at the  
7 fact that an effective quality assurance program in the  
8 utility's house would have one looking at the supplier and  
9 determining that the supplier is indeed implementing his program  
10 effectively, so that the equipment delivered is indeed in  
11 conformance with the utility's quality assurance program.  
12 The fact that it would not be, would be a breach in the  
13 utility's quality assurance program.

14 As an agent thereof, the utility has responsibility  
15 for any supplier.

16 MR. THOMPSON: You're absolutely correct. The  
17 licensee does have vulnerability for the activities of his  
18 suppliers.

19 MR. SABOL: And for failing to detect those things,  
20 for instance, which Region IV might find.

21 MR. THOMPSON: Yes, you could be. Now whether that  
22 raises your hackles on whether you're going to get fined for  
23 something your supplier does, bear in mind that it depends on  
24 the severity level or the seriousness of what's involved.  
25 But, yes, your observation is correct. It has been ever thus

1 in this industry.

2 MR. SABOL: I have one other question, then, I  
3 hadn't prepared to ask at this point, but the stated objective  
4 associated with the policy was to increase the level of civil  
5 penalties under Section 234. Does this increase in the amount  
6 of civil penalties affect the now existing penalties against  
7 company executives as described in 10 CFR Part 21?

8 MR. LIEBERMAN: Yes, it does. The legislative  
9 history of Section 234 indicated that the references in  
10 Section 206 to the Reorganization Act referred back to 234  
11 was intended to increase the 206 liability from \$5000 to  
12 \$100,000. On the policy we have limited the amount of money  
13 that we would propose to responsible officials to \$8000, as  
14 subject to civil penalties.

15 MR. SABOL: I might point out that in reading this  
16 policy, it seemed it was inordinately directed toward  
17 licensees, and there is not very much clarity that it applies  
18 to those organizations which supply, as in the case of a Part  
19 21 situation, it's not particularly clear there.

20 MR. LIEBERMAN: We can clarify that.

21 MR. GRIER: Yes.

22 MR. SUCH: Stan Such again, SNUPPS.

23 I would like to pick up on the point of the  
24 incident being detected by the licensee. I think we would  
25 all agree the case of an ECCS system being shut down for a



1 week by the valve being blocked is very serious and should be  
2 dealt with very vigorously.

3           However, by the mechanistic approach that I think  
4 many of us see in this policy, a handful of welds produced by a  
5 welder in the course of two or three days may not get picked  
6 up in the radiography, may have been accepted and it may not  
7 be until two weeks later when the utility or an outside  
8 consultant does an audit of the radiographs and picks up a  
9 handful of these welds and says, "These radiographs are un-  
10 acceptable."

11           By that definition, by the mechanistic approach that  
12 I understand in this policy, I am just as vulnerable to  
13 civil action as I would be in the case of the ECCS system  
14 being shut down for a week.

15           MR. KEPPLER: I'm not sure I'd call that a major  
16 breakdown in quality assurance.

17           MR. SUCH: But you keep making the point that the  
18 QA that picks it up that, good, it's the event that is the  
19 concern. The event here is the production of an improper,  
20 unsound weld. That happens every day on a construction job.  
21 That event happened. It was found. Go back to Mr. Thompson's  
22 point: How did it happen? When we produce 27,000 Section 3  
23 welds in a plant, there are going to be poor welds, unless we  
24 are trying to legislate no poor welds.

25           MR. KEPPLER: I think again -- I guess there is two

1 aspects:

2 One is focus on the significance of the problem first.  
3 It is the intent -- and maybe we've got to be sharper in  
4 defining these things, and again this is where you can help us --  
5 the intent is to issue fines for serious problems which are  
6 caused by acts of noncompliance.

7 I am not even sure that I can find an act of non-  
8 compliance in the example you have given. Maybe there is,  
9 maybe there isn't. But again, focus on the significance of the  
10 problem and the noncompliance had to cause the problem.

11 MR. SUCH: I would submit in that case the non-  
12 compliance could be the welder or the weld supervisor not  
13 correctly following his weld procedure, providing excessive  
14 current or heat, such that he does not produce a sound weld.

15 MR. KEPPLER: But if that problem were found in a  
16 reasonable period of time, I don't know that I would categorize  
17 that as a major problem.

18 MR. SUCH: I submit an unsound weld in a Class 1 line  
19 could be a rather significant safety problem.

20 MR. KEPPLER: It could be. It depends on the  
21 timeliness -- pardon?

22 MR. SUCH: It would undoubtedly be reported as a  
23 significant deficiency.

24 MR. KEPPLER: It might, but I guess -- I guess  
25 again, and it's going to be very hard in the area of

1 construction, admittedly, you're going to get down to some  
2 judgments on these things, and I think that -- I guess my  
3 reaction -- let me give my personal reaction, how I would view it.

4 I would say if you had a weld that was -- some  
5 welds in the piping system, I probably wouldn't be too excited  
6 about it. If you did the whole system that way, and didn't  
7 find it for months or even years, I'd be very excited about it.

8 MR. SUCH: But that's extreme.

9 MR. KEPPLER: Now I think you've got to get down into  
10 the specifics.

11 MR. SUCH: Again I think the concern coming through  
12 here is an appearance of following formulae and tables and coming  
13 up with an assessment as opposed to the individual assessment  
14 of what is the problem, what is the cause of it, what does it  
15 mean in reaching a judgment. That's what I want to find out.

16 MR. KEPPLER: That's why we tried to use the words  
17 "generally," "normally." But I think the key to it is really  
18 going to be the determination of did it fit the categorization  
19 of what we intended for Severity I, II or III?

20 If there are mitigating circumstances that make  
21 the problem less severe, we'll tend to classify it as a IV or a  
22 V.

23 Now maybe we haven't done well with the words, and  
24 I can only tell you that we've been working on this thing for  
25 months to get the words so they were suitable in this direction,

1 and we will appreciate any comments you can make in this  
2 specific nature.

3 MR. THOMPSON: Just as a quick note here. I know  
4 there are some of you in this audience who have some awareness  
5 of where we were last March. Last March one of the problems we  
6 had with the original proposal on the revised enforcement  
7 policy when we went to the Commission was that it's too rigid;  
8 go back and be more flexible.

9 Now we put the flexibility in, and we get a call  
10 for flexibility greater than we put in, but at the same time  
11 more definition and narrowing down on what are you going to do  
12 in this case or that case, and we fought that dilemma for many  
13 months now, so we are just looking for a little sympathy at  
14 this stage.

15 MR. BAKEVICH: Just to address the question I  
16 previously had, improper labeling or placarding in the  
17 transportation category is considered a Severity III violation?

18 MR. THOMPSON: If you read on, such that it causes one  
19 of the following. Or could reasonably be expected to cause one  
20 of the following. Just improper placarding by itself does not  
21 -- it has to -- you can read it, it's fairly long.

22 Any noncompliance with labeling, placarding,  
23 shipping, packaging, loading or other requirements that could  
24 reasonably result in the following:

25 (a) Improper identification of the type, quantity,

1 or form of material; failure of the carrier or recipient to  
2 exercise adequate controls; or substantial potential for  
3 personnel exposure or contamination.

4 MR. BAKEVICH: Okay. I'm reading the same section,  
5 and the first one, improper identification of the type,  
6 quantity, form of material. If improper labeling results  
7 in the improper identification of the quantity of material,  
8 I've got drums of contaminated clothing and got 50 millicuries  
9 instead of 30 millicuries, it's improper identification of the  
10 quantity of materials.

11 MR. THOMPSON: Not by the characteristics you just  
12 gave me. Suppose it was a -- instead of small bits of solid  
13 waste, low level, that you've got a screaming high gamma source,  
14 that's what we're talking about.

15 MR. BAKEVICH: But the reading of this says  
16 improper identification of the type, quantity or form of  
17 material, and a noncompliance of labeling -- now I've got a  
18 noncompliance with labeling.

19 MR. THOMPSON: Fine. I'll agree with you, it's a  
20 Level II. It is flat a Level II. Do you want it rigid that  
21 way or do you want the judgment exercised?

22 MR. BAKEVICH: Let's see. In this case, I want  
23 the judgment exercised.

24 MR. THOMPSON: All right. This is a case where  
25 judgment would be exercised, and I just gave you the judgment

1 we would exercise.

2 MR. BAKEVICH: I'm sorry, could you just run that by  
3 me again?

4 MR. THOMPSON: You asked if it's 50 rather than 30,  
5 and I said no, so I exercised my judgment.

6 My counsel advises me literally it's a Level II --  
7 I'm sorry, III.

8 MR. BAKEVICH: Severity III violation?

9 MR. THOMPSON: Yes.

10 MR. BAKEVICH: But you would not necessarily  
11 impose the fine?

12 MR. THOMPSON: I wouldn't necessarily call it a III.  
13 I was going to exercise my judgment, but you wanted to make it  
14 a --

15 MR. BAKEVICH: No, no, I want you to exercise your  
16 judgment. Don't get me wrong, that's why I'm standing here.

17 MR. THOMPSON: I'm posing the dilemma to you being  
18 posed to us in these meetings. You want more flexibility, but  
19 you want more rigidity.

20 MR. BAKEVICH: I understand your dilemma. This is  
21 just a specific question I have, and I'm glad you're going to  
22 exercise judgment. Thank you.

23 MR. GRIER: Mr. Reynolds?

24 MR. REYNOLDS: May we turn to Table 2 briefly? I  
25 know the time is late.

1           If my memory serves me correctly, the previous  
2 Staff drafts and policy statement provided that the number  
3 of similar violations of the date of last inspection or within  
4 the last two years. It was originally one year. Now it's  
5 been changed to two, and I am curious to know, and I wish you  
6 would state for the record the regulatory basis and purpose  
7 for the change.

8           MR. THOMPSON: Your observation is correct. The  
9 earlier draft included a period of one year or since the last  
10 inspection, whichever is greater. This period is now two  
11 years. It reflects a concern on the part of the Commission that  
12 one year was too short a time to consider the possibility of  
13 escalated enforcement action.

14           MR. REYNOLDS: Is that a unanimous view of the  
15 Commission?

16           MR. THOMPSON: I do not know.

17           MR. REYNOLDS: Or was it just Commissioner Bradford  
18 alone?

19           MR. THOMPSON: I do not know the extent to which  
20 all Commissioners participated.

21           MR. REYNOLDS: I think the transcript should reflect  
22 that --

23           MR. THOMPSON: All Commissioners concurred in that.

24           MR. REYNOLDS: The record should reflect that  
25 Commissioner Bradford wanted this change, and there is no

1 statement of basis or purpose for the two years.

2 Now you have doubled the time. It's an owner's  
3 burden you have placed upon industry with the stroke of a pen,  
4 and I think there should be some explanation for the number.

5 MR. GRIER: Well, it is approaching the time that  
6 I said we would adjourn or recess. If there are one or two more  
7 questions, I'll take those.

8 Yes?

9 MR. GURKAN: Gregory Gurkan. I'm with American  
10 Electric Power Company.

11 In Supplement I, a release of radioactivity offsite  
12 greater than 10 times the technical specification limits  
13 falls into Severity Level I, while exceeding that limit by  
14 five times in limit II, yet the fine for either in the table  
15 of civil penalties would be identically the same. Does this  
16 make sense? What is your reasoning behind that?

17 MR. THOMPSON: The reasoning is very simple: We  
18 regard the significance of the event occurring as being very  
19 parallel. The difference between the two is that for a  
20 Severity Level I event, the most likely course of action is a  
21 combination of a civil penalty plus an order either modifying  
22 the license or suspending certain activities.

23 Thus, the enforcement sanction in toto for the  
24 higher level release is more severe than for the lower level  
25 release.



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MR. GURKAN: Thank you.

MR. GRIER: One more question.

All right, we will then recess to reconvene here at 7:00 o'clock. If anyone would like to be on the list for further comments for the evening session, why, I believe there is opportunity to register at the desk as you go out. 7:00 o'clock, then.

(Whereupon, at 5:10 p.m., the meeting was recessed, to reconvene at 7:00 p.m., this same day.)

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EVENING SESSION

(7:00 p.m.)

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2  
3 MR. GRIER: I believe it's time for the meeting to  
4 resume, if you will take your places.

5 This is a continuation of the meeting that began  
6 at 1:00 o'clock this afternoon. The meeting is for the  
7 purpose of discussing the revised enforcement policy of the  
8 Nuclear Regulatory Commission.

9 There are handouts on the table in the back of the  
10 room which contain the revised enforcement policy as published  
11 in the Federal Register, and copies of the formal presentations  
12 that were made this afternoon at the beginning of the meeting.

13 I am not sure how many of you were here this after-  
14 noon or were not here this afternoon and missed hearing the  
15 formal presentations, but copies of those are available.

16 We are prepared to proceed with comments or questions  
17 from anyone present. We can give a summary of the presentations  
18 that were made, if that is felt to be necessary.

19 Those who were not here this afternoon, are you  
20 desirous of having some presentations made, or are you prepared  
21 to proceed with comments and questions?

22 MR. THOMPSON: I wonder if we might have a show of  
23 hands of people who were not here for this afternoon's presenta-  
24 tion?

25 (Show of hands.)

1 MR. THOMPSON: People who were not here at the  
2 afternoon presentation. I count three hands so far.

3 (Show of hands.)

4 Four.

5 MR. GRIER: Well, I might say a few remarks, and  
6 then if the panel members want to add something. The panel is  
7 made up of members who constitute the task force established  
8 to develop the revised enforcement policy. Mr. James Keppler  
9 headed the task force. He is the Director of NRC's Region III  
10 Office in Chicago.

11 Mr. Dudley Thompson, who is Director of the  
12 Enforcement-Investigation Staff of the Office of Inspection &  
13 Enforcement, NRC Headquarters.

14 Mr. James Lieberman, who is Deputy Chief Counsel  
15 for Rulemaking and Enforcement in NRC's legal office.

16 And Mr. Charles Norelius, who is Assistant to the  
17 Director and Enforcement Coordinator of Region III, Chicago.

18 Jim, do you want to say a few things?

19 We will have a brief summary of where we are with  
20 respect to the revised enforcement policy. Mr. Norelius.

21 MR. NORELIUS: I guess especially for the benefit  
22 of those who have just come for the evening session, I will try  
23 in maybe 10 minutes or 15 minutes to just cover the highlights  
24 of the remarks that we made earlier this afternoon, and of  
25 which you have copies, and hopefully that will just sort of tend

1 to focus on the objectives of the enforcement policy and may  
2 be helpful in your further comments or questions.

3 I think it would be helpful to go over the specific  
4 objectives that we had in mind in revising the enforcement  
5 policy, and we will maybe show selected slides that we have.

6 Jean, slide No. 3, if you could put that up for us.  
7 The first which you will see here shortly has six specific  
8 objectives.

9 First we wanted to establish criteria for utilizing  
10 the increased civil penalty authority.

11 (Slide.)

12 Now this came about when Congress enacted legislation  
13 effective June 30, which gave the Commission authority to  
14 issue civil penalties of up to \$100,000 per violation.  
15 That's an increase from previously where the limit was \$5000  
16 per violation, not to exceed \$25,000 in any 30-day period.

17 Secondly, because of the mandates given to us by  
18 Congress and by our Commission, we wanted an enforcement program  
19 which was tough yet fair.

20 Thirdly, we wanted to achieve a greater uniformity in  
21 the treatment of licensees, hopefully such that equivalent  
22 actions would be taken against licensees who had similar  
23 problems.

24 Fourthly, we wanted to better define our enforcement  
25 capabilities with respect to all of the NRC licensed activities,

1 in addition to operating reactors. We have additional guidance  
2 for the areas of construction safeguards, plus some other  
3 areas.

4 Fifth, we wanted to focus the escalated enforcement  
5 actions on the importance of events, rather than to focus on  
6 the specific numbers of items of noncompliance which were  
7 identified.

8 And lastly, we wanted to define better the  
9 relationship among the different types of enforcement actions  
10 which we have available to us, and I think specifically there  
11 we are talking about the relationships between civil penalties  
12 and orders.

13 Now in the new enforcement policy, we have violations  
14 divided into six separate severity categories, and these  
15 go from number I, which is the most significant, to number  
16 VI, which is obviously the least. And so this gives a relative  
17 ranking to help to focus on how important is a particular viola-  
18 tion.

19 Now the severity categories are defined separately  
20 for seven different program areas which we regulate. I think  
21 it would be helpful, Jean, to show slide No. 5.

22 (Slide.)

23 The Commission's program encompasses really three  
24 major types of activities, one being reactors, another being  
25 fuel cycle operations, and a third being materials.

1           The areas in the center, safeguards, health physics  
2 and transportation, may be applicable to any one of those three  
3 areas. But what we have done is to define the separate  
4 severity categories for each of these seven areas which are  
5 shown here.

6           Now there is a couple of points that I think are  
7 important to remember. A Severity Level I within the reactor  
8 operations program is obviously more severe than a Severity II,  
9 III, IV, V and VI. But a Severity I in reactor operations  
10 does not have the same health and safety significance as a  
11 Severity I in reactor construction, for example.

12           So the severities are not equatable across the  
13 board between those programs, but within each area they show  
14 a relative ranking of the safety importance.

15           I think next we will look a little bit at civil  
16 penalties, because that is an area that's of considerable  
17 interest, and I believe it would be helpful to look at slide  
18 No. 7, which shows the table of base civil penalties.

19           (Slide.)

20           Now as you can see, there are different groupings  
21 of licensees which are identified on the left-hand column.  
22 And generally the groups of licensees towards the top of the  
23 table are those which present the greatest potential hazard  
24 because of their operations, and also present licensees who  
25 have a greater ability to pay. So those licensees are at the

1 top of the table, and in case you have difficulty seeing it,  
2 basically the top line is power reactors; the second is test  
3 reactors and fuel facilities that have the small quantities;  
4 research reactors and critical facilities are in the third  
5 grouping; and the last, "all other licensees and persons  
6 subject to civil penalties," would include the hospitals,  
7 universities, those who possess byproduct materials licenses,  
8 and persons subject to civil penalties would include licensed  
9 reactor operators and persons subject to fine for failure to  
10 report significant events in vendor programs.

11 One other comment that might strike you; right away you  
12 will note that the civil penalties for Severity Levels I and II  
13 are the same. Basically this is because the basic difference  
14 between Severity Level I and II is really the same item of  
15 noncompliance.

16 What we have said, in a general sense, is that if  
17 you have a safety system inoperable but not called upon to work,  
18 that is a Severity Level II. If it is called upon to work, that  
19 is a I. So the only difference there is really one of  
20 whether it's called to work or not. So the basic noncompliance  
21 in many instances is the same between those two severity levels,  
22 and that is one of the reasons why they have the same civil  
23 penalty value.

24 A second point to be made is that for a Severity  
25 Level I, as we will see in another table, the licensee is

1 subject to the receipt of an order in addition to the civil  
2 penalty, so the combined sanction is greater for a Severity  
3 Level I than for a Severity Level II. These are considered  
4 to be base civil penalties, and there are provisions for  
5 adjusting them up or down, depending on factors -- well, we  
6 have the seriousness of the violation which is taken into  
7 account in the table. You see the different severity levels,  
8 the ability to pay is considered, and then self-identification,  
9 and reporting can result in a 50 percent reduction if a  
10 licensee has additionally exhibited good faith in taking  
11 extraordinary corrective action that may result in a further  
12 25 percent reduction.

13 On the other hand, if there has been prior enforcement  
14 history or other reasons that the licensee had warning not  
15 to have such a violation, then the civil penalty may be  
16 increased by 25 percent on the base value.

17 So you can have anything from 25 percent over this  
18 value to 75 percent reduction, depending on the conditions.

19 I think that the last point I would make in this  
20 brief summary is to look at the following table. Let me see,  
21 it's slide 10.

22 (Slide.)

23 The question has arisen from time to time after  
24 we had issued civil penalties, more than one to a particular  
25 company, as to how long would the Commission continue to issue



1 civil penalties without taking a stronger enforcement action,  
2 and this table is devised to provide some sort of a roadmap  
3 of a normal progression of escalated enforcement actions that  
4 may be taken if there were repetitive violations within a  
5 same or similar license area.

6 Now there is a lot of As and Bs and all that sort of  
7 thing, but let me just run through one example which I think  
8 will give you an indication on how the table would be used.

9 If a particular licensee had an event which was  
10 judged to be Severity Level II, then in the middle line, the  
11 first time it occurred it would result in a civil penalty,  
12 and you would go to the table, depending on the type of license  
13 and all, you would choose the appropriate value.

14 If within a two-year period a similar event occurred  
15 which would generally say that the corrective action had not  
16 been adequate from the first event, then you would go to the  
17 second table which would be A plus B, so you would not only  
18 get a civil penalty, but in addition an order possibly to  
19 suspend operations or modify the requirements would be issued.

20 If a third similar violation occurred within a two-  
21 year period, you would then get the same two sanctions, but  
22 you would in addition get an additional type of order which  
23 may either impose additional modifications or it may be a  
24 show-cause for revocation of the license.

25 So I believe that, in very quick summary form, is

1 the essential high points of the policy.

2 MR. GRIER: Thank you, Chuck.

3 We will turn now to provide opportunity for comments  
4 and questions from members of the public. The notice of the  
5 meeting indicated that up to 15 minutes would be provided for  
6 public comments or public statements. I remind you of that,  
7 and we will first take those who had requested in advance  
8 opportunity to speak.

9 The first ones that I have are a representative  
10 from ACORN. This, I believe, is an acronym for an organization,  
11 A-c-o-r-n. Is anybody from ACORN here?

12 (No response.)

13 The next individual then who had asked for opportunity  
14 to speak, Winnifred Miller. Is Winnifred Miller here?

15 (No response.)

16 Those are the only requests that I have for  
17 scheduled comments. So we will proceed then to take any  
18 comments or questions from anyone in the audience. If you  
19 will, please identify yourself and your organization at the  
20 beginning of your comments.

21 MR. VELASCO: Anthony Velasco, Bethlehem Steel  
22 Corporation.

23 After the proceedings of this afternoon, I almost  
24 thought I understood Table 2, and what I'd like to do is just  
25 ask a question or present a scenario hopefully that would

1 clarify it in my mind.

2 If we have, let's say, a radiography, and a  
3 radiographer fails to retract a source and lets it go all the  
4 way up to say Severity I, under health physics, and it results  
5 in 25 or 26 rem exposure, that man or the company, the licensee,  
6 has not had a previous incident. What I thought was said earlier  
7 was that that may not result or probably -- I thought you were  
8 saying it probably would not result in an immediate fine, but  
9 that the first under Table 2 was saying the first time that  
10 was repeated afterwards. No? Okay.

11 MR. THOMPSON: No, the first offense for the scenario  
12 you have outlined, without consultation with my colleagues, my  
13 estimate would be that would probably be a \$10,000 civil penalty,  
14 and the possibility of a license modification order, though  
15 that would not be a foregone conclusion.

16 The basis for that is as a radiography licensee,  
17 the base civil penalty is \$8000, but as I noted in the  
18 afternoon's presentation, the classic overexposure on radio-  
19 graphers is associated with failure to retract, survey,  
20 personnel monitoring and dosimetry, and those kinds of things.  
21 That has been called to the attention of that portion of the  
22 industry so frequently that we would consider there was  
23 prior notification and reason to have taken preventive  
24 measures.

25 Therefore, I would propose that it would be

1 escalated by 25 percent.

2 MR. VELASCO: Okay. The escalation part wasn't  
3 really of concern. It was more that when you say first under  
4 here it's the first violation and not the first --

5 MR. THOMPSON: Of that severity level.

6 MR. VELASCO: Yeah. Okay. Thank you.

7 MR. GRIER: Yes?

8 MR. HARRIS: Donald Harris.

9 I would just like to follow up on his question and  
10 state that in my opinion probably the best safety program in  
11 the country cannot necessarily always assure that a radiographer  
12 is going to completely follow the rules; that he may not survey  
13 a source and get an overexposure.

14 Does this mean that the licensee is still subject to  
15 that fine?

16 MR. THOMPSON: Yes, I'm afraid to tell you that's  
17 exactly what it means, and in that connection I would call to  
18 your attention the Commission decision in Atlantic Research,  
19 which was crucial to this determination, insofar as it applies  
20 to the responsibility of a corporate licensee for the actions  
21 of its employees.

22 This was a rather crucial decision in that it held  
23 very clearly that the corporate licensee does bear responsibility  
24 for the acts of its employees, and this becomes -- I recognize  
25 it creates a problem for some radiography firms, but the

1 soundness of the decision, I think, is hard to assail.

2 MR. HARRIS: Wouldn't that be like saying that a  
3 truck driver caught for speeding, the company is responsible for  
4 him?

5 MR. THOMPSON: Not quite the same. The trucking  
6 company doesn't have a license to conduct activities that  
7 constitute the same nature of hazard to public health and  
8 safety that the radiography firm does. Yes, they can kill  
9 people with their trucks, that's quite true; but this society  
10 has a little bit different attitude toward highway fatalities  
11 and hazards than it does to radiation.

12 MR. HARRIS: There was some talk at one time about  
13 licensing the radiographer rather than the company. Was there  
14 any follow-up on that?

15 MR. THOMPSON: I still wouldn't rule this out. You  
16 bear in mind that the activities of licensed operators  
17 operating reactors are still responsibilities of the corporate  
18 entity as well.

19 However, in direct response to your question, yes,  
20 we are aware that there have been some proposals from a number  
21 of sources for the licensing of radiographers, and the possibility  
22 is not ruled out, but as far as I know, there is nothing active  
23 at the moment with such approach.

24 MR. HARRIS: Thank you.

25 MR. GRIER: Are there other questions?

1 MR. THOMPSON: I would like to make some very quick  
2 summary type comments, and then I will see if my associates care  
3 to make any.

4 It is quite clear that we have quite a diversity of  
5 opinions, as we anticipated we would during these meetings.  
6 There are two messages that appear to be very strongly projected  
7 by representatives from the industry:

8 One is their concern for what they perceive to be a  
9 possible stifling of interchange of information, because of the  
10 limited degree to which we give credit for licensee identifica-  
11 tion and correction of problems.

12 We recognize that concern, and we'll be reviewing the  
13 comments we received in the comment period to that end.

14 Secondly, it is also quite clear from industry  
15 representatives that there is a concern about two ends of the  
16 spectrum: one, the need for flexibility in the policy, and a  
17 simultaneous need as perceived by industry for more clear  
18 definition of severity levels and dollar figures associated with  
19 civil penalties.

20 I don't know how we will handle that response, because  
21 these two desires, for more flexibility and more rigidity, appear  
22 to be at opposite ends of the spectrum.

23 Nevertheless, we have undertaken these public  
24 meetings as a means of allowing individuals and organizations to  
25 articulate their concerns with the policy, so that we can get a

1 policy that makes good sense, and meets the goals that were  
2 established and set forth in the prepared presentation.

3 We don't know the timetable for the completion of  
4 that, but it obviously will not be immediately after the 31st of  
5 December. We have at least one request already for an extension  
6 of the comment period, and I cannot give an indication now as  
7 to whether that request will be honored or not. I suspect that  
8 we will be able to extend it slightly, but that is not a  
9 Commission response.

10 We feel that we have in the three meetings that we have  
11 had thus far gained a great deal from the comments that have  
12 been supplied from all the interested parties who have spoken  
13 to the group, and we will be addressing those concerns in the  
14 early months of next year.

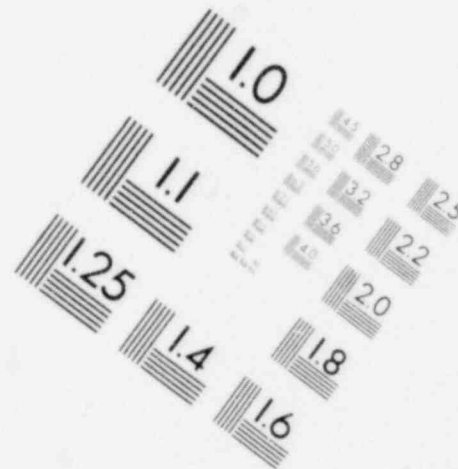
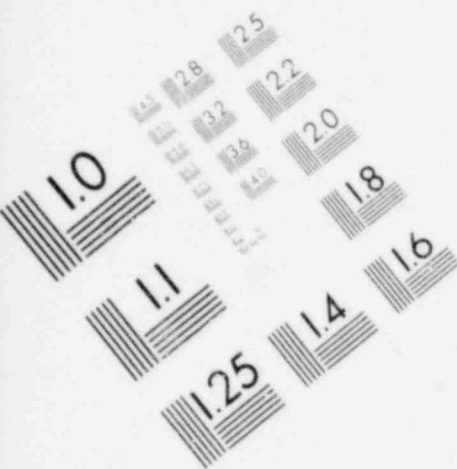
15 Jim, do you want to say anything?

16 Let me say on the part of the four of us who have  
17 been sitting here most of the afternoon, we appreciate your  
18 comments and we thank you very much for taking the opportunity  
19 to come in.

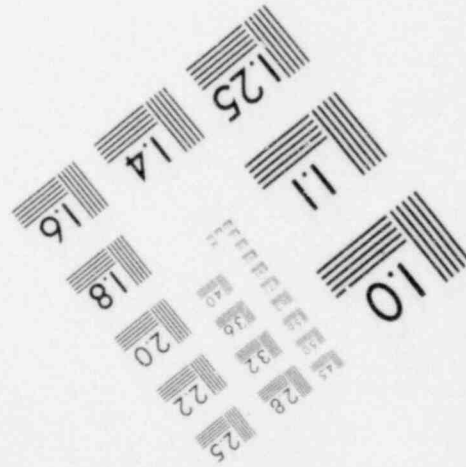
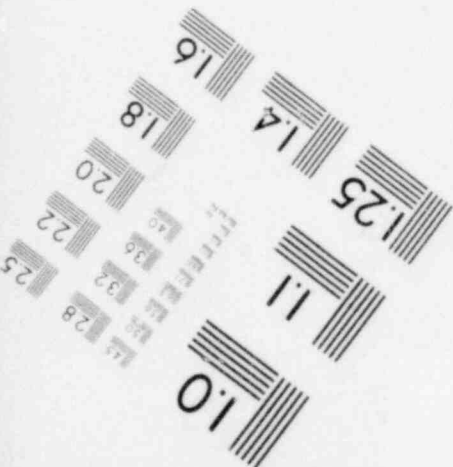
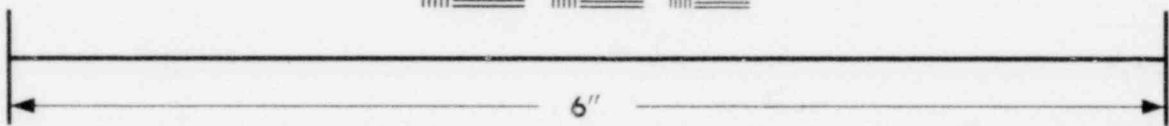
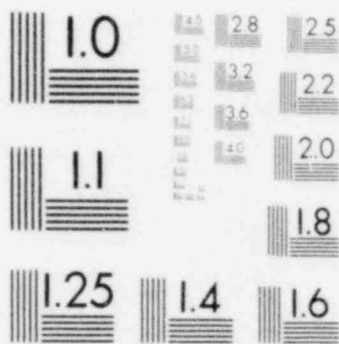
20 MR. GRIER: Well, thank you very much. Unless there  
21 are further comments or questions, why, the meeting is  
22 adjourned.

23 Yes, ma'am?

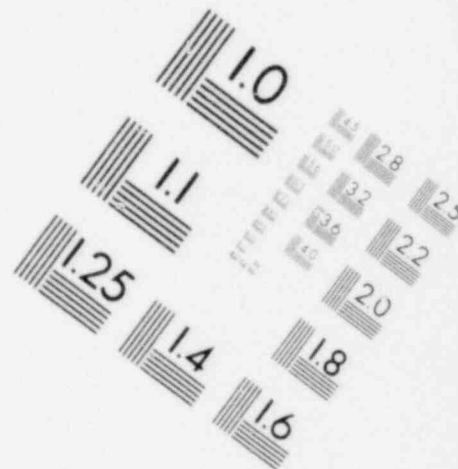
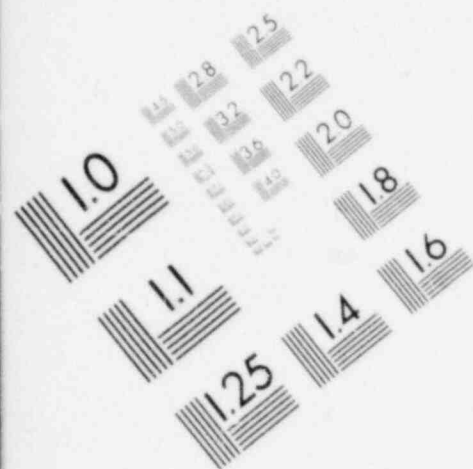
24 VOICE: Let me try to be brief. Jean Ewing. I did  
25 not come prepared to speak at all, and I live in Darlington,



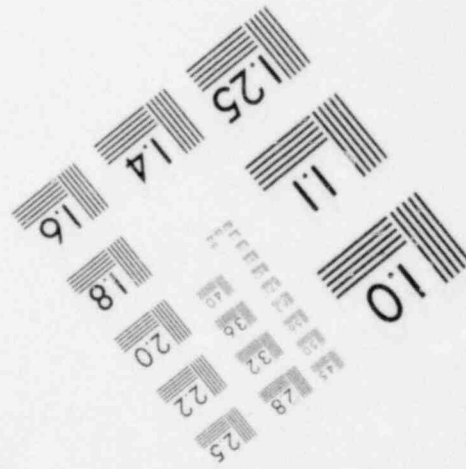
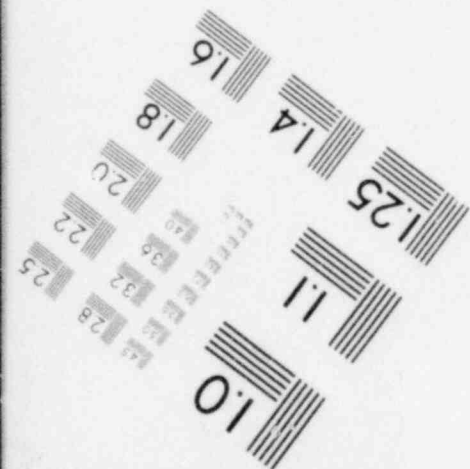
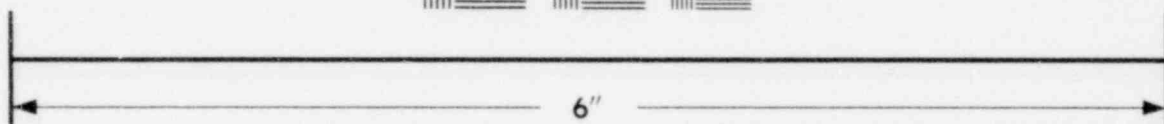
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**IMAGE EVALUATION  
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1 Maryland, which is quite near Peach Bottom. We have been uneasy  
2 in that area. We have heard your workers coming home jeering at  
3 the lack of the informality of the working conditions in this  
4 plant, and we have also compared this with people who talked  
5 with Navy personnel who say they are scared to death of commercial  
6 plants.

7 I, for one, am very happy to hear the NRC talking  
8 about clamping down, because these boys know that money talks.  
9 I hope that you do, when I hear some of the people representing  
10 these companies -- and they have our lives in the palms of  
11 their hands -- talking about fines that may be so severe that  
12 they will get covered over, I suggest specifically that fines  
13 for covering up be doubled or tripled or multiplied by 10.

14 Whether you are pro-nuke or anti-nuke, you want these  
15 things to run right. It's been my feeling for a long time that  
16 if we had built one nuclear plant on the continent of North  
17 America, one in Europe and one in perhaps Australia, learned  
18 how to run it right without using the people around them for  
19 guinea pigs, we might be on our way to a nuclear society.

20 If you guys around me are resisting paying these  
21 fines, I'd like to know why you think we should risk our lives.

22 MR. GRIER: Thank you.

23 Are there any other comments or questions before we  
24 adjourn?

25 Thank you very much.

1 (Whereupon, at 7:35 p.m., the meeting was  
2 adjourned, and reconvened at 8:05 p.m., this same  
3 day.)

4 MR. GRIER: We'd like to start the meeting again. Is  
5 everybody here now?

6 Let me say first that we were here at 7:00 o'clock,  
7 the regular meeting time, and we had some summary of the  
8 afternoon meeting and opportunity for questions and comments,  
9 and by about 7:30 the audience that was present at that time  
10 had no more questions and no more comments, so we proceeded  
11 to adjourn the meeting. I'm sorry that you were not here at  
12 7:00 o'clock, but we are all still here, and we will be glad  
13 to give you opportunity to make your statements and ask your  
14 questions, and we will respond as best we can.

15 I am Boyce Grier, the Director of the Nuclear  
16 Regulatory Commission Region I office. We are located in King  
17 of Prussia.

18 This meeting was for the purpose of explaining the  
19 revised NRC enforcement policy and to give opportunity to receive  
20 comments and questions from members of the public.

21 The members of the panel are from the task force  
22 that developed the revised enforcement policy. The chairman of  
23 that task force was Mr. James Keppler, who is Director of  
24 Region III Office in Chicago.

25 With him, Mr. Dudley Thompson, who is Director of

1 the Enforcement and Investigation Staff from the Office of  
2 Inspection and Enforcement Headquarters Office.

3 Mr. James Lieberman, who is with the NRC legal  
4 staff at headquarters, and Mr. Charles Norelius, who is the  
5 assistant to the Director and Enforcement Coordinator for Region  
6 III, Chicago.

7 They have been involved in developing the revised  
8 enforcement policy, and at the beginning of the meeting at  
9 1:00 o'clock this afternoon, there were some formal presentations  
10 with respect to the policy as proposed, published for comment  
11 and for interim use, and then we spent the rest of the afternoon  
12 and the first part of the evening here receiving questions and  
13 comments on that policy.

14 Now I believe you have received copies of the  
15 presentations that were made, the remarks. If not, there are  
16 some copies, I think, of the policy statement as published  
17 in the Federal Register.

18 Now I know that ACORN asked for opportunity to  
19 speak. We had gotten that request. I gave opportunity when  
20 we opened the meeting earlier, so that is on the record, but  
21 we will again give you opportunity to make remarks that you  
22 would like to make, and my understanding is that some three to  
23 five speakers wanted to make remarks.

24 In accordance with the rules that we had published  
25 for this meeting, the individual comment periods are to be

1 limited to 15 minutes each.

2 So, with that, does anyone on the panel want to say  
3 anything, have any remarks to mark?

4 MR. LIEBERMAN: Boyce, I'd just like to comment on  
5 this handout. Limerick does not have an operating license yet.  
6 It is under construction. We have a mechanism where members of  
7 the public can request the Commission to take action concerning  
8 a licensee, in this case the permit construction holder. It's  
9 under our regulations in 10 CFR 2.206, where you can submit a  
10 petition to the Commission if you so desire to suspend construction  
11 on the Limerick construction for whatever factual reasons you  
12 desire to submit.

13 After receiving such a petition, they would analyze it,  
14 put a notice in the Federal Register that we received the petition.  
15 The Director of Nuclear Reactor Regulation would make a  
16 decision on the petition, and then that petition is reviewable  
17 by the full Commission, and then at that point in time they can  
18 be appealed to the courts.

19 So I wanted you to be aware of that.

20 MR. THOMPSON: Boyce, I'd like to add a comment, too.  
21 As you can see, we do have a court reporter present. Because  
22 we don't have a public address system, I'd like those of you  
23 who intend to make presentations first to identify yourself by  
24 name for the benefit of the court reporter, and secondly, please  
25 speak clearly and distinctly, because of our lack of a public

1 address system. It may be a little difficult for her to get all  
2 of your comments unless you do so.

3 MS. MC GOWAN: My name is Meg McGowan. Just as I  
4 head into my opening statement, I feel that the Nuclear  
5 Regulatory Commissioners should be here, not the Staff. When  
6 one considers the density of the population that's impacted, and  
7 what sort of nightmare is this? What ignorance of an area  
8 permitted this construction to take place? Is the voice of the  
9 dollar so strong that the security of millions of people doesn't  
10 matter any more? I sneer at the lack of judgment of these  
11 very remote gods.

12 History proves that a people are not puppets, controlled  
13 with strings. Remote gods in due course can tumble. Let's  
14 take a look at some of the cities and towns just along the  
15 Schuylkill River. I don't know if you people have ever looked  
16 at an atlas.

17 To the west and to the east -- I'm doing it backwards --  
18 the Reading Railroad runs along the Schuylkill banks on the  
19 west side. The old Pennsylvania Railroad runs along the east  
20 side. This is a highly densely populated area. Pottsville.  
21 Reading. Pottstown, on whose doorstep sits Limerick. Phoenixville  
22 Norristown. Conshohocken. Philadelphia.

23 Anyone familiar with the banks of this river knows of  
24 the countless communities between those towns. It is truly a  
25 high density area. Yet no evacuation plan was mentioned, neither

1 in our meetings with people from PE, nor by the engineer on site  
2 -- engineers on site.

3 We are told spent fuel is to be shipped across state  
4 lines and I am happy to note that a negative undercurrent is  
5 growing against this thinking.

6 Our water, with rationing already practiced in the  
7 north of this state, and in northern New Jersey, what is the  
8 offering for Philadelphia? How can these people -- PE -- contemplate  
9 diverting billions of gallons of water for cooling? Somebody's  
10 out of their cotton-pickin' mind.

11 The environment is our business. The environment is  
12 not free for big business to pollute at liberty. Clean air,  
13 clean water, undamaged terrain, is our birthright. The for-free-  
14 take-all is no longer acceptable, and we will not permit pollution  
15 of our birthright.

16 The environment is not free. We therefore demand  
17 that the Commissioners hold meetings with us, not the Staff,  
18 we want the Commissioners. The people whose environment is  
19 threatened, we. In this particular situation, when atmosphere,  
20 food, water, medicines are exposed to the possibility of  
21 contamination, it is mandatory that construction of Limerick be  
22 halted.

23 (Applause.)

24 The engineers speak of the state of the art. They  
25 are mere mortals. They are experimenting with millions of lives.

1 VOICE: All right.

2 MS. MC GOWAN: We do not choose to be their guinea  
3 pigs.

4 VOICE: I don't. Thank you.

5 (Applause.)

6 MR. GRIER: Next.

7 MR. BULLOCK: My name is Joseph Bullock, ACORN.

8 I am --

9 MR. CLARKSON: Speak up.

10 MR. BULLOCK: From ACORN, Joseph Bullock, a member  
11 of ACORN.

12 I am interested in knowing about evacuation of the  
13 city of Philadelphia; not only Philadelphia, the whole area  
14 of the emergency. What plans have been made for it? Any plans  
15 at all?

16 MR. GRIER: The emergency plan for the state of  
17 Pennsylvania, which will include the local plan, is still under  
18 development and review, but --

19 (Simultaneous conversation.)

20 MS. BRENNAN: How about Philadelphia, where all the  
21 people are, where there's so many people right here? You  
22 know, when you say Pennsylvania, you're stretching it out to  
23 Pittsburgh.

24 MR. GRIER: An approved plan will be required to  
25 be in place certainly before any licensing of Limerick.



1 MR. BULLOCK: Will those plans be made public?

2 MR. GRIER: Yes.

3 MS. BRENNAN: When they said they didn't need it,  
4 they didn't need it till after. In the meeting with Mr. Taylor,  
5 he said they didn't need it until it was completed.

6 MR. LIEBERMAN: There would have to be a plan in  
7 effect before licensing.

8 MS. BRENNAN: Well, he said until it was completed,  
9 when we met with Mr. Taylor from Philadelphia Electric.

10 MR. BULLOCK: Mr. Taylor said five years after.  
11 That's what he said.

12 MR. GRIER: That's not correct.

13 MS. BRENNAN: They're not correct in anything  
14 they're doing. Not in the rates. And my name's Irene  
15 Brennan. I'm from the Bridensburg section of Philadelphia, and  
16 very concerned about people here in Philadelphia area, where  
17 there's so many people that they say in the effect it will be  
18 done in four days, that all this will cover the area, yet it  
19 takes 10 days to evacuate Philadelphia. Are you aware of this  
20 fact?

21 You know, there's a lot of factors that are just  
22 overlooked and not even, you know -- it's like all the skeletons  
23 in the closet, they're just hanging there. And we're the  
24 skeletons, you know. We're the skeletons that are hanging in  
25 the closet. There's no provisions made.

1 In Russia -- oh, thank God for Nader. e's the only  
2 one guy -- one guy that's awake in the whole United States that  
3 can go and face Congress and tell 'em. Oh. It was just a  
4 disaster what happened in Russia. A little disaster. When  
5 everything was just wiped out, and forgotten about.

6 You know, my name will be on a tombstone, but I  
7 hope to God that it's in the hands of God and not in you  
8 people.

9 VOICE: Amen.

10 (Laughter.)

11 MS. BRENNAN: And if they're putting everybody's  
12 name, there won't even be tombstones, they'll be wiped out so  
13 fast.

14 Nothing's taken into consideration of the water.  
15 What the hell are they going to do for water? You gonna bill  
16 us? Everybody's going on welfare now. And I'm thinking of it.

17 (Laughter.)

18 I'm thinking of it. You guys just don't care how  
19 you spend the money. Why should I live and struggle? I'll sell  
20 what I got and go out and have a hell of a good time, and then  
21 go get on welfare.

22 (Applause.)

23 Who's going to pay for the water? It used to be  
24 \$12 a year. Whoppy-do. You know what I pay? \$500, while  
25 two guys are standing watching one guy, two guys are standing

1 there with a gun. I had to pay \$500 for the year.

2 And I'll tell you, after I take a bath, I flush my  
3 toilet, because I'm conserving water. And I pay that kind of  
4 money today.

5 AUDIENCE: Right.

6 MS. BRENNAN: What am I going to do next year? The  
7 hell with working. The hell with everything. Let you guys  
8 support me. I don't give a damn.

9 You know, the money's coming easy. You got good  
10 jobs, you do what you're supposed to do, but are you looking  
11 in the public interest?

12 VOICE FROM THE AUDIENCE: No.

13 MS. BRENNAN: You know, the public's interest --  
14 who's on welfare today? They tell me -- the kids are smart  
15 today. They're wiser than us old guys thought. They're on  
16 welfare because they get better medication; they get all  
17 hospital care; and they're proud peacocks. They don't want to  
18 work.

19 Hey, with what you guys are doing, they're smarter  
20 than what we are. They're smarter than what we are, because  
21 the welfare will drain the social security out, and what's  
22 this country coming to? What is this country coming to? You  
23 don't care about the rates. They keep going high-galore.

24 Yeah, youse are getting a fat paycheck. But I'll  
25 tell you, Atlantic City is putting you guys to shame.

1 It's putting you guys to shame. You can go down there and win  
2 more in one night than you make in a year, you know.

3 It's making bums out of these people. And this is a lot to  
4 consider.

5 Don't you think nothing of this? You thinking of  
6 Pennsylvania, there's a lot of forests in Pennsylvania. They  
7 don't have anything set up about Three Mile Island. They  
8 can't even operate it for the money sunk into it. Five more  
9 years sitting there. It's a sitting duck. Would you go in it?

10 Hershey's moving to Virginia. Why? They're taking  
11 industry because all the cows are contaminated, the milk is  
12 contaminated. Yet you go to the meeting, Mr. Taylor will stand  
13 up there, "Nothing was done, no harm to nobody." Bullshit.

14 (Laughter.)

15 It's all bullshit. When people move like Hershey  
16 down in Virginia because there's too much contamination here.  
17 It isn't, oh, well you could tell me anything. But seeing it's  
18 believing. And if you can build a place with that much millions  
19 of dollars to go into it and sit there, sit there without being  
20 used, I don't know who's crazy.

21 And you're not going to use it till '85? And God  
22 knows if they're going to use it then. Who the hell needs  
23 that kind of money spent on what? You don't even know what the  
24 hell you are doing. You don't know what to do when and after  
25 it's contaminated. How are you going to bury it? What's

1 all this stuff? Coal gas. You know what, where it goes and  
2 what it comes, and what harm it could do.

3 Well, what are youse doing with this pill that's  
4 sitting on top of our heads here in Harrisburg? Nobody knows  
5 what to do with the contamination of it yet. But it's sitting  
6 there and hope to God it don't blow up.

7 (Laughter.)

8 Because you're going, too. You're sitting here.

9 (Applause.)

10 MR. BULLOCK: I finished my question. I just  
11 want it answered. Why did they built the plant that started all  
12 of this before they could even figure out any evacuation plan?  
13 How do you know it's going to work? Why did they start this  
14 before they figured out an evacuation plan?

15 MS. BRENNAN: They got too much money and they don't  
16 know what to do with it.

17 MR. GRIER: There have been requirements for  
18 emergency plans all along. But we learned a lot from Three  
19 Mile Island, and the requirement for complete emergency plans  
20 including provisions for evacuation, are requirements that  
21 have been imposed as a result of the Lessons Learned from  
22 Three Mile Island, and those are requirements that are in the  
23 process of being implemented at the present time. The upgraded  
24 emergency plans -- and I'm talking about all licensees now --  
25 must be submitted to NRC by the end of this year, or 1 January

1 1981, and will have to be in place by April of '81. I'm  
2 talking about operating plants.

3 It will be a condition for licensing of any plant  
4 that is presently under construction, but it's requirements  
5 that have evolved as a result of lessons that we have learned.

6 MS. BRENNAN: Well, it's a proven fact Philadelphia  
7 doesn't need it. It's a proven fact Philadelphia doesn't need  
8 it. And this is supposed to be built for Philadelphia.

9 MS. MC GOWAN: Sir, in speaking of an evacuation  
10 plan, have you ever driven our streets, or even the byways  
11 connecting the various towns during the busiest hours of, let  
12 us say, 7:00 to 9:00 and 4:00 to 7:00? Or even people arriving  
13 at the spectrum?

14 How can you contemplate evacuating just this section,  
15 just the Philadelphia section, when you consider all the other  
16 people along the river? How are you going to move mountains of  
17 people? What are you going to do with them?

18 MR. GRIER: Well, I'm not familiar with the  
19 specific -- what is proposed in the plan.

20 MS. MC GOWAN: Well, it's bumper to bumper. They're  
21 complaining of slow traffic on television. We listen to see  
22 where we have to cut off in order to be able to make our way.

23 MR. KEPPLER: Ma'am, we're not the people that  
24 review the emergency plan, but but what we will do is --

25 MS. BRENNAN: They don't need a license. They

1 shouldn't be given a license. We don't need their electric.

2 MR. KEPPLER: Let me suggest -- we can't answer your  
3 questions. Let me suggest that what you do is make your statement  
4 and we will see that they get to the Commission.

5 MS. BRENNAN: Well, why doesn't Harrisburg come here  
6 and hold their meetings here in Philly? This is what we want.  
7 We can't go to Harrisburg. We want them here.

8 MR. KEPPLER: We came here.

9 MR. GRIER: Are you the moderator?

10 MR. CLARKSON: Can I be the moderator then? Because  
11 I think it's better, because everybody is talking. I see a  
12 hand right back here.

13 VOICE: Did Edgar Bergen take anybody when he went  
14 out? Hell, no, he was just a puppet, and the only thing he  
15 done, he had to go with --

16 MR. THOMPSON: Would you identify yourself, please?

17 VOICE: Edward Borden, father of four kids that I  
18 want to see live and not killed by radiation.

19 VOICE FROM THE AUDIENCE: Amen.

20 (Applause.)

21 MR. CLARKSON: Any more questions?

22 MS. HALL: I'm Andrea Hall of Philadelphia ACORN.  
23 You said that you learned quite a bit from the  
24 Threa Mile Island experience. Am I correct? Well, if you  
25 learned so much from that, why do you go ahead and half-build a

1 plant? Limerick is half-built already, more than half-built.  
2 Why would you go ahead and get that far in building another  
3 nuclear plant without having an evacuation plan done first, if  
4 you learned so much from Three Mile Island? And, you know, you  
5 had to get those people out of there. So why would you go ahead  
6 and build Limerick and not have an evacuation plan already drawn  
7 up? Why would you have to sit there and say you don't know  
8 about that?

9 MR. GRIER: Well, I think Limerick was approaching  
10 50 percent at the time of the Three Mile Island accident.  
11 There are requirements now that in connection with an application  
12 for construction permit, that is before you get authorization  
13 to build, that there must be at least a conceptual emergency  
14 plan. That has to be a part of that application. So in the  
15 future, consideration of the emergency plan will be a considera-  
16 tion before a construction permit is issued.

17 MS. SMITH: Mary Ellen Smith, ACORN.

18 What is your definition of an emergency plan? What  
19 radius, how many miles taken in? When you say emergency plan,  
20 just how many miles does that take in? And one more question  
21 while you are thinking: Why don't they have to submit an  
22 evacuation plan at the time they even apply for a license to  
23 build?

24 MR. GRIER: I am saying that now they do.

25 VOICE: After Limerick.



1 MR. GRIER: After Three Mile Island.

2 MS. SMITH: Go back to my first question. The  
3 emergency plan takes in how many miles? You only said an  
4 emergency plan they have to submit, not a full evacuation plan.

5 MR. GRIER: 10-mile radius.

6 MS. SMITH: That doesn't even hit Philadelphia.  
7 Limerick is 21 miles. Do you gentlemen live around Philadelphia?

8 MR. GRIER: I do.

9 MS. SMITH: Where do you live?

10 MR. GRIER: West Chester.

11 MS. SMITH: Any of you gentlemen live around  
12 Philadelphia? That's why you're doing all the answering, right?  
13 It's all on your shoulders, right?

14 MR. GRIER: But the determination has been made  
15 that only evacuation is necessary to 10 miles. Nominally.

16 MS. SMITH: Oh. I didn't have any -- you know,  
17 this radiation eggs when it happened in, you know, Three Mile  
18 Island. We weren't contaminated in Philadelphia.

19 MS. BRENNAN: Hershey is more than 10 miles from  
20 Harrisburg, let me clue you. Because I'm an anthracite, I was  
21 born there.

22 MS. SMITH: So the net emergency plan doesn't  
23 even affect us either, in 10 miles? Even though we still get  
24 the aftereffects of any accident. That does not help us at  
25 all because our food will be contaminated and the water and

1 everything else. So that emergency plan is nothing to us.

2 MR. GRIER: Let me be clear now. There are two  
3 aspects: evacuation out to 10 miles and provision for  
4 protective action in terms of what might get into the food  
5 chain at 50 miles.

6 MS. SMITH: And who has that responsibility for  
7 Philadelphia?

8 MR. GRIER: The State of Pennsylvania has the  
9 responsibility for the plan.

10 MS. SMITH: Oh, it isn't the fire commissioners?  
11 Like we were led to believe?

12 (Laughter.)

13 I thought we were under the impression that -- we  
14 have a letter that he was the sole responsibility. Am I  
15 correct? For this type of thing? Do you people know what  
16 you're doing, with millions of lives? And you can't give us a  
17 really simple, direct answer?

18 We seem to know a little bit more what's going on  
19 than you do. And the plant is still going up and being built.  
20 Excuse our emotion. Your answers are really getting to us.  
21 We have been sent one place to another, and you want to know  
22 wh<sup>o</sup> we want to meet with the Commissioners and not the Staff?  
23 We know --

24 (Laughter.)

25 MR. CLARKSON: Any more questions? Go ahead, sir.

1 State your name, please.

2 MR. WARDEN: Edmund Warden. I live up in Northeast,  
3 North Philadelphia, rather.

4 In Russia, when the plant blow up, for 300 square  
5 miles, everybody died. Nobody could still go there for  
6 a thousand years, according to Russian scientists. If the  
7 plant goes up, that's what happened over in Russia. When they  
8 said maybe 2000 years, maybe nobody could live there. The  
9 radiation will kill them. And they have it barricaded and put  
10 protective wire around it, 300 square miles in Russia. What  
11 they going to do here? Sit on their thumbs like they already do?

12 MS. SMITH: What about the contaminants? That's  
13 something else, too.

14 MS. BRENNAN: Well, they're going to go with us.

15 MR. WARDEN: The Commissioners down in Washington  
16 and in Harrisburg, what, are they sitting on their thumbs, and  
17 they do nothing about it? They can't do nothing with the  
18 waste, what they do get from the other plants? What they going  
19 to do with what they get from Three Mile Island? And if  
20 this goes up, what is it going to do around here? Everybody  
21 can twiddle their thumbs then.

22 MS. SMITH: I'd like to ask another question.

23 MR. WARDEN: That plant should be stopped and stopped  
24 today, no further to go on, even at Three Mile Island. It  
25 should be stopped.

1 (Applause.)

2 MR. CLARKSON: I think, Mary Ellen, you wanted to  
3 say something?

4 MS. SMITH: I wanted to say something. Can the  
5 NRC take away the construction license from Limerick at any  
6 time?

7 MR. LIEBERMAN: Yes, they can.

8 MR. GRIER: Yes, they have that authority.

9 MS. BRENNAN: Well, why don't you do it? Why don't  
10 you do it?

11 MS. SMITH: So what can we do to help them take  
12 this away? What can we do other than talk to you Staff? Can  
13 we have public hearings? Can you get public hearings? I mean  
14 could you --

15 MS. BRENNAN: Could you stand up and speak?

16 MR. LIEBERMAN: You could file a petition with  
17 the Director of Nuclear Reactor Regulation. He is the man in  
18 charge of licensing reactors, stating why you want that plant  
19 shut down. And he is the man who makes the initial decision  
20 as to whether the plant should be stopped or not.

21 MS. BRENNAN: What's his name?

22 MS. SMITH: And he won't refer us to somebody else?

23 MR. LIEBERMAN: His name is Harold Denton.

24 MS. BRENNAN: Harold Denton? D-e-n-t-o-n?

25 MS. SMITH: Do you know Mr. Sells who came from

1 Washington to talk to us? He told us to go to 10 other places,  
2 that we were at the wrong place, or he wasn't at the right  
3 place, dealing with our questions. And we tried to get Harold  
4 Denton down and he told us that he wasn't the man to do it.  
5 He was at our meeting. How many was at that meeting? I know  
6 we're not all going crazy. I know I'm not. We were at that  
7 meeting, and the man we asked for, and Mr. Sells came down, and  
8 it's a lot of BS, told us to go here and go there, and we asked  
9 him the same question we asked you, and now you are telling us  
10 he is the right man. So we had the right man after all.

11 MR. LIEBERMAN: Was Mr. Denton at your meeting?

12 MS. SMITH: We asked for him. Mr. Sells came in his  
13 place and told us Mr. Denton is not the man.

14 MR. LIEBERMAN: I would submit a petition to Mr  
15 Denton and, as I said earlier, if Mr. Denton does not give  
16 you the relief you are looking for, then that automatically  
17 gets sent to the five Commissioners. Then they review it, and  
18 if you are not satisfied with their decision, then you go to  
19 the Court of Appeals in the Philadelphia area.

20 MS. SMITH: And by that time, the plant will be,  
21 you know, contaminating all the cows and everything.

22 MR. LIEBERMAN: I would disagree with that. I don't  
23 think this process takes that long. It would probably be  
24 completed before this plant is ever allowed to operate.

25 MS. SMITH: Do you think you could help us arrange

1 a meeting with Mr. Denton?

2 MR. THOMPSON: One at a time, please.

3 MR. CLARKSON: Okay, are you going to moderate?

4 Thank you.

5 MR. THOMPSON: If you will moderate that side, I'll  
6 try to keep these guys under control.

7 MS. SMITH: I did, I asked if you can arrange a  
8 meeting with Mr. Denton. We tried. He sent Mr. Sells  
9 and we wanted to know the same question that we asked. So  
10 could you help us arrange a meeting to get Mr. Denton down here  
11 to talk to us?

12 MR. LIEBERMAN: I can't guarantee that Mr. Denton  
13 will come down to this area, but I can guarantee --

14 MS. SMITH: Well, we won't even know if he will read  
15 our --

16 MS. BRENNAN: Where is he at?

17 MR. LIEBERMAN: I can guarantee if you submit a  
18 petition under 10 CFR 2.206 of the Commission's regulations,  
19 he will respond to that petition.

20 MS. BRENNAN: You can write this down for us?

21 MS. SMITH: He has to respond to that?

22 MR. LIEBERMAN: He has to respond to that.

23 MS. SMITH: We'll be in Washington Tuesday. By  
24 the way, we'll be in Washington Tuesday.

25 MS. BRENNAN: Can you write his name down on the

1 petition thing?

2 (Simultaneous conversation.)

3 MR. CLARKSON: Any more questions? Any more  
4 questions? One more.

5 MR. WARDEN: Edward Warden.

6 Now what I'm concerned with is this growing rate.  
7 Years back, I don't know whether you gentlemen are aware of the  
8 facts or not, we had been asked to conserve electric. Every  
9 time we conserved electric, our bills went up, and here the  
10 stockholders are still getting fat pocketbooks, and we got an  
11 18 percent rate hike pushed at us for something we don't need.  
12 The people of Philadelphia are being bled by monopolies like  
13 Philadelphia Electric, Bell Telephone, and whatnot. It's time  
14 that somebody stopped doing it. Stockholders got to get rich,  
15 but we don't. We're poor people. Now I don't think it's no  
16 more needed than a man in the moon. When is the end going to  
17 come? When is the end going to come of them spending our  
18 money foolishly?

19 (Applause.)

20 MR. CLARKSON: Pete, can you address this?

21 MR. BRANCO: Gentlemen, my name is Pete Branco.

22 We have a couple of demands we want to get across:

23 Number one, we would like all our testimony tonight  
24 to be put on record, all transcript to be given to the Nuclear  
25 Regulatory Commissioners.

1           Number two, we want the NRC to hold public hearings  
2 on the Limerick Nuclear Power Plant's construction license. We  
3 would like to get in on these meetings, if possible. We want  
4 their license suspended, naturally. The NRC Commissioners must  
5 be present at those hearings.

6           We want an answer to this demand by Monday, if at  
7 all possible. Is it possible?

8           MR. KEPPLER: Well, first of all, let me say that  
9 the record of this discussion will be included in the transcript,  
10 and it will be given to the Commission, so --

11          MS. BRENNAN: How long does that take?

12          MR. KEPPLER: Probably couple of weeks to get this  
13 thing reported and reviewed. But we intend to make all these  
14 meetings a matter of public record.

15          MR. BRANCO: Will these meetings be public, rather  
16 than public records?

17          MR. KEPPLER: We are talking about this meeting  
18 right now.

19          MR. BRANCO: I am talking about future meetings.

20          MR. KEPPLER: Again your request that the Limerick  
21 plant be shut down, Mr. Lieberman told you the procedure to  
22 follow.

23          MS. SMITH: No, no. He wanted the NRC Commissioners  
24 at public hearings here in Philadelphia. That's what Pete is  
25 asking.



1 MR. BRANCO: Why can't we have some hearings here  
2 in Philadelphia instead of Harrisburg or Washington?

3 MR. KEPPLER: I think if the Commission decides to  
4 grant a hearing in the case of Limerick, they will hold it  
5 in the vicinity of the plant.

6 MS. SMITH: How do they grant that? Do we have to  
7 send the request for that, too?

8 MR. KEPPLER: That's what we are talking about, yes.  
9 You have to start with this premise: The Commission has  
10 granted Limerick a construction permit. They are authorized  
11 to build that plant. And the next step that will take place  
12 will be the consideration of an operating license, unless you  
13 people push something -- and you're going to have to come in  
14 with some reasons as to why you think that construction needs  
15 to be stopped at this time. And as Mr. Lieberman said, the  
16 Staff back there will evaluate, it will give you an answer,  
17 and if they decide to grant hearings, stop construction, grant  
18 hearings on the matter, you have won your point.

19 If they don't, they will give you the reasons why,  
20 and then you have a course of appeals to follow.

21 MS. SMITH: We'll get another two-page letter.

22 MR. LIEBERMAN: If I could add to that. Even if  
23 the Commission does not grant suspension of the construction of  
24 Limerick at this time before the plant is allowed to operate,  
25 there will be the opportunity to hold a hearing on the operating

1 license in this area. They will only hold a hearing in this  
2 area if someone requests a hearing on the operating license.

3 So if you want a hearing on the operating license  
4 before that plant is allowed to operate, you have the opportunity.

5 MS. SMITH: We know that. We also want an opportunity  
6 to stop the construction.

7 MR. THOMPSON: That's what the Part 2.206 --

8 MS. SMITH: And this way Mr. Sells can't tell us  
9 we're at the wrong place; right? If we put 2 -- is the number  
10 2.206?

11 MR. CLARKSON: We have a copy of it right here.

12 MS. SMITH: We missed the 2.206 the first time, then.  
13 Do you guys ever get together, talk all about this  
14 at one time?

15 MS. BRENNAN: And now in the middle of it, it's --  
16 they're stuck for money and they need to raise our rates,  
17 and they need so many extra. Do they know what they're doing?

18 MR. KEPPLER: Well, you have to realize that the  
19 rate problems of the utilities are a matter between the utilities  
20 and the State Public Utility Commissions or the Public Service  
21 Commissions. The Nuclear Regulatory Commission has nothing to  
22 do with rates of utilities.

23 MS. BRENNAN: Why, when they started this plant on  
24 the X amount of dollars, didn't they know what they were  
25 doing? You figure on years ahead and years of progress and X

1 amount of dollars for the years to come. And when they did it,  
2 didn't they know what they were doing? Now all they didn't  
3 know, it would cost so much more, so they want to raise our --  
4 they didn't know what they were doing in the beginning. They  
5 didn't know what they were doing with X amount of dollars, and  
6 they don't know what they are doing with the lives and they  
7 don't know what they are doing with the waste.

8           What are they going to do with the waste? Isn't  
9 that considered? Isn't that a main factor? Isn't that a main  
10 factor, what to do with that waste? You don't know what to do  
11 with Three Mile Island. How are you going to tell us what  
12 you are going to do here, when you don't know what you are  
13 going to do there? You don't even know what you have to face  
14 there yet. You just seal it shut and let it sit for a couple  
15 more months and then, oh, yeah, question, answer, another year.  
16 And it just remains this way, and you hope to God nothing  
17 happens. Nobody knows what they're doing at this point, and  
18 you are letting this go on.

19           Don't you think it's very serious?

20           MR. KEPPLER: I think a lot of people are working  
21 on the Three Mile Island area. There aren't answers to give  
22 you at this meeting, but a lot of people are working on that.

23           MS. BRENNAN: They're working on it. What are  
24 they getting out of it? It's a dud, and you know it's a dud.  
25 And there's a lot of money being wasted on a dud.

1 MR. CLARKSON: Mary Ellen?

2 MS. SMITH: You know, we realize the position you  
3 are in. We were just wondering, you know, we will submit our  
4 petition, but can you personally ask -- put in a word for us  
5 to the NRC Commissioners, that they would acknowledge our  
6 request? It is 2.206, I believe. And have the public hearings.  
7 Would you put in a word for us on that? Would you do that for  
8 us?

9 MR. THOMPSON: We'll be happy to call it to their  
10 attention.

11 MS. SMITH: Thank you very much.

12 Do you think you can let us know what their response  
13 to that would be? Is there a time on that? Like when you ask  
14 them personally, can you get back to us within a couple days,  
15 a week?

16 MR. THOMPSON: We are assuming you go ahead with  
17 the petition under 2.206. You will receive a response. Again  
18 I'll tell you what the response -- or that it will be favorable,  
19 but you will receive a response in a short time period. I can't  
20 tell you what -- there is a time limitation, I believe.

21 MR. LIEBERMAN: The regulation, which I have a copy  
22 of, which I will provide you, merely states a reasonable time,  
23 but within a week or two of receiving the petition, we will  
24 send you a letter acknowledging the fact that we have received  
25 it, along with a notice in the Federal Register so that anyone

1 else who might want to comment on it, can comment on it. So  
2 it's part of a standard practice. We have another petition  
3 on the Limerick plant. I don't recall what the status of that  
4 is. So all we can say is it will be considered.

5 MS. SMITH: Along with your acknowledgement of our  
6 concern, you will talk to the NRC Commissioners, as you said?

7 MR. THOMPSON: We will see to it that it's called to  
8 their attention.

9 MR. KEPPLER: But let me try to help you. What you  
10 have -- and you must realize this -- that the NRC granted a  
11 construction permit for Limerick based upon an application  
12 that was submitted by the company and evaluated by the NRC.

13 Many things were taken into consideration in that  
14 assessment. I think to expect a reasonable response from the  
15 Commission that would be favorable to you, you are going to  
16 have to present information that indicates that either types of  
17 things that were considered have changed, the types of safety  
18 assessments, the background information that was related to  
19 that safety assessment has changed.

20 MS. SMITH: Could you get us a copy of all that  
21 assessment so we could make that?

22 MR. KEPPLER: Well, the Limerick Safety Evaluation  
23 documents are where?

24 MS. BRENNAN: On the shelf.

25 MR. KEPPLER: Don't be that way, please. I'm trying

1 to help you here.

2 MS. BRENNAN: Well, I'm trying to help you.

3 MS. SMITH: We're supposed to know what has changed.

4 MR. CLARKSON: They are trying to clarify something  
5 for us.

6 MR. GRIER: It's available in the regional office  
7 in King of Prussia, in my office.

8 MS. SMITH: Could you send us a copy?

9 MR. GRIER: No.

10 MS. BRENNAN: Let's go and visit him in his office.

11 MR. CLARKSON: Can we send one of our members to  
12 your office to get a copy of this?

13 MR. GRIER: Yes, sir.

14 MR. THOMPSON: There is a little more.

15 MR. GRIER: Not to get a copy. But we have a copy  
16 we can make available to you to look at there. But I don't  
17 think we have extra copies available.

18 MR. CLARKSON: Excuse me. I think one more question.  
19 Pete, do you want to say something?

20 MR. BRANCO: Yeah, I want to ask a very foolish  
21 question: What would be the chances of sending up a committee  
22 from this group here to meet with the Commissioners themselves?  
23 What do we have to do, to do that?

24 MR. LIEBERMAN: All we can say here, you know, we  
25 work for the Commission.

1 MR. BRANCO: I understand that.

2 MR. LIEBERMAN: All I can say is to ask them, you know,  
3 write a letter to them or call up the Secretary of the Commission.

4 MR. BRANCO: Well, just like Mary Ellen told you a  
5 few minutes ago, we thought we had a somebody, Mr. Denton, coming  
6 here. But he sent Mr. Sells here. Mr. Sells, when he got here,  
7 he said this is out of my ball game. He said you have the wrong  
8 man here.

9 MR. KEPPLER: I think if you write a letter to the  
10 Commission and voiced an interest in meeting with them, I don't  
11 think they would turn you down. I'll tell you this, though, let  
12 me tell you that again I think how successful you are in your  
13 endeavor is going to hinge on providing information which tells  
14 the Commission that the ground rules they used for evaluating  
15 that plant at the time they authorized the construction permit  
16 have changed. Because they have already concluded, at least  
17 on the information they evaluated, that it was okay to build  
18 the plant.

19 Now the one -- there has been many big changes,  
20 obviously, since Three Mile Island that are going to have to be  
21 taken into consideration and dealt with before an operating  
22 license can be given. But there is time for that. So the  
23 criteria to suspend construction, which is what you seem to  
24 want to do, has got to be built around either showing the  
25 construction is proceeding in a faulty way, or that the bases

1 for the safety at the plant has changed somewhat. And I think  
2 short of showing that, you are wasting your time.

3 MR. CLARKSON: Now our time is valuable and your  
4 time is valuable. We have been here quite a while. What we  
5 are interested in knowing, all this stuff has been taken down  
6 on this recording. When you get back to your superiors and  
7 they will hear this?

8 MR. KEPPLER: Again let me say --

9 MR. CLARKSON: And they'll get back to us, so that  
10 the public would know that ACORN has been here, to this hearing?

11 MR. KEPPLER: A transcript of this meeting will be  
12 available, will be put in the Public Document Room, and  
13 obviously this is going to be a big transcript. It started  
14 at 1:00 o'clock today. The transcript will be put in the  
15 Public Document Room, it will be available in Mr. Grier's  
16 office, and copies will be made available and will be given  
17 to the Commission.

18 MS. BRENNAN: And how long is this going to take until  
19 we get an answer back on what we want to know?

20 MR. KEPPLER: What you are asking for should be  
21 submitted separately.

22 MS. BRENNAN: And how long is this going to take,  
23 until we get an answer back on what we want to know?

24 MR. KEPPLER: What you are asking for should be  
25 submitted separately.



1 MS. BRENNAN: And who is going to do that?

2 MR. KEPPLER: I assume you people are.

3 MS. BRENNAN: Go down and see Stinton in Washington,  
4 to go visit him?

5 MR. THOMPSON: Submit it in writing.

6 MR. CLARKSON: In other words, what you are saying,  
7 in fact, that you are powerless right now; right? In other  
8 words, you have no strength? You know, you're just like we  
9 are. You know, in other words, your superiors sent you here,  
10 but you have no strength to say nothing; right?

11 MR. LIEBERMAN: That's right.

12 (Simultaneous conversation.)

13 MR. KEPPLER: -- and the new enforcement policy.

14 MR. CLARKSON: In other parts, this is a part --  
15 excuse us. Excuse me. In other words, you're saying that you  
16 came here, this is a job that you have to perform and you know,  
17 let the public come in on this meeting. The public can go out  
18 the same way they came in, that's what I'm saying, the public  
19 going out the same, they haven't learned a word than they did  
20 when they came in.

21 (Applause.)

22 You're not going to say an active yes or no?

23 MR. KEPPLER: I think we tried to help you.

24 (Simultaneous conversation.)

25 MS. BRENNAN: It takes money to buy beer. What

1 are you promising us? What are you promising us that's going  
2 to take place from this meeting? What are you going to do about,  
3 it?

4 MR. CLARKSON: I think this gentleman here wanted  
5 to say something.

6 MR. NORELIUS: I think maybe we came here with a  
7 different understanding of our purpose of coming here, you and  
8 us. The group you see before you is assembled for one particular  
9 purpose, to write a new enforcement policy. Congress gave our  
10 agency an increased enforcement authority in June. Specifically  
11 they authorized us to assess civil penalties up to \$100,000  
12 for violations of safety requirements.

13 We are not the group of people that does the  
14 licensing of plants. We are assembled to take the authority,  
15 the increased authority, and to write an enforcement policy  
16 describing how we will apply this, and how we will enforce  
17 the requirements.

18 So our scope is somewhat different than I think you  
19 perceived what we were doing, and what we can do.

20 MS. BRENNAN: So what's your scope? Now from what  
21 you heard us say, what is your scope? Let him answer that.

22 MR. THOMPSON: I do want to answer that. You submitted  
23 to us at the start of this session two demands: one, that we  
24 take a verbatim transcript of the meeting and make it available  
25 to the Commissioners. We have agreed we are going to do that.

1           Second, you wanted to stop construction at Limerick.  
2           On that one, we are not the right people to talk to about it.  
3           We have told you how to go about getting that request in the  
4           hands of people who can do something about it. Now I don't  
5           know how else we meet your demands.

6                           (Simultaneous conversation.)

7           MR. CLARKSON: Excuse me. Can we have order? I'm  
8           going by hands. Mary Ellen?

9           MS. SMITH: You have covered that, and we have  
10          raised the answer -- you know, really, could you get back to  
11          us, whether or not their response, the NRC Commissioners -- we  
12          know they are the ones that we need to talk to, but you are  
13          the only people here we can talk to. So we are taking advantage  
14          of this situation, and since you agree that you will talk to  
15          them is it in your authority to let us know that you have done  
16          this? Could you let us know that you have talked to NRC  
17          Commissioners?

18          MR. THOMPSON: We can certainly let you know.

19          MS. SMITH: Because we can't get close to them.

20          MR. THOMPSON: We certainly can let you know that  
21          we have spoken to the Commissioners on the subject.

22          MR. GRIER: How do we contact you?

23          MR. CLARKSON: I'm going to let you know now. Does  
24          anybody have a pencil to get the address of the ACORN office?  
25          We'll get that information to you now.

1 I think, Pete, you wanted to say something? I thought  
2 you had your hand up. Maybe I'm wrong.

3 MR. BRANCO: No, I pass on it.

4 MR. CLARKSON: Now are we satisfied, people?

5 MS. SMITH: Yes.

6 MR. CLARKSON: The people united --

7 MS. HALL: I have a question. When can we expect to  
8 hear from you after giving you our address and telephone  
9 number tonight?

10 MR. CLARKSON: All right, Andrea, did you still  
11 get their answer?

12 Excuse me, the young lady back here had a question.

13 MR. THOMPSON: We are trying to get an answer to  
14 that question. Let me answer your question on when. There is a  
15 question of reproduction and preparation and reproduction and  
16 review of the transcript. That will take about a week to get  
17 the transcript. The Commissioners obviously cannot see the  
18 transcript until it is completed.

19 They will also have to have some time to look at it.  
20 Their time is valuable, too. I would not anticipate that we  
21 could give you a response that it is in their hands and they  
22 have looked at it any earlier than two to three weeks.

23 MS. SMITH: But that isn't what we asked. We asked  
24 you if you would talk to them -- I wish they had names -- the  
25 NRC Commissioners, to agree to have public hearings here, and

1 you said yes. That has nothing to do with the transcripts.  
2 And you said you would do this.

3 MR. CLARKSON: I think the gentleman in the blue  
4 jacket wanted to say something -- the gray jacket. I think you  
5 had an answer, sir, in the gray jacket?

6 MR. KEPPLER: I'll try once again:

7 The Commission is not going to agree to meet with  
8 you people without some basis for a meeting.

9 VOICE: Why? What reason can they give not to meet  
10 with us?

11 MR. KEPPLER: If you give them a basis for the  
12 meeting --

13 MS. HALL: Our basis is that they don't have any  
14 evacuation plan for Philadelphia. That is the basis.

15 MR. KEPPLER: Listen to me a minute. The  
16 Commission has made a conscious decision to allow plants that  
17 were in construction at the time of Three Mile Island accident  
18 to continue being built, as long as they have an approved  
19 evacuation plan in effect by the time they get an operating  
20 license. So that decision has already been made.

21 MS. HALL: Wait a minute. Who made the decision  
22 again, please? That decision you just told me about?

23 MR. KEPPLER: This was a conscious decision on  
24 the part of the NRC.

25 MS. HALL: But wait a minute. What about the way

1 that we feel, the people that have to live around your decision?  
2 What law was passed. What law was passed that said that?

3 MR. CLARKSON: Which law was passed that said that?

4 MR. KEPPLER: It was a rule published in the Federal  
5 Register by the NRC.

6 MR. GRIER: NRC regulation.

7 MR. KEPPLER: NRC regulation.

8 MS. HALL: Did the NRC at all confer with any of the  
9 people or any of the groups and organizations that were against  
10 this plant being built at all? Did you consult the people at  
11 all?

12 MS. SMITH: How many is on the NRC Commission, while  
13 you're thinking?

14 MR. CLARKSON: Could we have some quiet just now? I  
15 think we are serious. Please, now. I think the gentleman wants  
16 to say something.

17 MR. LIEBERMAN: We put the regulation in the  
18 Federal Register and received comments, and we made a decision.  
19 I believe there were public meetings around the country concern-  
20 ing the rule, but I am just not quite sure on it.

21 MS. BRENNAN: I was just standing here a few minutes  
22 ago when you told me that they need an operating, and they  
23 have an evacuation plan now. And now you're saying that they  
24 don't need it until they are completed it, and I told you Mr.  
25 Taylor told us that from Philadelphia Electric, that they don't

1 need an evacuation plan until the place is completed. You said  
2 no, they have one now. Now you stand up and tell me, oh, you're  
3 trying to confuse me.

4 (Laughter.)

5 I'm with you. I'm with you. You can't twist me  
6 and turn me around and turn the question, too.

7 MR. THOMPSON: I don't believe anybody is trying to  
8 twist anything, ma'am. If there is confusion, let me try to  
9 clear it up right now.

10 The requirements for an evacuation plan and emergency  
11 plan must be in effect prior to the time an operating license  
12 is issued for the plants that are now under construction.  
13 I believe that's a statement that was made earlier, and I believe  
14 that's a statement that Mr. Keppler just made. At the time  
15 before an operating license issued, they must have an approved  
16 emergency plan in effect before they can get an operating license.  
17 That's a simple fact.

18 MR. CLARKSON: One more question. Two more  
19 questions. The time is growing late. I think Mary Ellen was  
20 first. She was first.

21 Mr. Bullock, you go ahead.

22 MR. BULLOCK: The question, after this is completed,  
23 now suppose that the evacuation plan is going to be disapproved.  
24 What's going to do with all this money that you spent? What is  
25 happening to all the money that you spent there for that? Do

1 you think they're just going to throw that money away and let  
2 the building go down or what?

3 MR. THOMPSON: Let me just make a comment on that.  
4 This is going to sound very narrow. NRC is in a position to  
5 judge the safety of the plant. We are not in a position to  
6 justify or defend what the company may have spent on any plant  
7 on which the decision -- that's what you want. I think this  
8 group would say you shouldn't care what PE spent on a plant, if  
9 it isn't safe to operate, you shouldn't let it operate. Isn't  
10 that what you want us to do?

11 VOICE: Right.

12 MR. BRANCO: Not really, because we are paying for  
13 it. We do care what happens.

14 MR. THOMPSON: That's a separate question. You  
15 asked about the safety of the plant. Now the agency, the  
16 federal agency that's responsible for the safety of the plant,  
17 is this one. The risk that is assumed on the costs that have  
18 gone into the plant should they not get an operating license is  
19 something that Philadelphia Electric has to live with and we,  
20 quite properly, do not consider what the cost of the plant is.  
21 If we did it otherwise, I think you would be right on our tail  
22 saying, "There you go, they bought you off."

23 MS. BRENNAN: Where are they going to get the water  
24 for this system? Where are they going to get the water for this  
25 system for safety? Answer that question.



1 MR. CLARKSON: Excuse me. I think Mary Ellen and  
2 then Andrea.

3 MS. SMITH: I'd like to get back to the original  
4 question that I raised and Andrea asked later, that you said  
5 that you would talk to the five gentleman which I really had --  
6 I have their names -- well, there is four because there is one  
7 vacancy.

8 MR. THOMPSON: There is one vacancy.

9 MS. SMITH: We knew that. I just didn't know their  
10 names. And you said you would talk to them about our concern,  
11 about stopping of construction at Limerick.

12 Now we could take a no answer. We have gotten that  
13 before. So, you know, even if they deny this from you, we  
14 would still appreciate a no, a yes or a no. It's a simple  
15 thing that we're doing here. We don't have to go into all these  
16 other --

17 MR. THOMPSON: You asked earlier what sort of a time  
18 would we be able to give you an answer. We can't give it to you  
19 Monday because the transcript won't be available..

20 MS. SMITH: Well, can you talk to the Commission  
21 and let us know? Why do they need the transcript first?

22 MR. THOMPSON: You demanded that they have it.

23 MS. SMITH: Oh, I demanded?

24 MR. THOMPSON: ACORN demanded that a transcript be  
25 taken and given to the Commission.

1 MS. SMITH: But not in our request for you to talk  
2 to them personally about the public hearings here.

3 MR. KEPPLER: What do you want us to tell them to  
4 have the meeting for? You want to stop the construction. Now  
5 why?

6 MS. SMITH: Well, you can't answer us, anyways.  
7 We have been talking for an hour.

8 MS. BRENNAN: Answer the question about the water.

9 MS. SMITH: You said you don't have the authority,  
10 anyway, so we'd just be going over and over again what we  
11 have been talking about for the past hour.

12 MS. BRENNAN: They have the authority because of  
13 the safety. They have the authority. They just got done  
14 saying they have the authority.

15 MR. CLARKSON: Excuse me, everybody. I hate to say  
16 this here, but I think we have been here a little while and  
17 we have got kids, and I think I hate to say this -- Andrea,  
18 please make it brief, because we have kids here and they have  
19 to get home.

20 MS. HALL: I know, but you called me already, Bill.

21 MR. CLARKSON: All right, Andrea. Please go ahead.

22 MS. HALL: I'd like to just ask a question.

23 You gentlemen say that you are responsible for the safety of  
24 these nuclear plants; am I correct?

25 MR. THOMPSON: This agency, yes.

1 MS. HALL: Okay. And Mr. Grier, Mr. Keppler,  
2 Mr. Thompson, Mr. Lieberman, and Mr. Norelius -- I'm not sure  
3 I pronounced everybody correctly -- but I'm sure that you would  
4 like this whole thing settled in your conscience when that plant  
5 starts to operate, that you have gone to every extent and every  
6 length to see that the people's questions are answered, and  
7 that the people are satisfied. Am I correct?

8 MR. THOMPSON: Yes, ma'am.

9 MS. HALL: So I'm sure that you must do some soul-  
10 searching when you are sitting at that NRC to think about all  
11 the thousands of lives that are going to be affected by the  
12 operating of this plant. And I don't see how, if you are  
13 really doing your soul-searching, and you are really pondering  
14 the situation, how you could sit there and not grant the  
15 people that are going to be affected or maybe killed by this  
16 whole thing -- I mean, you know, just go to every length that  
17 you could possibly go to and extend yourselves for the sake of  
18 the people that are going to be affected by this.

19 MR. THOMPSON: Let me go back over one point:

20 You have asked how you go about getting the public  
21 hearing. Mr. Lieberman gave you a very extensive discussion of  
22 how you go about doing that. You have asked that we take a  
23 transcript of your concerns and give it to the Commissioners.  
24 We are doing that.

25 You have asked further that we personally notify

1 notify the Commissioners of your concerns which I submit to you  
2 is best done not only in person, but allow them to read the  
3 transcript of this meeting to get your concerns as they were  
4 expressed. And you have asked that we let you know that we  
5 have done so. We have agreed to do that.

6 MS. HALL: Okay. Now we're asking that the transcript  
7 part may be eliminated, being that that's going to take three  
8 weeks, and you all were sitting here and you have all heard  
9 our testimony, and you all heard what we feel, and you under-  
10 stand what we have said. We are asking you if you can take  
11 that personally back to the Commission and sit down and talk  
12 with them about the transcript about that meeting, to shorten  
13 the length of time for another hearing.

14 MR. THOMPSON: I can't assure you it will shorten  
15 the time for a hearing because the hearing process is the one  
16 that Mr. Lieberman described to you. I will assure you that  
17 we will call it personally to the attention of the Commissioners.  
18 We will do that promptly and let them know that you are concerned  
19 and very interested in having input from them, and I will do  
20 that promptly.

21 MS. BRENNAN: Okay, now, you're sitting here telling  
22 us that you have about the safety, about Limerick, you here,  
23 and you control the safety of it.

24 MR. THOMPSON: The agency does.

25 MS. BRENNAN: You people here, sitting here, you

1 have the authority of the safety of it; right?

2 MR. THOMPSON: Plus about 3000 others.

3 MS. BRENNAN: 3000 other guys besides you decides is  
4 that place safe?

5 MR. THOMPSON: The agency has 3000 employees.

6 MS. BRENNAN: For Limerick? We're just talking  
7 about Limerick. And you guys, do you guys have the safety about  
8 it?

9 MR. THOMPSON: No, I stated that the agency is the  
10 one responsible.

11 MS. BRENNAN: I thought maybe you could answer us  
12 how safe it's going to be. You don't have no knowledge?  
13 And about the water system, you have no knowledge? And you're  
14 letting this thing go on and you have no knowledge?

15 MR. CLARKSON: Okay. We at ACORN, and speaking for  
16 all of them myself, we appreciate the time that you allowed  
17 us to consume from you. I think all of us are satisfied, right?  
18 To a certain extent.

19 MR. THOMPSON: Thank you for coming.

20 (Whereupon, at 9:15 p.m., the meeting was  
21 adjourned.)

22  
23 \* \* \* \* \*

NUCLEAR REGULATORY COMMISSION

This is to certify that the attached proceedings before the  
Public Meeting

in the matter of:

Date of Proceeding: Dec. 4, 1930

Docket Number: \_\_\_\_\_

Place of Proceeding: Philadelphia, Pa.

were held as herein appears, and that this is the original transcript  
thereof for the file of the Commission.

ANN RILEY

\_\_\_\_\_  
Official Reporter (Typed)

*Ann Riley*  
Official Reporter (Signature)