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Environmental Review for
Renewal of Operating Licenses

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1 UNITED STATES
2 NUCLEAR REGULATORY COMMISSION

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

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12 Lenox Room
13 The Comfort Inn
14 Chicopee, Massachusetts
15 Thursday, February 17, 1994

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17 The meeting commenced, pursuant to notice, at
18 10:00 a.m.

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1 PARTICIPANTS:

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David McElwee, Vermont Yankee

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Awareness

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1 PARTICIPANTS [continued]:

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9 Jerrold Oppenheim, Massachusetts Office of
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11 Alan Noguee, Massachusetts Public Interest Research
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13 Doug Walters, NUMARC

14 Geary Mizuno, NRC Office of General Counsel

15 John Moulton, NRC, License Renewal Branch

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P R O C E E D I N G S

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MR. SCHWARTZ: Good morning, everybody. I want to say welcome to the hall of mirrors, it seems like. We've got mirrors all around us here. I hope it doesn't detract from the discussions we're going to have here today.

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10

My name is Shelly Schwartz. I am Deputy Director of the Office of State Programs at the Nuclear Regulatory Commission. I will attempt to be the moderator for today's meeting.

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The purpose of this public meeting and the meetings we've had is to discuss state concerns with the treatment of need for generating capacity and alternative energy sources in the proposed 10 CFR Part 51 rule for license renewal.

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The proposed Part 51 rule change for license renewal, including the proposed generic environmental impact statement, was issued for public comment on September 17, 1991. There was a workshop held in November 1991, which I believe many of you participated in.

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The staff received over 130 comments, including 24 comments from states and five comments from other Federal agencies. Among other things, many states raised concerns on how the NRC was proposing to handle the questions of need for generating capacity, alternative sources of energy,

1 utility costs and cost-benefit balancing in the NRC
2 environmental review for plant license renewal.

3 On April 22, 1993, the Nuclear Regulatory
4 Commission directed the staff to develop options for
5 responding to state commenters who expressed concerns about
6 the preemption of state regulatory authority in these areas.
7 Furthermore, the Commission directed the staff to conduct
8 discussions with the states regarding these policy issues
9 prior to developing and presenting options to the
10 Commission.

11 Everyone, I believe, has been provided -- and if
12 you don't have it, we have more at the registration desk --
13 a copy of the draft options paper which was prepared by the
14 staff.

15 Please keep in mind that these are draft options
16 and have not been fully developed or analyzed. I think we
17 look at these draft options as really a spectrum of
18 approaches to address the concerns of the states. They were
19 developed really to stimulate discussion on options for
20 satisfying the needs and the concerns that were addressed by
21 the states.

22 Through these discussions at this meeting and the
23 ones that we've had in Rockville and in Chicago earlier this
24 week, we look to perhaps combining the options that have
25 already been discussed in this option paper, as well as lay

1 on the table any options that you all may have at the panel
2 or any options that any of you in the audience may have for
3 consideration.

4 Again, we're not looking at these options as being
5 in separate boxes we want to vote up or vote down. It's to
6 stimulate discussion, a combination of options, and anything
7 that we'd like to hear from you on.

8 I want to remind you that according to the Federal
9 Register notice, I guess, that put the options paper out,
10 the comment period for written comments on the options paper
11 will run through March 4, 1994 and we will accept comments
12 through that date. Anyone who would like to make a formal
13 presentation at this meeting, we'd love to hear from you,
14 with time available. If you want to expand your remarks,
15 written for the record, we'd love to have them.

16 We note that states and others also are very
17 interested and concerned in both the high level waste and
18 low level waste, radioactive waste storage and disposal
19 issues. These issues were commented on in the same context
20 as comments on the proposed rule.

21 The purpose of this meeting is really not to
22 debate those issues, but the state comments on high level
23 waste and low level waste and the comments by others on
24 those issues will be addressed by the staff in the analysis
25 of comments.

1 For this meeting, as I think we've done in the
2 previous two meetings, we will hear from each of the panel
3 members on the issues addressed in the options paper and, as
4 time permits, we would also like to hear from the audience.
5 I would ask that you step up to the mike and identify
6 yourself, because we are recording this and we'd like all of
7 your thoughts in the record.

8 A bit of logistical information, and that is,
9 first, transcripts of this meeting will be provided to each
10 of the panelists and if any of you all would like copies of
11 the transcripts, please let it be known to Colleen, who is
12 at the registration desk, and she'll make sure that
13 arrangements are made for you to get them.

14 For personal conveniences, the restrooms are
15 downstairs. The hotel, because of the weather and there
16 just aren't that many eating places around here, they've
17 offered to set up, I guess, a buffet for us in the room
18 here, with pizza and ham and cheese sandwiches and sodas,
19 and the price looks fairly reasonable. It will be a
20 cafeteria style. Colleen, I think, is waiting for a show of
21 hands to see if that's your druthers and they'll set it up
22 for us.

23 I think it's the easiest thing for me to do. If
24 you folks are interested in it, they'll set it up for us.
25 If not, there's a Denny's across the street or whatever.

1 Welcome to Lillehammer. I think we're here. It looks like
2 we've got a good showing, Colleen. Thank you.

3 With that, what I'd next like to do is to move
4 into a discussion of the agenda. First, let me say that I
5 apologize that we don't have printed names for everybody.
6 Don tells me we had a problem with snow in Washington and
7 our graphics folks were not able to get everybody's name
8 tags printed. So I apologize for that.

9 Next, what I'd like to do is to go around and
10 everybody on the panel introduce themselves and then
11 everybody in the audience, please introduce yourselves and
12 who you represent.

13 Bill, did you have something?

14 MR. SHERMAN: Do the introductions first.

15 MR. SCHWARTZ: Great. We'll start with Geary.

16 MR. MIZUNO: Geary Mizuno. I'm a staff attorney
17 with the Office of General Counsel for the NRC.

18 MR. GLEASON: I'm Gene Gleason. I'm the State
19 Liaison Officer for the State of New York.

20 MR. SHERMAN: I'm Bill Sherman and I'm an engineer
21 with the Department of Public Service in Vermont.

22 MR. CLEARY: I'm Don Cleary, NRC, Office of
23 Research. I'm the Task Manager for the Part 51 rulemaking.

24 MR. MOULTON: John Moulton, NRC Project Manager in
25 the License Renewal Branch.

1 MR. BROWN: I'm Gil Brown. I'm a professor at U-
2 Mass-Lowell.

3 MS. GINSBURG: Ellen Ginsburg, Assistant General
4 Counsel, NUMARC.

5 MR. NG: Ray Ng. I'm a manager at NUMARC. On
6 behalf of the commercial nuclear power industry, I'd like to
7 thank the NRC for allowing NUMARC to participate in this
8 workshop. For those that are not familiar with NUMARC, we
9 are an organization charged with coordinating the efforts of
10 the commercial nuclear power industry in all generic
11 regulatory matters, including the enrollment policy
12 operational and technical issues.

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

18 MR. SCHWARTZ: Thank you very much, Ray. I
19 appreciate your remarks. Can we start right here?

20 MR. KAHABKA: John Kahabka, New York Power
21 Authority.

22 MR. McCOLD: Lance McCold, Oak Ridge National Lab.

23 MR. SCHWARTZ: Thank you, Lance. Bill, did you
24 have anything you'd like to say at this point?

25 MR. SHERMAN: Yes, Sheldon. Under the subject of

1 conduct of the meeting, which you've covered, I think, since
2 a number of you have been able to participate in the two
3 previous meetings, is it possible, when we get to the
4 questions, for a summary to be given of the talk at the
5 previous meetings?

6 MR. SCHWARTZ: We can attempt to do that.

7 MR. SHERMAN: I know that you wouldn't be able to
8 bracket all of the issues, and, yet, I do think that
9 probably, if it seemed to converge, that would really be
10 helpful.

11 MR. SCHWARTZ: Leslie Greer, Massachusetts
12 Attorney General's Office. Good to see you here. Bill,
13 it's a good suggestion and we'll attempt to weave that in at
14 the right time, but I don't want to skew what went on in
15 other places because we really want to hear what you folks
16 believe are some of the options. We're getting some
17 feedback here.

18 I'd like to go through the agenda so we can at
19 least get a feel for how much participation we expect to
20 have. This agenda is just a little different than what we
21 went through in Rockville, but it's not significantly
22 different to make any difference in the discussions.

23 We'll go through the statements on any questions
24 that you have with respect to the agenda, any additions you
25 might have to the agenda, and, also, any opening remarks

1 each of you may have, and we'll go through that in the 10:10
2 to 10:30 timeframe.

3 Then Don will take us through the background and
4 history and also license renewal perspectives. Scott
5 Newberry couldn't join us for this session. Then Don will
6 take us through the next item, 10:45, and have panel
7 discussions on those issues, CEQ-EPA agreement we'll discuss
8 then, and then the need and alternatives should be
9 designated Category 3, and Don Cleary will deal with it at
10 that time, and clarification of the public record.

11 I look at the morning session as a way to, one,
12 identify any new options that we want to discuss this
13 afternoon, so that we can all be thinking about what those
14 options are, and also to all kind of start at a baseline of
15 understanding of options NRC is proposing and also what you
16 all are proposing for discussion.

17 In the afternoon, we will start the session by Don
18 leading us through Option 1, what we believe the Option 1
19 includes, and also a full discussion on the questions on
20 Page 4 under Option 1. We will cover each option
21 separately. Then any options that are identified by you all
22 or anybody in the audience, we'll add that to the agenda and
23 we'll discuss that at that time.

24 I would like to point to the last question on Page
25 5, just above the line where it says "Concluding Remarks by

1 Each Panelist," where it says "What is the state's preferred
2 option?" That's not consistent with my opening remarks. So
3 we've changed that question to be "To what extent do these
4 options resolve the state's concerns," meaning a combination
5 of options or other options that were raised by the panel.
6 Please, we'd like to get comments on that at that time.

7 With that, would anybody like to step out into any
8 statements that any of the panelists have right now with
9 respect to the agenda and any options that you'd like to
10 offer or any opening statements you'd like to offer at this
11 time? Gene, please.

12 MR. GLEASON: Yes, Shelly. I don't want to take
13 up too much time doing this because we'll get into later,
14 but, basically, New York State certainly appreciates the
15 opportunity to participate here and we appreciate the extent
16 to which the NRC and the staff have been grappling with
17 these issues and have heard the concerns that we and other
18 states have been raising now for nearly three years.

19 Personally, I think we've made a lot of progress
20 here and that we're close to an agreement. We would plan in
21 our formal comments to recommend a fifth option be added to
22 the four options that are already on the table. This option
23 basically has three primary features which we believe would
24 address the concerns that we've been raising for the last
25 three years on this issue.

1 First of all, we think that the text of the actual
2 rule that comes out should be modified to include and, also,
3 that each individual relicensing decision should include
4 statements that the Nuclear Regulatory Commission's findings
5 with respect to the need for generating capacity and
6 alternative energy sources are only intended to assist the
7 NRC in meeting its NEPA obligations and do not preclude the
8 states from making their own determinations with respect to
9 these issues.

10 That is we'd like to see the statement in the
11 actual rule and we'd also like to see it in each individual
12 relicensing decision.

13 Secondly, we continue to believe that
14 determinations regarding the issues of need for generating
15 capacity and alternative energy sources should be designated
16 Category 3 conclusions, requiring site-specific review,
17 rather than Category 1 generic conclusions.

18 Finally, we would like to see all NRC project-
19 specific EIS and relicensing decisions make reference to
20 state determinations on the issues of need for generating
21 capacity and alternative energy sources and should defer to
22 and be guided by those determinations to the maximum extent
23 possible pursuant to NEPA. We'll get into that later and
24 the reasons for that and the rationales we'd want.

25 Thank you.

1 MR. SCHWARTZ: That's great. Thank you very much,
2 Gene. Bill?

3 MR. SHERMAN: I would like to make a general
4 statement of where Vermont stands with this. Vermont's
5 position is that need and alternatives are a small subset of
6 its concerns. It is requested that interaction with the
7 states occur on all their comments, not just need and
8 alternatives.

9 Need and alternatives must be designated Category
10 3. Option 2 appeared to be the option most close to what
11 we're thinking in Vermont, but we also feel that a
12 consensus-building process must occur in order to find a
13 common evaluation of the real environmental impact from
14 radioactive wastes. We'll talk more about that as we have a
15 chance to speak.

16 MR. SCHWARTZ: Thank you, Bill. Leslie, do you
17 have anything?

18 MS. GREER: In terms of where Massachusetts is at
19 this point, there has not been a final position reached by
20 all the interacting agencies, including our office, the
21 State Utility Commission, and the State Office for Energy.
22 Our particular office, the Massachusetts Attorney General's
23 Office, stands by the comments that we filed in this matter
24 two years ago.

25 We certainly think that needs and alternatives

1 should be a Category 3, at least. We tend to think that the
2 NRC should rethink the whole process of doing the generic
3 environmental impact statement for relicensing plants.

4 I would emphasize that's the position of our
5 office rather than all the agencies involved in energy
6 issues in Massachusetts. But we think at least with respect
7 to needs and alternatives, it must be decided at the time of
8 relicensing rather than now and we also certainly concur
9 with New York and Vermont that the NRC should not be
10 preempting the positions of the states in making their own
11 determinations with respect to energy needs and
12 alternatives.

13 MR. SCHWARTZ: Thank you very much, Leslie. Gil,
14 do you have something?

15 MR. BROWN: I don't have anything formally
16 written, but if I add anything to this panel, it would be
17 that we are hoping to add a lot of common sense to this
18 rulemaking activity, keeping in mind that the issue we're
19 dealing with is existing nuclear power plants. We're not
20 digging new holes in the ground and not putting new cooling
21 towers or condenser output into rivers that don't already
22 have this condensate stream and other impacts.

23 So these are existing impacts that are already in
24 existence. The idea of a continuum of safety -- that is, in
25 my mind, anyway, the primary role of the Nuclear Regulatory

1 Commission -- to ensure safety in the existing
2 infrastructure of nuclear power plants is paramount.

3 Then the decision of whether or not the plants
4 should operate once they're licensed or licensable becomes a
5 business decision. We have the experience in this
6 commonwealth of a business decision made with the power
7 plant that has a license and I think that would be the case.
8 I don't view this process as a determination that a plant
9 must operate, but that a plant can operate and that other
10 decisions of states -- I'm not a state expert, I'm an
11 engineer -- would come into play, the need for power, cost
12 alternatives, \$19 light bulbs that the utility buys for us
13 because it will cut down on the need for new capacity.

14 MR. SCHWARTZ: New construction, right.

15 MR. BROWN: So all of that comes into play.

16 MR. SCHWARTZ: The conservation business.

17 MR. BROWN: Yes, sure. So this is not precluding
18 any of that decision-making. This, in my mind, is really an
19 emphasis on the holistic view of what we're trying to do,
20 which is make sure that the plants are safe to continue to
21 operate.

22 MR. SCHWARTZ: Good focus. Thank you, Gil. Ray?

23 MR. NG: Yes, please. I think I would like to put
24 on the table for discussion maybe a sixth option, and that
25 option would be basically the industry believes that the

1 NRC, in basically dispositioning its NEPA requirements, does
2 not need to address the need for power or alternatives,
3 either on a generic basis or on an application-specific
4 basis.

5 That would basically, I think, put the analysis,
6 economic analysis, basically between the utility and the
7 states and would remove it from the Federal, I guess, arena.

8 MR. SCHWARTZ: Great. Thank you very much. I
9 appreciate that. Would anybody from the audience like to
10 add anything to the record?

11 [No response.]

12 MR. SCHWARTZ: We'll now move into the background
13 and history section. Don, are you ready to go?

14 [Slide.]

15 MR. CLEARY: Is anybody having serious difficulty
16 seeing the screen? Yes. The front table might want to move
17 to the side.

18 I am assuming that everybody here has read the
19 staff discussion paper and is quite familiar with the
20 background of this rulemaking, but I'd just like to
21 highlight a few points to give us some focus and a starting
22 point for discussion.

23 [Slide.]

24 MR. CLEARY: The purpose of the rulemaking was to
25 improve administrative or regulatory efficiency. This

1 objective came from our belief that we had considerable
2 experience with operating nuclear power plants, we had
3 considerable experience with writing EISSs at the CP,
4 construction permit, and the operating license stages, that
5 license renewal and continued operation of the plants would
6 be within the envelope of experience, and that, in addition,
7 the environmental aspects would be relatively stable and to
8 the extent they weren't stable, that the rule would allow
9 introduction of significant new information.

10 So we attempted to use the operating experience in
11 developing this rule.

12 [Slide.]

13 MR. CLEARY: The treatment of need and
14 alternatives starting point was past experience in
15 analyzing, treating, addressing need and alternatives in the
16 construction permit and the OL stages. The OL rule, which
17 I'll get into in a little more detail in just a second,
18 provided the basic approach in the current rulemaking.

19 The need for capacity was established by reviewing
20 planned and future capacity and electricity demand forecasts
21 that were available from the literature. Oak Ridge did the
22 analysis and thoroughly looked at all of the demand
23 forecasts and came up with a synthesized impression of what
24 they amounted to.

25 The need for generating capacity findings in the

1 GEIS are Category 1 and, therefore, would be adopted in
2 individual license renewal reviews. In the alternatives
3 section, we looked at the environmental impacts of
4 reasonable alternatives and, aside from geothermal in a
5 couple of states, did not find any of the alternatives to be
6 clearly preferable from an environmental sense to continued
7 operation of existing nuclear plants.

8 There, however, was some uncertainty about where
9 operating and maintenance costs were headed and some
10 uncertainty about how high refurbishment costs could get.
11 Because of this, we established an economic threshold test
12 that, if that was not passed, a more extensive look would be
13 taken.

14 [Slide.]

15 MR. CLEARY: The environmental reviews, of course,
16 are based on the National Environmental Policy Act. In that
17 act, there are specific statements that we have to consider,
18 alternatives to the proposed action and prepare
19 environmental impact documents, and that each agency needs
20 to implement the Act. The Act is implemented by NRC in 10
21 CFR Part 51, which gives general guidelines on the conduct
22 of our environmental reviews.

23 [Slide.]

24 MR. CLEARY: More detailed guidance is given to
25 utilities or applicants in terms of the content of their

1 environmental submittals in construction permit applications
2 and Regulatory Guide 4.2. Detailed guidance is given to the
3 staff on how to review this information in the environmental
4 standard review plan, which is NUREG-0555. That was
5 published in 1979 and the reg guide goes back to 1976.

6 [Slide.]

7 MR. CLEARY: The significance of those documents
8 are that they are quite detailed and particularly with
9 regard to need and alternatives, the environmental standard
10 review plan lays out in great detail what analysis the staff
11 should have available or should develop itself.

12 [Slide.]

13 MR. CLEARY: Now, in the environmental standard
14 review plan, there is a detailed analysis of power. We look
15 at the power systems, power transfers, the individual
16 service area, power pools, reliability councils. We look at
17 electrical energy forecasts, power supplies, and we do an
18 assessment of need. There is a determination of whether the
19 evidence available indicates that there is a need for new
20 generating capacity at the CP stage.

21 [Slide.]

22 MR. CLEARY: In the alternatives, we look at the
23 alternative of not requiring new generating capacity, which
24 is basically power purchases and energy conservation,
25 conservation through increasing technological efficiency of

1 equipment and use, and, also, demand management through rate
2 structure techniques.

3 There is a staff assessment of the alternative
4 energy sources. We look at the environmental -- first of
5 all, the environmental aspects of reasonable alternatives.
6 If there is an environmentally preferable alternative
7 identified, we then move on to look at the economics and
8 other considerations and do a cost-benefit balancing against
9 the preferred alternative.

10 [Slide.]

11 MR. CLEARY: In the last major chapter of an EIS,
12 we look at -- it's a summary chapter. The first three terms
13 you may recognize as the wording from NEPA, from the Act
14 itself. Having determined at this point that there's no
15 environmentally preferred alternative, if there was an
16 environmentally preferred alternative and the costs were
17 right under the environmental standard review plan, there
18 would be a staff recommendation that a closer look be taken
19 at that alternative.

20 But having reached this point, there is a cost-
21 benefit balancing of the proposed action. The significance
22 of that is economics does play, traditionally, a major role
23 and is given considerable weight in that cost-benefit
24 balancing.

25 [Slide.]

1 MR. CLEARY: At the operating license stage, it's
2 basically an update of the CP EIS. With regard to need and
3 alternative sources, there is a rule in 10 CFR Part 51 which
4 says that need and alternatives need not be re-reviewed at
5 the operating license stage.

6 The basis for this rule is that the environmental
7 situation does not change significantly and that the
8 economics -- once the plant is built, the economics of
9 operating the plant are more favorable than the economics of
10 not operating the plant and replacing it with new capacity.

11 There was analysis done to back up this rule in
12 the early 1980s.

13 [Slide.]

14 MR. CLEARY: This just continues a little bit with
15 that thought. In the proposed rule, we attempted to build
16 on the operating license rationale, and I'll get into that
17 in a little bit.

18 Public comments, the major point here is that we
19 will be responding to all comments. There will be a
20 response document where every comment that you made, you
21 should be able to go into that document and see how we
22 addressed it. That will be part of the final rulemaking
23 package.

24 [Slide.]

25 MR. CLEARY: The schedule, written comment period

1 closes on March 4. We owe the Commission a report, a
2 Commission paper, in early June. It should take about a
3 month or a little more to get guidance back from the
4 Commission on what approach we should take.

5 The Commission paper we expect will have a
6 recommended approach or option to the Commission. That
7 recommended option may likely be a synthesis of options and
8 elements that have been developed or are being developed in
9 the public record that we're creating now.

10 The final rule package goes to the Commission at
11 the end of this December, which should mean about a March
12 1995 publication date.

13 That finishes it.

14 MR. SCHWARTZ: Are there any questions, comments,
15 discussion as of this point on what Donald has presented
16 thus far?

17 [No response.]

18 MR. SCHWARTZ: All right. John Moulton will
19 handle the discussion that Scott Newberry was going to
20 discuss. John, please.

21 MR. MOULTON: I'll stay seated on this one. As
22 Shelly mentioned earlier, Scott Newberry, my boss in the
23 License Renewal Branch, couldn't make it today. He extends
24 his apology on that.

25 What Scott wanted to do was just give an overview

1 of where all this fits in with the actual license renewal
2 rule and what's going on there, so a license renewal
3 perspective, if you will.

4 As you all might be aware, the Atomic Energy Act
5 limits operating terms to 40 years, but it does provide a
6 provision that would allow those licenses to be renewed.
7 Until the NRC's Part 54 regulation, the NRC did not have any
8 standards for issuance of renewed licenses.

9 So 10 CFR Part 54, as opposed to Part 51, Part 54
10 sets out the standards that licensees must follow to get a
11 renewed license. It sets out the safety requirements.

12 To the contrary, Part 51 is our NEPA implementing
13 regulations, and that's the focus here today. To receive a
14 renewed license, you must understand that applicants must
15 comply with both Part 54 and Part 51. Where we are with
16 Part 54 right now is based on our initial experience with
17 implementing our standards, our Part 54 regulation, the
18 Commission has instructed us to go back and revisit that
19 rule because of problems we've had in the implementation of
20 that.

21 I won't go into that. If you want more
22 information, you can talk to me afterwards. But,
23 essentially, we are also in the rulemaking on Part 54 based
24 on our initial experience.

25 MR. SCHWARTZ: Thank you, John. I appreciate

1 that. Any discussion, questions of John or the Part 54 part
2 of this Commission effort?

3 [No response.]

4 MR. SCHWARTZ: Don, you're keeping us right on
5 time. We'll have a lot more time for some substantive
6 discussion. Characterization of state concerns, Don.

7 [Slide.]

8 MR. CLEARY: I will attempt to editorialize a
9 little bit relative to what happened in Chicago, to the best
10 of my ability, as requested by Bill Sherman. But I do have
11 to say that we have not organized our notes and to get into
12 a lot of detail would probably take up time that would not
13 be terribly productive.

14 Relative to the characterization of state
15 concerns, there is one point that I would like to emphasize.
16 It's that the written submittals were quite clear as to what
17 the concerns were. What we're looking for in this process
18 of interacting with the states is really to understand what
19 are the basic problems behind these concerns.

20 We had some enlightenment in the last meeting in
21 Chicago as to problems that the PUC would have in terms of
22 demands on resource requirements and problems with
23 duplication, problems of standards of analysis that have to
24 be met when a state body or state analysts are faced with a
25 Federal document in the state courts. So we did get

1 considerable understanding as to the practical problems that
2 are being faced by PUCs.

3 The states expressed dissatisfaction with the
4 designation of need and alternatives as Category 1 issues.
5 There were a couple of major points. They felt that it
6 substantially eliminated public participation and, also,
7 there was a timing problem, that it inadequately provides
8 for current project-specific information.

9 At this point, I'd like to add something in terms
10 of refreshing our memories as to the categories and what the
11 role of the categories are. Our categorization scheme
12 really is a statement about the robustness of the analysis;
13 that is, the extent to which the analysis covers all of the
14 operating plants or covers not all of them, but maybe a
15 subset of them, or doesn't cover them with confidence.

16 Category 1 covers all of them and, of course,
17 covering all of them in the GEIS, we'd just take that
18 information into the site-specific review. Category 2,
19 where it covered some subset, there is a screening process
20 to determine whether a given plant fits in the -- is covered
21 in the GEIS or isn't covered; if it's not covered, then
22 there is site-specific review.

23 Category 3, where we don't have confidence or we
24 know that you cannot make a determination generically in
25 advance, automatically is reviewed.

1 [Slide.]

2 MR. CLEARY: Additional dissatisfactions were that
3 the treatment of need and alternatives was seen by the
4 states as conflicting with their traditional authority for
5 economic and non-nuclear safety regulation of the utilities
6 in their jurisdiction. Also, there was inadequate provision
7 for consultation and cooperation with the states.

8 And we got a lot of technical comments about what
9 were thought to be technical inadequacies of the forecasts
10 and the extent to which there's uncertainty in the forecasts
11 and lack of methodological accuracy and reliability.

12 There was also a concern that the timing of the
13 license renewal reviews, which an applicant can -- under
14 Part 54, which is the major license renewal rule, applicants
15 can submit applications for license renewal 20 years in
16 advance of expiration of the license. The states felt that
17 to be doing reviews and granting licenses 15, 20 years or
18 even ten years in advance of when a plant -- of a period of
19 extended life, was just too long a planning horizon for it
20 to fit in with their process.

21 [Slide.]

22 MR. CLEARY: The state recommended that we
23 designate need and alternatives as Category 3. There were
24 recommendations that we just don't consider need in our
25 review and recommendations that we defer to states'

1 determinations. Several states said that whatever you do,
2 you have to clearly state in the rule and other documents
3 that NRC, in fulfilling its NEPA responsibility, in no way
4 effects the regulatory authority of the states with regard
5 to issues of need and alternatives.

6 MR. SCHWARTZ: Great. Thank you very much, Don.
7 I think you've answered Bill's question, as well. I think a
8 lot of those things were also discussed not only in the
9 written comments, but clearly in the meetings in Chicago and
10 in Rockville.

11 I guess the challenge to the panel right now is to
12 answer the staff questions. Is the NRC characterization of
13 state concerns in Section III, and, I guess, as modified by
14 Don as to what we've recently heard, of the discussion paper
15 complete and accurate? I wonder if anything should be added
16 or changed? Would the concerns of the state be any
17 different for five-year rather than 20-year renewals?

18 Does anybody want to deal with that? Bill
19 Sherman.

20 MR. SHERMAN: Yes. Thank you. As I mentioned in
21 my opening statement, it seems to us that much of the focus
22 that you've done, both in these public meetings and also
23 what we've seen in your presentations to the Commissioners,
24 have tended to funnel the state's concerns and, in one
25 place, the major policy issues associated with state

1 concerns into need and alternatives.

2 I know that from my state's perspective, we feel
3 that our other comments also contain what may be major
4 policy issues and we really would like to be able to
5 interact and discuss with you the resolution of all of our
6 concerns. In particular, Vermont made comments in the
7 radioactive waste area, concerning Category 1 designations
8 and a Category 2 designation for low level radioactive
9 waste. That's the first comment. I think that we would
10 like to request interaction with you in the resolution of
11 our other comments.

12 The second comment I have is this. It relates to
13 something that was said previously by NUMARC and Mr. Brown.
14 We see the NEPA evaluation as asking the question "Is there
15 an environmentally preferable alternative to the major
16 Federal action of granting license renewal to a nuclear
17 plant," and we think that's the right question to ask.
18 States perhaps don't always agree with the Federal laws, but
19 I think that we think this is the right question to ask.

20 We think that the question needs to be answered.
21 Now, I think that our view is that the trees have obscured
22 the forest a little bit. The details of the review have
23 obscured what may be over-simplified as is the radioactive
24 waste problem of nuclear plants more or less preferable than
25 the particular environmental impact from what an alternative

1 might be.

2 We think that is an evaluation that can be done
3 simpler and I think that other questions will bring out
4 where we think it can be so that we get there. We think the
5 states have an integrated resource planning process that is
6 empowered through the Energy Policy Act of 1992, which comes
7 very close to doing this same kind of evaluation.

8 Let me leave this comment now at my second
9 comment, which is that we think NEPA is asking the right
10 question and we think that we have to focus on getting to
11 the right answer through the NEPA process.

12 MR. SCHWARTZ: Good. Thank you, Bill. I hope
13 that we're attempting to get to the answer to that second
14 question through some of these workshops. Gene?

15 MR. GLEASON: Yes. I just wanted to add a couple
16 things. I think Don did a very good job of characterizing
17 the state concerns. We had specific things. Like the State
18 of Minnesota, we sort of came unglued when we looked at the
19 analysis that formed the analytical basis for the
20 rulemaking, but we've gotten over that, I think. So I don't
21 need to dwell on that. We thought it could have been much
22 more rigorous than it was.

23 I also agree that we need to consider within the
24 context of this rulemaking what Congress has done with
25 respect to the Energy Policy Act of 1992 and the Federal

1 promotion of integrated resource planning to be implemented
2 by states.

3 Also, I want to echo Bill's thought. We had
4 thought originally when we looked at this in the State of
5 New York, and we have about four agencies that look at it
6 and try to coordinate on this, that the simple solution to
7 all this would be to just say, well, NRC, don't deal with
8 the need for power and alternatives.

9 But on reflection over the last three years, we
10 see the dilemma that the Commission is facing. The
11 Commission has NEPA. It's a Federal agency and it has to
12 comply with NEPA. We think that there are ways of resolving
13 this that also are not going to be terribly obtrusive to the
14 utilities that have to comply.

15 Thanks.

16 MR. SCHWARTZ: Great. Thank you very much, Gene.
17 Leslie, do you have something?

18 MS. GREER: Just to go back to what I think was
19 the original question posed, if we put this in a five-year
20 frame rather than a 20-year frame, does that resolve all
21 issues?

22 It probably doesn't resolve all issues. It
23 certainly doesn't necessarily resolve the issues as to the
24 state's traditional authority. It certainly does go a long
25 way towards addressing the problem with long-range

1 forecasts.

2 Of course, in any situation when you're talking
3 about either building new plants or relicensing plants, you
4 can't expect a decision to be made and to happen tomorrow.
5 In terms of talking about the timeline that's at issue, the
6 shorter the timeline is and you can still take count of the
7 logistics of relicensing or if the decision is made that
8 other alternatives are better, the construction of other
9 plants, if that's what the decision is made to be the
10 preferable time, the closer you come to that timeframe, I
11 think the better you're going to be.

12 MR. SCHWARTZ: Thank you. Gil, do you have
13 anything?

14 MR. BROWN: I'll pass.

15 MR. SCHWARTZ: All right. Ray?

16 MR. NG: No.

17 MR. SCHWARTZ: With that, let me open it up to the
18 audience. Does anybody have any questions or things you
19 would like to add to the record? Yes, sir.

20 MR. NOGEE: Alan Noguee, again, with Massachusetts
21 Public Interest Research Group. Just a couple of
22 preliminary things.

23 First, I would like to thank the NRC for having
24 this meeting. I think this is a step in the right
25 direction, although I would not that Mass. PIRG did submit

1 comments on an earlier round of consideration of these
2 issues and was not informed of this meeting by the NRC, only
3 learned of it two days ago. I have not had an opportunity
4 to read through all of the materials.

5 We wonder if the NRC is interested in obtaining
6 the input of all parties, in addition to the states. We
7 believe that there are many public interest groups and
8 citizens groups that have serious expertise on these issues
9 and serious concerns and that their input into these
10 questions needs to be seriously considered, along with the
11 input of the states and others.

12 MR. CLEARY: May I assure you that we are very
13 much interested. If you were not -- and I know that you
14 were not informed, since I did the mailings. It must have
15 been an administrative oversight in our database and I will
16 make sure that that is corrected and look forward to hearing
17 what you have to say today and receiving, hopefully, written
18 comments from you.

19 MR. NOGEE: Thank you.

20 MR. MIZUNO: Don, just to expand on that a little
21 bit, I think we need to address the concern that we did
22 invite any public interest groups to participate, and I
23 think that's not an accurate assessment on the part of Mass.
24 PIRG. In fact, we held a -- one of these sessions was held
25 in Rockville specifically to allow national public interest

1 organizations to attend and we specifically invited them,
2 but Don would probably be better able to address that.

3 MR. CLEARY: Not to belabor the point. We sent
4 notice to over 30 groups and if you should have been on our
5 list and weren't, we'll correct that.

6 MR. NOGEE: I do appreciate that. I do note, I
7 believe, that the state earlier -- that there were over 130
8 comments received. So I would hope that each of the
9 submitters of the comments, at the very least, in early
10 rounds, would also be informed of this reconsideration of
11 new options and have the opportunity to comment on that.

12 I think that's at a very minimum. I would just
13 also like to note that with respect to the characterization
14 of state concerns, we do share the same concerns that have
15 been expressed by the states. I think that you've done a
16 fair job of summarizing the major concerns. There are some
17 additional things I would just add very quickly.

18 I assume that when you state uncertainty in long-
19 term forecasts that you're referring to forecasts of cost
20 and availability of alternatives, as well as forecasts of
21 the need for power, all of which -- if there's one thing
22 that we can say as a group that's been working in the
23 states, it's that we have, I believe, 100 percent consensus
24 between the public interest groups, state regulatory
25 commissions and agencies, and utilities that any forecast of

1 the need for power ten years from now or the cost and
2 availability of alternatives ten years from now has an
3 overwhelming probability of being wrong.

4 We all agree with that. So I hope at some point
5 also during this meeting we will have the opportunity to
6 meet whatever expert the NRC has relied upon who feels that
7 they can project those costs with some certainty some 20 or
8 50 years from now, because I know we'll have a lot to learn
9 from that person.

10 MR. SCHWARTZ: Thank you. I know we can all
11 concur in that. That's good.

12 MR. NOGEE: Also, one small technical point, but I
13 think it is important. In terms of the definition of need,
14 I note that the Commission has adopted a definition of need
15 to be for an amount of capacity sufficient to replace the
16 proposed capacity of the plant.

17 I just want to add that in such an analysis, you
18 also have to consider the effect on the entire utility
19 system of which that plant is a part. Both in terms of the
20 nuclear plant and in terms of the proposed alternatives,
21 they will have different effects on the reliability of the
22 system and reserve margins that are associated with
23 maintaining reliable systems.

24 That is an issue both for some intermittent
25 renewable alternatives, for example, such as wind may impose

1 higher reserve margin requirements than others, the
2 Commission needs to consider that in its analysis, to the
3 extent that it is going to do such an analysis.

4 MR. SCHWARTZ: Thank you very much, Alan. I
5 appreciate it. Are there any other comments at this point?

6 [No response.]

7 MR. SCHWARTZ: Don, do you want to deal with any
8 of the comments or deal with or do them in the whole later?

9 MR. CLEARY: I don't think I need to respond to
10 them.

11 MR. SCHWARTZ: Great. The next issue is the issue
12 of the CEQ-EPA agreement. Don, you will lead us through
13 that, please.

14 [Slide.]

15 MR. CLEARY: Most or all of you are probably aware
16 that over a year ago, we -- going back almost two years, we
17 spent a long time in discussions with CEQ and EPA about
18 comments that they raised relative to the procedural
19 adequacy of the proposed rule. We have reached an
20 understanding, which we reported to the Commission a year
21 ago.

22 CEQ and EPA believe that the use of Category 1
23 issues precluded participation at the time of the individual
24 license renewal review. They believe that public comments
25 taken far in advance -- that is, public comments for the

1 rulemaking that we're in now -- do not provide timely and
2 meaningful involvement of the public and that timely and
3 meaningful involvement needed to occur at the time of an
4 individual action.

5 CEQ also believed that the Commission could not
6 strike a conditional cost-benefit balance in advance of an
7 individual license renewal review that would apply to future
8 actions.

9 [Slide.]

10 MR. CLEARY: We reached an understanding with CEQ
11 and EPA that if the following conditions were met and
12 incorporated in the final rule, that their procedural
13 concerns would be adequately handled. Rather than an
14 environmental assessment, as we had in the proposed rule,
15 there would be a supplemental EIS. The significance of this
16 is that for the EA, under our regulations, we don't have to
17 circulate it for public comment. We can issue a final EA.

18 That we would not have conditional findings in the
19 rule at this time, that we had to carry all of the
20 information forward and have findings in individual reviews.
21 Finally, a major point was the public comments, at the time
22 of individual reviews, would be evaluated regardless of the
23 category of the issue. That is that for Category 1 issues,
24 the public could submit comments, submit information. The
25 NRC staff would review those comments and determine whether

1 they are significant and new; that is, is it information
2 that was not within the bounds originally considered.

3 Also, I'd point out that there are existing
4 provisions in 10 CFR Part 51 that do provide some procedural
5 safeguards for getting public and state involvement for
6 individual reviews.

7 MR. SCHWARTZ: Thank you, Don. The question posed
8 to the panel and the folks in the audience on this issue is
9 to what extent are the concerns of the states resolved by
10 the changes to the GEIS and rule that are being made in
11 response to CEQ and EPA comments. Does anybody have any
12 comments on it? Gene?

13 MR. GLEASON: Unfortunately, again, I've got to
14 say that our concerns are not. I mean, it's a good step.
15 We had the same general philosophy, obviously, that EPA and
16 CEQ has expressed.

17 I don't see the other rulemaking, the Part 51, as
18 adequate procedure to eliminate this. We, I guess, have a
19 basic mistrust of the future and would like to see specifics
20 at the time of relicensing. We would like to see the
21 analysis. We would like to be able to deal with the numbers
22 and we'd like to see concrete statements to avoid any
23 confusion on the part of the utilities that we regulate and
24 on the part of the state and on the part of anyone that
25 would be involved in these various activities, to have

1 concrete definitive statements within each individual
2 licensing about the lack of preemption of state authority.

3 MR. SCHWARTZ: Good. Thank you, Gene. Leslie?

4 MS. GREER: I just think that as long as -- again,
5 I agree that the changes proposed by EPA and the Council on
6 Environmental Quality help in addressing some of the
7 problems that are in the proposed rulemaking.

8 At the same time, as long as an issue remains as a
9 Category 1 or Category 2 rather than be addressed at the
10 time of relicensure, submitting comments on it is like -- it
11 certainly would appear to be like whistling in the wind.
12 Even if something was structured as a Category 2 issue
13 rather than a Category 1, that seems to put the burden on
14 the commenter to come forward with a substantial chunk of
15 information and to overcome the burden to reopen the door to
16 have the NRC take seriously how the comments are being put
17 forward.

18 So as long as there's an issue, an environmental
19 issue, that remains in Category 1 or Category 2, I think
20 that, first of all, there's going to be a chilling effect
21 from commenters about is it worth their time putting effort
22 into working up a comment when there's not going to be any
23 obligation on the NRC to even consider it.

24 So I think that to really have a meaningful public
25 comment mechanism at the time of relicensing, you would have

1 to have it -- it's going to have to be a Category 3 issue.
2 That certainly addresses both the need and alternatives, as
3 well as other issues that at least our office, the Attorney
4 General's office, views as non-generic.

5 MR. SCHWARTZ: Thank you, Leslie. Geary, did you
6 want to pipe in there?

7 MR. MIZUNO: I think that perhaps Massachusetts
8 might not have a clear understanding of what NRC committed
9 to do as a result of the EPA and CEQ comments. I think it
10 is incorrect to say that NRC would have no obligation to
11 consider and address the comments.

12 In fact, the substance of the agreement that was
13 reached with EPA and CEQ was that the NRC would consider the
14 substance of the comments and address them in some fashion
15 on the merits.

16 The only thing that we were clarifying there was
17 in what kind of a forum and under what procedures we would
18 use internally in terms of how we would deal with it. But
19 from an external standpoint, a person who commented will
20 ultimately receive some kind of determination, written
21 determination from the NRC; not personally, but he would
22 ultimately see in that administrative record, in writing, a
23 response, an NRC response to the comment, indicating whether
24 the NRC agreed with it and, if it did, what it was going to
25 do, or, if it disagreed with it, what was the basis for the

1 NRC's disagreement with the comment.

2 I'll just leave it at that.

3 MR. SCHWARTZ: Thanks for the clarification.

4 MS. GREER: Yes. I did understand that. I assume
5 that any time there is a public comment period, at least my
6 experience has shown the NRC has undertaken to make a formal
7 response to a comment that's made, as you're proposing to do
8 with the comments that were submitted two years ago on the
9 range of issues.

10 But that still does not address the chilling
11 factor of the categorization. Also, in terms of actually
12 having the comments integrated into the decision-making
13 process, I'm not as confident that if an environmental issue
14 remains a Category 1 or Category 2, even if a response is
15 made saying we do not have to revisit this issue at this
16 time, I'm not sure that the NRC will, in fact, integrate it
17 into the relicensing decision in the same they would as if
18 it was a Category 3.

19 MR. MIZUNO: I cannot respond to the second
20 comment because that basically is saying you don't trust the
21 administrative process to function correctly. With respect
22 to the chilling effect, I guess I can see, from a practical
23 standpoint, that there might be that effect.

24 But on the other hand, if you have an organization
25 or individual or state who does believe that there is

1 significant new information that shows that the NRC analysis
2 in the GEIS is no longer correct or needs to be modified
3 somehow or perhaps just jettisoned entirely for something
4 new and they want to bring that to the NRC's attention, I
5 personally do not see, if I were doing that, how the fact
6 that there was a previous analysis done would somehow chill
7 me from performing the analysis and providing a write-up, a
8 written comment that is sufficient to make the case to
9 persuade the NRC that something should be done.

10 MR. SCHWARTZ: Good. Thank you very much, Geary.
11 Bill Sherman.

12 MR. SHERMAN: I would like to echo agreement with
13 the comments from my colleagues from Massachusetts and New
14 York. In addition, a couple specifics. The real difficulty
15 with the CEQ and EPA comments is that we don't know what
16 you're going to do with the items that you classified as
17 Category 1 or maybe 2 and that we think firmly should be
18 Category 3.

19 Our ability to comment on your proposal is really
20 hindered by that. I think my colleagues will agree with
21 that. We're in the dark as to really knowing what we talk
22 about. As indicated before, if you go one way with your
23 radioactive waste conclusions, we might not have a problem.
24 If you go the other way, we're going to have a big problem
25 with the way that CEQ and EPA comments were resolved,

1 because we're pretty sure that if you decide that there are
2 no problems and no talk about radioactive waste and then we
3 try and make a new and significant case and you say it's not
4 new, it's the same old problem, we're pretty sure that we
5 just won't get anywhere.

6 So I think the lack of clarity in how you're going
7 to resolve our comments makes it very difficult for us to
8 comment on this.

9 Next point. The new and significant test is a
10 real uncertainty to us, because we feel that without this
11 and without the generic environmental impact statement, we
12 have an avenue to adjudicating hearings. That's an avenue
13 which probably none of us like very well, but which we'd
14 have gone and it's an avenue that we know.

15 This new and significant test looks like an
16 opportunity to prevent that avenue to adjudication and it
17 makes us -- it establishes a process where the staff makes
18 the determination of new and significant. Then we have the
19 option to petition for rulemaking, change of rule or waiver,
20 the same staff rules on that. We have little expectation
21 that that same staff would rule any differently on the
22 second option than the first. So we're unsettled about
23 that.

24 Next point, just a small point. Back in
25 September, when I spoke at the State Liaison Officers

1 meeting on the same issues, I believe you were talking of a
2 ten-year update of the GEIS. Now I notice your paperwork
3 has a seven-year update.

4 We had in our comments suggested that it needed to
5 be updated every two years. So I guess we are not exactly
6 in agreement, but we're severely hindered, again, on knowing
7 what you're going to do with our Category 3 suggestions.

8 Another point. You mention that you're continuing
9 to speak with CEQ or EPA. We've seen your discussions of
10 the resolution of the comments, but we would like to see --
11 we won't really understand what you've done until we
12 actually see words on paper. I believe that I commented in
13 September at my talk at the State Liaison Officers meeting,
14 and I will reiterate that now, that we think that you should
15 re-offer the resolution for public comment again, because
16 there are significant changes from your initial offering,
17 and we don't feel that there is an industry priority -- that
18 is, an application pending -- such that it's impractical to
19 make that offering again for public comment.

20 Then, finally, I would say that despite all of
21 those comments, the CEQ-EPA resolutions do resolve a fair
22 number of what our comments were and we thank you for that.

23 MR. SCHWARTZ: Good, Bill. Geary, do you want to
24 respond to any of those at this point?

25 MR. MIZUNO: Yes, just a small portion to begin

1 because I think that there's some misapprehension. I
2 believe that under the agreements and under our current
3 procedures, it is not the staff who will determine whether
4 there is going to be a positive response or a negative
5 response to the rulemaking.

6 I should say under CEQ and EPA proposals and
7 agreement, but I believe that those would ultimately be
8 raised to the Commission and the Commission would have to
9 address what to do. So it wouldn't necessarily be the staff
10 making the sole determination there.

11 It's true that the staff would probably
12 participate. The Commission is going to ask the staff's
13 input on that, but it ultimately would be the Commission
14 that would be making the determination under the CEQ-EPA
15 agreements.

16 As far as having an opportunity for the public to
17 comment on the CEQ-EPA agreement and the need for
18 republication, like I said, right now, it is the OGC's
19 position that since there is a current public comment period
20 for addressing the states' concerns and the CEQ-EPA
21 agreements are being discussed, that the public has an
22 opportunity to comment on the aspects of the CEQ-EPA
23 agreement.

24 Then, finally, just a factual matter. The seven-
25 year period for updating the GEIS is part of the tentative

1 agreement that was reached between CEQ, EPA and NRC. So
2 that seven-year period is in the letters that have gone back
3 and forth between CEQ and EPA that analyze the agreement.

4 These letters have been in place in the PDR since
5 sometime in the middle of May of last year, I believe. Is
6 that true, Don?

7 MR. CLEARY: That's correct.

8 MS. GREER: Can I just ask a point of
9 clarification?

10 MR. SCHWARTZ: Sure, Leslie.

11 MS. GREER: If this is now the public comment
12 period, in the Office of General Counsel's view, for the EPA
13 and CEQ agreements, have those been actually published in
14 the Federal Register or do we do a FOIA request to obtain
15 them?

16 MR. MIZUNO: I don't think there's any need to do
17 a FOIA request. I think if you just talk with Don, he will
18 send them to you, if they weren't already included as part
19 of the SECY papers that were --

20 MS. GREER: Certainly, in the staff position
21 paper, there's a summary.

22 MR. MIZUNO: Excuse me. This is a question to
23 Don. Didn't we make some sort of reference to the CEQ-EPA
24 letters and weren't they provided? Perhaps they were not
25 provided.

1 MS. GINSBURG: Geary, I believe they're in the
2 SECY-93-032, attached to, which is a February 9, 1993 SECY.

3 MR. SCHWARTZ: The question being is everybody
4 familiar with them and have they had an opportunity to
5 address the issues. Is that the question at hand? Have you
6 had enough substance of the EPA-NRC agreements to have made
7 comments? I think that's what the question is.

8 MR. MIZUNO: I think we should just provide them.
9 Either Don or I, if we get your name and address, I will
10 just send them to you. They're in the PDR, but I have no
11 problem sending them to anyone who wants them. Come up to
12 me during the break.

13 MR. CLEARY: Geary, is this a correct statement?
14 That while there's a formal process for sending documents
15 out and setting and publishing in the Federal Register and
16 then establishing a comment period, the fact is that any
17 letter or information that we get during the course of a
18 rulemaking would be docketed and would be considered to the
19 extent possible given where we are in that rulemaking.

20 MR. MIZUNO: That's correct.

21 MR. SCHWARTZ: That's correct. Why don't we just
22 stipulate that we'll make sure that everybody on the panel
23 and others will get a copy of those documents?

24 MR. SHERMAN: If I could just comment to Mr.
25 Mizuno. We get very good help from the state liaison

1 functions, both in Washington and in the region, and,
2 basically, we know what they send us and they generally send
3 us -- they generally coordinate pretty well with you and
4 send us what we need.

5 MR. SCHWARTZ: Thank you very much. Gil, did you
6 have anything to say on that?

7 MR. BROWN: No. I'm sure there will be time.

8 MR. SCHWARTZ: Anybody in the audience I want to
9 give time to discuss the CEQ-EPA agreement.

10 [No response.]

11 MR. SCHWARTZ: All right. Let's move on to need
12 and alternatives should be designated as Category 3.

13 [Slide.]

14 MR. CLEARY: We have talked a little bit about
15 what Category 1 versus Category 3 does and doesn't do.
16 Basically, what I am trying to elicit here is assume that we
17 designate need and alternatives Category 3 and that the EPA-
18 CEQ agreement is in the final rule and nothing else. How
19 far does that go in satisfying your concerns and what are
20 the residual concerns that aren't satisfied?

21 Also, I will take this opportunity to respond to
22 what Bill Sherman was saying before about their concerns.
23 The fact is that we have not made a staff decision yet on
24 changing any of the categories. These are still being
25 processed through the technical staff and then will be

1 reviewed. It will be some months before even internally we
2 have a good understanding of where each of these issues are
3 going to come out.

4 What we have done relative to EPA is we've taken
5 their concerns, which are quite extensive and they've gone
6 through each issue and either agreed or disagreed with us,
7 and, for the most part, have attempted -- where they've
8 disagreed, they've attempted to explain why.

9 And because they have statutory authority and
10 responsibility to review all EISs, we are interacting with
11 them. We are going to go back to them within a few months
12 and discuss where we're coming out relative to their
13 concerns. I, at this point, don't know how that is going to
14 come out. They're still making residual differences.

15 So Bill Sherman is correct. The category outcome
16 is yet to be revealed.

17 MR. SCHWARTZ: The staff questions relating to
18 this issue are several states commented that need and
19 alternatives should be designated as Category 3 issues, and,
20 thus, reviewed at the time of a plant-specific license
21 renewal application. To what extent would this resolve --
22 this meaning the discussion that Don just had -- would this
23 resolve state concerns about conflict of the NRC-EPA review
24 with state regulatory authority?

25 I recognize some of the answers that you give to

1 this have been answers you have given before, but we want to
2 build a record on each of these issues. Gene.

3 MR. GLEASON: All right. Here it goes, for the
4 record. I think it will -- this is my record, to be
5 repudiated later by the formal comments of my Commissioners,
6 but I doubt it.1

7 MR. SCHWARTZ: We all suffer from that.

8 MR. GLEASON: I think that they'll basically go
9 along with this one. First of all, I think it would go a
10 long way. Obviously, we've argued for three years for
11 Category 3 determinations. Our state processes have been
12 set up and established and modified over the last 16 years
13 to do this type of analysis. We feel very comfortable with
14 it and we feel it's the right thing to do.

15 In addition to that, though, just to make sure
16 that our concerns on this issue are resolved, we still would
17 like two other things. The first is that in the text of the
18 rule, again, and in each relicensing decision, we would like
19 statements that the NRC's findings with respect to need for
20 generating capacity and alternative generating sources are
21 only intended to assist the NRC in meeting its NEPA
22 obligations and do not preclude states from making their own
23 determinations with respect to these issues.

24 The second thing we'd like to see in addition to
25 this in the Category 3 is that all NRC project-specific EIS

1 and relicensing decisions should make references to state
2 determinations, if they exist, on the issues of need for
3 generating capacity and alternative energy sources and
4 should defer to and be guided by those determinations, to
5 the maximum extent that's possible, pursuant to the NEPA
6 regulations.

7 MR. SCHWARTZ: Thank you, Gene. Consistent.
8 Right on. I appreciate that. Leslie or Bill or Gil?

9 MS. GREER: Again, obviously, this is not the
10 final word from the State of Massachusetts. But, again, we
11 think that it should be at least a Category 3 and we
12 generally concur with the statements made by the State of
13 New York.

14 I think the more difficult question and what I'm
15 sure we'll try and address later on today is the mechanism
16 for the deferral at the time of a relicensing decision.

17 MR. SCHWARTZ: Thank you. Bill, anything?

18 MR. SHERMAN: I, too, would like to state general
19 agreement with Gene Gleason's comments, but I would like to
20 address the other side of the coin. That is what if you
21 don't make it Category 3. I have a specific item, in
22 talking earlier with Mr. Mizuno, that I want to try and
23 rectify for Vermont.

24 We provided a significant batch of comments,
25 because we saw this possibility of litigation later, the

1 avenue toward litigation, perhaps being closed if it was
2 designated Category 1 or 2. We provided enough comments
3 that would serve as the basis for litigation now if you did
4 not choose to designate it Category 3.

5 Mr. Mizuno pointed out that we might have made a
6 mistake by not requesting a hearing in our initial comments
7 and since you've opened the comment period again. I think
8 that we would like to formally request a hearing for the one
9 nuclear plant within our site, if you do not designate at
10 least this one plant, because that's where our jurisdiction
11 ends, as Category 3.

12 I think our comments before March 4 will register
13 that, as well.

14 MR. SCHWARTZ: Just a follow-up. Scope of the
15 hearing?

16 MR. SHERMAN: We will address that in comments.

17 MR. SCHWARTZ: Thank you. Gil?

18 MR. BROWN: I can see that part of this process is
19 to repeat things so it becomes part of the public record on
20 each instance.

21 MR. SCHWARTZ: Unfortunately, the government only
22 can take it a little bit at a time or the right boxes at the
23 right time.

24 MR. BROWN: Well, it even starts to register after
25 this. Taking that as the protocol, the focus is on the need

1 for power. You've asked on several occasions what's the
2 basis of the concern, and I'm groping with trying to
3 understand what the basis of the concern is. As a citizen,
4 as an engineer, I think we all agree we want to do stuff
5 that makes sense and nobody wants to have more power plants
6 than you need or more expensive power plants and electricity
7 than we have to have.

8 If we're really coming to the table with that as
9 the premise, then I guess the process is that we should be
10 able to reach a -- goodwill ought to prevail and good
11 regulations ought to come out.

12 Because I'm not a lawyer and I don't do this every
13 day, I'm not sure what it means. I know what preclusion
14 means and that if there's a determination that there's a
15 need for the power plant made by one agency, then it's not
16 fair to the system to bring it up under another aegis. So
17 the states, as I hear it, are concerned that they will be
18 precluded from making their own decisions about the need for
19 power.

20 Is that a fair statement?

21 MR. GLEASON: Do you want a response? I can give
22 a response to that. That's one of the concerns, but I'm not
23 a lawyer either. I'm basically an economist and an analyst.
24 I think a basic concern is the very practical concern that
25 you cannot determine right now and nobody can tell me -- and

1 I reflect Mr. Nogee's comment earlier, nobody can tell me
2 right now that the fact that a nuclear power plant is
3 operating today means that in the year 2010, when it's up
4 for relicensing, whether that's the most economic business
5 decision that will be made by the regulated entity in the
6 State of New York.

7 It would create a terrible amount of confusion to
8 the utilities that we regulate if they got a false sense of
9 security from the Nuclear Regulatory Commission at the time
10 of an operating license -- they went in for a permit today,
11 got their permit and were told they were going to operate it
12 in 2010 and the State of New York says, well, that's
13 wonderful, but you're going to eat the cost of that forever
14 at the time that it comes up for the rate case because we've
15 done analysis and so have you that shows that this is not
16 the most prudent thing to do at this point in time.

17 So it's a very practical thing. We don't want to
18 create that uncertainty. We want to create a process that
19 only happens once, that occurs only once, that doesn't occur
20 50 different times, and that doesn't waste a lot of time and
21 resources as we go through it.

22 MR. BROWN: Clearly, there is nothing more
23 difficult than predicting the future. Stating that and
24 building anything that's going to last for more than an
25 instant, someone has to make a decision. We just saw in

1 Lowell the Wang Tower sold for half-a-million dollars.
2 These are buildings that perfectly function. What does that
3 mean?

4 In New York State, you guys made a determination
5 on Shoreham, that had a license, that it was in the public
6 interest. Those decisions could be made after the fact.
7 I'm trying to grope with what the challenge is. If you
8 don't have a license, then the point is moot. How do you
9 become eligible to get into the process? That's this whole
10 license renewal business and that's what I'm groping with.
11 What is the underlying concern? Need for power -- educate
12 me, please.

13 It should be done all the time, I would say. It's
14 an on-line decision-making. Now, as I understand the
15 Integrated Resource Planning Act, it probably requires this
16 to be an on-line thing, because we know, as we were told,
17 that whoever this 50-year planner is ought to come and tell
18 us all his secrets, because nobody can predict the future.

19 So where is the essence of what we're debating?

20 MR. SCHWARTZ: Gene.

21 MR. GLEASON: I agree. I agree with you that it's
22 an on-line thing, it should be done, and it should be done
23 in every single relicensing determination.

24 MR. BROWN: Right.

25 MR. GLEASON: And that's the basis of the reasons

1 why we opposed the notion that was originally proposed,
2 which said that the need for power and alternatives should
3 be classified as Category 1 determinations. That's why we
4 want them Category 3.

5 MR. BROWN: Maybe I didn't make it clear. The
6 decision now is you asked whether it's five years or 20
7 years, if that would help, but right now there's a 40-year
8 license. Where does need for power occur as a snapshot
9 today? Is there a parallel process for all the capacity
10 that's on the grid that determines need for power for every
11 power plant and what's the basis?

12 Because if I understand that, then this whole
13 discussion becomes a little more clarified for me, anyway.

14 MR. SHERMAN: Let me take a cut at responding to
15 part of your question.

16 MR. BROWN: I'm making this a battle. I hope this
17 is all right with the moderator.

18 MR. SCHWARTZ: I encourage this kind of a
19 dialogue. I think it's very important to have it without
20 any interruption. So let it flow.

21 MR. BROWN: Fine.

22 MR. SHERMAN: To make our concerns as clear as we
23 can, I mentioned earlier that we think that NEPA is the
24 right question.

25 MR. BROWN: Yes.

1 MR. SHERMAN: NEPA says when there's a major
2 Federal action, that there needs to be this evaluation.
3 What that does is that focuses what we're doing here to one
4 time. It doesn't ask the question about the continuing
5 review that states do about need for power, nor does it go
6 beyond that.

7 It takes a snapshot and says at the time of the
8 major Federal action, let's evaluate whether there are
9 environmentally preferable alternatives.

10 Now, it turns out that through the IRP process,
11 which I would characterize as an immature process -- the IRP
12 is a maturing process in the states. It is an evolving,
13 developing process. At present time, different states do
14 IRPs in different ways. But this forum questions at the
15 time of the major Federal action, we need to ask and answer
16 the question are there environmentally preferable
17 alternatives to the major Federal action.

18 I think all we want is, one, to see that that
19 question gets asked and answered with the right kind of
20 alternatives and with the right assessment of needs for our
21 individual states. Then, secondly, I think that we do
22 believe that -- let me back off and approach this a
23 different way.

24 If this were a construction permit environmental
25 report, the utility would provide in its environmental

1 report some assessment of needs and alternatives, which
2 would undoubtedly be very closely linked with what the state
3 evaluation was, because utilities generally use what states
4 are doing for need and alternatives.

5 Then the Nuclear Regulatory Commission would take
6 from that environmental report that same study and most
7 likely use it for their study. I think where we are is that
8 we want to see the question asked. We want the opportunity
9 for the right alternatives and need to be looked at and we
10 want the state input as much as possible.

11 MR. SCHWARTZ: Does that help you?

12 MR. BROWN: Not really.

13 MR. SCHWARTZ: Jerrold.

14 MR. OPPENHEIM: Let me see if this helps. Jerrold
15 Oppenheim from the Massachusetts Attorney General's Office.
16 From a state regulatory perspective, implicit in every IRP
17 proceeding or, even in the absence of that, in every
18 ratemaking case is a review of the prudence of the operation
19 of every plant on a going forward basis.

20 So that's from the state's point of view. It
21 really has nothing to do with licensing. It takes licensing
22 as a go/no go decision that's external. But assuming all
23 permits are in place, the economic decision is still, as you
24 suggested, constantly made. Obviously, it can't be done, as
25 a practical matter, every minute from a regulatory

1 perspective, but at designated opportunities, that decision
2 gets made on an economic going forward basis.

3 Those designated opportunities are every rate
4 case. In any rate case any intervenor may and frequently
5 does bring up the question whether it is prudent for a
6 particular plant to remain in rate base or whether an
7 investment that was just made in a particular plant was
8 prudent given the going forward costs of it and
9 alternatives.

10 The same thing holds true in IRP, although that is
11 still developing.

12 MR. BROWN: That makes a lot of sense to me, that
13 definition and doing that, knowing about all the
14 uncertainty, then making a determination at any point in
15 time is suspect, whether it's a millisecond before the plant
16 gets its relicense, which is as fast as you can do it and as
17 current as you can do it, or whether it's ten years before.

18 Predicting for 20 years in the future, whether
19 your -- it's all up in the air. So that's why IRP makes
20 sense and that's probably why it's not a Federal law. If
21 that determination is made, then every plant in our region,
22 whatever it is we burn, natural gas, coal, oil, imported
23 hydro, whatever it happens to be gets put into that mix.

24 My big issue or my philosophy, my basis is put
25 everything on an equal level playing field, so to speak.

1 Ask the same tough questions about nuclear like we're doing
2 today about all the alternatives. If IRP forces us to do
3 that, then so be it.

4 Then this issue really, with all due respect,
5 sounds not necessary, because it's going to be handled in
6 the process on-line all the time. Whoever is making the
7 financial commitment to relicense the plant, to go through
8 the hardware -- what I'm glad to hear, although I know it's
9 not the written scope, but apparently the idea of
10 determining safety is not -- the NRC does a good job on that
11 and that's not the debate here.

12 So with that, I'm getting -- I've got to take my
13 glasses off because it's blurry, but it seems like it's the
14 correct feedback from across the table.

15 That, again, as an engineer and certainly in a
16 region that uses a lot of nuclear power, is concerning,
17 right? We only want safe power plants and non-polluting
18 power plants of any kind or least polluting of any kind.

19 So if we're doing that in this IRP process, as
20 nascent as it may be, then we maybe don't have to bang heads
21 so hard on this one issue.

22 MR. OPPENHEIM: I think the point that the states
23 making, and perhaps this is the point that you're making,
24 too, is that this is not a decision that can be made by
25 anybody in a generic fashion, that it's got to be left to a

1 site-by-site and time-by-time decision.

2 Perhaps a good example in New England is to look
3 five years ago, let's say, at Yankee Rowe and Millstone 2.
4 At that point, there was something of a consensus that both
5 plants, on a going forward basis, were economic to continue.

6 The same power pool, so the same economic
7 conditions, roughly. We're talking about the same time.
8 Yet, a little bit later, utilities looked at specific
9 decisions with respect to both of those units, decided one
10 should close on economic grounds and the other one, on
11 economic grounds, justified a very large \$200-plus million
12 investment on a going forward basis.

13 MR. BROWN: The utility made that decision.

14 MR. OPPENHEIM: The utility made that decision.
15 That's yet to be subjected to state review. That will occur
16 in one of the cases that I mentioned. We don't know yet
17 which one, but either a rate case or an IRP case.

18 So the point is that those are going to be plant-
19 specific, site-specific judgments that are made depending on
20 the best information you have at any particular moment; what
21 are the alternatives, what's the demand look like, as best
22 as we can figure it out over some period of time.

23 MR. SCHWARTZ: Thank you.

24 MR. BROWN: Just one parting statement. In this
25 whole business of licensing nuclear power plants, in

1 particular -- I don't know anything about coal and cogen
2 plants, about the licensing -- the issue of stability and
3 from the decision -- from these utilities that are trying to
4 be in this business, whatever the process is, it ought to be
5 predictable and stable and understandable. So that the huge
6 uncertainty of the Seabrook financial disaster, I'll say
7 that, but that was a procedural disaster, in my opinion, the
8 billions of dollars that were wasted procedurally.

9 That was just part of this process that we need.
10 We owe it to ourselves to fix and make it straight so you
11 know what path you're walking on so you can get from the
12 beginning to the end. License renewal is part of this
13 process. No one is going to be happy if there's great
14 uncertainty in what's happening.

15 MR. OPPENHEIM: I would agree with that and I
16 think that's why I'm pleased that what's happening here
17 today is that an attempt is being made to clarify that line
18 between what the NRC is focused on and what the states are
19 focused on, and what the states are focused on is the
20 economics.

21
22 MR. SCHWARTZ: Thank you. I don't want really to
23 get off into a debate about Seabrook or Shoreham or any of
24 those other issues. I'd like to try -- Bill, I'll give you
25 one minute, but let me just finish. But I'd like to really

1 focus us on the issues of need and alternatives and also the
2 perceived or real potential encroachment by NRC into the
3 classic state responsibilities, held up by the courts, on
4 the economic regulation of the utility industry.

5 I think that's really the focus. Bill, one
6 minute, please.

7 MR. SHERMAN: For the benefit of the record that
8 you're developing, there's something that I wanted to put in
9 from our point of view that fits with what Gil has said. I
10 think what you're saying is that the IRP process is ongoing
11 and we could make these determinations that we may be
12 talking about here at any time throughout this long process
13 of planning.

14 At least in our state, there is one wrinkle that
15 is important for the NRC to realize in your evaluation. The
16 plant that we are concerned with in our state is a FERC-
17 regulated plant. That has a little bit different
18 characteristics than an in-state regulated plant.

19 We may be able to do some things and some
20 evaluations through the IRP process that will effect the
21 owner utilities of Vermont Yankee in the State of Vermont.
22 That's only 55 percent of the plant.

23 We may come up with some results in that process,
24 which I guess I couldn't foresee at this point. However,
25 NEPA asks a good question, because NEPA asks the question

1 for the major Federal action, which applies to the whole
2 plant, it may be the only time that we're able to really
3 have this considered in Vermont, because our state doesn't
4 only cover 55 percent of the plant.

5 So that's why we think that NEPA takes a snapshot
6 at a certain point and asks the question that we're ready to
7 work toward the right and the best correct answer for.

8 MR. SCHWARTZ: You've reached a new dimension
9 talking about wholesale.

10 MR. NG: Shelly, could I?

11 MR. SCHWARTZ: Ray, okay. Then I'd like to move
12 on in the agenda, if I may. Ray.

13 MR. NG: From an industry perspective, certainly
14 when we talk about license renewal, we're talking about the
15 operations of the plant beyond the initial 40-year license.
16 We view, from an industry utility standpoint, that license
17 renewal is certainly a prerequisite to the larger business
18 decision of whether that plant continues to operate or not.

19 Certainly, a renewed license is not an
20 authorization to continue to operate that plant beyond 40
21 years if the economics of that plant are not satisfactory.
22 As part of the IRP process, it seems, at least from the
23 industries, that that is being addressed on an ongoing
24 basis.

25 I offer those comments, I think, as a perspective.

1 MR. SCHWARTZ: Alan, please.

2 MR. NOGEE: Alan Noguee, again, from Mass. PIRG.
3 First, sorry, but I do need to correct Mr. Oppenheim's
4 statement. In 1988, I did a study that showed that it would
5 make economic sense to retire the Yankee Rowe nuclear plant,
6 which was essentially confirmed by the utilities some four
7 years later.

8 We're really talking about a presumption here, a
9 burden of proof and a presumption about whether there are
10 economic alternatives. Frankly, I'm -- Mr. Mizuno, you
11 asked the question earlier why don't people essentially
12 trust the administrative process. I think one thing our
13 experience shows is if we enter this process and there's a
14 presumption on states and on citizen groups that before
15 there can even be adjudication, they would have to meet some
16 burden of proof that they've won their case, that there are
17 cheaper alternatives, there will not be confidence in this
18 process.

19 I have read industry reports from NUMARC and EEI
20 and others, all of which conclude that there's not going to
21 be a future for nuclear power unless the public has more
22 confidence in the technology, the utilities and the
23 regulators. Frankly, I have colleagues who would like
24 nothing better than for the NRC to adopt the rule as issued
25 and to have to go into a community some 20 or 30 years from

1 now and defend their credibility on safety regulation and
2 have an anti-nuclear intervenor stand up and say, by the
3 way, this is the same agency that 30 years ago ruled
4 generically that there are no cost-effective alternatives to
5 this plant and, therefore, it can't be litigated here today.

6 There is nothing better that you could do to sink
7 the future of the nuclear industry than to establish that
8 kind of presumption and to give certain groups that kind of
9 argument as a starting point for future intervention.

10 If you're going to look at these issues, I think
11 everyone would now concede that they change over time, that
12 what one presumes today is not likely to be true even five
13 years from now, necessarily. If you create that kind of
14 presumption initially, even for five years, let alone the
15 kind of timeframes that we're talking about here, you will
16 not have the credibility before the public and the states.

17 MR. SCHWARTZ: I'll resist. Let's move on to the
18 next issue.

19 MR. CLEARY: We have also discussed this issue a
20 number of times this morning. That is the NRC should
21 clarify the respective regulatory authority in the rule and
22 other documents. There is agreement within the staff that
23 we should, indeed, make a clarifying statement in the rule,
24 statement of considerations, the GEIS.

25 What I would ask at this point, though, is we're

1 searching to find what the real problems are. This is an
2 interesting question to me because some people say, of
3 course, there is no overlap, that's the law and nobody
4 breaks the law and people need to understand the law.

5 Others will say but it's not a question of
6 preemption, it's a question of encroachment and that there
7 are problems. We got some good responses in Chicago as to
8 going beyond the surface, what are the real problems. There
9 are legal problems and those legal problems translate into
10 state resource requirements. They translate into changes of
11 burdens on state processes. So that's what we're looking
12 for here.

13 MR. SCHWARTZ: Great. Thank you, Don. Again, the
14 staff question is to what extent are the concerns of the
15 states resolved if the GEIS and the rule are modified to
16 include statements that NRC's findings with respect to need
17 for generating capacity and alternative energy sources are
18 only intended to assist the NRC in meeting its NEPA
19 obligations and do not preclude the states from making their
20 own determinations with respect to these issues.

21 Gene?

22 MR. GLEASON: Let me say that it's very helpful to
23 us and if you combine that with a Category 3 conclusion with
24 respect to need for capacity, as well as alternatives, and
25 include that statement in each individual relicensing

1 decision and then, if you can, defer to or be guided by
2 state determinations on need for capacity and alternatives
3 in each of those individual determinations, we'd be
4 completely satisfied.

5 MR. SCHWARTZ: Thank you, Gene. John?

6 MR. MOULTON: I just wanted to ask a philosophical
7 question about -- Bill, you had talked about NEPA and the
8 good question that was asked. I guess I just want to pose a
9 question to anybody here, a question we've been thinking
10 about. If NEPA mandates that agencies look at environment,
11 consider the environment in their actions -- and I think
12 that's what NEPA is doing. It's not -- I want to make a
13 statement about what I think NEPA is.

14 I don't think NEPA wants agencies to try to prove
15 beyond all shadow of doubt that the need that is proffered
16 is absolutely positively correct. But if we just focus on
17 the mandate of considering the environment, could you give
18 me some input as to what you think the agency's burden of
19 proof should be on the issue of need and should we be more
20 focused on the environmental considerations and less on the
21 agency's need, the agency's statement of need?

22 Not to belittle the need issue at a state level,
23 because I will grant you it's a big issue, but just from
24 complying with the NEPA standpoint, to consider the
25 environment, forgetting what we've traditionally done in

1 doing these detailed needs analysis, what would you think,
2 from the NEPA standpoint, our agency should be stating about
3 need?

4 MR. GLEASON: I'll take a crack at that.

5 MR. SCHWARTZ: That's a large question, John, and
6 one that we can sort of dialogue on, but it's not necessary
7 to answer right at this particular moment. Consider that in
8 the comments as we go through the day.

9 MR. MOULTON: That's fine.

10 MR. SCHWARTZ: Think about it. I don't want to
11 drive everybody to an answer now.

12 MR. GLEASON: I'll just tell you what I would
13 practically do, John. What I'd love to see you do, from New
14 York State's perspective, is take the most recent state
15 energy plan, take a look at the conclusions and the tones of
16 analyses that are in there and see if you think it's
17 adequate for your purposes, and, if you do, use it in any
18 relicensing.

19 MR. MOULTON: I think Shelly brought up a good
20 point. I just wanted to throw that out. If anybody has
21 some opinions on that, I'd be very appreciative to hear from
22 you.

23 MR. SCHWARTZ: All right, John. Thank you.
24 Anything more on the clarification of the record or can we
25 hold it for this afternoon?

1 I said I would not say anything, but in answer to
2 Alan, I would just like to say that the Nuclear Regulatory
3 Commission's response to the health and safety in carrying
4 out our mandate and not -- our purpose is not to proliferate
5 nuclear power in the United States. It's to be a health and
6 safety agency and to carry out our role under NEPA, as well.

7 When a utility makes a business decision to build
8 power and makes a business decision to build nuclear power
9 or to extend nuclear power, we're here to make sure they do
10 it in a safe manner. So anything with respect to any of the
11 options or alternatives that seem to presume that old
12 decisions were good decisions is a matter of trying to make
13 this process of license renewal more efficient and not the
14 notion of trying to proliferate nuclear power.

15 I want to put that on the record, if I may. If
16 you want to rebut, please do.

17 MR. NOGEE: I appreciate your saying that. I
18 don't know you personally and I have no reason to doubt you
19 and your sentiments on that at all, but I think it's fair to
20 say that the entire American public does not necessarily
21 agree with that view of the agency. And to the extent that
22 the agency adopts a presumption on economic issues that
23 generically nuclear power is better than any alternative
24 that might come up in the next 40 to 50 years, you would be
25 reenforcing the view among many members of the public that

1 the NRC is not an unbiased agency with respect to the
2 proliferation of nuclear power plants.

3 MR. SCHWARTZ: I appreciate that view. I will
4 also add, if you would, the USA Today poll on individuals'
5 trust in government, in 1964, I believe, it was 78 percent
6 and, in 1974, it was down to 36 or 38 percent, and
7 currently, according to this individual poll, it's 20
8 percent; actually, 19 percent, as quoted this morning.

9 So I understand and it's good for the record.
10 Gil?

11 MR. GLEASON: That was just the Federal
12 Government, Shelly.

13 MR. SCHWARTZ: Gene, I tried to get away with it,
14 but you wouldn't let me do it.

15 MR. BROWN: I just want to clarify something that
16 Alan said. Maybe I didn't hear it right. This decision is
17 on the existing power plant, not on the next generation of
18 nuclear power plants forever and ever and ever.

19 So it's really much narrower and to expand it to a
20 bigger statement than it is is wrong. You're talking about
21 bricks and mortar that are in place or systems that have
22 been upgraded over the lifetime of the plant. You're
23 talking about a switchyard that actually is pumping out real
24 megawatts.

25 To make a statement that says with some fuzziness

1 around the edges, but still pretty much in focus, that says
2 an existing plant that's already here, it's hard to imagine
3 that this isn't the reasonable choice.

4 I think that's what the GEIS is trying to conclude
5 for these plants that want to be relicensed, not all nuclear
6 power for all time.

7 MR. SCHWARTZ: Can we hold that?

8 MR. BROWN: And you didn't say that. You said all
9 nuclear power. It's just in existing plants.

10 MR. SCHWARTZ: Leslie?

11 MS. GREER: Yes. I think that we have to stay
12 focused here on what we're doing. We're not talking about
13 either whether people trust a state government or Federal
14 Government or anybody else. We're really talking here, I
15 think, in a much more narrow way about the NRC's obligations
16 under NEPA.

17 MR. SCHWARTZ: That's correct.

18 MS. GREER: And whether a generic environmental
19 impact statement that categorizes decisions with respect to
20 need and alternative, in fact, meets that obligation.
21 Because of the problems that exist both in forecasting long
22 range -- in some plants, such as Seabrook, we're talking
23 about a rule that is, at this point in time, saying that the
24 NRC views there's going to be a need for the relicensure for
25 the continuing need of that power for 50-odd years down the

1 way.

2 We're saying that, as a generic issue, it can't be
3 done. I think that what we're trying to do here is, in
4 fact, reaffirm a trust in the administrative process by
5 making comments, by trying to make the administrative
6 process work, because as one who has been involved in
7 litigation, I really wouldn't want to go back there again.

8 MR. SCHWARTZ: We're talking about efficiency.

9 MS. GREER: It is the worst way of making
10 decisions in the world. If reasonable people can come to -
11 - can hear each other out and address their concerns through
12 the administrative process, that is the best way to go.

13 MR. SCHWARTZ: Thank you, Leslie. Anybody else?
14 At this point, I'd like to break for lunch. Yes, ma'am.

15 MS. LARSON: Annette Larson with the New England
16 Coalition on Nuclear Pollution. I find it difficult, with
17 the questions and categories that you had for public
18 comment, to break down my comments based on those. So I'm
19 going to address it as a group. I find that these issues
20 really aren't separate, but they are completely
21 interrelated.

22 Now, as far as generic rules go, whenever you make
23 a generic statement, it fails to consider specific
24 instances, and what we're talking about here is specific
25 nuclear power reactors, specific sites, specific

1 communities, specific states with specific needs. So the
2 generic type of statement doesn't work.

3 Also, as far as the nuclear reactors themselves,
4 the General Accounting Office, in 1989, came out with
5 license renewal questions for nuclear power plants need to
6 be resolved and it states in here that "Neither the NRC nor
7 the industry fully understand all the effects of aging on
8 nuclear power plants" and called for them to verify the
9 adequacy of plant designs and compensate for uncertainties.

10 So the whole issue of uncertainty is one not only
11 that exists in regards to power supply, but also in regards
12 to the reactors themselves. What is power to spare today,
13 as comes up with the Conservation Law Foundation, may, after
14 a couple of summers of draught and a couple of hard winters,
15 no longer be that.

16 So long-term power planning is something that
17 needs to be done. We all need to make long-term plans, but
18 as far as reality goes, today is today. So decisions need
19 to be made on more short-term bases.

20 Now, as far as need for alternatives, again,
21 plant-by-plant and region-by-region, state-by-state reviews
22 need to be done. Efficiency needs to be considered
23 absolutely. Another GOA report, the DOE's efforts to
24 promote energy conservation and efficiency, talks about that
25 implementation of integrated resource planning to reduce the

1 nation's electricity capacity requirements would be 45,000
2 megawatts by 2010 and up to 90,000 megawatts in the longer
3 run.

4 So depending, again, on how successful these types
5 of programs are, the need for power will reduce, but then
6 those types of things can only be seen based on what's
7 happening today here and now and that type of thing.

8 I also question what alternatives were reviewed.
9 There's more to alternative energy than just more fossil-
10 based fuel. The technologies have been worked on for the
11 past 20 or 30 years, and so we're not in the dark when it
12 comes to knowing what sort of alternatives we have.

13 Another GAO report on efforts underway to develop
14 solar and wind power talks about levelized costs on various
15 resources, and we see here, based on this figure here, that
16 by the year 2010, wind, photovoltaic, solar, thermal will
17 equal gas and coal as far as cost efficiency. I don't know
18 -- this is another government agency. All I can do is take
19 what they say as fact.

20 So what we're talking about here is not that
21 alternative energy isn't going to be expensive forever, and
22 so it's something that we shouldn't even talk about, and
23 that we should definitely focus on what is possible, what is
24 capable, what is available in particular regions.

25 Just to summarize, there's not going to be one

1 alternative that's going to work, one generic way of solving
2 all problems, because there are different needs, there are
3 different resources. Also, in terms of comparing the costs
4 and viabilities, are maintenance and operations costs being
5 considered also as stringently as alternative energies are
6 being reviewed? Are the budgets for replacing turbines and
7 diesel generators and going through and fixing all of the
8 power supplies and all of the lines and all of the pipes,
9 are those being considered as stringently as the alternative
10 resources?

11 Just to wrap it up, one more GAO report, the
12 utility demand-side management programs can reduce
13 electricity use. They say in here that "substituting new
14 efficient technologies for existing less efficient ones
15 could reduce total U.S. electricity demand by 24 to 44
16 percent by the year 2000," and that's from the Electric
17 Power Research Institute.

18 Thank you very much.

19 MR. SCHWARTZ: Thank you very much for those
20 comments. They are very far afield and cover the full
21 energy picture and we appreciate you putting them in the
22 record. Thank you. Geary, did you have something you
23 wanted to add?

24 MR. MIZUNO: Nothing to this. This is just going
25 back to the EPA and CEQ agreements. We've been able to make

1 copies, but I want to just go on the record as to what I'm
2 going to be passing out to interested people and to clarify
3 what happened.

4 The first thing in the packet that is available is
5 a November 3 letter from the NRC to Lucinda Schwartz, who is
6 the Deputy General Counsel for CEQ, which sets forth NRC's
7 proposals to address CEQ concerns.

8 The second letter in the package consists of a
9 November 5 letter from CEQ back to the NRC, which indicates
10 CEQ's acceptance of the proposals or indicating that if the
11 NRC made these changes, then CEQ would consider its comments
12 resolved with respect to the procedural aspects of the GEIS
13 and rule.

14 The third letter is a December 30, 1992 letter
15 from the NRC to Ms. Ann Miller of the U.S. Environmental
16 Protection Agency. This letter provides the NRC's proposals
17 to respond to EPA concerns. I just wanted to clarify that
18 although the CEQ and EPA concerns overlapped, there were
19 some differences. So the proposals that NRC made to the EPA
20 were somewhat more lengthy than the proposals that were made
21 to CEQ.

22 The final letter that is to be provided in the
23 package is a December 31 letter back from EPA to NRC, which
24 indicates that if NRC makes the proposed changes, then they
25 adequately resolve the EPA's procedural concerns on the

1 GEIS, but it also notes that there still remain technical
2 matters with respect to the GEIS that need to be resolved.

3 Unfortunately, we weren't able to staple them. So
4 I'll leave it up to each individual to staple the letters
5 together.

6 MR. SCHWARTZ: Great. Thank you very much. With
7 that, we will conclude the morning session. I would like to
8 restart at 1:15.

9 [Whereupon, at 12:13 p.m., the meeting was
10 recessed, to reconvene this same day at 1:15 p.m.]

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AFTERNOON SESSION

[1:16 p.m.]

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3 MR. SCHWARTZ: For this afternoon, as I mentioned
4 earlier, we'll get into the discussions of Option 1 and
5 answer the questions as best we can as posed by the staff,
6 and then go through it sequentially, two, three, four, and
7 then Option 5. Hopefully, we'll try to get it up soon on
8 the agenda and get those discussions done and then a little
9 bit more discussion on the option offered by NUMARC. Is
10 everybody okay with that? Does anybody have anything?

11 [No response.]

12 MR. SCHWARTZ: Let's do it.

13 MR. CLEARY: I'll wait for the rest of the
14 panelists to get to the table.

15 MR. SCHWARTZ: Thank you.

16 MR. CLEARY: Before I introduce Option 1, I have a
17 few general remarks just to focus us.

18 [Slide.]

19 MR. CLEARY: On Slide 21, we've covered most of
20 the comments there this morning. I would like to point out,
21 though, that at this point in the process, nothing has been
22 settled. In fact, there has been no determination as to
23 whether we're going to continue essentially with the
24 proposed rule or not. So everything is open. Nothing has
25 been settled.

1 [Slide.]

2 MR. CLEARY: With regard to the options, we
3 developed the options to facilitate discussion. We don't
4 intend to vote each option up or down or to compare options,
5 except in terms of the elements of what they attempt to do,
6 what they do and don't do; that is, look at the strengths
7 and weaknesses of each of the options in terms of how
8 they're built up.

9 It is fairly clear that where we're moving to in
10 terms of what might be preferred options on the part of the
11 states or what NRC might think are strong and reasonable
12 options, that it's going to be a mix-and-match situation in
13 terms of what's in the discussion paper and also what has
14 been put into the record through transcripts and through
15 written comments.

16 [Slide.]

17 MR. CLEARY: Lance, skip to the table.

18 [Slide.]

19 MR. CLEARY: After the meeting in Rockville, we
20 saw that there was some ambiguity and confusion in terms of
21 how the options related to each other. So we developed this
22 table. I'm not going to go through it. I just want to
23 point out what the table attempts to accomplish for the
24 proposed rule and the four options that are in the staff
25 discussion paper.

1 We have a brief statement of what the option
2 attempts to accomplish, how that option uses need and
3 alternatives relative to the license renewal decision. Is
4 it a factor in the decision or is it not a factor in the
5 decision? The decision method that would be used, and that
6 goes to the use of cost-benefit analysis and the use of
7 economics in the decision.

8 [Slide.]

9 MR. CLEARY: Then, a brief statement as to what
10 happens relative to analysis in the GEIS and analysis at the
11 time of individual license renewal relative to the
12 responsibilities of NRC, of the states, and of the licensee.
13 You can use this table as -- refer to this table as we're
14 discussing and we hope that it will answer some of the
15 questions and keep a proper perspective of what we intended
16 in these options.

17 [Slide.]

18 MR. CLEARY: Under Option 1, we would review need
19 and alternatives and the results of that review would be
20 brought forward into the decision whether to grant a license
21 renewal. However, the main feature of this option is that
22 we back off from immediate use of economics in the decision.
23 We would do this by modifying the cost-benefit approach that
24 we have traditionally used and the initial look would be at
25 environmental impacts.

1 [Slide.]

2 MR. CLEARY: However, there are three situations
3 under this option that would lead to the introduction of
4 economic considerations; that is, if we found an inadequate
5 need for generating capacity or an environmentally
6 preferable alternative, and that's essentially the same as I
7 explained that we do for the CP-OL review, and if we found
8 significant cumulative adverse environmental impacts.

9 If the environmental impacts of relicensing happen
10 to look like they might be really significant and license
11 renewal would be brought into question, then we'd take a
12 full look in terms of how this fits into the economic
13 picture. Option 1 is not dependent on our determination
14 relative to the Category 1, 2 and 3.

15 MR. SCHWARTZ: Thank you, Don. Under that option,
16 I'm looking at Page 4 of the agenda. The question the staff
17 proposes is what problems, if any, do the states have with
18 NRC using for license renewal reviews the decision method
19 explained in Option 1 rather than the traditional cost-
20 benefit balancing.

21 Does anyone want to address that?

22 MS. GREER: Let me just ask some questions that I
23 had in reading the analysis in the position paper, and maybe
24 what I'm doing is misunderstanding. If the NRC, in the
25 proposed rulemaking, was to adopt Option 1 and keep need and

1 alternatives as Category 1 issues, it seems to me that
2 regardless of how one does the analysis, you're still
3 treating those issues in a generic way.

4 I realize that what Option 1 is trying to do is
5 trying to present an analysis that differs from the one in
6 Chapters 8 and 9 of the GEIS. At the same time, I think
7 that there still is a basic problem with the timeline and
8 forecasting and also in terms of the variables that effect
9 each different plant in each region in terms of their energy
10 need and states in terms of their energy need and
11 alternatives that are available.

12 If you were to go with Option 1 and keep in the
13 three triggering events that would produce a re-look at the
14 situation at the time of relicensure or perhaps when you're
15 re-looking at the situation, if you're going to modify the
16 proposed rule, re-look at the GEIS every seven years, you're
17 still talking about a period of time that is quite far down
18 the line from when the relicensing event would actually
19 occur.

20 In effect, Option 1 does not really change the
21 framework of the generic quality that's in the proposed rule
22 now. I don't think it gets us to the states' concerns about
23 their control over their decision-making process or needs
24 and authority -- needs and alternatives.

25 MR. SCHWARTZ: Don?

1 MR. CLEARY: Yes. Just one question to make sure
2 that we're working on the same basis. When you talk about
3 the timeline, you are acknowledging that we're doing the
4 seven-year update of the rule-GEIS re-look.

5 MS. GREER: I'm hearing you say that. I still
6 think, though, that each region is going to have -- I'm
7 certainly not an energy forecaster. That's not anything
8 that I would pretend to have any kind of expertise in. I
9 certainly think if you're talking about doing seven-year
10 energy forecasting as opposed to right now we're talking
11 potentially 50-year energy forecasting, that's certainly a
12 better timeframe.

13 At the same time, it seems to me that energy needs
14 in the southwest may vary very differently from energy needs
15 here in New England, given changes in population. As I
16 understand it, we're still losing population. Boston was a
17 metropolitan area that actually lost population in the last
18 decade.

19 Other areas of the country, Florida continues to
20 grow. It may well be that their energy needs and the
21 alternatives available down there are very different from
22 here. I think that the generic approach that you keep with
23 Option 1 is still problematic.

24 MR. CLEARY: There are perhaps a couple of issues
25 that you're addressing. I think what you're primarily

1 referring to is the technical quality of do we consider all
2 of the variables that need to be considered in forecasting
3 and then the timeline, the horizon and the increasing degree
4 of uncertainty as you go out in years.

5 There have been comments on those perceived
6 problems -- actually problems, I won't say perceived
7 problems -- that we're addressing. So in terms of whether
8 the population of Massachusetts is considered or not, that's
9 a technical issue that we think we were aware of and perhaps
10 can do a better job, and we'll attempt to do so.

11 Option 1 really gets to -- it's sort of a minimal
12 step, assuming that our NEPA responsibilities are very close
13 to what we've been doing. It really backs off -- it takes
14 us one step back in terms of the use of economics, which
15 there seems to be a consensus that that states the main.

16 That's the essence of what we're trying to do with
17 Option 1, aside from all of the forecasting issues, which I
18 think are problems for -- any option where NRC is going to
19 be doing the analysis, the time horizon and those technical
20 issues are a concern.

21 I've tried to put what you say in perspective. I
22 know I haven't been directly responsive to you.

23 MS. GREER: That's all right. You asked for
24 concerns.

25 MR. SCHWARTZ: It's on the record now.

1 MR. MIZUNO: Can I expand on Don's answer there?
2 The GEIS consideration of generating need for power was done
3 on a regional basis. In fact, it separated out the country
4 into, at least by my count, over ten different regions. So
5 it's not entirely accurate to say that -- well, it's
6 accurate to say that we have a generic evaluation, but the
7 country was not considered generically as a whole. It was
8 done on a regional basis.

9 So recognizing that, I think that Don was correct
10 in saying that technical questions were raised with respect
11 to the adequacy of the regional forecasts that were done and
12 I think it would be accurate to say that we are considering
13 them. So that, yes, we agree that there are questions that
14 were raised with respect to the regional forecasts, the
15 methodology and that sort of thing, and they are going to be
16 addressed.

17 I would just like to make that clear.

18 MR. SCHWARTZ: Gene.

19 MR. GLEASON: I don't want to get into the
20 technical stuff, because we really think the technical stuff
21 was an insult to states that do this stuff all the time and
22 to the utilities. Most of our utilities weren't pleased
23 with that technical analysis. I'll tell you, after 15 years
24 of doing this stuff, we just weren't very pleased.

25 But I think there's a specific problem that we had

1 with Option 1, which it really doesn't resolve our concerns
2 about our traditional responsibilities and it doesn't
3 resolve our concerns about the Category 1 and Category 3
4 issues.

5 That's basically where we're coming from on Option
6 1. We really think you've got to bite the bullet, make
7 these issues Category 3, and then we can craft a way in
8 which the NRC can meet its NEPA obligations and states can
9 go on feeling that they are safe and secure in their
10 economic regulatory obligations.

11 I know as a matter of fact that if Option 1 were
12 discussed, we would probably be in an endless discussion
13 with states like New York, Minnesota and California over the
14 adequacy of the technical analysis. I can see it coming. I
15 know where we'd be, and I don't think that's a valuable
16 thing. I really don't think that that's a worthwhile
17 exercise for us to put our time and activity in.

18 MR. SCHWARTZ: Thank you, Gene. Does anybody from
19 the audience want to jump in on this? Alan, please.

20 MR. NOGEE: Mass. PIRG agrees with the comments
21 from New York and the Attorney General of Massachusetts.
22 But, also, just to reiterate something that was said before,
23 Option 1 would appear to require an intervenor who wanted to
24 raise these issues to essentially prove that there were less
25 expensive alternatives available before the adjudication on

1 whether that was the case could take place, and that that is
2 simply an inappropriate burden to put on the process.

3 MR. MIZUNO: Let me respond to that, because I do
4 not believe that that is an accurate perception. It depends
5 upon what you mean by "prove." I'm unclear there. But I
6 will say that the intent that the Commission had and which
7 certainly CEQ and EPA had when they negotiated the agreement
8 with respect to raising information here -- and you're
9 assuming Option 1 is in the context of these agreements.

10 With that, an interested member of the public who
11 wanted to raise an issue would simply submit that
12 information in their comments and the NRC would be bound to
13 consider them. Now, if you're asking the question what
14 would be necessary to in order to change the NRC's mind, we
15 have this -- we established this test or standard of saying
16 substantial and new information.

17 It's unclear what you mean by "prove." I would
18 expect that you would have to have some level of information
19 that reasonable people could say, yes, if you look at this
20 information, it draws into question the adequacy or the
21 correctness of the previous document, but I don't think you
22 would have to prove it. Otherwise, there would be no reason
23 for the hearing in the first place.

24 So it has to be something less than "proof," but
25 it certainly has to be something that at least a reasonable

1 person could look at and say, yes, assuming the natural
2 consequences and taking it in a light most favorable to the
3 person that's raising it, would a reasonable person have
4 something -- would a reasonable person believe that this
5 causes one to question the adequacy of the existing
6 analysis.

7 MR. NOGEE: But I think you really make my point,
8 because I don't have a definition of what proof you might
9 require and what standard you might set at some point ten,
10 20 years in the future for reasonableness of the information
11 that I've brought before you in order to be able to open
12 this up as an issue for litigation.

13 It is a completely undefined standard right now.
14 The point is if you're really saying that all someone has to
15 do is raise it and then you will be able to adjudicate it as
16 a specific issue in the hearing, then having this as an
17 option with a generic presumption hasn't really accomplished
18 anything. Let's just call it Level 3 and go to it rather
19 than leave this arbitrary undefined preliminary standard
20 that we have to meet and which you have not spelled out any
21 specific criteria that have to be raised initially.

22 MR. MIZUNO: I would simply say that there is the
23 standard of substantial and new information. I will say
24 simply that absent this entire rulemaking, if we were just
25 in a normal proceeding, an interested member of the public

1 who wished to have an issue addressed in an adjudicatory
2 proceeding would have to meet a standard of showing that
3 there is substantial information that raises a question.

4 I would imagine that's the same sort of standard
5 that you would use. It's an equally -- if you have a
6 concern about this standard, it's an equally vague standard
7 in Part 2. So, therefore, I do not see that deferring the
8 issue to an individual renewal proceeding helps you get
9 further certainty in terms of the standard.

10 MR. NOGEE: Except insofar as you have defined a
11 generic presumption already that there are not better
12 alternatives. Whatever standard you then throw on for
13 overcoming that presumption, it's clearly a higher and more
14 difficult standard than if there's no presumption at all.
15 That is, I think, why you're hearing from the states and us
16 that we have to go to Level 3.

17 MR. SCHWARTZ: Okay. The comments are in the
18 record. Thank you. We'll move on to Option 2.

19 [Slide.]

20 MR. CLEARY: Under Option 2, NRC would adopt the
21 state review of need and alternatives and would use them as
22 factors in the decision whether to grant a renewed license.
23 In doing this, NRC has a responsibility for -- an ultimate
24 legal responsibility for defending its actions. There would
25 have to be some sort of guidelines that would be met.

1 At this point, those guidelines -- we don't have a
2 clear view of what the guidelines would be. There are
3 certain legal considerations. How technical the guidelines
4 would be we have no judgment on at this time.

5 One of our concerns is that the guidelines might
6 be such that either some states couldn't meet those
7 guidelines or a state might not choose to make a submittal
8 because of timing or other considerations. If that were the
9 case, then the burden would be back on the NRC for the
10 analysis and NRC, as it typically does, would tell the
11 applicant to perform the analysis and then we would do a
12 confirmatory review.

13 Under this option, a Category 3 designation is
14 implied.

15 MR. SCHWARTZ: The question the staff asks on
16 Option 2 is do the states have legal concerns or see other
17 problems if the NRC accepts a state's conclusions with
18 respect to the issues of need for generating capacity and
19 alternative energy sources as discussed in Option 2 and what
20 are the practical considerations in developing and applying
21 guidelines that would be met by the states.

22 A subset of that question or others are what
23 should be the major features of the guidelines. Can
24 guidelines be developed that can be met by all states? In
25 each state, is there a single governmental body that the NRC

1 could look to for findings on need for generating capacity
2 and alternative energy sources? Lastly, in that context,
3 can state findings be made and provided to NRC in a timely
4 manner for use in the license renewal review?

5 Is there benefit in coordinating between NRC and
6 state staffs while the state is preparing its submittal?
7 Finally, to what extent does Option 2 resolve the concerns
8 of the states?

9 Bill?

10 MR. SHERMAN: If I may speak about this.

11 MR. SCHWARTZ: Please do.

12 MR. SHERMAN: I probably won't answer the
13 questions, per se, but I'd like to put some of our thoughts
14 on the table for other consideration.

15 This morning, Leslie said that we have an
16 opportunity and a challenge to work together on this. I
17 really believe that this is an area where I can express that
18 we feel bad. Where I'd like to start is I'd like to start
19 by talking about the state integrated resource plan
20 processes just for a minute.

21 In Vermont law, we have the following words --
22 "Regulated electric utilities must provide a least cost
23 integrated plan, where concerns are addressed at the lowest
24 present value life cycle cost, including environmental and
25 economic costs." For the record, this is in our Title 30,

1 Section 218(c).

2 Now, this least cost integrated planning process
3 or integrated resource planning process is supported by the
4 Energy Policy Act of 1992 in Section 111. What this
5 involves is -- as I said earlier, it's a maturing process,
6 but what we've done in-state is we've used this to look at
7 new resources. Primarily, the work to date has focused on
8 air emissions, nitrogen oxide, sulfuric oxide, and finding
9 an appropriate externality value for those environmental
10 effects.

11 What we expect to happen as the process evolves,
12 we expect that in the future, states will turn their
13 attention to nuclear externalities to develop the proper
14 cost adder for nuclear externalities. Now, to my knowledge,
15 this hasn't been done yet in any of the states with
16 processes, but I don't have access to all the information.
17 It could be that someone has worked out something.

18 But as the process matures, we feel certain that
19 nuclear externalities will be developed by states in this
20 IRP process. Given this, what we have, then, is, in the
21 states, a process which is very close to the same question
22 that the Federal Government is required to ask and answer
23 when it has a major Federal action, the NEPA review.

24 So I think what Vermont is saying is that we feel
25 that we need to work together, because we feel there is a

1 high likelihood that your method of coming up with nuclear
2 externalities, which may or may not be the method in the
3 draft generic environmental impact statement, and, if so, it
4 appears to us to be obscured, will probably not be our
5 method for coming up with nuclear externalities, the cost of
6 the environmental adder for nuclear.

7 So what we feel is that we need to work together
8 on this. I, in my initial remarks, suggested some
9 consensus-building process, because I do think it's a
10 challenge that we could meet well. If we meet this
11 challenge by using the traditional agency, that is NRC,
12 methods, which come out of the waste confidence rule and, I
13 believe, in the environmental impact statement you've also
14 used the Low Level Waste Policy Amendments Act of 1985, if
15 you use those methods, you come up with one conclusion.

16 Yet, I think that instead we should start at a
17 different place and see if we can come to joint views on
18 what nuclear externalities are since all the states are
19 going to do this anyway. So, therefore, we support
20 something like Option 2, although I think that Option 5,
21 proposed by New York, may more clearly state what we would
22 support.

23 MR. GLEASON: Shelly, obviously, we come awfully
24 close to Option 2, also. I think our only practical
25 consideration is that the devil is in the details on Option

1 2 and the challenge, as Bill put it, is really trying to
2 figure out those guidelines and what they would look like.

3 Bill reads from his statute, you'll note, and here
4 is a statute that basically, as I read it, Bill, specifies a
5 methodology for doing planning. Our planning law in New
6 York is much more generic than that, much more general. It
7 states what factors have to go into the consideration and
8 then defers to a planning board how they are to fashion the
9 methodologies and everything.

10 But Option 2, I think the challenge is going to be
11 in those details. You have states like New York, California
12 and Minnesota that have reams and reams of regulations and
13 definitions and you don't have agreements among the states
14 on all the definitions. You have states at different points
15 on the learning curve to IRP, but I don't want to sound like
16 the chief of gloom and doom saying it would fail.

17 If, indeed, we give a good faith effort to it,
18 then I'm sure we could do it.

19 MR. SCHWARTZ: With perhaps flexibility and
20 default position for those states that don't have the
21 wholesome IRP program. That would be in the eye of the
22 beholder, I guess. Leslie?

23 MS. GREER: I'll try and address the questions in
24 order.

25 MR. SCHWARTZ: Please do.

1 MS. GREER: I would not hold myself out as an
2 expert on NEPA, but I am familiar with the Act, as well as a
3 number of the NRC decisions, both internally and then ones
4 that have actually made it into court, dealing with NEPA
5 issues, and I don't see any legal reason why Option 2 is
6 barred.

7 In terms of -- I think the condition there,
8 obviously, is that ultimately the NRC would, under NEPA,
9 have the ultimate responsibility to meet, but in meeting
10 that responsibility, it certainly would be in the interest
11 of the states to undertake an analysis in a way that would
12 be able to be upheld under NEPA, that would, in fact, meet
13 the NRC's obligations, because we certainly would not want
14 to have the whole thing thrown out either.

15 MR. SCHWARTZ: That's the basic question.

16 MS. GREER: And I also agree both with Vermont and
17 New York. I think that in many instances the states would
18 be able to do this kind of analysis. In fact, in many
19 states, such as the three sitting here, as well as a number
20 of others, it already is done in the IRP utility commission
21 context that now exists.

22 That does, though, take us down immediately to the
23 last issue of can the states' findings be made in a timely
24 manner. I guess the question that comes up if we're talking
25 about the utility rate-setting context is what would be

1 timely for the NRC. What kind of timeframe would the NRC
2 require? That's just a question. I don't expect an answer.

3 That also takes us back up to the question above,
4 is there a single state agency in all states now that could
5 be charged with this. Probably not. I'm not speaking for
6 any of the other states, but I think that there's probably
7 not in all 50 states across the country now such a single
8 state agency that you could just pass the question to do the
9 analysis.

10 On the other hand, for the states that actually
11 have an interest in this issue, I don't see necessarily any
12 bar why such a state agency could not be developed certainly
13 by the time that the relicensing issue came up for the
14 plants within their states.

15 Then this finally goes down to what may be the
16 thorniest issue presented by Option 2, which is the
17 guidelines. I think that the devil is in the details and
18 the states would want guidelines that would both comport
19 with NEPA and that we all view as reasonable. I think that
20 we can probably come to guidelines through discussion that
21 would both meet the NRC's obligations, but I think that
22 before we can get to that, I think we'd have to have some
23 information from the NRC as to what they would think they
24 would need for such guidelines.

25 The State of Massachusetts has a mini-NEPA. We

1 have what's called MEPA. Our state agencies, in making
2 decisions, essentially, in many, many contexts, both in
3 granting permits, licenses, whatever, and making financial
4 grants of a significant amount of money, go through a NEPA
5 process.

6 So I think that we can do it. Our state agencies
7 can do it. State governments can do it. I don't see why we
8 couldn't, as reasonable people, work out the details, but I
9 think we would have to hear from NRC as to what you view
10 your requirements to be for such guidelines.

11 MR. SCHWARTZ: Leslie, thank you for the rigor in
12 which you went through all that. That was very helpful.
13 Thank you. A lot of open questions, clearly. Questions,
14 comments, statements from the audience?

15 MR. ABBANAT: I'm Brian Abbanat from the Mass.
16 DPU. I just thought it might be useful to give you my
17 perspective on what might be the challenge in implementing
18 Option 2 from the standpoint of the states within New
19 England.

20 Where you're looking at a particular nuclear power
21 plant within the New England states, the power from that
22 facility is typically sold to two or more states outside of
23 the particular state in which the plant is located. It just
24 occurs to me that it might be a particular challenge in
25 looking at the need issue and attempting to adopt results of

1 state reviews to bring those reviews together on a timely
2 basis.

3 MR. SCHWARTZ: Thank you.

4 MR. SHERMAN: If I might, I would like to augment
5 what Brian has said. If there are environmental detriments
6 to nuclear power plants, then the region usually reaps the
7 benefits, but the individual state usually inherits the
8 detriments, if one considers radioactive waste a problem.

9 MS. GREER: Actually, I'd like to augment my
10 earlier comments to point out one other little thorny issue
11 which Brian brought to mind. In terms of the sharing, when
12 we talk about deferring the state analyses, obviously, a
13 question that arises here in New England is what happens
14 when two states come up with different analyses under a
15 given power plant.

16 Is the deferral then made on a percentage of power
17 basis? It's just another little issue that a number of
18 people have to try and put their minds to.

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

21 MR. BROWN: It's a similar question to what I had
22 before. If there's a need for power analysis done now,
23 there's a presumption. I hate to -- this discussion is a
24 little too theoretical for my knowledge base or maybe for my
25 taste at times, but if we assume that plants are here, then

1 who is making the assumption that there's a need for the
2 plant?

3 If the plant is needed today, my instincts tell me
4 that the plant will be needed tomorrow, and I literally mean
5 tomorrow, because it's 40 years and then 40 years plus a
6 day, what's the difference.

7 So who is making the determination on need for
8 power not in some hypothetical space that -- it's
9 theoretical space that I'm hearing some of this discussion,
10 but in the real space of real power plants being plugged
11 into a real grid being used by real people in real time.
12 That's a real open question for me because if the plants are
13 already needed now, then where are we.

14 MR. SCHWARTZ: Gene.

15 MR. GLEASON: Maybe I can help on that, Gil. Just
16 because the plant exists and is operating doesn't mean it's
17 an economically viable option at this point in time. Look
18 at the situation we're facing right now in New York State
19 and throughout New England. We've got so much capacity in
20 New York and New England that we could afford three weeks
21 ago to send nearly 4,000 megawatts down to Pennsylvania, New
22 Jersey and Maryland and still had a 3,000 or 4,000 megawatt
23 oversupply, with at least five or six plants out of service.

24 As a practical matter, Consolidated Edison last
25 month killed a contract or decided not to renew a contract

1 with our power authority, which the state owns, the state
2 utility for nuclear power for one of our nuclear power
3 plants, because they can get that power cheaper from
4 someplace else using another source.

5 So just because the plant exists and operates
6 doesn't mean it's the most economic thing to do at this
7 point in time. That's why you do these kinds of analyses to
8 make those determinations. You shouldn't assume because
9 it's operating that it's needed. That is my only point.

10 MR. SCHWARTZ: I guess we can move on to --

11 MR. BROWN: Just one last thought. This is not a
12 just-in-time manufacturing process where the chips come
13 flying in from wherever they're made and the cases come in
14 from wherever they're made and you just don't have any
15 inventory on the shelf. So I hear what you're saying about
16 excess capacity and maybe my simplification of a minute, 40
17 years and a day is a little inappropriate because we're not
18 going to argue that we don't need excess -- I'll call it
19 excess power, but reserve margin.

20 The size of the reserve margin is something else,
21 again. I hear what you're saying.

22 MR. SCHWARTZ: Option 3.

23 [Slide.]

24 MR. CLEARY: I think we know what Gene Gleason is
25 going to say about Option 3.

1 MR. SCHWARTZ: Option 4?

2 MR. CLEARY: Option 3 is a more radical departure,
3 as we see it, from the way we have done business -- the way
4 we have defined need in fulfilling our NEPA responsibilities
5 in the past. We see that you can distinguish between your
6 NEPA responsibility for defining need if you're faced with
7 having to build a new plant and green field situation,
8 capacity doesn't exist, and a situation where capacity does
9 exist, as Professor Brown has been promoting today.

10 Under this option, NRC would say that receiving an
11 application for renewal of license for a plant that is
12 already operating and supplying power would be sufficient
13 demonstration for it to proceed with its Federal action.
14 Under this option, we would not get into detailed forecasts
15 of demand for power or forecasting demand and forecasting
16 future power supply.

17 Under this option, we think that there is
18 sufficient basis for NRC to assume that if this plant were
19 shut down, that the power would have to come from elsewhere,
20 that an alternative would be needed. That could be
21 purchased power, conservation or additional generating
22 capacity. Therefore, under this option, we would treat
23 alternatives the same as previously under the other options.

24 This option does not depend on a category
25 designation. The main virtue of this option is that NRC

1 removes itself from the need for capacity debate and leaves
2 that to the states and would proceed directly with looking
3 at alternatives that might supply base load capacity that is
4 being given up if the license were not renewed.

5 MR. SCHWARTZ: Don, thank you. The question here
6 posed by the staff, and I'm reading from Page 5 on the
7 agenda, do the states have legal concerns or see other
8 problems if the NRC adopts the position that need for
9 generating capacity need not be analyzed in a license
10 renewal review as discussed in Option 3. To what extent
11 does Option 3 resolve the concerns of the states?

12 MR. SHERMAN: From my perspective, it doesn't go
13 very far to resolve our concern. In addition, although we
14 haven't done a complete legal evaluation of this, we have a
15 suspicion that once the action is designated as a major
16 Federal action, you have a NEPA requirement to determine
17 whether you need to take that action.

18 So we suspect that you're required to determine
19 need through NEPA.

20 MR. SCHWARTZ: John Moulton.

21 MR. MOULTON: I would just like to respond on
22 that. Let me give you a little feeling on what this option
23 would do in the way of rationalizing in the rule. We
24 definitely haven't finalized anything on this, but the way
25 this option would be viewed in a rationalization in the

1 rule, we would look at NEPA as -- the real purpose of NEPA
2 is to look at the environment and consider the environment.

3 There is no discussion in NEPA that says that
4 agencies must prove beyond the shadow of a doubt need. In
5 fact, it doesn't even mention it. Now, our regulations and
6 CEQ regulations do, in fact, have statements to the effect
7 that the agency needs to briefly state the need for the
8 action, and that's essentially it.

9 The argument would be that -- well, let me get
10 back to traditionally how we've done it, and Don had
11 mentioned this radical approach. It's different, because
12 traditionally we have sought to prove very extensively
13 beyond the shadow of a doubt with these detailed numbers
14 that there is a need and focusing a whole lot on the need
15 issue.

16 This option focuses where NEPA is probably more
17 focused, and that is on the environment. This option would
18 not base our decision on need. The decision would be based
19 more appropriately, where NEPA is focused, on the
20 environmental considerations.

21 This option, as far as making any judgments about
22 need, it would essentially adopt a lower threshold. The
23 agency just needs to show that a need is reasonably
24 proffered and once it passes that test, let's get on to the
25 real business. The real business at hand is the

1 environment.

2 These are business decisions. The gentleman next
3 to me has mentioned this is a business decision and this
4 would recognize that. These are business decisions and the
5 agency would not get into making judgments on whether the
6 businessmen proposing to renew the license or wanting it to
7 continue have a justified want or not, beyond a reasonable
8 proffer.

9 MR. SCHWARTZ: Thank you, John. Gene.

10 MR. GLEASON: Shelly, I just want to add this. I
11 agree with John that it's a business decision, but we
12 shouldn't lose sight of the fact that it's a business
13 decision about a regulated industry that receives certain
14 benefits from the states and others that regulate it.

15 But this is a very nice option, except for the
16 practical impact on New York. I can see that exercising
17 this option, all of our utilities would come in to us in the
18 energy planning process. They would come in to us in our
19 licensing proceedings, and they would come in to us in our
20 utility filings and ratemaking proceedings, and they'd say,
21 look, the NRC says there's a need for this capacity, why
22 don't you agree.

23 We've got the Federal Government here telling us
24 this capacity is needed and the State of New York says it's
25 not. This is going to be -- John, I know it will be used

1 and I'm just trying to make it clear, in everyone's minds,
2 so we don't duplicate things, that it won't make any
3 difference to us whether they argue that or not.

4 MR. MOULTON: I was going to say that's a good
5 point and that's a very valid point. Yes, we do have to
6 think about that. But I think you mentioned at the very
7 beginning that one of your wants or desires in this whole
8 outcome is for us, the state, unequivocally, that any
9 judgments we make on need for power or alternatives by no
10 means prejudice the state's decisions.

11 MR. GLEASON: Yes.

12 MR. MOULTON: That would be taken -- also, it
13 would be given just equal weight here, too.

14 MR. GLEASON: I think it would. The problem is
15 how you translate it. Yes, you're right.

16 MR. CLEARY: I think what we're trying to
17 accomplish here with this option is -- it goes to the burden
18 of proof question that always comes up. What we're trying
19 to accomplish is to provide a basis for NRC to proceed with
20 a review and to do it in a way that we don't have the burden
21 of proving -- whether this is legal or not still has to be
22 answered.

23 But we're trying to state that an application for
24 an existing plant is sufficient basis to proceed. The
25 wording would be such that we're not certain that it's

1 needed and that it is ultimately the state's decision as to
2 need.

3 Also, we're still talking about the capacity, not
4 the plant. What we're searching for here is a way just to
5 back off of need for the capacity analysis and the burden of
6 proof and NRC having to duplicate state reviews.

7 MR. GLEASON: Have you talked with CEQ about this
8 and EPA?

9 MR. CLEARY: They are reviewing the paper right
10 now.

11 MR. GLEASON: They have a copy.

12 MR. CLEARY: They have a copy. Unfortunately, the
13 way they work, I was not able to get any information from
14 them before these meetings, but we will be getting written
15 comments from them.

16 MR. SCHWARTZ: Leslie?

17 MS. GREER: Just in terms of the first question,
18 is there a legal concern, yes. There's a legal concern
19 that's been voiced as to whether, in fact, Option 3 is an
20 alternative that allows for the NRC to comply with NEPA.

21 It's one thing when you're saying at the operating
22 license stage we've just looked at all this at the
23 construction permit stage, which is only a few years back
24 down the line and nothing has changed very much since that
25 point in time.

1 We're now talking about a decision that is, at a
2 minimum, 40 years out and we're really looking at projecting
3 60 years out. I think it would be a great step to say 60
4 years down the line for any operating plant, the same need
5 was there as when it was built. Perhaps there's a greater
6 need, perhaps there's a lesser need, but if there is a
7 lesser need, then it certainly is, I think, something that
8 the NRC in making its relicensing decision would want to
9 think about, because in terms of the environment, the
10 environmental factors, if the plant continues to operate,
11 it's going to continue to generate waste.

12 In terms of the states, we are obviously all
13 struggling now with low level siting issues, the State of
14 Massachusetts perhaps more than anybody else here in this
15 room since we are, I think, further behind the eight ball in
16 it. While Yucca Mountain is still proceeding, there are, I
17 think, questions in everybody's minds about ultimate
18 disposal issues for high level waste.

19 So you can't just say the need issue -- you can't
20 divorce the need issue from the other environmental
21 concerns. If you don't need the capacity, if you don't need
22 it and you just shut it down, you're not going to have all
23 those other issues going on. You will have, obviously,
24 others if you're talking about replacing it, and then you go
25 to the alternatives analysis. That's Option 4.

1 MR. SCHWARTZ: Don?

2 MR. CLEARY: Yes. Would you modify your
3 statement, recognizing what Bill Sherman was talking about
4 earlier that these considerations really have to be looked
5 at in the alternatives analysis and recognizing that we are
6 doing the alternatives analysis?

7 MS. GREER: In some ways, I view need as an
8 instance of alternative. Essentially, need is, in some
9 ways, the conservation alternative, if you're going to talk
10 about it. Yes. I don't care how we call it, but in terms
11 of meeting energy supply here, it is essentially the
12 conservation alternative.

13 MR. MOULTON: Conservation, if you've noticed, is
14 on here. We are merely saying in this option that the need
15 to replace the power, because it is an existing plant, is a
16 reasonable one. It is merely a reasonable need for somebody
17 to proffer, and, therefore, we go forward. If you notice,
18 on the third bullet, we say that replacement in some form.
19 Conservation would be an alternative that would have to be
20 looked at. Can you conserve that capacity? And if the
21 answer is yes, well, I think that would be a --

22 MS. GREER: If you don't have to even go through
23 any additional conservation steps. It's essentially the
24 stop here now alternative. So you can categorize it as yet
25 another alternative issue, but I think that there's a real

1 problem, a legal problem under NEPA with -- at least if
2 you're planning to do this in the same way you do the
3 operating license at the operating license stage, I think
4 that somebody is likely to challenge you on it.

5 MR. MOULTON: Your logic of stop here now, I
6 think, is a good one, except where I have a problem is the
7 philosophy of if it operates and continuously operates and
8 then all of a sudden at this particular day it has to be
9 shut down because it's license termination time, there are
10 some real people out there who are really demanding that
11 power and really want it, and all this is saying
12 philosophically is you've got to somehow replace it.

13 Now, this logic is not valid if you go over time
14 and over time and the demand slowly comes down.

15 MR. MIZUNO: John, I just think that even though
16 they didn't say it directly, I think what they're saying is
17 that there is a special -- at least two instances where
18 possibly we cannot assume that there is going to be a need
19 for this capacity. I'll just leave it at that.

20 MR. SHERMAN: May I just jump in and add
21 something?

22 MR. SCHWARTZ: Well, Gil had his hand up.

23 MR. SHERMAN: Fine.

24 MR. SCHWARTZ: I wanted to get to his point.

25 MR. BROWN: Hopefully, it's on the same point.

1 We're zeroing in on what we're allowed to zero in on, which
2 is a nuclear plant. I think John was saying that if we just
3 analyze the environmental impacts, which would address, I
4 guess, a lot of the concerns you're saying about what I hear
5 you saying, not the need for power, per se, because,
6 granted, if -- and we have the situation today.

7 If there are ten power plants out there and you
8 only need nine, which one are you going to not run today?
9 How do you make that decision? So the argument isn't over
10 what do you do 40 years plus a day, because it's already
11 here. What do you decide not to use?

12 So the need becomes not the issue. This is
13 actually an attractive option. The decision is based on --
14 again, because it's here and now, we're not deciding to
15 build a new plant, it's a here and now facility and it's
16 safe and it's okay to operate from all the safety
17 parameters, then you say, well, which one don't we need.

18 So I think that's your emphasis, John. That's
19 what you're saying is going to be the core of Option 3.

20 MR. MOULTON: Yes and no. The core is that we
21 would not do a detailed analysis. That's the point I guess
22 I want to make.

23 MR. BROWN: Someone else would.

24 MR. MOULTON: We would not do a detailed analysis.
25 These are business decisions. The states really do those.

1 The focus in NEPA is the environment and I don't really have
2 anything else to say on this.

3 MR. SHERMAN: It seems like there's a little bit
4 of inconsistency in one of your slides and the table that
5 goes along with it, because your slide, I think, said it's
6 independent of the category and your table says that it
7 would be categorized as Category 1.

8 MR. MOULTON: I'm glad you brought that. Category
9 1, from an NRC standpoint, it wouldn't look at it, not from
10 the standpoint that the state would obviously look at it.

11 MR. SHERMAN: But I wanted to make the point that
12 there are a couple situations or scenarios where the power
13 from the nuclear plant that is on to date just might not be
14 needed for license renewal. Yankee Rowe is one where one
15 day it just stopped and that power was taken up.

16 Gene has talked about another situation right now
17 where there's excess power. We have an option in Vermont
18 where on that particular day, it may be better to execute a
19 contract with Hydro Quebec and take power that's available
20 there instead of the power that's coming --

21 MR. BROWN: Could I just respond? Yankee Rowe
22 would still be operating if it were producing power cheaper
23 than the alternative. It wasn't a question that it was
24 Yankee Rowe's excess 175 megawatts. The issue there was
25 pure and simple dollars and cents. So don't pin it on the

1 nuclear plant that --

2 MR. SHERMAN: Well, I know that, but I think the
3 issue -- I guess we're saying the same thing. What we're
4 saying is that it's very hard to discuss need without also
5 discussing alternatives and it isn't obvious to us that it
6 will be needed when the time comes, which means it isn't
7 obvious to us that it should be written off.

8 MR. MOULTON: I agree with Bill. There are going
9 to be instances where on a local level or regional or
10 whatever, the specific plant's need for power might not be
11 there. But this option would just merely recognize that the
12 NRC doesn't really need to get involved in that. It's
13 radical, it really is, but the NRC doesn't need to -- that's
14 where this option would go. The application wouldn't come
15 in for those particular cases where the demand really wasn't
16 there. The application would never come in.

17 MR. BROWN: Can I raise a hypothetical to try to
18 zero in on this debate? Say there's a tremendous amount of
19 over-capacity, tremendous, and it comes time for license
20 renewal and the nuke is producing power at zero cents a
21 kilowatt hour.

22 MR. SCHWARTZ: I'm sorry, Gil, but this is deja
23 vu.

24 MR. BROWN: The point is say it's the cheapest one
25 on the grid. Say it's the cheapest one. But there's oodles

1 of capacity out there. So the need determination would say
2 what? We don't need this capacity. What do you do with
3 that decision?

4 MR. OPPENHEIM: This is Jerrold Oppenheim from the
5 Massachusetts Attorney General's Office. I think we've got
6 two strands raveled together here. I'd like to try to
7 unravel them and maybe that will help or maybe it will make
8 it worse. Need in utility planning is basically an economic
9 idea. It's really got nothing to do with comparing load
10 with --

11 MR. BROWN: That's the point.

12 MR. OPPENHEIM: That's right. So in your
13 instance, you would try to look through whatever your
14 planning horizon is. You wouldn't look at the --
15 operationally, perhaps you'd look at the half-a-cent a
16 kilowatt hour, but in planning whether to keep it on-line,
17 let's say, for 20 years, you would look at the entire stream
18 of to-go costs and compare it with the alternatives.

19 So really divorcing need from economics from
20 alternatives is a little abstract. They're really all
21 necessarily done together. The reason, and this is the
22 second strand, it seems to me that the reason we're trying
23 to separate them is NEPA.

24 MR. BROWN: Exactly.

25 MR. OPPENHEIM: Because NEPA, in some way, is

1 saying, well, folks, like it or not, you've got to do
2 something about need. So I think we just need to confront
3 that head on and say, all right, somehow or other we'll do
4 that, but what we really want to do and what we're really
5 mandated to do anyway under the Energy Policy Act, it seems,
6 is leave that to the states.

7 There is that inconsistency that we have to
8 reconcile and we ought to just do it directly.

9 MR. SCHWARTZ: I guess the other part is we're
10 trying to decide collegially who we are in the formula that
11 you just set up.

12 MR. OPPENHEIM: Yes.

13 MR. SCHWARTZ: I think you can tutor our
14 discussions. Thank you.

15 MR. NOGEE: Very quickly. The problem with trying
16 to separate them this way is that it might very well be the
17 case that on that particular day when relicensing -- that
18 question is up, the do nothing alternative is cheaper even
19 than the conservation alternative, because you have so much
20 excess capacity at that point.

21 If you're going to do rational planning, that has
22 to be on the table to consider. There are, in fact, a lot
23 of speculation that we might be facing declining load
24 forecasts for a while. There's a lot of talk about retail
25 wheeling and utilities losing load to individual self-

1 generators.

2 You can't just rule out that possibility
3 generically and fail to deal with it.

4 MR. SCHWARTZ: That's a very good point. I'd like
5 to poll the panel on your options. We're about ready to get
6 into a discussion of Option 4 and then the other two
7 options. Is it your druthers to maybe just take a little
8 15-minute break right now and then move ahead or do you want
9 to just keep going?

10 MS. GREER: Actually, why don't we cover Option 4.

11 MR. SCHWARTZ: That's good, because it's a logical
12 follow-up. Let's move on to Option 4.

13 [Slide.]

14 MR. CLEARY: Option 4 is an even greater departure
15 from what we've done in the past, although it is not a
16 complete departure. Under Option 4, we assume that we have,
17 at a minimum, a disclosure responsibility under NEPA. So
18 there would be need and alternatives analysis and that
19 analysis could be done by NRC, the applicant, the states.

20 However, and this is the significance of Option 4,
21 we would not bring that information into the license renewal
22 decision. We feel that this might be justified because the
23 states have the responsibility for making the ultimate
24 economic decision.

25 Let's go to the next slide, Lance.

1 [Slide.]

2 MR. CLEARY: The states have the responsibility
3 for making the economic decision and we see that this option
4 provides the maximum flexibility. A license renewal
5 decision can be made. We have disclosed need and
6 alternatives situation and that's in the public record and
7 we're creating maximum flexibility for the second stage of
8 license renewal, which is the economic determination on the
9 part of the utility and the state.

10 Because we would be doing the analysis, this
11 option, as written, would not be dependent on the category.
12 We could still -- Option 1, we could still bring that
13 forward into the individual or, Option 3, do the analysis at
14 the time of license renewal.

15 MR. SCHWARTZ: The questions posed by the staff on
16 Page 5 are do the states have legal concerns or see other
17 problems if the NRC treats the issues of need for power and
18 alternative energy sources for disclosure purposes only and
19 excludes them from its decision whether to renew an
20 operating license as discussed in Option 4. Again, to what
21 extent does Option 4 resolve the concerns of the states?

22 MS. GREER: I have a question. Just a point of
23 clarification. I take it the disclosure statement to meet
24 NEPA requirements will essentially be the same logic as in
25 Option 3.

1 MR. CLEARY: No. It could be. You can mix and
2 match. But the way this is written, it would be close to, I
3 guess the way we've done it in the proposed rule. You could
4 mix and match this. You could use the Option 1 approach or
5 the Option 1 plus the Option 3 treatment of need.

6 MR. SCHWARTZ: Or Option 2.

7 MR. CLEARY: Or Option 2, yes. There is still the
8 analytical burden and we have to come to grips with what the
9 scope of the analysis has to be and the depth. It would
10 still be litigable, but we would defer the decision on the
11 economic viability and whether an alternative were better
12 than the particular nuclear power plant of the state. That
13 would not be part of our decision.

14 You yourself can say this combined with some other
15 option or this with some feature would look attractive or
16 not.

17 MS. GREER: I guess the query is, of course,
18 whether that actually meets the obligations under NEPA.

19 MR. CLEARY: That's a major question.

20 MR. SHERMAN: From our point of view, though, we
21 haven't also here done a complete legal evaluation. We ask
22 what can you do under this and from the NEPA, you can -- you
23 would be able to look at the adverse environmental effects
24 which cannot be avoided, the environmental impact of the
25 proposed action, and several other items from the NEPA.

1 But when you get to the alternatives of the
2 proposed action and whether there was an environmentally
3 preferable alternative, we don't see how you could fulfill
4 your NEPA charge by not looking at the alternatives.

5 MR. CLEARY: We would look at the alternatives.
6 The need and the alternatives analysis would be there. The
7 analysis is going to look like something or other. It could
8 look bad. There could be an obviously environmentally
9 preferable alternative that shows up. Under this option,
10 though, we'd just say there it is, do with it as you see
11 fit, we're not going to include it in our decision because.

12 Then the rationale is because that's the state
13 regulatory area and what we're doing is -- well, I don't
14 want to make any statements that have legal connotations.
15 But we're disclosing. We're looking at making safety
16 judgments. We're doing environmental analysis. We're
17 looking at the impacts. We're still into mitigation of
18 adverse environmental impacts for the proposed projects and
19 we're disclosing the alternatives.

20 On the basis of safety and environmental impacts,
21 are there any showstoppers for the proposed projects, we're
22 making a decision which allows the utilities and the states
23 maximum flexibility.

24 MR. SHERMAN: So if I understand that correctly,
25 what that means is that it would be possible to have an

1 environmentally preferable alternative maybe disclosed, but
2 the decision to go ahead and renew the license might be made
3 presuming that the safety, the 10 CFR 54 process was
4 completed, without regard to that environmentally preferable
5 alternative.

6 MR. CLEARY: That is the essence of the option.

7 MR. SHERMAN: I don't think that meets what
8 Vermont was looking for in its comments.

9 MS. GREER: Then you would be essentially looking
10 to the states in the rate-setting process to take the burden
11 to say, well, in this rate-setting process, we view, either
12 in the IRP process or whatever, we view the continued
13 operation of this plant as being less preferable than the
14 alternative.

15 I guess the two possibilities that you have to
16 confront in that kind of scenario are what happens in that
17 proceeding when the utility -- let's say you found in your
18 disclosure analysis that relicensure is the best. I think
19 it's predictable that the utility will come in and say to
20 the utility commission, look, the state advocate is wrong
21 because the NRC has found this, although they didn't factor
22 it into their consideration for relicensing, they found it,
23 or, in a contrary context, you found that this alternative -
24 - I think it becomes -- in terms of the rate-setting
25 proceeding, I would think that as an evidentiary matter it

1 would be certainly likely to be introduced.

2 Now, I read in Option 4 that you're going to say
3 we're not going to in any way preclude the state, but I
4 think as an evidentiary matter it would be a hard issue for
5 the utility commission to deal with or to ignore. For
6 people that are more familiar with the rate-setting process,
7 I'd like to hear their views.

8 MR. CLEARY: Does it make a difference whether
9 under this option we would or wouldn't go on to any economic
10 considerations, if we just looked at the environmental
11 impacts of alternatives and did not look at the economics?

12 MS. GREER: To the extent that the IRP process
13 addresses the environmental issues, I would think that still
14 would be an evidentiary point put forward by one side or
15 another.

16 MR. CLEARY: Yes.

17 MR. MIZUNO: I don't understand that.

18 MR. SCHWARTZ: I don't either.

19 MR. CLEARY: Under NEPA, and I'll make a
20 statement, maybe clarified by our lawyer, that we can't get
21 away from looking at alternatives and as long as we define
22 alternatives the way we do, we have to, at a minimum, look
23 at the environmental impacts.

24 Under the IRP, the way I see it, personally, is
25 that there is the potential for being in conflict in terms

1 of environmental analysis. So this doesn't solve that
2 problem.

3 MR. SCHWARTZ: Yes, sir.

4 MR. OPPENHEIM: Jerrold Oppenheim from the Mass.
5 AG. I think given the sort of conflict that we've
6 identified that NEPA has created, a certain amount of this
7 conflict is built into the statutes that Congress has handed
8 us all. My answer, as an advocate, to the question that
9 Leslie posits us is that most, not all, but most state
10 commissions are sufficiently protective of their own
11 jurisdiction and authority that they would recognize and you
12 can be sure that the advocates would be quick to point out
13 to them, in any event, that whatever the NRC had to say on
14 the need question, for example, was not binding upon them
15 and that they were free.

16 MR. MIZUNO: That's not even Option 4, at least in
17 one variant. You wouldn't even see an NRC conclusion with
18 respect to need for power or alternative energy sources.
19 That's why I'm really trying to understand what it is about
20 the Option 4 that would lead to an adverse evidentiary
21 burden, if you want to call it that, under Option 4.

22 MR. OPPENHEIM: As I understood the problem that
23 Leslie is pointing out, and it does seem to me to be a real
24 one, although I think it's manageable, is that if an NRC
25 disclosure or whatever it would be occurred prior to a state

1 determination through an IRP proceeding, let's say, of need,
2 that NRC disclosure would probably be waived at the state
3 commission by the utility.

4 MR. MIZUNO: First of all, it would have to be a
5 very shallow waiving around because as soon as you start to
6 read the NRC document, it would indicate clearly -- let's
7 put it another way. To the extent that the states felt that
8 an explicit disclosure of the sort that New York was talking
9 about was in there, this would be an even greater expansion
10 of that in saying not only are we not intending to have any
11 jurisdiction, we are hereby saying we are deferring to the
12 states as a legal matter, no question about it, and so
13 that's why I have a problem.

14 Given that, how can there be any evidentiary
15 burden that is any different under Option 4 or can be any
16 greater than under at least any of these options as included
17 with the explicit errancy disclaimer?

18 MR. OPPENHEIM: But my point is essentially in
19 agreement with what you just said.

20 MR. GLEASON: Shelly, I want to bring up another
21 angle on this. I have the luxury of not being a lawyer. We
22 actually consulted with five different agency lawyers in
23 preparing the comments on this and, to a person, they don't
24 think you can get away with it under NEPA. That's their
25 conclusion. I'll just share that with the panel, if I can,

1 and we'll have a different rule.

2 MR. BROWN: You got five lawyers to agree?

3 MR. GLEASON: Yes, I did. I thought that was
4 pretty good. I can't get three economists to agree, but I
5 can get five lawyers.

6 MR. SCHWARTZ: You've done very well.

7 MR. GLEASON: Thanks.

8 MR. SCHWARTZ: Yes, ma'am.

9 MS. LARSON: Annette Larson, New England Coalition
10 on Nuclear Pollution. I just wanted to put a couple of
11 other things on the table, again, from our favorite GAO
12 reports, the first underway to develop solar and wind
13 energy, 93-118.

14 Again, talking about externalities and how
15 electricity is valued and how the costs are calculated,
16 according to the DOE, while there is wide disagreement about
17 how these environmental costs or externalities should be
18 valued, they determined that the current system is
19 inadequate and that not all externalities are being
20 calculated into the costs.

21 So what people are paying for electricity isn't
22 necessarily what it costs. It doesn't all go back to the
23 amount of energy that it takes to mine the uranium, to
24 process the uranium, to do all of the decommissioning
25 activities. There are a lot of costs associated with

1 nuclear power that aren't exactly seeing their way into the
2 ratepayers' monthly bills.

3 Likewise, I have a copy of Counterfeit and
4 Substandard Products are a Government-wide Concern. It's
5 numbered GAO Report 91-6. That, too, is going to be a
6 concern as we get into older aging plants, as it reflects on
7 the costs and adding to repair. Utilities have installed
8 non-conforming parts in or are suspected of having received
9 them for at least 72 out of the 100 licensed domestic
10 nuclear power plants. This was in 1980.

11 The total may be higher because utilities did not
12 always delineate the number of plants effected at multi-
13 site units. Utilities reported finding non-conforming
14 fasteners, such as nuts, bolts and screws, in 58 percent of
15 the plants. Some were installed in systems needed to shut
16 down the reactor or mitigate an accident.

17 So that illustrates that there are a lot more
18 things that are going to and do effect the costs of
19 electricity than just the things that we're talking about
20 and more.

21 MR. SCHWARTZ. Thank you very much. I think some
22 of those nuclear externalities are the things that Bill was
23 talking about, as well.

24 MR. GLEASON: Shelly, as an economist, I can't
25 help but point out that most of our externality studies show

1 that nuclear comes out pretty good. We take a look at the
2 externalities of all alternative energy sources and it would
3 be less than ingenious if I didn't point out that it comes
4 out pretty good, particularly because within New York State,
5 the way we value it, we tend to value the air quality
6 benefits at a greater rate than some of the solid waste
7 issues.

8 MR. SCHWARTZ: Thank you. Gene, while you have
9 the microphone, do you want to start moving us into Option
10 5?

11 MR. GLEASON: I don't care.

12 MR. SCHWARTZ: I'm ready.

13 MR. GLEASON: All right. Basically, what Option 5
14 is is a modification of -- what was it? Option 2, it looks
15 like.

16 MR. SCHWARTZ: It does.

17 MR. GLEASON: It does look a little bit like
18 Option 2. What we would be comfortable with is, first of
19 all, to reiterate what I said this morning, that the text of
20 the actual rule be modified to include statements that the
21 NRC's findings with respect to need for generating capacity
22 and alternative energy sources are only intended to assist
23 the NRC in meeting its NEPA obligations and do not preclude
24 the states from making their own determinations with respect
25 to these issues.

1 On this point, we would expect the text of the
2 actual rule to be modified in this way and that each
3 individual relicensing decision would include such a
4 statement.

5 Secondly, we get to the Category 3 and Category 1
6 issue. We believe that determinations regarding the issues
7 of need for generating capacity and alternative energy
8 sources should be designated as Category 3, conclusions
9 requiring site-specific review, rather than Category 1,
10 generic conclusions.

11 Third, we would suggest that all NRC project-
12 specific EIS and relicensing decisions should make reference
13 to state determinations on the issues of need for generating
14 capacity and alternative energy sources and should defer to
15 and be guided by those state determinations, to the maximum
16 degree possible, pursuant to NEPA.

17 In other words, I think Don said it better when he
18 had the slide up there that said, well, we'll just adopt the
19 state determinations. That's fine with us.

20 Those are the three primary features of the
21 comments that I have and some of the things we've alluded to
22 earlier provide the rationale for that, and I'd be glad to
23 go over that again. I don't think it's necessary for the
24 record. We just put it on the table. We think it's a way
25 that we can be satisfied in terms of keeping our

1 jurisdiction and that primarily our various attorneys think
2 that the NRC would also be able to meet the requirements of
3 NEPA.

4 MR. SCHWARTZ: Thank you, Gene. Will you take
5 some questions to clarify it?

6 MR. GLEASON: Sure. I'd be glad to.

7 MR. SCHWARTZ: Gil?

8 MR. BROWN: One and three almost sounded related,
9 a couple. You've got three points, right?

10 MR. GLEASON: Yes. Number one -- I'm sorry, Gil.

11 MR. BROWN: Yes. Can you just go over them again?

12 MR. GLEASON: First of all, the text of the rule,
13 that is the actual rule when it's published, would be
14 modified to include a statement that the NRC's findings with
15 respect to need and alternatives are only intended to assist
16 the NRC in meeting its NEPA obligations, the first part of
17 it. The second part of it is that they do not preclude the
18 states from making their own determinations with respect to
19 need and alternatives. That is that the rule itself when it
20 comes out would actually say that.

21 Then that every subsequent licensing decision
22 would take this boilerplate from the rule and put this
23 boilerplate statement in that. That's the first point.

24 The second point --

25 MR. BROWN: If you could, skip to the third point.

1 MR. GLEASON: There we say that -- essentially,
2 what we're saying in the third point is that the NRC should
3 adopt the most recent state findings with respect to need
4 and alternatives, just like is proposed in, what is it,
5 Option 2.

6 MR. BROWN: So one and three are kind of --

7 MR. GLEASON: No, no.

8 MR. BROWN: A little bit.

9 MR. GLEASON: No. The first one is put in there
10 basically to make it absolutely clear to everyone in the
11 whole wild world where the jurisdiction is. The third one
12 is put in there to show the results of the exercise of the
13 state responsibility on economics. It's to adopt an
14 analysis.

15 MR. SCHWARTZ: Geary?

16 MR. MIZUNO: I think I know the answer to that.
17 But if we were to adopt the first portion of the proposal,
18 the state's proposal, which says we include both in the rule
19 language itself, as well as in any individual EIS, site-
20 specific EIS, this disclaimer and clear division between the
21 Federal authority and the state authority and whatever the
22 Federal Government did with respect to need and alternatives
23 is not binding at all on the states.

24 What would be the usefulness of making these two
25 items, need and alternatives, Category 3s and adopting, to

1 the extent possible, the state determination? There has to
2 be something other than the legalities.

3 MR. GLEASON: We think totally it's the
4 legalities. We think that you're under an obligation on
5 NEPA to do this and that the only way you can do that is by
6 making those issues Category 3 issues and by then deferring
7 -- then the way to do the analysis is to adopt the state
8 analysis on those Category 3 issues.

9 MR. SHERMAN: And if I might come in and add,
10 there might be an argument as to whether you should do NEPA,
11 but you should go somewhere else, not to us, to ask that
12 question. But since NEPA's is, we think you should do it.

13 MR. MIZUNO: No. That's not the question. Let me
14 follow-up again.

15 MR. SCHWARTZ: Please do.

16 MR. MIZUNO: This is just to refine it. Are you
17 indicating, then, that you disagree generally with the
18 generic approach to dealing with these things or is it
19 instead, regardless of whether there was a GEIS there, if
20 the NRC simply went on a case-by-case basis in an individual
21 renewal proceeding, it would confront NEPA power and
22 alternatives. Are you indicating that it's our view that
23 NEPA basically requires or otherwise has a strong
24 presumption in favor of the NRC adopting the state's
25 findings? Because I think they are two different --

1 MR. GLEASON: They're two different issues. First
2 of all, we think it's a legal issue that the NRC, as a legal
3 issue, has to look at need and alternatives and they can't
4 look at them generically. They've got to look at them in a
5 real time context and a Category 3 context.

6 The second issue goes to the method that the NRC
7 would use to make that determination. What we're proposing
8 is that since it's the state responsibility to do the need
9 and alternatives analysis, that the NRC would simply adapt
10 the most recent state determination on need and alternatives
11 for the purposes of implementing that legal responsibility.

12 MR. MIZUNO: Thank you.

13 MR. SCHWARTZ: That makes it clearer. Thank you.
14 Leslie, do you have some questions?

15 MS. GREER: Yes, just in terms of the latter
16 point. Let's say that a nuclear plant comes in for a
17 relicensing, makes its application to the NRC, triggering
18 NRC's obligation to do a Category 3 EIS at least on these
19 issues.

20 How do you see, and maybe you don't have an answer
21 to this now, how do you then see the state doing the
22 analysis? Do you see the state doing the analysis in terms
23 of an individual agency within the state or do you see the
24 NRC simply picking up the most recent information generated
25 by the state or do you see the state then initiating, let's

1 say in the context of a rate proceeding, an analysis?

2 MR. GLEASON: That's a fair question. We have the
3 luxury of having an energy planning process that is updated
4 every two years with all new information. The way we see it
5 right now is that if we felt that that process -- that the
6 results of that process were sufficient for this NRC
7 purpose, then we wouldn't have a problem with the NRC just
8 using our analysis, which would have gone through a
9 regulatory proceeding, and basing its determination on that.

10 If we see a need to modify that, we would do it.
11 If you're a state that doesn't have this kind of a process
12 and the luxury that we have on it, then I guess either one
13 of the options that you specify or probably others, there's
14 probably 20 ways of doing this at least, would be
15 satisfactory.

16 But, again, it all hinges on -- it's an attempt to
17 do two things. Number one, it's an attempt to recognize
18 what our belief is that the NRC has this NEPA requirement
19 and then a way around the backs of them having this
20 requirement while the states have the responsibility for
21 need and alternatives.

22 MR. SCHWARTZ: Help me, please. Maybe it's late.
23 How does the proposal that you put on the table differ from
24 our current way of doing business with no change in the rule
25 with respect to site-specific all the way?

1 MR. GLEASON: Do you mean how does it expedite the
2 current operating license proceeding?

3 MR. SCHWARTZ: Right. More efficiency is what we
4 are trying to do.

5 MR. GLEASON: I think you don't have to get into a
6 whole analysis of need and alternatives because it's already
7 been done for you. All you've got to do is review it and
8 say what you think. You just defer to the states on that,
9 period. So you skip doing all of that.

10 I know that in some of the operating licensing
11 proceedings that I've been in, we've spent years talking
12 about needs and differences. I recall a particular plant on
13 Long Island that we did a lot of that on.

14 MR. MIZUNO: I have a question, again, for Mr.
15 Gleason. From a mechanical standpoint, we adopt, after some
16 consideration or some such which we will leave open here,
17 the state analysis of need and alternatives and it is
18 incorporated into the draft EIS, site-specific EIS.

19 That is then published for public comment and
20 receive a -- well, we receive public comments that take
21 issue with the state analysis. How would you see the
22 process of the NRC reconciling or responding to those
23 comments?

24 MR. GLEASON: From my perspective, I think it
25 would be our responsibility to help the NRC respond to those

1 comments. Since they have adopted analyses that we have
2 performed, we'd take on that responsibility.

3 MR. SCHWARTZ: It's almost like a joint
4 proceeding.

5 MR. GLEASON: Yes, sure.

6 MR. SCHWARTZ: Help me if I'm wrong, Geary. It's
7 almost like a joint proceeding, isn't it, or co-authoring,
8 if you want to use that word. I'm just trying to clarify.

9 MR. MIZUNO: I think there are different ways of
10 handling it. I just wanted to make sure that the states
11 understood that they were still --

12 MR. SCHWARTZ: There's an obligation.

13 MR. MIZUNO: There's an obligation that we need to
14 deal with adverse comments, if there are any.

15 MR. GLEASON: We're in a unique situation. We go
16 through an adjudicatory type proceeding to adapt state
17 energy plans. We're used to battling this kind of thing out
18 and discussing it.

19 MR. MIZUNO: Because I've heard some other states
20 suggest that -- I won't say other states. I have heard
21 other individuals suggest that because the states' process,
22 internal process, resulted in public hearings or otherwise,
23 that they felt that there wouldn't be any need or any
24 opportunity for someone to challenge the state finding in
25 the Federal proceeding.

1 MR. SCHWARTZ: Because it's already had
2 administrative --

3 MR. MIZUNO: That's right. That would substitute
4 for the need for obligation for public comment and response.
5 That's the reason I wanted to see how the states would
6 respond to that.

7 MR. WACASTER: Art Wacaster with Sciencetech. I'd
8 like for you to expand on something a little bit. You
9 alluded to it, but then you didn't quite go far enough, I
10 don't think. You mentioned the fact that New York does do a
11 comprehensive two-year energy plan. Most states today, even
12 those that have IRP requirements, don't do IRP. They
13 require the utilities to do it and bring it to them.

14 So you have an applicant going to the NRC seeking
15 relicensing and you're asking the NRC to rely on the
16 applicant's information, in effect, because most states do
17 little more than review that information.

18 MR. GLEASON: I would assume that the state review
19 is rigorous enough to pass whatever state test there is for
20 the IRP process. I don't know how to say -- I don't think
21 we're going to take out other states' processes. I don't
22 think everybody should adopt New York's, but I think we can
23 work out that one.

24 MR. SCHWARTZ: Bill and then Lance.

25 MR. SHERMAN: I have a couple responses I wanted

1 to make, but to you first, sir. Our process -- you're
2 exactly right. The utilities prepare the IRP, but that goes
3 through a complete public process, an adjudicated public
4 process in-state to review and approve that.

5 So it's a much more rigorous process than just the
6 utility preparing or even just a casual look. I wanted to
7 comment on something regarding this Option F in the state.
8 There is a section in 40 CFR 1506.2 on the CEQ regulations
9 that talks about working with states, elimination of
10 duplication with state and local procedures.

11 Maybe you've discussed that in previous meetings,
12 but that looks to us like it's helpful for efficiencies.

13 MR. SCHWARTZ: Geary?

14 MR. MIZUNO: It was discussed and the NRC is aware
15 of it.

16 MR. SCHWARTZ: Lance?

17 MR. McCOLD: I'm Lance McCold, Oak Ridge National
18 Lab. I wanted to ask about your Option 5. You talked about
19 NRC deferring and adopting the need and alternatives
20 analyses. The alternatives consist of, in the GEIS, two
21 things. There are determinations about viability of
22 alternatives and determinations about the type and nature of
23 environmental impacts.

24 Do you intend that NRC would adopt and defer to
25 your determinations about the viability of these

1 alternatives or about the nature and characteristics of the
2 environmental impacts of the alternatives?

3 MR. GLEASON: We would like them to do the whole
4 thing, since we do the same thing. We look at the
5 environmental implications of every technology and action
6 that we look at. So if we're looking at an option of Hydro
7 Quebec electricity, we study it soup to nuts from the
8 economic perspective, as well as the environmental
9 perspective, and then we prepare an environmental impact
10 statement on our entire energy plan, which then goes out for
11 another round of public comment and comes back in and we
12 respond to the thousands of comments we get on that.

13 So as far as from the narrow selfish perspective
14 of New York, you can take whatever you like.

15 MR. SCHWARTZ: Brian?

16 MR. ABBANAT: Brian Abbanat from the Mass. DPU. I
17 just wanted to make two comments. The first is to reiterate
18 my earlier statement that where you're talking nuclear units
19 within the New England states that may be serving several
20 states, it may be tough to bring together the need findings.

21 The second is to, just for the record, indicate
22 that within Massachusetts, we do not typically make findings
23 on the need for specific facilities, nuclear or otherwise.
24 Within Massachusetts' integrated resource planning process,
25 there is a focus on the need for new capacity and there is

1 the possibility that given specific extraordinary
2 circumstances, the commission would focus on the need and,
3 in particular, the economics of an existing facility. Once
4 again, I'd agree with Mr. Oppenheim's comment that it's very
5 difficult to separate need from economics.

6 But the point I did want to make is that within
7 Massachusetts, under the current framework, you wouldn't
8 expect to see a finding that would focus on the need for any
9 existing facility in particular.

10 MR. SCHWARTZ: Thank you very much, Brian.
11 Leslie?

12 MS. GREER: I think that that raises a very good
13 point, which is that if Option 5, which is in some ways a
14 more refined version of two, was to be adopted, there would
15 probably have to be a default position where, to the extent
16 that a state did not either wish to do the analysis or had
17 no mechanism to do it, the NRC would have to probably be in
18 a position to do the analysis itself.

19 On the other hand, I think it's foreseeable that
20 over the next 40 years as states get more sophisticated in
21 their energy planning processes, to the extent that a state
22 doesn't have an agency or mechanism now to do that kind of
23 analysis, if they're given the option, they want to have a
24 say in an area where they have traditionally been able to
25 have -- to make decisions about needs and power mixes that

1 they're putting into the rate base, they may then have the
2 option of adopting mechanisms to decide the issues and put
3 to the NRC.

4 MR. SCHWARTZ: Thank you. John had a statement.

5 MR. MOULTON: If he's going to follow up on that
6 point, I'm going to make a -- I have a different point and a
7 different question.

8 MR. SCHWARTZ: Alan, do you want to follow up on
9 that same issue?

10 MR. NOGEE: Alan Noguee, Mass. PIRG. I want to say
11 that we strongly support New York's Option 5 through the
12 first three-quarters of it, at any rate. There are two
13 sections to point three. So we strongly support the
14 statements on preemption and that it be Category 3 and that
15 it make reference to the state's findings on need.

16 But in addition to the possibility that states
17 might, in fact, reach different conclusions on need, I also
18 think that Congress did set up a system of dual regulation
19 where both the states and the Federal Government have the
20 responsibility of ensuring that projects are needed and that
21 there are not preferable alternatives before they proceed.

22 And where there are many states in which I've
23 worked that we would be perfectly happy to deferring to the
24 state process for reviewing need, that's not true for every
25 state, either for lack of resources or for other reasons.

1 I don't believe that citizen groups would
2 necessarily agree with turning over a blank check to every
3 state process to be the final arbiter of need, irrespective
4 of the NEPA requirement that the Federal agency also certify
5 that there is need before the project goes forward.

6 So I do want to indicate that we would have that
7 generic reservation.

8 MR. SCHWARTZ: I'm looking around. Does anybody
9 want to deal with the dual regulatory authority that
10 Congress established?

11 MR. MIZUNO: I will say that I'm not sure about
12 the blank check.

13 MR. SCHWARTZ: I'm not either.

14 MS. GREER: I think what is key there is the term
15 "deferral."

16 MR. MIZUNO: I don't think there's going to be
17 deferrals under Option 2 or at least under Option 5, as I
18 understand it, the NRC would still retain ultimate legal
19 authority for that. I presume that we would establish
20 substantive guidelines of some sort that would determine
21 whether the states' analysis was acceptable or whether the
22 procedures that would lead to any analysis that may be
23 certified to us would be an acceptable process and uses an
24 acceptable methodology.

25 So there would not be a "blank check" where we

1 would accept anything that comes from the state. To further
2 expand on that, I would expect that the establishment of
3 those guidelines would be subject to public participation in
4 terms of being published for draft comment and the states
5 and the interested public would have an opportunity to
6 comment on those guidelines.

7 MR. SCHWARTZ: Thank you. John?

8 MR. MOULTON: This is a point of curiosity on
9 Option 5, on the implementation of that option. Perhaps
10 it's not really an NRC concern, but still, out of curiosity,
11 I would like it addressed. That is given that licensees
12 have told us on the timing issue and planning horizon that
13 they would need ten, 15, maybe 20 years timing advance on
14 their application submittal and given that under Option 5
15 you would like us to adopt your determinations on need and
16 alternatives, let's say we were to get an application 20
17 years ahead of time from the licensee, I guess I would
18 envision under this option we would turn to the states and
19 say we're waiting for your need and alternatives analysis.

20 Given your lack of confidence in planning out or
21 forecasting so far in advance, would it be likely that the
22 NRC would get a response like, well, wait another 18 years
23 because we only have a two-year planning horizon?

24 MR. GLEASON: John, I'll tell you what our
25 response would be. Our response would be here you go,

1 here's what it is today, use it as a basis, but tell the
2 utility that 18 years from now when they want to put it in
3 their rate base, we're going to re-look at it.

4 MR. MOULTON: Thank you.

5 MR. SCHWARTZ: Good points.

6 MS. GREER: I think in your guidelines one of the
7 things you would probably want to put in is some kind of
8 timeline or analysis to be presented. It would have to be
9 reasonable in terms of the timeline for relicensure. But it
10 seems to me that you may also want to have a flexible
11 timeline. If somebody comes to you five years before the
12 license is up and seeks a relicensure, you're going to have
13 a smaller window to work within.

14 So you may want to say, states, you have to go
15 through analysis in six months or however long it would
16 normally take you to do your EIS process.

17 On the other hand, if they're going to come to you
18 20 years beforehand and say, states, we want your analysis,
19 and your analysis is not on the fast track because there's
20 no time pressure on it, then there may be more flexibility
21 than six months, but that can be addressed.

22 MR. MIZUNO: I understand that point, but I think
23 that it would be inaccurate to say that the NRC's current
24 policy would be to treat a renewal application that came in
25 20 years beforehand as having a lower priority in and of

1 itself. If there obviously were licenses that -- if we had
2 a multitude of licenses, some of which were issued five
3 years beforehand and 20 years beforehand, perhaps there
4 might be a priority given to them.

5 But arguments can be made either way. You could
6 say that the people who came in late should not be given
7 higher priority because they waited for so long. So I just
8 want to say --

9 MS. GREER: Not to open the debate on how it is,
10 but in terms of whatever kind of guidelines you make up, you
11 can address the issue.

12 MR. MIZUNO: I'm sure we will.

13 MR. SCHWARTZ: I'd like to take the pleasure of
14 the Chair and move on without a break and we'll just
15 continue on, if that's okay. Option 6, Ray Ng with NUMARC.

16 MR. NG: Thank you. Before I restate and
17 elaborate further on the industry's proposed option, I would
18 like to offer some remarks from an industry perspective on
19 license renewal and meeting the future electricity
20 generation needs of this country.

21 It should be clearly understood that those
22 utilities seeking to renew their nuclear plant licenses will
23 do so as part of a larger decision-making process related to
24 meeting the energy needs of their customers and ensuring
25 reliable and efficient delivery of electricity.

1 In order to meet future electricity demands,
2 utilities will and must explore a range of options. These
3 include a variety of conservation measures, buying power
4 from others, extending the lives of currently operating
5 plants of all types, and building new capacity.

6 Obviously, for each option, consideration must be
7 given to whether it is safe, environmentally sound, and
8 reliable. Equally important for each option, the utilities
9 must consider the effective use of capital and whether a
10 particular option is justified in light of current and
11 projected operating and maintenance costs.

12 With that in mind, the industry has urged and
13 continues to urge NRC to develop regulatory processes for
14 license renewal that are efficient, stable and predictable.
15 Such attributes are critical because license renewal is a
16 prerequisite for plant operations beyond the initial license
17 period of 40 years.

18 Whether to continue to operate a particular plant
19 is a business decision. Even after NRC has determined that
20 there is reasonable assurance that a plant will operate
21 safely for a period up to 20 years beyond the initial
22 license, a utility must then decide whether continued
23 operations are economically advantageous or, in some cases,
24 even feasible.

25 I want to highlight that obtaining a renewed

1 license does not require a utility to continue to operate in
2 the renewal period any more than the initial license
3 requires a plant to operate for the full 40-year term.

4 The industry believes the NRC has made commendable
5 progress toward achieving an efficient, stable and
6 predictable process for considering the potential
7 environmental effects of license renewal through its
8 proposed GEIS. Industry endorses the NRC's generic approach
9 because in our view, most of the environmental impacts
10 associated with license renewal are common to all or almost
11 all operating plants.

12 Also, considering these common impacts only once
13 is a significantly more efficient use of commission,
14 licensee and public resources, while still producing a
15 comprehensive basis to support the NRC's NEPA analysis.

16 An important point in this context is that the
17 license renewal process encourages utilities who may
18 consider license renewal to obtain a decision from the NRC
19 several years before a license is to expire. This advanced
20 timing allows utilities to perform more definitive planning.
21 It provides the states and utilities with a fuller and
22 clearer complement of information with which to make future
23 economic and business determinations. The better the
24 quality of the information, the more likely that sound
25 decisions will be reached.

1 Obviously, this would be a benefit to all parties.
2 In the proposed amendments to Part 51, the NRC has included
3 for generic consideration economic and other non-safety
4 issues, such as need for power and alternative energy
5 sources. The industry does not believe that these generic
6 evaluations either supplant or bind the states on these
7 issues. In fact, it is well settled that regulation of
8 these issues is solely within the state's jurisdiction.

9 As noted in the industry's comments submitted by
10 NUMARC now two years ago, the industry believes that the NRC
11 can fulfill its obligations under NEPA even if it does not
12 consider the need for power and alternative sources of
13 energy.

14 Even though the NRC's consideration of economic
15 issues has no binding effects on a state's ability to
16 exercise its regulatory authority over those issues in the
17 appropriate state forum, we would support an option that
18 deletes consideration of these issues from the NRC's review.
19 This includes the performance of not -- well, it includes
20 not performing analysis for disclosure.

21 It seems to the industry that we have a difference
22 in legal interpretation of NEPA, at least as expressed today
23 by some of the others here. It's our view that NRC can
24 proceed and fulfill its NEPA obligations without addressing
25 the need for power and alternatives.

1 We think that certainly this is a more
2 straightforward approach than Option 2. It certainly
3 provides a very clear delineation between state authority
4 and Federal authority in this matter and puts into place the
5 consideration of economic issues between the utility and the
6 state agency that regulates the economics.

7 I would like to further comment that in the sense
8 of Option 2 or I think what I at least understood today in
9 some of the comments that have been offered that the NRC, I
10 guess, defer the analysis or accept the analysis of the
11 states. I would urge that the states work with their legal
12 counsels and also consider the cases of Calvert Cliffs in
13 that regard.

14 That speaks to the legal ramifications of Option 2
15 and possibly also of the Option 5 as offered by Mr. Gleason.
16 Certainly, I think that the panelist from Massachusetts
17 makes a very good point and also the individual from
18 Massachusetts with the Public Utility Commission. I think
19 that the devil is really in the details of implementing
20 something like Option 5 when you have so many jurisdictions
21 involved. Electricity does not at times seem to know
22 political boundaries and governmental boundaries. It would
23 lead to a situation, I think, of tremendous instability and
24 unpredictability for a utility.

25 I would like to just recap that certainly license

1 renewal is a prerequisite, we think, for the business
2 decision of whether a plant will continue to operate. That
3 also seems to be an ongoing process today and will be an
4 ongoing process beyond year 40.

5 Thank you.

6 MR. SCHWARTZ: Ray, thank you very much for the
7 presentation. Will you take some questions on the option
8 discussion?

9 MR. NG: Yes.

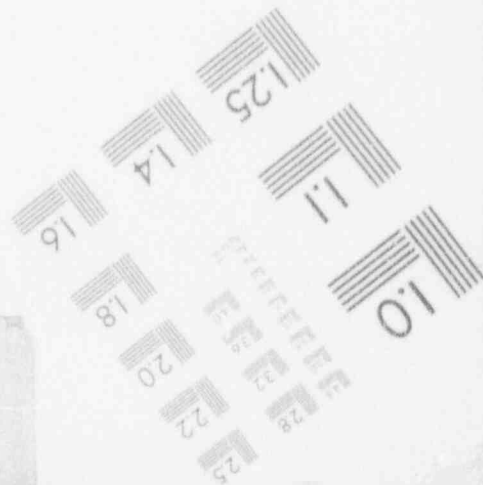
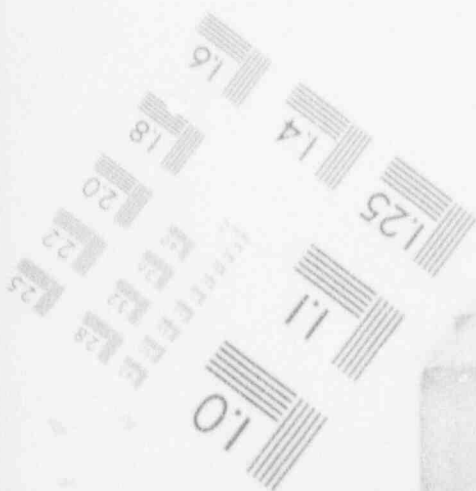
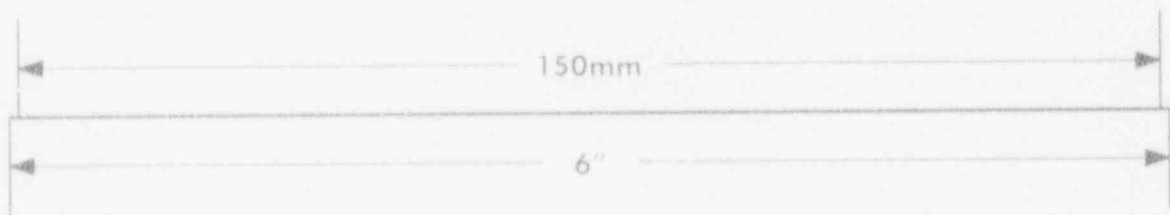
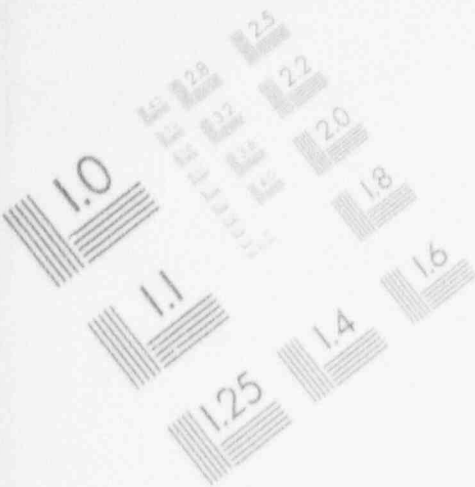
10 MR. SHERMAN: I would like to ask one question, I
11 guess. That is if my interpretation of NEPA is correct,
12 which is asking the question is there an environmentally
13 preferable alternative to the proposed Federal action, how
14 does your suggested option meet that NEPA requirement?

15 MS. GINSBURG: I think I'm up to answer that. The
16 answer lies in the way that the major Federal action is
17 defined. I think by defining the major Federal action in
18 such a way that you narrow the scope in a way that we think
19 is certainly defensible, you are then able to look at the
20 alternative of no action and that you don't necessarily have
21 to look -- there is case law that says that it is possible
22 to look at action versus no action.

23 The case law on these issues is and when you take
24 a look at it you will find that it's all across the board,
25 that there's pretty much case law to support whatever your

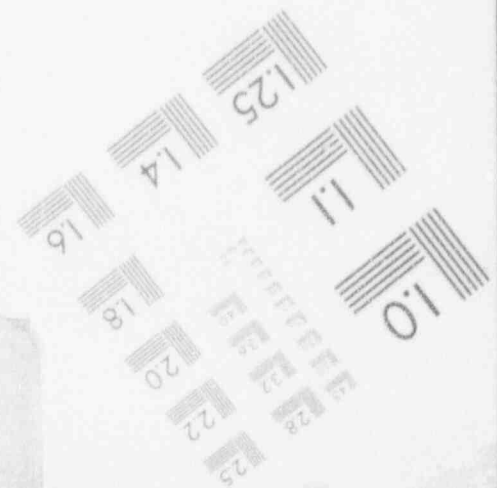
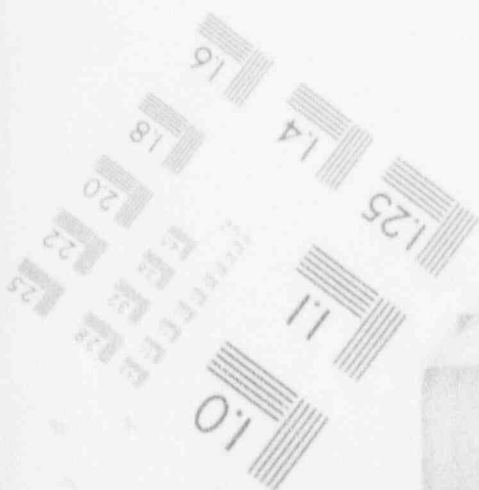
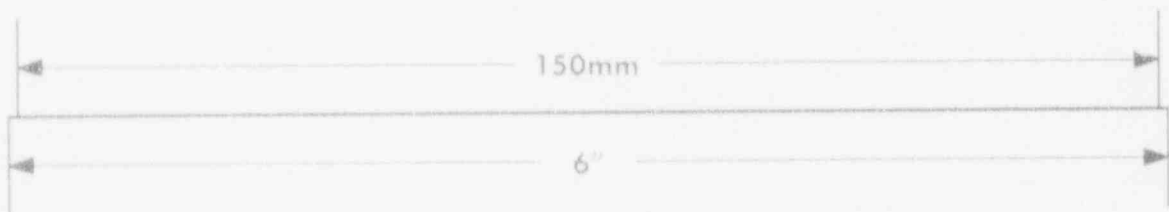
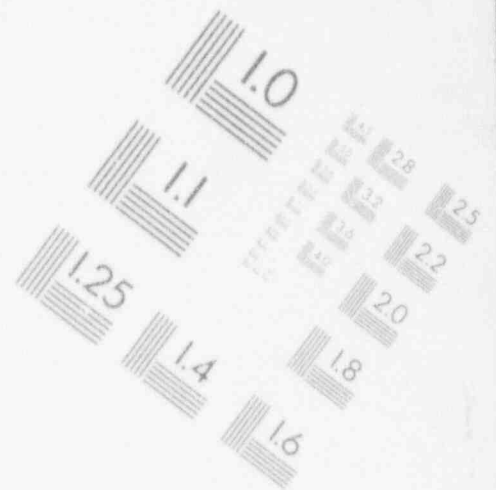
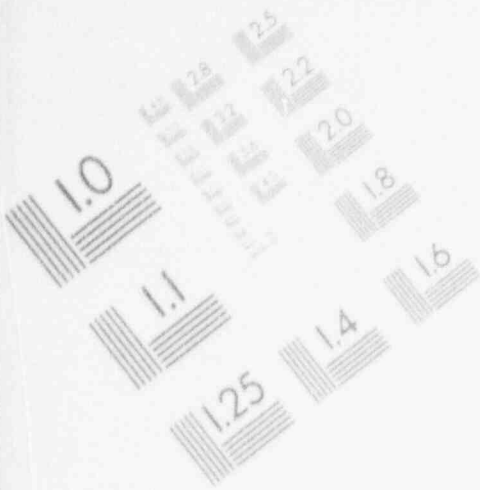
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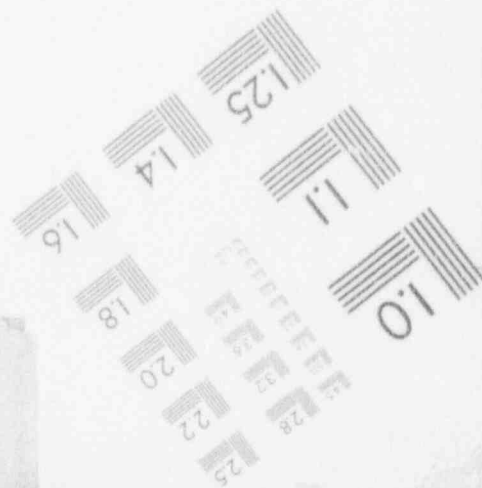
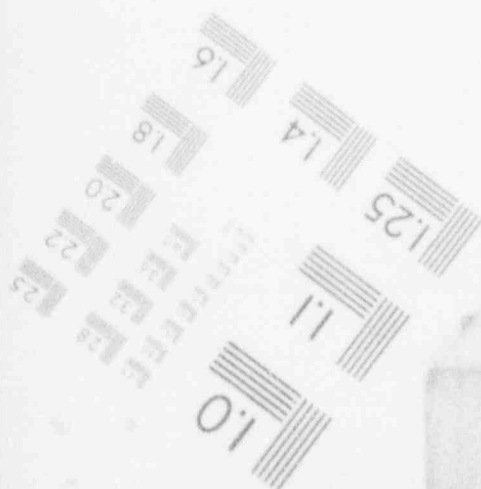
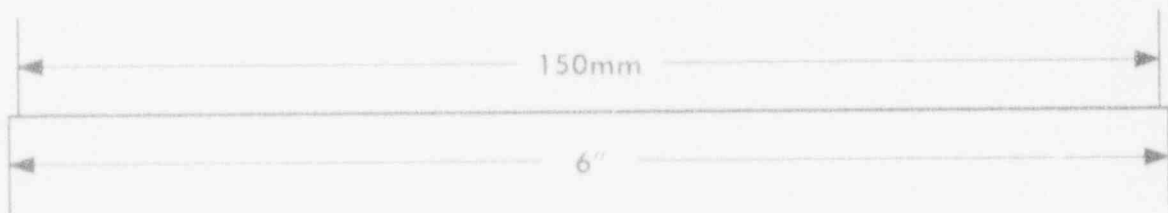
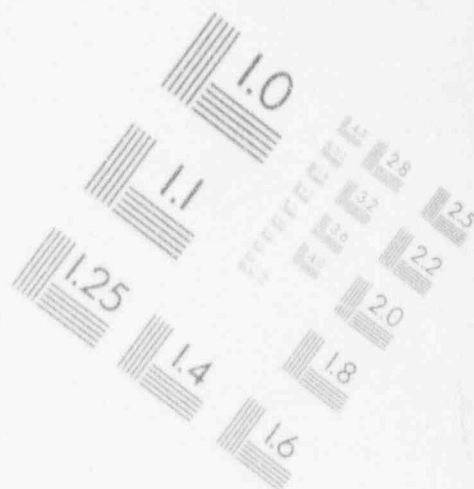
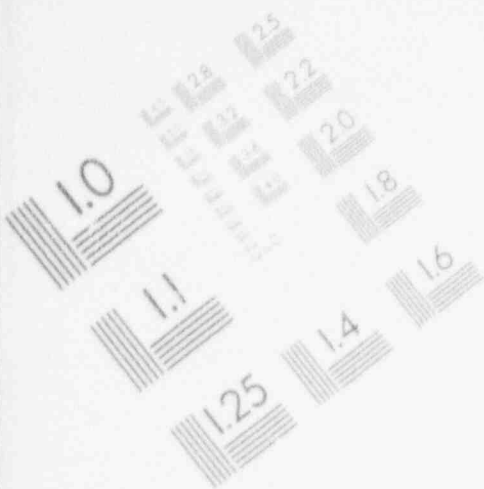
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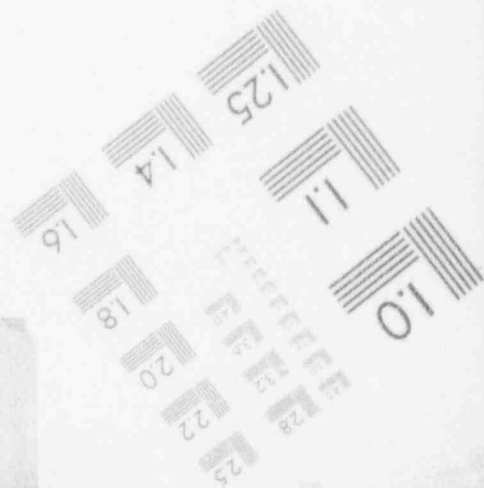
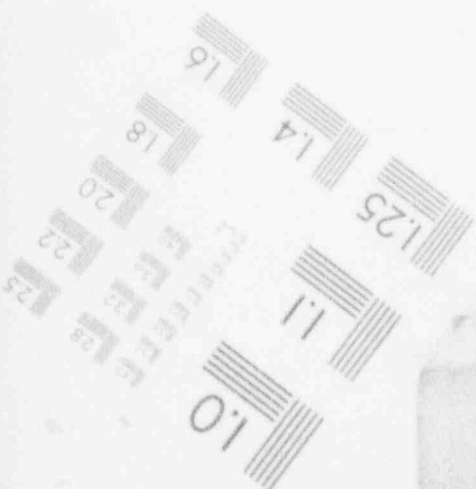
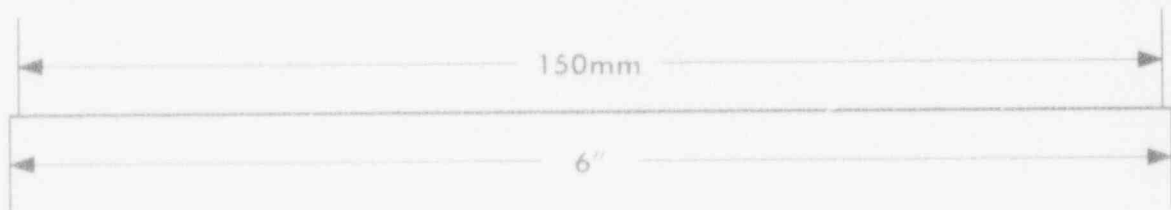
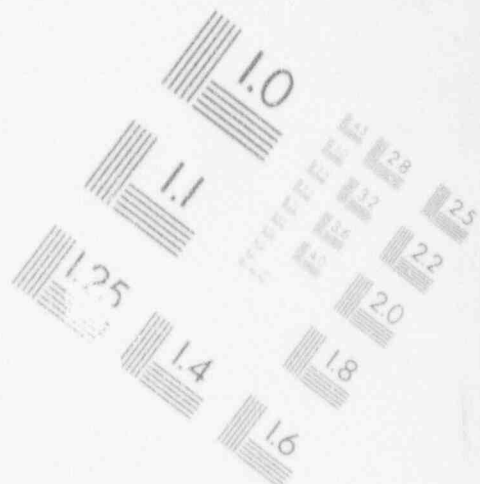
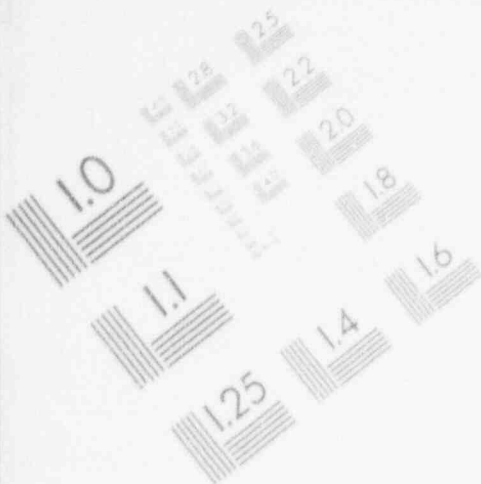
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1 proposition is. But we do think that it is a very
2 defensible position to take.

3 When you look at NEPA, if you look at the
4 foundation of NEPA, you're looking at a statute that
5 encourages Federal agencies to make informed decisions, to
6 take a hard look at the environmental effects of the action,
7 the major Federal action that's being considered.

8 We think that when you go back to the fundamental
9 objective of NEPA, that there is a way to define the Federal
10 action such that what you're looking at is whether or not
11 the NRC should or should not grant a license to nuclear
12 power plants which are currently running.

13 MR. SHERMAN: So in essence, that's looking at
14 alternatives and defining alternatives in a very limited way
15 as either doing it or not.

16 MS. GINSBURG: You would define them appropriately
17 to the way you've defined the scope of the Federal action.

18 MR. MIZUNO: I don't see how that results in any
19 significant change in the scope of the NRC analysis, because
20 if you assume that the Federal action is to grant the
21 renewed license consistent with public health and safety and
22 the no action alternative is to not grant the renewed
23 license, how does one choose between the no action
24 alternative versus the option of renewing the license from
25 an environmental standpoint?

1 You end up looking at the no action alternatives,
2 in my mind, which represent -- which possibly represent
3 greater or are more environmentally preferable than the
4 action of going forward with license renewal. So you end
5 up, I think, under that alternative of looking at
6 alternatives. In the context of looking at alternatives,
7 you define the scope of alternatives in terms of the need.

8 That's the crux of the problem that we have come
9 to in terms of analyzing the old approach which was
10 considered by the NRC.

11 MS. GINSBURG: Geary, I want to ask a question,
12 though. Did I understand you to say in your comment just
13 now that you're saying that if you analyze the no action
14 alternative, that you are likely to find that there is a
15 benefit? I lost you after you were talking about that and
16 how you then jumped from there to the need to analyze other
17 alternatives.

18 MR. MIZUNO: There is no such thing as a no action
19 alternative. In the context of renewal and assuming, as you
20 have already admitted, that the purpose of NEPA is to
21 determine environmentally preferable alternatives consistent
22 with meeting the need, you end up looking at "no action"
23 alternatives which are essentially the same as alternatives
24 to the proposed action which we've been talking about here;
25 solar, geothermal.

1 MS. GINSBURG: No.

2 MR. MIZUNO: Yes.

3 MS. GINSBURG: No. At least not the way we're
4 approaching it. The way we would approach it would be the
5 alternative is not to license the nuclear power plant,
6 particularly if you're leaving them in Category 3?

7 MR. MIZUNO: How do you define the environmental
8 impacts of that action?

9 MR. NG: Geary, we have committed, as you well
10 know, to submitting in writing initial comments and
11 certainly the rationale for our legal basis and we will
12 address that for you.

13 MR. MIZUNO: I think that you are going to have to
14 deal directly with that issue of what is the no action
15 alternative and how do you define the environmental impacts
16 of the no action alternative.

17 MR. SCHWARTZ: Great. Thank you very much. Any
18 other questions?

19 MR. SHERMAN: I'd like to make one more comment
20 about that, if I might.

21 MR. SCHWARTZ: Bill.

22 MR. SHERMAN: You mentioned in defining that
23 option problems interpreting the states' results and
24 tremendous instability. I wrote those down. I think you
25 might have had those in there. But, nevertheless, I think

1 that you were referring to the difficulty of implementing in
2 this process a state's determination.

3 I don't think that that is as hard as we're
4 speaking of it. The reason I don't think that is because I
5 think that if we go back to construction permits or
6 operating licenses -- well, construction permits, which
7 dealt with need and alternatives, probably what was used was
8 a utility-provided analysis which they took from the state
9 process, if there was one, and then in the EIS, NRC provided
10 that and if there was a hearing on that, probably everybody
11 worked together to make that defended satisfactorily.

12 Back then there just wasn't a lot of difficulty in
13 working together and I don't foresee that difficulty of
14 working together, with one caveat. As I in my earlier
15 comments expressed, I do think we're on a little bit of a
16 collision course in terms of nuclear externalities in the
17 IRP process and the way that the agency considers the
18 impacts of radioactive wastes in its processes.

19 We would all do well if we could all take up the
20 challenge and work together toward making these processes
21 converge.

22 MR. SCHWARTZ: Thank you. Ray?

23 MR. NG: In the sense of a practical
24 straightforward standpoint, I guess where I was coming from
25 in the sense that we view that -- especially like in the

1 plants in New England, you're providing power to not only
2 one state, but maybe two states or three states and you have
3 three state agencies involved.

4 It's difficult enough, I think, to get mutual
5 understanding with two parties, but it goes up, I think, not
6 linearly, but exponentially as you put three and then four
7 possibly sometimes. It's not linear.

8 MS. GREER: Since I triggered part of your
9 comment, I just want to say that I think that there are
10 issues that -- and certainly in New England probably more
11 than almost anyplace in the country given the size of our
12 states and our power grid, but -- and there is potential for
13 conflict and for different results.

14 At the same time, one, I think that that
15 possibility can be addressed by having a default position if
16 a conflict develops, either in terms of deferring to the
17 analysis of a majority of the states that draw the power off
18 of it or some other alternative.

19 But I would also point out that although there's a
20 potential for conflict, at least sitting here today, three
21 states, that if we haven't all spoken with one voice, I
22 don't think much that's been said by the three states or by
23 any member of any of the government agencies who have spoken
24 from those states today have been in conflict.

25 I think that we all tend to want the same result

1 and I don't think that you can say we shouldn't try this
2 alternative, the Option 5, because it might not work,
3 because I think there are ways to work out to make it work,
4 so that the states have no interest in having instability in
5 the markets either.

6 We want predictable power bases, power sources,
7 because only in that way can our economies grow, can we sell
8 to industry the availability of our states as attractive
9 places to do business. We want that stability, too. So I
10 think to the extent that you raised the issue of deferring
11 to the states may present difficulties, I think that the
12 difficulties can probably be worked out, because we have an
13 interest in having the process go as smoothly as possible,
14 too.

15 MR. GLEASON: I believe that, too, and I know we
16 can do that. Also, I just want to add a physical dimension
17 to that. If you look at the physical distribution of
18 operating nuclear power plants around the United States,
19 it's not 50 states you're going to deal with.

20 You're going to deal with some major states, like
21 New York, Pennsylvania, Illinois, that have at least six or
22 more nuclear power plants operating in them that are
23 constitute the bulk of the relicensing activities.

24 So if you take a slice at it in that way, I think
25 that it's even more manageable.

1 MR. SCHWARTZ: Thank you, Gene. Anybody else?

2 [No response.]

3 MR. SCHWARTZ: What I'd like to do right now is
4 I'd like to lump up the concluding remarks by each panelist
5 with dealing with the four general questions on Page 5 and
6 then move into a summary of the meeting and we can conclude
7 our workshop. Does anybody want to kick off the concluding
8 remarks? Gene?

9 MR. GLEASON: I'm not going to read our comments
10 at all. You will see our comments on March 4. They will be
11 transmitted by Commissioners Murray, Bradford and Jorling.
12 I suspect that they will offer this Option 5.

13 I want to thank the NRC staff for holding this. I
14 think this is the way to go. This is a good dialogue. This
15 is one of the better workshops I've participated in on a
16 rulemaking. I think everyone should be complimented for the
17 tenor of the dialogue here today.

18 Thanks.

19 MR. SCHWARTZ: Thank you, Gene. Appreciate that.
20 Bill?

21 MR. SHERMAN: I would like to echo Gene's comments
22 and also express our appreciation for being able to make the
23 comments. I think it's been a good meeting.

24 MR. SCHWARTZ: Thank you, sir. Leslie?

25 MS. GREER: I would like to say thank you for the

1 opportunity to be here today and to now essentially, without
2 backing off of everything I've said today, say that
3 obviously I'm speaking here as a representative of the
4 Attorney General's Office and we will go -- the State of
5 Massachusetts Attorney General will be submitting final
6 comments and we will try to do so in conjunction with the
7 other interested state agencies.

8 I think that from the preliminary meetings that
9 we've had with the other state agencies that there generally
10 is agreement as to the goals we want to accomplish and we
11 hope that we will be able to submit final comments from the
12 state that will be useful to you in actually addressing the
13 issue from a practical point of view.

14 MR. SCHWARTZ: Thank you very much, Leslie. Gil?

15 MR. BROWN: I would also echo thanks for the
16 opportunity to represent not only myself, but the
17 organization, CFACT, a citizens group -- actually, it's
18 called Committee for a Constructive Tomorrow -- for making
19 it possible for me to be here, and to not lose sight of the
20 objective, which is to do what's best for all of us, to keep
21 the grid and America viable with a commodity that over all
22 50 states provides 20 percent of the power and in a lot of
23 state a lot more, upwards of over 50 percent in some states
24 and regions.

25 The discussion here is very healthy. One message

1 that I come away with is that the NRC does its job in
2 keeping the plants safe and that's a prerequisite and no one
3 is debating that point. So long as the plants are safe at
4 40 years, we ought to give them the option to be part of the
5 mix in the 41st year in a predictable, reliable way.

6 MR. SCHWARTZ: Thank you for your participation.
7 Ray, do you have something?

8 MR. NG: Yes. I'd like to thank the NRC for
9 letting NUMARC participate on this panel on behalf of the
10 industry. I think that we have quite a bit in common here
11 in the sense that we are looking for a stable and
12 predictable process.

13 Certainly, I think we would all agree here that we
14 do not want to preempt state authority and jurisdiction in
15 economic matters. I think I would take a little bit away
16 from what Geary said in Chicago, that while we seem to have
17 very common end goals, it's a means of getting there and
18 defining a legally acceptable process of getting us to the
19 end.

20 Thank you very much.

21 MR. SCHWARTZ: Thank you, Ray. Any concluding
22 remarks from anyone in the audience?

23 [No response.]

24 MR. SCHWARTZ: With that, I will take the pleasure
25 of the Chair of thanking the five panelists for your

1 comments and taking the time out of your busy days to be
2 here with us. I thought this was a very useful workshop.
3 It seems like every time we had one, we learned a little bit
4 more, a little bit of a nuance, a little bit of a
5 combination of two and four, a new Option 5.

6 I know that the folks in Research and NRR and the
7 contractor, Art Wacaster, are going to have a lot of fun
8 trying to put together a record and a coherent policy that
9 we'll propose to the Commission that you all will hear about
10 sometime in the future.

11 Remember the record is still open till March 4 for
12 written comments to the Commission. So please submit all
13 your written comments. I look forward to yours and Ray's to
14 some of the detailing of the NUMARC position.

15 With that, I will conclude this workshop in
16 Chicopee and the meetings on this are closed. Thank you.

17 [Whereupon, at 3:32 p.m., the workshop was
18 concluded.]

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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: Part 51 Public Meeting

DOCKET NUMBER:

PLACE OF PROCEEDING: Chicopee, MA

were held as herein appears, and that this is the
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*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 REVIEW 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				
<u>Option</u>	<u>GEIS Analysis</u>	<u>NRC Supplemental EIS</u>	<u>States</u>	<u>Licensee Environmental Report</u>
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.	License 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