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Environmental Review for
Renewal of Operating Licenses

Docket No.

LOCATION: Rosemont, Illinois

DATE: Tuesday, February 15, 1994

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

PUBLIC MEETING
PART 51 - ENVIRONMENTAL REVIEW
FOR RENEWAL OF OPERATING LICENSES

Holiday Inn
Rosemont, Illinois

Tuesday, February 15, 1994

The above-entitled proceedings commenced at 10:00
a.m., pursuant to notice, S. Schwartz, Moderator presiding.

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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 It is about 10:00 o'clock, so I think we ought to get
5 started. My name is Shelly Schwartz. I am Deputy Director
6 of the Office of State Programs at the U.S. Nuclear
7 Regulatory Commission. I have the honor of being your
8 moderator today.

9 The purpose of this public meeting and the public
10 meetings that we will be having is to discuss state concerns
11 with the treatment of the need for generating capacity and
12 alternative energy sources and the proposed 10 CFR Part 51
13 rule for license renewal. The proposed Part 51 rule change,
14 as many of you know, for license renewal including the
15 proposed GEIS was issued for public comment on September
16 17th, 1991. Workshops were held later that year and I
17 understand many of you participated in those workshops.

18 As a result of the Federal Register Notice and the
19 draft rule, the staff received over 130 comment letters. 24
20 of the letters were from states and five from Federal
21 agencies. Among other things, many states raise concerns on
22 how the NRC is proposing to handle the questions of need for
23 generating capacity, alternative sources of energy, utility
24 costs and cost/benefit balancing and the NRC environmental
25 review for plant license renewal.

1 On April 22nd, 1993, the Nuclear Regulatory
2 Commission -- the Commission directed the staff to develop
3 options to responding to state commenters who expressed
4 concerns about the preemption of state regulatory authority
5 in these areas -- the areas I just mentioned. Furthermore,
6 the Commission directed the staff to conduct discussions wit
7 the states regarding these policy issues prior to developing
8 and presenting options to the Commission.

9 I believe everyone has received a copy of the
10 draft options paper that was prepared by the staff. If you
11 haven't had the benefit of this paper, there are more copies
12 out at the registration desk.

13 Please keep in mind that these are draft -- and I
14 will underline draft -- options, which have not been fully
15 developed or analyzed. The options I believe -- and the
16 staff and I have discussed it as late as this morning -- the
17 options really cover a spectrum of approaches on how we can
18 handle or address the state concerns. They were really
19 developed more as a spark or to stimulate discussion on how
20 we collectively can reason to satisfy the concerns of the
21 states in this area. So during the discussions I would like
22 to challenge you and offer an open mike to how we might
23 combine these options or are there other alternatives. And
24 we will get into those in the discussions today.

25 So, therefore, the purpose of this meeting and the

1 one we had in Rockville last week and today and the one we
2 will be having in Chicopee, Massachusetts is to get into the
3 discussion of the options and other options and other
4 alternatives and develop pros and cons so the staff can
5 present a coherent, logical presentation to the Commission
6 on how to satisfy state concerns.

7 The comment period for written comments will end
8 on March 4th, 1994. So, if anybody wants to add anything to
9 the record of this meeting or on your own, provide it to the
10 NRC as described in the Federal Register Notice.

11 We note that states and others are also very
12 interested and concerned in both high-level and low-level
13 radioactive waste, storage and disposal issues. They
14 commented on such, and you commented on such in the proposed
15 rule. The purpose of this meeting is not to debate those
16 issues. Those state comments on high-level waste and low-
17 level waste will be addressed in the analysis of comments on
18 the rulemaking.

19 During the meeting, we are going to hear from the
20 panel on each of the issues as we go through it. And, as
21 time permits, I would like to hear from those of you in the
22 audience as to what your concerns are or any options that
23 you might have or have to say about what we are trying to do
24 here. I would like you to limit the comments, depending on
25 the time available. We will always take written comments in

1 any length.

2 The transcripts will be provided to the panel
3 members. For those in the audience who are interested in
4 receiving transcripts of this meeting or I think any others,
5 please sign up at the registration desk, and they will make
6 the arrangements with the court reporter. If you haven't
7 found the coffee, it is upstairs, and the restrooms are
8 around the corner by the escalator.

9 At this point in time, what I would like to do --
10 and I apologize to the panel members -- only a few of us
11 have name tags, and I think that is because we trucked with
12 them from the last meeting. But I am told, because of the
13 snow storm, our Graphics Department at the NRC was shutdown,
14 just like a lot of other things in Washington. So, I
15 apologize to the panel members for not having printed name
16 tags for all of you.

17 At this time, what I would like to do is go down
18 through the panel and have each individual introduce
19 themselves and then go through the audience and have each
20 individual introduce themselves. Then we will get into some
21 of the guts of the discussions. Let's start with you.

22 MR. NG: Good morning. My name is Ray Ng. I am a
23 manager at the Nuclear Management Resources Council, also
24 known as NUMARC. On behalf of the commercial nuclear power
25 industry, I would like to thank the NRC for allowing NUMARC

1 to participate in this workshop.

2 For those of you who are not familiar with NUMARC,
3 we are an organization charged with coordinating the efforts
4 of the commercial nuclear power industry in all generic
5 regulatory matters, including relevant policy, operational
6 and technical issues. Every utility licensed to construct
7 or operate a commercial nuclear power plant in the United
8 States is a member of NUMARC. In addition, NUMARC
9 membership includes major architect and engineering firms,
10 and all of the major nuclear steam supply system vendors.

11 MS. GINSBERG: My name is Ellen Ginsberg, and I am
12 Assistant General Counsel for NUMARC.

13 MR. VISNESKY: I am Tony Visnesky with the
14 Illinois Commerce Commission Staff.

15 MR. MOULTON: John Moulton, Project Manager at the
16 NRC, License Renewal and Environmental Review Branch.

17 MR. MCCARTHY: I am Mike McCarthy with the State
18 of Minnesota. I am the Federal Intervention Coordinator.

19 MR. SCHWARTZ: Don.

20 MR. CLEARY: I am Don Cleary with NRC Office of
21 Research. I am the Task Manager for the Part 51 Rulemaking.

22 MS. JENKINS: Sally Jenkins, Wisconsin Public
23 Service Commission. I am the Senior Environmental Analyst.
24 I write Environmental Impact Statements.

25 MR. KRAFT: I am Dave Kraft with the Nuclear

1 Energy Information Service in Evanston, Illinois. We are a
2 non-profit environmental education organization on energy
3 issues and nuclear power hazards.

4 MR. SCHWARTZ: Good to have you.

5 MR. ROSS: Brian Ross, with the Citizens Utility
6 Board in Illinois. We are a membership-funded intervenor
7 group, non-profit organization.

8 MR. CALLEN: I am Ron Callen. I am Assistant
9 Director of Planning at the Michigan Public Service
10 Commission.

11 MR. ARNY: I am Michael Arny from the Wisconsin
12 Public Service Commission. I work on Systems Planning and
13 Integrated Resource Planning.

14 MR. MIZUNO: I am Geary Mizuno and I am a staff
15 attorney with the Office of General Counsel, Nuclear
16 Regulatory Commission.

17 MR. SCHWARTZ: Thank you. This is a very
18 impressive panel.

19 Can we start there, please?

20 MR. NIRS: Steve Nurse, of the Ohio Attorney
21 General's Office.

22 MR. GARY: Ron Gary, with the Staff of -- Power
23 Cycle Group.

24 MR. WHITECASTLE: I am Mark Whitecastle with
25 Scientech, Incorporated, in Washington, D.C. We are

1 consultants to the NRC.

2 MR. SHEBAGON: Mr. Shebagon, Office of Research,
3 NRC.

4 MR. NEWBERRY: I am Scott Newberry. I am Director
5 of License Renewal, the Office of Reactor Regulations, NRC.

6 MR. CANTER: I am John Canter from Oak Ridge
7 National Laboratory.

8 MR. RILEY: Joe Riley here for Wisconsin Electric.

9 MR. ATKINS: Terry Atkins, Wisconsin Electric.

10 MR. VALIDAY: Jud Validay, Wisconsin Electric
11 Power Company.

12 MR. RENO: Bob Reno, Wisconsin Electric Power
13 Company.

14 MR. WALTERS: William Walters, NUMARC.

15 MR. McMILLAN: Mike McMillan, from the U.S.
16 Environmental Protection Agency.

17 MR. BAILEY: Lee Bailey, Argonne National
18 Laboratory.

19 MR. LEGGETT: Roland Leggett, State Government
20 Affairs for NRC, Region III.

21 MR. JAMINEZ: Sperry Jaminez, Office of State
22 Programs, NRC.

23 MR. DUNBAR: Roger Dunbar, NUMARC.

24 MR. GALLO: Joe Gallo, Government Services for
25 Commonwealth Edison.

1 MR. HALLY: Neil Hally with the Illinois
2 Department of Nuclear Safety.

3 MR. LIMES: Dan Limes, Illinois Department of
4 Nuclear Safety.

5 MS. GROSS: Terry Gross, Office of Emergency
6 Planning.

7 MR. RILEY: Bill Riley, Illinois Commerce
8 Commission Staff.

9 MR. STUDSMAN: John Studsman, Illinois Commerce
10 Commission Staff.

11 MR. LEWIS: Jay Lewis, from Chicopee.

12 MR. MOORE: Tom Moore, Southern Nuclear Operating
13 Company.

14 MR. GALLO: Joe Gallo from Gallo & Ross.

15 MR. COPEN: Gary Copen -- James, Moore.

16 MR. CARDEN: Gene Carden, Public Health
17 Radiological Company.

18 MR. DuBRANE: Mike DuBrane, Commonwealth Edison
19 Company.

20 MR. LATER SOL: Scott Later Sol, Nuclear Radiation -

21 -

22 MR. SYDEL: Harvey Sydel, State Programs.

23 MR. LYLE: Steve Lyle, Section Chief for Rule
24 Making and License Renewal, NRC.

25 FROM THE FLOOR: Office of General Counsel, NRC.

1 MR. SANTO: David Santo, Minnesota Department of
2 Public Service.

3 MR. SLIGO: Allen Sligo from --

4 FROM THE FLOOR: U.S. Council for Energy
5 Awareness.

6 FROM THE FLOOR: Wisconsin Energy Council.

7 MR. SCHWARTZ: Oh, I am sorry, more.

8 MS. DOLE: Liza Dole, Oak Ridge National Lab.

9 MR. SCHWARTZ: Thank you all very much for being
10 here. What I would like to do now is quickly run through
11 the agenda so we will have some flavor for the pace of the
12 day. For those of you who participated in the February 9th
13 meeting in Rockville, you will find that this agenda is
14 slightly different. I don't think it is a major change, but
15 you will notice some differences. During the session, the
16 10-10 session, I would like everybody to -- we are reviewing
17 the agenda right now, and then I would like at the end of
18 this session or during this session for each of the panel
19 members, if they have any opening remarks, to do so at that
20 time. Following that, Don Cleary will give us the
21 background history of Part 51, and Scott Newberry will give
22 us the License Renewal perspective. At 10:45 Don will
23 discuss the characterization of state concerns. During each
24 of these sessions, if there are questions and discussions
25 from the panel or the audience, if there is time, we will

1 just try and continue the dialogue so we can sharpen our
2 understanding of what the staff is proposing. Then, at
3 11:00 o'clock, the CEQ and EPA agreement. At 11:20, the
4 need for alternatives should be designated Category 3. At
5 11:40, clarification of public record of NRC and state
6 authority. Then we will have a lunch break.

7 We figure we will have lunch anywhere -- I am not
8 sure how fast they are here -- but we will have an hour for
9 lunch. Then at 1:00 o'clock, we will get into the guts of
10 the agenda, as I see it. That will be the discussion of
11 each of the options. The way we will conduct that will be
12 Don will lead off with a discussion of the option and we
13 will have -- and if you go to page four of the agenda, there
14 are a few questions in there to try and guide the
15 discussions of the issues so that, as we go from meeting to
16 meeting, hopefully, we will be able to have a consistent
17 record and have answers to some of the staff questions. It
18 is not to preclude any additional questions or issues that
19 any of you would like to raise. Then we will run through
20 all of the options, one, two, three, four, and then deal
21 with any other options or alternatives that others may have
22 or would like to add to the record and describe those
23 various options at that time and will enter into a
24 discussion.

25 We will conclude that discussion and, with your

1 permission, what I would like to do is change the last
2 question on page 5. Now, you see general questions, "what
3 extent does each option..." and so on and so forth? The one
4 that says "what is the state's preferred option" -- we had a
5 discussion this morning that that may not be the right
6 question. The better question may be to what extent do
7 these options resolve the state concerns. It is to give you
8 a better flavor as to where the staff is coming from -- that
9 these are not the only options -- that we are not voting up
10 and down on these options, but we are really looking for any
11 additional thoughts that you may have -- a combination of
12 the options or any other phrasing you might have on that.

13 With that, let me ask the question does anybody on
14 the panel at this time like to adjust the agenda, make some
15 suggestions or offer up at this point any options -- any
16 additional options you may have? Also, I will open up the
17 panel at this time for opening remarks. Would anybody like
18 to go first? Ray?

19 MR. NG: Yes. We would like to suggest
20 alternative options to the four that have been identified.
21 Specifically, that option would have the NRC not consider
22 either need for power or alternatives as part of their NEPA
23 review, either on a generic basis or on an application-
24 specific basis. It is our belief that probably those
25 matters are best addressed between the utilities and the

1 state agencies. I will have -- I have some other remarks
2 that I have prepared, as you are probably well familiar. I
3 am not quite sure when you would like us to present those,
4 given the shift.

5 MR. SCHWARTZ: I think it would be appropriate
6 after we get into the discussions of the options to add it
7 just to one of the other options discussions.

8 MR. NG: Okay.

9 MR. SCHWARTZ: Then everybody can have a dialcgue
10 on that.

11 MR. NG: Good. We will do that then.

12 MR. SCHWARTZ: Okay?

13 MR. NG: Yes, that's fine.

14 MR. SCHWARTZ: Great. Thank you.

15 Mr. McCarthy?

16 MR. MCCARTHY: My name is Mike McCarthy, State of
17 Minnesota. I think that we would like to just make a could
18 of comments. First, we do appreciate the opportunity to get
19 a panel and a group such as the audience together today. We
20 appreciate the NRC staff's concerns to address many of the
21 concerns and comments we have raised. I would like to make
22 a point that we did raise many questions regarding technical
23 inadequacies, and we do understand that is beyond the scope
24 of today's discussions. We would like to reiterate our
25 desire to have those met. We put a lot of effort into it in

1 the State of Minnesota, and we are looking forward to seeing
2 those concerns responded to.

3 There are three points I would like to make at the
4 beginning of today's meeting regarding the need and
5 alternative issues. The first is we have had several
6 discussions within the State of Minnesota and with other
7 states and, regardless of many of the different ways one may
8 split this legally, there is a consensus I believe we will
9 see that the wise thing to do is to defer to the state
10 processes and state expertise, as many of the states are
11 already implementing review processes that look at needed
12 alternatives on an ongoing basis.

13 The second thing, and these are "ands" -- the
14 second thing would be that -- this is also an issue that
15 should be determined at the time of application -- that it
16 is unwise to pursue this type of determination many many
17 many years and perhaps several decades in advance. The
18 third point that I would like to make is specific to the
19 perceived encroachment of state decision authority. I think
20 that what we would like to see would be some type of
21 explicit statement in the body of the rule itself that
22 defines what the state authority is and helps clarify this
23 perceived encroachment. I would like to contrast that to a
24 statement in a cover letter or a statement in the preamble,
25 or a statement anyplace else that gives us those types of

1 assurances.

2 MR. SCHWARTZ: Good. Thank you very much, Mike -
3 - very succinct and right to the point. Great. I
4 appreciate it.

5 Tony?

6 MR. VISNESKY: I believe it is very important to
7 address the last issue, and that is the perceived
8 encroachment or preemption of legal authority -- to
9 operationalize that. I think it is extremely important to
10 realize that, whether there is a de facto legal preemption,
11 or merely a perception of encroachment, what we end up
12 dealing with in our processes in the states is a situation
13 that is probably best described as the worst of all possible
14 worlds. We end up with a situation in which a utility has
15 "Federally-blessed" need and economic justification for
16 recovery of capacity from power plants that they bring to
17 our process, where then -- they have the burden of proof.
18 We are then in the position, since we have the going-forward
19 burden, to show that somehow that is a flawed analysis.
20 Even if we could do that, and most state -- at least the
21 Illinois Commerce Commission is not equipped -- most state
22 commissions are probably not equipped with the scientists
23 and people who have technical expertise to testify and make
24 a record that would be imposing enough in these cases to
25 withstand the challenge of an appeal to a Court, which will

1 eventually occur in cases and has most often occurred in
2 Illinois where any particular party is disadvantaged. This
3 case, let's presume that the utility came forward, used its
4 NRC approval of a relicensing to justify recovery of
5 capacity from plants that exist. The Illinois Commerce
6 Commission was unable, through its staff or through its
7 intervention, to actually build a record that was
8 significant enough to overturn the burden that the utility
9 had uncovered with its Federal findings; but yet felt that,
10 in order to enforce the law in the State of Illinois, they
11 just not approve the plan. The plan, not being approved,
12 would be challenged in the Court. The Court would look at
13 it and essentially say, well, what do these hay seeds from
14 Illinois know? They are only, you know, I guess, staff
15 people, and they don't know anything, compared to the people
16 at the Nuclear Regulatory Commission, end of case. It is
17 overturned in the Court because there is an insufficient
18 record and insufficient expertise on the staff to make such
19 a record.

20 I guess it doesn't matter whether that is a de
21 factor preemption or whether that is an intrusion. The
22 likely outcome is pretty bad as far as we are concerned.
23 So, I think we need to focus not so much on nice words about
24 defining state authority and nice words about not treading
25 all over our legal obligation or legal authority. I think

1 we have to look at what the outcome is. And the outcome, no
2 matter how many qualifications you put in preambles, tax, et
3 cetera, may be one that we simply can't live with.

4 MR. SCHWARTZ: Anybody else who wants to weigh in
5 at this point? Yes, sir? Brian?

6 MR. KRAFT: Just a brief statement, not
7 necessarily reflecting the State of Illinois' position,
8 because we can't represent that -- but, in general,
9 representing some of the opinions from environmental groups
10 nationwide on the notion of GEIS in general and specifically
11 as to how it pertains to today's work. From the general
12 viewpoint, we feel that record -- the historic record
13 recently sort of proves some of the fatal flaws in the
14 notion of GEIS. I think the comments from the
15 representative from Minnesota a moment ago -- his second
16 comment further bolsters that opinion that, given the record
17 of the nuclear industry recently, it is very difficult to
18 project 20 years in advance, even five years in advance what
19 is going to happen since apparently the NRC couldn't predict
20 five months in advance after the issuance of the GEIS ruling
21 that Yankee Rowe, and San Onofre were going to be closed on
22 economic grounds. So, the first is just a warning or a
23 concern that the environmental community has with the entire
24 GEIS process and concept applied to plant life extension.

25 But, beyond that, in reviewing for today's

1 discussion, examination of NEPA, not only puts the NRC in
2 the bind of having to discuss the need and the alternative
3 proposition, but NEPA also orders the NRC to take a look at
4 the recoverability or the irretrievable recoverability of
5 resources, which is another economic issue. So, there has
6 to be some sort of a dance I guess traded between the
7 Federal Government, on the one hand, through NEPA, and the
8 states. How that gets played out I am not quite sure, but
9 there does seem to be some precedent in the radioactive
10 waste area, where the NRC has granted the states a good deal
11 of latitude through the Agreement State process, perhaps to
12 protect the states' rights in the economic sector, where
13 clearly history is on the case of the states -- on the side
14 of the case of the states. Maybe you would have some sort
15 of an arrangement where the states would, in essence, drive
16 the economic argument and the NRC would have to comply with
17 that. So, we will get into some more details on that later.

18 MR. SCHWARTZ: Good thank you. David, I am sorry.
19 I said Brian. David, thank you.

20 Anyone else at this point? Mike?

21 MR. ARNY: Yes. Thank you. The Wisconsin Public
22 Service Commission has comments that largely mirror those
23 voiced by Minnesota. We appreciate the opportunity to
24 comment today. It is very nice to be able to have an
25 opportunity to have input. Wisconsin, as many other states,

1 has a fairly extensive process for doing integrated resource
2 planning, in addressing the questions of alternatives and
3 need. We think that the states' expertise in this area
4 should be used.

5 Secondly, looking at the question of alternatives
6 and need at the time of the actual decision to go forward on
7 additional expenses is very important because things do
8 change fairly rapidly. And, for that reason, we support
9 putting the review of need and review of alternatives as a
10 Category 3 item.

11 Finally, we are also concerned about the perceived
12 encroachment on state authority. We have some experience in
13 that area, having turned down the application for a nuclear
14 power plant and then being sued on that. The only thing
15 that prevented the suit from going through completion was
16 Three Mile Island occurred, and the utilities involved
17 decided not to proceed. So, I think the idea that language
18 that says that the states aren't being preempted doesn't
19 necessarily carry very much water when a Federal agency has
20 acted. So, dealing with that is very important to us. We
21 would suggest that Option 4, among the proposals, that
22 leaves the determination of need and evaluation of
23 alternatives to the states, would be an appropriate course
24 of action. Thank you.

25 MR. SCHWARTZ: Great. Thank you.

1 Anyone else at this point? Brian?

2 MR. ROSS: Yes. I guess, in the interest of
3 brevity, I will just say that we want to echo many of the
4 points that have been made by Minnesota, Wisconsin, and also
5 by Tony from our own State of Illinois here. There has
6 already been a significant amount of debate around, in our
7 state, around the need for nuclear capacity and introducing
8 a process which would lend weight to the debate years in
9 advance before the extra time of resource choice is just
10 going to make the whole debate more problematic and
11 introduce all kinds of legal problems to a cost-effective
12 resolution of the problem and a cost-effective means of
13 meeting the resource needs of the state.

14 MR. SCHWARTZ: Great thank you. Ron Callen?

15 MR. CALLEN: I would like to make one additional
16 point historically. I note the NRC has spent a fair amount
17 of time looking at some of the historical precedents and
18 processes for nuclear power plant construction.
19 Historically, one of the things that has happened in a
20 dramatic fashion over the last years has been the advent of
21 long-range planning, more recently identified as integrated
22 resource planning. Many states have adopted that.
23 Wisconsin, for example, has been a pioneer in the issue.
24 The issue has taken a larger view -- a larger importance, if
25 you will, of the Congress in catching up with what is going

1 on in the real world -- has passed the Energy Policy Act,
2 Act 486 of the 102nd Congress. And it elevates as a strong
3 -- very strong encouragement to the states to adopting
4 integrated resource planning, or to defend themselves to the
5 contrary. I think it is something that should be reflected
6 in the NRC's thinking in calculating out its response on
7 NEPA.

8 MR. SCHWARTZ: Thank you, Ron. With that -- I
9 know there are some delegates from Ohio. Do you have
10 anything that you would like to add to the record?

11 FROM THE FLOOR: No.

12 MR. SCHWARTZ: Okay. I think every state has
13 spoken. With that, it takes us right on time to the next
14 part of our presentation, the background and history that
15 will be shared by Don Cleary and Scott Newberry. Don?

16 MR. CLEARY: Thank you.

17 I will give this table a second or so to adjust
18 yourself, if you want. It is your choice. You can work
19 from the handout or see the screen.

20 For those of you who have the handouts from last
21 Wednesday's Rockville meeting, there are slight adjustments
22 in this handout. The material covered is essentially the
23 same and the points are essentially the same. We hope that
24 we have sharpened some of the issues that came up last week.
25 Basically, in this background presentation, I want to just

1 make a few major points to get us focused and appreciate
2 where NRC was coming from, historical background and what we
3 are attempting to do.

4 [Slide.]

5 MR. CLEARY: The purpose of the 10 CFR rulemaking
6 was to improve the regulatory or administrative efficiency
7 in license renewal. While we were working on the health and
8 safety part of the rule, we came to feel that license
9 renewal, the types of refurbishment, the operating changes
10 that would likely occur, are well within the realm of past
11 experience and also we had prepared Environmental Impact
12 Statements on 110-plus plants. And we felt that by bringing
13 this information and operating experience together that we
14 could perhaps cut down and better focus the -- what we were
15 looking at on site-specific reviews.

16 The treatment of need and alternatives on the
17 proposed rule were based on NRC practice developed during
18 our reviews at the construction permit and operating license
19 stages for these plants. There was a rule -- on operating
20 license rule relative to the treatment and need of
21 alternatives and several other topics that was published in
22 the early '80s, which I will describe in a little more
23 detail in a second or so.

24 The -- in our attempt, we looked at need for
25 capacity essentially in the same way that had been done in

1 the past. We looked at future capacity projections and
2 electricity demand forecasts. One difference though was
3 that, in this attempt, we relied more on the range of
4 forecasts that were available and analyzed those forecasts
5 rather than moving on to do a lot of detailed forecasting on
6 our own, which we used to do at the CP stage.

7 In the treatment of alternatives, we looked at a
8 range of alternatives, and we found -- we first of all
9 looked at the environmental aspects of impacts of these
10 alternatives. Except for possibly geothermal in several
11 states, we found that none were clearly environmentally
12 preferable to license renewal -- that is, refurbishment and
13 continued operation of the existing plants. However, in our
14 attempt to apply the OL rule, we needed to look at the cost
15 situation. There was considerable uncertainty about O&M
16 costs and the possibility of very large refurbishment costs.
17 So, we introduced an economic threshold test. The idea
18 there was that we wanted to assure that the cost-benefit
19 balance was not -- a favorable cost-benefit balance was not
20 overturned. We saw the major problems, in terms of the
21 economic uncertainty.

22 [Slide.]

23 MR. CLEARY: The environmental reviews at the CP
24 and OL stage. The take-off point is the National
25 Environmental Policy Act, NEPA, which requires Federal

1 agencies to look at alternatives to the proposed action.
2 NEPA is implemented in 10 CFR.51, NRC's environmental
3 regulations.

4 [Slide.]

5 MR. CLEARY: Part 51 is further developed in
6 guidance to applicants for construction permit and OLS.
7 That is found in Regulatory Guide 4.2. And then staff
8 guidance as to how the staff is to review applications is
9 found in the environmental standard review plan, which is
10 NUREG 055. I will point out that Reg Guide 4.2 goes back to
11 1976, and the Environmental Standard Review Plan was
12 published in 1979.

13 [Slide.]

14 MR. CLEARY: In the next couple of slides, I just
15 want to impress upon you the level of detail that was
16 involved in developing the CP reviews. In looking at need
17 for power, we looked at the description of the power system,
18 which includes the service area, power pools, reliability
19 councils, transfers of energy within those systems.

20 We did forecasting of electrical energy and peak
21 load demand, and we looked at plans for placement and
22 retirement of capacity. And our assessment for the need for
23 the capacity or the need for the power was based on
24 reliability standards and baseload requirements.

25 [Slide.]

1 MR. CLEARY: In the alternatives, which is also a
2 detailed analysis, we looked at alternatives not requiring
3 new generating capacity, basically power transfers and
4 energy conservation, both conservation, in terms of
5 technologies, improved technology, use technologies, and
6 conservation, in terms of demand reduction through rates
7 structure devices.

8 Then we looked at the alternatives requiring new
9 generating capacity. This is essentially alternative energy
10 sources. There was a screening of a range of possible
11 alternatives, narrowed to technologically reasonable
12 alternatives, and then a close look at those reasonable
13 alternatives was made. And the first question was is there
14 an environmentally preferable alternative? If there was an
15 environmentally preferable alternative identified, we would
16 move on to a cost-benefit comparison with the proposed
17 action. At that point, we would add economic
18 considerations.

19 [Slide.]

20 MR. CLEARY: Then the last major chapter in our
21 Environmental Impact Statements at the CP stage, was an
22 evaluation of the proposed actions. Some of you will
23 recognize the first three bullets as wording coming from the
24 National Environmental Policy Act. The point I would like
25 to make here is that we did a cost-benefit balancing on the

1 proposed action. Remember, we did a screening of the
2 proposed action against alternative energy sources in the
3 previous chapter.

4 The additional point I would like to make is that
5 in this cost-benefit balancing we did in fact put utility
6 economics on the scale.

7 [Slide.]

8 MR. CLEARY: When we started Part 51 rulemaking,
9 we asked the question wouldn't it be possible to apply the
10 same logic that had been used for the OL rule to the license
11 renewal? The logic for the OL rule, of course, was codified
12 in Part 51, and it was based upon several things. First of
13 all, an update of the EIS -- our experience showed that
14 there was -- that the environmental impacts, there was
15 little change there, so that that was generally not a basis
16 for expecting a tipping of the cost-benefit balance.

17 Then there was the question of economics. And the
18 question posted there was the plant is constructed, what are
19 the operating costs of that plant compared to replacement of
20 that capacity? A number of studies were looked at and there
21 was a conclusion drawn that the economics were favorable and
22 very low likelihood of tipping the cost-benefit balance that
23 was reached at the construction permit review.

24 [Slide.]

25 MR. CLEARY: Public comments. There is just one

1 point I want to make here. All comments, including
2 technical comments on alternatives and need are being
3 addressed. And the comments and the response will be
4 provided in a separate NUREG report. Anybody having made a
5 comment, they will be able to go into that report and find
6 out what happened to their comment.

7 [Slide.]

8 MR. CLEARY: Rulemaking schedule. We owe the
9 Commission a paper -- a report on the results of our
10 interactions with the states in early June. That Commission
11 paper will summarize the alternatives and options that were
12 considered -- the pros and cons. And it will include a
13 discussion of any options that are serviced that go beyond
14 the four options that we have put forward. Typically, the
15 Commission expects us to put forward a recommendation. The
16 Commission response or Commission guidance on that will
17 probably take at least a month, up to two months from
18 submittal of the paper.

19 The schedule that we submitted to the Commission
20 recently we committed to having the final rule package to
21 the Commission by the end of December of this year, which
22 would mean that the final rule would be published about
23 March of 1995. Are there any clarifying questions on that?

24 [No response.]

25 MR. CLEARY: Good.

1 MR. SCHWARTZ: Scott Newberry.

2 MR. NEWBERRY: Good morning. My name is Scott
3 Newberry. I am the Director of the License Renewal Project
4 at the NRC. I have one brief viewgraph here to go over a
5 broader perspective on license renewal. I will then answer
6 any questions you might have. Some of you may be aware of
7 these activities already; but we thought it would be good to
8 give you an opportunity to ask questions if you had them.

9 [Slide.]

10 MR. NEWBERRY: As you may know, the Atomic Energy
11 Act does limit the operating license for a facility to 40
12 years; but the Act also provides the opportunity to renew
13 the license. A few years ago, as plants' expiration dates
14 were approaching, the NRC was petitioned to develop
15 standards renewal procedures. And, in December of 1991, we
16 completed 10 CFR Part 54, which addresses the safety review
17 for license renewal. As Don mentioned, an amendment to Part
18 51 was proposed. These are remarks I don't plan to say
19 anymore on part 51 -- but to just make it clear that for the
20 NRC to grant a renewed license, obviously, the licensee
21 would have to satisfy both parts 51 and 54.

22 Part 54, as I said, would establish the safety
23 requirements for renewal. And, just a bit on that. Part 54
24 currently would establish no new safety standards per se,
25 but the application for renewal and the review that the NRC

1 would do would ensure that the current standards to which
2 the plant were licensed would be maintained through the
3 renewal term.

4 A point of information. Recently, the Commission
5 directed the staff, on February 3rd, as a matter of fact, to
6 go back and revise Part 54, based on the experience that we
7 have gained in the last year or two in other regulatory
8 programs that have been put into place. My staff is
9 currently beginning the preparation of a proposed revision
10 to Part 54, which should be out in -- well, we have been
11 directed to get back to the Commission by the end of May, so
12 we may have an opportunity to comment on a revision to Part
13 54 by early summer, but that is a separate activity from
14 Part 51.

15 That is all I had to say. Are there any
16 questions?

17 [No response.]

18 MR. SCHWARTZ: Great. Thank you very much, Scott.
19 I appreciate it. Scott will be available all day here to
20 answer any other questions during the breaks or any other
21 time. Thanks, Scott.

22 Next on the agenda is Don Cleary. Don is going to
23 characterize the concerns that he had heard -- the staff had
24 heard from the states. We just want to make sure that we
25 got it right. Don?

1 MR. CLEARY: I think we understand that the states
2 have concerns. Really what we are looking for in these
3 workshops are what are the real problems behind those
4 concerns. In our reading of the state comments relative to
5 need and alternatives and the use of economic -- utility
6 economics, there was a dissatisfaction with the designation
7 of need and alternatives as Category 1 issues. I would like
8 to make sure that everybody understands what a Category 1, 2
9 or 3 does and doesn't do. Basically, these category
10 designations were a determination by the analysts as to
11 whether they felt that the analysis for that particular
12 issue encompassed all plants. If they felt that, it was a
13 Category 1. If they felt that it covered most plants or
14 some plants, but not all plants, it was a Category 2,
15 providing that we could come up with a trigger -- triggering
16 analysis, or a gating criterion that would allow us, at an
17 individual review, to determine whether the analysis did
18 indeed cover that plant or whether it didn't cover the
19 plant. If it didn't, then we do a full-blown analysis
20 relative to that issue. Category 3's were that we felt that
21 at this point in time we couldn't reach -- that the analysis
22 did not cover any of the plants.

23 The categorization scheme really was not a
24 judgment on the magnitude of the impact or the significance
25 of the impact. The states were concerned about the Category

1 because what it does is, at the individual renewal review
2 stage, if we adopt the GEIS, the applicant does not have to
3 address that, the staff does not address it, the GEIS
4 information is brought forward into the individual review.
5 This does not give the public an opportunity, in the
6 proposed rule, to raise issues up-front. There is a process
7 that they would have to petition for waiver of the rule or
8 rulemaking to change the rule relative to that issue. And
9 also, the technical concerns that -- stopping your analysis
10 at this point in time does not provide for the use of
11 current project-specific information.

12 States were also dissatisfied with NRC's treatment
13 of need and alternatives because it seemed to be in conflict
14 with traditional state authority, which we have spent some
15 time talking about already; inadequate provisions for
16 consultation and cooperation with the states, uncertainties
17 in long-term forecasts, and timing of license renewal
18 reviews in advance of the state planning and decision
19 horizon.

20 Major recommendations that the states made were to
21 designate need and alternatives Category 3. We had one or
22 two states that recommended that we not -- I think there
23 were two, maybe three states that said do not consider need.
24 And a couple of states said defer to the state's
25 determination of need. And, as has been mentioned

1 previously, what ever we did we had to clarify in the rule
2 that the rule did not in any way conflict with state
3 regulatory authority.

4 That's it.

5 MR. SCHWARTZ: Great. Thank you very much, Don.
6 At this point, I would like to open up the discussion to the
7 panel. The questions posed here are is the NRC
8 characterization of state concerns in Section 3 of the
9 discussion paper complete and accurate as summarized by Don?
10 What, if anything, should be added or changed? Would the
11 concerns of the states be any different for a five-year
12 rather than 20-year renewals? I will open it up to the
13 panel first. Mike?

14 MR. MCCARTHY: I think I need to make a statement
15 that gives us a little bit of a context. Don asked what are
16 the real concerns behind the states' concerns? I will be
17 blunt but polite. There are a couple of big-picture
18 concerns within which our concerns over need and
19 alternatives are set. One is we are still very concerned in
20 Minnesota about the whole approach of the GEIS and codifying
21 it as a rule. And our concerns with need and alternative
22 are nested within that general concern. We expressed this
23 at length in our filing in '92. We wrote you several page
24 on it, both from a legal and technical perspective.

25 We are also still, in that same context,

1 concerned, in a big picture perspective, about the purpose
2 of the rule. The NRC's own numbers identified total savings
3 of about 7 to 26 million nationally for this entire
4 exercise. The meter is running today. The meter has been
5 running for several years on this proceeding. We are
6 beginning to become concerned that this whole exercise has
7 negligible or perhaps even a negative cost-benefit. So, our
8 concerns are nested within those general concerns.

9 On the technical inadequacies, I want to point out
10 these concerns are not separate from our later discussion on
11 the CEQ/EPA memorandum of agreements and they are not
12 separate from some of our later discussions and options.
13 The reasons are this: We feel that there are some very very
14 very grave inadequacies, particularly in the need and
15 alternatives sections of the draft GEIS. And, if these
16 inadequacies, which are known now are not remedied now, and
17 we find ourselves in the situation later implementing only
18 the CEQ/EPA fixes, then we, as states, are left in a
19 situation where we can no longer raise these technical
20 inadequacies because they are no longer new information,
21 which is what is envisioned in the CEQ/EPA fixes, and we
22 would have to reinitiate some type of a rulemaking procedure
23 for a petition for waiver to get these things fixed later.
24 So, we are very gravely concerned over this. They are not
25 separate issues. They are interwoven as part of our

1 concerns.

2 MR. SCHWARTZ: Good. Thank you, Mike. At the
3 risk of opening up a dialogue here, instead of clarifying, I
4 must ask one question, if I may, Mike. You mentioned the
5 words "negligible benefit" I think is what you said. And
6 you were -- the negligible benefit with respect to the --

7 MR. McCARTHY: Cost savings.

8 MR. SCHWARTZ: -- proposed rulemaking in general
9 with respect to cost saving, or the specific parts of that
10 rulemaking that you think there are negligible benefits to?

11 MR. McCARTHY: Your fifth volume of the original
12 draft GEIS -- in fact, I could dig it out of my brief case,
13 I brought it -- assessed the benefits of undertaking this
14 whole exercise in '91 --

15 MR. SCHWARTZ: The total rulemaking?

16 MR. McCARTHY: The total rulemaking exercise.

17 MR. SCHWARTZ: I just want to be clear.

18 MR. McCARTHY: And the projected cost savings of
19 the streamlining by NRC's most probably outcoming was 7 to
20 \$26 million. And states, industry, and the NRC have put a
21 fair amount of effort into this streamlining process. I
22 think we have an ongoing concern that we are spending a lot
23 of time and money to save a little time and money. It
24 becomes -- one could very easily perceive or misunderstand
25 the purpose of the exercise.

1 MR. SCHWARTZ: Thank you for the clarification. I
2 appreciate it. Maybe no one else was confused, but I was.
3 I thank you for that.

4 Anybody else on these specific issues? Tony?

5 MR. VISNESKY: I think it is important, since you
6 asked about the basis of concern from the states -- one of
7 our major concerns is characterized I guess by contrasting
8 the process in our state to the statement that is made in
9 the paper -- the NRC paper that this can be -- these types
10 of determinations of need and economic benefit can be made
11 differently for existing plants than they can for plants
12 that would be built from a green field or the initial
13 license review.

14 In our state, there is essentially no difference.
15 You get absolutely no deference because the plant is sitting
16 there on the ground, and built. Out least-cost planning
17 rules require need to be shown even to recover capacity from
18 existing plants that -- and the need having been shown, that
19 the least cost means of achieving the need for new capacity
20 lays against all other alternatives within the capacity
21 available from recovery of capacity from plants that have
22 lost capacity, relicensing, if you will, rebuilding fossil
23 plants, et cetera, and basic recovery of capacity from
24 existing capacity. There is no difference in our state.

25 The second issue I think is important to look at,

1 and that is the determination of a threshold economic
2 benefit of boggy-number, if you will, for determination of
3 need. I remember the last time we met in Washington, which
4 was I think in 1992, that the Oak Ridge numbers at that time
5 indicated the range of between 450 and \$650 per KW for cost
6 -- for the cost of recovering capacity from these relicensed
7 plants. That falls smack in the middle of the costs in our
8 state that look like peaker costs. If that is the
9 threshold, that doesn't give us much comfort because you are
10 saying if -- you would be saying what is tantamount to, if
11 it is cheap enough by our determination, why should you
12 worry about it in your process? Our state process doesn't
13 allow us to make that the hurdle. The hurdle is not -- sort
14 of is it cheap enough not to worry about, but we must find
15 and have a statutory obligation to show in the Commission is
16 the requirement to approve a plan which has the lowest cost,
17 not just below a threshold cost. Those are two major
18 concerns.

19 MR. SCHWARTZ: Good. Thank you, Tony. Anyone
20 else?

21 MR. McCARTHY: I was going to address it. You had
22 also asked a second question, which I failed to answer, and
23 that was on the five-year basis, rather than a 20-year
24 basis?

25 MR. SCHWARTZ: Yes.

1 MR. McCARTHY: I think we also have questions and
2 concerns in Minnesota regarding that. One is it would
3 clearly raise an additional and perhaps repetitive
4 administrative process. So, when we discussed this in
5 Minnesota, it was not clear what that process was, but we
6 have a generic concern with introducing a repetitive and
7 perhaps an additional administrative burden when, again, the
8 purpose of what we are trying to do is to lessen the
9 administrative burden.

10 MR. SCHWARTZ: Mike?

11 MR. ARNY: Yes, thank you. I guess I would like
12 to just point out that in the Wisconsin Public Service
13 Commission's comments on the GEIS in 1992, we pointed out
14 several concerns we had about how the economic analysis was
15 done, review of alternatives and we still have those
16 concerns and hope they will be addressed.

17 As far as the question of what the fundamental
18 issue is, we are very concerned about minimizing the cost of
19 providing electric service to the customers of Wisconsin.
20 We have an elaborate process to do that that recognizes that
21 things change over time. We have a long-term planning every
22 three years because we recognize that information will
23 change and the situation will change. And, after that,
24 before anything is constructed, we go through an additional
25 construction review where need is determined finally. To

1 bring something to construction review, the need has to be
2 determined on a planning level in a previous planning
3 proceeding. All of this is designed to avoid surprises for
4 any of the players in the process, and also to make sure
5 that our long-term view of the future reflects the most
6 current information we have about what that future looks
7 like. This I think is an important point to make because
8 this is sort of the extreme opposite of freezing the view on
9 need and alternatives at an early stage. This says you
10 really have to leave it to the end if you want to minimize
11 costs.

12 In that same vein, just to talk about a couple of
13 things that are occurring now that lead to uncertainty about
14 exactly how the future will unfold -- one is the change in
15 the utility industry in terms of the amount of competition
16 and that creates an unknown factor that is likely to affect
17 what prices energy is available for in the future. That
18 kind of change and the participation of cogenerators and the
19 generation market, the opening up of the transmission system
20 to transfers again through EPACT, all of these things create
21 a lot of changes. I think anything that doesn't recognize
22 that and really defer the decision on need and alternatives
23 to the last possible point in time is likely to result in
24 higher costs for customers. If you make the decision before
25 you have as much information as you can and still make a

1 timely decision, you are just not using as good information
2 as would otherwise be available.

3 MR. SCHWARTZ: And the later you make it the fewer
4 alternatives there are?

5 MR. ARNY: Well, sometimes things go away in a
6 very pleasant way. But, really, the process of looking at
7 these things on an ongoing basis -- I mean, essentially what
8 we have in Wisconsin is a continuous process for evaluating
9 what the alternatives cost and when decisions are needed,
10 they are made by the Commission and I think in a timely way.
11 I think, if people look at the history of the decision-
12 making in Wisconsin, I think decisions have generally been
13 made that have resulted in lower customer costs because of
14 this process.

15 MR. SCHWARTZ: Thank you.

16 MS. JENKINS: I would just like to add a point --
17 that the evaluation, both on the planning and very
18 definitely at the construction stage, involves different
19 levels and amounts, but it does involve looking at the
20 environmental impacts of the choices.

21 MR. SCHWARTZ: Yes.

22 MS. JENKINS: And we particularly get projection
23 of omissions for the system as a whole.

24 MR. SCHWARTZ: Great. Thank you. I know a lot of
25 these issues will again recycle in our big discussion later

1 on this afternoon. I want to make sure we get into
2 clarifying things here and not into the major discussion.
3 So, John, you had you hand up, then Mike. And then I will
4 go to the audience for about five minutes to see if you have
5 any comments or questions.

6 MR. MOULTON: John Moulton with the NRC. I just
7 wanted to make a distinction or clarification on the need
8 issue and want to probe this just a little bit further. I
9 see the NRC's mission in establishing a need statement
10 solely to show why we are looking at a proposed action,
11 nothing further than that. Clearly, the states are in the
12 business of looking at whether a plant is needed or whether
13 a specific plant power is needed. But, if we look at need
14 from an issue of only justifying why we are looking at a
15 proposed action, I guess that -- I am trying to make that
16 distinction there.

17 First let me give a little background. In the
18 Rule, Table B-1 of the Rule, I will admit the NRC made some
19 statements implying that license renewal is needed, okay.
20 If the NRC was to back-off from that and merely state that
21 the need for a proposed action like license renewal is
22 merely the need for power and not make any judgments as to
23 whether the license renewal power is needed or any other
24 power is needed -- type of power -- but just power in
25 general is needed, not saying where it has to come from,

1 recognizing it could come from a number of sources, like
2 conservation. It could come from coal or gas, many other
3 generating sources, or conservation, like I said. Does the
4 state see this distinction as meaningful or not?

5 MR. SCHWARTZ: Mike?

6 MR. MCCARTHY: I am again going to refer back to
7 our technical comments. We did make -- we did raise many
8 scenarios. One is the scenario that in individual regions
9 you can have periods of over-capacity, where you have major
10 industries change or major additions come on and don't work
11 out -- the demand is not quite where you thought it was
12 going to be, so you have an over-hang of capacity. There
13 were a number of things that, in the real world, when you
14 are looking a couple of decades ahead can -- yes, they can
15 affect that.

16 I think, what I wanted to conclude with, as my own
17 comments here is a statement of when we actually have to
18 call something that is silly. If we look back 15 years to
19 1979, everybody knew this year's price of oil was going to
20 be \$100. That was a fact -- a quote fact. Both the
21 Government and industry invested a lot of money on that
22 piece of knowledge. That was 15 years ago. What we are
23 talking about now is looking forward decades as well. The
24 rule, and many parts of the rule specifically -- and need
25 and alternatives is based on what we feel is a faulty

1 assumption of gradual and predictable change in the
2 technologies for generation and power use. It is based on a
3 faulty assumption of gradual and predictable change in
4 energy law and regulation, and it is heavily depending on
5 the assumption of predictability of variables. And we
6 quoted some in our filing. Some of the variables are world
7 oil prices, gross national product, changes in labor force,
8 population changes, changes in national productivity, and
9 changes in saving rates. I have teased some people
10 periodically over the last couple of years. If we can
11 really get confident predictions of factors like this
12 decades in advance, I want to meet these people. We will go
13 form an investment pool, and I will retire.

14 [Laughter.]

15 MR. SCHWARTZ: I look at that as almost trying to
16 predict the outcome of the Nuclear Regulatory Commissioners.
17 If I could predict that, I would like to join you in that
18 venture.

19 MR. MOULTON: Shelly, I guess I still haven't made
20 my point on the distinction here. The NRC is tasked with
21 determining what it is -- what the need is for a proposed
22 action. Why is somebody submitting a renewal license -- a
23 license for an application for renewal. I guess what this
24 distinction I am trying to make is merely on the general,
25 simple statement of the purpose and need for an action. If

1 the NRC merely said that the need that is being met by this
2 proposal is one for power and the benefit would be power,
3 and not make any judgments as to -- that would prejudice a
4 state's determination of their local need or whether they
5 really need the plant, is that still prejudicial to what you
6 do? Anybody from the state I guess can answer that.

7 MR. VISNESKY: I have a question, John, as a
8 matter of clarification. Would the states' approval of
9 acquiring new capacity be sufficient justification for
10 looking at it, if that capacity were to come from a
11 relicensed nuclear plant? In other words, if a state,
12 through its planning process, approved as a least-cost
13 option, relicensing and nuclear, would that be sufficient
14 justification for you looking at it?

15 MR. MOULTON: Yes, it might.

16 MR. VISNESKY: So, you wouldn't even need a
17 threshold determination to suggest why you are looking at
18 it? The state in which the unit is located has proved it as
19 a recoverable capacity and at least cost. That is why you
20 are looking at it.

21 FROM THE FLOOR: I don't understand why --

22 MR. SCHWARTZ: Ma'am, would you please step to the
23 mike. We are on the record here.

24 FROM THE FLOOR: I don't understand the point of
25 the NRC --

1 MR. SCHWARTZ: Would you please identify yourself.

2 MR. MCCARTHY: Let me try to clarify it here.

3 MR. SCHWARTZ: Would you please identify yourself?

4 FROM THE FLOOR: I am Loraine with the Wisconsin
5 AG's office.

6 MR. SCHWARTZ: Thank you.

7 FROM THE FLOOR: Basically what I am trying to do
8 is to understand why people need to do this. It doesn't
9 make sense to me.

10 MR. MOULTON: Okay. Because we have a requirement
11 in our NEPA regulations that when we look at a proposed
12 action we have to answer the obvious question why are you
13 looking at this proposal and why is this action proposed?
14 It is as simple as that really. It really is. People don't
15 propose actions if they don't have a reason for doing it.
16 We merely have to simply state why it is this action is
17 proposed.

18 MR. SCHWARTZ: I think we are getting into the
19 details of the options at this point. I think it is a very
20 important discussion and I don't want to truncate it, but it
21 really gets into some of the discussions of the various
22 options. Let's hold -- please, I want to get everything on
23 the record. I would like to move on a little bit. When we
24 get into the details of the options I want to leave all the
25 time in the world, and we will stay here till tomorrow

1 morning, if necessary, to get everything on the record.
2 Whatever is efficient.

3 Any other comments? Excuse me. Let me open it up
4 to the audience any statements, questions or anything of the
5 panel.

6 MR. ROSS: If I could just real briefly respond.
7 It is that -- the way I understand what you said wouldn't
8 necessarily bring me great comfort -- the distinction you
9 made, because any kind of Federal blessing that is brought
10 to that -- that is given to that capacity may be used as
11 evidence in our own processes. When we may end up
12 challenging things at the Court -- and I think Tony was
13 talking about this earlier, and -- even though the intent of
14 the NRC may be one thing, the way that -- once the blessing
15 is given, the way it is used subsequent to that is going to
16 -- it may be considerably different. That is something that
17 we are very wary of because we have certainly seen these
18 kinds of arguments made before. So, while the intent may be
19 good, and we would -- intent-wise, I think we would agree
20 with you, if that's all it was and if everybody understood
21 that, that might be good enough; but I don't think that that
22 is going to be good enough in the real world when we come
23 down to judges making decisions about that.

24 MR. SCHWARTZ: Let me address that. I want to
25 make sure -- you used the word intent -- we are mandated to

1 address these issues by law. How that gets addressed is
2 what we are talking about to satisfy all of our questions.
3 I think that is really the point. Our intent is to satisfy
4 the concerns so we can move down the road so that it would
5 satisfy everybody's challenges and be efficient. But, we do
6 have a mandate that says we have to look at those things.

7 MR. ROSS: I guess when I am saying intent I mean
8 the intent of the clarification that he was making --

9 MR. SCHWARTZ: Okay. Good.

10 MR. ROSS: -- other than the larger goal.

11 MR. SCHWARTZ: Great. I would like to move on if
12 we may. Then we -- is it a clarification, mike?

13 MR. ARNY: I just asked you a question, and then
14 we could maybe talk about it more in the discussion. That
15 is, I don't know exactly what your rules are and I am not a
16 lawyer, but I will just ask you this question to open up an
17 area of discussion. If you need a reason to go through your
18 process, would --

19 MR. MOULTON: That is not a reason to go through
20 the process. Let me -- it is a reason for the proposed
21 action. It answers the obvious question why is the action
22 proposed. Okay.

23 MR. ARNY: I am sorry for misstating that. Would
24 an adequate justification be that a utility wanted to
25 consider this particular action as an alternative in

1 evaluating its resource options? Is that enough to meet
2 your requirements?

3 MR. MOULTON: That would answer the question why
4 it was proposed because the licensee would want that as an
5 alternative. The reason is this is proposed because we want
6 to leave this as an alternative. Maybe we could get into
7 this a little bit later. I will just leave this thought.
8 The NRC will ultimately have to show a benefit, and I am not
9 sure if that need is a benefit. We can get into that I
10 guess when we get to the afternoon.

11 MR. SCHWARTZ: Just one more and then we will move
12 on. Yes, sir?

13 FROM THE FLOOR: Can everyone hear me without the
14 microphone?

15 MR. SCHWARTZ: No. It has got to be in the
16 record, sir. I am sorry.

17 FROM THE FLOOR: I am from Michigan Radiological
18 Health. I am concerned whether the NRC can make the
19 connection between a real -- on behalf of the utility. If
20 what the NRC requires is a reason for the proposed action, I
21 mean, a proposed action could be -- rather than seeing it as
22 a real solution.

23 MR. MOULTON: That is a very good question. We
24 are struggling with that -- whether we have to judge that
25 the need is just reasonable or are we going to prove it

1 without a doubt, or if a proposed need is sufficient. That
2 is a very good question. We have to consider that.

3 MR. SCHWARTZ: I think that really gets to the
4 heart of a lot of this afternoon's discussion. I appreciate
5 your insight into that. The mike has a long cord, if you
6 want to pass it around.

7 Donald, CEQ/EPA agreement.

8 MR. CLEARY: Don't feel that we are cutting off
9 discussion on this, because the questions and comments that
10 you have been making on need are really at the heart of the
11 discussion of Option 3, which will take place this
12 afternoon.

13 [Slide.]

14 MR. CLEARY: CEQ and EPA comments. I think you
15 are all aware that NRC spent a long time talking with CEQ
16 relative to some of the procedural comments that they had -
17 - procedural concerns, and came up with a letter of
18 understanding that -- and a need to explain that this letter
19 of understanding is not binding. It is not a commitment.
20 It is an understanding that if the final rule were to have
21 these changes, the concerns of EPA and CEQ relative to their
22 basic procedural concerns would be resolved.

23 The basic concerns were the use of Category I's
24 precluded involvement at the time of the proposed action,
25 that public comments taken far in advance of but not at the

1 time of the proposed action does not provide for meaningful
2 involvement, and that the Commission cannot determine now a
3 favorable cost/benefit balance for future applications. A
4 determination has to be made at the time of the action.

5 [Slide.]

6 MR. CLEARY: To resolve these concerns, we reached
7 an understanding that, if we would commit to writing a
8 supplemental EIS rather than an EA this would provide for
9 circulation of a draft EIS. An EA need not be circulated in
10 draft, that the conditional cost benefit balancing would be
11 made in the final rule -- that that balancing would be done
12 at the time of the license renewal action, and that public
13 comments will be evaluated regardless of the category of the
14 issue. Basically what this means is that anybody who wanted
15 to make a comment, bring forward information, say this
16 information is going to change your conclusion with regard
17 to this or that, that they can submit it and that the staff
18 would commit to looking at it to determine whether it is
19 significant new information. And, if it were significant
20 new information, the staff would then proceed with folding
21 it into the analysis. This will reduce what CEQ and EPA
22 thought was a procedural hurdle of having to force new
23 information for Category 1 issues through the petition
24 process.

25 I will point out that there are existing

1 provisions of Part 51 that does provide for receiving
2 comments basically at any time and getting those comments on
3 the docket and staff having to report how the comments were
4 disposed of. That finishes that.

5 MR. SCHWARTZ: Great. Thanks, Don. I will turn
6 to the panel now. The question posed to the staff are to
7 what extent are the concerns of the states resolved by the
8 changes to the GEIS and rules that are being made in
9 response to CEQ and EPA comments? Does anyone have comments
10 on that? Mike?

11 MR. MCCARTHY: Mike McCarthy. I think one major
12 concern we have is most of the fixes in the CEQ/EPA
13 Memorandum of Agreements are geared towards what would be
14 Category 3 issues. They presume unresolved issues would be
15 my understanding -- what would get the EIS' attention. So,
16 by itself in isolation, these letters don't get us very far,
17 in combination with the redesignating categories for
18 specific issues then these become more significant.

19 MR. SCHWARTZ: Anybody else on the panel? Sally?

20 MS. JENKINS: If you go this route, the other
21 option, in terms of handling need and alternatives for
22 states that have little NEPAs, which we do -- our code
23 explicitly allows us to enter an agreement with the Federal
24 Government so that there is a joint supplemental
25 Environmental Impact Statement, where we do the part of the

1 work where we have the most expertise and you do the part of
2 the work where you have the most expertise. Our attorney is
3 not thrilled about trying to present need in front of your
4 hearing process.

5 MR. SCHWARTZ: Do you have experience in going
6 down that path?

7 MS. JENKINS: She was the attorney for this Public
8 Service Commission in Tyronne, and then had to testify in
9 some rate proceedings for NSP on what we had done.

10 MR. SCHWARTZ: Okay.

11 MR. CLEARY: I would like to say that Option 2
12 this afternoon has that as a large element, and I hope that
13 you are prepared -- we will be prepared at that point to
14 elaborate on the problems and considerations of joint NRC
15 state agreement.

16 MS. JENKINS: I don't think we have ever actually
17 done it. This is in the code. We came close for one power
18 plant, but there was a hostile one.

19 MR. SCHWARTZ: I mentioned in the session in
20 Rockville that the Commission a number of years ago when
21 PEPCO was considering the Douglas Point site, we did have a
22 single hearing where the NRC would make its decision based
23 on the same record and the state would then make its
24 decision based on the same record. It seemed like a good
25 idea, but the plant never went forward, so we never took it

1 to conclusion. I think Three Mile Island could write about
2 that.

3 MR. McCARTHY: I would also like to make one
4 additional comment. Again, what I want to point out is a
5 concern that Minnesota has regarding the EPA's CEQ concept
6 are in isolation. An additional factor is again the
7 technical inadequacies. I want to reemphasize especially on
8 need and alternatives, if these are not addressed now, the
9 EPA/CEQ vision does not account for that being done later.
10 We think that that is just a vitally important
11 consideration.

12 MR. SCHWARTZ: Thank you, Mike. I see nothing
13 from the panel. Anyone from the audience have any questions
14 or comments at this point on this issue? Okay. Yes, sir -
15 - the gentleman from EPA?

16 FROM THE FLOOR: I am from the regional office. I
17 heard some comments made on the memorandum of understanding
18 from the NRC -- EPA. It is our opinion that the CEQ
19 basically states that the Government -- compliance with the
20 -- is proper to review, comment and hold individual agency's
21 regulations. If we don't have a commitment -- the CEQ's
22 direction and advisory nature, we need to know that.

23 MR. SCHWARTZ: Thank you. Don, would you like to
24 respond?

25 MR. CLEARY: Yes. Unfortunately, our staff

1 attorney disappeared just in time.

2 MR. SCHWARTZ: Geary just walked out. If you
3 want, we can get back to that question as soon as Geary
4 comes back or first thing this afternoon. It is an
5 important question.

6 MR. CLEARY: I will just elaborate a little bit on
7 this. The Commission -- the understanding was reached
8 between the NRC staff and EPA and CEQ. This is not
9 implemented until the Commission acts on it in the proposed
10 -- in a rule. So, it is undetermined at this point in time
11 what is going to happen; but, to say that should not
12 necessarily raise great concern. It is just that the
13 ultimate authority at NRC has not acted on the
14 understanding.

15 MR. MCCARTHY: Don, I think my reading, from a
16 participant, of those letters, where essentially both EPA
17 and CEQ said we have some concepts that we think are good
18 ideas, and I believe they both ended with caveat sentences
19 that said something to the effect of we want to see the
20 actual drafts in writing, and so I think there was -- when I
21 am looking at these I am looking at them as more a
22 conceptual understanding rather than blessings. I may have
23 misread that.

24 MR. CLEARY: No. I think that that is a correct
25 observation -- that CEQ and EPA -- and we had a

1 representative from the Federal Liaison Office at the
2 Rockville meeting last week, and we believe that that caveat
3 -- that they full understand that. The final disposition of
4 that understanding has yet to happen.

5 MR. SCHWARTZ: Good. Thank you. It is a good
6 discussion.

7 MR. ARNY: I would like to offer just a quick
8 comment.

9 MR. SCHWARTZ: Yes.

10 MR. ARNY: I guess the flavor of the items and the
11 understanding is sort of to move things toward being
12 Category 3. We support things being in Category 3, but I
13 guess it is not clear to us what this means relative to
14 actually having the items in Category 3, and what the reason
15 for not simply putting them in Category 3 is.

16 MR. CLEARY: I would like to respond to that. It
17 is my understanding that the letters of understanding did
18 not go to the categorization -- that that is another issue.
19 CEQ in discussions said that they were not going to comment
20 on categorization of individual issues -- that they were
21 concerned about the procedural aspects of the generic
22 approach. And EPA submitted a long list of comments where
23 they took issue with categorization of specific issues. So,
24 I see the categorization as separate from the procedural
25 understanding.

1 MR. SCHWARTZ: Okay. Well, that leads us into the
2 discussion on the need for alternatives should be designated
3 Category 3, Don, which is the next item on the agenda.

4 [Slide.]

5 MR. CLEARY: The basic question here is, if need
6 and -- and this is just relative to need and alternatives,
7 not to the -- all of the other issues in the GEIS. But, if
8 need and alternatives were to be designated Category 3, as a
9 number of states recommended, how far would that go in
10 resolving the basic problems that you are describing here
11 this morning? I would point out that, if the CEQ and EPA
12 understanding are implemented, it does make it easier to
13 submit significant new information and have it considered by
14 the staff. I would also point out that the staff and Oak
15 Ridge are hard at work looking at all of the technical
16 comments that were submitted on need and alternatives and,
17 at this point, we just can't give you any idea of whether
18 the Category 1 determinations would be sustained. We will
19 see better within the next two or three months as the
20 responses come together. I will stop there.

21 MR. SCHWARTZ: Yes. The staff issues raised by
22 this point -- several state commented that need and
23 alternatives should be designed as Category 3 issued, and
24 thus reviewed at the time of a plant-specific license
25 renewal application. The question to the panel and the

1 audience is to what extent would this resolve state concerns
2 about conflict of the NRC/NEPA review with state regulatory
3 authority? I am asking the question a little differently.
4 Mike?

5 MR. MCCARTHY: Well, I would like to respond. I
6 hope that this doesn't get to be boring. We see a three-
7 legged, fundamental vision. I think that this is one of the
8 three legs. By itself, with no other changes, we would
9 still have some very very grave concerns, in conjunction
10 with the changes with the CEQ/EPA process, in conjunction
11 with a very explicit statement in the body of the rule
12 itself that clarifies that we are not getting our state
13 authority encroached upon, then we would see Category 3
14 redesignation as a significant step. But, I am constantly
15 going to reemphasize we are looking at a series of and
16 statements not or statements.

17 MR. SCHWARTZ: Thank you. Yes, sir?

18 MR. ARNY: Michael Arny from Wisconsin. We also
19 have multiple things that we are concerned about, and
20 redesignating things Category 3 would help, but it is not
21 the whole answer, as it leaves open the other questions that
22 we raised earlier of the jurisdictional question over in-
23 house state authority that may be encroached upon. That is
24 why we supported Option 4.

25 MR. SCHWARTZ: Thank you. Anyone from the

1 audience on this particular issue?

2 [No response.]

3 MR. CLEARY: One of the things that we are looking
4 at and need to understand is even with the Category 3
5 designation, the extent to which we are going to be faced
6 with the state concerns on individual cases. So, that is
7 just to say that we have thought of that issue also and it
8 is very important in terms of the strengths and weaknesses
9 of any approach that we might recommend to the Commission.

10 MR. SCHWARTZ: Thank you. We will move into the
11 clarification of public record of NRC and the state
12 authority. Are you ready to deal with that, Don?

13 MR. CLEARY: We have already spent a lot of time
14 talking about this.

15 MR. SCHWARTZ: Yes. The question is have we done
16 it through what we have been talking about?

17 MR. CLEARY: Yes. I will reiterate what I had
18 asked Mike McCarthy before the meeting. One of the real
19 problems, and I think we are developing them here -- it is
20 not enough for us to go back to the Commission and say well,
21 to do such and such will make the states feel good, we have
22 to be able go tell the Commission the states have these real
23 problems. So, that is a major point I want to kick off
24 with.

25 MR. SCHWARTZ: Tony?

1 MR. VISNESKY: Just to reiterate. I think it is
2 very important to understand that clarification, assertion
3 and statements to the effect that you are not preempting or
4 intruding don't get the job done in reality. That is it.
5 That is the basic problem.

6 MR. SCHWARTZ: The concern is that -- you said
7 earlier that the de facto -- that the perception could turn
8 out to be reality? That is a concern.

9 MR. VISNESKY: They absolutely have in our state.

10 MR. SCHWARTZ: Okay. Okay. I understand that.
11 Thanks, Tony.

12 MR. CLEARY: For the record, could we get a
13 reiteration of some of the details?

14 MR. VISNESKY: Certainly. The problem that we
15 face is regardless of the attestation of the Federal
16 Government, the Federal Government-blessed numbers,
17 analysis, especially when they are combined with a license
18 that has got an NRC stamp at the top of it or a license
19 renewal application that has been approved with the NRC
20 stamp, carry a lot of weight in district courts in Illinois.
21 It is a two-fold problem. One is it shifts the burden to
22 people like Commission staff members to refute utilities'
23 assertion that the NRC's determination is sufficient as a
24 determination of need and economic benefit. That shifting
25 of burden is virtually impossible for Commission staffs like

1 mine to deal with. We have 13 people, roughly eight
2 engineers and economists, none of whom have background,
3 education or expertise in the area of determining whether or
4 not nuclear plants are appropriately relicensable, whether
5 the economics have been studied sufficiently to make that
6 determination and whether or not in fact the need exists to
7 do that. You combine that with a state law that says all of
8 that burden must be met and a state law that clearly places
9 that on the Commission to determine that has been met. In
10 other words, in our state, it is not if the utility doesn't
11 have an acceptable plan, we send them home and they come
12 back with another plan. Our Commission is required to, if
13 they do not approve the plan of the utility, substitute a
14 plan or modify that plan by statute. We don't have the
15 ability to punt it, to use a poor sport's analogy. So, what
16 we end up with is sort of insurmountable burden of proof
17 shift that is very difficult to overcome. Practically
18 speaking, when these get challenged, one way or the other -
19 - and I am not -- I am not now speaking about the efficacy
20 of the decision; but whatever the decision of the Commission
21 is it is likely to be challenged especially because special
22 interests, whomever they are, are probably disserved by the
23 outcome. If those interests are disserved by the outcome,
24 they have redress through the Courts. The Courts use, to a
25 large extent, a process of weighting evidence that amounts

1 to the way I used to grade lab reports when I taught at the
2 university. That is, the one that has the best looking
3 cover and the one that has the heaviest amount of volume
4 gets the best grade.

5 MR. SCHWARTZ: What school did you go to?

6 MR. ARNY: Purdue.

7 [Laughter.]

8 MR. ARNY: So, it really does I guess -- and I
9 don't mean to demean the courts, but I have heard a U.S.
10 District Court Justice say exactly that -- don't confuse me
11 with analysis, bring me a good capsule of what you want me
12 to do and support it. That is a very difficult burden for a
13 staff to overcome because their position in that case will
14 always be second to the utility, possibly properly so, but
15 necessarily a difficult position to support. I am sorry
16 about taking so long, but you asked for detail.

17 MR. SCHWARTZ: No, that's fine. He wanted a
18 restatement for the record. I thank you for that. Gary was
19 queuing up to the mike.

20 MR. MIZUNO: I wanted to follow-up on that though,
21 without becoming argumentative.

22 MR. SCHWARTZ: Geary? You said that before.

23 MR. MIZUNO: Even in the absence of an NRC
24 determination, and assuming that what you are arguing is
25 that your staff is not able to effectively address any

1 problems that you might see in the NRC analysis, even in the
2 absence of an NRC analysis, the utility would then go
3 forward with their own determination of need. So, are you
4 saying that you have enough analysis to address the utility
5 thing -- I mean, the utility analysis -- the utility
6 generating analysis, but you don't have enough to address an
7 NRC-developed analysis or -- which I personally do not
8 understand, or are you saying I don't have resources to
9 address any kind of analysis? In that case, does it really
10 matter whether the NRC does something or not? I understand
11 the practicality; but is there anything other than the NRC
12 refusing to enter into the area which could address your
13 practical problem?

14 MR. SCHWARTZ: Tony?

15 MR. VISNESKY: I would certainly like to respond
16 to that. I guess I want to defend my staff a little bit. I
17 am not suggesting that we are incapable of doing the
18 analysis. What I am suggesting is that, if you put an NRC
19 imprimatur on something, that shifts the level of proof that
20 I have to bring in a court to one that I don't think I would
21 be comfortable suggesting we would prevail on, all other
22 things being equal. That doesn't mean that we can't do it
23 or that we are any worse off or any better off if the NRC
24 hasn't made a statement in terms of our responsibility at
25 the level that we have it in the state proceeding to

1 determine and assess need and look at the economic analysis.

2

3 I guess what I am saying is the minute somebody in
4 Danville, Illinois sees an NRC stamp on something, it
5 automatically becomes something that has a higher level of
6 efficacy associated with it than something that merely
7 carries the Illinois Commerce Commission statement of
8 findings of fact in a case that they have issued an order
9 in. That is the problem. It is not that we don't have the
10 staff to do it at all. We have the staff to do I think an
11 adequate job. It raises the stakes when the utility comes
12 in and will argue correctly that they have an NRC permit and
13 that determination has already been made. It is really not
14 a matter of fact, it is a matter of perception.

15 MR. SCHWARTZ: Let me see if I can characterize it
16 a little bit. I guess what I am hearing is, if the
17 underpinnings of the proposed rule and what we are proposing
18 here is efficiency, then the question is, if it turns out
19 that by NRC making a judgment whether explicitly or
20 implicitly, raises the burden of proof to a no level, are we
21 really creating a more efficient system?

22 MR. ARNY: That is a very basic concern of mine.

23 MR. SCHWARTZ: Okay. Thank you. Mike?

24 MR. McCARTHY: I think I would like to
25 characterize it similarly but differently. I think the two

1 philosophical questions we are wrestling with here today is
2 one of duplication and one of potential conflict. It is I
3 think going to be -- I would be stunned if there was not a
4 consensus that it is desirable to avoid duplication. I
5 think it is desirable to avoid potential conflict. There is
6 little upside that those of us in the states can perceive
7 from the NRC conducting analysis of need and alternatives.
8 There is significant downside. Since I see Geary, from the
9 NRC staff, has brought all of the CFR books over there and
10 has carefully piled them --

11 MR. MIZUNO: I knew I made a mistake.

12 MR. McCARTHY: I will give you a reference.

13 MR. SCHWARTZ: He has got two more piles.

14 MR. McCARTHY: Oh, yes, the other pile. I bet you
15 have the 40 CFRs there. If you would look up 40 CFR,
16 Section 1506.2, parts B and D, I think you will find the
17 issues of redundancy and potential conflict addressed.
18 Rather than re-read some of those parts, I think you will
19 find that the NEPA recognizes the wisdom of avoiding
20 unnecessarily duplicating what is already being done by the
21 states. I think you will find that there is a very explicit
22 suggestion that state plans and state activities already
23 underway, whether or not Federally-approved, have deference.

24 MR. MIZUNO: All right. I am aware of those
25 sections. In fact, it is open right to that section.

1 MR. McCARTHY: Excellent anticipation.

2 MR. MIZUNO: I guess the only thing I would say is
3 that what we are looking for from the NRC standpoint is, we
4 know the criticisms and we want to get them accurate; but we
5 are really also looking for proposals from the state side as
6 to how to deal with this procedurally. One of our options
7 here goes in a direction of coordinating state efforts with
8 the NRC efforts. That is just one way of doing it.
9 Clearly, the CEQ regulations have a lot of flexibility in
10 them. So, I would just say that we are looking for specific
11 ways of doing this, I mean, to the extent that we can. Or,
12 I mean, we have another options that is out there that says
13 the NRC will not get involved at all. So, what we are
14 looking at here is simply the states' views as to how best
15 to achieve your concerns or how best to address your
16 concerns with the process consistent with the NRC meeting
17 its NEPA obligations.

18 MR. McCARTHY: Could I restate what you just said
19 to see if I understood?

20 MR. SCHWARTZ: Let me try one other. To add --
21 Geary, tell me if I am going -- if I am stretching too far -
22 - to meet our requirements and not create a preemptive
23 situation and still minimize the litigative risk of where we
24 go with this potential rule. Is that okay?

25 MR. MIZUNO: Let me just say there is no

1 preemption from a legal standpoint. That is a bottom line
2 from a legal standpoint. Now, what the states have been
3 saying is that forget about the legality, there is a
4 practical effect of what the NRC is doing. So, what I am
5 saying is give us some options or give us some alternatives
6 for restructuring the process of doing the GEIS that will
7 meet your concerns but also meet the NRC's concerns of
8 achieving administrative efficiency and most of all
9 complying with our NEPA burden.

10 MR. MCCARTHY: I think what I have just heard is a
11 possible consensus that, if the states -- well, I think I
12 have just heard a consensus that you would be happy to defer
13 to state processes and expertise on these issues, if you can
14 do it within the constraints of the law.

15 MR. MIZUNO: I can't speak for the Commission,
16 because the Commission ultimately has to decide which way it
17 wants to go. But, what I am saying is that, if the states
18 have an alternative or options or whatever you want to call
19 them, of addressing your concerns, okay, that are consistent
20 with the NRC's stated concerns of why it went into this
21 whole GEIS rulemaking process in the first place, then the
22 NRC staff and OGC will look at those things and they will be
23 evaluated ultimately by the Commission. The Commission will
24 not close its eyes to those options. In fairness, we would
25 present those options to the Commission -- that this is what

1 the states ultimately would like. We would obviously
2 provide our evaluation of it, I mean, in terms of whether we
3 think that it meets our NEPA obligation, our legal
4 obligation -- whether it meets the administrative efficiency
5 obligation. But, other than that, I think it would be fair
6 to say that, if it represents -- I mean, if the states have
7 a consensus approach or alternatives -- a range of things
8 that can address -- these things can ultimately be brought
9 to the Commission's attention.

10 MR. ARNY: I would like to comment.

11 MR. SCHWARTZ: Mike and then Don.

12 MR. ARNY: I guess one side of this is the
13 analytical side and just what the capabilities are and what
14 the hurdles are when different kinds of covers get put on
15 certain decisions. I think that is very important. But, it
16 is also important to recognize that almost anything that is
17 done by the NRC is likely to be presented in arguments in
18 Court that they have preempted the state or that their
19 jurisdiction preempts the state, which is completely outside
20 of technical analysis. It is just the NRC acted or the NRC
21 will act, therefore, the state can't do what it intended to
22 do. Like I indicated before, Wisconsin has been down this
23 road, where we have been sued on exactly these grounds of
24 exceeding our jurisdiction in this area, and other states
25 have had that experience as well. So, that -- unless you

1 clearly sort of cut out the authority that is going to
2 remain the states and make that extremely clear, this is
3 going to happen. That is why we support Option 4, because
4 that clearly defines who is making the decision on need and
5 alternatives as the state, and it doesn't -- NRC hasn't said
6 something. And because they haven't said something about
7 that, it will be much harder to allege that the state had
8 been preemptive.

9 MR. SCHWARTZ: Be explicit is what we are --

10 MR. ARNY: Explicit.

11 MR. SCHWARTZ: Be explicit and don't imply.

12 MR. MIZUNO: Let me just address Option 4, because
13 perhaps -- I am not sure that Option 4 is really going to
14 address some of the states' concerns because, at least the
15 way Option 4 is presented, you would still have an NRC
16 discussion for what we believe is a NEPA disclosure
17 requirement of the need for power and alternative energy
18 sources. In other words, our current analysis of NEPA is
19 that we are required to disclose the subjects. So, you are
20 going to see a discussion therein. And, to the extent that
21 we think that there is a NEPA obligation to discuss these
22 things for purposes of disclosure, I think you are still
23 going to end up with a practical problem that Illinois has
24 raised. What will end to minimize that though is that we
25 would not make a finding under Option 4, at least the way

1 that it is currently written, with respect to having a
2 bottom line, and you would furthermore have this long --
3 well, hopefully, a very persuasive argument that indicates
4 why the NRC would be deferring to the states with respect to
5 these two subject areas.

6 MR. VISNESKY: What about waiting until -- or
7 using as your reason for entering into this process or
8 beginning the review, a finding of a state commission that,
9 in fact, this capacity was needed?

10 MR. ARNY: This sort of fits in with designating
11 these Category 3 items, because, if you designate them
12 Category 3 items, by the time you get to the point where you
13 have to make these decisions, a state could have acted to
14 develop the planning basis that it could provide to the NRC
15 to support a decision. There -- that would allow us to mesh
16 our activities rather than working at odds. I think, if you
17 don't designate them Category 3, you have got a timing
18 problem.

19 MR. MCCARTHY: I would like to make one other
20 comment also. Mike you have done very well at repeatedly
21 mentioning the words Option 4 this morning. I have
22 explicitly avoiding mentioning an option by name. Part of
23 that is I think that the way the staff paper was written, I
24 think it was very easy to misconstrue what was actually
25 being set forth in Options 3 and 4, and I am not confident

1 that what NRC staff was proposing in Option 4 is actually
2 consistent with a reliance on a state process. We can
3 discuss that this afternoon.

4 MR. SCHWARTZ: Why don't we hold on that until we
5 get into the individual details. These are very --

6 MR. MCCARTHY: I wanted to raise that now because
7 I think there might need to be some clarification with what
8 is actually on the table.

9 MR. SCHWARTZ: Right.

10 MR. MCCARTHY: I know some states are not really
11 sure what was in each of these options.

12 MR. SCHWARTZ: Uh-huh. Yes. We had that
13 discussion in Rockville. I think we are a little closer to
14 what -- understanding what exactly the right line, if there
15 is one, between each of the options. Again, I want to
16 emphasize that those options are not voting up or down. We
17 are really looking to say are there pieces of one option
18 that you find more comfortable, and would you marry it with
19 something else, or something that we haven't even discussed
20 yet? So, keep it open. The options are there for
21 stimulation of discussion.

22 Don, you did say you had a comment. Did we pass
23 that point?

24 MR. CLEARY: That's okay.

25 FROM THE FLOOR: I have a real quick question. I

1 am working with the NRC. It would be real helpful if you
2 could give us some alternatives for writing this and some
3 citations or some new examples. I know of no case
4 whatsoever in the area of economic regulation used in useful
5 decisions, or any major case where the court's have
6 oversight authority in those areas, certainly not using them
7 as a licensing matter. Certainly it has not been the case -
8 - if you could give us a citation?

9 MR. SCHWARTZ: Good question.

10 MR. VISNESKY: We certainly would be willing to do
11 that.

12 MR. SCHWARTZ: Great. Thank you.

13 Yes, sir?

14 MR. WILSON: Dave Wilson from Shaw-Pittman. I
15 have a question whether there is a conflict between the
16 states' concern that the NRC not infringe on its decision-
17 making and the comment that the need for power and
18 alternatives should be Category 3 issues. Because it seems
19 to me that, if these issues are Category 3 issues, that
20 implies that there will in fact be a site-specific
21 determination that the capacity represented by a particular
22 plant is needed and that there are not better alternatives.
23 It could even be a position that considers the states'
24 position and then in an adjudicatory proceeding rejects it,
25 if the evidence is contrary to the state's position. In

1 that case, you might end up in a state court with a res
2 judicata or a collateral estoppel-type situation. You might
3 well be better suited by a general generic finding or
4 presumption that, as a general matter, the capacity
5 represented by existing plants is beneficial or needed and
6 that there aren't any, as a presumption, totally
7 environmentally superior alternatives. If you had those
8 sort of general generic findings, they wouldn't get into the
9 specific issues represented by your plants and they might be
10 easier for you to address. They might have less intrusive
11 effect. So, I would just like you to consider that in maybe
12 addressing the alternatives or options that come along that
13 might be a consideration.

14 MR. SCHWARTZ: Thank you very much. Yes, sir?
15 Ron?

16 MR. CALLEN: In this regard, I would like to turn
17 to something I mentioned earlier and try something out on
18 you. Suppose when reviewing these two issues, the NRC was
19 to decide that they could only make very general findings,
20 as I think this fellow was suggesting, and that it deferred
21 to the states, A, because the state review on need for power
22 would be thorough and very timely and expert, and would
23 involve a pursuit, like in a demand forecasting and so
24 forth, that is unavailable to the NRC; secondly that this
25 type of deference -- a very general finding in a deference

1 would be an effort and non-duplication; and then thirdly,
2 such a finding would also be in conformance with the Energy
3 Policy Act that said that it is now national policy to go
4 through the IRP process.

5 MR. SCHWARTZ: I think you have outlined some of
6 the questions we have had. You have outlined three very
7 good pros for discussing pros and cons.

8 MR. CALLEN: I mention that particularly on the
9 point I think you were raising on kind of the pursuit --
10 help us get out of this.

11 MR. SCHWARTZ: Sure. Sure.

12 MR. MIZUNO: Can I raise two things with the
13 states?

14 MR. SCHWARTZ: Sure.

15 MR. MIZUNO: In fact, that discussion there sort
16 of brought one point, which is that, when we talk about
17 deference we have to be careful to precisely indicate what
18 we are talking about. Again, although I know that Mike
19 McCarthy wanted to get away from the options, I thought it
20 would be useful just to make a distinction. Under Option 2,
21 and the portion that was used in Option 2 was that it was
22 going to be "deference" to the state in the sense that the
23 state -- the NRC would accept, under certain conditions, a
24 state determination of need and alternatives; but the state
25 analyses would then be taken into account in the NRC

1 decision-making, okay? That is different from the kind of
2 deference that was in Option 4, in which Option 4, we said
3 we are going to have a discussion of the matter for purposes
4 of disclosure. Now, you could get -- you could derive a
5 process by which we -- either NRC develops that analysis or
6 we "defer to the state analysis for purposes of disclosure."
7 But, there was an even further deference, if you want to
8 call it under Option 4, in which the NRC was not going to -
9 - was going to not consider in its decision-making process -
10 - the license renewal decision-making, the issues of need
11 for power. And alternative energy sources and a generic
12 rationale for making that kind of overall deference was
13 going to be provided in the rulemaking. So, I think we have
14 two different kinds of "deference," and the states just need
15 to be very clear as to what they are talking about.

16 MR. SCHWARTZ: Thanks, Geary. That is a very good
17 distinction.

18 MR. MIZUNO: Okay. That is the first item. The
19 second item I just wanted to raise was that we have states
20 here who have very -- well, to certain varying degrees, an
21 internal process that does result in these cost-power
22 consideration, energy mix concerns, you know, a very
23 analytical program process for dealing with these issues.
24 The issue I would like to raise is how would we structure a
25 process that is legally defensible that says certain states

1 who do have these processes we will provide "deference," and
2 we will leave that open? But there are other states who
3 don't have these processes in place. So, the NRC cannot
4 rely upon "state processes" there. So, what should the NRC
5 do in those situations? I do not think that we can -- in
6 other words, I don't think we can develop a single, uniform
7 way of dealing with these things based upon the beset
8 states, if you want to call it that way.

9 MR. SCHWARTZ: I think that borders a little bit
10 on something David said earlier when he said there is an
11 agreement state program dealing with materials where the NRC
12 discontinues their authority with certain rationale. That
13 was something I think you raised, David.

14 MR. ARNY: If I could respond? We did assume that
15 we had a reasonable understanding of the different options.
16 I appreciate Mike McCarthy's comment. If we find that we
17 have misconstrued them through the discussion today, we will
18 suggest changes to our comments.

19 I did want to point out a couple of things.
20 First, we do have a written comment letter to you that I
21 will give you. I do not know what the appropriate process
22 is for getting that in the record or whatever. I will give
23 you a copy and you should do what is appropriate with it.
24 We have some we can hand out as well.

25 One of the issues that it addressed in these

1 comments is the last one you mentioned. The question of how
2 you should decide which states have adequate competency for
3 doing the integrated resource planning to evaluate need I
4 think was helped along, as mentioned earlier, by Ron -- that
5 EPACT has essentially told all of the states that they have
6 to tell the Federal Government that they are doing
7 integrated resource planning according to a definition in
8 the law, or explain why they are not. So, I think the
9 results of that process should differentiate the states that
10 are following a process that meets the Federal --

11 MR. SCHWARTZ: The whole process?

12 MR. ARNY: Yes. Meets a Federal standard, and
13 those states that are not, which gets you out of the
14 question of having to decide that.

15 MR. SCHWARTZ: Is there a formal evaluation of
16 that process done by anyone?

17 MR. ARNY: I believe DOE is supposed to evaluate
18 what is sent in, but I don't know exactly what the process
19 is.

20 MR. CLEARY: What is the time frame on responses
21 from the states?

22 MR. ARNY: I believe it was this year.

23 MR. MCCARTHY: I think that the -- and I bet, with
24 a little luck, Geary has got the EPACT right there in his
25 hands?

1 MR. MIZUNO: No. Unfortunately, that was the one
2 volume I didn't bring.

3 MR. McCARTHY: What we are referring to is the
4 Energy Policy Act of '92. I believe there is a phase-in
5 envisioned in terms of implementation. So, I think that you
6 will hear some states raise this concern on Thursday as
7 well, of what do you do during this transition period while
8 some states, which are further behind than others in
9 implementing this type of process. We do recognize there is
10 some type of a transition period here. I think that some of
11 the earlier analysis on EPACT will probably be -- I think it
12 was scheduled to lag about a year from the passage, which
13 would be anytime, within weeks or months.

14 MR. SCHWARTZ: Good. Anything else on the issues?
15 Tony?

16 [No response.]

17 MR. SCHWARTZ: I am looking at my watch. It is
18 about two minutes after 12:00. It looks like we are on
19 time, unless anybody has got something burning that they
20 would like to say right now? Mr. Gallo?

21 MR. GALLO: I just wanted to clarify one point
22 about the renewal license. In conjunction with the comments
23 that the panel made about trying to turn need for power and
24 alternatives into a Category 3 so that the timing would mesh
25 closer with the state decision-making processes, from the

1 industry standpoint, a renewed license is something that
2 most utilities want to get early on in the process, even
3 before they decide whether or not they in fact want to
4 operate a nuclear plant in the renewal period. It is like a
5 bus pass. I have got one in my pocket. It doesn't mean I
6 am going to take the bus, I just have one. The renewed
7 license is in the same fashion. So that when a utility goes
8 in for this license early in the game, the states are likely
9 not to be in a position to deal with need because the
10 utility is not going to make any application to the state at
11 that time. So, whether it is site-specific or generic, the
12 fact situation is going to be about the same. The state
13 contribution is not likely to be there because the utility
14 has come in early for the NRC license. That is all.

15 MR. SCHWARTZ: Good. Okay.

16 MR. MCCARTHY: I think just a follow-up comment.
17 I think many of the state processes and long-range planning
18 do address whatever the state acknowledges on a 10 or a 15-
19 year horizon and then will reevaluate that every other year,
20 every two or three years. That I think is a fairly typical
21 model throughout the country where this is done. I think
22 that I would be surprised if many plants were filing their
23 application more than 15 years in advance. I could be
24 wrong, but, if you had -- if that was going to be the case,
25 I think that that would be an interesting thing to know.

1 MR. SCHWARTZ: Good thank you.

2 MR. MIZUNO: Let me just add, just for the
3 purposes of the states, the Part 54 Rule does permit the
4 licensee to come in up to 20 years ahead of the period of
5 expiration. Now, whether they actually do, I don't know. I
6 mean, to date, I do not believe that any of the licensees
7 that have been in serious discussion with us have talked
8 about a 20-year advance, but that doesn't mean that they
9 couldn't do it under the existing regulation.

10 MR. SCHWARTZ: Good. Thank you.

11 MR. CALLEN: I just had one question.

12 MR. SCHWARTZ: Yes.

13 MR. CALLEN: It seems to me we are talking about,
14 in effect, a two-hurdle process here. One is the hurdle of
15 passing muster with the NRC and then, secondly, for this
16 option. As the gentleman suggested, once the utility passes
17 that option, then they will decide whether they are really
18 serious about it. So, then the second hurdle to be passed
19 is the state review that, yes, it makes economic and power
20 sense. I am wondering are we trying to get into trouble
21 here trying to package that all up into a single NRC
22 decision, where in fact we are really talking about two
23 steps?

24 MR. SCHWARTZ: Let's leave that question on the
2 table. We will address it this afternoon. Please be back

1 here at five minutes after 1:00. That is one hour from now.
2 Thank you all.

3 [Whereupon, at 12:05 p.m., the above-entitled
4 meeting was recessed for lunch, to reconvene at 1:05 p.m.,
5 this same day.]
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AFTERNOON SESSION

[1:08 p.m.]

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3 MR. SCHWARTZ: Welcome back to the afternoon
4 session. I think we covered a lot of ground this morning in
5 understanding the various issues and also in addressing some
6 nuances to the issues of trying to sharpen up the
7 differences and the similarities of where the states want to
8 go, where the NRC staff is trying to satisfy those concerns.

9 So I think the stage is set pretty well for some
10 good in-depth discussion on the various options. At the
11 risk of repeating myself, I'll do it one more time, and that
12 is recognize that these are not distinct options that we're
13 voting up and down, but just an array of ways that the staff
14 can come up with to satisfy states' concerns.

15 We're looking to new ideas, ways to package it
16 differently, and any other alternatives that you folks would
17 have and would like to add for the record.

18 With that preamble, we have one open issue from
19 this morning. The gentleman from EPA raised the question
20 about the EPA's CEQ agreement. John, you spent some time
21 talking. John, from EPA, do you want to raise that issue
22 again and make sure the record is clear?

23 FROM THE FLOOR: I had inquired with regard to the
24 status of NRC's commitment to carry forward on what we take
25 to be an agreement of substance reached between CEQ, EPA and

1 NRC. What I heard this morning seemed to me to call NRC's
2 decision to carry forward on implementing the agreement into
3 serious question.

4 And I inquired, in fact, what was meant by the
5 fact that the memorandum of agreement was not final,
6 etcetera, etcetera. I wanted to hear some discussion on
7 that.

8 MR. SCHWARTZ: John, would you like to deal with
9 that? I'm sorry. Gary?

10 FROM THE FLOOR: I think that the status of the
11 agreements that were reached between CEQ, EPA and the NRC is
12 that these were tentative agreements, in this sense. If the
13 NRC were to go forward with the proposals to modify the
14 rulemaking and the GEIS in accordance with the
15 representations made in the letter from the NRC, that EPA
16 and/or CEQ would agree that those were sufficient to meet
17 the concerns that were expressed in the -- concerns that
18 CEQ and EPA expressed in their comment letters that were
19 submitted to the NRC when the GEIS and the Part 51 proposed
20 rule were published for public comment.

21 But it was certainly understood -- and,
22 specifically, I'm talking about the EPA people in
23 Washington, as well as the attorney that represented CEQ in
24 the negotiations -- that these things were tentative in the
25 sense that the Commission would retain final say as to

1 whether it was going to adopt those proposals or not, with
2 the understanding that, of course, if we didn't adopt the
3 proposals, then the CEQ and EPA comments remain out there.
4 They would have to be addressed in some other fashion.

5 Does that explain it or are there any other
6 questions?

7 [No response.]

8 MR. SCHWARTZ: Seeing none, we'll move on. Thank
9 you very much. We appreciate it. Don, do you want to start
10 leading us through the discussion on the various options?

11 MR. CLEARY: The points that I wanted to make on
12 Slides 21 and 22 I think have been adequately made during
13 the course of discussion this morning, and Shelly just
14 reiterated some of the points on Page 22. So we'll jump to
15 23.

16 I will point out that this is one of the
17 differences from the package that we had last Wednesday in
18 Rockville. Subsequent to that meeting, we developed the
19 table which is on Pages 24 and 25. That makes a comparison
20 of the options, four options, and also with the proposed
21 rule.

22 You should recognize that the staff is carrying
23 consideration of pretty much staying with the proposed rule
24 forward. Nothing has been dismissed that we have considered
25 so far, but we're here to develop new thoughts and new

1 options or combinations of options.

2 I'm not going to go through the table. I would
3 just suggest that you refer to it during discussion. I
4 think it was developed to point out the differences in the
5 purpose of each option and how need and alternatives are
6 used in the license renewal decision, the role of economics
7 in the license renewal decision, and how, under each option,
8 the need and alternatives would be treated in the GEIS and
9 how they would be treated at the individual license renewal
10 stage by NRC, by the states, and by the applicant.

11 With that, I will move on to Option 1. Under
12 Option 1, need and alternatives are reviewed and they are
13 factors in the license renewal decision. However, the
14 direct economic costs and benefits will not initially be
15 considered in the renewal decision. Only if we run into
16 certain situations would we then move on for a fuller review
17 of cost-benefit.

18 The essence of this one is that we are deviating
19 from the current cost-benefit analysis approach that we
20 developed for CP and OL reviews.

21 The three situations where we would be, I guess,
22 forced into a fuller consideration of costs under this
23 alternative would be if, in our need analysis, which we're
24 still doing, the need for generating capacity. I think as
25 John Moulton tried to say this morning, our need is need for

1 generating capacity, not the need in terms of the overall
2 economic merits of a facility.

3 Another thing that would force us into looking at
4 costs is if we found an environmentally preferable
5 alternative. This is the same as we have traditionally
6 done. Then if, for whatever reason, we found environmental
7 consequences of renewal so great, either in cumulative terms
8 or in terms of a showstopper environmentally, then we'd take
9 a look at the economics. This option could be implemented
10 whether we start with a Category 1, 2 or 3 designation.

11 Those are my remarks.

12 MR. SCHWARTZ: If we shift to Page 4 of the
13 agenda, under Option 1, there are some questions that the
14 staff has proposed. What problems, if any, do the states
15 have with NRC using for license renewal reviews the decision
16 method explained in Option 1 rather than the traditional
17 cost-benefit balancing?

18 I'll open the floor for discussion. Mike?

19 MR. MCCARTHY: My name is Mike McCarthy. I think
20 to the extent that Option 1 continues the same fundamental
21 methodology as in the original draft proposal, I think I'd
22 just like to express that we have the same concerns
23 fundamentally as expressed in our original filing.

24 I think that this approach, for various technical
25 reasons outlined in our March 1992 filing, is clearly unwise

1 and fraught with multiple hazards.

2 MR. SCHWARTZ: Thank you. Would anybody else like
3 to chime in? Mike?

4 MR. ARNY: Mike Arny from the Public Service
5 Commission of Wisconsin. We have the same comments we had
6 this morning. This moves the decision-making process away
7 from the states, so we have the most direct information.
8 And this potentially could be early relative to the
9 decisions, depending on what choices are made on that
10 categorization issue. It also creates the problems we
11 discussed this morning with state jurisdiction.

12 MR. SCHWARTZ: I know a lot of the statements were
13 made this morning, but I appreciate you repeating them for
14 the record for these individual discussions. Thank you.

15 MR. VISNESKY: I have a very narrow and particular
16 comment about the dot point associated with using a method
17 other than the current NRC cost-benefit balancing method.
18 Our statutory requirement dictates that the method used to
19 select the least cost alternative is present value of
20 minimum revenue requirements.

21 So to the extent that the alternative would not
22 encompass that specific finding, we now would have a
23 disparity of criteria for finding between the national, in
24 the terms of the NRC, and the state, in terms of the PUCs,
25 selection methodology for economic suitedness.

1 MR. MIZUNO: What will be the implications of
2 that, in your mind?

3 MR. VISNESKY: The implications of that would be
4 either some showing that there was an equivalent value or
5 that the processes essentially yielded equivalent results or
6 it would seem to me that we would be embroiled in an
7 argument that somehow, for that particular type of resource,
8 the criteria that the state has selected is appropriate
9 through the Commission's rules, that a PVRR was an
10 inappropriate criteria for making that economic
11 determination. Two problems.

12 MR. MIZUNO: I'm trying to understand it. So
13 you're saying that if we chose a different methodology for
14 evaluating these subjects, different from the state, you're
15 saying that, consistent with what you said earlier, that the
16 burden would then be sort of increased in the sense that you
17 would have to explain why the state's methodology differed
18 from the NRC methodology.

19 MR. VISNESKY: Right. And if it differed, why the
20 consequences were either immaterial or, if the consequences
21 were material, why our method was better than the NRC method
22 for a specific selection of that alternative.

23 MR. MIZUNO: And you feel that you couldn't use it
24 to your advantage, the disparity, and saying since the NRC's
25 method is different, the Court should ignore it and instead

1 place a greater deference to the state method.

2 MR. VISNESKY: One thing I've learned about
3 regulation -- I'm an engineer, but in five years in
4 regulation, I've learned a lot of lawyer tricks. I'd argue
5 that like hell, but I don't know if I'd prevail.

6 MR. McCARTHY: I think I'd like to just put this
7 in context, aga' o this morning's conversation, because
8 we're starting out talking about Option 1 in isolation.
9 Again, I don't mean to pound on this repeatedly throughout
10 the day, but in the context of the greater discussion here,
11 what Option 1 fails to do does not include an explicit
12 statement of non-encroachment on the state authority, first
13 of all, which is something which is absolutely necessary in
14 the context of the rule.

15 It, again, does not defer to the states for -- and
16 recognize that they would o more timely and thorough
17 analysis of exactly these same questions and it does not
18 recognize the need to do this at the time of application.

19 I think following up with, I think, your point is
20 that if we are looking far into the future, contemplate a
21 generic assessment of need and alternatives that would have
22 been done under the Carter Administration for an application
23 before us today. I'll turn this around, because this is
24 what our lawyers always make us do when we argue things. We
25 argue the opposite.

1 Try to argue that your decision today would be
2 well justified on the information that was before the
3 Commission under the Carter Administration, and I think that
4 that would be a very difficult thing to do.

5 MR. MIZUNO: Just a point of clarification,
6 perhaps reiteration. I believe that the clarification of
7 respective regulatory authority would be a proposal that
8 would be common to all of the alternatives. This goes to
9 serve our point which we made previously, which is that
10 these options should not be considered in isolation, if you
11 want to combine elements or stuff, but it was, in fact, the
12 NRC's intent in this particular case that the regulatory
13 authority clarification would be done regardless of which
14 option was chosen.

15 MR. CLEARY: That's correct and that was in the
16 paper. I didn't highlight it here, but we did make that
17 statement in the discussion paper.

18 MR. SCHWARTZ: Any comments, suggestions, options
19 from the audience on this Option 1? Yes, sir.

20 MR. WILSON: Dave Wilson from Shaw Pittman. I
21 just want to suggest that the NRC consider the issue whether
22 the state's analysis and the NRC's analysis are or should be
23 co-extensive. I believe that the scope of the analysis
24 under NEPA is, indeed, different from the state, that NEPA
25 does not require the NRC to do a least cost methodology or

1 planning and, in fact, does not require consideration of
2 economic issues as a general matter.

3 I believe the case law is that you only consider
4 economic issues related to environmental impacts. So there
5 may be a misapprehension that the scope of the two reviews
6 are the same. I think, in fact, they are different and the
7 NRC's is more limited.

8 MR. MIZUNO: I understand that, but that's why I
9 was exploring the issue with Illinois. But I seem to
10 understand that he was making a practical distinction or the
11 practical argument. So I was trying to see whether you
12 could use that sort of distinction in the scope of the
13 analysis to favor the fact that you could ignore the --
14 well, it would have the same kind of weight that would
15 otherwise be given it.

16 MR. MCCARTHY: I think this is also an appropriate
17 point to point out that many states do consider this in the
18 context of environmental consequences and in the context of
19 looking at environmental consequences among alternatives.

20 This is not a separate thing and that is something
21 that many states do look at. We're not trying to divide the
22 state to look at economic issues apart from environmental
23 consequences, but, rather, states do look at this as part of
24 some proceedings that look at environmental consequences of
25 various options.

1 MR. VISNESKY: In fact, our requirement in
2 Illinois wraps it together in the least cost process. We're
3 right now under a rulemaking trying to define the manner in
4 which that's required, but it is, in fact, de facto required
5 as part of the least cost evaluation process.

6 MR. ARNY: That's true in Wisconsin, as well. The
7 planning process looks at both environmental impacts and
8 costs in determining what the appropriate plan to approve
9 is.

10 MR. VISNESKY: And establish weights between
11 environmental costs and benefits and puts them in the
12 equation that evaluates the total least cost option. In
13 Wisconsin, that is correct.

14 MR. ARNY: Yes, that's correct. The effort is to
15 make a decision that appropriately incorporates both the
16 dollar costs and the economic impact costs of alternatives
17 in doing the evaluation.

18 MS. JENKINS: I'm not sure we actually put weights
19 on them. I think actually our Commissioners, through their
20 own value system, put weights on things, but I don't think
21 we explicitly assigned weights. We have done some work on
22 trying to quantify externalities.

23 MR. VISNESKY: That's what I was referring to.

24 MS. JENKINS: But we only quantified greenhouse
25 gas emissions the last time around. We didn't quantify

1 anything else, whether it was EMF, land use, anything.

2 MR. CALLEN: In Michigan, it's quite similar. I
3 might point out also that in the recent IRPs, we have been
4 starting to focus on economic risk, as well as a cost-
5 benefit approach.

6 MR. MCCARTHY: In Minnesota, we do a couple of
7 different things before a couple of different entities.
8 Before the Public Utilities Commission, there are
9 considerations of externalities, but there are also other
10 proceedings that review environmental consequences that
11 would be handled by an entity such as the Environmental
12 Quality Board.

13 So we actually -- we in Minnesota and I believe
14 some other states do have more than just the utility
15 proceeding before the PUC to consider and I think it's
16 important to be aware that there are various ways the states
17 do weigh both the economic and environmental and other
18 social consequences of the decision-making and that this is
19 just not something which is ignored by many of the states.

20 MR. SCHWARTZ: A number of years ago, I remember
21 that the states had an effort on what was called then one-
22 stop-shopping, where you go to one organization and you get
23 all your permits and everything else. What was the question
24 I was going to ask earlier.

25 In other words, we're talking PUC and the Commerce

1 Commission, but there are other agencies within the state
2 that have equally important decisions to make with respect
3 to environmental impact and the whole business.

4 Are those normally on the same timing track as the
5 kinds of decisions you will be asked to make for license
6 renewal?

7 MS. JENKINS: Sally Jenkins, Wisconsin Public
8 Service Commission. In Wisconsin, when we're doing a
9 certificate for a new power plant, our Department of Natural
10 Resources, which issues appropriate air, water, solid waste
11 permits, identifies the major permits that are needed and
12 they have to issue those major permits before our Commission
13 can authorize construction.

14 MR. SCHWARTZ: How would that play in a license
15 renewal?

16 MS. JENKINS: We'd have to invent a procedure. To
17 some extent, if renewal can be considered as a policy
18 question, with economic and environmental information
19 feeding in in our advanced planning process, it's possible
20 that our Commissioners would make a policy decision in the
21 planning process and say, no, we don't want you to do it.

22 Now, what would happen after that, I'm sure it
23 would go to court. Beyond that, I don't know.

24 MR. SCHWARTZ: Thank you.

25 MR. VISNESKY: Illinois is similar in that we

1 assume that all other agencies which have jurisdiction over
2 air increments, water increments, other sister agencies,
3 EPA, Department of Energy and Natural Resources, state
4 nuclear entities, etcetera, are in place at the time the
5 certificate is sought.

6 MR. McCARTHY: Minnesota, I think I'm going to
7 have to do a written follow-up, because I am aware we do
8 have a function performed by the Environmental Quality
9 Board, which coordinates many state agencies. But in terms
10 of the timing and explicit nature, I have to defer answering
11 that until we file a written follow-up.

12 MR. SCHWARTZ: Thank you.

13 MR. CLEARY: I'd like to make an observation which
14 perhaps does get some reaction. I'm speaking as an
15 individual technical reviewer, having worked in the NEPA
16 area.

17 It seems to me that in determining what NRC --
18 what's adequate NEPA analysis for NRC, there is both a
19 technical aspect and there's a legal aspect. We can go to
20 OGC and say what's the minimum legal requirements. We could
21 go to, say, Oak Ridge and say as environmental experts,
22 including the need for power and the economics, what's the
23 minimum level of effort -- level of detail that's required
24 to put out an adequate report.

25 The ultimate answer involves what the decision is

1 that's being made and how much information needs to be
2 brought to bear on that decision.

3 I look around at other Federal agencies and I see
4 that there's a great diversity of the level of detail on
5 analysis in EISS. I think that NRC has traditionally been
6 pushed to a level of detail in much of its analysis because
7 its EISS are litigated within the NRC process.

8 What I'm searching for is what's the ultimate
9 balancing of legal, technical, Federal requirements,
10 resolution or alleviation of the individual -- of the real
11 state problems, which we got to in terms of there's a real
12 resource burden. It's not just legal niceties, but it
13 effects budget and staffing, which, by the way, is the
14 stated objective of this whole rulemaking.

15 MR. SCHWARTZ: Any reaction?

16 [No response.]

17 MR. SCHWARTZ: Okay. We can move on to Option 2
18 discussion.

19 MR. ARNY: Can I just ask a clarifying question?

20 MR. SCHWARTZ: Sure.

21 MR. ARNY: It was stated earlier that it was
22 assumed that all four options include a statement of the
23 recognition of the state's authority in determining
24 alternatives and need. Is it my understanding that you
25 would assume that that would go into the body of the rule?

1 Is that the correct assumption?

2 MR. MIZUNO: I think it would be fair to say that
3 where it would go in has not been decided. There are a
4 couple different places you could put it in. In fact, there
5 wouldn't be any reason why you couldn't put them in more
6 than one place. Some of the alternatives would be the -- if
7 you're familiar with the Federal Register practice, there is
8 what they call the preamble or the statement of
9 consideration that precedes the rule. So a statement could
10 be put in that statement of consideration.

11 There could also be specific rule language that
12 would be ultimately incorporated into our 10 CFR. Then
13 another alternative would be to -- or another place that it
14 could be put in would be in the GEIS itself, in the
15 appropriate chapter or chapters.

16 Finally, one could also put in a statement in any
17 individual site-specific environmental impact statement that
18 is produced. So those are the four possibilities that I can
19 come up with and if there are others, I'm willing to listen
20 to them. As I said, they could be in more than one place.

21 MR. MCCARTHY: Mike McCarthy, Minnesota. I think
22 those four sound really fine. But a minimum necessary is a
23 statement within the context of the rule. Part of why we in
24 Minnesota are asking that is if you look back through the
25 record of this proceeding, all the way back to the notice of

1 inquiry and some precursor meetings, I think that repeatedly
2 you will see the issue raised that states have said, gee,
3 this could be perceived as being an encroachment and
4 preemptive. NRC has repeatedly said, no, you misunderstand
5 us.

6 Then we get to the next stage and there's nothing
7 in the context of the rule itself that says that and it's
8 pointed out again. It says, gee, this could be perceived as
9 being an encroachment. NRC, again, says, gee, this is not
10 the intent. We get to the next phase and, again, there's
11 not an explicit statement.

12 I think we counted five cycles of this at
13 Minnesota preparing for this meeting. So multiple
14 statements may sound like overkill. However, I think at
15 this point, it has been raised so many times and not found
16 its way into the text of the rule so many times that stating
17 it very explicitly more than one place, with a minimum of
18 being in the text of the rule itself, would be a useful
19 thing to do.

20 MR. MIZUNO: The other observation that I have is
21 that I was being perhaps slightly inaccurate in terms of
22 saying for all the options, because if you think about it,
23 Option 4 would require a statement of consideration
24 discussion that explains why the NRC was declining to use
25 alternatives and need for power as decision criteria.

1 So simply as a matter of complying with the
2 Federal Administrative Procedures Act, you would have to
3 have a statement or discussion, a rationale, as it were, to
4 explain why the NRC would not be using alternatives and need
5 for power in its decision-making criteria and how that
6 complied with relevant law, including NEPA.

7 I guess that's just for information.

8 MR. ARNY: But does that mean that you would
9 expect that Option 4 would include that same explicit
10 language? It seems like it still applies, but it would need
11 to be made very clear that anything that the NRC had done
12 was preempting the states or --

13 MR. MIZUNO: I think that under Option 4, you'd
14 probably have to have explicit rule language that said that
15 the -- similar to the kind of exclusory language that we
16 have in our existing rule that says that at the operating
17 license stage, there is no consideration of need for power,
18 alternative sites, and alternative energy sources.

19 You would have to have the same kind of explicit
20 exclusory language in the rule at the renewal period.

21 MR. MCCARTHY: A concern that came up at Minnesota
22 when we discussed this prior to this meeting with some of
23 the other states was that that methodology, as explained in
24 Option 4 -- and I apologize for skipping ahead to Option 4.

25 But in that context, we were concerned that the

1 reliance on the operating license methodology, which
2 deferred to the prior determination in the construction
3 permit, effectively was an affirmative decision that could
4 be construed as being preemptive in the sense that we're not
5 going to talk about it because we've decided earlier, which
6 made Options 1, 3 and 4 all look a lot like an affirmative
7 determination of need based on prior decision.

8 But what I've been hearing you say earlier today
9 is that we misread that.

10 MR. MIZUNO: I think so. Let me just make it
11 clear. Construing the existing regulation in Part 51
12 narrowly, which is the way that the NRC has been doing it,
13 we believe that the existing regulation only applies to the
14 operating license EIS. The words of the rule there would
15 not allow us to -- at least under the narrow interpretation
16 which is currently what at least the staff is working with,
17 we would not use the existing language as a basis for saying
18 we do not need to make need for power or alternative
19 generating capacity determinations at the renewal stage.

20 Now, what we tried to explain, I think, in our
21 paper and maybe Don tried to explain it earlier this
22 morning, was that early in this process, the NRC had
23 considered extending the existing rationale of the operating
24 license rule, exclusion rule, to see if we could use that
25 same rationale as a basis for excluding consideration of

1 need for power and alternative energy sources at the renewal
2 stage.

3 It was our determination, at least at the proposed
4 rule stage, that that rationale could not be extended
5 because -- for various reasons, basically because the
6 rationale appear to be based -- the original rationale for
7 the rule, operating license exclusion, appeared to be based
8 on the amortization or the lack of amortization of the costs
9 of the plant at the time when the initial operating license
10 was issued.

11 It was unlikely that you could identify any
12 environmental impact that would outweigh the costs that had
13 been incurred to date in the construction of the plant, but
14 which had yet to be operated.

15 MR. McCARTHY: You were dealing with an
16 unamortized asset.

17 MR. MIZUNO: That's correct.

18 MR. McCARTHY: And you were weighing the economic
19 value against something else.

20 MR. MIZUNO: That would appear to have been the
21 Commission's rationale, although it's not that clear. I
22 have to say that the statement of consideration for the OL
23 case or OL rule is not clear, but you can certainly infer
24 that.

25 MR. McCARTHY: This was confused in the staff

1 paper and I think several of the states chose not to hang
2 their hat on a specific option, because the explanation in
3 the staff paper may have created more confusion than clarity
4 in this regard.

5 MR. MIZUNO: Hopefully, this will clarify it. So
6 in any event, the bottom line here is, at least at this
7 stage, that the NRC staff did not feel that the operating
8 license exclusion rule that's currently in the book applies
9 to renewal. We could not extend that rationale to the
10 renewal decision. So, therefore, we would have to generate
11 as part of this rulemaking a new rationale for not
12 considering need for power or alternative energy sources, if
13 there was a rationale.

14 As you know, the rationale that was being proposed
15 here was that the NRC adequately analyzed it as a Category
16 1.

17 MR. VISNESKY: I have a question about that. It's
18 motivated largely by your last few comments, which tie into
19 the notion in our state that that capacity is as much green
20 field capacity as anything else. So you're looking at a
21 component that's essentially unamortized capacity, albeit at
22 a lower cost because it's got some subsidy from existing
23 investment in it. In other words, you're not building it on
24 a green field, but for our purposes, it's green field
25 capacity. It's unamortized asset.

1 MR. MIZUNO: I think that the states certainly
2 have the freedom to consider it in that fashion. I'm not
3 saying that you're compelled to do it. Certainly, a
4 rational economic argument could be made in just the
5 opposite case.

6 All I'm saying is that when the Commission
7 originally adopted the OL rule, it assumed that the plant
8 had not yet been amortized. We felt that at renewal, with
9 40 years of operation under its belt, the plant probably had
10 been amortized to that extent. So, therefore, you could not
11 make the same generic determination that the unamortized
12 costs would always outweigh any environmental benefit that
13 you could find.

14 MR. VISNESKY: I certainly understand that. My
15 point is if you're going to apply that logic, the cost
16 number is different because it's not \$3,000 a KW unamortized
17 cost or 2,000 or whatever it happens to cost. It's more in
18 the neighborhood of four to 650, if you use the DOE and Oak
19 Ridge numbers, but it's still the same logical construct.

20 MR. MIZUNO: Yes. I would let Oak Ridge respond
21 to that, in particular.

22 MR. CLEARY: Let me elaborate on that. We took
23 the plant as sunk costs and to the extent that it was
24 unamortized, it's just all for the better, it gets a longer
25 life.

1 What we looked at was the refurbishment costs and
2 the O&M costs. So we didn't -- it appears that we did not
3 do the same analysis that you would have done.

4 MR. VISNESKY: Correct.

5 MR. CLEARY: We just assumed sunk costs and then
6 looked at future costs.

7 MR. VISNESKY: That's very clear from your paper.
8 It was basically the driver was the capital cost and then
9 you discounted that investment in capital based on the
10 continuing difference in operating costs between that and
11 other alternatives, correct?

12 MR. CLEARY: That's correct.

13 MR. VISNESKY: What I'm saying is that's still
14 consistent with the logical basis that we use for evaluating
15 alternatives, but I'm having a little trouble getting past
16 why you can't use our rationale as your rationale.

17 MR. MCCARTHY: That was the point I was about to
18 raise, because what I heard -- that's what I heard you
19 suggest earlier was that if we -- I apologize before the
20 fact, again, for going to Option 4 as a discussion issue.

21 What I heard you say was that since you could not
22 apply the operating license exclusion rule for not including
23 the assessment, you would need to use a different rationale
24 to not include that assessment. What I was about to suggest
25 is exactly what was just raised here. Could you use as a

1 rationale that the states are in a better position or may
2 have a process that would do a more timely and thorough
3 analysis?

4 MR. SCHWARTZ: Yes. I think the answer is that's
5 a potential -- that's one way we can present it to the
6 Commission.

7 MR. VISNESKY: Thank you.

8 MR. CLEARY: This is the heart of Option 2.

9 MR. MIZUNO: Option 2 or 4, depending upon how --
10 to what extent you have deference, again.

11 MR. CLEARY: It's just that Option 2 is next on
12 the list and we can move on.

13 MR. McCARTHY: A good segway, right? It's a good
14 segway.

15 MR. MIZUNO: That's right.

16 MR. ARNY: I just have one clarification that I
17 want to make absolutely clear based on this last discussion,
18 and that is that in Option 4, if, for example, part of the
19 rationale was that states are in a better position to do
20 this analysis of alternatives and need, you wouldn't have
21 any problem with including the same explicit language saying
22 that those things lie in the state's jurisdiction in Option
23 4 than you'd have putting that in the rule language for any
24 of the other options.

25 MR. SCHWARTZ: Let the record show there is a nod.

1 MR. ARNY: An affirmative nod.

2 MR. SCHWARTZ: An affirmative nod. Don, Option 2.

3 MR. ARNY: Our lawyers never let us down.

4 MR. SCHWARTZ: It was a very positive affirmative
5 nod.

6 MR. CLEARY: Under Option 2, NRC would adopt the
7 state review of need and alternatives, but would continue to
8 factor both of these topics into the license renewal
9 decision.

10 We have a legal obligation to -- we're always
11 legally responsible for anything that we put in our EIS. We
12 have long discussions with the lawyers as to what ultimate
13 legal responsibility means in practice, but it's there.

14 So we would have to demonstrate that we had some
15 guidelines that were met in our accepting state reviews and
16 I think that the issue of guidelines and what we would
17 accept does get into some of the technical considerations,
18 as well as what the minimum legal requirements would be for
19 us as a Federal agency to use to review whatever documents
20 you submit.

21 In this situation, if a state either could not
22 make a timely submittal or didn't meet the guidelines, then
23 we'd revert to business as usual, which is we put the burden
24 on the utility to provide us with the information and then
25 we would review the information and do our own confirmatory

1 assessments.

2 This obviously would delay submittals to case-
3 specific times and would make this de facto in Option 3.
4 Ready for discussion.

5 MR. SCHWARTZ: Great. Thank you, Don. I'll refer
6 to the record again for questions that are on Page 4 with
7 respect to this option. Do the states have legal concerns
8 or see other problems if the NRC accepts a state's
9 conclusions with respect to the issues of need for
10 generating capacity and alternative energy sources as
11 discussed in Option 2? What are the practical
12 considerations in developing and applying guidelines that
13 would be met by the states?

14 Then there's a subset of that question. What
15 should be the major features of the guidelines? Can
16 guidelines be developed that can be met by all states? In
17 each state, is there a single governmental body that the NRC
18 could look to for findings on need for generating capacity
19 and alternative and energy sources? Can state findings be
20 made and provided to NRC in a timely manner for use in the
21 license renewal review?

22 Is there a benefit in coordination between NRC and
23 state staffs while the state is preparing its submittal? I
24 think I know the answer to that. To what extent does Option
25 2 resolve the concerns of the states?

1 Does anybody want to lead off on that?

2 MR. McCARTHY: I see Mike Arny from Wisconsin
3 smiling at me, but I'll make a comment first. Mike McCarthy
4 from Minnesota.

5 I think, again, I would just like to reiterate
6 that we're looking at this as part of a series, not an
7 individual item in isolation. When we assessed this in
8 Minnesota among our staff before coming here, we were
9 perceiving Option 4 as being a little different than it's
10 being expressed today.

11 So, again, I think we're beginning to drift into a
12 fuzzing of the conversation between these distinct option
13 choices. I think you raised a question of what guidelines
14 might the NRC use in order effectively to defer to the
15 states and not take this into consideration. I might add
16 that by extension.

17 I think Wisconsin has done a particularly good job
18 of raising the integrated resource planning process as
19 described in the Energy Policy Act of 1992 as a very good
20 foundation piece of work, and we would concur that that is
21 the place to start and that that would largely give us the
22 foundation on which to build.

23 MR. SCHWARTZ: Thank you.

24 MR. VISNESKY: I believe we would concur, also. I
25 have one, I guess, query. That would be is it possible to

1 start the entire process with not the NRC adopting a state
2 review of need and alternatives, but that the starting of
3 the NRC would not commence until a state has made a
4 determination in review of the need for and evaluation of
5 the alternatives.

6 MS. GINSBERG: Ellen Ginsberg with NUMARC. One
7 thing you ought to consider in that context is that when the
8 NRC does its license renewal application review, it provides
9 a number of or several pieces of data information that would
10 be very valuable, I would guess, in the context of a state
11 review for its purposes based on the economics.

12 It provides you with information about what is
13 going to be required, be it refurbishment or other things,
14 for license renewal. I think that you might want to
15 consider how valuable that would be in making whatever
16 determinations you are required to make.

17 MR. VISNESKY: Yes. I am very familiar with what
18 you're speaking of in the way of the probability that
19 circulating water piping would have to be replaced and
20 things like and I understand that. I guess I'm separating
21 the initiation of an evaluation of a specific option from
22 the initiation of a need to determine that the option
23 exists.

24 I think that the NRC could meet its requirement by
25 affirming that a need for power exists and one possible

1 option for fulfilling that need would be relicensing nuclear
2 plants and maintaining capacity from them. In the specific
3 case of granting of a license, use the state's
4 determination. And to answer your questions rather
5 specifically, it fits into our process pretty well. We have
6 a 20-year process in Illinois.

7 You cannot ask for a certificate in this case in
8 the State of Illinois unless that option has been identified
9 in an approved least cost plan. The least cost planning
10 rule specifically requires an analysis and demonstration
11 that capacity that's recoverable from existing facilities be
12 the least cost.

13 It seems to me you could satisfy your statutory
14 requirement by relying on the general notion that a need for
15 power exists and, therefore, looking at the option of
16 providing for generic relicensing procedures so that that
17 option wouldn't be maintained as available and then looking
18 at the specifics initiated by a state's assertion through
19 its least cost planning process and an order from a
20 Commission or a PUC that, in fact, this did constitute an
21 appropriate alternative or resource based on the state's
22 findings.

23 MR. SCHWARTZ: Interesting concept.

24 MR. CLEARY: I'd like to clarify. It seems that
25 we've got a couple -- from NRC's point of view, there's a

1 couple of steps involved leading to our granting a license.

2 MR. VISNESKY: Yes.

3 MR. CLEARY: So we'd make a safety determination,
4 but the license wouldn't result at that time.

5 MR. VISNESKY: Correct. It would be a staged
6 process. In other words, you would, at any point in time,
7 look to see where this process is in terms of official
8 finding required to complete the licensing procedure. You
9 would initiate this assessment on the basis of the state
10 finding that it was, in fact, appropriate to look at that
11 alternative.

12 MR. CLEARY: It seems to me that that might
13 complicate the NRC licensing process, complicate for us, for
14 the utilities, and maybe even for the states.

15 MR. VISNESKY: I'm not suggesting I've thought
16 this through perfectly. I'm suggesting that this is an
17 idea, but it's going to need a hell of a lot more thought.

18 MR. SCHWARTZ: Again, maybe not every state goes
19 through the same 15 to 20 year rolling least cost planning.

20 MR. VISNESKY: Right.

21 MR. SCHWARTZ: So the process would have to be
22 flexible to accept other states' way of doing it.

23 MR. MCCARTHY: I'd just like to make a comment.
24 What we're looking for from the NRC is primarily reviews of
25 safety and radiological issues. That's one statement.

1 The second statement I'd like to come back to is
2 the gentleman from Illinois's premise that there will always
3 be the need for the capacity. I think lurking in that is
4 that there is a premise that there will always be a need for
5 that amount of capacity at that time at that location.

6 I feel that in fairness, we have situations that
7 we assess in Minnesota where the need at a time is actually
8 less or not existent as it was perceived in the past for a
9 given point in time. A major industry can move. There can
10 be a sudden availability in the area or nearby of
11 alternatives that were not perceived. There can be
12 implementations or changes of technology that will affect
13 demand actually to get the same amount of work done.

14 Many of these are unknowns. They're difficult to
15 anticipate. Because we cannot reliably predict gradual and
16 predictable change in all of these areas far in advance for
17 all locations for all time, I think it would be a poor move,
18 it would be an unwise thing to begin from the premise of
19 need for that amount of capacity for all plants at every
20 point in the future.

21 MR. VISNESKY: I didn't really suggest that that
22 was my position. What I stated was that I think that a
23 presumption could be made that, and our rule does require
24 this, that if capacity is available from a certain option,
25 that that option needs to be looked at in the context of all

1 options available; not the determination that capacity is
2 necessary as a premise, but that the determination that all
3 possible sources of capacity have been fully explored and
4 economically tested is the premise.

5 I think that could be used, not the presumption
6 that capacity will forever be necessary at a certain size at
7 a certain time. But certainly all options for supply, both
8 on the demand side of the curve and the supply side of the
9 curve, be explored and maintained as available to serve
10 future need.

11 MR. SCHWARTZ: A presumption.

12 MR. MIZUNO: At the risk of jumping the gun, I
13 will just make the observation that it appears to be very
14 similar to Option 3 and we'll let that go. But in any
15 event, let me -- I just wanted to address the very first
16 issue you raised about having the NRC's decision contingent
17 upon a state determination.

18 I guess from a legal standpoint, there is no
19 reason why the NRC couldn't tailor its process to
20 accommodate that. I don't think anything in the Atomic
21 Energy Act or NEPA would preclude that kind of
22 consideration.

23 However, I think it would be remiss for me to
24 suggest that the Commission would likely adopt that
25 approach, because there would be a considerable amount of

1 problems in terms of that coordination. Furthermore, it
2 would -- assuming that the Commission continues to believe
3 that it would like to give utilities the maximum amount of
4 flexibility and certainty, and that was one of the reasons
5 why it permitted licensees to come in as much as 20 years in
6 advance of the expiration of their license.

7 One could imagine -- one would be faced with
8 addressing this. How can you get regulatory certainty from
9 the NRC, assuming that the licensee has otherwise met our
10 radiological health and safety concerns and security
11 concerns by having a process that makes the ultimate
12 decision contingent upon a state determination?

13 I'm not saying that the Commission couldn't adopt
14 that. It might not do it, but I think that if a state were
15 to offer that up as an option, there would be many concerns
16 that would need to be addressed in their thing to explain to
17 the Commission why that process is an acceptable one.

18 MR. VISNESKY: A point well taken. And not to be
19 flip, but we're accused of providing almost no regulatory
20 certainty on a day to day basis. So I think that's
21 something that we live with, the lack of being accused of
22 being certain regulators. To some extent, we deserve it.

23 MR. CLEARY: Geary, could I ask for a
24 clarification? What is the difference between what you just
25 said and the basic situation that we have in Option 2, where

1 we would adopt --

2 MR. MIZUNO: I think what the state was saying was
3 that here you -- let's assume that Utility X comes in 20
4 years or 15 years in advance of their expiration and says I
5 would like a renewed license. I believe what I was hearing
6 was a process by which we would make our routine
7 radiological health and safety concern and say, yes, the
8 licensee's obligations have been satisfied with respect to
9 Part 54 and, in fact, perhaps might even make environmental
10 analyses and determinations for everything except for these
11 two matters with respect to need and alternatives.

12 There are different ways of handling it, but I
13 think you were saying issue some sort of either conditional
14 approval or conditional license, whatever the case may be,
15 you can handle it in either way. That contingency would be
16 wait until the state has finally come to a process and made
17 a determination with respect to need and alternatives.

18 Conceivably, that determination could be made a
19 year before the expiration date, at the worst case.

20 MR. NG: Geary, this is Ray Ng. I think that it's
21 certainly our view, from the industry standpoint, that as
22 part of NRC's issuance of a renewed license and fulfilling
23 Part 54 and Part 51 especially, that you do not need to
24 review and to assess the need for power and alternatives and
25 that you can proceed with the issuance of a renewed license.

1 MR. MIZUNO: I understand that's the industry
2 position. I have yet to hear any explanation or the basis
3 for that. So all I'm saying -- and I'm not saying that we
4 couldn't go down the direction. All I was trying to do was
5 to respond to this proposal here and just give my impression
6 as to whether it's legal or not and also my impression as to
7 whether it actually comports with the utility's needs and
8 the Commission's desire to address them to the extent
9 possible. That's all I'm saying.

10 MR. SCHWARTZ: I think you balanced your statement
11 with both of those alternatives. I'd like to move on to
12 Option 3. I'm sorry.

13 MR. ARNY: I'd just like to reiterate our comments
14 so they're on the record. Basically, with two, we have the
15 same underlying concern about where the ultimate decision-
16 making is made and if it's made at the NRC rather than the
17 state, that is a shift in authority. So that's our
18 fundamental concern.

19 But other than that, we do think the guidelines in
20 EPAC do lay out pretty clearly what IRP, integrated resource
21 planning, is. So the NRC wouldn't be saddled with that. We
22 think that's a piece that could be used somewhere.

23 In Wisconsin, to license a facility, basically,
24 you have to deal with the Wisconsin Public Service
25 Commission and the Wisconsin DNR, and we work very closely

1 together, work jointly on many aspects of what we do. So
2 it's not quite one-stop shopping, but it's pretty close.

3 The question of can states make findings and
4 provide them to the NRC in a timely manner in license
5 renewal, Wisconsin probably is in the position to do that
6 because as was discussed earlier, we have these forward-
7 looking 20-year plans. So that we would always have
8 relatively current information about what the needs were
9 looking out that far.

10 MR. SCHWARTZ: Great. Thank you.

11 MR. NERTHS: Steve Nerths with the Ohio Attorney
12 General's Office. One thing that hasn't been mentioned on
13 Option 2 is that the Ohio staff had basically a negative
14 reaction to Option 2 and thought that was actually the worst
15 option. Really, it kind of goes to the question of -- how
16 we read Option 2 is that basically we would do the analysis
17 and the NRC would still have, of course, the final say and
18 was retaining the final word over that.

19 So it was a question of the possibility of doing
20 all this time and effort, which is obviously a complex a
21 practice to go through. We're talking about resource
22 allocation and efficiency. That was a negative possibility.
23 We have the statutory responsibility to go through these
24 exercises, but it doesn't necessarily have to be under the
25 guidelines that the NRC might issue and it doesn't have to

1 be in that context that it would go through and jump through
2 those hoops only to be rejected or to be second-guessed, if
3 you will.

4 So in terms of Ohio, we have the Power Siting
5 Board, which basically makes that determination for siting
6 up front and takes in the environmental factors, as well.
7 But that was perceived as being a negative option. Under
8 some of the other options, I guess, No. 4 that we compared
9 it to earlier in terms of deferring to the states, in some
10 sense, that was at least more positive in that even though
11 there would be some guidelines presumably there, you're
12 going to get the state making the decision and it's not
13 going to be second-guessed or some endorsement withheld to
14 the final stage.

15 That was just another area for a conflict, I
16 guess, between the two standards. I guess it goes back to
17 the comment that was made earlier really of trying to see
18 how you can roll this all into one ball of wax when it
19 really is two stages. The comment that was made about a
20 conditional approval is actually the one solution that we
21 had thought at this point and we're kicking around, the idea
22 of issuing a conditional license.

23 I guess you could view it in one way as
24 complicating the process, but really, from our perspective,
25 it simply takes out that issue that's really a state issue

1 and says if the timing is such that the state decided first,
2 you could do the ruling in a way that it's binding on the
3 NRC and to the extent it addresses that issue.

4 If the timing is the NRC makes its decision first,
5 you could just make the relicense conditional upon a state
6 doing that. Then you have to deal with some standard of
7 some states don't address that issue in the same sense that
8 you believe is required under NEPA, in which case the NRC
9 would still have to address it in some fashion, I suppose.

10 But even if you had to come back and do that
11 later, I don't see that as being another layer of
12 complication. It's just withholding a decision from that
13 area, giving the states an opportunity to do it. It's
14 something that's within their jurisdiction and actually a
15 statutory responsibility in most states.

16 It's more of a hands-off approach. That was our
17 comments on Option 2 and kind of offering another option.

18 MR. SCHWARTZ: Great. Thanks. Geary, I think you
19 could answer the question with respect to Option 2.

20 MR. MIZUNO: Not answer the question, but rather
21 to provide a bit of perspective. The reason why Option 2
22 was developed and the way that it's presented, at least it
23 is the NRC's current view that the NEPA law, the current
24 status of the NEPA law does not allow us to defer entirely
25 to states absent some rationale.

1 There are a lot of cases where a Federal agency
2 attempted to simply adopt without some independent critical
3 review, examination or otherwise subject the process by
4 which the state determination was reached to some sort of
5 objective criteria, and in each case, the Federal agency was
6 told that it could not adopt without review the state
7 determination. It could not accept -- simply take the state
8 thing and stick it into their EIS.

9 Now, we believe that -- well, given that as sort
10 of the legal limitations, we felt that an option whereby we
11 defer to the state, but it's in terms of accepting their
12 analyses under certain conditions, that that would satisfy
13 the relevant NEPA law on this and, yet, provide deference to
14 the states.

15 Now, when we talk about guidelines here, I want to
16 be very clear that there's a whole range of possibilities
17 within this option. One thing would be to, in fact, have
18 the NRC independently review the adequacy of the state
19 determination of need and alternative energy sources and
20 using some criteria that everyone agreed upon. Presumably,
21 we would issue those for public comment.

22 But that's not the only way we could do it. We
23 could also have a situation where we issue guidelines that
24 say if your analyses meet these requirements and you certify
25 to us that they meet these requirements from a substantive

1 standpoint -- in other words, for example, you use the
2 methodology or you use the least cost planning method that
3 was set forth in the Energy Policy Act.

4 If you certified that to us, then we will accept
5 that -- I mean, that will constitute our pre-determination,
6 if you will, that your analysis is acceptable, because we've
7 already established some substantive requirements as to what
8 the analysis would reach.

9 Then another way of handling it would be forget
10 about issuing substantive criteria such as that or
11 indicating what substantive criteria the analysis would
12 meet, you could instead say we are going to review
13 individual states' procedures and designate a certain -- if
14 we receive a determination and analysis from a specific
15 agency and we have reviewed the procedure by which they make
16 the determination, then we will accept that analysis,
17 without any independent analysis.

18 Again, all these alternatives, I think,
19 effectively result in the NRC being able to meet its burden
20 under NEPA as determined by this case law and, yet, have
21 deference to the states in the sense that we are accepting
22 their product.

23 Under any of these alternatives, it has to be
24 understood that the NRC retains the ultimately
25 responsibility for the document. That's ultimately the

1 reason why the cases say we cannot accept, without some
2 independent critical judgment, the state determination,
3 because NEPA is something that imposes an obligation upon
4 the Federal agency.

5 So I just want it to be clear that there are a lot
6 of different ways of dealing with Option 2 and they don't
7 necessarily involve a case-by-case NRC review of the
8 substance of the state report or analysis that is submitted
9 to us.

10 MR. SCHWARTZ: Thanks, Geary. The gentleman from
11 EPA.

12 MR. McMULLIN: I'm Michael McMullin. I'd note
13 that a number of EPA staff of our Headquarters Office of
14 Federal Activities have had ongoing and substantive, but
15 large informal discussions up to date with various staff of
16 the NRC concerning matters under discussion today, including
17 the options that we're talking about today.

18 Now, EPA is developing formal comments on those
19 options and related matters and we intend to make those
20 available to NRC in accordance with the established
21 timeline. Let me say that insofar as NEPA compliance is
22 concerned, EPA is prepared to state for the record and is
23 likely to state in the formal comments, may I say, that
24 provided that NRC procedures clearly and unambiguously
25 establish a process that leads to a full and unbiased and

1 "hard look" at the submissions made by the state or by the
2 applicants, that we are prepared to say that Option 2 is
3 liable to be quite acceptable to us.

4 MR. SCHWARTZ: Thank you very much, speaking from
5 a regional office.

6 MR. McMULLIN: I might indicate that I have
7 contacted the headquarters office on this.

8 MR. SCHWARTZ: Do you think this would be the
9 headquarters position?

10 MR. McMULLIN: Yes, I do. That's what I meant to
11 tell you. I've contacted them and discussed this matter
12 with them.

13 MR. SCHWARTZ: Good. Thank you very much.

14 MR. CLEARY: May I ask a follow-up question to
15 EPA?

16 MR. McMULLIN: Sure.

17 MR. CLEARY: If you choose to answer at this
18 point.

19 MR. McMULLIN: Go ahead.

20 MR. CLEARY: Does this statement imply that NRC
21 does have a requirement to analyze need and alternatives
22 generally, as we have been doing?

23 MR. McMULLIN: It certainly implies that you have
24 a requirement imposed upon you under NEPA and your own
25 agency's implementing guidelines and regulations for NEPA to

1 look at the materials and assure yourself that there is good
2 reason for accepting them.

3 I think that there is some latitude in terms of
4 what that means on a case-by-case basis. But you are
5 required to have in place a process that leads you to
6 conclude that the information submitted is good, reasonable,
7 useful information developed in a fair and technically
8 supportable way.

9 MR. CLEARY: You may want to address this when we
10 get to Option 4, but would --

11 MR. McMULLIN: I intend to address it.

12 MR. CLEARY: Fine.

13 MR. MCCARTHY: I think the point that keeps coming
14 up, whether we're calling this Option 2, as modified by
15 discussion, or Option 4 or whatever option, there is a
16 unifying theme that's beginning to get repeated. I think
17 the unifying theme -- I'll try to summarize -- is that as
18 long as there is a credible process in place, then the
19 obligation is fulfilled.

20 Earlier today I specified my vision of what we're
21 trying to accomplish here is to do two things; to avoid a
22 duplicative process and to avoid potentially conflicting
23 decisions. I then heard later today Geary from NRC staff's
24 comment that given a justification of a sufficient state
25 process, then the NRC would meet its obligations by

1 deferring to a qualified thorough state process which could
2 use timely and qualified and thorough state decisions as a
3 means of fulfilling this obligation.

4 I think we're beginning to hear this repeated
5 often enough that whether this is repeated in Option 1, 2, 3
6 or 4 decision, I think this is the outcome everyone is
7 looking for. I think whether we call that a modified Option
8 2 or a modified Option 4 or whatever, I think this is
9 probably where we're going.

10 MR. MIZUNO: I don't want to speak for EPA, but I
11 read their -- I just want to be clear, but I do not read
12 their -- what the representative from EPA said as being a
13 clearcut endorsement of everything that I said about Option
14 2.

15 I read his statement or my understanding of his
16 statement is that only to the extent that there is an
17 independent NRC review of the state analysis would EPA
18 consider that to be sufficient under NEPA.

19 Now, I went beyond that. I said that I think from
20 an NRC standpoint, we felt that we would be consistent with
21 NEPA if we look at the process and we set forth guidelines,
22 and then we wouldn't have to look at the individual thing.
23 But just offhand and without seeing something written, I did
24 not read the EPA statement as being an entire endorsement of
25 the position that I presented. So I just wanted to be clear

1 on that.

2 MR. McCARTHY: Could I address a question to Mike
3 McMullin?

4 MR. SCHWARTZ: Sure.

5 MR. McCARTHY: Mike, question. If NRC found a
6 state IRP process as spec'd yet to be spec'd, to be a full
7 and thorough evaluation of the issues of need and
8 alternatives. Then the states filed to the NRC a complete
9 filing, found to be complete according to those specs, with
10 the decision enclosed. Would the EPA consider that to be an
11 appropriate process put in place by the NRC?

12 MR. McMULLIN: The answer to your question is I
13 don't know. We'll think about it. It's an interesting
14 presentation. We'll think about it. We'll address that in
15 our comments.

16 MR. SCHWARTZ: Great. I think it's whether the
17 glass is half full or half empty as to how much -- who is
18 going to make that judgment as to how full it is is really
19 the point that's being made.

20 MR. ARNY: I'd like to extend that comment. In
21 the energy side of analysis and the evaluation of need and
22 alternatives, we spent a lot of time talking about EPAC and
23 the standards that it establishes for the integrated
24 resource planning process at a state level.

25 On the environmental side, there's the state

1 implementation of NEPA, which could serve the same function
2 on the environmental side, because the states have the
3 opportunity under NEPA to implement environmental review.
4 In Wisconsin it's called WEPA. I'm sure it has a different
5 name in every state.

6 But there's that parallel underlying state
7 function that has been defined by a Federal agency and that
8 may serve a similar function of relating the Federal process
9 to a state process in a way that lets the NRC avoid having
10 to make judgments about adequacy of processes.

11 MR. SCHWARTZ: Ron Callen.

12 MR. CALLEN: I'd like to speak to a distinction
13 that I think is a difference and it's something I mentioned
14 earlier. That is that in order for a utility to physically
15 develop and extend the life of a nuclear power plant, it
16 really needs two separate and distinct decisions. One is
17 approval by the Nuclear Regulatory Commission, as Ellen was
18 indicating, the kind of requirements so the utility can
19 actually price out what it is it's going to do.

20 Secondly, a decision on the part of the state that
21 that is the decision that ought to be made in the context of
22 what we're going to do next. The reason I mention that is
23 it seems to me that there's a certain circularity here to an
24 NRC decision that makes its approval conditional on the
25 state determination, that the NRC decision stands on its own

1 as to what the utility needs to do in order for radiological
2 protection, nuclear safety, operability, etcetera and so
3 forth.

4 The utility will build only once the NRC makes
5 that decision and, secondly, once the state, in whatever
6 kind of review process it defines is adequate, decides that
7 it is practical and, indeed, advisory to do so.

8 So the NRC can fulfill its earlier obligations and
9 you can explain to your Commissioners why it is that they
10 ought to make such kind of decision.

11 MR. MIZUNO: That would be true in the absence of
12 NEPA. The point is that if the NRC's jurisdiction and its
13 regulatory responsibilities were defined solely by the
14 Atomic Energy Act, then you would have that clear
15 distinction between the radiological health and safety
16 jurisdiction of the NRC versus whatever residual or
17 remaining jurisdiction that the states may have.

18 I would agree with you entirely. The problem is
19 that Congress complicated the situation by passing NEPA,
20 which said that in addition to any existing regulatory
21 authority that a Federal agency may have, it also had now in
22 its responsibilities the requirement that it look at and
23 consider environmental matters.

24 So the question here is to what extent can we
25 fulfill our NEPA obligations consistent with, in this case,

1 maintaining this distinction between the traditional state
2 jurisdiction and the Federal jurisdiction, the primary
3 jurisdiction of the NRC here in terms of preserving
4 radiological health and safety.

5 MR. SCHWARTZ: Ellen.

6 MS. GINSBERG: One option that hasn't been
7 discussed widely, but in this context is clearly relevant,
8 is the option of the NRC, in fact, not considering need for
9 power or alternatives, other than the no action alternative,
10 precisely because this is a state-related matter. It goes
11 to exactly what Ron was saying just a moment ago.

12 We believe that there is at least a very strong
13 argument, I'm not sure it's yet been tested, with respect to
14 the NRC because the NRC has traditionally considered need
15 for power and alternatives.

16 We think there's a very good argument to be made
17 that these are things that should not be considered, that
18 these are not within -- these are not necessarily within the
19 realm of NEPA and that the NRC can go ahead and make its
20 NEPA finding without looking at these two issues.

21 MR. SCHWARTZ: Ellen, would you extend that also
22 to NRC making decisions for new nuclear power facilities?

23 MR. MIZUNO: You would have to. To be consistent,
24 you would have to. So I look forward to hearing -- NUMARC
25 is obviously not willing to share the details of the

1 analysis. So all I can say is we certainly will look at
2 that alternative, the legal basis for that, when it's there.

3 I will say that we have looked at that ourselves
4 and --

5 MR. McCARTHY: I will suggest a place you might go
6 find a site to look at and explore this a little further.
7 If you look in 10 CFR Chapter 1, Subpart A, and I'm looking
8 at Section 51.10, Part A, Subpart 2 -- we have good lawyers,
9 Minnesota. They find these things for us.

10 MR. SCHWARTZ: I know exactly the one you're
11 talking about.

12 MR. McCARTHY: And I apologize for that, but you
13 can look this up. I think you will find that there is a
14 basis for examining what your NEPA responsibilities are,
15 except where they are in conflict with other enabling
16 legislation.

17 MR. MIZUNO: Can you point that out again? Can
18 you give me that citation?

19 MS. GINSBERG: 10-A-2.

20 MR. McCARTHY: I think you will see that where the
21 basis of the question is is --

22 MR. MIZUNO: I don't see any inconsistency. The
23 problem with that is I don't see any statutory
24 inconsistency. Where is the statutory -- for the benefit of
25 the audience, it says that the NRC should comply with NEPA

1 to the maximum extent practicable, except where there is a
2 statutory inconsistency.

3 That's, in fact, words that are right out of NEPA.
4 NEPA has a specific thing that says there agencies are to
5 comply to the maximum extent possible, except where there's
6 other statutory authority that specifically precludes that.

7 I see no specific statutory authority or something
8 that says do not look at these areas.

9 MR. McCARTHY: I think the line of logic might be
10 extended, and I'm not suggesting that this is explicitly
11 Minnesota's position, because I think we can get to the same
12 -- a desired outcome through a different path. But I think
13 the basis is that you might suggest that your NEPA
14 requirements are constrained by other -- for instance, the
15 Atomic Energy Act, and that you have a narrower scope.

16 I don't think that --

17 MR. MIZUNO: That's something -- I have to respond
18 to that because that argument was rejected in Calvert
19 Cliffs. Calvert Cliffs is the, I guess, case that everyone
20 comes down to. That position has been rejected over and
21 over.

22 The courts have consistently indicated that NEPA
23 is additional authority to whatever enabling legislation
24 that an agency has. Unless there is a specific statutory
25 exclusion -- and the courts have really required it.

1 There's been a couple cases that said, in fact, they want to
2 see explicit statutory preclusion of certain things from
3 NEPA.

4 The agencies are to consider NEPA as additional
5 authority and consideration. Maybe Ellen has some different
6 insight on it.

7 MS. GINSBERG: My insight is, at least as an
8 immediate response, that that is not the basis for our
9 argument.

10 MR. MIZUNO: Yes. But I'm responding to his --

11 MS. GINSBERG: The 51.10-A-2 is not the basis for
12 our argument.

13 MR. McCARTHY: I think I would suggest, from
14 Minnesota's perspective, that we get to a similar outcome if
15 we get a series of "ands" fulfilled, if we get an explicit
16 statement that we are not being encroached upon in our
17 traditional authority and we have a statement of reliance
18 upon state process, and that could be spec'd as we go along
19 here, and that that provides the equivalent of the function
20 of the operating license exclusion, and we get the other
21 technical fixes, another series of "ands" we've expressed
22 earlier today.

23 I think we still come to the outcome where we are
24 relying on a state process, which would be more thorough and
25 more timely, and we are looking for great assurances we are

1 not being preempted. I think that will still get us to the
2 same outcome where NRC will not be trying to do something
3 which is a duplicate and perhaps problem-causing procedure.

4 MS. GINSBERG: Mike, let me ask you a question
5 just so I understand. Would it be more appealing to the
6 states not to have the NRC look at this at all and draw
7 conclusions on it rather than go through the exercise of
8 submitting to the NRC the state's determination in this
9 case, which would need to be looked at in some fashion and
10 end up where -- I can see a potential for duplication that
11 way rather than if the NRC does not look at the issue at all
12 and does not draw conclusions about it.

13 MR. MCCARTHY: I think we're about to begin
14 splitting legal hairs and I'm not an attorney, but I believe
15 the outcome, the desired outcome is that there not be a
16 duplicate process and that we not go down a path that will
17 introduce potentially confusing and conflicting decisions.

18 If we arrive at that outcome through a recognition
19 that this is a state role and that this is a state process
20 which is going to happen anyway, then I believe that we
21 would find that an acceptable outcome.

22 MR. MIZUNO: That's fine. My only comment is that
23 we all know -- I've said this in many other contexts, but
24 I'll have to say it again. It's very easy to come out to
25 know where your goal is, but the problem here and the

1 problem in all these cases is finding a legally acceptable
2 and policy acceptable means of justifying how you got out
3 there. There are many roads that one could take to come out
4 to your objective.

5 The question is which one is going to be the one
6 that is going to be justifiable. So I think that having
7 said that, what we are looking for -- I think we understand
8 where the states want to come out, but what we want to know
9 is how do you get there, what's going to be the bases for
10 doing that, how is it consistent with our responsibilities
11 under statutes.

12 MR. VISNESKY: I'd like to add that I think there
13 is some appeal to the idea of not having the NRC look at
14 these issues, but there's an equally attractive appeal to
15 having the NRC recognize through their process and bless
16 with their, I guess, stamp that the review process that the
17 states had gone through would substitute for a process which
18 they believe they're legally mandated to conduct.

19 That gives us a slightly better edge in terms of
20 arguing our position if it were ever to come down to those
21 arguments before district court judges than to have
22 essentially an outcome of a no finding.

23 It comes down to whether the rebuttable
24 presumption works in your favor or against you. I want the
25 rebuttable presumption working in my favor.

1 MR. SCHWARTZ: I've got you.

2 MR. ARNY: I wonder if I could clarify. I think
3 we have a little different point of view in Wisconsin, which
4 is why we suggested we like Option 4. That makes it very
5 clear where the authority resides and it doesn't mix the
6 authority. I think that mixing the authority creates a
7 potential for conflict that can be avoided by keeping them
8 completely separate.

9 MR. ROSS: Kind of on a similar note, I just want
10 to -- as a citizen's group, not a state commission, we have
11 some small problem with the NRC putting the stamp on the
12 state commission's work, as well, because if the NRC was
13 not, in fact, involved in that process.

14 Just as I had a problem earlier with -- that the
15 NRC staff may give legitimacy to something that it isn't
16 supposed to, because it can be used. That can be happen if
17 it's done on behalf of the utility's plan or done on behalf
18 of a commission's plan. If the NRC is not going to be
19 actively involved in the review, I would prefer not
20 endorsing, as having jumped over some hurdle or having some
21 kind of blessing, to use Tony's words, any plan, because we
22 don't necessarily see that as contributing to the process,
23 other than, I guess, easily satisfying the NEPA requirements
24 of NRC.

25 I don't know if I'm making myself clear.

1 MR. SCHWARTZ: I understand, but I'm not sure
2 where your bottom line is with respect to each of us, the
3 states and the Federal Government, satisfying the
4 requirements that have been put on our processes with what
5 you're saying.

6 MR. ROSS: I haven't thought this out fully. I'm
7 just saying this is something that has occurred to me that I
8 just wanted to raise and put on the record. There may not
9 be an easy way around this and there may not be a way to
10 satisfy the requirements.

11 MR. MIZUNO: I think what he's saying is that to
12 the extent that the NRC defers to a state analysis in some
13 fashion or another, that some public interest groups may
14 perceive that to be -- they would not be in favor of that
15 because it provides either a Federal imprimatur, which is
16 what Illinois would love, or --

17 MR. VISNESKY: I love it.

18 MR. MIZUNO: And in any event, there would be --

19 MR. SCHWARTZ: Geary, I understood what he was
20 saying. I was trying to find out what solution he might
21 have to offer because of those perceived --

22 MR. ROSS: And I don't have one. I'm just raising
23 the point.

24 MR. SCHWARTZ: Thank you. Appreciate that.

25 MR. CALLEN: I want to go into a point and a field

1 a little dangerous for me, please check me out on my
2 interpretation of NEPA.

3 NEPA was brought about because of the tragedy of
4 our -- as a country not thinking through issues as to their
5 environmental impact. NEPA required a clear and present
6 demonstration, publicly available, that we would expose our
7 thinking and come to conclusions.

8 But rather than finding point of fact on every
9 issue that we decide, NEPA would ask an agency to expose its
10 thinking. Therefore, you can't defeat an agency's
11 determination because you can find one alternative they did
12 not look at.

13 And the same kind of point, then, reaching back to
14 this economic analysis, it would say, then, my understanding
15 and check me out, the NRC would expose its thinking in terms
16 of the economic viability of the option. It could also
17 recognize that the job that needs to be done suffers from
18 two things. One is it doesn't have all the evidence it
19 needs and, secondly, the state must determine that to
20 ultimately make the decision to go with a license extension
21 be a reality.

22 So the NRC does not, as best I remember, does not
23 have to find that this is the highest and best economic
24 decision. So we can separate the issues of Federal and
25 state approval.

1 MR. SCHWARTZ: Thank you.

2 MR. MIZUNO: I agree.

3 MR. SCHWARTZ: My plans are I'd like to conclude
4 this discussion in the next couple of minutes. Let's take a
5 15-minute break and we'll get back into Option 3 and 4 and
6 then really get into the broader overall discussions on all
7 the options, if we can do that. We are already there and I
8 want to make sure we get through, for the record, the
9 detailed discussion on all the options and then get back
10 into the broader discussions.

11 Mike, I'll give you the last word on this.

12 MR. MCCARTHY: The last comment before our break I
13 was going to make was that in the context of our ongoing
14 discussion and reliance on state processes, I think an
15 observation is that typically the determination of need and
16 alternatives has been deferred to the state level under the
17 assumption that the closer you are to assessing your needs
18 and your alternatives, the more thorough the evaluation will
19 be done.

20 I might also suggest to my colleagues from the
21 environmental groups that it's closer. It's less travel.
22 You have better access. If you have a process that you
23 trust, if you have a full and complete review in place, then
24 you have a more accessible process to participate in rather
25 than duplicating this process in D.C.

1 I think that if we're to avoid duplication and
2 we're to avoid potentially conflicting outcomes with all the
3 associated litigation and administrative burdens, then I
4 again would suggest that all of our interests are best met
5 by creating reliance on a local decision-making process,
6 that both your interests and the states and other parties at
7 the local level, other stakeholders, would have immediate
8 and local access to participate in.

9 MR. SCHWARTZ: I said I'd give you the last word,
10 but I'll take the privilege of the Chair. I don't remember
11 any NRC proceeding having a specific geological venue. I
12 think our proceedings have been all over the country,
13 wherever anybody wanted access to it. I don't really see
14 that.

15 I would suggest we take a 15-minute break now and
16 we'll reconvene at about eight minutes of -- five minutes of
17 three.

18 [Recess.]

19 MR. SCHWARTZ: Could we get started, please? I'd
20 like to review where we are and what our expectations for
21 the rest of the afternoon are. The way I see it, it looks
22 like we've got to discuss Option 3, Option 4, and then
23 general questions with respect to all options and
24 presentation of Option 5, the one that Ray Ng raised at some
25 point after the discussion of Option 4, and then have some

1 concluding remarks by each panelist and any final comments
2 we have from the gathered group.

3 What I would like to do is first find out timing-
4 wise any timing constraints of any of the panelists with
5 respect to planes or what time you folks have to get out of
6 here, so we can accelerate or whatever and make sure you're
7 on the record early. Ray?

8 MR. NG: I've got a five o'clock flight and if I
9 can get out of here by about quarter after four, it would be
10 super. But that is not -- in other words, if there's a need
11 to continue discussions, there's another flight later. It's
12 just my convenience, that's all.

13 MR. SCHWARTZ: Terrific. Will Ellen be here?

14 MS. GINSBERG: I'll be here.

15 MR. SCHWARTZ: Great.

16 MR. McCARTHY: We need to leave about 4:30.

17 MR. SCHWARTZ: Anybody else? So 4:30 looks like
18 quitting time for all of us. Anybody else who wants to stay
19 and discuss that after, you can. I will not be here.

20 Also, in keeping with trying to make sure we know
21 the audience, I'd just like to recognize that Commissioner
22 Lynn Shishido-Topel of the Illinois Commerce Commission has
23 joined us. Commissioner, it's nice to see you. Thank you
24 for being here.

25 Option 3, Don, do you want to introduce the

1 option?

2 MR. CLEARY: To start off, we need to distinguish
3 between need for new capacity and need for existing
4 capacity. This option does not address need for new
5 capacity.

6 The assumption in this option is that if capacity
7 exists, there is a sufficient basis to assume that it's
8 serving a useful purpose. I heard some other rationale that
9 could be used to start off with the assumption that there is
10 a need and that the Federal action can proceed.

11 Under this option, there would be no detailed
12 analysis of the need for power and no forecasting of demand.
13 The assumption would be, though, that if the capacity didn't
14 exist, there would be a need for replacement. So that gets
15 us into an alternatives analysis. There would be an
16 alternatives analysis.

17 And under this option, as written, the alternative
18 -- the results of the alternative analysis would be a factor
19 in the license renewal decision.

20 This option could be applied to whatever the
21 determination is in the coming months as to whether
22 alternatives is a Category 1, 2 or 3.

23 MR. SCHWARTZ: Great. Thank you, Don.

24 MR. MOULTON: Shelly, I want to clarify some
25 things first before we get into it.

1 MR. SCHWARTZ: Sure.

2 MR. MOULTON: Don had mentioned that -- he stated
3 that there is a need so Federal action can proceed. I want
4 to correct that a little bit. It is not that we are
5 assuming in Option 3 that there is a need, so that,
6 therefore, license renewal is justified. That is not what
7 we are saying. Let me clarify.

8 From the very beginning, and this goes back to
9 some of the things I was saying earlier this morning, the
10 NRC, in its NEPA process, merely -- actually, the regulation
11 says briefly state the purpose and need for the proposed
12 action.

13 This would recognize that existing plants, for the
14 NRC's NEPA purposes, have a sufficient justification for the
15 NRC saying that a general need exists; therefore, the
16 proposal is a proposal that we can look at.

17 The difference between existing power and new
18 capacity, let me explain that rationale. At the
19 construction permit phase, there is a greater burden because
20 the plant is not on a grid supplying any power. So this
21 option would recognize that there is a much greater burden
22 and the NRC would probably have to do some more detailed
23 analysis.

24 This option would establish in the rule a
25 rationale that would say for license renewal, the NRC's NEPA

1 responsibility doesn't have to -- the burden is not as
2 great. The existing power, the plant is operating, it is on
3 the grid. To satisfy our NEPA need requirement, we don't
4 need to do a detailed analysis. Therefore, we would not do
5 a detailed analysis.

6 There would be no GEIS analysis of need. There
7 would be no site-specific analysis of need. We recognize in
8 this option -- this option would recognize that states do
9 this type of analysis. Maybe this goes well with what the
10 state and we were saying for all the options. Clearly, the
11 statement of non-preemption, the intent of not to preempt a
12 state's authority in this regard may be equally applicable.

13 But this is a general philosophy and we would not
14 do any detailed analysis whatsoever. The rule would just
15 make a rationale of why we wouldn't have to do one.
16 Therefore, our decision would not be based on need and none
17 would be there. I would foresee this as being less
18 intrusive to the states, almost a little bit like in Option
19 4, but halfway on the need area. But it doesn't do anything
20 for alternatives.

21 MR. SCHWARTZ: Thank you.

22 MR. VISNESKY: Just to make sure that I understand
23 you, John, you're saying that for your purposes, the fact
24 that it is existing capacity satisfies your statutory
25 requirement for a reason to proceed to assess alternatives.

1 It constitutes a finding of need.

2 MR. MOULTON: That's correct. We would not be
3 saying that there is a need for a specific type of power.
4 We would just be simply stating philosophically that there
5 is a need, by the fact that it was existing, to replace it
6 somehow, and we're not making any judgments as to how that
7 is. It could be conservation, it could be coal, it could be
8 anything, but we make no prejudgments in this and clearly
9 would leave that up to the states as to whether that's an
10 appropriate means for generating power.

11 I would also like to point out, and I don't think
12 this has really been pointed out too strongly, our NEPA
13 determination is by no means a requirement or a mandate to
14 operate that plant. It just merely, as Joe Gallo was
15 saying, a bus pass. It merely allows the state and the
16 utility to determine whether they want to use that or not.
17 That's it.

18 MR. SCHWARTZ: For the record, I'd just like to
19 put in the questions the staff has on Option 3. Do the
20 states have legal concerns or see other problems if the NRC
21 adopts the position that need for generating capacity need
22 not be analyzed in a license renewal review as discussed in
23 Option 3? To what extent does Option 3 resolve the concerns
24 of the states?

25 David?

1 MR. KRAFT: Dave Kraft from Nuclear Energy
2 Information Service in Illinois. Part of what you said
3 reassured me a little bit in the sense that some of these
4 determinations would be made by the state, but I did have
5 two problems with -- problems with two of the assumptions
6 that NRC has put into this option.

7 The first is what I read as interpreting the
8 notion of a plant being operated as being the same as plant
9 being used and useful. I think there is a difference
10 between the two and I think the conditions in Illinois over
11 the past decade are an example of that, where the
12 controversy has raged over whether the nuclear utility in
13 this state has been over-built or has been prudently built.
14 Depending on which side of the rate hikes you've been on,
15 you take different opinions on that.

16 I'm not so sure that just because a plant is in
17 operation necessarily qualifies it as a used and useful
18 plant. In fact, that's somewhat of a corporate decision
19 based on whether the states have what I call use-it-or-
20 lose-it laws in their Public Utilities Act.

21 It's a corporate decision, not necessarily some
22 sort of a fait accompli just because it's generating
23 electrons.

24 MR. CLEARY: Dave, could I respond to that?

25 MR. KRAFT: Sure.

1 MR. CL'ARY: We're not saying that the plant is
2 needed. We're saying that the --

3 MR. KRAFT: The power.

4 MR. CLEARY: The power, knowing that power is
5 needed from someplace.

6 MR. KRAFT: Okay. And that's why I said part of
7 what he said was reassuring. But the second problem I had,
8 though -- it's not so much a problem as an interpretation,
9 again. The conclusion on Page 10 here is that it is
10 reasonable to assume that the requirement of this existing
11 capacity would necessitate some form of replacement.

12 There, too, I'm not so sure that that would
13 necessarily be the conclusion. While it's correct that at
14 the construction permit stage and the OL stage you have some
15 uncertainty as to the projections, how far out is this going
16 to be used, is this power going to be needed over this time
17 period.

18 What actually ends up happening at the relicensing
19 stage is some of historical confirmation of whether this
20 plant was, indeed, or this power was, indeed, used or useful
21 or was it excess capacity.

22 So whether that, again, the fact that this power
23 is being utilized out there is necessitating some form of
24 replacement and, hence, triggering the alternatives I don't
25 think is necessarily true.

1 MR. MOULTON: First, let me comment on the used
2 and useful. Don started to cap in on that. That was the
3 key point that you made. We are not making any distinction
4 whether the plant is used and useful. If the power is on
5 the grid, just in the philosophical term, if it's on the
6 grid and it goes away, i.e., we make it stop at the end of
7 its operating term, just from that philosophical standpoint,
8 all we are recognizing is that something has to happen to
9 compensate for that loss.

10 This option would say that that's all we need to
11 do to meet our NEPA need determination and it's not
12 prejudicing the states, because we're clearly recognizing
13 that you guys make these determinations.

14 In reference to the CP predictions, I would grant
15 you that we haven't probably been very accurate and maybe a
16 reaffirmation of that need is necessary. But what we're
17 saying is that's something that the states do. We don't do
18 that for that plant.

19 MR. SCHWARTZ: Any discussion?

20 MR. McCARTHY: I think for purposes of the record,
21 I'd just like to reincorporate by reference many of the
22 earlier comments made earlier. There is a distinction to be
23 made with Option 3 because there is an attempt to separate
24 the consideration of need and the consideration of
25 alternatives.

1 I think the point I want to make specific to
2 Option 3 is that state processes typically look at need and
3 alternatives jointly and they look at them from both
4 economic and environmental issues jointly. To separate this
5 in Option 3 is a very peculiar approach, because it's very
6 difficult to assume one is looked at without looking at the
7 other.

8 I think that the assumption that that quantity of
9 capacity will be needed at that location at all points in
10 time during which this rule would be applied is a very
11 difficult to defend assumption. I, again, would reference
12 our technical comments regarding the modeling and the other
13 technical adequacies that the State of Minnesota identified
14 in our March 1992 filing.

15 MR. MOULTON: I guess in response I would just say
16 that as far as each point in time, the option does not
17 intend to -- does not propose to predict that every point in
18 time it's going to be needed. What we are saying is from
19 the philosophical standpoint of an existing plant, if it's
20 existing at the time of the application, then we have this
21 presumption of need from our NEPA standpoint.

22 If, in fact, as time goes on and the utility and
23 the PUC determine that the need really isn't there, this
24 option would kind of be self-correcting because the
25 application probably wouldn't even be tendered anyway.

1 MR. ROSS: I agree a hundred percent with what
2 Mike was just saying on this. I think, once again, we're
3 coming back to a situation like we had earlier in the day
4 where I think the intent of -- what you're trying to get at
5 here with Option 3 is good, but what I read in Option 3, I
6 was coming to the same conclusions as the other people who
7 have spoken to it.

8 First, I wasn't sure if you were making a clear
9 enough distinction between power and plant, and then,
10 second, I was unsure about whether or not this was
11 adequately recognizing the changes in the industry, such as
12 we may never need another thousand megawatt plant. We may
13 not need that kind of a bulky capacity addition ever and
14 bringing one on-line with relicensing may not be the right
15 way to address the needs of the utility's customers and the
16 load shape and all those other kinds of things.

17 I think, again, the intent may be right in terms
18 of what you're getting at, but I don't see anything in the
19 language that made me comfortable with that.

20 MR. MOULTON: Let me first make it clear for the
21 record that this option does not -- it does make a
22 distinction between plant and I've always been saying in my
23 comments this morning that we're trying to make the
24 distinction between the NRC making a need for the plant
25 determination, which we clearly don't want to be doing, and

1 the general need for power determination, which merely
2 answers the "why" question on a proposed action before the
3 agency.

4 I think we keep mixing that right there. I'd also
5 like to contrast this with the first part of Option 4. If
6 Option 4 says we don't use need and alternatives in our
7 analysis, but we disclose a need analysis anyway, my
8 question to you, why wouldn't that be even more prejudicial?
9 In the Option 3 need, we don't even do a needs analysis at
10 all, none whatsoever. We don't do a needs analysis.

11 In fact, we say a needs analysis isn't needed in
12 the GEIS and it's not needed site-specific for the NRC. And
13 we could even recognize that a needs analysis might need to
14 be done by the state or will need to be done by the state
15 and what we are doing by no means prejudices that.

16 MR. VISNESKY: I like the "will" better than the
17 "might."

18 MR. ARNY: I'd like to ask a follow-up question
19 and then just make a couple comments.

20 MR. MOULTON: Could I get a response to it? The
21 difference between Option 4, the need part of it, but still
22 disclosing the needs analysis, I would see that as a little
23 bit more prejudicial. In Option 3, we don't even do a needs
24 analysis with any numbers.

25 Mike was referring to the technical inaccuracies

1 of our needs analysis in the GEIS. This would do none
2 whatsoever.

3 MR. ARNY: But in a way, you make an assumption at
4 the beginning that confuses the analysis enough so that even
5 though you say you're not going through it in detail, you're
6 making a very simplistic assumption at the beginning that
7 because the plant exists, you have enough reason to go
8 forward with your process.

9 MR. MOULTON: Go forward with the process, not
10 necessarily go forward with license renewal.

11 MR. ARNY: No, no.

12 MR. MOULTON: Because we're keeping -- we are
13 saying need from any form -- I mean power from any form.

14 MR. ARNY: For me, this raises a question vis-a-
15 vis the earlier comment from the gentleman from the EPA. If
16 you just -- are we looking at need for the plant when we're
17 doing NEPA review or are we looking at need for the action
18 and how does that effect what needs to be included in the
19 action?

20 MR. MOULTON: I would answer that I think what
21 we're looking at is the need for the proposed action and we
22 are not making prejudicial determinations on the need for
23 the actual plant.

24 MR. SCHWARTZ: Anything else? Do you still have a
25 comment?

1 FROM THE FLOOR: I just had a question for Mike.
2 You mentioned that at least in your state, you consider need
3 and alternatives jointly and a lot of states do that,
4 although by no means do they all.

5 You're having trouble with this option. What
6 would prevent you from continuing to do what you do every
7 day if this option were selected?

8 MR. MCCARTHY: If the intent is to avoid a
9 duplicated process and to avoid potential conflicting
10 outcomes, then we would have potential partial duplication
11 and potential partial conflict here. If the intent of what
12 we're all here today to do is to avoid duplicated processes
13 and to avoid potential conflicting outcomes, then this
14 doesn't get us there.

15 MR. MOULTON: Where is the duplicative process?
16 Where is it duplicating?

17 FROM THE FLOOR: The NRC is not doing anything --

18 MR. MOULTON: Because we're doing absolutely
19 nothing on the need.

20 MR. SCHWARTZ: Mike, the question is the
21 duplication.

22 MR. MCCARTHY: If there is going to be an
23 assessment of alternatives, what alternatives are on the
24 table, what are the environmental consequences of those
25 alternatives, what are those alternatives within various

1 cost scenarios, then those are things which are being
2 considered routinely by many states, including Minnesota.

3 That information is reassessed routinely in the
4 State of the Minnesota. If the NRC is going to assess
5 something like that, that would be a duplicated process.

6 MR. MOULTON: I would agree on the alternatives
7 part, but as we said before, these options could be mixed
8 and interspersed. Could we just -- could you answer the
9 question maybe just on the need part of it? Because we've
10 said that these options could have parts of everything.

11 MR. MCCARTHY: It's very difficult. I'm trying to
12 conceptually separate two things which we do together,
13 because whether you need something or not is often
14 considered an alternative.

15 MR. SCHWARTZ: Joe, did you still have something?

16 MR. GALLO: Joe Gallo. What I heard the people on
17 my right side saying in response to your question, John, is
18 that the assumption that you need the thousand megawatts may
19 not be valid, without regard to whether -- setting aside the
20 question of whether the plants need it, the further
21 assumption that you're going to lose a thousand megawatts,
22 you need to replace that, may not be valid. That's what I
23 heard this side of the panel saying and that's the tension
24 there.

25 But I did want to ask you one question. You made

1 the point maybe five minutes ago that the NRC was not
2 looking in the GEIS at the need for the plant, but rather at
3 the need for the proposed action. Do you recall that?

4 MR. MOULTON: Yes, but let me quickly clarify. I
5 didn't mean this GEIS. I'm saying that's what I would
6 envision we should be doing. We should not be making any
7 prejudicial determinations that the plant was the only way
8 to make this power.

9 MR. GALLO: What is your vision of what the
10 proposed action is in connection with the GEIS?

11 MR. MOULTON: The proposed action is clearly the
12 option of license renewal. But to meet our NEPA
13 responsibility, I'm saying under this option of briefly
14 stating the need, it would clearly just be power. And we
15 don't have as much of a burden for license renewal case
16 because of the existing operation of the plant, as opposed
17 to a construction permit phase where you haven't even had
18 any operation whatsoever.

19 So there's a higher burden, a greater burden to
20 prove that there actually is a need for power.

21 MR. SCHWARTZ: Okay. Mike and then we'll move to
22 Option 4.

23 MR. ARNY: Just a brief comment. I guess the
24 separation, as was indicated earlier, of need from
25 alternatives, I think, is not a good precedent to set. It's

1 the kind of thing that, to the extent it was used later for
2 making further decisions, would lead to poor planning
3 decisions.

4 So I think that's not a good idea. I'm not sure
5 you'll get the savings on the need issue that you're
6 thinking you will because when the states revisit that under
7 Option 3, there would have been an NRC decision on need,
8 even though it was in a sort of simple way. So the state
9 would still have to deal with that decision having been made
10 by the NRC.

11 Then as was indicated, on the options level, both
12 the NRC and the states would be looking at options. So I
13 think that's a problem, as well. Then this leaves the
14 decision, as I've indicated several times before, on the
15 need for the facilities with the NRC rather than making it
16 clearly reside with the states.

17 MR. MOULTON: Those are good points and we'll take
18 those into consideration. I agree with the question of
19 whether there's really some benefit, the savings we're going
20 to get out of that. We have clearly looked at that and
21 we're still struggling with that.

22 MR. SCHWARTZ: Thank you, John. Geary?

23 MR. MIZUNO: I would like to ask a question to
24 follow-up on Joe Gallo's comment. Do any states foresee a
25 situation where somehow, apart from any kind of energy

1 conservation measures, that somehow you are going to have
2 reduced demand, such that the plant would not -- such that
3 the power provided by a plant would not be necessary? Is
4 there a regime here where somehow the power is being -- the
5 power demands are going to be reduced such that the power
6 need not be made up?

7 Apart from any other energy conservation or load
8 demand management or anything like that.

9 MR. VISNESKY: Let me proffer one possible
10 scenario other than the no-growth scenario, and that is
11 mergers and acquisitions in a competitive electric industry,
12 that meaning that you may end up with demand re-aggregated
13 and/or parsed, if you will, which would take the traditional
14 jurisdictional structure that we have to deal with in state
15 regulation and essentially make obligation to serve load,
16 which is what drives the assumption that you're going to
17 need the plant not important anymore.

18 MR. MIZUNO: Okay. I think that's fair.

19 MR. MCCARTHY: I might also elaborate that there
20 are other loss of load scenarios that you could construe.
21 You could construe loss of an industry or you could construe
22 loss of an industry load through self-generation, which may
23 be driven by changing technology and changing relative costs
24 of engineering.

25 So there are a number of these considerations that

1 -- again, I will refer back to our technical comments filed
2 in March 1992 that we did raise from Minnesota. We went
3 through them with great care and methodological procedure
4 and I think that you will see that these are not imaginary
5 concerns and that we have cited cases in our March 1992
6 comments.

7 MR. SCHWARTZ: I appreciate that. That was a good
8 discussion on Option 3.

9 MR. CALLEN: Shelly, just one other point I might
10 mention. Kern, Michigan shows that at least one utility has
11 something similar to that, and that is it has on the books
12 the alternatives for plant refurbishment of non-nuclear
13 plants that would be much cheaper than life extension.

14 MR. SCHWARTZ: Good. Don, Option 4.

15 MR. CLEARY: Option 4 is perhaps the most radical
16 departure from NRC practice and from NRC NEPA practice.
17 Under this option, we would review need and alternatives for
18 disclosure purposes only.

19 Our interpretation is that there is a minimum
20 legal requirement for disclosure. This is an issue which is
21 still being researched and deliberated. But these need and
22 alternatives would not be factors in the license renewal
23 decision.

24 The basis for this is that we would recognize the
25 appropriate regulatory authorities that by not -- by NRC not

1 making determinations in this area, we are just deferring to
2 the states where these regulatory decisions are made.

3 There's a philosophical justification for this.
4 We maintain that taking this approach, we disclose and
5 maintain flexibility for the utilities and the states to
6 make the determinations on the economics of proceeding with
7 license renewal, assuming that the license is granted.

8 MR. SCHWARTZ: All right. I'll read for the
9 record the questions under Option 4. Do the states have
10 legal concerns or see other problems if the NRC treats the
11 issues of need for power and alternative energy sources for
12 disclosure purposes only and excludes them from its decision
13 whether to renew an operating license as discussed in Option
14 4? To what extent does Option 4 resolve the concerns of the
15 states?

16 Who wants to begin? Michael.

17 MR. McCARTHY: Mike McCarthy, State of Minnesota.
18 I think given the explanations and expansion of what Option
19 4 means throughout the course of today's discussion, I think
20 that Option 4, in conjunction with many of the other things
21 we've discussed also earlier in terms of clarifying state
22 authority and these other options, other components, I think
23 Option 4 comes fairly close to meeting our concerns.

24 I say this with a caveat that for assumption
25 purposes, we are assuming that you have a legal obligation

1 and we recognize that that was still an outstanding
2 question. Setting that legal obligation aside, it appears
3 that, as we discussed earlier today, the NRC could defer to
4 the states and justify that, recognizing that the states
5 have processes in place and that many of the states with
6 processes such as integrated resource plans, as described in
7 the Energy Policy Act of 1992, would provide a thorough and
8 timely analysis of these issues.

9 I think that we would prefer to see that type of
10 deference to the states, that type of recognition of the
11 state role, and, as this option has been described and
12 expanded upon throughout today's record, that that would
13 come close to meeting our concerns. Our close is hinged
14 upon the other fixes we've discussed throughout the day that
15 would address our other concerns.

16 MR. SCHWARTZ: Thank you, Mike. Tony, are you
17 ready?

18 MR. VISNESKY: I would concur.

19 MR. SCHWARTZ: Thank you. Mike?

20 MR. ARNY: We would concur, as well. One of the
21 things we discussed as an extension to four was the
22 inclusion of some sort of criteria for which states could
23 participate in the delegation or leaving of the decisions on
24 need and alternatives to the states in Option 4 and using
25 the criteria that are laid out in EPAC would be a suitable

1 way to do that, as Michael has indicated.

2 This is the one option that, in our view, really
3 leaves the state authority with the state and is the
4 preferred option.

5 MR. SCHWARTZ: Thank you. Does anybody else on
6 the panel want to address this, members of the audience?
7 Yes, sir.

8 MR. McMULLIN: Mike McMullin from U.S. EPA. I
9 think it's fair to say that our agency will express serious
10 concern with regard to the compatibility of Option 4 with
11 NRC's compliance of the significant statutory requirements
12 of NEPA. It does not appear to us, from our present
13 understanding, anyway, that Option 4 could be implemented in
14 any meaningful way consistent with NEPA's requirements to
15 take a hard look at purpose and need and use that in --
16 disclose that in the impact statement and use that in the
17 decision-making process.

18 That would come to conclusion at the end of an
19 impact statement and the filing of a record of decision.
20 Again, we'll be more specific on this in our comments that
21 will be forthcoming to your agency.

22 MR. VISNESKY: I have a question. That would also
23 apply to Option 3. Not to revisit Option 3, but it seems to
24 me logically that would have to apply to Option 3, also.

25 MR. McMULLIN: It could.

1 MR. CLEARY: Mike, you're saying that disclosure,
2 in itself, is not sufficient.

3 MR. McMULLIN: According to our understanding of
4 this option as it's presently presented, I don't think that
5 it is sufficient. Again, our agency will file formal
6 comments with you. I have had the opportunity to discuss
7 this matter briefly with our headquarters staff and I am
8 assured that Option 4 is a matter of concern for them as of
9 today, yes.

10 MR. MIZUNO: I think Ellen Ginsberg might also
11 have something to say about this option, too.

12 MS. GINSBERG: Thank you for volunteering me.

13 MR. MIZUNO: It's only because I know that we have
14 to get all the opinions out here and I think the states
15 should understand that there is a divergence on the
16 legalities of these things. It's not cut and dried.

17 MS. GINSBERG: Let me just state briefly that our
18 concern is that if you look at Calvert Cliffs and some of
19 its progeny, what you find is that the courts were fairly
20 explicit about saying that NEPA is a statute that requires
21 the agency to take a hard look, to take a hard look for
22 purposes of making this decision without requiring that any
23 one decision be made, regardless of the substance of the
24 decision.

25 But Calvert Cliffs also said that you may not do

1 something which attaches, as was proposed in Calvert Cliffs,
2 simply attaches this analysis, but then does not allow, in
3 the case of Calvert Cliffs, a licensing board to look at
4 that information.

5 It seems to us that there is a concern here
6 because what you've done is you've provided analysis and you
7 leave it hanging out there for what you've described as
8 disclosure purposes, without considering it in the decision.
9 It is our view that you potentially could be on safer legal
10 ground to not deal with need for power or alternatives, and,
11 therefore, you would not have this sort of peculiar nature
12 of analysis hanging out there, but not being used in the
13 context of the overall decision.

14 MR. MIZUNO: Now I'll respond to that. Certainly,
15 I think that the concerns about the legality of Option 4
16 with respect -- and in light of the Calvert Cliffs decision
17 -- are well founded. But our analysis, at least our
18 analysis to date has been that the problem with the agency's
19 decision-making procedure in Calvert Cliffs, which we think
20 we would avoid in the situation, was that the Commission put
21 forward various arguments for why it did not legally have to
22 consider the EIS in its decision-making process, and the
23 court rejected them.

24 One specific argument, for example, was that the
25 agency's jurisdiction was limited solely to the purview of

1 radiological health and safety by the Atomic Energy Act and
2 NEPA provided -- either NEPA did not expand that
3 jurisdiction or the agency argued that, in fact, the AEA
4 preempted otherwise the jurisdiction that was provided by
5 NEPA, and the court rejected that.

6 So our preliminary reading is that the arguments
7 that the agency presented in the Calvert Cliffs decision for
8 not looking at or not considering the EIS in its entirety
9 were rejected by the court and I think that those principals
10 still stand as good law today. The agency would not be
11 using those bases as a reason for not looking at it.

12 The second way of distinguishing what we're
13 proposing here from what happened in Calvert Cliffs was that
14 the agency, in that case, was proposing to not look at the
15 EIS at all. This is not the situation with respect to the
16 GEIS in Option 4. Under Option 4, the agency would continue
17 to consider all other environmental factors and consider
18 those in the decision-making criteria.

19 All we'd be doing would be excluding the issues of
20 the need for power and alternatives. I think -- and this is
21 the most important distinction between Calvert Cliffs, is
22 that the reason why the agency is indicating -- is going to
23 preclude consideration of these factors in its decision-
24 making is this argument that we have suggested of primacy of
25 state jurisdiction in these areas.

1 I think that that -- to the extent that that
2 represents a rational basis for the decision factors, the
3 agency's overall approach in Option 4 will rise and fall. I
4 think that's ultimately going to be the analysis. It's
5 going to be will the court accept that rationale as
6 something which is not arbitrary and capricious.

7 MR. SCHWARTZ: Ellen, did you have a rebuttal?

8 MS. GINSBERG: Not a rebuttal. I think that all
9 those issues need to be discussed and certainly we will
10 discuss them in fair detail in our comments.

11 MR. SCHWARTZ: Thank you. Michael?

12 MR. MCCARTHY: I wanted to raise something Geary
13 had mentioned earlier today and perhaps you can come back
14 and elaborate on. You had mentioned earlier that there may
15 be an analogy or something we learn from the agreement state
16 protocols that would give us a guidepost on how to approach
17 this. Do you have any elaborating comments on that from
18 earlier today or not?

19 MR. MIZUNO: It's difficult to analogize because
20 the Atomic Energy Act contains statutory provisions that
21 authorize the NRC to have agreements with states. In other
22 words, the whole agreement state regime is a statutorily
23 approved one by the Atomic Energy Act.

24 MR. SCHWARTZ: Which precludes the states;
25 involvement in making health and safety decisions.

1 MR. MIZUNO: That's right.

2 MR. SCHWARTZ: With respect to production and
3 utilization of facilities. I think it would take
4 legislation to put a model together that's similar to the
5 agreement state program for special nuclear material.

6 MR. MIZUNO: But one can just forget about the
7 agreement states model and, yet, nonetheless, come up with,
8 from a policy standpoint, developing a procedure and
9 rationale for deferring to the states or coordinating
10 efforts with the states, as the case may be, which are both
11 consistent with the Atomic Energy Act.

12 It would require no special statutory
13 authorization and would be consistent with NEPA. I would
14 volunteer that. Certainly, I see nothing in the Atomic
15 Energy Act or NEPA that would preclude the NRC from engaging
16 in efforts that would result in coordination of analyses and
17 determinations of need and alternatives in this context.

18 MR. SCHWARTZ: There is one provision, also, I
19 think, Geary, and correct me if I'm wrong, but there is one
20 provision in Section 274 of the Atomic Energy Act that does
21 allow states to do business for and on behalf of the
22 Commission in carrying out the Commission's role. We've got
23 memorandums of understanding with various states for doing
24 various things, inspections and things like that.

25 I'm not sure whether that's an avenue somebody

1 wants to approach, but it may be another procedural way to
2 do some of the things that we all collectively seem to want
3 to do.

4 MR. KRAFT: I just want to clarify that we're
5 using that as a model.

6 MR. SCHWARTZ: Good. Anybody else want to jump in
7 on this?

8 MR. McCOLD: I've got a question.

9 MR. SCHWARTZ: Sure.

10 MR. McCOLD: This is Lance McCold, Oak Ridge
11 National Lab. I've got a question to the states. I'm
12 surprised, I guess, that this Option 4 sounds good to you.
13 From what I heard earlier, you were concerned about NRC
14 doing analysis and reaching some kind of -- doing an
15 independent analysis of need and alternatives.

16 Option 4 calls for that both at the generic and
17 the site-specific level. How come it's acceptable for you
18 in Option 4 and it isn't in some of the other options?

19 MR. VISNESKY: I'll respond to that. I don't
20 think it's, as you characterized it, acceptable. I would
21 characterize it as a fact of life, possibly. The best we
22 can get is some attestation that you don't intend to in any
23 way impinge upon our authority or preempt our authority.
24 That may be the best we can hope for.

25 I proffered earlier the notion that you might want

1 to even go so far as to not execute your statutory
2 obligation, except for the safety and health issues, until
3 such time as -- and even possibly condition your findings on
4 a generic relicensing provision, upon a state's
5 determination that there was, in fact, some either need for
6 that capacity and that it was an appropriate alternative to
7 examine among all alternatives available to provide
8 capacity.

9 So I wouldn't characterize us as sort of having
10 circled the wagons around that particular opportunity. I
11 would say that we're being realistic in saying, well,
12 contingent upon all of the things that Mike has said and the
13 other states have said, we're willing to accept that this
14 may be a fact of life, that this is the best we can hope
15 for, not that we, in fact, think it's a good idea.

16 MR. MCCARTHY: I might also elaborate. I don't
17 think that my understanding of Option 4 is we're asking NRC
18 to do something. I believe you mischaracterized Option 4.
19 If I understood you to suggest that by accepting Option 4 we
20 were suggesting that the NRC would be doing something they
21 were not doing in the other options, I think that is a
22 mischaracterization.

23 I think our desire is to avoid a duplicate effort
24 and I think what we've discussed this afternoon is that
25 Option 4 may best avoid the duplicative effort.

1 MR. MIZUNO: Let me explain Option 4 carefully
2 because maybe the states have a misapprehension as to what
3 occurs in Option 4 and perhaps offer a new Option 5 perhaps
4 that goes beyond that.

5 MR. McCARTHY: Six. There's already five.

6 MR. MIZUNO: Option 6 or 4-A, I don't know.

7 MR. McCARTHY: Let's call this the consensus
8 option under development.

9 MR. MIZUNO: Under the Option 4, we should be
10 clear that NRC would recognize that it still has a burden
11 under NEPA to disclose the issues and information relevant
12 to need for power and alternative energy sources. At least
13 as written down in here or as explained here, the NRC would
14 perform an independent analysis of need for power and
15 alternative energy sources and it would be disclosed in the
16 GEIS.

17 But what it would also be accompanied by would be
18 -- well, first of all, it's unclear as to whether that would
19 -- that analysis would consist solely of an analysis without
20 a conclusion. We might end up with no conclusion. I'm not
21 sure whether that would conform with NEPA or not.

22 But in any event, the substance or the heart of
23 Option 4 would be that you would have a discussion in the
24 rulemaking document, as well as in the rule itself, that
25 indicates that the NRC is not going to consider need for

1 power and alternative energy sources as decision-making
2 criteria in any individual license renewal proceeding.

3 So you would still be left with the problem, I
4 think, of having something out there that has some "NRC
5 imprimatur." This new option that I guess I'm now
6 suggesting as another thing to be considered, which actually
7 represents a combination of Option 2 and Option 4, is you
8 could devise a new option whereby the NRC staff accepts,
9 under some process, under the guidelines or whatever, a
10 state analysis, if available, and that would suffice for our
11 disclosure obligation under NEPA, and then it goes further
12 to say in any event, we are not going to make a decision of
13 any individual license renewal based upon the rationale that
14 I just explained about primacy of state jurisdiction,
15 etcetera, etcetera.

16 MR. VISNESKY: That gets very close to a preferred
17 option for me.

18 MR. McCARTHY: I would echo that from Minnesota.

19 MR. ARNY: For Wisconsin, I think that moves in
20 the right direction, as well. It seems one of the things
21 about four that is different than the other ones is that the
22 NRC is not making a decision and explicitly saying that. In
23 the other ones, there is a little bit of that decision
24 blended in. That's how four is different, I believe.

25 MR. McCARTHY: But it does appear under what was

1 just described, Mike, I think Option 4, there's still a
2 redundant process.

3 MR. MIZUNO: That's correct. Option 4 would have
4 a redundant process insofar as the NRC doing the analyses.

5 MR. VISNESKY: Because of the disclosure
6 requirement.

7 MR. MIZUNO: That's right. Let me just indicate
8 since you already know EPA's position, and it's a position
9 that ultimately the NRC is going to have to defend should it
10 choose either Option 4 or this new integrated option, is
11 that we are going to want to hear from the states of
12 whatever option that you go, you advocate as to how that
13 option is consistent with our NEPA obligations.

14 Do you believe that the NEPA obligation can be
15 limited to disclosure and that we can exclude certain
16 decision criteria and, in fact, even important ones that
17 would otherwise be required by NEPA, because NEPA
18 specifically indicates that you must have a discussion of
19 alternatives, whether it is acceptable from a legal
20 standpoint to exclude them from -- if you have an otherwise
21 rational basis.

22 I think that that is going to be the heart of
23 whether Option 4 or this new option is going to be
24 considered acceptable by the Commission or not. I should
25 say within the running of options to be considered.

1 MR. VISNESKY: But for the NEPA requirement,
2 though, there is no sort of inextricable logical connection
3 between the recognition of need and an assessment of the
4 alternatives to meet that need, even though our state
5 processes combine them. Does that characterize it fairly?

6 MR. MIZUNO: Yes. Yes, but except for is the
7 point.

8 MR. VISNESKY: Of course it's the point, but --

9 MR. MIZUNO: That's the point. But one further
10 thing, which gets back, I think, to some other discussion
11 that we had with respect to Option 3, which is to what
12 extent is it useful to talk about alternatives without also
13 talking about a need. Are they inextricable factors or
14 things?

15 MR. VISNESKY: Our state planning laws suggest
16 they are. I just wanted to make sure that we are addressing
17 the point of your statutory requirement under NEPA with that
18 particular part of the issue.

19 MR. ARNY: It seems like what we have here is sort
20 of a matter of degree on how much standards or oversight the
21 NRC has to provide over the state process to make it
22 acceptable to EPA under NEPA. At one end of that spectrum
23 is the conclusion that NRC doesn't need to determine need
24 and alternatives simply to issue a license if those
25 questions are going to be addressed at the state level.

1 That's one extreme.

2 The other extreme is that the NRC has to exercise
3 pretty explicit supervision or control or review in final
4 decision-making if there is a state process. Somewhere in
5 that continuum, I think, is the answer we're looking for and
6 where it is I think depends on some legal interpretations.

7 MR. VISNESKY: And where the EPA thinks that ought
8 to be.

9 MR. ARNY: That's right.

10 MR. CLEARY: From a non-lawyer's point of view,
11 Option 4 we see as or hope that it would fulfill our NEPA
12 responsibilities in the sense that we're not completely
13 walking away from need and alternatives. We're just, as a
14 matter of policy, recognizing that there is another more
15 appropriate forum and recognizing that we shouldn't be
16 duplicating effort and second-guessing in terms of the
17 decisions.

18 MR. MCCARTHY: I think in that context, Don, it
19 would be appropriate, rather than deferring -- rather than
20 duplicating a process and then not having a product to your
21 duplication, it would probably be more practical to defer to
22 a state process that had an outcome and a decision as long
23 as that process met a minimum set of specs that would
24 satisfy the EPA and presumably the CEQ that the process was
25 thorough and complete.

1 MR. SCHWARTZ: Good.

2 MR. MIZUNO: Let me just throw in one more thing,
3 too, because, in fact, Ellen Ginsberg raised this issue with
4 me, so I will not take credit for this insight, because it
5 is a good insight.

6 When considering either Option 4 or Option 2 or
7 this new option, I think another hurdle that the agency is
8 going to have to overcome is the fact that within NEPA,
9 there is a section that deals with when a Federal agency can
10 rely upon a state where a state determination or a state
11 analysis of environmental factors to satisfy the Federal
12 agency's NEPA responsibilities.

13 It sets forth some criteria there and if you look
14 at those criteria, Congress indicated that apart from the
15 kinds of guidelines and process things that we're talking
16 about there, it indicated that the Federal agency has to do
17 an independent review of the state determination.

18 So one could argue that here Congress specifically
19 said that where a Federal agency is giving out money for
20 grants, it can accept the state's analysis, but under these
21 conditions, and one of those conditions was we have to have
22 an independent Federal review of the state analysis, even
23 though Congress also indicated some of the other criteria
24 were that the Federal agency must find that the state
25 process is an adequate one, that the criteria being used are

1 adequate.

2 The fact that Congress put in this proviso there
3 suggests -- okay -- it's not directly applicable, but
4 certainly it's something that a party is going to consider
5 as a practical matter, what was the intent of Congress. Did
6 Congress really intend for the agency to defer entirely to a
7 state determination?

8 I think that that's something that has to be
9 addressed. It represents something in the statute and it
10 either has to be explained away, distinguished or otherwise
11 taken head on.

12 MR. SCHWARTZ: Yes. You need a good legal
13 analysis on that. Art had something and then Roland.

14 FROM THE FLOOR: To help some of us who will be
15 writing this up, I've heard terms used like NRC supervision,
16 oversight, as to what the states would be doing in assessing
17 needs and alternatives. Given that we've had state
18 governments that have actively opposed nuclear power, I wish
19 the state people would tell me how the NRC would exercise
20 this oversight and cause a state to do anything whatever.

21 MR. MIZUNO: I think what we've suggested is that
22 using the standards for integrated resource planning that
23 are laid out in EPAC and the states' responses to that to
24 the Federal Government provides you with a standard. I
25 think the simpler this kind of thing is, the better it will

1 work.

2 I think if a set of standards that define a
3 process that is adequate can be laid out using that as a
4 foundation, that that would be the simplest way to define an
5 adequate process and make sure that states were following
6 that process. Then if there's concern about following,
7 there's the potential for the audit afterwards.

8 FROM THE FLOOR: One quick follow-up with you. If
9 we talk about Option 4-A, as Geary has described it, in the
10 event -- would it be acceptable that in the event that there
11 was not an adequate state analysis, that the applicant could
12 also present an analysis to the NRC?

13 MR. SCHWARTZ: It's part of the flexibility,
14 because some states have robust and some don't. I think we
15 recognized that early on. It also gets back to the Energy
16 Policy Act and what happens there with respect to approval
17 or sanctions or whatever with respect to the DOE look and
18 how wholesome or robust the state program is. I think all
19 that still needs a lot of discussion. We're nowhere near
20 reaching closure in all the points.

21 But I guess the one other point that you
22 mentioned, I sense what we're talking about is the system
23 really being aligned with the question of need for nuclear.
24 It's the need for power, not need for nuclear. We're not
25 getting into that. Your question seems to get us in that

1 direction and I wanted to make sure it was clear.

2 FROM THE FLOOR: One of the concerns I have with
3 that is that there are some states that define that as need
4 for facility, and that's the issue that comes before the
5 Commission. In addition to need for power, they're
6 addressing the need for a specific facility rather than a
7 look at just a generic need for power to replace the power
8 from this plant.

9 MR. SCHWARTZ: If I may just complete this, and
10 other panel members can chime in, but if the state decides,
11 for its own reasons, that they don't want a nuclear power
12 plant, that's their judgment and they can go ahead and do
13 whatever it is they want with respect to that. That's not
14 the Nuclear Regulatory Commission's concern.

15 MR. VISNESKY: I have one caveat. I think it's a
16 fairly important one, though. That's addressing the notion
17 that if a state doesn't provide an adequate analysis, then
18 the other entity going forward would provide an analysis. I
19 think we always get a little bit kind of in trouble when we
20 try to define adequacy in legal terms.

21 So I would be willing to accept the notion that
22 you proffered if you stated that absent any analysis, the
23 party going forward could bring one, that would be all right
24 with me. But the determination of the adequacy of the
25 analysis gets very fraught with legal battle. If our

1 process here is supposed to improve efficiency in
2 bureaucracy, that's not the way to do it. Adding fuzzy
3 words doesn't do it.

4 MR. CALLEN: Could I pick up on that, Shelly?

5 MR. MCCARTHY: Actually, I'd just like to also
6 make one other comment. Mike McCarthy from Minnesota. I
7 think an important point to be made is the state's position
8 in terms of the type of process we're discussing here today
9 is not a pro-nuclear nor an anti-nuclear discussion.

10 I won't elaborate on the scenarios, but our
11 attorneys force us through exercises where we could be
12 dealing with either type of outcome within the scenarios
13 we're discussing here today. I think that behind the
14 question you asked was an assumption or perhaps a suggestion
15 that perhaps the states were looking at thwarting nuclear
16 power, and that is not the case. I want it to be on the
17 record and clear that that was not the case.

18 MR. ARNY: I'd just like to offer that the states,
19 Wisconsin and I think most other states, have very open
20 planning processes. So whatever a group's or organization's
21 concerns were, I think in most states, they can be brought
22 into the proceeding and aired there. That is certainly the
23 case in Wisconsin.

24 MR. SCHWARTZ: Ron Callen and then Roland.

25 MR. CALLEN: One point I wanted to bring up on

1 this. Having spoken at the beginning and throughout the
2 EPAC, I'd like to go on beyond that. As you mentioned,
3 Shelly, EPAC gives the state the authority to reject
4 integrated resource planning, as such, and to define its
5 review process as different from that.

6 The point I'm getting at is if a state so decides
7 that its process is to be other than integrated resource
8 planning, it seems to me by the definition of state law,
9 that's adequate at least for that state. I think it gets
10 NRC or a Federal agency into an awful mess of trying to
11 decide that it's inadequate because it doesn't meet a
12 Federal or an agency standard.

13 MR. VISNESKY: That was my point for raising the
14 adequacy issue. I think you are absolutely right.

15 MR. SCHWARTZ: Good point. The other side of the
16 coin. Roland?

17 MR. LICKUS: I just want to clarify a point.
18 Roland Lickus from Region III. This is to the states. Do
19 you see any other state law as impacting on your ability to
20 do an adequate job of reviewing the issue of need or
21 alternatives? I'll give you an example.

22 Many states have laws that say we are not going to
23 build any more nuclear power plants and they may put a
24 condition on that that says until adequate disposal capacity
25 is made available for high level waste or other conditions.

1 I just wondered. Do you see that these laws can
2 impact on your decision-making in terms of alternatives? I
3 could see the scenario coming forward where somebody may
4 claim because of this state law you can't consider the
5 nuclear alternative because we passed a law in this state
6 that says there will be no more nuclear construction.

7 MR. MIZUNO: Before he answers that, I want to --
8 I don't see that as being relevant here. The state
9 legislature has determined as a policy matter that they
10 don't want nuclear and that's the end for the state.

11 MR. SCHWARTZ: And it's not our judgment.

12 MR. MIZUNO: It's not our judgment to deal with
13 that.

14 MR. SCHWARTZ: Exactly.

15 MR. LICKUS: Could I clarify? It's only
16 applicable if we are taking the state's analysis and using
17 that as a foundation for any decisions we're making relative
18 to plant life extension. If that doesn't become a thorough
19 and technically valid analysis because a state law preempts
20 them from even getting that far, I think that could become a
21 problem for the NRC.

22 MR. SCHWARTZ: It's not a problem because the
23 decision is already made.

24 MS. JENKINS: The question of whether Wisconsin
25 can look at certain issues at Point Beach, either in a

1 specific construction document or in Advance Plan 7, because
2 of another state law has been raised and it's in front of
3 our Electric Division le staff at the moment.

4 MR. LEWIS: Dave Lewis. I think that perhaps it's
5 possible to make the case that the NRC need not look at the
6 need for power or alternative energy source issues in its
7 substantive decision-making. However, I think if the NRC
8 decides that these issues have to be part of its decision-
9 making process, that it has to include these in its
10 decision-making process, I don't believe that a state
11 analysis can be the end point of that analysis under NEPA.

12 I think the states should consider this in looking
13 at the options. NEPA requires consideration of public
14 comments. If the NRC adopts a state analysis, I think
15 that's just a beginning point, that the NRC would still have
16 to consider comments on that analysis. And if it's really
17 taking a hard look at the issues, it would have to carry
18 that forward and make a decision on how to resolve the
19 comments.

20 There is also case law that indicates that when an
21 issue is part of the NRC's substantive decision-making, the
22 NRC cannot exclude that issue from its public hearing or
23 before the Atomic Safety and Licensing Board, which, again,
24 means that if the NRC takes the state's decision and says
25 this is our NEPA position, it can't then insulate that

1 decision from adjudication before the Atomic Safety and
2 Licensing Board and eventual review.

3 When I stated earlier that this raises the
4 possibility that the state's decision would be rejected by
5 the NRC, I think that's a very real possibility when you
6 take the state's analysis and say we're going to adopt it as
7 a substantive portion of the NRC's decision.

8 If you're trying to avoid NRC review and second-
9 guessing of a state decision, you are better off coming up
10 with a rationale on why these issues don't have to be looked
11 at by the NRC in the first instance.

12 MR. SCHWARTZ: Thank you, Dave.

13 MR. MIZUNO: I want to make sure. Do the states
14 understand that point? I think that's an important point.

15 MR. VISNESKY: I understand it. I'm wondering why
16 -- and I don't want to be considered as not caring about due
17 process, but if our process involves opportunity for public
18 comment, hearings open to the public, intervenors, etcetera,
19 if you're taking that product, it seems to me that that
20 could be argued as sufficient public discussion.

21 MR. MIZUNO: Because I believe that -- well. I
22 think certainly that argument is there to be made, but I
23 think there are countervailing arguments that say that
24 independent of whatever process the state may put on, that
25 there is an independent NEPA requirement for certain things

1 to occur.

2 In any event, we have to comply with our
3 regulations. We could modify our regulations, I suppose, to
4 account for that, but we'd still have to determine whether
5 reliance upon the state process is sufficient to address the
6 substantive -- I'm sorry -- the procedural requirements of
7 NEPA that are imposed there.

8 Offhand, I would say that it would be difficult to
9 make that argument.

10 MR. VISNESKY: I understand that. But in the
11 spirit of not duplicating process, one might be able to
12 argue that.

13 MR. MIZUNO: Yes. I agree.

14 MR. SCHWARTZ: Dave, did Geary explain it
15 properly?

16 MR. LEWIS: Yes. I would add that there may be
17 issues of need and alternatives that go beyond the state's
18 review. It may be, in fact, the case that even if the state
19 determined that a particular plant wasn't needed for a
20 service area, that an applicant might be able to justify
21 need or value of the plant in the wholesale market.

22 Therefore, it's very hard for us to say that the
23 state's determination ends the issue absolutely.

24 MR. VISNESKY: But then it's not a jurisdictional
25 plant and we don't care. FERC cares, we don't.

1 MR. LEWIS: Yes, but all I'm saying is that the
2 state's decision may not be the end point of the analysis.

3 MR. SCHWARTZ: Understand. I'd like to turn to
4 Ray Ng for Option 5.

5 MR. NG: Shelly, before I get back into a
6 restatement of Option 5 and elaboration of some of its
7 attributes, I'd like to offer some comments from an industry
8 perspective on the role of license renewal in meeting the
9 future electricity generation needs of this nation.

10 It should be clearly understood that those
11 utilities seeking to renew their nuclear plant licenses will
12 do so as part of a larger decision-making process related to
13 meeting the energy needs of their customer, ensuring
14 reliable and efficient delivery of electricity.

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

20 Obviously, for each option, consideration must be
21 given to whether it's safe, environmentally sound and
22 reliable. Equally important, for each option, utilities
23 must consider the effective use of capital and whether a
24 particular option is justified in the light of current and
25 projected operating and maintenance costs.

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

7 Whether it's continuing to operate a particular
8 plant is a business decision. Even after NRC has determined
9 that there was reasonable assurance that the plant will
10 operate safely for a period up to 20 years beyond the
11 initial license, a utility must decide whether continued
12 operations is economically advantageous or, in some cases,
13 even feasible.

14 I want to highlight that obtaining a renewed
15 license does not require a utility to continue to operate in
16 the renewal period any more than the initial license
17 requires a plant to operate for the full 40-year term.

18 The industry believes that the NRC is making
19 minimal progress toward achieving an efficient, stable and
20 predictable process for considering the potential
21 environmental effects of license renewal through its
22 proposed GEIS. Industry endorses the NRC's generic approach
23 because in our view, most of the environmental impacts
24 associated with license renewal are common to all or almost
25 all operating plants.

1 Also, considering those common impacts, only once
2 is a significantly more efficient use of condition, licensee
3 and public resources, while still producing a comprehensive
4 basis to support the NRC's NEPA analysis.

5 An important point in this context is that the
6 license renewal process encourages utilities who may
7 consider license renewal to obtain a decision from the NRC
8 several years before a license is to expire.

9 This advanced timing allows utilities to perform
10 more definitive planning. It provides the state and
11 utilities with a fuller and clearer complement of
12 information with which to make future economic and business
13 determinations.

14 The better the quality of the information, the
15 more likely sound decisions will be reached. Obviously,
16 this will be a benefit to all parties.

17 In the proposed amendment to Part 54, the NRC has
18 included for generic consideration economic and other non-
19 safety issues, such as need for power and alternative energy
20 sources. Industry does not believe these generic
21 evaluations either supplant or bind the state on these
22 issues. In fact, it is well settled that regulations of
23 these issues is solely within a state's jurisdiction.

24 As noted in the industry's comments submitted by
25 NUMARC now almost two years ago, the industry believes that

1 the NRC can fulfill its obligations under NEPA, even if it
2 does not consider the need for power and alternative sources
3 of energy.

4 Even though the NRC's consideration of economic
5 issues has no binding effect on a state's ability to
6 exercise regulatory authority over those issues in the
7 appropriate state forum, we support an approach or an option
8 that deletes consideration of these issues from the NRC
9 review. This also includes not performing and publishing
10 the analysis for disclosure reasons.

11 In closing, let me restate that the industry
12 interest is ensuring that the NRC develops an efficient,
13 stable and predictable approach to license renewal. Such an
14 approach and the Federal, state and utility decisions which
15 flow from it will assure the nation's future energy needs
16 are met through an integrated system of safe, efficient and
17 economic power production.

18 Let me further comment in the sense that -- from a
19 rationale standpoint, we at NUMARC will certainly offer in
20 writing before the March 4 deadline date a rationale. I
21 believe that our rationale relies upon what seems to be a
22 difference in interpretation of what NEPA requires.

23 Certainly, I think that the approach that the
24 industry is proposing is certainly much more straightforward
25 and practical from an implementation standpoint, given that

1 there will be a number of plants that are geographically
2 located differently under the regulation of the different
3 states.

4 We certainly have a collection of states here
5 today, but there are other states. I think last week, Chuck
6 Grey from NERUT was indicating to us that there is quite a
7 variance. So that from our perspective, from a practical
8 standpoint, something like Option 2 would be very difficult
9 to implement in itself, especially when you get down to the
10 details.

11 I think there's an attractiveness from a very high
12 level perspective, but I think the devil is truly in the
13 details. We certainly believe that the approach the
14 industry is proposing would surely reduce or minimize any
15 overlaps between the states and the Federal Government and
16 certainly places the the interactions on economic matters
17 between the state and the utilities and certainly would lead
18 to a much more predictable process for license renewal for a
19 utility.

20 Thank you very much.

21 MR. SCHWARTZ: John.

22 MR. MOULTON: I have a comment or question or
23 maybe just a suggestion for your written comments to include
24 discussion on this matter.

25 As I understand the NUMARC option, the proposed

1 action would be the issuance of the license renewal permit
2 and the only other alternative would be the no action, not
3 issuing the license renewal permit.

4 I guess my comment centers on how would the
5 agency, the NRC, justify that the no action alternative is
6 not an appropriate action. I would think that you would
7 probably still get to a need for power type consideration
8 because you would want to show some impacts that are
9 detrimental in the no action alternative.

10 I can't really think of any, other than that you
11 wouldn't meet a need for power. And then we're back to a
12 need for power question again. So I would urge you to
13 address that in your comments.

14 Also, if the only alternatives are the proposed
15 action and the no action, how is that a really meaningful
16 NEPA review? If you could address that in your comments or
17 if you have anything now.

18 MR. NG: We'll do that.

19 MR. SCHWARTZ: Thank you. Does anybody have any
20 other questions or comments with respect to the NUMARC
21 option? Sally? Anybody from the audience?

22 [No response.]

23 MR. SCHWARTZ: All right. What I propose now, if
24 I may -- thank you, Ray. Appreciate it. What I'd like to
25 propose is that in the interest of time, it's about eight or

1 nine minutes after four, I'd like to deal with the general
2 questions and as I restated the final question, to what
3 extent do these options resolve the states' concerns, and
4 wrap it right in with concluding remarks by each panelist
5 and summary assessments to get us right to the final
6 comments from the floor.

7 I'd ask the panelists to do that. Do you have
8 some specific questions?

9 MR. MOULTON: Yes. Before we get into -- I hate
10 to do this, but there's one question that's been -- I've
11 been itching to get an answer to. It's almost like another
12 option, and that is we've never discussed totally dropping
13 the rule. Could the states give me some insight into the
14 benefit of just completely dropping the rule?

15 I kind of have an idea, but if you could answer
16 that on the record, I'd appreciate that.

17 MR. SCHWARTZ: Mike, I thought you answered that
18 this morning, but okay.

19 MR. MCCARTHY: Well, I'm just taken aback. I
20 ferreted out this morning that our initial caveat from the
21 State of Minnesota is that everything today is predicated
22 under a desired option to drop the rule. We feel that it's
23 fraught with difficult to defend assumptions and some
24 technical inadequacies that have yet to be addressed.

25 There are many, many problems underlying many of

1 the fundamental approaches to addressing generically these
2 issues and then codifying them as a rule. We have outlined
3 many of those points in our 1992 filing. I'll refer the
4 audience and later readers of the transcript to extensive
5 comments in that regard in that filing.

6 MR. MIZUNO: I don't see how dropping the proposed
7 rule is going to ultimately address some of the concerns
8 that the states have raised. All you're doing is deferring
9 ultimate NRC consideration of these things, because let us
10 say we postponed the rule and we end up with individual
11 license renewal applications, perhaps in your state.

12 The NRC is going to follow along with its current
13 procedure, which is to consider need for power and
14 alternative energy sources. That is our current practice.
15 So by dropping the proposed rule, you are not going to be
16 resolving these state jurisdictional concerns. You are
17 merely deferring them. And if you feel that that's
18 appropriate now, that's fine, but at least from my
19 perspective, I would not think that that's going to solve
20 the problem.

21 MR. SCHWARTZ: Another NRC view.

22 MR. CLEARY: Practically, dropping the proposed
23 rule is equivalent to just making all of the issues Category
24 3. We would do the same review case-by-case.

25 MR. SCHWARTZ: Any other states?

1 MR. VISNESKY: I think although dropping
2 rulemaking has a certain ring of sort of the siren song to
3 it, I absolutely hate rulemaking, but I think in this case
4 it might be tantamount to throwing the baby out with the
5 bath water. It appears as though there's been an awful lot
6 of effort put into it.

7 If we can distill from this process, and I think
8 we've shown that we've had a pretty productive day, some
9 beneficial aspects to it in terms of streamlining the
10 process and reducing duplication of effort and possibly
11 improving the economy of bureaucracy, if that's not an
12 oxymoron.

13 MR. SCHWARTZ: For regulatory agencies, it
14 normally is.

15 MR. VISNESKY: Well, we are full of morons. I
16 think that it's worth the effort to try to save it.

17 MR. SCHWARTZ: Okay.

18 MR. MOULTON: That was the exact reason why I
19 brought that up, because as Mike said, the State of
20 Minnesota did make that as one of the preferred options.
21 But if we did not drop the rule, it would want to do
22 something else, and I did not see that as meeting your
23 larger goals of your concerns.

24 MR. McCARTHY: I think the follow-on in the
25 context of our conversation was that this -- I think our

1 perception is there are problems with the original rule, as
2 proposed, that remain to be fixed, even of broader scope and
3 that the most streamlined solution to get us to a simplified
4 process may be to drop what's on the table and to reissue
5 something much, much, much more simplified and narrower in
6 scope.

7 MR. SCHWARTZ: John, you've got your stuff. Now,
8 may I propose to start the conclusion of the meeting,
9 dealing with the four general questions, concluding remarks
10 by each panelist, and to get us up close to the adjourn.
11 Does anybody want to go first or just go around the table?

12 MR. MIZUNO: Well, I sort of have nothing to add
13 because I'm here to listen.

14 MR. SCHWARTZ: I'm getting dyslexic. Mike?

15 MR. ARNY: I think we've sort of gotten to the
16 point in the discussion where what most people want is
17 pretty clear, the recognition of the state jurisdiction over
18 need and alternatives in the rule, rely on state planning
19 for need and alternative evaluation to the maximum extent
20 possible, and then set up minimum standards for state
21 planning analysis, perhaps based on EPAC, that makes the
22 package sufficient to meet the NEPA requirement that the NRC
23 has to face.

24 We've made it pretty clear that Wisconsin would
25 like to see that at the end of the spectrum that is on the

1 order of Option 4 or the modified Option 4, which I think is
2 an improvement over four of using the state's information
3 for the disclosure, as well.

4 So we've made it clear which end of the spectrum
5 we're on. I think if everyone can figure out how to craft a
6 package that's somewhere on that spectrum, that tries to
7 address the needs of both parties, I think we can come up
8 with something that will be beneficial to all the
9 participants. I hope that we can work with you to make
10 progress along that path.

11 MR. SCHWARTZ: Thank you very much. Sally, do you
12 have anything to add?

13 MS. JENKINS: The question that I had for EPA and
14 the person from Shaw, Pittman, Potts was where a state has a
15 little NEPA, if a joint EIS is prepared and the state
16 defends the part that it prepares and NRC defends the part
17 that it prepares, does that satisfy your NEPA concerns?
18 Because then you've got the response to comments, you've got
19 the testimony in defense in a hearing. You've got the stuff
20 you said that you were concerned about.

21 MR. LEWIS: The NRC and the states can certainly
22 cooperate in preparing their position on these issues. The
23 NRC does have a public hearing process before the Atomic
24 Safety and Licensing Board where the issues can be
25 challenged. They can be challenged by an applicant, another

1 interested third party, and their hearing rights extend to
2 the NEPA issues.

3 So even if the NRC staff and state went in and
4 defended a particular position that they had developed
5 jointly, a third party could come in and present contrary
6 evidence and the Atomic Safety and Licensing Board, based on
7 the evidence, might reach an alternative decision. If
8 that's the weight of the evidence, that would be the
9 decision of the agency at the end point and it might reject
10 the position that was developed by the state.

11 So I just wanted the states to recognize that
12 possibility. If the road you're going down is to make your
13 decision part of the NRC's decision, you can't really ensure
14 that it's going to remain untouched.

15 MR. SCHWARTZ: Thank you. Brian?

16 MR. ROSS: I haven't really been over a lot of the
17 stuff in detail. We kind of came into this process pretty
18 late. There were some issues raised by Minnesota about
19 technical considerations that I would like to examine,
20 because I think there may be some good points there.

21 But over the issues that we've covered here in
22 discussion, clearly, we're of the opinion that we want to -
23 - we have a process in the State of Illinois and we are
24 involved with it in terms of resource planning. We are
25 concerned about preemption of that process and of weakening

1 of that process due to the licensing requirements or
2 relicensing requirements being discussed here.

3 To that point, we would, I guess, tend to support
4 the modified Option 4 or whatever it is that we're calling
5 it now, with the additional caveat that I think some of the
6 technical issues that have been raised also need to be
7 examined.

8 MR. SCHWARTZ: Good. Thank you, Brian. David?

9 MR. KRAFT: Dave Kraft, Illinois. Again, since
10 we're not really speaking for a state, but, rather, my
11 comments are, I think, expressing those opinions of many
12 environmental groups both in Illinois and around the
13 country.

14 I could understand the feelings of some of the
15 states that stopping the rulemaking would perhaps be
16 throwing the baby out with the bath water, I believe was the
17 phrase he used. But in some ways, many ways, the
18 environmental community, I think, feels that the process is
19 so severely flawed, the rulemaking is really flawed.

20 What we're really talking about and what we've
21 been arguing about all day here is what color uniforms the
22 band is wearing on the Titanic. Until the more serious
23 issues that are laden within the GEIS process are rectified
24 and changed, you're not going to get too far along in terms
25 of making substantive change.

1 I think what happened here today is good just from
2 a process standpoint that the NRC can come away with
3 understanding that the states really do want to work in a
4 cooperative way. We also did highlight earlier that there
5 has been a cooperative arrangement before via the
6 agreements, status program.

7 So I think that is a positive thing to take back
8 and reconsider and perhaps it should not just be
9 reconsidered in the narrow context of this discussion today,
10 but in the broader context of reevaluating the entire rule.

11 MR. SCHWARTZ: Thank you. Ron?

12 MR. CALLEN: Well, in a corporate sense, I agree
13 with the direction that the states have been pursuing here
14 today on trying to resolve the problem. I would point out a
15 few things.

16 First of all, I believe that the three points I
17 made earlier, that I hope the NRC could conclude that the
18 state process would, if you will, take precedent, and that
19 was one that the state process would be more thorough,
20 timely and use the kind of experts that only the state has.

21 Secondly, that this process would be non-
22 duplicative or -- I'm sorry -- that you were called upon to
23 be non-duplicative. Then, thirdly, that the Energy Policy
24 Act elevates to the Federal level the requirement to do
25 integrated resource planning or something to the contrary.

1 The other two points I'd make are, first, that I
2 still see that this is really -- to extend the life of a
3 nuclear power plant is really a two-step process and we
4 really do need to recognize that it's two steps and you
5 can't either offend or negate one of the processes. I think
6 we're sometimes getting confused because we're trying to put
7 two processes into one and it doesn't work.

8 The other thing I come away with feeling is that
9 on a personal level, I can see and not be injured by NRC
10 doing its needs and alternatives review, to the extent that
11 it can, in order to satisfy NEPA. I'm going to pursue it
12 with Geary later. I still have -- deep down inside there
13 somewhere, I think there is some opportunity to do that
14 thing, and that the state process would lay above and beyond
15 that process.

16 MR. SCHWARTZ: Thank you very much, Ron. Michael.

17 MR. MCCARTHY: I would like to echo many of the
18 comments that have just been made by my colleagues and I
19 will elaborate on a couple. I think that it is important,
20 in addition to whichever option does unfold, that we do get
21 our statement of non-encroachment and non-preemption within
22 the context of the rule itself.

23 I think it's also important that the technical
24 inadequacies are addressed, as I mentioned earlier today.
25 And I think particularly in terms of the need and

1 alternatives, I would like to reemphasize the absolute need
2 to assess these issues at the time of application rather
3 than decades and decades before the fact.

4 I think that I'd also like to emphasize, in
5 conclusion, that what would pass as a minimally acceptable
6 solution is a series of "ands" and no one solution in
7 isolation. That's particularly important for the CEQ/EPA
8 discussions in the memorandum of agreements that were
9 discussed earlier today.

10 As we stated this morning, it is especially
11 important that the issues that are discussed in the CEQ/EPA
12 context shift many of those issues to Category 3.
13 Otherwise, those perceived fixes are not fixes at all. And
14 that those issues not be taken in isolation from the other
15 fixes we've mentioned were required.

16 MR. SCHWARTZ: Thank you, Michael. Appreciate it.
17 Tony?

18 MR. VISNESKY: In order to preserve time, I'm
19 going to say that I would agree with the other states
20 largely. I also want to make an observation. I feel it's
21 necessary to at least make the comment about proliferation
22 of rules in this context and whether or not it's good.

23 To some extent, I believe Peter Blau said it best.
24 He said "Bureaucracies exist to answer questions nobody
25 asks." And I think we might fall victim to that if we

1 continue to proliferate rules for the sake of getting better
2 rules, for the sake of covering one bit of minutia versus
3 another bit of minutia.

4 I guess if we can come away from this long
5 process, because I've been involved in this since 1991, with
6 something that's better than we had yesterday, it was worth
7 the effort. As long as it's no worse, as long as it doesn't
8 raise my burden of proof as far as the state is concerned,
9 and as long as it doesn't infringe upon due process rights
10 for all the parties that belong in our state process, I
11 think a good rule can be fashioned.

12 I think it can be fashioned along the compromise
13 we've talked about today. I think it's important that the
14 issues remain separable between determination of need and
15 the evaluation of alternatives, even though the state
16 process has combined them.

17 That's about it.

18 MR. SCHWARTZ: Great. Thank you, Tony. Ellen?

19 MS. GINSBERG: I think on behalf of the industry,
20 we'd like to state that given the current state of the law,
21 we would state unequivocally that the states have primacy on
22 the issues of uneconomic issues in the context of their own
23 state processes, and we don't believe that there is any
24 question as to any preemption by the NRC on these. Intent
25 or otherwise, it just isn't there.

1 With respect to the encroachment issue and the
2 perception concern, we think there's room to make some real
3 advancement here by the NRC perhaps stepping back from these
4 issues while still fulfilling its NEPA obligations. In that
5 context, I think retaining the -- perhaps if you look at our
6 proposal and assume for a moment its legality, there is a
7 real benefit in allowing the states to make the decisions
8 that it makes, given the scope of its authority, and the NRC
9 to make the decisions that it traditionally makes, given the
10 scope of its authority.

11 In that context, we would like to -- I would like
12 to reiterate that the industry views -- it is a very serious
13 prerequisite, and only a prerequisite, that license renewal
14 is a basis upon which a business decision will later be
15 made, but certainly a decision that provides it with a
16 significant amount of information, which will be very
17 important in making that future decision.

18 Thank you very much.

19 MR. SCHWARTZ: Thank you, Ellen. Appreciate it.
20 Ray, do you have anything else?

21 MR. NG: No.

22 MR. SCHWARTZ: Yes, State of Ohio.

23 MR. NERTHS: Steve Nerths from the Ohio Attorney
24 Genera... The State of Ohio will be filing written comments,
25 as well, but I think there's -- basically, our first option

1 was to not get into this area, but I think as we --

2 MR. SCHWARTZ: Well, welcome.

3 MR. NERTHS: As we've talked today, I think
4 obviously the NRC is getting legal advice that it thinks it
5 has to do this and I think that's going to be an NRC
6 decision they have to make.

7 I guess getting beyond that, I think there's a
8 couple things that we've heard that the states pretty much
9 all agree on. First is that we want to make it clear that
10 we're not preempted in the areas that we've traditionally
11 been involved in and have obligations to continue.

12 The other thing is really a question of timing,
13 doing it earlier and closer to the actual relicensing and
14 re-operational process.

15 But beyond that, I'd like to -- the thing that I
16 don't think the other states have brought out -- in fact,
17 the comments seemed to indicate the opposite -- is that I
18 think there's an assumption that the more the states get
19 involved, the better off they're going to be.

20 I'd like the other states to consider in
21 finalizing their comments the proposition that perhaps --
22 again, assuming the NRC is going to get into this area and
23 assuming they can make it clear that they're not preempting
24 us, that a hands-off approach by the states may be the best
25 approach.

1 Again, it goes back to the issue of these are
2 really two different determinations and they're different.
3 As the gentleman suggested earlier, I think it's Ron, they
4 really are two separate hoops to jump through. And I guess
5 the more the states get involved in the first hoop or the
6 relicensing question, the more these issues meld together
7 and you get into some perhaps legal concerns of prejudging
8 the decision that will be made later by the state or even
9 perhaps to the extent of -- to the point of erace judicata
10 type or slash/preemption challenge that you've later -- the
11 utility comes in and says you've already decided this, this
12 has already been decided.

13 So the states may want to keep in mind that don't
14 assume that the more you get involved, the better off you'll
15 be. If the NRC is going to do this and they have their own
16 particular determination they're going to make for a
17 particular purpose, as long as we make it clear what that
18 purpose is and that it's not impinging on the state, perhaps
19 we're better off waiting and doing our function through your
20 own process.

21 We'll consider that in our comments, too, binding
22 our final comments, because we're, unfortunately, late in
23 the game to it and we're still trying to finalize positions.
24 But I just wanted to raise that because I didn't hear it
25 brought out that way.

1 Thank you.

2 MR. SCHWARTZ: Terrific. Thank you very much.

3 Would anybody else like to make any closing remarks?

4 [No response.]

5 MR. SCHWARTZ: All right. With that, I would like
6 to congratulate the panel and you all for dealing with the
7 issues straightforward and in kind of the order that we had
8 asked you to. Sometimes it's hard to kind of manage a group
9 like this, to move forward and cover all the bases, and I
10 really appreciate your indulgence in helping me get
11 everything on the record.

12 I think we've made great strides in building a
13 record here. All of you have been involved a lot longer
14 than I have, but I've heard a lot of new issues and a lot of
15 good discussion on the existing issues. And we've even
16 developed another option, which we're dubbing 4-A, that
17 we'll comb the record to determine what is 4-A. But, again,
18 it will be in the eye of the beholder and hopefully you'll
19 all have a chance to -- and I know you will all have a
20 chance to look at it and review it and respond to what we
21 come up with.

22 With that, I will say this meeting is adjourned
23 and thank you all and have a safe trip home.

24 [Whereupon, at 4:35 p.m., the meeting was
25 concluded.]

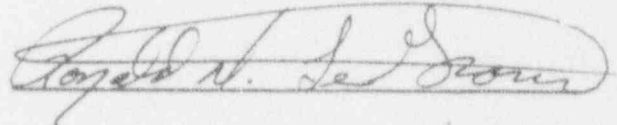
REPORTER'S CERTIFICATE

This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission

in the matter of:

NAME OF PROCEEDING: Public Meeting - Part 51
Environmental Review for
DOCKET NUMBER: Renewal of Operating Licenses
PLACE OF PROCEEDING: Rosemont, IL

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission taken by me and thereafter reduced to typewriting by me or under the direction of the court reporting company, and that the transcript is a true and accurate record of the foregoing proceedings.



Official Reporter
Ann Riley & Associates, Ltd.



*United States
Nuclear Regulatory Commission*

PUBLIC MEETING:

**TO DISCUSS STATE CONCERNS REGARDING
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***

*Note: This presentation is a revision of the
one presented at the 2/9/94 meeting.*

BACKGROUND

- PURPOSE OF 10 CFR PART 51 RULEMAKING
- TREATMENT OF NEED AND ALTERNATIVES IN THE PROPOSED RULE
- RELATIONSHIP OF LR APPROACH TO ENVIRONMENTAL REVIEWS AT THE CP AND OL STAGES
- PUBLIC COMMENTS
- RULEMAKING SCHEDULE

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

- BASED ON NRC PRACTICE FOR ENVIRONMENTAL REVIEWS AT THE CP AND OL STAGES
- 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

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

- DETAILED ANALYSIS OF THE NEED FOR 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

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

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 UNDERSTANDING

- 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 UNDERSTANDING (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 ALSO PROVIDE PROCEDURAL ACCESSIBILITY

DESIGNATE NEED AND ALTERNATIVES CATEGORY 3

- NEED AND ALTERNATIVES ARE CATEGORY 1 IN THE PROPOSED RULE
- STATES REQUESTED CATEGORY 3 DESIGNATION
- CEQ/EPA AGREEMENT MAKES IT EASIER TO SUBMIT INFORMATION ON CATEGORY 1 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

- STATES REQUESTED CLARIFICATION IN THE RULE
- WILL CLARIFY IN RULE AND GEIS
- WHAT IS THE REAL PROBLEM?

NRC'S FOUR OPTIONS FOR ADDRESSING STATE CONCERNS

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GENERAL REMARKS

- CONTINUING WITH THE BASIC FEATURES OF THE PROPOSED RULE IS STILL UNDER CONSIDERATION
- THE FINAL CATEGORY DESIGNATIONS OF NEED AND ALTERNATIVES WILL BE BASED ON NRC RESPONSES TO ALL OF THE PUBLIC COMMENTS ON EACH TOPIC
- A CATEGORY 1, 2, OR 3 DESIGNATION IS A JUDGEMENT AS TO THE EXTENT TO WHICH THE ANALYSIS ENCOMPASSES ALL NPPs AND NOT A JUDGEMENT ABOUT IMPACT MAGNITUDE OR SIGNIFICANCE
- NO DECISION HAS YET BEEN MADE ABOUT IMPLEMENTATION OF THE UNDERSTANDING REACHED WITH CEQ AND EPA AS TO THE CHANGES TO THE PROPOSED RULE THAT WOULD RESOLVE THEIR PROCEDURAL CONCERNS
- THE DECISION WHETHER THE UNDERSTANDING IS IMPLEMENTED IN THE FINAL RULE IS INDEPENDENT OF THE OPTIONS

GENERAL REMARKS (CON'T)

- OPTIONS PRESENT A RANGE OF APPROACHES THAT WILL ADDRESS STATE CONCERNS TO VARYING DEGREES
- ASPECTS OF SOME OPTIONS COULD BE COMBINED WITH OTHER OPTIONS
- OPTIONS ARE INTENDED TO FACILITATE DISCUSSION, NOT CONSTRAIN IT
- FOCUS ON IDENTIFYING THE STRENGTHS AND WEAKNESSES OF EACH OPTION

GENERAL REMARKS (CON'T)

- THE TABLE THAT FOLLOWS PROVIDES COMPARISON OF THE PROPOSED RULE AND EACH OPTION WITH RESPECT TO
 - PURPOSE OF OPTION
 - USE OF NEED AND ALTERNATIVES IN LR DECISION
 - ROLE OF UTILITY ECONOMICS IN THE LR DECISION
 - TREATMENT OF NEED AND ALTERNATIVES IN THE GEIS
 - RESPONSIBILITIES OF NRC, THE STATE, AND THE LICENSEE WITH RESPECT TO NEED AND ALTERNATIVES AT THE TIME OF A PLANT SPECIFIC REVIEW
- REFER TO TABLE DURING DISCUSSION OF OPTIONS

Summary Explanation of Options to Address State Concerns
Regarding the Treatment of Need for Generating Capacity and
Alternative Energy Sources in the Proposed Rule

<u>Option*</u>	<u>Purpose of Option</u>	<u>Use of Need And Alternatives as Factors in the LR Decision**</u>	<u>Decision Method</u>
Proposed Rule	Generic Approach to achieve administrative efficiency based on established NRC practice.	Yes	Current NRC practice for Benefit-Cost analysis.
1	Reduce likelihood of using economics in the decision whether to grant a renewed license.	Yes	Focus on environmental factors. Use economic analysis in special cases only.
2	Adopt State analyses and judgements of Alternatives and Need for generating capacity (subject to conformance with NRC guidelines).	Yes	Same as proposed rule but based on State's economic analysis.
3	Eliminate need for detailed NRC Need for generating capacity analyses by acknowledging the need for restoring existing baseload capacity.	Alternatives - Yes Need ----- No	Need for generating capacity accepted. Alternatives treated the same as in the proposed rule.
4	Defer to traditional State jurisdiction over utilities relative to generating Alternatives and economic decisions.	No	Focus on environmental factors. Look for overriding environmental considerations.

* Whether to incorporate the understanding with CEQ and EPA in the final rule is an issue common to all options.

** Other topics (e.g., water quality, aquatic, and terrestrial impacts) would continue to be decision factors in each option.

**Summary Explanation of Options to Address State Concerns
Regarding the Treatment of Need for Generating Capacity and
Alternative Energy Sources in the Proposed Rule (Continued)**

Responsibilities at the Time of Individual License Renewal Proceedings				
Option	GEIS Analysis	NRC Supplemental EIS	States	Licensee Environmental Report
Proposed Rule	Analyze Need and Alternatives and determine whether Category 1, 2 or 3.	If Category 1, use GEIS analysis. If Category 2 or 3, perform appropriate site specific analysis.	None	None for Category 1. Provide data and analysis for Categories 2 and 3.
1	Same as proposed rule.	Same as proposed rule.	None	Same as proposed rule.
2	Need and Alternatives deemed Category 3.	Adopt Need and Alternatives from State analyses that meet NRC guidelines.	Analyze Need and Alternatives to meet NRC guidelines.	Licensee responsible to assure coordination of State submittal at time of LR application.
3	Category 1 decision for Need and analyze Alternatives.	Adopt Need statement from GEIS. If Alternatives Category 1, adopt analysis GEIS.) If Category 2 or 3, perform appropriate site specific analysis.	None	None for Need. Same as proposed rule for Alternatives.
4	The same as the proposed rule but analyses are for disclosure purposes only.	Analysis of Need and Alternatives are not used in the license renewal decision. If Category 1, adopt GEIS analysis. If Category 2 or 3, perform appropriate site specific analysis.	None	Same as proposed rule.

NRC'S FOUR OPTIONS FOR ADDRESSING STATE CONCERNS

OPTION 1

- NEED AND ALTERNATIVES ARE REVIEWED
- BOTH ARE FACTORED INTO THE LICENSE RENEWAL DECISION
- DIRECT ECONOMIC COSTS AND BENEFITS NOT INITIALLY CONSIDERED IN A LICENSE RENEWAL DECISION
- UTILITY COSTS THEREFORE INITIALLY NOT A FACTOR IN DECISION
- USE OF DECISION METHOD OTHER THAN CURRENT NRC COST-BENEFIT BALANCING

NRC'S FOUR OPTIONS FOR ADDRESSING STATE CONCERNS

OPTION 1 (CONT'D.)

- 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
- OPTION NOT DEPENDENT ON CATEGORY DESIGNATIONS

NRC'S FOUR OPTIONS FOR ADDRESSING STATE CONCERNS

OPTION 2

- NRC ADOPTS STATE REVIEW OF NEED AND ALTERNATIVES
- BOTH ARE FACTORS IN THE LICENSE RENEWAL DECISION
- NRC GUIDELINES FOR STATE REVIEW
- IF NO STATE SUBMITTAL APPLICANT WOULD DO REVIEW AND NRC STAFF CONFIRM
- OPTION REQUIRES A CATEGORY 3 DESIGNATION FOR BOTH

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...)
- ALTERNATIVES A FACTOR IN THE LR DECISION
- OPTION NOT DEPENDENT ON CATEGORY DESIGNATION

NRC'S FOUR OPTIONS FOR ADDRESSING STATE CONCERNS

OPTION 4

- NEED AND ALTERNATIVES ARE REVIEWED AND DISCLOSED
- NEITHER ARE CONSIDERED IN THE LICENSE RENEWAL DECISION
- ANALYSIS COULD INCLUDE DISCUSSION OF DIRECT ECONOMIC COSTS AND BENEFITS OR NOT
- NEPA COMPONENT OF LR DECISION CONSIDERS ONLY UNAVOIDABLE ADVERSE ENVIRONMENTAL IMPACT OF LR

NRC'S FOUR OPTIONS FOR ADDRESSING STATE CONCERNS

OPTION 4 (CONT'D.)

- REMOVAL OF NEED AND ALTERNATIVES AS FACTORS IN NRC LR DECISION MAINTAINS FLEXIBILITY FOR STATES TO REGULATE CONTINUED OPERATION RELATIVE TO THESE MATTERS
- APPROPRIATE STATE REGULATORY FRAMEWORK MUST EXIST
- OPTION NOT DEPENDENT ON CATEGORY DESIGNATION