

Official Transcript of Proceedings

NUCLEAR REGULATORY COMMISSION

Title: Advisory Committee on Reactor Safeguards

Docket Number: (not applicable)

Location: Rockville, Maryland

Date: Friday, July 9, 2004

Work Order No.: NRC-1574

Pages 1-41

NEAL R. GROSS AND CO., INC.
Court Reporters and Transcribers
1323 Rhode Island Avenue, N.W.
Washington, D.C. 20005
(202) 234-4433

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

+ + + + +

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS (ACRS)

514TH MEETING

+ + + + +

FRIDAY,

July 9, 2004

+ + + + +

The meeting was convened in Room T-2B3
of Two White Flint North, 11545 Rockville Pike,
Rockville, Maryland, at 8:30 a.m., Dr. Mario V.
Bonaca, Chairman, presiding.

MEMBERS PRESENT:

MARIO V. BONACA	ACRS Chairman
GRAHAM B. WALLIS	Vice-Chairman
F. PETER FORD	Member
THOMAS S. KRESS	Member
GRAHAM M. LEITCH	Member
DANA A. POWERS	Member
VICTOR H. RANSOM	Member
STEPHEN L. ROSEN	Member-at-Large
WILLIAM J. SHACK	Member
JOHN D. SIEBER	Member

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 ACRS STAFF PRESENT:

2 JOHN T. LARKINS Executive Director, ACRS/ACNW

3 SAM DURAISWAMY Technical Assistant,

4 ACRS/ACNW, Designated Federal Official

5 Ralph Caruso ACRS Staff

6 David Cullison NRR Staff

7 John Hannon NRR Staff

8 Robert Elliot NRR Staff

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

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

8:29 a.m.

CHAIRMAN BONACA: Good morning. We are here for the purpose of writing our reports. And yesterday we heard that on the final generic letter potentially to the pre-blockage of emergency circulation building's design basis accidents of PWR. There have been additional changes to the generic letter. And so this is not an official meeting in the sense of -- we simply, we want to have some information regarding these changes so that we can make a decision whether or not we're going to write the report ourselves or not, at this time.

So I would like to turn to the staff and see if you can give us some insights.

MR. HANNON: Thank you. My name's John Hannon, I'm plant systems branch chief. And I have Dave Cullison and Rob Elliot from the staff with me this morning.

Let me start out by reminding that the outcome we're seeking with this generic letter is to assure a long-term core cooling capability to PWRs, to make sure their performance capability is adequate for that. And what you've been witnessing,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

(202) 234-4433

1 both in the subcommittee meeting and the full
2 committee meeting, is the staff is being exercised
3 over a process issue: what we can or cannot put into
4 a generic letter. You've seen two different
5 versions of the letter, and I'm sure it appears
6 frustrating to you that we've been whipsawed over
7 this. And it's doubly frustrating to the staff.

8 But just to recap. The public comment
9 version was geared for establishing compliance with
10 50.46, and it was an information request. Much of
11 the public comment we got was suggesting that, look,
12 let's call a spade a spade. This is a back-fit.
13 Just tell us what you want us to do. So it was
14 based on much of that comment that we revised the
15 generic letter and came to the subcommittee with
16 that version that was written towards -- based on a
17 back-fit, and asking for action to be taken. And
18 then during subsequent review by our OGC staff, they
19 concluded it was too much like an order. And we
20 wound up modifying it, taking it back closer to the
21 original version which was an information request
22 back to a compliance orientation. And so that's
23 what we briefed the full committee, on that version.

24 Now, we have -- I have Rob Elliot here.
25 We've uncovered a policy paper that was written back

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 in 1999 that's just been passed out which tends to
2 provide us some flexibility. It seems to us that it
3 provides us some flexibility that would enable us to
4 do either one of these two approaches. And we have
5 that under active consideration right now.

6 DR. SHACK: I would point out the
7 website on generic communications, generic letters,
8 says that the first purpose it gives to a generic
9 letter is to, you know, you can request
10 calculations.

11 MR. HANNON: Understood. If I could,
12 I'd like to let Rob try to explain the origin of
13 that and how we came to where we are.

14 MR. ELLIOT: This is Rob Elliot.
15 Basically, back in 1999 we decided to put out some
16 changes to our generic communication process in
17 order to clarify them. There had been a number of
18 stakeholder comments. There was confusion about
19 differences between a bulletin and generic letter.
20 I'm sure many committee members probably remember
21 that because we probably came to you all with this
22 paper when we wrote it. And at the time we sent a
23 paper to the Commission where we indicated what the
24 purposes of each generic communication were, and the
25 process we would use for putting out generic

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 communications.

2 And for some reason there seems to be
3 some confusion about whether or not requesting
4 action in a generic letter is something we can do.
5 But if you read the Commission paper that we handed
6 out to all the members, you'll see that it's clearly
7 stated on Page 3, where it talks about bulletins and
8 generic letters that both of those can request
9 either action or information.

10 And what we said is we recognize that
11 even though we're requesting action, the industry
12 perceives requested action as the actual
13 implementation of a regulatory burden. And so we
14 committed at that time to performing a limited cost-
15 impact analysis as part of doing the back-fit
16 analysis for the generic letter or bulletin. So we
17 revised our process a little bit, but we reserved
18 the right to request action, if need be, through
19 generic letters.

20 We took this to OGC yesterday, and we
21 were not able to get a decision from them as to
22 whether they agreed that we could use the generic
23 letter that we brought to the subcommittee. We are
24 tempted to go that way. They asked for a little bit
25 more time to be able to review both the information

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 we gave them on the policy paper and what they had
2 commented on before, before they would come up with
3 a decision. And so we felt it necessary to come to
4 you, explain to you what we are trying to do so that
5 you wouldn't be surprised.

6 John?

7 MR. HANNON: So I'd like Dave now, if he
8 would, to try to explain our next steps and where we
9 would like to go with this.

10 MR. CULLISON: Yes, I'm Dave Cullison
11 from the staff. What we're trying to I guess get
12 from you all today is -- since we don't have a
13 definitive OGC decision on whether we can ask for
14 action or not -- is that the committee make a
15 recommendation on which path we should go, whether
16 the information-only path, or the required action
17 path, if possible. Requested action path, that's
18 correct. We can't require an action.

19 DR. WALLIS: These are procedural
20 matters that we don't usually advise about.
21 Process. We don't usually give advice about this
22 kind of thing.

23 CHAIRMAN BONACA: You are going to
24 lawyers to get advice on how in fact you are doing.
25 It is for us to comment to that to make sure you get

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 it.

2 MR. HANNON: As an alternative to
3 actually commenting on which our preferred path
4 would be, what we would be seeking is a letter from
5 you to tell us to go ahead and issue one form in
6 this generic letter. Because we need to do that in
7 order to move forward towards a resolution.

8 CHAIRMAN BONACA: I think something has
9 to be issued. Something has to move. I understand
10 the concern is the issue of compliance. Compliance
11 with what? Compliance with the current
12 requirements. They are required to be complied
13 with. Or compliance with the intent, which is the
14 way of providing cooling. And now I certainly think
15 that the committee wants to see the units complying
16 with intent. And so there has to be some movement.
17 But I'm puzzled because you may remember during the
18 presentation, at the end we had a statement from NEI
19 that took exception with the generic letter. They
20 seemed to prefer the regional approach. I don't
21 think they were attempting to simply get compliance
22 with current requirements.

23 Do you have some insights on why they
24 would think that way?

25 MR. HANNON: Well, it's a process issue.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 It turns on whether we're going to be asking a
2 licensee to put themselves on report or not. And
3 that's objectionable. And we can deal with that as
4 a process issue. There are ways we can enable a
5 licensee to make changes to their plant while they
6 are still are obliged to comply with their current
7 licensing basis. And once those changes have been
8 implemented, they can adopt a new licensing basis,
9 and wouldn't have to address that compliance
10 question. And that was the way the subcommittee
11 version was geared, to not have to have. And that's
12 why, you may recall, that NEI didn't object to that
13 version of the letter.

14 CHAIRMAN BONACA: Okay. The other
15 question I have, the second question I have is
16 what's the benefit of issuing a letter now when
17 there is no NEI guidance behind at the same time. I
18 mean, the letter is going to sit there.

19 MR. HANNON: That's a valid question.
20 And our approach has been to get this information
21 out as soon as we had it available, as soon as it
22 was ready. We've always had it on the schedule to
23 be published in August, late August, I think it's
24 the 23rd of August. And recognizing that the
25 methodology review would be completed at a later

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 time. It's now scheduled for the end of September.

2 And we took the comments that we got
3 during the public comment period, which suggested
4 that we should key the response date on the actual
5 publication of the SE methodology. And we're going
6 to do that, and that has been built in to both
7 versions of the letter.

8 MR. ROSEN: I guess you really didn't
9 answer that question, except that's -- your answer
10 was 'That's the way we want to do it. We want to
11 get it out as soon as we can,' even though you've
12 acknowledged that there's nothing licensees can do
13 with it till they get the guidance. So it seems to
14 me impractical to ask licensees to respond through a
15 question and compliance when they don't have the
16 guidance to determine whether they're in compliance
17 or not.

18 MR. HANNON: Agree, and that's the
19 benefit of using the subcommittee version, because
20 it doesn't ask for the compliance question to be
21 addressed.

22 CHAIRMAN BONACA: And so in fact you're
23 requesting some information at a later date.

24 DR. WALLIS: So you want a kind of carte
25 blanche letter that says issue any kind of generic

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 letter that you eventually are satisfied with?

2 MR. HANNON: We have two versions.

3 We're going to go with one of them.

4 DR. WALLIS: But it seems to me there
5 might well be a third one. The way this thing is
6 bouncing around, there might be some kind of
7 compromise which might not appeal to us at all. I
8 don't know. I can't tell. We don't know what it's
9 going to be. You're looking for approval of a
10 letter that we haven't really seen.

11 MR. ROSEN: Which we haven't seen any
12 public reaction to, obviously, because they can't
13 react to something they haven't seen either. You
14 know, I always take into account what the public and
15 the other stakeholders say before I would venture a
16 response. So here I'm going to be, as part of the
17 committee, asked to do that without any input from
18 stakeholders, people affected.

19 MR. HANNON: You have had input from the
20 stakeholders on the one version of the letter, the
21 one that had the compliance orientation with an
22 information request. And that's why we came to the
23 subcommittee with a different version, the one that
24 addressed those two issues. So that's our preferred
25 pathway. And there may be some modifications, but I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 would not consider them to be significant. That
2 comes from CRGR. Because we are going to have to
3 take that version to CRGR for approval. So they may
4 have some wordsmithing, but I wouldn't expect it to
5 be significant.

6 DR. WALLIS: Well, the original draft
7 that I wrote for the letter that the committee might
8 have approved, I did say that the subcommittee
9 thought that the version that we saw was an
10 improvement, because it actually specified actions,
11 and it asked for specific calculations. And that
12 all seems to have disappeared from the next version.
13 We rather liked the idea of saying thou shalt do
14 these specific things, and use some guidance, and
15 come up with some mechanistic predictions and so on.
16 That seemed to disappear.

17 MR. HANNON: That's our preferred path
18 now.

19 DR. WALLIS: That's our preferred path
20 too, if we got the chance to influence the outcome.

21 MR. ELLIOT: This is Rob Elliot again.
22 But I guess that gets back to what we originally
23 asked, is whether you could endorse a specific path
24 or both paths. And it's my understanding the
25 committee doesn't normally comment on that. We

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 would welcome you taking an exception to the rule
2 though.

3 DR. WALLIS: Well, from the technical
4 point of view, it's nice to say some technical
5 requests rather than this vague thing about go out
6 and show compliance in some way or other. And I
7 think NEI liked the idea of using this -- I mean,
8 this whole thing has driven their effort, which
9 seems to be a good faith one, to produce a guidance
10 aimed at responding to the subcommittee version of
11 the letter.

12 MR. HANNON: We don't have anything
13 further, unless you have any questions or comments.

14 DR. WALLIS: You haven't been to CRGR
15 yet?

16 MR. HANNON: That's correct. We're
17 scheduled.

18 DR. WALLIS: They may do something else
19 with this letter.

20 MR. HANNON: We want to take the
21 subcommittee version to CRGR. We're scheduled to do
22 that on the tenth of August.

23 CHAIRMAN BONACA: We don't know what's
24 going to be in this letter.

25 DR. KRESS: I think we can assume it's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 pretty much like the subcommittee letter.

2 MR. ROSEN: How about the letter you
3 just gave us? It starts with --

4 DR. KRESS: It's pretty much like the
5 subcommittee letter.

6 DR. SHACK: If OGC will agree to it.

7 DR. KRESS: Well, that's --

8 MR. ELLIOT: One thing I forgot to
9 mention is this policy paper that we sent forward in
10 1999 was concurred in by Karen Cyr of OGC. So we
11 believe we're conforming with it, it's just a matter
12 of convincing the working level who want to consult
13 with their management that this is appropriate. I
14 can't say absolutely we think we're going to end up
15 with that product, but we think we have a strong
16 basis for saying that the subcommittee product is
17 appropriate and consistent with policy.

18 DR. KRESS: What we could do if we like
19 that letter is say they should go forth with a
20 letter that calls for ... and spell out the things
21 that we think is going -- that letter will have.

22 DR. SHACK: We can't ask for them to do
23 something that's illegal.

24 DR. KRESS: It does look like -- we can
25 ask. If it turns out to be illegal, why it's just -

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 - can do anything they want to.

2 MR. SIEBER: When are they going to
3 issue it?

4 CHAIRMAN BONACA: Earlier in the year we
5 wrote a letter that said we have to move on, we have
6 to issue a document.

7 DR. WALLIS: Last year.

8 CHAIRMAN BONACA: Provide guidance, and
9 you have to do this, because it has to be fixed.
10 And consider all these elements. So already we came
11 up and said.

12 DR. KRESS: I think our letter should be
13 consistent with that.

14 CHAIRMAN BONACA: Why should we repeat
15 that? I mean, I'm afraid that in repeating that we
16 get caught into the discussion that is taking place
17 right now, which is totally not to do with the
18 elements of technical issues. Really it is to do
19 with compliance, what we should be doing. My only
20 fear is that we step in a minefield with some
21 opinions.

22 DR. KRESS: Well, I take a little
23 different view. This issue has significant safety
24 implications. We're allowed to weigh in on
25 significant safety implications, and I think we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 ought to tell them what we think ought to be done.
2 In spite of the fact there are process questions and
3 legal questions.

4 DR. SHACK: They're going to do the same
5 thing in either case. The question is whether it's
6 a matter of compliance, or it's essentially a case
7 of verbalizing the design basis. Now, NEI has a
8 very strong reason for not making it a compliance
9 issue.

10 DR. KRESS: Well, I think we ought to
11 skirt around that. You know, that's for these guys
12 to decide, for them to iron out. But in our letter
13 we can say we think we ought to ask for whatever we
14 think we ought to ask for. In my opinion it would
15 be pretty much like our letter that we had, the
16 first letter we had.

17 CHAIRMAN BONACA: Before we changed
18 anything. Which said this letter is a better
19 version than the earlier version.

20 DR. KRESS: Yes.

21 MR. ROSEN: What bothers me about this
22 is it starts off by saying this is the request that
23 addressees submit information to confirm compliance.
24 It's not bashful about that. It says.

25 DR. WALLIS: They're going to change

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that. They're going to go back to the old version.

2 MR. ROSEN: They are going to change
3 that? So what are we -- I don't know what I'm
4 supposed to be sending you a letter approving then.

5 MR. SIEBER: My question is --

6 MR. ROSEN: I thought this was what we
7 were talking about.

8 MR. HANNON: That's the version we
9 shared with the full committee, but the previous
10 version we shared with the subcommittee.

11 MR. ROSEN: Now I don't know what I'm
12 supposed to be --

13 MR. SIEBER: My question is just one of
14 form. If you don't require compliance, doesn't that
15 de facto make it a back-fit? Where a licensee could
16 then say I don't want to do that unless you go
17 through the cost-benefit business.

18 MR. HANNON: Well, that is correct. And
19 the version that we shared with the subcommittee did
20 treat it as a back-fit.

21 MR. ROSEN: Well, I guess I wasn't at
22 the subcommittee meeting, so I'm not sure whether --

23 MR. SIEBER: I wasn't either. On the
24 other hand, if you get into that, I'm sure that if
25 it is a \$3 or \$4 million change for each licensee

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that they'll say it's a back-fit. You know, do the
2 cost-benefit. And then you'll be stuck.

3 DR. KRESS: No, it's a compliance back-
4 fit. You don't have to do a cost-benefit on that.

5 MR. SIEBER: If it's a compliance issue,
6 you ought to say it.

7 MR. ELLIOT: In 1999, we committed to
8 even if we were using the compliance back-fit, to do
9 a limited cost-benefit analysis. So we are doing
10 that analysis.

11 DR. KRESS: But you just do it for
12 information.

13 MR. ELLIOT: Right.

14 DR. KRESS: But, you know, clearly this
15 is a question of compliance with the spirit of that
16 law. And I would call it a compliance back-fit.
17 The spirit of the law is clear. You've got to
18 provide long-term cooling. And I don't care if the
19 guidance they had before is wrong or what. That's
20 the spirit of the law.

21 MR. SIEBER: Well, the original guidance
22 --

23 DR. SHACK: The way they ask the
24 question is very different in the two generic
25 letters. Any action that they require the licensee

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 to take will be a compliance back-fit, but the way
2 they ask the question is quite different. Which is
3 why NEI --

4 DR. KRESS: They're asking whether or
5 not if they're in compliance.

6 MR. ROSEN: Does OGC agree that this is
7 a compliance issue?

8 MR. CULLISON: This is Dave Cullison.
9 OGC does agree that it is a compliance issue, at
10 least on the high level, like we're discussing.
11 There is a requirement for long-term cooling. The
12 question here is that whether or not when they
13 perform an analysis, if they perform an analysis
14 under the information letter, that they have to
15 compare their current configuration against this new
16 information, and determine if they're in compliance
17 today. Or can they do this analysis, determine what
18 their configuration should look like, implement
19 those, update the licensing basis, and then
20 determine compliance. And it's a matter of I guess
21 you could say timing, when they determine -- when we
22 ask the compliance question.

23 The letter that was sent out for
24 comment, the draft comment, which -- the letter we
25 presented to the full committee, they're very

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 similar. The implication there is that we're asking
2 for compliance on their current configuration based
3 on this new information.

4 MR. LARKINS: Compliance with?

5 MR. CULLISON: 50.46 v.5.

6 MR. LARKINS: Based on what information?
7 Based on the original licensing information or based
8 on current information?

9 MR. CULLISON: No. From what was coming
10 out of GSI 191, the current information. There's a
11 current licensing basis for a lot of the plants, the
12 50 percent blockage. And they're in compliance with
13 their licensing basis, that licensing basis, today.

14 MR. LARKINS: That's what they said in
15 response to the bulletin.

16 MR. CULLISON: Right. And we're coming
17 back saying, well, that analysis, the guidance that
18 we presented years ago which drove the 50 percent
19 blockage is -- we have issues with that now, that it
20 doesn't accurately model sump performance.

21 MR. LARKINS: So the staff is changing
22 its position on the appropriate guidance to use in
23 determining compliance with 50.46(b)(5).

24 MR. CULLISON: Right.

25 MR. LARKINS: And the reason that was

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 called a back-fit? Why doesn't the staff just
2 follow the back-fit process?

3 MR. CULLISON: This is a compliance
4 exception in that, as with discussions on OGC on
5 this issue, that this information -- it's one of
6 these issues where if we'd known this information
7 when we issued the original guidance, we would have
8 included it.

9 DR. KRESS: We shouldn't constrain the
10 Commission and the Agency to fix things that are
11 basically safety problems that don't meet the spirit
12 of the law just because they gave some bad guidance
13 at one time. If they know better now, well they
14 ought to be able to go back and fix it without going
15 through the cost-benefit issue of a back-fit. If
16 it's a problem, fix it.

17 MR. ROSEN: As long as the licensees
18 know how to fix it, that's fine.

19 DR. KRESS: Well, right now I would say
20 the letter ought to say --

21 DR. POWERS: Why is it the NRC's
22 responsibility to tell them how to fix it?

23 MR. ROSEN: Because they took on the
24 burden originally to tell them how to design.

25 MR. SIEBER: No.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 DR. KRESS: No. And of course what
2 they'll do is use the NEI guidance, and that'll
3 become the ad hoc way to fix this. That's all right
4 with me. I just want to get going with something.

5 MR. SIEBER: I'm still struggling with -
6 - I even struggle with the 60 days after the
7 guidance appears clause in the letter. Why is it
8 the NRC's responsibility?

9 MR. LARKINS: Licensees are responsible
10 for showing compliance with 50.46.

11 MR. SIEBER: That's exactly right.

12 MR. LARKINS: The staff gave them one
13 way to do it, okay, and they generally followed
14 that. Some of them did not, not necessarily, but
15 most of them did. And now you're giving them
16 another way to do it. If you think that the way
17 that they have done it is incorrect, then I would
18 think you'd be in an enforcements phase. What do
19 the enforcement people say about this?

20 MR. SIEBER: I think that's raising a
21 red herring here. I think you have discovered
22 something. It says what everybody was thinking in
23 the past is probably not correct. Now we know
24 something more. Not as much as we would like to
25 know, but we know something more. Does it seriously

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 affect your plant or not. Okay? Now, Question
2 Number 1. If it does affect your plant, what can
3 you do about it? Question, Number 2. Question
4 Number 3 is what will you do about it.

5 DR. KRESS: I think the letter ought to
6 ask for that --

7 MR. SIEBER: And I'd say do it right
8 now. And if any --

9 MR. LARKINS: 50.46 says what you have
10 to do.

11 MR. SIEBER: And what it says is you've
12 got to assure long-term cooling. Okay, now the
13 question is by asking them can you, in light of the
14 additional information we have.

15 MR. LARKINS: Right.

16 DR. WALLIS: 50.46 says you have to take
17 -- immediately take the appropriate action. It's
18 very clear.

19 DR. KRESS: I don't know about the
20 immediate. I don't think this is an urgent issue.

21 MR. LARKINS: If a vendor doing a LOCA
22 calculation discovers that the peak cladding
23 temperature is 2202 degrees, and somebody signs off
24 and says, yes, this is the number, a licensee is
25 obliged to take immediate action to bring that plant

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 in compliance with the 2200 criteria.

2 DR. POWERS: Okay, now tell me what
3 immediate is. Does that mean within one nanosecond?
4 No, it does not. Does that mean within one day?

5 MR. LARKINS: Listen to the plant
6 person. What does he say?

7 MR. SIEBER: It's one hour.

8 MR. LARKINS: One hour.

9 MR. ROSEN: That's a tech spec word
10 "immediate".

11 MR. SIEBER: You have to reduce power.

12 MR. LARKINS: What they usually do, the
13 vendors, is they have something else that they can
14 either -- Well, what I'm telling you is, I'm telling
15 you what they do when they go over 2200 degrees.

16 DR. POWERS: There's no question of 2200
17 degrees right now. It's a question of long-term
18 cooling right now. Stay on the topic, please.
19 Please stay on the topic.

20 MR. LARKINS: Long-term cooling is the
21 last of the five criteria in 50.46. The criteria in
22 50.46 are 2200, 17 percent, hydrogen generation --

23 DR. POWERS: Would you please --

24 MR. LARKINS: -- and long-term cooling.

25 DR. POWERS: I'm not going to talk with

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 you anymore if you're going to be off the topic.

2 DR. WALLIS: Well, he's using them as
3 examples of other regulations.

4 DR. POWERS: I think it's an
5 inappropriate example, okay? Now, you've discovered
6 that you don't have the capability of long-term
7 cooling. Okay. The request is that you immediately
8 fix it. We have a risk-informed regulatory machine.
9 That means based on risk considerations, we can
10 define what immediate is. And we've done so,
11 effectively.

12 DR. KRESS: I think that's the way to
13 view this thing.

14 DR. WALLIS: But there's -- I mean you
15 haven't used much risk information in resolving
16 this.

17 DR. KRESS: Well, all we know is it's
18 not that big of a deal from the standpoint ...

19 DR. WALLIS: Well, it's all hearsay. I
20 mean, the bulletin said either show that you're in
21 compliance or take other actions. And only one
22 plant fixed the sump. The others took a lot of
23 actions, which were quite varied I understand.

24 MR. SIEBER: How do you know one plant
25 took?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 DR. WALLIS: Now, what was the measure
2 of safety achieved by all these other actions? Did
3 it make the problem go away or not? We asked for
4 specific measures of success of these other actions
5 at the subcommittee meeting, and it seems to be a
6 qualitative thing, rather than saying, yes, they
7 reduced the CDF to the point where it doesn't
8 matter, or something like that.

9 DR. SHACK: No, they reduced it to the
10 point that they think they can wait until 2007.

11 DR. WALLIS: Well, it doesn't matter
12 today, then. It doesn't matter that we don't take
13 immediate action today. They all did that?

14 DR. SHACK: All licensees have responded
15 with their actions. We have them under review.

16 DR. WALLIS: They're still under review.
17 So we don't know what --

18 MR. HANNON: We don't know the full
19 extent. But we do know that of the plants that we
20 have reviewed, they have taken action.

21 DR. KRESS: A lot of those actions are
22 going to be difficult in a PRA space.

23 DR. WALLIS: The original imperative
24 came from the suggestion that the CDF was really
25 quite hot. And it was these other actions that made

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the problem seem less immediate.

2 DR. KRESS: If we still thought it was
3 that high, we would classify this as urgent.

4 DR. WALLIS: There would be an order or
5 something.

6 DR. KRESS: I think that we've decided
7 is not correct information. And if the CDF effect
8 is such that we don't have to call it urgent, we can
9 do it on a measured basis. But I agree with Dana's
10 line of thinking on this.

11 DR. WALLIS: It's the line of thinking
12 that a member of the public might have, essentially.
13 A sensible member of the public.

14 DR. KRESS: It might be the view of a
15 member of the public, but it seems to me like the
16 appropriate view.

17 DR. WALLIS: I had a question about
18 50.54(f), which is cited in the second version here.
19 In this 1999 document you've just given us, it says
20 that generic letters will typically not invoke
21 50.54(f) unless the NRC has been unable to obtain
22 needed information through other means. So if you
23 invoke it, licensees are going to come back and say
24 why are you doing this.

25 MR. CULLISON: We did have some public

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 comments on the 50.54(f) from the NUBAR, the
2 industry's tactic group. And when we went through
3 the OGC this time with the letter, we originally
4 went up to them without a reference to 50.54(f), and
5 their recommendation was to put it back in to make
6 our request stronger.

7 And all these legal issues, we are
8 deferring to OGC.

9 MR. ROSEN: Well, that's not a legal
10 issue, that's a judgment issue. I mean, to make it
11 stronger is not a legal issue. Just their judgment
12 is it should be stronger. I don't agree that's a
13 legal.

14 DR. KRESS: Well, you're not always --
15 you're not constrained to actually do what the
16 public comments ask for. You just take them into
17 consideration. Then you do what you think is the
18 right regulatory approach. You know, you can take
19 these into consideration and see if it's the right
20 thing to do, but I don't think you're constrained to
21 do what the public comments say you have to.

22 DR. WALLIS: I guess we could write you
23 a carte blanche letter and say we're in favor of
24 issuing a generic letter. We've seen various
25 versions. Any one of these would be acceptable to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 us in order to get things rolling. Thank you very
2 much.

3 DR. POWERS: You're thinking very highly
4 of yourself today.

5 DR. WALLIS: A one-page carte blanche.

6 CHAIRMAN BONACA: I would be willing to
7 consider a letter if we make the point that there
8 are different versions being evaluated right now of
9 the communications, and that we are not making a
10 judgment on the way it's going to happen. Simply
11 that we believe there should be a communication,
12 follow the appropriate guidance, so that the
13 licensees can move on and fix this problem.

14 DR. KRESS: I think -- I would be more
15 specific on what the letter ought to ask for. It
16 ought to ask for the things Dana mentioned. It
17 ought to ask for them to make an evaluation whether
18 they're in compliance with the spirit of the law.
19 And if not, tell us what they're going to do about
20 it, and when. And I'm sure they'll use the NEI.

21 MR. ROSEN: The bulletin's already done
22 that.

23 DR. WALLIS: That's why we said the
24 second version was good.

25 DR. KRESS: Well, why do we need another

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 letter?

2 DR. WALLIS: It's appropriate for the
3 purpose of gathering information to confirm
4 compliance.

5 DR. SHACK: Because you don't want to
6 rely on those compensatory actions forever. You
7 know, you've reduced your risk to some sort of
8 manageable state that doesn't require an immediate
9 shutdown or downgrading of all PWRs, but you want to
10 take some -- the further action.

11 DR. KRESS: I don't see that that says
12 are you in compliance with the spirit of the law.
13 They're only going to do that if they do the NEI
14 calculation.

15 MR. SIEBER: Which are undefined.

16 DR. KRESS: That's the part I'm saying
17 they have to decide whether they're in compliance
18 with the spirit of the law according to the NEI
19 methodology. And that's what I would ask for. If
20 they are, okay. If they're not, fix it, and tell us
21 how you're going to fix it. That's different than
22 the bulletin, I think.

23 DR. SHACK: Well, that's different than
24 the bulletin, yes.

25 DR. KRESS: I think that's what Dana was

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 asking.

2 DR. SHACK: He's happy with the second
3 version of the letter, the original version.

4 DR. KRESS: I think that's the one I'm
5 happy with.

6 DR. WALLIS: We could take our "yes"
7 letter, and we could simply rewrite the paragraph
8 which says that the latest version we've seen is
9 okay, and we could also say that the other version
10 was okay, and in fact we prefer the way in which it
11 specifically mentions the calculations to be
12 performed. Then the "yes" letter would go simply as
13 it is, essentially, with a few changes.

14 DR. KRESS: Yes, I think that would be
15 good.

16 DR. FORD: In this 1999 thing, it says
17 here under generic letters, "Generic letters will
18 not be issued without prior staff interaction with
19 industry and public." Do I assume, therefore, that
20 the version that we saw yesterday, will it be in
21 fact discussed with NEI?

22 DR. SHACK: It looks like the one that
23 went out for public comment. It's certainly been
24 discussed.

25 DR. FORD: No, the one that we saw at

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the Thermal Hydraulics Subcommittee meeting had been
2 discussed.

3 DR. SHACK: No.

4 DR. FORD: Yes?

5 MR. ELLIOT: That was a version that was
6 changed in response to public comments.

7 DR. FORD: We received a copy of a --
8 we've seen two before the one yesterday.

9 DR. SHACK: Right. Let's review --

10 DR. FORD: Let me tell you what I
11 understand, Bill. The one that we saw and we
12 essentially -- we agreed upon technically, and which
13 the industry said "no problem" is the one that we
14 looked at in Thermal Hydraulics.

15 DR. WALLIS: It's this one that has the
16 blue lines and the red additions and things. That's
17 the one.

18 DR. SHACK: No. Prior to that.

19 DR. WALLIS: The one before. That was
20 like that.

21 DR. SHACK: Take all the blue lines and
22 additions out of that one.

23 DR. FORD: And that's the one --

24 DR. WALLIS: That's right.

25 DR. FORD: -- that the public agreed

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 with?

2 DR. SHACK: No, because that wasn't the
3 one that went out for public comment. That was
4 created in response to the public comment.

5 DR. FORD: Well, let me ask the
6 question. The one that we saw yesterday that we're
7 supposed to be pronouncing on has not -- there's
8 another factor. The one that we saw yesterday has
9 not been discussed with the public?

10 DR. SHACK: That's correct.

11 MR. ELLIOT: Not specifically.

12 DR. SHACK: Not specifically.

13 MR. ELLIOT: Though it's very similar to
14 the first version.

15 DR. FORD: But that's the one that Tony
16 Patrianni, they all went crackers over.

17 DR. SHACK: That's what Tom says. You
18 have to listen to the public comment.

19 DR. FORD: Was that meant to be the
20 public comment? He hadn't even seen it.

21 DR. SHACK: He had seen the original
22 version, which is the one they had the public
23 comment on, which was very much like that final one.

24 MR. ROSEN: That's what you say, but the
25 public hasn't had a chance to agree with that.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. ELLIOT: I don't think the
2 Commission paper meant to imply that we would, every
3 time we changed the generic letter, try to go out
4 and get public comment again. I don't think that
5 was the intent.

6 DR. SHACK: It's an absolutely, invert
7 iterative process.

8 DR. WALLIS: It would go on forever.

9 MR. ELLIOT: It was meant to say, you
10 know, that we would solicit public comment on first
11 draft, and then we would revise it.

12 DR. WALLIS: Well, let me try something.
13 Suppose we wrote you a letter which said if you have
14 all these uncertainties, you really shouldn't send
15 this letter right now. You should wait, and you
16 should sort things out, and you should also wait
17 until the guidance has been approved, and then you
18 could have a nice package which can go, and it's all
19 clear what they have to do.

20 MR. ROSEN: Then we can see it, and so
21 can the public. And then we can --

22 DR. WALLIS: Would that throw a wrench
23 into your work somehow?

24 MR. HANNON: It would just mean a delay
25 in the issuance of the --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 DR. WALLIS: Why is that a critical
2 thing?

3 MR. HANNON: Again, it --

4 DR. WALLIS: You get whipped if you
5 don't meet a schedule or something?

6 MR. HANNON: We're attempting to get
7 this out of our -- off our plate so we can focus on
8 the methodology. As long as this is continuing to
9 bounce back and forth it's a diversion, and keeping
10 some of our staff occupied that could otherwise be
11 working on the methodology.

12 MR. ROSEN: So we're doing it to make
13 the staff's processes work better. And the balance
14 of that is it will create quite a bit of difficulty
15 in the industry because the question of compliance
16 comes into play.

17 MR. HANNON: Not if we issue the version
18 that was discussed with the subcommittee, which is
19 our preferred path.

20 MR. ROSEN: But that's the version I
21 haven't seen, I guess.

22 DR. WALLIS: You haven't seen that one?

23 MR. ROSEN: No.

24 DR. KRESS: Somebody get him a copy of
25 that.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 DR. SHACK: It was sent to you. Just
2 look in your packet.

3 DR. WALLIS: It's this one that has all
4 the lined out because they changed it.

5 DR. SHACK: No, it's not that one,
6 because I think --

7 DR. WALLIS: No, it's the one before
8 that.

9 MR. ELLIOT: We can bring extra copies
10 of the second version.

11 DR. WALLIS: Well, you see the problem
12 my colleagues have is those who weren't at all the
13 meetings don't know what it is they might be
14 approving.

15 DR. FORD: I don't know. In terms of --
16 There was a version issued which we discussed at the
17 Thermal Hydraulics meeting where the guys from NEI
18 said, yes, we are happy with this, and looked at all
19 the legal aspects, the technical aspects. Everybody
20 said fine. The thing we saw yesterday was not that
21 document. And that's what I'm concerned about.

22 DR. KRESS: That's because OGC didn't
23 say fine.

24 DR. FORD: Exactly. Exactly.

25 CHAIRMAN BONACA: My understanding was

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that this was the original letter.

2 DR. WALLIS: No, no, no. That is about
3 Version 5 that was lined out. We have seen several
4 things. It's evolved through this whole period.
5 The one in there is not the same.

6 DR. SHACK: I believe if you take all
7 the line-in/line-outs out of that one, you have the
8 subcommittee version.

9 DR. WALLIS: Do you?

10 MR. LARKINS: I'm not sure. Let me ask.
11 The comparative tech version is compared against the
12 subcommittee version or comparative against the
13 original version that went out for public comment?

14 MR. HANNON: The subcommittee version.

15 MR. LARKINS: Okay, that's good then.
16 Okay, yes.

17 MR. CULLISON: And I have a copy of the
18 subcommittee version that we can make copies for and
19 give you immediately.

20 MR. LARKINS: Then, if you take the
21 line-in and line-out version --

22 MR. ROSEN: And read only the line-outs,
23 though.

24 MR. LARKINS: Read the line-outs, and
25 then you've got that version.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. ROSEN: Read the line-outs, but not
2 the red inserts.

3 DR. FORD: Have you got a sample of that
4 version?

5 MR. ELLIOT: Well, we can get you a
6 clean version to make it easy on your eyes.

7 DR. WALLIS: I'm not sure we have
8 exactly that version, but it's very similar to the
9 subcommittee version.

10 DR. SHACK: I never verify exactness.

11 DR. WALLIS: There may be a semicolon.

12 MR. SIEBER: Yes, the more we discuss
13 it, the more I think --

14 DR. SHACK: Does it have requested
15 action?

16 DR. WALLIS: Oh, that's the first
17 original. Request to perform evaluation is the
18 first. It should be in here. We didn't have this
19 at the time the package was put together.

20 DR. SHACK: Now, this is not the -- this
21 is the subcommittee.

22 MR. ELLIOT: Theron's making copies for
23 the committee right now, the subcommittee version.
24 No, we're going to bring it in to you in just a few
25 seconds here.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. ROSEN: I get lots of questions
2 wrong even when I know what they are. It would help
3 a lot if I knew what the question was. Then I have
4 a chance of getting --

5 DR. WALLIS: Well, let me make a
6 proposal here that we take and send the --

7 CHAIRMAN BONACA: I think we should
8 first of all --

9 DR. WALLIS: Discuss this?

10 CHAIRMAN BONACA: Yes, get off -- at
11 this point get off the record and thank the staff
12 for their input. I think we understand the
13 situation now. And then we'll make a decision. We
14 may have to take this off.

15 DR. WALLIS: John, may I ask you if
16 anything changes between now and eleven o'clock or
17 something that you come back?

18 (Laughter)

19 MR. HANNON: We'll be sure and do that.
20 Thank you, sir.

21 MR. SIEBER: Why wait so long, it could
22 flip four or five times.

23 MR. LARKINS: John, when do you expect
24 to hear from OGC?

25 MR. HANNON: They're working on it right

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 now. We got their attention last night, so
2 hopefully very shortly.

3 DR. WALLIS: So there might be new
4 information.

5 MR. ROSEN: There might be something
6 before eleven o'clock.

7 MR. SIEBER: -- have OGC come down here?

8 MR. HANNON: There was some interoffice
9 communication that had to take place, so I can't
10 predict on how long that's going to take. It may be
11 that they weren't able to get to Karen Cyr. And if
12 that's the case today, then we have to go into next
13 week.

14 MR. ROSEN: Did everybody find a copy of
15 the subcommittee version? They say they're making
16 copies of it.

17 MR. SIEBER: Well, you can get it off
18 the computer.

19 CHAIRMAN BONACA: Okay.

20 DR. WALLIS: Can also we hear from the
21 members who haven't expressed an opinion yet?

22 MR. SIEBER: He's handing out a
23 different letter.

24 CHAIRMAN BONACA: We can go off the
25 record. So we're going to go off the record. Thank

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 you.

2 (Whereupon, the foregoing matter went
3 off the record at 9:14 a.m.)

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25