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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

PUBLIC MEETING

PART 51 - ENVIRONMENTAL REVIEW
FOR RENEWAL OF OPERATING LICENSES

Holiday Inn Crowne Plaza
Conference Theater
1750 Rockville Pike
Rockville, Maryland

Wednesday, February 9, 1994

1 PARTICIPANTS:

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SHELDON SCHWARTZ, NRC
DONALD CLEARY, NRC
JOHN MOULTAN, NRC
GEARY MIZUNO, NRC
SCOTT NEWBERRY, NRC
RAY NG, NUMARC
ELLEN GINSBURG, NUMARC
CHARLES GRAY, NARUC

P R O C E E D I N G S

[10:00 a.m.]

1
2
3 MR. SCHWARTZ: Good morning, ladies and gentlemen.
4 Welcome to the NRC Public Meeting to discuss the State
5 concerns on the treatment of the need for generating
6 capacity and alternative energy sources in the proposed 10
7 CFR Part 51 rule for license renewal. It's good to see you
8 all here in such inclement weather. It must be a burning
9 issue for all of you to show up on such a day as this.

10 As you know, the proposed Part 51 rule change for
11 license renewal was issued for public comment on September
12 17, 1991, along with the proposed Generic Environmental
13 Impact Statement.

14 The NRC conducted a workshop in November 1991
15 which many of you all, I am told, participated in. The
16 staff has received over 130 comment letters on the proposed
17 Part 51 rule and, I guess, also on the proposed GEIS. Those
18 comments included some 24 State comments and five Federal
19 agency comments.

20 Among other things, many States raised concerns
21 over how the NRC was proposing to handle questions of need
22 for generating capacity, alternative sources of energy,
23 utility costs, and cost-benefit balancing in the NRC
24 environmental review for plant license renewal.

25 On April 22nd of 1993, the Nuclear Regulatory

1 Commission directed the NRC staff to develop options for
2 responding to State commenters who express concerns about
3 the preemption of State regulatory authority in these areas.

4 Furthermore, the Commission directed the staff to
5 conduct discussions with the States regarding these policy
6 issues prior to developing and presenting options to the
7 Commission.

8 I believe everyone has been provided the options
9 paper, and I hope everybody has had it, and if not, I think
10 there are copies out front.

11 The purpose of these meetings -- this being the
12 first, and there will be two others, one in Chicago and one
13 in Chicopee, which is outside of Springfield, Massachusetts,
14 next week -- the purpose of these meetings is to discuss the
15 options identified in the paper, pros and cons, and any
16 additional options that you all might come up with during
17 this meeting and the other meetings we'll be having next
18 week.

19 The comment period on the options runs through
20 March 4, 1994.

21 I'd like to also note that we know that the States
22 and many others are very interested and concerned in high-
23 level waste and low-level waste, in storage and disposal --
24 as well the storage and disposal attendant with those
25 issues, and many people commented on those issues in the

1 proposed rule.

2 The purpose of this meeting and the other meetings
3 is to deal -- is not to debate the issue of high-level and
4 low-level waste. The issue is to deal with the issues of
5 the options and the State comments on the options.

6 State comments and others on the issue of high-
7 level and low-level waste will be dealt with in the analysis
8 of comments on the rulemaking, and of course, the Commission
9 is always interested in any comments people have, written or
10 otherwise, on those issues, and you're certainly welcome to
11 submit those to the Commission.

12 With that brief preamble, the way we intend -- and
13 with your permission, the way we intend to run these
14 meetings is that we will go through each of the issues and
15 we'll deal with the panel members on each of the issues, and
16 as time permits, we will ask for comments from you all in
17 the audience, because we'd like to get a good dialogue and a
18 full record on all the issues and the questions raised in
19 the agenda, and you see there are some very specific
20 questions the staff has put together in the agenda, and we'd
21 like to get a full record at every one of these meetings on
22 where people are coming out, where you all are coming out on
23 those issues.

24 I've been told to -- for members of the audience
25 to make sure to use the microphone and identify yourself,

1 because we are recording this meeting, and while I'm talking
2 about the recording and transcript, members of the panel
3 will receive copies of the transcript. Others, if you are
4 interested, you can make direct arrangements with the person
5 responsible for the recording.

6 As I mentioned earlier, logistical information,
7 coffee is out in the lobby, and the restrooms and everything
8 are right out there. When we break for lunch, there are
9 places here in the hotel to have a quick bite to eat. There
10 are also a number of restaurants right across the pike --
11 Ambrosia, Mandarin, Woodside Deli. I've eaten at most of
12 them, and I'm still pretty healthy.

13 Continuing on the agenda, the next thing I'd like
14 to do is have each of the panel members --

15 MR. CLEARY: Shelly?

16 MR. SCHWARTZ: Yes.

17 MR. CLEARY: Excuse me. Could I clarify one thing
18 about the transcript?

19 MR. SCHWARTZ: Sure.

20 MR. CLEARY: We, in fact, have a sign-up sheet at
21 the registration table. So, you don't need to bother the
22 court reporter.

23 If you want a transcript, sign up at the
24 registration table, and we'll make sure that the court
25 reporter gets it.

1 Thank you.

2 MR. SCHWARTZ: Thanks, Don. I appreciate the
3 clarification.

4 What I'd like to do is have each of the panel
5 members introduce themselves, and then, following that, I'd
6 like all of you to introduce yourselves for the record, so
7 we know who is here and can enter into a dialogue with all
8 of you, as well.

9 I'm Shelly Schwartz. I am Deputy Director of the
10 Office of State Programs at the Nuclear Regulatory
11 Commission.

12 MR. MIZUNO: I'm Geary Mizuno, and I'm a Staff
13 Attorney with the Office of General Counsel for the NRC.

14 MR. MOULTAN: I'm John Moulton. I'm a Project
15 Manager at the NRC in the License Renewal and Environmental
16 Review Project Directorate.

17 MR. GRAY: I'm Chuck Gray, and I'm Assistant
18 General Counsel of the National Association of Regulatory
19 Utility Commissioners, the Washington association that
20 represents primarily State public utility commissions.

21 MR. NG: Good morning, ladies and gentlemen.

22 My name is Ray Ng. I'm a Manager at Nuclear
23 Management and Resources Council, also known as NUMARC.

24 On behalf of the commercial nuclear power
25 industry, we'd like to thank NRC for allowing NUMARC to

1 participate in this workshop. We believe that there will be
2 a significant benefit derived from all parties taking a hard
3 look at the issues of concern to the States with respect to
4 the environmental review required for renewal of a nuclear
5 power plant operating license.

6 For those of you that are not familiar with
7 NUMARC, we are an organization charged with coordinating the
8 efforts of the commercial nuclear power industry in all
9 generic regulatory matters, including the relevant policy,
10 operation, and technical issues.

11 Every utility licensed to construct or operate a
12 commercial nuclear power plant in the United States is a
13 member of NUMARC. In addition, NUMARC membership includes
14 the major architectural and engineering firms and all the
15 major nuclear steam supply systems vendors.

16 Our assessment of the workshop agenda is that the
17 principle focus of today's meeting is for the NRC to seek
18 the views of the States.

19 Industry believes its contribution to this
20 workshop can be best made during the presentation of options
21 that is scheduled this afternoon.

22 MS. GINSBURG: I'm Ellen Ginsburg, and I'm
23 Assistant General Counsel for NUMARC.

24 MR. CLEARY: I'm Don Cleary. I am with NRC,
25 Office of Nuclear Regulatory Research, and I'm the Task

1 Manager for the Part 51 environmental rulemaking for license
2 renewal.

3 [Audience members introduce themselves.]

4 MR. SCHWARTZ: Good. Thank you all very much.

5 What I'd like to do now is kind of run through the
6 agenda and discuss a little bit on how I think we'd all like
7 to get your views on the issues.

8 I think, first, we'll deal with the panelists and
9 have statements from the panelists, and then, in going
10 through the agenda, we have various times associated for
11 each of the issues. I think it's important -- oh, there's
12 one person who didn't introduce himself. I'm sorry.

13 [Additional introduction.]

14 MR. SCHWARTZ: Please don't feel -- and I'm not
15 going to feel constrained about the times. I think it's
16 important to get all of your views and to be on the record
17 for all the views, and if it takes a little longer, fine,
18 and if it doesn't take as long, that's fine, as well.

19 As I mentioned earlier, we'll be trying to answer
20 -- and mostly, as I think Ray Ng said -- I'd like to echo
21 that, and that is we're here to listen and clarify anything
22 that -- particularly that the Nuclear Regulatory Commission
23 has said in publication or in word, but we're really here to
24 listen to what folks have to think about the various
25 options.

1 As I said earlier, we'll try and deal with all the
2 questions -- and, really, the guts of this session are the
3 option discussions that's supposed to start the afternoon,
4 but if we get to it this morning, that's fine, too, and we
5 can just move along as quickly as we can.

6 What I'd like to do now -- first ask the panelists
7 and then you all -- in looking at the options, in looking at
8 what's on the agenda, I'd like to find out -- get a sense,
9 is there another option or other options that you believe
10 need discussion today? Are there other things that you
11 believe should be on the agenda today?

12 I'm not looking for a statement of support for the
13 option. What I'm looking for is an identification of the
14 option, and we'll get into the discussion later on on the
15 pros and cons of those.

16 So, first, let me ask the panelists, are there any
17 things -- anything that you see -- that you don't see on the
18 agenda that you think ought to be there?

19 [No response.]

20 MR. SCHWARTZ: Does anybody believe -- in the
21 audience, the general public -- believe that there's
22 anything that needs to be added to the agenda?

23 MR. NG: Shelly, we do have an option to talk
24 about a little bit later this afternoon.

25 MR. SCHWARTZ: Could you just identify the option,

1 so that folks could be thinking about it and be prepared to
2 discuss it? I don't want to force you into it, but I think
3 it would be useful to hear what it is, so people can think
4 about it and then be ready for the full discussion this
5 afternoon when we get to that.

6 MR. NG: Okay. I think the option basically is to
7 have the NRC not consider the need for power or alternatives
8 as part of their assessment of the environmental impacts.

9 MR. MIZUNO: Can I ask a question there?

10 MR. SCHWARTZ: Sure.

11 MR. MIZUNO: I understand that that's where you
12 want to end up, but can you just give us an idea as to,
13 generally, what would be the rationale for the NRC not
14 considering those two subjects?

15 MR. SCHWARTZ: Geary, do you mind if we wait for
16 the detailed discussion of that?

17 MR. MIZUNO: I think that at least one of the
18 options that are already in the paper have that as an end
19 point, but there is a specific rationale as to how you get
20 there. If you don't understand the rationale and how the
21 NUMARC approach differs from what is proposed in the option,
22 then there is nothing for people to really think about or to
23 -- it would otherwise appear to be option four.

24 MR. SCHWARTZ: If you can characterize it without
25 getting into a full discussion -- I'd like to move on in the

1 agenda. So, if you can characterize it, as to how it
2 differs from option four, I'd appreciate it.

3 MR. NG: What I'd like to do is just go ahead and
4 defer it to this afternoon, and also, I think, in the sense
5 of responding a little bit to Geary, in the sense of the
6 rationale, it's our plan at NUMARC to submit written
7 comments on behalf of the industry within the public comment
8 period. I think the expiration date is March 4th, and
9 certainly, within the context of that, we would provide not
10 only the rationale, I guess, from a technical policy
11 standpoint but we'd try to support that with some of the
12 legal rationale behind it, but probably, today, we're not
13 prepared to get into that.

14 MS. GINSBURG: Let me clarify, as long as we're
15 into this. I suppose it begs an answer.

16 The basic rationale here is that the theory would
17 be that the NRC is responsible for licensing -- granting or
18 not granting a license, and the major Federal action would
19 be described as granting or not granting a license.

20 Therefore, the way you describe the scope of the
21 major Federal action would, in some ways, determine what, if
22 any, alternatives you would have to consider.

23 MR. MIZUNO: That's very helpful.

24 I think that -- there is one other option, I
25 think, that the Commission required us to, I guess, inform

1 the public that is always there, which is to continue with
2 the proposed rule and the GEIS without any changes; in other
3 words, to go forward and to accept the existing rule,
4 existing proposed rule without any changes, and I believe
5 that would also include without any changes reflecting the
6 CEQ and EPA negotiations.

7 MS. GINSBURG: It was the industry's understanding
8 that that was an option, although not identified as one
9 before, that that was yet another option that didn't need to
10 be identified because of its previous explanation.

11 MR. SCHWARTZ: Thanks, Geary.

12 I think it's time to get into the agenda. We'll
13 get into background and history and turn to Don Cleary, who
14 will be briefing us, briefly, on how we got to where we are
15 today.

16 [Slide.]

17 MR. CLEARY: I want to provide some background
18 remarks that will help us focus better, hopefully, on the
19 issues at hand.

20 In the background, I want to cover the
21 environmental reviews that we do at the CP and OL stages,
22 the purpose of the Part 51 rulemaking, and our treatment of
23 need in alternatives in the proposed rule and how that
24 relates back to CP and OL; public comments, which Shelly has
25 pretty much covered, and the CEQ/EPA consultations, the

1 results -- what the concerns were there and the results, and
2 State consultation, and a brief rulemaking schedule.

3 [Slide.]

4 MR. CLEARY: The environmental reviews at the CP
5 and OL stages, of course, are based upon the National
6 Environmental Policy Act of 1969, referred to as NEPA.

7 NEPA requires a detailed statement of the
8 environmental impact. This is typically in the form of an
9 Environmental Impact Statement or an Environmental
10 Assessment.

11 It requires, specifically, that alternatives to
12 the proposed Federal action be considered, and it requires
13 that each Federal agency implement the provisions of NEPA,
14 and NRC has implemented NEPA in 10 CFR Part 51, which is
15 NRC's environmental regulations.

16 Part 51 covers the general scope of the NEPA
17 review, and within it, it requires that purpose and need for
18 and alternatives to the proposed action be addressed in both
19 EA's and EIS's.

20 [Slide.]

21 MR. CLEARY: Further detail on conducting
22 environmental reviews is provided in Regulatory Guide 4.2,
23 which is guidance to applicants for nuclear power plants,
24 preparation of environmental reports for nuclear power
25 plants. This is for the construction permit stage. It

1 covers information that we expect in an application,
2 covering both construction and operating impacts.

3 Also, the staff's guidance is in the Environmental
4 Standard Review Plan, which is NUREG-0555, and we've
5 referred to that as ESRP, and that provides -- that was
6 published in 1979 and provides considerable detail on what
7 is in an Environmental Impact Statement for a construction
8 permit.

9 [Slide.]

10 MR. CLEARY: The next couple of slides briefly
11 describe what is in the ESRP for the CP stage relative to
12 need for power and alternatives and cost-benefit balancing.

13 The need for power requires a fairly detailed
14 analysis: description of the power system -- that is, the
15 service area, and the regional relationships of that service
16 area.

17 It requires a discussion of electrical energy and
18 peak load demands and the factors affecting growth of demand
19 -- economics, demographics, substitution, conservation,
20 prices, rate structure.

21 Then it concludes with a staff assessment of need,
22 and that looks at the base load requirements, reserve margin
23 requirements, does sensitivity analysis on schedules, and
24 then there is a conclusion as to whether it seems apparent
25 that that amount of additional generating capacity is

1 required for the service area.

2 [Slide.]

3 MR. CLEARY: The section in the ESRP covering
4 alternatives covers alternatives to the project; that's
5 alternative energy sources. It also covers, for the CP
6 stage, alternative plant systems and alternative sites and
7 alternative transmission routes.

8 The alternatives to the project -- that is,
9 alternative energy sources -- look at alternatives not
10 requiring new generating capacity, and this is basically
11 power purchases, extending the life of existing plants in
12 the system, and additional energy conservation measures.

13 The alternatives requiring new generating capacity
14 are basically those additional energy sources. The
15 requirement is that a whole wide spectrum of possibilities
16 be evaluated, screened against certain criteria, and then
17 reasonable alternatives be brought forward for closer look.

18 The assessment of these reasonable alternatives is
19 -- we look at the environmental and health impacts and
20 determine one of three things, whether any alternative is
21 preferable environmentally to the proposed project or
22 whether it's equivalent or whether it's inferior.

23 If it's preferable, then -- environmentally
24 preferable -- then we move on to a cost comparison and
25 looking at the economics and also other factors that may

1 weigh in comparing the alternative with the proposed
2 project, and if there is -- if that alternative has a
3 favorable cost-benefit balance compared to the proposed
4 project, then the staff recommends that the alternative be
5 given serious consideration, and that recommendation could
6 lead to a denial -- conceivably lead to a denial of a
7 construction permit.

8 [Slide.]

9 MR. CLEARY: The evaluation of the proposed action
10 is the final major section of the ESRP, and that's where the
11 environmental impacts are summarized. The first three
12 bullets there are terms taken from NEPA.

13 The first bullet, unavoidable adverse
14 environmental impacts is basically a description of the
15 impacts that remain after all mitigation has been
16 considered.

17 Then, jumping down to the cost-benefit balance,
18 the benefits that are considered are energy generated,
19 regional productivity, employment taxes, non-monetary
20 externalities such as improvement in recreational
21 opportunities within the area.

22 The costs are the internal costs -- capital, O&M,
23 and fuel costs -- and also included are adverse
24 environmental impacts. These are listed, described, and
25 social -- socioeconomic or social infrastructure impacts and

1 other external monetary and non-monetary impacts, non-
2 monetary impacts such as aesthetic degradation of historic
3 resources and a variety of other things like that.

4 [Slide.]

5 MR. CLEARY: What I just described was the review
6 at the CP stage, which looks at both the construction
7 impacts and operating impacts.

8 At the operating license stage, NRC -- the utility
9 supplements their environmental report, and NRC develops a
10 supplemental EIS which basically looks at -- updates
11 information and looks at what's changed since the CP
12 analysis

13 Relative to the assessment of need and
14 alternatives, there was a rule in 1982 that codified, in
15 Part 51, that we need not look at need and alternatives at
16 the OL stage.

17 The logic and the analysis behind that rule was
18 based on evidence of favorable economics; that is, that
19 there has been -- very little has changed in the
20 environment, and the question is can the favorable cost-
21 benefit balance that was struck at the CP stage be
22 overturned, and the evidence was that it was highly
23 improbable that it could be overturned.

24 Therefore, the staff and the applicant do not have
25 to revisit need and alternatives at the OL stage, and as

1 I'll describe shortly, this was a starting point in our
2 looking at the license renewal stage; that is, could we
3 apply the same logic relative to need and alternatives that
4 was applied at the OL stage?

5 [Slide.]

6 MR. CLEARY: The environmental rulemaking for
7 license renewal was undertaken because there was a feeling
8 that we had a wealth of experience for well over 100 nuclear
9 power plants that we had done EIS's on, we had good
10 operating information on, and that there was good reason to
11 believe that license renewal experience would be within the
12 range relative to the operation of those plants and relative
13 to the type of refurbishment that could be expected.

14 So, the idea was to use that information and do
15 generic analysis to the extent possible and then reduce the
16 amount of analysis that had to be done on a plant-by-plant
17 basis.

18 [Slide.]

19 MR. CLEARY: In the proposed rule, our approach to
20 need and alternatives, as I said before, was based -- our
21 starting point was attempting to take the same approach that
22 had been taken in the OL rulemaking in '82.

23 We needed to establish an information base, and in
24 Chapter 8 of the GEIS, we looked at need for capacity and
25 gathered all of the forecasts that were available and

1 analyzed those and found that there was -- that all the
2 evidence that we had was that, for some distance into the
3 future, one could expect increasing, certainly not
4 decreasing, demand for generating capacity.

5 We reached a Category 1 conclusion on the need for
6 capacity. There are three categories. Most of you may be
7 aware that Category 1 is that the generic analysis -- we're
8 sufficiently confident in it that we would bring that
9 forward into the individual license reviews; Category 2 was
10 that we were confident for some subset of plants, but there
11 may be other plants that we'd have to take a closer look;
12 and Category 3 conclusion was that we did not have
13 sufficient confidence and would look at that particular
14 issue on a case-by-case basis.

15 Relative to alternatives, we looked at the
16 environmental impact of a wide range of reasonable
17 alternatives and found that none were environmentally
18 preferable to license renewal, except possibly for
19 geothermal in several States.

20 However, following the approach in the OL rule,
21 there was some concern about the economics of license
22 renewal and continued operation.

23 Trends in O&M costs and the possibility of
24 extensive refurbishment did introduce some uncertainty, so
25 that we introduced a test that would be used in the

1 individual license renewals, a threshold test, and if that
2 threshold test were met, the conclusions of the GEIS could
3 be adopted, and if the threshold test wasn't met, then a
4 harder look would have to be taken at alternatives for that
5 particular case.

6 [Slide.]

7 MR. CLEARY: Public comments -- Shelly already
8 mentioned those. I'd just like to emphasize that we are
9 hard at work looking at the many thousands of individual
10 comments and responding to the many thousands of individual
11 comments that we received.

12 [Slide.]

13 MR. CLEARY: Consultation with CEQ and EPA -- I'll
14 get into that in detail in a few minutes.

15 [Slide.]

16 MR. CLEARY: Consultation with the States -- just
17 a couple of points there.

18 We will be reporting to the Commission in a
19 Commission paper which is due in early June and telling the
20 Commission what we've considered and the results of our
21 conversations with the States, and the Commission expects us
22 to make a recommendation as to the preferred option.

23 [Slide.]

24 MR. CLEARY: Rulemaking schedule -- I've covered
25 most of it.

1 I would just point out that, at this time, we owe
2 the final rule package to the Commission in December of
3 1994, and that would put us approximately in the March 1995
4 timeframe for publication of the final rule and the final
5 GEIS.

6 Scott, you're next.

7 MR. NEWBERRY: My name is Scott Newberry. I'm the
8 Director of the License Renewal and Environmental Review
9 Project Directorate at the Office of Reactor Regulation at
10 the NRC.

11 I have some brief remarks here, just one
12 viewgraph, in fact. What I'm trying to do here is to just
13 point out a little bit of an overall perspective, stepping
14 back a bit from Part 51. Many of you may already know most
15 of what I'm going to say. However, some may not. So, we
16 decided to cover this in the introduction here.

17 [Slide.]

18 MR. NEWBERRY: First of all, the Atomic Energy Act
19 limits licenses of operating reactor facilities to 40 years,
20 and it also allows these licenses to be renewed but provides
21 no guidance, and of course, no procedures existed on how to
22 do that.

23 So, as plants moved steadily towards their license
24 expiration date, the NRC decided that standard renewal
25 procedures were needed and established a new rule, Part 54,

1 the license renewal rule. It was completed in late 1991
2 and, of course, proposed an amendment to Part 51, which
3 we're talking about here today.

4 I don't have anything else to say in these remarks
5 on Part 51, but of course, just to clear it up, to make it
6 clear that, for a plant to receive a renewed license, he
7 would have to comply with both rules, Part 51 and Part 54.

8 Just a few comments on Part 54.

9 The Part 54 rule establishes the safety
10 requirements for renewal. An important aspect of Part 54 is
11 that no new safety requirements or standards are necessary
12 to receive your renewed license, but the rule would require
13 a review to ensure that the current requirements, the
14 current standards in the rule, what is referred to as the
15 current licensing basis, would be maintained throughout the
16 renewal term.

17 Now, as I said, Part 54 was issued in 1991, and
18 when the Commission issued that rule, the Commission
19 realized that, after some experience was gained with the
20 rule, there may be a need to amend the rule, and in fact,
21 the staff has been working, assessing the experience and
22 made a recommendation to the Commission last fall, based
23 upon input from a workshop in September, that we should
24 change the rule.

25 Just last week, in a staff requirements memo, we

1 were directed to prepare a revised rule for the Commission.
2 The requirements memo directing the staff to do that is not
3 yet public but should be very shortly. So, there will be a
4 major activity to revise Part 54 this year. This is a
5 separate but certainly related activity to the Part 51
6 amendment we're talking about here today.

7 That's all I had to say in terms of prepared
8 remarks. If you have any questions, I'd be glad to answer
9 them now or later.

10 MR. SCHWARTZ: Thank you, Don and Scott.

11 We've got a couple of minutes, if anybody has --
12 first from the panel -- any questions of either Don or
13 Scott, to clarify their remarks.

14 [No response.]

15 MR. SCHWARTZ: Seeing none, does anybody in the
16 audience have any questions for either Don or Scott on what
17 they've just presented?

18 [No response.]

19 MR. SCHWARTZ: Seeing none, we'll move on in the
20 agenda.

21 MR. GUNTER: I have one quick question. My name
22 is Paul Gunter. I'm with the Nuclear Information Resource
23 Service here in Washington.

24 Just a clarification, Mr. Cleary. When you said
25 that the industry looked at alternatives -- the

1 environmental impact of alternatives and found that none
2 were preferable to license renewal, could you give us some
3 idea of what the NRC was looking at in terms of energy
4 efficiency around the country and trends in energy -- I know
5 that you probably looked at generating capacity, but I
6 wanted to get some idea in terms of energy efficiency, which
7 is more of a clarification on conservation, because --
8 conservation being an activity of behavior. Efficiency is
9 more in the lines of technology.

10 MR. CLEARY: Yes. We appreciated that, and
11 conservation was actually handled in the analysis of need
12 for generating capacity.

13 In Chapter 8 of the GEIS, we looked at various
14 conservation scenarios in the various forecasts and made
15 some fairly rigorous assumptions about the potential for
16 conservation in the future. So, it was considered in the
17 analysis.

18 MR. MIZUNO: Maybe you can refer him to the
19 chapter.

20 MR. SCHWARTZ: I was just going to say -- sir, are
21 you familiar with Chapter 8 of the GEIS?

22 MR. GUNTER: Well, I guess my question is more in
23 terms of just trying to delineate what you looked at in
24 terms of --

25 MR. SCHWARTZ: You can't be heard, sir. If you

1 want to be on the record, you're going to have to use the
2 mike.

3 MR. GUNTER: Again, just to clarify, conservation
4 is -- at least my understanding -- it's more in terms of
5 behavior, and energy efficiency is more in terms of
6 technology, and I'm wondering if you delineated between
7 conservation and energy efficiency technology in your
8 assessment.

9 MR. SCHWARTZ: Geary?

10 MR. MIZUNO: Just to clarify, I think what he's
11 saying is that conservation consists of two components, one
12 being increases efficiency due to technological advances and
13 also changes in behavior that result in decreases in use of
14 energy by individuals and corporations, and he wanted to
15 know whether, in our analysis, we separated out these two
16 components and analyzed them separately, and I'm just
17 wondering whether Oak Ridge should probably respond to that,
18 or do you know?

19 MR. CLEARY: I do know, but Johnny Cannon is
20 responsible for that part of the GEIS. So, we'll get it
21 right from the analyst.

22 MR. CANNON: I'm Johnny Cannon, Oak Ridge National
23 Laboratory. We did not distinguish between the two. It was
24 included implicitly. So, we didn't separate them out. As
25 Don mentioned, it was included implicitly in the need

1 chapter, rather than the alternative chapter.

2 MR. CLEARY: I would like to clarify that just a
3 little bit.

4 Technical efficiency and conservation through
5 demand management is built into most of the forecasts that
6 were used. So, these were activities that we were looking
7 for in the forecasts, and they were in the most of the
8 forecasts, and there were various assumptions that were used
9 relative to those -- to technical efficiency in the use of
10 electricity and conservation through demand management. Is
11 that a correct statement, Johnny?

12 MR. CANNON: Yes, it is.

13 MR. SCHWARTZ: All right. Thank you very much for
14 that dialogue.

15 All right, Don. Are you ready to go over the
16 characterization of the State concerns? Now the panel is
17 going to have to go to work.

18 MR. CLEARY: Okay.

19 [Slide.]

20 MR. CLEARY: I'd like to say first that we're
21 holding these workshops and interacting with the States so
22 that we can really understand what is behind the comments of
23 the States.

24 The comments are fairly clear in themselves, but
25 what we're really trying to find out is what is the problem

1 that exists that needs to be corrected, and that's
2 important, because when we evaluate the options, we have to
3 have criteria to evaluate and compare the options, and to a
4 great extent, that criteria evolves from what the problem is
5 that you're trying to solve.

6 In their comments, the States expressed
7 dissatisfaction with the designation of need and
8 alternatives as Category 1 issues, and they said that this
9 is because it substantially eliminates public participation
10 at the individual license renewal review, and also, it
11 inadequately provides for the use of current information,
12 timely information at the time of the project review.

13 [Slide.]

14 MR. CLEARY: Several of the States made fairly
15 strong statements that they saw that the treatment of need
16 and alternatives in the GEIS, draft GEIS, and the proposed
17 rule was in conflict with their traditional authority to
18 regulate utility economic aspects or the -- I guess, more
19 broadly, the non-nuclear safety aspects.

20 They also pointed out that there was inadequate
21 provision for consultation and cooperation and that our
22 forecast horizon was extremely long and involved a great
23 deal of uncertainty, and there was also concern about the
24 license renewal process taking place up to 20 years prior to
25 expiration of a plant's initial license and that this might

1 not fit in with the State's own planning horizon.

2 [Slide.]

3 MR. CLEARY: The States had some recommendations
4 to solve their concerns.

5 One was that we designate need and alternatives
6 Category 3 and thereby do a full review for each license
7 renewal application.

8 Several States said that we should not consider
9 need in our environmental review, in our NEPA review.

10 A couple of States said that, if we were going to
11 consider need, we should defer it to the State's
12 determination of need, and one or two States said that, if
13 all else fails, we at a minimum have to at least clearly
14 State in our rulemaking documentation that there is no
15 intent of NRC's analysis and findings that NRC's analysis
16 and findings conflict with what is clearly State regulatory
17 authority, and that's the summary.

18 MR. SCHWARTZ: Thank you, Don.

19 Next, we'll deal with the questions that the NRC
20 staff has posed on the agenda, and I'll read it into the
21 record.

22 To what extent are the concerns of the States
23 resolved if the GEIS and the rule are modified -- hang on.
24 I'm ahead of myself.

25 Is the NRC characterization of State concerns in

1 Section III of the discussion paper complete and accurate?
2 What, if anything, should be added or changed?

3 Would the concerns of the States be any different
4 for 5 year rather than 20 year renewals?

5 I guess I'll turn first to Chuck Gray of NARUC.

6 MR. GRAY: Thank you. Before I respond to your
7 question, I should probably describe the context in which I
8 appear today a little bit.

9 I hope, in the next two workshops, in Illinois and
10 Massachusetts, you'll hear the specific concerns of specific
11 States, and my sense is, from speaking with them in the last
12 week or so, that there is a common set of perceptions with
13 respect to what you're doing with this proposed rule, and I
14 think -- to answer this question, I think you have fairly
15 describe what I have been hearing for the last week or two
16 and what I've gleaned from reading the written comments I've
17 heard. I don't hope to represent all of the nuances of
18 those points of views today.

19 I guess I would like to see my role a little bit
20 as a resource person, perhaps describe the feelings that the
21 States have, perhaps provide some insight into the
22 regulatory processes that the States use, and also, I should
23 just say that the kinds of issues I personally have been
24 working on in the last two years deal with the major
25 structural changes that the electric utility industry is now

1 undergoing, and I think, from what I can understand you're
2 trying to do here, that those changes and particularly
3 activities that are now going on at the Federal Energy
4 Regulatory Commission and individual State public utility
5 commissions will affect how States see questions of need.

6 I think they will affect the structural nature of
7 the electric utility industry and, in fact, the question of
8 ownership of plants. Re-licensed existing plants, I think,
9 are going to be central to that debate.

10 I think we're also seeing a whole series of new
11 regulatory tools, including integrated resource planning,
12 least-cost planning, that have evolved in the last five or
13 six years or so, that clearly have changed the way State
14 commissions, public utility commissions, see their
15 responsibility to protect primarily the ratepayer interest
16 and also, in some cases, the environmental impact of utility
17 operations.

18 Having said that, I think -- we appreciate what
19 you're doing here, I guess. We appreciate the sensitivity
20 I've seen and that the States see to their concerns, and
21 again, I'd be happy to provide whatever assistance I can on
22 this. It's good to be here. Thank you.

23 MR. SCHWARTZ: Chuck, since you're the only one
24 here at this point to respond, there is someone else who
25 identified themselves from the State of Maryland. Would you

1 have anything to add, the folks from the Maryland siting
2 group? For the record, he said no.

3 Chuck, if you would, the second question here --
4 would the concerns of the States be any different for 5-
5 year than 20-year renewal -- do you want to deal with that?

6 MR. GRAY: I'd like to defer that to the next two
7 conferences.

8 MR. SCHWARTZ: Okay.

9 MR. GRAY: My sense is that, from everything I've
10 read and the people I've talked to, there are problems with
11 20 years as being beyond the planning process, but again,
12 I'm not sure what the right number is.

13 MR. SCHWARTZ: Okay. Great.

14 Ray or Ellen, as you understand the States'
15 concerns, are there any things that you might want to --
16 would like to add to the record or a question on this?

17 MR. NG: No.

18 MR. SCHWARTZ: Okay. Great.

19 Anybody else have anything to add to this issue?

20 Joe Gallo.

21 MR. GALLO: My name is Joe Gallo. I have one
22 question.

23 Do you know, Mr. Gray, whether all the States, all
24 50, have processes or procedures for determining need and
25 alternative sources of supply?

1 MR. GRAY: I do know that not all States do. I
2 have information -- we publish information on siting
3 certification and the like, and not all States make those
4 determinations.

5 MR. GALLO: Do you have the specifics?

6 MR. GRAY: Yes. I should do a commercial here.
7 This is the compilation, and I checked this yesterday. We
8 have collected summaries of all State statutes dealing with
9 siting, including whether or not there is a determination of
10 need as part of the siting certification process, and I can
11 provide that information to you now or when you would like.

12 MR. GALLO: Perhaps at a recess.

13 MR. GRAY: Fine. Or maybe, if there is a copy
14 machine, we could make copies of this page or something.

15 MR. GALLO: All right. Thank you.

16 MR. SCHWARTZ: I should note, there were a couple
17 of folks who showed up after the identification.

18 MR. GRAY: Just one --

19 MR. SCHWARTZ: Go ahead.

20 MR. GRAY: I was going to say most of them do. I
21 should have said it's far more than 35 or 40 States I think
22 we're talking about.

23 MR. MIZUNO: I guess I would like to request a
24 copy. This is Mr. Mizuno. I would like to request a copy.
25 That information would be very useful for us. I mean it has

1 legal implications. That's, in part, why Mr. Gallo was
2 asking.

3 MR. GRAY: Fine.

4 MR. SCHWARTZ: We can make that part of the
5 record, as well.

6 We introduced all of our -- each other when we
7 showed up. There were a few folks who showed up after.
8 There's Mr. Gallo, who just asked a couple of questions.

9 [Additional introductions.]

10 MR. SCHWARTZ: Okay. We are just right on time.
11 At this point in time, Don is going to give us a summary of
12 the CEQ/EPA agreement.

13 [Slide.]

14 MR. CLEARY: Both CEQ and EPA expressed a basic
15 and similar concern about the proposed rule, and in terms of
16 the words of CEQ, the rule does not further NEPA, because
17 the use of Category I to preclude discussion at the time of
18 the proposed action was not in the spirit of NEPA.

19 Public comments taken far in advance of the
20 proposed action was not considered by CEQ to be meaningful
21 public involvement in the process, and also, in the proposed
22 GEIS or the draft GEIS and the proposed rule, we did reach a
23 preliminary conclusion that would be revisited on a case-
24 by-case basis, and that conclusion was that there was --
25 things unchanged -- that there was a favorable cost-benefit

1 balance for re-licensing each individual plant, and that's
2 basically the comments of CEQ and EPA.

3 [Slide.]

4 MR. CLEARY: Now, we had an interchange with them.
5 We met with them separately and collectively several times
6 and exchanged draft letters and led to an understanding of
7 changes in the proposed rule that would satisfy them
8 relative to these procedural issues, and the major features
9 of that understanding was that we would use a supplemental
10 EIS rather than an EA in the -- for each license renewal
11 review.

12 The significance of that is that an EA need not be
13 circulated for comment, we can go directly to a final, and
14 by our commitment to an EIS, that means that there would be
15 a draft that would be available for comment and make it
16 easier for the public to have -- to furnish information and
17 comment in the process.

18 We also agreed that we would not reach a
19 conditional cost-benefit conclusion in the final rule, that
20 that cost-benefit balance would be struck on a case-by-case
21 basis, and there is also an understanding that, even if an
22 issue were Category 1, we would use the generic finding to
23 bring that into the individual case review, so that we
24 wouldn't initiate analysis.

25 However, we would take a hard look at any

1 information that anybody wanted to furnish us on any issue,
2 and if we determined that that information was new
3 information, not previously considered, and significant that
4 we would moved forward with a fuller review as to whether
5 that information changes any of our findings.

6 I would also like to point out that there are
7 already certain procedural provisions in Part 51 that would
8 apply to license renewal whatever the agreement with CEQ and
9 EPA are, and I won't elaborate on that, but there are
10 certain procedural safeguards that allow people into the
11 process.

12 MR. SCHWARTZ: Thank you very much, Don.

13 The staff has proposed the questions with respect
14 to the CEQ/EPA agreement.

15 To what extent are the concerns of the States
16 resolved by the changes to the GEIS and rule that are being
17 made in response to CEQ and EPA comments?

18 Chuck?

19 MR. GRAY: Again, my sense is that some of the
20 procedural objections that -- or concerns that the States
21 had have -- are responded to by the agreement that you all
22 made with CEQ and EPA, and it appears, from my discussions,
23 again, to improve the States' response, again, and
24 hopefully, next week, they can clarify this for us.

25 MR. SCHWARTZ: Thank you.

1 Anybody else on the panel have any comments on
2 this?

3 [No response.]

4 MR. SCHWARTZ: Anybody from the State of Maryland?
5 Anybody from the audience?

6 [No response.]

7 MR. SCHWARTZ: Well, we're making up time.

8 Don, are you ready?

9 MR. CLEARY: Ready.

10 [Slide.]

11 MR. CLEARY: One of the recommendations that was
12 made by a number of States was that we should just go ahead
13 and designate need and alternatives Category 3, so that they
14 could be revisited.

15 I'd like to point out that we are still doing the
16 analysis. There are a lot of technical comments on need and
17 alternatives, and it's yet to be determined whether, on a
18 technical basis, we can sustain Category 1's for need and
19 alternatives.

20 The significance of this question for the
21 discussants is that there was some feeling that, if we just
22 open these issues up to the States, that it should solve a
23 large percentage of their concerns, and what we want to get
24 at is which of the concerns would be solved and which would
25 still remain if need and alternatives were left open to a

1 full review on a case-by-case basis.

2 MR. SCHWARTZ: Panel?

3 MR. GRAY: I guess I'll start again. We may be
4 done by noon.

5 In response, I guess, the States are concerned
6 that they not be Category 1 issues. I think that what they
7 are learning through their own processes is the questions of
8 need and alternatives are utility-specific and are changing.
9 There's a lot of different things happening in the electric
10 utility industry, different alternatives.

11 I'm not sure how entirely relevant this is, but
12 even as we speak, there is a NARUC witness testifying before
13 the House Subcommittee on Telecommunications and Finance
14 about electric utilities becoming involved in fiber-optics
15 businesses, the point being or at least the future being
16 that utilities can install fiber-optic systems for metering,
17 load control, load management and the like, and it's so
18 cost-effective for them to do that that they can pay for the
19 systems that will provide us with the information super-
20 highway simply out of energy savings, and it seems to me
21 that -- I don't know if that's true or not, but I know that
22 Congress is interested in pursuing that, the Administration
23 is interested in seeing that utilities be involved in
24 pursuing that kind of future, and it strikes me -- again,
25 this is just me speaking -- that those kinds of changes or

1 those kinds of developments are going to fundamentally alter
2 the economics of this industry.

3 Similarly, the notion of opening up the
4 transmission system, which we're undergoing right now, is
5 also going to change the kinds of alternatives that
6 utilities are looking at.

7 A long answer -- maybe not a long answer but an
8 answer to the question -- one aspect of the question you've
9 raised here, I think, is that the States are very concerned
10 that your findings not affect or not somehow prejudice the
11 kinds of findings that they'll be making in light of these
12 kinds of changes. I guess that's all I have.

13 MR. SCHWARTZ: Okay. Thank you very much, Chuck.
14 Don, do you have any response to that?

15 MR. CLEARY: No, I don't.

16 MR. SCHWARTZ: Okay.
17 Ray, Ellen?

18 MS. GINSBURG: I just want to respond a little bit
19 to your last point about the concern that the States seem to
20 have about the effect or the prejudice -- prejudicial nature
21 of the NRC deciding these kinds of issues, and it's the
22 industry's view -- and it's a well-settled legal principle,
23 actually, under the PG&E case -- that the States have final
24 authority on the issues of economic regulation.

25 So, I kind of question as to whether it's a matter

1 of perception, what their concern really is, when as a
2 matter of legal binding effect, the NRC's determination in
3 this case does not bear on the State's determination on the
4 same issue.

5 MR. GRAY: If I can answer, yes, I've looked at
6 the -- that's one of my sort of stock in trade -- I deal
7 with preemption issues on a sort of daily basis, mostly
8 having to do with FERC decisions and FCC decisions, not
9 often with NRC decisions.

10 I think you're right. I think that, as a strict
11 legal matter, there would not be a preemptive effect. I
12 think some of the State comments are more -- it was
13 described to me yesterday as not preemption but encroachment
14 or influence.

15 I guess the practical perception or the practical
16 sense that these people have, that the State people have, is
17 that you may not have a binding legal effect on their
18 decision-making process, but what the NRC decides clearly
19 would affect it and that they see themselves as primarily
20 being the parties that have to decide these questions in
21 light of the interests of their own States, their own
22 utility ratepayers, the long-range future of their companies
23 and in light of their economic development plans, a whole
24 host of issues, and that, I think, is what drives their
25 concerns here.

1 Again, I don't disagree that, as a strict legal
2 issue, there's probably not a binding preemptive effect.

3 MR. SCHWARTZ: Thank you.

4 Geary?

5 MR. MIZUNO: I guess I have several comments and
6 questions. I'd like to explore this.

7 MR. SCHWARTZ: Great.

8 MR. MIZUNO: Because I suspect that you probably
9 have two different sort of State perspectives on this. I
10 mean they end up coming out in the same area, but does it
11 make any difference or have the States considered the fact
12 that, if we simply make a finding of need for power and we
13 issue a renewed license, that from a practical preemptive
14 standpoint, if you want to call it that, that leaves the
15 maximum amount of flexibility to the State, because we're
16 essentially in a situation where we have co-extensive
17 authority over whether the plant is going to operate.

18 The Federal Government, the NRC, determines
19 whether it should operate or not on the basis of protection
20 to the public health and safety and national security, and
21 we have this overlay of NEPA, whereas the States are
22 primarily concerned with the economic aspects and whatever
23 local and jurisdictional aspects that are left open to them.

24 If the NRC makes a general generic finding of need
25 for power and says we are going to determine whether to

1 renew the license on the basis of health and safety, from a
2 practical preemptive effect, doesn't that leave the States
3 the maximum amount of flexibility for themselves to
4 determine whether they want the plant to operate or not,
5 whether they are going to grant the certificate of public
6 convenience and necessity or allow the utility to recoup the
7 costs?

8 So, that's the first question, and then, I guess
9 the second thing is, to the extent that we're talking about,
10 again, preemptive effect, does categorization of need for
11 power and alternative energy sources really -- as a Category
12 3 -- really address the State's -- a State's concern if
13 their real concern is intrusion or potential preemptive
14 effect, because all Category 3 does is to delay the ultimate
15 NRC determination and consideration of the topics of need
16 for power and alternative energy sources, and so, that's why
17 I suspected that there were probably some States who felt
18 that, well, they were more concerned about having the best
19 available information closest to the time when the renewal
20 decision comes up versus other States who may have -- who
21 are just simply concerned, they don't want NRC making any
22 statement with respect to that.

23 MR. GRAY: That was what I was going to say. I
24 think there are some States that would prefer you just not
25 make a need for power finding, that the existence of such a

1 finding reduces -- at least they perceive that to reduce the
2 flexibility they would have in their own proceedings.

3 I guess, you know, you think of the company coming
4 in and said, listen, we've got an NRC finding that this re-
5 license is needed, and the State commission would say, well,
6 we don't find so in light of other alternatives, but at
7 least there's evidence that somebody somewhere, in
8 Washington or Rockville, has made a contradictory finding.
9 It may not be binding, but I think there's the feeling
10 that's their job.

11 As to the other side, I guess you're talking about
12 pushing the category delineation, there's a lot of feeling
13 that -- how can we determine 20 years in advance -- I'm not
14 sure I fully understand the timeframes, but that far in
15 advance that there is going to be a need for a re-license,
16 and this is really a site-specific and a company-specific
17 issue, and that's why it's not appropriate for Category 1
18 consideration.

19 MS. GINSBURG: Excuse me. Can I weigh in here?

20 I just wanted to make it clear, also, that
21 Category 1 is not so conclusive that, under any
22 circumstances, it can't be re-looked at, and much like
23 Category 2 or Category 3, where you've got the immediate
24 opportunity, if you can meet a threshold requirement, you
25 can re-look at Category 1 issues, and so, to say that, just

1 by virtue of being Category 1, it would never, under any
2 circumstances, be re-looked at is, I think, a bit of a
3 misstatement.

4 MR. GRAY: Well, maybe you can help me. What does
5 it mean -- what would it mean for the need issue to be a
6 Category 1 issue in a practical sense, that there would be
7 generic finding that all re-licenses are necessary?

8 MR. MIZUNO: I'm going to respond assuming that
9 the Commission adopts the CEQ/EPA compromise that was
10 reached or, you know, this preliminary understanding.

11 The implication -- the practical implications of
12 something being deemed a Category 1 would be that you would
13 not normally expect the individual EIS that is prepared in
14 connection with a specific renewal application to have a new
15 discussion of need for power or alternative generating
16 sources.

17 Rather, you'd probably see something that says --
18 some paragraph in there, you know, a short paragraph or a
19 sentence that says this topic was considered and determined
20 to be a generic finding in this GEIS, and so, the relevant
21 discussion should be found in Chapter 8 or Chapter 5,
22 whatever sections of the GEIS. You would find some
23 reference over, probably, to the GEIS in those areas. So,
24 that would be the first thing.

25 Then the second thing would be that, under the

1 CEQ/EPA compromise that was reached, a person who wanted to
2 challenge the -- I guess -- the generic finding that was
3 contained in the GEIS would have an opportunity to submit
4 their comment as part of the comments that they would submit
5 on the entire individual EIS, and the way that the
6 Commission would consider that would be to look and see
7 whether that comment raised significant new information that
8 drew into question the adequacy of the original GEIS
9 determination -- well, I should say original GEIS -- either
10 the original GEIS or whatever updated GEIS that is in effect
11 at that time, and the Commission would -- if the Commission
12 determined that there was no significant new information
13 there, it would probably, in the comment analysis that was
14 done for the final EIS, have some statement to that effect,
15 that the NRC did not believe that the commenter raised any
16 new information, significant new information, that would
17 draw into question the previous conclusions of the GEIS.

18 On the other hand, if the Commission determined
19 that, yes, the commenter did, in fact, present significant
20 new information that drew into question the adequacy of the
21 current GEIS with respect to those topics, I think the
22 Commission would have a number of different alternatives as
23 to how to address it.

24 It could either -- well, one of the things it
25 could do -- it could do a couple of things. It could,

1 perhaps, suspend the consideration of the application with
2 respect to environmental matters until it went through a
3 rulemaking to revise the GEIS.

4 The Commission could act, I guess, and say they'll
5 go forward here, but we would like to have -- it would open
6 up the hearing to a specific discussion of this, assuming
7 that that person requested a hearing, or the Commission
8 could say -- the Commission could -- well, I should say the
9 Commission could direct the staff to address that issue for
10 the -- for that specific plant, assuming that the
11 information that was brought was, you know, site-specific
12 information and drew into question only the applicability of
13 the GEIS to that specific site.

14 It might not necessarily have to open up the
15 entire GEIS. It might just say, well, consider it, you
16 know, in the context of this plant only.

17 I'm sure there are some other alternatives, but
18 basically what we committed to doing was that the Commission
19 would, in some fashion, have to deal with that information,
20 and if there was some significance either for that specific
21 plant, it would -- you know, it would deal with it there and
22 -- or if it had more generic implications, the Commission
23 would, you know, institute some sort of rulemaking to update
24 it, and you know, how that would be -- how that would
25 ultimately result in, you know, opening the scope of hearing

1 or not, you know, that would depend on how the Commission
2 acted there.

3 MS. GINSBURG: Chuck, you might note that, in
4 February of '93, the NRC issued SECY-93-032, where all this
5 is laid out, for your reference.

6 MR. GRAY: Okay. Maybe that document would answer
7 my next question. What kind of showing would someone have
8 to make to trigger that?

9 MS. GINSBURG: According to 032, it's new and
10 significant --

11 MR. GRAY: Right.

12 MS. GINSBURG: -- and if you're unhappy with the
13 response to -- that the NRC provides, then you would be --
14 it would be open to a 2.802 or 2.758 request for waiver.

15 MR. MIZUNO: It's a very complicated area. In
16 fact, one of the comments that we got from CEQ and EPA --
17 one of the things that we agreed to do was that, as part of
18 this GEIS and Part 51 rulemaking, if we were to adopt the
19 compromise, we would include some sort of statement that
20 explains how this entire process works, I mean going through
21 the intricacies, provides sort of like a layman's guide to
22 how to raise new information and what would be the
23 appropriate procedural mechanisms within the existing NRC
24 regulations. Isn't that true? Didn't we commit to doing
25 something like that? Well, Susan Offerdal is back there.

1 Susan, didn't the NRC commit to putting some kind
2 of brief description of the process by which the public can
3 raise significant new information, and if it was unclear or
4 if he was unhappy with the NRC's determination or
5 consideration of it, how we'd subsequently go about raising
6 this information before the Commission through its
7 procedures in Part 2? Do you recall that?

8 MS. OFFERDAL: I think they did, yes.

9 MR. NG: Geary, I think, to try to simplify
10 matters more, what NUMARC is suggesting is that the NRC, as
11 part of its environmental review, not address the need for
12 power or the alternatives.

13 MR. MIZUNO: I understand that. That's an option.

14 MR. NG: Right. I agree. And it seems rather a
15 very complex discussion we've just had.

16 MR. MIZUNO: Well, you have to understand, though,
17 Ray, that the EPA and CEQ agreement was reached on matters
18 which were more than just need for power and alternative
19 energy sources.

20 CEQ and EPA's concerns were with the procedural
21 structures that would be placed on people raising issues
22 about, for example, water quality or endangered species or
23 something like that.

24 So, the agreement that we reached with CEQ and EPA
25 was not limited to the -- you know, the specific subjects

1 that the States have but was -- it dealt with the entire
2 range of topics that were raised and addressed in the GEIS.

3 MR. SCHWARTZ: Anybody else? This is a good
4 discussion. John?

5 MR. MOULTAN: Charles, I recognize you are not in
6 a position to make definitive commitments to the States'
7 concerns right here, right now, but in Table B-1 of the
8 rule, we make a Category 1 finding on need, and I just
9 wanted to read that to you. What we say is that license
10 renewal of an individual nuclear plant will be needed.

11 Now, that is in direct contrast with a statement
12 like the need for power exists, but say in the general
13 concept, do you see a difference between that and -- I
14 personally see some preemptive practicality by saying, 20
15 years ahead of time, that license renewal is, in fact,
16 needed to meet the power.

17 My question is would you be more inclined to think
18 that a statement like a need for power exists, practically,
19 because a plant has been operating, is probably more in line
20 with not being preemptive to the States, leaving the States
21 the option of which alternative they would like to choose to
22 meet a need for power, like conservation, importing power,
23 and maybe even deciding not to meet it, but the NRC just
24 making a general statement that, once the power comes off
25 the grid, it has to be made up somehow.

1 MS. GINSBURG: John, can I interrupt here? I
2 think you have to make the distinction between the purpose
3 for which the NRC is making its determination and the
4 purpose for which the States are making their determination,
5 and that's a very critical separate approach that has to be
6 taken.

7 MR. MCULTAN: Ellen, you're absolutely right, I
8 agree with that, and we're probably getting ahead into the
9 option discussion, but let me respond to that real quickly,
10 and that is the NRC -- the staff has extensively looked at
11 the option of not considering need and alternatives, because
12 the need that we're acting for is really just issuing a
13 license and it's not operating the plant.

14 We have looked at that, but I guess, from a NEPA
15 practical standpoint, it's almost -- it doesn't answer the
16 question of why is the ultimate action going to take place -
17 - i.e., operation of the plant -- and to say it's because we
18 have a responsibility to issue a license or not issue a
19 license doesn't quite answer that why question.

20 MS. GINSBURG: I guess I wasn't --

21 MR. SCHWARTZ: Excuse me. He asked the question
22 of Charles. I'd like him to respond.

23 MS. GINSBURG: Sure.

24 MR. GRAY: I guess I need to clarify. You're
25 saying that the NRC would simply say -- which is self-

1 evident -- that if a plant ceases to operate, then its
2 output would need to be made up for.

3 MR. MOULTAN: It's a very simple finding, but it
4 has some very important implications here, and it tends to
5 answer the question of why are we proposing action, and we
6 think it might be able to satisfy the NEPA requirement to
7 State what the need is and not go any farther in preempting
8 States' authority of their own determination of how they
9 want to go about that.

10 MR. GRAY: Again, let me just speak -- this is
11 only myself speaking.

12 When I first started to learn about this issue, it
13 struck me as odd that anyone could make a generic finding
14 that a re-license was necessary or needed in light of other
15 alternatives given all the other alternatives that there
16 might be and how you could make such a finding sort of
17 puzzled me.

18 I think your second point or your alternative is
19 clearly something that changes that, would change that kind
20 of a finding. I'm not sure how much value it provides you
21 all. It would probably provide greater comfort to the
22 States, I think, if that's your point.

23 MR. MOULTAN: Like I said, I think we're probably
24 getting ahead, and we can discuss more about it in the
25 options.

1 MR. SCHWARTZ: Ellen, I cut you off.

2 MS. GINSBURG: I just want to be sure, John, that
3 you're not suggesting that there's anything in the GEIS that
4 has a preemptive -- that has a preemptive quality to it.
5 The fact is that, under the law, it cannot. So, I think
6 that's well settled.

7 MR. MOULTAN: That's true.

8 MS. GINSBURG: The second issue that I was talking
9 about in terms of the separation has nothing to do with the
10 options that are chosen.

11 Putting aside for a moment whether or not the NRC
12 chooses to discuss this, the purpose for which the NRC, if
13 it chooses, to look at these issues is for the purpose of
14 resolving, at least in its characterization thus far, its
15 requirements under NEPA.

16 The purpose for which the States would look at
17 these issues are for the purpose of determining whether,
18 given all the things that the State looks at, it wants to
19 either allow the utility to put this cost back into the rate
20 base and allow this utility to continue -- perhaps, it can
21 continue operating without putting it back into the rate
22 base, but they are very different, and they are on two
23 separate tracks, and I think that's critical to remember
24 when you're looking at this GEIS question.

25 MR. MOULTAN: I would agree. I think maybe I can

1 wait until we get into the options.

2 MR. SCHWARTZ: Good, John. Thank you.

3 We have something from the audience.

4 MR. LEWIS: David Lewis from Shaw Pittman.

5 NEPA does not require that you find at this stage
6 that license renewal is required. It requires simply that,
7 in your cost-benefit balance, that you find there's a
8 benefit, and need for power has typically been considered
9 the benefit for an action.

10 You can satisfy NEPA, changing your language in
11 the GEIS, making it less clear that you're -- making it more
12 clear that you're not infringing on the States simply by
13 saying we think that there is a need for power because of
14 the general need for electricity in regions, and therefore,
15 there is a benefit for license renewal.

16 That does not mean that it's the best. That does
17 not mean that there may not be a different State
18 determination based on least-cost planning. Those are other
19 issues.

20 But you can do your findings in the GEIS
21 generically to make those minimal NEPA findings of a benefit
22 and no clearly, obviously, environmentally superior
23 alternative as a matters of presumptions.

24 MR. SCHWARTZ: Thank you for that statement.

25 Any other discussion on this particular issue?

1 MR. CLEARY: Shelly, actually we've been
2 discussing the next issue.

3 MR. SCHWARTZ: I understand that. I understand
4 that. Do you want to lead off with the parameters that you
5 were planning to discuss on this preemption issue?

6 MR. CLEARY: Yes. We can bypass the slide.

7 This is an interesting question about clarifying
8 what is the law anyway, and one of the States or a couple of
9 the States have said that we should clarify, which we will,
10 but the question in my mind is -- I've heard from various
11 people within NRC, outside of NRC, the industry, even from
12 some States, that the law is clear, and what is the problem?

13 So, I think that, in pursuing this dialogue with
14 the States, we need to have a better understanding of are we
15 just making life a little -- or the situation -- does it
16 just make life a little difficult for a few States, or is
17 there a real problem there that the States are having --
18 going to have internally, and you know, we really need to
19 sharpen our understanding of that concern.

20 MR. SCHWARTZ: Good. Charles?

21 MR. GRAY: Yes. I anticipate you are going to
22 hear the level of fervor on the issue at the other
23 conferences. There are very strong feelings about this, and
24 it's somewhat surprising to me, as a matter of fact, among
25 some of the State people I've talked to just in the past

1 couple of weeks. I'll just stop there.

2 MR. SCHWARTZ: If I may, let me take the
3 prerogative of the Chair. Is the issue that we've discussed
4 that it may not be a legally binding decision that the NRC
5 is making that would be legally binding in any other
6 procedure? I think, from what I heard, that it is not,
7 because those purposes are for different purposes.

8 So, therefore, the only thing that's left is the
9 perception issue, that there will be a perception or a
10 chilling effect on the States making independent decisions
11 with respect to need.

12 MR. GRAY: I have a two-part answer to that
13 question.

14 First -- and I think I saw it in the staff paper -
15 - I think there would be a lot of States that would be glad
16 to see the Commission include in the rule a statement that
17 the law is that there is no preemption, and I think that's
18 what you all intend to do, if I understand this proposal
19 correctly.

20 So, there's the legal issue. We can all agree
21 that the law is clear on this, but I think it would be great
22 if you could restate the fact that the law is clear on this
23 and that the law, in fact, is that there no preemption.

24 MR. SCHWARTZ: Let's not dance around it. Let's
25 just say it.

1 ..R. GRAY: Yes. I've litigated cases where
2 Federal agencies have said that, and the courts found that,
3 regardless, there was a preemptive effect of some Federal
4 action that even the Federal agency didn't intend there to
5 be. So, you know, it would be helpful for the agency with
6 jurisdiction to make that finding clear.

7 The second part of my answer, I guess, goes to
8 your question of perceptions and influence and the like, and
9 clearly, that's, I think, where the heart of the concern
10 lies.

11 The comments I've heard from the States cite the
12 Pacific Gas & Electric case for the holding that there is no
13 preemption, and I think the States recognize that. It's
14 more of the subtle or maybe not so subtle, depending on the
15 State, influence that the NRC would have.

16 MR. SCHWARTZ: Any discussion? Geary, I saw you
17 leaning forward.

18 MR. MIZUNO: Well, I don't know whether you can
19 get back to the States or discuss this.

20 I mean, clearly, we don't want to have -- we want
21 to avoid any kind of preemptive, you know, implication here,
22 but to the extent that we have options here or the States
23 are advocating that we don't discuss the matters at all, the
24 need for power and alternative energy sources, I think it
25 would be useful.

1 You can sort of take this back to them, that it
2 would be useful for them to explain how that can be
3 accomplished consistent with NRC's obligations under NEPA,
4 and I think -- I mean, obviously, NUMARC has their concept
5 of NEPA, and they're going to be explaining how we can avoid
6 having to make any findings there, but if the States -- the
7 States have to understand that we are trying to respond to
8 what the NRC, at least up to this point in time, perceived
9 as its NEPA responsibilities, and up to this time, it has
10 perceived it as having to make or involved making need for
11 power and alternative energy source determinations for
12 purposes of NEPA disclosure, and if there is some way of us
13 being able to avoid having to do that that would be
14 consistent with NEPA, which is the only reason why we're
15 doing this, we would -- I mean that's what we're looking
16 for.

17 We obviously must comply with NEPA, and the only
18 question is can we accomplish what the States want to
19 accomplish consistent with the NRC's legal obligations under
20 the statute?

21 MR. SCHWARTZ: Without having to bear a challenge
22 that's litigable.

23 MR. MIZUNO: That's right.

24 MR. GRAY: I'm obligated to let people know what
25 happened here today in preparation for next week. So, I'll

1 see that that message is delivered.

2 MR. MOULTAN: I do have one comment of
3 clarification.

4 Ellen, you had asked me whether I thought that the
5 GEIS was in any way preemptive, and that probably came from
6 my comment about what I read in the rule. Let me clarify
7 that.

8 I don't have the GEIS in front of me, but Chapter
9 8, the needs analysis in the GEIS, ultimately concludes that
10 the need for power that could come from license renewal is
11 needed, and that is distinctly different from what I read in
12 the rule, which says license renewal of an individual plant
13 will be needed. Those are different.

14 One is saying that license renewal is needed to
15 meet the power, and the GEIS concludes that the need for
16 power exists and it could come from license renewal. That's
17 different. I just wanted to make that point on the record.

18 MS. GINSBURG: Thanks. I'll take a look at that.

19 MR. SCHWARTZ: Great. Thank you.

20 Any other discussion? Yes, Mr. Gallo.

21 MR. GALLO: My name is Joe Gallo. Just a couple
22 of observations.

23 It seems to me that the generic term "States" is
24 probably being used too loosely here, because some States
25 don't object to the NRC performing their traditional roles,

1 other states do, and I think, as Mr. Gray said, the heart of
2 the matter for those States, at least, is that they don't
3 want the NRC to muck around in the need for power and the
4 alternative sources of supply area.

5 I think it might be appropriate for the NRC to
6 determine who is the spokes-person for these States. If
7 it's somebody from the State EPA or from the State public
8 utility commission, their turf is being invaded by the NRC,
9 and that influences their viewpoint.

10 Perhaps the better spokesman in those cases ought
11 to be the governor, who after all should set the policy for
12 the State. You might target in that direction. It seems to
13 me that a State position based on a local State EPA position
14 versus, say, the governor's office are two different
15 matters. You might consider that.

16 MR. MOULTAN: Don, we did get the actual
17 governors' endorsing comments or the like, didn't we?

18 MR. CLEARY: Yes. There were comments from
19 several governors, but I think relative to the issue at
20 hand, we're reacting to comments from State PUC's, State
21 energy offices.

22 MR. GRAY: I would just add that, in a number of
23 States, public utility commissions are constitutional
24 agencies that are intended to be removed from influence, at
25 least formally, by the executive branch of the State

1 government. So, they probably continue to need to be talked
2 to anyway.

3 MR. SCHWARTZ: All right. I think we've concluded
4 discussion. This was the last issue for this morning's
5 session. Let me see if I can poll the panel to see what
6 your druthers are.

7 We could begin and maybe end on at least the
8 presentation of the four options before lunch and then
9 perhaps Ray Ng could discuss the fifth option, and I think
10 we've already discussed the implicit sixth option. I'll
11 seek your judgement on this. The other alternative is to
12 break for lunch now and then return back in an hour, say
13 12:45.

14 MR. MIZUNO: I would prefer to have the
15 presentation of the four options now. That way we'll leave
16 the entire afternoon for the real meat.

17 MR. SCHWARTZ: Exactly. I'd be happy either way.

18 MR. GRAY: Press forward.

19 MR. SCHWARTZ: Let's go. Don Cleary -- it's the
20 Don Cleary show today, isn't it?

21 MR. CLEARY: No one else wanted it.

22 [Slide.]

23 MR. CLEARY: Start off, once again, emphasizing
24 that an option that isn't here is the option of continuing
25 along the lines of the proposed rule and the draft GEIS with

1 regard need and alternatives, and we will be looking at
2 that.

3 The options that we developed that I will present
4 really are options that we thought of that were responsive,
5 to some degree, to the concerns that were raised by the
6 States relative to need and alternatives.

7 Option 1, we would still review need and
8 alternatives. They would be a factor in the license renewal
9 decision. The option would not be dependent on the outcome
10 of our technical review of whether we can continue to
11 sustain Category 1 or go to Category 2 or Category 3.

12 The heart of this option is that we would diminish
13 the consideration of -- at least the up-front consideration
14 of economic costs and benefits in the license renewal
15 decision, and utility costs would not be initially thrown
16 right onto the balancing and weighing.

17 We would look at the health and safety. We would
18 look at environment, environmental impacts. We would look
19 at the relative environmental impacts of alternatives. We
20 would look at need.

21 Only if a question of whether the plant was --
22 whether that capacity was really needed or the question of
23 whether there might be a preferable alternative from an
24 environmental perspective would we then be forced into
25 looking at costs.

1 We feel that, if there are environmental issues
2 there that would clearly indicate that an alternative would
3 be environmentally preferable, it's probably issues that we
4 well known, and there would be State involvement, public
5 involvement anyway at that point.

6 [Slide.]

7 MR. CLEARY: In this option, we propose that -- I
8 guess this is what I've already said -- that we'd take a
9 harder look at economics, if there was an adequate need,
10 environmentally preferable alternative, or -- what I didn't
11 say -- if the environmental impacts of the proposed action
12 were so adverse that that proposed action, re-licensing,
13 would come into question.

14 [Slide.]

15 MR. CLEARY: Option 2, the essence of that is that
16 NRC would not do its own analysis but, rather, would adopt a
17 submittal by the State, the State's review and determination
18 of need and alternatives. This option, as written, we would
19 then factor those determinations into the license renewal
20 decision.

21 If NRC adopts anyone else's reviews, it has to
22 meet certain minimum guidelines or requirements, because
23 NRC, in adopting it, is then legally responsible for the
24 analysis, and we've had a discussion as to what those
25 guidelines are, and they are -- they probably could be

1 minimal procedural rather than guidelines that would
2 reflect, for example, the extreme detail found in the
3 Environmental Standard Review Plan for need and
4 alternatives.

5 However, if a State was not prepared to make a
6 submittal, then the responsibility would fall back on NRC
7 and the applicant.

8 [Slide.]

9 MR. CLEARY: Option 3, the essence of this option
10 is that it distinguishes between new capacity and the need
11 for existing capacity. John Moulton, earlier, I think,
12 referred to the thinking behind this option.

13 Basically, the NRC would accept that there is a
14 need if a plant were operating and an application were
15 tendered for license renewal, that that would be sufficient
16 evidence for us of need, that we would not go further to do
17 detailed analysis of demand and supply of power, and that
18 last bullet is that -- obviously, that if there is existing
19 capacity -- if there is a need for the capacity that's
20 already there, if that capacity would be removed, that it
21 would have to be replaced in some form and that -- and we
22 would do, in fact -- do the alternatives analysis with this
23 option.

24 [Slide.]

25 MR. CLEARY: Option 4 is perhaps a more extreme

1 departure from our NEPA responsibilities or interpretation
2 of how we can fulfill our responsibilities.

3 Need and alternatives would be disclosed. There
4 would be information gathered, and there would be analysis.
5 However, that analysis would not be factored into the
6 decision whether or renew a license or not, and that
7 analysis would be available in the public record.

8 The thinking behind this option is that that would
9 create the maximum flexibility for the States, because we
10 recognize that the States are going to make the economic
11 regulatory decisions and decisions relative to optimal or
12 preferable -- any energy mixes within the State, and this
13 option could include discussion of economic costs and
14 benefits or not, and we want to pursue this with the States,
15 just as -- you know, what harm is done by consideration of -
16 - full consideration, including economics, of alternatives?

17 [Slide.]

18 MR. CLEARY: The license renewal decision would be
19 based, as I said before, on health and safety and the
20 environmental impacts of the proposed project, and that
21 concludes my presentation of the four options.

22 MR. SCHWARTZ: Great.

23 Ray, do you want to discuss your Option 5 at this
24 point and then we'll open it up for clarification or
25 discussions, clarification so that folks understand what the

1 various options are, and then we can get into the meat of
2 the discussions after lunch. I'll reserve that judgement to
3 you, if you want to wait till after lunch to discuss the
4 fifth option.

5 MR. NG: I think I would like to defer until after
6 lunch.

7 MR. SCHWARTZ: Does anyone on the panel have
8 questions of Don on clarification of the four options
9 presented?

10 [No response.]

11 MR. SCHWARTZ: Anybody in the audience have any
12 questions on the four options Don presented? Yes, sir.

13 MR. LEONARD: Dan Leonard, Ogden Environmental and
14 Energy Services.

15 Don, could you clarify how the categorization
16 process would be used in any of these options? It's not
17 clear to me what the significance of it is anymore.

18 MR. CLEARY: For Options 1, 3, and 4, we could --
19 they are not dependent on the determination -- the category
20 determination. They could be implemented whether we have -
21 - the technical analysis concluded a Category 1, Category 2,
22 or Category 3.

23 Option 2, where we depend on the State analysis,
24 would, in fact, be a Category 3, because we're accepting the
25 -- we anticipate that the State is going to submit that

1 analysis for the specific license renewal review.

2 Under that option, though, we would continue to do
3 the generic analysis but would obviously have to represent
4 it as subject to change with the State submittal, and we --
5 the extent to which -- that Chapters 8 and 9 would look the
6 same as in the draft GEIG we haven't determined yet.

7 MR. SCHWARTZ: Thank you, Don.

8 Any other questions?

9 [No response.]

10 MR. SCHWARTZ: All right. With that, we will take
11 our lunch break, and please be back here by one o'clock.
12 Thank you.

13 [Whereupon, at 11:50 a.m., the meeting recessed
14 for lunch, to reconvene this same day, Wednesday, February
15 9, 1994, at 1:00 p.m.]

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AFTERNOON SESSION

[1:00 p.m.]

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3 MR. SCHWARTZ: Ladies and gentlemen, according to
4 the official clock, I think we're ready to go.

5 Let me recap a little bit of the morning session.

6 I think we've covered the basics. At least those
7 of us here at the table and those of you in the audience do
8 have a better understanding of the issues, which should, I
9 hope, lead to some lively discussion of the issues and the
10 details for this afternoon's session.

11 We put a placeholder in for the first thing this
12 afternoon for -- I guess we don't want to call it a fifth
13 option, it's just another alternative, and Ray Ng of NUMARC
14 -- I'll give you the floor now for whatever discussion you
15 would like to put in the record.

16 MR. NG: Okay. Thank you, Shelly.

17 My remarks this afternoon will focus on the
18 approach that industry believes could address the States'
19 concerns about the NRC's consideration of the need for power
20 and alternative energy sources in the draft Environmental
21 Impact Statement.

22 However, before I proceed with that, I'd like to
23 say a few words about the NRC's proposed regulatory process
24 for license renewal and perhaps most importantly the role of
25 license renewal in meeting the future electricity generation

1 needs of this nation.

2 NRC licenses nuclear power plants to operate for a
3 period up to 40 years. This number was selected not based
4 upon technical limitations. Rather, 40 years was a period
5 typically used to amortize large capital projects like
6 fossil fuel power plants.

7 Perhaps because the drafters of the Atomic Energy
8 Act realized that the 40-year limitation was not related to
9 any particular technical concern, the Act also allows a
10 license to be renewed, very much, I think, what was said a
11 little bit earlier today by Mr. Newberry.

12 It should be clearly understood that those
13 utilities seeking to renew their nuclear power license will
14 do so as part of a larger decision-making process related to
15 meeting the energy needs of their customers and ensuring
16 reliable and efficient delivery of electricity.

17 In order to meet the future electricity demands,
18 utilities will and must explore a range of options. These
19 include a variety of conservation measures, building new
20 capacity, extending the lives of current operating plants of
21 all types.

22 Obviously, for each option, consideration must be
23 given to whether it is safe, environmentally sound, and
24 reliable.

25 Equally important for each option, utilities must

1 consider the effective use of capital and whether a
2 particular option is justified in light of current and
3 projected operating and maintenance costs.

4 With that in mind, the industry has urged and
5 continues to urge the NRC to develop regulatory processes
6 for license renewal that are efficient, stable, and
7 predictable. Such attributes are critical, because license
8 renewal is a prerequisite for plant operations beyond the
9 initial license period of 40 years.

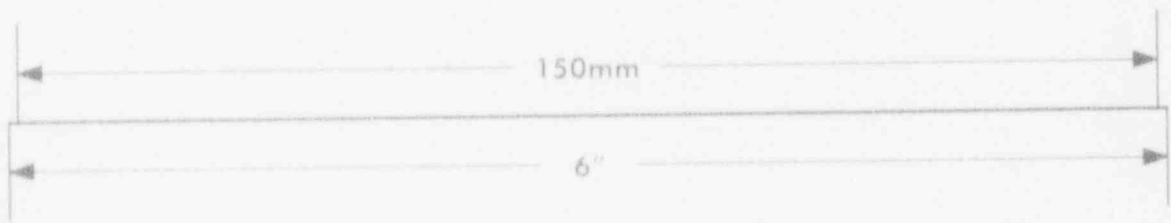
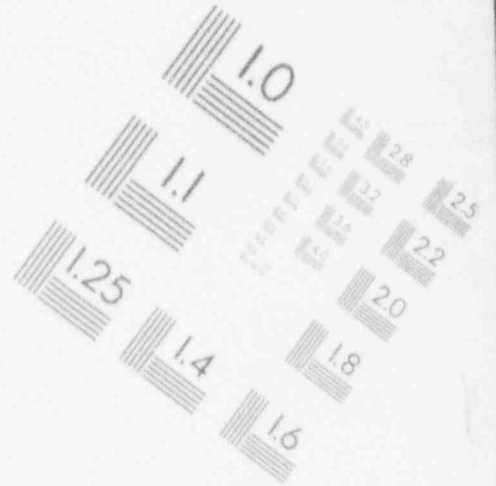
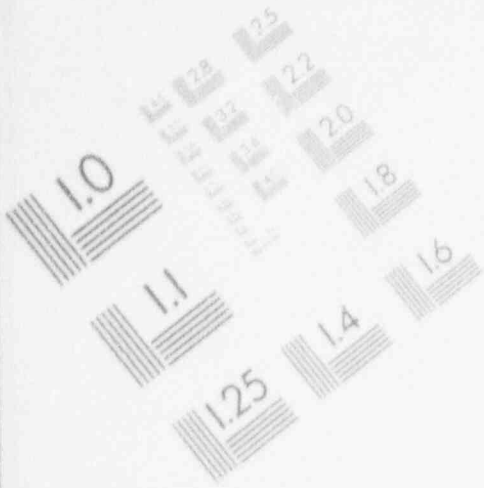
10 Whether to continue to operate a particular plant
11 is a business decision. Even after NRC has determined that
12 there is reasonable assurance that a plant will operate
13 safely for a period up to 20 years beyond the initial
14 license, a utility must then decide whether continued
15 operation is economically advantageous or, in some cases,
16 even feasible.

17 I want to highlight that obtaining a renewed
18 license does not require a utility to continue to operate in
19 the renewal period anymore than the initial license requires
20 a plant to operate for the full 40-year term.

21 The industry believes that the NRC has made
22 commendable progress toward achieving an efficient, stable,
23 and predictable process for considering the potential
24 environmental effects of license renewal through its
25 proposed GEIS.

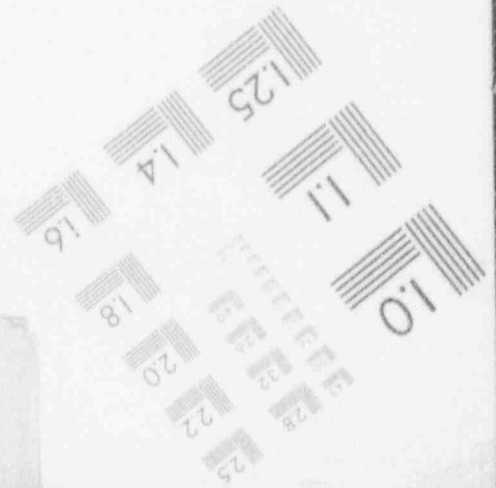
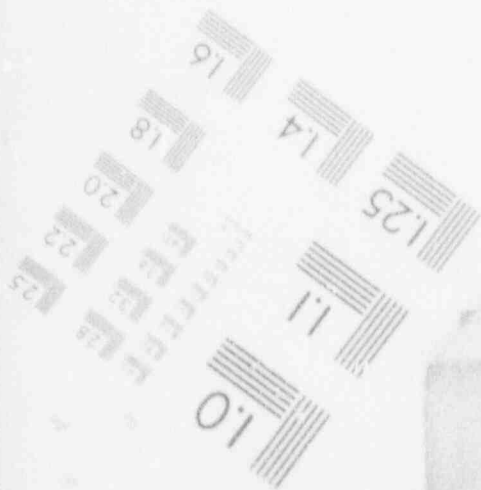
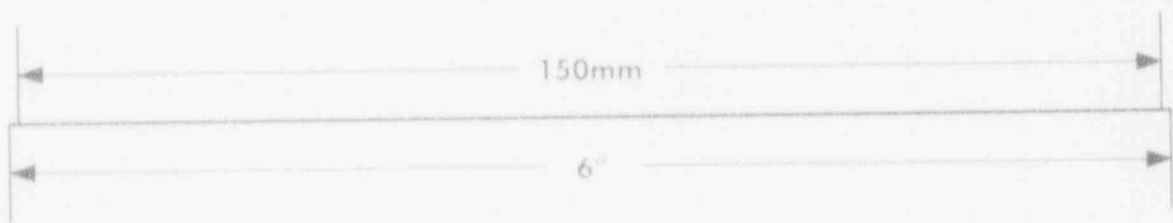
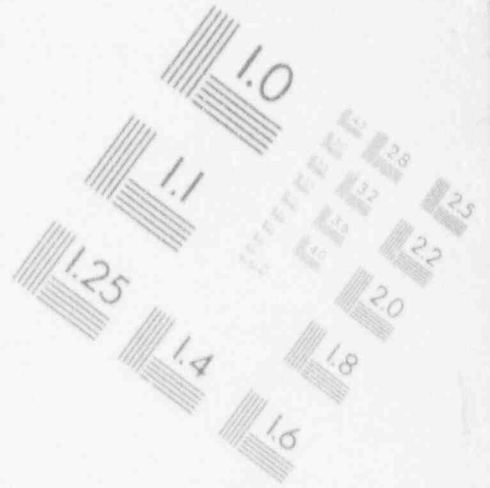
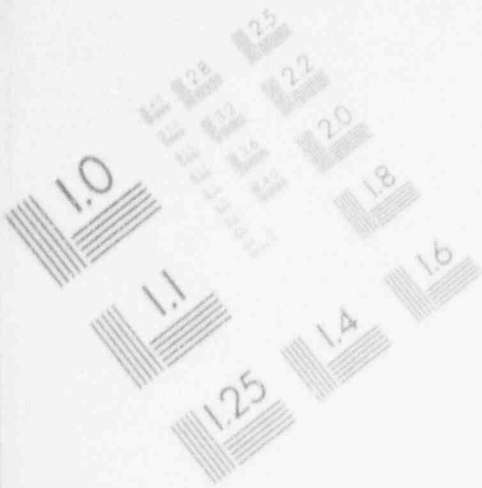
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IMAGE EVALUATION TEST TARGET (MT-3)



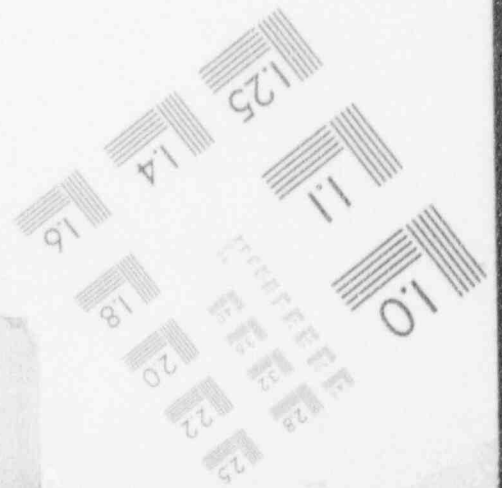
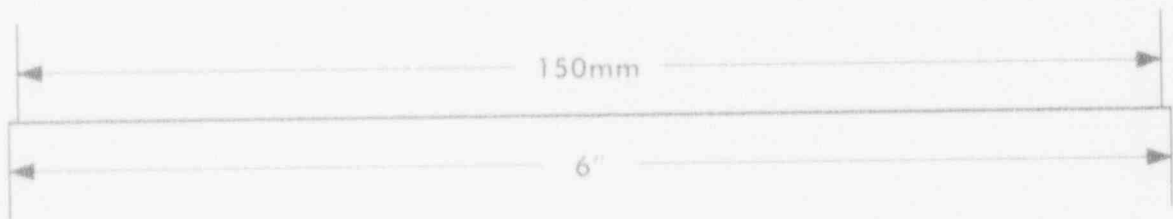
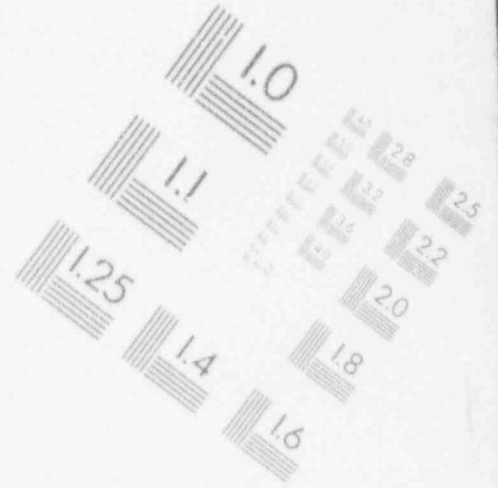
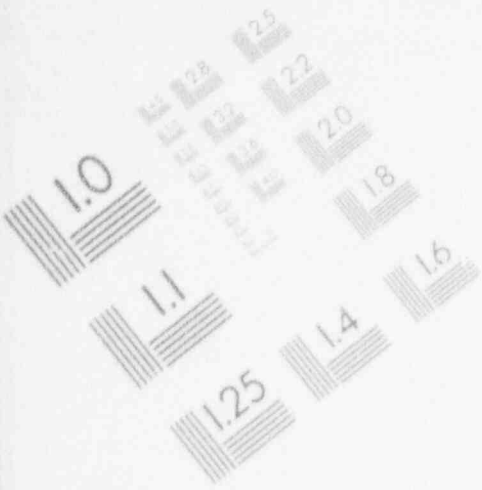
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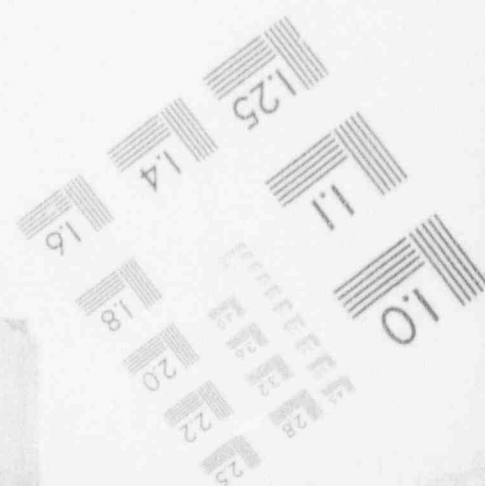
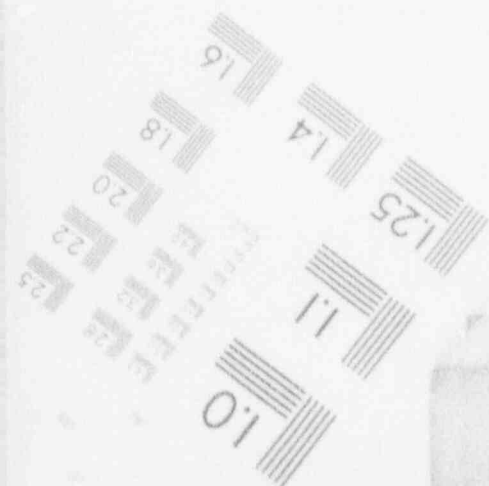
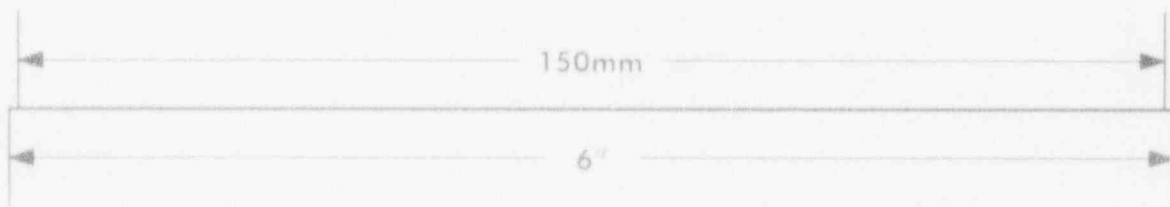
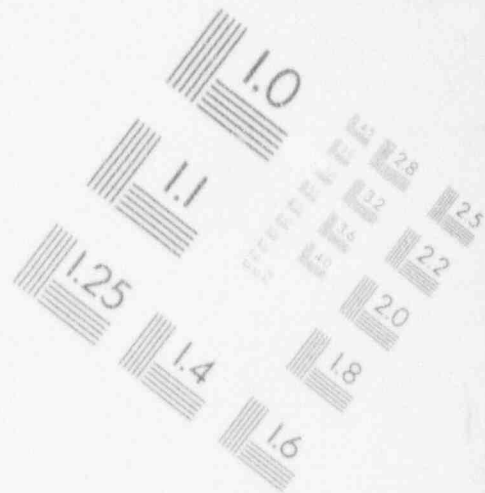
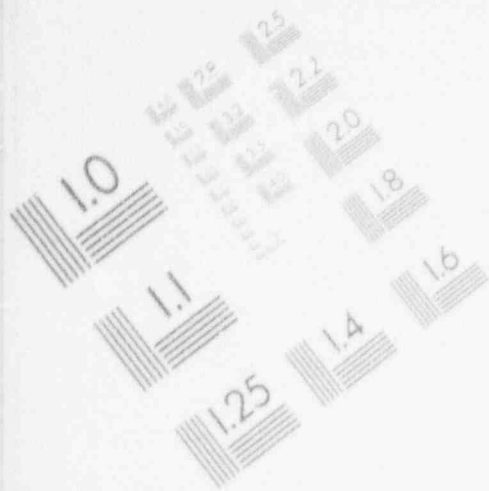
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IMAGE EVALUATION TEST TARGET (MT-3)



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IMAGE EVALUATION TEST TARGET (MT-3)



1 Industry endorses the NRC's generic approach,
2 because in our view, most of the environmental impacts
3 associated with license renewal are common to all or almost
4 all operating plants.

5 Also, considering these common impacts only once
6 is a significantly more efficient use of Commission,
7 licensee, and public resources, while producing a
8 comprehensive basis to support the NRC's NEPA analysis.

9 An important point in this context is the license
10 renewal process encourages utilities who may consider
11 license renewal to obtain a decision from the NRC several
12 years before a license is to expire.

13 This advanced timing allows utilities to perform
14 more definitive planning. It provides the States and
15 utilities with a fuller and clearer complement of
16 information to make future economic and business
17 determinations.

18 The better the quality of information, the more
19 likely that sound decisions will be reached. Obviously,
20 this will be a benefit to all parties.

21 In the proposed amendment to Part 51, the NRC has
22 included for generic consideration economic and other non-
23 safety issues such as need for power and alternative energy
24 sources.

25 The industry does not believe these generic

1 evaluations either supplant or bind the states on these
2 issues. In fact, it's well settled that regulations of
3 these issues is solely within the States' jurisdiction.

4 As noted in the industry's comments made by
5 NUMARC, now two years ago, the industry believes that the
6 NRC can fulfill its obligations under NEPA even if it does
7 not consider the need for power and alternative sources of
8 energy.

9 Even though the NRC's consideration of economic
10 issues has no binding effect on a State's ability to
11 exercise its regulatory authority over those issues in an
12 appropriate State forum, we support an approach that deletes
13 consideration of these issues from the NRC review.

14 In closing, let me restate the industry's interest
15 in assuring that the NRC develops an efficient, stable, and
16 predictable approach to license renewal. Such an approach
17 and the Federal, State, and utility decisions which flow
18 from it will assure the nation's future energy needs are met
19 through an integrated system of safe, efficient, and
20 economical power production.

21 To be a little bit more specific with regards to
22 the option that -- or approach that we're suggesting, we're
23 suggesting that the NRC neither needs to address the need or
24 alternatives on a generic basis or on a application-specific
25 basis.

1 Thank you.

2 MR. SCHWARTZ: Ray, thank you very much.

3 If I may ask just one question, and then we'll get
4 into some discussions.

5 As I understand -- let me try and restate it --
6 it's NUMARC's view that NRC need not consider need for power
7 or alternatives --

8 MR. NG: Yes, that's correct.

9 MR. SCHWARTZ: -- for license renewal --

10 MR. NG: Yes, that's correct.

11 MR. SCHWARTZ: -- in order to satisfy the NEPA --
12 the Federal NEPA requirements.

13 MR. NG: That's correct.

14 MR. SCHWARTZ: Okay. Where would you come out if
15 I just asked the question a little differently? How about
16 for new plant construction? Does NRC still have the
17 authority or do you think it's still necessary for NRC to
18 make the NEPA judgements for new plants on need and
19 alternatives?

20 MR. NG: I don't know, Shelly. I'm not qualified
21 to answer that.

22 MR. SCHWARTZ: Okay. I was just trying to see how
23 far it went.

24 MR. MIZUNO: We would expect to see some
25 discussion in your written comments that explains, if need

1 for power and alternative generating sources need not be
2 addressed at renewal, whether that rationale that you're
3 going to be using would also apply to the construction
4 permit and operating license stage, and if not and if you -
5 - in other words, if you believe that the NRC does have to
6 consider need for power and alternative energy sources at
7 the CP and OL stage but need not consider it for renewal,
8 then to explain why you would have that discrepancy.

9 MR. SCHWARTZ: Can you take some discussion and
10 questions, Ray, now?

11 MR. NG: Sure.

12 MR. SCHWARTZ: Oh, great.

13 Sher Bahadur.

14 MR. BAHADUR: I'm Sher Bahadur from NRC.

15 The option that NUMARC just now presented -- I was
16 just looking at Option 4 given by Don Cleary earlier this
17 morning, and I was somewhat unable to see the difference
18 between the two options. So, maybe if you could tell us
19 where the difference is.

20 MR. NG: We'll do it in two parts. I think that
21 the principle difference appears that there is a call for
22 analysis to be performed, and we're suggesting at this point
23 that that analysis need not be performed.

24 MR. BAHADUR: However, the way Don Cleary has
25 presented the option, although there is analysis available

1 for alternatives and need, it was not to be considered in
2 the NRC's decision-making.

3 MS. GINSBURG: I think I'll take a stab at this
4 one.

5 The answer there is -- or at least our concern
6 there is that, if you look at the Calvert Cliffs case, there
7 is language that's very clear and very strongly stated about
8 submitting NEPA analysis but not allowing the license board,
9 I believe it was -- and Geary, correct me if I'm wrong -- to
10 look at that analysis, so that what it ends up being is
11 something that is submitted but not reviewed.

12 The court was very clear in saying that that was
13 an unacceptable way to do a NEPA review and that that
14 essentially emasculated the purpose for which the analysis
15 was done.

16 So, we believe that you can take a different
17 approach, which is to say, by defining the scope of the
18 Federal action a particular way, a reasonable way,
19 obviously, that you then define the alternatives as
20 alternatives to the scope of the action that's been defined,
21 and that's the basis on which you can exclude -- or that is
22 at least in part the basis on which you can exclude need for
23 power and alternatives in this context.

24 MR. BAHADUR: Okay.

25 MR. SCHWARTZ: Thank you.

1 Anything else?

2 MR. MOULTAN: Ellen, just a clarification. What
3 would be the proposed action?

4 MS. GINSBURG: Whether or not to grant a renewed
5 license to the plant at issue.

6 MR. MIZUNO: I think that, when you submit your
7 written comments -- because the NRC already looked at that
8 option -- I mean internally -- and one thing I think you
9 need to do is to explain or address this issue of whether
10 there is a difference in conceptualizing NEPA where the
11 agency is a proponent of the action -- I mean it develops
12 the proposed action and actually implements a proposed
13 action -- versus a situation, which is the case in renewal,
14 where the NRC is not the proponent, rather it is the
15 permitting agency, and the proponent is an outside party,
16 and so, the question is, from a NEPA standpoint, how to
17 define the Federal action in terms -- I mean does the
18 definition of what constitutes a Federal action differ
19 between the situation where the agency is a proponent of the
20 actor versus where the -- an outside party is the proponent
21 of the action.

22 MS. GINSBURG: We'll be sure to address that in
23 our written comments.

24 MR. MOULTAN: In addition, Ellen, maybe you could
25 also address -- this also came out in our previous

1 discussions -- how this option could not be viewed as the
2 agency, the NRC, so narrowly defining the need so as to
3 almost guarantee the action of license renewal.

4 MS. GINSBURG: Well, the idea is that what you're
5 looking at is whether or not to permit -- to grant a license
6 to this -- you know, for this facility, and the other
7 alternative that you'd be looking at is not granting the
8 license for this alternative, so that there's no -- those
9 are two options. There's no predetermination that you would
10 go one way as opposed to another.

11 MR. MOULTAN: I understand, but I guess one of the
12 concerns that came out is, in trying to determine what the
13 underlying need for the action is almost implies that you're
14 trying to get to the ultimate action, which would be
15 operation of a plant. If you could just address that, how
16 this is really the underlying need.

17 MS. GINSBURG: But we're suggesting that you're
18 not looking at the underlying need, which is what your
19 question was. We're suggesting that all the NRC is
20 determining is whether, on the basis of public health and
21 safety and, you know, national security, that it can grant a
22 license -- and all the environmental considerations that are
23 considered pursuant to NEPA -- it can grant a license.

24 MR. MIZUNO: Well, I think this goes back to my
25 point. I think you need to address this issue of where the

1 agency is the proponent of the action versus where it's
2 permitting.

3 I think what John and I are talking about are just
4 sort of like different aspects of trying to address this. I
5 think that you have some cases that certainly support what
6 you're talking about, but they're not very -- I mean they're
7 not -- there are not that many, and I think there are also a
8 lot of -- there are an equal number of cases on the other
9 side that suggest that, when the agency is a permitting --
10 acting as a permitter, it does not -- it is improper to
11 define the Federal action as solely in terms of the
12 permitting decision but must look ultimately to the
13 applicant's overall purpose and need.

14 MS. GINSBURG: We'll take a look at that.

15 MR. SCHWARTZ: Good. Good.

16 Chuck?

17 MR. GRAY: I, too, was sort of interested in the
18 distinctions between Option 4 and the NUMARC option. What
19 does it mean in Option 4 that need and alternatives would be
20 addressed for the purpose of disclosure?

21 MR. MIZUNO: Okay. Don, you can chip in if I'm
22 going off on a wrong tangent, but we understand the line of
23 Supreme Court cases that have come out since Calvert Cliffs
24 to basically say that NEPA is primarily procedural and full
25 disclosure statute, and so, at minimum, we believe that the

1 agency's NEPA obligation is to fully disclose all
2 information relevant to the decision, the Federal decision,
3 and what we disclose, obviously, is determined by how you
4 define the Federal action, and under Option 4, what we're
5 saying is that, since we're defining the Federal action and
6 the need for the Federal action as being a need for power,
7 you -- we would disclose information and we would have a
8 discussion in the GEIS related to need for power and
9 alternative energy sources, that by having a discussion --
10 and I'm not simply talking about in a pro forma way but an
11 otherwise analytical discussion, you know, as best as can be
12 done given our limitations of, you know, data and, you know,
13 our methodology today, you have a disclosure of or an
14 analysis of these two subjects.

15 However, we would then go forth and say, having
16 fulfilled our disclosure obligation in NEPA, we will provide
17 a rationale -- we're providing a rationale as to why we do
18 not believe that the NRC, as a matter of policy, should
19 consider these -- this information in its decision-making,
20 so that -- and the rationale would be that, generally
21 speaking -- and this has to be developed, I think, in much
22 more detail, but generally speaking, it would be that the
23 NRC's primary concern is with public health and safety,
24 radiological health and safety under the Atomic Energy Act,
25 and traditionally, questions about need for power, energy

1 generation, and the mix between energy generation types and
2 those kinds of balancing ultimately and have traditionally
3 rested with the States, and so, therefore, given that we
4 have this historical, you know, bifurcation between the
5 authority of the State and the authority of the Federal
6 Government, that we have determined, on a generic matter,
7 generically, as a policy matter, that the NRC will not take
8 into account these two areas in a decision whether to renew
9 the license or not.

10 MR. GRAY: As to the disclosure step here, that
11 would be on a generic industry-wide basis, and there would
12 be no further discussion in any plant-specific setting.

13 MR. MIZUNO: I think that --

14 MR. GRAY: I'm not saying it's good or bad.

15 MR. MIZUNO: Okay. Right. I think that, in the
16 proposal, as written, it talks about how the disclosure
17 would be done on a generic basis, but because the staff
18 wanted to, you know, save resources -- and that's the reason
19 for doing it generically, but conceptually speaking, there
20 is no reason why the Commission could say we're not going to
21 address it generically, but we will have disclosure on a
22 case-by-case basis, but we will still not make a decision in
23 any individual license renewal proceeding based upon a case-
24 by-case discussion of the subjects of, you know, need for
25 power and alternative resources.

1 Now, Don, is that -- I mean is this consistent
2 with --

3 MR. CLEARY: Yes. Just a clarifying point.

4 Option 4 still has the possibility of -- it will
5 be treated generically and -- but there's still a
6 possibility that, after responding to all of the comments
7 that we'd see, that for disclosure purposes, that there
8 might still be some analysis that would be required on a
9 case-by-case basis.

10 MR. MIZUNO: I think the reason would be that -- I
11 think Don mentioned that we are still evaluating whether,
12 from a technical standpoint, we could support a generic
13 determination with respect to energy -- alternative energy
14 sources and the need for power, and if, from a technical
15 standpoint, you couldn't make that, then it would be
16 otherwise considered a Category 3.

17 So, you would -- you know, so you could
18 conceivably have a Category 4 -- I'm sorry -- an Option 4
19 situation where you have individual plant-by-plant
20 consideration of -- I'm sorry -- discussion and disclosure
21 of these subjects.

22 MR. GRAY: Just to finish, the need and the
23 alternatives issue would not be considered in the actual re-
24 licensing decision. It would not be grounds for granting or
25 --

1 MR. MIZUNO: That's correct. It would not be part
2 of the decision-making rationale. It would not be a factor,
3 a decision-making factor.

4 MR. SCHWARTZ: Thank you. I thought it was a good
5 discussion on Option 4.

6 We'll move on to a panel discussion of options,
7 and there are a number of questions, and with the panel's
8 permission -- we'll move on to the panel discussion of
9 options, and with the panel's permission, the way I would
10 like to do it is to deal with each option separately and
11 then pose the questions that are posed by the staff in the
12 agenda and have a full discussion of any issue that might be
13 raised.

14 I'll open up to the audience on each option for
15 any questions, comments, or positions people would like to
16 take.

17 If anybody has an extrapolated presentation, I
18 would appreciate it if you would minimize it to a couple or
19 three minutes, and we will take everything for the record
20 that you have and put it in the official record.

21 With that preamble, the question that is posed by
22 the staff on Option 1 is what problems, if any, do the
23 States have with NRC using for license renewal reviews the
24 decision method explained in Option 1 rather than the
25 traditional cost-benefit balancing?

1 MR. GRAY: I guess I'd need a little help in
2 understanding precisely how Option 1 differs from your
3 original proposal. I know you went through it before lunch,
4 but I need to be refreshed.

5 MR. SCHWARTZ: Don?

6 MR. CLEARY: Okay. The essence of Option 1 is
7 that we would back off from using the cost-benefit balancing
8 approach that we used for CP and OL, which would immediately
9 put economics on the scales. We would have basically two
10 steps.

11 One is that we would just take a hard look at the
12 environmental impacts of the proposed action and of
13 alternatives, and if the alternative -- if the proposed
14 action looked favorable and there was no question about
15 whether the capacity was needed, it would stop there.

16 If there were environmental issues that came up
17 either in terms of an alternative looking to be strongly
18 environmentally preferable to the proposed action, or if
19 there were serious environmental impacts that brought the
20 proposed action into question, then we'd take a broader
21 look, including consideration of the economics of the
22 proposed action and the alternatives.

23 It doesn't completely get us out of the economic
24 analysis in all cases, but what it does is it keeps us out
25 unless there are some really consequential environmental

1 issues.

2 MR. GRAY: I'm trying to understand -- what does
3 it mean by an inadequate need for generating capacity?

4 MR. GALLO: Can you give us a hypothetical
5 example?

6 MR. CLEARY: Well, first, inadequate need would be
7 if you had a situation where -- in a service area where
8 demand were falling and there was a real question as to
9 whether the generating capacity that was already in
10 existence would be needed in the future. At least at this
11 point in time, that's a fairly unlikely situation.

12 MR. GRAY: In that case, it could be, at least
13 hypothetically, that the NRC could find that there was not
14 inadequate need and the State could find that there was --
15 or that the re-license wasn't needed.

16 MR. SCHWARTZ: The presumption is that the utility
17 is coming in for license renewal based on a need --

18 MR. GRAY: Correct.

19 MR. SCHWARTZ: -- and the NRC could make a
20 determination that there was an inadequate need presented in
21 that license renewal application. Am I saying that right?

22 MR. CLEARY: That's correct.

23 MR. SCHWARTZ: Okay.

24 MR. GRAY: That the need was not inadequate, not
25 an inadequate showing.

1 MR. CLEARY: That the need was not -- that's
2 correct.

3 MR. GRAY: Okay.

4 MR. CLEARY: That's correct. After a hard look at
5 all of the evidence --

6 MR. GRAY: That you don't need to have this plant
7 re-licensed because you don't need the output of that plant.

8 MR. CLEARY: Well, the capacity represented by
9 that plant --

10 MR. GRAY: Was not needed.

11 MR. CLEARY: -- was not needed. That's not to say
12 that that plant might not be needed, because that need is
13 ultimately an economic decision in terms of the generating
14 mix, and that's why, at that point, economics would be
15 triggered.

16 MR. GRAY: At what level? I don't mean to be
17 dense. It would be triggered, and you would make a
18 determination.

19 MR. CLEARY: Yes. We would do an economic
20 analysis, and the outcome of the economic analysis and, you
21 know, everything considered, everything weighed, we would
22 still make a determination.

23 Just a couple of other statements. We're not
24 making the determination just on need or lack of need. If
25 there is lack of need, we're immediately forced into looking

1 more broadly in terms of comparing the economics, comparing
2 the proposed action with alternatives. At that point, the
3 way we have divided the problem, you're looking at
4 alternatives.

5 MR. GRAY: How do these three circumstances -- in
6 a practical sense, how would they become apparent to the
7 NRC? Presumably, the utility wouldn't raise these --

8 MR. CLEARY: No, no, through the environmental
9 review.

10 MR. GRAY: Okay.

11 MR. CLEARY: In the process of developing the
12 Environmental Impact Statement.

13 MR. GRAY: Okay. I'm not sure what the answer to
14 your ultimate -- I think it still would be problematic based
15 on, again, my understanding of where the States are on this.
16 I'm not sure I understand entirely the distinction between
17 Option 1 and the original proposal. It seems to be a matter
18 of nuance or where you start out as opposed to, necessarily,
19 where you end, but --

20 MR. MOULTAN: Charles, let me try to see if I can
21 help clarify this. I can't really speak to the first
22 bullet, inadequate need for generating capacity, but I'll
23 speak on the second bullet, okay?

24 I think this option -- it's my impression that
25 this option speaks to what our regulations tell us we can do

1 in NEPA space in our implementing regulations for ultimately
2 rationalizing our final decision, okay? And let me give you
3 an example, or let me give you some specifics on what our
4 regulations allow us to do.

5 We make a finding, a statement of need that gets
6 us into an alternatives analysis and looking at all
7 alternative sources of energy, and when we're done, we have
8 racked up some environmental impacts on each of the various
9 alternatives, and then we have to make a decision on which
10 one we pick, and that decision needs to be rationally based
11 on our assessment, and if there was an alternative that,
12 say, was environmentally preferable, granted we don't have
13 to pick that, but we need to be able to somehow lay out why
14 we didn't pick it, and that's where we would use economics.

15 We would say, see, although this other alternative
16 was so environmentally preferable, it's too economically
17 burdensome to do; therefore, the NRC finds that this option
18 is an okay one to go to meet the need.

19 MR. GRAY: I guess my question is how is that
20 different than the original proposal?

21 MR. MOULTAN: I don't really know.

22 MR. CANNON: I'd like to follow up on a question
23 that you asked. It's getting at how does this information
24 become apparent in the whole process?

25 Let's say, for example, need and alternatives is a

1 Category 1. Now we're at the site-specific stage. How
2 would you determine that there is an inadequate need for
3 generating capacity? I think that's the question, because
4 you wouldn't look at it if it's a Category 1.

5 MR. SCHWARTZ: On a site-specific basis.

6 MR. CANNON: Right. So, the GEIS and the rule
7 concludes that it's a Category 1, which means that you
8 wouldn't look at it on a site-specific basis.

9 So, the question is, under Option 1, how would the
10 information -- how would this information become apparent
11 that there is not a need for the generating capacity?

12 MR. SCHWARTZ: Thank you.

13 MR. GRAY: Was that a rhetorical question?

14 MR. SCHWARTZ: I'm going around in a circle on
15 this one. Try it again.

16 MR. CANNON: Let's say the Commission goes with
17 Option 1, and under Option 1, the bottom line says it's a
18 Category 1 for need and alternatives.

19 The question is who would generate the information
20 that says that the need -- there would not be a need? Where
21 would it come from in this process at the site-specific
22 stage?

23 MR. SCHWARTZ: Johnny, I don't know if you keep
24 looking at me, but let me respond anyway.

25 MR. SCHWARTZ: It's a real question, not a

1 rhetorical question.

2 MR. CLEARY: Under Option 1, it's much the same as
3 what we're doing now and what we did in the proposed rule.
4 There is a generic treatment, yet to be determined whether
5 we can sustain a Category 1 conclusion or whether it ends up
6 being a 2 or a 3.

7 If a Category 1 conclusion on need is sustained
8 and we go with Option 1, then the analysis, the conclusion
9 would then be taken into individual license renewal actions.
10 It would be adopted in each license renewal action.

11 If we ended up with it being a Category 3, then
12 there would be additional analyses in each license renewal
13 action. That analyses would be part of an applicant's
14 application, and the staff would review that information and
15 supplement as it felt warranted and would put its own
16 analysis in the supplemental EIS for that case.

17 MR. SCHWARTZ: That helps.

18 Yes, sir, Joe.

19 MR. GALLO: Joe Gallo. I don't think your answer
20 captures his question.

21 As he sees it, if the Commission decides to go
22 Category 1 on the generic issue, it seems to him -- and to
23 me, too -- that Option 1 then becomes inconsistent with a
24 designation that need and alternatives are deserving of a
25 Category 1, because there is no mechanism for the staff to

1 test at the site-specific stage whether or not what the
2 applicant has to say about need or alternatives -- indeed,
3 if he submits anything at all -- the staff will not be able
4 to determine adequacy at the site-specific stage under
5 Category 1.

6 Have I captured your question?

7 MR. MOULTAN: Joe, I can answer it. We're
8 obviously confused here.

9 Johnny first started out by saying that Option 1
10 would make need and alternatives a Category 1. That's where
11 the problem is. That's not what Option 1 says. Option 1
12 just says it will be reviewed. The determination on
13 Category 1, 2, or 3 is not being made in this option. So,
14 if it's not being made, it's just going to be reviewed,
15 either site-specifically or now, then that first bullet of
16 inadequate need does have some --

17 MR. GRAY: But is there something to the question
18 that, under Option 1, need and alternatives couldn't be a
19 Category 1 issue or shouldn't be a Category 1?

20 MR. MOULTAN: I'm sorry. Could you say that
21 again?

22 MR. MIZUNO: It makes no difference.

23 MR. MOULTAN: It makes no difference.

24 MR. MIZUNO: Option 1 was intended to not address
25 so much the preemption concerns directly but, rather, a

1 subset of, I would call, supporting arguments that some
2 States had made that said that NRC should not be doing
3 economic analyses, okay? I mean they were focusing on the
4 fact that we were focusing too much on justifying renewal on
5 the basis of the economics of the power being generated and
6 this sort of thing, okay? And they were focusing on that.
7 In fact, they were using economic analysis, and that seemed
8 to tread on their -- you know, on the road.

9 So, what Option 1 was intended to address was
10 saying, okay, is there some way that we can restructure our
11 decision-making process, regardless of whether we consider
12 need for power or alternative energy sources or, indeed, any
13 kind of environmental impact, other than in a strict
14 economic analysis, okay?

15 Traditionally, we have used a cost-benefit
16 methodology, and by that I want to be clear, where you
17 quantify, you know, economic benefits and economic costs as
18 much as you can and then you balance them all.

19 Option 1 was attempting to address, is there
20 another way of dealing with the decision-making need for
21 power is a Category 1 item or a Category 3 item, Option 1
22 would say, the way that we are going to consider things is
23 in a way other than using a strict cost benefit balancing,
24 using monetary values.

25 Don, do you want to comment?

1 MR. CLEARY: That was very well put.

2 Thank you.

3 MR. SCHWARTZ: Ray or Ellen, do you want to weigh-
4 in on this one?

5 MR. MIZUNO: Does Charles understand? Did you
6 want to ask me, or does that help clarify?

7 MR. GRAY: I was more interested in the steps by
8 which Option 1 would go from start to finish, if you would
9 presumably make some initial findings or maybe on a generic
10 basis. But, then, I guess on a supplemental EIS, or at some
11 later time, if certain showings were or weren't made, then
12 you would conduct these kinds of analyses. But, then again,
13 you may not. I guess that was what I was trying to
14 understand.

15 MR. MIZUNO: Right. And I think you have a
16 correct understanding.

17 MR. GRAY: Okay.

18 MR. MIZUNO: It was trying to minimize the role,
19 to the extent that we could, of the economic analysis.

20 MR. GRAY: Just to put in this final point, I was
21 also interested in how or what needed to be done to make
22 that showing or to trigger that inquiry on the part of the
23 Commission. And you're saying it was this cost benefit.

24 MR. MIZUNO: Well, in all cases, the NRC had been
25 using a cost benefit balancing methodology. And under this

1 option, that methodology would be limited to very specific
2 circumstances.

3 And I think that the three circumstances are the
4 three circumstances that are sub-bullets under page 24. Is
5 that correct, Don?

6 MR. CLEARY: That's correct.

7 MR. CANNON: I've got a question. Getting back to
8 the three bullets, my question is, under what conditions
9 would you look at those three bullets? And what I was
10 trying to say previously, if this is a Category 1, for need
11 and alternatives, you never would look at two of those
12 bullets --

13 MR. MIZUNO: I don't see that.

14 MR. CANNON: -- on a site-specific basis.

15 MR. MIZUNO: Oh, on a site-specific basis?

16 MR. CANNON: Yes.

17 MR. MIZUNO: Let's just take, for example,
18 significant cumulative adverse -- well, forget about
19 cumulative. Let's just call it significant, adverse
20 environmental impacts.

21 You could have a Category 1 finding with respect
22 to, say, water quality, okay. You could have a Category 1
23 finding, and that conclusion would be, yes, the water
24 quality overall is going to be negative, that there is a
25 significant impact to water quality from operating a nuclear

1 power plant, generically. And you could conceivably have
2 that kind of a finding. So, it would not matter.

3 Whether you may be finding generically that there
4 was an significant adverse environmental impact, you know,
5 on a generic basis, or whether you find on a site-specific
6 basis that there was a significant impact on water quality
7 for this specific plant, you would still end up in a
8 situation where you would then, under Option 1, go and use
9 the economic cost benefit balancing methodology.

10 But unless you were able to find that, or unless
11 one of these bullets were met, you would not be using that
12 strict cost benefit.

13 MR. CANNON: I agree. But on the first two
14 bullets, if you take the first one on generating capacity,
15 if in a GEIS, it's a Category 1, you would never see that in
16 a site-specific statement.

17 MR. MOULTAN: Unless, Johnny, somebody came up
18 with some new information, like we might be allowing to see
19 people. But I think, in general, you're correct. If we
20 make the Category 1 determinations, notwithstanding new
21 information at the site-specific application, if we did make
22 it Category 1, there would really be no avenue to question
23 need or alternatives.

24 MR. SCHWARTZ: Ellen?

25 MS. GINSBERG: There would be an avenue, and it's

1 the avenue that is proposed in the February 2nd --

2 MR. MOULTAN: That's what I said. I said,
3 notwithstanding that.

4 MS. GINSBERG: Yes. But those are the avenues. I
5 mean, there are three of them.

6 MR. MOULTAN: Absolutely.

7 MS. GINSBERG: I think that "notwithstanding" is
8 incorrect in that sentence, just to be sure.

9 MR. MOULTAN: Okay.

10 MS. GINSBERG: I just wanted to observe that if
11 the concerns of the states are that -- or among the concerns
12 are that there is a perception that this somehow encroaches
13 upon their traditional regulatory responsibility.

14 I guess I don't see how Option 1, Option 3, and
15 potentially Option 4 -- but at least Option 1 and Option 3 -
16 - how that addresses those needs. I pose that as a question
17 to the states as much as the observation.

18 MR. MOULTAN: How it addresses Option 1 and Option
19 3, what?

20 MS. GINSBERG: How it addresses the perception
21 that somehow the NRC is encroaching on the states' ability
22 to make the economic determinations.

23 MR. GRAY: That's a perception question.

24 MR. MOULTAN: I guess, related to that, I wanted
25 to make a statement to Charles.

1 The dilemma that we have in the economic area, and
2 the concern that the states have about the NRC meddling in
3 economics -- the dilemma is clearly when we have to
4 rationalize our decision.

5 If we can't use any economic decision tool,
6 whatsoever, it almost boils down, practically, to having to
7 pick the environmentally-preferred option, and without any
8 consideration of the economic burden of that, even if it is
9 economically feasible,

10 And that's our dilemma. We're trying to be
11 sensitive to the states concerns on one hand, but we can't
12 totally shut out the option.

13 MR. GRAY: I understand what you're saying.

14 MR. SCHWARTZ: Okay. Is there anymore discussion
15 on Option 1?

16 MR. GRAY: No, I don't have anything.

17 Yes, sir? Do you want to come up here?

18 [Laughter.]

19 MS. GALLO: Joe Gallo. I just want to persist on
20 this Option 1.

21 John, I think, finally conceded from the head
22 table that this fellow's question was correct; that if it is
23 a Category 1, you really, except for the exception criteria,
24 the significant new information -- I think it still takes
25 exception to that, though.

1 I would submit that Option 1 is really no
2 different than what you do, generally. In the normal case,
3 talking Category 1, NRC makes a generic finding of need, and
4 there's no environmentally preferable alternative, and makes
5 it a Category 1, and it's a generic finding.

6 You go site-specific, and significant new
7 information comes in, questioning those findings. Then the
8 staff will look further, and re-evaluate whether or not the
9 generic finding, as it applies to that specific case, is
10 still valid. That's what you do under the normal NRC
11 processes.

12 Under Option 1, you do the same thing, on the
13 generic basis. You call it a Category 1. You go to the
14 site-specific case, and some significant and new information
15 comes along, and the staff then has to look to see whether
16 or not the generic findings are still correct, and do a
17 further economic analysis. I don't see any difference
18 between the two.

19 MR. MOULTAN: I would agree with you, and that's
20 why, when Charles asked me, what's the difference, I said I
21 couldn't tell.

22 MR. GALLO: Who wants to defend that there is a
23 difference?

24 MR. MIZUNO: I'll defend that.

25 [Laughter.]

1 MR. MIZUNO: The difference, I think, is if you
2 look at a typical EIS, you will find a table at the end,
3 somewhere, and I can't remember which chapter it is --
4 Chapter 10 -- which provides a summary, reportedly, listing
5 all the costs and adding them all up.

6 Well, I take that back. They don't add them up,
7 but they certainly enlist them. And they have one side
8 saying costs or impacts. I'm sorry, I think they call them
9 impacts. The other side calls them benefits.

10 And even though you don't have a mathematical
11 operation performed on them so that you take one side, and
12 add them up together, you know, and then come up with a net.

13 It is clear that if you read the conclusions of
14 the NRC in that chapter, that that's what the Commission
15 did, and thereby justified the decision to go forward and
16 either to license to apply for construction or operation.

17 And so, you know, as a practical matter, the
18 Commission uses this economic quantitative cost benefit
19 balancing methodology in its decision-making, or it appears
20 to do so.

21 And I think the difference -- we do that all the
22 time. In other words, under the existing regime, you do
23 that for every major licensing case. And I think under this
24 proposal, you would no longer see that kind of quantitative
25 consideration. You wouldn't have an NRC table that purports

1 to translate non-quantitative impacts and benefits into some
2 dollar amount.

3 You know well that there are many, many studies
4 that have criticized the capability of an agency to modify
5 these kinds of benefits and impacts. And I think one of the
6 added advantages of going under Option 1 would be that the
7 agency would avoid those kinds of things. But, of course,
8 the negative thing is after you then end up with a much more
9 subjective decision-making.

10 Now whether that's preferable or not is, you know,
11 is open to argument. But all I'm saying is that this option
12 was developed to try and address this issue that the NRC was
13 using too much of an economic argument, saying the benefits
14 hereof of power generation are clearly so large as to
15 overwhelm any negative environmental impacts.

16 And, quite frankly, that's basically the document
17 the NRC has used over time. And that was a criticism. And
18 so this option was intended to address that.

19 MR. GALLO: All right, well, I heard you, but I'm
20 not convinced. Thank you.

21 MR. MIZUNO: Okay.

22 Thank you.

23 MR. SCHWARTZ: But you do understand it?

24 MR. GALLO: If I did, I would be convinced.

25 [Laughter.]

1 MR. SCHWARTZ: You're tough stuff.

2 Can we move to Option 2?

3 The questions on Option 2, do the states have
4 legal concerns or see other problems if the NRC accepts a
5 state's conclusions with respect to the issues of need for
6 generating capacity and alternative energy sources as
7 discussed in Option 2?

8 What are the practical considerations in
9 developing and applying guidelines that would be met by the
10 states? What should be in the major features of the
11 guidelines? Can guidelines be developed that can be met by
12 all states?

13 In each state, is there a single governmental body
14 that the NRC could look to for findings on need for
15 generating capacity and alternative and energy sources?

16 Can state findings be made and provided to NRC in
17 a timely manner for use in the licensing renewal review? Is
18 there benefit in coordination between the NRC and state
19 staffs while the state is preparing its submittal? And
20 finally, to what extent does Option 2 resolve the concerns
21 of the states?

22 Is there clarification of the options, or any
23 discussion?

24 Charles, are you ready to discuss this?

25 MR. GRAY: Yes.

1 MR. SCHWARTZ: Go ahead.

2 MR. GRAY: I guess my first question is a
3 question. When you say "legal concerns" in the first sub-
4 question there, do you mean legal concerns at the state
5 level, or legal concerns at your end of the table, or is
6 this just a question of whether you can defer use to the
7 state? Because I don't see, necessarily, any legal problems
8 at the state level.

9 MR. SCHWARTZ: I think Don's going to comment on
10 that.

11 MR. CLEARY: Yes. First, from a state level, and
12 then, second, to the extent you have knowledge or expertise,
13 at the Federal level --

14 MR. GRAY: The legal concerns or the legal reality
15 is, not all states make these findings. And I think that's
16 the thing that we xeroxed out of this book this morning.

17 It's not the case that every state could provide
18 this kind of assistance, if you will. However, most of them
19 could. And I suspect, over time, as this integrated
20 resource planning process expands, more states would be in a
21 position to provide more rigorous and sophisticated
22 analysis, that you could use.

23 I don't know what the answer is, as far as your
24 legal authority to defer to the states. I think other
25 Federal agencies do. But I don't know if they do it for

1 NEPA purposes or if they have specific statutory
2 authorization to do that.

3 I could go one question at a time, or I could go
4 through them all.

5 MR. SCHWARTZ: If you want to do it, do it.

6 MR. GRAY: Now, the practical considerations in
7 developing -- we've had some experience with this. I guess,
8 you know, when we become state people, we have the word
9 "flexibility" stamped on our foreheads. But I don't know if
10 that is precisely relevant here.

11 My personal experience had a lot of involvement
12 with states implementing some statutory authority delegated
13 to them by the FERC dealing with the setting of costs for
14 co-generation in small power producers in developing those
15 kinds of independent power producing businesses.

16 In there, the FERC rate-making standards that were
17 delegated were fairly broad, and the states have chosen a
18 variety of different ways to meet them. So, I guess, the
19 practical considerations would be those.

20 I don't know what the answer, as far as major
21 features of the guidelines, would be, other than the fact
22 that not all states maybe could have the authority under
23 state law to develop or implement the guidelines.

24 I'm learning that there is not a single
25 governmental body necessarily in every state that you could

1 look to. And I think we discussed that a little bit this
2 morning.

3 And as far as timeliness, that strikes me as, if
4 you established a timeframe, that most states would meet it.
5 That's been their history in other areas that I'm familiar
6 with. And I think there would be benefit for coordination
7 at the staff level.

8 And as far as Option 2, Resolving Concerns of Some
9 States, my review of some of the state comments indicated
10 that there were suggestions, that you all defer or adopt or
11 consider findings that they made on the need and
12 alternatives issue. So I guess it may satisfy the concerns
13 of some states.

14 MR. SCHWARTZ: Thank you, Charles. We appreciate
15 that.

16 Are there any other comments?

17 MS. GINSBERG: Some of the concerns that we have
18 with this option relate to a number of different things.
19 One is that, in essence, what you have suggested here, at
20 least potentially, makes the NRC proceeding dependent on the
21 state's participation of the state's action. And I think
22 there is at least a potential for difficulty there.

23 Additionally, it does put the state in the
24 position of having to have the NRC review and potentially
25 litigate its analysis. And I'm not sure, given the concerns

1 that the states have expressed, that that would necessarily
2 satisfy the concerns that had been articulated.

3 MR. GRAY: I think the states would hope that
4 their findings would be deemed to be conclusive when they
5 got here.

6 MS. GINSBERG: I think we might potentially
7 comment on that.

8 [Laughter.]

9 MR. GRAY: I guess I would respond to that a
10 little bit. I take it that at some point, it was state
11 custom to agree that the project doesn't go forward, in any
12 event. Would that be better, if you know that, you know,
13 ahead of time, or --

14 MS. GINSBERG: Well, it's our view, and I think
15 Ray said this quite clearly in his statement, that the
16 application for license renewal is a piece of information -
17 - whether or not you will be granted a renewal license -- is
18 a piece of information for the utility to consider in the
19 context of making further economic need, et cetera,
20 decisions, as to whether to pursue operation beyond the 40
21 year period.

22 In the cases where this might trigger a state
23 action, where the state agency (PUC) would have to determine
24 whether or not there is a need, et cetera. All this does is
25 go into the mix of information. It does not require that

1 that utility then take that renewed license and necessarily
2 continue to operate for a full 60 years.

3 MR. GRAY: I guess I'm trying to think of the
4 sequence of events. Does it make sense to go to the state
5 first, before you come here, is that right? What's the most
6 efficient way to manage both sets of the process, or is that
7 relevant, even, to discuss?

8 MR. LEWIS: I'd like to answer that. I'm Dave
9 Lewis, from Shaw, Pittman.

10 I think it would be very difficult to do the state
11 process first. What you get out of the NRC process is a
12 determination of what modifications are necessary, what
13 capital investment is necessary, what level of increased O&M
14 is necessary. And those are all inputs into the state's
15 determination.

16 I think if you try and do the full blown state
17 least cost analysis first, you will be doing it without that
18 missing information, and you are really putting the cart
19 before the horse.

20 So, I think, it's a real practical problem with
21 trying to do the state determination before you figure out
22 the physical constrains from the NRC proceeding.

23 MR. GRAY: You wouldn't anticipate that a state
24 can make a generic finding that relicensing is never
25 economic.

1 [Laughter.]

2 MR. SCHWARTZ: That's an interesting
3 determination.

4 Is there anything else on Option 2? Then I'll
5 open it up to the floor.

6 Yes, sir, Johnny?

7 MR. CANNON: Johnny Cannon. This is to Geary
8 Mizuno.

9 Isn't Option 2 really granting the states to be a
10 cooperating agency underneath CEQ regulations; and if so,
11 then why couldn't the states -- if they were, they would be
12 viewed as having some sort of jurisdictional special
13 expertise on these particular issues. But isn't that what
14 this option is?

15 MR. MIZUNO: I guess I would say that you could
16 structure their participation such that they could be
17 cooperating agencies. But you are limited to the CEQs of
18 mechanism.

19 In other words, you could have the states
20 participate as "cooperating agencies" pursuant to the CEQ
21 Guidelines. And there's no reason why -- I mean, you can do
22 that.

23 But I'm saying that I don't think NRC is limited
24 to having that participation in that fashion. In fact, if
25 you look at Option 2, it actually goes beyond, as I

1 understand it, a cooperating agency status.

2 So, in one sense, we would probably not use --
3 well, it depends on what the states want, you know. But I'm
4 just saying, we are not limited to using the CEQ guidelines.

5 MR. CANNON: But, legally, you wouldn't have to
6 defend their analysis.

7 MR. MIZUNO: As a legal matter, we would have to.
8 The Agency is going to be ultimately responsible for the
9 analysis of need for po. . and alternative generating
10 sources.

11 MR. GRAY: Is that true, regardless of which
12 option you pick, or is that just for Option 2?

13 MR. SCHWARTZ: That's for Option 2.

14 MR. MIZUNO: Well, under some of the options, you
15 are not going to be making a finding. But the agency --
16 let's put it this way, the agency is going to be ultimately
17 responsible for defending the fact that it has complied with
18 NEPA.

19 If it chooses to make an argument that it can
20 comply with NEPA, without making a finding with respect to
21 need for power and alternative energy sources, then they
22 will do that.

23 If it feels that, under Option 2, that it is going
24 to defer to the states, subject to whatever guidelines or
25 procedures or whatever we use to assure that the state

1 determinations are justifiable, we are ultimately going to
2 have to defend that.

3 You know, we can defend that on a couple different
4 bases, depending on how we structure the acceptance process.
5 But as a general matter, under any of these options, the NRC
6 is going to be responsible for defending the fact that it
7 has complied with NEPA.

8 MR. SCHWARTZ: Are there any other discussions on
9 Option 2?

10 [No response.]

11 MR. SCHWARTZ: We'll move to Option 3.

12 Do the states have legal concerns or see other
13 problems if the NRC adopts the position that need for
14 generating capacity need not be analyzed in a license
15 renewal review as discussed in Option 3?

16 To what extent does Option 3 resolve the concerns
17 of the states?

18 MR. GRAY: When you say that the need not be
19 analyzed, what does that mean; that you would be agnostic,
20 as to the question of need?

21 MR. MOULTAN: What it means is, we wouldn't
22 analyze it any further than the logic that we described to
23 you today, and that is -- the logic is, existing power,
24 which is on a grid, which goes away, it needs to be
25 replaced. That's the simple thing you were talking about

1 this morning. That would be the extent of it. And the it
2 would be taken for granted in further review.

3 MR. GRAY: But it would not amount to an implied
4 assumption or an assumption of any sort, that relicensing -
5 -

6 MR. MOULTAN: Absolutely. That's the point I've
7 been trying to clarify. It would not make any statements
8 that the need would have to be met through license renewal,
9 or through any other option.

10 MR. MIZUNO: In fact, under this option, you would
11 look and see how you would make up that need for generating
12 capacity, if you want to call it, in the alternative
13 section. So, everything would become an alternative. For
14 example, the man-side management, the emerging conservation
15 -- you know, alternative fossil plants, or a mix of
16 different types of fossils -- those would all be considered
17 alternatives.

18 What you would find in the need section simply
19 there is the conceptual argument that John had outlined
20 earlier today.

21 MR. GRAY: That's somewhat similar to the state
22 integrated resource process, or somewhat like it.

23 MR. MOULTAN: Ellen, you had mentioned that you
24 didn't think that the economics issue was addressed in 1 or
25 3, the concern of the states.

1 And, you are right. In Option 3, we don't purport
2 to address that. So we just chose not to, for some of the
3 reasons I was talking about before.

4 MS. GINSBERG: May I ask a clarifying question?
5 Are you suggesting wrapping? I mean, it sounds as though
6 you are wrapping some of the need arguments or the need
7 issues in under alternatives. Is that, in essence, what
8 would be taking place here?

9 MR. MOULTAN: That came up before. That's a very
10 good point. We did struggle with that a little bit. And,
11 no, we would not be wrapping any more analysis, any number
12 crunching of demand or whatever.

13 If I could take this through a hypothetical
14 situation, what we would do is, we would take that capacity
15 offered by the plant as needed. Not that the plant is
16 needed, but that capacity needs to be replaced. And we
17 would recognize that it's really up to the states to
18 determine which one it would go.

19 But in the alternatives review, let's say
20 conservation, that analysis would most likely be done at the
21 site-specific application, because there might be some more
22 technological advances in conversation methods.

23 But we would look and just see if that could be
24 conserved away. And that might take some cooperation with
25 utilities or the states, of course.

1 MS. GINSBERG: Excuse me, so alternatives would be
2 looked at as a Category 3, if I might use that term, in this
3 option? Is that what this would amount to?

4 MR. MOULTAN: Possibly. I don't want to say
5 definitely. But, you know, that's the way I would envision
6 this going. But certainly, there could probably be some
7 permutation to a little bit of Option 3, and maybe something
8 else.

9 MR. MIZUNO: But some things might be Category 1,
10 though, even under this option.

11 MR. MOULTAN: Right. There might be ways that we
12 could make some generic findings on some options that were
13 really so far flung.

14 MR. MIZUNO: Take for example, okay --

15 MS. GINSBERG: Well, you don't need to look at far
16 flung options.

17 MR. MOULTAN: That's what I'm saying. So you
18 could make the determinations generically. But that's not a
19 reasonable alternative; therefore, you wouldn't even look at
20 it, and we could say that is a GEIS now. You're absolutely
21 right.

22 MR. MIZUNO: Yes.

23 MR. GRAY: So if conservation were to replace the
24 capacity, you're finding would be, you need to replace this
25 capacity with something that doesn't need the replacement

1 capacity.

2 MR. MIZUNO: Yes, that's correct.

3 MR. GRAY: You would make a specific finding to
4 that effect, that some mix of other things, whether it would
5 be, you could say "x" megawatts this way, and add a gas
6 plant or something like that, and make it different.

7 MR. MIZUNO: We would not make a finding that
8 says, "This is the best we have done."

9 MR. MOULTAN: We would make an alternative NEPA
10 finding that this option could meet the need, or something
11 like that. We would choose this as the option.

12 Just like Geary said, it would be an acceptable
13 one of the options to choose, and we choose this one. But
14 that is not to say we are saying that this is the best way
15 to do it, and nobody can do it any other way, and the state
16 has preempted from doing it any other way. That is not what
17 the finding was intended to mean.

18 MR. GRAY: I understand.

19 MR. SCHWARTZ: Is there anything else? Charles?

20 MR. GRAY: I don't know the answer to the ultimate
21 question. It appears that it does.

22 One of the points I think some states made was
23 that you shouldn't be making need findings. This prevents
24 that from happening. That might respond to some of those.

25 MR. CLEARY: Could I jump in here?

1 MR. SCHWARTZ: Yes, Don.

2 MR. CLEARY: What this option does is eliminate
3 the analysis of need for the capacity, not need for the
4 plant; both at the generic level and at the site-specific
5 level.

6 But there still would be an analysis of the
7 environmental merits or demerits of alternatives. And to
8 the extent that there are conclusions reached there, it does
9 get you into issues of energy mix and energy mix policy at
10 the state level.

11 I guess the question is, how far can you go before
12 the states are concerned in terms of looking at the
13 environmental aspects of alternatives?

14 MR. SCHWARTZ: Thank you, Don. Geary?

15 MR. MIZUNO: I guess the only other thing I might
16 point out is that, I guess, under this option, we'll presume
17 that 3,000 -- I mean, the fact that we are presuming that
18 3,000 -- let's say, if the plant provides 3,000 megawatts of
19 electric power -- I mean, this essentially says, we have to
20 replace that 3,000 megawatts if that plant goes, well, at
21 the end of the renewal period.

22 That presumes that the total system demand is such
23 that -- I mean, this is only a hypothetical case, but you
24 might end up with a situation where there is absolutely no
25 demand, or much less than 3,000. So you might have a

1 situation where you have "significant new information" that
2 may suggest that this discussion of need is no longer
3 acceptable.

4 But that is so far fetched, I can't imagine that
5 that would ever occur. So as a practical matter, I wouldn't
6 see anyone, you know, raising significant new information in
7 the context of need. To me, all the significant new
8 information would be in the area of alternatives. And
9 that's where we would expect most of the discussion and the
10 change to occur.

11 MR. GRAY: Can I ask something that's not maybe
12 really relevant to this option? When you would make a
13 finding of need under any of these options, do you look at
14 just the company that's licensing the plant; do you look at
15 regional needs? Do you make any distinction in that regard?

16 MR. CLEARY: Yes. As I described this morning, in
17 our CP analysis, we do look at the service area and the
18 region, power pool, reliability counsel. We look at energy
19 transfers.

20 MR. GRAY: Thank you.

21 MR. SCHWARTZ: Is there anything else?

22 Yes, Joe Gallo?

23 MR. GALLO: I have a short question. Joe Gallo.

24 With respect to Option 3, as explained by the
25 panel, what are the parameters of the cost benefit balance?

1 MR. MOULTAN: The parameters of the cost benefit
2 balance -- I'm not really sure of the answer to this
3 question. But we have been struggling with what Geary was
4 calling this mathematical tabular form of a cost benefit
5 balance.

6 I would expect and envision that we would still
7 have a qualitative cost benefit balance, where we are just
8 rationalizing our decision among the alternatives out there.
9 I don't know how much economics would come into play. It
10 would depend on the specific situation.

11 But I would envision we would still have a
12 qualitative weighing of the impacts and costs and
13 rationalize, ultimately, our decision. But the exact
14 factors, I don't know.

15 MR. GALLO: What weight would you give to need for
16 power?

17 MR. MOULTAN: Well, as somebody mentioned before,
18 need for power is a benefit that I wouldn't -- and Geary,
19 correct me -- I wouldn't give it a weight in that cost
20 benefit balance; other than, it's a benefit. The benefit to
21 be gained is, you can get power.

22 But I wouldn't say that the need for power would
23 be necessarily a decision tool to say no.

24 MR. MIZUNO: Let me put it a different way. One
25 of the issues that we have been struggling over this option

1 is that under this option, you implicitly eliminate the
2 benefit.

3 So assuming that we move away from a "cost benefit
4 balancing methodology" as a decision criteria, I could come
5 up with alternative decision criteria and a process that
6 does not use even a qualitative cost benefit or a value
7 impact balancing.

8 And, in fact, probably under this option, what you
9 would probably be looking at, is trying to determine which
10 alternative represents the most environmentally acceptable
11 alternative; which one offers the least environmental
12 impacts, consistent with protecting the public health and
13 safety, and providing the so-called need for 3,000 -- well,
14 need for the power that was being provided by that plant.

15 MR. GALLO: Is it fair to say that the process
16 that you've just described is really under formulation
17 within the NRC?

18 MR. MIZUNO: That's correct. I would say it's
19 probably even less developed than, say, under formulation.

20 MR. MOULTAN: I have one quick qualification, as I
21 was thinking here. Since we would say that need for power
22 is taken for granted in this option, we wouldn't call it
23 necessarily a decision factor. It's a given.

24 Now, the alternatives, obviously, they need to
25 meet that need. So that kind of comes in play in a round

1 about way, to meet that need for power

2 MR. MIZUNO: Any alternative which did not meet
3 that need would be determined to be unreasonable --

4 MR. MOULTAN: Right.

5 MR. MIZUNO: -- and not be further considered. So
6 that's your first screen. Then you end up with a screen of
7 alternatives that do meet that "need" which is as we defined
8 it.

9 And then the question becomes, how do you decide
10 among these alternatives that meet these needs. And what
11 I'm suggesting is, one possible way of doing it without
12 using a cost benefit balancing methodology, is to simply say
13 which one offers the least environmental impacts, consistent
14 with meeting the need.

15 Now, there may be other tests. You might want to
16 use a couple other factors besides environmental impacts.

17 MR. MOULTAN: And as I was describing the dilemma
18 we had there, we can't just solely go by the environmentally
19 preferable one, because then you can come up with a case
20 where one is so environmentally preferable, it will still
21 meet the 3,000 megawatt need, but it's just so economically
22 burdensome that it would be not doable.

23 So we would have to use economic tools. And the
24 problem here is, we don't have a process that's quantitative
25 in exactly giving weight to those economics; so, it's all

1 qualitative.

2 But I don't think the standard is that it has to
3 be exact. It just has to be reasonably determined,
4 rationally deduced from our analysis; and that's all we
5 need.

6 MR. GRAY: Does the mere fact that the company has
7 filed an application for relicensing, and for extra money to
8 refurnish, doesn't that imply a need, sort of, by itself? I
9 mean, they wouldn't do that if they didn't think they needed
10 the power; is that correct?

11 MR. MIZUNO: Well, we discussed that as a possible
12 basis for -- as another thing to throw into the statement as
13 to why we are going to presume that there is need.

14 MR. MOULTAN: It did come. But, you know, somehow
15 it doesn't sit well, when you say, well, there's a need for
16 this, because they asked us for it.

17 MR. GRAY: We can't assume economic rationality on
18 the part of the companies.

19 MR. MIZUNO: I think one of the problems that you
20 get into, also, when we are dealing with this need thing, it
21 goes back to your question involving our reconsidering a
22 need, solely on the basis of the service area of this
23 utility, versus the region, versus something else.

24 Because it may very well be that this utility
25 "doesn't need the power" in the sense of being able to

1 provide the power generation needs for its service area.
2 But because of the new regime of electrical wheeling that we
3 are doing, where people can generate power for the purpose
4 of selling it and make money -- I mean, it's a purely -- you
5 know, they are in the business of selling power in a new
6 regime here.

7 So, then, you know, that's a complication that I
8 don't think we have come to grips with. And, in fact, we
9 are asking the states, give us your input into this.

10 MR. GRAY: Because it's going to be replaceable in
11 some sense, I gather.

12 MR. MIZUNO: That's correct. I mean, because of
13 the new realtor regime that allows -- I mean, wheeling is
14 going to occur.

15 MR. GRAY: It's becoming a commodity market.

16 MR. MIZUNO: That's correct.

17 MR. SCHWARTZ: Let me ask permission -- it's now
18 about 2:15. We have Option 4 to go through, and then some
19 closing comments. Would you like a little break? Let's
20 take a 15 minute break. We'll be back at 2:30.

21 [Recess.]

22 MR. SCHWARTZ: May we get started with the last
23 session of this meeting?

24 I think we're at the point of discussion of
25 Option 4. And Charles and I were just saying, we think we

1 discussed Option 4 at the beginning of the session, but let
2 me read the staff questions on there, and I'll make a
3 proposal.

4 The questions are, do the states have legal
5 concerns or see other problems if the NRC treats the issues
6 of need for power and alternative energy sources for
7 disclosure purposes only and excludes them from its decision
8 whether to renew an operating license as discussed in Option
9 4? To what extent does Option 4 resolve the concerns of the
10 states?

11 I think we had some discussions on that earlier,
12 and we can have a further discussion, if necessary, on all
13 of it. And also, as we've learned on some of the other
14 options, we may need to clarify the staff's intent on the
15 breadth and depth and scope and the envelope for this
16 option.

17 And then there are the final five general
18 questions, which I propose that we wrap into this final
19 discussion on Option 4, and also final discussion on the
20 various options.

21 And that is, to what extent does each option
22 alleviate state concerns about NRC treatment of matters that
23 are under the regulatory authority of the states? And that
24 also gets to what was already raised by the states on issues
25 of concern or any other issues that the states may have,

1 that have not already been addressed.

2 From a state perspective, what are the strengths
3 and weaknesses of each option? What problems, if any, would
4 a State have with its responsibilities under each option?
5 And the final question, what is the State's preferred
6 option?

7 With that preamble, I'll just open the floor up
8 for discussion, first to the panel and then to the audience.

9 Charles, are you ready?

10 MR. GRAY: Sure.

11 MR. SCHWARTZ: Thank you.

12 MR. GRAY: I guess maybe I could go to the last
13 question first. At the risk of climbing out on a limb a
14 little bit, my sense is that the states next week will tell
15 you, if they have to pick between these options, they prefer
16 Option 4.

17 For your first general question, to what extent do
18 they alleviate State concerns, I think you've intended to
19 put these on a continuum of some sort -- most or least or
20 from one direction to the other, and I think that's right.
21 I think you've done that.

22 I think the progressive option may become a bit
23 more -- I don't know if "acceptable" is the right word --
24 but something the states would be more interested in seeing
25 you adopt.

1 I guess I'll stop there.

2 Oh, with respect to the responsibilities, that, I
3 think, you will need to probably engage in some discussions,
4 staff to staff, with the state commissions that you have
5 particular interests or problems or suggestions with.

6 Or, maybe there's -- I don't know whether it makes
7 sense or not to think about maybe if there are some ways to
8 do, if not experiments, at least some pilot investigations
9 with the selected states that you feel have some confidence,
10 say, in Option 2, and have the most sophisticated integrated
11 resource planning processes, for example. That might be
12 something you would think about exploring.

13 MR. SCHWARTZ: Okay. Thank you, Charles.

14 We'll open the floor for discussion on the
15 Option 4 or the generic questions with respect to the four
16 options offered by the staff.

17 Everybody must have had a pretty big lunch.

18 Yes, sir?

19 MR. LEWIS: Dave Lewis. This applies to all four
20 options, but it's perhaps a broader question. And it goes
21 back to the initial EPA/CEQ agreement that was discussed at
22 the beginning.

23 It seems to me that whatever approach you take,
24 you've weakened the defense of that option by having decided
25 that your document has to be a supplemental EIS; that once

1 you've decided that you have to prepare an environmental
2 impact statement, you are necessarily heading down the road
3 where a more formal cost benefit balancing is required.

4 I wonder why you haven't kept the flexibility to
5 issue an environmental assessment in those cases where after
6 you consider all the site-specific comments, you still
7 conclude that there is no significant environmental impact.

8 If the concern is only that by preparing a
9 supplemental EIS there's a more formal public comment
10 process, you could still accommodate that concern by
11 circulating a draft environmental assessment, again, if that
12 reflects your final view of the impacts of all different
13 issues you look at.

14 But if you decide, after you've looked at all the
15 impacts, that together they are insignificant, you never get
16 into these questions, from a legal perspective of, you know,
17 whether there's need for power, and a benefit, because you
18 are not into EIS space.

19 MR. MIZUNO: Should I address that?

20 MR. GRAY: Yes, please.

21 MR. MIZUNO: I think, first of all, as I recall
22 the proposed rule, an environmental assessment was not
23 necessarily going to be the outcome in every case. Is that
24 true, Don?

25 MR. CLEARY: The proposed -- an EA would be done.

1 However, if all the information stood pretty much as it was
2 in the draft GEIS, it would have to be significant
3 information that would trigger an EIS.

4 MR. MIZUNO: Right. It would have to -- in other
5 words, we would have to find information from Category 2 or
6 Category 3 information at the site-specific level that would
7 lead us to believe that there may be a substantial
8 environmental impact. Correct?

9 MR. CLEARY. Correct.

10 MR. MIZUNO: Okay. I believe that it was the --
11 although it was not indicated in the statement
12 consideration, I think it was perhaps an understanding among
13 some people in the NRC that there would be very few
14 circumstances in which when you looked at the Category 2 and
15 Category 3 items, given the subject matters there, that you
16 would end up with the conclusion that there were no
17 substantial environmental impacts associated with nuclear
18 power plant operation.

19 And so that you would inevitably end up with a
20 supplemental EIS or an EIS being done to support the site-
21 specific renewal decision.

22 MS. GINSBERG: I think there's still an
23 opportunity, though, for retaining flexibility, because what
24 you've described is a predetermination on those issues. And
25 if you do an EA, there may be cases. And if I understand

1 what Dave is saying, is there may well be cases where that
2 is not the case.

3 MR. MIZUNO: Well, that's true. But I think that
4 in our negotiations -- well, this is getting into the
5 negotiations with EPA and CEQ. I don't know whether we
6 should revisit those. I mean, they're a done deal.

7 And I would say that certainly our decision to
8 prepare a supplemental EIS as opposed to an EA, that one of
9 the considerations was the fact that an EIS would be
10 required to be circulated for public comment; whereas, an EA
11 would not.

12 There was also discussions about whether, in the
13 context of license renewal, the NRC could reasonably support
14 issuing an EA to support an individual renewal decision. I
15 mean, that was also the topic of some of the discussions
16 between CEQ and EPA.

17 And so I think that ultimately what the NRC agreed
18 to do was to address all of those matters by just agreeing
19 to prepare a document called a supplemental EIS that would
20 be distributed for public comment.

21 And I guess, as an abstract matter, I would agree,
22 if our only concern was with the question for public
23 comment, we could issue a document called "Draft EA" and
24 circulate that for public comment. And what I'm suggesting
25 is that having offered that up to CEQ and EPA, that would

1 not necessarily have addressed all their concerns.

2 MR. CLEARY: I would like to add a couple of
3 things, Geary. Another reason that we agreed to go from an
4 EA to an EIS was that in the draft GEIS, and proposed to be
5 codified in the rule, we had reached the conditional cost
6 benefit conclusion.

7 So that the EA was really just an incremental look
8 at the Category 2 and Category 3 issues, and a FONSI,
9 Finding of No Significant Impact, would apply to that. And
10 that would be added to the conditional cost benefit balance
11 to see if that were changed.

12 Part of our agreement was that we would not reach
13 that conditional conclusion in the GEIS, but that all of the
14 information would be carried forward to the case-specific
15 review.

16 MR. MIZUNO: That's correct. And when Don refers
17 to carried forward, that means that the only consideration
18 -- the only cumulative consideration of impacts and values
19 would be handled in the site-specific environmental
20 document.

21 And it was felt that to call that document an
22 environmental assessment, in that context, would not be
23 consistent with NEPA, given the fact that we were probably
24 going to find that significant to the environment,
25 associated with the operation.

1 MR. SCHWARTZ: Okay. Any other questions?

2 Yes, sir?

3 MR. FONTECILLA: My name is Herb Fontecilla with
4 Virginia Power. I have just a comment question.

5 There seems to be a lot of interest in having
6 pilot participation and taking into account public comments.
7 However, the NRC, as you indicated, reached agreement with
8 CEQ and EPA on how to satisfy their comments. That is a
9 done deal.

10 Shouldn't there be an opportunity for the public
11 to participate in how that agreement is reached, and whether
12 that is the best way to reach an agreement, or the only
13 option?

14 MR. SCHWARTZ: That's a good question, Herb.

15 MR. MIZUNO: I guess perhaps I had overstated when
16 I said done deal, because I think I indicated at the very
17 beginning of this session that the Commission wanted to make
18 clear that these were simply what we're calling conditional
19 agreements, or that the Commission reserved the right to go
20 forward with the proposed rule in its existing form.

21 And then, of course, we would have to go through
22 the dispute resolution process that is in place for dealing
23 with disputes between the NRC and EPA. So, I would say that
24 that's the first thing.

25 And then the second, I guess more responding

1 directly to you question, I believe that there is going to
2 be provided another opportunity for the public to comment on
3 this. I mean, isn't this public -- well, I take that back.
4 I don't know.

5 MR. CLEARY: At this time, the only opportunity
6 for the public to comment is by March 4, on the specific
7 issues raised in the staff discussion paper. And further,
8 the next thing -- unless there is an internal decision to
9 recirculate an altered proposed rule -- the next thing will
10 be that the final rule package will be sent to the
11 Commission and published as a final rule.

12 MR. SCHWARTZ: Excuse me, Don, may I just ask this
13 question? I'm looking through the options of the paper now.

14 Are the things that are set on viewgraphs, with
15 respect to agreements between EPA and CEQ, part of this
16 package?

17 MR. CLEARY: The viewgraphs were developed pretty
18 much tracking the verbiage in the discussion paper.

19 MR. SCHWARTZ: So what you're saying is, there is
20 public comment now on what we discussed about the EPA and
21 NRC agreements? Is that what you're saying?

22 MR. MIZUNO: That's not true.

23 MR. SCHWARTZ: I'm trying to sort it out.

24 MR. CLEARY: Yes, that's a good question.

25 MR. SCHWARTZ: I don't think it's true.

1 MR. MIZUNO: I think the public knew that
2 negotiations were occurring between EPA, CEQ, and NRC, but
3 the public did not have a chance to participate in that.
4 And the agreements were reached in that, and the Commission
5 then made them available for the public to look at.

6 But there was no specific public comment period or
7 commenting or participating in the process of developing
8 those agreements.

9 MR. SCHWARTZ: Okay. I'm not a lawyer, so I can't
10 deal with that.

11 Any other comments on that? Yes, sir?

12 MR. WHITE: My name is Jud White. I'm also with
13 Virginia Power.

14 As a follow-up to that, my reading of Part 51, if
15 you build a new facility, you currently have the option to
16 do EA or EIS. Is that correct?

17 MR. CLEARY: A construction permits requires an
18 EIS.

19 MR. WHITE: There's a lot of EA language in Part
20 51. What does that apply to?

21 MR. MIZUNO: I don't have the section right now.
22 But there is a specific section in Part 51 that indicates
23 that the Commission has determined, as a matter of rule,
24 that certain actions will result in preparation of an EIS.
25 The Commission has said that.

1 And if you look at that section, one of the things
2 that is listed is the issuance of construction permit for a
3 nuclear power plant.

4 MR. WHITE: So the FONSI reference is only to
5 operating license? Because there is a FONSI reference in
6 51. I can show it to you.

7 MR. CLEARY: Basically, the FONSI, the Finding of
8 No Significant Impact, refers to the EA. And an example of
9 an action where we do an EA now is for recapture of a 40
10 year license. Some of the earlier plants were licensed from
11 the date of application, rather than from the date of
12 granting of the operating license.

13 MR. WHITE: I guess that I was trying to get at
14 that, from a new plant perspective, what would you have to
15 do, versus renewal?

16 MR. MIZUNO: Okay. Here, I just pulled it out.
17 In Section 51.20 -- sorry, 10 CFR, Section 51.20, paragraph
18 B says, "The following types of actions require an EIS or
19 supplement to an EIS." And one of the things that is listed
20 here is, "issuance of a permit to construct or desired
21 capacity license to operate or renewal of a desired capacity
22 license" -- oh, wrong one.

23 Let's see. Here, "issuance of a limited work
24 authorization or permit to construct a nuclear power
25 reactor, testing facility, or fuel reprocessing type,

1 pursuant to Part 50 of this chapter." So that covers the
2 CP, and that's (b)(1).

3 And then under (b)(2), "issuance or renewal of a
4 full power or desired capacity license to operate a nuclear
5 power reactor, testing facility, or fuel reprocessing plant,
6 pursuant to Part 50 of this chapter."

7 So the fact of the matter is that under 51.20(d),
8 the Commission has indicated that it will, in all cases,
9 prepare an EIS, for both the CP and the OL. So a FONSI is
10 not relevant, is not a possibility in either of those
11 situations.

12 MR. CLEARY: And Geary, is this correct, as it now
13 stands, Part 51 requires an EIS for license renewal?

14 MR. MIZUNO: Yes, right, because it says,
15 "issuance or renewal." Okay. I thought I read that out.

16 MR. CLEARY: You did. I just raised that to
17 emphasize it.

18 MR. MIZUNO: Okay.

19 MR. SCHWARTZ: I'd like to move into, I guess, the
20 concluding phase of the meeting, to see if each of the
21 panelists has a concluding remark.

22 Charles, do you have anything you would like to
23 add to the record?

24 MR. GRAY: I just would like to thank you for
25 having me here today. And I guess I consider my appearance

1 sort of a preview of coming attractions. I suspect next
2 week, you are going to have a long meeting, and maybe a bit
3 more heated discussion.

4 Again, I appreciate the efforts that the
5 Commission is making and that the Commission staff is making
6 to consider the point of view of the state regulatory
7 officials. I look forward to hearing what happens next
8 week.

9 Thank you.

10 MR. SCHWARTZ: Thank you, Charles. We appreciate
11 it.

12 Ray?

13 MR. NG: It seems that the analysis, need for
14 power, and alternatives, in our view, is best addressed
15 between the utilities and the states.

16 And in that sense, we would basically continue to
17 recommend an option where the NRC does not address, as part
18 of its environmental review, the need for power and
19 alternative energy sources. We don't believe that that is
20 necessary to support or to fulfill your NEPA obligations.

21 MR. SCHWARTZ: Thank you, Ray.

22 Ellen?

23 MS. GINSBERG: Thanks. I agree with everything
24 Ray said. And I, again, would like to just emphasize that
25 that license renewal is considered a prerequisite for

1 continued plant operation in the term following the initial
2 term of the license, and that this obtaining a new license
3 is one piece of information that a utility will consider in
4 making the determination regarding whether it will, in fact,
5 continue that plant, continue to operate that plant in the
6 renewed period. And I think that's an important point to
7 bear in mind, as we go forward in these discussions.

8 Thank you.

9 MR. SCHWARTZ: Thank you, Ellen. We appreciate
10 it.

11 Don?

12 MR. CLEARY: I have just one thing I would like to
13 maybe not raise for discussion here, since we are at the
14 end. But something that we brushed over was that while, I
15 think, everybody in their comments has been focusing on
16 license renewal for 20 years, the fact is that plants or
17 utilities can come in for applications for significantly
18 less than 20 years.

19 And my question is whether it makes a difference
20 to the states if a plant is coming in for only five years,
21 rather than twenty years. Does it make a difference in
22 terms of the concerns that have been raised?

23 MR. SCHWARTZ: I think we'd like to add that,
24 probably, to the next session, up on front, as a front
25 question, rather than wait until the end.

1 Geary, do you have anything?

2 MR. MIZUNO: No.

3 MR. SCHWARTZ: John?

4 MR. MOULTAN: I just wanted to thank everyone for
5 providing their comments today, and Charles, for your
6 limited insight into what the states can provide. I'll look
7 forward to some more detail on what the states can provide
8 in the Illinois and the Massachusetts workshops.

9 MR. SCHWARTZ: Thanks, John.

10 Does anybody else have any concluding remarks?
11 How about the ex officio member of the panel, Joe Gallo?

12 MR. GALLO: No, thank you.

13 [Laughter.]

14 MR. SCHWARTZ: Well, I'd like to express my thanks
15 to this very able and capable panel. Charles, on very short
16 notice, I think, just did a superb job in laying out the
17 states concerns.

18 And when you say states, as we've always said
19 before, you can't say "all states." There's always
20 exceptions. Everybody says, "I'm not included in that." So
21 I really appreciate the way you characterized it on short
22 notice.

23 Ray and Ellen, I appreciate all your comments, and
24 thank you very much, and the NRC staff.

25 But, most of all, thank you all. I appreciate

1 also the support that we have here from some of the Federal
2 agencies. Susan Offerdal of EPA, I appreciate your being
3 here, and from the Department of the Interior -- I think he
4 had to leave.

5 With that, we'll conclude this session. I'd like
6 for the NRC folks who are going to be on the road with us
7 for the next two sessions to stick around, and maybe we can
8 have our after session right now.

9 Thank you very much.

10 [Whereupon, at 3:00 p.m., the meeting was
11 adjourned.]

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REPORTER'S CERTIFICATE

This is to certify that the attached proceedings
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NAME OF PROCEEDING: Part 51 Public Meeting

DOCKET NUMBER:

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*United States
Nuclear Regulatory Commission*

**AGENDA: PUBLIC MEETING
ENVIRONMENTAL REVIEW FOR RENEWAL
OF OPERATING LICENSES**

*February 9, 1994 - Holiday Inn - Rockville, MD
February 15, 1994 - Holiday Inn - Rosemont, IL
February 17, 1994 - The Comfort Inn - Chicopee, MA*

Registration 9:15 a.m. - 9:45 a.m.

OPENING REMARKS 10:00 a.m.

Sheldon Schwartz (Moderator)

- Call to Order*
- Purpose of Meeting*
- Conduct of Meeting*
- Logistical Information*
- Introduction of Panel Members and Attendees*

REVIEW AGENDA AND MODIFY AS APPROPRIATE 10:10 a.m.

Sheldon Schwartz

- Review Agenda*
- Panelists Statements on*
 - Relative Importance of the Various Agenda Topics*
 - Any Additional Topics that Should be Added*
 - Additional Options for Discussion*
- Additions to Agenda*

BACKGROUND/HISTORY 10:30 a.m.

Donald Cleary

- Environmental Reviews at the CP and OL Stages*
- Purpose of 10 CFR Part 51 Rulemaking*
- Treatment of Need and Alternatives in the Proposed Rule*
- Public Comments*
- CEQ/EPA Consultations*
- State Consultations*
- Rulemaking Schedule*
- License Renewal Perspective*
- Scott Newberry*

CHARACTERIZATION OF STATE CONCERNS 10:45 a.m.

*Summary (D. Cleary)
Panel Discussion*

Is the NRC characterization of State concerns in Section III of the discussion paper complete and accurate? What, if anything, should be added or changed?

Would the concerns of the States be any different for 5 year rather than 20 year renewals?

QUESTIONS AND COMMENTS FROM THE FLOOR

CEQ/EPA AGREEMENT 11:00 a.m.

*Summary (D. Cleary)
Panel Discussion*

To what extent are the concerns of the States resolved by the changes to the GEIS and rule that are being made in response to CEQ and EPA comments?

QUESTIONS AND COMMENTS FROM THE FLOOR

NEED AND ALTERNATIVES SHOULD BE DESIGNATED CATEGORY 3 11:20 a.m.

*Leadoff Statement (D. Cleary)
Panel Discussion*

Several States commented that need and alternatives should be designated as Category 3 Issues and thus reviewed at the time of a plant-specific license renewal application. To what extent would this resolve state concerns about conflict of the NRC NEPA review with State regulatory authority?

QUESTIONS AND COMMENTS FROM THE FLOOR

**CLARIFICATION IN THE PUBLIC RECORD OF NRC
AND OF STATE AUTHORITY 11:40 a.m.**

Leadoff Statement (D. Cleary)

Panel Discussion

To what extent are the concerns of the States resolved if the GEIS and the rule are modified to include statements that the NRC's findings with respect to need for generating capacity and alternative energy sources are only intended to assist the NRC in meeting its NEPA obligations and do not preclude the States from making their own determinations with respect to these issues?

QUESTIONS AND COMMENTS FROM THE FLOOR

LUNCH 12:00 - 1:00 p.m.

AFTERNOON

NRC PRESENTATION OF FOUR OPTIONS 1:00 p.m.
Donald Cleary

Option 1 - Replace Traditional Cost-Benefit Analysis with a Decision Method that considers utility costs only under specific conditions.

Option 2 - NRC adopts State analyses and determinations

Option 3 - Need for generating capacity not analyzed

Option 4 - Need for generating capacity and alternative energy sources are not factors in the NRC license renewal decision

PANEL PRESENTATION OF OTHER OPTIONS 1:30 p.m.

Are there other options that should be considered in addition to the four discussed?

PANEL DISCUSSION OF OPTIONS 2:00 p.m.

*Summary Assessment of Options by Each State and Other Non-NRC Panelist
Panel Discussion*

Option Specific Questions:

Option 1 Questions:

What problems, if any, do the States have with NRC using for license renewal reviews the decision method explained in Option 1 rather than the traditional cost-benefit balancing?

Option 2 Questions:

Do the states have legal concerns or see other problems if the NRC accepts a State's conclusions with respect to the issues of need for generating capacity and alternative energy sources as discussed in Option 2?

What are the practical considerations in developing and applying guidelines that would be met by the States?

What should be the major features of the guidelines?

Can guidelines be developed that can be met by all States?

In each State, is there a single governmental body that the NRC could look to for findings on need for generating capacity and alternative and energy sources?

Can State findings be made and provided to NRC in a timely manner for use in the license renewal review?

Is there benefit in coordination between the NRC and State staffs while the State is preparing its submittal?

To what extent does Option 2 resolve the concerns of the States?

Option 3 Questions:

Do the States have legal concerns or see other problems if the NRC adopts the position that need for generating capacity need not be analyzed in a license renewal review as discussed in Option 3?

To what extent does Option 3 resolve the concerns of the States?

PANEL DISCUSSION OF OPTIONS (CONT'D.) 2:00 p.m.

Option 4 Questions:

Do the States have legal concerns or see other problems if the NRC treats the issues of need for power and alternative energy sources for disclosure purposes only and excludes them from its decision whether to renew an operating license as discussed in Option 4?

To what extent does Option 4 resolve the concerns of the States?

General Questions:

To what extent does each Option alleviate State concerns about NRC treatment of matters that are under the regulatory authority of the States?

From a State perspective what are the strengths and weaknesses of each option?

What problems, if any, would a State have with its responsibilities under each option?

What is the State's preferred option?

CONCLUDING REMARKS BY EACH PANELIST 4:00 p.m.

Within the scope of the discussion in this workshop, what comments and recommendations do you have for NRC at this time?

FINAL COMMENTS FROM THE FLOOR 4:30 p.m.

CONCLUDING REMARKS OF THE MODERATOR 4:50 p.m.

ADJOURN 5:00 p.m.



*United States
Nuclear Regulatory Commission*

PUBLIC MEETING:

**TO DISCUSS STATE CONCERNS WITH THE
TREATMENT OF NEED FOR GENERATING
CAPACITY AND ALTERNATIVE ENERGY
SOURCES IN THE PROPOSED
10 CFR PART 51 RULE FOR
LICENSE RENEWAL**

*PRESENTATION BY
THE NRC STAFF*

*FEBRUARY 9, 1994 - HOLIDAY INN - ROCKVILLE, MD
FEBRUARY 15, 1994 - HOLIDAY INN - ROSEMONT, IL
FEBRUARY 17, 1994 - THE COMFORT INN - CHICOPEE, MA*

BACKGROUND

- ENVIRONMENTAL REVIEWS AT THE CP AND OL STAGES
- PURPOSE OF 10 CFR PART 51 RULEMAKING
- TREATMENT OF NEED AND ALTERNATIVES IN THE PROPOSED RULE
- PUBLIC COMMENTS
- CEQ/EPA CONSULTATIONS
- STATE CONSULTATIONS
- RULEMAKING SCHEDULE

ENVIRONMENTAL REVIEWS AT THE CP AND OL STAGES

- THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969
 - A DETAILED STATEMENT ON THE ENVIRONMENTAL IMPACTS
 - CONSIDER ALTERNATIVES TO THE PROPOSED ACTION
 - EACH FEDERAL AGENCY IMPLEMENTS NEPA
- 10 CFR PART 51--NRC'S ENVIRONMENTAL REGULATIONS
 - COVERS PROCEDURES FOR AND THE GENERAL SCOPE OF THE NEPA REVIEW
 - REQUIRES THAT PURPOSE AND NEED FOR AND ALTERNATIVES TO THE PROPOSED ACTION BE ADDRESSED IN EAs AND EISs

ENVIRONMENTAL REVIEWS (CON'T)

- REGULATORY GUIDE 4.2, REVISION 2, PREPARATION OF ENVIRONMENTAL REPORTS FOR NUCLEAR POWER PLANTS, JULY 1976
- ENVIRONMENTAL STANDARD REVIEW PLANS FOR THE ENVIRONMENTAL REVIEW OF CONSTRUCTION PERMIT APPLICATIONS FOR NUCLEAR POWER PLANTS, (NUREG-0555), MAY 1979

ENVIRONMENTAL REVIEWS AT CP STAGE

- THE NEED FOR THE POWER
 - DESCRIPTION OF THE POWER SYSTEM
 - ELECTRICAL ENERGY AND PEAKLOAD DEMAND
 - POWER SUPPLY
 - STAFF ASSESSMENT OF NEED

ENVIRONMENTAL REVIEWS AT THE CP STAGE

- ALTERNATIVES TO THE PROJECT
 - ALTERNATIVES NOT REQUIRING NEW GENERATING CAPACITY
 - ALTERNATIVES REQUIRING NEW GENERATING CAPACITY
 - STAFF ASSESSMENT OF ALTERNATIVE ENERGY SOURCES AND SYSTEMS

ENVIRONMENTAL REVIEWS AT THE CP STAGE

- EVALUATION OF THE PROPOSED ACTION
- UNAVOIDABLE ADVERSE ENVIRONMENTAL IMPACTS
- IRREVERSIBLE AND IRRETRIEVABLE COMMITMENT OF RESOURCES
- RELATIONSHIP BETWEEN SHORT-TERM USES AND LONG-TERM PRODUCTIVITY OF MAN'S ENVIRONMENT
- BENEFIT-COST BALANCE
- SUMMARY

ENVIRONMENTAL REVIEW AT THE OL STAGE

- UPDATE AND SUPPLEMENT CP REVIEW
- NO REASSESSMENT OF NEED AND ALTERNATIVE ENERGY SOURCES
 - CODIFIED IN 10 CFR PART 51
 - RULE BASED ON EVIDENCE OF FAVORABLE ECONOMICS
 - NO ALTERNATIVE WOULD TIP C/B FOR COMPLETED PLANT

PURPOSE OF THE 10 CFR PART 51 RULEMAKING FOR LICENSE RENEWAL

- IMPROVE THE EFFICIENCY OF ENVIRONMENTAL REVIEW
- USE PAST EXPERIENCE WITH ENVIRONMENTAL REVIEWS
- USE OPERATING EXPERIENCE

TREATMENT OF NEED AND ALTERNATIVES IN THE PROPOSED 10 CFR PART 51 RULE

- APPLIED OL RULE APPROACH IN PROPOSED LR RULE
- NEED FOR CAPACITY ESTABLISHED BY REVIEWING PLANNED FUTURE CAPACITY AND ELECTRICITY DEMAND FORECASTS
- NEED FOR GENERATING CAPACITY FINDINGS TO BE ADOPTED IN INDIVIDUAL LR REVIEWS
- FOUND NO ALTERNATIVE TO BE ENVIRONMENTALLY PREFERABLE, EXCEPT POSSIBLY FOR GEOTHERMAL
- UNCERTAINTY ABOUT O&M COSTS AND COST OF REFURBISHMENT BRINGS C/B INTO QUESTION
- ECONOMIC THRESHOLD TEST TO DETERMINE IF MORE DETAILED REVIEW IS REQUIRED
- IF THRESHOLD TEST MET, ALTERNATIVES FINDINGS ADOPTED IN INDIVIDUAL LR REVIEWS

PUBLIC COMMENTS ON THE PROPOSED RULE

- APPROXIMATELY 130 COMMENTING INDIVIDUALS AND ORGANIZATIONS
- STAFF WILL RESPOND TO EACH COMMENT IN A NUREG THAT WILL ACCOMPANY THE FINAL RULE AND GEIS

CONSULTATIONS WITH CEQ AND EPA

- AGREEMENT WITH CEQ AND EPA REACHED ON MAJOR PROCEDURAL CONCERNS
- WILL DISCUSS PROPOSED RESPONSES TO ALL REMAINING EPA COMMENTS WITH EPA STAFF

CONSULTATIONS WITH THE STATES

- STAFF RAISED STATE CONCERNS TO THE COMMISSION AND WAS INSTRUCTED TO CONSULT WITH STATES IN DEVELOPING OPTIONS TO RESOLVE CONCERNS
- FOCUS ON CONCERN OVER CONFLICT WITH TRADITIONAL STATE AUTHORITY TO REGULATE WITH RESPECT TO ECONOMICS AND OTHER NONNUCLEAR MATTERS
- COMMISSION PAPER SUMMARIZING MEETINGS, WRITTEN COMMENTS, SPECIFIC OPTIONS CONSIDERED, PROS AND CONS, AND THE STAFF'S RECOMMENDATIONS

RULEMAKING SCHEDULE

- WRITTEN COMMENTS ON DISCUSSION PAPER AND WORKSHOPS MARCH 4, 1994
- DISCUSS WITH EPA RESPONSES TO ITS COMMENTS MAY 1994
- COMMISSION PAPER ON RESOLVING STATE CONCERNS EARLY JUNE 1994
- COMMISSION GUIDANCE TO THE STAFF JULY 1994
- FINAL RULE AND GEIS TO THE COMMISSION DECEMBER 1994
- FINAL RULE AND GEIS PUBLISHED MARCH 1995

LICENSE RENEWAL PERSPECTIVE

10 CFR PART 51 REGIONAL MEETINGS

- The Atomic Energy Act permits nuclear power plant licensees to renew their license.
- The license renewal rule, 10 CFR Part 54, was established to provide standard renewal procedures.
- 10 CFR Part 54 establishes the NRC's safety requirements and ensures that the current licensing basis will be maintained.
- In 1991 the NRC proposed an amendment to 10 CFR Part 51, the NRC requirements for complying with the National Environmental Policy Act (NEPA), to establish new requirements for environmental review of applications for a renewed license.
- To receive a renewed license, applicants must comply with both Part 54 and Part 51.
- Based on initial experience, and September 1993 workshop, the Commission recently directed that Part 54 be revised.

CHARACTERIZATION OF STATE CONCERNS

- NRC NEEDS TO CLEARLY UNDERSTAND BASIC CONCERNS
- DISSATISFACTION WITH:
 - DESIGNATION OF NEED AND ALTERNATIVES AS CATEGORY 1 ISSUES
 - SUBSTANTIALLY ELIMINATES PUBLIC PARTICIPATION
 - INADEQUATELY PROVIDES FOR CURRENT, PROJECT-SPECIFIC INFORMATION

CHARACTERIZATION OF STATE CONCERNS (CONT'D.)

- DISSATISFACTION WITH: (CONT'D.)
 - NRC TREATMENT OF NEED AND ALTERNATIVES SEEN TO BE IN CONFLICT WITH TRADITIONAL AUTHORITY OF THE STATES
 - INADEQUATE PROVISION FOR CONSULTATION AND COOPERATION
 - UNCERTAINTY IN LONG TERM FORECASTS
 - TIMING OF LICENSE RENEWAL REVIEWS IN ADVANCE OF STATE PLANNING AND DECISION HORIZON.

CHARACTERIZATION OF STATE CONCERNS (CONT'D.)

- STATE RECOMMENDATIONS:
 - DESIGNATE NEED AND ALTERNATIVES CATEGORY 3
 - DO NOT CONSIDER NEED
 - DEFER TO A STATE'S DETERMINATION OF NEED
 - CLEARLY STATE RESPECTIVE REGULATORY AUTHORITY OF NRC AND OF THE STATES

CEQ/EPA AGREEMENT

- CEQ AND EPA BELIEVES PROPOSED RULE DOES NOT FURTHER NEPA BECAUSE:
 - CATEGORY 1 ISSUE PRECLUSION AT THE TIME OF THE PROPOSED ACTION
 - PUBLIC COMMENT TAKEN FAR IN ADVANCE OF, BUT NOT AT THE TIME OF A PROPOSED ACTION, DOES NOT PROVIDE FOR MEANINGFUL INVOLVEMENT
 - THE COMMISSION CAN NOT DETERMINE A FAVORABLE COST-BENEFIT BALANCE NOW FOR FUTURE APPLICATIONS

CEQ/EPA AGREEMENT (CONT'D.)

- MAJOR FEATURES OF THE UNDERSTANDING REACHED WITH CEQ AND EPA:
 - SUPPLEMENTAL EIS RATHER THAN EA
 - NO CONDITIONAL COST-BENEFIT CONCLUSION IN THE FINAL RULE -- C/B BALANCE AT TIME OF PLANT REVIEW
 - PUBLIC COMMENTS WILL BE EVALUATED REGARDLESS OF CATEGORY OF THE ISSUE
- EXISTING PROVISIONS OF 10 CFR PART 51 PROVIDE PROCEDURAL ACCESSIBILITY

DESIGNATE NEED AND ALTERNATIVES CATEGORY 3

- STATES REQUESTED CATEGORY 3 DESIGNATION
- CEQ/EPA AGREEMENT MAKES IT EASIER TO SUBMIT INFORMATION ON CATEGORY 3 ISSUES TO NRC
- STAFF CONTINUING TO RESPOND TO ALL COMMENTS BEFORE DECIDING WHETHER CATEGORY 1 DETERMINATIONS CAN BE SUSTAINED
- NEED TO UNDERSTAND RELATIONSHIP BETWEEN STATE CONCERNS AND CATEGORY DESIGNATION

CLARIFICATION OF RESPECTIVE REGULATORY AUTHORITY

- PROBLEM RAISED BY STATES
- WILL CLARIFY IN RULE AND GEIS
- IS THERE A MEANINGFUL PROBLEM?

NRC'S FOUR OPTIONS FOR ADDRESSING STATE CONCERNS

DONALD CLEARY

NRC'S FOUR OPTIONS FOR ADDRESSING STATE CONCERNS

OPTION 1

- NEED AND ALTERNATIVES ARE REVIEWED
- BOTH ARE CONSIDERED IN LICENSE RENEWAL DECISION
- FEASIBILITY OF OPTION NOT DEPENDENT ON CATEGORY DESIGNATION
- DIRECT ECONOMIC COSTS AND BENEFITS NOT INITIALLY CONSIDERED IN A LICENSE RENEWAL DECISION
- UTILITY COSTS THEREFORE INITIALLY NOT A FACTOR IN DECISION

NRC'S FOUR OPTIONS FOR ADDRESSING STATE CONCERNS

OPTION 1 (CONT'D.)

- DECISION METHOD OTHER THAN TRADITIONAL NRC COST-BENEFIT BALANCING
- THREE REVIEW FINDINGS COULD RESULT IN CONSIDERATION OF DIRECT ECONOMIC COSTS AND BENEFITS
 - INADEQUATE NEED FOR GENERATING CAPACITY
 - AN ENVIRONMENTALLY PREFERABLE ALTERNATIVE
 - SIGNIFICANT CUMULATIVE ADVERSE ENVIRONMENTAL IMPACTS

NRC'S FOUR OPTIONS FOR ADDRESSING STATE CONCERNS

OPTION 2

- NRC ADOPTS STATE REVIEW OF NEED AND ALTERNATIVES
- BOTH ARE CONSIDERED IN THE LICENSE RENEWAL DECISION
- OPTION REQUIRES A CATEGORY 3 DESIGNATION FOR BOTH
- NRC GUIDELINES FOR STATE REVIEW
- IF NO STATE SUBMITTAL APPLICANT WOULD DO REVIEW AND NRC STAFF CONFIRM

NRC'S FOUR OPTIONS FOR ADDRESSING STATE CONCERNS

OPTION 3

- DISTINGUISHES BETWEEN NEED FOR NEW CAPACITY AND THE NEED FOR EXISTING CAPACITY
- FOR EXISTING CAPACITY, THE NRC WOULD STATE THAT THE NEED FOR POWER EXISTS
 - NO DETAILED NEED FOR POWER ANALYSIS REQUIRED
 - NO FORECASTING OF DEMAND
- LOSS OF EXISTING CAPACITY NECESSITATES REPLACEMENT IN SOME FORM (CONSERVATION, IMPORT, NEW FOSSIL, ETC...)

NRC'S FOUR OPTIONS
FOR ADDRESSING STATE CONCERNS

OPTION 4

- NEED AND ALTERNATIVES ARE DISCLOSED
- NEITHER ARE CONSIDERED IN THE LICENSE RENEWAL DECISION
- OPTION NOT DEPENDENT ON CATEGORY DESIGNATION
- OPTION COULD INCLUDE DISCUSSION OF DIRECT ECONOMIC COSTS AND BENEFITS OR NOT

NRC'S FOUR OPTIONS FOR ADDRESSING STATE CONCERNS

OPTION 4 (CONT'D.)

- LICENSE RENEWAL DECISION CONSIDERS UNAVAILABLE ADVERSE ENVIRONMENTAL IMPACT OF LICENSE RENEWAL ONLY
- NARROWED CONSIDERATIONS IN NRC LICENSE RENEWAL DECISION MAINTAINS FLEXIBILITY FOR STATES TO REGULATE CONTINUED OPERATION RELATIVE TO ECONOMICS AND ALTERNATIVE ENERGY SOURCES

(7590-01-P)

NUCLEAR REGULATORY COMMISSION

10 CFR Part 51

RIH 3150-AD94

Environmental Review For Renewal of Operating
Licenses: Public Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public meeting.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing regional meetings to discuss options for addressing certain concerns expressed by a number of States in comments submitted to the NRC on the proposed rule on the environmental review required for renewal of nuclear power plant operating licenses. The concerns that will be addressed involve provisions of the proposed rule that the States see as being in conflict with the traditional authority of the States to regulate electrical utilities with respect to questions of need, reliability, cost, resource options, and other non-safety aspects of nuclear power generation. The minutes will be transcribed by a court recorder in all regional meetings.

DATES: The dates of the regional meetings are: Rockville, MD, February 9, 1994; Rosemont, IL, February 15, 1994; Chicopee, MA, February 17, 1994.

Parties interested in participating in a panel should contact Donald P. Cleary

no later than January 28, 1994. Written comments on the matters covered in the staff paper and the meetings that are received by March 4, 1994 will be considered along with comments made during the meetings. Comments received after this date will be considered if it is practical to do so.

ADDRESS: The meetings will be held at the following locations: The Holiday Inn, Crowne Plaza, 1750 Rockville Pike, Rockville, MD 20852; The Holiday Inn, O'Hare, 5440 North River Road, Rosemont, IL 60018; The Comfort Inn at the Parwick Centre, 450 Memorial Drive, Chicopee, MA 01020. Written comments should be sent to Donald P. Cleary at the address given below.

FOR FURTHER INFORMATION CONTACT: Donald P. Cleary, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555; Telephone: (301) 492-3936.

SUPPLEMENTARY INFORMATION:

The purpose of the regional meetings is to gain the views of the States and other interested parties on how the NRC should treat need for generating capacity and alternative energy sources in its final rule on the environmental review for renewal of nuclear power plant operating licenses. The NRC published in the Federal Register proposed amendments to its environmental protection regulations, 10 CFR Part 51, which would establish new requirements for the environmental review of applications to renew operating licenses for nuclear power plants (September 17, 1991; 56 FR 47016). Concurrently, the NRC published NUREG-1437, a draft Generic Environmental Impact Statement (GEIS)

that contained the analyses which the NRC proposed to codify in Part 51. The public comment period on the proposed rule, the GEIS, and other related documents closed on March 17, 1992. In commenting on the proposed rule and the draft GEIS, a number of States expressed dissatisfaction with the treatment of need for generating capacity, and alternative energy sources. The States' concerns involve provisions of the proposed rule that the States see as being in conflict with the traditional authority of the States to regulate electrical utilities with respect to questions of need, reliability, cost, resource options, and other non-safety aspects of nuclear power generation. The Commission instructed the NRC staff to develop options for responding to these State concerns. In developing the options the staff is to solicit the views of the States.

The staff is soliciting the views of the States through four regional meetings and a request for written comments. To facilitate discussions with the States the staff has prepared a paper, "Addressing the Concerns of States and Others Regarding the Role of Need for Generating Capacity, Alternative Energy Sources, Utility Costs, and Cost-Benefit Analysis in NRC Environmental Reviews for Relicensing Nuclear Power Plants: An NRC Staff Discussion Paper," which may be either examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC 20037, or obtained from Donald P. Cleary at the address provided above.

Each meeting will be conducted in a panel format with panelists representing those States that submitted comments on the treatment of need for generating capacity and alternative energy sources, other interested States, electric utilities, the NRC, and interest groups concerned with the economic regulation of electric utilities. All interested persons are invited to

attend as observers and time will be scheduled to take questions and comments from the floor. The meeting minutes will be transcribed by a court reporter. Written comments on the matters covered in the staff paper and the meetings are invited. The public comment period will close on March 4, 1994.

Each meeting will begin at 10:00 a.m. and, with a 1 hour lunch break, will continue until 5:00 p.m. if participation warrants. Registration will be conducted one-half hour prior to the meeting.

Dated at Rockville, Maryland, this 11th day of January, 1994.

For the Nuclear Regulatory Commission.

Bill M. Morris

Bill M. Morris, Director,
Division of Regulatory Applications,
Office of Nuclear Regulatory Research.

ADDRESSING THE CONCERNS OF STATES AND OTHERS REGARDING THE ROLE OF NEED FOR
GENERATING CAPACITY, ALTERNATIVE ENERGY SOURCES, UTILITY COSTS, AND COST-BENEFIT
ANALYSIS IN NRC ENVIRONMENTAL REVIEWS FOR RELICENSING NUCLEAR POWER PLANTS: AN
NRC STAFF DISCUSSION PAPER

OFFICE OF NUCLEAR REGULATORY RESEARCH
U. S. NUCLEAR REGULATORY COMMISSION

January 1994

Contact: Donald P. Cleary
Division of Regulatory Applications
Office of Nuclear Regulatory Research
U. S. Nuclear Regulatory Commission
Washington, DC 20555
Telephone: (301) 492-3936

ADDRESSING THE CONCERNS OF STATES AND OTHERS REGARDING THE ROLE OF NEED FOR GENERATING CAPACITY, ALTERNATIVE ENERGY SOURCES, UTILITY COSTS, AND COST-BENEFIT ANALYSIS IN NRC ENVIRONMENTAL REVIEWS FOR RELICENSING NUCLEAR POWER PLANTS: AN NRC STAFF DISCUSSION PAPER

I. INTRODUCTION

The U. S. Nuclear Regulatory Commission (NRC) published in the Federal Register (56 FR 47016), dated September 17, 1991, proposed amendments to its environmental protection regulations, 10 CFR Part 51, which would establish new requirements for the environmental review of applications to renew operating licenses for nuclear power plants. Concurrently, the NRC published NUREG-1437, a draft Generic Environmental Impact Statement (GEIS) that contained the analyses which the NRC proposed to codify in Part 51. In commenting on the proposed rule and the draft GEIS, a number of States expressed dissatisfaction with the treatment of need for generating capacity, alternative energy sources, and certain other issues. The Commission has instructed the NRC staff to develop and present to it options for responding to these State concerns. In developing the options the staff is to solicit the views of the States.

This paper has been developed by the NRC staff to initiate and facilitate discussions with the States about how NRC should address their concerns. The paper provides focus for a series of three regional meetings which will be held in February 1994 to obtain the views of the States and others. Each meeting will be conducted in a panel format with panelists representing those States that submitted comments on the treatment of need for generating capacity and alternative energy sources, other interested States, electric utilities, the NRC, and interest groups concerned with the economic regulation of electric utilities. All interested persons are welcome to attend as observers and time will be scheduled to take questions and comments from the floor. In this paper, the staff presents its tentative proposals for addressing these concerns. Comments on the staff's proposals and submission of alternative proposals will be welcome. Following these meetings and the receipt of written comments from the States and other interested parties, the staff will prepare and present to the Commission a paper which will describe the alternative approaches considered and identify a recommended approach for addressing the States' concerns.

Section II of this paper provides a brief history and background for the reader. Section III summarizes the concerns expressed by the States that are the subject of this paper. Section IV describes the NRC proposals made to the Council on Environmental Quality (CEQ) and the U. S. Environmental Protection Agency (EPA) to address their concerns, which also are partially responsive to State concerns. In Section V the staff presents for discussion a set of options for addressing State concerns on Federal "preclusion" or "intrusion" into the need for power and alternative energy sources issues. In Section VI a series of focusing questions are presented to aid in reviewing the staff proposals and in developing alternative proposals.

II. BACKGROUND

This rulemaking was initiated by NRC in order to improve the efficiency of the environmental review process for renewal of operating licenses. Comments on the proposed rule and draft GEIS were received from approximately 130 organizations and individuals. These comments covered both procedural and technical concerns. The CEQ and the EPA each commented that the proposed rule would present unnecessary obstacles to public participation in the site-specific license renewal reviews. Various States made similar comments and also expressed concerns about the regulatory overlap between the NRC and State agencies relative to treatment of need for generating capacity, alternative energy sources, and economic analysis.

NRC's environmental protection regulations 10 CFR Part 51 which implement Section 102(2) of the National Environmental Policy Act requires that the "purpose of and need for action" and "alternatives including the proposed action" be addressed in NRC's environmental assessments and environmental impact statements. These provisions parallel CEQ's regulations 40 CFR Parts 1500-1508. The treatment of need and alternatives in the draft GEIS and the proposed rule was designed to be consistent with the provisions of 10 CFR Part 51 and established Commission practice for construction permit and for operating license reviews. Thus, "need" is defined in the draft GEIS and the proposed rule as need for an amount of generating capacity equivalent to the generating capacity of the nuclear power plant and "alternatives" are defined to be alternative energy sources that could supply equivalent generating capacity or actions to reduce need through energy conservation.

In addressing need for generating capacity, alternative energy sources, utility economics, and cost-benefit balancing in the proposed rule and the draft GEIS, the staff proposed to treat these issues in the same manner as they are treated at the operating license stage. In the environmental review at the construction permit stage, the NRC performs a detailed analysis of need for power (generating capacity) and alternative energy sources. The construction permit review covers both construction and operation issues. The general objective of the environmental review at the operating license stage is to confirm the continued validity of the information and analyses relevant to operation. The treatment of need for power and alternative energy sources at the operating license stage is codified in § 51.53(a) and § 51.95(a) which state that unless otherwise determined by the Commission, need for power and alternative energy sources need not be discussed in the supplement to the environmental report and the supplemental environmental impact statement for the operating license review. The rationale for this rule was promulgated in 47 FR 12940, March 26, 1982, which states on page 12940:

"The Commission stated its tentative conclusion that while there is no diminution of the importance of these issues [need for power and alternative energy sources] at the construction permit stage, the situation is such that at the time of the operating license proceeding the plant would be needed to either meet increased energy needs or replace older less economical generating capacity and that no viable alternatives to the completed nuclear plant are likely to

exist which could tip the NEPA cost-benefit balance against issuance of the operating license. Past experience has shown this to be the case. In addition, this conclusion is unlikely to change even if an alternative is shown to be marginally environmentally superior in comparison to operation of a nuclear facility because of the economic advantage which operation of nuclear power plants has over available fossil generating plants. An exception to the rule would be made if, in a particular case, special circumstances are shown in accordance with 10 CFR 2.758 of the Commission's regulations."

The staff proposed that the reasoning supporting the determination not to review need for power and alternative energy sources in individual operating license reviews could also be applied to license renewal reviews. The analyses reported in Chapters 8 and 9 and Appendix H of the draft GEIS were undertaken to provide the factual basis for promulgating provisions in the Part 51 relicensing rule similar to the existing provisions for the operating license stage. However, the analysis was not able to demonstrate that the costs of relicensing and continuing to operate a nuclear plant would be clearly lower than the continued operation of other existing generating capacity due to the possible capital cost penalty associated with refurbishment and because nuclear operating and maintenance costs had escalated to a point where nuclear's production costs were comparable to the production costs of select alternative sources of generation.

In the staff's view, the economic justification for relicensing could be sustained generically if it could be shown that the alternatives to relicensing would involve the construction of new capacity so that the capital costs of constructing the alternative would outweigh the refurbishment costs associated with relicensing. In following this line of reasoning, the staff's assessment of need for capacity in Chapter 8 analyzed whether the electrical generation from nuclear units could be made up by planned capacity (i.e., existing capacity plus all planned additions minus the capacity projected to be retired) or would, in fact, require the construction of new replacement capacity. In Chapter 9 of the draft GEIS, the staff reviewed alternative sources of energy that could replace the generating capacity of a nuclear power plant if it were not relicensed. The environmental impacts, as well as technical availability and cost of each alternative were reviewed. In Appendix H of the draft GEIS, the staff concluded that the alternative to relicensing is new capacity, that the least cost source of new capacity sufficient to replace a nuclear unit is a new coal-fired plant, and that, in general, relicensing is expected to result in substantial cost savings relative to constructing and operating new coal capacity. However, due to the prospect that some plants may have high refurbishment, and the generally higher operating and maintenance costs being encountered for nuclear plants, there remains some uncertainty about the economic cost of relicensing and the potential for an unfavorable cost-benefit balance. Because of this uncertainty the staff determined that a threshold cost criterion must be met by a plant, and if the criterion is not met, a more detailed cost analysis will be performed to demonstrate net benefits from relicensing compared to the most reasonable alternative.

As a result of this draft GEIS analysis, the staff believed that it had significantly limited the scope of the need for power and alternatives analyses at the relicensing stage. Load forecasts and supply and demand analyses for individual relicensing actions would not be required based on the generic findings that the alternative to relicensing would require the construction of new capacity which, with the exception of geothermal, was not environmentally preferable to relicensing. As a result, the need for power and alternative analyses collapse to the same economic argument used to eliminate these issues at the operating license stage. At the relicensing stage, however, the economic analysis is not as absolute. Consequently, the staff proposed a relatively simple economic threshold test, passage of which would fully satisfy the need for generation capacity and alternative energy source issues. The proposed rule at § 51.53(c)(ii)(J) requires justification of the choice of relicensing whenever replacement of equivalent generating capacity by a coal-fired plant has a demonstrated cost advantage over the individual nuclear power plant relicensing. Further, given that Chapter 9 found geothermal environmentally preferable, licensees for plants in California, Oregon, Washington, or Arizona would also submit a cost comparison with geothermal energy. For these reasons, the findings in the draft GEIS were summarized in the proposed rule and upon passing the economic threshold test the findings could be adopted without further analysis in individual license renewal reviews, (i.e., need and alternatives were determined to be Category 1 issues).¹

III. CONCERNS OF STATES AND OTHERS RELATED TO NEED, ALTERNATIVES, AND UTILITY COSTS

A number of States expressed dissatisfaction with the treatment of need for generating capacity, alternative energy sources, and related matters in the proposed rule and the draft GEIS. The States expressed dissatisfaction with:

- a) the designation of need and alternatives as Category 1 issues which are not subject to further review in individual plant renewal reviews;
- b) Category 1 determinations substantially eliminating public (including State and local government) participation and inadequately providing for consideration of current project-specific information at the time of a license renewal review, as required by NEPA;
- c) the treatment of need and alternatives by NRC in the proposed rule which is seen to be in conflict with the traditional authority of the States to regulate electrical utilities with respect to questions of

¹ Each issue assessed in the draft GEIS was designated Category 1 or Category 2 or Category 3 depending on whether the analysis and conclusions bounded all plants (Category 1) or a subset of all plants (Category 2) or whether the analysis could reach no conclusion at this time (Category 3).

need, reliability, cost, resource options, and other non-safety aspects of nuclear power generation;

- d) inadequate provision in the proposed rule for the necessary consultation and cooperation with State and local governments at the time of relicensing;
- e) the high degree of uncertainty in long term forecasts of need and alternatives and inadequate provision for the consideration of significant new information available at the time of a plant-specific license renewal review; and,
- f) the timing of individual license renewal reviews that may take place up to 20 years in advance of license expiration, which is far beyond a State's own planning and decision horizon.

Because of strong concerns, several States recommended that the proposed rule be withdrawn, and all States commenting on need and alternatives stated that these two issues should be made a Category 3, rather than a Category 1, so that they would be reviewed at the time a license renewal application is considered. The States of New York and Minnesota further believe that the NRC decision whether to relicense a nuclear power plant should either not consider need (New York)² or should defer to a State's determination of need (Minnesota).³ (Note that the determination of need for a specific energy facility by a State includes consideration of both need for electric generating capacity and the relative merits of alternative energy sources for meeting that need.)

² "Therefore, in exercising its authority to renew licenses for nuclear power plants, the Nuclear Regulatory Commission must base its decisions on issues of national security, public health and safety, and not on need and economic feasibility which are solely matters of state concern." [Written comments of Eugene J. Gleason, New York State Energy Office, page 14, Docket No. 31]

³ "In spite of the absolute right of states to determine need for generating power based on cost or other considerations of a non-safety nature, the NRC in this rulemaking has determined the need for nuclear power for decades to come." [Written comments of Amy Kvalseth, Minnesota Department of Public Service, page 5, Docket No. 53]

"...and since the NRC apparently agrees it does not have the authority to preempt a state's right to determine need, the NRC should defer to the relevant state agency's determination of need, and refuse license renewal in the absence of need." [Kvalseth, page 7]

"The Minnesota Agencies reiterate, however, that whether the alternatives are considered Category 1, 2, or 3 issues, the issue of alternatives as part of need determination is an issue for the states. States have the right under case law to decide on the basis of cost whether nuclear power generation is needed." [Kvalseth, page 28]

IV. PROPOSED CHANGES IN RESPONSE TO CEQ AND EPA COMMENTS THAT SHOULD PARTIALLY ADDRESS STATE CONCERNS

In a paper to the Commission, SECY-93-032, dated February 9, 1993, the staff reported on an agreement that was reached with the CEQ and the EPA on modifications to certain procedural aspects of the proposed rule which were of particular concern to those agencies. The staff believes that these changes to the proposed rule are also responsive to State concerns on limiting State and public participation and on obstacles to the introduction of significant new information in individual environmental reviews for relicensing. Major features of the changes to the proposed rule include the following:

- Rather than a final environmental assessment (EA) a site-specific supplemental environmental impact statement (EIS) will be published in draft for public comment.
- Conclusions on the overall cumulative impacts will be left entirely to each site-specific supplemental EIS and no conditional conclusion will be in the final rule.
- Procedures will exist whereby public comments will be accepted on any issue regardless of its categorization as Category 1 or 2 or 3. If the staff determines that the comments contain new and significant information, the staff will then determine whether that information substantively changes the results of previous analyses.

These changes will ensure that the license renewal review process will have adequate provisions for identification of new significant site specific environmental effects. The staff also is proposing that the environmental analyses summarized in Part 51 (Appendix B) will be reviewed and, if necessary, updated every 7 years by the NRC.

In addition to these changes to the license renewal provisions of Part 51, it should be noted that certain provisions for public involvement in environmental reviews are already in Part 51. These provisions require that

- 1) an applicant's environmental report include a discussion of the status of compliance with applicable Federal, State and local environmental standards and requirements (§ 51.45 (d) and (e));
- 2) the NRC publish in the Federal Register a notice of intent to prepare an EIS (§ 51.27);
- 3) the NRC conduct scoping for individual supplemental EISs (§ 51.28 and .29) by inviting interested parties, including affected State and local agencies, to participate in identifying significant issues;
- 4) the NRC distribute the draft supplemental EIS for public comment (§ 51.73 and .74); and

- 5) commenters not satisfied with the NRC response to their comments may pursue their concerns through petition to intervene (§ 2.714), through petition to waive the rule (§ 2.758), or through petition to amend the rule (§ 2.802).

V. ADDITIONAL PROPOSED CHANGES TO ADDRESS STATE CONCERNS

In SECY-93-032, the staff also informed the Commission of the concerns expressed by the States. Subsequently, the Commission instructed the staff to develop options for responding to these State concerns. The Commission further instructed that prior to developing and presenting the options to the Commission for approval: "the staff may afford all States the opportunity to comment, but should particularly solicit the views of those States that have expressed concerns on the above issues."

Although the changes to the rule proposed in response to CEQ and EPA comments would allow States and others to more easily present information on need and alternatives to NRC at the time of an application for license renewal, the changes stop short of the States' requests to designate need and alternatives as Category 3 rather than Category 1. However, the staff is continuing to review the Category designations.⁴ The concern that NRC's treatment of need for generating capacity and alternative energy sources conflict with State regulatory authority over these matters also remains to be addressed. The four options presented below directly address this concern to varying degrees. These four options are in addition to the option of continuing with the approach taken in the proposed rule and draft GEIS.

Whatever the option selected, the NRC recognizes the primacy of State regulatory and energy planning agencies in the economic regulation of utilities and in establishing energy-mix policies for their State. When the final rule is published, the NRC will include an explanation in the Federal Register Notice that the rule in no way preempts State jurisdiction over determination of the continued need for nuclear power plant capacity, taking cost and alternatives into consideration.

Option 1: Need and alternatives are factors in the NRC license renewal decision; however, the cost-benefit method used in making the decision would be replaced with a decision method that considers utility costs only under specific conditions.

Under this option need for generating capacity and alternative energy sources would be factors in the NRC license renewal decision but the cost-benefit

⁴ The staff is still formulating responses to public comments and considering revisions to the Chapters on need for generating capacity and alternative energy sources in the GEIS. Until this work is completed, a final decision will not be made as to whether the Category 1 determinations can be sustained for these two issues. The decision will consider both the soundness of the analyses and the potential for significant, new information to arise in individual license renewal reviews.

balancing method for making license renewal decisions that was used in the draft GEIS and proposed rule would be replaced with a license renewal decision method that would focus on environmental considerations and would give weight to overall direct economic costs and benefits only under certain circumstances. Even with this refocusing, the staff anticipates that after responding to public comments and making the necessary revisions to Chapters 8 and 9 the general analytical approach to need and alternatives in the final GEIS will remain essentially the same as in the draft. Whether further analyses will be required in individual license renewal reviews will depend on whether need and alternatives are designated to be Category 2 or Category 3 or they remain Category 1. If need or alternatives are designated as either Category 2 or Category 3 the plant specific analyses of these issues would be tiered to the GEIS.

The renewal review by NRC would be conducted between 5 years and 20 years prior to the expiration of a plant's current operating license, depending on when the licensee submits the application. Notification of receipt of the application would be given to the host State and other affected parties and comments would be solicited as part of the scoping process required of the NRC staff by 10 CFR Part 51. All information provided by the State during the scoping process and as a result of the State's review of the draft supplemental EIS would be considered by the NRC in preparing the supplemental EIS. The NRC, however, would be responsible for the analysis and the conclusions reached about need and alternatives in the supplemental EIS and would be responsible for their defense in NRC hearings.

There are three circumstances that could lead to consideration of direct economic costs and benefits in a supplemental EIS. These are: 1) inadequate need for generating capacity; 2) an environmentally preferable alternative energy source; and 3) significant cumulative adverse environmental impacts from renewal of the license. In Chapter 8 of the GEIS, the need for generating capacity is established by comparing available forecasts of supply and demand for the geographic area in which each nuclear plant is located in order to demonstrate that the electrical generation from the plant could not be made up by planned capacity (i.e., existing capacity plus all planned additions minus the capacity projected to be retired) but would require the construction of new unplanned replacement capacity. The potential for energy saving technologies and practices to reduce demand will be assessed in this analysis. If in an individual license renewal review it is found that there may be surplus generating capacity during the forecast period, the NRC would then consider the contribution of other factors such as economics to the overall desirability of license renewal and continued operation relative to the alternatives. In Chapter 9, the review of alternatives focuses on those technologies and energy sources that by themselves or in combination can supply baseload power equivalent to the nuclear plant under review. The environmental impact of license renewal of the plants and of the alternatives is reviewed and compared. If in an individual license renewal review an alternative is found to be environmentally preferable, the cost of the alternative will be compared to license renewal and if found to be superior, the renewal application may be denied. Even absent an environmentally preferable alternative, direct economic costs and benefits may be considered

if it is found that the relicensability of a plant is brought into question by significant cumulative adverse environmental impacts that cannot be mitigated.

This approach of focusing first on environmental impacts should greatly reduce the instances when direct economic costs and benefit are determinants in the NRC license renewal decision, and thus should reduce the potential for NRC involvement in matters that are the States' regulatory responsibility. Additionally, this approach to the license renewal decision will assure that if direct economic costs and benefits are considered, it will be in the context of significant concerns about environmental impacts or need. Such concerns may be expected to prompt State and public involvement in the review. Consistent with modification of the cost-benefit method, the staff proposes to remove the economic test in the proposed rule (§ 51.53(c)(3)(ii)(J)) which requires that "The replacement of equivalent generating capacity by a coal-fired plant has no demonstrated cost advantage over the individual nuclear power plant license renewal."

Option 2: Need and alternatives are factors in an NRC license renewal decision; however, the NRC would adopt a State's analyses and determinations of need and alternatives after confirming that the analyses meet NRC guidelines.

Under this option need for generating capacity and alternative energy sources would be factors in an NRC license renewal decision; however, the NRC would use a State's analyses and determinations in the license renewal decision after confirming that the analyses meet NRC guidelines. Under this option, the NRC would establish, with the advice of the States, guidelines for analyses acceptable to NRC. The guidelines would cover information requirements, standards for analyses, and decision methods to provide consistency and objectivity. These guidelines would need to accommodate NRC requirements for complying with NEPA and State regulatory requirements and practice. The guidelines would need to cover the treatment of environmental impacts for those States that consider them in their regulatory determinations. Because the guidelines for decision methods would be compatible with State requirements and practice, it is unclear at this time as to what extent the guidelines would follow or deviate from the cost-benefit method used in the draft GEIS or from the decision method proposed in Option 1.

NRC would adopt the State analyses and determinations after confirming that they meet NRC guidelines. Whether the NRC staff would have the primary responsibility for defending the analyses and determinations or the State would have the lead for the analysis and defense of these two issues would have to be determined. State analyses and determinations could be those performed by State agencies or by a utility and concurred in by the appropriate State agencies. Documentation on these analyses and determinations would be submitted as part of an application for license renewal. In these cases, regardless of whether NRC or State officials present such analyses at license renewal hearings, NRC would have the ultimate legal responsibility for the analyses. When State analyses and determinations are not available for a license renewal application, the applicant would be

required to submit its own analyses, and NRC would perform the review the same as in Option 1.

Option 3: "Need for Power" not required to be reviewed at the license renewal stage by the NRC to satisfy NEPA.

Under this option the Commission would treat the "need for power" issue in a manner similar to its treatment at the operating license (OL) stage in that a detailed analysis, including forecasting and economic evaluations, would not be performed. Alternatives would be addressed as discussed in any of the previously discussed options.

The "need" would be identified as not requiring evaluation to support the Commission's NEPA responsibilities at license renewal. The situation at license renewal is substantially different than at the construction permit (CP) phase. At the CP phase the issue is focused on whether or not new power generating capacity should be constructed and ultimately operated. At license renewal, the generating capacity (i.e., the nuclear power plant) already exists and even more importantly is being operated to provide electricity to the supply system grid. In view of this, the NRC/NEPA issue of "need" at license renewal can be viewed as even more straightforward than at the OL stage prior to any plant operation. It is reasonable to assume that retirement of this existing capacity would necessitate some form of replacement (e.g., new power generation facility, power import, conservation).

Additionally, it is unlikely that license renewal will be sought for existing plants which are determined by the licensees and States to be uneconomical or unneeded to supply a demand either during their initial 40-year operating term or during a renewal term. Practical cost considerations, on the part of both licensees and State regulatory authorities, are already having an impact on the continued need for some existing nuclear power plants. At license renewal the most important assessment of need will continue to be carried out by owners and the States. As a result, for license renewal, further justification of "need" should not be required to support NRC responsibility under NEPA. The NRC's NEPA review, under this option, would focus on the assessment of alternatives, including the alternative of energy conservation, and environmental impacts.

This option would stress the Commission's recognition of the State's key role in determining need for power and energy mix within its jurisdiction. While NRC's NEPA role regarding the "need" issue is similar, it is fundamentally different and NRC actions to satisfy NEPA are not intended to preempt or prejudice State decisions on energy strategy. Since this option would not include detailed NRC assessments of power demand, power availability etc. to satisfy NRC NEPA responsibilities for "need," it may be less likely to overlap with evaluations carried out by a State.

Option 4: Neither need for generating capacity nor alternative energy sources will be a factor in the NRC decision whether to grant a renewed operating license.

Under this option NRC would adopt a policy that need for generating capacity and alternative energy sources are not to be factors in an NRC decision whether to grant a renewed operating license. This option reserves to the States the decisions on overall energy mix. As in Options 1 and 2, need and alternatives would still be addressed in the GEIS but only for the purpose of disclosure and to demonstrate that the policy on which this option is based is reasonable. NRC's individual license renewal decision will be made only on the basis of the 10 CFR Part 54 safety review and cumulative environmental impacts and not on need for generating capacity and alternative energy sources. Adoption of this option would require even further modification of the NRC decision method than is discussed in Option 1.

The proposed rationale for removing need and alternatives as a decision factor is that it reflects the relationship between the regulatory authority of NRC and that of the States. The NRC is responsible to ensure that a nuclear power plant can and will be operated safely during the term of the renewed operating license and to be aware of and give consideration to the environmental impacts that are likely to be associated with license renewal and continued operation. The States are responsible for the economic regulation of their utilities and may have statutory responsibility for energy policy planning. Thus, the States provide the proper institutional and legal framework to monitor and regulate utilities on matters of utility economics and energy policy. Under this option, the NRC would adopt a narrower view of its decisional responsibilities for license renewal so as to not draw conclusions that overlap with or unnecessarily restrict the flexibility of State utility regulators and energy policy planners. In adopting this policy NRC would assume that the institutional framework existing at the State level will continue.

VI. FOCUS QUESTIONS

The following focus questions have been developed to (1) assure that the State concerns are addressed, (2) move the dialog toward identifying an option (possibly a new one) to recommend to the Commission, and (3) assure that the States properly focus on those issues NRC believes to be central to successful resolution of State concerns.

Focus Questions:

1. Is the characterization of State concerns in Section III of this paper complete and accurate? What, if anything, should be added or changed?
2. To what extent are the concerns of the States resolved by the changes to the GEIS and rule that are being made in response to CEQ and EPA comments?

3. To what extent are the concerns of the States resolved if the GEIS and the rule are modified to include statements that the NRC's findings with respect to need for generating capacity and alternative energy sources are only intended to assist the NRC in meeting its NEPA obligations and do not preclude the States from making their own determinations with respect to these issues?
4. What problems, if any, do the States have with NRC using for license renewal reviews the decision method explained in Option 1 rather than the traditional cost-benefit balancing?
5. Do the States have legal concerns or see other problems if the NRC accepts a State's conclusions with respect to the issues of need for generating capacity and alternative energy sources as discussed in Option 2? What are the practical considerations in developing and applying guidelines that would be met by the States?
6. Do the States have legal concerns or see other problems if the NRC adopts the position that need for generating capacity need not be analyzed in a license renewal review as discussed in Option 3?
7. Do the States have legal concerns or see other problems if the NRC treats the issues of need for power and alternative energy sources for disclosure purposes only and excludes them from its decision whether to renew an operating license as discussed in Option 4?
8. Are there any other options that should be considered in addition to those presented in Section V?
9. From a State perspective what are the strengths and weaknesses of each option? What problems, if any, would a State have with its responsibilities under each option?
10. What is the State's preferred option?

TABLE 200 - SUMMARY OF STATE STATUTES RELATED TO ELECTRIC POWER PLANT SITING

STATE	DOES THIS STATE HAVE A POWER PLANT SITING LAW?	IS PERMITTING A ONE-STOP PROCESS?	PROCESS INCLUDES DE-TERMINATION OF NEED?	PROCESS INCLUDES ENVIRONMENTAL REVIEW?
ALABAMA PSC	NO	-	NO	NO
ALASKA PUC	NO	YES-Alaska Permit Information Center	NO	YES
ARIZONA CC	YES	YES	NO	YES
ARKANSAS PSC	YES-ACA 23-18-503	NO	YES	YES 4/
CALIFORNIA PUC	YES	YES	YES	YES
COLORADO PUC	NO	NO	YES	NO
CONNECTICUT DPUC	YES	YES	YES	YES
DELAWARE PSC	NO-CPCM required of public utilities only	NO	YES	NO
DC PSC	YES	NO	YES	YES
FLORIDA PSC	YES-CH 403.5 2/	YES	YES	Dept. of Environ. Reg. 2/
GEORGIA PSC	NO	-	NO	PARTIAL
HAWAII PUC	NO	NO	YES	YES
IDAHO PUC	NO	-	YES	NO
ILLINOIS CC	NO-CC has authority to review	-	YES	YES
INDIANA URC	NO	-	YES	YES
IOWA UB	YES-IC CH 476A, 1991	YES	YES	YES
KANSAS SCC	YES-KSA 66-1, 158/177	YES	YES	No-in review-IRP regs.
KENTUCKY PSC	NO	YES	YES	YES
LOUISIANA PSC	NO	-	NO	NO
MAINE PUC	NO	NO	YES	Dept. of Environ. Reg. 2/
MARYLAND PSC	YES-AC MD, ART. 78, §54	NO 3/	YES	YES
MASSACHUSETTS DPU	YES	YES	YES	YES
MICHIGAN PSC	NO	-	NO	NO
MINNESOTA PUC	YES-MS §116C.51-69	YES	YES	YES
MISSISSIPPI PSC	NO-PSC requirements	-	YES	NO
MISSOURI PSC	NO	NO	YES	NO
MONTANA PSC	YES-Industrial Siting Council.	NO	YES	YES
NEBRASKA PSC	NO	-	YES-Power Review Board	PARTIAL
NEVADA PSC	YES-CH 704	NO	YES	PARTIAL
NEW HAMPSHIRE PUC	YES	YES	YES	DEPT ENVIRON. SERVICES
NEW JERSEY BRC	YES	NO	YES	YES
NEW MEXICO PUC	YES	YES	YES	PARTIAL
NEW YORK PSC	NO-Expired end of 1988	NO	YES	YES
NORTH CAROLINA UC	NO	NO	YES	YES
NORTH DAKOTA PSC	YES	NO	NO	YES
OHIO PUC	YES	YES	YES	YES
OKLAHOMA CC	NO	-	NO	NO
OREGON PUC	YES	YES	YES	YES
PENNSYLVANIA PSC	PENDING	-	PENDING	NO
RHODE ISLAND PUC 5/	YES	YES	YES	YES
SOUTH CAROLINA PSC	YES	YES	YES	YES
SOUTH DAKOTA PUC	YES	NO	NO	YES
TENNESSEE PSC	NO	-	NO	NO
TEXAS PUC	NO	-	YES	YES
UTAH PSC	NO	-	NO	NO
VERMONT PSB	YES	YES	YES	YES
VIRGINIA SCC	YES	NO	YES	YES
WASHINGTON UTC	YES	YES	YES	YES
WEST VIRGINIA PSC	NO	NO	YES	NO
WISCONSIN PSC	YES	NO	YES	YES
WYOMING PSC	YES	NO	YES	NO
NOVA SCOTIA URB 1/	NO	-	NO	Dept. of the Environment

See also Section 16, "Certificates, Licenses and Permits".

- 1/ Board has jurisdiction over construction and equipment cost approvals, but all engineering and environmental considerations are under jurisdiction of the Department of the Environment.
- 2/ Siting and Environment Review by Department of Environmental Regulation.
- 3/ Certificate states all conditions, permits or licenses required by other state agencies or found necessary during hearings.
- 4/ A.C.A. 23-18-503. Generating facilities 50 MW or more; transmission lines 100 KV or more and 10 miles or longer, or 170 KV or more and 1 mile or longer.
- 5/ Energy Facility Siting Board is chaired by PUC Chair; Director of the Department of Environmental Management and Chief of the State Planning Agency also serve.
- 6/ Commission did not respond to requests for update information; this data may not be current.

TABLE 201 - CERTIFICATION REQUIRED FOR SITING BULK ELECTRIC POWER SUPPLY FACILITIES

AGENCY	GENERATING EQUIPMENT OR FACILITIES CERTIFICATION REQUIRED FOR:						ELECTRIC TRANSMISSION LINES CERTIFICATION REQUIRED FOR:						CERTIFICATION IS:	
	CON- STRUC- TION	OPER- ATION	MAIN- TEN- ANCE	INVES- TOR OWNED	PUB- LICLY OWNED	CO-OP OWNED	CON- STRUC- TION	OPER- ATION	MAIN- TEN- ANCE	INVES- TOR OWNED	PUB- LICLY OWNED	CO-OP OWNED	CONTIN- GENT ON ANOTHER AGENCY'S APPROVAL	MANDA- TORY
FERC	20/	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	NO	YES
ALABAMA PSC		YES	NO	NO	YES	NO	NO	NO	NO	NO	NO	NO	NO	YES
ALASKA PUC		NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	YES
ARIZONA CC		YES	NO	NO	YES	NO	NO	NO	NO	NO	NO	NO	NO	YES
ARKANSAS PSC	34/	YES	YES	YES	YES	NO	YES	YES	YES	YES	NO	NO	NO	YES
CALIFORNIA PUC		YES 1/	YES 1/	YES 1/	YES 1/	NO	YES 1/	YES 1/	YES	YES	YES	YES	NO	YES
COLORADO PUC		YES	YES	YES	YES	NO	YES	YES	YES	YES	NO	YES	YES 1/	YES
CONNECTICUT DPUC	2/	YES	YES	YES	YES	YES	YES	YES	YES	YES	NO	YES	YES	YES
DELAWARE PSC	32/	YES	NO	NO	YES	NO	YES	YES	YES	YES	YES	YES	NO	2/ YES
DC PSC	36/	YES	YES	NO	YES	NO	YES	YES	YES	YES	NO	NO	NO	YES
FLORIDA PSC		JURISDICTION OF CABINET (FLORIDA ELECTRIC POWER PLANT SITE ACT); PSC PROVIDES INFORMATION												
GEORGIA PSC		YES	NO	NO	YES	NO	NO	NO	NO	NO	NO	NO	NO	YES
HAWAII PUC		YES	NO	NO	YES	N/A	N/A	NO	NO	NO	NO	N/A	N/A	YES
IDAH0 PUC		YES	YES	YES	YES	NO	NO	YES	YES	YES	YES	NO	NO	YES
ILLINOIS CC		YES	YES	YES	YES	NO	NO	YES	YES	YES	YES	NO	NO	YES
INDIANA URC	33/	YES	NO	NO	YES	YES	YES	NO	NO	NO	NO	NO	3/ YES	YES
IOWA UB		YES 26/	YES	NO	YES	YES	YES	YES	YES	YES	YES	YES	NO	YES
KANSAS SCC		YES	NO	NO	YES	YES	YES	YES	YES	YES	YES	YES	YES 27/	YES
KENTUCKY PSC		YES	NO	NO	YES	Y 29/	YES	YES	NO	NO	YES	Y 29/	YES	YES
LOUISIANA PSC		YES	NO	NO	YES	NO	YES	YES	NO	NO	YES	NO	YES 5/	YES
MAINE PUC		YES	NO	NO	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
MARYLAND PSC		YES	23/	23/	YES	YES	YES	YES	23/	23/	YES	YES	YES	YES
MASSACHUSETTS DPUC		SITING UNDER JURISDICTION OF ENERGY FACILITIES SITE EVALUATION COUNCIL												
MICHIGAN PSC		NO 6/	NO	NO	NO	NO	NO	NO 6/	NO	NO	NO	NO	NO	NO
MINNESOTA PUC	7/	YES 7/	Y 30/	NO	YES	YES	YES	YES 7/	Y 30/	Y 30/	YES	YES	YES	YES 7/
MISSISSIPPI PSC		YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
MISSOURI PSC		YES 10/	YES	YES	YES	NO	NO	YES 10/	YES	YES	YES	YES	NO	YES
MONTANA PSC		NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO 8/	YES 9/	NO 10/
NEBRASKA PSC	4/	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	N/A	N/A
NEVADA PSC		YES	YES	YES	YES	NO	NO	YES	YES	YES	N/A	YES	N/A	YES 11/
NEW HAMPSHIRE PUC		YES	NO	NO	YES	YES	YES	YES	NO	NO	YES	NO	NO	YES
NEW JERSEY BRC	13/	YES	NO	NO	YES	NO	YES	NO	NO	NO	NO	NO	YES	YES 12/
NEW MEXICO PUC		YES 14/	YES	NO	YES	YES	YES	YES 14/	YES	NO	YES	YES	YES	YES
NEW YORK PSC		YES 15/	24/	YES	YES	YES	YES	YES 15/	25/	YES	YES	YES	YES	YES 14/
NORTH CAROLINA UC		YES	YES	YES	YES	YES	YES	YES	NO	NO	YES	YES	YES	15/ YES
NORTH DAKOTA PSC		YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
OHIO PUC	35/	YES	YES	NO	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
OKLAHOMA CC	32/	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	YES
OREGON PUC	16/	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	NO
PENNSYLVANIA PUC		NO	NO	NO	NO	NO	NO	YES	NO	NO	YES	NO	NO	YES 17/
RHODE ISLAND PUC	18/	YES	YES	NO	YES	YES	YES	YES	NO	NO	YES	YES	YES	YES
SOUTH CAROLINA PSC		YES	YES	YES	YES	NO	YES	YES	YES	YES	YES	NO	YES	NO
SOUTH DAKOTA PUC		YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
TENNESSEE PSC		NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	YES
TEXAS PUC		YES	YES	YES	YES	NO	YES	YES	YES	NO	NO	NO	NO	NO
UTAH PSC		YES	NO	NO	YES	NO	YES	YES	NO	NO	YES	NO	YES	NO
VERMONT PSB		YES	YES	YES	YES	YES	YES	YES	NO	NO	YES	NO	YES	YES
VIRGINIA SCC		YES	YES	NO	YES	NO	YES	YES	YES	YES	YES	YES	YES	NO
WASHINGTON UTC		SITING UNDER JURISDICTION OF ALBERTA ENERGY RESOURCES CONSERVATION BOARD												
WEST VIRGINIA PSC		YES	NO 31/	NO 31/	YES	YES	YES	YES	YES	NO	NO	YES	YES	NO
WISCONSIN PSC		YES	NO 31/	NO 31/	YES	YES	Y 28/	YES	YES	NO 31/	NO	YES	YES	NO
WYOMING PSC		YES 19/	YES	YES	YES	YES	YES	YES 19/	YES	YES	YES	YES	Y 28/	YES
PUERTO RICO PSC	37/	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
VIRGIN ISLANDS PSC		NO	NO	NO				NO	NO					YES
ALBERTA PUB		SITING UNDER JURISDICTION OF ALBERTA ENERGY RESOURCES CONSERVATION BOARD												
NOVA SCOTIA URB	21/													

** FOR ADDITIONAL DETAIL ABOUT CERTIFICATION REQUIREMENTS, SEE SECTION 16 OF THIS BOOK, ENTITLED "CERTIFICATES, LICENSES AND PERMITS".

SECTION 36

POWER PLANT SITING AND CONSTRUCTION

This section details statutes and rules governing the siting and construction oversight of bulk power plants.

Table 200 briefly summarizes whether each state has a power plant siting law; whether permitting is a one-stop process; whether the process includes determination of need; and whether environmental review is part of the process.

Table 201 details whether certificate is required for constructing, operating and maintaining power plants or transmission lines; whether requirement is for privately-owned, publicly-owned or cooperatively owned utilities.

Table 202 details each agency's authority to set certification standards for siting facilities, including whether the process includes environmental review and determination of need, etc.

Table 203 details each agency's authority to set public participation standards for the siting process.

Table 204 summarizes long-range electric utility forecasting, including whether each agency does its own forecasting or uses its utilities' forecasts.

Table 205 details whether and on what projects each agency conducts on-site monitoring of construction of large generating plants.

TABLE 200 - SUMMARY OF STATE STATUTES RELATED TO ELECTRIC POWER PLANT SITING

STATE	DOES THIS STATE HAVE A POWER PLANT SITING LAW?	IS PERMITTING A ONE-STOP PROCESS?	PROCESS INCLUDES DETERMINATION OF NEED?	PROCESS INCLUDES ENVIRONMENTAL REVIEW?
ALABAMA PSC	NO	-	NO	NO
ALASKA PUC	NO	YES-Alaska Permit Information Center	NO	YES
ARIZONA CC	YES	YES	NO	YES
ARKANSAS PSC	YES-ACA 23-18-503	NO	YES	YES 4/
CALIFORNIA PUC	YES	YES	YES	YES
COLORADO PUC	NO	NO	YES	NO
CONNECTICUT DPUC	YES	YES	YES	YES
DELAWARE PSC	NO-CPCM required of public utilities only	NO	YES	NO
DC PSC	YES	NO	YES	YES
FLORIDA PSC	YES-CH 403.5 2/	YES	YES	Dept. of Environ. Reg. 2/
GEORGIA PSC	NO	-	NO	PARTIAL
HAWAII PUC	NO	NO	YES	YES
IDAHO PUC	NO	-	YES	NO
ILLINOIS CC	NO-CC has authority to review	-	YES	YES
INDIANA URC	NO	-	YES	YES
IOWA UB	YES-IC CH 476A, 1991	YES	YES	YES
KANSAS SCC	YES-KSA 66-1, 158/177	YES	YES	No-in review-IRP regs.
KENTUCKY PSC	NO	YES	YES	YES
LOUISIANA PSC	NO	-	NO	NO
MAINE PUC	NO	NO	YES	Dept. of Environ. Reg. 2/
MARYLAND PSC	YES-AC MD, ART. 78, §54	NO 3/	YES	YES
MASSACHUSETTS DPUC	YES	YES	YES	YES
MICHIGAN PSC	NO	-	NO	NO
MINNESOTA PUC	YES-MS §116C.51-69	YES	YES	YES
MISSISSIPPI PSC	NO-PSC requirements	-	YES	NO
MISSOURI PSC	NO	NO	YES	NO
MONTANA PSC	YES-Industrial Siting Council.	NO	YES	YES
NEBRASKA PSC	NO	-	YES-Power Review Board	PARTIAL
NEVADA PSC	YES-CH 704	NO	YES	PARTIAL
NEW HAMPSHIRE PUC	YES	YES	YES	DEPT ENVIRON. SERVICES
NEW JERSEY BRC	YES	NO	YES	YES
NEW MEXICO PUC	YES	YES	YES	PARTIAL
NEW YORK PSC	NO-Expired end of 1988	NO	YES	YES
NORTH CAROLINA UC	NO	NO	YES	YES
NORTH DAKOTA PSC	YES	NO	NO	YES
OHIO PUC	YES	YES	YES	YES
OKLAHOMA CC	NO	-	NO	NO
OREGON PUC	YES	YES	YES	YES
PENNSYLVANIA PSC	PENDING	-	PENDING	NO
RHODE ISLAND PUC 5/	YES	YES	YES	YES
SOUTH CAROLINA PSC	YES	YES	YES	YES
SOUTH DAKOTA PUC	YES	NO	NO	YES
TENNESSEE PSC	NO	-	NO	NO
TEXAS PUC	NO	-	YES	YES
UTAH PSC	NO	-	NO	NO
VERMONT PSC	YES	YES	YES	YES
VIRGINIA SCC	YES	NO	YES	YES
WASHINGTON UTC	YES	YES	YES	YES
WEST VIRGINIA PSC	NO	NO	YES	NO
WISCONSIN PSC	YES	NO	YES	YES
WYOMING PSC	YES	NO	YES	NO
NOVA SCOTIA URB 1/	NO	-	NO	Dept. of the Environment

See also Section 16, "Certificates, Licenses and Permits".

- 1/ Board has jurisdiction over construction and equipment cost approvals, but all engineering and environmental considerations are under jurisdiction of the Department of the Environment.
- 2/ Siting and Environment Review by Department of Environmental Regulation.
- 3/ Certificate states all conditions, permits or licenses required by other state agencies or found necessary during hearings.
- 4/ A.C.A. 23-18-503. Generating facilities 50 MW or more; transmission lines 100 KV or more and 10 miles or longer, or 170 KV or more and 1 mile or longer.
- 5/ Energy Facility Siting Board is chaired by PUC Chair; Director of the Department of Environmental Management and Chief of the State Planning Agency also serve.
- 6/ Commission did not respond to requests for update information; this data may not be current.

TABLE 201 - CERTIFICATION REQUIRED FOR SITING BULK ELECTRIC POWER SUPPLY FACILITIES

AGENCY	GENERATING EQUIPMENT OR FACILITIES CERTIFICATION REQUIRED FOR:						ELECTRIC TRANSMISSION LINES CERTIFICATION REQUIRED FOR:						CERTIFICATION IS:	
	CON- STRUC- TION	OPER- ATION	MAIN- TEN- ANCE	INVES- TOR OWNED	PUB- LICLY OWNED	CO-OP OWNED	CON- STRUC- TION	OPER- ATION	MAIN- TEN- ANCE	INVES- TOR OWNED	PUB- LICLY OWNED	CO-OP OWNED	CONTIN- GENT ON ANOTHER AGENCY'S APPROVAL	MANDA- TORY
FERC	20/	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	NO	YES
ALABAMA PSC		YES	NO	NO	YES	NO	NO	NO	NO	NO	NO	NO	NO	YES
ALASKA PUC		NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	YES
ARIZONA CC		YES	NO	NO	YES	NO	NO	NO	NO	NO	NO	NO	NO	YES
ARKANSAS PSC		YES	YES	YES	YES	NO	YES	YES	YES	NO	NO	NO	NO	YES
CALIFORNIA PUC	34/	YES 1/	YES 1/	YES 1/	YES 1/	NO	YES 1/	YES 1/	YES	YES	YES	NO	YES	YES
COLORADO PUC		YES	YES	YES	YES	NO	YES	YES	YES	YES	NO	YES	YES 1/	YES
CONNECTICUT DPUC	2/	YES	YES	YES	YES	NO	YES	YES	YES	YES	NO	YES	YES	YES
DELAWARE PSC	32/	YES	NO	NO	YES	NO	NO	NO	NO	NO	NO	NO	NO	YES
DC PSC	36/	YES	YES	NO	YES	NO	YES	NO	NO	NO	NO	NO	NO	YES
FLORIDA PSC		JURISDICTION OF CABINET (FLORIDA ELECTRIC POWER PLANT SITE ACT); PSC PROVIDES INFORMATION												
GEORGIA PSC		YES	NO	NO	YES	NO	NO	NO	NO	NO	NO	NO	NO	YES
HAWAII PUC		YES	NO	NO	YES	N/A	N/A	YES	NO	NO	YES	N/A	N/A	YES
IDAHO PUC		YES	YES	YES	YES	NO	NO	YES	YES	YES	YES	NO	NO	YES
ILLINOIS CC		YES	YES	YES	YES	NO	3/	YES	YES	YES	YES	NO	3/	YES
INDIANA URC	33/	YES	NO	NO	YES	YES	YES	NO	NO	NO	NO	NO	NO	YES
IOWA UB		YES 26/	YES	NO	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
KANSAS SCC		YES	NO	NO	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
KENTUCKY PSC		YES	NO	NO	YES	NO	YES	YES	NO	NO	YES	YES	YES	YES
LOUISIANA PSC		YES	NO	NO	YES	NO	YES	YES	NO	NO	YES	NO	YES	YES
MAINE PSC		YES	NO	NO	YES	YES	YES	YES	NO	NO	YES	YES	YES	YES
MARYLAND PSC		YES	23/	23/	YES	YES	YES	YES	23/	23/	YES	YES	YES	YES
MASSACHUSETTS DPUC		SITING UNDER JURISDICTION OF ENERGY FACILITIES SITING COUNCIL												
MICHIGAN PSC		NO 6/	NO	NO	NO	NO	NO	NO 6/	NO	NO	NO	NO	NO	YES
MINNESOTA PUC	7/	YES 7/	YES 30/	YES	YES	YES	YES	YES 7/	YES 30/	YES 30/	YES	YES	YES	YES
MISSISSIPPI PSC		YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
MISSOURI PSC		YES 10/	YES	YES	YES	NO	NO	YES 10/	YES	YES	YES	NO	NO 8/	YES 9/
MONTANA PSC		NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO 10/
NEBRASKA PSC	4/	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	N/A
NEVADA PSC		YES	YES	YES	YES	NO	NO	YES	YES	N/A	YES	N/A	YES	YES 11/
NEW HAMPSHIRE PUC		YES	NO	NO	YES	YES	YES	YES	NO	NO	YES	YES	YES	YES
NEW JERSEY BRC	15/	YES	NO	NO	YES	NO	YES	NO	NO	NO	NO	NO	NO	YES
NEW MEXICO PUC		YES 14/	YES	NO	YES	YES	YES	YES 14/	YES	NO	NO	NO	NO	YES
NEW YORK PSC		YES 13/	24/	YES	YES	YES	YES	YES 13/	25/	YES	YES	YES	YES	YES 14/
NORTH CAROLINA UC		YES	YES	YES	YES	YES	YES	YES	NO	NO	YES	YES	YES	YES
NORTH DAKOTA PSC		YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
OHIO PUC	35/	YES	YES	NO	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
OKLAHOMA CC	32/	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	YES
OREGON PUC	16/	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	NO
PENNSYLVANIA PUC		NO	NO	NO	NO	NO	NO	YES	YES	YES	YES	YES	YES	YES 17/
RHODE ISLAND PUC	18/	YES	YES	NO	YES	YES	YES	NO	NO	YES	NO	NO	NO	NO
SOUTH CAROLINA PSC		YES	YES	YES	YES	NO	YES	YES	YES	YES	NO	YES	NO	YES
SOUTH DAKOTA PUC		YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
TENNESSEE PSC		NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	YES
TEXAS PUC		YES	YES	YES	YES	NO	YES	YES	YES	NO	NO	NO	NO	NO
UTAH PSC		YES	NO	NO	YES	NO	YES	YES	YES	YES	NO	YES	NO	YES
VERMONT PSC		YES	YES	YES	YES	YES	YES	NO	NO	YES	NO	YES	YES	YES
VIRGINIA SCC		YES	YES	NO	YES	NO	YES	YES	YES	YES	YES	YES	NO	YES
WASHINGTON UTE		SITING UNDER JURISDICTION OF ENERGY FACILITIES SITE EVALUATION COUNCIL												
WEST VIRGINIA PSC		YES	NO 31/	NO 31/	YES	YES	YES	YES	NO	NO	YES	YES	NO	YES
WISCONSIN PSC		YES	NO 31/	NO 31/	YES	YES	YES	YES	NO 31/	NO 31/	YES	YES	YES	YES
WYOMING PSC		YES 19/	YES	YES	YES	YES	YES	YES 19/	YES	YES	YES	YES	YES	YES
PUERTO RICO PSC	37/													YES
VIRGIN ISLANDS PSC		NO	NO	NO				NO	NO	NO				YES
ALBERTA PUB		SITING UNDER JURISDICTION OF ALBERTA ENERGY RESOURCES CONSERVATION BOARD												
NOVA SCOTIA URB	21/													YES

** FOR ADDITIONAL DETAIL ABOUT CERTIFICATION REQUIREMENTS, SEE SECTION 16 OF THIS BOOK, ENTITLED "CERTIFICATES, LICENSES AND PERMITS".

FOOTNOTES - TABLE 201 - CERTIFICATION REQUIRED FOR SITING
BULK ELECTRIC POWER SUPPLY FACILITIES

- 1/ California Energy Commission also has certification authority over siting of thermal power plants and associated transmission lines. For such facilities, prior authorization by Energy Commission is required.
- 2/ Certification authority is the Connecticut Siting Council which has authority to monitor construction, operation and maintenance of generating or transmission.
- 3/ Co-ops must get an order from Commission for the right to exercise eminent domain.
- 4/ All electric utilities are publicly owned and operated; not under PSC jurisdiction.
- 5/ Contingent on prior recommendation of State Department of Natural Resources on environmental compatibility.
- 6/ Commission has certification authority only if a utility proposes to start operating in a municipality already served by another utility or agency.
- 7/ Minnesota Environmental Quality Board (MEQB) certifies the site of large (50 Mw or more) generating plants and issues construction permits for high voltage (200 Kv or more) transmission lines (MN Stat, Sec 116C.51-69). Various state agencies issue water appropriation, other permits. Siting and routing criteria are in MN Reg MEQ.C71-75. Before siting or routing process can be completed, PUC must issue Certificate of Need for generating plants of 80 Mw or more.
- 8/ Commission regulates only safety of co-op owned transmission lines.
- 9/ Need approval of NRC, when applicable, and State Air and Water Commissions.
- 10/ Investor-owned systems do not need certification if proposed construction is within their certificated service areas. No separate operating or maintenance certificate is necessary. Operation and maintenance expenses are reviewed for reasonableness. Standards for issuing certificates are contained in statutes and judicial decisions.
- 11/ Mandatory for publicly owned systems.
- 12/ Prior approval required of State Site Evaluation Committee.
- 13/ Utilities are required to acquire a certificate of need prior to commencing construction of any generating facilities over 100 MW. This function was recently transferred to the BRC from the former Department of Energy which was merged with the BRC in August 1989.
- 14/ Commission approval required for generating stations of 300 Mw or more or transmission lines of 230 Kv or more contingent on compliance with environmental standards. Prior certification required for construction or operation of any plant or system.
- 15/ Generating equipment of 50 Mw or more; transmission lines of 125 Kv or more for a distance of at least one mile and 100-124 Kv for a distance of more than 10 miles. New York PSC is solely responsible for certifying transmission lines. Siting Board certifies generating facilities (part of Dept. of Public Service). PSC staff participates fully in both certification proceedings.
- 16/ Certificates issued by Oregon Energy Facility Siting Council.
- 17/ By Governor.
- 18/ Siting issues are under the jurisdiction of the Energy Facility Siting Board which is chaired by the PUC Chair; no staff, no budget. Applicants are required to reimburse agencies involved for expenses.
- 19/ Wyoming PSC has authority over transmission lines only. Authority over plant siting transferred to Industrial Siting Council. Air and water quality administered by Department of Environmental Quality; also water quality by Health Department/US EPA, and water use by the State engineer. Commission evaluates and rules on all matters related to certification of transmission lines.
- 20/ Commission has authority to issue licenses and exemptions from licensing under Part I of Federal Power Act for non-federal hydro projects constructed by private and municipal entities. Commission has no jurisdiction under Part II of the FPA (no licensing or certification jurisdiction). However, agency has jurisdiction over all hydroelectric projects which occupy navigable waters of the US, affect government lands, use water or water power from a government dam, or affect the interests of interstate or foreign commerce and have post-1935 construction. Transmission lines licensed by Commission must be primary lines as defined in §3(11) of the FPA, i.e., a line connecting the hydroelectric plant with a distribution system or interconnected transmission system.
- 21/ Board has jurisdiction over construction and equipment costs, but all engineering and environmental considerations are under jurisdiction of Department of the Environment.
- 22/ Certificate required for transmission lines operated at voltage levels of 150 Kv and higher.
- 23/ May order continuing requirements; also Certificate states all conditions, permits or licenses required by other State agencies or found necessary during hearing process.
- 24/ Certificate issued by Siting Board establishes environmental limits which new steam electric generating facility must meet, thus affecting both operational and maintenance requirements.
- 25/ Certificate issued by PSC for transmission facility requires long-term plan for right-of-way management be filed with Commission for approval.
- 26/ New additional plant or combination of plants at single site exceeding 25 MW.
- 27/ Electric generating facilities only.
- 28/ Generating plants with capacity of 12 MW or greater and transmission lines rated 100 Kv or greater.
- 29/ Same as for private utilities and cooperatives for facilities outside of three miles from corporate limits of municipalities; Commission has no jurisdiction within the 3-mile limits.
- 30/ Authority vested in State agency other than PUC.
- 31/ Certificate of public convenience and necessity, issued prior to construction, may include conditions affecting operating and maintenance.
- 32/ No specific statutory requirements for certifying generating or transmission facilities other than for public utilities outside present certificated areas.
- 33/ Indiana Code 8-1-8.5
- 34/ A.C.A. 23-18-503. Generating facilities 50 MW or more; transmission lines 100 KV or more and 10 miles or longer, or 170 KV or more and 1 mile or longer.
- 35/ Power Siting Board staff are part of PUCO.
- 36/ In Order No. 9690, 4/12/91, agency ruled that a cogeneration facility that qualifies under PURPA must pass the same public convenience and necessity review required for utility-owned electric plants.
- 37/ Commission did not respond to requests for update information; this data may not be current.

TABLE 202 - AGENCY AUTHORITY TO SET CERTIFICATION STANDARDS FOR SITING BULK ELECTRIC POWER SUPPLY FACILITIES

** AGENCY	DESCRIPTION AND/OR SOURCE OF AUTHORITY CR=COMMISSION RULE/ORDER/DECISION S=STATE STATUTE J=JUDICIAL/COURT DECISIONS	CERTIFICATION STANDARDS INCLUDE PROCEDURES TO ASSESS:						
		IMPACT ON THE ENVIRONMENT	ENVIRONMENTAL IMPACT OF ALTERNATIVE SITES	EVALUATE NEED	FORM REGIONAL CERTIFYING BODIES	CONSIDER MULTI-STATE IMPACTS	CERTIFICATE GRANTS RIGHT OF EMINENT DOMAIN?	
FERC	S (FPA, Part 1)-hydro	23/	YES	YES	YES	NO	YES	YES
ALABAMA PSC			NO	NO	YES	NO	NO	NO
ALASKA PUC			NO	NO	NO	NO	NO	NO
ARIZONA CC			YES	YES	NO	NO	NO	NO
ARKANSAS PSC	CR, J, S (AS 23-18-511)		YES	YES	YES	NO	NO	YES
CALIFORNIA PUC	GO 131-B, CR 17.1		YES	YES	YES	NO	YES	YES
COLORADO PUC			YES	YES	YES	NO	NO	YES
CONNECTICUT DPUC	Siting Council		YES	YES	YES	NO	NO	NO
DELAWARE PSC	CR, S (26 DE C §201, 215 & 302)	1/	YES 1/	YES 1/	YES 1/	NO	NO	NO
DC PSC	S, CR	2/	NO	NO	YES	NO	NO	NO
FLORIDA PSC	CR 403.5 CERTIFICATION UNDER JURISDICTION OF CABINET (ELECTRIC POWER PLANT SITE ACT)	29/	YES	YES	YES	NO	NO	NO
GEORGIA PSC	S, CR				YES			
HAWAII PUC	CR							
IDAHO PUC	IC §61-52B							
ILLINOIS CC	J, S (IRS 1985 Ch 111 2/3, Par. 8-406; 83 IL Adm Code 200 & 305)	3/	YES	YES	YES	YES	NO	NO
INDIANA URC					YES			
IOWA UB								
Transmission lines	IC Ch 47B							
Gen'l facilities	CR, J, S (IC Ch 476A, 1991)	5/	NO	NO	YES	NO	NO	NO 6/
KANSAS SCC	KSA 66-1, 158/177		YES	YES	YES	NO	NO	YES
KENTUCKY PSC	CR, S, J		NO	NO	YES	NO	NO	NO
LOUISIANA PSC	Must be justified in terms of need		YES	NO	YES	NO	NO	YES
MAINE PUC	Must be justified in terms of need		NO	NO	YES	NO	NO	NO
MARYLAND PSC	CR, S (AC MD, Art 78, §54 A & B)		NO	NO	YES	NO	NO	YES 7/
MASSACHUSETTS DPJ	SITING UNDER JURISDICTION OF ENERGY FACILITY SITING COUNCIL		YES 7/	YES 8/	YES 8/	NO	NO	YES
MICHIGAN PSC								
MINNESOTA PUC	NU Reg REG. C71-75	9/	YES	YES	YES 9/	NO	YES	YES
MISSISSIPPI PSC	CR	10/	YES	NO	YES	NO	NO	YES
MISSOURI PSC	S, J	11/	NO	NO	YES	NO	NO	YES
MONTANA PSC	SITING UNDER JURISDICTION OF INDUSTRIAL SITING COUNCIL	17/						
NEBRASKA	S - Power Review Board, not PSC	4/	NO	NO	NO	NO	NO	YES
NEVADA PSC	CR 706, CR, SB 161		YES	YES	YES	NO	NO	YES
NEW HAMPSHIRE PUC			YES	YES	YES	NO	NO	YES
NEW JERSEY BRC		12/	YES	YES	YES	NO	NO	YES
NEW MEXICO PUC		13/	YES	YES	YES			
NEW YORK PSC		14/	YES	YES	YES	NO	NO	
NORTH CAROLINA UC	CR MGS 62-110.1	15/	YES	YES	YES	NO	YES	NO 24/
NORTH DAKOTA PSC		16/	YES	YES	YES	NO	NO	YES
OHIO PUC	Power Siting Board, Div. of PUC	26/	YES	YES	YES	NO	NO	YES
OKLAHOMA CC	NO		YES	YES	YES	NO 26/	NO	NO
OREGON PUC		17/	NO	NO	NO	NO	NO	NO 28/
PENNSYLVANIA PUC			YES	YES	YES	NO	YES	varies
RHODE ISLAND PUC	Energy Facilities Siting Board	18/	YES	YES	YES	NO	NO	YES
SOUTH CAROLINA PSC	S 58-1801 - 1832		YES	YES	YES	NO	NO	NO
SOUTH DAKOTA PUC	SDCL 49-41B		YES	YES	YES	NO	NO	NO
TENNESSEE PSC	S, J	19/	YES	YES	NO	NO	NO	NO
TEXAS PUC	VTCB 1466c & TAC Title 16, Ch 23	20/	NO	NO	NO	NO	NO	NO
UTAH PSC	CR		YES	YES	YES	NO	NO	NO
VERMONT PSC	30 VSA §24B	10/	YES	NO	YES	NO	NO	YES
VIRGINIA SCC	CR, S, J	21/	YES	YES	YES	NO	NO	YES
WASHINGTON UTC	Energy Facilities Siting Council	17/	YES	YES	YES	NO	NO	YES
WEST VIRGINIA PSC	CR, S, J	21/	YES	YES	YES	NO	NO	NO 27/
WISCONSIN PSC	CR, S, J	21/	YES	YES	YES	NO	YES	YES
WYOMING PSC		22/	YES 22/	YES 22/	YES	NO	YES	YES
ALBERTA PUB	SITING UNDER JURISDICTION OF ALBERTA ENERGY RESOURCES CONSERVATION BOARD							
NOVA SCOTIA URB	SITING UNDER JURISDICTION OF NOVA SCOTIA DEPT. OF ENVIRONMENT	25/						

** FOR ADDITIONAL DETAIL ABOUT CERTIFICATION REQUIREMENTS, SEE SECTION 16 OF THIS BOOK, ENTITLED "CERTIFICATES, LICENSES AND PERMITS".

FOOTNOTES - TABLE 202 - AGENCY AUTHORITY TO SET CERTIFICATION STANDARDS FOR
SITING BULK ELECTRIC POWER SUPPLY FACILITIES

- 1/ CT Siting Council determines environmental compatibility, public need and ultimate location of facility. DPUC has authority over method and manner of construction after certification by Siting Council.
- 2/ DE PSC Docket #29, Order 1536, Delmarva P&L was ordered to seek PSC approval for future construction contracts by demonstrating need and ability of customers to pay costs of construction. Authority in 26 DE C § 201, 215 and 302.
- 3/ ID Code § 61-528: financial ability, good faith of applicant, need for additional service, public convenience and necessity. Also, PUC would consider environmental questions under residual jurisdiction.
- 4/ All electric utilities are publicly owned and operated; Power Review Board has siting jurisdiction, not PSC.
- 5/ Transmission lines, Iowa Code Ch 478: Franchise required for lines operating at voltage in excess of 34 Kv. Also, Electrical Safety Code.
- 6/ Request for eminent domain in addition to that for certification; both are heard at the same hearing.
- 7/ Applies to transmission lines of 5000 volts or more.
- 8/ Commission regulations propound extensive information requirements and demonstrations of environmental impact and need.
- 9/ Environmental Quality Board (MEQB) certifies size of large (50,000 Kw or more) generating plants and issues construction permits for high voltage (200 Kv or more) transmission lines (MN Stat, § 116C.51-69). Various state agencies issue water appropriation, NPDES, etc. permits. Siting/ routing criteria - MN Reg MEQ.C71-75. Before siting or routing process can be completed, PUC must issue Certificate of Need for generating plants of 80,000 Kw or more.
- 10/ PSC grants certificates (CPCN) for bulk power plant facilities and transmission lines; holds public hearings on need, feasibility, environmental impact.
- 11/ Investor-owned systems do not need certificate if proposed construction is within certificated service areas.
- 12/ PUC must find that proposed facility is needed and will not adversely affect system reliability and economic factors. New Hampshire Site Evaluation Committee holds joint hearings with PUC to determine that proposed project: (1) will not unduly interfere with regional development giving due consideration to local views; and (2) will not have adverse effect on aesthetics, historic sites, environment, public health and safety. These findings are sent to PUC which makes its own findings then issues its decision. Certificate of Site and Facility, which is final, subject to judicial review.
- 13/ Utilities are required to acquire a certificate of need prior to commencing construction of any generating facilities over 100 MW. This function was recently transferred to the BPU from the former Department of Energy which was merged with the BPU in August 1989.
- 14/ Commission approval required for generating stations of 300,000 Kw or more or transmission lines of 230 Kv or more contingent on compliance with environmental standards. Prior certification required for construction or operation of any plant or system.
- 15/ Decision must be based on record. For construction, applications must find: (1) need for facility; (2) probable environmental impact; (3) minimum adverse environmental impact; (4) that facility is consistent with long-range planning objectives. For operation and maintenance, NYPSC has issued orders on required maintenance to assure reliable and adequate capacity.
- 16/ NCUC Rule NCGS 62-110.1 require certificate of convenience and necessity. NCUC rules require investigation into: (1) need for new facility; (2) economic justification for type of facility; (3) site specific environmental impact; (4) alternative facilities and sites; (5) safety.
- 17/ Separate Energy Facility Siting Council.
- 18/ Siting issues are the jurisdiction of the Energy Facility Siting Board, chaired by PUC Chair and served by Director of Department of Environmental Management and Chief of State Planning Agency.
- 19/ Property dedicated to public use, as set out in statutes and judicial decisions.
- 20/ General criteria - VTCS 1446c & TAC Title 16, Ch 23: nondiscrimination, adequacy of existing service, need for new service, effect of grant on recipients/other like utilities, factors such as community values, recreation/park areas, historical/aesthetic values, environmental integrity, cost.
- 21/ Must demonstrate public convenience and necessity and minimize adverse environmental impact.
- 22/ Wyoming PSC has authority over transmission lines only. Authority over plant siting with Industrial Siting Council. Air/water quality administered by Dept. of Environmental Quality; also water quality by Health Department/US EPA, and water use by the State engineer. Commission evaluates and rules on all matters related to certification of transmission lines.
- 23/ Commission has authority to issue licenses and exemptions from licensing under Part I of Federal Power Act for non-federal hydro projects constructed by private and municipal entities. Commission has no jurisdiction under Part II of the FPA (no licensing or certification jurisdiction). However, agency has jurisdiction over all hydroelectric projects which occupy navigable waters of the US, affect government lands, use water or water power from a government dam, or affect the interests of interstate or foreign commerce and have post-1935 construction. Transmission lines licensed by Commission must be primary lines as defined in §3(11) of the FPA, i.e., a line connecting the hydroelectric plant with a distribution system or interconnected transmission system.
- 24/ Certificate issued under Art VII or VIII of Public Service Law cannot grant right of eminent domain to applicant. Applicant already possessing this right must obtain certificate before exercising it.
- 25/ Board has jurisdiction over construction/equipment cost approval, engineering/environmental considerations under Department of the Environment, with hearings held by the Environmental Control Council.
- 26/ Power Siting Board staff are part of PUCO; PSE statute permits joint hearings with other states.
- 27/ Public utilities have the right of eminent domain without certification.
- 28/ Utilities have rights of eminent domain through court system. CC does not take jurisdiction over siting; no specific siting act.
- 29/ In Order No. 9690, 4/12/91, agency ruled that a cogeneration facility that qualifies under PURPA must pass the same public convenience and necessity review required for utility-owned electric plants.
- 30/ Commission did not respond to requests for update information; this data may not be current.

TABLE 203 - AGENCY AUTHORITY TO SET PUBLIC PARTICIPATION STANDARDS FOR SITING BULK ELECTRIC POWER SUPPLY FACILITIES

AGENCY	CERTIFICATION PROCEDURES INCLUDE STANDARDS TO ENSURE PUBLIC PARTICIPATION THROUGH:									
	PUBLIC NOTICE OF CERTIFICATION PROCEEDINGS	PUBLIC HEARING		PREHEARING MEETING WITH APPLICANT AND INTERESTED PARTIES		RIGHT OF INTERVENTION	RIGHT OF COURT APPEAL	NOTICE TO LOCAL/ OTHER PUBLIC OFFICIALS	NOTICE TO OTHER INTERESTED PARTIES	OTHER SAFEGUARDS
		OPTIONAL	MANDATORY	OPTIONAL	MANDATORY					
FERC	YES	NO	YES	YES	NO	YES	YES	YES	YES	YES 10/
ALABAMA PSC	YES	YES	NO	YES	NO	NO	NO			NO
ALASKA PUC	NO	NO	NO		NO	NO	NO			NO
ARIZONA CC	YES	NO	YES			YES	YES			NO
ARKANSAS PSC	YES	NO	YES		NO	YES	YES			NO
CALIFORNIA PUC	YES	YES	NO		NO	YES	YES			YES
COLORADO PUC	YES	YES	NO		NO	YES	YES			
CONNECTICUT DPUC 1/	YES 1/	NO 1/	YES 1/	YES	NO	YES 1/	YES 1/	YES 13/	YES	YES 13/
DELAWARE PSC	YES	YES	NO		NO	NO	YES			
DC PSC	YES	YES	NO		NO	YES	YES			NO
FLORIDA PSC	SITING UNDER JURISDICTION OF CABINET (ELECTRIC POWER PLANT SITE ACT)									
GEORGIA PSC	YES	NO	YES	YES	NO	YES	YES	YES	YES	
HAWAII PUC	NO	YES	NO	YES	NO	YES	YES			
IDAHO PUC	YES	YES	NO		NO	YES	YES		YES	
ILLINOIS CC	YES	NO	YES		YES	NO	YES		YES	YES 3/
INDIANA URC	YES	NO	YES			YES				
IOWA UB										
Transmission lines	YES	YES		4/	YES	YES	YES		YES	5/
Gen'l facilities	YES	NO	YES		YES	YES	YES			
KANSAS SCC	YES	NO	YES		NO	YES	YES			
KENTUCKY PSC	YES	YES	NO		NO	YES	YES			
LOUISIANA PSC	YES	YES	YES		NO	YES	YES			
MAINE PUC	YES	YES	NO		NO	YES	YES			
MARYLAND PSC	YES	YES	YES		NO	YES	YES	YES	YES	YES 6/
MASSACHUSETTS DPV	SITING UNDER JURISDICTION OF ENERGY FACILITY SITING COUNCIL									
MICHIGAN PSC	YES		YES		YES	YES				
MINNESOTA PUC	YES	NO	YES		NO	YES	YES			
MISSISSIPPI PSC	YES	YES	YES		NO	YES	YES			
MISSOURI PSC	YES	YES	NO		NO	YES	YES			
MONTANA PSC 9/	SITING UNDER JURISDICTION OF INDUSTRIAL SITING COUNCIL									
NEBRASKA 2/	YES	YES	NO		YES	YES	YES			
NEVADA PSC	YES	YES	NO		NO	YES	YES			
NEW HAMPSHIRE PUC	YES	NO	YES		NO	YES	YES	YES	YES	
NEW JERSEY BRC	YES	YES	YES			YES	YES			YES
NEW MEXICO PUC	YES	YES	YES		YES	YES	YES			YES 7/
NEW YORK PSC	YES	YES	YES		YES	YES	YES			
NORTH CAROLINA UC	YES	YES	NO	6/	NO	YES	YES			YES 7/
NORTH DAKOTA PSC	YES	YES	YES		NO	YES	YES			
OHIO PUC 12/	YES	YES	YES	YES	NO	YES	YES			
OKLAHOMA CC	NO	NO	NO		NO	YES	YES			NO
OREGON PUC 9/	YES	NO	YES		NO	YES	YES			
PENNSYLVANIA PUC	YES	YES	NO		YES	YES	YES			NO
RHODE ISLAND PUC	YES	NO	YES	YES	NO	YES	YES	YES	YES	
SOUTH CAROLINA PSC	YES	NO	YES		NO	YES	YES			
SOUTH DAKOTA PUC	YES	NO	YES		NO	YES	YES			
TENNESSEE PSC	YES	YES	YES		NO	YES	NO			
TEXAS PUC	YES	YES	YES		NO	YES	YES			
UTAH PSC	YES	NO	YES		NO	YES	YES			
VERMONT PSB	YES	YES	YES		NO	YES	YES			
VIRGINIA SCC	YES	YES	YES		NO	YES	YES	YES		
WASHINGTON UTC 9/										
WEST VIRGINIA PSC	YES	YES	NO		NO	YES	YES			
WISCONSIN PSC	YES	NO	YES		YES	YES	YES	YES		
WYOMING PSC	YES	YES	NO		NO	YES	YES			
ALBERTA PUB	SITING UNDER JURISDICTION OF ALBERTA ENERGY RESOURCES CONSERVATION BOARD									
NOVA SCOTIA URB 11/	SITING UNDER JURISDICTION OF NOVA SCOTIA DEPT. OF ENVIRONMENT									

** FOR ADDITIONAL DETAIL ABOUT CERTIFICATION REQUIREMENTS, SEE SECTION 16 OF THIS BOOK, ENTITLED "CERTIFICATES, LICENSES AND PERMITS".

FOOTNOTES - TABLE 203 - AGENCY AUTHORITY TO SET PUBLIC PARTICIPATION STANDARDS
FOR SITING BULK ELECTRIC POWER SUPPLY FACILITIES

- 1/ CT Siting Council determines environmental compatibility, public need and ultimate location of facility. DPUC has authority over method and manner of construction after certification by Siting Council.
- 2/ All electric utilities are publicly owned and operated; siting under jurisdiction of Power Review Board, not PSC.
- 3/ Individual landowners notified by mail. Staff inspects site.
- 4/ Mandatory hearing if written objection is filed after notice, or eminent domain requested.
- 5/ On projects involving over 1 mile of line over 34.5 kV, there must be an Informational Meeting in each county. Board member, counsel or hearing examiner reads summary of legal rights and utility representatives answer questions. Utility may not negotiate easements prior to this.
- 6/ By law, local gov't may participate in hearings with Commission but not in decision-making. Commission must consider recommendation of such body and other State agencies, including Depts. of Natural Resources; Environment; Health/Mental Hygiene; Transportation; Economic/Employment Dev't and State Planning. Applicants must notify affected property owners of proposed high voltage transmission line at least 30 days prior to a hearing.
- 7/ By statute, Attorney General may intervene on behalf of consumers.
- 8/ Hearing mandatory if requested by complainant.
- 9/ Separate Energy Facility Siting Council.
- 10/ All applications for license, amendment of license, exemption and amendment of exemption circulated for comment to all appropriate Federal, State and local agencies. Any person may also comment on applications.
- 11/ Board has jurisdiction over construction/equipment cost approval; engineering/environmental considerations under Department of the Environment, with public hearings held by the Environmental Control Council.
- 12/ Power Siting Board staff are part of PUCO; PSB statute permits joint hearings with other states.
- 13/ Pre-application reviews with local officials are mandatory.
- 14/ Commission did not respond to requests for update information; this data may not be current.

TABLE 204 - LONG-RANGE ELECTRIC UTILITY FORECASTING

The table below was compiled from responses to the following questionnaire regarding Commission activities in the area of long-range (10-year) electric utility load forecasting:

1. This agency relies heavily on load forecasts prepared by our utility system(s) and others and conducts independent load forecast studies.
2. This agency analyzes our systems' (and possibly other) load forecasts carefully by independently testing all or sample of their data and assumptions and thus makes in-house revisions to such forecasts where appropriate. We have _____ full-time equivalent positions devoted exclusively to this work.
3. This agency has an in-house load forecasting section which conducts independent load studies essentially from raw data. We have _____ full-time equivalent positions devoted exclusively to this work.
4. This agency hires consultants to make load forecasts when required.

AGENCY	(1)		(2)		(3)		(4)
	AGENCY USES UTILITY FORECASTS		AGENCY ANALYZES/REVISES UTILITY FORECASTS	NUMBER OF FULL-TIME POSITIONS	AGENCY HAS IN-HOUSE FORECASTING CAPABILITY	NUMBER OF FULL-TIME POSITIONS	AGENCY HIRES CONSULTANTS FOR FORECASTING **
ALABAMA PSC	YES		NO		NO		NO
ALASKA PUC	SOMETIMES		REVIEWS		NO		Sometimes
ARIZONA CC	YES		REVIEWS		NO		YES
ARKANSAS PSC	YES		REVIEWS		NO		Sometimes
CALIFORNIA PUC 6/					YES	2	
COLORADO PUC			NO		YES	.25	YES
CONNECTICUT DPUC	YES 7/		YES 7/	CSC-10 7/	NO		YES 4/
DELAWARE PSC	YES						YES
DC PSC	YES		REVIEWS				YES
FLORIDA PSC	YES		YES	.5	NO		NO
GEORGIA PSC	YES		YES	.5	NO		YES
HAWAII PUC	YES				NO		NO
IDaho PUC	YES		YES	1	IN DEVELOPMENT		YES
ILLINOIS CC	YES		YES	2	NO		NO
INDIANA URC 1/	NO		YES	4	YES	4	NO
IOWA UB	YES		YES	.5	YES	.5	NO
KANSAS SCC	YES		YES	1	NO		YES
KENTUCKY PSC	YES		NO		NO		
LOUISIANA PSC	YES						YES
MAINE PUC	YES		YES	.5	NO		YES
MARYLAND PSC 3/	YES		YES	.25	NO		NO
MASSACHUSETTS DPU 9/ 12/	YES						
MICHIGAN PSC	NO		REVIEWS IN IRP	.5	YES	2	NO
MINNESOTA PUC	YES		YES				
MISSISSIPPI PSC	YES		YES	0	NO		
MISSOURI PSC	NO		YES	1	IN DEVELOPMENT	3	Sometimes
MONTANA PSC	YES		NO		NO		NO
NEBRASKA PSC	Does not regulate electric utilities.						
NEVADA PSC	NO		YES	.25	NO		NO
NEW HAMPSHIRE PUC 1/	YES		YES	.50	NO		NO
NEW JERSEY BRC	YES		YES		NO		NO
NEW MEXICO PUC	YES		YES	0	NO		Sometimes
NEW YORK PSC 2/	YES		YES		YES	.25	
NORTH CAROLINA UC 4/	YES		YES 4/		YES	3 4/	NO 4/
NORTH DAKOTA PSC	YES		REVIEWS		NO		YES
OHIO PUC	YES		YES	1	YES	3	NO
OKLAHOMA CC	YES		NO		NO		YES
OREGON PUB 8/	YES		YES	.25	NO		NO
PENNSYLVANIA PUC	YES		NO		NO		NO
RHODE ISLAND PUC	YES		YES	0	NO		YES
SOUTH CAROLINA PSC	YES		YES		NO		
SOUTH DAKOTA PUC	YES				NO		NO
TENNESSEE PSC 5/							
TEXAS PUC	YES		YES	.5	YES	2	NO
UTAH PSC	YES		YES		NO		YES
VERMONT PSC 12/			REVIEWS				
VIRGINIA SCC	YES		AS NEEDED	.25	NO		NO
WASHINGTON UTC	YES		YES	.5	NO		
WEST VIRGINIA PSC	YES		YES	.5	YES	.5	NO
WISCONSIN PSC			YES 10/	1	YES 11/	.5	Sometimes
WYOMING	YES						
NOVA SCOTIA URB	YES		YES		NO		YES

** See also Table 66 for other agency use of consultants.

FOOTNOTES - TABLE 204 - LONG-RANGE ELECTRIC UTILITY LOAD FORECASTING

- 1/ The State Utility Forecasting Group was established to develop forecasts of long-range electric needs. Staff does company-specific demand forecasts.
- 2/ Responsibility for State agency load forecasts in long-range planning is now in the State Energy Office. Commission Staff continues to monitor utility forecasts and consult with the State Energy Office.
- 3/ By law, Commission must prepare a 10-year report every year on utility forecasts of load, new power plants and transmission lines. In addition, the State Power Plant and Environmental Review Division prepares an independent 20-year forecast of peak demands every other year, essentially from raw data.
- 4/ Consultants have been used in the past to perform specific tasks, such as estimating impact of solar heating, load management and conservation. In-house forecasting activities involve a number of people and equates to approximately three full-time professionals. Commission bases its forecast on evaluation of forecasts of utilities, Public Staff and others.
- 5/ PSC has not conducted a long-range electric load forecast. Commission regulates only one small privately-owned electric company which has no generating capabilities. Most electric power supplied by Tennessee Valley Authority, not regulated by state agency.
- 6/ Consultant occasionally hired or utility is ordered to hire. California Energy Commission responsible for load and long-term demand forecasts. PUC responsible for short-term demand forecasts for ratemaking (7 full-time positions).
- 7/ Department participates through one seat on Connecticut Siting Council and through staff analysis in annual CSC forecast hearings.
- 8/ Long-range forecasts for the state are the responsibility of Oregon Department of Energy. Federal legislation (Pacific Northwest Electric Power Planning and Conservation Act of 1980) requires long-range regional forecasting by the Northwest Power Planning Council.
- 9/ Long-range forecasts are the responsibility of Massachusetts Energy Facilities Siting Council.
- 10/ Utility specific and statewide forecasts.
- 11/ Statewide, not utility specific, forecasts.
- 12/ Commission did not respond to requests for update information; this data may not be current.

INTRODUCTION

ON-SITE CONSTRUCTION MONITORING OF LARGE ELECTRIC GENERATING PLANTS

During May 1983, at the request of the New York Public Service Commission, the NARUC conducted a survey of the State public utility commissions regarding on-site construction monitoring of large generating plants. The questionnaire is reproduced below. The following table was compiled from responses to the survey. All agencies are requested annually to update all material in this book to reflect the most current policy status.

1. Are you presently engaged in on-site construction monitoring of large generating plants?
2. Do you have any plans for such monitoring in the future? If yes, approximately when?
3. If yes to question number 1 or 2, what project(s) are you, or will you be, monitoring? (Project name(s); type of project; name, address and phone number of contact person.)
4. Comments

TABLE 205 - ON-SITE CONSTRUCTION MONITORING OF LARGE ELECTRIC GENERATING PLANTS

AGENCY	(1)	(2)	(3)	(4)
	Does On-Site Construction Monitoring	Plans Future Monitoring when?	Project(s) and Contact Person	Comments
ALABAMA PSC	NO	NO		
ALASKA PUC	NO	NO		
ARIZONA CC	NO	NO		
ARKANSAS PSC	NO	NO		
CALIFORNIA PUC	NO	YES		Use Board of Consultants on sensitive projects. Staff reviews progress & visits sites if problem.
COLORADO PUC	NO	NO		No plants under construction or planned.
CONNECTICUT DPUC	YES	YES	CT Siting Council does inspections	DPUC cooperates with CT Siting Council which has primary authority.
DELAWARE PSC	NO	NO		
D.C. PSC	NO	NO		No generating plants under construction.
FLORIDA PSC	YES		Plant Scherer. Contact Denise Vandiver, 101 E. Gaines St., Tallahassee (904) 488-8147.	
GEORGIA PSC	YES		Plant McIntosh CT, Units 1-8. Contact: B.B. Knowles, (404) 658-6357.	Monitoring as part of Certification process. Nothing planned until after 1995.
HAWAII PUC	NO	YES		
IDAHO PUC	NO	NO		
ILLINOIS CC	YES	YES	Periodic inspections.	No plants under construction or planned. No major construction anticipated next 10 years.
INDIANA LRC	NO	NO		
IOWA UB	NO	NO		
KANSAS SCC	YES	YES	Jeffrey No. 4 and Iatan No. 2	Nothing planned until after 1998. If and when new plant is certificated.
KENTUCKY PSC	NO	YES		
LOUISIANA PSC	NO	NO		
MAINE PUC	NO	NO		
MARYLAND PSC	YES	YES	Limited monitoring under generating plant inspection program.	All generating plants periodically inspected. No plants under construction or planned.
MASSACHUSETTS DPU	NO	NO		No plants under construction or planned.
MICHIGAN PSC	NO	NO		No plants under construction or planned.
MINNESOTA PUC	NO	NO		
MISSISSIPPI PSC	NO	NO		No plants under construction or planned.
MISSOURI PSC	NO	NO		All plants completed; none planned.
MONTANA PSC	NO	NO		
NEBRASKA PSC	---	---	Does not regulate electric utilities	No jurisdiction.
NEVADA PSC	NO	NO		
NEW HAMPSHIRE PUC	NO	YES		

TABLE 205 - ON-SITE CONSTRUCTION MONITORING OF LARGE ELECTRIC GENERATING PLANTS
(Continued)

AGENCY	(1)	(2)	(3)	(4)
	Does On-site Construction Monitoring	Plans Future Monitoring When?	Project(s) and Contact Person	Comments
NEW JERSEY BRC	YES	YES	(1) Oyster Creek-2nd Phase. Rework & modification of 650 Mw Nuclear Unit. Utility contact Edward O'Connor, Special Const. Asst. Tech. Functions, GPU Nuclear, (201) 263-2245. BRC contact: Tom Gould, Nuclear Engineer (201) 648-2219. (2) Salem I, Salem II Nuclear Units both 1070 Mw) and Hope Creek I (1057 Nuclear Unit). Utility contact: Larry Codey, Corp. Rate Counsel, PS E&G, (201) 430-6503. BRC contact: Marty Van Ess, Nuclear Engineer, (201) 648-2057.	(1) On-Site Monitoring: periodic monthly to quarterly site visits and briefings. (2) Besides Nuclear Engineers, other internal staff and consultants perform special audits for the BRC.
NEW MEXICO PUC	NO	NO		No construction plans until after 2000.
NEW YORK PSC	NO	NO		All plants completed, none planned.
NORTH CAROLINA UC	NO	NO		
NORTH DAKOTA PSC	YES	YES	No current projects.	Monitor to insure compliance w/siting permit conditions.
OHIO PUC	NO	YES	When facility is built.	
OKLAHOMA CC	NO	NO		CC has used consultants to evaluate completed projects for contracts, schedules, quality of work, contractor performance. This would continue and perhaps be expanded in the future.
OREGON PUC	NO	NO		Construction management reviews near completion of projects.
PENNSYLVANIA PUC	YES	YES	Beaver Valley II; Limerick II Nuclear	All generating projects over \$100 M. Energy Facility Siting Board reimburses municipal or state building officials for oversight of construction.
RHODE ISLAND PUC	YES	NO		All generating facilities periodically inspected
SOUTH CAROLINA PSC	YES	YES		
SOUTH DAKOTA PUC	NO	NO		
TENNESSEE PSC	NO	NO		TVA operates all generating plants in State. Commission has no jurisdiction over TVA.
TEXAS PUC	YES		Construction of nuclear and fossil generating units. 1/	On-site monitoring: periodic monthly to quarterly site visits and briefings. Review management reports to monitor.
UTAH PSC	NO	NO		No large construction projects.
VERMONT PSC	NO	NO		
VIRGINIA SCC	YES	YES	Clover Coal Units 1 & 2. Contact: W.T. Lough, SCC, (804) 371-7590.	
WASHINGTON UTC	NO	NO		Energy Facility Site Evaluation Council
WEST VIRGINIA PSC	YES	YES	Generating Units, projects uncertain. Contact Larry L. Smith, PSCW, (608) 266-3165.	Nothing planned until after year 2000
WISCONSIN PSC	YES	YES		Contact PSC regarding Projects.
WYOMING PSC	NO	YES	Black Hills Power & Light Well Simpson 2 Jon Jacquot	
ALBERTA PUB	NO	NO		
NOVA SCOTIA URB	NO	NO		

- 1/ Nuclear Power Plants: El Paso Electric Co. - Palo Verde Units 1-3; Gulf States Utilities - River Bend Unit 1; Houston Lighting & Power Co. - South Texas Units 1 & 2; Texas Utilities - Commanche Peak Units 1 & 2. Coal/Lignite Power Plants: Gulf States Utilities; Houston Lighting & Power Co. - Limestone Units 1 & 2; Lower Colorado River Authority - Fayette 3; Southwestern Electric Power Co. - Pirkey Unit 1, Dolet Hills Unit 1; Southwestern Public Service Co. - Tolk Unit 2; Texas Utilities - Forest Grove Unit 1, Martin Lake Unit 4, Twin Oak Units 1 & 2; West Texas Utilities - Oklaunion Unit 1. Planned Power Plants not Currently Certified: Central & South West - Coletto Creek Unit 2, Walker County Units 1 & 2, Inola Unit 1; Texas Municipal Power Pool - San Miguel Unit 2, Gibbons Creek Unit 2, Brazos Lignite Units 1 & 2.
- 2/ Commission did not respond to requests for update information; this information may not be current.