

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BRIEFING ON STATUS OF STAFF ACTIONS ON
INDUSTRY RESTRUCTURING AND DEREGULATION

PUBLIC MEETING

Nuclear Regulatory Commission
One White Flint North
Rockville, Maryland

Tuesday, July 30, 1996

The Commission met in open session, pursuant to notice, at 2:03 p.m., Shirley A. Jackson, Chairman, presiding.

COMMISSIONERS PRESENT:

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

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STAFF AND PRESENTERS SEATED AT THE COMMISSION TABLE:

BRIAN GRIMES, Deputy Director
Division of Reactor Program Management, NRR
DAVID B. MATTHEWS, NRR
JAMES M. TAYLOR, Executive Director
Operations
WILLIAM RUSSELL, Director
Office of Nuclear Reactor Regulation
ROBERT S. WOOD, NRR

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P R O C E E D I N G S

[2:03 p.m.]

CHAIRMAN JACKSON: Good afternoon, ladies and gentlemen. Today, the Commission will be briefed by the NRC staff on its actions on industry restructuring and deregulation and the progress of the staff's evaluation of our regulatory framework as it relates to safe nuclear operations and decommissioning.

The electric utility industry has entered a period of deregulation and restructuring that potentially could have profound impacts on the long-term ability of NRC's power reactor licensees to obtain adequate funds to operate but, more particularly, to decommission their nuclear plants safely. The NRC needs to be sure that we are apprised in a timely manner of any potential changes to our licensees or to those who exercise control over them that could affect safety or our safety oversight and whether significant changes in organizational and/or financial support for each plant are contemplated.

The Commission is, as stated on previous occasions, concerned about the assurance of decommissioning funding as well as network grid stability with respect to its affect on nuclear plant safety as different corporate entities emerge from restructuring and deregulation.

Commissioner Rogers, do you have any opening

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remarks?

COMMISSIONER ROGERS: No.

CHAIRMAN JACKSON: Commissioner Dicus?

COMMISSIONER DICUS: No.

CHAIRMAN JACKSON: If not, Mr. Taylor.

MR. TAYLOR: Good afternoon. With me at the table are Bill Russell, Dave Matthews, Brian Grimes and Bob Wood, all from NRR.

This is an update of various things the staff has been doing on this general topic. Some actions have been done and many are under way but it is really an update of

where we stand.

With that thought, I will turn to Bob Wood who has the principal presentation.

MR. WOOD: Chairman Jackson, Commissioner Rogers, Commissioner Dicus, could I have the first slide, please?

[Slide.]

MR. WOOD: What I would like to do today with your indulgence is talk about the action plan, the seven items in the plan, particularly focusing on the policy statement that you received early in July, also on the comments to the advance notice of proposed rulemaking that went out in April, talk briefly about some of the other actions that weren't in the action plan initially and then also just summarize where we stand.

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[Slide.]

MR. WOOD: Slide number 2.

As you know, the action plan on utility restructuring and deregulation was issued on February 6, 1996. We had seven tasks in that action plan. They addressed our concerns associated with restructuring and rate deregulation, particularly with respect to safety. But there were some considerations with NRC's mandated antitrust reviews as well.

We did get two comments on the action plan, one from NARUC, one from NEI. We -- since they were more directed at the substance of what we were doing, we pretty much subsumed those into the comments on the ANPR and we will treat them in that context.

Slide 3.

[Slide.]

MR. WOOD: The proposed draft policy statement, SECY 96-148, you received on July 2. I see it was made available here for distribution. If you would like me to, I can summarize briefly the overview and major points of that policy statement.

I think there were four major thrusts in the statement. One that we would confirm that licensees remain electric utilities in the reviews that we do and we would continue to conduct these reviews with respect to financial

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qualifications, decommissioning funding assurance and also the antitrust reviews.

We particularly are concerned about identifying all the direct and indirect owners, parents of licensees, to make sure that we have some chain of control if possible over who are running our plants.

We certainly want to establish and continue to maintain sound working relationships with the rate regulators at the state level through NARUC and the state PUCs themselves and at the federal level with FERC and to a lesser extent with the Securities and Exchange Commission.

Coupled with the policy statement, we are developing a standard review plan that will address in quite a bit more detail the financial qualifications and decommissioning funding assurance reviews and the antitrust reviews that we proceed with.

CHAIRMAN JACKSON: When will that be completed?

MR. WOOD: We have it under review. We are waiting to incorporate any Commission comments on the policy statement before we come out for final comment. We hope to have that, the standard review plans, complete by the end of August. We will send them up to you for your information at that point, as we send them out to the public for public comment.

MR. RUSSELL: Dr. Jackson, I have also asked to

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have, in addition to what I will characterize the scope and criteria for our review, to also look at the vehicle that is being used for NRC approval, whether that is an order or a license amendment such that we have a consistent process for handling those. That issue, I only recently identified to the staff and we have to work with OGC and others to address that, to factor that into the standard review plan as well.

This material, along with some other issues that are related, are currently undergoing review and dialogue between the general counsel's office and the staff so whether we are able to have a final product up depends on whether we address some of the prior precedents and issues to try and get a consistent process as well as criteria and scope of review.

CHAIRMAN JACKSON: But you are tracking along that path?

MR. RUSSELL: That's correct.

MR. WOOD: Slide 4, please.

[Slide.]

MR. WOOD: The second task in the action plan was an administrative letter. We sent that out to all power reactor licensees on June 21, 1996. We included copies or sent copies to the CEOs of the companies to make sure it got appropriate attention from the highest level of corporate management as well.

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The administrative letter focused on licensee obligations to inform the NRC of any ownership and control changes. We also wanted to address the potential resource and scheduling impacts on the NRC of when they decided to submit those applications just to make sure they understood what our constraints were.

As part of Task 2, we also, at Commissioner Rogers's direction, I believe, from the January briefing, had a concern about the confidentiality of sensitive financial information. We believe that the process identified in 2.790 is adequate for that purpose. We don't see any particular reason to change that. I think that offers a fair amount of protection of proprietary information. I think we can work within that framework.

CHAIRMAN JACKSON: You indicated in what you gave to the Commission that you had initiated action to acquire some additional information from two licensees.

As a result of the administrative letter or through any other means, have you received any other information that indicates that any other licensees may now be contemplating restructuring plans?

MR. WOOD: Well, yes. As a matter of fact, I got a call last week from the site executive at Trojan relating to the proposed merger between Enron and Portland General Electric and they promised subsequent to that phone call,

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and he made a few other phone calls to people in the agency, but subsequent to that they sent in an information package on the proposed merger and they are fully cognizant of the fact that they are going to have to go through a formal approval process by us on that merger.

CHAIRMAN JACKSON: This was stimulated by the administrative letter?

MR. WOOD: Well, he specifically called me because -- Steven Quennoz, because of the administrative letter identifying me as a point of contact. So there was one issue that came directly out of that at least.

MR. RUSSELL: That is not the only one that's in the backlog. That information has subsequently come through. I believe it was received in the Commission offices and it's now been forwarded down to the Staff and is under review, but we have others that we are hearing about that have not been finalized yet with submittals.

One of the issues that Bob mentioned, and that is resources, if we are the last to hear and they have a particular schedule that they want to execute for financial reasons and yet we don't have the resources available, we want to put them on notice that they had to have early dialogue with us such that we could do the planning, get familiar with, to be able to execute on the schedules that they wish.

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CHAIRMAN JACKSON: For that reason alone from the licensee perspective, it is useful to be responsive.

MR. RUSSELL: That is correct -- or we will end up in a first in, first out, and it may not be on the schedule that they wish and it may have financial implications for them if it transfers across the tax year or some other impact.

CHAIRMAN JACKSON: Thank you.

MR. WOOD: In the action plan, Task 3 is the development of an option short of rulemaking to report on the status of decommissioning funds.

Serendipitously during this whole period of time we had the Financial Accounting Standards Board come out with a proposed standard that seems pretty much on target in terms of requiring utilities to report on the status of funds, the amounts needed, the assumptions used and the projections of what the ultimate decommissioning cost will be, funds accumulated so far in the annual collections and whatever.

I understand from FASB's staff that the comment period closed the end of May. They got a little bit over

100 comments in. They expect to have a standard out some time in the fall, probably in the late November timeframe.

We would propose to develop a regulatory guide endorsing that standard at the time it is made final by

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FASB. We would expect just because of the administrative process of getting a regulatory guide out it would be some time six months or so after the FASB standard is finalized that we would come out with the regulatory guide, draft regulatory guide, for public comment.

CHAIRMAN JACKSON: If you are going to do that, is there any way to parallel the track to some extent based on what you know of the proposed FASB standard even though it is not in the final form?

MR. WOOD: We can certainly look into developing a regulatory guide that uses the proposed standard as a draft standard and then finalize that, I suppose.

CHAIRMAN JACKSON: I mean it strikes me that that is a useful thing to do, both in the sense of making sure that what we want out there, so to speak, is out there as soon as possible -- that's from our perspective -- but also from the perspective of the licensees, and tracking into what you said, Mr. Russell, it strikes me that the earlier we can have that available then again that helps licensees in any submittals to us.

MR. WOOD: Okay.

CHAIRMAN JACKSON: But that actually leads me to another question.

Typically the FASB standards have to do with things that relate to tax treatments, reporting

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requirements, et cetera, but these are reporting requirements relative to, say, the SEC or tax filings.

MR. WOOD: Right.

CHAIRMAN JACKSON: How then does that inform us? I mean are we going to have then access to that? Is the Reg Guide going to address that?

MR. WOOD: Yes. The Reg Guide will address that. Right now the NRC has a requirement that we receive power reactor, licensees' annual reports, annual financial reports, and this -- the FASB standard requires them to provide this information in the annual financial reports, so at this stage I think we would get the information through that vehicle and of course we have the parallel process out of the ANPR to have a regular requirement for reporting that information and we may decide either to use the annual financial reports which are already required or have some sort of separate report that would --

CHAIRMAN JACKSON: So the FASB standard is going to require this to be specifically in the annual report, because typically --

MR. WOOD: Right.

CHAIRMAN JACKSON: -- when these sorts of things, like liabilities, et cetera, are discussed or those kinds of financial vulnerabilities for companies, they typically are reported in 10Qs and 10Ks, whereas the annual reports do not

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necessarily have that degree of specificity in them.

MR. WOOD: Right. My understanding is that this is a specific requirement of the FASB standard that would be in the annual reports as well -- the annual reports to stockholders as well as to SEC.

CHAIRMAN JACKSON: And then we are going to be creating a mechanism internally to do a regularized review then relative to what is in these reports ourselves, because that was a bit of a hole at an earlier stage --

MR. WOOD: Right.

CHAIRMAN JACKSON: -- in terms of both the regularity with which we received these and the regularity with which we reviewed what we received.

MR. WOOD: Right.

CHAIRMAN JACKSON: And are you saying that as part of your action plan that in fact those two things specifically are going to be dealt with?

MR. WOOD: That's correct.

MR. RUSSELL: One aspect of the notice and comment that we mentioned earlier internally within the Staff and that is while there may be some things we could do to get to a draft Reg Guide sooner, we still have the issues with resolution of comments that come up, and while some of the comments could be similar to the comments that are received by FASB and be repeats and maybe we would adopt the same

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resolution, there may be others in a regulatory context we have to deal with, so we don't see this as being a significantly expedited --

CHAIRMAN JACKSON: Well, there is an expedited one because if you have a draft and that draft is modified as the FASB standard becomes finalized, that means that the part of our process that kicks in where we have things to go out for public comment and having to resolve that, then the earlier we get started, the earlier we can --

MR. RUSSELL: That's correct. I was focusing on --

CHAIRMAN JACKSON: No, no, no --

MR. RUSSELL: -- after the draft was out.

CHAIRMAN JACKSON: Right, I am talking about after the draft is out, but my whole point in discussing it with Mr. Wood had to do with the fact of having us have our Reg Guide available at the earliest possible moment to go out, knowing how the rest of the process has to track.

MR. RUSSELL: Okay.

MR. WOOD: On Task 4 we are having Oak Ridge National Labs update our database in the form of NUREGS on the owners of nuclear power plants and of course the owners of the owners as well as the antitrust license commissions and that is on track for the draft NUREGs to come in at the end of September.

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On page 6, Task 5 is the issue of forming a long-term Staff level liaison function with the economic regulators, both at the state and federal level.

As you know, Chairman Jackson, you signed out three letters over the past few months -- one to NARUC in April, one to FERC on July 12th, and the SEC on July 2nd.

We haven't gotten any formal response yet from them but I --

CHAIRMAN JACKSON: Yes, we have -- from SEC.

MR. WOOD: Oh, okay. I haven't seen it yet. I'm sorry.

CHAIRMAN JACKSON: That is very recent so you wouldn't know yet.

MR. WOOD: Another point. We learned recently where NARUC is developing a conference specifically on rate deregulation and restructuring.

We intend to fully participate in that.

We do engage in biweekly conference calls with the NARUC staff Subcommittee on Nuclear Issues and Waste Disposal. That committee/subcommittee also focuses on rate deregulatory issues and from what I can gather, there are about 13 different state PUCs represented on that subcommittee so we are getting a good cross-section of the state PUCs at the staff level and it's a good vehicle for them.

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CHAIRMAN JACKSON: Let me just follow up my earlier quick comment.

In fact, we have gotten a formal response from the SEC and Chairman Levitt has identified an individual for staff-to-staff contacts and then we just have to follow-up.

MR. WOOD: Okay.

CHAIRMAN JACKSON: And since we are talking about FASB standards, that's all the better.

MR. WOOD: We have had presentations periodically before NARUC and PUC working groups on the action plan.

I spoke with the Southeastern Conference, the Ohio Utility Safety Board that addressed these concerns, so our concerns are definitely getting out into the public venue.

Page 7, please.

On action plan items number -- tasks number 6 and 7, task 6 is in two parts. The first part is an evaluation of the legal issues associated with NRC authority and responsibility under 50.80, the authorizing section, Section 184 of the Atomic Energy Act. We also had a parallel effort on identifying inconsistencies in parts of NRC regulations, particularly part 50. We have identified a number of those issues, and what we would propose to do on those is to fold those into the proposed rule that comes out of the ANPR, to close those loops, to eliminate those inconsistencies.

Task 7, of course, is the ANPR itself. It went

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out on April 8th, 1996 and, of course, sought comment on the safety issues, particularly with respect to decommissioning related to economic deregulation and restructuring.

In the next couple of slides after that, starting with slide 8, I'll try to summarize the comments that we got

on the ANPR. Your slide says we got 41 comments. Yesterday we got number 42. So we're already a little bit out of date. But I had it right and it was consistent with the other one, so it doesn't change anything in here.

We found that the comments generally were consistent with the earlier briefings that the Commission has had and the views expressed in those briefings.

One area where there may be a slight change is that rate deregulation may be accelerating in some states. Massachusetts, New York and a few states are now talking maybe two or three years before full retail wheeling occurs, although I think there is still a consensus that in probably most states it'll be more like five or ten years. A number of commentors brought up the analogies to deregulation of natural gas and telecommunications industries where there were high hopes of doing something very quickly, but the process is taking generally longer than they thought. But whether those analogies are valid or whatever to the electric utility industry we're not sure.

CHAIRMAN JACKSON: Let me ask you a quick
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question. In your opinion, are there any areas where we may be under-estimating at all the impact of industry restructuring as a consequence of deregulation?

MR. WOOD: I don't think so, primarily because I believe that all the PUCs that I've talked to very much share our concerns about making sure that adequate decommissioning funds are going to be available, and there are mechanisms that they are evaluating, like transmission access charges, exit fees, other mechanisms that would provide for decommissioning and operating expenses.

I think if some PUCs, and I don't expect this to happen, but if some did not take these types of actions, we could address it on an ad hoc basis in terms of whatever changes take place, of course we have to approve, and if we don't see anything there in that process that provides us with a good level of assurance that they're going to have those funds, that we can either deny the restructuring plan or insist that some additional form of assurance be provided.

So I think we're going to be in pretty good shape, but --

MR. GRIMES: I think there is one area that's coming into more focus for me, and that's outside the financial area, the matter of determining control of the operations and the physical facility of the plant I think

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we'll have to be focusing on as these changes occur. So we've up to now been thinking mainly about the financial area and the decommissioning funds, but there are going to be a number of combinations of things we'll have to face in terms of findings that control is not transferred, or if it is, that appropriate parties are put on the license.

MR. RUSSELL: The context that that came up, to just illustrate with an example, in a meeting that we had with Southern California Edison, in the discussion of the California independent system operator, which would be operating the grid, would have access to that portion of the grid which is in the switchyard which all the lines feed in, et cetera. So there would either have to be contractual relationships that would ensure that the regulatory requirements associated with the switchyard, the facility or that portion of the facility are appropriately maintained.

We're just starting dialogue on some of those issues, so it's not a transfer of control of the total license, but it may be transfer of control of a portion of the facility which we would still have concerns. And so those types of issues are starting to come into play, particularly as independent system operators are being discussed in other states in order to support going more to retail open distribution of power.

CHAIRMAN JACKSON: Thank you.

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MR. WOOD: On page 9, as you know, we added in a question concerning the use by -- TVA is the only federal licensee that we have for power reactors to use a statement of intent. Most of the commentors except TVA felt that that was no longer appropriate, not so much from a safety point of view as for reasons of equity. They felt that TVA is going to experience these same competitive pressures, and it's best to level the playing field so they don't have a competitive advantage in this type of area.

The commentors generally confirmed what we thought

we knew already about the availability of decommissioning insurance for non-accident initiated premature shutdown. It remains infeasible, primarily because in the insurance market, it's a moral hazard, which means that the insured has some sort of control over the event that's being insured against. For example, as they get close to shutdown, if they can collect on their policies, there is an incentive to shut down prematurely and make that collection.

We did find that more commentators, including some power reactor licensees, believe that it was appropriate for us to have some sort of periodic reporting requirement. Most of them did refer to the FASB requirements as being appropriate, at the appropriate level of detail and of sufficient detail that would make those adequate.

The issue where we proposed having the possibility

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of some allowance for a credit on earnings on the decommissioning trust funds in the safe storage period most favored that. Most thought it should be ad hoc, although that presents some problems with respect to resource impacts on the NRC if we start screening too much on a plant by plant basis.

On page 10, other actions we have taken that were outside the action plan, we, as you remember, we sent two letters in early April to two utilities, Southern California Edison Company and Niagara Mohawk Power Corporation, based on some specific information we received from them on what appeared to be deregulation and restructuring activities where they hadn't come to us.

We found out what they were. In Southern Cal Edison's case, it was a proposal based on the California PUC initiative to have them sell off 50 percent of their fossil assets, which I don't think presents a particular problem to us.

In the case of Niagara Mohawk, they proposed a plan to the New York Public Service Commission in October of '95 which provided a number of options that they could take to meet increased competition in the state.

We have heard initially of some actions on those proposals. We're not at liberty to say yet what those are just based on some ex parte considerations. But we haven't

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seen any formal proposal yet, and as soon as we do, of course we'd inform the Commission.

MR. RUSSELL: There is one aspect that came out of the meetings where I believe the longer term work is going to be needed, and that is how we would deal with something other than an electric utility, what would be the generic approach if you have, for example, an independent power producer that is a nuclear plant selling to an independent system operator power based upon market clearing price of power where you get into a spot market type of activity, and it's not clear that this is so far off as it relates to some partial owners of nuclear plants today, whether they would continue to meet the definition of electric utility.

So the need to develop guidance as to how we would handle a review should we see one of those -- and to date we have not. To date, they have all been within the constraints of the definition. But it's clear that that is coming, and we need to be prepared to deal with that.

That will raise some interesting questions as it relates to, do they have sufficient funds to handle a period of a shut down for equipment and/or regulatory reasons or would a regulatory shutdown during a period when there's not access to funds create a concern regarding their financial qualifications to operate as compared to decommissioning.

So those kinds of issues are going to be issues

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that we're going to be dealing with in the not distant future as we start moving to independent system operators and nuclear power plants that may be no longer electric utilities.

CHAIRMAN JACKSON: So I take it by the fact that you're raising these issues that it's all incorporated into A) your action plan broadly and B) your standard review plan and reg guide development?

MR. RUSSELL: It is broadly. We just don't know what the answers are to those areas yet. We realize that they are issues we have to deal with and they are also significant policy issues which would have to come to the Commission.

CHAIRMAN JACKSON: Right.

MR. RUSSELL: And so we would follow the guidance

that is in existence now, that were we were to see such a policy issue on an ad hoc basis, that we would come to the Commission for guidance. We are working those in parallel; it's just not clear, because the first version is to articulate what are the standards, the review approach today? Based upon the regulations, where do we need to address some areas? But anticipating that we could end up in a situation where we have other than an electric utility that's a nuclear power plant licensee, while we see that potentially coming, we don't have the answers yet on how we

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would deal with all of the issues involved.

That is a bigger chunk of the work, depending on when it occurs.

MR. WOOD: Okay, page 11, please.

Continuing on with some of the other actions.

Chairman Jackson, you wrote a memo July 1st to Jim Taylor, and you addressed the issue of parent company guarantees in particular, and the three concerns that you had in terms of their efficacy.

Most parent company guarantees do pertain to NMSS licensees. We have three or four, I believe, that research and test reactor licensees use, but it's mostly a parent company guarantee -- the parent company guarantee approach is mostly used by NMSS.

We would propose to reevaluate the costs and benefits of any enhancements to the parent company guarantee mechanism. We went through a fairly extensive rulemaking about three or four years ago in that area, and a fairly good database on their failure rates, of parent company guarantees as opposed to some other assurance mechanisms, but we can reevaluate that. And I think if we do find any weaknesses, that is something we can incorporate into the proposed rule that might be developed or will be developed out of the ANPR process under Task 7.

CHAIRMAN JACKSON: You should reevaluate it in the

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sense that parent company guarantees, where the parent company is -- the parent's biggest asset is an electric utility is different than a parent company guarantee where the biggest asset is not an electric utility.

MR. WOOD: That's right.

CHAIRMAN JACKSON: So these things all track with each other.

MR. WOOD: Right.

On the last page, page 12, as I mentioned earlier, it appears that the activity regarding rate deregulation appears to be accelerating although it is not consistently true across the board. We still believe that in general, as Bill Russell mentioned, that the action plan adequately addresses these types of activities, and the types of new organizations that may be arising from them.

I would like to reiterate, I feel fairly strongly that the state PUCs seem to be sharing our concern on the potential safety impacts of rate deregulation and our proposing and developing and implementing mechanisms to provide adequate decommissioning funds.

I think the policy statement and the rulemaking effort begun in the ANPR will enhance decommissioning and funding assurance, and I think one last point, we have heard some mixed things about the chances of legislation. There have been a number of bills proposed or introduced in the

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House or Senate, and Senator Johnson has introduced one that apparently won't be going anywhere. Congressman Schaefer has, Congressman Markey has. We don't think -- well, we don't want to predict what we will happen, but we are not sure that anything will come of these, but they could have impacts as well, if something passes at the legislative level.

That really concludes my presentation.

CHAIRMAN JACKSON: Thank you.

Let me ask you a couple of questions in the safety area.

The NRC Staff position has been that any performance slippage by plants that may be attributable to cost pressures will be tracked by our existing inspection effort and programs, and I noted that there was at least one recent SALP report that tied performance to an apparent tightening of resources in a particular functional area.

Have we noticed -- what kind of tracking are we doing, and have we noticed any trends in that regard as a result of what we may think are resource pressures? We are

not economic regulators, but have we noticed any common activities?

MR. RUSSELL: We have seen some company assessments when companies have gotten into performance problems that have been tied back to resource issues. At

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this point in time we have done some inspection activity, but they have been isolated where we have looked at performance, or we have seen performance weaknesses, we have seen what has been available by way of capital investment separately. But these were for facilities that their own internal assessments indicated that cost pressure, and so we were gathering facts to support that.

Our focus to date has been on observing regulatory performance and determining whether that meets standards or not. It is quite frequent that a company that is planning downsizing activities or some type of restructuring will come to the regional staff or the headquarters staff and describe what that activity is as planned and how they are planning to conduct the transition period. Typically we get strong assurances that this is going to be managed carefully, but again it is a function of how the signal is sent through the organization. If the emphasis is on reducing cost, we have seen some cases of organizations self-imposing restrictions that may not have been intended by the corporate management in order to further reduce costs.

So it is a very important area, it is one that we are just starting to look into, but we have, based upon prior Commission direction, not been tracking financial information to correlate financial performance to safety

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indicators. There is a belief that if cost reduction activities are not managed well, that they can send -- unintended signals can have an adverse effect on performance.

CHAIRMAN JACKSON: So what you are saying is that you are not specifically trying to make a one-to-one tracking; however, you do have a heightened vigilance?

MR. RUSSELL: That's correct. And we have some anecdotal cases that do confirm some of those observations, but we have not done a systematic review to look at financial reports, 10-Ks, other information that might be publicly available to correlate that with tying to safety performance to see if we can see some relationship between the two.

CHAIRMAN JACKSON: Are allegations on the rise in instances where there have been restructurings or economic change?

MR. RUSSELL: Again, the information is limited. Allegations nationwide, total numbers, are increasing from where we were for the last few years. The information that we reported at the regulatory information conference, which looks at total numbers of technical as well as H&I allegations, indicated that the total was relatively flat through last year, running around 600 to 650. The H&I cases were increasing, but since the policy statement and the

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visibility that has been applied to it with some of the other things, we have seen an increase, and it looks like it is going to run approaching 800 to maybe 850 at the current, which would be about a 25 percent increase.

We have also noticed that in order to achieve some of the timeliness goals and to interact more closely with the individuals that are bringing concerns, that this has a resource implication. So we have proposed to increase resources in the allegation area through our budgeting review process.

CHAIRMAN JACKSON: Mr. Rogers?

COMMISSIONER ROGERS: Just one aspect of this that is really maybe peripherally connected, and that is the increasing interest of some operators to offer their services to manage other people's plants for them and particularly those that have had a good track record and so on and so forth. And while that is not exactly this question, I think they are going to get tied together pretty soon, and I think that it is well to watch those arrangements from this standpoint as well, because I am sure that one of the considerations will be cost in selecting a nuclear plant manager to come in and supply some kind of management skills; maybe just top level management, I don't know. I suppose there is a whole range of possibilities there that are being considered, but I know that is under

very active discussion now in a couple of companies, and I do think that it is well to keep those activities in sight, along with the deregulation question.

MR. RUSSELL: We agree. We have had discussions between myself and EDO and with OGC, with some situations that are currently under review. We have had in the past cases where licensees have brought in fairly substantial number of managers under contract to address performance problems. This occurred with the Tennessee Valley Authority in the late 1980 timeframe; it occurred also with Diablo Canyon, with some issues that they had during licensing. We have seen cases of 1s and 2s managers come in where INPO will provide a manager for two years, the individual remains an INPO employee, but functions in a management role at the utility.

But your point is one of degree, number, and we are talking about something that is other than a non-owner-operator, which would be unlicensed, which would be like the River Bend precedent, where you have a company operating under contract but is not an owner. So the issue is degree. We are looking at that in the context of our regulations and what would be the requirements for our review. But at this point in time, we don't have a threshold number of how many managers or what positions. What we have to do is look at each one on a case-by-case

basis as to what would be the reporting relationships, et cetera. And as long as they operate essentially invisibly to the regulator from the standpoint of their technical qualifications, their performance, et cetera, whether they do it under contract or they do it as an employee is not one that raises substantial issues at this point.

Obviously if you brought in an entire management team and changed out the whole team, you would have in effect a de facto transfer of control, so you would have that non-owner-operator scenario. We have not seen that at this point in time.

COMMISSIONER ROGERS: It might be coming.

MR. RUSSELL: It may very well. We understand that some companies are forming separate companies to in fact perform that service within the nuclear.

COMMISSIONER ROGERS: And I think that it has some important pluses in that there is talent that is identified talent and experience is being brought to bear in areas where talent is becoming in short supply. So there are some good reasons for it, but I think it does have to be looked at very carefully.

MR. RUSSELL: That could be one of the better diagnostic evaluations from the standpoint of a company coming in that wants to find the problems, identify what the material conditions are, what the budget should be to fix

it, within some positive incentive for fixing it and improving performance. So there are other positives as well.

CHAIRMAN JACKSON: Commissioner Dicus?

COMMISSIONER DICUS: No questions.

CHAIRMAN JACKSON: I would like to thank the staff for providing this useful briefing. As deregulation continues to evolve, obviously, the NRC must continue to maintain its interactions with state and federal regulators where our activities overlap and to be forward looking and to anticipate the impacts of the changes in the industry in determining the need for changes, some of which you are already addressing to our existing regulatory framework.

As you know, the NRC's primary focus will continue to be on safety, to ensure that plants continue to operate safely and that they can be decommissioned safely and, as such, that decommissioning funds are adequately available. And, as such, it is important that you follow through on your action plan in as timely a manner as possible and that in doing that you focus on a number of things that you have heard, among them the unexpected, things such as Mr. Grimes mentioned and that Commissioner Rogers alluded to, having to do with control of operations and management as well as physician facility control.

In focusing on the endorsement of the FASB

standards, as we mentioned, it is important that you are focusing on what that means in terms of our access to information. But, as you are working with other agencies, you should be looking for opportunities for us and that

sounds like what you are doing in this particular area, to avoid duplicative regulation and reporting requirements. But we have to ensure that we have access to what we need, that we can ensure consistency thereby and we can gain economic savings in fact from the staff working with other agencies.

Then, a key thing is that as you work your way through this, and you alluded to this Mr. Russell, that you surface the key policy issues which should come to the Commission so that we can deal with them within the complete regulatory framework and that we don't want to put ad hoc structures into place. You mentioned one potential one, the issue of the other than electric utility, but there are others.

So unless Commissioner Rogers, Commissioner Dicus, you have further comments, we are adjourned.

[Whereupon, at 2:50 p.m., the briefing was concluded.]