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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BRIEFING BY STAFF ON INDUSTRY
RESTRUCTURING AND DEREGULATION

PUBLIC MEETING

Nuclear Regulatory Commission
Commissioners Conference Room
One White Flint North
11555 Rockville Pike
Rockville, Maryland

Friday, January 5, 1996

The Commission met in open session, pursuant to notice, at 10:05 a.m., the Honorable SHIRLEY A. JACKSON, Chairman of the Commission, presiding.

COMMISSIONERS PRESENT:

SHIRLEY A. JACKSON, Chairman of the Commission
KENNETH C. ROGERS, Member of the Commission

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STAFF AND PRESENTERS SEATED AT THE COMMISSION TABLE:

J. HOYLE, SECY
K. CRY, OGC
J. TAYLOR, EDO
W. RUSSELL, NRR
R. WOOD, NRR

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P R O C E E D I N G S

[10:00 a.m.]

CHAIRMAN JACKSON: Good morning, ladies and gentlemen. This morning the Commission will be briefed by the NRC staff on its views on industry restructuring and deregulation.

It is imperative that the NRC be knowledgeable of the electric utility industry regulatory initiatives and other changes in the challenges they present. The electric utility industry is undergoing as you know substantial restructuring that is changing utility business practices.

The NRC must determine whether our current regulatory framework is fully adequate to assure continued safe nuclear operations and decommissioning or whether changes including rulemaking are necessary as a result of this changing business environment.

The Commission requested this briefing as a follow-on to the earlier meeting we had in December and requested the Commission be informed of staff proposed actions and response to the changing economic and regulatory climate. Commissioner Rogers, do you have an opening comments?

COMMISSIONER ROGERS: Not at this time, thank you.

CHAIRMAN JACKSON: Mr. Taylor, you may proceed.

MR. TAYLOR: Good morning. With me at the table

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are Bill Russell and Bob Wood from the Office of Nuclear Reactor Regulation. The presentation will be given by Bob Wood.

MR. WOOD: Thank you, Chairman Jackson and Commissioner Rogers. May have the first slide, please?

[SLIDE.]

MR. WOOD: Thank you. What I would like to do today is trace through first of all the background of the impetus for change and the move towards fuller competition and then I would like to talk briefly about the issues facing the NRC, particularly the nexus between the financial changes that are coming out of the deregulatory movement and nuclear plant safety, and then address current staff practice, trace through the process that we go through on the 50.80 transfer of control reviews, talk about the financial qualifications reviews both for operations and decommissioning, talk about the anti-trust review responsibilities under the Atomic Energy Act.

Then I will go into a brief history of the three power reactor licensees that have gone into bankruptcy and then finally I will talk about near, mid and long-term actions that the staff believes we need to take and these would reflect both our thinking independent of other input

but we would also bring out our reflections on the December 14th panel observations and recommendations.

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Second slide, please?

[SLIDE.]

MR. WOOD: With respect to the background, the Public Utility Regulatory Policies Act of 1978 or PURPA really was the initial impetus for the early start of the electric utility regulation movement. At that time independent power producers were formed as a way of increasing energy supply during the 1970's when the energy crisis was still very much in everyone's minds.

The Energy Policy Act of 1992 furthered this along. There was a requirement that FERC act at the wholesale level to provide non-discriminatory open access transmission. FERC issued their MEGA-NOPR, Notice of Proposed Rulemaking and Chair Moeller of FERC addressed this in the December 14th panel. According to her, FERC regulates about ten to 20 percent of NRC licensees.

The main impetus, however, from the deregulation movement I think it is primarily because of consumer perception that electricity rates are too high is at the state PUC level. California, in particular, has taken the initiative and recently came to a decision on phasing in retail wheeling from 1998 to 2003.

They also addressed the issue of stranded investment costs and they will allow that recovery of stranded investments up through 2005. They had a provision

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in their decision to disaggregate the electric utilities in California so that there would be a 50-percent spin-off of generation assets.

CHAIRMAN JACKSON: This initiative does not specifically deal with decommissioning funding?

MR. WOOD: That is correct. We haven't seen all the details yet but from the public releases we have seen, it didn't mention decommissioning. Of course, as more details come out we will stay on top of it. May I have the third slide, please?

[SLIDE.]

MR. WOOD: With respect to the issues facing the NRC we certainly want to be concerned about the effect that high cost or stranded assets resulting from increased competition will have on the safe operation and decommissioning, particularly will the owners of these higher-cost facilities become less willing or able to allocate adequate funds to their nuclear plants.

As you heard in the December 14th briefing, there is a difference between higher costs that arise out of embedded construction costs which may be able to be taken care of over accelerated depreciation and higher costs that arise out of operating costs which is probably a more serious problem.

Another issue is will deregulation and

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restructuring result in new types of owners and operators. We have already seen in the NRC corporate-wide nuclear service companies like the Entergy case primarily but there have been a few others. There may be hybrid owner/operators where independent or affiliated power producers begin to apply for NRC licenses and then finally there is the issue of foreign ownership. We haven't seen that yet. It is prohibited under our regulations in the Atomic Energy Act but we will have to address that if it comes up.

Will our regulations and policies apply to these new entities and if not, how should we change or revise our policies and requirements to address these new entities? We would have to address the issue will owners, new owners, be financially qualified under 50.33 requirements and will they meet the section 105(c) test of the Atomic Energy Act with respect to creating or maintaining inconsistencies with the anti-trust laws and finally concerning 50.75 and 50.82 where we have to re-visit our decommissioning funding assurance regulations. The fourth slide, please.

[SLIDE.]

MR. WOOD: I will briefly go into current staff practice on this slide and give an overview and there is a new slide coming up that I will address after this fourth slide on the 50.80 process.

CHAIRMAN JACKSON: We have copies, thank you.

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MR. WOOD: Good, you have copies. Over the past two years the NRC has conducted about 15 licensing reviews

under 50.80 involving mergers, restructurings and direct sales of reactors.

These are both for financial qualifications and for potential anti-trust changes. They typically involve license amendments and orders. Since 1984, the reviews have pretty much been pro forma since in 1984 the financial qualifications review at the OL stage was eliminated from our regulations.

Of the three general types of reorganizations, mergers seem to be the least problematic. We haven't found any mergers that would likely result in any sort of diminution of assets and we don't expect that that will happen in the future.

For recent restructurings involving holding companies, our concern of course is that once a holding company is formed, the parent might bleed off assets until only the nuclear plant is left.

Recently we have required either that the holding company be added to the license or the licensee has in some way committed to inform the NRC before significant assets are transferred from the licensee subsidiary to a parent or sibling or whatever. However, the licensees are not legally bound to tell the NRC of such transfers and I will get into

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some possible fixes to that later in the presentation.

CHAIRMAN JACKSON: Before you do that, how are the commitments documented currently?

MR. WOOD: Basically it is just a letter in writing. We have gone out and said the licensee will agree to inform us and they have come back with a letter saying, "Yes, they will do that." It is not a license condition.

CHAIRMAN JACKSON: But you are going to talk more about this you say?

MR. WOOD: Yes.

CHAIRMAN JACKSON: All right.

MR. WOOD: For sales of partial or full interest in power reactors, we have evaluated the financial qualifications of each buyer to determine that it will have adequate resources to operate and decommission and here as well we have done the anti-trust reviews. Now I would like the backup slide, please?

[SLIDE.]

MR. WOOD: With respect to the 50.80 transfer process, NRC must approve the transfers of licenses and rights thereunder whether they are made voluntarily or involuntarily, directly or indirectly. An application for transfer must include the financial qualifications as well as any other technical information that is germane to the transfer.

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The whole purpose of the 50.80 review was to determine which entity, the new entity or the parent entity or whatever, has actual or potential control over plant operations.

Staff evaluates the financial qualifications and anti-trust transfers by determining whether the new entity will remain an electric utility and that is defined in 50.2 of our regulations.

CHAIRMAN JACKSON: Let me stop you for a minute. The point though here is that when you mentioned in 1984 that our rules eliminated the financial qualification review at the operating license stage, that was for licensees that were defined as electric utilities.

MR. WOOD: That is correct.

CHAIRMAN JACKSON: All right. That is an important point in this discussion.

MR. WOOD: That is a very important point, yes. We also review the recent financial performance of the transferee or if the transferee is a new entity such as an operating company, we will evaluate the participation agreement or other agreement it has with its owner or other responsible party.

On the anti-trust side, most license conditions relating to anti-trust arose out of construction permit reviews that were done several years ago but we do get 2.206

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petitions requesting reinterpretations of those or challenges to behavior of a primary licensee. So that is an ongoing process as well.

We found that 50.80 is ambiguous on a few areas. For example, whether the formation of holding companies above a license is a direct or indirect transfer of control and we have to be very careful to define carefully which I

will get into later on that there doesn't become a situation of stranded responsibilities as Commissioner Rogers pointed out in December.

Obviously, we don't want to be interested in stock transfers on a small level or a de minimis level but if they are major bulk sales of stock, we may want to re-visit at what point we want to get involved in that. Then finally, transfers of other assets away from an existing licensee, we don't want to be in the situation where a licensee is sitting there and then assets are transferred away without our knowing it to the point where only the reactor is left without any other asset base.

Slide number five, please?

[SLIDE.]

MR. WOOD: The next two slides have a brief history of the three reactors that have experienced, power reactor licensees, that have experienced bankruptcy. Each of the three has sought bankruptcy protection under Chapter

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11 which is a voluntary reorganization. They have not tried to liquidate under Chapter 7 of the Bankruptcy Code.

The most famous one was, of course, Public Service Company of New Hampshire that declared bankruptcy in 1988 because of the problems associated with getting Seabrook licensed. They emerged from bankruptcy in May 1991 by merging with Northeast Utilities.

El Paso Electric Company sought bankruptcy protection in 1992, primarily as a result of excess power reserves and inadequate rate relief to cover the costs of power. They are a small, 15-percent owner of the Palo Verde facility. They are still in bankruptcy. At one point there was talk of a merger with Central and Southwest Corporation but that didn't come to fruition. Slide number six, please.

[SLIDE.]

MR. WOOD: With respect to both Public Service of New Hampshire and El Paso while they were in bankruptcy they paid all their operating and decommissioning costs. It was really the bondholders and stockholders that took the financial hit and not safety expenditures.

The third case is Cajun. However, because of Cajun's ongoing actions before our licensing board I don't want to mention any more because of ex parte considerations that you may become involved with.

CHAIRMAN JACKSON: Before you go further, the

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staff has not noted any operational impacts in these particular cases?

MR. RUSSELL: No. In fact, I was at River Bend and had discussions with the senior management of Entergy and the senior management at Gulf States Utilities, the 70-percent owners, and they assured me in that public meeting that there would be sufficient funds to operate and that they are covering the 30-percent of the operating costs which are not being provided at this time by Cajun.

Based upon the actual performance of the facility which has improved substantially since Entergy has been involved with oversight of operations, we have actually seen material condition improve and physical performance, actual performance of the facility improve and they are continuing to invest resources. For example, they are constructing office facilities, eliminating trailers and continuing to follow the financial plan that they had laid out to improve performance of the plant.

So we do not see any signs from a safety standpoint of impact of the financial debate that is going back and forth between the parties but we are involved in it and because it is in litigation we really can't discuss beyond that.

MR. WOOD: May I have slide seven, please?

[SLIDE.]

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MR. WOOD: We feel that there are several actions we can take in various timeframes to help solidify this process and correct some of the or clarify some of the ambiguities in the process. While we are doing that, I think we should continue to perform the 50.80 reviews of all power reactor licensee transfers of control for both financial qualifications and anti-trust.

One thing we have done, Bill Russell signed a memo on December 28th that elevated the signature authority for approving these 50.80 transfers up to his level, the office director level. One thing we would like to tell you, of course, is that if we do get any unusual or atypical

organizational arrangements, we will be sure to let the Commission know what these are and ask for your review or approval in those situations.

CHAIRMAN JACKSON: And that has been clearly codified in your procedures in terms of this notification of the Commission?

MR. RUSSELL: We have taken the first step with respect to changing our internal procedures as it relates to the authority, signature authority for granting a change in ownership or reorganization.

We will be revising our internal procedures as we are going to be discussing later to clearly define what the process is. We expect that that is going to take some time.

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We have not updated the Standard Review Plan in this area for a number of years.

That needs to be done and within that process, we will clearly define what will be the approach to a review where it qualifies as an electric utility and where we run into new organizational approaches or new issues, we would propose to follow something similar to what we did in the Advanced Reactor reviews, that is, we would bring the new issues or policy issues to the Commission and seek consultation with the Commission and we would codify that probably within five to six months as we do the review plan update.

So the short term action is basically a commitment from me to you that we will do this in the interim until we get the procedures written down or revised and that is why we elevated this to my level of authority within the Office.

CHAIRMAN JACKSON: So you are the one we have the chains on at the moment?

[Laughter.]

MR. RUSSELL: That's correct.

MR. TAYLOR: That is exactly right.

MR. WOOD: As Bill mentioned we will be developing an action plan for those types of activities and the other follow-on activities that I will be discussing in the next couple of slides. We expect to have that action plan by the

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end of January.

We also believe that we need to develop guidance on NRC financial qualifications and anti-trust processes to ensure that continued owner/operator responsibility for safe operation and decommissioning and we will be addressing as part of that the uncertainty of estimates as they may be affected by low-level waste costs or other factors in decommissioning.

Slide eight, please.

[SLIDE.]

MR. WOOD: More on the middle term, we want to evaluate the reporting requirements associated with 50.80 and also 50.81. If I could digress a second, the 50.81 process is really to look at creditor relationships and we have never seen any sort of major problem with that. We have gotten sale leaseback requests but typically these are not problematical so we haven't had any major activity in that but we still feel that we need to know about them so we want to re-evaluate the information we get under that type of review as well.

We want to look at structural changes to determine the need for either license conditions or a generic letter to ensure that the NRC is informed of all these types of changes.

CHAIRMAN JACKSON: Let me stop you for a second.

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From a financial structure point of view in terms of decommissioning funding, if you are looking at owner/creditor and other financial structures, is decommissioning funding subordinated relative to some other kinds of obligations, financial obligations?

MR. WOOD: Well, because they are not bonds or stock in the sense of a utility's capital structure it is considered a form of operating expense. So it would come out that way.

CHAIRMAN JACKSON: All right.

MR. RUSSELL: There have been some cases that have come up though where utilities have withdrawn funds from decommissioning funds during the course of a year and then put funds back in to re-establish that so there has been borrowing or movement between decommissioning funds within a utility.

We believe that these are the types of things that

we need to be informed of and so we are really looking at reporting requirements. When we talk mid-term actions, we may be looking at something like a generic letter that would go out to request information from licensees to inform us and we may need to look at this in the longer term through a rulemaking activity.

But we want to make sure that we have the information so that we can understand where there are any

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significant transfers of assets because as we indicated earlier we have only gotten letter commitments and only in a few cases and that there is no binding requirement that we be informed if assets other than the physical plant are transferred which relates to the ability of the company to raise funds to pay for future operations and decommissioning.

CHAIRMAN JACKSON: So basically what you are telling me is that in terms of what you will demand in terms of information will include information involving the decommissioning funds.

MR. RUSSELL: Yes, both transfers of assets which could affect the ability to have sufficient funds to operate in the future as well as anything which would impact the ability to put funds into the decommissioning area.

CHAIRMAN JACKSON: I think I preempted your next bullet point.

MR. WOOD: Yes, I think Bill has covered that so I will just skip on to the third bullet. We do believe that we need to consolidate and verify our information base both with respect to ownership of power plants and our anti-trust responsibilities so we will update the prior NUREGS on that.

One thing I should point out with respect to anti-trust, the staff has developed a generic anti-trust license

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condition for new non-owner operators that precludes an in-depth anti-trust review if the new operator is separated or divorced from the marketing or brokering of power or energy from the facility.

One thing we also believe we should consider doing is exploring a mechanism to develop an on-going staff level contact with FERC, the SEC and the appropriate NARUC staff subcommittees.

For example, we might consider requesting observer status on the appropriate NARUC staff subcommittees, the subcommittee on electricity, for example, and this would be in addition to Commissioner Rogers' contacts at the Commission level. We would also look at possible implementation of a Memorandum of Understanding with both FERC and the SEC on the division of responsibilities in that area.

CHAIRMAN JACKSON: All right.

COMMISSIONER ROGERS: I think that is a very good thing to do. It may be difficult to carry out. Some years ago we tried to establish something like that with NARUC and it just didn't seem to be, there just didn't seem to be points of contact that one could identify and lock-in to. One problem with NARUC is that there is quite a turnover of Commissioners and their staffs go with them. So that the staff, these committee staff members, are basically staff

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members of NARUC Commissioners so when the Commissioner goes, the staff disappears.

CHAIRMAN JACKSON: So goes the staff.

COMMISSIONER ROGERS: That has made it rather difficult for long term arrangements to develop but I think it is important to try to do this and I would suggest that in exploring this that you might look at, there are several university centers that have programs for new FERC Commissioners and staff members. I think Michigan State has one.

MR. WOOD: I think they are the famous one.

COMMISSIONER ROGERS: But I think there is another one as well. I know Harvard has some kind of a program. It might be that just exploring how to do this might be facilitated a little bit by some discussions with those groups because they have continuity, more continuity than NARUC itself has had.

CHAIRMAN JACKSON: Under the assumption though that FERC and SEC do have continuity.

[Laughter.]

COMMISSIONER ROGERS: Yes. I just didn't know how to deal with that.

[Laughter.]

CHAIRMAN JACKSON: I think the MOU route is an appropriate one. You indicated consideration. I would urge

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you strongly.

MR. WOOD: All right.

MR. TAYLOR: That is not one that we have broached at this point but it is one that we would like to pursue from the staff level.

MR. RUSSELL: Particularly in the context of identifying actions that may be being considered either as it relates to transfers of assets or ownership or things like that, that those kinds of issues generally would come up first with either FERC or with SEC and we typically get notification late in the process and so this type of information exchange would be useful.

CHAIRMAN JACKSON: The SEC has definite reporting requirements.

MR. RUSSELL: Yes.

CHAIRMAN JACKSON: That's good.

MR. RUSSELL: And they are also quite an open agency so just staff contacts to know where to look within their files that are publicly available so that we can stay cognizant of what is going on.

CHAIRMAN JACKSON: Yes.

MR. WOOD: Slide nine, please.

[SLIDE.]

MR. WOOD: We believe that there are some areas that need guidance. We have talked about this some already

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but I will reiterate some of the points now. We believe we really need to clearly delineate the NRC position on different ownership arrangements particularly new ones that arise, holding companies specifically but also operating/generating service companies, independent power producers, exempt wholesale generators and other hybrid companies or entities that may come along.

We want to make sure that everyone understands that the NRC will take any measures available under its licensing process to prevent reduction of assets necessary for safe operation and decommissioning.

We believe our initial licensing and decommissioning rules were predicated on the assumption that a minimum level of assets would be available and that power reactor licensees would either set their own rates or would have recourse to rate payers through their economic regulators. Restructurings that significantly reduce assets would be a violation of that assumption.

CHAIRMAN JACKSON: Since you raised that, do you feel that it is conceivable that there could be a situation where it would be prudent to invoke federal supremacy to prevent this?

MR. WOOD: Certainly in an extreme situation if we saw a direct impact on health and safety or potential impact on health and safety, we certainly would, I would think and

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I would defer to General Counsel on that, but I would think that we would have the authority under the Atomic Energy Act to do that.

MR. RUSSELL: I would clarify that if we find that there are not sufficient resources to operate, we certainly have the authority to order them to shut down.

CHAIRMAN JACKSON: Right.

MR. RUSSELL: Then the question becomes one as to whether there are sufficient funds available at that time to decommission and what is the ability and responsibility for decommissioning activities.

So I am less concerned about our oversight activities as they relate to safety of operations and the changes we are making in the inspection programs and other things to focus on operations because we do have the authority to shut down if we find that there are not sufficient funds or they are cutting corners in the operating area.

The area that is much more of concern is responsibility for decommissioning and whether sufficient funds for decommissioning are available.

CHAIRMAN JACKSON: That is why I asked the questions about decommissioning funding.

MR. RUSSELL: Those are the areas that we are going to continue to focus on.

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CHAIRMAN JACKSON: Thank you.

MR. WOOD: Slide ten, please.

[SLIDE.]

MR. WOOD: With respect to the longer term staff actions we believe are necessary I think we will probably need to strengthen 50.80 through rulemaking to make sure that it applies to all changes in licensees and owners that reduce assets or recourse to rate regulation or rate recovery.

We believe we should continue to assist the Office of Research in developing an Advance Notice of Proposed Rulemaking on enhanced decommissioning funding assurance for licensees that lose that rate regulatory oversight. This rulemaking is separate from the decommissioning cost rulemaking that you addressed in your December 20th memorandum, Chairman Jackson.

Depending on the staff analysis of the responses to the ANPR, we would of course then develop a proposed rule. At this point we see it following the general outline that was provided in SECY-95-223 on September 1st which would tighten the definition of "electric utility" and also require periodic reporting on the status of decommissioning funds.

We would look at some additional assurance mechanisms that we outlined in that SECY paper,

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certifications by ratemaking authorities, for example, parent or self guarantees accompanied by appropriate financial tests and then although the December 14th panel felt that accelerated decommissioning funding was not a good way to go and might be counterproductive, we feel that it still may under certain circumstances be appropriate; for example, in the California case, where they are allowing accelerated depreciation of the plant if there is some way of piggy-backing on decommissioning funding to that, it might be appropriate but we would have to look into that in more detail.

Concurrent with these rulemakings, we would develop a standard review plan to provide further detail with respect to NRC's expectations regarding assurance of funds for safe operation and decommissioning as well as anti-trust.

CHAIRMAN JACKSON: What is your time line for that?

MR. WOOD: The standard review plan is probably going to be in a few months, like May or June or so.

CHAIRMAN JACKSON: Six month timeframe.

MR. WOOD: Yes, a six month timeframe.

MR. RUSSELL: What we are looking at is essentially putting together a standard review plan that would address the financial and anti-trust areas, probably

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issue it for public comment since it is a changing area to obtain comments on it and then finalize it.

What we are looking at doing at least in the short term is codifying what has been our past practice, what our current regulations require and clearly to the extent that we go into rulemaking and add new requirements, we would also want to make the appropriate changes to the standard review plan at that time.

So what we are looking at doing is first getting a base line standard review plan which would codify the processes and we hope to have a draft that would be ready to go out for comment early in calendar year 1996, probably spring timeframe to late spring.

We need to look at though the total resources because there are a number of things going on. We have cases in litigation and we do have limited resources. So I have to develop a plan that is resource loaded so that we have some understanding as to what the schedules will be and that is why I am qualifying the schedules.

Our goal is to try to have something by April. Whether we can meet that or not is a function of other work load demands.

COMMISSIONER ROGERS: Just on this slide, it wasn't entirely clear to me as to how many distinct rules we are talking about here and I wonder if you could give some

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thought to be a little more precise about exactly how many different rules we are talking about and why we want three instead of two or all together in one. I don't know.

I am not saying what it ought to be but I am just saying that I think that some thought should be given to the general structure of the rulemaking here in terms of

precisely what each rule is to accomplish, whether they should be separated, whether they should be bundled together or not in some way and then the time tables.

MR. TAYLOR: It got started at different times.

MR. RUSSELL: Some of it is in 50.33, some of it is in 50.80, some of it is in 50.81, some of it is in Appendix L.

CHAIRMAN JACKSON: Have you done a systematic review of all of our existing regulations?

MR. RUSSELL: That will be one of the activities that we are going to look at in the action plan to identify where there may be other ambiguities or where the current rules may not be sufficient to accommodate the changing structures that we are already starting to see.

CHAIRMAN JACKSON: Right. I think Commissioner Rogers has a good point in terms of a lot of separate rules but in addition if you are doing it, you might as well look at all of the rules and see where there are inconsistencies or gaps and whether things can be collapsed.

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MR. RUSSELL: I did look back to see what the most recent amendments were to some of these rules and these were back in the 1970's and so we have not made a lot of changes to the rules.

So basically as Bob said the assumption or the premise was that they were going to be financially regulated by public utility commissions or have their own ratemaking authority if they were governmental type activities. That presumption is changing.

So we have to look at all of the places where that could be impacted and look at these new structures to see how they would be accommodated through our rules.

CHAIRMAN JACKSON: Right because in the end you want to be sure that we end up with a consistent regulatory framework.

MR. WOOD: That's right.

MR. RUSSELL: Yes, absolutely.

CHAIRMAN JACKSON: And that you don't have one rule that conflicts with another, et cetera, or overlaps too much.

MR. WOOD: Yes.

MR. RUSSELL: Right.

MR. WOOD: Slide 11, please.

[SLIDE.]

MR. WOOD: The next two pages have our general

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conclusions on this discussion. We certainly don't yet know the extent of changes occurring as a result of deregulation of the electric utility industry but we feel that it is inevitable.

We need to ensure safe operations and decommissioning of its licensed power reactors during the deregulatory process as well as after the changes do occur and we recognize, of course, that in some cases our interests and mandate may diverge from the rate regulators, FERC and the PUCs, and there may be some cases of friction in that situation.

We must be able to identify all owners and operators of each power reactor facility and the asset base and recourse to rate recovery that each has.

[SLIDE.]

MR. WOOD: We mentioned the actions that we intend to take in the short and mid term on strengthening both the financial qualifications and anti-trust review processes. We also believe that we should continue rulemaking on funding assurance for, and clarification of, non-utility power reactor licensees and obviously we would develop the associated standard review plans and other guidance either prior to that or concurrent with that.

We don't believe at this time that a large-scale overhaul of existing regulations is needed.

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CHAIRMAN JACKSON: Subject to a review.

MR. WOOD: Subject to a review, right. One thing we did hear in the December 14th panel discussion that confirmed our understanding that the process is going to be a longer term process that will occur over ten years or so, so we do have a little bit of breathing room, I think, in there and finally as we mentioned we do plan to develop a plan of action and milestones for your consideration and for public comment as well and that concludes my briefing.

MR. RUSSELL: I would characterize that there is one other issue that I feel is fairly significant and that

is we need to know in advance of changes occurring so that we have the opportunity to take the change under consideration and make a determination as to whether it does or does not affect control.

This is one that we have started doing as you heard in the meeting with commitments, letters on the docket. We think that this is something that we need to be periodically informed of and so clearly requiring licensees to inform us in advance of significant changes in assets or to inform us of contemplated changes in ownership or restructuring such that we can anticipate that, it is important not only from the standpoint of conducting the review but also to plan for resources, availability of staff resources, so that we not unnecessarily delaying these

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activities, et cetera.

This is an area of early knowledge of what is happening even though we may be handling it case-by-case in the interim that is quite important. So we are seriously looking at something along the lines of a generic letter each year similar to what we do in operator licensing and other areas so that we can plan our resources and be informed in advance of these things occurring so that we are not surprised.

CHAIRMAN JACKSON: What is the status of development of financial health indicators that might be used to assess the licensee's financial condition?

MR. WOOD: Research has a contractor that has been very helpful in doing that for materials licensees and I think we are certainly going to look at their availability in terms of helping us on the reactor side as well.

We have done some of this over the years with a number of different consultants and the thing with electric utilities is that they are heavily scrutinized by the financial community, Moody's and Standard and Poor's and other bond rating agencies.

We have relied on those things primarily because it is easy access and it is relatively cheap and we don't want to re-invent the wheel but we do want to take a second look at that and I think we potentially have a contractor in

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place to help us out on that.

CHAIRMAN JACKSON: So you would be looking to both inform yourselves from what has been learned in the materials area as well as looking at what can be gained from what is already known in the financial community, is that your message? MR. WOOD: Yes, that's right.

MR. RUSSELL: I think the context of using indicators to somehow or other potentially look at what our inspection programs are doing or how we are overseeing is a little bit different context. Bob is talking about what we classically do if we get a request for a transfer and we may look at Value Line or others to see what is the financial health of the corporation.

CHAIRMAN JACKSON: That is what I am talking about.

MR. RUSSELL: We are not using and it was Commission policy to the staff to not use financial indicators as a mechanism to prioritize or allocate resources. What we do instead is we focus on current performance and our processes for assessing performance and use that to allocate resources for our activities.

CHAIRMAN JACKSON: Commissioner Rogers, do you have any questions or comments?

COMMISSIONER ROGERS: Just on that, that then again relates to the operating condition.

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MR. RUSSELL: That's correct.

COMMISSIONER ROGERS: And as the Chairman has emphasized, it is the decommissioning costs that are big question and the big concern because things can switch so rapidly with respect to available assets.

I don't know to what extent, I don't think you can rely very much on some of these financial rating institutions data because that is always after the fact or pretty much after the fact and you want to be in early to understand whether something has a rather severe implication with respect to this ability to fund decommissioning costs and while I am sure that everyone is going to be concerned about that, the states will be as others, I still think it is very important for us to have an early dialogue on that.

I do think it may be a delicate matter though and I just wonder whether the best way to deal with that is

through a letter or not. Some of these considerations may be very preliminary and it would be well nevertheless for us to be aware of what the thinking is so that means that there may be some question of confidentiality that has to be observed there and it may be that we might give some real thought as to how to do that in a way that meets our needs and protects whatever is necessary for confidentiality, sometimes there is a lot more desired than is absolutely necessary in some cases.

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But I think some real thought has to go into that because it is very important that we have access to various possible thoughts on things that might happen so they don't happen so fast that they get away from us and we don't have a chance to at least exercise a little caution, sound a cautionary note to those that are involved as to how some action might impact the ability to fund the decommissioning costs and what those costs might really be.

I think just a little more focus on precisely how to do that within your own organization might be called for.

MR. TAYLOR: I think we would want to look at that very carefully so we don't create a problem and we will look at that and certainly discuss our approaches with the Commission because I think it is a very important issue.

COMMISSIONER ROGERS: If you don't approach it carefully enough, you may find out that you don't get the information you need when you need it and there might be another way to do that that would still protect people's interests and meet our needs.

MR. RUSSELL: We may be able to look at 2.790 and see whether this would be able to be treated as proprietary information since it relates to future planning. We will discuss that with General Counsel and see what is the appropriate approach.

MR. TAYLOR: We are knowledgeable how sensitive

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this information could be at a preliminary stage financially.

COMMISSIONER ROGERS: Right.

CHAIRMAN JACKSON: I would like to thank the staff for a very informative briefing. As deregulation continues to evolve and the economic and competitive environment becomes more clearly defined, the primary focus that we have will obviously be to continue to ensure that high safety standards are maintained and that decommissioning costs are adequately funded.

I believe that the staff should continue its forward looking assessment of the impact of deregulation and along that line I urge you to continue with the initiatives that you have undertaken as well as ones that have been suggested by the Commission to assure that public health and safety and safe decommissioning and the funding for that remains the focus.

I think you have gotten some particular suggestions from Commissioner Rogers. I think we look forward to getting your proposed action plan including your plans relative to the standard review plan with the time lines and resource commitments associated with it.

I think your plans of codifying current practice and clarifying it within existing regulations and frameworks is very important and I think your focus subject to the kind

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of caveats that have just been discussed on having early notification of significant change and your notifying the Commission are very important activities. Thank you. We stand adjourned.

[Whereupon, at 10:50 a.m., the meeting was adjourned.]