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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
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DESIGN CERTIFICATION RULEMAKING
(DCR)

PUBLIC MEETING
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MONDAY,
DECEMBER 4, 1995

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ROCKVILLE, MARYLAND
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The Public Meeting was held in the Auditorium of the Nuclear Regulatory Commission, Two White Flint North, 11565 Rockville Pike, at 1:00 p.m., Jerry N. Wilson, presiding.

PRESENT:

- Dino Scaletti NRC/DRPM/PDST
- Jerry Wilson NRC/DRPM/PDST
- Ralph Architzel NRC/DRPM/PDST
- Stu Magruder NRC/DRPM/PDST
- Joe Sebrosky NRC/DRPM/PDST
- Tom Kenyon NRC/DRPM/PDST
- Bill Huffman NRC/DRPM/PDST

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- 1 Tom Boyce NRC/DRPM/PDST
- 2 Diane Jackson NRC/DRPM/PDST
- 3 Harry S. Tovmassian NRC/RES
- 4 Brad Hardin NRC
- 5 Brian Grimes NRC
- 6 A. S. Masciantonio NRC
- 7 J. Taylor NRC
- 8 L. Raghavan NRC/OEDO
- 9 L. Soffer NRC/OEDO
- 10 Bob Weisman NRC/OGC/HOE
- 11 Myron Karman NRC/OCM/KR
- 12 John Moaninger NRC/DSSA/SCSB
- 13 Michael Markley NRC/ACRS
- 14 Geary Mizuno NRC/OGC
- 15 Marc Rowden FF-GE
- 16 Regis Matzie ABB-CE
- 17 Ninu Kaushal COM ED
- 18 Don Croneberger GPU NUCLEAR
- 19 Stan Blanton BALCH & BINGHAM (SNC)
- 20 Joseph R. Egan EGAN & ASSOCIATES
- 21 Mel Gmynek NEI
- 22 Robert W. Bishop NEI
- 23 Russ Bell NEI
- 24 Joe Colvin NEI
- 25 R. P. McDonald ARC

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- 9 Mike Schoppman FPL
- 10 David Helker PEPCO ENERGY
- 11 Steve Frantz MORGAN, LEWIS & BOCKIUS, LLP
- 12 Steve Breaver AEP
- 13 Joseph Quirk GE-NE
- 14 Evyrett Whitaker TVA
- 15 John Trotter POLESTAR-APP. TECHNOLOGY
- 16 Steve Katradis NUS CORP.
- 17 Darrell Eisenhut NUS
- 18 Charles B. Brinkman ABB-CE
- 19 Barton Z. Cowan ELITERT SEAMANS
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P R O C E E D I N G S

1:06 p.m.

MR. WILSON: Can we go on the record? On behalf of the Nuclear Regulatory Commission, I welcome each of you to another public meeting on the design certification rulemaking for the ABWR and System 80+ designs.

This meeting was announced in the Federal Register on October 18th and invitations to this meeting were sent on November 2nd to the 22 organizations that submitted comments on the proposed design certification rules.

If you haven't already registered, please do so at the desk outside and copies of the agenda and proposed design certification rules are also available at the registration desk.

I'm Jerry Wilson. I'm the lead for design certification rulemaking. Also representing the NRC at the head table are Mr. Crutchfield at my left, Mr. Russell at my right and Mr. Malsch at his right.

Proceedings of this meeting are being recorded by a court reporter and the transcript will be available at the NRC's public document room. Copies of the transcript of this meeting may also be obtained from Mr. Corbett and you may see him after the meeting.

If you have a statement during the meeting, please use a microphone and identify yourself to Mr. Corbett.

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1 Previously, the NRC held public meetings on these
2 design certification rules in July of 1992, November of 1993,
3 and May of 1995. Also, there have been numerous public
4 meetings on the GE and CE applications since 1987.

5 The purpose of this meeting is to provide an
6 opportunity for clarification of the submitted comments.
7 This is not an opportunity to provide new comments, nor will
8 we be negotiating or achieving resolution issues at this
9 meeting.

10 We plan to adjourn this meeting at 5 p.m.,
11 however, as a contingency, we have made arrangements to
12 continue this meeting tomorrow morning if we have not
13 completed the agenda by 5 p.m.

14 Now four individuals have requested an
15 opportunity to make opening remarks at this meeting. We ask
16 that these presentations be limited to no more than five
17 minutes in duration so that we may have sufficient time for
18 the remaining issues on the agenda.

19 I will call the individuals alphabetically
20 beginning with Mr. Colvin.

21 MR. COLVIN: Thank you and good afternoon. I'm
22 Joe Colvin from the Nuclear Energy Institute and on behalf of
23 the nuclear energy industry, including all the utilities, the
24 vendors, the plant designers and nearly 300 member companies
25 of the nuclear energy industry, I want to extend our thanks

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1 and appreciation for the opportunity to schedule this meeting
2 and to appear before you to meet with the staff and the other
3 members of the public and discuss the design certification
4 rulemaking for the ABWR and the System 80+.

5 I think it's important to go back and look where
6 we've come from and go back to the bold step and decisive
7 step that the NRC took in 1989 to issue Part 52, 10 CFR 52.
8 That initiative, then and now, aims to achieve the early
9 resolution of licensing issues and enhance safety and
10 reliability at nuclear power plants. We agree with these
11 goals explicitly. Those goals must be achieved in order to
12 preserve the viability of this important option as a safe,
13 clean and reliable source of energy to meet our country's
14 future energy needs.

15 Complementing the NRC's part 52 initiative, the
16 industry has its own strategic plan for building advanced
17 light water reactors and I have given Jim Taylor a copy. We
18 intend to release the fifth annual update of this plan at a
19 meeting on Thursday, and I'll provide this copy for you also
20 at this meeting.

21 If you look back to that strategic plan when the
22 original issue was in November 1990, we've really made
23 remarkable progress and we've made remarkable progress across
24 all fronts, particularly in the improved safety and
25 reliability operating reactors. But perhaps most noteworthy

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1 in all these successes is the success that we share with the
2 NRC trying to resolve these safety issues, bringing these
3 world class designs to the threshold of the first ever design
4 certifications.

5 The staff, the ACRS and certainly the Commission
6 are to be commended for their efforts in working through
7 literally thousands of important policy issues that have been
8 before us as we near these important milestones of Part 52.

9 These design certification rules do more than
10 formally establish the safety of the ABWR and System 80+
11 designs. They also lay out key aspects of a licensing
12 framework for the original Part 52 system and as the
13 Commission stated in their staff requirements memorandum back
14 in March of this year, these rulemakings "provide final
15 opportunity to examine the design certification process, to
16 insure that it will accomplish what is intended."

17 In that same SRM, the Commission stressed the
18 importance that these potential combined licensed applicants
19 perceive the process to be workable and it requested the
20 staff to give special attention to the resolution of comments
21 aimed at insuring a workable process.

22 When I looked at this issue and I've watched
23 this, it seems to me very remembering of the license renewal
24 rulemaking we were in last year addressing Part 54 when
25 Chairman Selin basically said, and I quote, "in this case we

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1 have a rule which is designed to encourage licensees to do
2 something which in certain circumstances we believe is
3 desirable. So it's not enough for us, the NRC, to think it's
4 a good rule. If the potential applicants don't find it a
5 good rule, it will not accomplish its objectives. So in this
6 case dealing so closely with representatives of the industry,
7 so long as we preserve the health and safety aspects that's
8 clearly called for since it's their activity that is to be
9 induced, rather than just command it as we would normally
10 do." I think it's precisely from that perspective that we're
11 really looking at some of the discussions today and as we
12 discuss these design certification rules to insure that these
13 issues, that this is an inducement rather than an obstacle to
14 potential combined license applicants.

15 In our August 4th comments, we explained exactly
16 why we perceived there to be some obstacles and certain key
17 aspects of those proposed rules that would cause them to fail
18 to meet the key objectives, including the early once and for
19 all resolution of safety issues and more productive and
20 stable licensing process.

21 As a result, we've proposed some alternatives in
22 there. Our objective for this meeting is as originally
23 intended by Mr. Taylor to be a full and open discussion of
24 some of these remaining issues, to assist the NRC in
25 understanding these issues, understanding the industry's

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1 viewpoint and leading to ultimate development of final design
2 certification rules that will achieve our intended results.

3 We're here as the industry to provide you with
4 these comments, to discuss these issues. We're counting on
5 hearing candid feedback from the staff on the merits of our
6 comments and recommendations and any concerns, certainly,
7 that the staff has with those.

8 In particular, we believe those recommendations
9 are really designed to hit at the process and try to make
10 that process workable. We ask that the staff consider in
11 that vein the industry's recommendations and discuss why
12 those could not be in fact, incorporated, if we've addressed
13 the public health and safety issues up front.

14 I think it's appropriate that we focus on
15 insuring that that process is sound as these designs are
16 being certified. With that in mind, we look forward to
17 today's discussions in which we hope we will contribute to
18 the final development of these rules.

19 I might add there is significant interest in
20 today's proceedings and this outcome from around the world,
21 principally Asia, and also in Europe, where they are watching
22 how we are going to address these issues to determine the
23 viability of this process as we move forward.

24 Thank you very much.

25 MR. WILSON: Thank you, Mr. Colvin. Mr. Franks?

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1 MR. FRANKS: Thank you, Jerry, and I'd like to
2 take the opportunity to thank everyone including industry as
3 well as NRC for being able to hold this public workshop and
4 express our views so that the public understands our views
5 and be very candid to try to work toward the resolution of
6 some of those issues.

7 As you're aware, the design certification program
8 is vital to the national energy strategy for the U.S.
9 government. The Department's involvement represents over
10 \$140 million of investment by taxpayers of which that \$140
11 million has been matched equally or in excess of by the
12 nuclear industry.

13 The strategy supports the goals that were set
14 forth in Part 52, standardization, to enhance safety and
15 reliability of future designs and provide a basis for stable,
16 predictable licensing processes and to provide a forum for
17 early resolution of licensing issues.

18 As we went forward over the last several years
19 implementing the technical aspects of Part 52, we were all in
20 the throes of addressing significant policy in those veins
21 that the design certification rules have been published. I'd
22 like to express that in publishing those certifications that
23 the designs that the NRC has made a statement with regard to
24 the final design approvals is from the Department's
25 standpoint valid and correct. There is significant

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1 enhancement in the safety and design of these new advanced
2 light water reactor plants.

3 So I'm here today principally to address a couple
4 of fundamental issues and those issues are process related.
5 They're either process related or interpretations used that
6 we have concerns about that would potentially cause some
7 uncertainties with potential furtherance of combined
8 operating license application and I'll briefly mention those
9 because I think the industry is going to talk in detail about
10 those during the course of the day.

11 But first, as I said, when we implemented this
12 and we came to the point where we had developed a draft of
13 those rules, I felt it was time to take a step back since
14 we've been so enthralled in the reviews and really reassess
15 the rule as it's written, reassess Part 52 as it was written,
16 and the way I accomplish that was to form a group of folks
17 that had not been involved in the day to day heat of the
18 battle of resolving and making determinations with regard to
19 the acceptability of these designs. So we established an
20 independent review team and independent in that they had not
21 been involved on a day to day basis over the last several
22 years like we had.

23 I wanted to step back and put their sales
24 acquisition where they were 10 years from now and they had
25 the responsibility as the chief financial officer, chief

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1 executive officer to make a determination whether they --
2 which reactor plant designs they were going to select and
3 whether the certification that had laid in front of them for
4 the last 10 years was of sufficient detail and clarity that
5 one would feel comfortable in selecting a nuclear option.

6 By and large, the independent review only had one
7 major concern and that was the confusion and the lack of
8 clarity and the process not in the actual technical details
9 of the designs.

10 So let me point out five key issues I think we
11 need to put on the table today and hear from the industry on
12 and then later on after the industry has spoken on those,
13 there are a couple of other processes I'd like to discuss.
14 So first is that the language in the text of the
15 certification or the notice of proposed rules is not specific
16 in the degree of finding that the NRC has.

17 MR. WILSON: Could we do those when we get to
18 them?

19 MR. FRANKS: Yes. I'm just going to mention the
20 issues on the part of the U.S. government's record and then
21 represent views on that.

22 The finding is limited, in other words, we
23 haven't made a sufficient statement with regard to the
24 acceptability of these designs.

25 The Department feels the change process is too

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1 restrictive and it adds some confusion as to how you go about
2 implementing a change process. The change control and
3 requirements of the probablistic risk assessments appears to
4 be very cumbersome and imposition of the term new applicable
5 regulations in my opinion, provides no useful purpose. In
6 certifications you have specified the regulations that you
7 were against and you've made a determination of those
8 regulations so that imposed another term like applicable
9 regulations may not be very beneficial and may cause some
10 uncertainties.

11 I've presented the potential negative aspects but
12 I wanted to reinforce the positive aspects that the standard
13 designs are acceptable as you appropriately concluded in your
14 design review, that all I'm concerned are process matters and
15 I say "all" very similar to Mr. Colvin mentioned about Part
16 54, that the rule on implementing the license extension was
17 process related. I think that's where we're at with these
18 new advanced designs, the safety of these new advanced
19 designs is acceptable, it meets or exceeds current day
20 standards and in most cases exceeds.

21 So with that in mind, I would like for us all to
22 objectively do what I challenged our independent team to do
23 and that's pull away from the throes of the details and
24 reassess, do we have a process that will be customer driven
25 and provide the customer the competence to order the next

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1 generation nuclear plant.

2 Thank you very much.

3 MR. WILSON: Thank you. Mr. Matzie?

4 MR. MATZIE: I'd like to thank the staff for the
5 opportunity to make some brief remarks at this workshop. Good
6 afternoon. My name is Regis Matzie. I'm the Vice President
7 of Engineering for ABB Combustion Engineering Nuclear
8 Systems. I'm responsible for the design, licensing and
9 engineering of the System 80+ standard plant design. System
10 80+ is one of the two evolutionary advanced light water
11 reactor designs featured in rulemaking under discussion
12 today.

13 With me are Mr. Charles Brinkman, ABB Combustion
14 Engineering's Director of Nuclear Licensing and Mr. Joe Egan
15 of Egan & Associates, counsel for ABB in the rulemaking
16 proceedings.

17 Also, in the audience is Mr. Steve Stam
18 representing our System 80+ partner, Stone & Webster
19 Engineering Corporation.

20 I want to make some very brief observations about
21 why we are here today. In 1987, Combustion Engineering began
22 work with the NRC staff to gain approval of the System 80+
23 standard plant design. In 1989, when the NRC issued 10 CFR
24 Part 52 to cover the certification of standardized plants,
25 ABB-CE applied for a design certification for System 80+.

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1 What followed was a long, arduous and extremely thorough
2 review of the System 80+ complete plant design by the NRC
3 staff and the advisory committee on reactor safeguards.

4 In July 1994, all this culminated in the NRC
5 granting a final design approval for the System 80+ design.
6 ABB is proud of this achievement and is very pleased with the
7 System 80+ standard plant design which is even now being
8 offered in world markets.

9 However, the purpose for which ABB Combustion
10 Engineering and the U.S. Department of Energy expended these
11 efforts and resources was to couple the design improvements
12 of the System 80+ design with the licensing process
13 improvements we believe were incorporated in Part 52. Part
14 52 was developed to foster a new and more effective licensing
15 regime in the expectation that few, if any, U.S. nuclear
16 utilities would ever again build a nuclear power plant
17 without licensing reform.

18 The intent of this new regime was to solve key
19 design and licensing issues up front and thereby make it
20 possible for the industry to consider once again building
21 nuclear power plants of a safer, more advanced and
22 standardized design.

23 In essence, design certification rules were to be
24 rules for use by the industry. It follows that if the
25 industry believes it cannot use these rules, notwithstanding

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1 the fact that they are based on the best designs ever
2 approved by the NRC, then the objectives of Part 52 will not
3 have been realized.

4 Having reviewed the April 7, 1995 notice of
5 proposed rulemaking, we have concluded that the rules
6 proposed by the staff do not meet the industry's
7 expectations. We believe significant changes must be made to
8 the proposed rules and we and our colleagues are here today
9 to discuss what those changes should be and why they're
10 necessary.

11 We look forward to discussions to follow. Thank
12 you.

13 MR. WILSON: Thank you, Mr. Matzie. Mr. Quirk?

14 MR. QUIRK: Good afternoon. My name is Joseph
15 Quirk. I am GE's project manager for the ABWR certification
16 program. The ABWR is one of two advanced light water reactor
17 designs that are the subject of pending Part 52 design
18 certification rulemaking.

19 I'm accompanied today by Marcus Rouden on my left
20 and by Steven Franz on his left, consulting counsel for GE
21 Nuclear and the ABWR proceeding.

22 My statement today is on behalf of Steven Specker
23 who heads GE's nuclear operations. Dr. Specker is
24 unavailable to be here today because he is in Japan
25 furthering the program for plants of ABWR design, a design

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1 that has long since gained the approval of Japan's safety
2 authorities and the first units of which are now nearing
3 construction completion there. And in fact, the first unit
4 has begun to load fuel operations.

5 The issuance of a final design approval for the
6 ABWR is a milestone for design standardization and stands as
7 the major accomplishment for the NRC as well as GE. The
8 challenge now is to embody that pioneering safety approval in
9 a workable design certification rule, a rule that will give
10 practical viability to the Part 52 licensing process.

11 Accordingly, we welcome today's opportunity for
12 dialogue with the staff on what we consider to be the
13 critical process issues in the certification rules for the
14 ABWR and the System 80+ designs.

15 You will hear from GE and other commenters today
16 some pointed criticism of specific process provisions and a
17 proposed design certification rules and equally direct
18 recommendations for remedial changes. Such forthright
19 expression by those affected by these rules is a necessary
20 part of the rulemaking process. Indeed, it would be a
21 disservice to the Commission and to our common interest in
22 realizing workable Part 52 licensing if we did not make our
23 comments clear.

24 The purpose of our recommendations for process
25 change in the proposed rules is to strengthen these rules so

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1 as to achieve the stable and predictable facility licensing
2 process, of which Part 52 and the Energy Policy Act of 1992
3 are intended to bring about.

4 We want Part 52 to work. And our comments are
5 made in that constructive spirit. The substantial financial
6 and technical resources extended on ABWR development and
7 obtaining NRC design approval demonstrates GE's part 52
8 commitment unmistakably.

9 Our workshop aim is straight forward, a candid
10 expression of use by the rulemaking participants and direct
11 responses by the NRC staff. In particular, we would like to
12 hear the staff's reaction to our recommendations so that we,
13 in turn, can respond to any concerns the staff may have.
14 Such an exchange is essential to the formulation of effective
15 final rule.

16 Without it, needless misunderstanding can
17 persist. The NRC will lack an appreciation of the adverse
18 impacts of the provisions we asked to have changed and the
19 Commission will be deprived of the record it needs for sound
20 rulemaking action.

21 The provisions with the industry has identified
22 for discussion today are central to whether the design
23 certification rules adopted by the Commission will be
24 considered for use by future utility customers. Our
25 customers have expressed their deep misgivings about the

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1 deficiency of those provisions and in particular, regarding
2 the lack of issue finality and the lack of licensing
3 stability and predictability. Remediating those deficiencies
4 is essential if Part 52 is to achieve its objectives and if
5 the safety and economic benefits of these advanced designs
6 are to be realized in our own country.

7 Thank you.

8 MR. WILSON: Thank you, Mr. Quirk. Would anyone
9 else like to make an opening statement? Seeing no requests,
10 let's move on to the main agenda.

11 In response to our invitation to this meeting, we
12 received requests from NEI and the Department of Energy to
13 include specific issues on the agenda. These issues are
14 listed in the order specified and their requests. I will
15 introduce each issue and open the meeting up for questions
16 from the NRC staff and others in the audience.

17 The first item on the agenda is the issue of
18 scope of finality for design certification. And this is in
19 NEI's comments Section I.B and I.D. There's two subissues
20 here. One, NEI believes that all matters within the
21 certified design should have finality including proprietary
22 safeguards theory and secondary references. And the other
23 subpart is NEI's request that the design certification rules
24 include finality for proceeding subsequent to the combined
25 license for operating license proceedings.

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1 Does staff have particular questions on this
2 issue?

3 MR. MALSCH: My name is Marty Malsch. I'm NRC
4 Deputy General Counsel. Let me just break this down into a
5 couple of subissues. Clearly, the overall objective of the
6 certification process is to achieve issue finality for the
7 purpose of later proceedings and so the question really is
8 not so much overall objective, but the fine points of how
9 that's worded in the design certification rule and the
10 subissues appear to be (1) whether a conclusion that the
11 design is safe and acceptable and complies with the
12 Commission's regulations includes, as inherent in such a
13 finding, a determination that additional or alternative
14 structures or features are not necessary, that's one issue.
15 Lack of need of additional structures, components or other
16 features or analyses, for that matter. Whether issues should
17 be considered resolved if they are inherent within the scope
18 of the design but don't appear to have received specific
19 attention in the staff's safety evaluation report and then I
20 think what is the most interesting issue of all, what kind of
21 finality should be associated with changes made in accordance
22 with the change process, that is to say, changes made in the
23 Tier 2 of the rule.

24 Let me just see if I've captured, around the
25 table here, captured the essential questions here under No.

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1 1.

2 MR. WILSON: Ron, will you be fielding the
3 questions and decide who is going to respond? How do you
4 want to handle that?

5 MR. SIMARD: The main responder would vary with
6 the issue. Jerry, in this case we thought Bob Bishop would
7 begin with the clarification of what are our concerns.

8 MR. BISHOP: Well, I think Marty has summarized
9 them well. We think that this is an issue that goes to the
10 heart of the process and really is critical to the
11 determination of the scope, the nature and the viability of
12 the design certification.

13 We think that the fundamental attributes that
14 need to be highlighted are clear in all of these prospects
15 that Marty has laid out, that each of them have been reviewed
16 and in turn approved by the staff and anything that has been
17 subject to that scrutiny deserves finality, deserves not to
18 have the issue reopened, either during this process or during
19 some subsequent process, with the caveat that of course
20 anything that's site specific would need to be dealt with in
21 site specific proceedings when they occur.

22 Our concern is that -- let me restate that. We
23 appreciated the clarification that the staff provided in the
24 public meeting on June 27th that based upon the reflection of
25 the comments received we believe that the features within the

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1 scope of the certified design would be considered final. I
2 guess that's probably the first thing that we could discuss.
3 Our view of finality is it does go to the entire scope of
4 what the design was that was certified, whether or not it is
5 explicitly mentioned in the DCD or in the FSAR, if it is
6 within, and fairly within the scope of the design, then that
7 issue cannot be raised subsequently. My shorthand example is
8 the fifth main coolant pump, that nobody proposed and nobody
9 evaluated in the DCD and certainly never mentioned nor in the
10 FSAR have addressed, yet we would presume that no one have
11 the authority or the opportunity to raise that issue in any
12 kind of a subsequent proceeding, because in our view that's
13 within the scope of the design that was approved. So
14 perhaps, Marty, if you could --

15 MR. MALSCH: Well, I might want to pass this over
16 to Jerry, but that relates basically to the kind of review we
17 conducted. WE thought it was probably kind of reasonable to
18 suppose that as a reviewer was going through the design it
19 was those kinds of issues that were in the reviewer's head,
20 even though they weren't specifically marked down in the FSAR
21 and that was adherence in the safety review. But it really
22 depends upon the nature of the review and let me just pass it
23 over, I guess, to Jerry and see whether he would confirm
24 that's the kind of process reviewers went through.

25 MR. WILSON: In a word, yes.

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1 MR. BISHOP: And that's why, Marty, I'm going
2 back to your comment as I've tried to write it down.

3 MR. RUSSELL: Can I ask for clarification? Bill
4 Russell, Director of NRR. The issue appears to be one of if
5 the staff did not explicitly exclude things, the potential,
6 I guess is something new could be identified with enhancement
7 later to be brought in and so it's the sufficiency of finding
8 that the design as described is adequate. Is that the
9 fundamental issue that you're dealing with?

10 MR. BISHOP: Yes.

11 MR. RUSSELL: One area that I see could be of
12 concern and that is the issue of backfit that meets an added
13 protection standard. Let's say something occurs as a result
14 of operating experience, some new phenomena or issue is
15 identified and we conclude through a rulemaking process that
16 backfitting is necessary to meet an adequate protection
17 standard. That part of the process you do not object to?

18 MR. BISHOP: Absolutely not.

19 MR. ROUDEN: Can I just add a point? We believe
20 that the fact the constraints contained in 52.63 really
21 reinforce our position that all matters within the scope of
22 the design have been deemed adequate by the NRC and that the
23 backfit mechanism, the backfit -- either the compliance with
24 applicable regulations or necessary for adequate protection,
25 those are the sole standards for dealing with matters within

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1 the scope of the design as far as changes are concerned. So
2 your question really reinforces our position.

3 MR. RUSSELL: That's what I wanted to understand.
4 Your view is that the design, as it's proposed, is the design
5 which is certified and that any changes to that design which
6 would be of a generic nature as compared to something which
7 may come up on a site specific interface issue or parameter
8 would be something that would be governed under the backfit
9 procedures for backfitting through a rulemaking activity?

10 MR. ROUDEN: That's right. There's one other
11 addition to that, that changes to the design which are
12 facility specific, not site specific, but facility specific,
13 would also be governed by those backfit procedures. So there
14 is parity.

15 MR. MALSCH: Yes, I think what we have to do is
16 take a look at -- I know NEI has suggested some language
17 changes that we've gone through preliminarily and we'll look
18 at more carefully again.

19 My perspective, I think, we kind of had the same
20 objectives that maybe our language wasn't as clear as it
21 should have been and I think what we need to do is take a
22 look at your language to see whether we can find chunks of
23 that acceptable for our purposes.

24 MR. RUSSELL: There's a second piece that you
25 mentioned and that is to the extent changes are made to Tier

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1 2 material, that's a more difficult issue.

2 MR. MALSCH: That's a problem. That's issue no.
3 2, I think. Am I right?

4 MR. WILSON: Yes.

5 MR. CRUTCHFIELD: Well, before we get to issue 2,
6 for the most part the rulemakings have been done in open and
7 publicly available. There are two aspects that are not
8 covered by that. That's proprietary and safeguard material.
9 How would you propose that they be addressed with respect to
10 this finality question?

11 MR. BISHOP: Denny, my view is treated exactly
12 the same way. That information has been, again, it shares
13 the fundamental attributes of being an integral part of the
14 design as much as the design of the main coolant. It's been
15 reviewed and approved by the staff. It's been vetted or been
16 able to be analyzed and evaluated by members of the public as
17 they saw fit to comment in the rulemaking proceeding. There
18 are processes available for it to be similarly available in
19 individual licensing proceedings. I think the same
20 attributes apply and the same result should append. That is
21 also final and resolved.

22 MR. MALSCH: Let me chime in on that one. I
23 should have mentioned that initially. That's kind of a
24 tricky issue. The Commission decided some time ago they
25 wanted the design certification rule to be publicly available

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1 in total like any other NRC rule, virtually in any other NRC
2 rule.

3 If we incorporate by reference to the rule and I
4 think we're talking about Tier 2 of the rule at this point,
5 right? We now have a rule which is in part not publicly
6 available which is certainly, I'm not sure it's unique in
7 NRC practice, but it's certainly unequal in NRC practice and
8 so there's a policy issue which I think we have to bring to
9 the Commission's attention regarding the desirability of
10 having a rule which is not generally available in the Federal
11 Register like all other NRC rules. And there's two
12 implications to that. There are two follow-on issues
13 associated with that. One is, I guess, the policy, the
14 desirability of having the rule, in part, not publicly
15 available, and two, how would you accord issue preclusion to
16 a rule which is not publicly available? We've done some
17 research on that and there's case law that suggests that even
18 though a rule may not be published and available for
19 constructive notice purposes, it still may be binding on
20 people with actual notice. I guess the question then is when
21 we have sort of a complicated process, we'll need to make
22 sure in any subsequent proceeding that there's a means
23 available to make the rule available to those who would be
24 potentially bound by it, bound by it in the sense that
25 they're seeking to make issues which will be unraisable

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1 because of issue preclusion.

2 MR. BISHOP: And I think that's my point, Marty.
3 You had earlier described the difference between available to
4 members of the public and generally available and I think
5 that's an important distinction here. Surely it's not
6 generally available and this information is available in the
7 public document room, but there are good and solid public
8 policy reasons why that's true. Safeguards is the easiest
9 one. Propriety information and the commercial viability of
10 that is also separately defensible, but it is in fact through
11 this process and through any individual licensing process, it
12 will be made available to members of the public who have an
13 interest and who are participants in that proceeding.

14 The only threshold is you can't just go in the
15 PDR and ask to have it opened up to you. There's another
16 procedural step or two that has to be followed, but the whole
17 purpose was to make it available to satisfy the public policy
18 interest that underlies the publication of all the material
19 that an agency uses in making its rulemaking decisions.

20 MR. ROUDEN: Marty, let me just add a thought
21 here with regard to the policy aspect to this which is by the
22 way not discussed in the notice of proposed rulemaking. All
23 you discuss is the Office of Federal Register requirement for
24 approval by incorporation by reference.

25 I think if you look at the legal avenues open for

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1 giving requirement or issue preclusion status to propriety
2 and safeguards information, you also deal implicitly, if not
3 explicitly with the policy considerations because the legal
4 considerations embody national policy considerations. Number
5 one, we think that by any fair reckoning and Bob has stated
6 the function and the role that proprietary and safeguards
7 information play in this process, that by any fair reckoning
8 this information comprises matters that are available to the
9 class of persons affected and thereby qualify for
10 incorporation by reference approval by the Office of the
11 Federal Register. That's number one. I think that's an
12 avenue worth exploring in terms of dealing with the realities
13 of the situation. You've got information which has all the
14 functional attributes which would give it finality and we're
15 dealing with a formality which precludes it from having
16 finality.

17 Secondly, the same provision of the
18 Administrative Procedure Act also calls for giving
19 requirement status to this material if it's available on a
20 timely basis to persons who are affected and as the
21 discussion that you and Bob initiated, I think would
22 indicate, if we followed it through, leads to the conclusion
23 that this would be available to persons that are affected.
24 Notices of its availability in connection with COL
25 proceedings would be published, presumably in the Federal

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1 Register or could be published in the Federal Register.
2 Persons with an interest which could be affected, that is
3 intervenors and potential intervenors could have access to
4 this information under appropriate protective agreements.

5 We believe that it qualifies as material that
6 would be timely and reasonably available.

7 MR. MALSCH: I have to ask a question. Looking
8 at the process, let's say a future process, let's say
9 combined licensing procedure, the normal process heretofore
10 has been that if you're an intervenor and want to get access
11 to let's say safeguards information or classified information
12 that you would first need to get a contention admitted in a
13 proceeding which would presume you've read the application
14 and are filing contentions, address the specific parts of the
15 application.

16 Now the extent to which the application is not
17 available at that particular point in time then they couldn't
18 frame contention, so the question would be whether if we went
19 forward with this proposal and accorded finality to
20 information which is not publicly available in a general
21 sense, at least not prior to the particular licensing
22 proceeding, whether the industry would be willing to make the
23 material available to people, let's say, with an interest,
24 prior to them having to establish contentions.

25 MR. ROUDEN: I think we would be willing to sit

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1 down and discuss with you a process which we discussed with
2 you in connection with this design certification rulemaking
3 proceeding.

4 Remember this issue has sort of been a work in
5 progress. We started out by precluding availability of the
6 interested public, of proprietary and safeguards information.
7 We urge the Commission to change its position. The staff
8 endorsed that recommendation. The Commission did so the
9 commenters who showed a legitimate interest could have access
10 to this information under protective arrangements.

11 I see no reason why we couldn't work out
12 something comparable as far as COL proceedings are concerned.
13 There is an anomaly, you know, in the staff's position. Even
14 though on the one hand you say that these can't be deemed to
15 be generally applicable requirements, the introductory
16 material to the notice of proposed rulemaking which
17 presumably would be incorporated in a statement of
18 considerations says that these would be requirements for COL
19 applicants.

20 MR. MALSCH: I recognize that.

21 MR. RUSSELL: Can I ask a follow-up question to
22 your point? Thinking back now on the number of technical
23 issues that came in, there were only a few and most of the
24 issues have been associated with process, but if we were to
25 either renote and indicate that certain information which

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1 is proprietary or safeguards could be made available to
2 qualified individuals or organizations who wish to comment
3 and went through that process providing either in camera or
4 some type of protective mechanism, that that might be a
5 process that could be followed now in the context of the
6 present rulemaking?

7 MR. ROUDEN: You've already done that in the face
8 of the present rulemaking, so that's an obstacle that's
9 already been overcome.

10 MR. RUSSELL: Was that sufficient clear at the
11 time to potential commenters?

12 MR. ROUDEN: I think that was clear. In fact,
13 that was a major point with us and we made it explicit. What
14 I'm suggesting is we go one step further and that in
15 connection with COL proceedings this information would be
16 available to a defined class which had an appropriate
17 interest and is prepared to accept appropriate protective
18 arrangements.

19 In other words, they then would fall within a
20 category of persons that would have timely notice of these
21 requirements.

22 MR. MALSCH: Let me ask a question. Do you think
23 it would -- let's suppose we went forward with this and at
24 least with the concept to the extent we've taken this
25 information and treated it as requirements. We also want to

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1 accord comparable issue finality. Would -- in your view,
2 would it be fair to that proposition that we could not get
3 approval of the Office of the Federal Register?

4 MR. ROUDEN: No, I think there are two different
5 provisions. As a matter of fact, I'd be happy to quote them
6 in the Administrative Procedure Act. The first is exclusion
7 from the requirement of publication and that is to the extent
8 a person has an actual and timely notice of the terms
9 thereof, that's the one we've just been discussing.

10 The second is the standard for approval for
11 incorporation by reference by the Office of the Federal
12 Register and that is that matters reasonably available to the
13 class of persons affected. I think there are two avenues for
14 dealing with this. One is to seek approval of the Office of
15 Federal Register for incorporation by reference. What the
16 obstacles are to that, I don't know. We discussed in the
17 past sitting down with the Office of the Federal Register,
18 but independent of that, there are mechanisms within the
19 existing regulatory process of the NRC and the licensing
20 process for giving timely notice to persons with an interest
21 in this, in COL proceedings.

22 MR. MALSCH: I think that could be. We may have
23 to sit down with the Federal Register fellows and see. I
24 think from their standpoint, my understand is they consider
25 this to be a highly unusual proposition that there would be

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1 anything incorporated by reference that is not available
2 publicly at the time the rule itself is published.

3 I think we'd be making from their standpoint a
4 novel argument to argue that it's available at some point in
5 the future when its actual effect is expressed.

6 MR. ROUDEN: Not only it has been, it is now and
7 it will be available to qualified individuals and I think
8 that we would urge that the Federal Register be asked to look
9 at this in the context of the specifics of the NRC rulemaking
10 and licensing process, not as an abstract proposition and
11 we'd be happy to contribute what we can to go forward in
12 those arguments.

13 MR. MALSCH: What if, for example, we publish the
14 rule and let's say a month after that someone wrote in and
15 asked to see a copy, would you be willing under some
16 restrictive protective order to make it available even then
17 prior to any kind of licensing procedure?

18 MR. ROUDEN: I'm not sure that it would be
19 necessary for someone at that point to see it. On the other
20 hand, one would have to contemplate that at some future time
21 those persons who you said must submit this information in
22 connection with sealed applications would have to have the
23 opportunity to see this information. We have to work our
24 arrangements for that.

25 I don't really think we've thought our way

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1 through all the avenues that could lead down a success path,
2 to resolution of this issue.

3 MR. MALSCH: You just think of some simple issues
4 like we publish a design certification rule and a short time
5 afterwards before any actual combined licensed applications
6 use it as filed, someone writes in and says I want to see a
7 copy of the rule.

8 MR. ROUDEN: No. I think that goes too far. In
9 setting up the procedures for access by commenters, there
10 were criteria specified by the Commission as indicators of a
11 sufficient interest to allow this to be done.

12 We'd be happy, I think, to discuss with you
13 comparable indicators as far as future actions is concerned.

14 MR. MALSCH: That's all I'm suggesting. It is
15 not a blanket approval for anyone who wants to come in and
16 take a look at this. I think there has to be a justifiable
17 interest.

18 We're talking about people who are affected by
19 this, classes of people who are affected by this.

20 MR. WILSON: Okay, any other questions on issue
21 number one?

22 MR. MALSCH: Have you, let me just ask a
23 question, have you had any discussions with the Office of the
24 Federal Register? I don't think we have.

25 MR. ROUDEN: We have not had any discussions with

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1 the Office of the Federal Register on this. Our view,
2 rightly or wrongly, has been that since this is an NRC
3 regulation we should not approach the Office of Federal
4 Register unless you're prepared to say our licensing process
5 works in such and such a way.

6 MR. MALSCH: Okay.

7 MR. RUSSELL: Maybe we could approach them again.

8 MR. MALSCH: I guess that's a possibility. In
9 the past they've been, as I said, reluctant to go ahead with
10 a rule which incorporates by reference a document which is
11 not then and there.

12 MR. ROUDEN: I would suggest that the NRC
13 licensing process is less than transparent so that an
14 explanation of how it works might be useful.

15 (Laughter.)

16 MR. FRANKS: Marty, Sterling Franks again. We
17 have, from a Department of Energy standpoint, looked -- you
18 know, pressed the Federal Register about this. There aren't
19 many cases where they've asked for exceptions, but that
20 doesn't say that they couldn't.

21 MR. RUSSELL: We just did this with the
22 rulemaking for the vehicle barrier safeguards information as
23 it relates to the size of the explosive charge being
24 considered and size and mass of the vehicle. There we had a
25 rulemaking where there is safeguards information that is

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1 referenced in the rulemaking, but is not generally publicly
2 available. So I think there is a precedent even with the
3 rulemaking we've just recently done.

4 I'm a little less sure about the proprietary
5 aspects than the issue that I think I'm wrestling with in my
6 own mind is the -- at the time of a combined license
7 proceeding, the issues would be one as to whether there are
8 any site specific interfaces that might impact the
9 information. Other than that, the only other time it would
10 come up is whether the actual facility has been constructed
11 consistent with a proprietary information in the context of
12 an ITAAC challenge which would be after a combined license
13 proceeding. And so I think making the information available
14 such that it could be challenged in the context of whether
15 the facility was built in accordance with the terms and
16 conditions of the design certification would be a case that
17 it could conceivably come up. And there, I could see it
18 would be very difficult to frame a contention, absent knowing
19 what the design details are that it's supposed to be
20 constructed to. So I think there's a ways to go in
21 describing under what circumstances information would be
22 released and how that might need to be dealt with. I could
23 see it in the context of an ITAAC challenge. I don't really
24 see these issues being challenged in a COL proceeding where
25 the matters had been addressed from a design standpoint

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1 because the site interface issues really should not impact
2 proprietary information. I'm just not aware of any. They're
3 going to be more utility unique operating licenses kinds of
4 issues that are outside the scope of what we're trying to do
5 now with design certification.

6 I'm almost of the opinion we're at a null set of
7 issues of concern as it relates to design for a combined
8 license proceeding, but they could be real issues come time
9 to demonstrate an ITAAC if you're relying on proprietary
10 information as a part of the basis of saying the facility has
11 been constructed in accordance with a particular ITAAC.

12 MR. ROUDEN: Well, I think I can make a
13 commitment on behalf of those with whom I've discussed this.
14 We can sit down and work out parameters which would give
15 persons who have a proper interest and access to this
16 information, timely access to the information under
17 appropriate protective agreements. They would not be
18 prejudice thereby. If they disagree with the way the issue
19 is resolved, they can use 7158. I mean we have a regulatory
20 process which really accommodates this issue. I'm just
21 saying we have to have the wit to apply that process to the
22 issue.

23 MR. WILSON: Okay, we'll move on to item 2 which
24 is related, that is finality of permitted changes. NEI has
25 four subparts to this comment: changes subject to prior NRC

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1 approval and hearing opportunity; changes made in conformance
2 with 50.59 like process; hearing opportunities for 50.59 like
3 changes they claim are time dependent; and 50.59 like changes
4 should have protection of the backfit standard in 10 CFR Part
5 52.63.

6 Are there any questions on this particular area
7 of comment by NEI?

8 MR. BISHOP: Perhaps I could begin again, Jerry.
9 This boils down to a fairly straight-forward issue. Part 52
10 itself provides for a defined, and some would say, a refined
11 change process. It provides for different processes for
12 changes of different significance, a change that has safety
13 significance, tier 1 material has a dramatically different
14 and appropriately so, change process than for instance those
15 materials or those matters that have no safety significance
16 which would fall within the proposed process of using the
17 50.59 type change process.

18 I don't think there's any question as to those
19 changes in the change process for safety significance. What
20 we're really talking about is how the 50.59 process would
21 work in this context. I guess I'd begin with just the
22 observation that by definition the 50.59 process and its use
23 cannot involve something that's safety significant. If you
24 go through the process and you find it safety significant,
25 you're no longer in the process. You now go to a different

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1 change process. We think that there's no reason to move away
2 from that process. It's a lawful, predictable, proven
3 process. It's worked very well in operating plants and we
4 think the same principles should apply in the context of
5 using it in a plant that's been licensed under Part 52 as it
6 does in a plant that's been licensed under Part 50.

7 We feel the same way, frankly, about the idea of
8 a hearing that might be inserted in the process as was
9 defined in the proposed rule. To use that as a process to
10 restrain Tier 2 changes, in our view, frankly, that's a
11 misuse of the hearing process. It does not merit any logical
12 kind of consideration other than it does indirectly what
13 might be better done or at least challenged on a more direct
14 fashion.

15 In our view on that issue, economic benefits of
16 standardization notwithstanding the NRC's flexibility that
17 enables design changes to be made under the 50.59 process,
18 where appropriate, will provide necessary controls into the
19 future. We do not think that we ought to exert what I termed
20 as creating a perversion in the regulatory process to
21 accomplish indirectly that goal.

22 I think the NRC has the opportunity to challenge
23 whether Part 50.59 has been properly applied, as it does now
24 in operating plants. Members of the public who do not agree
25 with the substance or the process have the 2.206 process

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1 available to them to bring up any challenge they might like,
2 so I guess at heart we think that the Part 50.59 process
3 ought to work in the Part 52 context in the same way as it
4 does in the Part 50 context and frankly, to have the same
5 attributes of finality that it does in the Part 50 process
6 that the flexibility built into the design change process in
7 Part 52 and in fact in aspects to the proposed rule provides
8 the necessary workability of the system, but maintains
9 standardization where it's important which is on the safety
10 significant aspects. Those things that are not safety
11 significant ought to be able to be dealt with subject to the
12 NRC's oversight, of course, on an on-going basis through the
13 use of the 50.59 process.

14 MR. WILSON: Okay, any questions or
15 clarifications on that?

16 MR. MALSCH: Let me just describe how the logic
17 behind the proposal in the proposed rule is, which I think
18 really does draw most directly from the current process.

19 Here's what we are thinking. Normally, when you
20 think of issue preclusion you think of let's say a universe
21 of issues which are relevant to say a combined licensing
22 proceeding or a simple CP proceeding. And when you have
23 finality associated with the rule, normally we have thought
24 in the past the rule simply carves an issue or bunch of
25 issues out of that process, looks at it, resolves it

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1 generically and then that generic resolution is binding in
2 subsequent proceedings.

3 Now this is a little different. Clearly, we have
4 looking at it from the standpoint of combined licensing
5 proceeding, we have looked at all safety issues associated
6 with the certified design and Tier 2 of the certified design
7 and issues associated with that design are carved out and
8 resolved.

9 Now once somebody makes a change in that design
10 under the change process, let's say a change in Tier 2 of the
11 design, we now have -- and let's say that change is picked up
12 by an applicant to buy a license, we now have a situation in
13 which an issue is presented within the scope of the certified
14 design which has not been reviewed by the staff so we can't
15 point to a rulemaking proceeding which has looked at this
16 particular issue and resolved it. A change could be made by
17 anybody, let's say, and the safety of that change would never
18 have been reviewed by the NRC. You could point to no
19 rulemaking proceeding in which the issue is taken up, carved
20 out, resolved, and then applied generically to subsequent
21 licensing proceeding.

22 In a sense, that's exactly now the 50.59 change
23 process for operating licensees. There is no, when someone
24 has an operating license and there's a change in the facility
25 as permitted under 50.59, and then proceeds to make the

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1 change based upon its review under 50.59, that's allowed to
2 happen not because NRC has approved the change and resolved
3 it either generically or specifically as being safe, it's
4 just part of your authority as an operating licensee to make
5 those kinds of changes without NRC approval. So there isn't
6 finality in the sense associated with those changes, in the
7 ordinary sense because we never looked at those changes.
8 There's no NRC decision you can point to as a part of -- not
9 a change process that would say NRC you have reviewed and
10 approved this change process. So when we draft a proposed
11 rule we are analogizing this to the normal 50.59 like process
12 in which there is authority to make the change, but there's
13 no representation that the change has been reviewed by the
14 Agency and approved by the Agency.

15 Now the problem is, all right, what do you do?
16 The problem is, I guess, the premise. Clearly, if there's no
17 safety significance in the change there's no issue. The
18 problem as I see it is how you resolve contests over safety
19 significance of the change. Suppose someone in a combined
20 licensing proceeding disputes the applicant's 50.59 like
21 analysis and says this is a significant change and it does
22 impact materially and relevantly on the finding NRC must make
23 to issue the combined license. That kind of issue doesn't
24 normally arise in connection with the 50.59 change processes
25 for operating licensees because there is no licensing

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1 procedure within which to raise the issue. It's an
2 enforcement space.

3 Now we could create a 2.206 like petition process
4 for that, but that's going to be kind of awkward because
5 there's no enforcement action. We're talking about issuing
6 a combined license. We're not talking about taking an
7 enforcement action. We're talking about issuing a license.
8 And so -- and we can't say there's issue finality because
9 we've looked at it, because by definition if they followed
10 the change process, the Agency hasn't looked at it. So from
11 my perspective I was having difficulty seeing according
12 finality to the usual traditional finality sense by virtue of
13 a rule making proceeding when the rulemaking proceeding never
14 examined the safety issue in question, namely, the
15 significance of this particular design change.

16 Now looking at it though from another
17 perspective, I think there is, as I thought about it,
18 something that is anomalous that's associated with this
19 particular process and I guess it's really the same anomaly
20 is inherent in the existing process. What if -- if we went
21 with the NRC staff's original proposal you would find a
22 situation in which in theory an applicant for a combined
23 license makes a change in accordance with the change process.
24 The change is then litigable as is any safety issue in the
25 combined licensing proceeding, but let's suppose the change

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1 is not made then. Let's suppose a change is not made until
2 one second after the combined license is issued at which
3 point it doesn't become litigable except perhaps as part of
4 a ITAAC challenge which would be the case in any event. And
5 so why should there be a difference in terms of litigability
6 depending on whether or not the issue is raised one second
7 before a combined license issuance or one second afterwards.

8 Of course, the same anomaly appears in an
9 operating licensing proceeding under the current rules. Some
10 could raise an issue about a design that would be litigable,
11 I suppose, in the OL proceeding where the very same issue, if
12 it arises because of a change made one second after OL
13 issuance, 50.59 would not be, but that's because there's no
14 mechanism available. The license is issued. The only
15 mechanism is a 2.206 enforcement process. Now that makes
16 sense when you're talking about a license already issued
17 because it would be an enforcement action taken against a
18 licensee. In our case, prior to CP combined, let's say COL
19 issuance, there's no enforcement action to be taken because
20 we're talking about not an enforcement action, but issuance
21 of a license in the first place.

22 Now maybe we could think about instead of issue
23 preclusion in the ordinary sense of issue that's been
24 reviewed and resolved, but instead talk about what would be
25 the normal mechanism as part of or as an adjunct to a

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1 combined licensing proceeding for an intervenor to raise as
2 an issue whether the change process standard has been met,
3 i.e., whether there was a significant safety issue here.

4 Now maybe we could create some sort of pleading
5 threshold that would say listen, we won't admit an issue in
6 the combined licensing case unless you make some kind of a
7 threshold showing that the change process hasn't been applied
8 properly.

9 Now there could be a difference here in the sense
10 of the outcomes because if you just treat it as a normal
11 enforcement action, there's no judicial review, whereas
12 normally as part of a licensing case, there would be judicial
13 review and I wonder if I could get your reaction to whether
14 it's essential that we treat this as final in a sense of an
15 issue reviewed subject to enforcement action only, with no
16 judicial review or whether we can treat this as kind of a
17 scope question or maybe a threshold pleading question in a
18 combined licensing case.

19 MR. ROUDEN: I think it's not a material issue in
20 COL licensing procedure. We've wrestled with this in
21 somewhat the same fashion you have and I think basically the

22 BN Commission would be writing on a clean sheet and we
23 would be urging it to do something that makes functional
24 sense in this regard, (a) you have a rule which provides
25 changes of this type can be made because by definition

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1 they're not safety significant. As a matter of fact, a test
2 of their nonsafety significance is you're not requiring staff
3 review of them. These are not issues which are material to
4 the licensing determining that staff would make in issuing a
5 combined license.

6 Our assumption is that the hearing process is
7 geared to matters which are material to the licensing
8 decision. If this is not material to the licensing decision,
9 there should be some external mechanism that's required to be
10 exhaustive before you can rate this as an issue. We sought
11 2.206 as a vehicle for doing this. After all, you are
12 dealing with where you are in compliance with a regulation,
13 50.59, so we didn't see why 2.206 couldn't be fitted to that.
14 We also saw virtue in having consistency utilizing the 2.206
15 process throughout, whether the change was made prior to the
16 COL's issuance or after the COL's issuance. And we also
17 wrestled with the same problem that you had, are you really
18 encouraging people to wait to make these changes after the
19 COL issues as contrasted in making the changes before the COL
20 issues and does that make sense?

21 We still think eh 2.206 process is the
22 appropriate mechanism for dealing with this. We think it's
23 lawful for the Agency to do this because we don't believe
24 that this is an issue that would be material to the COL
25 licensing determining by the staff. As far as the safety

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1 significance is concerned, the staff has already agreed to
2 treat these as nonsafety significant, if indeed, they do
3 qualify under 50.59.

4 MR. MALSCH: I think the difficulty, the problem
5 I see with the argument that makes it complicated is the
6 premise. Clearly, if you grant the premise that the change
7 which has been made at Tier 2 is in compliance with the
8 change process, I think the argument follows.

9 The problem is how do you deal with disputes over
10 the validity of the premise? If the premise, let's say it's
11 false, then it's no longer so clear to me that we have an
12 issue that is immaterial to the combined licensing process.

13 MR. ROUDEN: You get intervenors in an escape
14 valve mechanism just like we do for the operational stage at
15 2.206 type petition.

16 MR. MALSCH: I guess that's the issue. That's
17 the way I was looking at it. You need to create a special
18 process that's a part of or adjunct to the combined licensing
19 process that would treat this kind of an issue. One question
20 that struck us is let's suppose we have the staff for that
21 matter or the intervenor challenging the adequacy of the
22 review done by -- it could be a vendor, let's say an
23 applicant, made to support a change. And let's say we were
24 to agree with the intervenor or come to our conclusion that
25 the change process was applied inappropriately, if in fact

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1 there was a safety question. What would be the nature of the
2 enforcement action we would take? Normally, we take
3 enforcement actions against licensees and there would be no
4 licensee here, I suppose. I suppose in theory you could
5 issue an order to the applicant directing the applicant to
6 modify the application to delete the change.

7 MR. ROUDEN: Our preference is to apply existing
8 mechanisms to address this problem, rather than to create new
9 mechanisms. There are enough mechanisms in this process now
10 and I think that the 2.206 mechanism can be adapted to do
11 what we all agree seems to make sense here.

12 Admittedly, there are competing considerations.
13 We think the balance is in favor of treating it this way.

14 MR. MALSCH: And you see these things as
15 reviewable like any other enforcement action?

16 MR. FRANTZ: There are precedents. We've had
17 other cases involving applications for operating licenses
18 where somebody has also raised a 2.206 petition. The
19 Commission has found that to be worthy of a hearing and has
20 basically merged that the 2.206 issue into the operating
21 licensee hearing which is not reviewable by the courts.
22 We're saying something very similar here with the changes,
23 that if a Commission believes that there is ground to believe
24 that the change d.d evolve around a safety question it would
25 merge that issue into the 2.206 hearing context and that

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1 would be reviewable by the courts.

2 MR. RUSSELL: I have a question that relates to
3 knowledge that changes have been made. I don't want to have
4 a process that would cause people to make changes and make
5 them afterward. I would much prefer to have a change be made
6 when the engineering reviews are being done. You finalize it
7 and get the change through the process and get it resolved.

8 But if changes are being made and the staff does
9 not become aware of them because we run an audit type
10 inspection oversight or the public in this matter to make a
11 meaningful 2.206 petition is going to have to know that some
12 changes have been made, what have you envisioned as it
13 relates to collecting or notifying the staff or putting
14 something in the public domain that indicates changes have
15 been made pursuant to a 50.59 like process? Your conclusion
16 that these changes are permissible, therefore they're not
17 material to the licensing issue, but still at the same time
18 providing an opportunity for a challenge, whether it be under
19 2.206 or whether it be an inspection activity on the part of
20 the staff to go look at it and see whether we agree in the
21 context of enforcement whether this was a permissible change
22 or not?

23 MR. FRANTZ: Currently, I believe it's 52.79 that
24 requires FSAR to incorporate the DCD and I could envision
25 that for CO applicant, the CO applicant would identify as

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1 part of this FSAR DCD package the changes they are proposing
2 to make or deviations they are proposing to make from the DCD
3 itself so that the staff would have knowledge of this and of
4 course members of the public would have knowledge of that
5 through the initial submission or any updates of that
6 submission.

7 MR. ROUDEN: There are really two aspects of your
8 question. First is already inherent in what the staff
9 proposes, namely, allowing COL applicants to make 50.59
10 changes and we'd have to spell out the mechanisms for the
11 applicant notifying the staff in terms of whatever
12 periodicity is agreed upon. That's something that has to be
13 done. We recognize that.

14 The second, if our proposal is adopted, namely
15 that there is no hearing on these changes, but there is a
16 2.206 or some analogous petition right, we would have to
17 devise a mechanism to notify the public that changes have
18 been made. We recognize that that has to be done. Some
19 notice in the Federal Register that these changes have been
20 made and that the information is in the public documents.

21 MR. BISHOP: Perhaps something like they use now.

22 MR. RUSSELL: But if the COL application comes in
23 and you're in a proceeding and there are changes which are
24 identified, which are permissible changes under 50.59, the
25 fact that those are changes that are made prior to the

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1 issuance of a combined license should be absent a challenge
2 that was an impermissible change, should provide some degree
3 of finality as it relates to how you would make a judgment
4 against an ITAAC later as to whether the facility conform the
5 design as modified at the time of the application in granting
6 the operating license.

7 It would appear to me there's a benefit on the
8 industry's side to having these identified in the proceeding,
9 bars on the side of the application saying this was changed,
10 maybe a reference number to the 50.59 review or something so
11 that that's not an issue that comes up later as to whether a
12 design does or does not conform in the context of an ITAAC.

13 MR. ROUDEN: We agree this should be documented
14 and publicly identified. I think it's in our interest.

15 MR. RUSSELL: Okay.

16 MR. WILSON: Any other questions on this issue of
17 finality associated with changes?

18 MR. FRANTZ: Mr. Wilson, there is one additional
19 issue which I believe you have this number, Section 8, which
20 may be fruitful to discuss now. It also pertains to the
21 change process and that involves the criteria for determining
22 whether there's an unreviewed safety question. We were
23 somewhat concerned when we looked at the statement of
24 consideration for the proposed rule because it states that
25 unreviewed safety question exists "if the change involves

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1 issues that the NRC staff has not previously "approved" or "if
2 changes were made to the DCD have violated the resolutions
3 without prior NRC approval."

4 We believe that those two statements are
5 inconsistent with both Section 8 of the proposed rule and
6 with Section 50.59. In particular, both the proposed rule
7 and Section 50.59 define unreviewed safety questions in terms
8 of three criteria, namely, whether there's an increase in
9 probability or consequences of an accident, whether there's
10 a new or different kind of accident or whether there's a
11 decrease in margin of safety.

12 None of those three criteria embody the criteria
13 in the statement of considerations and we were wondering
14 whether the staff intended to change the definition of
15 unreviewed safety questions and if it did, we have concerns
16 because we believe that the process has worked well in the
17 past. We have 30 years worth of experience in 50.59. We
18 believe that's a mature process and we're concerned that by
19 establishing new criteria, we could really be going down an
20 unpaved road and encountering many new questions in the
21 future as to what constitutes an unreviewed safety question.

22 MR. WILSON: Could you clarify why do you think
23 it's outside of the existing definition?

24 MR. FRANTZ: Well, for example --

25 MR. WILSON: Change created an issue that was not

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1 previously reviewed or approved, then why wouldn't that be an
2 unreviewed safety question? One of the criteria you referred
3 to points out there's a possibility for an accident or a
4 malfunction of a different type evaluated previously. It's
5 a similar type approach if it's something that hasn't
6 previously been approved.

7 MR. FRANTZ: I'm not sure that's necessarily
8 true. If you have an issue or a change that involves a
9 matter by the staff that has not been previously approved,
10 that issue or change does not necessarily create the
11 possibility of a new accident. It's just something the staff
12 hasn't reviewed previously.

13 MR. WILSON: What's your concern?

14 MR. FRANTZ: Well, my concern is that if the
15 staff classifies this as an unreviewed safety issue, we're
16 then required to seek prior staff approval and go through the
17 hearing process for an issue that under today's rule, under
18 50.59 would not require prior staff approval or a hearing on
19 it.

20 MR. WILSON: Are you saying that you would
21 evaluate a change, but then you would determine whether that
22 change created a new accident or an increase or decrease in
23 safety?

24 MR. FRANTZ: That's correct. We have to go
25 through and for each one evaluate whether it's satisfied any

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1 of those criteria and if it does that's an unreviewed safety
2 question that would require NRC prior approval.

3 If it does not, even if it's not something that
4 stands as previously approved, then there would be no
5 unreviewed safety question and no need for prior NRC
6 approval.

7 MR. WILSON: But you wouldn't ignore that change
8 in your process of evaluation?

9 MR. FRANTZ: Absolutely not. We would be
10 required to go through and evaluate every change against
11 those three criteria.

12 MR. WILSON: Okay, that was part of the concern.

13 MR. BISHOP: Again, we see that as the sibling of
14 the 50.59 process. It's like a different delineation.

15 MR. RUSSELL: So the only differentiation then is
16 getting back to the issue of whether severe actions or
17 whether the scope of that 50.59 review process are not and
18 that would come up later.

19 MR. BISHOP: That's correct.

20 MR. RUSSELL: And you're saying the evaluation
21 would be against each of those three criteria, each time?

22 MR. BISHOP: Yes, yes.

23 MR. RUSSELL: And that would be the outcome of
24 the evaluation, whether they had or had not been impacted as
25 compared to whether it's a level of detail that the staff has

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1 previously reviewed or not?

2 MR. BISHOP: Exactly.

3 MR. RUSSELL: Okay.

4 MR. MALSCH: Can I come back to the 2.206
5 analogy? I was wondering how far we can carry this? Let's
6 suppose we have a prototypical challenge to a 50.59 like
7 change made by an operating reactor licensee. And let's say
8 we get a petition that contains extensive documentation and
9 affidavits just to make it the worse possible case. In
10 theory, that's a discretionary enforcement matter. The staff
11 would have the discretion in theory to say well, this is a
12 very interesting issue. You may have something here, but
13 we're too busy to get to it now. We're going to schedule it
14 for resolution a few years from now and in any event it looks
15 like a severity level 4 or civil penalty and not the need for
16 an order, so we're not, basically, going to take any action.
17 And that's not judicially reviewable on the theory that this
18 is inherently the exercise of enforcement discretion, the
19 ordering of an enforcement agent priority, safety priorities,
20 etc. etc.

21 Now let's step back and imagine the same petition
22 which is filed by an intervenor, let's say combined licensing
23 proceeding. A change has been made which has been identified
24 by the applicant in the FSAR, let's say, and an intervenor
25 files the same petition of some sort saying that no, this

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1 raises a significant safety question and he attaches
2 affidavits and studies them and argues that because of the
3 significance of the safety question, the NRC cannot make the
4 findings which are required for issuance of the combined
5 license and argues this is not a discretionary force of the
6 matter. The making of the findings for combined license
7 issuance is not a discretionary matter. Unless you make the
8 findings, you can't issue the license. So this is not an
9 enforcement matter and therefore the resolution of this
10 question should and must be subject to Commission review and
11 it is material to the licensing process because if I'm right,
12 you can't make the findings required for issuance of a
13 combined license.

14 Where am I wrong on that?

15 MR. ROUDEN: Well, it's not a question of you
16 being wrong. I mean I see no reason to believe that the
17 staff will not discharge its responsibility in issuing a COL
18 and considering all matters which are material to a licensing
19 determining on safety. That's number one.

20 We suggest 2.206 which admittedly has to be
21 adapted to fit this situation as being a mechanism which
22 could be utilized. I can think of another mechanism to be
23 utilized. If you consider a 50.59 change from a design
24 certification rule, to be part of the rule that is applied in
25 the licensing proceeding itself, perhaps an intervenor could

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1 use 2.758 to seek, admittedly it's discretionary, but it fits
2 in with the licensing process. I just don't think it's
3 insurmountable. But again, I think there are lawful ways to
4 achieve a practical result here. I think these are policy
5 determinations on the part of the Commission as to how they
6 deal with it.

7 We think that notwithstanding the competing
8 considerations that you suggested that the balance of
9 interest really favors dealing with these as you would expect
10 a 50.59 change to be dealt with, that it would be up to the
11 discretion of the staff to determine whether it rose to a
12 level of significance that warranted consideration as a
13 material issue in a licensing proceeding.

14 MR. RUSSELL: A nuance of this issue, we propose
15 to allow an applicant to make changes pursuant to 50.59, yet
16 until such time as they have a license, what would be the
17 enforcement vehicle?

18 Now if the challenge is whether the change was a
19 permissible change or not under the regulations so you have
20 a threshold of process and significance as compared to the
21 individual change, we have had experience where the change
22 process was flawed and we've even cited people for the change
23 process, but in the end we found that the substance of the
24 actual change was acceptable.

25 How do you deal with that in the context of a

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1 2.206 when there's no one to take enforcement against yet.
2 You only have an application. You don't have a licensee.

3 MR. ROUDEN: I suggested 2.758 may be a more
4 elegant mechanism to deal with it because then what you're
5 saying if you purported to make a change in compliance with
6 the provisions of the rule, you did not comply with the rule
7 in making that change, we will not accept this as a basis for
8 the licensing.

9 I do believe that there are ways to deal with
10 this. If we have a theological problem with regard to the
11 use of 2.206.

12 MR. BISHOP: And I think you also have
13 enforcement control over applicants.

14 MR. RUSSELL: You just don't grant the license.
15 Pretty strong enforcement authority.

16 MR. BISHOP: Well, that gets into the Catch-22
17 that Marty was talking about, that is for this issue, that's
18 not a very good answer.

19 MR. RUSSELL: I agree.

20 MR. MALSCH: Well, the other problem is if the
21 action that NRC would take would be not granting a combined
22 license, it's hard to argue in the same breath that the issue
23 is not material to the combined licensing process.

24 Now maybe the solution could be to develop a
25 2.758 like process whereby in some sort of a threshold

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1 showing that change process hadn't been applied properly is
2 enough to mount a challenge that at least gets to the
3 Commission itself to decide whether or not to admit the
4 issue. I think that might be workable, but I think that
5 would be an exaggeration to say that's accord and issue a
6 finality to the change. I think that might be more
7 reasonable and something we could work out.

8 MR. ROUDEN: There's no magic in the term "issue
9 a finality." What we want to be able to do is make sure this
10 is not a matter that can be raised in a subsequent licensing
11 proceeding. You can call it issue preclusion rather than
12 issue finality, if it fits better intellectually.

13 Our objective is the functional one, to achieve
14 the results that we indicated we want.

15 MR. MALSCH: I guess what I want is, at this
16 point I feel more comfortable exploring 2.758 analogies than
17 I do 2.206 petitions and all that carries with it in terms of
18 enforcement and initial review, so if you think that's a
19 workable thing, let me think about that some more and we can
20 build that into the rule. We built it into the change
21 process. I suppose we can build into the new rule a change
22 process challenge vehicle.

23 MR. RUSSELL: I'm not concerned about it after
24 issuance of a license. I do like the idea of any changes
25 that are proposed being identified in the license proceeding

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1 and the issue becomes one of how do you challenge individual
2 changes once again. There's got to be some threshold
3 associated with that. It's got to be argued it was an
4 impermissible change.

5 And then if you prevail on that, the answer is
6 we'll change it back. You can build it the way the design
7 certification was. So it is clearly something that's
8 reversible at that point in time.

9 MR. MALSCH: I just point out that I guess if
10 it's a clear violation at the properitoneal stage in
11 connection with an ITAAC compliance question, if you could
12 somehow relate the change to compliance with an ITAAC, you'd
13 have a similar kind of an issue.

14 MR. BISHOP: Potentially.

15 MR. MALSCH: Potentially.

16 MR. RUSSELL: I can also see similar issues
17 coming up with late filed allegations, but that's a matter
18 for the staff to look to and the threshold is whether the
19 allegation, if true, would have an impact of licensing
20 decision, if the change was impermissible would it have an
21 impact.

22 MR. MALSCH: There though if you have an
23 operating licensee and it's easy to fit that, more easily to
24 fit that into the enforcement process.

25 MR. RUSSELL: So from this the issue is with the

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1 period of time prior to issuance of a COL where changes are
2 made pursuant to a 50.59 like process, there's agreement on
3 notification in making such changes visible, such that they
4 are addressed in the context of the proceeding. The
5 remaining issue is what is the appropriate threshold
6 challenging those changes in the proceeding and the threshold
7 needs to be that it was an impermissible change under 50.59.
8 So there's some threshold or standard --

9 MR. BISHOP: The process is not correct.

10 MR. RUSSELL: So it failed one of a three part
11 questions, increase the probability of consequence of an
12 accident, create a new or different type of accident, etc.
13 So it's a challenge that would have to be careful and the
14 venue for doing that whether it's 2.206 or some other portion
15 of the proceedings is something we need to address.

16 MR. BRINKMAN: I'd like to submit that
17 enforcement, if you're in a position where the NRC felt that
18 it needed to have an enforcement proceeding but didn't have
19 the authority to do it in this situation, that really isn't
20 the issue for the industry. The industry wants to know as
21 soon as possible if the NRC considers that it's violated
22 50.59 process. The industry wants to rectify that. It
23 doesn't want to go on with false assumptions. I don't think
24 enforcement is even an issue.

25 MR. RUSSELL: I certainly agree with that and I'd

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1 rather address the issue before the facility is constructed
2 rather than after.

3 MR. BRINKMAN: That's exactly right.

4 MR. RUSSELL: So the issue is what's going on in
5 the engineering activities in parallel with a COL.

6 MR. MALSCH: That's an interesting question.
7 Would you see -- it just occurs to me -- would you see that
8 the combined licensing process would entail an Agency finding
9 that all the changes that have been identified are
10 acceptable? That has a down side and a plus side. The plus
11 side would be you have absolute finality in terms of any
12 later properitoneal challenge. The down side would be it
13 would pretty clearly make it an issue in the combined
14 licensing proceeding.

15 MR. BRINKMAN: I don't think I can speak for the
16 industry, but I certainly would make a very clean slate as
17 you present, and the industry, I must repeat this again, is
18 very much interested in anybody determining at the NRC that
19 we haven't done the process part.

20 MR. ROUDEN: You know, I think we need to discuss
21 this a little more. I think you've identified the two sides
22 of this particular coin.

23 I see the desirability of tying a ribbon around
24 these things. I also see making these into issues in a COL
25 proceeding that otherwise wouldn't be. I'm not sure that the

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1 down side doesn't outweigh the plus side.

2 MR. MALSCH: I don't know. In a sense, you can
3 argue you don't need the extra benefit of finality because
4 the real benefit of finality is associated with the drafting
5 if the ITAAC and the restriction in terms of pre-operation
6 issues to ITAAC compliance, but on the other hand, in terms
7 of enforcement actions and enforcement space between COL
8 issuance and fuel loading, this would get somewhere, but I
9 guess this is something you could think about.

10 MR. ARCHITZEL: This is Ralph Architzel from the
11 staff. I have one question for industry regarding the
12 Charlie Brinkman comment about timeliness of these
13 determinations that are made.

14 My concern is forget the COL proceedings. There
15 isn't one here yet, but you've got your design surrogate, it
16 may be finished. It may be in process. A vendor is doing
17 these type changes although I guess they don't have authority
18 yet. If you want timeliness on feedback of that process,
19 maybe five years or whatever it is to the COL, what's your
20 proposal there? As I've been hearing this whole
21 conversation, those type of changes will be stockpiled for
22 five, ten years or whatever. People won't be around who made
23 those changes and won't be able to answer those questions.
24 What is the position of industry with respect to those type
25 of changes made prior to any COL even contemplating coming

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1 in? There is no applicant and these changes are being made.
2 It seems like a timeliness question arises in that arena.

3 MR. REHN: This is Dave Rehn from Duke. Let me
4 answer that. That is on the list of items that -- number 6.
5 We very much support the notion of proceeding on. The
6 history of this, I guess, talked to -- we saw the need for
7 these types of 50.59 changes obviously after COL, the
8 issuance of the COL. I think the staff in their wisdom and
9 vision saw the need, potentially for an applicant to process
10 these and indeed asked for that in their SECY, I think it was
11 92-287.

12 Since that time, we, the industry have been
13 partnering with DOE and vendors to take these designs past
14 certification to a greater level of detail and in that vein
15 the industry, utility industry has acted as a surrogate
16 owner, surrogate applicant to bring that perspective to the
17 designs and we are finding the need for some of this. I
18 think we would support the same type of notion whereby we
19 would have a 50.59 like process available for the vendor
20 design entity. They could send those in on some frequency as
21 we've already discussed. They would be available then for
22 the public to review and be handled in much the same vein
23 then that's a COL applicant. And I think it would touch your
24 issue, Bill, about these then being addressed as they come up
25 rather than be stockpiled and being handed off to a COL

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1 applicant later on and have to go back and dredge up the
2 history.

3 MR. RUSSELL: My personal view is that that's an
4 issue that needs to be addressed potentially outside the
5 context of the rulemaking. With the exception of potentially
6 extending the change authority to the vendor that owns the
7 FDA, but there are rather significant resource implications
8 associated with that with respect to reviews and other
9 activities and we have generally stayed out of all of the
10 first of a kind engineering issues. And so I guess what I
11 need to understand is whether there is a proposal to do
12 something differently, because if there is, outside of the
13 rulemaking context, I've got issues from the standpoint of
14 staff review resources and audits that may be going on, etc.,
15 currently which are not going on. So I'd like to keep this
16 focused right now to the issues that are subject to the
17 rulemaking. If the industry wants to bring that up
18 separately with respect to activities underway as part of
19 first of a kind engineering or if one of the vendors wants to
20 bring that up that holds a final design approval and they're
21 looking at making changes to that final design approval using
22 a 50.59 like standard for such a change, then I think we need
23 to look at that separately.

24 MR. MALSCH: May I ask a related question. If a
25 vendor makes a change, does that propose to be binding on COL

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1 applicants or holders?

2 MR. BISHOP: Yes. We would envision that process
3 working until you have the COL application.

4 MR. RUSSELL: The case would be similar to what
5 is being done under Part 72 for some cask certificates
6 proposing to allow the vendor who submitted the application
7 to make subsequent changes and update them.

8 From one perspective, the person who knows the
9 most about the design and what's been through the review
10 process is clearly the vendor who did all the generic work.
11 And so the ability to do the 50.59 like review I don't think
12 would be in question. In fact, in many cases I would expect
13 for some changes a COL applicant may have to go back to the
14 vendor to get the information and be able to do a meaningful
15 50.59 review. It's just that we have not taken it that far.
16 We would be essentially treating that vendor as if they are
17 a licensee and it raises all of the questions about
18 enforcement and what if it's an impermissible change, etc.
19 So that is a much broader scope issue than I think what we're
20 proposing at this point in time.

21 I'd like to keep the issues reasonably confined
22 to that which we deal with in the near term because I think
23 that has some broader implications.

24 MR. MALSCH: I guess I'm wondering about that.
25 Clearly, the design certification of rulemaking includes

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1 within it the power on the part of let's say hypothetically
2 vendors to make the changes, but how can we go one step
3 further and say that we are giving the power to vendors to
4 buying subsequent utilities even though the actual change was
5 not part of the rulemaking proceeding?

6 MR. BISHOP: Marty, again, the 50.59 changes so
7 by definition things that are not safety significant are
8 binding in the context that we would envision it to be
9 applicable to somebody using the design, but clearly grounds
10 if licensee no. 2 didn't want to do it, then they administer
11 a 50.59 against that change of design.

12 MR. FRANKS: There's another point, for the site
13 specific submittal for the COL requires them to note any of
14 the changes anyway, so irrespective, even if we don't have an
15 applicant, at the COL stage you submit the site specific
16 design that identifies the differences between it and the
17 existing certified rule. At that point in time, you've got
18 the applicant who has the responsibility under the regular
19 rules.

20 MR. RUSSELL: But that's the status quo. You've
21 been making the changes and whoever comes in first is going
22 to have to justify why those changes are permissible changes
23 under 50.59.

24 MR. BISHOP: But under that process so would
25 everybody else as well.

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1 MR. FRANKS: Right.

2 MR. BISHOP: And that's one of the down sides we
3 see in terms of skill, resources and other factors. And we
4 are advocating -- I agree with you. This is an issue with
5 great many ramifications, but to us it makes sense to put the
6 opportunity in these rules in a design holder, if you'll
7 allow me to use that term, the FDA holder, to be able to make
8 50.59 changes under the same kind of orderly process to
9 provide notice so everybody will have the opportunity on
10 whatever frequency we think is the right thing to do and get
11 them done in an orderly fashion.

12 MR. MALSCH: But why wouldn't it be sufficient
13 from your standpoint that this would allow a combined license
14 applicant to simply incorporate by reference the change
15 evaluations the vendor had done as part of the license
16 application?

17 MR. BISHOP: They could and therefore so would
18 every other COL applicant. Our thought is that's just not
19 administratively very wise use of resources.

20 MR. MALSCH: We could issue a rule that would
21 bind a utility to a change made by a vendor that NRC never
22 reviewed?

23 MR. BISHOP: You could issue a rule that allowed
24 vendors to make 50.59 changes.

25 MR. MALSCH: I have no problem with that. My

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1 problem is the next step which is to say that change having
2 been made is binding on all the utilities in the country,
3 even though NRC never reviewed it.

4 MR. BISHOP: I'm sorry, binding on subsequent COL
5 applicants to the extent it's applicable, yes.

6 MR. MALSCH: Even though they never reviewed it?

7 MR. BISHOP: Sure. We never talked about you not
8 having to review the 50.59 changes for current plans. I've
9 always thought the materiality is the issue, not whether the
10 NRC has reviewed the subject or not.

11 MR. MALSCH: If it's not material, it's
12 irrelevant to us and not binding. If it was binding, we'd
13 have a stake in it, wouldn't we? I mean if it's an
14 immaterial issue, we would not have a sufficient stake in the
15 resolution to make it binding, would we? Yes?

16 MR. RUSSELL: I can see a vendor coming up with
17 a change that may be permissible under 50.59 that results in
18 economic benefit to the vendor, but may not necessarily be an
19 economic benefit to every applicant or present certificate
20 holder.

21 MR. MALSCH: Let's suppose you have a vendor who
22 has an interest in a gold mine. And he makes a change to go
23 from steel widgets to gold plated widgets and then that would
24 be binding on every utility in the future?

25 He would have to come in with an application for

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1 gold plated widgets and the NRC would say we could care less
2 whether they're steel or gold-plated. If we say we could
3 care less, then there's no basis for our saying but you've
4 got to do it, is there?

5 MR. REHN: The way it matters right now, once
6 these certifications are on the street a whole host of folks
7 could come in and say I want to be a COL applicant and go off
8 and do their own design. I could own a gold mine, you could
9 own a platinum mine and we could all define what we wanted
10 and be on a 50.59 as COL applicants/licensees.

11 What we are seeing in the industry is that for
12 standardization needs for the economies of design, the
13 economies that we hope to see in operation one day, we want
14 standardization so we would like to see these designs taken
15 forward at one time and that potential owners would be part
16 of the family that would buy into it and they would buy into
17 these detailed designs. Buying into one of these detailed
18 designs, that means that design is a package, you take it and
19 it comes complete with certain 50.59 type changes that are
20 part and parcel to that level of detail. I think that's what
21 we're saying that that's how we would view that package.

22 MR. MALSCH: Okay, but isn't that more of a
23 marketing strategy than a regulatory matter? I mean it's a
24 regulatory matter, but the resolution heretofore has been put
25 it in Tier 1. That's the standardization benchmark.

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1 MR. CRUTCHFIELD: Marty, what I think they're
2 trying to say is they would make it commercially binding, but
3 not binding from a regulatory standpoint.

4 MR. REHN: Yes.

5 MR. MALSCH: I can see that. That's up to you
6 all.

7 MR. REHN: Right now those particular changes are
8 limited only to someone processing them that has to be either
9 an applicant or a licensee.

10 MR. MALSCH: I can see that. I personally have
11 no problem seeing with seeing a vendor making changes. My
12 difficulty is with the concept that we would give a vendor a
13 power to issue something which is binding regulatorily on the
14 subsequent purchaser as opposed to having a market strategy.

15 MR. REHN: Bill, I think your summary earlier was
16 on target. We have not gone down this avenue completely yet
17 with you and I think with the industry. We'd certainly like
18 to continue this dialogue. We're receptive to these kinds of
19 concepts. We're like you, we're exploring the nuances now of
20 the 52 as we implement. We're getting there maybe in
21 different ways than we envisioned and this is an issue that's
22 come up. We'd like to be able to pursue it and see it come
23 to a resolution that allows us this opportunity.

24 MR. MALSCH: I can see from our standpoint since
25 the vendor is the one who knows the most about the design,

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1 he'd be especially interested in any applicant which has a
2 design that's different from that which the vendor is
3 currently offering. That's -- it's one step further for us
4 to say in a regulatory sense we will accept nothing else.

5 MR. REHN: I didn't mean to imply otherwise.

6 MR. RUSSELL: Okay, for the purposes of the
7 rulemaking we're going forward and getting comments on, we're
8 looking at applicants and licensees to the extent we need to
9 address what's being done when vendors, let's table that as
10 a separate discussion, have either DOE or ARC or whoever has
11 the right industry proponent for that come forward because I
12 think there are a number of issues that would be very
13 difficult to address in the context of a vendor essentially
14 becoming a licensee with enforcement issues that we're
15 talking about, other matters get involved; notice to changes.
16 What would be the public's participation, whether there be a
17 2.206 process or something else. I see this as a very much
18 complex issue than an applicant or a COL holder.

19 MR. WILSON: While they're thinking about it
20 maybe for the benefit of the audience we can take a look at
21 issue 6, post certification changes by design certification
22 applicants.

23 MR. BISHOP: Just one further comment. Bill, I
24 do think we need to put a place holder in the rule to provide
25 for the vendors to have the ability to make 50.59 changes

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1 because they do not now.

2 I'm not sure we can escape --

3 MR. FRANKS: I don't necessarily agree with you
4 there. I think the vendors do have the capability now and I
5 think they do it through the COL applicant and that the COL
6 applicant submits a site specific application. It differs
7 from the certified document that has to be so noted.

8 MR. BISHOP: I think that's not the most
9 effective way to deal with it.

10 MR. RUSSELL: The issue is one of delay and time.
11 The first application doesn't come in for five years, you're
12 going to have the loss of time. The practical issue, I'm not
13 sure if that's a rule making issue.

14 MR. FRANKS: That's right.

15 MR. RUSSELL: It can be done that way. If you do
16 it differently, I think it's gotten very significant
17 implication for what might be staff resources by way of
18 inspection activity of what's going on or review, 50.59 like
19 changes being made by vendors, etc. and this has come up
20 twice before and twice before the industry has said no, we
21 don't want NRC in inspecting, reviewing or doing. What I'm
22 hearing today for the first time is that you're seeing some
23 role where you want the NRC to be looking at changes that are
24 being made by vendors to the design certifications or to the
25 FDA's issue. So it might be FDA amendment. That has

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1 implications for both review and inspection activities that
2 are currently not in the budget planning, etc. All the
3 issues associated with recovery, you name it. This is a much
4 broader issue to solve what is an issue of timeliness of an
5 application coming in. You can have a consortium formed and
6 apply and do it through a vehicle of an early application
7 without having done site specific. There may be other
8 options to resolve this beyond the one of making a vendor
9 essentially a licensee.

10 MR. FRANKS: That's right.

11 MR. RUSSELL: All I'm saying is that issue,
12 rather than taking it up right now in the context of this
13 rulemaking is one that I think needs to be developed further
14 to have some dialogue, because this is not a part of the
15 proposed rule. This would be a substantive change which
16 would cause it to go out with another round of proposed
17 rulemaking.

18 MR. BISHOP: I think not necessarily.

19 MR. MALSCH: We'd have to think about that.

20 MR. McDONALD: Pat McDonald, Executive Director
21 of ARC. As you know, ARC and its contractors, GE,
22 Westinghouse are involved in first of a kind engineering.
23 This issue is very important because I think that we all want
24 to have a very well disciplined pristine process for assuring
25 that any 50.59 type changes are indeed properly reviewed,

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1 processed and imbedded in the design. We're finding, in the
2 first of a kind engineering that there are quite a few cases
3 of necessities to change things in tier 2 as one would expect
4 because there has been so much tier 2 information included in
5 the SARs and our process for 50.59 has previously said if
6 it's addressed in the FSAR or shown in there, you have to
7 have a 50.59.

8 So it is really of very high necessity to keep
9 the validity and discipline in the change process to have one
10 design certified design going forward rather than a series or
11 a group of certified design, not quite, we've got changes to
12 it. So I think this is one that needs to be put as the place
13 holder or to try to work this out at this time because it is
14 a real concern to the utilities who are in ARC and who see
15 how it's developing. We see it as Dave said, as a very key
16 part of standardization. We see a design put on the market
17 by a vendor to say whatever design it is. He says it's a
18 certified design. We expect that design, certified design in
19 any detailed work that goes along with it to be consistent.
20 I think it's a real economic and possibly safety issue that
21 we face up to this as part of this process.

22 MR. WILSON: Mr. McDonald, when several years
23 ago, as you first mentioned, first of a kind engineering and
24 we asked this question we were told it was a level of detail
25 that was implementing Tier 2. Now you seem to be saying it's

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1 causing a number of changes in Tier 2. Shouldn't we be
2 reviewing the tier 2 now then? I mean if it's that
3 significant shouldn't we reopen the review?

4 MR. McDONALD: As Mr. Russell said and he called
5 to our attention that you're not involved in FOKE. You are
6 not overseeing the process and what have you. I suggest that
7 you should with respect to changes to that material. That
8 doesn't mean you have to conduct inspections to show that the
9 proper procedures are used in developing the detail of a pump
10 requirement or what have you. It does by necessity because
11 you've put tier 2 processes in the licensing documents and
12 you can hardly go through a detailed design program without
13 finding many cases to where you want to change a little
14 length or a little connection from one valve to another or
15 cut out one valve out of the system. As long as that system
16 which has safety components also have some other little
17 valves in there to show it's a whole system, you have to
18 consider it.

19 MR. RUSSELL: Pat, we've had at least two major
20 meetings on this issue and in both of those meetings it was
21 described that it was the industry's preference that the NRC
22 not be involved. It was characterized that you were going to
23 hold GE and Westinghouse responsible for identifying whether
24 these would be permissible or not permissible changes and
25 that you were going to collect them with time and from the

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1 time of the first application they would be submitted for NRC
2 review. That's what we premised the proposed rulemaking on.
3 What you're saying is you want to do that differently now, I
4 would hope that this issue would be characterized in the
5 industry strategic plan as to how we're going to be doing
6 this differently because it has significant near term
7 resource implications which are not on the NRC's planning
8 horizon.

9 MR. McDONALD: Well, as resource implications
10 too, for the vendors who would be paying for your resources
11 --

12 MR. RUSSELL: Our inspection activity and review
13 activity.

14 MR. McDONALD: That's right. Now I do believe
15 that this issue was brought up as the potential issue in this
16 LPR before it was issued. I think it was brought up, wasn't
17 that right, Ron?

18 MR. SIMARD: Yes.

19 MR. McDONALD: Who did you bring that up with?

20 MR. SIMARD: I think it was brought up in a
21 meeting on construction inspection and ITAAC verification
22 that Mr. Russell attended, but I'm not positive.

23 MR. McDONALD: We saw this thing issue and your
24 people at that time, we asked for it to be considered in the
25 rule and we didn't know whether it was going to be and when

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1 it was issued, it wasn't considered. So it is an important
2 issue relative to which we called to your attention for the
3 rule when NOPR was put out.

4 MR. SIMARD: This is Ron Simard, Director of
5 Advance Reactor Programs for NEI. If it was brought up and
6 it was brought up only briefly, I don't think we've ever had
7 this detailed a discussion and I think the proposal that
8 we've raised now and judging from the discussion that's
9 occurred so far might warrant a little more and if there's an
10 opportunity outside this room to explore exactly what we see
11 in terms of the impact on NRC resources and what differences
12 there would be beyond NRC review of these changes as their
13 summaries are submitted with the COL application versus the
14 impact on NRC resources as the summaries are submitted over
15 some prolonged period of time.

16 We're probably better off having that kind of
17 discussion outside of the room, but the short answer is we do
18 not anticipate that this proposal would have the kind of
19 impact that is obviously treated your concern.

20 MR. RUSSELL: My view is this is 180 out from
21 proposals that have been made in prior meetings between the
22 industry and the NRC, where in all prior cases you said stay
23 out, we're going to rely on vendors to do this correctly and
24 we're just going to bank them and we'll come in with the
25 review proposal and whoever comes in first will justify the

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1 changes that were made in that 50.59 like standards.

2 What I hear you saying is something different
3 now.

4 MR. SIMARD: Well, I think what may be confusing
5 the discussion here is the emphasis on first of a kind
6 engineering. It's true that that program being underway now
7 is, in fact, generating a lot of potential changes, or at
8 least awareness. We need to be careful. There are not a lot
9 of potential changes that are being generated, but that
10 certainly raises the awareness of the types of changes that
11 can be uncovered. But the need for this proposal goes beyond
12 the first of a kind engineering. I mean the 80+ design, for
13 example, is not currently in the first of a kind engineering
14 program, but conceivably would be subject to the same sort of
15 the desire to incorporate improvements in technology over the
16 years, to incorporate operational experience learned by the
17 industry or from NRC generic communications. So I think it's
18 kind of unfortunate we're focusing on the first of a kind
19 engineering. This proposal is meant to be broader.

20 MR. MALSCH: Could I just come back to this
21 question of philosophy. If I can recall back when we first
22 discussed the whole idea of Tier 1 and Tier 2, initially the
23 idea was we have a design certification that would have lots
24 of detail and the reaction we got back from industry was well
25 really that's not necessary and it causes a problem because

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1 you built into the concept of the design certification rule
2 is now Tier 1, constraints on changes to promote
3 standardization and the industry reaction was if you put too
4 much detail into Tier 1, you thereby apply a level of detail
5 in terms of standardization constraint which we think is
6 undesirable. We wouldn't want flexibility to make changes
7 independent of standardization and you leave standardization
8 in terms of level of detail to the vendors in the marketplace
9 and the self-interest of the industry and so you propose a
10 tier 2 which has associated with it no standardization
11 constraints at all, at least not an obligatory space. Now if
12 what I'm now hearing is there are legitimate standardization
13 concerns with the current ability of the industry to make
14 changes under Tier 2, I mean there's a number of
15 ramifications and one would be to at least think about we
16 could build into the change process of tier 2 a
17 standardization constraint much like the change process
18 that's in Tier 1. That sort of comes exactly full circle of
19 where we were several years before, but if there are
20 standardization concerns of changes that can be made in Tier
21 2, that's something I've never heard before. I've always
22 heard in the past that's something that would be handled not
23 in terms of NRC regulations or limitations or orders of
24 constraints in design certification, but as part of the
25 strategic plan of industry initiatives and NRC wouldn't get

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1 involved.

2 MR. McDONALD: Let me bring forth an image, if I
3 may, of what we're talking about. We're talking about Tier
4 2, about the type of things that have been made in operating
5 plants. Imagine a little example that I gave you of a system
6 drawing that's in the DCD that has 2 valves which are really
7 not pertinent. Maybe there's an instrument line going off
8 one and maybe it's a sampling line off another or something
9 else and we have a reason that one of those really shouldn't
10 be there. It's not needed. It shouldn't be there. And it's
11 not part of the so-called Tier 1 area. We want to take it
12 out. So we have the vendor go in and he puts that in his
13 data bank. He takes it out. He puts it in every drawing.
14 He puts it in everything he has. He makes a description of
15 it. Now that system will interact with another system and on
16 and on and so if you try to carry forward more than one basic
17 design at a time, you have these changes that are interactive
18 and you have a data bank out there that probably the only
19 real design you still have is what the DCD says. And that
20 isn't the way that we like to watch the details and make sure
21 they're all the right quality and properly made.

22 I think, Bill, when we talked about this earlier,
23 you expressed your intentions not to get into first of a
24 kind. We said fine. It will be done in accordance with the
25 QA. It will be done in accordance with all the rules and

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1 we'll give it to you at COL.

2 But now I don't think that's equivalent to having
3 changes made in the 50.59 process. I think we're talking
4 about a periodic submittal by defenders when they get two or
5 three documents or the year or something, put these in and
6 they apply to the certified design which is up for sale for
7 everybody. Let's say that one of our two vendors here win an
8 award in Taiwan for a certified design or FDA. We the U.S.
9 utilities would like that to be consistent with what they
10 would build for us, except for site specific. We would like
11 that to be a certified design so that we would have that for
12 standardization for comparison purposes.

13 Now if in the detail design they can't do that,
14 then we've got a problem. We have defeated our
15 standardization from the very start. I beg you to consider
16 this carefully.

17 MR. RUSSELL: I'm still trying to understand what
18 the issue is. If the issue is these are 50.59 changes and
19 you want to have some understanding that the change process
20 that was used was consistent with the rule and we are not
21 going to say it is an inadmissible change and therefore throw
22 you back to square one, that's one issue. That's the issue
23 that previously you were going to rely on QA and the vendors
24 to make those judgments.

25 If you recall in the meetings, Pat, you

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1 mischaracterized a little bit, this is not the line where the
2 NRC said we're not going to do this. This is one where you
3 indicated you did not want us in it. We suggested that when
4 you're doing first of a kind engineering, if we've got a
5 concern with how you're developing the details such that we
6 conclude that that's not acceptable and it came up in the
7 context of seismic design and ASME code and changes, that was
8 a big area and that issue, we said, we're not going to review
9 it in process. It's your responsibility to do it in
10 accordance with the certified design and in accordance with
11 QA procedures. We'll review it when there's an application.

12 MR. MATZIE: I don't think the words, the
13 concept, the thought about 50.59 changes ever came into our
14 discussion. You're exactly right, but I don't think we ever
15 mentioned that.

16 MR. SIMARD: It's probably worth noting since
17 you brought it up. This latest issue of the strategic plan
18 still has that position paper in the back of it about the
19 industry commitment to standardization so even if this
20 proposal doesn't go forward and even if we have no mechanism
21 to gather these 50.59 changes and submit them with the first
22 COL application, our commitment to standardization that every
23 plant in that family is going to be identical means that we
24 take that same package of changes and submit them again and
25 again and again on the docket of each one of the successive

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1 plants that comes in. And so one of the advantages we saw
2 behind this proposal was some administrative efficiency of
3 being able to submit this summary of changes at one point in
4 time rather than repetitively.

5 MR. RUSSELL: But that efficiency already exists
6 because if something is submitted on a docket at one time,
7 the next time you identify the changes. That's been going on
8 for years.

9 MR. MALSCH: Let me ask the question. Wouldn't
10 a possible solution be a periodic updating of the FSAR and
11 amending Tier 2, to update Tier 2, depending upon the current
12 status of first of a kind engineering.

13 MR. McDONALD: That's, in essence, what a 50.59
14 is.

15 MR. MALSCH: Except this would involve a specific
16 rulemaking proceeding and agency approval that would be --

17 MR. RUSSELL: Then you're talking about
18 periodically amending the rule.

19 MR. MALSCH: Yes.

20 MR. FRANTZ: Right now, that would require a
21 change to Part 52 as 52.73 only allows changes for protection
22 --

23 MR. MALSCH: We're just talking about Tier 2.

24 MR. MALSCH: That's the generic changes.

25 MR. ROUDEN: That should apply to Tier 2.

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1 MR. MALSCH: We have to make a little
2 adjustment. I suppose that's do-able. It's certainly do-able
3 from a legal standpoint. There are obvious resource
4 implications. And you have to make sure we didn't have this
5 proliferation of petitions for rulemaking to amend Tier 2,
6 that's resulted in this suite of 45 variations in design
7 that's been certified.

8 In terms of finality and preclusion and
9 standardization that would probably get it for you.

10 MR. ROUDEN: I'm not sure it would do electrical
11 resource.

12 MR. MALSCH: Well, no, it wouldn't. In fact, it
13 may even exacerbate it.

14 MR. WILSON: Have we had enough of this issue of
15 changes? We'll move on to a new topic.

16 MR. SIMARD: Let's switch to a little lighter
17 topic, applicable regulations, the next one on the agenda.

18 Again this is Ron Simard speaking. What we'd
19 like to do is we'd like to ask a few questions to clarify the
20 staff's views on why these are needed and how they would be
21 implemented. The issue is that the proposed rules contain
22 several technical requirements that deviate from or are not
23 covered by the current regulations and the staff has proposed
24 to codify these positions by defining them as applicable
25 regulations as that term is used in the design certification

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1 books.

2 The industry strongly supports the goals of
3 higher levels of safety performance and in fact, the
4 implementation of these technical positions is found
5 throughout tiers one and two of the designs that are being
6 certified.

7 However, we believe the codification of these
8 requirements is unnecessary and both the industry comments
9 and I think the DOE comments as well questioned how their
10 codification could be done, how they could be implemented
11 without raising some fundamental instabilities. One of the
12 proposed reasons for codifying these requirements was to
13 allow the Commission to impose modifications to Tier 1
14 information or to issue a plant specific order for reasons
15 other than adequate protection of public health and safety.
16 And it's this potential for compliance backfits that
17 triggered the very strong concern we saw in the industry
18 comments and the DOE comments and the problem that we tried
19 to capture in our comments was that in codifying broadly
20 stated requirements over a 60 year plant life time, there
21 will be changes in the body of knowledge on severe accidents
22 and differences in NRC staff interpretation what these
23 broadly stated requirements mean.

24 That was the basis for the comments. And now
25 what I'd like to do is just ask a couple of questions to

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1 clarify the staff's thinking with respect to why the
2 codification is necessary and --

3 MR. WILSON: Before we proceed, let's not get off
4 the track of the purpose of the meeting. Staff has provided
5 the basis for its proposed rule. We've had meetings to
6 discuss what we have in the proposed rule. This meeting is
7 to discuss the comments and be sure we understand the
8 comments. I don't know if Mr. Malsch wants to entertain
9 those types of questions, but we've already been through this
10 before.

11 You say you've read in our proposed rules all the
12 various reasons we've given for regulations. The comment
13 period is closed.

14 MR. SIMARD: Right, and we didn't intend to raise
15 again positions that were rather to question reasons that
16 were stated in the proposed rules, but subsequent to that in
17 a public meeting, for example, staff did clarify something
18 that was not stated in the rules and that was the basis of
19 our questioning because what we heard in a public meeting on
20 June 27th was that the staff intent was not to impose
21 backfits based upon reinterpretation, based upon technology
22 or something like that, but rather to allow compliance
23 backfits if DCD information was found to be invalid.

24 So one of the things we wanted to ask today,
25 Jerry, was clarification as to your intent there and in

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1 particular, what you meant by invalid, to make sure that the
2 assumptions behind our comments are, in fact, correct.

3 MR. WILSON: Marty, would you like to address
4 that? Let me say first of all in general these rules
5 function like all other rules.

6 MR. MALSCH: Well, I guess I can -- I understand
7 the concern. If we have applicable regulations as part of
8 the design certification rule, they would function vis-a-vis
9 people using the design certification like any other rule
10 which would mean that under Part 52 we could backfit for
11 noncompliance. There would be such a thing as a
12 noncompliance backfit related to these requirements, whereas,
13 without them there would only be an adequate protection
14 question which is for severe accidents is probably
15 conceivable.

16 So I think we're talking about the ability,
17 should we have the ability to under any circumstances engage
18 in a compliance backfit of a design certification based upon
19 noncompliance with applicable regulations. We come up with,
20 I guess the issues lies in connection with a possible
21 backfit. It would arise in connection with renewal of the
22 design certification which one of the rules is based upon
23 regulations applicable and in effect at the time the original
24 certification was issued and if there are no regulations out
25 there, there are -- it wouldn't be an issue.

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1 I guess also there would be a question about
2 change process, you know, if you have an applicable
3 regulation then I suppose that might have implications for
4 the change process. It wouldn't be the case if there was no
5 applicable regulations.

6 Now, on the other hand, sure, I suppose, once you
7 introduce the whole idea of an applicable regulation, it's
8 going to be an issue in terms of either backfits or renewals
9 or changes. You're right, there's going to be a question as
10 to how that regulation is going to be interpreted and this is
11 a new regulation that we got after 15 years of experience as
12 you do with some of the other regulations.

13 On the other hand, that's inherent and the whole
14 idea of reviewing these applications as against not just Part
15 50 as it was currently stated, but in fact, against Part 50
16 plus a bunch of extra stuff which the staff added and had in
17 their mind when they were doing the review would be treated
18 and be accorded the same status as all the other regulations.
19 This is to be in lieu of a generic separate rulemaking
20 proceeding on severe accidents for these plants.

21 The history is do we want to have -- and this
22 goes back years ago -- do we want to have a gigantic
23 rulemaking proceeding on severe accidents? Well, no we don't
24 want to have that.

25 Do we want to have a rulemaking proceeding that

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1 updates the regulations and applies them in advance of design
2 certification applicants to the next generation of design
3 certification holders or applicants? And the answer is well,
4 no, we don't need to do that. It's not timely. It will
5 delay the design certification proceedings and so we say all
6 right, we'll simply fold it in to the design certification
7 proceeding itself and we would have the regulations developed
8 as part of the design certification process and they'll be
9 stuck into the design certification.

10 That's where we stand now. That was the
11 assumption upon which the staff did the reviews. On the
12 other hand, you're correct. It is essentially a collection
13 of new regulations that apart from these proceedings, there
14 is no regulatory experience. Now the staff clearly has no
15 intention of putting things in here solely for the objective
16 of backfitting the future all over the place. You can
17 preclude the possibility.

18 MR. SIMARD: We understand. What we were hoping
19 to get was a little better understanding of the statement
20 that we heard in that meeting earlier. For example, you
21 mention renewal. When the certification comes up for renewal
22 and you have to do that verification that, in fact, it
23 complies with applicable regulations that were in effect at
24 the time of the certification, does the staff intend to look
25 back at that determination as it was made in 1994, 1995,

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1 1996? In other words, to use the ASME codes, the regulatory
2 guidance that was used initially by the staff in writing the
3 FSAR or is there a possibility that in reexamining after 50
4 years, whether that certification meets the applicable regs
5 that they identify some, for example, new insights into
6 severe accident technology or new interpretations, for
7 example, coming out of the ASME code?

8 MR. MALSCH: Let me make a comment. I see two
9 separate issues presented there. Let's suppose and I haven't
10 got a particular applicable regulation in mind. Let's
11 suppose it says you shall have adequate protection against
12 zilch, zilch severe accident. Interfacing system LOCAs might
13 be a good example.

14 MR. SIMARD: Okay. I can see a difference
15 between new information which suggests that the resolution is
16 accepted as part of the original certification simply is
17 unsatisfactory. It doesn't accomplish the objective we had
18 in mind. I can see -- I had thought that would be a basis
19 for relooking at the issue as opposed to and something which
20 I had not thought would be the basis for relooking, just
21 something, a better way of doing it. It's better, but the
22 old way is still okay. I thought that it was not the
23 intention of the staff simply to update things because there
24 are better ways of doing it, but only to update things in
25 view of what could be revealed as actual inadequacies. Let

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1 me turn it over to Jerry. This is where we kind of have an
2 issue for the staff.

3 MR. WILSON: I think basically we agree with the
4 way Marty's characterizing it. As I said, these regulations
5 would function as any other regulations. This isn't a
6 situation today and to further talk about what you brought
7 up, our status right now is more stable, predictable than in
8 a typical rulemaking in that not only we have the requirement
9 but we have approved the implementation of that requirement.
10 So there's -- you say there's uncertainty. I would say
11 there's less uncertainty.

12 MR. SIMARD: It may be, if we could just
13 understand. Let me use that example. At this point the
14 staff has determined that in fact the piping systems
15 connected to the reactor coolant pressure boundary do in fact
16 to the extent practical, you know world-wide standings, and
17 there are several pages of detailed calculations and
18 assumptions in the SER and other places, for example, that go
19 behind saying yeah, as long as you meet this particular
20 pressure, low pressure systems and certain criteria on piping
21 fits, it's okay.

22 So the question is suppose over the years, over
23 the next 15 years when this thing comes up, suppose there are
24 advances in the ASME code, for example, that might cause you
25 to say you know, here's a better set of equations than the

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1 one used in 1994 SAR and if you apply this new set of
2 equations, you come out with a wall thickness of something
3 else. So is it the staff's intent, example, at the time of
4 renewal or throughout the lifetime of the plant when having
5 to make that sort of determination as to compliance to go
6 back to the 1994 information or to use later information?

7 MR. WILSON: I would say we would rely on what we
8 said in our evaluation and the only change would be if we
9 discovered that that was wrong. It's not that we were
10 sharpening our pencil and fine tuning it every year. That's
11 certainly not the intent.

12 I might add to that, by the way, we are going to
13 go back and take a look again at the wording of these
14 regulations and make sure that we're not changing the intent
15 of some buried, inherent ratchet in there that, I think it's
16 probably the word to say.

17 MR. MALSCH: I'd only say I have to confess that
18 the difference between something that's better and wrong is
19 something that's going to be not so easy to distinguish.

20 In your example, a new set of equations are
21 developed because a new model is developed which is more in
22 the core of experimental information or whatever, well, in
23 sort of a simplistic sense that suggests that the earlier set
24 of equations was wrong. The question would be, I suppose,
25 how wrong is it? Are we talking about a nuance or a slight

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1 adjustment or are we talking about something that's so long
2 that the basic objective of the new requirement is no longer
3 considered to be met. I think that's what the staff has in
4 mind, but I think it would be fair to say that in some
5 particular cases that may not be such an easy judgment to
6 make.

7 MR. BISHOP: But I think if you could provide
8 that clarification as well as looking at these words, a lot
9 of our concern goes away.

10 MR. WILSON: I think we do have to look at --

11 MR. BISHOP: There are degrees in this are what
12 really raise this issue.

13 MR. MALSCH: Or take a worse example, if you have
14 a requirement that says mitigate severe accident sequence
15 zilch to the extent practicable, well, someone would make a
16 judgement about practicability in 1995 and things could be
17 a lot cheaper in 2010, well, if that's what we mean by
18 deregulation then we end up getting it updated purely because
19 of advances in technology irrespective of new actual
20 phenomenological information. I don't think that's what we
21 intend. I would agree with you. The language in the
22 regulations would at least admit on the surface of that kind
23 of interpretation. I would see that problem.

24 MR. WILSON: Actually, the opposite of what
25 happens is as time goes by and there are easier and better

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1 ways of doing it that come along, the applicant, the licensee
2 comes in who would like to do this differently because
3 there's a better way.

4 Stu, did you have a question?

5 MR. MAGRUDER: Stu Magruder from the NRC staff,
6 specifically on the GE comments you included a table where
7 you discussed four regulations and a couple of them the staff
8 just requests some clarification pertaining to just what we
9 were talking about. For instance, I asked LOCA and core
10 debris cooling, the staff in the SER concludes that the
11 designs are acceptable and they fully meet the proposed
12 regulations and I think the staff just wants to understand
13 the industry concern be raised where you say the staff could
14 go back in the future and basically contradict our finding.

15 I just want some clarification on why you feel
16 that way.

17 MR. FRANTZ: I think our major concern there is
18 the language in the FSER. I think core debris cooling, for
19 example, the applicable regulation states that the continuing
20 shall be able to withstand the emissions for approximately 24
21 hours. If we look both of our design certification
22 documents, that control document and the FSER, there are some
23 scenarios in there that containment survives for 18 hours,
24 for example. And the staff has found that to be acceptable
25 and so has me, of course. We're concerned that ten years

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1 down the road there will be new staff personnel. The staff
2 would look at that statement in the FSEER and say 18 hours is
3 not 24 hours, therefore you don't meet the applicable
4 regulation. What we're going to do is impose a backfit on
5 it.

6 MR. MIZUNO: This is Gary Mizuno. I believe this
7 was specifically discussed at the working level and I believe
8 it was the industry that at the working level asked for that
9 kind of line to be inserted in because we were willing to
10 have more precise language in terms of talking about specific
11 sequences and the associated time periods that the
12 containment would have to withstand, but no one wanted to go
13 through the time of writing a regulation that went through
14 all those things, so therefore a compromise was developed
15 that would sort of say approximately 24 hours.

16 MR. FRANKS: But the language doesn't say it. We
17 don't say compromising regulation. It's applicable, it's to
18 be applied.

19 MR. FRANTZ: Our concern isn't in the guidance.
20 The staff has reasonable guidance to apply. We're concerned
21 about making that guidance into a regulation which doesn't
22 have that kind of flexibility.

23 MR. MALSCH: Let me ask this, in the industry
24 sampling would it be theoretically possible to reach
25 agreement on acceptable drafting of a set of regulations that

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1 you could live with?

2 MR. FRANTZ: In terms of would we meet the FSER?
3 In some cases it may be. In other cases, I'm not sure it's
4 possible.

5 MR. SIMARD: I'm not sure that we can answer that
6 because we have done an analysis and we tried to show where
7 these regulations, I'm sorry, where these requirements are,
8 in fact, applicable to the design. IS LOCA, for example, are
9 commitments to Tier 1 of the design.

10 I understand that the staff has said design
11 certification can't be a surrogate for evaluating proposed
12 changes, but I guess the reason we had trouble understanding
13 that you have a regulatory basis, it's Tier 1. So it's part
14 of the regulation. You have a change control process and in
15 terms of standards for evaluating a proposed change, you had
16 the guidance that led you to make the initial determination
17 that alternative A was acceptable, why wouldn't that same
18 guidance be used in determining whether alternative B was
19 equally acceptable?

20 I don't know if we have a ready answer to your
21 question. Previously, we thought that we could point to a
22 regulatory basis for all of these positions and that led us
23 to question why it was necessary to codify them and get into
24 this area of uncertainty.

25 MR. WILSON: Are there any other questions on

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1 applicable regulations?

2 MR. SIMARD: May I ask -- of the 14 applicable
3 regulations or 15 if you include the steam generator one for
4 80+, there are some of them that don't refer to the design to
5 being certified, but imposed requirements upon licensees for
6 later reference of the design. For example, a licensee would
7 be required by this applicable regulation to have a pump and
8 valve testing program over the plant lifetime and this is
9 separately a requirement under 50.55(a) and we were wondering
10 if the staff continued to see it, the appropriateness of
11 having applicable regulations in the rule certified as a
12 design that impose programmatic and operational requirements
13 on a licensee down the road. Are you able to --

14 MR. WILSON: I thought all regulations applied to
15 an applicant or licensee that references the design,
16 including all the procedural requirements we've been talking
17 about today.

18 MR. SIMARD: But you see no difference between a
19 design requirement on piping thickness, for example, and a
20 programmatic requirement that says over the lifetime of a
21 plant the COL holder shall have an outage plan that addresses
22 certain elements? Staff still feels that's appropriate?

23 MR. WILSON: The nature of the requirements is
24 obviously different. All those requirements apply to the
25 applicant or licensee that references the design. It's no

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1 different than any other requirement when you reference the
2 design. The ECCS requirement, plus, as I say, basically the
3 key part of the design certification are these procedural
4 requirements we're talking about and they all apply to the
5 applicant or the licensee.

6 MR. CRUTCHFIELD: Is there a question whether the
7 certified rules apply for the entire life of the license, the
8 40-year life of the license, is that your question?

9 MR. SIMARD: No, the distinction is between --
10 this isn't quite exactly -- let's say between the eleven
11 requirements that are clearly related to the design being
12 certified, like coolability, like interfacing system LOCAs.
13 The three that have to do with requiring design certification
14 rule that downstream a licensee would have to have an outage
15 plant, a check valve testing program.

16 MR. CRUTCHFIELD: So your argument they're solely
17 and specifically applicable to the design and others are
18 applicable to the COL and why don't we pull those three out
19 and handle them as part of the COL process?

20 MR. SIMARD: Yeah, we didn't understand that.
21 When we saw them in the proposed rules, we understood the
22 staff's rationale that was provided as to why these things
23 are necessary and we saw that as being applied to the ones
24 that are purely designed and we never did understand why
25 these were in the design cert rules, so we were just seeking

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1 clarification to see if the staff still thinks it's necessary
2 to have them in the design.

3 MR. CRUTCHFIELD: So your proposal would be to
4 separate the eleven and the three, if there are applicable
5 regulations, make eleven of them specifically related to the
6 design and handle the three others in another menu?

7 MR. SIMARD: And the comments we submitted did
8 single out those three. We tried to provide reasons why they
9 would be better addressed outside of the design
10 certification.

11 MR. WILSON: Any other questions on this issue?

12 MR. VINE: Gary Vine from EPRI. Just a quick
13 observation related to the earlier question about the need
14 for applicable regulations. There's a long standing history
15 here of industry positions and correspondence back and forth
16 between the industry and the NRC regarding how to deal with
17 severe accident issues. It has been our intent all along,
18 this goes back to the late '80s, that the mechanisms for
19 resolving technically the design requirements for severe
20 accidents would be in the context of the utility requirements
21 document and the NRC's view of those requirements. Having
22 settled the issue technically in that -- with that vehicle,
23 there's no need then to codify those requirements in the
24 design certification rule other than the fact that you codify
25 the design with those features included in Tier 1 and Tier 2.

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1 So the need to establish new requirements as part
2 of the certification rulemaking goes beyond what's necessary
3 given the technical resolution of these issues.

4 MR. CRUTCHFIELD: Are you saying the requirements
5 document is binding as a regulatory vehicle?

6 MR. VINE: No sir, just that the requirements
7 document was the vehicle by which the industry and the NRC go
8 through all of these technical issues and reach agreement on
9 how best to address each of them in the context of your SER.

10 MR. WILSON: Okay, is that enough on applicable
11 regulations? I think the next item on the agenda is ITAAC
12 verification.

13 Ron, did you want to characterize this issue
14 without a lot of restatement of what's in the comment?

15 MR. SIMARD: Yes --

16 MR. WILSON: I just point out that this is not an
17 issue that was discussed in the proposed design certification
18 rules.

19 MR. SIMARD: Yes, rather than restating what was
20 in the comments, I thought it would be useful to explain why
21 it was in the comments because we've been asked by the staff
22 why we brought this up, given that the subject was not raised
23 in the proposed rules.

24 The reason we did that is a strong concern
25 surfaced earlier this year based on the SECY construction

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1 inspection and ITAAC verification and some of the
2 interactions we had with the staff. The staff, some of the
3 staff were proposing that a determination of whether or not
4 an ITAAC was satisfied could involve from some fairly broad
5 ranging evaluations of QA activities, training, test
6 procedures, adequacy of procurement documentation and so
7 forth. So we became concerned that ITAAC verification was
8 heading down a track that was inconsistent with all those ten
9 years of effort that we put into ITAAC development. And
10 because the ITAAC are an integral part of the certification,
11 we're proposing that the rules contain a statement to
12 reinforce and explain the fundamental principles behind them,
13 that the design certification ITAAC are meant to provide the
14 objective safety standards by which the licensees and NRC can
15 verify that a plant which references the design be built.

16 Consequently, the ITAAC focus on the end products
17 and the results of construction and the words in these
18 certifications that we spent so many man years carefully
19 crafting reflect some -- reflect the need to insure the
20 acceptance criteria are crisply defined and objectively
21 verifiable and we feel that the process for verifying that
22 the acceptance criteria have been met, must have a similar
23 focus and be independent of the bulk of programmatic
24 activities and the on-going NRC's inspection and enforcement.

25 So we thought that the rules contained a clear

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1 statement similar to the one that we provided in our
2 comments, a brief statement to reinforce the principle that
3 guided the development of the words behind the ITAACs that
4 are in these rules, it would be very helpful providing the
5 direction to the follow-on work that needs to occur.

6 So I know that some of the staff raised questions
7 about us getting in the details of ITAAC verification. That
8 was not the intent. But what we're trying to establish is
9 some baseline policy guidance that would be useful when we do
10 get into that.

11 If I may ask just one question. I thought that
12 we saw a similar interest on the part of the staff in that
13 meeting on March 15 we referred to earlier. There were staff
14 at that meeting who stated a deficiency could affect an ITAAC
15 finding only if it was and I may be putting words in your
16 mouth here, I need some clarification, but only if these
17 factors were directly and causally related, but for the
18 requirements of the ITAAC and we were just looking to see if
19 that was, in fact, the intent.

20 MR. WILSON: Let me put my own words in my own
21 mouth. But I thought we had an agreement at that meeting
22 that any particular inspection finding would have to be
23 relevant and significant as it applied to that particular
24 ITAAC in order for it to be part of that determination and
25 that burden, if you will, would be on the NRC to demonstrate

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1 that some particular inspection finding was relevant to that
2 ITAAC determination and of significance as to whether it had
3 been met or not. I guess I would say I don't share the
4 degree of concern that I read into the comments on this
5 issue.

6 MR. SIMARD: No, your statement is helpful. As
7 a matter of fact it was for this sort of reason. That
8 clarifies it and it's very helpful and again we thought it
9 would be very useful that these rules had a similar statement
10 to the intent there that could then provide that basis.

11 MR. RUSSELL: We have an issue that was put on
12 the table nearly three years ago as it relates to
13 programmatic ITAAC, what I would characterize as Part C of
14 Part 52. And things are going to come forward in the COL
15 proceeding and clearly we're going to have a quality
16 assurance plan and clearly we're going to have to address it.

17 Those issues have not yet been finalized. We
18 were very careful to address what needs to be demonstrated
19 and how it's to be demonstrated as it relates to hardware and
20 design issues. That's what we are certifying now by way of
21 rulemaking.

22 The issues as to what is the role of the quality
23 program or how do you handle some of the soft issues such as
24 operator licensing issues associated with availability of
25 simulators prior to -- etc., are issues we have not yet had

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1 dialogue on and so we agreed to table those issues. In fact,
2 more than a year ago I suggested it would be useful to go
3 through a list of COL action items. I identified those that
4 are generic and then start to work on those issues, such that
5 we can make similar progress on those softer issues, but
6 there is a potential relationship between quality records.
7 If you're relying on a record that demonstrate that an ITAAC
8 has been met because something is now buried in a pile of
9 concrete and you can no longer go look at it, that having
10 confidence in the quality of programs that you can believe
11 the record is one thing. Otherwise, you may have to go and
12 use some kind of constructive examination technique to verify
13 that the physical plant condition is satisfactory.

14 We've tied the ITAAC to the extent we can to
15 physical parameters, things that can be done and measured and
16 we've described the conditions under which that will be
17 shown. We have separated out the quality issue because we
18 have not yet addressed it.

19 You will have, on any inspection report, if we
20 find a problem, we're going to pursue what we call extent of
21 condition and we're going to be asking questions. You
22 screwed up in this area, tell me why I should have confidence
23 in some other areas that's not impacted and if that doesn't
24 impact an ITAAC later on. It's the standard give and take
25 we're going to be going through.

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1 MR. SIMARD: And again, all we're looking for
2 with respect to the design certification ITAAC, not the COL,
3 but the design certification, some statement as to relevance,
4 causality, you know that sets a clear threshold for the staff
5 now --

6 MR. WILSON: I think we clarify that in the
7 statements of consideration.

8 Are there other questions on this issue of ITAAC
9 verification? Next issue, number 5, severe accident
10 consideration in tier change process.

11 My reading of the comment indicate that NEI wants
12 to delete Chapter 19 from the scope of Tier 2 information
13 considered in the change process under 50.59. Is that
14 correct?

15 MR. FRANTZ: I don't believe that is correct.
16 What we have proposed is a two criteria -- first of all, we
17 believe that the 50.59 process should apply to the important
18 features that have been identified from the PRA analysis
19 considered acts of violation and the other evaluations in
20 Chapter 19.

21 The staff and the applicants spent months trying
22 to develop a list of important features. We believe it's
23 comprehensive and we believe if the focus is on those
24 important features we will accomplish the goal of the
25 Commission to preserve the severe accident PRA insights.

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1 It's simply in accord with the Commission direction.

2 The other aspect of our proposal is to apply a
3 standard similar to that and I was talking to Mr. Russell in
4 a meeting last November whereby a change would involve an
5 unreviewed safety question only if there is a substantial
6 increase in consequences or probability. Right now the staff
7 has proposed with one exception pertaining to one section of
8 Chapter 19 that the traditional 50.59 definition be applied
9 and we believe that that traditional process would result in
10 unreviewed safety questions being determined for
11 insignificant increases in severe accidents.

12 MR. RUSSELL: I need to take you back because I
13 thought we talked about the standard 50.59 as it relates to
14 classic design basis accidents and we had reached an
15 agreement that in the context of severe accidents where there
16 is a larger uncertainty that a substantial increase of
17 probability was there, or the situation where it challenged
18 the containment or scenario which was previously deemed to
19 not be credible was now believed to be credible. That is,
20 that there was some judgment to be made using the kinds of
21 techniques we went through in the reviews of establishing
22 what constitutes a credible or an incredible challenge.

23 MR. WILSON: And that's what's in the proposal
24 and it applies to that section in the design control document
25 where it describes how the severe accident issues are

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1 resolved.

2 MR. FRANTZ: Well, that's not quite correct.
3 Back in November, we agreed to the part of the standard that
4 Mr. Russell just mentioned and all of Chapter 19, as
5 reflected as our DCD introduction.

6 Unfortunately, the rule says that standard only
7 applies to the PRA Section 19.E and the associated
8 appendices, 19.E(a) through E(e).

9 MR. WILSON: Right and that's where it's
10 described as to how the severe accident issues are resolved.

11 MR. FRANTZ: But the rest of Chapter 19 also has
12 discussions of severe accidents and PRA analysis. For
13 example, we have --

14 MR. WILSON: Well, PRA information has been
15 deleted. That's not an issue any more.

16 MR. FRANTZ: Currently, we have, for example, in
17 the DCD probabilistic evaluations of things like fire
18 protection, flooding, shutdown risks and all of those
19 according to the current wording of the proposed rule to be
20 judged by the existing design basis standard rather than the
21 severe accident standard that we discussed last November.

22 MR. WILSON: Right, just like all other safety
23 issues that are resolved throughout the application, those
24 would have the -- be the same evaluation. Those aren't
25 severe accident issues.

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1 MR. RUSSELL: I'm hearing two different things.
2 I thought there was a general agreement back at the meeting
3 in November as it relates to classic DBAs as they're
4 described in the staff standard review plan that the
5 potential for creating a new type of accident or the
6 probability of increasing the probability of an accident you
7 would use the classic 50.59 type process.

8 MR. FRANTZ: That's correct.

9 MR. RUSSELL: As it relates to severe accidents
10 which are being addressed for the first time in licensing
11 this type around. In the context of severe accidents, we
12 agreed that a standard -- a substantial increase in the
13 probability or the potential for creating severe accident
14 that was previously deemed to not be credible now is
15 considered to be credible.

16 MR. FRANTZ: That's correct.

17 MR. RUSSELL: Basically the threshold that we got
18 to sounds like the issue is in the details as to how various
19 sections are referenced for the operability of this. I think
20 we'll look carefully at what your comments are and we'll look
21 at it broadly. I don't see a basis for changing the
22 standard, particularly in light of the uncertainty that's
23 associated with severe accidents and the review process we
24 went through, we found these to be acceptable. We documented
25 the rationale as to why they were acceptable and I think that

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1 there needs to be some significance test associated with it,
2 not just that you can calculate and know that it's slightly
3 greater than what you calculated before.

4 MR. FRANKS: You're right.

5 MR. RUSSELL: I thought the issue was also
6 somewhat tied to separating portions of what would be in the
7 application that is the separation of the PRA information and
8 supporting information and some of those issues were going to
9 be addressed in the context of living PRA which we also
10 agreed would be addressed separately by way of separate
11 rulemaking. We deferred that to an OL issue to begin later.

12 MR. WILSON: Right, the PRA information is taken
13 out and we'll deal with that as an OL issue.

14 Any other questions on that item?

15 MR. RUSSELL: But clearly, the understanding is
16 that on changes, the change we talked about in November had
17 to do with potentially adding features to the design or
18 operating in a manner different than previously considered
19 and using the ABWR example and said that equipment under the
20 vessel head could delay the migration of corraent florant
21 spread, that that could constitute a different outcome than
22 if there were no equipment in that space.

23 The design feature and the controls do not
24 adequately address that from the standpoint of spreading
25 area, etc. But that is a change in operation and it could

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1 have an impact and assumptions were made as to how the
2 accident would progress. It relates to that kind of feature.
3 You may add features or do things that have unintended
4 outcomes and it's not sufficient to just rely upon a
5 description of the design to say this issue exists. You also
6 have to understand what the assumptions were and how it
7 behaved and make sure you didn't impact that analysis. And
8 so there was agreement that there would be a review of
9 changes to make sure you did not make a severe accident more
10 serious or adverse, that you hadn't undone some of the design
11 feature.

12 MR. FRANTZ: Agree. That is what was decided
13 back in November last year.

14 MR. RUSSELL: Okay, so the issue is only the
15 details of how the words close those agreements that we
16 reached in November.

17 MR. FRANTZ: There were two issues. We are in
18 full agreement it appears. With respect to the first issue,
19 we realize the staff agrees with us on this one. We'd still
20 like to confine the entire review to the important features,
21 but we realize that going back to last November, obviously at
22 this point it's up to the Commission to address that
23 determination.

24 MR. WILSON: Issue number 7. Role of the
25 introductory provisions to the design control document. NEI

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1 requested that substantive provisions in the introduction to
2 the design control document be incorporated in the design
3 certification rules. Any questions on this item?

4 I can say what we said before and we'll restate
5 it, is that we'll relook at the provisions of the
6 introduction to the design control document to see which ones
7 are maybe appropriate for inclusion in either, the rule or
8 the statements of consideration. We'll do that as part of
9 our comment analysis of the rule.

10 Any other questions on this particular comment by
11 NEI?

12 MR. BRINKMAN: Our concern was that our intention
13 to develop the introduction, if it was there for the purpose
14 of allowing the design control document be a free-standing
15 document and when the NOPR in the notice of proposed
16 rulemaking was issued, it specified stated that the
17 introduction is not part of the DCD as far as being
18 incorporated into the rule and that it is subordinate to the
19 statement of considerations which gives it virtually no legal
20 standing whatsoever.

21 MR. WILSON: As you said though, when we first
22 set out to do it we did it as a convenience and industry
23 brought up they didn't feel that every time a utility person
24 wanted to look at the DCD they had to go look up the rule and
25 the statement of consideration, so we developed this

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1 information to be a convenience. It wasn't to be overruled.
2 The rule itself or the statement of consideration would have
3 to be in conformance with that and of course, once the
4 rulemaking is final, I think what we'll have to do is go back
5 and be sure that the introduction is in fact in conformance
6 with the final rule and the statement of consideration. We
7 probably will have to revise both of them to achieve that.

8 MR. BRINKMAN: We believe it's a lot more than
9 any convenience. There are some very important principles
10 that were wrestled out with the staff and ourselves and given
11 a great deal of scrutiny that didn't get incorporated into
12 the rule.

13 For instance, the matter of what happens to ITAAC
14 after it's been satisfied. There is some statement in there,
15 but it doesn't go all the way to what we worked out here.
16 There are other areas that I could elaborate if you want me
17 to --

18 MR. WILSON: No, we said that in the comments and
19 as I said we'll go back.

20 MR. BRINKMAN: WE feel these are very significant
21 and they have to have legal standing. The desired
22 recommendation, as it was in the beginning that the DCD
23 introduction is to be incorporated in toto in the rule, but
24 if that isn't satisfactory to the staff, we have given you
25 words and we would strongly recommend their inclusion in the

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1 rule.

2 MR. SIMARD: Could I just follow up on that and
3 ask, in the alternative that you are unable to incorporate
4 the introduction, the industry comments provided two fairly
5 detailed tables. They were 8A and 8B, one for the ABWR and
6 one for the 80+ and we attempted to capture what we thought
7 were the essential principles and the key guidance elements
8 in the DCD introduction that would then be reflected in the
9 rule.

10 Are you able to tell us that how we did? In
11 other words, in your review of those tables do you think we
12 have, in fact, captured all the key points that concerned
13 you?

14 MR. WILSON: I can't give you an answer today.
15 I will assure you that we will address all of those items
16 when we do the comment analysis.

17 MR. SIMARD: Thank you.

18 MR. WILSON: Anything else on number 7?

19 MR. RUSSELL: I think there's a comment on that
20 last one. My understanding of where we've been is that many
21 of the issues that were in the introduction are what I would
22 characterize as text that describes how the rules operate
23 when the rules themselves are fairly complex and what we're
24 concerned about is having a potential conflict between the
25 introduction and what is the language of the rule as it has

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1 been structured legally.

2 So issues, for example, the item of ITAAC, once
3 ITAACs are satisfied the issue, the operating authorization
4 we said in columns 2 and 3 are no longer operable, but the
5 design description lasts for the life of the plant. I mean
6 that's a practical interpretation that was worked out amongst
7 engineers. It's in the design introductions, the DCD
8 introductions. We operated with it for two years doing the
9 reviews, but we didn't go back and use the same kind of plain
10 English to write the rules. We wanted to stay away from
11 changing the rules. So what it was it got changed as to how
12 it worked. Maybe there is something that can be done to
13 review it to say this is consistent to the rules, but should
14 a conflict occur between the rules and the introduction, the
15 rule applies and not the introductory material. Maybe there
16 are other ways we can address them. We're going to be
17 looking at it to see whether there are known conflicts. We
18 don't know of any now. This is more of a concern as to which
19 has precedent and the rule is clearly what has precedence.
20 And so it's in that context we were hesitant to endorse the
21 introductory material.

22 MR. ROUDEN: I think that's a good example from
23 our standpoint of something that should be included in the
24 rule. We believe it's of sufficient importance that it ought
25 to be specified.

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1 Our concern is not inconsistency of the statement
2 of considerations and the rule. That statement of
3 consideration over time is really going to disappear from
4 people's consciousness and what we wanted was something that
5 the original staff guidance provided, an integrated document
6 that was a continuing specific guide to people who would have
7 to implement the rule.

8 I mean I don't want to re-argue the points made.
9 They're in our comments in detail. That is our concern and
10 that is what we would want to address.

11 MR. BRINKMAN: Bill, I would like to add though
12 that these issues are very important. We devised the ITAAC
13 on that specific basis, but those two columns would
14 disappear. somebody can later on reinterpret the rule that
15 says these ITAAC are living documents that go on and on. For
16 a plant, we've got a big problem with the ITAAC.

17 MR. RUSSELL: But I agree with Marcus' comment
18 that if the issue is substantive, the issue ought to be
19 captured in the rule itself.

20 MR. BRINKMAN: And that is our point as well. WE
21 have proposed --

22 MR. RUSSELL: Some of the other changes are
23 being considered would alleviate that concern. What we have
24 to do is look at after comment resolution the final set
25 language that goes in the rule and how does that comport to

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1 the various introductions, if it's consistent with or if we
2 need to have changes with some of the DCD material, revise
3 some of the introductions or are we going to have to have an
4 iterative process to do that.

5 MR. BRINKMAN: I think we're in agreement in that
6 you're saying that which is substantive should be in the rule
7 and that's what we're seeking.

8 MR. EGAN: And to the extent that there is a
9 provision that doesn't go in a rule, we're real interested in
10 why it shouldn't go in the rule because when we did have the
11 negotiations, we felt we really did achieve closure on those
12 issues.

13 MR. RUSSELL: Well, I'm not interested in
14 reopening three years of technical review, but based upon a
15 number of assumptions as to how these things operate.

16 MR. WILSON: Okay, Mr. McDonald?

17 MR. McDONALD: On the subject of ITAACs, we went
18 by discussion of ITAACs that are continuing. I think the
19 discussions that we've had in industry groups about the
20 ITAACs relate very much to what constitutes a part 52 level
21 of a statement of compliance, what is to be provided as a top
22 level conclusion on the ITAAC requirement has been met. In
23 looking at the individual ITAAC, I believe we found that they
24 are indeed very fine processes. They are thorough. They
25 have a lot of meat to them. They're a good guide and far

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1 better than anything we've had in previous plants as an
2 alternate to look at, a guide to where we're going. I also
3 think that we all know that we have a large body of evidence
4 that is made and developed concurrently or rather before
5 those ITAACs are verified. And in essence, what I think that
6 we need to understand in terms of a part 52 process and the
7 discipline that we maintain in operations and construction
8 rather and in regulations, is would it not be adequate and
9 should it not be stated that the ITAAC requirements per se as
10 contained in the ITAAC and their completion as determined by
11 the owner, that those ITAAC per se, per word have been
12 completed and he signs your name to it, that that is the
13 conclusion that the regulator should look for.

14 And the regulator then has his own set of
15 inspections in whatever arena there are to the part 52, part
16 50 subset of Part 52, what have you. But I think what we're
17 concerned about is the infrastructure that might be built up,
18 a 20 story building with those ITAAC acceptance criteria on
19 top of them, that is some way integrated in each one of those
20 whereas what I think we're looking for, if we as a builder
21 complete the plan and take the ITAAC and say ITAAC No. 2421,
22 this requirement and repeat the requirement. It has been
23 completed satisfactorily and give it to you, does that not
24 constitute an adequate ITAAC verification by you? By ius to
25 you?

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1 MR. RUSSELL: Probably not. The reason is
2 because the ITAAC also described the method by which you
3 demonstrate compliance had been met so there was a method and
4 there was an acceptance criteria and you have to describe
5 that you followed that method. There are also several cases
6 where we indicated an acceptable way of meeting the ITAAC and
7 put it in Tier 2, we said that's not the only way you can
8 meet it, so there are other changes that could be made in the
9 50.59 like process. It could even be applied to a
10 demonstration methodology that will recognize that and so all
11 I'm saying is that there are a number of nuances and we will
12 be conducting inspections to the extent we find inspection
13 activity that indicates failure to satisfactorily resolve the
14 concern could impact one or more ITAAC that is going to be an
15 issue we need to identify and the process provides for us to
16 address that with construction in process and not wait until
17 the end and simply rely upon a certification.

18 MR. McDONALD: I would submit that this subject
19 needs to have further discussion along the direct line, that
20 I believe in the spirit of the Part 52 process, that the
21 simple restatement and affirmation that's been completed by
22 the owner should be adequate, his QA program will build him
23 up for that level. Your inspection program will build him up
24 to that level and it provides a clean response for the record
25 which will be open to intervenors in the hearings that come

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1 later. I think we have not delved into this adequately and
2 the time is late and we should make a determination that
3 those words and those responses for ITAAC completion should
4 be specified in the design certification rule. We know
5 there's a lot more to building a plant and there are
6 requirements that go into it. But if we don't have that,
7 then we don't have the assurance that we need to have about
8 the start up and the COL.

9 MR. WILSON: Well, as we said earlier on this
10 issue we will seek to provide some clarification to that in
11 the statement of consideration.

12 MR. McDONALD: Clarification -- I think we need
13 more than clarification. We need a depth of understanding.
14 In the past what gave rise to our concern was the
15 construction plans that you put forth and called them Part 52
16 inspections and what have you. In our mind, the Energy
17 Policy Act called for a high level ITAAC and that high level
18 ITAAC and that alone would be subject to intervention and
19 that was why that we thought it would work well and the
20 details of QA programs and what have you below it would be
21 handled on a normal, every day basis like we have in Part 52.
22 And when we don't have that assurance of what it takes to
23 supply an ITAAC, we do not have the confidence that this Part
24 52 design certification is going to be adequate for a
25 customer buy.

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1 MR. WILSON: Well, the regulation for ITAAC is
2 consistent with the Energy Policy Act of 1992 and
3 furthermore, as Mr. Russell mentioned earlier, we agreed that
4 there wasn't a need for a QA program ITAAC and in fact, we
5 don't have one.

6 MR. McDONALD: I don't you don't. I would submit
7 to you that the dialogue that we've had on those issues has
8 been typically this, we have talked about the ITAAC and
9 you've talked about the construction program, but the fact is
10 that for us to see what a design certification means in terms
11 of what to expect in the future, what to build for, we need
12 to see something that's simple, clean and straight forward
13 and when I asked Bill, I mean you're the smartest guy I know
14 what all that stuff is about, but when I ask you about this
15 and you stated that you would need more on how the methods
16 were, then I'm not sure what you're talking about.

17 MR. RUSSELL: Well, let me give you two examples
18 of ITAAC. One is the structural ITAAC which essentially is
19 one that's based upon reconciling the as-built plan for the
20 as-designed and showing it can structurally handle a load
21 under the design conditions and there's a process that's
22 built in there that says you build it in accordance with the
23 engineering and assuming the engineering was done well and if
24 it comes out that way that's fine. If not, if there are
25 changes based upon as-built differences, then there's a

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1 process for resolving those differences and showing it's
2 okay. So this is the capability of this structure
3 performance design function that we're relying on analysis.
4 The analysis met the design specified, so we're clearly going
5 to look at the analysis and the reconciliation of as-built as
6 to as-design and if there are no differences between as-built
7 and as-design, we find the analysis is consistent with the
8 package, we're done, but we're not simply going to accept the
9 certification, but we're going to audit it, we're going to
10 find out whether we can also support on an audit basis that
11 that has been done.

12 MR. McDONALD: No problem. No problem with
13 exactly what you said. And here I think it's more of a
14 communication thing than anything else.

15 The ITAACs themselves, the things that are
16 labeled ITAAC and the words that are labeled ITAAC are two
17 different things because you have a summation and it has
18 several parts to them. The detail in some ITAACs go one,
19 two, three, you should do it by this method, you should do it
20 by that, but the end product up there says these are done in
21 accordance with the plan and so the question is in terms of
22 the whole body of evidence that builds up to this, what's
23 that body of evidence that we put on the table for
24 intervention, for example, not that intervention is bad, but
25 for intervention which will happen along the way? What do we

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1 put on the table? It seems to me that there is so much
2 detail that could be in those packages as to make it
3 meaningless. And I'm suggesting to you that one way to have
4 everything in place is to use those ITAAC, the things that
5 are labeled, the key questions or key things to be done as
6 part of the ITAAC, the top tier up there is to simply for the
7 owner to certify those have been completed.

8 MR. RUSSELL: It has to be done.

9 MR. McDONALD: That's right and that is --

10 MR. RUSSELL: We're digressing, Pat. We've had
11 an activity underway for about a year and a half on this
12 issue of what have been lessons learned from construction
13 inspection activities. We've just gotten through a rather
14 long licensing process associated with a plant in Tennessee
15 that we had difficulties with representations that were
16 certified that we found weren't quite accurate back in the
17 1980s. Given that experience and those lessons learned,
18 we're going to watch this much more closely. I would submit
19 that the major lesson learned is do the engineering first and
20 then build the plant based upon the engineering as compared
21 to building it and then --

22 MR. McDONALD: We couldn't agree with you more.

23 MR. SIMARD: Pat, if I may, I think I understand
24 that Mr. Wilson clarified earlier of the staff's intent and
25 used the phrase "relevance". I understood that the staff's

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1 view as to the high level view of what constituted acceptance
2 criteria, they used the word "relevance", we use the word
3 "causal" relationship, but I understood our thinking to be
4 similar, so the issue that we brought to you in the form of
5 our comments here is a request that that statement, that
6 principle be stated in the rule.

7 Now Mr. Wilson has suggested perhaps it will be
8 in the statement of considerations and what we're saying is
9 that package the phrase confidence to the potential
10 customers, yeah, that would be good, but we would get even
11 more confidence seeing a high level statement like that in
12 the rule itself. I think that with respect to the issue
13 that's on the agenda today, that high level of criteria, I
14 thought I understood us to be in agreement as to relevance.

15 MR. WILSON: Yes, but I think Mr. McDonald has
16 brought a different issue into this. You and I are speaking
17 about the NRC made its verification that the ITAAC was met.
18 Now Mr. McDonald is addressing the question it is the burden
19 of the intervenor to be able to get a contingent on an ITAAC.
20 That's a separate matter and spoken to in a different part of
21 the regulation.

22 MR. MALSCH: Well, I thought the issue was -- is
23 there an issue -- is the issue stated in terms of what's
24 going to be in the public docket as opposed to what the staff
25 is reviewing?

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1 MR. SIMARD: On the docket, what does the staff
2 point to and say here's the package of documentation. That
3 is my high level basis. We're verifying that yeah, that
4 licensee is correct. He did, in fact, satisfy the acceptance
5 criteria. And all we're looking for was some guidance that
6 tends to focus people at the right threshold and try to
7 restrict questions coming in about all the underlying
8 programmatic activities and procurement, etc., that may not
9 be --

10 MR. RUSSELL: Well, I don't understand how we got
11 into the procurement and programmatic activities. We've
12 already said that's a COL issue.

13 Part of the ITAAC that is going to be the most
14 difficult is where you're relying on an analysis as a
15 demonstration that the ITAAC had been met. When you're doing
16 a physical test or you're walking down a plant to see that
17 something exists because it's called for, those are fairly
18 straight forward and easy to accomplish. When you're basing
19 it on an analysis and you're basing it on how it's been
20 constructed and you've got such things as concrete strength
21 and rebar placement and other things, the plant is built in
22 accordance with the engineering and there's some margin of
23 the engineering assumptions, then that's a fairly straight
24 forward analysis because you've already done the analysis and
25 you say based upon building it this way, okay. That's what

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1 we embodied and we specify the methods would be used and we
2 went through this with quite a bit of excruciating detail to
3 reach agreement, both in the structural area and in other
4 areas. So I don't understand what the issue is.

5 MR. McDONALD: The issue is what is going to be
6 submitted -- you're going to -- we're going to come to you
7 with a document that says this ITAAC we hereby say it's been
8 completed. The builder has to provide that to you for you to
9 be able to verify and approve.

10 What are we going to send you? Is that document
11 to the public document room that you're going to use and put
12 in the public document room and that is a Part 52 level of
13 documentation.

14 MR. RUSSELL: I never understood your question to
15 be that way, Pat.

16 MR. McDONALD: That's in essence --

17 MR. RUSSELL: What indication that you have
18 completed the analysis and the ITAACs are met and the
19 analysis is available on-site for inspection is probably
20 sufficient. I don't see you sending in reams of analysis for
21 example, or test documents and test reports and other things.
22 Those are documents you have to maintain that are going to be
23 quality records to support what you've done.

24 MR. McDONALD: That's good.

25 MR. MALSCH: I think we have to consider this

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1 because it would be possible to create a public document that
2 would be so sparse, it would be physically impossible for
3 anyone to raise the contentions about compliance with ITAACs.

4 MR. McDONALD: This is to the heart of the issue.

5 MR. RUSSELL: Our inspection reports that we have
6 now, what we're seeing in current cases, our inspection
7 reports are typically the source of information and used to
8 frame what we done in our inspection in terms of what we
9 looked at and what we found.

10 MR. MALSCH: Maybe that's enough.

11 MR. REHN: And I think that's the crux of our
12 concern. You said is it something as simple as a test? We
13 have a test report, we have a test methodology. We run the
14 test. We get the results. We verify the results against
15 whatever the criteria is and say yeah, verily, we've met the
16 ITAAC.

17 The concern we run into in reviewing some of the
18 construction details would tend to lead one also to a
19 conclusion that we would then also have is a basis of
20 information is everything back from Day 1 that gets into the
21 procurement of the piping and the installation and the pump
22 and this and that, all leading up to the performance of that
23 test. What I'm hearing you say it is not your intention. We
24 should focus on that.

25 And of course Marty raised another point and

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1 that's maybe too sparse a document in terms of that
2 background information. Your inspection reports may cover
3 it. Our concern was we don't end up with this voluminous
4 submittal just to get to the test.

5 MR. McDONALD: And of course, this has to do with
6 the Part 52 process that the COL stage starts and that's why
7 it's an important issue.

8 So in a test process, the test procedure, some of
9 them would be big as you know, would you expect that the
10 procedure and another covering statement which mirrors the
11 ITAAC requirement to be submitted for that particular part or
12 would you expect a dozen test procedures? I guess what I'm
13 suggesting is that we have better designs, better regulatory
14 oversight, more detail, more professional all the way around,
15 but we're trying to work with a process that is layered, in
16 essence, layered. And we need to have some idea that we're
17 not going to have to be tabling all those procedures and
18 tests as a part of the Part 52 process, that the ITAAC
19 referred in the Energy Policy Act referred to is in essence
20 that summation statement on the ITAAC.

21 MR. CRUTCHFIELD: I don't think that's a problem.
22 However, shouldn't there be a valid contention that the ITAAC
23 not been met, it's possible that your procurement spec would
24 be --

25 MR. McDONALD: Oh, absolutely, absolutely. WE're

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1 not trying to shortcut anything. WE're trying to look at the
2 streamline of the process and how the context is to be put
3 into it.

4 MR. EGAN: And one of the things we're trying to
5 focus on by getting something in the rule is a valid
6 contention in our view has to be one that's directly and
7 causally related to the text of the ITAAC and that's where we
8 want to know if we have any disagreement with the NRC because
9 as I understand Gerry, I think we're pretty much in violent
10 agreement.

11 MR. RUSSELL: You've got to show a chain of
12 analysis from whatever the discrepant condition is to some
13 ITAAC not being met, directly as a result of that particular
14 entry.

15 MR. EGAN: See, and the potential to undo the
16 years of ITAAC development is there unless you would get some
17 statement like you have in the rule. Down the road, there's
18 a new staff.

19 MR. McDONALD: This is the intent of the comment
20 and the short way to look at it is to take each ITAAC and put
21 the requirement, the summary requirement and that stands as
22 the requirement that the ITAAC requirement and the ones that
23 will be approved and submitted to you and that you would
24 accept and that will clearly delineate the Part 52 process in
25 all the details that support that are subject to the other

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1 embodied processes.

2 MR. RUSSELL: Well, I don't understand your
3 comment, Pat, because we have taken great pains and I sat
4 through many, many, many hours of meetings and in each case
5 where there was an analysis that was described we went into
6 great detail of what were the analysis methods and in some
7 cases we actually asked for looking at the analysis. I mean
8 we spent literally hours and hours of review looking at it,
9 reaching agreement on the methods, what was the acceptance
10 criteria and in all cases there are assumptions that go into
11 analysis that you built it in accordance with certain
12 conditions.

13 MR. McDONALD: Bill, that's great. As I said
14 these ITAACs are the best things that have happened to us and
15 under your direction they came about. So I think you
16 personally --

17 MR. RUSSELL: But I don't understand what your
18 comment is.

19 MR. McDONALD: My comment is looking at the
20 Energy Policy Act and Part 52 process, that it embodies and
21 it says ITAAC. And if we expand the concept of an ITAAC to
22 mean more in terms of documentation and data, then the simple
23 ITAAC as so carefully stated, if we assume it means all that
24 supporting document, then we've got a problem in the process.
25 That's all I'm saying.

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1 MR. CRUTCHFIELD: Let me make sure I understand,
2 Pat. Your view is you can satisfy an ITAAC from the
3 regulatory Part 52 standpoint by basically sending us a
4 letter saying I met delivery of 400 gpm load to this
5 particular locale?

6 MR. McDONALD: Yes, but we know darn well that in
7 order to have you buy it, that we've got to have the whole
8 body of QA and test and everything else signed of properly.

9 MR. CRUTCHFIELD: Now, as soon as we see that,
10 according to you, we then have the opportunity and the option
11 to be able to go out and look at that big stack of
12 information as we see fit?

13 MR. McDONALD: Absolutely. You were doing that
14 beforehand anyway.

15 MR. CRUTCHFIELD: Yeah. Your concern is when you
16 submit that you have demonstrated, you've met the ITAAC, but
17 it's not that big stack of information, but rather a succinct
18 statement that meets the high level ITAAC.

19 MR. McDONALD: That's all it says. And the
20 problem here -- part of the problem in here comes in the
21 process ITAACs as well as the other ITAACs. Process ITAACs
22 if you start trying to get all the programming-type stuff is
23 a mess. We're not talking about giving away anything. We're
24 not talking about level of regulation. We're not talking
25 about anything except Part 52 process and how it can be, go

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1 forward in a high confidence to the owner during an COL
2 process.

3 Dave, did I state that right?

4 MR. WILSON: Okay, for the second time I think we
5 finished number 4. I think we also covered number 8,
6 criteria for determining existence of unreviewed safety
7 question. Is that right?

8 MR. BRINKMAN: Yes.

9 MR. WILSON: Number 9 is expiration of Tier 2*
10 restrictions. Would you like to characterize that, Ron?

11 MR. BRINKMAN: Yes, I guess I have to start this
12 one by asking you a question. In the notice to proposed
13 rulemaking you issued several questions for public comment,
14 one of which was what is the prepared regulatory process for
15 NRC review of proposed changes for tier 2* information?

16 It would be helpful to me if I knew where the
17 staff is coming down on this because it would have relevance
18 for the rest of my comments.

19 MR. WILSON: Okay, simply, if you looked at
20 Section 8 of the rule that has to do with the change process,
21 it says if you want to change tier 1 information, you do
22 this. If you want to change tier 2 information you do that.
23 There is a specific procedure laid out as to what to do if
24 you want to change tier 2* information and it's an obvious
25 hole in the change process. The purpose of the question is

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1 to say we intend to look at that and we're seeking input on
2 the type of process you would have to changing tier 2*
3 information.

4 MR. BRINKMAN: Well, what I'm trying to get to is
5 talking about the opportunities for public participation in
6 that process. Tier 2* as it's now defined is information
7 that is somewhere in the body of Tier 2 that requires NRC
8 staff approval in order to be changed, but according to the
9 way the rule is now proposed, as I understand it, it also
10 provides the opportunity for public hearing on that
11 information.

12 I thought the sense of this question was should
13 that be the case or not.

14 MR. WILSON: That's another part of the question.

15 MR. BRINKMAN: That's the part I'm concerned
16 about.

17 MR. WILSON: First of all, procedure, and second
18 of all what opportunities come with that procedure.

19 MR. BRINKMAN: What I'm trying to elicit is that
20 staff made a determination that is leaning in one direction
21 with respect to whether opportunities for public hearing will
22 be allowed for Tier 2* changes.

23 MR. FRANKS: From my understanding on Tier 2*, we
24 discussed all this in our previous meetings, Bill, was the
25 Tier 2* process was recognized such as fuel where we have had

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1 gentlemen's agreements and we've come forward to the staff
2 and we're going to go in with a new fuel package and seek
3 prior approval, but what's happened is we started adding
4 additional issues that we haven't had that standard applied
5 to in the past. And then in addition to that, there was no
6 intention in our discussions I thought to ever have that
7 because it is Tier 2 as a basis for rehearing and reopening
8 the rule

9 MR. RUSSELL: The reality is that Tier 2* is a
10 compromise.

11 MR. FRANKS: Right.

12 MR. RUSSELL: We didn't feel we had sufficient
13 information to put it in Tier 1 and codify it in the rule was
14 some of the rationale for why we have these and in other
15 cases it was something we knew was going to change, fuel
16 design, digital I & C, control room design, those were issues
17 that we relied on the process.

18 The dialogue that we had earlier and this goes
19 back about three years was that if it was a change it was
20 going to be made by an applicant and it was a change to Tier
21 2* and it should just be described in the application at the
22 time of the review of the application and then would be
23 addressed in the context of the COL proceeding.

24 MR. FRANKS: Right.

25 MR. RUSSELL: If there were a change made after

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1 a license had been issued, a combined license and they wished
2 to make a change based on something they saw afterwards, then
3 it would simply be an amendment to the license which would
4 follow the normal process and we'd have to potentially make
5 a determination pursuant to Shalley as to why there did or
6 did not have a significant hazard, but we would follow the
7 normal amendment process and so the issue was if it's a Tier
8 2*, and you want to change it, the most efficient way to do
9 it is to tell us about it prior to submittal of the
10 application as part of the application process. If you want
11 to make a change to Tier 2* afterward, like you want to
12 change your fuel design, you do it through a normal amendment
13 process where you're changing the reference design that's
14 described to some other design that you want to use.

15 MR. FRANKS: Right.

16 MR. RUSSELL: Pardon?

17 MR. FRANKS: It just doesn't say that.

18 MR. WILSON: As I pointed out --

19 MR. RUSSELL: There are hearing opportunities
20 associated with amendments and there are hearing
21 opportunities associated with the COL. Both of them occur on
22 just the issue of --

23 MR. SIMARD: I gather from what you said the
24 staff has not changed its direction on that and that it still
25 would intend to have opportunity for public hearing as you

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1 would in an amendment.

2 MR. RUSSELL: That's correct.

3 MR. SIMARD: Okay, that's all preliminary to
4 where I'm going because it has to do with the significance of
5 what I'm talking about here. This --

6 MR. SIMARD: Because to do it otherwise you'd be
7 looking at going back and revisiting those issues and
8 deciding how much of it goes into Tier 1. You're going to be
9 reopening a substantial part of the staff's technical view
10 because the premise of our safety evaluation was on the
11 detail that was described. We then went through and put
12 little boxes around certain things in Tier 2 and we said,
13 yeah, we recognize that there needs to be a more flexible
14 process than rulemaking to change this and the process we
15 said was a review and approval where that review and approval
16 is done in a public arena, either in a COL proceeding or
17 after the fact to an amendment process where Shalley applies.
18 And that went up in a Commission paper. All I'm describing
19 is what's in a public Commission paper. When this went
20 forward we had a lot of debate back and forth with others.
21 We decided this is something that really underpins the
22 staff's ability to make the finding that's necessary and we
23 recognize that the Warner process was a little more flexible
24 than the rulemaking to be able to make the change.

25 MR. BRINKMAN: Well, you did ask the question in

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1 question 7 of the notice of proposed rule. Right know I
2 understand where you're falling out on, so I'd like to
3 proceed with the basic point, the basic contention here and
4 that is when Tier 2* items should expire and as you know,
5 we've got a long list of Tier 2* items and we're not
6 contending any of those and many of them, most of them expire
7 at first full power for the referencing plant. However,
8 there are two in the case of System 80+ and four in the case
9 of the ABWR which continue without any expiration.

10 Given that there are and I'm not disputing your
11 history, Bill, but I have to tell you my own understanding
12 was that when we were talking about these, we never had the
13 intention that they would be the subject of hearings, but
14 they would be matters that would be approved by the staff
15 without public hearing similar to other issues that the staff
16 is able to approve without public hearings.

17 MR. RUSSELL: Don't make a finding of no
18 significant hazard determination, whether there is or isn't
19 a request for hearing on an issue. We go through 1100
20 amendments a year, 5500 in the last five years and have only
21 had 25 requests for hearing and only a few hearings have been
22 held.

23 MR. BRINKMAN: But there's a potential and that
24 potential is destabilizing. I'm not trying to put this Tier
25 2* expiration issue in the same category as we hold

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1 applicable regulations and finality and so forth. What we're
2 trying to do here is put it in the context of a more stable
3 licensing process for issues which are Tier 2* and I've gone
4 through each one that's listed, each that doesn't have an
5 expiration date.

6 These are not things that rise to the level that
7 they ought, in the totality at least, that they ought to be
8 subject to applicant, excuse me, the licensee having 40 years
9 of having to live with this or having to go through a
10 potential for a hearing to change it. There are some matters
11 here that we agree were important enough to go up to Tier 2*
12 so that when you got the first full power, we are sure the
13 plant was built the way we wanted it, but the remaining 40
14 years of the life, we don't think that most of these raise to
15 that level the importance and things like defining what a
16 typical level of friction coefficient is, you know, just
17 doesn't seem like something a plant has got to live with for
18 40 years must be subject of the hearing possibility of
19 change. We've got seven pages of HFE material in here. They
20 aren't that important, but we're willing to live with it up
21 to the point of first full power for the plants, but why
22 subject them for the rest of their life to the potential for
23 a hearing if they want to change it.

24 MR. MALSCH: Do you think they become less
25 important from a safety standpoint as time goes on?

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1 MR. BRINKMAN: Yes, in the sense that many of
2 them are important to the safety standpoint, so I guess you
3 wouldn't say they're less important, but the point is they
4 are less likely to alleviate from safety because they've
5 already met that design requirement, when the plant is
6 constructed. So you've got the inertia of the plant being
7 designed that way, mitigating subsequent changes.

8 MR. WILSON: I'm not sure of your question. Are
9 you now re-arguing whether the Tier 2* is significant?

10 MR. BRINKMAN: No, no. I'm re-arguing whether,
11 I'm simply reopening the argument that we had from the
12 beginning --

13 MR. WILSON: In the beginning this idea of
14 expiration didn't exist or as Mr. Russell said, we originally
15 decided that separation of Tier 1 and Tier 2, the industry
16 was trying to minimize the amount of expiration in Tier 1 and
17 felt that at first blush the staff would put in Tier 1 that
18 we agreed to put in Tier 2*, so coming down, it was with the
19 understanding that Tier 2* would apply for the life of the
20 plant. It's only after that review NEI came forward and said
21 well, it seems that some of it could have an expiration and
22 I personally went back and said to each of the team reviewers
23 and said is there some of this where if it's changed after
24 the plant goes into operation you need to look at and they
25 said yes and we ran that up the line and that's how the

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1 expiration came on. It was after the fact.

2 MR. BRINKMAN: I don't disagree with that. I
3 agree with what you just said about that, however, the other
4 factor is is that when we first started talking about Tier 2*
5 we were talking, my understanding, about very limited set of
6 restrictions that eventually got expanded very extensively,
7 so there's much more in there than we ever had in mind.

8 MR. WILSON: I'm not sure what you mean in terms
9 of -- I mean the amount of Tier 2* is what we agreed to at
10 the time. It hasn't changed.

11 MR. CRUTCHFIELD: What is it that you're
12 proposing, Charlie?

13 MR. BRINKMAN: I'm proposing that --

14 MR. CRUTCHFIELD: The expiration date?

15 MR. BRINKMAN: That they all expire at first full
16 power.

17 MR. RUSSELL: Well, I can see we have a
18 fundamental problem with that because the one example of the
19 human factors review as it relates to control room design, we
20 are basically licensing a process and not licensing a
21 particular control room design and we would anticipate that
22 innovation and changes are going to occur with time and that
23 the reason we have confidence that that's acceptable is that
24 there's a process that we have confidence in that would
25 result in development of prototype testing, etc. and I

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1 recognize to the extent you want to introduce changes to a
2 portion of the control room later on, and follow those
3 portions of the process that are applicable to that change.
4 That's what we agreed to.

5 Now to take and throw out the experience with
6 human factors engineering and say that goes away at first
7 full power and that you don't have to follow that process for
8 subsequent change in the control room is not consistent with
9 what we had discussed as it related to both control room
10 design and I & C where you're looking at different software
11 systems, different computer processes, etc., when you looked
12 at a total system for introducing digital technology and they
13 were process oriented. So we recognize that change can occur
14 and what we did is we said if it follows this process it's
15 okay.

16 Now if you want to do it differently than that
17 process, then we'd like to understand what that new process
18 is that you're going to use. So that was the basis for
19 saying some of them did not have expiration dates.

20 MR. WILSON: We did it the opposite way. It was
21 with the understanding that none of them would have
22 expiration, but we went back and decided that some of them
23 could. That's how we got to where we are.

24 MR. BRINKMAN: And we feel that the level of
25 detail and significance, safety significance of these, don't

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1 forget, we are still subject to the regular 50.59 process, so
2 those are safety significant and we wouldn't be able to
3 change without --

4 MR. WILSON: So if that was a sole determinant,
5 we wouldn't have Tier 2*.

6 MR. BRINKMAN: This brings us up to the
7 construction of the plant and the operation of the plant, at
8 that point the normal process. It seems to us that you're
9 adding --

10 MR. WILSON: I don't know what you mean by normal
11 process.

12 MR. BRINKMAN: Any 50.59 process.

13 MR. WILSON: The Part 52 process, Section 8
14 applies to the life of the plant.

15 MR. BRINKMAN: Say that again?

16 MR. WILSON: The Part 52 process, Section 8
17 applies to the life of the plant.

18 MR. BRINKMAN: That's right.

19 MR. WILSON: It doesn't change at operation.

20 MR. BRINKMAN: We would only have Tier 2* until
21 we resort to a Tier 2 status.

22 MR. WILSON: Some of it, yeah.

23 MR. BRINKMAN: In our case, you're suggesting
24 some of it. We would like to see all of it.

25 MR. WILSON: The proposed rule has -- I

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1 understand we're going to go back and look at that.

2 Any other questions on No. 9?

3 MR. FRANTZ: Yes, there are two, as was mentioned
4 Tier 2* provisions that expire at first full power, the
5 System 80+, but not for the ABWR. Can you explain what the
6 difference is and why the ABWR should not have that same
7 provision?

8 MR. WILSON: It's interesting you ask that. I
9 went back and asked that of the staff also and first of all,
10 you understand Tier 2* isn't exactly the same for ABWR and
11 System 80+ and second of all, the manner in which it's
12 determined and what was in Tier 1 and Tier 2 and Tier 2*
13 affects a lot of these decisions, but also the approach is
14 significantly different in a particular area, fuels, and that
15 affected it also. And also there was some after the fact
16 changes that were made to CE that weren't made to GE and
17 we've gone back and looked at those. It appears that we may
18 have made a mistake on the expiration of CE. I won't get
19 into that in this meeting. I think we'll deal directly with
20 CE and CE applicants in a specific meeting to discuss those.
21 But we will address this point in the final rule as to what
22 areas should have expirations and if those areas are the same
23 between two applicants, how they should be treated.

24 Are we ready for Item 10, process control
25 technical specifications?

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1 MR. SIMARD: Yes, we just wanted an opportunity
2 to ask a question about again a clarification of the staff's
3 intent with respect to tech specs because we came away from
4 the June 27th public meeting a little confused. The proposed
5 rule states that NRC approval is required for changes in the
6 tech specs and what we heard in that June 27th meeting was a
7 reference to tech specs in the rule was referring to Chapter
8 16 of the DCD and the intent, as we took away from that
9 meeting, was that a plant which references the certified
10 design would have two sets, the phrase two sets of tech specs
11 was used, namely, there would be one set would be the tech
12 specs based on Chapter 16 of the DCD that are applicable to
13 the standardized part of the plant and they would be subject
14 to the change controls in the certification rule.

15 The other set, the second set would be those tech
16 specs applicable to the site specific part of the plant and
17 they would be subject to the Part 50 change process. So we
18 wanted an opportunity to ask were we correct there? Do you
19 foresee that or do you see that after license, after a COL,
20 for example, these tech specs are merged into a single set
21 much as they are in today's plants in forming the attachment
22 to the license?

23 MR. WILSON: Let me see to how we got to where we
24 are. First of all, there is going to be probably a different
25 change process for that site specific design information, for

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1 example, the ultimate heat sink information that comes in
2 different than the design certification information, so
3 you'll have the DCD information and that site specific
4 information. Now the actual change process of that site
5 specific information hasn't been developed yet and we have a
6 question in the proposed rule asking about that. It probably
7 wouldn't be exactly like 50.59. I suspect t would be
8 different, but I can't tell you exactly what it's going to be
9 like. So in any final application you're going to have one
10 body of information that comes under the change process for
11 design certification rules and some other information that's
12 different, possibly different change process. Not the tech
13 specs itself, and I'm glad my Director is here, are in Tier
14 2 because the staff wanted to achieve that level of
15 standardization in the tech specs to the extent possible so
16 that each applicant referencing it would basically have the
17 same tech spec.

18 Now the consequence of that is that that's in
19 fact in design control document and it would come under the
20 design control document change process. Now if we were to
21 adopt what you say and I suppose we could do that is that at
22 some point we extract that tech spec out of chapter 16 and we
23 have just one set of tech specs after the combined license is
24 issued, then we would have one change process for all the
25 tech specs, but then we're going to lose that earlier goal of

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1 having standardization of tech specs from applicant to
2 applicant. There's a trade off here. So what you're asking
3 us to do is go down a different road than we set out at the
4 time we were citing what goes into Tier 2.

5 MR. SIMARD: I guess we understood what that up
6 to the granting of the license, that there in the application
7 stage the applicant would be subject to the change controls
8 in the rule or any proposed change to those tech specs that
9 in the DCD that require the NRC approval and I guess what we
10 foresaw happening was that once the license is granted, we
11 now have a single set of tech specs that are subject to the
12 50.90 change control.

13 MR. WILSON: I understand your proposal --

14 MR. SIMARD: What you're saying, if I understand
15 you correctly, you say even after the license has been
16 granted, you see some of the tech specs in the license, the
17 ones that you can trace back to the DCD are subject to a
18 separate change control process?

19 MR. WILSON: It was the intent in the proposed
20 rule that they would be the same change control process as
21 all the other Tier 2 information. Now my question to you is
22 well, to adopt your proposal, how do you achieve
23 standardization of the tech specs once the plants get into
24 operation?

25 MR. SIMARD: We foresaw that happening through

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1 the industry, the standardization, the existing regulatory
2 controls, the amendment process, so that's how we foresaw
3 that happening. I guess our view was that after the license
4 had been granted, at least with respect to that plant that's
5 referencing the certification, Chapter 16 of that design
6 control document is of historical interest. What matters to
7 him and what he has to maintain under your scrutiny is once
8 he's selected from there, he's filled in the blanks, the set
9 points, whatever, and now that's part of his license, but I
10 guess you've clarified --

11 MR. WILSON: I understand what you're proposing.
12 I am just saying that recognize that we adopt what you're
13 saying and we've lost that standardization.

14 MR. RUSSELL: I think a related issue as well and
15 that is we have in dealing with the industry on how the
16 changes to the generic standard tech specs and the process
17 that we're following that we're going through with NEI and
18 each of the owners groups to try and maintain consistency.
19 These tech specs were developed based upon what I'll call
20 Rev. 0, the standard tech specs. We now have had some
21 implementation experience. There have been modifications
22 made to the standard tech specs based upon our experience
23 with them. Plants that have already converted are
24 incorporating those changes with subsequent amendments.
25 Plants that are yet to convert are getting them all at one

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1 time.

2 I think this is an issue we need to relook at.
3 The concept that I had in mind two years ago when we talked
4 about this was that if it was going to be similar to the
5 NUREG that constitutes the standard tech spec for that
6 particular class reactor, whether it's a Westinghouse 4 loop.
7 We had Westinghouse and we had different sections of the
8 standard for Westinghouse depending on the ice condenser,
9 etc. We had BWR-6s, BWR-4s, etc., but we recognize that
10 those were going to be somewhat living documents and that we
11 wanted standardization in the context of tech specs and
12 that's consistent with the rulemaking that was put out in
13 50.36 which was just done this last summer. So I think we
14 need to look at what we're doing in this context with that
15 rule and the statement of consideration associated with the
16 rule.

17 When we did this, we did it as Rev. 0 as the
18 standard tech specs. We factored in what we knew about risk
19 significance. We did other things to the extent we could.
20 There are still some site specific issues that have to be
21 addressed and may cause them to have tech specs on a site
22 specific basis. But I understood the comment, looking at
23 this, I don't see two sets of tech specs. We have a process
24 that we use for tech specs. The rule now identifies what is
25 the appropriate content of tech specs. I believe in these

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1 design certifications tech specs we have now in 16 are
2 consistent with that rule, but the particular language in the
3 bases could be refined or modified and we want them to be
4 consistent with what we're doing broadly in the industry and
5 since we may have five or ten years of operation before you
6 actually get to issuing the first set of tech specs for one
7 of the new designs, depending on what happens, I'd like to be
8 consistent with that experience.

9 We found that tailoring these to the operators'
10 needs, the people who are operating a plant is very
11 important, keeping them current. So we need to relook at
12 this as to how it fits in. We've identified the principal
13 features, but I don't want to say we're locked into those
14 particular words for the next 60 years.

15 MR. BISHOP: Our motivation was to have a set of
16 integrated tech specs that were operator-friendly that we
17 could continue to work with effectively.

18 MR. RUSSELL: Well, that's consistent with the
19 rulemaking and the statement of considerations of the
20 rulemaking just went forward. So we need to look at this.
21 We have your comments. We understand it.

22 MR. MALSCH: I'd raise a related issue and I have
23 gone back to check to see what we said about the description
24 of the change process on this item, but it strikes me that
25 looking, for example, referring briefly to the finality of

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1 the changes discussion in topic 2, we're talking about
2 changes to Tier 2, but to the extent these tech specs are
3 simply part of Tier 2, where you're changing tech specs,
4 that's something that's obviously much more important in
5 terms of materiality than anything else in the licensing
6 process than just your ordinary change. These would have to
7 be, if we were able to accommodate in some way in dealing
8 with the finality for other parts of the Tier 2, we may have
9 to carve the tech spec, maybe also Tier 2*, I'm not sure,
10 because the safety significance is a different order of
11 magnitude.

12 MR. BISHOP: Just speaking for myself, I don't
13 know that we've talked about any detail. I've always thought
14 that 59 was the way to go.

15 MR. MALSCH: Right.

16 MR. BISHOP: We know that it works. It's not
17 particularly smart or resource unintensive, but I think
18 there's a level of confidence that the process works and
19 that's what we're after.

20 MR. RUSSELL: But there is a major policy issue
21 also with trying to keep tech specs standardized between
22 plants, both from a regulatory consistency standpoint,
23 interface issue and all of the lessons that we have learned
24 from customized tech specs with requirements that vary from
25 plant to plant. So those are real objectives that we have.

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1 We need to find a way of rationalizing those too.

2 MR. BISHOP: And I think we have even more
3 incentive under Part 52 for standard plants to achieve those
4 goals, but we're also working, as you know, to achieve those
5 under Part 50 as well.

6 MR. RUSSELL: I think we're up to 75 now.

7 MR. WILSON: Okay, can we move on to item 11?
8 This item is applicability of ITAAC under Part 50. It was
9 interesting, Mr. McDonald said that ITAAC is the best thing
10 that history has ever had and this one, the industry says
11 they don't want to follow it. Perhaps you could characterize
12 that.

13 MR. SIMARD: That question is so sensitive I am
14 going to defer to legal counsel down the table here.

15 MR. EGAN: We put this up last on the list for
16 the industry, not because it's last in importance. In fact,
17 I think it plays out like this. We think this is either the
18 most important issue on the list or is completely unimportant
19 and that really depends on how successful we are with the
20 comments I've heard on Part 52. Because I think by
21 definition if we're worrying about this process, the ITAAC
22 process in Part 50, it sort of presupposes that the ITAAC
23 process is broken down in Part 52. We don't contemplate, I
24 don't think, that an applicant would proceed under Part 50 as
25 a first order of preference unless experience has

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1 demonstrated that the process has somehow broken down and at
2 this time, as Pat McDonald pointed out, we see a lot of
3 uncertainties in how the ITAAC verification process will
4 actually develop and we're not there yet. We maybe can agree
5 on the first step, but we've got a long ways to go and so we
6 continually look to Part 52 itself which preserved the option
7 and the opportunity for someone to go in under Part 50 and
8 thus, we were surprised, I would say that the proposed rule
9 would come out this early in the game and propose that ITAAC
10 should be applicable in the Part 50 context because the way
11 we see it, there's a post-construction hearing in the Part 50
12 context where you resolve construction and verification
13 issues.

14 MR. WILSON: May I interrupt in the interest of
15 time? I'm familiar with what the comments say and you may be
16 characterizing the rule somewhat incorrectly. The rule just
17 points out that when we wrote the ITAAC and in particular the
18 whole Tier 1, Tier 2 with the ITAAC, we didn't write it with
19 the understanding that someone would then come back under
20 Part 50 and reference the rule with a cherry pick it. We
21 were writing it with the understanding it would be used under
22 Part 52 and it was all integral. As Mr. Russell pointed out,
23 there are a lot of compromises in it. There were a lot of
24 things that were covered up with the ITAAC and that's the
25 reality of it. It just wasn't written to be used in the

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1 context that you're now trying to use it in. That's the
2 difficulty.

3 MR. EGAN: We don't see it as cherry picking. I
4 think the ITAAC are all entirely derivative of Tier 1 and
5 Tier 2, other material in Tier 1 and Tier 2, so -- and in
6 fact, there's an SRM that says they can't --

7 MR. CRUTCHFIELD: In Jerry's interest of time, if
8 I might, this issue you prefaced by saying that perhaps Part
9 52 ITAAC process is failed and therefore someone might refer
10 to Part 50. Since we really haven't got the rules out yet,
11 much less have a series of applicants for which the process
12 has or has not worked, perhaps this issue is best taken off
13 line from the Part 52 certification process and considered
14 elsewhere.

15 MR. EGAN: We couldn't agree more.

16 MR. RUSSELL: I'm still trying to understand what
17 was the issue?

18 MR. EGAN: Well, right now the notice of proposed
19 rulemaking has a statement in it that ITAAC would be
20 applicable.

21 MR. CRUTCHFIELD: If somebody comes in under Part
22 50 application and references a certified design that we
23 would follow the ITAAC --

24 MR. RUSSELL: The reality is we started Reg Guide
25 168 looking at properitoneal testing and where you could do

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1 a test that's how we got to an ITAAC and since it has existed
2 for a long time, I would characterize that there's probably
3 a lot of good technical information that went in there as to
4 how you would use it. So I don't see how you would
5 disassociate yourself, how you're going to demonstrate
6 something works in accordance with the design if you've gone
7 through and you've identified and developed a test. I think
8 this is kind of a moot issue.

9 MR. BISHOP: I agree with Denny's proposition.
10 I would only observe, Bill, that you might want to use each
11 and every one of them and the regulatory significance would
12 be different.

13 MR. RUSSELL: Clearly, you would use it given
14 that there would be an opportunity for hearing and
15 contentions would be admitted, etc. It would be back to the
16 Part 50 process. So it's more like an FDA that's going under
17 Part 50 and I'm not sure that ITAAC would have any particular
18 meaning until you get a license after you've already built
19 the plant.

20 MR. MALSCH: Well, we could fit it into the
21 ITAAC. Obviously, you put it in and make ITAAC a condition.

22 I think you can put it in there because you
23 wanted to address the issue in the notice to proposed
24 rulemaking. *

25 I'm not sure we need to have it resolved --

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1 MR. CRUTCHFIELD: I'll go back to postulate
2 before. Let's do it on another vehicle.

3 MR. WILSON: Any other questions on that item?
4 I want to turn to Mr. Franks. We've been four hours at this
5 and we have three more items on the agenda. They're your
6 items.

7 MR. FRANTZ: I think for sake of expediency, I
8 can roll them up into one item. I think we've sort of
9 discussed all of them.

10 MR. WILSON: I was going to give you the option,
11 I can give you more time if you need tomorrow. I can
12 facilitate a meeting tomorrow meeting or we can try to
13 quickly deal with it tonight.

14 MR. FRANTZ: I think I need five minutes maximum.
15 And I'll just make some statements. In our interpretation of
16 the Part 52 and looking at the requirements we have imposed
17 a regulatory burden on ourselves by requiring these documents
18 to be maintained, specifically the SARS and the DCDs which
19 are difficult to maintain. I request that we go back and
20 look at those.

21 Let me explain. 52.79 subpart (b) site specific
22 SAR requires us to submit the final safety analysis report
23 and reference the DCD. Okay? That's for an application.
24 Then in issuance of the COL, 50.59 requires us to make
25 completeness and accuracy of all the information. After the

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1 findings are maintained in accordance with 50.59 changes.
2 I'm just talking about how the process is laid out.

3 Now you go over to maintenance up at DCD and we
4 talked about maintenance all day, starting from convey until
5 ultimately decommissioning of the plant. This requires a
6 pinch of Part 52, Section 9 and 9(b)(1) reports required to
7 maintain the DCD and the updates and we submit those with the
8 applicant's amendments which is the SAR. And then it
9 requires 50.9.2 the quarterly reports and the DCD departures
10 and updates of the DCD. So here's inconsistencies in the
11 requirements for submission of SAR, different from submission
12 of the DCD.

13 So I'd just like for us to go back and reconsider
14 the language associated there and make sure that we can at
15 least streamline the SARs and the content and the context of
16 the DCD and the DCR. Okay?

17 That sort of gets into my issue about
18 simplification. That simplification is cutting out a lot of
19 the duplicity and using the normal process that we described.
20 WE talked about a 50.59 that the industry knows how to do
21 well. We talked about a 50.59 like process that's not
22 defined, but we got to define it and it should be part of the
23 DCD. We talked about other ways we get into the normal
24 regulatory process and I encourage us that the regulatory
25 processes have been utilized and simplified, we ought to the

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1 extent practical use those for Part 52 provides us with an
2 avenue for industry and we ought to consider those.

3 Those are my comments.

4 MR. WILSON: Any questions on Mr. Frantz'
5 comments?

6 MR. RUSSELL: Would you say that the DCD to the
7 extent that the language is identical and the SAR would be
8 sufficient and then for proprietary information or other
9 things that were in the SAR were excised to get the DCD
10 maintain that in a separate document?

11 MR. FRANKS: Something to that effect.

12 MR. RUSSELL: So you don't have to duplicate it.
13 So that basically the SAR is the DCD as change to the Tier 2
14 process, plus the proprietary information so maybe there's a
15 simple statement which DCD plus this additional information
16 which is your proprietary safeguards information because the
17 intent was to take the word processor and run it and simply
18 delete that information to get to the DCD. That's how we got
19 here.

20 If you just have a DCD, you have a supplement to
21 it that includes the safeguards information and the
22 proprietary information and that information with the DCD is
23 called the updated FSAR.

24 MR. FRANTZ: I think the concept of streamlining
25 the removing the duplicity of this thing is paramount to

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1 regulatory stability.

2 MR. WILSON: I'd just say I think we addressed
3 that issue in our guidance to Westinghouse recently on
4 preparation of their DCD.

5 MR. FRANTZ: I don't think it was clear even in
6 that. I looked at that and it was unclear to me that you
7 were not requiring the same thing when we asked our two
8 vendors about the DCD two years ago which was duplicating
9 what we had already done in a SAR.

10 MR. RUSSELL: The only reason we came up with a
11 DCD as compared to a SAR was because the proprietary
12 safeguards information and the PRA information we decided
13 would not be --

14 MR. FRANTZ: All of those issues convey with
15 Marty and everyone about how do we accommodate the
16 proprietary nature and the safeguards nature of this and
17 there are existing rules and regulations that cover that. So
18 why -- I'm not sure we even have to get into that, but all
19 I'm suggesting is as we look through this, let's look through
20 to make sure we get rid of the duplicity. That's all.
21 Because with that, I think, simplicity and a clear
22 understanding of the how in ten years when we're all retired
23 some owner is going to come up and say I want that one and
24 pull it off the shelf and be able to implement it. We're
25 certainly not there yet.

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1 MR. WILSON: Okay, we'll address those issues and
2 I'm going to hesitantly ask if there are any other questions.
3 The answer is no. I'd like to finish at 5 o'clock. With
4 that I'd like to thank everyone for coming out and --

5 MR. REHN: Jerry, could I make a closing --

6 MR. WILSON: Go ahead.

7 MR. REHN: I think on behalf of the industry,
8 we'd like to extend our thanks to the NRC for taking time to
9 have this discussion today. I think they're very valuable
10 for us to exchange information, to gain an understanding of
11 your thoughts and your viewpoints. Certainly, we sent you a
12 great deal of our thoughts about four months ago in a rather
13 thick document.

14 I think it's important too to note that in the
15 audience today there are many utilities represented who are
16 extremely interested. I think we represent a potential
17 customer and hopefully a user and implementer of these
18 designs and this rulemaking.

19 Our interest is and it has been in having an
20 option in the future for generations, that involves the
21 particular option. To that extent, we will have to each on
22 our own evaluate one day when these designs are available or
23 when the design certification is in place, whether indeed
24 that is an option that we would choose to exercise. The
25 comments that you have heard today, I think are

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1 representative not only of the individual vendors and to some
2 extent some of our staff of lawyers that we have with us, but
3 they also are strongly rooted in what the utilities see are
4 the needs we have for this to be a viable option. We hope
5 that you'll consider all of these as representative because
6 they are the total industry representing each and every one
7 of us in terms of our unique needs, but put together in a
8 form that represents to you what we see as our composite
9 desire to make this a viable rule and ultimately a viable
10 option for us. So again, we thank you for your effort.

11 MR. WILSON: Thank you, Dave, and once again, if
12 you want a copy of the transcript, see Mr. Corbett and with
13 that, let's close the record.

14 (Whereupon, at 5:00 p.m., the meeting was
15 concluded.)

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C E R T I F I C A T E

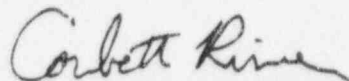
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