

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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30TH ANNUAL REGULATORY INFORMATION CONFERENCE

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COMMISSIONER PLENARY

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TUESDAY

MARCH 13, 2018

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The Regulatory Information Conference met
in the Grand Ballroom at the Marriott Hotel and
Conference Center, 5701 Marinelli Road, Rockville,
Maryland, at 10:31 a.m., Michael Weber, Director for
RES, facilitating.

COMMISSIONERS PRESENT

JEFF BARAN, Commissioner

STAFF PRESENT

MICHAEL WEBER, Director, RES

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

MR. WEBER: Good morning. It's my pleasure to welcome you back after the break and also to welcome you to this Regulatory Information Conference, the 30th Regulatory Information Conference.

I am Michael Weber, as Brian recently pointed me out, and I am the Director of Nuclear Regulatory Research at NRC.

For our next presentation, it is my honor to introduce Commissioner Baran who began his service with the Commission on October 14, 2014. We welcome him to his fourth Regulatory Information Conference.

Before serving on the Commission, he worked at the U.S. House of Representatives for over 11 years where he most recently served as Staff Director for Energy and Environment for the Democratic staff of the House Energy and Commerce Committee.

During his tenure with that committee, he focused on a variety of topics, including oversight of the U.S. Nuclear Regulatory Commission as a primary responsibility.

Originally from the Chicago, Illinois area, Commissioner Baran earned a bachelor's degree and

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1 a master's degree in political science from Ohio
2 University, and he holds his law degree from Harvard
3 Law School.

4 Ladies and gentlemen, please join me in
5 welcoming Commissioner Baran.

6 COMMISSIONER BARAN: Thanks, Mike. Good
7 morning. It's great to see everyone here. As Mike
8 mentioned, this is my fourth RIC, and so that means this
9 is my fourth RIC speech, and I had great sympathy for
10 our Chairman.

11 I think I've gotten there faster than she
12 did because I'm going to admit it. I am out of clever
13 ideas for an opening, so here's what we're going to do.
14 We are just going to jump right into the cheesy nuclear
15 jokes without any special preamble.

16 We all know they're inevitable, and you
17 heard me right. There are more than one. Multiple
18 cheesy nuclear jokes is how I'm going to go this
19 morning. Think of it as an opportunity for stakeholder
20 feedback.

21 I'm going to share two jokes. You let me
22 know which one you like more by whatever polite-ish
23 means you have to convey that. I get a better sense
24 of your collective sense of humor and we go from there.
25 Ready? Here we go. We're not going to - we're just

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1 going right in.

2 Joke number one, two atoms were walking
3 across the road when one of them said, "I think I lost
4 an electron." "Really?" the other replied. "Are you
5 sure?" "Yes, I'm absolutely positive."

6 I don't write them, folks. Here we go.
7 Okay, let's see what you think about joke number two.
8 Why can't you trust an atom? They make up everything.

9 Okay, all right, based on that response,
10 it sounds like people may have actually preferred the
11 first one. I'm not sure what that says about you as
12 audience.

13 Now, if you are one of the very, very
14 vanishingly few people who thought both of those jokes
15 needed work, feel free to send some suggested material
16 my way on the comment cards. This is your big chance
17 to wow us.

18 We're not going to read them today. We'll
19 instead save them for a future occasion that calls for
20 a high-quality nuclear joke.

21 In the meantime, we should probably get
22 down to business. There are a lot of important issues
23 before the Agency right now. Let me start with
24 post-Fukushima safety enhancements.

25 Almost every plant in the country has

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1 finished the work to comply with the NRC order on
2 mitigating strategies. That order requires plants to
3 have equipment on site and off site to respond to
4 beyond-design-basis events.

5 Every site also has new spent fuel pool
6 instrumentation in place so that operators have
7 reliable information on the water levels in their spent
8 fuel pools.

9 The installation of severe accident
10 capable hardened-vents at BWR units with Mark I or Mark
11 II containments requires physical modifications to the
12 plants during outages and will be completed by the end
13 of 2019.

14 The remaining flood hazard integrated
15 assessments are due by the end of this year, and the
16 seismic probabilistic risk assessments should all be
17 completed by the end of next year.

18 Based on those analyses, the NRC staff will
19 determine whether any additional site specific steps
20 need to be taken to better protect plants from
21 earthquakes or floods. Overall, the NRC staff's focus
22 has largely shifted to inspecting implementation of
23 these safety enhancements and natural hazard
24 evaluations.

25 The pending work for the Commission is the

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1 draft final rule establishing requirements for the
2 mitigation of beyond-design-basis events at nuclear
3 power plants. This draft final rule is the culmination
4 of years of work and is a key component of the Agency's
5 response to the March 2011 Fukushima-Daiichi accident
6 in Japan.

7 The rule responds to Near-Term Task Force
8 recommendations 4 and 7 by making the requirements in
9 previous NRC orders for mitigation of
10 beyond-design-basis events and for reliable spent fuel
11 pool instrumentation generally applicable to all
12 nuclear power plants. It requires the mitigating
13 strategies to address each plant's reevaluated seismic
14 and flooding hazards.

15 The rule also responds to Near-Term Task
16 Force recommendations 8 and 9 by requiring an
17 integrated emergency response capability and
18 sufficient staffing, command, and control training,
19 drills, communications capability, and documentation
20 of changes to support this integrated response
21 capability.

22 To address Near-Term Task Force
23 recommendations 10 and 11, the rule sets requirements
24 for enhanced onsite emergency response capabilities.

25 The staff submitted the draft final rule

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1 to the Commission for its review 15 months ago in
2 December 2016. I voted on it last June and agree with
3 the NRC staff that the provisions of this rule are
4 necessary to ensure adequate protection of public
5 health and safety.

6 Unfortunately, the Commission has not yet
7 finalized the rule. This delay matters because it
8 impacts the timing of compliance. The draft final rule
9 was written to generally provide two years for plants
10 to comply with the rule's requirements, with some
11 exceptions and flexibilities proposed by the staff.
12 If the rule had been issued during the summer of 2017,
13 the general compliance deadline would have been
14 mid-2019.

15 Given that the rule will be finalized much
16 later than anticipated by the staff, we will need to
17 look at adjusting the compliance time frames in the
18 draft final rule. Seven years after the Fukushima
19 accident, it is crucial that the Commission issue these
20 updated safety standards so that nuclear power plants
21 can meet them without further delay.

22 Power plant decommissioning is another
23 major focus area for the Agency. In the last few years,
24 six U.S. reactors have permanently shut down and eight
25 more have announced plans to close in the coming years.

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1 In late 2014, NRC embarked on a
2 decommissioning rulemaking to establish rules of the
3 road for reactors transitioning from operations to
4 decommissioning. The goals were to move away from
5 regulating by exemption in this area and to take a fresh
6 look at our decommissioning process and requirements.

7 Since that time, the Agency has gone
8 through two rounds of public comment, first in response
9 to an advanced notice of proposed rulemaking, and then
10 a response to a draft regulatory basis.

11 During the two comment periods, we
12 received a total of about 200 public comments from
13 licensees, states, local governments, nonprofit
14 groups, and other interested stakeholders. I read
15 them all and I can tell you that there are some very
16 good suggestions in those letters.

17 As the NRC staff prepares the draft
18 proposed rule for the Commission's review later this
19 spring, we need to thoughtfully consider the ideas
20 presented by all stakeholders with an open mind. We
21 should be aiming to produce a balanced rule that
22 considers the interests of a broad range of engaged
23 stakeholders.

24 Because complex rulemakings take time to
25 complete, we probably still have a couple years before

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1 the decommissioning rule is finalized. During that
2 time, I anticipate that the Agency will continue to
3 receive exemption requests from plants moving toward
4 decommissioning.

5 Some of these exemption requests will be
6 of high public interest like those related to emergency
7 planning, security, and decommissioning trust funds,
8 but under our current approach, the public has no
9 opportunity to weigh in on these important regulatory
10 decisions.

11 I think NRC can do better than that. We
12 can be more transparent and involve the public in the
13 process. There is nothing that prevents us from doing
14 that while we work to finalize the decommissioning
15 rulemaking.

16 So for the near term, I support improving
17 the existing exemption process by soliciting
18 stakeholder comments on decommissioning exemptions
19 requests that the staff expects will be of high public
20 interest. The staff would then consider and respond
21 to the public comments during its evaluation of those
22 exemption requests.

23 States, local governments, and the
24 communities around these plants are very engaged and
25 want to share their views. We need to give them the

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1 chance to do so. Our regulatory decisions can benefit
2 from their valuable insights.

3 Even as some existing plants are
4 decommissioning, we're seeing a lot of interest in new
5 nuclear technologies, whether it's advanced reactors,
6 accident tolerant fuel, or digital instrumentation and
7 controls.

8 The NRC staff has launched a
9 transformation initiative to identify any steps the
10 Agency should take to improve its approach to reviewing
11 new and novel technologies. I think that's a good
12 focus for the transformation team and look forward to
13 hearing the results of their outreach and
14 brainstorming.

15 Of these new technologies, the NRC has
16 probably done the most thinking about how we adapt our
17 regulatory framework to prepare for advanced reactor
18 applications.

19 As mentioned earlier, I think by Vic, five
20 vendors have begun pre-application discussions with
21 the staff, and we anticipate additional vendors may
22 reach out soon. We want to make sure that we have an
23 efficient and effective licensing process for
24 non-light water reactors, so we are ramping up our
25 activities in this area.

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1 With our current resource levels, the
2 staff is primarily focused on identifying and
3 addressing key technical and policy issues that should
4 be resolved early. For example, the staff is
5 finalizing guidance for crafting principal design
6 criteria for advanced reactors.

7 Staff is also creating a risk-informed
8 performance-based approach for selecting license basis
9 events. In addition, the staff is working to develop
10 the necessary computer codes to perform regulatory
11 reviews. A significant amount of stakeholder
12 interaction supports all of these efforts.

13 Vendors and licensees also are
14 increasingly focused on developing accident tolerant
15 reactor fuels that can better withstand higher accident
16 temperatures and provide longer coping periods during
17 station blackout conditions. In response, the NRC
18 staff is working to prepare the Agency for accident
19 tolerant fuel applications.

20 While incremental fuel design changes
21 could largely rely on existing data, models, and
22 methods, designs that depart more dramatically from
23 existing fuels may require a substantial amount of new
24 testing and modeling.

25 Just as with advanced reactors, the Agency

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1 needs to determine whether any updates to our
2 regulatory framework will be needed to enable to Agency
3 to perform efficient and effective licensing reviews.

4 One long-delayed rulemaking pending
5 before the Commission would certainly help the Agency
6 get ready for new fuel technologies and that's the
7 50.46(c) rulemaking. Here's why this rule is
8 important.

9 Currently, NRC's regulations recognize
10 only two types of fuel cladding for a full core,
11 Zircaloy and Zirlo. The regulations also recognize
12 only one type of fuel pellet made of uranium oxide, but
13 vendors are looking at other cladding and pellet
14 materials such as silicon carbide and uranium silicide.

15 Because these new materials are not
16 addressed by our regulations, licensees would need to
17 seek regulatory exemptions to use them. That's not
18 efficient and it makes it harder to innovate in ways
19 that could improve safety.

20 The 50.46(c) rule would move the Agency to
21 a technology neutral performance-based approach that
22 would apply to all cladding materials and fuel designs
23 so applicants would no longer need to seek regulatory
24 exemptions from the existing requirements.

25 There is also an important safety

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1 component to the rulemaking. New findings from an
2 extensive research program call into question the
3 technical basis of the existing regulation.

4 The latest science shows that the
5 combination of temperature and oxidation limits
6 established in the current regulation are not stringent
7 enough to prevent embrittlement of the fuel cladding,
8 and the existing regulation does not address the new
9 degradation mechanisms revealed by the latest research
10 such as breakaway oxidation.

11 In the absence of adequate regulatory
12 requirements, the NRC staff has been performing annual
13 safety assessments at each nuclear power plant in order
14 to ensure that there is no imminent safety hazard
15 related to the integrity of the fuel cladding during
16 a design-basis accident.

17 Essentially, the staff is conducting after
18 the fact backward looking reviews to see if the fuel
19 at each plant would have performed safely during an
20 accident in the prior year.

21 Because the existing regulations do not
22 prevent licensees from taking certain core reloading
23 actions that could reduce the safety margins at nuclear
24 plants, each year the staff looks back at the prior year
25 to confirm that safety margins did not erode in a way

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1 that would cause a safety issue. This is no way to
2 provide reasonable assurance of adequate protecting of
3 public health and safety.

4 The draft final rule has been sitting with
5 the Commission for two years. I voted on it 19 months
6 ago. We need to finalize the rule to address the safety
7 issue and to adopt a technology neutral approach that
8 lifts a current barrier to innovative fuel designs.

9 That brings us to digital instrumentation
10 and controls. I listed this as the third new
11 technology that the transformation initiative is
12 looking at, but let's face it. Digital isn't really
13 a brand-new technology. It's been around for quite
14 some time in most other sectors of the economy.

15 But when I visit an operating reactor and
16 go into the control room, I see a lot more analog
17 instruments than digital ones, and the operators in the
18 control room share their concerns about the
19 obsolescence and reliability issues associated with
20 analog technology.

21 I think there is broad agreement that
22 safety would generally be improved if more instruments
23 transitioned to digital. Unfortunately, we have not
24 yet been able to resolve this complex issue so that
25 plants can safely and efficiently upgrade to digital

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1 systems.

2 The staff is implementing an action plan
3 and I think we're starting to make some progress on a
4 path forward, but let's be frank. It's been slow
5 going. That's not a criticism of the staff or of the
6 industry. It's just a recognition that this area of
7 regulation has proven to be a real challenge, so we need
8 to rejuvenate our efforts on digital instrumentation
9 and controls.

10 As the safety regulator, we need to make
11 sure that digital upgrades are done safely and don't
12 introduce any unacceptable risks, but we also need to
13 make sure that there is a reliable regulatory framework
14 for making these upgrades. I look forward to hearing
15 the transformation team's ideas for how we can
16 accelerate our progress in this area.

17 I want to touch on two other key topics that
18 relate to operating reactors, risk-informed regulation
19 and security. We're seeing a significant increase in
20 the number of risk-informed licensing submittals.

21 In particular, there's growing interest in
22 applications under Section 50.69 to risk inform the
23 categorization and treatment of structures, systems,
24 and components. 50.69 is a potentially far reaching
25 provision that hasn't been used much until recently.

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1 The effort to risk inform technical specification
2 completion times also has ramped up in the last couple
3 of years.

4 It's an important initiative that
5 addresses the question of how we should deal with issues
6 of lower safety significance, and I think it's far
7 superior as an approach to some of the past efforts in
8 this area.

9 For example, in trying to come up with a
10 way to address so-called low-risk compliance issues,
11 the NRC staff began exploring different concepts and
12 approaches. One iteration of this effort basically
13 envisioned a type of long-term enforcement discretion
14 that could last for years.

15 It's no secret that I think that's a
16 terrible idea. If our regulations, in this case,
17 technical specifications, need to be updated and risk
18 informed, let's focus our energy and resources on risk
19 informing the technical specifications rather than on
20 developing a process to bypass our own regulatory
21 requirements.

22 Fundamentally, compliance with our
23 regulatory requirements is how NRC ensures adequate
24 protection of public health and safety. We should not
25 go down the path of allowing long-term noncompliance

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1 and the Commission's 1995 probabilistic risk
2 assessment policy statement recognizes this.

3 In the policy statement, the Commission
4 endorsed the use of risk insights, but also stated, "It
5 is, of course, understood that the intent of this policy
6 is that existing rules and regulations shall be
7 complied with unless these rules and regulations are
8 revised."

9 So my view is if our technical
10 specifications would require a licensee to address an
11 issue of very low safety significance within 72 hours
12 of shutdown, but a one week, or two week, or 30-day
13 deadline would be more appropriate, we should work on
14 revising and risk informing the technical
15 specifications. Let's focus on getting to the right
16 regulatory requirement, not coming up with a process
17 to permit prolonged noncompliance with the tech specs.

18 At the May 2017 Commission meeting on
19 risk-informed regulation, I heard a lot of stakeholder
20 agreement on this point, and I'm glad to see that the
21 NRC staff has responded by rethinking where it focuses
22 its attention and resources.

23 Maintaining strong physical and cyber
24 security programs is another key priority for NRC and
25 our licensees. The potential threats facing power

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1 plants, fuel cycle facilities, and radioactive
2 materials' licensees are constantly evolving.

3 NRC has already established
4 performance-based cyber security standards for the
5 reactor fleet, and a proposed cyber security rule for
6 fuel cycle facilities is now being reviewed by the
7 Commission. NRC must also maintain effective physical
8 security requirements, including force on force
9 inspections conducted by NRC.

10 Although the Commission is still
11 considering a paper on potential changes to the force
12 on force program, I can tell you how I'm approaching
13 this issue.

14 Currently, the NRC conducts two force on
15 force exercises at each nuclear power plant every three
16 years. Under the staff's recommended option, there
17 would be no second NRC conducted force on force
18 exercise.

19 Instead, NRC would perform an enhanced
20 inspection and evaluation of a regularly scheduled
21 force on force exercise planned and conducted by the
22 licensee. The licensee would both develop the
23 exercise scenario and provide personnel for the
24 adversary force.

25 I do not support this option because it

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1 does nothing to enhance the effectiveness of the force
2 on force program. Going from two NRC conducted force
3 on force exercises to one would provide no security
4 benefits. The only potential benefit would be to
5 reduce the costs of conducting the exercises and that
6 outcome is far from certain.

7 If a licensee were to be rated ineffective
8 or marginal during the sole NRC conducted force on force
9 exercise, or if the results were indeterminate, then
10 there are two possibilities.

11 Either NRC and the licensee would need to
12 schedule, plan for, and participate in a second NRC
13 conducted exercise which would eliminate the modest
14 cost savings that the staff anticipated for this
15 option, or a nuclear power plant licensee would be
16 allowed to operate without passing a single NRC
17 conducted force on force exercise during the three-year
18 period. The first outcome offers no advantages over
19 the current program, while the second outcome would be
20 unacceptable.

21 I support maintaining the current security
22 baseline inspection program which already reflects a
23 number of recent efficiency improvements. However, I
24 think the NRC staff should explore the pros and cons
25 of holding an ungraded, NRC conducted, active violent

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1 insider exercise in lieu of the second full scope force
2 on force exercise whenever a licensee is rated
3 effective in the full scope exercise.

4 Given the global trend toward lone wolf
5 terrorist attacks, it would be prudent to further
6 ensure that nuclear power plants could effectively
7 protect against an attack by an active violent insider
8 with access to the plant.

9 Instead of NRC formally grading a
10 licensee's performance, any issues found during such
11 an exercise could be entered into and addressed through
12 the licensee's corrective action program. I think
13 it's a potential change worth considering.

14 I've talked a lot about reactors' issues.
15 Let me close with a radioactive materials issue and
16 that's source accountability. Unlike for category one
17 and two sources, there's currently no regulatory
18 requirement for a vendor to verify the authenticity of
19 a license for category three sources before selling
20 them.

21 The Government Accountability Office
22 highlighted this regulatory gap in 2016 when it found
23 that a factitious company established by GAO could
24 produce counterfeit category three possession licenses
25 and obtain commitments from vendors to sell it a

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1 sufficient amount of material to reach category two
2 levels.

3 In light of GAO's findings, I propose that
4 the NRC staff take a fresh look at the question of
5 whether and how to track category three sources. My
6 Commission colleagues agreed, and the NRC staff
7 provided its recommendations in August 2017. The
8 Commission is currently considering those
9 recommendations.

10 NRC's existing license verification
11 system allows radioactive materials licensees,
12 including the manufacturers and distributors that sell
13 radioactive materials to other licensees, to confirm
14 that a license is valid and that a buyer is authorized
15 to acquire the quantities and types of radioactive
16 materials being requested. Use of the system is
17 currently required for category one and category two
18 quantities of radioactive materials.

19 The core finding of the GAO report is that
20 licenses can be altered or counterfeited to allow bad
21 actors to illegally obtain radioactive materials. In
22 response, I believe we should amend NRC's regulations
23 to require verification of category three possession
24 licenses through the license verification system or the
25 appropriate regulatory authority.

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1 License verification is a targeted
2 solution to closing this regulatory gap highlighted by
3 GAO because it occurs prior to the transfer of a source
4 in real time and can proactively prevent an illegal
5 transfer. This would meaningfully address the problem
6 identified by GAO by preventing unauthorized entities
7 from using counterfeit or altered licenses to obtain
8 radioactive materials.

9 We did not wait for an armed attack on a
10 nuclear power plant to establish physical security
11 requirements or for intelligence indicating an
12 imminent cyber attack before requiring plants to take
13 steps to address cyber security.

14 Likewise, we should not wait for an
15 adversary to exploit the failure to verify the validity
16 of category three radioactive materials licenses
17 before closing this regulatory gap. A small number of
18 category three sources can be aggregated to category
19 two levels.

20 Given the Commission's past determination
21 that category two quantities of radioactive material
22 warrant the suite of regulatory requirements the NRC
23 has applied to them, including license verification,
24 tracking on the national source tracking system, and
25 physical security, it makes sense to take the basic step

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1 of ensuring the validity of licenses to obtain category
2 three sources.

3 We also need to take another look at
4 whether to continue issuing general licenses for
5 category three sources. Generally, licensed devices
6 such as self-luminous exit signs, do not require
7 specific possession licenses, but the radioactive
8 material in a generally licensed device is no different
9 than the material in a specifically licensed device.

10 Right now, NRC does not regularly conduct
11 inspections to ensure that generally licensed sources
12 are used and maintained safety and securely. Although
13 there are hundreds of thousands of generally licensed
14 devices nationwide, there are a relatively small number
15 containing category three quantities of radioactive
16 material.

17 The NRC staff has expressed concern about
18 the lack of routine oversight and accountability of
19 generally licensed category three sources. The
20 agreement states have expressed similar concerns. In
21 fact, there is broad consensus among the states on the
22 need for change.

23 When the NRC's technical experts and our
24 agreement state partners reach the same conclusion that
25 general licenses for category three sources do not

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1 provide for adequate oversight, we need to take action.
2 So I support the NRC staff's recommendation to
3 reevaluate the practice of issuing general licenses for
4 category three sources.

5 As a safety and security regulator, we need
6 to have an open mind about the need for regulatory
7 change in this area. Of course that's true for
8 everything we do.

9 It's essential for NRC to tackle tough
10 regulatory issues with an open mind. It's not enough
11 to say, "That's the way we've always done it," or, "We
12 looked at that 30 years ago." We need to be open to
13 new ideas and new approaches. More than that, we need
14 to actively seek them out.

15 Stakeholder interactions are a big part of
16 that, which is one of the reasons why the RIC is very
17 valuable. So if you have feedback on NRC's work, or
18 a suggestion, or a new idea, please let us know. I look
19 forward to talking with many of you this week and during
20 my future visits to power plants and other licensed
21 facilities. I'm also happy to answer your questions
22 now. It looks like we have about 20 minutes. Thank
23 you.

24 MR. WEBER: Thank you, Commissioner
25 Baran. Starting off with a rather light note -

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1 COMMISSIONER BARAN: Okay.

2 MR. WEBER: - this questioner, similar to
3 the question that was posed to the Chairman, asks you
4 to relate your experience on the Commission with your
5 favorite movie, and would give you bonus points if you
6 sang a few bars from the movie.

7 COMMISSIONER BARAN: I'm opting not to go
8 for bonus points. I may opt not even to answer the
9 basic question to be honest, and I'll tell you why. I
10 was listening to Kristine get this question and I was
11 thinking, "Gosh, how could I answer that?" and I had
12 a long time to think about it and I came up with nothing.
13 I came up with nothing.

14 And so, you know, I could start talking
15 about movies that I love, but I'm not sure any of them
16 really, you know, work for kind of an analogy to my work
17 here on the Commission, so I think I'm just going to
18 take a pass on that. Maybe ask that question, you know,
19 sometime in the future and I'll give it some more
20 thought.

21 Honestly, the hour and a half I've had was
22 not enough to come up with a good answer to that
23 question, and I would really - I mean, it's a very
24 challenging question. I would challenge all of you to
25 think about that. You know, what movie would wrap up

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1 your experience in your work day? Gosh, I have no idea.
2 I don't even think I'd come up with a theme song.

3 MR. WEBER: All right, on a more serious
4 note, this questioner brings up the differing
5 professional opinion program and remarks that it's a
6 worthy program, but comments that perhaps it's evolved
7 in a way that was unintended and has unintended
8 consequences. So there's three parts to the question.

9 Is responding to a differing professional
10 opinion so resource intensive that NRC managers are
11 encouraged to make decisions they would not otherwise
12 simply to avoid a differing opinion? Are the resources
13 devoted to responding to these opinions commensurate
14 with the safety benefits gained? And how would you
15 advise NRC managers to balance those interests?

16 COMMISSIONER BARAN: Well, thanks for the
17 question. It's a very important program, our
18 differing professional opinion program, as is our
19 non-concurrence process, and I take every opportunity
20 when I'm talking with a large audience, including with
21 our staff, to plug those programs.

22 We want to have a good safety culture here
23 at NRC, and a basic component of that is having folks
24 raising concerns if they see a safety or security issue
25 they think is unaddressed, and these are mechanisms to

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1 do that, both the DPO program and the non-concurrence
2 process.

3 We also have the open door program where
4 folks will come in and just share their concerns
5 directly with the Agency's decision makers. I
6 encourage folks to use all of those programs because
7 I think they have had an extremely positive impact on
8 the Agency.

9 I've been here for about three-and-a-half
10 years now, and in that time, we've had a number of tough
11 regulatory issues that came up before the Commission
12 where there was a non-concurrence, or multiple
13 non-concurrences, or a differing professional opinion,
14 and I found them very, very helpful to our decision
15 making.

16 The decision makers don't always agree
17 with what the non-concurren or the author of the DPO
18 has stated, and that's fine, but it makes sure that
19 folks are clearly considering those issues as part of
20 the decision making. And I know that I've personally
21 benefitted, and I think the Commission as a whole has
22 benefitted in its decision making from those
23 contributions.

24 You know, I don't think that managers have
25 taken an approach of reaching a decision to try to avoid

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1 a DPO or a non-concurrence other than this, to say that
2 when folks have seen, you know, potentially dissenting
3 views or different views among the staff, I think they
4 try to make sure that those folks are brought into the
5 process and those issues are fully understood, which
6 I think is absolutely appropriate.

7 One of the trends that I've mentioned in
8 the past that I think is positive as a way to address
9 areas where the staff isn't of one mind is to have that
10 presented clearly in the decision making paper that
11 comes to the Commission, or even if it's not a
12 Commission paper, if it's a staff level decision, I
13 think it can benefit in the staff level decision making
14 documents.

15 I know when I've seen a policy paper that
16 clearly says, "Here is the staff's recommended view,
17 but it's not the only view on the staff. Here is
18 another view," and it talks about that in some detail
19 and you get a flavor for all points of view on the issue,
20 that that's, as a decision maker, extremely helpful.
21 So I think that's one good way to manage it.

22 That's a little different than a DPO or a
23 non-concurrence because in some cases, taking that
24 approach to representing both views in the paper
25 actually has someone not use the non-concurrence

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1 process or the DPO process because they feel that their
2 concerns have been raised directly to the decision
3 makers, so I think that's been a positive approach.

4 I think it's a worthwhile program. I know
5 the staff is looking at future optimization there
6 because, you know, there is a process, particularly on
7 the DPO, of, you know, a number of folks on the panels,
8 and there is, you know, a lot of steps to that process
9 with a fair amount of, I don't want to say rigidity,
10 but process around it.

11 And so I know that one of the things that
12 the Office of Enforcement is beginning to look at, and
13 really, I think, with a positive approach in mind is,
14 "Should we think about scaling that to the kind of
15 significance of the safety issue or the complexity of
16 the safety issue? Do we want to have a
17 one-size-fits-all type of program or do we want to
18 explore modifying that a little bit?" And I think as
19 long as the purpose of that effort is to really kind
20 of optimize the program, it makes sense to me. So it
21 is something that's being looked at. I think it's a
22 good program and it's been a valuable program.

23 MR. WEBER: Okay, thanks. Commissioner,
24 this question points out that military, medical, and
25 aviation sectors have successfully and safely applied

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1 digital instrumentation and control technology, yet
2 NRC has not as it's pertaining to the nuclear industry,
3 but the consequences of failure might be just as
4 consequential. Why can't the NRC benchmark these
5 industries and make comparable progress safely and
6 successfully in using the technology?

7 COMMISSIONER BARAN: Yeah, I think that's
8 a great question, and it's - I'm encouraged that the
9 transformation team is looking at this very question
10 because we, for a number of years now, have been
11 grinding away on some incremental improvements in a
12 number of areas here.

13 And we could go into some detail on that,
14 but whether it's the risks on how 50.59, you know,
15 should be used or guidance there, or whether it's common
16 cause failure or other issues, we have kind of several
17 issues in the action plan that the staff has been
18 working very hard on with the participation of
19 stakeholders to move those things forward, and there's
20 been some progress there which I think is great.

21 I wouldn't want to do anything that
22 detracted from the progress we are making, but I do
23 think it's been challenging enough that we need to ask
24 those bigger questions of, "Is there some kind of
25 different way generally we should be looking at this?"

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1 and so that's really a perfect place for the
2 transformation team and initiative to take a look.

3 And I know as part of their stakeholder
4 actions, they're talking to just those types of folks.
5 They're talking to the Navy. They're talking to FAA.
6 "How did this work in aviation?" You know, these are
7 digital systems in airplanes that we fly every day.
8 "How did FAA manage to get that done?"

9 They're talking to some of our
10 international counterparts. Some of you in this room
11 may have done a better job on this issue than we have
12 to date or made more progress on it.

13 So they're doing just that. They're kind
14 of taking that suggestion to look and see, "Okay, we've
15 been doing this a certain way in terms of trying to move
16 through this. We're making some progress. Is there
17 some bigger change we should be thinking about, some
18 different approach we should be adopting that would
19 accelerate our progress in this area?" So I'm looking
20 forward to see what they come up with.

21 It's not, of course, all on the transition
22 team. It's something as an Agency and as a staff we
23 can all think about as we go through this, and it's -
24 I won't say too much more on it, but I'll say this.

25 You know, as I mentioned, I got here around

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1 three-and-a-half years ago, and in that time, this
2 issue had already been percolating for a number of years
3 as many of you know. You were probably working on it
4 during those years.

5 And so I think there was a degree of
6 frustration that we weren't making, we're collectively
7 making more progress on this when I got here in late
8 2014, and now here we are. It's 2018 and some progress
9 has been made, but I don't think anyone thinks it's
10 going as quickly as we would like it to. I agree with
11 the Chairman on that. I think she made that remark.

12 And so I think we can agree on that, and
13 what we're got to figure out is how can we collectively
14 do better on that? How can we resolve these issues?
15 Because they are really important issues to resolve.
16 If you - I mean, there are practical effects today that
17 all of you know who are operating nuclear power plants,
18 but particularly if you think out into the future. You
19 think of subsequent license renewal and other things.

20 I mean, are we going to walk into an
21 operating reactor control room in 2050 and it's all
22 going to be analog? I mean, the answer cannot be yes.
23 The answer has to be no. We will have gone to digital
24 by then or maybe whatever technology is after digital
25 by then.

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1 So we need to keep working on this, and
2 really, as I said, kind of rejuvenate our efforts and
3 think broadly about how we're approaching this and can
4 we go at it in a better way?

5 MR. WEBER: Thank you. This commenter
6 questions or interpreted your remarks as your believing
7 that current fuel designs do not have adequate safety
8 margins in the operating nuclear power plants. So if
9 that is the case in your view, why are you as a
10 Commissioner allowing those plants to continue to
11 operate?

12 COMMISSIONER BARAN: Well, I should
13 clarify the remarks. I'm not saying that we have a
14 safety issue right now. I'm saying that our current
15 regulatory requirements are not adequate.

16 And we're doing something that we don't do
17 in other areas of regulation which is rather than have
18 adequate requirements that give us assurance that
19 today, tomorrow, next week we are going to have adequate
20 margin, we're waiting until the end of a calendar year
21 - I think it's a calendar year. Someone will correct
22 me if I'm wrong about that - and then we're going back
23 and looking at the prior calendar year to see if it was
24 all okay in the prior calendar year.

25 That is not a great approach to regulating

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1 in the health and safety area, I don't think. I don't
2 think the staff does either. And when they sent the
3 draft final rule up to us a couple of years ago, one
4 of the things they mentioned is in the absence of a rule,
5 the staff may need to look at other mechanisms like
6 orders.

7 If there was a situation in which there was
8 a safety issue, the staff would have to act, and so of
9 course they have that option, but I think we can better
10 than that.

11 I think we should have a clear rule in place
12 that's gone through notice and comment, and so I think
13 that's the best path forward. It gives us the benefit
14 of not only addressing this lingering safety issue or
15 potential safety issue, a kind of gap in our
16 regulations, an outdatedness of our regulations that
17 needs to be updated and corrected, but it also has the
18 advantage of better preparing the Agency for these next
19 generation fuel technologies.

20 MR. WEBER: Thank you. This question
21 deals with the implementation of the Fukushima
22 enhancements, and the question is, "How many nuclear
23 plants have not met their post-Fukushima
24 requirements?"

25 COMMISSIONER BARAN: Wow, that's like -

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1 that requires a complex, like, graph I don't have, but
2 let me do it simply.

3 So there are only a handful of plants that
4 are not, I believe, currently in compliance with the
5 mitigating strategies order, and most of those plants,
6 I think, involve Army Corps of Engineers data if I'm
7 thinking of the right thing there.

8 We've got a handful of plants where there
9 is some kind of outstanding work related to natural
10 hazards that still is being done, and I think some of
11 that involves coordination with other agencies, so we
12 have a handful there. I believe everyone's in
13 compliance on spent fuel pool instrumentation.

14 And then we have a relatively small number,
15 subsets of the fleet, that either have ongoing flooding
16 integrated assessments or seismic PRAs that are going
17 on, and those are labor intensive, multi-year efforts,
18 and in some cases, if you're talking about, say, the
19 seismic PRAs, there's also just a limited number of
20 people in the world who can do that work, so it has to
21 be staggered to get that work done.

22 So, you know, it's not going to be the same
23 answer on all of those. There's a high level of
24 compliance on each individually, or completion, I
25 should say, on each individually. I didn't mention the

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1 vents. That's also something in the next year, year
2 and a half we're going to be much closer on.

3 So we've seen a lot of progress and I think
4 we're going to see really in the next year or two a lot
5 of the ongoing work that's still happening reach its
6 conclusion.

7 MR. WEBER: Okay, thank you. This
8 commenter questions about the responsibilities of host
9 states in dealing with the environmental and the
10 economic impacts of decommissioning, particularly for
11 nuclear power plants. Should states' views be given
12 more weight in light of those responsibilities in the
13 decommissioning rulemaking?

14 COMMISSIONER BARAN: Well, I think we
15 absolutely need to consider their views, and we need
16 to consider them seriously and with an open mind. You
17 know, I think as long as we are taking that approach
18 to all of our stakeholders, we're doing the right thing.

19 You know, it is an interesting kind of
20 philosophical question, I think, and I don't know that
21 I fully know the answer to it which is, "Do we think
22 that the elected government of a state, actually their
23 views should carry more weight than another individual
24 commenter?" You know, one could see the argument for
25 it. I think as a practical matter - one could see the

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1 argument on the other side.

2 As a practical matter though, I think the
3 important thing is that we seriously look at what are
4 the ideas? What are the proposals? What are the
5 concepts we're getting from all the stakeholders, and
6 what's the right path forward on it?

7 So I can understand that, you know, part
8 of the rulemaking, some of those issues have to do with
9 what is the appropriate role of state and local
10 governments in the decommissioning process? So that's
11 something that I think rightly states are focused on
12 as an important issue, and that we need to take a close
13 look at it in this rulemaking process as I know we have,
14 having, you know, read the various documents, including
15 the comments that have come in.

16 So it's a work in progress, this
17 rulemaking. We still haven't even gotten to the
18 proposed rule yet. I think that comes up in May. I'm
19 looking forward to seeing it when we get it and I'm going
20 to continue to give a lot of thought to, you know, what
21 are the changes that make sense generally in this area?

22 MR. WEBER: Okay, thank you. This
23 questioner remarks about your comments on your vote on
24 the proposed revisions to the security oversight
25 program, and the commenter asks or makes the comment,

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1 "The proposed change to the security inspection program
2 is very similar to that that currently exists in the
3 emergency preparedness inspection and oversight
4 program.

5 "Do you think, in light of your views, that
6 the EP inspections are not effective, and would you
7 consider a performance indicator based approach that
8 would be examining and integrating the security drill
9 and exercise performance be a reasonable alternative?"

10 COMMISSIONER BARAN: Well, you know, I'll
11 confess I haven't taken a lot of time to look at that
12 question on EP. I don't have the sense that what we're
13 doing now isn't working. I have the opposite sense
14 that it is. So I'm happy to take a look at that issue
15 and think more about it. Thanks.

16 MR. WEBER: Okay, this questioner notes
17 that you mentioned the interests of five SMR vendors
18 and engaging with the NRC in a formal manner. They note
19 Canada currently is interacting with 10 vendors with
20 their regulator. "What is NRC doing to ensure America
21 remains the leader in the SMR regulation?"

22 COMMISSIONER BARAN: Yes, so the five, the
23 interaction with five actually refers to advanced
24 non-light water reactors which can have some overlap
25 with SMRs, but that's on the advanced reactor side.

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1 And I think the staff has been really
2 pretty aggressive over the last few years in working
3 to get ourselves ready for more pre-application
4 discussions, and then obviously the applications
5 themselves, and there's a lot of work to be done there.

6 I think, you know, everyone acknowledges
7 that the regulatory regime we have, including for new
8 reactors, has really been set up around light water
9 reactors. It's been focused on that and it's worked
10 reasonably well for that, but it's not really set up
11 to deal with non-light water reactors.

12 So I think the approach the staff is taking
13 is a good one in terms of thinking through - there are
14 a bunch of things we need to do. One of the things we
15 need to do that the staff is focusing on is what are
16 the technical and policy issues we need to start
17 thinking about early?

18 So for example, as I mentioned in my
19 remarks, design criteria and other things that you're
20 going to want to think through, you know, they were
21 written for light water reactors. What is the
22 comparable guidance for non-light water reactors? So
23 that work is happening.

24 We have to make sure that as an Agency, we
25 have in-house the technical capability to deal with

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1 this work as it comes in, and so when we have our
2 Commission meetings with the New Reactors Office and
3 others, that's one of the questions I ask and that we
4 talk about.

5 We want to make sure we have the technical
6 expertise we'll need for the various types of
7 technologies because as was mentioned earlier, it's a
8 range of technologies that we're talking about in the
9 advanced reactor space that we need to be prepared for
10 the different technology types. There are codes and
11 standards issues, other issues.

12 The staff has been very, I think,
13 proactive, and I hope, you know, for those of you who
14 have participated, you think they've been worthwhile
15 and very proactive on having regular stakeholder
16 engagement with vendors, with the Department of Energy,
17 with other stakeholders so that we're really
18 understanding both where do folks think they're going,
19 and what are the time frames associated with that, and
20 what do they see as the key issues we need to start
21 resolving so that we have a good regulatory framework
22 in place as applications come in so we can deal with
23 them in an effective and efficient manner?

24 MR. WEBER: Okay, last question.

25 COMMISSIONER BARAN: Okay.

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1 MR. WEBER: So recognizing that
2 excellence is an aspiration, not a destination, I think
3 as presented by our Executive Director for Operations,
4 and that we all can continue to improve, haven't
5 licensees demonstrated continuous safety improvements
6 over the last 30 years, and if so, then why is there
7 a need to do more, more, and more as it relates to
8 rulemaking and regulation?

9 COMMISSIONER BARAN: Well, I'm not sure I
10 totally agree with the premise of the question in terms
11 of, you know, a sense we need to do more, and more, and
12 more. We have, you know, we have regulations on the
13 books that sometimes need to be updated based on the
14 latest science or operating experience. I would be
15 50.46(c) in that category.

16 We have areas of rulemaking that are really
17 areas that we haven't spoken to real clearly in the past
18 like decommissioning in the decommissioning context.
19 Obviously we have a lot more decommissioning going on
20 now than we had in prior years, and, you know, it's kind
21 of amazing that we've gotten to this point in 2018 with
22 30 years of the RIC and we don't currently have, you
23 know, clear regulations.

24 "Here are the regulatory requirements that
25 apply to a plant that has permanently shut down." We

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1 don't have that. We were planning to do that long
2 before I got here in 2000. 9/11 happened and there were
3 other priorities that rightly took priority, but we've
4 gone a long time without having that clearly laid out
5 in our regulations.

6 So I wouldn't put that in the category of
7 more, and more, and more. I would put that in the
8 category of we haven't really clearly addressed that,
9 and it's to everyone's benefit to do so.

10 You know, I think particularly in the case
11 of decommissioning, the exemption process, the kind of
12 regulation by exemption approach we've been taking,
13 it's really not optimal. It's not efficient. It's
14 not as efficient as it could be certainly, and doesn't
15 involve the public.

16 So I think there are times when it's going
17 to - it does make sense to engage in rulemaking either
18 to update or to go to a new requirement that maybe we
19 don't have that we should. And one example there, for
20 example, would be cyber security for fuel cycle
21 facilities. That's something that's been part of the
22 plan on cyber security.

23 The staff had their kind of roadmap, or I
24 think we would call it a roadmap of the different types
25 of facilities we would address in a certain order, and

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1 we've gotten to fuel cycle facilities, and so it's time
2 to address that issue there for something that's
3 already been addressed for the operating fleet of
4 nuclear power plants.

5 So as an Agency, I think as an Agency, we're
6 very thoughtful about when it makes sense to do a new
7 rule or not, and it's certainly something that gets a
8 high level of discussion and attention at the
9 Commission level. And so I think that, you know, we
10 work very hard to make sure that if a new rule is being
11 established, it's one that makes sense and is
12 necessary.

13 MR. WEBER: Great. Commissioner, thank
14 you very much.

15 COMMISSIONER BARAN: Thank you.

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