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NUCLEAR REGULATORY COMMISSION

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DESIGN CERTIFICATION RULEMAKING

(DCR)

PUBLIC MEETING

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MONDAY,

DECEMBER 4, 1995

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ROCKVILLE, MARYLAND

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

PRESENT:

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

Tom Boyce	NRC/DRPM/PDST
Diane Jackson	NRC/DRPM/PDST
Harry S. Tovmassian	NRC/RES
Brad Hardin	NRC
Brian Grimes	NRC
A. S. Masciantonio	NRC
J. Taylor	NRC
L. Raghavan	NRC/OEDO
L. Soffer	NRC/OEDO
Bob Weisman	NRC/OGC/HOE
Myron Karman	NRC/OCM/KR
John Moaninger	NRC/DSSA/SCSB
Michael Markley	NRC/ACRS
Geary Mizuno	NRC/OGC
Marc Rowden	FF-GE
Regis Matzie	ABB-CE
Ninu Kaushal	COM ED
Don Croneberger	GPU NUCLEAR
Stan Blanton	BALCH & BINGHAM (SNC)
Joseph R. Egan	EGAN & ASSOCIATES
Mel Gmynek	NEI
Robert W. Bishop	NEI
Russ Bell	NEI
Joe Colvin	NEI
R. P. McDonald	ARC

Steven Stone	STONE & WEBSTER
Sterling Franks	DOE/NE-50
Norm Fletcher	DOE
Ernie Condon	DOE
Frank Ross	DOE
Brian McIntyre	WESTINGHOUSE
Albert Michaels	EPRI
Gary Vine	EPRI
Mike Schoppman	FPL
David Helker	PEPCO ENERGY
Steve Frantz	MORGAN, LEWIS & BOCKIUS, LLP
Steve Breaver	AEP
Joseph Quirk	GE-NE
Evyrett Whitaker	TVA
John Trotter	POLESTAR-APP. TECHNOLOGY
Steve Katradis	NUS CORP.
Darrell Eisenhut	NUS
Charles B. Brinkman	ABB-CE
Barton Z. Cowan	ELITERT SEAMANS
David L. Rehr	DUKE POWER CO.
W. C. Ramsey	SOUTHERN CO. SERVICES
Ben J. George	SOUTHERN NUCLEAR
Jose Conto	TEPCO
Jay Silberg	SHAW PITMAN
Harold R. Denton	SELF/NUS/DOE

Tricia Heboux SELF/DOE

I N D E X

P R O C E E D I N G S

1:06 p.m.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Thank you very much.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Department feels the change process is too

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

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

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

generation nuclear plant.

Thank you very much.

MR. WILSON: Thank you. Mr. Matzie?

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

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

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

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

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

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

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

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

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

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

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

We look forward to discussions to follow. Thank you.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Thank you.

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

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

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

Does staff have particular questions on this issue?

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

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

1.

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

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

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

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

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

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

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

MR. WILSON: In a word, yes.

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

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

MR. BISHOP: Yes.

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

MR. BISHOP: Absolutely not.

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

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

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

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

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

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

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

2 material, that's a more difficult issue.

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

MR. WILSON: Yes.

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

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

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

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

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

because of issue preclusion.

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

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

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

I think if you look at the legal avenues open for

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

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

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

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

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

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

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

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

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

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

MR. MALSCH: I recognize that.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. ROUDEN: We have not had any discussions with

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

MR. MALSCH: Okay.

MR. RUSSELL: Maybe we could approach them again.

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

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

(Laughter.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. ROUDEN: I think it's not a material issue in COL licensing procedure. We've wrestled with this in somewhat the same fashion you have and I think basically the BN Commission would be writing on a clean sheet and we would be urging it to do something that makes functional sense in this regard, (a) you have a rule which provides changes of this type can be made because by definition

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

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

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

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

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

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

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

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

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

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

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

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

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

would be reviewable by the courts.

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

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

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

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

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

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

MR. BISHOP: Perhaps something like they use now.

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

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

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

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

MR. RUSSELL: Okay.

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

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

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

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

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

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

MR. FRANTZ: Well, for example --

MR. WILSON: Change created an issue that was not

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

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

MR. WILSON: What's your concern?

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

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

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

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

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

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

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

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

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

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

MR. BISHOP: That's correct.

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

MR. BISHOP: Yes, yes.

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

previously reviewed or not?

MR. BISHOP: Exactly.

MR. RUSSELL: Okay.

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

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

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

Where am I wrong on that?

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

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

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

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

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

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

How do you deal with that in the context of a

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

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

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

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

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

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

MR. RUSSELL: I agree.

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

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

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

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

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

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

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

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

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

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

MR. BISHOP: Potentially.

MR. MALSCH: Potentially.

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

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

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

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

MR. BISHOP: The process is not correct.

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

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

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

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

MR. BRINKMAN: That's exactly right.

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

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

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

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

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

down side doesn't outweigh the plus side.

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

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

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

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

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

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

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

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

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

applicants or holders?

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

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

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

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

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

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

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

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

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

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

MR. FRANKS: Right.

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

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

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

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

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

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

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

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

MR. MALSCH: Even though they never reviewed it?

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

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

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

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

He would have to come in with an application for

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

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

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

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

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

MR. REHN: Yes.

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

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

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

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

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

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

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

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

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

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

because they do not now.

I'm not sure we can escape --

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

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

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

MR. FRANKS: That's right.

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

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

MR. FRANKS: That's right.

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

MR. BISHOP: I think not necessarily.

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

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

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

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

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

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

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

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

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

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

MR. RUSSELL: Our inspection activity and review activity.

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

MR. SIMARD: Yes.

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

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

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

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

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

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

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

changes that were made in that 50.59 like standards.

What I hear you saying is something different now.

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

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

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

involved.

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

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

we'll give it to you at COL.

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

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

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

If you recall in the meetings, Pat, you

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

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

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

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

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

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

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

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

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

MR. MALSCH: Yes.

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

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

MR. MALSCH: That's the generic changes.

MR. ROUDEN: That should apply to Tier 2.

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

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

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

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

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

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

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

books.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Do we want to have a rulemaking proceeding that

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Stu, did you have a question?

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

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

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

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

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

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

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

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

you could live with?

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

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

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

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

MR. WILSON: Are there any other questions on

applicable regulations?

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

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

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

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

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

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

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

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

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

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

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

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

MR. WILSON: Any other questions on this issue?

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

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

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

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

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

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

MR. SIMARD: Yes --

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

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

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

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

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

So we thought that the rules contained a clear

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

It's simply in accord with the Commission direction.

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

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

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

resolved.

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

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

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

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

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

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

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

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

MR. FRANTZ: That's correct.

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

MR. FRANTZ: That's correct.

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

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

MR. FRANKS: You're right.

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

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

Any other questions on that item?

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

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

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

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

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

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

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

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

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

Any other questions on this particular comment by NEI?

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

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

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

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

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

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

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

rule.

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

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

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

MR. SIMARD: Thank you.

MR. WILSON: Anything else on number 7?

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

been structured legally.

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

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

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

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

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

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

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

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

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

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

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

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

MR. WILSON: Okay, Mr. McDonald?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. RUSSELL: It has to be done.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. McDONALD: That's in essence --

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

MR. McDONALD: That's good.

MR. MALSCH: I think we have to consider this

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

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

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

MR. MALSCH: Maybe that's enough.

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

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

And of course Marty raised another point and

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

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

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

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

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

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

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

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

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

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

embodied processes.

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

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

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

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

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

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

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

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

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

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

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

Dave, did I state that right?

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

MR. BRINKMAN: Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. FRANKS: Right.

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

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

MR. FRANKS: Right.

MR. RUSSELL: If there were a change made after

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

MR. FRANKS: Right.

MR. RUSSELL: Pardon?

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

MR. WILSON: As I pointed out --

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

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

would in an amendment.

MR. RUSSELL: That's correct.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

expiration came on. It was after the fact.

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

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

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

MR. BRINKMAN: I'm proposing that --

MR. CRUTCHFIELD: The expiration date?

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

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

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

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

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

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

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

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

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

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

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

MR. BRINKMAN: Any 50.59 process.

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

MR. BRINKMAN: Say that again?

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

MR. BRINKMAN: That's right.

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

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

MR. WILSON: Some of it, yeah.

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

MR. WILSON: The proposed rule has -- I

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

Any other questions on No. 9?

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

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

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

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

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

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

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

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

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

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

MR. WILSON: I understand your proposal --

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

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

MR. SIMARD: We foresaw that happening through

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

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

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

time.

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

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

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

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

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

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

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

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

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

MR. MALSCH: Right.

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

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

We need to find a way of rationalizing those too.

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

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

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

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

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

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

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

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

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

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

MR. EGAN: We couldn't agree more.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Those are my comments.

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

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

MR. FRANKS: Something to that effect.

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

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

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

regulatory stability.

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

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

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

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

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

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

MR. WILSON: Go ahead.

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

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

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

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

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

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

C E R T I F I C A T E

This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission in the matter of:

Name of Proceeding: DESIGN CERTIFICATION RULEMAKING

Docket Number: N/A

Place of Proceeding: ROCKVILLE, MARYLAND

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission taken by me and, thereafter reduced to typewriting by me or under the direction of the court reporting company, and that the transcript is a true and accurate record of the foregoing proceedings.

Corbett Riner

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