

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
- - -
BRIEFING BY DOE AND NRC ON
REGULATORY OVERSIGHT OF DOE NUCLEAR FACILITIES
- - -
PUBLIC MEETING

Nuclear Regulatory Commission
One White Flint North
Rockville, Maryland
Friday, September 19, 1997

The Commission met in open session, pursuant to notice, at 10:14 a.m., Shirley A. Jackson, Chairman, presiding.

COMMISSIONERS PRESENT:

- SHIRLEY A. JACKSON, Chairman of the Commission
- GRETA J . DICUS, Commissioner
- NILS J. DIAZ, Commissioner
- EDWARD McGAFFIGAN, JR., Commissioner

STAFF PRESENT:

- JOHN C. HOYLE, Secretary of the Commission
- KAREN D. CYR, General Counsel

ANN RILEY & ASSOCIATES, LTD.
Court Reporters
1250 I Street, N.W., Suite 300
Washington, D.C. 20005
(202) 842-0034

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

PRESENTERS:

Nuclear Regulatory Commission:

- HUGH THOMPSON, Deputy ED for Regulatory Programs
- CARL PAPERIELLO, Director, Office of NMSS
- JOHN AUSTIN, Chief, Performance Assessment & HLW Integration Branch, NMSS

Department of Energy:

- TARA O'TOOLE, Assistant Secretary for Environment, Safety and Health
- RAY BERUBE, Deputy Assistant Secretary for the Environment
- JOHN TSENG

ANN RILEY & ASSOCIATES, LTD.
Court Reporters
1250 I Street, N.W., Suite 300
Washington, D.C. 20005
(202) 842-0034

[10:14 a.m.]

CHAIRMAN JACKSON: Good morning.

This morning the Commission will be briefed by officials of the Department of Energy and NRC staff on the status of the DOE and NRC Task Force activities to date to identify policy and regulatory issues needing analysis and resolution as part of examining NRC's seeking oversight responsibility for Department of Energy nuclear facilities.

Before we begin, I would like to provide a little bit of background. Maybe I'll do your job, Hugh.

MR. THOMPSON: I always appreciate that.

CHAIRMAN JACKSON: The Department of Energy made an announcement on December 20, 1996, that it intended to submit legislation to the Congress to transfer oversight of DOE nuclear safety to the NRC.

The DOE announcement was made after the completion of a study by an independent advisory committee and a follow-up study by a DOE working group on external regulation.

The Commission considered the matter as part of its strategic assessment and rebaselining initiative. Public comment was solicited on the issue and the public strongly encouraged the Commission to pursue the external regulation of DOE.

ANN RILEY & ASSOCIATES, LTD.

Court Reporters

1250 I Street, N.W., Suite 300

Washington, D.C. 20005

(202) 842-0034

4

The DOE's working group's recommendation that NRC be given regulatory oversight of DOE nuclear facilities along with the strong public support for the NRC assuming that responsibility influenced the Commission's final decision, which was issued in March of this year.

The Commission directed the staff to establish a task force to identify the policy and regulatory issues that needed to be resolved for this initiative to be successful. The Commission also instructed the staff to develop a joint memorandum of understanding (MOU) with the DOE to establish the framework for the legislative and follow-on phases of the project.

A former under secretary of DOE, Tom Grumbly, and Mr. Berube provided a briefing to the Commission on March 31, 1997, outlining DOE's vision for implementation of the working group recommendation.

At a meeting in June of 1997 DOE Secretary Pena and I on behalf of the Commission met and agreed to pursue NRC regulation of DOE nuclear facilities on a pilot program basis. For the near term, the two agencies are preparing an MOU to establish the framework for cooperation in proceeding with a pilot program.

It is the intent of this program for NRC to simulate regulation of DOE facilities on a series of pilot facilities over about a two-year period to help both

ANN RILEY & ASSOCIATES, LTD.

Court Reporters

1250 I Street, N.W., Suite 300

Washington, D.C. 20005

(202) 842-0034

5

agencies gain experience related to potential NRC regulation of DOE.

3 Today's briefing will provide a status report on
4 the NRC and DOE task force's activities to date to address
5 the issues that would need resolution between the two
6 agencies as the pilots move forward.

7 Unless my fellow Commissioners have any comments
8 they would like to add, we will proceed. I understand that
9 DOE Assistant Secretary Tara O'Toole would like to make a
10 few opening remarks before Mr. Thompson proceeds.

11 Dr. O'Toole, I'm going to call upon you to give us
12 some introductory comments.

13 MS. O'TOOLE: Thank you, Madam Chairman.

14 Commissioners, colleagues, I am very pleased to be
15 here today, which I believe marks another milestone in our
16 mutual journey to seek responsible regulation for the
17 operations of the Department of Energy.

18 The Chairman has done some of my work for me too
19 in her elegantly succinct summary of how we got here.

20 CHAIRMAN JACKSON: I tend to do that.

21 MS. O'TOOLE: We all appreciate it. Let me just
22 add a few more comments.

23 As the Chairman noted, in 1993 then Secretary of
24 Energy Hazel O'Leary committed the Department to being
25 regulated like everybody else. It was thought that with the
ANN RILEY & ASSOCIATES, LTD.

Court Reporters
1250 I Street, N.W., Suite 300
Washington, D.C. 20005
(202) 842-0034

6

1 end of the Cold War it was time to move into a new phase and
2 move out of the self-regulatory approach that the Department
3 of Energy and its predecessor agencies had pursued since the
4 1940s. Secretary of Energy Pena has reaffirmed this
5 decision.

6 I was a member of the external regulatory advisory
7 committee chaired by Dr. Ahearne and Mr. Scannell and have
8 had time now to think repeatedly of the rich exchanges of
9 perspectives that were offered in that very interesting
10 advisory committee. I have also participated in the DOE
11 task force headed by Mr. Grumbly and have contributed to the
12 reflections by the National Academy of Public Administration
13 who have been helping the Department of Energy and the
14 Department of Labor think through issues that might arise in
15 transitioning to regulation by the Occupational Safety and
16 Health Administration.

17 I would like to review for the record the three
18 issues that compelled the most discussion and anguish among
19 these various groups and that indeed resulted in the famous,
20 or perhaps I should say infamous, hung jury on the Ahearne
21 committee as to whether or not the Nuclear Regulatory
22 Commission or the Defense Nuclear Facilities Safety Board
23 was most suited to be the DOE's regulator in matters
24 nuclear.

25 There were really, as I said, three issues that

ANN RILEY & ASSOCIATES, LTD.
Court Reporters
1250 I Street, N.W., Suite 300
Washington, D.C. 20005
(202) 842-0034

7

1 people struggled with mightily.

2 The first was the recognition that we needed to
3 find an efficient and flexible regulatory approach that

4 could accommodate the variety of work and circumstances and
5 dynamism of DOE operations now and in the future. Added to
6 that was the need for value-added regulation, as it was
7 called, which meant not just cost-effective regulation that
8 did what it meant to do, but regulation that addressed
9 matters on a risk-based basis.

10 The second issue that engaged us in much
11 discussion was the need to engineer a very smooth transition
12 without overwhelming either DOE or the regulatory agency or
13 jeopardizing the core missions of those agencies.

14 The third matter was the imperative to maintain
15 momentum within the Department of Energy in improving the
16 internal management of all aspects of safety stewardship in
17 the Department of Energy.

18 We have struggled and we are struggling still to
19 ensure that work is properly planned, that hazards
20 associated with our work are identified and amply
21 controlled, and that those controls are continuously
22 reassessed for effectiveness and efficiency in DOE.

23 We are endeavoring to make all of our managers and
24 workers understand that one cannot inspect in safety; one
25 must continuously, as it were, remember to be afraid and
ANN RILEY & ASSOCIATES, LTD.

Court Reporters
1250 I Street, N.W., Suite 300
Washington, D.C. 20005
(202) 842-0034

8

1 work every day towards the end of preventing accidents and
2 injuries and mishaps from happening. We are committed to
3 maintaining this momentum while going forward with external
4 regulation.

5 At the same time, all of the committees mentioned
6 were mindful of the great benefits of external regulation
7 and strongly supported and reiterated their endorsement of
8 external regulation for DOE, and that decision has been
9 revisited, reiterated and re-endorsed by Secretary Pena and
10 the leadership of the Department of Energy.

11 In the past months the very able and hardworking
12 staffs of the Nuclear Regulatory Commission and the
13 Department of Energy have worked to design a path forward.
14 I think we are nearing the completion of a memorandum of
15 understanding between the two agencies that provides an
16 opportunity to gather real world evidence of how we might
17 shape possible NRC regulation of the Department of Energy.

18 I believe that the steps put forward in the draft
19 MOU do chart a way for the Department of Energy to emerge
20 into the light.

21 CHAIRMAN JACKSON: The light of NRC regulation.

22 MS. O'TOOLE: The full spectrum of light and
23 warmth that external regulation and excellent internal
24 safety management bestows on all recipients. I think that
25 the public trust and recognition of effective safety

ANN RILEY & ASSOCIATES, LTD.
Court Reporters
1250 I Street, N.W., Suite 300
Washington, D.C. 20005
(202) 842-0034

9

1 management within DOE cannot come without external
2 validation by an expert regulatory agency that that system
3 is indeed in place.

4 As we all know and as we have had reason to
5 recognize in the past months of working together very

6 constructively, our agencies have different customs and
7 habits and paces and levels of formality. I am persuaded
8 that each of our agencies harbors enormous talent and a
9 shared commitment to safety and a desire to go forward with
10 external regulation.

11 So I am here today to tell you that we are eager
12 and committed to taking the diverse talents and experiences
13 of these agencies of common ancestry, an ancestry that is
14 founded in a belief in the power of science and reason and
15 in the worth of defending participatory democracy, and we
16 are ready to evolve again into a new day and to devise a new
17 regulatory framework for the 21st Century.

18 CHAIRMAN JACKSON: Thank you very much,
19 Dr. O'Toole. I must say I have a question I would like to
20 ask.

21 MS. O'TOOLE: Already. Go ahead.

22 [Laughter.]

23 CHAIRMAN JACKSON: You outlined the three issues
24 that kind of led to the hung jury relative to which entity
25 should regulate. Could you edify us a little bit as to how

ANN RILEY & ASSOCIATES, LTD.

Court Reporters

1250 I Street, N.W., Suite 300

Washington, D.C. 20005

(202) 842-0034

10

1 you migrated from that position to the one that said we
2 would go forward with the NRC, at least to the point of
3 where we are today?

4 MS. O'TOOLE: In reading through the transcripts
5 of your meeting with Mr. Grumbly, I think some of that
6 journey was mapped in the exchange that you had with him at
7 that time.

8 I must say personally that I think that whether it
9 should be NRC or DNFSB was the wrong question. I think what
10 people were struggling with was not the worth or the
11 appropriateness of one agency over the other. That was kind
12 of the simplistic distillation of this very rich and complex
13 exchange that went on for many months. I really think that
14 what happened was that the complexities of those three
15 issues, which themselves have many questions embedded them,
16 as I said, got distilled in Washington to that overly
17 simplified sound bite of NRC versus DNFSB.

18 The path forward that we have drawn now recognizes
19 the benefit of the Defense Board maintaining some hold into
20 the near future over defense agencies, defense facilities
21 within DOE, while the near-term benefits of the Nuclear
22 Regulatory Commission picking up facilities within the
23 energy, research and nuclear energy programs of DOE are also
24 recognized and acted upon.

25 As I believe Mr. Grumbly described last time, over
ANN RILEY & ASSOCIATES, LTD.

Court Reporters

1250 I Street, N.W., Suite 300

Washington, D.C. 20005

(202) 842-0034

11

1 the next several years we plan to decommission and
2 decontaminate hundreds of facilities within the Department
3 which heretofore were part of the defense facilities
4 complex. As those facilities are cleaned up and dismantled,
5 they will be regulated principally by the Environmental
6 Protection Agency, which is the custom and habit that have

7 evolved up until now.
8 That legacy of facilities in DOE will thus
9 diminish; there will not be nuclear operations going on in
10 those buildings. At the same time, we expect that new
11 construction in DOE where it involves anything nuclear will
12 be regulated by the NRC.

13 So by having a more nuanced look at the past and
14 the future, I think the question of how best to make use of
15 the Defense Board's talents and understanding and commitment
16 to defense facilities, which, as I said, will diminish in
17 number, while taking advantage of the Nuclear Regulatory
18 Commission's powers as we go forward with the missions of
19 energy, research, nuclear energy and other new nuclear
20 enterprises is the way to go and is a very kind of neat
21 evolution and more elegant splicing of these issues.

22 CHAIRMAN JACKSON: Thank you.
23 Mr. Thompson.

24 MR. THOMPSON: I think Tara has also done some of
25 my work as well as the Chairman's.

ANN RILEY & ASSOCIATES, LTD.
Court Reporters
1250 I Street, N.W., Suite 300
Washington, D.C. 20005
(202) 842-0034

12

1 CHAIRMAN JACKSON: We can then get to the heart of
2 it.

3 MR. THOMPSON: Then we can get to the heart of the
4 discussion today. That really does bring us down to about
5 the area of slide 6 in the presentation, which is the
6 memorandum of understanding. We did talk about many of the
7 activities that we have --

8 CHAIRMAN JACKSON: Maybe you could review slide 2.
9 I think that might be useful. I think the ones that we
10 reviewed are really slides 3 and 4. So maybe we could do 2
11 and then jump to 5.

12 MR. THOMPSON: Slide 2 is the outline of what we
13 are going to talk about today. What we really did was have
14 some background, which I think has been covered.

15 The potential benefits were ones which have been
16 articulated partly here as well the advisory committee's
17 report, and they are listed both in the Commission paper,
18 which I think we forwarded, as well as in the slides there.
19 These were ones which focused on having the stability of a
20 regulatory program, the openness, the predictability and the
21 cost-effectiveness.

22 As Tara so eloquently discussed, there are lots of
23 complex interactions between stakeholders that are involved
24 in this, and I think that is where there is some of the
25 desire to bring some clear focus on the stability of the

ANN RILEY & ASSOCIATES, LTD.
Court Reporters
1250 I Street, N.W., Suite 300
Washington, D.C. 20005
(202) 842-0034

13

1 program, a clear understanding of the safety issues to be
2 regulated, and a recognition that there are many existing
3 facilities out there today that aren't new, that have not
4 been covered with this regulatory regime.

5 And there has to be a process. As we have stated
6 frequently, we have to have a transition period if NRC is to
7 be the external regulator as well as adequate resources both
8 on our part and on DOE's part to ensure that their

9 facilities, as we make this transition, are adequate to
10 protect public health and safety as well as not to disrupt
11 the ongoing efforts that DOE has underway to improve the
12 safety management at the DOE facilities.

13 CHAIRMAN JACKSON: Or disrupt our mission
14 responsibility.

15 MR. THOMPSON: That is absolutely correct. That
16 is one of the critical issues that was in the dynamics of
17 all the discussions, the importance of us not diverting our
18 own attention from our current mission as we add potentially
19 new roles and responsibilities.

20 Obviously some of the roles and responsibilities
21 we are accepting, such as the Hanford tanks, which is
22 outside of this particular pilot program, as well as even
23 some consultation with DOE on the Brookhaven reactors are
24 independent of what I will call a very structured, very
25 detailed approach, with an objective to determine whether

ANN RILEY & ASSOCIATES, LTD.

Court Reporters

1250 I Street, N.W., Suite 300

Washington, D.C. 20005

(202) 842-0034

14

1 legislation would be appropriate for class of facilities or
2 maybe overall other facilities.

3 I don't know how I got to slide 6 so quickly.

4 We did have quite a bit of interaction and there
5 has been quite a bit of dialogue between the NRC staff and
6 others on the potential for the program.

7 I think the evolution that the Commission and
8 Secretary Pena moved to, to have a pilot program approach,
9 was one in which the proof will be in the pudding.
10 Performance is as performance does. I think we will take a
11 look at an approach to be able to say our vision is that
12 it's there; this is the way we will add some meat to those
13 bones.

14 The memorandum of understanding that we have been
15 working on very diligently focuses on the pilot program, the
16 objectives, and we will cover the scope. A very critical
17 part is the stakeholder plan. The stakeholders are varied,
18 they are wide-ranging, and their interests are quite diverse
19 in certain cases, and I think it's important that we
20 recognize those, have those inputs, and obviously the
21 decisions will be ones that the Commission and the Secretary
22 will have to make.

23 CHAIRMAN JACKSON: When do you expect the MOU to
24 be ready for official review by the Commission and by the
25 Secretary?

ANN RILEY & ASSOCIATES, LTD.

Court Reporters

1250 I Street, N.W., Suite 300

Washington, D.C. 20005

(202) 842-0034

15

1 MR. THOMPSON: My expectation is early October.
2 We don't have any specific areas of disagreement. It's an
3 element of ensuring it gets a full review both in the
4 Department and within the NRC.

5 CHAIRMAN JACKSON: So you are scrubbing it out at
6 this point.

7 MR. THOMPSON: We are scrubbing it out. It is,
8 quite frankly, very close to final as far as both of us are
9 concerned. Unless something comes up, we think it should

10 proceed fairly smoothly up to the Commission and to the
11 Secretary.

12 CHAIRMAN JACKSON: Commissioner Dicus.

13 COMMISSIONER DICUS: If it is delayed, do you
14 anticipate delay in starting the pilot project, or is that
15 going to go ahead on course?

16 MR. THOMPSON: My understanding is that we really
17 want to have the framework in place, but we are poised such
18 that we would hope to begin about one week after the
19 memorandum is executed and signed. We have had a lot of
20 dialogue. We aren't sitting around basically waiting, but
21 we really won't start anything. We really do need to make
22 sure that the Commission and Secretary are in synch.

23 CHAIRMAN JACKSON: Commissioner McGaffigan.

24 COMMISSIONER MCGAFFIGAN: Is part of the delay
25 just waiting to see which funding approach the

ANN RILEY & ASSOCIATES, LTD.

Court Reporters

1250 I Street, N.W., Suite 300

Washington, D.C. 20005

(202) 842-0034

16

1 appropriations committees take, whether it's directly
2 appropriated to us or appropriated to DOE for transfer to
3 us?

4 CHAIRMAN JACKSON: Calendars.

5 MR. THOMPSON: My own sense is there are a lot of
6 individuals in DOE. DOE is a bit more diverse in this
7 matter than NRC is.

8 MS. O'TOOLE: We have more people to get on board.
9 I think it is very important that the decision-makers and
10 the policy executors in the Department, which is a
11 wide-ranging family, be very familiar with the MOU. I have
12 read it many times. I have gone over it in detail with both
13 Ray and Hugh and others. I see no impediments to this being
14 signed.

15 As you know, both the Chairman and the Secretary
16 of Energy are on airplanes for most of the next two weeks,
17 and I do think it is worthwhile in the Department of Energy
18 for the Secretary to have the opportunity to discuss this
19 with a number of people. So this is more a scheduling and
20 calendar issue than anything else. As I said, I see no
21 substantive impediments to going forward. We are poised to
22 move.

23 MR. THOMPSON: Slide 7 gets into the scope of what
24 we are looking at in the pilot program. We are trying to
25 have a range of facilities that give us a view of the types

ANN RILEY & ASSOCIATES, LTD.

Court Reporters

1250 I Street, N.W., Suite 300

Washington, D.C. 20005

(202) 842-0034

17

1 of facilities and the challenges that may exist. We are
2 looking at having about three facilities this year in the
3 area of nuclear energy, energy research, and environmental
4 management facilities. As Tara said, we really are not
5 looking at any of the defense program type facilities as
6 part of this pilot program whatsoever.

7 As we gain experience this year we expect to
8 expand this to maybe six to ten facilities by the end of FY
9 1999.

10 The types of facilities that we are looking at
11 would be ones that essentially are similar to NRC

12 facilities, and, as Tara also mentioned, where there is a
13 value added to the regulatory program. We think it's
14 important that there be value added. I think all the
15 stakeholders want to see some value added.

16 Another key element is facilities that are willing
17 to participate. It's going to take their time, their
18 effort, their enthusiasm in order to be able to address the
19 multiple issues that are going to be raised. We can
20 sometimes address the technical issues fairly easily.

21 There are other dynamics with respect to the
22 environments that we live in today. States have a lot of
23 interest. You have received a lot of correspondence from
24 the states.

25 Obviously there are concerns within the Department
ANN RILEY & ASSOCIATES, LTD.

Court Reporters
1250 I Street, N.W., Suite 300
Washington, D.C. 20005
(202) 842-0034

18

1 of Energy with respect to other aspects of worker health and
2 safety, like the OSHA responsibilities. Those are very
3 clear ones. We have an agreement typically with OSHA how we
4 handle radiation protection for workers. We have to
5 understand and coordinate well with OSHA to see if that's
6 the model that would work best for these activities.

7 CHAIRMAN JACKSON: What is the enticement or the
8 motivation for facilities, since you have identified
9 willingness to participate as a key element?

10 MR. THOMPSON: In my view, the enticements are
11 those things that we talked about earlier, the stability in
12 the regulatory program, the value added, a clear
13 understanding. Some of these facilities, like the national
14 labs, part of their facilities are already regulated, some
15 by agreement states, for example, in a regulatory program
16 that they are somewhat familiar with.

17 CHAIRMAN JACKSON: You're saying that the benefits
18 of external oversight are the same as the enticements for
19 facilities to want to participate or be willing to
20 participate in the pilot.

21 MR. THOMPSON: I have people who are very capable
22 of adding to this dialogue, so I would encourage Ray or Tara
23 to add anything to that.

24 MR. BERUBE: I agree absolutely that the benefits
25 are the enticement.

ANN RILEY & ASSOCIATES, LTD.
Court Reporters
1250 I Street, N.W., Suite 300
Washington, D.C. 20005
(202) 842-0034

19

1 CHAIRMAN JACKSON: Commissioner McGaffigan.

2 COMMISSIONER MCGAFFIGAN: In terms of what we are
3 going to do afterwards, which is try to convince Congress to
4 take progressive steps in this direction if the results of
5 the pilots are appropriate, does getting only facilities
6 that are willing to participate run you into the danger that
7 a congressional staffer in 1999 says to you, well, will it
8 be more difficult at the places that weren't willing to
9 participate?

10 I forget what it's called in statistics, but there
11 is an effect where you get good results even if you do
12 nothing just because the spotlight shined on you. Are you

13 worried about the representability of what we are doing?
14 MR. THOMPSON: Obviously that is a concern. We
15 would hope that the effectiveness of the review teams and
16 the participation of those would provide a solid and sound
17 foundation to be able to articulate that. I do think it's
18 important that we recognize and address, as we talked about
19 earlier, the issues and the costs.

20 I think costs are probably one of the key driving
21 issues associated with those who may be reluctant. As you
22 well know, this Commission and others are in tight budget
23 times. In order to be regulated in a much more open
24 environment some facilities, maybe lots of facilities, are
25 going to have to spend some monies to get their programs up.

ANN RILEY & ASSOCIATES, LTD.

Court Reporters
1250 I Street, N.W., Suite 300
Washington, D.C. 20005
(202) 842-0034

20

1 I think that's an issue that we have to be able to
2 articulate. Both the oversight committees and OMB are going
3 to want to know what the cost is going to be.

4 COMMISSIONER MCGAFFIGAN: I understand this year
5 trying to get pilots. You are hoping to start some of these
6 pilots in a few months, but when you are choosing pilots for
7 the following year, for FY 1999 implementation, somewhat
8 less willing participants might be a useful part of the
9 program.

10 MS. O'TOOLE: First of all, it is our hope that
11 once the benefits of external regulation and some of the
12 questions about how it will go forward are demonstrated in
13 the pilots we will have more volunteers for pilots than we
14 can handle. I think that actually might be the case.

15 As Hugh said, some of the reluctance has to do
16 with some facilities just having so much on their plate
17 right now that the challenge of diverting resources -- I
18 think actually people are at least as precious as money --
19 that could actually interface with the pilot program is one
20 concern of people.

21 I think a second issue is questions about how
22 exactly will this work out. Will the external regulatory
23 framework get in the way of or set back efforts already
24 underway to bring what we call integrated safety management
25 into being? How much will it cost? Will it be cost-

ANN RILEY & ASSOCIATES, LTD.

Court Reporters
1250 I Street, N.W., Suite 300
Washington, D.C. 20005
(202) 842-0034

21

1 effective?

2 I am hoping that we will get data on all those
3 questions that is reassuring and encouraging, or at least
4 that beats down some of the bogeymen that people may be
5 fearful of. I really do expect that we shall and that there
6 will be more volunteers. So I think the selection criteria,
7 the variable of selecting people against their willingness
8 to participate is a legitimate one.

9 Generalizability, however, is a fair question.
10 One of the characteristics of DOE is the great variety of
11 operations. It may be that it is reasonably straightforward
12 to figure out how to regulate multipurpose energy research
13 laboratories and much more difficult to figure out how to
14 regulate some of our singular nuclear operations that derive

15 from past experiences that are unique to DOE. Hopefully
16 those questions too, how singular is DOE, will be answered
17 in part by these pilots.

18 COMMISSIONER MCGAFFIGAN: There is another pilot
19 going on that is outside of this framework, and that is the
20 tank waste remediation work that we are involved in. I hope
21 that gets integrated somehow with whatever we are learning
22 there.

23 The other pilot that may be relevant, although
24 it's not with regard to DOE, is the work we may do with DOD
25 on the reactor at McClellan Air Force Base. Keeping DOE
ANN RILEY & ASSOCIATES, LTD.

Court Reporters
1250 I Street, N.W., Suite 300
Washington, D.C. 20005
(202) 842-0034

22

1 fully apprised as to whatever we are doing there might help.
2 Any comments?

3 MR. THOMPSON: We have often discussed the
4 applicability of that effort with DOE. We have also at
5 times discussed the desirability of having a non-power
6 reactor as part of the pilot program. Recognizing those
7 issues at this time, the McClellan Air Force reactor is well
8 on its way, quite frankly, and that's a very mature effort.

9 We also have other areas where we are having
10 experience interfacing with DOE that is going to be valuable
11 to have. The TMI-2 spent fuel effort in Idaho. It's really
12 not part of the pilot; it's actually part of the overall
13 licensing responsibilities that we have under current
14 statutory responsibility. That is valuable information to
15 have available to us and to DOE as we consider the elements
16 there.

17 CHAIRMAN JACKSON: I think what comes out of this
18 discussion is the need to ensure that where you have these
19 other distinct activities going on that you specifically pay
20 attention to and have a mechanism for having the lessons
21 learned propagate into how you shape the pilots and the
22 questions and how you try to go about addressing issues of
23 value added and all the other criteria that we are looking
24 at, but to do it consciously as opposed to saying that these
25 other activities are over here. I think that's the point

ANN RILEY & ASSOCIATES, LTD.

Court Reporters
1250 I Street, N.W., Suite 300
Washington, D.C. 20005
(202) 842-0034

23

1 the Commissioner was trying to make.

2 MR. THOMPSON: Our knowledge of DOE facilities is
3 somewhat limited. Ray has been thoroughly looking at these
4 for many years, and we will utilize all of that wisdom and
5 expertise as we go forward to try to identify the uniqueness
6 of particular areas.

7 CHAIRMAN JACKSON: I don't want to preempt
8 anything you were going to be discussing later. Presumably
9 you are going to be laying out a very structured process
10 with questions and issues that you would be trying to get
11 at. A useful exercise is simply to say if I take those and
12 I look at what is already happening or what has already
13 happened, say, with the air force reactor, and move along
14 with the Hanford tank waste remediation system, what do they
15 tell us in terms of the answers? All I am saying to you is

16 that you have to do it in a structured way, because if you
17 don't, it won't happen.

18 MR. THOMPSON: That is right. We intend to have a
19 very structured approach.

20 CHAIRMAN JACKSON: Structured cross feed. I'm not
21 talking about your structured approach within the pilot; I'm
22 talking about structured cross feed.

23 MR. THOMPSON: That's right. The concept of
24 self-assessment and those types of things are also valuable
25 for those who may be doubtful as to whether they want to

ANN RILEY & ASSOCIATES, LTD.

Court Reporters

1250 I Street, N.W., Suite 300

Washington, D.C. 20005

(202) 842-0034

24

1 volunteer. We will eliminate some of the unknown factors of
2 what will actually occur.

3 CHAIRMAN JACKSON: I think Commissioner Dicus had
4 a question.

5 COMMISSIONER DICUS: We talk about classes of
6 facilities. I think you have also used the term "types of
7 facilities." Is class and type the same thing?

8 MR. THOMPSON: The way I use them they basically
9 are.

10 COMMISSIONER DICUS: We may need to stick with one
11 term and then clearly define what that term is. I think in
12 this agency we sometimes use our terms and we haven't
13 defined exactly what we are talking about.

14 The second part of the question is, do we have a
15 definitive list of these classes of facilities? Have we
16 defined what classes we are talking about?

17 MR. THOMPSON: John.

18 MR. AUSTIN: We have broken down the facilities in
19 various categories, by nuclear energy, energy research,
20 environmental management. We have broken them down by
21 state.

22 COMMISSIONER DICUS: What do you mean by state?

23 MR. AUSTIN: Facilities within agreement states,
24 non-agreement states.

25 COMMISSIONER DICUS: You consider that a class of
ANN RILEY & ASSOCIATES, LTD.

Court Reporters

1250 I Street, N.W., Suite 300

Washington, D.C. 20005

(202) 842-0034

25

1 facility?

2 MR. AUSTIN: No. We have attempted to say
3 national laboratories as a class of facilities, but that
4 brings in a mixture of defense programs, energy research,
5 and given the direction that we are going in in excluding
6 defense program facilities, that breakdown didn't help very
7 much. We gave up on the effort of trying to characterize
8 that.

9 CHAIRMAN JACKSON: The question is, are you doing
10 it by regulatory class? For instance, broad scope materials
11 licenses, non-power reactors, et cetera.

12 MR. AUSTIN: Or fuel cycle facilities.

13 CHAIRMAN JACKSON: Or fuel cycle facilities.

14 MR. THOMPSON: In the broadest sense, that is the
15 way we were looking at those, those that would fit within
16 the broad scope material licensing umbrella, those that may
17 be just a specific license under material approach, those

18 that would be non-power reactor, and there were those that
19 would fit more into the fuel cycle facilities. Then you
20 have to think if you were to go into other things such as
21 low level waste burials or something. Those are ones that
22 typically fall within my kind of thinking on this process.
23 We weren't trying to get too much outside of that box.

24 CHAIRMAN JACKSON: Is it fair to say that to some
25 extent the identification of classes is evolving and will

ANN RILEY & ASSOCIATES, LTD.

Court Reporters

1250 I Street, N.W., Suite 300

Washington, D.C. 20005

(202) 842-0034

26

1 come out of the pilot?

2 MR. THOMPSON: That's probably the way to look at
3 it, but we are trying to get a broad range right now so that
4 we just don't all look at kind of the broad scope licensees.

5 MR. BERUBE: If I could add. This is an example
6 of what Tara was talking about, where the cultures need to
7 merge. The classifications that NRC uses we've not used,
8 for obvious reasons. We classify them a different way. But
9 we are understanding one another. I think out of this will
10 evolve a classification system for those facilities.

11 CHAIRMAN JACKSON: Okay.

12 COMMISSIONER DICUS: Just a follow-up. It is
13 important. I am looking at this product that we are going
14 to have when we finish the pilot. How are we going to use
15 it? Where do we make the transition we have been talking
16 about from knowledge that we get from the pilot to using it
17 to the next step or the next goal that we have?

18 I think at the front end we should recognize the
19 classification problem and merging so that when a facility
20 enters the pilot program we have a good idea what
21 classification it's in so we can better use the information
22 we get from it.

23 CHAIRMAN JACKSON: It has to be part of
24 decision-making.

25 MR. THOMPSON: That's right. I think that really

ANN RILEY & ASSOCIATES, LTD.

Court Reporters

1250 I Street, N.W., Suite 300

Washington, D.C. 20005

(202) 842-0034

27

1 comes to both the Secretary and to the Commission when you
2 contemplate any kind of legislative approach. Anything that
3 we do is going to have to be able to be conducted with the
4 legislative imprimatur.

5 MR. BERUBE: Along those lines, we are hopeful
6 that the pilot at Lawrence Berkeley National Laboratory will
7 serve that purpose with respect to the rest of the
8 non-weapons laboratories in the DOE system.

9 CHAIRMAN JACKSON: I think the point being until
10 you have entered the pilot there are some questions that
11 can't be answered. I think the message is that you need to
12 be keeping that at the forefront and developing a coherent
13 and consistent among everybody definition of class but also
14 being able to say how that parsing into class facilitates
15 decision-making, including any issues vis-a-vis enabling
16 legislation as well as regulatory approach.

17 Commissioner McGaffigan.

18 COMMISSIONER MCGAFFIGAN: The one other pilot that

19 I think we've had is USEC. I hope you all have looked at
20 that example as well.
21 MR. THOMPSON: We both have clearly looked at that
22 and know there are lessons there for both of us.
23 COMMISSIONER McGAFFIGAN: Good.
24 CHAIRMAN JACKSON: Why don't we move on.
25 MR. THOMPSON: We have talked about the objectives

ANN RILEY & ASSOCIATES, LTD.

Court Reporters
1250 I Street, N.W., Suite 300
Washington, D.C. 20005
(202) 842-0034

28

1 of the pilot program. There are a couple of things on here
2 I really do want to highlight. One of them is the issue in
3 the middle, evaluate alternative regulatory relationships.
4 What that means for the purposes of this pilot is,
5 how do you really license the types of complexes that DOE is
6 responsible for? Do you issue a license to DOE? Do you
7 issue a license to the M&O contractor? Do you issue a
8 license to both? Do you have some type of bifurcation of
9 how you would expect regulatory responsibilities to be
10 carried out?
11 Quite frankly, one of the areas that we will have
12 some early input on making decisions on that one is the
13 Idaho TMI-2 spent fuel facility and even some of the Fort
14 St. Vrain spent fuel storage facilities.

15 CHAIRMAN JACKSON: You may have more than one
16 license.

17 MR. THOMPSON: We may have more than one license.
18 We got that a little bit with the U.S. Enrichment
19 Corporation where we had to decide who is going to be the
20 licensee. Martin Marietta is the primary operator. So we
21 have kind of faced it, but I think that we ought to look at
22 that carefully for this particular arena.

23 CHAIRMAN JACKSON: Your last two bullets speak to
24 not interfering with ongoing safeguards and security program
25 and not interfering with current regulatory and other

ANN RILEY & ASSOCIATES, LTD.

Court Reporters
1250 I Street, N.W., Suite 300
Washington, D.C. 20005
(202) 842-0034

29

1 oversight authorities for DOE nuclear safety. I guess the
2 real question is, can you flesh out what the concern is
3 there, and how are you addressing the issue? What are you
4 doing in order to address that concern? What is the concern
5 and how are you addressing it?

6 MR. THOMPSON: There are two elements in this.
7 Obviously the defense program facilities are not going to be
8 included in the pilot program. That's obviously one of the
9 objectives; if there is some tangent that is involved with
10 those, that we be fully aware of that and make sure that we
11 don't inadvertently have some issue that may have a
12 significant role with the defense programs.

13 Likewise, as you may recall, there were some
14 concerns about the special nuclear material, weapons type
15 grade material. There is a very strong and active DOE
16 responsibility associated, an integral part of their defense
17 programs that protects that material even when it's in
18 weapons form or even when it's available there. That is
19 such an integrated part of many of those facilities. We
20 didn't want to try to interfere or interrupt that overall

21 responsibility because that is clearly DOE's regard now.
22 The security programs typically related directly
23 with the safeguards.

24 That doesn't mean that at places like Lawrence
25 Berkeley, which are much more like an NRC type license

ANN RILEY & ASSOCIATES, LTD.

Court Reporters

1250 I Street, N.W., Suite 300

Washington, D.C. 20005

(202) 842-0034

30

1 facility, that we would not preclude or we would likely
2 include that as part of our pilot program to look at that,
3 because that wouldn't have the sense of having a direct
4 concern with the national defense and security programs.

5 CHAIRMAN JACKSON: What about the last bullet?

6 MR. THOMPSON: The last bullet is one that is very
7 clear to all of us. During this pilot program DOE and its
8 M&O contractors are responsible for the health and safety
9 activities. This is in no way intended to interfere with
10 their day-to-day responsibilities in that regard, as well as
11 the non-radiological activities that DOE is responsible for.
12 The intent of that bullet is to ensure that what we do there
13 has no negative impacts on other activities.

14 Tara.

15 MS. O'TOOLE: That's quite right. The
16 responsibility of the Department and its contractors to
17 ensure the health and safety and environmental integrity at
18 its sites is in no way diminished or held in abeyance by
19 these pilots. That is the first point.

20 Secondly, we are in discussions with the
21 Department of Labor about moving DOE to external regulation
22 by the Occupational Safety and Health Administration. It is
23 our hope and my expectation that some of these pilots will
24 be joined by OSHA. We have had one OSHA pilot at the
25 Argonne National Lab, which was quite helpful and

ANN RILEY & ASSOCIATES, LTD.

Court Reporters

1250 I Street, N.W., Suite 300

Washington, D.C. 20005

(202) 842-0034

31

1 successful.

2 The time line is slightly lagging compared to the
3 NRC/DOE enterprise, but I would think that some of these
4 pilots would also pick up OSHA participation. That will, of
5 course, give us some experience with questions about how NRC
6 and OSHA might interface with DOE at our operations.

7 So it isn't so much a question of interfering
8 there as interfacing and integrating.

9 CHAIRMAN JACKSON: Commissioner Diaz.

10 COMMISSIONER DIAZ: Going back to the objectives,
11 I wanted to emphasize that the determination of costs of
12 regulations might be a very critical issue. I think the
13 methodology that will be used in how to extrapolate the
14 costs from pilots to a more global issue is not a simple
15 issue, and we should pay attention to that from the
16 beginning. That is going to be the bottom line eventually.

17 MR. THOMPSON: That's true. As we talk about the
18 other one, the stakeholder involvement and a lot of effort,
19 there are going to be up-front planning costs on these
20 things that will be important, but they don't get, as you
21 say, precisely to the issue of the cost of regulation.

22 There are two elements that I think are going to
23 be very critical. One is the cost to DOE of getting their
24 facilities up to meeting whatever the standard is. Our
25 experience with U.S. Enrichment is that there is a real

ANN RILEY & ASSOCIATES, LTD.

Court Reporters

1250 I Street, N.W., Suite 300

Washington, D.C. 20005

(202) 842-0034

32

1 cost. Not necessarily at all facilities, and it probably
2 varies. There is probably a wide range of variance,
3 depending on the age of facilities and some of the
4 activities that they were involved in.

5 Secondly is the cost to NRC, which is very
6 important to us. I think many of these facilities are
7 sufficiently similar to NRC facilities that we would have a
8 reasonable understanding what the steady-state cost is.
9 There is transitional cost.

10 We had some significant efforts with respect to
11 the U.S. Enrichment Corporation in getting our own
12 regulatory framework in place. We put a new regulatory
13 framework in place for those facilities, and the new
14 approach, the certification, which we did not have for other
15 facilities. We obviously have that experience behind us,
16 but it was one that did cost, and we will be careful to do
17 that.

18 MS. O'TOOLE: I think that's a very important
19 point, Commissioner. I think we also need to keep in mind
20 that the costs are going to have a different complexion,
21 depending upon how tightly they are linked to value. The
22 value added for a given price tag will be very important to
23 highlight for observers of these pilots.

24 I have some concerns that it would be very
25 difficult for the pilots to adequately illuminate the value
ANN RILEY & ASSOCIATES, LTD.

Court Reporters

1250 I Street, N.W., Suite 300

Washington, D.C. 20005

(202) 842-0034

33

1 of the investment the country might make in external
2 regulation over time. I think we need to be very kind of up
3 front and forthright about what in our judgment, based upon
4 these pilots, we think the worth of external regulation
5 might be.

6 I think the Congress, for example, would be quite
7 willing to pay the cost of external regulation if they had
8 an opportunity to think through what benefits might derive
9 over time. For example, if it were to prevent a cleanup
10 such as the one now being managed by the Office of
11 Environmental Management, that might be a very good deal.

12 Predicting the future is always hard, of course,
13 but we ought to keep in mind the difficulty of linking costs
14 to value and the need to do that in some way with these
15 pilots.

16 CHAIRMAN JACKSON: I think there is the need to do
17 it. The way I would put it is that one has to give definition
18 to what value added means, because one does not want to
19 advertise this as being without cost.

20 MS. O'TOOLE: Precisely.

21 CHAIRMAN JACKSON: The issue is, what regulatory
22 approach makes sense? Then, having decided that, what
23 definition do you give to value added in that situation?

24 Because there is a price tag. If the idea is that it
25 doesn't cost anything and that's the metric, then we might

ANN RILEY & ASSOCIATES, LTD.

Court Reporters

1250 I Street, N.W., Suite 300

Washington, D.C. 20005

(202) 842-0034

34

1 as well go on back upstairs and you can go back downtown.

2 MS. O'TOOLE: Deal.

3 MR. THOMPSON: She can go back and get in the
4 traffic.

5 CHAIRMAN JACKSON: Commissioner McGaffigan.

6 COMMISSIONER MCGAFFIGAN: I'd like to go back to
7 the point you were making earlier about evaluating
8 alternative regulatory relationships and the issue of who is
9 the licensee. It strikes me in the two pilots we know we
10 are going to have we already have two different ways.

11 At Lawrence Berkeley we are going to evaluate
12 whether it should be University of California or DOE, but
13 it's the whole site, and that's what the pilot is.

14 At Oak Ridge we are looking at a single actinide
15 facility and there is no illusion that any time soon we are
16 going to get the entire Oak Ridge site with the Y-12 plant
17 and all of that. If Congress wanted to say, okay, that site
18 and maybe similar sites should be regulated by NRC, you'll
19 have to figure out how that would be done with DOE
20 maintaining ongoing regulatory oversight over the rest of
21 the site.

22 We have that somewhat in the USEC case, as I
23 understand it. So this is not unprecedented, but you will
24 have parallel systems in place for some period of time until
25 you complete the entire transition, and I hope you all think

ANN RILEY & ASSOCIATES, LTD.

Court Reporters

1250 I Street, N.W., Suite 300

Washington, D.C. 20005

(202) 842-0034

35

1 about that and the legal and contractual implications. I
2 think you have both.

3 CHAIRMAN JACKSON: You are saying there is the
4 issue that you can do a site license or a facility-specific
5 within a site.

6 COMMISSIONER MCGAFFIGAN: Right.

7 CHAIRMAN JACKSON: In a certain sense the Hanford
8 situation provides another example that we are de facto
9 working up on; the TMI fuel facility, which is one that we
10 are involved in at any rate in Idaho. All of these provide
11 examples. It's a question of distilling the collective
12 wisdom.

13 Commissioner.

14 COMMISSIONER MCGAFFIGAN: The latter is obviously
15 the much more difficult than the former.

16 CHAIRMAN JACKSON: Right, the facility-specific.

17 COMMISSIONER MCGAFFIGAN: The former we probably
18 all think we know how to do; the multipurpose laboratory
19 looks like a university oftentimes, smells like a
20 university, and can probably be licensed like a university.

21 CHAIRMAN JACKSON: Some would say is a university.

22 COMMISSIONER MCGAFFIGAN: The latter is going to
23 be where a lot of the legal talent goes.

24 CHAIRMAN JACKSON: Why don't we go on.

25 MR. THOMPSON: The next slide basically kind of
ANN RILEY & ASSOCIATES, LTD.
Court Reporters
1250 I Street, N.W., Suite 300
Washington, D.C. 20005
(202) 842-0034

36

1 sets out the approach that we are contemplating for the
2 pilot reviews. We are looking at this as kind of a joint
3 assessment. It's not quite a self-assessment, but it has
4 many of those elements where we are going to be involving
5 the facility and the DOE site people as well as NRC people
6 from headquarters, NRC regional inspector specialists on
7 this.

8 The teams will be co-chaired by John Austin, who
9 is here, and John Tseng, who is back there, for DOE, who is
10 also the co-chair with Ray Berube of the DOE task force.

11 CHAIRMAN JACKSON: Why don't you come sit at the
12 table.

13 MR. THOMPSON: We were waiting for Mary Anne
14 Sullivan. John, come up.

15 What we want to do is an assessment. It's
16 information gathering. It's not trying to be a gotcha type
17 of an approach. We are trying to evaluate the efforts. To
18 do this, we will look at documents, do some up-front
19 reviews, do some management planning on this aspect, and
20 develop our sense of understanding of the profile of the
21 activities there and what's really conducted, and then do
22 some onsite work with the combination of teams that we
23 talked about.

24 The criteria that we will be looking at is NRC,
25 DOE and particularly any of the national or state standards
ANN RILEY & ASSOCIATES, LTD.

Court Reporters
1250 I Street, N.W., Suite 300
Washington, D.C. 20005
(202) 842-0034

37

1 that might be applicable. I say that with respect to state
2 standards. The Berkeley lab has accelerators, and obviously
3 those are elements that we don't normally regulate, and to a
4 certain extent we are going to have to make some evaluation.
5 There are some thoughts that a state could regulate the
6 entire facility when it has those types of characteristics,
7 which is obviously a very different model than we have for
8 most all other federal facilities that have Atomic Energy
9 Act material which we regulate separately.

10 We do expect the team to prepare a report about
11 two months after the completion of each of the pilot
12 programs. In an ideal world those will be quicker than
13 later. Obviously it will depend on the complexity of the
14 facility as well as the stakeholders and how many dollars we
15 need in order to get the buy-in.

16 As I said earlier, we expect the first pilot to
17 begin approximately one week after we sign the MOU. I think
18 that's the full planning element associated with that.

19 CHAIRMAN JACKSON: Commissioner Dicus.

20 COMMISSIONER DICUS: Going up to the third bullet,
21 on risk-informed, performance-based approach, have you
22 fleshed out how you plan on using those concepts that we
23 have to focus the pilots on the areas of greatest
24 significance?

25 MR. THOMPSON: The answer is I'm probably going to
ANN RILEY & ASSOCIATES, LTD.

1 ask somebody else to answer it. There is a key element we
2 recognize that DOE has, their integrated safety management
3 approach, which really is a parallel to the concepts that we
4 have been using with our own kind of risk-based approach,
5 ensuring that we evaluate --

6 CHAIRMAN JACKSON: Risk-informed approach.

7 MR. THOMPSON: Risk-informed approach that we have
8 been working on and I'm learning to say properly, I think.
9 If I slip up again, I'll cut part of my tongue off.

10 [Laughter.]

11 MR. THOMPSON: John.

12 MR. AUSTIN: As you know, we have a draft
13 regulatory guide out for comment. In that draft regulatory
14 guide there are some principles and a framework, a logical
15 structure to making regulatory decisions. We plan to apply
16 those in looking at the pilot facilities.

17 MS. O'TOOLE: We have spent a great deal of time,
18 blood and toil in the last several years at the Department
19 of Energy trying to construct a common grammar, which you
20 have just demonstrated is difficult, so that we all are
21 proceeding along some similar lines in terms of following
22 principles of managing safety.

23 We have made some progress, as Hugh mentioned,
24 constructing what we call the integrated safety management
25 wheel, which is not magic; it is not new; it is very

ANN RILEY & ASSOCIATES, LTD.

1 familiar to most people who work in any realm of safety
2 management. It basically says that safety is not a matter
3 of simply checking off a list of standards that come down
4 from on high. It must be a continued dedication to proper
5 work planning, to a considered analysis of the hazards
6 associated work, to the implementation of appropriate
7 controls to manage those hazards, to the assessment of the
8 efficacy of the controls selected, and then feeding back
9 those assessment into the next work planning cycle.

10 We have tested that out in various modalities and
11 with different models at different levels of the agency, at
12 the task level, at the facility level, at the site level,
13 and to a much lesser extent at the program level. We have
14 gotten a lot of buy-in and a lot of benefit, I think, from
15 the beginnings of this evolution of a common language, which
16 I think, Madam Chairman, as you have just noted, is very,
17 very important.

18 So what we are eager to embark on is a shared
19 discovery of what iteration of the next common meta-language
20 or grammar might come out of this that is indeed
21 risk-informed and performance-based.

22 CHAIRMAN JACKSON: One could in fact, and I will
23 just assert, that a risk-informed, performance-based
24 approach, one could argue, is a methodology or an element of
25 integrated safety management. So you need not have to worry

ANN RILEY & ASSOCIATES, LTD.

1 about meta-languages.

2 MS. O'TOOLE: Absolutely.

3 MR. THOMPSON: I think that is one of the
4 fundamental things. It is really an underpinning of both
5 our activities and efforts in this area.

6 The next slide focuses a bit on the stakeholders.
7 We mentioned earlier how important the stakeholders are in
8 this overall effort.

9 Overall project activities. Both organizations
10 are responding to congressional oversight committees and
11 their staffs on questions concerning where we are headed.
12 Obviously there is legislative actions up on the Hill as we
13 speak.

14 The Office of Management and Budget is a key
15 player in this, and we will obviously keep them informed.
16 They have requested a status briefing once we proceed a
17 little bit further with our memorandum of understanding so
18 that they are on board with it.

19 Likewise, the agreement states. We plan to give
20 presentations to the Organization of Agreement States at
21 their annual meetings with the Council of Radiation Control
22 Program Directors.

23 COMMISSIONER DICUS: It's Conference of Radiation
24 Control Program Directors, not Council.

25 CHAIRMAN JACKSON: Common language.

ANN RILEY & ASSOCIATES, LTD.

Court Reporters

1250 I Street, N.W., Suite 300
Washington, D.C. 20005
(202) 842-0034

1 [Laughter.]

2 MR. THOMPSON: That concludes my briefing.

3 [Laughter.]

4 MR. THOMPSON: I've got three pages left.

5 The other element that is important is OSHA, but
6 also EPA. We do want EPA to be aware of what we are doing.
7 It's important to both our organizations that EPA understand
8 where we are going and how we intend to move forward.

9 As far as informing the public in general, we plan
10 to have a Federal Register notice, but we collectively will
11 try to identify those independent organizations that may not
12 normally just read the Federal Register like I do every
13 morning to pick out those things that may affect NRC.

14 CHAIRMAN JACKSON: Is that what you mean by the
15 directed mailing?

16 MR. THOMPSON: Right. There are stakeholders that
17 would be potentially like organizations that are already set
18 up around sites that DOE has. DOE has a fairly aggressive
19 -- aggressive is the wrong word --

20 MS. O'TOOLE: Robust.

21 MR. THOMPSON: Robust. There you are. I knew I
22 would make one more mistake before this thing was over.
23 That's it. No more mistakes.

24 [Laughter.]

25 MR. THOMPSON: A robust list of stakeholders at

ANN RILEY & ASSOCIATES, LTD.

Court Reporters

1250 I Street, N.W., Suite 300
Washington, D.C. 20005

1 particular facilities, like the agreement states.

2 CHAIRMAN JACKSON: Is there going to be a joint
3 list?

4 MR. THOMPSON: It should be a joint list.

5 With individual pilot facilities, we want to brief
6 the appropriate state regulators, both radiological and
7 maybe dealing with other activities; invite the states to
8 participate as observers or participants. We need to work
9 out the details on how that would work.

10 Citizens groups are particularly important. In
11 fact, as we both know, it is important to have the union
12 representatives. Sometimes there may be multiple union
13 interest in a particular site or facility, and so it's
14 important that they have a particular role.

15 COMMISSIONER DICUS: Also, in all of the
16 activities that are ongoing there is the question that I had
17 asked earlier in another briefing, coordinating with our
18 affected regions.

19 MR. THOMPSON: Yes.

20 Finally, kind of like what's behind door one, door
21 two and door three, we actually have two doors. Behind door
22 number one is Lawrence Berkeley. They are our first pilot
23 program. As we discussed earlier, they essentially do
24 multidisciplinary research in energy science and general
25 science and the biosciences. That is very similar to what

ANN RILEY & ASSOCIATES, LTD.

Court Reporters

1250 I Street, N.W., Suite 300

Washington, D.C. 20005

(202) 842-0034

1 we have at many of our universities. They actually have
2 about 440 graduate students and have some 100 or so students
3 that get a graduate type degree each year.

4 They have things like the national tritium
5 labeling facility, and as I mentioned, also they have the
6 accelerator which provides a unique area that we typically
7 never in the past have done any particular reviews on.

8 We did have the spent fuel dry transfer and
9 storage facility in Idaho early on, and I think that's
10 identified in the Commission paper that we sent up as a
11 candidate. We really did give this a lot of review early.
12 Because it was a new facility, it would be one that would
13 have us looking at some of the DOE spent fuel that is not
14 typical for what we normally look at.

15 Then, as we looked at what we would gain from a
16 pilot program, we came to realize that most of anything we
17 would gain in a pilot program we would gain during the
18 actual licensing, because it was a modular concept. They
19 were going to the TMI-2 module first. This would be at a
20 much later date. So we thought it would be a better pilot
21 project that would be a similar type facility.

22 The other aspect of it was we didn't really want
23 to interfere with the ongoing licensing review
24 responsibilities, which is our statutory responsibility, and
25 I think DOE agreed that they wouldn't want to see anything

ANN RILEY & ASSOCIATES, LTD.

Court Reporters

1250 I Street, N.W., Suite 300

Washington, D.C. 20005

(202) 842-0034

1 interfere with that schedule because they have commitments
2 also that we are trying to be sensitive to.

3 CHAIRMAN JACKSON: Does DOE expect to provide a
4 replacement for the Idaho site that will meet the proposed
5 schedule for the pilot program?

6 MS. O'TOOLE: Yes.

7 CHAIRMAN JACKSON: And you expect that you might
8 have that done before the MOU would be signed?

9 MR. BERUBE: At this point I would be concerned
10 that that could delay the MOU. I actually think the MOU can
11 proceed and we can identify the third pilot. In fact I
12 would like to take additional time to make sure that we get
13 a pilot that is going to work.

14 CHAIRMAN JACKSON: But you expect it to be part of
15 the pilot for this FY-98?

16 MR. BERUBE: Yes.

17 MS. O'TOOLE: Oh yes.

18 MR. BERUBE: I would say shortly after the MOU is
19 executed. Maybe toward the end of October or sometime in
20 November we should have it identified.

21 MR. THOMPSON: Right now we aren't looking at
22 doing three pilots simultaneously. There is a staggering of
23 the approach. Before we finish one we will start the
24 planning for the second, because there will be different
25 technical experts, different facilities. There are a lot of
ANN RILEY & ASSOCIATES, LTD.

Court Reporters

1250 I Street, N.W., Suite 300

Washington, D.C. 20005

(202) 842-0034

1 things we can do, but we did have a sequencing approach that
2 we were going to look at.

3 The third facility is the Radiochemical
4 Engineering Development Center at Oak Ridge, Tennessee. As
5 I mentioned earlier, it's a facility that processes and
6 utilizes a lot of DOE heavy element research. It would give
7 us some experience looking at how they work with irradiated
8 fuel assemblies and some experience with hot cells, though
9 we do have some experience with hot cells, and some heavy
10 elements.

11 To summarize where we are today, we are preparing
12 the MOU for the Commission and Secretary Pena's approval
13 early in October. We will select the three to six
14 facilities for the program in 1999.

15 We look forward to proceeding on this and
16 certainly would respond to any Commission questions.

17 CHAIRMAN JACKSON: I guess my question at this
18 stage of the game is, how does this track to
19 decision-making?

20 MR. THOMPSON: The approach that we see right now
21 is that once we get the first pilot report out, it may in
22 fact be able to give us sufficient information and
23 recommendations with respect to that group of facilities.
24 What is the right word, class?

25 CHAIRMAN JACKSON: Those facilities or classes of
ANN RILEY & ASSOCIATES, LTD.

Court Reporters

1250 I Street, N.W., Suite 300

Washington, D.C. 20005

(202) 842-0034

1 facilities.

2 MR. THOMPSON: Those classes of facilities. In
3 fact it may be sufficient in itself to justify the
4 Commission and the Secretary considering legislation to
5 include those classes of facilities in a transition period.
6 I don't know that we have to wait for the entire program to
7 be completed.

8 On the other hand, if there are questions about
9 the value added, we may need to have the results of more
10 pilot programs, more understanding of the costs that are
11 going to be associated with it before we proceed. That's
12 the way I would see it.

13 CHAIRMAN JACKSON: Cost is a big issue. We have
14 had a robust discussion. Perhaps I would ask Carl
15 Paperiello to comment. To a certain extent it strikes me
16 that in terms of what you advertise that costs are a
17 function of a decision about what regulatory approach makes
18 sense. It is not until you go in and do a more detailed
19 assessment than what you are going to be doing in these
20 pilots, it seems to me, and work out what the transition
21 plan is that you really know what the costs are and
22 certainly what the costs are on a per-fiscal year basis,
23 because the transition plan is predicated on some assessment
24 of where the facility is today, to what extent it meets the
25 standards it would need to meet, and then what things it

ANN RILEY & ASSOCIATES, LTD.

Court Reporters
1250 I Street, N.W., Suite 300
Washington, D.C. 20005
(202) 842-0034

47

1 would need to do if there are changes, and over what period.

2 I'd like to hear some commentary. I would like
3 to begin, if I may, having Carl perhaps make some edifying
4 comments from your experience with the USEC gaseous
5 diffusion plants.

6 MR. PAPERIELLO: That's right. I thought about
7 that as we were discussing lessons learned from USEC that
8 are applicable to it. I think that we are going to see
9 significant differences, I would expect, between Lawrence
10 Berkeley and the Radiochemical Engineering Development
11 Center. It deals with issues of hardware versus the
12 performance standards.

13 I think from everything I have read --

14 CHAIRMAN JACKSON: Don't make predictions about
15 specific facilities. I'm more interested in your generic
16 lessons learned in terms of how these things fall out,
17 because you haven't looked at the facilities yet.

18 MR. PAPERIELLO: That's exactly right. It's how
19 many things look like systems that we are already used to
20 and what we find that fits into our regulatory structure,
21 how many things, even if they don't fit into our regulatory
22 structure, are just a different way of doing something to
23 get to the same end point.

24 When you look at risk-informed, performance-based,
25 if they are achieving the results that we both agreed are
ANN RILEY & ASSOCIATES, LTD.

Court Reporters
1250 I Street, N.W., Suite 300
Washington, D.C. 20005
(202) 842-0034

48

1 acceptable, even if the methods are significantly different
2 than meet our conventions, if we are flexible enough to

3 accept that, that is certainly going to influence the cost
4 of taking over the regulations of these facilities as well
5 as the time line to do the integration, because procedures
6 won't have to be changed; things will not have to be
7 changed.

8 The approach that we have to the initial one,
9 which is Lawrence Berkeley, is to give ourselves a period of
10 learning rather than going in and saying, okay, is this
11 place good or bad or meeting some objectives? How do you do
12 understanding them and how do you achieve your goals? What
13 are your goals and how do they compare to our goals?

14 My first impression -- I'm will tell you it's only
15 a first impression -- from downloading the radiation safety
16 manual for Lawrence Berkeley is it looks quite --

17 CHAIRMAN JACKSON: I'm trying to steer us away
18 from talking specifically about facilities that the task
19 forces as task forces have yet to really do the full
20 evaluation on. I guess what I was really trying to elicit
21 from you is, what are those kind of key lessons learned in
22 terms of how one has to look at facilities that you have
23 gotten out of the experience that you may have had with the
24 USEC. Maybe I would like to hear from the Assistant
25 Secretary.

ANN RILEY & ASSOCIATES, LTD.

Court Reporters

1250 I Street, N.W., Suite 300

Washington, D.C. 20005

(202) 842-0034

49

1 MS. O'TOOLE: I think that there may be two
2 different decision levels to which matters of cost pertain.
3 I would hope that the pilots would give us some ballpark
4 figures that would be generalizable to the class of
5 facilities that the pilots inhabit. That might inform the
6 decision whether or not to go forward with authorization
7 legislation.

8 I think questions about how much money we ask OMB
9 for is a separate issue that will probably need more nuanced
10 analysis and will come later, but hopefully the pilots will
11 arm us to at least suggest to Congress whether or not
12 external regulation is a good thing and get that in motion.

13 CHAIRMAN JACKSON: Commissioner Dicus.

14 COMMISSIONER DICUS: One question. As part of our
15 definition of simulated regulation we use the term
16 "regulatory concepts." Have we really defined the term?

17 MR. AUSTIN: Under regulatory concepts, one would
18 be the risk-informed, performance-based. We will be trying
19 that out. Another regulatory concept would be certification
20 versus licensing. So it's in that nature that we would be
21 testing these.

22 COMMISSIONER DICUS: Do you think you have a
23 complete list of these regulatory concepts, or is this work
24 in progress?

25 MR. AUSTIN: Work in progress. It would be

ANN RILEY & ASSOCIATES, LTD.

Court Reporters

1250 I Street, N.W., Suite 300

Washington, D.C. 20005

(202) 842-0034

50

1 tailored to the individual facility. We will have a work
2 plan tailored to each one but which contains common elements
3 in order to reach these general decisions in the future.

4 CHAIRMAN JACKSON: Assistant Secretary.

5 MS. O'TOOLE: I would note, Commissioner, that we
6 have a few regulatory concepts ourselves which are codified
7 in our internal independent oversight template that we would
8 like to explore or use elements from.

9 COMMISSIONER DICUS: I want to be sure that that
10 is coordinated.

11 CHAIRMAN JACKSON: So out of this you are going to
12 come up with the regulatory guide.

13 MS. O'TOOLE: Yes, a robust set.

14 CHAIRMAN JACKSON: That word again.

15 [Laughter.]

16 CHAIRMAN JACKSON: Commissioner Diaz.

17 COMMISSIONER DIAZ: I've got a question for
18 Dr. O'Toole. I was looking at this interesting use of the
19 word "common," common grammar, common principles, a common
20 desire to serve the people of this country. There was
21 something that you said at the beginning. I'm not quoting,
22 but it would be close, and it impacts on an area which we
23 are highly sensitive to. Hundreds of facilities will be
24 decontaminated and regulated by EPA. What do you see the
25 role of the NRC in the decontamination of facilities and
ANN RILEY & ASSOCIATES, LTD.

Court Reporters
1250 I Street, N.W., Suite 300
Washington, D.C. 20005
(202) 842-0034

51

1 regulation of the facilities in that sense?

2 MS. O'TOOLE: I don't see a prominent, immediate
3 role. Right now most of that work, indeed I believe all of
4 that work, is going on within the purview of the Office of
5 Environmental Management.

6 There is an external regulatory framework that
7 governs that work. That is in the hands of the
8 Environmental Protection Agency. The Superfund laws, the
9 RCRA laws, Resource Conservation Recovery Act laws, and
10 other statutes are on the books that govern those kinds of
11 operations. We are not proposing to alter that
12 significantly.

13 There may be offshoots of that work having to do
14 with handling and deposition of materials that evolve into
15 wastes once they are taken out of the building that come
16 under NRC purview. For example, some of our materials will
17 be going to Yucca Mountain.

18 COMMISSIONER DIAZ: The actual status of a
19 decontaminated facility, which we normally have a stake in
20 our facilities, you presently don't see a role for the NRC
21 in that respect?

22 MS. O'TOOLE: The overall concept advanced by the
23 Grumbly task force was that over the next several years the
24 decontamination and decommissioning work will progress,
25 thereby decreasing the number of facilities that are

ANN RILEY & ASSOCIATES, LTD.
Court Reporters
1250 I Street, N.W., Suite 300
Washington, D.C. 20005
(202) 842-0034

52

1 contaminated in the Department, and that much of that work
2 will be accomplished in the next decade. It was thought
3 that it was probably not worth the effort to fold the
4 Nuclear Regulatory Commission into that endeavor. Given
5 that it is already overseen by EPA, there is already

6 external regulation of DOE operations in those spheres to a
7 very great extent, instead we would focus the NRC resources
8 on those aspects of DOE operations that will be ongoing
9 missions in the future and that do not now at present have
10 any external regulatory oversight.

11 COMMISSIONER DIAZ: Thank you.

12 CHAIRMAN JACKSON: Commissioner McGaffigan.

13 COMMISSIONER MCGAFFIGAN: Two questions. One that
14 may not come up naturally in the pilot program but it would
15 be interesting to see how it works is the enforcement
16 policy. I have been watching in the press some of the
17 enforcement actions of DOE vis-a-vis some of the labs,
18 Sandia or Los Alamos, or whatever. You exercise enforcement
19 discretion, as we do. In some cases you increase penalties;
20 in some cases, et cetera.

21 It might be interesting to just have the two
22 enforcement groups talk to each other to see whether there
23 are discrepancies at all in how we would approach an
24 individual case. Not how we would govern, but just so you
25 would understand our enforcement policy should external

ANN RILEY & ASSOCIATES, LTD.

Court Reporters

1250 I Street, N.W., Suite 300

Washington, D.C. 20005

(202) 842-0034

53

1 regulation come into effect and any differences that there
2 might be at the moment. We are not planning in the
3 simulation at the moment to do any enforcement.

4 The other suggestion I have for you -- I know the
5 issue of timing of legislation has come up in the staff
6 discussions. I just want to make a pitch for trying to have
7 something ready in calendar 1999 for the FY-2000
8 congressional process, the 106th Congress first session.

9 Having started in 1993, as the Assistant Secretary
10 said earlier, in this process, if anything is going to be in
11 place in the 21st Century, given the multi-committee nature
12 of jurisdiction in both houses, at least three authorizing
13 committees and an appropriation committee in each house, if
14 it isn't ready in 1999 and we send it up in 2000 in a short
15 session, with the complexity of the congressional
16 jurisdiction, it will be well into the 21st Century and a
17 different presidency before Congress gets to actually
18 authorizing some external regulation.

19 I don't know hard and fast, but I think a target
20 should be to try to do something in calendar 1999 and the
21 FY-2000 legislative process.

22 MS. O'TOOLE: I think that's very reasonable. I
23 am quite hopeful that the pilots will give us sufficient
24 information to allow us to do that and to propose informed
25 legislation.

ANN RILEY & ASSOCIATES, LTD.

Court Reporters

1250 I Street, N.W., Suite 300

Washington, D.C. 20005

(202) 842-0034

54

1 I share your concern about time ticking away and
2 the difficulty of getting through the various congressional
3 committees.

4 It is important to many of our stakeholders and
5 indeed some significant players in Congress that we
6 genuinely take heed of what we learn in the pilots, and that
7 it is not to be construed as a kind of make-work exercise,

8 and that we really do take the pilots seriously and closely
9 ponder the question of whether to go forward with external
10 regulation, that threshold question of yes or no, and then
11 how.

12 But I agree with you, Commissioner. If we are
13 going to do this, we need to move promptly, and 2000 sounds
14 about right.

15 CHAIRMAN JACKSON: A lot of being able to take
16 seriously the results of the pilots is a function of how you
17 structure what you are asking going in. That's the key, as
18 you know, to success, I think.

19 I would like to thank Assistant Secretary O'Toole,
20 Deputy Assistant Secretary Berube, Mr. Tseng, and the NRC
21 staff for providing a very informative briefing.

22 As I indicated in my opening remarks, the
23 Commission continues to endorse the Department's proposal
24 for evaluating the benefits of external regulation by
25 conducting the pilot program we have discussed today.

ANN RILEY & ASSOCIATES, LTD.

Court Reporters
1250 I Street, N.W., Suite 300
Washington, D.C. 20005
(202) 842-0034

55

1 As the Commission anticipated, both of our staffs
2 have worked together in an open and cooperative manner on a
3 very challenging project, and so I would like to commend
4 both sides, because the Commission recognizes the complexity
5 of the tasks that lie ahead for DOE, for NRC, and for all of
6 our stakeholders.

7 Finally, in light of Assistant Secretary O'Toole's
8 recent announcement of her resignation as Assistant
9 Secretary for Environment, Safety and Health at the
10 Department of Energy -- I was told I could say that, and I
11 asked specifically -- I would like to take this opportunity
12 to personally commend and thank Dr. O'Toole for providing
13 her leadership and guidance in launching a major overhaul of
14 the Department's internal safety program for addressing
15 conditions to improve the Department's nuclear sites and
16 nuclear activities. I am speaking on behalf of all of my
17 colleagues in that regard.

18 Your efforts and vision and tenacity have provided
19 a driving force in bringing about a new paradigm of safety
20 within the Department of Energy. So I wish you luck in all
21 of your future endeavors.

22 Unless my fellow Commissioners have any comments,
23 we are adjourned.

24 [Whereupon at 11:36 a.m. the meeting was
25 concluded.]

ANN RILEY & ASSOCIATES, LTD.

Court Reporters
1250 I Street, N.W., Suite 300
Washington, D.C. 20005
(202) 842-0034