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Meeting Title: Brief by Oge on Regulatory Issues & Options for Decommissioning Proceedings  
 Meeting Date: 11/24/92 Open X Closed \_\_\_\_\_

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Title: BRIEFING BY OGC ON REGULATORY ISSUES AND  
OPTIONS FOR DECOMMISSIONING PROCEEDINGS

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NUCLEAR REGULATORY COMMISSION

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BRIEFING BY OGC ON REGULATORY ISSUES  
AND OPTIONS FOR DECOMMISSIONING PROCEEDINGS

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PUBLIC MEETING

Nuclear Regulatory Commission  
One White Flint North  
Rockville, Maryland

Tuesday, November 24, 1992

The Commission met in open session,  
pursuant to notice, at 10:00 a.m., Ivan Selin,  
Chairman, presiding.

COMMISSIONERS PRESENT:

IVAN SELIN, Chairman of the Commission  
KENNETH C. ROGERS, Commissioner  
FORREST J. REMICK, Commissioner  
JAMES R. CURTISS, Commissioner  
E. GAIL de PLANQUE, Commissioner

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STAFF SEATED AT THE COMMISSION TABLE:

WILLIAM C. PARLER, General Counsel

JOHN C. HOYLE, Acting Secretary

MARTIN MALSCH, Deputy General Counsel, Licensing and Regulations

MITZI YOUNG, Office of the General Counsel

JOHN PARTLOW, Associate Director for Projects, NRR

DOROTHY MICHAELS, Office of the General Counsel

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P-R-O-C-E-E-D-I-N-G-S

10:00 a.m.

CHAIRMAN SELIN: Last spring we spent a lot of time trying to figure out how to handle the Shoreham decommissioning questions that arose, a number of interesting questions. We found that we were making what I hope are sensible but ad hoc decisions that appeared to have implications for more generic approaches to decommissioning. It's clear that there will be a number of other decommissionings either before or at the end of the license period in the next number of years.

So, when we went through the Shoreham experience, the Commission requested the General Counsel to provide a paper discussing lessons learned. Because the premature plant shutdowns are somewhat likely, it's important that the Commission identify any gaps in our decommissioning regulations and in our practices and to revise them if necessary. Therefore, we asked the General Counsel to prepare the briefing that we'll receive today. He's here to discuss his views concerning appropriate procedures and requirements for decommissioning and to provide his office's recommendations for changes to our regulations and, if appropriate, to our operating

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1 practices.

2 We're looking forward to hearing what you  
3 and your team have to say about this important topic,  
4 Mr. Parler.

5 MR. PARLER: Thank you very much, Mr.  
6 Chairman and members of the Commission.

7 First of all, I'd like to introduce the  
8 people that are here with me. On my right is Mr.  
9 Malsch, the Deputy, who had a large input to this  
10 paper, particularly with regard to the analytical  
11 sections dealing with the recommendations. Ms.  
12 Dorothy Michaels, on Mr. Malsch's right, assisted in  
13 that regard. On my left is Ms. Mitzi Young from our  
14 Hearing Division who helped me tremendously. I asked  
15 and the EDO agreed to have someone from his staff here  
16 to answer any technical questions or any other  
17 questions you might ask, that might be asked, and also  
18 detailed questions about the process.

19 Mr. Chairman, you have referred to the  
20 circumstances under which this project was initiated  
21 and the directions to us in an SRM of June the 10th of  
22 this year. Before that SRM was issued, I, as the  
23 accountable official, at least in the Office of the  
24 General Counsel, had some concern as to what was going  
25 on. Those concerns were concerns that I could not

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1 explore fully at the time because of the separation of  
2 functions rule, which we discussed yesterday in  
3 another context, that apply to the Shoreham  
4 proceeding. The staff was taking certain positions  
5 about the decommissioning rule and what was required,  
6 on the one hand, and the advisors to the Commission  
7 were seeing things a little differently on the other.  
8 I asked myself, "What is it that these folks are  
9 reading? Are they reading the same thing? Is the  
10 guidance clearer, unclear?" et cetera. So, I was very  
11 anxious to find out what was going on and I initiated  
12 this effort a little bit before the staff requirements  
13 memorandum was put out.

14 Mr. Chairman, I will tell you, and it was  
15 certainly disclosed in the paper and will be further  
16 amplified during the briefing, that there is a gap in  
17 our decommissioning rule as far as prematurely  
18 decommissioned plants are concerned, the process that  
19 should be followed. The statement of considerations  
20 that I will talk about in a little more detail later  
21 does say that the prematurely decommissioned plants  
22 are covered, but that's about it.

23 We also will recommend or make some  
24 recommendations which the Commission may or may not  
25 choose to accept. If they accept them, then we will

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1 have to go to work on putting out the rules.

2           What I would like to emphasize, however,  
3 at the outset, to put all of this in context, is that  
4 life in the decommissioning area after Shoreham is  
5 still going on. Actions have been taken by the  
6 Commission in the decommissioning area. I see as  
7 recently as a couple days ago that the Commission  
8 approved a decommissioning plan, an amendment of  
9 license for the Fort St. Vrain nuclear generating  
10 station. But that approval was carefu'ly qualified,  
11 at least generically, that the steps or the actions  
12 that's been set forth in the particular  
13 decommissioning plan may or may not require advanced  
14 agency approval in the context of other individual  
15 cases, that the other individual cases will be  
16 evaluated on a case by case basis.

17           Similarly, action was taken in the San  
18 Onofre Unit 1. There was a continued possession only  
19 license that was issued which will not become  
20 effective until after the facility is permanently shut  
21 down and the licensee has certified that all the fuel  
22 has been removed from the reactor vessel and that this  
23 was taken even though defueling will not be completed  
24 until sometime next year. In the spring of next year  
25 when the POL amendment becomes effective, it will

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1 remove the licensee's authority to operate the  
2 reactor, which is something that is very important and  
3 certainly was very important in Shoreham to try to  
4 arrive at that point, that understanding where you  
5 have the license that is changed from a Part 50  
6 license to authorizes a licensee to operate the  
7 facility to a Part 50 license that in effect  
8 contemplates not operation ever again but  
9 decommissioning.

10 The POL in San Onofre would establish the  
11 basis for issuing various reliefs and exemptions from  
12 the requirements of the operating license which are  
13 not necessary to ensure safety in the permanently  
14 defueled mode and the licensee is required to submit  
15 a decommissioning plan for the unit no later than two  
16 years after the permanent cessation of operations,  
17 which presumably is next spring.

18 : point I want to make is despite what  
19 will be said hereafter about gaps, et cetera, the  
20 process can still work on a case by case basis. Of  
21 course, another important thing to keep in mind when  
22 we discuss things such as this is that the objective  
23 of what we do in areas such as this is to assure the  
24 protection of the public health and safety, the common  
25 defense and security, to assure that our environmental

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1 responsibilities are met and to make sure that we have  
2 a process which is open, the decisions that we make  
3 are rational, that they're made on the public record  
4 and that we give interested members of the public an  
5 opportunity to participate in the process, whether  
6 that opportunity is in the form of hearings, public  
7 meetings or responding to their petitions, giving the  
8 people an open process, the opportunity to know what's  
9 going on that could affect them and to try to put the  
10 various health and safety risks and environmental  
11 questions and concerns into perspective. I think that  
12 under the system that we have, that is being done.

13 Now, that's the context. In order to  
14 understand our recommendations, I would like to give  
15 you an overview and then I will say something very  
16 generally about the recommendations and Mr. Malsch  
17 will discuss the analytical details for the  
18 regulations.

19 The analytical details, they are somewhat  
20 complex. Fog level is kind of high because -- not  
21 necessarily because of the problems that we're dealing  
22 with which are rather straightforward, but because we  
23 have to get into such things as whether you have to  
24 have a hearing, what kind of hearing, whether the  
25 hearing has to be before the fact, after the fact, et

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1 cetera, and the discussion which takes place and the  
2 analysis is in a framework of the regulation, the  
3 decommissioning rule that we have and the statement of  
4 consideration which accompanied that rule when it was  
5 put out in 1988.

6 Now for the background, for the regulatory  
7 background. We all like, as I've heard you all say as  
8 recently as a materials licensing meeting, to have a  
9 good principal framework for regulatory decisions and  
10 that, of course, is in accord with the principles of  
11 good regulation. Even though I tried to make the  
12 point that we can make on a case by case basis the  
13 prematurely shut down decisions, the point is also  
14 that we do not have a set of regulations which  
15 directly address that problem and here is why.

16 The decommissioning rule really  
17 contemplates what will happen during the normal  
18 expiration of life of a plant. Decommissioning is  
19 defined in the rule to removing a facility safely from  
20 service and to reduce the residual radioactivity to a  
21 level that permits release of the property for  
22 unrestricted use and termination of the license. I'm  
23 not saying that's what it should be, but that's what  
24 the rule says. The rule -- I'm talking about the text  
25 of the rule now. The text of the rule provides for a

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1 premature preliminary decommissioning plan. Each  
2 licensee shall, about five years prior to the  
3 projected end of the operation of the activity, submit  
4 a preliminary decommissioning plan containing a cost  
5 estimate for decommissioning, an up-to-date assessment  
6 of the major technical factors that could affect  
7 planning for decommissioning. Incidentally, the  
8 financial aspects that are associated with premature  
9 decommissioning is not covered in this particular  
10 study. That's covered in a separate study. If my  
11 recollection is correct, I believe that the staff has  
12 submitted a paper on that subject to the Commission.

13 The rule also contemplates an application  
14 for termination of the license. Any licensee may  
15 apply to the Commission for authority to surrender a  
16 license voluntarily and to decommission the facility.  
17 Then for any facility that permanently ceases  
18 operation after July the 27th, 1988, the application  
19 must be made within two years following permanent  
20 cessation of operations, in no case later than one  
21 year prior to the expiration of the operating license.

22 Then, each application for termination of  
23 the license must be accompanied or proceeding by a  
24 proposed decommissioning plan. The decommissioning  
25 plan, at least as this non-technical person would

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1 understand the rule, was a very important part of the  
2 decommissioning rule. It was in the decommissioning  
3 plan that if demonstrates that the decommissioning  
4 will be performed in accordance with the regulations  
5 and will not be inimical to the common defense and  
6 security or the health and safety of the public, and  
7 after notice to interested persons, on the basis of  
8 that plan, the Commission will approve the plan  
9 subject to such conditions and limitations as it deems  
10 necessary and appropriate and issue an order  
11 authorizing the decommissioning. The rule does not  
12 say, I don't believe, if my recollection is correct,  
13 too much about whether you would have a hearing, what  
14 kind of a hearing, the timing of the hearing. Perhaps  
15 most important for purposes of this discussion, the  
16 rule doesn't say anything at all about a premature  
17 decommissioning plan.

18 However --

19 COMMISSIONER REMICK: Bill, if I could ask  
20 a question. Does it say anything in the normal case  
21 about such a thing as a possession only license?

22 MR. PARLER: No, it does not. No, sir.

23 Now, in the statement of considerations,  
24 what I will do is, to set the background, talk about  
25 the statement of consideration and then about the

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1 Commission guidance in Shoreham and that will lead us  
2 into the regulations. I'm sorry, the recommendations  
3 that we are proposing.

4 In the statement of considerations there  
5 is a statement, I guess, in response to a comment that  
6 was received on the proposed rule that the normal  
7 lifetime as well as those which may be shut down  
8 prematurely, those plants are covered by the rule.  
9 But as I've already said, there's nothing in the  
10 regulations about premature shutdown. As I just said  
11 in response to the question, a possession only license  
12 is not defined anywhere either in the decommissioning  
13 regulation.

14 However, the statement of considerations  
15 mentions that decommissioning, and I'm reading this  
16 correctly, it may sound like some of these things are  
17 in conflict, but old Parler is not confused. I may  
18 not sound exactly clear at all times, but this is the  
19 way to do this, folks.

20 The statement of considerations mentions  
21 that the decommissioning will be conducted under a  
22 possession only license, and it goes on to say,  
23 "Normally a Part 50 license authorizing possession  
24 only will be issued prior to the decommissioning order  
25 to confirm the non-operating status of the plant and

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1 to reduce some requirements which are important only  
2 for operation prior to finalization of the  
3 decommissioning plans."

4 Then there's a reference to a Regulatory  
5 Guide 1.84 which was put out in 1974, some 14 years  
6 before the decommissioning rule, which includes a  
7 description of the information to be submitted in an  
8 application for a possession only license.

9 MS. YOUNG: 1.86.

10 MR. PARLER: 1.86. Ms. Young just told me  
11 it was 1.86.

12 There is also a provision in the statement  
13 of considerations that subsequent license amendments  
14 will be used as appropriate, presumably to relax the  
15 operating license requirements as the process unfolds  
16 toward the goal of decommissioning, which the rule, I  
17 failed to say, provides three approaches. One of the  
18 approaches without great enthusiasm, decontamination,  
19 decon, I suppose, SAFSTOR and entomb. The one that's  
20 alluded to without great enthusiasm is entomb.

21 The statement of considerations also says  
22 that the overall approach to decommissioning must be  
23 approved shortly after the end of operation under the  
24 rule rather than under an amendment possession only  
25 Part 50 license being issued without plans for the

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1 ultimate disposition. That's what it says.

2 The statement of considerations says also  
3 that the primary means of protecting the health and  
4 safety of the public and workers during  
5 decommissioning is through implementation of the  
6 decommissioning plan. The statement of considerations  
7 also says that because decommissioning, including any  
8 change from the original operating license, requires  
9 Commission approval, there are no loopholes which  
10 would allow adverse impacts to the public or the  
11 environment.

12 There's a section in the decommissioning  
13 rule, 50.82(f), which clearly indicates that the  
14 license ultimately is terminated by a determination of  
15 the Commission after the decommissioning has been  
16 performed and it has been adequately demonstrated that  
17 the facility and site are suitable for release to  
18 unrestricted use, which may occur some considerable  
19 number of years in the future. I suppose if it's the  
20 decon approach, it could be as early as a little less  
21 than six, as I understand it. If it's SAFSTOR, it  
22 could be around 60 and if it's some combination of  
23 entomb or something, if it gets much over 100 or  
24 around 100 then people start being concerned, at least  
25 as far as the rule is concerned.

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1 Is that generally correct? Yes.

2 Now to the part of the statement of  
3 considerations that is perhaps the most -- well, it  
4 certainly is of some significance in light of the  
5 Shoreham experience. A commenter asked, "Well, what  
6 can we do prior to the approval of the decommissioning  
7 plan?" At least as I understand the rule, the  
8 decommissioning plan seemed to be an important part of  
9 the step toward decommissioning. The statement of  
10 considerations refers to Section 50.59 which permits  
11 the holder of an operating license to carry out  
12 certain activities without prior Commission approval  
13 unless these activities, as we all know, involve a  
14 change in technical specifications or an unreviewed  
15 safety question.

16 And going on, the statement of  
17 considerations say that the amendments contained in  
18 the decommissioning rulemaking cannot alter a  
19 licensee's capability to conduct activity under 50.59,  
20 whether they're talking about the flexibility or at  
21 least some flexibility that a licensee presumably  
22 would have under 50.59 to move in the direction of  
23 decommissioning prior to the submission and the  
24 approval of the decommissioning plan.

25 The statement of consideration says,

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1 "Although the Commission must approve the  
2 decommissioning alternative and major structural  
3 changes to radioactive components of the facility or  
4 other major changes, the licensee may proceed with  
5 some activities, such as decontamination, minor  
6 component disassembly, shipment and storage of spent  
7 fuel, if these activities are permitted by the  
8 operating license and are 50.59. These matters will  
9 be further discussed in a revision to Regulatory Guide  
10 1.86 under consideration."

11 In a broader general context, the  
12 statement of considerations says, among other things,  
13 that the radiation levels to which workers will be  
14 exposed will be similar to the levels of major  
15 maintenance activities conducted during the operation.  
16 It says that if total exposures prove to be higher  
17 than estimated, this could be factored into decisions  
18 concerning the alternatives and approaches in the  
19 future. There's a reference made, I believe, to the  
20 standards in Part 20 that would have to be observed.

21 The statement of considerations also  
22 refers to the general generic environmental impact  
23 statement that also accompanied the decommissioning  
24 rulemaking and the statement of considerations says,  
25 "This generic environmental impact statement, GEIS,

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1 shows the difference in impacts among the basic  
2 alternatives for decommissioning is small and the dose  
3 impact of decommissioning is small whatever  
4 alternative is chosen in comparison with the impact  
5 associated from 40 years of licensed operation. The  
6 relative impacts are expected to be similar from plant  
7 to plant so that a site specific environmental impact  
8 statement will result in the same conclusions as a  
9 GEIS with regard to the methods of decontamination."

10 COMMISSIONER CURTISS: Bill, could I ask  
11 a question back on an earlier point? You touched on  
12 one of the key issues that we'll need to think about  
13 in the context of your recommendations. The rule  
14 itself contains a definition of decommissioning. The  
15 statement of considerations language that you cited  
16 contains some discussion that might arguably be  
17 inconsistent with or difficult to reconcile with the  
18 language in the rule itself.

19 The Reg. Guide 1.86 which existed at the  
20 time, a 1974 version of the reg. guide and perhaps I  
21 can draw upon Mr. Partlow's recollection as well, was  
22 it intended in either the definition in 50.3 or in the  
23 description in the statements of consideration that  
24 what we were trying to capture and allow or disallow  
25 in drawing the line between what you could do and what

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1 you couldn't do prior to approval of a decommissioning  
2 plan, was it intended that we were to essentially  
3 incorporate the then existing Reg. Guide 1.86  
4 approach? Is that reflected in the language that  
5 we've got either in the definition or in the rule?

6 MR. PARTLOW: I'm afraid I just can't  
7 answer that, Commissioner. I first became involved in  
8 the Shoreham point and specific guidance from the  
9 Commission sort of took over in the Shoreham case and  
10 I'm not familiar with the history before that.

11 MR. PARLER: I'm not familiar with the  
12 history either. I was not involved yet, but I can  
13 tell you what I think is a result of a rather  
14 intensive look at the thing for the last couple of  
15 days. That is that the framers of the rule apparently  
16 contemplated that the guidance in the 1.86 as updated  
17 would be the sort of guidance that when we get around  
18 to our recommendation number one, that would be useful  
19 to flesh out the bare bones of the rule itself.

20 One of the points in the statement of  
21 considerations that I went through a couple minutes  
22 ago about the 50.59 change procedures and not changing  
23 major structural components, et cetera, is, I believe,  
24 also in the regulatory guide.

25 COMMISSIONER CURTISS: Okay.

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1 MS. YOUNG: If I could --

2 MR. PARLER: Go ahead.

3 MS. YOUNG: -- add anything here, I didn't  
4 participate in the rulemaking, the decommissioning  
5 rules in '88 either. But my reading of the reg. guide  
6 and the statement of considerations which specifically  
7 says that those activities that could proceed without  
8 approval of a decommissioning plan would be further  
9 addressed in a revision to the reg. guide, when you  
10 look at the reg. guide, the most you get from that is  
11 that catch phrase, you're going to do major structural  
12 changes to radioactive components, but you should  
13 submit a decommissioning plan. But you can do minor  
14 activities, components, move on things in the absence  
15 of such a plan. That's about as far as the reg. guide  
16 gave you in terms of illuminating the kinds of things  
17 the 1988 rulemaking was talking about.

18 About the only thing different that I  
19 notice in reading the two together was that they  
20 talked about in the reg. guide things like removal of  
21 the pressure vessel or major components of the primary  
22 system being the kinds of things that you might need  
23 approval of your decommissioning plan for. But those  
24 things have never really been illuminated in any kind  
25 of further draft to the reg. guides. I think a draft

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1 at one time was prepared, but it didn't get any rather  
2 than the first or second cut.

3 COMMISSIONER CURTISS: That was actually  
4 my second question. Is the June '74 reg. guide the  
5 existing operative guidance today? Nothing else has  
6 been prepared to update that reg. guide?

7 MR. PARTLOW: That's correct. Doctor  
8 Weiss just told me that there was a draft -- there is  
9 a draft update of that regulatory guide to bring it  
10 into consistency with the statement of  
11 considerations, but it hasn't been issued and I can't  
12 tell you the exact status of that draft.

13 COMMISSIONER CURTISS: The rule itself, as  
14 Mr. Parler indicated, indicated that that reg. guide  
15 would be updated.

16 MR. PARTLOW: Yes. And apparently that  
17 effort did happen at some point.

18 MR. PARLER: We do know that there is a  
19 difference as a result of intense discussions about  
20 another subject.

21 COMMISSIONER CURTISS: Okay. That's all  
22 I have at this point.

23 MS. YOUNG: Maybe that the experience in  
24 Shoreham caused some delay in even trying to revise  
25 that reg. guide since there was a lot of dispute over

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1 the activities that could receive without approval of  
2 a plan.

3 COMMISSIONER CURTISS: Yes. I raised that  
4 question because when we get to your recommendation on  
5 this point it does seem to me that it is fully  
6 consistent with the definition of decommissioning  
7 itself in the rule. The statements of consideration,  
8 the language on this point, it does seem to me at  
9 least they complicate the matter in terms of what that  
10 says can and can't be done. If we intended in turn in  
11 the definition of decommissioning to actually  
12 incorporate and rely upon the 1.86 approach, as has  
13 been pointed out, that prohibits some things from  
14 being done as well that I think virtually make sense  
15 to permit. But we can get to that point when you get  
16 to your recommendation.

17 MR. PARLER: Well, what you were saying  
18 would help, I am sure.

19 Mr. Chairman, I have just one other point  
20 to make about the guidance that the Commission gave us  
21 and to the public in 1988, the statement of  
22 considerations of the decommissioning rule. It's  
23 this. In response to the concerns expressed by the  
24 commenters, decisions on decommissioning would be made  
25 without public input. The statement of considerations

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1 says that the decommissioning involves an amendment of  
2 the operating license and the NRC rules provide an  
3 avenue for public input with respect to license  
4 amendments.

5 So be it for the statement of  
6 considerations. I would like to now mention briefly  
7 the additional guidance that the Commission give to  
8 the subject in its decisions in the Shoreham  
9 proceeding and I will do that very quickly.

10 In what we call CLIs, Commission License  
11 Issuance 90-8 in October of 1990, the Commission  
12 stated that its responsibility was to assure that the  
13 licensee complies with the requirements applicable to  
14 the plan in its mode or condition and it refrained  
15 from taking actions that would materially affect  
16 decommissioning methods, options or cause prior to the  
17 approval of a decommissioning plan. That was also the  
18 decision, if my memory is correct, in which the  
19 Commission decided that it did not have to approve the  
20 alternative of continued operation as an NEPA  
21 alternative. That's a legal issue. But I think even  
22 though it is not settled judicially, is fairly  
23 understood at least internally and I will not say  
24 anything more about that. I don't think that  
25 particular point is relevant much to anything that is

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1 said here this morning.

2 Later on in January of 1991, in a CLI-91-  
3 1, the Commission ruled that the Shoreham licensee's  
4 request for a defueled operating license was a request  
5 for a POL, that is a possession only license. The  
6 Commission said that the decommissioning rule will not  
7 contemplate that in normal circumstances and a  
8 possession only license would have to be preceded by  
9 submission of any particular environmental information  
10 or accompanied by any NEPA review related to  
11 decommissioning. The rules do not require the  
12 submission of any preliminary or final decommissioning  
13 information before a POL could issue.

14 Before that decision, the staff had sought  
15 in a staff paper 90-421 guidance from the Commission  
16 about three phases in processing decommissioning  
17 plans. One of the phases was what could be done  
18 before the issuance of the POL. Perhaps the -- as I  
19 recall, the summary of what the staff was asking is  
20 that the licensees would be required to preserve from  
21 degradation systems needed for operation to comply  
22 with the operating license requirements in the  
23 regulations applicable to whatever mode or condition  
24 the plant was in after shutdown. But after issuance  
25 of the POL, the licensees would have to maintain

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1 staffing and systems necessary only for the safety in  
2 the shutdown mode or the defueled condition.

3 After the approval of the decommissioning  
4 plan, the licensees would have to conduct their  
5 activities in accord with the approved decommissioning  
6 plan. Until the decommissioning plan was approved,  
7 the licensees were to refrain from any actions that  
8 would affect the decommissioning methods or options or  
9 increase the decommissioning pulse.

10 The Commission declined to provide the  
11 additional guidance that the staff requested, but  
12 indicated it would continue to consider POLs for  
13 prematurely decommissioned plants on a case by case  
14 basis, which indeed, as I have indicated at the  
15 beginning, they have done in the cases of Fort St.  
16 Vrain, San Onofre, the two cases I mentioned, as well  
17 as other cases.

18 The issue of the significance of the  
19 approval of the decommissioning plan and what hearing  
20 rights, what kind of hearing, the timing of the  
21 hearing were issues before the Commission in the  
22 Shoreham proceeding, at which time the proceeding was  
23 settled and the Commission did not have to address  
24 those issues and provide further clarification in the  
25 area.

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1           That is the background that the  
2 recommendations that we have should be viewed against  
3 with emphasis again that although there are these  
4 perhaps gaps and ambiguities, that responsible  
5 regulation is still taking place on a case by case  
6 basis.

7           The basic questions here are what can be  
8 done after the decision is made to decommission a  
9 nuclear power plant, which is primarily what I'm  
10 talking about. Some of these issues might apply in  
11 other contexts.

12           During the discussion in preparing the  
13 paper, I heard that the rule does not say when  
14 decommissioning starts or when operation ends and  
15 things such as that. Well, some of these issues  
16 perhaps were made more difficult because they came to  
17 light in the Shoreham proceeding, which was heavily  
18 contested. Different signals were being sent in the  
19 public record about whether the plant was supposed to  
20 operate again or would operate again or would not.  
21 Also, the utility, at least as I understand it, wanted  
22 to proceed along the decon route to have the  
23 decommissioning done expeditiously so that various  
24 things could be sent to a particular part of our  
25 country.

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1 But opportunities -- how much could be  
2 done without certain kinds of opportunities for public  
3 participation had to be thought out every step of the  
4 way in the Shoreham proceeding, which was really a  
5 very hard, severe test of the decommissioning rule and  
6 without that it may well have been that some of these  
7 ambiguities and gaps would not have surfaced, or at  
8 least not as quickly as they had.

9 Now, we have seven recommendations for you  
10 to consider. They are policy choices. If the  
11 recommendations are adopted, there would have to be,  
12 at least in most of the cases, implementing rules. I  
13 would suggest that the recommendations, at least for  
14 the most part, would have to be considered as a  
15 package. The first four of the recommendations really  
16 deal principally with what can be done on the path of  
17 decommissioning until the final decommissioning plan  
18 is issued and approved, or submitted and approved, and  
19 the decommissioning order issued.

20 The last three have to do with the  
21 opportunities for public participation. There is one  
22 cautionary recommendation in the last three which kind  
23 of like says that if the Commission believes that  
24 there should be opportunities for earlier  
25 participation, that that should be considered. These

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1 regulations are structured like this because we were  
2 unable to come up with a conclusion that there's any  
3 ideal time for public participation. On the one hand,  
4 no decommissioning at all could be allowed until the  
5 decommissioning plan is approved. According to our  
6 understanding of what the Commission said in Shoreham,  
7 that would not appear to be a viable suggestion.  
8 Besides that, in view of the flexibilities that even  
9 operating licensees have when they're in the operating  
10 license mode to do certain things, the additional  
11 flexibilities that they have under 50.59, that did not  
12 appear to be a good point of departure. That is  
13 allowing nothing to be done until the decommissioning  
14 plan is approved.

15 We also thought about the possibility of  
16 consolidating or trying to have some sort of a process  
17 under which amendments would be consolidated by the  
18 applicant, but there didn't appear to be sufficient  
19 background for us to conclude that that would be a  
20 good idea, that would be the kind of flexibility that  
21 perhaps should be left up to the licensee. We also  
22 discussed whether the possession only license should  
23 be mandatory before the decommissioning can proceed  
24 beyond some prescribed point and were unable to come  
25 out with a convincing rationale as to why that should

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1 be the approach.

2 So, these several recommendations that we  
3 have provide -- if they are implemented at least when  
4 rules are needed to implement them, they provide the  
5 maximum flexibility on the one hand for  
6 decommissioning to proceed in a responsible fashion,  
7 but also providing for as much advance information to  
8 the public as possible about the plans, with  
9 opportunities provided to the public to participate at  
10 appropriate stages.

11 Whether or not there should be an  
12 opportunity for a prior hearing, say prior to the  
13 approval of the decommissioning plan, is really a  
14 policy question. I think the legal analysis which Mr.  
15 Malsch will get into in further detail would conclude,  
16 at least as a general proposition, that most of these  
17 various steps could be evaluated so that the  
18 conclusion could be reached that there's no  
19 significant hazardous consideration involved.

20 That's a very general description of these  
21 recommendations. The first one very briefly says the  
22 staff should provide guidance on the activities  
23 permissible prior to the approval of the  
24 decommissioning plan. What I tried to describe about  
25 the rule itself, the statement of considerations and

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1 the Commission guidance in the Shoreham, the possible  
2 need for such guidance I think should be apparent.  
3 Also, the 1.86, the regulatory guide, as far as I  
4 know, has not been updated.

5 We refer in the recommendation number one  
6 to activities which would not foreclose the release of  
7 a site for unrestricted use. That's slightly  
8 different from earlier formulations on that point  
9 which talk about not foreclosing alternatives. But if  
10 one would recall, what I tried to say about what the  
11 statement of considerations said about the insights  
12 from the GEIS on the environmental concerns, et  
13 cetera, is not readily apparent why the foreclosure of  
14 alternatives would be a big concern as long as it was  
15 not the foreclosure of the alternative of the release  
16 of the site for unrestricted use.

17 Another factor would be that the approach  
18 that we're talking about would not significantly  
19 increase decommissioning costs or cause a significant  
20 environmental impact not previously reviewed.  
21 Translated, that means that if there's anything about  
22 the site specific decommissioning that's not within  
23 the boundaries, I guess, of the GEIS, that those  
24 things should be considered.

25 The next recommendation deals with the

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1 50.59 benchmark. When I referred to the 50.59 in the  
2 statement of considerations, one of the things that I  
3 did not mention but which is mentioned in our paper in  
4 a footnote is that the 50.59 as written in our Part 50  
5 regulations covers what can be done under a plant that  
6 is authorized to operate. The objective as I  
7 understand it for the most part is to provide for  
8 50.59 flexibility after the plant has decided to shut  
9 down and not to operate again.

10 The recommendation number 3 tries to have  
11 as its objective telling the licensee to inform us and  
12 the public of its plans for the decommissioning  
13 activities or what its game plan is at least in broad  
14 terms up to the decommissioning plan. We probably  
15 would not include the sort of analysis that one would  
16 get in a decommissioning plan, but at least an attempt  
17 to come up with a game plan would be a step in the  
18 right direction of informing us and the public as to  
19 what's going on.

20 That is the recommendation which, as I've  
21 just described, would perhaps also fall in the second  
22 category of trying to enhance the opportunities for  
23 public involvement and participation.

24 The fourth recommendation has to do with  
25 the issuance of a confirmatory order to make it clear

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1 that from a regulatory standpoint there has been a  
2 permanent cessation of operation. In other words, to  
3 stop wondering what the licensee's intent is, stop  
4 asking the question that the decommissioning rule does  
5 not say when decommissioning begins and when operation  
6 ends, but take the straightforward approach and  
7 whenever the decision is made that the licensee has  
8 decided to terminate operations, then to start  
9 decommissioning to have that confirmed by a regulatory  
10 action such as a confirmatory order.

11 The recommendation number 5 --

12 CHAIRMAN SELIN: Excuse me, Mr. Parler.

13 MR. PARLER: Yes.

14 CHAIRMAN SELIN: I think it might be  
15 useful if we stopped with these first four regulations  
16 and discuss those because my own views on the hearing  
17 will be very much affected on the views of my  
18 colleagues on these first four. They seem to be a  
19 set, clean up the regulations to allow appropriate  
20 practices, and the last three, depending on what's  
21 decided there, would be how would the public --

22 MR. PARLER: Yes. Mr. Chairman, if we  
23 stop at the first four, which I certainly would have  
24 no problem with your approach, since Mr. Malsch's role  
25 is to provide details to my broad brush treatment, you

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1 might want to hear from Mr. Malsch on the first four  
2 before you go on.

3 CHAIRMAN SELIN: That would be fine. But  
4 I have one question. It's a little bit about the  
5 connection. It is about the connection between the  
6 first and the third recommendation. Does the third  
7 recommendation become moot under some outcomes of the  
8 first recommendation? In other words, depending on  
9 what's decided on what kind of guidance should be  
10 given on what can be done in advance of the  
11 decommissioning plan, does that sort of affect the  
12 disclosure --

13 MR. PARLER: Well, the recommendation  
14 number 3, as I understand it, would not become moot  
15 because recommendation number 1 would provide generic  
16 guidance across the board, perhaps an updating of the  
17 Regulatory Guide 1.86. We'd still want to know, I  
18 would think, in the absence of a decommissioning plan  
19 filed early on, what a specific licensee's game plan  
20 will be.

21 CHAIRMAN SELIN: Okay.

22 Mr. Malsch, since you know what you're  
23 going to say and we don't know what you're going to  
24 say, do you want to present the preemptive legal  
25 analysis or do you want to let it come out as people

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1 ask you questions about the recommendations?

2 MR. MALSCH: Why don't I just go over it  
3 very briefly, a little bit of the substance behind  
4 some of the recommendations. Then we can go back to  
5 the public hearing process.

6 CHAIRMAN SELIN: Fine.

7 MR. MALSCH: As Bill said, the focus of  
8 the report is on the lessons learned from the Shoreham  
9 proceeding with a view toward improving the process in  
10 future cases. Shoreham was a prematurely shut down  
11 plant, but we had in mind here lessons learned not  
12 only for future prematurely shut down plants, but also  
13 lessons learned from plants that are shut down in the  
14 ordinary course as well. I also wanted to emphasize  
15 that there are other issues that could be raised about  
16 decommissioning that are not covered by this study.  
17 For example, there have been questions raised about  
18 the role of spent fuel storage in the decommissioning  
19 process. We're not addressing those.

20 The Commission has by a separate  
21 rulemaking addressed the matter of financial assurance  
22 for decommissioning for prematurely shut down plants  
23 and we haven't addressed that question.

24 Also, Shoreham was unique in that contrary  
25 to what the drafters of the decommissioning rule

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1 expected, the controversy in Shoreham was not over how  
2 to decommission, but whether to decommission at all.  
3 That led to some fairly unusual decisions in the  
4 proceeding.

5           There were, for example, two Commission  
6 decisions on whether the Commission had to consider  
7 operation as a NEPA alternative and at various stages  
8 in the process the staff made efforts to preserve  
9 Shoreham for later operation, something which I think  
10 the drafters of the decommissioning rule never thought  
11 would be a possibility.

12           But there are some lessons learned that  
13 can be taken into account. The most important one  
14 is -- as Bill mentioned, one of them is what actions  
15 can be done prior to approval of a decommissioning  
16 plan approval. The regs call for approval of a  
17 decommissioning plan, but nothing in the regulations  
18 prohibits anyone from decommissioning or even  
19 commencing decommissioning prior to approval of the  
20 decommissioning plan. There is language in the  
21 preamble to the rule that says that prior to de-plan  
22 approval there could be minor component disassembly  
23 and some decontamination in shipment of local waste  
24 off site. There is a suggestion in the preamble that  
25 major structural changes shouldn't take place prior to

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1 de-plan approval, but nothing in the rule itself which  
2 contains any such prohibition.

3 Now, there is the option here of reading  
4 the rule since it says one shall not -- since it call  
5 for approval of a decommissioning plan, one might  
6 infer from that that therefore you can't decommission  
7 prior to approval. But as I said, there's nothing in  
8 the rule that says that. It is an option that might  
9 be considered. For example, we could amend the rules  
10 to define commencement as decommissioning and then  
11 prohibit that from occurring prior to approval of the  
12 decommissioning plan.

13 When we looked at that as a possibility,  
14 it appeared to us that this was not strictly speaking  
15 necessary for safety or environmental reasons. Among  
16 other things, it would lead to a situation in which a  
17 licensee of a plant permanently shut down could do  
18 fewer things without NRC approval than a licensee of  
19 a plant only temporarily shut down for, say, repairs  
20 or refurbishment or maintenance. That struck us as  
21 kind of anomalous. Instead we decided to look at the  
22 kinds of safety or environmental problems which  
23 actions prior to approval of the decommissioning plan  
24 might cause and to tailor the prohibitions to those  
25 kinds of problems rather than simply recommending an

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1 outright prohibition. So, we focused on the possible  
2 safety or environmental issues that might arise in  
3 this interim period.

4 There are two categories of safety  
5 questions. The first category we thought was probably  
6 taken care of by the ordinary 50.59-like process.  
7 That regulation says that a licensee, a person  
8 licensed to operate a plant, can make changes in the  
9 plant or changes in the procedures for operating the  
10 plant as described in the final safety analysis report  
11 if it doesn't require an amendment to the license or  
12 technical specifications and doesn't present an  
13 unreviewed safety question. We thought that for most  
14 safety questions that kind of a regulation would take  
15 care of safety problems and that regulation was quite  
16 workable in this context. Although, as I'll get to a  
17 little bit later, there's a glitch in the actual  
18 wording of the regulation which we can correct rather  
19 easily.

20 The second safety issue that occurred to  
21 us would be that it's possible that actions prior to  
22 de-plan approval might either deplete decommissioning  
23 funds so that funding was not available and was needed  
24 later on to actually complete the decommissioning  
25 process, or possibly decommissioning increased

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1 decommissioning costs. It's the same consequence.  
2 So, that was the safety issue we considered that might  
3 be addressed in terms of what actions are approvable,  
4 are permissible prior to de-plan approval, those two  
5 safety categories.

6 COMMISSIONER de PLANQUE: Can I ask a  
7 question just on that point?

8 MR. MALSCH: Sure.

9 COMMISSIONER de PLANQUE: Did you also  
10 consider the possibility that spending money on  
11 decommissioning problems now, let's say disposal of a  
12 component could actually be significantly cheaper  
13 than to wait until later and have the reverse effect on the  
14 budget. In other words, it's not going to take  
15 away money later on but could, in fact, mean you have  
16 to spend more later on.

17 MR. MALSCH: In fact we did consider that.  
18 That's why if we were to fashion the criteria, it  
19 would be focusing on not just things that cost money,  
20 but things that actually cause a problem later on in  
21 terms of the availability of decommissioning funds.  
22 So, that all comes up again in the context of the NEPA  
23 foreclosure question and I'll get to that in a minute.

24 In terms of environmental considerations,  
25 the GEIS on decommissioning approves as the

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1 decommissioning goal release of a site for  
2 unrestricted use. Also, this goal is actually in the  
3 regulations defining decommissioning. So, we thought  
4 that there were two proper NEPA considerations for  
5 these interim actions. One is, of course, the usual  
6 NEPA consideration and that deals with the actual  
7 action at hand not causing a significant environmental  
8 impact not previously evaluated, but that's a fairly  
9 obvious alternative.

10 But in terms of foreclosing options, we  
11 thought the focus should not be on foreclosing  
12 decommissioning options since they're all aimed at the  
13 same goal, but instead we should look at the end point  
14 which is release of the site for unrestricted use.  
15 That becomes important when you consider, let's say  
16 for example, a proposal to remove some piece of  
17 equipment from the plant and ship it off site for  
18 disposal in lieu of a waste disposal facility. That  
19 could actually save money. On the other hand, if  
20 you're focusing on foreclosing decommissioning options  
21 and SAFSTOR is an option, you end up at least  
22 nominally foreclosing the option of storing that  
23 material on site for an extended period of time. So,  
24 if that was the NEPA criteria for interim actions, you  
25 couldn't do it, even though it would save you money

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1 later on and even though taking a piece of  
2 contaminated equipment and shipping it off site for  
3 burial in it would advance the end objective of  
4 release of the site for unrestricted use.

5 So, for that reason, we think the focus  
6 should be on foreclosing or not foreclosing the  
7 ultimate aim of decommissioning. I think the  
8 important difference under this criterion is that it  
9 would allow under most scenarios a utility to actually  
10 do some decontamination disassembly and shipment off  
11 site prior to approval of the decommissioning plan  
12 provided there are no safety problems and there are no  
13 significant environmental impacts on the actual  
14 activity being proposed. That would be a change.

15 COMMISSIONER CURTISS: In your view, we're  
16 unable to accommodate the result that you're proposing  
17 or the approach that you're proposing within the  
18 framework of the Shoreham standard?

19 MR. MALSCH: Well, the Shoreham standards  
20 spoke about foreclosing decommissioning options and I  
21 think it was understood that those are the options  
22 described in the GEIS SAFSTOR, entomb, what not. I  
23 know that it's been understood by the staff in that  
24 context, which has caused a great deal of hesitation  
25 on the part of the staff in approving early efforts to

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1       disassemble and ship off site for disposal.

2                   CHAIRMAN   SELIN:       Mr.   Malsch,   your  
3       discussion is fascinating.   On the other hand, we're  
4       56 minutes into the 90 minute session and we're still  
5       analyzing the first of seven alternatives.   So, either  
6       we need a briefer way of doing this or we need to  
7       bring out these points as questions come out.   Can you  
8       do this even more briefly or do you want to have  
9       questions?

10                   MR.   MALSCH:   Actually, that's the one I  
11       really had to cover in some detail.   The rest of them  
12       I think are a little more straightforward.   They are  
13       fixing up 50.59, the issuance of confirmatory orders,  
14       possession only licenses.   Let me just mention there  
15       that there's one very important part of our  
16       recommendation and that is to go through all the  
17       regulations and prescribe precisely which ones apply  
18       to a possession only license.   The effect thereby  
19       would be that if such a license is issued, there comes  
20       into play an existing defined subset of safety  
21       requirements and no need for granting license  
22       exemptions as we have in the past.

23                   That brings us to the nature of de-plan  
24       approval and hearing rights.   Let me go back to Bill  
25       on that subject.

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1 COMMISSIONER REMICK: Are we going to  
2 discuss the first point?

3 CHAIRMAN SELIN: Let's discuss the first  
4 point.

5 MR. MALSCH: Oh, fine.

6 MR. PARLER: That's what I thought.  
7 That's why I was silent.

8 CHAIRMAN SELIN: Okay. I don't know what  
9 I think until I hear my colleagues' questions. That  
10 will tell me who to disagree with.

11 Do you want to start, Commissioner Remick?

12 COMMISSIONER REMICK: The first couple  
13 questions just for information, so I better  
14 understand. Is a POL considered an amended operating  
15 license in this context or is it a new license?

16 MR. MALSCH: It is not a new license. I  
17 guess you might call it an amended license. Our  
18 proposal would be to actually define it in the  
19 regulations so that it's defined what it is and which  
20 regulations apply to issue it and which regulations  
21 apply to one who holds it.

22 COMMISSIONER REMICK: Okay. In your first  
23 recommendation, if I was the staff, I guess the first  
24 question I'd asked myself in providing guidance, are  
25 we assuming that the plant has been defueled or not?

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1 If it hasn't been defueled, it seems to me that  
2 there's not much guidance. It's an operating license  
3 and your choice is 50.59 or amendment to that license,  
4 as I see it.

5 So, first question I would ask providing  
6 guidance, are we assuming the plant has been defueled?  
7 Then, the next question I would ask if I was in the  
8 staff's position in providing guidance to -- I assume  
9 that they've amended their license with something  
10 called a possession only license and have they  
11 requested things like tech spec changes and so forth?  
12 It seems to me the staff is in a very position to  
13 provide general guidance without making assumptions,  
14 I guess, under various options.

15 I don't know, Jim, if you thought about  
16 that or not.

17 MR. PARTLOW: Our assumption is that, yes,  
18 the plant would be defueled before the POL were ever  
19 issued. I think that's one reason why we have placed  
20 with you for permission for the SONGS POL early. When  
21 these things are met rather rapidly, then the POL can  
22 be issued as soon as the defueling process is over  
23 with. I would assume ~~that~~ <sup>that</sup> would be the starting  
24 point for providing this guidance on what can be done  
25 and what can't be done.

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1 COMMISSIONER REMICK: Okay. All right.  
2 And it seems to me then that the next thing, you'd  
3 have to make some kind of assumption as to has there  
4 been some kind of amendment to the license called a  
5 POL because that might already -- the POL itself might  
6 define certain things that have been approved. So, is  
7 this guidance to lay out the type of things that might  
8 be included in a POL? And once you have the POL, the  
9 additional things you might do. I'm a little confused  
10 on the guidance.

11 MR. MALSCH: I think what we had in mind  
12 is simply defining a possession only license is a  
13 license which only authorizes possession but not  
14 operation of the plant.

15 COMMISSIONER REMICK: Right.

16 MR. MALSCH: Then to go through the  
17 regulations and define which regulations and  
18 requirements do and do not apply to POL. Now, if  
19 there are requirements in the license, in the  
20 particular license that apply to a plant in a shutdown  
21 mode but which on reflection are not necessary for a  
22 plant in a shutdown mode, I think our proposal would  
23 be to handle that separately as a license amendment  
24 because I didn't think we could speak generically in  
25 our POL regulations as to which licenses had which

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1 requirements along those lines because they seem to be  
2 so case specific.

3 COMMISSIONER REMICK: Yes.

4 MR. MALSCH: So, there would still be the  
5 need. Even though a POL were to be issued, there  
6 would still be the need on a case by case basis to  
7 possibly amend select license in tech specs.

8 COMMISSIONER REMICK: Well, if the POL is  
9 amended license, I can see a broad spectrum of POLs  
10 unless we define it differently. In other words,  
11 somebody might come in and just ask for a possession  
12 only license which would be similar to a confirmatory  
13 order saying, "We won't operate," but asking for no  
14 modification for tech specs or that type of thing,  
15 including environmental tech specs. Somebody else  
16 might come in at the time of a POL and indicate  
17 they're not going to operate, assuming that they don't  
18 already have a confirmatory order to that effect, but  
19 also say, "We'd like to change this tech spec, we'd  
20 like to change that tech spec," just part of a POL.

21 MR. MALSCH: That's correct.

22 COMMISSIONER REMICK: And I'm not trying  
23 to do the staff's work, but I'm trying to understand  
24 what the recommendation is on what it is that the  
25 staff would be working on, what kind of assumptions do

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1 they make about what is in a POL or is this more  
2 generic and their guidance would be the type of things  
3 that might be considered either in a POL or -- I'm at  
4 a loss to understand.

5 MR. PARLER: It's more generic as to the  
6 things that could be done say under the operating  
7 license. There is some flexibility there under 50.59  
8 of the operating license once the decision is made to  
9 cease operation and a confirmatory order is issued.  
10 I understand that under some of these operating  
11 licenses there are tech specs which automatically  
12 become inoperative or of no further meaning because a  
13 particular mode of operation has been changed. Then,  
14 how we react to the amendment by amendment approach,  
15 to the POL approach, to -- in other words, what we  
16 foresee would be the sort of things that can't be done  
17 prior to the approval of the decommissioning plan.  
18 If, as I am informed, not being a technical expert,  
19 under 50.59 when you have an operating license that's  
20 still in the operating mode, one can remove the steam  
21 generators under 50.59 without too much adieu, it  
22 would seem to me that until the decommissioning plan  
23 is submitted and approved there's quite a bit that can  
24 be done.

25 As I understood this recommendation and

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1 certainly from rather intensive discussions, the  
2 objective is to update and expand the regulatory guide  
3 as necessary to indicate how the staff views some of  
4 these various things, what could be done at various  
5 steps. In that respect, it is perhaps a more  
6 comprehensive approach and more generic guidance to  
7 the approach which the staff asks the Commission for  
8 guidance on and I believe the paper was 90-194 in  
9 Shoreham that I alluded to earlier, specific things  
10 that could be done at specific steps. The Commission  
11 did not give any guidance on that and said that they  
12 would continue to answer the questions on a case by  
13 case basis.

14 This recommendation number 1 asks the  
15 staff -- who knew how to write this staff paper  
16 telling the Commission what they plan to do at various  
17 steps to flesh that out and perhaps give everybody  
18 guidance, at least generic guidance. That's my  
19 understanding of what the recommendation is talking  
20 about.

21 MR. PARTLOW: I think this recommendations  
22 1 and 4 somewhat go as a set. Recommendation number  
23 1 is really about how much dismantling can take place.  
24 Recommendation number 4 will help to clarify what's  
25 the timing of reduction in regulatory requirements,

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1 tech specs or not.

2 MR. PARLER: There's another difference  
3 too. Recommendation number 1 is generic,  
4 recommendation number 4 would be a plant-specific  
5 action.

6 MS. YOUNG: If I could also add, I don't  
7 think it really matters whether you have a POL that  
8 just prohibits you from operating or a POL that has  
9 attendant with it those tech spec changes that remove  
10 all sorts of related requirements. The issue that we  
11 were concerned about was what regulations really apply  
12 to a plant that's no longer going to operate, what are  
13 the hazards imposed by that plant, what emergency  
14 planning requirements are necessary, what leak rate  
15 testing requirements might apply, those things of  
16 concern. But in addition to the decommissioning  
17 context, a licensee and the staff who is going to be  
18 overseeing these activities needs to know what types  
19 of things can proceed without approval of the plan if  
20 you are a facility that is no longer going to operate.

21 COMMISSIONER REMICK: That I understand,  
22 but in my simplistic view they have an operating  
23 license which defines which regulations apply. Until  
24 that is amended, that's it. I don't know how else and  
25 I don't think by guidance we can change an operating

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1 license. They have to somehow amend the license.

2 MR. PARLER: What you are talking about is  
3 really the point that we had more internal debate  
4 about than I -- amongst us lawyers than I care to have  
5 had. My answer to that was that what we are talking  
6 about here assumes that there is no uncertainty about  
7 what the licensee wants to do and what its plans are,  
8 that a decision has been made that the licensee is  
9 going to decommission this plant and it is prepared to  
10 go into a mode of operation where the operation would  
11 cease and they would embark on the course toward the  
12 approval of the decommissioning plan and ultimately  
13 the termination of the license. Early on when the  
14 decision is made, you still have a Part 50 license,  
15 but a Part 50 license has been amended so that the  
16 facility could no longer be operated.

17 MS. YOUNG: And there are regulations now  
18 that are phrased in terms of each licensee authorized  
19 to operate. They're the regulations that are phrased  
20 in terms of each operating license shall. So, it's  
21 very difficult once you remove that authority to  
22 operate to tell in every instance with certainty  
23 whether certain requirements in Part 50 apply to you  
24 or they don't. The staff has kind of had to do those  
25 on an ad hoc basis, often taking the conservative

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1 approach that if there's any room for doubt, maybe  
2 they should be an amendment or exemption.

3 COMMISSIONER REMICK: So, I take that  
4 you're assuming that there has been an amendment to  
5 modify the operating license then. POL issued.

6 COMMISSIONER CURTISS: Or confirmatory  
7 order.

8 MS. YOUNG: Confirmatory order.

9 COMMISSIONER REMICK: But a confirmatory  
10 order, I think, just says that they will not operate,  
11 right? It doesn't get into relief on tech specs and  
12 things like that.

13 MR. PARLER: There's a variety of things  
14 that might happen, I've been told, but the crucial  
15 thing that has to be decided is that the decision has  
16 been made that the plant will not be operated and  
17 they're going to decommission the plant and an  
18 appropriate regulatory action should be taken early on  
19 to reflect that. One of the quickest ways to do that  
20 is through the confirmatory order, which is kind of  
21 like, at least in these circumstances, the equivalent  
22 to a temporary restraining order or some prompt  
23 understanding as to what the situation will be. Then,  
24 when the licensee wants to proceed further to get  
25 further relief, the licensee has the flexibility to do

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1 it either by amendment or to come in with a possession  
2 only license.

3 COMMISSIONER REMICK: Okay. I think that  
4 answered it because I thought perhaps what was being  
5 said is they have a license and they're committed to  
6 that license. I thought perhaps you were saying that  
7 by some type of generic guidance they were going to be  
8 relieved from the commitments of that license. In my  
9 simplistic view, the only way they can be relieved  
10 from the commitment of that license is amendment to  
11 that license, which we might call POL.

12 MR. PARLER: Excuse me. The  
13 recommendation -- I can help on this one. The  
14 recommendation number 1 has nothing to do with giving  
15 any plant-specific relief. The recommendation number  
16 1, the objective would be to remove some of the  
17 ambiguity that I spent quite a bit of the 60 minutes  
18 of time that has already elapsed explaining that  
19 exists because of the fact that the rules do not cover  
20 prematurely shut down plants. The statement of  
21 considerations give the guidance that I tried to give  
22 and the Commission has given certain guidance but  
23 largely it is that the cases will be decided on a case  
24 by case basis. It's that generic guidance that the  
25 recommendation 1 talks about. Recommendation 1 with

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1 all the generic guidance in the world would give no  
2 relief to any specific licensee.

3 COMMISSIONER CURTISS: Let me follow up on  
4 Commissioner Remick's question because I think he's  
5 focusing on -- or at least I think it's important to  
6 focus on your recommendation insofar as what happens  
7 when a confirmatory order or a POL is issued because  
8 by operation of either of those two actions -- I want  
9 to ask in a minute whether there are other similar  
10 legal vehicles that would permit a licensee to take  
11 such a step. But by operation of the issuance of a  
12 POL or a confirmatory order, we are indeed granting a  
13 licensee relief in the sense that you are proposing to  
14 use that new -- called a legal benchmark, if you will,  
15 as the basis for 50.59 modifications. So, unlike a  
16 situation that would exist for an operating reactor  
17 licensee only authorized to operate at full power  
18 where their benchmark for 50.59 is keeping the plant  
19 operational, one of the significant steps that you're  
20 proposing here, in fact it sounds very familiar to me  
21 because I believe this is a step we ought to take, is  
22 to provide by issuance of a confirmatory order or a  
23 POL for the conversion of what you have called the  
24 50.59 benchmark to permit the licensee to do some  
25 things under 50.59 that they could not previously do

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1 absent either of those two legal steps. Is that a  
2 correct summary?

3 MR. PARLER: That is correct, but it's  
4 just not focusing on the 50.59. The 50.59 is just one  
5 aspect of the problem --

6 COMMISSIONER CURTISS: But there are other  
7 things as well. That's right.

8 MR. PARLER: -- as to make it quite clear  
9 that in the situation that we're talking about one  
10 does not have to worry about answering the question  
11 when does decommissioning begin, et cetera, et cetera,  
12 that have it nailed down by a regulatory action that  
13 presumably the licensee wants. The licensing having  
14 made the decision is not going to operate the plant  
15 any longer and it wants to proceed on the route of  
16 decommissioning.

17 CHAIRMAN SELIN: Do you have --

18 COMMISSIONER REMICK: Not on the first  
19 question.

20 COMMISSIONER CURTISS: I have questions on  
21 all but one of your recommendations. We'll come back  
22 to the hearing issues.

23 Let me say I think the recommendations  
24 that you've laid out here in most of the significant  
25 respects are right on the mark. I think you've now

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1       come to grips with some of the key questions that have  
2       arisen in the contexts of specific cases, that as you  
3       pointed out have been the focus of a lot of painful  
4       debate and discussion. I think the approach that  
5       you've laid out here on all of the major issues save  
6       one that I have a question about is a sound way to  
7       proceed. The questions that I have are really only  
8       limited to clarifying in areas where I don't fully  
9       understand what you're recommending or suggesting ways  
10      in which we might even make the process more efficient  
11      and more effective.

12               Let me begin with the first  
13      recommendation. The only observation I guess I would  
14      make there, and I'll direct this to both the technical  
15      staff first and then the legal staff, is that I am  
16      concerned that if we are to await further development  
17      of guidance to define what can be done by a licensee  
18      in this context, that is to say after the issuance of  
19      a POL or a confirmatory order, that the 1974 guidance  
20      that's on the books now that in 1988 we committed in  
21      the statement of considerations to update might, in  
22      fact I think will become the critical path to allowing  
23      some of these things to be done, some of these things  
24      that you've alluded to, steam generator being taken  
25      out, pressurizers and so forth.

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1           If we're not in a position either to allow  
2       those to go on independent of the development of the  
3       guidance, or alternatively the guidance itself is  
4       forthcoming quickly -- let me ask a question about the  
5       former option -- could we under this approach, and  
6       absent the guidance being final at this point, could  
7       a licensee that has either a confirmatory order or a  
8       POL go in today and under the approach that you've  
9       recommended under 50.59 take out its steam generators,  
10      take out its pressurizer, take out other radioactive  
11      components that in the SOC might have been defined as  
12      decommissioning, do so under 50.59 without the need to  
13      have that guidance in place first, would the staff be  
14      comfortable permitting those actions to be taken  
15      today.

16           MR. PARTLOW: On a safety basis the staff  
17      would be comfortable. The staff would want to make  
18      sure that it is comfortable carrying out Commission  
19      policy on decommissioning. As the General Counsel  
20      said to open, life is going on and we do have a plant,  
21      Yankee Rowe, that is ready to proceed with these kinds  
22      of activities. They're not ready today. They are  
23      going to be ready shortly, perhaps before we can have  
24      all this guidance in place. But as the Commission  
25      said in the Fort St. Vrain decommissioning order,

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1 these things need to proceed on a case by case basis  
2 and I would say that that is our plan now,  
3 Commissioner, is to try to work to start on this  
4 guidance using the real case of Yankee Rowe.

5 COMMISSIONER CURTISS: Yes. Obviously the  
6 outcome --

7 MR. PARTLOW: But the answer is yes, on a  
8 safety basis we are comfortable with a competent  
9 utility carrying out those actions under 50.59.

10 MR. PARLER: In addition to what Jim has  
11 said, let me assure the Commission that this paper and  
12 this recommendation did not mean to even remotely  
13 suggest until the guidance was out activities should  
14 cease. That's why I tried to emphasize at the outset  
15 the case by case approach, but it's still underway.  
16 The guidance here is generic guidance, so that two  
17 decades from now when people are talking about a  
18 prematurely decommissioned plant, they will not have  
19 to go through the Commission's decision history in  
20 Shoreham and the statement of considerations, et  
21 cetera, et cetera, to find out if a question is raised  
22 what could or could not be done.

23 COMMISSIONER CURTISS: Let me make three  
24 suggestions here for you to think about. One, I think  
25 it's important to get the guidance developed and I

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1 hope we can proceed even perhaps if it's in some form  
2 that can be moved forward on quickly, it's valuable to  
3 have licensees have that guidance available. It's  
4 overdue.

5 Second, having said that, I think it does  
6 make -- this is my own personal view. It does make  
7 sense to permit -- once a confirmatory order or a POL  
8 is issued, maybe some other legal mechanism as well,  
9 it does make sense to permit a licensee pursuant to  
10 50.59 to undertake steps like the ones that we've  
11 talked about here. Now, the question then that arises  
12 is do you allow the things that have just been done to  
13 date, like steam generator change-outs, or do you  
14 permit other things? I guess those are my two  
15 suggestions. One, get the guidance out. Number two,  
16 50.59 can be used, I think, to permit many of these  
17 things to be undertaken.

18 Technical question. Would you -- under  
19 the approach that you have suggested, that you would  
20 not foreclose unrestricted release of the site in the  
21 actions that you take, is it conceivable that a  
22 licensee pursuant to 50.59 can do not just those  
23 things that we've seen normal licensees do today, like  
24 steam generator change-outs, but could take 50.59 all  
25 the way to the point of, let's say, cutting up the

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1 vessel and essentially what we've called  
2 decommissioning the facility?

3 MR. PARTLOW: It's conceivable by a  
4 licensee that -- given they're going out of business.  
5 That means people leave, programs may not be as -- so,  
6 as long as we found that utility to continue to be  
7 competent to carry out those kinds of activities, I  
8 would say yes.

9 MR. PARKER: I would think that at what  
10 point along the various steps if you can go to a  
11 certain extreme such as taking the pressure vessel  
12 apart, et cetera, one needs to examine carefully in  
13 the guidance what the role of the decommissioning plan  
14 is. Does it have any substance left to it or is it a  
15 shell? Is it something that simply looks down beyond  
16 after everything has been dismantled and  
17 decontaminated to the steps that ultimately are  
18 contemplated prior to the eventual termination of the  
19 license and the release of the site for unrestricted  
20 use X decades in the future.

21 COMMISSIONER de PLANQUE: I have a direct  
22 follow-up to that question. Is it clear whether or  
23 not decommissioning funds can be used in the example  
24 given, removal of a steam generator?

25 MR. PARTLOW: I may have to defer to

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1 someone, but I believe the intent is that  
2 decommissioning funds be spent only after the  
3 decommissioning plan has been approved and ordered.

4 MR. MALSCH: I think that that's been the  
5 practice. There would be a concern, let's say  
6 hypothetically, in taking out let's say the pressure  
7 vessel. If you spent decommissioning funds, let's say  
8 a substantial part of decommissioning funds, and were  
9 depleting the fund prior to approval of the de-plan,  
10 begin to get concerned about whether if you later were  
11 to approve a different method of decommissioning  
12 there'd be enough money left to carry it out.

13 COMMISSIONER de PLANQUE: Yes, but this is  
14 where you get into my earlier point that it may be  
15 cheaper to do it now.

16 MR. MALSCH: Yes.

17 COMMISSIONER de PLANQUE: Thus you have  
18 more money later.

19 MR. MALSCH: Yes.

20 COMMISSIONER de PLANQUE: So, it's not a  
21 simple issue.

22 MR. MALSCH: That's right, it's not as  
23 simple as it might seem.

24 CHAIRMAN SELIN: They have to get a plan  
25 in. By the way, I just want to make it absolutely

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1 clear. No one has ever said that once the licensee  
2 has expended the decommissioning funds he's off the  
3 hook.

4 MR. MALSCH: No.

5 CHAIRMAN SELIN: That is an escrow account  
6 towards decommissioning, but not a limitation on  
7 balance.

8 MR. MALSCH: Right.

9 COMMISSIONER CURTISS: On the financing  
10 question, and it is a central one, I think it's worth  
11 reexamining that question and doing it obviously given  
12 the pending case in an expeditious way. What you are  
13 proposing here is to allow activities -- you are  
14 proposing a standard for defining what can be done and  
15 can't be done prior to approval of a decommissioning  
16 plan frankly is different from what we've had to date,  
17 or at least what the statement of consideration says  
18 in the rule itself. It's also different from what, as  
19 you've pointed out, footnote 3 in the Shoreham  
20 decision says.

21 MR. PARLER: Yes. However, the Commission  
22 did decide in Shoreham that the approval of a  
23 decommissioning plan is not the necessary prerequisite  
24 to the approval of the possession only license. What  
25 was unclear from the discussion here is what in the

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1 direction of decommissioning could be done under a  
2 possession only license.

3 COMMISSIONER CURTISS: I agree. The point  
4 that I'm trying to make here is that what you're  
5 proposing is to permit a lot of activities to be  
6 undertaken and I think it's proper to do that given  
7 what you've suggested on the standard, that the  
8 undertaking of which was included in the estimates  
9 that the licensees produced and the funds that they  
10 have been accumulating in their decommissioning trust  
11 funds to date. If we're going to permit these  
12 activities to be undertaken, it does seem to me that  
13 a parallel thought that we ought to focus on, the one  
14 that Commissioner de Planque raised, is if we're going  
15 to permit these to be undertaken prior to approval of  
16 the decommissioning plan, it would make sense from a  
17 practical standpoint to say that those funds that have  
18 accumulated and been estimated to carry out these kind  
19 of activities to date somehow ought to be available to  
20 be expended from the decommissioning trust fund.

21 MS. YOUNG: Commissioner Curtiss,  
22 something you said troubled me. You talk about  
23 whether we could proceed according to these  
24 recommendations today. I guess the staff, from my  
25 experience, has been operating under the rubric of

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1 CLI-90-08 that they have to preserve alternatives, so  
2 I think it would really take a specific statement from  
3 the Commission to deviate or at least further explain  
4 what that standard meant to really be able to allow  
5 plants to do everything under 50.59, not to mention  
6 changing 59 to apply to plants that have licenses that  
7 don't authorize operation.

8 MR. PARLER: Right, and what we have  
9 suggested, these recommendations are really a kind of  
10 boundary or framework in which, if the Commission  
11 chooses to provide this sort of flexibility, they can  
12 do it from a legal standpoint. And I also understand,  
13 at least very generally, that the staff does not  
14 disagree with the recommendations. I understand that  
15 they support them.

16 COMMISSIONER CURTISS: Let me be clear  
17 here. I think it's tough to square the approach that  
18 you've recommended, which I happen to agree with, with  
19 the standards set forth in CLI-90-08. And I do think  
20 we need, either through a change to the regulations or  
21 -- I actually don't think it requires that -- a  
22 Commission approval of this SECY paper, I think, would  
23 accomplish that in an SRM.

24 MR. PARLER: Well, the staff requirements  
25 memorandum with clearer guidance on how to proceed

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1 under these recommendations would be an important  
2 first step.

3 COMMISSIONER CURTISS: My point was that  
4 you ought to be able to proceed in this regard without  
5 having the long-awaited guidance developed in final  
6 form, because we may be waiting a long time for that  
7 to happen.

8 MS. YOUNG: We'll take guidance in any  
9 form.

10 CHAIRMAN SELIN: Before you go on past  
11 that, Commissioner Curtiss, I'd like --

12 COMMISSIONER CURTISS: Go ahead.

13 CHAIRMAN SELIN: I read this paper as  
14 having three parts to it.

15 Number one, it says let's define what we  
16 mean by the options that we wish to keep open. Are  
17 they different options in a sense of keeping open  
18 different decommissioning options or are they  
19 different options in a sense of not precluding ways of  
20 getting unrestricted use?

21 Second, there's a bunch of very specific,  
22 and I agree with Commissioner Curtiss and I think the  
23 rest of my colleagues, very specific sensible things  
24 about bringing things up to date and tying them  
25 together.

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1 And then third, which we haven't gotten  
2 into, are the hearing procedures.

3 I see no reason that, after suitable  
4 discussion and framing, we couldn't in an SRM address  
5 the first question which is the critical question  
6 that's been brought up. What options must be  
7 maintained in order for people to go ahead short of  
8 regulatory guidance and all these other things? It's  
9 a reasonable objective to see if we can't do that in  
10 an SRM. I wouldn't expect in the short run an SRM  
11 addressing the 20 or 30 very specific questions that  
12 are in here, but perhaps we could split up the  
13 response on that broad basis that Commission Curtiss  
14 has brought up from exactly how we feel about --

15 MR. PARLER: Most of the 20 or 30 or how  
16 many specifically there are flow from the fundamental  
17 question as to how much flexibility the Commission  
18 wants to give a Part 30 licensee to commence  
19 decommissioning once the decision is made to shut-down  
20 the facility and to decommission it, how much could be  
21 done prior to the submission and the approval of the  
22 decommissioning plan. That's what the policy issue is  
23 that has to be addressed and guidance on. The other  
24 things kind of like follow from that.

25 COMMISSIONER ROGERS: I wonder if you

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1 could just say a few words about the issue of illegal  
2 segmentation of decommissioning. It's not quite clear  
3 to me how all this fits into that prohibition.

4 MR. MALSCH: I think that there are  
5 several ways to look at this and there are several  
6 kinds of criteria in the case law. The concern is  
7 that on the assumption, which may not be correct, but  
8 on the assumption that approval of the decommissioning  
9 plan requires a full environmental impact statement  
10 and the question is whether Agency actions beforehand  
11 ought to be done only with the full EIS or whether you  
12 can take them in advance and do the full EIS later on.  
13 There's several considerations that apply here.

14 One would be, are you by approving things  
15 piecemeal before full preparation of the EIS  
16 overlooking some environmental impact that you would  
17 pick up if you did the full EIS now? I think our  
18 analysis suggested that would not be the case so long  
19 as the actual actions you're taking are examined and  
20 there's assurance that they themselves don't cause any  
21 significant environmental impact.

22 The other concern is prejudicing the  
23 results of the ultimate NEPA review. And since we  
24 thought that the ultimate NEPA review, if there was to  
25 be a full impact statement, would be examining the

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1 goal of releasing the site for unrestricted use as  
2 long as our recommendation sets forth, that goal is  
3 not prejudiced. You haven't prejudiced the ultimate  
4 NEPA question.

5 Now there's one other consideration  
6 sometimes applied, and that is whether the individual  
7 actions before preparation of the full EIS are  
8 dependent in the sense that they cannot be justified  
9 unless you assumed the end result of the final  
10 environmental impact statement. This criteria is  
11 derived from all these interesting early NEPA cases  
12 involving interstate highways where you had like a  
13 proposal to have an interstate connecting two cities  
14 and an environmental controversy about some path in  
15 between as to which it was conceded the need for a  
16 full environmental impact statement and the Agency was  
17 proposing to build both segments up to the middle  
18 without doing the EIS. The question was, well, unless  
19 you presumed the results of the EIS, there's no  
20 justification for building in two segments.

21 Here, though, if you talk about  
22 justification, the kinds of actions we're talking  
23 about are independently justified, for example just  
24 saving money or reducing unnecessary safety  
25 requirements which would have viability and meaning

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1 regardless of how the decommissioning plan was  
2 actually approved, so we didn't think in the final  
3 analysis that that was a relevant consideration. So  
4 it boiled down to the two criteria we have, impact  
5 from the actual actions at hand and, two, not  
6 foreclosing ultimate release for unrestricted use, and  
7 we think that takes care of any segmentation problem.

8 CHAIRMAN SELIN: Commission Curtiss,  
9 although it may be hard to remember, still has the  
10 floor.

11 COMMISSIONER CURTISS: I just have two  
12 specific questions and then I'm done save for the  
13 hearing questions.

14 Your comment that we need to amend 50.59  
15 to make it clearly applicable to POL holders, is there  
16 any uncertainty that arises from that recommendation  
17 insofar as our ability to permit the now current POL  
18 holders to proceed with 50.59 actions?

19 MR. PARLER: I don't think there's any  
20 great uncertainty that would cause General Counsel to  
21 lose sleep because of litigative risk, but it is a  
22 fact that the rule talks about changes for licenses  
23 that are authorized to operate and I would think that  
24 we are talking more about just a cleaning up thing at  
25 some appropriate time rather than some major obstacle.

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1 That's the way that I would view the issue.

2 COMMISSIONER CURTISS: Okay.

3 Second question. You've identified two  
4 specific legal vehicles that in your view provide a  
5 basis for permitting a licensee to go ahead and make  
6 50.59 changes with the new legal benchmark, the  
7 possession only license and the confirmatory order.  
8 Are there other possible options which you have not  
9 discussed here which would have the same legal effect  
10 either in the form of actions that we take or in the  
11 case of, for example, a contractual commitment not to  
12 operate the plant that would be sufficient to convert  
13 the license to that new basis?

14 MR. PARLER: As a regulatory agency, I  
15 would be kind of leery or not have a complete good  
16 feeling about contractual commitments because that  
17 would get me into an entire other area, validity of  
18 the contract and other "what ifs." I am sure that  
19 there must be other regulatory ways short of  
20 contractual commitments. These are the traditional  
21 ways and these are the only ones that occur to us,  
22 but--

23 COMMISSIONER CURTISS: Would a  
24 confirmatory action letter serve that purpose?

25 MR. PARLER: Well, you get into a question

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1 as to what's the difference between a confirmatory  
2 action letter and a confirmatory order and whether one  
3 amends the license or not and what sort of hearing  
4 opportunities that provides. I suppose that perhaps  
5 it might, but I prefer to stick with those things that  
6 I'm more comfortable with and have control over and  
7 that's why we mentioned these two.

8 But if there are others that would at  
9 least remove any uncertainty from a regulatory  
10 standpoint that the plant is no longer licensed to  
11 operate and that the licensee is embarked on a course  
12 of decommissioning, whatever you call them and if they  
13 do the job from the regulatory standpoint, they would  
14 be okay.

15 MR. MALSCH: One consideration. We  
16 thought that it was important in doing this evaluation  
17 that the rebaseline would be -- rebaselining for  
18 purposes of 50.59 evaluations would be occasioned by  
19 some NRC initiative. Otherwise, you end up with a  
20 situation in which, let's say hypothetically, a  
21 licensee with a plant shut-down for refueling  
22 unilaterally elects to rebaseline all the 50.59  
23 evaluations and different things, assuming the plant  
24 will not operate without informing the NRC and you end  
25 up down this slippery slope as to what these

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1 evaluations actually are.

2 MR. PARTLOW: Commissioner, I would think,  
3 if we're going to go through the regulations and  
4 clarify which ones apply and which ones don't to a  
5 plant, it's not going to operate, that probably a bit  
6 of a higher regulatory footprint than a confirmatory  
7 action letter would probably be appropriate.

8 MR. PARLER: I have one other comment.  
9 That is, that my response to your question was a  
10 generic one looking to the future. If other devices  
11 have been used in current cases, I did not mean by my  
12 remark to have any legal uncertainty about those other  
13 approaches. I was speaking about what I would feel  
14 more comfortable with generically for the future.

15 CHAIRMAN SELIN: Commissioner de Planque?

16 COMMISSIONER de PLANQUE: No questions.

17 CHAIRMAN SELIN: Commissioner Rogers?

18 COMMISSIONER ROGERS: I don't have any.

19 COMMISSIONER REMICK: I have one more  
20 item. I'm sorry.

21 If a licensee were to choose the  
22 alternative of entombment -- which is one of our  
23 options, right, in decommissioning? -- does that  
24 foreclose that site use for unrestricted use?

25 MR. MALSCH: Well, first of all, the

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1 Commission's regulations when they were drafted were  
2 focusing on release for unrestricted use from a  
3 radiological safety standpoint only. The regulations  
4 were never structured so that you would return this to  
5 its pristine environmental condition. It was only  
6 focusing on radiological concerns.

7 I think that entombment, if you're talking  
8 about entombment of structures which are radioactively  
9 contaminated and, for example, would not satisfy  
10 release for unrestricted use for ecological criteria,  
11 then that is in fact inconsistent with the goal of  
12 decommissioning.

13 COMMISSIONER REMICK: Okay. Then, if we  
14 change the criteria as you've suggested here, we would  
15 be precluding entombment as one of the alternatives?

16 MR. MALSCH: No. I mean, it's there as an  
17 alternative. My assumption has been that somehow the  
18 drafters assumed that the structures ultimately  
19 entombed would meet the criteria for release for  
20 unrestricted use.

21 COMMISSIONER REMICK: Oh, I see. So you  
22 could presumably have structures there maybe earth-  
23 mounded, not be a radiological hazard, and that would  
24 meet the goal?

25 MR. MALSCH: Right.

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1 COMMISSIONER REMICK: I see. Okay.

2 MR. MALSCH: I think that's what the  
3 drafters assumed.

4 CHAIRMAN SELIN: Sounds to me like a  
5 regulation that says pi shall be equal to 3 because  
6 it's too hard to remember all those decimals.

7 MR. PARLER: Then they try to explain in  
8 the statement of considerations why pi should be equal  
9 to 3 because it's too hard.

10 "It is the Commission's belief that an  
11 entombment alternative for decommissioning should not  
12 be specifically precluded in the rule, because there  
13 may be instances in which it would be an allowable  
14 alternative in protecting the public health and  
15 safety." Obviously, the draftsman had difficulty with  
16 the concept of providing an entombment alternative  
17 with the definition of releasing something for  
18 unrestricted use.

19 CHAIRMAN SELIN: Right.

20 COMMISSIONER REMICK: But the point I'm  
21 trying to get at, this changing criteria would not  
22 preclude that as a possibility?

23 MR. MALSCH: No. I think it's still there  
24 as a possibility.

25 CHAIRMAN SELIN: I just want to make a

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1 couple of comments and then ask a question about the  
2 hearing stuff, because we really need to break in  
3 about 15 minutes absolutely.

4 First of all, I'd like to identify myself  
5 with Commissioner Curtiss' general positive statement.  
6 In fact, I'd like to go even a step further. Not only  
7 is it a first-rate piece of work, but, given where we  
8 stand and the need to really focus on decommissioning,  
9 I would like to make sure that the staff gets the  
10 appropriate guidances. Most licensees I think are  
11 going to be reticent to come forward rather than  
12 trying to sneak some complete decommissioning plan  
13 over on the staff and we really do have to make sure  
14 that common sense and the ultimate objective, which is  
15 return to unrestricted radiological use, governs the  
16 steps and your approach seems to me to hit all these  
17 points on a common sense basis. I think that's very  
18 good.

19 I would like to look ahead to the hearing  
20 and ask you a general question about it. If in fact  
21 it's feasible to carry out your first recommendation,  
22 in other words have fairly clear guidance as to what  
23 it means to foreclose options that we don't want  
24 foreclosed, to increase decommissioning cause, and to  
25 avoid environmental impact, is it your opinion that

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1 the public can reasonably be expected to be served if  
2 no hearings are held until the decommissioning plan  
3 comes in?

4 In other words, thinking logically about  
5 what we mean by an open process and making sure the  
6 public's interests are served, that those three  
7 conditions are met, are there other strong reasons  
8 that there would be a basis for trying to push up the  
9 decommissioning plan or hold the hearing early? Are  
10 there reasonable options for the public other than  
11 these options, I guess, is the way to put the  
12 question.

13 MR. MALSCH: The concern would be -- well,  
14 if we are faithful in a hearing to our recommendations  
15 about what can and cannot be done, then, by  
16 definition, things which will be occurring prior to  
17 the hearing on the de-plan approval will involve no  
18 significant environmental impact, no safety hazards,  
19 no foreclosure of release for unrestricted use. But  
20 things will be going on which will cause questions as  
21 to the public -- in the public's mind as to perhaps  
22 what is going on here.

23 The option that we just sort of mentioned  
24 briefly was you could move the process up further  
25 earlier so that there was a public process before any

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1 significant actions began to take place. But that  
2 runs into two difficulties. You then, first of all,  
3 end up having to define commencement of  
4 decommissioning or some other phase and prohibit  
5 things until the de-plan is approved. And it also  
6 forces you to move up submission of the  
7 decommissioning plan so you can have a meaningful  
8 hearing.

9 So in terms of a hearing on the  
10 decommissioning plan itself, we weren't sure that was  
11 such a feasible concept. There could be less formal  
12 mechanisms that could easily be adopted, for example,  
13 public meetings, workshops, open public meetings near  
14 the site that could be done that would inform the  
15 public what is going on but would stop short of an  
16 adjudication on the de-plan.

17 CHAIRMAN SELIN: How about something like  
18 your step 3 where when licensees have to inform the  
19 NRC that we consider that should be done at a public  
20 meeting and that people would have a chance to hear  
21 what they're -- so at least they have a general idea  
22 of what's being done to them.

23 MR. MALSCH: That's correct.

24 CHAIRMAN SELIN: Because, I feel very,  
25 very strongly -- this came up in Shoreham -- that the

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1 idea to make a decision and then have a hearing  
2 afterwards, which can only in extremis affect that  
3 decision, is cynicism and we must avoid that. If this  
4 approach would avoid that, it sounds attractive.

5 MR. MALSCH: You could, for example,  
6 require shortly after issuance of the confirmatory  
7 order that a licensee at that point inform the Agency  
8 of its plans and at that point the NRC could schedule  
9 a public meeting on the plans.

10 CHAIRMAN SELIN: Okay. The second  
11 question goes back to the thing that Mr. Parler said,  
12 which is central to all this is a better definition of  
13 what a decommissioning plan is, what it's supposed to  
14 carry out. In my mind, it makes ultimate objectives  
15 and basically says, "Once we get this junk out of  
16 here, here's how we're going to decontaminate what's  
17 left and open the space to public use and here's what  
18 it's going to cost and here's how it's going to be  
19 funded." But, that concept really has to be carried  
20 out.

21 I haven't seen and, even if we just said  
22 your paper is approved, I still don't see that we have  
23 clarified the concept of what a decommissioning plan  
24 is. Do you think that's essential? And if so, what  
25 vehicle would you see our following in order to do

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1 this?

2 MR. PARLER: Some of the elements of what  
3 a decommissioning plan should contain are in the  
4 decommissioning rule, the decommissioning plan as well  
5 as the preliminary decommissioning plan. I think the  
6 elements that are there, if my recollection is  
7 correct, are adequate to at least indicate to an  
8 interested member of the public that the objective of  
9 the plan is as you have described and it would be  
10 something that an interested member of the public  
11 would be interested in, I would think, because here is  
12 a plan that would say how this thing that has been  
13 used for some other purpose eventually at some time  
14 after certain courses of action will be released for  
15 unrestricted use. That's the kind of thing, unlike  
16 highly technical questions, that interested citizens  
17 might have a particular interest in and they might  
18 have a particular interest in it before the plan is  
19 approved.

20 Therefore, the suggestion in the  
21 recommendation number 5 that the -- maybe offering a  
22 post-effectiveness hearing, that the policies there,  
23 the policy considerations there might suggest  
24 otherwise, that if, in view of the potential  
25 importance, no matter what has been done before to get

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1 the materials or the structures off of the site, there  
2 are still important considerations that remain that  
3 the public should have an opportunity and perhaps a  
4 prior opportunity to be heard on.

5 COMMISSIONER CURTISS: As a practical  
6 matter, I read your recommendation as saying that a  
7 definition of a decommissioning plan is going to  
8 emerge as a result of your case by case consideration  
9 of what you're prepared to permit a licensee to do  
10 under 50.59. And the upshot of that is that the  
11 definition of a decommissioning plan is kind of going  
12 to be a revealed standard. We're going to define  
13 things that they can do in this case by case review  
14 that the technical staff will undertake, presumably  
15 carving away things for which a pre-approved  
16 decommissioning plan is not required, leaving some  
17 residual yet to be determined to be addressed in a  
18 decommissioning plan.

19 I think it's difficult, because of the  
20 need to approach these issues in that case by case  
21 way, to say in a prospective way, "Here are things you  
22 can or can't do." You either have to decide we're  
23 going to do that on a case by case basis or you have  
24 to say we're not going to do that, we're going to  
25 define the dividing line between what can and can't be

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1 done in a generic fashion. I'm comfortable with that  
2 approach.

3 MR. PARLER: I would think that, as a  
4 general proposition, trying to decide in advance for  
5 all cases the timing of the hearing and the kind of  
6 hearing would probably not be too wise, because in  
7 some instances there may well be the particular case  
8 where you would decide otherwise. If generic guidance  
9 is given, it would have to be qualified for the  
10 special case in any event.

11 COMMISSIONER CURTISS: I was raising the  
12 technical question. On the hearing question, frankly,  
13 the only recommendation in here that I disagree with  
14 is your recommendation number 5. It does seem to me  
15 that, in view of the fact that you're permitting a lot  
16 of these things to be undertaken without the need for  
17 a pre-approved decommissioning plan that is in turn  
18 the subject of a public hearing, together with the  
19 Chairman's comment or recommendation that you do  
20 recommendation number 3 in a public fashion, that you  
21 do that in a public forum in some way, it seems to me  
22 that you've eliminated all of the disincentive to hold  
23 a hearing in advance of approval of whatever is left  
24 in the decommissioning plan.

25 I frankly am comfortable saying, as I was

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1 in Shoreham, that we ought to say as a matter of  
2 policy that we will conduct a hearing prior to  
3 approval of the decommissioning plan, whatever that  
4 might be in a particular case.

5 MR. PARLER: I would agree with that for  
6 different reasons, which I tried to state.

7 CHAIRMAN SELIN: Let me just summarize  
8 three quick points and then turn to my colleagues.

9 Number one, I would feel comfortable if on  
10 your first point when you started giving general  
11 guidance you tried to give some general guidance about  
12 what the role of a decommissioning plan is. It  
13 wouldn't be so specific that it would answer all  
14 questions that would come up, but it would be nice to  
15 have in one place in a form of a regulatory guide the  
16 role of a decommissioning.

17 Number two, following up on your point  
18 about pushing the informal hearings, et cetera, I do  
19 think that, citing Commissioner Curtiss citing me,  
20 which is a kind of an impersonal authority, is that  
21 there be some public indication by the licensee before  
22 he starts this about where he's going and what he's  
23 doing and that item 3 in a public meeting might serve  
24 that purpose because I think it looks terrible and it  
25 is terrible that the first time the public actually

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1 gets informed is after a decommissioning plan has been  
2 put in.

3 Then the third point is what goes on in a  
4 post-effectiveness hearing sort of depends on what  
5 happened before, whether the decommissioning plan is  
6 a surprise and therefore you need a second hearing or  
7 whether it's just carrying out what was already  
8 disclosed at this informal meeting, that we'd be quite  
9 flexible. As long as the public gets a chance to hear  
10 from the licensee what's going and comment on those at  
11 an early point, what happens thereafter I'd be myself  
12 pretty comfortable with seeing what surprises there  
13 are in the decommissioning plan, what issues come up.

14 MS. YOUNG: If I could --

15 CHAIRMAN SELIN: Yes, Ms. Young?

16 MS. YOUNG: I hate to do this, but there's  
17 a concern even with recommendation 3 that the public  
18 really won't have that much information about what's  
19 going to go on at the site with respect to what are  
20 the safety or environmental consequences of those  
21 actions. Normally NRC actions and applications to get  
22 a particular license amendment or to get an  
23 application of proof is accompanied by a safety and  
24 environmental analysis that supports it. With  
25 recommendation 3 you're just simply getting a

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1 statement of, "These are the kinds of things we might  
2 do." But that information that's captured in that  
3 recommendation is not specific as to how detailed and  
4 what kind of analyses are required. Right now I  
5 wouldn't require any.

6 CHAIRMAN SELIN: You'd have to look at  
7 that in somewhat more depth to say, "Is this truly a  
8 review to see if you can safely take apart some steam  
9 generators without spilling radioactive water," which  
10 is not what I think the objective is. I think the  
11 objective is to lay out the overall scale so people  
12 aren't surprised at how much has been done before a  
13 plan has gone in. So, we're not surprised.

14 MR. PARLER: We would be delighted, Mr.  
15 Chairman, to get Commission guidance on broadening the  
16 scope and the intent and the objective of  
17 recommendation number 3 so that there could be earlier  
18 public awareness of what's going on and if we do that  
19 that has a potential for accomplishing a lot more  
20 early on than would rather prolonged debate about  
21 whether a hearing should be formal, informal, before  
22 the fact or after the fact at the time of the  
23 decommissioning plan. That's the way that I sense the  
24 discussion.

25 CHAIRMAN SELIN: Commissioner Rogers?

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1 COMMISSIONER ROGERS: Nothing.

2 COMMISSIONER REMICK: I think perhaps it's  
3 called for for me to clarify my position because I  
4 asked some questions that might have been confusing.  
5 I very much favor guidance on clarifying what we mean  
6 by these various things and what people can do at  
7 various stages with a confirmatory action letter or a  
8 POL. I favor very much allowing the licensee as much  
9 flexibility as we possibly can from a safety  
10 standpoint to do things.

11 My concern is this. The licensee has a  
12 license and most of that process we considered safety  
13 from the standpoint that it was a plant that was  
14 capable of operation, presumably in operation. Very  
15 little thought went into establishing tech specs and  
16 so forth and what do you do when you tear one of these  
17 things apart and you have some systems functional and  
18 not. My concern is that we don't just assume that  
19 because the plant is shut down that there aren't some  
20 safety considerations. There's a lot of activated  
21 materials, there are systems, there are gases under  
22 pressure, all kind of things like this. So, I think  
23 it has to be an orderly process, that we have to  
24 carefully reason out what can one do from a safety  
25 standpoint and what should not be done.

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1           That's my only concern in trying to make  
2           sure we do it in an orderly process and do think about  
3           these things. We have not only the health and safety  
4           but we have environmental considerations as we go  
5           through this process. But I favor flexibility, I  
6           favor guidance which would clarify what we mean by all  
7           these things. But I do think there are some safety  
8           things to think about as we proceed with  
9           decommissioning.

10           CHAIRMAN SELIN: Commissioner Curtiss?

11           COMMISSIONER CURTISS: I just have one  
12           very specific comment and one very general comment.

13           The specific comment, I would encourage  
14           you to go back again and look at your proposal to  
15           treat these decisions or this decision on the  
16           decommissioning plan as a form of regulatory  
17           permission in the fashion that you've outlined. We  
18           have been careful as an agency in interpreting the  
19           hearing rights under 189(a)(1) to provide for hearing  
20           rights only on those things which are specified in  
21           189(a)(1). Regulatory permission is not one of those  
22           and I think there are great risks attendant to  
23           introducing the notion that a regulatory permission,  
24           which in this context includes approval of a  
25           decommissioning order, but in other contexts might

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1 include things like exemptions, all sorts of things on  
2 which we, I think, would be loathe to broaden 189 to  
3 include hearing rights on those matters.

4 This was an issue that was raised in the  
5 Shoreham context. I think it deserves more careful  
6 evaluation as to what you call this in the context of  
7 what the hearing rights are. That's my specific  
8 comment.

9 My general comment is this, picking up on  
10 Bill's comments at the outset. This has been -- this  
11 process that we've been engaged in over the past  
12 couple of years, beginning with the first prematurely  
13 shut down plant, has in some respects been a painful  
14 process for the reasons that the General Counsel  
15 outlined at the beginning, the difficulty of  
16 communicating on these matters both within the staff  
17 and between the staff and the Commission in a fashion  
18 that frankly has occurred here and much to the benefit  
19 of our effort to establish a stable, sensible, sound  
20 and efficient regulatory process.

21 The only remaining lesson learned here, I  
22 guess, or observation that I would have is in my  
23 judgment this kind of thing, this approach, while the  
24 conclusions reflected here, recommendations that you  
25 have were certainly informed by the experience of

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1 going through a Shoreham, Rancho Seco, Fort St. Vrain,  
2 now Yankee Rowe and maybe Trojan, but certainly those  
3 early cases.

4 I must say that the only frustration that  
5 I have is that we were not able to benefit from this  
6 earlier in the process. These issues that are  
7 addressed here were all matters that were on the table  
8 and discussed in the context of those prematurely shut  
9 down plants and for some reasons related to events  
10 beyond our control as to what the status of the  
11 Shoreham facility should be that influences process.  
12 There's nothing we can do about those. But the  
13 technical and the legal issues here that you set out,  
14 and set out I think in a very cohesive fashion with  
15 your recommendations, were all matters that could have  
16 and should have been addressed two years ago at the  
17 very outset, informed as we were at that time that  
18 these issues were on the table.

19 My own personal view is that we put  
20 licensees and their ratepayers to unnecessary expense  
21 as we worked our way through these issues, significant  
22 expense that served to detract from the funds that  
23 could have been made available for decommissioning.  
24 That's occurred in this case and I think we've  
25 benefited from taking a hard lessons learned look at

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1 the process that we went through and the approach that  
2 we ought to take on these specific issues.

3 But the only remaining observation I would  
4 have here is that when we confront issues like this,  
5 and not in the decommissioning context, but issues  
6 like this in the future, the earliest possible  
7 opportunity for the staff, the whole staff as well as  
8 the staff with the Commission, to engage on the policy  
9 issues for the purpose of laying out fundamentally  
10 sound regulatory approach, which you have done here,  
11 is something that I think we ought to keep foremost in  
12 mind.

13 So, with that, I commend you for the  
14 effort that you've done. I think it's an excellent  
15 road map for how we ought to proceed.

16 MR. PARLER: Mr. Chairman, may I make two  
17 comments?

18 On the hearing question, we are  
19 particularly mindful of not reading anything into the  
20 first sentence of Section 189 of the Act that is not  
21 already there. We try to be conscious of that.

22 On the other hand, even though a hearing  
23 is not required as a matter of law in the 189, the  
24 Commission can always exercise its discretion to  
25 provide the public with a meaningful opportunity to be

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1 heard. So, we'll take that suggestion under advice  
2 very closely.

3 One of the problems in this case which led  
4 to the delay, there may be many but at least one was  
5 when these issues emerged, they emerged in a heavily  
6 contested case. As I tried to mention at the  
7 beginning, we just couldn't get together and comply  
8 with the separation of functions requirement and  
9 discuss them. Even if we had, we may well not have  
10 come to grips with them on a timely basis, but at  
11 least we tried the best we could.

12 CHAIRMAN SELIN: Commissioner de Planque?

13 COMMISSIONER de PLANQUE: Yes, just one  
14 quick question.

15 In 50.82(e) there is a requirement for a  
16 notice of interested parties after the decommissioning  
17 plan is prepared and before Commission approval. I  
18 would assume -- I'm not sure what the basis of that  
19 notice is. Does it presume public comment on that  
20 plan and, if so, how does that affect whether or not  
21 there's a need for a hearing?

22 MR. MALSCH: It says something like after  
23 notice to interested persons, the Commission will  
24 improve.

25 COMMISSIONER de PLANQUE: Yes.

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1 MR. MALSCH: It implies at least a chance  
2 for the public to comment. It leaves it entirely  
3 unclear whether any hearing is involved. There's  
4 another statement that's made in the rule preamble  
5 that further confuses the issue because it says that  
6 decommissioning takes place under an amended license,  
7 implying that somehow there's a license amendment  
8 involved here also. That clearly involves a hearing.

9 But as we learned in Shoreham, it wasn't  
10 clear exactly which amendments were really needed at  
11 that point in time. So, the whole situation ended up  
12 being kind of confused.

13 If I go back and look at the  
14 decommissioning rule, I think that one problem here is  
15 that the drafters of the rule did not have in mind the  
16 broad scope of 50.59 activities that we now have in  
17 mind. So, they in fact thought merely by virtue of  
18 the operation of 50.59 that not a whole lot could be  
19 done prior to approval of the decommissioning plan and  
20 that the plan itself would then amend the license as  
21 necessary. That turns out to have been a not entirely  
22 correct assumption.

23 CHAIRMAN SELIN: Yes.

24 MS. YOUNG: And then also the experience  
25 with decommissioning in the past, most people had gone

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1 the SAFSTOR route that would necessarily include some  
2 type of modification to your tech specs, which would  
3 be license amendments, which means you'd get that  
4 notice and an opportunity for hearing attendant with  
5 those requests.

6 CHAIRMAN SELIN: This has been a  
7 stimulating discussion, very interesting, very  
8 helpful. I think you might expect to get guidance in  
several stages. I think what we'll try to do is there  
10 are some points that perhaps we can move on quickly  
11 for the benefit of the staff and the licensees who are  
12 faced with immediate issues and others might take a  
13 little more time.

14 George Santiana once said those who don't  
15 know history are fated to relive it, but I've decided  
16 since I've come here those who do know history also  
17 are fated to relive it. So, let's try to get on from  
18 here and get these --

19 MR. PARLER: Until we get the further  
20 guidance and the guidance is implemented, as I  
21 understand it, we will continue to operate under the  
22 guidance that we have, which I believe requires the  
23 case by case decommissioning approval be sent to the  
24 Commission such as Fort St. Vrain and others. We'll  
25 proceed on the case by case basis that we have in the

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1 past.

2 CHAIRMAN SELIN: Thank you.

3 (Whereupon, at 11:58 a.m., the above-  
4 entitled matter was concluded.)  
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OPTIONS FOR DECOMMISSIONING PROCEEDINGS

PLACE OF MEETING: ROCKVILLE, MARYLAND

DATE OF MEETING: NOVEMBER 24, 1992

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